ERICH NAUMANN: Yes.

THE SECRETARY GENERAL: Otto Rasch. Remain seated.

OTTO RASCH : Yes.

THE SECRETARY GENERAL: Erwin Schulz.

ERWIN SCHULZ: Yes.

THE SECRETARY GENERAL: Franz Six.

FRANZ SIX: Yes.

THE SECRETARY GENERAL: Paul Blobel.

PAUL BLOBEL: Yes.

THE SECRETARY GENERAL: Walter Blume.

WALTER BLUME: Yes.

THE SECRETARY GENERAL: Martin Sandberger.

MARTIN SANDBERGER: Yes.

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THE SECRETARY GENERAL: Willy Seibert.

WILLY SEIBERT: Yes.

THE SECRETARY GENERAL: Eugen Steimle.

EUGEN STEIMLE: Yes.

THE SECRETARY GENERAL: Ernst Biberstein.

ERNST BIBERSTEIN: Yes.

THE SECRETARY GENERAL: Werner Braune.

WERNER BRAUNE: Yes.

THE SECRTARY GENERAL: Walter Haunsch.

WALTER HAENSCH: Yes.

THE SECRETARY GENERAL: Gustav Nosske.

GUSTAV NOSSKE: Yes.

THE SECRETARY GENERAL: Adolf Ott.

ADOLF OTT: Yes.

THE SECRETARY GENERAL: Eduard Strauch.

EDUARD STRAUCH: Yes.

THE SECRETARY GENERAL: Emil Haussman.

MR. FERENZ: May it please your Honor, the prosecution has been informed that Emil Haussman,named as a defendant, died subsequent to the filing of the indictment.

THE PRESIDENT: The record will show that the defendant Emil Haussman died subsequent to the filing of the indictment and prior to this date or arraignment so that all proceedings arising out of this indictment will cease as of the date of his death.

THE SECRETARY GENERAL: Waldemar Klingelhoefer.

WALDEMAR KLINGELHOEFER: Yes.

THE SECRETARY GENERAL: Lothar Fendler.

LOTHAR FENDLER: Yes.

THE SECRETARY GENERAL: Waldemar von Radetzky.

WALDEMAR VON RADETZKY: Yes.

THE SECRETARY GENERAL: Felix Ruehl.

FELIX RUEHL: Yes.

THE SECRETARY GENERAL: Heinz Schubert.

HEINZ SCHUBERT: Yes.

THE SECRETARY GENERAL: Mathias Graf.

MATHIAS GRAF: Yes.

THE SECRETARY GENERAL: May this Honorable Tribunal please, all defendants except Emil Haussman are present and in the dock.

THE PRESIDENT: Very well. The prosecution will now proceed with the reading of the indictment and the defendants will attend to the reading of the charges lodged against them.

MR. FERENZ:

"Military Tribunal Case No. 9 OTTO OHLENDORF, HEINZ JOST, ERICH NAUMANN, OTTO RASCH, ERWIN SCHULZ, FRANZ SIX, PAUL BLOBEL, ALTER BLUME, MARTIN SANDBERGER,WILLY SEIBERT, EUGEN STEIMLE, ERNST BIBERSTEIN, WERNER BRAUNE, ALTER HAENSCH, GUSTAV NOSSKE, ADOLF OTT, EDUARD STRAUCH, WALDEMAR KLINGELHOEFER, LOTHAR FENDLER, WALDEMARVON RADETZKY, FELIX RUEHL, HEINZ SCHUBERT, and MATHIAS GRAF.

OFFICE OF MILITARY GOVERNMENT FOR GERMAN (US)

"AMENDED INDICTMENT "The United States of America, by the undersigned, Telford Taylor, Chief of Counsel for War Crimes, duly appointed to represent said Government in the prosecution of war criminals, charges that the defendents herein committed Crimes against Humanity and War Crimes, as defined in Control Council Law No. 10, duly enacted by the Allied Control Council on 20 December 1945.

These crimes included the murder of more than one million persons, tortures, atrocities, and other inhumane acts, as set forth in Counts One and Two of this indictment. All of the defendants are further charged with membership in criminal organizations, as set forth in Count Three of this indictment."

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THE PRESIDENT: Mr. Ferenze, in view of the fact that we have already had the roll-call of the defendants it seems unnecessary to me that you read again the names of the defendants as they now follow in the indictment and if we hear no objection we will proceed immediately to a reading of the counts beginning on page 6.

MR. FERENZ: Yes.

THE PRESIDENT: Very well.

MR. FERENZ: Count One - Crimes against Humanity.

1. Between May 1941 and July 1943 all of the defendants herein committed Crimes against Humanity, as defined in Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with: atrocities and offenses, including but not limited to, persecutions on political, racial, and religious grounds, murder, extermination, imprisonment, and other inhumane acts committed against civilian populations, including German nationals and nationals of other countries.

2. The acts, conduct, plans and enterprises charged in paragraph 1 of this Count were carried out as part of a systematic program of genocide, aimed at the destruction of foreign nations and ethnic groups by murderous extermination.

3. Beginning in May 1941, on the orders of Himmler, special task forces called "Einsatzgruppen" were formed from the personnel of the SS, the SD, the Gestapo , and otherpolice units. The primary purpose of these groups was to accompany the German army into the E astern territories, and exterminate Jews, Gypsies , Soviet officials, and other elements of the civilian population regarded as racially "inferior" or "politically undesirable."

4. Initially four Einsatzgruppen were formed, each of which supervised the operation of a number of subordinate units called "Einsatz kommandos" or "Sonderkommandos."

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Some Einsatzgruppen had, in addition, other units for special purposes. Each Einsatzgruppe together with its subordinate units consisted of about 500 to 800 persons. Einsatzgruppe A, operating mainly in the Baltic region, included Sonderkommandos 1a and lb and Einsatzkommandos 2 and 3. Einsatzgruppe B, operating mainly in the area towards Moscow, included Sonderkommandos 7a and 7b, Einsatzkommandos 8 and 9, and special units named Vorkommando Moscow, (also known as

Sonderkommando7c) and Trupp Smolensk. Einsatzgruppe C, operating mainly in the area towards Kiew, included Sonderkommandos 4a and 4b and Einsatzkommandos 5 and 6. Einsatzgruppe D, operating mainly in the area of sourthern Russia, included Sonderkommandos 10a and 10b and Einsatzkommandos 11 a, 11b and 12.

5. All of the defendants herein, as officers or staff members of one or more Einsatzgruppen or their subordinate units, committed murders, atrocities, and other inhumane acts as more specifically set forth in Paragraphs 6 to 9 , inclusive, of this Count.

DR. HANSSURHOLT: May I please have a word? The defense of the defendant Dr. Rasch calls the attention of the Court to the fact that the defendant is not in a position to attend the Court. The defense has made an application on 8 Sept. that the proceedings against Dr. Rasch be severed. The defendant was brought in this morning and the momentary condi tion of the defendant gives the defense reason to point out that he cannot attend the proceedings any further.

THE PRESIDENT: Are you satisfied that he is not in physical condition to attend the balance of the proceedings this morning which may not endure longer than an hour?

DR. SURHOLT: The defendant has just told me that owing to his condition he is not in a position even to understand the words of the prosecutor. He can't hear them .

THE PRESIDENT: Then do you make the representation that he is not in physical condition to be arraigned this morning?

DR. SURHOLT: I don't think so but I am prepared to represent him and the defendant has consented to that.

THE PRESIDENT: Then you ask that he be excused from the Courtroom for the rest of the proceeding this morning?

DR. SURHOLT: Yes, I ask for that.

THE PRESIDENT: Very well. The defendant Otto Rasch because of his physical condition will be excused from attendance this morning and he will be arraigned at a later date individually, will attendants escort the defendant Otto Rasch from the Courtroom? (the defendant Otto Rasch was escorted from the Courtroom) You may continue, Mr. Ferenz. BY MR. FERENZ:

"6. Einsatzgruppe A and the units under its command committed murders and other crimes which included, but were not limited to, the following;

(A) During the period 22 June 1941 to 15 October 1941 in Lithuania, Latvia, Esthonia and White Ruthenia, Einsatzgruppe A murdered 118, 430 Jews and 3, 398 Communists.

(B) On or about 4 July 1941 in the City of Riga, Sonderkommando 1a and Einsatzkommando 2, together with auxiliary police under their command, carried out pogroms in which all synagogues were destroyed and 400 Jews were murdered.

(C) During October 1941 in Esthonia, Einsatzkommando 1a, together with Esthonian units under their command, committed murders pursuant to a program for the extermination of all Jewish males over sixteen except doctors and Jewish elders.

(D) During the period 7 November 1941 to 11 November 1941 in Minsk, Sonderkommando 1b murdered 6, 624 Jews.

(E) During the period 22 June 1941 to 16 January 1942 in its operational areas, Einsatzkommando 2 murdered 33,970 persons.

(F) On 30 November 1941 in Riga, 20 men of Einsatzkommando 2 participated in the murder of 10,600 Jews.

(G) During the period 22 June 1941 to 19 September 1941 in Lithuania, Einsatzkommando 3 murdered 46,962 persons.

(H) During the period 22 June 1941 to 10 August 1941 in the area of Kauen and Riga, Einsatzgruppe A murdered 29,000 persons.

(I) During the period 2 October 1941 to 10 October 1941 in the vicinity of Krasnowardeisk, Einsatzgruppe A murdered 260 persons.

(J) During the period 15 October 1941 to 23 October 1941 in the vicinity of Krasnowardeisk, Einsatzgruppe a murdered 156 persons.

(K) During the period 24 October 1941 to 5 November 1941 in the vicinity of Krasnowardeisk, Einsatzgruppe A murdered 118 persons.

(L) On 20 November 1941 in the vicinity of Krasnowardeisk, Einsatzgruppe a murdered 855 persons.

(M) In about December 1941 in the ghetto in Witebsk, units of Einsatzgruppe A murdered 4,090 Jews.

(N) On 22 December 1941 in Wilna, units of Einssatzgruppe A murdered 402 persons including 385 Jews.

(O) On 1 February 1942 in Loknia, units of Einsatzgruppe A murdered the 38 gypsies and Jews remaining there.

(P) On 2 and 3 March 1942 in Minsk , units of Einsatzgruppe A murdered 3, 412 Jews.

(Q) On 2 and 3 March 1942 in Baranowitschi, units of Einsatzgruppe A murdered 2,007 Jews.

(R) On 17 March 1942 in Ilja, east of Wilaika, units of Einsatzgruppe A murdered 520 Jews.

(S) On or about 7 April 1942 in Kauen and Olita, Lithuania, units of Einsatzgruppe A murdered 44 persons.

(T) During the period 10 April 1942 to 24 April 1942 in Latvia, units of Einsatzgruppe A murdered 1,272 persons, including 983 Jews 204 Communists and 71 Gypsies.

7. Einsatzgruppe B and the units under its command committed murders and other crimes which included, but were not limited to, the following:

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(A) In about July 1941 in the city of Minsk, units of Einsatzgruppe B murdered 1,050 Jews and liquidated political officials, "Asiatics" and others.

(B) During the period 22 June 1941 to 14 November 1941 in the vicinity of Minsk and Smolensk, Einsatzgruppe B murdered more than 45,467 persons.

(C) On 15 October 1941 in Mogilew, units of Einsatzgruppe B murdered 83 "Asiatics."

(D) On 19 October 1941 in Mogilew, units of Einsatzgruppe B participated in the murder of 3,726 Jews.

(E) On 23 October 1941 in the vicinity of Mogilew , units of Einsatzgruppe B murdered 279 Jews.

(F) During the period 22 June 1941 to 14 November 1941 in its operational areas, Sonderkommando 7a murdered 1,517 persons.

(G) In September or October 1941 in Sadrudubs, Sonderkommando 7a murdered 272 Jews.

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vicinity of Klinzy, Sonderkommando 7a murdered 1,585 Jews and 45 Gypsies. areas, Sonderkommando 7b murdered 1,822 persons. White Ruthenia, Sonderkommando 7b murdered 216 Jews. Bryansk, Sonderkommando 7b murdered 82 persons, including 27 Jews. areas, Einsatzkommando 8 murdered 28,219 persons. 8 murdered 627 Jews and 812 other persons. participated in the murder of 113 Jews. 912 Jews.

THE PRESIDENT:Mr. Ferenz, I would suggest that it is not necessary to read the letter which proceeds each paragraph; merely read the text.

MR. FERENZ: Yes, sir. 8 murdered 822 Jews. of Mogilew, Einsatzkommando 8 murdered 1,609 persons, including 1,551 Jews and 33 Gypsies. began murdering Jews and by 25 October 1941, 3000 Jews had been executed of Witebsk, Einsatzkommando 9 murdered 273 persons, including 170 Jews. operational areas, the Group Staff of Einsatzgruppe and the Vorkommando Moscow murdered 2,457 persons.

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of Smolensk, the Grup Staff of Einsatzgruppe B and the Vorkommando Moscow murdered 144 persons. gruppe B and the Vorkommando Moscow murdered 144 persons. Einsatsgruppe B and the Vorkommando Moscow murdered all male Jews. Roslawl, Vorkommando, Moscow murdered 52 persons. Smolensk, Trupp Smolensk murdered 60 persons, including 18 Jews.

If your Honors, please, Mr. Walton will now continue with the reading of the indictment.

THE PRESIDENT: Very well.

MR. WALTON: Paragraph 8. Einsatzgruppe C and the units under its command committed murders and other crimes which included, but were not limited to, the following: of Shitomir, Novo Ikrainia and Kiew, Einsatzgruppe C murdered more than 75,000 Jews. Jews and confiscated their clothing and valuables. Shitomir, Sonderkommando 4a murdered 2,531 persons. areas, Sonderkommando 4a murdered more than 51,000 persons. Sokal and Luck, Sonderkommando 4A murdered 3000 Jews 317 Communists. Jews between the ages of 12 and 60.

Sonderkommando 4a murdered 32 Gypsies. with the Group Staff and police units, murdered 33,771 Jews and confiscated their clothing and valuables. Jews. vicinity of Krementschug, Sonderkommando 4b murdered 125 Jews and 103 political officials. Sonderkommando 4b murdered 186 persons. Poltawa, Sonderkommando 4b murdered 595 persons. vicinity of Kiew, Sonderkommando 4b murdered 861 persons, including 139 Jews and 649 political officials. vicinity of Artemowsk, Sonderkommando 4b murdered 1,317 persons, including 1,224 Jews and 63 "political activities." operational areas, Einsatzkommando 5 murdered 29, 644 persons. murdered 74 Jews. of Berditschew, Einsatzkommando 5 murdered 8,800 Jews and 207 political officials. vicinity, of Rowno, Einsatzkommando 5 murdered 2,615 Jews and 64 political officials.

vicinity of Kiew, Einsatzkommando 5 murdered about 8.000 Jews and 104 political officials. vicinity of Dnjepropetrowsk, Einsatzkommando 6 murdered 226 Jews and 19 political officials. of Stalino, Einsatzkommando 6 murdered about 149 Jews and 173 political officials. 6 murdered 493 persons, including 80 political activities and 369 Jews. and other crimes which included, but were not limited to, the following: in the area of Southern Russia, murdered more than 90,000 persons. murdered 45 persons, including the Council of Jewish Elders. murdered 16 Communists and 682 Jews. Kitschinew, Einsatzkommando 11a murdered 551 Jews. 11b murdered over 700 persons. Einsatzkommando 12 murdered 94 Jews. of Chotin, Einsatzgruppe D murdered 150 Jews and Communists. vicinity of Nikolajew, Einsatzgruppe D murdered 8,890 Jews and Communists.

vicinity of Nikolajew and Cherson, Einsatzgruppe D murdered 22,467 Jews. east of the Dnjepr, Einsatzgruppe D murdered 4,891 Jews and 46 Communists.

(L) During the period 15 January 1942 to 31 January 1942 within its operational areas, Einsatzgruppe D murdered 3,601 persons, including 3,286 jews and 152 Communists.

(M) During the period 1 February 1942 to 15 February 1942 within its operational areas, Einsatzgruppe D murdered 1,451 persons, including 920 Jews and 468 Communists.

(N) During the period 16 February 1942 to 28 February 1942 within its operational areas, Einsatzgruppe D murdered 1,515 persons, including 729 Jews, 271 Communists and 421 Gypsies and other persons.

(O) During the period 1 March 1942 to 15 March 1942 within its operational areas, Einsatzgruppe D murdered 2,010 persons, including 678 Jews, 359 Communists, and 810 Gypsies and other persons.

(P) During the period 15 March 1942 to 30 March 9142 within its operational areas, Einsatzgruppe D murdered 1,501 persons, including 588 Jews, 405 Communists, and 261 Gypsies and other persons.

10. The acts and conduct of the defendants set forth in this Court were committed unlawfully, wilfully and knowingly and constitute violations of the law of nations, international conventions, general principles of criminal law as derived from the criminal law of all civilized nations, the international penal laws of the countries in which such crimes were committed, and Article II of Control Council Law No. 10.

11. Between 22 June 1941 and July 1943 all of the defendants herein committed war crimes as defined in Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with: atrocities and offenses against persons and property constituting violations of the laws or customs or war, including, but not limited to, murder and ill-treatment of prisoners of war and civilian populations of countries and territories under the billigerent occupa tion of, otherwise controlled by Germany, and wanton destruction and devastation not justified by military nnecessity.

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The particulars concerning these crimes are set forth in paragraphs 6 to 9, inclusive, of Count One of this Indictment and are incorporated herein by reference.

12. The acts and conduct of the defendants set forth in this Count were committed unlawfully, willfully, and knowingly and constitute violations of international conventions, particularly of Articles 43 and 46 of the Regulations of the Hague Convention No. IV, 1907, the Prisoner-of-War Convention (Geneva, 1929), the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations--The international penal laws... It should be the "internal penal laws." It should be corrected.

THE PRESIDENT: Let that correction be noted in the record.

MR. WALTON: ...the internal penal laws of the countries in which such crimes were committed, and Article II of Control Council Law No. 10.

13. All the defendants herein are charged with membership, subsequent to 1 September 1939, in organizations declared to be criminal by the International Military Tribunal and paragraph 1 (d) of Article II of Control Council Law No. 10. Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the "SS"). Blume, Sandberger, Seibert, Steimle, Biberstein, Braune, Haensch, Otto, Strauch, Haussman, Klingelhoefer, Fendler, Von Radetzky, Schulbert and Graf were members of Aemater III, VI and VII of the Reichssicherheitshauptanit (RSHA) constituting the Reichssicherheitsdienst des Reichsfuehrers SS (Commonly known as the "SD").

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and Ruehl were members of Amt IV of the Reichssicherheitshauptamt (RSHA) constituting the Geheime Staatspolizei (commonly known as the "Gestapo"). of the Military Tribunals and the charges herein made against the above-named defendants are hereby presented to the Military Tribunals.

Signed "Telford Taylor, Brigadier General, U.S. Army, Chief of Counsel for War Crimes, Acting on behalf of the United States of America."

THE PRESIDENT: Mr. Walton, do you know whether the error pointed out by you is the result of a translation incorrectly done, or entirely a typographical error?

MR. WALTON: It is my impression, sir, that it is a typographical error. I will inform myself and report to the Court later on.

THE PRESIDENT: Well, it occurred to the Tribunal that we might make the correction now without the necessity of a formal amendment, if it is purely a typographical error; and if there is no objection from either side we will see to it that the indictment will read, in paragraph 12, "the internal penal laws," instead of the International penal laws," as you pointed out. notwithstanding each one will be asked whether he is familiar with the indictment because of having read it himself. into the microphone. There will be no speeches, discussions or arguments of any kind at this time. The defendant will answer the very simple questions put to him, and then plead "guilty" or "not guilty" to the charges lodged against him in the indictment. Tribunal?

DEFENDANT OHLENDORF: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thrity days ago?

DEFENDANT OHLENDORF: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT OHLENDORF: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT OHLENDORF: Not guilty, in the sense of the indictment.

THE PRESIDENT: You plead not guilty?

DEFENDANT OHLENDORF: Yes.

THE PRESIDNET: Very well.

Heinz Jost. Are you represented by counsel before this Tribunal?

DEFENDANT JOST: Yes.

THE PRESIDENT: Was the indictment in the German languaged served upon you at least thirty days ago?

DEFENDANT JOST: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT JOST: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT JOST: Not guilty, in the sense of the indictment.

THE PRESIDENT: Very well. bunal?

DEFENDANT NAUMANN: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT NAUMANN: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT NAUMANN: Yes.

THE PRESIDENT: How do you plead to this indictment, builty or not guilty?

DEFENDANT NAUMANN: Not guilty.

THE PRESIDENT: Very well.

Erwin Schulz, are you represented by counsel before this Tribunal?

DEFENDANT SCHULZ: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT SCHULZ: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT SCHULZ: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT SCHULZ: Not guilty.

THE PRESIDENT: Franz Six, are you represented by counsel before this Tribunal?

DEFENDANT SIX: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT SIX: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT SIX: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT SIX: Not guilty.

THE PRESIDENT: Paul Blobel, are you represented by counsel before this Tribunal?

DEFENDANT BLOBEL: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT BLOBEL: Yes.

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THE PRESIDENT: Have you read the indictment?

DEFENDANT BLOBEL: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT BLOBEL: Not guilty.

THE PRESIDENT: You may be seated. Walter Blume.

JUDGE SPEIGHT: Are you represented by counsel before this Tribunal?

DEFENDANT BLUME: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT BLUME: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT BLUME: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, builty or not guilty?

DEFENDANT BLUME: Not guilty.

THE PRESIDENT: Martin Sandberger.

JUDGE SPEIGHT:Are you represented by counsel before this Tribunal?

DEFENDANT SANDBERGER: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT SANDBERGER: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT SANDBERGER: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT SANDBERGER: Not guilty, in the sense of the indictment.

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THE PRESIDENT: Willy Seibert.

JUDGE SPEIGHT: Are you represented by counsel before this Tribunal?

DEFENDANT SEIBERT: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you more than thirty days ago--at least thirty days ago?

DEFENDANT SEIBERT: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT SEIBERT: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT SEIBERT: Not guilty.

THE PRESIDENT: Eugen Steimle.

JUDGE SPEIGHT: Are you represented by counsel before this Tribunal?

DEFENDANT STEIMLE: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT STEIMLE: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT STEIMLE: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT STEIMLE: Not guilty, in the sense of the indictment.

THE PRESIDENT: Ernst Biberstein.

JUDGE SPEIGHT: Are you represented by counsel before this Tribunal?

DEFENDANT BIBERSTEIN: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT BIBERSTEIN: Yes.

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JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT BIBERSTEIN: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT BIBERSTEIN: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT BIBERSTEIN: Not guilty.

THE PRESIDENT: Werner Praune.

JUDGE SPEIGHT: Are you represented by counsel before this Tribunal?

DEFENDANT BRAUNE: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT BRAUNE: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT BRAUNE: Yes.

JUDGE SPEIGHT: How do you plead to this indictment,guilty or not guilty?

DEFENDANT BRAUNE: Not guilty, in the sense of the indictment.

THE PRESIDENT: Walter Haensch.

JUDGE SPEIGHT: Are you represented by counsel before this Tribunal?

DEFENDANT HAENSCH: Yes.

JUDGE SPEIGHT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT HAENSCH: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT HAENSCH: Not guilty.

THE PRESIDENT: Judge Dixon will now interrogate the following defendants. Gustav Nosske.

JUDGE DIXON: Are you represented by counsel before this Tribunal?

DEFENDANT NOSSKE: Yes.

JUDGE DIXON: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT NOSSKE: Yes.

JUDGE DIXON: Have you read the indictment?

DEFENDANT NOSSKE: Yes.

JUDGE DIXON: How do you plead to this indictment, guilty or not guilty?

DEFENDANT NOSSKE: Not guilty.

JUDGE DIXON: Adolf Ott, are you represented by counsel before this Tribunal?

DEFENDANT OTT: Yes.

JUDGE DIXON: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT OTT: Yes.

JUDGE DIXON: Have you read this indictment?

DEFENDANT OTT: Yes.

JUDGE DIXON: How do you plead to this indictment, guilty or not guilty?

DEFENDANT OTT: Not guilty.

JUDGE DIXON: Eduard Strauch, are you represented by counsel before this Tribunal? (DEFENDANT BEGAN EPILEPTIC ATTACK AND WAS REMOVED FROM THE DOCK)

MR. GICK: Dr. Karl Gick, Your Honor, for the Defendant Strauch. May I make a statement as defense counsel for the Defendant Strauch? I would like to inform the Tribunal that the Defendant Strauch suffers from epileptic attacks. Strauch earlier asked me to make an application to the Tribunal in order to have him examined, in order to clarify the question of whether he is fit to participate in the proceedings. Within the next few days I shall submit this application. I ask that the Defendant Strauch be removed from the proceedings for the time being and that you listen to his pleading later on.

THE PRESIDENT: In view of the very obvious condition of the Defendant Eduard Strauch, the arraignment insofar as it pertains to him will be postponed to a later date. Defense counsel will be requested to submit a motion in writing along the lines indicated by him, which will be replied to by the Prosecution in due time, and then the Tribunal will pass upon whatever is contained in the motion. Since we are considering this subject at the present time, I might like to call counsel for Otto Rasch to the podium.

application - or had - for severance. I am not aware whether that application has been reduced to writing or not.

DR. SURHOLT: Yes, this application was handed in on the 8th of September in writing. I believe there was a delay because the translation of the medical opinion was difficult for the Translation Department.

THE PRESIDENT: Very well, then. If the motion has been filed I presume the Prosecution will reply to it in due time. Are you familiar with this motion, Mr. Ferenz?

MR. FERENZ: Yes, Your Honor, I am familiar with the motion. I have not as yet received an English translation of it. As soon as we do receive the motion we will reply to it, and the Tribunal may consider it at their convenience. I would, at this time, however, like to have it part of the record that the Defendant Rasch, who was excused, was excused at his own request and the Prosecution has no objection to it; however, before he was brought here this morning I was assured by a physician that he was physically able to attend the arraignment. He was excused on his own statement and not on the advice or request of any physician.

THE PRESIDENT: Very well. The record will so indicate. We will continue with the arraignment.

JUDGE DIXON: Waldemar Klingelhoefer, are you represented by counsel before this Tribunal?

DEFENDANT KLINGELHOEFER: yes.

JUDGE DIXON: Was the indictment in the German, language served upon you at least thirty days ago?

DEFENDANT KLINGELHOEFER: Yes.

JUDGE DIXON: Have you read the indictment?

DEFENDANT KLINGELHOEFER: Yes.

JUDGE DIXON: How do you plead to this indictment, guilty or not guilty?

DEFENDANT KLINGELHOEFER: Not guilty.

JUDGE DIXON: Lothar Fendler, are you represented by counsel before this Tribunal?

DEFENDANT FENDLER: Yes.

JUDGE DIXON: Was the Indictment in the German language served upon you at least thirty days ago?

DEFENDANT FENDLER: Yes.

JUDGE DIXON: Have you read the indictment?

DEFENDANT FENDLER: Yes.

JUDGE DIXON: How do you plead to this indictment, guilty or not guilty?

DEFENDANT FENDLER: Not guilty.

JUDGE DIXON: Waldemar von Radetzky, are you represented by counsel before this Tribunal?

DEFENDANT YOU RADETZKY: Yes.

JUDGE DIXON: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT VON RADETZKY: Yes.

JUDGE DIXON: Have you read the indictment?

DEFENDANT YOU RADETZKY: Yes.

JUDGE DIXON: How do you plead to this indictment, guilty or not guilty?

DEFENDANT VON RADETZKY: Not guilty.

JUDGE DIXON: Felix Ruehl, are you represented by counsel before this Tribunal?

DEFENDANT RUEHL: Yes.

JUDGE DIXON: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT RUEHL: Yes.

JUDGE DIXON: Have you read the indictment?

DEFENDANT RUEHL: Yes.

JUDGE DIXON: How do you plead to this indictment, guilty or not guilty?

DEFENDANT RUEHL: Not guilty.

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THE PRESIDENT: Heinz Schubert, are you represented by counsel before this Tribunal?

DEFENDANT SCHUBERT: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT SCHUBERT: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT SCHUBERT: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT SCHUBERT: Not guilty.

THE PRESIDENT: Mathias Graf, are you represented by counsel before this Tribunal?

DEFENDANT GRAF: Yes.

THE PRESIDENT: Was the indictment in the German language served upon you at least thirty days ago?

DEFENDANT GRAF: Yes.

THE PRESIDENT: Have you read the indictment?

DEFENDANT GRAF: Yes.

THE PRESIDENT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT GRAF: Not guilty.

THE PRESIDENT: Very well. Does counsel for the Prosecution or any counsel for the defense have any motions to make?

MR. FERENZ: The Prosecution has no motions to make, Your Honor.

DR. SURHOLT: I have no application to make, but in respect to the words of the Prosecution in the case of Rasch I would like to point out that only for today was I willing to accede to the request of the Defendant to let him go. This does not go for the rest of the proceedings.

THE PRESIDENT: Very well. In order that defense counsel may be prepared to proceed without delay with their respective cases, they are now informed that there will be no recess of the Tribunal between the completion of the Prosecution's case and the beginning of the defense.

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Opportunity has already been afforded defense counsel, I am informed, to peruse and study the documents which the Prosecution intends to present. Further opportunity will be given defense counsel to further peruse and study these documents prior to the opening of the actual trial date. Consistent with the safeguarding of every right of the defendants, as guaranteed by the Charter, the ordinances, and the laws controlling the procedure of this Tribunal, this case will proceed with dispatch. Any defense counsel who desires to call a witness or to obtain a document must not wait until he is about to call his client to the witness stand to testify. He should make his request immediately as soon as he is aware that he will need such evidence, so that whatever time is consumed in obtaining the evidence, whether it be oral or documentary, may be running while other defendants are testifying. The Tribunal does not want to be placed in the situation of idling a day or even an hour while awaiting evidence which, with a little bit of foresight and energy, could have been obtained in ample time. The trial--the taking of testimony, will begin on Monday, September 29, 1947, in Courtroom No. 2. This Court will be in recess until that time. The Tribunal will now rise.

THE MARSHAL: The Tribunal will be in recess until 9:30 o'clock Monday, September 29th.

(The Tribunal adjourned at 1045, to resume session at 0930, Monday, 29 September 1947.

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No. 2-A in the matter of the United States of America Nuremberg, Germany, on 22 Sept.

1947, 1445, Justice John J. Speight, presiding.

(Arraignment of Defendant Otto Rasch at Municipal Hospital Nuremberg, Germany, at 1445, hours, 22 Sept.

1947.

The following were present; Judge John J. Speight, presiding judge; A. Horlick-Hochwald, representing the Prosecution; Dr. Surholt, counsel for Defendant O. Rasch;Otto Rasch; defendant; Capt.

Jenckes, representing the Marshal, and the Secretary General's office; and Julian R.Schwab, reporter, and Mr. Lamm, court interpreter.)

JUDGE SPEIGHT: Otto Rasch.

DEFENDANT RASCH: Yes.

JUDGE SPEIGHT: You know that you have been indicted, and that an indictment has been filed against you for the commission of War Crimes and Crimes Against Humanity to the Secretary General of the Military Tribunal No. 2-A?

DEFENDANT RASCH: Yes, I know that.

JUDGE SPEIGHT: Are you represented by counsel?

DEFENDANT RASCH: Yes.

JUDGE SPEIGHT: Do you know that the first day of trial is set for Monday, September 19th, 1947?

DEFENDANT RASCH: Yes.

JUDGE SPEIGHT: Was a copy of the indictment in the German language served upon you at least thirty days ago?

DEFENDANT RASCH: Yes, I got it.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT RASCH: I have read it.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT RASCH: Not guilty.

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No. 2-A in the matter of the United States of America Nuremberg, Germany, on 22 Sept.

1947, 1540, Justice John J. Speight, persiding.

(Arraignment of Defendant Eduard Struch in the Chambers of Judge John J. Speight, Palace of Justice, Nuremberg, Germany, 1540 hours, 22 Sept.

1947.

The following were present: Judge John J. Speight, presiding judge; A. Horlick-Hochwald, representing the Prosecution Staff;Strauch; Capt.

K.S. Jenckes, the Marshal, also representing the Secretary General's office; Julian R. Schwab, court reporter; and Mr. Lamm, court interpreter.)

JUDGE SPEIGHT: Eduard Strauch.

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Do you know that you have been indicted, and that an indictment has been filed against you for the commission of War Crimes and Crimes Against Humanity to the Secretary General now pending before Tribunal No. 2-A?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Are you represented by counsel?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Do you know that the first day for the trial is set for Monday, September 29th, 1947?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Was a copy of the indictment in the German language served upon you at least thirty days ago?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: Have you read the indictment?

DEFENDANT STRAUCH: Yes.

JUDGE SPEIGHT: How do you plead to this indictment, guilty or not guilty?

DEFENDANT STRAUCH: Not guilty.

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litary Tribunal No. IIA in the matter of

THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II-A.

Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Military Tribunal II-A will now be in order and you will ascertain if the defendants are present.

THE MARSHAL: May it please your Honors, the Defendants Otto Rasch and Eduard Strauch are absent.

THE PRESIDENT: Because of what?

THE MARSHAL: At the request of the medical authorities, Sir.

THE PRESIDENT: Very well, Since the arraignment several days ago, Otto Rasch and Eduard Strauch have been arraigned separately because on the opening day they were too ill to respond, but that the record will show that they now have been arraigned properly, in accordance with law.

MR. FERENCZ: May it please Your Honors, it is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women and children. This was the tragic fulfillment of a program of intolerance and arrogance. Vengeance is not our goal, nor do we seek merely a just retribution. We ask this Court to affirm by international penal action man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of Humanity to Law.

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the dark decade of the Third Reich, would have seemed incredible. The defendants were commanders and officers of special SS groups known as Einsatzgruppen - established for the specific purpose of massacring human beings because they were Jews, or because they were for some other reason regarded as inferior peoples. Each of the defendants in the dock held a position of responsibility or command in an extermination unit. Each assumed the right to decide the fate of men, and death was the intended result of his power and contempt. Their own reports will show that the slaughter committed by these defendants was dictated, not by military necessity, but by that supreme perversion of thought, the Nazi theory of the master race. We shall show that these deeds of men in uniform were the methodical execution of long-range plans to destroy ethnic, national, political and religious groups which stood condemned in the Nazi mind. Genocide - the extermination of whole categories of human beings, was a foremost instrument of the Nazi doctrine. Even before the war the concentration camps within the Third Reich had witnessed many killings inspired by these ideas. During the early months of the war the Nazi regime expanded its plans for genocide and enlarged the means to execute them. Following the German invasion of Poland there arose extermination camps such as Auschwitz and Maidanek. In Spring 1941, in contemplation of the coming assault upon the Soviet Union, the Einsatzgruppen were created as military units, but not to fight as soldiers. They were organized for murder. In advance of the attack on Russia, the Einsatzgruppen were ordered to destroy life behind the lines of combat. Not all life to be sure. They were to destroy all those denominated Jew, political official, Gypsy, and those other thousands called "asocial" by the self-styled Nazi supermen. This was the nex German "Kultur".

gistered. They were forced to wear the Stard of David under threat of death. All were then assembled with their families to be"re-settled" under Nazi supervision. At the outskirts of each town was a ditch, where a squad of Einsatz men waited for their victims. Whole families were arrayed, kneeling or standing near the pit to face a deadly hail of fire. men for extermination, denying them the right to live.

Helpless civilians were conveniently labeled "Partisans" or "Partisan-sympathizers" and then executed. and insane, for "useless eaters" could never serve the Third Reich. beings and discharge corpses. Every Einstzgruppe had its allotment of these carriages of death. these Nazi slaughters and vowed that Justice would be done. Here we act to fulfill that pledge, but not alone because of it. crippled and its people hungry. Most Germans are still unaware of the detailed events we shall account. They must realize that these things did occur in order to understand somewhat the causes of their present plight. They put their faith in Hitler and their hope in his regime. The nazi ideology, devoid of humanism and founded on a ruthless materialism, was proclaimed throughout Germany and was known to all Germans. Hitler and other Nazi leaders made no secret of their purpose to destroy the Jews. As we here record the massacre of thousands of helpless children, the German people may reflect on it to assess the merits of the system they so enthusiastically acclaimed. If they shame at the folly of their choice they may yet find a true ideal in place of a foul fetish.

of this case. We charge more than murder, for we cannot shut our eyes to a fact ominous and full of foreboding for all of mankind. Not since men abondoned tribal loyalties has any state challenged the right of whole peoples to exist. And not since medieval times have governments marked men for death because of race or faith. Now comes this recrudescence - this Nazi doctrine of a master race - an arrogance blended from tribal conceit and a boundless contempt for man himself. It is an idea whose toleration endangers all men. It is, as we have charged, a Crime against Humanity.

The conscience of humanity is the foundation of all law. We seek here a judgment expressing that conscience and reaffirming under law the basic rights of man."

Mr. Glancy will now read Part I of the opening statement,

THE PRESIDENT: Let me suggest that as each attorney appears at the podium he announce his name and whom he represents, Of course that will not be necessary with the Prosecution, but I would like the defense counsel to do that. We didn't seem to do that last time, but that seems to make the record somewhat ambiguous.

MR. FERENCZ: Very well.

MR. GLANCY: May it please the Tribunal. to investigate the basic tenets and the development of the Nazi doctrine which inspired the crimes we shall prove. It is conceded that the Nazi neither invented nor monopolized this idea of superior peoples but the consequences they wrought gave it a new and terrible meaning. The Nazi conception has little in common with that arrogance and pretention which has frequently accompanied the mingling of different peoples.

The master race dogma as the Nazis understood and practiced it, was nothing less than the most all-encompassing and terrible racial persecution of all time. It was one of the most important points of the "unalterable program of the Nazi party" and the only one which was consistantly advanced from the very beginning of Nazi rule in Germany to the bitter end. It was, as Gottfried Feder, the official commentator of the Nazi Program, called it "the emotional foundation of the Nazi movement". The Jews were only one of the peoples marked for extermination in the Nazi program. The motivation of the crime of genocide, as it was carried out by Hitler and his legions in all of the occupied and dominated countries, steemed from the Nazi ideology of "blood and race". In this theory of the predominance of the alleged Nordic race over all others and in the mystic belief that Nordic blood was the only creative power in the world, the Einsatzgruppen had their ideological basis. In this primitive theory; derived in part from Nietzsche's teaching of the Germanic superman, the Nazis found the justification for Germany's domination of the world. As Rosenberg put it in mystic fog:

"A new faith is arising today; the myth of the blood, the come the old sacraments."

3 September 1933, Hitler professed a similar creed, but gave it a more practical expression:

"But long ago man has proceeded in the same way with his fellow man.

The higher race - at first higher in the sense of possess embraces races of unequal value.

Thus there results the sub as the sole conceivable right because founded on reason."

and races, particularly the Slavs of Eastern Europe, as inferior, and Jews and Gypsies, as sub-human. From this thesis to the conclusion that inferior people should be decimated, and sub-humans exterminated like vermin, is but an easy step. The International Military Tribunal found in its judgment:

"The evidence shows that at any, rate in the East, the mass German occupying forces.

In Poland and the Soviet Union territory could be used for colonization by Germans.

Hitler had written in 'Mein Kampf', on these lines, and the plan was clearly stated by Himmler in July 1942, when he wrote:

'It is not our task to Germanize the East in the old sense, ly Germanic blood live in the East."

In August 1942 the policy for the Eastern Territories as laid down by Bermann was summarized by a subordinate of Rosenberg as follows:

"The Slavs are to work for us. In so far as we do not need Germanic health services are superfluous.

The fertility of the Slavs is undesirable."

"In Poland the intelligentsia had been marked down for exter representatives of the Polish intelligentsia."

This aim was openly admitted by the highest SS dignitaries. Himmler gave vivid expression to this view point in a meeting of SS Major Generals at Posen, in October 1943:

"What happens to a Russian, to a Czech does not interest me in the slightest.

What the nations can offer in the way of napping their children and raising them here with us.

Whether only so far as we need them as slaves for our Kultur; other wise, it is of no interest to me.

Whether 10,000 Russian fe ditch for Germany is finished.

We shall never be rough and heartless when it is not necessary, that is clear.

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We Germans these human animals.

But it is a crime against our blood to and grandsons to have a more difficult time with them.

When somebody comes to me and says; 'I cannot dig the anti-tank kill them', then I have to say, 'You are a murderer of your own blood because; if the anti-tank ditch is not dug, German They are our own blood.

That is what I want to instil into of the most sacred laws of the future.

Our concern, our duty is our people and our blood.

It is for them that we must provide plan, work and fight, nothing else.

I wish the SS Germanic peoples, especially Russians.

All else is vain, winning of the war."

Cabinet session in the Government Building at Cracow on 16 December 1941 and advocated the following solution of the Jewish problem:

"Gentlemen, I must ask you to rid yourself of all feeling of pity.

We must annihilate the Jews, wherever we find them structure of the Reich as a whole."

licy as follows: "The Jews are a race which has to be eliminated. Wherever we catch one it is his end." And earlier, speaking of his function as Governor General of Poland, he confided to his diary this sentiment: "Of course, I cannot eliminate all lice and Jews in only a year's time." Military Tribunal, was asked how the defendant Ohlendorf could admit the murder of 90,000 people, he replied:

"I am of the opinion that when, for years, for decades, the inevitable."

Germany to embark on the program of extermination. The prophecy of Hitler, made in his speech to the German Reichstag on 30 January 1939, that the result of war would be the annihilation of the Jewish race in Europe came very near fulfillment.

It is estimated that, of the 9,600,000 Jews who lived in Nazi dominated countries, 6,000,000 have perished in the gas chambers of the Concentration Camps or were murdered by the Einsatzgruppen. As the International Military Tribunal found in its judg ment:

"Adolf Eichmann, who had been put in charge of this program killed in the extermination institutions."

this work with hideous and ruthless efficiency. It was Himmler who boasted proudly in his speech to the highest SS leaders, in 1943, "Only the SS was equal to the task of exterminating the Jewish people.

Others talked about it but had too many reservations..

honor in the history of the SS." Hans Frank, has publicly regretted his advocacy:

"We have fought against Jewry, we have fought against it for tion - utterances which are terrible.

...A thousand years will pass, and this guilt of Germany will still not be erased."

During the last years the world has learned much about this "state within the state" which was formed by the SS. Much about this new aristocracy of "blood and elite" need not be repeated here. The Einsatzgruppen were part of the SS. They were created at the direction of Hitler and Himmler, by Heydrich the Chief of the Security Police and SD, who was Himmler's righthand man, and operated under the direct control of the RSHA, the Reich Security Main Office, one of the most important of the twelve main offices of the SS.

The Einsatzgruppen were formed in the Spring of 1941. The sequence of events was as follows:

directing that the Security Police and the Security Service be called in to assist the Army in breaking every means of resistance behind the fighting front. Thereafter, the Quartermaster General of the Army, General Wagner, representing Keitel, the Chief of the High Command of the Wehrmacht, met Heydrich, Chief of the Security Police and Security Service. These two men reached an agreement concerning the activation, commitment, command and jurisdiction of units of the Security Police and SD within the framework of the Army. The Einsatzgruppen were to function in the rear operational areas in administrative subordination to the field armies, in order to carry out these tasks as directed by Heydrich and Himmler. level were necessary for the creation of such small units is shown by the character of their assignment. These "security measures" were defined according to the principles of the Security Police and the SD, the principles of Heydrich, the principles of unmitigated terror and murder. The actions of the Einsatzgruppen in the conquered territories will demonstrate the purpose for which they were organized. was attached to an Army Group. Einsatzgruppe A was attached to Army Group North, Einsatzgruppe B was attached to Army Group South. Einsatzgruppe D was assigned to the 11th German Army which was to be nucleus for the formation of a fourth Army Group, after it reached the Caucasus. The function of the Einsatzgruppen was here to insure the political security of the conquered territories both in the operational areas of the Wehrmacht and the rear areas which were not directly under civil administration. These two missions were made known at a mass meeting of the Einsatzgruppen personnel before the attack on Russia. At this meeting Heydrich, Chief of the SIPO and SD, and Streckenbach, Chief of the Personnel Office of the RSHA flatly stated that the task of the Ein satzgruppen would be accomplished by exterminating the opposition to National Socialism.

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of the Einsatzgruppen. Hitler himself, instructed them that it was the mission of these Special Task Forces to exterminate all Jews and political commissars in their assigned territories. The Einsatzgruppen were dependent upon the Army Commander for their billets, food and transport: relations between Armed Forces and the Security Police and SD were close and almost cordial, and the commanders of the Einsatzgruppen reported again and again that the understanding of the Army Commanders for the task of the Einsatzgruppen made their operations considerably easier." The officer strength of the Einsatzgruppen was drawn from the SD, SS, Kripo and Gestapo. The enlisted forces were composed of the Waffen SS, the Order police, the Gestapo and locally recruited police, When occasion demanded, the Wehrmacht Commanders would bolster the strength of the Einsatzgruppen with contingents of their own. The Einsatzgruppen were divided into Einsatzkommandos and Sonderkommandos. These sub-units differed only in name. When a mission called for a very small task force, the Einsatz or Sonderkommando was capable of further subdivision, called Teilkommando or splinter groups. population alone, but reached into prisoner-of-war camps in total disregard of the rules of warfare. Soldiers were screened by Einsatzkommandos personnel in order to find and kill Jews and political commissars. of the ideological background of this fight to the commanders in chief and the highest officers of the three branches of the Armed Forces.

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This war, he said, would not be an ordinary war, but a clash of conflicting ideologies. Special measures would have to be taken against political functionaries and commissars of the Soviet Army. Political activities and commissars were not to be treated as prisoners of war, but were to be segregated and turned over to special detachments of the SD which were to accompany the German troops. The carrying out of this Hitler directive was described by the International Military Tribunal in its judgment that:

"... There existed in the prisoner-of-war camps on the Eastern Front small screening teams (Einsatzkommandos), headed by lower ranking members of the Secret Police (Gestapo).to report them to the office of the Secret Police."

German soldier might suffer from the sight of these executions, the Chief of the Office IV of the RSHA assured him cynically that, in the future, this "special treatment" - the euphemistic expression for killing - would take place outside the camps so that the troops would not see them. tionary, commissar, higher ranking civil servant, leading personality of the economical field, member of the intelligentsia or Jew might escape extermination. These purposes were realized in actions we shall now describe.

MR. GLANCY: Mr. Walton shall continue for the Prosecution.

THE PRESIDENT: Very well.

MR. WALTON: began in conformity with the agreements between the Army High Command and the Reichs Security Main Office. At first the Border Police School Barracks at Pretzsch in Saxony was designated as an assembly point but because of the inadequacy of facilities, the neighboring villages of Dueben and Schmiedeberg were also designated as assembly points.

from military or police organizations, they already understood normal military duties. The course of training given them at the assembly points, consisted of lectures and speeches on their new and special functions. After this orientation the Gruppen received their equipment, and were to be committed to action. Events were not long delayed which brought these organizations to their assigned tasks, and their missions were thoroughly understood from the highest ranking leader of a Gruppe down to the lowest SS Man. Russia. The Einsatzgruppen, already alerted, fell in behind the marching columns of the Wehrmacht as an integral part of the machine constructed for swift and total war. Within a space of three days the training grounds in Saxony were empty and all Einsatzgruppen had entered upon the performance of their various missions. territory in the early months of this aggression. By December 1941 the Eastern front extended from Leningrad on the North to the Crimean Peninsula in the South. The Baltic States, White Ruthenia and most of the Ukraine were in German hands. In this wide land the Einsatzgruppen moved behind the lines of combat. They were deployed from north to south in alphabetical order across the east of Europe. as the proof is adduced. And it will be seen that they followed like methods in executing their common mission. Identity of purpose and of top command were reflected in a common pattern of performance. Some victims were disposed of casually. Political functionaries were shot where found. Prisoners of war who fell in the category of opponents of National Socialism were handed by the Wehrmacht to the Einsatzgruppen and killed.

These swift methods were also applied in disposing of Jews, gypsies and persons falling under that vague denomination "undesirables." But these latter classes of humans marked for slaughter were large - too large to be disposed of by casual assassination. Their very numbers demanded that they be killed en masse. Accordingly, we find plans and methods adpated to this necessity. to 800 men. Four of these small forces totaling not more than 3,000 men killed at least 1,000,000 human beings in approximately two years' time. These figures enable us to make estimates which help considerably in understanding this case. They show that the four Einsatzgruppen averaged some 1,350 murders per day during a two year period; 1,350 human beings slaughtered on the average day, 7 days a week for more than 100 weeks. That is 337 murders per average day by each group of 500 to 800 men during the two year period. All these thousands of men, women and children killed had first to be selected, brought together, held in restraint and transported to a place of death. They had to be counted, stripped of possessions, shot and buried. And burial did not end the job, for all of the pitiful possessions taken from the dead had to be salvaged, crated and shipped to the Reich. Finally, books were kept to cover these transactions. Details of all those things had to be recorded and reported. extermination operation, an Einsatz unit rounded up those elements of the population marked for slaughter. This was accomplished by special orders to report and by manhunts. It was followed by concentration of the victims under guard to be transported to a place for execution or at the abbatoir itself. In accomplishing roundups a common deceit was widely practiced: those who were to die were told to report for "resettlement" - hope was held out to those who had none in fact, and who awaited certain death. The methods of extermination varied little. Mass shooting, the commonest means of slaughter, was described with classis simplicity by Herman Graebe, a German civilian, before the International Military Tribunal.

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Graebe was in charge of a building firm in the Ukraine. May I read from his statement:

"I walked around the mound, and found myself confronted by a tremendous grave.

People were closely wedged together and heads.

Some of the people shot were still moving. Some were were still alive.

The pit was already 2/3 full. I estimated that it contained about 1,000 people.

I looked for the man who did the shooting.

He was an SS-man, who sat at the adge of the narrow end of the pit, his feet dangling into the pit.

He had a tommy gun on his knees and was smoking a cigarette.

The people, lying there, to the place to which the SS-man directed them.

They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice.

Then I heard a series of shots.

I looked into the pit and saw that on top of the bodies that lay before them.

Blood was running from their necks.

I was surprised that I was not ordered away, The next batch was approaching already.

They went down into the shot.

When I walked back, round the mound I noticed another truck-load of people which had just arrived.

This time it included sick and infirm persons.

An old, very thin woman with while two people held her up.

The woman appeared to be paralyzed.

The naked people carried the woman around the mound. I left with meters away from it.

Some of them were still alive; they looked firm who stood around.

A girl of about 20 spoke to me and asked me to give her clothes, and help her escape.

At that moment we I moved away to my site.

10 minutes later we heard shots from the vicinity of the pit.

The Jews still alive had been ordered to throw the corpses into the pit; - then they had themselves to lie down in this to be shot in the neck."

gasses in enclosed trucks or vans. Here again the victims were induced to inter these death machines by the promise that they would be transported to other areas for re-settlement. As the van left the leading area it was filled with deadly fumes. A few minutes later, when the van reached the disposal point, the corpses were unloaded into prepared excavations which became unmarked mass graves.

These, then, were the usual methods used by the Einsatzgruppen. May I now briefly detail some of their activities. ing what it had been doing. The report gave the total of 121,817 persons killed. The Commanding Officer stated:

"To our surprise it was not easy at first to set in motion an extensive pogrom against the Jews.

Klimatis, the leader was noticed from the outside.

During the first pogrom in the consisting of about 60 houses.

During the following nights, approximately 2,300 Jews were made harm, less in a similar way."

Sandberger, arrested all male Jews over 16 in its area and with the exception of doctors and the Counsel of Elders, they were all executed. The defendant Strauch commanded Einsatzkommando 2. Six months after they began operations, they reported a total of 33,970 executions. The Commissioner General of White Ruthenia had the following to say :

"During detailed consultations with the SSBrigadefuehrer Zenner Dr. Juris Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks.

In the endangering the allocation of labor in any way."

1942 when they reported that 15,000 Jews were shot in Tschwerwen. The report pointed out that these acts created a feeling of insecurity and even anxiety in the population of White Ruthenia and that it was impossible to estimate the consequences of such measures. At another time while this Einsatzgruppe was under Jost's command, it reported that it had executed 1,272 persons including those too aged and infirm to work and political leaders. The report adds that 14 of this number of more than 1,000 persons slaughtered were either guilty of misdeeds or were criminals.

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The proof will show, we believe, that this proportion of only 2% of the victims shot for crime is not unusual.

The Defendant Nuemann commanded Einsatzgruppe B. In Minsk this Einsatzgruppe had rounded up all make inhabitants and put them in a civilian prison camp. By careful screening, with the help of the Secret Field Police, it was able to liquidate over a thousand Jews. In Lithuania, a local commando of this Gruppe reported that 500 Jews were being liquidated daily. The report also stated that nearly half a million roubles in cash "which belonged to Jews who were subject to special treatment were appropriated as belonging to the enemies of the Reich and confiscated." By the middle of November 1941, Einsatzgruppe B could report a total of 45, 467 executions. These executions were broken down as follows: In reporting further executions in the civilian prisoners camps in Minsk, Einsatzgruppe B stated that another 733 civilian prisoners were liquidated. The comment made concerning these executions is:

"All the persons executed were absolutely inferior elements with a predominate mixture of Asiatic blood. No responsibility could be assumed if they were left in the occupied zone." B. In one of his affidavits he says:

"I carried out one execution in the course of my duty.

similar number were executed in Minsk ....in both occasions a in front of it and shot with carbines.

About 10 people were dead.

Coups de grace were not necessary."

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Eugen Steimle, the defendant, commanded Sonderkommando 7A. In one of his affidavits he tells us that he had been reprimanded for not shooting women and children in his mass executions. His reports will indicate that the reprimand was not without effect. and he tells us:

"During the time I was Kommando Head of the Kommando 7B, Bryansk.

The people to be executed were handed over to my unit by the local Commandant.

The corpses were temporarily buried in the snow and later buried by the army.

The valuables and Six did not vary from this standard pattern. Under the significant heading, "Executive Activities", this group reported in the first days of November.

"As to purely executive matters, approximately 80,000 persons occupation of Kiew; it was carried out exclusively against Jews E Even though approximately 75,000 Jews have been liquidated in this a possible solution of the Jewish problem.

Although we succeeded, all Jews have indeed disappeared.

But when after a certain periof executed Jews."

The killing of 33,000 Jewish inhabitants of Kiev in only two days stands out even among the ghastly records of the Einsatzgruppen. It was the Defendant BLOBEL, who with his unit under the command of the Defendant RASCH, accomplished this massacre which nearly defies human imagination.

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Einsatzgruppe C received high praise for its activities from the Commander of the 6th Army High Command, Generalfeldmarschall von REICHENAU. This ruthless, mass killing shamed some of the German witnesses, and the Einsatzgruppe had to report that "Unfortunately it often occurred that the Einsatzkommandos had to suffer more or less hidden reproaches for their consequent stand on the Jewish problem." which was marked for extermination. They were only the most helpless victims. Therefore, Einsatzgruppe C stressed the point of the political sources of danger by reporting:

"Even if an immediate hundred percent exclusion of the Jewry danger.

The Bolshevistic work depends on Jews, Russians, Georgians, Armenians, Poles, Lartians, Ukrainians; the population.

In this situation, the goal of a political police of the Jews."

Einsatzkommando 5 was commanded by the Defendant SCHULZ. Only half a year after this Einsatzkommando had begun its activities, it was able to report a total of 15,000 executions. It was reported that the liquidation of insane Jews represented a particularly heavy mental burden for the members of Schulz's Einsatzkommando, who were in charge of this operation. Nor were the non-Jewish inmates of insane asylums spared. Einsatzkommando 6 killed 800 of them in one asylum alone. The commander of this unit, at a later time, was the Defendant BIBERSTEIN. Before he became leader of Einsatzkommando 6, he was a Protestant Minister - and under his aegis two to three thousand helpless people were murdered, and he himself supervised executions which were carried out by his unit by means of a gas-van.

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The Headquarters Staff of Einsatzgruppe D is in the dock. The Commander was the Defendant Ohlendorf and his Deputy was the Defendant Schubert, A sub-unit of Ohlendorf's command, Einsatzkommando 12, was commanded by the Defendant Nosske. A third unit of Einsatzgruppe D, Sonderkommando 10/B, was led by one Persterer who is now deceased. Persterer's Deputy was the Defendant Ruehl.

During the first nine months of Ohlendorf's year in command of Einsatzgruppe D, this force destroyed more than 90,00 human beings. These thousands, killed at an average rate of 340 per day, were variously denominated Jews, gypsies, asiatics, and "undesirables". Between 16 November and 15 December 1941, this Einsatzgruppe killed an average of 700 human beings per day for the whole thirty day period. The intensity of the labors of Einsatzgruppe D is suggested by an April 1942 report upon its work in the Crimea, which states:

"The Crimea is freed of Jews. Only occasionally some small groups are turning up, especially in the northern areas. In cases where single Jews could camouflage themselves by means of forged papers, etc. they will, nevertheless, be recognized sooner or later, as experience has taught." In ordering these massacres Ohlendorf and his men were not without scruples.

"It was," he said, " my wish that these executions be carried out in a manner and fashion which was military and suitably humane under the circumstances. For this reason I personally inspected a number of executions, for example, executions which were carried out by Kommando 11B under the direction of Dr. Werner Braune, executions by Kommando 11A under Sturmbannfuehrer ZAPP in Nikolajew, and a smaller execution by Kommando 10B under the leadership of Alois PERSTERER in Ananjew. For technical reasons ( e.g. because of road conditions) it was not possible to inspect all mass executions. Insofar as I was prevented from Inspections for personal reasons, I ordered members of my staff to represent me at these. I remember that SCHUBERT inspected an execution which was carried out by Kommando 11B under BRAUNE's direction inDecember 1941 in Simferopol.

The only people whom I generally assigned to inspections were, except for SCHUBERT, Willi SEIBERT and Hans GABEL." to Berlin as, "very difficult" because "reports about actions against Jews gradually filtered through from fleeing Jews, Russians, and also from unguarded talks of German soldiers." But these difficulties apparently increased the determination of Einsatzgruppe D. On 18 February it reported to Berlin:

" By the end of February the combing-throughof the occupied Crimea will have beenfinished. Certain important areas in towns in particular are being regularly rechecked. The search for isolated Jews who have up to now avoided being shot by hiding themselves or by giving false personnel data, was continued. From 9 January to 15 February more than 300 Jews were apprehended in Simferopol and executed. By this the number of persons executed in Simferopol increased to almost 10,00 Jews, about 300 more than the number of Jews registered. In the other Kommando areas as well, 100-200 Jews were still disposed of in each instance." The International Military Tribunal reached the conclusion from the evidence then before it that:

"Einsatzgruppen of the Security Police and SD operating behind the lines of the Eastern Front engaged in the wholesale massacre of Jews.... Commissars, Jews, members of the intelligentsia, fanatical communists and even those who were considered incurably sick were classified as 'intolerable', and exterminated......These units were also involved in the widespread murder and ill-treatment of the civilian population of occupied territories. Under the guise of combatting partisan units, units of the SS exterminated Jews and people deemed politically undesirable by the SS, and their reports record the execution of enormous numbers of persons." The brief details I have recounted indicate the character of the proof to come. It is for such crimes as these that we invoke the jurisdiction of this court.

If it please Your Honors, Mr. Ferencz wil conclude the opening statement.

MR. FERENCZ: Jurisdiction of the Court Council Law No. 10, a quadripartite enactment made pursuant to these agreements, authorize the creation of this court. These Military Tribunals, established by the United States as agencies to administer Law 10, are in essence and in fact International Courts. towns, but the rights the defendants violated belong to all men everywhere. These rights may be vindicated by any nation, alone or in concert with others. The nationality of the victim and the time and place of crime do not impugn this jurisdiction. We find this law both in opinions of the Permanent Court of In ternational Justice and the practice of states in military offenses.1 The permanent court has held that states have legal power to determine any criminal matter as long as such legal action is not prohibited by international law.2 Where conduct menaces the universal social order, there can be and has been no prohibition on the right of courts to act. No law has ever prohibited the trial by any court of crimes such as we shall here disclose. crimes. International jurisprudence soon gave States the right to punish these violators regardless of the victim's nationality or the location of the crime. This applied in time of war or peace. It has long been accepted that a belligerent may punish members of enemy forces in its 1. Cowles, Universality of Jurisdiction of War Crimes.

Alif. Law Rev. June 1945 2. SS Letus (France vs Turkey) Judgment No. 9, Series A, No. 10.

Cited in Cowles, op. cit. pp 178-180 custody who have violated the laws and customs of war.

1 The jurisdiction exercised by military courts trying offenses against the laws of war has never been territorial. Sir Hartley Shawcross, the British prosecutor at the International Trial, pointed out that:

"The right of humanitarian intervention on behalf of the rights of man trampled upon by a State in a manner shocking the sense of mankind has long been considered to form part of the law of nations".2 German law professors too declared this in their writings.3 The jurisdictional power of every State extends to the punishment of offenses against the law of nations "by whomsoever and wheresoever committed".4 It is, therefore, wholly fitting for this Court to hear these charges of international crimes and to adjudge them in the name of civilization. committed Crimes against Humanity. The same acts we have declared under Count I as Crimes against Humanity are alleged under Count II as War Crimes, The same acts are, therefore, charged as separate and distinct offenses. In this there is no novelty. An assault punishable in itself may be part of the graver offense of robbery, and it is proper pleading to charge both of the crime. So here the killing of defenseless civilians during a war may be a war crime, but the same killings are part of another crime, a graver one if you will, genocide - or a Crime against Humanity. This is the distinction we make in our pleading. It is real and most significant. To avoid at the outset any possible misconception, let us point out the differences between the two offenses.

1. Ibid p. 206 2. Transcript p. 813 3. Bluntschi, "Das Moderne Volkerrecht der Civilisierten Staaten" 4. Wheaton, cited in Cowles, op cit.

supra p. 191 customs of war.

By their very nature they can effect only nationals of a belligerent and cannot be committed in time of peace. The Crime against Humanity is not so delimited. It is fundamentally different from the mere war crime in that it embraces systematic violations of fundamental human rights committed at any time against the nationals of any nation. They may occur during peace or in war. The animus or criminal intent is directed against the rights of all men, not merely the right of persons within a war zone. At a recent conference for the unification of penal law, the definition of crimes against humanity was a leading topic. There it was the Counselor of the Vatican who said:

"The essential and inalienable rights of man cannot vary in time and space. They cannot be interpreted and limited by the social conscience of a people or a particular epoch for they are essentially immutable and eternal. Any injury ....done with the intention of extermination, mutilation, or enslavement, against the life, freedom of opinion... the moral or physical integrity of the family.....or the dignity of the human being, by reason of his opinion, his race, caste, family or profession, is a crime against humanity."1 hostilities, may violate basic rights of man and simultaneously transgress the rules of warfare. That is the intrinsic nature of the offenses here charged. To call them war crimes only is to ignore their inspiration and their true character.

Control Council Law No. 10 clearly lists war crimes as offenses constituting violations of the laws and customs of war, and Crimes against Humanity as a distinct offense unrelated to war.2 The London Charter restricted the jurisdiction 1. Report of the VIIIth Conference for the Unification of Penal 2. Art. II, 1(b) and (c) of the International Military Tribunal to Crimes against Humanity connected with Crimes against Peace or War Crimes.

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1 This restriction does not appear in the Control Council enactment, which recognizes that Crimes against Humanity are in international law, completely independent of either Crimes against Peace or War Crimes. To deny this independence would make the change devoid of meaning.2 In this case the crimes occurred while Germany was at war.

This is a coincidence of time. The plans for persecution and annihilation were rooted deep in Nazi ideology and would have been effected even had their agressions failed to erup in open conflict. This was shown by their actions in Germany itself, in Austria and in Czechoslovakia. 1. Charter of the IMT, Art. 6(c) 2. The opening statement by the Prosecution in Case No. 5, U.S.

v. Flick et al, pp. 56-73, contains a detailed exposition of which we have charged.

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It accuses these defendants of atrocities and offenses, including persecutions on political, racial and religious grounds, murder, extermination, imprisonment and other inhumane acts. Each of these is recognized as a crime by Law No. 10. That murder and extermination violated the criminal laws of all civilized nations even the defendants will not be heard to deny. gave no warning to these accused that their attacks against ethnic, national, religious and political groups infringed the rights of manking? We do not refer to localized outbursts of hatred nor petty discriminations which unfortunately occur in the most civilized of states. When persecutions reach the scale of nationwide campaigns designed to make life intolerable for, or to exterminate large groups of people, law dare not remain silent. We must condemn the motive if we would affect the crime. To condemn an evil and ignore its cause is to invite its repetition. The Control Council simply re-asserted existing law when naming persecutions as an international offense. Germany itself had been their champion. In the Berlin Treaty of 1878, Germany declared that religious differences could not be used to exclude a person from his civil or political rights. Following the first World War, in the German-Polish Convention of 1922, Germany obtained the legal protection for her ethnic minorities throughout Poland. The German Government bound itself under German Law to guarantee the complete protection of the life and liberties of all inhabitants, without discrimination as to their birth, nationality, language, race or religion.1 Germany agreed that these were obligations of international 1. Reichsgesetzblatt, Part II, 1922, No. 10, dated 15 May 1922, Art.

concern1 and were basic laws which could not be superseded by any official, order, or any other law. 2 In the Permanent Court of International Justice Germany obtained recognition of an guarantees by international Law of her minority rights in Poland. 3 Indeed, it was under the guise of protecting the rights of minorities that the Nazis Invaded Czechoslovakia. So mindful of their own rights; no callous of the rights of others. gave ample warning to the world. It should come as no surprise to these defendants that they may now be judged under international law for acts which were always known as crimes. Count Two of our Indictment accused these defendants of violations of the laws and customs of war. The acts particularized in Court One, in addition to constituting Crimes against Humanity also violated rules for the conduct of hostilities and are therefore charged as a distinct offense. The standards of conduct for an occupying Power were established by the Rules of war. They were obligated by international agreements to protect family honor and rights, to respect the person and property of non-combatants as well as their freedom of religion. Prisoners-of-war were to be treated as prescribed by humane codes adopted by all civilized nations. The evidence will disclose how the defendants in this case defied these laws, how unarmed civilians were methodically liquidated, how 1. Ibid - Art. 72 2. Ibid - Chap. I i. 3. Opinion No. 6 and 7. Permanent Court of International Justice - Series A, No. 6, p. 4-41, dated 25 August 1925;Series A, No, 7 p. 4-107, dated 25 May 1926.

prisoners-of-war were casually Selected for extermination, and it will also show wholesale plunder and destruction devoid of all military necessity. All of these acts are war crimes as recognized in Law No. 10. declared that the SS, the Gestapo, and the SD were criminal organizations. In reaching their decisions the Court made frequent reference to the deeds of the Einsatzgruppen. These activities contributed largely to the Tribunal's finding that membership in the organizations named, constituted crime. We have charged that all of these defendants Were members of one or more of these criminal groups on or after 1 September 1939. Proof of such continuing membership supports conviction under Count Three of our Indictment. There will be little doubt that each one knew the criminal nature of the band he joined. If the law condemns any man for these participations none can bear greater guilt than the defendants in this case.

how the Einsatzgruppen were organized and their ideological foundation in Nazi Germany. We have suggested that the chief significance of this case lies in the protection by law of fundamental human rights and we have described how those rights were systematically violated. We also seek here to hold a handful of men responsible for crimes they alone could not possibly have committed. What are the standards by which we test their guilt? the mass executions committed by their units. In those cases they are clearly responsible under standards known and accepted by all. In other cases it may not be shown that these defendants specifically ordered or directly participated in the crimes of their Kommandos. Here guilt is just as great. of his organization. We cannot believe that any member of a group engaged in murders by the thousands could fail to know its criminal intent. We do not undertake the burden of showing any defendant's foreknowledge of the precise contours of the crime committed. No where on earth does the law impose such a burden. command in an extermination unit. By virtue of his post he had the power to order executions. It is not conceivable that these grave deeds Were independent acts of misguided subordinates. They were bound by law, if not by conscience, to refrain from such activity. That they knew, no doubt, as well as all men know it. They COURT II-A CASE IX will not here deny their knowledge of the Lord's Commandment, well known to all who wear the soldier's uniform.

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Laws which impose on him who takes command the duty to prevent, within his power, crimes by these in his control-these laws, declaratory of common morality rest lightly on the honorable soldier. He feels no restraint in the rule that old men, women and children shall be protected as far as military necessity permits. It is this duty legal and moral, to prevent, to mitigate, and to disavow the slaughter of innocents, that all the defendants flagrantly violated. The purpose of the laws of war to protect civilian populations and prisoners would largely be defeated if a commander could with impunity neglect to take reasonable measures for their protection. This was declared by the Supreme Court of the United States 1 and relied upon by Military Tribunal I in the case against German doctors. 2 of these defendants carried with it the power and duty to control their subordinates. This power, coupled with the knowledge of intended crime and the subsequent commission of crime during their time of command imposes clear criminal responsibility. that some word of explanation deges in as if to salve the conscience of the executioner. "So and so many persons were shot." the report will read "because they were too old and infirm to work." "this or that ghetto was liquidated, to prevent an epidemic," "so many children were shot, because they were mentally ill." 1. Application of Yamashita, 66 Supreme Court 340-347 2. Judgment of Military Tribunal, Case No. 1, p. 70.

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Such lean tokens cannot exculpate these wrongs. The Euthanasia doctrine based on a Hitler order scorning pre-existing law spurred the annihilation program. Military Tribunal I, in discussing euthanasia laws stated:

"The Family of Nations is not obligated to give recognition to such legislation when it manifestly gives legality to plain murder and torture of defenseless and powerless human beings of other nations." 1 Law No. 10 specifically declares that certain acts are Crimes against Humanity "whether or not in violation of the internal law of the country where perpetrated."

The defendants here can seek no refuge in the Law. of a superior does not free him from responsibility for crime.

It may be considered in mitigation. This is the law we follow here, and is notinnovation to the men we charge. Even the German Military Code provides that:

"If the execution of a military order in the course of duty violates the criminal law, then the superior officer giving the order will bear the sole responsibility therefore. However, the obeying subordinates will share the punishment of the participant:

(1) If he has exceeded the order given to him or (2) It was within his knowledge that the order of his superior officer concerned an act by which it was intended to commit a civil or military crime or transgression."

2 1. Military Tribunal 1, Case No. 1, p. 50. 2. Reichsgesetzblatt 1926, No. 37, p. 278, Article 47, (cited in Jackson Opening). of helpless people constitued crime?

Moral teachings have not so decayed that reasonable men could think these wrongs were right. 2 million Jews were murdered by the Einsatzgruppen and other units of the Security Police.1 The defendants in the dock were the cruel executioners, whose terror wrote the blackest page in human history. Death was their tool and life their toy. If these men be immune, then law has lost its meaning and man must live in fear.

THE PRESIDENT: The Tribunal will now be in recess and reconvene at 11:20 for the purpose of hearing the proof to be presented by the Prosecution.

We will repeat what we said on arraignment day: That the Defense must he prepared to proceed immediately upon the termination of the presentation of proof by the Prosecution.

DR. ASCHENAUER: My name is Aschenauer, Defense Counsel for the Defendant Ohlendorf. already handed to the Tribunal on the 26th of September, 1947. Several Defense Counsel in Case 9 have already informed the Tribunal that the assumption on the part of the Tribunal, that the Defense compared to that working in other trials was better supplied with detail and that therefore no break was necessary, does not correspond to the facts. in which they stated that Prosecution material was available in Room 119, but unfortunately it transpired that nothing was available in that room. It was stated in this letter that Room 119 had been mixed up with 219, but even a search for material in Room 219 wasn't 1. Official Text p. 292.

particularly successful, since that room was locked. Apart from that, even after the first day, fifteen of the thirty volumes which had been made available had been collected again by the Prosecution, and finally it isn't fair to compel the Defense to go through thirty volumes in order to find some evidence. Finally, it is an impossible condition if more than twenty Defense Counsel can look at documents at the rate of only one copy at a time, dealing with various parts of the evidence. ment books have been available does not alter this fact. In every trial so far, it has been the custom for all Defense Counsel to receive Prosecution documents from the Prosecution before the completion of document books. In case IX only twelve Defense Counsel have received a small number before that certain date, and in that connection as we were concerned with incomplete extracts from documents, the Defense is all the more handicapped since the indictment, as was said, concerned purely a relatively short presentation of documents. Nor can the Defense refrain from stating to the Tribunal that only a short time ago some

Defense Counsel took up their jobs, and added to this, that important witnesses are being abroad, or that their addresses were difficult to find, because their camps were changed frequently or are still changing. It must also be known that mail in Germany takes a long time and it must also be pointed out that translation of the opening statement take at least fourteen days, if the present difficulties of translation don't even make an even longer period necessary. The drafting of the opening statement, of course, can only be begun after the completion of submission of the Prosecution evidence, since this will go into the details. document books must be translated. In the Judges' Trial I sent my document books to the Translation Center on the 24th of July and the last document book was ready on the 6th of September, the first one on the 2nd of September.

days should be inserted between the completion of the Prosecution's presentation and the Defenses' opening statement; only in this way it is possible to guarantee a correctly conducted defense. would appear necessary that the Defense and the defendants each be given at least one copy of the document book, as was the custom in Case 6, and not, as was the case in this instance, one document book per Defense Counsel and Defendant.

THE PRESIDENT: So far as opening statements pre concerned, there is no reason why you should wait until the presentation of all the Prosecution's evidence before you begin to write your statement. You know what the defendants are charged with. There is no reason why you could not at this very instance, if you were called upon, proceed to write where you now are, and give your opening statement in the Ohlendorf defense. You know what he is charged with: the indictment is very specific, and you now heard the opening statement. Defense counsel are informed now that if they intend to present an opening statement, that they should proceed to write it immediately, and, so far as translations are concerned, if we can have them done in the way that mimeograph copies can be prepared, very well; if not, then the statments may be translated and read from the interpreters's booths. With regard to the documents. I should like to hear from the Prosecution as to just what has been given to the Defense, that we can make a ruling in accordance with the facts.

MR. FRENCZ: May it please, Your Honors: the Defense Counsel made a motion similar to this and submitted it in writing to the Tribunal. At this time the Prosecution replied in writing, and the Tribunal ordered in accordance with it a careful examination of both sides of the case. I do not care to go into the details of exactly which documents were delivered on which days inasmuch as I do not have receipts in my possession at this time. However, I would like to point out that the uniform rules of procedure laid down by all the Tribunals require only that defense counsel be given copies of documents to be introduced twenty-four hours before they are actually introduced. That is all that is required by the rules as laid down by the Tribunal.

THE TRIBUNAL: Does every defense counsel now have translated copies of these documents books on the bench?

MR. FERENCZ: Your Honor, on Friday afternoon I received signed receipts from the Defense Administrator showing that the Defense Administrator, who represents the defense counsel, had received copies 29 September 1947_M_MSD_7&8_2_Gallagher (Frank) of every single document we intend to use in this entire case.

Those documents are how arrayed in the document book in front of defense counsel. In addition to that which is much more, in a much longer time, than the rule required, we have given to the defense counsel twelve copies of every document we intend to use. These twelve copies were delivered as quickly as our translation branch could prepare them. I gave the translation branch several weeks ago a letter instructing them to give the defense counsel those copies, and they did deliver them, so that by last Friday or last Thursday, they had received advanced copies of ninety percent of our documents and by Friday they had then all which is much more than the rules require? I do not go into examination about what the Prosecution has given to the defense counsel.

DR. ASCHENAUER: Upon the statement by the representative of the Prosecution, I should like to draw attention to it that the Defense Administrator has received this material, that is possible, but he does not in any way represent us. The nine document books from which the Prosecution is reading were handed out to us on Friday evening, but it is out of the question that if the Prosecution is to read from them; that thereafter immediately after the opening statement one is able to represent one's client with regard to every individual document. The time for preparation is much too short.

THE PRESIDENT: Defense counsel must not believe that there is any intention on the part of the Prosecution, and certainly not on the part of the Tribunal to "ham-string" them in their adequate and complete presentationof the defdnse. What we want to avoid is unnecessary delay, and very often you approach a problem with the defeatest attitude, that you must have much more time than the situation really requires, for instance, with regard to witnesses. Now you have stated that the mail is slow, and much time be required for correspondance, and we can certainly understand that but there is no reason why with the immediate dispatch of correspondance for the purpose of obtaining witnesses who, enough witnesses can't be ready to proceed with the defense. After 29 September 1947_M_MSD_7&8_3_Gallagher (Frank) all, we have a great number of defendants, so that the one individual defendant need not wait until his case actually arrives before he begins to prepare his defense, he should begin immediately, I mena today, now.

DR. ASCHENAUER: Now may I bring the attention of the Tribunal that it is written the task of an adequate Defense to see that every defendant should be given the privilege to present his case in one piece, it is an impossibility for defense counsel to deal with his defense piece-meal;(one sentence missing because change of film.)

THE PRESIDENT: Do you now have copies of these defense books in German?

DR. ASCHENAUER: These document books have been handed over in nine volumes, and they are avilable, yes, Sir.

THE PRESIDENT: Yes, very well. The Prosecution will immediately proceed to introduce these in the record, and they then become proof, and subject to refutation. You will have as you now indicated you do have now the translation, and you will have amply time to read them and prepare your defense. Now with regard to the opening statements, I do not assume that you have any intention of making opining statements. Certainly they should not be unnecessarily long statements. It would appear to us that no opening statment for the defense should be longer than thirty minutes in duration. As there any one who feels they should have more time than that? It does not seem to me it would he necessary.

DR. ASCHENAUER: I believe that so far as I am concerned, half an hour will be enough. I am at least speaking so much now for the defendant than on behalf of the Defense. I am coming to the question of opening statements, it seems to me that the Prosecution today has touched upon a number of legal questions, which so far have never been mentioned before a Tribunal, with so much emphasis, and it seems necessary to me, therefore, that this speech be given to us as quickly as possible in the German language. Might I remind you, Mr. President, that in the Pohl case, President Toms took care that it was given to 29 September 1947_M_MSD_7&8_4_Gallagher (Frank) us immediately in the German language; if you look at these document books, have to come to the assumtpion that we must make our opening statements rather quickly.

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We therefore should have to have this opening speech rather quickly, for this Tribunal, being legally trained, would no doubt agree with me, that the legal concepts can not be examined by hearing them, but exact reading is essential.

THE PRESIDENT: You need not labor on that point, I agree with you entirely. You should have a copy of this opening statement quickly. Mr. Ferencz, how soon may they have that translation?

MR. FERENCA: Your Honor, the German version of the opening statement is now being mimeographed, and they will certainly be available this afternoon.

THE PRESIDENT: Very well.

DR. BERGOLD: Only when we have got an examined it, will be have the possibility of making a decision regarding the length of time the opening statement will require to be read, and therefore, I beg the Tribunal to reserve a discussion on the length of these opening statements, at least, for today, until we have had the opportunity to examine the opening speech, and then to come to a decision how long we should need to reply to it individually.

THE PRESIDENT: You have concluded the discussion, We want you to have had an opportunity to read the opening statement, counsel. The Tribunal will be in recess for twenty minutes.

(recess)

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THE MARSHAL: Persons in the courtroom please find your seats.

THE PRESIDENT: You may proceed, Mr. Ferencz.

MR. FERENCZ: May it please your Honors, inasmuch as this case will be based almost entirely upon official German documents, I would like at the outset to outline the procedure to be used for the introduction of these documents and to establish the authenticity of the documents to be presented. as expeditiously as possible and to read in court only those portions of the documents which are particularly significant. Each of your Honors should have before you a manila folder which is marked "Military Tribunal Case No. IX, Prosecution Document Book No. I." On the first page there is an index to the contents of the book. Immediately following this index there is a more detailed description of the documents and the order in which they will be presented. German copies of these document books were presented to the defense counsel three days ago, and advance copies of a large part of the documents were made available to the defense several weeks ago. Some of the documents to be used are lengthy and cover many subjects completely unrelated to the issues at bar. We have extracted for the document books only those portions which we have thought were in any way relevant in this case. Should our judgment have been faulty we shall gladly join defense counsel in correction of it. The proof in this case is quite free from subtlety, and I think we should quarrel little respecting the admitting of documents. have access to the complete document, and it is the complete document which will be offered as an exhibit.

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In accordance with the procedure established in other military tribunals and with the permission of the court, the Prosecution will assume that a document is in fact admitted into the record if no objection is raised by the defense counsel at the time that the document is offered in evidence. As a document is offered in evidence the identification number of the document will be mentioned as well as the Prosecution exhibit number. A certified copy of the original document will be handed to the representative of the Secretary-General as the offer is made. These copies become the official exhibits and are subject to inspection by defense counsel at the time of the offer if they so desire. should be noted that they fall into three broad categories: one, affidavits; two, German documents which were processed for use before the International Military Tribunal; and three, German documents which were processed for use before military tribunals such as this one.

The Prosecution offers as Exhibit No. 1 a certificate by the Chief of Counsel for War Crimes showing the authority of certain persons to administer oaths and to attest those affidavits which will be offered in evidence before this Tribunal. The certificate will be found on Page 1 of the Document Book No. I. prepared for use before the International Military Tribunal was established by a certificate of Major Willian Coogan, It was introduced in that trial as United States Exhibit No. 1 and explained how the United States Army captured, assembled and preserved German documents, records and arehives, and how they were catalogued and identified for use in trial. I would now like to offer as Exhibit No. 2 the Coogan certificate.

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It is found on Page 9 of Document No. I. tribunal are authenticated by a certificate of Mr. Fred Niebergall, Chief of the Document Control Branch. This supplies substantially the same information as the Coogan certificate. I offer the Niebergall certificate as Prosecution Exhibit No. 3. Page 14 of Document Book No. I reads as follows: "Therefore, I certify in my official capacity as herein above stated, that all documentary evidence relied upon by OCC is in the same condition as when captured by military forces under the command of the Supreme Commander, Allied Expeditionary Forces; that they have been translated by competent, qualified translators; that all photostatic copies are true and correct copies of the originals, and that they have been correctly filed, numbered and processed as above outlined." Signed, "Fred Niebergall". an almost complete set of detailed reports of Einsatzgruppen operations. These reports were called operational situation reports and were prepared in the following manner; The Einsatz units in the field were required to send regular reports to Berlin by mail and by radio describing their activities and giving their locations.

I offer Document NO-2716 as Prosecution's Exhibit No. 4.

DR. KOESSL: Dr. Koessl for the defendant Schubert. the reprint, at least my reprint, has several mistakes in it. I will make a decision after looking over the original.

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THE PRESIDENT: How do you now know that there are mistakes in this document if you haven't seen the original?

DR. KOESSL: The mistakes are quite evident, for example, the Reich Chancillory. Already upon the first reading you can see that there are mistakes in it.

THE PRESIDENT: Suppose we do this. Suppose we accept the document and then when you nave checked your copy with the original you may come to the podium and indicate what you think are errors and what correction should be made, and they we shall adjust the document accordingly.

DR. KOESSL: Yes, sir. But at the same time I also object against NO-3055. That is the Schubert affidavit of the 24th of February, 1947. It will be submitted later on, but in this volume.

THE PRESIDENT: Suppose you make the objection at that time. It might be easier to rule on it then.

MR. FERENCZ: If your Honors please, there will be several typographical errors in these documents, as is inevitable when we have work of this caliber. We shall be very glad to correct such errors at any time they are pointed out to us.

DR. GAWLIK: Dr. Gawlik for the Defendant Naumann. defense documents that objections can be raised if there are any mistakes after looking at the original? At the moment we have to immediately compare the originals with the transcripts.

THE PRESIDENT: The door will be open at all times for corrections of any character.

MR. FERENCZ: In Document NO-2716, which is an affidavit of the Defendant Schubert, there is a description of the typical manner in which the Kommando leaders had to send reports to the group headquarters containing information as to the number of Russians and Jews executed, and I quote from Paragraph 7 of his affidavit found on Page 17 of Document Book I, Page 19 of the German copy.

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"The Einsatzgruppe reported in two ways to the Reich Security Head Office. Once through radio, then in writing. The radio reports were kept strictly secret and apart from Ohlendorff, his deputy

Standartenfuehrer Willi Seibert and the head telegraphist Fritsch, nobody with the exception of the radio personnel was allowed to enter the radio station. This is the reason why only the above mentioned persons had knowledge of the exact contents of these radio reports. The reports were dictated directly to Fritsch by Ohlendorff or Seibert. After the report had been sent off by Fritsch I received it for filing. In cases in which numbers of executions were reported, a space was left open, so that I never knew the total amount of persons killed. The written reports were sent to Berlin by courier. These reports contained exact details and descriptions of the places in which the actions had taken place, the course of the coperations, losses, number of places destroyed and persons killed, arrest of agents, reports on interrogations, reports on the civilian sector, etc." Here the defendant -

DR. GAWLIK: Dr. Gawlik for the Defendants Naumann and Seibert. the Prosecution in every case indicates against which defendant the material is offered and what it wishes to prove by it so that we are not unclear about this.

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THE PRESIDENT: What it wishes to prove by a document is certainly superfluous because the document itself, if it means anything, will show what it intends to prove. Now, insofar as identifying the defendant himself is concerned, I should like to hear from the Prosecution in that regard.

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MR. FERENCZ: Your Honor, this is another illustration of a case in which the defense counsel have made a motion, received a written reply from the Prosecution and have received a court order and have brought up the same motion again in court. I will only repeat what I said in my reply to their original motion. Most of those documents are reports Which concern many of the defendants. Several of them concern all of the defendants. To stop at each point and recite the roster of the men in the dock would add very little to the case. One portion of cour case is devoted to proving the individual responsibility of each defendant. At that time we will refer back to the documents already received in evidence and point out exactly how each defendant is connected with that document. That is the procedure we intend to follow here and it seems to us to be very clear as to which documents will implicate which defendants.

THE PRESIDENT: That would seem to cover the situation, Dr. Gawlik. If, however, you find later on you are confused as to what defendant is charged with the contents of any particular document, then you may make whatever motionsyou desire to the Tribunal and they will be ruled upon, for it seems go us at this moment that the procedure outlined by the Prosecution is entirely reasonable and will be entirely clarifying to the defense.

MR. FERENCZ: In Document NO-2890, which was just introduced as Prosecution Exhibit 5, the Defendant Ohlendorff tells us in Paragraph 7, found on Page 23 of Document Book I, Page 26 of the German copy, and I quote: "The reports of the Einsatzgruppen went to the Army or Army Groups, to theChief of the SIPO and SD." Your Honor, the SIPO is the security police, "Normally, weekly or bi-weekly reports were sent to the Chief of the SIPO and SD by wireless and written reports were sent to Berlin approximately every month. The Army Groups or Armies were kept currently informed about the security in their area and other current problems. The reports to Berlin went to the Chief of the

SIPO and SD in the Reich Main Security Office. After the founding of the Commando-Staff of the Chief of the SIPO and SD in about May 1942, this staff prepared the subsequent reports.

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The Commando-Staff consisted basically of Gruppenfuehrer Mueller, Chief of Office IV and Obersturmbannfuehrer Noski, Group Leader in Office IV, to which specialists from Offices III, IV and V were available for coordinating the composition of the reports. Questions which had to do with the personnel of the group and with garrisons, came to Office I. Administrative questions and matters concerning equipment were taken care of by Office II. Information about the spheres of life (SD) went to Office III. The Chief of Office IV received reports on the general security situation, including Jews and communists. Information about the unoccupied Russian areas went to Office VI." book as Prosecution Exhibit 6. This is Page 29 of the German copy. This is an affidavit of an SS leader, Kurt Lindow, who states as follows:

"In October 1941, till about middle of 1942, I first was deputy chief and later on chief of sub-department IV A 1. This sub-department dealt with communism, war crimes and enemy propaganda; moreover it handled the reports of the various Einsatzgruppen until the Headquarter Staff was set up in 1942. The Einsatzgruppen in the East regularly sent their reports to Berlin by wireless or by letter. The reports indicated the various locations of the Gruppen and the most important events during the period under survey. I read most of those reports and passed them on to Inspector Dr. Knobloch of the Criminal Police who made them up into a compilation which at first was published daily under the title 'Operational Situation Reports USSR'. These reports were stencilled and I corrected them; afterwards they were mimeographed and distributed. The originals of the reports which were sent to the Reich Security Main Office were mostly signed by the commander of the Einsatzgruppe or his deputy.

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"The reports 'Operational Situation Reports USSR', No.'s 114, 115 118, 121, 122, 128, 138, 141, 142, 144, 159, as shown to me, are photostats of the original reports drawn up by Dr. Knobloch in subdepartment IV A 1 of which I was the chief." evidence. They were a sampling. They were shown to the affiant for the purposes of identification. Lindow continues:

"I recognize them as such by the red bordering discernible on the photostat, by their size, the types and partial bordering. I identify the handwritten initials appearing on the various reports as those of persons employed with the Reich Security Main Office, but considering that six years have elapsed since, I cannot remember the full names of these persons whose handwritten initials appear on the documents. From the contents of the handwritten notes I conclude that these were made by Dr. Knobloch, and moreover I notice that various parts of the abovementioned reports are extracted from the original reports of the Einsatzgruppen to the Reich Security Main Office.

"On the strength of my position as deputy chief and, later on, chief of subdepartment IV A 1, I consider myself a competent witness, able to confirm that the Operational Situation Reports USSR which were published by the chief of the Security Police and the Security Service under file mark IV A 1 were compiled entirely from the original reports of the Einsatzgruppen reaching my sub-department by wireless or by letter." of facts officially reported by the Einsatzgruppen themselves. Einsatzgruppen.

The Defendant Ohlendorff has given us a careful exposition of the formation of the Einsatzgruppen before the Russian campaign and how they were organized. This affidavit is Document NO-2890, found on Page 21 of Document Book No. I, and was received as Prosecution Exhibit 5, Page 23 of the German Document Book. It reads as follows:

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"1. The Einsatzgruppen for the Eastern Campaign (Russia 1941) began as a result of an agreement between the Chief of the Security Police and Security Service on the one hand, and the Chiefs of the OKW and OKH on the other," This, your Honors, refers to the Army High Command, "As I remember it, this agreement was signed by Heydrich and a representative of the OKH. On the basis of this agreement between the chief of the Security Police and Security Service, the OKW and OKH, the Einsatsgruppen were to take over the political security of the front areas, which, up to the time of the Russian campaign, the army units had carried out themselves. The Secret Field Police were to occupy themselves only with security within the groops to which they were assigned.

"2. As far as I remember, this agreement took effect about three weeks before the start of the Russian campaign and was as follows:

"a) The Chief of the SIPO and SD formed his own motorized military units in the form of Einsatzgruppen, which were divided into EinsatzKommandos and Sonderkommandos and were to be assigned in their entirety to the Army Groups or Armies. The Chief of the Einsatzgruppen was the deputy of the Chief of the SIPO and SD, who was assigned to Commander in Chief of the Army Group or Army.

"b) That the Armies or the Army Groups had to supply the Einsatzgruppen with quarters, food, repairs, gasoline and the like. Each Army Group and the 11th Army, the latter as nucleusof another Army Group for the Caucasus, was assigned an Einsa tzgruppe, which in turn was divided into Einsatzkommandos and Sonderkommandos.

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"During the Russian campaign there were four Einsatzgruppeh, which bore the identifying letters A, B, C, and D, The area of operation of each Einsatzgruppe was determined by the fact that the Einsatzgruppe was assigned to a certain Army Group or Army, and marched with it. The Einsa tzkommandos or the Sonderkommandos formed from them were assigned from time to time to area designated by the Army Group or Army. The Einsatzkommandos were divided into Sonderkommandos in order to have more small units available for the size of the area of operation.

"The areas of operation of the Einsatzgruppen were as follows: The Einsatzgruppe A operated from the center Latvia, Lithuania, and Esthonia towards the East. The Einsatzgruppe B operated in the direction of Moscow in the area adjoining Einsatzgruppe A to the south. Einsatzgruppe C had the Ukraine except for the part occupied by Einsatzgruppe D. At a later time, when the Einsatzgruppe D advanced towards the Caucasus, Einsatzgruppe C was in charge of the entire Ukraine, in so far asit was not under civil administration.

"Einsatzgruppe D had the Ukraine south of the line Czernowitz, Mogilew-Podolsk, Jampol, Ananjew, Nikolajew, Melitopol, Mariupol, Taganrog, Rostow. This area also included the Crimean peninsula. At a later time Einsatzgruppe D was in charge of the Caucasus area.

"All of the Einsatzgruppen were made up of a number of Einsatzkommandos and Sonderkommandos. For example, Einsatzgruppe D, of which I was chief, had the Sonderkommandos 10A, 10B, 11A, 11B, and Einsatzkommando 12." Tribunal the breakdown of Einsatzgruppen.

I'll continue:

"(5) The personnel strength of the Einsatzgruppen varied. It usually consisted of a total of 500 to 800 men. Einsatzgruppe D belonged to the smaller Einsatzgruppen. The officers and non-commissioned officers of the Kommandos were composed of men on detached service from the State Police, Criminal Police, and in limited numbers, from the Security Service, Aside from these, the troops were largely made up of 'Not dienstverpflichtete' (Compulsory service) of companies of the Waffen-SS and Order Police."

will return to it shortly when we deal with the subject of the function of the Einsatzgruppen which is the topic of that paragraph. 27 of Document Book #1, which is Document NO 4134 and offered as Prosecution Exhibit 7. This is on page 31 of the German book.

DR. ASCHENAUER (Defense Counsel for defendant Ohlendorf): I object against the submission of the Document NO. 4134. This document contains obvious errors. On page 31 of the German document book, Report USSR, No, 42 126, dated 29 October 1941. On page 36 of this copy, German document book, I find the following: "Situation report, USSR, #126, 27th October 1941." On the same page, the following text is to be founds "On daily report #110, 27 October 1941 the communication report remains unchanged." Daily report is evidently confused with situation report. Then 110 and 126 are not correct. It is also completely out of the question that from the 22nd of October to the 27th of October, 16 situation reports or daily reports should be made out and passed on. Here there is a question of mistakes and I therefore ask that this document be refused.

MR. FERENCZ: As I understand the objection, Your Honor, it is to either a poor translation whereby something was translated as "daily report" instead of "Operational report" and there is a number on the report which confuses the defense counsel. In the absence of a showing here of exactly what the defense counsel is talking about, I don't feel competent to comment on the particular objection. However, as a general matter, if there is such an error, I will certainly be glad to correct it. I am certain that there must be several errors in the presentation as we will give it. If there is anything more than purely formal objection, I wish the defense counsel would make that clear.

THE PRESIDENT: Dr. Aschenauer, is the document, as you read it, at least clear as to intent, and you find objection only to some detail which perhaps later can be straightened out?

DR. ASCHENAUER: No, Your Honor, I have the original in front of me now and here there are no typographical errorsand this is not a matter of typographical errors nor of details. My objection refers to the probative value of the document. First of all, in the operational report 126, there are two different dates given. One date, the 29th of October 1941, on the first page of the document. In one of the further pages, the date 27th of October 1941.

THE PRESIDENT: Are you reading now from the original? That is, the photostat?

DR. ASCHENAUER: No, this is the original document which the prosecution is offering.

THE PRESIDENT: Well, that's what I say. You are reading now from the original?

DR. ASCHENAUER: Yes,

THE PRESIDENT: And the objections, I take it, are to the original document and not to the translation?

DR. ASCHENAUER: Yes, that's right. And if I say "operational report" is confused with "daily report" or "situation report", then it's completely out of the question that the number 110 is correct.

THE PRESIDENT: Well, if you have no objection to the translation itself, then we don't see how your objection to the original can have any value, because the prosecution submits it as it is and if it is defective in any way then, of course, it's to your advantage that it's defective and, at the proper time, you will point that out in argument to the Tribunal when the issue must be decided. So, therefore, it does not go to the authenticity nor to the relevancy of the document. It's up to the prosecution to determine whether they wish to present in evidence a document which may be defective.

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DR. BERGOLD (Defense Counsel for defendant Biberstein): I believe my colleague would have to object to something else. It isn't really the actual original, but the photostat of the original and, anmely, that copy which the prosecution is submitting as evidence to the Tribunal. The objection of my colleague could, if I understand him correctly mean that this is something which is not authentic and which perhaps, at the first look at it, might look like a forgery. Therefore, it seems necessary that the prosecution in this case does not submit the photostat, but the originals, so that it can be objected to or not.

THE PRESIDENTS: Well, the photostat is always taken at its face falue unless it can be shown that there was some mechanical difficulty in the actual photographing of the document. Do I understand you to say, Dr. Bergold, that you insist on the presentation of the original report itself, and how would that help you any more than the photograph would?

DR. BERGOLD: No, the photostat isn't always the same. Sometimes one can see, by looking at an original, that, for example, different kinds of paper were used so that the original might be composed of different reports. Or that various typewriter ribbons were used. But you can only see that by looking at the original. The photostat does not show those color differences nor does it show the differences in the quality of paper.

THE PRESIDENT: Well, Mr. Ferencz, what have you to say to this?

MR. FERENCZ: Your Honor, there are two different objections to this document. The first objection made is that document which we have offered as a photostat of the original has, on the first page, the date 29 October 1941, whereas, on one of the pages next to the end, it has the date 27 October 1941. It seems quite immaterial to me whether the date was 29 October or 27 October, We have offered the document for a completely different purpose.

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you pointed out, is a matter which will be seen by the Court and which will be given weight in judging the probative value of this particular exhibit. The second objection made, however, is that this photostat copy may not be a true copy of the original. Either because...........

Pardon me, I'd understood it as being an objection that there may have been some error in copying the original. However, I see that defense counsel does not agree with me.

THE PRESIDENT: Well, Dr. Bergold, just what is your objection? The Tribunal had also understood it that way.

DR. BERGOLD: No, I merely say that the photostat is surely correct, but sometimes one can only judge a doubtful document if one looks at the original and see if the original in itself is a closed document or doesn't consist of several reports. The photostat is, of course, always correct. The photostat is unimpeachable. My request is merely to submit the original. Then we can decide whether we can maintain the objection or not.

MR. FERENCZ: I would like to point out that the certificate which goes with every exhibit certifies that it is a true photostatic copy of the original. In most other cases it has not been necessary to present the original. However, in order that these defendants are convinced that they have been given every opportunity, I have had the originals brought here from Berlin. They are available in my office and defense counsel are welcome, at any time, to compare the photostatic copy with the original and I will be very glad to correct any errors.

THE PRESIDENT: Very well. That answers it very completely.

DR. BERGOLD: I thank the prosecution for their graciousness.

MR. FERENCZ: The Operational Situation Report of 29 October 1941, found on page 27 of Document Book #1, which is the report we have just been discussing, shows the breakdown of Einsatzgruppen, Einsatzkommandos and Sonderkommandos, as charged in paragraph 4 of the Indictment, and as shown on the chart now before the Court.

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We come now to the purpose or function of the Einsatzgruppen. There was a definite reason why the Nazis considered it important, before the Russian campaign, to organize these special groups. There were special aims in the Nazi program which could not be fulfilled by the army alone and which would require battalions of SS men. Throughout the reports, letters, orders, affidavits, and other documents which will be presented here, the Court will find one persistent and ghastly thing:

Execution of Jews because they were Jews; execution of political functionaries because they were Communists; execution of Gypsies because they were regarded as anti-social; and execution of others because their arrogant murderers considered them inferior. Einsatzgruppen was.... What the function was. Document NO 4762 is a copy of portions of the judgment and is found on page 34 of Document Book #1. Page 39 of the German copy. It reads as follows:

"The murder and ill-treatment of civilian populations reached its height in the treatment of the citizens of the Soviet Union and Poland. Some four weeks before the invasion of Russia began, special task forces of the SIPO and SD, called Einsatz Groups, were formed on the orders of Himmler for the purpose of following the German armies into Russia, combatting partisans and members of Resistance Groups, and exterminating the Jews and communist leaders and other sections of the population. In the beginning, four such Einsa tz Groups were formed, one operating in the Baltic States, one towards Moscow, one towards Kiev, and one operating in the south of Russia."

And further the judgment says:

"The plan for exterminating the Jews was developed shortly after the attack on the Soviet Union. Einsatzgruppen of the Security Police and SD, formed for the purpose of breaking the resistance of the population of the areas lying behind the German armies in the East, were given the duty of exterminating the Jews in those areas."

NO 4762 as Prosecution Exhibit 8: NO. 2620-PS, found on page 35 of Document Book 1, and offered as Prosecution Exhibit 9, that - I quote. It's found on page 40 of the German book:

"Himmler stated that an important part of our task consisted of the extermination of Jews - women, men and children - and of Communist functionaries." formed, as stated in paragraph 3 of his affidavit, Document NO. 4145 which appears on page 37 of Document Book #1, and which is now offered as Prosecution Exhibit 10, as follows. Page 43 of the German book.

"During the setting-up of the Einsatzgruppen and Einsatzkommandos during the months of May/June 1941 I was at Dueben. During June, Heydrich, Chief of the Security Police and Sd, and Streckenbach, Head of Office I of the Reich Security Main Office, held lectures on the duties of the Einsatzgruppen and Einsatzkommandos. At this time we were already being instructed about the tasks of exterminating the Jews. It was stated that Eastern Jewry was the intellectual reservoir of Bolshevism and therefore, in the Fuehrer's opinion, must be exterminated. This speech was made to a small, selected audience. Although I cannot remember the individuals present, I assume that many of the Einsatzgruppen chiefs and Einsatz and Sonderkommando chiefs were present. I heard another speech by Heydrich in the Prinz Albrecht Palais in Berlin, in the course of which he again emphasized these points." addressed a letter to the chiefs of all Einsatzgruppen concerning the Jewish question. This letter, which is found on page 40 of Document Book #1, which is Document EC 307-1, is offered as Prosecution Exhibit 11, Page 48 of the German book.

point, I would like to point out the practice of other Tribunals. When there were objections of defense counsel to particular documents, the practice was to permit the prosecution to present its case in chief and then give the defendants every opportunity in their presentation of their case to point out errors in the documents, to emphasize different paragraphs of the document, and to make such corrections as they see fit.

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DR. ASCHENAUER (Defense Counsel for defendant Ohlendorf): Your Honor, that was not the usage before other Military Tribunals.

I object to this document. It does not at all refer to the subject of the Indictment before this Tribunal. The document merely refers to the commitment of Einsatzgruppen in Poland. It has nothing whatsoever to do with the Einsatzgruppen in Russia. In Russia, in 1939, there were no German Einsatzgruppen yet.

MR. FERENCZ: Your Honor, this is exactly the type of objection I refer to. When the Court has a document before it, the defense counsel may attack its probative value or the reason it is being Introduced. I would like, however, to continue introducing the document, as planned, without interruption, and the defense may make their objection at any time in the presentation of their case and point out any facts which may impeach the document at that time.

May I proceed?

THE PRESIDENT: Defense counsel certainly may object to the authenticity or relevancy of a document at the time it is being presented, because, if it is obviously irrelevant and obviously not authentic, there is no reason why the Tribunal should take up its time in even considering it. But, as to minor details - not necessarily minor details - but, as to itmes in the document itself which can easily be presented after the prosecution has terminated its case, I would suggest that that be the procedure to be followed. understand that he objects to its relevancy. Is that right, Dr. Aschenauer?

DR. ASCHENAUER: Yes, Your Honor.

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THE PRESIDENT: Now, I'd like to hear you on the relevancy, Mr. Ferencz.

MR. FERENCZ: Your Honor, this document is a letter sent to all the chiefs of Einsatzgruppen of the Security Police.

THE PRESIDENT: All of them?

MR. FERENCZ: Yes, sir.

THE PRESIDENT: Regardless of locality or geography?

MR. FERENCZ: The heading is: "To the Chiefs of all Einsatzgruppen of the Security Police. Re: The Jewish question in the occupied territory."

THE PRESIDENT: Well, that seems to be sufficiently broad to cover the categories into which the defendants fall.

MR. FERENCZ: If Your Honor please, I think I can anticipate the objection here. The date is September, 1939, and the question may arise, how is it related to these defendants? We are introducing this document not to show what any of these defendants did, but to emphasize what the Gruppen were doing, what the Chief of the Security Police and SD was doing. The same man who was Chief of the Security Police and SD when these defendants were in command, and the report shows that he discusses the terrible measures planned in the final solution of the Jewish question. It certainly seems relevant to me to see what the man who ordered these defendants to go into combat was talking about shortly before he did so, on a question which is very relevant to this case.

DR. ASCHENAUER: Your Honor, the objection made by the prosecution can be removed quite easily, be merely referring to a Prosecution Document itself. That is, Exhibit #8. That is the excerpt which was quoted before COURT II-A CASE IX from the judgment of the IMT.

This disproves the opinion that has just been expressed by the prosecutor now,

MR. FERENCZ: That is correct, Your Honor. This is another letter from a different source, further substantiating the point we are making. as such, it seems to me to be very relevant.

THE PRESIDENT: As background material it seems quite relevant to the case. We have introduced in other trials, speeches by Himmler which may not have been made directly to the defendants involved but which certainly indicated the pattern of activity of the SS group involved.

DR. BERGOLD: Yes, I understand the point of view, Your Honor, but this document is of a certain importance for us because Einsatzgruppen are addressed in this document. It is addressed to the Chiefs of all Einsatzgruppen. Therefore, the great possibility exists that the Einsatzgruppen which are under indictment here should be confused with these Einsatzgruppen. The Einsatzgruppen which are indicted here did not yet exist on the 21st of September, 1939. To be sure, they had not even been planned yet and, for that reason, I understand our objection that this must be cleared up because, otherwise, the impression is created from the very beginning that in this document, this type of Einsatzgruppen is referred to.

THE PRESIDENT: Is there anything in the document which would indicate the life of the order? Would it not be continuing until such time as these Einsatzgruppen came into being,and, therefore, would apply to all Einsatzgruppen?

DR. BERGOLD: No, Your Honor. They are quite different types of Einsatzgruppen. They never had anything to do with these here. They had quite a different organization and structure. Therefore, this order could never be applied to these.

DR. GAWLIK (Defense Counsel for Haumann & Seibert): Your Honor, I raise another objection. This concerns the document. It is a simple copy which does not bear any signature whatsoever. It isn't signed at all. This is apparent from the photostat. Therefore, I have to raise an objection to the authenticity of this document. It is only certified for the correctness of the copy "Major, General Staff" and it does not have a handwritten signature or initial.

MR. FERENCZ: Your Honor, the document is offered by the prosecution in order to show what Heydrich's thoughts were about the final solution of the Jewish question. That is all. We ask the Court not to consider the document for any other point. That being so, I don't think it worth while to delay at this time to discuss the authenticity of the document. This, as every other document we shall introduce, will bear the certificate that it is a true copy of a captured document. Therefore, it is admissible if half is missing, or if the signature is missing, or whatever condition it may be in. We offer it for that simple point.

THE PRESIDENT: With the limitation that the prosecution has now volunteered, the document will be received and given such probative value as it will merit in the final consideration of the case.

DR. GAWLIK: Your Honor, I ask you to reconsider this decision because a document cannot have any probative value which is unsigned. It is completely valueless. This original document reads this way. "Signed: Signature, written with typewriter. A copy has merely been made of it. It's completely out of the ordinary.

MR. FERENCZ: Your Honor, lest this problem continue COURT II-A CASE IX to arise, I think it worth while to take a moment to answer this objection.

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signed personally by Heydrich. They copy has typed in "Signed: Signature". Immediately under that: "Certified True Copy, Signed: Major, I.G." This is obviously a copy made by the Germans themselves of a true copy and that is why it is being introduced.

DR. GAWLIK: Your Honor, the situation is not this way. I don't object that Heydrich didn't sign it, but it would have to be signed by whoever made out the certified copy. Namely, the Major in the General Staff, but even this major did not sign it. It says literally "no signature" and literally is typed in. "Signed: Signature" and this was written with typewriter and this is completely unusual. The initials of the major would have to be present or the signature of the major. And this document could have been written in any way and has not the slightest probative value. And my objection isn't that it is not the intials of Heydrich, but there are no initials at all, not even of the person who made up the certified copy. Up above it says "copy" and down below "Signed" with typewriter. There is no such thing.

THE PRESIDENT: If counsel will let the Tribunal have the photostat during the recess period, we will render a decision definitively when we reconvene at 1:50. May I have that now?

We would ordinarily have reconvened at 1:45, but since we have gone five minutes over the period, it will be 1:50. Ten minutes to two.

Now what page is that?

MR. FERENCZ: Page 40 of the document book.

(A recess was taken until 1350 hours, 29 September 1947) (The Tribunal reconvened at 1350 hours.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The certificate which accompanies Exhibit 11, Document EC-307-1, indicates that the document was found in German archives, records and files captured by Military Forces under the command of the Supreme Commander, Allied Expeditionary Forces. Since the document was found in the German archives, that fact in itself would argue against spuriousness or forgery because since the document would appear to be detrimental or inimical to the interests of those who possessed it, it is scarcely possible that one would hold in his possession a forged document against his own interests. Therefore, under the rules of procedure, the exhibit will be accepted for whatever probative value the Tribunal will give to it eventually in consideration of the entire case.

You may proceed, Mr. Ferencz.

MR. FERENCZ: Thank you. function of the Einsatz Gruppen and had just introduced Document EC-307-1 where Heydrich emphasized that the total measures planned and the final aim were to be kept strictly secret, and that the measures planned required the most thorough preparation both from the technical and economic points of view. The defendant, Ohlendorf, in his affidavit, which was offered this morning as Prosecution Exhibit 5, stated in paragraph 6 which is on page 22 of the English document book and page 25 of the German document book, and I quote:

"The Einsatzgruppen had the following assignments: they were responsible for all political security tasks within the operational area of the army units and of the rear areas insofar as the latter did not fall under the civil administration.

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In addition they had the task of clearing the area of Jews, communist officials and agents. The lastnamed task was to be accomplished by killing all racially and politically undesirable elements seized, who were considered dangerous to the security." I and offered as Proseuction Exhibit 12, is a directive issued on 11 November 1942 by the Reich Commissioner for the Eastern Administration. This document made it clear that the carrying out of executions, especially the liquidation of Jews, was the task of the Security Police and the SD. Heydrich on 23 April 1942 sent to Ribbentrop a monthly report on Einsatz Gruppen activities. This is Document NO2662 found on page 48 of Document Book I and is offered as Prosecution Exhibit 13. It is on page 46 of the German document book. Here under the heading of "Executive Operations" the report has two separate sections dealing with the actions taken against Jews and Communists. ment Book I as Prosecution Exhibit 14. This is the infamous Operational Order No. 8 from Heydrich, Chief of the Security Police, issued to all Einsatz Gruppen in July 1941 describing his duties in purging prisoner-of-war camps. I quote:

"I am enclosing directives for the purging of the prisoner camps which contain Soviet Russians."

"I request that the chiefs of the Einsatzgruppen try to execute the purge of the transit camps with their own forces as far as possible." segregate civilians and prisoners of war to select those considered politically intolerable.

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Enclosure 2 states and I quote:

"Above all it is necessary to find out all important officials of the State and the Party, in particular professional revolutionaries, the officials of the Comintern, all influential party officials of the Communist Party of the Soviet Union and its subdivisions in the central committees, the regional and district committees, all People's Commissars and their deputies, all former political commissars in the

Red Army, the leading personalities on the central and intermediate level of the State administration, the leading personalities of the economy, the Soviet-Russian intellectuals, all Jews, all persons found to be agitators or fanatical Communists."

Then follows:

"In order to carry out successfully the measures indicated in these instructions the Kommandos will request the camp authorities to surrender the prisoners in question.

"Executions must not be carried out in or near the camp. If the camps are in the Government-General close to the frontier, prisoners are to be moved to former Soviet territory, if possible, for special treatment." things in their Judgment stating:

"Soviet prisoners of war in prisoner-of-war camps in Germany were screened by Einsatzkommandos acting under the directions of the local Gestapo officers. Commissars, Jews, members of the intelligentsia, 'fanatical Communists' and even those who were considered incurably sick were classified as 'intolerable' and exterminated." cution Exhibit 15. It is found on page 64 of the document book, page 82 of the German copy.

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already been introduced, swore in an affidavit he made in 1945, Document No. 2542-PS found on page 65 of the Document book and offered as Prosecution Exhibit 16, that Himmler had given orders to execute captured Russian political commissars and Jewish soldiers. In the prisoner-of-war camps on the Eastern front Einsatzkommandos had to segregate the prisoners for candidates for execution. This affidavit was read in part in the Judgment of the International Military Tribunal. Document NO-4763 is a part of the Judgment and I offer it as Prosecution Exhibit 17. It states and I quote from page 67 of the document book, page 86 of the German document book:

"There existed in the prisoner-of-war camps on the Eastern Front small screening teams (Einsatzkommandos), headed by lower ranking members of the Secret Police (Gestapo). These teams were assigned to the camp commanders and had the job to segregate the prisoners of war who were candidates for execution according to the orders that had been given, and to report them to the office of the Secret Police."

A few months after issuing Operational Order No. 8, the Chief of the Security Police sent another important order to the Einsatzkommandos. This is Document NO-3421found on page 68 of the document book and offered as Prosecution Exhibit 18. It is on page 87 of the German book. It states -

DR. ASCHENAUER: Dr. Aschenauer for defendant Ohlendorf. 3421. The Prosecutor has just explained that that was an order to the Einsatzkommandos in the East. Looking at it at first it shows that the Einsatzkommandos in the East were not addressed here. They only meant the Einsatz kommandos which had assembly points in the individual prisoner-of-war camps in the Reich.

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This document is not connected with the question raised by the Prosecution. For that reason I ask you to sustain my objection.

THE PRESIDENT: What is your view on this, Mr. Ferencz?

MR. FERENCZ: If it please Your Honor, what the Defense Counsel has pointed out is something which would go to the probative value of the particular document. I do not agree with his interpretation of it. Of course, that is a matter for the Court to decide. As such, we request that the Court accept this document as an exhibit. If as the Defense Counsel contends, it has no value in. this case, the Court will certainly recognize that and can discard the document.

DR. ASCHENAUER: Your Honor, I did not talk about the probative value but only about the distributor. On page 2 of the document it reads:

"To all Main Offices of the State Police, information to the Reichsfuehrer-SS and Chief of the German Police, to the Chief of the SIPO and the SD, to the Chiefs of the Amt I, II, III, IV, V, VI, and VII, to the Departments IV D 2, IV D 3 and IV foreign workers, to the Group Leader IV D, SS-Obersturmbannfuehrer Dr. Weinmann, to all higher SS and Police Leaders, to all Inspectors of the SIPO and the SD, to the Commander of the SIPO and the SD, to the Inspector of the concentration camps, to all Commanders of concentration camps."

That is the distribution list. All these offices were informed about the Order. Only the chiefs of the Einsatzkommandos in the East were not informed about it. For that reason I do not understand what this document has to do with the presentation of the Prosecution. The document is irrelevant. For that reason I ask you not to accept it.

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I do not want to mention anything about the contents.

THE PRESIDENT: The mere fact that it is not addressed to the Einsatz Gruppen of itself would not be a valid objection because in the very nature of things in unfolding the history of this operation, we will need to have documents other than those which are addressed directly to the defendants; so that of itself would not be a sufficient objection. If, however, you can show that the contents of the document in no way affected the defendants, then that would be another matter and that would go to the probative value.

DR. ASCHENAUER: In that case, Your Honor, I want to postpone it until I present my evidence.

THE PRESIDENT: Well, Judge Speight calls to my attention on page 68 the sentence which reads;

"The surplus copies attached are to be distributed to the leaders of the Einsatzkommandos."

DR. ASCHENAUER: Your Honor, I also found this sentence but the sentence does not refer to the Einsatzkommandos in the East but to the Einsatzkommandos of the SIPO and SD concerning the concentration camps in the Reich. That is a question we wish to examine when we present out evidence.

MR. FERENCZ: Your Honor, since we are on this point, I would like to point out, too, that in the heading it makes reference to Operational Orders 8 and 9. This is on page 68 of the document now before you. I have just read part of Operational Order 8. I refer the Tribunal back to page 56 of the document book which is Operational Order No. 8. There it gives the distribution list again and since

Defense Counsel has seen fit to read the entire list in the second document, I will read the entire distribution list or part of it at least in the first document which is referred to in the second, and it says:

"To the Einsatzgruppe A, Sonderkommando Ia, Sonderkommando Ib, Einsatzkommando II, Einsatzkommando III, Einsatzgruppe B, Sonderkommando VII a, Sonderkommando VII b, Einsatzkommando VIII, Einsatzkommando IX, Einsatzgurppe C, Sonderkommando IV a, Sonderkommando IV b, Einsatzkommando V, Einsatzkommando VI."

THE PRESIDENT: Mr. Ferencz, the document will be accepted and admitted for such probative value as will be determined later.

MR. FERENCZ: Yes, sir.

DR. STVEBINGER: Dr. Stvebinger for defendant Werner Braune. this document 5414. At the bottom of page 6 -

THE PRESIDENT: Which one are you referring to? Which one are you referring to?

DR. STVEBINGER: Document No. 3414.

THE PRESIDENT: What page is that in the American document book?

DR. STVEBINGER: I only have the German one in front of me. Page 67 in the German document book.

THE PRESIDENT: Very well. What is the objection?

DR. STVEBINGER: This document bears at the bottom of page 6 the stamp "Higher State Police, Secret State Police Office." I wish to point out that no such stamp existed ever. No "Higher State Police" in that sense never esisted.

MR. FERENCZ: May 7 point out, Your Honors, this is completely collateral. The Court has the document before it end can test the authenticity of the document.

THE PRESIDENT: The objection is overruled and the Prosecution will continue.

MR. FERENCZ: Another top secret order deals with the same subject. It is Document NO-3422 found on page 71 of the document book and now offered as Prosecution Exhibit 19. I will read a few extracts:

"Enclosed please find the directives for the purging of the prisoner-of-war camps and transit camps containing Soviet prisoners of war and civilian prisoners in the Rear army area; for your information and observance (see Enclosure 1).

"In particular I order that the operations order number 8 and 14 as well as the supplementary ordinance issued to them be destroyed immediately in case of danger."

Further on page 75 it states;

"The chiefs of the Einsatzgruppen for their zone of operation will submit to me monthly brief reports on the activity of the Sonderkommandos according to the pattern laid down for the activity reports of the Sonderkommandos."

On page 76 it states:

"In agreement with the commanding officers of the rear army area (district commanders for prisoners of war), the operations of the Sonderkommandos have to be regulated in such way that the segregation is effected as unobtrusively as possible and that the liquidations are carried out without delay and at such a distance from transit camps and villages as to insure their not becoming known to the other prisoners of war and to the population." every Kommando represented in the dock. ment book is offered as Prosecution Exhibit 20. This is on page 107 of the German book. This is an operational situation report stating that:

"Directives given by the Reich Main Security Office Liquidation of State officials and of Party officials took place in all mentioned towns of White Russia; Jews were dealt with according to orders in the same manner.

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The individual numbers of executions has not yet been established." book and page 109 of the German copy is offered as Prosecution Exhibit 21. This is an Einsatzgruppe report dated the 14th day of January, 1942, and stating on page 83, page 114 of the German book:

"Efforts are being made to purge the Eastern territory of Jews as completely as possible. Shootings were carried out in such a way as to attract as little public attention as possible." impelled to execute those whose political opinion, race or religion differed from their own. Thus, in Document NO3340, German document book page 119 and found on page 86 of Document Book I, which is offered as Prosecution Exhibit 22, Einsatzgruppe A reported that they had to shoot 140 persons near Leningrad, some of them for "membership in the Jewish race."

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121 of the German document "book, is now offered as Prosecution Exhibit 23. Here, Einsatzgruppe C reported their principal duty, apart from liquidating the party organizations and cleansing the country of Jews, was combatting partisans. This indicated that the destruction of the Communist party and the Jews was regarded as a routine matter by them. Einsatzgruppe D reported in Document NO-3139, page 123 of the German document book, found on page 91 of the English document book, and offered as Prosecution Exhibit 24; that they had solved the first part of the Jewish question when the Jews had been registered and herded into a few streets. The Einsatzgruppen knew in advance what they were going to do. The basic orders were given to them before the invasion of Russia, and in accordance with those instructions the Einsatzgruppen were able to plan their future operations. This is illustrated by the report of 22 August 1941, Document NO-2842, found on page 93 of the document book and page 127 of the German book, and offered as Prosecution Exhibit 25. Here the plans of the Einsatzgruppe C were disclosed. The plans reported were to round up the Jews in certain villages, liquidate them, and raze the villages to the ground. When the Einsatzgruppen wrote of their plans to destroy all the Jews, they meant exactly what they said. An old woman or an infant of Jewish blood were subjects fit only to be

shot. NO-3644, found on page 100 of the document book, page 134 of the German book, and offered as Prosecution Exhibit 26, and I quote:

"Rasch informed us that Obergruppenfuehrer Jeckeln had been to see him and had transmitted an order by the Reichsfuehrer-SS, implying that all Jews were to be shot. Only in cases where Jews were required for purposes of labor, consideration as to their executions should "be given. Jewish women and children were, if necessary, to be shot as wall in order to prevent acts of revenge."

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without foundation, as can he shown in a secret letter sent from the Eastern front on the second of December 1941 by the Inspector of Armaments. This letter, Document 3257-PS, found on page 103 of the Document Book, 136 of the German document book, and offered as Prosecution Exhibit 27, was addressed to Gen. Thomas, chief of the Industrial Armament Department in Berlin. The Inspector, who was chiefly disturbed by the annihilation of laborers needed for production, had the following to report, and I quote:

"The attitude of the Jewish population was anxious, obliging from the beginning. They tried to avoid everything that might displease the German administration. That they hated the German administration and army inwardly goes without saying, and cannot be surprising. However, there is no proof that Jewry as a whole, or even to a greater part, was implicated in acts of sabotage. Surely, there were some terrorists or saboteurs among them, just as among the Ukrainians. But it cannot be said that the Jews, as such, represented a danger to the German armed forces..."

DR. ASCHENAUER (Counsel for defendant Ohlendorf): Your Honors, I beg your pardon, but I have to interrupt. I must object to this document. This document 3257 does not bear any signature also nothing can be seen from the document as to its origin. It says the Ukrainian Inspector--therefore, it is nothing but a paper. The document does not show by whom it was sent, or whether it was sent off. Therefore, for that reason I contest the authenticity of this document and ask you not to accept it.

he attitude of the Jewish population was anxious, obliging from the beginning. They tried to avoid everything that might displease the German administration. That they hated the German administration and army inwardly goes without saying and cannot he surprising. However, there is no proof that Jewry as a whole, or even to a greater part, was implicated in acts of sabotage. Surely, there were some terrorists or saboteurs among them--just as among the Ukrainians. But it cannot he said that the Jews, as such, represented a danger to the German armed forces. The output produced by Jews who, of course, were prompted by nothing hut the feeling of fear, was satisfactory to the troops and the German administration."

"The Jewish population remained temporarily unmolested shortly after the fighting. Only weeks, sometimes months later, specially detached formations of the police (Ordnungspolizei) executed a planned shooting of Jews. This action as a rule proceeded from east to west. It was done entirely in public with the use of the Ukrainian militia and unfortunately in many instances also with members of the armed forces taking part voluntarily. The way these actions, which included men and old men, women and children of all ages, were carried out was horrible. The great masses executed make this action more gigantic than any similar measure taken so far in the Soviet Union. So far about 150,000 to

200,000 Jews may have "been executed in the part of the Ukraine belonging to the Reichskommissariat; no consideration was given to the interests of economy."

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they wrought. The Germans were characteristically systematic and efficient in their murders. There are no records in history more shameful to mankind than the description of the methods used in the Nazi program of genecide.

I will read further from Ohlendorf's affidavit which was introduced as Prosecution Exhibit Ho. 9, and it is on page 35 of the document book, page 40 of the German copy.

"In the implementation of this extermination program, the Special Commitment Groups (Einsatzgruppen) were subdivided into Special Commitment Detachments (Einsatzkommandos), and the Einsatzkommandos into stil smaller units, the so-called Special Purpose Detachments (Sonderkommandos) and Unit Detachments (Teilkommandos). Usually, the smaller units were led by a member of the SD, the Gestapo or the Criminal Police. The unit selected for this task would enter a village or city and order the prominent Jewish citizens to call together all Jews for the purpose of resettlement. They were requested to hand over their valuables to the leaders of the unit, and shortly before the execution to surrender their outer clothing. The men, women, and children were led to a place of execution, which in most cases was located next to a more deeply excavated anti-tank ditch. Then they were shot--kneeling or standing--and the corpses thrown into the ditch, I never permitted the shooting by individuals in the Group D, but ordered that several of the men should shoot at the same time in order to avoid direct, personal responsibility. The leaders of the unit, or a specially designated persons, however, had to fire the last bullet against those victims which were not dead immediately. 1 learned from conversations with other group leaders that some of them demanded that the victims lie down flat on the ground to be shot through the nape of the neck. I did not approve of these methods." standard procedure for executions. His affidavit, Document NO-3055, offered as Prosecution Exhibit 28, page 143 of the German book, and page 107 of the English book, indicates, too, that the killers were without humanity.

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I quote:

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"As commissioner of Ohlendorff I followed his orders. I went to the gypsy quarter of Simferopol and supervised the loading of the persons, who were to be shot, into a truck. I took care that the loading was completed as quickly as possible, and that there were no disturbances and unrest by the native population. Furthermore, I took care that the condemned persons were not beaten while the loading was going on. Since it was my task to supervise the whole execution, I would only stay a short time at each phase of it. The -place which was designated for the shooting of these Russians and Jews was several kilometers outside of Simferopol and about 500 meters off the road in an anti-tank ditch. Among other things, I ascertained that the traffic in that region was stopped by persons designated for this, and was detoured on side roads. When the condemmed persons arrived at the place of execution they were ordered to leave their money, their valuables and papers at a place designated for this. I watched that none of the deposited items were kept by the SS- and Orpo men who were designated for the collection. The depositing of this property by the condemned persons was finished without the use of force. I supervised this phase carefully in order that all the valuables could be handed over to the Einsatzgruppe D for subsequent remittance to Berlin."

"For a short time, when the people who were to be shot were already standing in their positions in the tank ditch, I supervised the actual shooting, which was carried out in strictest conformity with Ohlendorff's order--in a military and humane manner as far as possible. She people were shot with sub-machine guns and rifles. I know that it was of the greatest importance to Ohlendorff to have the persons who were to be shot killed in the most humane and military manner possible, because otherwise, in other methods of killing, the moral strain would have been too great for the execution squad." execution squad, but the only concern for the unfortunate victim was that he be standing in the proper position in the tank ditch before he was shot.

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killing which would eliminate some of the work for the executions. He states in paragraph 5 of his affidavit, Document NO-4314, German document book page 145, and offered as Prosecution Exhibit No. 29-I see there is another objection coming. I will continue the quote later.

DR. BERGOLD (Counsel for defendant Biberstein): Your Honors, I wish to make an explanation on principle here. From the document books of the Prosecution I understand that there is only one item of evidence against Biberstein, his own affidavit, which the Prosecution is about to submit. I talked about this case, and I wish to reserve the right to make objections, I cannot specify them exactly now. I wish to state that this decisive interrogation not always conducted according to the regulations on interrogations, as usual in an English court; and secondly that it does not contain the complete interrogation of the defendant--but only part of it--which therefore cannot be understood very well. For that reason I ask to reserve the right to object to this at a later time.

MR. FERENCZ: As I understand it, Dr. Bergold wishes to reserve his right to object to this document at a later time. We have no objection to that,,

THE PRESIDENT: The right is reserved.

MR. FERENCZ: I have just offered this document NO-4314 as Prosecution Exhibit 29. It is found on page 112 of the document book. Here the defendant Biberstein states:

"The persons to be executed had to kneel down on the edge of a grave and members of my Kommandos shot them in the back of the neck with an automatic pistol. The persons thus killed mostly dropped straight into the pit. I had no special expert for those shot in the neck. No physician was present either at this form of execution."

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Occasionally the Germans tried to disguise their actions. The Jews were ordered to assemble and ware told that they were going to "be resettled. Thus page 15 of the report of 7 October 1941, which is Document NI-3140, found on page 116 of the document book, page 155 of the German, and offered as Prosecution Exhibit 30, we have this statement:

"The resettlement measure against the Jews was throughout approved by the population. The fact that in reality the Jews were liquidated was hardly known until now." page 159 of the German, and now offered as Prosecution Exhibit 31-

DR. HEIM (Counsel for defendant Blobel): Your Honors, I object to the affidavit of defendant Blobel. I ask that Document No. 3824 only to be permitted under the condition that Mr. Wartenberg, who took this affidavit, may be crossexamined. In this examination I want to show that this affidavit is an excerpt from a longer interrogation of defendant Blobel and that sentences of the affidavit taken out of the context give quite a different meaning than the defendant Blobel gave in the original examination--and wanted to give. In the course of examination it is supposed to be shown that the defendant Blobel, before signing the affidavit, wanted to make necessary corrections. His request was not granted, however, because he would have the opportunity to do this during the next interrogation. This interrogation which he was promised, however, never took place.

MR. FERENCZ: The Prosecution has absolutely no objection to the defendant who made this affidavit taking the stand in his case and explaining to the Court exactly how the affidavit was made, or any corrections he wishes to make at that time.

THE PRESIDENT: Dr. Heim, that is the inevitable right of every defendant.

MR. FERENCZ: I will now read the affidavit in question:

"During the period of my service as chief of the Sonderkommando IV-A, from the time of its organization in June 1941 until January 1942, I was assigned at various occasions for the execution of Communists, saboteurs, Jews, and other undesirable persons.

I can no longer remember the exact number of the executed persons. According to a superficial estimate, the correctness of which I cannot guarantee, I presume that the number of executions in which the Sonderkommando IV-A took a part lies somewhere between 10,000 and 15,000. I witnessed several mass executions, and in two cases I was ordered to direct the execution. In August or September 1941 an execution took place near Korosten. Seven hundred to 1,000 men were shot, and Dr. Rasch was present at the execution. I had divided my unit into a number of execution squads of thirty men each. First, the subordinated police of the Ukrainian militia, the population and the members of the Sonderkommando seized the people, and mass graves were prepared.

execution, 15 men were led in each case to the brink of the mass grave, where they had to kneel down, their faces turned toward the grave. At that time, clothes and valuables were not yet collected. Later on this was changed."

"1) The execution squad was composed of menof the Sonderkommando 4A, the military and the police. When the men were ready for the execution, Sonderkommando leaders, who were in charge of these execution squads gave the order to shoot since they were kneeling on the brink of the mass grave , and the victims fell , as a rule, at once into the mass grave. I have always used rather large execution squads, since I declined to use men who were specialists for shots in the neck, Each squad shot for about one hour and was then replaced. The persons which still had to be shot were assembled near the place of the execution and were guarded by members of that squad which at that moment did not take part in the execution.

II) I supervised personally the execution which I have described here and I saw to it that no encroachments took place." Not content with merely slaughtering people in open fields, the SS devised a mechanical method for murder.

The defendant Biberstein declares in his affidavit, No. 4314, which was just introduced as Prosecution's Exhibit 29, declared on page 113, and this is page 146 of the German book:

"I personally superintended an execution in Rostow, which was performed by means of a gas-truck. The persons destined for death, after their money and valuables ' sometimes the clothes also) had been taken from them, were loaded into the gas-truck which held be tween 50 and 60 people.

The truck was then driven to aplace outside the town where members of my Kommando had already dug a massgrave. I have spasms.

No physician was present at unloading to certify that the people were really dead." the ordinary massacres. In a letter sent to Berlin, Document No. 501 P.S. found on page 134 of the English document boo, 165 of the German book, and offered as Prosecution's Exhibit 32, an SS Lieutenant Becker, who was in charge of the vans complained about these difficulties: vans of Einsatzgruppen C and D had to be overhauled. Even though these vans were camouflaged as house trailers they soon became known to the civilian population as death vans. The Commandoes used their own men to unload the bodies after the gassing for they feared that if prisoners were used for this work, they might escape.

Lt. Becker explained that this work might cause serious psychological and physical injury to the commando men who had to do the unloading. methods used in these executions, I will now read excerpts from an eye-witness account. This account was given before the International Military Tribunal and a large portion of it was read into the judgment as a finding of fact. man, Document NO 2992 PS, and is offered as Prosecution's Exhibit 33. Part of this affidavit was read in the opening statement. I will read another part.

The witness, a german, Hermann Graebe , here states:

the earth mounds . The people who had got off the trucks -men, of an SS-man, who carried a riding or dog whip.

They had to put shoes, top clothing and underclothing.

I saw a heap of shoes of with a whip in his hand.

During the 15 minutes that I stood near the pit I heard no complaint or plea for mercy.

I watched a family about 20 to 24.

An old woman with snow-white hair was holding the it.

The child was cooing with delight. The couple were looking on with tears in their eyes.

The father was holding the hand of a boy of about 10 years old and speaking to him softly; the boy was fighting his tears.

The father pointed toward the sky, stroked his head, and seemed to explain something to him.

At that moment the SS-man at the pit shouted something to his comrade.

The latter earth mound.

Among them was the family, which I have mentioned.

passed close to me, pointed to herself, and said, "23". I walked grave.

People were closely wedged together and lying on top of each other so that only their heads were visible.

Nearly all had blood running over their shoulders from their heads.

Some of the people shot were still moving.

Some were lifting their arms and turning their heads to show that they were still alive.

The pit was already 2/3 full.

I estimated that it already contained about 1000 people."

Mr. Clancy will continue with Document Book 2.

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THE PRESIDENT: I think this is an appropriate time to take a recess. The Tribunal will be in recess until 10 minutes past three.

(A recess was taken until 3:10)

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DR. LUMMERT for defendant Blume: Your Honor, I have an objection, - a belated objection to raise, against the affidavit of the defendant Blume, Document No. NO 51545, Exhibit No. 10. I have just learned of this during the recess, when I had occasion during the recess to discuss the affidavit with the defendant Blumer. The first document book was submitted on Friday when I was no longer in the building. It was technically impossible to speak to the defendant Blume before this morning, and only now, just during the recess I learned that the defendant, Blume, when he gave the affidavit, was in a spirtitual state of mind, which made it impossible for him to give a valid and good affidavit.

JUDGE MUSMANO: Couusel when your Client takes the stand he will have full opportunity to explain the circumstances under which he gave the affidavit.

DR. LUMMERT: Your Honor, at the moment I would just like to reserve the right to make a formal objection against this affidavit, not against the contents - merely a formal objection, and I would just like to reserve this right at the moment.

JUDGE MUSMANO: The Court will show that you made an objection, and your right to a further objection is reserved to you and to your client.

DR. LUMMERT: I would just like to give this reason. The defendant, Blume,--

JUDGE MUSMANO: It is not necessary to go into the reasons. You will have an adequate opportunity.

DR. LUMMERT: Thank you, you Honor.

DR. HEIM: Dr. Heim for the Defendant Blobel. If Your Honors please, permit me to make the following statement belatedly. On the 11th of August I was allowed to present the Witness Hennige for the Defendant Blobel. Hennige, about two weeks later, was delivered to the Court prison. Repeated requests to the Prosecution to let me examine Hennige as my witness were refused, giving the reason that Hennige, since May, 1947--that is long before the charges were made-was named as a Prosecution witness. The Prosecution informed me that I can speak to the witness Hennige from the 17th of September on. I ask the Court to make a ruling to the effect that the Witness Hennige, who has been granted to me, can be examined by me without the presence of a commissioner, since Hennige is both a Prosecution and a Defense witness. Up to this time I have had only the opportunity to speak to this witness in the presence of a commissioner.

MR. HORLICK HOCHWALD: If the Tribunal please.

THE PRESIDENT: Yes.

MR. HORLICK HOCHWALD: These motions of defense by Dr. Heim were before the Tribunal, as far as I can remember, about ten days or seven days ago, I have answered these motions on behalf of the Prosecution. I do not think it is necessary that this question be taken up in open court again. The Tribunal has the motions of the defense counsel before it, and the Tribunal has the answers of the Prosecution before it, and the Tribunal will decide on it.

THE PRESIDENT: We will give you a decision on that tomorrow morning.

MR. HORLICK HOCHWALD: Thank you.

THE PRESIDENT: The name of the witness is Hennige? I mean the witness in the case.

DR. HEIM: Hennige.

THE PRESIDENT: Very well.

DR. HEIM: Your Honor, I have a further question to bring up here. On the 17th of August I made a motion to interrogate the witness Court No. II-A, Case No. 9.Kraege who is in prison here, and I made a motion to grant this witness as my witness.

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Repeated motions were refused, with the reason that Kraege was being examined by the Prosecution at the time, and that from the first of September on he would be at my disposal. On the 28th of August the Prosecution, without informing the defense, took this witness back to Dachau. My motion to bring this witness back to the Court prison in Nurnberg has not been answered so far. I ask Your Honors to tell the Prosecution to return this witness to the Nurnberg Prison.

MR. HORLICK HOCHWALD: If Your Honors please, by regretable mistake the witness Kraege was sent out to Dachau as we did not need him any more. But we wrote immediately a letter to the Defense Information Center, giving the information that the witness was sent by mistake out of Dachau and asking Captain Rise, who was in charge of the Defense Information Center, to inform the defense counsel that if he should desire the present of the Witness Kraege we have no objections against that. I do not think that the Prosecution has the duty to get witnesses for the defense here. If the defense counsel makes a normal application for the summons of the witness here, the witness will be brought to Nurnberg.

THE PRESIDENT: We must not make a distinction between Prosecution and defense when it comes to the matter of obtaining a witness. We are seeking to get the truth in this case, and if defense counsel asks the Prosecution for assistance to obtain a witness, the Prosecution must give every aid to the defense. I will make no distinction between witnesses, A witness is supposed to be impartial and neutral and not be for one side or the other. Of course each side has to take the initiative in obtaining the witness. Now, I'm glad that you have made this effort to have this man brought back, and I will appreciate your following it up to see that he does get here so that the defense may have him as their witness.

MR. HORLICK HOCHWALD: I do not know-- Your Honor, I certainly will make every effort. I can recollect just now that the defense Court No. II-A, Case No. 9.counsel, after Kraege was sent out, filed a request, an application, for the summons of the witness Kraege; but if they did so the witness would be brought automatically to Nurnberg.

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THE PRESIDENT: Very well.

DR. HEIM: Thank you, Your Honor.

MR. GLANCY: If it please the Tribunal, this time I wish, with Your Honors' permission, to offer the documents into evidence which are assembled in Document Books II-A, II-B, II-C, and II-D. These documents are offered in support of the allegations contained in paragraphs 6, 7, 8, and 9 of the Indictment.

THE PRESIDENT: Mr. Glancy, so that I may be certain about the numbering, do I understand that from No. I you go to II-A? There is no No. II as such?

MR. GLANCY: No sir, there is not.

THE PRESIDENT: Very well.

MR. GLANCY: These reports contained herein contain the details of the crimes which are particularized in the paragraphs of the Indictment, which I have previously mentioned. I shall not quote from these documents which will be analyzed and discussed by the Prosecution at a later time when we shall treat the responsibility of the individual defendants here in the dock. I wish at this time to offer these documents into evidence with the understanding that the Prosecution will refer to them in detail at the appropriate time. The operational situation reports assembled in Document Books II-A, II-B, II-C, and II-D give a clear picture of the types of crimes with which the defendants are charged. With the permission of the Tribunal I shall proceed.

THE PRESIDENT: Proceed.

MR. GLANCY: I offer Document L-180 as Prosecution Exhibit 34. This is a Stahlecker report of activities of Einsatzgruppe A up to the 15th of October 194l.

I offer Document NO-2940 as Prosecution Exhibit 35. This is a report dated 6 of July 1941.

I offer Document 2273-PS as Prosecution Exhibit 36. This is a report of Einsatzgruppe A.

I offer NO-2935 as Prosecution Exhibit 37. This is a report dated the 7th of July 1941.

I offer Document NO-3155 as Prosecution Exhibit No. 38. This is a report dated the 12th of October 1941. report dated 1 December 1941.

I offer Document NO-2829--this is No. 2-8-2-9--as Prosecution Exhibit No. 41.

I offer Document NO-3405 as Prosecution Exhibit 42. This is a report dated 16 January 191+2.

I offer Document NO-3257 as Prosecution Exhibit 43. This is a report dated the 5th of January 1941.

DR. ASCHENAUER: Dr. Aschenauer for the Defendant Ohlendorf. Your Honor, may I express my basic misgivings about this type of presentation? I do not know whether in this type of presentation, in which one merely mentions document and exhibit numbers, the basic principle of the proceedings are preserved. It is impossible that during this time the defense has the time to test and examine these documents to see whether any objections should be made against them. It is out of the question to keep up with this type of presentation. It is impossible to raise any objections to the effect, whether this document is admissible or authentic or relevant. It is impossible to examine whether the document is signed correctly, from where it comes, from whom it comes, etc.

THE PRESIDENT: I don't know, Dr. Aschenauer, whether you have been counsel in any of the other cases tried in the Palace of Justice here, but we have tried various systems with regard to the introduction of documents, and we have reached the conclusion that this is the most logical and the most expeditious manner of disposing of documents.

When they are read in open court a great deal of time is taken, and much of the contents is lost anyway, and the Tribunal must read the documents anyway, so that we are merely wasting time in reading in open court what the Tribunal must analyze and study with a great deal of detail later on. Now, what the Tribunal can do and what the defense counsel can do: We have just now terminated a case in which this procedure was followed. An exhibit number is given to the document and then the defense counsel at his leisure, as the Tribunal must also do at Court hours, study the documents. You will have ample opportunity to make every objection that the document suggests as to authenticity, as to relevancy, as to possible errors in translation. Any objection which you may make now can be made later. Otherwise, it would be an interminable procedure, and it wouldn't help the Prosecution nor the defense. And I assure you that it is only because we have tried out the other systems that we have now come to accept this system, and I think later you will be satisfied that all your rights will be protected.

MR. GLANCY: The Prosecution wishes to advise defense counsel at this time, Sir, that the reason we have chosen this method is to avoid constant repetition. At a later time when we go into the individual responsibility of the defendants, we shall refer to these again. The defense's wishes to object will not be prevented in the slightest by this procedure.

THE PRESIDENT: (To DR. KOESSL) Do you wish to present something?

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DR. KOESSL (For the defendant Schubert): Your Honor, after what I have just heard, I believe it would be even better to submit the document in such a manner that the Prosecution say those documents in Book III-A, for example, will be Exhibits 40 to 60. In this manner, all document books could be submitted within a quarter of an hour, and we could then take up the three days in which we can read these documents and really study them.

THE PRESIDENT: But you seem to overlook the fact that each document must become an exhibit, and must receive an exhibit number, and that is what we are doing now. And if he gives a merely inclusive number for a document book, then you would not have the exhibit number to each document,

DR. KOESSL: I don't mean it that way, your Honor. I see,-for example, here, 23 documents, and according to those, one merely gives those documents the numbers 34 to 57. That is my proposition-

THE PRESIDENT: Well, your proposition is not well taken because there may be some documents he does not want to introduce.

MR. GLANCY: If it please the Tribunal, I will now proceed.

THE PRESIDENT: Proceed.

MR. GLANCY: I offer Document NO-2933 as Prosecution Exhibit 44. This is a report dated 16 July 1941. This is a report dated 2 February 1942. This is a report dated 19 September 1941. August 1941, as Prosecution Exhibit 47.

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COURT II-A CASE IX This is a report dated 17 October 1941. This is a report dated 7 November 1941. This is a report dated 21 November 1941. This is a report dated 12 January 1942. This is a report dated 6 February 1942. This is a report dated 9 March 1942. This is a report dated 23 March 1942. This is a report dated 17 April 1942. Document NO-3277 as Prosecution Exhibit 56. This, again, is a report dated 24 April 1942. Book II-B. Prosecution Exhibit 57. This is a report dated 13 July 1941. a report dated 29 August 1941. It is a report dated 9 October 1941. It is a report dated 9 October 1941. This is a report dated 4 September 1941. a report dated 19 December 1941.

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COURT II-A CASE IX a report dated 26 October 1941. a report dated 23 September 1941. a report dated 25 October 1941. a report dated 21 April 1942. Document NO-2993 as Prosecution Exhibit 67.

In Document Book II-C: This is a report dated 3 November 1941. This is a report dated 29 July to 14 August 1941. a report dated 12 July 1941. a report dated 29 July 1941. a report dated 12 November 1941. a report dated 17 September 1941. a report dated 8 December 1941. a report dated 20 October 1941. a report dated 3 October 1941. a report dated 28 September 1941.

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COURT II-A CASE IX report dated 11 July 1941. report dated 19 November 1941. report dated 6 March 1942. report dated 25 September 1941. report dated 9 August 1941. Document NO-3153 as Prosecution Exhibit 83, a report dated 12 September 1941.

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Court No. 2-A, Case No. 9 Exhibit 84, a report No. 190, dated 8 April 1942.

dated 5 November 1941. 145, dated 12 September 1941. 150, dated 2 January 1942. 157, dated 19 January 1942. 45, dated 7 August 1941.

I offer Document NO-2950 as Prosecution Exhibit 90, Report No. 40, dated 1 August 1941.

I offer Document NO-4135 as Prosecution Exhibit 91, Report No. 22, dated 15 July 1941. Einsatzkommando 10-B to Army Group South. 170, dated 23 August 1941.

I wish to correct the record, your Honor. That is, the report No. 170 dated 18 February 1942, Document NO-3339, Prosecution Exhibit 93. 61, dated 23 August 1941. 89, dated 20 September 1941. 95, dated 26 September 1941.

I offer Document NO*3406-A as Prosecution Exhibit 97, Report No. 117, dated 18 October 1941.

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Court No. 2-A, Case No. 9 2-C and 2-D. proceed with the case against those defendants who were members of Einsatzgruppe A. I shall refer first to Document NO-2890 which has been previously introduced as Prosecution Exhibit No. 5 and which may be found in Document Book I on page 20.

This is the affidavit of the defendant Ohlendorf. In paragraph 3 there were four Einsatzgruppen formed at the beginning of the Russian campaign and they were denominated Einsatzgruppen A, B, C, and D. Further he states in the same paragraph that the area of operations for which Einsatzgruppe A was responsible was from the center of Latvia, Lithuania and Esthonia towards the East. Book I and which has previously been introduced as Prosecution Exhibit No. 7. document which enumerates the Commando which formed Einsatzgruppe A and their various locutions.

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COURT II-A CASE 9 III, one of the four commandos of this Einstazgruppe. Here we see the towns there as well as their location at White Ruthenia, In addition to Latvia, Lithuania. Esthonia, White Ruthenia was also a part of the territory for which Einsatzgruppe A was responsible. Reports that we shall introduce at a later time will also substantiate this. From this part of this document we may also see that Einsatzgruppe A was composed of the four commandos previously mentioned. These four commandos were identified as Sonderkommandos 1A and 1b,and Sonderkommandos 2 and 3. The Mission of the Sonderkommandos of the Einsatzgruppen and the reasons for and the purpose of these units has been clearly explained by evidence previously introduced and therefore, I shall at this time concern myself with the case against the defendant JOST. Document Book 3-A. I offer this as Prosecution Exhibit 98. This is the SS personnel record of the defendant Brigadefuehrer General Heinz Jost. On page 7 we see a curriculum vitae of the defendant General Jost in his own words:

"I was born on 9 July 1904 in Holzhausen, district Kirchheim, the son of the pharmacist Heinrich Jost and his wife Clara, nee Dinges. From 1911 till 1914 I attended the grammar school in Lorsch (Hessen), following I attended the Senior High School (Gymnasium) in Densheim until the Final examination in 1923. Following that I Studied Jurisprudence in Giessen and Munich; passed the first examination in May 1927. My time of preparation as legal clerk I spent at the local court in Lorsch, the district court, and labor court in Darmstadt, the district office in Bensheim and with an attorney in Worms. After passing the COURT II-A CASE 9 bar examination in the fall of 1930, I settled down in March 1931 in Lorsch as attorney.

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In March 1933 I became Police Director-in Worms, following that in Giessen until April 1934. After rather long assignment at the Reich Leitung of the DAF. After rather long assignment at the Leitung of the DAF, I was taken into the SD on a full-time basis, and today I hold there the office of an Amtschef. membership number 75,946. I worked in the Party as Local Gruppen Leader, District Propagandist, and Organization Leader, as Speaker, and SA Fuehrer until I was taken over Into the SS." Book 3-A. This will be Prosecution Exhibit 99. This is the affidavit of the defendant Jost. Here he admits he took command of Einsatzgruppe A at the end of March 1942 and remained in command until the end of August, 1943. In his own words, he says, "From the end of March until the end of August or the beginning of September 1942 I was assigned with the execution of the official business of the Einsatzgruppe A and all affairs of the commander for the East-land, Ostland, During this time I took over the office of the Einsatzgruppe A." Einsatzgruppe A Just was also know by the title of "BdS Ostland". This denomination, I wish to add, involved no change of function of the defendant Jost.

Jost himself recently explains his position and titles on page two of this document where he states - this is paragraph 6 on page 2 of Document Book 3-A. On page 3 of the German Document Book:

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COURT II-A CASE 9 also commander-in-chief of the Security Police and SD in East land (BdS Ostland). Headquarters for the Einsatzgruppe A was located in KRASNOCWARDEISK, whilst headquarters for the commander-in-chief-for the Security Police and SD East land was located in RIGA. On the whole the duties of a commander-in-chief of the Security Police and SD were the same as those of a chief of an Einsatzgruppe, and the duties of a commander of the Security Police and DS (KdS) the same as those of a chief of a Sonderkommando or Einsatzkommando respectively, The difference in these names can be explained by the fact that a commander-in-chief or a commander of the Security Police and SD was subject to civilian administration and received his orders from the higher SS and Police Leader or SS and Police Leader respectively, whilst the Einsatzgruppen and Kommandos received their orders from the Chief of the Security Police and SD on the one hand, or from locally superior Wehrmacht offices on the other hand, After this district had been declared an area of civilian administration all Einsatz units were changed into units of the commander-in-chief or commander of the Security police and SD. There was no basic change of duties." which I introduce as Prosecution Exhibit 100, found on page 66 of Document Book 3-A, page 92 of the German Document Book. Here we see under the heading of rather next to Einsatzgruppe A that Jost was designated as the commanding officer of Einsatzgruppe A and that his subordinate commander had the title of KdS. We see from these documents that the only difference that existed was that from the change of command, in either case directives were funneled through COURT II-A CASE 9 Jost who issued orders to a subordinate.

From Document NO-3256 we also see that the defendant Sandberger was the KdS in Esthonia. Lange, whose present whereabouts is unknown, was the KdS in Latvia, the defendant Strauch was the KdS in white Ruthenia and that Jaeger, who is also presently at large, was the KdS in Lithunania. At this time the area was under the brilliant administration of subordinates of the defendant Jost, as the BdS Ostland and commander of Einsatzgruppe A. which has been previously described and Jost participated in the furtherance of the static plans for the extermination or liquidation of Russian Jews. Reports which I shall introduce, were phoned and dispatched by the defendant Jost, as will be seen later. In support of this I offer Document USSR-41 as Prosecution Exhibit 101. It may be found on page 3 of Document Book 3-A.

THE PRESIDENT: Mr. Glancy, when you are referring to a document please give us first the document book; then the page. When you give us the page number then we don't know which book is being referred to.

MR. GLANCY: I will follow that, sir, thank you. In the German copy it's page 5. This is the findings of the Russian Extra-ordinary State Commission for the Investigation of War Crimes. Here are reported letters-excerpts of letters-by SS-Sturmbamufuehrer Kirchstein. It emanates from the office of the Chief of the Security Police and SD. It's marked as will be noted "secret." In one of those letters dated 28 May 1942 it is reported that on 14 April 1943, 243 patients of a mental hospital died. The finding of the Commission certifying to the fact that these patients were murdered by the forces of the Security COURT II-A CASE 9 Police and SD.

These forces were under the command of the defendant Jost. Book 2-A on page 133. This was previously introduced as Prosecution Exhibit 56. This is the Operational Situation port of the Einsatzgruppe No. 195 dated 24 April 1942. I wish to call the attention of the Tribunal there's a typographical error in my copy of the document, it's dated here 24 April 1947. I can assure the Tribunal that's merely a typographical error. The original is 1942. Under the heading or "Einsatzgruppe A", location KRASNOVADAI it's reported:

"Within the period of the report a total of 1272 persons were executed, 983 Of them Jews who had infectious diseases or were so old and infirm that they could not be any more used for work, 71 gypsies, 204 communists and 14 more Jews who had been guilty of different offenses and crimes." It's interesting to note that in addition to those murders for no reason other than that they were part of a group of these unfortunates, that it was the basic mission of the Einsatzgruppen that they had to be exterminated. Thats clearly shown by stating that others whom they murdered were guilty of various misdeeds and crimes. 128 of Document Book 2-A also introduced as Prosecution Exhibit 55. This is the Operational Situation Report No. 193, dated 17 April 1942, under the heading "Lithuania" which as has been shown was under the command of the defendant Jost, we see that it is reported:

"In Olita 22 people were shot on 7 April 1912 because or Communist activities and connections with partisan groups. Russian stick grenades and explosives were found COURT II-A CASE 9 on several of the Communists and were secured.

The same day 22 persons, among them 14 Jews, who purportedly had spread communist propaganda very recently, were shot in Kauen." contained in the indictment under Count III I refer again to Document NO-2896, found on page 4 of Document Book 3-A which was introduced as Prosecution Exhibit 98. Here it is seen that the defendant Jost joined the NSDAP on 1 February 1928 and received the party number of 75946. On page 6 it is noted that he joined the SS in July of 1934 with the SS number of 36243. It is noted on page 7 that he was a member of the SD as a Section Chief. Through Periodical promotions he rose to the rank of Brigadier General in the SS. This concludes the prosecution's case in chief against the defendant Heinz Jost.

Noting the time, your Honor, it's ten after four. Does the Tribunal wish that we proceed against the defendant Sandberger or wait until our session tomorrow morning?

THE PRESIDENT: Well, we have quite a bit of time we can use in some way.

MR. GLANCY: In the case against the defendant Sandberger I offer Document NO-2891, found on page 73 of Document Book 3-A as Prosecution Exhibit 102. This is the affidavit of the defendant Sandberger. In this document he states that he joined Einsatzgruppe A in June of 1941 at which time the area fell under the control of the civilian administration and Sandberger assumed the duties of KdS in and Pretzsch Elbe. He retained this position until late in 1943. *---* *---* This is offered to (mintelligible) of the COURT II-A CASE 9 Regeierungsrat Dr. Sandburger at present in Riga.

"I herewith appoint you, effective innediately, commander of the Security Police and the SD for the Generalbezirk Estonia of the Reich, Commissariat Ostland, office in Reval." 31 of Document L-180 which may be found on page 11 of Document Book 2-A and which has been previously introduced as Prosecution Exhibit 34.

THE PRESIDENT: Mr. Glancy, may I make another suggestion?

MR. GLANCY: Yes, sir.

THE PRESIDENT: You give us the references in diametrically reverse order. You give us the smallest order and then higher and higher until we got to the top. We don't know where you are. Give us the Document Book, the page number, then the document number and then the paragraph number.

MR. GLANCY: Thank you, your Honor. I will rectify that.

THE PRESIDENT: I think it will be simpler that way.

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MR. GLANCY: This is the infamous report rendered by Stahlecker, predecessor to Jost, as Commanding Officer of Einsatzgruppe A, under whose command Sandberger was until Stahlecker's death in March, 1942. This report is dated 31 January 1942. It contains a comprehensive report up to 15 October 1941. 9 of the document which is page 19 of the Document Book. I refer to paragraph 3:

"Most of the 4,500 Jews living in Esthonia at the beginning of the Eastern Campaign Tied with the retreating Red Army, about 200 stayed behing. In Reval alone there lived about 1,000 Jews.

"The arrest of all male Jews of over 16 years of age has been nearly finished, With the exception of the doctors and the Elders of the Jews who were appointed by the Special Commandos, they were executed by the Self-Protection Units under the control of the Special Detachment la. Jewesses in Pernau and Reval of the age groups from 16 to 60 who are fit for work were arrested and put to peat-cutting or other labor." in command of Sonderkommando I-A with headquarters in Reval, Esthonia. Besides the execution of these unfortunates referred to, we see that the women did not escape unscathed, but suffered the ignominous fate of slave labor. on page 16, which is page 26 of the Document Book, we see a tabulation of the murders committed by Einsatzgruppe A, under the Heading, "Esthonia," it reports 474 Jews, 684 Communists, getting the total of 1,158 persons who met their deaths under the supervision -- under the command of Defendant Sandberger until October 15, 1941. previously introduced as Prosecution Exhibit -

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MR. GLANCY: 21 -- I am sorry, Sir, but due to an oversight, the portion which I was going to quote and in which we are interested, has been omitted from this part of the document. If it please the Tribunal, I will reserve and introduce this at a later point.

THE PRESIDENT: Very well. Very well.

MR. GLANCY: Thank you. In Document Book III-A, page 13, I offer Document NO-3844. This is another affidavit. This will be introduced as Prosecution Exhibit 104.

DR. HEIM (ATTORNEY FOR THE DEFENDANT BLOBEL): Your Honors, as a result of the method of presentation by the prosecution, it is not possible for me to follow the prosecution, especially because the prosecution does not give the pages in the German Document Book. I also believe that the other defense counsel suffer from the same trouble and we cannot correctly put in the exhibit numbers, I therefore would ask the prosecution to give us the exhibit numbers of those documents submitted in Book III-A and in the future also the pages in the German document book, if possible.

MR. GLANCY: The prosecution apologizes for this oversight and realizes it makes it very difficult for the defense counsel. After hours we will be very pleased to aid the defense in lining up their exhibits.

THE PRESIDENTS Very well, Mr. Glancy. Do you have the page numbers in the German document books at hand, as you proceed?

MR. GLANCY: I can, Sir, with a slight delay -

THE PRESIDENT: Well, I was thinking perhaps for tomorrow, if you would have them for tomorrow, as you go along and then for what has already been done you might assist defense counsel, with one counsel, and he can give it to all the others.

MR. GLANCY: It is my pleasure.

THE PRESIDENT: Any one of you can see Mr. Glancy and he will help you out in getting the correct numbers.

MR. GLANCY: Here we find in this affidavit of the Defendant Sand berger where he states -- It is page 21 of the German -- I will quote:

"I, Martin SANDBERGER, after being duly sworn, declare an oath: Security Service in Reval from summer 1941 until summer 1943, the following facts became known to me:

When in the winter of 1941/1942 Obergruppenfuehrer JEGKELN (Hi-her SS and Plice deader Russia-North) travelled on an official trip through PSKOW, he ordered the local office of the Security Police to shoot 400 Esthonian Jews who were in the working camp in, or near PSKOW. At the same time he expressed his indignation about the fact that the Jews had not already been shot previously. This was the reason why the chief of the office did not dare to postpone the execution, and ask me as Commander of the Security Police and the Security Service in Reval about my opinion, but ordered their immediate execution. official trip through PSCHOW. I can no longer remember the name of the chief of the office, but one of the three names mentioned below must be the name of the person who ordered that the order for the shooting be carried out." culpability, these troops in Pleskau -- which is the German - by his own admission performed the executions. The troops in Pleskau were a part of Sandberger's command and he, as commander, is responsible for their actions.

On page 72 of Document Book III-A, we find Document NO-3873. I offer this document as Prosecution Exhibit 105; in the German document book it may be found on page 97. This is an affidavit of the Defendant Sandberger, dated 19 November 1945, where as in other instances he attempts to avoid responsibility for the actions of troops under his command. However, the prosecution presents these remarks for the consideration and judgment of the Tribunal herein he states:

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"I, Martin Sandberger, after being duly sworn, declare on oath:

"In my capacity as Commander of the Security Police and the Security Service in Reval from summer 1941 until summer 1943, the following facts became known to me:

"Brigadefuehrer Stahlecker who was at that time Commander-in-chief of the Security Police and of the Security Service in Riga (Russia-North) gave me or my office the following orders:

"July 1941 that the Jews who were at that time in Esthonia should be interned (analogous to the internment of 'hostile foreigners' in the area of operation).

"About September 1941 that these Jews should be shot.

"I can no longer remember whether these orders were given to me orally by Stahlecker, or orally or by telephone by his office IV to the Chief IV of Reval."

"The internment order was carried out by the political police of Esthonia or by the prefects of the Esthonian Police. The shooting order was not carried out by me." their commander, is deemed responsible for their actions. The prosecution has charged under Count III of the indictment that the Defendant Sandberger was a member subsequent to 1 September 1939 of the SS and SD, organizations declared to be criminal by the International Military Tribunal and paragraph I-D of article II of Control Council Law 10. was previously introduced as Prosecution Exhibit 103. It may be found on page 23 and 24 of the German Book. This document is the SS personal record and shows that he became a member of the NSDAP on the 1st of December 1931.and that he joined the SS on the 11th of May, 1935, with the SS Membership No. 272495. artenfuehrer on the 30th of January, 1945, His personal record further shows that he was assigned as commanding officer to Amt VI of the RSHA by a letter found on page 18 - page 28 of the German Book, signed by Dr. Kaltenbrunner:

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"After being relieved of your commission as Commander of the Security Police and the SD, Italy, you will be transferred from Office I to Office VI of the Reich Main Security Office, effective retroactively from 1 December 1943. At this time I charge you with the direction of Group VI-A." Sandberger.

THE PRESIDENT: I think this would be a good point at which to recess for the day. Mr. Ferencz, would you please assign someone to the document book this evening to get the German page numbers so that we can get that just as quickly as the English page numbers for tomorrow?

MR. FERENCZ: Yes, Your Honor.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at 9:30 when we will convene in Courtroom No. 2, Room 581 581. The Tribunal will now rise.

(The Tribunal adjourned until 30 September 1947, at 0930 hours.)

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30 September 1947_M_MSD_1&2_1_Biosi (Lee) Military Tribunal No. IIA in the matter

THE MARSHAL: The Honorable, the Judges of Military Tribunal Ho. II_A.

Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may continue with the presentation of the prosecution.

MR. GLANCY: Thank you, your Honor, is here represented by councel before I proceed with the case against the defendant Strauch.

DR. GLICK (for the defendant Strauch): Your Honor, I shall take this opportunity to make the following statement! My client yesterday morning had another epileptic fit. He injured himself considerably during that attack. According to available information at the present, he suffered a knee injury, and a spine injury. He will not be able to attend the proceedings within the near future. Yesterday, also, he could not attend the trial. I therefore ask that, for the time being, my client be excused from participating in these proceedings. After gathering more detailed information from the doctor about the case, I will make a written application to the court - which will determine the further condition, and the further participation of the defendant Strauch in the proceeding, I will then ask for a final decision of the Court.

If I may continue my statement in this connection! I have had no opportunity to go through the documents with my client, the documents were only given to me yesterday, before that I had only received several excerpts which, in the main, did not concern my client.

Therefore, I am not in a position to make any statement concerning any documents which apply to my client. I ask that I "be permitted to reserve this right for a later time.

THE PRESIDED: The record will show that the defendant Edward Strauch is. for the moment, because of his physical condition, unable to be present in Court and he will he excused from attendance in Court. The Tribunal, of course, will be ready at all times to receive any motion which his councel desires to submit in Strauch's behalf. as they pertain to Strauch's counsel of course will have ample opportunity - not only to study the documents, but to reply to them in due course.

MR. GLANCY: Now that it has been ascertained that the defendant Strauch is here represented by counsel, the prosecution is ready to proceed with the case against the defendant Strauch. the German, Document NO-.2966, which I now offer as Prosecution inhibit ICS. This is the SS personnel record of the defendant Obersturmbannfuehrer Lt. Col. Edward Strauch.

At the bottom of page 20, beside the notation "Security Police Service Record" we see the following? "Since 4 November 1941 leader of Einsatzkommando Latvia with the Commander-in-chief of the Security Police and the SD for the Eastern Territories and since February 1942 Commander of the Security Police and the SD in White Ruthenia; since February 1943 assigned to the Deputy of the Reichsfuehrer SS for Anti-.Guerilla Combat as Intelligence Officer (Ic)." The terms Einsatzkommando 2 was in Latvia. is given as 17 August 1906, Struach at this time being 41 years of age. German, Document NO-3405, which has been previously introduced as Prosecution Exhibit 42. This is on operational situation report numbered 156, dated 30 September 1947_M_MSD_1&2_3_Biolsi (Lee) 16 January 1942.

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Commandant of the Security Police and SD for the General District White Ruthenia, temporarily represented by SS-Sturmbannfuehrer Hofmann. This document refers hack to an earlier period and states, on page 64, at the top of the page, and I quote: "On the 30th November 1941, 10,600 Jews were shot in Riga. The action was led by the Higher SS and Police Leader. One officer and 20 men of Einsatzkommando 2 took part". Strauch, as has been previously shown, was part of Einsatzkommando in Lativa 2 with Headquarters in Riga on the 30th of November 1941. Further, it is reported, "the total to date in the area of Einsatzkommando 2 thus amounts to 33,970." of the German. This is Operational Report No. 155, dated 4 January 1942. It was received in Berlin on the 14th of January 1942, Commander of the Security Police and the Security Service for the General District White Ruthenia.

On page 84 under the heading of White Ruthenia, I quote: "In White Ruthenia the purge is in progress. The number of the Jews in the area handed over to the civil administration is at present approximately 139,000. 33,210 Jews were shot by Einsatzgruppe A since it had taken over the official duties in White Ruthenia."

THE PRESIDENT: Mr. Glancy, you have said "Einsatzgruppe A", and I presume that is correct. I merely want to have your confirmation on that because it so happens that in the reproduction that very letter does not appear in my copy, nor in the copies of my brother judges,

MR. GLANCY: One moment, please.

It says "A" in the German Book, sir.

THE PRESIDENT: Very well.

MR. GLANCY: I refer the tribunal to Document Book III-A, page 45 30 September 1947_M_MSD_1&2_4_Biolsi (Lee) of the English, page 63 of the German, Document NO-4533, here offered as Prosecution Exhibit 107.

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This is an Operational Situation Report Ho. 168, dated 13 February 1942. listed as the Commanding Officer of the Security Police and SD for the General District White Ruthenia. is on page 69 of the German:

"In Minsk during the period from 1 to 4 February a total of 123 persons; were arrested, 80 of these for refusing to work. Since lately the cases of work refusal became frequent, especially at the railroad offices, 5 persons who had refused were shot by summary court in the presence of the whole crew of an industrial plant." that: "On 4 February 1942 the Ghetto of Rakow, 38 kilometers distance from Minsk, with roughly a hundred persons, was liquidated. The Jews had begun making the population rebellious." the German, we find Document ITO-3234, which I offer as No, 183, dated 20 March 1942, On page 60 Bl of the German Book. Under the herding of White Ruthenia, I quote:

"In the period from the 5th to the 28th of February, the main field office Wilajka shot 29 Jews, 4 Communists, 5 partisans, 5 public enemies-, and 4 persons for sabotage. Another 16 persons were arrested."

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Sept-30-M-MJ-1&2-5-Biolsi (Lee) page 92 of the German, we find Document NO-3236, which I offer as Prosecution Exhibit 109. This is Operational Situation Report No. 186 dated--

THE PRESIDENT: Mr. Glancy, just; a moment please. Here that has another exhibit number.

MR. GLANCY: One moment, sir, I will correct it if that is so. show that this has not been previously introduced. What do your records show, sir?

THE PRESIDENT: We have it marked asExhibit 100.

THE SECRETARY GENERAL: That is 3256, Judge.

THE PRESIDENT: Oh, -3256? Very well. This is 109.

MR. GLANCY: This is Operational Situation Report No. 186, dated 27 March 1942. Turning to page 67 of the English, 92 of the German, we see that the defendant Strauch is listed as the Commander of the Security Police and the SD for the District General White Ruthenia. On page 70 of the English, page 95 of the German, under the heading of White Ruthenia, we note:

"Further operations carried out against the Jews, as for example in Rakow and Tscherwen (15000 Jews were shot in Tscherwen) create a feeling of. insecurity and even anxiety in the population of White Ruthenia, In the more educated circles it is said that they were not used to such a procedure during the Soviet regime and that it was impossible to estimate the consequences of such measures." of the German:

"In the interest of further general pacification in the security police field within the area of the 18th Army, 102 persons were shot during the time covered by the report (former leading Communist-NKWD operators, saboteurs, partisans)."

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130 of the German, we find Document NO-3241, which has been previously introduced as Prosecution Exhibit No. 53. This is Operational Situation Report No, 178, dated 9 March 1942. On page 121 of the English, page 133 of the German, we see in the second paragraph, the fillowing report:

"During an action against the Jews, executed on the 2nd and 3rd of March; 3,412 Jews were executed in Minsk, 302 in Wileijka, and 2,007 in Barenowitschi. Thus altogether 5, 721 Jews were executed." page 17 of the German, we find Document NO-3872 which I offer as prosecution Exhibit 110. This is an affidavit of the defendant Sandberger, executed on the 19th of November 1945. Here we see in paragraph that Sandberger names the defendant Strauch as one of those responsible for persecution of the Jaws in Minsk. The extent to which the defendant Strauch may be held responsible and the zeal with which He participated in the murder of the Jews may be seen by referring to Document Book III-A, page 32 of the English, page in the German Document Book, which I offer as Prosecution Exhibit

111, Document 3028-PS. This is a letter addressed -to the Reich Commissar for White Ruthenia, Gauleiter Lohse, from the Commissar General for White Ruthenia, signed Kube. Here it is stated:

"In every encounter with partisans in White Ruthenia it has been established that in the former Sovies part of the District General, as well as in the former Polish part, the Jews together with the Polish resistance movement in the East and the Red army men of Moscow, are the mainstay of the partisan movement. As a result of this, and in view of the danger to the whole economy, the treatment of the Jews in White Ruthenia is a predominantly political matter which, therefore, should not be solved according to economic, but political angles.

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During detailed consultations with the SCBrigadefuehrer Zenner and the extremely capable Chief of the SD, SS-Obersturmbannfuehrer Dr. Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks. In the Minsk-Land area, the Jewry was completely exterminated without endangering the allocation of labor in any way. In the prevailing Polish Lida area, 16,000 Jews, in Solnim 8,000 Jews, etc., were liquidated. The preparations for the liquidation of the Jews in the Glebokie area were completely disrupted by an arbitrary action by the Rear Army Area, which has already been reported to your office. In the Roar Army Area - I was not contacted - 10,000 Jews were liquidated, who were schedule for extermination by us anyway. In the city of Minsk, about 10,000 Jews were liquidated on 23 and 29 July, 6,500 of whom were Russian Jews - mainly old people, women and children the remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Bruenn, Bremen and Berlin in November of the previous year, at the Fuehrer's orders.

"The Sluzk area was also ridded of several thousand Jews, The same applies to Nowogrodek and Wilejka. Radical measures still remain to be -taken for Baranowitschi and Hanzewitschi. In Baranowitschi about 10,000 Jews are still living in the town alone, 9,000 of whom will be liquidated next month. In the town of Minsk, 2,600 Jews from Germany have been left over. Besides, all the 6,000 Jews and Jewesses are still alive, who have been working, during the action, with the units who had employed then previously. Even in the future, the largest Jewish labor force will be in Minsk, since the centralization of armament industries and the burden on the railways lakes this necessary for the time being. In all other areas the number of Jews utilized for labor by the BD and myself will be fixed at 800 at the outside, but at 500 if possible, so that after the completion of the action 8,600 Jews rail remain in Minsk, and approximately 7,600 in the ten remaining territories, including the territory Minsk-Land which is already free from Jews.

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The danger that the partisans will, in future, derive any important support from the Jews will then have ceased to exist. I myself and the SD would certainly much prefer that the Jewish population in the District General of White Ruthenia should be eliminated once and for all when the economic requirements of the Wehrmacht have fallen off. For the time being, the necessary requirements of the Wehrmacht, which is main employer of the Jewish population, are still being considered. The clear anti-Jewish attitude of the SD and the difficult task of the units in White Ruthenia to deliver again and again new Jewish transports from the Reich to their destination, both put an undue strain on the physical and spiritual strength of men of the SD and diverts them from their real purpose, which lies in the White Ruthenian region itself.

"I should therefore, be grateful if the Reichs commissar could sec his way to stop further Jewish transports until the partisan threat has finally been overcome. I must make 100% use of the SD against partisans and against the Polish resistance movement, both of which demand the use of the full strength of the SD-units, which are none too strong as it is.

"After the collusion of the anti-Jewish action in Minsk, Dr. Strauch, SS-Sturmbannfuehrer, reported to me tonight, with justifiable wrath, that without any order from the Reichsfuehrer-SS and without notification of the Commissioner, a transport of 1,000 Jews has suddenly arrived from Warsaw for use in this air fleet area, I should like to ask the Reich Commissar, who has already been advised by teletype, in his capacity as the. highest authority. in the Ostland, to stop such transports. The Polish Jew is, exactly like the Russian Jew, ail enemy of all that is German, He represents a politically dangerous factor, the political danger of which exceeds by far his value as a specialized worker. Under no conditions must Wehrmacht agencies of the Army or the Luftwqffe be allowed to import, without the approval of the Reichcommissar, into an area under civil administration, Jews from the Government General who might endanger the entire political work and security of the district General.

I an in full agreement with the Commander of the SD in White Ruthenia, that we ere to liquidate every Jewish transport which has not been ordered or announced by our superior offices, so as to avoid further unrest in White Ruthenia."

SD's plan for genocide, The prosecution has charged in count 3 ox the 1-D of Article 2 of Control Counsel Law No. 10.

Exhibit 106. This is Document NO-2966, the personnel record of the defendant Strauch.

In the second paragraph, we see that the defendant 623392.

He has been a member of the SS since 1 December 1931 with see that Strauch has been a full-time member of the SD since August, 1934.

That is in the fifth paragraph.

"Since August 1934, Strauch has been engaged, on a full-time basis, in a leading position at the SD/Reichsfuhrer SS."

This concludes the prosecution's case, in chief, against the

MR. FERENCZ: May it please your Honors, we will now proceed to in Einsatzgruppe B. Einsatzgruppe B began its operations in June of 1941 and followed the German army with the other Einsatzgruppen.

I cution Exhibit 78.

This is on page 52 of the German document book.

gruppe C was renamed and redesignated as Einsatzgruppe B. It is this Einsatzgruppe B with which we shall be concerned.

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Exhibit 61 in Document Book II-B on page 22, page 23 of the German, document NO-2844 discloses that in addition to the group staff, Einsatzgruppe B consisted of Sonderkommandos 7-A and 7-B. They are loosely termed Vor-kommandos 7-A and 7-B and Einsatzkommandos 8 and 9, as well as the Vorkommando or Advance kommando Moscow. This is shown also on the chart now before the Court. That there was in addition a special kommando for Smolensk will be shown shortly in the affidavit of the defendant Naumann. Gomel, Riansk, Wjasma and neighboring places, as a brief study of the reports will disclose. Only the leaders of the gruppe staff under Kommando 7-A and 7-B and a Vorkommando Moscow are available to us as defendants, and we will therefore concentrate our examination on activities which concerned these men.

Responsibility of the defendant Naumann: The defendant Naumann, your Honors, is the third man in the first row from my left-hand. He is 42 years old, is a Brigadier General in the SS, and is charged with numerous crimes while he was in command of Einsatzgruppe B. His own affidavit, Document NO-4150, is offered in evidence against him, of prosecution Exhibit No. 112. This is found in Document Book III-B on page 1 of the English and German.

THE PRESIDENT: Mr. Ferencz, as I indicated yesterday, it would help us considerably if you started with the larger unit first. That is, the book, then the page, then the exhibit number, then the paragraph.

MR. FERENCZ: Yes, sir.

THE PRESIDENT: Now which book was that?

MR. FERENCZ: This is Document Book III-B, page 1, Exhibit No. 4, now offered as Exhibit 112. The affidavit explains that as early as 1929, Neumann became a member of the Nazi party.

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In 1935, he became a full-time SS leader and a member of the SD as charged in count 3 of the indictment. Naumann also explains that from the end of this year, he, an SS general, was working as a farm hand moving from farm to farm under the assumed name of Rudolf Biegen. Einsatzgruppe B from the end of November, 1941, until February, March, 1943. This, we shall show, is not quite accurate. prosecution Exhibit 113, which is Document 10-2970, This is Naumann's SS personnel record and confirms his membership in the SS and SD. The defendant was awarded the Iron Cross First Class as well as numerous other decorations. It also tells us on page 11 that he became chief of Einsatzgruppe in Poland in 1939 and that He became chief of Einsatzgruppe B in Russia on 1 November 1941 and not at the end of November. in January 1942 and we must therefore accept that as the more accurate date. This is further confirmed by Document in Document Book II-C, page 20, page 23 of the German. That was prosecution Exhibit 72 and is Document NO-2830. Naumann is listed on that report as chief of Einsatzgruppe B and it is dated 12 November 1941. of the German. This is hiw own affidavit, Document NO-4150, and I will reed from paragraph 4:

4.) I know that, while I was its chief, Einsatzgruppe B or, other units under its control, carried out executions.

I am un able to state the total number of executions.

There was no longer Police and the SD and by my predecessor.

I did not revoke the

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5.) Einsatzgruppe B received from the Reich Security wards passed on to the Einsatzgruppe in the South.

As far as

6.) In my period of service, ghettos no longer exist

7.) I am aware that the administration chiefs collected execution.

The money and valuables were remitted to the Mini stry of Finance."

Naumann's connection with executions is further shown by an affidavit of the defendant Ott. This is in Document Book II-B, page 64, page 57 of the German copy. This is the affidavit of the defendant Ott. Ott swears, and I quote from paragraph 4 -- this is on page 57 of the German copy:

para. 4." During the time I was Kommando head of the Kommando 7b, about 80 to 100 executions were carried out by this Kommando. I remember one execution which took place in the vicinity of BRYANSK. The people to be executed were handed over to my unit by the local commandant. The corpses were temporarily buried in the snow end later buried by the army. The valuables which were collected from these people were sent to Einsatzgruppe B. This was ordered by command of NAUMANN, the head of Einsatzgruppe B, and the same was true for other executions." to show the crimes committed by Einsatzgruppe B during the period from November 1941 to March 1943 when Naumann admits he was in command. I refer to a document in Document Book II-B on page 12, page 10 of the German copy.

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This is prosecution Exhibit 59, Document NO-2825. This is a report made two weeks after Naumann took command of Einsatzgruppe B. It describes the murders of thousands of persons of both sexes and of all ages as well as the liquidation of 83 persons for being, and I quote from page 14 of the English, page 13 of the German, "racially inferior elements with an Asiatic strain."

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Naumann assumed command but inasmuch as it reported the liquidation by Einsatzgruppe B of more than 45,000 persons, the defendant Naumann must have known the nature and functions of the organization whose command he accepted and held. 31 of the German, This is prosecution Exhibit 62, Document NO-2324, and is the report of 19 December 1941. It describes on pa 30 36 through 39, 36 through 38 of the German copy, fifteen separate special actions in sixteen different localities by Einsatzgruppe B which re sulted in the shooting of a total of 17,202 Jews, both male and female, and including the deliberate killing of 16 Jewish and Russian children in a children's home. Document Book III-3 on page 15 of the English, page 17 of the German, and it is now offered as prosecution Exhibit 114. I quote from page 19 of the English, page 22, last half of the page of the Germany copy. "During a screening of the prisoner of war camp in Witebsk, 207 Jews were arrested. They were shot.

"Further special operations had to be carried out in Sloboda, Polozk, Biskatowo and Bytschicha, because the Jews sabotaged the orders of the German occupation authorities. All together, 266 Jews were shot.

"In Gorodok the Ghetto had to be evacuated because of the danger of an epidemic. 394 Jews were shot.

"During a screening of the prisoner-of-war camp in Wjasma a total of 117 Jews were seized. They were shot." German, we have prosecution Exhibit 66, Document NO-3276. This document reports executions by each of the kommandos of Einsatzgruppe B for the period between 6 and 30 March, 1942, giving a total of thousands of persons killed. In many instances, a reason is given for the killing such as "because of theft or attempted murder or sabotage or spying," but those are very few and the vast majority are listed as killed with a simple explanation "Jews" or "Gypsies" or "Membership in the communist part."

That is found on page 56 of the German, page 62 of the English.

Naumann's personnel record in the operational reports cannot be denied. The thousands of murders we hive described were committed by Einsatzgruppe B while the defendant was its commanding officer. defendant Blume. The defendant Blume is seated in the first row, fourth seat from the right-hand side. He is 41 years old and was an attorney. His affidavit has already been received in evidence in Document Book I as Exhibit 10. It is on page 37 of the English, page 43 of the German in the first document book. There he explains his rise and activities in the SS. In 1933, He jointed the nazi party. In 1934 or 1935, he became a member of the SS where he achieved the rank of colonel. In 1945, he was working for Office 4 of the Reich Security Main Office. the defendant with membership therein in count 3 of the indictment. termination of hostilities concealed his activities with the Security Police and went to work as the servant to a farmer. This summer he was apprehended. been unable to deny. He tells us in the first paragraph that in June of 1941 he was assigned to Dueben where the Einsatzgruppen were organized and until approximately the middle of August he was chief of Sonderkommando 7-A in Einsatzgruppe B. In paragraph 3, he swears that during May or June he heard lectures by Heydrich and Streckenback on the duties of the Einsatzgruppen and Einsatzkommandos. He says in paragraph 3, and I quote:

"At this time, we were already being instructed about the tasks of exterminating the Jews."

And further on he says: "I heard another speech by Heydrich in the Prinz-Albrecht-Palais in Berlin, in the course of which He again emphasized these points." his assignment. We turn again to has affidavitNO-4145 to learn of his activities during the months of terror while he was in command, I read from paragraph 4 of his affidavit, found on page 38 of the first document book, page 45 of the German copy:

"4. As Chief of the Sonderkommando 7 a I carried out one execution in the course of my duty. I remember one occasion on which between 70 and 80 people were executed in Witebsk and another occasion on which A similar number were executed in Minsk. On the latter occasion I only received a directed order from NEBE, Chief of the Einsatzgruppe B, to fine out whether this execution had taken place. I was not present during the whole execution, but convinced myself that it was carried out. In both cases a kind of trench was dug; the persons destined to die were placed front of it and shot with carbines. About 10 people were shot simultaneously by an exectuion force of 30 to 40 men. There was no doctor present at the execution, but the leader of the execution force who was responsible made sure that the people were dead. Coups de grace were not necessary. Neither was there in my unit any specialist in the art of shooting in the neck. I did not take part in any further mass execution.

5. I received all orders regarding executions, direction and duties of Sonderkommando 7 a, which was subordinate, to me in Dueben or in the Prinz-Albrecht-Palais in Berlin. During the campaign I never received any further orders." 7-A in the field was controlled solely by its commanding officer, the defendant.

Tribunal and the defendant some executions he neglected to mention, I offer his personnel record found in Document Book III-B, page 21, page 25 of the German. This is Document NO-3245 and simply corroborates his position in the SS and SD after 1939 as charged in count 3 of the indictment.

Mr. FERENCZ: Your Honor please, the defense counsel is asking to see the document. The document was introduced yesterday as an exhibit, and it is now in the court archives where it may be examined, and the defense counsel may raise objection to this at any time if he so sees fit.

DR. LUMMERT: (for defendant Blume) I would like to reserve the right to raise an objection against this, because it is not clear from where these personnel records originate, or from which agency they come. Furthermore, I believe I remember that the document has not been submitted yet. I am surprised by this.

THE PRESIDENT: Mr. Ferencz, was that the document submitted into evidence?

MR. FERENCZ: I beg your pardon, Your Honor, the document was not submitted. This is in Document Book III-B, and the document is now here, and it has been just now handed to me.

THE PRESIDENT: Will you now introduce it?

MR. FERENCZ: Yes, Your Honor. I was about to introduce it as Prosecution's Exhibit No. 115.

THE PRESIDENT: Vary well.

MR. FERENCZ: It is in Document Book III-B, on page 21, and it is simply a corroboration of the defendant's position in the SS and the SD after 1939 as charged in Count III, of the Indictment. page 20 of the German Prosecution's Exhibit No. 116. This is Document NO-4537, and is an operational situation report. It shows that Einsatzkommando 7-A killed an unspecified number of Jewish and Russian Communist Party functionaries on 3 July in Wilna, The numbers are not given, and even if the Einsatzkommando killed only one it was murder.

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The report further states that Einsatzkommando 7-A is trying to push forward to Minsk as fast as possible. English, and page one of the German. Prosecution's Exhibit No. 57, Document NO-2937. This is another report where under the Einsatzgruppe B heading the report shows that in Minsk the Einsatzgruppe was screening all male inhabitants, and had executed 1050 Jews, with others being executed daily, including officials, and Asiatics. They further state that in-Wilna, and we saw in the last document that Kommando 7-A was in Wilna on 3 July. Up to 8 July Einsatzkommando had liquidated 321 Jews.

DR. LUMMERT: Dr. Lummert for the defendant Blume. So far as the document last mentioned is concerned, I would like to point out an obvious mistake. In the place just quoted, the German document book III-B, page 37, English Document Book - - - one moment, please, page 31, on top, and I quote: In Wilna the local Einsatzkommando liquidated 321 Jews up to 3 July." Sofar as this local kommando is concerned, they did not mean the Sonderkommando 7-A, which was commanded by the defendant Blume, but they mean Einsatzkommando. 9. This mistake is very evident when you look at the previous document --- may I draw the attention of the Court to document No. 4537, in the German document book, page 33, in the English document book, page 28, in the middle of the page there it says: "Einsatzkommando 9, location Wilna", this location Wilna is mentioned as the local Einsatzkommando in the other document book. The defendant Blume, therefore, has nothing to do with the paragraph in the Document Book NO-2937, and this is very obvious.

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MR. FERENCZ: May it please Your Honors, I think the point of defense counsel is a reasonable one to make. However, the last of his statement, "This is very obvious" is not exactly accurate, because on the same page where he pointed it out that Einsatzkommando 9 was in Wilna on 3 July, the very same page 28 in the document book III-B, it also says Einsatzkommando 7-A was in Wilna on the same day. When I referred to the other document, five days later describing the execution in Wilna, it gave the total killed by the Einsatzkommando, without stating which Einsatzkommando it was. I concede it could have been one or the other, but it certainly has probative value to show what the Einsatzkommandos were doing, and that the Einsatzkommando 7-A was in that place five days previously.

DR. LUMMERT: If I may add another thing to this. I don't want to discuss this matter as such. I merely raise this objection, because so far as I think there is an obvious error here, for the local Einsatzkommando could never be a Sonderkommando, because the Sonerkommando had the mission, as is well known, to follow the troops and never had any headquarters.

THE PRESIDENT: Dr. Lummert, your objection and observation are now on record, and they will be available to you when you present your client's case.

DR. LUMMERT: Yes.

MR. FERENCZ: We have been showing, Your Honor, that Einsatzkommando 7-A was in Wilna on 3 July, and was trying to push forward to Minsk as fast as possible. We had referred to Prosecution's Exhibit No. 57, showing that in Minsk, report dated 13 July, thousands of people were executed for being officials, Jews and Asiatics, and, we have just shown that "A" kommando in Wilna had executed hundreds of people five days before the report shows that Sonerkommando Seven was there.

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of the German, and offer Document NO 2954-E as Prosecution's Exhibit No. 117. Here under the heading "Einsatzkommando 7-A in reports from Witebsk", the report states and I refer to: "By appointed Jewish Council so far about 3000 Jews registered. Badges for Jews introduced. At present they are being employed with clearing rubble. For determent, 27 Jews, who had not come to work, were publicly shot in the streets. The Ruthenian part of the population has approved of this. Large scale execution of Jews will follow immediately." referred to executions, which he witnesses in Witebsk. I refer now to Document Book III-B, page 37, page 60 of the German, and I offer document NO 2949 as Prosecution Exhibit No. 118. Here under the heading Einsatzgruppe-B the report dated 5 August 1941, describes how various groups were rendered harmless in thirty different named localities, and that Einsatzgruppe executions by 31 July had reached 11,084. of the German. This was Prosecution Exhibit No. 58, Document No-2837. This is a report dated 29 August 1941, describing the numerous killings by Einsatzgruppe-B including on page 10 of the English, page 7 of the German, "In Witebsk also actions against the Jewish intelligentsia were continued," and, "In Minsk 615 more persons were liquidated in the course of the combing-out-action in the civilian prisoner camp there What could the defendant have been doing while all of his comrades were so busy.

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the German. This is Document NO-3842, the affidavit of the successor of the defendant Blume. This is the affidavit of the defendant Steimle, and offered as Prosecution's Exhibit 119. Steimle states in the middle of paragraph 2, and I quote: "From talk by members of the Kommandos, I know that SS-Standartenfuehrer Dr. Blume, my predecessor in this Kommando in White Ruthenia, carried out shootings of Jews besides fighting against partisans." And further, Steimle states in the middle of paragraph 3, page 67, of the German copy, page 41 of the English: "SS Standartenfuehrer Dr. Blume: From Office I, Reich Main Security Office, later Commando-in-chief of the Security Police in Greece. Finally with the Waffen-SS, Led the EK 8a from the beginning until September 1941. Carried out shootings of Jews and partisans and partisan warfare on the march through white Ruthenia. Character, weak and bureaucratic."

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COURT IIA CASE IX we Lave Document NO. 2844, Prosecutions Exhibit No. 61. This gives us some further indication of what Blume was doing. It reports on page 27, page 29 of the German, that by the 20 August 1941, Sonderkommando 7-A, very loosely termed, Vor-Kommando 7-a, liquidated a total of 996 persons. The defendant did not deny carrying out at least one execution, but he might have us believe that the more than nine-hundred executions, which he forgot to mention in his affidavit, occurred in a few days after he relinquished command of Sonderkommando 7-A in the middle of August, we rely on the judgment of the Tribunal. Steimle. The defendant Steimle is the last man in the second row of the dock on the righthand side. III-B, on page 44, German Book page 71, as Prosecution's Exhibit No. 120. It is Document NO-4459, and is the second affidavit of the defendant Eugen Steimle to be introduced. We see from the affidavit of Steimle, that Eugen Steimle, is thirty-eight years old, and in 1932 he joined the Nazi Party, and four years later he joined the SS where he achieved the rank of Colonel. In September 1936, he was appointed leader of the SD in Stuttgart. Like so many of his friends Steimle hid under an assumed name after the end of the war until he was arrested in October 1945. The defendant's membership in criminal organizations, as charged in Count III of the Indictment, is further confirmed by his SS personnel record. This is in Document Book III-B, on page 46, page 74 of the German, Document NO-3247, offered as Prosecution's Exhibit No. 121. His personnel record also contains a letter of recommendation from the COURT IIA CASE IX Reich Main Security Office, Berlin, and I quote from page 51 of the English, and page 80 of the German in the middle of the page, I quote:

"SS-Obersturmbannfuehrer Steimle has proved his ideological and political dependability already during the time when National Socialism fought for its existence. He is a man of absolute integrity and an SS-leader conscious of his responsibility. His mental capacities are above average, and he has a talent to negotiate skillfully and is showing great assurance. Endowed with a good political instinct and corresponding psychological abilities, he made himself in relatively short time throroughly acquainted with the secret message communication service, and started first of all to solve with great success the problem of the gathering of intelligence information. He is pursuing with greatest tenacity and energy his aim to establish a well functioning secret communication service in Western Europe. During his assignment in the East as leader of a Sonderkommando he has shown excellent qualities in leading and treating the men entrusted to him. Especially during the winter combat 1942/43 the Kommando participated frequently and sucessfully in combat-actions. With the exception of his age, Steimle is meeting the conditions of the SS-order of 15 November 1942. Because of his whole personality, his performance and his official positions, we are asking for his extraordinary promotion to SS-Standartenfuehrer, inspite of the fact that he has not yet reached the minimun age of 36, which is required by the Reichsfuehrer SS for such a promotion." End of quote. of Sonderkommando 7-A from the beginning of September 1941, until the middle of December 1941. Paragraph 3 on page 44, page 72 of the German, goes on to say that the defendant COURT IIA CASE IX Steimle received instructions for executions early in October at a conference with Nebe who was then Chief of Einsatzgruppe B. Nebe told him that Sonderkommando 7-A, when fighting Jews, so far had not been shooting women and children, Nebe insisted, however, that henceforth Sonderkommando 7-A would shoot women and children as well.

The defendant Steimle tells us that he received these instructions from his superior officer. In the next breath he denies he ever passed on this order, He likewise denies in both of his affidavits that his kommando shot any Jews. of the German, NO-3842, where he even denies that workers were sent to Germany while he was in command, He admits that his unit had a gas van or gas chambers as he called it, and he just adds to it that it was never used. He does admit in his second affidavit that he carried out executions, in fact, he says, they numbered between 100 and 250, but the persons executed were partisans, persons suspected of being partisans, and members of the Russian Army, who had refused to surrender. He was quick to point out however, that even in those executions orders never came from him but were already in existence. The defendant Steimle also said in Document Book III-B, page 45 of the English, page 73 of the German, "It can be assumed that a Captain or 1st Lieutenant folt is in Sonderkommando 7-A, had been shooting people but it was on his own initiative. The defendant does not know that Foltis carried out executions of Jews," anyway. All of this makes interesting reading, However, let's now turn to the facts. page 71 of the German, we have Steimle's affidavit NO-4459, which was Prosecution's Exhibit No. 120. It tells us that COURT II CASE IX he was in command of Sonderkommando 7-A until the middle of December 1941.

page 63 of the German, we have prosecutions Exhibit No. 107, Document NO-4533. This report gives the correct listing of the leaders of the kommando, and clearly list Steimle as commander of Sonderkommando 7-A, on 1, February 1942, two months after Steimel swears he was back in Stuttgart. This is further corroborated by the following document in Document Book III-B on page 53 of the English, and on page 82 of the German, I offer Document NO-4784 as Prosecution's Exhibit No. 122. This report again show Steimle as commander of the Sonderkommando 7-A 30 January 1942. In Document Book II-A, on page 104 of the English, page 112 of the German, we have Exhibit No, 51, which was Document NO-3278, and shows Steimle in command on 12th of January. page 42 of the German, we have prosecution's Exhibit No. 64, NO-3143, which is the report of 23 September 1941, and states on page 53 of the English, and page 47 of the German, that executions totaled for Sonderkommando 7-A up to 13 September 1941, were 1011. English, and page 15 or the German, which is Document NO 3156, which is prosecution's Exhibit No. 60.

This report states on page 18, page 17 of the German, "The Sonderkommando 7a also reports of juvenile communists who were liquidated as they had had the intention of blowing up a railway bridge, nearing completion. Explosives had already been supplied and were at hand.

"In Welikije Luki a group of juveniles who had the intention of blowing up a railway bridge was also rendered harmless. The ringleader of the group had persuaded the others to participate." executions by Sonderkommando 7a, up to 28 September 1941 as 1252, an increase of almost 250. man. This is Prosecution Exhibit 63, Document NO-3403, This report dated 26 October 1941 gives the execution total for Sonderkommando 7a as 1344 persons. man. This is Prosecution Exhibit 59, Document NO-2825, here on page 14, page 13 of the German. After a long description of liquidations by Einsatzgruppe B for trivial offenses the report states that'Sonderkommando 7a carried out 173 liquidations during the report period.

THE PRESIDENT: Mr. Ferencz, would it be convenient for you to suspend at this point.?

MR. FERENCZ: Yes, your Honor.

THE PRESIDENT: Very well, the Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: Persons in the courtroom please take your seats.

THE PRESIDENT: Mr. Ferencz, before you begin I should like to make an announcement to defense counsel. Yesterday afternoon two of the attorneys, I presume speaking for all of the defense counsel, came to my chambers and again requested for some time in which to prepare the defense and the opening statements. The Prosecution has proceeded much more rapidly than I originally thought they might so that we will have some time available, and your request is not an unreasonable one. What is reasonable is apparent to the world and what is unreasonable is also apparent to the world, so therefore, we will allow you the balance of the week after the Prosecution terminates its presentation, which, it seems possible, may even happen this afternoon. In fact we will remain in session until the Prosecution has finished today so that, therefore, you will have Wednesday, Thursday and Firday and Saturday, of course, and Sunday also, to make whatever preparations you need to proceed with the case next week. before them, it is necessary that at least eight of the opening statements be ready by Friday afternoon. Now, eight attorneys, and it will be most convenient naturally, if they ware the first eight defendants, if those attorneys could have their speeches ready by Friday afternoon, they will be delivered to Room 106, to Mr. Hodges, who is the head of the translation section. The balance of the opening statements will be ready by Monday noon and will also be submitted to Mr. Hodges in Room 106. not have his opening statement ready by either one of those two dates? I hear no comment. Therefore, the Tribunal will assume that by Friday afternoon, by that we mean no later than four o'clock this Friday, the first eight opening statements will be in Mr. Hodges' hands, and the remainder in his hands by Monday afternoon.

than we will proceed to the taking of evidence on behalf of the defendants.

MR. FERENCZ: Before I proceed, your Honor, I would like to make an additional request of defense counsel. Yesterday the question was raised about having the original documents available to the defense counsel so that they might compare them with the photostatic copies. The Prosecution received permission from the Deputy Military Governor to have the original documents which were used in the case brought here by Colonel Helm, who is the custodian of the documents and the commanding officer of the Berlin Document Center. These documents are now in my office, but they must be returned to Berlin as quickly as possible. Inasmuch as considerable care is exercised with those documents and they must be guarded at all times, I would therefore request the defense counsel come to my office this afternoon if possible and compare the documents with the photostats to assure themselves that all the photostats are true copies and have not been altered in any way so that Colonel Helm may return to Berlin with the documents tomorrow if possible.

THE PRESIDENT: Mr. Ferencz, would it be agreeable to Colonel Helm, who is the custodian of these documents, to allow them to remain in Nurnberg for ome more day, that is to say, all of tomorrow? Defense counsel will then be free to make whatever comparisons they desire, and then he could leave on Thursday if that is satisfactory.

MR. FERENCZ: Yes, your Honors, I see it is satisfactory to Colonel Helm to leave on Thursday with the documents.

THE PRESIDENT: Then defense counsel will understand they will have all the rest of today and all tomorrow to make those comparisons. The documents will not be available after tomorrow night, and the Tribunal will not after that time hear any complaint about comparisons between photostats and originals.

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MR. FERENCZ: To continue, your Honor, we were discussing the responsibility of the defendant Steimle, and I have referred to Document Book II-B, page 12, page 10 of the German, Prosecution Exhibit 59, where on page 14 of the English, page 13 of the German, there is a long description of liquidations by Einsatzgruppe B for trivial offenses, and the report states that Sonderkommando 7a carried out 173 liquidations during the report period. The total number of executions by Einsatzgruppe B up to the 14th day of November 1941 is then given as 45,467 and the total for Sonderkommando 7a as 15l7. This is on page 15 of the English, page 14 of the German.

Now by comparing Exhibit No. 64 with Exhibit No. 59, we can see that from the 13th day of September 1941 to the 14th day of November 1941, which is only part of the period during which the defendant Steimle admits he was in command, the total of executions increased from 1011 to 1517 giving an increase of over 500 persons killed in that time. In his affidavit the defendant Steimle conveniently forgot more than half of that.

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Book 11-B, page 30, also page 30 of the German. This is Prosecution Exhibit 62, Document NO-284, This is the report of 19 December 1941, describing the general activities of Einsatzgruppe B without breading it down into particular units and describes executions in 14 different localities, resulting in the death of over 17,000 Jewish men, women, and children, but the Defendant, SS Colonel Steimle says he knows nothing about this. This is Prosecution Exhibit 65, Document NO-3160. In this report, dated the 25th of October, 1941, at a time when the Defendant Steimle was admittedly in command, it was reported that Sonderkommando 7-A gave special treatment to 63 communists, functionaries, NKBG agents, and agitators.

The description of the Kommando's activities follows in numerical order and it also states on page 54, page 48 of the German --Sonderkommando 7a and before its description of Sonderkommando 7a -- that -and I quote on page 48 of the German.

"The Jews partly resisted the turning of the village of Belowschtschina into a ghetto for the Jews of Sadrudubs and 272 Jews and Jewesses were liquidated consequently, most of them members of the Communist Party, publicaly dangerous elements and political agitators, amongst them a political commissary who had instigated the Jews in their opposition." parted by a document in Document Bock II-A, page 46, page 45 of the German, This was Prosecution Exhibit 39, Document NO-2656 and was an activity report sent by Heydrich, confirming these facts. The Defendant Steimle firmly denies that Jews were ever shot by his Kommando. I will not take up the time of the court by going into a lengthy examination of Steimle's activities as Commander of Sonderkommando 4a. It is clear that he was held in sufficiently high esteem by his superiors to assign him to that important position from 25 August 1942 to 15 January 1943.

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part but in paragraph 4 of his affidavit, Document NO-4459, which is in Document Book III-B, on page 44 of the English, page 71 of the German, and prosecution Exhbit 120, he says that a deputy leader, Major Schmidt, was attached to Colonel Steimle and directed the executions independently. from the Defendant Blobel will be shown in greater detail in the presentation of the case against Blobel. It will be in the light of this total picture of death, despair, and destruction that the credence of Defendant Steimle's statement must be weighed.

We come to the responsibility of the Defendant Ott. Ott is seated fifth from the left in the second row of the dock. His affidavit was introduced previously in Document Book IIb, page 64, page 57 of the German. It is Document NO-2993 and prosecution Exhibit 67. It tells us that he became the commanding officer of Sonderkommando 7b on the 15th of February, 1942, and remained the head of this Kommando until about a year later in January 1943.

Let us turn to the defendant's own words to see what occurred while he was head of Kommando 7b. I quote from paragraph 4 of his affidavit, which is on page 64 of the English, page 57 of Document Book IIb. Quote:

"During the time I was Kommando Head of the Kommando 7b, about 80 to a 100 executions were carried out by this Kommando. I remember one execution which took place in the vicinity of Bryansk. The people to be executed were handed over to my unit by the local commandant. The corpses were temporarily buried in the snow and later buried by the army. The valuables which were collected from these people were sent to Einsatzgruppe B. This was ordered by command of Naumann, the head of Einsatzgruppe B, and the same was true for other executions."

In Document IIIb on page 66, page 124 of the German, we have Ott's SS Personal record. We offer that document, NO-4747, as prosecution Exhibit 123. I will read from page 71, which is a sketch of his life history prepared by Ott himself in 1934.

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Ott states:

"In fall 1922 I joined the Party. I was an SA man until I resigned, together with a number of comrades because of the irregular conditions and the discord in the continuously changing administration of the Ortsgruppe at that time. I rejoined the Party on 1 September 1931. Since then I have been permitted to serve my Fuehrer also in the SS. During the period of my temporary withdrawal I remained faithful to Adolf Hitler's ideals. I have been a National Socialist since 1922 and never belonged to any other party. job with the SD of the Reichsfuehrer SS. The defendant's membership in the SS and SD has been charged against him in Count 3 of the indictment.

I refer now to a document in Book II-A. on page 66, page 92 of the German. This is Document NO-3236 and was Prosecution Exhibit 109. This report gives us the location and leaders of the Kommandos as of 27 March 1942 and clearly shows Ott as Chief of Sonderkommando 7b, located in

Bryansk with detachment in Orel. This confirms the defendant's location and position in connection with his admis sion of executions in Bryansk; Document NO-3276, which is Prosecution Exhibit 66.

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This states on page 62, page 56 of the German, that Sonderkommando 7b gave special treatment to -- which means executed -- 82 persons during the period 6 March to 30 March 1942. I quote:

"19 among them for collaborating with partisans, 22 for engaging in Communist propaganda and for proved membership of the Communist Party, 14 for making incendiary remarks, 27 Jews."

This was one month after the Defendant Ott took command. In this report also, each of the Einsatzgruppe Kommandos of Einsatzgruppe B reported executions totaling thousands of persons killed including thousands of Jews given special treatment. 80 to 100 executions. We have corroborated the fact that he was in command of 7b in Bryansk here he directed one execution. we have in addition presented the official report of another execution by Ott's commands while he was responsible and during which 82 persons were killed, some for membership in the Communist Parties, others merely for being Jews. We accept Defendant Colonel Ott's own statement of 80 to 100 executions committed under his command as adequate explanation of his later activities. is seated sixth from the left in the second row. I refer to Document Book III-B, page 57, page 112 of the German copy, and I offer Document NO-4235 as prosecution Exhibit 124. This is an affidavit of the Defendant SS Major Waldemar Klingelhoefer. In it he tells us that he joined the Nazi Party in 1930 and became a member of the SS in 1933.

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DR. ASCHENAUER (Attorney for Defendant OHLENDORF): Your Honors, I am sorry to interrupt, but the exhibit number did not come through,

MR. FERENCZ: Exhibit No. 124. Party since 1930 and his membership in the SS since 1933. In Document Book III-B on page 61, page 116 of the German, we have Klingelhoefer's SS personnel record. This is Document NO-4809 and offered now as Prosecution Exhibit 125. Here the defendant in 1944 sketched his life history and tells us further on page 65 of the English, page 123 on the bottom of the page of the German translation, quote:

"Since 1 December 1934, I have been doing full time duty in the Security Service (SD) of the Reichsfuehrer SS." Count 3 of our indictment. different times a member of one Sonderkommando, the leader of another Kommando, and finally a staff officer of Einsatzgruppe B Headquarters. His affidavit states that he became a member of Sonderkommando 7b when the Einsatzgruppe was formed in Dueben. The major says he was assigned as an interpreter. He remained with Sonderkommando 7b until August 1941 when Nebe, who then commanded Einsatzgruppe B ordered him to replace the Defendant Six. As the leader of Vorkommando Moscow, Klingelhofer tells us that Vorkommando Moscow disbanded for a short period in September 1941 and in October, it was reformed in two parts, one of which was commanded by Klingelhofer until December 1941. On the 20th of December, 1941, Major Klingelhofer was assigned as an interpreter, he says, to the staff of Einsatzgruppe B and he held that position for the next year. doing when he was not serving merely as an interpreter. I read from paragraph 3 of his own statement found in Document Book II-B, on page 58, page 113 of the German. Quote:

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"..... 3. While I was assigned by Nebe to the leadership of the Vorkommando Moscow, Nebe ordered me to go from Smolensk to Tatarsk and Mistislawl to get furs for the German troops and to liquidate part of the Jews there. The Jews had already been arrested by order of Hauptsturmfuehrer Egon Noack. The executions proper were carried out by Noack, under my supervision. Those Jews, who were going to be executed, were led to the edge of a pit, which had already been prepared for this purpose, and shot from behind while they were standing there. There was no physician present during these executions. Due to their standing position at the edge of the pit these people mostly fell into the grave after they had been hit by the bullets. In case it was noted that someone in the pit was still alive, he received the coup do grace. Approximately 50 Jews were shot during these two executions."

"..... 4. Approximately one month later, at the end of September or the beginning of October, Nebe ordered me to go again to Tatarsk for the purpose of a Jewish action, because the remaining Jews had left the ghetto in Tatarsk contrary to orders given them. Nebe ordered me to establish an example. When I arrived in Tatarsk I found out that this report was correct."

"Thereupon I had the remaining Jews, approximately 30, shot. I carried out this order to prevent these people from joining the partisans. Although I had orders to shoot women and children too. I did not comply with this part of the order." apparently have escaped the defendant's memory. Let us recall that from August 1941 to September 1941 he admits having commanded all of Vorkommando Moscow and from October to December he admits having commanded part of it. In Document Book II-B, on page 26, page 27 of the German, we have Document NO-2844, as Prosecution Exhibit 61, and I quote from the bottom of page 27 of the German, on page 26 of the English, quote:

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"The Vorkommando 'Moskau' was forced to execute another 46 persons, amongst them 38 intellectual Jews who had tried to create unrest and discontent in the newly established Ghetto of Smolensk." German, that the staff of Einsatzgruppe B and the Vorkommando Moscow by the 20th of August had liquidated 144 persons. I refer now to Document Book II-B, page 47 of the English, page 42 of the German. This is Document NO-3143, which was Prosecution Exhibit 64. On page 53 of the English, page 47 of the German, it gives the execution total for Vorkommando Moscow up to 13 September as 312, an increase of more than 150 persons executed since the 20th of August. Document NO-3156, which is Prosecution Exhibit 60. This is an Operational Report of 9 October 1941 and states on page 18 of the English, page 17 of the German and I quote from paragraph 3:

"Operations against functionaries, agents, persons committing sabotage and Jews. ding to reports by the Russian population, tried to create a panic by spreading false runours to the effect that the Bolchevists were supposed to be advancing. They furthermore threatened to take revenge after the return of the Bolchevists. The FKM thereupon sent a Kommando and liquidated 114 Jews." the total liquidation by the Group Staff and Vorkommando Moscow by September 28, 1941, increased to 2,029 persons killed. This represents an increase of about 2,000 since the 20th of August and during the time the Defendant

Klingelhofer was in command. Document NO-3160. This is Prosecution Exhibit 65 and gives us the official report dated October 25, describing the execution of the Jews in Tatarsk.

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The defendant told us about this execution in his affidavit. His statement there that contrary to the orders he had received, he did not shoot women and children is refuted by the official report that at least three Jewish women were shot. I quote from page 54 of the English, page 43 of the German:

"The Gruppenstab and the Vorkommando Moscow (Advance units) undertook an action against the Jews in Tatarsk. The Jews had begun to leave the Ghetto on their own authority and to return to their old quarters trying to expel the Russians billeted there in the meantime. The village was combed through systematically and the Jews were herded together on the market square. Some of them had fled and had to be driven out of the nearby woods. As punishment for not following the orders of the German Security Police all male Jews and three women who were in Tatarsk at that time were shot." 45 of the German. This is Prosecution Exhibit 79, Document NO-2656. This is an Activity and Situation Report of the Einsatzgruppen sent by Heydrich to Ribbentrop and confirms exactly on page 50 of the English and page 50 of the German the quotation given.

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have Document NO-3403. This is Prosecution Exhibit 63. It reports that the total executions by the Gruppenstab and Vorkommando Moscow as of 2 6October, 1941, increased to 2, 457. There is nothing in the reports to substantiate the defendant's contention that the Vorkommando Moscow was divided into two parts; or, that his authority was at any time limited to only one part of this commando.

Thus, we have seen even the defendant has been unable to deny.

Klingelhoefer in his preter in Sonderkommando VII-B. We will not contest his role there for 22, page 23 of the German.

This is Document No. 2844, and is Prosecution Exhibit 61.

This report, dated 4 September 1941, gives the execution total for Sonderkommando VII-B as 886.

Can the defendant Major Klingelhoefer deny that he was connected with those crimes?

was a member of the Einsatzgruppe B staff. All of the crimes attributed We come now to the responsibility of the Defendant Six.

The Defendant Six is seated in the first row, fifth from the right.

In con page 79, page 145 of the German.

This is Document NO-4807, and is offered as Prosecution Exhibit 126.

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DR. ULMER(Attorney for the Defendant Six): as it admittedly contains, in contrast to the photo copies which are in my hands, questionable remarks. It is not quite the photostat of the original itself; it does not quite agree with it.

MR. FERENCZ: I wish Defense Counsel would make it clear what the remarks are that do not agree with the original.

THE PRESIDENT: Please be a little more specific.

DR . ULMER: I wish to express that I question the probative value of this document as far as my defendant, my client, is concerned.

THE PRESIDENT: If you are merely questioning the probative value, that is something which the Tribunal will determine in due course; but, if you wish to point out some discrepency between the photostat and the German reproduction in your book, that is another matter and I shall be glad to hear from you on that score.

DR. ULMER: The photostat of theoriginal, which is in my hands at the moment, contains no entry concerning the promotion to Brigadefuehrer, while the document itself which has been introduced as Document 4807 contains such an entry.

THE PRESIDENT: MR. Ferencz, you have both sheets before you. Will you please clarify this situation?

MR. FERENCZ: Yes, Your Honor. I am introducing this document at this point to show that the Defendant Franz Alfred Six was a section chief in the SD headquarters in 1941. On the first page of the photostatic copy of this record, which comes from the official German archives in Berlin, it says that this is the record of Dr. Six and shows him as being Amtchief, which is Section Chief, in SD Hauptamt, which is the SD main office. That is the reason why this document is offered. I am not sure that I understand the objection to it.

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THE PRESIDENT: Do you note any discrepancy?

MR. FERENCZ: There is no discrepancy between the English translation on this point and the German copy. I think the objection is to the point of Brigadefuehrer, the rank of the defendant which is not shown here. It shows him as Oberfuehrer. However, that is not the point we are making.

THE PRESIDENT: Dr. Ulmer, if the Prosecution does not make the point against which you have an observation to make, then no harm results.

DR. ULMER: I have merely this one objection to this document, and I would like the Tribunal to allow me to come back to this when my case is beginning.

THE PRESIDENT: Yes, that right will be reserved to you.

DR. ULMER: Thank you.

MR. FERENCZ: Returning to tis Document NO-4806 - 4807, I beg your pardon, it is offered as Prosecution Exhibit 126, and shows that the defendant was a section chief in SD headquarters in 1941. have Document ND-4546, which is offered as Prosecution Exhibit 127. This is the affidavit of the Defendant Six. In in he tells us that he became a member of the Nazi Party in 1930, when he was only twenty-one years old. Five years later he joined the SS, after having been a member of the Brown

Shirted SA. In 1935 he became a member of the SD, and four years later became head of an SD office in Berlin. Count III of our indictment charges the defendant with his membership in the SS and SD. Then, like many of his associates, the Defendant Six, too, acquired a sudden interest in agriculture; and at the end of the war assumed an alias and went to work as a farm hand. The defendant admits that in June, 1941, he was ordered to Berlin where Heydrich, chief adjutant, assigned him to Vorkommando Moscow. He admits that he was the commanding officer of Vorkommando Moscow until the 20th of August, 1941; and that the kommando operated in Smolensk and Tolotshino.

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We saw in the affidavits of several of the other defendants the nature of the instructions and orientation lectures given to Einsatzgruppe Kommando leaders in Berlin in June of 1941. General Six tells us, however, that his kommando was much different from the others. General Six was only supposed to collect files and documents, he says. a document which through an error is not in the document book. I have the document, NO-2956, here in loose form, and it is ready to be introduced as an exhibit. We wish to introduce it solely to corroborate the defendant's statement that he was in Tolotshino at a certain time, and to give the total executions of Einsatzgruppe B at a certain period. With the Court's permission, I would like to introduce this now loosely, and I will distribute it to the defense counsel at this time and to the Court at this time.

THE PRESIDENT : Very well. You may introduce it.

MR. FERENCZ: This document, NO-2956, is now offered as Prosecution Exhibit 128. Here under the heading of Einsatzgruppe B it lists the Vorkommando Moscow and gives its location as Tolotshino, confirming the defendant's statements. It also says that the total liquidations carried out by Einsatzgruppe B up to the time of reporting, 23 July, 1941, was 7, 620, with 3, 386 of these having been killed between the 14th and 19th of July. we have Document NO-2949, which is Prosecution Exhibit 118. This gives the location of Einsatzgruppe B as Smolensk, and we recall that the defendant deposed that he was stationed at Smolensk. It also states on page 38 of the English, page 62 of the German, that the Einsatzgruppe execution total up to 31 July was 11, 084, which meant that Einsatzgruppe B and its units killed about 4,000 people in eight days.

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There is no mention of archive collections. German, we have Document NO-2837, which was introduced as Prosecution Exhibit 5 8. I noticed in checking the document that it is an extract and one pert has been omitted, which I would now like to include. The original exhibit, of course, is the complete document, and is in the record. However, I have an errata sheet which includes a small portion giving the location of Vorkommando Moscow, and, with the Court's indulgence and permission, I would like to distribute that to be added before the document on page 7 of Document Book II-B. This document, which is Prosecution Exhibit 58, is the report dated 24 August. It shows us on the errata sheet that Vorkommando Moscow, located in Smolensk, is listed under Einsatzgruppe B, and that the Wehrmacht had turned over to the Vorkommando Moscow 740 persons, presumably partisans, who had been arrested on the highways. There still is no mention of any collecting of documents.

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Vorkommando Moscow. This is in Document Book II-B, page 27, and is Document NO-2844, introduced as Prosecution Exhibit 61. This gives us, on page 27, page 29 of the German, the numbers executed by every unit under Einsatzgruppe B. It gives us the total liquidation for the groups up to the 20th of August, 1941, and the defendant admits he commanded Vorkommando Moscow 'till then, and it shows that Einsatzgruppe B executed 16,964 persons up to the 20th of August; and a total for the Gruppenstab and the Vorkommando Moscow together was 144. On page 26, page 27 of the German, of this document, this is further broken down and shows clearly that Vorkommando Moscow executed 46 persons in Smolensk, and I quote: "The Vorkommando Moscow was forced to execute another 46 persons, among them 38 intellectual Jews who had tried to create unrest and discontent in the newly established Ghetto of Smolensk." Still no mention of document collections. Vorkommando Moscow, It is interesting to note, however, that Vorkommando Moscow, which the defendant swore was only an archive collecting unit, reported that the execution total had gone up -- I will repeat. It is interesting to note, however, that Vorkommando Moscow which the defendant swore was only an archive collecting unit, reported that its execution total had gone up to 312 by 13th September. This was in Document Book II-B, page 47, page 42 of the German, in Document NO-3143, which was Prosecution Exhibit 64. Prosecution Exhibit 60, which gives the total executions by the Gruppenstab and the Vorkommando Moscow up to 28th September, 1941 is over 2,000 persons killed. have Document NO-3403, which is Prosecution Exhibit 63, and gives the total executions up to 26th October for the Gruppenstab and Vorkommando Moscow as 2,457 persons killed.

hoefer, who took over the command of Vorkommando Moscow after Six, we gave numerous illustrations of executions by that unit. The defendant Klingelhoefer apparently was not aware of the fact that Vorkommando Moscow was -- as Franz Six would have us believe -supposed to collect documents. In view of the extermination function of all Einsatz units, the pattern of whole-sale murder, and the number of executions shown to have occurred in Vorkommando Moscow, while the defendant Six was in command, we submit that his contention that he was merely there to collect archives is quite incredible. individual responsibility of the defendant in Einsatzgruppen B. Court chooses to recess.

THE PRESIDENT: It is so close to the recess period, that we will now take the noon recess and reconvene at 1:45.

(A recess was taken until 1345.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: In order that there may be no misunderstanding about the preparation of the opening statements, please let me repeat that the first eight speeches must be in the hands of the Director of the Language Division in Room 106 by Friday afternoon of this week; and so that it may not be left to chance, as to who the first eight defendants will be, I will enumerate them: and Blume. defendants will be in the hands of the Translation as indicated. The speeches for the others, namely: Haensch, Nossko, Otto, Strauch, Klingelhoefer, Fondler, von Radetzky, Ruehl, Schubert, and Graf -- will be in the hands of the same Chief of Translation Section on Monday by noon.

MR. GLANCY: May it please the Tribunal - I beg your indulgence for a moment. Yesterday in the prosecution's presentation of the case in chief against the defendant Sandberger the prosecution noted that an excerpt was missing from its book, namely, Document Book I, Document NO-3279. I have learned that it was in all other books except the Prosecution's. I wish to make this a part of the record Sandberger. With the Tribunal's permission I will read it. It is on page 78a of the English, 108a of the German, already included under the heading, "Location Krasnowardeisk", also under the heading of "Communism" it states:

"With the exception of one, all leading communist officials in Esthonia have now been seized and rendered harmless.

The sum total of communists seized runs to about 14,500. Of these about 1,000 were shot and 5,377 put into concentration camps. 3,785 less guilty supporters were released."

DR. HOCHWALD-HORLIK: If the Tribunal please, before I present Document Book No. III-C, which deals with the individual responsibility of the defendants who were active in the Einsatzgruppe C, I want to inform the Tribunal that we tried to get Dr. Surholt, who represents the defendant Rasch -- and the prosecution has been informed that Dr. Surholt left for Berlin without leaving any substitute here. So I do think, as Dr. Surholt was duly informed by the Tribunal that the case will start on Monday, and as Dr. Surholt was present at the arraignment of the defendant Rasch, the prosecution should be permitted to now present its case against the defendant Rasch now.

THE PRESIDENT: The prosecution will proceed - and from this incident let me state when the Tribunal informs all counsel that any session will take place on any particular day, automatically counsel must realize that he will be present on that day or the case will proceed in their absence.

DR. HOCHWALD-HORLIK: Thank you, your Honor.

May it please the Tribunal. I shall now proceed with the presentation of Document Book III-C. The documents contained in this document book refer to the individual responsibility of the defendants who were active in Einsatzgruppe C. In most instances it will be necessary to refer to evidence that has already been presented in earlier stages of the trial. Your Honors will find the document numbers and their descriptions of the documents in the order in which I shall refer to them in the list -- with the reading in the order of presentation.

The list was to be inclosed in the Document Book but, unfortunately, by mistake only the first four and one-half pages are in the book itself. But I have furnished the Secretary General with other copies, and as far as I know there are copies also of the second part in the order I now present before the Tribunal. was under the command of the defendant Rasch consisted, beside the Group Staff of Sonderkommando 4A and 4B, of Einsatzgruppen 5 and 6, as your Honors will see on the chart on the wall. The original code letter for this Einsatzgruppe was, until 11 July 1941, Einsatzgruppe B. From 11 July on, however, the Einsatzgruppe, which consisted of these four units, was re-named Einsatzgruppe C. This change took place for reasons of organization, and I would like to refer in this connection to Document Book

II-C, page 46 of the English, page 52 of the German, Prosecution Exhibit 78, Document NO-2934, which shows the change. This document shows also the defendant Rasch as commander of Einsatzgruppen B and C, respectively. Einsatzgruppe C operated, in the time in which the crimes particularized in paragraph 8 of the Indictment were committed, in the Ukraine. The defendant Ohlendorf stated, in paragraph 3 of his affidavit, which is in Document Book I, page 22 of the English, page 23 of the German, Prosecution Exhibit 5, Document NO-2890 - that Einsatzgruppe C had the Ukraine except for the part occupied by the Einsatzgruppe D. At a later time when the Einsatzgruppe D advanced towards the Caucasus, Einsatzgruppe C was in charge of the entire Ukraine insofar as it was not under civil administration.

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that Einsatzgruppe C operated at a time which mainly concerns our presentation, in the area of Shitomir, Khiev, Lemberg, Sloviansk, Rowno, Stalino, Nikolajew, and Poltawa. area directly on the chart -- it is just behind the witness box. to refer briefly to Document Book I, page 89 of the English, 121 of the German, Prosecution Exhibit 23, Document NO-3154, which is Operational Situation Report No. 80, dated 11 September 1941. This Operational Situation Report describes the tasks of Einsatzgruppe C as follows, and I quote from page 1 of the English translation, under the heading, "Observation made and measures taken by the Security Police":

"Beside the thorough liquidation of the Party organization and the operations to clear the country of Jews who constitute the most evil disintegration factor, the executive operations by Einsatzgruppe C at present also include, above all, the fight against the partisan nuisance." times and in different positions, commanders or members of Einsatzgruppe C and Sonderkommandos and Einsatzkommandos, were the defendant Rasch, Schulz, Blobel, Steimle, Biberstein, Haensch, Fendler, Radetzky and Graf. Steimle, who was commander of Sonderkommando 7a of the Einsatzgruppe B from September to December 1941, and commander of Sonderkommando 4a of Einsatzgruppe C, from August 1942 to January 1943, has been already discussed during the Presentation of Document Book III-B, and I shall here avoid repetition.

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The responsibility of the defendant Rasch. The defendant Rasch -- in paragraph 1 of his affidavit dated 13 August 1947, which is in Document Book III-C on page 1 of the English, page 1 of the German, Document NO-4749, which I offer as Prosecution Exhibit 129 -- admitted having been commander of Einsatzgruppe C from May to October 1941, but he omitted to state that he was, for a short period, at the end of October and the beginning of November 1941, commander of Einsatzgruppe B. This is proved by the Operational Situation Report No. 126, Document Book I, page 28, 31 of the German, Document NO-4134, which is Prosecution Exhibit No. 7. This Operational Situation Report shows Rasch in charge of Einsatzgruppe B on the 29th of October. Another Operational Situation Report, which is in Document Book II-D on page 10 of the English, 8 of the German, Prosecution Exhibit 85, Document NO-3159, lists him in the same position on the 5th of November. However, it is apparent from Operational Report No. 132 -- Document NO-2830, in Document Book II-C on page 21 of the English, 23 of the German, Prosecution Exhibit 72, that after this short service he returned to Einsatzgruppe C as its commander, as this report shows him in this position on the 12th of November

1941. I do not want to take up the Tribunal's time by quoting all the documents in evidence which prove the thousands of murders and atrocities which were carried out by the units of Einsatzgruppe C during the time when Rasch was in command. But I might be permitted to refer to some of the Operational Situation Reports in evidence.

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Operational Situation Report No. 128, Document Book II-C, page 1, Document 3157, Prosecution Exhibit 68, shows -- and I am quoting from pages 3 and 4 of the document:

"As to the purely executive matters, approximately 80,000 persons were liquidated until now by the Kommandos of the Einsatzgruppen. Among these are approximately 8,000 persons through investigations convicted of antiGerman or Bolshevistic activities. The remainder was liquidated as a retaliatory measure. Several retaliatory measures were carried out as large-scale actions. The largest of these actions took place immediately after the occupation of Kiev. It was carried out exclusively against Jews with their entire families. The difficulties resulting from such large-scale action - in particular concerning the seizure - were overcome in Kiev by requesting the Jewish population through wall-posters to move. Although only a participation of approximately five to six thousand Jews had been expected at first, more than 30,000 Jews arrived who until the very moment of their execution still believed in their resettlement, thanks to an extremely clever organization.

"Even though approximately 75,000 Jews have been liquidated in this manner, it is already at this time evident that at this time this cannot be a possible solution of the Jewish problem. Although we succeed, in particular in smaller towns and also in villages, in accomplishing a complete liquidation of the Jewish problem, again and again it is, however, observed in larger cities that after such an execution all Jews have indeed disappeared. But when after a certain period of time a Kommando returns again, the number of Jews still found in the city always considerably surpasses the number of executed Jews."

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some of the facts which this report reveals. Of 80,000 persons - only 10% of the total, as it is stated here, were convicted through investigations, - which means, in other words, that they were murdered without so much as a semblance of a trial. The remaining 90% - 72,000, were executed as a retaliatory measure. We cannot imagine crimes of such magnitude which would justify the killing of 72,000 people in retaliation, and it is even beyond imagination how the powerless civilian population could have been able to permit such crimes.

Operational Situation Report No. 106, which is in Document Book I, page 122 of the English, page 149 of the German, Document 3140, Prosecution Exhibit 30. You will find, in the middle of the page, a note which reveals that approximately 35,000 Jewish inhabitants of Kiev were actually exterminated on the 29th and 30th of September 1941 by Sonderkommando 4a under the command of the defendant Blobel, at the time when Rasch admittedly was commander of Einsatzgruppe C, to which Sonderkommando 4a was subordinate.

Operational Situation Report No. 132, which is in Document Book II-C, on Page 23 of the German -- and I want to refer to pages 23, 24 and 25 in the English -- reads, in connection with Einsatzgruppe C, as follows:

"The number of executions carried out by Sonderkommando 4a meanwhile increased to 55,432. Among those executed by Sonderkommando 4a in the second part of the month of October 1941 until the date of this report, in addition to a comparatively small number of political functionaries, active communists and people guilty of sabotage, etc.

, the larger part were again Jews, and a considerable part of these were again Jewish prisoners of war who had been handed over by the Wehrmacht. At Borispol, at the request of the Commander of the Borispol Prisoner of War Camp, a platoon of Sonderkommando 4a shot 752 Jewish prisoners of war on 14 October 1941 and 354 Jewish prisoners of war on 10 October 1941, amongst them some commissioners and 78 wounded Jews, handed over by the camp physician." the first paragraph of this page, your Honors: "Another platoon of Sonderkommando 4a was active at Lubny and, without any interference, executed 1365 Jews, Communists and partisans, among them 53 prisoners of war and a few Jewish riflewomen." I do expect these were Jewish women carrying weapons. It is obvious that the 55,432 executions were not carried out in a few days, but that is the number of total murders committed by Sonderkommando 4a.

THE PRESIDENT: Mr. Hochwald, it will be assumed by the Tribunal that once you introduce an exhibit, even though you only read a small portion of it the entire exhibit is in evidence.

DR. HORLICK-HOCHWALD: Your Honor, I was only referring now to documents which are in evidence, and we always put the complete report in.

THE PRESIDENT: I only want to make this statement so that defense counsel may feel free to refer to the other parts of the exhibit. Naturally, you are only reading a fragment of the exhibit, but the entire exhibit is evidence and will be regarded as being in evidence.

DR. HORLICK-HOCHWALD: That is correct; and we have always submitted a photostatic copy of the complete report.

(continuing) These executions were carried out with Rasch as commander of Einsatzgruppe C by Sonderkommando 4a, which was a Sub-unit of Einsatzgruppe C. your Honors -- page 25 of Document Book II-C, the same document from which I quoted, 28 of the German, paragraph 1 of this page:

"Sonderkommando 4b is stationed at Poltawa, according to a report dated 16 October 1941. Slaviasnk is to be the next location. The work of Sonderkommando 4b, influenced partly by weather and road conditions, was mainly limited to the town area of Poltawa. In the week from 4 October 1941 to 10 October 1941, a total number of 186 persons was executed, among them 21 political functionaries, 4 people guilty of sabotage and looting and 161 Jews. In addition, the task of the Sonderkommando included searches and pursuits of former leading Communist Party functionaries and members of the executory committee of the Poltawa district." 3, page. 19 of the original, your Honors, page 29 of the German, just under the heading:

"The number of people executed by Einsatzkommando 5 amounted to 15,110 on 20 October 1941. From this number, 20 political functionaries, 21 people guilty of sabotage and looting and 1,847 Jews were shot between 13 October 1941 and 19 October 1941. On 18 October 1941, 300 insane Jews of the Kiev lunatic asylum were liquidated, which represented a particularly heavy mental burden for the members of Einsatzkommando 5, who were in charge of this operation."

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the same page, your Honors:

"137 trucks full of clothes, made available in connection with the campaign against Jews at Shitomir and Kiev, were put at the disposal of the National Socialist People's Welfare Organization - NSV - for further disposal. The greater part of these articles, after necessary disinfection, were distributed among German nationals. From this stock a field-hospital of the Waffen-SS, among others, was also able to meet its requirements of woolen blankets etc." Report No. Ill, Document Book 2a, page 44 of the English, page 40 of the German, Document No-3155, Prosecution Exhibit 38 -- it is on page 2 of the translation, the third paragraph from the bottom of the page:

"In the period between 7 September and 5 October, 207 political officials, 112 saboteurs and looters as well as 8,800 Jews were liquidated by Einsatzkommando 5.

"Special Kommando 4b, in the period between 13 and 26 September, executed 103 political officials, 9 saboteurs and looters and 125 Jews.

"Einsatzkommando 6, in the period between 14 and 27 September, executed 13 political officials, 32 looters and saboteurs as well as 26 Jews." under the defendant Rasch took part in the killings of thousands of people. As to Rasch's responsibility for killings carried out by Einsatzgruppe B, where he was in command at least from 29 October to 5 November 1941, it is sufficient to compare Operational Situation Report No. 125, which is in Document Book II-B, page 42 of the English, page 39 of the German, Document 3403, Prosecution Exhibit 63, with another Operational Situation Report in evidence -- Operational Situation Report No. 133, in the same Document Book II-B, on page 15 of the English.

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The document starts on page 10 of the German, Document NO-2825, Prosecution Exhibit 59. The first report, No. 125, which is on page 42 of the English, 39 of the German, which is dated 26 October 1941, lists on page 2 of the translation the execution total of Einsatzgruppe B, as 37,180 persons.

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The report No. 133 which is on page 15, 13 of the German, which is dated on the 14 November 1941-- it is on page 15 of the document book, 45,407 executed by the same unit. In this number of persons killed by Sonderkommando 4-B, Einsatzkommando 9 and Vorkommando Moscow which belonged to Einsatzgruppe B were not in 2-B. Nevertheless, the increase shown in this period between 26 October and 14 November is 8,273. As Rasch was in charge of Einsatzgruppe B at least from 29 October-5 November, he is in charge and responsible for this. by affidavits of some of his co-defendants. I refer to Document Book III-A, page 10 of the English, page 17 of the German, your Honors. Document NO-3872, prosecution Exhibit 110. This is an affidavit of the defendant Sandberger dated on the 19th of November, 1945. This document lists Rasch under paragraph 5-B as responsible for the persecution of Jews in the Ukraine. No. I on page 97 of the English, 134 of the German, Document NO-3644, prosecution Exhibit 26 reveals that Rasch informed Schulz in Lemberg that Jewish officials and other inhabitants of this town were alledgedly guilty of murder. 2,500 to 3,000 persons were arrested and most of them were killed. It was Rasch who informed Schulz that according to an order of the Fuehrer not only guilty but also strongly suspected persons were to be shot as a so-called reprisal. Einsatzkommando 6, he was personally present at the executions. Schulz was ordered to take part in the execution by Einsatzkommando 5 and it was Rasch who handed down the order to Schulz that all Jews were to be shot. Exceptions were to be made only in cases where the Jews were necessary for forced labor. Rasch also ordered that Jewish women and children were eventually to be shot, together with the male Jewish population so that no avengers could survive.

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Document Book III-C on page 60 of the English, page 98 of the German, Document NO-3341 which I offer as prosecution Exhibit No. 130. In this document, Schulz in paragraph 6, the second to the last paragraph on page 2 of the document, your Honors, it states that Rasch distinguished himself by extraordinary ruthlessness. He also ordered that the commanders of the individual units of Einsatzgruppe C should personally take part in the killings. on page 129 of the English and 159 of the German, prosecution Exhibit 31, document NO-3824 - and I am referring to paragraph 3, 6 and 7, 8 and 9 of the document--it states that when Blobel joined Einsatzgruppe C as chief of Sonderkommando 4-A in June 1941, Rasch was in charge of Einsatzgruppe C. That is in paragraph 5. Rasch was personally present during the execution of 700 to a thousand persons near Korosta which took place in August or September, 1941. book, your Honors, Blobel's unit which was one of the units of Einsatzgruppe C and was directly under the command of the defendant Rasch, also killed women and children. In September or October, 1941, Blobel received from Einsatzgruppe C a gas wagon and one execution was carried out by using this gas wagon. At the end of September 1941, the group staff of Einsatzgruppe C participated in the mass execution of Jews in Kiev. When Blobel was ill, Rasch or Radetski replaced him and Blobel knows that during that time executions were carried out. on the 1st of September, 1939, a member of an organization declared to be criminal by the International Military Tribunal, namely the SS, the Gestapo, and the SD. I refer to document book III-C, page 3 of the English, and the German, and offer Rasch's SS personnel file, Document NO-3253 as prosecution Exhibit 131. This document proves that Rasch was a member of the SS and the SD from 1936 on.

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in the American army, and in the SS he was a leader of the regional area of Fulda Werra from the 1st February 1939 on. And rose to the rank of inspector of the Sipo and SD Security Police and Security Service which is a high ranking position in the Gestapo too. In the Gestapo he was attached as Brigadier General of the police to the Gestapo Koenigsberg from the 1st of December 1940 on.

Page 8 of the document book, your Honor. He received a high SS decoration--the death head and the sword of honor. Membership in Criminal organization is also proved by his own affidavit to which I have already referred. That is in Document Book III- C, page 1, prosecution Exhibit 1 to 9, document NO-4749. Sonderkommando 4-A, the case of the defendant Blobel. I refer to Document Book I, page 130 of the English, 159 of the German. This document is NO-3824, prosecution Exhibit 31, an affidavit of the defendant Blobel dated 6 June, 1947. In this affidavit, the defendant Blobel states that he was commander of Sonderkommando 4-A from June 1941 to January 1942. It was Blobel and Sonderkommando 4-A who exterminated approximately 35,000 Jews in Kiev on the 29th and 30th of September 1941.

Operational situation report No. 106, which is in Document Book No. I, page 118 of the English, 149 of the German, Document NO-3140, prosecution Exhibit 30, shows that Blobel arrived at Kiev -- and this is on page 3 of the document, paragraph 2 under the heading of I--Kiev.

Blobel arrived at Kiev already in the 21st of September. I would like to correct no error which appears in the English translation. In the document, the name of Blobel is not written out but your Honors will find on top of the document in a later sheet referring to this particular sentence and there it is shown that the name of Blobel appears in the original document. 21st of September.

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II-C on page 21 of the English, page 23 of the German, Document NO-2830, prosecution Exhibit 72, about the location Sonderkommando 4-A under Blobel on the 4th of November, 1941, Rasch discloses that he personally was in command of the Kiev action. Book I, page 118 of the English, 149 of the German. This is Document NO-3140, prosecution Exhibit 30. I quote from page 124 of the document book, page 155 of the German.

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Partly because of the better economic situation of the Jews under the Bolschevist regime and their activities as informers and agents of the NKWD, partly because of the explosions and the resulting fires, the public feeling against the Jews was very strong. As an added factor it was proven that the Jews participated in the arson. The population expected adequate retaliatory measures by the German authorities. Consequently all Jews of Kiew were requested, in agreement with the city commander, to appear on Monday, 29 September until 8 o'clock at a designated place. These announcements were posted by members of the Ukrainian militia in the entire city. Simultaneously it was announced orally that all Jews were to be moved. In collaboration with the Gruppen staff and 2 Kommandos of the police regiment South the Sonderkommando 4a executed on 29 and 30 September 33771 Jews. Money, valuables, underwears and clothing were secured and placed partly at the disposal of the (Nazi Party Public Welfare Organization) NSV for use of the racial Germans, partly given to the city administration authorities for use of the needy population. The transaction was carried out without friction. No incidents occurred. The "Resettlement measure" against the Jews was throughout approved by the population. The fact that in reality the Jews were liquidated, was hardly known until now, according to up - to - date experiences it would however hardly been objected to. The measures were also approved by the Wehrmacht. The Jews who were not yet apprehended as well as those who gradually returned from their flight again to the city were in each case treated accordingly. Simultaneously a number of NKWD officials, political commissars and partisan leaders were arrested and liquidated." I skip the next three paragraphs and quote from the last paragraph on page 10, page 156 of the German under the heading-it is ten of the document, your Honors.

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After the confinement of the Jews to a restricted area which had been carried out by the Feldkommandantur following a suggestion of the Sonderkommando 4a, a considerable calm was noticed, e.g. at the markets and so forth. Simultaneously a number of until new persistent rumors died down and it seemed as if also a communist propaganda had lost much ground through the confinement of the Jews. It appeared however already after a few days that a mere spatial confinement of the Jews without construction of a Ghetto was not sufficient. and that the old troubles started again. Complaints were received in many offices about the insolent attitude of Jews on their working places. It was established that the Jewish district was the origin of an active propaganda among Ukrainians saying that the red army would soon reconquer the territories taken from it. The local militia was shot at from ambush at night and also at day. It was further found out that Jews exchanged their belongings for money and left the town in order to settle in the Western Ukraine - that is, in territories already under a civil administration. All these facts were observed, the Jews in question however could only be arrested in very few cases, as they had sufficient means to escape apprehension. Therefore a conference on this matter took place on 18 September 1941 with the Feldkommandantur, in which it was decided to liquidate the Jews of Shitomir completely and radically, as all warnings and special measures had been up - to - date unsuccessful: On 19 September 1941 the Jewish district was evacuated starting at 4 o' clock in the morning, after having been surrounded and closed the evening before by 60 men of the Ucranian militia. The transportation was carried out by 12 trucks which had been place at the disposal partly by the Feldkommandantur, resp. the city administration of Shitomir. After the transport had been carried out and the necessary preparations had been done with the help of 150 prisoners a total of 5145 Jews were registered and executed.

50.000 - 60.000 Pds of underwear, clothing, shoewear, cooking ustensils and so forth could he transferred for use to the deputy of the NSV in Shitomir, BOSS. Confiscated valuables and money were transferred to the Sonderkommando 4a." of the German: Exhibit 73, NO-3151, which is operational situation report No. 86 dated 17 September 1941, this report reveals that already before the murder of the Jews in Shitomir up to the 17th of Sept. in 1941, Sonderkommando 4-A had exterminated 6,584 persons described in the report as Bolshevists, Jews and asocial elements. on page 23, the document starts on 23 in the German, Document NO-2836, prosecution Exhibit 72, second paragraph from the bottom from page 23, proves that on the 12th of November, 1941, of the activity of approximately four-and-a-half to five months, and I quote:

"A number of executions carried out by Sonderkommando 4-A meanwhile increased to 55,432." 4-A. I would like to refer further to page 5 of the same document which I have already quoted when discussing the responsibility of the defendant Rasch. This entry proves that a platoon of Sonderkommando 4-A executed 1,365 Jews, Communists and saboteurs. "In Kiev, Sonderkommando 4-A regularly carried out interrogations and arrests which in most cases led to executions. Here almost without exception we were concerned with active communists who had worked for the communist party. It is worth mentioning that in several cases by way of incriminating statements made by witnesses, communists could be arrested who had just been released from prisoner-of-war camps because they had stated that they had never taken any active part in politics before.

One of them had been a functionary of the communist party since 1925. Another one had been a member of the party for 15 years and had served as a politruk in the Soviet army. English, 61 of the German, Document 3405, prosecution Exhibit 42. This document reveals the details of the activities of Einsatzkommando 4-A in a time when Blobel was in command. I quote from page *9 of the English translation, second paragraph from the "bottom of the page. It is page 65 of the document book, 69 in the German, under the heading of: Line 27 onwards: the Jewish population had been requested by means of posters to report on the previous day. Altogether 1,538 Jews were shot. Their clothing was handed over to the mayor if Poltawa, who gave special priority to ethnic Germans when distributing it.

This documentary evidence is corroborated by Blobel's own affidavit and by affidavits of his co-defendant Steinle and Radetzki. I refer to Document Book I, page 130 of the English, 159 of the German. The quote is on 161 of the German, Document NO-3824, prosecution Exhibit 31. This is an affidavit of the defendant Blobel dated 6 June 1947. He admits that Sonderkommando 4-A under his command carried out several executions of communists, saboteurs, Jews and other undesirable elements. executed but presumes that approximately 10 to 15 thousand were executed under the collaboration of Sonderkommando 4-A. He himself does not claim that this number is even approximately correct and the evidence which I have just referred to and other documents before the Tribunal manifestly prove that the number of the victims of Sonderkommando 4-A during the time when Blobel was in command was approximately 60,000.

In the same affidavit, Blobel admits that not only men but also women and children were shot by Sonderkomnando 4-A when he was in command. C which was, as he says, then under Rasch. One execution was carried out by means of this gas van. He admits in paragraph B of the affidavit that Sonderkonmando 4-A participated together with the group staff of Einsatzgruppe C in the Kiev massacre but stated that the number of the victims given in the various reports is 33,771 is too high and claims that only approximately half as many persons were killed. some of the killings and he Was often absent from his unit for reasons of health. During the time of his absence, either Rash or Radetzki were in command of Sonderkommando 4-A and some executions were carried out under the command of these two defendants. an affidavit of the defendant Radetzki which I offer into evidence as prosecution Exhibit 132. On 27 of the German, I refer to page 21 of the document book, in this affidavit Radetzki declares that he was officially informed of the fact that Sonderkommando 4-A participated in execution and that Blobel ordered the execution. The affidavit of the defendant Steimle which is in Document Book III-B on page 39 of the English, 64 of the German, Document NO-3842, prosecution Exhibit 119, reveals on page 40 of the document book, the shooting of Jews and other atrocities were carried out in the Ukraine by Blobel. blatant and unmitigated rogue, There is conclusive evidence that the persons connected with Einsatzgruppen were well aware of the criminal nature of this activity Gruppenfuehrer Mueller, the chief of Amt 4 of the RSHA, which was the head of the Gestapo, assigned to the defendant Blobel in June 1942 the task to remove the traces of evidence of the mass killings by the Einsatzgruppen by burning all the corpses of the victims of these units.

Document NO-3947. That is on page 22 of the German - an affidavit of the defendant Blobel which I offer into evidence as prosecution Exhibit 133, Your Honors.

DR. HEIM: Dr. Heim for the defendant Blobel. Your Honor, I object to the submission of this Document NO-3947. It is an affidavit of the defendant Blobel of the 18th of June, 1942. I object to this because this document is irrelevant to the evidence. The affidavit of the defendant Blobel related to his activity after he was active as a leader of the Einsatzgruppe E, of the burnings of the corpses of the mass graves in the East; neither in the opening speech nor in the speech by the prosecution did the prosecution refer to this. This is a completely new point of view which is not liable to punishment because this refers to the burning of corpses which were not executed by the defendant Blobel.

THE PRESIDENT: The prosecution is not restricted to what is mentioned in the opening statement. The purpose of the opening statement is merely to acquaint the Tribunal and the office at side with the general nature of the evidence which will be presented so it doesn't matter that it was not mentioned in the opening statement. It would be impossible in the opening statement to include all items of proof and any evidence which refers to a defendant whether it specifically points out some item in the indictment or not is relevant. The objection is overruled.

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MR HORLICK_HOCHWALD: I offer this document NO-3947 as Prosecution's Exhibit No. 133, Your Honor. In this affidavit Blobel admits that he received this assignment from Mueller. He also stated that he went in June 1943 to Kiev, and was present at the burning corpses and destruction of the mass graves, he was not in a position to carry out this task as the German troops had to retreat and to abandon the area in which the mass graves were l ocated, and, in this affidavit Blobel corroborates that statement of the camp commander of the Auschwitz concentration camp, Hoess. English, page 25 of the German, as Document NO-4498, and I offer it as Prosecution's Exhibit No. 134.

DR. HEIM: Dr. Heim for the defendant Blobel. Your Honor, I object to the introduction of this affidavit of this evidence. It is not an affidavit which is either sworn to nor certified to, nor signed by any Allied Officer, I point out that this document had already been introduced before in case 4 by the Prosecution, and on that occasion, on my intervention, this document was not admitted in evidence by the Tribunal.

THE PRESIDENT: Where was this document obtained?

MR. HORLICK*HOCHWALD: Your Honor, sofar as I do know this is a deposition of Hoess who was condemned to death by the Polish War Crimes Court before the Polish judge, but sofar as I do recall, I am not sure, but I can make certain this document or at least a part of this document was admitted in evidence in the Pohl case, but I am not certain.

DR. HEIM: Your Honor, at the time in the Pohl case, just in regard to the defense of the defendant Blobel, I objected to this document, and this document was refused.

THE PRESIDENT: We will admit the document only provisionally, and Dr. Heim will be permitted to renew his objection when his client takes the stand.

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MR. HORLICK-HOCHWALD: Yes. I further would like to offer a document in corroboration of this proof, and I turn to Document Book III-C, page 19, Your Honor, Document NO-4467, which I offer as Prosecution's Exhibit No. 135. It is on page 26 of the German. This is a corroborative report of one SS-Untersturmbannfuehrer Jackel, which refers to the same subject of which the gentleman has been soeaking. The affidavit of the defendant Schulz. This is in Document Book III-C, on page 60 of the English, page 98 of the German, and Document NO-3841. It was admitted in evidence as Prosecution's Exhibit No.130 It states that Blobel had the task of removing traces of mass graves of killed persons. Blobel's membership in the SS and the SD is proved by his personnel record, Which is in Document Book III-C which is on page 11 of he English, and page 1? of the German, Document NO-3197which I offer as Prosecution's Exhibit No. 136, This document shows that he entered the SS and SD in 1935.

DR. HEIM: (for defendant Blobel.) Your Honor, I object to the introduction of this document in this form. You can not sec from the copy what is being printed, or what was later written inhandwriting and - or on the typewritten, and the Tribunal may easily get the Impression that, for example, that the defendant Blobel is holder of the blood badge. In the middle of the document it says "blood bagde" and it can not be gathered from this whether the word "blood badge" is printed in there, or whether the word was later put in there.

THE PRESIDENT: Would you not on comparison with the photostatic copy resolve that question?

DR. HEIM: Your Honor, yes, it would, but in the courtroom it is not known what was actually put in by hand on the copy, what Blobel said, what position he held, and what actually was printed in that form. For example it is printed, "Decoration blood badge. Gold party Badge." You could get the impression that Blobel, certainly held all of these decorations, Sofar as I can see, the Prosecution would have to make a special remark -- a written remark about this.

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THE PRESIDENT: Well, solong as the document before us is a copy of what appears in the original document, it does not matter what impression is gathered from it. The impression will have to be whatever logic compels. Your objection can only go to whether the document is relevant, whether it is authentic, and, whether it is true fascimile of the original. You have the opportunity to see the original Dr. Heim.

DR. HEIM: Yes, Your Honor, I know that the decorations are held by him, and what he did not hold, in these forms certain decorations were merely printed in there, and the possession of these decorations were latter written in, but in the copy the Tribunal can not see what was this form, which decorations were printed in there and which actually applied to Blobel, and which did not apply to him. I personally know the original has not.

THE PRESIDENT: Well, you have the opportunity to tell us when Blobel takes the stand.

MR. HORWICK-HOCHWALD: May I draw the attention of the Tribunal to the fact that why it is completely immaterial as there is a sign on the photostatic copy which Dr. Heim obviously overlooked, which shows exactly what kind of decoration Blobel received.

THE PRESIDENT: Very well, proceed.

MR. HORLICK-HOCHWALD: I then offer Document NO-3197 as Prosecution's Exhibit No. 136. This document shows that Blobel entered the SS and SD in 1935, and in the SS he rose the rank of Standartenfuehrer (Colonel), on 30 January 1941, and was a Fuehrer in the Hauptamt, head of the Office of the SD. He received this promotion as his personnel service record and corroborated by Blobel's own affidavit, which is to be found in Document Book 1, page 129 of the English, and page 159 of the German, which is Prosecution's exhibit No. 31, Document NO-3824, in which is shown the responsibility of the defendant Radetski, who was also an officer in the Sonderkommando 4-A. He admits in his affidavit, which is in Document Book III-C, on page 20 of the English, and page 20 of the German, which was admitted in evidence as Prosecution's Exhibit No. 132, Document NO-4438, that he was a member of Sonderkommando 4-A from June 1941 to December 1942 and he admits having been in June and July 1941 in Group Ludzk, Groskow and Shitomir, in Ludzk he says he was with the Teilkommando a sub-unit of Sonderkommando 4-A; from December 1941 to March 1942 he allegedly was on leave and returned to Charkow as commander of Sonderkommando 4-A, in March, at Charkow.

He said further in this affidavit that he had official knowledge of Sonderkommando 4-A took part in a number of executions within the area assigned, and that Standartenfuehrer Blobel ordered executions. English, and page 47 of the German, document NO-4765, which I offer as Prosecution's exhibit No. 137. This is an affidavit of Gustav Kraege, dated 21 August 1947, Kraege himself was a member of Sonderkommando 4-A, in a partcommando -- that is a Teil-Kommando Sonderkommando 4-A arrived in Ludzk on 28 June, and that SS-Hauptsturmfuehrer Kadetzki was the highest ranking officer in this advance; this, of course, applied to nothing else but that he was the commander under Radetzki, and I would like to quote from para- 3 of the document, page 30: "During my service with Einsatzkommando 4-A, I took part in the march of the unit from Schmiedebot to Russia. We arrived at Cracow on the 25th or 26th of June where we stayed for only one night.

Some days latter we reached the former Russian frontier in Sokal, where the Kommando was held back for several hours due to attacks from the air. In Sokal a Vorkommando was formed consisting of 20 to 25 men, among whom I was myself, and was given orders to proceed to Ludzk, and to prepare quarters there for the remainder of the Kommando. We arrived at Ludzk on 28 June. After having been billeted in a bank building the Vorkommando was sub-divided in smaller groups with orders to pry open strong boxes in various buildings, and to seize documents. Part of the Vorkommando consisting of Waffen-SS and interrogators remained in the billets. The Vorkommando was headed by three leaders, namely, SS-Hauptsturmfuehrer Waldemar von Radetzki and two Obersturmfuehrer whose names I do not know any more. I remember that one evening a conference was held during our stay at Ludzk, in the course of which Waldemar von Radetzki, as senior leader, gave orders to the assembled subleaders to seize documents, and other important material from certain buildings, At that time I had the impression that Radetzki was the head of the Vorkammando, although he had never been pointed out to me as such. Radetzki questioned Ukrainians from among whom he selected several to cooperate with the Sonderkommando 4-A, The main part of the Kommando arrived at Ludzk in early July. I did not witness any executions during our stay at Ludzk. But when we were putting the documents of the office in order some days later in Rovno, a number of about 20 reports and records of interrogations came to my hands from which I learned that people had been executed in Ludzk and Sokal."

THE PRESIDENT: Mr. Hochwald, might this be a convenient time to take the afternoon recess.

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MR. HORLICK-HOCHWALD: Yes, Your Honor.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

THE MARSHAL: The Tribunal will recess fifteen minutes.

(recess)

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THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Dr. Koessl for the Defendants Ott and Schubert. as Exhibit No. 134. The question of the admissibility of this document interests all the defense counsel. As this document is obviously inadmissible. The affidavit of Rudolf Hoess is not sworn to. If it had been sworn to it could not be submitted because he is not alive any longer and therefore he cannot be corss-examined.

THE PRESIDENT: Is this the one that Dr. Heim spoke of?

DR. KOESSL: Yes, sir.

THE PRESIDENT: Well, we have already ruled on that.

DR. KOESSL: In my opinion Dr. Heim did not raise the question of the admissibility of this document.

THE PRESIDENT: Whatever question he raised the Tribunal said that we would admit it only provisionally in order to retain its continuity and then you will have the privilege of attacking it on any point when your case comes up.

MR. HORLICK-HOCHWALD: If your Honors please, before the recess I referred just to the responsibility of Radetzky in connection with the activities of an advance commando in Ludzk. I only want to refer in this connection to Document Book II-A, Page 76 of the English, 79 of the German, Prosecution Exhibit 44, NO_2938, which shows that an advance commando of Sonderkommando 4a arrived in Ludzk on the 27th of June. Your honors will remember that Kraege says in his affidavit that this advance commando arrived the 28th of June and that by this advance commando 300 Jews and 20 looters who had been arrested were shot on the 30th of June. 1160 Jews were shot as a reprisal for the death of 10 Germans on the 2nd of July. The report goes on, "Finally, it was possible to discover altogether 50 Polish agents and spies who were liquidated also." Thus Radetzky carries responsibility for the killing of 1460 Jews, 20 saboteurs and 50 Polish agents and spies. That Radetzky replaced Blobel when the latter was ill is confirmed by Blobel's own affidavit, Document Book No. I, Page 129 of the English, page 159 of the German, Document NO-3824, Prosecution's Exhibit 31.

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Moreover, Radetzky, as I have already pointed out, admits himself that he had official knowledge of the fact that executions were carried out by Sonderkommando 4a. He admits having been in Rowno and Shitomir where mass killings were carried out. This is proved as to the town of Rowno by Operational Situation Report No. 19 which is in Document Book II-C on Page 46 of the English, 52 of the Germen, NO-2934, Prosecution Exhibit 78. This report states that Sonderkommando 4a had shot 240 Bolshevists and Jewish officials, and in respect to the activities of of the Sonderkommando 4a in Shitomir I want to refer to Document Book I, Page 127 of the English, 149 of the German, Document NO-3140, which is Prosecution Exhibit 30. This documents. proves that on the 19th of September, 1941, 3145 Jews were executed by Sonderkommando 4a. Radetzky further admits having joined Sonderkommando 4a after absence for illness in Charkov in March. 51 of the German. This is Document NO-3237 and will be Prosecution's Exhibit 138. Your Honors. This document proves that Einsatzgruppe C executed in Charkov 193 persons and 64 Jews. like to offer from Document Book III_C, Page 22 of the English, Page 30 of the German, Document NO_4771, which will be Prosecution's Exhibit 139. This document proves his membership in the SS from December 1939. his assignment to the Sonderkommando, Security Police and SD in May 1941, and his membership in the SD is proved by teletype which is on Page 8 of the document. These facts are also corroborated by the own affidavit on the defendant which is in Document Book III_C on Page 20 of the English, 27 of the German, Document 4438, which I have already introduced at Prosecution Exhibit 132, your Honors. responsibility of the Defendant Haensch. I refer to Document Book III-C on Page 20 of the English, 27 of the German, Document 4438, which I have already introduced as Prosecution Exhibit 132, your Honors.

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responsibility of the Defendant Haensch. I refer to Document Book III-C, Page 35 of the English, 54 of the German, Document NO-4567, which I offer as Prosecution Exhibit 140. There Haensch admitted he was a commander of 4b from the middle of March until approximately the middle of June 1942, but he claims that he actually stayed with the Einsatzkommando only for about seven to eigh weeks. Somewhat contradictory to this statement is an admission on the next page, the second page of the document, Page 36 of the document book, that he was appointed as leader of Sonderkommando 4b by Heydrich in the beginning of 1942. He describes then his official functions, and I will skip this and only refer to Page 9 of the document. Page 43 of the document book, where he states that he watched three or four executions. Page GO of the English, Page 61 of the German, Prosecution's Exhibit 42, Document NO-3405, which is dated 16 January. This document proves that Haensch at that time was in command over Sonderkommando 4b. On page 4 of the original, Page 4 of the translation, Page 6 of the document book, the name Braune which originally appeared as commander of Sonderkommando 4b is crossed out and replaced by the name of Haensch in handwriting. On the same page the name of Blobel, which appears as commander of Sonderkommando 4a is corrected to Dr. Weinmann. This undoubtedly proves that Haensch had been replaced by Braune, no, that Haensch had replaced Braune and Weinmann had replaced Blobel at the time when this report was made That is on the 16th of January, 1942. This date is of certain importance, of the English, this is Document No_3340, Prosecution Exhibit 22, it shows the following entry.

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I quote from Page 2. "Einsatzgruppe C; Location, Kiew: "During the period 14 January to 12 February 1942, 861 persons were shot by order of summary court by the Sonderkommando 4b. Of this number 649 were political officials, 52 saboteurs and partisans, and 139 Jews." your Honors find Document NO_3240, which is Prosecution Exhibit 80. There it is stated that Sonderkommando 4b executed a total 1317 persons. These two entries prove that Haensch did not only execute 861 persons, bu order of a Summary Court who sentenced these persons to death in a period of less than one month, but also used his own discretion for the execution of 1,317 people. of Document Book III-C, Page 51 of the English, 85a of the German, Document No_3261 which will be Prosecution's Exhibit 141. Your Honors, this is the SS personal record of Haensch and proves that he was a member of the SS and SD, both, after the 1st of September 1939, and that he received the death-head ring and the sword of honor.

I turn now to the case of the Defendant Fendler. I offer from Document Book III-C, Page 55 of the English, 89 of the German, Document NO-4144, which is Prosecution's Exhibit 142, where Fendler admits he was a member of Sonderkommando 4b from May to October, 1941. As to his position in the Sonderkommando, I do not Want to quote Paragraphs 3,4 and 5, but I shortly refer to the fact that he said here that he was the second highest ranking officer in this unit and that he often carried out the functions of a deputy to the leader of the unit. He further states that he never was officially informed that the execution had taken place by Einsatzkommando 4b at the time when he was in charge there, but he by no means denies that he unofficially knew that executions were held.

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He admits having been in Tarnopol. In this connection I would turn to Document Book II-A, Page 81 of the English, 79 of the German. Your Honors. Document NO-2938, Prosecution's Exhibit 44 which shows on the bottom of the page that by Sonderkommando 4b 180 Jews who were used for excavation of corpses were slain afterwards by this Sonderkommando. Jewish residences were destroyed by members of the Waffen-SS by hand grenades and setting of fires. Honors, 52 of the German, Document NO-2934, Prosecution's Exhibit 78, which shows that in Tarnopol Einsatzgruppe 4b carried out 127 executions and liquidated 600 Jews by inducing a program which killed these 600 people. Fendler further admits in an affidavit that he was in Poltawa. In this connection. I would like to turn to Document Book II-C, Page 25 of the English, 23 of the German, Document NO2830, Prosecution's Exhibit 72, your Honors, which shows that the Sonderkommando 4b in Poltawa killed 186 persons cut of which were 161 Jews. the English, 40 of the German, Document 3155, Prosecution's Exhibit 38, which states that Special Kommando 4b executed another 103 political officials, 9 saboteurs and looters and 125 Jews.

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COURT II-A CASE 9 to Document NO-4144 which is in Document Book III-C, on page 55 of the English, 89 of the German, which I have already introduced as Prosecution's Exhibit 142, and offer out of Document Book III-C, Page 57 of the German, page 92 of the English, I am sorry, Page 57 of the English, your Honors, 92 of the German, Document NO-4958, which will be Prosecution's Exhibit 143, the SS personal record of Fendler, in order to prove his membership in criminal organizations. to take up the Case of the Defendant Schulz. In this connection I have to refer to Document Book I, Page 96 01 the English, 134 of the German, prosecution's Exhibit 26, Document NO-3644, where he admits that he was commanding officer of Einsatzkommando 5 from May until the end of September, 1941. The affidavit further reveals that Schulz in the Einsatzkommando participated. in mass executions which were carried out in Lemberg by various units of the Einsatzgruppe C by order ot the Defendant Rasch. Schulz admits that he was informed by Rasch that not only guilty but also strongly suspected persons were to be executed, and that also Jewish females and Jewish children Were to be killed. In another affidavit of Schulz which is in Document Book III-C on Page 60-

DR. DURCHOLZ: Dr. Durcholz for the Defendant Schulz. is supposed to be proved by exits document of the Defendant Schulz, I should like to say the following: In the index of Document Book III-C, on page II of the index, with reference to the document NO-3644 Exhibit 26, the following is contained in the last Sentence, and I quote: "Jewish women and children were also executed." This is the end of COURT II-A CASE 9 Quotation.

I have to correct this: In the affidavit of the Defendant Schultz of the 26th of May of 1947, which is supposed to contain this sentence, in Document Book I, Page 134, I don't know, the English page number, under No. 7 the last Sentence contains the following, and I quote: "Jewish women and children would have to be shot in cases if necessary, so that there may be no avengers."1 This is the end of my quotation. From this document it becomes evident as is Seen from the context, that the defendant Schultz made known an order and decree issued by the Reichsfuehrer-SS, which also becomes evident iron the documents, at the beginning of August in Shitomir, that in future women and children would have to be shot. But on no account had this order already been issued in Lemberg, as it can be concluded from the index. That under the leaders of the Defendant Schulz women and children were never shot, I shall, when the case of the Defendant Schulz comes up, give evidence to that effect.

MR. HORLICK HOCHWALD: If Your Honors Please, I do think that what was just introduced by Defense Counsel for Defendant Schulz could be better placed in His presentation of his case-in-chief than in this instance.

THE PRESIDENT: Well, he explained it in the last sentence, that he said he would present it when his case comes up.

MR. HORLICK HOCHWALD: I just referred to another affidavit of Schulz Which is in Document Book III-C, which is on page 60, your Honors of the English, 96 of the German, Document NO-3841, which I shall introduced as Prosecution's Exhibit 130. This document reveals that even Streckenbach, Heydrich's deputy in the RSHA considered the activity of the Einsatzgruppe to be murder.

DR. DURCHOLZ: Your Honor, to this also 1 want to say a few words. In this document-

THE PRESIDENT: Just lot me Say this. If you have an objection to the authenticity of the document make it; if you have an objection to the relevancy, make it; but if you are merely commenting on its discrepancy with some other document, then the objection is out of order. You will have an opportunity when your client takes the stand end when you make your argument to point out ell the discrepancies. You may attack the; document from any side, any angle.

DR. DURCHOLZ: I shall, when my case comes up, make the necessary correction, but I should like to say that the indices which are added to the document books to us are not always in agreement with the actual content of the document books. Therefore a correction would be necessary. That was the purpose of my coming, up here.

THE PRESIDENT: Yes, that is something you can do at the appropriate time,

MR. HORLICK HOCHWALD: If your Honors please, I only want to add the order of presentation is by He means a part of the evidence. It was only to aid the Tribunal and the defense counsel in order to follow our presentation of the case in chief and to make it easier for the Tribunal and the defense counsel to follow.

THE PRESIDENT: Very Well, proceed.

MR HORLICK HOCHWALD: The evidence presented by the Prosecution gives a clear picture of Einsatzgruppe 5 at the time Schulz was in command. I would like to refer to Document Book II-C, Page 25, your Honors, Prosecution's Exhibit 72. It is on Page 23 01 the English, Page 41 of tile German document, NO-2030. In this document you will find that the number of people executed by this Einsatzkommando COURT II-A CASE 9 amounted, on the 20th 01 October, 1941, to 15,110.

Schultz was, according to his own admission in charge of this unit until the 26th of September of thesame year. Page 44 of the English, Page 40 of the German, Prosecution's Exhibit 38, Document NO-3155, Which shows in the period from 7 September to 5 October 8800 Jews were liquidated by Einsatzkommando 5.

As to Schulz' membership in the SS and the SD and the Gestapo, I offer from Document Book III-C, on Page 63 of the English, 103 of the German, Document NO-4298, as Prosecution's exhibit 144, your Honor. This document proves Schultz's membership in the SS, SD and the Gestapo, and his higher rank of a brigadier general in the police. These facts are also corroborated by his own affidavit, Which is in Document Book I, on Page 97, already introduced as Prosecution's Exhibit 26, Document NO-3644. Book I, Page 111 of the English, 145 of the German, Prosecution's Exhibit 29, Document NO-4314, which is the affidavit of the Defendant Biberstein, where says that he was commander of Einsatzkommando 6 from Juno 1942 until June 1943. He alleges in his affidavit that his actual departure to Russia was delayed and that he did not arrive there earlier than in September. He further admits, and I quote from Paragraph 3 of the document, "2000 to 3000 executions Were performed in the area of my Einsatzkommando. I personally superintended an execution in Rostow which was performed by means of a gas-truck."

I do not want to take the Tribunal's time by quoting further from this interesting document, but I want to refer here to Document Book III-C. No, I want to offer here from COURT II-A CASE 9 Document Book III-C, Page 72 of the English, 116 of the German, the Document NO-2901, which will be Prosecution's Exhibit 145.

This is an SS personnel record, and there we find the correspondence between the Kommando of the Secret Police of the SD, Ukraine, and Biberstein. I only Want to quote Very shortly from this correspondence. There is a teletype, radio message of the 23rd May, 1943 to SS Sturmbannfuehrer Gottwald.

"The leadership of Enisatzkommando 6 was conferred upon me by the decree of the RSHA (Reich Main Security Office) dated 14.7.42 I A," and so forth. "Subordination. of Einsatzkommando 6 under Commander Rowno can only of accomplished, if the RHSA repeals the above decree and thus revokes my appointment. Since there is no report on this Here, I request immediate clarification." Signed by this defendant. the Einsatzgruppen and their units had one foremost task, to kill, to exterminate. Spoliation slave labor assignment were additional duties, Which were accomplished only as Secondary tasks in the frame of their main duties, to round up Soviet officials, commissars, and Jews for execution, and to carry out these executions. In the light of this evidence the guilt of Biberstein is amply corroborated.

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Book I on page 112 of the English, page 145 of the German, Document NO-4314, Prosecution Exhibit 29, Biberstein admits having been a member of the SS and SD. He also was a leader in the Gestapo in Oppeln. These facts are confirmed by his SS personal record, which I just introduced in evidence. Document Book IIIB, page 70, of the English page 116 of the German Book, prosecution Exhibit 145, Document NO-2901, which proves that he was a member of the SS and the SD from November 1936 on and was active in the Gestapo office in Oppeln.

DR. FIGHT: (Attroney for the defendant Biberstein) I object to the submission of this last document. This is an excerpt from the personnel files and individual letters, especially the letter which was quoted by the prosecutor in which Biberstein objects to the submission to another command; it is not signed by him. It cannot be seen from the copy whether actually those letters were signed by the defendant. It is typewritten. It is initialed, but it is not signed.

MR. HORLICK-HOCHWALD: If Your Honors please, I referred to the document as being a radio message, A radio message cannot be signed, and I only want to state here that this is a captured document perfectly admissible.

THE PRESIDENT: I think that is correct, Dr. Ficht. Your objection is overruled.

MR. HORLICK-HOCHWALD: I turn to Document Book III-C, Your Honors, page 74 of the English, 123 of the German, which is Document NO-4855, and which I offer as prosecution Exhibit l46, the affidavit of the Defendant Graf, where he admits that he was a member of Einsatzkommando 6 from the end of May, 1941, until approximately 15 October, 1942.

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already in evidence, first to Document Book II-C, page 60 of the English, 65 of the German. This is Document NO-3240, Prosecution Exhibit 80; then to a document in Document Book II-A and on page 67, Your Honors, 61 of the German, the document starts, -- this is NO3405, Prosecution Exhibit 42, and to Document Book I, page 86, 87, to 88 of the English, 119 of the German, which is Prosecution

Exhibit 22, Document NO-3340. All these documents refer to executions carried out by Einstazkommando 6 in the time when Graf was a member of this unit. 125 of the German, Graf's SS personnel record, which is Document NO-4801, as Prosecution Exhibit 147, in order to prove his membership in the SS and the SD with which he is charged in the indictment. Mr. Walton will now proceed with the presentation of Document Book III-D.

MR. WALTON: May it please Your Honors, Document Book III-D has to do with the personal responsibility of the defendants of Einstzgruppe D. Einsatzgruppe D operated in the period of time in which the crimes set forth in paragraph 9 of Count 1 of the indictment were committed. The area of operations in which the criminal acts occurred was roughly the coastal plain of the Black Sea and the Crimean Peninsula. This area has been more precisely stated by the Defendant Ohlendorf in his affidavit of 24 April 1907 in Document Book I, page 20, Document NO-2890, which has already been offered as Prosecution Exhibit 5. Paragraph 3, which states the boundaries of this area is found on page 22 of the English and on page 24 of the German Document Book. The many Operational Situation Reports and Activity Reports put into evidence by the prosecution in previously introduced document books confirms the fact that Einsatzgruppe D was active in this area during the period of time alleged in the indictment. The personal responsibility of the Defendants Otto Ohlendorf, Willy Seibert, Dr.

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Dr. Werner Braune, Gustav Nosske, Felix Ruehl, and Heinz Schubert, for specific criminal acts will now be shown by documentary proof offered in evidence in the order of the defendants named. To speed this phase of the Prosecution's case, the documents implicating those defendants veil be offered without regard to the chronological order in which the various crimes were committed.

The case against the Defendant Ohlendorf: Ohlendorf is the No. 1 defendant in the dock. In paragraph 1 of his affidavit, dated 2 April 1947, the Defendant Ohlendorf states that he was a Commanding Officer of Einstzgruppe D from June 1941 to the end of June 1942. This document is in Document Book III-D, page 1, German Document Book Page 1, and is Document NO-2856, which is now offered as Prosecution Exhibit 148, In Paragraph 4 of this affidavit of 24 April 1947, which has been previously cited in Document Book I, page 20 in the English, 23 in the German, and isDocument NO-2890 already introduced as Prosecution Exhibit 5, the defendant shows that Einsatzgruppe 1) was composed of the Sonderkommandos 10-A, 10-B, 11-A, 11-B and Einsatzkommando 12. In an affidavit dated November 5, 1945, which is found in Document Book I, page 35, and is Document 2620-PS and found on page 40 of the German Document Book I, already offered asProsecutions Exhibit 9, Ohlendorf describes the activity of his organization as follows:

"When the German Army invaded Russia, I was leader of the Einsatzgruppe D in the southern sector and in the course of a year, during which I wasleader of the Einsatzgruppe D, it liquidated approximately 90,000 men, women, and children. The majority of those liquidated were Jews, but there were among them some Communist functionaries too." in detail the methods of performing these executions and this act is a concise and. graphic detail of the activities of the group. I will refrain from quoting from it. It's already in the document book.

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THE PRESIDENT: Very well.

MR. WALTON: This statement as contained in the paragraph just referred to by this defendant is reaffirmed by Ohlendorf in his affidavit made on 2 April 1947, which is in Document Book III-D, page 1, German pages 2 and 3, and is Document NO-2856 and was offered as Prosecution Exhibit 148. Ohlendorf in paragraph 3 thereof discusses his obedience to the orders of the RSHA and the Reichsfuehrer SS to execute certain undesirables of the civil population. He states, quote:

"A number of undesirable elements composed of Russians, Gypsies, and Jews and others, were executed in the area detailed to me. All Jews who were arrested as such were to be executed within my area. It was my wish that those executions be carried out in amanner and a fashion which was military and suitably humane under the circumstances." is slightly on the conservative side is shown by an official report of the activities of Einsatzgruppe D, which states, in effect, that its number of executions of Russian Nationals to the end of March 1942 was 91,678. The Tribunal's attention is called to the fact that this was approximately three months before Oldendorf relinquished his command. over Ohlendorf's statement is in Document Book II-D, page 1, Document NO-3359, and it is on page 7 of the German Document Book, It has already been offered as Prosecution Exhibit 84. How these numbers reached such staggering totals is shown by several documents. Document Book II-D, page 9, German Document Book II-D, page 8, Document NO-3159, already offered as Prosecution Exhibit 85 shows on page 18 of the English and on page 21 of the German that the Operational Situation Report No, 129, dated 5 November 1941, accounts for 11,037 Jews and 31 Communists as having been executed by the whole group. The total number of executions given to the date of reporting amounts to 31,767.

page 25 of the German, Document NO-2828 already introduced as Prosecution Exhibit 86 shows that by the middle of December 1941 the total number of executions performed by Einsatzgruppe D had risen to 54,696.

of Jews, Krimtchakes, Gypsies, and Communists. Krimtchakes were people of Jewish extraction who had lived in this area for several hundred years, but were classified as undesirables by the Einsatzgruppe. By 2 January 1942 when this report was published the total of executions of Einsatzgruppe D had risen to 75,881, as shown in Document Book II-D, page 22 of the English, page 27 of the German, and it is Document NO-2834which was offered as Prosecution Exhibit 87. The point referred to can be found on page 2 of the English Document Book and on page 33 of the German Document Book.

THE PRESIDENT: Just a little more slowly, Mr. Walton, because of the interpreters.

MR. WALTON: 17 days later Einsatzgruppe D reported a total of 80,160 persons executed, which is shown in Document Book II-D, page 29 of the English, page 34 of the German, and is Document NO-3338 (a). It has been offered as Prosecution's Exhibit 88. The point referred to can be found on page 31 of the English Document Book and on page 35 of the German. as Prosecution Exhibit 149 a summary or, conclusion of the condition of the areas of all the Insatzgruppen in the occupied territories of the East is given. The point referred to can be found on page 9 of the English copy and on page 11 of the German copy. It states in paragraph "C" headed "Jews":

"The solution of the Jewish problem which can be considered as almost solved and settled in the Ostland, continues in the remaining occupied territories of the East. The concentration of Jews in Ghettos has generally been carried out. Again and again the Jews who do not obey the official orders are seized and shot. In order to avoid the further spreading of the danger of epidemics, shootings of Jews became necessary at different occasions."

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committed on those who we re mentally ill. In Operational Situation Report No. 45, dated 23 March 1942, which is found in Document Book II-A, page 124 of the English, page 138 of the German and is Document NO-3235, already introduced as Prosecution Exhibit 54, it is shown on page 126 of the English and 140 of the German that Einsatzgruppe D reported from its headquarters of Simferopol, quote:

"In the territory south of Karasubasar investigations for the preparation of extensive actions on the part of the Wehrmacht were carried out by the Kommando stationed there.

"The removal of asocial elements led to the fact that 800 gypsies and insane people were rendered harmless." 140, there is a typographical error, which says that 500 Gypsies and insane people were rendered harmless. I have taken the liberty, since this was in the archives of the court to have it brought into court and it is ready for inspection and the correction from 500, which is in the German Document Book, to 800 should be made. Counsel can satisfy themselves that the document has that number.

THE PRESIDENT: Very well, defense counsel is so informed.

MR. WALTON: So that there would be no confusion in the RSHA or to anyone to whom these reports were distributed, the concluding paragraph of this report, which can be found on page 127 of the English and 141 of the German Einsatzgruppe D, in the manner of a summary or a recapitulation stated:

"During the period covered by report, 2,010 people were shot; amont these there were 678 Jews, 359 Communist officials, 153 partisans, and 810 asocial people, Gypsies, insane people, and saboteurs." summarily executed in Document Book III-D, page 11 of the English, page 12 of the German, Document NO-KW-604 is offered as Prosecution Exhibit 150.

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This document is a report from Sonderkommando 11a, a sub-unit of Einsatzgruppe D, on a case of one Waldimir Romanenko, a Russian National who was arrested for sabotage. This report isdated 10 September 1941. On investigation, these charges against him were found to be without merit and the report concludes:

"As Romanenko seems to be a feeble-minded person who according to his own statement was already sent three times to a medical establishment, he was executed on 9 September 1941 for hereditary biological reasons." helpless victims and non-combatants, is shown by a signed report from Ohlendorf, dated 13 February 1942, which details the disposition that was made of money and Watches taken from

Jews who were re executed. In support of this allegation, the prosecution cites Document Book III-D, page 14 of the English, page 15 of the German, Document NOKW -631, and now offers it as Prosecution Exhibit 151. same transaction, the prosecution cites the affidavit of Heinz Schubert, which is in Document Book I, page 108 of the English, Document NO-3055. This document appears on page 141 of the German copy and paragrapsh 3 and 5 of that document. This document has already been introduced as Prosecution Exhibit 28. Schubert states that after having been ordered by Ohlendorf to supervise an execution carried out by a sub-unit of Einsatzgruppe D, he relates in detail the action he took concerning the property of those persons who were executed. The events narrated by him occurred in the vicinity of the Russian city of Simferopol some thime in December 1941. He states that among his duties and responsibilities involved in these executions were to supervise the collection of money, jewels and other valuables of people who were to be shot and to see that none of the SIPA and SD men converted them to private use but that they were forwarded to Einsatzgruppe D Headquarters for transfer to Berlin. Now he goes on in paragraph 5 to detail how this collection was made and the time it was made of the Jews on to the execution of the condemned, There is no point in reading this language.

unfortunates who were to be executed is shown in Document III-D on page 16 of the English, page 17 of the German and is Document NO-4489, just now introduced as Prosecution's Exhibit 152. This is an excerpt from Operational Situation Report No. 103, dated 4 October 1941, wherein it is mentioned that Einsatzgruppe D put Jewish homes and their furniture at the disposal of the German settlers. religious grounds, the alternative was slave labor. Einsatzgruppe D contributed its efforst toward rounding up, registering, and committing to forced labor Jews and other persons. In Document Book III-D, page 17 of the English, page 30 of the German, Document NO-4538 is now offered as Prosecution's Exhibit 153 and this document shows that a kommando of Einsatzgruppe D on its own initiative caused a ghetto to be established at Kichinew and the Jews there were used for slave labor. An excerpt from Operational Situation Report No. 64, dated 26 August 1941, which is found in Document Book III-D, page 24 of the English, page 46 of the German and is Document NO-2040, I now offer as Prosecution's Exhibit 154. This document shows that Einsatzgruppe D in the vicinity of Mogilev put approximately 6,000 Jews who had been previously deported by the Roumanians into labor camps and forced thorn to work.

Records before other Military Tribunals show only too well the hapless lot of the slave laborer under his German master. Of those who escaped immediate execution, or who were in German custody, either in the Ghettos or slave labor camps, they always were confronted with imminent death in the form of executions in reprisal for actions of others not apprehended by the Germans. Any act which the Germans denominated as "an act of sabotage" could bring immediate death to persons selected for a reprisal execution. Hundreds of Russian nationals, usually non-combattants were summarily executed on the slightest pretext. In Document Book II-C, page 17 and 18 of the English version, page 18 of the German version, Document NO-2952, already offered in evidence as Prosecution's Exhibit 71 shows that a sub-unit of Einsatzgruppe D, in a report dated 29 July, 1941, from the Russian district of Belzy, reaped a terrible vengeance on Jews. An excerpt from paragraph 5 of this same document, which is a report from Einsatzkommando 10-A stated that the commando appropriately treated the Jewish counsel of elders in Belzy and other Jews totaling 45 for failing to comply with security police directives. It does not require a vivid imagination to deduce what happened to the 45 Jews who were, in the language of the report, appropriately handled. An excerpt from an operational situation report No. 45, dated 7th August, 1941, which is in Document Book II-D, on page 35 of the English, page 57 of the German, and is Document NO-2948, already offered as Prosecution's Exhibit 89, shows that sub-units 10-A, 10-B, and 11 have reported. Einsatzkommando 10-A reports: "On account of riots and attacks against the Wehrmacht, raids were carried out against Jews. In the course of this 97 Jews were shot, and 1756 hostages were taken. Hostages are taken in each new place and they are executed on the slightest pretext.

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Nine Jews ware shot in Jampol." quoting further from this same document, Einsatzkommando 11 reports from the Russian town of Kischinow: "Up to now 551 Jews have been liquidated, 151 of whom were liquidated because of participating in sabotage acts, and 400 as reprisals for shooting at a German medical truck, and for setting up signal flares for Red aviators, Jews are confined to the Ghetto, if they have not gone away." on page 43 of the German, Document NOKW-641 is not offered as Prosecution's Exhibit 155. This is a report forwarded by Seidel to Army Obercommando 121, and contains a letter from a SS second Lieutentant which carefully points out that the group under his command carried out executions exactly as ordered by Einsatzgruppe D. These documents constitute the Prosecution's case-in-chief against the defendant Ohlendorf, and all show dates within the time he was in command of Einsatzgruppe D. In support of the allegations as set forth in Count III of this indictment, charging Ohlendorf with membership in the SS and the SD, orgainzations declared to be criminal by the judgment of the International Military Tribunal, the Prosecution offers in Document Book III-D, page 27 of the English, page 48 of the German, Document NO-3146, correction -- Document 3196, as Prosecution's Exhibit 156. This document shows certain excerpts from the SS service record of the defendant Ohlendorf; gives his rank in the SS on page 29 of the English, on page 48 of the German; his membership in the SD on cage 27 of the English, and on page 49 of the German; his party and SS serial numbers on page 30 of the English and on page 51 of the German; and other pertinent information about his life history. Corroborating evidence about these facts concerning his life history and his professional activities is contained in his affidavit of 1 April 1947, which is in Document Book III-D, page 32 of the English, page 46 of the German, and is in paragraph 2 of Document NO-2857. It is now offered as Prosecution's Exhibit 157.

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10 in the dock, which is next to the last man on the front row. The defendant Siebert was chief of Ohlendorf's staff for security questions and since he was a senior officer present, he acted as deputy for his chief when that individual was absent. At all times the defendant Siebert had access to the secret files of Einsatzgruppe D. This is shown by the affdavit of Ohlendorf which is in Document Book III-D, Document No. -- sorry, page 1, German, and Document Book page 1; and is Document NO-2856, which was offered as Prosecution's Exhibit 148. As co-defendant and fellow member of the group staff in Einsatzgruppe D, Heinz Schubert considered him in fact to be Ohlendorf's deputy. In Schubert's affidavit, which is in Document Book I, page 108 of the English, page 141 of the German, and is

Document NO-3055 already introduced as Prosecution's Exhibit 28, Schubert so states. Seibert, in his own affidavit, says that in certain matters he was a deputy of Ohlendorf, and that one of his main tasks was the writing of the situational and activity reports. Seibert's affidavit is in Document Book III-D, page 34 of the English, page 60 of the German, and is Document NO-2859. This information is contained in paragraphs 1 and 2, and this document is offered now as Prosecution's Exhibit 158. page 65 of the German, which is now offered as Prosecution's Exhibit 159, there is a report, dated 9 October, 1941, made to AOK-11 by this defendant. In this report, Seibert asks for a time to be fised for an oral report on 11 October, the time to be agreed upon with the liaison officer.

This report is signed by Seibert with the title, with a designation of deputy. It shows clearly that Seibert was in full charge of Einsatzgruppe D during the absence of his regular commanding officer. page 69 of the German, Document NOK W 628 is now offered as Prosecution's Exhibit 160.

DR. ASCHENAUER: (Attorney for the Defendant Ohlendorf): Your Honor, I should like to admit this document only according to its probative value.

THE PRESIDENT: That will be so recorded.

MR. WALTON: This document is a 12 page report to army commander 11, which shows the activities of Einsatzgruppe D during the period from 1 February to 16th April, 1942 in which accounts of the executions of communists are given. Five of these executions were by hanging in public for the "purpose of intimidation" to the rest of the civilian population. This point can be found on page 42 of the English document book, and on page 73 of the German. This same report goes on to state that because the village Laki, L-a-k-i, had collaborated with partisan forces, it was evacuated of all those who were not immediately shot and was burned to the ground in reprisal. interest in the executions performed by Einsatzgruppe D is shown by his own affidavit, made on 1 April, 1947. This affidavit is in document Book III-D, on page 34 of the English, page 60 of the German, and is Document NO2859. It has already been introduced as Prosecution's Exhibit 158. In paragraph 3 thereof he states "Ohlendorf took a number of inspection trips during the time I served with his group.

He accompanied me -- he was accompanied by me on almost all of these trips, and, if I remember rightly, executions took place on at least two of these trips. I was a witness to these executions but I was not assigned to supervise them. I also made inspection trips alone and reported the facts to Ohlendorf." in his affidaivt of 4th February, 1947, which is in Document Book I, page 17 of the English, page 19 of the German, and is Document NO-2716, already introduced as Prosecution's Exhibit 4. In paragraph 8 of this document Schubert confirms the statements made by Seibert in his affidavit. The statement of Seibert that he never supervised any executions is contradicted by the affidavit of his former chief Ohlendorf, made on 2 April, 1947. In this affidavit, which is in Document Book III-D, page 1, and is Document NO-2856, already offered into evidence as Prosecution's Exhibit 148, Ohlendorf states in paragraph 3 thereof "The only people whom I generally assigned to inspections were, except for Schubert, Willy Seibert and Hans Gabel. The latter was Hauptmann of the

Protective Police and Commander of the Protective Police Company attached to me. Details, such as whether and to which executions I sent the two last named, I can no longer remember."

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Seibert was, of necessity, so close and complete in every detail, and since this defendant knew even the top secret natters in which Einsatzgruppe D was engaged, every document which deomonstrates the implication of Ohlendorf likewise names his executive officer and deputy, additionally, however, even in Ohlendorf's absence, and on his own initiative, he issued the necessary orders for the murder and illtreatment of Russian citizens. The responsibility of these two codefendants is the same, The forgoing documents show this co-responsibility. The documents referred to in the Prosecution's case against Willy Siebert all bear dates within the period when he was a deputy to Ohlendorf and, constitute the Prosecution's case in chief under Count I and II of the indictment. by Count III of the indictment, is shown in Document Book III-D, page 48 of the English, page 81 of the. German, and is Document NO-2858, and is now offered as Prosecution's Exhibit 161. In this affidavit the defendant Seibert states in paragraph 2 that he was a member of the Nazi Party, the general SS, and in paragraph 1, that he rose to a position of a subchief in the Reich's main office of the Security Service or SD.

DR. GAWLIK: (For the defendant Seibert) Your Honor, as far as the Prosecution his made statements saying that Seibert gave orders, I object to the statement, and I should ask for these statements to be striken from the record, as it does not become evident from either of the documents that the defendant Seibert gave any such orders. I am of the opinion that these statements have nothing to do with the case of the Prosecution.

THE RESIDENT: Upon do you base your statements, Mr. Walton?

MR. WALTON: I am sorry, sir. I want to know what document the Counsel for the Defense is objecting to. At the moment I waa stopped. I was talking about Seibert's affidavit with regard to his life history.

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I don't quite the connection, Your Honor.

THE PRESIDENT: Dr. Gawlik, do you refer to any particular document?

DR. GAWLIK: No, I am not referring to any particular document, but the general statement of the Prosecution which do not become evident from any document. The member of the Prosecution made the statement to the effect that it becomes evident from the document that the defendant Seibert gave orders for the murders, and I object to these statements as they do not become evident from any document.

THE PRESIDENT: Dr. Gawlik, please always keep in mind that any statement by counsel is of itself not evidence. It must be supported by either a document or by the testimony of a witness in court, so if Mr. Walton made that declaration and it is not supported by any document, it of course can in no way affect Seibert; and you will have ample opportunity to challenge anything which Mr. Walton or any of the Prosecution counsel said.

DR. GAWALIK: I realize that as far as the probative value is concerned, but the general practice is to the effect that the Prosecution also objects to our statements, if during our case, we make any statement and we are always told that we must only submit the actual material evidence and that any statements: are a part of the plea. Therefore, I object new to the statements of the Prosecution, and, therefore, I would like this to be stricken from the record because I am of the opinion that it does not belong to the submission of these documents.

THE PRESIDENT : If Mr. Walt on makes any objections similar to the one which you are making now, I will tell him the some thing which I am now telling you.

DR. GAWLIK: Thank you. Your Honor.

MR. WALTON: At the time I had offered into evidence, Document Book III-D, on page 48 of the English, and on page 81 of the German, Document NO-2858, which I offered as Prosecution's Exhibit 161. In this affidavit, the defendant Seibert stated in paragraph 2 that He was a member of the Nazi Party, the General SS, and, in paragraph 1 that, he rose to a position of a sub-chief in the Reich's main office of the Security Service or the SD.

This statement is confirmed in Document Book III-D, on page 50 of the English, page 83 of the German, by Document NO-2969, now offered as Prosecution's Exhibit 162. This latter document contains excerpts from the SS Service Record of Willy Seibert, now a defendant in this case. It shows his SS rank on page 50 of the English, page 83 of the German; his membership in the party on page 50 of the English, on page 83 of the German; his membership in the SS on the same pages, and his position in the SD on page 50 of the English, on page 87 of the German. Other and further facts of his life history are also shown.

The case against the defendant Dr. Werner Braune. Dr. Braune is seated No. 13 in the dock, second man on the second row from this end. According to paragraph 1 of his own statement, made on 8th July, 1947, the defendant Werner Braune was from 9th October - sorry- from October 1941 until August or September, 1942, chief of Einsatzkommando 11-B. This statement of Braune's is in Document Book III-D, page 54 and 55 of the English, and page 94 and 95 of the German, and is Document NO-4234, and is now oeffered as Prosecution's Exhibit 163.

DR. RIEDIGER(For the defendant Braune). Your Honor, as far as this document is concerned, Your Honor, I should like to draw the attention of the Tribunal to a mistake which was evidently made in the copying of the document, of the affidavit of Werner Braune. On page 4 of this affidavit it says that the defendant Wartenburg has sworn to this affidavit; that the defendant Braune has sworn to this affidavit. This statement has been signed by Mr. Wartenberg. Evidently this is incorrect, as becomes evident from the proceeding page, from the bottom of the page. I quote: "As I have made a statement not under oath, but only having given my word of honor, therefore I am prepared to make these statements the Tribunal under oath." I do not assume that Mr. Wartenberg did to this purposefully but I rather assume that this is a mistake; but, at the same time, I should like to have this mistake corrected before the Tribunal; and the statement does not only refer to the contents of the document, but also to the form in which it was submitted.

THE PRESIDENT : Mr. Walton, are you ready to give us any clarification of this?

MR. WALTON: If Your Honors please, according to my notes, from which I was reading, according to paragraph 1 of his own statement, I did not call this an affidavit. I am sure that it was an oversight on Mr. Wartenburg's part, but the prosecution does not consider this document any more than a statement of the defendant.

THE PRESIDENT: With that explanation, I presume, everything is cleared up.

DR. RIEDIGER: Yes, that is clear, Your Honor.

THE PRESIDENT: You may proceed, Mr. Walton.

MR. WALTON: In this document, in paragraph 3, he states that during the time that he was chief of Einsatzkommando 11-B a number of Jews were executed and that he can remember exactly an execution which took place in Simferopol a few days before Christmas. He also goes on to state how this execution was carried out, and what was done with the property and the clothing of the victims that were executed. He admits in this same document that gas vans were assigned to him for executions but he denies that they were used by him. His chief, Ohlendorf, in his affidavit, of 2nd April, 1947, which is in Document Book III-D, page 1 of the English, page 3 of the German, and is Document NO-2856, already introduced as Prosecution's Exhibit 148, confirms this statement when he says in paragraph 3 that he, Ohlendorf, personally inspected executions which were carried out by Commando 11-B under the direction of Dr. Werner Braune.

The Operational Situation Report, No. 145, dated 12 December, 1941, which is in Document Book II-D, page 20, and is Document NO-2828, already offered as Prosecution's Exhibit 86, it is shown that Einsatzgruppe D was credited with 2,929 executions, 19 of which were communists, and the rest Jews.

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These were carried out in the Simferopol area in which at that time Einsatzkommando 11-B was located.

Another Operation Situation Report, which is No. 150, dated 2 January, 1942, in Document Book II-D, page 22 of the English, page 27 of the German, and is Document NO-2834, already introduced as Prosecution's Exhibit 87, shows that at this time Einsatzkommando 11-B had its headquarters at Simferopol with parts of the command in Aluschta, Karasubar and Eupatoria. Under the report from Einsatzgruppe D, the fourth sub-head, on page 28 of the English, page 33 of the German, it is denominated Jews and the following is stated: "Simferopol, Jewpatoria, Aluschta, Karasubasar, Kertsch and Feodosie and other districts of the Western Crimea have been cleaned of Jews. From 16 November, through 15th December, 1941, 17,645 Jews, 2,504 Krimtschaks, 824 gypsies and 212 communits and partisans have been shot.

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It goes on further, to quote:

"Rumors about executions in other areas rendered action at Simferopol very difficult. Reports about actions against Jews gradually filter through from fleeing Jews, Russians, and also from unguarded talks of German soldiers." was attached was performing its share of executions in this area, and the fact of executions was known not only to the German soldiers but was generally known to the population of that area. The often-cited document in Document Book I, pages 108/109 of the English, page 141 of the German, which is Document NO-3055, has already been introduced as Prosecution's Exhibit 28. This is a Schubert affidavit of 24 February 1947, which shows in paragraph 3 that he witnessed an execution inthe Simferopol area in December 1941, of between seven and eight hundred persons and that Einsatzkommando 11b was in charge of the execution. German, Document NO-3339, was offered as Prosecution Exhibit 93, and is an Operational Situation Report No. 170, and shows that, quote:

"From 9 January to 15 February more than 300 Jews were apprehended in Simferopol and executed. By this, the number of persons executed in Simferopol increased to almost 10,000 Jews, about 300 more than the number of Jews registered. In the other Kommando areas as well, 100 to 200 were still disposed of in each instance." And it can be easily deduced from these reports that Einsatzkommando 11b contributed to these executions. However, the prosecution does not wholly rely upon these documents by which to implicate this defendant. Direct documentary proof, showing Braune's actual participation and command function in carrying out executions is available.

German --- Document NOKW- 1863, is offered as Prosecution Exhibit 164.

This document is an Operational Order signed by Braune for Sonderkommando 11b and dated 12 January 1942. This orders his command to conduct a surprise raid with the aim of seizing unreliable elements such as partisans, saboteurs, possible enemy troops, parachutists in civilian clothes, Jews, leading Communists, etc. Furthermore, it states that the leader of Sonderkommando 11 b, Dr. Braune, will be in charge of the Operation. This Order admittedly does not show its own execution. However, Dr. Braune will soon have ample opportunity to relate the final results of the raid. is in Document Book III-D, page 62 of the English, page 104 of the German, and is Document NOKW-584, is now offered as Prosecution Exhibit 165. This document describes a certain reprisal action which occurred in Eupatoria on 7 January 1942. The Wehrmacht officer was in charge of the operation and to assist him, Einsatzgruppe D headquarters assigned three SS Fuehrers, among them Dr. Braune. courtyard. 1184 men were selected from thisgroup, marched off and shot. This report specifically states that Dr. Braune gave the order for the execution detail to fire. in paragraph 9(F) under Count One of the Indictment, and the documents so introduced all apply to the period when the defendant Braune was in command of Einsatzkommando 11 b. in Count Three of the Indictment, is contained in an already cited document, in Document Book III-D, page 54 of the English, page 94 of the German, and is Document NO-4243, which is Prosecution's Exhibit 163. In paragraph 2 thereof Braune's membership in the Nazi Partyand the General SS is shown.

member of the Security Service of the SD and the Gestapo. These statements are confirmed in Document Book III-D, page 64 of the English, page 106 of the German, in Document NO-3249, which is now offered as Prosecution's Exhibit 166. This document shows excerpts from the SS Service Record of Dr. Werner Braune. It shows his SS rank, his membership in the SD and the GEstapo, his Party and SS serial numbers, and other pertinent facts of his life history. in Document NO-4146, now offered as

Prosecution's Exhibit 167, in paragraph 1 of this document, Nosske states that he was in command of Einsatzkommando 12 from June 1941 to March 1942. In this same affidavit, in paragraph 4, he states that he was assigned to duty in Berlin for the purpose of a taking over the staff command of Security Police and SD. However, because of the killing of Heydrich, Chief of the Security Police and SD, the formation of this organization never occurred as planned. He does, however, state that as a senior officer present, he took charge of the weekly meetings of the Referents of the RSHA, in which matters concerning the occupied Eastern territories were discussed and appropriate action taken. So far as it is known, he was in B erlin until shortly before the collapse of the Third Reich. German, Document NO-2841, has already been offered as Prosecution's Exhibit 94. In this document there is an excerpt from Operational Situation Report No. 61, dated 23 August 1941, which shows the activities of Einsatzkommando 12 during the month of August 1941. It states that in the Babtschinzy area, resistance was partially shown to an orderly havesting of the crops. This resistance was said to be instigated by Jews. As a counter measure or reprisal, 94 Jews were executed.

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German, Document NOKW-634, is offered as Prosecution Exhibit 168. This is a report from the defendant Seibert, as the executive officer of Einsatzgruppe D to the AOK 11, dated 9 October 1941. In this report it is shown that 11 parachutists were "rendered harmless" by Einsatzkommmando 12. German, Document NO-3147 has been offered as Prosecution Exhibit 96. This is an excerpt from the Operational Situation Report No. 95, and is dated 26 September 1941.

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satzkommando 12 was located at this time, several Soviet party officials and eight NKWD officials were rendered harmless: This report also shows that in less than a month the total number of executions for the group was 8890 Jews and communists, and that all told the group had at the date of reporting liquidated 13,315 persons. It seems reasonable to think that Einsatzkommando 12 contributed its share to these totals. Document NO-2837 which was offered as Prosecution's Exhibit 56; this document is an excerpt from an operational situation report number 67, dated 29 August 1941, and shows that approximately 27,500 Jews had been driven back into the Rumanian area, that 1265, mostly young Jews, were shot by units of Einsatzgruppe D. is in Document Book III-D, page 76 of the English, page 121 of the German, and is document NO-4149, we now offer as Prosecution's Exhibit 169. Ruehl confirms in part the facts in the operational situation report No. 67 just offered.

DR. LINCK: (Dr. Linch for the defendant Ruehl.) - The objections to this document and its submission are on the same line as were raised yesterday for Document NO-4314, Exhibit 29, by my colleague Dr. Bergold for the defendant Biberstein. We refer to the history of the affidavit as a part of a longer statement; as it has been mentioned yesterday, I may come back to this to take care of my case but I should like to make the following two statements. as it says in the English as well as in the German document book, but on the 26th of June, which a look into the original will prove. I do not emphasize this because I want to be righteous but because I want to state that it might be of importance during the taking up of my case.

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The second thing is the following. There is a translation mistake which is not without significance; in the english document book page 77 in the middle of the page, on page 123 of the German document book IIIb, it becomes evident from this that the statement of the defendant Ruehl in the reports to Ohlendorf where he asks for a decision has been translated by "we decided" -- "Wir entschlossen." from that that Ruehl had any power of decision.

THE PRESIDENT: What should the word be instead of "we"?

DR. LINCK: "It was decided" that means Ohlendorf, of course.

THE PRESIDENT: You may recall that to the Tribunal's attention when you take up your client's case.

MR. WALTON: May it please the Court, the Prosecution desires that the official translator render an official translation of the contested part of this affidavit.

THE PRESIDENT: You mean now?

MR. WALTON: No, sir. When it becomes necessary for the Court to consider it.

THE PRESIDENT: Yes, that is right. That right will be reserved to the Prosecution.

MR. WALTON: Ruehl in paragraph 3 of his affidavit relates that he delivered a large transport of Jews to the area occupied by Einsatzkommando 12. In his affidavit which is in Document Book III-D, page 69 of the English, page 114 of the German, and is Document NO-4146, has already been offered as Prosecution's Exhibit 167, this defendant relates what assignment he received when he reached Berlin. Thus, the defendant Gustav Nosske is shown to be personally implicated in the crimes through active command of Einsatzkommando 12. His criminal liability for the crime charged in paragraph 9-G under count 1 of the in dictment is shown.

Einsatzgruppen in Berlin as shown by the documents dealing with these activities while on duty at the RSHA there. As in the other cases, documents introduced by the Prosecution against this defendant, all refer to the period in which he was commander of Einsatzkommando 12, or as chief of the Kommando staff of the RSHA in Berlin. minal as charged in count 3 of the indictment is shown in Document Book III-D, page 69 of the English, page 114 of the German, Document NO-4146already offered as Prosecution's Exhibit 167. These statements are confirmed in Document Book III-D, page 80 of the English, page 126 of the German by Document NO-3505 which is now offered as Prosecution's Exhibit 170. Nosske. It shows his SS rank, his membership in the SD, and the Gestapo, his party and SS serial numbers and other pertinent facts of life history.

The case against the defendant Felix Ruehl. In Document Book III-D page 76 of the English, page 121 of the German, Document NO-4149, has already been offered as Prosecution's Exhibit 169. This is the affidavit by the defendant Ruehl. In paragraph 1 of this document, Ruehl states that from May until October, 1941, he was assigned to Sonderkommando 10-B in Russia. In paragraph 4 of this document, he states and I quote:

"Immediately after the arrival of Sonderkommando 10-B at Czernowitz, approximately 50 inhabitants were delivered to the Kommando with the order to shoot them, as they were said to have participated in a surprise attack against Rumanian troops, when these arrived at Czernowitz."

"Sturmbannfuehrer Alois Prestera refused at first to carry out the executions but in the end he gave into the wishes of the Rumanians and had 12 or 15 of these people shot by the Kommando.

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Additional 20 or 30 persons were then shot by the Rumanians, later. The executed people were Jews for the most part. I did not attend these shootings but got my official notice thereof in the time of my service."

In this connection and in confirmation that the defendant's statement is credible, the Prosecution cites Document Book II-D, page 45 of the English, page 48 of the German, Document NOKW-587 already offered as Prosecution's Exhibit 92. This document, dated 9 July 1941, is a report of the commanding officer -- sorry, report to the commanding officer of Army group South and shows that on 6 July 1941, this Kommando 10-B reached the city of Czernozitz. However, the defendant's contention that only a few Jews were shot is not borne out by this report.

This report minces no words when it says "Immediately after arrival we contacted the competent commander, Military Police Major Luzansky, as well as the other Rumanian posts which were present here, and started a search of the town for politically suspected elements. On the 7th of this month, the arresting of the communists and Jews on the basis of the search lists that were already made out and of the newly made up lists. On the 8th instant a major raid was carried through, in the course of which the Jewish leadership could be caught almost completely. The following day about a hundred Jewish communists were shot by the Kommand, together with the execution of Jews by the Rumanian Army and police force, a total of over 500 Jews have been shot in the course of 8 and 9 July. One kommand was sent to Hole for a search. A report has not yet been received."

Five days later, by operational situation report No. 22, dated 14 July 1941, this Kommando was able to report on events that took place in the town of Katyn or Hodyn.

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cution's Exhibit 91. Kommando 10-B reported that in this town all intellectual Jews were arrested and treated accordingly.

May it please the Tribunal the words "arrested and treated accordingly" do not appear on the English translation. That will be on page 43. However, a check of the German copies shows that that phrase appears in German in their books.

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It should be where his word "and" is, and next to the last sentence -- the third sentence from the bottom, and the word "and" should come out, and the period be substituted, and in the previous sentence "Arrested and treated accordingly" should be added, to that previous sentence.

THE PRESIDENT: You are sure that those words do appear in the German text?

MR WALTON: May it please the Tribunal, I have had three German speaking persons checking on that.

THE PRESIDENT: Well, in that event I think we can take the liberty of adding those words. to the English text.

MR WALTON: To the English, yes, sir. After all details were in, and more evidence was avilable, operational situation report No. 40, dated 1 August 1947, which is in Document Book II-D, page 37 of the English, page 40 of the German, and is Document NO-2950, already has been offered as Prosecution's Exhibit No. 91. This shows the activities of Einsatzgruppe D to B --- correction, may it please the Tribunal, it should be Prosecution's Exhibit No. 90, Document NO-2950. And I quote: "In cooperation with the Rumania Police there have been shot dead in Czernowitz 682 of the approximately 1200 arrested Jews." And in the further paragraph it says and I quote: "In the area of Czernowitz, Hotin has been passed, whereby 150 Jews and Communists have been liquidated." The defendant Ruehl, SS-Hauptssturmfuehfer, or captain, shows was in a position of staff responsibility, even second in command of Einsatzkommando 10-B, in accordance with his own statement compared with his commanding officer as representative of Sonderkommando of Einsatzkommando 10-B. the German, Document NO-4149, already introduced as Prosecution's Exhibit No. 169, he gives an account of his conferences with his commanding officer, and the action which he took following the conference with his Chief, Ohlendorf.

Two things can be noted, his position, at least in this incident entitled him to command function so that he could confer with the general, and give orders to Obersturmbannfuehrer Lippert, a man who held a higher rank. Second, that this incident here related by the defendant took place in the Mogilew-Podolsk area. situation report No. 45, dated 7 August 1941, which is in Document Book II-D, on page 33 of the English, and page 27 of the German, and is Document NO-2948, already offered as Prosecution's Exhibit No. 89. This document shows that Sonderkommando 10-D was then stationed in the Mogilew-Podolsk area, and prevented the mass departure of Jews into territory under the domination of Germans.

The next operational situation report No. 64, dated 26 August 1941 which is in Document Book III-D, page 24 of the English, and page 46 of the German, and is Document NO-2840, already introduced as Prosecution's Exhibit No. 154, shows that Mogilew-Podolsk area, Godasr area, approximately six-thousand Jews who had been deported from Rumania, were interned and forced to work. This report further shows that plans were already made to concentrate the Jews in Mogilew in a separate part of town. In this proof which shows that the defendant Ruehl had command functions in Sonderkommando 10-B, during the time the offenses occurred, as shown by the documents I cited here, and, upon these facts the Prosecution charges him with criminal responsibility; only Rosterer had outranked him in this sub-unit of Einsatzgruppe-D. The membership of this defendant in criminal organizations as charged in Count 3 of the Indictment, is shown by paragraph one and two, of Ruehl's affidavit, which is above cited document, and is found in Document Book III-D, page 76 of the English, being Document NO-4149, already introduced as Prosecution's Exhibit No. 169. This information is confirmed in Document Book III-D, page 90 of the English, and page 136 of the German, and is Document NO-4808, now offered as Prosecution's Exhibit No. 171.

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That latter document shows excerpts - -

DR ASCHENAUER: Mr. President. I beg your pardon, Your Honor, if at this time I interrupt you in asking would it be possible for the Prosecution to come to its end as quickly as possible, considering the shortness of our preparation and lack of time for our submitting our case, it is absolutely necessary that at six o'clock we should speak with the defendants, which is hardly possible if the proceedings are not finished before six o'clock.

THE PRESIDENT: It was only to allow you additional time to prepare your case that we thought that if we were to terminate the prosecution today, because if they finish today, then you have all of tomorrow, Thursday, and Friday and Saturday for preparations, whereas, if we must come back tomorrow, naturally, you lose just that much time for your preparation. I don't think Mr Walton has very much more.

MR WALTON: Three pages.

THE PRESIDENT: I think we will finish very quickly.

MR WALTON: Only the case against the defendant Schubert, Your Honors, and then I will finish.

THE PRESIDENT: Very well.

MR WALTON: I was quoting from Document NO-4804, which is found on page 90 of the English book, and page 136 of the German book, and is Prosecution's Exhibit No. 171, which are excerpts from the service record of Felix Ruehl, which gives his rank in the SS, his membership in the Gestapo, his Party and SS serial numbers, and other pertinent information about his life history. Case against the defendant Heinz Schubert. The defendant Heinz Schubert was assigned for duty in Einsatzgruppe-D in October 1941; his co-defendant Otto Ohlendorf as his commanding officer made Schubert his adjutant and this defendant served in this capacity during the entire time Ohlendorf remained in command, until June 1942. Schubert left for Berlin when Ohlendorf relinquished command of Einsatzgruppe-D. It is shown by paragraph 2 of Schubert's affidavit, dated 24 February 1947, which is Document NO-3055, in Document Book I, page 108 of the English, page 141 of the German, and is already offered as Prosecution's Exhibit No. 28.

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I might also point out there, if it please the Tribunal, that there is a typographical error in the German which states that Schubert was on duty with Einsatzgruppe-D until June 1944. It whould be 1942. Authority for same is as stated previously.

THE PRESIDENT: Very well.

MR WALTON: The duties of the adjutant of the commanding officer of Einsatzgruppe-D are described several documents. In Document Book III-D, page 34, Document NO-2859, which has been introduced as Prosecution's Exhibit No. 158 in paragraph 2 of this document, which is an affidavit by Willy Seibert, it shows that the defendant Schubert composed certain reports of Einsatzgruppe-D from time to time. His duties as adjutant, are however, clearly outlined in Paragraph two in the affidavit of

Ohlendorf, made on 2 April 1947, which is in Document Book III-D, page 1, Document NO-2856, already introduced as Prosecution's Exhibit No. 148. There is no point in detailing his duties.

THE PRESIDENT: No.

MR WALTON: That can be skipped. Occasionally, however, the adjutant of Einsatzgruppe-D was assigned to more important duties. In paragraph three of the same document just cited Ohlendorf states that he sent Schubert as his representative to inspect executions. The inspections of an execution is admitted by the defendant Schubert's own affidavit of 24 February 1947, which has been often cited before.

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that he sent Schubert as a representative to inspect executions. The inspection of an execution is admitted by the Defendant Schubert's own affidavit of 24 February, 1947, which has been often cited before. For the record it is in Document Book I, Page 108 of the English, Page 141 of the German, Document NO-3055, Prosecution's Exhibit 28, in which he states in December 1941 he witnessed an execution near Simferopol. I should like to call the Tribunal's attendion to Schubert's assertion in Paragraph 7 of his affidavit of 4 February 1947, which is in Document Book I, Page 17 in the English document book, Page 19 of the German, and is Document NO-2716, already offered as Prosecution's Exhibit 4, in which he states that the precise totals of executions were not known to him. However, I am speaking of the contents of the reports concerning activities of the group that were regularly sent from his headquarters to Berlin. He states that these reports contained exact details and desreiptions of the places which the actions had taken place, the courseof the operations, losses, the number of places destroyed and persons killed, arrest of agents,report on interrogations and reports on the civilian sector. criminal as charged in Count 3 of the indictment is shown by Paragraph 3 of the Defendant's affidavit of 4 February 1947, above cited as being in Document Book I, Page 17 of the English, Page 19 of the German, and which is Document No-2716 already offered as Prosecution's Exhibit 4. Statements of this Defendant concerning his membership in these criminal organizations are confirmed in Document Book III-D, Page 99 of the English, Page 146 of the German, and is Document NO-3244, now offered as Prosecution's Exhibit 172. This document shows certain excerpts from the SS service record of Heinz Hermann Schubert, a defendant in this case. It shows his membership in the SS and in the SD, his party and SS serial numbers, and other pertinent facts about his life history.

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Document Book III-D on the personal responsibility of the defendants in Einsatzgruppe D.

MR. FERENCZ: May it please your Honors, I would like to thank the Tribunal for their patience in remaining longer than the usual session, and I would like to point out that we have only one more item in the presentation of our case in chief. This is a documentary film which is now ready to be shown in Courtroom I, and which lasts about thirty minutes. In order that the defense counsel may be given full opportunity to confer with their clients and to meet their objection that an additional running of the court at this time would prevent that, I would like to join in their request that the court be in recess for a period of several days after the presentation of the Prosecution's case in order to enable them to have sufficient time to prepare their defense, and I would like to request the court to remain for another thirty minutes so that we may conclude our case.

THE PRESIDENT: Yes, do you intend to show that exhibit in this courtroom or Courtroom No. I

MR. FERENCZ: We expect to show it in Courtroom No. I, your Honor, and we would first like to introduce just the certificate which precedes the showing of this exhibit.

THE PRESIDENT: Yes, just before you do that I would like to ask, have you presented all the documents in all the document books?

MR. FERENCZ: We have, your Honor.

THE PRESIDENT: Very well.

DR. GAWLIK: (For Defendants Naumann and Seibert, your Honor, I object to the showing of this film, and I would like to ask the Prosecution to tell us what the probative value of this film would be? This film has been shown, and in my opinion this film has no probative value whatever.

THE PRESIDENT: You say it has been shown?

DR. GAWLIK: The film has been shown to the defense counsels last week in order to give them opportunity to raise objections.

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MR. FERENCZ: Your Honor, we invited the defense counsel to see a showing of the film before we cut some of the film, inasmuch as part of it had no relation to this case. We are introducing this film for the purpose of showing some of the mass graves which were found by the Russian soldiers when they returned to territories which had been occupied by the Einsatzgruppen. The films were taken by Russian troops of places where the Merman troops had been, and they opened the mass graves in the cities in which we charge these defendants with having committed crimes.

THE PRESIDENT: It would appear to the Tribunal from what you have said that this exhibit could well form part of the res gestae of the case, and whatever comments you wish to make on it later, of course you are free to do so. whether you may not have the opportunity of seeing your clients after the showing of this picture, even if it is one-half hour later, and I have been assured that this may be done. I would like to know in which room you usually interview your clients so that the necessary arrangements can be made.

DR. GAWLIK: Your Honor, in Room 57 and in the gymnasium, in Room 57 and in the gymnasium.

THE PRESIDENT: Very well.

DR. GAWLIK: Your Honor, I have another suggestion about the film. I should like to suggest that the film should be shown without any commentary, as a mute film, because any oral statements can only be introduced by witnesses, or by the way of witnesses, or there should be a witness who explains the film so that we have the opportunity to crossexamine this witness. We do not know who this person is who explains the film or who makes the statements, and we have no opportunity to rectify these statements. Then this film should be shown as is done by a silent film, without any commentary.

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MR. FERENCZ: If your Honors please, this film was introduced as an exhibit before the International Military Tribunal. The Tribunal there accepted it with the English commentary. I believe the Tribunal is in a position to judge what is evidence and what is not evidence, and we ask therefore that the film be shown as it was accepted by the International Military Tribunal.

THE PRESIDENT: I can assure Dr. Gawlik that the Tribunal will not be emotionally disturbed by any commentary made by any narrator. We will merely view what is shown to us, and whatever is to be said about the film can be said by defense counsel and by Prosecution. It would require too much of a mechanical alteration to attempt to remove the audible accompaniment to the film at this time, and I think it will be much simpler if we will now recess and reconvene immediately in Courtroom No. I. Is there anything further to be said?

MR. FERENCZ: Yes, your Honor. I would just like to offer the exhibit which is the certificate preceding this film. I offer now as Prosecution's Exhibit No. 173 Document No. USSR-81. This is the certificate of the Russian cinema operators and has already been given to the defense counsel in German. The English copy will be made available to the Tribunal very shortly.

DR. FICHT: Dr. Ficht for the Defendant Biberstein. original of these documents are only available until tomorrow exclusively, because after that they will be transported to Berlin. It appears to me that on the basis of today's proceedings it seems necessary that stipulations about various points should be made with our clients, and I should like you to make it possible for us to keep the documents, the original documents, a little longer, at least a day longer.

THE PRESIDENT: Do you know whether Colonel Helm would object to remaining over one more day, Mr. Ferencz?

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MR. FERENCZ: Unfortunately, your Honor, Colonel Helm is not here. I know that he has important business in Berlin. However, I believe I can persuade him to leave the documents here one day longer if necessary.

THE PRESIDENT: The Tribunal will recess only momentarily and reconvene in Courtroom No. I. The defendants will be escorted there, of course, under guard.

(A recess was taken in order to reconvene in Courtroom No. I.)

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THE MARSHAL: THE Tribunal is agian in session.

MR. FERENCZ: If Your Honors please, the translating system is not functioning and we will therefore translate directly from the floor to the defense counsel. The sound track is in English and the defense counsel have a German translation of the sound track in their possession. Therefore, it will not be necessary to translate as the film is being shown. We have a copy of the the sound track for the Tribunal and it will be in English.

THE PRESIDENT: Very Well.

MR. FERENCZ: The prosecution is now ready to show the next document.

(prosecution Exhibit No. 173 was then shown.)

MR. FERENCZ: If Your honors please, that is the conclusion of the prosecution's Case-in-Chief.

THE PRESIDENT: The Tribunal will now recess and reconvene next Monday morning at 9:30 o'clock in Courtroom No. 11, Room 581. The Tribunal will now rise.

(The Tribunal adjourned until 6 October 1947, at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II-A.

Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: For the purpose of the record, it will be noted that Otto Rasch and Eduard Strauch, because of illness, are not present in Court and will be excused from today's session. and reconvened in Courtroom No. 1, Dr. Gawlik, I think, made an objection to the showing of a motion picture exhibit, which was about to be projected in Courtroom No. 1. We overruled the objection, because by the very nature of things, it was impossible for the Tribunal to know just what the exhibit consisted of. We did witness the motion picture and we ere now convinced that the objection was in order and should have been sustained. It was not apparent to the Tribunal how this motion picture exhibit in any way implicated individually any of the defendants. Therefore, the objection is now sustained and the motion picture will have no effect upon the disposition of this case.

I might add, personally. that I could not in any way use that exhibit in the disposition of this case, because I closed my eyes after the first five minutes.

Dr. Aschenauer, you may now proceed with the opening statement.

Mr. President High Tribunal! the Case of the United States versus Ohlendorf, at al, it will be the task of the Defense to make their comments concerning the documents themselves. The Defense will be able to point out errors, to make clear to the Tribunal points which are contradictions in themselves, thus destroying in some cases the value the documents possess as evidence, as well as reducing the value of the entire evidence brought forth by the Prosecution.

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However, all this does not alter the fact that executions took place. It is therefore the duty of the Defense to discuss how this gruesome drama in the East come to pass. they committed I. The acts with which they are charged

a) in presumed self-defense on behalf of a third party(so-called act for the presumed protection of third parties (Putativnothilfe) is the established technical term of the German legal language).

b) under conditions of presumed emergency to act for the rescue of a third party from immediate, otherwise unavoidable danger (socalled "Putativnotstand" according to German manner of speaking). This defense is legally of importance as there exist no national legal code and no national penal system in which the exonerating reasons advanced by the defendants do not carry some weight. How these reasons are designated in the terminology of the individual national penal systems is irrelevant; irrelevant is also, for the time being, to what extent these reasons constitute exemption from punishment or extenuating circumstances, whether they can be regarded as eliminating the prerequisite of unlawfulness, as eliminating the prerequisite of guilt, or as extenuating circumstances; essential at the moment is only the very general assertion that these reasons may influence "whether" and "how" to punish and must therefore be examined. possible when the legal principles have been clearly established according to which the conditions and consequences of the reasons for exoneration from guilt or instigation of punishment are to be judged. This point must be cleared up first. 1) The so-called General Regulations of Law No. 10 laying down the constituent elements of a crims. On the contrary, every national penal code contains a great number of regulations which determine the general conditions which make an act a punishable offense, conditions which are fundamentally common to all crimes, be this in the form of a definite decree, be it in the form of a common law brought into a system by decisions of trial courts or by publications of members of the legal profession.

Into this group fall among others the regulations pertaining to causality, intent and negligence, attempt and preparatory acts, perpetration itself, and mere participation, soundness of mind and age limit, periods of limitation, further, which is of importance for the following, the regulations concerning self-defense, including presumed self-defense (Putativnotwehr) and the regulations concerning acts committed for the protection of other persons in danger, including the cases where this danger is only presumed.

None of this applies to Law No. 10. Apart from instituting by implication the principle "nulla poena sine lege poenali praevia" to the negative, it merely contains regulations stipulating the nonlimitation of certain acts, the legal irrelevance of the fact that the acts were committed by responsible officials and the instigating fact that the acts were committed upon orders. Other regulations which normally form part of the "General Regulations" of every penal code are not contained in the law.

There can be no doubt (and on the occasion of actual cases the Military Tribunals themselves made statements to this effect) that the silence of Law No. 10 is not to be interpreted in such a way as if the reasons, circumstances and conditions which make an act a punishable offense or exclude punishment should have no bearing. There is no question of that. Circumstances such as the regulations concerning soundness of mind, age limit as far as guilt is concerned, selfdefense and acts committed under the pressure of emergency, etc. regardless of whether they are ruled by written law or by common law, are simply indispensable.

The question is merely which sources are to be drawn open for the problems not settled by Law No. 10.

If Law No. 10 were a so-called special national law, it would be very simile to answer this question. One would only have to fall back on the general regulations of the Penal code of that country which enacted this law, just as the so-called penal by-laws of the German law forge "General Regulations" of their own and refer to the corresponding general regulations of the German Penal Code. However, Law

No. 10 is barred from the use of this possibility. The reason is that this law, owing to its origin, is an international agreement, made by the four signatory powers for the detailed implementation of the Moscow Declaration of 30 October 1943 and the London Declaration of 8 August 1945. However, this agreement was made by four sovereign powers of equal rights, each of which had its own penal system. Thus it is impossible simply to use the pertinent regulations of the Code Penal, the Soviet penal Code 1926, the English or American Penal Law as "General Regulations" of Law No. 10. 2) Which legal system is to form the basis of the "General Regulations" of Law No. 10?

Here the following fundamental possibilities exist:

a) Applicable is the law of this state which administers justice in the actual case. In the case at hand the Tribunal would therefore have to draw upon the general regulations of the penal law of the United States of America to fill the gaps of Law No. 10.

This solution would have one undeniable advantage: namely, an exact knowledge of the applicable laws on the part of the Tribunal which will make the decision. On the other hand, these advantages are outweighed by considerable disadvantages. There is, first of all, the question whether Federal Penal Law or the penal law of one single state would be applicable. As the latterpossibility is excluded, the gaps of Law No. 10 would have to be filled by the Federal Penal Law of the USA. To judge acts under the pressure of emergency end in self-defense in accordance with the Federal Penal Law of the USA, however, calls forth the same doubts as those which speak against the supplementary use of the Angle-American legal system when judging European continental legal conditions.

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The doctrine of these legal systems on the rules governing acts of selfdefense and acts committed in a state of emergency, rules developed by Case Law, would be so alien to European legal thought, that it is bound to produce misleading results if applied to the conduct of the Defendant. According to American law, the scope of the rules governing acts of self-defense is extremely narrow, if compared with the European concept; the principles of the rules governing acts committed in assumed self defense are not even elucidated. Similar to English law, selfdefense forms part of the constituent elements of a crime and, therefore, does not carry the same comprehensive and fundamental importance as it has in European law. Therefore, the closing of gaps left in Law No. 10 with American statutary or common law, would no doubt violate the predominant principle that an act can only be completely judged if presented in its social and legal context; it would not be in conformity with the principle of material justice, as postulated in Law No. 10, if principles alien to the German and European concept of law were applied, in considering legally relevant varieties of conduct, such as acting in emergency or in presumed emergency, acting in self-defense or in presumed self-defense. supplement application of the legal code of the nation by which the Court is formed in the case. The evaluation of the Defendant's actions would differ - and this would have effects contrary to just punishment if each Court were to fall back on its own national law. For in that case it would be unavoidable that the interpretation of the concept of mental sanity, by e.g. a French court should differ from the one, say, of an English Court.

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The result would he that, given identical cases the difference in age limits would also have to be considered - one Defendant would have to be acquitted, while the other would have to be sentenced, because he happened to be handed over to a Court of a different Allied nation. The supplementary application of the LEX FORI does not therefore lead to a satisfactory solution.

b) The national law of the defendant should be applied. In order to close the gaps left in Law No. 10 in the field of general regulations, the general part of the German Criminal Code would therefore have to be applied in case this doctrine is followed. the Court is A PRIORI not familiar with that law. This, however, is outweighed by considerable advantages. The general part of the German Penal Code is (as are the Austrian, Swiss, and Russian Laws) a characteristic representative of the European legal system with its tendency to lay down firm, and at the same time general rules, especially in respect to acts committed in a state of emergency and in self-defense. Furthermore, that law could in fact, and not only in hypothesis, be considered the guiding principle for the conduct of the Defendant. The Defendants are also psychologically forced to admit the validity of these law statutes against themselves to their full extent; they do not have the excuse that they are being judged according to "foreign penal law". Finally also International Law speaks in favor of applying German Criminal Law in a supplementary fashion; for, as the Defendants committed their acts in occupied enemy territory, these acts have to be considered, according to a theory popular on the Continent of Europe, as committed within the borders of Germany within the meaning of the Criminal Code.

c) The law of the place of the crime should be applied. As the offense of the Defendants is "geographically defined" within the meaning of the Moscow Declaration of 30 October 1943, that law can easily be ascertained; in the case under review, it is the Penal Code of the Soviet Union (Penal Codes of the Russian Soviet Federal Socialist Republic of 1926, of the Ukrainian Republic of 1927 and any Special All-Union Laws). The following considerations speak in favor of the supplementary application of that law.

Firstly, according to the Moscow Declaration of 30 Oct. 1943, (which according to Article I forms an integral part of Law No. 10) the law of the place of the crime (Law LOCI) rules the adjudication of crimes which can be geographically defined; the perpetrators "will be sent back to the countries in which their abominable deeds were done in order that they may be punished according to the laws of these liberated countries". Furthermore, the applicability of the LEX LOCI is explicitly stressed in the indictment itself; this must, naturally, be true not only for the arguments of the Prosecution, but also for any exonerating or justifying circumstances. Finally the application of the LAW LOCI also conforms to the idea of justice.

d) Finally: the law of the victim State should be applied - in this case again, the Penal Code of the Soviet Union. The facts which favor the principle stated in c) also apply here. That theory is further supported from the point of view of legal systems, by the principle of punishing acts committed in a certain country according to the laws of that country and for the protection of that country, a principle recognized in International Penal Law; it is supported, from the point of view of territorial applicability, by the fact that above all other solutions, it stills the justifiable desire for retribution on the part of the primarily injured state. The following will show that in the first place the Soviet Penal Law and, failing that, the German Penal Law, should be used to supplement "general regulations" in order to close the gaps in Law No. 10 and that this solution is preferable by far to any other possibility.

That choice brings with it another very important advantage. For the problems under discussion in the present case, namely evaluation of acts of self-defense end pets of emergency, the two legal systems show striking similarities, as both are exponents of the characteristic European concept of Penal Law, with its tendency to systematic generalization and adversity towards Case Law.

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This can be easily explained on historical grounds. For the Penal Code of the Russian Soviet Federal Socialist Republic of 1926 is largely based on the old Russian Penal Code of 1903; the latter's origin, however, was decisively influenced by the German doctrine prevalent in about 1900. When we compare the German and Soviet rules governing acts of self-defense and acts committed in an emergency, we can arrive at that "cross-section", that "average rule", a result unobtainable by comparing the Continental European and the Anglo-Saxon Penal Laws, owing to the difference between these two legal systems. A Court called on to decide a specified case is only then able fully to evaluate the arguments of a defendant, if their evaluation is based on the so-called European "cross-section" of the rules governing acts of self-defense and acts committed in en emergency. The rules have to be discussed in the following, and the arguments brought forward for the defendant have to be judged according to these rules. and in presumed self-defense. according to European legal conception. The prerequisites of these two legal concepts first have to be examined separately, according to German and according to Soviet Law; subsequently it has to be ascertained which prerequisites are common to both legal systems; the result will form the above-mentioned "cross-section", on which the actual evaluation of the defendant's actions has to be based. I. Self-Defense 1) According to German Law.

a) Self-defense is considered (Article 53 of the Penal Code) a so called justification; where self-defense is established there can be no question of an act being unlawful:

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the act is not only excused but even approved by the law. The prerequisite for self-defense is an unlawful attack, i.e., an attack which the attacked person does not have to tolerate. The attack need not yet have started. Self-defense is also admissible in the face of an imminently threatening attack. Acts in defense of all protected interests come under self-defense which is not limited to acts in protection of life and limb. Therefore, also the state as such, the existence of a nation, the endangered vital interests of a nation, can be defended in self-defense. The protected interests are thus much more numerous then in Anglo-Saxon Law.

b) Not only the person attacked, but any third person, is allowed to act in self-defense. This is important, particularly with respect to the so-called self-defense on behalf of the State. For selfdefense in favor of the State always constitutes an act for the protection of a third party, can therefore only be carried out by a third person. No comparison in the value of the protected interests is being drawn in the case of self-defense, neither does it exist, therefore, in the case of defense of the State. The only measure for the defensive action always is the intensity of the attack.

c) Presumed self-defense and acts for the presumed protection of a third party. Although these concepts are not formulated in the law, they are generally recognized in theory and jurisdiction. They exist where the perpetrator erroneously presumed an "unlawful attack". If the error was unavoidable, the presumed state of self-defense serves as justification; if, however, the error could have been avoided. the legal importance of such self-defense is contested; according to one opinion, the defendant cannot be sentenced for having acted with intent; while according to another less widespread opinion it constituted a factor mitigating the guilt, while accountability for intent remains.

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According to both opinions, it is, however, impossible to hold the Defend and responsible to the full extent for this criminal guilt, if, owing to a factual error, he believed his act to be justified. 2. According to Soviet Law.

a) According to Soviet Law (Art. 13, par. 1 of the Penal code of the Russian Society Federal Socialist Republic and the other Republics of the Union of the year 1926) the concept of self-defense conforms essentially to the German concept. Self-defense can apply to the State too, and particularly to the Soviet organization as such. In contrast to German law, the Soviet law even states VERBIS EXPRESSIS that selfdefense may be also exercised in favor of the State (compare for details Maurach, Systematic Treatise on the RUSSIAN PENAL LAW of 1928, p. 101). As in the German law, there is no provision for fixed proportions between the clashing interests. It is not clarified in professional publications whether an act committed in aid of a third person constitutes justification or only an excuse.

b) Presumed self-defense and acts for the presumed protection of a third person. As in the German law, this is not laid down by law, but is recognized in jurisdiction and literature. It is treated in the same manner as a factual error. It excludes intent, the guilt is at least considered as mitigated; it is immaterial whether or not the error was avoidable. II. State of Emergency 1) According to German Law The regulations concerning the state of emergency (Notstand) found in the existing laws are insufficient, not codified and given for individual cases and situations.

The fundamental decisionof the Reich Supreme Court clarified the position. According to this the following applies:

a) A distinction is made between a state of emergency as justifica tion for an act end a state of emergency merely precluding guilt.

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A feet com on to both is that an interest protected by law must be in imminent danger, which danger can only be averted by the violation of another interest protected by the law, having no connection with the first one. If the threatened interest is found to be of greater value, then the state of emergency constitutes grounds for justification; if the interests cannot be weighed and if there is a threat of danger of life or limb of the perpetrator or a relative then the state of emergency constitutes a reason precluding guilt.

b) National Emergency is in principle recognized within the same limits as assistance to the State in case of emergency ( Staatsnothilfe). According to the decision of the Reich SupremeCourt of 3 April

1922 File II, 791122, a situation of acute danger is constituted particularly by underground activities of resisting elements of the population of an area and the increasing insecurity of that area resulting therefrom". Furthermore, the Reich Supreme court has in No. 60, 318. recognized the so-called permanent state of emergency and has stated that the permanent danger which a particular person presents to the community could, in certain circumstances, justify his elimination by killing as an act of emergency. The question of whether national emergency allows the killing of a man was, on the other hand, left open by the Reich Supreme Court. The question has been widely discussed, especially in the period following the first war, but was never definitely decided.

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c. Presumed state of emergency. The law gives no definite ruling on this, but it is recognized according to common law in doctrine and jurisprudence. In principle it is treated in the same Way as presumed self-defense.

2. According to Soviet law: More modern than German law, Soviet Penal Law gives, in Section 13, paragraph 2 of the Criminal Code, a ruling on the state of emergency. It has thus achieved the aim for which the German reform legislation has been striving for a long time. Acts of emergency are unrestrictedly admissible if they are necessary for the protection of higher interests insofar as the danger could not be averted by any other means. Whether this constitutes a justification or merely a legal excuse is not clear. There is no legal ruling on a presumed state of emergency but it is treated as an error and thus comes in the same category as presumed self-defense.

3. Results of comparison of both legal systems. If the elements common to both legal systems are examined, a wide similarity will be found in the conceptions of these legal terms:

a. Self-defense. All protected interests may be the subject of self-defense, particularly the survival of the state and the vital interests of the nation represented by the state. If the existence of the state or of the nation is directly threatened, any citizen -- and not only those appointed for this purpose by the state -- may act for their protection. The extent of the self-defense or of the act for the protection of the third party (Nothilfe) varies according to the severity of the attack and does not exclude killing. An error concerning the prerequisites of self-defense or of an act for the protection of a third party is to be treated as an error about facts and constitutes, according to the avoidability and also the degree of gravity of the individual error, a legal excuse or, at the very least, a mitigating circumstance.

b. State of emergency. In accordance to both legal systems, a state of emergency is always of a subsidiary character - thus it is a so-called last resort.

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All legal interests can be in a state of emergency, especially also the state and its institutions as well as the welfare of the nation. A state of emergency is recognized where the threatened legal interest is of considerably greater value than the interest attacked by the perpetrator. A presumed state of emergency is, on principle, treated as a grave error - that is, it is treated in the same manner as presumed self-defense. of a legal clause. On the basis of the examination of the European "cross-section" of the legal position assumed by the defendant Ohlendorf, it must be established to what extent the actual circumstances under which the defendant acted correspond to the prerequisites of a criminal case as described above. Before, however, reference must be made to the method to be applied. the real conditions were given for a case of action in defense of the endangered nation (Staatsnothilfe) or participation in the self-defense of the state (Staatsnotwehr). But they do submit that in view of the special situation in which they found themselves and in which they were called upon to act, they assumed that the conditions were given for the above-mentioned legal concepts. There is no need to examine the questions whether there actually existed a situation calling for an act of self-defense or of emergency. and which discusses the objective conditions for an act of self-defense and in a state of emergency. Such an examination is necessary in order to find out where, precisely, the defendant Ohlendorf committed the error concerning the permissibility of his action; because the greater the extent to which the objective situation corresponded to the defendant's conception, the weightier his defense that by mistake he considered his action justified or necessary.

After this introduction, and on the basis of the defendant's statement, the examination may be arranged according to the following points of view:

1. Objective conditions, i. e., conditions which existed not merely in the defendant's mind but were actual facts: the nature of the war against the Soviet Union.

2. Subjective conditions. i. e., conditions Which were not actual facts, the assumption of which could, however, have brought about the defendant's error about what would constitute the conditions for action in defense of the endangered nation or in a state of national emergency; the East European Jewish problem as part of the problem of Bolshevism; origin and import of the defendant's obsession that a solution of the problem - Bolshevism versus Europe - could only be brought about by a "solution" of the Jewish problem, and, in their particular sphere, only by unreserved execution of the Fuehrer order. tions, - that is, the question of the cause for the above-mentioned obsession, I call upon the expert witness Professor Dr. Reinhart Maurach. does not justify extraordinary actions prohibited by written and common international law from the point of view of self-defense, and a state of emergeny. If this were the case, international law would be a mere illusion, for at least one of the parties waging wax would be able to claim to have acted in self-defense - whereas both parties would be at liberty to plead the existence of a state of emergency. or state of emergency. But a preliminary condition is that there is really war in the strict sense of international law, an armed clash between two states; but if the armed clash has from the outset an aspect considerably exceeding the measure of war and its limits, if, in other words, the war aims and war methods to be definitely expected from one of the opponents are so "total" that, in relation to them, the tradi tional conceptions and limits of international law cannot be applied, it will not be possible to refuse resort to self-defense and to a state of emergency - even within the war - to the opponent of such a state.

given the qualification of such an enemy - proper enemy in the sense of international law. The character of the Soviet Union as a state, and, consequently, as a potential belligerent can, it is true, not be denied. But the question is Whether the Soviet Union, according to her own ideology and to the ideas which are its basis, has not to be considered as such a belligerent who, considering the war aims and methods of the Soviet Union, puts the presumptive adversary ipso facto into the position of war self-defense admissible in international law.

II. In addition, the defendants refer to the orders given and the state of emergency caused by these orders. As to this question Dr. Gawlik is going to give detailed explanations. Concerning this problem of superior orders contested by the statute here, and by Law No. 10 of the Control Council, I only want to give some quotations of passages from English - not German, works:

Professor Oppenheim has stated in his book, "The Law of Nations":

"Violations of the rules of warfare are war crimes only if they are committed without order of the belligerent government in question, If members of the armed forces commit such violations by order of their governments, such violations are no war crimes and cannot be punished by the opponent; the latter can, however, take reprisals. If members of armed forces are ordered by their military commanders to commit violations - the members cannot be punished - for the commanders alone are responsible and the latter can, therefore, be punished as war criminals after being captured by the enemy." writes in the article, "The Legal Nature and Punishment of Criminal Acts of Violence Contrary to the Laws of War";

"The principle that members of the armed forces of a country are not personally responsible and can, therefore, not be punished for acts contrary to the rules of warfare and committed by them by order, or with approval, of their governmental or military superiors, is not part of the codified law on warfare.

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Nevertheless, this seems to be a recognized principle of this law, at least, this principle has been drawn up in the war manuals of the powers as a rule of the common law on warfare since 1914." the supervision of the Judge Advocate General published by the U. S. War Department in 1940, and today still in force, states - after enumerating the possible war crimes:

"Individuals of the armed forces are not to be punished for these war crimes if the latter were committed by order, or with the approval, of their government or commanders. The superiors who ordered such acts or under whose authority such acts were committed by their troops, can be punished by the belligerents in whose hands they fall." British authorities in the British Manual of Military Law. Its Article 443 went on, after enumerating possible war crimes:

"It is, however, important to note that members of the armed forces who commit such violations of the recognized rules of warfare that have been ordered by their governments or commanders are not war crimes and can, therefore, not be punished by the enemy. He can punish the officials or commanders responsible for such orders if they fall into his hands, otherwise he can only take the other measures dealt with in this chapter." published in the English Year Book for International Law 1944:

"Although Chapter XIV of the Military Manual was not given statutory powers it contains, in general, a statement of the rules of written and common international law as they are understood by Great Britain."

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man was to disobey the order of the Fuehrer, if is necessary to illustrate the situation in its historical development by a written expert opinion.

III. When Fieldmarshal Keitel defended himself and the OKW at the trial before the IMT, he tried to convey a picture of the distribution of power in the National Socialist regime, according to which the SS represented the will which governed the state - whereas the Wehrmacht and its leaders were in a state of unqualified subjection to this "fact". Wehrmacht and any leading institutions and supreme representatives of the State and Party, we must always remain conscious of the fact that the Wehrmacht enjoyed at all times a privileged position which was unique. claimed a central position in a comprehensive sphere of activities, was at the beginning of the war excluded from the Wehrmacht and from the occupied territories under the command of the Wehrmacht. (Example: The first groups of the Chief of the Security Police and of the SD (Security Service) marched into France camouflaged and under a false designation,) It was only before the Russian campaign that an agreement was concluded, after difficult negotiations, which regulated the tasks of the State Police and of the SD outside the troops. High Command of the Army and the Chief of the Security Police and of the SD which led to a written agreement which was signed by Quartermaster General, General Wagner, and by the then Chief of the Security Police and of the SD, Heydrich. Schellenberg kept the minutes. The agreement contained the basic order of the Fuehrer, that the Security of the fighting troops must be guaranteed by all means and that units of the Security Police and of the SD must be employed in support of the Army units.

The Chief of the Security Police and of the SD was given immediate authority to issue pertinent instructions to these units and an independent channel for receiving and transmitting reports which was outside the jurisdiction of the Wehrmacht. These units by no means formed a special "political theater of operations" hut they were attached to the Army units - this was laid down in the second part of the agreement - and generally had to carry out tasks for the Army units within their areas, which had hitherto been handled by the Army units themselves. The second part contained an exact regulation of commands and subordinations. "In the Front or combat areas the Einsatzkommandos of the SIPO and of the SD were in all tactical and service questions that is completely - put under the command of the Army." In the operational areas they were under the command of the Army as far as service matters were concerned; orders resulting from tactical considerations had precedence over all other orders. If it was required by the military situation, the Einsatzgruppen and Einsatzkommandos could be used for military tasks regardless of other orders. The third part of the agreement explained the concepts "tactical" and "service".

In accordance with this agreement and the "Barbarossa-Order" to the Army units, which was based on it, mobile units designated "Einsatzgruppen" and "Einsatzkommandos" were attached to the Army Groups and Armies in the East, Army Group North got Einsatzgruppe A. Army Group Center got Einsatzgruppe B, and Army Group South got Einsatzgruppen C and D. (Einsatzgruppe D was originally intended to serve with an Army Group which was to operate in the Caucasus.) In spite of the intended official designation of the leaders of these units as "Representative of the Chief of the Security Police and of the SD with the commander of the Rear Area of Army Group......, Einsatzgruppe....", what happened in practice was that at once, at the beginning of the Eastern campaign whole Einsatzgruppen or the larger part of such groups were attached to Armies by order of the Army Group in question. Einsatzgruppe D was, from the first day and for the entire period which is of importance for this trial, attached only to the 11th Army and had no connection with the Commander of the Rear Area of the Army.

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(Kommandos) each to the Commanders of the Rear Area of the Army and to three individual Armies, the detachments (Kommandos) of Einsatzgruppe C were at the disposal of the Armies only. That the Commanding Generals of Armies themselves attached great value to having the detachments in their operational area is proved by the subsequent alteration of the order for Sonderkommando 4a. This Kommando was assigned to the Commander of the Rear Area of the Army, but was attached to the 6th Army on the personal order of Field Marshal von Reichenau.

For "Marches" and "Rations" the Einsatzgruppe was subordinate to the Command Headquarters, which means that the Army units were competent for 1. Determining the location of the staff of the Einsatzgruppen and of the Kommandos, which included fixing the strength of the staffs and kommandos as well as the length of time to be spent in one location.

2. Billeting.

3. Rations including PX goods.

4. Gasoline.

5. Repair of motor vehicles and spare parts.

6. Ammunition.

7. Maps.

8. Field post.

9. Telecommunications. carried out in practice in the East we may form the following picture of the actual and. legal situation, which is typical for the manner in which orders were given:

1. The Einsatzgruppen and their subordinate units were fully motorized mobile units which were militarily equipped and organized.

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Members of the State Police, of the Criminal Police, of the SD and units of the Ordnungspolizei and of the Waffen-SS were assigned to the Einsatzgruppen. They were thus units composed of a minority of specialists of the Security Police and of the SD and of units of the Ordnungspolizei and of the Waffen-SS. This unit was at the disposal of the Representative of the Chief of the Sipo and of the SD for his tasks in the operational area of the Command headquarters, to which he was attached. The special position of the Einsatzgruppen and Einsatzkommandos manifested itself also in the fact that they were not called Einsatzgruppen and Einsatzkommandos of the Sipo and of the SD, but simply Einsatzgruppe A to D, or Kommandos 1 to 12. Their primary task being of the kind normally handled by the Security

Police and by the SD, the Einsatzgruppen and Einsatzkommandos were led by leaders of the Sipo or of the SD who were specially assigned this task.

2. The Representatives of the Chief of the Sipo and of the SD with the Army groups and with the Armies were attached to the Commanding Generals and subordinate to them in the functions which were most important for their work.

3. As regards technical instructions the powers of command of the Commanding Generals and of the Chiefs of the Security Police and of the SD were not clearly separated. The question had been deliberately left open and left to practice. But it was certain - and expressly mentioned in the Barbarossa order - that every order of the Army Group or of the Army, "for reasons of operational necessity" had precedence over the orders of the Chief of the Sipo and of the SD. Whenever it was necessary in the military situation, the Army units could on their own responsibility and at their own discretion make the Einsatzgruppen and the subunits subordinate to themselves for military tasks.

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Defense Law of 4 September 1938. In Article 2 we read: "Once an operational area has been determined, the declaration of the state of defense confers on the Commander-in-Chief of the Army and the Commanding Generals of Armies without special order the right to exercise executive power in this operational area. This right to give orders has precedence over instructions given by other superior agencies..."

Concerning, "competencies to issue orders in the operational area of the Army" the OKW moreover issued an order on 11 April 1940 which states under No. 3 with reference to the Reich Defense Law: "... in their exercise of executive powers the Commanders-in-Chief of the Army and the Commanding Generals of the Armies are entitled to issue directives, to set up special courts and to issue instructions to the authorities and agencies in charge of the operational area, with the exception of the highest authorities of the Reich, the highest authorities of the Prussian State and the Reichsleigung of the NSDAP. This right to issue instructions has precedence over instructions of other superior agencies." and by an order of the LKW shows, that the right of issuing instructions to the higher SS-and Police Chief and the SS-and Police units under his command is gradually more firmly established. Thus on 7 September 1943 the OKW issued a "service instruction for the higher SS-and Police Chief in Greece", in which it is laid down among other things: "The Higher SS-and Police Chief is an agency of the Reich Fuehrer-SS and Chief of the German Police, which for the duration of its service in Greece is under the command of the Military Commander Greece"..... The Higher SS-and Police Chief receives directives and instructions for the field of activity assigned to him from the Reich Fuehrer-SS and Chief of the German Police and carries them out independently while making current and punctual reports to the Military Commander Greece, as far as he gets no restricting orders from the latter. The Military Commander must be informed in time of the reports submitted by the Higher SS-and Police Chief to the Reich Fuehrer-SS and Chief of the German Police". gypsies prima facie as elements of insecurity in accordance with the order of the Fuehrer at the beginning of the Russian campaign.

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be noted that it was carried on under the jurisdiction of the Commanding Generals to whom these groups were attached. Therefore, in all tasks, including these which belonged in a stricter sense to the Security Police and the SD, this jurisdiction had to be respected, which means that these tasks could be carried out only with the express will or with the tacit consent of the commanding generals. This applies especially to the commanding general's capacity as supreme judicial authority for the population in his area of jurisdiction. It is true that the use made by the commanding generals of this capacity varied considerably in their dealings with the Einsatzgruppen and Einsatzkommandos; in certain areas the organs of the Army invariably gave their consent to all executive acts affecting the population. In other operational areas the fact that the command authorities occasionally interferred in pending proceedings or gave orders for special measures concerning the population, showed that the commanding generals were not only conscious of their superior jurisdiction and position, but also made use of it.

It is with deep regret that we clarify these points. For the Defense, however, they are of great importance with respect to the possibility of disobeying given orders. The leaders of the Einsatzgruppen and Kommandos were executive officers with instructions. Their authority as to decisions started only with the very execution of their orders. For them there was no real possibility at all to prohibit the execution of orders themselves. Actually, there was merely the theoretical possibility for the Army Commanders to examine at their discretion - an account of their authority and their task concerning the security of their operational area, on account of their responsibility for safeguarding the front-line operations - the question of whether the actual killing of the people selected endangered their tasks.

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If they had come to this conclusion they would have "been authorized to give instructions to prohibit liquidations. Likewise it is clear that, again theoretically, only intervention of the Commanders-in-Chief with the Fuehrer was possible. Defense is going to prove: 1.) the continuous close cooperation of the Army groups with the Einsatzgruppen and Kommandos. Orders of the Army Commanders to secure objectives, to carry out inspections, etc., and also other military tasks, e.g. investigations concerning anti-partisan measures, recruitment of Tartars for front-line service, will show the close connection between the Commanding General and Einsatzgruppe or Kommandos.

Finally, evidence will be submitted for the following: quently, also Supreme Military Judiciary authorities. (Oberste Gerichtsherren) for their areas, i.e., they made decisions affecting liberty, life and death. That they were conscious of this fact in relation to the civilian population is clearly shown by individual facts already mentioned or still to be mentioned. mentioned by the Prosecution were known to the responsible Commanding Generals. Written or oral reports were given in many cases about such executions by Einsatzgruppen and Kommandos to the Commanding Generals. executions, or took part in them, or gave special orders in individual cases.

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IV. The prosecution has charged the defendants not only with crimes against humanity and with war crimes but also with membership in an organization that has been declared criminal.

Under Count 3, Mr. Ferencz stated:

"The judgment of the International Military Tribunal established the fact that the SS, the Gestapo, and the SD are criminal organizations." In reaching its decision, the Tribunal made frequent reference to the acts of the Einsatzgruppen. In the face of this, the Defense, will demonstrate the following: "SD", even by official authorities of the NSDAF and of the State, by all military authorities up to Adolf Hitler himself, a completely false conception as to the Actual meaning of "SD" arose among wide circles of the German people, especially during this war, above all, however, abroad, and especially among the occur, occupation authorities.

The error is based on the fact that the term "SD" had the two following meanings:

A. It is the term for a special news service organization, which collected, evaluated, and Submitted. reports to the appropriate authorities of the State and of the Party. This news organization which did not have any executive police powers either before or during the war, exercised its functions within the SS, that is within the Party its members were employees of the The party and were paid by the latter, just as in general, the entire budget was met not by the State but by the Party, that is, the Reich Treasurer.

THE PRESIDENT: May I interrupt, please, If you say that Hitler himself mis-used the term SD --

DR. ASCHENAUER: I would like Your Honor to repeat what he said. The system was out of order.

THE PRESIDENT: Yes. I understood you to say that Hitler himself misused the term "SD"?

DR. ASCHENAUER: Yes, that is so.

THE PRESIDENT: If that is so, won't we then run into many complications as to the meaning of this term, because the Tribunal has been led to believe, and, with the Tribunal the rest of the world, that Hitler's word was law in Germany. Therefore, if he used the term "SD" in any particular way, wouldn't that of itself then make his meaning official?

DR ASCHENAUER: No, Your Honor. This is not a matter of the general mis-use, it just occurs in one particular decree in a sentence which was used here.

THE PRESIDENT: It would appear to me that from what we understand of Hitler's power, that if he called the SD a "PQ" that then it become "PQ" from that moment on.

DR ASCHENAUER: I don't think I have understood what Your Honor meant.

THE PRESIDENT: Whatever Hitler said was law, and if he used the term "SD" in any way opposed to your definition of "SD", Hitler's definition would be the law, would it not?

MR ASCHENAUER: No, Your Honor. That I quoted it here is one certain decree, which is erroneous, a mistake which has been made once, and all the other decrees which are being offered to the Tribunal, and submitted to them, who that what is said in this one sentence is a mistake.

THE PRESIDENT: Very well, it was for purpose of clarification that I had asked it. (interruption) Will you please repeat Dr. Aschenauer, it seems that it got into the wrong channel.

DR ASCHENAUER: The error is based on the fact that the term "SD" had the following meanings:

A. It is the term for a special news service organization which collected, evaluated, and submitted reports to the appropriate authorities of the State and of the Party. This news organization which did not have any executive police powers either before or during the war, exercised its functions within the SS, that is, within the Party;

its members were employees of the Party, and were paid by the latter, just as in general, the entire budget was met not by the State but by the Party, that is, the Reich Treasurer. If, therefore, the SD is referred to as an organization with a special assignment, that is an organization with certain tasks, only the above-mentioned news organization, with its clearly delineated duties, its installations and its personnel carrying out this task can and should be meant. Any other duty, or the assumption of a function is a false implication.

B. All wearers of the SS uniform with the SD marking on their left jacket sleeve were also characterized as "SD". From the beginning of the war, the SS uniform with the SD marking was worn by almost all of the members of the Secret State Police (Gestapo) including the Border Police, Criminal Investigation police, and especially all members of the Stapo and Kripe on combat assignment, were SS uniforms with the SD insignia. It is, therefore, easily understandable that everybody considered all men wearing this uniform to be "SD". Another result was that this term was not only applied to all those wearing those uniforms with the SD insignia but also to the organizations to which these men belonged. These were the SD offices in the actual sense of the word and the offices of the State Police and Criminal Police. For the sake of convenience and the desire for simplification and abbreviation, all of them were now called "SD". Thus the Wehrmacht, when dealing in enemy country with "commanders of the Security Police and of the SD" and with "Commanding Officers of the Security Police and of the SD"--that is what these agencies were officially called --, referred to them briefly merely as the "SD" only, for all members of these organizations were the SD insignia. Thus the French or the Norwegians referred briefly to these organizations and their personnel, all of whom were the SD insignia, as SD only, and usually they meant the State or Criminal Police. Actually, how could he know that the "Commander of the Security Police and of the SD" was an organizational term that could be traced back to the "Chief of the Security Police and SD," that even in these organizations there existed not always an SD news service set-up, or that in such organizations there were actually three completely independent and separate organizations included:

1. A news organization of the Party or of the SS, that is the SD in the real meaning of the word, as the organization with a special news service function.

2. Two authorities of the State Executive, that is of the Police (Stapo and Kripe), which in their special duties and activities, stood on an equal feeting completely independent one of the other, and were merely held together by purely organizational ties and by the fact that the same individual held, a lending position in both. (In this connection, see enclosed sketch.) mutually shared uniform (SD) finally went so far that even the Fuehrer in his "Commando Order" of 18 October 1942, ordered that

the arrested commando troops be given over to the "SD" even though, in this instance, beyond all doubt, he meant the police executive, the State Police. It would not have occurred to any office in the Wehrmacht or the German Police to deliver members of an enemy commando, if they were arrested in the Reich, to an SD sector, for everyone know that this was exclusively the concern of the State Police. Kripe were this uniform and this SD insignia, even though they had nothing to do with the actual SD news service itself, as far as their duties were concerned? The answer to this requires a brief description of the development.

The "SD" as a news service originated in 1932, when HIMMLER commissioned HEYDRICH, a former naval officer, with the establishment of a news service, in order to combine uniformly the local "political information service" (P.I.) which had here and there arisen due to political necessity. This P. I. had the task of gathering information about the other political parties, their plans, and aims, in order to be able to utilize it in the struggle against the other parties.

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include the gathering of information about all opponents of National Socialism, their organizations and their activities. The actual hour of birth of the SD, however, was in 1934 when a few old National Socialists who came from all circles of the movement and were thus clearly not recruited from the ranks of the SS alone, recognized the following to be true: The old parties of all shades of opinion, together or banned by the State. Any additional activity by these organizations is illegal and is therefore to be dealt with by the police, and the police is therefore authorized to fight, together with the Information Service, against such illegal opponents. This in itself proves that from the very beginning the SD (Security Service) was not at any time given such executive powers which rested exclusively with the police organs of the State. (Even at that time the SD was mainly engaged in the research and study of ideological contrasts and their effects on National Socialism.) Furthermore, they relized that A. Gradually, ever since 1933, all public criticism in parliaments, press and radio had been abolished. B. There was a growing tendency to misuse the Fuehrer principle and to push through orders, permitting no criticism. C. There existed the common tendency always to stress to higher authorities only the positive aspect of one's own field of activities, but to conceal in a shamefaced manner all unfavorable developments, mistaken measures, danger points, etc. only a completely distorted picture of the development and situation in the individual vital spheres (Lebensgebieten) (Law, administration, education, economy, etc.) They could no longer have a clear perception of the resulting reaction among the public and professional circles concerned. From this they concluded that an authoritarian state, by its every nature, needed an organization which would be willing and capable of presenting to responsible central agencies an objective and undisguised picture of the general position and developments without having any administrative responsibility itself.

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In 1934/1935, this task was assumed by the SD with out explicit orders to that effect from any party or government authority, therefore, illegally, (For the authorization and legitimation of the SD as sole permissible news service of the NSDAP covered only the collection and transmission of news relating to counterreforms, their efforts and aims.) This explains why in 1934/1935 this part of the SD at the SD Main Office in Berlin consisted of a mere handful of men. Easter, 1935, for example, it consisted of a man who also worked as legal and administrative expert, 4 or 5 younger jurists, who had not finished their professional training and only worked part-time at the SD in addition to their other work, and 3 or 4 assistants. plete lack of agencies in the country and the necessity to build up this news service for vital spheres in a more or less illegal manner, because every reference to it caused sharp protests by the Party and above all by government authorities against this type of work. It was regarded by all these people as an inadmissible encroachment upon their own jurisdiction. Thus, for example, until 1936, the time when Ohlendorf entered the SD, the entire field of economy had hardly been dealt with. Only after that were systematic efforts made to win suitable specialists who were able to handle the individual vital spheres (Lebensgebietsarbeit) in an expert manner. At this juncture, it may already be said that from this work in purely vital spheres done by the Zentralabteilung II/2 the Amt III was subsequently developed under OHLENDORF, this is today considered the SD in the proper sense. "Chief of the German Police" with the official designation "Reich Fuehrer SS and Chief of the German Police at the Reich Ministry of the Interior" in the process of another governmental reform and the centralization of the police which had hitherto been under the direction of the Laender.

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Under him were Daluege as "Chief of Police and Heydrich as "Chief of the Security Police" Thereby, Heydrich simultaneously held a post in the administration of the SD as news service of the Party and of the entire German Security Police. This two-fold function explains the subsequent title of "Chief of the Security Police and SD" from which derives the designation "Commander" (or in command) (Befehlshaber) bzw. Kommandeure) of the Security Police and the SD in the occupied territories. Whereas until 1936 probably only a few members of the police, mainly the State Police, belonged to the SS, partly to the SD and partly to the General SS Himmler, from 1936 on, endeavored to have the SS take over the whole police organization. Thus from 1936 to 1939 many members of the police force who were eligible for the SS, were taken over into the SS, starting with the State Police and Criminal Police. Heydrich brought it about that the transferred members of the Stapo and Kripe began to wear SS uniforms. They were the SD insignia on the left sleeve, although they were never in any way connected with the SD as news service and as organization for a special task but remained, as hitherto, members of the state executive. Neither common service nor esprit de corps tied them to the SD. The uniform clothing of the Stapo and the SD, the distribution of which was started at that time, gave the uninitiated the first cause to designate on bloc as SS, members of two organizations of totally different fields of activitywork of a news service for vital spheres and executive work of the Security Police - merely becuase of their uniform outer appearance that is to say the SD uniform with the SD insignia. This misleading collective name led to the habit, of calling SD men not only the members of both organizations but of designating the offices and field of activity of both institutions simply as "SD". In fact, 90 percent of the people wearing SD uniforms had nothing to do with the actual work of the SD news organization. On the other hand, the SD of the RFSS, purely as news service, was not connected with the state executive (State Police and Criminal Police), either by subject matter or by its duties.

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In spite of this fact, it was also called SD in common usage and especially also during the war in official announcements, decrees and orders (see Hitler's commande order). (Besides, in the NS-State there were numerous such 'personal unions' (one person being the holder of two or more jobs) as for instance in the person of Goering, the Minister President of Prussia, Reich Minister for Air, Supreme Commander of the Luftwaffe, Plenipotentiary for the Four Year Plan, Reich Chief for Hunting, etc. Nobody would dream of it to call all this one organization on account of the 'Personalunion'.) produced. There we see two completely different organizational and actual spheres of office - one of them the Party, the other the State. But the men working in these two completely independent and different set-ups are wearing the same uniform: The SS-uniform with SD. These were the first decisive causes for the above-mentioned complete confusion. the Party news service and the State Police were, on account of wearing the same uniform, mistakenly looked upon as one uniform entity, whereas from the very beginning they also showed very relevant actual differences among each other. These differences were the cause that already in 1937/38 some spheres of work Were completely taken away from the SD (II/i) and were handed over to the Secret State Police Office, namely Communism and Marxism. The 1938 decree concerning the division of functions (Funktiens-Trennungs-Erlass) already made it quite clear that the SD had nothing whatsoever to do with the comprehensive intelligence Service in enemy territory. These differences were ultimately settled when, urged by the State Police in 1938, another reorganization was effected, the result of which was the establishment of the "Reichssicherheitshauptant" (Reich Main Security Office.) Thus it was ultimately made clear that the dealing with the enemy in its entirety as far as intelligence service and actions resulting from it were concerned, belonged to the competence of the Secret State Police, that is to say, Amt IV of the RSHA.

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This reorganization terminated the former Zentralabteilung II/1 (Central department) (Enemy research) ("Gegnerforschung") in the framework of the SD as a news service organization, and from that time onwards the SD's exclusive sphere of work was that of a mere news service organization, exclusively occupying itself with "Lebensgebietsarbeit" (matters concerning vital spheres). The former Zentralabteilung II/2 (Lebensgebiete) became the AMT III of the RSHA, and its employees were branded as members of a criminal organization in the IMT verdict. The SD, however, which organization was declared to be a criminal one, is according to its development the leading Zentralabteilung II/2 (Lebensgebiete), which at no time has had any contacts whatsoever with the tasks and the activities of the State Police (Stapo).

As from September 1939 the following set-up was given:

The Reichssicherheitshauptamt (Reich Main Security Office) (RSHA) consists of 7 - seven - Aemter:

Amt I: Organization and Personnel Amt II:

Administration and Economy Amt III:

SD - Home Front (Lebensgebiete) Amt IV:

Secret State Police Amt V: Criminal Amt VI:

SD-Ausland (Foreign News Service) Amt VII:

Scientific Research problems of the Sipe (Stapo and Kripe) (State Police and Criminal Police) and of the SD in one organization. As far as their objectives are concerned they remain separated in the Amt, as for instance all the personnel problems of the SD (Amt II, VI and VII) Were handled in Referat I A 4 by men of the SD, of the former SD-Main Office, that means employees of the Party. They are exclusively concerned with SD, that is Party personal data, which have nothing to do with the problems concerning civil servants (Stapo and Kripe).It is the same in AMT II.

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The administration of the budget funds is handled completely separately in Amt II. And this by necessity, for the administration has to concern itself with;

A. The budget funds of the State (Stapo and Kripe)

B. The budget funds of the Party (SD). Here completely different directives are followed, for not only the salaries and wages were entirely different, but so were also the whole of the accounting system of the Party and of the state. its tasks, AMT III was a hundred percent identical with the former Zentralabteilung II/2 (Lebensgebiete) of the SD-Main Office. Therefore, it is exclusively a Party office, its men are employees of the Party, they receive Party wages, have no civil service rights and duties, are exclusively subordinate to Party orders, and for this reason only they cannot have any State executive powers. If individual men, as will be commented on later, were detached for executive tasks, then they were used as individual persons. They worked by order of the State (Stapo and Kripe) and not as SD and in pursuance of its tasks: to be the Party news service without any executive functions.

AMT IV takes ever the tasks of the Secret State Police. Therefore, its special tasks are exclusively those of the State Police as an executive agency of the State. One might say that Amt IV is identical with the Secret State Police Office. Reich Criminal Office, which is also a purely State executive organism.

AMT VI (Foreign News Service) takes over the tasks of the former Zentralabteilung III/2 (Foreign News Service) therefore it is also a more SD (Party) office, its members are Party employees and do not possess any executive powers.

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AMT VII (Scientific Research) is also a mere SD (Party) office without any executive powers and without any regional agencies. It did not have any real predecessor in the SD-Main Office. Its task is philosophical historical scientific research in the sphere of "Weltanschauung" which is laid down in a series of publications. This task too, did no longer exist during the war, so that it really only constituted a library and archives office. was a clear and unequivocal separation of mere news service tasks (Amt II, VI and VII) on the one hand, and of the State Executive (Amt IV and V), so that at the beginning of the war there is no longer any overlapping of competencies. Verdict that the SD after 1939 were an auxiliary organization of the Government's Executive Branch. The only factors which these different offices had in common with each other were three:

A. The same uniform.

B. The same chief (HIMMLER AND HEYDRICH).

C. The merely technical junction effected by the organizational structure of the RSHAL, which, however, only exists in the main office, because regionally, the Stapo offices, themselves entirely self-contained and independent from each other on the one and, on the other hand the SD sections continued to exist. The Security Police Inspectorates and the SD Inspectorates are offices with no executive duties but only with supervising and organizational tasks without any departmental competence and power of command. The Stapo office received its directives for its work exclusively from Amt. IV of RSHA, the SD sector exclusively from Amt III and VI of RSHA.

THE PRESIDENT: Dr. Aschenauer, I think this might be a convenient time to take the morning recess. Before we actually recess, let me indicate to the defense counsel that Mr. Wartenberg, the interrogator, who took most of the statements of the defendants, will be available this afternoon for cross-examination on the part of defense counsel with regard to the manner of taking of the statements.

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Of course, this is an opportunity which you may avail yourselves of, if you desire. You don't need to cross-examine if you have nothing to examine him about, but in view of the fact that Mr. Wartenberg will ver soon be departing for the United States, it is necessary if you intend to raise any questions at all about the manner in which the statements were taken, that you raise these questions now, so this afternoon when we reconvene after the noon recess, Mr Wartenberg will take the stand, and he will be available to all defense counsel for any questions which they desire to put to him. We will now recess for fifteen minutes.

(recess)

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THE MARSHAL: Take your seats, please.

DR. ASCHENAUER: In the occupied territories, however, the merely technical junction was created in a manner corresponding to the RSHA, Consequently there exists at the headquarters of the Regional Commander of the Chief of the Security Police and the SD, the offices I-VI corresponding to those of the RSHA, and that is one of the reasons which have led to misconceptions concerning the SD. But here too nothing has changed in regard to the departmental duties of the various offices. It has to be added that office VII had branch offices neither in occupied territories nor within the Reich. And not in all occupied territories did Amt III have branch offices in operation. differently organized. The usual organizational structure of the Security Police and SD cannot be compared with them. They are not government offices which constitute branch agencies for offices III, IV, V, and VI, but militant units whose organizational structure is evolved out of their special task, which they are to execute within the executive powers of the commander-in-chief of Army groups and armies. on operational duties and subject to military law. Force, the Stapo, the Kripo (Criminal Investigation Police), the SD, of emergency inductees and volunteers from conquered territories. They are organized for the commissioner of the Chief of the Security Police and the SD at the headquarters of the officer commanding the organizations behind the lines. Their activities change with the requirements of the situation in the zone of operations and are, as a rule, therefore, not those of Offices I, II, III, IV, V, or VI.

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All these problems will be clarified by hearing Dr. Spengler as witness. These problems form the basis for the question: What was Ohlendorf's position to Himmler and Heydrich the leaders of the SS? During the presentation of evidence, it will be revealed that Ohlendorfs work was in direct contrast to that of Himmler, Bormann and Ley.

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Ohlendorf caused the following: dence pointing out, for example, that "the small fry gets caught, but the big fish get away," and, incidentally, attention was called to the interference of the Party into judicial matters. A further report criticized the overlapping of the system of fines which the economic associations Wintochaftsverbaende could impose and the procedure before the regular criminal courts, which had caused an intolerable discrepancy in the severity of penalties inflicted. further attacks on schools and school teachers were prohibited by Goebbels, that the importance of scientists was officially adknowledged, that interference with school life by the H.J. as discontinued, the H.J. activities reduced, the school children excused from collections of all kinds, etc. of motion pictures and succeeded in supporting the role of the motion pictures against the will of Goebbels. The seventh Kulturkammer which already had been proclaimed by Ley was stopped by appropriate SD reports. In contradiction to the political policy of coordination (Gleichschaltung), private association were sponsored. In long reports, Amman's publishing and press policies were criticized and thus a number of publishing firms and newspapers were saved from closing down or from being transferred to the Eher Publishing firm. political publications. On the other hand, the publication of good classical novels and worthwhile new novels was aided. cluded from the measures for waging total war, although a decision to that effect had already been reached. The evidence presented was so convincing that the Party Chancellery changed their opinion and, satisfied by the documentary and statistical evidence, brought forth by the SD exerted its influence for the continuation of work at the universities.

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zation with reports supported by evidence. five Gaues.

These facts correspond with the description of the "SD" in the "C.I. Handbook Germany," published by the "Supreme Headquarters, Allied Expeditionary Forces, Office of Assistant Chief of Staff, G-2, Counter Intelligence Sub-division." It reads here under number IV, "The German Intelligence Service," as follows:

"Amt III, with its regional offices, is the Party Intelligence Service inside Germany. To this end, it maintains networks of agents in all walks of German life.... who are drawn from all classes and professions. The information supplied by these agents is made up into Lageberichte (Situation reports) which are sent up to RSHA by the regional offices. These reports are extremely frank, and contain a complete and unbiased picture of German opinion and morale." of Ohlendorf. The picture of a man will arise which, in purpose, intent and actual work stood in opposition to the terrible events in the East. vice since 1938, gets into the terrible situation, the effects of which are visible today, through the announcement of the mobilization. Before his assignment in Russia, he had a war assignment of the Reich Group Commerce. After he had refused twice this war assignment was cancelled upon order from Heydrich. Ohlendorf was drafted for the Reich Fuehrer SS. This fact is also proven by the

Indictment, No. 3196, page 5 of the original. Ohlendorf now clearly belonged to a military, hierarchic organiza tion.

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Ohlendorf did not agree with the execution order. The assembled leaders of the Einsatzgruppen protested unanimously against Streckenbach who announced the Fuehrer order in the name of Himmler and Heydrich. Streckenbach agreed with the opinion expressed through that protest, but he declared that in a similar cases in Poland he had already tried everything in order to have the order not executed.

Himmler supposedly refused flatly. At the beginning of October 1941, Ohlendorf approached Himmler at Nicolajew, with regard to the execution order, although the latter in a speech before the leaders and men of the Einsatzgruppe and of the Einsatzkommandos called together, had again repeated the strict order of the Fuehrer. Ohlendorf in speaking to the Reich Fuehrer SS emphasized the inhuman burden. He did not even receive an answer. He could not make Himmler revoke the order. There was no possibility for him to prevent the practical execution of the order, which was his endeavor. There is no possibility for him to evade the order. He is in an unheard-of conflict of duties. Ohlendorf has no possibility to make any appeal, since any attempt to get to Hitler personally always had to be made via Heydrich and Himmler, Since it is Bormann who is behind the order, any attempt to surpass Himmler and Heydrich would have failed at the latest when it got to Bormann. Bormann's actual role in that unequaled European tragedy, the story of who he was, will be recorded by some future historian. If one assumed any other possibility for Ohlendorf to gain influence, one would forget, that he was only a Standartenfuehrer, without any political powers, i.e. without any position in the Party based on political powers. He knows neither Hitler nor Bormann. No Reichsleiter or Gauleiter or any other politically influential personalities are his acquaintances, let alone on his side. All he could do was to interpret the order in as limited a way as he could possibly do and to try to execute it as humanely as possible under the given circumstances, contrary to the interpretation of the indictment not only in the interest of his men but first of all in the interest of the victims, since the protection of the men against brutalization is a protection of the victims against brutalized men.

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Ohlendorf's entire life shows that in spite of all setbacks and threats his fight was not only directed against the tyranny of Nazi leaders within the Reich, but that immediately after his return from the Einsatz he starts fighting against the exponents of extermination and colonial power politics in the East, especially against Koch, Globotschnik and Einsatzgruppenfuehrer, SS-Gruppenfuehrer Thomas. Ohlendorf continues in this fight, even though Himmler treatens him not only with liquidation of his office in case he should continue with this kind of reporting, but also threatens to arrest him. In that moment it becomes evident that, as soon as there is no purely military relationship where no resistance is possible, Ohlendorf makes use of the slightest opportunity in order to actively intervene against the policies of power and extermination. by the defense. The tragedy of Ohlendorf's life will become clear to every man. taking part in the session this afternoon and tomorrow morning.

THE PRESIDENT: In order that Dr. Aschenauer may have an opportunity to prepare the defense of the defendant Ohlendorf, Ohlendorf will be excused from attendance upon the trial for the rest of the day and for all of tomorrow.

DR. ASCHENAUER: Thank you.

THE PRESIDENT: Your're very welcome.

DR. SCHWARZ: (Attorney for the Defendant Joost)

THE PRESIDENT (Interposing): Just before you begin, I presume you would want to leave, Dr. Aschenauer; you would like to leave the Court now and you would like to have the defendant Ohlendorf available from this moment?

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DR. ASCHENAUER: Yes, Your Honor.

THE PRESIDENT: "Will the defendant Ohlendorf be escorted from the courtroom so that he will be available to his counsel. Just a moment please, Dr. Schwarz.

Dr. Aschenauer, may I suggest to you that if you wish to put any questions to the interrogator, Mr. Wartenburg, that Mr. Wartenburg will be available this afternoon; and, any time you care to come in, we will make him available to you so that you may not lose any time in getting back to your client.

DR. ASCHENAUER: I have no questions to address to Mr. Wartenburg.

THE PRESIDENT: Very well, Dr. Schwarz, you may proceed.

DR. SCHWARZ: If Court please, -A and in violation of the provisions of Law No. 10 of the Allied Control Council of 20 December 1945, committed the following:

1. Crimes against humanity by participating in the murder of 2. War crimes by atrocities or assault on body, life or property 3. With having been a member after 1 September 1939 of an orga litary Tribunal and by par.

1, Article II of the Law No. 10 prove the following points in answer to the charge of having committed crimes against humanity and war crimes, both of which, since they are essentially based on the same facts, will be treated under figure 1 as follows:

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1. a) Jost was appointed Chief of Einsatzgruppe A by command on 29 March 1942.

His personal dislike of this order and the of the authoritative effect of this order.

As far as this effectively binding orders.

The problem of "order and ne such excluding guilt", need not be discussed at this point, ing this resp.

has already made a statement to that effect.

Montgomery's views on the nature of the concept "command".

the following (Excerpt from The Times, London, of 27 July 1946): "It must be clearly established that the army is a its discipline.

The army would fail the nation if it were them with three principles:

3. It is the duty of the soldier to obey all orders given questions."

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b) When Jost entered upon his service, he looked at the tasks a military point of view.

For Einsatzgruppe A was subordi nated primarily to the Chief of the Army Group North.

Its Nort.

Lituania, Latvia, Estionia, and White Ruthenia did regions.

In these regions, which were under civilian ad at the time of Jost's entry upon his appointment.

These The Prosecution submitted an essay on basic conditions within the SS, the SD, the Gestapo, the Reich Security Main Office, and the Einsatzgruppen, dated 29 September 1947, which assumed, especially with respect to the enclosed photostatic copies of the drawings, the presence of certain actual conditions, which, at the time of JOST's entry upon his appointment, were already obsolete.

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with partisan reconnaissance and the combatting of partisan troops in collaboration with the army, counter intelligence against espionage and sabotage, searching for parachutists, and the reconnaissance by agents of the region towards Petersburg. vocally the chain-of-command relationship of the Einsatzgruppe to the Wehrmacht and to the Chief of the Security Police. ment of the Defense. We shall refer to it later.

c) The joint statement of the Defense will also deal with the problem of how far the measures taken by the Einsatzgruppe A in the course of their military duties can be thought justified from the point of view of international law in view of Russia's behavior.

d) The occurrences, with which JOST was charged in the indictment under I S and T, were not initiated by units of the Einsatzgruppe A. submitted by the Prosecution in the course of this proceeding.

e) Apart from his appointment as Chief of Einsatzgruppe A, JOST also was Commander-in-Chief of the Security Police and the SD Ostland in the Reich Kommissariat Ostland. In this capacity, his activities were restricted by HEYDRICH, since his duties chiefly concerned the organizational structure of the offices of the commander-in-chief within the sphere of the Reich Kommissariat Ostland and within the framework of the civil administration, and because matters of an executive nature and those dealing with the Einsatzgruppe were to be excluded.

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The problem of executive orders became acute when JOST at the end of April 1942 received instructions by HEUDRICH to the effect that all Jews with the exception of the age groups from 16 to 32 should be subjected to "special treatment". In this connection, it is necessary that the relationship between JOST and HEUDRICH is clearly outlined. After having been active since 1934 in the SD for seven years, JOST left the Reich Security Main Office at the end of August 1941, after having had most serious disagreements of a professional, political, and personal nature with HEYDRICH. From the beginning JOST tried with every means at his disposal to make HEYDRICH revoke his appointment as

Chief of Einsatzgruppe A. Up to then, HEYDRICH had been considerate of JOST's attitude by not having issued executive orders to him. the above mentioned order or taking the consequences of insubordination, JOST decided not to relay this order but to have it rescinded, and to make the attempt to talk to HEYDRICH and see that this order would be annulled. At the same time, JOST again handed in his resignation. them act more in line with his way of thinking, and by this saved the lives of approximately 40,000 Jews. view with regard to the shooting of Jews against SS Obergruppenfuehrer JECKELN, with special emphasis on the fact that his men could not be expected to carry out such orders. novardeisk command to the effect that the inmates of the insane asylum in Krasnovardeisk be liquidated since the asylum was needed for billets. of freeing Ostland from Jews, and thereby contributed toward saving these people.

During Jost's command from March until August 1942, no executions were carried out upon his order or with his sanction.

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g) This attitude that JOST displayed merits emphasis even more because he is as such not one of the most robust of men, and besides because of illness he never was in possession of his full strength and natural resistance, either physically nor psychologically. He suffered and still suffers from thyroid disease, from disturbances of the vegetative nervous system, and from an artrosis deformans of the spine. This is the reason for his frequent disability, and especially after Easter 1942, he was 1 me and confined to bed for 12 days. more than he could possibly have been expected to do. was phrased in the judgment of the IMT as the question of whether or not a choice corresponding to a code of morality was possible at all. (Chapter 5 at the end). The American Military Tribunal II in their judgment against Erhard MILCH said the following on page 96 of its opinion: "It was never our intention, and it has never been suggested by us, that he (MILCH) should have chosen any course of action which could have culminated in the loss of his life." And this was the great danger in JOST's case.

h) With this attitude that JOST exhibited it was inevitable that he was taken to task for it by the people then in power. After JOST's efforts towards being recalled from his post as Chief of Einsatzgruppe A were finally successful in August 1942, HIMMLER, at the beginning of March 1944, caused him to be inducted as Unterscharfuehrer into the Waffen-SS, without regard to age, health or previous training. HIMMLER wanted to get him out of the way.

2a) JOST's duties at the SD after 1 September 1939 as Chief of the Office VI, SD Ausland, at the Reich Security Main Office, consisted in getting information from foreign countries for the respective competent Reich authorities. Office VI never had anything directly to do with either the persecution and liquidation of the Jews, atrocities and murders in concentration camps, excesses in the Administration of occupied territories, the execution of the forced-labor program, nor with ill-treatment and murders of prisoners of war.

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b) JOST's membership in the SS was forcibly dependent upon his job in the SD. He was not an SS-Fuehrer in the main office. He was on the payroll of the Police as Brigadier General (Generalmajor).

DR. GAWLIK: Dr. Gawlik for the Defendant Naumann. defendant Naumann who is represented here by me, are very severe. thoroughly the facts and their juridical implications. evidence submitted by the prosecution, it becomes already apparent that this evidence is not sufficient to establish Naumann's criminal responsibility for the actions with which he has been charged.

The incorrectness of the prosecution's assertions already arises in part out of the submitted indictment. I shall make further corrections in my submission of evidence. Naumann's character which is different from the interpretation as presented by the prosecution in the Opening Statement and throughout its submission of evidence. beginning of its activities in Russia. Until the end of November 1941 the leader of Einsatzgruppe B was the then commanding SS Gruppenfuehrer Nebe, chief of Amt V of RSHA. already were at the Einsat and Special commandos, because they already had been issued in June 1941 at the beginning of the war against Russia.

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whatsoever for all executions which occurred before his taking command of Einsatzgruppe B. This concerns the following documents submitted by the Prosecution:

NO-2934, Exh. 78, Vol. II C, P. 52 NO-2844, Exh.

61, Vol. II B, P. 44 NO-3156, Exh.

60, Vol. II B, P. 15 NO-3160, Exh.

65, Vol. II B, P. 48 NO-3403, Exh.

63, Vol. II B, P. 39 reports (Ereignisberichte) which originated between July and October 1941. But the same is also true of documents NO-2825, Exh.

59, Vol. II B, P. 10 and NO-2656, Exh.

39, Vol. II A, P. 45.

The latter document contains a situation report (Lagerbericht) of 25 November 1941, in which the period of the report is specifically mentioned as 1 to 31 October 1941. In the other document we find that various executions which occurred on different days in October were mentioned in an operational situation report on events dated 14 November 1941. the executions mentioned in the operational situation reports of 19 and 22 December 1941 (Document NO-2824, Exh. 62, Vol. II B, P. 31 and Document NO-2833, Exh. 114, Vol. III B, P. 17). I shall prove that the executions mentioned in these operational situation reports have been performed by the Einsatz- and Special Commandos at a time when Naumann was not yet in command of Einsatzgruppe B. This Einsatzgruppe was then still under the command of the then SSGruppenfuehrer Nebe. The operational situation reports have been compiled by Amt IV, Al of the RSHA in Berlin and, consequently, bear the date of the day when they were drafted and compiled in Berlin. They were compiled on the basis of written reports which were transmitted to Berlin by the individual Einsatz- and Sonderkommandos through the Einsatzgruppe.

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The transmission of these written reports from the locations in the heart of Russia to Berlin took several weeks, particularly in view of the great transportation difficulties. This also explains why the operational situation report of 22 December 1941 (Doc. NO-2833, Exh. 114) relates events of 18 and 21 November 1941. The executions mentioned in the operational situation report of 19 November 1941 (Doc. NO-2824, Exh. 62) must, therefore, refer to an even earlier date. can thus not be the responsibility of the defendant Naumann for the simple reason that they date from a time when he was not the Commanding Officer of Einsetzgruppe B.

By submitting Document NO-2830, Exh. 72, Vol. II C, Page 23, the Prosecution wants to prove that Naumann was Commanding Officer of Einsatzgruppe B as early as 12 November 1941. This document constitutes an operational situation report of the same day which does not contain reports of Einsatzgruppe B, which, however, names the defendant Naumann as Commanding Officer of Einsatzgruppe B in the beginning under the list of location and lines of communication. In this connection I point once more to the fact that these operational situation reports were compiled at the RSHA (Reich Main Security Office) in Berlin where also the decisions concerning the assignment of personnel were made and where also the latest reports of the assignment of personnel were known. On 12 November 1941 it was known at the RSHA (Reich Main Security Office) that Naumann was assigned as Commanding Officer of Einsatzgruppe B.

But at that time Naumann had not yet assumed duty. At that period he even was not yet in Russia. deduced for the executions carried out in November 1941 in the area of Einsatzgruppe B.During the time of Naumann's activity as Chief of Einsatzgruppe B we have, therefore, only the operational situation report of 21 April 1942, which has been submitted by the Prosecution as document NO3276, Exh.

66, and which contains data on executions in the period from 6 to 30 March 1942. for the executions mentioned there. I shall base my argument on the legal principles laid down already by Tribunal II in its judgment in the Milch Case and also by the Supreme Court in the Yamashita Case. the following questions can be answered in the affirmative beyond any reasonable doubt:

1. Did the defendant Naumann personally take part in executions?

2. Were these executions carried out under his direction or under his command?

3. Had he any knowledge of the executions before they were carried out?

4. If so, did he have the power or the opportunity to prevent them or stop them?

5. If this is the case, did he fail to act, and did he, in this way, become particeps criminis and accessory to the crime?

I shall prove: As to 1 1. The defendant Naumann personally did not take part in any executions. He himself did not kill any of the persons named in Document No-3276, Exh. 66, Vol. II B, p. 66. 2. The defendant Naumann did not give any instructions or orders for the carrying out of these executions either. Nor did he pass on any orders to the Einsatz- and Sonderkommandos under his command for the carrying out of these executions. The orders given by Hitler for these measures were already in the possession of the Einsatz- and Sonder kommandos when Neumann took over.

These orders had been transmitted to the Einsatz-and Sonderkommandos by Naumann's predecessor, the then SS-Gruppenfuehrer Nebe. As to the legal significance of these orders I shall give detailed explanations in my Closing plea. 3. It is not contested that it was known to the defendant Naumann when he assumed duty as Chief of the Einsatzgruppe B, that the Einsatz- and Sonderkommandos under his command had been given orders for the carrying out of executions. Neumann's criminal responsibility. This has already been decided by Military Tribunal II in the trial against Milch and by the Supreme Court in the Yamashita Case. opportunity to prevent the carrying out of these orders and to stop them, and have failed to do so. the opportunity to prevent the carrying out of the orders given by Hitler and passed on by Himmler and Heydrich, which were in the hands of the Einsatz- and Sonderkommandos. Naumann would not have failed to prevent the carrying out of the execution orders if he had had only a vestige of power to do so. This is proved by his conduct when he was Chief of the Security Police and of the SD in Holland. If Neumann were the type of person as described by the Prosecution, Neumann would have rendered himself guilty of some sort of war crimes or crimes against humanity also in Holland. However, the opposite is the case. The defendant Neumann endeavored in Holland to lighten the burden of occupation whenever he had a chance to do so. He took steps to have Dutch hostages released, to have a number of Dutchmen discharged from concentration camps where they had been put for suspected acts of sabotage against the German occupying power; he saw to it that the Dutchmen confined in prisons for political reasons were provided with sufficient food so that their distress was relieved.

All this Naumann did though he was not competent to do so, and though he exceeded his competence by these actions and acted contrary to existing orders. execution orders issued by his predecessor to the Einsatz- and Sonderdommandos, if he had had the power to do so. But to do so was outside Naumann's sphere of power - for these were orders of Hitler, Himmler and Heydrich - three persons - who concentrated all power in Germany in their hands and ruthlessly saw to it that the orders issued by them were carried out.

I shall prove that Naumann's activity during his service in Russia. did by no means consist of carrying into effect Himmler's and Frank's ideas in their speeches cited by the Prosecution, on the extermination of inferior races, Naumann was, first of all, a soldier - and his main activity as Chief of an Einsatzgruppe consisted in the safeguarding of the zone of communications in the East against the numerous raids by Partisans. I shall prove in my argument, that this activity claimed his entire strength, so that he was in no position to supervise the work of the Einsatz- and Sonderkommandos in the carrying out of the execution orders given by Hitler, Himmler and Heydrich. This explains also why Naumann never took part in any execution.

THE PRESIDENT: Dr. Gawlik, while you are here we want to call your attention to a motion made by Dr. Schwarz asking that the order in the presentation of his case he delayed because of the fact that he was not engaged as counsel until September 17th. His request does not seem to be - Oh, I did not have my key up - shall I repeat what I said: Yes, you may wonder what this has to do with you but you will see in a minute. Dr. Schwarz, who represents, Jost, the defendant who precedes your client in the order in which they are seated in the box has asked.

that he be allowed to present his case in a later order because of the fact that he was only engaged as counsel on September 17th. He would appreciate therefore, if you would present your case immediately following the case of Ohlendorf, so that Dr. Schwarz will have, let us say, approximately thirty days from the time that he was appointed for the presentation of his case, so if it is agreeable with you when Ohlendorf's case is finished, you will proceed with Neumann's?

DR. GAWLIK: Very well.

THE PRESIDENT: Thank you very much.

DR. SCHWARZ: Will you pardon me, Your Honors, may I ask the Tribunal in order to have more time to prepare the defense of Jost that you excuse him from being present in the Courtroom?

THE PRESIDENT: From this moment you would like to have him excused, from this moment?

DR. SCHWARZ: Certainly.

THE PRESIDENT: Very well. In order that the defendant Jost may be available to his counsel he will be excused from, attendance on this proceeding for the rest of the day and for tomorrow al so?

DR. SCHWARZ: I would like to ask that he do so.

THE PRESIDENT: Very well, the request is granted. Will the Marshal escort the defendant Jost from the Courtroom?

(The defendant Jost is escorted from the Courtroom).

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DR. SURHOLT: Your Honor, the prosecution -

THE PRESIDENT: Might you indicate your name and the client you represent for the purposes of the record?

DR. SURHOLT: Attorney Surholt for the Defendant Dr. Rasch. The Prosecution charges the defendant Dr. Otto Rasch with

I. Crimes against Humanity

II. War Crimes

III. Membership in Criminal Organizations (SS, SD and Gestapo). The defendant pleaded "not guilty" in the arraignment of the Tribunal. To motivate this and to contest the indictment, the Defense will submit the following:

1. The Einsatzgruppen were established in the early summer of 1941 in accordance with such principles as are generally recognized as admissible from the view point of international law in the event of war. The forces selected for this assignment received a special but purely military training. The instructions given to them in view of the tasks with which they were to be charged shortly in the course of the assignment pertained solely to a security of the "military zone in the rear". This security was to be

attained by rendering harmless saboteurs, by fighting partisans, and in general by fighting all such elements as, according to general war experience, endanger the safety of the fighting troops in areas already occupied by them. Any form of training or even an indication for an assignment of such a nature as the Prosecution is now quoting under the name of Crimes against Humanity and War Crimes was not given, neither could it be surmised. Thus the defendant Dr. Rasch had no reason to reject the command over Einsatzgruppe C with which he was charged.

2. Accordingly, the assignment of the Gruppen, or at any rate that of Gruppe C headed by Rasch, was motivated by military necessity. The orders he passed on to the subordinate Kommandos were based on adequate prerequisites. Executions were only to be carried out if the actual facts of the crime were established, they had thus to be limited to cases involving persons who had participated in murders, looting acts of sabotage, etc.

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3. Things changed only when new orders came out to the effect that in the area to be made safe by the Einsatzgruppe the Jews including women and children, were to be annihilated. The defendant Dr. Rasch can no longer recall the exact date of this order. It may have been in August, but also in September 1941. The order was transmitted to Rasch by SS-Obergruppenfuehrer Jeckeln. This order seemed so incredible to Rasch that he immediately left for Berlin to obtain a direct explanation. The first evening he got as far as Cracow from where he reported to SS-Gruppenfuehrer Heydrich by telephone to consult him in this matter. The latter confirmed the contents of the order as binding pointing out explicity that it came from the Fuehrer himself and was to be carried through under all circumstances. he received to the units under his command, although he personally not only disagreed with these orders, but rejected them. Although he was a high SS-leader, yet he had no possibility directly to refuse compliance with that order without exposing his own person to immediate grave danger. Like a number of other high SS-leaders before him, he would first have been sent to a KZ and then to one of the so-called "lost battalions" (Verlorener Haufen), whose members were assigned to especially dangerous tasks and thus systematically annihilated. It was moreover evident from the situation that a refusal would not have prevented or even hindered the execution of the order. Therefore, without refusing to comply with the order as such, he attempted to obtain release from his command on grounds which appeared to have no bearing on the matter. Consequently, he was relieved of his function and sent on leave in October on his own request because of his health and divergencies in opinion with Reich Commissioner, Gauleiter Koch. duties as higher SS and Police-leader in France and Northern Italy. IN view of his experiences, Rasch gave ill health as a reason, in order to be excused from further duties.

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He looked around for a civilian job; at first he intended to return to the legal profession but then changed over into industry by joining the Continental Oel A.G. He remained with that firm to the end of the war.

4. The Defense is going to prove the facts stated up to the present partly from documents presented by the Prosecution, partly through witnesses, and particularly through putting the defendant into the witness stand in his own case. intends to show that the defendant Rasch obstructed hindered the aims

and measures of the Party on several other occasions as well. In that way he opposed the Party in their endeavors to interfere in the normal communal administration, consciously risking and losing his position as Lord Mayor of Wittenberg. He further saved political and also racial persecutees from the concentration camp and even from death, without being prompted by any but purely humane motives. In that he even went as far as to use his rank for giving orders to subordinate agencies, to which he was not authorized in the course of duty. Evidence to that effect will be given through witnesses and the submission of defense documents.

5. With regard to the legal position, the Defense is fully aware that, according to Article II 4b of the Control Council Law No. 10, the fact that an action was committed under orders does not exempt a person from responsibility for a crime and can, at most, be taken into consideration as a mitigating circumstance. It is, however, the opinion of the Defense that the written law is always subordinate to the recognized laws of nature. No man can be denied the right to defend himself in a state of necessity. It will be the task of the Defense to elaborate on this idea in detail, at the conclusion of the hearing of the evidence.

6. Rasch was a member of the SS and the SD - not, however, of the Gestapo (Secret State Police). In that respect, however, he denies having had the intent necessary for his conviction in accordance with the rules laid down by the verdict of the IMT.

May I make some explanation? The preparation of the defense of Dr. Rasch, owing to the sickness of my client, during the decisive days of the last week -

THE PRESIDENT: Slowly.

DR. SURHOLT: On the other hand, however, in particular, during the decisive days of the last week for the reason that I was sick myself, and also my right hand was badly burned -- owing to that, I have not proceeded very far in preparing my case as yet, and, in particular, I have not yet discussed the case of the prosecution in detail with the defendant. I therefore ask, that the case of Rasch be not heard yet. I ask, therefore, that the case of Rasch be put back for the moment, as I am not quite ready yet. Quite apart from the fact that the Tribunal has not yet decided as regards my motion to separate the case of my client.

THE PRESIDENT: I don't quite understand what you mean by your request that the case of Otto Rasch not be taken up for the moment, because there is no possibility that his case will be called for the moment. We have first all the opening statements. Then we will have Ohlendorf's defense. Then there will be Naumann's defense, and then the Joost defense, and Rasch won't be reached for some few days.

DR. SURHOLT: Yes, I repeat, I cannot see how long it will take. I only say since my predecessors are not present, I will not have sufficient time.

THE PRESIDENT: Well, at the present moment, you are not threatened with any immediate presentation of your client. Let's wait and see what develops. As the situation at present presents itself, I do not see where you have any problem at all. If in the matter of three of four days you seem to feel that you are being pressed unduly for time, then your motion to the Tribunal and we will rule upon it.

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DR. SURHOLT: Thank you very much.

THE PRESIDENT: In view of the lateness of the hour, perhaps we won't take up another opening statement, but will now recess until 1:45.

(A recess was taken until 1345 hours.)

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THE MARSHAL: Persons in the courtroom will please take their seats.

MR. WALTON: May it please the Tribunal, the Prosecution was informed by the Tribunal that it desired to hear the testimony of Mr. Rolf Wartenberg concerning affidavits and related matters, and that it make him available for cross-examination by the Defense. If the Tribunal desires to hear him at the present time, he is available.

THE PRESIDENT: I think it might be well to call him now so that his intended trip to the States will not be retarded.

MR. WALTON: Mr. Wartenberg is just outside the door.

THE PRESIDENT: Yes; you may call him to the witness stand.

DR. GAWLIK (Counsel for defendants Naumann and Seibert): As a result of the fact that the witness Wartenberg is being called now, we are in a somewhat difficult position. We only found out about this today, and we had no possibility--at least I had no possibility--to discuss this with my client. Therefore, I should like to have the Tribunal grant us the possibility of having the witness called again tomorrow. If I have the opportunity to speak to my client tonight about this, we should call him tomorrow. I am of the opinion that during the examination of one or the other defendants it might be necessary to call the witness Wartenberg again. I also would like the Tribunal to grant us that.

THE PRESIDENT: Were you here this morning, Dr. Gawlik, when I made my announcement concerning this witness?

DR. GAWLIK: Yes, I heard it this morning.

THE PRESIDENT: Now, I would like to suggest to Defense counsel that when an announcement is made by the Tribunal, if any of counsel have any observations to make, that they be made then, When I said this morning that Mr. Wartenberg would be called this afternoon you did not inform the Tribunal that you were not prepared to question him this afternoon.

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No defense counsel suggested in any way that they were not entirely pleased with that arrangement. Now, we have brought Mr. Wartenberg in, and now you tell me that you are not ready to proceed.

DR. GAWLIK: Your Honor, I think there must be a misunderstanding. When the announcement was made this morning I was not here. I only heard about it from my colleagues this morning.

THE PRESIDENT: Well, then, you did not answer my question correctly when I just asked you if you were here this morning.

DR. GAWLIK: I beg your pardon, I had to adjust my channels. They were not adjusted to the German language.

THE PRESIDENT: Well, then, let me repeat, for your benefit, Dr. Gawlik, what the situation is. Mr. Wartenberg is an interrogator, and you know that he took many--if not all--of the statements of the defendants. He is soon returning to the United States and must be leaving Nurnberg during the next two or three days. He may not be called, as you suggested a moment ago, intermittently, as defendants take the witness stand. He must be interrogated now--or not at all. I do not mean this very moment, but very quickly. now, whatever you want to put to him, we will see about having him appear a little bit later in the day, or possibly tomorrow morning. But you must absolutely dismiss from your mind the thought that you can call him later on, because he will not be here. He will not be in Europe.

DR. GAWLIK: I understand, Your Honor; and I do not know whether that would be required at all. I only wanted to reserve this right.

THE PRESIDENT: Mr. Walton, would it be convenient for Mr. Wartenberg to be here the first thing tomorrow morning, just so that Dr. Gawlik will have an opportunity to talk with his client?

MR. WALTON: Your Honor, I have not conferred with Mr. Wartenberg on that particular point, but if the Tribunal will ask him I am sure that it can be settled now.

THE PRESIDENT: I will ask you, Mr. Wartenberg: Could you appear here tomorrow morning?

MR. WARTENBERG: Yes, sir.

THE PRESIDENT: Yes. Very well then, Dr. Gawlik. I hope you have the right channel working. Mr. Wartenberg will be here tomorrow morning at nine-thirty, available to all Defense counsel for examination on the subject matter which I have mentioned. So we won't need you this afternoon. I am sorry to have brought you in, Mr. Wartenberg.

(Witness leaves the stand.)

DR. DURCHHOLZ (Counsel for defendant Erwin Schulz): of the Prosecution, and to the reading of documents by the Prosecution may I make the following statement. Erwin Schulz replied by pleading "not guilty" to the question of the Tribunal, whether he pleads guilty or not guilty to the grave charge preferred against him, this reply sprang from his innermost conviction. This reply was by no means a matter of course which was expected with a certain irony; especially it wasnot intended as two empty words implying a cowardly flight from any responsibility to the world, whenever such responsibility might be established. The defendant rather wanted to express to the Tribunal competent to judge his actions that he can, in his conscience, take the responsibility for what he has done in his life. He has consciously declared that he feels absolutely guiltless in face of the monstrous charges brought against him.

May I demonstrate in my argument on what this feeling is based? right and justice while pleading before this Tribunal. I shall endeavor to assist in clarifying all acts and in establishing all facts which will be of importance for the defendant's course of action.

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I may assure the Tribunal that I shall represent the interests of the defendant without passion and in all frankness in order to establish the truth. Crimes Against Humanity, in which he is supposed to have participated in some form defined in Control Council Law No. 10, in actions representing murder, extermination, imprisonment, and other inhumane acts, committed on political, racial and religious grounds, actions which are said to be part of a systematic program of genocide, having as its aim the destruction of foreign nations and ethnic groups by murderous extermination. having by the same actions committed war crimes, acts which are said to have been committed in violation of the laws and customs of war, such as murder, ill-treatment of prisoners of war and of the civilian population of countries and territories under the belligerent occupation or otherwise controlled by Germany, as well as wanton destruction not justified by military necessity.

Under Count III of the Indictment the Defendant is charged: 1.) with having been, after 1 September 1939, a member of the Schutzstaffeln of the NSDAP--(SS) and 2.) with having been a member of Amt IV of the Reichssicherheitshauptamt (Gestapo); that is, of organizations declared criminal by the International Military Tribunal and by paragraph 1 d of Article II of Control Council Law No. 10, but only under definite conditions, which have, however, also been proved beyound doubt. fulfilled by asserting under paragraph 8, letters Q to W of the Indictment, that the defendant, asleader of Einsatzkommando V within the Einstazgruppe C, murdered a considerable number of human beings, in the period from 22 June 1941 to 24 January 1942.

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In this I must start from the assumption that "murder" is to be understood as the concept--at all times common to all civilized peoples and always remaining the same--of killing a human being for joy in killing, avarice, or for other low motives, treacherously, cruelly, or perhaps by methods which constitute a public danger.

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following objective and subjective evidence by presenting affidavits of witnesses, by verbal examination of witnesses by verbal examination of witnesses, by documents and by hearing the Defendant as witness in his own case: 1) Concerning his so-called "Russland-Einsatz": The defendant Schulz was from 23 June to 24 August and from 15 September to 22 September 1941 in the so-called "Einsatz Russland" as leader of Einsatzkommando 5 within Einsatzgruppe C. In the time from 24 August till 15 September 1941 the Defendant was in Berlin or on trips to and from Russia. of his Detachment to his successor, the then SS Obersturmbannfuehrer (Lt.Colonel) MEYER, who had been appointed by the Chief of the Security Police and of the SD. made responsible for his acts, whatever their nature, only for the period, during which he held the actual command and responsibility for Einsatzkommando 5. did not order such a murder nor did he in any form participate in it; on the contrary he opposed such murders and any sort of brutality, any atrocity, any maltreatment of a human being, to whatever political or religious creed or to whatever race he might belong, he always proved his own humane attitude and endeavored to educate others in the same humane attitude and always exercised only the best influence. As far as shootings were carried out by members of his detachment, they were in no case executed on his order. Apart from the fact, that he had learned of unqualified killing orders only after having spent some time in "Einsatz Fussland" - he was likewise not present at the alleged preliminary conferences, at which such orders for killings or extermination are said to have been issued - and that he would have been obliged to have such orders carried out by his detachment, it was he, who on his own responsibility imposed a limitation on such an unlimited order.

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He withheld such an order and passed it on only insofar as he made it an express condition for any possible execution, that clear evidence of a guilt constituting a recognized common crime must be established. Such crimes were in fact committed, as may also be seen from the documents presented by the Prosecution. But in addition there had to be absolute military necessity, because after all there was a war. The Defendant SCHULZ commanded no liquidation unit, nor did he usurp the right to decide on the fate of human beings and to spread only death as an intended consequence of his power and contempt. By his orders he prevented the execution of such a command. He did not call helpless civilians partisans or helpers of Partisans and he did not cause them to be executed, he did not organise murder, he did not select human beings in order to exterminate them, he did not destroy life behind the front. Nor did he ever take Part in killing sick and insane persons in hospitals and lunatic asylums or in having them killed. As far as he was ordered to kill also women and children, he never carried out such an order and never communicated it to the men under his command. His men would have refused to comply with such an order. But whenever the Defendant had to pass on an execution order, it was only done, if real, grave, capital crimes justified such a measure.

My colleagues Dr. GAWLIK and Dr. ASCHENAUER have already explained, and will deal with it later, what it means in law and international law for a soldier bound by orders, especially in war, to carry out an order and what consequences a possible so-called war emergency may have. If such measures affected Jews, Soviet functionaries and other personsgypsies were never killed by Einsatzkommando 5, as long as the Defendant SCHULZ was the responsible leader- this was not done in compliance with an alleged murderous extermination order, or in order to destroy foreign nations and ethnic groups because of their race or religion or for political reasons, but only because these were perpetrators or accomplices in established crimes, in other words, because they were spies or saboteurs.

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Under Defendant SCHULZ' command no victims were simply liquidated, no prisoners of war were killed, neither living or dead persons were deprived of their possessions, no foreign property was wantonly destroyed, in no place big drives were started to herd parts of the population together because they were destined to be killed, nowhere did he carry out man humts or give orders for or execute a socalled "resettlement". There was no gasvan for killing purposes in his unit. In particular I shall prove in this connection, that the times, places and numbers of executions alleged by the Prosecution in order to establish the Defendant SCHULZ' individual responsibility, are not correct. I shall prove, that the Defendant SCHULZ opposed with the means at his disposal any orders for harsh measures, which were in his opinion illegal, immoral and ruthless, and that this brought down on him the displeasure of his superior authorities. Hitherto he had known only of one purpose for his assignment: the security of the fighting troops as it was rendered necessary by war conditions. His own activity and the activity of his men was confined to this. I shall prove to Your Honors that he felt duty-bound to frustrate more farreaching intentions of his superior authorities and to refrain from the activities alleged by the Prosecution, whenever such were demanded from him. It was due to this fact that the Defendant SCHULZ succeeded in being relieved of his command after only a short and interrupted term of activity in the Einsatzgruppe, because he had been subjected to demands for which he could not assume responsibility. 2) Concerning his other activities:

It will be proved. that the Defendant SCHULZ did not commit any crimes against humanity or any war crimes in the "Einsatz Russland". It will moreover be proved that also before and after that time he never rendered himself guilty of such a crime against humanity.

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In this way I shall also convincingly refute Count III of the Indictment concerning membership in organisations declared criminal. It should certainly be assumed, that a member of an organisation, who has worked only in the sense of this charge, is a criminal. But for this purpose it must be proved that he has objectively and subjectively participated in war crimes and crimes against humanity, at least by being an accessory to them. I am in the fortunate position to prove the following concerning the professional career of the Defendant and his activity in the police by menas of Affidavits of witnesses, by verbal examination of witnesses as well as by the hearing of the Defendant as witness in his own case: a) Having been a member of the police since 1923 the Defendant was transferred to the SS in 1935 in the course of the general assimilation of grades. Promotions in the SS were automatic consequences of his promotions in the police force and were in no way consequences of special merits in this organisation. b) In this work the Defendant was only guided by motives of humanity, helpfulness and tolerance. He took stops against any form of excess and maltreatment, against all unjustified arrests, especially for political, religious and racial reasons, regardless of personal consequences for himself. In numberless cases it was he who gave a helping hand to people in protective custody and their families, to procure work and bread for them. Numberless orders for protective custody were not carried out owing to his intervention. He gave bail for such persons and did many more similar things. He always endeavored to have due respect for other people's convictions. c) The Defendant was no favorite of the Party, he never engaged in Party politics and had earned no special merits in the NSDAP.

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d) The Defendant SCHULZ had the reputation of being the ideal comrade and chief, who treated every subordinate equally well, who personally helped his fellow-men in their needs and troubles, no matter whether they were friends or enemies and whatever their political allegiance. He was without racial or national hatred, he was no representative of a ruling classwho wanted to force an opinion on unwilling people. He exclusively served absolute justice and therefore the law. To show this attitude I could already today out forward within the frame of my statemtne quotations from Affidavits forwarded to me, partly even without having asked for them. However, I shall reserve them for my detailed demonstration of the transparent and unchangeable personality of the Defendant SCHULZ. In conclusion I may mention that the Defendant SCHULZ in his clean attitude, when holding his last high position in the police at Salzburg Austria, did not misuse it as a member of an organisation declared criminal. It was definitely due to his energetic intervention that he dissuaded the Party, State and Wehrmacht from any senseless resistance. He contributed to preventing a horrible end of the final tragedy. He prevented chaos, senseless sacrifices and useless bloodshed on both sides and saw to it, that the city and an extensive district capitulated in an orderly manner. It was he who showed on this occasion, as already at all times before, his special concern for the welfare of a large number of prisoners of war and foreign workers. This was also recognized by the competent American officers. It was also his constant attitude, which finally obliged the Defendant to remain at his post to the bitter end, in order to act only in the interest of humanity. On the day of the capitulation he at once and without being requested put his person and his knowledge of things at the disposal of the American headquarters.

The Defendant shares the Prosecution's standpoint, that the human conscience is the basis of all law. Therefore he may demand a judgment in accordance with this conscience.

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DR. DURCHHOLZ: Mr. President, Your Honors, I would like to utter a request here at this point regarding the fact that the defendant Schulz will be called to the witness stand at a very early date, and especially regarding the fact that the two defendants, Jost and Rasch, will probably be taken on the witness stand at a later date, and as I need time for the preparation of my defense, I would like to ask that the defendant Schulz be excused tomorrow for the whole day, especially as only opening statements are to be heard tomorrow and I have no questions to put to the witness Wartenberg.

THE PRESIDENT: In accordance with the request of defense counsel, the defendant Schulz will be excused tomorrow from attendance at the station. informed by the Translation Section that there are still three opening statements not delivered - the opening statements for Sandberger, Nosske and Seibert. I hope defense counsel will get their statements in immediately.

DR. GAWLIK: (For the defendant SEIBERT): Your Honor, an opening statement has been submitted for the defendant Seibert this morning.

THE PRESIDENT: Do you know about the other two?

DR. MANDRY: (For the defendant Sandberger): My opening statement has been submitted this morning by me, Your Honor.

THE PRESIDENT: Very well, is (defense counsel for Nosske here? Well, if any one sees him please Inform him what the Tribunal has just stated and we will take the next opening statement now for the Defendant Six:

DR. ULMER: For the defendant Six: Your Honors of the High Tribunal: The defendant, Dr. Franz-Alfred SIX has been accused on all three counts of the indictment, that is to say, in his capacity as leader of Vorkommando Moscow, he has been charged with criies against humanity and war crimes as well as being guilty by virtue of his membership after 1 Sept.

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1939 in the organizations of the SS and SD, which have been declared criminal by the International Military Tribunal and in accordance with paragraph 1 (d) of article II of Control Council Law No. 10.

The defense completely disputes this accusation. The documentary evidence submitted by the Prosecution is not sufficient proof of his guilt for the crimes with which he has been charged. crimes committed by the Vorkommando Moscow:

"1, 7 (T) During the period from 22 June 1941 until murdered 2.457 people in their operational (U) During, the period of 22 June 1941 until (V) On September or October 1941, the Staff (W) During the period of 6 March 1942 until 30 I shall prove that the defendant, Dr. SIX, did not commit such crimes either as a principal, participant, instigator or by aiding, abetting or agreeing to such acts.

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He had no connection with atrocities and punisable offenses, including, but not limited to, persecution on political, racila, or religious grounds and other inhumane acts against civilians, including German citizens or the citizens of foreign countries, offences committed in violation of the rules for and customs of war relating to prisoners of war and civilians living in countries and territory under war-time occupation or otherwise under German control and by wilfull distraction and not justified by military necessity. He was also not a member of any organization or group connected with any of the crimes mentioned above.

a) SIX as Chief of Vorkommando Moscow had

b) during the period of Six's direction, the for the safeguarding of archives.

It was

c) Only from 25 June 1941 until 20 August 1941 was My presentation of evidence will show that

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a) the reports submitted by the Prosecution as

b) these reports do not correspond to the facts Against count III, membership, after the 1 September 1939, in criminal organizations, I will submit evidence that

a) SIX was merely a man of science and came to the

b) SIX, it is true, became a member of the SS through

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c) SIX always clearly expressed his opinion against to be expected, and that, only due to HEYDRICH's

d) SIX, because of his opinion tried in vain to

e) SIX, after HEYDRICH's death, again took steps

f) SIX, regardless of his membership in the Abteilung (Cultural Political Division) of the show in the case of SIX, that he took part neither in crimes against humanity nor in war crimes.

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membership of Dr. SIX in one of the organizations declared criminal - the characteristics of a crime in the sense of the indictment are not given, as SIX neither aided war crimes and crimes against humanity, nor wanted or planned the commitment of such crimes. defendant Dr. SIX guilty in the sense of the indictment.

DR. HEIM: (For the defendant Blobel): May it please your Honor: Before I occupy myself with the facts as presented by the Prosecution as far as it concerns the defendant Blobel, may I ask the permission to present a few ideas of a general character, for which there is reason in this trial, paradoxical as this may sound at first. I shall mainly limit myself to reproduce such ideas as originate from the pen of non-German authors and which sine ira et studio endeavor to solve the difficult task of prying into the depths and abysses of thepsychic characteristics of the German People. This survey may be a small contribution to the effort to explain the situtation from which it results that the defendants, and amongst them also Blobel, were "the cruel henchmen whose terror will be engraved in the darkest pages of the history of humanity" according to the Prosecution's assertion. The intention of my statements is to bring out a part of the underlying total connections of our time."

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(Mitscherlich and Mielke, The Dictate of the Contempt for Humanity (Das Diktat der Menschenverachtung). to dispute or to whitewash any crimes which were ordered or executed under the National Socialist regime, but at the same time I would like to point out that during the war crimes were not only perpetrated by the members of the Axis but also by those of their military opponents. delicate sphere where there are opposed on one side: llyalty and absolute obedience - in the National Socialist State and equivalent to life and freedom - and personal guilt and atonement on the other side. has not become any more humane. It is to be regretted that the second World War has shown a retrogressive development in respect to the protection of the civilian population. This we were made to feel to a not too small extnet in our own country too. The apocalyptic horsemen have for many years haunted Germany too, and they left behing their ineradicable traces. Many German towns with a culture of almost a thousand years have perished under a hall of bombs and it will not be possible to restore them and in them innocent women, children and old people have lost their lives. It is unfortunate that especially when for yars it had been systematically fostered by utilizing all possible means of propaganda, hatred has resulted in wild orgies of cruelty. "War has always promoted such outbreaks ..." (Schenk, Letter from a Swiss to a German student in "Europa vor der deutschen Frage" (Europe faces the German problem).). It is further said in this volume that it is deemed the highest ethics in Germany "completely to renounce one's own individuality and to recognize solely the State as one's conscience above which there is no higher binding authority". And Schenk states also the causes which exist for it according to his idea, by declaring:

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"It results from the specifically Prussian military Germany.

.."

"The Frenchmen" as he goes on to state - and I want to add to it -- the American and the British -- will never understand that there are people who acknowledge an authority over them which may prescribe to them how to behave." This in itself regrettable and frightening character trait, to give one's individuality up completely and only to be a small wheel in the set-up of a clockwork, has become the theme of a critical essay by Robert d'Aarcourt "The mental perspectives of the Germans (Dis geistigen Perspektiven das Deutschen)" There it is being said:

"Resistance - this word means something disreputable to the Germans.

... They have superstitious veneration for opposition.

.. In thepresence of power, in the presence judgment in the Germans becomes befogged.

The ability of the word.

The only reaction to a given order is its acceptance and its execution.

.." the problem, how it was possible that decent and blameless people, according to the statements of the Prosecution, could so diligently and punctually given the National Socialist annihilation machinery, is given in the statement contained in the above-mentioned essay by D'Harcourt;

"There is no other nation that in its whole make-up is more removed from any public affairs than the Germans.

That in the second instance a citizen.

.."

for his family predestinate him exactly to function in the prescribed sense in the authoritative State. And this State utilized the endlessly docile yielding disposition of a nation to which the security of the family meant more than the duty of the citizen who is conscious of his responsibility, to form it at will and to its own purposes. brought Blobel as well as the other defendants into the dock. Under 8 C-J the indictment charges the defendant Bllbel with the murder of nearly 60,000 people. Prosecution, the latter seems to consider the case as a simple case of murder, in which on theone hand there is the perpetrator andon the other hand there is the known number of people executed. But it is not quite as simple as the Prosecution seems to think, even if the actual facts are apparently sufficiently proven by documents. to another essential factor. The submitted documentary material to which the Prosecution had access, is definitely incriminating. However, it is so much easier for the Court to fulfill its difficult and responsible task of finding the objective truth, the more fully the material will be at its disposal -- the exonerating material as well as that which implicates the defendants. The documentary material which was found amounts to the immeasurable, and that which was made available to theDefense is only an infinitesimal part of it and besides exclusively the material which indicts the defendants. The war in the East was specially characterized by atrocities andcruelties on both sides, but the material which would show the other side also in its true light and would thus give a full picture of the situation in the East is not accessible to the Defense.

But that this material was collected by German agencies to give testimony in future times, most of these defendants will be able to confirm.. reports of the Reich Main Security Office submitted by the Prosecution are incomplete and unreliable and that they can only be fragmentary documents of questionable value in view of the insufficiency of the organization used and of their manifest tendency towards exaggeration. I shall prove in detail that the alleged figures do not correspond to the facts, as is shown by comparing the individual reports. Especially I shall prove that Blobel cannot be rendered responsible for the reported, "large-scale actions" and "reprisals", because these were partly measures ordered by other agencies - Higher SS and Police Chief,, Chief of the Einsatzgruppen, Town Commander - and carried out by other units, and partly such executions, as were ordered by the Commanding General of the Army District Command 6, Fieldmarshal von Reichenau, as collective measures sanctioned by International law - reprisals - on the occasion of crimes, attacks in disregard of the customs of war, acts of sabotage against the fighting or occupying troops, and were carried out by police units and Ukrainian Militia. for carrying out of a considerable number of executions, since he was in the hospital for a considerable time and also for other reasons was not fit for duty during the time in question fallen ill of Volhynian fever and because of a head injury; for these reasons a deputy took over his command.

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sub-detachments, which dealt independently with the security tasks assigned to them in the areas of the front-line divisions, resulted in Blobel having no influence on the reported events and was informed of them only subsequently or perhaps not at all, because the subdetachments reported immediately to the Einsatzgruppe through Army District Command 6. a detachment of altogether 52 men, from which number we have to deduct office personnel, mess personnel, interrogation staff and drivers, can attain the number of executions alleged by the Prosecution. This is simply impossible. Evidence will show, that the Chief of an Einsatzkommando or Sonderkommando had no power of command over units of the Ordnungspolizei, the Waffen-SS, the Wehrmacht and the Unkrainian Militia. Furthermore I shall prove, that, as far as parts of Sonderkommando 4a took part in executions, they were used by Blobel in consequence of orders received by him as chief of the Sonderkommando from the Einsatzgruppe or from Army District Command 6. Blobel had no occasion to consider the carrying out of the executions criminal and to examine whether these orders were in conformity with International law, because the Russian enemy hardly knew the concept of International law, had not signed International Conventions concerning warfare and did not in the least intend to comply with the customs of war. In this conception Bllbel was of necessity seconded by what he had experienced and seen, especially of atrocities committed on German soldiers. I shall prove what may perhaps appear incredible, namely, that the executions of women and children as carried out by Sonderkommando 4a, were by no means contrary to International law, since the Russians in their carefully organized and all-embracing partisan warfare, which was contrary to International law, ruthlessly employed also women and children for these purposes.

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Apart from all that it has already been mentioned that in Germany, too, the war did not spare women and children, and in this repeat the prevailing rules of warfare have destroyed the doctrine of reprisals. I may point out in this connection that the Anglo-American conception of warfare -- in contrast to the one prevailing on the European Continent - sticks to the traditional concept of war, which regards every person resident in enemy territory as an enemy alien.

Through the principles involved in the subject, "order" have already been discussed by somebody else, I want to refer in this connection to Himmler's speech at Posen in October 1943 in order to underline what has already been said in the beginning. His statements as to loyalty and obedience left no doubt as to what an SS-leader had to expect in the event of noncompliance with orders. Himmler stated among other things:

"I want to lay down one directive. Should you ever we shall see to it that he 1 ses his life.

.. I want to make a clear and unambiguous statement.

It goes But orders must be sacred.

If generals obey, the Armies obey automatically.

.. The only commissar we have obedience.

.." Marwitz could refuse obedience in spite of his oath of allegiance, because thecarrying out of an order of the king would have meant for him a conflict with marality and conscience.

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Marwitz' tomb bears the characteristic inscription; "He saw Frederick's heroic epoch and fought with him in all his wars. He chose disgrace, where obedience brought no honor." In Adolf Hitler's Germany men who refused obedience were either put in a concentration camp or shot dead, regardless of person and rank, as is proved above all by the measures against the participants in the events of the 20 July 1944.

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the moral law; this applies also to the Defendant Blobel. For either he had to carry out the order or if he refused to do so, he lost his liberty, or he was even shot dead by a summary Court martial. In addition the National Socialist regime during the war introduced the truly devilish device of family liability, in order to eliminate the last remnant of a will to disturb the machinery of its system. The fear to endanger even the closest relatives made the internally reluctant man abandon every better motion of his conscience. But the legal conclusion to be drawn from this situation must be that the defendant was in a genuine emergency, at least in a presumptive emergency. But this is a justifying reason according to the general principles of penal law. Even if the Defendant Blobel, like so many other Germans, who have remained decent at heart, should be reproached with cowardice and egoistic self-preservation, the short statement may be sufficient, that this may not establish any punishable form of participation. made to the provision of the German Military Code, that the participant in the execution of an illegal order renders himself liable to punishment; to this we may object that the authoritarian State would have declared that every kind of resistance against the crime is in itself a crime. In addition terrorist and tendentious sentences did the rest to spread the conviction, that any sort of resistance was condemned to failure and therefore meant only a useless and consequently senseless sacrifice. in 1943 to open the mass graves in the East and to destroy the corpses completely, no argument for the Defendant is needed in this respect. It cannot be understood why the burning or the destruction of corpses is supposed to be a criminal act, no matter why and by whom the exe cutions were carried out.

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Defendant Blobel the day after tomorrow, that is Wednesday, for the whole day, as it must be reckoned that he will be examined as a witness very soon, and I would like to prepare his examination.

THE PRESIDENT: The request of Dr. Heim is granted, and the Defendant Blobel will be excused from attendance in court, next Wednesday all day.

DR. HEIM: Thank you.

THE PRESIDENT: About how long is your opening statement?

DR. LUMMERT (For Defendant Blume): About fifteen minutes.

THE PRESIDENT: Suppose we take the recess now. The Tribunal will be in recess for fifteen minutes.

DR. LUMMERT: Lummert for Blume. Your Honor, I was prepared to examine the witness Wartenberg this afternoon. Would it be possible that the witness Wartenberg, in case he is in the building, could be called during the interval so that I could examine him after my opening statement? It would be an advantage if I could be excused tomorrow, I and the defendant Blume.

THE PRESIDENT: I shall inquire if Mr. Wartenberg is available. Mr. Glancy, can you answer that question?

MR. GLANCY: To the best of my knowledge and belief, sir, he is in the building. During the intermission I will make sure and inform the Tribunal upon our return.

DR. LUMMERT: would it be possible to ask the Witness Wartenberg to give us his documentary evidence about the interrogation of the defendant Blume, or to bring it along with him?

THE PRESIDENT: Will you so inform Mr. Wartenberg, Mr. Glancy?

MR. GLANCY: I didn't quite get that, sir. I am sorry.

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THE PRESIDENT: Yes. Whatever Mr. Wartenberg may have with regard to the interrogation of the Defendant Blume he should bring along with him into court when he comes in.

MR. GLANCY: If the time allowed permits he will.

THE PRESIDENT: Very well.

MR. GLANCY: Sir, might I ask at this time, are there any other defense counsel who are ready this afternoon to continue with the interrogation of the Interrogator Wartenberg?

THE PRESIDENT: Yes, that is a very good suggestion which Mr. Glancy makes. If there is anyone else who is ready to question Mr. Wartenberg and will indicate the name of his client, then Mr. Wartenberg will be instructed to bring along those papers also.

DR. FICHT: Biberstein.

THE PRESIDENT: Will you make a note of that, Biberstein. Anyone else?

(No response,)

THE PRESIDENT: Well, those two, We will recess.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

MR. GLANCY: If the Tribunal please, the Prosecution hasnnow located Mr. Wartenberg, and he should be here within five minutes,

THE PRESIDENT: As far as you can, take advantage of those minutes; you may begin. I am sorry. I merely said we will begin with the opening statement.

DR. LUMMERT: (Attorney for the Defendant Blume) special desire for a speeding up of the procedure became evident. Particularly in the present proceedings the otherwise customary interval between the submissions by the Prosecution and the opening speech of the Defense wasnot allowed. I, therefore, request for indulgence that I shall only be able to do full justice to my duties as Defense Counsel in my final plea, when I shall argue the legal principles of the case. punishment for acts normally constituting murder and mass-murder can be administered to the individual perpetrator, if the murder was committed by order of the State? had to lose their lives, on the part of all belligerents. Killing in the course of military action does not count as murder. There is general agreement that the leaders of states and supreme military commanders have to observe the recognized rulesof war which are recognized among all civilized states. In case of violations, they may be held to account. But what is the position in respect to Criminal Law of the individual soldier and officer, if the supreme leadership of the State and of the Army violates the law of war and of nations by their commands? This is the crux of the present case. future World State. It is the hope of suffering mankind. Up to this time, the so-called states, those strange, highest forms of organizedsociety were and still are at the same time the supreme legislators.

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They did and still do claim so-called sovereignty for themselves. With the courage of the legislator the verdict of the IMT anticipated the basic law of the future World State in that one sentence, which in my opinion is the most important one, but unfortunately also that sentence of the great Nuernberg verdict, which it is hardest to put into practice:

(Official text, vol I, p. 223) "On the other hand the very essence of the Charter is that individuals have international duties which transcent the national obligations of obedience imposed by the individual State." individuals, which find themselves in a position where their national duties of obedience clash with their international duties. It is the vocation of the United Nations to prepare that World State and step by step make it a reality. The difficulties of the negotiations of the United Nations in a nut shell are described by the question, whether the funda mental principlesof West or East are to be dominant.

After this general survey, let us now return to our trial. The acts for which the defendants are now held responsible here belong into the history of the era of transition from single states to the World State. I intend to take up in my closing plea on behalf of my Defendant Blume in detail the problem of whether or not a person can be expected to act in a certain way as a basis for excluding guilt. This reason for excluding guilt does not concur with either the so-called necessity (Notstand) arising from having received an order, nor with the general state of necessity as defined by criminal statute. It is rather the basic legal principle, acknowledged legal theory by science and practice in many countries, which is fundamental to all special statutory provisions concerning the state of necessity, but which is not entirely covered by them. The International Military Tribunal mentioned this basic principle in its discussion of Article 8 of the Charter; it is expressed in the following way (Official text, Vol I, p. 224): I quote:

"The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible." organizations charged with being criminal. There it excluded from "criminal groups" those "who were drafted into membership by the State in such a way as to give them no choice in the matter" (Official text, Vol. I, p. 256 and 273). give a complete and true picture of his participation -- which was on the whole very slight -- in those acts carried out in the East by order of the political and military dictator Hitler. I shall show exactly and in detail how the Defendant Blume almost never carried out this order, which he himself felt to be altogether impossible, how in two cases he could not altogether evade the order when exposed to the strongest immediate mental pressure on the part of his superior Nebe, which left him no other choice, and how he was relieved and sent back to Berlin already after about seven weeks in the middle of August 1941, because Nebe was highly dissatisfied with him and found him too "soft" and too "burocratic". carrying out of the order, he bad only the choice to forfeit his own life at once for non-compliance with orders or to carry out the order. But this was no choice in conformity with the moral law. I legal duty to suffer martyrdom is universally rejected. In conformity with this, the Presiding Judge of this Tribunal, Judge Musmanne, said in his concurrent opinion on the conviction of the former Fieldmarshal Milch (text of Judgment, English, p. 84, German p. 96):

"We never intended, nor was it suggested, that he should take any action, which would result in the forfeiture of his life."

stand on his general educational background and on his professional career and his activity asofficial of the Security Police in the years before and after the middle of 1941. witnesses and by the presentation of a number of documents. This evidence will concern both the activity and conduct of the Defendant Blume and the general picture of his character and personality. Finally, I shall submit some documents concerning legal rules and legal questions in order to facilitate the task of the Tribunal. Defendant Blume will show that it will be possible to consider him worthy of a mild judgment. Tribunal, in agreement with my colleagues, to be permitted to make a short separate statement on the question of criminal membership (Count III of the Indictment), because I have dealt with the offense of membership in a "criminal group" already during the IMT trial and recently again in legal opinions.

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THE PRESIDENT: Mr. Wartenberg has now arrived, and he will please take the stand.

ROLE WARTENBERG, a witness, took the stand and testified as follows: BY THE PRESIDENT:

Mr. Wartenberg, will you please repeat after me the following oath: I swear that the evidence that I shall give shall be the truth, the whole truth and nothing but the truth, so help me God.

(The witness repeated the oath)

THE PRESIDENT: Mr. Walton, do you want to address a few questions to the witness as some sort of a preliminary for the cross examination?

MR. WALTON: Your Honor, only insofar as qualification is concerned.

THE PRESIDENT: Very well. BY MR. WALTON:

Q What is your name? War Crimes? of this Office.

MR. WALTON: We submit, Your Honors, that he is qualified to be cross examined by the Defense on the subject of interrogation.

THE PRESIDENT: Very well. BY DR. LUMMERT (Attorney for the Defendant Blume): Q Witness, I have a few general questions to address to you in connection with the affidavit NO-4145, Exhibit No. 10. It is in Document Book I; in the German on page 43, in the English - I don't know the page number, but it could easily he found.

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May I ask you, witness, do you have the original or a copy of this affidavit in front of you"?

A Is that affidavit dated 29-6-47?

Q Yes, it is. May I ask, witness, when was Defendant Blume interrogated which is the basis of this affidavit? On the sane day, the 29th of June; or, previously? to 1500 hours. affidavit, the signature to the original affidavit; or was it the first interrogation? the Defendant Blume during the interrogation; was there anything particular obvious about him?

A I don't recall anything particular about that. he may rise. Blume, a short time only before that interrogation, was arrested and the persons who arrested him ill-treated him very badly; and, that afterwards he tried twice to commit suicide which only did not succeed because the putties which he used for this purpose tore twice; and that the strangulation marks which resulted from, his attempted suicide could be seen quite clearly on the right and left side of his neck. That he apart from that showed signs of the ill-treatment on his face?

MR. WALTON: If Your Honors please, I think the witness would give clearer answers if Counsel for the Defendant Blume would ask him one question at the time. The natters which he is going into at the present time are not material to the issue of taking of affidavits and the conducting of interrogations; and I think that the time is certainly being wasted With this type of questioning.

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I ask the Tribunal to have the Counsel for the Defense ask him direct questions so that he can give direct answers.

THE PRESIDENT: I think you can be a little more specific in your BY DR. LUMMERT: Blame during the interrogation had signs of attempt of suicide on his neck? particularly his lips which were bleeding?

A I do not recall these marks. It is possible, but I do not recall it. Defendant Blume was exhausted and depressed? that particular date?

A I think so. I do not have any reason to believe why a certain dry should be of a disadvantage for interrogation.

Q May I ask you about the course of the interrogation. First of all, a stenographic report was taken while you were asking and he was making his replies? the shorthand record, write the affidavit NO-4145?

A I have, after the interrogation; I prepared the affidavit. I do not recall if I used the stenographic record or if I dictated the material out of my memory. Anyhow, it was, as far as I recall, not done in the presence of Blume.

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The affidavit was shown. later on to him and in one of the copies I have in front of me he had made his corrections. submitted to him the affidavit prepared by you, that he might sign it, objected that his informations which he had given to you about his attempts to evade the carrying out of that order as far as possible, had not been recorded by you? the background or acts of a defendant have been omitted in the shorthand record. had omitted something, to make an additional record? because you had no time; and that you told him that he himself should write down the supplementary evidence?

A I do not recall such an incident. In case that I would have asked an interrogatee to write certain things down I would have them available in my files. The only records which I have, besides the affidavit and the first interrogation is the record at the time when Blume signed the affidavit. receive a letter by the Defendant Blume in which he wrote down the supplementary statements and asked you that this supplementary statements would also be recorded and submitted to him to be signed? Did you receive that letter?

A I did. not. I have no other record in the file of Walter Blume than the first interrogation, the copy of his affidavit dated. 29 June 1947, and. a record taken at the time from the proceedings while signing the affidavit.

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which I have in front of me. It is dated 29 June 1947. That is the same day when the affidavit, NO-4145, was signed. I now ask you, witness, is it possible that the original letter, on the way from the prison to the Prosecution, might have got lost?

A I cannot answer that question. I do not have the mentioned letter. is not contained in the documents of the Prosecution?

A I am sorry; I have no other material, with the exception of an affidavit from Dr. Walter Blume, made on the 23 - made on the 25th of June in Iselheide, of which I have a copy; but, I have not a letter of the Defendant Blume.

DR. LUMMERT: These interrogations in Iselheide occurred before that date, didn't they? I have no further questions now. I only ask the witness to look in the documents of the Prosecution on Case 9 to have another look no at the documents you have here, but perhaps at other documents, to see whether or not the letter may have been received after all. I reserve the right to make an application to the Tribunal to ask the Prosecution to submit that letter.

THE PRESIDENT: When you return to your office, Mr. Wartenberg, you may look for any such document and then when you come into Court tomorrow, you may report on the result of your search.

THE WITNESS: Right, sir.

MR. WALTON: One question, please.

THE PRESIDENT; Yes, Mr. Walton. BY MR. WALTON:

Q Mr. Wartenberg, have you from time to time received letters or notes from witnesses and defendants in the jail in Nurnberg? and I am keeping those letters always in the file which has the name of the writer, together with other papers. a letter that you never received?

DR. BELZER (Attorney for the defendant Mathia Graf): With the permission of the High Tribunal, I would like to address a question to the witness, referring to an affidavit of the defendant Graf, submitted by the Prosecution in Document Book III-C. It is Document NC-4855, Exhibit No. 146. It is in Document Book III-C, German page 123. I am afraid I don't know the English page. It is the document before the last in the Document Book III-C. After this document there is only one more document.

THE PRESIDENT: Page 74.

DR. BELZER: Document 4855. BY DR. BELZER: defendant Mathias Graf at the and of July, 1947, in my presence? and submitted to the defendant Mathias Graf? which reads, "In the year 1933 I joined the Party. My membership number is about 3,700,000. In 1933 I joined the Allgemeine SS. My membership number is 77,431." I would now like to ask you whether you can remember that the defendant Mathias Graf in that connection asked you to and to enter into the affidavit that in the year 1936 he had left the SS? to the defendant that he was not necessary to make any additon here, because there was the possibility that while the defense of the defendant was being brought up, this fact would be mentioned then?

DR. BELZER: I have no further questions then. BY DR. FICHT (Attorney for the defendant Biberstein):

DR. FICHT: Your Honors, this concerns the affidavit of the defendant Biberstein, which is contained in Document Book I on the English page 111.

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made? front of me, could you give me the date of the affidavit you mentioned? you only make statements based on the documents in front of you? from 1000 hours until 1115. I have the stenographic record of this affidavit in front of me. ments in front of you concerning that affidavit? Iselheide in front of me.

Q Did you take that in Iselheide yourself?

Q How was this affidavit of 2d of July made? If I may say in short, in order to make the answer more easy, was the affidavit of 2 July 1947 based on the questions mentioned by you on 29 June or was it based on the questions of the interrogation of 25 June? had also at that time knowledge of the affidavit of 25 June, and it is possible that I have used certain statements out of that affidavit, to which the defendant Biberstein had sworn to. Iselheide of 25 of June, which you mentioned last, was much more detailed and also cites certain reasons which might be in form of the defendant? affidavits again and check line against line. The information, as far as I recall, which is contained in the affidavit of 2 July is contained in the interrogation of 29 June, 1947.

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Q May I for that reason ask a more precise question? Did the defendant, when signing this affidavit of 2 July 1947, did he not ask you that further circumstances contained in the Iselheide affidavit be recorded here also? Do you remember something like that?

A It is possible, but I do not recall that fact. I cannot deny it, but I don't recall it. contained in the Iselheide affidavit, then there would be an opportunity later on to record those?

A No. Basically, I never made these statements in an interrogation, unless I intend to take another affidavit from a defendant. That happens only if during that last interrogation, additional material has been given by the defendant. You don't particularly remember how you acted in this case?

Q Now I have a few other questions. Did you ask the defendant before he signed this affidavit of 2 July 1947 and inform him that he could refuse to give evidence which would incriminate him?

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A.- At that time the Defendant Biberstein had not been handed an indictment - and as such I did not consider him a defendant. I did not inform him that he can refuse to answer.

Q.- Is it correct that you swore in the Defendant Biberstein at the very beginning, as stated in the affidavit?

A.- That is correct.

Q.- On your previous statement that you did not inform the defendant that he did not have to give evidence, I presume you did not inform him either that he could refuse to swear an oath?

A.- I did not inform him to that effect.

Q.- You did not inform him, either, in what capacity he is making those statements - as a defendant or as a witness -- or, -- I withdraw my question. It is not correct. Did you explain to the defendant that he had to make his statement as a witness, or did you point out to him that he could expect an indictment?

A.- I did not inform the Defendant Biberstein that he was a defendant; I did not know it myself at that time; and any person who has not received the indictment is usually sworn in as to the correctness of the statements unless that person objects against it.

DR. FICHT: Your Honors, I have no further questions. I like only to reserve the right to address another question to the witness - if the affidavit of Iselsheide, for which I have asked the Tribunal in writing when I have looked at it, in case the witness Wartenberg is still available at that time.

DR. HORLICK-HOCHWALD: If the Tribunal please, Dr. Bergold's office has received a copy of this affidavit on the 3rd of October, so that Dr. Ficht must have in his possession a copy of the affidavit by now.

DR. FICHT: I am sorry I cannot confirm that. Perhaps there is some mistake - but Dr. Bergold could only look into the other documents; but concerning the other documents for which he has asked he did not get a copy.

He could only look at them - but the Iselsheide affidavit he did not have an opportunity to look at. That is why I wanted to reserve the right to ask.

DR. HORLICK-HOCHWALD: The Prosecution is not adviced that Dr. Bergold has had the right to look into the interrogations of the Defendant Biberstein. If that happened, it happened by mistake..... of course, we would object to the surrender of transcripts of interrogations, but the Prosecution has in its possession a slip, a note, from Dr. Bergold's office that the copy of this affidavit was received on the 3rd of October.

DR. FICHT: I cannot make any further explanations to this because I have already done so.

THE PRESIDENT: In any event, Dr. Ficht, please inform yourself when the Court recesses today whether you do, or do not, have this document. If you have it, be prepared to ask any questions that you intend to ask, tomorrow morning. If you do not have it, then contact the Prosecution's office to see if you can get another copy of it. In any event, tomorrow morning will be your last opportunity to question Mr. Wartenberg on this or any other document.

DR. FICHT: Very well.

THE PRESIDENT: Mr. Wartenberg, I understand that you did not inform the defendant that He could refuse to answer your questions. Did you in any way suggest to him by word or act that he was compelled to answer your questions and to make a sworn statement?

THE WITNESS: Your Honor, after the defendant, whom at that time I considered only as a witness, entered the room I asked his name, and I took him under oath. Then I asked him the questions; and at no single moment did he say he would refuse to answer at question. Then, after I had prepared the affidavit, I showed it to him and he made five corrections on the affidavit.

THE PRESIDENT: Would you say, then, that his attitude throughout the entire interrogation was a wiling one?

THE WITNESS: Yes, Sir.

THE PRESIDENT: Very well.

Does any other defense counsel desire to question Mr. Wartenberg, this afternoon?

DR. LINK (For the Defendant Ruehl): May it please the Court, I would like to address a few questions to the witness Wartenberg. I refer to Document NO-4149, an affidavit of the Defendant Ruehl, in Document Volume III-D, German Copy page 121, Exhibit 169.

THE PRESIDENT: Dr. Link, - this is not of any great importance but I would like to repeat to you what I said to the prosecution counsel several days ago - that when you refer to a document try to give us firts the document book number, because when you give that last, by the time we look at the book we have forgotten the exhibit number, the document number, and what it is all about.

DR. LINK : Yes, Sir.

May I start?

THE PRESIDENT: Proceed. BY DR. LINK:

Q.- Witness, may I ask you, do you have this affidavit in front of you, the affidavit of the defendant Ruehl? It is in the German and English document book, shown with the date, 26 May, 1947.

A.- No, I do not have that document in front of me.

Q.- Do you, perhaps, have an affidavit of the 26th of June, - or don't you have any documents concerning the Defendant Ruehl at all?

A.- I have at present no documents concerning the Defendant Ruehl here.

MR. WALTON: May it please the Tribunal, the message that I received from the Tribunal was to the effect that Mr. Wartenberg should bring with him the records which he has in his office concerning the Defendants Blume and Biberstein.

I repeated that message, and so he did not come prepared. Also, he felt that tomorrow morning he could have his records with him; and it would be necessary, if counsel for the Defendant Ruehl goes on, that we obtain these records on the Defendant Ruehl before he asks questions.

THE PRESIDENT: Neither did the Tribunal know that Ruehl was going to be the subject of inquiry.

DR. LINK: Certainly, Your Honor, it is my mistake. I was merely encouraged to address these questions already today because my colleague, Belzer, who - as far as I know - didn't report either, - came to the desk; - so I came to the conclusion that the witness had brought all documents with him. I will then take the liberty of asking questions tomorrow morning.

THE PRESIDENT: Yes. Mr. Wartenberg, that will be all this afternoon. We shall appreciate your being here tomorrow morning at nine thirty will all necessary documents that may be required going into.

WITNESS: Yes, Sir.

THE PRESIDENT: "We will take up the next opening statement now.

DR. LUMMERT (For the Defendant Blume): Your Honors, I ask for permission that the Defendant Blume be excused tomorrow morning from session so that I can discuss and prepare his defense with him tomorrow morning.

THE PRESIDENT: Only for tomorrow morning, or all day?

DR. LUMMERT: For all day, please.

THE PRESIDENT: Yes, the Defendant Blume will be excused from attendance in Court all day tomorrow.

DR. LEIS (For the Defendant Eugen Steimle): Your Honors, may it please the Court.

at the first glance so unambiguous and clear that the Defense seems to be deprived of every chance to make even one single defendant appear in a light different from the one in which he has been put by the Prosecution. No objection can be made to the statement of the Prosecution, that the law must not remain silent where persecution is carried out on a national scale and makes life intolerable to large groups of human beings or is even intended to exterminate them. But I believe that we must not overlook that today - two and one-half years after the end of the second World War - we are certainly in a quiet position to ascertain in retrospect, clearly and objectively, the terrible results and the facts leading to them, but that at the time when the acts were committed no such glance into the future was possible. Not even for the defendants who did their duty not as leaders, but as subordinates. For, though, it is admitted that some of the defendants were high SS-leaders, the orders which they had to obey did not emanate from their own spehre of power but from the highest authority of the state and were de facto to be regarded as laws according to the character of the Dictatorship prevailing in Germany. We must try to imagine ourselves back in the period spoken of by the reports submitted in order to examine from this standpoint the question of guilt or innocence of the individual defendants. Only an accurate knowledge of the actual facts can create the conditions for a just judgment. I completely agree with the Prosecution's opinion that we must know and convict the motive, if we want to fight the crime. of the motive does not touch the defendants, but those in whose brains the plans and commands originated, and who today can no more be made responsible because they either punished themselves or have already been convicted by a Tribunal. It is equally clear that in the last resort the defendants were only tools, and in this respect we must only put the question whether they were willing instruments or not.

For they could in no case prevent the orders given to them from being carried out, even if they wanted to risk their personal destruction. In this connection, the Prosecution's reference to German Military Penal Law is out of place, by which the assertion is to be proved that even according to German law a person renders himself liable to punishment by carrying out an order for the commission of a crime. For the quoted provision of the Military Penal Code has a meaning and is applicable only under the obvious condition that the man who receives such an order knows himself protected by a higher authority by which he is inthis particular case secured against the otherwise resulting consequences of a refusal to obey an order. But in our case the defendants know clearly that they could expect no such protection on the part of anyone, since, these orders originated from the highest authority of the Reich as their immediate source. It is evident that at that period the refusal to carry out an order of the Fuehrer or the attempt to frustrate the execution of such an order would have meant the death penalty for every one who would have dared to make such attempts. Moreover, there must be no doubt that whoever would have been prepared for this risk could have done this only while knowing exactly that the sacrifice of his person would have meant no change in the carrying out of the order. The conflict of conscience arising out of this fact for everybody reflecting on those things, was probably so terrible that it is today hardly possible to conceive it adequately.

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But it arose only for him who did not work himself spontaneously and in full accord with the aims of his leaders. I therefore consider it to be my task as counsel for the defense of the defendant Steimle to explain from what social background the defendant comes, in what ideas he was educated, and what his opinion was concerning his task as Chief of the SS-Leitabschnitt (SS Administrative District) Stuttgart, I think it is necessary in submitting evidence to show the Tribunal also, as briefly as possible, the field of activity of the defendant Steimle in this SS Administrative District, In this way it will be seen that Steimle when he was sent to Russia, was transferred to a world that was entirely foreign to him not only externally, but particularly also as far as the essence of his task was concerned, He tried, therefore -- also in the new field of his activity -- to put into the foreground his intelligence service which he had given up at Stuttgart, I want to show hereby, in what conflict of conscience particularly he was bound to come when, after taking over his Kommando 7a in the Einsatzgruppe B, he got to know the existing orders, and in what way he tried to find a solution compatible with his conscience. led by the defendant only from 7 September 1941 to 10 December 1941, because at that moment he was given leave of absence to Germany, From this leave Steimle did not return any more to Kommando 7a. He cannot be charged any more with the events that took place after his departure to Germany because he had, of course, no influence insofar -- apart from other possible points - for purely external reasons. Hereby it is interesting to state that Steimle who, for the period of his leave, with the approval of his superiors handed over the Kommando to a deputy, was definitely superseded as leader of the Kommando in the days between 10 and 15 January 1902, Nevertheless, he is still mentioned as Kommando leader 7a in the report on events No. 186 dated 13 February 1942, Exhibit No. 107. This can easily be explained by the fact that the appointment of another Kommando leader was delayed by some weeks, that the Kommando was led by a deputy, and that during this period Steimle remain registered -- merely formally on paper -- as leader of the unit.

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Only by the way it may be said that the documents submitted must only lose part of their probative value by the statement of such facts. place while he was Kommando leader -- as far as they can be ascribed to him -- concerned partisans and saboteurs. Before, by detailed interrogations, the fact which, without any doubt, was punishable according to War and International Law, had been ascertained in detail. Hereby it will become clear that the main task of the Sonderkommando 7a under Steimle had to consist just in safeguarding the German troops - engaged in serious fights -- and their rear communications from the continuous partisan raids. The special nature of the fight in the East, which was particularly characterized by a partisan war -- organized systematically by the Red Army - made other tasks of the Sonderkommando 7a less important during this period. Above all, the plan of the enemy had to be thwarted who made use of the whole population in the rear area and, in this way, intended to create an intolerable situation for the German troops. The frustration of this intention was a justified security measure and cannot be called a crime by saying that there had been only camouflage of an extermination policy concerning anti-social elements, or elements that were, racially, of inferior value. in which, the defendant Steimle was Chief of Sonderkommando 4a in Einsatzgruppe C. Steimle had commanded the Sonderkommando from about the end of August 1942 to 15 January 1943. On the witness stand he will give a truthful explanation of the tasks carried out by his Kommandos (Detachment) during this period. value of the reports on events (Ereignismeldungen) presented by the Prosecution. In this we will have to pay special attention to the fact that these reports contain no description of the facts by the defendant himself, but that they are combined reports written in the Reich Main Security Office, which were based on individual reports of the Einsatzgruppen, which, in their turn, were summaries of the reports of the Kommandos.

At least in the Reich Main Security Office this work of utilizing reports was done by men unfamiliar with the local combat area and who already for this reason were prone to mix things up, often in the crudest manner. Therefore, if we want to ascertain to what extent each single defendant took part in all the actions in question, it is of decisive importance to examine whether, and how far, he had altogether any share in the events described in the reports concerning him. The mere contents of reports on events can by no means be of decisive importance in this connection. difficulty. On the one hand we find horrible and cool figures which cannot be explained away though they are not correct in every single case; on the other hand we see the men in the dock who, enmeshed in the net of the machinery of a Dictatorship, were put in their position by an inexorable order and are now made responsible for things they have not devised and which did not originate in their own responsibility. May the Defense in its case in chief succeed in establishing the facts in accordance with the truth, and thus assist in facilitating a just verdict of the Tribunal.

THE PRESIDENT: In view of the lateness of the hour, I doubt the succeeding counsel would be able to finish his opening statement before recess time, which is 4:30, so the Tribunal will now be in recess until tomorrow morning at 9:30 o'clock.

THE MARSHAL: The Tribunal is in recess until 0930, tomorrow morning.

(The Tribunal adjourned until 0930, 7 October 1947)

THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II-A.

Military Tribunal No. II-A, is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Will the Marshal ascertain if the defendants are present in Court?

THE MARSHAL: May it please your Honors, the defendants Rasch and Strauch are absent because of illness. The defendants Ohlendorf, Jost, Schulz and Blume are absent at their own request.

THE PRESIDENT: Very well. The record will so indicate.

MR. WALTON: Your Honors, yesterday during the session it was stated by counsel for the defense that they had not received a copy of the affidavit of Biberstein, which the Prosecution contends was served on them by specified date, in obedience to direction of the Tribunal. I am ready to produce a signed receipt by an employee of the office of Dr. Bergold, with a copy in the German language that the affidavit of Ernst Emil Heinrich Biberstein made on the 25th day of June 1947 at Iselheide, has been received by that office on the 3rd day of October. I shall be glad to show this to the representative of Dr. Bergold's office, or Dr. Bergold if he is present.

THE PRESIDENT: Yes.

MR. WALTON: If the Court desires to see it I will present it to the Court.

THE PRESIDENT: It will not be necessary for us to see it. Your word is sufficient. I think both Dr. Bergold and Dr. Ficht are absent this morning. In fact they asked me to allow them to present their opening statements at a later order.

When their representatives do arrive I will appreciate your showing it to them.

MR. WALTON: Yes.

THE PRESIDENT: Now we are ready to proceed with the further interrogation of Mr. Wartenberg by counsel who desire to avail themselves of that privilege.

DR. HEIM: (For the defendant Blobel). German text, there is Document No. NO-3824, Exhibit 31, an affidavit by defendant Blobel of 6 June 1947.

Q (By Dr. Heim) Witness, did youcheck this affidavit of defendant Blobel on the 6th of June 1947. 6 June 1947, signed by Paul Blobel. interrogation of defendant Blobel? gation, make this affidavit yourself, or rather had it made by another gentleman of the Prosecution?

Q Witness, did you make it yourself? Blobel to sign, is that correct? state that he wished to alter this affidavit submitted to him on various points, or rather to complete it?

I am just looking for my record. On the 6th of June 1947, the day when that affidavit was signed, I had the defendant Blobel in my office, I checked his identity, and then I told him that I consolidated his interrogations of 26 and 27 May, and I told him to read it. through, to make all corrections he wanted to, and to sign it. This was in the morning between ten and eleven hundred. My record further shows that the witness read it and trade corrections, and because of a number of additions this declaration was rewritten and presented to the defendant Blobel on the very same day at fourteen thirty for signature I want to indicate by that, that the defendant Blobel had all possibilities to make changes. I have changes of this particular interrogation in my files. text as it stood should not be changed in principle?

A I doubt that I have made such a statement; and I want again to refer to my record - that between ten and eleven hundred this statement was presented to the defendant Blobel as I first put it down; that he made his corrections; that I had it rewritten; with all his alterations; and in the afternoon of the same day it was again presented to him. I think that shows to you that the defendant Blobel had every chance of making the alterations he wanted to make.

Q Witness, you did not answer my question. I asked you, did you explain to defendant Blobel that the affidavit as submitted to him should not be changed in principle? I ask you to answer this question. just said: That I presented him an affidavit in the morning, when he did make the changes. If I would have told the defendant Blobel that he was not permitted to make any changes in that affidavit there would not have been any reason to rewrite it and present it to him the afternoon of the very same day.

to defendant Blobel that also according to American law He had the right to refuse to sign as witness concerning statements which would incriminate himself? defendant Blobel, he was for me just an interrogatee, and I never have instructed an interrogate that he may refuse testimony. law-- it is not the same as in German law that a witness may refuse to act as witness if he incriminates himself by his testimony?

MR. FERENCZ: He is asking Wartenberg questions about American law which he is not qualified to answer.

THE PRESIDENT: That may be. Very well, what did you want to say? Dr. Heim?

DR. HEIM: In my opinion it was the duty of Mr. Wartenberg, to inform the defendant that according to procedure practized here, i.e., to American law he had the right to refuse testimony concerning facts which might incriminate himself. If Mr. Wartenberg interrogated Blobel American law and he should know about it.

THE PRESIDENT: Dr. Heim, this is a legal argument which in due time you may present to the Tribunal.

You have Mr. Wartenberg here for the purpose of ascertaining the facts. Ascertain just what physically and objectively happened. And if, from these facts, you fell that you have been aggrieved - well, of course in due time you will address yourself to the Tribunal. But this is not the time to argue a question

DR. HEIM: Thank you.

Q (By Dr. Heim) Witness, if I understood you correctly, the defendant Blobel was not informed by you of the right to refuse testimony? testimony?

testimony, but the defendant Blobel did not refuse to answer any questions I put to him.

THE PRESIDENT: Was there at any time, Mr. Wartenberg, any indication from the interrogatee that he was reluctant to converse with you on any subject which you introduced for discussion?

WITNESS: At the first interrogation I had with the defendant Blobel, according to my information he was lying. He did not give me the proper indentification of his units, and so on. During the second interrogation he changed his mind and gave me his full story of the units, without any reservatiob, as taken down in the affidavit.

THE PRESIDENT: You did not answer my question. I said, during the time that you talked with the defendant - at that time not a defendant - did he indicate, or evince any reluctance to converse with you on any subject which you presented for the purpose of discussion?

WITNESS: No, Sir, he did not.

BY DR. HEIM: defendant Blobel a swear word such as "pig"?

A I told him that in my opinion he is a liar. I do not recall having used the word "pig." did you explain to him that the points mentioned were taken out of the context by you, and that further explanations were still necessary?

taken, an additional interrogation; and after that additional interrogation a further affidavit had been prepared. So the defendant Blobel had ample time to add, for the preparation of the second affidavit, any points not covered in the first one. entirely with the so-called Action Water Cases, that is, the action of the Foereign Office No. 5. It has nothing to do with the first affidavit of 6 June.

I would like to ask you, at the time did you explain the defendant Blobel that he would still have an opportunity to correct the affidavit of 6 June; and if so, did you give Blobel the opportunity to make the corrections Blobel requested?

additions; but even in case he did he could have requested to put certain questions which have not been properly explained, into the affidavit of 18 June 1947. mentioned, also an except of a longer interrogation of the defendant Blobel?

Q Did you also make out this affidavit of the 18th of June? did you ask defendant Blobel, about the facts which were subjects of the interrogation, for the affidavit of 6 June 1947? chance to speak up and tell me if he wanted to have any additional points in it.

Q That will be enough. Witness, under figure 7 of the affidavit of 6 June, on page 162 of the German document book No. 1, it reads in the second line, and I quote:

"In September or October 1941 1 received from Einsatzgruppe C under Dr. Rasch, a gas van, and execution was carried out by means of a gas van." to you that the gas van of SK 4a was never used, but that he, that is Blobel - had seen the gas van used with another unit?

because I do not recall every single item off-hand, which was mentioned in any of the affidavits I have taken; but even if that would have been the fact, as you stated, counsel, then Blobel had the chance of making the corrections. I definitely have given every single man who wanted to make additions or corrections to the affidavits the chance to do so.

Q Witness, do you have the affidavit in front of you? on page 161, Document Book 1 in the German text. It there reads, I quote:

ordered to direct the executions. In August or September 1941 an execution took place near Korosten, where 700 to 1,000 men were shot, and there Dr. Rasch was present." Korosten, did you wish to explain that these executions were conducted could assume that. affidavits. I just repeated the statements the defendant had made during an interrogation. If he told me exactly as it is stated here, that there was an execution, and Dr. Rasch was also present - then these are the facts he told me. That is what I put down. I do express my own opinion ... if Dr. Rasch was present, or if Dr. Rasch was in charge, or if Blobel was in charge.

Q Witness, I believe you misunderstood me. If one look at the gether. I would like to ask you - did you, when making out this affidavit, take individual sentences within the long interrogation of Blobel and put them together?

the defendant said. of that interrogation, in Germna, to bring out the points:

Question 73: "Were you also present during an execution?

"A Yes, by Korosten."

"Question 86 of the same interrogation, on the same subject.

"Who gave the command for shooting?

Q And you supervised?

A Yes, I watched it, and avoided excesses."

DR. HEIM: Your Honor, I believe if the witness gives us sentences from the interrogation of Blobel taken out of the contest, in my opinion the same/is given as is given in the affidavit. I would like co ask the Tribunal, and make a special request, that the interrogation of defendant Blobel, on which the affidavit of 6 June is based, questions arise out of that to be put to the witness.

MR. WALTON: I would like to be heard here before the Tribunal makes its decision on that request, your Honor.

THE PRESIDENT: You may proceed.

MR. WALTON: At this time another request is entered with the Tribunal to have the stenographic transcription of an actual interrogation. To grant this request, your Honors, would be in effect throwing open the files of the Prosecution to the entire defense counsel. We believe, first of all, that such applications for the prosecution's records of pre-trial investigations should be denied on principle, because these investigations concern others, besides defendants in the dock, and these others may be those against whom indictments are contemplated, Also, it will prejudice the Prosecution's case against the present defendants unduly, and it goes far beyond the statutory time of notice.

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THE PRESIDENT: Mr. Walton, let me interrupt. I would like to suggest to defense counsel the following: He has before him the interrogator, and he has at his disposal the interrogatee. He can question his client at length whenever he desires, and he has the witness here who conducted the interrogation, and defense counsel may put to him any questions which he desires. Defense counsel has, in addition, the document, which is the only piece of evidence before the Court, namely, the statement, so we see no reason why it is necessary to go into collateral matters when the whole field of inquiry is open before you. We have no desire, and will not permit, that the defense counsel not be given every opportunity in the world to present their defense, but at the same time we don't want the proceedings to be unnecessarily protracted with questioning and investigations which will, in the end, produce no more than what is before us.

Wow, you have Mr. Wartenberg here before you. You can put any questions before him which is relevant, which you desire.

DR. HEIM: Thank you.

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BY DR. HEIM: of you, I would like to ask you that while looking at the interrogation to answer me the following questions: In Figure 6 of the affidavit there are contained two sentences which I have read. You have read the sentences; you have these sentences in front of you. Can you tell me whether these two sentences are excerpts from an interrogation of Blobel which occured in immediate succession, or, whether Blobel made these two statements concerning the executions at different stages of your interrogation. Blobel only at a later time wanted certain names added to the interrogation. I do not recall exactly how it was at this point, but I recall that in the first affidavit which was presented to him in the morning of the 6th of June that we made changes by adding several names on which the defendant Blobel insisted. I cannot definitely tell you if it was also at this point, but as far as I can see right now on my interrogation report he did not mention at that time the presence of Dr. Rasch.

Q Witness, may I interrupt you. Not being able to look into the interrogation of the defendant Blobel, and since the Tribunal permitted me to address questions in that respect. I would like to ask you to answer my previous question, It is based on the interrogation of Blobel. Can you determine whether Blob el concerning the two first sentences under Figure 6, said these two sentences in his affidavit in immediate succession or whether the two sentences are taken out of two different stages of the affidavit.

A They are taken out of two different stages. As I said before, when he spoke during the interrogation of that execution) I have not the name of Dr. Rasch mentioned, and as far as I recall it, Blobel insisted later on after he was presented with the first affidavit to add a number of names.

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if you will answer the following question: Are these individual sentences taken out of different parts of the interrogation and did you then put them together? Rasch not mentioned at this place of the interrogation.

Q Witness, you did not answer my questions. I asked you in general concerning this affidavit of 6th June, did you state the individual sentences of the defendant Blobel and join them in this statement?

Q Then, I only have a few more questions to you. Did Defendant Blobel tell you that the figures concerning the executions in Kiev were not correct as seem from the operation report? sentence expresses that fact. the figure maintained by the Prosecution of 60,000 executions as stated in the operation report SKVA, was not correct? too high. In the last paragraph, the last sentence of paragraph 5 of his affidavit he states that the figure is between 10,000 and 15,000 persons which were executed by Sonderkommando IV-A, and in the last sentence of paragraph 8 in regard to the figure of Kiev he states that according to his opinion only half of the figure would be correct.

the figures given by him of ten to fifteen thousand was the figure which SK IVA was at all connected with? "According to a superficial estimation, the correctness of which I cannot guarantee, I think that the number of people executed in participation of Commando IV-A was somewhere between 10,000 and 15,000. taken down in writing which Blobel made, you don't remember? sick in the hospital. the first sentence reads; I quote: "Sonderkommando IV-A also shot women and children." can you still remember whether Blobel gave this explanation concerning the entire activity for all the time of Kommando IV-A; or, whether he told you during the interrogation that this statement merely concerned Kiev. when I took the affidavit, I did not consider it important if that happened only once or if it happened more often. I was concerned with the fact that the Kommando had killed women and children. As to the defendant Blobel's statement how often, I will try to find out right now. I asked him the question: "were women and children also shot?" his answer was: "on one occasion women and children were also shot." statement of Blobel's refer -- which occurrence?

A That statement was made in general; not on a specific incident, because just before we were talking about they way of preparing reports.

Q Witness, now one more point. The figure 9 of the affidavit of the 6th June; was the defendant Blobel asked by you who during his absence was Blobel's deputy?

Q Can you still remember the reply Blobel gave you? of the second part of paragraph 9, because on this point I definitely recall it that the defendant Blobel insisted on adding certain names to the affidavit. As far as I recall right now, offhand, the names mentioned here, namely, Dr. Rasch, Radetzky and Dr. Bayer. Either all three of them or part of them had been added by Blobel when the affidavit was presented to him in its original form in the morning of the 6th of June, I recall this incident definitely that he stated he wants to have these names in. the senior leader in the Sonderkommando IV-A after Blobel?

Q Do you still remember the reply?

A I don't recall it, but may be you can help me with the facts and may be I can confirm it. have been Radetzky? Radetzky was his deputy during his absence; did he say that expressly? I cannot find this passage right now in the interrogation, but I think that he mentioned the name of Radetzky; he definitely asked me to put the name of Radetzky into the affidavit.

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Q One more question, please, witness. Did Blobel express to you during the interrogation the possibility that Radetzky was Blobel's deputy during Blobel's absence?

Q Now, my last question. Under Figure 9 of the affidavit of the 6th June, at the very end, during Blobel's absence three different persons were his deputies. I quote: "Under their command a number of mass-executions were carried out." Witness, do you know for sure that Blobel explained this to you, at the time, because in my opinion he could not have learned who was his deputy at Sonderkommando IV-A during his absence? there during his absence, but I would like to point out that I did not believe that Dr. Rasch, the commanding officer of an Einsatzgruppe would be the deputy of a Kommando-leader; but anyhow, as the defendant Blobel wanted to have that point in his affidavit, it was put in, although I figured it improbable; but anything whatever a defendant or at that time an interrogates wanted to have in his affidavit was put in.

DR. HEIM: Thank you; I have no further questions.

MR. WALTON: I have one or two questions to ask on the Blobel interrogation.

THE PRESIDENT: Certainly. BY MR. WALTON:

Q Mr. Wartenberg, when you took certain facts which the Defense Counsel for Blobel has spoken of as sentences from the interrogation of the interrogates Blobel, did you do anything at that time any different than you did from other interrogations?

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submit these sentences or facts in the form of an affidavit to the now defendant Blobel?

Q Was he allowed to make corrections and changes as he so desired? willingness to sign the changed or corrected, affidavit?

Q Did he sign it?

Q Did he demur or object to signing it after he had corrected it? BY DR. HEIM:

Q Witness, I have one more question. Did you let defendant Blobel make any corrections he wished to make? ly as it stood?

A No. As I have explained before, because he had a number of objections, we re-wrote the whole affidavit; and I am not quite sure, it is very possible, that I dictated the new affidavit even in his presence, but I am not sure on that point, But anyhow, as he did not accept the first draft of the affidavit, a new affidavit was prepared in the afternoon and that was just done to the effect that the defendant Blobel could make all corrections he wanted to. second draft of the affidavit?

DR. HEIM: Thank you. I have no further questions. BY DR. KOESSL (Attorney for the Defendants Ott and Schubert):

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which is the last document, in Document Book II-B, as Exhibit 67, MO-2993. Witness, was this affidavit Ott of the 24th July, 1947, formulated by you?

Q Was it formulated by you?

A Yes. it was. previous interrogations?

Q When did this interrogation take place? February 1947? the records of the interrogation? interrogation than in the affidavit?

A Yes. Usually the interrogation is much more detailed end after certain points which were not quite clear had been always cleared, basically, they were put into the affidavit in a clear and precise form. about his start of the work and the time when the Kommando was actually taken over by Ott? I ask this in connection with Figure 3 of the affidavit. from the 15th of February, 1942 until January, 1943, mainly with headquarters in Orel.

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about a line of training when he was not yet in charge of the Kommando?

A I do not understand that question. Could you express it a little bit clearer? 1942 he was not immediately put in charge of the Kommando, but only after a period of training lasting about four weeks?

A I am sorry, Counsel, I cannot find any point of that. If you want to, I will read to you this paragraph where he says word by word what he did. "I was also in Russia, from the 15th February 1942 until January 1943, mainly in Orel." "With which unit there?" "Einstazgruppe B, Soncerkommando VII-B." "Thank you." I cannot find in addition any paragraph where he refers to any training. put in charge of the Kommando. interrogatee at that time. I asked him in the same connection: "Who at your time was in charge of Einsatzkommando VII-B?" "I commanded it myself; my predecessor was Obersturmbannfuehrer Rasch."

Q Thank you. What statements did Ott make on the operation Eisbaer?

A He stated that this operation was under Colonel Ruebsam; that it was in different locations; that it lasted from the middle of February to May; and that at this tine he went on leave; and then he continues to talk about executions.

Q May I ask what is your opinion about executions; is that in connection with the operation Eisbaer?

A I don't think so, but I cannot say because I have just here in the record that he states that before he went on leave, it might have been twenty to twenty-five persons.

THE PRESIDENT: Yes, Mr. Walton.

MR. WALTON: Your Honors, this type of examination is going far beyond the affidavit which is now in evidence before the Tribunal.

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It is used as a device to bring out information Contained in interrogations which the Court felt should not be turned over to the Defense Counsel. The Defense Counsel has a perfect right to ask what the interrogation said concerning the statements said in the indictment, and the Prosecution believes that it has a, right to ask about any of the facts concerning the signing of the affidavit or the holding of interrogations; but we wish to object to going beyond such facts in order to bring out everything that was said at this interrogation, We don't see that it is material or relevant at this time.

THE PRESIDENT: I might suggest to Defense Counsel that the only thing before us, the only thing that the Defense Counsel need to worry about, is what is contained in the affidavit, Even if the defendant should have in his conversation with the interrogator admitted many other things which are not in the affidavit and not before the Court, he does not have to answer to that. So, therefore, it seems to me entirely unnecessary to go into things which are not before the Tribunal.

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DR. KOESSL: The purpose of my question will be shown clearly by my next question. BY DR. KOESSL: of interrogation there are not statements contained as to executions in connection with the "Operation Eisbaer." I, therefore, would like to ask you how does the sentence: "Within the Operation Eisbaer I also carried out executions of band leaders and partisans or persons suspected of being partisans", got into the affidavit draft. That is the sentence which the defendant Ott has crossed out after signing it. I have made a mistkae by putting down: "Within the Operation Eisbaer" a number of executions carried out, and he said it was not so, he had a perfect right to cross it out and initial it.

Q Did he not say that during the interrogation? is not very clear, because after talking of the "Operation Eisbaer", he mentioned executions and therefore when I took the affidavit out of the material Ott had given me during interrogations, I was at that time under the impression that executions were carried out during that "Operation Eisbaer", but when he lateron stated it was not so, he crossed it out and initialed it.

Q Thank you. Now I have a few more questions from Document Book No. 1, the affidavit of Schubert, the German page 151, Exhibit No. 28, NO-3055, the affidavit of Schubert of 24 February 1947. Witness, when did the interrogation take place on which the affidavit of Schubert of 24 February 1947 is based?

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4th of February, and on 23rd of January, and, I myself have interrogated Schubert still during my Army career sometime in December 1945, and out of all information I personally had obtained the affidavit was made. February 1947 is based was on the 18th of February, is that correct? the interrogation of 23 January, so I will not say that it was done only on one particular interrogation, but on a number of them. interrogation of 18 February, was put into an unheated single cell in the defendant is wing of the prison? there, he was not allowed to go for walking any more? possibility which I do not recall definitely, but I am quite sure that I am informed the prison authorities after that confession he made that there is a possibility of suicide, and I have no knowledge which or what kind of precautions the prison authorities are taking in such a case.

THE PRESIDENT: I assume, you mean "were taking"?

THE WITNESS: Yes, Your Honor. BY DR. KOESSL: was handed the affidavit to sign in which Schubert made at least one dozen corrections?

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arose about the words "Intend" and "Supervise" because these words, according to Schubert, do not adequately give the meaning of the actual order? but I have over here particularly the copy of the draft, and Schubert made eight corrections, and as I thought that the document would not look very neat and clean, after he had made the corrections, I had the whole affidavit re-written and presented to him on the 24th February. "intend" ? find the point you want to make. If you would give me a little bit more of the information I will try to find the point you want to bring out, counsel. about twelve, I only ask whether one of these corrections which can be discovered easily concern the word "intend"?

A In what connection, please?

Q In connection with the description of Schubert's tasks in the Action Simferopol? that all the money and valuables, which were taken away from those people earmarked for execution were delivered to Einsatzgruppe-D, but the correction which Schubert made later-on is that they went to the administrative officers and their deputies, as you said "Beauftragte" for sending them to the Einsatzgruppen. Is that the point you wanted to stress?

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DR. KOESSL: I believe the Prosecution will permit me to look at the corrected record of 21 February. If so I think I can save myself asking other questions on that point.

THE PRESIDENT: Have you any observation to make on that, counsel?

MR. WALTON: If your Honor please, the witness is here, and he has offered to aid him in any way, The counsel for Schubert has a copy of the affidavit before him, and Mr. Wartenberg has the original draft and a copy of the affidavit before him, I think as to this particular word, if he will read the context in which it was used, Mr. Wartenberg can locate it without making a search.

DR. KOESSL: In that case I would like to ask the witness to tell me every single correction made in the affidavit draft of 21 February?

A I will read these corrections in German. The word "Town" was crossed out and replaced by "Free and Hanseatic City in the Reich" (Freie und Hansestadt im Reich). The figure containing the number of people shot of about "700 to 800" was added in handwriting. "Einsatzgruppe D" was crossed out, and "Administration Leaders and their commissioners for transferring to Einsatzgruppe D" ("Verwatlungsfuehrer und deren Beauftragte zur Weiterleitung an Einsatzgruppe D") replaced instead, "Gypsies and other national groups" was crossed out. "Under my supervision was the whole" was crossed out and replaced by: "Among other things I also convinced myself that he ..." paragraph 6: added "and rifles". Paragraph 7 was cancelled. BY DR. KOESSL:

Q May I ask for paragraph 6 again. In paragraph six what is the word?

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A It was added "For the executions not only machine pistols were used but also rifles."

Q The next correction? with the disposal of the corpses, and was cancelled, because Schubert claimed he was not present. As a matter of fact, that was only in the draft, because I did not put in the numbers and so on.

Q Why was this paragraph entered in the affidavit? Schubert the idea that he knew something about the disposal of the corpses, but he stated when he was present with the affidavit that he did not have any knowledge to that effect, so I cancelled the whole paragraph.

Q The next corrections?

A These were all the corrections. Only in the affidavit itself in paragraph 3 it reads: "In January or February 1942" and he changed the date there to "December 1941". the effect that a discussion about the contents of the order and Schubert's being authorized to carry out inspections is contained therein?

A No. I have started over here a record of 21 February, but I think as we were busy in correcting the copies that my secretary did not take everything down during that interrogation because at the time we were only concerned with the different corrections which we made in handwriting, as a matter of fact, in Schubert's own handwriting.

MR. WALTON: The Prosecution fails to see the materiality of this line of questioning. The Defendant Schubert can relate any detail everything that took place at this interrogation. Mr. Wartenberg has testified to the essential facts which took place. He has delineated a number of corrections, and I see no reason in pursuing this line of questioning, Your Honors, unless it is for your own information.

THE PRESIDENT: It has only incidentally brought out a very important item, and, that is, the care with which the affidavit was made out, and the entire opportunity and extreme latitude allowing the interrogatee to make changes, so to that extent it has shed a great deal of light on the entire procedure, so we would say this has been very illuminating to the Tribunal.

DR. KOESSL: For that reason, Your Honor, I notice that on the main point itself this generosity did not exist.

THE PRESIDENT: I don't quite grasp the point. What do you regard as the main point?

DR. KOESSL: Nothing seems to be contained in the interrogation record concerning the considerable objections of Schubert on the question whether he ever made use of his right of intention ("Beabsichtigungsrecht"). Considerable discussion on that point took place. That is to What my entire questioning was directed, to find out whether the record of interrogation on this most important point mentioned anything, and, whether the record of 21 February mentioned anything about that, in particularly whether alterations of Schubert's on that point were carried out. All other corrections are, of course, only of irrelevant nature and in my opinion cannot prove very much generosity.

THE PRESIDENT: Well, the corrections were not considered irrelevant by the interrogatee, because he made the corrections himself, and it must be understood that this interrogation did not intend to be the entire story of the defendant's case. That will come in the trial which we are now, of course, conducting, and the defendant will be given every possible chance and opportunity to tell his entire story.

DR. KOESSL: Yes. BY DR. KOESSL: Defendant Schubert that the co-defendant Siebert incriminates him, and give him the responsibility for it? I had numerous inquiries with Schubert, starting in November or Decem ber 1945, and of these interrogations I have no record because they were conducted in the vicinity of Frankfurt, and not by this office for which I am working right now.

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I cannot answer you that question. you blamed the defendant Schubert on this point, you told the secretary not to write down this part of the interrogation? interrogations that I am telling to my secretary not to take down a certain point, because it happens that some of the interrogatees are asking me personal questions in regard to leaves, or in regard to movement to another wing, and, these questions are usually not taken down, but questions to facts are always taken down. page 19, of the German, wherein Schubert affidavit, Exhibit No. 4, No. 2716, of 4 February 1947 is contained. Can you remember, witness, that Schubert objected to the formulation of this affidavit in a few parts, and considered it to be ambiguous, and you confirmed to him that he would have plenty of opportunity to clarify the sense of such paragraphs. It concerned mostly, but not entirely, the figure 7 of this affidavit, which at the end says something about "the civilian sector" and of "burning" in any case which is not quite clear in its formulation. will take at a later date an additional affidavit, and that points which are not clear could be clarified then. I have taken a later affidavit, but I do not recall that Schubert, while taking the additional affidavit, referred to this paragraph 7 of the affidavit of February 1947. If I have told him that he has a possibility to clarify it, it is possible, and, according to my records, I have continued to interrogate him, and I have continued to take affidavits from him. If he had certain points which he, at a later time, wanted to bring out, he could have done so, as on the 21 of February he was given the draft of an additional affidavit which was completely changed, and re-written, so even if he had the intention to add anything he had the chance there.

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of the place in the Eastern territories where actions took place, and that the "course of operations" contained the number of losses, number of locations destroyed and persons killed, arrest of agents, reports about interrogations, reports on civilian sectors. Can you confirm to me that this "course of operation" speaking of losses, number of towns destroyed, only and exclusively concerned fights of the Wehrmacht against partisans?

cerned fights of the Wehrmacht against partisans?

A I don't think so, because I asked Schubert sofar as I recall at that time what was in the reports his unit forwarded to the Reichssicherheits Hauptamt in Berlin ; and he claimed that these things were in it, and I had the feeling that the reports of the Wehrmacht would go through the Wehrmacht channels, and not through the channels of an Einsatzgruppe. I had the impression that these were the actions of the units. How far the Army was connected with it, that is a completely different thing. Schubert explained to me his position that he was something like a file clerk and adjutant to Ohlendorf, that he filed the reports away, and that is what he saw in the reports. this particular Wehrmachts area?

THE PRESIDENT: Counsel, I am afraid that now we are getting into a discussion on the facts themselves, and not of the affidavit. You may inquire as to whether the affidavit represents what the interrogatee said, but to go into the merits of the facts themselves is a little beyond the scope of this present inquiry.

DR. KOESSL: If Your Honor please, I only come to talk about it because this place in this affidavit is not quite explicit in the German, at least, it is not at all to be understood.

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THE PRESIDENT: If it becomes meaningless, then, of course, it is Meaningless. That is what the defendant signed, and that is the only thing he will be charged with sofar as that document is concerned, naturally.

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also later, Schubert was interrogated by you. time.

Q Did you also interrogate him on 14 March?

A What year?

Q '47. the Defendant Schubert? the mission of Siebert.

THE PRESIDENT: Suppose you look for that during the recess, Mr. Wertenberg. We will now recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: Take your seats, please.

MR. WALTON: The Prosecution at this time desires to object to the line of inquiry into the interrogation of 14th of March, 1947, which was made some eighteen dry subsequent to the signing of the affidavit under discussion. We object for the some reasons, that it is not materiel. It is a device to pry into the files of the Prosecution. We feel that it is a matter totally irrelevant to the signing of the affidavit, and for matters of relevancy we object.

THE PRESIDENT: Let's hear what question you will present, and then we will rule.

BY DR. KOESSL:

Q Witness, in the affidavit of the 24th of February under No. 3, you have said the following: "In December 1941, 1 don't recall the exact date, I was ordered by Ohlendorf or Siebert,", etc. In connection with this formulation a discussion developed as to whether the addition of Siebert may be adopted in the affidavit. Do you recall this?

A I have this in my draft of 21st of February. I have already both names in, "Ohlendorf or Siebert", and I am right now under the impression that the Defendant Schubert did not know who gave him the order to attendance, but I cannot tell you off-hand if we had a discussion about the point or not.

Q Wasn't it the object of all the discussions which took place about the position of Siebert? can check it. You referred before to the interrogation of 14th of March. and the following affidavit of 21st of February, and the affidavit of the 24th which followed from this and the interrogation of the 18th of March which again is in connection with the previously mention ed one.

MR. WALTON: I renew my objection, Your Honors, to any interrogation subsequent to the signing of the affidavit.

THE PRESIDENT: This does seem perhaps a, little rambling and a little undecisive.

DR. KOESSL: Yes, sir; Your Honor. I would like to formulate my question somewhat differently. BY DR. KOESSL: Schubert discussions took place about the question of whether Siebert gave an order to Schubert at all?

A I have questioned Schubert on the position of Siebert. It is quite possible that in finding out the chain of command and the personnel in the unit and to find out their positions that I have asked him the question, "Did Siebert ever give you an order?" That is very probable.

Q Can you remember that Schubert said, "No, not Siebert but Ohlendorf gave me this order?" vit that Ohlendorf gave the order, but as in my mind on account of Schubert that fact was not stated definitely, I put both names down with the word "or" in between them. February; does this affidavit correspond with the one of the 24th of February verbatim? on the 24th of February in my presence, yes. As far as I can see right now, there might be a word changed, but in regard to the meaning, the statement of the 21st was the material for the statement of the 24th because there I showed him the affidavit, he made the corrections, it was re-typed and presented to him for signature.

of February also contained the formulation, "I superfised".

A In what paragraph, please?

Q The phrase, "I supervised", is contained several times in the affidavit.

A What paragraph, please?

Q Under No. 3 it says: "I was ordered to supervise the execution." Is this formulation also to be found in the affidavit of the 21st of February?

Q Then I have one final question. During the interrogation at Oberursel around November 1945, did you threaten the Defendant Schubert with a broom and tell him that you would, if necessary, help to refresh his memory?

DR. KOESSL: I have no further questions, Your Honor. BY MR. WALTON:

Q One question on the interrogation of the Defendant Schubert. Mr. Wartenberg can you recall whether you ever held any contraversial discussions with Schubert as to his position in Einsatzgruppe D? of the interrogation if it took place?

THE PRESIDENT: Next counsel. BY DR. HEIM (Attorney for Defendant Ruehl): sional preasons. I ask that I may be premitted to put a few questions to the witness, as his assistant. I refer to Document Book III_D, page 121, in the German, page 76 in the English text, Document No. 4149, Exhibit No. 169. This is an affidavit of the Defendant Ruehl.

Q Witness, may I ask you the following: According to the German and English document book, one would have to assume that the affidavit was made out on the 24th of May, 1947. At end of the document book it says that the affidavit comes from the 26th of June, 1947. May I ask you when the affidavit was actually given? that it was the 26th of June 1947 and on the English part also on the 26th of June.

to be a mistake, that is, the date of the 26th of May?

Q When did you interrogate the Defendant Ruehl for the first time? at that time?

A I don't think so, because, as I recall, this is the only affidavit I took of Ruehl.

Q Did you interrogate the defendant again, and when was that? between 1400 and 1530 and on the 24th of June between ten and tenthirty.

Q I did not get the last number, on the 21st of June? out which the Defendant Ruehl signed or was this affidavit made out as a result of the interrogation of the 9th of June?

AAs far as I can recall, I don't have these dates in my mind any more - what day I made out an affidavit, but usually an affidavit is prepared after all interrogations have been completed, unless some new items come out or the interrogatee informs me about some other interesting items and I have the feeling that this affidavit was made out after all interrogations. of the 24th of June expressed misgivings about the first draft of an affidavit? because in my record here I have the notification, which I will read in German, "I had the affidavit written out once again. Please read this and sign it."

of June, but on the 26th of June, is that correct? certain information or refusing the oath, may I assume that after you what you have already said, you have not done so in this case -

MR. WALTON: If it please the Tribunal, Counsel for Ruehl is now going into the subject of constitutional rights as regards the giving of testimony against one's own interest. Constitutional rights do not apply to these defendants. The defendant is presented with the affidavit. He can read it over and make what corrections he so desires, or he can refuse to sign it. There is no burden on the interrogator to inform him of any rights he may have, but there is no pressure on him to sign or not to sign. How any questions concerning the constitutional rights of these defendants are entirely irrelevant and of no material value to this case.

THE PRESIDENT: The Court disagrees with you, Mr. Walton, that the defendants are not entitled to constitutional rights.

These defendants are entitled to every right guaranteed by the United States Constitution as introduced in all subsequent agreements with other nations which brought about these trials. However, the Tribunal does not see up to this point that the defendants have been deprived of any of those constitutional rights. It would appear that, at least up to this point, that every opportunity was given the defendant to read, the statement which he signed and the statement itself indicates an opportunity was given for correction, so, therefore, the constitutional rights were protected, so it isn't that they are not entitled to constitutional rights. It is that those constitutional rights were preserved.

MR. WALTON: If I understood the question of Counsel for the defendant Ruehl, he asked him if Mr. Wartenberg informed him as to whether or not he could sign or not sign.

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THE PRESIDENT: It is so obvious that anyone presented with a document to sign may sign or not sign; that question put in that fashion is entirely superfluous. If there is any discussion that the defendant refused to sign and then was threatened or was cajoled, or was persuaded, or was offered some definite gain, if he signs, then that is highly relevant.

MR. WALTON: I quite agree with you, Your Honor, but the question in its present frame, as I understood it, I am objecting to as superfluous and as irrelevant.

THE PRESIDENT: Counsel, you have now heard this discussion, so please frame your question keeping in mind what the Tribunal has uttered.

DR. HEIM: My question did not refer to the signing of the affidavit. It was supposed to be formulated in the sane way as my colleagues have stated it.

THE PRESIDENT: Please put the question. that the interrogatee, namely, the Defendant Ruehl in this case, had a right to refuse to give testimony? to me that he does not want to talk about certain incidents.

THE PRESIDENT: Did you ever state to the defendant that he was compelled to sign any document which you presented to him?

THE WITNESS: Never, sir.

DR. HEIM: I thank you.

THE PRESIDENT: Next counsel, please. BY DR. ERICH M. MAYER (Attorney for the Defendant Braune):

DR. MAYER: My questions refer to Document 4234, Exhibit No, 160, in the German Document Book III B, on pages 96 and 97. This is the interrogation of the Defendant Braune by the witness Wartenberg.

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of the interrogation the defendant Braune refused to give his testimony Under oath? because he thought that this was equivalent to giving an oath? I repeat the question. Is it correct that after having refused to give an oath the defendant also refused to give an affidavit, because he was of the opinion at least according to his German legal conception, that such an affidavit was equivalent in form to the oath? Braune expressly contains the formulation that he did not make this statement under oath, while in your note under page 97, it says that the statement was made under oath? which is signed by me, which appears after the signature of Braune?

A I should like to state that on my copy the word "Eidesstattliche Erklaerung" at the end, the word, "Eidesstattliche" has been crossed out by me at that time. It is just a typographical error and if you will read the last paragraph before the signature of Dr. Braune, it states that he made the declaration in the German language and it does not say that it is a sworn statement. It further states there that this declaration is not made under oath, but under his word of honor which Braune gave me at the interrogation.

DR. MAYER: This explanation is sufficient. I have no further questions to put to the witness.

THE PRESIDENT: Very well. Any other questions to be put to Mr. Wartenberg by defense counsel?

Apparently not. If you have anything further, Mr. Walton, in connection with this witness -

BY MR. WALTON:

Q Mr. Wartenberg, a great deal has been said about your methods of interrogation. I should like to go a little further into your qualifications, Did you have prior to the time you became a member of the Office of the Chief of Counsel any experience in interrogations? experience before you became a member of the interrogation staff in the Office Of Chief of Counsel? Training Center and I observed there the School for interrogation in the German language. I had, later on, additional training with the British and American forces in England. I was assigned later on to Seventh Army Interrogation Center and the Theatre Interrogation Center at Oberursel and during all my army career, the basic element of my work was interrogations, with the exception of some short periods when I was used for other work.

THE PRESIDENT: What rank did you hold in the Army?

THE WITNESS: My last rank was Captain,

Q How long have you been on the staff here? else present? this building I have always a German stenographer present and in addition to that there is a guard. mistreatment of an interrogates, there would be witnesses to such action on your part, would there not?

in the Office of Chief of Counsel promise anybody, either a defendant or a witness, a reward for his testimony or for the execution of an affidavit? to obtain an affidavit or a statement from anyone? affidavit? compelled by anyone, else in your presence to sign an affidavit or a statement? an affidavit is prepared by you? interrogation room, if he is an inmate of the Nuernberg prison, he is under guard. He identifies himself by name. He is either taken under oath or reminded that he is still under oath. Then the interrogation is taken and, after I have the records from my secretary, I am going through those facts which I consider important. I write those facts out and then I recall the interrogatee. I remind him of his oeath, if he had sworn an oath before, and I present him with the affidavit. I ask him then to read it, to make all corrections he wants to, but to let me know beforehand So that we can do it together on all the necessary copies. After that, when the interrogatee has made all his corrections, he initials the corrections, and signs the affidavit in my presence.

by you were changed radically by the interrogates so that the whole affidavit had to be rewritten in order to comply with the wishes of this affiant? on the new draft?

A Certainly, they can make their changes. There is one case where an affidavit was written four or five times -- I am not sure about the number, but it was definitely more than three times, because the defendant was not satisfied with the draft and he has all chances to make all necessary corrections.

Q Do you remember the name of this then interrogatee? your draft of the affidavit unsatisfactory and drew up their own statements?

A Yes, that happened in the case of Haensch. After two interrogations, I had prepared an affidavit and he told me that I mixed up things; that I distorted facts in a way that he was not able to sign it. He insulted me also in the manner he talked to me and I told him, "Draw up your own affidavits." He did so and after I had it, I read the affidavit. I called him back. I had him initial each single page and sign this affidavit without any additions. you that the affidavit already signed by them was not complete and they therefore wanted to make a new statement or additional statements?

DR. GAWLIK (ATTORNEY FOR DEFENDANT NAUMANN): I object to this question, Your Honors, for the following reason. This is redirect. The redirect can only refer to the preceding cross-examination and, secondly, this question is completely irrelevant in this general form. The prosecutor would have to ask whether this refers to a defendant in the dock here, but I don't know what relevancy it has - what has happened in other cases, which do not have anything to do with this trial.

THE PRESIDENT: Well, Dr. Gawlik, you and your brother counselors here have levelled a pretty steady attack on this witness' procedure so that now prosecution counsel is merely endeavoring to explain what is the procedure. Of course, if the witness is now speaking of interrogations of witnesses or defendants not connected with this case, that would be irrelevant.

DR. GAWLIK: Yes.

THE PRESIDENT: It is not apparent whether he is including in his answer generally the whole orbit of his manner of questioning or whether he is restricting it to the defendants in this case, and I would suggest in that respect, Mr. Walton, that he confine it to only those directly connected with the present case which we are trying.

MR. WALTON: I think we can clear that up in one moment, Your Honor.

THE PRESIDENT: Yes.

Q Mr. Wartenberg, during your contract with Office Chief of Counsel what other case or cases, if any, have you worked on, except this one?

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when affiants informed you that the affidavits signed by them were not complete and that they wanted to make a new statement, what was your procedure? after some time after the affidavit had been taken, I discovered a typographical error in the date. I recalled the defendant Klingelhoefer, together with his defense counsel, because by that time the indictment had been served on him. It was stated to me at that time that certain points were not clear in the previous affidavit and I wanted to have it corrected and that Klingelhoefer will present me with a new affidavit. Some days later, he came up to the office. He handed me his affidavit. His defense counsel was present. We discussed certain points and at the end the affidavit was signed and handed over to the prosecution staff.

Q One further question. Let me direct your attention to the time when you interrogated the then witness, now the defendant Blobel. Do you recall whether or not that Blobel, at the time when he was represented by Deputy Reich or von Radetzky, or someone, do you remember whether or not he stated he knew executions were carried out in his absence?

MR. WALTON: No further questions.

THE PRESIDENT: Very well, Mr. Wartenberg, you will be excused and we will take up the reading of the opening statements. I do not recall who is next in order. Who is ready to proceed?

You are ready, Dr. Gawlik?

(The witness was excused.)

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DR. GAWLIK (for the defendant Seibert): My evidence--(interruption)

THE: PRESIDENT: Just a moment, please.

Dr. Gawlik, we are sorry that you may have to miss your turn. It appears that we don' have the translation of your Opening Statement. Would it be inconvenient, too troublesome, for you to allow the next attorney to read his Opening Statement, and then you can be called as soon as the translation appears.

DR. GAWLIK: Yes, certainly.

THE PRESIDENT: Is Steimle's attorney here? Are you ready? Oh, yes; very well. Who is ready?

DR. MAYER(for the defendant Braune):

THE PRESIDENT: Very well, you may proceed, Dr. Meyer.

DR. MAYER: Your Honors, the defendant Braune, like all other defendants, is charged under three counts: first, Crimes against Humanity, Countl; second, commission of war Crimes, that is Count 2; and third, Membership in a Criminal Organization - Count 3. The Prosecution in a nine document books has submitted material and has emphasized in its Opening Speech in which manner the defendants including the defendant Braune, incriminated themselves. They have-

THE PRESIDENT: Oh - just a moment-- I am sorry. I thought that you had this translation. I am very sorry, Dr. Mayer, to interrupt. But you know it is quite a task to interpret extemporaneously. So we would like to proceed with those Opening Statements whose translations We actually have here. I will indicate the ones which are ready: Defendants Walter Haensch, Heinz Schubert, von Radetzky, Ott, Biberstein, and Grad.

Now, Dr. Bergold has asked me to allow him to read his statement this afternoon. So, who is ready, of the ones I have named?

DR. RIEDIGER (for the defendant Haensch):

THE PRESIDENT: Very well, you may proceed, please, Dr. Riediger.

DR. RIEDIGER: Your Honors, the defendant Walter Haensch was taken over by the SD with the rank of Unterscharfuhrer in May 1936, after he had been working as a civilian legal consultant with the SD since 1 August 1935.

of Sonderkommando IV b for a short time. mer duties in the which main Security Office and from September 1943 till the end of the war he was attached to the Office of the Reich Plenipotentiary in Denmark as administrative official in the Main Department "Administration and Law". against humanity and war crimes, and calls him to account for membership in the SS, the latter being an organization declared criminal by the IMT. it concludes that Haensch as Chief of the Kommando is responsible

1) for the shooting of 861 persons, including 139 Jews and 649 Commissars in the neighborhood of Kiew during the the from 14 January 1942 to 12 February 1942,

2) for the shooting of 1, 317 persons, including 1,224 and 63 Commissars in the neighborhood of Artemowsk during the time from February to March 1942. Service grade attained by him. evidence for the following facts:

1) It is untrue that Haensch in the period mentioned by the Prosecution was already responsible Chief of Sonderkommando IV b. The defendant did not assume his duties in Russia until about the middle of March 1942. In evidence I shall present documents, witnesses and the defendant himself, whom I shall call to the witness stand.

2) The entire work of the Defendant in the Russian Theatre of Operations, as far as it must be taken into consideration for purposes of criminal investigation, lasted only a few weeks, due to interruptions caused by temporary duty elsewhere and ended in June 1942.

tioned kinds of evidence.

3) The defendant admitted that during the time when he was in command, 3 or 4 shootings took place. show that they do not constitute the facts of a crime against humanity and of a war crime. as a soldier; he was not in the Communications Zone, but in the immediate combat zone with the fighting troops and closely cooperated with the. area of which he was in charge. Warfare in the East was especially

characterized by insidious surprise attacks and incredible cruelties, espionage and acts of sabotage committed by the civilian population. This resulted in harsh measures, which were, however, still in conformity with International Law and the customs of war. in the nature of such purely military defense necessities and deterrent measures. had nothing at all to do with the extermination of the Jews and the elimination of the so-called racially inferior or politically undesirable elements. knowledge of all these things my client could derive from all sources of information at his disposal. for these must consider all instructions issued to the defendant before, when, and after, he assumed his duties and, above all, his own observations during his time with the Sonderkommando. Also in this respect the facts will demonstrate that in view of the strict observance of the Fuehrer's Order Number I concerning "secrecy", the large distances between the individual Kommandos, between which there was no connection at all moreover in view of the fact that the purposes originally assigned were in the course of time radically changed, the defendant Haensch could obtain any knowledge only from his own activity.

to the Tribunal and to prove that in it Haensch neither committed any of the crimes mentioned in the indictment, nor became an accessory to it. by the application of Control Council Law No. 10 concerning a soldier under the military obligation of obedience and the limits of what may be demanded of a person in the event of conflict of duties. tion according to the basic directives laid down in the IMT judgement prompts me to examine once more whether the legal principle nullum crimon sine lege (no crime without a law), which is firmly established in all civilized nations, has been sufficiently considered. subjective prerequisites fur a Verdict of guilty exist, especially if all reasons precluding guilt are taken into consideration; and, above all, whether my client was conscious of acting illegally.

DR. KOESSL (for the defendant Ott): Your Honors, the Prosecution's charge of systematic murder of nations comprises a complexity of guilt which can hardly be realized in its full scope, let alone can it be defended. of this trial if one considers it as detached from the individual personalities which fate has brought into the dock here. The trial here concerns humanity without God.

to the Tribunal, to proclaim the right of humanity to be allowed to live in peace and dignity without any consideration of creed or race, represents a redeeming aspect. The theory on which I shall base my defense does actually proceed from the idea that the concept of genecide was not born in the head of those defendants. Those who were mainly responsible have evaded this responsibility, as they lost their brave-heartedness, which they only too often requested from, their subordinates. Another circle of persons is already sentenced. Those were the "instigators" and the "main perpetrators" of the systematic genecide, if I do understand the nucleus of the indictment correctly. the Einsatzgruppen members of all ranks can only be judged under the viewpoint of subordinate forms of participation. Law according to International Law. The Prosecution, however, does not only rely on International Law but also on general principles of the Penal Codes of civilized countries and on the Penal Codes of the countries in which the crimes were perpetrated. On top of that it refers to Article II of Control Councillor Law No. 10. This multiciplicity of juridical arguments carries the seal of contradiction in itself. Considering the purpose of the Opening Statement I have to limit myself to indicating those legal problems only insofar as they might have any influence on the presentation of evidence. The nucleus of the, problem mentioned is to be found in the treatment of the objection concerning the acting on orders. This Tribunal is appointed to judge according to Internation Law and is only bound by International Law. According to International Law the acting on orders constitutes a fact, which in respect to war crimes is to be treated as a complete justification, even if in the national law of the individual States another principle is valid. Article 47 of the German Military Penal Code cannot be valid as applying against the defendants, this recording to German Law at that time the FUEHRER orders had legal powers and no authority was existing with which to lodge an objection against these orders.

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March 1942 and, with the exception of some important interruptions, he remained in charge until January 1943. did not execute any so-called "action against the Jews" during the whole time he was in command. individual executions undertaken by Sonderkommando 7 b during the time in question always took place only in connection with operations against artisans and are thus justifiable from a point of view of Internation Law. neither be called a terror against a defenseless population nor as a camouflaged genocide, and that it does not concern a persecution from political, racial or religious re sons, but that it concerns merely protective and defensive measures for the security of the occupational armed forces and combat troops. way OTT behaved towards the civilian population in the occupied territories of other countries, and that as an instance of evidence for the foundation of his own credibility in the presentation of the conditions in Russia. This presentation of evidence as, at the same time, meant to prevent that incriminating conclusions be drawn from his membership in organizations which have been declared criminal. to present the limitations of the individual responsibility of the individual defendants and especially to ascertain all details which in each individual case were the cause of the executions with which the defendants are being charged.

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the Einsatzgruppe seen as a whole, the more so the principle has to be applied that the penal guilt is a personal one, a principle which according to the statements of the International Military Tribunal, belongs to the most important legal principles. "Guilt", however, cannot only be applied to the criminal intent of the action of the person acting. Thus all those reasons for the evidence become essential which have a bearing on the complex of perceptions of the defendant concerning his position in the dictatorial Fuehrer State.

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DR. KOESSL: May I be permitted also to make the Opening Statement for the defendant Schubert?

THE PRESIDENT: Yes, go ahead.

DR. KOESSL: May it please the Tribunal. sibility upon the principles pronounced by the Supreme Court of the United States in the YAMASHITA Case and by Military Tribunal I in the trial against the German doctors, concerning the responsibility of military Commanders. authority which granted the defendant his rank amd position, and which included the duty of exercising control over its subordinates. the rank of a 1st lieutenant (Oberleutnant). SCHUBERT was not given any authority wither by his position or by his rank, and, furthermore, that defendant SCHUBERT belonged to no unit nor did he have any authority of command. the rights and duties of adjutants of associations organized in a military way, never included the leadership and supervision of the units subordinate to their commanders. A person who cannot issue orders is by the same token not in a position to stop them, and cannot stop them, even disregarding any sort of coercion or state of emergency. Prosecution had the role of defendant SCHUBERT at the only execution which he ever saw, presented in the light of a supervisory and commanding activity. will demonstrate SCHUBERT's actual functions in order to show the Tribunal the scope and the content of his work.

defendant will assume more significance than in the case of any other defendant. I shall, therefore, take advantage of the opportunity to show that SCHUBERT was assigned to the functions of an adjutant because of the very nature of his career, and that this function actually correspond to the career of an administrative official. sufficiently during the opening speech for defendant OTT. The theory of defense presented there also provides the method for my argument in the SCHUBERT case, in order to create the conditions for examining individual responsiblity by a just standard.

THE PRESIDENT: Any one else ready?

DR. LEID: (For the defendant Klingelhoefer): I don't know whether the Tribunal has the translation of my opening speech.

THE PRESIDENT: We do not have it. I am sorry, Dr. Leid. We have the Opening Statement for the defendant Mathias Graf. Is his attorney here? No? Ruehl. Those are the ones we have ready. Well, of course, most of those have been delivered, but -

DR. HELMS: I am in a position to give the Opening Statement for the defendant Ruehl.

THE PRESIDENT: Very well, proceed.

DR. HELMS: May it please the Tribunal: of Germany volunteered to serve the American authorities. This happened in the consciousness that he would have to account for his political past. But this also happened in the firm conviction that the investigations which he had would be held, could not connect him with any kind of dishonorable or punishable acts. Therefore, he did not hide in the internment camps.

When the defense of the organizations before the IMT called him to be a witness against the Prosecution this was done by him without hesitation. After the collapse he thus got into a circle to which he had never belonged, and he heard of things which he had just heard from rumors, and thus he heard about happenings which he had never known before. with deliberate slaughter of more than one million defenseless men, women and children. What is it that brings this man, who has been brought up in simple surroundings, who has been a conscientious student soldier and official but not a fanatical National Socialist--what is it that charges him with murder? Where is the proof of his guilt?

The Prosecution has not answered this question. It wants to bring men into court, men who have committed murders, crimes and other inhuman acts. Everyone of the defendants held a leading position or a command post in an extermination unit. Each had the power to order executions by virtue of his position. See page 35 of the Opening Statement.) All had ranks and positions which included the power and the duty to control their subordinates. (Page 36 of the Opening Statement.) Not one of these criteria applies to the defendant Felix Ruehl. of evidence. A glance at the Indictment and at the Prosecution's documents will be sufficient. The only documents in which the Tribunal will find the name of Felix Ruehl are his own personal papers and his own affidavit. He is not mentioned in any report, neither as a superior nor as a subordinate, and no where is any reference made to him. Many of my colleagues had to present arguments of a legal and political nature which shall serve to solve the problems which cannot be ignored in these proceedings. I will be able to second them without having to lay claim to them. Many of my colleagues, if not all of them, will have to show factual proof refutes the contrary statements of the Prosecution and which reduces them to a sound basis on which alone a just verdict will be possible.

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I will be in a position in the first instance to refer to the Prosecution's own documents and will only have to contribute to a very limited extent to their explanation and their correction, finally, many of the defendants may have to state personal reasons as extenuating circumstances which make their actions and their responsibilities appear in a different light. nothing to tone down or to extenuate. He has nothing more, and nothing less, to contribute to the material for the proceedings than the decent attitude of a mar who served where he was asked to servea service which was neither dishonorable nor criminal. belonged to Sonderkommando 10b within Einsatzgruppe D. This unti is mentioned once under Figure 9 C of the Indictment, where he is charged with having murdered Communists and Jews near Czernewitz. The defendant Ruehl did not at any time lead this Sonderkommando or any of its Teilkommandos. Even the Indictment does not contain such an assertion. It merely mentions the accused as one of the officers of this Sonderkommando. Evidently even the Prosecution takes it for granted that every officer and soldier does not automatically become a criminal if punishable offenses are committed in his unit. Therefore, it endeavors to establish as close connection as possible between the defendant and the command of this unit. This is the only explanation for the Prosecution's reference, in its opening speech, to my client as deputy of the late Kommandofuehrer Persterer (page 24), whereas on its map and charts it shows him correctly as an ordinary member of this unit.

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Court2-A Case 9 Ruehl was neither Persterer's deputy, nor his next in seniority.

In particular, it will be shown that in the Kommando, Ruehl did not even work as an export who had the opportunity to come in touch with executive measures; that he was, however, an expert for matters of personnel and economy, that is, a so-called administrative officer a position which could not concern itself with matters which constiute the object of the indictment. among the last of the defendants. There are one or two other ordinary members of a Kommando sitting together with him in the prisoner's dock. With regard to his position as administrative officer, and in view of the period for which he had been assigned to that post, he is actually the last. the Prosecution (page 25 of the Opening Speech), whereby it may be impossible to prove that some of the defendants ordered crimes or directly participated in them, beyond that, he is convinced that his activities do not connect him with any other form of participation in war crimes and crimes against humanity, within the scope of Control Council Law No. 10. NSDAP, which is the SS; and 2) a member of Amt IV of the Reich Security Main Office, the Gestapo. This does not provide conclusive reason for requesting punishment for membership in organizations which have been declared criminal by the IMT. SS and Gestapo is not a punishable offense in itself, - that this applies to groups within these organizations, and that the IMT precluded the punishment of individually innocent members by further reservations.

knowledge of the criminal aims, is punishable. The Prosecution cannot evade its obligation in this issue. that his active membership in the SS came to an end as early as 1939, when the defendant was transferred to the police. Further promotions in the SS were merely adapted to Civil Service promotion as a sort of assimilation of rank. Counter-Intelligence department. Thus he was engaged in work which in every civilized state belongs to the noblest tasks of the police or similar institutions. this defendant, inspite of his limited scope and slender possibilities without exercising influence, without intolerance, arrogance and, above all, without race hatred, assisted by word and deed those whose extermination, according to the Prosecution, was part of his program. This he did in conscious opposition to the National Socialist doctrine with great danger to himself. III of the indictment will not be justified. why the defendant Felix Ruehl in his and my convictions should not find himself before this Court.

THE PRESIDENT: Before we recess we would like to evince the situation as to the Opening Statements which we are ready for this afternoon's delivery. Naturally, this will be of no concern to those attorneys who have already spoken.

Mr. Hodges, Chief of the Translation Section, is here. Will you kindly stop to the podium, Mr. Hodges, so we can ascertain where we stand. It seems from the evidence before us that at the present time we do not have the Opening Statements in the English translated form, of the defendants Sandberger, Seiberg, Steimle, Nosske, Strauch Klingelhoefer and Fendler.

Will you please indictae to the Tribunal Mr. Hodges, what your position is in that respect?

MR. HODGES: I have just delivered to the Interpreters' Booth, all the statements on the part of defense counsel for each defendant, except Sandberger and Strauch. Those Opening Statements have been translated. The stencils have been cut, and they are, to the best of my knowledge, in Mr. Frank's office, Room 580, now.

THE PRESIDENT: Splendid.

MR. HODGES: There are no longer any translation problems with reference to those Opening Statements.

THE PRESIDENT: May I ask the Interpreters here. You have all the Opening Statements yet remaining, with the exception of Sandberger and Strauch?

INTERPRETER: Yes, Sir.

THE PRESIDENT: Well, then there is no reason for delay this afternoon. We will move right along.

Thank you very much, Mr. Hodges.

The Tribunal will now be in recess until two o'clock.

(The Tribunal recessed until 1400) (The hearing reconvened at 1400 hours, 7 October 1947)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Bergold, are you ready to proceed now?

DR. BERGOLD: Yes, yes.

May it please the Tribunal: case is a very difficult one. As it has hardly ever occurred before, the sentiments of the world are against the defendants and want to find them guilty before the proceedings have even come to a close. But in no other case was the wisdom of the law more to be admired which prescribes that every man must be defended, may the crimes for which he is accused be as obvious as they can be. In this particular case the defense can present deliberations which will have to influence the verdict. statement, discuss in detail the competency of the court. I assume that our opinion with regard to this question will be presented in time by the defense. The only point I want to refer to at this moment, is, that these very statements of the prosecution about the competency of the court prove that in this trial the legal situation not only resulting from Control Council Law No. 10, will have to be taken into account but especially that originating from the fact that all actions brought before court in this case have taken place in the territory of the USSR. If this Tribunal is to be an international one - and I do not intend at this moment to assume this without reservations - if any national tribunal should be in a position to punish actions of this kind, regardless by whom they were committed and where, the special legal situation prevailing at the place where the crime was perpetrated must also be taken into account, unless a trial held by a foreign court in a foreign territory must result in depriving the defendant a priori of his pleading justification for his acts.

with special care the fact that the USSR, as I have proved in the case of Milch, did not only not sign the last Geneva Convention, but that she even expressly withdrew from the former conventions, among which were also the Hague Rules of Land Warfare. Furthermore, it will have to be examined whether this did not also constitute a withdrawal from international law which up to that time had been valid without any codification, since otherwise, the cancellation of contracts representing only a codification of the already valid international law would appear as a senseless action which cannot be expected from the shrewd statemen of the USSR. ted by the defendants represent in part, or from the point of view of some of the defendants, only a retaliation for acts committed previously on German soldiers by nationals of the USSR in disregard of international law. This point of view is important for the defense of the defendant Biberstein because his activities with the Einsatzkommando 6 did not begin until October, 1942. Einsatzkommando 6, no more real mass executions took place, that no more executions with the purpose of annihilating Jews or political opponents were ordered, but that the executions which were carried out during the period of his activities were effected only after thorough investigations and that they represented retaliation for crimes and hostile acts for which the perpetrator would have been punished with death by any other state waging war.

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the theory that the prosecution would not undertake the burden of showing the defendants' knowledge of all the crimes committed; nowhere on earth would the law - and those are the trends of thought of the prosecution - impose such a burden on the law. I consider such a statement unusual. If it were to remain uncontradicted in its absoluteness, a fundamental principle of all justice would be destroyed, namely, that every man is entitled to be presumed innocent. A complete rejection of the duty to show proof seems to be inhuman to me, because in this way Law would become an unescapable fate for everybody even for the innocent defendant. facie evidence is recognized, i.e. evidence on the basis of the first appearance of the facts. No legal theory of any civilized nation, however, means by this doctrine to relieve the prosecution completely of the burden of showing evidence which is its duty. It only means, that if a certain complex of facts is known, their first appearance may sometimes speak seriously against a defendant. If, however, the defendant on his proves - also only prima facie - that that special rule of first appearance does not apply in his case, the privilege of the prosecution resulting from the prima facie evidence becomes invalid and the prosecution will again be subjected to the most severe requirements for proving their case by evidence. For this reason, I solemnly protest against the prosecution's pronouncement of that legal principle. One must not, because of the especially serious indictment in this case, abandon the established rules for adjudication. There is a great temptation for any simple mind to deal tyrannically with accused tyrants. But just democracy demands that such temptation be resisted, for a democrary which abandons only one of its principles, and were it only temporarily, is already on the dangerous road to the abyss.

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prosecution's onus probandi means, that it will have to prove separately and for his particular case, that such mass executions constituting a crime against humanity happened, namely shootings without any proceedings, for the mere reason that the victims belonged to a certain race or had a certain political conviction. The defendant Biberstein violently denies that shootings of that kind took place while he was serving with the Einsatzkommando 6. seems to me just as fatal as the complete rejection of the onus probandi. In the case of the defendant Biberstein, the prosecution was in a position to present only one real document of evidence, namely the affidavit of the defendant Biberstein himself. This affidavit was written in a way that at a first glance, an incrimination of the defendant Biberstein could be deducted from it. excerpt from the total statements of the defendant Biberstein. Biberstein gave a more detailed statement once before at Eselheide. During the interrogations preceding the drafting, of the two affidavits, the defendant stated in detail that he never took part in a criminal execution. He also stated that all executions which were carried out during his activities, were effected only after thoroughly conducted proceedings, during which the defendants had confessed all their criminal deeds, usually murders of German soldiers. Those exonerating statements were, however, not incorporated into the affidavit. Attempts on the part of the defendant to the effect to have his exonerating statements incorporated in the affidavit were - as far as I know - rejected with the misleading and only seemingly satisfying explanation that some other time and at some other opportunity the defendant would be in a position to submit his reservations and explanations. I am calling such an explanation misleading because any court is skeptical against later attempts by a defendant to amend statements and is liable to accept as truth only the first statement.

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Finally, the defendant was not even informed, when the affidavit was taken down, that it would be used as evidence in proceedings against him. It has been neglected, to draw his attention to his basic rights to refuse to testify against himself, which basic rights exist in criminal proceedings of the world, especially however, in the United States. The defendant was misled into assuming that he was making this statement as a witness, because he had also been asked to take an oath before.

THE PRESIDENT: Dr. Bergold, excuse me for interrupting. You, of course, may proceed with your arguments, and I don't want to limit you in saying what you intend to say, but I just want to suggest that possibly that what you are giving us now is more in the nature of a final argument, rather than an outline of what you intend to produce.

DR. BERGOLD: Your Honor, if you will continue to listen to me, you will understand why I make this explanation. It is not a final plea, but an opening statement because it refers to the coming evidence.

THE PRESIDENT: Proceed.

DR. BERGOLD: The German defendants are completely uninformed about their rights in the American proceedings which in themselves are entirely unfamiliar to them, so that the least that could be demanded from justice would be to explain things to those people before proceedings are started.

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are presented to the court and on top of it taken out of their contents, if, furthermore the attempts of the defendant to make corrections in the wording of such an affidavit, are rejected with the misleading explanation such corrections could he made later on, and if, in addition to that, a defendant is not told that according to the rules of procedure he is entitled to refuse statements incriminating himself, I cannot refrain from stating my conviction that such procedure cannot be called fair any more. defendants, I received the impression that the manner in which affidavits are obtained from the defendants is a rather dubious one. The grievances which I have uttered here have been raised exactly in the same way and to the same extent by the defendants in all cases handled by me. If, however, as in this case, the prosecution presents only one real incriminating document, namely an affidavit obtained in such a manner from the defendant, the limit is reached and it becomes the duty of the counsel for the defense to point out those procedures and to raise his voice in warning and complaints. Tribunal I had a controversy with the Honorable Justice Jackson. At that time, I objected against the procedure of the prosecution to present only the incriminating parts of a large document, and to leave out the exonerating parts, which would have neutralized the incriminating ones. I pointed to article 160 of the German Code of Criminal Procedure and to the corresponding articles of the Austrian Code of Criminal Procedure where the law expressly stipulates the Prosecution's duty to gather also exonerating evidence and to submit it before the court.

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The Honorable Justice Jackson replied to me that this could not be demanded, he could not serve two masters. Nevertheless, the International Military Tribunal instructed the Prosecution in such a case to present the document in full, i.e. including the exonerating parts and that from the start, without having been asked by the defense to do so. Only this wise ruling by the International Military Tribunal, a precedent for our case, is in accordance with justice. The point is not whether or not to serve two masters. We all here serve only one mistress, namely the truth. She is always the same. But is truth not in danger if affidavits which were obtained under such circumstances and with such restrictions are submitted? I do not hesitate to state that such an affidavit, if it is the only recall incriminating evidence against the defendant has no real and admissible value as evidence. other cases, as far as I know them, the prosecution was in a position to present objective evidence against the individual defendant and I prefer to conduct my defense without making trouble. The special situation here forces me to state my objections openly before you. You may be convinced that I have deliberated very seriously before I come out with all this. But who can go on keeping silent if he really wants to fulfill the duties of the defense? The duties of the defense are the duties of democracy to which all of us here have to live up. of the same sort as the men accused here. Only for a very short time, and against his own will, was he leader of an Einsatzkommando, and from the very beginning, when he received the command to take over the Kommando he objected to that order. He did not do that because he knew about the terrible things that had happened previously with Einsatzkommandos.

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at the Reich Ministry for the Interior. I have already stated that during his time of duty the executions were carried out on the strength of a kind of sentences in certain cases for clearly defined actual crimes. If all this is taken into consideration, there is no proof for the defendant's guilt. Neither can be hold responsible for the manner of the procedure. There were regulations for the procedure and he had to observe them in order not to become liable to punishment himself, so that in this connection - as I am going to point out later on - the sentence of the Supreme Court in the case of Mac Intosh must be considered. It is obvious that, in view of the special position of the defendant, not only the incriminating parts of his statement are to be used as a basis for the verdict. Such a statement must be used in its entirety, and in favor of the defendant it must also be considered what he has to say for his exoneration, especially if the exonerating elements will present an entirely different picture of his action than that which the prosecution wants to depict. for many years. This fact alone makes it seem likely that the defendant could hardly have been a slaughterer of human beings and that he, more than anybody else, could become convinced that the executions carried out during his activities were justified and were taking place on the strength of an adequate and sufficient procedure. All this is much the more important since I am also going to prove that during those times of war serious crimes were committed against German soldiers by the Russian population, which could not find your approval either, gentlemen of the Tribunal; the legal principle that two wrongs do not make a right cannot be applied to this case, since the point is to prove that a death sentence has been pronounced against wrongdoers.

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believed that he did not have to have a bad conscience. He was with the Kommando far such a short time that he hardly remembers the people who were there with him, and especially does not even know their whereabouts. This makes it difficult for the defense, so that the swiftness of the proceedings is harder on us than on other defendants. I therefore ask the Tribunal to stay favorably inclined towards me and not to hold it against me if, against my will, I may perhaps be compelled to submit some evidence somewhat belatedly. Situations are often stronger than the best of will, I am, however, fully confident that the High Tribunal will be just in every respect.

THE PRESIDENT: Very well. Dr. Hoffman, you may proceed.

DR. HOFFMAN: Dr. Hoffman for the defendant, Gustav Hosske. blems, and I am convinced, that each one of them has given them profound and long reflection. these arguments.

I may point out the case against POHL et al. and state, that there may be fundamental difficulties prescribing a kind of Defense which is altogether different from the usual one.

Also in the case against POHL et al. the work of the Defendants had been brought into connection With inhumane acts and cruelties. However, in that case inhumane acts and cruelties developed from facts of the most various kind, and several of the Defendants knew nothing of their existence, even less participated in them. just as no one who is present in this room wants to lose his. by truth and Justice. advantages and disadvantages in going so far. such a murderous order as the one in the center of the Prosecution's Indictment. others by myself committing wrongs. spect, will also once be judged.

In this it is better to see one's own weaknesses, before one goes to Law oneself to ask for justice.

of the Defendant NOSSKE: He rail confine himself exclusively to what he can state out of his own personal experience. and what were his reactions to it. afterwards till the end of the war. into consideration the personal fate of the Defendant NOSSKE.

DR. MANDRY: Dr. Mandry for the defendant Martin Sandberger. responsible for measures of persecution taken against Jews and Communists, at the Sonderkommando la respectively during the period when he was commander of the Security Police and the SD for Estonia. reports, reports on activities and the situation. These reports are a compilation of individual reports not available in the original of several Kommandos subordinate to the Einsatzgruppe. From these general reports the clear and unobjectionable proof for criminal actions of certain persons can be deducted, For this reason the prosecution, taking three affidavits given by my client as a supplement in connection with these reports, drew the conclusion that SANDBERGER is guilty in the sense of the indictment. prosecution.

1) SANDBERGER's assignment in the East was effected upon order of his superior authority and constituted a war assignment in enemy territory.

He was subject to the laws of war like any soldier. It had become impossible for him to shun the carrying out of the orders given to him.

The verdict of the IMT (Page 16514 of the German transcript) takes this into consideration. The reasons on which the sentence is based with regard to this point are as follows:

"During the war a member of the Security Police and SD did not have a free choice of assignments within that organization and the refusal to accept a particular position, especially when serving in occupied territory might have led to serious punishment." committed under the compulsion of the laws of war in enemy territory and under the compulsion of orders and control measures issued by the superiors HIMMLER and HEYDRICH, the Amtschefs STRECKENBACH and MUELLER at the RSHA, as well as by the higher SS and Police leaders for Northern Russia (the SS Obergruppenfuehrer and generals of the Waffen SS PRUETZMANN and JECKELN) and also especially by the chief of the Einsatzgruppe STAHLECKER, SANDBERGER's immediate superior. I shall prove that in carrying out the orders he received STAHLECKER developed a great amount of energy and that JECKELN was just as hard and unpredictable a superior, who would have broken the slightest resistance with all means of the power at his disposal.

II) propaganda declared time and again before the beginning of the Russian campaign and during it that, in keeping with the ideology of bolshevism, the Soviet Union was on principle aggressively inclined, that it represented an acute danger for the life of the German people and the entire Western world, that it had planned an attack on the German people and that that was a matter of life and death for Germany. The Defendant who had been a National Socialist since his 20th year believed in these statements.

when the campaign in the East started: The Soviet Union had not joined the Hague Rules of Land Warfare and the Geneva Convention: neither did they feel bound themselves by other custons of war. For that reason the general international rules of war would not apply for the Germans either in their war against Russia.

III) STAHLECKER with the High Command of the Army Group North my client was destined for an assignment in Estonia. He was attached to the 18th Army. When he arrived at the territory of the assignment given to him, he was told the following: During the time of the occupation of Estonia by Soviet Russia in 1940/41 many Estonian citizens had been killed by Soviet authorities without any justification and without any proceedings; several tens of thousands had been arrested and had been removed from Estonia against their will. The entire property in real estate as well as the greater part of commerce and industry had been expropriated and the former liberty of the Estonian population had been destroyed. for years the republic of Estonia had prohibited communism by a law and that any communistic activities had been liable to serious punishment. He furthermore learned that the government of the Soviet Union had instituted an organization in Estonia, which had orders to carry out sabotage and espionage after the Red Army had withdrawn from Estonia and the country was occupied by German troops. The entering German troops were especially impressed when they learned that before evacuating the city of Derpat in the middle of July the Soviet authorities had shot all political prisoners of the Derpat prison, 250 of them, in the court of the prison. population, numbering approximately 4,500 persons, in general had gone over to the Soviet side during the time of the bolshevist occupation.

They were holding important offices in key-position of the Soviet state and party machine, especially in the secret police, the NKWD. the Jews in Estonia confirmed to the defendant all that he had been told at the beginning of the campaign in the East by the Fuehrer order and by the motivation for that order given him by his superiors. Especially in Estonia it was more evident than any where else that the Soviet Union had violated international law, the national laws of Estonia and the laws of humanity in general.

IV) of assignment seemed necessary for the protection of the territory assigned to that Kommando. Upon request of the Army High Command and upon order of chief of the Einsatzgruppen STAHLECKER its foremost task during the first weeks was to attach itself with Teilkommandos to the fighting troops and mostly to take care of tasks of the intelligence. In addition to that the field of activities of the Sonderkommando included the prevention of sabotage and espionage, which was carried out especially by Jews and communists. had never been active in the service of the police. He therefore had no experience in this field and personally was not especially eager to do that kind of work. His former activities in the SD never included andy police work, but during his membership in the SD he was occupied with making reports about German spheres of life. statements about the contencts of those reports, to which I refer herewith. perience of my client were in the field of political intelligence and in exploiting that for politics and administration, I will prove in detail that the authorities of the Wehrmacht as well as the official authorities of the now German civil administration and the Estonian authorities of the re-instituted sovereign administration claimed a great deal of the time of my client for their purposes and tasks.

He received especially trained, and indepently working specialists for the special departments IV and V, i.e. the Secret State Police and the Criminal Police. They were given special independence in their work. SANDBERGER's activity in connection with them was limited to inspecting their work. Teilkommandos were given full independence and responsibility of their own. The superior authorities, especially the chief of the Einsatzgruppen STAHLECKER had ordered that expressly. My client was anxious to respect at all times this responsibility and independence of his subordinates.

V) arrests and trasfers to camps and in a number of special cases in executions. In accordance with the above-mentioned orders of the chief of the Einsatzgruppen, the leaders of the Teilkommandos were responsible for the decisions in each individual case, and later on, after everything was centralized in Reval, the leaders of the departments State and Criminal Police were responsible.

While the fighting in Estonia was still in progress my client's own proper activity in this sphere consisted mainly of drawing up regulations in the frame work of the existing orders on the special jurisdiction in the Barbarossa territory according to the followingprinciples?

a) Individual statement of guilt and legal hearing: into the actual facts and statement of the guilt and without the accused having been given the opportunity to defend himself.

b). Problem of collectivity.

c). Executions were only permissible if the person concerned had been convicted of and had confessed to have perpetrated sabotage or espionage or if during the years 1940/41 of the Russian occupation he had committed crimes against the life of any Esthonian citizen.

d). The execution of all measures against the population and connected with the Security Police was effected by the Esthonian police and under the control of a member of the Sonderkommando, In doing so any harshness not necessary for the purpose of the measure should be evaded in its execution.

VI) in 1941, this did not happen under the responsibility of my client, but under the exclusive responsibility of STAHLECKER.

In order to be able to report as executed STAHLECKER's order, to free Estonia of the Jews immediately, however, without personally having to order the executions of Jews, finally my client in November 1941 had all remaining Jews in Esthonia brought from the internment camp at Revel to a camp near Pleskau.

Pleskau is situated outside Esthonia on Russian territory, but at that tine it belonged into the office district of my client. of 1942 in Pleskau, does hot come under the responsibility of my client, because it had been personally ordered by the Higher SSand Police Leader Jeckeln, who was the competent legal magistrate at the same time, pad to the execution of which a subordinate of my client had been forced, without my client having been present or having been informed of its execution. my client under the pressure of the orders given, but he had then retarded far beyond the time given already for the execution of the Jews. admissible according to principles of international law, analogous to the internationally approved measure of interning enemy aliens. not take actively part in the extermination of Judaism. As to the criminal responsibility concerning the internment of the Jews as caused by my client, it has to be considered that Sandberger as a National Socialist official had sworn an oath of allegiance to Adolf Hitler and to his superiors as appointed by him. Furthermore, he felt bound to his military duty of obedience and he had to decide either to contribute to the ordered extermination of the Jews or on his own initiative to alter and to interpret the measures ordered which at least for the time being saved the Jews from immediate death. There was no other possibility for my client in this terrible state of coercion. In this connection I shall extensively enter on the problem whether or not an open refusal to obey orders end the consequences this would entail could be expected.

the Einsatzgruppen in general and, with certain exceptions, in his Kommando, But there was no possibility for him to prevent these events, for they had been ordered by his superiors, If he would have taken any stand against these orders of his superiors and measures to prevent their execution, the consequences would have been that his superiors would have ordered his death, without anything having been altered in the events. in the East, respectively the Security Police and. the SD, were so Mechanical, that if one leader was lost, automatically a replacement took his place, who then had to see that the order was being immediately executed. My client was of the opinion that his successor would have executed these orders without any reservations. several tines the disapproval of his superiors in the Security Police, which I will prove.

As to point No. 3 of the indictment (membership in criminal organizations) I will show, that according to the IMT Verdict the prerequisites for sentencing my client are not given. Though Sandberger was with the SD after 1 September 1939, first of all he was only active in Department I of the RSHA. When later on in 1941 my client joined the Osteinsatz, he was ordered to do so, and it was not possible for him to get out. The same applies for his assignment in Offices III and VI of the RSHA. client I shall bring evidence by submitting documents, witnesses and statements of the defendant himself, whom I intend to call to the witness box.

THE PRESIDENT: counsel for the Defendant Seibert.

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DR. KLINERT: Deputy for Dr. Gawlik for Seibert. the case against the Defendant Seibert will be based on the legal principles laid down already by Tribunal II in its judgment in the Milch case and also by t he Supreme Court in the Yamashita Case. plained by me in my Opening Statement for the Defendant Naumann: 1. Did the Defendant Seibert personally take part in executions? 2. Were these carried out under his direction or under his orders? 3. Did he have any knowledge of the executions before they were carried out? 4. If so, did he have the power or the opportunity to prevent them or to stop them? 5. If this is also the case, did he fail to act and did he in this manner become a particeps criminis and accessory to the act? ad 1.) Seibert did not kill any of the persons mentioned, in the Documents presented against him. While he belonged to Einsatzgruppe D he never served in an Einsatz- or Sonderkommando, which alone had to carry out the executions. But just as little did he supervise the executions or participate in them in any similar manner. Such tasks were never assigned to Seibert in his capacity as Deputy to the Chief of the Einsatzgruppe. This is already impossible for the simple reason, that he never was Ohlendorfs Deputy. task it was not to carry out executions. Therefore he also never received orders for the carrying out of such measures, Nor was his field of work connectedin any way with such tasks. Seibert had been assigned to the Staff of the Einsatzgruppe only as Chief III (Leiter III).

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In this capacity he had to make the reports. In all essential points this was the same kind of work that Seibert had to deal with, when he was in Amt III of the Reich Security Main Office in Berlin; this was also the reason, why he was assigned to the Einsatzgruppe. This task occupied Seibert's whole time, which is easily understandable in view of the enormous size of the area of the Einsatzgruppe. wise had nothing to do with the executions he is charged with. These tasks included especially liaison with the Army. Owing to this activity Seibert, acting for Ohlendorf, signed the reports to the High Command of the 11th Army, dated 9 October 1941 and 16 April 1941, which have been submitted by the Prosecution as Documents NOKW-629 and 628, Exhibits 159 and 160. It cannot be understood, how the Prosecution wants to deduct from the text of these Documents Seibert's responsibility for the measures mentioned in the documents. Ad 2.) orders for the carrying out of these executions. Nor did he ever transmit any orders to the Einsatz- and Sonderkommandos under his command for the carrying out of these executions. He could not do this for the simple reason, that Seibert was not a Chief of the Einsatzgruppe D, who was invested, with the power of command; moreover, he himself never received such orders. I have already emphasized, that Seibert was merely specialist III in the Staff and entrusted with the writing of reports. Seibert had been assigned to the Einsatzgruppe only for this purpose. This follows from the mere fact, that, as I shall prove, Seibert never had anything to do with the executive, either before or after, not even as regards information. satzgruppe D. To this extent the statement of the Prosecution is incorrect, as I shall demonstrate in detail in my Case in Chief. As far as any doubts on that point might be possible on the strength of the documents submitted by the Prosecution, I shall clarify in my Case in Chief, that Seibert never was deputy of the Chief of Einsatzgruppe D and especially never commanded Einsatzgruppe D in Ohlendorf's absence.

gruppe neither by Ohlendorf nor by any other superior agency nor had he ever been entrusted in practice with the functions of such a position. Seibert could not hold such a position for the simple reason, that he was not the senior Chief with the Einsatzgruppe. In Ohlendorf's absence the Einsatzgruppe was led by the individualChiefs of Kommendos for their areas. Ad 3.) dommandos under Einsatzgruppe D carried out executions. However, this knowledge is not in itself sufficient to establish Seibert's criminal responsibility. To this extent I refer to my argument in my Opening Statement for Haumann. previous knowledge of the executions he is charged, with. establish criminal responsibility. The Prosecution moreover had to prove that Ad 4.) the carrying out of these orders and to stop them, and Ad 5.)

Already according to the Prosecution's own statement these conditions do not exist. D Seibert had neither the power nor the opportunity to prevent the the executions carried out by the Einsatz- and Sonderkommandos under Einsatzgruppe D. Not even the Prosecution has asserted this and I therefore believe that the Prosecution will so far agree with me.

In any case the Prosecution had to show what the Defendant Seibert could do and would have had to do to prevent the carrying out of the executions. The Prosecution has offered nothing to that effect.

Einsatzgruppe D was under the Defendant Ohlendorf's command. The execution orders, in virtue of which the Einsatz- and Sonderkommandos acted, were based on orders of Hitler, which were transmitted by Himmler and Heydrich and the execution of which was supervised by these persons.

The Defendant Seibert had a *---*er rank than the Defendant Ohlendorf and was subordinate to the latter Sonderkommandos under him, which were partly commanded by men with a higher military rank than Seibert's.

THE PRESIDENT: The Tribunal will now he in recess for fifteen minutes.

At the request of Sandberger's counsel the Defendant Sandberger will be excused from attendance in Court for the rest of the day.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Counsel for the Defendant Steimle.

DR. LUMMERT (ATTORNEY FOR THE DEFENDANT BLUME): Your Honor, I would like to be permitted to ask the Tribunal whether it would be possible for the Defendant Blume to be excused from the session tomorrow also, because I have to prepare his defense with him.

THE PRESIDENT: The Defendant Blume will be excused from attendance from court tomorrow in accordance with request by his counsel.

DR. LEIS (ATTORNEY FOR DEFENDANTS STEIMLE AND KLINGELHOEFER): Your Honors, I would like to inform you that I have received the opening statement for Steimle yesterday. Perhaps I can continue with the opening statement for Klingelhoefer. trial to establish the actual facts and to examine their connection with the individual defendant. The Defense will also have to examine factors not contained in the evidence of the Prosecution which are nevertheless of great, if not of decisive importance. There would be no difficulty in dealing with this case if one could assume from the beginning that everything contained in the action reports presented here, was done on the strength of the defendants own decision. One can hardly deny that such an opinion would be incorrect. The question arises therefore, what was the cause for the defendants' cooperation in the Einsatzgruppen, the Sonderkommandos and the Einsatzkommandos. The answer to those questions will necessarily constitute a considerable part in the work of the Defense. It will become evident that the defendants were not the instigators, but the executive organs, subject to the inexorable law of a command, not issued by some individual, but deriving from the highest state authority. May I refer in this connection to the statements which I have made already in my opening speech for the defendant STEIMLE. The case of the defendant KLINGELHOEFER is to be judged from the same point of view. He was a member of an Einsatz Court No. II-A, Case No. 9.gruppe without having the possibility to decide freely whether he ever wanted to become a member or whether he wanted to remain one.

His own attitude with regard to this membership was of no importance, he had to fill out the place where he was told to stand. as a starting point when examining how he behaved in this situation into which he had been forced. logical order, first a member of the Sonderkommando 7b, deputy chief of the Vorkommando Moskau, furthermore, leader of a smaller Vorkommando and finally member of the Gruppenstab of the Einsatzgruppe B. From about the middle of the year 1941 until December 1943 he was active in the Einsatz in the East. In the course of my argumentation I will first attempt to explain the actual positions held by the defendant within the Einsatzgruppe B, which Kommando he had led and which were his tasks in connection with that. is concerned, I shall explain that he was assigned to that Kommando on account of his command of the Russian language. The defendant was born in Moscow, the son of German parents, and spent the first fifteen years of his life in that city. This factor was the only reason, why, in 1935, he was taken into the SD. The description of his activites with the SD-sector Kassel will explain the nature of his activities for the period prior to his assignment to the Sonderkommando 7b. It will, however, also show the contents and goals of his field of activities, during the Einsatz Russia, and which in fact, did not change regardless of the positions he held. It does not seem to be surprising that a man who had a command of Russian and had gone to school in Russia, was especially suited for taking over the evaluation of the captured documents for the purposes of the intelligence service. no time charged with the independent command of the "Vordommando Moscow", Court No. II-A, Case No. 9.It will be seen that for a short time only he was formally reported as the deputy commander of that Kommando.

This was caused by the interval elapsing between the date, when the former head of the "Vorkommando Moscow" was recalled, namely Defendant SIX, and the date when his successor, SS-Obersturmbannfuehrer KOERTING arrived. The actual command over "Vorkommando Moscow" for this interval was taken over by the head of Einsatzgruppe B, NEBE, whose offices were located in the same building in Smolensk anyway. I shall produce evidence for the clarification of these organizational circumstances by submitting an affidavit by the Defendant, which was taken down by the interrogator of the Prosecution, Wartenberg, on 17 September 1947. the independent command of the Defendant and which were his duties there. In the course of this it will become clear that the "Vorkommando Moscow" was dissolved about the end of September 1941 and that KLINGELHOEFER was entrusted with the command over a newly formed unit, the socalled "Vorkommando Gruppenstab". The latter was to secure archives for the purpose of the intelligence service in case Moscow was taken, following directly behind the advancing German troops. In order to realize this intention, the "Vorkommando Gruppenstab" was called to Shatsk, where the Army High Command for this sector of the front was stationed. The Kommando remained there inactive until its dissolution in December 1941, as it was out of the question to take Moscow. of Einsatzgruppe B did not effect any changes in the type and purpose of his field of activity. The Prosecution did not produce any action reports for this period which extends to the end of 1943. In the witness stand, the Defendant will, however, give account of his sphere of activities during that time. It will be seen, that although he was incorporated into the organization of Einsatzgruppe B, he was one of those people who had to apply himself to the requirement of the intelligence service on the strength of his special knowledge of the Court No. II-A, Case No. 9.conditions in Russia.

It goes without saying that he was also serving as an interpreter during his entire term of duty in Russia. In spite of these facts, KLINGELHOEFER took part in two executions. The circumstances leading up to and the part he himself played in these events require detailed explanations by himself in the witness stand. Prosecution and Defense will have to screen them very carefully for their real probative value as far as it concerns the Defendant. For it is obvious that owing to the nature of these reports which covered a wide area and were a summary of a multitude of individual reports, errors occurred. They are not alone due to human inadequacy, but can and probably did originate from the generous tendencies of the reporting officers themselves. I know myself to be in concord with the Tribunal, that the Defendant shall only be charged with such acts, in which he actually participated in person and exercised decisive influence.

THE PRESIDENT: Counsel for the Defendant Strauch.

DR. GICK (ATTORNEY FOR THE DEFENDANT STRAUCH): Your Honors, in order to facilitate a better understanding of my defense for defendant STRAUCH, it is necessary to make the following definitions which are of fundamental significance: created in order to protect the territorial gains of the Armies advancing in the East. the Army units.

Consequently, it follows that: 1.) The Einsatzgruppen and Einsatzkommandos were directly subordinated Groups and the Einsatzkommandos under the commanders of the Armies. 2.) Einsatzgruppen and Einsatzkommandos received their orders regarding Court No. II-A, Case No. 9.

3.) Einsatzgruppen and Einsatzkommandos existed only in areas under They were replaced by:

1.) The chief commanders (Befehlshaber) of the Security Police

2.) the commandants (kommandeure) of the Security Police and agencies of the Civil Administration. They had nothing to do with army units. They were agencies of the civil administration system which had been instituted in the East and which were headed by Reichcommissioners and higher ranking officers of the SS and Police for "Ostland". chief commanders lay within the civil administrative sphere. Their activities were exactly the same as those of the corresponding administrative authorities and police offices in the Reich, for example the observation and enforcement of laws and ordinances issued in the respective area under civil administration, such as the collection of political news, the prosecution of criminal offenses etc. structure consisting of six different sections. with the Einsatzkommandos. They operated, as described above, in the advanced army areas. Entirely different persons were used there as leaders who were with their units at the front. was similar. Only in so far did a certain connection of personnel Court No. II-A, Case No. 9.*---*st here, as the chief commanders of the Sipo and SD combined their positions with those of the chiefs of the Einsatzgruppen through a personal union.

But as far as their work was concerned, they had nothing to do with each other, a fact which becomes clear through the following example: the chief-commander of the Sipo and SD Ostland had his headquarters in Riga, that is in the area of the civil administration, although his headquarters as Chief of Einsatzgruppe A was in Krasnowardeisk, that is directly within the Army area. hearing of witnesses and the presentation of documents. Einsatzkommando 2 of Einsatzgruppe A. I shall establish proof that defendant STRAUCH came to Latvia and WhiteRuthenia on March 22, 1942, that is at a time during which these territories already were under civil administration. Einsatzkommando 2, as, in fact, he was not. 1941 in the area around Leningrad. It seems that at that time this was Sturmbannfuehrer PLOETZ. Einsatzkommando 2 merely had a school in Riga for training purposes of the kommando. Their teaching staff comprised one leading and five subaltern officers who instructed one to two Latvian companies. Both, teaching staff and trainees, were exclusively under the command of the Chief of Einsatzkommando 2. Latvia, only for a few days. However, as I shall prove later he was transferred to White-Ruthenia as commandant of the Sipo and SD. Einsatzkommando 2 is erroneous. activities for which Einsatzkommando 2 must be blamed.

fact that Strauch for the period in which he is charged with the responsibility for the incidents as defined in the indictment, cannot even be considered the responsible commander of the Security Police and the SD. Although in the indictment STRAUCH is mentioned on November 4, 1941 as Commander of the Security Police and the SD; he only arrived in Latvia on November 10, 1941, and assumed his duties only from that date on.

Approximately one week after this date, however, i.e. around November 18, 1941, he became incapacitated due to a complicated fracture of his arm. He was replaced by a deputy commandant, a certain Dr. LANGE, who from this point on conducted all affairs entirely independently and without any possibility of interference from the side of STRAUCH, - and who remained in this position until he was formally appointed commander. chief commander of the Sipo and SD. appointed commandant of the Sipo and SD in White-Ruthenia in the meantime. had the same independent position as commander there as Dr. LANGE in Latvia. over the command in White-Ruthenia. He arrived in Minsk on March 22, 1942. Before that he never had been in White Ruthenia. independent and responsible one and is therefore not comparable with a mere substitution during an absence, STRAUCH cannot be made responsible for the events which occurred during the regime of his deputies, not considering the fact that these deputies were never in charge of the Einsatzkommando 2.

and presentation of documents. mentioned in the documents as lying within the area of the commandant of Sipo and SD of White Ruthenia, actually were not situated in that area. Consequently, a connection of defendant STRAUCH with the events that took place in these localities, cannot be considered. Kube-letter of July 31, 1942, submitted by the prosecution - Document 2829, Exhibit 111 - and through hearing of witnesses and presentation of documents prove this letter to be objectively incorrect.

THE PRESIDENT: Counsel for Defendant Fendler.

DR. LEHMANN (ATTORNEY FOR THE DEFENDANT FENDLER): May it please the Tribunal, in the case of the defendant FENDLER the prosecution has referred in all to six of the documents which it introduced into the proceedings. From these documents may be seen, according to the statements of the prosecution, that FENDLER belonged to Sonderkommando 4 b as an officer and during his membership in this Kommando he learned unofficially that executions had been carried out. According to the statements of the prosecution, such executions were carried out by Sonderkommando 4b at places where FENDLER was stationed at that time with this Sonderkommando. a member of the SS and also of the SD and thus considers as proven his membership in an organization declared to be criminal by the International Military Tribunal. guilt under counts 1, 2 and 3 of the indictment. course of the introduction of its evidence that during his membership in the SD the defendant FENDLER performed only duties connected with intelligence and information. Thus, for instance, during the time when Court No. II-A, Case No. 9.he belonged to the SD before the Eastern campaign commenced in 1941 he worked in various offices of the SD, dealing with the protection of industrial plants.

After he had become a candidate for executive rank in the autumn of 1940 and studied law, he was assigned to field duty in the summer of 1941 on the basis of his qualifications. He was assigned without any action on his part to Sonderkommando 4 b which had then been newly formed in Einsatzgruppe C. At that time FENDLER only knew that his Sonderkommando was to be an advance Kommando of the Einsatzkommandos of Gruppe C. He was not informed of the detailed orders which the officer in charge of the Kommando had received. Above all, he had no knowledge of the fact that Einsatzgruppen and Einsatzkommandos which had executive powers would have to perform deeds which would violate the laws of warfare and would include inhuman acts. He was even less aware that they were to take part in the so-called "final solution of the Jewish question". As early as 1938/9 FENDLER was engaged, with so-called Einsatzgruppen, in the occupation of the Sudetengau and Czechoslovakia and took part in the establishment there of offices of the SD. He could therefore only assume that on the Eastern front the Einsatzgruppen would have the same duties, as the only expert in intelligence service he was appointed expert adviser of Section III i.e. intelligence expert, in Sonderkommando 4 b. The intelligence section (Section III) within Kommando 4 b had no material connection whatsoever with the executive (Section IV). FENDLER's duty as SD-expert was to secure all intelligence material found in the occupied area and to screen it for relevant information. He also had to make reports on the economic, cultural and political conditions and on the morale of the population. He never at any time worked on the executive side either in accordance with orders or voluntarily. June 1941 until the 2 October 1941 on the Eastern front, therefore some of the documents presented in the case against him which refer to a later date, cannot incriminate him.

connected with intelligence and information, and as the defendant FENDLER in all the time he was in the SD until the end of the war never performed Counter-intelligence duties for the Executive (Gestapo), he knew nothing of the criminal character of the SD as determined by the IMT verdict. Furthermore, under them existing regulations, FENDLER was not able to leave the SD during the war. It can therefore not be said that FENDLER voluntarily remained in the SD during the war. Nor did he belong during the war to that group of persons in the SS declared to be criminal by the IMT verdict. and witnesses.

THE PRESIDENT: Counsel for defendant von Radetzky?

DR. RATZ (for the defendant von Radetzky): May it please the Tribunal: cases they may not show that the defendants gave explicit orders for the crimes committed by their Kommandos or that they directly participated in the same; however, the prosecution maintains their guilt to be just as great. of the defendant v. Radetzky, who was into the proceedings only subsequently included and of whom the Prosecution will not be able to prove that he gave orders for the crimes perpetrated by his Kommando, nor that he participated in them directly. However, I am not only convinced that the defendant's guilt is not equally great, but that the defendant's criminal guilt does not exist at all, as shall be proven by full evidence in the course of those proceedings.

I trust that already the first sketch of the case v. Radetzky, which I want to outline now to the Tribunal, will make the defendant's nonguilt already sufficiently clear.

When in 1939 Hitler's insane policy bore its first evil fruit, the defendant v. Radetzky was one of the first unfortunate ones who had to taste that fruit. On 15 October 1939 a treaty was concluded between Germany and Latvia, according to which the Baltic Germans Were to be uprooted from their native land and to be resettle in the Reich. From his hometown Riga, where he worked as Prokurist of an export firm, Radetzky came to Posen, together with numerous compatriots and fellowsufferers; there he was active at the advice Bureau for Baltic German immigrants and helped to ease the lot of many a resettler who felt already disappointed in some respects. Already in 1939 he received a second blow. On the occasion of a visit to Posen, Himmler at that time expressed his great displeasure at the independent existence of a representation of the Baltics in the form of their Immigrants Advie Bureau and ordered the transfer of that bureau to the Bureau for the resettlement of ethnic Germans, on SS outfit.

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The staff of the immigrants' bureau, for their part, accordingly were incorporated into the SS; obviously this transfer was not effected for political or ideological reasons, it was not even voluntary; it was a purely organizational measure, due to Himmler's mania for unification. Yet another mania played a part in this, the uniform; it was thought that the staff of the Immigrants' Advice Bureau would gain in prestige and it would raise their morale all round, if they were dressed up in SS uniforms. The truth of those facts is proven by the following: Contrary to all tradition and regulations, these men did not have to produce proof of their Aryan descent; the very day Radetzky was received into the SS, he was promoted to SSUntersturmfuehrer, equivalent to the rank of a Lieutenant, without any examination as to his personal and professional qualifications. Radetzky subsequently were the SS-uniform, sometimes with and sometimes without the insignia of his rank, as the occasion demanded. Thus Radetzky belonged to that special category of "wearers of the SS-uniform", that could justly be termed the Quasi-SS. the preparations for the campaign against Russia in 1941, Radetzky had not been called upon - he who not only hailed from the East and had command of the Russian and other Slav languages, but also was an expert on conditions in Russia. Pursuant to the Decree No. 3 for the securing of labor for tasks of special political importance dated 15 October 1938, he was conscripted in May 1941 for service with the Reich Main Security Office. interest; hereby, the following points were essential, in general, and also concerned Radetzky: 1) this was a compulsory conscription, taking place without, and mostly against, the will of the- person concerned, 2) no employment contract was concluded between the person concerned and the now employer, but his previous employment was maintained; this follows, on the one hand, from the legal provisions which are explicit, but furthermore from the fact that the person in question, in our case the defendant v. Radetzky, did not get any salary at all from his new employer, the Reich Main Security Office, but merely a small "indemnity for personal expenses", 3) apart from the lack of voluntariness, a particularly typical feature of the liability for emergency service consisted in the usual transfer of the person liable for emergency service into a professional atmosphere which was quite unknown to him, so it was something quite common if, for instance, a manufacturer of picture frames or the professor at a girls' school became liable for emergency service as a police sergeant.

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So the export merchant from Riga and former Latvian citizen v Radetzky came to the Reich Main Security Office, without having contributed to this fact by his free will even a single time in the chain of the facts that had caused this effect.

v. Radetzky came first to the border police school Pretzsch and, already after some weeks, in July 1941, to the Sonderkommando 4a set up at Schmiedeberg. v. Radetzky was not a specialist in the field of the Security Police or the Secret State Police; he had, in this respect, as little notion as any other ordinary citizen, he had even less any notion because lie had been a foreigner up to 1939; but v. Radetzky knew Russian and other Slavic languages, besides, and particularly, he was well informed about the Russian country and people; in addition, by virtue of his intelligent and distinguished objective manner, he was particularly gifted for initiating and cultivating relations, for observing correctly, investigating and penetrating human beings, circumstances and events. v. Radetzky became, therefore, with the Sk 4a, he went on with this task.

What is, then, meant by SD affairs? was: to safeguard the back of the fighting army, consequently to secure the rear area by police supervision, but, in addition, to improvise the war occupation of the areas from the standpoint of police and administra tion, until the occupying power could organize a proper administration.

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The fact that the Einsatzgruppen and their individual units had actually this task, follows without difficulty, from careful reading of those parts of the so-called reports of events that were omitted by the Prosecution in their document books. Accordingly, it was part of the tasks of the Einsatzgruppen, 1) to study the economic, social and political conditions of the country and to elucidate the structure of the state and the party machinery of the enemy from the archives and the files of the enemy; 2) to observe the state of mind and the attitude of the population and their readiness for collaboration with the occupying power, furthermore, to investigate the enemy propaganda activities and the activities of the resistance groups and partisans and to report about these points to the central authorities of the State; 3) to ward off and to fight partisans who were in well-organized units or acted individually. all these points of view and tasks in a clumsy way as an occupying power. The section concerning observation and report according to what I just said, was "SD matter", and the field of the defendant v. Radetzky's activities was here. With Einsatzkommando 4a he followed the combat troops, the 6th Army, in their advance into Russia, but not as a commander or participant in the so-called executions, but as an expert SD-affairs. His special task was the safeguarding of important documents and flies of administrative authorities and institutes, the compiling of reports concerning agriculture and industry, the food situation and the existing conditions in the self-administration of the communities. It would be absurd if one wanted to maintain that such an exceptional person as v. Radetzky, a man whose mother tongue was German and who at the same time was fully conversant with the Russian language and conditions, would not have been employed for these purposes, or that the German Army leadership would not have been interested in the economic conditions, the food conditions, and the conditions concerning administra tion in the occupied territories.

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pert qualifications of the defendant v. Radetzky. After he had proved him worth also in practical administrative work, such as organizing of the food distribution for the population, he was detailed as early as July 1941 to the AOK 6 as liaison officer, namely as liaison officer for the Sk 4a to the Army and liaison officer of the Einsatzgruppe C to the Army Group. the defendant pursued. The Tribunal will surely be astonished to learn, among other things, that it was v. Radetzky, against whom such severe indictments are brought, who was mainly responsible for averting a famine from the town of Charkow which was only 12 kms behind the front lines. Furthermore, I hope it will be proven to the full satisfaction of the Tribunal that the defendant v. Radetzky never participated in the dreadful executions, and that he also never was deputy to the commander of the Kommande. The latter may already seem evident now.

if one considers that v. Radetzky never got any significant training and education as an officer of the police or even as an ordinary policeman; therefore, he was definitely not qualified in this respect.

The further employment of the Defendant v. Radetzky is along a straight line too, and as a fact it proves more than all the statements made by witnesses and in documents, what he was found to be qualified for, for what was suitable and for what he could not be used. Since the summer of 1942 he was a liaison officer to the 2nd German Army and to the 2nd Hungarian army. In 1943 he was a liaison officer to the 8th Hungarian army corps and to the 2nd German army. On account of his knowledge of languages and his vast and profound knowledge of the whole conditions in the Russian territory v. Radetzky was transferred to Amt VI of the Reich Main Security Office by the end of 1943; up to that time, as has to be stressed expressly, he had not belonged to Amt VI of the Reich Main Security Office out to Amt I. As will have to be proven, the defendant had tried already numerous times to get a release from the straight-jacket of his national emergency service and to be transferred to the combat troops of the Army. He did not succeed, though he succeeded in repeatedly getting long leaves, and he furthermore succeeded in being less esteened as an expert; ultimately he was released from the immediate service in the Reich Main Security Office and he was being employed for further tasks of an informative nature. Then he once again became a liaison officer, namely with the Russian volunteer army of General Wlassow, which was no longer to taken seriously. There he prevented further follies and he caused General Turkul to surrender with his staff to the approaching American troops.

legal way, was driven out of his Baltic country. Then, without his will, he passively drifted into the claws of National Socialism. His characterization will be completed by describing how he fought for the rescue of his companions who were endangered by the racial and other basic principles of Nazi idealogy, opposing these very principles and thus endangering his own safety, and how he consequently gained grateful friends. once more to the "theory of individual responsibility," which the prosecution developed in the Opening Statement: the activities of a Sonderkommando is sufficient a reason for the establishment of the criminal responsibility of a defendant, because each defendant had the authority to order executions or to prevent executions. But Defendant Radetzky never possessed such an authority. This could only be assumed if the defendant would have been the commander or deputy commander of

Sonderkommando 4a at one time or another, which actually never was the case. It is common knowledge that in military affairs there is no such thing as an authority over one's superiors, but only an authority over subordinates. Of course, there is a limited possibility to offer resistance to orders from military superiors or to cause them to change or withdraw their orders, Everybody familiar with military affairs knows well that such possibility decreases rapidly in direct proportion to the grade in the military hierarchy on which such a controversy may occur. Whereas, for example, a general may well be at variance with orders from his superiors and may express his counter-proposals in a courteous and diplomatic manner and, if necessary, even plead illness in order to evade the execution of an unsavory order, this was completely Impossible for a man of Defendant Radetzky's military rank.

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For him contradiction or opposition would have meant a certain danger to life and limb. Such considerations are, however, totally unnecessary in connection with Defendant v. Radetzky and there is no need to plead, perhaps, that the defendant incurred no criminal guilt because he could not be espected to oppose criminal orders given him. For Defendant v. Radetzky never received or carried out an order for execution nor did he ever assist in any way in the carrying out of such an order. This leaves a mere knowledge. I believe I am in a position to state that it is already an established principle of the American Military Tribunal that criminal responsibility cannot be based on a mere knowledge of crimes.

Accordingly, trusting the Tribunal's justice, I hope to invalidate the charge brought against the Defendant v. Radetzky.

THE PRESIDENT: Counsel for the defendant Graf. You may proceed,

DR. BELZER: (Attorney for the Defendant Graf) May it please the Tribunal, the outside appearance of this case is marked by lack of space. The dock is terribly crowded and the seats of the counsels for the defense have grown, so to speak, into the tables of the judges. To whatever estent I feel personally honored to be seated at the table of the judges, so to speak, I must all the same say that at least this one place could have been saved if the prosecution had chosen the men whom it wanted to bring before the Tribunal in connection with the Einsatzgruppen from the same point of view which it maintained in the indictment and the opening statement. The inclusion of the Defendant Matthias Graf into the indictment of case 9 is a serious mistake of the prosecution.

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Mentioned in the indictment at lest defendant is:

"Matthias Graf - (2nd Lt) in the SS, member Einsatzgruppe C." defendants, as officers or staff members of one or more Einsatzgruppen or subordinate units, had committed the crimes specified in the indictment.

this statement on page 1 by saying that the defendants had been commanders and officers of special groups known as Einsatzgruppen, that each of the defendants in the dock had held a position of responsibility or command in an extermination unit and each of them had assumed the right to decide the fate of men. Examining the individual responsibility of the defendants the proseuction states in the opening statement (p. 35 and 36 of the German translation) in addition: "Each of the defendants held a position of responsibility or command in an extermination unit. By virtue of his post he had the power to order executions." And further I quote: "As military commanders these men were bound by laws well known to all who wear the soldier's uniform, laws which impose on him who takes command the duty to prevent within his power, crimes by those in his control." Finally, the prosecution in its opening statement (p. 36 of the German translation) promised; "We shall show in this case that the rank and position of these defendants carried with it the power and duty to control their subordinates. This power, coupled with the knowledge of intended crime and the subsequent commission of crime during their time of command imposes clear criminal responsibility." about evidence; concerning the Defendant Matthias Graf, it has not proved anything at all as to participation, In any form whatsoever, in the crimes specified in the indictment.

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It could not do so and can never do so. assigned to the Einsatzkommando C-6 from the end of May 1941 to about the middle of October 1942. During all the time of his membership in this Kommando the defendant had not the rank of an officer. At the beginning of the war with the war with the Soviet Union the defendant Graf had the lowest rank among all members of the Kommando. It can therefore not be said that Graf had held any authority of command or even only a position of responsibility in the Einsatzkommando C-6. Nor had the defendant Graf to do any police work with the Einsatzkommando C-6, nor had he in the least to do with the executions carried out by the Kommando. Graf was specialist III of the Department SD: His task consisted in reporting from all fields in the life of the population. These reports concerned:

ethnic questions and people's health, all diseases, whole of the time of his membership in the Kommando the work of the defendant Graf was within this framework. The fact, that the defendant Graf had no officer's rank in the Einsatzkommando C-6, results from the document submitted by the prosecution, NO-4801, Exhibit No. 147, in Doc. Book IIIC. This is the personnel file of the defendant. On page 1 of this document it is entered that Matthias Graf was appointed 2nd Lt on 20 April 44.

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Consequently the defendant became an officer only after being away, again, from Einsatzkommando C-6 for nearly 2 years. that the defendant Graf was actually not a member of Einsatzkommando C-6 as officer, and was never a staff member of the Kommando or of Einsatzgruppe C, that, at no time, he had or exercised authority of command, at no time, did any police work and had nothing to do with any execution. The defendant Matthias Graf can never be connected with the crimes described in the indictment.

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dants had been members of the SS and, in addition, the defendant Graf is enumerated among the members of the SD. Hereby Graf is charged with membership in organizations declared criminal by the judgment of the IMT. On the part of the defense it is objected in this respect that the defendant Matthias Graf withdrew from the SS in 1930. This fact results from the personnel file of the defendant, prosecution exhibit 147 in Doc. Book IIIC. On page 6 of the Document (page 3 of the original) the following time is given as period of membership in the SS; 1 April 33 - 15 March '37, and as rank; SS Sturmann Graf did not rejoin the SS. starting point that the SD was a voluntary organization, end states as a fact that all members of the SD joined this organization in a voluntary way. In the conclusion the IMT declared "as criminal in the sense of the statute, the group of those members of the SD....who became or remained members of the organization, although they know, that this organization was made use of for carrying out acts declared criminal according to article 6 of the statute, and who, as members of the organization, took a personal part in the commitment of such crimes." The conviction of a defendant on account of membership in the group declared criminal - of members of the SD is consequently dependent on two preliminary conditions:

(1) Voluntary joining of the SD and hereby membership in the SS or voluntary maintaining of membership and (2) Taking a personal part in the commitment of crimes mentioned in the statute and in the Control Council Law No. 10.

prior to 1 September 1939. It will be proved that Fraf never joined the SD voluntarily, but in January 1940, became liable for emergency service for the war period as auxiliary war worker.

That he was, first, employed in the SD intelligence service at home, was detailed, temporarily, to Einsatzkommando C-6, against his will, and, finally, was retransferred to service at home. Evidence will be submitted that Graf refused repeated suggestions to be taken over by the SD, and repeatedly tried in vain to get away entirely from the SD. The fact that the Defendant Graf obtained an SS rank for the period of his employment with the SD, did not mean new membership in the SS. The request of the prosecution concerning conviction of the Defendant Graf on account of membership in a criminal organization cannot be complied with -- apart from other points - because of the lack of membership in the SD or SS. It was already previously mentioned that there is no proof at all for any criminal activity of the Defendant Graf. indictment is completely unfounded in all three counts.

Your Honor, I would like to put a question to the Tribunal. In the opening session on the 15 September it was stated that motions for the calling of witnesses to be interrogated are to be put in. I have complied with this request. I have made my motions. If I only count one day for each of the defendants, my turn will come at the earliest four weeks from now. Yesterday the Defense Center already brought the witness Franziska Reimers from Bonn to Nurnberg, but I can not see why this lady who has a job today at homo has to sit idling in Nurnberg for four weeks. I, therefore, ask the Tribunal to permit me to tell this Miss Reimers to return to Bonn, and to stand ready to come back to Nurnberg at my call.

THE PRESIDENT: I want to thank you, Dr. Belzer, for your immediately and enthusiastic compliance with the request of the Tribunal -

DR. BELZER: I have not the connection, Your Honor.

THE PRESIDENT: May be you don't have your earphones on correctly.

DR. BELZER: Thank you.

THE PRESIDENT: And I want to congratulate the Defense Center for the speed with which it operated, as it would seem they have go ahead of all of us. I see no reason why this witness should be compelled to wait the period of time which you have estimated, so you have the consent of the Tribunal to release her, and to see to it that she is back here in Nurnberg in time to be called as a witness when you are ready for her.

DR. BELZER: Yes, Your Honor, Thank you.

THE PRESIDENT: All the opening statements appear now to have been delivered, and I want to thank the Defense Counsel for their cooperation with the Tribunal in every respect, and we will now recess until tomorrow morning at 9:30 o'clock. Dr. Aschenauer will proceed with the presentation of the Ohlendorf defense. Do you have something to present?

DR. STUEBINGER: Dr. Stuebinger for the defendant Werner Braune. ment for the defendant Braune may be read. I have not as yet read this.

THE PRESIDENT: Oh, I am very sorry, yes.

DR. STUEBINGER: May it please the Tribunal: all the other defendants, on the following three counts:

1. Crimes against Humanity.

2. Commission of War Crimes.

3. Membership in a criminal organization. terial and emphasized it in its opening statement, demonstrating how the defendants, - including defendant Braune - are supposed to have committed acts making them guilty in the meaning of the Indictment. It has characterized the acts of the defendants as "the tragic fulfillment of a program of intolerance and arrogance". Over, and above that, it has stated that each of the defendants, in his position of responsibility or as commander in a so-called liquidation unit, usurped the right to determine the fate of human beings, and was imbued with the idea of death as the intended result of his power and contempt.

The acts for which the defendants have to answer were supposedly not dictated by military necessity, but by an extreme perversion of human ideas, the National Socialist doctrine of the master race. In refutation of this, I as Defense Counsel, should like to make the following statement : question put by the Presiding Judge as to whether or not he considered himself guilty of the grave charges brought against him, the defendant answered "Not guilty" and with this statement he thus expressed his own inner conviction. answer as an ejected incomprehensible denial and therefore to attach no significance to it; nothing could be further from the truth than to interpret the statement of the Defendant as an attempt at cowardly evasion of responsibility. pressed the fact that He feels absolutely innocent of the grave charges which have been brought against him and that those who were ultimately responsive were quite other persons who are not sitting in the prisoners' dock today. rations and trains of though are the basis for this feeling. It is inherent in defendant Braune's attitude that he in no way attempted to disown his acts or to white-wash them and that his statements are entirely trustworthy.

easier for me to carry out my task as defense counsel. I do not regard it as my task to attain a dubious result by legal tricks and distortions, but merely to serve the cause of law and justice before this high Tribunal. against humanity, in which he is alleged to have participated, as defined by the provisions of Control Council Law No. 10.

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war crimes by the sane actions, crimes which were committed through violation of the laws and customs of war, including murder, maltreatment of prisoners of war and of the civilian population of countries and territories under the belligerent occupation of or otherwise controlled by Germany and wanton destruction and devastation not justified by military necessity.

1.) with having been a member of the Schutzstaffeln (SS)

2.) a member of Ant III of the RSHA. (SD)

3.) a member of Ant IV of the RSHA (Gestapo) i.e. of organizations, declared to be criminal by the International Military Tribunal and paragraph 1 d of Article II of Control Council Law No. 10. the actions constituting the subject of the indictment comply objectively with the above-mentioned facts with regard to Germany's fight against Bolshevism unless measures taken in individual cases seem justified as permissible retaliation according to existing customs of international and war law or were permissible as punishment for offenses against orders expressly and publicly issued by the occupying power. under orders in a frontline assignment and acted only within the scope of orders which He considered to be bindings The question of acting on orders is of special importance in this case, since the defendant was not holding an important key position, but was a subordinate receiving orders and received his assignment at a time when all orders had already been issued and had been in the processof execution for months.

Under these circumstances He had no possibility to disobey "the order, apart from the fact that he trusted the legality of the order given to him.

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1.) These points of viewmade the Defendant speak his "not guilty".

2.) This trial receives its special characteristics through lacking consciousness of guilt and emergency resulting from orders. three counts of the indictment existent by claiming in figure 9, letters A-P of the indictment, -- without, however, completely specifying the actions with which the Defendant BRAUEN is charged (with exception of letter F) -- that the Defendant as leader of Einsatzkommando 11b of Einsatzgruppe D murdered a considerable number of human beings in his territory of assignment (Crimea) during the tine of November 1941 until March 1942. concept common and unchanged at all times to all civilized peoples, of killing a human being from joy of killing, avarice or other low motives, maliciously or cruelly or by morns constituting a common danger. that the defendant without any efforts of his own was ordered to an Einsatzgruppe in the East and that in his position he only acted within the scope of binding orders issued long before his arrival and that he could not act differently although the contents of those orders in no way corresponded with his own ideas concerning the treatment of members of other races or were even in accord with his own inner disposition and wishes.

On the contrary the carrying out of the orders given to him was rather a heavy psychological burden for the Defendant and only the idea of duty and obedience, but also the knowledge that it would be impossible for him to evade this order, made it possible for him to stand this strain. It was not in his power to annul or to alter orders. was told what his tasks were, when all ordershad already been given a long time ago and when they had been executed since months.

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objectively or subjectively. His Kommando did not exterminate but it carried out orders which, as they had been given, were given from a point of view of safeguarding the territory. He was not entitled to examine or even to decide upon what was a military necessity and what not. That was solely the task of the highest military authority. more than 2000 kilometers resulted from the situation reports and that these reports were sent to 60 different agencies, as is proven by the distributor, and situation reports were sent out in 100 copies to Reich Ministries, as for instance to the Reich Minister for Foreign Affairs, v. RIBBENTROP, proves, that it wasout of the question for the defendant to doubt that this was anything but a Fuehrer order. Wehrmacht, as the executor of executive power and of the responsibility in the execution of the measures, participated to a very essential extent or that the Einsatzgruppen received any possible assistance in the execution of their tasks. Thus he soon received orders directly from the Army to take and execute measures in the sense of the Fuehrer orders, be it the assignment for the combing of Simferopol, in which it was expressly stated that they were to be on the lookout fur Jews, or the order given by the 11th Army, which in December 1941 ordered the execution of the measures against the Jews in Simferopol to be finished before Christmas. the fight was going on in the East may not be forgotten, and that one had to deal here with an opponent, who originally disregarded any International Law and fought a total war, in which He thought every means admissible. systematic way of the partisan warfare, which had already been well prepared by the Russians before the outbreak of hostilities and which was considered an especially effective means to decrease the strength of the enemy.

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The manner of fighting in the Eastern campaign, for which the assignment of partisans behind the lines of the German Army had been considered as a well calculated means of fighting and which had been cultivated accordingly in an over increasing measure, has shown how far in modern total warfare the methods of fighting have come away from the ideologies of the Hague REgulations for Land Warfare, and how fluctuating had become the whole complex of the problems of "military necessity". That is also borne out by the manner in which the modern air warfare was conducted and the development of the atom bomb as the latest means of combat until its first employment in Japan. himself in the assignment in the East and make clear the situation concerning orders given him. The Prosecution has also acknowledged this situation concerning orders without any reservations, when they talk on pages 11/12 of the Opening Statement of an information given the commanders of the Wehrmacht by HITLER on the tasks of the Einsatzgruppen, and when they refer to HITLER's decree as shown in the verdict of the IMT, and mentions that detailed instructions were put into effect.

The defendant's conduct: The defendant BRAUNE saw to it that orders, issued long before this assumption of office, were carried out correctly and he took special care that no excesses or cruelties occurred. the defendant's examination in his own case, in no way conforms to the picture of my client which the Prosecution hasgiven in itsopening speech. The Defendant BRAUNE was not the man to take upon himself the right to decide the fate of men and to deal out death in a cold-blooded manner. To the contrary, he considered this, his task, his duty as a tremendous burden, carrying it out merely in realization of his war-time duty as a subject and soldier to abide by the orders and laws of the head of the State and his Supreme Military Commander true to his oath as Civil Servant and soldier.

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consciousness of carrying out a Fuehrer order, thereby engaging in a legal activity. In harmony with his personality and position he could under no circumstances oppose this order. Much loss did it occur to bin that ho might possibly refuse to carry out the order, as he was aware of the consequences which such a refusal in the operational theater would mean to him. It would have meant his certain death. been expected. The judgment of the I.M.T. defines it as a question whether there actually existed a choice in accordance with ethical laws.

Court No. II answered this question in its judgment of Erhard MILCH (page 96 of the opinion) to the effect that it. did not intend to suggest to MILCH and had never' done so that he (MILCH) should have chosen any way cut which might have cost him his life. Life is a legal right the maintenance of which must above all be granted to man, but open resistance to HITLER's order would have brought it to a sudden end. The defendant BRAUNE was no more than a small cog in a largo machine and he would nave been removed by the force of authority and power and HITLER'S order would still have been carried out. ho wasappointed and he could not sabotage the orders for he was always under the control of his superiors and his subordinates who independently of him had for some time already acted on orders given them.

I shall describe BRAUNE's conduct when not under orders from his supreme commander. on that point.

He left the SD in April 1939 when transferred to Coblence. After the outbreak of war he did not belong to Amt III, Amt VI or Amt VII of the RSHA. does not provide the basis for a sentence, for BRAUNE was made to join the Gestapo by deception and coercion, he did net join by his own free will and it is this free will which is a condition for a sentence.

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totally different light from that in which the Prosecution has tried to present him. The only possible answer to the Prosecution can be a verdict of "Not Guilty".

THE PRESIDENT: I hope you understand, Dr. Stuebinger, that there is no intention to slight you by nut calling you this afternoon. The confusion arose through the fact that you had appeared at the podium this morning, and apparently you were checked off, so now we certainly do have your opening statement, and now we will recess until tomorrow morning at nine-thirty.

(The Tribunal adjourned until 8 October 1947, at 0930 hours.)

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THE MARSHAL: Persons in the courtroom will please find their seats. the United States of America and this honorable Tribunal,

THE PRESIDENT: The defendants Rasch, Strauch, Blobel, and Blume are excused from attendance today in accordance with previous arrangements. Dr. Aschenauer, are you now ready to proceed with the defendant Ohlendorf?

DR. ASCHENAUER : I call the defendant Ohlendorf as a witness in his own case. as follows:

THE TRIBUNAL (JUDGE SPEIGHT): Raise your right hand and repeat after me: speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

THE TRIBUNAL (JUDGE SPEIGHT): You may be seated, BY DR. ASCHENAUER:

Q What is your name?

Q When and where were you born? District of Hannover.

Q What was the profession of your father?

Q Do you have any brothers or sisters?

Q What is the profession of your brothers and sisters?

A My oldest brother is a biologist; my second brother is a farmer; my sister has a business.

Q What was the political opinion in your parents' house? was a trustee of the German People's Party.

Q What was the religious attitude in your parents' homo?

Q Where did you spend your childhood and adolescence? and worked on the farm in my leisure hours. father's farm. Does that have any special significance in your development? of handling a farm and got to know the human conditions in a farm district, that is, the cooperation and living together of farmers, industrial workers, and peasants, merchants, tradesmen, and people of other trades. The rest of the time my professional development proceeded along with my political development, these conditions of administration, culture, religion, and education, as I got to know them in that village, always remained with me, and they became the leading motives for my own philosophy.

Q What kind of education did you have? I graduated from the Gymnasium.

Q Where and what did you study?

,8 October-M-IL-1-3-Caming (Int. Lea) were law and national economy, Later, after my graduation, I spent one year in Italy studying the fascist system and the fascist philosophy of international law.

Q Are you married?

Q Since when?

Q Do you have any children? ago.

Q When did you become a member of the Nazi Party?

Q How did you come to enter the Nazi Party? days on. When I was 16 years old, I was director of a youth group of the German National Party; but I was not sufficiently bourgois and involved in the class system not to turn my back very quickly from this People's Party. The interests of that party in the special political methods did not appeal to mo. However, on the other hand, I was too much involved with the religious and cultural philosophy of the traditional bourgeoisie to become a Marxist. But at that time I recognized that the social need was a truly national problem, a problem, that is to say, for the whole people, and I recognized that the national need was also a truly social problem. These two points of view seemed to have been expressed best in National Socialism in my opinion. In addition, I was attracted very much by the fact that active people count as valuable in building up a national state, symbolically expressed in the concept of the Worker's Party. Likewise the idea of national thought was attractive to me as well, that is, the doctrine that peoples are independent concepts which by themselves and in themselves have to solve their own problems.

Q What activity did you engage in in the Nazi Party? done in the relatively small organization at that time. I was director of a district group. I sold papers, I posted posters. I participated in discussions and spoke in gatherings. I went from house to house and from man to man.

Q Were you at that time a member of the SS too? that at that time those particular functions were not seperated as yet. There were no sub-organizations of the Party. Thus, the question of participating in the functions of the SS was not a question of becoming a member. Rather, together with four other members of the Party, I was detailed for service in the new SS functions, but since I left my home town shortly afterwards, I did not get to perform that service. I was merely crossed off the list and therefore never found out under what number I was registered.

Q. What was your activity in the Party after 1926?

A. In 1926 there were the first differences between myself and my superiors in the Party. I did not agree with my superiors' political and other philosophies. Therefore, from 1926 to 1933 I did not work within the official party. On the other hand, on my own, especially in the years 1929 to 1931 as a student in Goettingen, I was very actively engaged in spreading National Socialism by arranging for gatherings by myself, by arranging discussions, and especially conducted training courses. These courses were probably the first which were systematically started by the Party.

Q. Why do you emphasize these training courses especially?

A. Because in these courses my entire activity, even in later years, mirrors my activity later on. I was of the opinion that our time was spiritually a time of consciousness; that is to say, human beings did not want just to take what was given to them but they wanted to decide what they wanted by themselves and on their own free will. Therefore, I considered it correct, if one wanted to succeed in establishing an idea or a movement, to win over people consciously for this idea or for that movement. Thus, I started training courses in which I tried to discuss the political, social, and spiritual factors of the time in order to educate people to have their own opinions about these matters. Even though this was not recognized in this field in which I did this work, it was, nevertheless, successful, and the Party went through no crises in this field.

Q. Weren't there at that time already definite directives, and didn't you have to operate according to these directives?

A. Yes. The year 1930 was a very decisive year for the Party insofar as one considered the years 1925 to 1930 as the years of building an ideological basis for the Party. In 1930, on the other hand, the Party leadership decided to assume power in the country by means of a parliamentary mass party. According to this mission, the tactics and the strategy of the Party were laid down. Instead of the ideological basis, the mass propaganda was evolved.

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In the leadership of the various agencies, regarding both the men who considered this propaganda as correct and who could carry it out, the ideological basis was simplified. An attempt was made to make the utterances of the Party systematic. But at the same time an opportunity to continue the ideological foundations was missed. At that time lists of speakers were made up and these speakers instructed about the subjects of their speeches and the way of handling them. I did not do any work in making out these lists, nor was I ever an official speaker of the Party. I rather objected to such a systematic laying down of principles; and thus it is understandable that until 1933 I was not active within the official framework of the Party any more.

Q. Until what time is your activity valid in the Party?

A. Until the spring of 1931. In the summer of 1931 I took my state examinations. After that I went to Italy for one year.

Q. Why did you go to Italy?

A. I went to Italy because, as a National Socialist who was conscious of the fact that his own opinion was not yet fit to develop a program for the people, I wanted to study the development of an apparently parallel, movement in order to see what that party which had already been in power for ten years was doing for its nation.

Q. What significance did your stay in Italy have for your further development?

A. I became an absolute anti-fascist in Italy and returned from Italy with the will to fight this fascism wherever and in whatever form I encountered it and to do everything to keep this development away from National Socialism and to find a basis for it which by its quality would not only put it in a position to avoid fascism but even to overcome it.

Q. Where did you see the dangers of fascism?

A. With the secularization of the religious values of Christianity and with the neglect of observing the Catholic laws. It went hand in hand with this dissolution of the communio fidelium, the community of the faithful.

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The cessation of this community went hand in hand With the material values of society; that is to say, the ideas of enlightenment and of individualism made man independent and forced him to rely on himself. He no longer belonged to a natural community hut as a sum total represented his own interests. The cessation of this metaphysical relation between the individual people brought up questions of order which have not been solved up to this very day. At the same time it endangered the security of the larger states; and this problem has not yet been solved. As a gain of this time which has been achieved for humanity, they have acquired the consciousness of their own willpower and have established themselves as moral human beings. Fascism put itself beyond this gain of centuries. It merely recognized that there were no more natural communities. It opposed the traditional values of Rome to the dissolving tendencies of society, in the Roman Empire in the divine state and in the Roman Empire as an expression of a religious entity and its laws.

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Of the first, the traditional value which founded the basis for the State as a final earthly value of the devine will. From the second, it developed humanism in order to add its one picture of individual application to the obligation of the State. A study of Fascist Doctrine, and of the Fascist legislation, especially of the constitution, showed clearly that this is an absolute State, whose efforts on a moral basis were camouflaged. The State was an entity in itself, and the only value to men, society and the people were only to arise as a value from this absolute value of the State. This State alone gave them the moral foundation and the social obligation.

Q As a National Socialist weren't you yourself in adherence of an absolute State - the total State, or of the Fuehrer State, as it said in the Nazi ideology? the Fascist State. National Socialism as such vent out from the recognition that the nature of the natural communities was dissolved by individualism, which also had recognized the idealization of the individual and the insecurity of the individual as regards his place in life. But contrary to Fascism, National Socialism made an attempt to consider human beings as realities, and as having their own value. It saw him as a member of a people. It found a new natural community, namely, the relationship of the citizen to the whole makeup of people in which this man was born as a member. Man was not merely an incidental citizen of it but a link within the people. Thus, man and the people had the primary value, and the State was merely an auxiliary means of caring for and developing these people and its culture.

THE PRESIDENT: May I interrupt you just a moment, please. Was this ideology expressed in the publications of the National Socialist Party, or is this your own individual interpretation, and your own individual philosophy?

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this opinion unequivocally. This is the culture speech of 1935, and the speech on the front to the generals of the Eastern Front in the Spring of 1943 where Hitler expects considerable consequences as a result of this opinion, even for the German people insofar as he determined that it belonged to the makeup of the German people, that it is composed of various tribes of various races, and that it, therefore, is the mission of leadership of that State to care for and keep up the various qualities of these different tribes. He assigns the task to the State of uniting these various different characteristics of the different tribes in the German people, and he takes this as his basic conception. The regrettable feature is that these very two speeches by the possibility which was opened to Goebbels were withheld from the public; the culture speech of 1935 did not appear in the newspapers, but the speech of Goebbels appeared from the very beginning to the end. Furthermore, Your Honor, I believe it is hardly in optional Socialist literature which gives any systematic opinion in this respect.

THE PRESIDENT: Do I understand you to say that these two speeches were withheld from publication against the wishes of Hitler? much as it was the official speech before the Reichstag (Reich Party Assembly), but Goebbels, as the Propaganda Minister had the possibility of preventing a further dissemination, since he gave orders direct to the press as to which speech of the Party Assembly was to be published, and which was not. I don't know anything about whether Hitler opposed the dissemination of these speeches.

THE PRESIDENT: Do I understand that Goebbels would have a superior authority to Hitler in the matter of propaganda, if Hitler was interested? one not living through these things. We had a State in which the commanding power of the Fuehrer could not be doubted, but even he had to give way occasionally to the hierarchy below him, Ley, Goebbels and Goering in particular, and, in fact, he had to give them a free hand in their own field as there were no cabinet sessions, there were no regular Fuehrer discussions, and, whatever was brought to him by and for his decision was incidental.

THE PRESIDENT: Do you intend to say that Goebbels opposed the theories advanced by Hitler in these two speeches, and for that reason withhold public dissemination of them? BY DR. ASCHENAUER: doctrines? of the people, which National Socialists embraced, their idea of an authoritarian State, Fuehrer, had to be rejected, and was actually rejected. If this theory of absolute State was propaganda, of the National Socialist Party anyway, this on the one hand goes into the question which the presiding judge just asked; insofar as a man like Ley had an absolute interest to bring out that ultimate power of the Fuehrer and the State in order to be able to have his own absolute power in the State; and, on the other hand it brings with it the tragic moments of National Socialism, namely, because National Socialism up to 1933 had not developed its formuli sufficiently. After 1933 men flocked to it and were fully prepared for any devotion and to make everything available for a program of which they knew that those Fuehrers, who were right with them, were enthusiastic about it. Literature about the total State -- about the Fuehrer State is altogether written by such people, and not one National Socialist will be found among them. These are the same people whom today confess - I mean attempt to say justly that they were never National Socialists.

That is why I from the beginning opposed this type of literature, in student unions I treated the spiritual foundation of such literature, and, I would just like to name one person, the Jurist of Third Reich, Karl Schmidt, This Karl Schmidt as a basis for his political views had the doctrine of Friend and Foe. Nothing could contradict the views of National Socialism more than this doctrine for in a people all members are part of the people; even if they are opponents of a certain point of view, they, therefore, are not enemies who have to be exterminated but they are fellow countrymen who have to be won over.

But this doctrine together with the National Bolshevist literature in the field of economics has built up the Total State as a basis of this idea. member of the people. Furthermore, one would have to discuss the difference between the Western Democracy and a Germanic State? philosophies conflicted here without having understood each other. In National Socialism, as an idea, the idea of absolute obedience was seen in this opposition. But the differences between Democracy and National Socialism lie somewhere else.

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aim is the equality of its citizens, and the guarantee of their upmost liberty, but it leaves the human side of life, the culture, the economics, the education to the individual himself, that is to say, it makes a difference between the citizens and human beings. This philosophy is opposed to the Germanic tradition. For this tradition the State is a representative of the whole people; for the leadership organization to care for and develop the people and its members. To this extent the Germanic man wants and expects from his representative, namely, the State, the development of the entire human being, and on his part he is prepared to devote himself entirely to this representative. The strongest expression of this was the Germanic Community, which existed without constitution, without limitation of rights and duties, consisted of a community of volunteers who devoted themselves unconditionally to its community, but who expected that the officials of this community would fulfill their living conditions. It Is clear that such a philosophy bears within itself tremendous dangers. If this serving element of the State is not sufficiently regarded, and if the State becomes an entity in itself, and a value to itself, and this danger National Socialism did not evade, this danger for the reason which I mentioned above, a number of Fuehrers and theories developed just the opposite but the strange thing is, that theoretically speaking an absolute Fuehrerism existed, but in particular during the war, especially, a pluralistic anarchy developed. That is to say, below this Fuehrer there were independent power -politics, disobedience and treachery, the Fuehrer State was neither thought out all the way nor, even less, was it formulated all the way through. The Fuehrer did not only deny the State as a purpose in itself, but has destroyed it in an exaggerated form, so that it was no longer available to him as an instrument; in place of the State, the multiple wantonness of the various fuehrers took its place.

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Q What wasyour activity in the Party after 1933? District Court in Hildesheim, and as such I lived in my own town once more, I lead my own district group in my own town only temporarily. I directed the legal matters in the District Court at Hildesheim, and, furthermore, within my official duties I conducted training courses. In the clear consciousness of the coning in of a let of non-National Socialists into the Party could no longer be prevented, which made a discussion of the Fascist and Nazi Doctrines in opposite views necessary, and during this tine this theme was the content of my speeches, and despite the efforts, I could not prevent this joining of many non-National Socialists to the Party. This activity lasted until October 1933.

Q Then did you join the Institute for World Economics in Kiel?

Q How did that come about? economics, but since I knew on how little National Socialism was actually based, I accepted an offer from professor Jessen to be able to combine politics and economics, and, he offered no a position at the Institute for World Economics in Kiel, where I became his personal assistant, and at the same time he offered mo the opportunity of building a department, or to setup a department for National Socialism and Fascism. Thus it was our common goal to examine Fascism scientifically, and at the same time to explain National Socialism. Personally, it was my intention to study philosophy and theoretical National Sociology and Economies.

Q How long were you active as a scientific assistant? without him I remained at Kiel until the Fall of 1934.

Q How was it that your activity terminated so shortly?

AAbout new year of 1933 and '34 Professor Jessen and I had objected very strenuously against National Bolshevistic tendencies of the Party at Kiel, especially, because this National Bolshevist circles had built up an organization in almost all Reich Ministries.

As the result of this fight on our part I was in February 1934 arrested at the request of the Party with several other students. Professor Jessen evaded this arrest because he was sich. He had to leave Kiel since his opponent and my opponent, especially in the Ministry of Culture actually held the power. After Professor Jessen left, the Ministry of Culture demanded in the Fall of 1934 that I be dismissed from Kiel, because I was a factor of political unrest there.

Q. What did this event mean for your scientific plans, for your scholastic plant?

A. Since the departments of the Culture Ministry were against me, my scholastic career was at an end.

Q. What activity did you decide to engage in now?

A. Jessen and I took up the fight against these people with other groups in the Party and formulated the plan to build the commercial high school in Berlin into an economics institute in order to fight these national Bolshevist forces which were especially active in economics, in order to oppose them with real representatives of National Socialism. Jessen was to be provost of this school, and I was to aid him in building up the school. For this purpose I went to Berlin in December, 1934, but these plant fell through also because of the Party, in this case on the part of Rosenberg. In the paper, the Voelkisch Beobachter, an article appeared against Jessen which called a book by Jessen anti-national. Rosenberg objected to Jessen. The Culture Minister, Rust, did not dare to make him director of the school. Thus my scholastic plans were definitely at an end, but simultaneously my political activity was also at an end, insofar as the director of the Reich School of National Socialist Economics, Dr. Wagner, warned me at the request of an organization in Munich and warned me about attacking National Socialist politics in my speeches, such speeches which were epecially directed against the policies of the Reich Food Office would no longer be tolerated.

Q. How long did you remain in the Institute for Applied Economic Sciences?

A. Now I was without any professional goal, directed a library in the Institute for Applied Economic Sciences and furthermore held meetings with students. I had already described them briefly, but those forcer also destroyed my student meetings so that I was definitely at an end in Berlin.

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Q. Are you speaking of the time '35, '36?

A. Yes.

Q. In May, 1936, you entered into the service of the SD. How did that come about?

A. This same Professor Jessen who had called me to Kiel and Berlin now offered me a post in the SD, namely specialist on economics, a position which had been offered to him too. Until that time I was not familiar with the SD. Jessen arranged a meeting with the leader of the SD, at that time Professor Hoehn, and in this discussion I told him what my political opinions were, and to my surprise he answered that these very political critical opinions were just the very ideas on National Socialism were needed in the SD. Since there would be no more public criticism, this would be an organization which would have as its mission to inform the leading organizations of the state about National Socialist developments, and especially as regards wrong developments, wrong tendencies, etc.

Q. What was the concrete mission which SD was assigned?

A. I was told to build up an economic news service, to create an organization which would be in a position in the field of economics to give all the information which would tell about mistendencies and mistaken developments in the National Socialist philosophy. This was the motive which then induced me to enter the SD and thus into the SS in 1936.

Q. Now, before going into any more important questions concerning the charges of the Prosecution, I would like to finish the story of your professional career.

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How did your position in the SD develop further?

A. The picture in the SD was somewhat different that I had expected. The Chief of the SD had exaggerated to me insofar as the organization of the SD, which in reality did not exist. The whole central organization which I found consisted of about twent young people without any office help, without any registration, without any means at all. It was not a well organized apparatus at all. One did not even know what was wanted. One took up individual cases which in such an embryonic organization happened to come along. The natural interest of the Chief were practically the be-it-all of the SD. He was a political scientist and teacher, and thus the SD was first concerned with that field. Here I began to work in the field of economics, laid the basis for an information service in which information was gathered about economics in Germany, and I tried to find specialists who would be in a position to analyze the economic tendencies and to evaluate these tendencies. This work pleased, and around the turn of the year '36, '37, I became Chief of Staff of the SD inland, that is representative of the chief, with the special mission of transferring the system I had developed to the other fields. The basis for an all-encompassing information service was adopted and was organized along those lines. In 1936 we already find a picture, in a small scale, of the later Amt III of the Reich Main Security Office.

The SD Central Department II/2 had three groups which encompassed the entire phases of the spheres of national life, Group I, culture, education and national culture; Group II, law and administration, the questions of Party and State, of the high school and of the student organizations; Group III, all departments of economics.

Q. In your work did you have any difficulty?

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what was being developed here. The difficulties came from the culture. sphere and from the economic spheres. In the years 1936 and 1937 the development of the four-year plan and the success of the food ideologies as National Socialist policies had made strong influences within the middle class. Hundreds of thousands of plants were closed. I started to take a part in this development with the new SD. We did not only try to take a hand in these developments and to point out the catastrophic consequences, but we also took a hand personally by personal conferences and strengthening our information material so that in the closing down of these plants many difficulties arose. At the same time we tried to point out to Himmler the damaging effects of these measures. And now there was the first shart difference, because the Reich Food Association under Darre as head was the actual basis and support of Himmler's ideologies, and therefore he objected to my reports as being against Darre. The factual problems were not agreeable to him. Since we also took a hand in the cultural problems and objected against the retirement and recall of the old professors by the Party and called attention to the fact that the opportunistic young knights were certainly not fit to replace the wisdom of the old professors, Himmler called me on the carpet. For the first time he called me a pessimist and this clung to me all the time. Besides Himmler stated that the SD had no business in these questions, but that they were left up to the Party. In the year 1937 the Director of the SD, Professor Hoehn, was dismissed through the intervention of Streicher. After the director had been dismissed the mission of the SD was to be changed, and therefore those forces were removed who had so far determined the direction of this new line. Since I was not prepared to give up my ideas about the subject, I was myself dismissed, not dismissed, I was merely excluded from a policy-making position. I was merely restricted to the economic department. Since I no longer saw any chance for the development of the SD in this position and did not want to participate in any other measures I asked for dismissal.

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Heydrich refused this, but after long negotiations I succeeded, in the spring of 1938 to get permission to leave the SD and to become an official in the Economic Administration. November, 1939, I became the top manager of this group. In this time I only worked in the SD sporadically, for after my dismissal the other defendant, Seibert, was my deputy in the economic group who now actually directed the task.

Q Why did you accept a position in the Reichs-Group Commerce? years, '36, '37 and '38 was that unemployment was not only overcome but by the four-year plan and the many tasks which had been created threatened about one million businesses of the middle class. We had taken up this question since in our opinion it was the mission of National Socialism to dissolve the collectivization but not by proletarizing the middle class and by dissolving independent plants to increase this collectivization. The attempt to prevent this -- I only found a chance to prevent this in this Reichs-Group Commerce, and thus I went to this Reichs-Group Handel, Reichs-Group Commerce, in order to pursue my aims further in practical politics which could no longer be pursued in a normal manner.

DR. ASCHENAUER: Your Honor, this would be a convenient time to recess.

THE PRESIDENT: Very well, the Tribunal will be in recess for fifteen minutes.

(A recess was taken:)

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THE MARSHAL. The Tribunal is again in session.

DR. ASCHENAUER (Attorney for Defendant Ohlendorf): Your Honor, before I proceed with questioning my witness, I would like to clarify a few mistakes which were made in the translation. A list of incorrect points becomes evident from the comparison between the English and German. Professor Hoehn and not in the SD.

Two - it was said : alleged national socialist policies in the Reichsnaehrstand..... "allegedly" was not translated. from SD itself was mentioned, - the dismissal from the Main Office was meant. The Main Office was left out. These three things were incorrect.

THE PRESIDENT: Dr. Aschenauer, your remarks, of course, will be incorporated into the record and we can assure you that the correct version will appear in the final transcript, because everything which is stated here in court is automatically recorded on a film and from that the transcript is eventually prepared.

DR. ASCHENAUER: Yes, thank you very much, Your Honor. large responsible task in the Reichsgroup Commerce (Handel) in September 1939 you became the leader of the office of the SD Inland in the Security Main Office? the State Police, because of the centralization of the political Police Forces by the Reichsfuehrer SS and the Chief of the German Police, had by then been extended so far that apart from the immediate fighting in the executive, they also took over the SD, the News Agency. and which had been legitimized by the Party, had, in the years 1936 and 1937, become smaller and smaller and in 1938 it had been separated from the State Police and SD and was finally dissolved.

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to take up his old plans and form a State Protection Corps. He attempted to do everything in his power to establish this corps after the separation by the State Police and SD. He affiliated them into new organizations and turned them over to the Reichssicherheitshauptamt. The Reich Security Main Office too was supposed to be just a staff for a State Security Corps, which he extended to such an extent later on, that even the inner administration was taken over into the the State Security Corps. The SS Police, the SD Interior Administration were supposed to be taken over into the State Security Corps and the SS was supposed to be responsible for all this. silent about his plans in front of the Party, because the Party had legitimized the SD as a news agency, because the SD was a Party establishment above the SS but it had never been prepared to admit such a task in front of the State and to have it legitimized by the Party. was the news agency which had been legitimized by the SD. Party. It was attempted not to give up the SD as a news agency, because the Party had developed its own news agency and would have had the possibility to require officially this news service for itself, because the Reichsfuehrer SS did not offer them this intelligence service for their purposes. service from the Party in order to amalgamate these intelligence services within the State Security Corps, but this never came about. The Reich Security Main Office, as an institution, until the collapse, had never been an official agency, but officially the Security Police.

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that is, the State Police and the Criminal Police, were superior to the Reich Security Main Office which remained an official authority. This Main Office, Security Police, was not dissolved, although in the Reich Security Main Office and State Police formed the office for the Amt IV and the Criminal Police formed Office V. Also the SD Main Office did not remain as an official Party institution, although internally the administration in Office I and Office II were combined with the State organization. This Reich Security Main Office, therefore, was an interior administration set-up of the Reichsfuehrer SS for the purpose of the State Protection Corps, but it never became an official agency within the State or Party. Thus, through a decree, it had been forbidden to use the letterhead of the Reich Security Main Office for any external correspondence. party from extending its own news service to the intelligence service on the one hand in order to use the SD as a function itself; in order to be able to show a facade to the Party as the other news agency was dissolved, which had been handled by the adversary and as this did not exist any longer within the SD, it was only a small beginning of the Lebensgebiet (domestic) News Service, that is Central Department II/2. As the Reichsfuehrer SS did not intend to extend this domestic news service and to develop it, and, also, Heydrich did not intend to reorganize the SD as much as it would have been necessary, the solution of an external facade was sufficient. This was an emergency solution, insofar as the staff which had been in the SD up to the time in the fight in 1936, 1937, 1938, had been used up by the deputy of Heydrich in the Reich Security Main Office. Therefore, there was no person who on this new basis could establish bearable relations with the State Police, but, as the SD was not regarded as a really serious matter by Himmler as by Heydrich, I remained in my main capacity as the manager of the Reichsgroup Commerce and Trade and in NOV, 1939 I was authorized to become the main manager officially, i.e. to takeover the complete organization of about 900,000 members and to represent them officially for all agencies of the Reich.

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I remained Honorary Manager of the SD and I only temporarily worked in the SD and I saw no possibility thus to create a different picture from the one I left in 1938.

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of a special confidence on the part of Himmler or Heydrich, was it? was prepared to take this over, because there was no serious intention of extending this office. your work done, the work you just talked about? ties and all the setbacks and defeats which happened later on. The SD Inland, the only purpose. as from September 1939, of the SD within the Reich remained illegal. The Party had not approved of this formation of the SD and it was not prepared to approve of it. Himmler himself did not legitimize this SD. He was not prepared to cover it, and he let it and its men down whenever they were attacked by any side; he did not defend it. Thus it was not possible to follow the plan of the administration of the Office III-D, and, too, it was in the interest of the German people, and it was not possible, as far as office personnel went, so that it could really solve the task which was Large extensive. This became evident very soon, especially in my own person. Although in September 1939 I became the manager of Ant III, in the beginning of November we had the first big crisis. Heydrich sent me on official trips with Himmler, and disputes arose, the consequence of which was that in Warsaw he informed me, through his chief- adjutant Karl Wolff, that I should leave his services, that an agreement between us about the work was no longer possible.

Q What is the reason for this disagreement with Himmler? been able to treat the Jews in a manner which he wanted and that, he said, was the product of my education. Heydrich was very pleased by this crisis with the Reichsfuehrer because any possibility of my overshadowing his position had been prevented. He refused to let me have the organization, and he gave reasons to the Reichsfuehrer for abandoning the idea of my dismissal, During the year 1940 there were more disagreements, because the fact of the news service was protested from all sides.

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Ley complained to Himmler about me and asked for my dismissal because of criticism by the SD News Service against the development of the DAF and its economic enterprises. Himmler himself criticized a number of reports because he said they are defeatist and pessimistic. They came back torn up. In the negotiations with me Heydrich realized that I was chief of the Reich Group Commerce and Trade and was declared essential as such - that means I was obligated to serve in the Reich Group Commerce and Trade during the war and that he had thus almost completely lost his power over me. Thus, in 1940, the crisis with Heydrich started again in a very acute form, he asked me on various occasions to join the army. This was prevented because, meanwhile, the chief of the Reich Group Commerce and Trade is a soldier, and apart from taking over the management, I also took over the military end of Reich Group Trade, therefore, he asked for my dismissal from the Reich Group Trade.

THE PRESIDENT: May I interrupt, please. Witness, would you please indicate specifically just what were these differences between you and Himmler? Briefly, but specifically.

A (By the witness) The differences of opinion between Himmler and myself were differences of temperament and of politics. I now use his expression: I was the unbearable, humorless Prussian, an unsoldierly type, a defeatist, and intelligence monger.

THE PRESIDENT: Are we to understand that you mean by that, that you anticipated the defeat of Germany? many difficulties which might make the success of the war questionable

THE PRESIDENT: I see.

A (Continuing) What was most disagreeable to him was that in our administrative reports we wanted to bring about constitutional conditions under all circumstances.

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We made it quite clear to him that if the order of the state was destroyed the war could not possibly be was. Now, I called Himmler a Bavarian because he called me a Prussian. He did not want orderly conditions. He was the representative of "Personalism". He tried to imitate Hitler in a small way. Hitler himself followed the type of policy so fatal to us, he had the habit of assigning tasks not to organizations but to individual persons, and if possible he assigned one and the same task to several individuals This was imitated by Himmler, although for him there was no reason whatsoever to fear that one of his functionaries would become too powerful, but he believed he could prevent his individual functionaries from becoming more powerful than Himmler himself. Practically the question of national culture dealt with in Case & Will be of interest to the Tribunal - these questions were handled by five different offices without making the conpetency for the individual tasks clear. When I suggested to Himmler to deal with these questions as an entity, this was, a further reason for his utterances which he made in Warsaw to the effect that I should be dismissed. Thus was his basic structure. He was a practical man; he was an opportunist of the day who was in no way prepared to deal with matters objectively and in an organized manner - rather, he liked to employ individual people day by day and to drop them again in the same manner. According to my opinion this Led had to destroy the whole order even in peacetime, and, of course, especially in as serious a war as Germany had to wage and that which separated me most from him was the willfulness of the individual decision not only in regard to the tasks he himself assigned but also in the legitimizing of people who were partly not qualified or so appointed that they could not exercise any leadership - it may even be that he appointed them perhaps for this reason - and on the other hand, by way of intervening in the continuous flow of events in an individual sphere, and thus nary very important matters were never brought to a satisfactory solution.

Expressed in one word, the difference between us was that I regarded politics objectively, and I wanted to make man the subject of politics While he regarded politics merely from a point of view of his own person and his tactical position, and he subordinated the facts to this tactical position.

If we judge the matter from the German point- of view, Himmler has not so much become a parasite of our own people for what he did, but for what he did not do. He had a power which has led to the terrible judgment of him and the SS, and in reality he did not exercise this power in Germany but he and his power were an empty shell, and in this we have the important element of his crime against humanity too, that through the police, through a unit like the SS, and later through his direction of the Ministry of the Interior, he would have had the power which would have enabled him to see the damage, and he would have had the possibility to remove this damage and to create a orderly conditions.

Q. Witness, you pointed out the difference between Himmler and yourself, How did it come about that in spite of this you returned to Berlin in June 1942, and took over Office III?

A. In June 1942, Heydrich was killed as a result of an attempt on his life. Himmler himself took over the leadership of the Reich Security Main Office with the clear intention of weakening it, because Heydrich was the only SS leader who had grown above his, Himmler's head. Technically, Heydrich was officially the Reich Protector and already on the official list of Reich authorities and ranked above Himmler. When Himmler was in charge of the Reich Security Main Office he weakened it in two important points. He took the economic authority from the Reich Security Main Office and transferred it to Pohl, the manager of the Economic Main Office, and he also took away the personnel authority of the RSHA and transferred it to the SS Personnel Main Office. Everyone who knows about offices and authorities knows what this weakening means. Himmler was not present at that time in Berlin, that is, the RSHA had no management, and no leadership. Thus he was forced to have the different offices working independently as the Office III, which, while I was in Russia, had no representative. I was, therefore, the only one of the management who, during his absence in Berlin, could direct the Office III. Furthermore, it was a tactical measure which, in my opinion, was to point up his weakening measure of the RSHA by taking away the Office Chief from the office and then instituting a person who had no authority, neither internally nor externally.

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Q. What was the development of your relations with Himmler after this?

A. When I returned from Russia in July I was ordered to report to Himmler. In August he received me in his headquarters in a very friendly manner.

THE PRESIDENT: May we suspend just for a moment? There seems to be something wrong with the transmission here. We don't quite get all of it. I would like to speak to the interpreter here... BY DR. ASCHENAUER:

Q. We were just dealing with the question of the development of your relations with Himmler.

A. After my return from Russia I reported at the headquarters to report to Himmler about the situation of Office III. I was received in a very friendly manner, I was promoted to a Brigadefuehrer, and he told me that he planned to make me a Brigadier General of the Police. This friendly manner, of course, had its ulterior motives, because he went on with Heydrich's intentions by asking me to leave the Reich Group Trade and to become an official in the Reich Security Main Office. I explained to him that I had to ask him not to make me an official of the Reich Security Main Office, and not to make me a Brigadier General of the police, and why the Office III had remain an independent office under all circumstances, that is, it had to remain a party organization, and its members had to be party employees. I made it quite clear to him that the Party would never stand for a state organization taking over an information service in which the work of the Party would also be dealt with. I also made it clear to him that the SD could only tackle the task which he had talked about under the conditions that he would not give it the appearance of a police organization, because a police organization collected the most able experts of all departments, but these were not prepared to even give the impression that they were in any contact what so ever with the police.

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Apart from that, through this connection between the state police and the SD, the most important task of the SD would be abandoned namely to be independent of any department, not to serve in any administrative or executive function, but to work without any individual responsibility and in no connection with other departments, but working completely independently because this, in itself, would justify the SD dealing with other subjects with its objective criticism, which, otherwise, would no longer be objective criticism and would be regarded as criticism of one department against another department. This, of course, led to a completely new disagreement. Himmler reproached me with very harsh words, and asked me to not try and teach him anything. He knew exactly what the purposes of the SS were, and what meaning the state protection corps had for him. I was dismissed in disgrace, and this was the second time in my activity of nine years in the SD that I had the chance to speak to Himmler himself. When Kaltenbrunner took over the office and became Himmler's successor in January 1943, Himmler spoke of the Office III and its chief with ironical words, and said they were the guards of the grail of National Socialism and of the SS who stood whining by the broken ideas and thought that now everything had been lost. Thus, we were publicly denounced as nuisances, pessimists, and defeatists. But it was only now that the actual crisis of the SD started because after Stalingrad conditions in Germany became more and more difficult. The more difficult these conditions in Germany became, the more critical, of course, became the reports of the SD, And now, Himmler was no longer prepared to approve of this activity on the part of the SD but, on the contrary, he used the complaints of his colleagues in the Reich Offices and pushed them on to the SD.

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A. I'll give you a few examples. In the spring of 1943 Goebbels had tried through a theatrical attempt to gain the internal political power in Germany. It was the famous Sports Palace Speech, the declaration of a total war. Goebbels himself asked on that morning for a report of the SD on the effects of this declaration; and he got this report. In this report it was said that among the population of all Germany, in all districts, this declaration in the Sports Palace was disapproved of and disagreed with and that it was called a Punch and Judy show. This led to Goebbels' forbidding any spreading of these reports from all the Reich or part of the Reich. The reports from the Reich were these summaries of reports of all departments of the SD which were issued by us to all Reich departments and authorities and in the administrational practice of the Reich were the only source of information of the departments about difficulties of the remaining departments. With this the most important means of information of the SD was abolished and destroyed. that even Reichsminister Rammers and Goering, who, on pressure only, received these reports, were not in a position from their own reports which they received to overcome this defeatism. Gauleiter news service in the Party Chancellory had received these reports which I had issued against his power politics in Russia, He complained to the Reichsfuehrer SS, and the Reichsfuehrer SS wrote a letter to Kaltenbrunner in which he instructed him to dissolve the Office III and its subsidiary offices; to warn its chief; and to threaten him that if these unnecessary reports were not stopped, the SD, the news service, would be dissolved completely and the chief would be arrested. Bormann and Ley were the next people to take this direction. Ley immediately forbade the confidence men and the administrators of his office any collaboration with the SD. Because of the unjustified work of the SD, Bormann threatened to speak to the Fuehrer, which was to have the of effect that the Fuehrer would take the Chief of Office III where he belonged, and his people would be put to a more productive work.

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also in 1944 forbade all Party authorities, all office chiefs in the offices down to the smallest menial clerk to have any activity within the Party. I mean the SD. This fight which Bormann put up remained in force until April 1945; and it was such a heavy fight that even Kaltenbrunner, who on the whole approved of my work, asked me urgently to stop the work on the Lebensgebiet (domestic) paper, or at least to camouflage the reports as reports of the adversary or sabotage reports. The reports of this kind regarding the leadership situation within the Reich which fell into the hands of the English showed the Allies that this manner of reporting was not given up in spite of all and in spite of the threats it was still possible to edit and issue the strongest reports about the leadership of the Reich, about the complete interior dissolution of leadership within the Reich, and about the collapse of the Luftwaffe and to submit them first by way of detour to the Fuehrer.

According to my knowlege that is the tragedy of the SD. These were the only reports which in the midst of the catastrophy were submitted to Hitler. I myself did not know Hitler personally nor did I over have the possibility of submitting a report to him or even of speaking to him.

Q. How did it come about that you were appointed into the Reich Economic Ministry?

A. My professional development was conditioned by my work in the Reich Group Commerce and Trade. This work gained importance and significance as it was meant for a group in the professional organization because the neighboring groups of the industries, the handicraft and banks and insurance companies and the transport groups did not have tasks which were handled by political people. They were not prepared to work in this very difficult sphere of the economical and armament ministries; and, as I entered this policy with political arguments, my own significance in economical policy was a much bigger one than can be understood from commerce and trade.

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This was fortified by the fact that even in the economic ministry there were no political personalities who were prepared to discuss the differences with the Party, and the political person Speer, who was the confidence man of the Fuehrer. Thus in the years 1939 and 1940, from the Reich Group Commerce and Trade we were in charge of the economic, political situation; and we fought against all collectivistic and socialistic tendencies which were connected with the names Speer and Bormann.

Funk was in agreement with my activity. He especially approved of my work which I did in the face of the so-called self-responsibility of economy; that is, against the consequence that state authority as a state would vanish, and instead of the state economic leaders entered who took over the authority of the state, but at the same time they were competitors in competition with each other. Therefore, the possibility of corruption set in. But also it was one of the primary reasons for an economical loss of war because the competitor was no longer prepared to talk about its actual output to the competitor, and large masses of the people did not feel themselves confronted any longer with an objective state but with individual industrial beasts and monopolies. Therefore, the contrast between economy and the state became larger and larger. Funk approved of those reports of mine and therefore asked mo for my entry into the Reich Ministry of Economy. State in the Ministry of Economy. Himmler categorically refused my transfer into the Reich Ministry of Economy and for the very reason that caused Funk to ask for my transfer into the Reich Ministry of Economy. Himmler also recognized the significance of the economical development of the capitalism of monopoly as it had not been known until that date, But in a letter to mo he refused my own transfer into the Ministry of Economy, giving the reason that He did not want an 33 leader to be exposed in this economical fight against capitalism because this economical fight could not be waged within this whole world war.

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After the Ministry of Economy collapsed in the summer of 1943, Funk again tried and through a tactful game succeeded in coming to a decision before Himmler; and Himmler now agreed.

Q. What was the effect of your last discussion with Himmler?

A. The relation with Himmler deteriorated even more; it had to deteriorate even more after this because my now duty in the Reich Ministry of Economy was added to the old crisis because what our predecessors had not been able to do now became our own task. We tried to force Pohl and his old Reich Economic Main Office to uncover the cards of the SS office; to play with open cards, as it were. We told him that we would not stand for the dissolution of this SS structure in Germany any more than we would in foreign countries. During the course of this discussion, together with Heider, the UnderSecretary of State in the Ministry of Economy, Himmler asked me to come to Berchtesgaden in the summer of 1944. He explained to us why this policy was not to be pursued by us in opposition to his economical activity. We refused any agreement; but he had already created conditions in Hungary by a deal with the Weiss-Konzern, securing the Weiss enterprise for the SS. As for us, the right was on our side in this case; and as normally he had nothing on us, he used the next occasion to begin a now correspondence of a very serious and criticizing, slanderous manner. The reason was the economical reform plan which I had drafted in the autumn of 1944. He intended in the economical field to establish an orderly administration. Himmler first agreed with that when Bormann objected because he was against any consideration on the part of the state and tried to prevent this; and furthermore he did not want a curtailment of the power and authority of the districts which he regarded as a measure against the Party.

Himmler now changed his opinion and agreed with Bormann. He disavowed my reform suggestions, which he said were academical reports, statements of an unnecessary intelligence.

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But the end of our relations was of a different nature. In the last fortnight before the collapse I turned over my quarters in Flensburg and Ploen to Himmler. Only now did really serious discussions begin. Now he was more open to discussing matters with me. But even to say that these discussion were actually good discussions between Us-- only the end was more or less like the beginning because. at the end I tried to cause him not only to dissolve the Werwolf activities but also to dissolve the SS, and to go over and turn himself over to the Allies. In trying to cause him to do so, I put it t** that he alone could explain to the Allies the tasks which he had given to the SS in a responsible manner, and he would have to take this responsibility. He refused and escaped without saying goodbye.

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DR. ASCHENAUER: I think this would he the right moment for a recess, Your Honor.

THE PRESIDENT: I should like to ask a question. BY THE PRESIDENT:

Q. What was the date of this discussion with Himmler when the witness recommended the dissolution of the SS and the going over to the Allies?

A. That was the 9th of May, your Honor, 1945.

Q. Well, it was all over then, wasn't it?

A. No, it was not all over in a manner of speaking because the Flensburg government was in power, and the Allies had agreed to this so-called Flensburg government. This government was actually in power until the23rd of July 1945. They were officially in charge of Germany; of course, only in the manner of a district council. In this time between the 9th and the 23rd of May there were government reshuffles, as it were. Only on that date Himmler left the government as Reich Minister and as the commander of the subsidiary army. He had been of the belief that via his officer Schellenberg the Allies might negotiate with him and he might be used as a confidence man within Europe. From these conversations with Schellenberg via Bernadotte, the chief of the Red Cross in Sweden, with Churchill and the British government, Himmler really believed in it, until the day of his escape, even until the day before his death. Even after he escaped he sent me ordinance reports every day by which manner he tried to find out whether Schellenberg had returned from Sweden or whether Field Marshal Montgomery had answered the letter which he had sent on the 9th of May.

Q. But whoa you say that on the 9th of May you were discussing whether you should go over to the Allies, it's like the mouse discussing whether he should go over to the cat. You'd already surrendered.

A. Yes, but as I just stated, this small district of the Flensburg government, as it were, with the locality Muerwik and Gluecksbuerg, had not surrendered, because at that place there were official negotiations between the Control Commission of the Allies with the government and the chief of government of the so-called German Reich.

I may draw your attention to the fact, your Honor, that at the negotiations the Allies authorized Jodl, Keitel, and Friedeburg to remain the chiefs of government in this district Flensburg. This Chief of State with his government actually remained in force until the 23rd of May 1945.

Q. But you didn't seriously believe that you could successfully hold out against the combined Allied power after May 8, did you?

A. No, I think we must have misunderstood each other, your Honor, because I had only two intentions. One was to prevent SS units from being formed into underground movements. Therefore, I tried to cause Himmler to dissolve the SS officially and to order them to submit to fate, as it were; and as far as it would be possible to work, to work with the Allies positively. I also tried to cause Himmler to go over to the Allies and put himself at the disposal of the Allies so that he could tell them what the tasks were and of what nature they were, the tasks, that is, which he had given to the SS, and so that he could take the responsibility for them.

Q. Were you in daily contact with Himmler following May 8?

A. Yes.

Q. Until when?

A. At least until the 19th of May. I believe it must have been until the 21st, by ordinances. He had camouflaged himself and was living in a disguise under which he then was delivered into a prisoner of war camp.

Q. How did you submit yourself to the Allies?

A. When Himmler told me that I was afraid of myself and afraid for my own life then, I told him that I had already made up my mind to put myself at the disposal of the Allies and to take my own responsibility for what I had made of the SD. I could not leave it to anybody else to take responsibility for the activities of the SD; and although I had not been arrested when the rest of the government had been arrested in the afternoon, after asking three times for it, I achieved the status of being arrested.

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Q. When was that? What date?

A. That was on the 23rd of May.

Q. Then they favored you by arresting you?

A. Yes, on the 23rd of May.

THE PRESIDENT: Very well, recess until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 8 October 1947)

THE MARSHAL: The Tribunal is again in session. BY DR. ASCHENEUER:

May I continue now, Your Honor. Witness, did you report voluntarily for the campaign in Russia?

A.- No, on the contrary. Twice I was directed to go to Russia, and twice I refused. Then I got the third order which I could no longer evade.

Q.- Why didn't Heydrich from the beginning simply give orders, it was certainly not customary to negotiate with any of his subordinates?

A.- He was forced to insofar as I was on call for the Reich Group Commerce -- I had a note in my military passport which obligated me in case of war, to be at the disposal of the Reich Group Commerce, therefore, it was necessary that this war order be superseded by Heydrich's order. This happened for the third time by order, so that the Reich Group Trade revoked this order. Now I was conscripted for the Reichsfuehrer-SS, the Army district giving notice of a secret mission for the Reichsfuehrer-SS and that I had gone into a foreign country. After that I was made available for the Reich Security Main Office. Now I was given a note in my military passport for the Chief of the Security Police and SD.

Q.- Please explain the legal situation of your membership in the SD, when you were conscripted in 1941?

A.- In 1936, I joined the SD. When I was given the job of building up a critical military information service or office. When this job was taken away from me I asked for my dismissal. This was refused to me in 1938.

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I immediately was able to leave from the main position which I held there. The situation with the Chief of Security Police and SD was as difficult as in the other SS organizations, because one did not enter into a contract. It was merely an unilateral loyalty agreement, and in addition to a simultaneous joining of the SS, a condition of military subordination existed. One was at the same time a military subordinate. My renewel application for dismissal in November 1939 was again refused. By now the position of the Chief of Security Police and SD had become even stronger. In the meantime through a decree the Security Police and SD were listed as being on a war emergency status, and in the renewed decree it was added that even an application to leave this organization would be forbidden. This application was even punishable. In this manner it was no longer possible after 1939, even to file an application to leave. This last remark applied to a general condition, since through the wish of the Reichsfuehrer-SS I had the possibility in November 1939 to make a renewed application. This is when I was conscripted for the Russian campaign in 1941, I was not a voluntary member of the SD, or of the SD. I was conscripted for the campaign.

Q.- How did the formation of the Einsatzgruppen and the Einsatzkommando come about? Were they part of the agencies of the offices of the Secret Police and the SD?

A.- The Einsatzgruppen and the Einsatzkommando were neither agencies nor parts of the organization of the Office of the Reich Main Security Office. They were mobile units set up for one single purpose which were set up ad hoe for one certain employment. The members of the Einsatzgruppen and the Einsatzkommando were either conscripted or were taken from the members of the Security Police and SD. Or they were drafted to a large extent, for example, as drivers or interpreters, whereas, a large membership of the Einsatzgruppen, by order of Himmler, was made available by companies of Security Police and the Civil Police; these Einsatzgruppen and Einsatzkommando were no agencies or authorities but they were military units.

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Q.- During the detailing of leaders and the men, were the purposes and the orders of the Einsatzgruppen made known to the men and the loaders when they were drafted?

A.- No, this was not done. The leaders and men were given an order to report to Deuben or Presch in Saxony. They did not get any information where they were to be committed, or what tasks they were supposed to do. Even after the units had been activated, the commanders and men did not know about it.

Q.- When was the area of operation made public?

A.- It was made known shortly before the units left for Russia, about three days before.

Q.- When was the order given for the luquidation of certain elements of the population in the USRR, and by whom was it handed over?

A.- As far as I recollect, this order was given at the same time when the area of operations was made known. In Pretsch the Chiefs of Offices I and IV, the then Obersturmbannfuehrer Streckenbach and Mueller, gave the order which had been issued by Himmler and Heydrich.

Q.- What was the wording of this order?

A.- This special order, for such it is, read as follows: That beyond our mission the Security Police and SD, the Einsatzgruppen and the Einsatzkommando had the mission to protect the rear of the troops by killing the Jews, Gypsies, Communist functionaries, active Communists, and all persons who would endanger the security.

Q.- What were your thoughts when you received this order of killings?

A.- The immediate feeling with me and with the other men was a general protest. Obersturmbannfuehrer Streckenbach listened to this pro test, and, even gave us a few different points which we could not know, but at the same time he told us that even himself had protested most strenuously against a similar order in the Polish campaign, but that Himmler had rebuked him just as severely by stating that this is a Fuehrer order, which must be carried out, in order to achieve the war aim of destroying communism for all times, therefore, this order is to be taken without hesitation.

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Q.- Did you consider this order as correct?

A.- No, I did not. I did not consider it correct, because apart from the necessity of taking such measures, these measures would have moral consequences which are very damaging.

Q.- Did you know about plans or directives which had as their goal the extermination for racial and religious grounds?

A.- I expressly assure you that I neither knew of such plans nor was I called on to cooperate in any such plans. The Obergruppenfuehrer Barzelewsky testified during the big trial that the Reichsfuehrer-SS in a conference of all Obergruppenfuehrers made known that the goal was to exterminate thirty-million Slavs. I repeat that I was neither given such an order was even the slightest hint given to me that such plans or goals existed for the Russian campaign. This is not only true for the Slavs but this is also true for the Jews. I know that in the year of 1938, '39 and '40, no extermination plans existed, but on the contrary, with the aid of Heydrich, and by cooperation with Jewish organizations, immigarations from Germany and Austria were arranged; financial funds even were formed in order to help aid the poorer Jews to make this immigration possible.

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In 1941 I personally helped in individual cases, where, for example, a representative of I.G. Farben called on me in order to overcome difficulties with the State Police. It was then their intention to let so-called bearers of secrets immigrate. Up to the very and I succeeded in giving such aid. Thus at the beginning of the Russian campaign I had no cause to assume that the execution order which we were given meant any sort of the beginning of an extermination or that any such extermination was planned or was to be carried out. During my time in Russia I sent a great number of reports to Chief of Security Police and SD in which I reported about the fine cooperation with the Russian population. They were never objected to. When Himmler was in Nikolajev in 1941 he neither made any reproaches about this, nor did he give me any other directives. I am rather convinced that where such an extermination policy was later carried out, it was not carried out by the order of the Central Agencies, but it was the work of individual people.

Q Did you give any thought to the legality of such a Fuehrer Order?

A Of course I did. I knew the history of Communism. From the theory of Lenin and Stalin and from the strategy and tactics of the Bolshevism World revolution, I knew that Bolshevism was to let no other rules prevail other than those which would further and promote its its aim. The practice of Bolshevism in the Russian Civil War, in the War with Finland, in the War with Poland, in the occupation of the Baltic Countries and Bassarabia, gave us the assurance and certainty that this was not only theory, but that this was carried out in practice, and in the same manner it therefore was to be expected that in this war no other laws would have any validity. This was true for the International Conventions which Russia officially denounced to the German government, as well as the international customs and usages of war, and, it was true because according to this same Communist Ideology the customs and usages could only develop between partners who were on the same ideological basis.

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Just as the other class is the opponent internally who is to be destroyed by all means, according to the same ideology the other state which does not represent a Bolshevistic system is the external opponent which is to be destroyed, just as the class is to be destroyed internally. The rules in this are adjusted according to the state of emergency of the moment. In this respect it was clear to me that in this war against Bolshevism the German Reich found itself in a state of war emergency and of self-defense. What measures are to be taken in such a war to fight such an opponent on his own ground - to determine this could be only a matter to decide for the supreme leadership which waged this war for the life or death of its people; and, which, in my opinion, they certainly believed they waged also for Europe and even more for there was no doubt for us that the Four-Year Plan, as well as the events of 1938 and 1939, were nothing else for Hitler but the securing of the point of departure for this war against Bolshevism considered by him to be inevitable.

THE PRESIDENT: Witness, when you refer to the Russian practice in the war against Poland, were you referring to the war of 1939 when Russia was your Ally?

A Yes. This has nothing to do with it, or does not change the subject, the fact that Russia was our Ally at the time.

THE PRESIDENT: No, I am just asking if that is the war you are referring to?

THE PRESIDENT: Yes. Well, did Germany at that time also have the same practices?

A I do not know that this happened to the same extent. That violations took place cannot be doubted.

THE PRESIDENT: You believe that it was not as widespread as it later developed in your war against Russia? Is that what I am led to believe?

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BY DR. ASCHENAUER: given to him?

A This is not possible legally or actually. According to the general legal interpretation in Germany, not even a judge had the possibility of examining the legality of a law or an order. As little as an administrative official can examine the administrative edict of a supreme authority. But even actually it would have been presumptuous because in the position in which every one of the defendants found themselves, we did not have the possibility of actually judging the situation. It also corresponds to the moral concept which I have learned as an European tradition, that no subordinate can take it upon himself to examine the authority of the supreme commander and chief of state. He only faces his God and history.

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Q Didn't Paragraph 47 of the Military Code give you an occasion to interpret this execution order differently? created to prevent excesses by individual officers or men leaves open the possibility to consider the supreme order of the Supreme Commander a crime. Apart from this, again according to continental concept, the Chief of State cannot commit a crime. regarded these exterminations in the East?

A This seems to have several reasons. For one thing, the deeds in the Hast were published as being isolated excesses done by the SS. One took them out of their context and made the SS alone responsible. In reality these executions in the East were a consequence of total wax which was inevitable if a philosophy of one country prevailed which had as its goal the destruction of every resistance against their conquering the world with their idea. This war was not finished. The Reparations for a possible conflict seem to tell me that whatever happened in the East is only a prelude.

Another point. It has been customary so far to judge executions during a war by various standards. The theorizing element which made the execution seem honorable was the fight of man against man. This has long been overcome. The individual war opponents try to exterminate as many enemies as possible by preserving their own strength. The fact that individual men killed civilians face to face is looked upon as terrible and is pictured as specially gruesome because the order was clearly given to kill these people. I cannot morally evaluate a deed any better, a deed which makes it possible, by pushing of a button, to kill a much larger number of cirilians, men, women and children, even to hurt them for generations than those deeds of individual people who for the same purpose, namely, to achieve the goal of the war, must shoot individual persons. I believe that the time will come to remove these moral differences in executions for the purposes of war I cannot see that political factors and political and economic conventions, which in their consequences cause the execution of and acts of violence against and misery for millions of people have done anything better morally only because the conscious consequences were not expressly made known to the population.

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I believe, therefore, that when history has come to an end, that this conflict will not have started in 1941, but with the victory of Bolshevism in Russia, that then only can the judgment of history be made which will inform about various phases of this conflict. Fuehrer order which was given to you? that any other order but the goal of the war was present, namely, a momentary and permanent security of our own area, inopposition to that area, in which the belligerent conflict is taking place. execution was the part of a systematic program of genocide which had as its aim the destruction of foreign peoples and ethnic groups. Will you please comment on this?

A I did not have any occasion to assume any such plan. I assure you that I neither participated in plans nor did I see any preparation for such plans which would have let me assume that such a plan existed. What was told to us was our security and those persons who were assumed to be endangering the security were designated as such. objective prerequisite that the executions of populations according to the Fuehrer order were re necessary?

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the propaganda of Goebbels was not clearly enough delineated. I was convinced that this order, in order to grin its ends internally, had torn many millions from their families, when dispossessing the Kulaks had taken the adult population away three tines from rural districts, and that the same thing was true of the other states. This state would have even less consideration for a foreign population. relation to the Bolshevist authorities, was a very, very snail number, much lower than the Jews who occupied leading positions. The Prosecution has submitted a report from my Einsatzgruppe. In this report in Enclosure No. 2 it explained the situation of Jewry in the Crimea. Unfortunately this enclosure is not available. It would have shown that in the Crimea, for example, up to ninety percent of the administrative and leading authoritative positions were occupied by Jews. The information service in the sane field, conversations with innumerable Ukrainians and Russians and Tartars, and the documents which the Prosecution submitted show that this was not a sporadic happening in the Crimea. For us it was obvious that Jewry in Bolshevist Russia actually played a disproportionately important role.

Three times I was present during executions. Every tine I found the sane facts which I considered with great respect, that the Jews who were executed went to their death singing the International and hailing Stalin, that the Communist functionaries and the active leaders of the Communists in the occupied area of Russia posed an actual continuous danger for the German occupation which the documents of the Prosecution has shown.

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of Stalin for ruthless partisan warfare would be followed without any reservation. Orally and in written from the Bolshevists have attested enthusiastically to the fact that this partisan warfare was not only waged by the Communist Party and not only by the Communist functionaries, hut as Stalin requested, it was waged by the population, by peasants, by workers, men, women and children. This same literature is proud of the fact that it was waged with great treachery, which the call of Stalin evoked in order to wage this war successfully. Thus our experiences in Russia were a definite confirmation of the Bolshevist theory and of the practice as we had learned about it before.

Q. What orders did you give for the security of the rear area in regard to killing of civilians?

A. Before I testify to the various facts, I would like to say the following: The men if my group who are under indictment here were under my military command. If they had not executed the orders which they were given they would have been called to account for it by me. If they had refused to execute the orders they would have had to he called to account for it by me. There could he no doubt about it. Whoever refused anything in the front lines would have met immediate death. If the refusal would have come about in any other way a court martial would have brought about the same consequences. The jurisdiction of courts-martial was great, but the sentences if the SS were gruesome. The orders for the executions in the East given in Pretzsch, went to all Einsatzgruppen commanders or Einsatzkommando leaders who went along during the beginning of the Russian campaign. They were never revoked. Thus they were valid for the entire Russian campaign as long as there were Einsatzgruppen. Thus it was, therefore, unnecessary at any time to give another order of initiative. Therefore, I did not give any general order of initiative and did not give any individual order to kill people. I emphasize this, even though I was told in England two and a half years ago that the Russians had found a written order. My mission was to see to it that this general order for executions would, be carried out as humanly as conditions would permit, Therefore, I Merely gave orders for the manner of carrying out these executions.

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Q. What were these orders?

A. These orders had as their purpose to make it as easy as possible for the unfortunate victim and to prevent that the brutality of the men would lead to inevitable excesses. Thus I directed first that only so many victims would be brought to the place of execution as the execution commandos could handle. Any individual action by any individual man was forbidden. The Einsatzkommandos shot in a military manner only upon orders. It was strictly ordered to avoid any mistreatment, undressing was not permitted. The taking of any personal possessions was not permitted. Publicity was not permitted, and at the very moment when it was noted that a man had experienced joy in carrying out these executions it was ordered that this man may never participate in any more executions. The men could not report voluntarily, they were ordered.

Q. What did you do to prevent a wide interpretation of these orders?

A. It was forbidden that the commandos undertake any executions outside of the territory occupied by the German Army. This became necessary in Czernowiz. This was especially necessary after 10,000 Roumanians had been driven into the German area of occupation, and it became acute for Odessa, when the Roumanians tried to carry out executions beyond our orders. The commandos had the order during the execution of Communists to execute only these persons who by their proved deeds and conduct do definitely represent a danger to security. A family was never seized, neither by a high functionary nor by a commissar nor by any other person. If, on the other hand, it was said that children were executed at Kertsch this was done without any connection to the Einsatzkommando there.

Q. Why did you not prevent the liquidations?

A. Even if I used the most severe standard in judging this I had as little possibility as any of the co-defendants here to prevent this order.

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There was only one thing, a senseless martyrdom through suicide, senseless because this would not have changed anything in the execution A this order, for this order was not an order of the SS, it was an order of the Supreme Commander-in-Chief and the Chief of State. it was not only carried out by Himmler or Heydrich. The Army had to carry it out too, the Supreme Command of the Army as veil as the commanders in the East and Southeast who were the superior corianders for the Einsatzgruppen and

Einsatzkommandos. If I could imagine a theoretical possibility, then there was only the refusal on the part of those persons who were in the uppermost hierarchy and could appeal to the Supreme Commander and Chief of State, because they had the only possibility of getting access to him. They were, after all, the highest bearers of responsibility in the theater of operations.

THE PRESIDENT: May I ask a question, Dr. Aschenauer 7 the East, that is of the Wehrmacht, also had orders to carry out this program of execution?

THE WITNESS: I know that the Supreme Command gave the Supreme Commanders for the Eastern Campaign who had assembled on the 30th of March, not only information about the measures planned, but also directives to support the execution of these measures. The fact that SS and Police units were used for these executions had only one reason, namely that there was no guarantee for a systematic execution of these orders in the Army troops but that one expected demoralization if Army troops would be used, AS the war progressed in the Southeast this principle was abandoned.

THE PRESIDENT: Would you say that the Army commander not only countenanced this program of executions but lent their active support to it?

THE WITNESS: Yes, that is what I want to say. If I my give you two examples for that, the executions in Simferopol by the Einsatzgruppe 11-B were executed on the order of the Army, and the Army supplied the trucks and the gasoline and the drivers in order to bring the Jews to the places of execution. The arrests of hostages were expressly carried out by order of the supreme commander of my army. He did not agree with the executions of those hostages, because the numberof executions did not seem high enough to him and afterwards he told Seibert, the defendant here, to tell me that He himself would henceforth carry out the appropriate number of executions. from this order. sense, because in agreement with the army, we had excluded a large number of Jews, the farmers, from the executions. When the Reichsfuehrer SS was in Nikolajew on the 4th or 5th of October, I was reproached for this measure and he ordered that henceforth, even against the will of the army, the executions should take place asplanned. assembled all available commanders of my Einsatzgruppe. The Reichsfuehrer addressed these men and repeated the strict ordered to kill all those groups which I had designated. He added that he alone would carry the responsibility, as far as accounting to the Fuehrer was concerned. None of the non would boar any responsibility, but He demanded the execution of this order, even though he knew how harsh these measures were. pointed out the inhuman burden which was being imposed on the men in killing all these civilians. I didn't even get an answer.

order? and the possibility of appealing to a higher authority, but I had neither of them. this order by sickness? myself as an individual person who only could think and act responsibly for himself. After I had once become Chief of the Einsatzgruppe, I felt responsible for the 500 men of this group. By simulating illness, I could have evaded the mission, but I would have betrayed my men if I had left this command. I could not leave this task and I would not have been convinced that my successor would care for his men in the same manner as I did. I considered this which I was able to do for my men -

despite everything, I considered this duty and I shall consider it today as much more valuable than the cheap applause which I could have won if I had at that time betrayed my men by simulating illness.

Q Did you issue orders of execution? executions?

A It is in three points. As far as the transportation conditions permitted, I convinced myself before the large executions whether measures had been taken at the place of execution, which would make possible the conditions I set down for these executions. ordered that other distant Kommandos be detailed to support that Kommando which had to carry out an execution, and through my men to carry out unexpected inspections during these executions, I wanted to make sure in that way whether my orders were being carried out about the manner of execution.

was, in the first place to follow the German Army into the Eastern territories and to kill Jews, Gypsies, political functionaries, communists, and other elements of the civilian population which were considered racially inferior or politically unwanted. Will you please comment on this?

THE PRESIDENT: Just a moment, please. That is a rather large question and it takes up, perhaps, another phase of the indictment. Suppose we have our recessnow? Recessfor fifteen minutes.

(A recesswwas taken.)

THE MARSHAL: The Tribunal is again in session.

DR. ASCHENAUER: I may repeat the last question, if it please the Court. BY DR. ASCHENAUER: was, first, to follow the German Army into the Eastern territories, and to eliminate with Soviet functionaries, Gypsies, Jews, and other elements of the civilian population which were considered racially inferior, or politically unwanted. Would you say something about that, witness? to eliminate groups of the population because they were racially inferior, and that was not the main task. It was an additional task which, in itself, was foreign to the actual task of the Einsatzgruppen and Einsatzkommandos, because never was such a task a task of the Security Police or of the SD for that matter - and never by any means, as it is mentioned in another place in the indictment, were they trained in such exterminations and executions. Rather the general task of the Einsatzgruppen and the Einsatzkommandos was that the security of the army territory in the operational theaters should be guaranteed by then, and within the framework of this security task the execution order was, of course, one of the basic orders. But, in reality, the Einsatzgruppen's task was a positive one, if I do not consider this basic order for exterminations and executions. It must be realized, of course, that a group of about 500 people who, on the average, had charge of an area of 300 to 400 square kilometers, could not terrorize such an area, even if they had wanted to do so. Therefore, if we regard it intelligently these tasks could only be called positive ones, and as such they were developed by myself. The first experiences I collected was when the task was transferred to us by the army to harvest in the Transistria. The larger number of Kommandos only dealt for weeks with this task of harvesting in Transistria, and I had assigned various tasks which were the basis of my policy altogether which were, first, the institution of a self-administration, as it were, in the communities so-called "Kolchos", and also in the municipalities; secondly, a recognition of private property; thirdly, the payment of wages which the population received for each fifth collection.

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I guaranteed this wage, even to the Rumanian authorities. Fourth, cultural places were restored - that is, the population was supported in restoring the cultural centers and they were inspired to take up a new cultural life. It is not for me now to describe or disucss the success which this had with the populations of such places. I can only state that because of these measures the population was on our side, and they themselves reported any disturbances which might happen in these territories. Therefore, by this positive winning over of the population, the security of the territory internally could be guaranteed, and actually, in our territory a partisan resistance movement did not come into existence, but it was formed by external elements and was artificially extended. to the army about the atmosphere within the population, the reaction of the population to German measures, and what disturbances and damages happened in the area on the part of the Germans. In this manner plebiscites could be arranged which were useful to the population and which saved us any police measures. The situation in the Crimea was much more difficult, although I was there a longer time than any where else at a stretch, and I had the possibility to prepare political measures. Even here the increase of my positive measures succeeded in establishing a sort of confidence relationship between the population and the SD agencies. When, in January 1942, the danger arose that we would lose the Crimea, the Tartars, also the Ukrainians, voluntarily put themselves at our disposal for military service. The army left it up to me to deal with the political situa tion in the Crimea.

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At that time I could not accept the Ukrainians into the army, but the Tartars put 10% of their male population at my disposal within three weeks, absolutely voluntarily. Here, selfgovernment and self-administration was granted to all parts of the population that is, those units, those communities with a Ukrainian majority had a Ukrainian mayor; the Tartars got a Tartar for their mayor; the Greeks got a Greek; and the Great Russians got a Great Russian. These measures were extended in winter as a support when the danger of famine arose in the south. Thus, the actual security task was permanently a positive one and was to be achieved by positive measures.

Q Did the combatting of armed bands belong to your sphere?

A No, that was not within my sphere. But, in the Crimea - especially, after repeated landings of the Russians in Feodosia, Kersch and Eupatoria from the North, East and the West, with the ultimate aim of the Jaila Mountains, the whole Crimea was systematically filled with enemy agents and spies and those strongly executive tasks, as, for instance, band intelligence, became an essential task which was assigned to us by the army. To my great regret the forces of the army in the Crimea were so small that for months the Commando 10b and parts of the Commando 11b had to be assigned to fight armed bands. This assignment, as well as the combatting of armed bands, was under the army command, that is, the command of the various army units which held the front sectors. We ourselves were only subordinates and were outside our actual field of activities. this activity of the Einsatzkommandos? the Einsatzgruppe very small. I had merely one, or possibly two, departmental experts, and one adjutant, the defendant Schubert, who was also the manager of the business office. That was my whole staff, who had to deal with the matters.

I had to be in the headquarters of the army, the local headquarters, that is, in order to establish and guarantee the permanent contact between the Einsatzgruppe end the Army; I was actually the point of contact between the army and the Einsatzkommandos. My main task was to carry out the orders of the chief of the SD, the Security Police end the too frequent orders of the army, and to adjust them, and to take care that the Einsatzkommandos, on the basis of the general situation in an area, were committed in the right tactical manner. Thus, for instance, we had to hunt down saboteurs, enemy agents, or make out intelligence reports, or gather intelligence about partisans, or whatever the situation required.

Q I now turn to the documents. I note the Document Books I, II-A, II-B, II-C, II-D and III-D. I don't know whether the Prosecution had these document books at their disposal at present.

MR. WALTON: While the document books mentioned by the defense are not all here I don't think that will hamper Dr. Aschenauer at all - I think we can take enough notes, and enough notes appear in the record for our own purposes.

THE PRESIDENT: Very well. BY DR. ASCHENAUER:

Q My first question on this subject: Introducing the evidence against the members of the Einsatzgruppe D, the Prosecution under Exhibit 149 produced document No. 2661, Volume III*D, and they have remarked that the operation and situation report No. 10 concerning activities of the Einsatzgruppe D from the last until the 28th of February 1942, in which it is shown that all Jewish areas in the Eastern territories are to be cleaned, as it were, by transporting the Jews to Ghettos and those who resisted the German regulation would be shot. Jews would also be shot in order to prevent the spreading of epidemics. Would you comment on this, witness?

insofar as it is not a report from the Einsatzgruppe D, because in this document, independently from individual reports of the group, collective notes - summaries, as it were - reports which were made Independently of the original reports. Only from the location signs can one conclude which territory is meant for the individual Einsatzgruppen. Of Einsatzgruppe D there is only one small remark three of four times in this lengthy document, the content of which is quite independent from the charge of the Prosecution, This paragraph is mentioned twice. The error seems to me based on the fact that the Prosecution confuses the term "Eastern Territory" - "Ostland", Evidently it takes the term "Ostland" to mean the whole of Russia, while in reality "Eastern territory" in German usage, is an administrative term by which the three Baltic countries are meant - Lithuania, Latvia and Estonia, and the charge of the Prosecution against Einsatzgruppe D is the content of what is being reported from this Eastern territory. It is your own affidavit of 5 November 1945, and there it says:

"In the course of the year while I was leader of the Einsatzgruppe D they liquidated", (the Einsatzgruppe, that is), "90,000 men, women and children."

What do you mean by "approximately"?

COURT II-A CASE IX Einsatzgruppen for two and a half years now; and during all that time I have always tried to avoid naming figures because the numbers of executions I do not actually know.

I don't know anyhow today. I know under what conditions these sentences were signed by me. It is an affidavit which was chosen from a number of ten or twelve. Even then, that "approximately meant that I did not actually know. I can assure the Tribunal that in any oral remarks I might have made during these interrogations, I avoided as long as I could naming any figures whatsoever. If, of course, the figure 90,000 was named by me, I always added that of this, fifteen to twenty per cent are double countings. That is on the basis of my own experiences. I do not know any longer how I could have remembered the number of just 90,000 because I did not keep a register of these figures. The "approximately" must have meant that I was not certain. evident--and my own men reproached me for it--that I was wrong in naming the figure 90,000. It is evident that I mentioned this number 90,000 by adding a number of other figures. I do not mention this in order to excuse myself as I an perfectly convinced that it does not matter for the actual facts whether it was 40,000 or 90,000. But I mention this for the reason that, in the situation in which we are today, politically speaking, Fibures are being dealt with in an irresponsible manner. The material and the value of man seems to become so unimportant that the play with millions does not seen to be of any particular importance either. Herr Auerbach mentions the figure of 11,000,000 in relation to Germany. A very small part of these millions have ever COURT II-A CASE IX seen a concentration camp.

The IMT named the number 2,000,000 for elimination in the Eastern territories. The prosecution in this trial is slightly more modest and only mentions the number of 1,000,000. It is not for nothing that the prosecution deals with only a small portion of time concerning the activities in the Eastern territories because after this period there were no activities on the part of the Einsatzgruppen. prosecution in these documents, figures occur up to 46,000. I must now state solemnly that in the Reich Security Main Office, Heydrich, Mueller, and Streckenbach, and all the others who knew about these matters, intentionally exaggerated and invented the numbers of Einsatzgruppen A,B and C. By that, B, I mean during the period of NEBE. I am convinced that these figures, which, if I add the numbers in the documents, are not even half of what the prosecution charges me with, are exaggerated by about twice as much. I believe that it is quite evident that these figures should be compared with others and looked upon as the Soviet, the Bolshevist figures. Compare these figures, as I say, with the numbers of civilian population figures which for the same reasons even from other motives, perhaps, but in an inhumane manner were murdered because this is what happened while I was in command of the Einsatzgruppen.

Q. Witness, you speak of exaggeration and double counting. Do you refer, when you maintain that, to Exhibit 95, Document Number 3,148, Volume II, Page 57, of the 20th of September, 1941, and Exhibit 96, Document Number 3,147?

THE PRESIDENT: Dr. Aschenauer, I have been conducting a campaign, very unsuccessfully up to this moment, of COURT II-A CASE IX trying to get defense counsel and the prosecution counsel, when referring to an exhibit to give us the largest unit first--the book number, the page, the exhibit, the date, then the paragraph.

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But you start off with the paragraph, and it's very difficult.

DR. ASCHENAUER: I shall try, your Honor, to comply with your wish.

Q. In maintaining this, do you refer to Volume II-D, Exhibit Number 95, Document Number 3,148, in the German Document Book Page 57; and Document Book II-D, Exhibit 96, Document Number 3,147; furthermore, to Document Book II-C, Exhibit 76, Document Number 3,137; furthermore, Volume II-D, Exhibit 85, Document Number 3,159? In these documents there are numbers which I would like you to comment on.

A. I should like to contest this figure, the figure mentioned in Volume II-C, Page 49 of the German text. There it says that from the 16th of September until 30 September, 22,000 Jews and Communists were executed and that the total figure is 35,000. In Document Book II-D, German text Page 57, it says, "Under Einsatzgruppe D," Location Kikerino, Work commandos of this area freed of Jews. From 19 August to 25 September 8,890 Jews and Communists were executed. Total number, 17,315." There's a question mark. In the next sentence it says, "At the moment the Jewish question is being solved in Nikolajew and Cherson. In each case approximately 5,000 Jews were comprenended." This operational situation-report is from the 20th of September. On the next page, Document 3,147, the operational situation-report from the 26th of September 1941, There under "Einsatzgruppe A the Location of Kikerino is stated. I do not know whether that was an actual garrison of the Einsatzgruppe A, but at any rate COURT II-A CASE IX I know that this Location was never a location of the Einsatzgruppe D. In this operational-situation report almost Literally under Einsatzgruppe D with the location of Nikolajew the same subjects are mentioned as in the operational situation report of 20th of September.

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were submitting as documentary evidence the reports of activities of Einsatzgruppen A and D; but actually up to this moment, apart from the reports of the Einsatzgruppen to the army, they have submitted no original reports. These two subsequent operational-situation-reports, which could be controlled and checked up on very easily in Berlin, show very clearly how far the original reports are removed from the contents of these operational-Situationreports. It is my opinion that from the operationalsituation-reports not a single sentence can be identified with a sentence of an original report from the Einsatzgruppen and the Einsatzkommandoes, but, on the contrary, as becomes evident from these two reports, the operational situation reports are made up from the original reports, and they are full of mistakes and are not compiled with the view point to pass on actual reports.

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one another in copy. But as a matter of fact they have been dealt with. According to my memory, these reports concerning the fivethousand Jews in Nikolajev zone are correct, but, of course, only once, not twice. If now on page 49, II C, under 2 October, it says that between 16 September and 30 September 22,000 Jews and Communists had been executed, this is an amount which during the occupation of the Einsatzgruppen in this territory did not exist in that area. During this time the Einsatzgruppen was in charge of operations in the Nikolajev-Keresov territory and the territory east of the Dnjeper River, so far as it was already within our own territory of command. In the operational situation report of 18

October, in Document Book II-D, on page 60, Document II-D, page 60, it says, "During the time of report, the solution of the Jewish question was dealt with especially in the territory east of the Dnjeper River; the territories newly occupied by the commandos here freed of Jews". Then it says, "including those territories east of the Dnjeper River 4897 Jews and 46 Communists were executed". This figure is first of all outside the report of the tine of 26 September and secondly, it states the actual figure on which existed as to this territory at the time it becomes evident that the report of 22 October cannot be correct, under any circumstances. It can only here be an addition, or in using the reports from other Einsatzgruppen. There must be another exhibit, tie number of which I don't remember, from which this becomes quite evident, namely the fact from the operational situation report of the beginning of November. May I have this. That must be the operational report No. 129 of 15 November 1944, Exh. 85 in Document Book II-D, on page 21. Here approximately 4 weeks later on page 21 of the German version, this report of Einsatzgruppen D in that period reports 11,000 Jews were executed. It must be noted that in situation report 5 November, although in October, the total num ber had been mentioned as 40,000, the situation report of November states there are 31,000.

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Here is a contradiction which cannot be clarified from the documents which only prove the questionability of the evidence of these documents, not only regarding these figures but these individual reports in these documents.

Q I further offer the documents in Volume II-B, Exhibit No. 58, Document 2837, in the German Document Book, it is on page 6. It is an operational situation report from the 29 August 1941. Furthermore, in Document Book II-D, Exhibit 89, Document No. 2943, German Document Book on page 37; also from Document Book III-D, Exhibit 154, Document No. 2840, in the German Document Book page 46; would you comment on the statements in these documents concerning other statements, whether they contradict each other?

A May I put a question? I think there is a mistake here in this document. This is Document Book II-B, page 6, Exhibit No. 58, which is Document No. 2837. I think it ought to say 57.

Q It should he operational situation report of 29 August?

A There is something missing. (Counsel and defendant consulting document at witness dock) I would like to point out two facts. On one occasion it says in the Document 2837, Document Book II-B, page 8 of the German text that in Mogilaw-Podolsk approximately 27,500 Jews were transported to the Rumanian territory, although in the report of 26 August it says that in the immediate vicinity of Mogilaw there were approximately 7,000 Jews who until the time the official duties were taken over were sent from Rumanian into this territory. A Jewish transport of about 6,000 people was in spite of protest by the Rumanian Bridge-Commandant transported into the Eastern territory at this time. Even if I add these 6,000 to the 7,000 and I do not think they are contained in this 7,000, then I arrive at the result of the number of 13,000 and this is the number which I remember. But here it states until the taking over of office from the reports of 7 August, it became evident that at that time the Einsatzkommando X-B, location at Mogilaw-Podolsk and I quote:

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"Prevents the Jewish transport Into territory, taken over by the Germans." This, therefore, is quite Unlikely that when during the period of report of 7 August a transport which could only he carried out over two bridges end was stopped, and, on 26 August, 7,000 Jews should have gone from the Rumanian territory into the German territory; that then 2 days later 27,000 could have been there to be driven back.

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submitted reports are. The same is valid for Document 2837, Page 8, where it says that in Chernowitzzat the time of the report through large-scale actions which took place in the Eastern territories some 3,000 Jews and 34 Communists were liquidated. For from the operational report of the 7th of August, it becomes evident - that is on Page 38 that the location of Kommando 10-B was Mogilev Podolsk and no longer Chernovitz, The figures under Chernovitz I shall deal with in another document.

Q. I now submit from Volume II-D, Exhibit 94, Document No. 2841. That is the page of the German boo, Page 95. The Prosecution charges you that the Einsatzkommando 12 in Babtschinzy had murdered 94 Jews.

A. From the text of the document itself it becomes evident that these Jews were executed as a counter-measure for the facts which are mentioned in this document itself. I quote verbally; "Only in Babtschinzy resistance was partially shown toward an orderly harvesting caused at the instigation of Jewish inhabitants and such Jews, who had only come to this territory a few months ago. By spying on the population, the Jews had already created a basis for numerous deportations to Siberia."

Q. I now take Document Book III-D, Exhibit 153, Document No. 4538. It is in the German Document Book, Page 36. The Prosecution charges that the Einsatzgruppe D from their own initiative founded a ghetto and used the Jews for executive works.

A. From the document itself the contrary becomes evident. I quote literally. "On the initiative of the Einsatzkommando the Rumanian town-commander in the old city erected a Jewish ghetto." The subsequent report that from this Ghetto Jews were assigned to working groups is a logical measure, which was taken by the town commander of Rumania who wasin charge of the administration of the Ghetto.

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Q. In the same volume there is Exhibit 155, which is Document No. 641 which I submit to you. It is Page 40 of the German Document Book, and it says the following. The Prosecution wants to prove from this document that the sub-units of Einsatzgruppe D carried out conscientiously the execution orders.

A. This document is one ox the very few which are a true copy of the original report. However it does not become evident from this that the Prosecution wants to prove.

On page 43 it says verbally, "also otherwise, "all executions which were ordered by me and carried out by me," that is the man who wrote the letter, the report, "were carried out in the manner as ordered by Einsatzgruppe D, "which is exactly the contrary of what the prosecution claims. But this document is very interesting otherwise on the following page and that is in a double manner. First the Army here gives an instruction to the Einsatzgruppe D which is signed by the Ic AO "e", that means Riesen, who is a major on the general staff. This is countersigned by "RU". That must have been a mistake. It probably should read "RA". That is Major Rank, the superior, the superior of the major. In this it says that the Einsatzkommando of the Security Police with the Twenty-Second Infantry Division is within the combat front of the division-- That is in a condition in which all commandos or part commandos of the Einsatzgruppe found themselves. It says verbally, and I quote: "It is to be expected that all measures, especially public executions in the town of Genitschesk for setting up and determing, etc. of a Ukrainian protection unit, etc., will be taken after the division I-C, as proved, previously agreed to it." This document speaks for itself and I do not have to comment on it, but as the document is now being dealt with I should like to deal with another point of the document which is not being under debate yet. Although at that time I had the highest rank of a Standartenfuehrer, and as it is not customary in the Army, in particular as to public executions that an order to another unit should be signed by a man who is inferior or at least not as high as the receiver in his rank, the major here writes to the chief of the Einsatzgruppe who is a Standartenfuehrer, which incidently at that time had the even higher rank of an Oberfuehrer.

THE PRESIDENT: I think this may be a convenient point at which to recess until tomorrow morning at nine-thirty.

(The Tribunal afjourned until October 9, 1947, at 0930 hours.)

America, against Otto Ohlendorf, et al., de 9 October 1947, 0930-1650.

Justice Musmanno,

THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II-A.

The Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Before we begin the morning proceedings, and the testimoney of the defendant Ohlendorf, I should like to make this short announcement. Dr. Aschenauer has asked upon the termination of todays session that he be allowed a very brief time in which to prepare the final part of his case in behalf of his client. He asked for a recess until Monday noon. We will grant the request, and I would like to add that whatever time Dr. Aschenauer is permitted naturally goes to the benefit of all counsel, so that you also can be working on the preparation of your individual cases. So instead of reconvening Monday afternoon, we will allow the entire day of Monday with the understanding that on the following Saturday, not this Saturday, next Saturday after this week end, we will hold a session to make up for little of the time we will have lost. So that, when we complete todays proceedings, at such time as Dr. Aschenauer feels he has done all he cares to do today in connection with his case, we will then recess until next Tuesday morning at 9:30 o'clock.

DR. ASCHENAUER: Your Honor, may I proceed.

THE PRESIDENT: Very well. BY DR. ASCHENAUER:

Q. I take Document Book II-C, and I submit to you, witness, Exhibit 71, Document No. 2952, that would be in the German Document Book at page 18, wherein the Prosecution charges that Kommando-XII had murdered 45 Jews. According to this document what was the real state of affairs?

A. In this document book it shows literally that these 45 Jews had been disposed of because they were not following police measures, and because they had attacked a German Military Unit.

This, therefore, was a counter measure.

Q. Document Book II-D, I show you now Exhibit 89, Document No. 2948, in the German Document Book, from pages 28 to 39, and the document has been introduced by the Prosecution in order to prove the murdering of 561 Jews?

A. The same state of affairs is valid for that document as for the last one, which says literally here, because participation in sabotage acts 351 and 400 counter measure for shooting at the German Medical carriages, and other such acts.

Q. I have the same document book II-D, and I show you the following three documents. First, Exhibit 92, Document No. 587, Exhibit 91, Document No. 4135, Exhibit 80, Document No. 2950; page number would be in the German Document Book page 40 to 48. Based on these documents the Prosecution is going to prove that the Einsatzkommando X-3 at the time of the report had been in Czernowita, and had murdered 16 Communists, and 682 Jews in Czernowitz, and 150 in the vicinity of Chotin. Apart from that caused the liquidation of 500 people in Znernowitz; I show you these three documents and I will ask you to clarify those questions in these documents?

A. Could you repeat the document numbers, please?

Q. Document Nos. are 587, on page 48 of the German Book, and the next is Document 4135, which is on page 43, and then document No. 2950, on page 40?

A. These documents contain two reports over the period of reporting, beginning with the 9th of July, the other one 14th of July and the last one of the first of August. If you compare these three documents it becomes evident that there is a strong contradiction between them, although it is the same period of reporting. Document No. 487 is a report of the Einsatzkommando 10-B to the Army Group South. Here it says, among other things, from the time of report from the beginning of July a major raid was carried through in the course of which the Jewish leadership could be apprehended almost completely.

In Document 4135 on page 46 of the German Text, it says, "In Rumania" prison in Czernowitz a large number of Jewish lower class population , hardly any intelligencia. There were no members of the Heeresgruppe Sued within the next stage. There was a further explanation. I can give a further explanation here. Those that were caught here in one place, those that are caught here and in the other place they said, no Jews are imprisoned. I also want to add that Kommando 10-3 had no prison of its own. The same applies for a further statement which we find in document, No. 5871, of the following date, which was 9 July, in which it says that 100 Communists were shot by the Kommando, but were executed together with Jews by the Rumanian Army Unit, and by police, and that the leading Jews were shot during the course of 8 and 9 July. In the Report No. 3145 on 14 July, which was the same period there are no reports about shootings. In the report of 1 August, 1200 people arrested are being talked about, and of more than 600 people having been shot. Although in this report of 14 July, it already states that Kommando 10-3 was in charge of executing the task in Czeriwitz, and would take three to four days for it. From my own knowledge the conditions in Czernowitz itself was contrary to these documents as stated in the about Czernowitz, when the following situation prevailed: In Czernowitz the general liquidation of Jews was prohibited, because Czernowitz was Rumanian territory. Actually the Jewish leading persons here not arrested, and as I remember, was never arrested. On the contrary the Rumanians made business with these Jews, and these Jews were in a position to make politics against the occupying forces, therefore, I ordered measures to be taken such as:

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That these people should be arrested, and they should he interfered with. When in the course of these reports I myself went to Czernowitz, and I found out first of all who was the leader of the Kommando who was very much excited, because the Rumanians, that is the militia, in an unexplicable mannder had carried out liquidations. First of all, it was protested strongly against these liquidations, and for these very reasons had refused the request of the Rumanians to take part in these liquidations. The only interesting part of these reports is that Document 587, of 9 July, shows that the Army Group South in Czernowitz, which was being informed by members of the Army from the very beginning is informed about the liquidation of Jews from the very beginning. For this report was sent directly to the Army by the command and the activity of this Kommando has not been caused by myself, as this Kommando had already been cut away from the Army, before I myself entered this territory in Rumania. Furthermore, according to my own experience in Czernowitz, I think these arrests as well as the liquidation which is mentioned in this report, a tactical report of success which was meat for the sake of the Army, and I think it has not been submitted to me by Bersterer, the Kommando-Leader, for this very reason, because I knew that the content was not right. It says in Document 4135, amongst other things , which is on page 45 of the German text, the Einsatzgruppen Chief had a free hand over the assignment of Kommando. That is said to be the result of my discussions with General von Schobert, who was commander-in-chief of the XIth Army; in fact, however, the reception I got from General von Schobert was his showing a cold shoulder to me, as it were, and it was certainly of no value to me, General von Schobert did not even think it necessary to receive me in his office, but he passed me in the passage, after I had been kept waiting for some time, and only spoke to me while passing. Furthermore, just a few days after this report we had a few disagreements with the Army, because contrary to the free hand which it says here, the Army kept issuing orders in this district disregarding my own order in that territory under their command without informing me before hand.

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It was at this time that the Army tried to go over my hand completely, and to treat the Einsatzkommandos as they would treat their own units. Therefore, either the statement in this document is only a tactical report or it has been taken from another report.

Q. If I how take Document Book III-D and Exhibit 158, Document No. 2859, German page No. 60 and submit it to you, witness, I take from this document the text which is an affidavit of the defendant Willy Weibert, and I quote: "I never had the order to segregate Communists in the Russian prisoner-of-war camps; however, the fact is known to me that members of the Security Police, and of the SD received the order to interrogate camp inmates in these camps, and to carry out executive measures." I would like you to comment on this; I would like to ask you were such Kommando instituted in your field of command by Willy Seibert and were prisoner-of-war camps actually combed?

Document No. 2422, which is on page 93 of the German book. In this document a distribution list is shown about the Kommandos which should he instituted in the prisoner of war camps, Stalag and Dulag by Chief of the Sipo and the Security Police. In Enclosure 1, which is on page 101 it says: "Every week the leaders of the special Kommandos report to the chief of their own Einsatzgruppen and special forces." If I go on quoting from page 102 I find the following part: "The chiefs of the Einsatzgruppen decide about executive proposals on their own responsibility and they pass on the orders to their Sonderkommandos (to the special Kommando troops)". If we nay just put these two together, these are the two most important parts of the document. Please comment on this. such camps, in which actually persons were singled out. The reason for this might he that our field of activity and our quarters were in the immediate front and we could not institute camps for any length of time. Anyhow, I do not remember that such Kommandos were ever put into force, but I know for certain that I was never submitted a list of people who were singled out and that I never accepted or refused a list of the kind that is mentioned in this document. I have never seen such lists.

Q In Document Book, Volume I, there is Exhibit No. 11.It is Document EC-307/1. It is page 48 of the German documents. I am showing you this document and I am asking you whether the decree mentioned in this was ever handed over to you? I was never handed this decree nor did I ever find out about the content of this. I should like to add that from the wording as well, and especially from the facts in 1939 to 1941, the term "final aim" in Paragraph 2 on Page 1 must not be mixed up in this case with the term "final solution" as it was coined in 1942.

From 1939 to 1941, according to my knowledge, no killings of Jews were carried out in Poland; but even here in Poland, in a parallel way to the migration measures of the Reich such measures were carried out. Document No. 2934. It is on the German page 55, page 4 of the document itself, page 6 of the original, there is the following sentence: "Paleski considerably devastated. Rumanians content themselves with looting everything. Pogroms could not be achieved so far". I should like you to comment on this quotation.

A The sentence, "Pogroms could not be achieved so far", means a tactical term for the sake of the Berlin office, because contrary to the orders of Berlin I had forbidden my command to instigate pogroms. I refused to take such measures because I did not agree with the method and the effect.

Q I have here Document Book II-D. I an talking about Exhibit 84, which is Document No. 3359. It is on German page 7. This is an operational situation report of 8 April 1942. From this document I quote as follows: "Inhabitants of the village of Laki near Bachtschissaraij were in constant contact with partisan groups; they gave them billets at night and supplied them with food. On 23 March a penal action against this village produced such huge quantities of food that the partisans would have been able to live on this until the next harvest. The 15 main participants, among them the mayor, were shot, all inhabitants were evacuated and the village was burned down." I should like you to comment on this document.

A This document is an example for many. I should like to repeat and state again that combatting the armed bands and the retaliation measures which were carried out for such villages as insisted on bands, all came under the order of the staff for partisan combatting and usually those actions were fought by the local army units, that is by the field divisions of the territory.

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general activity and a general situation report is given. That means naturally in reporting, the situation in the territory is discussed, and not only our own activities but also all the other happenings and events of the locality itself, quite independently of who created these situations.

THE PRESIDENT: Witness, just as a matter of information, looking at this page about which you have been testifying and directing attention particularly to the phrase, "and the village was burned down", would you please explain just what military objective was being aimed at in destroying the village? Let's assume for the purposes of the question that there was a reason for liquidating those who were opposing your forces, that is to say the partisans. Just what was attained in the actual physical destruction of the buildings?

THE WITNESS: These villages which I talk about were at the foot of the Yaila Mountains. The Yaila Mountains fill the southern part of the Crimes near the coast. In the Yaila Mountains there were about 10,000 partisans at my time. Naturally, these partisans were not sufficiently supplied with food because the mountains and the south coast had already been territories where there were famines even during peace. Therefore, the villages, that is the north part, were natural reservoirs for food supplies for the southern part. That means these villages were the only bases or the only places where partisans could go, especially in winter. The reason for burning and destroying these villages were two-fold; one, at first the village that is talked about here was a hiding place for partisans, and thus a base, was to be destroyed for partisan activities; and secondly, after the Army had threatened, on verification, to burn down villages if the villages supported the partisans actively, in such a case when a village actually supported the partisans it was then to be a deterrent for the inhabitants of the village.

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THE PRESIDENT: Very well. BY DR. ASCHENAUER:

Q I have Document Book II-a in front of me. It is Exhibit 54, Document No. 3235, page 139 of the German document book. It is an operation situation report of 23 March 1942, It is reported about shooting of mentally insane people. Even if it is not evident from the document how many mentally insane people were actually shot. Could you comment on this? place at a time at which I myself was not present in the Crimea, but I can assure the Tribunal that my Kommandos did not carry out shootings of mentally insane. I have forbidden this explicitly, and I repeated this again and again because the Army asked us on various occasions to carry out shootings of mentally insane people. It is for this reason that it is impossible that this report deals with actions carried out by one of my own Kommandos. Furthermore, I think this is a false report because the territory at the south of Karasubasar consisted mainly of woodlands and clay huts. There were no major villages and there was certainly no asylum for insane people.

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Q.- Witness, I must remonstrate you here and that is from Document Book III-D, I want to put to you Exhibit 150, Document No. 604. I shall show you this document and I should like you to comment on it.

A.- This Document 604 is a report of the Sender Kommando 11a to the army. In the last paragraph it says, that Romanenko, on the 9 December 1941, for heriditary biological reasons, was executed, I do not remember this case in detail, but the reason probably was that - or at least this becomes evident from the document - that the Sonder Kommando 11a received a direct order from the Commander-in-Chief of the Army that Romanenko should be punished as deterrant, if possible should be executed in public by hanging. The Kommando investigated this case, as becomes evident from the document, and did not find the reasons confirmed for this request by the commander-in-chief. It does not become evident from the report why the kommando, in spite of this, executed the order, especially as it gives the reason for heriditary biological reasons, I do not know whether I ever saw this report, but if I had seen it I would not have agreed with it, but I assume that he reported to the Commander-in-Chief immediately after the Commander-in-Chief had been put in charge of this kommando.

Q.- Witness, from the same document book I now turn to another document. Would you look on page 15. It is Exhibit 151, Document No, 631, I ask you on this document, why did you try to justify yourself with the Army; why did you have to justify yourself concerning the confiscations of watches and other valuables taken during the Jewish actions?

A.- I remember the incident very well which led to my writing this report to the Army, Some officers had complained to the Chief-of-Staff that I refused to turn over money to the town of Simferopol without a receipt. Furthermore, complaints had been received that I had failed to turn over as many watches as I should have done after the confiscations had taken place. The Army sent a remonstration to me and asked me where the valuables were.

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As the Army, by their own position, had the authority to ask me for such an explanation of the facts, this is the answer to the complaints of the Army.

Q.- I should like you to keep the same document, that is III-D, and to look at Exhibit 152, which is on page 21 of the German. This is Document No. 4439. The Einsatzgruppen is charged that they had looted Jewish apartments and had taken away property which they put at the disposal of Ethic Germans.

A.- What is called looting here was the carrying out of the confiscation, - and utilization decrees - which I simultaneously had received from the Reich Security Main Office and the Army. The apartments as well as the furniture, were put at the disposal of people who had lost all their property and who could prove that or it was administered by the local commander in their respective localities of command and was put at the disposal of those people who were looking for apartments. Furthermore, apart from these two lines, this report, which contains about twenty pages, is an excellent explanation of the terror under which the German territories lived for twenty years, and which only proves what I said yesterday, that as a rule three male grown-up members of each family in the course of this time were taken from the family and their fate could not be established.

Q.- That is those who looked for accommodations were, therefore, Tartars, Ukrainians and Etnic Germans, witness during what period in the war were you Chief of Einsatzgruppe D?

A.- I was chief of the Einsatzgruppe D from June 1941 until June 1942, inclusive, However, from March 1942 to July 1942 there were considerable interruptions.

Q.- What was the nature of these interruptions?

A.- From the beginning of March until 26th April I was on leave in Berlin. At the end of April I had to go back to Berlin until the begin ning of May.

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After the death of Heydrich on the 4th of June, 1942, I was called to Berlin, and I only returned in order to give over my office to my successor.

Q.- Did you, as the Chief of the Einsatzgruppe, operate with the Einsatzgruppe and its units in Russia independently?

A.- No. My official office position was Plenipotentiary to the Chief of the Security Police and the SD in the 11th Army. As such, for the tasks which I had to carry out within the Army, Einsatzkommandos had been subordinated to me as units with whom these tasks were to be carried out.

Q.- Will you explain to us the importance of this position in the Army and the activity of the Einsatzgruppen and Einsatzkommandos?

A.- I was given this assignment on the basis of an agreement between OKH and OKW (The Command of the Army and the Armed Forces) on the one hand and the Security Police and the SD on the other. This decree was known as the so-called Barbarossa decree. On the basis of this decree the institution of these mobile units had a two-fold significance within the framework of the Army units. On the one hand, special units were subordinated to the Army for tasks which they had so far carried out on their own authority and with their own units. On the other hand, Heydrich, Chief of the Police and the SD, the sole authority, to give immediate instructions to these Einsatzkommandos, and, also to receive the new reports direct with the reason and the purpose to prevent an expected collaboration of the adversaries in the Reich itself and in the occupied territories at the front. The essential thing was that these activities were carried by me and the Einsatzkommandos in the assigned territories and was within, the territory of the Army, this means that the task and activities of the Einsatzkommandos were under supreme authority of the Commander-in-Chief of the Army. He held the executive power within his territory, and his power of attorney had been laid down in the Reichs Defense Law, as well as in a decree of the OKW, the high command of the Army, regarding the position of a commander-in-chief in the operational theatre.

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of the Army were of primary importance and had to be complied with first. Therefore, it was necessary for the units to carry out all activities and tasks in a form which was in agreement with the intentions of the Army. That means the Army had either to agree or comment upon this, or, at least, show their agreement concerning the activities of the units within the framework of the tasks of the Army. By this term I mean that the activities of the Einsatzkommandos, Special Task Forces, were formed from the tasks of the army itself. That is, it had to attempt to fulfil the task which was meant for these special units within the framework of tasks of the army. It wasits duty to accept special tasks, which, according to the authority of the Barbarossa Decree could be asked for by the army.

Q This is the general framework. Was this factual and legal relation - to the army hirarchy and to the Einsatzgruppe and Einsatzkommandos also defined individually by a decree? agreement I mentioned. It was left to the discretion of the Army to determine the operational theatre of the individual kommandos, the strength of the kommandos, and the period of activity of the kommandos. Furthermore, it also had been determined for operative necessities the regulations and decrees of the army had priority. What had not been determined, however, was the current competition of orders which might occur within the decrees of the Chief of SD and the Security Police and the Chief of the Army. It was often the case, that it was more or less left to the skill of the officers in charge of the respective agencies to find an objective solution in case of such competitive orders. For operative reasons, however, the highest instance always in the end had the right to make the final decision. Barbarossa Decree for your own position and your activities and the activities and the position of the Einsatzkommando?

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tried from the very first day not to take notice of me at all as the Chief of the Einsatzgruppen and to treat the Einsatzkommandos as their own army Units. We were auxiliary units, of the TC/AO. This becomes evident also from another document. It is Document 584. It is in Document Book III-D, in which IC/AO gives us a picture of how in his own tasks of espionnage of armed band activities and the setting up of plans for combatting such bands, apart from the Field Constabulary and his own units, and also the SD, delivered news reports which he himself used for his own purposes.

Q What was your relationship to the Chief-of-Staff of the Army? nor the Chief of Staff really took notice of mo at all when I first reported to them. When therefore, on the strength of describing the actual situation. The Army made use of the Kommandos without my knowledge. I had a serious dispute with IC, the consequence of this was that I was called to the Chief of Staff, Colonel Woehler, and he received me with the words, if the collaboration between the Army and myself would not improve, he would ask for my dismissal in Berlin. I believe that this fact gives a good picture of my relationship with the Chief of Staff, For although the Chief of Staff was a colonel, and, I, as a Standartenfuehrer apparently was - colonel, also the actual position becomes evident which I had within the framework of the Army. By the Army I was considered an unit leader of just about 500 men. That equals a commander of a battalion and I was treated accordingly. I was not only ordered to see Oberst Woehler but even a major and IC Rank and, he avoided expressly to address me with naming my rank, a custom usually exercised in the army in order to show that he, even as major, was above a Standartenfuehrer.

THE PRESIDENT: I understood you to say he was a colonel.

THE WITNESS: Who?

THE WITNESS: Who?

THE PRESIDENT: This officer with whom you were speaking.

THE WITNESS: The last one I mentioned was a Major. The IC with whom I had to deal immediately, and from whom the Einsatzgruppen received most of the orders, was a major.

THE PRESIDENT: Yes. Were you so under the control of the army that a recommendation from him for your dismissal would have had weight and effect in Berlin?

THE WITNESS: I didn't hear the question.

THE PRESIDENT: I see. I am sorry. Were you so under the command of the army that a recommendation from this officer to Berlin could have worked the dismissal which he threatened?

THE FITNESS: Immediately, yes. There is no doubt, because it was Himmler is interest as to this assignment to extend this first footing he had won for the territory of the army by means of a close collaboration with the army, and it is generally known that, as rule, not one officer of Himmler was ever covered by him when in the case of complaints the complainant was a person who was of importance to Himmler himself, and this was certainly the case of the Chief of the OKW, Keitel. What was your field of command? What was your power of decision? I repeat the question. Would you tell the Tribunal the content value of your position? What were you in command of? What was your power of decision and your authority? What was the territory of your authority? were at the utmost auxiliary organs of IC. The field of tasks which had been concretely established was to get a secure collaboration with the Security Service and the SD and to guarantee such collaboration with the army. That was the general framework of the order, and within the framework the order frequently discussed here -- to liquidate certain groups of people wasone concrete order, that had been issued, in order to achieve the goal of guaranteeing the security within this territory.

My authority consisted in safeguarding the communication lines of the army as well as the police security and in deciding whether or not the Einsatzgruppen should carry out such executions. It was outside my authority to stop the Einsatzkommandos from carrying out such executions, because this was the basic order which came from the Commander in Chief of the Armed Forces and which was not within the power of authority of the unit leaders. My authority only started in carrying out these orders, that is, when deciding in what manner these orders were to be carried out, which was determined within the task or security. The orders which were issued by the OKW currently in this connection prove that the competence and the possibility of securing and guaranteeing security in these territories was not fully used, but that these orders with their possibilities were never exploited by me. Furthermore, the fact that in winter 1941/1942 currently Kommandos were never exploited by me. Furthermore, the fact that in winter 1941/1942 currently Kommandos were taken away from my own units by the army and became subordinated to the combatting troops. This, as I say, proves perhaps best that I, with my own kommandose, was only a little wheel at the lower and of the machinery, which the Army units kept in the Russian territory. might be of interest here, for instance, in the assigning of combatting units?

A I think I have given an example for this just now. There is only to be added that, as I have already basically explained before, special tasks were transferred to me by the Army which I just had to carry out and I could determine the way in which they should be carried out, for instance, in espionnage of armed band activities or recruiting of Tartars, or, for instance, the harvesting or establishing of district administration, or whatever the case might be. My authority and power of ordering was not left to me at all; and only insofar as the army did not deal with it itself, for me it was only a way of carrying out these orders.

Q The concluding question concerning the Russian set of questions: How was your power of decision? What was your power of decisions concerning execution orders?

A I do not think I have to repeat this. As to the orders for execution, even if applying the harshest standard, I had no possibility whatever to overlook them.

DR. ASCHENAUER (ATTORNEY FOR DEFENDANT OHLENDORF): This ends the questions dealing with Russia. Perhaps this would be a good moment for a recess.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

DR. ASCHENAUER: May I continue?

THE PRESIDENT: Yes, indeed.

DR. ASCHENAUER: I now come to the final questions. Membership in the SS and the SD. BY DR. ASCHENAUER:

Q: Witness, we heard yesterday that in 1926 for a few months, lists were made of the members of the SS. What was the position after 1926 until 1935?

A: From the time 1926 to 1936 I had n immediate contact nor any immediate connection with the SS. I was not a member of the SS, either.

Q: By joining the SD, did you become a member of the General SS -- the Allgemeine-SS?

A: No, I did not become a member of the Allgemeine-SS. That concerns everybody who joined the SS through the SD as an organization. For all persons wearing the uniform of the SS within the reach of Heydrich and Daluege, the Chief of Regular Police, were appointed for that very purpose in order to avoid that these members of the SS should become members of the General SS. They did not want the officials to be subordinated to the General SS as well and they did not want them to be subordinate to other chiefs in the SS. They way none of those who joined the SD became a member of the Allgemeine SS.

Q: Witness, you said yesterday that Himmler tried to form a State Security Corps. What was the development of this?

A: This idea of the Stats Security Corps remained nothing but a plan. Nothing has been achieved that way, which made this idea at all a reality. The State Police agencies and the SD agencies in the Central Offices, as well as in the Regional Offices for the Reich, remained independent of each other and they remained independent agencies.

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This presumption that the so-called Inspector of the Security Police and the SD established this connection, is incorrect because he had no actual orders, but in general he was to deal with the personnel questions of the SS members. He had further tasks which were not within the field of activity of the Sparten. Heydrich had formed commands of the Security Police and the SD in Holland he had made an attempt - and my men, together with the men of theState Police, were organized into one organization. This individual incident was rectified by me after Heydrich's death, when I returned from Russia. This one example in Holland was a step which could be described as one step towards the State Security Corps. The solution of this unit in Holland was the last attempt of that kind, but the agencies of the Security Police and the SD remained independent with their various tasks which had nothing to do with each other.

Q: What did you consider the political situation of the SD to be; in how far was the SD Inland in opposition to the Nazi regime?

A: The way things stood in the Reich there were three possible courses one could take if one did not agree with the development after the seizure of power: emigration abroad, emigration within the Reich, and positive opposition. The first two ways of opposition meant nothing but a catastrophe. They wanted to bring about a collapse by force. The positive opposition held an evolutionary attitude towards history, because in every revolution values are lost which can never be replaced and history must be considered as a continuous course of events where brisk interruptions and the attempt to miss something out -- whether forward or backward it does not matter -- on the whole causes more damage than it does good.

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The men who after 1935 built this SD and extended it, saw the faults of the Nazi development in the same manner as those who emigrated abroad or within the Reich, but they stood in the middle of the political development, remained independent, and had to remain hidden for many years; they assembled exports who were able to overlook the situation; they obtained knowledge in order to understand the situation thoroughly and now tried, with the damages they could show, to bring about the evolution against the misuse of National Socialism by National Socialists. They wanted to bring about the evolution in order to counteract the damage done. The possibility was given to us through Himmler's generous attitude on one occasion. It was known generally, that when joining the SS, he did not attach any importance to the fact whether the persons were members of the Party or not.

with the strange coincidence that about 80 per cent of these experts were not members of the Party, But, these people were in a position owing to the moral strength which they held throughout the years to attract the largest part of the German intelligentsia in as far as they proved active in their professions and beyond this they attracted masses of the population and these people, who agreed with us in the one aim to develop history in a positive manner and who wanted to help to stop the mistaken developments which occurred; those were the actual workers for our end. Those were the members throughout the entire Reich with whom we carried out this positive opposition against Naziism.

Q Witness, whom did you fight in particular through the SD?

Q Why these three in particular? value of the human being. Ley, because he interfered with the independent development of the social ideas and the private sphere of the human being and tried to do away with it; Goebbels, because he denied the independent mental development, the development of consciousness, and in that way, the inner freedom of the human being, and in questioning all absolute values he took these values from the modern Existentialism and embodied and expressed Nihilism. Bormann, because he eliminated the natural tension between the individual and the community to the disadvantage of the individual by trying to subordinate these individuals to certain masters within the Party. These three together attacked the value of the human being, the result of modern times.

Q How did SD Inland fight this power? opposed these tendencies and secondly, he denied in his reports the measures of these persons, in as far as they expressed their inner views in their measures. That way, in a great number of cases, the realization of these tendencies in their development, as I have noted, was hindered or eliminated altogether.

opposition as you described it to us? and did not want any executive power and were prepared to show their power only by making reports, whose form and contents were unobjectionable.

Q What aim did the SD have?

A The aim of the SD was: our entire reporting activity was measured in the same way all the time, what is the effects of certain activities upon the individual and how do individuals react to these activities and we tried to help to develop a way of living in which people could develop themselves as we saw them, namely, people who, in their aim to gain consciousness and inner freedom found a way of living and results in all spheres of life and who were suitable to support these human developments.

Q You used the words "inner freedom". What do you understand by the word "freedom."

A By "freedom" I mean the voluntary ties of the individual, the motives of his will and actions, the obvious will of God, in nature and history. existed and still exists, in particular the SD was considered a great power which was omniscient in a way. Will you please state your opinion on this. activity had to be camoflaged. My department was not called Economic Department but ST-4; it was supposed to mean Staff Department No. 4. In 1937 I was not in a position to make any report at all without gitting permission of Herr Kranefuss first who was the economic expert in the personal staff of the Reichfuehrer SS. In 1938 we made the first great report, the contents of it dealt with sabotage of the Railway Adminis tration and further extension of the G erman Communication network.

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This report was read by Heydrich and put in the files, that is, it disappeared in the safe because this mighty SD was not in a position to inform even a third person that they were dealing with such questions. In 1939, after the war had started, we had the courage to reveal obvious damages in the beginning of the war by making reports on them and here chance assisted us because Goering saw these reports and took them and used them in the sessions of the Reich defense counsel meeting and used them as questions to the resort representatives. He now desired to be informed on that way without knowledge of the connection for the first and only time in the history of the SD he permitted that these reports were given out. In 1940 he confirmed them again, when a number of local leaders, Gauleiters, objected strongly to these reports. But this leagalizing did not last either and in spite of the importance of these reports the SD was only an illegitimate child which one did not like to see and wanted to hide as quickly as possible. As the development in 1942 and 1943 shows that we were allowed to make official reports to the outside world no longer, Goebbels prohibited it. The power we had until the end was the result of the personal influence of my individual experts using their knowledge in the fact of experts in the Resors who were interested in this knowledge, an actual power the SD never constituted. My personal relations I need not repeat in this connection. I explained it in detail yesterday.

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THE PRESIDENT: Are there any defense counsel who would like to question the witness? If so, and whatever order they desire, they will proceed with such questioning. BY DR. GAWLIK (counsel for Seibert): Q Witness, how long have you known Herr Seibert? A Since May 1936. Q In what manner did you meet Herr Seibert? A He was in the economic section of the SD which I joined at that time.

He was an expert there on questions of commerce and trade. Q Who was Gruppenleiter, Group Leader, of the Economic Group? A I was the group chief of the Group Economics. Q In how far was Herr Seibert your deputy? A In June 1938 Seibert became my deputy, when I left the SD as per orders from the main office.

He was my deputy until about 1944 Q For what tasks was Herr Seibert responsible? A Merely for within the economic sphere. Q Was Herr Seibert your deputy also in your capacity as Office Chief A There was no general deputy for office chief III but the four group Q Would you please inform the Tribunal which these four groups were. A III-A Law and Administration, Party and State; III-B Ethnic groups theatre and radio; III-D Economics starting with Agriculture, Trade, Q What was Seibert's last task before Russia was attacked?

A At the time he was my deputy in the economic group in the SD. Q When was Herr Seibert ordered to join Einsatz Gruppe D? A He was ordered to join the Einsatz Gruppe D when it was set up. Q I believe the word "ordered" should be translated as "drafted". He was drafted to join the SD and not ordered to join the SD.

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When was Herr Seibert drafted to the Einsatz Gruppe D? A When the Einsatz Gruppe was formed.

Q Can you tell me the date? A June 1941. Q Did Herr Seibert volunteer to work for Einsatz Gruppe D? A No, at that time Seibert was in the Army and without his knowledge Q What tasks within Einsatz Gruppe D was Herr Seibert supposed to deal with?

A He was intended for the reporting section. Q And what was his title? A Leiter III, or Chief III. Q Will you please describe in detail the tasks of Leiter III within A He had the task to work on the news reports on the same subjects it.

For example, asfact which I have seen myself, to look into the NKWD had to be determined and similar things.

Apart from that he had to deal with all military tasks under me.

He continued in his connection with the Army; he inspected the Tartar companies villages; as protection against the partisans, he saw that they got Q Witness, in your reply you mentioned the word "Lebensbereiche", life's sphere.

A I hope you understand me because we talked about it all day yesterday.

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Q Who determined the drafting of Herr Seibert to Einsatz Gruppe D and his tasks?

A At the suggestion of office I, the Chief of the Security Police and Q And who determined the tasks of Herr Seibert within the Einsatz Gruppe D? A I fixed the tasks of Seibert but he was assigned to the official Q Could you determine his position?

A No. that was fixed from Berlin. Q Could you change the position of Herr Seibert as Chief of Department III?

A In the long run, no. Q What was the reason that Seibert was drafted as Chief of Office III? A The reason was the previous knowledge he had gained on SD work, on economic group.

Apart from that, as I had meetings of all group other branches.

He was the most suitable one of my group leaders to Q In your staff was there an expert on executive questions? A When the Einsatz Gruppe was formed such an expert had been given to me.

After a considerable short time I asked for him to be relieved because he was not fully employed by me.

The Einsatz Gruppe itself had no executive tasks.

For that reason we did not heed to have an Q What title did this expert on executive questions have? A He was Chief of Office IV.

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Q Did you appoint Kerr Seibert as Executive Office or did he work in that capacity?

A This expression executive officer is an invented expression which Q According to page 236 of the German record the Prosecution stated that Herr Seibert was Staff Chief for Security measures.

Is that correct?

A That again is an imaginative description. We did not have a staff chief nor a staff chief for security measures.

There was no title Q In order to make it quite clear I want to ask you again, was Herr Seibert perhaps the officer dealing with security questions?

A No, he was not an officer dealing with security Questions either.

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Q. Did Herr Seibert have to carry out any executive tasks?

A. At no time did he have to carry out executive tasks?

Q. Did you appoint Herr Seibert to make lists of numbers of executions?

A. No, there was no such lists.

Q. Did Herr Seibert have the task to prepare secret papers and documents?

A. No, he didn't have that job either. The documents were in the office altogether.

THE PRESIDENT: Question, please, Dr. Gawlik. Did I understand you to say, witness, that there were no lists of executions. Did you hot keep a register of those who were to be executed or had been executed?

A. No such lists were kept by Herr Seibert or by me. It might be possible that in the office the number were known, because there for example, reports fron Berlin were collected there.

BY DR. GAWLIK:

Q. Did your Einsatzgruppe have a deputy chief?

A. Originally a deputy had been appointed for me. The reason was because the chief of State Police wanted mo to take a State Policeman because he under-estimated my capability in these tasks. For that reason Obersturmbannfuehrer Seezem, Chief of the State Police Agency, had been appointed asmy deputy expressly, but since he was chief of Vorkommando as well, during my activity he never was present in the place there I was billeted and for that reason ho never carried out this function as deputy.

Q. Who appointed this deputy chief?

A. Like all other functionaries, he was appointed by Heydrich.

Q. Was Herr Seibert ever deputy chief of Einsatzgruppe-D?

A. He never was that.

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Q. Did the RSHA appoint Herr Seibert as deputy chief officially?

A. Neither official nor unofficially.

Q. To make it quite clear I want to ask again. Did you appoint him as a deputy?

A. I neither did this, nor could I do this.

Q. From Document volume III-D I submit to you on page 1 of the German Document Book--I am afraid I cannot give you the English page because I don't have the English Document Book; Exhibit No. 148, Document NO-2856, I submit to you; it is your affidavit of 2 April 1947 and in explanation in this document you stated the following among other things: "The former Standartenfuehrer Willi Seibert was my Chief III. Since he was the senior officer from point of service after me, he was entrusted by mo with the duties of a deputy during my absence." This "Entursted by me with the duties of a deputy during my absence," is that statement in this affidavit not contradictory to the statement you made just now?

A. No, not in disagreement, Seibert was the senior officer after me, in my staff but, not in the Einstazgruppen, but in the Einsatzgruppen there were at least two people who were senior to him in rank, and at least two others who had the same rank as he hold; therefore, it means that he wasmy deputy on the staff of the Einsatzgruppen, but not duputy for the entire sphere of the Einsatzgruppen.

Q. Please look at the same document book, on page 60, Your Honor, it is Document Book III-D, Exhibit 158, document No, 2859, the affidavit of Herr Seibert. In this affidavit Seibert said that as senior officer within the Einsatzgruppen staff"I undertook all tasks within the group in case Ohlendorf was absent from the group."

A. I don't understand this sentence because he could do nothing but continue to be in charge of this staff during my absence, and to settle the affairs which were in this staff.

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Q. Was Herr Seibert senior officer within the entire Einsatsgruppe?

A. I think I have already answered this question.

Q. But perhaps you will repeat?

A. No, he was not.

Q. During your absence did Herr Seibert have special rights which normally he did not hold in respect to the command leaders?

A. Not materially. Actually, of course, he did not hand on any reports which I would have given normally. The fact that he dealt with the affairs of the staff in my absence, those affairs which could not remain until my return, does not mean that his power was extended.

Q. Please look at document III-D, page 73, which is Exhibie No. 160, Document NOKW 623, the report to the 11th Army, 16 April 1942?

A. What is the page?

Q. Page 73, 39 of the English. Do you find it?

A. Yes.

Q. In this report, shows that Communists of an extermination battalion were hanged in public, was this measure based on an order by Herr Seibert?

A. This measure in no way was based on an order by Herr Seibert. Such matters did not concern him, but he wasonly informed of it afterwards as a report of an event which had taken place here in the partisan war.

Q. When you look at the signature of this report, and also look at the same document book III-D, page 68 of the German Document Book, Exhibit 159, page 36 of the English Document Book, Document No. 629 NOKW, you will see that Herr Seibert signed both letters "By order of"-

A. I can not see that on page 68.

Q. Then it will be on one of the next pages.

A. On page 68 it says, Herr Seibert, but not "By order of."

Q. May I see that document book, please? Please look at page 80, does this signature "by order of" show that Herr Seibert was your deputy?

A. This "by order of" does not show it, but it was the general habit that chiefs of certain branches signed "by order of." That was the usage in the RSHA, and particularly in my office III. Therefore, he signed "by order of" automatically, no matter whether I was present or absent, as my deputy in his branch.

Q. If you would look at the letter of 9 October 1941 again, in Volume III-D page 68, Exhibit 159, Document 629, NOKW, this letter reveals that Herr Seibert, during your absence, asked the AOKL for an appointment for a discussion, giving the reason, that you were absent; did Herr Seibert deal with this matter only because you were absent?

A. No, he did not deal with it ;?or that reason, he did it because he always thought it was part of his branch. The question was whether such matter could be discussed with the chief of staff, or with the OB, (Commander in Chief) because then I usually went too.

Q. Please look at Document Book III-D on page 3 of the German; it is your affidavit of 2 April 1947, exhibit 148, Your Honor, Document No. 2856, on page 3, where you stated the following: "The only people whom I generally assigned to inspection tasks were, except for Schubert, Willi Seibert and Hans Gabel." I now ask you, what did these inspections tasks consist of?

A. This formula was no doubt the result of long discussion with Wartenberg, who wanted to determine that Seibert inspected execution. This I could not confirm, however, the reason is in the sentence before to the final sentence, that it was no doubt after this discussion that I prepared the statement, "That I did not know anything whether, or to which executions I sent the two persons named last. The inspection task I refer to was the regular contact of the Einsatzgruppen with the Einsatzkommandos, I only had three officers dealing with this, Seibert, Schubert and Gabel, these general inspections Seibert also carried out regularly; he inquired about order in the command, about the work in his branch, he inspected everything he had to deal with, or if any events occurred.

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Q. Is it therefore correct that in this sentence you wanted to express that Seibert did not inspect any executions?

A. I expressed that I do not remember any such executions, because, therefore, I do not remember that Seibert inspected any.

Q. Did Herr Seibert ever give an order to carry out executions?

A. He certainly didn't give any such orders, because such orders were not given, particularly Seibert never was given the opportunity to do so; he did not have such authority.

Q. Did Herr Seibert ever in any manner assist in carrying out executions?

A. I do not know anything about such a thing.

Q. Could Herr Seibert have avoided carrying out the decrees given by Hitler?

A. No, he didn't have any authority to do so.

Q. Did Herr Seibert accompany you during the service trips to the commands?

A. Almost regularly.

Q. What were his tasks during these service trips?

A. His own branch had to be inspected in particular.

Q. During these trips with Herr Seibert, did you visit places of executions?

A. I remember one case when we happened to come across an execution of a few people who were executed for some reason the police had given. I cannot remember any other such case.

Did Herr Seibert assist in these measures at all?

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A. No.

Q. Did Herr Seibert have any tasks such as observations?

A. No.

Q. Was Herr Seibert only a witness by chance there?

A. Yes, it was merely chance that he was a witness.

Q. Did Herr Seibert make service trips on hisown to the commands?

A. Certainly.

Q. What were his tasks?

A. The same inspection order we have already dealt with.

Q. Was Herr Seibert intended to become your successor as chief of the Einsatzgruppe?

A. I don't know about that, but I don't think it probable, because he didn't hold a position high enough for that.

Q. What do you know about a long absence of Herr Seibert from the Einsatzgruppe-D?

A. I remember that for four or five weeks, November to December 1941, he was on leave in Berlin.

Q. What do you know about the activity after Herr Seibert returned to Einsatsgruppe-D?

A. Herr Seibert returned with me and assumed his activity as deputy chief of the Economic Department.

Dr. GAWLIK: Thank you, Tour Honor, I have no further questions.

DR. MANRY: Dr. Mandry for the defendant Sandberger. BY DR. MANDRY:

Q. Witness, do you know how Gruppenfuehrer Mueller, Chief of Amts-IV judged Sandberger's activity in Estonia?

A. Yes, I know that. Gruppenfuehrer Mueller, during a lunch we had together, expressed his opinion about Sandberger's activity in Estonia, basing it on statements that he neglected his own Security Police, and tried to build up such a machinery of Estonians; he left these Estonians to themselves,. In his opinion Sandberger did not look after the security well enough in this region.

Q. Can you tell uswhen this discussion took place, approximately?

A. I cannot say that any more.

DR. MANDRY: I have no further questions, Your Honor.

DR. KOESSL: Dr. Koessl for the defendant Schubert. BY DR. KOESSL:

Q. Witness, on what occasion did you meet Herr Schubert?

A. I met Schubert when he reported to me in Nikolaev, that was October 1941.

Q. Could you determine his job in the Einsatzgruppen yourself or was Schubert appointed for a special task?

A. No, he was not appointed for a special task. Only commanders were assigned for certain tasks.

Q. What position did you give to Schubert?

A. He became my adjutant, and as such chief of the business office; that letter was of more importance to me, because I did not use an adjutant myself.

Q. Why did you use Schubert in this very function?

A. He had had jobs as; official, and, therefore, had been trained in administration, and owing to his training he seemed to me particularly suitable to deal with business matters.

Q. What tasks did he have to deal with as adjutant?

A. As adjutant he had to get terms, to make agreements, to look after guests, and to agree on terms and such things.

Q. Did Schubert ever have any power of command for troop units?

A. No, he had no power to give orders to any unit, only to one or two secretaries.

Q. Could Schubert give orders to Kommando leaders, for example, the chief Einsatzgruppe 11-B?

A. Of course not, he was not entitled to give any orders.

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Q. Would Schubert determine the appointment of non-commissioned officers, or of enlisted men?

A. I do not understand the question.

Q. Could Schubert determine that the non-commissioned officer, Mueller, of Einsatz command 11-A, say, would take part in some partisan drive tomorrow?

A. Of course not. I have replied to that before, he could not give such orders. He could only have given orders to Sergeant Firtsche to write the letter again, but not to move to another place.

Q. Was it Schubert's duty to supervise duty in units?

A. No.

Q. Was Schubert ---the previous question was, was it Schubert's duty to supervise the duty of units and individual members of Einsatzgruppen-D, apart from the secretaries?

A. No.

Q. Did Schubert have to deal with planning executions?

A. No.

Q. In fact, what did Schubert have to do with the actual carrying out of the executions?

A. Actually not all, unless in individual cases I would have appointed him to carry out an inspection.

Q. In your affidavit of 2 April 1947, Document Book III-D, pages 1 to 3, Exhibit No. 148, No. 2856, you write in the last paragraph; "Insofar as I was prevented from inspections for personal reasons, I ordered members of my staff to represent me at these." I remember that Schubert inspected an execution which was carried out by Kommando 11 B under Braune's direction in December 1941 in Simferopol. The only people whom I generally assigned to inspections were, except for Schubert, Willi

Seibert and Hans Gabel." Did the order to Schubert include that he should deputize for you at Simferopol, or was he entitled to give orders to Kommando Leader Braune?

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A. Of course not. He was merely the one who inspected places and then a report wasmade to me. I read his affidavit, and was surprised by the formulation. He neither had the task of inspection, nor did he have to arrange anything, nor could he give any directives personally. He could merely see and listen.

Q. Could Schubert give orders to commanders, or part-commanders? That is, subordinates of Braune?

A. Of course not, except in an emergency, of course.

Q. Could Schubert have changed directives of Branune or did Schubert have to change directivesof Braune, if he did not agree with the way executions were handled?

A. Of course not, he could not interfere.

Q. What was Schubert's task if your orders concerning the treatment of those to be executed were not conformed with?

A. He had to report about the occurrence.

Q. If I understand you correctly, Schubert, owing to your directives, was not allowed to give any orders?

A. He was not allowed to give any orders.

Q. Was Schubert, apart from the Execution in Simferopol, sent to any other execution?

A. I do not know about that. I think it is quite improbable.

Q. On other occasions, apart from executions, did you assign inspection tasks to Schubert?

A. I cannot remember inspection tasks, but certainly he had other tasks, for example, I remember, for example, that he helped to recruit Talars.

Q. Were inspection tasks a part of Schubert's, general task?

A. Not in general, or principle, but only on other immediate orders.

Q. Did Schubert have to make reports to the RSHA about the activity of the Einsatzgruppe?

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A. Not in general, but if I remember rightly he dealt with personnel questions, and administrative department, because he was chief of the business section where these questions were dealt with.

Q. Did Schubert sign reports himself?

A. I definitely do not think so.

Q. In how far was he entitled to sign?

A. In general he did not have the opportunity to sign anything, but if he had to transfer a person to a command, and had given him a letter of recommendation, he certainly would have to sign "by order of" Schubert, ro "By order of", every time at my request.

Q. During the several service trips, did you always have Schubert with you?

A. I think only on exeptional occasions, once or twice. I can not remember.

Q. Was Schubert appointed to deal with special tasks into which the other members of your staff could not look?

A. Of course not. Unless they were personal questions.

Q. Did Schubert over receive an order from you to execute any persons, himself?

A. That was not his task, and he did not get any such order.

Q. Did Schubert ever receive such a report to be handed on?

A. He certainly did not hand on any such reports, because they did not exist.

Q. Why was Schubert given the Iron Cross Distinction?

A. For repeatedly taking part in partisan fights.

Q. Who conducted these partisan fights?

A. I think I have answered this question before. They were lead by unit leaders, and the distinctions were given by the commander-inchief of the Army personally, and only under very grave conditions.

Q. What tasks did Schubert have after he served in Einsatzgruppen at the time he was with you as adjutant in the RSHA?

A. He returned to Berlin with me immediately, and there again he represented me in my antechamber, that is, he dealt with the same tasks as in the Einsatzgruppen.

Q. Did Schubert ever have the power of giving orders during that time?

A. No.

Q. Was Schubert active as an advisor, or did he carry out any confidential activity?

A. Nothing other than being in charge of the ante chamber will answer that question.

Q. Why did Schubert stop working as your adjutant?

A. After he had been with no for about two years, as adjutant I considered it better for his development that he would now get another job in order to develop better in a professional manner. The reason washis marriage, and since Iris service with me took up nearly every evening, I did not think that he could conform with his duties as a husband if he had to work evenings.

THE PRESIDENT: Then we will terminate the days proceedings. The Court will now recess and will reconvene next Tuesday morning, October 14th, at 9:30 o'clock. hours.

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THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II-a. Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

MR. WALTON: May it please the Tribunal, during the afternoon session of tribunal II-A on 30 September 1947, Dr. Aschenauer interposed an objection to Book III-D, pages 39 of the English, 69 of the German, Document NOKW 628, offered as Prosecution Exhibit 160.

DR. ASCHENAUER (Attorney for Defendant Ohlendorf): The translation is not coming through.

THE PRESIDENT: Would you please repeat that? Apparently the translation did not go through.

(The interpreter repeated as requested.)

THE PRESIDENT: Very wall. Did you get that Dr. Aschenauer?

DR. ASCHENAUER: No.

MR. WALTON: I will repeat it.

THE PRESIDENT: Yes, Mr. Walton will repeat it.

MR. WALTON: May it please the Tribunal, during the afternoon session of Tribunal II-a on September 30, 1947, Dr. Aschenauer interposed an objection to Book III-D, page 39 of the English, page 69 of the German, Document NOKW 628, offered as Prosecution's Exhibit 160. In subsequent conferences with Dr. Aschenauer it was determined that pages 2, 3, 5 and 8 of this document were, in fact, missing, Under Your Honors' ruling that excerpts from a document which are introduced into Guidance, it can be presumed, therefore, that the entire document is admitted in evidence.

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We immediately telegraphed Washington to forward the missing pages of this document. These pages, which I have already referred to, came by air courier after the Tribunal had recessed on 9 October and are now available, together with the proper certification attached. that it be allowed to place a photostatic copy of each of these missing pages in the archives of the Tribunal and respectfully request the Tribunal to instruct the Secretary General to add them to Document NOKW-628. copies of those pages and is prepared at this time to deliver them to Dr. Aschenauer. Counsel can therefore make the necessary comparison between his copy and the photostat, which, If Your Honors admit, will then be in the official record of the case.

THE PRESIDENT: The request of the prosecution is approved. The full statement made by Mr. Walton is selfexplanatory and the Tribunal need not take up each item detail by detail. The Secretary General is instructed to receive the photostatic copies and make them part of the official records of Case No. 9, now before Tribunal II-A.

Dr. Aschenauer, have you now completed with the direct questioning of the defendant Ohlendorf?

DR. ASCHENAUER: There are a few more defense counsels who want to put questions of Ohlendorf.

THE PRESIDENT: That is correct. Such defense counsel as desire to cross examine the Defendant Ohlendorf may now take up their cross-examination in whatever order Defense Counsel have agreed upon.

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BY DR. SCHWARZ (Attorney for the Defendant Jost) : Were the Einsatzgruppen and Kommandos only active in the Army areas? area of the civilian administration? only meant for the Army area, while in the areas of the Reichskommissars and the General Kommissars, the regular agencies of the Security Police were active. active in the area of the civilian administration? the commanders of the Security Police and SD.

Q Were these authorities locally established authorities? or Sonderkommando in the Army area and the commander in the area of the civilian administration? units, no agencies. The have no definite garrison. They are not restricted to a locality but in fulfillment of their tasks they adapt their activities to the requirements of the Army. Their various strengths and their Sub-Units also do this, while the agencies of the commanders and the civilian administrator are restricted to a locality and are a definitely established agency, which, is suited to be operational for the administrative hierarchie.

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SD, as compared to that of the commanders, an unrestricted and exclusive one or was it restricted?

A The title "commander" does not picture the condition correctly, The commander himself was under the Reichskommissar that is to say, the supreme administrative organ in a definite occupied area. This latter one had a power of command which cannot be compared to any other agency leader, He was immediately under the Fuehrer and the Chief of State. The commander of the Security Police was part of this hierarchy by reason of the fact that the commander of the Security Police as regional agency of a district or general Commissariate was again within the hierarchy of the general Commissariate. The commander was under the Generalkommissar, however not immediately, but the SS and Police Leader was in between. The Generalkommissars, for instance, of the Eastland, were relatively independent agencies, since those were three different areas, and, thus, the commander was actually more independent of his Generalkommissar than of his commander. Since the Generalkommissariats were independent areas, the Reich Main Security Office had, established the fact that, for example, in the Generalkommissariats of the Eastland, the commander there was also responsible to Berlin directly, that is, not by way of the commander. In the same way, the Reich Security Main Office issued orders to the various commanders without touching the military commander himself. In Eastland, for example, I would say that the commander is more an inspector than a military commander. In other occupied territories it was different.

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the commanders ? commander. direct?

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Q. You said that, if I understood you correctly, that the Reichskommissar Was the immediate representative of the Fuehrer and the bearer of the highest responsibility?

A. Yes, that is correct.

Q. Is it correct then, according to what you said, that the designation of "commander " actually does not picture the real condition, but is a mistake?

A. I thought I had described the various conditions which made the commander merely an inspector.

Q. From what time does the activity of the Einsatzgruppen cease in an area ?

A. At the moment when an area has been given over to the civilian administration.

Q. Do you know anything about the opinions of the Gruppenfuehrer Mueller, the Chief of Office IV of the RSHA, as far as Jost is concerned?

A. I think it can be said that Mueller hated Mr. Jost deeply. This was shown by the fact that he tried for many years to prejudice Jost, in which attempt Mueller used his power with the State Police.

Q. Do you know anything about the reasons for this hatred?

A. Not in detail, no.

MR. WALTON: If Your Honors please, I think it will appear from the indictment that the time when Jost was Commander of an Einsatzgruppe, it was after the death of Heydrich Mueller. Therefore, the prosecution objects to the questions concerning the attitude of Mueller toward the Defendant Jost as being immaterial to the issue involved in the indictment.

THE PRESIDENT: If thechronology as indicated bythe Prosecution is correct, the objection is sustained.

DR. SCHWARZ (Attorney for Defendant Jost): I have no further questions, Your Honor.

BY DR . HOFFMANN (Attorney for the Defendant Nosske):

Q. Witness, a few factual questions: During your direct examination, you mentioned the shooting at Belzen and you said that the 45 Jews who were shot there were shot byEinsatzkommando 12. I do not find any description of Einsatzkommando 12 in the document. Would you affirm whether this was actually Einsatzkommando 12?

A. Einsatzkommando 12 never was in Belzen. This is a mistake; in the document too it says 10a and not 12.

Q. Witness, where was the Einsatzkommando 12 in 1941?

A. Until the end of July 1941, Einsatzkommando 12 was in what was formerly Rumania.

Q. Can you say anything about the mission of Einsatzkommando 12?

A. At that time Einsatzkommando 12 was a rest area.

Q. It has not been made clear to me how Einsatzkommando 12 is connected with Anajew. Do you know whether Einsatzkommando 12 was in Anajew at all?

A. First Einsatzkommando 10 A was in Anajew. Later 10 B.

Q. The documents also show that a partial kommando of Einsatzkommando 12 was ordered to the Crimea. Do you know what the reason for this transfer was?

A. This transfer took place in the winter of 1941, 1942, after the returning of the Russians in the South and East and in the West, and this created a very difficult situation, since the partisans and saboteurs continually interrupted the railroad lines, and then a part of Einsatzkommando 12 was detailed to reinforce the kommandos on the Crimea. They were detailed to assist Einsatzkommando 10B.

Q. Then I still have one more question. You said that the Einsatzgruppe D was also active in Stalino.

A. Neither the Einsatzgruppe nor any Einsatzkommando nor a man of Einsatzgruppe D was ever active in Stalino.

Q. Witness, then I have one further question. If I understood you correctly, you said during your direct examination that a man of your Einsatzgruppe who refused to obey the order, if this happened in the front lines, would either be shot immediately or be put before a court-martial. Did I understand you correctly?

A. Absolutely.

Q. Witness, do you agree with me that if someone were to expose himself to such a danger of rather being shot than to execute such an order that such a person would have to have a definite moral inner attitude about this?

A. Yes, definitely.

Q. Witness, I heard you here on the witness stand - I am not of the same opinion as you are, but I would like to say that your deduction was open to disagreement - did you inform your men of the Einsatzgruppen of this deduction, and did you train them in this respect?

A. I believe that your words are too general for me to answer concretely.

Q. Another question, Witness. I would like to make it more concrete: Concerning the misgivings which the various men in the Einsatzgruppe D mighthave had in t his connection did you do away with these misgivings by telling them your explanations?

A. I cannot remember anything concrete about this, but I am convinced that in individual talks with the officers I talked about this and I am also convinced that I talked along these lines to the commandos during roll-calls.

THE PRESIDENT: Dr. Hoffmann, you asked one question whose purport I was unable to grasp. It came through this way: Did anyone objecting to an order have to have a definite moral attitude? That to me is a little vague.

DR. HOFFMANN: May I make it more concrete then.

Q. Witness, did you dissipate the inner resistance of these people against this order and did you tell them that this order was necessary?

A. To do this, such an inner resistance would have to have been evident to me and I didn't see any trace of this. Ho such resistance came to my attention on the part of the client of Mr. Hoffmann and to which I would have had to answer. I was concerned with making it easier for my men and then one had to make them realize the seriousness of their tasks.

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Q. You want to claim, witness, that all the men, especially my client , did not object to carrying out these orders?

A. No, I didn't say any word about this. The question was -did such an open resistance -- was such an open resistance evident to me, and how did I act on such resistance. In two and one-half years I had sufficient occasion to see how many men of my Gruppe did not agree to this order in their inner opinion. Thus, I forbade the participation in these executions on the part of some of those men and I sent some back to Germany.

Q. But it is your opinion that this is merely a matter of nerves?

A. I have had no possibility to investigate the various psychiatric conditions of every single man.

Q. Witness, the question is too serious to just shrug it off. I hope you agree with me that everyone must have had a moral resistance against these orders.

A. I believe my answers to questions on direct examination did show that.

THE PRESIDENT: Dr. Hoffman, please ---- Kindly pause for a moment after Dr. Hoffmann finishes with his question before you begin to answer in order that we may get the full interpretation of his question before your answer begins. BY DR. HOFFMANN:

Q. Witness, in my opinion, you must have counted on such a moral resistance on the part of everyone of your men, isn't that right?

A. I don't understand your question.

Q. I May I repeat it. Can it be assumed -- or, I ask you .... Do you believe that everyone of your men simply agreed with this order and merely would carry out -- such as bringing water or carrying coal?

A. I will comment on your question. You want to hear from me that it was my duty to talk to everyone of my men and overcome the moral resistance widen he had against carrying out these orders.

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I say again that - this would have been neither my job, nor did the men give me such an opportunity, by their conduct - for, in the final analysis it belonged also to the moral attitude of these men that they being soldiers should know how to obey, and that they applied their moral inner convictions to the carrying out of the orders.

THE PRESIDENT: Witness, am I correct in assuming from your answer that the men at no time offered such distress or complaint with regard to executing theorders given them, that necessitated your speaking to them -- to calm their fears or inner resistance?

THE WITNESS: I think I have already said that I had repeated conversations with my men which had this problem as their content, but there was no genuine resistance which, in order to express myself more clearly, I would have had to break by force. But many men have suffered terribly under this task, and, therefore, had to be sent home for many, various , reasons; either that their nerves went to pieces, or they could not stand this morally, and they were sent back home for their own protection.

THE PRESIDENT: Very well. Any other questions by any of the defense counsel? BY DR. MAYER (For defendant Dr. Braune):

Q. Witness, since when have you known Dr. Braune?

A. Since May 1936.

Q. Where did you get to know Dr. Braune?

A. Dr. Braune was Department Head for Law and Administration of the SD, Central Department II-2, -- in this same Central Department in which I took over the Department for Economics.

Q. Do you know since when Dr. Braune was a member of the SD and how he got to join the SD?

A. As far as I recall he joined the SD in 1935 with Professor Hoehn.

Q. Were you, yourself, Braune's superior?

A. From 1937 on , yes; as Chief of Staff of the Central Department.

Q. Did Braune, during the time of your work with him, have anything to do with the Enemy Information Service? That is II 1?

A. No, he always worked in the Domestic intelligence service.

Q. Do you know whether he had anything to do with that field before you worked with him?

A. No, he got into the Domestic intelligence Service immediately.

Q. With what did Braune chiefly occupy himself in the SD Main Office?

A. With the questions of law, of administration, relation of Party and State, and the students.

Q. Did you talk with Dr. Braune of the aims and purposes of the Domestic Intelligence Serbice of the SD?

A. Very frequently. In this sector he was my closest collaborator.

Q. What opinions did Dr. Braune represent? Did he agree with yours?

A. He agreed with me so much that after Hoehn left he could not remain there very much longer, but was forced, in 1938 at the latest, to leave the Central Department II-2.

Q. Was it also Braune's job to deal with Party matters?

a. Yes, I just said Party and State was one of his departments.

Q. Did his activity include also reports about Party matters?

A. Yes, of course; that was the task of the department.

Q. What were the opinions of Heydrich and Himmler about this task?

A. They were officially forbidden by a decree of Heydrich.

Q. Was the activity then discontinued?

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A. No, it was continued under a camouflaged designation.

Q. What do you know about Dr. Braune's leaving the SD?

A. In the dispute between the state police and the SD -especially about questions of administration and the state which belonged to the field of activities of Dr. Best in the State Police - Braune came to be so strenousuly in favor of the SD that he had to leave at the demand of Dr. Best. After his dismissal the work of his department practically stopped. That was the demand of Best.

Q. But despite these tensions with Dr. Best -- how did Dr. Braune get to join the Stapo, the State Police.

A. Braune together with a number of other assessors, at the demand of the SS Main Office, Department I, had been directed into the State service. The Budget of the SS Main Office was so small at that time that the SD was in no position to employ new people. This emergency was eliminated partly by the fact that planning agencies of the state were employed for this new personnel, which were then detailed to the SD Main Office; and thus Braune also was transferred to such a planning agency.

Q. Is it correct that Dr. Braune thus only belonged formally to the State Police -- but actually worked for the SD?

A. Yes, that is absolutely correct.

Q. How did it happen Dr. Braune was subsequently transferred to the Stapo state Police?

A. In 1938, two attempts were made, First, Best requested that the assessors who held planned positions of the State Police now should also be put at the disposal of the State Police; and secondly, Heydrich tried, in order to have his way with the StateProtection Corps, to effect an exchange of State Police and SD officials. Thus a successor of Braune, an official of the State Police, was detailed to the SD.

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Q Do you know anything about the fact whether Dr. Best especially objected to some special work of Dr. Braune in the legal field? the dismissal of Braune from the SD. In the dispute between the State Police and the SD about the treatment of administrative questions - Braune on my order had written a report which was submitted to Heydrich, the SD Main-Office, by way of the Central Department I, and

Heydrich gave it to Best, and Best thereupon demanded the definite dismissal of Braune. Police and his transfer to Muenster?

A No, no; he objected strenuously. He felt betrayed and he tried by all means to stay with the SD. in Muenster?

A Yes, he finally achieved that. He need not resign from the SD completely, but he got the SD sector in Muenster the State Police in Muenster. because of the almost exclusive activity of Braune for the SD in Muenster a row developed? Schoengast, demanded the recall of Braune from Muenster because Braune, as he said, did not do any work for the State Police. He only worried about the SD. That was psychologically understandable because he was chief in the SD Main Office, whereas the work of the Deputy State Police director corresponded to the position of an Assessor, that is of an expert referent.

support him in those attempts with the aim of getting him back to Berlin? 1939. When I got the order from Heydrich to make a reform suggestion for the future SD, I got Braune to come back from his furlough and he helped me in Drawing up the suggestion. And I had planned to give him the Gruppe A in the new office. Heydrich had agreed to this, however Best managed to prevent this again.

Q Is it correct that you even asked Dr. Braune to look for an apartment in Berlin so that he would get the idea that he could count on his recall to the SD? look for an apartment in the same area where I was living. That was about the beginning of October 1939.

Q Did I understand you correctly, that it was Dr. Best who strenuously objected against Dr. Braune's retransfer to the SD, and who finally prevented this retransfer?

Q When did Dr. Braune hear about these various actions? concerned in the dispute. But the fact that he finally did not come back to the SD in October 1939 he heard from me since Heydrich now told me this.

Q Did Dr. Braune have the possibility of leaving the State Police and returning to the SD? Heydrich, not on the will of Braune. Heydrich had decided against him.

Q But isn't the fact to be considered that war had broken out by this time?

happened, what I have already said: that any possibility of leaving the State Police was prevented be a decree of Heydrich. That is to say, Braune was not only prevented from joining the SD by the will of Heydrich, but he did not have the possibility of leaving the State Police either against Heidrich's will. Braune belonged and I want to ask you a few questions, Herr Ohlendorf, about Dr. Braune's activity in the Einsatzgruppen. Did you cause Braune to be detailed to your Einsatzgruppe D?

Q How is it to be explained that Dr. Braune came to join the Einsatzgruppe at all? were to be put in the Einsatzgruppen. Thus, in ways the loaders were released and now fuehrers were always committed.

Q When did you hoar about Braune's being detailed to your Einsatzgruppe D?

A In October I was in Berlin on an official trip. Braune looked me up and told me that he had been ordered to report to my Einsatzgruppe. We then left together in my car.

Q Then your garrison was in Nikolajev, is that right?

Q What job did you assign to Dr. Braune after you arrived in Nikolajev? Norway, who was to inform himself about my job. During his presence which lasted for about two weeks I had told Braune to take care of this Minister. At the same time Braune acquainted himself with the task of the Einsatzgruppe by reading the documents of my Einsatzgruppe.

After that, about the beginning of November, he then left for Odessa as the leader of Commando 11b. about his job as leader of a Commando? acquainting himself with the job, and I am sure I spoke to him about these jobs. Odessa? Braune acquainted himself with the job during about one week. For that period the preceding Commando leader still held the command. Odessa? all business in Odessa and to prepare the Commando for an advance into the Crimea.

Q Did Dr. Braune carry out liquidations of Jews in Odessa? Roumanians demanded liquidations from Braune. According to my directives Braune objected to this, but the Roumanians pressed him and threatened him with complaints, so that Braune asked me once more and received the same directives from me. He did not carry out any liquidations in Odessa.

THE PRESIDENT: Just a moment, please. I am wondering if that answer came through in accordance with the statement of the witness. What nationality was involved there?

DR. MAYER: I didn't get the question, your Honor.

THE PRESIDENT: I have that the Ukrainians demanded liquidations from Braune, and then later on the word Roumanian was used.

DR. MAYER: In Odessa it was a question of occupational areas overlapping, and the Roumanians advanced beyond the Border-Lines of the occupied area. Thus they were given the power in their areas. It was the Roumanians who demanded from Braune the executions of Jews in that area. Dr. Braune refused these executions decisively.

THE PRESIDENT: I see; very well.

Q Do you recall when Braune's Kommando arrived in the Crimes? of November, that is, with his commander., with only a few vehicles. The rest had got stack in the mud, and he was able only to follow slowly.

Q Where did the Dr.. Braune establish his command post?

A This was in Simferopol?

Q Was there already another Kommando active in Simferopol? and a sub-command of 11-A were in the Crimea?

Q Were these part Kommandoes already active? Simferopol? Jews in Simferopol be carried out before Christmas, This directive of the Army was handed to me by a liaison officer, and Braune thereupon negotiated with the Army since we were not in a position to carry, out these liquidations. Thereupon, the Army agreed to create the conditions necessary which happened, and, thus, the liquidations took place before Christmas 1941. actually lent its support to carrying out of these executions? the Jews, the drivers, the gasoline, the military police to guard in that area.

Q What do you know about Dr. Braune's attitude concerning the Fuehrer's Order in general?

A Braune is a very soft sensitive man. Since I was with him for months I know that he carried out these things only with difficulty, and by overcoming his great reluctance.

Q What was Braune's main activity in Simferopol? the middle of the great partisan movements, and thus, his commandos hunted down partisans. Furthermore, he occupied himself with intelligence service, because he was predestined for this by his background.

Q When did you again see Dr. Braune after your return to Berlin? back, and to take up a position in the Academic Exchange Service, and in the student field. On my suggestion he was transferred to this activity.

Q What do you know about Braune's recourse to the RSHA, and his transfer to Norway. more complicated, the younger officers from the RSHA were all drafted, and, thus, Kaltenbrunner wanted officers who were under his jurisdiction, and who were active in other agencies to return to the RSHA. Thus, he wrote the letter to the then superior of Braune, Scheel, and demanded that Braune be released. Braune was then ordered back to the RSHA. Even though Mueller, Chief of the Gestapo, was against it, Braune was detailed to Norway in the capacity of Commander by Kaltenbrunner.

Q Did you speak with Dr. Braune before he reported for Norway?

A Yes, I did. He reported away to me before he left. duct in his new position at that time?

A Yes, I did. I was especially concerned with Norway. For a long time we from the "SD" had carried on a fight with Terboven. Through the unfortunate system of the agencies of the Commander, they were very much dependent on the Reich Commissioner as I already explained. The Commander in his opinions had adopted himself completely to the Reich Commissioner Terboven. So that I, in order to be able to Court No. IIA, Case No. 9.inform myself, sent my own man to Norway.

The tensions were so great that Terboven had one of these men dismissed. I told Braune about these conditions, and I demanded that he should resist Terboven, and that he should take care that so far as possible the politics of violence carried on by Terboven be stopped, and that a reasonable agreement with Norwegians should be reached. Braune agreed to this. the sense of your instructions? and the commander of Norway. Because of the resistance of Braune against the large scale action which had been ordered by Terboven to be carried out by the Security Police, which had been refused by the RSHA also, the commander had now come into a position when he also had to resist the Reich Commissioner. Thus, a dispute developed which as a result of the activity of Braune was brought about. He thus conducted himself in accordance with my instructions. measures on the part of Scheele against Terboven? so. ly changed? that he could no longer get out of it. to ask you a few questions about the landing of the Russians in Jewpatoria in January 1942? Witness, do you recall the landing? results did these landings have? also on the penninsula of the eastern side of the Crimea, and from Court No. IIA, Case No. 9.these bases it was attempted to make the partisan movements successful.

was when the Russians conquered Jewpatoria? had tried to fell Jewpatoria. These trucks with wounded people were met by the Russians, and they cut all the throats of these wounded people. The civilian population showed great joy about these things, and they resorted to celebration around these dead people.

MR. FERENCZ: Your Honor, I must object at this point, and ask what relevency this testimony has to the charges in this case.

THE PRESIDENT: The objection is well put. Will you please answer that question as to the relevency of this line of questioning.

MR. MAYER: I consider this question necessary in order to show in what difficult situation the Einsatzgruppen found themselves in the Crimea, and, it also is to show how strong the partisan resistance was against the Einsatzgruppen, and how big the partisan movement was in that area, especially, after the landing of the Russians, and, especially how it effected the civilian population, and thus created a dangerous strategical situation. I also want to show by means of these questions how close the collaboration of the Einsatzgruppen was with the Army, and. finally, also to what extent my client received orders from the Army. In that respect I consider these questions as of probative value, but I leave the decision to the Tribunal.

THE PRESIDENT: Certainly you may put any questions which refer directly to your client. You may show what conditions he had confronted with when he arrived in any certain area or locality. You may show what directly was brought to him in the way of information, but we can not lose time in a general history of a "situation of anywhere not immediately connected with your client.

DR. MAYER: Yes, Your Honor. I shall leave this field, and in conclusion I would like to ask the witness Ohlendorf to give a judgment of Braune with whom he worked so long.

THE PRESIDENT: Did you nay a judgment?

DR. MAYER: A purely personal judgment, A judgment of his personality.

THE PRESIDENT: If you us? the word judgment

DR. MAYER: Or recommendation which he would make out of his superior.

THE PRESIDENT: Yes. You use the word judgment, and you are then encroaching upon the duties of the Tribunal.

DR. MAYER: I did not mean that, but I meant purely a personal relation to his subordinates.

A I have known Braune for nine years. I got to know him as a very decent, true and straight character, who was so stubborn in his character that quite apart from the welfare of his own person, he tried to act according to this genuineness and straightforwardedness; he was a good patriot, and believed that he found his calling in the SD, thus, with all passion he through himself into the work of the SD. He was one-hundred percent reliable, and one knew that wherever he worked, there would be decency and a clean attitude.

DR. MAYER: I have no further questions to ask the witness.

THE PRESIDENT: When you say that you knew that he could be counted upon for one-hundred percent as to reliability, I take it that you mean that he would carry out whatever directions he received with regard to liquidations, or of anything else he was directed to do.

THE WITNESS: I did not quite understand this, Your Honor.

THE PRESIDENT: In your summation of Braune's character, I understood you to say that he was one-hundred percent reliable. By that I understood that you mean that he was one-hundred percent reliable to the Reich?

A No, no, but reliability of his character. If a job was given to him one did not have to bother about whether it was carried out or not. If he said, yes, he meant, yes.

THE PRESIDENT: Yes.

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DR. LINK: Dr. Link for the defendant Ruehl. I have a few questions with the permission of the Tribunal, to put to the witness Ohlendorf. BY DR. LINK: Einsatzgruppen-D?

A Yes, together with other men - one moment, please. I am mistaken. Yes, I know him from his activity in the Einsatzkommando 10-B.

Q What position did he hold in this Einsatzkommando? Kommando 10-B. Since he had these qualities which the kommando leader of 10-3 did not have, the leader of Kommando 10-B did not keep order, any official business matter was against his nature, and, thus, I ordered Ruehl to see that order was kept within this kommando. Without his holding the title, he was practically the administrative chief of the Kommando. of an administrative chief, may I ask you whether he had any power of command over this Kommando, or any part of this Kommando in this function?

A No, he had no such command over the Kommando. Mot even over parts of it. Persterer? have the seniority after Persterer, Ruehl was Obersturmfuehrer, that is, a 1st Lieutenant, and there was another man who was a captain, and who in the Kommando itself was the leader of the Department IV. Thus, were any one to be designated as deputy of the Kommando, it would have been automatically this leader of Department IV, because he was a captain. his deputy; would you know anything about this?

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fore; I know that he was not deputy of Persterer. Also that he was not the designated person to be such by Persterer. a case of Ruehl once actually appearing as a deputy of the Kommando Leader. This assumption by the Prosecution is mentioned in connection with the transporting of a number of Jews back to Rumania territory. I therefore, ask you, can you remember that Persterer had reported to you at any time about the situation which had prevailed or developed in his area as a result of the fact that the Rumanians had transported a large number of Jews into the area occupied by the German Army? Do you remember that?

Q How was that situation developed? from me what was to be done with the Jews who had been transported across the Dnestr River, into the German area by the Romanians. He had brought Ruehl along because Persterer himself did not go back to Mogilew, but had still another mission to complete. I told Persterer that the Jews driven across the River by the Rumanians were to be brought back into the Rumanian territory, and that it was to be prevented that the Russians would drive any more Jews into our area. The situation in the area of Mogilew was so difficult, because the city of Mogilew was completely destroyed. Therefore, the famine prevailed, and it was not possible to prevent plunderings and revolts, for these Jews had been completely plundered by the Rumanians. They had no baggage with them at all. Therefore, hurry was great, and thus Ruehl wont back to Mogilew-Podolsk and -- he was to see to it that the Jews were to be sent back into the Rumanian territory, which was their homeland. The fact that Ruehl came to see me is nothing special for in contrast to what the Prosecution assumed it has not a question of a lieutenant coming to sec his general but of a leader coming to see his superior; everybody had this possibility who had any type of mission, and such mission could be given to any one, even if he had not been a leader, and even if he had not been a leader, he certainly would have the opportunity of speaking to me, for that is what I was there for.

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explanation of my client that he then handed your order on to a SubKommando at the suggestion of Persterer. Did I understand you correctly that this fact would lead one to assume that Ruehl had any power of command, or any activity as Deputy? first order could not be executed at once? back the Jews into their territory, but we were dependent on the Rumanians because there was only one bridge at that time, and the Rumanians threatened to shoot if we tried to bring back the Jews into their land. Ruehl informed me of this and now I ordered Kommando 12 to negotiate at another bridge near Jampol and which had just been completed at that time, but it had not yet been handed over to the Rumanians, and thus Kommando 12 received the order to see to it that these Jews would now be brought back into their homeland via that bridge, and that happened. report appeared before you and that this was not Pesterer, would you explain this in the same way as you explained the first conference? because of the situation I have described, and thus Ruehl had to take his place in order to tell me about the results of the negotiations with the Rumanians.

Q Was this order then carried out? in any connection with the basic order under discussion? the conduct of the Rumanians I had ordered namely we would under no circumstances undertake to execute people by order of the Rumanians.

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reaction of the victims themselves were, namely the Jews?

A No, I saw nothing of it, I don't know.

THE PRESIDENT: The Tribunal will now be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session. BY DR. BELZER (ATTORNEY FOR MATHIAS GRAF):

Q Witness, you were chief of Office III in the RSHA? questions: Do you know that during the war emergency duties had to he carried out by the SD? object to this duty or to reject it? who did the emergency duty have to be a member of the SS or a member of the Party?

Q Who assigned the people for emergency duty in the SD? by the regional agencies themselves. person carrying out such emergency service become a member of the SD?

A No. the SD he became active on behalf of his emergency duty. Dueben or Schmiedeberg? Police and SD he came under his jurisdiction. was there a mass meeting held by Heydrich or Streckenbach? kommando advertised?

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concerning the assignment for these Eastern areas apart form the Einsatzgruppen leaders and the Einsatzkommando leaders, were there subordinate leaders present also?

DR. BELZER: I have no further questions, Your Honor. BY DR. SURHOLT (ATTORNEY for the Defendant Rasch): a member of Office I?

Q Rasch came from the. Ministry of the I terior to the SD, did he not? Until then he had not joined any part of the SS. He became Untersturmfuehrer automatically when joining the SS. Did this make him a member of the Waffen SS or the General SS?

A Certainly not the Waffen SS. There was no General Waffen SS. the SD in Koenigsberg. The Prosecution has submitted a document in Volume III_C, Exhibit No. 131, German page 13, Document No. 3253. There it says -

THE PRESIDENT: You are reading too rapidly.

Q "Since the Fuehrer has appointed you Brigadier General of the Police with the document handed to you on 19 Feburary 1940. I herewith assign you as from 1 December 1940 to a position provided in the budget of Brigadiers General of the Policepay group PA allocated to the State Police Headquarters at Koenigsberg." Witness, can you tell me whether the meaning of this document is of importance; with regard to budget purposes, so that a position was assigned to him where he could be paged by the fiscus, or does it also result in his being drafted into the State Police in Koenisberg?

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budget was transferred to him. This has nothing to do with the function as such.

Q Could Himmler stand contradiction? been promoted, could that be considered as normal? well as abnormal?

Q Is that a sign of disapproval?

A I couldn't say that. intervals and according to a certain schedule?

DR. SURHOLT: Thank you. BY DR. FICHT (Attorney for Defendant Biberstein): defense counsel-when discussing documents and it was mentioned whether the number of 90,000 killed were correct or not, you explained the following: "After a certain period, activity of the Einsatzgruppe in the Fast no longer to k place. In connection with this, I would like to ask you what period did you mean by this? flowed back to the area of civil administration. Rostov or surroundings, even if only temporarily? were in Rostov for a short time.

Q When was that, approximately?

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Q 1941 or 1942. Can you express yourself to that effect? time. been in Rostov and then had to clear out and only in 1942 occupied Rostov again, can you then answe this question whether special atrocities had been committed there? BY DR. MAYER (for the defendant Braune): BY MR. WALTON:

May it please the court I don't quite see the materiality of this in that Dr. Mayer has been given the opportunity already to cross-examine the witness.

THE INTERPRETOR: I'm sorry, channel 3 is not working.

THE PRESIDENT: Let us first see what Dr. Mayer intends to present. He may be merely asking for the correct time. We don't know.

MR. WALTON: That's true; I only wanted him to confine himself to something that had taken place before. I am objecting to anything that has already been discussed.

THE PRESIDENT: Your objection is well taken. Let us see what he is going to ask. The sound system seems to be functioning now, Dr. Mayer.

DR. MAYER: I only wanted to address one question to complete my former question. The question itself refers to a document submitted by the Prosecution.

THE PRESIDENT: Was that within your knowledge when you questioned the Defendant Ohlendorf before?

DR. MAYER: Yes, I knew the document.

THE PRESIDENT: Why was it you did not put this query at that time?

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DR. MAYER: I simply did not address the question because I had forgotten it during the examination.

THE PRESIDENT: That seems to be the privilege of an attorney, to forget a question, so we will allow it. BY DR. MAYER: Thatk you very much.

Q It refers to Document NOKW 584, Exhibit No. 165 in the German volume III D, pages 104 and 105. This document itself deals with retaliation measures against partisans in Eupatoria and I ask the witness to inform himself of the text on which the action was based and to state his opinion on it and also what orders he gave to Braune at the time.

THE PRESIDENT: What was that document again, Dr. Mayer?

DR. MAYER: Exhibit 165, in the German Document Book III D, pages 104 and 105.

THE PRESIDENT: What is the document number itself?

DR. MAYER: The document is NOKW 584.

A I exactly remember this occurrence. The ICAO of the Army and Major Riesen came to me on behalf of the truz in order to obtain an order that my Einsatz Commando carried out a retaliation measure in Eupadoria. It was a retaliation measure for occurrences which have been descried previously by me when the Russians had cut the throats of wounded soldiers. I rejected the carrying out of this retaliation measure because I did not consider it to be my task to carry out retaliation measures of this kind for the Army. Major Riesen asked me for persons who could be put at his disposal in Eupadoria. I said I was prepared to do this because the retaliation measure itself as described to me by Major Riesen I did not approve of. The Commander in Chief had ordered that the entire population capable of war service in Eupatoria be shot. Owing to our stay in Eupatoria it was known that among this population there was a great number of persons who were not suspected of being partisans or who could be considered to endanger our security. For that reason I sent Braune along in order to select from the male population those persons who could not he considered dangerous but could assist Major Riesen with advice.

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Braune returned from Eupatoria disgusted. The Army had not prepared the execution properly and therefore very unpleasant occurences had taken place and Braune had to take a hand in order to re-establish order to avoid even greater unpleasantness.

Q I have another little question. What connection did Braune have with Riesen? held a kind of a superior position.

Q Did Dr. Braune also approach him about the views of the Commandant Mueller. because rightly he considered him a white collar officer rather than an officer who would fight at the front and he received him with the words that for this action he did not require an order from the Commander in Chief. This statement may he explained by the fact that already at the beginning of the war through Keitel orders had been given to Army sections which in this case gave the officers the opportunity ever without the orders from the Supreme Commander to carry out such actions. BY DR. ASCHENAUER: difficulties in the record. May I put them prior to the cross examination?

Q In the Prosecution's evidence on page 330, which is the memorandum of 30 September, it says: Krimschacken are people of Jewish descent, who were living in this area for several hundred years, however, the Einsatzgruppe considered them undesirable. In this connection may I address two Questions. Did the Einsatzgruppe classify the Krimschacken - May I assist your memory with an excerpt of a document which Was not submitted here, Exhibit 325 presumably from the SS trials and may I ask what the decision obtained from Berlin?

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A. The Prosecution themselve did explain that the classification of the Krimschacken was not necessary because the prosecution themselves described them as of Jewish origin. Therefore, the Fuehrer order concerned them. Thus, the Einsatzgruppe was not content with this result because at the Crimea, apart from the Crimean Karaims problem the question of the Karaims also existed. It consisted of the following: The Krimschacken are of Jewish origin but have given up their Jewish creed and spoke Turkish. The Karaimen, mostly, are not of Jewish origin but had the Jewish confession. The Einsatzgruppe twice to keep both groups out of the liquidations. The order of the 5th of December 1941 shows this. The following facts were written down here. The Karaims, according to their own statement, have nothing in common with the Jews except their confession. They are supposed to originate iron the moguls who formerly lived in the area of the Black Sea. During the czaristic days, in contrast to the Jews, they had all Civil rights and they are still proud of this, even now. The Krimschacken according to statements by the Jews are supposed to be Jews who left Italy about 400 years ago and came to the Crimea and spoke the Tatarian language. The Krimschacken themselves maintain to be a branch of the Tatarian people. One may presume that both sides are right and that there are immigrants from Italy Who, in the course of the centuries mixed with the Tatars, accepted their language and their customs but retained then confession. When the Einsatzgruppe enquired from Berlin it was decided that the Krimschacken are to as treated as Jews

Q. This finishes the direct examination as far as I am concerned.

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COURT IIA CASE IX available to the Prosecution for cross-examination on the entire defendant's case.

MR. HEALTH: May I state my name for the record. James E. Heath for the Prosecution.

INTERPRETOR: I'm sorry, your Honor, the German channel is out again.

THE PRESIDENT: You may proceed Mr. heath, I think it is all right now. BY MR. HEALTH: Thank you Sir.

Q. Mr. Ohlendorf, We can begin for this moment exactly where you left off. You spoke of the Krimschacken decision in Berlin, the decision that because those people were of the same blood--------

INTERPRETOR: I'm sorry, the German channel is off again. BY MR. HEALTH

Q. Mr. Ohlendorf, you spoke of two classes of people, the Krimschacken and the Karaimen------

MR. HEALTH: I think it is kaputt again your Honor.

THE PRESIDENT: Mr. Heath, it seems that a few minutes will elapse before channel 3 may be reactivitated so we will take advantage of the noon recess and then you can begin afresh immediately after the noon recess. The court will be in recess until 130.

(A recess was taken until 1330 hours)

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THE MARSHAL: The Tribunal is again in session.

MR HEATH: May I proceed, Your Honor?

THE PRESIDENT: Proceed, Mr. Heath. BY MR. HEATH:

Q Mr. Ohlendorf, to speed this examination I'd like to attempt to agree with you upon one or two points. First, we shall not quarrel about numbers, You have indicated that Einsatzgruppe D under your command slaughtered something less than 90,000 human beings. I understood you to suggest to the Court that this figure is exaggerated although it appears in an affidavit which you have given. I ask you now to give the Court the best estimate you possibly can of the minimum number of human beings who were killed under your command by Einsatzgruppe D. give any definite figure, and that even the testimony in my affidavit shows that in reality I could not name any figure. Therefore, I have named a figure which has been reported "approximately". The knowledge which I have gained by this day through the documents and which I have gained through conversations with my men, make me reserve the right to name any figure and strengthen this reservation. Therefore, I am not in a position to give you a minimum figure, either. In my direct examination I have said that the numbers which appear in the documents are at least exaggerated by one half, but I must repeat that I never knew any definite figure and therefore cannot give you any such figure.

Q You can not give us a minimum figure? my reasons why I cannot give any figure.

Q Well, let me ask you -- perhaps I can help you ... In any event, I can indicate to the Court one reason why you might have doubt about the numbers.

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In 1943 the Reichsfuehrer SS Himmler addressed the SS Major Generals at Posen. You are aware of that speech, are you not?

Q Perhaps you recall his complaint, and I will read it to you: "I come now to a fourth virtue, which is very rare in Germany - to truthfulness. One of the greatest evils which has spread during the war is the lack of truthfulness in messages, reports, and statements, which subordinate departments in civil life in the State, the Party and the Services sent in to the departments over them," Of course, that was in 1943.

Did you exaggerate the reports which you sent to the RSHA? were reported to me, and I know that double countings could not be avoided, and I also knew that wrong numbers were reported to mo, I have avoided to pass on such double countings or wrong statements because the neighboring units did not know their figures and, nevertheless the reporting of wrong figures was not prevented - and especially the reporting of strange figures - figures of other units were not prevented. The the report from Chernovitz is certainly the reporting of such strange figures, namely, the reporting of such actions which were done by the Roumanians in Chernovitz. system was maintained in Einsatzgruppe D to keep track of the people slaughtered? were sent from the Commandos to the Einsatzgruppe, and these reports were gone over and the figures contained in them were sent to the RSHA.

Q Well, it is quite obvious that that is what happened. But tell us now who reported for Einsatzkommando 12, say, during the first six months of its operations the killings by Einsatzkommando 12, to you?

Q And who was the man who reported to you? in this case by the then Sturmbannfuehrer Nosske. numbers killed by his unit? for example, was 200 or 250 kilometers away from me.

Q Witness, I don't mean to cut you off, but I think if I ask you now to attempt to make your answers as responsive as possible, I shall attempt to make my questions as explicit as possible - and I believe we both shall benefit. So - I ask you again - now why you did not check up on Nosske, but simply the question ... Did you rely on Nosske for truthful reports of the slaughters committed by Einsatzkommando 12?

A I didn't understand the last part of the question. Only the last part of the translation.

THE PRESIDENT: Please repeat the question, Mr. Heath, BY MR. HEATH: of persons slaughtered by Einsatzkommando 12 while it was under his command?

A I was of the opinion that these reports were truthful. In the case of Nosske however, in one case it was brought to my attention that the report was not truthful. But that was relatively at an early stage in Nikolajev.

case which were not killed by his kommando but by a strange unit. exaggerating the number killed by his unit? unit under you?

Q Yes, do you recall an exaggeration in the case of 10-A?

Q Any other Einsatzkommando do you recall exaggerating figures? yourself in today, it should be possible for you to give us a minimum figure based on the reports of the man who were under you, should it not? one half years that to the best of my knowledge, about ninety-thousand people were reported by M 4 Einsatzkommandos. How many of those were actually killed I do not know and I can not really say.

Q Very well, we will leave this after one more question. This figure ninety thousand is the best estimate you can give at this moment. I take it we must continue to read that with the qualification that you gave in direct testimony, that you think there is a great deal of exaggeration in it?

THE PRESIDENT: Mr. Heath, I do not understand the witness to say that he regarded the figure ninety-thousand to be an exaggeration. He states, and he stated not only here but before the International Military Tribunal, that his estimate of the number killed by the Einsatzgruppe D during the time he was in charge was ninety-thousand, and he comes to that conclusion from the reports and that is what I understand he says today.

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MR. HEATH: I agree with Your Honor: I had understood him to say that in the transcript his testimony was - - go ahead?

THE WITNESS: I am not quite in agreement with this answer, Your Honor. Insofar as I said that the number ninety-thousand was reported as having been killed, but I cannot really say whether that number had been actually killed, I would not want to say from the last that they were killed by the Einsatzgruppen, because from exaggeration I also knew definitely that the Einsatzkommando reports of the killings were made which were carried out by other units. Therefore, I could only repeat that ninety-thousand were reported.

THE PRESIDENT: Witness, you may agree to what I have stated, but you will have to agree to what you stated yourself on January 3, 1946, you were asked: "Do you know how many persons were liquidated by the Einsatzgruppen D under your direction." And you answered: "In the year between June 1941 and June 1942 the Einsatzkommandos reported ninetythousand people liquidated,"

THE WITNESS: Yes.

THE PRESIDENT: Question: "That included men, women and children? Answer: Yes, Question: On what do you base these figures? Answer: On reports sent by the Einsatzkommando to the Einsatzgruppen. Question: Were those reports submitted to you? Answer: Yes."

MR. HEATH: Your Honor, please, if I may interrupt, the defendant, I think I can clear up the difficulty. I have the advantage of having the transcript of his testimony before me.

THE PRESIDENT: Yes.

MR. HEATH: I don't know that Your Honor has had the opportunity to sec it.

THE PRESIDENT: No, I have not.

MR. HEATH: He did make this statement with respect to the affidavit which you just read.

THE PRESIDENT: It is not the affidavit. This is testimony put to him in court.

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MR. HEATH: He followed by that to this extent in the case of the direct examination. BY MR. HEATH:

Q Witness, this is from your testimony of last week. He said, if of course, the figure of ninety-thousand was named by me, I always added that in this fifteen to twenty percent are double countings, that is, on the basis of my own experience. I do not know any longer how I could have remembered the number of just ninety-thousand, because I did not keep a register of these figures. The "approximately" must have meant that I was not certain. It is evident that I mentioned this number of ninety-thousand by adding a number of other figures. I do not mention this in order to excuse myself, as I am perfectly convinced that it does not matter from the actual fact whether it was forty-thousand or ninetythousand. I mention this for the reason that in the situation in which we are today, politically speaking, figures are being dealt with in irresponsive manner. That is the qualification that I had referred to.

THE PRESIDENT: But that still does not in any way take away from what he said on January 3, 1946.

MR. HEATH: I agree, sir, with you.

THE PRESIDENT: That is the testimony of that day, and it still stands now as he gives this explanation and the Tribunal sees no difference between what he said then and what he said today, namely, that this estimate of ninety-thousand is based upon the report which he personally saw.

MR. HEATH: Alright, sir.

THE WITNESS: With what was just read by the President of my affidavit of 3 January 1946 I agree completely.

THE PRESIDENT: Yes.

THE WITNESS: Anything else which I have said on direct examination is merely a commentary to the testimony of 3 January 1946.

THE PRESIDENT: Very well.

MR. HEATH: Very wall, sir; BY MR. HEATH:

Q As we adjourned for lunch, Mr. Ohlendorf, I had begun to ask you about the Karaimians and the Krimschacks, I think you called them.

Q I beg your pardon?

Q Karaimians. I understood that you were confronted in the south of Russia with the question further to slaughter Krimschacks. Krimschacks I understood were human beings who had come by way of Italy to Russia, and they carried with them and they had Jewish blood. The direction which you got from Berlin was to kill the Krimschacks, is that correct? another sect whom you encountered in the south of Russia, and this sect had no Jewish blood, but it did share the religious confessions of the Jews. Is that right? should be killed, and I understood you to say that the order you got from Berlin was you shall not kill them for they have nothing in common with the Jews except the confession?

had no idea, and that you have no cause today to think that there was any plan to exterminate the Jewish race in existence, nor that you had any information of putting it into effect. Is that right? between the Karaimians and the Krimschecks, except Jewish blood?

A I understand your question completely. In reference to the Eastern Jews, in the case of the Jews who were found in the Eastern Campaign it was the order that these Jews are to be killed for the reason that they were considered carriers of Bolshevism, and, therefore, considered as endangering the security of the German Reich, This concerned the Jews who were found in Russia, and it was not known to me that the Jews in all of Europe were being killed, but on the contrary I knew that down to my dismissal these Jews ware not killed, but it was attempted by all means to get them to emigrate. The fact that the KarKaraimians were not killed showed that the charge of the Prosecution that persons were persecuted for their religion is not correct, for the Karaimians had that Jewish religion, but they could not be killed because they did not belong to the Jews in Russia, and because they did not belong to the Jewish Race. the last sentence, "They did not belong to the Jewish Race," is that right?

Q They were found in Russia?

Q But they participated in the Jewish Confession in Russia? blood in them?

Q So they came absolutely under the Fuehrer Decree; or the Streckenbach Order to kill all Jews?

Q Except for blood?

A Because they were of Jewish origin. For you must understand the Nazi Ideology as you call it. It was the opinion of the Fuehrer that in Russia and in Bolshevism, the representatives of this blood showed themselves especially suitable for this idea, therefore, the carriers of this blood became especially suitable representatives of the Bolshevism. That is not on account of their faith, or their religion, but because of their human make-up and character.

Q And because of their blood, right? their nature and their characteristics. Their blood, of course, has something to di with it.

Q Let's see, if I can understand it; we got a lot of time, I hope. What was the distinction except blood?

A Between whom?

Q Between the Karaimians and the Krimschecks?

Q Only the difference in blood, is that so? was blood? has not been doubted during the entire trial, that in this Fuehrer Order the Jews were designated as the ones who belonged to that circle in Russia and who were to be killed.

Q Very well, witness, let's not quibble. Let's come back again. What you followed was the Fuehrer order, Now I leave you out of it for a moment, your own idea of what should be killed and what should not be killed.

THE PRESIDENT: I disagree with you, Mr. Heath, that the witness has quibbled. I think he has stated very clearly that his orders were to kill all Jews, that was the criterion which he followed. If he was a Jew he was killed, if he was not a Jew then they might figure some other reason to kill him but he wouldn't be killed because he was a Jew.

MR HEATH: Yes, Your Honor, I am attempting to get him to say the word blood and not the word Jews. That is the reason I was saying he is quibbling, but I am perfectly happy to leave it where it is.

THE PRESIDENT: I think he has been rather forthright.

MR. HEATH: Very well. BY MR HEATH:

Q Let's see, Mr. Ohlendorf, let's go for a moment to this order which you got at Pretsch in the Spring of 1941. Did you have any knowledge whatever of the purposes of the Einsatzgruppen before you went to Pretsch?

Q But you did not know what they were to do? missions in which people of the Security Police and the SD were working that is, of course, true. Security Police would be to slaughter Jews and Gypsies?

A I could no longer say today that I had such an idea, but I don't believe so. In my opinion the order about the killing of the Jews was known to me for the first time in Pretsch, that is, for the Russian campaign. Einsatzgruppen to kill all Jews and Gypsies and certain other categories, you would remember it today -- would you not, Mr. Ohlendorf?

not?

Q And. twice you refused?

Q The order in the first instance came from Heydrich? came from Heydrich?

Q You refused both the first and the second order?

Q Why?

A For two reasons. For one thing, because I had not been a soldier and did not have any interest in the military, secondly, because I was not a policemen, and had no interest for police work, and police work was against my nature, and third, because I had a genuine job to do in Berlin which I knew would not be replaced once I left it, and I wanted to do a job in which I could do the best I had. circumstances, excuse me, Ohlendorf was your military superior, was he not?

THE PRESIDENT: Ohlendorf you say? BY MR HEATH:

Q I mean, Heydrich? order must be obeyed without a question? people you have told us because you were ordered to do it, not because you wished to do it?

people please stick to that and question me about this matter.

Q I'll come to that in due time. I shall ask you now again how you refused the first Heydrich order to join the Einsatzgruppe? leave Berlin, and I said in my direct examination I was indispensible to the Reich Trade Group, that is, I had a note in my military passport which obligated me to work for the Reich Trade Group, and, therefore, Heydrich first had to consult me and remove this note. Therefore I had the chance to discuss these matters with him. go to Russia, and twice I refused?

Q Did you go to Heydrich and say, I refused to go to Russia? I used the tact which is necessary when discussing such matters with a superior, that is usually customary.

Q On the second occasion what happened? you were able to persuade him to relieve you of that assignment?

A When the last order came I could not evade it. How strenuously he insisted on this could be seen from the fact that Mueller and Streckenbach, Chief of the Gestapo and Chief of Personnel, were of the opinion that it would not be useful to give me an Einsatzgruppe, and they also protested to Heydrich about giving me the command of an Einsatzgruppe, but since he wanted it, the third order came down, and there was no chance to evade it this time.

Q I didn't follow you there. Who was it that insisted, Streckenbach? Mueller.

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were to do in Russia?

A I don't know.

Q I beg your pardon?

A I don't know whether he did. any idea of what they were to do? job away from the Army, whereas, up to that time he had detailed personnel to the Army, and the Army worked without letting him in on his work, therefore, he expanded his domination to include the operational areas. gruppen? Armed Forces High Command and the Army Command, and Heydrich commissioned these two agencies. you to go to Russia in command, he knew what work you were going to perform in Russia, did he not?

A Whether he already had the Fuehrer's Order I don't know. I only knew the fact that the Einsatzgruppen were being set up. say, what the Einsatzgruppens were to do?

Q Now he had a special order?

Q In your direct testimony you said the order read as follows: Did you see the order yourself?

A No, I did not say, it read as follows? I merely gave the contents, for I always said, there was no written order.

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Q I misunderstood you, the transcript said "Read as follows," So your understanding of the purposes of the Einsatzgruppen came from Streckenbach orally at Pretsch?

Q And you protested? a general protest.

Q What form, did your protest to Streckenbach take? possibly accomplished. It is impossible to ask people to carry out such executions.

Q Why? for people spiritually than to have to shoot defenseless populations. worse than to be shot either, when you are defenseless? for example, to starve.

Q It is not meant entirely ironically. I have read the whole of your testimony, and I am impressed by the fact that not once did you express any sympathy or regret.

THE PRESIDENT: Mr Heath, I don't think that that observation is in place.

MR HEATH: I withdraw it, Your Honor.

THE PRESIDENT: You are not to comment on the witness. Ask him questions, and he is to answer them. What you think about him is of no consequence.

MR. HEATH: I know that, Your Honor, and I ask the Court's forgiveness for having out the question.
BY MR HEATH :

Q What form of protest did the other men present at the time? What did they say about this order which Streckenbach described?

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bach and Millar were persons who had the same rank as the other Einsatzgruppen leaders, so that here there was lively protest not of a formal kind, but as among comrades, the reaction to this order was expressed in rough words, and I sail in my direct examination that Streckenbach immediately interfered in our argument and confirmed it in even stronger terms than we had just expressed it.

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Q. What was Streckenbach's rank?

A. At that time he was Bridgadefuehrer or Gruppenfuehrer. At any rate he was the chief of an office, as I was, and as Nebe who led the Einsatzgruppe B, and besides Rasch was in the same rank.

Q. Now you have answered my question. What other protest was made besides pointing out to Streckenbach the bad effect on the morale of troops who would have to do these killings?

A. I didn't get the question.

(The question was repeated by the interpreter.)

A. I didn't mention that sentence. I merely said that the order for the killings was an inhumane order. I didn't speak of morale, for those experiences were to be made only afterwards when the order was carried out. Here is tas merely a protest of the inner being of each man against such an order.

Q. A protest against killing defenseless human beings, is that right?

A. Yes.

Q. How strongly did you feel that at the time?

A. I don't know how to explain this to you.

Q. Was it sufficiently strong, your feeling of revulsion, was it sufficiently strong for you to doubt the possibility that the head of the German State had ordered any such thing?

A. I didn't understand the question.

Q. You say that you felt very strongly that this was an inhumane order.

A. Yes.

Q. Did your feeling of revulsion against what was ordered cause you to question whether the head of the German State had in fact made such an order?

A. First of all, it was not concerpt. If I must describe this feeling I would have to say grief and sorrow, not only for the momentary order but for the moral and spiritual consequences which such orders would have to have in their wake and which are still not concluded.

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THE PRESIDENT: Witness, I don't think that you quite grasp the questions which Mr. heath put to you. Let me try to put it. Were you appalled and shocked by this order that you questioned whether it could be true and that possibly some mistake had been made and that the Head of the State had not issued such an order?

THE WITNESS: I did not doubt the fact that the Fuehrer had given it because this was also the first reaction of Streckenbach, that he repeated this word, "Fuehrerorder" to us.

Q. (By Mr. Heath) With no prior information from anyone about the order you were fully prepared to believe and did believe that Adolf Hitler had ordered those exterminations?

THE PRESIDENT: Mr. Heath, I don't understand why you want to pursue that business. There is no doubt that the order was issued by the Head of the State. It was so explained to him. He believed it, acted on it and executed it, so why do you question that?

MR. HEATH: If your Honor please, I was trying to get, with the Court's permission, at this man's state of mind and why having access to Heydrich and having access to Himmler if he thought it impossible that.

THE PRESIDENT: He didn't think it was impossible. He never said he thought it was impossible. He knew the order came from Hitler, Himmler, et al., and accepted it.

MR. HEATH: I had not so understood, your Honor.

THE PRESIDENT: I don't think there is any Question that he accepted it as coming from the higher leaders. Do you have some doubt that he accepted it as such?

MR. HEATH: If your Honor please, I have no doubt that he accepted it as such and acted on it as such,

THE PRESIDENT: I am sorry, I forgot to turn the switch, I will remember to keep it up.

MR. HEATH: Shall I repeat that answer to your, your Honor?

THE PRESIDENT: Yes, please.

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MR. HEATH: I said, sir, I have no doubt that he accepted it and I have no doubt that he acted on it as an order coming from Hitler. What I am attempting to find out is his state of mind when he tells the Court as he has, "I felt bound I had to act because of the military command." I am trying to get the witness to explain to us why if he was horrified by this order, as he says he was, he did not use the channels that were open to him: to go to Heydrich, to go to Himmler, and to question whether Hitler had in fact ordered this thing.

THE PRESIDENT: For the simple reason that there was no doubt in his mind that the order had. come down.

MR. HEATH: Very well, very well.

THE PRESIDENT: That is the reason he didn't go.

MR. HEATH: Very well, if it is as clear as that, Your Honor, I shall certainly not labor it any further.

THE PRESIDENT: That is the conclusion the Tribunal reaches, and if we are in error I am sure the witness will volunteer directing us.

Q. (By Mr. Heath) Witness, I leave that now and go to this question that we haven't quite finished with yet. Streckenbach, when you men protested this order, said, "I myself protested a similar order in Poland, is that right?

A. Yes.

Q. "And my protest came to nothing." I suppose he told you that, did he not?

A. Yes.

Q. In fact he said, I think, that Himmler had rebuked him for protesting.

A. Yes.

Q. Now, when he told you that, did it occur to you that Jews in Poland, who had been the subject of a similar order prior to your invasion of Russia were not properly classified as bearers of Bolshevism in what was the nearly Fascist state of Poland?

A. I don't know that the same thing was ordered and carried out in Poland what was ordered and executed in Russia. I know just from this talk with Streckenbach, that individual actions were ordered in Poland, but not that a general order existed, and Streckenbach already at that time protested against single actions. These aporadic actions were not so much directed against Jews as also against Poles for the reason that after the invasion of the German troops there were border guards who as exaggerated retaliation revenged themselves on the Poles who whortly before and after the outbreak of the war had committed misdeeds on Ethnic Germans and had killed a large number of them, and Streckenbach objected to these actions, and I was personally a witness in the dispute between him and. Himmler because this happened on the official trip on which I accompanied Himmler.

Q. How long have you known Walter Schellenberg?

A. Walter Schellenberg?

Q. Walter Schellenberg.

A. I know him since my SD time, since 1936.

Q. You have told the court that you did not want to go to Russia. Do you recall the conversation about going to Russia which you had with Walter Schellenberg after your return to Berlin?

A. No. I don't.

Q. Do you remember saying to Schellenberg that he was not a good National Socialist in that he had not proved himself?

A. I don't think I have ever expressed myself in such a primitive form. I never used such phraseology until this very day.

Q. You must understand that the language I use is a quotation from an interrogation of Walter Schellenberg. I know that you and Schellenberg used better German than comes out in English. I have heard it said that you use excellent German yourself.

A. Mr. Prosecutor, you can depend on the fact that since 1937 I have had such a bad relationship with Schellenberg - which I don't want to describe here - that in the year 1942 when I know him even better than in 1937, I certainly did not have any such talks with him.

Q. Well, I don't want to increase your troubles with Mr. Schellenberg, but he has said some good things about you, as well as that. I will ask you again, did he not answer you and tell you that you were rather slow because he knew how to avoid service with the Einsatzgruppen and you didn't know how to do it?

A. That is so grotesque that I don't know any answer other than I can only say to you that Schellenberg would have taken any possibility to pick out an Einsatzgruppe in which he could have done the most to please Himmler, for nothing else was the purpose of his life down to the very moment when he believed he could please and had to please other persons.

Q. Now, let us move to something that is not qrotesque. I want to ask you, or I say this, Sir, You have told the Court repeatedly that to your knowledge there was absolutely no purpose to exterminate races. You are charged here, of course, with war crimes, which is one kind of killing, and crimes against humanity which is another kind of killing. You have told the Court that you have no reason today to believe that these killings were part of an extermination program. I want to ask you further, you are aware of this speech which Hitler made in 1953 at the party rally in Nurnberg, and I would like to ask you, when I have read you this quotation, to comment on it, "But long ago man has proceeded in the same way with his fellowmen. A higher race, at first higher in the sense of possessing a greater gift for organization, subjects to itself a lower race, and thus constitutes a relationship which now embraces races of unequal value. There thus results the subjection of a number of people under the will often of only a few persons, a subjection based simply on the right of the stronger, a right which, as we see it in nature can be regarded as the sole conceivable right because founded on reason." Do you recall that or any of the similar outgivings of Adolf Hitler during the period 1933 on?

please the Prosecution especially. Despite repeated readings I have still not understood it to this date, Perhaps the last two sentences are reasonable, but the first two-thirds I cannot make any sense out of. a great deal of Hitler's statements, were you not? about politics from various scattered quotations. If one were to do this it would be hard to find any statesman of one whom could say that he had ever any definite idea. for statesmen are in the difficult position of being in politics which is something changing and developing and statesmen always adapt themselves to this changing characteristic of politics. This has not been only a quality of Hitler but all statement use to do this until this very day. the jurists of the Third Reich, Karl Schmidt, whom you quote in your direct examination, as the author of what you call the theory of "friend and foe". You pointed out to the Court that this theoretician of the Nazi movement, the top legal theoretician, had, in your opinion, an impossible doctrine. Schmidt was the top juridical commentator on the Nazi State, was he not?

A In '33 and '34, yes, but then it was at an end after that,

Q Now, in Schmidt's conception man had the very power, which Hitler described here, too coerce his weaker brother, did he not, the moral, right to do it? ppeared as the top jurist of the Third Reich because he credited such mistaken theories to National Socialism. because he opposed your view of National Socialism?

A That is very difficult. You ask very much. National Socialism, unfortunately, had no time to work out its theory thouroughly and thus I looked in vain for even one book of principles on which National Socialism really was based.

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MR. HEATH: If your Honor please, my connection is broken here now. Will you speak please?

(The interpreters tested the channel).

Q (By Mr. Heath) Let us go to Gottfried Feder. When was his influence ended in Germany? undersecretary in the Ministry of Agriculture in 33, this was the last honor which one gave him. Actually he didn't have anything to say in the Agricultural Ministry after 1933, nor did he have any political significance at all.

Q Very well. He was free of political pressure, and it was he who said that the master race dogma was the emotional foundation of the Nazi movement. Do you care to comment on that, do you care to comment on the Herrenvolk, the importance of it to the Nazi movement? arrived at the idea of the master race from his own vanity. Outside of him and Ley and two other people there was certainly no logic in the leadership for raising this nonsense of the master race. The office for racial politics dealing with such racial problems never represented this theory. dates. In August, 1942, we find Rosenberg, spokesman, saying "The Slavs are to work for us. Insofar as we do not need them they may die. Therefore compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undersirable." Now, Rosenberg, would you classify him as the spokesman for the National Socialist State?

A Certainly, but I don't believe that he expressed this in this form for I know him personally. He was anything but a man who would even say such a thing;certainly not act accordingly. I never could consider him an enemy of the Slavs.

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Q Very well. He himself, I "believe, came from Russia, did he not?

Q Wall, let's see about Hans Frank. How do you place him in the Nazi hierarchy in 1941 at the time you were in Russia? conditions in the Reich considered him anything else, not even Hitler.

A The same thing would go for Frank as what I said before. You might quote from him about the legal state as it could not have been formulated any better by the best Democrat, and you could list him as the greatest enemy of the SS and of the police, but he was taken seriously neither as the one nor as the other, and the fact that he came to the General Government was the result of the fact that Hitler did not want to make him Minister of Justice, even though the Minister of Justice was deceased and no one had been found to replace him. The General Government was not considered to be a permanent organization and therefore the Governor General, the title of the Governor General was considered to be honorary, and even a Frank was not considered to be able to spoil it, because he had a "spiritual strength". (Tuhalt") Socialism, is it not, that psychopaths and irresponsibles were given power in a personal state?

A I don't think that it is a single case, but this has happened time and again in politics. difficulties in the Party came from your opposition to those men who advocated total destruction of the objective or instituional state, is that right?

Q You had been convinced by a year's study of Mussolini's personal autocracy that Italian Fascism was a bad thing?

institutional restraints on men who weilded power? unrestricted dictatorship in the form of a totalitarian state. words, do we not? power to legislate by himself without the restraint of any constitution, was he not in precisely the same situation and did he not have the same power to act that Mussolini had acquired, from the legal standpoint?

A Yes, I understand you completely. The difference is that the one was National Socialist and the other was FAscist. Hitler did not for himself, did not make up a constitution for an ah solute; stats, but because he had a different opinion of the state he had himself given power for a definite period of time. And this was nothing else but a constitutional means, which during the parliamentary period of the Weimar Constitution was also used then, especially in the years '31 and '32, when Paragraph 48 of the Weimar Constitution was the basic support of the government. This law giving a government the power must not let one conclude that Hitler wanted to establish a dictatorships, but he took a constitutional means, and I know that during the entire time of the Hitler Government, even during the wars it was the idea to build a senate, a kind of parliamentary system, and I know, that several times Hitler complained to acquaintances that he still had not found any man who could rebuild the state for him and who could give the state the appropriate legal form. I don't believe that Hitler wanted a dictatorship.

mind Hitler wanted something other than a personal dictatorship. power? power? you entertained, you have told the Court, was shared by a number of intellectuals who gathered around you in the SD -you persevered in the hope that some day your view would succeed and the absolute dictatorship would be limited by institutions or by law?

A Yes, that is right, I was convinced of this fact for two reasons: especially because it was known that after the war Hitler wanted to lay down the affairs of state and merely wanted to remain head of the State and thus I understood from his misgivings and from his contempt toward very many people, it was his interest to establish certain safeguards for the new political forces.

And the second reason was the knowledge of the front generation. In the SD we had knowledge of a great number of letters, for example, of Hitler Youth Leaders, who severely objected to functions of the leader corps of the Nazi Party that is to say to the absolute power of the Party. Therefore, I was firmly convinced that the front generation after the war would start to have other conditions in German -- other than those which now existed as a result of a five-year war.

Q I understood you to qualify all of Hitler's hopes and expectations for limiting his absolute paver with this statement, "He hoped after the war to do that."

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or until the war was finished? strict kind of leadership in Germany as existing in other states during the war; because of the fact that Hitler formally held the entire power, which actually was being distributed among the hierarchs below him -there was no genuine leadership in Germany during the war.

THE PRESIDENT: Witness, I think we are drifting very far afield here, but you just made one observation which has aroused a question in me. You stated that you would have wished that in Germany during the war there might have been leadership such as existed in other nations. Do you want to give an example?

THE WITNESS: For example, America.

THE PRESIDENT: If you would have had this kind of leadership in Germany there would have been no need for Hitler or for a war, don't you think?

THE WITNESS: I spoke of leadership during the war, Your Honor. I believe the leadership in America during the war was slightly different than the one during peace. The war legislation gave the President extraordinary powers and he then found organs who supplied him with extraordinary powers during war time, whereas in Germany, the means of power were actually already used up during the war because a Bormann and a Ley had spent these forcible measures too early; for psychologically seen, the subordinate will adapt himself to the measures of the superiors and the method uses itself up, but I am convinced that in America war was directed more strictly and organically than in Germany,

THE PRESIDENT: Proceed, Mr. Heath. under Himmler, did you not?

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A No, one couldn't say that. This was only a little side activity. The main time of my activity was spent in economics, from 1938 to 1943 as a private man and from November 1943 to the end of the war as an official of the Reich Economics Ministry. the end of the war?

Q Yes. Now I want to question you about your relationship with Himmler, briefly. I understand you to say in your direct examination that in - Let's begin at the beginning. May I recite briefly: In 1926 you joined the NSDAP.

Q 1925. Then you distributed booklets from house to house according to your word you did everything that was to be done in the small party membership at that time. Then you went to Italy, I believe, and when you came back you conducted a Party training course.

Q Well, those dates are not important. Let us begin in 1933. Your first official position was referendar in Hildesheim. Economy in Kiel?

A Yes, that's right. 1934? the Roehm action in the Party, also the Bolshevist tendencies?

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A That would be very nice for you, but it wasn't that way, unfortunately. These were National Bolshevist circles and not Roehm circles. I could give you the names, but I do not think they will interest you.

Q No, they don't. I wasn't clear. I didn't know what you meant precisely because I find this -

A It was a mistake in the translation. These were National Bolchevist circles.

Q You were arrested in 1934 at the request of the Party?

Q That is the NSDAP? from Kiel?

Q At the request of the Party?

Q Rosenberg?

A That again was somewhat later. That was during the activity in Berlin. in 1934?

Q You then went to Berlin?

A I am sorry I didn't get it in the German.

(The interpreter repeated the question.) school into an economic school. National Socialism?

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Q And Rosenberg then killed that plan for you? examination "Thus my scholastic plans were definitely at an end, but simultaneously my political activity was also at an end. Dr. Wagner warned me about attacking National Socialist politics in my speeches." Is that right? So thus far you were in opposition to the ruling Party authority?

Q Now, you were out of work in 1935 and 1936, or weren't you?

A I was not without work. I said in already the direct examination that I did earn my living, but I bad no great future plans. I also stated that I directed a library in the Institute for Applied Sciences.

Q All right. In May you entered the SD, May, 1936? SD?

Q Who was that?

THE PRESIDENT: Mr. Heath, do you want to suspend now for the afternoon recess?

MR. HEATH: I beg your pardon.

THE PRESIDENT: Suspend now for the afternoon recess?

MR. HEATH: Whatever time suits Your Honor.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

MR. HEATH: May I proceed your Honor?

THE PRESIDENT: You may proceed, Mr. Heath. BY MR. HEATH:

Q Mr. Ohlendorf, at length I was attempting, before the recess, to show what I will now summarize.

You were in constant conflict with Party leadership on matters of ideology and practice, were you not?

A I want to intervene here. During the time the Prosecution refers to the Party had very little to do with ideologies; but my interventions were mostly concerned with practical politics - that is, in particular against the policy of the food Ministry Reichsnaehrstand.

Q Let me rephrase the question. Prom time to time, from 1936 until the end, you found yourself in opposition to so powerful leaders of the State as Goebbels, Bormann, Ley---is that right? in writing your reports he would speak to the Fuehrer about you and have put where you belonged, and your subordinates put where they could do more useful labor?

A Did you say Himmler?

A I can't remember that. on the occasion? I believe.

belonged. Soon after that you went with Himmler on a official trip to Warsaw, did you not?

A There is an error concerning the years. The occurrence you described as a Himmler occurrence when he threatened to send me to a concentration camp and to dissolve my office was in the year 1943.

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My official trip with Himmler--when I was one among fifty--was at the beginning of November 1939.

Q I see. I think I have made the error; all right. Well, you went to Poland with Himmler in 1940?

Q 1939. All right. And Heydrich sent you along with Himmler, you say? Disputes arose between you and Himmler in 1939?

Q That's all right, whether it was monoloque or not. He reproached you that members of the SD in Poland had not been able to treat the Jews in a manner in which he wanted, and that you say, "was a product of my education."

What was it he wanted done to the Jews in Poland which he said you had failed to do?

to the prosecutor or his previous questions. It was in the same city, where differences between Streckenbach and Himmler occured. It concernto the order which controlled you in Russia?

A Yes. During the direct examination I already answered the questions, but the President, and today I answered your questions, that once concerning certain definite single actions. differed from the order which controlled killing of Jews in Poland in 1939? during the entire time of the committment, the killing of all Jews had been ordered. Special actions in Poland had been ordered, whose contents I do not know in detail.

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to treat or to dispose of Jews in Poland, did he not specify, beyond what you have just told the Court?

A No. He attacked me in a public place, where the people accompanying him were together with some officers, and shouted at me across the table that this man was the product of my education. He wanted to express by this that he had behaved in an unsoldierly manner and that instead of acting he had examined questions which might result from such connections. It was not even a monologue in this sense, but merely shouting at me when I was sitting at the table. No actual discussion took place.

Q Did you know what it was that Himmler was rebuking you for?

A He had asked this certain SD man what he had done. He met him in the street and this man replied to him that he had studied the Jewish question in that territory, and the expression "studied" annoyed him so much. "studied" the Jewish question, Himmler was impatient and rebuked you because a man had used the word "study"?

Q Is that all that you know about Himmler's disaproval of the SD in Poland in relation to the Jews?

Q Well, that may mean a number of things. What did it mean to you? fuehrer Wolf, at that time chief adjutant of Himmler's ordered me to come, and revealed to me that Himmler wanted me to leave this service because agreement between him and myself was not possible, but there were other causes for this as well--not only this one. tell us about it?

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the use of the word "study" - Himmler was impatient, because no study necessary about what was known the Jewish problem in Poland, but acting without study. Is that what he meant?

A No, it was much simpler. He merely accused the man that instead of helping to act, he merely occupied himself with obtaining information.

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right? you further who ordered you to instigate pogroms in Russia? announced in Pretsch. by instigating pogroms, is that correct? said this, who was also present during this discussion. to you? pogroms, did you not? not achieve pogroms?

report. In all these reports which were submitted as documents, Einsatzgruppe D in this report is only mentioned in one line with respect to pogroms. refuse to execute a part of the order which had been given you?

A I think on the contrary -- not to carry it out. Part of the order about the manner of killing was not carried out by me.

Q Part of the order about the manner of killing.... You also were called upon by the Army to kill insane people in Russia?

Q Were you ordered by the Army to do that?

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this was addressed to me as a request. It suggested to me as I would express it best. to you?

A I cannot say that any more now. It might have been Central Organs of the Army, or, generally, it would have been suggestions of local headquaters to local agencies of one of my commands. With such matters one did not come to me in my central position. of this decree, or this order to kill, and that it had the obligation also to execute the order within its ability? Is that right?

A Yes; but I do not know that in this order insane persons were mentioned; but I would have considered the insane persons kust like anybody else because they would have come under the order if they owing to their condition, would have endangered security - but not because they were insane alone, and for that reason I rejected this request.

Q You don't mean to say that the persons you killed had to endager security in order to be killed, do you?

Q Well, let's not say about the sense of the Fuehrer Order. Let's talk about reality. Did the people you killed in fact endager security in any conceivable way?

A Even if you don't want to discuss the Fuehrer Order it cannot be explained in any other way. There were two different regions one, where those people who, through the Fuehrer Order, were considered to endanger the security and, therefore, had to be killed. The others, namely, the active Communists or other people were people whose endangering of security was established by us and they were only killed if they

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Q Very well. I repeat my question. Apart from the Fuehrer Order, and not because the Fuehrer Order assumed that every man with Jewish blood endangered the security of the Wehrmacht ... but from your own experience in Russia, from your own objective witnessing of the situation in Russia, did every Jew in Russia that you killed in fact endanger security, in your judgment? Order because this Fuehrer Order did not try to evade temporary danger, but also danger which might arise in the future. us see if we can't talk about it without the Fuehrer Order. I ask you the simple question... From your own objective view of the situation in Russia, did the Jews whom you killed, and the Gypsies, endanger the security of the German Army in any way?

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I did not examine that in detail. I only know that many of the Jews who were killed actually endangered the security by their conduct, because they were members of the partisans, for example, or supporting the partisans in any way, or housing agents, etc.

Q Let's put the partisans or those who were aiding the partisans completely aside?

A I will assist you, Mr. Prosecuter. Of course, at a certain time there were persons when one could not have said that at that moment they were an immediate danger, but that does not change the fact that for us it meant a danger insofar as they were determined to be a danger, and none of us examined whether these persons at the moment, or in the future, would actually constitute danger, because this was outside our knowledge, and not part of our task.

Q Very well. You did not do it then because it was outside of your task. I want you to do it today for this Tribunal. Will you tell us then whether in your objective judgment apart from the Fuehrer's Decree, all of the Jews that you killed constituted any conceivable threat to the German Wehrmacht. not connected with the Fuehrer's Order. Therefore, I can not give you this answer which you would like to have. make - - you need not answer that. Let me make it clear then, in the Crimea - - No, I believe near Nilelajew, Himmler came to see you in the Spring of 1942, did he not, or Fall of 1941? farmers is that right, and you had determined not to put them to death? constitute any security threat whatever to the German Wehrmacht?

the general situation, and of the Army. I considered it more correct not to kill these Jews because the opposite would be achieved by this, namely, in the economical system of this country everything would be upset, which would be of importance to the operation of the Wehrmacht as well.

Q Then, I ask you the question again. Because these people were farmers, you concluded that it was wiser to get grain they produces, than to put them to death? I was conscious of this danger.

Q Of the danger, that they might house partisans in their houses? the Jews would conceal partisans in their houses?

A No, I only named this as an example. There might have been agents against us who could endanger us in any way. I only mentioned this as an example. wouldn't it, or what do you call them, Karaimians.

THE PRESIDENT: Mr. Heath, I must confess a confusion here. I understand the witness to say, or perhaps you said it, that the reason the Jewish farmers were not executed is that they were used to bring in the harvest. Then a discussion ensued as to the possible threat that these Jews could bring to the security because they could house partisans. There must be a contraciction there; in one instance, there was no need to kill them, and the other instance, they were a threat and therefore were subject to executions. Were they saved, or were they not saved. If they were saved, why, and if they were killed, why?

MR. HEATH: As I understood the witness, Your Honor, he said he was balancing the desirability of getting in the harvest as against a potential threat.

THE PRESIDENT: I see.

MR. HEATH: He exercised discretion.

THE PRESIDENT: And came to the conclusion that there was more to be gained not liquidating.

MR HEATH: Precisely, I understand it.

THE PRESIDENT: Is that correct?

THE WITNESS: I think it is even simpler. They were not farmers, they were craftsmen, who when there would be no longer work for them to do would endanger considerably the interests of the Wehrmacht. I never considered this problem in discussion but now Himmler came to me and ordered that without consideration to any other circumstances these Jews were to be treated according to the Fuehrer Order, without any further discussion, and without any further considering, of circumstances.
BY MR HEATH:

Q What about the gypsies. I believe you have no idea whatever as to how many gypsies your command killed, have you?

A No, I don't know.

Q On what basis did you kill gypsies, just because they were gypsies? Why were they a threat to the security of the Whermacht?

Q Blood? that the Jews actually during wars regularly carried on espienage service on both sides.

THE PRESIDENT: You were asked about gypsies. Jews?

Q I beg your pardon?

Q I think I best repeat the question. I would like to ask you now on what basis you conceived or determined that every gypsy found in Russia should be executed, because of the danger to the German Wehrmacht?

A There was no difference between gypsies and Jews. At the time the same order existed for the Jews. I added the explanation that it is known from European history that the Jews actually during all wars carried out espionage service on both sides.

THE PRESIDENT: Well, now, what we are trying to do is to find out what you are going to say about the gypsies, but you still insist on going back to the Jews, and Mr Heath is questioning about gypsies. Is it also in European history that gypsies always participated in political strategy and campaigns?

THE WITNESS: Espionage organisations during campaigns.

THE PRESIDENT: The gypsies did?

THE WITNESS: The gypsies in particular. I want to draw your recollection to extensive descriptions of the Thirty-year War by Richardo, Huch and Schiller -

THE PRESIDENT: That is going back pretty far in order to justify the killing of gypsies in 1941, isn't it? a part in this, to get at this decision.

THE PRESIDENT: Could you give us an illustration of any activity of a band of gypsies on behalf of Russia against Germany during this late war? that they actually played a part in the partisan war.

THE PRESIDENT: You, yourself can not give us any illustration of any gypsies being engaged in espionage or in any way sabetaging the German War effort?

A That is what I tried to say just now. I don't know whether it came out correctly in the translation.

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For example, in the Gilay Mountains, such activity of gypsies have also been found.

THE PRESIDENT: Do you know that of your own personal knowledge? the reports which came up from the Gilay Mountains.

THE PRESIDENT: In an instance in which gypsies were included among these who were liquidated, could you find an objective reason for their liquidation?

A From Russia I only knew of the gypsy problem from Sinferopel. I do not know any other actions against gypsies, except from the one in Sinferopol.

THE PRESIDENT: Very well.

MR HEATH: May I proceed, Your Honor?

THE PRESIDENT: Yes, please, BY MR HEATH: gence? Isn't is a fact that the nationals of any invaded state are notorious bearers of intelligence. Don't the Americans bear intelligence, and the Germans bear intelligence, and the Russians bear intelligence for their countries when they were at war?

A I don't think so, But the difference is here that these populations for example, the German population, or the American population have permanent homes, whereas gypsies being unsettled as people without permanent homes are more prepared to change their residence for a more favourable economical situation, which another place may promise them. I believe that a German, for example, is very unsuited for espionage.

Q Well, let's not get into that. I understand you to say on direct examination that you took positive measures, to pacify the conquered territory, and you found that in reality the positive measures which you took as against these killings was about all that was necessary, except in the Crimea, is that right?

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A I didn't quite understand your question?

Q I shall repeat it. "During my time in Russia. I sent a great number of reports in which I reported about the fine cooperation of the Russian population," do you remember that? said that you did not have the same fine cooperation in the Crimea, because there were so many Jews down there?

A No, I did not say that, but on the contrary. I even said that owing to the fact that I was able to remain very long in the Crimea and looked after the population there in a political respect very carefully the cooperation of the population in the Crimea and the Einsatzkommande became even closer than it was in the other areas.

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Court No. IIA, Case No. IX.

Q Mr. Ohlendorf, what happened to the Jewish children, the gypsy children? parents.

Q Did you kill them just like their parents?

Q I don't understand your answer. Did your reports show the killing of children or did they show that children had been spared? to the security of the Wehrmacht a child constituted in your judgment? I did not have to determine the danger but the order contained that all Jews including the children ware considered to constitute a danger for the security of this area. for killing children except genocide and the killing of races? from the fact that this order did not only try to achieve a security but also a permanent security because for that reason the children were people who would grow up and surely being the children of parents who had been killed they would constitute a danger no smaller than that of the parents. tion of whole races in order to remove a real or fancied threat to the German people.

A Mr. Prosecutor, I did not see the execution of children myself although I attended three mass executions.

Q Are you saying they didn't kill children now?

A I did not say that. May I finish? I attended three mass executions and did not see any children and no command ever searched for children, but I have seen very many children killed in this war Court No. IIA, Case No. IX.

through air attacks, for the security of other nations, and orders were carried out to bomb, no matter whether many children ware killed or not,

Q Now, I think we are getting somewhere, Mr. Ohlendorf. You saw German children killed by Allied bombers and that is what you are referring to? bomber who drops bombs hoping that it will not kill children and yourself who shot children deliberately? Is that a fair moral comparison? covered a city that was a fortified city, square meter for square meter, with incendiaries and explosive bombs and again with phospherous bombs, and this done from block to block, and then as I have seen it in Dresden likewise the squares where the civilian population had fled to--that these men could possibly hope not to kill no civilian population and no children. And when you then read the announcements of the Allied leaders to this--and we are quite willing to submit them as document--you will read that these killings were accepted quite knowingly because one believed that only through this terror, as it was described, the people could be demoralized and under such blows the military power of the Germans would then also break down.

Q Very well, let's concede -- I think there is truth in what you say, though I never saw it. Does it occur to you that when the German Wehrmacht drove into Poland without provocation and when you drove into Norway and when you drove into the Low Countries and when you crushed France and when you destroyed Belgrade, Jugoslavia, Greece, when you put Roumania, Bulgaria under your heel, and then attempted to destroy the Russian State, does it occur to you that people resisting your tyranny stand on a higher moral level when they resort to the same horrible cruelties which you initiated in order to destroy your tyranny. Answer that, please.

which you referred to, in a different way than you do.

Q And that is also my opinion; on that we have a difference. events of the last weeks in particular even if the price of peace calls for force because there is a danger which, if it is not broken by force, will cause a battle of bloodshed, that we then as the ones who were closer to Bolshevism than you in the States, much sooner came to realize than you; and with this view I agree principally with your statesman in America at the moment, and I believe that among these statesmen hardly anyone does not hold the view that Roosevelt made a mistake when in 1942 he presumed that we were not in an emergency state concerning Russia, not in a German only, but also in an European state of emergency.

THE PRESIDENT: Just a moment, please. This is a very interesting debate and if the Tribunal didn't have a very serious and solemn responsibility in passing upon the issue of guilt or innocence in the charges very solemnly drawn in the indictment, the Tribunal would be glad to listen to this debate which could go on for a very long time but since the issue is a very narrow one, Mr. Heath, let us try to adhere to the problem which is before the Tribunal, namely, is this defendant guilty of having perpetrated illegal killings.

MR. HEATH: Thank you for the admonition.

THE PRESIDENT: I don't mean by that that occasionally it is illuminating to get into these side issues but I am afraid this last exchange went beyond all bounds of normal discussion on a question of murder. BY MR. HEATH: the slaughtered in Russia. I think you have not yet answered my question. What conceivable threat to the Wehrmacht was offered by the children of gypsies and Jews, let's say under five years of age?

THE PRESIDENT: Yes, the witness has stated that the reason these children under five, under four, under three, down to conception I imagine, were a possible threat to Germany in the future years. That is his answer and he stands on it.

MR. HEATH: Your Honor, I have no further questions. I trust I have not imposed too much on the patience of the Court.

THE PRESIDENT: You have not imposed on us. We have enjoyed your discussion very much.

A (BY THE WITNESS) Your Honor, may I say one thing. That was not for me the, reason for the killings, but merely to clarify the question of the Prosecutor I tried to give a possible motive for the Fuehrer Order, but not an argumentation of the conditions us they were with the Einsatz Commander in the East, because the Fuehrer Order also included the children, and I merely tried to give an answer to the question of the prosecutor but not my own personal view. BY THE PRESIDENT:

Q What the Prosecutor put to you Mr. Witness is a very fair question, namely, you are an individual of intelligence, a person of reflection and you don't do things blindly and dumbly and when an order comes to you to kill down and shoot down in cold blood children that you had to give an explanation to your brain as to why it was necessary to do away with these tots. That is the question he put to you and your answer is you had the order of the Fuehrer because it constituted a threat to the future of Germany. time when I received the order.

MR. HEATH: Your Honor, I am in the unhappy plight of having to ask permission to ask one more question. We of the Prosecution objected to the same thing on the part of the gentlemen for the defense this morning.

THE PRESIDENT: I think the Prosecution on occasions forgets too.

MR. HEATH: I did forget, your Honor. BY MR. HEATH:

Q Mr. Ohlendorf, on the question of the order which you say you felt you had to honor and fulfill, the Fuehrer Order. It is a fact, is it not, that you could have failed in your duty as a soldier and escaped this without any penalty, in short, you could have played sick. direct examination because I expected it.

Q Let's see if you expect the next one - I suppose you do. At one juncture you were told by the Chief of Staff of the Army above you down there, in the South of Russia, that unless your collaboration with the Army improved, he, Colonel Woehler - I forget his name - he would recommend your immediate dismissal in Berlin, so there was a way, was there not, where you could have avoided service merely by refusing to be agreeable with other military gentlemen. Is that right?

debate but factual reproaches which were not true. And did not do anything else than rectify untrue reproaches.

Q I am sorry, I didn't understand that. Is it true that you were threatened with a recommendation for dismissal unless your collaboration with the Army improved?

A No, it was the first word of the Chief of staff, "If your cooperation with us does not improve we will request that you be dismissed," and then a number of factual reproaches which were untrue, and I merely had the possibility with regard to the Chief of Staff, to reject these untrue reproaches. Nothing else was being discussed. I do not think that you expect that, in order to be relieved, I should have allowed these reproaches which were not true, to be put on to me and my men. thing, I simply wanted to find out whether it was possible for you to win a dismissal from this job or task that you had by disagreeing with the military and you have it was. BY THE PRESIDENT: at pretsch when you first learned of this mission. How many of the defendants were present at that conference? this word - Nikolajev how many of the defendants were present if you recall?

Q Who?

leaders were there, only I cannot remember the individuals. stated that valuables and clothing were not taken from the victims? Valuables were taken away and a part of the clothing was also taken, I merely prohibited that they had to undress. outer clothing, were they not?

THE PRESIDENT: They are scolding me from the interpreters' section here.

Q (By the President): Witness, do you stand on all the testimony which you gave before the International Military Tribunal, you approve of what you said before the IMT?

A I only want to add two things. The record I have seen about my statement is very incorrect and there are several mistakes of context which not only change the matter but also contain expressions which don't make sense. For example for "conference" they put "food stores" or something. Inasfar as these mistakes are removed I stand up for my statement before the IMT. This does not concern the interrogations in your records, I know from experience that they are full of mistakes, and not one of the records was corrected by me afterwards or signed, but I talk now about my statement before the IMT. in Court and the interrogation?

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THE PRESIDENT: Very well, Dr. Aschenauer.

DR. ASCHENAUER: I presume that Mr. Walton wants to continue with the cross-examination. I want to point out the ruling that only one member of the Prosecution is allowed to conduct the cross-examination. In the case against the generals, against the Southeast generals, the Prosecution tried the same thing, to have one general questioned in cross-examination by two prosecutors. The Tribunal ruled that it is not permitted, according to the ruling which applies before this Court, and only one prosecutor has the right to conduct cross-examination. For that reason I object to the coming cross-examination by Mr. Walton.

THE PRESIDENT: Can you point to any actual ruling of this Tribunal which prohibits the Prosecution from questioning the defendant on all phases even if two attorneys are required to do that or more?

DR. ASCHENAUER: Your Honor, it is a decision by the Tribunal here in Nuernberg.

THE PRESIDENT: Which Tribunal?

DR. ASCHENAUER: That is the Tribunal which is in session against General List and Field Marshal von Weichs the Southeast generals.

THE PRESIDENT: Are List and von Weichs in this box?

DR. ASCHENAUER: No, but I presume that here the same ruling applies, and I also remember a written ruling where it says, "This ruling applies to all military Tribunals in Nuernberg."

THE PRESIDENT: Who said that?

DR. ASCHENAUER: That only one prosecutor is entitled to do the cross-examination.

THE PRESIDENT: Who said that it applied to all tribunal

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DR. ASCHENAUER: It is my opinion it is a fixed jurisdictional ruling and that one Tribunal admits a decision and the other permits the reverse. The usual thing is that one ruling applies always and that one ruling of the various military tribunals also applies for this tribunal.

THE PRESIDENT: Well, Dr. Aschenauer you very well know that cases differ from Court to Court There undoubtedly was a good reason for the ruling in that particular case, just as there is a good reason for the ruling in this case, and the ruling in this case is that your objection is overruled.

DR. ASCHENAUER: Then I can't add anything.

THE PRESIDENT: I will say naturally, Mr. Walton, that you will not go over the same field covered by Mr. Heath.

MR. WALTON: It is not the intention of the Prosecutor at this time to encroach on the field covered by Mr. Heath. However, they do overlap.

THE PRESIDENT: Wall, of course that would happen.

MR. WALTON: If I go too far afield the Tribunal will call my attention no it.

THE PRESIDENT: Very well. BY MR. WALTON: examination that you were conscripted or drafted for the campaign in the East as a high-ranking member of the SS and the SD? examination that you were conscripted or drafted for the campaign in the East as a high-ranking member of the SS and S the Eastern campaign.

At the time I did not consider myself a high-ranking member of the SS and actually I was no such think. For that reason I could not say it.

Q Well, what was your rank at that time?

Q That is equivalent to a full colonel, is it not?

A I don't know the American army, but about the rank conditions I have already mode a statement in detail in my direct examination. Do not forget that I was a political SS leader and not a military SS leader and that the unit which I had to lead actually had the strength of a battalion and not that of a regiment with a colonel over it. campaign with the SS and SD units if you had not been a member of these organizations before the war? would have had or got the possibility to give me orders, I certainly would have evaded this fate. of the SS and SD before the war you would have been conscripted for service in some branch of the Armed Forces as distinct and seperate from the SS and SD? because as I said, I was considered indispensable for the Reich groups Trade (Handel). On the other hand, many people were drafted for this effort who were not members of the SS and had no connection with the SS or SD, and just for that reason they could be drafted because until then they were in a position which the Wehrmacht could not approach until then, for example, in plants which were considered essential for the war effort.

time, just now, that no SS and SD men were drafted by the Wehrmacht at the time of the campaign against Russia?

A No, that is incorrect. Many SS leaders were also in the Army. Himmler tried, of course, to stop SS leaders from joining the Wehrmacht because he himself did not have sufficient personnel. He continously got new orders to set up new divisions, and in '43 at least, he did not have sufficient officers and men who could be a basis for this new division. were not put in the Wehrmacht but retained in the SS and SD units? general way what the armament of an Einsatzgruppe was and more specifically Einsatzgruppe D? gruppe D had 180 vehicles. These trucks had two drivers each, and this figure is contained in the entire total of 500. This fact shows the limited number of actual experts because from the very beginning 200 drivers were deducted from the 500 men. This large number of vehicles shows that the Einsatzgruppe was fully motorized. The Waffen-SS, another 80 to 100 men, was particularly given for armed protection. They were equipped with automatic rifles. The others either had rifles or automatic rifles. I believe that is about the total equipment.

Q There was no light or heavy artillery, of course?

and the gypsies who were not partisans?

A Their equipment? gypsies who were not members of partisan bands. What was that? civilian population, had just as many and just as little weapons as it was usually the case. roundups or these assemblies came to them with their arms in their hands? similar occurrences, which you have submitted yourself.

Q Answer my question, General. Was it reported to you that Jews and gypsies who were required to register by your orders, passed through their own council of Elders, came to register with their arms in their hands?

Q only now do I understand you. I believe this is only a rhetorical question. If the Jews at the order of the SS police, had to be registered surely they would not appear with weapons, and I think I can guarantee that they did not appear with, weapons. say that the Jewish population, exclusive of partisan bands, had now arms, whatsoever, isn't it? already in a organized unit while, of course, there were a lot of passive partisans, that is to say groups who had weapons or poison and which only later would be organized and used by larger units.

Q I will state it differently. Then those Jews who did not belong to any active resistance movement, is it a general fact to say that they were unarmed members of the civil population?

A Certainly. Some of them did not have any weapons, of course. way you so desire the methods generally used by these Jews?

THE WITNESS: I am sorry, I cannot hear the translation.

THE WITNESS: I am sorry, the translation is interrupted.

THE PRESIDENT: Proceed. generally used by the Jews and gypsies to carry out their resistance to the armed forces if they were not members of partisan bands?

DR. ASCHENAUER: A similar question has alreday been asked by Mr. Heath, and I object to it it is really a repetition of what Mr. Heath said and it is one of the overlapping cases to which your Honor has indicated.

THE PRESIDENT: The question was very similar to it.

MR. WALTON: Very good, sir, I will withdraw it.

THE PRESIDENT: Very well.

Q (By Mr. Walton) General, can you give us a few examples of acts of sabotage which these people commited against your Einsatzgruppen or the German Armed Forces?

THE INTERPRETER: I am sorry, the channel is out. I can't hear.

THE PRESIDENT: Very well. It seems as if it will take a little while to repair the channel so the Court will recess until tomorrow morning at nine-thirty o'clock.

(The Tribunal adjourned until 15 October 1947 at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II-S.

Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

DR. WISMARCK (for the defendant Jost): Your Honor, I ask that the defendant Jost, to prepare his examination on the witness stand, be excused this afternoon and tomorrow from presence in Court.

THE PRESIDENT: The request is granted, and the defendant Jost will be excused from attendance today and tomorrow.

DR. DURCHHOLZ (for the defendant Schulz): Your Honor, I would like to make the same request and ask that the defendant Schulz be excused for this afternoon to prepare his defense.

THE PRESIDENT: The same approval is granted, and the defendant Schulz will be excused from attendance at the time indicated.

DR. LUMMERT (for defendant Blume): Your Honor, I have the same request for defendant Blume, for today.

THE PRESIDENT: And the request is also granted, for defendant Blume.

DR. ASCHENAUER: Your Honor, I only want to correct one translation mistake. Defendant Ohlendorf was asked yesterday about the speech of the Reichsfuehrer-SS in Poland. He replied to this, he had "heard about this speech hero." This "here" means here, in Nurnberg. That was not translated. In order to avoid a misunderstanding, I wish to point this out.

THE PRESIDENT: In other words, the defendant Ohlendorf indicated that he did not hear the speech at the point where it was delivered, but only heared of it here, in Nurnberg?

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DR. ASCHENAUER: Yes, your Honor.

THE PRESIDENT: Let the record show, as so indicated.

MR. WALTON: With the permission of the Tribunal I shall proceed.

THE PRESIDENT: Proceed, Mr. Walton. BY MR. WALTON: about which so much has been said here, was an illegal order? and customs of war?

Q Have you ever heard of the Geneva Convention?

Q And have you ever heard of the Hague Convention? subject to military law, did you not know that the killing of civilians in occupied areas, without any trial, is considered by both international law and the laws and customs of war to be plain murder, and nothing else? the authority to decide whether a person was a Jew, or Gypsy, or a Communist, and to order his execution? commanding officer of that unit?

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man was a Jew or a Gypsy and order his execution?

A I cannot answer to this question in a concrete manner; but before I do so I wish to point out that the question of discretion what could be done to carry out the order, - the entire situation should be considered. For example, concerning the Jews. It was usual that the Commandos called the Jewish Elders to determine who was Jewish and who was not. The possiblility to go beyond this decision was not given to the Commandos. Therefore, they had to accept the determination of the Jews themselves as a basis of their orders. The actual carrying out could not be done by the Commando leader himself, of course, but he had to rely on his officers who were commanders of part of the command as well. As the Tribunal knows, this question had already been decided before the war by order of the Fuehrer, through Keitel, insofar as individual officers had the opportunity to arrive at a decision whether or not the person was suspicious, and whether they might endanger the security. In my direct examination I already explained that this statement went too far in my opinion, and, therefore, I gave the order that the suspicion be confirmed. But to ask for more, - for example, concerning the Jews, than, to believe the determination of the Jewish Elders could not have been expected of the Commandos because there was no possibility of doing more. Doing more would have questioned the task. Commando leader by the Jewish Council of Elders was sufficient to denominate those named as Jews? Jewish Elders themselves took the Jews to the registration place or the collection place. identification that could cause his execution by Einsatzgruppe D?

A No; I remember cases in Sinferopol where, to identify Gypsies, the certification of two witnesses, at least, was used and required by the command there.

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of the area in which this man was arrested?

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Q And these witnesses claimed to have known it?

A Yes. That was the difficulty, because some of the Gypsies - if not all of them - were Moslems, and for that reason we attached a great mount of importance to the fact that there were no disprepancies in the procedure, and on this question in particular local Tartars took part. there was in the case of a Jew, is that right? Jews - and as I said yesterday already, I only remember the great action in Sinferopol. that you personally never issued execution orders. Am I correct? order for execution as such had been given from the start in Pretsch, or rather, later by the Reichsfuehrer. But the Commandos took it for granted that when they came to a larger city the solution of the Jewish question would be the first problem to be solved, and, therefore, the execution developed - not from one order, but followed a number of occurrences - such as asking for a Council of Elders, or rather, nominating a Counsel of Elders registering etc., until the final action was the result. The same during the executions themselves, where a number of organizational occurrences took place one after the other, a definite order was only given, really, at the moment when an officer stood before a military unit and gave the order to shoot. Everything else develops - one occurrence following another. examination, reference was made quite frequently to, and I quote, "the Army". To what Army, or Army Group were you referring?

A In my case, to Group 11. Eleventh Army.

Einsatzgruppe D?

A First, General Ritter von Schobert; he was killed. After that, there was a temporary assignment; end then later, Field Marshal von Manstein. Army Group Wouth during your career as commander of Einsatzgruppe D?

A With the Army Group South itself, no; only with the Army. The reason was that the Eleventh Army was independent, relatively. That had been intended as a nucleus for a new army group which was to operate in the Caucasus Mountains. These army units at that time were still in the Baltics and were ready there.

Q How often were you in contact with General von Schobert? And later General von Manstein? the 12th of June; then I saw him again in the Army casino once or twice. And von Manstein, I mostly saw in the Crimea on duty, as well as privately; for example, privately - he put me in charge of recruiting Tartars. I also had personal discussions with him about the question of military commitments of my unit. Contact with the Army became closer in time because the difficulties of the first month put some officers at such a disadvantage that they had to beg my pardon. And now the other officers tried to eliminate these former differences. It took longest with Manstein. Not before the Spring, 1942 was I invited by him personally, for the first time, to his castle on the South coast, which he had set up for recuperation. There I was, together with my successor von Albensleben, and another officer, and three or four officers of the Army. I was invited to his place one evening. I stayed there the night. The next morning I had breadfast with him, and then I travelled on. The second time I was privately invited during the celebration when Sevastopol fell. Apart from that, there was a constant contact with the Army, of course, owing to the fact a liaison officer was with the Army to share the billets with the one I C.A.O.; and beyond that, Herr Seibert, at least one week visited the Chief of Staff of IA or IIA, or the Chief for Partisan Combatting, and arrangements were made.

Naturally, I had more to do with the Chief of staff than with the Commander in Chief. And for that reason I visited him officially, repeatedly. Finally, after the winter of 1941, a very lively personal relation with the Staff Office of the Army took place in my casino. For example, during the Christmas celebration the staff of the Army was almost completely represented, and also during my goodbye party.

Q General, I think a translation came through incorrectly. The way I heard it when you were mentioning the commanders of the Eleventh Army, the name von Albensleven come through as your successor.

A I want to complete this. Einsatzgruppe D was given to Overfuehere Bierkamp, but he was with Einsatzgruppe D only for a snort time in the Crimea. The Crimea was given over to the civil administration and Albensleben became SS and Police Leader for the Crimea, and, therefore, he became successor for that area. Not in my position as chief of the Einsatzgruppe. question, your personal contacts and official contacts with the Army under General von Manstein were more frequent and more friendly than with his predecessor, General von Schobert? before he died, in battle.

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Q. Can you remember now when General von Mannstein succeeded General von Schobert, that is, the approximate date?

A. I cannot remember the exact date, but I think that von Mannstein beemae successor of von Schobert in September 1941 at the latest.

Q. Now did General von Schobert, or General Mannstein ever issue orders to your Gruppe concerning executions?

A. That question is to concrete, Mr. Prosecutor. Such orders existed in various forms. For example, if he told the defendant Siebert, who is present here, that retalliation measures which he had ordered were not sufficient, and for that reason he would have to take a hand himself, or concretely, as I described concerning Sinferopol, where the Army requested that the liquidation of Jews be carried out immediately. Apart from that the idea of killing certain persons like, for example, the insane people, but I can not always say, of course, that this was of the Army itself. But the Einsatzoommandos, were assigned to corps or divisions, so that they had contact with the commandos, and, therefore, the task of issueing individual orders was later given to the smaller units rather than to the Central Offices.

Q. Then General von Mannstein did personally issue instructions or orders concerning the executions in Sinferopol, about which we have spoken?

A. No, I cannot say that, but an instruction came, sofar as I remember after discussing it with Braune, it came from the Quartermaster General Oberst Hauch, Colonel Hauch, but in the organization of the Army, it is natural that the Quartermaster General on his own authority cannot do such things without the approval of his commanderin-chief. I, therefore, cannot say that von Mannstein knew about it, or that he ordered it. I am merely considering it to be so owing to the military situations.

Q. It is highly probable that General von Mannstein did know and did instruct his staff officer to issue orders which came to you, is that correct?

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A. In that case I cannot imagine that a staff officer as to his own authority can make such demands.

Q. General, who were the Army officers with whom you usually had conferences as to the activity of the Eisatzgruppen-D?

A. That was I-C.

Q. Can you give me his name?

A. First, Major Rank, R-A-N-K. Later his successor, Major Eisler, or Colonel Eisler; the I C-A-I, Major Riesen, E-I-E-S-E-N, and the chief of the Partisan combatting unit was Major Steffanus. The other staff officers I think are not of such great interest in this connection, that is, the I-A, there was Oberst Bussel, and von Werner. They are the most important names I know of.

Q. You say all of these were on the staff of General von Schobert, or General Mannstein.

A. Yes.

Q. Did these same officers whom you have named hand down to you orders for the execution of Jews?

A. No, I cannot say that.

Q. For the execution of Gypsies?

A. No, I cannot say that, either.

Q. For the execution of the insane?

A. As I said before, I do not definitely know whether this order was given by the Central office or from the Medical offices, or from the Regional offices.

Q. Who issued the orders for killing of active Communists and Soviet officials?

A. For these groups the order was contained in the general Fuehrer's Order.

Q. I believe you testified a few moments ago that the liaison officer of Einsatzgruppe-D with the 11th Army was the present defendant Seibert?

A. No, the liaison officer was another man. Siebert belonged to my staff, and was in my billets, while the liaison officer was another officer, who was in the staff of the Army, and also shared his billets with the Army.

Q. Now, General, you have admitted here that during the time you commanded Einsatzgruppe-D, an unidentified number of persons were executed, by the units under your command, and, I believe you testified further that the responsibility for the actual executions generally were in the kommando leader, am I correct?

A. Responsibility is a word which can be explained in different ways, those who gave the order; were responsible. They were responsible for the carrying out in this case.

Q. Just a matter of information, will you state in detail what normal channel the order went through from the authority issuing it to the man who actually pulled the trigger?

A. I believe my entire examinations show that this order was given once, namely, in Pretsch, and, therefore, the initiative was given, and, therefore, no new initial order was given in my time. Such an original order I did not get anyhow, unless one could consider the order to pick out PW's from PW camps as an extra order. The original order, as I have said, was sent to the chiefs of the Einsatzgruppen, and to the Kommando leaders who were assembled.

Q. This in effect is true, is it not? Because of the difficulty of communications in the area in which you found yourself, you Kommando leaders were largely, because of poor communications, independent units, were they not?

A. The Kommando leaders were independent, there is no doubt about that. They had to be able to act independently for reasons as you gave just now.

Q. And they made a great many decisions without having to consult either you or higher authorities, did they not?

A. These decisions, Mr. Prosecutor, have to be stated more definitely. In this general form I cannot answer, yes or no.

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Q. I apologize. They made tactical situations without consulting higher----tactical decisions-----I am sorry, without consulting higher headquarters, did they not?

A. Of course,

Q. How to select these commanders, great care had to be exercised as to their ability. Their initiative and their general ability to do the job?

A. Of course.

Q. And they were trusted sub-unit commanders of yours?

A. It is rather difficult to answer this.

Q. I will repeat General. I shall rephrase the question. Because of their careful selection, you relied on their judgment in given situations, did you not?

A. The Kammando leaders had certain tasks. These tasks they had to carry out. I did not choose the Kommando Leaders, or else they would have been quite different ones, but they were appointed by the RSHA, and they had to carry out the task which they had been assigned, and I had to rely on it, that according to their best ability they would fulfill these tasks. But since I did not rely on it completely, I tried by inspections to find out whether the commandos were in order, and whether the tasks were carried out. Unfortunately, as to some commanders, it was possible to go there, even once within six months, because it was rather difficult to get there. I had no influence in choosing Kommando leaders, either.

Q. In your direct examination you have explained your position and relationship with the Chief of the 11th Army. My question in connection with this topic may be, therefore, in a sense a little repetitious, but nevertheless, I would like you to answer this for the information of the Tribunal. Which were the special tasks which were assigned to you by the Army on the basis of the so-called Barbaressa Decree?

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A. The basic task surely was to supply information and to look after the policing and the security of the Army. Beyond that the Army gave definite detailed tasks, and those changed according to the situation. For example, in July and August the harvest had to be brought in, the rear, had to be guarded; in November and December and January, to make inquiries about the partisans and to fight them; immediate military commitments, and then again the information service. These changed according to the situation.

MR. WALTON: At this time, may it please the Tribunal, I should like to submit to the witness for his examination, and later to be introduced into evidence, the document under NOKW-256. There are copies in the German language ready for distribution just as there are in the English now. I think it would be fair to Dr. Aschenauer at this time if he choosesto inspect it, and if he desires to make an objection I shall await on him at this time.

THE PRESIDENT: You are subitting it now for identification and scrutiny prior to actual introducing it as an exhibit?

MR. WALTON: Yes, and unless it is ruled out, sir, I should like for it to be given an identification number, so that it can be more easily introducedinto evidence by its number at a later time.

THE PRESIDENT: I think it might be well to give it an exhibit number at once.

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MR. WALTON: According to my count, sir, the exhibit number it is entitled to is No. 174. I am ready to stand corrected if that is an error.

THE PRESIDENT: Has the witness received it?

MR. WALTON: I submitted it to his counsel, first.

THE PRESIDENT: Yes. If you have an extra copy, let Dr. Aschenauer have one. If so, he can read it simultaaneously.

MR. WALTON: Yes, sir, but I would like Dr.Aschenauer to see the original, first.

THE PRESIDENT: I see, alright. Secretary General, have you enlightened Mr. Walton on the correctness of the exhibit number?

THE SECRETARY-GENERAL: Exhibit No. 174 is correct.

THE PRESIDENT: That is correct.

MR. WALTON: Before I can ask him, the witness will have to read it, first. It is not too long, but it consists of several pages.

THE PRESIDENT: Very well.

MR. WALTON: General, will you indicate when you have finished reading it, please?

THE WITNESS: Yes (after reading same) I am ready.

MR. WALTON: Thank you. BY MR. WALTON: containing this Decree? the so-called Barbarossa Decree. I do not think that this draft actually constitutes the Barbarossa Decree, but considerable parts are contained in the Barbarossa Decree. I believe that there are not a great number of differences in the contents.

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outlining the collaboration of the Sonderkommandos, and the Army in the rear areas?

A I just forgot one thing. This text shows in this draft the fact that the Einsatzgruppen in the operational areas are mentioned, and also Einsatzgruppen in the rear areas. There were no such double assignment. Only one Einsatzgruppe was assigned to the Army, to each group, and the Army group decided how they were to be used. in the forwarded areas, the Army decided that?

Q now, isn't it true, that this Barbarossa Decree, that Himmler's orders based on it made it plain that the Sonderkommando should carry out their missions under their own responsibility? expression "own responsibility" were, I presume, that this means that the chief of the Security Police, and the SD could give instructions to these commandos, which then were carried out on their responsibility; but it never meant beyond the authority of the Army, or rather of the Army group, and this limitation, as is shown in this draft also, because every time it is said that the instructions are to be given to the Army, the Army can make restrictions. The Army can exclude areas; it can make restrictions if the operational situation required it. Later in the Barbarossa Decree, it says that the operational necessity could cause instruction of the Army, and change them. This sense is revealed clearly in this draft, "own responsibility" never means beyond the actual authority of the commander-in-chief.

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of the Army, as contained in his task. This is shown in the assignment of the Einsatzgruppen and in the instructions of the OKW for the competence of the commander-in-chief. of the order, the Fuehrer Order, subject to the tactical situation at any time, which was the responsibility of the Army as to how to carry out these missions was entirely up to the decision of the Einsatzgruppe, was it not? draft of the Barbarossa Decree include executions? the executions, the Einsatz commanders had the order, and the tasks were given to them to carry out certain executions, of course.

Q By the Barbarossa Decree?

A No, no, I did not say that. At least, I did not intend to say that. I do not know that in the Barbarossa Decree this order for extermination is contained. To repeat it. I do not know that in the Barbarossa agreement the Fuehrer Order anything about the killing of certain groups of population was contained.

Q General, I won't quarrel with you, but the testimony is very clear on your oders for execution. I leave that point at this time. Now, General, did it ever happen that the order of the Commander of the 11th Army, or his staff, was given directly to the Kommandos -- these units which were subordinate to you?

A Which orders?

Q Any orders?

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they did not pass through your headquarters? distribution lists, a written order to a command was given to me to see. This was only so if they were orders by the Army. Orders by a Corps, or by the Division I did not see, of course. after the order was actually given? Army corps gave an order to s sub-unit of yours?

A Whether I was informed? from your headquarters, and attached to the Army corps, do you follow me? commando 11-B should be committed for a certain specific task, the Army group commander issued an order directly to the commander of the Einsatzkommando 11-B?

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Q. Now, were you later through official correspondence or through reports of your kommando informed that that actual order was given?

A. Of course, in writing or orally if the command leader considered it necessary that I should knew about this event.

Q. Then yourinformation did not come from a copy of that order sent to you through official channels, but through the report of your kammando leader?

A. In that case, if the Army did not give a written order, only that way of course. If they gave a written order, on the whole they would have given me a copy.

Q. Then you obtained your knowledge of this type of orders from a report submitted to you by your kommando leader?

A. Yes.

Q. General, was it the task of the liaison officer of the different units of the Einsatsgruppen to transmit such orders?

A. I believe I must ask a preliminary question. By liaison officer you mean the officer who was in the staff of the Army?

Q. Yes.

A. In the document book such an occurrence is mentioned, the case with Romanenko. There, the document shows that the liaison officer got an order from the Commander-in-Chief and gave it to the commando itself immediately. This shows that the command wasin the place where the Commander-in-Chief was, while I was with the stuff of the Einsatzgruppenabout two hundred kilimeters to the west. Therefore, if the Commander-in-Chief wanted to hand something to a command, he could easily give such instructions to the liaison officer.

MR. WALTON: Now I shall have to avail myself of the privilege of forgetting one or two questions. Your Honor, I should like to draw the witness's attention bact to some moments ago when I was asking him about who had the authority to make selections for executions. It is entirely out of the context now, but my attention has been called to it. I ask I ask permission to go back and ask him.

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THE PRESIDENT: I recall that you did go over that subject, but there is no reason why you can't go back to it.

Q. (By Mr. Walton) There is one class which I forgot to ask who made the selection. General, who made the selection of Communist and Soviet officials for execution?

A. The procedure was that certain persons were arrested and these persons were examined and were taken to be examined, as is usual, by the police. The interrogating officer, mostly together with the kommando keader, determined the result of the examination, and with that they determined whether the man endangered the security, as the result of the examination, or whether he did not, and they passed a judgment on this person.

Q. It usually turned out, did it not, that a member of the Communist Party and a Soviet official of the Communist Party or of the civil administration were considered a definite threat to the security of the German armed forces?

A. Yes.

THE PRESIDENT: Witness, in carrying out the procedure which you have just indicated, I assume that in many, if not all of the towns, that you would find yourself liquidating the governing authorities, the mayors, the councils, etc., because naturally they would be members of the Communist Party, is that true?

THE WITNESS: Insofar as I know the conditions in the cities or districts where the Einsatzkommandos entered, there was no administration any more, but the leading personalities had escaped or were hidden.

Q. (By Mr. Walton) General, how were the condemned people assembled for an execution?

A. In detail I cannot describe that.

Q. I believe you stated in the matter of the Jews the registration through the Council of Elders stated who were the Jews. Now, if it was determined that so many would be executed, were the Council of Elders instructed to assemble so many people?

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A. To assemble the people, yes.

Q. Now, was there any pretext given, either by the kommando leader or by the Jewish Council of Elders, to get these people to assemble?

A. Yes, for example, on the resettlement question.

Q. They were told that they had to move or they would be moved to a place for resettlement, is that correct?

A. Yes.

Q. Now then, what disposition was made of these people after they had assembled in the market square or at the place designated?

A. It was tried, for example, to compare whether registration lists were the same as the persons present. The persons were then assembled and then were taken to be executed.

Q. Were they sometimes marched to the place of execution?

A. No they were taken there by trucks. I just described how in Simferopol the Army gave trucks for this purpose.

THE PRESIDENT: Did the Council of Jewish Elders know what was the real purpose of the demanding of this list of the Jews?

THE WITNESS: Certainly not in my Einstazgruppe.

THE PRESIDENT: Well, after the first contingent had been marched away or transported away, was it not then very obvious the purpose of the obtaining of this list?

THE WITNESS: In a city the Jews were then assembled all at once, at one time, for example in barracks or in a large school or in a factory site.

THE PRESIDENT: Do I understand then that no executions took place until the Council of Jewish Elders had completed their work of making up the lists?

A. Yes.

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Q. (By Mr. Walton) Now, did you have any Army directives or any orders stating the minimum distances from Army headquarters where these people could be executed?

A. In the case of Simferopol the Army decreed that shootings should take place at a certain distance from the city. The same occurred at Nikolajev.

Q. By certain distance do you mean a certain distance from the headquarters or from the Army installation or from the city itself?

A. In Simferopol from the city; in Nikolajev from the headquarters.

Q. Now, what was the general method used in execution?

A. Only one method wasused by me. That was the military manner.

Q. Am I to infer from that execution by shooting?

A. Yes.

Q. In what position were these victims shot?

A. Standing up or kneeling.

Q. What disposition was made of the corpses of the executed victims?

A. They were buried in that same place. The kammandos, who carried out the executions, had to prepare the burying so that no signs of the executions could be seen afterwards.

Q. What was done with the personal property of the persons executed, General?

A. The personal property was confiscated. The valuables, according to orders, were given to the Reich Ministry of Finance or rather to the Reichsbank. The personal property was at the disposal of the local kommando and the city, except for exceptions in Simferopol where the Army was assigned a group of the National Socialist Peoples' Welfare Organization who took care of the textile items.

Q. Were all the victims, including the men, the women and the children, executed in the same way?

A. Until the spring of '42, when by Himmler's order it was determined that women and children be killed by gassing in gas vans. Your Honor, I ask to make a remark about a question in yesterday's examination.

I think a mistake arose to the effect that Your Honor asked me whether from the reports from the kommandos the fact that children were shot could be seen. Should I have answered to the effect that this opinion was confirmed, that would be wrong. My confirmation in the IMT that men, women and children are contained in the figures is merely a conclusion from the fact that Jewish men women, and children were to be shot. In the reports which came from the Kommandos no such difference was made. Actually I do not remember any report where children - or figures of children - are mentioned. I repeat, the statement, on which I confirm, was a conclusion I came to following the order.

THE PRESIDENT: I understand then that a report indicating that 5,000 Jews had been killed would not specify so many children, so many women, but just 5,000 persons?

THE WITNESS: Yes, yes.

Q. (By Mr. Walton) Let me refresh any memory, General, please. I believe you stated in answer to the last question that executions were entirely in the form of shootings until the spring of '42 when you received an order to have women and children executed by gas vans, am sorry I missed your statement as to where this order originated, or from whence this order came.

A. The order of the gas vans came from Himmler immediagely and was given to special units who had these gas vans.

Q. These units who had charge of the operation and the maintenance of the gas vans stayed with the vans all the time?

A. Yes, I only saw it myself for a short time because it occurred shortly before I resigned, but the drivers remained there while the officer who had come along originally left later on, but the reason for this was mainly that the vans were refused by the kommando leaders, and I was not prepared to force the kommando leaders to use these vans. The vans were practically not used.

Q. General, have you ever seen yourself a gas van?

A. Yes.

Q. Will you give a short description of the physical appearance of a gas van to the Tribunal?

A. It is an ordinary truck just like a box car. It looks like that, like a closed truck.

Q. No windows in the gas van?

A. I beg your pardon?

Q There were no windows?

A. It is possible.

Q. The back of the gas van, did it have a thick door which led into the interior of the gas van?

A. Of course.

Q. And this door was narrow where only one person could enter at a time?

A. No, I believe it was an ordinary door as any other truck has it.

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Q. Now were the people selected for execution induced to enter these vans?

A. One could not see from the van what purpose it had, and the people were told that they were being moved, and therefore they entered without hisitation.

Q. The same information was given them that they would be moved for purposes of resettlement?

A. Yes.

Q. General, could you estimate how many persons could be accommodated at one time in these vans?

A. There were large vans and small vans. The small one might have taken fifteen persons and the large one thirty.

Q. Did you ever learn how long it would take to execute persons by the use of these lathal gas vans after they were subjected to gas?

A. As far as I remember about ten minutes.

Q. Did all of your kommandos use these vans?

A. No, because there were more kommandos than vans. Apart from that one van was no good because they had come from Berlin. One van was sent to Taganrog immediately without my seeing it and never came back, and the other two vans remained in Simferopol.

Q. Did Sonderkommando 10-A ever use one of these vans?

A. I already said that one van was sent to command 10-A immediately.

Q. I apologize then. I missed it. Did 10-B ever use one of these vans?

A. No, I am not sure whether they did use it. I cannot swear to it, but I don't think so

Q. I accept your answers as the best of your recollection and belief. Did Sonderkommando 11-A use one?

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A. No, as I said, the two vans were in Simferopol.

Q. 11-B, did it ever use one?

A. 11-B will have used it I think

Q. And Einsatzkommando 12, do you recollect it ever had one?

A. No, they certainly did not have one.

Q. Now many people do you estimate - I am sure that you do not remember the exact number, but how many people do you estimate were executed by these vans by Einsatzgrppe D?

A. Please save my mentioning these figures because I don't know anything about 10-A and concerning 11-B the van may have been used two or three times, I an not sure. I myself hardly saw the van, but only the first time, together with the physician, I had a look that the people died without any difficulties, and then I must have left. I don't know whether it was used again.

Q. Then some people were executed by means of the gas vans by your subkommandos?

A. Yes.

THE PRESIDENT: What was the purpose-

A. Not by myself.

Q. (By Mr. Walton) By your units.

A. Not by myself.

THE PRESIDENT: Did you always have a physician with you?

THE WITNESS: Yes.

THE PRESIDENT: And what was the immediate purpose of the services of this physician?

THE WITNESS: He was unit physician really, but I also used him, of course, for such purposes as expert.

THE PRESIDENT: I see. But his primary purpose was to supervise the health of your men?

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THE WITNESS: Yes.

Q. (By Mr. Walton) General, when you were on direct examination you stated, and I quote your own words. "The Army left it to me to deal with the political situation in the Crimea." Was the task of cleaning the Crimea of Jews, gypsies and above all Communists considered a political task?

A. No, If I talked of a political task here, among the various groups of the populations it could be found, for example, the difference between the Tartars and the Ukrainians, or those from Creat Russia and the Ukraineians, to set up administrations of small localities. For example, if in a parish there were different groups of populations, to see to it that when the mayor was appointed a person was taken who was appropriate to the numbers of the population under him.

Q. Then the executions were solely a security task and the tasks which you have outlines in your previous answer were the general political tasks

A. Yes.

MR. WALTON: May it please the Tribunal, I wish no question now the witness on certain of the documents in the Prosecution's book. This is the end of a phase of. my cross-examination. If the Tribunal so wishes to have the recess at this time, I think it is proper as far as my examination is concerned.

THE PRESIDENT: Yes. Just before we recess I would like to state this to Defense Counsel. I presume that some of you will want to present documents. I heartily recommend that you begin to assemble those documents immediately. There is a great problem, as you know, here, in the palace of Justice in the matter of translating documents and then getting them properly mimeographed, COURT IIA CASE 9 and if you wait until your client is about to take the stand to busy yourself in the preparation of these socalled document books we will find ourselves in such a state of congestion that it will be impossible to get the books out in time.

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So I ask you please to get started at once on whatever documents you intend to produce.

(A recess was taken).

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Court No. II-A, Case No. 9.

THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER (Attorney for the Defendant Haensch): Mr. President, I ask that the Defendant Haensch be excused from the sessions on Thursday and Friday, since the time is approaching for the preparation of his defense.

THE PRESIDENT: The Defendant Haensch will be excused from attendance in court on Thursday and Friday in accordance with the request made by his counsel.

Yes, Mr. Walton.

MR. WALTON: General, there are about three or four questions which I overlooked concerning executions. I desire, at this time, to ask them and then I expect to leave this subject for good and all. BY MR. WALTON: called for the future execution of women and children by this means. Do you know why this change was made from the usual method of shooting? lieve the moral strain on these men who were actually detailed to execute women and children. Now you have stated that their mechanical performance was not of the best and this gave you the opportunity to use a van as little as possible, is that not right.

A No, that is a mistaken interpretation. These two things differ. If the gas wagon was mechanically faulty it certainly was not used. It was not used even if it was in order, because for the men the moral strain was greater in killing people by gas vans than by shooting. vans, the usual method of shooting was employed? page 3 of the English, page 5 of the German, and this is Document NO-2661, Court No. II-A, Case No. 9.being Prosecution Exhibit 149.

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Under the paragraph headed, and I quote, "Jews", which is found on pages 9 and 10 of the English, I am not familiar with the page in the German, this is stated, and I quote, "The solution of the Jewish problem which can be considered as almost solved and settled in the Ostland, continues," -- which is underscored, -- "in the remaining occupied territories of the East." -- "Of the East" is underscored -- Still quoting: "The concentration of Jews in Ghettos has generally been carried out." -- That sentence is underscored -- Still quoting: "Again and again the Jews who do not obey the official orders are seized and shot. In order" -

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15 Oct 1947_M_MSD_9_1_Biolsi (Lea)

MR. WALTON: Shall I continue, your Honors? Have you found it?

THE PRESIDENT: Yes, you may continue.

MR. WALTON: Still quoting: "In order to avoid the spreading of the danger of epidemics, shootings of Jews became necessary at different occasions" End of quotation.

General, are to presume that the term "Ostland" refers to the Baltic countries? other territories occupied by Einsatzgruppen? gruppe at all, but in March 1942 -- this is a report of March 1942, in this case from the occupied civil areas --for example, the Eastland was not an area of Einsatzgruppe in this time. territories of the East?

A Certainly not in some of these areas. Einsatzgruppe D, during this time - from the 1st to the 28th of February - which is the time of the report, was in the crimea, and in Melitopol and in Taganrog. continuing the solution of the Jewish problem in the Eastern territory which it occupied?

A Yes, but from the terminology "herding into ghettos", this does mean that an area of the Einsatzgruppe D cannot be for, at that time, there were certainly no ghettos in the area of Einsatzgruppe D. classes of the Russian population which threatened the security of the German forces, beginning with the class you considered most dangerous to security?

A I don't think I over undertook to make such qualification. If you had asked me at that time whom I considered most dangerous I 15 Oct 1947_M_MSD_9_2-Biolsi (Lea) Would certainly have mentioned the political commissars or the political functionaries -- independently from the racial group of-to which they belonged.

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Q And who was the next most dangerous class, in your opinion?

A I don't want to make any more classification. killing of the insane was handed you. an execution of insane persons -- naming the time and place, approximately.

A Noo not even approximately. I only remember one locality, one building, but I cannot give you the village, or the town, or the time. After such an order I inspected these matters myself in order to be able to give respective reports to the army and then I refused to do it.

Q You don't recall the approximate number of people who were liquidated at this time?

A No, I don't.

Q Now, let's turn our attention to Document Book II_A, page 124 in the English, page 138 in the German, which is Document No_3233, and is Prosecution Exhibit 54. On pages 126 and 127 of the English Document Book this quotation is found:

"The removal of asocial elements led to the fact that 800 gypsies and insane people were rendered harmless."

And on page 127 this quotation appears:

"During the period covered by the report, 2,010 people were shot, among these there were 678 Jews, 359 Communist officials, 153 partisans, and 810 asocial people, gypsies, insane people, and saboteurs."

Do you follow?

Karasubasar. In the last paragraph of this excerpt it says that among the 810 asocial people, gypsies, insane people and saboteurs were liquidated. Does this not mean that only 10 of this number met death as saboteurs, because they offered any threat to the military security of the German forces? the expression, "saboteurs" means whether this number contains a number of people who endangered the security of the German forces by sabotage. And were shot for that reason.

A No; in the first paragraph I have quoted it says that 800 of a certain class of people were executed. Then, in the second quotation it says 810 -- that is different from 800--asocial, gypsies, insane people and saboteurs -- being a difference of 10 people between the first figure and the second figure. Now, can we assume that within this larger number only 10 people were saboteurs?

A I have already commented on this document. Such an assumption would be impossible. I believe that the reports were mixed up here. I just said that south of Karasubasar such a possibility did not even exist, In reality it could not exist.

Q Now, let us turn to Document Book III_D, again on page 11 of the English, page 12 of the German, Document NOKW_604, which is Prosecution Exhibit 150. Do you recognize this report, General?

Q Do you consider this an authentic report? Romanenko-- I am soory, I mis-stated the question. This is a report prepared by Commando 11_a on the case of Wladimir Romanenko, suspected of sabotage that interfered with Russian workers employed by the German authorities. It goes on to state that the information to Romanenko's 15 Oct 1947_M_MSD_9_4_Biolsi (Lea) sabotage activities proved, on investigation by Commando 11-a, to be erroneous.

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Now, General, what was the disposition finally made of Romanenko? I cannot remember the incident at all. It can be gathered from the first two lines, what we have already discussed this morning - that on the 7th of September the Special Commando 11-a, through Sturmbannfuehrer Gemeiner, - he was at the time the liaison officer of the army, etc., the Supreme Commander had ordered the surrender to the Commando and had informed them that he wanted a punishment to be meted out, if possible, by public hanging. As the prosecutor has just stated, the Commando has thoroughly examined this incident and it did not find the charges of the Supreme Commander confirmed in all its details. Therefore, it seriously warned two witnesses who testified against Romanenko. Nevertheless, Romanenko was executed as an insane person. This report is evidently a report of this Special Commando 11-a, again via the liaison officer, direct to the Army headquarters. Unfortunately, I don't known what led the Special Commando 11-a to act as it did.

Q Just from the report, isn't it true that Romanenko offered no threat to military, security, -- did he? order from the army to punish Romanenko by hanging him publicly. what army gave that order?

A That must have been on the 10th of September; and it must have been the Supreme Commander, - either Manstein or still Schobertbut I would assume that at that time probably Manstein was there already; but I cannot be sure.

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Q. Now, let us turn to Document Book II-C, page 42 of the English, and 49 of the German, being Document NO-3137, which is Prosecution Exhibit 76. Now, there is a paragraph which reads as follows, and I quote:

"The Commandos continued the liberation of the area from Jews and Communist elements. In the period covered by the report the towns of Nikolajev and Cherson in particular were freed of Jews and remaining officials there were appropriately treated. From 16 until 30 September, 22,467 Jews and Communists were executed. Total number, 35,782. Investigations again showed that, everywhere, the high Communist officials had be-taken themselves to safety. It was, foremostly, leading partisans or leaders of sabotage detachments who were seized."

General, did you follow the quotation?

A. Yes.

Q. Was not the headquarters of your Einsatzgruppe D in Nikolajev at the date of that report?

A. Yes, it was.

Q. From memory, can you tell how far Cherson was from Nikolajev?

A. About 80 kilometers.

Q. Your headquarters were in Nikolajev some months, were they not?

A. That is right.

Q. Can you give an estimate as to how many Jews lived in these two cities?

A. I have already commented on this in my direct examination. According to my estimate there were about 5,000 Jews in each of these cities.

Q. Now, what did you mean when you reported to Berlin that a city or an area was freed of Jews?

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A. That there were no more Jews in those areas.

Q. Where were the former Jewish inhabitants of these places?

A. The Jewish inhabitants had been killed.

Q. When a report stated, and I quote: ".. and the remaining officials were appropriately treated." --what, exactly, is meant by the term "appropriately treated"?

A. Mr. Prosecutor, I may call your attention to the fact that you may not assume that this is my text. This is a text from Berlin, and the interpretation such as you would like to have I cannot give you to this text. For if we think back to this time the first sentence already is incorrect, that the territory was freed of Jews, for this was at the time when the area was completely untouched as far as ridding it of Jews is concerned, and only later did Himmler arrive and ordered the executions of these craftsmen. The first sentence, therefore, would be incorrect, and therefore, I ask you not to have me interpret this word for word because this would be an incorrect interpretation. I have already said in direct examination that this figure especially cannot be correct under any circumstances. Neither the 22,000 nor the total number of 35,000.

Q. From the general language of these reports from Berlin -- which I agree with you is not your language -can we assume that "appropriately treated" is a synonym, or another word for liquidation?

A. Yes, certainly.

Q. General, last Wednesday you commented on Book II-D, page 51 of the English, page 57 of the German, which is Document No-3148, and is Prosecution Exhibit 95; and also the next document which is in the same book, page 52 of the English, and page 58 of the German. This latter COURT II-A CASE IX document is NO-3147. Now, by comparison of the two Communists executed, and both of them give the same total of 13,315.

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Does not that appear on both documents?

A. No, in the first document the number 17,350 appears as the total number. And in the second, 13,315. But even if I say that the "7" is a typographical error and that it should be "13" then this is the best proof that here in two separate operational reports, one on the 20th and one on the 26 of September, the same report was given.

Q. Now, let me reach what I am trying to get at. Can it be possible that this report of the 26th of September, if the numbers agree, as they do in my book but don't in yours -- if the numbers agreed, would not the report of the 26th of September be a confirmation of the report already sent forward on the 20th of September?

A. That is absolutely possible.

Q. Now, in the event, we will say, if Berlin received any additional reports of executions during the week 20 to 26 September, was it customary for the RSHA to merely repeat the facts contained in the report preceding to show that the tactical situation with regard to Einsatzgruppe D had not changed?

A. well, usually if nothing happened it was not customary to copy the same report over again, but you would just say that there is no report. Therefore, this is completely incomprehensible to me.

Q. General, as a matter of fact the execution of Jews and Communists happened more frequently during the first part of the campaign than later, in 1942, did it not?

A. Yes, of course.

Q. And this was because Einsatzgruppe D encountered more of these classes of people in August and September 1941 than it did in February and March 1942, isn't that correct?

A. Yes, that is correct.

Q. Now, one report states that an Einsatzgruppe C -not your Einsatzgruppe -- executed 35,000 people in two days. Is it not true that all units of an Einsatzgruppe, with the active assistance of police units attached to them and Wehrmacht units upon which they should call for assistance, could have executed such a large number of people in such a short time.

A. No, I consider it completely out of the question.

Q. Let me go into that a little further. Police Battalion No. 9 was a police battalion on which you could call, is that correct?

A. No, no.

Q. What was the police battalion-

A. If the police battalion which had been attached to the Einsatzgruppe in the East had the number "9, then this was the original battalion which, by order of Himmler, was distributed among the various Einsatzgruppen, without battalion staff, that is, there was no more battalion, but there were four companies, and these four companies were distributed among the four Einsatzgruppen. Each company to each Einsatzgruppen. In my Einsatzgruppe the company was completely dissolved. That is to say, the various Einsatzkommandos got one or two plattons, or a half platoon, from this unit. For it was attempted to use these police units for guard purposes for the Einsatzgruppen. It may be that another Einsatzgruppe handled this differently. For example, kept the company together. But a company was put at my disposal which was no longer a company because it was distributed among the entire area of 400 kilometers.

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for manpower to assist in the Jewish raids, or any partisan warfare or executions? your own for assistance when you needed it?

A If they were voluntarily asked to do it. I could not order a unit to do so.

Q Let me ask it this way. Your survey of a tactical situation showed you that you did not have enough manpower to solve this problem, even with the assistance of what Police Units you already had, would you then be at liberty to go to the nearest Army, to the nearest battalion commander of the Wehrmacht, or regimental commander of the Wehrmacht, and explain your situation to him and ask for some help in liquidation. It was a question of voluntary agreement between the leader of the Einsatzkommando, and the leader of the military unit to get assistance, despite the prohibition of participation in the executions, and this happened repeatedly. It was not a question of an order on our part, but of agreeing voluntarily with the other military commanders. or the non-commissioned officer have the power to volunteer or to agree to go to your assistance in these execution matters? it upon himself to disobey.

Q Let's go back just a little bit. The Einsatzkommando Fuehrer has agreed with his neighboring Army commander, whether a unit is decided, or a battalion, or regiment, it makes no difference, he has agreed that he needs thirty or fifty men to come to his assistance.

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The Army unit commander is agreed that he does need this many men. Does this Army unit commander then call on a junior officer and say, pick out twenty men, or thirty men, and take them over to where the Ensatzkommando requests them, and commit them to action, or, does that junior officer assemble his company and ask for volunteers from the Wehrmacht to go? it I would have to assume the latter, that he would ask the people to volunteer. it was for the men, is that right, on a voluntary basis?

Q Now, General, let's turn to Document Book II-B, page 7 in the English, page 5 of the German, which is document NO-2337, and is Prosecutions Exhibit No. 58, this is report dated 29 August 194-7.

A '41.

Q '41, yes, I am sorry, on page 11 of that report, in the English document book, it relates the number of Jews that were driven out in the Rumanian territory, and in this connection you discussed the participation yesterday of the defendant Felix Ruehl, of which he has also told in his affidavit. Now are these two instances the, same, the one in the document and the one which is related by the defendant Ruehl?

A I don't remember the affidavit of Ruehl.

Q All right. I show you in Document Book III-D, page 76 of the English, page 121 of the German, Document No-4149, which is Prosecution's Exhibit No, 169.

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Now in paragraph 3 of that document -in his affidavit the same incident as the one given in the report of Document 2837, the first document which was called to your attention? made of this transport, after he carried them to some place. Did he ever report back to you that this problem was settled, that he had disposed of the Jews? Jews were liquidated, would you have remembered it now? know that is a difficult question.

A I remember the incident very exactly. But to answer your question, I didn't have the impression that Ruehl was a leader of the transport. Ruehl, sofar as I remember was the very one who passed on my directives to MogilowPedolsk to let the Jews go back to Rumania, who then reported to me that Rumania would not let the Jews return across the river, and then he was referred to Kommando XII, which was then to try to arrange the transporting back of the Jews by way of another bridge. That happened as the result of a directive given by me to Noske. Ruehl, therefore, had nothing else to do but to give the directive to Mogilov, and to report back to me that the Rumanians would make difficulties. And, then from a part of Kommando XII together with a part detachment of X-B in Mogilov, which was not under the direction of Ruehl, but under a different leader.

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This transport of Jews was effected from Mogilov over the bridge to Jampel, into the Roumanian territory. From my own knowledge I consider it completely out of the question that a) younger Jews were picked and b) that 1265 were shot. Because the order was clear, and Noske reported later the carrying out of this order, and there was no cause to assume that such a selection was made, or that such killings were perpetrated.

Q Then Nosske reported to you on this incident?

Q Do you recall what Nosske reported? with the German bridge officer, he had just barely made it possible that this transport be brought back. have been preferred by the Rumanians, could the Einsatzgruppe have prevented or order the Rumanians troops to cease and to desist and not execute these men? We only had the possibility of intervening once and awhile because the Rumanians were making difficulties by lootings, and by rapings, and, thus, we permitted ourselves to interfere personally. with the Rumanians troops affairs? persons.

Q All right. Now, General, one more document. Let's turn to Document Book II-D, on page 49 of the English, and on page 54 of the German. This is document NO-2841, which is Prosecution's Exhibit No. 94. Were any of these 94 Jews guilty of spying, as the report says, on the population?

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A I can only interprete the text, Mr. Prosecutor, that according to that, it looked as if the Jews had sabotaged against the harvest, and were identical with persons who had denounced other people, and caused them to be sent off, that is what the document shows. dissatisfaction with the agricultural workers, or in any way preventing them from doing their normal agriculture, labor, would it not, that would be agriculture sabotage?

Q Yes. And also it was about or prior to the entry of German forces in this area, these people had sent Russians, there own fellow nationals, by their denouncing, off to Siberia. Now, General, it is not clear to me why for a crime against another Russian before the Germans occupied the area the German forces would want to punish these men?

A Mr. Prosecutor, may I remind you of the law which had just been decreed in Germany, I believe they were the Same, only goes somewhat further, insofar as the officials are accused that as the result of the laws of their State they officially persecuted people, and in the case of Goerdler, the young girl who recognized Goerdler, who even was involved in the assault against the life of the Chief of State, received twelve years in the penitentiary, and that these twelve years in the penitentiary, according to the Berlin publicity were not even sufficient. That was yesterday, we were trying to pin it down to facts as to the document before us.

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Now who determined that the number of Jews should be 94 to be executed as a reprisal, or retaliation. Was this the Kommando-Fuehrer there?

A It must be typically a fact which I had said before; a detailed investigation was undertaken, and the result of this investigation had effected 49 people. Namely, they had participated in sabotage, or in agitation. That is not a general measure, but certainly these were individual investigations.

Q But it was a reprisal measure? was a measure because of the security being in danger, The text which was probably summarized one can not quite make it out.

Q Let me ask you this. As a general policy were the populations of any area warned beforehand that they would be subject to reprisals if they did not obey the directives and the orders of each of the police units?

A Yes, there were very clear orders. There were directives of the Army, or of the Army corps, which were posted, and made known everywhere in which, for example such crimes were listed with a threat that whoever violated such directives would be publicly hanged.

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given a trial, or was it an emergency measure to have the arresting officer decide whether he had violated a directive and pass sentence?

A I don't know about such matters. I believe that these taking of hostages and reprisal measures took place later on. Bock II-C, page 16 in the English, page 18 in the German, which is document NO-2952, and is Prosecution's Exhibit No. 71. General, in this document please turn to the fourth paragraph under the heading "Partisan Warfare."?

Q Page 16 of the English, and 18 of the German. Now under paragraph four I direct your attention to the sentence where twenty hostages were dealt with by a summary Court. General, are you familiar with the proceedings in a Summary Court?

A No, I don't know anything about it.

Q You don't know then whether these twenty hostages would have a right to counsel to represent them?

A I don't know this, but I could give you exact information about it. The decree which I had mentioned before, the. Decree of the Fuehrer, signed by Keitel of May 1941, excludes such procedure. This is a directive about the procedure-to be applied before a court martial, and this directive determined that in all these cases a court martial is not competent, but that an officer has to decide those cases by himself. it to be stated in another way.

THE PRESIDENT. Mr. Walton, may I interrupt, please.

MR. WALTON: Yes.

THE PRESIDENT: Does the offer also decide the ratie?

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suspect, or not? German deaths, if any?

A I had just understood the Prosecution's question differently. I don't he meant the taking of hostages, but the question of whether somebody if he was suspected was in a position to have a defense counsel present him in the trial.

THE PRESIDENT: Mr. Walton, is referring to a particular document where reference is made first to ten hostages, and then twenty hostages. Does this officer who investigates the matter decide just how many hostages shall be killed because of whatever jeopardation was committed upon a German element?

THE WITNESS: The Einsatzgruppe itself did not take any hostages, give you this information, with my knowledge of the Einsatzgruppe, but Colonel von Schobert - I mean, General von Schober complained to Seibert that for these cases which happened in Belzy, not enough hostages had been shot, and he, therefore, would give directive that harsher measures be taken, that is to more hostages should no shot then were shot in this case.

I don't know whether ratio numbers were already determined, as this happened in the Southeast later on. I would assume that this was determined by the competent local officers of the units, probably, according to these directives of the Army, but I am only giving you my interpretation. the first trial, the IMT Trial, that Keitel had been quoted as ordering so many hostages to one German soldier killed, and I was wondering if that applied in this case?

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Q Some more information, General. I think you have answered this, but I would like to get it dtraight in my own mind. Did the hostages under sentence of death have the right to appeal deaht sentences to a higher military or SS authority?

A Of course not. Thas was just what I said before as to the content of Keitel's Order.

Q Yes, now, didn't the main duty of this Summary Court consist of selecting the number of persons to be executed, the main duty?

Q In your direct testimony didn't you state as a fact that the arrest of hostages was carried out, and I quote your words, "By order of the Supreme Commander of my Army," and then you relate that the Army complained that you executed a few hostages. This has been referred to several times, is that correct? of Seibert, who had this experience with Schober. I don't know of these hostages measures from my own knowledge. complaint about too few hostages being executed? year? is it not so? complaint? Not you personally, but generally as to your unit? hostages.

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like to add from my recollection that at my time in the East the Army also arrested very few hostages, because at that time the partisan warfare had not yet turned into a warfare of the population, a general warfare. execute hostages? was brought to your knowledge that hostages were executed by some one?

A I only know from the Prosecution's documents about the shooting of Kischimen. I don't remember anything myself.

Q Now let's consider this same document a little father. In paragraph-

THE PRESIDENT: Mr. Walton, suppose we recess at this time.

MR. WALTON: Yes, Your honor.

THE PRESIDENT: We will be in recess until 1:45.

THE MARSHAL: The Tribunal will be in recess until 1345 hours.

(Whereupon a recess was taken until 1345, 15 October 1947.)

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(The Tribunal reconvened at 1345 hours, 15 October 1947).

THE MARSHAL: The Tribunal is again in session.

THE-PRESIDENT: You may proceed.

CROSS EXAMINATION (Continued) BY MR. WALTON: your attention to the document which we were discussing at that time, and it is contained in Document Book II-C, Page 16 of the English, Page 18 of the German, and it is Document NO-2952, Prosecution's Exhibit 71. I should like to call your particular attention to Paragraph 5 headed "Jews". In your comments last Thursday you stated that these forty-five Jews were executed as a counter-measure. By this do you mean that they were executed - I am sorry.

A I beg your pardon. I only stated my argument following the document. subject "Jews"? retaliation for attacks on German military personnel? to which could bring death, failure to register as a Jew? not stayed at home in the evening. They are precaution-measures in order to avoid attacks by the military, which is a presumption which cannot be taken from the document. forty-five Jews in that document? Would you state as a matter of general knowledge that they would?

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acted on cases where Jews were to be shot in reprisal? that on principle there was an order that regular courts were to he excluded. English and the German Page 43, Document NO-4135, being Prosecution's Exhibit 91, and in this same document book, Page 45 of the English, Page 48 of the German, which is Document NOKW-587 and is Prosecution's Exhibit 92.

MR. WALTON: May it please the Tribunal, Document NO-4135 shows at the top of Page 41 the date 10 July 1941. The photostat copy of the original shows this date to be 14th of July, 1941, and the German document books so give it. I now ask your Honors to make correction of this typographical error.

THE PRESIDENT: It will be corrected. BY MR. WALTON: two documents offer strong contradiction. I invite your close attention once more to these two documents. In NOKW-587 it was reported to the I-C of Army Group South that Einsatzkommando 10-B shot 500 Jews, among whom was the Jewish leadership. Now, when we consider Page 41 of the English, Page 43 of this same document book, where you found Document NO-4135, it shows the situation which prevailed about the same time in Czernowitz as the report to I-C of the Army Group South shows, does it not?

Q Yes. At one-point in your testimony you stated that the SD had no prisons as you were immediately behind the fighting front, did you not?

A I beg your pardon; because?

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prisons as you were immediately behind the fighting front, did you not?

A No, not for that reason. That must be said in another connection. In Czernowitz not the SD but the Einsatzkomnando there did not have any prisons but the Rumanians had them because the Rumanians were in charge of that city.

Q And did Einsatzgruppe D ever take any prisoners? prisoners? individual case, but surely there would have been P.W.'s as well as certainly civilian prisoners because if they were suspected of a crime they had to be examined. interrogations were in progress? finished interrogating in Army prisoner-of-war cages or Rumanian prisoner-of-war cages or prisons, take them out for interrogation and put them back? occurrence from Feodosia. These occurrences were new to me, that civilian prisoners were sent to POW camps. When I read it I could only explain it to myself that it concerned persons of military age who were sent to the POW camp for that reason. not be killed but should be punished by a prison term? wrong impression. I believe that the Proportion of released prisoners to these condemned was ninety to ten, or even a ratio of ninety-five percent to five percent, and a number of documents, which the Prosecution has submitted here itself reveal that fact, that a number of persons were arrested who were suspected of being partisans and the rest were released.

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Q Nov in the second topic under the heading, "Einsatzkommando 10-B" in Document NO-4135 before you, which is Page 42 of the English, it states that a great number of Jews of the poorer class are in the Rumania, prisons and nearly no intelligentsia. Doesn't this document confirm the fact that executions had nearly wiped out the leadership or the intelligentsia class in this area, as reported in NOKW-587to the Army Group South? contrary because I actually knew the condition, because in Czernowitz there were two scandals. One was the very rotten way in which Jews were killed by the Rumanian Army, and the second was the dirty business the Rumanians did with the rich Jews, and from my knowledge I can comment on this sentence, that the rich Jews actually were not arrested.

THE PRESIDENT: What methods did the Rumanians employ in liquidating Jews that you disapproved of in the language which you have just used?

THE WITNESS: With the kommando leader from Czernowitz I wanted to leave Czernowitz, and I found some of the Jews as they had been shot by the Rumanians, or they had been shot at, and they had been lying there shot although not dead, although the kommando leader had asked the Rumanian Army to stop this. One group of Jews had been sent there and they had shot at them and left the victims lying just as they were. Some were not dead, and only forceful, interference by Pesterer finally stopped it or put it in order end that was when he was responsible for excesses against Rumanians. BY MR. MALTON:

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cooperation between the Rumanian troops and the Einsatzgruppen insofar as the solution of the Jewish problem was concerned in your respective areas?

A Unfortunately I must contradict you immediately, Mr. Prosecutor. This cooperation was not possible and for that reason did not exist. Document Book II-D, Page 41 in the German, 43 in the English, the same document, NO-4135, Prosecution's Exhibit 91. We agree, do we not, that this Operational Situation Report No. 22 is one of the reports that was consolidated in Berlin? report from the four Einsatzgruppen, A, B, C and D?

Q Now, did not the information under the heading, "Results of the Conference between General von Schobert and Ohlendorf," come from your headquarters before Berlin could consolidate it in its report? is on Page 72 of the English, Page 97 of the German, and is Document NO-3422, and it is Prosecution's Exhibit 19. This document contains directives for the commanders of the chief of the Security Police and the SD which were to be assigned to the prisoner of war camps and the transient camps and the date of this document is 29 October 1941. Were you on the date shown on this document the commanding officer of Einsatzgruppe D?

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English, German Page 16, to Document NOKW 641, which is Prosecution Exhibit 151, and this document is, as you will recognize, your signed report to Army headquarters, under date of 12 February, 1942, You gave the Tribunal your comments on this last week, but I would like to ask you what is meant by the phrase under, and I quote, Paragraph I, "Watches confiscated".

A I beg your pardon, may I have this page number again?

Q It is Page 16 of the German. Do you find paragraph headed "I. Watches confiscated"?

A Page 16? meant by the term, and I quote, "Anti-Jewish actions" which appears in the first sentence of that paragraph?

A "The watches confiscated during the anti-Jewish actions", do you mean this?

Q No, just what the torn "anti-Jewish action" means.

A That is not written here, "anti-Jewish action".

Q Doesn't the sane phrase in Paragraph II under "Confiscated rubles" appear? cause in the German text it says "Jewish actions," and not "anti-Jewish actions."

Q Does that phrase then mean an action against the Jews? "Confiscated rubles" also means the same thing?

Q Now, isn't it true that this property was confiscated simply because it was Jewish property and because Jews were enemies of the Reich and they had no right to property whatever?

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which came, which we got after the Jews were killed was confiscate by the Reich. this action?

A I don't think it has ever been maintained. There was an instruction to confiscate. I want to ask you some questions on other information. In your direct examination you stated that between March and July 1942 you were frequently absent from your post as commander of Einsatzgruppe D, did you not? were away? or because of your confidence in him?

A I beg your pardon; because Einsatzgruppe D because of his rank or because of your confidence in him? group, and he was the senior officer there.

Q Then because of his rank as senior officer?

Q Isn't it true that you had confidence in Seibert, that he would be a man that would see that all orders and directives both from Berlin and from the Army would be carried out with the same degree of care that you would have used if present and in actual command?

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A Unfortunately I cannot confirm that to you. He did not have the qualification to do that. I trusted Seibert but that independently from what you say, I think we discussed it this morning.

Q General, don't misunderstand me. This is not merely confined to executions by the actual daily activities. Didn't you have confidence that Seibert would see that they were carried out just as completely and just as militarily as you would have had you been there? the authority to do so. He could not act for me as authority towards kommando leaders who were senior in rank to him like Standartenfuehrer Seezen, for example, the kommando leader of 10-A; Standartenfuehrer Mueller of Kommando 12. Zapp also held the same rank as he did at least, if not a higher rank. These factors alone show that he had no power to command these kommandos. As you hill remember from the direct examination, as an acting chief it was, Standartenfuehrer Seezen who had been assigned to no by the RSHA. That has never been clanged, only that I did not use him. In this connection Seibert never acted, for me, but he acted for no in the staff, and saw to it that the affairs were running out properly. about the activities of the group to be transmitted to the different Kommandos?

A No. Although I don't like saying it, in this connection I must say again that such orders were never given by me at all, and Seibert neither had the possibility nor the opportunity to give such orders. absences in which Seibert was left there, did you have any cause for complaint against his actions that he had performed while you were gone?

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the groups differences arose. However, I could not blame him for this because in that connection he did not have the moral authority to prevent this.

Q Did he make any attempt to settle these differences?

A I am afraid I don't know that any more. concerning the solution of the Jewish problem in the areas occupied by Einsatzgruppe D? took place, of course, gypsies, Communists, etc?

A Mr. Prosecutor, such an immediate possibility he did not have and he had no reason for it because he was not immediately connected, with it. Such discussions usually Were conducted, in a comradely manner because he knewmy position just as well, that is my situation with regard to Himmler and Heydrich. He knew the situation of Himmler and Heydrich regards the Fuehrer. In other words, he knew all the circumstances, and he could not anticipate that nowadays it would, be useful, apart from useless conversations a bout these matters, to have made formal objections.

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Q: Did he over ask to be relieved of duty permanently with you?

A: No.

Q: Did he ever ask to be relieved of the duty of inspector of executions?

A: I do not know whether Seibert over inspected any executions. For that reason he could not have asked me to be relieved of that duty. The military inspections in the companies, he certainly very much enjoyed, because that was what he liked to do.

Q: He accompanied you on inspection trips you have stated?

A: Yes.

Q: And on these inspection trips you have at least three times inspected executions. Was Seibert with you then?

A: During these inspection trips no executions were inspected at all, but I merely remember one trip we had together when by chance at the Kommando 10-A we happened to come across the shooting of several plunderers.

Q: He did not ask to be relieved from viewing this incident, did he?

A: It was on the street. He could not have been relieved, because he was approaching this place.

Q: When you sent Seibert on an inspection trip, did he, as your representative have the power to see that the execution squads carried out your orders for humane executions?

A: I have just said that I do not remember that he was sent by me to inspect any executions. If I sent him on any inspection trips, for example, to inspect the Tartar companies, of course he had the special authority to stop bad conditions there. That was the purpose of the trip.

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Q: Was Seibert's service in Einsatzgruppe D satisfactory to you at all times?

A: That would be saying too much. In general, I managed to get along with him.

Q: Would you consider that Seibert was one of the few close friends you had in Einsatzgruppe D when you commanded it?

A: I do net consider military connections as friendly connections.

Q: General, let us turn for a moment to Co-Defendant Heinz Schubert. When he reported to you in Nikolaev in October 1941 -- this was some three months after the Einsatzgruppe D had taken the field, was it not?

A: Yes.

Q: who informed Schubert of his field of tasks?

A: That was very simple, relatively speaking. He went to the office and looked at how the files were kept and took care of these files, and, apart from that, I told him what I wanted concerning visitors, terms, order, and so forth. That was all and it was not very difficult to make this clean to him, because he had previous experiences about such things.

Q: Now, was he also informed officially of the main tasks of Einsatzgruppe D in its own operational areas? I specifically refer to the Himmler order and the order to Keep the supply lines moving to the Wehrmacht. Was he informed of that officially?

A: Whether he knew about that, I don't know; I presume so. In any case, I had no reason to inform him about it officially, because officially it was no concern of his

Q: Do you happen to know where he first acquired the knowledge that Einsatzgruppe D was engaged in liquidation of the Jews and Communists, etc?

A: I don't know that. I presume that he only heard that in the Crimea.

Q: When Schubert returned from his inspection trip to Simferopol in September 1941, did he report to you in person?

A: That was not an inspection trip in Simferopol. That was in the same place. He was sent out by me to the same place, because I went there in the morning and in the afternoon and he went there in between. When he returned of course he reported to me.

Q: Did he tell you that he had seen to it that this execution by Braune's Commando II B was carried out according to your orders?

A: He could not have reported that to me, because that was not his task. He merely had to watch and listen but had no authority of command.

Q: Then you would make this same answer to the next question: Did he tell you that he saw to it that those condemned persons were not beaten and that there were no disturbances among the civilian population?

A: It was not his task.

Q: General, isn't it a strange coincidence that all your efforts from 1938 to 1941 to have Braune assigned to you for duty were of no avail, and then suddenly he turns up in your Einsatzgruppe in the fall of 1941, by the merest chance?

A: I don't know whether he had good connections with Amt I and if he wanted to come to me, but I don't think so. I think actually he was surprised by his transfer and it was a mere coincidence that he came to me, but I don't want to maintain that definetely.

Q: You were glad to have him when it so happened he did report to you?

A: I was very glad that he was with me, of course.

Q: And the reason you were glad was because you valued his services, isn't that true?

A: Yes.

Q: Now did Browne ever ask you to be relieved of his command?

A: He never talked about that.

Q: Yesterday -

A : One moment, please. There would have been no chance to do so either, because he knew, like everybody else, that a soldier cannot ask to be relieved from the Army, but unfortunately, he is under the war legislation, where no special application can be made. Such an application would be of no avail.

Q: Yesterday, you testified that many of your officers and men could not stand the mental strain of executions, is that correct?

A: Yes.

Q: you described Browne yesterday as a soft and sensitive man. How did it happen that he was able to stand this strain and there was no necessity to relieve him of his command?

A: As far as I know, Browne only saw one single execution in his life. That does not seem to be a very great strain.

Q: Let us turn our attention once more to Sonderkommando 10 B. Who was the highest ranking officer next to Pesterer in this Kommando?

A: It was Hautsturmfuehere Finger.

Q: Do you consider it impossible for Ruehl ever to have been the deputy Pesterer?

A: Yes, definitely.

Q: When asked by counsel for the Defendant Biberstein about the time when the activities of the Einsatzsgruppen ceased completely, you answered, that that was a result of the retreat of the German forces from Russia and you said, further that the activities of the Einsatzgruppen stopped, when they had to retreat into areas under the German civilian administration, did you not?

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A: Yes, but concerning the actual tasks of the Einsatzgruppen, because previously in interrogations I said that on this occasion the Einsatzgruppen were usually reorganized. Their tasks were changed and they were converted into fighting units to help fight the partisans. That was the fate of Einsatzgruppe D, for example.

Q: Approximately when did this change in the activities of the Einsatzgruppe in general take place? What year?

A: In general, one could say after Stalingrad. That is in January, 1943, that is, with the year of 1943.

Q: Are you in a position to state specifically when the activities of Einsatzgruppe C ceased entirely?

A: Unfortunately not.

Q: Were you at that time active in the conquered territories of the East or had you already returned to Berlin?

A: In July 1942 I returned and never went back to the East.

Q: So you were in Berlin at this particular time?

A: Yes.

Q: Now, General, you have told us that the Einsatzgruppe D was broken down into Kommandos. What was the average strength of a Kommando in personnel?

A: That varied. There was only one complete kommando. That was Kommando 12, while the other Einsatzkommandos were broken down and on an average they consisted of 70 to 80 people.

Q: Was there any further breadkown? Were there platoons, or squads in each Kommando?

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A: Yes, as required, part kommandos were found.

Q: Now a Teilkommando, is this a permanent organization; or was it organized to perform a cert in mission and then return to its parent group, which is correct?

A: Yes.

Q: Which is correct?

A: As required by necessity the Army could require that a corps or a division could be given such a sub-unit.

Q: Now, it was necessary to have on your staff and certainly distributed through the kommandos, interpreters, was it not?

A: Yes.

Q: What was the usual rank off interpreters in Einsatzgruppe D?

A: That varied. I, for example, had a hauptsturmfuehrer who acted as interpreter. Mostly these interpreters were not from our own ranks, but had been sent to us to help out and mostly they did not join the SS, but were only given a uniform usually according to their former position, that is, an assessor, for example, as a rule would have the uniform of a hauptsturmfuehrer, a regierangsrat, a counsellor, would get a uniform of a sturmbannfuehrer. That is, the interpreters did not no Id a rank as such, but his rank changed according to his former position. He could have been an unterfuehrer, or a hauptsturmfuehrer, or some higher rank.

Q: In the event that it was a sturmbanfuehrer or a hauptsturmfuehrer, did he have interpreting duties?

A: If he was employed as an interpreter, he was an interpreter.

Q: Nothing else?

A: It is possible, of course, that he may have been used for other jobs if necessary of course. Of course, I did not leave anyone in my office without doing anything.

Q: In Einsatzgruppe D, did you have a kommando for the purpose of collecting archives or intelligence material?

A: No.

Q: Do you know if any other Einsatzgruope had a kommando for the purpose of collecting archives?

A: No.

Q: Was there attached to the Einsatzgruppen headquarters any units whose purpose was not the protection of the rear are as by insuring the security of the area?

A: I think this document which you showed me previously reveals that. Here it says first, "Securing, before the commencement of operations, of certain objectives (material, archives, files, pertaining to organizations, associations, groups, etc. hostile to the Reich or State)" It was, of course important to secure such archives. It was necessary and of great importance to know about conditions in the Soviet Union.

preserve such material, were they not? Vorkommandos or Sonderkommandos, because they marched into a city with the fighting troops and had to secure such objects. ever have any contact with the officials of the Reichskommissar for the strengthening of German Volksdeutsche Mittelstelle, the Race and Resettlement Office? deutsche Mittelstelle. Kommando 12, during the month of August, September, until the middle of October, moved up to the Ethnic German Regions in Transistrien, which were dlosed regions and these areas were then handed over to a representative Volksduetsche Mittelstelle and during that time the Chief of that organization, Obergruppenfuehrer Lorenz, was in this area and I also talked to him. recollection? Litzmannstadt?

Q Did you know of the Lidice incident? an Einsatzgruppe? Mittelstelle Einsatzkommandos?

expression. The Volksdeutsche Mittelstelle, the Repatriation Office for Ethnic Germans, had Kommandos that had to look after those areas which I described and these kommandos took over the work from me and in that respect I was in contact with them.

Q Did you continue to work together with this group? Germans, and if we heard about the fate of those as for example of the 50,000 Ethnic Germans in the Crimea, we informed these groups about it. the Race and Resettlement questions? This was the Repatriation Office for Ethnic Germans. I don't know whether these people belonged immediately to the Volksdeutsche Mittelstelle or to the Higher SS and Police Leader who had special officers for these tasks. In any case, I wish to add immediately that the actual task of the Einsatzgruppe had nothing to do with these kommandos and that they did not help us either. SS and Police Leader Hildebrandt in the Crimea?

Q A few more questions and then I am done. May I assume that it was your opinion that you had to obey an order of the Fuehrer whether you personally would agree or disagree with such an order? human or inhuman?

even unto death?

A Unto my own death? Of course. Of course, in winter, for example, we thought that our lives had come to an end. gruppe Chief that Germany had signed a defense treaty with the Soviet Russia in the summer of 1939? Russia went to war?

A I don't know that. Probably.

MR. WALTON: General, I want to thank you for your cooperation and your prompt answers in this examination.

THE PRESIDENT: Do you have any questions, Mr. Heath?

MR. HEATH: If Your Honors please, yesterday I had begun to ask a question. I think I did not make the relevancy of it clear to the court. Mr. Walton has just touched on it and it is this the plea of the Defendant here obviously is the coercion of a superior order that under the law -

THE PRESIDENT: Mr. Heath, I don't think it is necessary to make any argument.

MR. HEATH: Very well.

THE PRESIDENT: Put the question and then if it seems irrelevant, we will rule on it.

MR. HEATH: Yes, sir. BY MR. HEATH:

Q. Mr. Ohlendorf, you have just said that you felt that you must respect this order unto your own death.

Will you now tell the Court what your present judgment is of the order. Do you think it was a moral order or do you think it was a wrong order which you received from the head of the German state?

DR. ASCHENAUER (Attorney for the Defendant Ohlendorf): I object to this question, Your Honor. Only facts can be asked about and not opinions.

MR. HEATH: May I answer, if Your Honor please. who claims mitigation because of superior orders is putting himself in the position of saying, morally I had no choice. If, in fact, he morally approved of a superior order and therefore would have acted without the coercion of it, if in fact he did not object to the coercion but merely lent himself to the course of action which he would have to follow without coercion, then a plea of mitigation fails entirely, and so here, if the Defendant did these killings because of the coersive effect of an order, with which he disagreed, that is one thing, but if Ohlendorf was himself in full agreement or in partial agreement with the purpose which Hitler had, then the mitigating effect of the coercion oder is fully or almost fully lost.

THE PRESIDENT: Dr. Aschenauer, do you follow that argument?

MR. HEATH: The plea is bad, if it is done willingly.

DR. ASCHENAUER: I wish to point out that these are merely argumentations which have nothing to do with testimony by the witness.

THE PRESIDENT: The Tribunal has indicated that this is not the time for argument, but it would appear that the purpose behind the question is not in the nature of argumentation, but for the purpose of determining whether there can be any mitiation in the offense as charged by the prosecution in the indictment and for that purpose the question will be permitted.

The objection is overruled.

A Mr. Prosecutor, I have already replied to that question during my direct examination by stating that I considered the order wrong, but I was under military coercion and carried it out under military coercion knowing that it was given in a state of emergency and the measures were ordered as emergency measures in self-defense. The order, as such, even now, I consider to have been wrong, but there is no question for me whether it was moral or amoral, because a leader who has to deal with such serious questions decides from his own responsibility and this is his responsibility and I cannot examine and not judge. I am not entitled to do so.

MR. HEATH: If Your Honors please, that is exactly the state of the record and I respectfully submit that we yet have no answer. For this reason: the witness has said he thought it was a wrong order, because it was difficult or impossible of execution, when he was told -

THE WITNESS: I didn't say that.

MR. HEATH: When he was told about it at Pretzsch, he thought it was impossible of execution. I think the very issue which he seeks to avoid is the crux of this question, namely, not whether it was a difficult order, or a wise order, from the standpoint of his, but whether it was right or wrong. The issue is a morale one. The coercion of superior orders goes to the moral coercion and not to the wisdom of the order.

THE PRESIDENT: But, Mr. Heath, hasn't he answered your question?

MR. HEATH: He has said -- he said it was a wrong order.

THE PRESIDENT: Now, what more do you want. Put another specific question and we will see if he hasn't answered. It appeared to the Tribunal that he has answered, but put the question to him.

Q You have said it was a wrong order. I want you only to tell me whether it was morally wrong or morally right.

THE WITNESS: May I correct beforehand that in my reply I never said whether it was a difficult or not a difficult order. That is an ssumption which I don't want to have in the record.

THE PRESIDENT: Then it must have been an error in transmission, because the Tribunal is under the impression that yesterday you stated in your original protest against the order that it was impossible of fullfilment or very difficult of fullfilment. Are we in error in that impression?

THE WITNESS: I said, "inhuman", Your Honor.

THE PRESIDENT: I see, very well. The record indicates just what was said. Now do you want to put another question?

Q I put the same question. Was the order a moral one: was it morally right, or was it morally wrong? to decide on the moral issue, but I considered it to be wrong because such factors are able to bring such results which may mave immoral affects and, in my opinion are bound to have immoral effects. But I fo not think I am in a position to jusge the responsibility of a statesman who, as shown in history, rightly, saw his people before the question of being or not being, to jusge whether a measure in such a fight against fate, for which this leader is responsible, is moral or immoral.

THE PRESIDENT: Do we extract from all that you have said, this thought@ That you are not prepared to pass upon whether the order was morally right or morally wrong, but you do say that the order could only lead to very bad circumstances which would be injurious to Germany

WITNESS: Not only to Germany itself, your Honor. I consider this to be much more serious, even. I see the order which Hitler gave, not as a first cause for this order, but I already consider it as a result of logical developments which may have started - or at least became very obvious - when in 1935 in our opinion Germany was encircled. Such measures must further such developments -- for example, to the effect that instead of an understanding, - hatred, revenge and an exaggereated effort to gain security will become very strong and, therefore, the general insecurity of the word will be increased. For example, causing effects - as can be described with the name "Morgenthau Plan" or requests, as such that Germany is be weakened in its greatness and strength so that this people will no longer endanger the security of any one. That is what I meant by "effect" which might result from such factors, because they are intended for this: while I mean that throughout historical development at some time a chain of hatred or mistrust has to be broken in order to start anew somewhere, and that, for example, I hoped would be achieve through national individual people, but here the chain is continued, a sequence is continued, which instead of reconcialiation breeds more hatred, and increase the feeling for security.

That is my opinion on this.

MR. HEATH: May I put the question once more, if Your Honor please?

THE PRESIDENT: Yes, you may put the question and then the witness may answer it directly, or, if he feels he has already answered it, he may so indicate, or he may refuse to answer it.

We will see what happens. BY MR. HEATH:

Q I do not ask you for a judgment of Hitler's morale; I ask you for an expression of your own moral conception.

The question is not whether Hitler was moral; but what, in your moral judgment, was the character of this order: Was it a moral order, or an immoral order? abstractly for a moral estimation or nothing - but a moral estimation and judgment about a deed of Hitler. And for that reason the judgment which I may make is judgment on the deed of Hitler. Your Honor. You surrendered your moral conscience to Adolf Hitler, did you not?

A No. But I surrendered my moral conscience to the fact that I was a soldier, and, therefore, w wheel in a low position, relatively, in a great machinery; and what I did there is the same as is done in any other army, and I am convinced that in spite of facts and comparisons which I do not want to mention again, the persons receiving the orders and all armies are in the same position- until today, until this very day.

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your moral scruple. It was the fact that you had surrendered to Hitler the power to decide moral questions for you -- is that right?

A That is an argumentation from you which I never said. No, it is not correct. But as a soldier I got an order, and I obeyed this order as a soldier. required - I suppose you did -- if you had a moral conscience you had to judge the orders that came to you. You got an order from Adolf Hitler, and you tell us you accepted his moral judgment absolutely, whether right or wrong, - is that right? I think my answer will not be changed by the fact that you want me to make a certain reply.

Q Let us put it in the negative, then. You refuted to make any moral judgment, and you refuse now to make any moral judgment then, and you refuse now to make any moral judgment on this matter?

Q I am not asking you the reason. I am asking whether you refuse to express a moral judgment as to that time, or as of today. BY THE PRESIDENT:

Q Yesterday Mr. Heath put a question to you which perhaps we did not allow to be answered - but in view of what has now been stated perhaps we might go back just a moment. He asked you whether, when you received this order, any question arose in your mind as to its authencity namely, was the order of such a nature that it caused you to hesitate as to whether there could have been an error in it and would cause you to go higher than the officer who had given you this mission, in order to determine, positively, whether it was uathentic or not. You remember that discussion?

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Hitler, that is, it was Hitler's, it did not give it to you, but it came from Streckenbach.

Q Yes, very well. And his rank was not so high that an incredible statement by him could be questioned? to such extent that you wanted to inquire whether it truly was an order given by Hitler or not; or not, or were you so satified that Hitler knew what to do, and the circumstances were such that even that order could be a logical one, that you accepted it without misgivings, without questioning, without doubts, and without investigation? dispersed, as I explained yesterday, through reaction-to wards Streckenbach, and Streckenbach argumented on all those questions which your Honor just mentioned. So that during this discussion all the questions have been worked on already, and finally. No other solution was loft to us, than according to Streckenbach's experience through his discussion with Hitler it is quite obvious that there is a Fuehrer Order here which under no circumstances can be taken back, or can be cancelled.

Q You indicated a lack of desire to answer Mr. Heath's question on the moral issue. You indicated that it wans't for you to decide the moral question at all. But with every order, with every demand, or request, there instinctively goes a moral appraisement -- you may agree whith it or not --; so when this order was given to you to go out to kill, you had to appraise it, instinctively. The soldier who goes into battle knows that he must kill. But he understands that it is a question of a battle with an equally armed enemy. But you were going out to shoot down defenseless.

Now, didn't the question of the morality of that enter you mind? Let us suppose that the order had been -- and I don't mean any offense in this question -- suppose the order had been that you should kill your sister. Would you not have instinctively morally appraised that, order as to whether it was right or wrong -- morally, not politically, or military but as a matter of humanity, conscience, and justice between man and man?

from the others. I believe during my direct examination plenty of questions of this kind have been dealt with. Probably with the occurences of 1943, 1944, and 1945 which I had - where with my own hands I took children and women out of the burning asphalt myself, with my own hands, and with my own hands I took big blocks of stone from their stomachs, of pregnant women; and with my own eyes I saw 60,000 people die within 24 hours -- that I am not prepared, or in a position to give today a moral judgment about that order, because in the cause if this connection these factors seem to me to be above a moral standard. These years are for me a unit separate from the rest. Full of ruthlessnot in position to take one occurence or rather a small event, of what I experienced and to isolate it, and to value it morally in this connection. I ask, you to understand that from a human point of view.

Q Your answer gave a certain date. You mention the years 1943, 1944, 1945. Naturally, these were years following 1941, when you were confronted with that issue.

MR. WALTON: One thing further, Your Honor.

THE PRESIDENT: Well, let's wait until the recess is over and determine whether you gave anything else.

DR. HEIM: Your Honor, I ask you to permit defendant Blobel to be absent from the Tribunal tomorrow forenoon and afternoon so that I can prepare with him his own examination.

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THE PRESIDENT: The request wilt be granted.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Does the Prosecution have any further questions?

MR. HEATH: Your Honor, please, is this Court going to pursue the question which it asked before the recess, or is the Court through questioning the witness?

THE PRESIDENT: Oh, I thought we had exhausted that inquiry, unless-

MR HEATH: The Court made inquiry on which it got no response from the witness, which was, I think, the ultimate question which Your Honor was putting to him, namely, if you get an order from Hitler to kill your sisten, would you have acted on the order, or would you have had any conflicting moral judgment about the nature of the order? There was no response, and I don't know whether the Court thinks we have gone far enough with the questioning, or, whether we may ask for a response to that question?

THE PRESIDENT: The Court would not insist on the question being answered because of its very nature, but it seems to me that it is a relevant question, but the witness may or may not answer, as he sees fit.

MR. HEATH: May we then put the question to him, if Your Honor, please? BY MR HEATH: and blood, would you have executed that order, or not?

A I consider this question frivolous. The question which is being put to me here by the Prosecution, it deals with people - - with life and death of people, and of millions of people who are near starvation even today, therefore, I can only designate and state that the question is frivolous. killing order, a moral question arises, but if thousands of human beings are involved in it, you can see no moral questions; it is a matter of numbers?

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A Mr. Prosecutor, I think you are the only one to understand my answer in this way, that it is not a matter of one single person, but from the point of departure events have happened in history which among other things have led to deeds committed in Russia, and such an historical process you want me to analyze in a moral way. In fact, I do, however, refuse moral valuation with good reasons as outlined sofar as my own conscience is concerned. I don't refuse answering this last question because of just one person; it is, in order to bring morality on the basis of numbers, but because the Prosecutor now addresses me personally....

Q I shall not address you personally. Suppose you found your sister in Soviet Russia, and your sister were included in that category of gypsies, not a Jewish - - but in, gypsy band, and she was brought before you for slaughter because of her presence in the gypsy baud; what would have been your action? She is there in the process of history, which you have described?

DR. ASCHENAUER: I object to this question and I ask that question not to be admitted. I think the subject has been dealt with sufficiently so that no other questions are necessary. This is no question for cross examination.

MR. HEATH: Your Honor I believe we have met tests which we applied by putting one of his own flesh and blood in exactly the alleged historical stream in which he can form no judgment. I asked him now whether if he found his own flesh and blood within the Hitler order in Russia, what would have been his judgment, would it have been moral to kill his own flesh and blood, or immoral.

DR. ASCHENAUER: I ask for a ruling of the Tribunal upon my objection.

THE PRESIDENT: The question indubitably is extraordinary one, and ordinarily would not be, tolerated, in any trial, outside of a trial like this, which is certainly an extraordinary and a phenominal one. We are dealing her with a charge, which to the knowledge of this Tribunal has never been presented in the history of the human race of a man who is here charged with the responsibility for the snuffing out of lives by the hundreds of thousands - - not hundreds of thousands, but ninetythousand.

If he was not charged with anything so monstrous as that, it does not seem to me necessary for him to answer the question on a moral issue, but if he was presented with an order by Hitler to dispose of his own flesh and blood, whether he would regard that as a moral issue, or not, I believe, that it is a question that is entirely relevent and is not frivolous, and the witness will be called upon to answer it.

THE WITNESS: May I please answer this question in the way it was put by the Prosecutor, and the way it was originally put. I had not finished my statement why I considered this question as frivolous,as the Prosecutor interrupted me.

MR HEATH: The Court has ruled that the question is not frivolous, and it calls for an answer. I urge the Court or respectfully request the Court to ask the witness to answer the question.

THE PRESIDENT: The ruling disposes of this, and the witness will answer the question, so that you do not need to urge or demand.

MR HEATH: I should have added Your Honor, or refuse to answer it, one way or the other.

THE PRESIDENT: I am disposed to believe that he will answer it. Let's see whether he will answer it, or not.

THE WITNESS: I consider this question as frivolous, because it brings a completely private matter into a military one; that is, it deals with two events which have nothing to do with each other.

THE PRESIDENT: Witness - -

MR. HEATH: Your Honor -

THE PRESIDENT: Let's just keep in mind this situation. You are a defendant in a trial, and very serious charges have been brought against you. Your whole life and career are before this Court for scrutiny and examination.

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A question arises regarding an order which you received, and that order calls for the execution, of defenseless people. You will Admit that in normal times such proposition would be incredible, and intolerable, but you claim that the circumstances were not normal, and, therefore, what might be accepted only with terrified judgment was accepted at that time as normal discharge of duties. It is the contention of the Prosecution, that regardless of the circumstances, the killing of defenseless people involved a moral issue, and that under all the circumstances you were to refrain from doing what was done. Now by way of illustration he advances, suppose that you had in the, discharge of this duty been confronted with the necessity of deciding whether to kill among hundreds of unknown people, one whom you knew very well. It seems to me that that is relevant comparison. Now, let's direct our attention to that very question, if you will, please.

THE WITNESS: If this demand would have been made to me under the same, pre-requisites that is within the framework of an order, which is absolutely necessary militarily, then I would have executed that order.

MR HEATH: That is all, sir.

THE PRESIDENT: Witness, I would like to ask one question. Were the men in your command entitled to any increase in pay because of the nature of the operation, or were they paid regular salary which went to all soldiers?

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at any time.

THE PRESIDENT: Now you were travelling in a territory which must have been very strange to you, and you had indicated that you had interpreters, but you must have been confronted with many language difficulties, because of dialects, and so on. Do you suppose that because of those language barriers that any errors might have occurred, so that even individuals under the broadest interpretation of that order were killed who should not have been killed?

A I don't think so. The interpreter whom I had, for instance, my own interpreter was from Russia himself, and he knew the language and the conditions.

THE PRESIDENT: Very well. You stated yesterday the only reason why you did not wish to leave your command was that of a fear your successor might not be so considerate ox your men, as you were. In what way did you regard that, considerate in what respect?

THE PRESIDENT: Well, you were considerate of them, but the Tribunal does not understand in what respect, was it with regard to accommodations, with regard to food, with regard to the manner in which they had discharged this unpleasant duty? in Nikelaev; that, for example, the Higher SS and Police Leader Jeckel, had organized special detachments which had to carry out nothing but executions, and it is understandable that this would ruin these people spiritually, or make then completely brutal. This is an example of what I meant.

THE PRESIDENT: Very well. How much time did you spend, generally, in each community. I presume you were travelling all the time?

A I personally, or with my staff?

THE PRESIDENT: With your staff. With your unit, the Einsatzgruppe?

A I changed my headquarters when the headquarters of the Army moved;

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I always joined the Supreme Command of the Army.

THE PRESIDENT: Now you said that you tried to avoid excesses. Just what do you mean by that? his own.

THE PRESIDENT: You mentioned this morning that apropos something else, that there was a Christmas celebration in your organization. Did you have a Christmas celebration regularly every year?

THE PRESIDENT: Yesterday, you stated that you had attended three executions, and in each one of those executions the subjects were singing the International and that they were shouting their allegiance to Stalin, and you took from that their solidarity to the Bolshevist Cause, and, as I understood your answer, you drew from that a justification for the order, namely, that these individuals had in effect declared their hostility to Germany, and, that, therefore, as a matter of security and self-defense, or as a war measure in itself, it was justifiable to dispose of them in the way they were disposed of?

THE PRESIDENT: I see.

THE WITNESS: I was asked whether I saw any signs that the Fuehrer Order really was based on objective facts, and I meant these facts as one example to show that in these cases the victims actually expressed this attitude. This was not a basis for my action, only an example of what I saw myself.

THE PRESIDENT: Did you take from their singing and from their shouts at that moment, that this reflected an attitude on the part of all that race, which called for aggressive measures on the part of the Reich? visits always were attended by the same demonstrations on the part of the victims. It was not a cause for me to act in any way. It was merely an It was merely an illustration of the actual situation.

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THE PRESIDENT: Now just one more question on this incident. When you observed this demonstration, did you feel any sense of relief that here indeed were enemies of your country, and, therefore, the order which you were executing did have some justification in fact? Your Honor, because in any situation it is difficult to comment on this. I said that I watched this demonstration with respect, for I resepcted even this attitude, and I never hated an opponent, or an enemy, and I still do not do so today.

THE PRESIDENT: Any further questions, Dr Aschenauer? BY DR ASCHENAUER:

Q Your Honor, I only have two more questions. Thye concern the document which was submitted by the Prosecution. I believe it is Exhibit No. 167 - - 174. On page 4 of the German copy. In the original it is on page 3. There are two sentences "we received your directives from the Chief of the Security Police and the SD, and we are informed that we are under your command as far as restricting our mission on the part of the Army is concerned." I want to ask one question. Did you ever have any responsibility of your own about these missions, including the executions, which went higher in responsibility than that of the Supreme Army Commander, as the executor of Supreme command and which would have excluded the responsibility of the Army commander-in-chief over life and death?

A No. This activity was carried out under the responsibility of the Supreme Commander. He alone had the execution power of command, and therefore he disposed over life and death. This responsibility was never limited. your responsibility refers to the manner and type of the execution of the order?

DR. ASCHENAUER: I have no further questions.

THE PRESIDENT: The defendant may now be returned to the defendant's box.

(Witness excused. )

DR. ASCHENAUER: I call Dr. Reinhard Maurach.

DR. REINHARD MAURACH, a witness, took the stand and testified as follows:

JUDGE DIXON: Witness, hold up your right hand and repeat after me: will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE DIXON: You may be seated. BY DR. ASCHENAUER: your person.

A My name is Reinhard Maurach, M-a-u-r-a-c-h. I was born on the 25th of March, 1902, in Simferopol, Professor of Criminal Law, now in Munich. I have no connection with the defendant.

Q I ask you my first question. What is the position of the Soviet Union to international law?

MR. FERENCZ: If your Honors please, I must object to that question; the international law of the Soviet Union is certainly not an issue here. It has no relevance in this case.

THE PRESIDENT: Dr. Aschenauer, the question itself very obviously is irrelevant. If you can show the Tribunal how the attitude of the Soviet Government in any way sheds any light on this issue before us, we will be glad to hear you.

DR. ASCHENAUER: Your Honor, the Prosecution in its indictment refers to The Hague Convention, to the various agreements which were concluded between the various states. It also mentions the general customs of war. This opinion represented by the Prosecution forces me to the conclusion that these conventions and agreements are also valid for the Soviet Union. The Hague Convention, the international usages of war, are bases for the indictment. In this indictment we are concerned with a part of the war history. Therefore, this trial must also examine the principles of international law and the various conventions and what the position of the Soviet Union is to these conventions. It is the thesis of the Defense that a war emergency existed. For that reason we must produce a basis for the practice and theory of international law and the various conventions. It must be shown by the Defense that in reference to the Eastern area, inasfar as it is being dominated by the Soviet Union, a special legal situation existed. For this reason I must ask this basic introductory question, in order to show what the relationship is as far as the belligerency is concerned, from the point of view of the High Command of the Soviet Union, what the relationship is of this High Command to the various uses of war, and what its position is to the various conventions, For this reason I ask that this question be admitted.

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In the final analysis it is nothing but an introductory question. After it I shall go into the specific questions which concern the indictment more specifically and more practically.

THE PRESIDENT: Are you prepared to show, Dr.Aschenauer, that by international law there is a defense to the charges as outlined by the Prosecution in the indictment?

DR. ASCHENAUER: As far is this is concerned, I have already gone into it in my opening statement, I have explained here that international law is not valid for the East

THE PRESIDENT: I don't want you to give me your opening statement again because I think that lasted three hours and a half. Dr. Aschenauer, the trouble is that your question is a little too general. I think you will have to admit that. The question which you have put to the witness is entirely too broad. Now, if you can get it down directly to the indictment and to the specific charges we will gladly hear you and see how much of this we may permit under our rules of procedure.

DR. ASCHENAUER: Then I shall formulate my question differently.

Q (By Dr. Aschenauer) What is the position of the Soviet Union, in its attitude toward international law, to The Hague Convention?

THE PRESIDENT: Well, that is the same thing.

Q (By Dr. Aschenauer) Was the Hague Convention valid for the Soviet Union?

THE PRESIDENT: Dr. Aschenauer, as we understand the defense, especially as brought out by the first defendant, the defendants were compelled to execute an order which come to them from higher authority.

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Not once did the Defendant Ohlendorf speak about Russia and what its attitude was toward the Hague Convention. Their defense is not predicated, as we understand it, upon what Russia did, So wherein is the relevancy of this type of testimony?

DR. ASCHENAUER: The relevance of this testimony lies in the fact that on the basis of the Russian conduct in carrying on the war, the defendants had to count on the fact that a war would be carried on in the fast which would have to be waged outside of the normal limitations imposed by international law, and I want to prove this on the basis of the attitude of the Russian war leadership toward international law. The partisan warfare mentioned by the Prosecution is likewise to be traced back to the attitude about international law held by the Supreme Command of the Russian Army.

THE PRESIDENT: As We understand it, Dr. Aschenauer, you will attempt to establish by this witness that the Fuehrer order was justified because of Russia's attitude toward Germany and toward all those involved in the war. If you establish that, then you must, perforce, concede, and the Tribunal will ask you now whether you are willing to concede this, that the order was a justifiable order and that, therefore, the respective defendants had no reason to complain about the order because it was in accordance with international law. Are you ready to concede that?

DR. ASCHENAUER: I want to designate the Fuehrer order as a preventive measure of the German war leadership. For this reason I must cone back to the war rules as they were valid for the Eastern campaign, that is to the attitude which prevailed before the year 1941, for the Fuehrer order is in the final analysis only a consequence of this Russian attitude.

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THE PRESIDENT: It would appear that you are in this position at this very moment, Dr. Aschenauer, of defending Hitler or defending Ohlendorf. If you prove that Hitler had every right to issue this order, then you are establishing that everything that was done was done in accordance with international law, which would in itself be a refutation of what Ohlendorf himself stated, that he objected to the order.

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DR. ASCHENAUER: No, your Honor, it is this way, I describe the presumed emergency state in which the defendants found themselves and which can be explained from the international law in existence. I must prove how the defendants reached the conviction that the Fuehrer order had to be executed, and one part of this proof is the practical attitude toward international law in existence, I must prove how the defendants reached the conviction that the Fuehrer order had to be executed, and one part of this proof is the practical attitude toward international law represented by the Russian war leadership.

THE PRESIDENT: Then you are going behind the Fuehrer order itself. You are going one step further than the defendant himself did in his defense, is that correct?

DR. ASCHENAUER: No, I don't go any further than the defendant himself did. The defendant said that the execution of the order can only be explained for the existing special circumstances, and the special conditions then existing were a result of the war emergency state then existing.

THE PRESIDENT: But he did say that he protested this order.

Mr. Ferencz.

MR. FERENCZ: I would like to point out to Dr. Aschenauer that this question was raised before the International Military Tribunal and it was held, by the. Tribunal there that regardless whether Russia was bound by The Hague Convention or not, Germany was so bound. So to raise the question here again is completely irrelevant to any of the issues we have brought and outside the jurisdiction of this case.

DR. ASCHENAUER: Your Honor, may I state my attitude towards this objection? This is one of the basic problems in Case 9. In Case 9 it isn't a matter of any facts, but of activities of persons in Russia, one cannot legally evaluate these activities by examining the actual overall situation if one does riot look into the circumstances, the knowledge and the experiences of the defendants, which induced them to commit those deeds. The Prosecution argues that the question of an emergency, and of a presumed emergency is superfluous since the IMT verdict established a state of aggressive war against Russia.

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In such case there would be no state of emergency for the attacker. Whether the IMT verdict about the aggressive war against Russia did justice to the actual historical situation in 1941, I leave outside of this trial. This IMT verdict does not touch upon the legal situation of the 23 defendants here in Case 9. self-defense cannot be denied to them in face of the situation in which the citizens of the State found themselves after the speeck of their Chief of State of the 22nd of June '41, except if it were proved to them that they knew, contrary to the speech of Hitler, that, it was a purely aggressive war, that they wanted it, and that they were preparing for it. of the Defendant Ohlendorf with all clarity. Here at the latest the Prosecution should have brought up its objections. Nothing of the kind happened. This evidence admitted without the slightest objection, and now that this line of thought is to be pursued and confirmed by an expert opinion, and since this is being objected to by the Prosecution, it can have only one reason, that after the defense of the Defendant Ohlendorf, the great importance of these points have become clear to them. Furthermore, it is doubtlessly true that international law and international customs of war have been established for cases of war only because the one partner always will plead an emergency and unrestricted warfare would be the result. International emergency and international self-defense are independent of the fact whether anyone is the attacker or the one being attacked and is independent of any such subsequent findings. Finally it happens that one of the war partners, apart from the cause of the war, declares himself not bound by international law or by the established customs of war. Maurach's testimony is to show that this situation applies to Germany, and especially the intentions, motives, and aims of the defendants in reference to the Russian conduct which was to be expected from the theory and practice applied before 1941.

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As far as the intensity of the criminal will of the defendants is concerned, it is legally relevant and necessary to find out for what motives they acted. The clarification of this psychological question plays an important part at least as far as the sentence is concerned. The cutting off of any evidence which tries to explain the motives of the perpetrator is therefore equivalent to an inadmissible restriction of the defense. Evidence such as this cannot be rejected with statements which belong only in the judgment of the Tribunal. If this evidence was such that on examining it one would have to see chat it was neither relevant for deciding guilt or the sentence, the Tribunal could refuse the evidence. In this case the evidence belongs to the usual Subject matter of the trial which the Tribunal may only evaluate at the end of the trial. Convention and the customs of war as bases for the legal evaluation of the actions. Therefore it is justifiable to examine the Russian side of this war in order to find where these bases were actually present. The partisan warfare was claimed even by the Prosecution. Why should it not and care it not be proved that this partisan warfare, Which originally was responsible for many executions was outside of international law? Likewise it is important that, beginning with the Stalin call for partisan warfare of 3 July 1941, the defendants found the previously assumed emergency confirmed as the war continued. The indictment claims that there is no emergency state when there is an aggressive war. When the Prosecution claims this it basically confirms the standard for all criminal laws, namely that a national emergency exists. It doubts merely that in the special case of the belligerent state between the Reich and the Soviet Union, which was declared, unfavorably for Germany, as an aggressive war, a National emergency was to be applied. This decision of the Prosecution is to be clarified since Ohlendorf and the others base themselves on this national emergency.

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to enable the Tribunal to determine the subjective side the intentions, the goals, and the motives of the defendants. The claim of the Prosecution is erroneous for two reasons.

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THE PRESIDENT: Dr. Aschenauer, may I interrupt, please. You stated in your argument up to this point that you might interpret our refusla to hear this evidence as a constriction upon the opportunity of the defense to present its case. We would look with great regret upon any interpretation by you or your brother defense counsel that this Tribunal in any way prevented the defense from presenting its case, regardless of what it may be. It appears to us at this juncture that what you are attempting to show by this witness is irrelevant. However, we will permit some questions just to see how you develop your theme. If it appears, after a few questions, that the testimony of the witness is entirely immaterial to the issue, then we will once more examine the relevancy of it. If we allow the witness to testify to the full extent of his knowledge on this particular issue, we will allow the prosecution to make any motion that it sees fit after the testimony is in as to whether this still is irrelevant, if it turns out to be irrelevant and it should not be excluded. Q (BY DR. ASCHENAUER) Then please answer my first question.

THE PRESIDENT: Now may I just say this in addition, Dr. Aschenauer and to the witness also: Let us try to be very specific with questions and with answers. The field of International Law is limitless and boundless and if we have a professor on the witness stand and he takes us as students in his classroom, he could talk for hours on any given subject and, undoubtedly interestingly. Let us try to confine it to the actual issue before the Tribunal. of 1907 cannot have any application to the Soviet Union. This is a decision which is not connected with legal theory and general questions, but in my opinion it is to be examined positivistically whether these regulations of this international convention of 1907 are binding for the Soviet Union, either because it was a signatory or because of continued validity. I don't think I am wrong in assuming that an express adherence of the Soviet Union to the treaty has not been registered and therefore it cannot be determined whether the Soviet Union signed it or not.

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Of course, this still does not mean anything. One would have to go on and examine perhaps, whether the Hague Convention is valid for the Soviet Union because it was signed by the Czarist government and because the Soviet Union is the legal successor of the Czarist Government. But I would like to deny this question also, for the following reasons: successor of the Czarist Government has been very variously answered in legal theory, and the Soviet Union has-unfortunately, I might say - not taken an unequivocal position on this issue. Once in 1924 it stated to the Institute Intermediary in answer to the question whether a treaty concluded in 1917, a treaty concluded before the Soviet Union existed, whether such an agreement is binding to the Soviet Union that this cannot be answered generally, but that it would have to be interpreted from case to case. In all political treaties the Soviet Union has taken the attitude that such treaties which represent a certain limitation on its sovereignty, do not automatically continue to be valid, but that it was different with its practice on economic agreements, world postal agreements, which were not political agreements, but when political treaties were involved, the Soviet Union reserved the right to sign it. Therefore, it always represented the attitude that these political treaties were only valid for the Soviet Union if an express renewal or a new signature takes place. As I said, an express signing did not take place, a silent agreement -

THE PRESIDENT: Professor, just a moment.

MR. FERENCZ: If Your Honors please, I don't want to hinder the defense in any way, but in order to save time, we will concede whatever the Professor states as his opinion; either the Hague Convention does apply to Russia or does not apply to Russia and we will concede, if he will just state what his opinion is -- that is, we will concede that it is his opinion.

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THE PRESIDENT: Yes. That's quite a concession, Dr. Aschenauer. He is willing to agree with you on either side and then let you draw from that statement whatever you feel is logical in your defense, because it must be very clear even to you, Dr. Aschenauer, that the way the professor has begun his dissertation -- that it may be a rather long one, because he is more or less trained to go into a Question with the greatest of minutiae and with the blackboard, We might be here much longer than even you expect, if we don't put a limit on his testimony.

DR. ASCHENAUER: Yes.

THE PRESIDENT: Why don't you ask him directly whether Russia is or is not bound by the Hague and Geneva Conventions. Then, at least, we'll have briefly his answer. Then, if he wants to explain why, he can in a few brief sentences fortify his conclusion.

DR. ASCHENAUER: Yes, I shall try to be precise.

Q (BY Dr. Aschenauer): Witness, was the Soviet Union bound by the Geneva Prisoner of War Convention? to the Soviet Union and for this reason: Because this Convention was concluded in 1929, that is, at a time when the Soviet Union already exited, and the Soviet Union was not a signatory to this convention. would make considerable differences, all according to whether the prisoners of war are proletarians or class enemies? statement nor is any statement of the War Ministry existent, but there are other explanations by the leading representatives of the Soviet International Law: Professor Korovin, Professor Pashukanis, Sabanjn, and others, and here, as a rule, they stated that the Soviet Union would draw a difference in the treatment of its prisoners, all according to whether these are proletarians or non-proletarians, that is, class enemies.

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The proletarians can be educated in a prisoner-of-war camp but the class enemies have to be isolated and have to be made harmless. ered admissible, if they represent a danger to the leadership of the Red Army?

A This question is to be confirmed basically, principally. Examples for this are the evacuations of elements of populations, even before the war, from border territories, and, above all, during the War, after 1941, the evacuations of even greater groups of people from the war areas, first of all, of the Tartars from the Crimea, of the Germans from the Crimea, and of all the Volga Germans form the Volga area.

Q Would this danger have to exist more concretely? evidence of any treasonous attitude of these people. It was sort of a general preventive measure.

MR. FERENCZ: If Your Honors please, all the questions presented by the Defense thus far have had no bearing whatsoever on the charges brought against the Defendant Ohlendorf or any other defendant in this case. We, therefore, ask that this line of questioning be discontinued and that everything stated by the witness be stricken from the record as irrelevant.

THE PRESIDENT: Certainly, Dr. Aschenauer, the Conventions with regard to prisoners of war aren't applicable here, because we are not discussing prisoners of war. We are discussing the civilian population.

DR. ASCHENAUER: Your Honor, the Hague Convention, on the other hand, is a matter of this case and -

THE PRESIDENT: Let me interrupt, Dr. Aschenauer, please. You have heard the prosecution's objections and the Tribunal has attempted to indicate also how it looks upon this particular issue. Now, as we said before, in no way will we restrict the defense in presenting what to them seems the logical defense in this case, always within the bounds of reason.

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Now we will recess at the present time and I would suggest that you talk with the professor after court adjourns and the professor has heard this discussion back and forth and perhaps you can crystallize a few precise questions which will bring from the witness precisely what you want and then we'll make the ruling on the prosecution's objections tomorrow morning. Is that clear?

DR. ASCRENAUER: Yes.

THE PRESIDENT: Yes. The Tribunal will now be in recess until tomorrow morning at 9:30 o'clock.

(The Tribunal adjourned until 16 October 1947, at 0930 hours.)

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of America, against Otto Ohlendorf, et al.,

THE MARSHAL: The Honorable, the Judges of Military Tribunal. No. II-A.

Military Tribunal No. II-A is now in session, God save the United States of America, and this Honorable Tribunal.

MR. WALTON: May it please the Tribunal, one short motion this morning before we get down to the business of the Court. The Prosecution this time moves the Tribunal for an admission of the Document which was introduced yesterday during the cross examination of the Defendant Ohlendorf. That document is No. NOKW-256, which has been given the identification number of Prosecution's Exhibit No. 174. We respectively move the Tribunal at this time that this document be admitted into evidence as part of the Prosecution's case.

THE PRESIDENT: Prosecution's Exhibit No. 194 will be admitted into evidence as part of the Prosecution's case. Dr, Aschenauer.

DR. GAWLIK: Dr. Gawlik for the defendant Naumann. Your Honor, I ask that the defendant Neumann be excused immediately because his defense has to be prepared, and that he be led to Room No. 57 to discuss it with me. I make this motion now because Professor Maurach is to be examined as an expert, and, therefore, it was my intention to have Herr Naumann excused in the afternoon, but I just heard Professor Maurach will not appear, and that Herr Spengler will be examined immediately, and for this reason I would like now to make this motion.

THE PRESIDENT: The motion of course, will be granted. You understand that you will be the next in order?

DR. GAWLIK: Yes, Your Honor.

THE PRESIDENT: Very well, all right. The defendant Naumann will be excused and will be taken toRoom No. 47 where he may be in conference with his attorney, Dr. Gawlik.

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DR. GAWLIK: Yes, your Honor.

DR. KOHR: Dr. Kohr for the defendant Blobel, as representative for Dr. Heim. I make a motion to have the defendant Blobel excused also, and that he be brought to Room 57 also. There seems to be a mistake here. The motion was already made yesterday afternoon, but the defendant Blobel was brought in here erroneously. It is necessary that in order to prepare the defense he be brought to Room No.57 to discuss the defense.

THE PRESIDENT: You would like to do that immediately, would you?

DR. KOHR: Yes, Your Honor. Yes, I would like to have it done immediately.

THE PRESIDENT: The defendant ---

DR. KOHR: It was a mistake, He was already excused for today, but he had to appear anyhow.

THE PRESIDENT: Yes. Well, we will rectify the mistake. Immediately the defendant Blobel will be excused, and taken to Room No. 57 so as to be in conference with his attorney.

DR. KOHR: I thank you, Your Honor.

THE PRESIDENT: You are welcome.

DR. RIEDIGER: Dr. Riediger for the defendant Haensch. Your Honor, the situation with Haensch is similar, on the basis of the decision of the Tribunal yesterday Haensch has been excused for the proceedings of today, and, tomorrow, but he was never brought in anyway, and I ask that he be dismissed, and that he be brought back for a discussion on his defense.

THE PRESIDENT: You also want him taken to this Room No. 57?

DR. RIEDIGER: No, if it is possible, to his cell, because he has to work himself.

THE PRESIDENT: And you want that done immediately?

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DR. RIEDIGER: If possible, yes. If this does not create any special difficulties.

THE PRESIDENT: I see no difficulty whatsoever. The defendant Haensch will be excused so that he may be interrogated by his counsel, and will be taken from the defendants box, immediately.

DR. RIEDIGER: Thank you.

THE PRESIDENT: I understand we are having some mechanical difficulties which are very brief in duration, we hope so, and we will suspend for two or three minutes. We are ready Dr. Aschenauer,

DR. ASCHENAUER: Your Honor, Dr. Reinhard Maurach was to testify yesterday in Court, and was to give an expert opinion founded on the subject of what were the results from the attitude and the war practices of the Soviet Union sofar as International Law is concerned, and, what in his opinion this has to do with the war emergency state -- war with the presumed emergency state, Your Honor, I have come to the conviction that the Tribunal would get a better and a clearer picture of this if this man would give in writing an expert opinion in the form of an affidavit. Therefore, I ask that this expert opinion be admitted as an exhibit.

MR. FERENCZ: If Your Honor, please, we have not as yet received any copy of the exhibit offered by the Defense ... However, if it pertains solely to questions of the Russian attitude towards International Law, and, is not more closely connected with the charges in this cass, we object to it as not being relevent.

THE PRESIDENT: This is a repetition of the objection made bythe Prosecution yesterday, and the Tribunal indicated yesterday that we were disposed to hear the Professor in order to ascertain that his testimony would be relevent. The Tribunal is further disposed now to receive the Professor's opinion in a written form, so, therefore, the objection of the Prosecution is overruled, and you may have the Professor prepare his expert opinion in writing, and to submit to the Tribunal as an exhibit on behalf of the defendant Otto Ohlendorf, and at the same time we will entertain a motion on the part of the Prosecution if itsees fit to have it excluded, if the Prosecution at that time again insist that the evidence as adduced by the exhibit it irrelevant.

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MR. FERENCZ: One mere point, Your Honor. As concerns this exhibit we waive our objection to net having received it in advance, but request the defense counsel be instructed that as regards the calling of witnesses to the stand, and the introduction of additional. exhibits, the Prosecution be notified twenty-four hours in advance.

THE PRESIDENT: Well, Dr. Aschenauer, I am presuming you are familiar with the rule, and in announcing it to you I would like the defense counsel to be reminded that the rules require that the Prosecution be informed twenty-four hours previously with the presentation of witnesses, or of an exhibit, with the nature of the testimony to be presented by that witness, or in the exhibit.

DR. ASCHENAUER: Before I call the witness Spengler, I would like to make a statement that I renounce the witness, Justus Baier. I want to use the witness Spengler completely. The witness Spengler is a character witness, and an export witness, but in order not to take the time of the Tribunal unnecessarily, I will do without the witness Herr Baier, and I shall be satisfied with submitting the affidavit.

THE PRESIDENT: Very well, we will accept the procedure.

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DR. ASCHENAUER: I call Dr. Wilhelm Spengler as a witness.

DR. WILHELM SPENGLER, a witness, took the stand and testified as follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me: speak the pure truth, and will withhold and add nothing.

(The witness repeated the oath)

JUDGE SPEIGHT: You may be seated. BY DR. ASCHENAUER. draw your attention to the translation difficulties, and I want to ask you to speak slowly, and to watch the lights, as these mean interruptions and slowing down. The first question. First give the Tribunal information about your person, and about your education and your profession.

A My name is Dr. Wilhelm Spengler, and I was born on 19 March 1907 in Ratholz in the Allgaeu. I am the son of a teacher, Wilhelm Spengler, and his wife. I attended public school in Buchsheim, near Memmingen, in Suebia. The High School in Memmingen, I graduated from High School in 1925 in Augsburg. Having grown up among the confusion of the First World War, and in view of the chaos and the spiritual and ideological world dissolution of the war epoch, and on the relative construction of values -- (interruption) A (continuing) It was up to me to look out for myself, and to find my own spiritual basis for my life.

For this reason I studied European cultural history for six years, and literature and philosophy at the Universities of Munich and Leipzig.

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I got a Ph.D. and in 1932 in Leipzig also I passed the State examination for teaching at a High School on the subject of German, History and Philosophy, with the aim of a scholastic career.

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Q Witness, did you reach your goal?

A No. This shows the desperate situation of the scholastic German youth in these years. The Commissar State Examination in Saxony for teachers, Professor Hoehn told me that despite my good examinations, I could not be employed because of an oversupply of teachers. That is, I could not get a definite position for fifteen years, that is 1948. This situation as assistant teacher jobs, did not provide enough for my life and too much for death. I could not do any more as young man, than my graudation with honors and my PhD, and my state examination was excellent, qualified me, and nevertheless I was on the street without any employment. Just to show you this general situation I mention these results of my examinations.

Q From where did help finally come to you?

Q Now, Witness, we come to your political career. Did you belong to the Nazi Party?

A No, I did not belong to the Nazi Party at that time. If in my whole student years there was something which could not arouse my interest, then this was politics. The confusion and the talks of the dozens of parties was for me so much more of a reason for me to concentrate only on my studies. how did you come to this contact? instructor at a university. I became the aid of Professor Hoehn in Jena. I heard from him for the first time that such a thing as an SD was to be formed, and he told me that leading agencies of the Party in Berlin, to which he had connections, had in mind to form an objective information about spiritual life, about sciences, about the situation at universities, and that they wanted to have a picture of how these various cultural groups thought about the formation of the National Socialist State.

He asked me whether I would be prepared to give him such information.

Q How did you decide that? by the State, and since I could not count on any definite position until 1948, but since here I saw a possibility that I might find work and work objectively, and express my feeling, even critically, that I could be useful in this job, and since I could work at a central agency and could occupy a policy-making position, I said to myself -

THE PRESIDENT: Just a moment, please. Now, you have been telling us what you had been doing. Now you tell us the conversation you had with yourself. Now, in this very interesting dialogue between you and yourself, what are we to gain from that which will help us in deciding the case of Otto Ohlendorf? In other words, Dr. Aschenauer, I am afraid that you are allowing this witness to go into too much detail with regard to his own life. What is the relevancy of this?

DR. ASCHENAUER: Your Honor, I want to clarify the following questions by means of this witness: According to what points of view did Ohlendorf carry on his activity in the SD: secondly, what was the effect of the opposition of Ohlendorf; thirdly, by means of the SD and in the SD, Ohlendorf had humanitarian goals, and he defended these goals against anyone without any regard of his own person so that therefore he made enemies and incurred serious threats.

THE PRESIDENT: But, Dr. Aschenauer, this witness is giving us the story of his life, not of Ohlendorf's life.

DR. ASCHENAUER: Your Honor, I had to come back to the time which this witness himself lived through in order to show the Tribunal what this man lived through and what his own opinion is. Your Honor, I had to go into these things because in the cross-examination, it is up to the Prosecution to also examine the character of the witness. Therefore, I have asked these introductory questions, and I shall not come back to these questions. My next theme will be the SD work, which was Ohlendorf's aim, and I must, by describing this SD work, form the basis for Ohlendorf's opposition against the totalitarian state.

ent II/2, and he struck me very quickly.

Q Now, why? the wearer of a golden party badge, never did I hear from such a man such polished and critical remarks about the development of National Socialism. He made this criticism about the various economic fields, and he showed that the actual activity of these economic departments in the life of the German citizen is not the realization of National Socialist aims, but that it is a decadence from the original idea, a divergence from the original idea.

It is not the realization of a national organized life in the nation, but the culmination of the old capitalistic economic forms, but now by means of the authority of the Party. He also gave me concrete examples for this criticism out of the daily work for the justification of this criticism. ask you to speak more slowly. Witness, what was the effect of this criticism in the office, how was his attitude judged in the rest of the office?

A The effects were various. Some of these people saw in him a man who had a very clear philosophical picture of things which to him meant National Socialism, and who from this picture had criticized actual conditions, and who had the belief that by this criticism he could reform these actual conditions, but the others saw in him, even at that time, an intellectual pessimist and one who only sees things in a very dim light.

Q: Witness, what connections do you know of which caused Ohlendorf to become Chief of the Domestic Service of the SD?

A: These connections took place in the first half of the year 1939. No clear picture of what this SD was to be and was to become, had as yet been developed, for in the beginning, in its embryonic beginnings, immediately after the so-called assumption of power, a part of this SD, the so-called Central Department II/1. was the legitimate enemy information service of the Party and was to inform about the status of enemy tendencies and ideologies within the total structure but already in 1934, '35, Hoehn began to build his cultural department into a reflection of the spiritual and cultural life, of the life of law and administration and of economics, and his successor. Six, also strove to develop a general information service about these matters. developed as the latter Office IV of the RSHA and had achieved complete independence. From the beginning on, as far as the enemy information service and observation was concerned, the Gestapo had available its own investigation offices and its own information service. That means that the concept "enemy" in the SD which was developing became smaller from year to year, and in 1938 the development was given a final coup de grace in the sense that the enemy observation disappears even as an informational task. This was finally completely excluded from the SD and was given to the competence of the Gestapo alone. This was decided in the so-called decree of separation of functions. From this period of time on the SD, and this is true for the entire Office III of Ohlendorf, on the SD has had nothing to do whatever with concrete enemy information.

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This became the competence of the Gestapo alone. Including all connecting questions on informational measures.

Q: Witness, what became of the Office of Cultural Affairs which had been directed by Hoehn and later by Six, that is to say of the Department II/2, of the so-called Domestic Field (Lebensgebret).

A: From this remaining apparatus Ohlendorf now developed Office III, and from 1939 on until 1945 Ohlendorf gave this office its character and its aims and its goals and its ideas.

Q: Witness, can you tell us about the ideas, the loading ideas, according to which Ohlendorf performed his SD work, can you describe this to us briefly?

A: Since I was active in this office of Ohlendorf from the beginning and was active until the end, and since I was the department head of Culture and Science in this office, I can doubtlessly describe this backbone of the office, this Office III, and I must say this right now, Ohlendorf had a religious central idea about human beings which was the center of his thinking, and which he emphasized to us one hundred times during conferences.

THE PRESIDENT: Witness, you have used the phrase "religious central idea". Do you mean, by that that he was a member of a church and was given to religious worship, or are you using that phrase in a generic sense?

THE WITNESS: It was his inner philosophical religious philosophy.

THE PRESIDENT: You say it was an inner philosophical business. Did you look into his soul?

THE WITNESS: It was an inner philosophy which he

THE PRESIDENT: Yes, but you keep saying "inner". What sort of spectacles or apparatus did. you use to look into his inner soul?

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I am very anxious to know how you looked into his inner soul.

THE WITNESS: Your Honor, he always told us his thoughts repeatedly and repeatedly and he developed then over a number of years.

THE PRESIDENT: As far as Otto Ohlendorf's inner soul is concerned and his outlook upon life in general, he expressed that attitude from the witness stand with a clarity that you have not yet approached. I don't think that anyone could tell us in better language than Otto Ohlendorf spoke himself just what he thought and felt, so now in your testimony please give us objective facts, what

Ohlendorf did, what he said, but don't try to tell us that you roamed about in the inner recesses of his soul, because we don't know that you are capable of doing that.

Q: (By Dr. Aschenauer): Witness, give us practical examples according to which Ohlendorf performed his SD work.

A: I can give concrete examples from the work of this Office III. The contempt for all intellectual things and academicians, on the part of the NSDAP, is well known. Throughout long years of information service the organization of the spiritual man and of cultural accomplishments in the framework of a people has always been brought out again and again, but finally we succeeded to change this evaluation of schools and intellectual things. Goebbels, on the basis of these reports, finally declared himself prepared, by means of a decree of the press conference of the Reich government, to avoid any contemptuous evaluations of sciences or scholars and teachers and to avoid such remarks in press, theater, radio and literature, and to forbid such remarks. I think it was in the fall of 1943 Goebbels invited the high school principles to convene at Heidelberg and he tried to establish contact with the scholars aria to get them to agree to the Party program.

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This would not have been possible without the tireless efforts of the Information Service of the SD in which the justification of these intellectuals was always emphasized again and again. When Goebbels became the representative of the Fuehrer for total war, the high schools and universities were to be closed immediately. On the order of Ohlendorf almost all German universities took it upon themselves to defend their scholastic activities and thus we were able to avoid that the intended closing down of all schools would be undertaken in general and would only be done in single instances.

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Of course, one cannot state in detail how many young scholars and how great a fraction of the succeeding academic generation were enabled to carry on their work and that they were not destroyed by the war through this measure. When the Speer Ministry decided that research was not inportant for the war, and since scholars were drafted to the Army withoug any questions, the continuous support and collaboration with the Reich Research Office, through this cooperation it was brought about that a Fuehrer decree was issued and this Fuehrer decree ordered that the drafting of research workers would be stopped and that 5,000 research workers and scientists would be brought back to their research institutions from the front lines. If a spokesman for the American foreign office -

MR. WALTON: If it please the Tribunal, I fail to see the relevancy of this line of testimony. I have listened very carefully and I object to this line on the grounds that it does not pertain to the issues involved in this case. If, however, this witness is a character witness, I make no objection, to him stating his opinion of the character of ohlendorf, but I do object to the record showing a dissertation on the cultural history of Germany from the year 1931 to 1945. We are not interested in the cultural history of Germany or in the Information Service of Germany during the war years.

THE PRESIDENT: In this trial?

MR. WALTON: In this trial, yes, Sir.

THE PRESIDENT: Dr. Aschenauer, it must be obvious to you with all the zeal with which you naturally manifest in behalf of your client, and justifiably so, that what this witness is talking about now has no relevancy to the issue and can be of no assistance to this defense. It is just merely a discussion on something which is of interest, but not in this trial, please try to bring the witness directly to the Defendant Otto Ohlendorf, what he did, what he said, and how what he did and said affected him, in so far as the charges in the indictment are concerned. And let me suggest, Dr. Aschenauer, at this juncture for all defense counsel in the preparation of witnesses please, do not fall into the groove or pattern which has apparently been marked out for this witness.

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Try to adhere directly to the issue and give the Tribunal facts which will illuminate the issue and not illuminate the whole world as scholastic learning

DR. ASCHENAUER: Your Honor, the Defendant Ohlendorf is charged with Count 35 membership in a criminal organization. This activity, this work, which the witness has described as the work of the Defendant Ohlendorf was the activity of the Defendant Ohlendorf in Office III, for which he has been accused. In my presentation of evidence I shall come to the opposition of Ohlendorf against the totalitarian state. For this reason, I also had to use part of the time to explain what Ohlendorf did in his Office III. This is nothing else but the admissible exculpation proof.

THE PRESIDENT: Well, the defendant is charged, in Count III with membership in the SS. Now how does this testimony that Goebbels sent all the students to the front in any way exculpate the defendant from membership in the SS? Now Ohlendorf was or was not a member of the SS. If he was not, that simple statement suffices. If he was, then it must be shown that he was unaware of the criminal purposes of the SS as outlined in the decision of the International Military Tribunal. If that can be shown, then he was exculpated insofar as that count is concerned. Now, will you please try to adhere closely to that very definite narrow issue.

DR. ASCHENAUER: Your Honor, may I say a few words to that? The Control Council Law No. 10 admits proof of exculpation. It says here that a man can be exculpated if he did not know the criminal intents of the organization. I ask, Your Honor, isn't it a proof of his exculpation if a man worked against the aims seat down by Himmler and other people, namely, the totalitarian state. I want to hear-the proof of exculpation and, therefore, to this restricted extent, I thought I could give the Tribunal a basis on which I could build later on.

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If it is sufficient to the Tribunal, I shall continue and discuss the contradictions which arose.

THE PRESIDENT: The difficulty is very obvious. The witness has prepared himself to testify along a certain line and he is having a hard time to deviate from this program which he has already outlined for himself. That is the reason I wanted to admise other defense counsel not to let other witnesses prepare themselves in this manner. He is covering entirely too much territory. We have said that whatever Ohlendorf said and did, which is in any way relevant to Count 3 or the other counts will be admissible. Now let us try to keep in mind the Defendant Ohlendorf at all times. Let us proceed.

Q (By Dr. Aschenauer): Witness, please describe the controversies of Ohlendorf and the leading personalities and give the reasons. disagreements of Ohlendorf on the one hand and Heydrich and Himmler on the other hand. Here we find diametrically opposed disputes in their various goals. Himmler and Heydrich had the aim to take the entire SD and incorporate it very closely into the Security Police and to take the SS and Gestapo, the Criminal Police, and the SD and make out of all of them a State Protection Corps. Opposed to this incorporation of the SD into a State Protection Corps, Ohlendorf objected for years as strenuously as a lion. The final disagreement between Himmler and Ohlendorf ends with a dispute between Himmler and Ohlendorf on the subject of this State Protection Corps. Shortly after Ohlendorf returned from Russia, during a discussion with Himmler, Ohlendorf protested against such a State Protection Corps, which was to protect the Nzai reality, and he objected so severely that Himmler did not want to hear any of this bullying. The incorporation of the SD into such a State Protection Corps was in disagreement with Ohlendorf's basic plans, namely, the position which he had set up for himself, namely, to work for the people, for the nation, for its citizens, and for their wishes and desires, their needs, and their criticisms, and not to work for the totalitarian state.

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I may perhaps have exaggerated a little bit -

THE PRESIDENT: No, no. Don't exaggerate. Let's have the facts just as you know them.

THE WITNESS: Yes, yes, Your Honor.

Q (By Dr. Aschenauer): What were the reasons for the dispute with Ley? that is the regimentation of the German man from the cradle to the grave. From those who developed the DAF, beginning with the DAF kindergarten down to the DAF vocational education, even about the regulation of leisure time, in the DAF man was being regimented from cradle to the grave, and he was ordered about from cradle to the grave.

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Q. May I interrput you, Witness. I ask you to be brief and only give the essential facts.

A. Against these policies of Ley, Ohlendorf made reports for years and was considered an opponent by Ley himself. Ley complained so continuously and bitterly to Himmler about these SD reports and Himmler did not approve of the work of Ohlendorf, but criticized Ohlendorf as an intellectual beast. He even limited and restricted the Information Service so that Ohlendorf from the middle of the war on was able only to send to Himmler about 1/10 of this critical work against the Nazi reality. Thus the Reich Press Chief, Dietrich, complained about these reports, because the Ohlendorf reports showed the actual popular opinions about these press reports and the Army reports. Thus Goebbels wanted to have Hitler dissolve the SD because when Goebbels gave his speech in the Sports Palace to open total warfare, a speech in which he called on the people with questions; "Do you want total war?" in the extremely critical SD report an out the -

MR. WALTON: May I renew my former objection, please?

THE PRESIDENT: Now we are going to hear a blow by blow account of Goebbels' speech in the Sports Palace and how the audience responded to his various rhetorical questions. Now how does that help us in deciding the question of the guilt or innocence of Otto Ohlendorf?

DR. ASCHENAUER: Your Honor, I don't want to come back to this complex of questions and I shall go into the Jewish question, which is the basis for the prosecution indictment.

THE PRESIDENT: Yes.

Q. (By Dr. Aschenauer) Do you know the attitude of Ohlendorf towards the Jewish problem?

A. Even though the Jewish problem did not belong to the field in which Ohlendorf worked, I can, nevertheless, testify to his concrete opinions and his conduct, as far as the Jewish question is concerned, because in reference to the general political situation about the Jewish problem Ohlendorf would express himself on this problem, and also acted on it.

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Ohlendorf's attitude towards the Jews can be gathered from his attitude towards the concept, "people." Jews were people for Ohlendorf also, not German people, that is, but foreign people, but because they were people they were for him justified from the world order and world situation.

Q. Witness, what practical conclusions did Ohlendorf draw from his attitude?

A. Following his practical attitude Ohlendorf judged events of the so-called Crystal Night in November 1938 and he rejected these events in his reports by the Group III D. He stated his attitude against the wearing of the Jewish star, because this was a contradiction to the dignity of the human being. In his economic reports he also stated his objection against the boycott of Jewish business, in 1835 already when the Jews in Germany who held a great number of key positions in the medical field, press field, legal field and so forth, had to leave these positions, because the figures highly exceeded the small percentage of the Jewish population with the German Reich.

Q. Witness, what do you know about a minority statute for the Jews which Ohlendorf worked out?

A. The most important step which Ohlendorf took about the status of Jewry and their position in Germany was his request to Heydrich around 1938 or 1939, to effect a minority statute for the Jews in Germany so that such a minority statute would lay down the rights for this alien group which happened to live in Germany and that such a statute would regulate those rights of the actually undetermined status of Jewry. I know that with this suggestion to Heydrich which Ohlendorf made spontaneously on his part, because he was not even competent to deal with these questions that Ohlendorf was thrown out when he made that suggestion. I witnessed his bitterness, how aroused Ohlendorf was about this brusque refusal, of Heydrich to listen to him. The events did not let Ohlendorf rest in peace afterwards either. Despite the brusque re fusal which he got, about a half year or three-quarters of a year later, Ohlendorf made another attempt to have this minority statute established as a legal regulation, just like the other minorities in Germany had their own autonomy.

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Here the result was exactly the same. Heydrich simply refused --

Q. Witness, do you know whether Ohlendorf voluntarily reported for the Eastern campaign, or whether he was ordered to report?

A. Ohlendorf did not report voluntarily for the Eastern campaign. He was ordered to report. Ohlendorf at that time was only honorary head of the office and in his main position he was manager of the Reich Group Trade so that for the time being Ohlendorf was not able to report as Heydrich and Himmler requested, because he was made indispensible for the Reich Group Trade, but during the Polish campaign various incidents must have happened about which I did not hear in detail, but which induced Himmler to rebuke Ohlendorf, which came by way of Heydrich down to Office III, and reads about as follows: Ohlendorf's weaklingsand cowards did not prove satisfactory in Poland. It was about time that these men would be committed in combat and Ohlendorf above all. Heydrich then asked Ohlendorf several times and asked him personally when he would report for the campaign. Ohlendorf objected for the following reasons: He had never worked in the field of the State Police; that he had no experience in Police matters, and, in addition, Ohlendorf had never been a soldier; beyond that, it was against Ohlendorf's nature to direct various units of the State Police and the Criminal Police.

Q. Witness, do you know anything about whether Ohlendorf in the spring of 1941 still worked on the Minority statute for the Jews?

A. I don't know any details about this. Even though I thought about it, I cannot give you the year. I don't know whether it was 1939, 1940 or 1941. I don't know exactly. But Ohlendorf retained this attitude, this known to me from former years.

DR. ASCHENAUER: I have no further questions.

THE PRESIDENT: The cross-examination, will be taken up after the morning recess. The Tribunal will now be in recess for fifteen minutes.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

DR. ASCHENAUER: Your Honor, I made a mistake during the discussion -- and I wish to beg your pardon -- I used the expression "Gestapo State". To explain this -by this I did not mean the organization, and their legal tasks, but only the terminology used today for the Nazi state.

THE PRESIDENT: The record will show that explanation and correction.

DR. SUESS (for the defendant Schulz): Your Honor, I ask that the defendant be excused from the session this afternoon because the defense wants to prepare him for his direct examination.

THE PRESIDENT: The defendant Schulz will be excused from attendance in court this afternoon so that he may confer with his counsel in the preparation of his defense. Now, Mr. Secretary General, will you see that the necessary order gets to the prison authorities so that Schulz will not be brought into Court this afternoon?

DR. SUESS: Thank you, your Honor.

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DR. GAWLIK (for the defendant Seibert): Your Honor, I would like to address a few questions to the witness Spengler.

THE PRESIDENT: You may proceed. BY DR. GAWLIK:

Q. Mr. Spengler, do you know Herr Seibert?

A. Yes, I know Kerr Seibert.

Q. Please state for the record, which of the defendants is Kerr Seibert.

A. From me, the second from the right, in the front row.

DR. GAWLIK: Your Honor, I ask you to note in the record that the witness Spengler identified the defendant Seibert correctly.

THE PRESIDENT: I think perhaps the interpreter stated that incorrectly. isn't that what you intended to say?

DR. GAWLIK: Yes, sir.

THE PRESIDENT: The record will so indicate, that the defendant Seibert has been identified by the witness on the stand, at the present time Spengler. BY DR. GAWLIK:

Q. Since when did you know Herr Seibert, and what do you know about his work?

A. I hav e known Herr Seibert since 1936. He was in the Group III-D, Economics, of the Office III. He was Referent, and later Deputy Gruppenleiter, finally, Gruppenleiter.

Q. How many Gruppenleiters were there?

A. There were four Gruppenleiters.

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Q. Was Herr Seibert also Deputy office Chief?

A. No, Herr Seibert was not Deputy Office Chief.

Q. Did Herr Seibert volunteer to work in the Einsatzgruppen?

A. No, there were no volunteers.

Q. What did Herr Seibert do in the Einsatzgruppe?

A. Herr Seibert, like all those who worked in the Einsatzgruppe, was ordered to go there.

Q. Could Herr Seibert have refused to obey this order?

A. No, no more than any other orders we were given.

Q. What would have happened to Herr Seibert if he had not obeyed this order?

A. He would have been arrested and put before a Tribunal.

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Q. When Herr Seibert was ordered to Einsatzgruppe-D, did he know, about the work of the Einsatzgruppe?

A. No, no, he did not know about the work when he was drafted to work for the Einsatzgruppe.

Q. What were the reasons that Herr Seibert was drafted to Einsatzgruppe-D?

A. The reasons were as follows: A Chief-III, that is an expert on the news service, was to be taken in, and as Herr Seibert, since 1936, had belonged to this office and therefore had gained a lot of experience, and as the economical questions were important, Herr Seibert was detailed for this duty. Apart from that Seibert was also an officer of the Army, of the Wehrmacht.

Q. What field within Einsatzgruppe-D was Herr Seibert intended to work in?

A. Herr Seibert was detailed by Berlin to work as Leader-III, That is, he was to give SD reports on various subjects, economics, law, and administration, health, culture, and Science.

Q. Witness, what do you know about Herr Seibert's activity with the Einsatzgruppe-D?

A. K know that Herr Seibert carried out his task as leader III because such specialised report were made in the economic field, and, also on ethnic subjects and they were sent to Herr Seibert in Berlin. For example, a report about the position of the Tartars in Crimea, and on their organization, their history, their Estonian origin, and soforth was made.

Q. Would you please repeat on what is your knowledge based as to Herr Seibert's activity in the Einsatzgruppe-D?

A. This knowledge is based first of all on reports which remained in Berlin with Seibert's colleagues; we talked about all of this, and also because in the later COURT II-A CASE IX years I met Herr Seibert almost daily, and we talked about this work and these reports.

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Q. Was Herr Seibert deputy of the Chief of Einsatzgruppe-D?

A. Herr Seibert's position as Deputy Chief of Einsatzgruppe-D I don't know about. I knew that he was Chief-III, and in the staff of Herr Ohlendorf, Einsatzgruppe Ghief, I know that.

Q. Then it would have been known to you if Herr Seibert had been deputy of the Chief of the Einsatzgruppe-D?

A. If he had held an official position as Deputy Chief of Einsatzgruppe I would have known about, or I would have heard about it, and, Herr Seibert later on would have told me about it.

Q. Witness, to this reply I submit to you from Document BOOK III-D, page 69 of the German text, and unfortunately, Your Honor, I do not have the English text; it is Exhibit No. 160, Document NOKW-628. This report is from Herr Seibert, signed "By order of"?

A. I see.

Q. Does this not show that Herr Seibert was Chief of Einsatzgruppe-D, and does this not contradict your reply?

A. No, this does not show that Herr Seibert was Deputy Einsatzgruppe Chief, because even I in Berlin signed during the absence of Herr Ohlendorf in the Crimea, I signed all reports of my group "by order of", because each group leader in his field could deputize for the chief, and they signed, "by order of" but this did not make any of us group leaders, deputy chief, Ohlendorf never had a deputy in Berlin in Office-III.

Q. When did you meet Herr Seibert after his commitment in the East?

A. That was when Herr Seibert returned, June 1942.

Q. What do you know about Herr Seibert's activity after this return to Berlin?

A. As previously he again worked in the economic group III-D., and expert reports were made in addition to the economic reports.

Q. Did this economical group apart from their reporting activity have any executive power?

A. No, this group III-D, like the rest of Office-III had no executive authority at all. This executive power was Vested in the State Police and in the Criminal Police, Office-III, and, therefore, Herr Seibert and the group could neither give an order for arrest, nor could they interrogate a person; not even could they officially ask him to a court, they could only invite him for discussion. The only authority which Herr Seibert and the entire Office-III had was the information Service showing the situation in special fields.

Q. Was Herr Seibert, after his return from Russia, Herr Ohlendorf's deputy?

A. No, Herr Seibert never held that position, I must definitely state here that Herr Seibert would have been the last one of the group leaders to be appointed as Deputy Chief of the Office, because he was the youngest one of us. Only in 1944 was Herr Seibert appointed Gruppenleiter, group leader, although he had worked in the economic field since 1936, and since Herr Ohlendorf had been in the office as Office-chief, he conducted the economic departments in III-D.

Q. Witness, you already said that it was customary under Herr Ohlendorf that every group leader signed "by order of." I have one question on this point, was this only used when Herr Ohlendorf was absent at any time?

A. This was not only used when he was absent, but it was generally used, for example, after Herr Ohlendorf had returned, I continuously signed finance department reports "by order of" just, as Herr Seibert did in the economic field.

THE PRESIDENT: Witness, you stated that Seibert was too young to have taken ever a deputyship. How old was he at the time?

A. Herr Seibert, I believe, was born in 1909, I am not quite sure of it, I only know that among us group leaders he was the youngest one.

THE PRESIDENT: Well, Ohlendorf himself was only about thirty-two or thirty-three at the time?

A. I know that, but Herr Ohlendorf had a very good education and training. He had studied law.

THE PRESIDENT: Then your answer should be not that Seibert was too young, but he was too inexperienced?

A. I can say that, too, as well.

DR. GAWLIK: I have no further questions, Your Honor.

THE PRESIDENT: Any further cross examination on the part of another defense counsel?

DR. STEIN: for the defendant Sandberger. BY DR. STEIN:

Q. Witness, since when have you known the defendant Sandberger?

A. I believe since about '36, '37, perhaps even '38.

Q. At that time was he in the Reich Security Main Office with you?

A. No, at the time he was not in the RSHA, but he worked in the SD, in Stuttgart, and there he did reporting, expert reporting.

Q. Did you see Sandberger after his journeys after COURT II-A CASE IX the Eastern campaign?

A. Yes. I know Herr Snadberger was appeared there in the RSHA, in Berlin.

Q. How often did this happen?

A. Two or three times, I am not quite sure,

Q. What did he want in Berlin at that time?

A. On one occasion Obersturmbannfuehrer Gengenbach, that was the group leader for law and administration, who dealt with personnel questions in Office-III, I talked to this man, and there I heard that Herr Sandberger urgently requested to return to his specialized SD work in Office-III.

Q. Can you say approximately when this happened, about what year -- what month?

A. I can work that out. When did the Russian campaign start, the year of '41, or the beginning of '42, was it not, and it was a few months after the Russian campaign started, approximately.

DR. STEIN: Thank you, I have no further questions.

THE PRESIDENT: Very well. Any other defense counsel? Is the Prosecution ready for cross examination?

MR. WALTON: The Prosecution has no questions to ask this witness.

THE PRESIDENT: Very well, the witness will be allowed to leave the courtroom. He may be escorted from the courtroom.

(witness excused)

THE PRESIDENT: Dr. Aschenauer?

DR. ASCHENAUER: Your Honor, I have finished except for presenting the documents in the submission of my evidence.

THE PRESIDENT: Yes, Dr. Aschenauer, as I have indicated on several occasions, I do hope that you will get to work at once on your own documents that you intend to present.

DR. ASCHENAUER: I shall hand in the document books, as the affidavits arrive and state when my documentary material will be ready. The first document book I shall hand in at the beginning of next week. I shall hand in the translation.

THE PRESIDENT: Very well. Dr. Gawlik are you ready to proceed with the defendant Naumann?

DR. GAWLIK: I am prepared to continue, but the defendant Naumann is not here. I believe he is just coming.

THE PRESIDENT: He will be brought in immediately. Dr. Gawlik, through no fault of your own, and we are sure you are not trying to conceal your client from the Tribuanl, they brought over the wrong defendant. They brought here Blobel instead of Naumann. It would take a little of time to correct this error, and to make the correct substitution, so we will take advantage of that time, and we will now recess for the regular lunch period, and reconvene at 1:30 o'clock.

(Whereupon recesswas taken to 1330 hours, 16 October 1947) (The hearing reconvened at 1335 hours, 16 October 1947.)

THE MARSHAL: The Tribunal is again in session.

DR. SCHWARZ: Dr. Schwarz for the Defendant Joost. Tribunal permit the Defendant Joost to be examined after the Defendant Schulz?

THE PRESIDENT: Is counsel for Defendant Schulz here?

DR. SUESS: Dr. Suess for the Defendant Schulz. this. If the examination of the Defendant Joost is now going to be postponed, we have no objection against this.

THE PRESIDENT: I understand it then that counsel for the Defendant Schulz is prepared to proceed with the defense case upon the termination of the case of Neumann?

DR. SUESS: Pardon me, your Honor, but I didn't get this.

THE PRESIDENT: I understand that counsel for the Defendant Schulz is prepared to proceed immediately after the termination of the Naumann case?

DR. SUESS: Yes, your Honor.

THE PRESIDENT: And counsel for the Defendant Joost will be prepared to proceed immediately after the termination of the Schulz case?

DR. SCHWARZ: Yes, your Honor. I thank you.

THE PRESIDENT: You are very welcome indeed.

DR. SCHWARZ: May I also make the request that the Defendant Joost be excused from tomorrow's session so that I can discuss his defense with him?

THE PRESIDENT: The Defendant Joost is excused from attendance at tomorrow's sessions so that he may confer with his attorney.

DR. SCHWARZ: Thank you.

THE PRESIDENT: You are welcome.

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MR. FERENCZ: If your Honor please, the Prosecution has no objection to the defense taking the stand in any order they see fit, but we Would appreciate it if the Prosecution could be given notice in advance of the order they intend to take so that we may prepare our cross-examinations at the same time.

THE PRESIDENT: Yes. For the information of the Prosecution the Tribunal will state that Joost's order was moved back only because his counsel was appointed a little later than the other attorneys, so that it now stands this way: Naumann, Schulz, Joost. Then we have no reason to assume that the regular order will not be followed following that.

MR. FERENCZ: We would like to know if the Defendant Rasch intends to take the stand.

THE PRESIDENT: We had set that aside because of the physical condition involved there, and I don't suppose Rasch's attorney is here this afternoon. No. Very well, will someone -- I will ask the Secretary-General to obtain information at the Defense Information Center as to the condition of Rasch and the intention of his counsel with regard to placing Rasch on the witness stand.

DR. GAWLIK: Dr. Gawlik for the Defendant Naumann. the examination of the Defendant Naumann in his own defense. With the permission of the Tribunal I call the Witness Naumann to the witness stand.

THE PRESIDENT: The oath has not yet been administered.

ERICH NAUMANN, a witness, took the stand and testified as follows:

JUDGE DIXON: Defendant you will stand. Raise your right hand and repeat after me. the pure truth and will withold and add nothing.

(The witness repeated the oath.)

JUDGE DIXON: You may be seated.

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BY DR. GAWLIK:

Q When and Where were you born? English and 4 of the German text of Exhibit 113, Document NO-2970, and from Document Book II-D, Page 1 of the English and Page 1 of the German, Exhibit 112, Document NO-4150. Are the statements in these documents about your person correct?

A In Document 4150 there is one small mistake. It must be on Page 1. Instead of "1940" it should read "1942."

A Yes, I am just looking for it. In the seventh line from the top, but this is in the German text, you must read the whole text, the sentence reads: "In the year 1935 I became SS-Fuehrer in full time capacity and from 1940 on I became an official and a police officer." Here it should read "1942" instead of "1940."

THE PRESIDENT: Which page of the original?

THE WITNESS: That is Page 1 of the Document 4150. BY DR. GAWLIK:

Q And in the original?

THE PRESIDENT: Read the sentence again, please.

THE WITNESS: On Line 7 of the German text, "In the year 1935 I became SS-Fuehrer in a full time capacity, and from 1940 on I became an official and a police officer." There it should read "1942" instead of "1940."

THE PRESIDENT: "1940" does not appear in the English text.

MR. FERENCZ: If your Honors please, I believe the English text says "1935." I believe that is what the defendant is referring to.

THE PRESIDENT: Yes, it should be, "I have been a member of the SD since 1940," is that the correction he wishes to make?

THE WITNESS: That is already the next sentence, I mean the previous sentence.

THE PRESIDENT: Well, it reads in the English this way. "I joined the SA in a fulltime capacity. In 1935 I became full-time SS leader, and since 1935 I was an official and officer of the police." Is it that "1935" which is incorrect?

THE WITNESS: Yes, that is not correct, but in the German text it says "1940", not "1935."

THE PRESIDENT: And it should be nineteen-forty -- what?

THE WITNESS: 1942.

THE PRESIDENT: Very well, the correction is made.

THE WITNESS: The other document is 2970, in the same document book, Page 14 of the German text.

DR. GAWLIK: This is Exhibit 113, your Honor.

THE WITNESS: In the middle of this page, it is on Page 11 of the original document.

THE PRESIDENT: Yes.

THE WITNESS: Next to my signature it says "10th of January '42." That should read 10th of January, 1943, because in January, 1942, I was neither Brigadier General nor Major General. Otherwise, outside of a few typographical errors, which are not important, this document is correct.

THE PRESIDENT: The corrections will be noted. BY DR. GAWLIK: the year 1929? not at all active politically. The distress of the year 1929, the struggles between the various parties, the collapse of the economy, the unemployment with all its devastating results, and the resulting party struggles caused me to bother my head about political parties.

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Thus in May 1929 I went for the first time to a gathering of the Nazi Party. In November 1929 I then joined the Party. Before I worried about political parties I was a neutral German as far as party policies were concerned who loved his Fatherland, but who rejected Marxism, the Nazi Party seemed to be the only party which would find the way out of this distress and misery which was not Marxistic but was yet socialistic. For this reason I joined the Party in November 1929.

Q How long were you an SD leader in full capacity? first of July, 1935, until the end of the war.

Q Where were you active before? and I was this from October, 1933, until June, 1934.

Q In what were you active after that? the Educational Matters. Here I remained until June 1935 when the organization was dissolved.

Q Was this an agency of the Party of an affiliation of the Party? connections with the Party, of its affiliations. was accepted by you? Educational Matters was dissolved in the year 1935. Therefore, I had to look for another position. Through a former acquaintance of mine, the then SS-Sturmbannfuehrer Joost, who offered me a post as a department head in the SD Main Office, I came to the SD.

Q What position did you first hold in the SD?

AAs department chief in the central Department III/2.

Q What was your activity in this central Department III/2?

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protection organization? fuehrer in Austria? Graz and Klagenfurt, had to be given SD subdepartments which then would function as branches of the SD Main Office, just like all the other SD subdepartments worked in the Reich.

THE PRESIDENT: Dr. Gawlik, may I interrupt please? The Defendant Ohlendorf will be excused from attendance this afternoon for the purpose of an interrogation which is to be made by Mr. Wolfe.

(The Defendant Ohlendorf was thereupon excused.)

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Q (By Dr. Gawlik) And what were the missions and the activities of the SD in Austria? fuehrer in Berlin? domestic services for the District of the Reich capital, Berlin, and for the District of the Province Mark Brandenburg.

Q When did you become Chief of Einsatzgruppe B in Russia? Einsatzgruppe in Russia?

Q Did you voluntarily report for this mission?

Q Who gave you this order to take over this Einsatzgruppe B? B from Streckenbach, the head of Office I. Heydrich gave the order for me to take this group over.

Q Who signed the Transfer- order? Russia?

Q Can you give reasons for this?

A Yes. Orders of Heydrich had to be obeyed, especially during war time. the commitment? would have been sentenced to death for refusing to obey an order.

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Q When did you leave Berlin?

Q When did you arrive at the Einsatzgruppe B?

Q And when did you take over the command of Einsatzgruppe B? introduced me to the job and during that time I did not have my power of command. Nebe still held it. After the expiration of this week, Nebe handed the Einsatzgruppe over to me and frm then on I was Commanding Officer of Einsatzgruppe B.

Q How long were you Commanding Officer of Einsatzgruppe B? of the German text, I submit to you Exhibit 113, Document NO-2970. This document says from the 1st of November 1941 you were Chief of Einsatzgruppe B. How do you explain this statement in this document book? Is that correct?

A The 1st of November is the date of my Transfer - order. After Gruppenfuehrer Streckenbach had ordered me to take over Einsatzgruppe B, Rasch suddenly was supposed to take over Einsatzgruppe B and I was supposed to go to Kiev. At the same time it was discussed that Rasch should go to Berlin and Thomas was to be sent to Russia and it was not clear whether Thomas or I were to go to Kiev or Smolensk. After a long discussion back and forth I finally went to Smolensk. Rasch did not go to Smolensk but went to Berlin and Thomas went to Kiev as new Chief of Einsatzgruppe C. During that time I had to remain in Berlin, because my destination was not yet determined. English, page 23 of the German text, Exhibit 72, Document NO-2830. This concerns the Operational Situation Report 132 dated 12th of November, 1941. In this Operational Situation Report of the 12th of November 1941, you are already mentioned as the Commanding Officer of Einsatzgruppe B. Were you already Chief of Einsatzgruppe B at that time?

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November, 1941. Report 132 of the 12th of November, 1941? RSHA, but as my Transfer Order was of the 1st of November 1941, I of course, was automatically mentioned in the reports as Chief of Einsatzgruppe B.

Q Where were these Operational Situation Reports compiled? It may have been Office IV, but I am not sure. on these situation reports?

A Yes, for example, in the case of Rasch, I don't remember these two reports, but there are two operational Situation Reports of the 29th of October and the 5th of November. In these two Operational Situation Reports of the 29th of October and the 5th of November. In these two operational Situation reports, Rasch is designated as Commanding Officer of Einsatzgruppe B, even though he never was in Smolensk in all his life. It may have been caused by the fact that Rasch as I said before was to go to Smolensk before me, which was made known in Office I and therefore Rasch was certainly mentioned as Chief of Einsatzgruppe B in these Operational Reports.

Q Who was your predecessor in Einsatzgruppe B?

Q Who was Nebe?

A Nebe was the Chief of the Reich Criminal Office. That is, the Chief of the Reich Criminal Police.

Q What were the reasons why Nebe was recalled?

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A I don't know. I assume that he had to return in order to continue his very important activity as Chief of the German Criminal Police.

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Q What Einsatzkommandos belonged to Einsatzgruppe B? 7b, and the Special Kommando Moscow and the independent, detachments Smolensk and a small detachment which was the advance command post. gruppe B?

Q What was the composition of this staff? assistants, the signal personnel, guard personnel, and the drivers. These together were members of the staff.

Q What was the garrison of Einsatzgruppe B?

Q Where is Smolensk? subordinated to you?

A That varied. The Einsatzkommandos contained about 130 to 150 men. The Special Kommandos were smaller, about 60 to 70. The Special Kommando Moscow contained about 30 men during my time. Einsatzgruppen and the Special Kommandos from your garrison? kommando 9x -- that was about 150 kilometers -- and others were considerably farther. For instance, 7b was in Orel, which was about 450 kilometres away. 7a was in Kalinin, about 500 kilometres away and these distances cannot be measured with our Middle European conditions here, because the road conditions in Russia especially after the battles were very bad and to travel even small distances took a considerable amount of time. As an example I might cite that a trip from Einsatzkommando 9 to Einsatzkommando 7a took me about 1 whole day from early morning to night to travel 300 kilometres.

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Q How large was the area of Einsatzgruppe B approximately? a whole Army corps. Thus it consisted of the areas of first 6, later 5, and 4 Armies and then extended back. The territory began in the north east in the Kalinin, which is north of Moscow. The boundry went farther south and down to the area near Orel. From there the border went from east to west, down south west of Gomel in the Pripet Marshes and from there a line south to north to the Delta of the Dyna and from there a line from the west to the east to Kalinin. I once placed this territory on the map of central Europe and this square covered the following area: The points of the square were Kiel in the North-east, Vienna in the South-east, Paris in the south west and London in the north west.

DR. GAWLIK: Your Honor, I ask that the defendant may rise and point this teritory out on the map.

THE PRESIDENT: He may do so.

THE WITNESS: Kalinin -- there is Moscow. North of Moscow is the Volga. North from Moscow is Kalinin, near the Volga and there its borders cross the M of Moscow down through Podolsk, down to about Tula, which is near Orel. Then the border went through Kursk. South of Kursk, Cherkassy, then along the Pripet Marshes down to the old Polish border and then north outside of the territory, Borisov is still included, then up near the source of the Dune River and then across the lake up there back Kalinin.

Q. Were you subordinated to the Chief of the Security Police and SD?

A. Yes.

Q. Where you also subordinated to any other agencies?

A. Yes. To the Commander-in-Chief of the Army Group Center, the Commander of the Rear Army Center and the Higher SS and Police Leader Central Russia.

Q. To what extent were you under the command of the Commanderin-Chief of Army Group B?

A. Not Army Group B, but Army Group Center. The Commander-inChief of Army Group Center was my superior as far as march-routes housing, food, and these matters were concerned. Furthermore, I had to report to the Commander-in-Chief and as far asthe tactical situation demanded it I had to accept orders from him.

Q. To what extent were you subordinated to the command of the Commander of the Rear Area?

A. In the same manner, only restricted to the Rear Area.

Q. To what extent were you subordinated to the Higher SS and Police Leader?

A. The Higher SS and Police Leader exercised a sort of supervision over all parts of the SS and Police units in his area.

Q. Did you give the Einsatzkommandos and special detachments under your command, any special orders to execute Jews, Gypsies, and Communist functionaries?

A. No.

Q. On the basis of what orders did the Einsatzkommandos and Special Kommandos carry out executions of Jews, Gypsies, and Communist functionaries?

A. On the basis of the order handed down by the Chief of the Security Police and SD, and by Gruppenfuehrer Streckenbach.

Q. Witness, was this order handed down to you during your time of service with the Einsatzgruppe B?

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A. No, this order had already been handed down before the Einsatzkommandos and Special Kommandos went to Russia.

Q. And who wasthen commanding officer of Einsatzgruppe B -- in order to determine this once and for all?

A. The first Chief of Einsatzgruppe B was my predecessor, Nebe.

Q. On the basis of this order was every member of the Communist party to be killed?

A. No. Only insofar as they exercised any endangering activity.

Q. Could you have prevented the execution of this order?

A. No, I could not.

Q. Can you give any more reasons for this?

A. Yes, I had no possibility of preventing the execution of a Fuehrer Order. This would have brought the most severe measures in its wake against me. Furthermore, I would not have been able to change anything in the order if I had disobeyed it.

Q. Perhaps you can express more clearly what would have happened to you if you had attempted to prevent the execution of this order, already given to the Einsatzkommandos and Special Kommandos.

A. I would have been put before an SS and Police Court, and certainly would have been sentenced to death; but I think it would have been even more probable that Himmler would have given the order to have me shot if I had refused to obey the order.

Q. From Document Book III-B, page 1 of the English text, page 1 of the German text, I submit to you Exhibit 112, Document NO-4150. This if your affidavit of the 27th of June 1947. Are the statements in this affidavit correct?

A. Yes, I already said that with one exception -- 1942, instead of 1940 -- outside of this, they are correct.

Q. Under number 4 of this affidavit, you stated the following: "I know that while I wasits chief, Einsatzgruppe B--- or, as the case may be -- the Einsatzkommandos, Sonderkommandos and other units under its control carried out executions."

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Is this statement correct?

A. Yes, that is correct.

Q. Did Einsatzgruppe B itself - that is, the staff - carry out any executions?

A. No, this was not its job.

Q. What were the other units outside of the Einsatz- and Special Kommandos Which carried out executions?

A. That was the independent detachment Smolensk.

THE PRESIDENT: Dr. Gawlik, I don't quite understand your differentiation between the affidavit and the interpretation that you are attempting to derive from it. How, paragraph 4 states that "Einsatzgruppe B carried out executions" -- leaving out the intervening phraseology. Noe, you are having the witness to say Einsatzgruppe B did not carry, out executions. How do you interpret that from this very clear statement in the affidavit?

DR. GAWLIK: Your Honor, shall I explain this, or shall the witness explain?

THE PRESIDENT: Well, I would like to have the witness explain it, under your direction.

A. (By the witness) The Einsatzkommandos and Special Kommandos belonged to Einsatzgruppe B. If the Einsatzkommandos and Special Kommandos carried out executionsthey are to be counted as total executions of Einsatzgruppe B as a total unit. But I was asked by Dr. Gawlik whether the staff of Einsatzgruppe B -- the 60 men - carried out any executions. To that I answered No, - it was not its task, it was not the mission of the staff to carry out executions.

THE PRESIDENT: But the Einsatzgruppe B was responsible for the executions. The staff was responsible for the executions. They may not have actually pulled any trigger, but the Einsatzgruppe B was in charge of executions assigned to that action group.

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A. (By the witness) No, Your Honor, it was not this way. I already said in the beginning that the area of Einsatzgruppe B was very large, -- and I believe Dr. Gawlik will come back to this during the trial -- it was, therefore, not possible to give express orders to each pendently, to a large extent. The largo distances forced them to do it; so did the lack of communications; and also local subordination to the army or to the Commander of the Rear Area.

THE PRESIDENT: You knew that there was an order which required the Einsatzkommandos and Sonderkommandos to perform executions? Answer that, please.

A. (By the witness) Yes, Your Honor.

THE PRESIDENT: Yes, and these Einsatzkommandos and Sonderkommandos came under your jurisdiction in Einsatzgruppe B?

A. (By the witness) Yes.

THE PRESIDENT: Yes, so that the only distinction you were drawing is between the trigger men and the headquarters? Lot me put it in another way -

A. (By the witness) No, Your Honor -- I am describing the situation asit was. In Pretsch and in Schmieberg I don't know exactly how it was -- I was not there -- the Einsatzgruppen chiefs and the leaders of the Einsatzkommandos and Special kommandos were given these orders, and on the basis of these orders they acted.

THE PRESIDENT: Yes. And they were under your supervision and control. You were the superior officer of those Einsatzkommandos and Sonderkommandos?

A. (By the witness) Yes.

THE PRESIDENT: Yes, and what you are telling the Tribunal is that you and your staff did not actually participate in an execution?

A. (By the witness) No.

DR. GAWLIK: Your Honor, he wants to say even more than that.

He wants to say that he did not give any order for those executions because the order already was existing for the Einsatzkommandos and Special Kommandos at the time when he took over the Einsatzgruppe.

THE PRESIDENT: Yes.

MR FERENCZ: Excuse me, Your Honor. I believe the defendant is on the stand, and we will hear from him what he intends to say, and not his defense counsel. We object to defense counsel explaining what defendant wants to say.

DR. GAWLIK: This is the moment, Your Honor, which I have already mentioned before, When I raised an objection against some additions which the Prosecution made in their presentation of evidence, and them at that time Your Honor was kind enough to tell me that if I would make such additions Your Honor would tell the Prosecution the very same thing.

THE PRESIDENT: Well, I assure you that my kindness, as you very kindly termed it, will carry over to this point -- and therefore you are absolved from any sin. BY DR. GWLIK:

Q. We were under number 4 of this Document NO-4150. I ask you now, - Did the Einsatzgruppe B itself - that is, its staff - carry out any executions?

A. No. The staff did not carry out any executions. That was, as I said, not its mission.

Q. What were the missions and the activities of the Einsatz and Special Kommandos?

A. The Einsatz and Special Kommandos had the mission to keep order and security in the entire army area, in the rear of the combatting army.

Q. What were the activities and missions of the staff?

A. The staff was to busy itself with personnel questions, administrative questions, organizational matters; it had the motor questions under it; food, housing.

Furthermore, it had to accept the reports from the Kommandos; it had to compile collective reports and send them to Berlin, to the Main Office, end to other agencies.

independently?

A They had to work completely independently. This was because of the great distances, the very bad communications, and the various orders commands of the army and their localities, or the commander of the rear area. Kommandos active as a result of orders given to them by the staff? detection in building up indigenous police; in reporting all necessary domestic information; and other such matters. police? police--to see that order and security were maintained, that crime be prevented. Furthermore, the indigenous police was used also in partisan detection, and it also fought partisans. gruppe B?

A The Commandos and detachments had to do this. The detachments were called "Troops", with Einsatzgruppe B- therefore, "Troop Detachment Smolensk" for instance.

page 1 of the English and German text, Exhibit 112, Document 4150. This is your affidavit of the 27th of June 1947. Under number 5 it says: "Einsatzgruppe B received from the Reich Security Main Office Berlin, two or three gas vans but these were shortly afterwards passed on to Einsatzgruppe in the south. As far as I know Einsatzgruppe B did not use these vans.

Are these statements correct?

Q Did you ask for these gas vans?

Q Who ordered the assignment of these gas vans?

A I don't know; probably some agency in the RSHA.

Q Did you know about this order?

Q Could you have prevented the assignment of these gas vans?

Q How long were these gas vans with Einsatzgruppe B? give you the exact period.

Q What happened to those gas vans?

A I don't know whether they were used for the purpose assigned to them. I know I saw one of them, that once one of those gas vans was used to carry wood, I don't know whether they were used for original purpose. I did not hear of any such case.

Q Who ordered that the gas vans be given away? of the German, I submit to you exhibit of Ott, of the 24th of April 1947. Ott speaks of an execution in this affidavit, which took place in the surroundings of Bryansk.

Did you order the execution near Bryansk? it?

Q Could you prevent the carrying out of this executions? the execution?

Q On the basis of what orders were the valuables collected? I took over the Einsatzgruppe.

Q Who gave this order?

A Ott must be mistaken here. I already said that this order already existed when I took over Einsatzgruppe B.

THE PRESIDENT: Do I understand, Dr. Gawlik, that it is your intention, or your client's intention, to repudiate the affidavit of Ott?

DR. GAWLIK: Yes, in this respect, yes.

THE PRESIDENT: I notice in the defendant's own affidavit, in paragraph 7, the affidavit of June 27, 1947, that he says, "I am aware that the administration chiefs collected valuables and money belonging to the persons intended for execution. The money and valuables were remitted to the Ministry of Finance." It would appear from this statement that he know beforehand, before the executions, that the valuables were to be collected.

DR. GAWLIK: Perhaps he can asnwer that question.

THE WITNESS; There was an order that the valuables of those people to be executed were to be collected by the administrative cheifs and were to be sent back to the staff of Einsatzgruppe B with a letter. The staff of Einsatzgruppe B, that is, Department II, the Administration, now was to send these valuables on to the RSHA, later to an agency of the Reich Finance Ministry in Mogilew, or Borisow, I don't know exactly which place it was.

THE PRESIDENT: Wouldn't parts of this affidavit be correct in that incident where he says that the valuables which were collected from these people were sent to Einsatzgruppe B. This was ordered by command of Naumann.

If you were commanding Officer at the time, and it was the procedure to send these valuables to your staff headquaters, and there was no indication on your part that this order was rescinded, then, in fact, you did order the sending of the valuables?

THE. WITNESS: Yes, I actually had these valuables passed on as was ordered.

THE PRESIDENT: You ordered that the valuables be sent from the places of execution to your headquaters?

THE WITNESS: No, that had already been ordered when I took ever the command. That already was customary before.

THE PRESIDENT: And you know that that order was in effect?

THE WITNESS: Yes, I know that.

THE PRESIDENT: And you carried on the procedure which had been established prior to your asking over Einsatzgruppe B?

THE WITNESS: Yes.

THE PRESIDENT: So, therefore, Ott is correct in saying that it was by your command, because you were the current commander.

THE WITNESS: Yes, Ott meant the chief of Einsatzgruppe B. Of course, I assume that he didn't know whether Nebe ordered it, or whether I did. Therefore, he probably used my name.

THE, PRESIDENT: Very well.

DR. GAWLIK: Your Honor, may I make a short statement about my presentation of evidence, to make it more comprehensible. The defendant does not dispute that he knew about this. But Tribunal II in the verdict against MILCH has already stated that knowledge alone is net punishable, but the defendant must either have participated, he must have killed himself, or he must have given an order to kill, or he must have the had the possibility to intervene in this order, or committed a sin of omission. That is the line of my evidence. The knowledge alone is not being disputed here.

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THE PRESIDENT: You are just about two months ahead of the time for that argument. That comes at the end of the trial.

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BY DR. GAWLIK: page 10 of the German text, the Exhibit No. 59, Document NO-2825. This concerns the Situational Report, 14 November 1941, under No. IX, on page 14 of the German Document Book -- I don't know what page of the English Document Book, it is page 15. It says the liquidations during the report period reached the following figure: 45,467. What was the report prior which this situational report of 14 November 1941 covered?

Q Where does it say that? next to the last paragraph, 23 October. The other dates are all older. This is the latest date given there.

Q Perhaps you can give the other dates too? 14th, 17th, 21st, 9th, 19th and 23rd of October. 1941, there are reports still missing?

A It also said here that under the last paragraph No. IX, "According to reports at hand the reports of SKM, Sonderkommando-XVII and Sonderkommando-IX, and the OKW, Oberkommando der Wehrmacht, are still missing, and you may see that these three kommandos will appear in yet later reports. One can see from the documents that between the events that happened in Russia, and the appearance of this in that situational report, between these two there is a lapse of a period of four or five weeks. After I have looked at the documents, it appears to me that the time is even greater than five weeks. gruppe-B?

A The report period runs down to 23 October, that was Nebe's time.

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Q The Prosecution has said the following about this document: "This report describes the activity which probably took place before Naumann took over command." That is page 155 of the German report. Please comment on this.

A This activity didn't only probably take place, but definitely it took place before. is a report which was made out by Naumann two weeks after he took over Einsatzgruppe B. Is that correct?

A No, that is not correct. I have already said I did not take over the command until 30 November. of the people mentioned in this document?

Q Were you in Smolensk during this period?

Q Were you in Russia at all during this time? the liquidation of 45,000 persons has been described by the Einsatzgruppe, the defendant Naumann must have known the purpose and the functions of this unit whose command he took over and held. I will ask you, therefore, did you know of this report of 14 November 1941? mentioned in this document when you took over the command? situational report? Streckenbach, which took place during my first visit in Russia, I am sorry - during my first visit in Berlin, after I had taken over the Einsatzgruppe-B. At that time Streckenbach told me that various Einsatzgruppen reported figures which were considerably exaggerated, and, I remember that he really said some people don't seem to be concerned about a zero or two.

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He mentioned in accordance with this the name of my predecessor. pecially the special action named under figure five, in then against forced labor inmates in the camp in Megilow. Tell me when this liquidation took place for the record? the document.

Q Did you hear anything about those liquidations? liquidation of inferior people? I know. If this happened at the time, Nebe was in command, I can not explain how Nebe happened to give such orders.

Q Now I submit to you a document from volume II-B. It is on page 36 of the English, page 31 of the German text. It is Exhibit No. 62, Document No. NO-2824. Did the liquidations covered by this report take place during the time you were in command of Einsatzgruppe-B?

A No, it was before my time. When commenting on the previous document I already stated that between the events in Russia and their the appearance of the situational report, a period of four to five weeks elapsed. This difference can be explained by the fact that after the event in Russia reports had to be made out by the detachment, and the detachment had to pass on this document to kommando, when the occasion presented itself, not immediately and the kommando had to gather up these reports from the various detachments, and had to collect them into the Einsatzgruppe, that is, to the staff of the Einsatzgruppe. That was not possible every day, the transport and gasoline situation made it impossible; thus a vehicle was used only when the various numbers of requests made that justifiable.

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The Einsatzgruppe then collected these various reports, summarized them, and then when the opportunity arose sent them on to Berlin, to the RSHA. Thus, it can be explained that between the event in Russia and the appearance of the report, a considerable time elapsed. document? executions took place, or had to take place during the time before you took over the Einsatzgruppen-B? No. 149, and I don't know where it is to be found. English, page 17 of the German, Exhibit No. 114, Document NO-2833. Your Honor, this is the report of 22 December 1941, the operational report of 22 December

1941, that is document NO-2833, from volume III-B. This bears the number 149, Whereas the other operational report which I am supposed to comment on bears No. 148. This was made out earlier, as can be seen from the date. It was made out three days earlier, that is, on 19 December, whereas the other was made out on 22 December. This report No. 149, shows on page 23, the date 18 November and on page 24, 21 November. If the report of 22 December mentions dates like the 18th and 21st of November in its report, then the dates of the report on 19 December must be still earlier.

THE PRESIDENT: Dr. Gawlik, shall we take our afternoon recess now, please.

THE MARSHAL: The Tribunal will recess for fifteen minutes.

THE MARSHAL: The Tribunal is again in session. BY DR. GAWLIK: 62 from Document Book II-B, page 36 of the English text, Document NOKW-2824. The Prosecution showed by this document that sixteen insame people and Russian children were shot. Can you state something about this, please? English, page 17 of the German text, Exhibit 114, Document NOKW-2833. It says, "Operation Report of 22 December, 41". The executions mentioned in this operation report, did they occur during your time when you were in charge of Einsatzgruppe B? are mentioned in the report. These events, therefore, occurred before my time. charge as Chief of Einsatzgruppe B? it was absolutely necessary that Einsatzgruppe B beled very well, and to get to know all the conditions out there in detail. For that reason I started immediately, and in time to visit all kommandos and partkommandos, to get to know my men, the chiefs of the kommandos and of the part-kommandos, to get to know my men, the chiefs of the kommandos and of the part-kommandos, to get acquainted with the country and the people, to get to know the security position, to know what the area looked like, to know the means of communication, how the population liked us and how the kommandos were manned out there. This was necessary because I needed this knowledge in order to be able to give orders eventually which were required according to the situation. page 52 of the German text, Exhibit 66, Document NO-3276. It concerns an operation report, No. 194, of 21 April 1942.

Did you order the executions mentioned in this document?

Q Were you present during these executions? intended missions?

Q Could you have stopped these executions from being carried out? were carried out by the Sonderkommandos and the Einsatzkommandos? under the Fuehrer order, membership in partisan bands and other crimes which are mentioned where various Army orders applied.

Q Did you give any orders for this?

Q What do you want to add to this operation report?

A I know this operation report. I know the paragraph on the previous page, 55 of the German text. I recognize the article about information on partisans exactly. On the other hand, the listing, in the form as submitted here, I have not seen before. I, therefore, presume -

Q One moment, Witness, please. Will you please state which listing? etc., are named. I do not know this list in this form. I would remember it because rather large figures are mentioned. I presume that these reports were put together in Berlin from various small reports because I would remember those figures. of the Einsatzkommandos and Sonderkommandos, did that consist merely in killing Jews, gypsies and Soviet functionaries for racial reasons or because of their political opinions?

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Q What was the main task of the Einsatzgruppe? before my time, in such a way that the partisan fighting became the most important part, as it affected the security of the roar area. The Einsatagruppen and the Einsatzkommandos, the active parts of them, on principle had to collect intelligence concerning partisan warfare. This activity in time finally took up the time of the Einsatzkommandos more and more.

Q Is this shown in this document, Exhibit 66, NO-3276? they appear in record. "Police Activities" it reads: "At the time of reporting the Einsatzgruppe B" - it says "3" here, it is meant to be "B" - "has shifted its activity, even more so than hitherto, towards the field of partisan detection. While in the larger areas of the command the security situation may be described as satisfactory, pressure by partisans in the flat country is not only continuing but increasing, so that the possibility of military operations on a larger scale in the near future must be reckoned with."

Q Are these statements correct?

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A. Yes, they are right.

Q. Can you complete these answers?

A. From my own knowledge?

Q. Yes, from your own knowledge.

A. Yes, The situation in the central Army area became such that the entire area could not be crossed by German troops at all, in which roads such as the Reichstrasse, the main roads from Vitebsk to Lebel, from Vitebsk to Polotsk, from Polotsk to Lebel, and many others were blocked for any traffic because the partisans had blown up all the bridges on this road and had thrown trees across the road. The partisans shot at every German vehicle they could see. Sometimes it was not even possible, in areas where there were woods, to pass through in single vehicles. We had to organize convoys where ten, twenty, thirty and fifty vehicles traveled together, mostly protected by tanks, in order to be able to move at all in some cities and places. If the partisans came across single vehicles or a number of vehicles and shot at them, they plundered and attacked them. In attacking these vehicles the people riding in them were killed. They were hit on the head. They cut off their noses, their ears, and other parts of the body, or they cut swastikas on their back, and even in winter, if they were not dead, they left them lying wounded, left them freezing, undressed them, and I could tell lots of things. This knowledge I have partly from reports, partly from discussions with eye witnesses and survivors. Even Einsatzgruppe B did not escape these losses, and one day Einsatzgruppe B lost thirty-one men in Rshev, south of

Mogilew. It was the middle of the winter. We found the men, again, one badly wounded. For weeks or even months he was in the hospital recovering.

COURT II-A CASE IX These thirty-one men had bean treated as I have already described. Therefore, I don't have to say it again. partisans. They plundered and robbed whatever they needed, animals, clothes, utensils, or anything they thought they might need. The inhabitants were killed. or if they resisted unsuccessfully they were killed. Their houses were burned, and in that way the partisans carried on warfare in the East. I could talk about this for hours and even days, about many, many details which I remember.

Q. I now submit to you a document which the Prosecution up to now has not submitted. It is the operation report, No. 186 of 27th March, 1942, Document NO-3236, which I do not want to submit as evidence but only to be identified, and which I give the number, "Naumann No. 1" for identification. In how far does this document show the main tasks and activities of Einsatzgruppe B?

A. On Page 20 of this operation report No. 186 of 27 March the following can be read: "On 9 March 1942 a discussion took place at the headquarters of the Rear Army District about a large-scale Army operation against the partisans. To carry out this action against the partisans two active Army divisions with heavy armament and with units of the air force were selected in addition to the already existing security brigades. Einsatzgruppe B, at the instruction of the Commander of the Rear Army Area, had to see to it with its troops operation, that the operation be properly prepared. For that reason, until the conclusion of the operation in the operational areas the number of fortifications and strongpoints is to be increased in those areas and more men are to be sent there from Sonderkommandos 7-A and 9.

COURT II-A CASE IX The task of the Security Police and the SD is to carry on an intensive intelligence campaign through V-men and agents. At the beginning of the discussion the commander of the Rear Army Area, General of the Infantry von Schenkendorf, talked to Einsatzgruppe B and expressed his thanks for the work of the Security Police and SD without which the success of the Army operation would not be possible. He pointed out that the forces of the Security Police and the SD, on the basis of the experiences of the Eastern campaign, were indispensable."

Q. That will be sufficient. What did these partisans do?

A. Murder, plunder, looting.

Q. Were these only small sallies?

A. No, they were regular partisan battles. It was a regular partisan war.

Q. Is this also shown in the document?

A. Yes, it is shown from the other document, Document 3276, Document Book II-B. There it says, on Page 55 of the German text, in the first third - at the end of the first third of the page: "The methods learned in the partisan schools are systematically carried out in practice by the partisans so that in some areas of the Einsatzgruppe one can talk about a real partisan war with Bolshevistic methods."

Q. Were the attacks of the partisans only directed against the German troops?

A. No, also against the population of the country.

Q. To what extent does the Document 66 show this?

A. Following the paragraph I just read it says, "The innumerable ambushes, especially at night, frighten and depress the village population. People are somewhat COURT II-A CASE IX disappointed by the allegedly insignificant activity of the German agencies in combatting the partisans.

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In the threatened villages hardly anybody is prepared to accept an official position. The natives have to watch passively while the partisans seize their cattle and food, as self-defense, because of lack of arms, is ineffective in warding off the raids."

Q. Did the Russian inhabitants take part in fighting these partisan?

A. Yes.

Q. Is this shown in the document?

A. This is also shown in the document. Following what I just read, "It has been established, that where partisans are threatening the people only in weak numbers, the villagers defend themselves vigorously. It may furthermore be said that the rural population in general takes up the fight against the partisan pest with gusto and gladly refuses assistance whenever they can destroy the partisans by themselves."

Q. What was the attitude of the Russian population towards the work of the Einsatzkommandos?

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Einsatz-kommandos is being extensively facilitated by informers among the Russian population. The auxiliary police and the contact menare reported everywhere to have proved their worth in the detection of partisans.

Q I now come to the final questions. were you a member of the General SS, after 1 September 1939?

Q When?

Q What was your rank in the Waffen SS?

Q Did you volunteer to join the WaffenSS?

Q What was the reason for your membership in the Waffen SS? or the Navy or the Air Force.

Q Then, was your membership the result of a law?

Q Could you evade the draft orders?

A No, that would not have been possible. I would have been condemned to death for desertion. member of the SD?

A I don't knew that. I don't think so. As far as I know, at that time in 1940, certain age groups had been released for service in the Waffen SS. 1939?

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A The SD?

Q Which SD? SD voluntarily? impossible to leave. There was no such thing in war time.

Q Can you give any reasons for that? What laws applied to you?

A The Army laws. I was considered essential for the Security Service during the war. My duty in the SD was considered my war service.

Q I now submit to you the verdict of the IMT. According to this verdict the SD is accused of the following crimes:

First, the extermi nation of the Jews, cruelties and murders in prisoner of war camps; excesses in occupied teritories, fourth, carrying out the forced labor program; fifth, ill treatment and murders of prisoners of war.

Did you knew that the SD Information Service, that is the organization in Office III of the Reich Main Security Office, committed such crimes and was used to commit such crimes against humanity?

Q Can you give reasons for that?

A The SD was merely an information agency. It had no executive tasks.

THE PRESIDENT: Dr. Gawlik, on a point of information, the SD originally was, as I understand it, a news gathering agency, an intelligence organization.

DR. GAWLIK :Yes.

THE PRESIDENT: But it would appear that many misused the phrase to refer to something else and even, according to the Defendant Ohlendorf, Hitler erred in his reference to the SD so that I ask you new, was there any organization or outfit or group of individuals involved in violence which became known as the SD, even though incorrectly, so far as the original organizational chart was concerned?

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DR. GAWLIK: Yes, Your Honor. This name SD included -- that was -the concept was not clarified and by SD one often described the Security Police and the Secret State Police, and the Criminal Police. The reasons for this were that all the officials of the criminal Police uniform, and unfortunately it was quite common in Germany that the high-ranking leaders wanted power. Now Heydrich wanted to show that these are the people who belonged to him and therefore he gave them a gray uniform and all these people were insignia on their sleeve with the word "SD", Security Service, but they were Secret State Police officials and Criminal Police Officials, so that in the occupied territories every secret state police official and every Criminal Police official was described as an SD man.

This is shown in the submitted documents. For example, the Grebe document, which was submitted to the IMT. It describes persons who doubtlessly were Gestapo and Secret Police members, as SD members, and therefore, when one talked about police measures, one often meant SD. Keitel explained this in an affidavit before the IMT. He stated, there, if he did not know which police division was competent, he merely said, "Security Service", people had the opinion that the Police looked after the public order and the security and therefore, and therefore, it was the security Service, while this Security Service of Office III is quite a different thing.

It had no executive power. It could not even arrest a man.

THE PRESIDENT: Very well.

Q (By Dr. Gawlik) In your capacity as Oberhauptsturmfuehrer in the SD after 1 September 1939, did you commit any crimes against humanity or any war crimes? crimes?

DR. GAWLIK: Your Honor, I have no further questions.

THE PRESIDENT: Cross-examination on the part of Defense Counsel?

DR. KOESSL (Attorney for the Defendant Ott): Would you permit me to ask a few questions, please. BY DR. KOESSL ( Attorney for the Defendant Ott): over Sonderkommando 7A?

Q When was this?

Q After that was he again put in charge of Sendorkommando 7B? continued ti Bryansk where Kommando 7B was and there he stayed with his predecessor Rauch for about three weeks and trained. That was the usual thing when a new Kommando leader came. We tried to make him work with his predecessor for about three weeks in order to train him well.

Q What opinion did you have of Ott? who did his duty, was a good leader to his men; I had no complaints about him.

Q How did the Army judge the defendant Ott?

A I remember two occurrences: One during a visit of the AOK 2 in Ord and the other one in a letter which the Commander in Chief, General Schmidt, wrote to me, when Ott was to be relieved, that Ott should remain, because the Army cooperated very well with him. command?

A I don't know about any during Ott's activity in Kommando 7B.

Q. Can you remember long periods when Otto was prevented from taking part in leading the Kommandos?

A. Yes, that occurred twice and then for some time: The first journey took about four weeks -- I am not quite certain -- about four weeks. It took place about April or May; and the second time he was absent even longer, because he had broken his leg and therefore he was ill, and then he had to recuperate and went on leave. During that time the RSHA relieved him. He returned once more, because the Commanderin-Chief of the AOK 2, General Schmidt asked for it in writning and this letter had been handed on to Berlin with my approval.

Q. Do you remember that the prosecution submitted Exhibit 123, in Document Book III-B on page 129 - 130, which has the NO number 4747? The transfer is mentioned and, as you pointed out, they asked for him to be transferred from Russia.

A. May I have the document, please?

Q. Do you there find a decree according to which Ott was ordered to return to the Reich?

A. This is the decree I already mentioned.

Q. This decree was not complied with and Ott was sent to Russia again, because the Army asked for it.

A. Yes, because the Army asked for it and because I had sent this letter on to Berlin.

DR. KOESSL: Thank you very much. I have no further questions. JUDGE MUSMANNO: Any furhter questions by defense counsel? BY DR. FRITZ (Attorney for the defendant Fendler):

Q. Witness, you said in your direct examination that you were in charge of D, a department in the RSHA, in the Central Department III A 21 and that you worked on the plant protection there, is that correct?

A. Yes.

Q. Did your department have judiciary departments in the SD and in the Subdepartment of the SD?

A. Yes, departments and some subdepartments were concerned with this.

Q. Did a department unit in III 21 also work in a subdivision plant protection?

A. Of course.

Q. Did those members of the 3D who worked on plant protection have any executive police powers?

A. No, they did not have that.

Q. Therefore, if I understand you correctly, a departmental chief in III 21 in a subdivision of the SD did not have any executive power.

A. Definitely not.

DR. FRITZ: I have no further questions.

BY DR. STRESS: (Attorney for the Defendant Schulz)

Q. Witness, at the beginning of your examination, you stated that you did not learn anything about the execution order in Bruisk or Dueben, but even later. How do you know that this execution order in Bruisk, Dueben or Schmideberg was announced?

A. I heard about that for the first time through Gruppenfuehrer Heydrich before I left for Russia.

Q. Was it told to you by anyone else?

A. Nebe discussedit with me, of course.

Q. When did your departure to Russia take place? When did you discuss it with Heydrich?

A. Between the 1st of November and 21st of November, between my assignment and the date of my departure.

Q. 1941?

A. Yes, 1941, closer to the 20th than to the 1st.

DR. STRESS: Thank you.

BY DR. ERICH KARL MAYER (Attorney for the Defendant Steimle):

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Q. Witness, do you know the defendant Steimle?

A. Yes.

Q. Since when did you know him?

A. I met him in Russia.

Q. On what occasion did you meet him?

A. During my visit to his position in Reshev.

Q. What position did he hold at the time?

A. He was in charge of Sonderkommando 7a.

Q. What position did he hold under you?

A. He was under me.

Q. For how long was Steimle under you?

A. Only for a short time, approximately until the middle of December 41

Q. Can you describe briefly Steimle's activity in Sonderkommando 7a while you were there?

A. I remember something about this, owing to a visit I paid to Steimle in Kalinin and Reshev soon after I took my office. On that occasion Steimle talked about the work there and I remember that in the narrow front near Kalinin considerable espionnage activity was going on. He described to me one case in particular in which a Russian female student carried out espinonnage and gave messages to missions. This I remember of the activity of Sonderkommando 7a at the time when I worked there and visited Steimle.

Q. Did you, during the time Steimle was subordinated to you, hear about execution acts of any sort, particularly against Jews? Were they reported to you?

A. The time when Steimle was my subordinate was so short that I know that during that time no such actions were reported.

Q. During your activity asChief of Einsatzgruppe B did you hear whether Sonderkommando 7a under Steimle before you started to work there carried out such actions?

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A. I don't know that.

Q. Can you state when Steimle left Sonderkommando 7a?

A. I already said about the middle of December.

Q. Why?

A. In order to go on leave.

Q. Who granted his leave to Germany?

A. I did.

Q. Did Steimle return after this leave to Sonderkommando 7a?

A. No, Steimle did not return; when Steimle had not returned after his leave I either inquired in Berlin or was informed by Berlin that Steimle would not return because he had become ill meanwhile.

Q. Can you tell us to which Army Sonderkommando A was attached, during Steimle's time?

A. Always the 9th Army.

in which Sonderkommando 7-A was active on the map?

A Yes. The 9th Army in the territory of Sonderkommando 7-A were the same. The 9th Army was on the left wing of the Army Group Center. Therefore, Steimle was always furthest to the north of the northern commands. In the norht of this territory, there was Kalinin. Then the border ran along the front 'til just before Moscow. The south frontier of this territory was the division line of the 9th Army and the 4th Tank Division, which was 20 or 30 kilometers north of the top point from Smolensk to Moscow. The western border was the division line between the Rear Army and the rear territory. In general, it went from north to south approximately like the Dnjepr that is from east of Smolensk up to the Valday Mountains to the south of the Ilmen Lake, which is blue on the map and there again along the front, which ran from west to east there.

Q Witness, do you have Document Book II-B infront of you, still?

DR. MAYER: Your Honor, the witness will got the document book. BY DR. MAYER: NO-2824, Exhibit 62. It is the operation report No. 148 of 19 December 1941. During the examination it had already been discussed... In this document, in the territory of Einsatzgruppe B places are named but it is not stated which Einsatzkommando or Sonderkommando was assigned for these places. Please tell me, as Chief of Einsatzgruppe B - whether the following places, which I will read to you, were in the territory and were under the competency of Sonderkommando 7-A. The places are mostly on page 36, 37 and 38 in the German Document Book. I name the locations: Gshatsk.

A Gshatsk was not there. Gshatsk was near to Moscow.

Q Kurhle?

A Orel also further south; did not belong to 7-A.

A Bobruisk is south of Mogilew. It belongs to Einsatzkommando 8, not to 7-A. Vitebsk. In general, west of Smolensk. But since the border of 7-A was east of Smolensk it cannot have belonged to 7-A. to 8; Kormu is also down there, near Gomel -- I don't know the exact situation - but it is not under 7-A.

Q On the next page the following locations: Ljubawitschi.

A Ljubawitschi - I know the exact situation not very well. It is west, or southwest, of Bobruisk or Gomel, near Marinagorka, on the northwest border of the swamp region. That belongs to 9 or 8.

Q May I add another question. According to the situation of Ljubawitschi, 7-a cannot have anything to do with it, either. Einsatzkommando 8.

A Roslawl is east of Smolensk. It could not belong to 7-a.

DR. MAYER: Your Honor, I only have a few questions as defense counsel for defendant Klingelhoefer.

THE PRESIDENT: Vary well, proceed. BY DR. MAYER: on what occasion did you meet him.

Q On what occasion, and where?

Q What position did Klingelhoeffer have at that time? Gshatsk -- not far from Moscow. that Vorkommando Gruppenstaff had the task, when Moscow was attacked to set up billets, to look after the staff of the Einsatzgruppe for a command which wanted enter Moscow. they were in Gshatsk? it existed. Afterwards it was dissolved because I had realized that we would not get to Moscow vary soon. about measures or actions as contained in the indictment? had no more work for them. They had no space, either, because in Moshaesk there was part of Kommando 9. returned? I travelled together with Klingelhoeffer. I had met him in Smolensk while I stayed in Gshatsk. I visited him in his billets. I left him there.

I travelled on to Wjasma and to Kalinin, and then again to Smolensk. Meanwhile, Klingelhoeffer had already gone on leave.

Q When did he return? leave? Klingelhoeffer on my staff. Klingelhoeffer had been born in Moscow. For many years he had lived in Moscow. He therefore know he Russian language very well. He could treat Russian people very Well. He was the most suitable man. I needed him in particular for the necessary SD work because I could not use an interpreter who could just conduct conversation at a very low level, but he had to know the language so well, in writing and speech, so that material found in the Archives, or reports, could be translated by him; he could conduct conversations with some Russians whose knowledge was of importance to us, with professors, older gentlemen from the Czarist day and so forth. was Sturmbannfuehrer? itself did not matter, but his linguistic ability, and his mental ability apart from that, when I considered the entire work of Klingelhoeffer and the very valuable work he has done for the SD, the rank Sturmbannfuehrer in adequate with the way in which he solved his task. or did you also give him tasks which took him to other places? for about two weeks. This exception consisted of the fact that Klingelhoeffer got an order from me to make inquiries about partisans in Drasnin, that is about 25 kilometers to the west of Smolensk. The reason why Klingelhoeffer got this order was actually not in Klingelhoeffer' field; the reason was that as far as I remember the Chief of the staff in the Rear Army territory called, and reported that now the partisans had approached Smolensk and were getting dangerous, and that they were already 25 kilometers away.

He asked me to send a suitable man who could find out what the position was in Krasnin and in the woods south and east of it. This order I gave to Klingelhoeffer although Kraesnin was in the territory of Einsatzkommando 8. the local commander in Kraesnin, and why?

A This had to be done because it was ordered; and secondly, General Schenkendorf, the commander of the Rear Army, had ordered that in all these cases when Security Police commanders were put in charge of some limit they would report to the competent army officer. Krasnin to Smolensk? the Iron Cross first class? them were given out. Einsatzgruppe B was given one or two such distinctions. Since Klingelhoeffer at the time was one of the few leaders who had been in the east from the beginning, and apart from that, his reports were extremely valuable, and as the officers appreciated this I recommended Klingelhoeffer for this distinction: The Iron Cross with Guards first class.

Q What can you say about Klingelhoeffer's personality?

A Klingelhoeffer was formerly a singer. He has an artistic manner which is very evident. He is a soft, sensitive, a decent man, a good comrade and a good, cooperative worker.

DR. MAYER: Thank you, witness, I have no further questions.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine-thirty.

(Tribunal recessed until 0930 hours 17 October 1947,)

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: If no other defense counsel intends to cross-examine the witness the Prosecution may now begin with its cross-examination. BY DR. LUMMERT (For Defendant Blume): to ask you first of all, Witness, when did you become the successor of Nebe as the man in charge of Einsatzgruppe B?

Q Do you know the Defendant Blume? 7-A?

A I do, and I know that from Nebe. He told me that. That was prior to my time. was in charge of Sonderkommando 7-A from its establishment, in other words, from June, 1941, until approximately the middle of August, 1941. I would like to ask you, Witness, did you at any time hear anything from your predecessor Nebe about the way in which Dr. Blume lead the Sonderkommando 7-A?

A Yes, indeed. Nebe spoke to me about Blume. He told me that Blume did too much for his men and that very, very often he spent the time with his men at Lakeside Places. I can very well remember the name of the Lake Roswita which I got to know myself later. Blume's inactivity as the man in charge of that kommando?

A I drew from Nebe's words that wanted to express his dissatisfaction.

DR. LUMMERT: Thank you very much. No further questions.

THE PRESIDENT: Very well. I take it that no other defense counsel desires to cross-examine the witness. Mr. Ferencz, you may now begin. BY MR. FERENCZ: that you never committed any crimes. Please explain to the Tribunal why you assumed an alias and moved from farm to farm as a common laborer after your discharge from a P.W. camp? official announcement that the Germans would be given the possibility to continue their struggle against Bolshevism. this would no longer be possible. That, for me, as an old National Socialist within a matter of minutes a whole world collapsed, can only be comprehended by someone who experienced those minutes or hours in a similar situation. It was a spontaneous decision, not having been considered previously that as an officer to avoid, if possible, being taken P.W. That was the reason why I wrote myself out a false release paper, and I received false papers altogether on a false name.

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command of Einsatzgruppe B on 30 November 1941, and not on 1 November, 1941, is that correct.

A Did I understand you correctly, was it the 30th? Yes. whether Rasch or Thomas would be assigned instead of you, and that explains why the 1 November date was wrong. the 1st of November, 1941. The first which I learned about my commitment to Russia was a telephone call from Streckenbach, which also took place on the 1st of November, probably. During that telephone call Streckenbach told me about the fact that I was being sent to Russia as an Einsatzgruppe chief, and at the same time he told me that I had to prepare myself but that I had to await additional orders. A few days later, maybe two, three or four days afterwards, I can't remember the exact number of days, Streckenbach again called me up and he informed me that it was not quite clear whether I was to be transferred to Smolensk or Kiev. Whether at the time it was discussed that Rasch or Thomas was to be sent to Smolensk I don't know, because it was quite a mix-up, and it is still all mixed up. I still can't find my way around. In any case, the situation was such, that I was being discussed back and forth whether I was to be sent to Smolensk or Rasch was to be sent to Smolensk, or Thomas. At the same time it was also stated that Rasch was to be sent to Kiev and I was to be sent to Smolensk, or Thomas was to be sent to Smolensk. At the same time it was also discussed that Rasch was to be transferred to the Continental Oil Company in Berlin or that I was supposed to go there.

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This back-and-forth discussion ended to the effect that I was finally told that I was to be transferred to Smolensk; Rasch was to be transferred to Berlin; and Thomas was to be transferred to Kiev.

Q How long did the confusion last? I mean, when were you certain as to the time you were to take command? retroactively - starting on the 20th or the 21st, which date I probably departed. I believe that we were clear about everything around the 15th or 16th. of Einsatzgruppe B from 1 November on? I started my service, as stated before, on the 30th of November, and of course there might be a difference of one or two days in that. were chief of Einsatzgruppe B from 1 November on? chief of the Einsatzgruppe B is dated the 1st of November. However, the actual starting of service, and therefore taking over the power of command as chief of Einsatzgruppe B, only took place around the 30th of November. Those differences between the transfer order and actual taking over of the service can always be found. You can see that from my personnel file as well. I would like to refer you, for instance, to my transfer date from Holland to Nuernberg, which was dated 1944. I know even today, and I know that very well, that I started my service on the 9th of June 1944, here in Nuernberg, and that my order of transfer was dated, I believe, May. I can't remember the correct date, but anyway, it was May, and now you can see, there was a certain lapse of time, between the order of transfer and actual starting of service.

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which you filled out on the 10th of January, 1942, which was two or three months after your assignment, and you stated in that personnel questionnaire, and you confirmed to the best of your knowledge, at that time that you were chief of Einsatzgruppe B, from 1 November on. Why didn't you qualify it there and point out that you only were chief from 30 November on? when I was asked one of the first questions by my defense counsel, that there was a mistake in the document book, and it was not on the 10th of January 1942, but on the 10th of January, 1943, that therefore, the questionnaire does not contain a difference of two or three months but a difference of one year. But that does not make any difference really. I have put the date of my transfer at the time, which was correct at the time. Of course, 1 had no idea at that time, that I would have to use this date or I would have to answer for that date at any time here. Had I known that then I am quite sure that I would have written a different thing, namely the transfer order or transfer on that date, and actually taken over service on another date. to this, that he reported to you in the middle of November, would you say that he was lying or mistaken? Reshev at the end of November, would that also be incorrect?

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with Sturmbannfuehrer Klingelhoefer, and I went to Vyasma, and from Vyasma I went to Chatsk and from Chatsk back to Vyasma, and from Vyasma I went to Rshev and Kalinin; from that can be seen that I was present in Rshev only a few days after taking over my assignment. inspect his position toward the end of November?

A It could not have been towards the end of November. It must have been early in December. did you receive specifically?

A I didn't understand the question. Would you repeat please? specifically what orders did you receive? and my departure on the 20th or on the 21st, I was ordered to Heydrich and I received clear orders from him for Russia. Now, first of all I received the Fuehrer order concerning the killing of Jews, gypsies and Soviet officials. No. 2, I received a general order for the Einsatzgruppen and for the Einsatzkommandos to maintain order and security in the rear area of the combating forces. function was to kill defenseless people, is that correct? that there was a Fuehrer order, and according to that Fuehrer order all Jews, gypsies and Soviet officials were to be killed.

Q Did he tell you that women and children were to be killed too?

Q What was your reaction? the first time used a sentence that all the Jews were to be shot and all gypsies and all Soviet officials, I asked him clearly that this only dealt with human beings who had done something criminal and which fact could be proved.

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Whereupon Heydrich interrupted me quickly and said, "That is a clear Fuehrer order. This Fuehrer order has been issued for the security of the rear of the combating forces and of the entire Army area. There is no discussion whatsoever about this Fuehrer order. It can only be understood in one way, and it has to be carried out accordingly. All Jews, both male and female, all gypsies, and all Communist officials fall under the Fuehrer order." He repeated, "There is no discussion. The order must be carried out. The Fuehrer issued the order for reasons of security of the Army areas."

Q Do I understand then that you did not pretext this order? as it had been issued, and I took it, as an order of my supreme commander and of the head of the state, and, of course, I also took knowledge of the fact there was not discussion about it. B in any way or to improve their operations?

A Would you repeat, please? Einsatzgruppe B in any way or to improve their operations?

A That I had to improve my operations? about to take over. it in any way? No, no, I knew nothing about it.

Q To change them or improve them? Einsatzgruppe-B? I was told that Gruppenfuehrer Nebe, at the time, was in charge of the Einsatzgruppe, and that Gruppenfuehrer Nebe and the Kommando leaders had exactly the same orders as those issued to me, and that Einsatzgruppe B and their kommandos had to act according to those orders; furthermore, that I would have to receive certain instructions from Nebe.

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knew that units of Einsatzgruppe B were killing defenseless people, is that correct? had to assume that people were being killed, and I had that confirmed by Nebe

Q So your answer to the question is yes? tinue killing defenseless people after you took command? received those orders in Schmideberg Ant Thueben or Pretsch and the leadership of Einsatzgruppe B could not possibly change anything in the orders or in the execution of those orders.

Q Would you answer my question, please? I will repeat it. Did you know that units of Einsatzgruppe B were going to continue killing defenseless people after you took command, yes or no?

A I believe that my answers exactly your question. Of course, I didn't say yes or no, but I went into details.

Q But your answer then is yes, with an explanation? Sonderkommandos, based on the orders which they had received, would continue their activities as they had done so far, and therefore they had to act according to those orders and continue their activity, your units. Did you read these? and I read part of them. Of course, I didn't read all of them, I don't believe, because they arrived sometimes in large bundles, and apart from that I wasn't present all the time, but as I stated yesterday, during the first six weeks I was traveling all the time in order to gain some sort of an impression about the areas of my assignment, about the units at my disposal, etc.

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, etc. what did you discuss with then? the sub-kommandos we discussed all sorts of things. I know you want to know whether we spoke about the execution of the Fuehrer-order, the execution orders. I shall give you that answer before you are going to put it to me directly. Of course I spoke with the kommando leaders and the sub-kommando leaders about it, for the very simple reason because the kommando leaders, should I not have started to speak about it, would have addressed me about it, because this order was very harsh, terribly harsh for the Einsatz Kommandos and others who were involved in it. Everyone knew that it was not pleasant but was very much against one's inner feelings.

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and its terrible burden when executing it who had something to do with it directly or indirectly were confronted, on the the other hand, however, with another discussion namely that this order had been issued by the Fuehrer, that is to say, by the man in supreme command, the supreme head of the State. We were now faced with the problem of our personal feelings and this order. Each one of us had to make up his mind whether during the war we had to decide according to our own personal feelings or whether we had to obey an order which was issued during the war by the Supreme Commander of the State. The decision was for us, as obedient soldiers, not easy, but it was clear we had to carry out the order, for the very simple reason that the soldier during the war has to carry our orders. If every soldier would only carry out an order after having considered whether as likes it or not, then there would be no more soldiers.

Q: Did you discuss it with any of these defendants?

A: I surely spoke about it with Steimle. I surely also spoke about it with Out. I also discussed it with my codefendant. Whether I spoke about or discussed those things with him I don't know. It is possible. I am not quite sure Defendant Klingelhoefer had nothing to do with the execution of those orders and noon of the other defendants here were with me at the time.

Q: When you discussed it with these defendants did you impress upon them the fact that it was a Fuehrer Order and had to be carried out by them without question?

A: That was known to the Kommando leaders as well as to me by the order. It was known and there was no need to point it out again, because the Kommando leaders would not have acted if they had not known the Fuehrer Order.

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Q: Did any defendant ever come to you and say he couldn't or wouldn't, or didn't want to carry out the execution of defenseless people?

A: Nobody approached me in that form. No, nobody spoke to me about that.

Q: As Chief of Einsatzgruppe B, what would you have done to any defendant who refused to carry out the Fuehrer order?

DR. GAWLIK (Attorney for the Defendant Naumann): Your Honor, I have to object to this question. The witness can only be questioned about what he did, what he heard, and what he saw. However, beyond that he cannot be asked what he would have done, because it is nothing but an assumption. It is a hypothetical question. It is furthermore to be considered here that we would receive possibly a wrong reply which would lead to a wrong conclusion, for the witness possibly at the time would not have had time to think it over, because the circumstances were severe -- but anyway, this is not a question to put to a witness anyway.

THE PRESIDENT: What did you intend to establish by this question, Mr. Ferencz?

MR. FERENCZ: I intend to establish, Your Honor, that the defendant did, in fact, Enforce the Fuehrer Order and that, had any defendant discussed it with him, he would have ordered them shot or he would have let them go and that his position either coerced other defendants or did not coerce the defendants. The plea of superior orders is an important defense in this case and each defendant says he received the order from a superior. I would like to establish whether he could have evaded that order by going to his immediate superior and stating that he objected to the killing of defenseless people. I would like to know what this defendant would have done either to enforce that order or to allow his subordinates to evade the order.

THE PRESIDENT: The objection i s overruled.

Q: (By Mr. Ferencz): Would you answer the question, please, Naumann. What would you have done as Chief of Einsatzgruppe B to any defendant who refused to carry out the order?

A: I have stated before that nobody had come, but had someone come to see me, then, first of all, I amy trying to place myself back in that time -- I would have thought about the objection of that respective man then I would have made my decision. The decision would have been unmistakable; if it was a simple refusal to obey an order, I would immediately have had to report him to my superior officers.

Q: You said in you direct testimony that your units worked very independently, is that correct?

A: Yes, I said, "independently", yes.

Q: Does that mean that they could have failed to execute Jews and gypsies and others and no one would have been the wiser?

A: I know of no such thing. That Komandofuehrer acted thus

Q: I am asking you would it have been possible, because of their independence to do that without having any disciplinary action brought against them?

A: I told you that nothing of the kind came to me, nor nothing of the sort had happened -- that a kommando leader had done what you said.

Q: Could he have done it because of his distance from Smolensk or because of the independence of the kommandos, could they have avoided the killings of Jews without that coming to your attention?

A: Theoretically speaking, that might have been possible.

DR. HOFFMAN (Attorney for the Defendant Nosske): Your Honors, the defendant already stated that he knew nothing at all about it.

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With that he pointed out that he knew nothing correct about certain facts and the question whether hypothetical things could be possible according to my opinion prejudices the defense of the other defendants and I would appreciate it if this question would not be admitted, as I believe that each defendant himself would have to answer this.

THE PRESIDENT: The fault lies in the very question itself. The question is could anything have happened without the defendant having known about it. It is very obvious that anything could have happened without the defendant knowing about it, so therefore, the objection is sustained.

MR. FERENCZ: I will rephrase the question, Your Honor.

Q: (By Mr. Ferencz): Because of the independence of these units and their distance from Einsatzgruppe B, were you able to control their acts so closely that the failure to kill Jews would have become apparent to you?

A: Due to the distances of that area, should it have happened, it would have hardly been possible, but still I would like to repeat that I know of no such case.

THE PRESIDENT: The question, Witness, is whether you had direct control over these inferior commands and whether your line of communication was such that you were currently informed of what was taking place in the field. Did you keep a check on them, in other words.

THE WITNESS: The connections between the Kommando leaders and myself was the following: The commandos reported every two weeks to me or to the staff of Einsatzgruppe concerning what incidents we controlled, that is to say, administrative, personnel, executive, and other measures. Apart from that once in a while the Kommando leaders would come to see me if they had some sort of a reason to do so and if they had a reason to discuss certain matters with me or then to discuss certain things with members of the staff of Einsatzgruppe B. Furthermore, until the month of April 1942 I would drive out currently to the kommandos and sub-kommandos and I would visit them, That meant, of course, that I went to see a kommando very seldom, because according to my recollection in 1942 there were approximately 24 garrisons of the Security Service Police and so within my area.

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From the month of April, 1942, I had a plane at my disposal. Then, of course, I no longer drove to those kommandos but I flew there. That is what the direct contact was like between the kommando leaders and myself.

THE PRESIDENT: I think that is a full answer to your question, Mr. Ferencz.

Q: (By Mr. Ferencz): Yesterday you examined Document Book II-B, page 15, which was Document NO-2825 and this reported the killing by Einsatzgruppe B and its units of over 45,000 people in four or five months. This was before you took command. What is your best estimate of the number of persons killed by Einsatzgruppe B during the 15 months that you were in command?

A: I was already asked about that figure during my examination by Herr Wartenberg. Mr. Wartenberg for two hours wanted me to tell him the exact figure. He made all sorts of proposals to me. He started with 1,000 and then went up to half a million. I should name a definite figure. I told him that I could not mention any figure, because any figure I mentioned would be wrong.

Q: In Exhibits USSR 48 and 56 before the International Military Tribunal it was reported by a commission investigating atrocities in the Smolensk area that during the German occupation there and it was your area over 135,000 peaceful citizens were killed. Do you think that figure is too high or is it too low?

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A: What document did you say this came from, Hr. Ferencz?

Q: Those were exhibits in the International Military Tribunal.

DR. GAWLIK: Your Honor, I would appreciate it if when the prosecution refers to certain documents that the witness be shown that document as it is the custom in all trials. At least if he would be shown the document he can state something about it. After all, he can't make any statements if he doesn't know the document.

MR. FERENCZ: Your Honor, the question concerns the figure of 135,000 people killed in the Smolensk area. It is very simple and I am asking the defendant if that figure is too high or too low.

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THE PRESIDENT: Do you know who made the statement before the IMT. No.

MR. FERENCZ: Your Honor, I have it in a exhibit USSR 48 and 56. I don't know and I don't have the document with me. I have one of our staff analyses of the documents giving that figure.

THE PRESIDENT: The prosecution, Dr. Gawlik, would be within its proper rights to ask him that question independent of any document.

He merely asks him if that many people were killed in his area. Now the witness can reply the number is too high, is too low, or he doesn't know. The whole field of response, in open to the witness. There is no undue advantage taken of him by the question.

DR. GAWLIK: I agree with your Honors. If the prosecution would ask, please comment on this figure, if that is the way the question is put, I have no objection whatsoever, however if reference made to any documents in the question then, of course, I would like to ask that the document be shown to the witness, or, that the question be asked without referring to the document.

MR. FERENCZ: I will rephrase my question, Your Honors.

Q (By Mr. Ferenz) Based upon your judgment as Commanding Officer of Einsatzgruppe B and based upon your knowledge of the reports sent to you, do you say that 135,000 people killed by Einsatzgruppe B is an excessive figure?

A This figure is so large that it couldn't possibly be debated.

Q Your answer, then, is that it is excessive?

Q What is your minimum estimate of the numbers killed? Wartenberg wanted me to tell him about that end he asked me for two hours and I couldn't give me any information whatsoever. If you ask me about 135,000 people, then I have to tell you that this figure is a definite overstatement of what had been done by Einsatzgruppe B.

them. You were Commanding Officer of Einsatzgruppe B for 15 months. You have told us that the officers of Einsatzgruppe B came to you and that you discussed the execution of defenseless people with them. You have also told us that for two hours you have refused the question, as to the minimum number executed while you were in command. And do I understand you now still refuse to answer the question?

A I did not refuse to quote a minimum. All I said was, I simply cannot give a figure because I do not have the information necessary to calculate, such a figure. If I did it was a total figure for a period of over 15 months. That takes in thirty monthly reports from six kommandos, which means 18 reports. Therefore it is absolutely impossible for me to give you a correct figure which was never added up, which, however, is contained in those 180 reports, but as much as hard as I may try I simply cannot give you an exact figure.

Q Very well. You stated yesterday that it was not the mission of the Einsatzgruppe staff to carry out executions and that you were only concerned with administrative and organizational matters, is that correct? further than that. I didn't say only administrative and organizational matters. Am I to repeat what I said yesterday, Mr. Prosecutor? the personnel, administrative matters and also with organizational matters; furthermore, that the staff had to see to it that certain questions of billeting, feeding, and also of transportation, of gasoline and similar matters were taken care of; furthermore, that the staff had the task to receive the reports from the commandos and to compile the reports which were then sent to the RSHA in Berlin and other agencies.

the executions? the staff. and I ask you to explain why it says in this report that the staff and the Vorkommando Moscow killed almost 2 1/2 thousand people.

A We already discussed this report yesterday. We read all the dates in this document and I shall read them again, 11 October, 14 October, 18 October, and the 20th of October, and the latest date is the 23rd of October.

It could be seen very clearly yesterday that at that time Nebe was in charge. What Nebe did in detail I don't know and there is something else to be added to that, namely, that at that time in October the Army still advancing. Einsatzgruppe B also was moving and I ran the group when the so-called activity had begun and the front lines had been stabilized. by saying that it may be true that the staff killed people before you arrived, but when you came there the Staff no longer killed people?

A I don't know whether the staff carried out any killings at any time. The staff was already in Smolensk and part from that, the personnel strength was so small that only those men were there who were actually used and needed for staff work. this sentence, and I quote, "Staff and Vorkommando Moscow, 2,457," under the report of liquidations to mean that the staff killed 2,457 people with the help of Vorkommando Moscow.

A I don't know. I couldn't know how things were before my arrival because I symply took over the Einsatzgruppe when it was busy in a stationary manner. How it was during the advance, I really can't tell you at this time. I don't know.

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Q How many gas vans did Einsatzgruppe B have? three gas vans.

Q What were they supposed to be used for?

A That was mentioned before. They were to be used to exterminate human beings.

Q Were they in fact used for that by your unit?

Q Didn't you ever discuss with your kommando leaders the killing of women and children? trips to the kommando leaders and I mentioned that before that I spoke with them about this Fuehrer Order. women and children? were no gans vans. Einsatzgruppe B. is that correct?

A Yes, there were gas vans during my time. Of course I could be wrong about the date, but it must have been in June, June 1942.

Q As Commanding Officer of Einsatzgruppe B, didn't you ever inquire how these vans were being used?

A No, and please don't foget, Mr. Prosecutor, that at that time, in other words in 1942, June 1942, the executing of Jews were over.

Q Who sent you the gas vans?

Q Do you know specifically who?

A No, I don't

Q Where did the gas vans go when they left your unit?

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the RSHA. Where they were brought to, I really don't know. I stated in my affidavit at the time that I assumed that they were sent to one of the Einsatzgruppen in the south. That could have been C or D. From disgas vans were sent to D.

Q In other words, you say that you don't know specifically who sent the gas vans nor do you know where they went and you do not know what they were used for, is that correct?

A I have stated that they came from the RSHA. Who sent them, of course I don't know. I furthermore stated that I don't know whether they were used and I also stated that I knew that their purpose was to exterminate human brings and, finally, I stated that day they were picked up by a representative of the

RSHA and I don't know where they were brought to. carrying wood. What was your reaction at that time?

A I saw a gas van for the first time after they had arrived. The man in charge of the motor pool came to see me and when I went through the garage I looked at the gas van. Do you want me to describe it?

A On a second occasion I saw that gas van which? was always in the garage in Einsatzgruppe B had been loaded up with wood and, of course, we had to have stocks of wood for the winter. That was one of the problems of an Einsatzgruppe leader, too. its kommandes, were you not?

Q You had the power to command, did you not? command or who reported totake charge of a unit under your command?

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and normally speaking they would stay there for three or four days with the staff of Einsatzgruppe B in order to gather information concerning everything from the administration to police activity. After that, they drove to their kommandos and they took charge of the konmando. They stayed there for approximately three to four weeks with their predecessor, and at the end of that time I went to their garrison and I relieved the man who had been in charge so far of his duties and I introduced the new leader to his men.

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Q. You didn't give him any orders or instructions as to what his task would be, or how he should perform his task?

A. So that the new Commando leader or the Sonderkommando leader could get well acquainted with those orders he was to work along with the former Commando leader until he got into the swing of affairs, and that is why I issued no new orders about all those things which had been ordered before, this is not customary in the military.

Q. You just then took him and introduced him to his predecessor, and didn't give him any orders -- just turned him over and said, here you instruct him. Is that correct?

A. I understood from the translation that I took him along to my commander. Is that what you said?

Q. No, no. I understand from your answers that when a new officer reported you didn't give him any new orders or instructions but turned him over to the officer he was supposed to relieve, and that officer explained the function of the Commando to him and instructed him in what he was supposed to do, is that correct?

A. Orders are not issued to individual persons, but to a unit, and when those orders already exist for a unit, then they are executed by the unit. When a now man takes over he has to carry out the old orders; so that there would be no gap, and so that the work would not be interrupted, I decreed in all cases that the new Commando leaders had to work along with the old Commando leaders for three or four weeks.

Q. I am trying to find out what happened when a new officer reported, who gave him the order to do anything - whether it was a lieutenant or a major or even a non-commissioned officer.

A. I know exactly what you want me to tell you, Mr. Prosecutor. You want me to tell you the new Commando leader came, and I said Here are the 36 or 40 orders which were issued during that time, and I will give them to you all over again. However, it was not that way. The Commando leader went to the new Commando and took it over along with the orders that had been issued to the Commando previously.

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A new chain of orders is not customary in military life. If a unit has certain orders, they stand and if a new Commando leader comes, he has to execute all these old orders - he has to carry thorn out. Orders are not given to individuals, but to units.

Q. They are just passed on existing orders by which you mean the order from Hitler and nobody else in between gave any new orders, is that correct?

A. Of course, you are referring to the Fuehrer Order. The Fuehrer Order was given to the Commandos and Einsatzgruppe; therefore, the Commandos and the Einsatzgruppe had this order from the beginning. Now, if a new leader, came in - then the task of the Einsatzgruppe and Einsatzkommando remained exactly the same, regardless of whether there was a change in leader or not -- it just didn't make any difference. A new leader had to comply with the orders which had been issued to that unit and carry them out in the same manner as they had been carried out so far. And that applies to every military unit, every agency, even in the homeland.

Q. Who told him about the old orders?

A. Probably the old Commando leader.

Q. You have seen the affidavit of the defendant Ott where he swore that you ordered valuables to be collected from the executed people, and to have them sent to you in Einsatzgruppe B, have you not?

A. Would you please show me that?

Q. Yesterday we discussed the Ott affidavit in which the defendant Ott said that you had ordered the collection of valuables. Do you remember that?

A. Yes, indeed.

Q. Did you issue any other instructions concerning other aspects of the executions, such as the distance from the city, the size of the squad, the manner of execution, the killing of children, or any similar methods? (Interruption)

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A. Do you mean the executions or the valuables?

Q. I repeat my question. Did you issue any other instructions concerning other aspects of the executions, such as the distance from the city, the size of the squad, the manner of execution, or similar things?

A. No, that was not necessary. Those orders had been issued before.

Q. In other words, every detail was covered by pre-existing orders, and no questions were ever raised to you?

A. Well, of course, there were questions once in a while.

Q. What sort of questions?

A. I stated before that the Fuehrer Order was discussed between my Commando leaders and myself. We had two feelings...first of all, our own inner feelings against this order, and on the other hand we had the order, and then, of course, the decision was made that for obedient soldiers all orders had to be carried out.

Q. Did you control whether the executions were done in a humane and military manner, such as the defendant Ohlendorf has told us he did in regard to Einsatzgruppe D?

A. During my visits the Commando leaders told mo how executions had been carried out in the past. During my time, and I am now speaking about the chronological development, only a few or rather, fewer, executions were carried out than before. As a result of this, and as these were distributed over a larger area and a larger period of time, and as I was not instructed in advance about them, this was not negligence on the part of the Commando leaders but it was within the independence which they had in their activities. I could not possibly have issued instructions before the execution of those orders. Apart from that, the Einsatzcommando leaders during the months of July -- (Interruption) behind them, and, therefore, it would not be necessary for me to issue individual orders in individual bases.

DR. DURCHHOLZ (for the defendant Schulz): Your Honor, I am sorry that I have to interrupt. But the defendant Schulz has been suffering from a bladder ailment for some time. If possible, I would like him to be excused from the present court session at the present time.

THE PRESIDENT: In view of the representation made by counsel, the defendant Schulz will be excused from attendance at the present moment. He will be secorted from the Court. BY MR. FERENCZ:

Q. Have you finished your answer, Naumann?

A. Yes.

Q. Do I understand you correctly, the, to say it was not necessary for you to issue any instructions concerning the details of executions?

A. Yes, that is correct. I say that because the Commando leaders reported to me as to how they had carried out these executions so far, and I had no objections to that.

Q. Yesterday you pointed out that several Prosecution documents which listed killings by Einsatzgruppe B were inaccurate because it was before your time. I hand you now, from Document Book II-B, page 62, Document NO-3276. This reports thousands of liquidations by the units of Einsatzgruppe 3 between 6 and 30 March 1942, including the killing of thousands of Jews and Gypsies. Were you the commanding officer of Einsatzgruppe B and its units at that time?

A. During that period of time, yes.

Q. Did you personally ever order anyone to be executed?

A. No, not individually. As I stated before, orders already existed; they didn't have to be issued again.

Q. Did you ever order anyone to be "Sonderbehandeit" - or, to be given special treatment?

A. No.

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Q. You are sure of that answer?

A. Yes, I am quite certain.

Q. Allow me, to refresh your memory. Did you ever hoar of the special Camp Wissokoje? W-i-s-s-o-k-o-j-e.

A. Yes, I know Wissokoje, indeed. There are several Wissokojes. I am assuming you are referring to the Estate of Einsatzgruppe B near Smolensk.

Q. I am asking you now if you have heard of the Camp Wissokoje.

A. Camp Wissokoje? There was no such thing as Camp Wissokoje.

Q. Did you ever order anyone executed near Wissokoje?

A. No.

Q. Were you in the vicinity of Wissokoje on the 5th of December 1942?

A. I don't know that. If you are referring to the Wissokoje I am referring to, then it was the Estate of Wissokoje, near Smolensk, approximately 17 kilometers east of Smolensk. Whether I was there on the 5th of December 1942, I really don't know, I was there quite often.

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a man on it and ask you if that refreshes your recollection of having ordered an execution.

A What am I to know about this document? executions? connection with executions.

Q Then it does not refresh your recollection, is that correct?

AAgain I don't see what this has to do with it. namely the name of the enterprise of Zeppelin. But this is the first thing in the three documents which means anything to me. people, that you ever ordered executions? just given to the defendant.

MR. FERENCZ: I have just handed to the defendant three pages which appear to be a questionnaire or life history of three men. Each contains a picture of the man. It states when he was born, his name etc. These are part of a file to which the last note attached is as follows, to your memory the execution of certain people by your order:

"SS Special Camp Wissokoje. Dated 5 December 1942. Memorandum. As a result of various things which"-

DR. GAWLIK: I have to object, your Honor. I have to have a German copy of that document so I can tell whether this document is relevant before I can let it be accepted into the record, your Honor.

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MR. FERENCZ: Your Honor, I have copy of the document. The objection is a matter of relevance. I think the objection can be over-ruled. I will show the document to the defendant and to the defense counsel and introduce it in the court as soon as I am finished reading a short paragraph.

THE PRESIDENT: That answer your objections, Dr. Gawlik.

DR. GAWLIK: Yes, but your Honor, I still ask that I be given a copy prior to the introduction of the introduction of the document because I can't judge whether the part that is being read is relevant, the reason it is being read, and whether it has anything to do with Naumann. I can't check it if I don't have the copy, the copy should be shown to me in advance. And we always used to do it that way before. We always received the German copy first.

MR. FERENCZ: I am just trying to refresh the defendant's recollection, your Honor. I will show the relevance of this document in the first sentence.

THE PRESIDENT: You see, Dr. Gawlik, Mr. Frencz is not introducing a document in evidence at this moment. He is cross-examining the witness. He asked him if he recalls certain episodes, and the defendant has stated he has no recollection of any such episodes. Now, the prosecution is endeavoring to refresh his memory. Naturally, you have the right to see this document, but Mr. Ferenzc has the right to put the proposition to him before exposing the document to anybody, because it is only for the purpose of refreshing the recollection of the defendant.

MR. FERENCZ: I repeat my question. I will read to you a certain document to refresh your recollection about having ordered executions: "Special Camp Wissokoje. 5 December 1942. Memorandum. As a result of various thinhs which happened in the meantime at the special camp Wissokoje, "K" was given the special treatment on 25 November 1942 by order of SS-Brigadefuehrer Naumann of Einsatzgruppe B." Does that refresh your memory?

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Q I will read a little further: "Here can be seen from the reports of SS-Hauptsturmfuehrer Sauckel, to the RSHA, Amt VI, Department VI-CZ, signed Goebel, SS-Unterscharfuehrer."

Do you remember anything having ordered executions now?

DR. FICHTE( for the defendant Bieberstein): Your Honor, for the defendant Bieberstein I would like to object to this manner of introducing evidence. It was usual at all times that before a document was introduced at least no one could read anything from the document During cross-examination it may be brought on that something is stated in the document, but not the whole document can be read. I an objecting to this on principle, for any further such cases.

DR. GAWLIK: And now I would like to see the document which was just read. the document.

MR. FERENCZ: You may show it to the defendant. Perhaps he will then remember.

THE PRESIDENT: Up to this point there is nothing incorrect in the procedure so Mr. Ferencz may continue.

Is there a question pending now? BY MR. FERENCZ:

Q Does that refresh your memory, Naumann? gruppe B - in the Estate of Wissokoje there was a house which had been placed at the disposal of an official of Office VI, and this representantive of Office VI received three to six Russians who stated that they were against the Bolshevists, and that by order of the Germans they wanted to carry out certain actions against the Germans. This agency of Office VI was not subordinated to me. It was subordinated to the competent department of the RSHA, Reich Security Main Office.

It received these instructions from there which did not concern me and with which I had nothing to do. The leader of this Commando, a Hauptsturmfuehrer, conducted independent negotations, without having to report to me and without reporting to me. As, for execution of a man of this organization - I never did order such a thing because I didn't have the right to do so. It was up to Office VI. around Camp Wissokoje?

A No, I don't know that, either. killed by order of SS-Brigadefuehrer Nuamann of Einsatzgruppe B. Is that you? Are you the person referred to? than myself.

Q But you don't know anything about those killings?

MR. FERENCZ: Thank you. Your Honor, this document has just been received from Berlin. We have not yet had it processed, as soon as we can put it into the hands if the Court we shall do so and introduce it as an exhibit at that time. We have three such documents.

THE PRESIDENT: I would suggest you expedite the processing so that the Tribunal may be entirely current on these documents.

MR. FERENCZ: We will do it as rapidly as possible, your Honor.

THE PRESIDENT: The Tribunal will now be in recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. FERENCZ: Before the recess we were discussing some documents which stated that the defendant Neumann ordered the execution of certain peopl. For purposes of idnetification I ask that these documents be given Prosecution's Exhibit No. 175, and we will introduce them as soon as they can be processed.

DR GAWLIK: I object to these documents being permitted to be presented, and I ask that the originals be submitted. First of all the connection of these documents is not evident, what I have been handed -and I only was given a part of them, and the Prosecution still the other part, are three questionaires of three Russians, but what they have to do with it, and the connection with these documents, is not at all evident and for that reason the Prosecution has not shown in how far these questionaires are at all relevant. In the last document which was given, to me it concerned a memorandum from a document and it seems strange why the Prosecution does not submit the entire document. I, therefore, must contest the authenticity ox these documents, unless the original be submitted. If the Prosecution has a copy, they must be in the position to get the original also.

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MR. FERENCZ: If your honor please, at the time we introduce the document into evidence we will introduce the complete document, certified the same as every other document introduced in Nurnberg, and the defense counsel may raise their objections at that time. Now we are just asking that it be given a number for purposes of identification.

THE PRESIDENT: Dr. Gawlik, the Prosecution at the present moment is merely asking that numbers be assigned to these documents. You will receive copies of the documents. That is copies of the entire documents, before they will be admitted into evidence. When he is about to introduce the documents into evidence you will have an opportunity to object to their relevancy or to their authenticity. He has merely asked that we give numbers for the purpose of maintaining the continuity.

DR. GAWLIK: But I ask that the original be submitted for identification because I contest the authenticity of this last document. It does not show at all from where it originates. I talked to some of the defendants. I am not allowed to talk to Defendant Naumann during crossexamination. None of the defendants know the persons mentioned there.

THE PRESIDENT: What have you to say to this, Mr. Ferencz?

MR. FERENCZ: The original is in Berlin, your Honor, and we have only received photostatic copies. This is the practice with all documents introduced. We have seen at the beginning of this trial that documents are processed in a certain way to assure their authenticity. The only objection I can understand is that the Prosecution has fabricated this document. If that objection is actually raised we will bring the original here. However, we must request that a photostatic copy be adequate, inasmuch as it is the usual practice, and to bring originals down in every case would completely disrupt the custody of the documents and the great care with which they are handled now.

DR. GAWLIK: I did not quite understand the question.

THE PRESIDENT: Dr. Gawlik, when you receive the copies, please look them over quickly and then decide whether you will insist upon the originals being brought here from Berlin.

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At the present moment we well allow the numbers to be assigned. The Secretary-General may indicate what numbers.

MR. FERENCZ: 175, Prosecution's Exhibit 175.

THE PRESIDENT: Do you intend to give only one number?

MR. FERENCZ: He will give one number to the group of documents. your Honor.

THE PRESIDENT: Very well, that number will be assigned to the group of documents.

Q (By Mr. Ferencz) Naumann, you have made several statements here this morning, which you, of course, insist are true, isn't that correct? of the other defendants to or careful about what they tell the interrogator and not be fooled, and further try to tip them off about what you had said in order to avoid, contradictions? prison about my interrogation.

Q About what? it to the Court and identify it. Would you read it out loud, please?

Q Will you please read this, return the other document, please? I will hand you the original.

DR. GAWLIK: Your Honor, I want to know about the contents, as is customary, before the document is discussed here. I cannot look after my clients interest as defense counsel if matters are discussed here about which I have no knowledge, matters which are between the Prosecutor and the Defence. The usual thing is that when a document is discussed that the defense counsel gets a copy.

MR. FERENCZ: If your Honor please, I have only one copy, but I give it to the defense counsel.

Q (By Mr. Ferencz) Would you please continue and read the document slowly and clearlytto the Court?

A "Do not be bluffed during interrogations. Always be careful, even if they smile at you. My statements so far you Were leader of the VKM first of all in Moshaisk, then in Roslawl. I cannot give the dates. Whether you carried out executions I do not know. My service started at the and of November, 1941. At that time there were no more ghettos in my region. The larg executions of the first time occurred during Nebe's time. I then got you into my staff, first of all because of your linguistic ability. Secondly, I had to be open here as it seemed to be wiser - because of your inclination to drink occasionally. I then assigned you to my staff, firstly because of your linquistic knowledge -

DR. GAWLIK: Your Honor, I object. First of all it should be shown who wrote this letter. The Prosecution would have to prove this. Secondly, I don't see the purpose of reading it out. The Prosecution could submit this document. Why should it be read out?

MR. FERENCZ: If your Honor please, we introduced first a typewritten copy of the document. The defendant said he was not sure that this was his own note, whereupon I handed him the original.

THE PRESIDENT: Is it the contention of the Prosecution that this is a note written by the Defendant Naumann?

MR. FERENCZ: Yes, your Honor.

THE PRESIDENT: Yes, and have you handed him a document which purports to have been written in his own handwriting?

MR. FERENCZ: Yes, your Honor; he has it now before him.

THE PRESIDENT: Defendant Naumann, is this your own note?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: Then I don't see any objection to his reading it.

DR. GAWLIK: It could be submitted in evidence. The Prosecution can state what they want to prove by it. I don't see the purpose of reading it out, why the witness should read it. We can read that ourselves, and so can. the Tribunal.

MR: FERENCZ: Your Honor, we will submit it as evidence. However, it is his own handwriting, and there are some parts that are difficult to read, and it is a short statement, about a page and a half, and it is all very pertinent and I am unable to read his handwriting, and that is one of the reasons I have asked him to read it himself and, to explain it to the Court.

THE PRESIDENT: Yes, I would recommend that the defendant read it, as he has been doing it, but read it slowly so that we can got the benefit of the translation.

Q (By Mr. Ferencz) Continue, please.

THE PRESIDENT: May I ask, Mr. Ferencz, if you have a typewritten copy for the interpreter. It might be easier to give us the translation if she had the German before her.

MR. FERENCZ: We have just made a translation, your Honor, and it now is in the hands of the interpreter.

THE PRESIDENT: Very well. Now please, witness, read the document slowly.

THE WITNESS: Where from, Mr. President?

THE PRESIDENT: I would suggest from the beginning. First, to whom is this directed?

THE WITNESS: I addressed it to Klingelhoeffer.

THE PRESIDENT: Very well.

THE WITNESS: "Don't let them bluff you. Always be careful, even with the friendliest face. My statements until now, you were the leaders of the VKM, at first in Gsaitsk or Moshaisk, later in Roslawl. I cannot give dated. Whether you carried out executions, I don't know. The beginning of my duty, and of November, 1941. At that time there were no ghettos left in my area.

The large-scale executions fell into Nebe's time. I then brought you to my staff, firstly, because of your knowledge of the language; second, I had to be frank here, because your inclination to drink deemed it necessary. You then spent sometime with the preparation of a plan for Moscow and you worked for the SD in the staff, mainly because of your knowledge of the language. Troop Smolensk was led by some small Sturmscharfuehrer or Untersturmfuehrer whose name I do not know any mor. Troop Smolensk belonged to the EK 9. The number of persons executed by Einsatzbruppe B was not registered in the group staff. I therefore could make no statements on this. I did not give any execution orders because these were already given by Heydrich and Nebe to the SK and EK. B received two or three gas vans from Berlin which were not used by B and were, therefore, under directions of the RSHA given to C.

"Written reports went to Berlin about every three weeks. There was no count of executions contained therein, but it contained mainly a description of the situation from a security police point of view and a voluminous SD report. Beginning in spring, 1942, the main activity of Einsatzgruppen B changed to partisan reconnaissance and to the formation of police forces of indigenous persons (OD). This court has no original report of Einsatzgruppe B nor other records, only information reports issued by the RSHA, and these are not complete. These reports were first issued in 1942. About your activity in Gsaitz and Smolensk the court has no records.

"I have identified the following persons as belonging to Einsatzgruppe B and stated that I knew them:

"Staff: Schroeder, Schirme, Hoele, Eckstein, Rath, Mueller, Kiesewalter, Mahnke, Koch, Holste, Fischer, Pfeiffer, Gatz, Siegling, Lehmeyer.

"7a. Steimle, Rapp, Matschke "7b. Rausch, Ott, Schiefner "8. Bradfisch, Richter, Schindhelm.

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"9. Schaefer, Wiebens, Burchardt "VKM Klingelhoeffer, Blume.

"There names were known here already for the greater part. Further I know nothing about the fact that executees had their clothing taken away from them before the executions and that the clothes were given to the NSV.

"An agent of Office IV, who has said to have had the mission of removing mass graves, was not with me." End.

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MR. FERENCZ: If Your Honor please, we will do the same with this document as we have done with the last. We are having some difficulty having it photostatted because it is in very small writing and the paper is bad, but we will make it a document as rapidly as possible and will submit it then as Prosecution's Exhibit 176.

THE PRESIDENT: That number will be assigned to the document.

Q. (By Mr. Ferencz) Naumann, will you please explain to the Tribunal why you thought it necessary to tell the Defendant Klingelhoefer the date that you took command and what he did and what you did, as well as who were membersof your kommando, and to warn him not be, be bluffed.

A. I gave these statements to Klingelhoefer and they were the same as those I made during the interrogation. Why I did this? Klingelhoefer was my comrade. I know him. I know that Klingelhoefer gets easily upset, and I considered it my duty as a comrade to tell him what I had said during my interrogations. Other reasons concerning this information did not play any part except the comradely attitude.

Q. Then as I understand you, because of your comradely attitude you told him not to be bluffed, and to say the following things, is that correct? As I understand your answer you are saying---

A. That is right. From a comradely attitude.

Q. Tell me, what is your opinion about the Defendant Klingelhoefer?

A. I stated yesterday when I was questioned by Klingelhoefer's defense counsel.

Q. You stated yesterday that he was a fine fellow and you were glad to have him as a major interpreter in your headquarters, is that correct?

A. Yes, that is right.

Q. Didn't you once state in an interrogation where you were under oath that he was no man and he didn't know much and since he was a heavy drinker you couldn't rely on him for very much?

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A. No, I never expressed myself In that form. I only expressed exactly what was written in that note.

Q. I will hand you now the question and the answer which was put to you by Mr. Wartenberg concerning the Defendant Klingelhoefer, and I ash you in it is correct to read it to the Court.

A. "15 Question: Was his rank not too high to be an interpreter?

"Answer: If you ask me about his personality he was not a hardworking and clever man. I could not leave him in an independent position either because he liked to drink, and therefore I kept him with me.

"16 Question: Did the VKM, during Klingelhoefer's time, carry out executions?

"Answer; I can answer neither yes nor no; I think probably."

Q. That is enouth, thank you,

A. May I add something on this?

Q. If you wish.

A. The reply 15 is such bad German, which I don't usually use, not even during an interrogation, obviously the stenographer was not very clear about this, I have noticed this has happened repeatedly during interrogations. Very often I had to ask, during the interrogation, "Can you follow this?" And she often answered, "Please go a little slower."

Q. Do you wish to make any corrections to your answers there? If so, please do so.

A. I certainly did not say, did not use the phrase, "he was not a hard-working and clover man." Also I did not use the phrase, "I could not leave him to work independently because he, liked to drink too much," This phrasing was not used. As far as I remember, I said much more, in detail, about Klingelhoefer. These are only a few words or sentences about the Whole interrogation.

Q. In other words, you say that the transcript of that interrogation, which purports to be a verbatim transcript, is inaccurate and is much shorter than what you actually said, and is not in your own language?

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A. It is inaccurate.

Q. Thank you. Will you return it, please?

THE PRESIDENT: Witness, do I understand that although the language as reproduced in that document is not your phraseology, and although you said more than is contained in the document, yet the thought which you expressed is reproduced in the sentences which you read?

THE WITNESS: No, Your Honor, my opinion was expressed-much more in detail and more to the effect as I said yesterday. However, I told Interrogator Wartenberg at the time that Klingelhoefer was inclined to have a drink every now and then. That is exactly that I said, because that represents more approximately Klingelhoefer's actual character. He was not really a heavy drinker, he just liked to have a drink occasionally. That is a phrase I used verbatim and it is not mentioned here.

Q. (By Mr. Ferencz) As my last question, Naumann, I ask you, in regard to your activity as commanding officer of Einsatzgruppe B for a period of approximately fifteen months, do you feel any guilt or remorse?

A. I believe the reply to this question can be seen from previous answers I have given. I have Said that the order, state order, which was given to us, and which ordered that certain categories of people, were to be killed for the purpose of maintaining order and security. I also said that this order, with all those who had anything to do with it directly or indirectly, caused considerable moral difficulties of conscience, but that all those who were directly or indirectly connected, realized that this order was given by the Supreme Commander and head of the state and that this order had to be obeyed.

Q. What is your answer then, do you feel any guilt or remorse?

A. Guilt and remorse I can only feel for crimes I personally commit. If I myself had carried out killings and cruelties then I would have to feel guilt and remorse. If I have carried out an order then I have no guilt at all, and therefore I cannot feel remorse for a guilt that does not exist.

you did while commander of Einsatzgruppe B, is that correct?

A. I have already given my explanation to that effect.

MR. FERENCZ: Thank you, No further questions, Your Honor.

THE PRESIDENT: Any redirect examination, Dr. Gawlik?

DR. GAWLIK: May I first ask the interpreter to give me the English translation of this letter. I believe there is a mistake in it.

THE INTERPRETER: The court reporters have it now.

THE PRESIDENT: Whoever has the present custody of the English translation of the note in question will please allow Dr. Gawlik to have it.

MR. FERENCZ: If Your Honor please, we may save time, if he will point out any correction we will concede to it. BY DR. GAWLIK:

Q. Witness, I ask you to read the one sentence in this letter which starts, "I".

A. "I do not know that executees had their clothes taken from them before the execution and their clothes were given to the National Socialist Welfare Organization, the NSV".

Q. Please read the English as far asyou can, what has been translated in the English.

MR. FERENCZ: Your Honor, the defendant has read it. We have received a translation. Are you satisfied that the translation we have now received is correct?

DR. GAWLIK: I only wanted to show that the interpreters were given a translation which said exactly the opposite. The translation says, "I do know about it."

MR. FERENCZ: We will concede the correction, Your Honor. The original document was going to be offered to the Court, The translation was made only this morning and quickly passed forward. If it is corrected, there should be no further discussion on the matter.

DR. GAWLIK: I only wanted to correct this in order to inform you on this important point in the future.

THE WITNESS: Shall I read the sentence again:

DR. GAWLIK: Yes, please do.

THE WITNESS: "I know something about the fact that executees had their clothing taken away before their executions and that they were given to the NSV.

Q (By Dr. Gawlik) Did you write that in the letter? executees before their execution were robbed of their clothes and these clothes were handed over to the NSV.

DR. GAWLIK: I ask that the English translation be corrected in the record, because I presumed that the original text was wrong.

THE PRESIDENT: Dr. Gawlik, the Tribunal's impression is that the interpretation came through that the defendant knew nothing about those facts. So, therefore no harm was done, so that you will see that what actually came to the Tribunal was the correct translation. after the end of the war hide. I therefore ask you did this happen because you had committed any crimes or were there other reasons, and what were they? officer to avoid captivity. It happened on the evening when I took off my uniform, that was my decision. Any other reasons or even any other thoughts than this I never had, particularly at this time. I could not have known how things would continue in Germany and until a few hours ago I has the impression that the Western Allies would give us the opportunity to continue to fight against Russia.

discussion with Heydrich. This order of Hitler, did you pass it on at all? beginning the units had been given exactly the same order. ask you did you have the possibility to object at all. opportunity to protest and object. I myself interrupted Heydrich and I was rebuked in that manner. I have described. were also discussed. please describe briefly what connections between the staff and the Sonder and Einsatzkommandos existed. Chief, is that it? I was Chief of the Einsatzkommando and, as such, I took a lot of time to talk to my Kommando leaders and the subkommando leaders, subordinate to these and to go out to them, because in the whole area, there were twenty-four garrisons, which were very hard to reach. Therefore, I could not visit every individual garrison very often. Beyond that I was visited by Kommando leaders when they thought that it was necessary to discuss something with me or members of the staff who wished to discuss something or to regulate something with me. These were mostly members of the staff and on this opportunity those gentlemen of course, visited me. Beyond that the Kommandos reported every two weeks always on the 1st of the month and the 15th or the 1st and the 16th, about everything that had occurred in the reegion in every branch and field and therefore gave reports on organizational matters, about questions of personnel and billets, about the fuel situation, about the vehicle situation and the effusive SD report and the report about police actions, report about cooperation with the Army and other things.

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in to be identified. I ask you can you remember that you gave this order mentioned in the document? "Zeppelin" was not subordinate to me. Office VI of the RSHA in Berlin was in charge of it and directed it and the chief of this unit with one or two men worked with their own agency in Russia, immediately connected with Army agencies. They had immediate contact. Einsatzgruppe B merely had to help him if he needed material to carry out his task. I just now recall that it had its own fuel quota from the Army. It very closely cooperated with the Wehrmach, the German Army, and especially with the Air Force, the Luftwaffe, because agents were brought over frontlines by land as well as by air ways and such mutual assistance was necessary.

Q Please describe to the Tribunal what the enterprise "Zeppelin" was.

A The enterprise "Zeppelin", as far as I got to know about it, had the task to take Russians who had anti-Bolchevist ideas and bring them Across the frontier lines an either to help them return with news, which occurred only rarely, but up take them to the territories close or far away from the front from where they broadcasted together with them, the news to the German stations, by means of signal outfits which, as far as I know, belonged to the Wehrmacht, with other words to *o espionnage. I know that further orders were given that capable people were given the task not only to send the news reports, but also to carry out expoonnage acts. Details about this I do not know, because for the men of operation "Zeppelin" secrecy applied accordingly only these were allowed to know anything about it who were concerned with it.

Q Were the members of operation "Zeppelin" sobordinated to you as Chief of Einsatzgruppe B?

A No, I already said so. They were under Office VI. only in case they were not sure of something they had to be supported by a letter of the Einsatzgruppe.

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If they could work it out themselves, they did not need the assistance of the Einsatzgruppe and this was mostly the case, letter? I merely want to clarify in advance as to the phrase (Sonderlager) Special Camp Wissokoje. The Prosecutor asked me whether I knew a camp in Wissokoje. With good faith, I said, "no" because there was merely a house, which was a Russian farm house, a wooden house, covering about 15 square metres. This wooden house was inhabited by the agents and there they received their reports. I do not consider this house to be a camp, because it was a house with two rooms, which was put at their disposal. The phrase an SS Special Camp, Wissokoke, I learned about only for the first time here. I had never heard about it and a house of 15 square metres, can hardly be given, the bragging name of an SS Special Camp. Also the Signature that is written here I do not know. It is Obel or Gobel. I know the man mentioned in the letter, SS Hauptsturmfuehrer Sakut. this?

A I don't know any such person.

Q He did not belong to your staff either? that it was actually written like that, is based on a mistake. orders to to that effect, for "Special Treatment" as it says here. I would have remembered it and I already said that I could not have given such orders, because I was not in charge of these Russian men. Once or twice I saw these men. There was a colonel among them who performed very good tricks on horseback, but apart from that I didn't know anything about these men.

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when you were Chief of Einsatzgruppen B? security in the rear of the fighting forces. The activity itself extended mainly to the search for partisans as mean task, then there was also SD reporting and setting up local police force. These three subjects were the most important tasks of the Einsatzgruppe B. far?

DR. GAWLIK: Then I have no further question.

THE PRESIDENT: Do you have something, Dr. Hoffman?

DR. FICHT (ATTORNEY FOR THE DEFENDANT BIBERSTEIN): Your Honor, I only want to ask that the Defendant Biberstein be excused tomorrow from attendance because I want to prepare him for his defense.

THE PRESIDENT: The Defendant Biberstein will be excused from attendance in Court tomorrow and, incidentally, the Tribunal will announce that there will be a session tomorrow, even though it be Saturday. It will begin at none o'clock and will terminate at twelve O'clock.

Do you have something, Dr. Hoffman? BY DR. HOFFMANN (Attorney for the Defendant Mosske): Einsatzgruppe independent? gruppen. as Ohlendorf? gruppe B were the same as those with Einsatzgruppe D?

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D as in Einsatzgruppe B I cannot say, because I could not see in what manner Ohlendorf was in charge of his Einsatzgruppe. commitment were the same?

A If you don't express yourself too generally by referring to the Fuehrer Order, that was the basis of all Einsatzgruppen and all Einsatzkommandos, in the same manner.

Q There is one thing I don't understand. you said the Einsatzkommando leaders received the Hitler order and carried it out. You only notified the Hitler decree that was all you did were you then, as functionaries necessary at all? assigned and according to what Ohlendorf said, during the last few days and what I said yesterday And today. it is obvious that there had to be Einsatzgruppen Chiefs. Because the territory was so vast there had to be a connective system, even if only a loose one.

Q Witness, perhaps I am stupid, but I still don't understand why you interrupted the line of orders which you followed concerning the Einsatzgruppe Chiefs, the Hitler decree the Einsatzkommando leaders and any the channel of command was, Hitler decree - Einsatz leader. cutiond, a number of actions occurred. This includes me and also the kommando leaders. That is obvious, but if in Schmiedenberg, Pretsch, and in Dueben, in one of those three places, an order was not only given in the Einsatzgruppe Chiefs but also Sonderkommando and Einsatzkommando chiefs, I cannot help that. the Einsatzkommando carried it out?

DR. GAWLIK: I want to object to this question. I don't see the relevanty of this question to the line of defense of my colleague Hoffmann.

THE PRESIDENT: If it is in the nature of cross-examination, which it is, Dr. Hoffmann has the right to extract as much benefit as he can from the witness for the benefit of his own client, so that it's entirely up to the witness as to whether the statement by Dr. Hoffmann as put to him is correct or not, so the objection is overruled.

Q To explain Dr. Gawlik's attitude, I wanted to say that I act as defence counsel for an Einsatzkommando Chief and therefore it is important for me to know whether he is made responsible for the Hitler Decree immediately or whether you come in between. Up to now this has net been shown and that is why I ask you. neither a kommando leader, nor an Einsatzgruppen chief. That is my opinion.

THE PRESIDENT: Do I understand from that answer that Adolf Hitler is now charged with all the war crimes no one else is responsible? Is that what I get from your comment?

THE WITNESS: No, Your Honor, what I mean is the decree was issued; for the fact that it was issued, Hitler as Supreme Commander is alone responsible because he gave it.

Q (By Dr. Hoffmann) Let us leave this subject. Obviously we cannot agree, witness, Another question: You said you cannot state how many executions were carried out in your Einsatzgruppe? manner; Did you know how many Jews, gypsies, and other people to be killed were in the territory of your Einsatzkommando?

A I say "we" expressly. We knew as little about this as about the total figures of the population there.

Q Do you know how many remained afterwards? this decree out to the full extent. To repeat my question, did you know how many survived, yes, or not

A To this clear question I can only say, "no." opinion that no Einsatzkommando leader did not carry out the decree to the full extent, but he did, in fact, carry it out fully? Fuehrer did not carry out the decree completely.

Q But you are not quite sure?

A I might mention that I didn't look through all the woods in Russia to see whether any Jews remained. the individual kommando leaders, yes, or no? were just as obedient soldiers as I was.

Q Do you consider it obedient to carry out such a decree? can help to win the war against an enemy, which at that time and even now threatens not only Europe, if that order was given to us as soldiers, we had to carry it out. of the Einsatzkommando leaders had this same opinion as you, you think therefore that that order was carried out to the full extent, is that right?

Q But apart from that, you don't know?

A What the others did I don't know. BY THE PRESIDENT: as you know?

A I don't know, Your Honor, of anywhere it was not carried out, I have no proof that it was carried out to the full extent, because a kommando leader might have said for some reason or other, "I won't do it, and nobody will find out." I don't know that anything like that happened, but I cannot say now that it actually did not happen. Decree was aimed at Bolchevism and that therefore you believed it to be just? and the Soviet Officials were to be executed? You agreed with that?

A Your Honor, please don't take it amiss if I can't say yes fullheartedly. After this decree had been given by the Fuehrer I considered it necessary to carry out this decree. you believe you had to obey orders, is that the interpretation I am to get from your answer? Socialist I heard the speech of the Fuehrer on the 22d of June, 1941, when he described the opponent in the East And I realized the meaning of his speech and when the decree was given I carried out this order in order to win the war against the Bolchevists. was the way to win the war and you believed the war to be just, because you had heard Hitler say so in this famous speech on July 22d, 1941, or whatever date it was? might be of vital importance.

Q It doesn't need to extend far. The question is simply, "Did you agree with the order and did you execute the order, because you believed that as a National Socialist man, as a patriot, as a soldier, it was necessary to execute this order in order to win the war against Bolchevism against Russia, did you agree with the order"? essary to kill hundreds of thousands of defenseless people, men, women, and children unarmed, did you agree with that?

no misgivings about it? it seriously. I have said that repeatedly, but opposite to the personal misgivings and the weightof these thoughts, there was the order and my personal misgivings and my personal ideas for me as a soldier would become inconsistant for me being a soldier, I was not allowed to follow my personal misgivings and ideas.

Q Did you have any misgivings at the time?

Q Then you did not agree with the order? and it was contrary to my nature to kill defenseless people.

Q And you believe it was wrong to kill, especially women and children? so, because there was Fuehrer Decree. to shoot down women and children.

A No, I did not hold that opinion owing to my convictions. It was my conviction that it had to be done.

Q Then you were in full accord with the order?

Q You either did or din not have misgivings. Did you have misgivings?

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to the carrying cut of this order, but owing to the situation at the time -

Q Answer the question simply. Did you have misgivings? Did you have some reluctance? Did you feel some revulsion in the execution of this order? to carry it out.

Q Did you have misgivings? Answer that question.

Q Then you did not agree with the order? You had misgivings. You were reluctance You felt that there was something wrong; therefore, you had misgivings; therefore to that extend, you did not agree with the order. Now please answer that question. it was inhumane and unjust to strike down defenseless woman and children, is that right? it a terrible duty to have to shoot these women and children.

Q Now let us stick to the issue. I asked you a number of times whether you did or did not have misgivings and now I get the direct answer from you; you did have misgivings; you did not like this job.

A. No.

Q Very well. Then to that extent you believed there was something wrong with the order? and that it was necessary. I also know for sure -to execute the order in order to destroy the enemy in order to win the war, why did you have any misgivings?

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something morally wrong? and these helpless women and children. You saw nothing morally wrong in that?

Q You saw nothing morally wrong about it? I do not hesitate to answer.

Q It isn't a question of being decisive. It is a question of telling the truth. Now you either thought this order was right or it was wrong. Now if it was wrong tell us it was wrong. If it was right, tell us it was right. Tell us if it was right or wrong. There is certainly no disposition to coerce you to give one answer or the other, we want the truth because you must understand that this is certainly a very pehnomenal thing for people to be shot down without an opportunity to defend themselves, to explain their case, there was no opportunity given at all. Therefore, it is a very phenomenal situation so that it is entirely in order that we ask of you who was in this operation whether you thought it was right or wrong and that is all there is to it. Now you either agreed with this order or you did not agree with it. because you agreed with it?

A I already said that I had misgivings. It was with reluctance and it was a fight between duty and conscience add the realization that this measure was necessary in order to fight Bolshevism.

Q Then you did not agree with it completely? Let me point out to you witness, that when a soldier goes into battle, he has no misgivings.

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He is going in to fight. He knows that his opponent is armed. He knows that he is fighting for his country and he may kill. Further, afterwards, when he comes back and goes home he sleeps tranquilly that night, if he comes out alive, and he has no misgivings, no reluctance. On the contrary, there is enthusiasm for the combat. Now, here you say you did have some misgivings; you did entertain some reluctance, so therefore, I ask you whether if you did entertain That reluctance, If you did not believe at the time that there was something wrong with the order. was part of our aim of the war and therefore it was necessary.

Q Very well. Then the Tribunal will accept from your answer that you saw nothing wrong with the order, even though it did involve the killing of defenseless human beings. That is what we draw from your answer.

THE PRESIDENT: Very well, the Tribunal will be in recess until two o'clock.

(A recess was taken until 1400 hours.)

9The Tribunal reconvened at 1400 hours)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT. Any further examination of the defendant Naumann? If not he will return to the defendant's dock.

DR. GAWLIK (for the defendant Seibert): Your Honor, for the time being I have concluded my introduction of evidence in the case of Naumann. However, I reserve the right to introduce other evidence at a later date.

THE PRESIDENT: Do you have in mind witnesses, or documents, Dr. Gawlik?

DR. GAWLIK: Only documents, your Honor, that is all.

THE PRESIDENT: That right will be reserved.

(The witness was excused)

THE PRESIDENT: Counsel for defendant Schulz?

DR. HORLICK-HOCHWALD: If the Tribunal please, I would like to make an announcement on behalf of the Prosecution. By order of the Tribunal dated 29 September the witness Haennecke was declared a prosecution witness. In the meantime, the Prosecution has finished its interrogation of the witness Haennecke. Defense counsel for defendant Schulz requests Haennecke as a defense witness. There is no objection on the part of the Prosecution that Defense counsel call Haennecke as a defense witness. Moreover, the Prosecution would like to reserve the right to introduce an affidavit of said witness at a later date.

THE PRESIDENT: Your statement is self-explanatory and needs no comment.

DR. HORLICK-HOCHWALD: Thank you, your Honor.

DR. DURCHHOLZ: (for the defendant Schulz): Your Honor, before I may call the witness for the defendant Schulz to the witness stand, I would like to make a short statement.

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I had a conversation with the defendant concerning the witness Haennecke and we finally agreed not to call Haennecke as a witness a I have an affidavit which I will introduce at a later date. However, on the 2nd of October of this year I made a written application to this Tribunal to place certain witnesses at my disposal whose names we re mentioned on that list. So far, with the exception of the witness Haennecke, I have heard nothing at all of the witnesses. That is the reason why I would refer again to that application and ask the Tribunal kindly to comply with my request so that I can possibly, at a later date, call in those witnesses and subject them to our direct examination.

THE PRESIDENT: Will you please indicate the names of those witnesses?

DR. DURCHHOLZ: At the time I had requested the witnesses: Reinhold Braeder, Alfred Faust, Dr. Lauer, Dr. Ogilwi, Alfred Schwarting, Dr. Joseph Steiner and Hans Wanninger? your Honors. Approximately 14 days ago I gave my Document Book I for Translation, So far I have not been able to receive a single copy in English. I only have copies in German. Therefore, it is not possible for me to introduce those documents, in particular, during the examination of the witness. I would appreciate it if this Tribunal would give me an opportunity of introducing those documents at a later date. Ana an additional fact is, that for the short period of time which was placed at my disposal I have not received all affidavits which I intend to introduce. This is due to the fact that the mail service is rather slow and a few affidavits are still to be expected from Austria.

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I would therefore, appreciate it if the Tribunal would take notice of these matters as well.

THE PRESIDENT: The Tribunal, of course, will allow you to present those affidavits and those documents when they are available and ready for presentation.

DR. DURCHHOLZ: Then I would appreciate it if the Tribunal would order that the defendant Schulz be brought to the witness stand as a witness in his own behalf.

ERWIN SCHULZ; a witness, took the stand and testified as follows:

JUDGE SPAIGHT: Raise your right hand and repeat after me: will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

JUDGE SPAIGHT: You may be seated. BY DR. DURCHHOLZ: full name and the details about you? November 1900 in Berlin. My last place of service was Salzburg in Austria, where I also lived. studies, and your professional background, witness? of the Koclnische Gymnasium in Berlin. I remained there without interruption until "Unter Prima" that is until I was 17. On the 11th of April 1918 -- I was 17 at that time With that I interrupted my studies. After having received my infantry basic training in the autumn of 1918 I was transferred to the Field Recruit Depot of the Fifth Guard Infantry Division in France.

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Due to the Armistice of the 9th of November 1918 I was no longer used for front line assignment. I participated in the retreats from France towards Germany, and early in 1919 I was discharged from the Army as a simple private. served in the first World War did you receive any decorations?

A No, I didn't, In 1934 - that was the only time I received the general modal which was issued to all participants of the first World War. 1919, witness?

A I returned to my old school class. That is to say, I returned to the Cologne Gymnasium in Berlin and towards the end of 1919 I graduated. That was the examination for veterans of the first World War. finished that school?

A It was my intention to become a physician. However, I could not possibly carry out my plan to study medicine because my father did not have the means to pay for the expenses involved in such a study. My intent to carry out those particular studies in the medical training of the Army did not succeed due to the collapse of the German Army at the time and the dissolution of the German army. I would have chosen that way as might have been suggested to me to do because within the framework of that training the expenses would, of course, be borne by the Army. On one condition, however namely, that after I would have completed my examination I would have had to join the army for a period of eight years in the medical service.

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have enough money at his disposal to enable you to study medicine. Would you like to tell us briefly what your father's profession was? in Altmark. As a child already, when he was very young, he became an orphan. When he was 18 he volunteerd into the Army and, to be exact, it was the same regiment in which I later served. My father did service there for approximately 12 years, and he thus gained access to a position as an official of the State in the civil service. My father first joined the Berlin police, but after a comparatively short time he was called in by the Berlin magistrate for his extraordinary services in the police. He was rather young at the time -- that was in 1902 -- when he was placed in charge of the administration in the Waterworks at Lichtenberg, which was part of the Berlin Hamburg Works and he remained there until he was released and received a pension due to retirement in 1924.

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At the end he was administration inspector. My father explained low official.

My mother also did not have a fortune My mother was of four became a half-orphan.

As the pension which my grandmother

Q. Now , witness, after having deviated from the normal now to our professional background.

What was the profession you had chosen under the circumstances?

A. As both of my parents had a very severe childhood behind them, and a very severe life altogether, they had make it their task to have me study.

Considering conditions in 1919, after the reasons of convenience, to choose the study of law.

Due to this a selection of a professional or other career later on.

That is examination.

At the end of the second term the first signs of in flation could be noticed easily.

My father lost all the money he

Q. Now, witness, I come now to your studies for the career as a police officer.

What did you do to get that job?

A. Before I answer that question, Mr. Counsel, may I state that I personally helped along with my own upkeep.

I worked as a simple clerk in the bookkeeping department of the Dresdner bank in Berlin.

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In 1923 I went to Hamburg with the intention to continuing my studies of law as a student I was employed in an auditing department, but the inflation, however, had set in in the meantime, and the devaluation of money made it absolutely impossible for me to save up any money. Unfortunately at the time we had to live from hand to mouth in the worst sense of the saying. Through a friend of mine I found out that the Bremen Police were looking for police officers. Again led by the career of my father, I decided to apply there for a job, and particularly since I had all the necessary qualifications for such a job, and, at the same time, I hoped to have lots of time while I was there to continue studying in order to carry on from those two terms which I had mentioned before. I received my order of inscription after I had been there, and on the termination of my notice, the 5 November 1923, I joined the "Schutzpolizei", the protective police in Bremen.

Q. In what capacity did you do it. Were you in an official position, in a position of a civil servant, or were you bound by a contract?

A. I became apolice official , in other words, I became an official according to the German code for officials. After two years, approximately, I received a so-called citizenship of Bremen. I also received a document to prove that.

Q. What was your activity then, and your further training with the police, witness?

A. As I had the qualification of having served in the army I became a police sergeant. As police sergeant I had one simple advantage, which was to be able to jump some of the prescribed number of courses. However, as a police sergeant, according to directives prescribed by law, I had to go through some courses, and finally passes an examination before I became an officer; the same as applied to all the other officials. On 1 March 1924, I became a T/5. On 17 May 1924 I became a sergeant.

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On 1 February 1925, after having completed the staff sergeant examination, I became a staff sergeant. On 12 April 1924, after I passed another examination, I became official code instructor which is about the same as staff sergeant. On 1 July 1925, I became a full sergeant, and the same year I passed my officer's examination. It was on 1 August 1926 that I became a Lieutenant, what we call in German

Zugmachtmeister. During all these phases of my development I was put through ail the branches of the police departments, and trained in all those branches, I served in the police service as "commissarischer" lieutenant and I went through special guard duty with cur patrol, and so on, and I also worked with the traffic police for a while. Then after that there was a special training in the mounted police; then on the military motor patrols, and in the identification department.

Q. I understand that after you passed your examination on 1 august you became an officer. Why did it take so long, witness?

A. The reason for that is that at the time those members of the Army and the police were under the control of the Entente Commission; agencies which had been prescribed by the Entente Commission could not be circumvented in any way. As the Bremen police corps was comparatively young, and as no vacancy could be expected very soon, a special commission was granted by the Entente Committee to two comrades of mine and myself, and we finally became what I referred to before when speaking of the KommisarLieutenant, which stands for a lieutenant with a special commission. This commission became effective on 1 August 1926; a full commission officer's position could only start on 1 November 1927.

Q. Due to thatposition as a police lieutenant did your field of activity change in any way?

A. Generally speaking, there was hardly any change. I remained in the Wachbereitschaft, within the service, that is to say, I was working in the traffic division of the service, and also in the police service.

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By special request I also went through the criminal police branch, and in order to increase my knowledge within the field of police work within that assignment. In 1928 I was transferred to the Police School in Bremen, and in the first year of my activity in the Police School in Bremen I took over the training of the use of weapons, and in the second year of my activity in the police school, I was assigned as teacher in police matters. They had special classes for police training of non-commissioned officers.

Q. During that period of time did you have a political activity, or anything of that kind?

A. No. I was not active in any political way. Political activities were discarded by me anyway, as I was at all times of the opinion that a civil servant is a servant of the State and not a servant of a party. I also always complied with the principle during the entire time of my activity. A political attitude also was discarded by me, because the commander of the Protective Police in Bremen, General Gaspari, had stated in hiw own free way that his officers werenot to join any party, nor were they to represent one of the parties in public in any way. After that I denounced any political activity. After that I was transferred to the Political Police in Bremen, that is, the end of 1930. The Political Police of Bremen was called the Central Police Office.

Q. You stated, witness, that you were not active in any way in political matters, nor did you have any political attitude, how was it, witness, that you were then transferred to the political police?

A. My transfer to the Political police took place because one of the special vacancies was created for a special expert, and I was theone who had been assigned to that duty, and I went down there. In any case, political points of view were entirely out of question for me when I was transferred there, and they could not possibly be considered because the Political Police had nothing whatsoever to do with politics directly; their activity waslimited to serving all political parties, regardless of what kind of parties they were.

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It was decided after my transfer to the Central Police Office was made, as a matter of fact, that I was not to become a member of any party, nor was I permitted to be a member of any party.

Q. Who was the man in charge of the Political Police, and who was that police officer subordinate to?

A. The man in charge of that agency was Police Captain Kruse. The agency itself was in direct service with the Division of Police called the Senatory. (interruption).

THE PRESIDENT: Proceed.

THE WITNESS: The Police Senatory in Bremen is approximately the same as a Minister of interior, in other countries. It is a term used within the structure of the Police Division, and it is approximately the same as it is today. Bremen is a City-State, and with the official name of "Free Trade City of Bremen."
BY DR. GAWLIK:

Q. Can you tell us what political group this Police Captain belonged to?

A. then I joined the Political Police Senator Deichmann was the police officer. Senator Deichmann was a member of the SPD, the then political party of Germany. His successor became Senator von Sprecklesen. Idon't remember the exact date when this occurred, but according to my recollection he was a member of the German People's Party.

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Herr Kaisen of Bremen was also a member of the Senate. He is the present Senator in Bremen. organized, what was the structure of the Political Police at the time? different than all other branches. As I stated before, the manager was a police captain. That police branch was subdivided into two sub-divisions, and they were assigned the Roman number I, and the Roman number II. Of these two sub-divisions, the sub-division Roman number I dealt with the entire activity of the political parties. Subdivision Roman II were the Intelligence Sub-division, what is to say, for matters in connection with high treason. That sub-division was staffed almost entirely with members of the Protective Police branch - the Schultzpelizei. The Criminal investigation Department had also been assigned to this department dealing with executive matters, to take care of interrogations and investigations.

Q How long were you a member of the Political Police. How long were you avice there? whatsoever from 1930 to 1939.

Q Now we come to 1933, witness. How did the incidents of that year influence your office and agency?

A First of all, there was no change whatsoever. The structure and at the same time the personnel was kept up in the same way. All the members and high officials of that agency remained with one exception. Not one single man belonged to the Party, but there was a change in the Police Senator's Office. Of course, the new Police Senator was a member of the NSDAP. The Police Senator was at the same time in charge of legal matters, and his official title was "Senator for Internal Matters and Justice." For a short period officers of the SA and officers were transferred to our office as commissionars for special employee relations.

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These men were nothing but Party members without a professional background. However, the Police Senator later removed them all at once, because they were not very proficient with their jobs.

Q With this activity in 1933, did any change occur then?

A No. From an organizational point of view, there was no change at all. Even in the field of competencies, it all remained the same. After a few weeks, I assume it was approximately in June or July 1933, the agency simply assigned a new title to this branch, and it was called the Gestapo, Secret State Police, in Bremen; that happened with all the other offices in the Reich; that was its only title. 1933?

A I was still in Subdivision I. In November 1933 the man in charge of the agency, Captain Kruse, was transferred back to the Schutzpelizei, the Protective Police. A political point of view might have been responsible for that transfer. At the same dates the Political Police became detached from the Police Senator's supervision that is from its independent position it had and for a short while it was subordinate to the Department of Criminal Police. It was under the supervision of SS-Sturmbannfuehrer Criminal Police, however, changed quite soon, a short while after the Political Police again became independent as it had been before. Krebs took charge of the Political Police, and was at the end directly subordinate to the Police Senator. Again it was detached from the Criminal Police. The Criminal Police received a man especially for that purpose who was in charge of that Division. Krebs however, was not very reliable, and in 1934 he was entirely removed from the police service, or the police force. From that moment on I was made in charge of that agency. you became chief of Political Police in Bremen. The purpose for which I had all these questions answered in detail was to give this Tribunal a clear impression of the professional background of this defendant.

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Actually at this present moment it would be necessary to speak about the development of the Police since 1933, from 1933 on. However, I believe I can consider these facts as well established now. However, I would like to point out that a decree in 1934 contained tasks of the Gestapo Secret State Police. Witness, what happened now to political opponents of the NSDAP, after the 30 January 1933, in Bremen?

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concentration camp was established in the emmigration halls of the Nord-Deutscher Lloyed, which was a transport company, a liner company. At that time upon instigation by the Party and in coordination with the police senator, through the protection police or Schutzpolizei this camp was established. The man in charge of the main district was placed in charge of that matter. The establishment and guarding of that camp, however, was entrusted to Party-affiliated organizations. of the so-called concentration camp, which was also known as the Missler halls? camp, with the institution, nor did my chief have anything to do with it, and how far he was consulted in the establishment of that camp I cannot say.

Q Did you know anything about the conditions in that camp, Witness?

A I couldn't tell you from my own knowledge anything about conditions in that camp, as I never visited the camp. However, through a Party member who was working as a confidence man for me ever since 1933 I found out that a few attacks took place in that camp.

Q Did you do anything about it thereupon, Witness? senator through normal channels. The men immediately demanded an investigation, and if my recollection is correct, he wanted to have that investigation carried out by the public prosecutor in Bremen. That investigation proved the facts which instigated my investigation. The guards were immediately relieved of their duties and the police officer was immediately transferred as a punishment.

Q Did the camp as such remain in existence, Witness?

A The camp was dissolved towards the end of 1933. After Captain Kruse had left I suggested to the police senator the dissolution of the Camp myself, and I also asked him to use Christmas as an amnesty date for all the prisoners and to have them released.

My proposal was complied with, as I explicitly stated that I would assume responsibility for it, namely, that the public security would not be endangered in any way by the release of chase prisoners. questions. Witness, what was the reason that you joined the NSDAP?

A Two reasons were decisive for my having joined the NSDAP. I was thrown into the maelstrom by exactly the same enthusiasm which the entire German people had at the time, because I also at the time was of the conviction that after the years and years of sufferings, of fights, brothers against brothers, the National Socialist movement would indeed be in a good position to unite the German people and to help them lead the way. I also had an opportunity to observe with what idealism men and women of all circles and of all social levels, believing in being saved from the misery at the time, immediately volunteered for that organization and believed in that organization. This working for the Fatherland and for the freedom of all the citizens of that country, already, prior to 1933, had gained my sympathy. In spice of that at the time I had certain misgivings to join the Party, as the large number of converts provoked that criticism on the part of all veteran members of the Party; they called them opportunists and similar names. On the other hand, however, I recognized the necessity to actually show one's attitude openly for this new movement, and particularly in the special position which I was, I had to get my way through in the Party as a Party member who was on the same level as all the others. However, I would like to expressly point out that my inner enthusiasm was the main moving force for my having joined the Party, and it was only the second position that it was necessity that forced me to join the Party.

Q When did you actually join the Party, Witness? March, 1933, and on the 1st of May, 1933, I was accepted as a member of the Party.

Q Did you at any time join the other SS organization? say in 1935, and I received a corresponding rank. At the time I was a captain and I was kept as a captain in the SS, that is to say as an SS-Nauptsturmfuehrer.

Q I shall come back to that, Witness, at a later date. In this connection, as far as this correspondence of rank was concerned, after the membership in the NSDAP had finally come through, did your attitude and the official position which you held, change in any way? personal attitude. On the contrary, I was of the conviction that my inner attitude was in tune with the aims of the Party, and particularly since publications of all sorts pointed cut and gave proof of the reconstruction, of the tremendous reconstruction which was being carried out, and proved both the power as well as the purity of the Party.

Q However, you had seen, Witness, hadn't you, that after the seizure of the power certain excesses took place?

A Yes, indeed. I had seen those excesses. However, I considered these to be certain results which cannot be avoided in a revolution. Those things simply could not be avoided in this revolution which took place, and also it must be considered that prior to 1933 innumerable members of the Party, that is to say NSDAP members, were being beaten up by political opponents right in the middle of the street and two SA men were shot to death in Bremen. what your attitude was about the excesses which took place in the socalled concentration camp in Bremen. Now, let me interpolate a question. Did you yourself have anything to do with the arrest or with the placing of the commitment to the camp of those persons, did you have anything to do yourself with that? issioners for Special Tasks which had been assigned to those duties by the Party, and how far my former chief participated in this is beyond my knowledge.

However, one thing should be noted, that he couldn't possibly have done anything about it anyway at that time. Those were nothing but transition instances, and as I have stated before, the two commissioners who had been assigned to those duties were later on released by Police Senator Lauer after somebody convined him of the fact that they were absolutely not fit for that job. on the 1st of February, 1934, you became a police captain, is that correct?

Q Were you, at the same time, put in charge of that agency? With that I mean the Gestapo, the Secret State Police, in Bremen?

A No. When my chief, Captain Kruse, in 1933 returned to the normal service of the Schutzpolizei, I deputized for him, and I was placed in charge for only a short period of time. something for certain people who had been arrested. You told us about the dissolution of this Bremen concentration camp, and the results which it had, that all the prisoners were released, and that you took the responsibility for these people, you vouched for them. Can you tell us now in connection with this, your way of handling matters, can you give us any further examples?

MR. HORLICK-HOCHWALD: If your Honor please, the Prosecution fails to see the relevancy of this line of questioning. I do think the witness has explained fully what he was doing and why he was doing it. I don't think another line of questioning can be started now. He has informed the Tribunal quite well what his point of view in this connection was.

THE PRESIDENT: What do you intend to establish by continuing this line of questioning?

DR. DURCHHOLZ: Your Honor, I would like to state that the defendant, who since 1923 was with the police as an expert, and who later on was transferred to the RSHA, to the Reich Security Main Office, was not a member of the Gestapo.

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I would like to prove that he is in no way connected with any crimes that are being charged against this organization, or the Gestapo. That is the reason why I would like to prove a few preliminary things which occurred; how the defendant accepted it, how he helped political opponents, and also how he had them released from custody against rules and regulations. I consider it, therefore, important to deal with those points briefly in direct examination. This, for me, is one of the most Important points of evidence concerning the third count of the indictment. I would like to proceed here in a historical chronological manner, and when we come to 1941, I would like to speak about the assignment of the defendant and the Russian campaign.

MR. HORLICK-HOCHWALD: If your Honor please, counsel for the defense is certainly aware of the fact that the defendant is charged under Count No. III only for having been a member of the criminal organization after 1939 and not between 1933 to 1939. Therefore, the Prosecution still fails to see the relevancy of this line of questioning.

DR. DURCHHOLZ: Your Honor, the answers to various questions will expplain why the defendant, since the first of September 1939, was still a member of that organization, namely, as I will prove later on, which is the fact that he remained in the same position as before, and he also acted against the assumption that he had anything to do with crimes here.

THE PRESIDENT: I presume that it is your intention to attempt to show that the defendant, via a logical development of affairs, arrived at the situation in which he found himself in 1941, is that your purpose?

DR. DURCHHOLZ: Yes, yes, your Honor.

THE PRESIDENT: We will allow you to proceed a little bit further along that line, and then, Mr. Hochwald, you may renew your objection if you still think he is going too far.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

DR. ULMER: (Attorney for the Defendant Six): Your Honor, may I ask that for tomorrow Saturday, the 18th, and Monday, the 20th, that Defendant Six be excused from attendance so that I can prepare with him his statement on the witness stand?

THE PRESIDENT: The Defendant Six will be excused from attendance in court tomorrow, Saturday, and Monday.

DR. ULMER: Thank you.

DR. STUEBINGER (For the Defendant Jost): Your Honor, as deputy for Dr. Alfred Schwarz, I wish to make an application that Defendant Jost be excused for tomorrow from participating so that his defense may be prepared. I also ask to consider that the prison personnel be informed about this so that the defendant will not be brought here by mistake as has happened repeatedly.

THE PRESIDENT: Yes. I will instruct the Marshal to make note of the fact that the Defendant Jost is not to be brought to the court house tomorrow, and, for the purposes of the record, the Defendant Jost will be excused from attendance tomorrow. Naturally, it is understood that he will be ready on Monday to come into court.

DR. STUEBINGER: Your Honor, I shall inform Dr.Schwarz of this.

MR. HORLICK-HOCHWALD: If the Tribunal please, the Prosecution has been informed -

THE PRESIDENT: Yes, Mr. Horlick Hochwald.

MR. HORLICK Hochwald: If the Tribunal please, the Prosecution has been informed that after the case of the Defendant Schulz , the case of the Defendant Jost will be put on.

THE PRESIDENT: That is right.

MR. HORLICK HOCHWALD: But unfortunately, we have no information as who is to take the stand and whose case is to be discussed after Jost's case. The Prosecution of course would like to know who will take the stand afterwards.

THE PRESIDENT: I thought that I made it clear, but now so that everyone will be informed, the order will be as follows: At the present time we are hearing the case of Schulz. Following Schulz, we will hear the case of Jost. Following Jost, we will hear the case of Six, and then proceed in accordance with the seating arrangement of the defendants. Rasch is being skipped for the present, until we learn something more about his physical condition.

MR. HORLICK HOCHWALD: Thank you, Your Honor.

THE PRESIDENT: You may proceed.

DR. DURCHHOLZ (Attorney for the Defendant Schulz): Your Honor, Defendant Schulz, while working with the police in Bremen and other cities had the opportunity to show his political attitude and his views as to the political occurrences, and to show his attitude toward his political opponents. It was my intention to let the witness describe a few cases here, however, having a few affidavits at my disposal, I shall submit these occurrences to the Tribunal in the form of affidavits and for that reason I limit myself to allowing the witness describe only a few incidents.

THE PRESIDENT: That is entirely agreeable to the Tribunal.

DR. DURCHHOLZ: The defendant repeatedly had the opportunity while working with the police to be in contact with Jews. Therefore, I consider it important that the defendant now may make some explanation on that point.

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BY DR. DURCHHOLZ: towards the Jews?

Q If "Anti-Semitic" means hatred and destruction I have never been "Anti-Semitic." My so-called "Anti-Semitic" attitude only went to that extent as the immoral influence of the Jews which I saw in my native country, in policy, economics, and culture, which had great power here and which limited the development of our own forces and put them aside, and I wanted the influence of the Jews to be reduced to a normal level. The individual Jew meant exactly the same to me as any other follow human being. If a Jew was an honorable man, his race or religious opinions were of no interest to me. towards the Jewish progroms in 1938? November 1938, I was in Munich. I took the next train back to Bremen. Here I found that the Anti-Jewish demonstrations had been performed by the SA in Bremen. Later, I realized that compared to the occurrences in other cities the extent in Bremen was not quite so bad. In spite of this, a few cases of theft had occurred. Immediately I gave instructions to find out who had done it; and in agreement with the Criminal Police, I ordered the stolen items to be returned to their rightful owners. Here I succeeded in nearly all cases, especially in the one concerning the Jewish Jeweler Fischbein to whom I was able to return his entire property which had been stolen from him, although the SA strongly opposed to this measure. Two SA men who had killed an elderly Jewish couple were found by my agency. They were arrested and were reported; as the proceedings which recently took place in Bremen shows, this report was handed on to the Prosecution, where - according to investigation - the proceedings were stopped by order of higher authorities.

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My views as to the events of the 8th of November 1938, I expressed during an official discussion where all members of my office took part, clearly and frankly describing them as to be unworthy of the German people. I clearly recollect two incidents where two young Jewesses owing to an affidavit given by their mothers before a lawyer were said to have originated illigimately. I had this certified officially, so giving them an opportunity to enter it in to the files of the register office. After that they were no longer considered full blooded Jews. I adopted this attitude, because I admired the sacrifice which mothers male here. when I now mention the name of Dr. Rosenack? Herr Dr. Rosenack would no doubt be in a position to testify. Professor Rosenack was an attorney in Bremen, he was the son of a Jewish Rabby. For many years, from 1934 until he emigrated to the States, I think in 1937 or 1938 I discussed all affairs of the Jewish population in Bremen with him. He negotiated with me as an equal partner. I esteemed him greatly as a human being, because of his bravery I was promoted lieutenant during World War I. He had been wounded and had the Iron Cross distinction. Before he emigrated to the States, he visited me and thanked me for my loyal attitude towards his follow Jews.

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He asked me to look after the interests of the Jews after he had left. As long as I was in Bremen I kept my word to him. That was up to the year 1939. The address of Dr. Rosenack has not been determined definitely but I believe he is living in New York.

DR. DURCHHOLZ: As soon as I get the translations I shall submit a great number of affidavits by the witnesses mentioned here about these and other occurrences, and I shall introduce them to the Tribunal.

Q (By Dr. Durchholz) Witness, will you please tell the Tribunal when, and in what manner, you had official and private contact with the SS. formalities I was, according to my rank as captain, drafted into the SS as a Hauptsturmfuehrer. The document stating this fact is contained in my personal files, which without exception I handed out to the CIC in Salzburg in the year 1945. This original document as others concerning my promotions, unfortunately, I cannot submit here because when my personal files were returned to me in Nuernberg last year they had already been taken out, but I presume that these papers are in the files of some American agency.

Q Why were you promoted in the SS at that time? with my promotion as lieutenant of the police, or rather, as official, as it was done automatically with everyone throughout the Police Force. Bremen, Where did you go to after that? transferred from Bremen and was put in charge of the State police agency in Reichenberg. I still want to mention that before my transfer to Reichenberg I was transferred to Graz for about 8 weeks in spring of 1938, for about 6 weeks to Aussig, when our troops occupied the Sudeten area, and in to fall of 1938 for about 8 weeks to Olmuetz.

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Q What activity did you have in Graz? What was your work there? of Austria, in March 1938. It was my job to take care of the security there and to set up a state police office in Graz according to Reich principles..

DR. DURCHHOLZ: May I point out to the High Tribunal, that in connection with the defendants activity in Graz where he particularly looked after political persecutees, I have a number of affidavits which I shall submit where, for example, the Archbishop there was released through him, as wall as a number of college professors and a man who was a Minister then an is a Minister now Were released through the defendant.

Q ( By Dr. Durchholz) Witness, after Graz you returned to Bremen? remained there until the fall of 1938. At that time I received the order to take over charge of an Einsatzkommando in the Sudeten area.

Q You just used this expression "Einsatzkommando." You were drafted to an Einsatzkommando when the Sudeten area was occupied, were you not? Could this Einsatzkommando perhaps be compared with the Einsatzkommandos of 1941 in Russia, which will be discussed later on? Or did it mean something different? same as the Einsatzkommando and the Einsatzgroups set up in Russia.

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At that time there were already an Einsatzgruppe which conducted a Commando's marching into an area which it, and the Einsatzkommandos who were intended for certain areas. The only difference between them was that they were not strictly subordinated to the military commanders and, as it should be, they were merely meant for police tasks. In spite of this, even at that time the Einsatzkommandos were subordinate to military commanders during army operations to such an extent as the military commander also had the executive power. area, were you ordered back to Bremen - and then you again took part in the occupation of Czechoslovakia and joined the Einsatzkommando there?

A Yes. The development was the same again, when I arrived in Olmuetz nobody had been arrested yet. The Einsatzkommando merely were given a search book according to which certain persons who had proved to endanger the security had been arrested - persons who had exposed themselves. I still remember that most of them were formerly ethnic Germans who, when Hitler had taken over in 1933, had emigrated and developed an anti-German activity in Czechoslovakia. There were also a few Czech citizens among them -- for example, remember that in this list for arrests the police director for Olmuetz, Dr. Bender, had been intended to be arrested as well. Before I carried out this order, however, I got myself some information on how he did his duty, and in particular whether he worked against Germany, and about his attitude about racial Germans within his region. Since I did not hear anything to that effect, not even from racial Germans, and nobody was against this man, I did not carry out this order for arrest. I discussed the matter personally with Dr. Bender very frankly, and when he gave me his word of honor not to escape, I fulfilled his request to let him go to Prague in order to settle his private affairs there.

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This actually happened, and Dr. Bender, as long as I was in Olmuetz, was completely a free man. proceed against Jews in particular?

A No. There was no such order, "Neither for my activity in Austria, nor in the Sudeten region, nor in Czechoslovakia - that is the later Protectorate - were there ordered any measures against the Jewish population. assignment? was given in the year 1941; I did not take part in any other assignment.

Q But these were actual peacetime assignments. After 1939 when assignments to Poland, France, Holland, Norway, and so forth, took place, did you take part in this, too? other countries during the war. As I said already, merely for the year 1941 I was in the Russian campaign. to the State police office in Reichenberg, and from here you were sent to Hamburg? started for you, did it not? Will you please state something briefly to that affect? sent to Hamburg as Commissar Inspector for the corps area district 10.

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This is a new time, a new sphere in my work in the Security Police because after that time I left the executive. in the Security Police means? Ohlendorf already has given ample explanation on that point. The official tasks of an inspector were merely of an inspectional character. He had to supervise organisational and personnel matters, to visit local offices and to see if everything was conducted in the proper manner, and to straighten out differences between the Police and the Party, if necessary, to settle them, and finally, the entire Security police was to be represented by him. My main task I saw in looking after my men, giving great importance to their training, in order to avoid by all means that the standard became lower by the influence of the war.

Q Did the inspector have factual powers? Did he have any authority to give orders? orders. He had no executive power.

DR. DURCHHOLZ: About the witness activity in Hamburg I shall also submit affidavits by persons who worked together with him and whom he met there somehow else and whom he helped there.

Q (By Dr. Durchholz) Witness -

THE PRESIDENT: Counsel, I presume you are gathering those affidavits as you go along, and as quickly as you can. You are not waiting until the very end to get them?

DR. DURCHHOLZ: Yes.

THE PRESIDENT: Very well.

BY DR. DURCHHOLZ: activity in Berlin in March of 1941. In what capacity?

Q That is the Group which was competent in the RSHA?

A Yes, in the RSHA. That is the Group which was competent for training and education, and, normally also, for the affairs of young members to join the staff, The latter question, of course, during the war was of hardly any importance, While being in charge of Group I-B at the same time I was put in charge of the Fuehrer School -- school for leaders. I simultaneously performed both tasks at the school house in Berlin/Charlottenburg. The schools were very important because they were competent for the passing of examinations opening careers of officials of intermediate and higher and leading positions. There were two official schools: one sub-leader school in Fuerstenberg, and a school for leaders in Charlottenburg. In Charlottenburg detectives were trained for the criminal police and for the State police, These schools were looked after by Group I-B, who conducted them. They were the ones responsible for the RSHA. The entire plan was worked out here, and also the material was put together and handed on to the schools. In that way it was achieved that the schools followed a definite plan for the individual classes. They had the same means for teaching, and all those participating in the training courses, therefore, always were instructed according to the same principles throughout. Owing to the development of the war the training for the agencies themselves was no longer of so high a standard because a number of the best experts, owing to the distribution, had been taken away from the schools or did not find sufficient time, to take care of this training.

For that reason it was made a duty of the schools, in spite -- or rather I should say, just because of the war, that the export training be more thorough and even more concentrated. In order to achieve this aim I avoided all that was unnecessary. We did not do as much sports, and only kept up so much as was necessary to keep our pupils physically fit. My military training was discontinued entirely. In the same way, My instruction courses, for the State police and, the criminal police who had been conducted separately until this, were to be joined together. The schooling of both departments was therefore conducted together in favor of the members of the state police who got a good training in criminology that way.

Q An intermediate question, please. Were these schools set up by the Nazis after 1933, or had they existed oven before? not founded by the Nazi state but the continuation and development of an institution already in existence.

DR. DURCHHOLZ: Thank you, That is enough.

Q (By Dr. Durchholz) Were the teachers in these schools political functionaries and officials of the NSDAP? member of the NSDAP, was not necessary, and not required. The only thing that was required was the expert knowledge, the personal attitude and the professional skill. Most of the teachers were members of the criminal police because they had the best expert training.

Q The last question about these schools for leaders? How long did such a training course take?

war, took 9 months,

Q You were a commander of this school for leaders, then? And after that, you were assigned to go to Russia?

Q Now I come to your assignment in Russia. How, and when, did you receive the order for your assignment in Russia in 1941? in charge of the school of leaders and Group leader of I B. At the time I was SS-Standartenfuehrer and colonel in the police. About May of 1941 the Chief of Office I, Gruppenfuehrer Streckenbach, gave me the order that the school should be prepared to train people for future members for the executive staff. He based this measure on the fact that there were too few leaders. This shortage came about because meanwhile France had been occupied, and so had Poland and Belgium. Soon after that the order came that the members of this training course should be transferred to Praetsch where, at the time, the school for sub-leaders of the Security Police was still in existence. Approximately at the same time, only a few days later, did I receive the order according to which I was to be put in charge of an Einsatzkommando myself. The aim for the Einsatzkommando was not made known at the time. I remember distinctly that it was often assumed that we were going to attack England. gathered in Praetsch of all places? because there a school was available, and also in the surroundings there were suitable rooms -- for example, inns and other localities.

The school building alone was not sufficient. Apart from settling people in Praetsch, people were also accomodated in the surroundings in Dueben and Schmiedeberg.

Q What happened in Praetsch? repeatedly, because at the time I was just moving from Hamburg to Berlin. For that reason I am not able to give a detailed report about the activities in Praetsch.

that? I lived in a room of a school for leaders, while my apartment was still in Karlstrasse, in Hamburg. My wife was there still, and about the middle of May 1941, the house and my apartment at Hamburg were bombed, or, rather a bomb fell near on the house opposite, and, therefore, my house was badly damaged. For that reason it was of great importance to me to get my wife away from there, also because of the repeated raids. and to take her to Berlin with me. When the General of the Police, whose name was Keller, was transferred, I was able to take over his apartment in Berlin - Wilmersdorf. Thus, by this lucky chance I was able to carry out my removal from Hamburg to Berlin, and this happened just at that time when I had been ordered to Pretsch. With approval of the Chief of Personnel I was released from being billeted in Pretsch. A decisive faster there also was the fact that I was still training for my new task, which was more important than staying in Pretsch inactive, even if only temporary. I was ready to be called away at any time, of course, and I could be at the collection point within a few hours. My property from Hamburg arrived in Berlin at the beginning of July and about that time I was fully occupeid in looking for my apartment.

Q And when were you actually in Pretsch? the forces, and I had to take part in this inspection. About two days before that I travelled there for that reason, and used that same opportunity to greet the men assigned to me, and to inspect their services.

Q What kind of service was that?

A There was a military training service. Most of the members of the Security Police needed a refresher course. Curing these days training was being conducted for the Armament Service; also secret maneuvers were carried out in order to get the trainees used to the new methods in the maneuvers, as they were no longer used to these. I also remember that the transfer of forces in the area under secrecy was being studied.

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The training was done by members of the Waffen--SS, which was also assigned to help there. The second day was completely taken up by inspecting the territory and fixing the dates. return to Berlin?

A I returned to Berlin after the inspection. I had to hurry up now to complete the setup of my apartment, because one could expect to be moved any moment. was made known. You told me that this Decree was not known to you before your assignment, is that correct?

A Yes, that is correct. I only heard about the so-called Streckenbach Decree when Herr Wartenberg on Good Friday of this year interrogated me for the first time. was it not? Can you now explain why you did not hear of this speech of Streckenbach and this Fuehrer Decree? in Pretsch all the time. point? Schmiedelberg, when it was made known on the radios that the German Wehrmacht had crossed the Russian borders. Sofar as I remember that was on a Sunday. That day remained in my memory because on that day for the first time I had my apartment set up completely, and had breakfast with my wife there, when the news was given on the radio. I, therefore, left for Schmiedeberg very soon. That was as far as I remember on 21 June 1941. The march from the collection point took palce on 23 June 1941.

Q How did you know of your commitment?

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Shortly before the inspection in Pretsch in the Prinz Albrech Palace in Berlin, this had taken place, the speech was held there under the auspices of the whole Einsatzgruppen Chiefs and the Einsatzgruppen leaders, who were there. However, I am not able to say that they all took part.

Q And what did Heydrich say during this meeting? ly pointed out that the fight which would soon take place would be the hardest and most bitter the German people had ever gone through. In his inspections, in his speech, and in his attitude, he did not leave any doubt about the seriousness of the situation. He pointed out and stated that in the fight to come not only the people were fighting against another people, but for the first time ideology was fighting against another ideology. He also informed us about the huge territory in Russia, and the difficulties of the fighting in this territory. He explained that Bolshevism would not stop from using every means of fighting, as Lenin had already written; emphasizing there in particular the part the partisans were to play, which Lenin and others had written about, and this could not be misunderstood. That every one should be sure to understand that in this fight Jews would definitely take their part, and that in this fight everything was set at stake, and the one side which gave in would be the one to be overcome. For that reason all measures had to be taken against the Jews in particular The experience in Poland had shown this. Ho pointed out that the Security Police in the rear of the Army territory would be exposed to the attacks of the partisans. For that reason he decided to train them in the use of their weapons, and how to be protected by such weapons of the Police and the Waffen-SS. He also explained the subordination system to the Wehrmacht. These were the main points that Heydrich made, sofar as I remember, but I want to emphasize particularly that any words about extermination or final solution were never mentionedhere. Also the socalled Commissar Orders were not mentioned during this discussion, either.

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THE PRESIDENT: I assume we are about to take up another phase of the situation, and in view of the fact this might be a good place to recess for the day. The Tribunal will be in recess until tomorrow morning at nine o'clock. Please, remember, at nine o'clock, and will be in session until twelve o'clock, and that will finish the session for tomorrow.

THE MARSHAL: The Tribunal is in recess until nine-thirty hours tomorrow.

(The Tribunal adjourned until 18 October 1947, 0930 hours) of America; against Otto Ohlendorf, et al,

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II-A. Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

DR. DURCHHOLZ (Attorney for the Defendant Schulz): I would like to continue with the direct examination of the witness.

DR. LUMMERT (Attorney for the Defendant Blume): Your Honor, I would like the Defendant Blume to be excused from this morning's session because I would like to prepare his defense with him. Schulz on the witness stand on Monday. I have a few questions to ask him. The reason that I am mentioning this is in case his examination will be finished today.

THE PRESIDENT: If his examination is not finished today, then, of course, you may examine him on Monday, but if his examination should be finished an appreciable period of time prior to the hour of adjournment, we would ask you to do the cross-examination at once, because otherwise, there would be that interval which would not be very satisfactory.

I might ask, Doctor -- How do you pronounce your name? Durchholz?

DR. DURCHHOLZ: Yes.

THE PRESIDENT: -- Dr. Durchholz if he anticipates that he will have finished with the examination by noon.

DR. DURCHHOLZ: I don't think that I will finish completely today, THE PRESIDENT: I see. In which event, of course, you may examine on Monday.

DR. LUMMERT: Yes.

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THE PRESIDENT: Further, Defendant Blume will be excused from attendance in court today and will he escorted from the courtroom.

(The Defendant Blume was excused.)

THE PRESIDENT: You may proceed. BY DR. DURCHHOLZ (Attorney for Defendant Schulz):

Q.- Witness, yesterday we were interrupted at a point when you were telling us that you heard a speech by Heydrich in Berlin, in which he spoke about the coming campaign in Russia, in which he did not mention execution, extermination orders or the so-called Commissar order. As I saw from the documents, nevertheless, Heydrich mentioned the Russian campaign more than once. What do you have to say about this?

A.- I only know of his one speech. If any other speeches were supposed to have been held at Pretsch, I can only say that I do not know anything about it, because apart from those days I have mentioned, I wasn't there.

Q.- Is it possible that such a speech is not in your memory any more?

A.- I consider that completely out of the question for an event of such importance I could not have forgotten. Furthermore, my statements and the documents submitted here will show that I could have no knowledge about the order which had been handed down by Streckenbach.

Q.- Can you now tell me, please, how things developed in Pretsch?

A.- The exactness of the dates which I am now going to give you, I cannot absolutely guarantee, since it is only my memory which I have at my disposal. I have no documents. Pretsch and Schmiedeberg started; they were fully motorized. The group to which I was assigned consisted of the so-called "Advance Commandos" 4a and 4b, the Kommando 5, which I was to command, and Kommando 6. The leader of the group was Brigadier General of Police Rasch.

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First of all, we went as far as Liegnitz. On the next day we continued to Gleizitz, where we remained for three days, as I remember. Here the Kommandos of the Protective Police joined us. From Gleiwitz, we continued on to Cracow, where we spent one night. On the next morning we continued to Dewitsa. Hwer we garrisoned in the troop quarters. On the 1st of July, about, we reached Radymno at the then new Russian frontier. On the following morning we continued to Lemberg. We reached Lemberg as far as I remember about three days after it was taken. As far as I recall, it must have been about the 2nd of July. There was a large group of people in front of this building, mostly weeping and wailing women. As we found out later on, this was the prison in which their relatives who had been killed were. At the headquarters I found out where I was to be accommodated. It was the building in which the Russian NKWD had been previously quartered. Before that it had been an administration building of the Lemberg Electrical Works. had left, a very great number of Lemberg citizens, Ukrainian and Polish inhabitants of other towns and villages had been killed in this prison and in other prisons. Furthermore, there were many corpses of German men and officers, among them many Air Corps officers, and many of them were found mutilated. There was a great bitterness and excitement among the Lemberg population against the Jewish sector of the population.

DR. DURCHHOLZ: Concerning these incidents in Lemberg, Your Honor, which took place before the German troops, marched into Lemberg, I would like to refer to one of the Prosecution's documents, which I have already seen and read in its photostatic copy, but which has not yet been submitted as a Prosecution Exhibit. This is Document NO-2651. That is an Operational Report of the 31st of July, 1941.

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I would like to reserve the right to submit this document as my own later on. Lemberg are briefly mentioned in Prosecution Exhibit 116 in Document Book III-B. This is Document No. NO-4537, on page 32 of the German text, to which I am now referring.

Q. (By Dr. Durchholz): Witness, please continue.

Mr. HORLICK-HOCHWALD: If Your Honors please, the document quoted by Dr. Durchholz was not offered by the prosecution, but, of course, there is no objection on the part of the prosecution that it is offered by Dr. Durchholz and we will furnish him, if he wants it, with a photostatic copy of the document.

Dr. Durchholz has received it.

THE PRESIDENT: Do you intend to introduce that now?

DR. DURCHHOLZ: No, I would like to submit it later with my document book. I have not had it translated, yes.

THE PRESIDENT: Very well.

A.- On the next day Dr. Rasch informed us to the effect that the killed people in Lemberg amounted to about 5,000. It has been determined without any doubt that the arrests and killings had taken place under the leadership of Jewish functionaries and with the participation of the Jewish inhabitants of Lemberg. That was the reason why there was such an excitement against the Jewish population on the part of the Lemberg citizens.

THE PRESIDENT: What do you mean by "Jewish Functionaries"?

THE WITNESS: Your Honor, these were Russian Communist Functionaries of Jewish faith.

THE PRESIDENT: They were office holders of the Soviet nation who happened to be of the Jewish race?

THE WITNESS: Allegedly, yes.

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A. (Continued) There was also great excitment among the German troops because of members of the Wehrmacht, who had been killed. The Army commander, in agreement with the Lemberg authorities, had decided to set up a militia immediately.

THE PRESIDENT: What was the date of these happenings?

THE WITNESS: My arrival in Lemberg was about the 2d of July, and I said -

THE PRESIDENT: Year.

THE WITNESS: 1941.

THE PRESIDENT: Yes.

A. (Continued) And Dr. Rasch told us what had taken place. I think I just said that. On the following day, that is the 3d of July, 1941....

THE PRESIDENT: What were the Russians doing there at that time?

THE WITNESS: At our time they were no longer there.

DR. DURCHHOLD: Your Honor, I think I can clarify this doubt. On the occasion of the Polish Campaign, Lemberg, which was then Polish, had been conquered by the German troops and had been occupied by them. Then Germany and Russian concluded an agreement, according to which Lemberg was to go over to Russia. Therefore, in 1941, Lemberg was occupied for the second time by the Germans. Lemberg had then been Russian.

THE PRESIDENT: Well, but by July 3, you had overrun Lemberg, had you not?

DR. DURCHHOLD: Yes.

THE PRESIDENT: The German troops had got beyond Lemberg?

DR. DURCHHOLD: In July 1941, the German troops had taken Lemberg from the Russians.

THE PRESIDENT: Yes, but I understood you to say that these excesses occurred on July 3.

DR. DURCHHOLD: No.

THE WITNESS: No.

DR. DURCHHOLD: No, it was before the Russian troops left the city. From the document which I shall submit later, you will see that these excesses were committed by the Russians against the Lemberg population before the Germans marched in, about the 25th and the 26th of June, 1941.

THE PRESIDENT: That was prior to Schulz's appearance in Lemberg?

DR. DURCHHOLD: Schulz came to Lemberg only after the German troops had taken Lemberg.

THE PRESIDENT: After the excesses had occurred?

DR. DURCHHOLD: Yes, after the excesses. He saw the results of these excesses with his comrades,

THE PRESIDENT: Very well.

A. (Continued) The militia had orders to arrest the Jewish population of Lemberg and also those who were suspected of having participated in these killings. May I add here, Your Honor, that this is a description by Dr. Rasch, which he himself got from the German Army commander of Lemberg. localities. I must add here that a larger unit of the Security Police of Cracow from the Government General had had arrived there and was also informed of these facts. I don't know what missions were given to what units. undertook to carry out the arrests. As far as I was informed, they were carried out as ordered, namely, without using any violence. Non-Jews were supposed to have been COURT II-A CASE IX among these too, and these were also designated as perpetrators or participants.

able to observe that interrogations were carried on uninterruptedly and that part of the RSDS was isolated from another part. As far as I remember, Dr. Rasch made known on the following day that a Fuehrer order had been given, according to which the guilty ones and the participants in these murders, which were against International Law, were to be executed in reprisal and if I remember correctly, in connection with this decree the Army command order was also made known, according to which the political Commissars and Functionaries were to be executed.

Q. Is this a basic order?

A. Yes.

Q. Please give me the exact wording of this order.

A. The order read out by Dr. Rasch was to the following effect: First of all, it went into the position of the Security Police, namely, the security of the operational area was its main position, and the security of the rear Army area. Then it continued about like this: the Fuehrer has ordered in the interest of the combatting troops that all Commissars and all Communist, Functionaries, Spies, agents, saboteurs, and looters be shot immediately, since they operate in the rear of the combat troops and represent a deadly danger. This order was top secret.

Q. Weren't there any details given about this?

A. Yes, Dr. Rasch gave the following explanations: First, the Functionaries set up by the Communist Party, Spies, agents, and saboteurs are chosen fanatics, who would use any means at their disposal to undermine order and to destroy the combat morale of the troops.

The persons used by the Communist party are to be estimated more highly in their value to the party than the members of the Nazi party. The functionaries of the Communist party can only have been given their mission because they have already proved their worth and herewith they are good risks for the Party. They are bound to their mission with their lives because in case of betrayal, or in case of treason, they immediately have to pay with their lives. Second, we have to be especially careful about the Jews. They have entered into an embittered fight. The Jews also are carriers of destructive tendencies in the rear of combat troops. Third, the Russian has announced before all the world that he does not consider himself bound by any international law. And his measures are performed accordingly

- and our measures, too, have to be performed accordingly. This was the statement which Dr. Rasch made.

Q How did you accept this order?

A I was under the impression of the Lemberg incidents. Nevertheless, I reacted against this order since I considered it as incorrect; politically incorrect, also. I had serious misgivings, but I knew that in my own disposition I was inclined toward, kindness and I ascribed this conflict to my nature. From the conduct of the enemy as it had been determned, I believed that I had to force myself to a greater harshness, but I hardly succeeded. My inner feelings were against the measures which had been ordered. But when I thought it over conscientiously, and when I left out all feeling, I had to determine that law, and feeling, had nothing to do with each other, I had seen the thousands of murdered people and the many mutilated corpses and I had smelt the odor which lay heavily over Lemberg, and I saw the many weeping men, women and children who were looking for their relatives among the corpses. We always saw people in the street who kept carrying their dead home in imporvised coffins. The soldiers were terrified by the mutilated corpses of their comrades. Therefore, I could see no wrong in the reprisals ordered by the Fuehrer, and in the so-called Commissar Order -- even though I justified this myself, and even though I considered these necessary measures as incorrect.

But I did decide, - and I acted according to it -- to give it my own limits by asking that the guilt be proven in order to exclude any wilfulness. like to go into your disposition -- your opinion about these orderslater. Now please describe the events in Russia - without your personal opinion.

A On the following day the executions took place. They were not in the hands of Einsatzkommando 5. I don't know to what extent the agency of the General Government was used for this. The order for the Lemberg executions was given by Dr. Rasch, and the execution was ordered by him. I personally, on the morning of that day, went into town. When I returned about noon I was informed that I had already been looked for. Einsatzkommando 5 had received orders to continue the executions that afternoon. I immediately reported to the building of the Group Staff in order to speak to Dr. Rasch. His Chief of Staff told me that he was not there. I therefore asked the Chief of Staff to revoke; the order issued to Einsatzkommando 5 since neither I nor the members of my Commando were prepared for such a task. The Chief of Staff answered me that Dr. Rasch had expressly ordered that the Einsatzkommando 5 was to carry out these executions since the other commander was to be relieved. A further conversation was useless. I assembled my men and spoke with them about this order. I told them that this is a reprisal measure ordered by the Fuehrer. I pointed out to the great difficulty of this deed. I demanded that everyone perform it with seriousness and with dignity. I told the officers in the presence of the troops that they were to observe this order carefully and remove anyone, and report about it to me, who would violate this dignity in any manner. I recognized in the serious demeanor of my men how terribly difficult it was for them to execute this order. I gave directives to start immediately in order to use the short time available and give my men their orders.

Every man was to be assigned his place exactly, so that the carrying out of the executions would proceed exactly, and without any loss of time for the victims. At the place, I tell my men once more about the reason for these executions and I pointed out especially that the investigations which had been conducted had determined definitely the crime or the participation in the crimes on the part of the victims in the killings which had taken place in Lemberg.

The bringing in of the voctims was done by another Commando. The burying was done by the Lemberg militia under the supervision of this Commando, Whether any members of the General Government agencies were used here, I don't know. After I had personally convinced myself that a doctor was also present and that everything was carried out conscientiously, I went back to town after the first execution since I already had set down a deadline for our continues march. According to what I remember, five executions were carried out on that day, each time involving about 18 people. First I went to my quarters in order to get my papers. quarters. field where the prisoners had been collected. I went to the window where I saw that some Army unit had gone to this field and was chasing the prisoners around and was mistreating them. Without hesitation I went to the quarters of Rasch in order to inform him of what I saw and in order to ask him to intervene immediately. But he had not yet returned. When I reproached the Chief of Staff for not interfering he told me that it was none of my business to intervene here if the soldiers gave vent to their wrath. In the interest of these tortured people I could no longer carry out any negotiations. I ran to this field and saw two majors of the Army. I asked them to stop this shameless demonstration immediately. Since I was very excited one of them immediately pulled out a whistle and put a stop to this demonstration.

I had the back gate of the field opened and let all of the prisoners out. I also freed other people who had been destined for execution. In about two minutes the whole field was empty. I could no longer get get hold of either of the two majors -- or the units. They had disappeared just as quickly. I immediately ordered a driver to drive me to the place of execution and to inform them that the executions were finished. There were at least 2,000 prisoners in that field. I was at first terrified myself when I saw this empty field in front of me for I feared that I had dons more in my excitement than I could account for, In the evening of the same day Criminal Commissar, Dr. Krieger looked me up and told me follows: "I warn you, people are saying bad things about you because you concern yourself with matters which are none of your business." I told him that I shall answer for that myself, It is unheard of that Hoffmann did not intervene even though these were prisoners who were under the protection and guard of the Security Police. About one hour after this conversation I reported to Rasch in order to tell him about what had happened. He cut me off with the words that he had already been informed. I was very much surprised that nothing further had happened. On this occasion I received the approval to advance the next day. BY THE PRESIDENT: Just a moment. were released from this collecting field; one part was to be destined for execution, I knew that; what was to be done with the other prisoners, I don't know.

Q What was the date of this happening?

Q You arrived on July 2nd?

A We arrived around the 2nd of July in Lemberg. On the 3d of July, as I have already said, the order of Dr. Rasch took place and now I cannot exactly guaranted the date - it could have been the 4th or 5th of July when these events took place.

by Dr. Rasch and the executions?

Q One day. And wit hin that time the investigations were made as to those responsible for the previous mas s acre?

AAnother Einsatzkommando was responsible for this. They conducted investigations for about two days, and as I have already said, in cooperation with the Lemberg authorities, with the militia, and I could see -- myself did not participate -- tha t interrogations were carried on continuously, and that after these interrogations of the entire number of prisoners on th is field poeple were taken out continuously. HOW many these were, I don't know. I assume that it amounted to about 300 persons.

Q 300 persons that did what? prisoners on this field.

Q 300 persons sched uled for execution?

Q You said 300 people were taken out... but you didn't say why they were taken out. the larger number, and those were the one s who were destined for the executions. That was in the process of carrying out reprisals.

Q Were there any women among them?

utions. That was in the process of carrying out reprisals.

Q Were there any women among them?

A No, not one singl e woman. Only men. place on the 4th, and you have indicated that one day intervened -- what ever the dates were -- be tween the order and the execution, we must conclude that all the inv estigations which were made were made within the period of 24 hours. Is that right?

A. No, your honor. I think it is a matter of 48 hours. I can be mistaken here. I cannot guarantee it exactly. I would remember better if I had participated in the investigations myself. I only cod d give a description of the events, the way I saw them, because I lived in the same building. How these investigations were actually conducted, I don't know, I only point to the fact that a large number of men were executed by another Einsatzkommando.

Q Which one was that, do you know?

Q No, which Einsatzkommando was it?

Q Six?

AAnd parts of units from the General Government. There was a larger Commando which had arrived from the General Government which was already stationed in Lemberg. These units from the General Government followed immediately because they had already been ordered from Berlin, that the old

Polish territory which had become Russian, was now to be reoccupied because this territory was to be incorporated into the General Government also. your arrival?

AAS perpetrators?

Q No, no, no; as victims. You say that the Russians had killed 5,000 -- or whatever the number was. Who were the victims -- they were Poles, weren't they?

A They were Ukrainians and Ploles; men and women -- whether there were any Germans among them, I don't know. There were very many German soldiers and men; they were also found killed.

Q German soldiers?

Q Wasn't that Russian territory at the time?

A Yes; it was Russian territory but, your Honor, we were two or three days behind the combat troops, and here it was probably a ma tter of German armed units which had previously been taken prisoners.

Above all, probably air Force officers who had been taken prisoners. Above all, probably Air Force officers who had been shot down.

THE PRESIDENT: proceed,

DR. DURCHHOLZ: I shall Come back to this incident later and I shall submit a document, and I shall bring in an eye witness who can give a description of this and who will say that this is a matter of a large number of German prisoners who were also killed at that time. BY DR. DUHCHHOLZ: lives of those who had been destined for execution?

A Whether that is true for all of these, I don't know because I don't remember what was to happen with these people. I can only confirm it for a part of these people. In any case, I have spared them of any tortures. else you saw as you continued to advance.

not guarantee the dates, we left Lemberg, Since the reads were clodded, we advanced very slowly, and we had to spend the night at Brody. The following day we continued to Dubnew. Here we remained almost for one week. Since the front had come to a standstill in Dubnew similar events had taken place as already had taken place in Lemberg. In the Dubnew prisons there were several hundred people, Ukranians for the most part; women and men who had been killed, and the population again told us that the executions had been carried out by Jewish Functionaries. A priest and a woman who had hidden themselves among the corpses, and who had been saved, confirmed these statements.

THE PRESIDENT: Just for the purpose of clarification, because this phrase is apparently used frequently, the phrase "Jewish Functionaries", let me ask if we are to understand by that phrase you mean officials of the Soviet Government who were of the Jewish Race?

THE WITNESS: Not officials in every case, Your Honor, but any kind of functionaries of the Communist Party who were of the Jewish Faith.

THE PRESIDENT: Members of the Communist Party holding aposition of some responsibility who also were of the Jewish Faith, is that the definition?

THE WITNESS: Yes, Your Honor. A priest and a woman who had hidden themselves among the corpses, and who had been saved, confirmed these statements. The woman was in the hospital with cuts in the throat from a bayonet; another woman about twenty-four years old could not be heard since she had become insane. The leadership over these executions in the Dubnew prison, according to the statements by these witnesses, was supposed to have been held by the commandant, allegedly, with his daughter: At that time his name was determined, but I can not remember it now. The prisoners had been shot with pistols through the holes in the door. When they had been shot soldiers appeared and stabbed the executed people with their bayonets.

THE PRESIDENT: When you say soldiers, please indicate the nationality of the soldiers?

THE WITNESS: They were Russian soldiers. On this occasion the Priest and the above woman had hidden among the corpses, and the woman received those bayonet wounds in her throat. I don't believe I am telling an untruth if I mention that my Kommando did not carry out any executions in Dubnow, since no more guilty persons were found, or were denounced by the population.

THE PRESIDENT: Do I understand you to say that this woman told her story about what had happened?

THE PRESIDENT: She had received a bayonet thrust in the throat?

A Yes she had a bayonet wound in the neck. I saw her myself. The cut went through there (indicating side of neck) on the side of the throat.

THE PRESIDENT: It did not effect her speaking ability?

A No, Your Honor, it did not. The people who had participated in this had fled, and the Jewish inhabitants who had remained were not guilty. At Dudnow I had to detail a detachment to another place. There the army command of the 6th Army was located, about the day of the advance from Dubnow, a criminal commissar from the General Government arrived and took over an area as belonging to the General Government. On 13th of July I received the order to proceed to Shitemir. We started from Dubnew about the 14th of July. We were stopped on the way as the Kommando suffered losses during an air attack, or during air attacks. The Russian army had broken through, and a continued advance to Shitemir was not possible. Dr. Rasch, who was in Svier with his staff gave me orders to proceed to Shepetawka, which was about fifty kilome ters south of Svier. Here the forces had to be committed for their own safety exclusively, because parts of cut off Russian forces, were active in the forests around Shepetewka, and they were active continually in small scale attacks. Only on 22 July was I able to continue and my dest ination was Berditschew, which I reached around the 23 July. I was quartered in barracks near the headquarters of Rundstedt's army Group, two detachments were sheltered in barracks, as these were closer to the center of the town.

I remained in Berditschew about four weeks, since the front had become stabilized at Kiev. BY DR. DURCHHOLZ: now I consider it fitting if you now briefly describe the activity of your Einsatzkommando -- what was the mission of your Einsatzkommando altogether?

A The field of activity was very extensive. The job was made more difficult because we arrived at even a more severe iron curtain than exists even today. Everything was new to us, and had no comparison with previous standards. The area, the people, the language, already brought about great difficulties. The measures of the opponent in Lemberg and in Dubnew, the continuous actions of individual fighters, by combat groups, and by individual people armed to the teeth who had been hidden in the woods, who were often and frequently in possission of empty artillery guns and anti- tank guns, communication troops, and sabotage corps, all these made things very very difficult, but the most difficult were the innumeralbe very welltrained and unbelievably well sabotaged communication centers in the rear of our Army areas. These with incredible cleverness interfered with our Army, with the administrative agency of our army, and with the military units used by the Army. Even though I was hardly four weeks in Russia, activity by infiltration of these forces already had assumed a dangerous preparation.

could not even be controlled or examined or taken care of. These infiltrated forces had their direct communications to cutoff troop units, and partisan units. Thus for them, they communicated intelligence about the Wehrmacht units, and about their strength. Sabotage acts of Army installations took place day and night continually. Within the stress of prisoners of war who clodded up the roads there were likewise important intelligence men of the other side. Hardly a night passed without people being hidden in the dense forests with communication missions, and these people amounted to a great detail of work and great patience. Added to this was the danger in which each unit found itself. The investigation of the auxiliary toops used by the Army, these Were interpreters, health officers, kitchen personnel; the investigation of these people took up a great amount of time and patience, since training had to be naturally laboriously done by interpreters, and it must be considered here that in this area the amount of denunciation was very great, but even among these people who denounced them, there were agents who had the intentions and also succeeded in their intentions to make everything unsafe and suspicious of each other. Of greatest importance for the Army leaders were the news of intelligence about Russian war efforts, and the Russian ammunition plants, and the armaments, since nothing was known about this. When the Armies first opposed each other, it was only too clearly to be seen that Russia in its war on Finland had, by sacrificing its reputation in world opinion, camouflaged its war potentiality. The first intelligence reports from the Ural Mountains made the Army agencie really, or sit-up. These intelligence activities had to be carried on by nature of the circumstances. Furthermore, the COURT II-A CASE IX Kommandos had to look for their own food, for their own maintenance, for the equipment, the vehicles had to be overhauled, and all of that went with it.

Then the daily reports came in from the population, reports about munition dumps, about agents. Here it was difficult to spot all of these reports. Furthermore, the militia kommandos had to be investigated, for we had found out that here also forces of the Russian Intelligence Service had been infiltrated. Since other organizations were looking, reports had to be received and passed on which concerned this, especially with regard to agriculture, the harvest was ready to be collected, but there were no tractors, no harvesting machines, not even sickles and tines. We stood there completely empty handed, The Security Police also had to bother their heads about this, and had to inform and to mobilize the competent authorities. In addition there were many other details which are not worth mentioning.

Q. Report now what happened after that?

A. After about two weeks' stay in Berditschew, the kommando leaders were ordered to report to Shitemir, where the staff of Dr. Rasch was quartered. Here Dr Rasch informed us that Obergruppenfuehrer Jeckeln had been there, and had reported that the Reich Fuehrer-SS had ordered to take which measures against the Jews. It had been determined without doubt that the Russian side had ordered to have the SS members and Party members shot. As soon as such measures were being taken on the Russian side, they would also have to be taken on our side. All suspected Jews were, therefore, to be shot, Consideration was to be given only where they Were indispensible as workers. Women and children were to be shot also in order not to have any avengers remain. We were horrified, and COURT II-A, CASE IX raised objection, but they were not with a remark that an order which was given had to be obeyed.

I raised the question whether the RSHA was informed of this, and whether it represented the same opinion. Dr. Rasch answered me that was, of course, the case since the Higher-SS and Police Leader Jeckelm had passed on the order of the Reichfuehrer, this order was binding on everybody, regardless. Here for the first time we saw the dictorial power of the Higher-SS and Police Leader.

THE PRESIDENT: What date was that so we may observe the chronology of events?

THE WITNESS: That must have been about the beginning of the August, the first third of August, If I had to give a date I would say between the 10th and 12th of August.

THE PRESIDENT: Thank you,

THE WITNESS: It was Certainly not later than that,

THE PRESIDENT: Very well,

THE WITNESS: I myself was firmly convinced at the time that such a development was not done with the agreement of Heydrich or the RSHA, for I never had heard of anything of this kind, nor had experienced it, and, I would like to add here once more, that this opinion had certainly existed in myself, because I had Heard of this order for the first time, since I did not know about the Streckenbach order, due to my absence from Protsch at the time it was given. BY DR. DURCHHOLZ:

Q. What did you do as a result of this order. Please limit yourself to facts only?

A. Having returned to Berditschew, I discussed these incidents with my internalls among my leaders. I had great confidence in them. I could not very well tell them everything which depressed me, since a thoughtless word would have brought about more harm than good, but I thought COURT II-A CASE IX that I could tell from their conduct that they agreed with me.

After the order had been given, and since the work performed by Jews was of a decisive importance, I told them to see to it above all that the Jewish population be used for work exclusively. I gave them a way out in the interest of my own people, as well as in the interest of the victims, which was to give a misleading report. I had misgivings about this order whether such a measure was fitting or not, but I believe that a misleading report might excuse such a motive. In their reports the detachment commanders were to report about as follows: In locality "X" there were three-hundred Jews. Nov only 280 more who are indispensible as laborers. Since many Jews had fled from those villages, one could merely use these, perhaps, who had fled among these which no longer could be used for work, and, thus we were not telling the untruth, as I did not want to have any lies in my reports, and I told these officers that in my opinion, the order which had now been given, could not possibly have the approval of the RSHA, and I started to wonder how to make out these reports. The Einsatzkommando did have signaling equipment, but it could only wire via the Einsatzgruppe itself, This was therefore not possible. I intended to write a letter to Streckenbach, but I also expressed my worry that the route by APO would be too long.

who needed a furlough urgently. I have forgotten the name of therman. He was a reserve soldier in the Waffen-SS. I know that he was a farmer and that he owns a farm in Schleswig-Holstein. He was destribed to no as reliable. Despite the restriction on furloughs he did receive a furlough, and he received the mission to travel by way of Berlin on his furlough and personally deliver ft letter to Streckenbach. In this letter I asked that Streckenbach might recall me to Berlin for any reason whatsoever as I had to report to him about matters which I could only report orally. The official way was not possible. Since he knew me he would be convinced that I would express such a request only for very urgent reasons which I had never expressed before. The men was sent on his furlough with this letter on the following day. I directed my officers to conduct themselves as they had so far, to avoid any brutal measure and to use the harshest measures only if all the requirements were given. But above all the men were to be given so much police work that the variety of their reports would show that they were being urgently used. The reports told me that my officers did understand what I told them. ordering me to report to Berlin. In the meantime I heard by rumors that Obergruppenfuehrer Jeckeln, together with a major group, among whom there was one member of the Security police as far as I knew, had carried out executions of Jews in the entire area. Jeckeln himself at the time was in Stara Constantinovich.

Q. Did Jeckeln belong to your Einsatzgruppe C?

A. No, Obergruppenfuehrer Jeckeln was Higher SS and Police Leader for the area of Army Group South. His power of command had all security and police units under him in that area, insofar as the SS units were not purely Army units. As Higher SS and Police Leader he was the representative of the Reichsfuehrer-SS in his own area. As I was told he had major units of the regular police with him who were exclusively destined to carry out executions of Jews.

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This fact is underlined by a report which is to be found in Document Book I, Exhibit 27, Document No. 3257-PS on page 138. That is page 3 of this report. It reads as follows:

"The Jewish population, after the combat actions, has remained unharmed for the moment," Only weeks, sometimes months later a systematic execution of the Jews was undertaken by units of the regular police. This action went from east to west. It was done publicly and by using some Ukrainian militia, often, unfortunately, with the participation of volunteers from the Army.

Q. Did Jeckeln also come into your area?

A. I just wanted to mention this When I received the radio message which ordered me to report to Berlin various detachments of Jeckeln arrived in Berditschew. BY THE PRESIDENT:

Q. Witness, would you say that generally the Jews were quite opposed to the German forces and attempted to interfere with their progress?

A. I don't understand,

Q. Would you say that generally there was a hostility on the part of the Jewish population toward German forces of all kinds?

A. Not in general, no.

Q. Well, then, do you disagree with the prevalent idea of the National Socialist idea that the Jews were enemies to the best interests of the Reich?

A. I must say, it wasnot to be wondered at, your Honor, considering the intolerance of the Germans against Jewry, one could not expect a friendly attitude from the Jews.

Q. Then you would say that generally there was an unfriendly attitude on the part of the Jews toward the Germans generally speaking?

A. I understood the question to say whether I am of the opinion that the opinion of the Jews toward the Germans was not friendly.

Q. Yes.

A. Yes, I believe that that is definitely true.

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Q. Yes.

A. And I had expressed it to the effect that this attitude is not to be wondered at.

Q. Yes, and would you say generally that they were hostile to the German forces and where they could attempted to interfere with their progress?

A. I can't say that in general for the Jewish population, but it is true that among the terrorists and saboteurs and functionaries and among the intelligence men and all these forces whom I described before, doubtlessly there was a great number of Russian citizens of the Jewish faith, to express myself quite definitely.

Q. Would you say in this particular area to which this report refers, the one you read from that there was an organized resistance on the part of the Jews toward the German forces?

A. Your Honor, I cannot tell you that, and I ask you not to interpret my statements to the effect that I want to confirm, that I want to state any facts in this document which are not known to me. I only want to point out in this report that here it was not the Security Police who did this by themselves, but that Obergruppenfuehrer Jeckeln with units of the regular police, to which no member of the Security Police belonged, became effective in this area.

Q. Do I understand then that you were not familiar with the local situation in that area referred to in the report from which you just read?

A. No, not to any extent.

THE PRESIDENT: Very well. BY DB. DURCHHOLZ:

Q. You were just telling us whether Jeckeln was also active in your area. I think that was also the question of his Honor.

A. When I received the radio message to report to Berlin and that advanced detachment of Jeckeln appeared in Berditschew, an officer whom I questioned told me that Jeckeln was being moved from Stara Constantinovich to Berditschew.

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My whole thought was to avoid a meeting between my kommando and his and to be active in other localities in such a manner so as not to disturb his police activities and still to chose localities in which one could not expect any great Jewish actions, Therefore, when I prepared my trip to Berlin on the 23rd of August, I gave the order to move my staff to Skwira immediately where one of my detachments had already set up headquarters. Skwira is about ninety kilometers east of Berditschew. The detachments were to be used in the same manner further east. This order was carried out on the 26th of August. As I heard later from a detachment commander the three detachments were in Swenigorodka, Tarashja, and the third was near Stavishe on a collective farm.

DR. DURCHHOLZ: Your Honor, if it is your intention to have a recess. I would like to propose that it be now because the succeeding part should not be interrupted.

THE PRESIDENT: The proposal is received with welcome. The Tribunal will be in recess for fifteen minutes.

(A recess was taken) Court2-a case 9

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THE MARSHAL: The Tribunal is again in session. BY DR. DURCHHOLD (Attorney for the defendant Schulz):

Q. Witness, you tols us at the end of the last session that you succeeded in being called to Berlin in order to see Strenckenbach. Just tell me exactly what happened in Berlin.

A On the 24th of August I left for Berlin. As far as I can recall I arrived there on the 27th of August. I can recall this date rather clearly because the date of my arrical in Berlin was just before the birthday of my wife and so I was able to spend her birthday with her. I was unable to see Streckenbach on that same day.

It may have been on the 28th or 29th of August, I don't remember this quite clearly, but then I reported to Streckenbach in detail, and I told him what order Obergruppenfuehrer Jeckeln had issued through Dr. Rasch, in particular, that women and children were not to be saved. I described to him very much in detail just what effects this would be bound to have and I told him how monstruous the conscience of these people concerned had been. issued it, he told me that such an order would just mean plain murder. In this connection I would like to emphasize that this statement on his part referred to the form of the order, which was passed on by Rasch and which stated as a reason for this measure that women and children should be shot so that no vendetta would arise. I also expressed that at the time of my interrogations at Oberursel. I would like to comment on that again later on. Heydrich about that subject as soon as possible. On that occasion I asked him to submit my request for transfer also in case this order should be maintained.

Several days passed, because Heydrich was not theere. If I am not mistaken he was at Prague at that time. Several days later, Streckenbach asked me to come and see him and he told me on that occasion that Heydrich also had misgivings about the manner in which this order had been issued.

be changed because a Fuehrer ordere demanded that these measures should me maintained as long as the opponent was also using these measures, and as long as they were necessary. I again repeated my request for transfer because I told him that I was not able to carry out such an order, or to announce such an order to my man. He then told me that this had already been done because my transfer had already been requested by another agency, Which described me as not being enough, at the same time. Streckenbach announced me that Obersturmbannfuehrer Meyer had been appointed as my successor and that he would be notified immeduately.

Q You told me that you requested a transfer. On that occasion didn't you have the feeling that you were very selfish and that you were letting your men down?

A Yes, I did have that feeling. When I was traveling from Russia to Berlin, I realized quite clearly that if those orders should be maintained, that I would never be able to agree to it in my inner feeling.

However, I would like to emphasize that my own mental consitution was not the only thing which took me to Berlin.

When I left Russia I simply could not imagine that this order should be valid, I considered it to be a result of the doings of an over fanatical worker. At this time I would like to point out again at that period of time I did not have the least idea of the Fuehrer Order, which had already been announced.

Dr. Rasch had not discussed it with me, either on any occasion. I therefore hoped that I would be able to get a decision in Berlin which would mean liberation to all persons concerned, from the mental burden it had imposed upon all of us. After all, I did not were concerned. I assumed at the time that these happenings in Einsatsgruppe C had occured, who was a great fanatix, and that for this reason Einsatzgruppe C was occupying a social position. When I considered the idea of my transfer, the question arose within me whether my attitude was dishonorable or cowardly before my men a the men of whom I was in charge.

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I can assure that my request for my transfer was very hard for me. However, I could not act differently, especially since I had realized quite clearly that it would mean a difference whether I had to carry out an order as s soldier or whether I as an officer in a leading position would issue such an order, I was unable men which I myself refuted throrough;y within myself, orders which I was simply unable to understand, I participated in one single execution of 18 people at Lemberg, and I therefore know that at that time I had to use up all my energy in order to avoid losing my outer appearance, and from this experience I knew what this order meant. However, I would like to emphasize here that my own opinion is not to be any criticism on the actions of anybody else who, from his own inner deep conviction, may have harbored a different opinion and who represents it at this time. I was frequently reproached for my alledged softness. I had to bear this repraoch and I did bear it. ing to his disposition. He just cannot alter his basic constitution. At that time, although O know that I was a man who was fully ready to do his duty, I was unable to raise a strong enough will in order to issue an order which I was unable to give. However, I would also like to point out in this respect that my request of transfer probably would not have been approved if Streckenbach had not heldped me out in a friendly manner and if my transfer had not been requested by another party. Also, the possibility that I could approach Streckenbach, as I was able to do, certainly was only possible to very few people since I, as a commander of the officer candidate school, was subordinated to the Office Chief One, I had a very close official relationship with him.

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by way of Streckenbach because you had a particularly close personal relationship with him?

A Yes, only because of that reason. However, that I did not only think of myself is shwon by the fact that I was also successful in being able to have the officers candidate training course sent back of which I was in charge. Although for the Einsatzgruppem this lack of officers candidates meant a severe burden for some time, which they did not let go without objections, in spite of their objections the recall was carried out.

Q How were you able to rescind this reaching training course? circumstances he should see to it that the officer candidates should be taken off. I described to him that these valuables men, if they should remain, under such orders, they would completely deteriorate as officers. However, this was the contrary of what this traning course was trying to achieve, Under such a way of giving orders, these officers wither would have to degenerate mentally or they would become so brutal that they be completely unsuitable as leaders of human beings, Streckenbach agreed with my opinion and he assured me that he would report to Heydrich once more.

Again I had to wait for several days. Then I was notified by him that Heydrich had shown full understanding for the case and that he had also ordered that this training course be interrupted and withdranw at once.

In this way I at least had some partial success.

Q Once you had been in Berlin did you again return to Russia?

A Yes. After all, I had to turn over my detachment to my successor, who was Obersturmbannfuehrer Meyer. In the meantime, he had already been notified to that effect. Approximately on the 12th of September 1941 I left Berlin. I left for Skwira where my detachment had moved in the meantime.

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In my affidavit of the 26th of May 1947 in Document Book 1, on pages 134 and 135 of the German text, Exhibit No. 26, Document No. 3644, I have stated that approximately on the 26th of September 1941 my successor arrived at that locality. This date, however, is not correct. The mistake was an by the fact that I did not know any more, Kiev. I told Mr. Wartenberg at that time that the change of my position to Obersturmbannfuehrer Meyer followed immediately in connection with the fall of Kiev. Since, however, I now know the difference from the documents, I can tell them to you with rather certainty. Accordingly, Kiev fell on the 19th of September, so that at the very latest, on the 21st of September, or probably already on the day before, Obersturmbannfuehrer Meyer arrived at my locality and took over the command. My return journey to Berlin followed on the 25th of September. I am also able to determine this date from the documents. From this it becomes evident that Dr. Rasch arrived at Kiev on the 25th of September.

At that time, however, he came from Nowoukrainke, to Skwira, where he was stationed in the school were I was also s taying. He stayed there overnight together with the Chief of Staff. Since it had become very late at that time, and he was unable to move on during the night on account of the strongly mined streets. On that occasion I immediately reported leaving his sphere. On the following morning, on the 25th of September, Dr. Rasch went to trip to Berlin.

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from Russia?

A Yes. Approximately at the same time when I relinquished my command, the members of the training course were also recalled by radio message. Until 1 October 1941 they were to report to Group 1-B at Berlin, at the school there. Right on the spot I was able to convince myself that with the exception of one who was killed in battle and several cases of delay owing to special difficulties, all of them were back in time. In agreement with the Chief of Personnel, they were granted a furlough until the 1 November 1941. use this occasion in order to tell the training course something about your judgment of the war measures taken in the East?

A Yes. Since I had found out that those people partly had to fight the same strong inner conflict, I felt it to be my duty to tell them my opinion quite clearly, with the intention to give them some inner support. I thought that in their faces I saw the mirror of their feelings, that their thoughts did not differ from my own. However, probably all of them could not find the right way in their inner struggle between right, duty and their feelings; they were confronted with a horrible picture of an atrocious war; a constant propaganda began running on them with the eternal motto: "The Jews are trying to exterminate Germany." Finally they began to believe it. They just clenched their teeth and did their duty. Perhaps they did so to test that they were doing their very best in order to pacify their own souls. I assembled the members of the training course in the assembly hall of the officers candidate school, and first talked to them about general matters. With regard to measures caused by the war in the East, I finally concluded with the following words: "I know that part of you with clenched teeth had to fulfill a hard duty which was contrary to their inner feelings. This assignment brought something different to them than they had hoped for and what they had wished, namely that Court No. IIA, Case No. 9.they would be able to prove their worth in combat at the front.

However, I told them I was expecting one thing from them, even if it has been said that these measures were necessary, because the opponent provoked these things, and, even if they acted in a deepest conviction of what they ware doing was right and necessary, each one of them should clearly realize that this was a terrible experience. I told them that I prohibited them to talk about these things. That these things were too serious to serve assa subject of a conversation. However, those who were bragging about the shooting of Jaws, those people I would remove from the training course, because they had character deficiency. People who maintained such an attitude certainly were not fit to be officers. assignment in Russia, I am now coming to several individual questions. In your opinion was there a possibility of launching protest against the orders which were issued by Hitler? which I spent there during my assignment, two phases of development must be observed. First of all we have the Fuehrer Order, which was contained in the so-called Commissar Order, and which was supplemented by the Barbaressa Order, and, secondly, we have the other order which was issued by Jackelm in August. The first possibility of objecting to this order wasat the time of our assignment, and it was too late at that time in my opinion, or of what I don't know -- it would have been unsuccessful because of the fact that the first order, the so-called Commissar Order, after all, existed already actually as a Fuehrer Order as the result of mutual discussion between the OKH and other agencies. Here there would have been the first possibility of raising an objection. If inspite of this, this order had still been issued, thus we had to assume with certainty that the details in particular with regard to the legal aspects should have been conscientiously discussed; for how can the legality be doubted if higher responsible commanding agencies Court No. IIA, Case No. 9.do issue them; and this order did not result from any local situation, but from the very beginning it was considered to be applicable to all territories in the East.

The measures which ware taken, therefore, had to be considered as being necessary for the combat troops, and as being inevitable. This could not have been a political measure alone, because the order was issued by the OKH, the High Command of the Army. Therefore, in this case the objection would have had to be raised already by the Highest Command Agency of the Wehrmacht. The first observations during the campaign in Russia led to recognize very clearly that a very fierce opponent was confronting us who just like we had to fight for existence or his extermination, and accordingly he chose his methods. Also William Henry Chamberlain writes in the "New Leaders" in an article "The Permanent Crisis", that in this connection we have to quote Lenin: "It is necessary to apply every method no matter how mean, howdeceitful, how illegal it may be, in order to serve the Communist Idea." Could we reproach legally our opponent with these measures, with that repudiation of the existing International Law which was so well known to the world, his methods for the extermination and weakening of his arch-enemy? His attitude required other harsh measures considering our self-preservation. That was an opinion which I also had succeeded in obtaining, even against my own inner feelings. Within the framework of the order which was given to me, I did in our behalf, and absolutely saw to it, that the measures which resulted from self-defense, and from the urgent circumstances, which were necessary for the security of troops, and the security of areas they were entitled to, in my opinion, should not exceed the permissible limits. I want to add in this respect that my judgment may have been wrong. If from the Russian side, measures were taken with terrible severity against the civilian population, as well as against German soldiers. I can understand that when these facts became known by the local Wehrmacht agencies in this first phase, when the order was given. There were no objections that these measures were even emphasized to be urgently necessary.

However, I can not understand it that no objections were raised against the second phase of development by the Wehrmacht commanders. But the responsibility remained with the Wehrmacht Agencies; they were in charge of the executing power; only with their consent could happen what actually had happened. Even silent toleration in such serious cases must be compared with consent. Whether the Wehrmacht commanders with their objections expected to be successful or not, in my opinion, this didn't matter at all for the time being. However, as long as the Wehrmacht did not do anything at all in the way of making objections, any steps from any other side were completely impossible and useless. After all, the question could have been put to them just how can you raise objections to measures against which even the Wehrmacht does not have any objection. However, the failure to object at that time meant consent, and consent was played on equal basis with necessity. Only under these circumstances things could develop as they actually did, especially as without any doubt, for example, Jeckelm had sufficient fanatics at his disposal who instead of impeding the carrying out of these measures would always press to have them carried out; and who were able to do so because no effective obstruction was placed in their path.

However, this avalanche would just roll over the little man who tried to raise an objection. In this way my own description of things in Berlin, in which I did not only tell them of this development but where I also told them about the mental destruction of the individual person, was found not to have any reaction. I am also firmly convinced of the fact that the chiefs of the Einsatzgruppen also would have been unsuccessful in raising an objection if an objection had not been issued by the command agencies of the Wehrmacht. agencies were bearing the responsibility for the tasks which were forced upon the Security Police. But from above there came no obstruction but only instigation.

Q What was your own attitude towards that? there was an order which was not so firmly limited I determined that criminal activity of the person concerned had to be the basis for the most harsh measure it required. In this connection I would like to point out once more that the sequence of time with regard to this order within the Einsatzgruppen C took another course as far as I was concerned. I ordered that no shootings were to take place without that reasons for the execution were examined conscientiously, and that the persons concerned, the victim as well as the person who had to carry out the execution, was told that in every case the necessity of the situation had to be taken into consideration and had to be decisive. I myself regretted it most that no court martials were established. They were refused by the Keitel Order and by pointing out the fact that the Russians did not use any court martials either. Here the Wehrmacht did not raise any objection either. It could and should have reserved for itself the right to institute court martials. of a formal proceed. I accepted officers to head these small detachments who had been professional policemen and officials in the police Court No. IIA-Case No. 9.for many years, and who, furthermore, in their training course had shown themselves to be very conscientious and that they had received some legal training.

Without their personal decision no execution could be carried out. I was unable to reserve my own decision in this matter because all prerequisites for that were lacking, and they had been given the right to make the decisions. However, I am still grateful to fate, even today, that the officers who worked under me were humane and decent, and if I may express myself so, in this connection: they were quite reasonable. Order, could not have prevented anyone not carrying out any more executions, and it would have given everyone the possibility of correcting me if they were not in agreement with my opinion. However, none of them did that. This also becomes evident from the documents. It should have been proven by them.

Q At Zhitomir weren't you informed of the other order by Jeckeln? announced. about that supplementary order? civilized nations and international law is concerned, I am unable to decide. I am not a legal expert. However, the fact is that Russia did not recognize International Law, and the ruthlessness of the methods which they employed could be clearly seen by all. Is it that under these circumstances the partner is also bound to International Law? After all I no longer was able to see any International Law. The fact is that the German measures toward the Western powers were never used. In this, however, one should see a premeditated action. That is the way the little man in the street looked at it, and he was certainly convinced of the fact, in his bitter fulfilling of his duty, that if he had refused to obey these orders, it would have cost his own life Court No. IIA, Case No. 9.and he did not believe that he was doing any wrong.

Whether, in consideration of these things, we are dealing with something wrong here, that probably would have to be decided by an International Court of Law. However, regardless of the fact whether this was wrong or not, I was unable to give my inner agreement to these measures, and I did not do it. you any extensive comment on the subject because my requested and approved transfer liberated me from this issuing of orders. ments, I want to ask you one more brief question. Yesterday when we discussed your official assignment you mentioned the fact that even before your assignment in Russia you were in charge of Einsatzkommandos. Was this decisive it any way for your assignment in Russia later on? be approximately the same, especially since I did not know the Streckenbach order, since I was absent from Pretsch. With the exception of the statements of Heydrich, which I have told you about already, I did not hear any details about the assignment in Russia which could even have lead me to conclude that such special tasks would be demanded of me. Only subsequently I heard of the statement of Heydrich that more severe measures would have to be taken against the Jews, and here I had to give it another meaning than I did at the moment when I reported to him. At the time, in any case, I really did not assume that shootings on a major scale were intended or planned, Even though up to that period of time I had been a member of the Security Police for eight years, I myself never had received any order or ever heard of an order which would have dealt with the shooting of Jews.

DR. DURCHHOLZ: I am now coming to the discussion of the Prosecution documents which the Prosecution has introduced so far. I would like to ask this Tribunal and the Prosecution to have the following volumes at hand, Volume I, Volume II-A, II-C and III-C, because I Court No. IIA, Case No. 9.shall only discuss documents from these volumes.

THE PRESIDENT: Those documentsbooks will undoubtedly be available on Monday when we will reconvene at nine-thirty O'clock.

(The Tribunal adjourned until 20 October 1947, at 0930 hours.)

THE MATSHAL: The Honorable, the Judges of Military Tribunal II-A.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

DR. MANDRY: (For Defendant Sandberger): Your Honors, my client has been ill for several days and for that reason I could not work on the questionnaire. I ask that my client be excused from attending today and tomorrow, and I would be very grateful if he would be released immediately.

THE PRESIDENT: Who is your client?

DR. MANDRY: Sandberger.

THE PRESIDENT: The Defendant Sandberger will be excused from attendance in Court today and tomorrow, in accordance with Dr. Mandry's request.

DR. MANDRY: Your Honor, may he be taken down immediately to room 55?

THE PRESIDENT: He is in Room 55 now?

DR. MANDRY. No, he is still here. He wants to be taken to Room 55.

THE PRESIDENT: Very well, the Marshal will have the defendant Sandberger escorted to Room 55 so that he may confer with his attorney.

DR. DURCHHOLZ: Your Honor, may I continue with the direct examination?

THE PRESIDENT: You may. BY DR. DURCHHOLZ:

Q. Witness, on Saturday when we concluded the session we intended to look at the document books. I now ask you to make general statements, briefly, on the documents.

A. Yes. From the very beginning I want to express very clearly that my leaders and myself do not want to be identified with the manner in which the reports were made, because it was disgusting. The wording in the reports is not the same wording as it was in the original reports. The contents surely only contain part of the original reports. The contents and the way it is written are the result of not in every respect very pure imagination of the staff leader of Einsatzgruppe D. Sturmbennfuehrer Hoffmann. Hoffmann was a defficiency character. He was as uncontrolled by ambitious; as he was dishonest. Everybody was afraid of him because his intrigues. This is not only my opinion of today; this opinion I told him to his face, and described it to Dr. Rasch in a report of several pages. This was even my only personal report during the Russian campaign. How Hoffmann got his statement and figures. I can't imagine at all. Surely, in order to shine he took everything down in favor of the Einsatzgruppen and what the Commandos in other offices did according to their duty. For example, the measures of the Commandos Jeckeln, and also the measures of the commandos of the army, the Wehrmacht. His devilish report about the resettlement measures in Kiev alone is a proof of his character. Hoffmann was released and relieved of the Security Police and at that time I told him myself that he was dismissed. If, in spite of his untrue statement the documents prove that my previous statements are at least basically correct, I can only be grateful.

Q. About the occurrences in Lemberg which have already been mentioned, do you want to say anything in addition to that?

A. Yes. I believe that it is not necessary to state anything more about it because it will not express anything further than what I have already said. May I add that the events in Lemberg at the time were shown to the foreign press, and to foreign representatives also. allowed to make three corrections.

Q. Witness, which document are concerned here?

A. It is my affidavit in Volume 1, Exhibit 26, Document No. 3644, on page 132 of the German text. Here it reads, in the first sentence, in the German text in the third line from the top, "according to which guilty persons and those suspected were to be shot as reprisals"; hut I stated in the record; "According to which the guilty persons and the participants were to be shot as reprisals." This mistake I did not notice because "suspected persons" were mentioned previously in connection with arrests. I can submit also the original from which I dictated - and which I put at Herr Wartenberg is temporarily disposal. In this connection may I mention that the statements which I gave here I have previously given to Herr Wartenger in the same manner. Please, make corrections. In the last sentence of this paragraph it reads; "It saw Dr. Rasch on the place of execution." That is right. But in this connection it gives the impression that this happened during the executions carried out by Einsatzkommando 6. That is not so. I saw him when Einsatzkommando 5 carried out the first execution. I told Mr. Wartenberg about this at the time but as the text had already been written he told me that I could clarify this during my examination, which I would like to have done by this now.

THE PRESIDENT: Dr. Durchholz, the witness has stated that he has the original. What does he mean by that?

DR. MANDRY: At the time he had made the statements at Herr Wartenberg's request himself, and gave them to him, and the affidavit was then made up out of those statements. The witness still has the original which he gave to Herr Wartenberg at the time, and this was shortened and excerpts taken out.

THE PRESIDENT: You mean the original in his own writing?

DR. MANDRY: Yes.

THE PRESIDENT: How did this get back to him once he gave it to Wartenberg?

WITNESS: Herr Wartenberg gave it back to me personally; or one of the gentlemen of the prosecution gave it back to me.

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THE PRESIDENT: Very well. Do I understand that this so-called original which you possess differs in some essential point from the affidavit which you signed, and which is now an exhibit?

WITNESS: No, your Honor. That is not what I tried to tell you. It was merely that the wording is incorrect. The actual statement is absolutely correct; only the connection might give the wrong impression here. That is all I wanted to clarify.

THE PRESIDENT: Very well. If even the connection is such that an improper inference may be drawn from the affidavit and you regard this as of some importance, why wasn't Mr. Wartenberg questioned on this when he was here in Court?

WITNESS: Your Honor, these mistakes I informed my defense counsel about when I saw the document immeidately; and Herr Durchholz at the time when it was submitted also objected to it. And you, your Honor, granted to Herr Durchholz that this correction be carried out when I was examined here.

THE PRESIDENT: That is entirely correct. But I am now wondering why Dr. Durchholz didn't question Mr. Wartenberg on this feature.

DR. DURCHHOLZ: Your Honor, I did not consider this clarification. so important as to question Herr Wartenberg here. I believe it sufficient to merely ask the witness to clarify it. The facts, actually, are correct. Only they appear to have been taken out of the connection and are not very clear.

THE PRESIDENT: Very well. Proceed. BY DR. DURCHHOLZ:

Q. On page 6 of the same document it says, under number 7, "About the 6th or 7th day after the executions..." - but actually it should read: "About the 6th or 7th day after my arrival in Lemberg." This is shown, and is obvious, from the way I described things previously because on the 6th or 7th day after the executions I was already in Dubus. This is merely a correction as to the date.

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Q. Does that finish Lemberg?

A. Yes.

Q. While advancing, you stayed, in Dubno for about six days. What happened there?

A. I think here I can make a brief statement, too. I have already described the events in Dubno, and surviving witnesses were examined on the events. The entire events were handed over to a dective Commissar in the General Go vernment who was competent on this, because as previously Polish territory it was to belong again to the area of the General Go vernment. I think I do not state anything incorrect if I repeat that in Dubno no executions were carried out by Einsatzkommando 5. In Dubno I had to give part of my detachment to Kreminig. According to my opinion the AOK-6 had requested them to go there. At first I thought that this would happen only at Shepitowka, but now I recollect it having been already at Dubno. The two other detachments alternated took over patrol and guard duties and the one off duty had to look after the supplies for the providing as well as for the preparing of food, because the detachments were independent and looked after this themselves. Also vehicles and equipment had to be maintained.

Q. From Dubno you moved to Shepitovka, did you not? Anything special to be said about this?

A. Shepitovka was surrounded by very dense and thick woods for many kilometers, and in these woods troops were hidden who were well armed, and constantly attacked small units, so that even during the day the streets could only be passed in convoy. During the night they were closed to traffic. My two part detachments - the third was still being absent - were performing patrol and guard duties day and night. Inquiries were made also; an Intelligence Section was set up, If I remember correctly, while staying in Shepitovka two people who were caught because they proved to be partisans were shot. The detachment in Kreminev also, as far as I remember, at the order of the Army Command had reported two or three shootings.

As far as I remember these were persons who had made armed attacks on individual vehicles of the Wehrmacht, where a driver was killed.

Q. On 25 July, approximately, you arrived in Berditschew, and there you stayed until you left for Berlin on the 24th of August - approximately?

A. Yes.

Q. Do you want to state anything about that?

A. Here, systematical security work was started. May I refer to the report I have given already? My detachments -- the third one had returned in the meantime -- I set up in such a manner that the one dealt with the city area itself, the second detachment looked after the surroundings of Berditschew, and the third one I kept for special tasks because at that time the harvest had to be brought in the various small cities had to be given Mayors and the collective farms their managers and this had become very important because these areas -that is, the small cities and the collective farms -- did not have any leaders.

Q. Did you hear anything about executions during that time?

A. Yes, All the time while I stayed in Berditschew, as far as I remember only two major cases of executions occurred. One was in Berditschew where, at the order of the Wehrmacht, on the citadel such persons were shot who during the fighting for Berditschew had been caught as armed partisans, and had been put to prison at the citadel by the Army. The other case was at Schmelnik, where a real terror group had appeared, who, apart from other criminal deeds, had murdered 25 Ukrainians who had cooperated with the local German commander.

Q. Let us now skip over to the individual documents. In Volume 3-C, Exhibit No. 130 of the Prosecution, Document NO-3841, that is on page 98 of the German text, - it is your affidavit in O berursel of 20 December 1945, and there it says under figure 1, at the top, second sentence, I quote: "After the end of 1931 until 1934 I was Referent to the Political Department of the Police in Bremen."

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Are the dates correct?

A. No, they are not correct. It should say, "approximately at the end of 1930" - as I have already stated here.

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Q. Very well. In the same document on page 4 of this document, it says in the last sentence of paragraph 6, I quote:"Streckenbach himself described the activity of the Einsatzgruppen in the East to me as murder." what do you want to state to that?

A. When I made my statements I stated my opinion on this, too, and I believe I have clarified the occurrence already. May I point out that when disussing these events at Oberwisch in 1945, we merely dealt with Einsatzgruppe-C. In Oberwischat the time I was only asked about these three events which are contained in this affidavit. I myself only gave confirmations of the previous questions. This statement by Streckenbach referred not to the entire activity of the Einsatzgruppen, but It also was connected with the actual wording which Obergruppen fuhrer Jekelm at the time had handed to Dr. Rasch. He thus expressed that the order transmitted in that form, namely that "women and children are to be shot so that there will be no vendetta", was an invitation to take part in murder. This position did not refer to the Fuehrer order as I already pointed out, I would like to ask that this be corrected.

Q. Please look now at document book II-C, which is Exhibit No. 82, Document No. NO-2947. That is the Operational Report No. 47 of 9 August 1941. On page 5 of this document it says, "That in Berditschew in 45 houses of Jews a great number of stolen goods were stored which was distributed among the suffering Ukranian population." Witness, do you wish to state anything on that?

A. Sofar as I remember, these were not stolen, but hoarded goods, such as food. etc. At the time, these were put at the disposal of the population, because if these had been stolen goods, that is looted property, surely, COURT IIA CASE IX measures would have been taken, which in this report have not been mentioned, and, sofar as I remember were not issued, either, but if measures would have been taken, then surely the Einsatz group doubtlessly would have reported on it.

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Q. May I ask you to look at the same document, on page 7 of this document, where it states: "Furthermore Einsatzcommando-V until now has shot 74 Jews." Please say something about that?

A. I have the following comment to make on this. Shortly after I arrived in Berditschew, an officer of the Wehrmacht reported to me when I visited this Wehrmacht agency, that they had persons who had been arrested in the Citadel who were to be executed, because during the fighting for Berditschew they had been caught with arms, and had been taken to the Citadel. Since he pointed out to me from the very beginning that according to the instructions the Security Police had to carry out this task, I told him about this, and, therefore, asked a leader of the sub-command in Berditschew to carry it out, and I investigated the case. Two or three, or perhaps, four days later, Dr. Rasch visited me at Berditschew, and informed me that when he just visisted the Army group, they had objected to the fact that the executions had not been carried out as yet. Under the circumstances I had to ask the sub-commando leader to examine the occurrence, and to investigate it. I no longer am able to give the exact number of those arrested. The figure given may be correct. I do not think, however, that all persons were executed. The executions were carried out in the Citadel in the presence of the commandant, and the occupational troops were present too. I think we can say for certain that there were not only Jews, These statements COURT II-A CASE IX probably would have been made by Stabsfuehrer Hoffman, because he Seemed to like it better to out it that way into his reports.

I shall show, for example, that an incorrect statement was made on another occasion as well. This document is also of importance, because in connection with the situation Report No. 2, it can be shown that the reports were not always correct. This Situation Report No. 2 is in this same document book, on pages 6 to 15 of the German Text. It is Exhibit No. 69, Document No. 2652, Situation Report No. 2, the time of the report 29 July to 14 August, 1941. In the Situation Report No. 47, to which I compared this present Situation Report, is on page 80 of the German Text, and is correct. It shows that in Shitomir the public execution of a Jew, age 60, who had been a judge since 1918, and in who, when interrogated had admitted to have carried out one-thousand murders, and, this man was to be killed together with his hangman. In Situation Report No. II, which I have just indicated, it shows on page 14, that this man was hanged in Berditschew, while numerous people attended the execution. This is not true. Ii only this One document had existed, surely, I would have been blamed for this. However, the situation Report No. II, almost has verbally the same contents as the Situation Report No. 47. If these reports are compared, one can see that the names mentioned, the names of the cities, are not the same. In Situation Report No. 2, it says, on page 13, in Berditschew, 222 Jews were shot. I must add the same to this --

THE PRESIDENT: You are referring to page 13. Now I do not find page 13 in this report in our document book. Mr Hochwald, do we have it in our document book?

MR HORLICK-HOCHWALD: I am sorry, we don't have it there, and it certainly must be somewhere else; if the COURT II-A CASE IX witness can refer to which page of the original?

THE PRESIDENT: No, he means page 13 of the original. If he is referring to page 13 of the original, I want to draw attention to the fact that on page 13 in the English Document Book, I find page 11 with the original excerpt, and, then the next itme is page 20, of the original excerpt.

MR HORLICK-HOCHWALD: That is right.

THE WITNESS: Your Honor, I made a mistake here. I get the wrong figures for the pages. It is page 13 in the German text, not the document page.

THE PRESIDENT: That is right. I am referring to page 13 of the original, as you indicated, and that page 13 does not appear in our document book.

MR HORLICK-HOCHWALD: Page 9 of the original document, Your Honor.

THE INTERPRETER: It is page 9 of the original document.

THE PRESIDENT: Very well, you may proceed.

MR HORLICK-HOCHWALD: It is page 9 of the original document book.

THE PRESIDENT: Yes, we found it.

THE WITNESS: There it shows you that in Berditschew 222 Jews were shot, but according to the Situation Report No. 47 it is shown that the EK-V shot 74 Jews, and another command shot 148 people. I repeat, if this document were the only one in existence, surely because I was in Berditschew, I would have been blamed for them all.

THE PRESIDENT: Where is the Situation Report No. 46 that you are referring to?

DR. DORCHHOLZ: Your Honor, it is Situation Report of No. 47, it is Exhibit No. 82.

THE PRESIDENT: Yes.

DR. DORCHHOLZ: Document No. 2947.

MR. HORLICK-HOCHWALD: It is on page 66 of the document

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THE PRESIDENT: I know that is the one he referred to before, but we had difficulty in locating his specific reference even in that document.

DR. DORCHHOLZ: Your Honor, unfortunately I do not have the English Document Book, else I would have tried to indicate the pages in the English document book to make things easier.

THE PRESIDENT: when you quote from a document, or refer to a document, it might be well to indicate the page and the paragraph of the original as it is shown here, and that would help us to locate the specific item being discussed.

MR HORLICK-HOCHWALD: Your Honor, the specific item to which the witness has now just referred to, the shooting of the 74 Jews, is in the middle of page 71 of the document.

THE PRESIDENT: Very well. Thank you very much.

THE WITNESS: The comparison with Situation Report No. 2 is finished now. I now want to show you Situation Report No. 47, and return to it. I want to point out page 80 of the German text, that is page 13 of the original, where the activity of the police regiment of the Higher Police and SS Chief is mentioned, and it reports on the shootings, I am talking about this, and asked that I may repeat it based on other documents in order to show this activity is particular. The units in Chorestkow were continuously active in the entire territory, therefore, it is not only possible or probable, but in my opinion it is certain that the statements as to the activity of these units were reported by my partcommandos as well. If such measures were carried out in their territory. In the Situation Report No. 47, on page 6 of this document, that is page 12 of the original - - -no, on page 10, of the original, Your Honor, in Tarmopol and in Chorestkow where pogroms took place that is, they tried to do this. For the sake of order, I wish to point out that Einsatxcommando-V was never in these localities; also according to the following statements on pages 11 and 12 of the original, in Shitomir, Trojanow, Krostyschew, Tscherjaschow, Jaslow, Polonna, Proskura, and Winnica & Barcarow that first, except for Zaslow and Polonna belonged to my territory, I do not know, because these localities I dan not find in the map at my disposal.

Q Now in Document Book II-C, Document No. NO3151, Prosecution's Exhibit No. 73, page 31 in the German text -

MR HORLICK-HOCHWALD: Page 27 of the English, Your Honor.

DR. DURCHHOLZ: That is the Situation Report No. 86, of 17 September 1941, I quote: on page 2 of this document, German text, and in paragraph four the following: "Einsatzkommando-V at the time is distributed over a large territory, and it is combing out the villages of this area systematically. Among others, several Bolshevistic mayors and chiefs of collective farms were taken care of."

MR HORLICK-HOCHWALD: Page 29 of the English Document Book.

THE PRESIDENT: Yes.

DR. DURCHHOLZ: 9continuing) Apart from that several insane people were eliminated, who had the task to blow up railroad tracks and bridges and to carry out other acts of sabotage." Witness, what do you wish to comment on this? did not report. I am sure. In my statement I have already mentioned that a part-commando was systematically assigned not to "take care of" mayors and chiefs of collective farms, but rather to appoint such men. I assume that in this Situation Report something wrong has been reported, because I can not remember and I consider it quite impossible that here systematically mayors and chiefs of collective farms, without any special reason, should have been executed. I do not want to exclude the fact that such cases may have happened, because in my report on the activity of my kommando, I have already expressed that Russian agents were very clever to put their agents into such positions and to use their influence and there, under the cloak of reliability, they had a great deal of influence. They gave them espionage orders, and, therefore, they helped the intelligence service. If this would have happened, and I would have mentioned that, surely Herr Hoffmann would have reported it in detail, because he liked to make reports. He says in the following paragraph: "Four executions were carried out in Ulanow, and 18 in Uledowka," this was reported and the figures mentioned.

THE PRESIDENT: Witness, do I understand you to say that Bolshevistic mayors were not executed?

THE WITNESS: Your Honor, in this report, no executions are mentioned at all. They are just general statements that Einsatzcommando, V systemacally had the task to eliminate mayors and chiefs of collective farms, to get rid of them.

THE PRESIDENT: I understood you to say a few moments ago that it was not correct that Bolshevistic mayors had been executed. Is that what I understood you to say?

A I said, Your Honor, that this generalization is not correct. I had given the job to a Teil kommando in order to appoint mayors and chiefs of collective farms; I, therefore, think it is impossible that the Teil kommando could have been active here to get rid of them systematically, but I do not want to say that it could not have happened, that the mayor, or chief of collective farm was executed, because he was an agent or a saboteur of some sort.

Only the generalization is not correct. not be executed merely because they were Bolshevist mayors? be something in addition to being a Bolshevist and a Communist and a Mayor in order to be executed? able action.

Q But didn't the original Fuehrer Order actually include all Communist-functionaries? Communist-functionary? commit some punishable act against the German forces in order to be liquidated?

A. Your Honor, then I think I misunderstood your previous question. If a Bolshevist mayor was still in his position, and he was arrested in a deadly danger in the rear of the fighting army.

Q. Yes. Well then, we come back to the report and we find that this statement is correct.

"Among others, several B olshevist mayors and " - I can't pronounce that word -- "were taken care of."

Now, that means that the Bolshevist mayors were executed, does it not?

A. Your Honor, when such a person was arrested, and I never said this was not done then it must have happened.

I merely objected because any more.

They certainly had disappeared.

Q. But if further they were taken care of in the words of the report, and the phrase "taken care of " did not, I understand, mean

A. Naturally, your Honor.

Q. Very well. As a matter of curiosity what does that long word which I stumbled over mean, "Kulchose," well, I won't make an

A. Kolchose, your Honor. That is a collective farm.

Q. I see.

A. And these are chiefs of the collective farms. THE PRESIDENT: Very,well, thank you.

A. (Continuing) In the upper paragraph on Page 33 of the German text it is reported that in Chmielnik 229 Jews were dealt with.

This figure has been invented.

May I ask to compare it to another document?

German text. Page 25 of the original.

MR. HORLICK -HOCHWALD: Page 93 of Document Book I, your Honor.

A. (Continuing) It is a situation report, No. 60, of 22 august 1941. Here it says on Page 2 of the document at the bottom, "After the commander of the locality had been relieved and a new commander had not yet been appointed, the Jewish population used the opportunity to terrorize the Ukrainians and to spread the rumor that the Russians would now return in order to take revenge on the Ukrainians with murder during the night. In a neighboring village, according to an inhabitant ---" Now, please note the wording, "by Jews and Communists".

THE PRESIDENT: Just a moment, please. The difficulty in our locating whatever quotation is being read is that the witness states Page 2, after we once get the document, and he apparently is referring to Page 2 as it is listed in the document book, but I think it would be more specific if he referred to the page of the original. Now this document --

THE WITNESS: Page 26 of the original -

THE PRESIDENT: Yes. I think it would be much better if he did that because we have the pages listed in our book in accordance with the original. First we have here "Page 25 of the original, page 26 of the original, Page 27 of the original," and if you merely make that reference then we can immediately locate what he is going to read from, and then he might also indicate what paragraph of that page. Now, he is referring to Page 26, is that correct?

MR. HORLICK-HOCHWALD: This is Page 94.

THE PRESIDENT: All right, Page 26 of the original. Which paragraph?

THE WITNESS: Of the original, the top of the page.

THE PRESIDENT: Very well.

A. (Continuing) "After the former local commander had been relieved and before a new one was appointed, the Jewish population at once turned this occasion to advantage by terrorizing the Ukrainians and by spreading the rumor that the Russians would come back to take a bloody revenge.

According to the reports of an inhabitant, Jews and Communists killed 25 Ukrainians altogether in a neighboring village." Please note Jews and Communists. "The Jews tried to block the approach to Chmielnik--" Please may I add how wrong the terms of this report are in its whole tendency? While in the previous sentence Jews and Communists were mentioned, suddenly Einsatzgruppe only reports about Jews now. I continue to quote. " --by stretching a rope across the road, thus making a trap for motor cars. The commanding officer of a construction company and a fully loaded personnel carrier could evade the trap only at the very last minute." previously, to fight the Jewish excesses extensive actions were taken. The localities concerned are surrounded and prominent Communist Jews are taken. The Ghetto, or rather the houses of the Jews are combed out systematically. Together with the local kommando and the militia lists of the known Communists still existing, there are made, and they were searched. In Chmielnik 100 Jews and Communists have been found.

THE PRESIDENT: It would seem here that we are straining at nets. You indicated that in one sentence the phrase "Jews and Communists" was used, that phrase. Then you say that this must be an error because in the following sentence they only say Jews tried to block the road with a rope, but in the next paragraph we come back again to the phrase "Jews and Communists".

THE WITNESS: Your Honor, I want to explain the following, the manner in which the reports were nude. They were not made by my my kommando, but I merely wanted to point out, I wanted to show how the person in the Einsatzgruppe making the report deviates from the facts.

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THE PRESIDENT: I don't see where there is much of a difference if in one place a man says, "Jews and Communists," end in the next sentence he only mentions Jews, end then later on he says, "Jews and Communists". Wherein do you find such a difference?

THE WITNESS: Your Honor, this situation report, which actually was made four weeks later than the document we discussed first, itstates, "During the cleaning action carried out in Chmielnik 229 Jews could be dealt with." That is the document I started off from, and I merely compared them to show that there were not only Jews, but that the other document proves wit out doubt that there were bands of Communists among them. Doubtlessly there were also Jews, That was the reason why I compared this document with the other one.

THE PRESIDENT: Well, I don't intend, of course, to argue with you on this and you are certainly entitled to your interpretation of the two documents, but I must confess that I don't see this great difference which you seem to draw from a comparison of the documents. In the former document the statement is made that 229 Jews were taken care of. In the other document a reference is made to Jews and Jewish Communists. That still does not eliminate the possibility that 229 Jews were killed, merely because in the succeeding document to which you referred there is the additional phrase used of "Jewish Communists". That does not destroy the original reference to 229 Jews.

DR. DURCHHOLZ: It does not say in the document "Jewish Communists" but only "Communists".

THE PRESIDENT: My document says "Jewish Communists", Jews and Jewish Communists.

THE WITNESS: Everything is mixed up in the reports of the Einsatzgruppe. That is what I wanted to point out.

THE PRESIDENT: But I don't see this mix-up. They say very flatly, definitively, clearly and specifically that 229 Jews were taken care of, and when they say "taken care of " we know that they don't mean to lodge them and put them up at a hotel.

It means that they were executed.

THE WITNESS: Of course, your Honor.

THE PRESIDENT: That is very specific. Inthis other document the reference is made to the activities of the Jews and and the Communists. This is a little more specific, a little more in detail, a littlemore graphic. It tells the story about the stretching, of the rope across the road, it tells about their various activities, and that is the reason they were executed.

THE WITNESS: Your Honor, it will be best if I tell you how it happened as far as I remember, according to my recollection. May I start. One day the local commander of Chmielnik came to me who had been, appointed as new local commander. His rank was captain, with him was an officer of the Army Group South, These two described to me very excitedly the events in Chmielnik and the murder of twenty-five Ukrainians. The reason was because they had worked together with the German Army agencies, according to the request of the officer of the Army Group South I asked the Toil command leader -- Sorry, I made a mistake, I gave the local commander a. Toil command. The events in Chmielnik were investigated very carefully and the following impression was given:

still heavily armed, were hidden in the woods. With the assistance of many inhabitants of villages they actually terrorized, the area, and the biggest event of these was when twenty-five Ukrainians were murdered. A Russian officer made out requisition papers. With the assistance of local inhabitants he got food and cattle. The skins of the cattle were given to the local commanders during the night, as settlement, as payment, and were taken near his house. These settlement bills gave both the unit and name of the Russian officer. letters. He actually did not feel safe any longer with his few soldiers. Several other things occurred. I cannot remember the details any more. For example, the car trap. One trio investigations took four to five days. As far as I remember a Wehrmacht unit was also appointed to search the woods, and the troops hiding in the woods went south. At the order of the Army, the Wehrmacht, that is at the order of the local commander, those who participated in the terrorizing, were shot. The command was in the hands of the local commander. As far as I remember at the time about ninety persons were shot.

THE PRESIDENT: Were these Russians, ninety Russians were shot?

THE WITNESS; Russian inhabitants of the City of Chmielnik. Not only Jews, but, say three Communists, members of the terror group, among them a number of Jews, were executed.

THE PRESIDENT: But your narrative tells us of the terrorization by Russian soldiers who were hidden in the woods.

THE WITNESS: These Russian soldiers in the woods used, the local inhabitants in the City of Chmielnik, for example, to get food, to get cattle and other things.

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The local inhabitants helped them, and these local inhabitants helped, these troops who were still hiding in the wood, and they got the things for them which they needed. These inhabitants also carried out terrorizing. Their own population was threatened. It was said that the Russians would return, and twenty-five Ukrainians were murdered of whom it had been said that they had collaborated with the Germans. Of course. I cannot remember everything. I can only tell you what I remember.

THE PRESIDENT: Very well.

THE WITNESS: I believe that about ninety persons, including a number of Jews, were shot. The measure was not taken because they were Jews but because they had acted as terrorists, and also had arms which they were not allowed to have. I remember this case in detail because after a few days the local commander and the mayor and an officer of the Army came to me, and thanked me for the assistance. The local commander thanked me in particular, because through these events he had been able to strengthen his forces, he got reinforcements. If I mention a service of thanksgiving, a religious service, this is not meant to be in bad taste, out if it was mentioned at the time it was only meant to emphasize the fact that the population actually felt that they had been relieved of terror. since this figure is incorrect, of course the other figures will also not be right.

THE PRESIDENT: While you are on this question of figures, do I understand now that you approve of both these reports but differ from them only in the matter of the figures?

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THE WITNESS: Yes, your Honor. The executions were carried out. As far as I remember there were nineth persons in Chmielnik but never 229.

THE PRESIDENT: You claim, then, that 229 is excessive?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: What about the following paragraph where it says that your kommando took care of 506 Bolshevists and Jews in the course of fourteen days. Do you claim that figure also in incorrect?

THE WITNESS: Yes, your Honor. I just indicated this, Since this figure 229 is incorrect, doubtlessly the other figure will also be wrong. How this figure, 506, was made up, I can't imagine at all.

THE PRESIDENT: Again I say I am not attempting to argue with you, out I am wondering how the report can be so correct in everything else, out yet be wrong only in the matter of the figures?

THE WITNESS: Your Honor, I can only explain this because the Einsatzgruppe did not think that the report by the Einsatzkommando was not high enough and on their own authority they reported higher figures. I think I can presume that almost for certain because men of the Einsatzgruppe once told me about this, that Hoffmann sent false reports to Berlin, but perhaps there is a possibility that during Dr. Rasch's investigation, more details can De found out about this.

DR. DURCHHOLZ: Your Honor, may I explain something briefly to you which I think still is not clarified? This concerns an execution of about ninety persons executed by the Wehrmacht. Einsatzkommando 5, that is the witness, had nothing to do with this execution, only based on the reports here he wants to prove that the reports made by Stahsleiter Hoffmann at the time are not correct.

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The defendant had nothing at all to do with these executions.

THE PRESIDENT: The form and substance then of the witness's explanation is that generally the reports are true as to what. transpired there, but insofar as he is concerned only ninety people were executed, and these ninety represented individuals who had been proved guilty of sabotage and acts of violence, Is that what we take from his testimony?

DR. DURCHHOLZ: Yes. BY DR. DURCHHOLZ:

Q. You wanted to talk about the insane persons yet, didn't you?

A. Concerning the Insane persons mentioned before, I remember that actually on one occasion I believe two persons were taken who had orders to carry out sabotage, and who were insane. A generalization of this, however, as the group report shows again, according to which the NKVD preferred to use such persons to carry out sabotage, certainly the person making the reports invented this. In the reports of Einsatzgruppe 5, this has certainly never been mentioned.

Q. I now ask you to look at Document Book II-A.

THE PRESIDENT: Suppose we take our morning recess now. The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. DURCHHOLD: (Attorney for the Defendant Schulz) Your Honor, in reference to the incidents described by the witness in Chmelnik and in Berdischew, there seem to be a few unclarities. Therefore, may I briefly summarize what the witness wanted to say with his testimony. September, 1941, according to the report 229 Jews were executed in Chmelnik.

MR. HORLICK-HOCHWALD: If your Honors please, the explanations of defense counsel are entirely immaterial at this time. I do think at the time of the closing argument or in the closing brief, such an explanation may be made, but not just now. The. Tribunal has asked the witness what he wanted to express. He also explained to the Tribunal and the Tribunal has summarized the statements of the witness and the witness has said, "Of course, very well, that is what I was thinking," I do think a further explanation on the part of the defense counsel can be only entirely argumentative.

THE PRESIDENT: It will be unnecessary, Dr. Durchhold, to relate again what the witness said or even to summarize the evidence. If there is any specific item that you desire to direct the Tribunal's attention to, because of any misunderstanding or because of any error, we will entertain whatever you have to say on that subject.

DR. DURCHHOLD: I don't want to argue, Your Honor, about what the defendant has said. I merely wanted to correct an unclarity.

MR. HORLICK-HOCHWALD: If there is something incorrect, defense counsel can make a correction by asking questions, but not by explaining himself.

THE PRESIDENT: I think that might be better. Just call the witness' attention to the particular item, and, if there is an error, he has an opportunity to correct it.

DR. DURCHHOLD: Yes, I shall ask the witness questions.

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BY DR. DURCHHOLD:

Q Witness, were 229 Jews executed in Chmelnik? were some Jews.

Q Were you in Chmelnik at that time?

Q When did you hear about these executions in Chmelnik? incidents, after the executions had been carried out by the Commandant of Shmelnik.

Q Did you give this order for the executions in Chmelnik? Chmelnik.

DR. DURCHHOLD: I think this clarifies the matter.

THE PRESIDENT: When you say, "Village Commandant" you refer to the commandant of what, of what organization?

THE WITNESS: Of the German Army, Your Honor.

Q Now I refer to Document Book II-A. This is Prosecution Exhibit No. 46, page 9 of the original document, Document NO-3149, Operational Report 88, of the 19th of September, 1941. I quote on page 9 of the original, first paragraph, "Between 24 August and 30 august 1941, Einsatzkommando 5 carried through 157 executions by shooting comprising Jews, officials, and saboteurs." Witness, what is your comment on this? because during the time of this report I was in Berlin, but I would like to point out that it can be seen from the text that these are not expressly Jewish actions. In the number given, certainly, executions done by other units are also included. Maybe the erroneous reports are responsible for these figures, about which I spoke yesterday, but are responsible for these figures, about which I spoke yesterday, but I would like to draw the Tribunal's attention to the fact that in this same document in the following sentence it is pointed out that a Kommando of the Higher SS and Police Leaders executed 1,303 Jews, among them 875 Jewesses of over 12 years of age.

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These incidents took place in Berditschew, but at a time when I had left Berditschew. but it is not only probable but certain that the activities of these Kommandos are also listed in the reports of the detachments of my Kommando. I personally was in Berlin during this time, and I was not carried in the reports of my group. Therefore, for this time and for the following period, I cannot take the full responsibility. I take the responsibility for the fact that my limited order was kept up to the fullest extent, even though at the beginning of August, that is, 2 weeks before this period which is mentioned here, I was given the order in Shitomir to execute all Jews who were not able to work, including women and children.

At this opportunity, I would also like to add that during my month's stay, from the 23rd of July until the 24th of August in Berditschew, 12,000 Jews were living in Berditschew. During this entire month, as far as I remember, the exception of this one single execution at the citadel, no executions took place, even though during my stay in Berditschew after the 24th of August t e order was already valid to execute all Jews not able to work. At the time about 3,000 Jews, in order to be able to preserve them as workers, were employed in the airport in Berditschef. BY THE PRESIDENT: out, what do you mean by your "limited order"? phases of the order are to be considered; since I was not in Pretsch at the time the Fuehrer order given there by Streckenbach was unknown to me.

Q I don't want the whole history; just what was your "limited order"?

A Dr. Rasch gave the order, according to which functionaries, saboteurs, that is, functionaries, altogether, agents, and so forth, were to be executed. I limited this order, insofar as I told my detachment commanders in every case that guilt would have to be proved.

Q Yes. Now you say that this was carried out, that your limited order was respected even in your absence?

Q This sentence which you read from the report states, "Between 24 August and 30 August, 1941, Einsatzkommando 5 carried through 157 executions by shooting, comprising Jews, officials and saboteurs." your limited and qualified order.

A Your Honor, I can't say whether this report is correct, because during this time I was in Berlin and I did not see the reports. I merely wanted to point out that from the number alone, it seemed to me to be correct, because it is my conviction that the order which was issued at the beginning of August, according to which all Jews not fit to work were to be shot, was not carried out. the ones who were executed, would it not be reasonable to suppose that Jews were executed only because they were Jews, because, since you also listed officials and saboteurs, if the Jews had been killed, because they were saboteurs, then they would come within that classification and not merely because they were Jews.

A Your Honor, that is the way it was. I pointed out that the Jews were not merely shot because they were Jews, but only if they were actually active as functionaries, saboteurs, agents, and so forth. You can see this from my report or from the reports of my detachment commanders it can also be seen. That is why I said at the beginning that the Einsatzgruppe made up their own reports, but beyond that Berlin also changed the orders and they did not reporduce those facts which my detachment commanders reported. A report which was made out by my detachment commanders looked about as follows: "So-and-so many saboteurs or functionaries or looters were executed," and then perhaps they mentioned among these there were so-and-so many Jews. That about is the way the reports read which came from my detachment commanders. what is said in here has nothing to do with my own reports. the report, does not exclude the interpretation that under "Jews" you could have had also women and children, because you have in two other categories, officials and saboteurs? but I believe I can depend on the reliability of my commander who never reported to me about an execution of women and children.

Q Well, now, let me ask you just one question very specifically: Do you accept this statement in the report as is? Jews there could be included women and children? it can of course, be assumed that that was the case.

Q That it could have included women and children? Let me out it this way: This statement as it now reads could be interpreted that some people were killed only because they were Jews and within the group of Jews there could have been women and children, but you now tell us that this is incorrect and that as a matter of fact no women and children were killed.

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Is that what we want to draw from what you have said? says that 875 Jewish women were killed and they became women Jewesses only because they were beyond the age of 12, so that, therefore, that could have included also young girls. Now do you refute that part of the report also?

A No, Your Honor. I just said that here the Kommandos of the Higher SS and Police Leaders actually executed women and children as Jews. Because of this I wanted to point out that this took place despite the existence of my order, despite of this order. These did not take place in my Kommando, because I went to Berlin to object to this order to shoot women and children. I wanted to prevent this, but on the part of the Higher SS and Police Leaders it did take place.

THE PRESIDENT: I understand your explanation. BY DR. DURCHHOLD (Attorney for the Defendant Schulz) order to shoot women and children? which women and children were executed by any detachment of Einsatzkommando 5? Jewesses under 12 years of age? Kommando did not cooperate.

Q Now I come to Document Book II-C; this is the Document NO-3146, Operational Report 94 of the 25th of September, 1941, Prosecution Exhibit 81, page 15 of the original document. I quote the second paragraph, second sentence:

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"Einsatzkommando 5, for the period between 31 August and 6 September 1941, reports the liquidation of 90 political officials and 290 Jews;"

MR. HORLICK-HOCHWADL: Your Honor, that's on page 64 of the English Document Book, last paragraph.

THE PRESIDENT: Yes, I have located it. Thank you.

Q Witness, please comment on this: one, during this period I was in Berlin. Here I would like to point out that the activity of the Higher SS and Police Leaders is mentioned particularly. It says there that his units in the Month of August executed 44,125 persons, mostly Jews. I point out the activities of these units again and again, because I am convinced of the fact that the Einsatzkommandos of Einsatzgruppe C were charged with the figures of these units for a great part. made report of its own all about executions or that the Einsatzgruppe C in whose area Jakeln worked included their figures in its own reports? gruppe C can be shown that they are mentioned along in the report, but I would like to point this out. I may seem tasteless if I express myself in this way, but with the everlasting pressure to report figures, it is completely possible that the detachment leaders in order to spare their men and make life easier for themselves reported some executions which were carried out by others as their own. I would like to say that I myself looked for a way out and I gave my detachment commanders a way out to be able to give erroneous reports, misleading reports, for instance, to have them report that in a certain locality so many Jews lived formerly abd now only so many are listed, and the fact that some of them fled should not be mentioned, but just left open in order to make it seem to the Group Staff that an Einsatzkommando actually killed those people.

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perhpas it is to be criticized, but it is a way out of a desparate situation and it is too entirely possible that Herr Hoffmann whom I knew personally was so ambitious for figures and thus satisfied his desire from these reports and even exaggerated them and that he added zeros and therefore reported completely distorted facts and that he used such means to gain attention when I was in Shitomir already.

Q Now please look at Document Book II-A. This is in reference to Operational Report 1-11 of the 12th of October, 1941, Prosecution Exhibit No. 38, Document NO-3155 on page 4 of the original document, second paragraph. I quote: Einsatzkommando 5 in the time of the 7th of September until the 5th of October executed 207 political functionaries, 112 saboteurs and looters, as well as 8,800 Jews." Witness, please comment on this.

Page 1,007

A. Quite apart from the fact that this report covered a period of 15 days, which was after I left the command, the story I told you shows that I did not give such an order. I can say the same thing with certainty about my detachment who, around the 25th or 26th of September 1941, were ordered back to Berlin and were already in Berlin at the latest by the 1st of October 1941. This is doubtless an action which took place after I was relieved. I would like also to point out that after I returned from Berlin, which was about the 15th of September, and where I expected my already designated successor in Skwira, I no longer received any more reports and I did not see any more reports. The detachment leaders who during my Week's stay in Skwira were with me in conference., did not tell me of any type of action, with the exception of the fact that in the entire area the units of the Higher So and Police Leaders were especially active there. With this I do not want to say that the Einsatzkommando did net carry out any executions when I was in Skwira; they certainly did take place wherever it was necessary. But the prosecution seems to have documents according to which these executions took place in Berditschew, or near Berdischew, for it says in the indictment, on page 13, by using the same figures and dates, under "S", I quote: "During the time of the 7th of September 1941 to the 5th of October 1941, Einsatzkommando 5 in the surroundings of Berditschew murdered 8,800 Jews and 207 political functionaries." In this document the mention of this locality is missing. As I said, my Einsatzkommando left Berditschew on the 26th of August. My small Commando staff was used in a school in Skwira. Skwira is about 90 kilometers east of Berditschew. The three other detachments were moved to places which were even further east, about 80 to 100 kilometers east of Skwira, that is, 150 kilometers away from Berditschew.

As long as I was in Skwira - and that takes in the' period of 15 September to 24 September - no detachment of Einsatzkommando 5 left its garrison in a westerly direction, perhaps these things are connected with the advance in Kiev - I cannot say that - for Einsatzkommando 5 went to Kiev after leaving Skwira. This can be gathered in Document Book 1, Exhibit No. 30, Document No-3140, page 150 of the German tent, page 9 of the original. There it says:

"A Vorkommando "(that is, an advance detachment) "of the Sonderkommando 4a left by Obersturmfuehrers Haefner and Janssen, 50 men strong, arrived on 19 September 1941 with the fighting troop in Kiev. The advance detachment of the Gruppe arrived there on the 12st of September, while the Gruppe staff followed on the 25th of September." they are important for me when I was recalled from Skwira.

THE PRESIDENT: Do we understand, witness, that you are telling us that the statement in the report contained in Document NO-3155 regarding the activities of Einsatzkommand 5 is in error, and that instead of Einsatzkommand 5 it was Sonderkomnando 4a, is that what we are to gather from you now?

THE WITNESS: No, your Honor, I didn't want to say that. I merely pointed out that Einsatzkommando 5 was not even in Berditschew, but was about 100 to 150 kiloments away from Berditschew, and the document which I just mentioned shows that Einsatzkommando 5 soon afterwards arrived in Kiev. I don't know whether Einsatzkommando 5, after I was recalled, was committed in Berditschew. As long as I was in Skwira during this week which I mentioned, Einsatzkommando 5 was not in Berditschew.

DR. DURCHHOLZ: I believe the witness made a mistake. He meant Kiev. Not Berditschew.

WITNESS: Yes, Berditschew. According to the indictment these 8,800 Jews were killed in the vicinity of Berditschew.

THE PRESIDENT: But wherein do you draw this explaination about Einsatzkommando 5 from Document No-3140? Did you understand my question?

WITNESS: I have the document NO-3140 in front of me.

THE PRESIDENT: Yes, well, you read from that document from what you read you now tell us that perhaps Einsatzkommando 5 was in the area of Kiev. How do you draw that conclusion from this document.

WITNESS: On page 16 of the original of this document it says,--

THE PRESIDENT: Yes, very well; I have found that. And that explains what you Were telling us. Why, then, did you read about Sonderkommando 4a? What did that have to do with the story? That Sonderkommando was in Kiev.

WITNESS: I merely read the text, your Honor, in order to show that first of all the Gruppe staff was in Kiev, and secondly, Einsatzkommando 5 was together with the Gruppe. I didn't want to say anything about Commando 4a. I merely wanted to mention a sentence which began with that.

THE PRESIDENT: It seems to me that if you had merely called our attention to page 16 of the original you would have achieved all that because paragraph 2 on page 16 maked Sonderkommando 4a and Einsatzkommando 5 stationed in Kiev, isn't that correct?

WITNESS: Yes, your Honor. That is correct.

THE PRESIDENT: That is just a little excursion then, when you read about 4a in the first paragraph of page 9.

WITNESS: I don't understand your question, your Honor.

THE PRESIDENT: WELL, it isn't important. I was only calling attention to the fact that you read a statement which in no way bore out your contention that Einsatzkommando 5 was in Kiev - whereas if you had read from page 16 that would have explained it to us at once, and what we went through seems wasted motion, that's all.

WITNESS: Yes, Your Honor.

THE PRESIDENT: Very well. Proceed. BY DR. DURCHHOLZ:

Q. Now I am coming to Document Book II-C, Exhibit 75, Document NO-3404-A, Operational Report 119, of the 20th of October 1941. This Operational Report mentions Einsatzkommando 5, and says that in Uman and in other cities this Commando was active.

Witness, what do you have to say about this?

A. Here I can only say the same as I said about the preceding document. I received no reports about these actions from my detachments since the report mentioned here reports about a period of time when I was already in Berlin. About the incidents in Uman I can say nothing. They are completely unknown to me. No one discussed incidents in Uman with me. The city of Uman itself did not belong to my area at all. Therefore, I consider it probable in this case, too, that the command of the Higher SS and Police Leader was active there. How Uman got into the reports of Einsatzkommando 5 I cannot say at all. I personally was never questioned, nor have I ever given an order to go to Unman. Uman itself is several hundred kilometers away from Skwira. Einsatzkommando was divided into three detachments -- the detachment which was closest to it, namely, in Swenigorodka, was also 100 kilometers away from Uman; and I again hope this is not considered COURT II-A CASE IX in bad taste - but I consider it technically impossible that such a small detachment which consisted of about 30 people could, on one single day, execute 1,400 Jews.

Here, too, I can only say that I have never given such a report, and that I would not have given such an order. Quite apart from the fact that on the 23rd of September I handed over my command to my successor. I only mention it because this mentions a plan, and if a plan had proceded this action, I would doubtlessly have known about it. I may ask that Dr. Rasch be interrogated about this during his examination. I can say nothing about Uman.

Q. Witness, the Prosecution charges you in a number of other documents with having participated in executions. These are the documents which are contained in Document Book II-C, Exhibit No. 72, Document No. 2850, that is the Operational Report 132 of the 12th of November 1941. Then, in the same Document Book, Document No. 2832, Exhibit 79, that is the Operational Report 135 of the 19th of November 1941; and in the same book, Document No. 2827, Exhibit 74, that is Operational Report 143 of the 8th of December 1941. What do you have to say about these documents?

A. They all were made out after my time, and, of course, I cannot say anything about them. It may be of interest to look at Exhibit 72 in Document Book II-C, Document No. 2832, that is Operational Report 132, on page 19 of the original.

THE PRESIDENT: Did you say Operational Report No. 132? Here it is listed as 135.

DR. DURCHHOLZ: 132, your Honor. 132, 135 and 143.

Witness: It might be useful to mention Operational Report 132, even though this is after my time and have nothing to say about it. I mention it only to underling the incorrectness and inexactitude of the report and to show that Einsatzkommandos are charged with things with which they had nothing to do. In Operational Report 132, on page 19 of the original-

DR. HORLICK-HOCHWALD: 135 of the English document book, your Honor.

WITNESS: It says that Einsatzkommando 5 executed, from the 28th of September to the 4th of October, so and so many functionaries in Kriwoi-rog; and in the time of the 28th September until the 4th of October it killed so and so many functionaries in Dnepopetrowsk.

book, Exhibit 79, Document 2832, page 57 of the German. There it says, on page 22 of the original-

DR. HORLICK-HOCHWALD: Page 57 of the English, your Honor.

WITNESS: (continuing)... that "Einsatzkommando 5 is busy in the district of the Dnjeprbogen (bend of the Dnjepr) since the 6th of October 1941. Apart from extensive rural districts the following towns, all of a definitely industrial character and densely populated", namely, Dnjepropetrowsk, etc. This shows that Einsatzkommando 5 was not at all active in this area but that this was the area of Einsatzkommando 6. I mention this merely to underline the unreliability of the reports. Otherwise, I have nothing to say about the other documents because they are after my time. BY DR. DURCHHOLZ:

Q. May I make a concluding question. According to the indictment, letters "U", "V" and "W" - the witness as leader of Einsatzkommando 5 is charged with having participated in executions which took place from the 20th of October 1941 to the 24th of January 1942.

Witness, were you in Russia during this time at all?

A. About the 28th or 29th of September 1941 I returned to Berlin from Russia, and after that time I never returned to Russia.

Q. And at what time did you officially hand over the command of Einsatzkommando 5?

A. I handed over my command just when Kiev was captured. That is why I mention the dates from the document, in order to emphasize that at the latest, one or two days after Kiev was taken, I turned over my command to Obersturmbannfuehrer Mayer.

Q. Were you ever in Kiev?

A. NO; from Skwira I went by way of Berditschew back to Berlin.

Q. In your Einsatzkommando 5, did you ever order measures against Gypsies or so-called racially inferior people?

A. No, I don't know such an order at all.

Q. Was there a gas van in Einsatzkommando 5?

A. No, not during my time.

Q. Do you know of any mistreatment of prisoners of war and of civilian populations?

A. They are unknown to me. They would have been severely punished by me, for the detachment commanders -I told the detachment commanders, and at every other fitting opportunity, not to commit any indecensies or mistreatment, and to conduct themselves decently and cleanly at all times.

Q. Did your Commando carry out any destruction of personal property?

A. No, I don't know of any single case where such a destruction was carried out.

Q. The prosecution charges that valuables were taken from the victims or from the people to be executed. What do you know about this?

A. In my Einsatzkommando this was not the case. Such valuables were given to the relatives of the victims. If such relatives were not present these valuables were handed over to Einsatzgruppe as per order. How the Einsatzgruppe disposed of them, I don't know. I can merely remember that some cash of insignificant value was handed over to the Einsatzgruppe. Valuables were not present at all.

DR. DURCHHOLZ: Your Honor, this concludes the examination of the witness in the Russian assignment. After this I want to come back to his activity in the Office I of the R SHA.

And then, in conclusion, to his activity in Salzburg as the local police chief. I believe that I shall conclude the direct examination after a short While, but I consider this a proper time for a recess.

THE PRESIDENT: Yes. Before we recess: Mr. Hochwald, these two localities mentioned by Dr. Durchholz -- Salzburg and Berlin -- insofar as the offices of the RSHA are concerned -- do they come within the purview of the charges in the indictment?

DR. HORLICK-HOCHWALD: Certainly not as far as the activity of the defendant in Berlin is concerned.

THE PRESIDENT: Is he charged with any crime committed in Berlin or Salzburg?

DR. HORLICK-HOCHWALD: No, he is not, sir. This question would only be relevant as to a decision on Count No. 3.

THE PRESIDENT: I see, Is that your purpose, Dr. Durchholz?

DR. DURCHHOLZ: Yes, sir.

THE PRESIDENT: Very well. The Tribunal will be in recess until one forty-five.

(The Tribunal recessed until 1345 hours.)

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THE MARSHAL: The Tribunal is again in session.

MR. HORLICK-HOCHWALD: The Tribunal please, inasmuch as the witness has finished his testimony concerning Counts One and Two of the Indictment, and of what the witness is going to say now, can only have a certain relevency as to Count Three of the Indictment, the Prosecutiln is willing to concede that in the RSHA after his return from Russia. and in his position asinspector of the SIPO and SD in Salzburg, the witness did not commit any act and did not reveive any knowledge which would have made him guilty on Count Three in the Indictment, that in order to save time and to make the trial expedient.

THE PRESIDENT: We gather from what you say then, that whatever the defendant is charged with in the Indictment, has or has not been answered by the testimony up to this point, and that anything further which might be said would shed no more light on Count Three.

MR. HORLICK HOCHWALD: That is correct, Your Honor.

THE PRESIDENT: And you are willing to concede that regardless of what he might say in connection with his activity in Berlin, and in Salzburg, it would not incriminate him under Count Three.

MR. HORLICK HOCHWALD: We want to submit that, when he says now, and I do expect he will say so, that he did nothing incriminating in the period after returning from Russia and in Salzburg and Berlin, so we will submit to this statement.

THE PRESIDENT: Count Three is rather a broad Count. Insofar asthe defendant would testify to what happened following his return to Berlin, the Tribunal understands that the Prosecution does not charge him with participating in any criminality after that time.

MR. HORLICK HOCHWALD: That is correct.

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THE PRESIDENT: Therefore, efforts on that point would be irrelevent.

MR. HORLICK HOCHWALD: Yes, that is correct.

THE PRESIDENT: But if the witness might want to explain what he did in Berlin before in order to expulgate himself from the charge under Count Three, then that would be relevant.

MR. HORLICK HOCHWALD: That is what we understand, but the witness has already testified, and the testimony of the witness from now on should come at the time after ids return to Berlin, in the beginning of November 1941, until the end of the war, and what I want to express to the Tribunal is that we see the liability of the witness under Count Three any time previous, first, let's state the date as 1 November 1941-

THE PRESIDENT: Until the termination of his activity in Russia.

MR. HORLICK HOCHWALD: That is correct.

THE PRESIDENT: Dr. Durchlolz; what have you to say to this?

DR. DURCHHOLZ: Your Honor, the defendant is charged under Count Three because he was amember of the SS after 1 September 1939, and remained a member of the SS after that date. The IMT had determined, that a defendant is guilty if he remained a member of this organization which has been declared criminal after that date and asto his direct examination the witness has given detailed statements that he does not want to identify himself with the crimes committed by this organization, He showed the reasons which were decisive for him to act in the manner as he did, and he wants now to prove the reasons why he remained in this organization, that is, only to be mitigating, and insofar as any crimes were ordered, after his assignment in Russia, to avoid such crimes. For that reason it is important for the defense that he may prove his personal attitude as to individual events, and his position later. Of particular importance seems to be the attitude he adopted in Salzburg later, and may I say that the witness in Salzburg received the well known Air Force Order, according to which the parachutists of the enemy who had jumped, without interference from the police, should be lynched by the excited population.

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THE PRESIDENT: Dr. Durchholz, now that you understand the position of the Prosecution, you may proceed with your examination of the defendant, keeping in mind it is not necessary to respond to any charge along the lines mentioned by Mr. Hochwald. You may examine him, but perhaps you may do it a little more briefly than you had intended orginally, because of the concession made by the Prosecution.

DR. DURCHHOLD: Very well. I shall try to make the questions as brief as possible, but I consider it necessary to give an overall picture of the personality of the witness. I therefore ask that I may address the questions as I had intended to.

THE PRESIDENT : You may proceed.

BY DR. DURCHHOLZ:

Q. Witness, after returning from Russia, you were in command of the Officers Training School of the Security Police again, were you not?

A. Yes.

Q. Before your assignment to Russia, and after your assignment in Russia, you tried through directives you gave to the participants to show them how to conduct themselves asfuture police leaders. May I ask you very briefly, with a few brief words to explain the attitude which you asked the participants to take?

A. I shall try to be as brief aspossible. First of all I'll answer the question whether this has no connection and no relevency. Owing to my experiences in Russia I felt it to be my duty to train the young officers at the Officers Training School very carefully. As a basic idea I always told them that they had to be an example, becuase a living. example is the best education. I pointed out to them the difference between the ideas of being a leader and being a superior. First of all I used the phrase, "Master Race," the slogan "Master Race" and gave them two explanations, which in German sounds so very similar, and yet they are so entirely different, namely, the socalled "Master Race" or "Master man," and the socalled"Masterly man", or the "domineering man"? I compared these ideas to other ideas as well, which in my opinion were often misused drastically, the ideas of strictness on the one hand and, brutality on the other hand, and at the same time the difference between weakness and kindness.

Many people can not see any difference between them. Finally, I also got the concept of selection, which particularly within the SS was a very important word. I clearly said that within the Security Police we were further from representing a selection, and we had to try everything possible through energy and hard work, and by giving our best to become better, but that we could only consider ourselves to be a selection when, using fair self-criticion, we could say that the least one amongst us was as good as the best amongst an average man. I particularly emphasized that it was of importance to be humane and chivalrous.

Q. You then became chief of Gruppe-I-A in the Reich Security Main Office, were you not? While there did you have anything to do with the executive there?

A. No, the Group-I-A was that group within Office-I which dealt with personnel questions. They were subdivided into six referatedepartments. If I may tell you about the departments of the Referate and what they dealt with: Department -I dealt with general official measures, distinctions, terms, and employing personnel in occupied territory.

Department 2 dealt with personnel files of State police. Department 3 with personnel filesof the criminal police. Department 4, the personnel files of the SD. Department 5 SS matters. Here, in all the departments of the Security Police all matters of promotions were dealt with; from here it went to personnel Main Office, which decided promotions. The RSHA were not entitled to promote anyone on their own authority with the SS. They also had no authority to regulate the reasons for promotions. They were strictly laid down, and had to be followed according to the proscribed measures. Department 6 which later came to Office-II, dealt with and looked after the relatives of people who had fallen in battle, and the casualties. Then there was a department for organization which merely dealt with organizational affairs of the inner construction,

Q. Then you became chief of Office-I. Please tell us in one sentence what Office-I meant?

A. Office-I dealt with personnel matters. Previously they had been connected with Office-II. When Streckenbach went to the WaffenSS, those two offices were separated completely. Office-I then had four departments: Group I-A which I have just mentioned, personnel; Group I-B, training and education, about which I have already talked, and---

THE PRESIDENT: Your attorney said to answer in one sentence. Now you were to give us a brief outline of the office. It might be interesting but to go into any long detail discussion of all the movements and mechinationsof the Office is scarcely necessary.

BY DR. DURCHHOLZ:

Q. Another question, witness. Did you have any close connection with Himmler?

A. No, I had no connection with Himmler, except during four lectures, when sofar as I remember he was in Hamburg, and one in Koenigsberg, once in Berlin, and once in Salzburg, when he talked to the counter intellegence.

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Apart from that I had no connections with Himmler. During these lectures, I did not have any close contact with Himmler. I never went to him with discussions.

THE PRESIDENT: Did you hear his Posen speech in October 1943?

A. No, Your Honor. Sofar as I wasinformed, only the group of leaders, that is, people above the rank of group leaders participated in those meetings. I myself wasnever in Posen. BY DR. DURCHHOLZ:

Q. Now I'll talk about your last activity in Salzburg. Where and what was your task when you went to Salzburg? March 1944 I was relieved from my job as Office Chief, and sent to Salzburg as commander of the Security Police. It was not of any importance that I held a rank of Chief of the Security Police only as an honorary rank, because actually I was nothing but an inspector. My intention to use this position to give orders was refused to me by Berlin at the time. If I had the title of Commander of the Security Police, this was only because with that title I wason equal basis with the office chiefs, while the title "inspector" would have meant down grading. I started to work in Salzburg on 1 May 1944. At the same time I was in the section North of the Drau as representative of the Higher Police and SS Leader Obergruppenfuehrer Rossler, who was handling a special task in Laibach, and there dealt with the anti-band actions south of the Drau River, and he was quite independent in his power as commander. His representative in this field was SS-Brigadefuehrer General Hahn. My position as such remained the same asit had been in Hamburg.

Q. Now in the Salzburg special events occurred about which, in your official position, you had to explain what your attitude was. What were they?

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A. Apart from the constant events which also made some impression four big events are of most important ones. On 20 July 1944, the socalled Air Force Order, "Fliegerbefehl", which had become known as"Augen zu erlass", taking over the POW Department from the Reichfuehrer--SS, and finally the actual capitualtion, from that, if I am asked to state my opinion about these events now that I have to be brief, I can only mention the fact that I managed in Salzburg to deal with the events on 20 July in such a manner that they took place without any great interference on the part of the population. In comradely cooperation with the commanding general in Salzburg I could solve these problems, and no arrests were carried out, and no measures were taken and no persons were involved. About the same time a top secret order, the air force order wasgiven, which had become known under the name of ' 'Augen/zu/Befehl'. I was instructed myself to make this order known in the agencies in the proper manner. Apart from that I didn't agree with.

I considered these announcements a great danger, the results might have been dangerous, and for that reason I put it into the safe and didn't announce it.

Q. Will you please state what the contents of this order were?

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were?

A Yes. Actually it had become known incorrectly, and that is what I wanted to explain. I did announce this order later because it was talked about, and it was said that this order contained something, that all parachutists were to be shot. I then announced this order because I had to prove to the commanders that the shooting of parachutists was not at all mentioned in this order, but that merely the police had been instructed not to take a part if the population lynched parachutists who came down. The police was not to interfere with this. That was one reason why I did not announce this order. I could never understand that the police, who should look after order and security, should permit injustice.

In Salzburg too, no difficulties arose. Parachutists who came down were handed over to the Wehrmacht officers. In one case one airman was saved out of the River Salzach by the police.

About August 1944 Reichfuehrer Himmler became chief of the POW's and the Higher SS and Police Leaders became higher commanders of the POW's within intelligence service. Since the Higher SS and Police Leader was absent from Salzburg, on my own authority, although I was not competent to do this, I took responsibility for the POW department. In very many cases I could help POW's. Most of all in spite of some officers, during heavy air attack I gave them opportunity to go into air-raid shelters and saw to it in every way that even under the most difficult conditions Red Cross parcels were sent to them, and saw to it carefully that the Geneva Contention was kept to in the strictest manner. I believe I will be able to conclude the subject because I just heard now an affidavit has arrived from the officers concerned who confirm this. I can add only that in spite of the great difficulties which occurred during the last moments of the tragedy in Salzburg, and also in the Alps Mountains no POW and no foreign workerswas done any harm. When they were given over on the day of the capitulation it Was done in the best of order without any occurrences or incidents, and Salzburg itself could also be handed over in the proper manner.

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helped that Salzburg surrendered without a fight and asked the Wehrmacht and the Party officers to let Salzburg surrencer without a fight? every city was considered a fortress. The refusal to obey such orders would be dealt with by a court martial, and mostly very severe punishments were conferred. According to this Salzburg started to work on their defense. During the first discussion with the Reich Defense Commissar I managed to convince the Gauleiter and Defense Commissar of the fact that there was no sense in doing this because this city was of no military importance and it could not help operations to defend such a city at all. Since the Commanding General Ringel also followed my suggestions and the Regierungspraesident also supported my views, the Reich Defense Commissar tried to ask the higher offices whether they could avoid defending the City of Salzburg and declare Salzburg an open city, also because of the man hospitals in Salzburg at the time. At another stage I managed, with the support of the Regierungspraesident, Dr. Lauer, to convince the Reich Defense Commissar as well that the blocked region in front of Salzburg no longer should exist not to give the approaching opponent the impression that Salzburg was to be defended. We also succeeded to stop people from preparing to blow up bridges so that Salzburg as a city remained intact. The third point was merely the Alps fortress behind Salzburg, and which as such was not really a fortress at all. I did not succeed because the old 'Fuehrer decree still existed, that this Alf fortress was to be defended, and General Kesselring wanted to have this defense carried out. In this Alp fortress all authorities in Salzburg were informed in a proper manner to resist the approaching American Army, or rather to hand over the city and to surrender it in good order, which actually happened then.

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and order and particularly took care of it that the 20,000 POW's which were in the Alp fortress were well looked after, and that the foreign workers were treated in a proper manner. On the day of the capitulation, without even one incident, the entire territory of Salzburg, without any signs of lack of organization, could be surrendered. Army authorities. Where was this?

A This was on the Zell Am See Lake on the day of capitulation. That is 8 May, 1945.

Q And why did you do this? the twenty-five years when I worked in the police, and the orders I had given there, I wanted to be present where my men were, whom I had led throughout this time. In the hour of the capitulation it was decisive whether I remained faithful to the basic principles which I had expressed and announced. One of these principles was in the hour of danger the leader should always be with hismen. That is why I surrendered.

DR. DURCHHOLZ: Your Honor, I have therewith concluded the direct examination of the witness.

THE PRESIDENT: The witness is now available for cross-examination on the part of defense counsel. BY DR. LUMMERT (for Defendant Blume): of 1941 did you come from the east and return to Berlin? because I was in Berlin one or two days before my wife's birthday. That is the 27th or 28th of August, 1941. time, of the RSHA? 28th or 29th.

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at the time as well? Please answer yesor no.

Q Did he talk to you?

Q Was the Defendant Blume already in Berlin at the time?

Q What did Streckenbach tell you about Blume at the time?

A It was in accord with my own statements. When I saw Streckenbach at the time and described to him the conscience troubles of the men and also told him about my own state of mind he told me that it was the same with Blume, Blume already had been recalled because he was too soft, too humane.

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Q Did Streckenbach's statement show that Blume had already returned to Berlin?

Q According to Streckenbach's statement did you understand that the Defendant Blume had tried to avoid this order for shooting as far as possible? Streckenbach explained to me that Blume was in the same state of mind as myself.

DR. LUMMERT: Thank you. I have no further questions. BY DR. GICK (For the defendant Strauch):

Q Witness, in Document Book III-A for "Apple", Exhibit 106, Document 2966, German Page 34, I am afraid I don't know the English page, there Strauch since February '42 is described as Commander of the Sipo and the SD in White Ruthenia. May I submit this document to you? Actually he is only mentioned as representative in the documents in March '42. Only on the 22nd of March, 1942, did he start his service. According to your general knowledge about the conditions in the personnel office, how does this difference in the statements in the personnel files conform with the statements in other documents concerning actual taking over of the power of command? I want to put it: from an office chief upwards was very complicated. within the official dhannels of the central office. The personnel chief did not have power of authority over the personnel entirely. When office chiefs were appointed, the Chief of the Security police had first to be asked about it. When this discussion was completed, according to his instructions, the draft was made out. It looked about as follows: At the top right there was, the date; "Berlin" -- The day wasleft open -- and the month and the year. When this order was ready the special offices also had to sign it that means that it had to be sent on to the Offices III, IV and V, so that they could eventually make an objection against the person because possibly this might concern their field of activity as a commander.

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There a few days elapsed until the circulation was finally concluded in the adjutant's office of the Chief of the Security Police: it might have taken up to three weeks. Then the paper was submitted to the chief for signature, and this signature was only given after a time e.g. in cases of absence. Even there sometimes it was possible that it had to be left there for two or three weeks. This happened repeatedly, and the day of the actual signature was then given and filled in on the empty space on the top. But since many of the offices had already approved it previously, the signature of the chief could not be doubted, it happened that an order was given through teletype so that in such cases between the actual day of duty and the date of the document there were considerable differences of time. given about the middle of March and reached Defendant Strauch, about that date, and only then Strauch started to work there?

A I cannot state my opinion on Strauch's personal case, but I think there is a possibility according to what I have said previously.

Q Then a second question. Do you know from your activity with the RSHA that Strauch in White Ruthenia almost entirely worked on armed investigation of partisans, so that he wasofficially reproached that his own work as to security police information service thus was neglected?

A Yes, that is right. I know that Strauch, whether with or against his will I, cannot decide off hand, of course, had nearly got into a position of dependence towards Gruppenfuehrer von Dem Bach who took him particularly under his wing in order to use him for partisan combatting. For that reason he himself therefor was forced, particularly as his chief in the Higher Police and SS official in his district to deal with him very closely in the partisan combatting. So he was reproached for being more active in that field than in the sphere of the security police.

DR. GICK:Thank you. I have no further questions.

DR. SURHOLT: (For Defendant Dr. Rasch): The defense of Dr. Rasch asks to reserve the right to address questions to Defendant Schulz also at a later date. As reason I give the following. The defense does not know about the facts the witness just stated. My defendant himself is not present. I an, of course, not in a position on my own authority to put questions here extemporaneously.

THE PRESIDENT: Well, Dr. Surholt, were you present during the examination of the Defendant Schulz? Were you present during the examination of the present defendant?

DR. SURHOLT: Yes, except for ten minutes, I believe.

THE PRESIDENT: Then you are familiar with what he has testified to.

DR. SURHOLT: Yes, I know that.

THE PRESIDENT: And you have had contact with your client right along, have you not?

DR. SURHOLT: Yes, I talked to him on Saturday, Saturday afternoon, but the witness has stated a lot today as well.

THE PRESIDENT: That is what I am leading up to, that the only part o this witness's testimony which has not now been related or related to your client is that which he testified to this morning.

DR. SURHOLT: That is not correct, because it is impossible to talk to Rasch for a long time. After about half an hour or an hour he is exhausted. Apart from that, the technical possibilities of having discussions with him are very difficult. Rasch is together in one room with several others in hospital, and it is obvious that I have to wait very long until he is taken to another room, and that is very difficult altogether, in order to discuss matters with him at all. Apart from that his mental state at the moment is such that one cannot say that his mind, is working actively now. HE makes many incorrect statements, the incorrectness of which is found later. His memory is not working so that it is very difficult to help him to understand the way the proceedings are going.

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Apart from that, quite honestly, I am not in a position, -- let us say, when a defendant like Defendant Schulz is in the witness box and for two days and making statements continuously -- to remember all that, even when I make short notes, and to remember everything that might be of importance to my client, because this defendant as subordinate to Rasch and has stated a great deal concerning my client.

THE PRESIDENT: Dr. Surholt, what you have just stated how is not a valid excuse.

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THE PRESIDENT: Dr. Surholt, what you have stated in the latter part of your statement is not a valid excuse because every Defense Counsel is confronted with the same situation. He listens to the witness and then he must immediately stop to the podium and begin to examine, and he must make notes as best he can. That is a lawyer's job; that is what I had to do when I was practicing law. But what you have stated with regard to the condition of your client is another matter, and certainly we give full weight to what you have said to the Tribunal so that we will permit you to do one of two things. You may, if you wish cross-examine the witness in such fields as you now feel you are sufficiently familiar with and have already talked over with your client, reserving the remainder of your cross-examination to a later day; or you may, if you wish, decline to cross-examine now and at a later date cross-examine the witness Schulz completely at one time.

DR. SURHOLT: I would prefer that.

THE PRESIDENT: You would prefer the latter?

DR. SURHOLT: Yes.

THE PRESIDENT: Very well. That right will be reserved to you then.

DR. SURHOLT: Your Honor, may I address another word to the Court? I know and agree to the way you understand the duties of a Defense Counsel, but there is a great difference that after each session I cannot talk to my client about the testimony of a witness and I cannot discuss with him anything a witness may have said and ask my client to clarify it.

THE PRESIDENT: That is the very reason we made the ruling we did. Mr. Hochwald, do you have anything to say about this?

MR. HORLICH-HOCHWALD: If Your Honors please, if the Defense will question at a later date the Defendant Schulz concerning his connection with Rasch and so on may the right be reserved to the Prosecution to cross-examine Schulz on such questions which may arise out of this, later?

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THE PRESIDENT: That right naturally follows, Mr. Hochwald, will be reserved to the Prosecution.

Any other Defense counsel ready? BY DR. HOFFMANN: (Counsel for Defendant Nosske) Q.- Witness, you were personnel expert in the RSHA?

A.- Yes.

Q.- In that position you had to know about all institutions in the RSHA, did you not? Not the way they worked, perhaps, but about the fact of their existence?

A.- Yes.

Q.- I would now like to ask you: Was there a top staff in the organization of the Einsatzgruppen?

A.- I have never heard of that expression.

Q.- Was there a Staff Command of Security Police and SD?

A.- I have never heard that description either.

Q.- And now only one more question to you. Could you tell me your views about the way in which orders were passed on? That is, the Hitler Decree, and the official channels through which it was sent to the various agencies of the Einsatzkommandos?

A.- Yes, I believe that this official channel is very clear. First of all, it must have come from the Fuehrer himself. For the Police in its entirety it must have come via Himmler;from Himmler it must have gone via the Main Office Chiefs, that is at least by the Chief of the Main office of the Police, the Regular Police, because such men had been put at their disposal. And for the Security Office, via the Chief of the Security Police-- that is Heydrich-- then it must have been handed down in such a manner that the Einsatzgruppen were informed by the Einsatzgruppen chiefs and the Einsatzkommando leaders were informed by the Einsatzgruppen chiefs.

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BY DR. MAYER (Counsel for defendant Steimle):

Q.- Witness, as a former Gruppen chief for personnel questions in the RSHA, do you know anything about the way Steimle was transferred to Office VI?

A.- The Chief of Office VI, Schellenberg, dealt with Steimle's transfer and tried to achieve it for some time. I remember that at the time I tried very hard to get Steimle to Office VI because Schellenberg at the time was just setting up his office, and Himmler bothered him very much in this, and almost daily either he or his experts were in my office in order to try to get some personnel. I therefore tried to bring Steimle there as well, particularly as Steimle himself would have liked to go there. If I remember correctly, basically his office chief, Ohlendorf had approved this.

Q.- And why did you not succeed in this?

A.O Steimle's transfer for Office VI was put aside by Streckenbach temporarily. What detailed reasons were decisive for this, I do not know However, they may have consisted in the fact that between the two office chiefs there was not very much close cooperation.

I want to add something. Schellenberg's requests for personnel at the time went to such an extent that they could not have been confirmed.

Q.- In any case, Streckenbach refused, isn't that right?

A.- Yes.

Q.- Did you know whether Schellbenback tried to have Steimle transferred to Office VI at such a time when Steimle was already in command of a Kommando in Russia?

A.- Yes, I also remember that. The Russian Campaign was decisive for Schllenberg to call me up at my office and to inquire about the position regarding Steimle. On that occasion he told me "If Steimle goes to Russia now I surely won't have a chance of getting him to my office for a long time to come." For that same reason, if I remember cor rectly, that same day I tried again and asked Streckenbach to give us Steimle.

Streckenbach told me then that Steimle, after he had finished in Russia, would be sent to Office VI, Q.- How did you manage to get Steimle to Office VI after all -- and earlier than Streckenbach had intended this to happen?

A.- I think Streckenbach did not have anything to do with that because, if I remember correctly, shortly after I took over Office I, Steimle was sent to Office VI.

Q.- When did this happen?

A.- I took over Office 1 on 1 February 1943.

Q.- And soon after you transferred -

A.- I cannot remember all the details but I know that it was very soon after, because Schellenberg would not let go.

Q.- Thank you, BY DR.FRITZ (Counsel for Defendant Fendler):

Q.- Witness, since when have you known the defendant Fendler?

A.- I met Fendler when I got the order, in the spring of 1943, to take an Einsatzkommando in Oppelm. In this Einsatzkommando Fendler was assigned to me as an SD expert.

Q.- What jobs did he have at the time when he was SD expert in the Kommando?

A.- The tasks of the Einsatzkommanders at the time were such that as long as the army itself was mobile they looked after the locations, housings, and saw to it that a proper office was set up. was Fendler's task to make these preparations for a final office.

Q.- Was the manner in which this SD Office, was set up and founded the same as in the agencies in the Reich?

A.- I think I can say that they were exactly the same.

Q.- Do I understand you correctly to gag that Defendant Fendler at the time, even when Czechoslovakia was occupied, was not active in the executive staff?

A.- He had nothing to do with the executive staff. The executive tasks were dealt with by a Criminal Commissar.

Q.- In the year 1940 Fendler became a candidate for the so-called Executive Service (Leitender Dienst). Will you please inform the Tribunal what was considered to be the Executive Service?And candidate for Executive service?

A.- This position was set up as a result of the shortage of personnel owing to the war. Since all available personnel were put at the disposal of the Wehrmacht and the command offices and since the police and the Wehrmacht themselves who legally had the duty of handing on men stopped to transfer men, the Security Police was in an emergency state, to supply their own candidates for leaders and chiefs. For that reason, a great number of men were chosen whose abilities were above the averabe. Their character had to be good enough for this, as well. After they were selected these men were put together in special training courses, and had to study law at one of the universities. When they completed this law course and had trained with the administrative offices, such as the County Councillor, the Government President, and so forth, these men then passed their final State examination before the Main Testing Commissioner, in Berlin. They became assessors and started their careers in the Executive Service. Throughout this training they were called Candidates in the Executive Service.

Q.- They studied law like any other students at a German university?

A.- They had to matriculate and graduate from the university; they had to satisfactorily complete all the terms; they had to take part in lectures; they had to participate in seminars, and do every bit of it.

Q.- During that time, did they cease to work in their official capacity?

A.- During the time of the course, they were excused from their offices which they held, because they had been taken from all departments and during this time they belonged to Office I, and Office I looked after them.

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Q.- When Fendler was a candidate for the Executive Staff just like the other candidates, in the summer of 1941, was he sent to Pretsch, on the Elbe River, and from there ordered to go to an Einsatzkommando, or did he volunteer to do this?

A.- The candidates for training for this Executive Staff, at the order of the Chief of the Security Police, in May 1941, owing to the lack of leaders at the time, were all given jobs and ordered to go to Pretsch. This was a military order and therefore nobody could volunteer, of course.

Q.- Were these candidates informed in Berlin as to the purpose of their job?

A.- No, they were not informed about this, and nobody could have done this because there was nobody who knew it himself.

Q.- Did the candidates have the opportunity to object to going to Pretsch?

A.- First of all, one could not object because that would have been military disobedience; and, secondly, there was no reason for it.

Q.- Were the candidates informed about all this in Pretsch, what tasks the Einsatzkommandos had and what their job were to be in the East?

A.- I cannot state in detail about this because I don't know about any such order, but I don't think so because if these candidates of the Executive Staff were given more detailed information this information would have reached the leaders in my command as well and they would have told me about it.

Q.- Did you meet Fendler in Russia during the assignment?

A.- No.

Q.- Do you know who was the Commander of Einsatzkommando IV-B?

A.- The Commander of Einsatzkommando IV-B was Oberregierungsrat Hermann. I know him very well personally because he was in charge of this training course and had also been at the officers' candidate school.

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Q.- Can you tell me any more details about the attitude of Hermann in his office?

A.- Hermann was the typical German civil servant; very conscientious correct down to the last detail, sometimes even correct to such an extent that one could consider him pedantic.

Q.- Defendant Fendler states that Hermann, from the beginning of the assignment until September 1941, never was on leave and never left the Kommando for any other reason either. Do you know anything about this?

A.- I know this for the same reasons as I have said before. Hermann was in charge of the training course, this training course for the candidates of the Executive Staff, and I expected him to return to Berlin. When I returned to Berlin Hermann had not yet arrived, but he arrived a few days later so that I know that during the Russian Campaign he was not in Berlin.

Q.- How long did Fendler belong to the Executive Staff, and when did he complete his training?

A.- He belonged to one of the first selective training courses? If I remember correctly, it must have been in 1940. And he also was one of the first to pass the final examination. That was in the fall of 1943.

Q.- That should have been in August. Is that possible?

A.- Yes, that is quite possible.

Q.- Where was Fendler transferred to after that?

A.- When they finished their studies and when they had passed their assessor's examination, the candidates for the Executive Staff were sent back to the different departments of the Security Police, and according to the request and their ability they were trained in several branches. At the time, Fendler, was sent to Office VI.

Q.- What did they deal with there?

A.- Foreign Defense.

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Q.- could a member of the SD or a candidate for the Executive Staff during the war leave the SD?

A.- Of course that was not possible because, according to orders, it had been prohibited. Heydrich considered any such request, tantamount to desertion.

Q.- Are you able to give your private opinion and your official opinion of the defendant Fendler?

A.- So many people passed through the Officers' Training School that I do not remember every one in detail, of course, and cannot judge them. But I think I can state briefly that Herr Fendler if he had not been perfect, officially; if his character had not been good, he would hat have been able to remain in the training course. I think that is the general judgment I can give.

DR. FRITZ (Counsel for Defendant Fendler): I have no further questions, Your Honor. During the examination of Schulz it was pointed out to me that the Interpreter once interpreted Executive Service rather than Leading Service. Might the word not be translated as Leading Service -- rather than Executive Service? The Prosecution pointed it out to me that that is the correct translation.

THE PRESIDENT: Mr. Hochwald, do you agree that this correction is in order?

MR. HORLICH-HOCHWALD: I do think that the translation "Executive Service" for Leitender Dienst is much better an explanation than Leading Executive.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session. BY DR. Aschenauer (Attorney for the Defendant Ohlendorf):

Q: Witness, do I take it from the answer to one of the counsel's questions about the channel of the Fuehrer order and about the execution of certain people in Russia that you claim that in all cases it first went to the Chief of the Einsatzgruppe and then later to the Einsatzkommando leaders and not as it has been stated previously in Pretsch, to all Einsatzgruppen chiefs and to all Einsatzkommando chiefs?

A: I answered the question of Dr. Hoffmann the way I understood it. He asked me what thenormal channel was. I didn't know the say it was presented in Pretsch because I wasn't there. If the Deputy of the Chief of the Security Police presented this order before the Einsatzgruppe Chiefs and the Einsatzkommando chiefs, in such a case a repeated order to the Einsatzkommando leaders would be unnecessary.

DR. ASCHENAUER: Thank you. I have no further question.

DR. MAYER (Attorney for the Defendant Steimle): Your Honor, I ask that the Defendant Steimle be excused from court tomorrow, Tuesday and the next day, Wednesday, so that we can prepare his defense.

THE PRESIDENT: The Defendant Steimle will be excused from attendance in court tomorrow, which is Tuesday, and Friday so that he may prepare his defense.

DR. MAYER: Wednesday, Your Honor, not Friday.

THE PRESIDENT: I am sorry. Tuesday and Wednesday.

DR. MAYER: Thank you.

DR. HOFFMANN (Attorney for the Defendant Nosske): Your Honor, would you permit me another question to the witness?

THE PRESIDENT: We always permit you another question, Dr. Hoffmann.

BY DR. HOFFMANN (For Defendant Nosske):

Q: Witness, may I ask you, you were the leader of an Einsatzkommando?

A: Yes.

Q: To whom did you feel responsible about the order which you received, to the Fuehrer himself or to your Einsatzgruppe Chief?

A: First of all to my Einsatzgruppe Chief.

Q: And why?

A: That was my next superior to whom I had to report.

Q: Only to report?

A: Yes, I also got my directives from him and I have also said that I received my orders from my Einsatzgruppe Chief personally. The first one received in Lemberg, and the second one in Shitomir.

DR. HOFFMANN: Thank you. BY DR. KLINERT (Attorney for the Defendant Seibert):

Q: Witness, I have a few questions. In Document Book III-D, German text. page 83, Document No-2969, Exhibit 162 -- do you have this document? On the promotion sheet of Seibert among the experts of Amt I SS Brigadier General Schulz is mentioned. Are you SSBrigadier General Schulz?

A: Yes. Then I was Group Chief I-A.

Q: Do you make any claims about the correctness and completeness of these orders, or are there mistakes possible?

A: Yes, mistakes are possible.

Q: How are these mistakes to be explained?

A: Unfortunately, and I have regretted this several times, there are mistakes in filing. That is first of all because the various agencies did not keep their records up to date. Often it was the fault of the person himself, when he forgot to inform us about any changes which were important, but which did not seem important to him.

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Sometimes some mistaken statements might appear so that the files were not in every way correct. Certainly they could not guarantee not to make mistakes.

Q: Did mistakes occur frequently?

A: Yes, very frequently. Since you ask me that, I remember one case when a man was refused promotion by Himmler because after having been married for a long time lie had only one child. I tried to clarify this matter and I found out that this man had four children already, but he himself had forgotten to list those four children on his files so that there was a mistake.

A: That is enough for this point. What ran: did members of the Police get when they were taken into the Security Police and SD?

A: May I have the question again?

Q: What rank did members of the Police and Army get when they were transferred into the Security Police or SD?

A: The later service decree was basic. They were taken over in the same rank which they held in the police.

DR. KLINERT: Thank you. I have no further questions. BY DR. FICHT (FOR THE DEFENDANT HAENSCH, not for Defendant Biberstein -- in the absence of Haensch's counsel):

Q: Witness, I have a few questions which refer to your activity as a representative of Office I in the RSHA. While in your activity as Office Chief later on, what did you know about the Defendant Haensch? Do you know that in June 1942 Haensch was already back in Berlin with the RSHA?

A: Yes, I can remember this, because it belongs to the general activity of the Group Chief I-A, because in June I took this group over, after my predecessor had assumed his new duties.

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Q: Is it correct that Haensch down to the time he left the RSHA in August 1943 stayed with this Office I?

A: Yes, Haensch was Chief of Group I-D, which was dissolved after he left there and Haensch then went to Denmark.

Q: I would like to ask you about this later. Did the Defendant Haensch in July 1942 ask you in a written form to give him a furlough? Do you know anything about this?

A: Yes, this correspondence is in my recollection, because I asked Streckenbach whether there were any objections to this and because I personally answered his letter and I granted him his furlough.

Q: Can you say anything about Haensch's earning the Merit Cross Second Class and that he told you that he had already been awarded this by the Army, and when was this?

A: I also remember that case, for Haensch belonged to Office I and I was glad to be able to give him a decoration and I was very much disappointed when he told me that he already had the Order of Merit, Second Class, because he had gotten it from the Army.

Q: Is it correct that. this happened about August or September, 1942?

A: Yes, that might be possible.

Q: Was Haensch's activity only in Office I of the RSHA?

A: I don't know any other activity of his.

Q: What activity did he perform in what field?

A: He was in charge of Group I-D, Disciplinary and Legal matters.

Q: Were welfare matters concerned with that?

A: Partly, yes.

Q: What about the cooperation that Haensch carried on with the other detriments of the RSHA? Did he have anything else to do with other offices? Did he have any insight in other offices?

A: He had actually nothing to do with the activity of the other offices, since he only took care of disciplinary matters.

Q: AS personnel expert, you probably could say something about the manner in which the defendant Haensch worked. What was his manner of work? What kind of a man was he?

A: Haensch was very correct, sometimes exaggeratedly conscientious and as his job demanded of him, he was not open to bribes and he had the best will to be just, as far as he could.

THE PRESIDENT: Dr. Ficht, when you use the phrase which you did, namely, "How was the Defendant Haensch in his work" or words to that effect, we are speaking very vaguely and guardedly. We are not talking about a streetcar conducor or a police man. We are talking about someone who is charged with the execution of an order which involved the killing of human beings. Now, if you ask him if he was conscientious in the discharge of his duty, if he did his work well, and this witness replied, "Yes, he did it well, and sometimes even did better than was expected of him", and if we are thinking of that order, we must assume that he killed more people than the order required him to kill, so I merely want to call to your attention that when you use generic language of that kind that it is capable of an interpretation not so favorable to your client. I would therefore suggest, to be very specific and not to use general terns what sort of a man was he and did he do his work well, because if in the eyes of his superiors, if we accept this order as it has been given to us, here in court, the more women and children who we re killed, the better the work was done.

DR. FICHT: I beg the Tribunal's pardon. This was merely to be an introductory question to my next question. Therefore, the special purpose was not evident. May I perhaps ask my next question so that you can sec what I am driving at?

THE PRESIDENT: By all means, but just let me suggest to you and to other defense counsel that this is a very unusual type of a case and we can't use general terms in appraising a man's character. You say, "What is his character?" "His character was a good character"! "How did he do is work" "He did it well". Keep in mind what his work was, andin the eyes of his superior what was regarded as good character.

Q: (By Dr. Ficht): Witness, is it correct that the Defendant Haensch made many enemies in the office, because he refused to whitewash mistakes!

A: Yes, I know of such cases.

THE PRESIDENT: Well, now, there is another question which is absolutely meaningless and if one would want to take an interpretation unfavorable to the defendant, he easily could. "Did he whitewash mistakes?" Now what kind of mistakes? A mistake in the eyes of his superior might be the killing of only 500 instead of 1,000 that would be a mistake in the eyes of the superior, would it not? Your questions have to be very specific. Otherwise they either mean nothing or they mean something that you don't intend they should mean.

BY DR. FICHT: Haensch. Is it correct that he tried to get out of the RSHA, and by his own initiative got a position with the Reich Commissar in Denmark?

Q Do you know... were any offers made to you by Kaltenbruenner in order to keep you in your former position. When by order of Kaltenbrunner Gruppe 1-D was dissolved, Kaltenbrunner had the intention to have the disciplinary expert under his immediate supervision, and he had already selected a person for this position.

Q Make it brief, witness. The whole story is rot necessary.

A But this is how the offer came to be made. Because Haensch had to get out, Kaltenbrunner offered him a position as commander in the General Government. This position Haensch refused at the time, and according to his wish he was employed by the Reich Commissar in Denmark. Office I, including Haensch's office?

A Do you mean the reports in these document books? known. did they discuss the Jewish executions in any way?

A I cannot remember any case. I don't think see however, for Streckenbach would not have found such conferences to his taste. returned to the RSHA from his Russian assignment, had asked the severe punishment of a Gestapo man because he had mistreated a Jew?

A Yes: I know this case because I passed it on to him. It was an assessor of the State Police, Berlin: the message was given to me by telephone that this assessor had conducted himself in an inacceptable way

-- where and how I don't know anymore. the proceedings were immediately started by Haensch, and severe punishment was asked. If I remember correctly this assessor was punished very severely. At any rate he was dismissed immediately from the service. BY THE PRESIDENT: Just a moment, now, You say someone was punished because he mistreated a Jew.

Q what did he do; how did he mistreat this Jew? gated -- where it was, I don't know, your Honor....

Q How did this assessor mistreat the Jew? Now, give us a direct answer to that question.

Q He struck a Jew out in the street. That is what he was charged with?

Q Yes. Now, did this assessor participate in the execution of any Jews?

A No, it had nothing to do with that at all. This incident took place in Be lin, your Honor.

Q Oh, this incident took place in Berlin?

Q And when was this, what year? in Berlin to strike a Jew? It can be proven at any time that several such cases did happen.

Q What was a Jew doing in Berlin m 1943? I thought they had been sent away long before 1942, to Treblinka, Lublin and Auschwitz... Jews in Berlin. Not individual Jews, but quite a number. It was evident because just at that time the markings of the Jews with the so-called Star of David has been instituted.

Q Do you know of this incident yourself? Do you have personal knowledge of it?

A I don't know who it was, but somebody called me up. I immediately sent for the Berlin agency chief of the State Police and I gave the order that that assessor was to be interrogated. I immediately sent this correspondence to Mr. Haensch, and then they duly investigated it. May I point out that some time later proceedings were inititated against other State police agencies in Berlin--this was also in 1943-when even death sentences were meted out because such people had committed offenses on Jewish property. It would not be very difficult to bring proof of this by witnesses. Death sentences and large prison sentences and downgrades were given out. of Berlin, yourself?

Q You don't know the name of the Jew, do you?

A Noo I don't, your Honor, but it can be determined who was the assessor.

Q Yes, but it is important that we we know more than that. We want to know why this assessor was punished, if he was. I would suggest, Dr. Ficht, that if you intend to make anything of this episode that you will have to submit evidence a little more specific; not merely that this witness overheard something over the telephone, and then he sent someone out, and finally someone was punished.... It would be very interesting to the Tribunal to get some direct evidence that a Jew was struck on the streets of Berlin in 1943 and that this assessor-- was he a member of the SS, this assessor?

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WITNESS: The Gestapo.

THE PRESIDENT: (continuing) Gestapo? Yes; that is even more interesting -- that a member of the Gestapo was punished because ho struck a Jew in Berlin in 1943. Very well. Proceed. BY DR. FICHT: My last question. the Security Police and the SD, Haensch was in Prague?

A Yes, I know that. At that time 1 was ordered to see that this conference was taken care of, and that the guests. were housed.

DR. FICHT: No further questions. BY DR. RATZ (for defendant Radetzky):

Q Witness, do you know Radetzky?

Q When, and where, did you get to know him? 4a at that time?

Q You were later Department Head in the RSHA. What time was that? I, and I remained in that capacity until the first of April 1944.

Q Was Radetzky with you in Berlin at that time?

Q What did he want from you? ceased and that he be relieved from the Security Police. He told me especially that the service in the Security Police was not agreeable to him. Radetzky was a Baltic German and knew Russian conditions very well, and in Shitomir already he told me that he considered the war measures in Russia as very wrong.

Q What did you tell Radetzky as an answer to this? old office of the repatriation of Germans, but this refused by the Chief. earlier date? wishing to be recalled, and that the man in charge of personnel came to see me, and brought the police along and from this I could tell that Radetzky made such en attempt before. I don't know exactly how it was done, but he did make an attempt to leave the Security Police.

Q Thus your help for him had no success? teletype.

Q Do you know what activity Radetsky wanted to get into?

A What exactly hewanted to do. I don't know. I merely conversed with him, and I tried to get him into Office-VI, where there was a possibility for him to work in his field. In Office-VI they were locking for a liaison officer for liaison in the Russian Vlassow Army.

Q Do you know whether he was later transferred to Office-VI? elapsed. He actually did get in Office-VI later on. to-wit, that RAdetsky might get a different job. For what reason did you do this? which he assumed to talk about these things frankly. I knew Radetscky as a very profound human being, and I wanted to help him to be able to follow his wishes. you know how he got into the service of the RSHA? furherer Dr. Kroeger, who at that time was ableto leave the Security Police. Dr. Kroeger himself was a Baltic German, and interpreters were needed for the Russian Campahign, and, thus, Dr. Kroeger had commanded a few of his fellow countrymen to be used as fellow interpreters. Among these was Radetsky. to the RSHA? obligated to serve. service means in reference to membership in the RSHA and the SD. Was he a member of the SD, or how is this matter of emergency service to be explained?

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emergency service, nor of the State Police or the SS. He joined as a civilian, and he was used in the agency as he was needed. If he was to be used in the war, he had to wear a uniform corresponding to his position, his rank and his salary. A cording to theses he then was assigned to the rank, and thus, he became a so-called "Uniform wearer," It might sound very strange but that is the way it was. These "Uniform wearers" were addressed by the SS rank but could not designate themselves as SS-members. that these are in Document Book III-O. Document NO-4771. Exhibit No. 139, which is on page 45 of the German text, the last document in this volume-- (hands document to the witness). Here it says in the text that SS-Sturmbannfuehrer (NDV) Haldemos von Radetsky is to be transferred." Please tell the Tribumal what this designation means?

A You mean this desgination "NDV"?

Q Yes? under war emergency.

Q Why is this designation added immediately after the "Sturmbannfuehrer"? not an active member of the SS. If he had been one obligated to serve under war emergency, and at the same time an active SS-Leader, then this designation would not have appeared.

Q If I understand you correctly, this designation "NDV" is to mean that Radetsky only got into the SS by way of this emergency service status?

A Well, that question is not correctly put. He did not get into the SS, but he merely wore a SS-uniform.

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Q In this document there is a handwritten note "File, Sturmbannfuehrer is not needed." After you signed the document, orsince you signed the document, you can perhaps say what this note means? as a Sturmbannfuehrer, because he only held this rank as in this emergency service status. by the commando. the SS, by the Reich fuehrer. Please tell the Tribunal what you have to say about this note? the matter of the Vlassow Army in his own staff, and for this purpose he was looking for a liaison officer who spoke Russian, that was Radetsky, but this assignment to that field did not come off, because Office VI took over the matters concerning the Vlassow Army. Thus, there Radetsky went directly to Office-VI.

Q DR. RATZ: Your Honr, I would like to state something in connection with this personal file. It is actually outside of the examination of this witness. Photostates of the documents have been made available, among them a photostatic copy of this document which we are just discussing. I have now found out that one page has been torn out of this collection, and therefore, I went to the document room and the document room explained that this missing page would not be handed over by order of the Prosecution. I, therefore, tried again to secure this missing page but this was refused once more. I believe it is not right to tear out one page from this document which belongs altogether, especially since the Prosecution in their letter 4 September 1947, told us expressly that the document room was to deliver to any defense counsel complete photostatic copies.

THE PRESIDENT: We don't argue the matter as to whether it was right-- We don't need to argue the matter as to whether it is right to tear out a page because it is obvious that a page should not be torn out.

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Let us find out first whether a page was removed, and, if go, why, and then we will consider the situation.

MR HORLICK-HOCHWALD: If Your Honor please, I can possibly give the information in regard to this matter. In between the personal file of the defendant Radetsky there are different independent letters. One letter which had nothing to do with the file itself was removed from the file, and will be handed in by the Prosecution at another time. But I can now inform the Tribunal that this is a completely independent document; a letter which not a part of these forms which the Tribuual sees here.

THE PRESIDENT: Do you intend to submit it later into evidence?

MR. HORLICK-HOCHWALD: I doo Your Honor, at another time.

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THE PRESIDENT: And do you intend to submit that letter in evidence?

MR. HORLICK-HOCHWALD: We do, your Honor, but at another time.

THE PRESIDENT: Do you intend to submit it as rebuttal, or how do you intend to get it into evidence?

MR. HORLICK HOCHWADL: We want eventually to put it to the witness either in cross-examination or put it in as rebuttal.

THE PRESIDENT: You do not regard it as part of your case in chief?

MR. HORLICK-HOCHWALD: No, sir; we did not. We put in this document entirely only to show that the Defendant Radetzky was a member of the SS and of the SD, of course. If Defendant Radetzky denies that, I do think this document is proof enough to show that be was a member of the SS and of the SD, so it is not a part of our case in chief.

THE PRESIDENT: Dr. Ratz, the Prosecution has the right to present its case as it sees fit, just as defense counsel have the same right. Now, you were assured that that document will be available at a later date, so therefore I don't think it is necessary to spend any more time on that document, especially in view of the fact that you are not now presenting the case of von Radetzky. You are merely cross-examining this witness. You have not yet reached your client's case. BY DR. RATZ:

Q Witness, a few further questions. Later you were commander of the Security Police and SD in Salzburg. In this capacity did you meet Radetzky again?

A Yes. Radetzky came to Salzburg. At the time it was in the last few weeks before the capitulation. He came there in his capacity as liaison officer of the Vlassow Army. At the time I spoke to him, and I told him that I considered the defense of Salzburg under the circumstances as very senseless, but there was still one more difficulty to be overcome. That was the development of a tremendous activity by Russian Generals who were active in volunteer armies. These Russian generals wanted to set up a new corps around Salzburg because they did not want to be used in the fight against their own countrymen.

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They wanted to be used to fight the Western Powers. It was very difficult to regulate this matter since a liaison with the leading agencies in the north of the Reich was very difficult. This was difficult because the Gau-Leader of Linz was prepared to use this volunteer corps.

THE PRESIDENT: Now, Witness, you are going into a history of the Vlassow Army and the strategy of the letter days of the war. Now, Dr. Ratz merely asked you if you saw von Radetzky at Salzburg and what you talked about or what you had to do with that defendant, Now, let's get directly to that point, and you can give us the other background only in the event it becomes necessary in your discussion of whatever transpired between you and von Radetzky.

THE WITNESS: Yes. we have to thank Radetzky for preventing these plans from maturing. This army was not formed, and the Russian generals, if I remember correctly, were at the disposal of the American commander after the capitulation.

Q (By Dr. Ratz) At the end of the war was Radetzky still a uniform wearer or had his relationship to the RSHA changed?

A I can't tell you any more than the fact that he had come to the Security Police on an emergency status. this emergency service or to evade the orders given him? he was in the Security Police on an emergency status he was also under the jurisdiction of the SS and Police and he would have had to account for it before a court martial.

DR. RATZ: I have no further questions.

THE PRESIDENT: Witness, just for the clarity of the record, when you spoke of the Russian generals, you, of course, meant those Russian generals who were fighting on the same side as Germany?

THE WITNESS: Yes, those who were on the German side in the Vlassow Army and other volunteer corps.

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If I remember correctly there was General Tokol and General von Manteuffel, and other names. I don't remember.

THE PRESIDENT: I thought it might be better to have that clarified on the record.

THE WITNESS: Yes.

THE PRESIDENT: Very well. BY DR. HAEHN (For Defendant Ruehl):

Q Witness, during the direct examination and today's cross-examination by Dr. Fritz, you have described a course for candidates of the executive service whose members were then detailed to the Einsatzgruppen as a group. You have also testified that you succeeded in getting the participants of this course, recalled, and that this course again continued in October 1941 in Berlin. course? that since 1941, at the latest October, 1941, he was away from his unit, the detachment 10-B of Einsatzgruppe D, that he left it finally. course returned.

Q Before this you mentioned in the cross-examination of Dr. Fritz that the candidates for this executive service, after completion of the course, were used as their qualifications and their potentialities indicated. Were there any exceptions for reasons of emergency service? of persons has to be distributed, and too high a percentage expresses the same wish, not all these wishes could be satisfied. the course, expressed the desire to be accepted in the Criminal Police?

A I can't say it with certainty, but I think it was the case for I listened to the wishes personally.

DR. HAEHN: I have no further questions.

THE PRESIDENT: Do any other defense counsel desire to crossexamine?

(No response.)

THE PRESIDENT: Mr. Hochwald, due to the lateness of the hours, perhaps you would prefer to begin your cross-examination tomorrow morning.

MR. HORLICK-HOCHWASD: Yes, your Honor, I only have two questions about the same document as was put to the witness by defense counsel for the Defendant Radetzky. Perhaps I should be permitted to ask this now.

THE PRESIDENT: Yes, by all means. BY MR. HORLICK-HOCHWALD:

MR. HORLICK-HOCHWALD: I, your Honors, again refer to Document Book III-C and to Document No 4771, which is on Page 22 of the English, I shall quote from Page 26 of the English, 29 of the German. Radetzky was not a member of the SS?

A Mr. Prosecutor, I gather this from the document which was submitted to me.

Q All right. Will you look now on Page 29 of the German, Page 26 of the English, and I would like to read to you. a letter to the Chief of the SS Personnel Main office, Berlin SW-11, Prinz Albrechtstrasse 9. This letter is dated 13 December 1939.

"I would ask so promote SS Untersturmfuehrer Waldemar von Radetzky, SS No. --" and so forth, "leader of the staff of SS Upper-Section Marthe, to the rank of SS Obersturmfuehrer, SS Untersturmfuehrer v.

Radetzky was personally accepted into the Schutzstaffel by the Reichfuehrer SS."

Do you still maintain that Radetzky was not a member of the SS?

A Mr. Prosecutor, I don't know these incidents. I ask you now whether you still maintain that Radetzky was not a member of the SS. Please answer this question.

A I don't believe this is necessary. I don't know in what form he got into the SS. somebody who was accepted by Himmler himself into the SS could not be a member of this organization?

A If he was personally accepted by Himmler?

THE PRESIDENT: It isn't necessary. It is very clear.

MR. HORLICK-HOCHWALD: That is all I have to ask on this document, your Honor. May I then start my cross-examination tomorrow?

THE PRESIDENT: Then, Witness, to that extent you modify your previous statement about von Radetzky? You would say then from this letter that he must have been a member of the SS?

THE WITNESS: I didn't read the letter yet, but if the things are as they were described, that he was accepted by the Reichsfuehrer, SS, I cannot deny it. I don't know anything but what was submitted to me, I first met Radetzky in 1939 when he was already Sturmbannfuehrer and already in an emergency status in the Security Police.

THE PRESIDENT: When you described the system of allowing certain individuals to wear uniforms, even though not members of the SS, you were describing a general situation?

THE WITNESS: Yes, that was a general situation. These men received a spedial identification card that was a temporary identification card. The men had the obligation that if they were returned from the occupied territory where they were uniform wearers they had to hand in their uniform again and could not consider themselves as SS members.

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This was the third class of officers.

THE PRESIDENT: Very well. The Tribunal will be in recess until tomorrow morning at nine-thirty.

(The Tribunal adjourned until 21 October 1947, at 0930 hours.)

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Otto Ohlendorf, et al., defendants sitting at Nurnberg

THE MARSHAL: The Honorable, the Judges of Military Tribunal II-A.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Any other defense counsel to cross examine the witness Schulz? If not, Mr. Hochwald, you may continue with your crossexamination. BY MR. HOCHWALD: in May 1933, is that correct? earlier?

Q Not earlier that that?

Q Why did you join the Party before 1932? of the State Police in Bremen.

Q Was that the only reason?

Q Wasn't it the reason that you being a member of the Political Police were able to render much more valuable service to the Party and to the SS if you were only a comouflaged member; I mean that you were not a member actually, but that your superiors didn't know that you were a member of the Party, and in this way was it not possible for you to help the Party much better in this position?

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Q All right, that was not the case. What was your rank in the service on 1 January 1933?

Q 1st Lieutenant?

Q And on 1 August 1939?

A On 1st August 1939? Sofar as I remember I was Regierungsteat. (Governor Council)

Q Yes but what was your military rank? You were a Police Officer here your not?

A Yes, here I must give a some what lengthy explanation. In 1923 I joined the Protectice Police, and until the end of the year of 1938 I was police offer all the time, and a member of the police, and, thus, I belonged to the Main Office of the Regular Police. As a result of the police reorganization in 1939 some kind of decision had to be made whether I was to remain as a member of the Main Office Regular Police, or whether I should go to the Security Police, thus, in the year of 1938 I was released from the Main Office Regular Police, and I was transferred from the Main Office Regular Police to the Main Office Security Police. The Main Office Security Police didn't dispose of their office positions, and, thus, as Police Captain, that was my rank at the time, I was transferred as a government counsellor. the orderly of police was the rank of Captain, is that correct, in 1938?

Q And you were not promoted in 1939? dates are here in the document.

Q When did you become a Standartenfuehrer? in Hamburg.

Q That called for the rank of a colonel, is that right?

Q That was in 1940, was it not?

Q When were you promoted to Oberfuehrer? were promoted Oberfuehrer?

A No, not directly when I returned from Russia. For at the end of September I returned from Russia, and if I remember correctly that promotion to Oberfuehrer became effective on 9 November.

Q On 9 November you were promoted to Oberfuehrer?

A Yes, I think so. But this is in my personal file which I gave the CIC and that must have all my information. general?

A Yes, that is right. That is an intermediate promotion for officials, that is, because there is no such equivalent rank.

Q When were you promoted to the rank of brigadier-general? original date as of October 1942, as I remember it.

Q That was the highest rank you achieved? the so-called Sudeten country, in Aussign and in Reichenberg, is that correct?

Q Was that in 1938?

1938, and later during the occupation of the Protectorate in the Spring of 1939

Q Where were you after the occupation of the Protectorate? leadership of the State Police in Reichenberg, and sofar as I remember that was effective 1 June 1939.

Q How long did you stay in Reichenberg? the documents to show this, until I was transferred to Hamburg, and that I think was on 1 March 1940.

Q What was your position there?

A Where? In Reichenberg I was Head of the Police Agency, and I was Governor Councillor. you not? during the time that you were there in command?

A Mr. Prosecutor, I can not tell you exactly.

Q Approximately? were there?

A I can not say that definitely, because I don't know it exactly. But any kind of a large scale arrest didn't take place during my time. On the contrary, I used an expert who was especially given the job to see that the Jewish property was confiscated in an orderly manner. fiscated then? property was already undertaken, and in this field I found a lot of disorder.

This disorder caused me to create order, and to use an expert on the job, who carefully confiscasted the Jewish property, and wherever any agencies had taken hold of some furniture, everything was carefully confiscated and was reported to the Chief Minister of Finance.

Q What was the name of this expert?

A That was the Police Inspector Spaet, if I remember correctly?

Q What happened to the people who were arrested at that time? Were they sent to a concentration camp? Office, for I did not have the power to make decisions in this matter. possible? yes.

Q You were also in Olmuetz?

Q When was that? 1939.

Q 15 March 1939, is that correct? In Olmuetz? date.

Q You were there for eight weeks, approximately?

Q What was your position ther, Herr Schulz?

Q You were commander of an Einsatzkommando, is that correct?

A Yes, that is right, Mr. Prosecutor.

Q Were you the highest Gestapo officer in charge in Olmuetz? Einsatzgruppen chief who had his headquarters in Prague.

Q But in the Olmuetz you were the highest, were you not?

Security Police suspects of persons who were endangering the security of the occupying forces, mostly ethnic Germans who were immigrating from Germany, and also the pure Czechs, is that correct? Germans and Czechs were arrested at that time in Olmuetz? during the time of my stay only very few arrests were made. If it was the question of Czech Nationals, the measures were carried out by the Czech police. sures? arrested? there were not many. is that right? Jews. Whether some Jews were listed in the arrest lists given by the RSHA, I just don't remember at the moment. were arrested by other agencies then yourself?

A I didn't quite get the question, exactly. against the security of the German forces were arrested, did I understand you correctly? arrested?

A No, at the moment I can not remember. Certainly not because they were Jews only.

Q You are sure of that?

A Mr. Prosecutor, there are many years in between, and I don't know that exactly but it can not have been a decisive number. I ask you to consider that the Einsatzcommando was a preparatory agency which only created a prerequisite for localities for the agencies to be set up later. that time, were you not? Czechs, as you mentioned, and surely if they were Jews. Were they sent to concentration camps? concentration camps, from Olmuetz, I don't know that.

Q Nobody was sent to Buchenwald?

Q Who was sent to Buchenwald without your order? case. another concentration camp just without having the approval of the Gestapo? of the Einsatzgruppe, is that correct?

Q In May 1941?

Q Who communicated this order to you? tion?

A With two exceptions, Mr. Prosecutor. Namely I was in Pretsch at the time of the inspection and the two days before we marched to Russia, after the war had been declared on them.

Q I meant it that way, I didn't think you going. I meant the inspection only when Heydrich was there. Can you tell the Tribunal where these three places are located? Schnieberg, some kilometers away from Pretsch.

Q What province of Germany is that?

Q Is that in Eastern Germany, is it not?

A Well, that depends what borders you are considering. This is on the road to Leipsig. satzgruppen?

Q Who was present at this inspection?

A That Mr. Prosecutor, I can not tell you definitely. All the Einsatzgruppen kommandos were distributed among the various localities and on that day of the inspection they were gatherd together on the marching field near Schniedeberg. A very few hours before the inspection all the commandos gathered together, and lined up in the open square, and then the inspection took place by Heydrich, and after the inspection they marched out of this place down the road.

Q You don't remember of one of the defendants being present at this inspection? Einsatzgruppen -- Einsatzkommando leader of Einsatzgruppe V were present.

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Please keep in mind that at that time - I did not know about the distribution of the various offices among the various commandos. I know that in Schniedeberg in a bar where part of the Einsatzkommando was quartered, Dr. Rasch was there, so far as I remember, and, I also believe to have seen Sturmbannfuehrer Hennecke and I also think that I saw Herr Blobel, and I think Herr Hermann was there, too, but I can not tell you that definitely, whether this was on the day of the inspection or whether this was in the last days before we started to march out. is that correct?

A Mr. Prosecutor, if I did mention any other name it would be an assumption so I can not tell you definitely.

Q Was Streckenbach present? and Heydrich undertook the inspection.

Q Did you speak to Streckenbach on that occasion?

Q Nothing else, no conversation? before the inspection you were called to a meeting in the Prince Albert Palais in Berlin to Heydrich, and Heydrich informed the people present about the task of the Einsatzgruppen, and especially about the war against Russia, is that correct?

Q Who of the defendants in the dock was present at that meeting?

A I think I can say definitely that Herr Ohlendorf was there. As for the others, I don't know. Ohlendorf?

A There were several, Mr. Prosecutor, but I can't tell you that definitely who was there. I know, for instance, that Gruppenfuehrer Nebe was there.

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I also know that Dr. Stahliger was there. I think if you were to mention any names to me I think I can remember that I saw them, but otherwise I really cannot say with certainty which of the defendants were there.

Q Neither Naumann nor Rasch?

A Dr. Rasch, I think, was there, yes.

Q Was the defendant Naumann there?

A Naumann I cannot recall. I cannot tell you that definitely.

Q Was Streckenbach present at that meeting?

Q Did you speak to him?

A I did not talk to him personally. As I remember this incident we were together in this hall, and we had to wait for sometime until Heydrich arrived. During the time Streckenbach was present and there was a general conversation, but a special personal conversation between myself and Streckenbach did not take place. some excesses on the part of the Nazi regime when Hitler came to power, is that correct? to be the effect or a transit period which would soon disappear. and 1941, especially of excess against Jews, Socialists, Communists, and other enemies of the Nazi regime? duties.

Q Many of such cases?

Q You were all the time an officer of the Gestapo. You can hardly have been ignorant of the fact that great numbers of Jews, Communists, and other enemies of National Socialism were sent to concentration camps for an unlimited period of time without having been afforded trial, is that correct?

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camp who was not previously carefully interrogated. Excesses did not take place under my leadership.

Q I did not mean in your office. I just asked about your general knowledge. valid for me would also be valid for others. I cannot imagine that according to the directives which were issued by the RSHA without any reason anyone would be put into a concentration camp, for the decision about bringing anyone into a concentration camp lay with the RSHA itself. Therefore, reasons had to be given for such measures. don't you?

Q In the light of this experience, how do you interpret Heydrich's remark at the meeting, this meeting which we have just discussed, that the most severe measures against Jews would have to be taken during the campaign against Russia? would have to be taken. Heydrich expressed himself as follows, as I said in my direct examination: "Also against Jewry one would have to take more severe measures. The experiences in Poland taught us that."

Q All right. Will you tell the Tribunal how you interpreted these words of Heydrich? arrests, that is, send people to concentration camps or Ghettos, or other such possibilities. I did not think about these things in detail.

Q You went to Einsatzkommando in Russia. You must have had some idea what you were going to do there.

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according to that I adjusted myself to this type of assignment. the Jews in connection with the task of the Einsatzgruppen?

A May I have this question repeated, please? were you of the opinion that this would not be a part of the task of the Einsatzgruppen? executions had been ordered. to do? You said what you did not expect. I want you to say what you did expect.

A Mr. Prosecutor, I had to leave that up to the situation. I did not go to Russia with a predisposition about what was to be done and with clear orders, but first I had to see with what events should be confronted. If someone assigns me a job, I cannot say, I cannot judge the situation until I have seen how it develops. you and the other persons present during this meeting?

Q And you didn't think at all about what eventually would be done to these measures against the Jews? danger could be accomplished by arrests, for previously, although I had already been eight years with the Security Police, I had never received an order to shoot Jews, and never did I hear up to that time that such an order had been given. the opinion that all Jews were to be arrested?

Q But didn't you know of severe measures that had been taken in Germany from 1933 on?

scale. That this was my opinion I can emphasize by the fact that after I reported back to Berlin, To Streckenbach, I expressed very clearly that there should be another solution to eliminating danger than shooting. of July, is that right? This conference you just spoke about, that was on the 28th or 29th of July?

Q Oh, I am sorry. You told Streckenbach in detail about the order Obergruppenfuehrer Jeckeln had issued. This order was handed down to you by Dr. Rasch, and then in particular women and children were not to be saved.

Q Did you read the order to him verbatim, didn't you? could not read it, but the way I remember it I presented it orally. murder, is that correct? way it had been given, namely to include women and children, I just don't remember what type of wording was used. Dr. Rasch had given a limitation, but I can't remember the exact wording. I presented this to Streckenbach with the explanation that women and children were to be shot so that there would be no avengers. satzgruppe C in this conference, is that correct?

A I could only refer to this Einsatzgruppe C, Mr. Prosecutor, because I did not know the other Einsatzgruppen. satzgruppe C.

afterwards I had a more detailed, more personal conversation with Streckenbach in which he told me his own opinion about these war measures in the East. This, his personal opinion, was not being debated in the order given by Jeckeln. that the activities of the Einsatzgruppen are plain murder? by Jeckeln and handed over by Dr. Rasch in Zhitomir. I am referring to Document Book III-C, page 61 of the English. This is NO-3841, Prosecution's Exhibit 130, page 101 of the German. It is the last thing in paragraph 6 of the affidavit. There it reads, "Streckenbach himself described the activity of the Einsatzgruppen in the East to me as murder." Oberursel when I was interrogated.

Q Is it not true that the word "Einsatzgruppen" is used here, in plural, which means in itself that more than one Einsatzgruppe was meant, does it not? As the sentence is worded here it means that all Einsatzgruppen in the East were meant, is that correct?

AAccording to this wording yes, Mr. Prosecutor, but at the time my defense counsel Mr. Durchholz, asked that this thing be corrected, and the Tribunal has informed Mr. Durchholz that this correction can be made. I also ask that you take from the text here that all this conference only referred to Einsatzgruppe C, since the name of Dr. Rasch was mentioned before. I also would like to say that in the year 1945 I still did not have the knowledge about the extent of the activities of the Einsatzgruppen which I have today. It maybe that I overlooked this at the time, and I think that is understandable, for I did not know at that time what a tremendous difference this one letter might have. Otherwise I would have looked even more carefully at what I had testified to.

BY THE PRESIDENT:

Q.- Witness, do I understand you to say that now in 1947 you know more of what happened in 1941 than you did in 1945 when necessarily you were closer chronologically to the former date?

A.- Yes, Your Honor.

Q.- How do you explain that?

A.- I did not have the knowledge about the extent of the activities.

Q.- Well, what school did you go to after 1945 that you learned about the activities of the Einsatzgruppen?

A.- After 1945 it became known to us in Obernrsel what is to be discussed, or what was discussed before the great court about the Einsatzgruppen. I can still remember very exactly that I was extremely surprised at the time to hear the number of 90,000 executions from the lips of Herr Ohlendorf.

Q.- Witness, but what I am speaking of is this. In 1945 you had a certain personal knowledge, first-hand cognizance of what was done by the Einsatzgruppen, that is correct, isn't it?

A.- Yes, Your Honor.

Q.- Now, so far as your own personal observation is concerned, that could not have increased with the passage of time, and especially when you were in prison?

A.- Whether I was surprised -

Q.- So, therefore, whatever you knew in 1945 you knew, and you could not increase your personal knowledge of what had happened previously by the passage of time, that is to say up until 1947?

A.- I don't know how you mean this question, your Honor.

Q.- Yes. Let me make an illustration. Let's suppose that in 1940 I made a trip to Australia.

A.- Yes.

Q.- In 1941 I would remember what happened in 1940.

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A.- Yes? Your Honor.

Q.- In 1945, I couldn't remember more than I remembered in 1941, could I?

A.- Doubtlessly not, Your Honor.

Q.- Very well. That is the reason I don't understand why you say to us that in 1947 you know more about what the Einsatzgruppen did than you did in 1945.

A.- From my own experience I did not know this, Your Honor, but it is obvious that during these years in the camps, as well as otherwise we talked about what happened and what the events were.

Q.- What you mean is that you learned more about the activities of other people since 1945?

A.- Yes, that is what I wanted to explain, Your Honor.

THE PRESIDENT: Very well. BY MR. HORLICH-HOCHWALD:

Q.- You made here a differentiation between the Hitler order as testified to by the Defendants Ohlendorf and Naumann, and the order of Jeckeln which was handed down to you by Rasch?

A.- That is right.

Q.- You explained this difference twice. Unfortunately, I am still not aware where the main difference lies. Will you tell the Tribunal where you see this colossal difference between these two orders.

A.- Mr. Prosecutor, I think you have misunderstood me. There were two orders for me. The first order was made known to me in Lemberg, I think, in connection with the reprisals which had been ordered there.

Q.- May I just interrupt you a moment. You do speak about this order?

A.- Yes.

Q.-You do speak about the Hitler order which, according to your testimony, was not known to you as you had not been in Pretsch when it was handed down by Heydrich?

A.- Yes.

Q.- But I understood your testimony to the effect that there was a difference between the Hitler order and the order that was handed down by Jeckeln. I personally fail to see the difference, and I would like you to explain to the Tribunal where you see the difference.

A.- Mr. Prosecutor, you might admit that there is a tremendous difference where an order of the Chief of Staff is passed on, and as expressed with that clarity by Herr Ohlendorf, and this measure has to looked upon as a war-emergency measure. This is an order which the Chief of Staff is free to five, and this order has to be accepted; but in Whitomir where there was no talk of the Chief of Staff but where it was said the Reichsfuehrer who had handed down such an order and did not give the reason of absolute war emergency for this measure but merely said that no avengers should arise, then there must be a great difference in this. At least that was the way I saw it, and this reason and the fact that we were not told at the time that the Fuehrer had or dered it had developed great doubts within me and great uncertainty.

Q.- All right, that I can understand, but what I cannot understand is one thing. When you came to Streckenbach on the 28th or 29th of August, Streckenhbach knew about the fact that this order was given by the head of the State. He knew why it was given and he knew how it was given. What I personally cannot understand is the fact that he answered you when you gave him all these facts, "This is plain murder." Will you explain that to the Tribunal?

A.- Well, I can remember, Mr. Prosecutor, that Streckehbach was also very excited about this way of issuing orders, for I expressed my conviction about it to him.

Q.- And he agreed with you?

A.- And I also told him, how am I going to explain this? I told him how this strange order was interpreted by the other Einsatzkommando lea ders who were present at the conference.

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Q.- But will you tell the Tribunal why didn't Streckenbach tell you, which would have been the only natural reaction, "The way Rasch told the thing to you is wrong, but the order in itself is right. It is a war emergency. It is ordered by the Fuehrer." That is the thing which I absolutely am unable to understand from your testimony, and you possibly can inform the Tribunal how that happened.

A.- Mr. Prosecutor, I cannot remember the wording of this order, and please try to imagine yourself in my situation for when I came to Streckehbach I still did not know that this order had been given already announced at Pretsch. That this Fuehrer order actually existed, he did not keep from me.

Q.- May I interrupt you a minute? You testified here in direct that he promise I you to contact Heydrich, and several days later, as Heydrich was agsent at that time in Prague, he came back and told you about the Hitler order. This is the thing about which I want to have information. The order of Rasch was an order, which said, that all suspected Jews and their families were to be killed so that no avengers could survive. The Defendant Ohlendorf and the Defendant Naumann have testified here that a Fuehrer order was in existence that all Jews, suspected or not, were to be killed, men, women and children, in order as the Defendant Ohlendorf said, to safeguard the momentary and future security of the Reich. The "safeguarding of the future security" and the phrase "no avengers should survive" to me has absolutely the same meaning, no difference. What I do see only is that the order of Rasch was not as far reaching as the Hitler order. The Hitler order said, "all." Rasch's order said only "the suspected." I still fail to see that when you told your story to a man who undoubtedly knows about the Hitler order that this man goes on and says, "This is plain murder,"

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A Mr. Prosecutor, I did not discuss this with Herr Streckenbach with so much precision, for the simple reason that my recall had already been made known. If this dismissal had not been granted I would have discussed this with Streckenbach in ever greater detail, but, as I took it from the conversations which I had with him and in which I described to him the tremendous spiritual distress of the men and I described it to him very passionately, in this case I can point out to you that my description at that time and my decision at that time to see Streckenbach and to tell him about these things was just as difficult as it is to discuss these things before you today. have no explanation of this reaction of Streckenbach?

A Mr. Prosecutor, I don't remember the exact course of the conversation. I just know the one fact, that Streckenbach was very much exited about the way of issuing orders and this can be traced back to the fact that I myself was so aroused, and this is the reason why I designated Dr. Rasch was ruthless, that without consideration of the feelings of men, he merely gave this bare fact, without even giving us an explanation in order to quiet down our agitation. Thus the conversation developed and thus I told Streckenbach that this is impossible. "How can such a measure be carried out? How can it be ordered with these bare two words?" And in this situation, Streckenbach had agreed that this was unheard of, this manner of making an order known. BY THE PRESIDENT :

Q Witness, did Streckenbach criticize the Fuehrer Order? Did he say anything which could logically be interpreted as a condemnation of the original Fuehrer Order itself?

A Yes, Your Honor, I can say that he did. Streckenbach was as much aroused by the war measures in the East as anyone else. Dr. Rasch interpreted it? and told him what had happened with Rasch and what had happened to me as a result of the manner of issuing orders.

Q No, let us adhere to my original question. Did Streckenbach criticize, condemn, or disparage the original Fuehrer Order, which has been so clearly described by the first two defendants, Ohlendorf and Naumann? considered the Fuehrer Code as very cruel, if I may express it that way. order, wasn't he, to the Einsatzgruppen leaders?

A I don't know this from my own experience. you know that, at least, since 1945, since you have been studying this? of heart from the time that he originally gave the order?

THE INTERPRETER: Your Honor, would you please repeat the question; it did not come through. must have had a change of heart between the time that he originally gave the order to Ohlendorf and the time that you spoke with him as to the manner in which Rasch was executing the order?

announced an order because he was obliged to do so. It is possible that a man is obligated to announce an order without approving it himself. Even a soldier will criticize orders -

Q Very well, I understand that. I did not know that when Streckenbach gave the order originally that he had any reservations about it, but from what you tell me now, I am to believe that Streckenbach at no time approved of the order, but merely passed it on, because it was his duty as an officer to do so. Streckenbach. I merely know them from the situation as it developed in this conversation which I had with him.

THE PRESIDENT: Very well. Thank you. BY DR. HORLICK-Hochwald: one question and I would like you to answer this question first with "yes" or "no" and then you can explain it to us. Did Streckenbach on the 28th or 29th, when you told him your story about Rasch, tell you that a Fuehrer Order existed or not? existed.

Q So you change your testimony. In Direct, you said he told you that he would refer to Heydrich and that a few days later he came back from Heydrich and told you then that there was a Fuehrer Order existing.

A Mr. Prosecutor, in reference to the fact of the existing Fuehrer Order I did not want to cinfine myself to a date, but merely wanted to mention the fact that Streckenbach did make known to me the existence of this Fuehrer Order.

that a Fuehrer Order existed, is that right?

A I cannot say definitely, I don't know. intervention with Heydrich about these happenings in the East or whether he told you immediately that nothing can be done in this respect, as an order of Hitler was just given him?

A This possibility existed, Mr. Prosecutor. May I only point out that I really cannot remember the conversation exactly. I can only remember the fact that Streckenbach was aroused by the way in which this order was issued and that he also promised me he would speak with Heydrich to clarify these matters. The possibility exists that he also told me at that time that it cannot be changed, but whether this was before the conversation with Heydrich or after the conversation with Heydrich I cannot remember, even though I have a pretty good memory.

Q All right. You testified here that you had a very close official relationship with Streckenbach, is that correct?

Q How were your personal relations? friendly. a job with an Einsatzkommando?

A Yes, I think so, Mr. Prosecutor. This reproach of being soft pursued me for a long time, but it was unjust, for in order to clarify these mixed feelings I tried to describe these concepts of brutality, of harshness, of goodness and softness of leader and superior to my students in the training course.

Streckenbach knew that I was absolutely an opponent of any brutality measures and this fact, Mr. Prosecutor, can be proven for the entire time of my 25 years in Police work. He was the man who handed down to you the order that you would have to take the command of an Einsatzkommando. You were on excellent official and personal terms with him and he never told you what kind of tasks you would be confronted with. Do you want to comment on that?

A No, Mr. Prosecutor. The message that I should take over an Einsatzkommando reached me in the same way as it reached all others. I received a teletype message just as everybody else. Streckenbach did not tell me in any way that this assignment included the execution of human beings.

Q He never told you? BY THE PRESIDENT: of human beings?

A I heard about that when the order of Dr. Rasch was made known in Lemberg. Here the Commissar Order was announced and explained in the building in Lemberg, according to which all Communists and Functionaries, and all others, whom I mentioned in the direct examination -- This order was made known at Lemberg and then it was explained what a tremendous danger the functionaries represented in Russia.

Q Very well. Very well. How much time elapsed between the receipt of the teletype which merely informed you you were to take command of an Einsatzkommando and when you learned the exact nature of the duties you were to execute? an Einsatzkommando, reached me in May 1941, and the announcement of the order in Lemberg took place in the beginning of July.

Q When? you were entirely ignorant of what was expected of you as the leader of a very important expedition?

Honor.

THE PRESIDENT: Very well. BY DR. HORLICK-HOCHWALD: also know that you were too soft as you expressed it?

A I just don't knew, Mr. Prosecutor.

THE PRESIDENT: Mr. Horlick-Hochwald, I don't know whether I misunderstood the witness, but my recollection is that he said that he was reputed as being too soft and then he added, "But this observation was unjust," Did I understand you to say that, Witness?

THE WITNESS: Yes, insofar as I didn't get a chance yesterday to develop this subject further -

THE PRESIDENT: No, just about 15 minutes ago you said that "Everybody said I was too soft, but it was unjust to say that."

THE WITNESS: I consider this reproach of softness toward me as wrong, because, if I may express it this way, I see a difference between goodness arid softness. Softness is something bad. Goodheartedness is not.

THE PRESIDENT: Very well, I merely wanted to call Mr. HorlichHochwald's attention and not to say that the witness was soft, with the assumption that he admitted softness. He absolutely denies softness.

MR. HORLICK-HOCHWALD: So I withdraw my question.

Q (By Mr. Horlich-Hochwald) I now would like to turn to the events in Lemberg. You have stated in your testimony that according to the information you received from the Defendant Rasch and according to your own information, a great number of citizens of Lemberg, Ukrainians and Poles, had been killed in the Lemberg prison, is that correct?

A Yes, that's right.

officers, Which had been found mutilated. tion of Lemberg under the leadership of officials of the Jewish faith. Is that correct?

A Yes, Jewish Commissars. I would like to emphasize here that these are not my own findings, but it was the description which Dr. Rasch gave us, and it was evident that there was great tension between the Jewish population and the rest. These are merely facts which I can state here. I would like to quote your testimony: "The militia had received an order to arrest the Jewish popjlation of Lemberg and also those who were suspected of having participated in these killings." Does that mean all Jews in Lemberg were arrested?

A Well, at any rate, a very great part: on the field in Lemberg, as I have described it, I saw that there were about 2,000 to 3,000 male Jews among whom there were also some Non-Jews. I cannot give you the ratio, but these people had been arrested. or not, just for the simple reason that they were Jews, is that right? large number it is out of the question that an arrest was carried out only after thorough investigation. as to the killings of the Ukrainians and Poles. Did I understand you correctly?

A That's right, Mr. Prosecutor. The way Dr. Rasch described it to us, a special Fuehrer Order arrived from Berlin but the way it was told to us it was meant only as a reprisal measure for Lemberg.

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Q It was a special order then for this one incident? Do I understand you correctly?

Q When was this order issued? first days of July. As far as I remember, I arrived in Lemberg about the 2d of July and it must have been around the 3d or 4th of July, but I really do not know the exact day.

Q It was immediately after you came to Lemberg? same day. killed, approximately?

AAccording to what Dr. Rasch said, it was supposed to have been about 5,000 people.

Q And how many Germans?

A I cannot give you the number. I don't know.

A I cannot even give you an approximate number, because I don't know. ordered and carried out, for the killing of the Poles and the Ukrainians or for the mutilation or eventual killing of the members of the German forces? about the fact of the order. I don't know its contents.

Q In other words, you don't know which. These are two completely different actions. You as an old police officer will certainly understand that: On the one hand, killing of civilian population before the German Wehrmacht came to Lemberg. On the other hand, killing of members of the armed forces, is it not? So you do not know for which of these two acts the reprisals were ordered.

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the entire killings in Lemberg. the German, soldiers? reprisal order that beside this special reprisal order there was a general order of Hitler that all Jews, Gypsies, and Communists should be killed? contrary, only the order was announced, which I mentioned here, namely, the so-called Commissar Order, excerpts from the Barbarossa Order, and I can remember exactly that when these orders were announced, one of them lay before him in a printed form and that it was top secret. cated this order?

A Of the defendants I do not believe anyone was there. I cannot say definitely. Kommando 4b had arrived there first, but had continued very soon afterwards. Then Kommando 6 was there, and how many other Kommandos were there while passing through, I cannot say. Furthermore a large Einsatz Staff from the General Government was there.

Q You don't remember any of the defendants being present? limited order of reprisals and the Commissar Order by requesting the proof of the guilt of the people who were to be executed, is that correct?

Q What exactly, Herr Schulz, do you mean by that? as far as it concerned the functionaries, did not have any restriction. If one did not limit this concept of functionary, it could be interpreted wilfully. In order to avoid this wilfullness in interpretation, I demanded that in every case guilt would have to be determined. This, of course, was not necessary with the others, such as saboteurs and looters, for a saboteru has already committed a punitive action, otherwise one could not designate him as a saboteur.

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it, is that right?

A Yes, that' right.

Q I am also interested in how you limited the reprisal order. Will you tell that to the Tribunal? for I had no competence nor opportunity to limit or correct this order in any way, for the execution of this order was exclusively in the hands of Dr. Rasch, personally. trial before they were executed?

in which we were billeted, and withe the participation of the Lemberg population, probably some officials of member of the police, interrogations took place continuously from morning to night.

THE PRESIDENT: Mr. Hochwald, I think it is very clear to the Tribunal that there was no trial in the accepted understanding of that word. And he has indicated what they did. They interrogated th suspects, and then made their decisions.

DR. HORLICK-HOCHWALD: Yes, sir. I withdraw my question, then. Well, did not-

THE PRESIDENT: Mr. Hochwald. I am informed that in about two minutes the film will have consumed itself. So let us take our recess now.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. HORLICK-HOCHWALD: May I proceed, your Honor.

THE PRESIDENT: Proceed. BY DR. HORLICK-HOCHWALD: If I am not mistaken, Herr Schulz, you answered the question of the Tribunal as to how long a time was at the disposal of the investigating authorities in Lemberg, - at the utmost 48 hours. Is that correct? As far as I recollect I followed my statement, I arrived on the second of July, and if I remember it correctly on the following day the arrests were made, and according to my memory, and also according to the statement I made, on the 6th or 7th day after I had arrived in Lemberg, I went on. As the day of our march was the day after the execution had taken place, the interval between that day of our arrival and the day of our march must have been the day of the interrogations.

Q Who carried out these investigations? in change, and a larger unit of the General Government. took part in this investigation?

A No, I cannot say exactly, Mr. Prosecutor, because I did not take part myself in these matters and I did not investigate about them, but I assume that there must have been over 50 to 60 people taking part in that. BY THE PRESIDENT:

Q You mean investigating?

A Yes, those people who carried out the investigations. That is the number which I can estimate, approximately. Those people were in the building, but I cannot say that with certainty. the Einsatzkammando? part in it, as far as I can see. I may add here that I cannot say with certainty -- in the building there was quite a lot of traffice, as it were, and I saw that many police officials took part in these investigations and interrogations. I cannot say anything further, your Honor.

Q How many were there in your command? and about 50 members of the regular police. They latter were, of course, also trained police officials which were trained in ordinary police service.

Q So that you had a personnel of 73 people?

Q In your Commando there were 73?

A Well, those were trained as police officials, yes; they were professional police officials.

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command?

A You mean the total number?

A Including the drivers?

AApproximately 200, your Honor. Of these, there were about 50 drivers.

Q 50 drivers. Give me the breakdown of those 200 people. 50 drivers, and then what? 25 members of the Security Police, that is, State Police, Criminal Police, and SD. Furthermore, there were about 50 drivers. 50 members of the Waffen-SS and 50 members of the regular police, and there were a few additional members who were interpreters. That is approximately the breakdown.

Q Yes. Now, excluding the drivers - you then had, let us say, approximately about 150 men?

Q Yes; now, of these 150, one-third were engaged in this interrogation work, because you said 50 to 60. of people in the building. Of my own Commando men had been assigned to this. My Commandoo that is, No. 5, did not participate in the interrogations in Lemberg. My Commando was ready to march because I had been given the order to march off as soon as possible. Only because of these happenings in Lemberg I was prevented from marching on.

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THE COURT: But your kommando participated in the executions? least my kommando was ordered to take part in these executions. Were executed? interrogations. You say you don't know who conducted the investigations; no one from your kommando sat in on the investigations, and you have no knowledge of what the investigations really brought out. Now is it you did not interest yourself a little more, since you were so concerned about seeing to it that no innocent people suffered? kommando had anything to do whatever with this task, because I have already mentioned that my kommando was ready to march, and should have marched on.

A (continuing) The distribution of the task was subordinate to the commander who was in charge of the task, generally, and who was in the same building, and who also made the necessary decisions. I believe that he would have disapproved very strongly if I had also taken part in the officialship. were executed, you do not of your own personal knowledge know whether they were all guilty, or not. - - just a moment, the switch is turned off, I am getting only the German. me that the individual cases were examined. executed by your kommando?

Q Were you given a list of those who were to be executed?

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A No, Your Honor, I was not given that. The supervision of all of these executions was under the Einsatzkommando-VI, and even the investigation of the people charged with crimes was carried out by this kommando, and that on that day my kommando only had to supply the execution squad, having received an immediate oredr from Dr. Rasch.

Q How did you know who was to be executed?

A We were informed of this by Dr. Rasch, that is, that the participants were to be executed as reprisals. I am not informed, whether when reprisal measures are carried out,there arises the question of guilt at all, whether it is of any importance whatsoever, I can not decide that. the execution of individuals whose guilt you personally were not as sure of?

A I only knew the cases had been examined. The order had been given to examine also these cases, and I had assumed that the careful decision, of the Einsatzgruppe chiefs were right and that the executions which were carreid out were justified, once they were reprisals officers?

A No, I didn't doubt it, mainly because I could observe, Your Honor that some of the arrested people were always separated. From these observations I had to assume that these people who were separated had been examined and interrogated. certain place where they were awaiting your arrival? Lemberg. I had to deploy my Einsatzkommado there to carry out these executions. The victims, or the people who were to be executed were taken there by trucks in consignments of eighteen to twenty people, or they were taken there by Einsatzkommando-VI, or by people of the general government, I don't know exactly, and the militia also handled the burying of these people.

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I already said my kommando was only in charge of the carrying out of the executions. of to Streckenbach prior to the executions?

A No, Your Honor, this order was not made known at Lemberg. This order, which I complained about, was the one proclaimed at the beginning of August, around the 10th of August, approximately, and it was proclaimed in Shitomir.

THE PRESIDENT: You may proceed, Mr. Hochwald. BY MR HOCHWALD: each involving about eighteen people, by your Einsatzkommando? Rasch were carried out in connection with this reprisal?

A That I can not say Mr. Prosecutor, I can not remember, I don't know. I think I can remember that that there were reprisals - that the number was established by the Fuhrer, but I don't know this number. you received from Rasch in the beginning of August in Shitomir? announced this order?

A Of the defendants, nobody was present. It is possible that Herr Blobel was there, but I am not certain that he was present. It is certain that Herr Naumann was there, and Dr. Kroeger. There were a few other gentleman but I don't remember the names. there was a Fuehrer Order in existence, which in essence had the same content within the order he gave you as handed down by Jekeln from Himmler?

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Q Nobody said such a thing? opposition against this order of Rasch's?

A Yes, I did. Not only I objected but also other people, other comrades who were present. They most decidedly complained about it.

Q What exactly did you say?

A I can not remember the exact words. I do not remember them. Because I did not know that I would have to repeat them one day. It was within the framework of general discussion whether it would have been practicable under the conditions to complain, and to speak about it, I don't know. I am not able to decide about this, and I decided on that occasion to act, and, I merely asked questions whether the RSHA, the Reich Security Main Office in Berlin knew about these orders, and, whether the RSHA agreed to them. Whereupon, as I already said, in direct examination, Rasch answered that was absolutely certain, if the highest Police and SS Leader, the Obergruppenfuehrer Jekeln decreed such an order, then that was valid for all.

Q For all. Not only for the Einsatzgruppe-C, is that right?

A I may ask you what you mean by "all"?

Q You said that it was so that this order came from Himmler? C? and SS Leader Jekeln. Jekeln was competent for the Einsatzgruppe-C. Einsatzgruppe, which should not be valid for all of them, as the order for one Einsatzgruppe alone was issued by the group-commander, but not by the Gruppenfuehrer Himmler, who was in charge of all SS troops?

A That may be so in spite of this. I heard that on the part of Obergruppenfuehrer Jekeln, he was known to be a fanatic, that more was actually done, and more was actually decreed than perhaps was necessary and wanted, that I assumed at the time.

Q Did you see something in writing from Rasch, as to this order?

A No, I didn't, I didn't see anything in writing. which possibly would be more than was requested on which this order of Jekeln was based? that it came really from Himmler? then operated? Rundstedt?

Q What was your collaboration with the Army authorities? service, although in the short time of my stay in Russia I had no possibility, of course, and no opportunity to have a definite relation at all. I must inform you that during all these times, during the time I was in Russia, I was on the move all the time. you have connections with the lower army unit - the lower level? various agencies between the I-C, mainly, was done through a liaison man who had been appointed by myself.

Q So you had a regular liaison officer at Reicheman's headquarters?

A No, he was not in Reichenau's Headquarters. I han another liaison officer when I was in Berditschew with Army Group South and I dismissed the liaison officer for this task, because Army Group South was in Berditschew itself.

Q Who was commander of this Army Group? from that part of the Army to execute people? you?

A Probably through I.C.

Q And One-C handed this request to your liaison officer?

A No, he didn't.

Q You never got it?

Q Who got the order from One-C, the execution order, I mean?

A I do not know what order you are referring to? more times you received a request from the part of the Army to execute people, your answer was, yes. I then asked you how the chain of command was, how this order reached you, your answer was, it was over the One-C. My question now is, from the One-C whom did the order reach from the One-C?

A It was like this. Shortly after my arrival in Berditschew I visited him, and on the occasion of this visit to the Army South, I was told that in the case of Berditschew the arrested people were in the Citadel in Beritschew who had been arrested as partisans bearing arms in the fight at Berditschew , and I was asked to settle matter there and then.

Q. Who asked you that?

A. I am not in a position now to tell you the name.

Q. It must not be a name;which office of the Army requested it from you?

A. I think it must be an officer who was collaborating with the One-C, that he was an officer of One-C itself ,b ecause apart from this one visit I never visited the Army group south again.

Q. Then if I understand you correctly, then you executed people only on the basis of telephone or teletype requests without knowing anything as to the circumstances?

A. No.

Q. Only for the simple reason that an officer in an Army office asked you to do that , is that correct?

A. No, that is absolutely a mistake. I also explained the matter in a very different way. They were made known to me on occasions of such discussions, and then I ordered the investigation of these things. As I said,yesterday, I passed this on to subCommander of my command, and this officer did not have the opportunity or chance to deal with it immediately, and so even I was reminded by Dr. Rasch, my chief, when, a few days later he inspected my command, and told me that complaints had been received, and that the executions of these partisans, who were arrested in were in the Citadel, had not been carried out and only then I gave sub-commander the order again , and I asked him to investigate the matter. This investigation took place at the Citadel.

Q. And the Teilkommando leader settled the question with Wehrmacht immediately then? No, I understand you differently, I understand that it was left to your discretion and to the alscretion of the subordinates of yours t as to whether these people should be executed, as you said, the last investigation was left to one of your sub-commanders, is that correct?

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A. The investigation was carried out by the commander of a subdetachment, after conclusion of the investigation . In this case the Wehrmacht decided how it was to be handled after that. I, myself, did not give any such order.

Q. Is it not true that the sub-commander was responsible to you and not to the Army?

A. Yes, they were subordinate to me, but I was subordinate to the Army; the Army could give orders to me and to my detachments.

Q. I only wonder that the sub-commander who was responsible reported to the Army and not to you.

A. Certainly, he also reported to me, but the people arrested at Berditschew were under military arrest at the Citadel, and, consequently, the authorities who arrested them had to be informed.

Q. But you received the requests for executions and not your sub-commander, and you gave him the order to investigate the matter, so, it seems to me more natural that you would have been informed about the effect of this investigation, and you could make then your recommendation to the Army, is it not true?

A. I could have done so, yes, but in this case I passed it onto the sub-commander who was in charge of the investigation.

Q. All right. You testified in this connection about another execution which was carried out in Suichnik, is that right?

A. Yes.

Q. Who ordered this execution?

A. I already described this event. I believe that it is known, but 'll repeat it again. One day --

Q. May I interrupt you a moment; I only want to know who ordered this execution, then you can explain. Say, first, who ordered it?

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A. The order was given by the local commander in Smolensk, who was the local commander at this town.

Q. Was he in a position to give yousuch an order?

A. The local commander did not pass on this order to me; that he made all these rules which he had to set up for his area as the commander of the town.

Q. To whom exactly did he give the order?

A. He gave this order to a detachment leader, whom I had put at his disposal for investigation at Smolensk.

Q. Was this sub-command leader responsible to you, or to the local commander?

A. He was subordinate of myself who was appointed by me to carry out the task for the Wehrmacht.

Q. Alright, did you ever receive orders to kill insane people.

A. I cannot remember having received an order to execute insane people.

Q. Did you ever kill insane -- I don't mean that you killed them, but under your command were there insane people executed?

A. I do not know of such a case.

Q. Can you tell the Tribunal whether a Gestapo Leitstell is an office of the Gestapo?

A. I don't think I understand this question?

Q. Can you tell the Tribunal whether a Gestapo Leitstelle is a Gestapo Office?

A. A Gestapo Leitstelle is an official agency, yes.

Q.An office of the Gestapo, I asked.

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A. A state police Leitstelle is an agency of the state police for one particular district of administration.

Q. May I rephrase my question? Does the Gestapo Leitstelle belong to the officesof the Gestapo?

A. Certainly.

Q. And a Gestapo Aussenstelle?

A. That is a subsidiary office of the Gestapo main office.

Q. A subsidiary office of the Gestapo, is it not?

A. Yes, that is right.

Q. Commandos and officers of such offices were members of the Gestapo, were they not?

A. Yes, they were.

Q. You told the Tribunal further what an inspecteur of the Security Police and the SD is. Is it not true that all Gestapo offices were under the supervision of either the Commander-in-Chief or the Inspecteur of the Security Police and the SD?

A. I don't think I understood your question correctly.

Q. Is it not true that all Gestapo offices of a certain area were under the supervision of the Commander in Chief or of the Inspecteur of the Security Police and the SD?

A. This was a different organization. Within the Reich territory itself there were the inspectors, so-called. The inspectors had no executive power. In the occupied territories, however, there were kommanders of the police and the SD, the executive power of whom was a much larger one, although, of course, they were tied to the orders of the central office, that is the RSHA, the Reich Security Main Office.

Q. But wasthe inspecteur of the Security Police and the SD a member of the Gestapo, a Gestapo officer?

A. That depended, Mr. Prosecutor. They were taken from all three departments of the Security Service of the SD. There were inspecteurs who were taken from the State Police; inspecteurs who came from the SD; and also inspecteurs who came from the Criminal Police, but in their capacity as inspecteurs they were taken from their former activities within the other department and were subordinated immediately to the Chief of the Security Police.

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I think this answers your question, Mr. Prosecutor.

Q. That was perfectly correct. So it is possible that somebody can be supervising the Gestapo without being a member of it. Will you tell that to the Tribunal?

A. Yes, I mean the word "supervision" is perhaps not quite the right word here, If you mean the inspecteur, his task, at least within this department, wasto take care that all things were carried out in an orderly manner without that the inspecteur as such was not certified to give any orders for the carrying out of these tasks.

Q. No activities whatsoever, no executive activities whatsoever?

A. The inspecteur had no executive power.

Q. Who made the reports which were sent from Einsatzkommando V to Einsatzgruppe C?

A. They were drafted by the subkommanders.

Q. Did the subkommanders direct and send them to Einsatzgruppe C?

A. Not in every case. As a rule they were sent via the Einsatzkommando. These reports were not only drafted and made but by the subkommanders but even by individual collaborators.

Q. So it is true then that you received these reports, did you not?

A. Yes, I think I can say that.

Q. Did you read these reports before they were sent on?

A. I think so, yes.

Q. Did you receive copies of the reports which were made by Einsatzgruppe C to the RSHA ?

A. No, I didn't receive such reports. I did not even receive copies from my own Einsatzkommando, because our Einsatzkommando had about three or four typewriters only, and basically only original reports were passed on.

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Q. How then did you receive knowledge about the reports which were sent from Einsatzgruppe C to the RSHA?

A. Not at all. I never received reports from the Einsatzgruppe to the RSHA.

Q. You testified here in direct that you made a personal report to Rasch concerning the activities of his Staff Leader, Hoffmann. You further testified that Hoffmann was the man who made the reports.

A. Yes, I did so. My report to Dr. Rasxh did not only deal with the activity of Dr. Hoffmann, but with his human attitude which I criticized most vividly in this report. This had nothing to do with his reporting on individual brunches of his activity.

Q. How do you know then that Hoffmann made the reports?

A. I knew that from my discussions which I had with the Einsatzgruppe in Zhitomir. At least three or four times I have visited in Einsatzgruppe in Zhitomir.

Q. Can you tell the Tribunal whether the Defendant Rasch did see the reports of Hoffmann before they were sent on?

A. What happens within the Einsatzgruppe itself, I am not able to say.

Q. So you cannot testify to the fact then that these reports were made only by Hoffmann as you stated in your direct examination, is that correct?

A. No, I cannot say that.

Q. Do you know whether it is true or not that Hoffmann and Rasch were on very friendly terms?

A. Generally it was assumed that Hoffmann and Rasch were on very close terms.

Q. What were your own relations to Rasch?

A. They were not of a very friendly nature.

Q. You stated in one of your affidavits which is in evidence that Rasch distinguished himself by extraordinary ruthlessness.

A. I think I used the term, "ruthlessness", but it was more or less in the same line, which I have already mentioned before. He was absolutely cold and void of feeling, and he passed on these very hard orders and severe orders without even trying to explain the necessity of such orders. There were some other points as well which caused me to estimate him, therefore, asan extremely cruel and ruthless man.

Q. Can you tell -- then, the other points?

A. I can only give reasons for this from his general appearance, his general personality. I cannot at the moment remember any individual details, Mr. Prosecutor. you about these terrible orders, but you did not find it ruthless that he carried out these terrible orders, is that correct? Do I understand you correctly?

A. I think that your question was unneccessary, Mr. Prosecutor.

Q. You need not answer it.

A. In that case I will not answer it.

Q. When you were recalled from the East and returned to the RSHA did you ever report personally to Streckenbach or Heydrich on the activities of the Einsatzgruppen?

A. Already on the occasion of my first trip to Berlin I reported to Streckenbach explicitly, and after my return I did not omit to give him another detailed description about conditions in Russia. After all it then led also to Hoffmann's dismissal from the Security police as far as the person himself is concerned.

Q. Did you talk to Heydrich about the Hitler order?

A. No, I did not. I had hardly any relation or personal relation to Heydrich. I talked about it to Streckenbach, personally and I asked him to see Heydrich about it. This indeed was difficult. I said to Streckenbach that I would be prepared to report to Heydrich myself because Heydrich had then been appointed Reichprotector in Prague, and only stayed in Berlin for just very few days at a time.

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After my return from Russia I never again saw Heydrich in Berlin.

Q. Apart from this information you gave to Streckenbach, did you make an attempt to have the order that all Jews, gypsies and Communists were to be killed withdrawn?

A. I know nothing about gypsies. May I have your question repeated, Mr. Prosecutor?

THE PRESIDENT: Mr. Hochwald, you need not specify what the order was each time you mention it. It is the Fuehrer order. I think the Tribunal knows which order it is, and the witness knows, so just say "that order, the Fuehrer order".

MR. HORLICK HOCHWALD: I am so sorry, Sir.

Q. (By Mr. Horlick-Hochwald) Did you then make an attempt?

A. It was the purpose of my visit in Berlin, anyhow.

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Q. I am sorry. You misunderstood me. I asked you when you were called back from the East.

A. Yes.

Q. It was at the end of September, you say. Did you then afterwards, when you returned, when you were in a quite high position in the RSHA, did you use your influence to do anything to have this order withdrawn?

A. After my return I discussed it with Streckenbach again, and I reported about the events in the East as I had experienced them myself, and although I knew that they were now being stopped, I discussed them in great detail with Dr. Kaltenbrunner at the very beginning, and one of my first requests in 1943 when I became the personnel chief was the request to have a general inspecteur appointed who, independently from all offices, would supervise the offices, mainly within the East in order to find out what was actually happening there. This inspecteur general was refused to me; but I succeeded to have a trustee at my disposal in order to examine and investigate conditions in the East which I no longer was able to survey. Standartenfuehrer Dr. Canaris on my personal request, received this order from Kaltenbrunner, the personal order to make an inspection tour through the Eastern Territories and to report to him without any restraint what so ever what he had seen and heard. This report on the part of Dr. Canaris, which contained many pages and still showed up many shortcomings, was submitted to Obergruppenfuehrer Dr. Kaltenbrunner, and on the basis of this report there was an absolute clean-up. about assigning the Security police also with the combat of partisans. At the beginning I succeeded in this to the extent that in my opening speech as Chief of Group I, I could inform the chiefs of all three departments that the soldierly tasks of the security police, which was an unusual kind of task for the police, the playing at soldiers, was to be discontinued, and that with the agreement of Kaltenbrunner the Security Police in the East would only deal with matters of security policy from than on.

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Q. Am I correct in assuming that it is your contention that nobody way ever executed by units under your command unless he was found guilty of a very serious crime and of an overt act which endangered the security of the German Army, is that correct?

A. That was my intention yes.

Q. I did not ask whether it was your intention. I asked you whether you state here that nobody else than guilty persons were ever executed by units under you command?

A. According to the reports which are submitted here, I was of the conviction that actually only guilty people were executed.

Q. This procedure was in direct contradiction to the order of Rasch asyou had received it in Zhitomir, is it not?

A. At least it is a very strong limitation asit were . At least after the order of August it was an absolute contradiction, yes.

Q. Did your refusal to carry out this order impair your career in the Gestapo?

A. Mr. Prosecutor, I may ask you not to use the word "refusal" because I did not refuse to obey an order. To refuse to obey an order means to tell a superior officer: "I refuse to carry out this order." This I did not do. I, myself, looked for a way out, and I did find a way out. Because of this way out I was not reproached. That is right Whether this way out was ever found out at all, I am not able to say. But that I exercised the greatest restraint, this fact was well known.

Q. Wasit known then to your superiors, at least to a certain extent, that your activities in Russia had been a failure?

A. I must assume so, because as Streckenbach informed me, my discharge was carried out because I was not hard and severe enough.

Q. Who promoted your Oberfulner, Herr Schulz?

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A. I presume that this was done on the suggestion of Office I.

Q. Antschef I was Streckenbach?

A. Was Streckenbach, yes.

Q. And it was Himmler who promoted you at the time there, is that not correct?

A. That is correct. Such promotions could only have been done by Himmler.

Q. Why?

A. I am afraid I cannot say that. That was a certain date of promotion, and I was promoted together with a number of other people.

Q. It is a question of memory. I introduce now Document 4957 This will be Prosecution Exhibit 176, Your Honors. Will you turn first to the last page. There are special remarks on the last page, handwritten. Defense counsel will be good enough to hand them out to you. and I will read them. It is obviously a remark made by you, is it not, this handwritten remark?

A. I don't know which remark you are referring to.

Q. The last remark. I will show it to you. It is better to take this. Here is the document. Do you have the document here? Is that your handwriting, Mr. Schulz?

A. Yes, it is my handwriting.

Q. I would like to quote: "From the beginning of 1931 I occupied a particularly confidential position with regard to the SS and also to the Kreis leadership of the NSDAP because of my position then as Referent in the Central Police Office of Bremen (Political police). My entrance into the Party only after 30 January 1933 resulted from the express wish of the then SS-Unit Leader." examination expressly why you did not join the Party earlier and asked you expressly about your reason, that you said that my contention was not correct?

A. Mr. Prosecutor, in this form the statement carries more weight than is actually the case, because such a close relationship was not really the case.

Q. will you look at Page 1 of the Document and now we shall find why you were promoted Senior Colonel? I quote: "I hereby promote you, effective 9 November 1941, to SS-Oberfuehrer because of outstanding service in the Einsatz." Will you tell the Tribunal, Mr. Schulz, whether the words "in the Einsatz" means your activity in the East?

A. That is possible, yes, but I do not think that if merits are talked about here that this only concerns the shootingof people. There were also other tasks, Mr. Prosecutor, which were my own task. The execution of people was an extraordinarily difficult subsidiary task which I carried out with extreme suffering, and I think I have explained that. I have gone into details about it, and God knows I did not take it easy, and I found a way of my own which perhaps not everybody would have found. The merit was in achieving, to secure the rear Army territory, if this has to be pointed out at all, not the shooting and execution of people wasthe merit.

Mr. HORLICK HOCHWALD: Tribunal before you did see the document. Before you had the document before you, you told the Tribunal, "I have not idea why I was promoted."

THE PRESIDENT: The Tribunal will be in recess until 1:45.

( A recess was taken unti 1345 hours.)

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*---* *---* (The hearing reconvened at 1345 hours, October 21, 1947.)

THE MARSHAL: The Tribunal is again in session.

DR. HEIM (Attorney for the Defendant Blobel): Your Honor, I ask that the Defendant Blobel be excused from tomorrow morning's session, since he will have to appear as a witness in his own defense within a few days and so that he can prepare his defense.

THE PRESIDENT: The Defendant Blobel will be excused from attendance in court tomorrow morning.

DR. HEIM: Thank you.

THE PRESIDENT: You're welcome.

Do you desire to present any further questions?

Dr. DURCHHOLZ (Attorney for the Defendant Schulz): Your Honor, I would like to ask a few questions in re-direct.

THE PRESIDENT: You may proceed. BY DR. DURCHHOLD (Attorney for Defendant Schulz):

Q. Witness, I come back to the document previously submitted by the prosecution, NO-4957, Prosecution Exhibit 176. On page 1 of this document, your promotion to SS-Oberfuehrer is made effective as of the 9th of November, 1941. I ask you now, did you keep this secret up to this time for any reason?

A. No secret has been revealed about my person in this document, b ecause the original document listing all my promotions was handed to the CIC when I was arrested in Salzburg in the year 1945. I gave all my papers to the CIC and no document was lacking, not even this one.

Q. Was this promotion a promotion because of favoritism?

A. No, this promotion was no promotion like that. It was not out of order.

Q. Did your seniority warrant this promotion?

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A. Yes.

Q. On the next to the last page of this document, it is noted under the 22d of March,1943, that since the beginning of 1931 you held a special relationship of confidence to the SS and NSDAP. Can you explain to me what this relationship of confidence consisted of?

A. This relationship isn't anything special. That I sympathised with the Nazi Party before 1933 I have already said in my examination; that I tried to achieve a relationship of confidence was not only in the interest of the Party but in my own interest,namely, it was through this relationship that it was often possible to prevent conflicts between political opponents and street fights.

Q. At that time did you show any favoritism towards members of the Nazi Party or SS?

A. No, never.

Q. Didn't you in the year 1932 have a Higher SS leader arrested?

A. Yes, even the one I have mentioned as a witness here, that was the SS leader of the SS Unit in Bremen. Shortly before the assumption of power, he was arrested for being suspected in a murder as a s result of a personal investigation on my part and brought into the prison pending trial. Only after the assumption of power, through the new Party agencies, was he released from this prison.

Q. Did you have especially close connections withthe Party? Were you active in propaganda?

A. No.

Q. Did you regularly attend Party meetings?

A. No, I didn't consider then important and visited them very rarely.

Q. Did you have any personal ties with Party leaders?

A. No.

Q. Now I come to another point. Did you consider yourself a camouflaged member of the Party before 1933?

A. No.

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Q. Now I come to your activity in the Sudentenland. You were in Reichenberg and in Clmuetz. In cross-examination this morning something unclear seems to have cropped up. One could assume that you had appointed a Commissar in Reichenberg who had the job , by your order, to secure Jewish property. What activity is concerned here?

A. As far as I can remember, I said that when I took this agency over I found great disorder; Party agencies end other authorities had taken some of the property of the refugees and other Jews. They had taken furniture and Office equipment for their own use. This disorder I eliminated and in this I had to put up with great opposition among these agencies.

Q. Thus, you wanted to accomplish that it would be impossible for people who had nothing to do with this to enrich themselves with Jewish property?

A. Yes, that was the reason why I appointed an official; not a Commissar, but an official.

Q. Did you not cause arrests in Reichenberg of such people who on their own enriched themselves with Jewish property ?

A. Yes, several persons.

Q. Were proceedings initiated against these people by your order?

A. Yes, proceedings were started, against them.

Q. On your order?

A. Yes.

Q. Who ordered these confiscations of property, you or other agencies?

A. The confiscation was ordered by the Higher Finance Minister.

Q. Do you remember that after the war broke out with Poland,the then Gauleiter Henlein asked you to take Czechs into protective custody?

A. When war broke out with Poland, Gauleiter Henlein asked me to come and see him and he demanded of me that all leading or even prominent Czechs be taken into protective custody. At that time I told Gauleiter Henlein that the conduct of the Czech minorities, as far as I could see in my three months' activity there, was correct and loyal so that I did not consider such a measure as justified and that I even was afraid to embitter the Czech minority by this measure.

Gauleiter Henlein answered me, "You must admit that I know the Czechs better." Nevertheless I told him that I considered this measure as superfluous and that I would guarantee that no unrest would result. Then I promised him to make up a list of such people who are known to be prominent . On this basis of this promise, Henlein agreed to refrain from the protective custody, if it turned cut that I was right. No arrests were ordered and the Czech inhabitants of the Sudetenland conducted themselves absolutely loyally during the Polish campaign. Not only in this case, but also in all other cases, I have always represented the interests of humanity.

of a search book certain people would have to be arrested, Who ordered this? our duties. It had been prepared by the RSHA. or other people? Thus I mentioned that in this list Police Director Dr. Bender was included too. cause they were Jews or were any other prerequisites necessary? was a Jew. I have already mentioned Dr. Rosenach,as a witness. I worked with him for four years uninterruptedly and in an absolutely friendly manner.

Q Were you competent to send people go a concentration camp?

A I personally had no power of decision about this. The decision lay with the RSHA. heard about excesses on the part of the Party. Were these matters within your competence or were these excesses of other agencies or other authorities? of my competence. As long as I held an official position, not a single human being was mistreated. If this had been the case, I would have severely punished a man who did such a thing.

Q I want to come back briefly to the order of Heydrich. Did you expect that your assignment in Russia would be merely the liquidation of Jews and others who are considered politically unreliable?

THE PRESIDENT: Dr. Durchholz, the witness testified that when he received the order, he did not know that he was going to do and it wasn't until a month later that he ascertained its exact nature.

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It seems that we have covered this particular subject.

DR. DURCHHOLZ: I merely mentioned it because it came up in cross-examination and one might get the wrong idea from it this morning.

THE PRESIDENT: You are not required to cover the ground which is covered in cross-examination, if you have already addressed yourself to that subject in the direct examination. You are only to pick up what he brought in extra to what you introduced in the direct examination. BY DR. DURCHHOLZ: didn't remember all the events in Russia, especially since one assumed that somehow they kept the events in Russia secret. When did you hear what the Einsatzgruppen did in Russia?

Q I shall formulate it differently. Before the end of the war, did you find out to the full extent what activities the Einsatzgruppen carried out in Russia, as far as the many executions are concerned? about softness was made unjustly. Do you mean to say by that that you were not soft enough in Russia, that, therefore, you carried out all measures which had been ordered without hesitation?

THE PRESIDENT: Dr. Durchholz, the witness very clearly stated that by softness he meant lack of moral fibre. He didn't want it to be confused with good heartedness. He denied being soft, but accepted the attribute of good-heartedness. I think that covered that.

DR. DURCHHOLZ: If this statement was given, I consider this question as answered.

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BY DR. DURCHHOLZ:

Q I come back briefly to the events in Lemberg. Witness, did you have anything to do with the arrests of the Jews in Lemberg?

Q Did you not release arrested Jews on that field?

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because they were Jews?

THE PRESIDENT: It seems he covered that pretty thoroughly, Dr. Durochholz. He told the whole story. He said investigations were made, and only those who had participated in massacres were executed. BY DR. DURCHHOLZ:

Q I come now to another question. You told us that during the investigation in Lemberg the militia participated. Which militia was this? German or some other? from the Lemberg population -- that is, indigenous personnel.

Q Poles?

Q Didn't the Mayor of Lemberg participate in these investigations?

Q How many Einsatzkommandos were in Lemberg at that time?

A Temporarily there were four Commandos there: Commando 4b, Commando 5, Commando 6, and this Commando from the General Government. Commando 4b was the first one to leave. person give it to your Einsatzkommando?

A The order was given by Brigadier General Dr. Rasch.

Q Were those executions of hostages? out executions only if punishable actions had been determined previously?

THE PRESIDENT: He's covered that ground.

BY DR. DURCHHOLZ: Who gave the order for the executions on the citadel in Shmielnik?

A This question is wrong. Once there was an execution on the citadel in Berditschew.

Q Who gave the order in Shmielnik? by the town commandant. to your commander. Russia, as you have described it, would not have been disadvantageous for your career in the police, for you said that you did not execute the orders such as they should have been executed. Was this known to the Higher agencies?

A This answer I have already confirmed; otherwise, my dismissal would not have come about. to carry out the order?

THE PRESIDENT: I think he's covered that. He stated what it would mean to disobey an order.

DR. DURCHHOLZ: I have finished the redirect examination. to examine, I want to make a short statement. I ask that you permit me to call three witnesses so that I may examine them here in Court. These are: Dr. Steiner; Alfred Faust, and Alfred Schwarting. I shall do without the other witnesses.

DR. HOCHWALD: Your Honors, please, it would be helpful if Dr. Durchholz would inform the Tribunal on what subjects these three witnesses are going to testify. Are they character witnesses, or can they testify as to crimes charged in the indictment?

DR. DURCHHOLZ: These three witnesses are to testify as to how the defendant conducted himself in his activity in the Gestapo. As far as the witness Steiner is concerned, he is a representative of the Catholic Church in Austria. In the case of the witness Faust, he is leading Social Democrat in Bremen.

And the witness Schwarting is the person whom the defendant appointed to a void excesses on the part of the police. These points are connected with Count 3 of the indictment -- Membership in a criminal organization.

DR. HOCHWALD: If your Honors please, it seems clear from the Statement of Dr. Durchholz that all of the witnesses are going to testify only on Count 3, and more or less on very similar subjects. It seems to the prosecution sufficient if only one of the witnesses would appear, and the other two give their testimony in the form of an affidavit.

THE PRESIDENT: I don't know whether that would be satisfactory to you, Dr. Durchholz. But we will say this. That if we allow the three witnesses, they will be restricted to what you have indicated will be the subject of their interrogation, and from what you have said it would appear that ten minutes to each witness might be enough in Court.

DR. DURCHHOLZ: Yes. I shall confine myself to very brief questions.

THE PRESIDENT: Very well. Then these witnesses will be permitted. Are they here now?

DR. DURCHHOLZ: No, they are not here yet. I shall call them when they arrive here.

THE PRESIDENT: Well, does that mean that otherwise you have terminated the presentation of the evidence in the case of the defendant Schulz?

DR. DURCHHOLZ: Yes.

THE PRESIDENT: Very well. It is unfortunate that the witnesses are not here because we prefer, naturally, that the witnesses testify at the same time that the defendant does. But through no fault of yours the witnesses are not here -- but we do hope that this situation does not repeat itself, and that we can have witnesses here simultaneously with the presentation of the defendant for whom they will testify.

DR. DURCHHOLZ: Your Honor, I had asked for these witnesses some time ago.

THE PRESIDENT: I have said it -- it is no fault of yours; Dr. Durchholz.

DR. DURCHHOLZ: Your Honors, as far as the submission of my documents is concerned, I have just heard before that my document book one, in the English language, has been given to the prosecution. Since I want to submit Document Book 2, I consider it useful to submit the two document books together at a later date.

THE PRESIDENT: It might be interesting to known Dr. Durchholz, that submitting your document book to the prosecution is not quite enough. The Tribunal should get a chance to look at it, too. We have not received it.

Mr. Hochwald, do you have any further questions of the witness?

DR. HOCHWALD: The prosecution has no further questions.

THE PRESIDENT: Very well. Just a question or two.

DR. HEIM (for the defendant Blobel): BY DR. HEIM: detachment leaders made up reports and that these reports always went to Einsatzkommando 5. Can you tell me from your own knowledge whether this channel of reporting was used also in the other Einsatzkommandos and Special Commandos? but during my cross examination I think I told the prosecutor that it could have been possible that they took a shorter way, especially with the difficult communication in Russia. How the other Einsatzkommandos regulated their channels, I don't know. There was no SOP about this channel.

Q witness, now the last question. Thus you cannot claim, if I understand you correctly, that this channel of reporting, as you have described it this morning for Einsatzkommando 5, also was used for the Special Commando 4?

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DR. HEIM: Thank you. I have no further questions. BY THE PRESIDENT: officers school sent, generally?

A You mean the pupils of the school for executive service? normally they didn't get any assignment after the school. The usual courses were taken in that school: the training courses for criminal commissars for the State Police, and for the criminal police. These training courses were prescribed. After a training course was completed an examination had to be passed, and promotion depended on the passing of the examination, according to the Reich regulations. came to your school for extra instruction?

A No, your Honor, they were not officers on an assignment; the men who came to my school were no officers as yet. They were officer candidates. They were taken from the agencies of the whole Reich and were ordered to the school if they were up for promotion. The course lasted 9 months. After completion of this course, and after the passing of the examination -- if somebody failed, it, without this examination -they wont back to their old agencies. while they were at your school? of this course. the official attitude of the Reich government towards the Jews?

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way, nothing was said in this course. The ideological training only saw to it that everyone was informed of the developments of the Nazi party and about the career of the Fuehrer. Party, certainly something was said about the Jewish problem, was it not?

A I don't think so, your Honor. This was a special school. The education of human beings as such in their daily duties was a matter for their own agencies to take care of. I may emphasize expressly that in this school no education for hatred or contempt for any people ever took place.

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Socialist party insofar as it concerns the Jaws, a program of hatred and contempt? Reich government thought of the Jewish problem, since it did not involve hatred and contempt? an ideological or religious nature is discussed in detail: but there was no time for that at that school: nor were there any qualified teachers to deal with the questions. I may say that I, as commander of the school, would have hardly been in a position to give a survey of the history of the Jewish people. lasted 9 months, although you were training men to act for the Reich in various fields of security work, and that although the Jewish problem was a major problem in the Reich, and although there was this specific order from the Fuehrer that the Jews in the occupied territories ware to be executed - at any rate, to be placed under observation -- that in spite of all that, not a word was said about the Jewish situation in the instruction of these students in your school? question when discussing legislation, but any type of educational questions which immediately touched upon the Jewish problem were not discussed in this school.

Q I understand that you taught chivalry. Now, just what did this course in chivalry consist of? What were the students instructed to do along chivalrous lines? them a survey of their duties as future leaders. Among these duties I included an appeal to humanity and chivalry. I demanded of every single one that he set a good example, and that his conduct always he such that he could answer for it to himself; that, above all, he should never make demands of other people which he could not perform himself.

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could always answer for it to himself. Was he ever instructed that he should conduct himself in such a way that he should give answer to a Supreme Being? leaving your school?

Q Were they trained and qualified to enter Einsatzkommandos? Einsatzkommando, did not take place in the school at all. for an Einsatzcommando job, either, but you were sent to one. I am asking if the graduates of your school would be amendable for assignment to Einsatzkommandos. entered into the execution of the Fuehrer Order in an Einsatzkommando, could they have executed that order, as it was sent down through the line of command, and yet have been faithful to the code of chivalry which you instructed them on? It was not valid for the entire time--could one execute that order and yet be true to the code of chivalry which you taught in your school?

A Your Honor, that is difficult to answer. This was an order which people had to obey.

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Q I don't know why it is difficult to answer. You taught chivalry. You volunteered that. No one asked you. You said you taught students chivalry, and these students, just like all other graduates of army schools, could be subjected to the Fuehrer Order; and they are now in the field, and they have this order to go out and execute, and they remember your code of chivalry. Can they execute the order and still be true to this coda of chivalry?

Q Then you feel disinclined to answer? right explanation. I now put myself in the situation of a man who has been obediently educated. I can imagine that the feeling for gallantry as such would not be destroyed by the fact that a harsh order must be followed -- but may I make the following explanation. If I take the fact that the enemy in Russia carried on a very severe war, and thereby challenged such harsh measures on the other side -thus, if the measures of the enemy are declared as unchivalrous, then I don't think it is up to me to designate my own measures as such. population because Russia had not lived up to the code of chivalry. Is that what you are telling us?

A Your Honor, that is very difficult. One has to consider the concept of morality and law. I am not enough of a philosopher to analyze the concept of morality, and I am not enough of a jurist to define the concept of law; but if my morality is equivalent to guilt, then it is very difficult to say - for the gruesome war raged through the years - if this whole war was immoral, then the Fuehrer Order as a part of this war, is also immoral. But I cannot get myself to claim that. in what was done.

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people. had been massacred, and as a reprisal measure certain individuals were taken into custody and executed. Is that correct?

A Yes, arrests were made, and executions were ordered; yes. massacre of Jews. Hadn't the German forces themselves executed Poles in Poland?

A I don't know that, your Honor. numbers - hundreds of thousands - of Poles were executed... you don't know that? learning that Poles had been massacred by the Russians, you believed that the order to conduct the reprisal was based upon the revulsion on the part of the German forces against the execution of helpless Poles?

Q Yes, perhaps it Was a little involved. During the Polish invasion, Poles were executed merely because they were Poles. Documents indicate that that actually happened. The German forces executed Poles, civilians. Now, it seems strange that since the German forces, when they were allied with the Russian forces, executed Poles, that they would suddenly demand reprisals because Poles had been executed by the Russians.

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A Your Horror, I can only say this one thing. I don't know the detailed circumstances of this order. I merely had to accept the fact that here the Fuehrer had ordered reprisals, but German Wehrmacht soldiers had also been killed, and I also would like to point out the fact that in the Polish campaign, Germans had also been murdered before. What the connections are here, and what caused the head of the State to give this order, I just don't know.

THE PRESIDENT: Very well, I think that covers it. The Marshall will return the defendant to the defendants' dock. Dr. Schwarz for the defendant, Jost, are you ready to proceed?

Dr. SCHWARZ: Yes. Dr. SCHWARZ for the defendant Jost.

THE PRESIDENT: You may proceed.

HEINZ JOST, a witness, took the stand and testified as follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

JUDGE SPEIGHT: You may be seated.

DR. SCHWARZ: Your Honor, may I please begin with the direct examination of the defendant Jost.

THE PRESIDENT: Yes. BY DR. SCHWARZ: person?

A My name is Heinz Jost. I was born on 9 July 1904 in Molzhausen, District of Marburg. I am the oldest of three brothers. The next brother is a druggist, and the youngest is a physician. I am married and have one child.

Q What were your parents, witness? Hessen. Both parents come from families of officials.

Q In what manner were you educated in your parent's home?

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accordingly. Both parents were Catholics. and my mother was very devout. My parents tried to give me the traditional upbringing of a decent, honest and respected citizen,and they chose for me an academic career. they? who educated us to do our duty, to be just and honest, and to love the Fatherland and its people. In his political opinion he was a liberal and democrat, and before and after the first World War he was active in the Democratic Party. Later on, disappointed about the development, in Germany, he joined the Nazi Party.

Q What education did you have?

Q And what came after that? in Benzheim Hessen.

Q How did you education proceed after that? 1923 to 1927. I attended the University at Giessen, and I spent one term at Munich. I completed my studies in the Spring of 1927, and passed my Bar Examination. career?

A I spent this time in the District Court of Darmstadt; at the District Court and at the office of the Landrat, with a lawyer, and with the Labor Court.

Q Did you pass the assessor examination, if so, when and where? the Assessor examination, that is, the State examination, and was with the Hessen District Court in Darmstadt until the end of 1930.

a part in your political development? for my political development, the experience of the First World War. the loss of that war, and the post-war years, awakened my interest in all questions concerned with my Fatherland. During my time as a student, I was very active in sports, and in this activity I met people from all classes, especially from the working class. I got to know the people very early in my life, whom I would not have met otherwise. I not only got to know these people from the working class, as honest and decent people, but I also gained insight into their needs and their worries. I saw and recognized their economic position; their primitive and modest living conditions. In other words, I came to grips with the social problems of our time through personal knowledge. Above all, I saw, outside of this material distress, that this German worker held a position outside of his people, and was not considered as a full member of the people. One even denied him his human dignity. After I had entered the University, I joined a student organization, and here I got to know the bourgeois life from which I myself came, but into which I now gained more of an insight. I saw the social exclusiveness, the so-called narrow attitude and narrowmindedness, and conceit of the bourgeois himself. During that time I became conscious of a deep rift within the German people, that there were actually two classes who speak the same language, but who were actually foreign to each other, and could not speak to each other on the same terms. This condition occupied my mind very much without my knowing how it could be changed. Around that time I became acquainted with the philosophy of the Nazi Party.

THE PRESIDENT: Dr. Schwarz, would you want to suspend now for the afternoon recess, and then take it up immediately after we reconvene?

DR. SCHWARZ: Yes, Your Honor.

The PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Yes, Mr. Hochwald.

MR. HORLICK-HOCHWALD: If the Tribunal please, I would like to make a correction. I offered this morning NO-4957, and by mistake gave it is Document No. 176.

THE PRESIDENT: Exhibit number, you mean?

MR. HORLICK-HOCHWALD: Exhibit No. 176. It should be, Your Honors, Exhibit 177, as Exhibit 176 was reserved for one of the two documents which were handed to Naumann in cross-examination.

THE PRESIDENT: Your statement will be sufficient to make the correction on the record.

MR. HORLICK-HOCHWALD: Thank you, Your Honor.

DR. ULMER: Defense counsel, Dr. Ulmer, for the Defendant Dr. Six. not finish what I had in mind for the preparation of his case. I would be very grateful to you if the Defendant Six will be freed from session tomorrow morning as well.

THE PRESIDENT: The Defendant Six will be excused from attendance in Court tomorrow morning in accordance with the request of his counsel.

DR. MAYER: Dr. Mayer for the Defendant Braune. morrow morning for the preparation of his defense.

THE PRESIDENT: The Defendant Braune will be excused in accordance with the request of his counsel.

DR. SCHWARZ: Your Honor, may I proceed with the examination of the Defendant Jost?

THE PRESIDENT: Please do. BY DR. SCHWARZ:

Q Mr. Witness, we talked about your entry into the NSDAP. When did you join the NSDAP and in what manner?

AAt the beginning of 1928 I joined the NSDAP. At that time there was no large organization of any kind. There were only a few members of the Party in those days.

Everybody did want he thought he had to do. The political activity mainly consisted of spreading of propaganda, distribution of papers, pamphlets and leaflets and in eager discussions between individuals, discussing politics with men and women who were of other opinions, and with the attempt of trying to convince others of the justifiability of their political opinions. Only in later years, that was in 1930 and 1931, the first organizations or organizational outlines started. At some periods I had the office of a cashier or as a local administrator, or sometimes I was in charge of propaganda, according to whatever the office was doing. because of my professional career I could not become active in this unit. Definitely I joined the SA in 1931. I joined the SA as a simple soldier. I was promoted automatically and when I joined the SD in 1934 I had the rank of an Obersturmbannfuehrer. In 1935 I was promoted SS Hauptsturmbannfuehrer; in 1936 I became a Standartenfuehrer; in 1937 I became an Oberfuehrer and in 1939 I became a Brigadefuehrer. state examination, I settled in Lorsch which is in Hessen, which is the country I come from, as a lawyer. I stayed there in this profession for about two years, and in the middle of March 1933, as requested by the Hessen Government, I took over the police office in Worms. From autumn 1933 to March 1934 I was in charge of the police office in Giessen.

Q What was the reason for your leaving the police? Government, I had to carry out measures of the SA so that I felt that I should ask to be relieved and to look for another job in Berlin.

Q And what job came in question when you went to Berlin?

Labor Front, totake part in the new foundation of a re-settlement section. This was a department in which I could develop my social political interests, but this department was actually never founded, and at that time, it was in the summer of 1934, I became acquainted for the first time with the SD.

Q How did your joining the SD come about? saw many things that one liked very much but many things also that one did not like. This new authoritarian state had not created any possibility until then to improve on shortcomings and mistakes or to create a Possibility to abolish them or to contribute toward their abolishment. Thus it seemed to me that there should be an organizetion which should be created to be prepared, without any individual interest, to deal with all features of the public life - negative or positive - and to report about the results of this work to the competent legal authorities, without serving their own interests in any executive capacity whatsoever. This organization seemed to me most welcome, or at least an organization of that kind seemed to me most welcome. As model for this activity the British Secret Service would serve in which each individual Englishman, in fulfilling his national duty, had to takepart as a matter of course, without having the actual feeling to be an agent or to do something dishonorable . Such, on a voluntary basis, by cooperation of honorary members this organization was to be built up. This ideology agreed with my own opinions, and therefore, I decided to join this young organization.

Q Is this question answered then, Witness?

Q What was your actual activity in the SD until 1939? to have no contact and nothing to do with the activity which I just described. I was given the task to create an counter-intelligence In the German language "Abwehr" is an organization which has as its task to find out and to explore activities of foreign information within the German Reich,territory.

Until this point there were in German two agencies which dealt with this task; the one was the Count intelligence Department of the Wehrmacht and the other was the Counter Intelligence Department of the Gestapo, the Secret State Police. The first was mainly dealing with military matters in counter-intelligence questions and the protection of military objects, while the Counter-Intelligence Department of the Secret State Police worked within the framework of general police matters and had as its task to clarify cases of espionnage and to search for perpetrators with the usual general police means. These two organizations did not seem by any means sufficient in order to create enough security to protect the country against foreign enemy agents and this was to be the new field of activities of the new SD with its own means and its own possibilities. The SD was to be installed as a third organization and its main tasks were to be the following: foreign information services in general, that is, as far as it was possible, to study their histories and organizations, and manner of working, their methods and distribution of tasks and such matters. Furthermore, there was the task to build up a preventative counter-intelligence; that is, by Instituting a network of voluntary workers and collaborators to make it difficult for the foreign intelligence service to work; that is, to carry out measures which were suited to protect military objects and others exposed to sabotage against enemy activity. to the setting up of various subsidiary organizations, especially in industry, such as protective institutions, plant security institutions, and similar things, without actually creating on actual uniform schedule of organization.

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The measures themselves were carried out by the Economic and Labor Offices who were interested in this whereas the SD worked in an advisory capacity. the Reich Security Main Office? intelligence activity in the SD discontinued in Autumn 1939. The organization was dissolved and the tasks on the whole were redistributed according to the now re-organization and were given over to the Secret State Police. I had taken part in the Staff of the Third Army as chief of the Civil Administration, in the middle of October, 1939, I was entrusted with the leadership of the newly established Office VI within the RSHA. Plans for the creation of a foreign intelligence service and information service in foreign countries were not new then, but until that point, or, practically until the outbreak of the war, they had got stuck and were only be put into practice when Office VI was established. As the Office III of the Reich Main Security Office, that is, the SD for German territory, to deal with the general reporting about all spheres within the Reich and to organize such a service, thus, in the same summer, Office VI had the task by reporting from foreign countries to get information which was to be made available to all the Reich Offices. The building up of this young organization was very difficult during the war when the borders were closed and there were Eastern and Western front lines. Personnel and material were lacking so that in the first month of the young office our main task consisted of keeping up with the organizational work and catching up with the work which had not been done during peace time.

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After months, that is about in Spring, 1940, the basic organizational work had been concluded and the reporting activities concerning all foreign countries could begin. Even here the basic rule was adhered that the whole work should only be performed with the help of honorable collaborators and no care was taken that the collaborators in question should be a member of the SS or a Party member, but the main question was to find collaborators who were able to see and judge conditions and happenings in other countries with good common sense.

Q Witness, who was your chief at that time? after Office VI was formed, was the Chief of the RSHA, Heydrich. Security Main Office? the beginning of September, 1941; that is, until that point I held office in the RSHA.

Q What were the reasons for your leaving the RSHA then? political information service, independent from other offices of the RSHA, and knowingly independent from the Gestapo, the Secret State Police was met with quite some resistance on the part of Gruppenfuehrer Mueller who was the Chief of this office. This man, whom I just mentioned as well as Heydrich had visualized on entirely different development when the RSHA and Office VI had been initiated. Especially Mueller had believed then that the SD and the young Office VI could be regarded as a sort of Information Service for his own office

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THE PRESIDENT: May I interrupt please? Mr. Heath, I would like to ask you a question.

MR. HEATH: Yes, sir.

THE PRESIDENT: Are you charging the present defendant with criminality insofar as his membership, or, activity, rather, in the RSHA is concerned? Are there any specific offenses which allegedly have been committed by him in the RSHA aside from being a member of the SS organization?

MR. HEATH: If your Honor please, I'd better call on Mr. Clancy who knows. I don't know.

MR. GLANCY: NO, sir, this is only a collateral issue. The only significance in that is the fact that AMT VI, which the witness has just mentioned as being their foreign counter-intelligence service as found by the SMT, was part of the SD, but what we are mentioning here is only a collateral issue to what we have brought here.

THE PRESIDENT: This background, Dr. Schwarz, is, of course, important. A general picture is always important. A general background is naturally important, but I am wondering whether it is necessary to go into so much detail.

DR. SCHWARZ: I beg your pardon, Your Honor. I believe that it will be possible that the defendant could cut this a little shorter, but it seems that he wants to express his opinion as to his relations to Chief Mueller, because it is most important for his later activity and for the relationship to Heydrich, but I would like to ask the defendant to make it a little shorter perhaps.

THE PRESIDENT: In view of what you have said, it becomes obvious that what he is talking about is relevant and important.

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I might make this observation: That since we have been sitting here, our greatest difficulty with witnesses has been that they speak too rapidly. Now this present defendant is a refreshing contradiction to that, in that he speaks slowly, and I am just hoping that we don't all go to sleep, because of the very leisurely manner in which he is testifying. Perhaps he might speed it up just a little bit.

Dr. SCHWARZ: Your Honor, I have already told the defendant that he could speak a little faster. I think he will do it during the further course of his examination.

THE PRESIDENT: Very well. of the RSHA. Please make a statement as to how far you went in the RSHA. to change the Office VI into an Information Service which would serve the Gestapo, the Secret State Police, was not complied with by myself. In my view Office VI was to be an agency which must by all means be independent and must be an agency to serve all offices and agencies of the Reich and all leadership offices, with information supply as it would become necessary -- such an agency must not be supported or dependent from one office, especially not from a political police.

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21 Oct 1947-A_MSD_25_1_Arminger (Hildesheimer) and from this opposition open discussions about the field of tasks resulted, and during the further months and years, there were considerable disputes. The reproach that Office VI was of no importance whatsoever to Office IV, for instance, was of course supposted by me, and there was also the reproach that the work of Office VI was not in the interest of the Secret State Police. There was a reproach of separatism or sabotage. There was also the reproach that the office was politically unreliable and other such reproaches eventually lead to the fact that one day Office VI received no further funds for its activity. It was said it was of no further value to the Secret Police. in the opinion and in the attitude of Heydrich and Mueller and in the lack of understanding of an independent unpolitical information service. All these disputes made successful work in Office VI impossible when eventually at last it came to Heydrich using political reasons, asking which in fact I could not fullfill. He reproached nor or at least he requested me to divorce my wife because she was not a National Socialist and if I was not capable of taking care of my wife, who was not a National Socialist, I would not be capable of taking care of my office, so I asked to be relieved of my office. tht is, until the end of the organization, by the end of August 1941, I was transferred to the Ministry East, which I had not asked for, that is, at least I did not select the Ministry East myself. I was transferred there without my having asked for it.

Q Were you still paid by the Reich Security Main Office? RSHA. At the same time, according to my war service, I was also a part of the Security Police as the Ministry East could not immediately create a position for me.

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21 Oct 1947-A_MSD_25_2_Arminger (Hildesheimer)

Q What happened when you were relieved from the RSHA? vacant for me in the Ministry East, and waited for such a position.

Q Did Heydrich at any time offer you a position? Ministry East, Heydrich attempted on two occasions to reinstate me in his sphere of powe , by offering me once a commanding position somewhere, and on another occasion he offered me the position of an SS and Police Leader.

Q Witness, what was your attitude towards these two offers?

A I refused both offers mainly for three reasons. First of all, I was not interested in police questions and I did not think that I was suitable to deal with such Questions. Secondly, under all circumstances. I wanted to Leave this sphere of influence of Heydrich because after all these years of disputes and personal differences I did not feel inclined and I did not have the intention to serve him in any way whatsoever. Only after a transfer to or changing over into another position would it become possible for me to become my own master.

Q How did Heydrich take your refusal?

A Heydrich's basic characteristic was his manial distrust of other people. Thus his offer must be understood. He mustrusted everybody, even his closest collaborator and above all he was afraid of the fact that if one of his close collaborators transferred to another agency that he might become dangerous. When, therefore, he regretted having suggested to have me released for the Ministry East and he attempted to get me back,or at least, he made such proposals to me. My hope, however, was to remain in charge of an administrative office or department which would have been well in accordance with my personal inclination. your relations with Heydrich would ever become more severe?

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21 Oct 1947_A_MSD_23_3_Arminger (Hildesheimer) did not do any thing at all to abolish the difficulties which had thus been created. sent on an information tour.

A Yes, that is true. In February of 1942, I received a letter then from the Chief of Office I of the RSHA. That Was Streckenbach, which contained the order for me to report to the Eastern Administration and to go on an information tour to the Eastern Occupied Territories. On the occasion of a discussion I had with Heydrich a few days later, he confirmed this order and he asked me to discuss the actual carrying out of this trip with the Ministry East, which I actually did. your activity in Einsatzgruppe A, as the commander of a SIPO and the SD, Ostland. When and where did the order reach you to take over the leadership of Einsatzkommando A? which began in the beginning of March, 1942, during my stay in Smolensk, in fact, approximately on the 24th of 25th of March, 1942, an order reached me. This order was to the effect that I was to get in touch with the Chief of Einsatzgruppe A; that I was to become Ehief of the Einsatzgruppe North, and the Secuity Police and the SD. Eastern Territories and that any regulations in accordance with this would be made later. This order had been signed by Heydrich. I thus received the order to take over those agencies which until that date had been handled by Stahlegger who had been iklled a few days previously.

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Q.- Witness, when you received this order was anybody present?

A.- Yes, when I received this order Sturmbannfuehrer, the then Sturmbannfuehrer Karl Henneke, and my adjutant Gerd Nyhoegen.

Q.- What impression did the receipt of this letter make on you?

A.- It was not only surprising to me, but it was most moving. It was a surprise because after I had been appointed into the Ministry of the East I never counted on an assignment in the sphere of influence, of Heydrich, because I believed that once and for all I had been taken over by another agency, another office, and therefore that a separation from Heydrich had been definite. This hope had been destroyed by the receipt of this letter, but in spite of this I decided to undertake steps for the revocation of such a assignment.

Q.- Did you mention this misgiving to Henneke?

A.- Yes, I mentioned this to Henneke who, as I said, was present at that moment. I told him of my intention, and I told him that I was going to try to go back to Berlin as soon as possible in order to reach Heydrich personally, and thus to have this order revoked, if possible.

Q.- Why were you so interested in having this order revoked?

A.- I have already explained for what reasons I did not want to be entrusted with police work, and for what reasons I did not want to work under the sphere of influence of Heydrich. Before I had received this letter I had a discussion with the above mentioned Henneke, and I had told him that I myself, personally, would not be in a position to carry out execution orders, and it was no sooner said than the teletype arrived which appointed me to a post, where doubtlessly I would come into contact with such orders.

Q.- Witness, how did it come about that you made that remark to Henneke that you would not be able to carry out execution orders? Did Hanneke say anything to you about this?

A.- I had been informed through Henneke of happenings in the Ukraine which overwhelmed me so that I did not know how I could deal with this problem at all.

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Q.- Witness, was this order by Heydrich which you had received, binding for you?

A.- The order was signed by Heydrich, as I already said, and I was still paid by the RSHA, my war appointment was to be Chief of the Security Police -- so Heydrich was justified in sending this order to me, and I was under duty to comply with this order.

Q.- Now, what did you do when you received the order?

A.- I had to comply with the order and I went to Riga. There I arrived at the earliest on the 28th of March 1942. I think it must have been a Sunday. On Monday, which was the 29th of March, I took over the office and I immediately telephoned Berlin in order to ask how and where could I get hold of Heydrich. I received information that Heydrich was on the way and he was expected back in Berlin for the week-end. Two or three days later I decided to go to Berlin myself. At the moment of my departure a teletype arrived which announced Heydrich's visit for the very same day. That was either the 31st of March or the 1st of April 1942.

Q.- What urged you to have a discussion with Heydrich?

A.- I was going to try, during that discussion with Heydrich, to have him revoke the order, or at least to give me time to think it over. Furthermore I knew - at least in case he did not withdraw his order, that I would get orders by him, personally. As my questions to the former adjutant of my precedessor Stahlegger concerning orders, especially about the treatment of Jews, were to the effect that such an order had never been received in writing, he told me that this order, before the beginning of the assignment, was given to the chiefs of the Einsatzgruppen and Einsatzkommandos verbally, and that was the Fuehrer Order which had been carried out by the Einsatzgruppe A.

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Q.- Was that order in force at that time, witness?

A.- Yes, the order was at that time in force, although at that point, or at the time before, within the Reich Commissariat of the Eastern territories, that is not in the territory of the Einsatzgruppe but in the territory that had been taken over by the civil administration for reason of labor allocation and assignment or for economical reasons, - for those reasons this order had actually not been carried out completely. Withdrawal of the order had not been received, but the measures were, for the mentioned reasons, not no longer carried out.

Q.- Witness, how did your discussion with Heydrich take place, and what was the result?

A.- If Heydrich's suddent visit was not a surprising fact more it was his behavior, He was most charming, and he behaved in a very kind manner, such as I had not seen in him for many years. He tried in a very cordial manner to discuss all kinds of matters which had nothing to do with the actual question. Obviously, his intention was to get me into a receptive mood in order to say then finally: "Now I have already offered you on various occasions to become a commander. Through the sudden death of Stahlecker we now have the possibility to comply with this wish of mine, and I hope that this new task will be a pleasing one to you. I objected a few times, and gave the reason for my objection, and repeated to him what I had already told him on former occasions, and it was that I was not suitable person for police matters, that I had not counted on a re-employment in his own sphere, that I had innerly separated myself from him and wanted to prepare myself for my future task. I saw it my duty to draw his attention to the fact that he himself, before the start of the Russian campaign, had refused a proposal to employ me in the Eastern assignment, giving the reasons that I was ill and as far as my nerves were concerned, not in a state to take part in such a campaign. Apart from that, when I left the Office VI he had also said that my state of health was such that for this reason alone it would be adequate for me to leave the charge of Office VI.

THE PRESIDENT: Dr. Schwarz, this might be a good point at which to suspend; and youmight indicate to the witness that after a little spurt of speed he once more dropped back to a somnolent state. You might ask him..... I am sorry .... I merely wanted to say that the witness responded immediately to our suggestion that he increased the speed of delivery, but then he became tired very quickly and once more has dropped back to his rather somnolent delivery. You might tell him this evening to have a good rest and perhaps tomorrow morning he can speak with a little more speed, especially in view of the fact that he already has his material prepared, We don't intend to request that a witness adapt himself to any particular kind of delivery, but I do think he could speak a little more rapidly.

DR. SCHWARZ: Your Honor, may I say that during these last days the defendant has had much work to do, and has been in a rundown state, because during that time the whole day was spent in the preparation of the defense of the defendant. I think that a quiet night will give the defendant the possibility to comply with the wishes of the Tribunal tomorrow.

THE PRESIDENT: Thank you very much.

DR. KOESSL (for the defendant Ott): I would like to ask the Tribunal to escuse the Defendant Ott tomorrow, as he also has to prepare his defense. Furthermore, I would ask to represent now my colleague Dr. Gawlik to excuse the Defendant Seibert on Wednesday and Thursday, also in order to prepare his case.

THE PRESIDENT: The Defendants Ott and Seibert will be excused tomorrow; and Seibert also on Thursday - so that they may confer with their respective counsel in preparing their case for the defense. thirty.

(The Tribunal recessed until 0930 hours, 22 October 1947).

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0930 - 1630, Justice Michael A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats. States of America and this Honorable Tribunal.

DIRECT EXAMINATION (Continued)

DR. SCHWARZ: Dr. Schwartz for the Defendant Jost. the defendant I would like to make a short statement. Evidently Jost was yesterday not in the position any longer to go on with his own case. I have already taken the liberty to put a request in, on the 9th of October, for a medical examination of the Defendant Jost. This request, however, referred to the state of healt of the Defendant Jost at an earlier date. The defendant now tells me that he is afraid he is no longer able to concentrate on his defense after a very short time to the extent which would be necessary to comply with the wishes of the Tribunal and to defend himself in his own case. be feasible to have the Defendant Jost examined, or at least to determine his state of health in order to establish whether he is in a position at the moment to go on with his defense. If the Tribunal believes that it cannot grant this request, I would like to ask the Tribunal to consider the state of health of the Defendant Jost and to bear it in mindin the further development of the defense.

THE PRESIDENT: There is no reason why a physical examination of the defendant may not be had.

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DR. SCHWARZ: I do not know, your Honor. As I said, I have made a request in writing on the 9th of October. This request has not yet been ruled on and has not yet been granted.

THE PRESIDENT: The Tribunal will immediately instruct the jail physician to conduct a physical examination of the defendant at the first opportunity. In the meantime we will proceed with the examination of the defendant, and there will be no disposition on the part of the Tribunal to cause him to testify in any manner which might in any way interfere with the normal processes of thinking and speaking. increase the tempo of his speaking that for a short while he did, and he seemed to speak very normally and responded quickly and acted as any normal person would. So there is nothing visible to this Tribunal which would suggest that the defendant is not able to conduct his defense here in open court. We will continue in the normal fashion and then perhaps at noontime we can have this physical examination conducted.

DR. SCHWARZ:Yes, your Honor. I appreciate the regard that the Tribunal showed yesterday for this defendant. I agree to the proposal of your Honor, and I shall proceed now with the direct examination of the defendant.

THE PRESIDENT: Very well, proceed. BY DR. SCHWARZ: conference with Heydrich. The last thing you said was that you had refused Heydrich's offer and that you gave him definite reasons which led you to this refusal. Will you proceed from this point? no longer in the position to fulfill the task which he had meant me to fulfill. These objections were rejected by Heydrich. He told me he had a very good reason why he had come to Riga. He wanted to prove to me that all disputes and difficulties we had had in former times had been forgotten, and he wanted to express thus that I had his confidence.

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As to my stating my case, the fact, for instance, that my state of health was not such that I would be able to fulfillthese tasks, he told me, "You are not going to be put in charge of any Einsatz tasks, but you will have the task of a commander, and as I am going to give these tasks to you, you will fulfill them." Further objections on my part he did not accept. After this dispute had taken place in this form for sometime, he came to the conclusion that if indeed I did not want to accept this task permanently, he would have to order me to take over this task temporarily until a definite successor would have been found. At the moment no such commander was at his disposal. I would have to do this for a fewweeks at least. Thus through my resistance I had accomplished that at least I would no definitely be appointed as a commander, or at least not permanently. these tasks, and what your assignment would be, what it would consist of?

A Heydrich said the following: "Your main or your only task will be to act as my representative, and that you should express to the Higher SS and Police Leader and especially to the Reich Commissar, that the Security Police and the SD are willing to collaborate closely with the civil administration. We want to be an integral part of the civil administration, engaged in building up its work, and the foundations are now being laid for a long time to come.

"Stahlegger" who was my predecessor, "has not been able to fulfillthis task. He only dealt with the Einsatzgruppe and the Army. These assignments are only of a temporary nature, and therefore they are no longer very important to me. The Kommandos of the Einsatzgruppen are practically only working for the Army, and they have no tasks in connection with the Security Police." Einsatzgruppe could not be taken over by another leader, because, as he said, there was no commander at his disposal at the moment.

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Naturally I had to report to the Chief of the Army Group and thus keep up contacts with the Army. The assignment itself would be carried out by the kommandos ashe had already said, and it would be carried out independently with agreement and approval of the Army. It would suffice if the senior leader in Krasnogvardeisk would deal with the few assignments which were still the tasks of the Einsatzgruppe. I told him that I did not want to have further conflicts with the Chief of Office IV, Mueller, and these conflicts would result if I took over this task. He answered, "I told you what your assignment is. The executive power is not your business but that is the task of the kommandos who are working as independent authorities with the General Command. They know their tasks and you do not have to bother with them. Furthermore, I forbid you any participation in partisan warfare or in any operation. I do not want to see a second case Stahlecker. I shall go to White Rutheniamyself in the near future. There I have to give my own directives, especially concerning Commissar Kruge."

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In fact, a few days before I had stated in front of witnesses, that I did not feel myself in a position to carry out such measures. I knew that this would be the only opportunity to express my attitude. If I became unfaithful, as it were, to myself, I would never have the opportunity again to express my opinion, and therefore I asked him whether the order could not be revoked for the Reich Commissariat Eastland. I added literally, I quote: "Obergruppenfuehere, you have known me now for the last eight years, and I would like to tell you that I cannot imagine myself carrying out such measures." time, was, "Perhaps we can consider a resettlement of the question." Whether he actually meant this or whether it was just an answer for the sake of an answer in order to make it easier for me to take over this task, I cannot decide today. In any case I believed this statement of his, and this statement was sufficient for me at the moment, even though of course, it meant in no way the revoking of the Fuehrer order; but I hoped that at least for the territories governed by the civil administration a different policy would be possible and prevailing conditions might be changed. Furthermore I was of the opinion, I was convinced in fact, that from many sides and authorities objections would be received against then Fuehrer order, for instance, on the part of the High Generals, or from other authoritative agencies within the Government, and also on the side of the church, of foreign powers, and by the bishops. I could not imagine that nothing would happen as a result. It was soon to be established, however, that my hope was unfounded.

Q Were not the decrees of the RSHA mentioned in this discussion? discuss a decree of the RSHA in Office IV which had just been received. It concerned the treatment of Estonians, Latvians and Lithuanians who were within the Reich authority for allocation of labor and who received special treatment on the part of the police. This decree was signed by Heydrich and was only valid for the Reich territory.

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It was only reported to the office, to the agency in the Eastern Territories. That is, it was not to be applied there, but one could have applies it analogously. The decree had been worked out very carefully and very conscientiously, and I attacked this decree, and I drew Heydrich's attention to the fact that this form of treatment was impossible. Heydrich's attention to the fact that this form of treatment was impossible. Heydrich at first pretended at least not to be able to remember this decree at the moment, although it was only a few days old, and he promised to change the decree according to my suggestions. The decree itself provided for severe punishment of the above-named people, but I do not remember at the moment the actual distirbution of the punishments and to which of the offenses these punishments were to be applied. The effect was that after ten days a second decree was issued which completely revoked the first decree, and thus any special treatment or inferiority status of the above-mentioned nationality groups or personal groups was revoked.

Q Witness, what assignemtn did Heydrich give you in this discussion? office buildings, rooms, different authorities, different relations to superiors, different tasks and assignments and responsibilities. These are the two offices of the Chief of Einsatzgruppe A with the Army Group North, and the other post was the Commander of the Security Police and the SD in the Reich Commissariat

Eastland. Both were in accordance with what had been discussed with Heydrich. were your assignemtns and tasks as its chief?

THE WITNESS: Your Honor, may I show this on the map?

THE PRESIDENT: Yes, indeed.

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A The northern front went in the following direction. North it went to St. Petersburg to approximately this point, South it went to point which I can't show exactly on the amp, because it doesn't list the necessary places. This was the front of the Army Group North. At this front, or, shall we say, behind this front, in the rear Army territory, there was the Einsatzgruppe A. That was the field of activities of Einsatzgruppe A. This was the territory which was bordered by the front in the East and in the West it was bordered by the civil administration territory. It went here and went to the west, where there was Estonia, which had teen under civil administration for the last few months, out it was still operational territory and to that extent this was under the responsible competence of the rear Army territory. In this Army territory there was an overlapping of Army and civil authority. In this territory was the Group Staff of Einsatzgruppe A. Here in Krasnogwardeisk was the Kommando of Krasnogwardeisk. The Group Staff and Commando of Krasnogwardeisk were practically one single unit. Another Kommando was here, immediately at the front, at Loknia; that was within the territory of the Operational theatre of the 16th Army. Up here in the North was the 18th Army and this was the 16th Army. Detachment Ia was responsible, which was stationed in Reval and was under the command of Sandberger. The assignments of the Detachment Krasnogwardeisk were at this time essentially counter-espionage and counter-sabotage, combatting Bolshevist activities of any kind, whatsoever, or counter-acting of enemy propaganda, and so on, and the third task -- and this was the main one - was by order of the Army to carry out intelligence missions about Leningrad and small partisan *ands in the vicinity. Fifth, to support field detachments in their security and administrative tasks.

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its original field of activities. For the last few months it had been at the front and had held a sector of about 30 to 40 kilometers and, of course, was mainly busy with this task and was therefore subordinated to the competent Army group since it had a combat assignment. Assignments as they had been originally planned in the Einsatz order were not being carried out by this particular detachment. The influence of the Einsatzgruppe itself or my own interest in this detachment was non-existent. chiefs concerning their authority and responsibilities, I may refer to the statements of the Defendant Ohlendorf concerning this point, which are valid just as much for this territory as for other territories. as a commander of the South Group within the Reich Commissariat Eastern Territories? which was administered which had been governed by a civil administration for months. That was the Reich Commissariat Eastland. The Reich Commissariat Eastland included the formerly independent Baltic States, Estonia, Lithuania, and Latvia, which had been independent until 1940 and then had been taken over by Russia in the well-known way and which in 1941 came under German domination.

These three countries are three entirely different ones. They are different people, different cultures, different languages and still these three countries have a certain unity and they come under the term

Staat Balticum. Added to this territory as a sort of an appendix there was the territory of White Ruthenia, which is not marked on this map, but which is about this territory. This is mainly former Russian territory with Russian, or rather White Ruthenian population. They are Slavs, who, however, in their looks and also in their language are somewhat different from the Russian population, therefore, the term, White Russian, or White Ruthenia.

This territory had no contact with the Baltic and had also no historical or organic connections of any kind with it. supreme official of the Reich. Subordinated to him personally was the Higher SS and Police Leaders who dealt with all police and SS matters. Under him, in turn, there was the Commander of the Regular Police and the Commander of the Security Police, who, in this case, was myself. These countries which were now called a General District were headed by a General Commissar, as the men who actually wielded power in these territories. He ruled his country according to the points of view and the requirements necessary for his particular territory. Lithuania was governed in a different manner than Estonia and Estonia, accordingly, was governed in a different manner from Latvia and White Ruthenia was governed in a different manner and regarded in a different light. their respective countries received directives from the Reich Minister for the Eastern Occupied countries. They received different orders, but he left a free hand to the individual commander and he did so because after all, they were different territories, different countries, which could not be governed in a uniform manner. question? Witness, what were your assignments as the Commander of the Security Police and the SD in the territory which you have just mentioned? by Heydrich, only a temporary leadership of the offices concerned. I had only to deal with administrative tasks for the time being.

Q Where was your office located?

AAccording to Heydrich's orders my office was in Riga.

wardeisk, the Group Staff? by you at the sane time? tasks to be modified and to order that the matters of the Einsatzgruppe should be taken charge of by the senior leader in Krasnogwardeisk, because the detachments collaborated very closely with the armies so that the activity of this representative was merely limited to maintaining communications with the armies. ties?

A The distances were large. The road conditions were bad. Communications of messages were difficult, as there was no teletyping possible, it was very much dependent on weather conditions.

Q Witness, what were the channels of command in the Einsatzgruppen? SS, the Chief of Police, from the Chief of the Security Police, from the Chief of the Army Group, and from the commander of the rear army area. commandos?

A The authorities which I have just mentioned could. Also the Einsatzgruppe itself or the Army or other military units to whom these Einsatzgruppen had been attached. of the SD and the Einsatzkommandos? tion, I had to obey orders of the Chief of the German Police and the Security Police, and of the Chief of the Security Police and SD, of the Higher SS and Police Leader, that is, the local commander and the Reich Commissar for the Eastland.

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and the SD have?

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were headed by the Commissar General, all SS and police matters were dealt with by a Police Commissar. Under this SS and Police Leader were, according to the organization in the Reich Commissariat, the Commander of the Regular Police and the Commander of the Security Police and the SD. These commanders of the SD and the Security Police could receive orders from the Reichsfuehrer himself, and the Chief of the German Police and the Chief of the Security Police and SD, individual agencies of the Reich Security main Office, the Commander in Chief of the Security Police, the General Commissar, the Higher Police and SS Leader or the Police and SS Leader. Einsatzgruppen within the Army territory and the Office of the Security Police and SD in the territory of the civil administration? kommandos to rule the Army rear area are known. I am not speaking about the special orders. The same applies to the territory under the civil administration. Here also our tasks consisted of detecting Communist activities in any shape whatsoever. In that respect one could speak of an identical task for both. But the difference is that the assignments in the operational theater were determined by the activity of the Army, While in the area under civil administration other requirements existed. Here the first thing is that the German government has to build up and install its administrative apparatus, because the countries, Estonia, Latvia, and Lithuania had their own independent governments and in the distribution of authority, there was a great difference between the individual countries. Furthermore in these territories the economy had to be re-built. According to this, the activity of the Security Police and the SD also had to do other tasks and with the reinstitution of the civil governments, the commanders were installed who thus become regular administrative officers within the civil administration; now they are no longer operational units which have been formed and established for a certain purpose and sphere.

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These commanders took over the tasks and assignments of the Criminal Police and tasks and assignment of Administrative Police and other regular police assignments. established which was set up in stages. In Lithuania, for instance, it was set up a little before it was established in Latvia, in Latvia before it was installed in Estonia. One could say that by autumn 1941 it was established.

THE PRESIDENT: Dr. Schwarz, the defendant is charged with certain crimes in the indictment, specifically as the Chief of Einsatzgruppe A, and is being called upon to answer for the executions which took place in the territory which he was governing. Now you have been giving us quite a detailed account of the administration of this area, of this land Is this all very appropriate and relevant to the defense? Do you intend to show that by what he is now describing, the defendant is not responsible to the charges in the indictment, or is this just general background.

DR. SCHWARZ: Your Honor, the statements of the defendant are basically necessary for the further defense of the defendant, or, at least, they are necessary as such, but they are also necessary and important for a few individual cases with which he had been charged by the prosecution. Furthermore, this particular point of the defense of the defendant will be concluded very shortly and after that he can be very much briefer.

THE PRESIDENT: Very well. Proceed.

A (Continued) With the beginning of the civil administration, with the establishment of the civil administration, the activities of the Einsatzgruppen were concluded in these territories, and Einsatzkommandos at the time when I took office were not active in the territory which was governed by civil administration, with the exception of the one which I had just mentioned, which was active in Estonia. There, there was a civil administration, as well as the military authority, which cooperate with each other.

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Referring to this, I wish to correct the No. 3 of my affidavit of the 20th of June, 1947. In my interrogations I repeatedly pointed out that units of the Einsatzgruppe A were not active in the territory just mentioned, but the interrogator maintained the contrary and eventually I became insecure and lacking the power of concentration I answered with this statement which you will find under No. 3.

MR. GLANCY: If it please the Tribunal, I believe that the defendant and the defense counsel have had ample opportunity while Mr. Wartenberg, the interrogator, was here to attack and to correct any phase of the affidavit which he wished. It seems it is a little late and a poor time to do so.

THE PRESIDENT: It is true that Defense Counsel had an opportunity to cross-examine Mr. Wartenberg, but the defendant also has the right to state his side of the case, so that objection is overruled. Proceed.

A (Continued) The same is valid for No. 5, which seems to be a typographical mistake. There it says, "It is known that during my time of office in Einsatzgruppe A," and it says "in" and it should say "with", because units of the Einsatzgruppe A, or kommandos of the Einsatzgruppe, as it becomes quite evident from the statements, could not have taken part in these activities. the Army? already been mentioned: on various occasions, it happened that the Kommandos, of course, were bound by the orders of the Army and had to obey orders of the Army, exactly as any other Army unit and they had to obey these orders and to comply with the wishes of the Army and nobody had any influence on the Army and its orders, orders which had existed for months. with Heydrich. What did you do after this discussion?

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a few days in order to settle some personal affairs in Berlin. After I returned, I reported through my local commander to my local chief, the Higher SS and Police Leader, Obergruppenfuehrer Jekeln. I told him about my discussion with Heydrich, especially about the fact that my activity would only be temporary and would not last. In this lengthy discussion, the subject of treatment of Jews was touched upon and I told him of the utternaces that Heydrich had made which had given me reason for optimism and from this optimistic mood which I was in, I stated the subject to him in a rather optimistic light.

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As I said before, on a former occasion I could speak to him openly and I believed that I could talk to him openly and frankly because this utterance on the part of Heydrich had given me the reason. In all frankness I expressed my opinion to him, opinion as to this question, and I made it quite clear to him that I regarded this Fuehrer Order as untenable, and that eventually one would arrive at the conclusion to change it or even to revoke it in some of the territories. This remark of mine was objected to by him, and he reproached Heydrich betterly and said, "Heydrich wants to sabotage the Fuehrer Order. The Security Police suffers from an excess of humanitarian feeling." And he told me that he would disregard entirely Heydrich's intentions. For him only the Fuehrer Order was valid, which would be carried out strictly by him, and in this connection the word "responsibility" was mentioned. He said that for him there was only one responsibility to carry out, regardless, any order which he had received. I objectwould perhaps have the possibility of finding out and perhaps would know about this. He would probably have had a reason for telling me that it might be revoked. All objections on my part met with no success, and Jekeln said that the Fuehrer Order would be valid for him until it was actually revoked. I told him in what form I had expressed myself as to this question in front of Heydrich. After I had achieved nothing in this matter, I discussed the situation of the position of the people who were forced to carry out this order personally, and I told him that these people would suffer severe psychologic al damage through this.

The question of this responsibility would have to be examined one day. His answer was, I quote: "I have thought and considered this very carefully, and if I catch somebody who objects to this or breaks down, then he will also be shot." At this moment it became clear to me in what position those were who were under Jekeln's subordination because, according to this, there could be no doubt as to the consequences for refusing to obey the order.

But even if such an order was carried out the SS man could still suffer a tragedy if he could not bear such responsibility. It was, therefore, of no avail, what he did. In this discussion the commander of the regular police was present, General Jadicke, and Administrative Counsel Alexander Landgraf. I had been made most insecure after this discussion, but I relied on the remarks that Heydrich had made to me. Jekeln himself gave no orders to me, and did not entrust me with any measures as far as the subject had been closed. But he did not tell me whether, and if, and where, he considered his orders of carrying through these measures. This discussion had taken place a few days after Easter.

Q What was your state of health at this time, witness? paralyzed. I had serious rheumatism in my joints, which was the result of this psychological state. Furthermore, my thyroid glands and my nerves were in a very serious state. This state of health had deteriorated within the course of the years throughout all these disputes with Heydrich and other leaders, and that was also the reason why I told Heydrich that I did not consider myself fit to carry out such tasks entrusted to me. The physician who treated me asked me to have myself relieved for long stretches from this work. Of course, I could not carry out all my offices due to my state of health.

Q In what way did you carry on your services? Kauen in order to visit the local commander.

Q What was the purpose and the result of this visit? study conditions in Lithuania. I wanted to meet the commander, and I wanted to establish what kind of personality he was. On this occasion I found out that the Jews who were still alive in Lithuania generally were still employed as far as they were fit to work. As tion was not its aim because, after all, a part of the Jews was to remain alive - that was for me the tragedy of it all - because the families were to be parted, and I do not know who of the victims would have to be pitied more.

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I could not overcome this thought and I could not pass on the order. After a few days I recognized that something had to be done, and I decided to visit Heydrich again and to make a last, though probably unsuccessful attempt to change his mind. Whether there would be a possibility to see him at all, I did not know, but I was going to try it in any case and I would at least succeed in being recalled, because he told me, after all, that I was to remain only for a few weeks. I asked to see Heydrich, but I did not get an appointment. I reported in the meantime to the 16th Army. I visited the commander of Loknia, I reported to the commander of Estonia, and I tried to find out about the state of the Jewish question because I thought at that time there were still Jews in existence. Here again I believed him, that it was my express wish that no measures of this kind were to be carried out in the future because I was still hopeful that another outcome might be possible.

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The discussion that I asked for with Heydrich took place on the Friday before Whitsuntide in 1942. In my whole life I have never had a more difficult interview. This was not only the most difficult one. When I visited him I had already been in the possession of the order for three weeks, without having passed it on, and now I, of course, had to face reproaches and charges. The reception Heydrich gave me was a freezing coldness. He did not even reply when I greeted him. There was no trace of the joviality with which he had received me two weekd earlier in Riga. The same cold relations had been reestablished. He did not pay attention to what I had to say. He looked into his files. He did not seem interested in anything I had to say. I told him about my report to the Chief of the Army Group about the relation between the Army and his agencies, but this did not seem to interest him. After I told him a few personnel matters I told him about the visit of Rosenberg in the Eastern territory. That was the first which aroused his interests. And then I told him of my visit in Kauen. And this opportunity I used to tell him that I had come to him because I was very, very worried, and I told him explicitly and in great details the psychological constitution of individual men whom I had gotten to know, in order to show him what effects these orders had on his men. For tactical reasons this appeared to be the only way to start discussing this particular subject because the care for his men was the only point about which he was sensitive. He was immediately willing to discuss this subject, and he immediately said that everything should be done for these men, that they must be able to go on furlough, and accommodations were to be arranged for them in the Black Forest. I told him that that was taken for granted. And I told him that ther could be no improvement in the psychological state of the men as long as these men were under this psychological pressure of these events, and that the events were not over, and that they would take place again. And there would be no cure as long as this would go on, if there would be a cure at all. I told him that this had gone on long enough, that the first thing was to take care of the persons who were in spiritual difficulties, and here, indeed, there was Spiritual distress, and that is what I wanted to tell him.

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With this explanation I wanted to put a weapon into his hands, and wanted to influence him, and wanted to tell him that thus he could do something himself, that he could change his order, and to recommend that Heydrich, being in a difficult position himself, and being bound by the Fuehrer Order--but if I wanted to achieve anything at all this seemed to me the only possible way in order to influence him and to cause him to taky any steps whatsoever. I believe that I can say that he was impressed by my statements. He did not say anything at all to start with, and he seemed to consider things very seriously. When I saw him in this mood I asked him about my new orders, whether I was to remain in Riga, and I reminded him that he had promised me that I should only have to stay a few weeks, whether he was not willing now to appoint a successor here and now.

THE PRESIDENT: Just a moment. "Successor." You said "Predecessor."

INTERPRETER: Yes, successor.

THE PRESIDENT: Dr. Schwarz, this might be a convenient time to have our recess. So the Tribunal will be in recess now for 15 minutes.

DR. SCHWARZ: I beg your pardon, your Honor, the answer to this question will only take one or two minutes. Would it be all right with the Tribunal if he would finish it.

THE PRESIDENT : By all means, continue.

A (By the witness) As soon as I mentioned this question of my transfer, his mood was changed. He got up from his chair and he said in a very severe voice, "Yes, I will talk to the Reichsfuehrer on your behalf. In 8 or 10 days you will leave your post and will be transferred to another office." In other words, - "You will be interested to know that also your friend Best, in Paris" -- he had been the former Chief of Office I in the Reich Security Main Office and had been relieved two years ago, and he was at that time the military administrative chief and he had the rank of a Major General. "Best also has asked to be trans ferred to another office and he will receive that, but he will not get what he wants.

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I shall see to it that he should serve as a simple private at the Eastern front. Thus we will see if he will ever return at all." for Best would also be my own fate, because this could not be interpreted otherwise. He gave some brief instructions to his adjutant about the successor, or at least reminded him to appoint a successor, and now this question had been concluded.

DR. SCHWARZ: Your Honor, this might be a good opportunity to recess.

THE PRESIDENT: I might ask a question. You said, witness, that when you asked for a successor that Heydrich's manner changed. You had told us that in the early part of the discussion he was very frigid. Do you understand by your explanation that he suddenly became more friendly or more frigid?

A (by the witness) He had received me in a very cool manner -that is, in a forbidding manner, but he became more interested when I told him about the Reich Minister Rosenberg who had visited the Eastern territory.

THE PRESIDENT: Yes, but I am only trying to understand what you meant when you said his manner changed -- did he become more cordial, or less cordial?

A (by the witness) Yes, but I told him about the spiritual distress of these people, and then he was in a rather soft mood again, and this caused him to get up from his chair and to become cold again, and forbidding; this melancholy mood had vanished within one second when he noticed that I wanted to leave all this.

THE PRESIDENT: Then he went through the Tropical zones...the Arctic Zone, the Temperate Zone, and then back again to the Arctic Zone?

A (By the witness) Yes, yes, your Honor.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

)A recess was taken)

THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER: Dr. Riediger for the defendant Haensch. Your Honor, may I ask you that the defendant Haensch be excused this afternoon because we want to prepare his defense.

THE PRESIDENT: The defendant Haensch will be excused this afternoon in accordance with the request of his counsel.

DR. FITCH: Dr. Fitch for the defendant Bieberstein. Your Honor, for the same reason I ask that my defendant be excused for this afternoon and tomorrow afternoon.

THE PRESIDENT: Tomorrow afternoon and not tomorrow morning?

DR. FITCH: Yes, only in the afternoon.

THE PRESIDENT: Yes, the defendant Bieberstein will be excused from attendance in court this afternoon and tomorrow afternoon in accordance with request of his counsel.

DR. MAYER: Dr. Mayer for the defendant Steimle. Your Honor, I ask that the defendant Steimle be excused tomorrow morning and tomorrow afternoon as well in order to prepare his defense.

THE PRESIDENT: The defendant Steimle will be excused from attendance in court all day tomorrow in accordance with the request of his counsel.

DR. MAYER: Thank you.

THE PRESIDENT: You may proceed.

DR. SCHWARZ: Thank you, Your Honor. BY DR. SCHWARZ:

Q. Witness, you talked about your discussion with Heydrich at the end, just before recess. After that were you transferred?

A. No. About five days after this discussion, Tuesday or Wednesday after Whitsumtide the attempt against the life of Heydrich occurred as a result of which he died a few days later. For that reason they now transferred me, and then from there I went to the troops, as I expected.

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Q. Did you try anything else to got your transfer through?

A. After Heydrich had been buried I reported to Himmler who temporarily took over the Security Police and the SD. He had not appointed a successor for Heydrich yet, but I was not received, and he informed me that I should return to Riga, I was to hear from him sometime.

Q. what was the result of the Heydrich order concerning you?

A. Heydrich was dead but the order still existed, of course, After his death I could not expect to be threatened to carry out this order, because of his death, but I did not know whether Office IV, Mueller or anybody else, might not threaten me to carry out this order.

THE PRESIDENT: What was the date of your last conversation with Heydrich?

THE WITNESS: The Friday before Whitsuntide.

THE PRESIDENT: Can you give us a calender date, because Whitsuntide changes, varies according to the year.

THE WITNESS: It should have been about the 22nd of May, if I remember correctly, and the attack on him was shortly after Whitsuntide.

THE PRESIDENT: Very well.

Q. (By Dr. Schwarz) Witness, you described to us how when you visited the kommandos you explained to the kommando leaders and asked them not to carry out the Fuehrer order for the time being. Now, what was your attitude to the officials in the other offices?

A. My attitude to the other officials concerning the order, I did not have to adopt any particular attitude, I only had to explain something to them in another respect. During a roll call of the office I pointed out that the Jew also has legal protection, his life, his property and his person, and this was wrong for that reason.

Q. Witness, did you or your office get similar orders like the Heydrich order?

A. Soon after I returned to Riga a leader of a kommando in Krasnogvardeisk, that is one of the Einsatzgruppe in the Army territory, said that an Army agency -- it might have been the corps in Krasnogvardeisk, but it might have been another agency, I can't remember exactly -- this agency had ordered him to liquidate the inmates of an insane asylum because the building was required as an Army billet.

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I asked this leader excitedly whether he had already done anything to that effect. He said no. I told him, "Go and report in my name, that I forbid the carrying out of this measure, and in future I will not allow such orders to be given. Should the person giving the order still retain this opinion I shall complain to the Chief of the Army Group immediately."

Q. What order did the kommando leader bring back?

A. After a few days it was reported to me, ver soon afterwards, that owing to my instructions and directives this measure had not been carried out. I heard no more about it after that.

Q. Your opinion concerning the liquidation of Jews, did you also express it to other people?

A. The end of July, beginning of August 1942, I was called to the Reich Commissar in Riga. He asked me what the Jewish situation was. He asked me how many Jews remained in the East. He wanted to discuss something with me. He said, "I would like to report to the Furhrer now that the Eastland has no Jews left." I was very surprised about this statement, and fearing a similar order I stated, "I cannot take the responsibility to carry out such measures, and I cannot expect it of myself or of the men under my command. Those who want to give the orders have to carry them out themselves. Jeckeln also knows my view." After this, my reply, there was a long silence until I said after sometime that such measures were not carried out. "Yes, I can imagine," was that reply, "that it is very difficult for those men." I had assumed then that the Army does not agree to carry out such measures because many of the Jews work in the Army plants. After a few meaningless words the discussion was thus closed. It is to prove the actual responsibility and in the interests of historical truth to state this here and to show the pressure under which each of these people was, and the more he was affected by the circumstances and the pressure of it, the lower his rank was because if a Reich Commissar could not do anything about such orders, surely some low-ranking Unter or Obersturmfuehrer of about twenty-five years of age cannot do anything either.

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But this discussion also proves that within this order not only the agencies of the Security Police and the SD were concerned, for this shows, as I have Said, the question of responsibility and shows it very clearly. For we personally the confirmation of these facts could be of disadvantage because I am convinced that my statement and the discussion will not be confirmed. Personally I don't care. At the time I did not care what reply I gave, and now I don't care. If a Reich Commissar had The courage at the time to state such an opinion, then I should state this opinion now as well. At the time I stated my opinion, and I repeat that my fate in immaterial to me in this connection, but for the sake of historical truth I have said this.

Q. Witness, was there any third party present during these discussions, or did you inform any third parties about the contents of this discussion?

A. Yes, after I returned to my office I informed my adjutant, and after returning to my apartment I informed the Commander Jadicke who happened to be in my apartment at the time. He was visiting me for some reason. I informed Jadicke about the discussion. He was surprised and said, "But you were quite right. I congratulate you. That takes a lot of courage."

Q. Who became Reydrich's successor?

A. No successor was appointed, but Himmler dealt with the official business.

Q. Did that improve or make your position worse?

A. This forced me to insist on my transfer to Himmler. This was difficult because one could hardly speak to Himmler. Since Heydrich's death I continously tried. I followed him to Reval and Tilsit without being able to reach him. I had him celled up continously. All attempts were in vain.

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But after this discussion with the Reich Commissar I now increased my efforts because of the pressure of the order under which I still stood and the possibility that this statement of mine towards the Reich Commissar be reported to Himmler or somebody. This was the reason to go to Himmler in a hurry. At the end of August I traveled to him without having been asked by him to go to him, and to visit him in his field command position. Although I had no appointment I was received by him.

Q. Will you give the Tribunal a short description of this discussion with Himmler?

A. Himmler received me without words.

THE PRESIDENT: Let us have the date.

A. (Continuing) 'Are you trying to tell us --' I said at the end of August, 23rd, 24th, 25th approximately, perhaps the 26th, that is the last third of August.

THE PRESIDENT: Between the 23rd and 26th of August?

THE WITNESS: Let's say between the 22nd and the 26th approximately.

THE PRESIDENT: Very well.

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A (continuing) Himmler received me with the words, "Are you trying to tell me that you had a row with Mueller, therefore you went back to this thing that had happened the year before?" I had not expected this and told him that that was not the reason why I had come to him, But he wanted to know what had happened between Mueller and myself. As I have tried to explain yesterday, I gave him a detailed. explanation of the development and the difference in the tasks that were in the Secret State Police and the Security Service, and during this discussion I tried to make it clear to him that owing to this difference in assignments, differences with Mueller had arisen, and that now it could not be certain that the SD could work successfully any more. I was repeatedly interrupted by him in this so that I was hardly able to give a continuous explanation. The remarks he made proved that he himself did not know anything about the differences in the tasks. He minimized the whole matter, of course, and showed his lack of interest in all these affairs. He concluded this discussion by exclaiming, "Are you trying to suggest to me that these tasks and these agencies have to be separated again?" I told him, "I consider it to be my duty, and I think I am authorized to make suggestions to that effect. I do not belong to the Reich Main Security Office any more. I only wanted to answer your question why these differences had arisen." He then replied, "Well, you are in Riga now, and everything is over there. You needn't bother about these questions any more." I now told him this was the very reason why I had come to him. I told him that Heydrich had only given me a temporary task in Riga, and owing to his death my transfer had not come about as it had been intended. I told him that it had been intended to put me into the Eastern Ministry, and now we discussed whether the tasks in the East were in my line. I told him at first it was only a matter of theory, but in the East one had to be practical. I said a definite sentence, and I talked about the executive problems which were difficult for the men, but I was interrupted and could not go on, and after that moment I hardly got a chance of talking again.

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I was asked, "Are you a philosopher? what is the meaning of this? What do you mean, problems? All that is concerned are our orders." I think I have to explain this to you. "I have given the Handshuhbefehl, the glove order." I beg your pardon, I have to explain this. Himmler had given an order that when a superior was greeted or saluted the glove had to be taken from the hand. In the Army it was the other way around, the glove had to remain on the hand. Himmler said, "I have given this glove order. There are many who believe they do not have to bother about such an order because they don't like it. Anyone whom I meet who does not follow this order and obeys it in the strictest manner, I shall punish him very severely and harshly, and even if the contents of the order are ever so ridiculous, the contents of the order don't matter, all that matters is that it is an order, and those who don't obey the glove order prove that they do not want to carry out orders of great importance. Orders cannot be discussed or debated. Orders have to be obeyed, and that principle you don't seem to have realized yet. What is your age?" he asked. I replied, "I was born in 1904". "Oh, you are one of those people who never had any military training. No one here can be an officer or a general who cannot obey, because those who don't obey orders cannot give orders either. I must think about how I can train you to do this." having the possibility of replying to it. After sometime, while he was making these statements, he interrupted himself and looked at me rather surprised, and looked at me questioningly. He said, "Tell me, it has been reported to me that you have been ill. You are said to have had a nervous breakdown, is that right?" I confirmed this and said that for sometime I was hardly able to work. This was the reason why he changed the subject and his mood and explained and asked me whether I had a good physician. He mentioned a Dr. Fahrenkampf of Munich and became very friendly.

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I was to be given in the Eastern Ministry. On this subject there was a general discussion during which he gave me some advice, what I should do if I should be put into the Eastern Administration sometime, and I could understand from this that he agreed to my transfer to this department. He did not make any difinite decision on the spot, but he sent me back, and as far as I remember, on the 2nd of September, 1942, that is about a week after this discussion, I received a teletype message which contained my transfer. generally? and I had no opportunity to have any personal relationship with him. This was the first opportunity to talk to him alone and at some length. The discussion took perhaps thirty to forty minutes. I had the possibility then to see him as a human being and to meet him personally, and the decisions I made on that occasion were not very favorable, although I realized that now my fate had been sealed, as far as that is concerned, because the criticism he used did not leave me any doubt. On the other hand, I was deeply moved because of the general spirit. That is that after that nothing could be changed in that order because one was not able even to discuss the order. The order was not explained. It was simply as order and one could not go beyond that. That was what overwhelmed me. In spite of all attempts I had made, nothing could be changed in principle.

I had kept back this Heydrich order. I talked to Heydrich twice and expressed my objection to the Reich Commissar. I tried to discuss the subject with Himmler, even if I was not able to discuss it properly. This did not change the order.

THE PRESIDENT: Proceed.

A (Continuing) Owing to my rank and my position I had the possibility to discuss it again perhaps. Of all these defendants I held the highest rank at the time.

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I was the Senior Chief in the RSHA. For that reason I had some possibility to do this.

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Himmler may have had consideration for me, owing to my bad health, but I wanted at least to talk about things other people could not discuss any more, but since I could not have this order cancelled and revoked, none of the defendants could have done so, not all of them together could have achieved this. could not be changed and that the individual cannot stop fate, even if he tries ever so hard. I could not know whether other people had also tried, whether they were successful.

THE PRESIDENT: Do you mean by that remark that it is impossible to change any circumstances, that everything is predestined beforehand?

THE WITNESS: No; that in this situation it was not possible for the individual to revoke this order, other people would have had to do this.

THE PRESIDENT: You use a very general phrase that one cannot change fate. If you intend to adhere to that doctrine, then these trials are of no importance and nothing can be achieved by way of intelligent inquiry into anything, that everything is predestined and moves along in accordance with a patterned design supernaturally.

THE WITNESS: I merely wanted to say that the individual who came under this order did not have the power or the opportunity to stop events; that stronger forces would have had to come to stop Hitler. That is what I tried to express.

THE PRESIDENT: You mean by those stronger forces, the Allies?

THE WITNESS : If necessary, that too.

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THE PRESIDENT: Very well.

Q (By Dr. Schwarz) Witness, have you finished answering this question?

Q Were executions carried out according to your oder?

Q How about the extermination of political opponents?

THE PRESIDENT: Which order do you refer to, Dr. Schwarz? You say, there are no executions following his order, which order?

DR. SCHWARZ: The Fuehrer Order as well as the order by Heydrich.

THE PRESIDENT: You asked him if any executions followed his order. I assume you mean the defendant's order, Jost's order. Now which order was that? Let's be specific. Let's have the date.

DR. SCHWARZ: Certainly, Your Honor. what I mean, is all orders which he issued based on the fuehrer Order and the order by Heydrich, the last one discussed, maybe orders he was given from the higher authorities, and as a result of which he gave orders. I asked him whether he gave orders on his own authority.

THE PRESIDENT: I want to know the date of Jost's order, not the Hitler Order nor the Heydrich order.

DR. SCHWARZ: My question, whether he himself had given the orders, the defendant answered with "no."

THE PRESIDENT: Repeat your question, please.

DR. SCHWARZ: Were any executions carried out on your order?

THE WITNESS: No, I did not give any order.

THE PRESIDENT: You were following his orders, the defendant's orders, and the defendant replies he gave no orders.

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DR. SCHWARZ: Well, I don't know about any order which he might have given.

THE PRESIDENTL Then he did not give an order?

DR. SCHWARZ: No, he did not give one. That is what his reply tells us.

THE PRESIDENT: Very well.

(By Dr. Schwarz) What about time question of the extermination of political opponents? the prosecution charges me, never took place. The reports prove that the Communists who endangered public security were interned. All internees and their position were examined. They were released, if there was no reason to keep them arrested any longer. Sometimes, however, numbers were released. In Riga on 1 May 1942 at my suggestion Communists were released who had not been charged with anything serious. Similar measures occured in Estonia. There too I made the suggestion. The commander himself had already previously followed his own decision and seen to it that a great number were released and some more people were going to be released.

Q Were you absent from your office a number of times?

A I was in Berlin four times: approximately, between the 2nd and 8th of April, between the 20th and 28th of May, between the 15th of June and the 13th of July. Apart from that, I was absent repeatedly when visiting other Army agencies, Army groups, visiting the rear army and inspecting detachments. deputy and your men in case you should be absent?

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any decisions of basic importance without first asking me. I could always be reached by telephone so that I should be informed about important events. your transfer. After you were transferred from Riga, what job were you given? and I was promised to become liaison officer with the Army group Caucasus Mountains, but I never took up this assignment, because negotiations between the Ministry East and the High Command of the Army took so long that by that time the Caucasus Mountains had been lost.

Q Did you get an assignment in the Ministry East? concerning the execution of Jews or to undertake anything in this respect? Rosenberg. After that I had a long personal discussion, not within his office, because he wanted to meet me personally. During a very long and general discussion affairs in the East were also discussed. He talked about his relationship with Himmler, which was very bad at the time. He also talked about the SS and here also he had all kinds of objection. In this connection I used the opportunity to mention the execution in the East and to explain to him, how very hard and difficult this order was, to individual SS men in the East that it would not be fair to make him responsible for these events. Responsibility is in the hands of him or those who gave the orders, and now I tried to explain to him that there must be some way to discuss this with the Fuehrer.

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Downcast he replied: "It is a Fuehrer Order. I can't do anything about it." "I have tried it," or something to the effect. In any case, he was very downcast. I then told him that carrying out such measures would have an effect for decades and would thus cause difficulties throughout the world; that the difficulties already in existence would be increased, and it would not really help at all. I briefly told him about my own attitude during my stay in the East, regarding this subject. That was definitely the last time I spoke on the Jewish question and discussed it with anyone who had some political importance. Of course, I did not state my personal opinion, but this discussion was the last one of all, because after that day, practically until the end of the war, I had no opportunity to discuss such things with anyone of any importance.

THE PRESIDENT: Witness, are we to unterstand from what you have just stated, that Rosenberg was sympathetic to the Jews and their plight?

THE WITNESS: Sympathized is far too much. He certainly did not do that, but I think I could understand him to the effect, that these measures were not quite to his liking.

THE PRESIDENT: Did he criticize the Fuehrer Order with regard to the execution of the Jews?

THE WITNESS: By "criticizing", I mean decided objecting. No, he did not do that.

THE PRESIDENT: Well, then, in effect, he had not opposed the order?

THE WITNESS: I understood it to that effect that he did not consider the shootings right and that he had already mentioned this, but he couldn't do anything about it.

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THE PRESIDENT: He did not than criticize the order?

THE WITNESS: By criticize I consider a stronger attitude.

THE PRESIDENT: Well, he spoke very unfavorably about the order.

THE WITNESS: Not about the order perhaps, but about the measures; that perhaps recognized it us a Fuerer Order, but he did not like the Actual measures.

THE PRESIDENT: But the order demanded the shooting, the execution, the killing of Jews. Did he speak unfavorably of that order?

THE WITNESS: He said "But it has been ordered; though I don't quite like it, either" or so something to that effect. That is, somehow he did not quite like it personally, but it just had been ordered.

THE PRESIDENT: Well, it was more a shrug of the shoulders than it was a criticism?

THE WITNESS: That is what I was trying to say when I stated by "criticism" I mean something rather to the effect of a stronger objection, a determinate, obvious attitude.

THE PRESIDENT: Very well.

Q. (By Dr. Schwarz) Witness, you explained to the Tribunal that your assignment in the Caucasus did not actually take place. Did you get Another assignment, and where?

A. The assignment in the Caucasus, as I already mentioned, never come into effect. They tried to give me another assignment, not within the SS, but Himmler also objected to this. As a surprise, instead of an assignment, in the Spring of 1943, I was asked to report as Unterscharfuehrer to the (SS Body Guards) the Leibstandarte at Charkow in Russia, and so without any training, or any medical examination, I was sent to the front at once. Himmler had give this order and I had not been given any reasons for my being drafted into the Army.

Q. What did you understand by this measure?

A. I presumed that this was the result of my discussion with Himmler, or that it happened owing to some other complaints thus giving the reason why this measure had been taken so all of a sudden.

Q. Were you actually drafted then?

A. No, this never actually took place, because at that time the Ministry East had just decided to send me to an Army Group after all, so that I managed to postpone this drafting for some time. In the summer of 1943, I became liaison officer with an Army Group definitely and started to work with Army Group A in Nikolajew at the end of October, 1943. From the day I left my office in Riga until that time I thus had not been doing anything for 13 months.

Q. How long were you active in the Army Group?

A. In the Army Group itself, I acted as a liaison officer between the Ministry East and this Army Group. But there was practically no work for me to do on neither side. The only assignment I was given was that the Field Marshall von Kleist sent me to Berlin in order to speak to Rosenberg about the military situation and to cause him to talk to the Fuehrer and to ask him in the west. Rosenberg said he was not competent to deal with such a question. At the end of February, 1944, the Deputy Higher SS and Police Leader in Nikolajew, Obergruppenfuehrer Hildebrandt, offered me to propose me as commander of the Security Police and the SD, although he was not competent to do so, because it was his opinion that my assignment in the Army Group was unsuitable and would not last, because there were no work at all for me there. Hildebrandt really wanted to help me in getting me into a reasonable position again. This suggestion, which was very favorable for me I rejected, because under no COURT II-A CASE IX circumstances did I want to go to the police and I did not went to be once more under Himmler's authority.

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And above all I by no means wanted to go back to an office, where I would risk to meet orders which I simply could not carry out. I gave reasons for my attitude, and I continued to reject this job. About this rejection and most likely about the reasons, a few days later, Hildebrandt made a report to Himmler. I was suddenly ordered to go back to Berlin and there at the end of March or the beginning of April, 1944, I suddenly received a Fuehrer Order that I was to join the Waffen-SS as Unterscharfuehrer.

Q. Witness, did you actually serve in the Waffen-SS.

A. Yes, I served as Underscharfuehrer until about the end of July 1944, but I was not able to carry out this duty. Owing to bad health I was sent to a mursing house. After that I remained at home until the end of the war.

Q. What significance did this assignment as Unterscharfuehrer have for you?

A. This drafting as Unterscharfuehrer, of course, took away my prestige, which I had according to my last position. It actually was a degradation, although it had not been formally stated as such, because I remained a Brigadefuehrer, a Major General. Through a circular to various high authorities of the SS and the Ministry of the Interior, the drafting which was to be valid until the end of the war was made known and had the denouncing effect which was wanted. On the 24th of April, 1945, I was taken prisoner by the Americans.

THE PRESIDENT: What is the equivalent Army rank to Unterscharfuehrer?

THE WITNESS: Corporal.

DR. SCHWARZ: Your Honor, I now come to the last set of questions which is the membership in criminal organizations.

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THE PRESIDENT: This might be a good point at which to suspend. The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 22 October 1947)

THE MARSHAL: The Tribunal is again in session.

DR. HOFFMAN (For the Defendant Nosske): Your Honor, I Would like to ask your permission to go back to a remark that was made yesterday on the occasion of the examination of the defendant Schulz. The execution of Poles was mentioned, and I was of the conviction that the translation mentioned hundreds of thousands of Poles. I do know the correctness and the consciousness of the Court, and I am quite sure that the Tribunal will clarify the matter. It was the document which had been submitted that was being discussed. I now took the liberty of referring to its literal text, as it had been submitted to the IMT. I have the document here. Literally of course, Himmler only talks about thousands of Poles, whereas the figure hundred thousand refers to people who were deported.

THE PRESIDENT: The decision of the International Military Tribunal speaks of the execution of Poles in a language which could allow the interpretation of hundreds of thousands. Hitler here is merely speaking of the thousand that had to be shot, He says thousands, then thousands, a hundred thousand. He does not include here those who were killed in the gas chambers. Do I understand, Dr. Hoffman, that it is your impression that the phrase "hundreds of thousands" is exaggerated, that there were not that many killed? Is that what I take your observation to be?

DR. HOFFMANN: Your Honor, I assumed that in consulting a document you will come back to this particular speech at Metz, which I have mentioned, and in this speech "hundred thousands" are being talked about who were deported and about thousands which were actually shot. If you have your knowledge, Your Honor, from other documents,where another picture comes into existence, in that case I do not want to express my attitude to you now, and that, of course, is not my task either; but I only thought that the contents of the speech in Metz, the impression created by this speech might prove to different, and this is why I come to speak of it once more Himmler's speech at Metz does not show that it was hundreds of thousands, but Himmler in.

Metz speaks only of thousands who were shot.

THE PRESIDENT: Yes, Dr, Hoffman, the equivocation results from your assumption that I was quoting from Himmler's speech. I was not. I was referring generally to the fact that from all the documents one can very easily conclude that hundreds of thousands of Poles were killed in Poland by the German forces and the decision of the IMT, I am rather confident, will bear out the correctness of that interpretation.

DR. HOFFMANN: I meant only from the point of view that your knowledge might be based on that particular speech in Metz, otherwise -

THE PRESIDENT: Yes, I thank you for your interest.

DR. ULMER (for the Defendant Six): Your Honor, yesterday the Defendant Six was excused for today. Defendant Six is not in the room at the moment. There is the possibility that the Jost's defense will be finished in the afternoon, and I do not want to prolong by not having, the Defendant Six really at the disposal of the Court. Would you, therefore, take care that perhaps during the interval the defendant Six will come up.

THE PRESIDENT: The Marshal will take care of that.

DR. SCHWARZ: Your Honor may I now proceed with the direct examination of the defendant? BY DR. SCHWARZ:

Q.- Witness, you are charged by the Prosecution to have been a member of organizations declared criminal. I have a few questions to put to you in this connection Was the SD, and therewith Office VI, a Counter Intelligence Service of the Gestapo?

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A.- Office VI in its organization, and especially in its field of tasks, as I have already explained yesterday when I talked about Office VI, was, as I said, independent; and therefore it was not a counter intelligence organization of the Secret State police.

Q.- Was your activity in Office VI any connection with the executive power?

A.- My task was mainly the supply of information from foreign countries.

Q.- How did it come about that you joined the SS?

A.- In Summer 1934 I entered the SD. Therefore, I became a member of the SD and it was thus I became an SS leader for the subsidiary organization of the SD.

Q.- Were you a member of the General SS?

A.- No, only a member of the SD.

Q.- Were you an honorary SS leader?

A.- No, I was a major general, I got the salary of an official.

Q.- Did you carry out any activity in the SS, apart from that?

A.- Not in the SD, not in the armed SS, the Waffen-SS.

DR. SCHWARZ: Your Honor, I have now concluded my direct examination of the defendant, and I would now like to begin to submit, and to discuss the documents which concern the Defendant Jost as charged by the Prosecution.

THE PRESIDENT: You will refer to the documents introduced by the Prosecution?

DR, SCHWARZ: Yes, Your Honor.

THE PRESIDENT: You may proceed. NY DR. SCHWARZ:

Q.- Witness, I shall now show you Document Book I, page 23; it is Exhibit 5, Document 2890. It is the affidavit of Ohlendorf, of the 24th of April 1947.

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THE PRESIDENT: Before the Witness answers that question, I would like to clarify a little matter that was brought up by Dr. Hoffmann. Dr. Hoffman, I want to call to your attention the text which I had in ind when I used the phrase "hundreds of thousands", and I think you will agree that I was justified in the use of that phrase when you hear what the IMT said in connection with the program of the German forces in Poland. The IMT describes the wholesale liquidations of poles, and then ends up this way:

"So successfully did the Germans carry out this polity in Poland that by the end of the war one-third of the population had been killed and the whole of the country devastated." Will you agree with me that one-third of the entire population of Poland would far exceed the phrase of "hundreds of thousands"?

DR. HOFFMANN: Unfortunately, I have to agree with this. Your Honor.

THE PRESIDENT: Very well; thank you. BY DR. SCHWARZ:

Q.- Witness, I ask you, in accordance with this document, were you ever personally used for assignments of the kind mentioned in this document? in this particular document. During the time of my activity there were no major operations in the war theater, and as a consequence there were no large numbers of prisoners of war; there was, therefore, no reason to act according to this order. I was not, in any case, ever asked for a decision in this matter.

Q. Witness, in Document Book I which is before you, will you please go to page 31, - I do not know the English page number I am afraid - it is page 20, it is Exhibit 7, English page 21, No. 4134. This is Operation Report 126 of the 29th of October 1941-

DR. BERGOLD: Your Honor, I must ask you to excuse my being here without a robe*on. I just come from Room 51. My defendant is at the disposal of another Court, and by mistake, he has been led to this room, I am afraid. I would, therefore, like your Honor to repeat you order that the defendant Biberstein should be put at my disposal in room 57.

THE PRESIDENT: Have we not excused him?

DR. BERGOLD: No, my colleague Dr. Ficht has informed your Honor that the defendant Biberstein should also be in Room 57 this afternoon, and your Honor was kind enough to pass the order that that could be done. But apparently the prison was not informed of this.

THE PRESIDENT: I see. We Seem to be having some difficulty with the identification of defendants. Did they by chance send some other defendant to room 57, instead of Biberstein?

DR. BERGOLDL: Yes.

DR. RIEDIGER (for defendant Haensch): The same is true in the case of Haensch. Your Honor was kind enough to have the defendant excused this afternoon, and the same happened to this defendant. He is not in room 57, in fact, but is here. But nobody else was Sent down either. But the order which was issued by Your Honor this morning has not been received by the prison.

THE PRESIDENT: Well, at least we have made this progress - that we didn't send the wrong person there. You remember a week ago they sent the Defendant Blobel, who COURT II-A CASE IX should be very easy to distinguish because of his board, instead of somebody else.

At any rate, The Marshal is instructed to have the Defendants Biberstein and Haensch conducted to room 57.

DR. BERGOLD: Thank you.

DR. SCHWARZ: Your Honor, I refer to Document 1, German page 1, Exhibit 7, Document No-4134.
BY DR. SCHWARZ:

Q. Witness, what have you got to say about this document? It is English page 27.

A. This document is meant to prove that the territory of assignment of the Einsatzgruppe 3, which was subordinated to Einsatzgruppe A, around the towns Baranowice and Minsk, that this Einsatzgruppe in fact was stationed in this territory of white Ruthenia. This report is of the 29th of October 1941, is no longer competent, during the time which was only half a year later, of course, Einsatzgruppe A, after a civil administration had been created was no longer responsible for this territory. Therefore, I gave this detailed description this morning concerning the difference between the Army sector and the civilian administrative Sector.

Q. Witness, I shall show you now Document Book III-A, German page 1, English page 1, and it is Exhibit 99, Document 4151. It is your affidavit of 27 June 1947. Would you tell the Tribunal any corrections you might have to make in this affidavit?

A. Concerning number 3 of this affidavit I have already given my opinion, this morning I stated the incorrectness which is that in the countries of Latvia and Lithuania there was no Einsatzkommando of that time. I also expressed myself to this effect in forming interrogations, and I said that only for Estonia with The Special Commando I-A, this COURT II-A CASE IX was still the case.

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In spite of this it was taken into the affidavit according to the old drafting, and it was signed by me, as evidently I was in a state of lack of concentration and, therefore, unable, to contradict and to correct the statement. It is obvious that the detachment Loknia although it was mentioned priviously on various occasions, was not mentioned here, and was not taken into the affidavit.

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Q: Will you also comment upon number four of the affidavit?

A: I have done so this this morning by speaking about the individual offices in Lithuania, and Latvia, and also in Estonia, I said that I took measures for the territory of the Einsatzgruppe-A, but no special decrees and of requests of this kind were necessary because in this territory there were no Jews, and, therefore, this particular order was not applied in those territories. My worry was mainly those territories where there were Jews. Heydrich had announced his visit in White Ruthenia, and by the beginning or the end of May he had actually come there, without notifying me of this visit of his, without having me accompany him, and without giving me any detail and any information about his visit afterwards.

Q: Will you please go to page No. 74 in the Document Book III-A, which is the front of you; it is the English page 53. It is Exhibit No. 100, Document NO-3256. This document concerns the operational report in USSR, and, is No. 191 of 10 August 1942 -- 10 April 1942. You are named here as the leader if Einsatzgruppe-A, and the commander-in-chief of the group, Eastern Territories. What have you got to say about these?

A: This document quite obviously reports that as independent agencies next to each other there are on the one hand the police commissioner, and the SD Service for Eastern Territories, and on the other hand there are commanders of the Security Police and SD, Eastern Territories, in the individual general district, and apart from this there is Einsatzgruppe-A as a special unit, which has nothing to do with the individual offices, and agencies which I just mentioned.

Q: Witness, do you want to conclude anything from this state of affairs, something concerning your own activities?

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A: I clarified the point this morning by saying that the working of these two channels of command were different with these two agencies. In the general district the man who was locally responsible for SS and Police matters was the SS and Police Leader, and his chief was the commissar-general, the holder of the actual executive power for this territory. By this method the executive power of a commander is basically curtailed, and in my case there was a special curtailment due to Heydrich's special modification.

Q: Witness, please go to page 6 in the German text, III-A, English page 3, Exhibit No, 101, Document NO-USSR-41. This document shows that allegedly on 14 April 1944 -- 43 -42, it mentioned insane people were murdered. What do you have to say about that?

A: As this document concerns an event which happened in Riga, it is outside my field of command or the field of command of my Einsatzgruppe, and these units could not have taken part in this event. The document itself is a letter of the commander of the Security Police of Latvia, and it is addressed to the inhabitants Registration Office, in Riga, and, although it is addressed to this authority, this document was not found at that place, but it was found in the office of the sender. If it is to be regarded as an original document, it should have arrived at the adressee and not only the sender should have held it. So far as the content matter of the letter is concerned, I must say that it has not been known to me before, and was not known to me afterwards, if it had. I would have prevented the carrying out of those measures. If I had known of this measure, I also would have prevented the carrying out of it in Krasnogwardoisk. The document, however, is no proof of any kind that the shooting was actually carriedout by the authority concerned.

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That was an order of which it is absolutely possible that it was issued by another agency, or that the carrying out was done by another agency. or, it was carried out by whoever gave the commander the order to make out this document.

Q: Witness, I shall now show you Document Book II-A, German page 147, English page, so far as I know. 133. It is Exhibit No. 56, Document NO-3277, of 24 April 1942. This document has been submitted only in excerpts by the Prosecution, therefore, I am showing you the photostat of this document, the contents of which I am referring to here. On page 19 of the document it says, amongst other things, "In the period of reporting 1272 people were executed." Will you please comment upon this?

A: The operation period of reporting only becomes understandable when reading the entire report. The time of report does not refer to the date given by the RSHA. 24/4/42 because as far as the Reich Security Main Office is concerned there was no period of reporting, but the period of reporting can only refer to the report of the offices of the agency who has drafted this report. This can be recognized if you only look at pages 2 to 18 of this report. From these pages 2 to 18 it becomes evident that it is not a report of Einsatzgruppe A, but it is a monthly situational reports of the commander of the commander of the Security Police and SD in Latvia. On page 2 of the report, the general security in Latvia is being dealt with, and it speaks about newspaper publications of 9 March 1942; on page 14 there is a date, 26 April 1942. on page 13 there are agricultural matters, there is another mention of '42; on page 14, that is the order of 1 March 1942, containing slaughtering restrictions. In the report about the position of the work of the security Service, on page 15, the events of 19 march, and of 21 March 1942 are being discussed.

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Page 21, mentions the arrest of a prison supervisor, on 26 March. On the same page there is another report, this time of 24 March 1942, and page 17, finally contains the date, 10 March 1942; here a hand grenade attack is being described. The report was not received and not compiled by the general sector of the Einsatzgruppe; it is evidently an independent report by the commander to Berlin, the commander had the authority to write such reports. These reports had to be filed by the end of each month. It is evident that this is a monthly report for the month of March. After the date, 23 March, there is no other mentioning of any date, so that this report can be regarded as concluded. The events are therefore of a time before I took over the office.

Q: When did you take over this office?

A: On 29 March 1942 -- yes, '42.

Q: Were the figures mentioned on page 8 of this document new to you?

A: They concerned the establishment of the Latvia office of information.

Q: That is page 67. Public information.

A: You mean , page 68?

Q: Yes, it is page 68, the Question itself is found on the preceding page.

A: Yes, it is II- A, 162 -- page 182.

Q: I shall repeat this question later on. In the Document Book in front of you, II-A that is, will you please turn to page 142, it is English page 128, Exhibit No. 55, Document No. 3281 of 17 April 1942. It is operational report USSR-193, 17 April 1942, what have you to say to this?

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A: Basically, I have to say that this report was on *ithuania riots, dealing therefore, with a territory which was not within the command of the Einsatzgruppe. Events are being described therein which are proved to have taken place in the former Polish territories. Perwons were arrested and shot because of communist activities, and on account of maintaining relation to partisans. It has been established that

** was not just a mass execution, but executions carried out *ter the guilt of the people of Olita had been established. They were persons who were executed on account of endangering public security, and therefore the local commander was authorized to take these measures. They, the commander, can act independently, and they need no special order or authority to carry out such a mission.

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Q. Did you hear about these events immediately after they took place?

A. I cannot remember.

Q. I now show you -

THE PRESIDENT: Dr. Schwarz, before you go to the next document, please, I would like to ask a question.

Q. Witness, if you had received this report, as you have read it, you would have approved it, and concluded that the officials who conducted the executions had acted properly?

A. That I cannot say just from reading and looking at a report of this kind, but the independent duties transferred to the individual offices, and the restrictions issued to me not to carry out and not bother about executive measures would not have made possible as investigation of the individual cases.

Q. I gather from what you said, that since these executions were conducted only because of security reasons, that, therefore, they were justified?

A. If a report of the reasons of an arrest and justification thereof has been received, and, even if not only just a group of persons are being punished, but a group of these individuals are proved to be guilty of relations with partisans, and to be in active contact with such, if such matters are revealed, then - -

Q. Then the execution is justified?

A. According to the orders by the OKW and as given by the OKW people in contact with partisans, or partisans themselves, Whether volunteers or a forced partisans had to be shot if such guilt had been proved.

Q. Very well, you have justified this shooting by reading one sentence in this report, but you did not read the following sentence which contains, "The same day 22 persons among them 14 Jews who purportedly had spread Communist propaganda very recently were shot in Kauen."

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A. Yes, that is on page 2 of the text in the document; it stops just here, and it goes on with the second page. That is the second part of the report.

Q. Well, I assume that you had been looking at the entire document, and have given us your observation of that document?

A. Yes.

Q. And we assume from what you had said that because it appeared in the report the report the executions were justified, and you gave quite a lay reason why you thought they were justified. Now I ask you, would it be justifiable to shoot 14 Jews only because it was assumed or was of purported that they had spread Communistic propaganda?

A. In the report it is: "Those who are proved guilty after they had been suspected." They proved to be guilty; it is not Just assumed, and not only because they belonged to a race.

Q. I, of course, do not nave the German text before me, and even if I did, I would not understand it. I would like to have you read from the German, and that is will be interpreted for us that sentence which begins, "The same day 22 persons, among them," and so on. Please read that sentence as you find it there. Read it slowly.

A. "On the same day in Kauen 22 persons of these 14 Jews who purportedly had spread Communistic propaganda very recently."

Q. Yes.

A. "Were shot in Kauen."

Q. Yes, the translation as it came to us now agrees with the translation of the document as it appears in the book.

These 14 Jews were only suspected of having spread this Communist propaganda, and it was assumed, it Was said, that they had spread it. There is no indication in the report that it was established and proved that they had spread the Communistic propaganda?

DR. SCHWARZ: Mr. President, Your Honor, I beg your pardon - -

THE PRESIDENT: Yes.

DR. SCHWARZ: I must agree here with the defendant that the term "purportedly", according to German usage, expresses enough for the authorities to carry out these executions.

THE PRESIDENT: Dr. Schwarz, it all depends upon the translation of the word "purportedly." The work "purportedly' in English is a long distance from the word "To prove". Now I don't know how many kilometers it is away in Germany, but it is many miles away in English.

DR. SCHWARZ: If I may draw your attention to the fact, Your Honor, that the German word "Nachweislich" has been translated into English, and perhaps there is a mistake here, and the whole picture becomes distorted, and you get a distorted view.

THE PRESIDENT: What is the German word in the document?

DR. SCHWARZ: "Nachweislich". I beg your pardon, Your Honor. I am just being told that the word "nachweislich," should be translated by "approved", and I believe the English word "approved" actually expresses what I mean by the German word "nachweislich".

THE PRESIDENT: Of course, if the word in English were "proved" instead of "purportedly" then that would bear out what you have said.

THE INTERPRETER: Your Honor, there is a mistrans lation in the document.

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When you asked the defendant to read the document book, I read from the English version.

THE PRESIDENT: Yes.

THE INTERPRETER: So it is a mistranslation.

THE PRESIDENT: Would you say then that translated literally, the word should be "proved" instead of "purportedly"?

THE INTERPRETER: Definitely.

THE PRESIDENT: Very well that correction will be noted in the document. We can assume then that this document says: "That 14 Jews had circulated Communistic propaganda and because of that they were shot."

THE WITNESS: Yes.

THE PRESIDENT: Very well, I take it, witness, that you assume that to have been a correct procedure?

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THE WITNESS: This manner of acting without the individual happinings of the event, today, after five and a half years, can no longer be looked upon in its proper light. It is Just a report.

THE PRESIDENT: I asked you directly: do you regard it proper, militarily proper, to shoot fourteen people, or only one person for that matter, because he spread Communist propaganda?

THE WITNESS: According to my orders these measures had to be carried out. In that far it was correct and justified.

THE PRESIDENT: Very well.

DR. SCHWARZ: Your Honor, may I then proceed in submitting the documents?

THE PRESIDENT: Please do. BY DR. SCHWARZ: No. 92; English 66. It is Exhibit 109. It is Document No. 3256. It is an operational duty report, U.S.S.R., No. 186, of the 27th of March, 1942. On Page 1 of this document where the Einsatzgruppe A is mentioned, in the place of the name of the leader of the Einsatzgruppe, there is a remark in brackets; it says, "Handwritten," and then "illegible". I ask you now if at this date - I beg your pardon, at the date of the original document, your name could have appeared as that of the leader of the Einsatzgruppe. of a report - when I myself had not taken over the post as leader of the Kommando, but it can be assumed, as I said, that on the 27th of March the authority who issued this report in Berlin, already knew of my appointment, because this was actually made known two or three days before. It is, therefore, possible that my name appears as a handwritten remakr there, although I had not actually taken over the office yet. But apart from this, the events mentioned in this document are so far back that they must have happened long before I actually took over my office, apart from the fact that, again, they were outside the territory under the command of Einsatzgruppe A. fact that in the opening speech of the Prosecution, which I have here, on Page 18 of the German document, the Einsatzgruppe A is being spoken about, and in the last paragraph on this page - this is on the 27th of March, 1942, - it says, "The Defendant Jost was in charge of Einsatzgruppe A when they reported that in Tscherven 15,000 Jews were shot.

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I understood you correctly if I assume that this event was before the time at which you began your service with Einsatzgruppe A? report was compiled on the 27th of March in Berlin at a date when I myself had not started yet taking over matters of the Einsatzgruppe, but even if I had done so at that date, on the 27th of March, the mentioned events are far back, in fact weeks, and certainly long before I took over. you were already in command of the Einsatzgruppe? ings in Tscherven?

DR. SCHWARZ: Your Honor, I have now arrived at the conclusion of the direct examination of the Defendant Jost.

THE PRESIDENT: The Tribuanl will be in recess for the usual afternoon recess, and then defense counsel will have an opportunity to cross-examine the witness.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session. BY DR. MANDRY (Attorney for defendant Sandberger): March, 1942, until the beginning of September, 1942, Sandberger was your subordinate. What impression did you have of him, and his character, and his interests? What impression did you gain through these five months?

A In the year 1940 I met Sandberger in Berlin. On that occasion I talked to him for about five minutes. I saw him again in Larch 1942 and now I had an opportunity to talk to him repeatedly and on those occasions, of course, I got to know him better. His attitude was correct and well mannered. He was a man who tried in such difficult times and in such a territory to deal with his task in a manner which certainly one could not describe it as being a policy of tyranny. On the contrary, Sandberger certainly was not a friend of harsh and severe measures. the Security police?

A We might explain it in such a way: His interests were firstly political. He was interested in the territory he was working in, that is the Estonian territory, as a political problem. His interests in police matters were of minor importance. He was neither trained for police work; and this was not his sphere of interests. people?

AAs I heard repeatedly from him, Sandberger's opinion and attitude was that the Estonian people should become politically independent as far as possible, and the manner in which he dealt with Estonians, the way he dealt with the Estonian indigeneous government officials and Police officers, especially with officers of the Security Police and asked them to cooperate with him and how he supported their independence and always tried to form them into an Estonian unit, who could work independently.

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of Communists, in particular, Communists who were charged with union offences. I should like to know if you would tell us. about Sandberger's general attitude in Security Police measures against Communists. Communists charged with minor offenses could be released from captivity. On that occasion, he told me that in Estonia this had happened previously, a few months before individuals were released continuously; and that on some holiday it had been achieved that a greater number should be released. However, he added that these measures were not approved by the national Estonian circles, who did not like anything that was connected with Bolchevism and they were not enthusiastic about it, because the Estonian people made the Communists responsible for all that had happened in Estonia in 1940 and 1941. Many of the Communists who had been released were again arrested, because they immediately became active again, and, therefore, the Estonian authorities and the German authorities had new trouble to trace them.

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Estonia, or bad conditions calmed down? operational territory. Of course, they always tried to develop Communist activity in his territory. Small groups of partisans or parachutists and agents who came down by parachute were active and for that reason something was always going on. In any case the territory was endangered. collective measures against Communists, whether he ordered such measures, or whether he approved of them? and I can't imagine it, knowing Sandberger personally, but I do know that he had set up a very complicated channel of procedure in order to examine each individual Communist. This was also done with the strongest cooperation of the Estonian Security Police, because this authority knew the Estonians best and had to deal with the entire problem of the Communists in Estonia and also the individuals and could judge best. In general, some Estonian Police agency took such reports and sent them on to some superior agency where they were examined, I presume, and in the end in Reval, in a central office, they were again examined very thoroughly and here Sandberger has set up a commission to deal with the final examination, containing three lawyers or officers who examined the matter again. There, orders could be refuted, if not sufficient proof was given, or a decision was then confirmed by Sandberger's office. It was a very thorough system and certainly a very individual system. towards the Fuehrer Order concerning the extermination of the Jews.

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Did you also discuss this with Sandberger? Did you discuss this Jewish question with him and what opinion did Sandberger hold on the problem, as far as you remember? Sandberger considered this order to be impracticable and that his whole attitude expressed this, even if he is not a man who talked a lot and criticized measures strongly or discussed it a lot, but it had been expressed quite clearly that he disapproved. passive person, concerning the Jewish question and the extermination of Jews? be described as passive, although that is an expression which is not correct and suitable here, because it was more than just being passive. What he expressed was a real objection. Estonia, you had the wrong view that in Estonia there were Jews who were concerned with the extermination decree. What did Sandberger tell you about the existence of Jews and executions that he had carried out? What did he tell you about this ? were left. That from the very beginning there had been very few Jews, whose greater part, when the Russians left, had left as well. Part of these Jews at the immediate direction from Riga without his cooperation had been gotten rid of. having caused executions of Jews? was done without his assistance and done during his absence and his knowledge.

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About details I did not ask him.

Q You told us before, owing to Sandberger's attitude, it can be shown that he objected to the extermination of the Jews. Your predecessor was Stahlecker. Do you know about his views about the necessity of carrying out the Fuehrer Order concerning the extermination of Jews, do you know anything about that? Stahlecker and did not see him. I therefore did not have the opportunity to hear his personal opinion to this question but I had known Sthalecker previously for years and I do know that he was very ambitious and I know that he did everything in order to follow his ambitions. Therefore, I can imagine that an open objection, that means objecting to carrying out orders, he would never have tolerated. It was not his way to act in a very harsh manner himself, that is to take measures himself on the spot, but he would have made a report for the competent court which would have had the appropriate consequences.

Q Who was your legal chief? Jeckeln. the practice of war, he tried to attain through the SS and his idea about the jurisdiction of the time when you were with Jeckeln? Can you give us some examples about this? man who was very hard indeed, but also he was hard and strict to himself. What he expected of a subordiante he expected of himself too. In the same way as his own views were very strict, this was expressed in his measures, of course. I remember that during the summer months of 1942 he was in charge of a combat unit near Leningrad, temporarily.

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Two volunteer officers of this combat unit -- did I say Estionian officers? -- had taken an unofficial leave, and left for a short period of time, about twenty-four hours and had travelled to Estonia. Jeckeln was informed about this or he somehow discovered this. They were out before a courtmartial immediately. They were condemned to death. The sentence was confirmed by Jeckeln. The harshness shown in the measure proves how Jeckeln dealt in such cases. Jeckeln? already explained this morning: that he was prepared to have shot SS men whose nerves could not stand the strain.

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That proves his harshness towards his subordinates. This court-martial against officers also proves this. But how in his personal sphere, down to the bitter and he could be so, is shown by the fact that even one of his own children, which was not quite sane, he had killed -- that is, he used Euthanasia. That proves how hard this man was. took a hand in Sandberger's sphere of duty?

A Yes. In Sandberger's sphere, that is, Einsatzkommando 1-A. There Jeckeln discovered some Jews who lived in a barrack gathered there. He immediately ordered that they should be dealt with. Sandberger himself only heard about this afterwards, of course, because he was in Breskaw. option could he have done anything against it, in order to lay that his subordinate took a hand in this sphere? because the High SS and Police leader had all the authority. In this individual case it was not possible, in particular, because Jeckeln's personality as Obergruppenfuehrer certainly did not want any instructions given by people of lower rank. did you tell the interrogating officer about the fact, in how far Sandberger ordered executions of Jews? time Sandberger certainly did not carry out any such measures, and he had told me that in the previous time he had not carried out, or ordered, or caused, such measures to be taken. way Sandberger made his reports, and did you get to know it.

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some offices, when Sandberger told a co-worker who had to make a report, and criticized him very sharply. He criticized the contents of the report, as well as its style, constantly. I stayed in the room for some time and I think Sandberger did not even see me. In any case, on that occasion I should see that he was very thorough and very conscientious about these reports.

DR. MANDRY: I have no further questions, your Honor.

THE PRESIDENT: Any other defense counsel? BY DR. MINZFELT, Assistant to Dr. Gick, for the defendant Strauch: the way the civilian administration was set up for the Eastern territory. Will you please repeat when the civilian administration was set up in Latvia?

A I don't exactly know the date and the month, because, as I said, the civilian administration was set up in stages administration must have been set up. civilian administration had already been set up, was he sent there as a commander of the Security Police and of the SD, or as Einsatzkommando chief? had been set up, the Commando agencies had been set up; and if he had an immediate order for Latvia, he must have been ordered there as a commander. being set up, where was Einsatzkommando 2?

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A I can't say that because the Einsatzkommandos in their entirety or in part had moved on to the front with the Army. previous replies, that Einsatzkommando 2 already was far away from the civilian administration in Latvia, that is, from Riga, and had moved to the front. at the time? Commando. 2 could be commanded from Riga? made up from this Commando, had the headquarters in the Army territory, owing to the distance it was hardly possible to command both units at the same time. Einsatzkommando 2 at the time when the Commando chief's position was taken over in Riga by Strauch Einsatzkommando 2 was near Krasnowardeisk; if it was near this locality, could Strauch's Einsatzkommando be commanded from Riga? Krasnowardeisk -- I don't know whether it was, it is possible -- I do not see any possibility how these two agencies could be commanded by one person only. Theoretically, it can be imagined; but practically, there would be no sense to it. leaders of Einsatzkommando 2 during, or before, your time?

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constituted the Commando Loknia later on - I think it must have been like that - in that case, in Loknia there was Sturmbannfuehrer Dr. Bloetz, before my time; and during my time, Sturmbannfuehrer Kober. How it was before my time, I don't know, of course, provided that Einsatzkommando 2 later constituted Einsatzkommando Loknia. the Office of the Commander with the Security Police and the SD, and an Einsatzkommando.

A I have already done it this morning. The Einsatzkommando is a military unit connected with the army; the Commander of the Security Police and the SD, when the civilian administration has been set up, does not constitute a special unit but a proper authority. General Districts, were there any executions carried out? submitted -- of which I don't remember the number -- and there executions in

Latvia were mentioned. Those were executions because of Communist propaganda, sabotage and similar things -- that is, if actual facts were proved, executions were carried out. you remember, and did you hear about, mass executions? to that effect. and the SD also carry out partisan measures, or rather, anti-partisan measures?

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partisan problem as well, of course, and it was their job to make reconnaissance. The actual combatting of partisans was up to Army and Police troops. During reconnaissance, of course, occasional fighting took place, but that was not the idea. of March 1942 you met Strauch in Riga and talked with him there?

A That is right. At the beginning of March 1942 I saw him in Riga. that time when you met him there?

A Because I saw him; and I believe at the time I exchanged gasoline coupons because in the Reich territories different gasoline coupons were valid than in Eastern territories. Department III of the Command in Riga, and he worked there? the Commander of the Security Police and the SD, and there in Department III, that is, the SD Department.

Q Department IIId. Did Strauch tell you at the time that he would have to go to Minsk soon in order to take the position of the Commander of White Ruthenia? few days. He had been appointed to go to White Ruthenia and would soon go there. When he went, I don't know. Heydrich to give him authority so that in Jewish affairs temporarily he would not have to undertake anything?

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it was Heydrich's intention to travel to White Ruthenia himself in order to give instructions there personally, without telling me what kind of instructions there would be. I also said that in the beginning of May, up to the middle of May, he actually was there, and that he did not inform me about his stay there, and his instructions. Later I heard from Strauch, however, that Heydrich had been there, and that after Strauch had addressed himself to Heydrich, Heydrich had granted to Strauch that for economical reasons, or for reasons of labor, temporarily nothing was to be done concerning the Jews for the time being, or that he would not have to undertake anything as yet. You say that Strauch also was very courageous, indeed, to address Heydrich and to ask him that the order for execution of Jews in White Ruthenia should not be carried out yet. took a let of courage to discuss the subject at all with Heydrich. Exhibit 111, Document 3428, the alleged letter of General Commissar Kube to Reich Commissar Lohse, of 31 July 1942, is contained. From the document books, did you also hear about this letter? newspaper which published it. Previously I had not known about it. of this letter? for several reasons. The greatest surprise for me in this letter was that Kube is supposed to have written it.

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Kube was known generally, as well as to me, as a man who wanted the Jews to live, not only for economic reasons but also for humane reasons. For that reason the letter seems so incredulous to me. I also knew that Kube himself formerly had objected to measures against Jews. This is also in opposition, and contrary to that. Thirdly, I knew that in White Ruthenia at the time Kube described here, criticism was practiced as stated in reports. Therefore, it cannot be understood that on the one hand for economic reasons and reasons of labor the Jews should be put into ghettos, and on the other hand, that same Kube who requested such measures wanted Jews to be liquidated to that extent. within ten weeks before 31 July 1942, would you have known White Ruthenia, would you have heard about such an event, or heard about it some way or other? other, even if the report had been sent to Berlin immediately. But such events would have become known somehow. clever cooperator and worker. What do you think of this characterization of Strauch by Kube? between Kube and Strauch there was a very bad relation; they were on very bad terms, and I can't imagine why Kube should suddenly change his mind.

THE PRESIDENT: Counsel, do I understand that you question the authenticity of this document?

DR. MINSFELT: Yes, your Honor.

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THE PRESIDENT: Do you have the photostat available?

DR. MINSFELT: No, your Honor.

THE PRESIDENT: Does the Prosecution have the photostat of this original document available?

MR. GLANCY: The Prosecution, sir, to the best of my knowledge and belief, is in possession of it, but not here in the courtroom. It can be furnished in a very few minutes, though.

THE PRESIDENT: Well, I think that some time soon it should be submitted to the Tribunal for scrutiny and examination.

MR. GLANCY: It will be done, Sir.

THE PRESIDENT: Very well.

DR. MINZFELT: Your Honor, may I add - we consider this letter to be forged, but if it should be found that it has actually been written then we must consider the contents as incorrect and not corresponding with the actual events in White Ruthenia. For definite reasons we must state that the letter and the truth do not correspond.

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THE PRESIDENT: At this moment, you can only question the authenticity of the document, and since you do question it, the Tribunal will need to pass upon whether the document is what it purports to be. With regard to the contents, that is something that your client can attack when he takes the witness stand.

DR MINZFELT: Yes.

MR CLANCY: May it please the Tribunal, I would like to advise that the Tribunal is already in possession of this in its archives as Prosecution's Exhibit 111.

THE PRESIDENT: The Secretary-General will present the photostat to the Tribunal tomorrow morning. Any other defense counsel who desires to cross examine the present witness will please step to the podium. If not , the Prosecution will begin its cross examination of the witness. By MR CLANCY:

Q Mr Jost, isn't it ture that you have stated in your affidavit that in addition to your duties as commanding officer of the Einsatzgruppe-A, that you were also at the same time Befehlshaber of the Reich Security Police and the SD? Commander of the SD? East were according to the instructions given by Heydrich, which were merely temporarily conducting this office as a commander. the SD and the Security Police during those four months? limitations that I told you about.

Q What limitations do you speak of? tasks of the executive were not part of my tasks, but, that these tasks were up to the independent commanders.

the guidance of a commanding officer? shown the independent position they had. English - - if the Tribunal please, it is on page 2 of the English, I apologize, Your Honor.

THE PRESIDENT: Page 1, I understand it to be.

MR CLANCY: I wish to refer to page 2, sir.

THE PRESIDENT: Yes, very well. BY MR CLANCY:

Q In paragraph 6 it says that, "In its entirety or on the whole the duties of the commander-in-chief of the Security Police and SD, that is, of a KdS, were the same as these of the chief of Social Command or an Einsatzgruppe." Did you not state that in your affidavit?

A It states here "in general" and I have given an explanation about this in detail this morning, as it is not possible to explain in one sentence in detail the difference of the entire tasks of the various departments. the Kommandeur des Reich Security Police was subordinate, is not that correct?

A This was a double subordination. I already was working on that this morning. The commander in the first instance was there for his general area and his local commander was the SS and Police Leader; who had to give orders and was the superior. I also explained that there were considerable differences between the various Special Commands (Einsatzkommandos)

Q Do you wish to add something to that?

difference which was in the chain of command, is that correct?

A One moment please. I said the difference in the description can be explained by this, and I must add that I have given a detailed statement to that this morning to clarify the situation about the tasks. Police Leader, didn't you then an intermediary say, that you yourself as BDS were subordinate to the Higher SS and Police Leader?

A Your question is not quite to the point. The commander was subordinate to the SS and Police Leader, and I was subordinate to the Higher SS and Police Leader, but your question was correct in so far as you said that I had an in-between position or was - as you expressed yourself - an intermediary.

Q In other words; any order issued by the Higher SS and Police Leader would as a natural course of events come to you for transmission to the lower units, is that not correct?

A It could have gone through two chancels. The higher SS and Police Leader could give me an order to be handed onto the commanders, but the Higher SS and Police Leader can also give orders to the SS and Police Leaders, who then on their own account hand the orders to the commanders. These two channels were in existence side by side. observed, is it not? "commander" does not quite describe the competency and the functions of a man; this depends on the entire organization of the region, described by me this morning. In a military sense, I understand a commander to be an agency which has complete and unlimited authority to give orders. This complete authority, as I have described it, does not apply to this case. Your authority was limited. You said that Heydrich put you in command of Einsatzgruppe-A as BDS-Ostland and he limited your authority, is that correct?

Q Limited to what?

A First, as to time, it was only a temporary task; secondly, being a representative with the limitation, that I had nothing to do with the executive, those were tasks of the commanders. first and to limit it to such an extent that you would not be effective? in general, it had to be considered a temporary special arrangement which was not meant to last, because for the final appointment which he intended, this limitation would not have been given. an especially limited case sofar as service in Russia was concerned. You had authority and yet you lacked it? (interruption) You met with frequent directions which might have appeared reasonable to other people in any other case but your own. You seemed to have led a charmed life. Let's study it. You protested to Heydrich, yet I understood that Heyrich was a severe, hard, militaristic individual who would not suffer any interference; secondly, we have just heard that Jekeln, Obergruppenfuehrer Jukeln, a superior to you, we have heard that he was a hard man, and a ruthless man, who thought nothing of sacrificing his own son, or his own daughter, because he was imperfect and because he was insane, and yet you with complete impunity were able to tell him that you would not carry out his order, is not that correct?

Q How do you explain that?

A I beg your pardon, did you say "his" orders?

Q Orders at least coming from him, I know not their source? of what I told him and what Heydrich had told me, and what I had told Heydrich.

to carry out an order; it does not matter how you phrase it, how eloquently it was couched, it still had constituted an outright refusal, did it not?

A I didn't hand on the order which I received. coming from Jekeln?

A It did not come from Jekeln. This order came from Heydrich.

Q Didn't you state on direct examination that you received orders from Jekeln?

A No, that is a mistake. I said, I didn't get any orders from him after the discussing. he explained to me again what he intended to do. He didn't tell me so when he would give me any orders.

THE PRESIDENT: Mr Clancy, if you are going to take up another phase, suppose we recess until tomorrow morning.

MR CLANCY: Very well.

THE PRESIDENT: The Tribunal will be in recess until 9:30 tomorros morning.

(The Tribunal adjourned until 23 October 1947, 0930 hours)

THE MARSHAL: The Honorable, the Judges of Military Tribunal II-A.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Yesterday, we asked for a document, and the Secretary General has handed in a photostat. It is Document 3426-PS. What is the exhibit number of this document and in which book does it appear?

MR. GLANCY: The exhibit number is 111. It is found in Document Book III-A, on page 42, if Your Honors please.

THE PRESIDENT: The record will show that the Tribunal has physically examined the photostat, has noted all the various features which go into the construction of a document, and will therefore have a visual memory of the document so that in its deliberation as to its authenticity, it will recall its actual appearance. The document will now be returned to the secretary General for filing.

DR. GICK (Attorney for the Defendant Strauch): Your Honor, as has been measured very briefly yesterday, my client suspects that this document is not genuine. The photostatic copy which was submitted today and which I have previously seen for one moment does, of course, give an exact picture of the original, but the document differs very much from the documents submitted in general by the defense here. May I remind you that the affidavits of a certain Max Weinreich of New York reveal that this document was found in the East-Ministry, together with some other documents. The exact circumstances are not explained in COURT II-A CASE IX this affidavit.

It is merely explained that this document was secured by a Sgt. Friedman. Like the other documents, tins document is not given over to the military authorities, but this document was sent privately to the Jewish Society in New York, a private society which deals with Jewish social problems and for that reason it probably received the document. Society. The prosecution has never actually held it and therefore I could never see it here. existence of this document, that none of the persons concerned here know anything about it, neither the persons mentioned, nor gentlemen who worked there; neither the Police Chief Chimanov, for example, nor Lohse, the Reich Commissar to whom this letter is addressed. White Ruthenia at the time and they show them upside down. There are strong contradictions contained in this document concerning the person of Mr. Kubeling, as well as his attitude and also about conditions which I still have to prove as to conditions in white Ruthenia. I see contradictions is the Kube letter. in this case the original be submitted. One can recognise matters much better iron the original than from the photostatic copy of a document, of course. That is, one can test its steams, the signatures, and initials, only when the original can be looked into here, can one see whether the document is authentic. If you ask the prosecution to get this document -- and this should not be difficult, if it is in New York -- I should like to reserve the right that, when the document is here, that the persons mentioned in this affidavit be called here as witnesses be cross-examined.

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Court No. II-A, Case No. IX.

THE PRESIDENT: The right to call those witnesses already exists. There is not reason why you can't call these witnesses now, immediately. This document, like any other document is subject to attack on the Dart of anyone, especially with regard to the authenticity and certainly with regard to content, so there is no reason why you can't call witnesses to shed further light upon this document and attach it from any angle.

DR. GICK: Yes.

THE PRESIDENT: With regard to the obtaining of the original, a question may arise as to whether this Institution would be willing to hazard the loss or whatever could happen to a document travelling that distance. I would like to hear from the prosecution as to what hopes they could entertain in obtaining the original of this document for the purposes of this trial.

MR. GLANCY: The prosecution at this point is unable to suspect what success they could gain by a request to this named institute. However, we shall made every effort to bring the original here, or at least to shed more light through the word of an affidavit as to how it was found, by whom it was found, under what auspices it was found -- possibly it was a Government sponsored agency. That I do not know, Sir. However, we snail attempt to ascertain that and inform the Court.

THE PRESIDENT: Very well.

MR. GLANCY: Another point, if Your honor pleases, it would facilitate our task, and the task of the Tribunal, and the task of the defense, if defense counsel would be a little more specific as to the discrepancies Which he has noted, the fault that he finds with the document.

THE PRESIDENT: Following out Mr. Glancy's suggestion, the Tribunal recommends to defense counsel that he prepare a brief out specific document pointing out wherein he questions the authenticity of this document.

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The statement will accompany the letter, which will be written by the prosecution asking for the temporary submission of this original document to the Tribunal and, if, for any reason, the Institute does not feel inclined to release the original, even for the short period, then, at least, we will have its answer to the questions which you present.

DR. GICK: Your Honor, I shall write down everything I nave said here and I shall submit this letter to the Tribunal and the prosecution.

I have another request, Your Honor. Owing to the condition of Defendant Strauch, I have had no opportunity to discuss in detail Herr Jost's statements in the witness box. Today I am not able to discuss everything, while he is in the witness box. Therefore, I reserve the right at a later time to do this and to cross-examine Herr Jost at a later point again.

THE PRESIDENT: Aren't you sufficiently familiar with your client's case to conduct a cross-examination now?

DR. GICK: Unfortunately not, Your Honor. There are various points which arose which are quite new to me and which I have not yet discussed with my client.

THE PRESIDENT: Very well, we will reserve the right to you.

MR. GLANCY: May I proceed, Your Honor?

THE PRESIDENT: Please. BY MR. GLANCY:

Q. Witness, in your direct examination, you stated that you joined the National Socialist Party in 1928, is that correct?

A. Yes.

Q. For the purpose of the record alone, is it not actually true that you joined in the fall of 1927?

A. I applied to join at the end of 1927 and was actually accented in 1928. That can be proved by the membership number.

Q. Then When you became a member, the Party was in an early stage of development, right?

A. Yes, in the first stages of development.

Q. Three years later, that is, in 1931, you joined the SA, is that right?

A. I finally joined, yes.

Q. Was the SA not used as an authority or unit to superior opposition and to protect speakers of the growing National Socialist movement?

A. At that time there were so few members of the SA that one could hardly say that they were in a position to suppress opposition, out it was their task to deal with protective measures, particularly during meetings. young, a little too were, to accomplish its task?

A. I said if they had had the task which you say they had.

Q. Hot what I say. I believe that you just said it was for protection at meetings: is that not true?

A. Yes, that is correct.

Q. From this training you must have experienced violence and ruthlessness in cutting down any opposition which arose to your speakers at these meetings, correct?

A. I beg your pardon. I did not quite understand your question.

Q. During these times and during your activity as a protective member, of a protective group, namely, the SA, you must have experienced violence and ruthlessness in curbing any opposition which arose during your meetings, correct?

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A. If you imagine that during every meeting nothing but atrocities took place, I don't know how to reply to your question. At the time, all political meetings were conducted in a very orderly fashion. of course, there were discussions. That is natural. Occasionally there were disturbances, as well, serious disturbances, That is also known, but that has nothing to do with the fact that opponents had to be suppressed or that they had to be destroyed.

Q. You seated that you took over the police office in Worms in March 1933, right?

A. Yes.

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Q. What were your duties there?

A. The task of police chief - when the security endangered it, and anything connected with such tasks, to take measures to secure the security.

Q. Never having been a police chief, I do now know... Can you inform me what those tasks were, specifically?

A. To the sphere of the police...the regular police... belong the Police Revieres distributed through the city, traffic police, criminal police, police dealing with strangers, political police -- those approximately are the tasks.

Q. You included, I believe, criminal police, did you not?

A. Yes.

Q. You had stated on direct examination that one of your objections to taking over command in the East was your lack of police experience, am I right?

A. Not lack of experience, but the fact that I did not like to work in the police, and that I was not suitable for it because I think I personally am not suitable for these tasks as would be required.

Q. You were suitable in 1933, weren't you?

A. They considered me to be suited, but I personally was no longer interested in these tasks. That is why I turned to different tasks later on.

Q. In the autumn of 1933 you were in charge of the police office in Giessen and remained there until March 1934. Right?

A. Yes.

Q. You still didn't feel that you were personally suitable to these tasks?

A. In any case, I left there. I could have remained, if I wanted.

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Q. In the year 1934 you joined the SS?

A. Yes.

Q. In the same year you joined the SD and were given the task of creating an information and counter intelligence service which had the task of combatting foreign intelligence, agencies, or organizations which might pose a threat to the security of National Socialism, right?

A. You have not formulated it correctly. This organization had to deal with counter intelligence, as I have mentioned, that is, to find out about foreign news service and to prevent them from giving such news. The activity of these news agencies need not be anti-National Socialist first of all, but, of course, they can be antiNational Socialist.

Q. But was it not one of your basic reasons for suppressing this type of thing, - that which might constitute a threat to National Socialism and give it a black eye in other countries?

A. I don't quite know how to answer this question. In every country there are counter intelligence organizations, and every country tries to avoid foreign agencies espionage-I don't See anything particular in this. I think the country would be careless if they did not build up an organization for its protection.

Q. I quite agree with you. But that is not the reason for my question. Wouldn't you say that this task constituted, or rather, was in the nature of a security function also?

A. All questions connected with a foreign news agency, that is, all questions connected to making these activities difficult, or make them impossible, of course,

Q. Thank you. Was this not also in the nature, COURT II-A CASE IX possibly slightly removed, of police work, detection, suppression?

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A. I have already explained this briefly in the direct examination, that the tasks of the police were limited, according to their general field of activity, to deal with espionage cases - that is, cases which had already occurred, to clear them up, and to search the person who was guilty.

Q. My question is merely.... Was this in the nature of police work. Yes or no?

A. That is just what I was tring to explain.

Q. It only takes one word.

A. May I ask you to repeat the question?

Q. Was this work in the nature of police work?

A. I understand you now. No, it did not have the character or the nature of police work. It had been built up on means at the disposal of the SD - that is, with cooperators, and those co-workers had no police functions because they were not able to search houses, or arrest people, nor to fulfill tasks which are normally given to the police.

Q. During this period of development of the National Socialist regime in which you participated, might we not say from this that you were conversant with persons, groups, or movements, which threatened the security of the Third Reich?

A. That I knew such personnel, or such groups of persons.... is that the question?

Q. No, it is not. That you were aware that these groups of persons, or movements, existed as possible or potential opposition to National Socialism.

A. I don't know what reason somebody might have who is commissioned with news information Service whether COURT II-A CASE IX his activity directed against National Socialism, or Whether he just does it to Serve his Fatherland, to get information for his Fatherland, or whether he does it to be paid well.

...there might be various reasons and these reasons will be immaterial to whom carries out the counterintelligence.

Q. You stated in your direct examination that you had been a propagandist for the National Socialist movement, right?

A. Insofar as I discussed with people who held different opinions -- that happened not only once, but repeatedly, - inasfar as I distributed propaganda material, that I temporarily worked in a propaganda department, - yes,

Q. At what time did you become aware of the fact, as a National Socialist, that Jews were considered an economic and a virtual Physical threat to the Reich?

A. As endangering the Reich?

Q. Yes.

A. I don't know how to reply to a question addressed like this.

Q. Perhaps I can rephrase it for you, make it a little easier. Were you aware that Hitler, and the other members of the Hierarchy of National S ocialism, intended to rid Germany of Jews because they were considered a potential threat, economically and physically?

A. During the first years after 1933, perhaps until the beginning of the war, I cannot say for certain, plans on a large scale to resettle the Jews or to give them the possibility of emigrating, I did not know about that. I knew, of course, that Jews emigrated, and that it was desired; but whether there was a general plan for that, I didn't know.

Q. You were aware that the National Socialists didn't COURT II-A CASE IX exactly find the Jews pleasing?

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A. That's right.

Q. Were you aware of the laws that were passed which deprived Jews of their property rights, their rights of citizenship? In the final analysis, speaking of concentration camps, their right to live?

A. No, I was not conscious of that, that they denied them their right to live.

Q. You didn't fully answer my question. Were you aware of the discriminatroy laws regarding property rights, and the rights of citizenship?

A. No, I was not conscious of that.

Q. Can you read?

A. Yes.

Q. Did you read the papers?

A. In general, yes.

Q. Thank you. In 1939 you marched with the Army, that is, the Third Army, into Poland, right?

A. Yes.

Q. What was your position with the Third Army?

A. In the staff of the Third Army I was chief of the civil administration.

Q. Did you have a title?

A. No.

Q. Was it skin to a BDS?

A. No, no. It was a military position that is attached to the Third Army.

Q. I understood you to say on direct examination that it was rather a shock to you when you were - we might saydegraded, and sent to the front as an Unterscharfuehrer for the reason that you had never had any military experience.

A. That was not why I was surprised. The shock was owing to the fact that as Major General I had been demoted, COURT II-A CASE IX and now was an NCO.

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Q. My question was... On direct examination you stated that you had no previous military experience, Right?

A. I had no real training, and no experience at the front.

Q. I understand that a seasoned soldier, a soldier who knows his way around, is a person who has participated in a campaign, Isn't that experience of the best?

A. The campaign in Poland, where I had a position on the staff, cannot be compared to this.

Q. Was this a tea party or a campaign?

A. That was a campaign, but with a position on the staff.

Q. You stated that it was a military task, did you not?

A. Yes.

Q. Thank you. What were your duties here?

A. Setting up administration offices, as in the territory under the military commanders, setting up county offices, mayor offices, setting up economic administration, and get it going again: and also agriculture. That was part of the work I did.

Q. Night we not say that this experience that you gained in this campaign would qualify you for the position of BDS?

A. That has nothing to do with this, because they were merely administrative tasks of the military administration

Q. I believe it is common knowledge that excesses were committed here against the Polish Jews in the polish intelligentsia. Are you aware, or were you at that time aware, -- did you witness these excesses.

A. From the time when I was in this territory in the COURT II-A CASE IX north of Poland, where German policemen had shot a Jewess in self-defense, was put before the court-martial and was condemned to death.

I remember this case very vividly. But measures against Polish intelligentsia or Jews at that time, up to the beginning of October 1939, I know nothing about that.

Q. Let us confine ourselves merely to the Jews or to the intelligentsia... Were there any other groups who were annihilated during this campaign?

A. In the territory where I was at that time I did not hear of any such measures.

Q. It later came to your attention that these things took place, except in one isolated, qualified incident?

A. At the moment I cannot remember any other case.

Q. Leaving this, after your service in Poland in October 1939, you returned to Berlin to become chief of Amt VI of the RSHA... right?

A. Yes.

Q. You remained in this position until September 1941 ... correct?

A. Yes.

DR. SUESS (for Defendant Schulz): Your Honor, the Defendant Schulz has a bladder trouble, and I ask for a short interval, that he may have a chance to affend his nature.

THE PRESIDENT: The Defendant Schulz will be escorted from the courtroom by the Marshal until his temporary indisposition has passed.

DR. SUESS: Thank you, your Honor. BY MR. GLANCY:

Q. As part of the duties within your agency, that is, Amt VI, did you not have representatives in Russia selecting natives of Russia for intelligence work?

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A. In Russia? If I understand you correctly, I am supposed to have had agents in Russia Itself. I must say that a German intelligence service unfortunately did not succeed to set up a news service system in Russia itself.

Q. If I am not mistaken, I have understood the Defendant Naumann to state that there were representatives of Office VI in Russia and that they had a house of their own from which they operated in selecting people to carry out counter intelligence work.

A. In the occupied Russian territory, I thought I understood you to say in Russia, in the Russian territory, Mr. Prosecutor. If you want to have detailed information on this, I ask you to ask my successor. During my time I had no opportunity yet to deal with this.

Q. From September 1941 until February 1942, you stated on direct examination that you were paid by the RSHA, but that you were without assignment.

A. Yes.

Q. Was this merely that you were awaiting for an opening suitable to your rank, such as the Einsatzgruppe?

A. No, I was supposed to join the Ministry East.

Q. In February 1942 you took an information tour into Russia?

A. Yes.

Q. What type of information were you gathering?

A. In the interest of my future assignment in the Eastern administration, I was to get some information on the situation in the East, that is, get to know the country. That was the task given in Posen. This was no special task. The task was only given because I had nothing else to do. Just to give me something to do.

Q. You stated on direct examination that you went to Riga and took command of Einsatzgruppe A, with the task 23 O ct 47-3&4-9-M-AEH-Biolsi (Juelich) COURT II-A CASS IX of BDS and Ausland included, correct?

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A. Yes.

Q. At this time did you become aware, or were you previously sware, of a Hitler order for the extermination of Jews, Communist functionaries, or other undesirable elements?

A. At the latest, at the time when I arrived in Riga I was informed about the Fuehrer order. Whether this has been discussed previously -- in any case, I did not know of the contents of it until then. Even in Riga itself, when I asked to have the order made known to me, I only considered him, considering the Jewish question because that was the main problem.

Q. You were aware of this Hitler order to contain the specific order to wipe out the Jews in the occupied Eastern territories of Russia?

A. Yes, I heard about chat in Riga, quite clearly.

Q. From whom?

A. From the adjutant of Stahlecker.

Q. On what date did you learn of the order to kill Jews?

A. I knew previously that the order existed, although I did not know about its full extent.

Q. I am sorry. Will you repeat that please?

A. I said, I knew that Jews were being shot, but I did not know about the extent of the order and the great importance of it. I only heard about this in Riga; I only could realize it there.

Q. On what date did you become fully conversant with all the uncaning of this order to kill Jews?

A. Well, I presume the day I started to work in Riga.

Q. Which was?

A. I believe it was 29 March.

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Q. On the 29th of March 1942, you were aware of the order to exterminate Jews?

A. Yes.

Q. What was your reaction when you first became aware of this order?

A. It was my intention to travel to Berlin in order to try to ask Heydrich to cancel, this order, The psychological reaction, not only at that moment, but also previously, for instance, the discussion in Smolensk, which I described yesterday... this mental state remained.

Q. You found this distasteful then... it repulsed you?

A. It is hard to describe this in orders, how these things were.

THE PRESIDENT: Witness, will you please speak more directly into the microphone? The interpreter has difficulty in hearing you.

Q. (By Mr. Glancy) Will you kindly repeat your answer?

A. I said, the entire psychological condition is hard to describe in words.

Q. Were you shocked?

Q. You were pleased?

A. I don't think it necessary to emphasize that this was not the case. I think I used the expression "shocked" yesterday. That is perhaps what it was.

Q. As a National Socialist were you at any time convinced that this was a necessary task, that is, the extermination of Jews?

A. Whether I personally had the opinion that they had to be exterminated, and this was necessary, I personally did not hold this view.

Q. You were not of this opinions?

A. No.

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examination from Heydrich calling for a liquidation of Jews other than those between the ages of sixteen and thirty-two years of age; you stated that you put this in your office safe in order to think it over. What was your action upon it? on the order.

Q You refused to pass this order on? hand it on.

Q That, at least, was a passive refusal? checked up on the different Einsatzgruppen to see the orders that had been issued from Berlin were carried out?

A No, there was no such man at the time. Heydrich was the chief, and apart from him there was nobody special who was given the commission to check on the Einsatzgruppen, or do anything of the sort. Berlin, this being a military, or at least a para-military organization, weren't you required to reply by endorsement, that is, something like contents received, or noted, carried out, or ignored?

A No. In that case it did not happen that way. of these orders? matter - only the receipt was confirmed, but if it was not a top secret matter, no receipt was given for it. It was a more formality, it has nothing to do with the contents.

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as to the execution of the tasks given to their subordinate commanders was by the reports sent to Amt-IV RSHA, is that correct? any other authority. to Amt IV?

A I don't think so. It is possible that monthly reports were still made, but I can not remember any details any more.

Q In other words, you merely do not remember? and what kind of reports were made. formal report, were they?

A They were reports. Situational Reports, and Activity Reports, which as far as I remember the commander sent in every month.

Q To you?

Q But to you first? reports at their discretion, the two reports could be made simultaneously.

Q You did receive your reports?

A What do you mean? My own? you say it was their privilege to sent out simultaneously. You received yours?

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did not contain reports of executions?

A I can not remember details any more. I do not dare to state that in a huge territory and for that set tine there were no deaths. subordinates then, you know of that possibility, don't you? could have done so is quite possible. were carried out by your subordinates and in turn reported to you? partisans in the city proper, but now I can not say any more what actually happened there, and how many people died there. I remember for example that this happened. they were Jewish, nor armed but Jewish; therefore, not partisans, but Jewish? have happened while you were in command, do you?

A It might have happened? East, you had two positions. First, the Chief of Einsatzgruppen-A, and, secondly, that you were BDS or Commander-inchief of force of Security Police and SD, is that right? description of your duties, first, as Chief of Einsatzgruppe-A, secondly, as Commander-in-Chief of Security Police and SD?

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instructions Heydrich gave me, and depended on the position in which Einsatzgruppe-A was

Q That was the position of Einsatzgruppe-A?

A What the position was? The position of Einsatzgruppe A was, as stated yesterday, that there were the three commandants, I-A at Krasnogwardeisk, and commander I-A was part of the roar army area in Estonia, and had to deal with those areas which overlapped the civilian administration; the Commander Krasnogwardeisk was working in the territory of the 18th army, and the commander of Loknia was near the front with the 16th Army. existed? dissolved before my time, or were subdivided before my time. I don't know exactly whether the Kommando of Loknia consisted only of Kommando-II or only part of this, and whether a new subdivision were added. All this happened before my time. I only know that during my time One-A, Krasnowardeisk and Loknia were talked about and written about.

Q Let's get on to the BDS. When Heydrich assigned you to Einsatzgruppe-A you stated it was no longer active as an Einsatzgruppe, is that correct? the beginning, were no longer dealt with, because the Kommando Loknia was part of the troops, and Kommando Krasnowardeisk dealt with part of army duties, that is espionage, counter intelligence, part of them general security duties. These were the original tasks which had been assigned to the Einsatzgruppe.

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against your expressed wishes, did Heydrich insist upon naming you the Chief of Einsatzgruppe-A?

A Why he insisted on it? Or rather, why he didn't comply with my request to send somebody else there in my place. I don't know exactly why. He told me at the moment he didn't have any one at his disposal for this.

Q My question is, not why he didn't appoint some one else. You have stated that, at least in a sense, this was a case of temporary command. You had nothing to do. You had no Kommando under Einsatzgruppe-A?

A I understand you now. I said yesterday that the group staff in Krasnowardeisk, that is, the group staff of Einsatzgruppe-I-A were almost one unit with Kommando Krasnogwardeisk, because no other task had been assigned to the kommando in such a way, that the existence of special groups or groupstaff was no longer justified; they had not really been dissolved but they had become a unit. kommando still active as you were appointed commander? stated that there is a possibility that executions of Jews took place, is that correct? as in that territory there were no Jews.

Q Then let's broaden the question to include your task of the troops under your command as BDS-Ostland? Were there any executions that took place during your period of command as chief of Einsatzgruppe-A or BDS Ostland?

Q First, was Estonia under your command? ambiguous position, in as far as first, there was Sonderkommando-A which came under the commander in the rear of the territory in Verra, and, also under the commander of the Security Police and SD, and again belonged to the general district of Estonia, therefore, there was an overlapping of the competency there.

Q Couldn't that be simplied by saying that although they could receive orders from others, they also received orders from you, and in turn had to report all happenings within their areas to you?

A Not every event had to be reported to me. In many cases it might have happened, that only the military office was informed, or only a civilian office was informed. There is no guarantee that I heard about every event. the commanding officer of action of troops under him? that this always happened, because there was a possibility that the reports were sent to Berlin immediately. The commander had special authority to report independently from his superior.

Q: Previously you sadi that they must send reports and they had the right to make the simultaneously with a direct report to Berlin, and send a cive-copy to you?

A: They could have sent this to me, yes.

Q: Was Latvia also under your command?

A: Latvia was under the commander of Latvia.

Q: Was there a commander of Security Police there?

A: A commander of Security Police and the SD.

Q: Weren't you the commander-in-Chief of Security Police and SD?

A: Yes, I was the commander-in-chief.

Q: Therefore, these two as were subordinated to you?

A: With the modification I made yesterday.

Q: Which was?

A: That is an individual general district, as independently administrated, it was the general-commissar who was the responsible man. Under him was the SS and Police Leader, and order him the commander of Security Police and SD. This results in an subordination system which can make it possible that somebody might be omitted.

Q: You were the BDS Ostland?

A: Yes.

Q: These troops then of Estonia, Latvia, Lithuania and White Ruthenia were KDS for that particular countries?

A: As commanders of the security police, yes.

Q: Therefore, they were subordinate to you, is not that correct?

A: With the limitations I have mentioned.

Q: Did they not report to you?

A: They did send reports to me, but I have no guarantee that I got all of the reports.

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Q: There is in the course of events a good, chance that you got most if not all?

A: I didn't know that.

Q: Was that not the custom to forward the reports to you?

A: I have explained repeatedly that the commanders had the right to give any reports to the RSHA, the Reich Ministry Security Office, and then to the Einsatzgruppe-commander; the scheme was quite different here, there was a different possibility of injustice for the RSHA and this could result in entirely different channels of command.

Q: But perhaps the channels were devious and many; but you were in one of the channels, were you not?

A: Yes, I belonged to it.

Q: You were in a commanding position?

A: I must repeat again and again - in a limited position as commander resulting from the special situation in this territory.

Q: Let's make it very clear then. You could issue orders, could you not?

A: Yes, I could issue orders.

Q: They owed you the duty of rendering reports and carrying out your orders, is that right?

A: If I had passed on this Heydrich Order at that moment, I would have given an order, of course, and would have requested that reports be sent to me; and would have waited until it was reported to me that this order had been carried out.

Q: I am going to show you one of the many reports received from the occupied zone of Russia. You have stated now that White Ruthenia, Lithuania, Estonia and Lativia were under your command, is not that correct?

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A: I repeat; in the form I stated.

Q: I shall repeat, you could issue orders to the KDS, and these armies with the full expectation they would be carried out, is that correct?

A: Orders could be given by me, as well as by the commissar-general, and, also by the local Police and SS Leader; therefore, there were many possibilities of issuing orders, part of those orders could be given from the Reich Ministry Security Office, and also from the Higher Police and SS Leader, who would always do this immediately.

Q: Didn't the Higher SS and Police Leader customarly, except in the case of an emergency, issue final reports or rather orders to you for your subordinates?

A: Please repeat that.

Q: Was it not a custom, except in cases of rare emergencies, for the Higher SS and Police Leader to issue order to your subordinates through you?

A: During the time when I was there, I cannot remember any specific case. It might have been possible.

Q: Thank you. Now I want to point out a report I have here, and it would seem to the eye that there are clear marks of demarcation that is showing an expressed chain of command, and I want your comment upon it? (hands photostat to the witness)

A: Do you mean this page here? Do you mean this page here?

Q: That is right (Counsel is at the witness's box). I also would like to show the court what I mean and I point out what appears as a line of demarcation.

THE PRESIDENT: You want to do something for the purpose of the record -- you had better talk into the microphone, Mr. Clancy.

MR. CLANCY: I want to show the Tribunal the line of demarcation which would seem to note a definite chain of command.

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It will be noted -

THE PRESIDENT: You are not getting that?

THE INTERPRETER: No, sir, I cannot hear.

MR. CLANCY: I wish to point one to the Tribunal the lines of demarcation which are outlined in the document, and which appears after each division and sub division, namely under Speduln there appear three dashes separating him from Brigadefuehrer Jost. This is identified under him with the commanders of the counries of Estonia, Latvia Lithuania and White Ruthenia.

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THE PRESIDENT: Has this document been translated and will it be introduced as an exhibit?

MR. GLANCY: It has been translated, Your Honor. It is being distributed, and I am offering this copy for the archives of the Court.

THE PRESIDENT: Very well.

MR. GLANCY: It is Document NO-5156 and will be offered now as Prosecution's Exhibit 178.

THE PRESIDENT: Mr. Glancy, this might be a good point at which to suspend for the morning recess.

MR. GLANCY: Thank you sir.

THE PRESIDENT: The Tribunal will now be in recess.

( A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Mr. Ferencz, before you begin your cross-examination the Tribunal will announce that we will recess today at 12:15 instead of 12:30, and then reconvene at 2:15. You may proceed. BY MR. FERENCZ:

Q. Defendant Jost, there are a few points I would like to go over with you again in order to clarify some of the statements you have made. You have stated that on the 29th of March, 1942, you became fully aware of the Hitler order which meant the killing of defenseless people, is that correct?

A. May I first say something about a document which was previously submitted?

Q. Just a moment. If you please, I will ask you the questions in a very specific way, and I would appreciate it if you would speak up and answer the questions briefly and concisely and to the point. We will return to the document where you left off, and at that time you will be able to give as full an explanation as you care to make. Now, I ask you again, is it correct that on the 29th of March, 1942, you became aware of the Hitler order to kill defenseless people?

A. At the latest, at that day, yes.

Q. Specifically, who told you about this order?

A. I already said the former adjutant of my predecessor Stahlecker told me about the existence of this order, without being able to show it to me in a written form because it did not exist in a written form.

Q. And he gave it to you also as an order for you to carry out, is that correct?

A. No, he could not do that as an adjutant, of course.

Q. You mean he just passed the order on in a conversational way and said, "Here, you are arriving as commander of a unit, let me tell you about this order just for conversation, not for you to carry it out," is that what you are trying to imply?

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A. No, An adjutant does not have the power to tell me to carry out an order.

Q. But he was passing on an order from Hitler. Was he telling you about it saving, "This is a Hitler order," just so you would be aware of it in a conversational way, or so you would know what your duties were to be?

A. He merely informed me about it upon my request to give me the Einsatzkommando orders, which he spoke about. He did not show it to me in a written form. It was made known to the Einsatzgruppe chief before an assignment was given to him.

Q. I realize it was met in a written form, but when an adjutant tells you that Hitler has ordered what defenseless women and children will be shot, don't you interpret that as telling you that you are to continue to carry out that order?

A. I already said that an adjutant does not have the possibility of telling a superior to carry out an order.

Q. What did you do immediately upon hearing this order?

A. I called up Berlin and tried to get in touch which Heydrich.

Q. Did you get in touch with Heydrich?

A. No, he was not there; he was on the road.

Q. What did you do after that?

A. About two days later I decided to go to Berlin In order to clarify the situation, and at that moment Heydrich, by superior, arrived in person.

Q. Why did you want to clarify the situation, was it because you were not clear as to exactly who was to be killed or was it you didn't believe that Hitler had given such an order? Why was it that you decided to call Heydrich or to go to Berlin?

A. In order to try, to have my assignment revoked.

Q. You have heard the Defendants Ohlendorf and Neumann testify from the stand that it would have been impossible or cut of the question to try to have this order revoked, have you not?

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correct? the question to raise such a matter with anybody in Berlin. A Hitler order was not to be questioned. Now you tell us you did go back to question that order. How do you reconcile that with, the statements made by Ohlendorf and Naumann?

A These are two different matters. I wanted my position to be revoked. About the order, I asked Heydrich whether it could not be revoked for the Reich Commissariat, for there were no Jews; despite the existence of the order and despite the fact that the territory was under the domination of the Germans there were Jews and so I asked them whether this order could not be revoked for that area. order, is that correct? Berlin? be revoked for this area.

Q Just a content. We are back in Berlin. You said you went back to Berlin when you heard about the order in order to try to have it changed or to have it changed insofar as it affected you. Now I ask you just to clarify that statement, did you or did you net try to have the order revoked while you were in Berlin?

A I was not in Berlin at all. I wanted to go to Berlin, but then Heydrich case to Riga and in Riga the conversation took place. The trip to Berlin never took place, because Heydrich arrived in Riga on surprise.

QWell, when Heydrich arrived in Riga -- Let me say it this way: When you got to Riga, you tried to call Heydrich by telephone and he was not there.

A few days later he arrived in Riga at which time you tried to get him to revoke the order, is that correct?

A I asked him whether it wasn't possible to have this order revoked for the Eastern Territories.

Q Why did you do that? carried out on the basis of this order that the reasoning Jews be killed. be carried out when it was an order involving the killing of defenseless people, is that correct?

A May I have the question repeated.?

Q The question is: Since you told Heydrich that you didn't want the order to be carried out, to have it revoked at least for your area, didn't you then, in effect, tell him that a Hitler Order was wrong and should not be carried out?

A No, I did not tell him that. I merely asked him whether the order could not be revoked.

Q I am asking you why did you do that? Did you think the Hitler Order was wrong to kill defenseless people or did you think it was too difficult to carry out, or did you think now you should use those people as laborers? What was the motive behind your trying to have a Hitler Order revoked? misfortune.

Q What do you mean by misfortune? Do you think it was wrong to carry out this order? Did you think it was not necessary for the security of the Reich? immeasurable misfortune for the victims, that that will explain matters, to be killed, but Hitler considered it necessary for the security of the Reich and Ohlendorf and Neumann have explained that it was necessary to kill children, because the future security of the Reich would be endangered.

Therefore, it was correct to have such an order and to carry out such an order. Do you agree with that reasoning? Ohlendorf's reasons. I personally had the feeling of what had happened or what could happen - and this feeling overwhelmed me.

Q You are not answering the question. You are an attorney, are you not?

Q Well, please answer the question. Do you agree with the reasoning that defenseless people, Jews, particularly, should be shot or should have been shot to assure the security of the Reich? existing could be carried out humanly. The order exited and it was binding to everyone, with all the consequences of such an order of the Chief of State. Thinking about the details whatever it was necessary, etc., I don't think that one could make this analysis in detail in such a spiritual state of mind. in such a spiritual state of mind you stated you objected to this order. You went to Heydrich and you said you wanted to have the order revoked. You must have thought about the order. I just want to know what was in your mind, for what reasons you wanted to have it revoked. Did you think the order was correct? Did you think it was too difficult to carry out? Did you think it was wrong? What did you have in mind when you went to Heydrich to revoke the order?

Q How, just a moment. You say, then, that you thought the Hitler order was a wrong order, is that correct?

A It was not right. no, I did not consider it as right, I could not bring myself to think it was right.

the order was wrong? it, you did not think it was correct, which was the same thing. Did you mention this to Heydrich? did not exist to have the order revoked for the Eastland; and the second sentence, which contained my personal opinion. He had known me for eight years and I thought I had to tell him that I could not imagine how I was to carry out such types of measures. That is the content of my explanation in two sentences.

A The first sentence shows that I objected to this order. Otherwise, I would not have asked for its revocation. The second sentence shows, my personal human attitude. wrong, did you? was sufficient in the situation, for it was a matter of being successful and asking and not the formulation in detail, and one could not think about for hours, years and months previously, but one had to make it right at the moment. morally wrong? when I got it. order, even though it came from Hitler, is that correct?

already. Here it is only the question whether such an order given by the Chief of State is legal. The next question, what can one do against such an order, or how can one express one's opinion, or what can one do about such an order for having it revoked; and there is a further question whether one can carry it out, for there are many things in this world which are absolutely legal, which are terrible in carrying them out, but that doesn't change the legality, but if I am prepared to say other things which are not pleasant either, so, for instance, the Potsdam Agreement is absolutely legal there can be no doubt about it ....

Q I don't like to interrupt, but, perhaps, will you just state your point? What is the point you are trying to make with your answer? of State.

Q I didn't raise the question of legality at all. I asked you morality is connected with the fact of whether the order was given by the Chief of State and therefore is legal. repulsed by it. I thought I understood you to say earlier that you thought such an order was wrong. Are you now saying that you thought it was legally wrong? That is why you were repulsed by it, though morally you thought it was correct and necessary? existed and was there and I thought it impossible of execution and as I expressed it yesterday, I thought there were enough people who would do something against this order, and see that it was revoked.

Q Why was it impossible of execution? Some of the other defendants have explained how they executed the order. Why do you say it was impossible of execution?

certain groups, I was not able to pass on this order. I just was not in a position to do so.

Q You mean you were too work to carry on and pass on this order?

A If I had been weak and soft, I would have passed it on. I think this needs tremendous strength not to pass this order on.

Q But why didn't you pass the order on? That is the point I am trying to raise. Did you think it was morally wrong and did you think it was physically impossible? What was the reason why you refused to pass or an order from Hitler? the result of the carrying out of the order would be terrible for many thousands of people and that this over whelmed me so much that I just could not pass on the order. If you can imagine such a situation - I don't know whether it can be reconstructed by a third person, at least this was sufficient for me, and I would like to add this: I looked at the problem from a historical point of view and I locked for examples in history where another things the First World War. when Monkey threw out the Armenians for military security and transported then to the Sinai desert and thereby killed 2,000,000 Armenians in a terrible way. This was an extermination like only to say by this example that I looked into this situation from all sorts of views and considered it. because you thought it morally wrong?

A Yes, I have given my statement. It isn't possible today, after 51 years , to give a detailed analysis of the feelings and thoughts. whether it is right or wrong, or whether it was right or wrong to kill defenseless people?

everything to see that the order was revoked. More than that I could not do.

Q Well, you certainly did not consider it correct. Let's pass on.

THE PRESIDENT: Mr. Ferencz, just as a matter of chronology, I would like to know when he received the written order. Witness, you learned of the order orally on March 29, 1942. When did you receive the written order?

THE WITNESS: The end of April or beginning of May.

THE PRESIDENT: And between the end of March and the beginning of May on what orders were you operating?

THE WITNESS: I then was not operating at all, but the explanation of Heydrich "that may be we will come to a resettlement" aroused the hope in me that actually a change might he possible. That I was wrong in believing in this hope shook me, very much, because, after all, I did get the order later, for I had not counted on such a possibility.

THE PRESIDENT: You May proceed, Mr. Ferencz. BY MR. FERENCZ: revoked?

A "Perhaps we will come to a resettlement." a Hitler order? manner Heydrich could speak with Hitler about this matter. I did not know what the two men did discuss between each other. I absolutely could not survey that.

Q What did you judge from his answer?

A I beg your pardon?

Q You say he said they would see if they couldn't change the order or have it revoked, is that correct?

A Who said that?

A Heydrich said, "Maybe we come to a resettlement". whom did you receive it from? signed in his own hand.

Q What did, you do at that time?

DR. SCHWARZ (Attorney for the Defendant Jost): Your Honor, pardon me for interrupting, but I would like to call your attention to the fact that the interpreter mistranslated the word "Umsiedlung", as far as I have just been told with "change". I would like to point this out so that there will be no misunderstanding.

THE PRESIDENT: The interpreter express the situation linguistically because the Tribunal, naturally, can't pass upon the suggestion of counsels.

INTERPRETER IDEA: The word used here is literally translated by "resettlement" , so that the defendant may mean that Heydrich said the headquarters could be changed to another location. I can't quite make out what he means. He just used the word, "resettlement".

THE PRESIDENT: Does that satisfy counsel?

DR. SCHWARZ: Yes, your Honor.

THE PRESIDENT: You may proceed, Mr. Ferencz. BY MR. FERENCZ:

Q Then on this point. Heydrich's reply to your objection to the order was that there might be some resettlements, is that what the answer was supposed to have been?

A That's how I understood him."Perhaps we will arrive at a resettlement." by Heydrich telling you that all the Jews were to be executed, is that correct?

executed? correct? is that correct?

Q But it was by Heydrich addressed to you, is that correct?

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Q. You stated this morning that as chief of Einsatzgruppe A you followed Heydrich's instructions, do you remember that?

A. What?

Q. As chief of Einsatzgruppe A you followed Heydrich's instructions, do you remember that answer?

A. That Heydrich gave me social instructions, yes.

Q. I am asking you -- please answer the question -you stated this morning that as chief of Einsatzgruppe A you followed Heydrich's instructions, is that correct? discussed this morning.

Q. Pardon me for interrupting. Will you answer the question first, and then explain it. I think it will clarify matters. I ask you again, did you say this morning that as chief of Einsatzgruppe A you followed Heydrich's instructions?

A. ...that I say my job as chief of Einsatzgruppe A the way Heydrich had given them to me, with the limitation the way I described it yesterday as well as this morning.

Q. Now, you have stated that the first time you objected to Heydrich he said - "perhaps there can be some resettlement" - and three weeks later you received an order to kill children, and that later on there were some modifications, is that what you are trying to say?

A. That can't be understood the way it came through.

Q. Are you trying to tell us that although the only official reply you received from Heydrich upon protesting the Hitler order was a direct order to you to carry it cut, that later on Heydrich came around and made some special concessions to you and gave you some special instruction, is that correct?

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A. I said yesterday, that whether what Heydrich told me was true or was what he meant, or whether it was camouflaged, or whether he told me to make it easier for me to assume my command, that I don't know. But I believe the first. That is why I was the more surprised when a few weeks later an order to me personally actually did arrive; for this order proves that until that time I did not get any orders from him personally to carry out these measures. Otherwise the second order would not have been necessary.

Q. When you got the written Heydrich order did you carry it out?

A. No.

Q. In other words, you did not carry out an order you received from your military superior, is that correct?

A. I did not pass it on.

Q. What was your rank at that time?

A. Brigadier General, and Brigadefurhrer.

Q. What was your rank a year later?

A. The same.

Q. In other words, though you did not carry out an order from your superior, you were not shot, you were not tried, - a year later you had the same rank you had at that time, - Brigadier General in the SS... Correct?

A. If you heard this yesterday, as I described it, it is understandable.

Q. I am more interested in the conclusion as being clearer. Is that the correct conclusion?

A. I did not pass on the order, and after a few days I decided, even if it was hopeless, to go to see Heydrich.

Q. Please, answer the question. Is that a correct conclusion? That you did not pass on or carry our an order from your direct military superior and a year later you still had the same rank of Brigadier General in the SS.

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.. Is that correct?

A. Because of the death of Heydrich, nobody came to know that I did not pass on this order, for you can't demand of me today that I should report to Himmler about an order which I did not passion. That would have been a little too much.

Q. Your answer there is yes, with the explanation you have given. Is that correct? that you did not pass on the order, you did not carry out the orders of your military superior, yet a year later you were still a Brigadier General in the SS?

A. I did not pass it on, and I was still a Brigadier General a year later, yes.

Q. Did you receive any decorations in that year, in between?

A. Between -

Q. Between April 1942 and April 1943?

A. In April 1942 I got the War Merit Cross, First Class. That had been applied for a long time ago, and had nothing to do with the activity in the East - for such decorations don't arrive at the moment they are applied for. It takes months or years. Otherwise, I did not get any kind of decoration.

Q. Let me make my point clearer. You have stated or implied that thereason you were still a Brigadier General in the SS a year after having refused to comply with this order, and not complying with it, - the reason you were able to do that was because Heydrich was killed and nobody else knew that you were violating a Hitler order. But I am asking you, isn't it a fact that every SS man of any rank of importance knew in April 1942 that there was a general order to kill all Jewish children?

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A. At that time, and later, not every SS man knew that.

Q. Did almost everybody know it?

A. I did not talk to the many thousands of SS leaders.

Q. I realize that. I realize that. And you understand my question.

A. The SS leaders who were assigned in the East probably would have known about it. Whether they knew the order in its wording and in its details, I don't know.

Q. In other words, most of the SS people, or a great many of them in the East, know that there was a general order existing to kill all Jewish children, so that if you did not carry out that order, someone besides Heydrich would have known that you were violating the order. Isn't that correct?

A. If no one knows the special order, and no other SS leader or any other person can than draw any conclusion against me.

Q. Is there any difference between a special order to kill children below 16, and a general order to kill Jewish children or all Jews? Or, wasn't the special order part of the greater order, the broader order, and if you didn't carry out even the part, it would have Green more apparent?

A. I said yesterday that this order, of course, was a result of the general Fuehrer Order; yes, that's true. For economic reasons, or for reasons of labor allocation, it provided for a limitation just at those ages - which was the special tragedy of the situation.

Q. My question is this. Please direct your attention to it, and your answer to it. You stated that it was generally known among the SS that there was an order from Hitler to kill all Jews.

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You stated that you did not carry out your special order to kill all Jewish children up to 16. My question is: Would it not have been apparent from those two orders, and the fact that you didn't carry out the special order, that you were disobeying the orders of your superiors? Yes or no? Answer the question, please!

A. I must ask you to have it repeated, please, it was too long.

Q. For a lawyer you are very difficult to under stand questions. I repeat the short part. Would it not have been apparent to all SS officers when you did not kill Jewish children, that you were violating your orders?

A. No, that may not have been apparent.

Q. How do you explain that, that it would not have been apparent?

A. I just said that at the time of my arrival in this area there were some Jews still living there, who had not been killed even though they had been under German domination for 9 months. So that if there is no solution of this order or a complete carrying out of the order, would not be very conspicuous at the moment because in order to provide labor one had not completely carried out the order. Otherwise it would have had to have been carried out by that time, In 9 months it could have been carried out.

Q. What happened to all the Jewish children in your area?

A. They remained where they were.

Q. And nobody knew that you were not carrying out Hitler's order?

A. Outside of those two above mentioned people, no one knew that. They had read the order.

MR. FERENCZ: I think this would be a good time to recess, your Honors.

BY THE PRESIDENT:

Q. Just to recapitulate what Mr. Ferenz has been putting to you... It was generally known by SS leaders in that area that an order existed that all Jews were to be liquidated. You did not execute that order either before you received the written order with this limitation, or after. What Mr. Ferencz has been endeavoring to get from you is a crystalline answer - clear and specific - as to whether it did not become more obvious to those other SS leaders in your area, that you were flat-footedly refusing to obey an order which came down from the Fuehrer himself. Now just answer that question directly. Was it generally known?

A. At least, it was known to the members of my agency

Q. And it could be apparent to all the other SS leaders in that area?

A. I don't know.

Q. And yet nothing happened to you?

A. Through the death of Heydrich -

Q. Yes, we know that.

THE PRESIDENT: We will recess now until two-fifteen.

(The Tribunal recessed until 1415 hours.)

(The hearing reconvened at 1415 hours, 23 October 1947.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed.

CROSS EXAMINATION (Continued) BY MR. FERENCZ: had received an order to kill children low of the age of sixteen and people above the age of thirty-two, that you had refused to carry out this order, and retained your grade, at least for a year, as BrigadierGeneral in the SS. I would now like to move to your activity as commanding officer of Einsatzgruppe A. You were the commanding officer of Einsatzgruppe A from the 29th of March until the 2nd of September, 1942, is that correct? that time?

A In any case there can't have been many.

Q Can you give us an approximation?

THE PRESIDENT: Witness, please try to get a little closer to the microphone and speak into it. number of dead during that time was very small, it must have been a very small number. BY MR. FERENCZ: command during the time you were in command, is that correct?

Q I am not asking for details. You were the commanding officer. I am asking you if units under your command killed some people while you were in command?

Q You refuse then to answer the question?

THE PRESIDENT: Witness -

THE PRESIDENT: You must be a little more direct in your answers. Now, you just can't avoid a question like that with a shrug of the shoulders. Now, please try to answer the question of the Prosecution, because these questions are relative. Put the question again.

THE WITNESS: Yes, yes. BY MR. FERENCZ: command while you were in command? already explained during my examination that there could only have been small numbers. All that concerned me was that the order given to me was kept back by me as far as possible.

Q Why do you presume that such killings took place? owing to some situation there might have been the possibility that executions did occur. There might have been partisans; there might have been some Communist activist, or several of them, so that they had to act on the spot. killed by units under your command?

AAt the moment I cannot remember that. Certainly I do not remember any reports about mass executions during my time. individuals or small groups of individuals?

A I cannot definitely remember. That is impossible. For example, the one report that was discussed yesterday, the report where 22 died in Kauen and some 20 died somewhere else, I have read that, but I cannot remember now since I did not read the reports so carefully at the time.

That I would remember that now. ment Book II-A. page 128.

A I don't know what number it has. I can only talk about the contents. shot on 7 April 1942, because of Communist activities and connection with partisan groups.

Q You were in command on 7 April 1942, were you not? given a detailed explanation about this at the request of the President, yesterday. persons, among them fourteen Jews who had spread Communist propaganda were also shot in Kauen. That makes 44 people shot during the time you were in command for Communist activities and Communist propaganda. Can you tell the Tribunal what your reaction was when you received such reports? dangerous and therefore mass executions had to be carried out or whether measures had to be taken in individual cases. I personally was under the pressure of mass executions which were threatened. wouldn't cause any reaction on your part, is that what you are trying to say? that there must be a difference whether executions are carried out owing to certain facts as they are reported in this report or whether it means the shooting of tens of thousands of people. There is some difference, isn't there?

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Q Of course there is a difference. I would like to know from you what procedure was used to find out that these people were guilty of having spread Communist propaganda. You, as commanding officer of Einsatzgruppe A, must have had a certain responsibility to see that people were not innocently killed.

A That was not the task of the commander. I have already explained that yesterday, but the commander acted independently and on his own responsibility. That is, he neither had to find out the details about each order nor did he have to ask for permission. He was alone responsible, owing to the orders given to him and the position he had been given. to Einsatzgruppe A were independent and could act independently, and you as commanding officer of Einsatzgruppe A, and the highest ranking officer, had no responsibility for what they did and no duty to act?

Q Is that correct? rences in the territory of the command district of Lithuania. Secondly concerning my executive power was limited owing to orders from Heydrich and I would never have assumed more responsibility then Heydrich had given to me.

Q Now, you have made two points. One is that these units were not units of Einsatzgruppe A; they just happened to be somewhere in the area. Please explain to the Court why it is that these reports consistantly list Einsatzgruppe A, first and underneath Einsatzgruppe A certain sub-units, showing on the face of the report that they are part of Einsatzgruppe A. different territories and therefore two districs of competency. First of all we are concerned with Einsatzgruppe A, and secondly with the civilian administration of the Reich Commissariat, Eastland, where the commanders were appointed as regular authorities.

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There are two different territories therefore. very misleading because they just show Einsatzgruppe A and the units under Einsatzgruppe A. Can you explain why the reports were written in such a misleading fashion? know. Of course, the reports were compiled in Berlin. I have already explained in a document yesterday how in the list of agencies the commanders of the agencies were mentioned, and that the Einsatzgruppe was a separate agency. The same is shown in the document which was submitted this morning. There it is also revealed that there is a Commandat and there is somebody who has the power, but the document does not say that the local commanders, the SS and Police Leaders, existed. It does not say that the General Commissars were also in this list. Therefore there is no proof at the full organization but only a listing of the actual agencies. and you say you don't know why the reports in Berlin were written in such a misleading fashion, is that correct?

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things down were not very exact, but it does not make any difference, the differences and the different forms did in fact exist. of Einsatzgruppe A and second as B.D.S. or commander in chief of the Security Police and the SD for Ostland or the East, is that correct?

Q The answer is yes, is it not?

Q Now, as B.D.S. or commander in chief of the Security Police and SD, were there other units, K.D.S. or commanders of the Security Police and the SD, who were subordinate to you as commander in chief? Administration, din not exist. There were no other units which belonged to this territory. There were other SS units and other police units, but they had nothing to do with me.

Q Your reports seem to be very clear. You say they are oversimplified, but they show, and you were shown this morning the photostat of one document mentioning you as Commander in Chief of the Security Police and the SD for Ostland or the East, and under you in the same section listing the commanders of the Security Police and the SD for Estonia, Latvia, White Ruthenia. It would appear from the face of these reports that these are all subunits of your high command, is that correct? previously that the organization of the SS and Police Leaders and this General Commissar who was my superior were not listed in this list. as in the case of the Einsatzgruppe where they listed kommandos under you falsely, in the case of the B.D.S. they have done the same thing and listed the K.D.S.'s under you falsely, is that correct? were mentioned and to list the whole organizational structure again.

After all it was only a communication, who was in charge of a certain command. This is of no great importance. them, as regards Jost; they are not accurate?

A Because they don't describe the entire impression or picture.

Q Then they are wrong as concerns you, is that what you are saying? because it will not give a correct impression of the organization. ing of the B.D.S. or the Commander in Chief of the Security Police and the SD, the B.D.S.s or the Commanders of the Security Police and the SD for Estonia, Latvia, Lithuania and White Ruthenia? and the SD.

Q Isn't it true that basically what happened there was that the Senderkommandos and Einsatzkommandos which had been under your command as Einsatzgruppe Leader became K.D.S. or Commanders of the Security Police under you as Commander in Chief of the Security Police? Isn't that basically the change organizationally which took place? it. again?

A I have explained it. I don't know how many more times I have to explain that question.

Q I am afraid it was not quite clear yesterday. Of course, if you refuse to answer the question I will proceed. about it, but I think I was very clear and explicit.

Q Then you refuse to answer it again, is that correct?

Q I asked you, you refuse to answer it again? It is a simple question. Will you please tell me, do you refuse or don't you refuse to answer it again?

THE WITNESS: I ask the President to tell me whether I have to repeat my answer to questions which have already been asked and I have replied to.

Q (By Mr. Ferencz) I didn't ask you before whether you wanted to or didn't want to answer the question. I am asking you that now for the first time, do you or don't you want to answer the question?

THE PRESIDENT: Ordinarily we find that witnesses like to talk and our great trouble is in stopping them. They would like to talk forever. It is quite refreshing to find a witness who not only wants to be brief but who even doesn't want to talk at all. Now, the Prosecution has asked you to clarify a certain point. You have stated that you have already clarified it. Then he put another question to you as to whether you decline to clarify again. If you decline, that is within your privilege. So, if you will, please answer the last question put by Mr. Ferencz, whether you now are declining to once more give the explanation which you gave before.

THE WITNESS: May I ask that the question be addressed to me again?

Q (By Mr. Ferencz) I don't mind repeating the question. As I understand the explanation you offer, I ask you is it not true that what happened organizationally was that the units, the Sonderkommandos and Einsatzkommandos, which were under you as Einsatzgruppe Leader, became K. D.S.'s or kommandos of the Security Police and SD under you as Commander in Chief of the Security Police and SD and basically that was the organizational change which took place? into two regions. This had been done months ago. There was the Army territory and the territory under civil administration, and in the Army territory, out of the old Einsatzkommandos, new kommandos were formed, and in the territory under civilian administration a completely new organization was set up which dealt with civilian administration of this territory, and set themselves up accordingly.

These were the command posts for the general districts. This was done without my assistance. This was already so when I came there. Now this went about in detail I don't know, of course, when and how individual people were a ppointed, I don't know. an Einsatzkommando under you became in charge of a K.D.S. or became the K.D.S. under you when you became the B.D.S.?

A No, that is not correct. I have explained that yesterday as well, that only in Estonia a personal union existed between the local commander there and the Kommando I-A. The reason was that here a territory under civilian administration was still operational territory. Therefore two competencies overlapped.

THE PRESIDENT: Will you pardon me, Mr. Ferencz? BY THE PRESIDENT: have, prepared on June 27th of this year. The answer would seem to be in variance to what you have just stated, and I would like to have your clarification on it. Your statement read, "On the whole the duties of a Commander in Chief of the Security Police and SD were the same as those of a Chief of an Einsatzgruppe, and the duties of a Commander of the Security Police and SD (KDS) the same as those of a Chief of a Sonderkommando or Einsatzkommando, respectively."

Q Is this statement correct?

Q Now, please don't tell me about yesterday. I want to know now, this afternoon, is this statement correct.

A The statement is not sufficient. It is not explicit enough.

Q As far as it goes, is it correct? Einsatzgruppen and also for Kommandos were combatting Communists, but that these tasks varied, according to the situation in the Army territory and in the territories under civilian administration they changed and other tasks were, added to these basic tasks which existed from the very beginning and that particularly under civilian administration where the police was a regular authority there was no special unit for a special term of time. These were the tasks of the criminal police and administrative police, the tasks of establishing a district police organization and therefore the organizational picture changed and that that channel of command changed and their responsibility to Berlin changed.

THE PRESIDENT: Well, at least I got further than you do. I got him to talk. BY MR. FERENCZ: picutre. You were Chief of Einsatzgruppe A, and you became commander in chief for the Security Police and SD in the East. Sandberger was head of Sonderkommado Ia and be became commander of the Security Police and SD for Estonia. for Lithuania. became KDS for White Ruthenia, is that a correct organizational picture of people who were under you as Einsatzgruppe A Chief and then weren't there subordinate units with you as the commander in chief of the Security Police?

A No, during my time it was different. During my time, Jager was commander of the Security Police and SD in Lithuania. Whether previously he was in charge of Einsatzkommando III I don't know. I know that he was commander of the Security Police and SD in Lithuania. I also know that Strauch was commander of the Security Police and SD in White Ruthenia, because the kommandos and Einsatzkommandos had disappeared from these territories and had been moved up to the Army territories.

Q Let's take them one at a time. Perhaps you can give us the answer then.

You have already stated that you were the head of Einsatzgruppe A and the BDS, commander of the Security Police. Was it true that Sandberger was at one time commanding officer of Sonderkommando I-A and at some time he was commander of Security Police for Estonia? Einsatzkommando III and he was at one time commander of the Security Police and SD for Lithuania?

A During my time he was commander of Lithuania. Whether he previously was in command of Kommando III, I really don't know. II and he was at one time commander of the Security Police for White Ruthenia? II previously. During my time he was Commander of the Security Police and the SD in White Ruthenia.

Q You don't know whether he was or was not commander of Einsatzkommando II is that correct, or do you want to state that you do know he was not?

yesterday, in Document Book III-A, page 3, Document USSR 41. Here it reports the killing of many people, including children on the 14th of April, 1942, which was during your time, in a letter sent from the Chief of the Security Police and SD in Latvia. You have seen the document listing the Security Police and SD for Latvia under you as commander in chief of the Security Police and SD for the East. Would you please explain again or for the first time, how it is that you deny responsibility for these crimes?

A Shall I give an explanation about the document? I am repeating it. I do not know anything about the action mentioned here; I would have stopped it the same way I did in Krasnogwardeisk, where I stopped them from liquidating insane people. The document itself does not prove who carried out this action. Also it is strange that this document was found in the office of the sender and not in the office of the addressee, because it is addressed to the Registrar Office of the City of Riga and therefore should have been found there.

Q General, on this point you say you can't understand how it is that a letter sent from one office and addressed to another is found in the office from which it is supposedly sent. Isn't it the practice to keep carbon copies? I do not have here, it is supposed to be an original. remained in that office? this is a true document and you are confused by it, and, even if it were true, you don't know anything about those things, is that correct?

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in Krasnogwardeisk. Did you know that that was a violation of a Hitler order?

A That I stopped It? In any case I stopped the order given at that time.

Q Tell us exactly how you did that. To whom did you speak? To whom did you give the order not to kill insane persons? fuehrer Dr, Roeder.

Q who was he?

A I beg your pardon?

Q what was his position?

Q What Kommando?

Q Was that an Army Kommando or an Einsatzkommando? What was it?

Q Was it a unit of the Army or a unit of the SS?

A No, it was a unit of the Security Police and SD. That was one of those special units which had been assigned to help the Army. Krasnogwardeisk? that these insane people should be killed because the building was requested as barracks.

Q Who had requested him to do that? Police and SD and tell them to kill people without consulting the highest officer of the Security Police and SD?

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A In any case, it occurred as I have described it. Obviously this Army agency thought they had the authority to give an order to that kind of subordinate unit or else they would not have given it. was a unit of the Security Police and the SD and you were Commander in Chief of the Security Police and SD. It must have been a unit subordinated to you, is that correct? was one of these three kommandos which was in the territory of Einsatzkommando A and was active there. Police and SD and override an order of the Army, is that correct? that.

Q I am asking you about your authority. You have explained that the Army gave a unit of the Security Police and SD an order to kill people in Krasnogwardeisk; that you lifted that order and prevented those killings. Does that mean that you had authority over all units of the Security Police and SD, even to the extent of overriding an Army order? to tell this Army agency that I did not want such orders and refused to ask units to carry out such an order. It was up to the Army to tell them, whether they did not like it.

Q You say in any case you took the right. I am asking you, if you had the right by virtue of your position?

A I think it depends on what I said and did in that case; that must be the decisive matter, but in any case, the Army could have insisted on it inspite of me. The Army could have done it on their own as has been done in other cases and I could not have done anything about it and without even informing me about it. All that was possible. That depends on the circumstances.

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to kill people without your consent, or over your objection? the Army order,is that correct?

AAm I responsible for that too, that I overrode my authority? I don't understand the question.

THE PRESIDENT: He is not charging you with any responsibility for it. He is merely asking you if you did override the authority of the Army. It is only a question of fact, not a question of responsibility.

THE WITNESS: Yes. complaints about you. Did the Army speak - say that they wanted that building and that you had gone over their order?

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A.- I asked that I be told that if this agency insisted on that order, I asked them to inform me in that case. I would complain to the chief of the Army Group; that would have been the next step I would have taken if this Army agency, who was somehow subordinate to the Army had insisted on this. If the Chief of the Army Group had said "My unit was wrong. I revoke this." Everything would have been settled, but that never came about. One can't think of all the possibilities. That was enough for me.

Q.- Well, we'll leave the subject of your overriding the Army in Krasnogwardeisk and turn to something completely different. How many gas vans did the unit under your command have?

A.- I don't know anything about that.

Q.- If it says something in the reports about that, you'd regard it was misleading, wouldn't you?

A.- I don't know what reports are concerned.

Q.- You were the Commandant, the Commanding Officer, Commander in Chief of the Security Police and Security Service in Ostland were you not?

A.- Yes.

Q.- And you held that position on the 15th of June, 1942, is that correct?

A.- Yes.

Q.- You say you do not know anything about gas vans being part of your unit, is that correct? Let me refresh your memory.

A.- Yes.

Q.- I am going to give you a document, which is a photostatic copy of a message concerning gas vans, which state, I read from the English translation found in Document Book I, page 136. The Defense Counsel all have it. It was Prosecution Exhibit 32, Document 501-PS, page 136 of Document Book I. This document , signed by the Commandant of the Security Police and Security Service in Ostland by somebody else for him, which was you, states:

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"A transport of jews, which has to be treated in a special way, arrives weekly at the office of the commandant of the Security Police and the Security Service of white Ruthenia."

"The three S-vans, which are there, are not sufficient for that purpose. I request assignment of another S-van (5 tons). At the same time I request the shipment of 20 gas hoses for the three S-vans on hand (2 Diamond, 1 Saurer), since the ones on hand are leaky already." Signed, "For the commandant of the Security Police and the Security Service, Ostland," which was you.

A.- That is the office.

Q.- That was your office, isn't that correct?

A.- That is the office.

Q.- Do you know anything about this?

A.- No, I have never seen this letter.

Q.- This is another illustration then of a report sent out of Berlin, or a document which we have, which is completely misleading and you don't know anything about it.

A.- Because the contents were not submitted, nor was the letter submitted to me.

Q.- Let me refresh your recollection perhaps.

THE PRESIDENT: Do we have affirmation that this is his office?

MR. FERENCZ: He has stated, Your Honor, that this is his office, Commander, or "Commandant," as it is here translated, "Of the Security Police and the Security Service, Ostland." That was your office, was it not?

THE WITNESS: Commander of the Security Police and the SD in the Ostland, yes.

Q.- Now, let me see if I can't refresh your recollection with another one of these misleading documents. I refer to page 137, the next page of Document Book I. Turn the page and there you see another top secret letter addressed to your office, Commandant of the Security Police and Security Service, Ostland, Riga, and here you see the reply to the cable which came from your office, or the letter which came from your office, and they say that the delivery of a 5-ton Saurer can be expected in the middle of next month and further on that 100 meters of hose will be supplied.

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Does that remind you or does that bring to your mind

THE PRESIDENT: I don't locate that, Mr. Ferencz.

MR. FERENCZ: It is on page 137.

THE PRESIDENT: Of the English?

MR. FERENCZ: Of the English Document Book I. It is possible that the order of pages has been confused. If Your Honors like, I will come up and find it.

JUDGE DIXON: It's on page 136.

MR. FERENCZ: The pages may have been mised up, Your Honor.

THE PRESIDENT: Yes, I see now.

Q. (By Mr. Ferencz): I am referring now to the reply to the top secret communication requesting additional gas vans and gas hoses and the reply which is addressed to your office during the time that you were in command states that they will deliver the gas vans, plus 100 meters of gas hose and I ask you do you now recall anything about gas vans in units under your command.

A.- The reply mentioned here, even if it has been received, was never shown to me personally or the sending out of a letter and the reply would have been treated by me in the proper manner.

Q.- Now, you are saying that you don't know anything about this, is that correct?

A.- No.

THE PRESIDENT: I don't quite understand the answer, the sending of the letter and the receipt of the reply would have been treated by me as always.

That is not clear to me. What do you mean by that?

THE WITNESS: The letter is not signed by me, and therefore was never submitted to me, because if I had seen it, I am sure that accordingding to what I have said already that I would have taken different steps and if I had received the reply and it would have been shown to me on that occasion I would have taken steps which I could not have done two or three weeks before.

THE PRESIDENT: Do you know who it was that signed this letter on your behalf?

THE WITNESS: He did not sign it at my request, but is is the usual thing that the department chiefs as part of their tasks signed, "By order of", or, "At the request of"

THE PRESIDENT: I asked you if you know the person who signed in your behalf.

THE WITNESS: I know the person, yes.

THE PRESIDENT: And did he have the authority to order equipment and receive equipment without conferring you, or informing you of the action?

THE WITNESS: He did not got the authority from me, nor did he discuss it with me.

THE PRESIDENT: Did he have the general authority to order equipment without your knowledge?

THE WITNESS: Within the Administration of the department of which he was in charge, he could request such things, which he thought he required for his department. This is one of those things which is not really within his normal sphere of tasks, within his department. because administration means that he had to deal with all those things.

THE PRESIDENT: I am asking you if he had the authority, did he have the authority to order equipment?

yes. ter? has never been discussed. He just assumed that authority. I could not have known anything about this.

Q Then he did this without the authority of anybody? him this authority; at least, I don't know that anybody else authorized him to do this.

Q Did you learn that the van then did arrive? that an answer was received, I have never seen a gas van. received?

A No. I was not told about this, neither by my adjutant, nor by my drivers, nor anyone. BY MR. FERENCZ: pletely misleading in that it would indicate that you were connected with gas vans - in some way, at least - whereas actually you knew nothing about it. Is that correct? That's true, isn't it? inaccurate reports in that they would indicate that you as the commander of the Security Police and SD were somehow connected with the requisitioning or distribution of gas vans - whereas actually you don't know anything about it?

Q Do you know where Salaspils is?

THE PRESIDENT: Mr. Ferencz, would you mind suspending now while we take the afternoon recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. FERENCZ: Your Honor, the Prosecution has no questions to the defendant Just.

DR. MAYER: ( for the defendant Steimle): Your Honor, I ask that the Tribunal grant that the defendant Steimle be excused from tomorrow morning's session, so that we can prepare his examination.

THE PRESIDENT: The defendant Steimle will be excused from attendance in Court tomorrow in accordance with the request of his counsel.

DR. MAYER: Thank you.

THE PRESIDENT: Any re-direct examination?

DR. SCHWARZ: ( for the defendant Jost): Yes, Your Honor. Prosecution referred to Document Book III-A, Document USSR-41, Exhibit 101, page 5 of the German text, page 3 in the English text. I must to the authencity of this document. It looks as if the case of this document it is a re-translation of a Russian document, a Russian document collection. I would like to have the Prosecution submit this document in its original.

THE PRESIDENT: Mr. Ferencz, is the original available?

MR. FERENCZ: I don't know, your Honor, if the original is available. Grom the number, USSR-41, I judge to be an exhibit which was introduced before the IMT. I don't know whether our document room has the original or a photostatic copy, certified and signed by the finder of the document.

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DR. SCHWARZ: Pardonme, Your Honor. I did not not the translation through the microphone. May I please ask Mr. Ferencz to repeat what he has said?

THE PRESIDENT: He is now looking for the document, or the phtostat of it.

MR. FERENZC: Your Honor, I have a photostat of the document bearing an official Russian seal. The document is in Russian and I don't find any German document the Russian photostat I have before me. However, this, as in all other document, is certified to have been captured German documents, and this was admissible before the International Military Tribunal. It has all the officials Russian seals,as well as I gather, and an International Military Tribunal number. This is the only available to us, and it is the best evidence we have on this point.

THE PRESIDENT: What you have is available to defense counsel for study, is it not?

MR. FERENCZ: Yes Your Honor. It is. This is the same exhibit as was introduced in Court.

THE PRESIDENT: Where are the originals of the documents which were presented before the IMT?

MR. FERENCZ: Those are in the archives of the IMT, but I believe that the document introduced is exactly the same as the one we have here. It is an official Russian report, and that was the document introduced before the IMT, and we have a photostat of that exhibit, exactly the same as it was introduced before the IMT.

THE PRESIDENT: But before the IMT the document itself was introduced. Here you have the photostat.

MR. FERENCZ: I believe, Your Honor, that the document itself that is, the official Russian report itself, was introduced before the IMT. And that may be available, If it is, of course, it is open to defense counsel.

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THE PRESIDENT: Well, would it be in this building?

MR. FERENCZ: Yes, your Honor, it would be in this building.

THE PRESIDENT: Well, will you assist Dr. Schwarz in attempting to locate the actual archive in which it may be filed?

MR. FERENCZ: Yes, Your Honor, I know where it would be filed, and we would be glad to give that information to defense counsel.

THE PRESIDENT: Very well. Any other observation?

DR. SCHWARZ: Your Honor, I am agreeable to this suggestion, and I would like to reserve the right to raise my objection, and to keep it raised, until I have the possibility of examining the document.

THE PRESIDENT: Your objection, therefore, will be kept in mid-air until such time as you are able to descend to the ground again.

DR. SCHWARZ: Thank you, your Honor. defendant Jost, but may I use this occasion to correct something in the transcript of the 14th of October 1947, the morning session, on page 594 of the German record the following is stated.... In this incident we are concerned with the examination of the defendant Ohlendorf by myself in cross-examination. May I briefly recapitulate the contents.

defendant Jost and this chief Mueller of Office-IV in the RSHA, and Mr. Walton raised an objection against my question stating: "Your Honor, I believe that the Indictment shows that of the time during which Jost was chief of an Einsatzgruppe was already after Mueller had died." The Prosecution, therefore, objected to questions which are concerned with the relationship between Jost and Mueller, since in the sense of the indictment this seemed to be irrelevant and, Your Honor, stated too that, if the time given by the Prosecution is correct, the objection is sustained. At that time I could not determine whether the assumption of the Prosecution that office chief Mueller had died by that time was correct, but in the meantime I found out that Mueller is still alive today. The objection of the Prosecution against my question is thus unfounded. May I ask that this be corrected in the record, sofar as the Prosecution remembers this.

MR. CLANCY: If it please the Tribunal, I am familiar with this. It was a bit of a slip of the tongue on the part of Mr. Walton. I am sure what he wanted to say was that Heydrich was at this time deceased, and that Mueller was alive. Perhaps it could be that Mr. Schwarz could tell us where Mueller is at this time?

DR. SCHWARZ: I unfortunately do not know that. I merely know that Mueller is alive.

THE COURT: The record will show that Heydrick is dead; that Mueller is alive and at large.

DR. SCHWARZ: Your Honor, since the questions I wanted to ask Ohlendorf were answered substantially when the objection of the Prosecution was raised, I do not want to waste the Tribunal's time, and, therefore, I shall do without the remaining questions which I intended to ask, after the matter which was important to me has been corrected.

THE PRESIDENT: Very well.

DR. SCHWARZ: Now, Your Honor, I also would like to request since it has been impossible for me to do this as yet, to have the witnesses at the defendant Jost's disposal called, and I would like to have these witnesses called up into court as soon as possible after they have arrived I have called a number of witnesses; a number of these witnesses, their addresses not being available, will not appear, but sofar as it will be possible I will get affidavits from the remaining witnesses, and, I merely would like to reserve the right to call those witnesses to the witness stand from whom I can not get affidavits.

I believe I agree with the Tribuanl, if, in the interest of speeding up the proceedings, I see to it that the witnesses be called at about at the same time, and one after the other, and I shall then get in touch with the Prosecution and the Tribunal in this matter when the time comes, in order to set a definite date for the appearances of the witnesses.

THE PRESIDENT: Very well. You have a number of things floating in midair, so we will add this one to those passengers.

DR. SCHWARZ: Yes, Your Honor.

THE PRESIDENT: Very well. Witness, I would like to direct your attention again to your affidavit of July 27th, this year, in which you say you did not give any orders to execute Jews and so on. June 27th, 1947, when you say: "I instructed my kommando leaders not to carry out any executions." You first learned of this order on March 29 1942. Did you call in your kommando leaders and tell them, "I have learned of an order with which I do not agree, and I am telling you now not to execute this order." Is that what you did? matter with him, and told him "I hoped that we shall be able to have this order revoked in the Eastland. For the moment please refrain from such measure in this area." In a similar manner I talked to the commander in Latvia, and then I spoke to the commander in Estonia. One after the other.

with which you did not agree, and that they should suspend any execution of that order until you contacted them again? known to me. I was new, and at that time, as I have already stated, there was a certain stoppage for reasons of labor allocations, they had not carried out the fuehrer order completely. Now I want to see to it that the order was stopped completely, because I was hoping by these words of Heydrich about the re-settlement, that the order would be revoked for the Eastland.

Q Yes. Did you tell these leaders not to talk about what you had stated to them?

A No, I didn't. Himmler, or your commanding officer, and as the result of that report could you have been subject immediately to a courtmartial?

A It could have been possible, if one of these people didn't agree with me, that he saw sabotage in my request, bur from the manner of my description I don't think that one of these leaders intended to denounce me.

Q And they didn't denounce you?

Q Yes. So then it was possible in the German Armed Forces to refuse to obey an order and not be shot immediately? any such refusal would become known to a superior, then the consequences were evident. this importance, one which came from the Fuehrer himself; it was possible to talk about it over an extended area, which included three countries, and, yet, the refusal to obey the order not come to the attention of the originator of the order, and those who passed it along?

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see at the beginning of a war.

Q But this happened in your case? Order existed, and inspite of the existence of the Fuehrer order, the order was not completely carried out, and even though it was for reasons of labor allocation, still such reason existed; that was the special situation in which I was. compelled others to act didn't compel you to act?

Q No, I just asked you a simple question. A very vital order and an important order, which compelled all others to act didn't compel you to act in this particular case? when the complete Heydrich order arrived, then a new situation arose. May, when you received a written order executions were suspended because of your attitude, and what you had told the kommando leaders under you? Fuehrer Order was in general not executed completely. I had no influence over this fact. This happened before my appearance there. This explained the fact which was described before, why other SS leaders just didn't say, why didn't you shoot everybody here, for this was possible this had nothing to do with my person. It was not very conspicuous that the Jews, who had been left there for the past six or eight months, and continued to live, this was not conspicuous. April?

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safe?

Q What kind of a safe did you have?

Q Did,you carry it with you as you travelled? You were a mobie outfit, you moved around?

A No, no, this was a formal established agency. Riga was a permanent agency. It was stationary there.

Q I don't mean this was a "vest-pocedt" safe which you could carry on your person? you had received the written order? mentioned Refierungsrat, otherwise, I did not talk about this order, for I had decided for the time being to speak to Heydrich.

Q Yes. Now you saw Heydrich on May 22nd?

Q Then for three weeks this order went unexecuted?

Q And no one raised any objection?

Q It didn't come to the attention of any one that you had received this very vital order and you had refused to act on it? from those two above mentioned people.

Q Only Heydrich personally?

A Yes, who else could have known about it?

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Q Well, the chain of command would have included somebody else?

Q Heydrich personally sent you this order. He wrote this order with his own hand, and sent it to you. He didn't send it through an adjutant, or through some intermediary office? personally, and was sent to me by Heydrich's courier, together with other mail. of the highest ranking officers in the Reich, and you paid no attention to it - - you did not execute it?

Q Well, you did not execute the order?

A I didn't pass it on because I reported to him.

Q You reported to him sometime - - on May 22nd?

Q Yes, for three weeks you didn't execute the order?

A That is right, I didn't pass it on, and I didn't execute it.

Q Then you conversed with Heydrich?

Q And then fortunately for you, from what you told us, he was killed?

A Yes, right. Not only for me. *---*u for not executing the order? *---*lat I would be recalled, and probably, if I understand it correctly, I *---*ould have been transferred to the troops. That would have been the end *---*f that, outside of the fact that something else might have happened, but *---*nfortunately for me, the assassination did come in.

Q Yes. And so far this order still went unexecuted, sofar as you *---*were concerned?

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Q Yes. Then on August 22, or between August 22nd and the 26th you spoke to Himmler? August, you still kept this order locked up in your safe? Police officials above you?

Q Yes, continued to exist?

Q Yes. How long have you been a soldier. How long were you a soldier up to this time?

Q What? German Arm forces is implicit obedience? violate the first principles of a soldier, which is obedienoe? about five months, you did not obey an order which was issued to you by a superior officer?

Q And nothing happened to you? You were not even courtmartialed?

THE PRESIDENT: Have I been talking all this time without speaking with the microphone open.

THE INTERPRETER: No, but the microphone seems to be out of order.

THE PRESIDENT: I hope I have not been talking to myself?

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THE INTERPRETER: No, sir, I got everything. But what was your last remark, I didn't get that?

THE PRESIDENT: I said I hope I have not been talking to myself during all of this time. you had put to naught this cardinal, essential, revered principle of the German Armed forces, that obedience is the first law of a soldier?

A I didn't pass on the order, and, therefore, I violated obedience, yes, that is right.

Q Ve ry well. In yyour testimony this afternoon you referred to a precedent for an extermination of a race by recalling the Armenian massacres. I didn't quite couch the purposes of that allusion. Did you mean that if Turkey could do it, that Germany could do it. Is that what you meant by that comparison? order to determine whether similar examples had happened, and all these statements always lead back to the fact that at other times this was done, if you look at the history of the middle ages, you will find the same thing, that is why I thought of this. recollection, and, therefore, justified the order? the Hitler-Himmler-Heydrich order to execute all Jews? time ago, I never understood this episode, and it seems to me it was a terrible tragedy, which hit the little people of Armenia who were defenseless. you historically recalled the Armenian massacre, that you in your own mind condemned the action of those who had exterminated the Armenians?

not understand it. and contrary to the laws of civilization? modern history.

Q They were both wrong, the Armenian massacre?

Q And this Heydrich massacre?

Q The Himmler-Heydrich massacre. Very well. How many vehicles - - first, let me ask you, how many men were in your Einsatzgruppe? men, and in the area of the Kommando there were three-hundred men, and, altogether, in the entire area there were somewhat about - - more than five-hundred people, of the German personnel.

Q Yes. How many vehicles did you have? merely according to what the different agencies needed, and I could only estimate it very roughly.

Q Let's have your rough estimate? hundred and ten. I simply don't know.

Q Yes. Well, could it not have been correct to say more than onehundred? today. you to have much more than one-hundred vehicles?

THE PRESIDENT: Yes.

Q. (By the President) So that if any unusual equipment came into your Einsatzgruppe it would be likely for you to notice this unusual equipment, considering that you had a limited number of vehicles?

A. Yes, I would notice that.

Q. How was it that you didn't notice this murder van which came, this gas van?

A. I don't even know whether it ever arrived. I didn't see it and no one ever told me about it.

Q. You read the correspondence about the gas van, did you not?

A. No, I did not see it.

Q. You read it here today?

A. Yes, here I saw it.

Q. You do not doubt the authenticity of those letters, do you?

A. I didn't examine them that carefully.

THE PRESIDENT: Can you quickly show him those letters again?

THE WITNESS: Looking at the photostat one can see no proof of the fact that it is not authentic, at least I can't see anything.

Q. (By the President) Now, the letter requesting the additional gas van states that your Einsatzgruppe already has three vans, but they are not sufficient for the purpose intended, and the purpose is quite obvious. A request is madefor another van, and the letter of June 22nd says that this 5 - ton van will arrive the middle of the following month, which would be in July while you were still the commander of Einsatzgruppe A. Now, are we to understand that although your Einsatzgruppe had four gas vans, vans which were equipped to kill people by a very ingenious device, although you had this most extraordinary equipment, that yet it did not come to your attention?

A. In any case I did not see the letter. That is an absolute fact. I just didn't see it.

Q. Let's forget about the letters. I am speaking now of the vans . These vans were especially equipped to treat Jews in a special way.

The original letter speaks of a transport of Jews arriving weekly. Now, that isn't an incident which could be bery easily overlooked, transports of human beings arriving and being gassed to death in certain types of equipment. All this constitutes a series of events which would not be easily over looked or not noticed by the commander of an operation who has his wits about him.

A. Apart from these letters I did not receive any reports that such transports of Jews were brought in. One single time they spoke about Jewish transports from white Ruthenia, but it was said because of the partisan situation no transports could be brought through.

Q. It says,"A transport of Jews, which has to be treated in a special way, arrives weekly at the office of the Commandant of the Security Police and Security Service of White Ruthenia." Here we have this most extraordinary spectacle of a transport of human beings arriving and being systematically fed to gas vans and there being liquidated. Now, this extraordinary situation in no way came to your attention although you were the commanding officer?

A. No, it did not become known to me.

Q. And although then the equipment was increased to four vans and you only had as many as one hundred vehicles, yet you did not know of these four gas vans which were used for the purpose of exterminating human beings, you did not know that?

A. If it was not reported to me and cannot suspect these things, then I cannot know them.

Q. You made inspections from time to time, I take it?

A. Yes, but nothing was said to me about gas vans and nothing was shown to me.

Q. You inspected your equipment from time to time, did you not?

A. No, I didn't inspect vehicles in detail.

Q. What kind of a Major General are you that you were conducting an operation and yet are not familiar with your equipment and its state of repair?

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A. If they don't tell me anything about these vans I can't know it; I didn't see them.

Q. Did you inspect your equipment from time to time?

A. The vehicles, if I came to the garage yes, I looked at them.

Q. And if these gas vans had been there you would have observed them if you inspected the equipment, would you not?

A. If they had been there I would have had to see them, yes.

Q. So therefore we come back to the proposition that you questioned these letters.

A. I said I cannot see anything from looking at the photostat that they are not genuine.

Q. Very well. If the letters are genuine then your Einsatzgruppe would have three gas vans and ordered a fourth one, and the communications indicate that the fourth one would be delivered the middle of July.

A. It says in the letter that the gas vans were to go to White Ruthenia. That is, it is to a certain locality and not to the Einsatzgruppe, not even to the place where I was.

Q. Well, but you had command of that area, didn't you?

A. Yes.

Q. Then we will sum it all up by saying this, that although you were an officer in the German Army, and although you had been a soldier for many years, yet you did not inspect your equipment and you were free to ignore orders which came to you from the highestranking officer in your organization.

A. I don't know what is more difficult, to live under this pressure for four months or to say this today. It would be easier not to say it today, and it would have been better for me at the time to act differently and not to make these efforts for months to achieve a different goal. I have said it day before yesterday, that I did not act this Way because my inner feelings forced me to act that way, and the realization of what would befall all these victims , not only the Jews, but that this would have terrible consequences, that something would have to be done against it.

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That was my conviction.

Q. You are making a comparison between that period and the stress under which you find yourself today, and do we understand from that comparison that you are wondering now whether it might not have been easier for you to have executed the order and not find yourself in a position here on a witness stand admitting that you refused to obey an order, is that what we are to believe?

A. No.

Q. Then I don't understand why you made the reference to the great difficulty you have been having at the present time.

A. No, I wanted to say that at the time it was terribly difficult to make this attempt to swim against the stream, and that today it is very difficult to describe it in the manner it happened, especially since those people who knew about it and who were there are not to be found today. That is my misfortune. If the people whom I mentioned to my lawyer and who know about this affair were to be found then they can confirm it without any question. I have said that to my Lawyers,they know that for, that was a fact which I could not tell to a hundred people. Only a few could know about it.

Q. Very well.

A. That is why I asked that these witnesses be looked for, and I ask once more to look for them so that these things can be confirmed.

Q. Well, we can't find Reinhardt Heydrich for you but we might be able to locate Mueller.

A. No, I ask for Landgraf and Nyhogen and Jadeke . These are the three men who know about the situation.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II-A.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Dr. Schwarz, are you ready to proceed?

DR. SCHWARZ: Yes, your Honor.

THE PRESIDENT: Do you have anything further to present in the case of defendant Jost at this time?

DR. SCHWARZ: Your Honor, I have no redirect examination to put to the defendant. May I say only what I have already said yesterday that I reserve the right to call the witnesses later on, as soon as they have arrived here.

THE PRESIDENT: Very well, the defendant Jost will now be taken back to the defendant's dock.

DR. SCHWARZ: May I ask that the defendant Jost be excused from this afternoon's session.

THE PRESIDENT: For what reason?

DR. SCHWARZ: I Would like to discuss with the defendant the affidavits which yet have to be taken.

THE PRESIDENT: For the reasons indicated by defense counsel, the defendant Jost will be excused from attendance in Court this afternoon.

DR. SCHWARZ: Thank you.

THE PRESIDENT: Dr. Ulmer, are you ready to proceed with the defendant Six?

DR. ULMER: Yes.

THE PRESIDENT: Very well, the defendant Six will be escorted to the witness stand.

FRANZ SIX, a witness, took the stand and testified as follows:

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JUDGE DIXON: Hold up your right hand and repeat after me: the pure truth and will withhold and add nothing.

(The witness repeated the oath)

JUDGE DIXON: You may be seated.

THE PRESIDENT: You may proceed. BY DR. ULMER:

Q. I ask the defendant - what is your name?

A. My name is Franz Alfred Six.

Q. Please give your data.

A. I was born on the 12th of August 1909 in Mannheim. I attended the Gymnasium - High School - and graduated in 1930. From 1930 to 1934 I studied social and policical science, history, at the University of Heidelberg.

Q. Did you only study at Heidelberg?

A. Heidelberg was the German school of Socialogy. I got to know teachers and personalities which impressed me very deeply. They gave me an extensive knowledge in the entire theory of political science and sociology, and above all, they gave me a picture of the modern world state.

Q. Was Heidelberg in this respect of great importance for your future career?

A. Yes; in Heidelberg there was the first Institute for teaching foreign political science.

Q. Please describe this Institute.

A. It was an Institute for comparative political science and sociology. It gave me an interest in the study of political science and to set up a teaching institute, that is to say, the way it had already existed for a long time in the Anglo-Saxon countries.

Q. These interests which were aroused in you in Heidelberg could you make use of them and realize them after your studies?

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A. No. It was clear to me that if I wanted to take up a scholastic career I first had to pass the prescribed examination.

Q. What examination did you pass?

A. In the year 1934 I passed my PhD at the University of Heidelberg. In the fall of the same year I took up a teaching position at the University of Koenigsberg, and at the same time I took the press position and publicity directorship in the German Students Association. In the year 1936 I passed degree of Dr. Phil. That is, a higher doctor's degree than the previous one, and got another degree at the University of Koenigsberg. As a result of these examinations, in the year 1936 I became a lecturer, and in the year 1938 I became a professor in the faculty for law and political science, at the University of Koenigsberg. In the year 1939 I was transferred to the University of Berlin.

Q. Didn't you pass an examination in Leipzig?

A. Yes, that was the Venia Legendi.

Q. You said Koenigsberg; you meant Leipzig?

A. Yes.

Q. What professorship did you receive in Berlin...to which professorship were you called?

A. In Berlin I received the chain for foreign political science anf for external politics. I taught general political science, the history of the European powers, the history of world politics, and world states, and history of diplomacy and foreign policies.

Q. Did this mean the realization of your plan made at Heidelberg to extend these political sciences?

A. Yes, in Berlin I was able to realize this.

Q. In how far?

A. In Berlin there were two semi-academic institutes, a University for political science, and the Semi-academic institute for foreign policies. I made them into full academic institutes, and incorporated them as a faculty of political science into the University of Berlin. I was the first Dean of this faculty in Berlin.

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Q. And the educational aim of this faculty, - what was it?

A. The educational aim of this institute of foreign politics was the training of a number of highly qualified people for all the private and official agencies of the Reich in foreign countries. This education took place in three branches. A branch for international law, a branch for world economics and foreign trade, and a branch for cultural history and philosophy. Everyone of these branches was connected with the study of a special country and its language. Outside of this educational aim I aimed at the education of Germans who could think internationally, whom we had not yet known how to create since the beginning of the Reich. Above all, this new type of German was to see that Germany was led away from its intellectual isolation and to see to it that the prejudices against Germany were lifted.

Q. You were the Dean?

A. That is right.

Q. And how was your faculty composed?

A. The faculty included the best specialists from the German universities. These experts had been visiting professors for years, or even for decades, at the leading universities of foreign countries. Thus they had knowledge of the international situation. They had formed their own political opinion, and for a great part they had reservations about National Socialism.

Q. Was one of the educational aims of this faculty the training of the diplomatic service?

A. Originally not. The Foreign Office under State Secretary Luther had its own school for the training of diplomats, but it had not proceeded with its plans. For this reason in the year 1942 I was given the task by the Foreign Office to take over the planning and the training of people for the Diplomatic Service. I was to carry out this training within this faculty of international politics.

Q. This was then an additional task for you as a university professor?

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A. Yes.

Q. Did you serve in any other capacity in the Foreign Office?

A. Yes, the development for total war made the drafting of many age groups as attaches of the Foreign Service - made that impossible for the duration of the war. The tranining for the diplomatic service, therefore, was postponed for the duration of the war. For this reason I was offered the direction of the cultural political branch. This I directed from 1943 on.

Q. Was it customary that a university professor took over the direction of the cultural branch of the Foreign Office?

A. No, since the establishment of the cultural branch in the Foreign Office in the year 1920, it had become a tradition to take scholars and university professors and make them directors of a cultural branch.

Q. What were the missions of this cultural political branch?

A. The cultural branch had the direction and administration of German cultural organizations in foreign countries, that is to say, of the German schools, of the German scientific institutes, of the German language institutes of the German visiting professors, etc. Outside of that, the whole cultural exchange program under this branch, that is, in the fields of poetry, of science, of the theater, of music, of the fine arts, and of the film. As war missions there was added the translation and dissemination of German writings in foreign countries, especially of the papers and document books.

Q. This, then was a mission which one could only give you, and which you could only assume on the basis of your scholastic capacity?

A. Well, as I have already said, My predecessors were mostly scholars and university professors. The difficult and complicated relations with the scholars in the Reich and in foreign countries made it seem feasible to have scholars as directors of this branch.

Q. What rank did you hold in the Foreign Office?

A. After assuming this cultural political branch I became an Envoy, First Class.

For this purpose I gave up my professorship and continued my lectures as an honorary professor.

Q. That is the some activity as a professor, only you did not have the possibility to be a regular professor because of your official activities, and you were forced to become honorary professor?

A. Yes, the duties were the same, but the official duties changed. This was a normal, a customary prescription in the former German administration system.

Q. How long did you direct the cultural political branch?

A. I directed this branch until the capitulation.

Q. And now your Party dates, place.

A. Member of the Nazi Party in the year 1930. Membership in the Student League of the SA, November 1932. Member of the SD and SS in the year 1935. Chief of office in the RSHA in 1939.

Q. Your personnel file is here.

DR. ULMER: Your Honor, it is Document 4807, Prosecution Exhibit 126, Book III-B, page 145 in the German text. I don't know the page number in the English text.

THE PRESIDENT: We have it. 79.

DR. ULMER: Page 79 in the English text.

Q. (By Dr. Ulmer) In this personnel file you are listed as chief of office as your official position.

office?

Q What were you working at in full capacity?

A I was university professor that was my only capacity. As such I was paid and as such I carried out my activities. to you as a General, designated you as a General. Were you a General? Did you have the title of a General?

A No, it was one of the few titles I did not have. I was Honorary Brigadier General, but that is to say, Brigadier General in the General-SS. In the Waffen-SS I was Untersturmfuehrer; I never held a rank of the Police as a General. you had held this rank in the Waffen-SS, or in the Police Service, that you were actually a general in the Police Service? the Police and the Waffen-SS, or something like that.

THE PRESIDENT: What do you mean by "Honorary Brigadier General"? I became Brigadier General in January 1945. This was done in accordance with my promotions to a higher class envoy. That is, to say, my appointment to Brigadier General was honorary.

Q Were you at the time addressed as a General? weren't you so addressed? people in the service of the State to give them ranks in the SS in order to give them equivalent ranks according to heir official civil service ranks. Accordingly, I became a SS-Brigadier General.

Q Well, you were entitled to that designation, were you not?

A Your Honor, I would have to explain it linguistically. The meaning of Brigadier General in German does not mean a General, but in English it is translated as Brigadier General. In order to be a General in Germany it would have to say "Brigadefuehrer und General, this is an Army Brigadier General and SS Brigadier General. would be Brigadier General? rank in the English concept of the word. value in the English language, it would be Brigadier General, would it not? equivalent would be Brigadier General? for in German there is a difference between the rank in the SS and the military rank in the Waffen-SS, or in the Police. For if this were not this way, every State-secretayr, or every official of a ministry who held an honorary rank in the SS would have to have a rank such as major, or general, or something like that, or some other rank, but this was not the case. Did I explain that sufficiently, Your Honor? confusion into my mind in this respect. That you are the first officer that I ever heard ow who was entitled to be called a General, but didn't want to be called a General.

A May I answer this, please?

Q No, I don't think it is necessary?

A This is a very basic question. As an university professor, and as an official in the diplomatic service, I could not very well assume a Police rank, and I didn't think there was adequate connection in the rank and positions. As an university professor, I could hardly call myself General of the Police, I have always refused to do it, and today I am saying that I did so rightly, and for my inner convictions.

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THE PRESIDENT: Well, counsel, General or Corporal, let's proceed.

DR. ULMER: Your Honor, may I just state in conclusion that as the translation brings about a mistake, perhaps Brigadier-leader would be the translation in the SS rank, and Brigadier General, that is, General Major in German, which is the designation of an equivalent to a uniformed soldier, or a Police officer.

THE PRESIDENT: I assure you that despite the witness's efforts to extricate himself from what he regards as an ignominy, of being a General, that even if the Tribunal were to ascertain him as holding a General rank, we would not impute to him any additional incriminality because he was a General. BY DR ULMER:

Q Why did you join the Nazi Party?

A I was born in an industrial city, and grew up in one. I came from a working class family. From my sixth to twenty-fourth year, I saw most of the social questions, and its root, namely, in my own home, and in my development. I had to earn my living early in my life, when I was still going to school, and then the situations were often so difficult that I had to leave school in order to be able to earn my living, and in order to continue to go to school, and continue my studies at the university, which I could only make possible by hard work and going short. In all these years I did not get any assistance from the State, or any scholarship. But I had no chance that there would be any prospect for that from the State. In view of this unfortunate situation, and my hopeless future, I set my hopes on the Party, which would bring about a justifiable solution of the social question. Many of my generation faced this decision either to become Communists or National Socialist. I became a National Socialist. Less for reasons of the program, but from recognizing the potential power of National Socialism, which promised me to solve the social question not from the class point of view, but from the whole peoples point of view.

But perhaps, that is not a reason that I became a National Socialist when I was twenty years of age, and, for this reason I would like to site two examples which were decisive for me. In my home town, I witnessed the bloodiest class sturggles through the years of 1918 until the year of 1933, that is, for fifteen years workers rose on every First of May, for fifteen years the regular police, or the Reich Militia, came in and put down these revolts with machine guns. I asked myself at that time if the State was still in order; if the request for bread and employment is not by a machine gun and rifle. The second example, I carried on my studies at Heidelberg, for four years on an average of twenty marks a month. I needed elevne marks to live in an attic, and that left me nine marks to live on. Nine marks, that meant thirty pfennigs a day, at ten pfennigs for the lunch in the kitchen for the poor, ten pfennigs for four rolls in the evening, and ten pfennigs for cigarettes, and this I lived through for four years in the midst of Heidelberg Student Romanticism, where the main problems were welfare and donation and then I asked myself, whether society was still healthy, if it finds so much camplacency, and how it can reconcile this complacency with so much distress. The answer which I gave myself was joining the Nazi Party. much the reasons?

in those years did not mean anything, or nothing at all. It was known as a temporary program, and that is how we judged it. I would just like to give a few examples. There was the interpretation of the "Feder" ideology and the interpretation of "Rosenberg" ideology. There was the school of Spain and the school of Greek; there were western ideologies, and eatern ideologies. There were believers in Germanic Divinity, and there were positive Christians -

THE PRESIDENT: Witness, when did you begin your scholastic career at Heidelberg?

Q Your affidavit states"from 1933 until 1934 I studied Social, Political Science, History and Journalism at the University of Heidelberg."

A That is a mistake, Your Honor. It means 1930.

THE PRESIDENT:Yes. Socialist Party?

Q Yes. Now you have given us a heart-rendering tale of eating in a garret for four years, and then you joined the National Socialist Party, but apparently jou joined the Party before ever these trials and tribulations had developed at the University of Heidelberg, where there was so much complacency in the midst of distress; now did you anticipate what you were going to suffer at Heidelberg at the time? worked for two years before I graduated; I saw this and actually experienced it. ing at the University of Heidelberg, you then joined the Party?

lead me to become a Nazi. the University of Heidelberg?

A Yes, that is right? could draw upon while you were at the University?

A I didn't understand what advantage - what profit I could draw from it. that you found yourself that your only resource could be was to join the National Socialist Party. You found that was the only escape that you could find from this distress in which you were?

Q Yes, all right, then you became a Nazi in 1930? titled to have from 1930? could be derived from this political affiliation with a certain Party you could get from 1930. but you have described to us the harrowing experience and your distress at the University of Heidelberg when you already were a fullfledged Nazi? Party that did not help any while you were at the University of Heidelberg?

Q Or did it ever help you?

Q THE PRESIDENT: All right.

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BY DR. ULMER: Heidelberg, or in the hope that this Party will keep its promises and realize then out of the entire German distress? and in the year of 1930, one didn't think about that a Party would distribute any advantages. It was a really inner will and hope that there would be an ideal of a community where class struggles would be eliminated, and the advantages of social order would be brought about. and when? the time the Party issued a decree that every member of the Party would have to become a member of the professional organization. Accordingly I became a member of those two organizations.

Q And then in 1935 you also became a member of the SD. Why? and press expert. A University colleague suggested to me to build up a press department in the SS agency. That made the material of the world press available to me which was no longer available in a common way. For this reason I decided to take over this activity as a sideline, and this was in the year of 1935. the SD; what did you know about the SD at the time this offer was made?

A Until the year of 1935 I had no connections with the SD. It was nothing more to me than an agency of the SS, just like many others.

Q You were not then with the SS. Why did you become a member of the SS, was there any connection between them? SS automatically. Merely to mention it, I never made an application to enter the SS. I didn't fill any racial questionnaires either. I was just taken in and then later had to be dismissed from the SA.

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Q You were in the SD Main Office from 1935 to '39. What branches did your activity include? and Writing, and from the year of 1937 to 1939, Domestic Department. University? professor and as a sideline I was Department Chief in the SD from '35 to '39.

Q Then in '39 you handed over these activities in the SD. Why? ship with Heydrich. In the year of 1939 I was dismissed from my job.

Q And why did your relationship with Heydrich become worse?

A We had human end political reasons. Human reasons since a purely power political terroristic character like Heydrich could not bear intellectual arguments for any length of time, every co-worker who had his own intellectual opinion sooner or later had to be suspected of being soft and agreeing to compromises, that is intellectually. Heydrich's political attitude was to divide the entire German people into supporters and opponents and therefore disregarded education and personal opinion completely.

A (Continuing) For this reason I had an increasing number of disputes which then led to the bad relationship and finally to my dismissal.

Q And what were the results of this dismissal?

Q Was it possible to be dismissed from the SD? dismissal. Furthermore I was university professor in full capacity and financially independent so that I could permit myself this stop.

Q And Heydrich approved the dismissal, or didn't he? and how an SS Leader can leave the SD.

Q And Why didn't Heydrich approve this dismissal? This was one of the characteristics of Heydrich which has often been described here. No one could be honorably dismissed from his service. Either something was said about him or he just ruined him. September, 1939, on? start completely new office, the office for science and research.

Q What was the name of this institute?

Q What were its missions? questions.

Q What type of research purposes? no modern problems but historical ones in the manner of a historical university institute. It was to undertake cultural history, intellectual history, an intellectual history of foreign countries. The reason why Heydrich founded such an institute during the war can only be seen from his own snobbishness.

He just wanted to have his own office of science which would, so-to-speak, be a decorative office in his RSHA. with them? necessary research workers impossible. Thus there were only a number of publications about the history of liberalism and Free Masonry.

Q Could these research results be used practically? lished in a series of publications. Therefore, they could not be used in the Reich or anywhere else.

Q How many collaborators were there in office VII?

A The Office VII was in charge of 15 referents, experts. In addition there were some translators, some archive workers and liberians and some stenographers. All told there were forty people.

Q And how large were the other offices in comparison? Police Office included 800 people.

Q All others had several hundred? occupied territories? 40 people.

Q How long were you director of this office? from December, 1941, until July, 1942. about? 1940, I was called up.

A My relationship to Heydrich had not improved. Office VII did not seem important to me as far as the war was concerned, but the important thing was for me, that like every other German I believed I had to do my duty as a soldier.

Q How long were you with the Waffen-SS?

A From May, 1940, until April, 1942. actively from May, 1940, to June, 1941.

Q Where were you with the Waffen-SS? battalion for retraining. From September to December I was in the war school, 1940, war academy. From December, 1940, to July, 1941, I was in the Division Reich.

Q And where were you with this Division Reich? the eastern border.

Q What was your position in the Waffen-SS ? kommando.

Q What military rank did you have in the Waffen-SS? so long, was that agreeable to him?

A No, it was not. He tried to call me back several times.

Q And you were still able to remain with the Waffen-SS? all my heart, and that I wanted to remain with the division until the end of the war. Therefore they always designated me as indispensable for lack of officers.

Q And when were you finally recalled after all?

A Two days before the war with Russia began. On that date an order signed by Himmler arrived in the division headquarters that I was to be sent to Berlin.

attempts to remain with the troops?

A I tried by all means to stay with the troops. It was a matter of my honor not to leave the troops two days before the beginning of this War.

Q And what did the Army say? but I was informed that an order of Himmler had to be complied with and they could not do anything further.

Q When did you leave the division?

Q Were you dismissed from the Waffen-SS? to it.

Q Why? to the division.

Q And when did you arrive in Berlin? 1941.

Q Was the outbreak of the war on the 22nd?

Q Where did you report in Berlin? to the main office of the Waffen-SS. This referred me to the RSHA because the RSHA had called for me. Thereupon I reported to Heydrich.

from the front?

A No, the transfer had come as a complete surprise. I had no idea why I had been ordered to Berlin.

Q What did Heydrich tell you about it?

A Heydrich didn't even receive me. His adjutant, Plotz, told me that I had bean with the Waffen-SS long enough, He intended to give me an archive command in Moscow which I would have to organize and set up . The kommandos of the Einsatz Staff Rosenberg and of the Battalion Kunzberg of the Foreign Office which were archive kommandos of other agencies were already on the road, and therefore I was to see to it and I should arrive in Moscow first. For this reason I was to take up a connection with the Chief of Einsatzgruppe B, Nebe, who was responsible for the Moscow area.

Q You were to arrive in Moscow first? What do you mean by that, with the combat troops? these duties in Moscow as soon as the German troops arrived there. kommando would be subordinate to Einsatzgruppe B?

A No, I had received my order from Heydrich. As Chief of Office VII, I could not be made subordinate to another chief of an office. without objection? be compromised before the officers of my division if I would leave my troops shortly before the outbreak of war, and I asked that I be sent back to the division.

Q What was Heydrich's reaction, did he consider this objection?

A No, he refused it. Plotz told me it would be out of the question. It was up to me later to advance with my division.

research and international politics, or were similar security orders given previously to this office? the office of Rosenberg. The office of Rosenberg by a special Fuehrer order had received the mission to secure certain - to confiscate certain objects of an artistic value in the occupied territory. As a result of the agreement between Heydrich and Rosenberg in the spring of 1940, the Security Police was given the right to confiscate certain documents and archive material from the time after 1933. This special order was given to Office VII in the spring of 1940.

Q Was Office VII active according to this order, and where? Athens and in Belgrade where it was busy with such archive orders.

Q In what form was this activity carried out? these documents and had to evaluate them. carried on. What was the activity, for example, in Paris?

A In Paris the great political organizations were secured. All the ministries, together with the historical work of the foreign office, all those documents were photostated. A number of archive documents which were requested by offices in Berlin, such as the Surete or the Alliance Francaise, they were taken to Berlin. These are just a few excerpts from this work. from your answer. You said we secured the great political organizations. organizations.

Q Could you yourself confiscate these?

A The procedure was as follows: The confiscation was carried on by the Secret Field Police, a military organization, and then the evaluation was taken up by the Kommandos of Office VII.

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DR. ULMER: I am referring to a translation error, "confiscation",

THE INTERPRETER: They are arguing here about the translation of the word "Beschlagnahme" which to me means confiscation.

THE WITNESS: The difference is not great. Confiscation would be a final taking away, and here we mean confiscation for the purposes of evaluation and then the documents are returned.

THE PRESIDENT: Do we know that those documents were returned?

DR. ULMER: Yes.

THE WITNESS: Not all documents were taken away. Mostly they were left in the buildings More examined, and were then again returned to the offices.

THE PRESIDENT: Well, would you say then that it was a temporary seizure of documents?

THE WITNESS: Yes, with those which were not carried away from the place of origin it was a temporary seizure, yes. Others, of course, which were needed in Berlin were confiscated.

THE PRESIDENT: Yes. Well, then, you might make that distinction between confiscation, where the documents were taken and not returned, and temporary seizure where the documents were merely temporarily taken for the purpose of study, scrutiny, and then returned.

THE WITNESS: Yes.

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Q. Thus you received the order from Heydrich to set up a similar kommando for Moscow?

A. Yes.

Q. Did Heydrich or his deputy issue a written order to set up such a kommando?

A. No, this was not customary. The setting up of such kommandos was an exclusive function of Office VII.

Q. It is not customary then. Did office VII carry out its task without Heydrich issuing an order?

A. Yes.

Q. Thus this became a work of experts in Office VII?

A. Yes.

Q. Was there a difference between this kommando to be organized for Moscow and the former archive Kommandos of Office VII?

A. No, not their missions. No, there was no difference only in the importance of the objective, the interest in the Soviet Russian documents was especially great. For this reason I was given the mission in Moscow.

Q. Was Moscow especially important within the interest for these Russian documents?

A. Well, it was known that the Russian centralization has Moscow as the head of all important agencies of the State, of the Party, and of the cultural life and likewise, the way in Paris, Brussels, and the Hague were important for their countries, so Moscow was the city in Russia, which was the city in Russia which was most important.

Q. How did you prepare this Kommando?

A. I informed my co-workers in Office VII. I gave them the orders to prepare the materials necessary for Moscow , that is, city maps guides and organizations there and the other materials which are necessary to carry out such a mission. Furthermore, I reserved the right to ask for these co-workers.

Q. When was that?

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A. After I had made contact with Nebe, which had been ordered by Heydrich.

Q. Where Was Nebe at that time?

A. Nebe was in Warsaw.

Q. What were the results of your conferences with Nebe?

A. Nebe was not very agreeable to this mission. He already had thought himself of securing the documents in Moscow and he didn't think a special kommando was necessary.

DR. ULMER: Your Honor, now we will have to go into detail about this advance Kommando Moscow, the actual Count I. I think this would be a good point to recess.

THE PRESIDENT: The Tribunal agrees with you. The Tribunal will be in recess for 15 minutes.

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THE MARSHAL: The Tribunal is again in session. BY DR. ULMER: discussion with Nebe and you said that Nebe had not been pleased, that you received this particular assignment, and you have said that he thought that the security of files could be done by, and that he did not need a special commander for this purpose. How did you react to this answer of Nebe's? assignment.

Q Did you go to Heydrich and speak to Heydrich about it?

A Yes, but he did not receive me. But he said that he had given me the assignment, the order, and I had to carry it out.

Q How did he let you know - in writingg? Ploetz? towards Heydrich. For a long time after I tried not to return to Berlin and to shirk from this duty, and I was certain that if I now made any moral objections once more I had to reckon on very severe measures against myself.

Q You mean arrest?

Q You then went back to Warsaw, did you?

Q Did Nebe now agree?

A No. Nebe again made some objections and he said that now he had to discuss it first with the chief of the authority in Minsk, the AOK, which is the superior commando to the Army. That was General Field Marshal von Kluge.

Q Where was he? Was he in Warsaw?

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Q And did Nebe actually talk to Kluge?

Q Was it about this Archives Commando?

Q Was von Kluge in agreement with this?

A Yes, Kluge agreed. He referred him for further discussion to his major in 1-c Helmdaeh. He was a major in the general staff.

Q What were your further steps then? for a meeting and a discussion of the departmental experts.

Q And did they arrive?

A No, only two of these arrived. Streckenbach said that he could not dispense with any more experts, and the rest should have been taken from reserve leader corps of the Einsatzgruppen.

Q Who was Streckenbach?

A Streckenbach was the Department Chief 1 of the SD. He was in charge of the personnel department.

Q Office I was only personnel?

Q What did you do then under the circumstances? back to Berlin again. For this reason I declared myself satisfied with the state of affairs and I asked Nebe to put at my disposal a few interpreters whom he had in Moscow. detachment?

A Two arrived from Berlin. Two of them were actually from the staff, two came from the detachment VII-B, and two from the Einsatzkommando IX.

Q Two, did you say, from Group Staff?

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Q Thank you. And how were they sub-divided, according to their origin?

A Mahnke and Augsburg came from Berlin. Engelhard and Siebert came from the Staff. Klingelhoeffer and Noack from Commando VII-B, and Luther and Feldmann from Einsatzkommando IX.

Q Mahnke and Augsburg, e.g. were scientists? who were put at your disposal? or they had to have some scientific knowledge of archives.

Q Did the Archive Commando have a special name?

A Yes. I just called it "Advance Commando "- "Vorkommando Moscow" - in order to make clear its special character and its special purpose. in the preliminary syllable "Vor"? this Commando a name? connection with this particular Commando - armaments, clothing, giving of names - everything, was my assignment as the chief of Office VII. assignment? for Moscow and had such material prepared which I took with me. On the basis of this material I appointed these men and prepared them for their task.

Q What kind of material was it? and in German. There were statements, and drafts, and distribution plans of Ministries which gave a full picture of the whole administrative system of Moscow.

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material? Can you give me further details upon this? sariats, were selected. All the organizations - that is, the Bolshevist party organizations, all public cultural organizations, archives, libraries, institutes, were established. Degrees of their importance were established. Individual offices and institutes, were marked down on the map accordingly and these materials were passed on to one particular expert to work out in his particular sphere. Did you take part in the preliminary discussions in the setting up of tasks for the Einsatzgruppe, at Berlin, Pretsch or Duben? I was to go to Berlin. or some other representatives, or did you receive instructions about the execution order? with Heydrich or Streckenbach before my departure or even after my return. My sole discussion was by telephone. It was a discussion with the adjutant Ploetz. Therefore, I received no instruction from anyone in Berlin concerning the execution order. or just information concerning the execution order?

A No, not even Nebe. Nebe gave me neither instructions nor information, neither in Warsaw nor in Minsk. did you receive any knowledge about the execution order?

Q Where?

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naturally were mentioned and were discussed, but I myself - and I have to make a point in stating this - had no knowledge about the general elimination of Jewery, especially about the extermination of women and children... As I said, I had no knowledge and never received any knowledge. did it ever get the assignment, or, in your opinion, could the Einsatzkommando have received such order for executions?

A No. The advance Commando Moscow was special commando of the Reich Security Main Office. It was not an Einsatzkommando. And as a consequence of this, there was no need for me to pass on any instructions or give any orders. Vorkommando Moscow concluded?

A That was on the 14th of July. At that time I left Minsk.

Q That is, with the Advance Commando Moscow?

Q What was your next destiny?

A That was the Division Reich. It was a combat division actually, Combat Division for Moscow.

Q Where was it situated?

A The Division Reich was in the vicinity of Smolensk. About the garrison I was to find out from OAK-4.

Q Where was the army under AOK-4?

A That was stationed in Tolochino. That is half way to Smolensk.

Q Did you actually move there, to Tolochino? Were you stationed there? of AOK-4, on an estate, on a farm.

Q When was that?

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then, and who were the men you negotiated with? staff, vonHelmbach. Helmbach? Furthermore, I gave him a full explanation of the purpose of the Advance Commando Moscow for the securing of archives material in Moscow. I furthermore gave him an explanation that it was of major importance to reach Moscow with the actual combat troops in order to secure the material undamaged and undestroyed, and in conclusion I asked him to issue a decree, an army decree, so that the advance units would be informed about this and would be able to support me. special assignment of your Commando, as the Commando for archive securing? about the consistency of the Commando, whether I had enough experts, and he asked me how I would behave in Moscow, and he was fully in agreement with this, in general.

Q what did he do? How did he express his approval in front of you? me that he would issue this army task, and he just said that he would issue it when Moscow actually would be taken, in due course. he explained to you and told you details about the military position of the garrison and direction of the Division Reich...did he talk to you about this? He explained to me about the fighting around Smolensk, which had been particularly severe, and for the first time had stopped the quick advance of the German troops, and he also mentioned in detail the garrison and the location of the Division Reich.

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This was in a gap, a little further from Smolensk in the so-called Djelna Curve. He said that it would be good to wait for a few days until the AOK-4 itself would march into Smolensk as the road had been interrupted on various points.

Q What did you do then in Tolochino?

A I said that I arrived there on the 16th. I spoke to Helmbach on the 12th about, I sent a few quartermasters, in advance - and on the 23d I marched off in the direction of Smolensk with the AOK-4.

Q Then you stayed in Tolochino for quite some time. Did you have further discussions with Helmbach?

A I had two further discussions with Helmbach. One discussion just shortly before we reached Smolensk, because Smolensk was still being bombarded, a position had been built up in the vicinity of

Smolensk; and a further discussion I had with Helmdach in the middle of August, which I shall come back to eventually. activity?

A That was not my assignment. Furthermore, I was in a combat zone. There was no possibility to carry out any executive activities. 23d of July 1941 --- you sent quartermasters in advance, didn't you? up quarters there? in the vicinity around Smolensk - the eastern part of the town still was in the hands of the Russians. Until the 4th of August there were heavy artillery fights, and practically until the 4th of August the town was bombarded by an immense number of Russian batteries. in Smolensk?

Smolensk. Only the water carriers were sent out to fetch back water at the wells.

Q Where about were you stationed in Smolensk? That was one of the few buildings which had not been fully occupied by troops, because it was only three hundred meters from the foremost front lines. administration?

Q Were there other units in this building?

Q Did you then go to your Division Reich from Smolensk? Division Reich, and I had given him a letter to the commander of Division Reich, in which I explained the purpose of my being on the way there, and that I should take up contact with him.

Q Did the commander react to this? ed me that the division would be withdrawn from the Djelna area, that it would be stationed there and that I should not go to beyond the Djelna curve.

Q Who was this commander?

Q When did you talk to him? the division while they were marching.

Q That title of Sturmbannfuehrer is that equal to a colonel? advance to Moscow with the Division Reich?

A Yes, I did say it in several discussions. I called on the division while it was stationed there, as well as the Commander Wunder, and some of his officers came to see me in Smolensk in order to clarify this question.

Q What did you arrange with the Division? Division to Moscow, that I would receive fuel and rations from the Division and that I would furthermore be able to use their signal service.

Q Who is "We" would advance with their Division?

Q What did you and your leaders do in Smolensk? to do for some time. Therefore I decided to inspect Smolensk which is a large city in the Russian territory and to look for archives and other valuable documentary material.

Q What did you do then for example?

A I inspected the archives of the town. The archives of the administrative district; all cultural organizations, institutions, universities, and other places like churches. Either as I said , I looked at them, and inspected them, or I marked them with notices and protective notices.

Q What were these protective notices you stuck there? in Minsk to print proclamations in the German and Russian languages which proclaimed to the population and soldiers that certain articles were under protection. For experience had taught that archives and documents were deliberately destroyed by the indigenous population and sometimes by our own troops through negligence.

A There were two big churches in Smolensk. One was the famous Cathedral of Smolensk which by the Russians had been turned into a museum. It was full of wonderful treasures such as crowns and other objects which were completely exposed. The other was a very famous and beautiful old Russian wooden church which was used as a central archive for the Russian Government.

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I turned this cathedral over to a Russian orthodox minister and I had the objects taken away from the other church and I turned this church over to the catholic priest. The reason was to safeguard these treasures from plunder and spoliation. in Smolensk? have already said, the city was under artillery fire until the 4th of July, the whole town before the retreat of the Russians, was evacuated and dismantled and there were only a few inhabitants remaining who as a consequence of the battle had gone into hiding. The rest had escaped, and fled to the vicinity of the town of Smolensk. The town was practically empty of all population.

Q Therefore, no police actions or executions were carried out?

Q Nebe, and the group-staff had remained, isn't that so? You were alone with the VKN?

Q Did Nebe arrive with his group-staff in Smolensk and at what date?

Q Where were the accommodations for him and his group-staff? remaining buildings, he moved into another wing of the same building.

Q What kind of contact did you have with Nebe? Security Main Office. I did not look for such a point of contact either, because I had to deal with the marching of the Division Reich, and I was definitely marching with them.

Q Were there any actual personal tensions between you and Nebe? interpreters of my command for his purposes.

Q For what purposes were you to place them at his disposal?

A He wanted translation work to be done. He wanted contact with the town administration, and that in one case he even wanted interpreters for the police commander.

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Q For what purposes?

Q For interpreting purposes? reference to your kommando? the part of my interpreters without my special approval. Furthermore, for reasons of our being stationed together in the same building, I demenaded strict separation between the group-staff and my own unit.

Q That, of course, increased the tension?

Q Why then did you not simply leave Smolensk? Smolensk created a completely new military position, a position which was decisive for the final phase of the campaign of this year; the Army and motorized units of the AOK-IV were taken away from the advanced direction of Moscow and were put into the position in the direction south of Chernikov-Kiev in order to eliminate the endangered flank. Among those transferred troops was also the Division Reich. A discussion with I/c Major I.G. Helrmbach in the middle of August, it must have been the 15th of August, revealed that Moscow would not be taken within a measurable space of time, therefore, the advance kommando Moscow became idle for weeks, even months. protective assignment? porate my kommando into the Einsatzgruppe B.

Q You mean the whole command?

Q What kind of thing was this special task going to be? in the East territory, that is in the vicinity of Smolensk. With this, of course, the nature of the assignment of my VKM would have changed completely and I would have been forced to most severe measures.

Q Did you accept? accepted it I would have been his subordinate.

Q Well, what did you do?

Q Where did you send this teletype message?

Q You mean the Reich Mein Security Office to Streckenbach?

Q Did you choose another way also? courier, in which I detailed my position, and the reasons for the wish for my release.

Q What was the result, were you released? On 20th of August I left Smolensk and went to Berlin.

Q Who received the order?

Q It was to you, was it not?

Q Did you take leave from Nebe? Or did you just leave without much ado? the responsibility for Vorkommando Moscow. superior command office?

secure files and archives in Mascow. I only reached Smolensk with this order, therefore, I had no reasons to send reports.

Q And you didn't do it?

A No, I didn't.

Q Did you make reports to the Einsatzgruppe B? Office directly and there was no point, there was no reason and no duty to report to Nebe. situation reports? during this trial, but I assure that these reports are not due to my own initiative. before I do so, will you give me some data you have on the VKM? order to establish the VKM. On 14 July I left Minsk; from the 16th to the 23rd of July I was in Tolochino;from the 23rd to the 4th of August I was by myself in Smolensk. That is, I was with the Vorkommando Moscow. That is the date when Smolensk was still being attacked. On 5 August the group-staff arrived in Smolensk, and as to this I was luckily united with the group-staff; from the 20th of August - - on 20 August at six o'clock I left Smolensk.

DR. ULMER: Your Honor, I am now forced to name a number of operational situation reports which unfortunately have not been submitted by the Prosecution. The use of these documents, however, has been promised me by Mr. Ferencz, who told me I could use them outside of court, and which I shall offer in evidence in my document book for the defense. May I put a few questions from the contents of these operational situation reports?

THE PRESIDENT: By all means. Since you have mentioned document books, the Tribunal would like to announce to defense counsel that we are informed that up to this point only two defense books have been prepared, and two are in the state of preparation. We would like to repeat that defense counsel should interest themselves in the immediate preparation of any documents which they intend to submit, so that we will not he confronted with a state of congestion towards the latter days of the trial. You may proceed.

DR. ULMER: Your Honor, as to my own case, and my own defense, I can say that my document book is being prepared very actively, it has already been stencilled, and it is only a matter of having them run down and translated. Therefore, shortly after my direct examination of the defendant Six, it will be submitted to the Tribunal.

THE PRESIDENT: Very well. BY DR. ULMER: operational situation report of Einsatzgruppe B covering the period o of July and August 1941. There is one operational situation report for instance, of the 9 of Julh 1941, which lists first of all the advance kommando Moscow, and states: "After negotiations in Minsk the Special Kommando VII-A is being transferred from the AOK-IX which is to march past Moscow to the newly formed armored AOK 4 to which an Advance Kommando is attached, including interpreters, and those who know the locality of Moscow under the command of Standartenfuehrer Dr. Six. The present AOK-IV has been turned into AOK-II, and the Sonderkommando VII B will be at the disposal of AOK IV". How do you explain the compilation of this report? it to Berlin. ferred from AOK IX, to AOK IV?

with my archive-assignment.

Q Would you have been able to carry on with your task? (Film not to be heard here). not have inspired my task as both Kommandos had completely different tasks. But this report, in my opinion, confirms my task's concerning the archives ahd the independence of the Advance Kommandos Moscow.

Q Why? one AOK which the Einsatzgruppe with its personnel status could not have afforded to carry out.

Q You mean a double staffing , in what way?

AA double staffing with the two kommandos. I mean, the same character, but if I really just simplify, VII-A was a special Einsatzkommando, and my unit was an Archive-kommando.

Q There is an operational situation report of 23 July 1941. This states: "VKM is still stationed in Tolochino". Is this report correct? stationed in Tolochino in the combat zone AOK-IV. this report? inflammation of the jaw. He had to leave for home via Minsk, evidently Nebe reported that fact.

Q And Nebe made a report of this?

Q On his own initiative, without your suggestion?

DR. ULMER: Your Honor, another operational situation report has to be presented, so would you like for me to proceed, or would you like to call a recess?

THE PRESIDENT: I think that we should have a recess at this point. The Tribunal will be in recess until L;45.

(A recess was taken until 1345, 24 October 1947).

(The hearing reconvened at 1350 hours, 24 October 1947)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION (Continued) BY DR. ULMER: situation report about Tolochino. A further operational situation report on 26th of July 1941 reports the VKM to be in Smolensk, is that correct? with some quartermaster since the 21st of July, 1941. The city was still being fought over as the report mentioned.

Q How do you explain this report? who suddenly got sick and had a severe appendicitis and had to leave immediately. He went back by way of Minsk. Therefore, it may be assumed that he gave his report to Nebe orally. of the German text, Exhibit 118, the Staff of Einsatzgruppe B is reported to be in Smolensk, is that correct?

THE PRESIDENT: Which Document Number please?

DR. ULMER: I beg your pardon, your Honors. It is Document NO-2949, Exhibit 118.

THE PRESIDENT: Very well, thank you.

Q (By Dr. Ulmer) Is that correct? his group staff on the 5th of august, 1941. been yet submitted of 6th of August 1941 reports from Smolensk as follows:

"In the City of Smolensk in the House of the Soviet important material was safeguarded. The material, after having been examined, will be forwarded." Is that correct?

Q How do you know that? safeguarded in Smolensk by the Advance Kommando Moscow.

Q What did this material consist of? USSR shortly before the outbreak of war.

Q You know that - how did Nebe know about that? was lacking, I saw to it that those secured documents were handed over to the staff in order that the staff may send them on to Berlin. Further material was sent on to the staff also as it was found.

Q It was sent continually to Berlin in this manner?

Q Thank you. According to these operational situation reports the group staff under Nebe's direction and the Advance Kommando under your direction was in Smolensk from the 5th of August 1941, until the time of your departure on the 20th of August, 1941, and they were locally together? to the Einsatzgruppe or to the Einsatzgruppe staff in that time? kommando.

Q On Nebe's approval? that time? sent to Berlin by courier. If Nebe wanted to process this material in his reports this was completeky outside of his duties for it was safeguarded by the Advance Kommando Moscow.

Q Thank you. Why did you yourself not report the safeguarding of this archive material to Berlin? the way the other kommandos had it and had no other means of communication. The safeguarding in Smolensk was caused by the special military situation and by the fact that we had stayed there without having planned to do so.

Q Now, I have the operational situation report, No. 67, of the 29th of august 1941. This is Document No. 3837, Document Book II-B, Page 5 of the German text, Page 6 of the English text, your Honor, Prosecution's Exhibit 58. Do you know this document?

Q Since when? mentioned according to which the Army gives 740 civilians over to the Advance Kommando Moscow in two days. Is this report correct?

A Factually yes, but formally no. The field command, because of lack of interpreters, had handed over some hundred civilian prisoners to the Einsatzgruppe who had been handed over to it by field units. Since there were so many of them, Nebe asked me that the interpreters of the Advance Kommando Moscow be used in order to screen these people.

DR. ULMER: Your Honor, unfortunately this operational situation report which I have just mentioned has not been fully submitted by the Prosecution. I intend to submit several of the paragraphs from the operational situation report which have a direct Bearing on the questions submitted by the Prosecution, and I want to read these paragraphs now, and later I want to submit them in my document books.

It says there, "During the screening the following took place: First, the main group of civilian prisoners were people who, in the course of the advance of the combat troops, for security reasons, had been taken into provisional civilian or prisoners of war camps, for the most part outside of their regular identification papers they hold discharge papers from a Dulag, from a transient camp. Secondly, one group of punitive prisoners who had been sentenced to prison-terms by the Bolshevists for misdemeanors such as drunkness during work and reporting too late for work, had been used as punitive labor for digging ditches after the outbreak of the war and for building improvised fortifications. When combat took place in their territory they had mostly fled and were later arrested as vagabonds by the Army agencies. This group usually lacks identification papers since, when they were brought into the Russian prison their identification papers were taken from them by the prison officials. Third, a group of draftees who had an order to report to the Army and were on the way to join their unit but were no longer able to roach their unit. They were mostly to be used as drivers, as road builders and railroad engineers."

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THE PRESIDENT: Dr. Ulmer, how long is this quotation which you are going to read?

DR. ULMER: I just read about half of it, your Honor. I could summarize it.

THE PRESIDENT: I think that is what you should do, summarize it, especially in view of the fact that you intend to submit the entire text later. You give us the content in a few brief words indicating that you intend to let us have the entire text later?

DR. ULMER: Yes, your Honor. people who had been ordered to join the Army and who were no longer able to reach their unit. Their identification papers consisted only of their order to report to a certain unit. A Fourth group is also mentioned, persons who had been taken away from their field work and farmers who had been arrested without any reason. They have identification papers issued by Army agencies, Wehrmacht agencies as workers on collective farms.

Q. (By Dr. Ulmer) Witness, my question in reference to this is as follows: Outside of these four main groups were any more persons isolated, selected?

A. The distribution of the prisoners was done as follows: It was done the way the report says, and the exactness of this report shows how much care was taken in this to see to it that these partly half-starved people be distributed justly and that they be subdivided into these four groups. Any further subdivision of prisoners or even execution did not take place since there was on reason to do that. These civilian prisoners, after the subdivision into these four groups had taken place, were led away by soldiers of the Field Command who had been present during COURT II-A CASE IX the subdivision.

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More than that I cannot tell you about this subject.

Q. Thank you. In Document Book II-B, Document 2844, Prosecution's Exhibit 61, Page 22 of the German text and Page 22 of the English text, we find an operational situation report, No. 73, Do you know this one?

A. No, I did not see it until the trial here.

Q. Thank you. Can I have it back, please? This operational situation report mentions, on Page 29 of the German text, that group staff and Advance Kommando Moscow from the 22nd of June to the 20th of August had shot dead 144 people. Is this report correct?

A. No, The Advance Kommando Moscow in the time between the 22nd of June, 1941, and the 20th of August, 1941, did not shoot any people. As far as the Advance Kommando Moscow is mentioned in this report, the report is wrong. As far as the group staff is concerned, I cannot give you any details.

Q. How do you explain that this report came to be made out?

A. An explanation is easily to be found. The report was made out after my departure, that Is to say at a time when I had already subordinated the Kommando to Nebe.

Q. How do you come to the conclusion that this report was made out after your departure?

A. That can be seen from the report itself. It is here a collective report of all kommandos of Einsatzgruppe B with the deadline 20th of August. These reports took at least a few days until the Einsatzgruppe received them from the various Kommandos. At that time, that is when Nebe made out this collective report, I had already left.

Q. How do you come to conclude that this report was made out unjustly as far as the participation of the Advance COURT II-A CASE IX Kommando Moscow is mentioned in the execution?

A. Until the 20th of august, 1941, that is the day of my departure, the Advance Kommando Moscow did not carry out any executions. This is proved by the total reports which are submitted here. There are single individual reports about all kommandos of the Einsatzgruppe, about executions by the Kommandos. There is no such report about the Advance Kommando Moscow, but the operational situation reports show that executions were carried out by the group staff.

Q. For what reason did Nebe give a point for the Group Staff and Advance Kommando Moscow?

A. On the 20th of August I left. On the same day, Nebe put the Advance Kommando Moscow under his command. Thus Group Staff and Advance Kommando Moscow were under his command. This fact was unknown in Berlin. Nebe therefore used the first opportunity to report this subordination.

Q. To report it where?

A. To report it to Berlin. He thereby explained that now the Advance Kommando Moscow in reference to its position was equivalent in its position to all the other Kommandos. Furthermore, Nebe wanted to accomplish with this report that in this first collective report of all Kommandos - for this was the first report like that-no report like it existed before that - that all Kommandos under his command would now be listed as being under his command.

Q. Could one imagine reasons for the report mentioning jointly Group Staff and Advance Kommando Moscow from those commands being in the same building?

A. As I have already explained, Nebe tried, when I was still there, to use my interpreters for his own purposes. After my departure, he had a free hand in doing this and he certainly made use of that. Thus, there probably was an organizational unity between the Group Staff and the Advance Kommando Moscow, as it is expressed in this report at hand.

Q. Then you consider this report an arbitrary action on Nebe's side?

A. Yes, Nebe wanted to express to Berlin that now Group Staff and Advance Kommando Moscow Were both under his command. If the Advance Kommando Moscow really had carried out independent executions on its own, then it would have been listed separately.

Q. Thus you exclude completely the participation on the part of the Advance Kommando Moscow in this figure of 144 executed people during the time of the 22nd of June until the 20th of August?

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A. Yes, for reason of time, of location, and for reasons of the proof of the Operational situation reports. Therefore, in my opinion, the claim of the prosecution in Letter U in the indictment, according to which the executions are supposed to have taken place in the vicinity of Smolensk in unfounded. For then the prosecution tries to limit the time of the execution between the 5th and the 20th of August, out the operational situation report states that the executions took place in the time from the 22nd of June until the 20th of August and not during the time of the 5th of August to the 20th of August, that is to say, during that time during which Advance Kommando Moscow and the Group Staff were together at the same place.

Q. In the same document which was just submitted to you, namely, in the operational situation Report No. 73, the Advance Kommando Moscow is supposed to have executed 46 people among them 38 intellectual Jews, who had tried to engender discontent and dissatisfaction in the newly erected Ghetto in Smolensk. How do you explain this report?

A. I have no explanation whatever for this report. As I have stated, in general, the advance Kommando Moscow between the 22nd of June until the 20th of August did not execute any people and I also want to say especially that the Advance Kommando Moscow between the 22nd of June and the 20th of August did not shoot any Jews.

Q. Do you have any proof of time for those months?

A. Yes, the subdivision of these civilian prisoners brought in by the Field Command took place on the 18th and 19th of August, that is, one or two days before my departure. This is the last incident in which Advance Kommado Moscow participated which can have any reference to me, as far as the date is concerned. This incident of these prisoners brought in by the Field Police are mentioned in the Situation Report of the 29th of August.

THE PRESIDENT: Witness, you have stated several times now that between June 22 and August 20, 1941, that your Kommando did not exe cute any Jews.

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THE WITNESS: I have said between the 22nd of June and the 20th of August.

THE PRESIDENT: Yes

THE WITNESS: 20th of August.

THE PRESIDENT: Well during what period of time did they participate in executions?

THE WITNESS: I don't know. I am just trying to analyze to you for what reasons no executions can have taken place in the period down to the 20th of August. Especially, I tried to analyze at the moment why this report about the execution of 38 Jews and 8 other people could not belong to the period up to the 20th of August.

THE PRESIDENT: Well, during what period or time, did the Vorkommando Moscow conduct any executions?

THE WITNESS: Until the time of the 20th of August, non, but Advance Kommando Moscow continued to exist and I shall come back to these questions later together with my counsel.

THE PRESIDENT: well, do you know of any period of time during which this Kommando executed Jews?

THE WITNESS: No, I don't know. I merely tried to prove by the dates in the report that this report about 38 Jews and 8 other people, since this the Prosecution charged me with the responsibility for itthat I should try to prove that this does not belong to my period of services there.

THE PRESIDENT: proceed.

Q. (By Dr. Ulmer) Did you continue to be informed after your departure from Russia about what the Advance Kommando Moscow continued to do or in what manner it continued to operate?

A. No, I had no knowledge of that at all.

Q. In other words, what you can say about the Advance Kommando Moscow refers only to that period you mentioned, between the 22nd of June and the 20th of August. The execution of 46 people from the Ghettos is stated in the operational Situation Report of the 4th of September, 1941.

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The subdivision of the prisoners as undertaken by the Army is mentioned in the report of the 29th of August, 1941; you were just about to explain that the subdivision of the prisoners is therefore the last event which happened during the time of your presence and the registration mentioned in the report of the 29th of August, 1941, is included in this. why should the execution of the 46 people and, especially the registration of this not appear in the Situation report of the 4th ofSeptember, 1941? Why can that not fall within this period?

A. As I just said, the last event which can have any reference to my presence there was the distribution of the civilian prisoners and this distribution of civilian prisoners appears in the report of the 29th of August. The report about the execution of 46 people, among them 38 Jews, does not appear in this report of the 29th of August, but in the one of the 4th of September. The incident of the execution of these 38 Jews plus 8 further persons, must therefore, be later than the incident about the subdivision of prisoners mentioned in the previous report of the 29th of August, but, since I left immediately after this distribution of prisoners, namely, on the 20th of August, 1941, the time of the execution of these 46 people cannot fall in the period of my presence in Smolensk.

Q. In this operational situation report of the 4th of September, 1941, the execution of the 46 people in Smolensk is mentioned once and then it mentions the liquidation by Einsatzgruppe B, according to the status of the 20th of August, 1941. Can you give me any explanation for this?

A. Yes, for these same logical reasons of the date. If the execution of these 46 people in Smolensk took place between the 20th and 30th of August, then this date corresponds to the date of receipt of the reports of the Einsatzgruppe, for the Einsatzkommandos as of the 20th of August, 1941, had to report the figures of liquidation. These reports took a few days, as I said, in order to reach the Einsatzgruppe from the advance Kommandos.

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After the receipt of these individual reports, the collective reports could be made out by the Group Staff, that is, Nebe. This also could only have been possible in the last August days. This explanation then that the execution of the 46 people, including those 38 Jews in Smolensk, judging by the receipt of the reports from the Einsatzkommandos to the Einsatzgruppe must have happened at a time when I was no longer in Smolensk,

Q. But where were you?

A. I was in Berlin.

Q. In this document which reports the execution of these 46 people by Advance Kommando Moscow on pages 28 and 29 of the German text you can see reports of liquidations by Einsatzgruppe B, about these collective figures, about which we just spoke.

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A. Yes.

Q. In the last mentioned report, the Advance Kommando Moscow and the Group Staff are mentioned. Would you find any explanation for this?

A. There is really a further explanation for what I have already said, if the above mentioned report of the 4th of September, 1941, that is, the collective report of all of the Einsatzkommandos, mentions the Advance Kommando Moscow in reference to the killing of 46 people, that is, as an individual report, and then one page later mentions the various execution figures of the various Einsatzkommandos, then it would have been conspicuous for a reader in Berlin if the collective report of all the Einsatzkommandos would not have mentioned the Advance Kommando Moscow too, since no liquidation figures for the time until the 20th of August existed for the Advance Kommando Moscow, the report merely mentioned the Advance Kommando Moscow together with the staff. which the Advance Kommando Moscow in the report of the 4th of September, 1941 is also mentioned in connection with the liquidation of 144 people. Do you have any personal knowledge about the origin of this report?

A. No, I have seen this report for the first time during this trial. Therefore, I can give no explanation of my own knowledge. I can only make short explanations with my own reasoning, which can be gathered from the above mentioned reasons of location, time, etc.

Q. I shall give you my document book with the three last mentioned reports, which have been submitted and which I want to show you. First of all, there is Document No. 3143, Prosecution Exhibit 64, Book II-B, page 42 of the German, page 47 of the English. This is a report on the 29th of September and the Group Staff and the Advance Kommando Moscow is mentioned with a number of 12 executions of people. What do you have to explain about this?

A. I have already explained that on the 20th of August, 1941, I left Smolensk, and, if I give my explanation about the collective reports, the collective reports after the 20th of August only can be a collection of reports of later executions of the Einsatzgruppe B, that is to say, at a time after the 20th of August, about which I cannot say anything from my own knowledge.

Q. 2,029 executed people, this is what the Situation Report 108 reports on the 9th of October, 1941, Document 3156, Prosecution 60, Book II-B, page 15 of the German text, page 16 of the English. Please give an explanation for this.

A. Here too again We are concerned with the collective report of a still later date about which I can merely repeat what I have already said. I left Smolensk on the 20th of August and I have given my explanation about the first collective report of the 20th of August. About this report, too, I cannot say anything from my own knowledge.

Q. Finally, under the date of the 26th of October, 1941, I have a collection of execution figures of 2,457 people for the Staff and the Advance Kommando Moscow. This is mentioned in the Operational Report 125 of the 26th of October, 1941, Document 3403, Prosecution Exhibit 63, Book 211-B, page 39, Page 41 of the English.

THE PRESIDENT: Dr. Ulmer, when you give us these citations you start out with the most minute thing first and then finally lead up to the biggest thing last, which is the document book, so we are compelled to keep all this in our mind until finally you tell us the big secret, in which document book it is. Please tell us first the document book and then give us all the details.

DR. ULMER: Yes, Your Honor, I shall try to do this, but this was the last Quotation:

A.(By Dr. Ulmer) I would like to have an explanation from you for this collective report.

A. Here, again, I must repeat what I have said about the two preceding reports.

This is a report of a still later date which is a summary of executions which Were carried out within Einsatzgruppe B, that is, at a time when I was no longer with the Einsatzgruppe in Smolensk and therefore I can make no statement about it.

Q. Then you left Smolensk on the 20th of August, 1941?

A. Yes.

Q. And when did you arrive in Berlin?

A. I arrived in Berlin on the 21st of August.

Q. why so quickly?

A. From Orscha I used a transport plane which brought me back by way of Warsaw.

Q. To whom did you report in Berlin?

A. I reported to Streckenbach, since Heydrich was not in Berlin at the time.

Q. How did Streckenbach receive you?

A. He received me in a friendly manner, out he told me that Heydrich was angry about my application to be relieved, it would have been my duty to take on this partisan warfare order. He told me that until he had discussed this question with me, I should not take up any work in Berlin.

Q. who said that, Streckenbach, or Heydrich via Streckenback?

A. Heydrich via Streckenbach.

Q. What did you say to Streckenbach in answer?

A. I told Streckenbach in answer to this, and I am certain about it, that I was an officer of the Waffen SS and that if any steps were intended against me, I would ask for a proceedings to be started against me myself.

Q. what was Streckenbach's attitude about that?

Q. what was Streckenbach's attitude about that?

A. He understood my attitude, but he told me he would pass on this report to Heydrich.

Q. Did you tell your military agency, the SS Main Operational Office about it?

A. Yes, I reported to Juettner, the Chief of the SS main Office and I asked for his protection, since I was still an officer of the Waffen SS and that I had been taken back from the troops against my will, and that I was still on an army status.

Q. what did Obergruppenfuehrer Juetner have to say about that?

A. Juettner promised me his protection and he promised me not to have me released - from the Waffen SS until this Question had been closed in a satisfactory manner.

Q. what did Heydrich or Streckenbach do in the meantime?

A. In the month of September and October nothing happened; the matter just rested.

Q.- And what did you do during that time?

A.- At that time I took up my duties as lecturer at the university and as Dean.

Q.- When did this case come up for decision?

A.- At the beginning of November I was ordered to see Heydrich in Prague, and he reproached me about my so-called desertion from the SD to the Waffen-SS. He told me I was unfaithful and disobedient, and similar things.

Q.- Did you just take this, or did you answer him?

A.- One can only imagine my position at that time if one knows the relationship between Heydrich and myself which existed since the year 1938/1939. Heydrich had treated me like a dog for three years. And I believe that anyone who was in the RSHA at the time knew that, and knows it. And at the time I was in a mental state in which I no longer considered my personal fate, and it did not matter to me what Heydrich was going to undertake. It was clear to me that sooner or later he would break me in some manner. Therefore, I told him at the time that since the year 1939 I had tried to get out of the SD, that I had volunteered to go to the Waffen-SS in order to achieve my inner freedom; that was recalled from my troops against my will, and that I could see no sense in the situation in which the German people found themselves to take over such an unnecessary office, so unimportant for the war as Office VII was. I can only say that Heydrich broke out in a fit of rage and finally threw me out.

Q.- Did this happen in front of witnesses?

A.- There were some people in the anteroom -- the State Secretary Frank, Sturmbannfuehrer Ploetz, and a secretary.

Q.- What happened then?

A.- I returned to Berlin and told Streckenbach about the conversation and about my whole position. And I must say again today what had become clear to me at that time, - that Streckenbach at that time was the good angel in the RSHA.

At any rate be introduced and tried to eliminate this dispute in some manner. At the end of November, after Nebe returned from Smolensk, a conference took place at Streckenbach's office between Streckenbach, Nebe and myself. In this conference Nebe was absolutely stubborn, Therepupon, Streckenbach decided he would take up the matter with Heydrich personally. The result of this Heydrich-Streckenbach conversation was evidently the fact that I was informed that I was to take on my duties in Office VII once more; that he spoke to Juettner, and that I would be dismissed from the Waffen-SS, and that, therefore, some sort of compromise might be reached. I mention this only because it shows the special situation in which I found myself at the time. It explains the psychological situation I found myself in my relationship with Heydrich for three years. I also want to mention here that in the beginning of December, retroactive to the 9th of November, I became an Oberfuehrer, and this promotion came about at a time when all other office chiefs in the RSHA were also promoted.

Q.- This promotion to Oberfuehrer came about after the compromise achieved by Streckenbach, and it represented an awarding which should have been made before but it was withheld?

A.- At any rate, in September 1938 I had been promoted the last time. And I had wondered that I had been promoted, but at any rate I was promoted.

DR. ULMER: Your Honor, I just hear that when translating my question about the witnesses during this dispute with Heydrich, only two names Minister Frank and Adjutant Ploetz were given -- according to the answer of the defendant there was an another witness who was also present -- the Secretary Scherrer. Please, correct the English record.

THE PRESIDENT: What are you complaining about?

DR. ULMER: The answer to the question - "Who witnessed the dispute between the defendant and Heydrich" - were three names.

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And the translation gave only two names.

INTERPRETER: No, I translated all three.

DR. ULMER: -- I think that you probably missed the Secretary Scherrer?

THE PRESIDENT: The interpreter states that he did mention all three. But at any rate, your statement is on the record and the official mechanical record will state what actually occurred.

DR. ULMER: I thank you; I just wanted to have it correct. I didn't want to complain.

Q.(By Dr. Ulmer) - When were you dismissed from the Waffen-SS?

A.- That took some time longer. The Division Reich had been completely destroyed in the fighting area near Moscow in December, and had to be reconstituted so that the dismissal only came about in March or April. This time corresponds with the repatriation of the Division into the Reich.

MR. FERENCZ: I think there has been another error in translation. The question was, "When was the 'Entlassung'"..... which is properly translated "release", and it came across as "dismissal", I would like to have that corrected in the record, or have the translator make it clear now how he translates the word "entlassung".

THE PRESIDENT: Now let's make this clear first. We haven't admitted that there was an error in the first instance. You now merely call attention to this situation which will be cleared up immediately.

DR. ULMER: My question was, "When were you dismissed from the Waffen-SS"?

MR. FERENCZ: The question is .... is translation of the word "Entlassung" -- "dismissed" or "released"?

INTERPRETER: TO me it is "dismissed".

MR. FERENCZ: Thank you.

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BY DR. ULMER:

Q.- Did you speak with Heydrich once more?

A.- No, I got another order in May 1942 to take part in a conference in day at Prague, but I did not speak to any of the other office chiefs, and I was not addressed by Heydrich. A few days later the assassination of Heydrich took place.

Q.- After the death of Heydrich, did you dissolve your relationship with the SS?

A.- Immediately after the death of Heydrich a discussion between Streckenbach and myself took place. Strenckenbach agreed with me to the extent that I could now leave the SD. The offer at the time made to me by the State Secretary Luther of the Foreign Office, namely to take over the training of the diplomatic service, was then the official reason. From the 1st of August 1942 I was let out of the SD.

Q.- Why were you again called into the Waffen-SS in February 1943?

A.- I think there was a slight variation in the translation. On the 1st of August I was given leave not released, and Kaltenbrunner, the successor to Heydrich, on the occasion of taking over the RSHA, made the demand to me that I should be in charge of Office VII temporarily. I refused this, and I volunteered for the Waffen-SS.

Q.- But you were called into the Waffen-SS on the 22nd of February 1943 -- your call-up was revoked again. For what reason?

A.- I told the then Foreign Minister Ribbentrop that this was a forced situation for me; whereupon, he intervened with the FHA of the Waffen-SS and my draft was revoked.

Q.- And when were you taken into the Foreign Office?

A.- Immediately after the call was revoked. In February 1943 I made indispensable to the Foreign Office and I was given the direction of the cultural branch. At the same time as an Office Chief I left office VII, officially.

DR. ULMER: Your Honor, I just have a few concluding questions. If you wish the recess, this would be a good point.

THE PRESIDENT: If the questions are only a few, and by that we suppose they would not occupy more than five or ten minutes, then we will proceed until you actually terminate,

DR. ULMER: Yes, it would be finished in ten minutes at most.

Q. (By Dr. Ulmer) - Then the concluding question. Your activity as Dean, or University professor - was this in connection with your activity in the SD or Security Police?

A.- No; I can say at the most that I had great difficulties on behalf of this faculty of international politics through Gruppenfuehrer Mueller. Twice I was threatened with arrest by him. I only say this because I want to emphasize what great contrast could exist there between such workers of international politics and Office IV, the Gestapo, even though I was in the RSHA myself. When I built up this faculty of international politics in 1940 I had about 20 to 25 no-aryan students from the university "Foreign countries"; I had taken them into my faculty as students from another institute. On the basis of a denunciation with the State Police he demanded that those people be excluded - whereas I had my way about it -- and they were able to conclude their examination in my faculty. He demanded the arrest and dismissal of the 50% non-aryan professor, Albrecht Haushofer, whom I had suggested as a professor, and whom I kept on down to the last moment. He further demanded the recall of another professor, Professor Grave, who had married a half Jewish wife, and nevertheless I kept him as a professor. He arrested a number of students and lecturers in 1942, who had set up a resistance movement, and he threatened me with arrest and interrogated me for hours. This is only a short description of what the relationship of this faculty was toward the Gestapo.

Q.- Was your activity in the Foreign Office in any connection with the SD?

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A.- No. Since 1941 a decree existed in the Foreign Office that no SD member may belong to the diplomatic service. And Ribbentrop made me promise that I would leave the SD since one could not serve two masters.

Q.- What were your principles in the cultural work with the Foreign Office?

A.- Those principles were conditioned by the war. I wanted to realize the principles or maintaining intellectual contact with foreign countries, even during the war, and thereby to maintain intellectual exchange with foreign countries during the war - for as the director of the cultural branch in the Foreign Office it was my uppermost duty, also during the war at least, to maintain those contacts and not to interrupt them which were the only connection there with world - at least European culture. This I did faithfully. Even though it was not easy to do this in the Foreign Office. My department chiefs in the Foreign Office had very bad disputes with Goebbels during the 2 1/2 years of my activity there. In the course of the years I had retained a pretty good picture of the relationship of the personality to the community, and of the originality of intellectual achievement. Whatever goebbles did in Germany was the greatest cultural mechanism which has ever been seen, and in my field, at least in foreign countries, I tried to maintain the idea of an intellectual liberty and of a genuine cultural contribution, It was not easy - for every thinker, every poet, every scholar who went abroad on my order, and with my signature, had to go there against the will of Goebbles. And if I can say one thing that I did in those years, it was to prevent that the barren cultural mechanism of Goebbles would become the token by which Germany is known abroad. The result of my attitude was expressed by the fact that in the year 1944 Goebbles via the State Secretary Mussehl, demanded the dissolution of my cultural branch and my being drafted. But just as much as I maintained the idea of intellectual freedom in my cultural work, I thought that it was also my job as director of the cultural branch to maintain and direct the intellectual and religious ties with the foreign countries.

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Thus I took it upon my own shoulders and on my responsibility that from the time after 1942 and 1943 the German religious communities abroad got their contributions from me; that German priests, Protestant and Catholic, still were able to travel to their congresses and organizations abroad; that the parochial schools and religious hospitals should not be dissolved, but that under the great difficulties of securing foreign exchange continued to exist under my direction. BY THE PRESIDENT:

Q. Are we to understand from what you are now telling us that the utmost religious freedom existed during the war?

A. I was just about to describe, your Honor, that in the field of cultural ties with foreign countries I secured these connections for those religious institutions.

Q. Well, I asked you a question... you didn't answer it. Do I understand from what you have been telling us that because of your efforts there existed in Germany during the war, religious freedom?

A. No, I did not say that. I said I tried to maintain this principle, at least abroad.

Q. You tried to maintain it abroad? What did you have to do with that abroad. We took care of that abroad.

A. For example, according to the demand of Bormann I should have refused my contribution to the German communities abroad.

Q. It would have been very interesting if you had done something of worrying about this freedom abroad; in fact, that seems to have been the difficulty --- Germany was too much interested in what was taking place in other countries.

A.- I thought that if I maintained the ties between the German church and the foreign church, that then I have made a contribution to the existence of the German church, too.

Q.- Why didn't you make a contribution to the German church in Germany.

A.- I was not competent for dealing with the parochial questions in Germany. But the relations between the German and the foreign church that was my job.

Q.- Did you do anything in Germany to ease the burden of the clergy that was not permitted the utmost expression of religion?

A.- If the German, or Catholic, church had the desire to attend foreign congresses in order to keep up the contact with the church; of if missionary work was to be done in China, or Africa, then I did so. That was the job which was entrusted to me.

THE PRESIDENT: Very well. The Tribunal will be in recess for fifteen minutes.

(A recess was taken)

DR. HOFFMANN: Dr. Hoffman for Nosske. from Monday's session in order to prepare his defense.

THE PRESIDENT: The Defendant Nosske will be excused from attendance on Monday in accordance with the request of his counsel.

DR. FIGHT: Dr. Fight for Beberstein. excused from Monday's afternoon session.

THE PRESIDENT: The Defendant Biberstein will be excused from Monday's afternoon session.

Mr. Ferencz, I think the interpreter is ready to give a clarification on the translation on which you made an observation before we recessed.

INTERPRETER LEA: I have informed myself that the word "Entlass" can mean discharged, dismissed or released.

THE PRESIDENT: Very well, The record will show that for the clarification of the word in question.

Dr. Ulmer, just before we recessed the witness was taking us on quite a tour around the world and we last saw him in China and Africa. Now, let us try to bring him back to the scene of activity which is the locale in the indictment.

DR. ULMER: Yes, your Honor. The activity of the defendant, of course, is concerned with the activity of the defendan in the Foreign Office, therefore it is necessary that he went out to larger regions are concerned, and therefore he could take no influence on church matters within Germany. My last question, your Honor, to the defendant, was what the last, the ultimate aim of your cultural activities.

THE WITNESS: As a scientist and research worker, I want to find and answer for young people to the questtion of the relationship between the various nations, the attitude of the various people and their cultural communities.

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As a cultural politician I wanted to take care that this culture was being kept up and maintained, and to create a community conscience between the various peoples. This was even more valid for war than it was for peace.

MR. ULMER: Your Honor, I have now finished my set of questions as far as my direction examination is concerned. BY THE PRESIDENT:

Q: Were you concerned, Witness, about the dissemination of these cultural ideas in the kommando groups?

A: When I took over the leadership of the kommando Moscow I proved my attitude by, for instance, making free two churches and giving them back to the population so that the purpose for which they were actually built could be fulfilled again. I think this is a proof of my attitude to these questions, even during the time of my commando.

Q: Do I understand that during the time that you were with Einsatzgruppe B that you exerted your influence to have the churches reopened so that the civilian population could worship in the churches, is that what I gather from your observation?

A: That is right, your Honor.

Q: Yes, so that your part in Einsatzgruppe B was not to herd the people together and take them out into the woods for the purpose of execution, but to rally them together and March them to church?

A: One has nothing to do with the other, your Honor.

Q: Well, you know the purpose of Einsatzgruppe B. You know what the main purpose of all these Einsatzgruppen was.

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A: Your Honor, I was not a member and not a part of the Einsatzgruppe B.

Q: Well, you were attached to Einsatzgruppe B, were you not?

A: This is a question of proper definition, your Honor. The fact that I was given a few leaders and a few interpreters by Gruppe B, that does not mean that I was actually attached to it but I regarded myself in my function and my activities in the East as an independent individual commando in the East.

Q: Your kommando at one time or another actually did participate in executions whether you were there or not.

A: At times when I was the chief of this kommando no. That is until the 20th of August. I attempted to make that quite clear in my direct examination.

Q: Yes, but prior to your arrival this Einsatzgruppe B was engaged in the execution of the well-known fuehrer order was it not?

A: That at the date when I arrived it was already active?

Q: Yes.

A: And indulging in these activities? I did not see this activity, your Honor.

Q: No, but they had taken place, and you know that they had taken place.

A: At the date when I arrived, I did not know that these activities had taken place. That was at the time when Einsatzgruppe, B, that was on the 6th of July, did not have the possibility of ever having been active.

Q: You knew the purpose of the Einsatzgruppen in that area; you knew the Fuehrer order, did you not?

A: I heard of this Fuehrer order, as I have already said, in my direct examination, I found out about the Fuehrer order, as I have already said, through other commando leaders.

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Q: Yes, and we are to understand that once you got into the field, you immediately changed the complexion of things and that instead of having the Jews taken out into the fields to be executed, instead of the civilian population being expressed, you exerted your efforts to have the churches reopened and the civilians given the utmost religious freedom and cultural expression?

A: No, your Honor, I see no casual connection in this statement. There is no casual connection, your Honor, on the one side carrying out executions, or allegedly, and on the other hand, making churches available for the population.

Q: You volunteered this yourself. You gave us quite a very interesting narrative on your activity, and you told us how you held aloft the torch of religious freedom and how you kept alive the flame of cultural expression.

A: Yes.

Q: You told us that in quite a speech.

A: Yes, yes.

Q: Now I am asking whether you exerted your efforts in behalf of religious freedom, in behalf of cultural expression, in behalf of a political liberty when you were in the field?

A: Your Honor, I must then deal with the basic question of my attitude to the war in Russian and the question of the treatment of theRussian people by the German troops. Here also I have my own and a very independent opinion which I acquired during many years, and it is part of my attitude that was not part of my knowledge and my conviction that the German Army terrorized the U.S.S.R. when they marched in, but in my political conception it is certain that as Germans it would have been our task in the political administration and government of these countries and to ask for principles of political freedom and agricultural freedom, and even religious and cultural freedom.

conviction that that was the political program of the German Reich and that was to be carried out in the occupied Eastern Territories, and it is one of the overwhelming shocks of my life that I had to establish as I have now during the last weeks found out from documents which I had not seen before I came here, as, for instance, discussions between Adolf Hitler, Goering andRosenberg, and as I say, to recognize in such documents that from the very first day of our march into Russia, instead of political administration in the most genuine sense of the word only terror was meant.

Q: So you only learned about the terrorism when you got to Nurnberg as a prisoner recently?

A: I have had many experiences, your Honor, with terror.

Q: Did you know of terrorism in overrun Russia while you were there in charge of this commando group?

A: In Russia I found out that the political intention and the political system was a terroristic one.

Q: You did find that out?

A: What I found was against my personal convictions.

Q: Well, was it your personal observation?

A: Yes, it was my personal observation, and also what seemed to me just as necessary and as important, it was the realization that this policy did not agree with my personal idea of necessity of German policy in the East.

Q: And what did you do between June 22nd and August 20, 1941, while you were in that occupied territory, to restore political liberty and freedom to the civilian population?

A: My function in the East during the march was not of such a nature that I would have had the possibility to carry out such principles.

I could not do anything at all.

couldn't do anything else?

Q Of course not. And if your kommando had to be used for purposes of execution could you have done anything to prevent it? under my own personal leadership and under my personal supervision and under my personal order, if, as I say, my commando would have had to carry out such actions, I could have prevented them. tory, we understand that your kommando did not participate in any execution and that you exerted all your efforts during this period to cultural pursuits? not my order to spread culture.

Q What did your commando do during this period? existent archives in Moscow, to make use of them and make such arrangements as necessary.

Q What did you personally do; how did you yourself put in your time while you were there? On the 14th, I left Minsk after I had accomplished my task within the kommando.

Q And what was that task? with the first front troops and to take care that the archives were secured, and here I have to say that the original order I got, the original explanation I got was that within six to seven weeks the German Army would arrive in Moscow. Under those conditions this commando was established.

istic activities? yourself? the proclamation of a self-government on the part of the Russians, the fact that in this, self-government was not given over to the inhabitants of White Ruthenia or to the Ukrainians. indulged in terrorist practices. Now, just what happened that causes you to make this statement? What did you see; what terroristic practices did the German forces exercise? establish self-government, that in itself is proof that other measures of a very strong military force were exercised.

Q And you didn't know of the execution of the Jews while you were there?

THE PRESIDENT: Defense counsel may cross-examine the witness.

DR. LAMBERT: Lummert for the Defendant Blume. Your Honor, I have only one very short question to the Witness. BY DR. LAMBERT: Berlin, and soon after, you had a negotiation with Streckenbach who was the office chief of Office I of the Reich Security Main Office. May I ask you what day this discussion took place?

A It was on a Saturday. As far as I remember it was the 23rd of August. this discussion with Streckenbach? existed between Blume and Nebe. When I asked why, he told me that he had received a report from Nebe to the effect that Blume was not carrying out strong enough measures on the question of executions.

Q Did Streckenbach tell you any more? he had circumvented this execution order?

A No, he did not do that. He did not say anything about it. He only said that the report from Nebe had arrived. He did not ask me about their relationship but it is not impossible that Streckenbach might have done so already.

DR. LUMMERT: I have no further questions, your Honor.

DR. RIEDIGER: Riediger for the Defendant Haensch. Your Honor, I wish to put two short questions to the witness. BY DR. RIEDIGER:

Q Witness, do you know the Defendant Haensch?

Q Where did you meet him, and since when do you know him?

AApproximately since 1937 or '38.

Q And he was then in the SD Main Office?

Q What was he active as, what was his work? to be released from the Reich Security Main Office? in my faculty for foreign political science and asked me on that occasion whether I saw a possibility of a change, that he could change his activities so that he could leave the Reich Security Main Office and could enter the Ministry for foreign affairs or another agency of that kind.

Q Did he mention a reason why he wanted to be released? feel very well.

discussed this with you, and that on that occasion he asked you whether he could join the civil administration in Denmark? believe at that time he came to see me again and asked me whether on behalf of our relations with the Reich Plenipotentiary in Denmark I could use this connection in order to influence him. May 1942. How many participants were there?

Q Do you remember whether Haensch was present?

DR. RIEDIGER: Your Honor, I have no further questions, but may I now ask in this connection to excuse the Defendant Haensch from attendance in Court on Monday, for further preparation of his Defense?

THE PRESIDENT: You would like to have him excused from attendance on Monday?

DR. RIEDIGER: Monday.

THE PRESIDENT: Monday?

DR. RIEDIGER: Yes.

THE COURT: Yes, the Defendant Haensch will be excused from attendance in court on Monday in accordance with the request of his counsel.

DR. HEIM: Dr. Heim for the Defendant Blobel. BY DR. HEIM:

Q Dr. Six, several minutes ago, when you were asked by the President, you said you would have had the possibility to prevent executions if you for your kommando had received an order to carry out executions. Do you mean to say by that, Dr. Six, that this was equally valid for leaders of other kommandos, for instance, the leader of the kommando SK-4-A? Do you mean to say by that that the commander of the SK-4-A would have had the possibility to prevent executions which he had been ordered to carry out?

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A No, I did not want to say that. I merely wanted to state that I as the commander of the Advance kommando Moscow was in a special position not to comply with execution orders. Therefore,as I received no such order at all I did not have to carry out such orders. It is, of course, evident, that whoever received such an order had to carry out this order, but I did not want to touch this question.

DR. HEIM: Thank you, your Honor, I have no further questions. BY THE PRESIDENT: would then have executed it?

Q Theoretical? Well, that is your field. You are a professor. Theory is your field, is it not? military organization is concerned and that the individual, if he has been put in such a situation, hardly or not has the possibility to evade such order if he receives such an order.

Q Then your answer is yes?

A Yes. What exactly was the question? in the field had received the Fuehrer order to liquidate civilians that you would have executed the order? now stated, you would have executed the order? situation from the position I am in today, and I did not receive such an order. militarily you were called upon to execute an order, that you would have no other recourse but to execute it.

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You then stated a generic proposition. Now, we apply to you directly and we ask that if you were in the field and you held a position of command and you received this order, would you have executed it? if I regard myself merely as an officer, then this officer would have had to carry out such an order, but I cannot say that about myself, because I did not receive it. I can only see it is an abstract way, that in fact a leader, who receives such an order has to carry it out.

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Q I don't know of anyone who could speak better about yourself than yourself. No one would know your experience; because of your training and education and culture no one would know you better than yourself and if you received such an order, you would go into a conference with yourself and then you would reach a decision. Now that decision would be either to execute the order or not execute the order. Your Honor. I would have to take the actual act of this order and I would have to discuss this act with myself and either would have to agree with this act personally or I would have to refuse it. I would have to make an inner decision.

A To think myself back into such a position I cannot do. I can only take an abstract case and I say this officer has to carry out this order and, if the officer, which in this case is Six, is in this dilemma, he had to carry out this order, but between the receiving and the carrying out of an order, there is a personal decision. At any rate I did not experience such a decision and therefore I can only look at it in an abstract way. involved in this theoretical question. Usually when one is confronted with a theoretical question, he desires to know all the factors. You, with your training and education and having bean a professor and a teacher and having lived many years and now having been in a courtroom since the beginning of this trial, and knowing all the factors, there is no reason why you should sidestep a direct question. Now you have gone so far as to say that if Officer Six were ordered to execute the order, he would execute the order. Now, are you -- is your name, "Six"?

Q Were you Officer Six?

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is, "Yes," is it not? slip of the tongue -- between the receipt of an order and the carrying out of an order, there is, as we can recognize now in many cases, of my comrades, a very difficult human decision. This difficult human decision is not merely theoretical and cannot be expressed in the abstract and can only be experienced and it can only be answered as a human problem.

Q Dr. Heim asked you a very direct question. He asked you if his client were present with an order could he do anything other but obey it and you said, "Yes." Now I am asking you, if you, Six, were confronted with that order, to execute, would you have obeyed and followed out the order? In the position of an officer I have to carry out an order. But carrying out of such an order, as has been mentioned and asked about by the Prosecution again and again and the mental struggle with the moral problems, these moral values are of such consequence and severity that they cannot be theoretically discussed. They can only be experienced. like that unless you reflected on it and unless you discussed it. Now you have discussed it. We have discussed it for many minutes. Now I come back to the original question: If you received this order, would you execute it?

Q What your can you answer it in? How long do you want to reflect on this? We still have two more months left of 1947. What year could you answer such a question in? Your Honor.

Q Well, then, we come to this conclusion: that although you were an officer in the German Army for many years and although you have had the benefit of a very thorough education, and although you were a professor in a university, and although you were also a Dean, and although you also knew about religious values, and although you had spent many years of your life in the consideration of psychological and philosophical questions, now in this courtroom, when listening to this very simple question and especially in view of the fact when you realize that every other defendant is confronted with the same question, you refuse to answer it?

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Heydrich to move and in full knowledge of the Fuehrer Order to carry out certain measures, I could answer this question exactly to day, but, as I have not received such an order then and neither was put in front of the alternative to carry out shootings, it is not possible for me.... decided the question on July 22, 1941? order first..... have come to a decision on July 22, 1941.

Q You could have come to a decision on that day?

Q And now with the benefit of six years' reflection upon such an order, you feel incapable of answering this question? receive this order as an order directed to myself personally and as a consequence I was not put into the personal position to struggle with myself and to have to come to a decision to carry it out. if Officer Six had received that order, Officer Six would have executed it. You made that statement. Do you confirm it now?

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A I add, not this order, but "an" order, "an" order I said Your Honor.

Q Well, "an" order, "an" order might be merely to take a drink of water. We are speaking about "the" order. We are not speaking of play things here. If Officer Six had received the order which we are discussing here would Officer Six have executed that order? You answered that in the affirmative. Now, do you want to change your answer? Do you want to say that you do not agree with yourself of 15 minutes ago.

Q Well, then, do you confirm that answer?

A Yes, I said so, but I meant "an" order, generally, any order whatsoever.

Q Any order whatsoever, which could also include the Fuehrer Order?

Q Would it also include the Fuehrer order? I am considering all the phases between the receipt and the carrying out of an order, that is, the personal, the moral, the inner decision, which was not put to me, and, therefore, I must repeat that I can only say in the abstract that a leader or an officer has to carry out orders, but between the receipt of an order and the carrying out of an order, is the most important decision in human life; that is the mental dispute I think, and the fight about such a deliberation about such an order, that is the conflict, the most human inner quality, even if an officer; otherwise a question for morale and ethics would not exist at all.

Q Well, this is just merely an outpouring of words. I asked you whether you confirmed what you said 15 minutes ago and you said you did. Now I don't know whether this expenditure of rhetoric has in any way changed that original statement. We will take from what you have said that if Officer Six had received this order, he would have executed this order. You would have said that if Officer Six received any order, he would have executed that order and within that generic and comprehen sive expression, "any order", we will assume that you can include also such an order as the one which we have just discussed, namely, the Fuehrer Order.

attitude in this case without any moral and ethical participation, between receipt and carrying out of an order.

THE PRESIDENT: Any other defense counsel ready to cross-examine?

DR. MAYE : Dr. Mayer, for the Defendant Steimle.

I must correct myself, Your Honor. I am sorry. It is for the Defendant Klingelhoefer that I plead now. BY DR. MAYER (Attorney for the Defendant Klingelhoefer):

Q Professor, when and where did you meet Klingelhoefer? Moscow?

AAt this time he was drafted to Vorkommando. That was in Minsk.

Q Why was he drafted to VKM? Advance kommando Moscow? all objects for the ministry in Moscow. Smolensk? work out the files in the Soviet House and in the NKWD house, and he made the corresponding excerpts and these were sent to Berlin. during his activity in the VKM under your command, with these executions of Jews and other persons?

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the VKM and I can now say in detail that until the day of my departure Klingelhoefer was not in charge of such measures and did not deal with them. left? personally.

DR. MAYER: No further questions, Your Honor.

THE PRESIDENT: Any other defense counsel wish to cross-examine?

Mr. Ferencz, are you going to conduct the cross-examination of the witness?

MR. FERENXZ: Yes, Your Honor, I am, but in view of the late hour, I think it is better to recess at this time than to be interrupted after ten minutes by a weekend recess.

THE PRESIDENT: For that reason, in view of the fact that after two days perhaps we would not be so fresh on what you have said, now in view of that fact, the Tribunal will recess for the day and for the weekend and will reconvene Monday morning at nine-thirty o'clock.

(The Tribunal adjourned until 27 October 1947, at 0930 hours).

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of America, against Otto Ohlendorf, et all., 27 October 1947, 0930-1630.

Justice Mussanno,

THE MARSHALL: The Honorable, the Judges of Military Tribunal 11_A.

Military Tribunal 11_A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may proceed. BY MR. FERENCZ:

Q. Six, at the outset I would like to clarify a matter which was being discussed just before the recess. As concerns the defendant Blobel, you stated that if he received an order he would have to carry it out and there would be no possibility for him to prevent executions. You refused to judge whether you would have carried out such executions How can you make that judgment for Blobel? Blobel whether I was of the opinion that an officer could refuse to obey an order. I assume, of course, that if he puts such a question to me he does not refer to it as being especially pertaining to his client, but which referred to commanders as such; therefore, I stated that the order must be carried out, objectively speaking. From the very beginning, though, I made the reservation that between carrying out the order and the actual receipt of the order, there is an important factor to be considered, namely the personal will to come to a resolution. In this personal decision there is no way, of course. question and in your reply you did not intend to make any specific reference to this defendant, is that correct?

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A Noo Mr. Prosecutor, I did not want to do so. I did not want to make a special remark as referred to the defendant Blobel.

THE PRESIDENT: Witness, you have stated again what you have stated a number of times, that between the receipt of the order and the execution of the order, there would need to be a passage of time for reflection. The question which Mr. Ferencz has repeated to you this morning, which was given to you on several occasions last Friday, was very specific. Now this situation was put to you on Friday. Since then, three days have intervened, and you say that there would need to be a passage of time between the receipt of the order and the execution of it. Now three days have passed since this Question was put to you, do you think now you can answer that very specific question. That if you received an order which Blobel received, would you execute it?

THE WITNESS: Your Honor, you are asking a hypothetical question.

THE PRESIDENT: We are not asking a hypothetical question at all. Now listen to this. Dr. Heim asked you a very specific question. I will read it to you. "Question: Dr. Six, several minutes ago you said when you were asked to that effect by the President, that you had the possibility -- you would have had the possibility to prevent executions if you or your commando had received an order to carry out executions. Do you mean to say by that, Dr. Six, that this was equally valid for leaders of other commandos, for instance, the leader of Kommando_SE_IV_A, do you mean to say that that Kommandocommander of SK_IV_A would have had the possibility to prevent executions which he had been ordered to carry out." Your answer was: "Noo I did not want to say that." Then after another little discussion here you said: "It is, of course, evident that whoever received an order had to to carry out the order." Now you took it upon yourself to answer for Blobel. You took it upon yourself to answer for a brother officer, a brother soldier. Now, if you could answer for him, and you go even farther, and answer for the whole German Army, you answer for every officer: if you could answer for these officers, all these other officers, you should he able to answer for yourself, because no one knows yourself better than DR. Six knows him. Now that is what Mr. Ferencz has put to you this morning very specifically and you have replied to the question, by saying you would need time for deliberation. Now, you have had three full days for deliberation, and we would like to know if you would answer that question directly, specifically, and not with a great deal of circumlocution? Proceed.

THE WITNESS: If I had received the order to shoot women and children, I, knowing my present inner attitude-- and I believe it still is the same as it would have been at that time if I should have received such an order, I would have refused this order by own death. I can not give you a clearer answer than that. If I would have had to shoot women and children, I would have refused to obey this order, even if I had paid my own life for it. BY MR. FERENCZ: caught in January 1946? disposal of the American troops, when I met my wife. However, she told me that there had been two raids by the secret service, and conviction had been expressed against me and my family; then upon her wishes, I decided to wait for some time. That was the reason.

Q Did you give yourself up, or were you Caught? correct?

Q When did you become a member of the SS?

Q What was your rank in the SS?

Q Was that an honorary title?

not those for full capacity service. That was not a real rank. than any other SS man had, or was it just an honor to be a member of the SS? holds. At that time I was already, a paid member of the University Corps in Koenigsberg, therefore, this title was not merely an honorary one, that is what I meant to say.

Q Were there any different SS titles which were was honorary? honorary title because if you had been active you would have had something in addition to just the title of Brigadierfuehrer. Now I ask you whether any other titles in the SS different from Untersturmfuehrer, which were not honorary? Untersturmfuehrer and at the same time a lieutenant of the police, or a lieutenant of a Waffen-SS, but at that time there was no such thing. your title as Untersturmfuehrer and any other Untersturmfuehrer, no matter what he was doing, is that correct?

Q What was your SS rank three years later on, 1938?

A In '38 I was SS_Standartenfuehrer.

Q That is equivalent to a colonel, is it not?

Q And what was your SS rank in 1945?

A 1945?

Q 145?

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Q In other words, in ' 35 you were lieutenant, in '38 you were a colonel, and in '45 you were a Brigadier General, is that correct? SD? Tribunal has declared that Offices III-VI and VII of the RSHA were criminal organizations?

Q You were chief of Amt - VII, were you not?

Q During what period were you chief this criminal organization? then again from December 1941 until July 1942.

Q Isn't it between November 1939 and May 1940, and November 1941 to March 1943, '41 until March '43? I was granted leave from my office VII, that is, I mean the activityother activity. I was granted leave from it by a representative appointed thereto, therefore, I was not responsible at that time.

Q But you were a chief in title, at least?

Q Then you were still the chief in title? with museums, archives, and libraries, and literature, and similar materials. With what matter was Section VII-B of your office concerned? churches of all denominations, and scientific socolism.

Q By scientific socialism do you mean Marxism?

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Q Or Communism? docialism, or at least the field that can he called as such; that is practically the terminology that was used by Karl Marx, and which was used by him and other scientific lecturers. called it, or Marxism, did you also study the question of Communism? as it was part of the whole scientific complex, but no special question of Communism as a political organization. question? was included Also.

Q You did not answer my question. I asked if you had a special section concerned with the Jewish question?

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A. No, there was no such special section.

Q. What was Section VII-B-I?

A. Department VII-B-I was non-existent. There was just a subdepartment of VII-B-I, that was free masonry and liberalism.

Q. You are sure it was not free masonry and Jewery?

A. Yes, I am absolutely certain, quite certain. cerned with liberalism?

A. According to my recollection and knowledge, it is absolutely certain that I was in charge of this office. There was no such section. It depended on what time you are referring to.

Q At any time did you have a section concerned with Judeism?

A. No, as such there was no department. There were plant, and it was within the church department to take up Jewish church history.

Q. Do you Know Hauptsturmfuehrer Ballensiefen?

A. Hauptsturmfuehrer Ballensiefen, yes.

Q Isn't it a fact that he was head of Section VII-B-2 which was concerned with Judeism?

A. I could not understand this question exactly.

Q. Isn't it a fact, that he was the head of Section VII-B-2 Which was concerned with Judeism?

A. well, obviously he was in charge of several departments in the Church Department. whether it was VII-B-2 or I, I can not remember, and I don't know what time you are referring to.

Q. Isn't it a fact that you had a separate sub-department concerned with political churches aside from the Jewish questions?

A. No, no sub-department on political church matters, just one small department on church and all its denominations.

Q. Do you know SS-Captain Morawsky?

A. Morawsky?

Q. Morawsky?

A. Yes, I do.

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Q. wasn't he the head of sub-department concerned with political churches?

A. No, not for a moment, never for a moment.

Q. what political churches did you regard as opposing groups?

A. I have already said that the term political church matter was not used in my office, and that it said it was churches of all denominations, and that within these churches, the Christian Church, as well as the Jewish Church was the aim of the cultural research.

Q. In other words, you were concerned with the Jewish Church, out only from a point of view of cultural research, is that correct?

A. In any case at the period when I was responsible, that was the aim of our work, yes.

Q. Didn't the other SS men regard that as a little curious?

A. I did not understand the question.

Q. Well, you said that you were concerned with the Jewish cultural research matter; everybody else was concerned with exterminating the Jews, so isn't it a little bit odd that your department should be so different from all the others?

A. Will you repeat that? It is a well known fact that this office dealt with the cultural research of these churches, therefore, it was up to the office as such, and it also dealt with the historical research, and in addition to this, which I have already said, and which I can prove, that there were no matters of Jewish interest but the Jewish culture with which we dealth, because there was no expert and no scientist that could deal with this matter.

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Q. In other words, you did have a subsection but no one dealt with the question, it was just an empty title?

A. Again I must repeat that Herr Ballensiefen was theonly man who was in this subdepartment, but dealt with churches generally, and his work, which he carried out at the period when I was responsible, and I can take responsibility for the truth of this, was cultural development of Jewry, and I can especially remember that in the period when he was subordinate to me he was mainly dealing with preparations for the establishment of assimilation between 1780 and 1815, and he wanted to write a thesis on this.

Q. For what purpose did you have this section on Jewry, just to take historical theses on it?

A. when it was instituted and at my time, this was its main and only task.

Q. Isn't it a fact that your purpose actually was to uncover whatever you could in Jewish history or elsewhere to be used to further the SS-Anti-Semitic actions?

A. No, never for a moment, at least not during the period of my position.

Q. Did they ever use your materials for that purpose?

A. Not during the time when I was in charge of the office. BY THE PRESIDENT: Mr. Ferencz, that not for a moment would you even think of looking for material which might be used against Jewry in connection with its historical past. Does it shock you very much that any institution, office, branch or organization or such like should seek material for propagandistic purposes against the Jews?

A. No, your Honor, if that assignment would have been given to me while I held the office---

Q. Do you mean to tell us that in your department that you weren't interested in locating material which could be used against the Jews?

A. I do not understand, the nucleus of your question.

Q. Well, the actual basis of the question that Mr. Ferencz asked you if you did not have a department which was interested in locating material which could be used against the Jews, and you said horrifiedly, "No, not for a moment." Now, I am calling to your attention the basic policy of the Nazi party with regard to Jews, namely that the Nazi Party was going to make war on the Jews from every possible angle. You were a member of the Nazi Party, weren't you?

A. Yes.

Q. Yes, and you were interested in carrying out the policies of the Nazi party, were you not?

A. Which question an I supposed to answer, whether I am innocent or whether I dealt, with this question at all?

Q. You are supposed to answer the questions which are put to you, and the reasons they are put to you is this, that you volunteered, and remember this witness, that you volunteered this. It was not put to you by the Tribunal and it was not put to you by Prosecution counsel. You volunteered here on the witness stand to prove yourself a champion of religious freedom. You told us a very dramatic story of how in the field you opened the churches, that you led the population to the churches, so it is a subject which you opened up, not which anyone else invited you to address yourself upon. So therefore, these questions are put only because you opened the door to such questions. So, now we come back to the question which was this namely; were you interested in advancing the policies of the Nazi Party?

A. I was certainly not interested during my tern of office to supply propagandistic material with which another practical propaganda point could be supported. That was not the task I was in charge of.

Q. were you interested generally in advancing the Nazi Party?

A. I carried out what was within my field of task, but I cannot say that during any time, any period since 1939, I was interested in order to support the National Socialist Party in all its aims, but within the course of years certain very strong differences between my own attitude and the developing aims of the National Socialistic Party came into existence. garding Jews, did you not? Please answer that question, yes or no.

A. Yes, I know this point of program.

Q. Very well, and as a member of the Party and a member of the SS you were sworn to carry out the policies of Hitler, were you not?

A. No, I had not taken the oath as to that, to carry out everything without conditions, everything that Hitler ordered.

Q. You did not take the oath of allegiance to Hitler?

A. Yes, I was supposed to be faithful to Hitler, but not-

Q. Did you take the oath of allegiance to Hitler?

A. Yes.

Q. Yes, and that oath goes something like this, does it not: "I swear - or I vow - inviolable allegiance to Adolf Hitler, I will follow whatever he says or whatever his leaders direct me to do." Generally speaking, isn't that what the oath says?

A. Yes.

Q. That you were to follow Hitler and his leaders regardless, that is, what the oath says, isn't it?

A. Yes.

Q Very well, And the basic principle of Hitler's policy, one of the basic principles, was war on the Jews. That is true, isn't it?

A. No, that was not the basic idea.

Q. I said one of the basic policies of Hitler's program was war on the Jews. You mean to deny that?

A. No, not at all.

Q Very well. Then since you had sworn inviolable allegiance to Hitler, and that included necessarily hostility toward the Jews, now do you tell us that in your work you were not interested in using material which you would find against the Jews?

A. I can only say this, if I had done so, your Honor,--I cannot say here that the plan when the department was instituted, that the plan then was in existence.

Q We are not speaking of the plan. Mr. Ferencz merely asked you whether you would not be interested in material against the Jews, and you were horrified at that question. You said, "not for a moment," and that is what provoked this long exchange between the Tribunal and the witness. Now we are asking you whether it is not a fact that in your work that any material which you came across, either through research or accidentally, which could be used against the Jews would be very important in the discharge of your duty toward Hitler?

A. I had no opportunity to do so.

Q. The answer isn't very clear to me. I ask you whether you would not be interested in material which came to your attention, hostile to the Jews, whether you would not be interested in using that material or making it available for others to use against the Jews?

A. No, I had no interest, no personal interest in doing so.

Q. Therefore, to that extent you did not follow your allegiance to Hitler, you had reservations on the Jewish question?

A. It depends what is intended by the Jewish policy of Hitler. I-

Q. We understand you to say that you do not know now what Hitler's policy was against the Jews?

A. I do. Far be it from me to say that the Jewish question was kept a secret in Germany until 1942 or had a different importance or significance than after 1942, and what I have already said. The Jewish question in 1930 or 1935 had an entirely different importance and significance, and I personally state these matters only for the reason that when I entered the NSDAP I did not regard the Jewish question as a basic question of the NSDAP.

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Its very shape too must pass now. But at random, in order to prove my opinion and attitude at that time, my tutors were Jews.

Q. I didn't understand you. Who were Jews?

A. In 1934 I was made a doctor, got my doctor's degree under the sponsorship of these people, and if I had been an Anti-Semite I would not. I would not have come to see these two people and I would not have been in charge of them, my two very best teachers. Today I only want to say, to tell-

Q. Two of your teachers were Jews?

A. They were not only my teachers, your Honor, but they were the people under whom I had to work. My doctor's thesis, my thesis to make my doctor's degree, to take the test, as it were, that means a tutor has a certain confidential position.

Q. That was in 1934?

A. 1934.

Q. And you had a great deal of respect for these two men?

A. Yes. I was in the university and in the school and in the lectures. I was invited to their homes, and I must say that this certainly cannot be a bad relationship.

Q. Yes, you had a friendship for these two Jews.

A. The relationship was that of a pupil to his teacher. That means I had respect for them. I regarded one of them particularly with tremendous respect.

Q. And this great respect that you had for these two Jews, did it continue after you left the university?

A. Certainly. For instance, I corresponded with one of these two, and I was in close contact with him for years after.

Q. Do you regard these two Jews as exceptional men, or did they in themselves typify Jewry?

A. They were just as much Jews for me as were others, and I had no experience at that time.

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Q. Then if they carried out the general characteristics of Jews, then you would feel very much offended if they were persecuted, wouldn't you? Please answer that question. You would feel very much offended if these two Jews were persecuted, wouldn't you?

A. I personally tried to protect then as far as I could.

Q. Would you please answer that question. You would feel very much offended if these two Jews were persecuted?

A. I regarded it in any case as highly unpleasant that these people were concerned in new laws and regulations.

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Q. Answer that question, would you feel personally offended that these two Jews whom you respected and admired so much were persecuted? Would you think it unjust, unfair, unchivalrous and improper in a civilization such as you find in Germany, would you regard it as unjust?

A. Yes, I was hurt personally here, especially in the case of one person who --

Q. All right, Now, do you feel offended when all their brothers and sisters, going up into the hundreds of thousands and millions were persecuted, do you feel hurt when all the other Jews, who were of the same characteristics and temperament as these two Jews as far as race is concerned, do you also feel offended when they were persecuted?

A. May I ask what you mean by persecution, by persecuting, when the period of the persecution begins?

Q. Now, Professor Six, a man who has been a dean of a university and a professor and a journalist and a newspaper man and a general and a soldier, with all of your experience for you to ask what is meant by persecution seems a little trifling. You know from personal insult up to deliberate killings. Now, that is what is meant by persecution. It ran the whole gamut from the simplest kind of an insult to the last grave crime of killing them while they were in a defenseless position and burying them in unmarked graves. That is the definition of persecution. Do you feel offended when all the Jews were persecuted? Do you feel as much offended about that as you did about these two Jews you knew?

A. When on the 9th of November, 1938, I saw and I heard the Jewish synagogues were burned down, I was ashamed as a German, I must say that. I waited for the man Goebbels not to remain for a day longer in his office than necessary, and I must say it was a tremedous shock for me when I saw that he would remain in office, and not only, that but he was justified in his measures. If that is what you want to know, your Honor, I can still say as a German I think it is a shame and a scandal that churches are being burned down.

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Q. All right then, you did agree with Hitler's policy of persecution of the Jews.

A. If it is a mortal persecution as it actually happened to be, If it was intentional to carry out the Jewish question systematically into the channel into which it was carried and to carry it out in that manner, if that really had been the case, although I do not know whether it was the case, then it is not for me to say here that I condemned the solution as it was later on called.

Q. Do you agree or not agree with Hitler's policy against the Jews?

A. I did not agree with this shape of politics.

Q. Very well. Then you had that reservation in your oath to Hitler.

A. In only this, your Honor, as a going system.

Q. You did have that reservation in your oath to Hitler?

A. Yes.

Q. Yes. when you were protecting the churches in Russia, did you also protect the synagogues?

A. I said in Smolensk there were no synagogues, and it is a fact that although these two churches were protected by me that was mainly for the reason that there were archives there and valuable treasures. I did not want to leave these churches open to plundering and spoliation.

Q. You were interested in the church because it was a depository of documents in which you were interested and not because it was sacred as a place of worship?

A. Why I was interested in this, was that the question?

Q. Yes, because you had told us that you had protected these churches, Now, you say you were protecting them from plundering because archives were located there. Now, I ask you, were you interested in saving these eeclesiastical edifices because they were the depositories of documents in which you were interested, and not because they were places sacred to worship?

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A. I thought they were places of worship, and I thought one should return these places to people for this purpose. I believed that it was necessary and self-evident that churches that were wished for by the population as places of worship should be returned. I do not think it is my merit only that this was done, and I think a number of people did that, and I do not want to brag about it because I regard this as selfevident that it should be done.

Q. Well, you bragged about it on Friday, and have you changed your mind about it now?

A. No, but I do not Want to brag about it.

Q. How many men were in your command in Moscow, in your kommando?

A. In the Advance Kommando Moscow there were twenty-three people.

Q. In your organization did you have a chaplain?

A. In the advance Kommando Moscow, no. The advance Kommando's twenty-three men did not have a chaplain.

Q. Did you have a chaplain in your other organization, when you were with the Waffen-SS?

A. No.

Q. Did you ever conduct religious services yourself for your men?

A. I could not do so. I am not a clergyman.

Q. Did you ever offer them facilities for worshiping?

A. If a man intended to go to church and worship he could do so, he was free to do so.

Q. Your interest, therefore, in Moscow, in saving these churches, was an interest which did not arise out of any religious impulse in yourself, do I take it?

A. Religious impulse, your Honor, was put in front of me as it were. It was wished that churches would be put at the disposal of the population, and I thought it was the right thing to do, to grant this impulse.

Q. Are you -- You don't need to answer this question if you don't want to. Are you a religious person yourself?

A. Yes, I regard myself as a religious person. It didn't seem clear to me when you were discussing the terror in Russia which you witnessed whether this terror was being perpetrated by the Russian forces or the German forces.

A. What I mean to say, your Honor, was that I myself am of the opinion that in the course of time instead of a peaceful policy in Russia a power policy, a force policy, was developed as it was connected in Germany with the name Koch. What actually happened is not only a shock to me but it was also a shock to large parts of the German population.

THE PRESIDENT: I am sorry to have broken in on your cross-examination, Mr. Ferencz. You may proceed. BY MR. FERENCZ:

Q. Six, you stated that when you saw the burning of the synagogues as a German it struck you as a shame and a scandel. I ask you now, when you became aware of the fact that such defendants as Ohlendorf and Naumann here were executing or ordering the execution of people, did that strike you also as a shame and a scandal?

A. I can say that all these measures which were instituted in Russia at the outbreak of the war came under an unambiguous and clear Fuehrer order, and I think I left no doubt when I said that each person was in severe dispute with himself, and there are people who had this tension and it remained until this very day, but at the moment in which I am confronted with an order to a supreme commander or political leader, I am confronted with a choice on the one side and a political order on the other side.

This tension is not new and historically speaking there always has been such a tension, I cannot say now if I am confronted with an order not --

Witness, pardon the interruption. However, I would appreciate it if you would first answer the question and then you may give whatever explanation you see fit. Now, I am asking you a simple question. You stated when you learned of the burning of the synagogues as a German it struck you as a shame and a scandal. I am asking you as a German did it strike you as a shame and a scandal when you learned of the murder of defenseLess people?

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Answer the question and then proceed with your explanation. Is you answer yes or no? Did it strike you as a shame and a scandal when you learned about the execution of defenseless people?

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A You mean, women and children?

Q You recognize the circumstances. You have told us there was a general Hitler order to kill all the Jews. When you learned that that Was being carried out, did it strike you as a shame and a scandal?

A I am prepared to answer it, but I cannot answer, if you don't ask me the question, "when". These orders that Jewish children and women were to be liquidated, I never learned in Russia. I cannot answer that, if I never found out about it. I cannot say how I regarded it. It is a hypothetical question. Nazi and an SD officer that the Hitler order to kill Jewish women and children and men was being carried out. When you found that out, at any time, did it strike you as a shame and a scandal, the same as the burning of a synagogue struck you as a shame and a scandal?

Q Did you regard it as a shame and a scandal. Those are your own words, you remember, as regards the synagogues. called by Goebbels as a spontaneous action, out without disregarding the Order of the Chief of State, the fact that synagogues actually burned and that no steps were taken to prevent this, I regarded as a shame, as a German and as a human being, but I cannot regard an order as a shame. It is, after all, the contents of an order, but not the order itself. I cannot say that an order is a scandal. If the Chief of State issues an order, I can only regard it as a human being, and I am prepared to regard and to judge it as a human being, but I cannot say that an order is a scandal, an order by the Chief of State.

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I cannot answer that question.

Q I am not asking you about the order. I am asking you about the results of that order, the actual execution of people. You must have learned about that at some time in your long career as a Nazi. When you learned that people were actually being killed as a result of a Hitler Order, did that affect you as much as the burning of the synagogues did?

THE PRESIDENT: Mr. Ferencz, I think it would be well, if you stuck to his original phrase, "a shame and a scandal", so that we don't get off into other bypaths.

MR. FERENCZ: Yes, Your Honor. BY MR. FERENCZ:

Q You used the words, "shame and a scandal", as regarding the burning of the synagogues. I am asking you now, when you learned that people were killed, that Jews were killed, did that strike you as a shame and a scandal too? children as a scandal and a shame, whether they were killed by partisans, or the Fuehrer Order, or by bombs. That remains exactly the same, whether the killing of women and children is a shame. If you want this answer immediately, I regard it generally as a shame.

Q I am not asking you generally. I am asking you very specifically, and I would appreciate a specific answers: When you learned that women and children and anyone else were being killed by you, were being killed by the German, as a result of the Hitler order, did you regard that as a shame and a scandal? regarded the killing of the Germans. I simply cannot make any difference between the one and the other.

Q Is the answer, "Yes", you regarded it as a shame and a scandal, when you thought about it, is that correct?

Q Way don't you answer the question specifically? I put the question specifically.

Why do insist on making it general?

THE PRESIDENT: Put the question specifically and get a specific answer. BY MR. FERENCZ: the Hitler Order, did you regard that as a shame or a scandal?

THE PRESIDENT: Yes, or no. not enter my head, but my reaction did not work in this direction.

THE PRESIDENT: You are being a little slow in answer to the questions which were put to you, but you will observe that in every instance, the series of questions follow upon something volunteered by yourself. These questions are all prescribed and precipitated by the statements which you volunteered on the witness stand. Further you indicated very specifically that you regarded the destructions of the synagogues on November 8, 1938, as a shame and a scandal. Now the question put to you by Mr. Ferencz is simply this: Since you regarded the destruction of the synagogues as a shame and a scandal, did you also regard the execution of Jews as a result of the Fuehrer Order as a shame and a scandal? Now, please answer that Yes or No or tell us you feel dis clined to answer it.

Now, yes, or no, or indicate you do not want to answer that at all.

THE WITNESS: Must I answer this question, Your Honor?

THE PRESIDENT: I have indicated that if you don't want to answer it, then the Tribunal will have to assume that you don't want to make a comparison between the destruction of an inanimate conglomeration of stone, brick, and mortar, and pulsing live human beings. Now, if you don't want to answer the question, the Tribunal does not demand that you answer any question. You are indicted and you voluntarily take the stand. No defendant is compelled to take the stand, if he does not wish to, but once he takes the stand, he is subject to cross-examination and then, if he volunteers statements, certainly those statements are open to inquiry end the witness stated that he regarded it as being a shame and a scandal that the synagogues were destroyed.

Now Mr. Ferencz very properly asked you "Do you regard the destruction, the killing, the executing of men, women and children, as a result of the Fuehrer Order, a shame and a scandal?" Now, please answer that, yes or no, but, if you don't want to answer it, then, say, "Please, I do not wish to answer that question" and we will pass on to something else.

THE WITNESS: The shooting of women and children -

THE PRESIDENT: No, no. Now, we don't want another long speech. You are very interesting and we enjoy these bookish lectures of yours, being a university professor, they are very interesting, but now we have spent a great deal of time on this particular question and we don't want any long speech. Now, once again, Mr. Ferencz, put that question and stop there, and the witness will answer, yes, or no, except, if he is disinclined to answer it, then, he will have to ask the Tribunal to excuse him from answering the question, and of course be excused from answering the question. BY MR. FERENCZ: ler Order, did you regard it as a shame and a scandal?

Q I shall come to one more question. When defenseless men were shot, did you regard that as a shame and a scandal?

THE PRESIDENT: Why does it depend? Now, he said, if defenseless men were executed, a man is defenseless, he is helpless, he doesn't have an are to defend himself, I think that is what is meant by "defenseless", I don't need to have that amplified. If defenseless men were executed under the Fuehrer Order, did you regard that execu tion as a shame and a scandal?

THE WITNESS: If it is the expression of the fuehrer Order, then not.

Q Well, we have an interesting situation then. If defenseless men are killed as a result of a Hitler Order, you say that you did not regard that as a shame and a scandal. If defenseless women and children were killed, then you did regard that as a shame and a scandal. Why do you make the distinction? yes or no. This is the first time I have been allowed to say anything for some time, but I want to say something on my side, to make an objection. If you don't force me to answer, yes, or no, I want to state, Mr. Prosecutor, the term, "defenseless men" has to be defined very closely and you told me that I would be allowed to give a clarification afterwards. At the moment, or at least, shall we say, when I now state the meaning of the term "defenseless", the question is whether he would have the possibility to find out the case, or whether he would have been able to examine the actual possibility -

THE PRESIDENT: Witness, I think we can shorten this. What Mr. Ferencz meant, and you are right in objecting to the word "defenseless", if it were taken apart from the context of what has been going on now for two days by this: a man, a Jew, who was executed merely because he was a Jew. He was not spoken of as an individual that was given a trial or who was proved to have committed sabotage, or who was an active partisan, or who was lead out and shot. That is an act of war. We do not mean that idea. It means a man who was shot merely because he was Jewish, not having committed a crime, merely because of his race. Did you regard the killing of such a man, such a defenseless person as a shame and a scandal? I think that answers your objection.

THE WITNESS: In this question -BY MR. FERENCZ: The Tribunal has clarified the question. Would you answer the Tribunal's question, please?

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A May I ask you to repeat?

Q The question is this: You stated that you regarded the killing of defenseless women and children as a result of the Hitler Order to be a shame sad a scandal. You also stated that you did not regard the killing of defenseless men to be a shame and a scandal. The question is: What is the distinction -- and by defenseless men, we meant to say, as the Tribunal pointed out, Jews who were killed just because they were Jews?

A Normally women and children are not waging war. On the other hand the man is a potential bearer of warfare. I underline this, I emphasize this "potential". If therefore the shootings are based on his characteristic of being a "potential" bearer of warfare, and if, furthermore, they are carried out when their potential guilt has been established in a concrete situation, then I think the shooting is justified. every day. The Jews were ordered to be registered. The old men who had never born arms in their lives were taken out and shot, along with the others. You have made a distinction between men whom it was justifiable to kill without limitation as to their condition or age, or class or anything else, and the killing of women and children, are you saying now that you regarded all men because of the mere fact of their sex as potential bearers of warfare, are therefore justifiable victims of this murderous order? and the women and children are disregarded. That, at least, is my opinion, and that is why I must make the primary and primitive difference between the potential bearer of arms and on the other hand the woman and the child. This difference is unambiguous and is in our cultural and moral code, and if I act according to this moral code, I must recognize this difference, but, if you ask my own opinion, I must give you the answer that according to the European moral code, the man is the bearer of arms, the bearer of warfare.

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Therefore, I must make this distinction and I make it for this reason and for no other.

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Q Then According to your cultural and moral code, it was justifiable to kill any man who was a Jew, regardless of his condition, age, or previous act, is that correct?

THE INTERPRETER: Would you repeat the question? It did not come through. perfectly justifiable to kill all men, because they were Jews?

A No, that has nothing to do with my moral and ethical code. According to my moral code, guilt has to be established, a guilt from a concrete situation. Europe, and your cultural and moral code, men were regarded as bearers of warfare? killing Women and children.

A This specific conclusion I did not draw. You did. I only stated facts of the case. children, out it was justifiable to kill men. is what I mean. were Jews was justifiable? it is justifiable, or, at least, was justifiable. It is another question whether it was also morally justifiable. any way? atmosphere, I regard the Fuehrer Order as unmoral, if I can speak as a citizen of a state. If I may be permitted to say so, who have, during the last thirty years, watched the establishment of a fighting moral, together with and in addition to a Christian and humanitarian atmosphere, and when I saw, according to these new orders, women and children were killed, not in actual combat, with your permission, I must say, as a citizen of a State, if I may be regarded as such, I regard it as amoral, but, of course, I can no longer say that as a humanitarian and as an individual.

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I am justified to regard it as immoral. I want to say that quite clearly, out, as a citizen, I can only regard it as immoral and I give you the reason. The whole warfare moral or the so-called civilized world is overshadowed today.

MR. FERENCZ: It was a long speech.

THE PRESIDENT: Did you get an answer?

MR. FERENCZ: No, I didn't.

I would like to put the question again very simply. As I understand your answer, you regarded the Hitler Order as amoral, is that correct?

THE PRESIDENT: Now, listen, Witness, you can't be two individuals. You're one men and you can't day, "over here I am a citizen. Over here I am a person. Over here I am a professor. Over here I am a, soldier." You are one man. Please answer the question as one man, and we have spent a great deal of time on this. It has all been very interesting and it hasn't bear lost, because we got angles which might not have occurred to us before. Now let's epitomize it in one very simple question, did you regard the execution of a Jewish man, a male, did you regard his execution - merely because he was a Jew as a shame and a scandal?

THE WITNESS: As an individual, I regard -

THE PRESIDENT: No, no, no. Did you, not as an individual, just one certain individual, you. I only see one person. You talk to us as if you were a whole platoon of men.

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THE WITNESS: I have Said that I regarded it as amoral. BY MR. FERENCZ: defendants, that the Hitler Order was a proper order?

THE PRESIDENT: While you are right at this point, I think I would like to acquaint Dr. Heim with what -- would you please step up to the podium, Dr. Heim? Because the witness has mentioned -- the witness has just Stated that he refused to answer this question, which might concern other defendants. I would like to call your attention, Dr. Heim, since you were not in the courtroom at the time, that this morning the witness made an answer which might seem to be contradictory to the answer which he made to a question put by you last Friday and, since it involves your client, we believe, in the interest of fairness and justice, you should know this answer, which could, be contradictor to the answer he gave on Friday. You had asked the witness this question: "Do you mean to say by that that the Commander of the SK 4a would have the possibility to prevent executions which he had been ordered to carry out. The witness answered among other things, but he made this very specific reply, "It is, of course, evident that whoever received an order had. to carry out the order." This morning he stated that had he received such an order, he would have refused to carry it out so in that he made a distinction between himself and your client, and we believe that you should be acquainted with that answer made by the witness. If, later on, Dr. Heim, you would like to question the witness on that, you, of course, will be permitted to do so.

DR. HEIM: (Attorney for Defendant Blobel): Your Honor, above all, I went to thank Your Honor for drawing my attention to this. Secondly, I take the liberty to ask you whether after the conclusion of the cross-examination of the prosecution, I can ask a few relevant questions of the witness?

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THE PRESIDENT: Yes, you will be permitted to do that, Dr. Heim.

DR. ULMER(Attorney for the defendant Six): Your Honor, may I ask you to inform Dr. Heim of the fact that the defendant refused for his own person and therefore provided that the question has no relevancy.

THE PRESIDENT: Yes, I'd suggest that you acquaint Dr. Heim with the general nature of the witness' statements so that Dr. Heim may be entirely at home in this for the cross-examination when he takes it up.

DR. ULMER: Will that be now, Your Honor?

THE PRESIDENT: No, no, during the recess, hut I will say this for the information of the Marshal, that during the recess, the witness is not to speak to anyone.

DR ULMER: Yes, Your Honor.

THE PRESIDENT: Mr. Ferencz, I think we might recess now.

MR. FERENCZ: If Your Honors please, I have just one question I would like to put. BY MR. FERENCZ: answer this one too?

THE PRESIDENT: Very well. He refuses to answer why he refuses to answer.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. ULMER: Your Honor, thank you for giving me the possibility of informing Dr. Heim. I used the recess for this, and at the same time Dr, Heim. I used the recess for this, and at the same time Dr. Heim was informed through his assistants who were present throughout the entire morning's session.

THE PRESIDENT: Yes,

DR. HEIM: (For the defendant Blobel): Your Honor, I an very well informed about everything the witness stated this morning, but my questions relating to this, I would like to ask at the end of the cross examination of the Prosecution

THE PRESIDENT: Dr. Heim, we are disposed to let you do that, so you do not have to argue about that. Yes, the Prosecution will finish its cross examination and then you will be given ample opportunity to go into that subject or any other Subject which you deem relevant in behalf of your client.

DR. HEIM: Thank you, your Honor.

THE PRESIDENT: You are welcome. BY DR. FERENCZ:

Q. Six, do you know a police major named Johannes Hermann Mueller?

A. I do not remember that.

Q. How has made some statements about your character, which I would like you to have an opportunity to explain. Therefore, I am going to give you an interrogation of this police major, and will ask you to read two of the questions which were put to him, as well..... I will ask you to read to of the questions which were put to him concerning you, and to read his answers out loud, and then to give us an explanation of his statements. The questions are 27 and 28. Would you please read that out loud? Would you please read it out loud? I won't hear anything.

A. I am just ready.

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Question No. 27. To the person to be interrogated, (probably it is meant to be Nebe, N-e-b-e) at the time?

Answer: That is a very important question. Do you know all those people.

...it was such a strange mixture of people.

that he had the execution carried out. I don't know whether he was an old-time Nazi.

He fitted very well into the circle.

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"Question No. 28; What kind of an impression did he make?

" Also one of those wild worriers. This repelled me a little. A full stop I always thought , Good Lord, that man is a Professor. At the time He was dull. He had worries about his family and his wife, I don't know, but apart from that he was not very quiet." given to those questions?

DR. ULMER: Your Honor, the name Muller, is the most popular name in German. For that reason it would he very nice if the Prosecution would submit this document as evidence in order to give me the possibility of informing myself which Major Muller from the police is concerned, and to use that in my cross-examination and how it comes about that he holes such an opinion.

THE PRESIDENT: Counsel let me make one suggestion which has nothing to do with your request, that when any attorney steps up to put a question or makes a statement, especially right in the middle of an examination being conducted by someone else, that he give his name and the client he represents so that it can be seen from the transcript at once who it was that made the declaration.

DR. ULMER: I beg your pardon, Your Honor, as defense counsel of the defendant in the witness box, Dr. Six himself, it escaped me at the moment.

THE PRESIDENT: I did not mean it as a criticism. I am only stating that for the purposes of the transcript, the record which is printed afterwards, it would not he too apparent that you were the defendant's counsel.

DR. ULMER: I know, Your Honor, but still I had to beg your pardon because it was a mistake on my part.

THE PRESIDENT: Very well, now Mr. Ferencz, Will you please answer Dr. Ulmer's questions.

MR. FERENCZ: I shall be very glad to give it Dr. Ulmer and make it a part of the record. I am talking about Johannes Hermann Muller.

I will give defense counsel whatever information I have about Herr Muller in order that he may acquaint himself with who this person is. I know he is a police major and I have given that much to the defendant. Now to come back to my question.

Q. Do you have any comment to make or examination concerning this police major's opinion about you?

A Well, I don't knew this police major and I don't know who he may be. The explanations are so general that I cannot comment on them, no decisive fact is put down here upon which I could comment. tyrant, particularly as regard to your subordinates? me. If you can give me details about it I can tell you what I think about it.

Q I will give you part of Schellenberg's interrogation and I will ask you again to read the questions concerning you and the answers, and then you will be given an opportunity to explain it, it is question No. 29.

DR. ULMER: For the defendant Six; introduce these documents as evidence and to give them an exhibit number.

MR. FERENCZ: Your Honor, the derendant has asked to see the document so that he may be able to explain it, I have given him the document and it will depend. upon his answer whether I choose to submit it as a rebuttal document or not. I submit we are not obligated to make a document of ever piece of evidence we present to the defendant for the purpose of cross-examination.

THE PRESIDENT: So long as defendant and defense counsel are given every opportunity to see, study and scrutinize the document or Paper or memorandum whatever it may be, that the Prosecution is using, there is no necessity of making it an exhibit unless the Prosecution desires to do so.

BY MR. FERENCZ :

Q Now would you please read that question and answer? and subsequent questions and I must say that this question as such is rather taken out of the context, because a few pages previously and a few pages later other questions are mentioned:

"Question No. 29 What was the general opinion of him in the SD?"

Q He is talking about you there, is he not? time afterwards, "What was the general opinion of him in the SD?

"He had a way of treating human beings. He was a ruthless tyrant towards his subordinates. One must not take this amiss but one must blame those people who were the cause for his character becoming like this." your character? liberty of giving the same opinion of him. In any case I doubt that he tried as much as he could to observe the way I treated my co-workers. Schellenberger was so close to Heydrich and Himmler and always cooperated with them so closely that people in a position like mine did not seem important and interesting to him. In any case it is interesting for me that he gave this very careful answer, because as he says, I had a way of dealing with co-workers, this may represent a good way of treating them or a bad way. I know from my own experience that treated my co-worker's very well and that I concerned myself with their worries, but I am sure of one thing that I never thought myself in a position to determine or order their wills or opinions concerning the ways of their lives, that is all I can say.

Q Do you know why he regarded you as a tyrant?

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little opportunity to be together with me. kommando Moscow? 20th of August.

Q Are you sure it was the 15th of July? July?

A I beg your pardon?

Q The fourth?

A I have never said that. May I just explain this: Of course, I had been appointed since the 23rd but the departure took place on the 14th or 15th. I not only stated this today but I have said it since the first day of my interrogation. it was explained to you that you were to perform a mission similar to that performed by the Einsatzstaff Rosenberg, is that correct? beginning your activities with the Vorkommando Moscow? that one did not have to study them in particular. Apart from that I must say that my office carried out such tasks in any case. Einsatzstaff Rosenberg in Paris, and you said that you were to do a similar thing in Moscow? berg was sentenced to death partly because of the activities of the Einsatzstaff Rosenberg in Paris?

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A I don't know that, but I cannot see any connection between this and the activities of my commandos. the Einsatzstaff Rosenberg did in Paris?

A No, Mr. Prosecutor, there is a very important difference. May I explain it to you? The Einsatzstaff Rosenberg had the task to secure items of art and culture.

Q Does the word "sicherstellen" does that mean confiscate?

A Certainly for him it meant confiscate. He had the task to confiscate items of artistic and cultural value. My task was set down in a special agreement as confiscation of archive material, that is documents of the date prior to 1939; the confiscation of art and cultural items according to Article 56 of the Hague Convention is considered to be prohibited because they are to be considered to be private property, however, the confiscation of archive material, that is, such which are not considered of value for culture and art internationally, they are considered as a war booty and every power at war today considers it their right to confiscate such materials, for example in Germany, during the last two years the Ministerial Collection Center. tion to examining documents, also had the task of confiscating art works, is that correct? time.

Q Do you know about the "M"-action of Einsatzstaff Rosenberg?

Q Perhaps this will refresh your memory. The "M"-action, as found in the judgment of the IMT, was an action by the Einsatzstaff Rosenberg in which they took all the furniture away from all the Jews in occupied territory in the west and sent them back to Germany, did you ever hear of that?

have heard the word "M"-action here. that you were to perform activities similar to those of the Einsatzstaff Rosenberg, is that correct? the measure required that they confiscate the documents and archive material, that was to be carried out, and the rest of the material, the Einsatzstaff Rosenberg would have to confiscate on their own. This could not overlap because of an agreement as laid down in the year 1940.

Q I am not quite clear in your answer. Did you say you were a part of the Einsatzstaff Rosenberg? with the Fuehrer order and on the other hand the tasks of the Archive Commando of Office 7 was set down definitely by this agreement of the year 1940, and in this it had been set down expressly that only archive material and only archive material from the date since 1933 was to be taken, only these, the security police were to confiscate only these. the East similar to what the Einsatzstaff Rosenberg did in the West, which you explained after the examination and studying of documents? in the West but I had to deal with such things Which according to the agreement of Heydrich and Rosenberg in the year 1940, had been given as a task to the SD, only they were to confiscate archive material from the time after 1933.

Q Was the Einsatzstaff Rosenberg to do this by themselves? separately, that this be a task of the SD and the security police and in the future they should carry it out on their own.

Eastern front? berg were to be sent to the East as well but I have never come across any nor did I meet him previously.

Q You stated that there were 23 people in Vorkommando Moscow. How many vehicles did you have.

A Shall I repeat?

Q No, how many vehicles did you have? did you wear a uniform?

Q what want did your uniform indicate?

Q That is equivalent to Colonel, isn't it? Was that an honorary colonel or an honorary uniform? job was a university professor and as my files show, which you have submitted as documents here, I was still practically a member of the Waffen SS.

Q How were you addressed when a soldier came up to you? Did he speak to you as Professor Dr.Six, or did he cell you Colonel? you were just an honorary colonel, if you were dressed as a Colonel, as a commanding officer of a unit and soldiers addressed you as colonel, what do you mean that you were just an honorary SS Colonel now? honorary office.

position? colonels?

Q But you had another job, you used to be a college professor?

Q But one of your positions at least was to be an SS Colonel?

Q I am still confused by that "honorary", was your position as SS Colonel, aside from the fact you had a job elsewhere as a college professor, any different from the position of any other SS colonel? Are you trying to give us the impression that it was just a title that it had or do you mean to tell us that you were wearing the uniform of a colonel and addressed as a colonel and then you say it was an honorary position. Will you please tell me if it was any different from any other SS colonel? This fact is shown by the files you submitted yourself from the main SS office, where it says it quite clearly. I cannot repeat anything else but what I have always said and apart from the fact I did not know about this position and this had been indicated in my files several years before.

Q Did you get paid as a colonel?

Q Did you have the privileges of a colonel?

A What are the privileges?

A I can't say what privileges come within that position. Anyway, I didn't have any.

Q Did you have your own territory or area of operations?

Q You are sure you didn't have your own Gebiet or area of operations? that Smolensk belonged to your Gebiet or area of operations. Can you explain that? mean by saying now that this was in your advance territory? less than an area which was under my competency to carry out the Einsatz tasks, and it would have been like that, and as the title shows Vorkommando Moscow, this was a Commando which had the special task of securing the archives, and it was not an Einsatzstaff Commando owing to the fact I had no operational territory. lensk belonged to your territory? this territory. with 23 men it could be regarded as your area or was regarded as your area by another defendant, is that correct?

A I beg your pardon, would you repeat the question please? your 23 men that is the explanation why Blome said Smolensk was in your territory?

A That is a possible explanation. What he means I don't know, of course.

DR. ULMER: For the defendant Six.

Your Honor, they are referring to an interrogation of Blome. May I ask that the Prosecution state whether this concerns a document already submitted in one of the document books, what exhibit number it has and which book it is in, whether it is a document which had been submitted about a statement of Blome, and I ask that if it is not to be introduced or if the Prosecution does not intend to submit it, that the same reservations be made as concerns Muller and Schellenberger and the dependent Six and that this may be indicated.

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MR. FERENCZ: Your Honor, this is an interrogation of the defendant Blome which was not introduced as a document in as much as it is an interrogation. However, in view of the request of defense counsel I will submit the interrogation to the defendant Six and ask him to read the questions and the answers which he has just explained and I will at that allow his defense counsel to examine the document and he may use it any way he sees fit for further questioning of the defendant Blome or when he takes the stand.

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DR: ULMER: I am very grateful and I believe this will avoid a number of misunderstandings. MR. FERENCS:

Q. Please read the question and the answer out loud?

A. Who carried out the Action Smolensk? Answer: Smolensk was not one. You are making a mistake here. Well, I know nothing about it. I only went in with the front troops and safeguarded the NKVD building, which was still in good order and then I left again because that belonged to Sixis territory. Shall I continue?

Q. No, thank you, that covers it. Your explanation then, of course is that you don't know why Blume stated that Smolensk was your territory?

A. No, I don't know that.

THE PRESIDENT: Mr. Ferencz, please. Since you refer to the witness's rank in the SS, I have been able to locate the personnel records to which the witness referred. Would you please let him look at that document? III-B on page 79 in the English.

MR. FERENCZ: Yes, I am giving the English copy, Your Honor. I don't have the German copy with me.

THE WITNESS: I can read in the English.

MR. FERENCZ: Can also read the English.

THE PRESIDENT: Document No. NO-4807, and he said he reads English so you can have it in English.

MR. FERENCZ: I'll later on give him the other copy so he may follow it also.

THE PRESIDENT: Very well. You indicated in answer to Mr. Ferencz's question that this personnel record shows that you were an honorary colonel. I don't find that phrase in the document. Would you please indicate which item it is, which can be interpreted as an honorary colonel?

THE WITNESS: On page 1 of the original document, it says, one moment please, I must look it up. It is different in the mimeograph copy. Under the column, "Profession" it says: Secretary: University teacher, and.

then in quite a different handwriting: SS Leader. My profession is given as secretary: college professor, and then SS-leader, I can only understand this to mean that at the time I gave as my main profession that I was a lecturer. Later, although it is not mentioned here, it says here, Employe: foreign office. If the RSHA or the SD Main Office had been my employer, it would have said here, SD Main Office, or Reich Main Security Office. For that reason I stated this.

THE PRESIDENT: That is the basis on which you make your statement that you were only an honorary colonel?

A. Yes.

THE PRESIDENT: Who makes up this personnel record? Who makes up this Personnel record?

A. That is done by the expert in the So Personnel Department, and, as this file shows in the original, and in German, alterations are made continuously. This file was made in the year of 1937. Perhaps even in the year of 1936, because this time corresponds with the statement: docent, lecturer. Later on I was a professor, and later when all my changes were entered, it was never entered that my main job was in the SD, and I was paid for this, but under profession it says: docent lecturer, employer later foreign office.

THE PRESIDENT: Yo regard these as accurate then?

A. Yes, Your Honor, I also know it, owing to my position, and my payments, and soforth.

THE PRESIDENT: Very well. As I glance at this document I see Another item which just fell before my eyes accidently. I would like to ask you a question.

A. Yes.

THE PRESIDENT: I asked you not very long ago, maybe only an hour ago, whether you were a religious man, and whether you upheld the church?

A. Yes.

THE PRESIDENT: Your answer is, yes. Now I'll direct you attention to this personnel record.

A. Yes.

THE PRESIDENT: Under the heading "Religion"?

A. Yes.

THE PRESIDENT: And there it says "left church"?

A. I don't know, No, Your Honor, it says there, Religion: believer in God, and in brackets, "Protestant" in the original here.

The president; Well, what does it say after that, the next line?

A. Church K.A. Might mean: left church.

THE PRESIDENT: Yes, is that true?

A. Yes.

THE PRESIDENT: You did leave the church?

A. Yes.

THE PRESIDENT: Yes, so, therefore, your interest in these churches in Moscow was not because you had any reverent belief in the church, was it?

A. I believe the question doesnot exclude that even if I was not a member of the church I could still be a religious person, or am one.

THE PRESIDENT: Well you were not religious enough to want to stay in the church?

A. I was not religious enough not to have to stay in a church, but I claimed for myself, from reasons of freedom of conscience that I had to try to find a relation to God, as I thought I had to find it.

THE PRESIDENT: Why did you leave the Church?

A. Why?

THE PRESIDENT: Yes?

A. Why, for the simple reason because I believe that I could find my way to God without an intermediary.

THE PRESIDENT: Then why did you believe in saving these churches in Moscow? Couldn't all these other parishiners and worshippers also find God without an intermediary of the church?

A. That is a principle of freedom of conscience and belief i.e.

That every human being can find his way to God, ashe considers it to be right.

THE PRESIDENT: You feel that the church is necessary for these others but not for yourself?

A. Not that I consider it necessary, but for this fact, that every individual may search a vasic way to God, whether it be through the church, or whether it is done intermediarily.

THE PRESIDENT: When you answer my question this morning---

A. Yes.

THE PRESIDENT: (continuing) as to whether you were a religious man, we gathered the impression that you were a man who believed in God, and attended church?

A. Yes.

THE PRESIDENT: But you do not attend the church. You left the church?

A. Yes, I left the church, but I want to assure you, Your Honor, that it does not change my statement that I am a religious person, and that my belief in God has nothing to do with my leaving the church. BY MR FERENCZ:

Q. You say that your special task was collecting archives, is that correct?

A. Yes.

Q. What was your general task?

A. May I have the question repeated, I did'n get it.

Q. So you think your special task was to collect archives, but what was your general task? Did you have another function besides that?

A. No, I didn't say it was my special task, but it was a specialized task within this commando.

Q. I want to call your attention to Document Book- III-B, page 34, perhaps your defense counsel can give it to you in the German.

A. Thirty-four. (discussion between counsel)

Q. You will notice in paragraph 2 which begins on page 33 of the English, and goes over there to page 34, discussion of the functions of commandos expected to enter Moscow. It says: No assignment will be made until the fall of Moscow; thence, "neigher important material nor Communist officials can be seized." This is right before the end of paragraph 2. Wasn't it also part of your function in addition to the confiscating of documents to seize Communist officials if you could find them?

A. No.

Q. When you were in Smolensk, did you participate in combing the city for officials, experts, criminals, Jews, etc?

A. No.

Q. I want to call your attention now to Document Book II-B, page 8, at page 6 of the German, Document NO-2837, on page 7 of the English, it states: "In Smolensk some quarters of the town were systematically combed for officials, agents, criminals, Jewish intelligence, etc." Didn't your interpreters assist in this work?

A. There were few cultural quarters of the city where a systematic search for functionaries, partisans, and Jews and that were combed for such people, the result of which 74 people were shot. I never participated in any thing like that.

Q. Didn't your interpreters assist in these search actions throughout the city of Smolensk?

A. May I have the exact words again please?

Q. Didn't your interpreters assist in these search actions throughout the city of Smolensk?

A. In this search action in which several quarters of the city were completely destroyed, as a result of which 74 people were shot, no interpreters of mine took part in such activity, either.

Q. Did they assist in other search actions to find Jewish intelligencia, and Communist officials?

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A. They didn't take part in any other either, in which people of that kind were searched for, or found, or shot.

Q. You and your own particular men who were qualified for this type of work did nothing then in Smolensk, while the rest of the troops was we busy, is that correct?

A. We did nothing with the rest of the troops?

Q. While the rest of the troops were so busy hunting Jews and Communists?

A. That troops do you mean?

Q. The SS-troops, or whoever it was. The Einsatzgruppe- which participated in these killings, in this particular case, EinsatzgruppeB troops?

A. In every case I can only repeat, that I didn't take part in any action in which Jews, Intelligencia, Functionaries, agents and looters were searched for, and as a result of which 74 people were liquidated, or had been arrested. That was the answer, of course, wasn't it to your question?

Q. Yes.

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THE PRESIDENT: Mr. Ferencz, you didn't ask whether he participated. You asked whether the interpreters did.

Mr. FERENCZ: Whether the interpreters participated. BY MR. FERENCZ:

Q. Did your answer cover your interpreters, too?

A. No, nor did my interpreters take part in such task as described here, in particular, with such results as the shooting of 74 people.

Q. What other unite were in Smolensk at that time to do this sort of work?

A. In Smolensk ?

Q. Yes?

A. First of all, the Wehrmacht might have been there. Secondly, the police might have been there. The field commands. That is, quite a number of units.

Q. Anybody else?

A. Group-staff? Do you mean those?

Q. I am asking you -

A. In any case, I don't know of any action where the Group-staff had to carry out such an action in which 74 people were executed.

Q. Was the group-staff present in Smolensk?

A. From the 5 August on the Group-staff was present in Smolensk, I already stated that.

Q. This particular document lists these killings under Einsatzgruppe-B, part of a report from Einsatzgruppe-B?

A. My document here shows me only a heading, "actions against funtionaries, agents, Jews, sabotuers, and looters," without a date.

Q. The date is on the document, and that is before you, you have just read it, the heading, "Einsatzgruppe-B, location Smolensk." And then it goes on and describes the killing of these 74 persons?

A. What am I to reply to this?

Q. You were trying, to convey the impression that Einsatzgruppe-B or the staff of Einsatzgruppe-B certainly could not have done these things.

Is that still your impression after looking at this document, or do you think after looking at this, this was the activity of Einsatzgruppe-B?

A. I can not say from the documents who might have carried out this action, but I can assert and say one thing for certain, and I want to repeat this, that in this action the vor kommando did not take part in any form, and in this respect didn't participate in any search action, and these results they were not connected with it, and I did not take part in it.

Q. You are an expert on archives and documents. Did you look at this item, Document saying, "Einsatzgruppe-B, location Smolensk," describing killing of 74 People in Smolensk, and you say you can't tell whether it was done by the Einsatsgruppe-B, is that correct?

A. I can not say that because I don't know anything about it.

Q. You stated that you were not part, or the Vorkommando Moscow was not part of Einsatsgruppe-B, is that correct?

A. Yes.

Q. As an expert on documents, can you tell me why, if you were not part of Einsatsgruppe-B, the reports continually lists the Vorkommando Moscow under the heading of Einsatzgruppe-B, and in the place where they are describing activity of units of Einsatzgruppe-B?

A. I already stated during my direct examination that there are two location reports, simple location reports, which Nebe mentioned in his reports. These two which quoted, namely of 23 July and I believe of 27 July, they are only location reports; the next report which is submitted again in which Vorkommando Moscow is mentioned again is 29 August, and on 29 August I was no longer in Smolensk. Even if the time of the report and the time of the courier deducted from it, one can assume for certain that it was made out after my departure. Therefore, to repeat, and I want to mention this specifically, that the first two location reports were not made following reports from me, but must have certainly been compiled by Nebe, in his own authority and that I, furthermore, in this report of the 29th in my own handwriting--, and at my suggestion, made no reports, therefore, I can only repeat that the first two reports were made up after my departure, that is, at the time when he put himself in charge of the kommando, I can not be responsible for that.

Q. In other words, to summarize it, you say that if the reports show Vorkommando Moscow, or your unit, under description of "Einsatzgruppe-B activities" during your time, the reports are wrong, is that correct?

A. Yes.

Q. And that Vorkommando Moscow, at least during your time, was not part of Einsatzgruppe-B?

A. It was not part of the Einsatzgruppe-B during my time. I have confirmation of that; I have proof of that, and that is my opinion to the very end.

Q. Why did you turn Vorkommando Moscow over to Einsatzgruppe-B?

A. There was no other leader in Moscow, that is, in Smolensk to whom I could have handed it over.

Q. How about Klingelhofer?

A. Klingelhofer, didn't have a special function in my commando; that is, he was not commissioned , nor was he brought along by me for any special task; or thus appointed by Berlin, therefore, there was not any other way, if there is a recall for me from Berlin than to hand over the commando until new instructions came from Berlin, to the highest SS leader.

Q. Who was your deputy in Vorkommando Moscow?

A. I never had a deputy.

Q. Who was the next highest ranking officer?

A. The next highest ranking officer was Sturmbannfuehrer Klingelhofer, but it was a mere coincidense, because he was not chosen for that, nor did I know him previously, and owing to that he did not act as deputy at all for me.

Q. You are saying then when you went back to Berlin, instead of turning your unit over to your next highest ranking officer, the defendant Klingelhofer, you turned it over to a unit which you were not connected previously, Einsatzgruppe-B, is that your answer?

A. No, that is not my reply. My answer is: Until a new commander or chief of this kommando was sent by Berlin, unless Klingelhofer's name had been mentioned especially from Berlin, I had to hand it over to the highest rank at the place.

Q. And you could not just leave it with the highest ranking officer in your unit, but you turned the whole thing over to a completely different unit with which you were not previously connected?

A. Well, when the Vorkommando Moscow was set up, it was attached to me personally. I personally took up the commitment with the Division Reich. It was founded on my activity---

Q. Please answer the question, and then give us the explanation.

A. What did you want me to answer now?

Q. Is it correct that instead of turning it over to the next highest ranking officer, Klingelhofer, you turned it over to a completely independent unit, Einsatzgruppe-B, with which you had not been previously connected? Is that correct?

A. According to the channel of command it seemed to be the only right way for me.

Q. What do you mean by "channel in which the news came"?

A. I did not have my own technician set, so I could not get news to my aid, owing to that the order for transfer from Berlin came through the Einsatzgruppe, through the radio, therefore, if no other specialized order had been given, I must consider it to be right to choose that way.

THE PRESIDENT: Would you like to recess now, Mr. Ferencz?

MR. FERENCZ: Yes, Your Honor.

THE PRESIDENT: There will be recess until 1:45 o'clock.

(The Court recessed unti 1345 hours, 27 October 1947).

(The Hearing reconvened at 1350 hours, 27 October 1947).

THE MARSHAL: Take your seats, please.

CROSS EXAMINATION (Continued) BY MR. FERENCZ:

Q Six, What is your connection with Himmler? on occasions when there was a larger circle present. with him?

A What do you mean, official relations? Of course, as an SS leader, as an SS Reich Leader, he was my highest superior.

Q Did you ever talk to Himmler?

Q Did Himmler know about your work?

A What work do you mean?

A It is possible. No, he had no special knowledge in a way that he might have known where I was aprat from a special appointment, no. a document we discussed or you discussed briefly yesterday. There are two interesting points in this document I would like to look into again. You will notice on Page 29 of the German, Page 27 of the English, that it states that the Staff and the Vorkommando Moscow liquidated 144 persons up to the 20th of August, 1941. On the page before that, page 26, the middle of the page, it says that the Vorkommando Moscow was forced to execute another 46 persons, amongst them 38 intellecutal Jews who had tried to create unrest in the ghetto at Smolensk. Do you tell us that the Vorkommando which you headed had nothing to do with these killings?

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Vorkommando Moscow killed 144 persons up to the 20th of August applies only to the staff and not to Vorkommando Moscow, in that correct? gruppe B, say that the Einsatzgruppe B Staff was not occupied and could not have carried out any killings. In view of his answer how do you reconcile that with your statement that these 144 were killed by the Staff? Group Staff and the Advance Kommando Moscow had carried cut 144 executions cannot concern the Vorkommando Moscow as a matter of fact. That is for a variety of reasons. As I stated the Advance Kommando Moscow never carried out any shootings, and as this Vorkommando, this Advance Kommando did not carry out any shootings, there is no other conclusion that they must have been carried out by the staff. 144 persons. You say it could not have been the Vorkommando Moscow inasmuch as you did not have the facilities for killing. Naumann says the staff did not carry out any killings because the staff did not have the facilities for killing. How can you reconcile the two. fuehrer Naumann made his statements. As far as I can see from his statements here that must have arrived in Smolensk in either November or December. Whether conditions changed or he made any alterations I don't know in detail and I cannot it. could not have carried out these killings inasmuch as there were only twenty-three men and they were transistors and interpreters, is that correct?

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executions; I said that it has not carried out executions. It did not carry them out. I first made an absolute concrete statement about the Vorkommando Moscow not carrying out any shootings. And then there is a report here which was made after my departure which mentions the staff and the Vorkommando Moscow, and I have tried to find an explanation, how I can concoct and explanation analytically. If I say the Staff carried cut 144 executions and the Vorkommando none at all, then there will he still 144.

THE PRESIDENT: Mr. Ferencz, the Witness mentioned the month of November which I don't reconcile with this report which specifically says August. Can you give me an explanation as to what he meant by November?

MR. ERENCA: No, Sir. Perhaps the witness can explain it.

THE WITNESS: I was no witness of it, and I have no personal knowledge of shootings of the Group staff. Whatever I have said and analyzed out of these documents applies only to the documents we have here.

THE PRESIDENT: Witness, I understood you to say in making an explanation of this item that a certain group arrived there in November. Did you use the month of November in a previous answer?

THE WITNESS: I was asked by the Prosecutor how HerrNaumann came to his explanation and my answer was that according to what I heard here Naumann must have arrived at the Einsatzgruppe at the beginning of December and I have to find out whether the documents, refer to November orDecember. Personally I can not give an opinion to this because I wasn't there at that time. BY MR. FERENCZ:

Q Were your interpreters armed? rifle. That was merely a matter of security in a military fighting combat zone. It was after all a territory which was a combat zone in those days, which can be proved by the dates.

to have executed 144 persons, would it not?

Q Now you say, of course, that they didn't. On Page 26 we have the statement that the Vorkommando Moscow was forced to execute another 46 persons, amongst them 38 intellectual Jews. My question is if the Vorkommando Moscow was only there to collect archives, as you have been telling us, how do you explain the fact that they suddenly started killing the Jews?

A I don't know whether this report is correct and true. I accept it as a fact from the reports we have here. I furthermore testified that at my time there were no shooting of any kind. To this report in particular furthermore I said that the Advance commando Moscow did not carry out any shootings of Jews. If this report was made at any period after my departure, which, of course, I do not know, then it could be possible that the changeover brought it about, the changeover, I mean, which Nebe carried out After my departure, but again I cannot say anything as to this because at the time of my presence there there were no changes. Forkommando may have started to kill Jews as shown in this report, but during your time they were just archive collectors, is that correct? Whether they were carried out afterwards, after I had left, I do not know. Vorkommando Moscow carried out considerable numbers of executions. Do you have the same explanation about those, that the character of the Vorkommando changed after you left and then they started executing the Jews, but during your time they were just archive collectors?

A Here again I can only give the spine answer. At my time there were no executions. With the date of my departure, this becomes evident from the collection I have here, a uniform kommando was established, a common Kommando. For what reasons and why it was established I do not know.

twenty-three men, were they all scholars and students as you have tried to picture them and yourself?

A What do you mean? certain knowledge and training. You have explained at great length that you are a professor with many degrees, a learned man, and that is why you were put in command. Was it equally true about the other members of your unit, Were they also scholars and learned gentlemen? principles. Some had an intimate knowledge of Moscow, some were interpreters and had knowledge of achieves. killing the Jews the moment you left? attitude as to this. were you not? keen on shooting people or that they had the wish to do so. left, the Vorkommando Moscow started shooting at least hundreds of people?

A You mean when I left? been then after you left. You can see the documents now. If you like I will place them before you again, but you have seen them, saying the Vorkommando Moscow executed thousands of people, or at least hundreds. Didn't that surprise you in view of your knowledge of the nature of the assignment and the caliber persons you had working with you?

put in charge of the kommando he changed the Vorkommando Moscow for his own purpose - perhaps not or perhaps partly with perhaps. I mean that I am not certain whether the whole number of various u its referred to the Vorkommando Moscow also. did you refuse? my kommando from an archive kommando to an Einsatzkommando from this moment I am in charge of an Einsatzkommando, and as such I am subordinate to the Einsatz orders fro various reasons, for instance, in the assignment of task in the operational theater, whereas I had no operational theater before when it was an archive kommando.

Q Why didn't you want to be in charge of an Einsatzkommando? charge of an archive kommando. This archive kommando was within my field of interests. I cannot imagine if Nebe suddenly would have had the idea of putting me in charge of an Einsatzkommando, that I would have complied or would here like to comply with such a wish. When I was supposed to be entrusted with it I said there was no reason why I should take it over, and I made use of the only means of my disposal, I sent a teletype message to Berlin and asked for my relief. Einsatzkommandos which made you object to becoming an Einsatzkommando leader? authorized to assign me to such a task. That alone was quite sufficient for me. with the Einsatzkommandos but you didn't like Nebe to have higher authority than you?

A My decision at that time was of the following nature. I did not want to change my kommando and for that reason I asked my release.

The other reason was an entirely different one. Einsatzkommandos? I did not see them with my eyes. Therefore, from my own knowledge here I can give no answer to that question, or no satisfactory answer. requesting your release? correct?

Q You say: therefore, that it was possible, at least for you, to get released from duty on the Lastern front by simply writing a letter or sending a cable, and in five days you get back the reply saying you were released, is that correct? to Streckenbach, and in this letter I stated that the tasks with which I had been entrusted would take months as the military situation was a new one, and that under these conditions my presence was no longer justified and no longer necessary, and therefore this order or this assignment by Nebe to take over such a task as I had a special assignment with which I had arrived from Berlin, and that under no circumstances I would be Nebe's subordinate. And to this I got that answer. ivities taking part in Smolensk and you didn't want to be a part of them?

Q Why didn't you ask also for the release or withdrawal of year twenty-three men who also had a special assignment, you say?

subordination. It is quite possible that the others would wait for a few mouths until the Moscow assignment was topical again. Personally I did not have this intention. For this reason I asked for my release. The aim was to conquer Moscow, but as I said, according to the information we received, this might have taken months. to a strange organization and reported back to Berlin. What happened when you got to Berlin?

Q Just one question. What happened when you got to Berlin?

A I said before that I left the kommando to its tasks. I said in Berlin that would be necessary to send a new commander. gather, what did he say? November, and in between there was a period of two months, and as I have already explained, and I tried to make it as explicit as possible, he reproached me very severely and he drew my attention to the fact that for a lone time I had tried to leave the SD for the Waffen SS and as he accused me with desertion then I was from the SD since I was now trying to get to the Waffen SS. He also said that he was not pleased with my attitude during the last few years and he reproached me and said I had been unfaithful and disobedient. activity. Did he mention anything specifically about your activity in the Einsatzgruppe? Was he pleased about that, or was he displeased about that too?

A What should he have been pleased with? I don't understand the concrete question. disobedient and disloyal. I am not quite just sure why he called you those thing? Was it because of your activities with the Einsatzgruppen? time previously and especially, of course, because of having applied for being released. On the other side, of course, he could not expect me to have myself as a chief of an office subordinated to another chief.

Q Isn't it a fact that contrary to what you have just told me, you were highly regarded and that your activity with the Einsatzgruppe had been exceptionally well done?

difficulties, which lasted two months and that it lasted until the end of November, until the difficulties were put aside and then these dealings with Streckenbach come to comprise. I also stated that in the beginning of December I got my promotion re-effective with the 9th of November. If you mean that, I cannot say anything further. These are the facts and I have already stated this-

Q Isn't it true -period of three to three and a half months in between.

Q Isn't it true that you were promoted on the 9th of November because of your exceptional service with the Einsatzgruppe? about special merits. I am quite certain of that.

THE PRESIDENT: The answer isn't specific, Mr. Ferencz.

MR. FERENCZ: Your Honor, his last sentence that he has said that in his recommendation it doesn't say anything about his exceptional service, but that appears to be an absolute falsehood and I mean to show him him letter of promotion.

THE PRESIDENT: Very well. Proceed.

THE WITNESS: You said, Mr. Prosecutor, because of exceptional service in the Einsatzgruppe. That is what I denied.

Q (By Mr. Ferencz) Did you get promoted for exceptional service in anything? Did you get promoted for your exceptional service in anything? My question is put just now; you are telling us now that for years you were in disfavor with Heydrich. You never did anything right, for the SS, trying to paint a picture as though you were very unpopular; now I am asking you: Did you get promoted because of exceptional service in anything? You say that you did not get promoted because of exceptional service in anything?

You say that you did not get promoted because of exceptional service in the Einsatz; was it because of exceptional service some place else that you got promoted a few weeks after you left the Einsatzgruppe?

A That is not known to me. I only know that there were no special merits concerned with my promotion, nor was it in the least in the Einsatzgruppe.

Q Did you receive your notice of promotion?

Q Whom did it come from?

Q Who signed it?

A I cannot remember the details. As a rule, or, to a certain extent, I do not know up to Oberfuehrer Handattenfuehrer - they were signed by Heydrich promotions to higher ranks were signed by Himmler. give you a copy so that you can look at it. "To SS STandartenfuehrer Dr. Six, Franz Alfreds, SS No." so and so. "SD Main Office."

"I hereby promote you, effective 9 November 1941, to SS Oberfuehrer for outstanding service in Einsatz." Signed "H. Himmler." Would you take a look at this, please? Now tell me is that you, Dr. Franz Alfred Six? Is that you? by Himmler promoting you for your outstanding service in the Einsatz? any promotion letter of this kind containing this sentence. for your outstanding service in the Einsatz?

Himmler for outstanding service in the Einsatz, but you have no explanation, particularly in view of what you have told the court now for a whole morning?

A I repeat the promotion with this particular text. I have not received. I I had received it, and I inspected it. I would have said so, here. Even if such a promotion was made, I cannot explain why it says special merits and does not say what it means. The Einsatz was mentioned, but it doesn't state the function and, aside from this, there is no special abnormal explanation of what I have just said. I cannot state -

THE PRESIDENT: Did you receive that document?

THE WITNESS: This document I never received. I cannot have received it.

THE PRESIDENT: You knew that you were promoted, didn't you?

THE WITNESS: Yes.

THE PRESIDENT: And how were you notified of the promotion?

THE WITNESS: I received a memorandum from Streckenbach and a special order.

THE PRESIDENT: And you say that you didn't receive this letter from Himmler?

THE WITNESS: No.

THE PRESIDENT: what is your explanation, why you didn't receive an important document of that character?

THE WITNESS: Your Honor, I am just saying that I did not receive this special order. Even if I had received it-

THE PRESIDENT: So then there is a possibility that yon did receive it?

THE WITNESS: No.

THE PRESIDENT: You volunteered that even if you had received it, then what? If you had received it, now, what were you going to say?

THE WITNESS: If I had received it, I would say that I have not received it in its form. I do not see any reason why, if such a document is availably and if I actually did receive it, I see no reason why, I should say I didn't.

THE PRESIDENT: Himmler's letters usually got to their destination, did they not?

THE WITNESS: Yes.

THE PRESIDENT: There is no reason why this should not have reached you in a normal course of affairs?

THE WITNESS: In any case, I didn't receive it. I have already said that I got my promotion at the beginning of December. It is possible that a explanation is contained in the fact that I got my promotion late, or that for some reason or other it was not received by me. I don't want to deny that I have been promoted, and furthermore I want to say that if I had received this order, I would have said so. I see no reason to deny the receipt of a letter, if I actually received it.

THE PRESIDENT: And you offer no explanation as to why a letter of this importance would not have reached you?

THE WITNESS: From the fact that this was a late promotion, it would be possible that this letter did not reach me.

THE PRESIDENT: I did Not catch that.

THE WITNESS: Apart from the fact that only in the beginning of December I was promoted to Oberfuehrer, that is, not immediately, at the 9th of November, apart from this fact. I have no further explanation. That is what I meant, and I mean. That is to say, that it is possible through this late promotion, I never received this order. When I got my promotion I got a memorandum and I get an order and from these two facts, I assumed that I had been promoted.

THE PRESIDENT: But you offer no explanation as to why a letter of this importance would not have reached you in a normal chouse of affairs?

THE WITNESS: I have no technical explanation for it.

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MR. FERENCA: Your Honor, on the letter it says, "for outstanding service in the Einsatz."

Q (By Mr. Ferencz) How do you interpret that?

A I have no interpretation for it. Apart from the fact that, as I have said before, all promotions on the 9th of November probably contained the same statements. The same letters were received. archives, and had no connection with the Einsatzgruppen, how do you explain the word "Einsatz" in there. Did the word Einsatz refer to your activity in the Security Police?

A There are various explanations which could be used. The one is that the promotion was not specified sufficiently by the office of Himmler. A second explanation is that the office, that is the Streckenbach office chose this particular explanation to got me promoted.

Q Doesn't that mean the Security Police Einsatz in the Best?

A Can you repeat the question, please?

Q I say, doesn't that term "Einsatz" refer to your activity with the Security Police Einsatz in the Last? sure, by Himmler. It was suggested and proposed by Streckenbach or Heydrich; I am not certain what reasons there were to use this term. moted for outstanding service, after what you have told us about Heydrich's opinion of you?

A I don't know. I never looked at the proposal that Heydrich or Streckenbach made to Himmler. I don't know whether it was just a routine matter to promote me at the 9th of November and put promotion orders into this form.

THE PRESIDENT: Witness, I havehere in my notes that you said that "Heydrich reproached me severely, because I had tried to leave the SD, that he would turn around and recommend you for promotion for the wonderful work you did in the SD?

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THE WITNESS: Am I suppose to give an explanation, Your Honor?

THE PRESIDENT: Well, there seems to be an inconsistency in your declaration, first, you said that Heydrich reproached you severely, and in answer to a question put by Mr. Ferencz, you said that "possibly Heydrich recommended me for promotion." That seems an inconsistency to the Tribunal. If it doesn't to you, then we will pass on to something else.

Q (By Mr. Ferencz) Did you receive notice of your promotion to Brigadier General in the SS? service with the Einsatzgruppe?

A You mean promotion to Brigadefuehrer? No, that promotion took place in 1945.

Q But in the correspondence concerning your promotion, didn't it say that Franz Alfred Six, Doctor, or Professor, was exceptionally good with the Einsatgruppe in the last and therefore should have been promoted?

A You mean my promotion to brigadefuehrer or Oberfuehrer?

Q I mean in your promotion to Brigadefuehrer; when they told about all your great activities with the SS didn't they also say that you had performed exceptional service with the Security Police and with the Einsatzgruppe in the East?

A. There is a period of four years in between 1941 and 1945. In 1945 I got my promotion on the 30th of January. It is quite unimaginable that in 1945, again special merits in the past should be mentioned in my promotion.

Q To you it is unimaginable. Let me refresh your imagination and I will read to you, and I will give you the copy to read in a moment.

Q "Reich Main Secruity Office, Berlin, 2 October, 1944, Subject: SS Oberfuehrer Dr. Alfred Six,"is that you?

A. Yes, that is I, That is 1944.

Q "1. Memorandum. The Reich Main Security Office requests the promotion of SS Oberfuehrer Dr. Six to Brigadefuehrer effective 31 January 1945". Then follows a long description of your Party membership, your SS membership, the badges and decorations you have on and it also says, "SIPO Einsatz." "SIPO" means "Security Police", does it not? That refer to the Einsatzgruppe on the Eastern front, does it not? thing which is not true, it says further on that "in his professional career on 9 November 1941, S was promoted by the RFSS" which means the Reichsfuehrer SS Himmler" to the SS Oberfuehrer for outstanding service in the Security Police, Einsatz in the East" and so on. I am going to give you this letter so that you can take a look at it. Will you explain, please, to the Tribunal, why it is that this SS correspondence refers to your activities with the Security Police, Einsatz from 22 June to 28 August, 1941, specifically saying East Einsatz and again refers to your promotion by Himmler, because of your outstanding service in the Security Police, Einsatz in the East, when you just went to collect archives and you didn't even do that well, you tell us.

A. The proposal was made by Erlinger, by Erlinger as deputy. That is, that is another man. This is not Streckenbach. Therefore, evidently in his proposal list, he must have referred to this list of the 9th of November, because the wording is exactly the same as the promotion list of November, and when I consider -

Q. Just a moment: The wording is not the same. Let me refresh your memory on that too. The letter from Himmler said "For Outstanding service in Einsatz" and the letter you have before you says "For outstanding service in Security Police Einsatz in the East." It is a little more specific. You haven't answered my question: In view of the story you have been telling us, that you were just collecting archives, how do you explain all this referring to your outstanding service with the Police and with the Einsatz in the East?

A. It says here, I repeat; "for special merits in the Security Police East" he was promoted. I see no large difference between the word Einsatz and Einsatz in the Security Police and the fact that I was a member of the Security Service and that for this Security Service I was in charge of Vorkommando Moscow is without doubt because Office VII was a part of the Security Police and the SD and, therefore, there is no special emphasis or difference as compared against the term used in 1941. It is only a special term which refers to my activity at that time.

Q. Tell me this. You notice it says, "SIPO Einsatz, 22 June 1941 to 28 August 1941, East Einsatz." Now you told us that on the 22nd of June you were ordered to establish the Vorkommando Moscow.

You told us that on the 20th of August, eight days sooner than your records show, you left the Vorkommando Moscow and that Vorkommando Moscow was not part of an Einsatzgruppe, even though the reports show it to be part of an Einsatzgruppe. Now here the letter again indicates that you were active with the Einsatzgruppe.

A. It does not say so, Mr. Prosecution.

Q. It says, "SIPO Einsatz," for those dates you gave plus eight more days.

A. Yes.

Q. East Einsatz.

A. Yes.

Q. Does that mean archive collecting to you?

A. In any case the fact exists that Office VII established the Vorkommando Moscow and that they acted also for their purposes in the East. This is not in contrast because otherwise it should read here "within Einsatzgruppe B." The fact that Vorkommando Moscow was active for the Reich Security Main Office, I never doubted for one moment. I merely said that it was not a part of Einsatzgruppe B.

Q. How do you reconcile your story that you were reprimanded by your superior officers; that you never were a part of an Einsatzgruppe, certainly not Einsatzgruppe B, with the fact that in your personal files you have a letter from Himmler promoting you for your outstanding service in the Einsatz and that in your letter recommending you for promotion to Brigadefuehrer in the SS gives the dates of your activity with the Einsatz and when it says more specifically that you were promoted for outstanding service in the Security Police Einsatz in the East , to me that doesn't resemble archive collecting either. That is, perhaps you can explain it, the same as you have explained everything else?

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years after my appointment, that is, in 1941. Furthermore, it is a fact that another man proposed this and it is not the same man who made the proposal in 1941.

Q. So two people made the same mistake, Himmler and Erlinger, is that what you are saying?

A. No, the second is based upon the first, so to speak. The second used the same basis.

Q. And Himmler made the first mistake and Erlinger copied Himmler, although he didn't have the dates of the Einsatzgruppe, he out them down somehow or other, in order to get you a promotion, he told you the dates, which you conveniently forgot, since that was the week they were doing all the killing.

A. Himmler was sent the suggestions. The suggestions were made by the personnel offices. The basic files used are the same, and it is known that the proposals always painted a very beautiful picture and they emphasized all the details to get the promotion through.

Q. Is that the best explanation you have for that?

A. Apart from the fact that the proposal is based on the same basis as the one of the 9th of November, and that there were two different people who made these proposals on the same basis, and that it is also true that Himmler signed them, I have no further explanation. But I must say again that from this it does not become evident that Vorkommando Moscow was a part of Einsatzgruppe B.

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got the dates 22 June 1941 to 28 August 1941, for your activity in the Security Police Einsatz in the East? You have told us that you left on the 20th of August, and that our documents showing killings after the 20th of August, and even immediately after, happened as soon as you left. And here you have an official letter saying, that you were with the Security Police Einsatz. until the 28th of August. Where did Erlinger get that information? that on the 20th of August I actually left, and not on the 28th, and I can only say tint after all the witnesses, the living witnesses, who saw when I departed, are more credible than the stated figure in the document books, the probative value of which I do not know, I shall prove that I left on the 20th of August. I think I can find manifold proof of this. My question is:

Q Do you know how Erlinger got that date, 28th of August 1941?

A I do not know ether he received the date, the 28th. It might have been the 20th. It can be a mistake in typing. It may be any mistake. I can only state, and I shall prove, that I left on the 20th, and the men who can bear me out are manifold. I do not know where Herr Erlinger is. Otherwise, he would have to bear me out on that. least as far as that 28th goes?

Q I also notice in this latter that it says, "SS Oberfuehrer Dr. Six is an active and proven National Socialist." Do you notice that?

Q That is true, isn't it?

Q Now let us go back a little bit. When did you first learn of the order to annihilate the Jews?

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A You mean the year 1941?

Q That's right.

Q Where?

Q From whom? Einsatzkommnado 9 in Minsk.

Q Tell us something about it, That was the conversation like? He had a certain scientific knowledge and training; he spoke Russian -training concerning the killing of Jews, too. these particular questions were carried out, and he asked mo whether he would be employed in this here, too. out executive measures. executive measures, as yon call thorn -- I call them the murder of defenseless Jews -- is that what you wean by executive measures? measures.

Q What do you mean by executive measures.... writing letters to Himmler, or reading archives. What does executive measures mean? interrogations, etc. including shootings.

Q Interrogations and imprisonment, etc. By etcetera you mean taking people out and shooting them down, isn't that correct?

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A He didn't ask me that. He gave me that one answer, and that had nothing to do with it.

Q Now, Professor Dr. Six, you are telling us about executive measures, and you say that means imprisonment, interrogations, etcetera. Isn't it a fact, known to you now and known to you then, that executive measures meant taking the Jews out,all of them, and killing them? Now answer that question.

A I wasn't present. used.

THE PRESIDENT: Mr. Ferencz, he already answered that basic question, and now he is getting off on a side track. You asked him when did he first learn of the order to annihilate Jews. He said between July 7th and July 10th. Now, that is the answer to the question. He learned of the order to annihilate Jews at that time. Now proceed from that point. BY MR. FERENCZ: the Jews? executions of Jews.

QA Is that all you said to him? He says -- "Will you carry out executions of Jews?" -- and the first time you hear this you said, "My Commando does not carry out executions of Jews." Is that all?

A I said, we are not concerned in it. It is not our task, nor our assignment.

Q If that was the first time you heard of it, weren't you surprised, didn't you ask him "What do you mean -- executions of Jews?" or was it customary to have someone come to you and tell you, "I am carrying out executions of defenseless peoples" -- and you didn't ask him anything about it? Please try to be a little more credible.

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and he told me that he had found it out at his garrison -- I don't know what name he mentioned -- he had been told then that it was an assignment; and I learned it then, and I told him that this was not our task.

Q You didn't tell him, "That sounds to me like a shame and a scandal" -- did you?

A I told him we had nothing to do with it; it is not our assignment. or shame, or displeasure, at this prospect of German soldiers or troops murdering defenseless people? measures. elimination of Jewry you never had any knowledge. Tell me, between yesterday and today, when did you suddenly acquire this knowledge?

A What general measures; what special measures?

Q Let me read you from the transcript. You were being questioned about your activities of Vorkommando Moscow, and the question was, "Well, then, before your march with the Advance Commando Moscow, did you receive any knowledge about the execution order? Answer: Yes. Question: When? Answer: when the leaders of other Commandos arrived, these questions --"

Q "......these questions naturally were mentioned and discussed. But I myself -- and I have to make a point in stating this -- had no knowledge about the general elimination of Jewry. Especially about the extermination of Women and children. As I said, I had no knowledge, and never received any knowledge."

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When did you change your mind, between yesterday and today? about information. I emphasized I received information from the leaders of the Commandos, but I received no instructions. I made a difference between instruction and information. "instruction" and "knowledge"?

Q Does than transcript say "knowledge"?

A Then it would have to be examined. I said information and instruction.

Q Information and instruction, is what you said?

A Dr. I said I received information, and I have not received instruction.

Q Let me read it to you again: "As I said, I had no knowledge and never received any knowledge." Does that mean "instructions" to you?

Q Now it should. I agree. You didn't say it yesterday, though. Now, to whom did you protest about this general order about the elimination of the Jews? certain personality. The only possibility to lodge a protest would have been in Berlin; therefore, I never discussed this question in the given situation, and I could never actually protest.

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Q Isn't it a fact that you were in favor of the elimination of Jewry, and therefore you didn't protest?

Q It isn't a fact that you were in favor of the elimination of Jewry? You just said no. Now, are you changing your answer to yes? shootings of the Jews.

Q When did you agree to the elimination of the Jews?

A I don't know what you mean.

Q You didn't agree in June or July. Isn't it a fact that you did agree at some time to the general elimination of the Jews? is that correct?

A What do you mean - agree to it? That I just said, "I agree to the shooting of the Jews." Is that what you mean?

Q I mean this. You heard of the order, or you gained knowledge, of the program to exterminate the Jews. You said you didn't protest to anybody because there was nobody there to protest to; whereas, it is actually a fact, and you know it, that you didn't protest because you were in favor of the program. Now, isn't that true? East because there were no superiors to whom I could protest.

Q Didn't you in fact tell the others that it was & good thing to eliminate the Jews, that it was necessary - as a good National Socialist didn't you further Hitler's program?

Q You did not?

Q What kind of a National Socialist were you? You read the report that you were a good National Socialist. You admit that you knew Hitler's program concerning the Jews.

Are you now trying to tell us that you were not in favor of that program? I could say - I tried to express it. I have no possibility now, or at least words do not suffice, for the expression of what I have to say. a loss of words. Isn't it a fact that as a good National Socialist you favored the program to exterminate the Jews? That you spoke in favor of it... if you want me to be more specific. Yes or no?

Q Then let me show you that you are a liar. I have here a confidential report made at the Works Session of the Consultants on Jewish questions on German missions in Europe. 3 and 4 April 1944. Krummhuekel.Do you remember that?

Q Were you there?

Q Did you make a speech? it. going to put to me.

Q You have seen the document, haven't you?

A No, I never saw it. And I always doubted the authenticity of it.

Q Well, let me read it to you. Perhaps you will remember. This was a session of members of the Foreign Office, was it not, to discuss the Jewish question. Is that correct?

A No. It was not. It was a session of the Foreign Office in which an information office was to be erected to deal with the question of a counter intelligence on so-called Jewish propaganda.

Q Did you make a speech on the Jewish question at that time? contained in the minutes....I just spoke about the Jewish organizations as such.

Q But you did say something about the Jewish question. You remember that? speech can be proved outside the context of the speech, and I can therefore, without a confidential agent, menage to remember what I said at that time. Therefore, it is of main importance for me, and it is only relevant what I know and what I can produce here as evidence.

Q At that meeting didn't they discuss the measures which were being taken to murder all the Jews? I was only for two hours at this meeting, and I left immediately afterwards. Therefore I could not have knowledge on any questions that were dealt with there from own experience or later informations. but while you were there, nothing happened, is that correct? bear me out, and they will say that after two hours, after I had delivered my short speech which lasted 30 minutes, I left.

Q Forty people weren't discussing the same subject, were they? They were 40 of a kind, were they?

Q Let me read you something. These are the minutes of the meeting, end it says here, in parenthesis: "As to the details of the state of the executive measures" -- and we just discussed executive measures -"in the various countries reported by the Consultant, are to be kept secret.

It has been decided not to enter them in the protocol." Now, let me read the minutes of what you said.... I will only read parts of it, though they are all consistent.

A It is a excerpt, Mr. Prosecutor. It is not the complete text.

Q No?

A The Minutes are not signed. They are not signed with a name.

Q For a man who hasn't seen this report you certainly know a lot about it.

A I am only asking. You said it was a confidential report. that it is Unsigned, that it is just an abstract; and a minute ago you said you never saw it. Now let me read what it says for the benefit of the Court - the Court doesn't know it. by now I know what it says in this report, what it is supposed to say and what it does not say.

Q Your knowledge of archives is amazing, Professor. It says here, under Professor Six: "Elimination of Eastern Jewry to deprive Jewry of biological resource. The Jewish question must be solved not only for German but also internationally". Jewish question you mean going for all documents in the archives and go study them somewhere. what did you mean by that? uttered, and I have no confidence in confidential reports which bear no signature, and I have no confidence in a witness who cannot be cross examined in this Court. Furthermore, I have heard about the participants and I have asked for affidavits to be made out, because this statement is so extensive and of such importance that it appeared to me even during the first days of my interrogation - and I thought that it must be corrected as from then.

Q What kind of a National Socialist were you if you didn't believe in those ideals? You mean that you repudiated Hitler? Is that what you are trying to tell us now? You were a good National Socialist but you did not believe in what Hitler proclaimed end carried out throughout the world? Is that what you are trying to tell us?

Q Yes or no. Then you can explain it.

A May I have this question repeated. It is very complicated.

Q It is not very complicated. You said you didn't make those statements, statements furthering the annihilation of the Jews. Your reports have shown that you were a good national Socialist. I am asking you if you repudiated the Hitler doctrine for the annihilation of the Jews.

A Evidently I said that, yes. I give an affirmative -

Q You say now that you repudiate Hitler's doctrine?

MR. FERENCZ: I have no further questions, your Honor.

DR. ULMER: Why I ask that this last document, so-called Krummhuebler Speech, be shown to me -- or has it been submitted? I never saw it.

MR. FERENCZ: I will introduce the document in evidence, Your Honor, and at that time the defense counsel will have access to it.

THE PRESIDENT: Very well.

(A recess was taken.)

MARSHAL: The Tribunal is again in session.

DR. MAYER: Counsel for Defendant Klingelhoefer: tomorrow, Tuesday, and the day after, Wednesday, in order to prepare his examination, I ask that he be excused from the sessions?

THE PRESIDENT: The Defendant Klingehoefer will be excused from attendance tomorrow and Wednesday in accordance with the request by his counsel.

DR. MAYER: Thank you, Your Honor.

DR. ERICH M. MAYER: Counsel for Defendant Braune: Braune.

THE PRESIDENT: The Defendant Braune will be excused from attendance in court tomorrow in accordance with the request of his defense counsel.

DR. KOESSL FOR DR. GAWLIK: For the Defendant Seibert: from attendance in order to prepare his defense.

THE PRESIDENT: The Defendant Seibert is excused from attendance in Court tomorrow Tuesday and Wednesday.

DR. ULMER: For the Defendant Dr. Six:

May I address a few brief questions on re-direct examination?

THE PRESIDENT: You may proceed:

DEFENDANT, DR. SIX BY DR. ULMER: research? against Jewdom for Streicher or for whom was it prepared? ly the Jewish philosophy and Jewish Arab philosophy and the German philo sophy, concerning mysticism and other philosophies that was the program which I was to develop in this research but it never really come to that.

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Q What scientific publications did Ovvice VII make during that time?

A Five or six books were published. I will give a few, for example, "Die Illuminaten", that is Free Masonary, an organization between 1790 and 1820, and another one was called the "Golden Rosen Kreuzer", that is a mystic organization in the 18th century; then the influence of the Great Prussian Landes Logen, and the participation of the dynasty in Germany, altogether there were five or six books.

Q About Jewry no publications were made?

Q Now another problem. How strong was an EinsatzKommando with executive tasks compared with the personal of your Archive Commando which amounted to 23 men? whole commando in front of me and, therefore, I can only say, what I heard, that the so called Sonder Commando had 80 to 100 men and an Einsatz Commando about 200 men, but I did see that with my own eyes.

Q And with the Vorkommando Moscow you were Standartenfuehrer?

Q At that time what was your rank as a soldier in the army? Waffen SS. I had been out on leave and had been requested for this task.

Q What was your military rank in the Waffen SS at the time? relieved only later. as an organization? or police troop?

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self a colonel or could a brigadefuehrer call himself a major general, or did this extra military or honorary title have to be given out expressly? to be set up because at the same time it was a position in the civil service and that was unnecessary for me because I already was a civil servant. Therefore, I did not need it. officer in the Waffen SS, ever given to you? or Major General?

Q And now a third suggestion: In the approaches of the Prosecution about the recommendation for/promotion, the word "Einsatz" is mentioned. How was the word "Einsatz" used in the last war? Was it used as a collective definition for military service? front, then he was "un Einsatz", he was in the committment, that is, in the "Einsatz". 1941 as a special privilege or were you due for promotion or did you feel that it was high time you were promoted?

A I had not been promoted for three and a half years. And as Gruppenleiters, that means people of a lower rank and workers in the RSHA had become Oberfuehrers already, and I as a Standartenfuehrer, of course, could expect that the office chief had to have a rank no lower than the person subordinate to him, the Gruppenleiter. some committment ("Einsatz") had to be concerned or confirmed it, what I am trying to say is that if the promotion and the suggestion for pro Coutt II-A, Case IX motion had not referred to some kind of committment, would a promotion have been possible at all during the war?

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A War service itself was condition for such promotion. Through the war, for example, I had been a soldier for more than a year with the Waffen SS, fighting at the front as an artillery officer.

DR. ULMER: Your Honor, those were my questions on redirect examination. It is all of the questions I have to the defendant as a witness. I want to explain some things. that owing to the difficulties in obtaining documents and the delays owing to the translation of documents, at the moment it is impossible for me to submit my document books to you now. I, therefore, Ask you to permit me that the documents may be submitted later, but fairly soon.

THE PRESIDENT: Your request is granted.

DR. HEIM: For the Defendant Blobel: witness, would you permit me to state here expressly that I do not consider the witness to be an expert on international law and an expert on the moral laws end laws of humanity without having the intention to under estimate the ability or moral attitude of the witness. Since, however the Tribunal end else the Prosecution have put some hypothetical Questions to the witness concerning this matter and for the reason of his replies to this question from which possibly some conclusions for the judgment on and the actions of the other defendants could be made, particularly concerning my client Blobel, I want to address a few questions to the witness in order to clarify so far as I consider them to be necessary for the defense of the Defendant Blobel. BY DR. HEIM:

Q Dr. Six, you said this morning during the cross-examination by the Prosecution, "If I had been given orders to shoot women end children, then owing to my inner attitude I can say I would prefer to die." Dr. Six, I want to ask you about this: Do you believe that the moral laws and the laws of humanity absolutely require to prefer suicide particularly then during the war and particularly in a committment then to carry out an order, that is an order to shoot women and children?

MR. HOCHWALD: If your Honors, please, I would like to taise an objection to the question of Dr. Heim. He has just said he does not consider the witness to be an expert for moral law and Laws of humanity but the question he is putting to him is a question to an expert. Do you think it is necessary, I do think that there is a strong contradiction between the explanation of Dr. Heim and the question he puts to the witness.

THE PRESIDENT: Dr. Heim, you will either have to take this witness as someone exceptionally qualified to answer such a hypothetical question and which he will be bound by for himself or you will have to exclude the possibility of any expertness on the part of the witness, and then take him as he is and answer for himself.

DR. HEIM: Your Honor, the Tribunal and also the Prosecution have addressed questions about this to the witness concerning the basic ideas of the laws of humanity and the moral laws. I must say that the witness throughout several hours stated his opinion on this. I believe this justifies me in addressing questions concerning this without being able to consider the witness to be an expert on the principles of the laws of humanity.

DR. HOCHWASL: If Your Honors please, if the Tribunal and the Prosecution asked the witness a hypothetical question and the Tribunal and the Prosecution wanted to know the position of the witness for himself, Dr. Heim, of course, has the liberty to ask his client what he was thinking at the time but if he asks Dr. Six about hypothetical questions on humanity and on morals then he obviously takes him for an expert on this question, and the question on the part of the Tribunal and the Prosecution put to Dr. Six are very different from what Dr. Heim is doing. The Tribunal and the Prosecution wanted to know the position of the witness himself and Dr. Heim wants a statement of what his client would have eventually been thinking which is a completely different situation.

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DR. HEIM: Your Honor, on the part of the Prosecution the witness is supposed to be an expert. I think owing to this fact I have the right to address other questions concerning this to the witness. In my previous statement I merely stated my personal opinion as defense counsel for the Defendant Blobel.

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THE PRESIDENT: Now, this witness has presented himself in a multiple personality at various times. He has testified using a defendant's roll, he has been a professor, he has been a soldier, he has been a journalist, he has been a Dean, he has been an archive collector, and now, you want to qualify him as an expert, that makes him six different people, now his name happens to be "Six" but still he is only one person, and whatever question you will put to him he will answer as Franz Alfred Six, so we will permit the question, but let's remember at all times that he is answering the question and not some abstract personality. BY DR. HEIM:

Q. Herr Dr. Six, would you personally as yourself, not as any abstract personality, answer my following question: Do you believe that the laws, the moral laws and the law of humanity absolutely requires to prefer to commit suicide than to carry out a military order during a war, particularly where there is a commitment concerned , an order to shoot women and children.

A. I am trying to formulate my reply as clearly as you have asked the question, Dr. Heim. From a legal point of view this is a question of personal discretions, and from a moral point of view, if I can separate this at all, and I think this is difficult,it is a question about the decision of ones own personal will, is the first item. Everybody has to decide for himself. If a man chooses for himself to carry out any such kind of an order, then this is his own personal decision. If he rejects it is an order which should not be given to him then that's a different decision. In the case I think I have to say that the order in itself puts everyman before the question and everybody had to give the answer himself. This is not a question which appeared only today but it is a question that is going throughout the history of modern moral law, and this tension cannot be done away with in the future either. It can only be answered in each individual case.

Q. Witness, is it at all possible to explain today whether you or, for instance, the Defendant Blobel, would have had a possibility not to carry out an order ?

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A. There is the danger with all hypothetical questions. For that reason it was a great experience for me to know that in the English Parliament hypothetical questions are prohibited. But it is difficult in the year of 1947 to but oneself back to the year of 1941 with all the circumstances involving it, with the psychological tension, and then to decide with the utmost correction and to say what would have been done at the time. Have I replied to this question sufficiently?

Q. Dr. Six, what would have happened if you had been given an order to shoot women and children , and in order to avoid carrying out this order you would have committed suicide? What would have happened to these women and children then? What would it have saved -- their lives?

A. The order would have been transferred to somebody else.

MR. FERENCZ: Your Honor, that question is much too hypothetical to be answered. He is asking if - -

THE TRIBUNAL: What he is asking is for now he takes another roll. Here comes as a necromancer one who can speak after death. Dr. Heim has asked Herr Six to tell us what happens after he died, what would happen after he died. We were willing to allow this witness to answer in some very unusualmental and spiritual qualities, but that he can talk to us as a spiritualist is a little bit beyond that we can permit here. BY DR. HEIM:

Q. Witness, I will address another question to you. Do you believe that it contradicts the principles of humanity and the moral laws, to execute women and children if these women and children had been condemned by a court martial because of sabotage , espionage and so forth?

A. If the actual situation can be established, if the individual guilt can be proved, if they had means to define this legally, then I think all that is necessary has been complied with, as and which judgment.

Q. Dr. Six, you were not the leader of a commando , but your task was, as we found during your examination, to secure archive material in museums. As a leader of this Vorkommando Moscow, can you form a judgment on the moral attitude and activity of a Fuehrer of the SK IV -A for example, can you imagine it?

MR. HOCHWALD: Your Honors, please, I object to that line of questioning on the part of Dr. Heim. He first stated that he does not consider the Witness an expert; then he ask the witness a question which obviously can only be but to an expert, and then he himself questions the possibility of the witness to answer such questions. So I really fail to see what line of questioning in this case is. So far as I understand it, the witness has said nothing about the activity of the Defendant Blobel in the East. He has made no judgment of that, what B lobel should have done, didn't do, or did do, so I absolutely fail to see the relevancy of this.

THE PRESIDENT: Dr. Heim, on Friday the witness, in answer to a very specific question put by you, replied as follows: "It is, of course, evident that whoever received an order had to carry out the order." Factor No, 1. Factor No. 2 is that this morning he said that if he received that order he would refuse to carry it out. Now, he either has established one line of conduct for your client and one line for himself or those two answers are inconsistent.

Now, we are thoroughly willing, Dr. Heim, to allow you to question him on that apparent inconsistency, but I think we should limit ourselves, insofar as it is possible, to a determination of that apparent inconsistency, and you may put any question that you think is in order to clarify that point.

DR. HEIM: Thank you, Your Honor.

Q : (By Dr. Heim) Witness, I go back to your answer of this morning where you explained that you would have preferred to die rather than carry out an order to the effect that women and children were to be shot. With this explanation did you only want to refer to yourself personally or did you also want to try to express that in your opinion the leaders of the executive kommandos, the Defendant, Blobel, for example should have acted in the same manner?

A: I again repeat that I see no contradiction in saying that I personally considered the order to shoot women and children wrong and therefore did not carryi it out and that somebody else did carry out the order, because in every human being, on receiving an order it is a personal decision and every person has to decide for himself. I once again repeat that the order as such I did not receive, but I was asked what I would have done, and since I was requested to tell it I gave a reply, which, owing to my present position, is quite obvious, and I further add I think it is almost certain that it would have been my decision at the time as well.

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But actually carrying out such an order is up to personal discretion, and if I consider this solution to be suitable for myself this does not mean that it is the same for everybody else either. It is my decision, my personal decision, and every human being has different views about carrying things out. This was my opinion, and I repeat it still is my opinion.

Have I answered your question in sufficient detail?

Q: One more question about this, please, Witness, If I understood you correctly you were trying to say that not in every person by Nature the same moral principles are based in his soul from which he can come to such a decision?

A: That is right. I wish to add I lost a sister when she was very young, and I am fully convinced that this sister died innocently, and this death moved me so strongly and supported my personal judgment to such an extent that I personally have the strength to bear out what I have said here. That is my personal opinion.

Q: Witness, now the last question on a different subject. You explained today during cross-examination by the Prosecution that on 15th of August you sent a telegram to Berlin, and as a result on 20th of august you were transferred to Berlin. Could you say whether the leaders of the executive kommandos, my client Blobel in particular, would have had the same possibility, in such a simple and fast manner, to be transferred from his office as leader of SK-4-A?

A: I tried to explain the particular situation in which I was the particular position. I said that taking over a different task would have menat an integral Change of my position and my being subordina te to another office chief.

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This fact I emphasized very strongly in my letter to Streckenbach, and that certainly was the reason why, owing to the fact that time should not be wasted until my original assignment be carried out, I was granted such time. I have no personal experience about the possibility of others being transferred, but I believe in a normal case it is like this, according to my experience in the SD, throughout many years, that transfers and appointments are made by superiors and are not made on personal suggestions.

Q: Witness, since this morning, did I or anyone else talk to you about these questions?

A: No.

DR. HEIM: Thank you. I have no further questions. BY THE PRESIDENT:

Q: Witness, did you ever witness an execution?

A: No.

Q: Did you ever see the preparation for an execution?

A: No.

Q: Did you ever happen upon a scene after an execution had just been completed?

A: No.

Q: In all the time that you were in the East you never saw preparation for the killing of anybody?

A: No.

Q: So that all your answers are entirely theoretical and academic insofar as executions are concerned?

A: Yes.

Q: You have indicated very strongly that you disapproved of the execution program as laid down by Hitler, that is true?

A: Yes.

Q: So to that extent you had a reservation in your mind when you took the oath of allegiance to Hitler?

A: Yes.

Q: This morning I quoted the oath from memory as I had recalled it. I will now read it literally. "I vow inviolable fidelity to Adolf Hitler. I vow absolute obedience to him and to the leaders he designates for me." You took that oath, did you?

A: Yes.

Q: But you were not willing to live up to it according to its letter?

A: First of all and most of all I did not think that such an oath would include an entire program which varied very much.

Q: Then when you learned that it did include a program which conflicted with your conscience, you desired to deviate from the program and an allegiance to the oath, is that might?

A: That is a question which is very decisive, and I don't know whether I can reply to it in three or four words.

Q : You can give me more than three or four words.

A: If I am to answer this question freely, such a decision does not arise suddenly, but they are very difficult situations of development which only form by and by and throughout the years since 1939 whether a person was a National Socialist or a German, a growing criticism arose against political measures, and a certain attitude did not come about all at once but was a result of a great number of realizations and experiences. I believe my attitude or my relation to Adolf Hitler did not come about all of a sudden but through years and they changed.

Q: Witness, when did you take your oath, what year?

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A: I gave my oath in 1935 or 1936.

Q: Alright. So that you had several years to ponder over the solemnity of that oath. Between 1936 and 1941 you had five years so that you can't say that this suddenly hit you like a lightening flash and you had to make an instantaneous decision. Now we ask you again, did you feel yourself free to deviate from this order when you received an order that conflicted with your conscience or with your system of morals?

A: I did not put this question to myself with such clearness.

Q: Well, thik of it now.

A: I am prepared to give this answer, your Honor, but I don't quite realize what alternative you expect of me.

Q: I don't expect any alternative of you. I only expect a true and honest straightforward answer. You took a solemn oath to follow Adolf Hitler, to obey not only his orders but the orders of all leaders appointed by him, unquestioningly. That was the oath. Now I want to know if you were willing to live up to that order unquestioningly or whether you made exceptions here and whether you side-stepped somewhere else?

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A.- I certainly did not follow this oath -- I cannot think of the proper expression -- I did not follow this oath without any doubts or considerations, but I had a lot of doubts and misgivings on various occasions.

Q.- Then you were wailing to deviate from the oath?

A.- Owing to the fact that at the points which I mentioned just now, I did not follow the oath.

Q.- Then you were willing to use your own mind in deciding which part of the oath you would follow and which part you would not?

A.- With such clarity, which part of an oath I would obey and what parts I would not obey, as in a scale of figures, I could not express it so clearly, but it was clear to me that certain requests made to me, I could not comply with.

Q.- Yes. You then did not regard the oath as having a sacred binding obligation, in accordance with this letter?

A.- If I answer this question, I must say that political revolutions, spiritual revolutions, and conscience revolutions, always existed.

Q.- Now please answer that question. You were willing to deviate from the oath?

A.- I already said that.

Q.- Yes, now, are you willing to deviate from other oaths that you take?

A.- I have not given any other oath in my life.

Q.- You gave an oath here the court to tell the truth. Did you ever deviate from that oath, because of the situation with which you were confronted?

A.- I do not think I will have any advantages if I deviate from an oath in this tribunal.

Q.- So, therefore, you will deviate from an oath only when it will be to your advantage?

be to your advantage?

A.- No, just no -

Q.- No? Then you make a difference between the oath which you gave to Hitler and the oath which you gave somewhere else.

A.- The oath I gave to Adolf Hitler was a political oath. The very moment when a relation exists between the person administering the oath and the person giving the oath, or, rather, if a breach occurs here, then I believe it is possible to make political reservations.

Q.- Then you do make a distinction between the Hitler oath and another type of oath.

A.- I make a difference between a political oath and an oath only directed to God.

Q.- So therefore a political oath, you can treat as you wish, but another kind of oath you regard as sacred and binding?

A.- There are people in Germany -

Q- No, don't tell me about people in Germany. I am asking you, here, in Nurnberg.

A.- What question?

Q.- You do make a distinction between this oath to Hitler, which you call a political oath, and another oath?

A.- The oath I gave to Adolf Hitler was an oath of allegiance and only of allegiance. The very moment where I think I can not give my allegiance here on one point, then I believe I can make my reservation there.

Q.- Yes, and did your superiors know that this was the way you were treating the oath, that you could abide by it when you pleased and ignore it when you so chose?

A.- On this particular question, that is the Fuehrer Order to kill women and children, I tried to evade the oath by my thoughts. I never received it personally. Nobody told me I should shoot women and children and I believe that this refusal in my mind is one of my rights as a human being, and, if I have the courage to say this, to express it here, not matter what results I may derive from this, I believe I did this after mature and serious consideration.

I also accept the danger that the only oath I gave in my life should be questioned while I am sitting here in this Tribunal.

Q.- Did you have the courage to express yourself that way when Adolf Hitler was alive?

A.- I believe that through many individual actions, I have dared to disobey this order, through practical measures.

Q.- Then you did receive the order. You say you have dared to disobey it.

A.- I did not say that I received the order, I merely said I had the courage at that moment to take certain measures, for example, to help Jews.

Q.- You helped the Jews when you were there in the East? Is that the reason you received the promotion? Tell us how you helped the Jews when you were in charge of this Moscow Kommando, Tell us what you did to help the Jews while you were there.

A.- I did not help them then at that time.

Q.- You didn't help them when they needed your help?

A.- I didn't understand the question.

Q.- You knew that an order was out to exterminate Jews, because you spoke to a Kommando leader. You told us about this, on July 7, between July 7 and July 10, you knew that there was an order out to exterminate Jews. Then was the time for you to show your humanity and now tell us what you did then to help the Jews.

A.- At that time I did nothing.

Q.- You did nothing? And when you went back to Berlin, did you tell Heydrich that this order was unconscionable one, that the extermination of Jews was contrary to every law of civilization and humanity -- did you tell him that?

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A.- I did not have much opportunity to speak at the time. During the discussions, he mostly talked.

Q.- Yes. So that it all comes down to this: that your courage in defying Hitler comes to you in 1947 and not 1941. '42, '43, '44 or '45?

A.- I believe - but it would go into too much detail -- other political factors played a part here.

Q.- Yes, now you were promoted, because of what you did in the East, weren't you?

A.- According to the words of this declaration. Not in my opinion.

Q.- Well, you didn't promote yourself. Others promoted you and it was their firm believe that you had conducted yourself in so examplary a manner that you were entitled to a promotion?

A.- I already said that I am not sure that it wasn't a pretext used on the 9th of November to promote a great number of leaders and it did not depend on the examination of the merits of the person at all.

Q.- You were willing to have yourself considered as an exterminator, one leading those Kommando groups closely in the execution of innocent people, so that you might receive the promotion, even though it was untrue?

A.- I said that I did not see the promotion in its wording, I said that from the very beginning, I wasn't conscious of the fact, therefore and the second letter, which was submitted to me concerning my second promotion I did not see either because this was an internal memorandum. Therefore, on both occasions, I did not know the reason.

Q.- So that it wasn't until 1947 that you learned why you had been promoted?

A.- Yes, until that time I did not know that the reason for my promotion were to be my special merits in the East and I don't know what special merits I gained in the East.

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Q.- You don't know of anything which you did in the East which would have entitled you to a commendation or a promotion?

A.- No.

Q.- And you think that this promotion came out of the goodness of heart of Himmler?

A.- No, I said that obviously it was a result of Streckenbach's intermediation and the fact that it was only expressed in the beginning of December seems to be a very good reason for this.

Q.- So that what you want the Tribunal to believe is that Streckenbach, out of his great friendship for you invented the story that you had conducted yourself gallantly in the East in the execution of these orders at the head of your Einsatzkommando and that he manufactured this story out of his love for you in order to have you promoted?

A.- This record in the document, as I can see, says merits in the commitment, the Einsatz. This does not mean, Your Honor, that they are concerned with merits concerning the extermination of Jews.

Q.- Well, you have stated that you didn't do anything in the East which entitled you to a commendation or promotion, insofar as your original mission was concerned, as you told us your original mission to be.

A.- That is my personal opinion.

Q.- Yes, so, therefore, the promotion was not given for what you tell us you did in the East, namely, collecting archives. We at least can exclude that. You say you did nothing in that respect.

A.- In any case, I cannot say why Streckenbacj should have said this, Consequently I can say neither the one nor the other thing.

Q.- So it was all a mystery why you got this promotion and the mystery wasn't solved until you reached Nurnberg?

A.- No, I did not say that. I said it was my turn. I had not been promoted for 3 1/2 years; that Gruppenleiters had already been promoted to Obergruppenfuehrer and I was still a Standartenfuehrer. What this printing part in this is -Q.- Are you speaking of the promotion in 1941 or the one in 1945?

A.- 1941.

Q.- Yes, when you were a member of the SS?

A.- Yes.

Q.- And an actual member, not an honorary member?

A.- I repeat again I was not paid and it was not my main task. There is a difference between an honorary position and a main position.

Q.- One has to believe now that you did all this work just out of charity, that you didn't receive any pay, while you were wearing the SS uniform?

A.- Not a penny.

Q.- You didn't receive any pay?

A.- No.

Q.- From nobody?

A.- I was paid by the State as a university professor, but I was not paid by the SS.

Q.- But you were being paid?

A.- Yes, certainly, but not by the SS.

Q.- But you received a stipend every month regularly?

A.- Yes, I was paid by the Reich Education Ministry.

Q.- You were paid by the Reich Government?

A.- Yes.

Q.- The same government that paid all SS people?

A.- But from their own resources of administration and from other field of administration.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at 09:30.

(The Tribunal adjourned until 28 October 1947, at 0930 hours.)

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THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

DR. VON STEIN: (Dr. Von Stein for the Defendant Sandberger) today and tomorrow to prepare his examination.

THE PRESIDENT: You want him excused immediately?

Dr. VON STEIN : Yes, please, Your honor.

THE PRESIDENT. The Defendant Sandberger will be excused from attendance in Court today and tomorrow in accordance with the request of his counsel.

DR. RIEDIGER: (Dr. Riediger for the Defendant Haensch.) that he be excused for today and tomorrow in order to prepare his defense.

THE PRESIDENT: The Defendant Haensch will also be excused today and tomorrow for the same purpose.

DR. MAYER: (Dr. Mayer for Defendant Steimle.) morrow to prepare his examination.

THE PRESIDENT: The Defendant Steinle will be excused from attendance in court this afternoon and tomorrow for the purposes indicated by his counsel. left the room?

Dr. Ulmer, have you finished with your client?

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DR. ULMER: (For Defendant Six) I have one final request, whether it would be possible to get the record also in the English version of the days that the defendant Six was in the box in order to check up on the translation, since on "Einsatz" which is commitment, and "Einsatzgruppen" there might have been some confusion.

THE PRESIDENT: The Tribunal will authorize your receiving an English copy of the transcript. The mechanics of your obtaining it will be worked out through the Defense Center.

DR. ULMER: Thank you, Your Honor, and may I reserve the right, if I should find out that something is wrong, may I point it out?

THE PRESIDENT: By all means that, right will be reserved to you.

DR. ULMER: Thank you very much.

THE PRESIDENT: Now, Dr. Ulmer, what more will you have to present in behalf of the Defendant Six?

DR. ULMER: First I shall only have to submit documents, Your Honor, concernining witnesses, it depends on whether Witnesses are to appear and can appear here who can state that the witness did not take part in any shootings. Bringing in such witnesses has its difficulties and not the least is the fact that it has been in the papers that all people who had anything to do with Einsatzkommandos may be sent to Russia. The result of this might be that possible witnesses nay be hiding, and for me as a Defense Counsel it is particularly difficult to bring the witnesses here at all. But anything witnesses could prove I could prove here thorough affidavits and documents. I already have these here, and very soon I will submit them to the High Tribunal. The delay is not owing to me but only owing to the technicality of mimeographing and translating the documents.

THE RRESIDENT: Dr. Ulmer, you, of course, present your defense in any way that you desire. We will merely inform you that the Tribunal stands ready to offer you any and every assistance within its power to facilitate the obtaining of such proof as you believe is relevant and which is available in behalf of your client.

DR. ULMER: Thank you very much indeed, Your Honor.

THE PRESIDENT: The Defendant Six will now be returned to the defendant's dock and the Defendant Paul Blobel will be taken to the witness box.

DR. HEIM: Your Honor, Dr. Heim for the Defendant Blonel. I want to discuss a basic question which arose owing to an occurrence this morning. When I came into this room this morning and talked to the Defendant Blobel, and put down my two hands on the barrier the guard instructed me to step back 70 centimeters. Your Honor, the Defendant Blobel is hard of hearing. There night be some difficulties during the session here owing to that. It is impossible for me to talk to him when I am 70 centimeters away from him, who is sitting. For that reason I ask the Tribunal to instruct the guards that one may put one's hands on the barrier, and I don't quite realize whether this is an offense against security.

MR. FERENCZ: If Your Honor please, the question of how far any one must stand when speaking to a defendant is a question of security which is solely within the competence of the military post who are responsible for the security, and I do not believe it nay properly be raised in this court. If there are any objections so that the defense counsel feels he may not present his defense, I ask the Court to instruct him to take it through the correct channels, namely through the Defense Administrator, making an appeal to the persons responsible for the security in the jail.

THE PRESIDENT: I mil say with regard to that, the Tribunal is ready at all times to hear complaints, criticisms, or appeals of any nature Which have to do with this trial and if Dr. Heim believes that his discharge of his duty is in any way being impeded by what he has now announced, he is entirely within his rights to inform the Tribunal, and the Tribunal will immediately look into the matter which he has mentioned, and if security regulations, because of the unusual circumstance, will allow him to advance closer to his client for the purpose of conferences that privilege will be allowed to him.

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DR. HEIM: Thank you, Your Honor. fied as follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me. pure truth and will withhold and add nothing.

( The witness repeated the oath.)

THE PRESIDENT: Before you begin your examination, Dr. Heim, the Tribunal will instruct the Marshal to contact the prison physician to examine Dr. Blobel during recess time to ascertain that his hearing is so defective that it is necessary that his attorney approach closer than the security regulations require.

DR. HEIM: Thank you, Your Honor.

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BY DR. HEIM:

Q. Witness, please tell us your full name.

A. Hermann Wilhelm Paul Blobel.

Q. When and where were you born?

A. On 13th August 1894 in Potsdam.

Q. What was your father's profession?

A. My father was a carpenter.

Q. Did your father do any political activity and did this have any results?

A. As far as I know my father was in a trade union. In 1899, owing to a strike, he left Berlin and went to Remscheid. He worked in Berlin as a carpenter in a construction firm. He wanted to work with a construction firm in the States. The mother followed him with the children, and my parents stayed in Remscheid.

Q. Please describe briefly your career until the beginning of the First World War, to start with.

A. At the age of five I came to Remscheid in the Rhineland and there I visited the elementary school. I then learned the carpenter trade. I passed an examination. After that I worked as a mason and also worked in the office in a construction firm. I trained myself in mathematics and other subjects connected with construction. In 1912 I passed the entry examination at the Royal Construction School in Wuppertal. I continued to work as carpenter apprentice, and I saved money in order to be able to visit school. I was exempt from military service for one year.

Q. Herr Blobel, did you take part in the First World War?

A. Yes.

Q. Please give a short description.

A. On 1 August 1914, I joined as a pioneer, the engineer regiment 24 in Cologne. At the geginning of November, 1914, I went into the field to the front. I remained with this unit from '14 until '18 at the front.

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At the end of the war I was released. I had several slight wounds. I was released to go to Remscheid.

Q. Please describe your professional training and activity later on.

A. With the assistance of my parents and my brothers and sisters my professional training between 1919 and 1920 at the higher technical college in Wuppertal was finished. After that I was a building technician in various positions in construction firms and in 1924 I got a certificate as indepentant architect in Solingen.

Q. Did the economic collapse in 1926/27 concern you?

A. My activity as an architect started very small, from 1924-1927 I was successful. So that is 1926 I had a capital of my own of approximately- 15000 Reich Marks. I used this to build an apartment for myself. The money breakdown in 1926/1927 caused that I received very few orders, and therefore also the salary was missing sometimes, and business obligations I had very few. My debts at the tine amounted to 16,000 Reich Marks, On the other hand, I had duesof 25,000 Reich marks to come, which I could not get. In 1929, that is '28, '29 and '30 there was a time when I got no orders. My mobile property wasused to cover the debts. In 1931 I could not be leased. I was unemployed and until 1934 I got the unemployment relief which was. entered in the register.

Q. Until this time did you take part in any political activity or were you interested in politics at all?

A. Until 1931 I did not belong to any political party. My professional activity for many years caused no to have connections with SPD circles, the Socialist Party of Germany.

Q. Did you then join any political organization, and if yes, which one?

A. In May 1931 I joined the SA Reserve, a group of older businessmen. In October 1931 I joined the SPD, the Socialist Party of Germany. In January 1932 I came to the So as a candiate. In 1932 I received my book of membership to the SPD.

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In 1933 the SPD was prohibited.

Q. Mr. Blobel, does your reply not contain an inconsistency, that you were a member of the SPD and the SA or SS Candidate at the same time?

A. At the time a great many members of the SA Reserve were in the same position. We did not consider the SA to be a political organization but rather "Vereiv" a club, which it actually was. Concerning the membership in the SPD and at the same time the application to join the SS, I saw no contradiction in this, because at that time I did not carry out any political activity in the SA, in which I found no aims opposite to those of the SPD. At that time the SS was established in Solingen for the first tine and

Gruppenfuehrer Weitzel was appointed for this district in Duesseldorf. In 1929, with a few hundred men he went over from the SPD to the SS.

Q. Witness, how long were you a member of the SA Reserve?

A. A member of the SA Reserve I was from May 1933 to - or rather June, July, 1931. In July 1931, I left the SA Reserve.

Q. What was the reason and your motive to change your political opinions and to leave one party?

A. The difficult position made it necessary to join people who were prepared to help each other.

Q. Did you join the NSDAP?

A. I was registered through the SS.

Q. When was this?

A. I received the membership book in 1934. My application was filed at the end of 1934. My register card submitted by the Prosecution does not coincide with these dates. In this file as date of joining the NSDAP, the 1st of December is entered, 1931, but this time is too early. It is predated.

Q. Having been a proper member of the SPD, did this not have any consequences for you?

A. In 1933, a procedure was opened in the examination board of the NSDAP, owing to my membership in the SPD.

Q. Witness, using this opportunity, I want to refer to Document Book III-C of the Prosecution, page 17 of the German text. It is Document NO-3197, Exhibit 136. It is the file submitted by the prosecution as your register card. This is your personal file, page 17, in the Document Book III-C.

MR. HORLICK HOCHWALD: page 11 in the English.

Q. Thank you, Mr. Prosecuter. On page 1 of the document a number of decorations are mentioned and the copy of the document does not reveal which of these decorations you receiver. Witness, would you please explain briefly which decorations you actually received, according to your personal records?

A. I only got those decorations mentioned in the copy of the register card, those which bear a star in these records here.

Q. That is sufficient. Witness, what did you do after 1933?

A. From 1933 to 1934 I was still unemployed. In 1934 until the middle of 1935, I was employed by the City of Solingen with a month salary of 120 Reichmarks. After June 1935 I came to the SD Section, Duesseldorf.

Q. Herr Blobel, please describe your activity in the SD in Duesseldorf.

A. As an architect, I Wes appointed by the SD. I set up and conducted the construction of the SD office in Duesseldorf in 1935. I remained with this new agency and I had to deal with the information service deomestic sphere in the Duesseldorf district. When the SD Section was extended I then became Chief of a sub section and later on the Section Duesseldorf, within the Oberatschnitt (Main Section) Duesseldorf.

Q. During your activity in Duesseldorf, did you have any differences with superiors or other party agencies?

A. Differences of opinion in dealing with some subjects occurred repeatedly. The change in the leadership of the SD Sectors also causes divergencis in opinions with the subordinate leaders.

Q. When were you promoted for the last time?

A. My last promotion occurred on the 30th of January, 1941.

Q. How do you explain the fact that since 1941 you were not promoted any more?

A. I had no previous convictions by any court, and there is no reason why I should not have been promoted. Perhaps I was too old, because sufficient younger members were there who confirmed with the conditions required. The judgment of my superiors about me I don't know, but the judgment of the superiors was decisive.

Q. What were the chances of promotion for full-timeservice leaders generally?

A. On the whole, promotions were made from time to time in spaces of one to two years, according to efficiency.

Q. Which organizations, sections, or associations connected with the NSDAP did you also belong to?

A. I was a member of the NSV, the Reich Colonial association, the Reich Association for Air Raid Protection, the Reich Association for Art, and then I was in the SA for a number of months. I left the SS when I was transferred to the SD.

Q. When were you appointed to go to Berlin?

A. I was drafted on the 13th or 14th of June, 1941.

Q. What kind of an authority was this?

A. I was taken from military Service as being indispensible in civil life and I was put at the disposal of the Reichfuehrer SS. This being ordered to Berlin was to be regarded as conscription.

Q. Was this drafting to Berlin--could it be compared to a conscription for War?

A. Yes.

Q. At the time did you know the reason why you were appointed?

A. I did not know the reason for this, no.

Q. Where were you sent from Berlin?

A. From Berlin I was sent to Pretsch with other leaders.

Q. Did you previously know about the transport to pretsch?

A. No.

Q. In Berlin, did you take part in any official discussion?

A. No, not even in the discussion in the Prinz Albrecht Palais, which were mentioned here repeatedly. On the day of my arrival, together with other leaders, I was sent to Schmiedeberg immediately.

Q. What statements can you give concerning the age of the leaders in Schmiedeberg and Pretsch?

A. In general, the leaders were much younger than I was.

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Q. Witness, at the time you were already 45 years of age. At the time on comparing yourself, did you realize the differences in age between you and the rest of the leaders, and did you not think about whether it might be a special motive for your being drafted?

A. I considered this drafting to be a reply to my application to leave the SD.

Q. Can you give us facts which confirm this assumption of yours?

A. With the inspecteurs, Brigadefuehrer Freiherr Von Schade and Oberregierungsrat Nockemann and Oberregierungsrat Hasselbach, who were in charge of the SD Main Section (Oberabschnitt) at the time, I requested that I be released from the SD, because I wanted to go back to my former profession, particularly as the personal relation with the Chiefs of the Main Section in Duesseldorf was not bearable any more. There were so many intrigues.

Q. How long were you in Pretsch?

A. Until the morning of the 23d of June, 1941.

Q. Please, describe briefly the external events during your stay in Pretsch.

A. On arriving in Pretsch, Schmiedeberg, men had already been established there. The leaders were given quarters and billets in Schmiedeberg and other localities. I had to report to Dr. Rasch whom I saw on the 17th or 18th of June there. The setting up of units or detachments was done according to the lists of the members. I did not know the general situation; on the 17th or 18th of June, the leaders were sent to the leaders Training School in Pretsch.

Q. Who announced the reason for your appointment?

A. It was announced by Gruppenfuehrer Streckenbach, in front of all the leaders who were together in the Leaders' Training School in pretsch.

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Q. What were you told about your future commitment there?

A. Streckenbach announced: From that moment on, You, as well as all subleaders and men who have been drafted will be under war regulations., which have to be observed by a soldier in the field. All of you are bound to the Fuehrer by oath. to inform you about just like every other soldier of the Fuehrer.

You know about the measures you will have to expect according to war regulations. According to the Fuehrer Order, Einsatzgruppen are being formed and subdivided into Kommandos. These Einsatzgruppen will be subordinated to the Army commanders on the expected invasion of the East. Your task is the following: In cooperation with the Wehrmacht, the German Army, all elements which endanger the security are to be seized by you. political activists, functionaries, agents of the Communist party, and Jews. their men. The leaders of the Einsatzgruppen can make use of penal law and jurisdiction, according to the SS and police laws. In cooperation with the Wehrmacht, you are to see to it that personal discipline and good conduct will be maintained during the march and when carrying out the tasks and you will emphasize this."

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Q. What was the general attitude when the tasks of the unit were announced?

A. At first there was general silence. The speech was finished. We went into the different rooms. There little circles formed and in general the task was considered a necessary security measure while the News Agency and Information Service and the fighting of armed resistance of the forces mentioned were main items. No one could exactly picture what the task was which Streckenbach had explained in a few brief words. He had explained a great deal more about the soldierly behavior of the men of the Security Police, Who, together with the Wehrmacht Would march cut to the front. That was his main concern.

Q. what picture did you have, Herr Blobel,at the time, about your future task?

A. My personal opinion of this task was based on the fact, to be part of the Wehrmacht in a military commitment as a Security Police especially to secure the troops, and if these Einsatzgruppen were committed there had to be reasons which indicated danger. As opponents, there was the enemy counter Intelligence with all its branches, which we did not know as yet, but which had to be known by the Military counter-intelligence.

Q. At that time, could i you imagine at all that the security tasks given to you would conflict with general moral laws?

A. About the extent of the tasks of the Security Police, I could not imagine anything. I did not know the Eastern Territory until then. The generally valid laws of morals and law I considered to be our directives. Apart from that I imagined the Security Police tasks to be the same as I had seen in the work of the Security Police in The Reich, as I remembered during the franc fireurs partisans time from 1914 to 1918 during the first World War.

Q. At the time would you have had the possibility to leave your commitment("Einsatz") and resign?

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A. No.

Q. Why not?

A. I had been drafted under war law, to this particular task. A refusla would have caused a court-martial.

Q. Do you know any case that when the orders were given in Pretsch Schmiedeberg a leader asked that he be transferred?

A. I did not hear of any such case. I did not hear of that kind of thing.

Q. What would have been the consequences according to the laws at the time if one had refused to obey the order which had been given?

A. From that moment onwards, the man would have been given to the SS and Police court to be examined and the punishment inflicted by the police court was much stricter than that of the Army Courts-martial. The sentence was death for disloyalty.

Q. How was the task distributed in Pretsch?

A. The Einsatzgruppen A,B, C, D were formed.

Q. To which Einsatzgruppen were you appointed?

A. Einsatzgruppen B; after a few days it was altered into Einsatzgruppe C.

Q. Who was the chief of your Einsatzgruppe?

A. Dr. Rasche.

Q. How was the subdivision in Einsatzgruppe C which had previously been Einsatzgruppe B?

A. Einsatzgruppe C was subdivided into Sonderkommando 4a, Sonderkommando 4b, Einsatzkommando 5 and Einsatzkommando 6.

Q. Was there a difference between the Sonderkommandos and the Einsatzkommando concerning tasks ?

A. The Sonderkommandos were units subordinated directly to a Army unit, in particular officials of the STAPO and the KRIPO as interrogating officers, so to say as, a Secret Field Police and extension officers for the political secotr. The Einsatzkommandos on the other hand were directly subordinated to the Einsatzgruppen.

Q. I refer to the document submitted in Ohlendorf's cross-examination by the Prosecution , NOKW -256, Exhibit 174. It is the draft for an order the commitment of the Sonderkommandos and the Einsatzgruppen and it says on page 4 of the German copy: "The Sonderkommandos of the Security Polce (SD) carry out their tasks on h their responsibility." Witness, is this draft not in contradiction with the way it was carried out according to which the Sonderkommandos were subordinated to the Army?

A. Not at all. This document is a draft order, which obviously had nothing to do with the later Barbarossa Decree.

The fact is, in any case, that the Sonderkommandos immediately subordinate to an Army unit, as can be shown by my other explanations.

Q. Was there a difference between the Sonderkommandos and the Einsatzkommandos concerning the number of men?

A. The Sonderkommandos in contrast to theEinsatzkommandos were much smaller concerning the number of their men, approximately in a rate of one to four, at least of one to four.

Q. How strong was the SK 4A and how far was it set up? What were the subdivisions?

A. Sonderkommando 4a consisted of a commando Leader, 7 leaders, 45 subleaders, men, drivers, kitchen personnel, altogether a total of 1 7 45.

Q. Who were the leaders of your Kommando?

A. The leaders in the SK 4a were Criminal Officers and leaders from the SD: Jantzen, Hanf, Haefner, Karlson and Dr. Funk were candidates for the leading staff. Drafted as war emergencies and appointed as interpreters were Von Radetsky and Mueller.

Q. Were they commanded for a special purpose?

A. The drafting to the Einsatzgruppe was considered a military commitment.

Q. For Now long did your appointment last?

A. The time of the committment meant for a definite period of time, which, however was not fixed according to which the course was to be carried on.

Q. When did the SK 4a leave Pretsch and where did it go to next?

A. Gruppe C, that is, the previous Gruppe B, as well as SK 4-a, marched in the surly morning hours of 23 June 1941 from Pretsch via Liegnitz and Gleiwitz, to Cracow.

Q. What orders did you get there?

A. On the 25th of June 1941, in Cracow, I received the order to march SK 4a to the AOK 6 headquarters, and that I should report to the Commander-in-Chief of the 6th Army, General Field Marshal Von Reichenau.

Q. Witness, please describe further events, particularly the occurrence when you reported to the AOK-6.

A. The SK 4-a marched via Sandormirsz, Samos (?) to the headquarters to the AOK 6 near the river Bug . On the 26th of June 1941 together with the leader , I reported to the Commander-in-Chief , General Field marshal Von Reichenau, in the afternoon. The Field Marshal ordered me to a discussion. Also the following people were oredered to take part: The Chief of Staff, the Quartermaster General, the Chief of Department 1-C; a colonel, Major Palzow, officer in the Department C; and another major of the staff, Altogether, the Field Marshal and five officers and myself, and a leader of mine. The Field

Marshal who was walking about in the park in his bathing suit turned to me with the following words: "Please excuse my dress. I have just returned from the front. I expected you already for three days , together with your commando." I told the Field Marshal that three days ago we had set off. The Field marshal said, "I am glad you are here there is your Commando stationed , - and how many men do you have," I told him how many ,1:7:45, the Commando was still approaching.

Q. Please describe the discussion with Field Marshal von Reichenau.

A. It follows now the discussion, with almost verbal extractions: "The Field marshal: Herr Major Palzow, please give me the map and the order which concerns the Commando." The Field Marshal to the officers of the staff:" Gentlemen, please hold the map. About the position:

We are here, we are there, and there." And the Field Marshal pointed out on the map the position of the front." And according to the reports received by the divisions in these areas," -- and he indicated these places on the map," armed civilians have been met who have done us a lot of harm." And he said to 1-C, "Please, Colonel submit today's report." Then he continued: "According to the situation, the Commando will be sub-divided into three sub-divisions, and subordinated to the commanders in chief of the Division. The army order, please." Herr Major Palzow, who had the order in his hand, showed a page in the text to the Field Marshal, The entire order consisted of about ten to twelve pages. The contents of the order were: announcing the individual units , out of which the army was set up, and also troop units which had been ordered to the combat area of the Sixth Army. The next paragraph dealt with the commitment of the Commando of the Security Police, and their tasks . I heard there about the same assignment of tasks , how they were announced by Gruppenfuehrer Streckenbach at Pretsch. The contents were approximately as follows: PKH. A file number. Top Secret matter. Date, July .1941. And the contents were approximately ...: "Since it is to be expected that the advance of the units is hindered by the many political groups of the opponent, the commanders in their territory are given detachments of the Security Police of the Reichsfuehrer SS. The task of these commandos deals with the Security Police activity concerning political opponents and the absolute elimination of all elements and Jews, insofar as they endanger the security of the units. The commandos will give instructions as required to the units subordinate to them, " Then some more followed, which I don't remember exactly. I told the Field Marshal that the Commando, according to the commitment order Barbarossa -- this order which had been handed to me by Dr. Rasch in Cracow -- that the Commando, of the Rear Army territory with view to marching routine - was subordinate to him. The Field Marshal give the order that concerning the technicalities of the actual marching and the supplies, and concerning the task it be directly and immediately subordinateto AOK 6, and should only be used in the fighting area.

The Chief of Staff received the order to inform the Commander of the Rear Army territory, and also the Division Commanders about the commitment of Commando 4-a. The Chief of Staff ordered the 1-C to carry out such an order at once. A copy of this order was received by the Commando the following day. The contents of this order was approximately the following: "AOK 6, Department C, the SD 4-a, of the Security Police of the Reichsfuehrer SS, are subordinate to AOK 6 , Department C with regard to factual concern with the task to carry out Security Police measures on political events endangering the security of the troops. The Commando is to be supported in every respect. " And then the stamp of the AOK 6, and the signature. Another copy of this order was given to the leaders of the later Teilkommandos - subcommandos. The Field Marshal instructed all officers of the staff who were present to support the commando in every respect. I was given the order to advance the Commando as quickly as possibly. Maps were handed out; march routes were fixed; news service and reports from the Division were discussed. The Field Marshal gave orders current personal reporting to him or the chief of staff, or rather, to 1-C. A permanent liaison officer was appointed, and the utilization of material which had been captured by 1-C and the Ukrainian Special department which was attached.

Commander-in-Chief of AOK-6? the 1-C of the AOK 6 with the duty to report to Field Marshal von Reichenau and to supply a permanent liaison officer, as to the marching route, and the supplies, it was attached to AOK-6, it was ordered to be in the fighting area.

DR. HEIM: Your Honor, I believe this is a suitable moment to introduce the document Blobel No. 1, as Exhibit No. 1. This is the first document in Document Book Blobel No. 1. It is a plan with the title: "Division and Subordination of Sonderkommando 4-a on the 28th of June 1941." yesterday.

THE PRESIDENT: Proceed.

DR. HEIM: Your Honor, it concerns the first photostatic plan in the book. It is called, "Division and Subordination of Sonderkommando 4-a on the 28th of June 1941."

Q (By Dr. Heim) Witness, please explain to the Tribunal, briefly, the sketch made by you. dotted lines show the relation concerning the information service among the units. In the middle of the sketch you see AOK 6, to which Staff Department C under Field Marshal von Reichenau belonged. As the plan shows, this Department C was a Special Ukrainian Department. This special department was connected with the former Ukrainian Colonel Brisancz, and exchanged news and information with him. Brisancz himself was in the military counter-intelligence. On the right side of Department C you see the liaison officer of Sonderkommando 4-a, put in who was attached to Department C of AOK 6.

THE PRESIDENT: May I say to the interpreter that the designation on the chart, in English, is "Section C". I presume that when you are say ing Department C you are referring to the same block which is here indicated as Section C. And if that be true I would suggest the use of Section C to avoid any confusion when the record is read and compared with the chart.

INTERPRETER: Thank you, your Honor. BY DR. HEIM

A The full lines indicate about the Section 1-C. The orders were sent immediately to the offices of SK 4a; also direct to the Teilkommandos of SK 4a with the divisions, In the latter case, the orders were sent through 1-C of AOK 6 to the competent 1-C -

THE PRESIDENT: Does any one know what the equivalent in the English language is of 1-C? What the equivalent would be in the American Army?

MR. WALTON: Your Honor, please, that would be the G-2, or Intelligence -- Chief of intelligence.

THE PRESIDENT: I see. Very well. Thank you very much, Mr. Walton. BY DR. HEIM: the competent 1-C of the Intelligence Section of the Army unit, and from there to the Teilkommando. Information, but not orders, were sent from the Teilkommando to the office in the same manner. Or through courier. As the dotted line indicates, between the Teilkommandos and SK 4-a and the orderly room. In the upper part of the chart the subordination of AOK under the Army Group South is shown. Between the Army Group and AOK 6, the Higher SS and Police leader with his staff acted as intermediary. As the line of the Higher SS and Police Leader to Einsatzgruppe C shows, the Higher SS and Police Leader had the right to give instructions to the Chief of Einsatzgruppe C. Between Einsatzgruppe C and SK 4a there is a full line missing because orders by the Einsatzgruppe C were sent via the liaison officer with AOK 6 to SK 4a, to the orderly room. The SK 4a, therefore, was subordinate immediately to the AOK 6, and also to Einsatzgruppe C. On the way, orders were given via AOK 6. An immediate connection with Einsatzgruppe C existed temporarily between the Ukrainian interpreters inasfar as they could meet within movements of the units about.

This is indicated by the dotted line between the interpreter unit of Einsatzgruppe C and the interpreters of SK 4-a, The interpreter of Einsatzgruppe C were mostly Ukrainian emigrants -- politically it belonged to Colonel Brisancz and had been connected with him during the war 1914-1918. by Field Marshal Von Reichenau? breaking unit. Also, personnel was appointed for the orderly room. This can be seen in the chart discussed just now.

DR. HEIM: Your Honor, may I point out that the three Teilkommandos are entered at the bottom of the sketch, and on the same level the safebreaking division. Below the little sections, the strength of the individual commands are mentioned.

Q (By Dr. Heim) What tasks did the Teilkommandos have?

A The Teilkommandos: Security Police work -- that is, finding and seizing of the opponent's document material, interrogations of persons, filing of documents concerning certain events were part of the security task. Also, participation in the carrying out of executions. were to be carried out by the Teilkommandos?

A No, I was not entitled to this. The Commander-in-Chief did decide about this. Or rather, the Commander of the Army unit in whose territory the Teilkommandos were committed.

THE PRESIDENT: Dr. Heim, may we suspend now?

DR. HEIM: Yes.

THE PRESIDENT: Very well. The Tribunal will be in recess for fifteen minutes.

(A recess was taken)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Proceed. BY DR. HEIM: sub commandos. How high was the strength of a Teilkommando normally? command.

Q That would have been twenty? commissioned men and officials and two to three drivers. On the Chart I have just described you can see this strength regulation.

Q What was the task of the Constant Liaison Officer in the AOK/6?

A The Constant Liaison Officer had to transmit the orders of AOK/6 to the Teilkommandos and had to transmit also reports of the Teilkommandos to AOk/6 via I/C. He also had to inform the orderly room and the office about reports with regard to changes of the location of the Teilkommandos, and on measures issued and directives issued by the Supreme Commander. The location reports of the Teilkommandos were sent to Group C via the AOK/6 by radio, and during the first period they did net arrive because the group had a different code key which was not known to us. troop?

A We didn't have any radio installation.

Q where were you, Witness, usually, where were you yourself? SK-4-A, in the registrar's office. to the SK-4-A itself? the I/C commanders of the division and were in constant exchange of news with the units which were part of the division. There they received direct orders from the AOK/6, and these orders were channeled through the SK-4-A according to the situation.

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THE PRESIDENT: Pardon me. Dr. Heim, the reference to a division, is that to an Army division?

Q (By Dr. Heim) Witness, the Bench would like to know whether the reference to a division actually refers to a division of the Army? security division in the territory itself.

Q Was this division under the Armed forces command?

THE PRESIDENT: Very well.

Q (By Dr. Heim) Was there any connection between the Teilkommandos and the remainders of SK-4-A?

A Namely the remainder of the SK-4-A consisted of the registrar's office and the food supply office. As long as the Teilkommandos were in the direct vicinity of the remainder of the SK-4-A, that is the orderly room, they had a possibility to contact them by courier, but there was no radio or other means of communication at the disposal of the command. The Teilkommandos via the I/C of the AOK/6 and further on via the I/C of the division could be contacted. During the advance, there was no possibility at all of a contact with the orderly room because of the distances. Also the bad roads hampered these communications considerably. The battle area had a part in it and also the actual situation of the fighting itself. as the situation arose?

A The Teilkommandos were formed as the situation arose. They were not a permanent unit. The changes made in the distribution are shown by the charts after all, and during my testimony I will refer to them again. the SK-4-A, taking especially into consideration your own personal position? In what area of the AOK/6 did the SK-4-A exert its activities?

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A In the battle area of the A OK/6.

Q Well, what do you call the battle area? forty Km large which extends to the backward area, but once in a while that would go further in the rear even.

Q What activities did the SK-4-A normally exercise in this area? as well by the Army as by the civilian agencies. Furthermore the checking of elements by which the troop had suffered damage while they were advancing, either snipers or saboteurs or attacks by civilians, and so on and so forth, or by persons not belonging to the uniformed battle units. Furthermore, it was a task of the SK-4-A to make use of the record documents as far as Security Police measures were concerned, and in this connection the SK-4-A had also the duty of sorting out the documents, the documents first of all which pertained directly to military matters, that is within the scope of the AOK/6, and such documents as were to be transferred to the RSHA. Furthermore the SK-4-A was in charge of investigation and search for persons which had made the troops suffer damage, and furthermore they had to search for political activists, saboteurs and suspected elements who had taken part in activities against the troops. Search was also carried out on the part of search lists, and these search lists given to the SK were in line with those used by the killed troops when they reached into Germany. The SK-4 had to search for the persons. The further task of the SK-4 was to interrogate these persons, to establish the facts, and on that occasion the Production of the files and the drawing up of the files was done by the interrogators. Q Witness, what was the Security Police task? That was the Security Police Task of SK-4-A, but I want the properly speaking SD tasks, for instance, reporting on the occupied areas and so on and so forth.

A Yes, that was connected with it. That was the task of the interpreters of the chiefs of Subkrumandos.

rather deal with the Security Police tasks of the SK's. A while ago you stated that it was a task of the SK-4-A to interrogate persons. What happened, with these persons once they had been interrogated, that is usually? Kommandanturs or of units of the Armed Forces. Once they had been interrogated, the files and documents were submitted to the AOK/6. During the first period I did that personally most of the time, that is, I submitted them to the Supreme Commander, personally. The other files which had been drawn up at the divisional quarters were brought to the Army Commander by the competent command chief who was responsible and had proper Police training, and he submitted it either to the Supreme Commander or to the I/C in charge. In cases of which I personally know, the Supreme Commander, on the strength of the Fuehrer order, ordered the executions when the files were submitted and when he saw that there had been violation of international law and of the customs of war established beyond doubt in these files. you make any suggestions to him concerning executions?

A No, I wasn't even in a position to do so because I didn't have the proper police and legal training. Therefore, I didn't interfere in the interrogations either, because I never dealt with things like that. files to the Supreme Commander in AOK/6? established in the files they were immediately released, but that happened already with the units before the files were even submitted to the AOK/6. these crimes where it was not found out they were not guilty?

A The OAOK/6 ordered the execution of all such persons for which the files established that they had violated the customs of war and the international legal prescriptions.

Q Who actually carried out these executions? the Army units involved, on the strength of the order issued by the Supreme Commander of the AOK/6. issued by the Supreme Commander? orderly room of the SK-4-A, and from these files I gathered knowledge concerning their contents, in as far as it was in German and I could read it. In the cases where larger circles of persons were involved there were names, lists in the files, with so-called final reports. These lists were attached to the files. out by the AOK/6? of files submitted to him, discussed the matters with the legal officer of the AOK/6, checked them and then made his own decision. In the divisional headquarters the SK leader had to submit the files to the I-C officer, and this I-C of the divisional headquarters discussed them again with the I-C of the AOK/6. the AOK/6? of the armed forces or that they had done sniper activities or other atrocities, furthermore, persons convicted of espionage or sabotage, also civilians who, contrary to the directives, were in the possession of arms, and also for participation in and abetting of such violations. For all these activities public posters had to be posted up by the AOK Commander, by which the population was informed that these crimes were liable of capital punishment.

Q Didn't you have any misgivings at the time that these orders ordering executions were contrary to the international law and that carrying them out you could make yourself punishable? law, especially as the Russian adversary did not consider himself bound to the customs of war and to the international law. Furthermore, these shootings were not coarried out in any arbitrary manner. On the contrary, in line with the international law in force at that time, every case was individually checked and only on the strength of this examination the decisions were made. Even today I am of the opinion that this procedure was quite in line with international law. AOK/6 concerning the carrying out of the executions as ordered? discipline for the executions, which could only be carried out in a military court martial manner. He ordered that a shooting command was to be formed, that there should be two rifles always for every person to be executed, that the command should be conducted in accordance with military rules. That pistols or a shot in the neck be used as the Russians did, was prohibited in the most severe manner in accordance with the regulations dealt out by the Supreme Command. The details of the execution were fixed by the Supreme Commander, and instead of the five rifles per person as was ordered by a military commander for the execution of a German convicted it was lowered to two rifles per person only. carry them out in exactly the same way as they had been issued by the Supreme commander?

mentioned. Reichenau towards the tasks of the Security Police as you have just referred to them? and more specifically by the reports given to him by the I-C and the special detachment of Ukrainians, was very well informed concerning all the developments and concerning the activities of political groups, sabotage units and attacks against the troop, enemy propaganda, and in the interests of the security of the troops the Supreme Commander, of course, made it a very strong point to eliminate these circles and to prevent these incidents. At all times Von Reichenau stressed the most intense persecution and immediately carried out the punishments publicly posted up for such crimes. With regards to that the Supreme Commander in his daily orders had informed all the officers and soldiers of regulations of conduct of a very positive nature. One of these orders was so stringent that I still remember it. The wording was, "To all officers of my staff and to all officers and enlisted men under my command: I prohibit for all officers and soldiers not members of a commando carrying out these orders that they stand around as spectators and loiterers" - and this word (loiterers ' was so stringent "when the commando carry out their difficult tasks and thus prevent them from doing them properly". The wording went on to say that even every officer that loitered around the executions as a spectator would be put in that category.

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4a? to be directed? investigation either directly or via the I-C files which were kept and contained the whole command, were submitted to him by the sub-commands via the I-C of the division to I-C of AOK6. The local reports of the sub-commander had to be sent to Group C and in regular intervals a report on the activity of the Kommando had to be given also. Furthermore, the enemy espionage material had to be secured for AOK 6. The connection with Group C was only possible via Army radioo because we had no radio installations of our own. Furthermore, the Supreme Commander requested reports concerning the condition of the territories in the Ukrainian area. In the same way, such reports were made for Group C. Every commander had to make a report also on the situation.

Q Who in your command had been appointed for this reporting? and also the SKD Sub-Kommando leaders. SD 4a done? situation in their area and also about the exploitation of documents they had captured; enemy documents which were meant for the RSHA and requested by this office were transferred to Group C via the orderly room. Reports on the activities were collected by the Liaison commander in the AOK 6. according to the report of the headquarters of the OAK 6.

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sub-kommando, the safe blasting command, was ordered to go to Luck. on page 79 of the German text. There we have Document No-2938, and it is Exhibit 44 of the prosecution.

MR. HORLICK-HOCHWALD: On Page 76 you can follow it in the English. 1,854 by the SK 4a. Witness, is this list correct?

A The documents can lead into a misunderstanding. The figures are wrong.

Q And how far are the figures wrong? forces and of the police took a considerable part in the executions.

Q What sub-kommando was ordered to Sokol? a sub-kommand under the command of Hanf. The strength was one leader and six men and three drivers.

Q On whose request was the assignment made?

Q What persons were involved when the measures were carried out? by the armed forces as snipers, as participants in attacks against the armed forces, persons, who at the very beginning of the assignment had formed guerilla groups.

Q Who had ordered the executions referred to in the document?

Q Did you direct all these executions yourself? 30 each. The others were carried out by units of the armed forces and by the Ukrainian local Security Detachment in the Sokol area. As our personnel strength was very low, the SK 4a, that is, the sub-commands attached to it, as a rule would not have been in a position to carry all these executions in so short a time, as they are listed in this report.

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In the Sokal area, 6 or 7 localities were involved in these executions. did the Commander in Chief decide to issue these orders? day in the Sokal area by snipers and attacks in the dark. The bodies were mutilated in a most horrible way. I personally even saw that five German soldiers, shot in the back, had their backs slit on an iron gate and one morning they were found like that. From further reports, I also remember that Pro-German Ukrainians were killed by terror groups by being put alive into boiling water and when the German troops marched in a few hours later, they found these people partly living. Those were a few occurrences picked out of the many reports which we received at Sokol.

Q Were you morally depressed in some way by these occurrences? these occurrences because the most primitive people only did such things and, therefore, I considered the measures for the punishment of these criminals completely justified.

Q What kommando was dispatched to Luck?

AA sub-kommando of which Dr. Funk and Jantzen were in charge was dispatched to Luck, six men, and three drivers, and also the safe blasting command, in charge of which was von Radetsky.

Q On whose orders was this distribution made? Chief of the OAK 6. Luck? put on the march to Luck, and also the safe blasting command.

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4a and what was the strength of this remainder? preter, Mueller, and 7 men in the orderly room remained in Sokal.

Q Was another command of the SK 4a active in Hracow? area. measures referred to in the document we have mentioned, namely, the shooting of 1,160, plus 300, plus 20 Jews in Luck? on-

THE PRESIDENT: What page?

MR. HORLICK-HOCHWALD: Page 81, second paragraph from the top.

A (Continued) According to the reports we had received later, atrocities had been committed while German troops marched

Q Witness, will you please start again with your answer? later stage, atrocities of the Russians had been found out when the German troops marched into Luck. Four German pilots had been split up alive with oxygen welding machines. 2,000 Ukrainians, about 2,000, had been shot in the jails, and a few of then were still alive. A retaliation measure was ordered by the Commander in Chief of the OAK 6, Field Marshal von Reichenau; under the leaders of the Higher SS and Police Leaders or by a plenipotentiary of that Higher SS and Police Leader, it was carried out. ordered by the Commander in Chief? such a measure?

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be called in?

Q On whose directive was this measure carried out then? in agreement with the Higher SS and Police Leader Jeckeln. first time?

A In August, 1941, the beginning of August. I should say.

Q Now what was you next aim on the march?

A On the same day; that was the 7th or 8th of July, 1941. It must have been one of those two days. have just mentioned, were they already carried out when you arrived at Luck?

Q Did you aim in Luck?

Q Why not? was in bed with a high fever. A staff physician ordered that I be transferred to the hospital during the same night, because I was suspected of having contracted typhoid fever and a nervous breakdown. I was transported to Lublin and put in quarantine. there?

Q Witness, when did you come back to the command?

Q Where was the SK 4a during that period?

Q Who was in charge of the SK 4a in your absence? was Liaison Commander with the Higher SS and Police Leaders and for the Group C. He had been assigned and he was with the Higher SS and Police Leaders at Luck. The Group C had Hauptsturmfuehrer Dr. Baier, who had been sent to the SK. if soo what kind of changes? location of the Einsatzgruppe C. The official exchange of orders with the AOK 6 was taken over by the Group Staff. Radetzky personally remained in contact with the Department Economy of the AOK 6 for reasons of reporting. The Liaison Commander Haefner received the assignment to report on negotitations with regard to the Ukrainian question. to remain in contact with the AOK 6 or with the 29th Army Group, which was under the command of the AOK 6. The sub-kommandos were attached to the front line divisions toward the north and towards the southeast; the orderly room remained at Shitomir. same location result? 6 did not exist any longer, because the Group C wanted to avoid a duplication at the same location and, therefore, they had prohibited all direct contact of the SK 4a with the AOK 6. Einsatzgruppe C from that moment onward was responsible to the AOK 6 for the affairs of the SK 4a.

Q What other changes could you tell us, apart from that? detachments of the Waffen SS, 55 to 60 men with three leaders of the Waffen SS had been ordered to the Kommando. Police, which had been attached to this Kommando?

the Sub-Kommando South for Security Police Tasks and guerilla fighting.

Q To whom was the Waffen SS attached? sub-Kommando North. join the SK 4a? and military task and especially for guerilla combatting.

Q Under whose orders were they? mitted by the responsible Army commander for the Guerilla Warfare. The Waffen SS in its command was independent, also, as far as administration and food supplies were concerned. Security Police or the Waffen SS that had been attached to this group?

ponsible tetachment commander of the armed forces in their assignment. As far as personnel was concerned, the Waffen SS was also independent. The Security Police had been submitted to the orders of the sub-kommando leader and they were not independent units. tion of SK 4a and did they result in such a reorganization?

Q On whose initiative was that carried out?

Q At what period and how did these reorganizations take place? marched to the front line areas received orders from the armed forces and the same applied to the Security Police and Waffen SS. its location in Shitomir?

region east of Radomiszl and Malyn. The same applied to the Waffen SS, a little more northeast in the same area. The other sub-kommando was assigned southeast of Shitomir in the region Wassilkow Byala Zerkjew, together with the Security Police.

DR. HEIM: Your Honor, now I should submit Document No. 2 and have the witness comment about it, and, therefore, I dare to suggest to the Tribunal that maybe we should start our recess now.

THE PRESIDENT: The suggestion is welcomed and the Tribunal will recess until 1:45.

(A recess was taken until 1345 hours.)

(The hearing reconvened at 1345 hours)

THE MARSHAL: The Tribunal is again in session.

DR. HEIM (for the defendant Blobel): With the permission of the Tribunal I will continue with the questioning of the defendant Blobel. We stopped talking about August 1941, and I take the liberty, Your Honors, in this connection to submit the Document Blobel No. 2 as Exhibit No. 2. It is the second photostatic copy in Document Book 1 for the defendant Blobel, and it is headed, "Division and Subordination in Sonderkommando 4-A at the end of August 1941." BY DR. HEIM: front of you, the division and subordination of SK-4-A at the end of August 1941. leader is mentioned. From his a channel of commend exists to the Ukrainian Battalion and the police regiments, and an exchange of information with the AOK 6. And finally, a channel of command of Einsatzgruppe C. Subordinate to AOK 6 was the Section C, which was at the same level, concerning orders, as Einsatzgruppe C. Between Section C of the AOK 6 and Einsatzgruppe C, there was an information service and also a channel of command. The SK 4-A, as the line from Einsatzgruppe C to SK 4-A shows, received the instructions and orders immediately from Einsatzgruppe C whereby the channel of command was between the Chief of the Einsatzgruppe C and the Chief of the SK 4-a. As the chart also shows, the two sub-kommandos of the Security Police were in the area of the territory of the Army Commander, and also the Waffen-SS. Immediately subordinate to the AOK 6 were the security divisions with the Ukrainian militia in the army units, the local commandants throughout the territory, together with the Ukrainian security units which were attached to them. On the left side of the chart it shows that the orderly room consisted of three officers, six *CO's and privates, one cook and helper, and also one or two interpreters.

mentioned? territory. In the south it was the 29th Army Corps; in the north, a front - or a security division. The sub-kommandos had to discuss, screen, interrogate, make out documents, and to carry out executive measures, together with the Army, or units with whom they worked. At the same time, the sub-kommandos helped with the combating of partisans, together with the army, the local commanders, and Ukrainian militia in the Army units.

Q At whose order? and Police Leader; over the Gruppe C or through G-2 of the AOK 6, via G-2 of the Division.

Q Which units took part? Army units, and the units under the Higher SS and Police Leader Jeckeln. There were police regiments of the regular police and battalions of the Ukrainian militia, who were subordinate to the Higher SS and Police Leader. and said his name was Jeckeln. Can you give us a characteristic of Jeckeln? way of using his power, which extended down to the Security Police, and, beyond that, to the local commanders. Jeckeln did not allow any contradiction. His manner was inconsideration of others; given orders should only be reported when they had actually been executed.... His instructions were supported through the SS and Police Court of which he was the presiding judge.

Q Were the Ukrainian militia units the same as the Army units?

A No; there were Ukrainian security units with the local commandanturas; secondly, Ukrainian militia units within the Army - that is, with the Security Division of the Army. And Ukrainian militia units who were subordinate and attached to the Police Department of the Higher SS and police leader. the German text, which is the Document Exhibit No.71, Document NO2952.

DR. HOCHWALD: Page 16 of the English Document Book, Your Honor. BY DR. HEIM:

(continuing) It says there, I quote: "In Shitomir itself, Gruppenstab and Vorauskommando 4-A in cooperation have up to date shot, all in all, approximately 400 Jews, Communists and informants for the NKWD. Thus, Einsatzkommando 4-A has carried out 2531 executions."

Witness, will you please comment on these reports?

A I was not present during this event. It happened when I was absent, at the time I was at the hospital in Lublin. In this connection, however, I want to point out that this report is not correct, and that there is a discrepancy in it. In the Situation Report No. 37 of 29 July 1941, Document No. 2952, Exhibit 71, the execution of 400 persons in Shitomir is mentioned, by the SK 4-A. In the Operation Report No. 47, of 9 August 1941, Document 2947, Exhibit 82, from the Book II-C - there it also says that in Shitomir 400 people were executed.

DR. HOCHWALD: Page 66, Your Honors. BY THE WITNESS:

(continuing) Therefore, in the Situation Report two weeks later the same figure is mentioned.

DR. HEIM: Your Honors, may I state where you can find the two documents the witness just mentioned? The Document NO-2952, Exhibit 71,is contained in Document Book II-C of the Prosecution, on page 18 of the German text. The Document 2947, Exhibit 82, is contained in Document Book II-C, on page 72 of the German text.

DR. HOCHWALD: The first document, Your Honors, is on page 16 of the English; and the second one is on page 66. BY DR. HEIM: 2531 executions? in Document Book II-C, 2934 Exhibit 78; Document Book II-A, 2936, Exhibit 44; Document Book II-C, 2952, Exhibit 71. Adding up the figures in the documents, results in the figure 2494, while the document says 2952. Exhibit 71 mentions the figure 2531 as a total of those figures. But in the figures mentioned last, shootings by the Army, the Police, the Ukrainian Units, and SK 4-A are all put together and reported here. territory as it developed after the German Army had occupied it. in the population could be felt. Some were in favor of the Germans, and some strongly disapproved of the Germans. The armed civilian resistance was carried out by civilian agents of the Russian NKWD who organized it and carried out by them. Civilian snipers, partisans, spies, agents, saboteurs of traffic, railroads and streets, of communications and army property, could be found. Russian agents formed resistance groups against the German army. Partisans and guerrilla bands were active. Excesses took place, murders and arson were committed, they tried also to destroy the harvest and the machines. The Russians helped these partisans and guerrillas and suddenly a great number of people moved from the east to the west. Parachutists acted as agents.

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division of this territory from a military point of view? of the security of the units had taken place, were large territories. From the front to the rear they were divided in several sectors: the fighting area which varied had a depth of 20 to 40 kilometers and more; the rear area where the new .fighting units and the supply units moved; then came the Rear Army territory, and then followed the operational territory. All together from the front up to the rear it extended over 300 to 500 kilometers.

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Q In which territory was the SK 4A active? near the front. During the advance the borders often varied owing to the enemy action,but if the front did not move for some time, the areas over-lapped owing to the constant movement from the rear area so that the rear army territory some times reached into the combat area almost to the front. just described? agencies or the offices of the rear army territory and the rest of the operational territory were operating. At the same time the activities of these offices had to be carried out in the same territory. For example, the agricultural leaders were operating very near the fighting units. It was the same with the police and security tasks of the higher SS and police leader and the units intended for the army, such as the security division of the army, the secret field police, local kommandanturas with their local Ukranian security units and the Ukranian militia units as part of the security units. Also the front units with their security behind the front line or in the area near the front. In the same territory, the higher SS and police leader had his police regiments of the regular police and the Ukranian militia also subordinate to him. The sub kommandos were in the areas near the combat line subdivided into smaller divisions. same place?

A The result was something similar. In the same territory the higher SS and police leader was with his advanced regiments and the regular police and the Ukranian militia units who were subordinate to him, and on the other hand the army with the subordinate units, security divisions and the Ukranian militia units, also the secret field police and the local commandanturas and the Ukranian security departments. And behind the combat area the front units with the army and their security units.

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All of these agencies were active for the security in the same territory at the same time. active at that time? combat territory. Some of them had been attached to troops when combating the destruction mentioned before and often they came across opponents who were not military.

Q Were the Part Kommandos independent in carrying out their tasks? to follow orders, which were given by leaders of the army through G-2 of the front or security division or by the army on their own responsibility orders directly from their leaders or to the higher SS or police leaders via group C, in doubtful cases, however, the G-2 decided where these kommandos had to be and to whom they were to be attached. to follow orders? the basis of information from the AOK itself, or upon instigation of the higher SS and police leader in agreement with the commander in chief of the AOK 6. There was an exchange of information between G-2 of the divisions and the G-2 of the AOK 6. special department with the AOK 6? a special Ukranian department of about 160 men who with a far reaching organization was active among the Ukranian population. task? beyond the combat area and particularly the task to solve the military and housing problems and also to bring the cultural ideas from the occupied territory to the enemy territory.

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Q With the Part Kommandos were there also members of this section? came from the civilian population but were of minor importance. receive their orders? army and of the fighting units and also of the security divisions. Also they received orders from the AOK 6 and from the higher SS and police leaders, the latter through Group C and of the office of the SK 4A. Other orders of the Group "C" were given directly according to the situation and to the events. In emergency cases every leader of the SK had to decide for himself. various sectors and the crowding of agencies which gave orders at the same time and in what they resulted. territory of the army area. Reports about endangering the security came repeatedly to the Einsatz Fuehrer of the army near the front. The measures were carried out by the army leaders themselves, that is, measures according to the army orders were carried out independently or with the instructions of the competent Department "C" of the front divisions or the security divisions. The latter were executive organs to whom the local commandanturas with their Ukranian security units and the militia units which I have already mentioned, were attached. They were all subordinate. The local commandanturas were simultaneously informed by the higher SS and the police leader and carried out measures in the same territory. police leader on the one hand and the Commander in Chief of the AOK C, Field Marshal Von Reichenau on the other hand?

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higher SS and police leader got total power, even as far as the area near the combat territory. In carrying out security measures in this area the commander in chief of the AOK 6, Von Reichenau, with the higher SS and police leader, Jackeln, agreed on their orders. The latter was generally feared because he did not allow any objection to his orders. conditions in this territory? which might in any way affect the German army, intended or actually carried out, would be punished by death. Streets and territory were searched by Army units. The Commander in Chief gave daily orders to all army units and recommended that strict measures should be taken against these people.

Q Was the SK 4A participating in this and if so, in what way? the SK 4A was ordered to control the movement from the East to the west and also to take measures to protect the harvest. In the same way for investigation about Ukranian national opponents and their armies. of the civilian population? police units of the higher SS and police leader and also the Ukranian militia units of the higher SS and police leader. and give details. area was one of the tasks. To seize the people who gave the information and their means of information were to be seized. Such persons had to be given to the G-2 section immediately to be interrogated. Apart from the military reconnaissance they had to transmit political information. The number of such persons who took part in this was very large on the whole and extended from place to place.

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Another task was the reconnaissance about the whereabout of guerilla forces, their propaganda, their arms strength and their informations and channels of communication, and agents. Reports about these investigations to the competent agents in their territory supporting them, assistance when seizing such opponents, interrogation of the persons arrested, preparing of records and additional information to the information the G-2 officers had gotten.

Q How long was the SK 4A stationed in Shitomir? that is, until the 17 September 1941, inclusive. On that day the battle of the Dniepre River East of Kiev had been decided. Shitomir? 13th of August until the beginning of September 1941.

Q What kind of an illness did you have? the time and the staff physicians of the AOK 6 looked after me. and if so, who was this deputy?

A No special deputy was appointed. My chief had their spheres of work. The interpreters Mueller and Radetzky looked after the information service and the sub-commando leaders who were 100 to 120 kilometers away automatically arranged everything with the competent army agencies, the local commanders, the G-2 of the divisions and leaders and commanders of the divisions.

Q What happened while you were ill? conference with Einsatz Group C where the higher SS and police leader made it a point that the measures against the Jewish population had to be sharper and that he disapproved of the manner in which they had been carried out until now because it was too mild.

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Q Did the members of the SK 4A take part in this discussion? was asked to go to this conference, information about it was handed on by the Group staff. Jeckeln reserved the subject of the treatment of the Jews for himself.

Q What was the reaction to the measures which had been ordered?

A The measures were not approved of. Dr. Rasch withdrew from the vicinity of the SS and police leader and went with some of his group staff to Novo Ukarinka, and the sub-kommandos of the SK 4A withdrew further back to the front. German text. I believe in the English text it is page 82, it is the document exhibit 82, document NO 2947.

MR. HOCHWALD: It is on page 66 of the English.

DR. HEIM: I beg your pardon.

Q Do you have the documents?

Q Exhibit 82, document NO. 2947, in this document it is reported and I quote:

"In Berdichew until the arrival of Einsatz Kommando 5, a unit of Einsatz Kommando 4-A was committed. 148 Jews were executed because of looting, Einsatz commando 5 further executed 74 Jews up to this time."

Witness, will you please comment on this part of the document?

THE PRESIDENT: Dr. Heim, what page of the original is that on? What page of the German original, because the report is rather long.

MR. HOCHWALD: In the English it is on page 71 in the middle of the page, the fifth paragraph from the top.

THE PRESIDENT: Yes, thank you. when you refer to a report, Dr. Heim, and then it has been located, please indicate the page of the original, because it does not always correspond with the mimeographed copy. Some times you may have a page and a half of the original report on just one page of the mimeographed copy.

DR. HEIM: Thank you, Your Honor, for helping me.

Q Will you please comment on this passage in the document? measures only upon the order of the competent army commander, but there is also a possibility that this instruction was given by the higher SS and police leader and that the staff was in Berdichew. I was not present myself during this event. It must heave happened during the advance. page 122 of the German text. It is document Exhibit 23, document No. 3154.

MR. HOCHWALD: The document is on page 89 of the English, Your Honor. BY DR. HEIM:

Q It is situation report No. 80 of the 11 September 1941. I quote from about the middle of page 122 of the German text which is at the beginning of page 13 of the original. It is the third paragraph in the original I quote:

"In Korosten, according to reports received, numerous Jews who had previously fled had gathered again, constituting a source of continuous unrest.

"238 Jews who had been rounded up and driven to a special building by the Ukrainian militia, were shot.

"In Fastow, where the Secret Field police of the local command post and a Landesschuetzen Batallion had already liquidated about 39 snipers and 50 Jews, order could be fully restored only after Special

Kommando 4-a had shot a former terrorist and all the whole Jewish inhabitants between the ages of 12, and 60, making a total of 262 heads.

"Therefore, the execution figure of SK A4 until the 24-8-1941, amounts to 7152 persons."

Witness, how do you explain this report just submitted?

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Ukranian militia, but the SK-4-A had nothing to do with these actions, because Ukrainian militia were not subordinate to the SK-4-A. Also the SK-4-A could not give orders to Ukrainian militia, and SK-4-A was also not mentioned as an executive unit. Fastow is 90 kilometers to the east of Zhitomir, to the southeast, and very near the combat area, it was an artillery zone around Kiev. In this territory only a Commander of the Army or a unit commander of the Army could have given orders. Whether Subkommando 4-A ever went into Fastow I personally do not know.

It says then, "With that the figures of executions by the SK-4-A amounts to 7152." The difference between this figure and the previous figure, 2531, cannot be understood, and does not conform with the facts. This description in the report shows that all figures in Korosten and Fastow, where the SK-4-A is not mentioned, were added to a total, an addition according to territory results, of figures of executions by the SK-4-A through the information service. It is very probable that from situation reports where events in the Ukrainian territory were mentioned, these figures were included in the figures of the nearest headquarters.

Q Was the execution of the persons mentioned there ordered by you? order.

Q Who gave the order for the executions then?

A I personally do not know. In Korosten it must have been that authority to whom the Ukrainian militia was subordinate. This might have been an Army unit or the Higher SS and Police Leader. As to the Fastow case, either the front can have given the order or the security division belonging to the AOK/6.

THE PRESIDENT: Dr. Heim, just for a point of information. Witness, where were you when Special commando 4-A was in Fastow?

DR. HEIM: Witness, do you understand the President's question?

THE WITNESS: Yes, where was I when the Sonderkomando 4-A was in Fastow.

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THE PRESIDENT: Yes.

THE WITNESS: We had a subkommando to the south. I personally was in Shitomir in the orderly room.

THE PRESIDENT: And whom had you authorized to head the Kommando 4-A in Fastow while you were in Shitomir?

THE WITNESS: At the south territory there was a Subkommando South near Biala Zerkjew Wassilkow at the time.

THE PRESIDENT: Either I didn't get your answer or I didn't make my question clear enough. Whom had you authorized to direct Special Kommando 4-A when it was in Fastow and you weren't there, you were in Shitomir? To whom had you delegated your authority to command the unit when you were not there?

THE WITNESS: The subkommando leader of the commando South was Jantzen. About September he was ill in Zhitomir for sometime, and shortly before the kommando moved he came back to the kommando. At that time, as far as I remember, the kommando was subordinated to the GFP there, that is the Secret State Police, because there was no other leader at their disposal.

THE PRESIDENT: But you were normally the leader of this SK-4-A, were you not?

THE WITNESS: Yes, I was the chief of the entire command.

THE PRESIDENT: Yes, that is right. Well, you weren't in Fastow when these events occurred, as you have told us, but who was in charge of the Kommando in Fastow? Being the leader, whom had you delegated to lead the Kommando?

THE WITNESS: I did not give any such order. I only heard about this event in this report, and the leader in September, Jantzen, was ill in Zhitomir for two weeks during that time.

THE PRESIDENT: Just a moment, I didn't say that you had ordered anybody. I am just asking whom you placed in command of Special Kommando 4-A during the time that these events occurred since you were not there.

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THE WITNESS: In this lower territory there was a Subkommando South, and it was lead by the leader, Jantzen.

THE PRESIDENT: Well then, was it Jantzen who was in Fastow when this occurred?

THE WITNESS: Whether he was in Fastow I don't know,but he was in Biala Zerkjew. That is further southeast.

THE PRESIDENT: Well, if Special Kommando 4-A was in Fastow at the time indicated, then it was Jantzen who was in charge of it at that time. Well then, I take your answer to be that it was Jantzen.

THE WITNESS: Jantzen was in charge of the Southeast Subkommando, but whether this Subkommando went to Fastow, I only just read that in these documents, that it actually had been there.

THE PRESIDENT: You may proceed. BY DR. HEIM: couls you give orders to them and tell them the commitment? in their territory they were subordinate to the Army Commander in the territory. They were part of the division where they operated at the time.

Q At the time did you give orders for executions? of the German text. It is the document, Exhibit 73, Document NO-3151.

MR. HORLICH-HOCHWALD: Page 27 of the English, your Honor.

Q (Continuing) It is the situation report No. 86 of the 17th of September 1941. On Page 32 of the German text, Page 17 of the original text, ti says in the third paragraph, Page 17 of the original, continuation of the original, Paragraph 4 of Page 17 of the original, I quote: "that the Sonderkommando 4-A has exterminated 6584 Bolshevists, Jews and asocial elements." Witness, will you please comment on this?

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total are incorrect. It is contrary to the facts. Exhibit 73, NO-3151, Document Book II-C of the Prosecution. It says that the SK-4-A, according to the situation report No. 86 of 17 September 1941 executed 6584 persons. On the other hand the SK-4-A until 24 August 1941 is supposed to have shot 7152 persons, as the document Exhibit 23, Document NO-3154 shows. This document is contained in Document Book I of the Prosecution, on Page 122 of the German text. It is a situation report No. 80 of 11 September 1941.

THE PRESIDENT: What was that document number again, please?

DR. HEIM: The document quoted here last is Exhibit 23, No-3154. It is a situation report No. 80 of 11 September 1941.

Q (By Dr. Heim) Witness, how do you explain inconsistency shown in the documents according to which, until 24 August 1941 the total figure of executions carried out by the SK-4-a is 7152 persons, while according to a later report of 17 September 1941 it is only 6584? execution figures in the reports. While on the 24th of August, 1941, according to Document 3154, 7152 have been listed as the total figure, the situation report of 17 September,1941, shows the figure 6584, without correcting an obvious mistake.

THE PRESIDENT: Which of these figures do you tell us is correct?

THE WITNESS: Neither of these figures, your Honor. The reason is this, the total figures contain the execution figures of others, of the militia and of other units, and also executions carried out by the SK 4A. All these units took part and all these figures are added up here. This is an addition according to territory and the situation reports mentioned only the total. It is shown there, so many people were shot by the militia, then, on that day the Army shot so many people. At is a situation report covering all the sectors adding all the figures and sent to Group C.

THE PRESIDENT: What is the purpose in pointing out the discrepancy in these figures between the two reports?

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THE WITNESS: First of all 7152 are supposed to have been shot, on the 24th of August, by the SK 4A, but on the 17th of September the report says that there were only 6584, that is about three and a half weeks later there is a difference of approximately six to seven hundred.

THE PRESIDENT: Yes, I know there is a difference. I say, what is your purpose in pointing out a discrepancy? You have given us this for some purpose. What is the theory of the discrepancy?

THE WITNESS: What I am trying to say is that the figures mentioned in the documents here could not possibly be correct and that the information is incorrect.

THE PRESIDENT: Well, could one of the figures be correct?

THE WITNESS: No, it cannot be correct, because I have read in the previous documents that for example in Luck 1160 and another 300 and a few others were shot and there it says expressly that police, Army, together shot so and so many, the Ukrainian militia so many. In other words,all the units together achieved this figure.

THE PRESIDENT: Well then, do I understand you are attacking the arithmetic of the reports?

THE WITNESS: The addition in itself is not correct. Whether the facts actually were like this I cannot say. It is possible, of course.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

( A recess was taken)

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THE MARSHAL: The Tribunal is again in session

THE PRESIDENT: You may proceed.

Q (By Dr. Heim) Witness, before the recess, we stopped with two activity reports which contradicted each other, as you said. You were asked by the President why you drew the attention of the Tribunal to this contradcition. Witness, was it your intention thus to explain that the activity reports submitted by the prosecution do not correspond to the actual executions, or, at least the figures mentioned in the reports? tioned therein. They are not correct themselves. The facts do not correspond to those mentioned here, namely, that SK 4a was competent for these figures. It is the addition of these various units which participated in these incidents.

Q Who was responsible for the reports of Einsatzgruppe C? Group C, Regierungsrat, administrative councillor Dr. Hofmann.

Q Can you comment on Dr. Hofmann's procedure of making reports from your own knowledge? unfair in drafting his reports. He was unfair to the Group Chief and also to the Reich Security Main Office. In the general reports about territories all events were mentioned which concerned executive measures and executions, as far as they were known to the sub-kommandos. These general reports were mentioned by Hofmann as the output, as the accomplishment, as it were, of the Kommandos.

Q What is your opinion as to why Hofmann reported these happenings? power. For this very reason, his reports were untrue and incorrect. His personal ambition and the high figures which he mentioned and the promotion were his leading motives.

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on the commander of the RSHA? chief of staff of Einsatzgruppe C. He was actually in charge of Group C and all sub-departments and administrative matters. He was guided by his personal ambition and he was known as a very ambitious person in his attitude and in his aims. He was generally noted as a cunning liar. Dr. Rasch was led by him, whereas it should have been vice versa. Radomyschl? and that was in August 1941. After the order by the higher SS and Police leader about the more severe measures against the Jews became known, this sub-kommando moved further to the last at the front line near the territory of the Waffen SS, which had been assigned to this territory, and which was subordinated and given to the kommando for the combatting of armed bands, and which was active there. It was the territory of Malyn Macarow. The time was the middle of August, 1941.

Q I now refer to Document Book II-A of the prosecution. It is page 93 of the German and it is 86a of the English text. It is Document NO-3149. It is Exhibit 46. It is an Operational Situation Report is for the 9th of September, 1941. It is Operational Report 88. I quote from the third paragraph of page 93, that is the German text, 88 of the English text. It is on page 4 of the original about the middle of the page and it is headed, "Measures in the sphere of the Security Police." I quote.

MR. HORLICK HOCHWALD: It is on page 89 of the English document book.

Q I quote: "On the 6th of October, 1941, the-

THE PRESIDENT: We have September. You read "October."

THE INTERPRETER: It was my mistake, Your Honor. He said the 9th.

Q (By Dr. Heim) On the 6th September 1941, the Kommando 4a carried out a Jewish action in Radomyschl. There, Jews had convened from the entire vicinity.

The Jewish apartments, therefore, were overfilled. On the average 15 people lived in one room. Sanitary conditions, therefore, had become untenable. Every day several Jewish corpses had been taken away from the houses. Food for the Jews as well as for children could not be issued. As a consequence of this increasing danger, contagious diseases existed. Therefore, 1,107 Jews were shot by Kommando 4a and 561 more Jews were shot by the Udrainian militia." That is the end of my quotation. I ask you, Witness, does this report correspond, to the facts?

A I cannot give you my own picture of the circumstances. Rad_ omyschl was was 50 to 60 kilometres east of Shitomir. Therefore, even if this report corresponds to the facts, the competence was in the hands of the local commander or the medical departments of the Army. The spreading of disease in the units of the Army was very prevalent at the time. I myself was suffering from Wolhynian fever at that time.

Q Could you order such an action at all?

A The order for such an action could only be given by AOK/6, the competent Army authorities in agreement with the supreme commander of the AOK/6 and the SS Police Leaders. BY THE PRESIDENT:

Q Witness, Dr. Heim asked you a question which you did not answer. After he read from the report in question he said to you, "Is this report in agreement with the facts?" Now will you please answer that question put to you by your own counsel? not from my own experience. At a later date I heard a report about conditions in Radomyschl, in which it said that an action by the Higher SS and Police Leaders had been carried out. with the facts? are as described here, whether that was so in individual cases, I don't know.

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I know in any case that the action by the Higher SS and Police Leaders was carried out. you, or, at least, you have seen the report. The report is very specific. Your attorney asked you, "Is this report in accordance with the facts?" In reply, you said, first, that you did not know of the situation when it occurred. Later on you learned the facts. Now I ask you, is this report in agreement with the facts? who was in constant contact with the SS and Police Leaders, some epidemics must have occurred and an action did take place.

Q Then there were executions?

A Yes. The Higher SS and Police Leaders carried out an execution. That is correct. The fact that an execution had taken place was confirmed later on. executed because a supply of food for the children was impracticable? 4a?

A No, that was not mentioned to me as a fact. I only heard that a part

Q How many were shot by that Kommando?

A It was never stated exactly. People participated who actually belonged to the Ko mmando North and who at that time were in Radomyschl.

Q How many were shot by Kommando 4a, do you know?

Q How many juveniles were shot by the Ukrainian militia?

A I don't know that either.

Q And how many Jews were overcrowded in the flats?

A I do not know exactly. I did not receive the news.

Q Then you tell us now that you din't know the facts at all, is that right?

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A The facts I did not see with my own eyes. I only know -

Q Did you learn of the facts? You told us that someone had related to you what had happened. Now did he mention these items which I just read to you, and which your counsel read to you?

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stances, that the Higher Police

Q Now, now, witness, let us be a little specific. I asked you a series of questions. I'll repeat them. First you tell us that you do not know of the facts of your own personal knowledge because you were not there. Now let us agree upon that. Were you there, or not there?

A I wasn't there.

Q Very well. Then you tell us that someone related to you what had happened, is that right?

A Yes, that's correct.

Q Yes. Now, did he tell you that 1107 Jewish adults were shot by Commando 4-A?

Q All right. Did he tell you that 561 juveniles were shot by the Ukrainian Militia? living in a room? for the children, was impracticable?

Q Answer that question. Did he tell you this.... that there wasn't enough food for the children?

Q All right. Then you don't know anything about these facts, do you? as that action was carried out in this town which was reported to me by Meier.

you agreed with the facts. Now you tell us that you were not there, and the person who spoke about the episode did not tell you any of the facts which I read from the report. That's right, isn't it? this at all, are you? You cannot tell whether this report is correct or not? later. each item, that Meier had not told you that. So, therefore, you have no knowledge of these facts at all, not even from hearsay; so, therefore, you cannot tell whether this report is correct or not, can you?

A That is quite correct, Mr. President.

Q Yes. All right. Proceed.

DR. HEIM: Your Honor, may I draw your attention to the fact that the witness save me the following answer: "From my own, knowledge I can give no picture of the circumstances as they happened." And, putting it in one sentence, he continued: "But if it is based on actual facts, the local commander was responsible."

THE PRESIDENT: Well, naturally, if he said he wasn't there, he knew nothing about it, and he gave no order, his conclusion is that he is not responsible. The point that seems rather strange to me is that you would ask him whether this report agreed with the facts when he tells us that he knew nothing about the facts.

DR. HEIM: Your Honor, it becomes evident from the report that allegedly executions were carried out by SK 4-a. I merely wanted to know from the witness whether it corresponds to the facts that these executions were carried out by the SK 4-a.

THE PRESIDENT: Very well.

BY DR. HEIM:

Q Witness, I have another question to put to you. Did you, as the commander of SK 4-a, have anything to do with the executions mentioned in this document? authority and the AOK/6 and I have nothing to do with the action and the circumstances as described in the document. I was told about them afterwards. I was told about the participation of a number of men ordered by the local police commander. BY THE PRESIDENT:

Q Who was in command in the field, of Commando 4-a at this time? in this town - Radomyszl? not actually present in Radomyszl at the time of the date of this document. September 6th?

Q Were they under you?

A Yes, they were subordinated to me; to the Staff 4-a, and to myself, as I was the Commando Leader. BY DR. HEIM: fact that a group of the SK 4-a had participated in this action?

A No, that was not known to me. I only learned that very much later from Sturmbannfuehrer Meier, who was in the office of the Higher Police and SS leader and who, based on these facts, made an examination, an investigation at SK 4-a in Shitomir, for the reason of finding out whether the sub-commando witch was stationed in the northern territory was authorized to get an additional supply from the country itself.

The following event happened. The sub-commando had moved to MalynMacarow, further to the East, in the middle of August - and they had left four people in Radomyszl who kept pigs - which was their so-called fat store - and one day the SS and Police Leader came with his staff, and he established that there were four members of the SK left there, and he ordered them to carry out this action and at the same time he confiscated a few pigs. The report of this officer went to the Higher SS and Police Leader, and he gave them to Meier, and Meier had to ask us about this. And eight or ten days later he made an inquiry into the matter and on that occasion Meier told me that an action had taken place, and three people of yours were used in this action. That is how I found out about this action, but the leader of the sub-commandos did not know anything about it at the time. They only learned later, when - preparing their march to Kiev - they wanted to fetch their sausages and their ham and these were gone.

Q Who carried out the action, generally? regiments of the Higher SS and police leader of the Ukrainian umilitia and a number of men of the SK 4-a, that is, the Part Special Commando North who were stationed at the time in Radomyszl. by the sub-commando independently? when I met the leaders again in Kiev I heard about it because they were very much embittered that the supply had been taken awry. An independent report on the part of the sub-commando was never issued. such an "operational report" had been received by you?

that 1107 men had been executed, I would have asked him: with your 15 men only? He certainly would appeared to be a liar.

THE PRESIDENT: It is not clear to me, Dr. Heim, just what this last exchange was. I understand you asked him - what would he have done if the writer of the report had told him that 1107 Jews had been executed... Was that the question you put to him?

DR. HEIM: Your Honor, I asked him: What would you have done as leader of SK 4-a, and what would you have said, if your sub-commando leader had reported to you to the effect that the sub-commando had carried out shootings of 1107 people?

THE PRESIDENT: Yes; and his reply was that he would have called this man a liar. Yes. BY THE PRESIDENT:

Q Witness, why would you have celled him a liar? Did you know what the facts were? Did you know how many were killed? were killed? know, I would have asked him .. Where did you got this report from... Who ordered it to you... And I would have said it is impossible that 1107 people were shot in one day by 15 people. would know that 1107 people could not have been shot in the period of time indicated, is that right?

Q You would know that as an expert?

A Yes; according to the order, executive measures issued by the Higher commander, this would have been impossible, that he would have shot 1107 people in one day with 15 people.

THE PRESIDENT: Proceed.

DR. HEIM: I now come back to the document discussed last, which is Document Book II-A of the Prosecution, on page 93, I think it is, page 86 of the English. It is Document NO-3149, Exhibit 46, on page 8 of the original document. It says in the last but one paragraph, the last sentence, that is, the original document, page 8, last paragraph, last sentence.

DR. HOCHWALD: Your Honors, on page 89, third paragraph from the top.

THE PRESIDENT: That is the page we were already on.

DR. HOCHWALD: That is the next page, the sentence following the quotation by Dr. Heim.

THE PRESIDENT: I see.

DR. HEIM: I quote: "Thereby the Sonder-kommando has taken care of a total of 11,328 Jews till 6 September 1941."

BY DR. HEIM: ed in that report? In the proceding document, II_C, Document 3151, Exhibit 73 of the Prosecution, page 32 of the German Book, it says that on the 17th of September that SK 4-a carried out executions of 6,548 people. According to the Operational Situation Report 88, Document 3149, of the 19th of September 1941, according to this report, as I say, the Special Commando 4-a until the 6th of September 1941 executed 11,328 people. This comparison shows very clearly the incorrectness of the Operational Situation Reports, which contradictseach other if we regard then closely.

Q This rapid increase of the numbers -- how can you explain it? The discrepancy between these two reports?

total figure of 7,152 on the 24th of August 1941. The Operational Situation Report of the 17th of September 1941, Document 3151, reports the number 6,584 on this day. The Operational Situation Report of the 19th of September 1941 mentions a total figure of 11,328 on the 6th of September 1941. The figure 11,328 on 6 September 1941 is in no logical connection to the figure 6,584 In the report of the 17th of September 1941... just as little as 11,328 to 7,152 of the 24th of August 1941. Experience tells me that Hofmann as a reporter got a supply of reports from the Army authorities via Sturmbannfuehrer Heier, which he used these figures in his own reports. Apart from these documents, the situation reports of the sub-kommandos were at his disposal, the reports of the commanders of the subcommandos, in which the activities of all units stationed in the territory were reported about. The text of the reports which went to Berlin was in the hands of Hofmann. BY THE PRESIDENT: to the events of September 6th in Radomyszl? Berdichew and sent current reports to Gruppe C because that was his assignment. It was his duty, in fret, to maintain the connection between the Gruppe C leader and the Gruppe, and he currently reported to Hofmann about these general happenings. September 6th?

A Whether Hofmann established this figure, I cannot say. The additionamust have been made in Berlin. Hofmann will have reported for the territory, saying that in his particular tine so and so many executions were carried out. Under this particular unit the EK 5, the SK 4-b, or SK 4-a, and in my opinion these were added as being within the territory.

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on September 6, 1941? How many men were in that sub-commando? four men -

Q How many?

A Four men.... four men.....

A No; the entire sub-commando had only 15 State police and SD men of the SK 4-a. executed in one day, you said that 15 men could not do it. So there were 15 men in the operation?

A That's correct. The Kommando was operated by four men in Radomyszl and the others were in the front line division in MalynMacarow. There was a distance between these units of 40 or 50 kilometers. That was the only independent Kommando which they had, which the officer of the Higher Police and SS leader had found somewhere. executed 1107 persons, you said you would have called him a liar because 15 men could not have executed that many. That is what I understood you to say. one leader.

Q But 15 men could not have executed that many in one day?

Q How much time is required for an execution? the Supreme Commander was, two rifles to one person, one firing squad; and if I now think about it, for a short while, and as I experienced myself in Sokal when twice approximately 30 men were shot. The whole duration of the leading in of the prisoners - it takes about 10 minutes.

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If I then work it out mathematically, it means that in an hour six squads are active, and if I think about the firing duration, I begin to think that it is impossible that this could be carried out

Q Well, I don't see where it is so incredible. Suppose that 1107 men were taken by trucks cut into the woods, or into a field.... that would only require one operation. You have them out there. Then they are lined up. You say there are 15 men in the shooting party, and two rifles to a person.... that would give you on the average of 71/2 per shooting... In order to work this out without too much complication, we will say seven to a shooting. With 100 shootings you would have disposed of 700 people, wouldn't you?

Q Yes. All right. And now, how much tine is required to lead out seven men and to shoot them down? That certainly wouldn't take more then four or five minutes, at most, would it?

A That would take ten minutes, certainly... to line up, to lead in, and line up the prisoners. To make the firing squad ready, to put down rifles, to take them up.... the carrying away of the corpses to the graves, and the leading in of the further seven men. all, would be 42.

an hour would be 42? day, this was in the month of September, when you had plenty of day light, you would have 15 or 16 hours of daylight, and if they were operating continuously 700 or 800 could have been killed in one day.

A Your Honor, no kommando can stand up to this. If a kommando works perhaps an hour it is enough and it cannot be put to shooting people all of the time, that is too much.

Q Well then how many could have been executed in one day normally? What number would you have regarede as not being subject to criticism or as being an exaggeration? men and each shooting took about an hour, and afterwards their nerves were in a very bad state and you could not have used these people again the same day, one would have had to put up many more kommandos if you wish 1100 people to be shot in one day, that is impossible, incredible. on day, you wouldn't have called him a liar, would you?

A No, one wouldn't do that. I knew my men. category of a credible or veracious person? concerned, you must have a unit with a special guards and a special unit which has no other assignment than shooting and for the guarding of corpses of 200 people, there must be other guards, there must be other units.

Q Did you say "guarding the corpses?" somewhere, they had to be guarded.

Q Why did you have to guard the corpses?

Q Oh, I understood you to say you had to guard the corpses. Very well, proceed Dr. Heim. BY DR. HEIM: mentioned, are these executions mainly Jews, if that report is correct at all? Jews. text, as the document Exhibit 81, document 3146, in the English document book it is on page 62. It is operational situation report No. 94 of the 25 September 1941, on page 69 of the German copy, page 14 of the original, approximately at the beginning of the page 14 of the original copy, under No. I, it says and I quote:

"The group staff is still at Nowa Ukrainka. After the fall of Kiev, headquarters will be shifted to that place. Sonderkommanda 4a is still in Shitomir; Teilkommandos at Radomysihl and Bialacerkiew. Other Kommandos are deployed in the area of Malin-Macharow, Korosten and east of Wassilkow."

MR. HOCHWHALD: Your Honors, it is on p ge 64 of the English document book in the middle of the page. There is the Roman numeral I - Locations. BY DR. HEIM:

I continue quoting:

"On the basis of an agreement with the Army High Command it is guaranteed that a Vorauskommando of Eisatzkommando 4a and of the Group staff will march into Kiev with the advance guard after the fall of the town." paragraph and it says:

"Sonderkommando 4a has now surpassed the number of 15,000 executions."

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15,000. Did this Sonderkommanda 4a carry out any further assignments in that section there? these few days. According to my knowledge document 3149 of 19 September 1941 mentioned the number, 11328, document 3146, however of the 25 September mentions the number over 15,000. These two figures show a difference of 3672 people. Assignments of these measures in the period mentioned were not carried out and were not participated in by any of the SK 4a.

Q The stations and garrisons mentioned in the document Ex. 81 with regard to SK 4A are they correct? commando was at Makarow, the Southern subcommando was in a sector near Wassilkow with troops in Kopastow. That was in the vicinity of Wassickow. The orderly room remained in Shitomir until October 1941. The subcommando 4a was not stationed in Korosten, but the interrogators had carried out interrogations on the orders of the higher SS and police leaders. The locations Korosten and Radomyszl are not correct, for this period. lation which just occurred. The witness said the orderly room of SK 4a remained until the march of 17 September 1941 in Shitomir. I think the word October was mentioned. SK 4a had sent an advance commando to Kiev, who gave the order to send the mentioned advance Kommandos of the SK 4A to Kiev? and I received an order from the group because only special units which were agreed upon beforehand were allowed to enter Kiev.

Q Will you give us further details about the march towards Kiev?

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direction northeast to Macharow with its special advance units. The south commando, however, was ordered to march together with the advance commando Haefner and together with the 29th Army Corps to Kiev, from the territory around Wassilkow. The orderly room of the SK 4a with the 8 or 10 men who were left there with the kitchen machinery and the vehicle repair shops and with the Ukrainian personnel marched on the 17 September 1941 in the direction of Kiev from Shitomir, on a detour road in the north. The garrison of the AOK 6 was given the opporutnity to contact the staff officers of the army group again, and on the same day Paltawa has been taken by German troops.

Q When did you reach Kiev yourself? I reached ths suburb of Kiev and I met the Commander Haefner and on the 24 of September 1941 I reached Kiev itself .

Q When did the individual subkommandos of the SK A4 reach Kiev? that is about 8 or 10 men under Haefner, also the South subkommando under Jantzen, the North Kommando, and the Waffen SS from the Northern territory reached Kiev on the 25 September.

THE PRESIDENT: Dr. Heim, do you think we might suspend at this point?

DR. HEIM: Yes, Your Honor.

THE PRESIDENT: The Tribunal will be in recess - do you have something, Dr. Ficht?

DR. FICHT: For the Defendant Biberstein: tomorrow afternoon's session because he has to prepare his defense.

THE PRESIDENT: The defendant Biberstein will be excused from attendance in Court tomorrow afternoon.

(The Tribunal adjourned until 0930 29 October 1947)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II. A.

Military Tribunal No. II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Just before you begin, Dr. Heim, I would like to make a short announcement. On Friday afternoon the Tribunal will recess at three instead of four-thirty. In order to make up that hour's time, We may run a little later this afternoon. We may go as far as five o'clock this afternoon and five o'clock tomorrow afternoon, and then on Friday at three o'clock we will terminate for the week, so that the attorneys can make whatever plans they desire. to trial briefs. At the end of the trial, of course, each counsel will address the Tribunal in behalf of his client. In addition to that, if he wishes, he may beforehand prepare and submit to the court what we call a trial brief, a brief on the law and on the facts. the defendants in order to analyze the various documents. It may be impossible in the course of an examination or cross-examination or in a final summation speech to refer to all of the documents in a way that would be entirely satisfactory to the attorney and his client, so that you are advised that, if you wish, the Tribunal does not request, but, if you wish, you may prepare a brief on the documents and on the law involved in a particular case which you are handling. That, of course, applies to the prosecution also.

DR. HEIM (ATTORNEY FOR THE DEFENDANT BLOBEL): Your Honor, I permit meself to ask a question of the Tribunal. I think as far as I am concerned and, as far as my colleagues are concerned, it would be an advantage-

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THE INTERPRETER: The switch here is out of order. I cannot hear the original.

(The sound system was repaired.

DR. HEIM: Your Honor, after what the Tribunal has stated, I would like to ask a question. This is important for my colleagues as well. and it would be to their advantage to know today what period of time is allotted for this closing speech, because this time and the knowledge of this time would be important to us, because we could then tell to what extent and how long we should submit a closing brief to the Tribunal.

THE PRESIDENT: Let me say very clearly that there are two items. one the closing speech, which is delivered orally and which, or course, is also written, but which is delivered physically by spoken words to the Tribunal, when all the testimony is in. That is a normal procedure and happens in every trial. within the time alloted to him, in the final speech, cover all angles of the case legally and factually, he may, in addition, prepare a brief in which he can point out various arguments legally and factually. These briefs should be prepared currently and one should not await preparation until the end of the trial. I would suggest that each attorney who believes he will prepare a brief, should start on it immediately upon the conclusion of his case, because he knows what he has presented and, of course, he knows what the prosecution has presented. The same things is true of the prosecution. not have time to go into all the documents in cross-examination. It may not even be necessary, but in preparing a brief and then every reference which the prosecution feels is necessary in order to establish the case may be made in that brief. Is that clear?

DR. HEIM: Thank you, Your Honor.

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THE PRESIDENT: We only add that the Tribunal does not insist upon it that you prepare these briefs, but, if you do prepare them we shall be glad to have them.

DR. HEIM: Thank your, Your Honor. With the permission of the Tribunal I continue my direct examination of the Defendant Blobel, as a witness in his own defense.

PAUL BLOBEL __Resumed DIRECT EXAMINATION __ Continued BY DR. HEIM (ATTORNEY FOR THE DEFENDANT BLOBEL): Kommando 4a in Kiew. Witness, you said that various Kommandos of Special Kommando 4a arrived in Kiew on the 20th of November, 1941. with the mission of establishing themselves in Kiew, and then on the 24th of September you arrived yourself in Kiew and on the next day the two sub-kommandos arrived there too. In this connection, I would like to refer to Document Book I, page 149 of the German, page 415 of the English text. This is Document NO-3140, Exhibit 30.

In the English text on page 118, in the German text on page 150, it says, literally, at the beginning of page 9 of the original, about the middle of the page in both books-

MR. HORLICK HOCHWALD: On page 118 in Document Book I, in the middle, the heading is Kiew, "I, Kief."

Q I quote: "A Vorkommando of the Sonderkommando 4a led by Obersturmfuehrers Haefner and Janssen, 50 men strong, arrived on 19 September 1941 with the fighting troops in Kiew. The Main Kommando of the Sonderkommando 4a reached Kiew on 25 September 1941 after Standartenfuehrer Blobel had already been in Kiew on 21 and 22 September. The Vorkommando of the Gruppen staff, Hauptmann of the Schutzpolizei Krumme, Obersturmfuehrer Braun arrived in Kiew on 21 September 1941. The Gruppen staff followed on 25 September 1941."

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THE PRESIDENT: Dr. Heim, you supplied the name which is absent in the English copy after "Standartenfuehrer". Which name did you read?

DR. HEIM: Your Honor. I beg your pardon.

MR. HORLICK HOCHWALD: On page 115 of the document book it shows that the name is Blobel. Is that what Your Honors wanted to know?

THE PRESIDENT: That is right. Thank you very much.

Q (By Dr. Heim) Witness, is this description of the RSHA correct just as I have read it?

A The dates are not correct. Haefner and Janssen, as I have already mentioned, with 17 men and drivers, as well as with 28 men of the regular police arrived in Kiew after the day it was captured that is on the 20th of September. I personally arrived in Kiew on the 24th of September, one day before the Northern Kommando arrived. The Group Staff was already in Kiew when I arrived there. report is not correct, as far as the date of your arrival in Kiew is concerned?

A No, it was not the 21st and the 22nd of September. It was the 24th of September, 1941. answer until the translation has come through. Please describe briefly your first impressions about the conditions in Kiew. on their way to the front. Explosions to k place at various places. The inner city was in flames. Troops and units were quartered there. The roads were cleared of barricades by the troops. The part of the city which had been burned was evacuated by the population, who went to sleep in parks, and many buildings had been evacuated by the fleeing population.

Q When did the main Kommando of Special Kommando 4a reach Kiew?

A The Kommando designated "Main Kommando" was the northern subcommando with the Waffen-SS. This Kommando arrived on the 25th of September, 1947, in Kiew.

Q Where did Einsatzgruppe C take up headquarters? ing for its headquarters.

Q Where was the orderly room of Special Kommando 4a? space in a building nearby. The Ukrainian population greeted the German troops with obvious pleasure. :

Q What was the situation which Special Kommando 4a found in Kiew? Wehrmacht units went through the city and blew up the streets, but the fire spread to the other parts and did not stop. The entire city was a sea of flames and thick clouds of smoke covered the city.

Q What order came about as a result of this fire? 1941, all billets, those which were situated in the center of the city had to be evacuated. The Special Kommando 4a moved to a stadium on the Dnjepr River. All units which were not needed in Kiew had to evacuate the city.

Q Did this order also apply to the Group Staff? ing had been heavily damaged by explosions. to Special Kommando 4a? original units. The Regular Police joined the Group Staff in its guard duties.

Q Did sub-kommandos of the Special Kommando 4a remain in Kiew? ship of Untersturmfuehrer Mueller, up to then an interpreter, was ordered to report to Poltava at the front.

It consisted of a leader and 12 to 15 non-comissioned officers and men. that time?

A Yes, the leaders of the executive units. Hanf, Tausen, Haefner, Janssen, upon order of the Group, had to return to Berlin, to continue their studies. Dr. Funk had already left the Kommando in Shitomir.

Q Where did the rest of Special Kommando 4a stay? northern sub-kommando were billeted near the group which now occupied the main building of the NKVD, which it had confiscated.

Q What was the health condition of the members of this Kommando? had been taken to the hospital. I personally had been wounded on the

Q How strong was SK 4a at that time? addition to about 1,745 men.

THE PRESIDENT: Just a moment. The witness apparently uses some technical expression which can very logically be interpreted in the manner in which the interpreter has given it to us, but that seems to clash with that has been stated before. The number did not reach the total now just stated so please repeat the number slowly and then we will see just what we get.

THE WITNESS: The Kommando contained about two-thirds of its original strength and the original strength was as follows: I Kommando leader, 7 officers, 45 men.

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THE PRESIDENT: Because of that technical expression one seven four five we get the idea of 1,745 which, of course, is incorrect.

DR. HEIM: Your Honor, please permit me to make an explanation about this concept, one dash seven dash four five. In the German Wehrmacht it was customary to list the leaders, the officers and the men, and list them in this position, numerically, and merely have a line between those numbers.

THE PRESIDENT: Do we understand that the first digit indicates the commanding officer; the second, the number of subordinate officers; and the third number or position of digits indicates the number of men. Is that correct?

DR. HEIM: Yes, that's right. Your Honor.

THE PRESIDENT: Thank you. BY DR. HEIM?

Q. Witness, you were just telling us how strong your commando was. About 30 men remained, including officers and men, including the advance commando which had advanced toward Poltawa under Mueller. What chiefs were at your disposal?

A. The following chiefs were at my disposal: Untersturmfuehrer Mueller with an advance detachment at the front; Hauptsturmfuehrer Radetzky, with a driver who had been ordered to go to Army Command 6, and the administrative officer who had been recalled to his original unit but who was still with my commando.

Q. How strong was the remainder of Sonderkommando 4-a which remained in Kiev?

A. The rest of Special Commando 4-a, including the office helps, men and drivers, amounted to fifteen or eighteen men in Kiev. That is, non-commissioned officers and men. Added to that was myself and the administrative officer.

Q. As leader of SK 4-a did you have any special duty to make out reports?

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A. Outside of the fact that the persons had to be reported to the Group, I had no duty to report to Army Command 6 or to the Higher SS Police leader, or the town commandant.

Q. Where was the headquarters of the Higher SS and Police leader?

A. The staff of the Higher SS and Police leader immediately after marching into Kiev had set up headquarters there.

Q. Can you tell us what jobs the units had which were immediately under the command of the Higher SS and Police leader?

A. The police regiments of the regular police, as well as the mandant, had marched in and were used in combatting the fire, and also had to remove Russian explosives and road mines. There were thousands of mines on the roads, even in the city itself. The streets were just filled with mines.

Q. What units outside of combat units were stationed in Kiev at that time? the command of the town commandant. Other units, such as supply units of the Transportation Corps of the various Army units, who started to set up their supply camps, etc.

Q. What mission did the SK 4-A have in Kiev?

A. The missions of the commando in Kiev consisted, first, in ascertaining the situation in the town itself. Reports about the population, and from the troop units, were summarized and passed on to the Group.

Q. What can you tell us, briefly, about the conduct of the Russian enemy during your stay in Kiev?

A. The terror acts of the enemy groups were large-scale. There were attacks, shootings within and around the city, which became more frequent. Security units of the Army, of the regular police, and of the Ukrainian units, made possible many arrests of people.

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Q. What measures did the military commander undertake against these acts?

A. The Army or the town commandant posted announcements and threatened severe punishments if the decrees which had been ordered were violated. All troop units were used in arresting sabotage troops and terrorists.

Q. Did the conference take place in Kiev about the execution of measures in order to re-establish security aid to fight these disturbances.

A. As I heard later on, a conference did take place.

Q. Do you know between whom this conference took place?

A. The conference took place between the town commandant of Kiev, Brigadier General Eberhardt, the Higher SS and Police leader Jeckeln, and the leader of the Einsatzgruppe C, Dr. Rasch, or his Chief of Staff, Hoffman.

Q. Were you present during that conference?

A. No, I did not take any part in such a conference with the town commandant or the SS Police leader. I was not ordered to attend such a conference. I was not able to do duty because of my head wound.

Q. Did you know the results of this conference?

A. I know that the Higher SS and Police leader after that conference ordered action against these terrorist attacks.

Q. In this connection I refer to Document Book I, on page 149 of the German text. This is Document NO-3140, Exhibit 30. This is the situation report 106 of the 7th of October 1941. On page 155 in the German book it says, literally.... it is in the beginning of page 15 of the original-

DR. HOCHWALD: It is page 124, Your Honor.

DR. HEIM: Witness, do you have this page?

WITNESS: Yes.

Q. (By Dr. Heim--continuing) I quote: "As an added factor it was proven that the Jews participated in the arson. The population expected adequate retaliatory measures by the German authorities. Consequently, all Jews of Kiev were requested, in agreement with the city com mander, to appear on Monday, 29 September until 8 o'clock, at a designated place.

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These announcements were posted by members of the Ukrainian militia in the entire city. Simultaneously, it was announced orally that all Jews were to be moved." retaliatory measures in Kiev, or with ordering them?

A. As far as giving orders for those measures I had nothing to do with it. The decision was in the hands of the Higher SS and Police leader Jeckeln and the town commandant, or the commander of the Army area.

Q. Did you know at the time that the retaliatory measures had been ordered, and do you know the reason why they had been ordered?

A. An order for the retaliatory measure was reported to me via the Group staff. The reason for this order was to be found in these terrorist attacks which were currently known, and the fact that the fire in Kiev could be traced back to Jewish origin. And the daily reports about the front actions show this especially.

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Q. Did you consider these retaliatory measures which had been military law?

A. The continuous arson, explosions, attacks and murders, and

Q. In the document just cited it says, in the continuation of the above mentioned citation, I quote:

"In collaboration with the Gruppen staff and to commandos of the September, 33,771 Jews."

Is this figure 33,771 Jews, correct in your opinion?

A. In my opinion this figure is exaggeratedly high.

Q. In the case of the people who were executed, were they ex clusively Jews?

A. I don't know that.

Q. Did the exact numbers of executees -- did they ever become known?

A. He, they never did become known exactly. A lot of guess work best.

As a basis for his figure, the evacuated apartments might have

Q. How many members of SK 4-a took part in this execution, who had been ordered to do so by the Higher SS and Police leader?

A. As far as I remember, according to the number of people then

Q. Were these 15 men joined in a firing squad?

A. The men of SK 4-a were assigned to the general duties, whether any such people had been ordered to join a firing squad, I don't know.

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I just don't know.

Q. During the action in Kiev did an officer of SK 4-a participate?

A. No, an officer did not participate, and I myself was not present at the execution. I personally was not fit for duty at the time.

Q. Were any reports made out by SK 4-a, about this execution perhaps giving the numbers?

A. The possibility exists. In my sick room Hoffman reported on the 1st or 2nd of October, and told me that he reported to Berlin, that the Group staff and the SK 4-a, and police units, had shot 33,000 Jews. As a further document he requested a report by SK 4-a. He then repeated this request. Whether this report was written or whether he dictated it, I don't know.

Q. Did you contradict such a procedure, or object to such a procedure of reporting about executions?

A. I told Mr. Hoffman at the time that such a procedure of reporting would give a completely false picture in Berlin, and if Berlin would ask for reports under oath, steps would be taken against him and myself; but Hoffman had already reported to Berlin and was not prepared to correct his reports afterwards. He continued to send detailed reports about Kiev to Berlin, which have also been included in these operation reports.

Q. Did you -- that is to say, did the SK 4-a -- have anything to do with the collection of clothing, since it says in the document that money valuables and clothing were safeguarded?

A. The SK 4-a had nothing to do with that. As far as I knew, Ukrainian militiamen did this.

Q. Do you know who received these things?

A. The Ukrainians had the administration of these things. How they were distributed, and who was the recipient, I don't know. The militia was under the Higher SS and Police leader.

Q. I again refer to Document Book 1, page 156 of the German text.

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This Exhibit 30, Document NO-3140. In the English document book it is page 115, under III, in the middle of page 16 of the original. We have a report -

DR. HOCHWALD: It is page 125 of the English, Your Honor. BY DR. HEIM:

(continuing) In the middle of page 16 of the original, under III, there is a report about the operation against the Jews in Shitomir. There it says, I quote: "After the confinement of the Jews to a resstricted area, which had been carried out by the Feldkommandantur following a suggestion of the Sonderkommando 4-a, a considerable calm was noticed, for example, at the markets and so forth." tion to the Field Command?

A. As far as I remember the SK 4-a in a report to Group C suggested this in its report, about the situation in Shitomir. This was done because the Ukrainians had often confiscated apartments from Jews who had moved there in 1937, and at that occasion murders and excesses had taken place.

Q. On the next page of the document, about the middle of the German text, a little below the middle on page 17 of the original, a conference which took place on the 10th of September 1941 in the Field Command is spoken of. According to this situation report, it had been decided as a result of this conference to eliminate and liquidate the Jews of Shitomir Completely and finally, - did you participate in this conference, witness?

DR. HEIM: Your Honor, the Prosecutor just drew my attention to the fact that in the English document book the 13th of September 1941 is given as the date of the conference. In my document book, in the German text, it says the 10th of September 1941. I cannot determine at the moment which one is correct.

THE PRESIDENT: May we not have a look at the photostat to determine which is the correct date?

DR. HOCHWALD: Your Honors, please, this document is Exhibit No. 30.

THE PRESIDENT: The Secretary General, will please locate that exhibit and submit it to the Tribunal.

Q. ( By Dr. Heim) Witness, did you participate in this conference at the Field Command?

A. I didn't take part in such a conference, but I can say definitely that the report about Shitomir was submitted to the SS and Polices leader Jeckeln. The order of Jeckeln about the shootings and what was to happen about the Jews was brought by Obersturmbannfuehrer Meier. Furthermore, the document, just mentioned says that on the 19th of September the Jewish quarter was evacuated and three thousand and some odd Jews were registered and executed.

Q. Did the SK 4-a have anything to do with the execution of these Jews -- because the Prosecution insists on the responsibility of SK 4-a in this case.

A. The SK 4-a had nothing to do with this. The SK 4-a was not in Shitomir at the time but was about 150 kilometers east of it, just at the time they were marching into Kiev. On the occasion of this execution, and at any other time, or for any other reason, the SK 4-a did not confiscate any money, or valuables, or clothing. The statement in this document is absolutely incorrect and -

Q. In connection with this-

THE PRESIDENT: Pardon me. I didn't catch that last word.

INTERPRETER: The defendant said the statement was a big lie.

THE PRESIDENT: Oh, I see. All right.

Q. (By Dr. Heim -- continuing) In connection with this operation report just discussed I want to refer to Document Book 1, page 159 of the German, page 129 of the English text. There we find Document NO3824, Exhibit 31. This is your affidavit, witness. It is an affidavit of the 6th of June 1947. In this affidavit it says, under number 7, I quote:

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"In September or October 1941 the Einsatzgruppe C under Dr. Rasch placed a gas van at my disposal, and one execution was carried out by means of that gas van." that is to say, the Special Commando 4-a, used the gas van. Is that correct?

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A. No, I never said anything in my interrogation about the use of the gas van for Special Commando 4A. This cannot be concluded from my statement in the affidavit that the Sonderkommando 4a used the gas van. This gas van was always with Group C, that is to say, it was delivered around this Kiev time and it was with the group staff. The group staff at the time was at the same location as Sonderkommanda 4a. I saw this gas van employed by another unit and later the gas van was used as a truck for general purposes.

Q. I now come to a set of questions which refer to a number of situation reports. Witness, was another Kommanda in Kiev together with the Special Kommanda 4a?

A. Einsatz Kommando 5 had also arrived in Kiev on the 25th or 26th of September 1941 with about 150 men. This was not the entire Einsatz Commando 5. Einsatz Commando 5 was larger than that.

Q. Who was the Commanding officer of Einsatz Commando 5?

A. The Commanding Officer of Einsatz Commando 5 was then Obersturmbannfuehrer Meyer who had until that time been permanent liaison officer to the higher SS and police leader for Group C and who had relieved Schultz.

Q. Did the performance of the two kommandos of Einsatz Group "C" in Kiev result in a change of the organization?

A. A change in the organization had been planned. The Special Kommando 4a which was weak and continued to be weakened by losses was to be dissolved and incorporated into Einsatz Commando 5. Obersturmbannfuehrer Meyer was to assume leadership since I was to be relieved because of sickness and injury. This reorganized Kommando 5 was then to put men at the disposal of the regular garrison duties and men were actually detailed to Shitomir, Rovonow and other places.

Furthermore, it was planned for the area of Charkow to use a certain advance commando there.

Q. Was this plan realized?

A. Not essentially, except for the details which I have already just described, but the files of special kommando 4a were handed over to Einsatz Commando 5,

Q. What was responsible for this plan not being realized?

A. About this time, October 1941, the Reichsfuehrer SS visited the higher SS and police leader Jockelm at Kiev. Dr. Rasch for reasons known only to him incurred the displeasure of the Reichsfuehrer. He then subsequently left for Berlin. In his absence Dr. Hoffman took over the command of Group "C".

THE PRESIDENT: Will you suspend just for a moment, please. We have before us now photostat of the Exhibit which was under discussion a few minutes ago. We have document No. 3140 before us for scrutiny and on page 17 we are looking at the date which was a subject for discussion a few minutes ago. We would like to have both the Prosecution and defense look at the data and see if they can agree upon it because it is not entirely clear.

MR. HOCHWALD: It seems to me to be a zero, Your Honor.

THE PRESIDENT: Dr. Heim, does it seem more like a zero than an eight to you?

DR. HEIM; Your Honor, I consider the number to be. a zero.

THE PRESIDENT: Very well, we agree on that.

DR. HEIM: Your Honor, I would then request a corresponding correction in the English document book,

THE PRESIDENT: That correction will be made. What page is that, Mr. Hochwald, do you recall the page in the English text?

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MR. HOCHWALD: I shall find out, Your Honor.

THE PRESIDENT: Page 126, Judge Dixon says.

MR. HOCHWALD: Yes, it is 126, on the bottom.

THE PRESIDENT: Very well, we will accept for the moment September 10th as the date but we will not close the door to any further discussion on this date. It may be that the photostat can be subjected to microscopic inquiry in order that all ambiguity may be removed. It may be that in connection with the rest of the document and with other documents that the 18th of September might be more logical and then that would fortify the possibility that that digit is an eight instead of a zero but for the moment it will remain the 10 of September. BY DR. HEIM:

Q. Witness, I would like to repeat the question just asked of you. You have only answered it partly. Why was this reorganization which you mentioned not realized?

A. I described that Dr. Rasch had left for Berlin and Dr. Hoffman-had assumed command of the group. After the return of Dr. Rasch from Berlin in the last third of October, 1941, the command was finally handed over to Dr. Thomas in Kiev. The new Chief, Dr. Thomas, left the two kommandos, EK 5 and SK 4a, according to the plans and used SK 4a in the combat zone and EK 5 in the rear areas, just as Dr. Rasch also recommended my release since the setting up of garrison units had already started and was proceeding.

Q. What directives did the new group Chief, Dr. Thomas, make about the area or about the garrison disposition?

A. The remaining kommandos, SK 4a until it had completed the necessary motor repairs, remained in Kiev, but it had orders to meet with the other two sub-kommandos in the area of CHARKOW.

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EK 5 was to remain In Kiev and to continue its activities East of the Dniepr River and the area Kiev -- POLTAWA was rear area territory.

Q. In your opinion, does the possibility exist that the simultaneous presence of SK 4a and EK 5 in the Kiev area lead to mix-ups in the reports of the chief of the security police and the SD?

A. The IK 5 with a strength of about 180 men and the rest of SK 4a with a strength of one kommando, which is one administrative officer and 30 men had the same garrison, namely, Kiev, as can be seen from the document book II-C, Exhibit 72, No. 2830.

THE PRESIDENT: Just a moment, please witness, would you like to make a request for the excuse of the defendant

DR. DURCHOLZ: Yes.

THE PRESIDENT: He will be excused under guard. BY DR. HEIM:

Q. Witness you just said that the Einsatz Commando 5 had a strength of about 180 men, whereas SK 4a had one commanding officer, one administrative officer and 30 men. Here you had reference to a document which shows this relationship. Will you please refer to this document once

A. The document in which these reports are listed is in document book 2-C, Exhibit 72, document NO-2830, operational report of the 12 November 1941, on page 20. I now refer to document book II-A on page 43 of the German text. This is Exhibit No. 38, document No. 3155 in the English document book. This is on page 43. This is the operational report 111 of the 12 October 1941. On page 4 of the original, pardon me, on page 5 of the original, the second paragraph reads as follows:

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In the English document book it is on page 45 and I quote:

"on the 26 September, the Security Police took up its activities in Kiev. On that day 7 interrogation Kommandos of Einsatzkommando 4a started their work in the Civilian Prisoner Camp, in the Prisoner-of-War Camp, in the Jewish Camp, and in the city itself." it to you?

A. This is an obvious mix up with the EK 5 stationed in Kiev. As has been frequently mentioned before the SK 4a strength was negligible so that the activities of the SK 4a mentioned here is impossible. I repeat, the SK 4a in Kiev consisted of an administrative office and supply units, the drivers, four men, and 7 or 8 Ukrainians, two men in the division and three men in the orderly room. Usually three men were detailed for interrogation duties. The interrogations themselves were carried out by officers who were first of all brought in from the Reich to the group and who had been provided for garrison duties and they frequently changed. SK 4a never was active in carrying out interrogations in camps as the report mentions.

Q. In connection with the designations in Kiev, I refer to document book II-C, page 28 of the German text. This is Exhibit No. 72, Document No. 2830, This is on page 20 of the English text. On page 17 of the original in the next to the last paragraph on page 24 of the English document book, page 28 of the German, there it says, and I quote:

"In Kiev, Sonderkommando 4a regularly carried out interrogations and arrests, which in most cases led to executions. Here, almost without exception, we were concerned with active Communists who had worked for the KP."

Witness, is this report correct?

A. What I have already said before is to be applied here, that this is also a mix-up with Commando 5.

Q. Can you give any more facts which point to a mix up between EK 5 and SK 4a?

A. The facts mentioned in No. 2832, in Book II-C, Exhibit 79, situation report 135, this is on page 50-a of the English text, the 19 November 1941, this is on page 51. The localities mentioned in this report, Koselex, Tschernigow, Njeschin, all of these localities were within the area of EK 5, which was in charge of the entire area East of Kiev, down to Poltawa, and to which this area had been given as rear army territory. The same document, page 22 of the original, shows that from the 20 October to the 26 October, 1941, the EK 5, executed the 36 political functionaries and 32 saboteurs and looters and 4372 Jews, in area of Kiev, without mentioning the locality. This is on page 57 of the English. In the week from the 26 October to 1 November, 1941, inclusive, Einsatz Commando 5 executed 40 political functionaries, 60 saboteurs, and looters, and 2585 Jews in the area of Kiev, again without mentioning the specific locality. There it is noted specifically that the number 2654, includes 414 hostages shot as a reprisal for various arsons and 1391 executions carried out by a sub-commando of Einsatz Kommando 5, which had returned from the area of Squirapogrewitscheplisky. This sub-commando at the time in question returned from the area of the EK 5 to Kiev. The mix-up of EK 5 with SK 4a becomes even more evident from the report of the headquarters and radio communications. In document No. 2830 of the 12 November, 1941, and in the document No. 2832 of the 12 November, 1941, and in the document No. 2832 of the 19 November, 1941, SK 4a is credited with signal communications with Dujivovetrowsk, which actually belonged to EK 5. This circumstance can be traced back to the reorganization which the group must have reported to Berlin.

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DR. HEIM: Your Honor, I would like to give two exhibit numbers to the documents which the witness has just mentioned; Document NO-2830boars the Exhibit No. 72, and it is in Book 2-C, on page 20, of the English text. The Document NO-2832 is Exhibit No 79, and is on page 58 of the English Document Book.

THE PRESIDENT: Dr. Heim, this might be a good place at which to have a recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Heim, did you have the opportunity to study the document under a microscope, or under a magnifying glass.

DR. HEIM: I did so, your Honor.

THE PRESIDENT: Well, doesn't it seem to you now more likely that it is an "8" rather than a "zero".

DR. HEIM: Your Honor, in an examination I have convinced myself that it is an "8". Especially as on the proceeding page I compared the eights and I can now state that it must be an "8" and not a zero.

THE PRESIDENT: Very well, the record will show definitely and definitively that the date is "18" and not "10".

DR. HEIM: Thank you, your Honor.

THE PRESIDENT: yes. BY DR. HEIM: ness of the Operational Reports concerning the mix-up between EK5 and SK4A and I have one question to ask you. During this time did SK4A carry out executions at all, when the SK4A was stationed in Kiev together with EK5? September 1941.

DR. HEIM: I now refer to Document Book II-A of the Prosecution and I turn to page 42 of the German and 43 of the English text. Here we have document NO-3135, Exhibit No. 38, this is an operational report number 111 of 12 October 1941.

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On page 4 of the original, of English Document Book, on page 44, the fourth paragraph at the bottom, it says, and I quote: "The Sonderkommando 4-A has by now reached the total number of more than 51,000 executions. Apart from the special action in Kiev of 28 and 29 September, for which 2 Kommandos of the Police Regiment South were detached, all executions carried out sofar were made by that Special Kommando without any assistance or outside help." It is on page 44 of the English text, and it is the fourth paragraph from the bottom. operational report. Will you comment on it, and will you give the Tribunal a detailed statement telling us whether this report about SK4A is true, and whether this SD4A carried out 51,000 executions, and if this statement is in agreement with the facts?

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A. The facts according to the operational reports prove that the total figure is incorrect. In various and numerous reports, as I have already said, in connection with the SK-4-A, other units, as, for instance, Army units and units of the Higher SS and Police leader are mentioned. In the operation report of the 12th of October, which is Document 3155, 8800 Jews are reported as having been shot, without mentioning the name of the location of EK-5. From the 25 September until the 5th of October, 1941, the largest part is taken by the sector Kiev; EK-5, with approximately 150 men,-that is three-fourths of the actual kommando,--was stationed in this territory.

Q. Was the SK-4-A in the position, as it was a small unit, able to carry out the following executions within this period mentioned without outside help, these 51,000 minus 33,771, the result of which is 17,229? Will you comment on this?

A. Without any outside help this was practically impossible, and secondly the reported total figures contain execution numbers of other units. One can currently prove it in the succession of documents. There is also, furthermore, the reporter himself added the figures.

Q. I now refer to Document Book II-C of the Prosecution. On Page 28 of the German text--it is Exhibit No. 72, Document NO-2830-is the operational Report 132 of the 12th of November, 1941. It is Page 20 of the English text, your Honor. On Page 5 of the German copy it says, and I quote:

"The number of people executed by SK-4-A has increased to 55,432." That is the end of my quotation. Witness, do you think this figure mentioned here is correct?

A. The figure mentioned here is subject to the same condition as all others which were mentioned, and is equally incorrect. In the same document there are other executions mentioned which were, allegedly, carried out by the SK-4-A in Borispol., Q. mid you learn of these executions at the time?

A. No, I never learned of these executions at the time. The SK was never detailed to Borispol, and SK-4A could not dispose of a platoon, which is about fifty to sixty men.

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Here is the same mix-up between a platoon of the EK-5, which is in the rear area territory, with units of SK-4A.

Q. I now refer to Document Book II-C of the Prosecution on Page 43 of the German, Page 37 of the English text. It is Document NO-3404, Exhibit 75. It is Operational Report 119 Of the 20th of October, 1941. On Page 47, the first paragraph in the German text, Page 40 of the English document book, second paragraph from the bottom it says, and I quote: "An operation was carried out in Iwankow on 19 September 1941 by the Sonderkommando 4a with the aid of the militia, in which 166 persons were apprehended and liquidated." That is the end of my quotation. witness, is the report correct?

A. Whether it is correct I do not knew. Through this document I am learning for the first time of this alleged fact. I looked on the map and I saw that Iwankow is north of Markov before Kiev. It is an incident which happened before we reached Kiev. The militia mentioned in the document, according to circumstances prevailing there, must have been subordinate to an Army unit. The action itself is not known to me. From the report it does not become evident for what purpose the executions were supposed to have been carried out. The order for such measures I was not authorized to give. I was not entitled to do so as the executive power was in the hands of the local Army commando. ment 3140, according to which on the 19th of September, 1941, that is, therefore, the same day, in Zhitomir an operation is supposed to have been carried out by the SK-4. Iwankow and Zhitomir are 110 kilometers apart as the crow flies, and the subkommandos at the time were in the vicinity, in a radius around Kiev and were marching towards Kiev, towards the units to which they had been detailed.

Q. In this same document an operation of the SK-4a is mentioned in korosten according to which 177 Jews are supposed to have been executed.

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Will you comment on this?

A. By order of the group, three interpreters had been ordered to Korosten as from august 41, before I was detailed there, on the 13th August 1941. I was suffering from Wolhynian fever at the time. The SK-4a, according to my knowledge, never had a subkommando stationed in Korosten, or never had one ordered nor detailed there. The kommandos of the SK-4a were stationed in the frontal area around Kiev in August, or September at least.

Q. Please will you go to Document Book II-c of the Prosecution, to page 31 of the German text. In the English text it is Page 27. There we have Document NO-3151, Exhibit No. 73. on Page 32 of the German text, Page 29 of the English text, the third paragraph from the bottom, an execution is mentioned, an execution, in fact, of 160 people in Korosten. Is this action, according to your opinion, the same as the one mentioned in 3404 in Korosten?

A. In my opinion it is the same operation. The document does not mention any dates, at least no different dates. Both reports were taken from different contexts by the reporter. The situation reports and the other reports originated from the Higher SS and Police Leader.

Q. witness, I now come to the document just mentioned, which was NO-3404. It is in Document Book II-C of the Prosecution, Page 37 of the English book, Page 47 of the German text. On Page 40 of the English text, the second paragraph from the bottom, there is an execution mentioned, an execution of three adolescents by the SK-4a at Radomysohl on 13 September 1941. These adolescents, according to the report, are supposed to have carried out espionage, and therefore were executed. witness, did these executions take place according to your knowledge?

A. What measures were carried out there I cannot say. Basically, any case of espionage had to be reported to the competent Army agency, and in this case it was G-a. The perpetrators had to be arrested and turned over to G-2. In various cases they were parachutists who were arrested.

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Q. who, according to your knowledge, gave the order for the execution of these adolescents?

A. It can only have been the competent G-2 division, or the G-2 officer of the AOK/6 who reported the incident and took the according executive measures.

Q. Do you believe that these executions were properly investigated beforehand?

A. Yes, I think than an interrogation must have taken place, interrogation and sentence was here in the hands of the Army.

Q. In the same document it says in the context that the special kommando 4a on the way from Wyrna to Dederow stopped a gypsy band of 32 persons and that these persons were executed by the SK-4a. The reason given was the fact that when the wagons were searched German equipment was found and that the band could not give any information as to the origin of this equipment. Is this report correct?

A. This is the first time that I heard of this report. In the frontal area around Kiev and also the rear Army territory, the existence of gypsies would have been an exceptional thing. In these territories there were no gypsies and no vagabonds. We never met them. It is not known to me that a report of this kind was ever issued or received. The gypsy country was very much more to the south. In the report, in my opinion, again there must have been a mix-up of the authorities of the kommandos. I can find no other explanation.

Q. Witness, you will not be able to tall me the order of execution, based on your statement, of course?

A. No, I can make no statements as to this.

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Q. Furthermore, it says in the same document that an advance kommando, a Vorkommando of the SK-4a on the 4th of October, 1941, in B ereslow, with the aid of Ukrainian confidential agents, carried out a Jews-operation. According to this operational report a total of 537 Jews, namely, men, women and adolescents, were apprehended and liquidated. That do you know of these operations as mentioned in the report?

A. I know nothing about the operation itself. The territory at the cast of Kiev was the rear Army territory which came under the EK-5 in which Bereslow is situated. The SK-4a, the advance kommando, was stationed at that time in Charkov or near Charkov, 300 kilometers more to the east. The rest of SK-4a was stationed in Kiev and was not liable for assignment. It was just being restored, and of the men of the actual SK-4a nobody was ever there.

Q. I now refer to Document Book II-C of the Prosecution, Page 62 of the German text. It is Exhibit No. 72, Document NO-2830. In the English Document B ook it is page 20. Here an execution of 1365 people in Lubny is mentioned. Witness, were these executions ordered by you. It is Page 20, 24 of the English document book, first paragraph from the top.

A. These executions were carried out on my orders. A platoon of the SK-4a was never in Lubny. The advance kommando of the SK-4a led by Mueller must have passed Lubny, which is evident in Document 3405 which is in Document Book II-A. It is Exhibit No. 72. On Page 9 of the text it says that this subkommando of the SK-4a took over on the 18th of October, 1941, making use of the file material which was left over by the SK-4a, and it took over the tasks of dealing with current events. As I already ski, a platoon as mentioned in the documents was not at the disposel of the SK-4a and a platoon was not a part of SK-4a, and therefore it cannot have been made use of for a matter of this kind. It must have been a different unit. This is the first time that I heard of an event of this kind.

Q. In the same document it says that on the 8th of October, 1941, special kommando 4a in Jagotin was searching for suspicious elements.

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During this operation 125 Jews had been arrested and had been liquidated. Herr Blobel, does this report agree with the fact?

A. The report concerns the same location and it can, therefore, not have referred to SK-4a. I do not know these happenings.

Q. Witness, I want to refer to the document which you mentioned before, and I want to deal with it in detail. Will you take Document Book II-A and will you take Page 61 of the German text? It is Exhibit No. 42, Document NO-3405. It is Operational Report 156 of the 6th January, 1942. It is on Page 57 of the English document book, your Honor. In this document shooting of 34 agents and Communists and 73 Jews of the SK-4a also in Lubny is reported. What do you know about this operation, and what did you ever learn about it?

A. This event concrns the subkommando 4a which in the middle of October, 1941, in Kiev, staffed by one leader and 15 Underleaders and men, was reinstated and subdivided, and marched towards the advance kommando in Charkov. The march passed Lubny at the direction to the sector Charkov. According to the document this subkommando took over the files in Lubny which were left by the preceding kommando. The advance kommando must have marched on by the time of reporting. The files could only be left with the local kommandantura or with an Army unit, and lists concerning information and investigation results must have been at their disposal which were then followed up by the kommando. I remember the leader of this kommando who took part in the reinstatements of the group and was detailed to the group SK-4a, he was quite a now man. I remember, as I say, that later when he arrived in Charkov in December, 1941, he described the state of the kommando and said that the kommando, including members of the Wehrmacht and Army, went to the kommandantura in Lubny and other villages in the vicinity, and that they searched for partisans and raided partisan hiding places, and thus they also found lots of food. The kommando itself found and took with them pickled beef, large supplies of pickled beef, and they found members of armed bands.

The kommando from the beginning of their being stationed in Lubny until the march to the cast, to Charkov, dealt mainly with these matters. After they arrived in Charkov I heard for the first time of this activity, of this subkommando which was floating about in the territory.

THE PRESIDENT: I didn't quite get the connection of the pickled beef in this narrative. Just what was that? Will you repeat it, please?

THE WITNESS: The kommando leader in December, 1941--

THE PRESIDENT: Which kommando leader was this now?

THE WITNESS: The kommando leader of the newly install subkommando which arrived in the vicinity around Lubny on the 18th of October, 1942.

THE PRESIDENT: Which number was it?

THE WITNESS: That was the only subkommando apart from the advance kommando.

THE PRESIDENT: Of the SK-4a?

THE WITNESS: Of the SK-4a, that was part of SK-4a.

THE PRESIDENT: All right.

THE WITNESS: These people arrived in Charkov in December, the advance kommando, the subkommando, and the remainder had to eat in this location and these men carried with them this preserved beef which they had taken with them.

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THE WITNESS: It was pickled, beef, as the Russians do prepare it. We distributed it later on to the population of Charkow.

THE PRESIDENT: You distributed this pickled beef to the population?

THE WITNESS: Later on, when the kommandos left, this pickled beef was distributed to the population.

THE PRESIDENT: How much did you have that you could distribute among the population?

THE WITNESS: The barrels.

THE PRESIDENT: Two barrels?

THE WITNESS: Two big beer barrels.

THE PRESIDENT: How we have beer in it? And how much population was there?

THE WITNESS: We did not give it to all the population of Charkow, but to the nearest inhabitants.

THE PRESIDENT: About how many people received a piece of this pickled beef in the beer barrel?

THE WITNESS: By special order of the commander, the population of Charkow were supported in food supplies, because there were emergency circumstances, as far as food goes in Charkow during this particularly severe winter; and kitchens were installed for the people who were in the vicinity and they received a meal from the Wehrmacht rations and for this purpose this beef was used and it was cooked-

THE PRESIDENT: Oh, it was cooked? I thought you said it was pickled.

THE WITNESS: Yes, they make a special kind of meal from this, mixed with beans and the Ukrainians eat it in this manner.

THE PRESIDENT: You said that you distributed the two beer barrels of pickled beef among the population. I want to know how many people were beneficiaries of this beef distribution.

THE WITNESS: Well, there must have been three to four hundredweight of beef, and every day they had large boilers of 150 liters and meat of this kind was added to the beans and men, women, and children, whoever was there, came and got this food in tin plates, they got some soup too and they were most satisfied with this food, because conditions were very bad.

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THE PRESIDENT: How many people received the pickled beef from these beer barrels?

THE WITNESS: AT least 100 to 150 people received this food.

THE PRESIDENT: All right. We may proceed with the march.

Q. (By Dr. Heim) Witness, did you finish your answer just then?

A. I want to give details about the condition of the sub-Kommando in December 1941, when they returned from this territory, this was 1 1/2 months later than it says in the document.

Q. Witness, in the same document, it is NO-3405-in Document book II-B of the prosecution, page 65 of the English, page 69 of the German text, there is a section which is headed, "Activities of Sub-Kommando SK-4a in poltawa" -- and quote. In this report it says that in Polotawa on the 23rd of November. 1941, a Jew's extensive operation was carried out during which 1,538 Jews were shot. Did the SK-4a carry out such an action in Poltawa?

A. My Kommando Sk 4a did not carry such an action in Poltawa, because it had neither a sub-kommando nor even a platoon which was ever stationed in poltawa. If this action is correct and corresponding to the facts, the Special Kommando 4b, which was actually stationed in Poltawa would have been responsible, or the EK5, which was detailed to this location. I don't know about the events as mentioned in the report.

Q. I shall put it to you, witness, that according to this document the total figure of people shot by the Sk 4a until 30 November 1941 is of 59,018 people. Will you please comment on this?

A. The total figure is in contradiction with logic. It is an addition to reported figures which contain different units and different territories. It is also an addition which was carried out by the Berlin Agency.

The units were mixed up and some figures have been doubled. The town, Boguslaw, Kochewatgo, Tscherepin, Shwaliwka, Justungrad, Wolodarka, Uman, Tyschy, Borispol, Koselez, are garrisons of the EK-5, but outside the sector of the activities of the unit. The locations, Kiew, Boguslaw, Tscherepin, Gornos taipol, Dymer, Poltawa, Ghermkow, Tschernigow, Charkow, Ostow, Oster, -- Ostow and Oster both-Lubni, Gornostaipol, Dymer and Poltawa are all within the sector of the rear army territory east of Kiev, which came under EK-5, under the leadership of Obersturmfuehrer Meyer. SK 4a, the actual SK 4a including this sub-kommando in the combat area carried out 107 shootings in Lubny farther east.

Q. Witness, before I now come to a new sector, I want to refer to another document. This document is contained in Document Book ii-C of the prosecution, on page 37 of the German text. It bears the exhibit number 74, Document No. 2827.

THE PRESIDENT: I didn't catch the document book number.

DR. HEIM: II-C.

Q. II-C, Exhibit 74, Document 2827. It is in the English Document Book on page 33. On page 34 of the English Document Book in the second paragraph from the top, it is on page 39 in the German document book, it says, I quote, it is page 34, second paragraph in the English. "on 7 November 1941, a sub-kommando of the SK 4a shot 385 Jews in Gornostaipol, according to martial law. These Jews had, for the greater part, been driven together into Gornostaipol from the surrounding villages. On its way back to Kiev, the sane Kommando shot 120 Jews in Dymer, and 30 Jews in Oster on the same day. This action Was carried out in cooperation with the Wehrmacht offices without any mishap." That is the end of my quotation. Witness, does this agree with the facts?

A. The actual SK 4a was never active in these villages. Gornostaipol and Oster were within the field of activities of EK 5; in this way, this report is not in agreement with the facts.

Dr. HEIM: Your Honor, I now take the liberty of offering Document Blobel No. 3 as Exhibit 3. It is the third photostatic chart. It is in the first document book, Blobel, which is headed with, "Breakdown for Subordination System of the SK 4a as from the middle of OctoberNovember, 1941."

Q. Witness, does this chart agree with the actual subordination system of the SK 4a in September, October, 194l, when the remainder of this Kommando was stationed in Kiev?

A. Yes, it is the exact reproduction of the subordination system in October and November, 1941.

A. Will you please give us a detailed description of this plan?

A. This chart contains three sectors. The rear army territory at the bottom; in the center, there is the combat area; the frontal area is at the top. In the rear army territory and operational territory, which at that time was a civilian administered territory, the Einsatzgruppe was stationed, first under Dr. Rasche and then under Dr. Thomas. The remainder of the kommando 4a, under my own leadership, was subordinated to Group C and was actually part of the frontal sector, but through changes in the personnel had remained in the garrison of the Group. The channel of command was: AUK 6 G-2 to the unit and from there to the sub-kommando. Orders of Group C to the sub-kommandos in the frontal sector were never given, because the commander of the ACK 6 had the sole power of command for the whole combat area. The channel of reporting of the sub-commands Was: G-2 of the Division to G-2 of the ACK 6 and from there to Group C and from there to the remainder of 4a, each time via the liaison officer with ACK 6. For the rear army territory there was an exchange of orders between ACK 6 and Group C. With the later curtailment of the rear army territory, which was conditioned by the Dnjepr River, this same channel of command remained Group C to ACK 6.

Kiev? frozen and the bridge had shifted. It was a very difficult march.

Q Whi was the destination of the SK 4-A?

A Charkow via Poltawa, there to report to the _OK 5 and then the march to the destination. There the field marshal had to be reported to. There was a personal discussion and then the assignment was

Q When did you reach your destination?

Q What happened then to the SK 4-A? the territory around Charkow and also the leaders eventually convened in Charkow.

Q Were there ports of the SK 4-a at this time? always been in this territory , was already in Charkow at this time.

Q Which was the sub-kommando that reached Charkow later? even farther to the Most and this Kommando reached its destination at a later date.

Q Was the whole kommando collected at Charkow now?

Q Did one kommando branch off from Kommando SK 4-a? SK 4-a was detailed.

Q Where was this supply kommando stationed?

Q What was the strength of this kommando?

Q What was the condition of the SK 4-a when it arrived in Charkow?

winter was completely exhausted, dirty, lazy and in a very poor condition. Part of the vehicles - as a consequence of the icy paths there were no actual roads at that time - were in a terrible state and needed repair.

Q For what tasks was SK 4-a detailed in Charkow? tion? of which it was assigned.

Q Was it increased?

assignment at Poltawa; defense measures had to be taken, because there

DR. HEIM: Your Honor, the last document from the Document Book Blobel No. 1, I take the liberty of offering this Blobel Document No. 4 as Exhibit No. 4. It is a photostatic chart headed, "Purely Military Assignment of the Special Kommando 4-a in the Sector Charkow in December 1941, January 1942." assignment of the SK 4-a, concerning the subordination system? 1942.

Q Herr Blobel, will you give some details to the Tribunal? and the distribution of individual units. In the lower part, the territory has been put in. In the rear army territory, the combat area has been put in. At the some time, the Dnjepr river shows the border of the rear combat territory. In the back there is the civilian administered territory, which has been put in at the upper third of the chart.

In the civilian administered territory, the SS and Police Leader was in command of Einsatzgruppe C. In the combat area, AOK 6, with its supreme commander and the subordinated Division C is marked in. In the last mentioned, there was the permanent liaison officer of the SK 4-a. A dotted line shows the channel of command of liaison officer to the supply kommando in the combat area of the SK 4-a. As this dotted line points out, there was a channel which went via the supply kommando 4-a to SK 4-a. Its force was in the frontal area or, at least near the frontal area. The SK 4-a, as is shown in the lower third of the chart was stationed in the defense regions around Charkow, together with other units. From the Division C of the AOK 6, as the full lines show, the orders went immediately to the commander of an army sector who was in charge of a number of defense sectors. The SK with a number of other units became a sector within the general defense sector; the sector commanders were immediately subordinated to it. The line leading from the AOK 6 to the division commander shows the immediate subordination system and frontal divisions were immediately in the front line, in special positions.

DR. HEIM: Your Honor, I think this would be the time to have a recess.

THE PRESIDENT: The Tribunal will be in recess until L;45.

(A recess was taken until 1345 hours.)

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(The Tribunal reconvened at 1345 hours.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed. BY DR. EHIM: Blobel No. 4, which received Exhibit No. 4. This chart shows the military assignment of the SK 4-a in the Charkow area from December 1941 to January 1942. military assignment within the sector Charkow. of AOK 6 was assigned. Shortly after my arrival in Charkow we had negotiations with him and we discussed the situation. All officers of all units in and around Charkow participated in this discussion. the units, and the commanders, were assigned. The SK 4-a was assigned for day and night duty in the Charkow sector. Positions were taken up; engineers blasted the position; it was severe cold; alarm stages were ordered from one to three; territorial and road security was established; the Russians attacked in the southeast at various points. These break-throughs generally ended at the hedgehog position, generally behind the frontal position. About ten kilometers before advance raids against Charkow. Q What was your state of health at that time?

A Bad. I still suffered from Wolhynian fever because of exertions and strains.

THE PRESIDENT: I have heard reference to this fever now very many times; I have not yet got the name of it. Will the interpreter please spell it for me?

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INTERPRETER: W-o-l-h-y-n-i-a-n.

THE PRESIDENT: Never heard about that particular type of fever, so it was quite a mystery to me as to what the word was.

DR. HEIM: I myself, although I have been a soldier in Russia, have not experienced it. But as far as I know, it is a disease, a fever, the cause of which apparently has not been discovered until this very day. Unfortunately, I am not able to give you a further statement about it as I have not experienced it myself. But perhaps the witness can give you a detailed statement.

THE PRESIDENT: No, I am not interested as a doctor to ascertain the symptoms of the disease. I merely wanted to know what the word was.

DR. HEIM: Your Honor, Wolhynian is a county in Russia, a district. It has many swamps - and as this fever has been influenced by the swamps and occurs in many cases in this district, it got this name Wolhynian fever.

THE PRESIDENT: Very well. Thank you very much. BY DR. HEIM:

Q Witness, you said that there were many cases of Wolhynian fever; what was the cause of this? against it; but the men also were taken with this fever, severely, or perhaps sometimes less severely. Suddenly one had high fever and just lay around for days - it was an intestinal disease.

Q How long did the disease affect you?

A From the end of December 1941 until March 1942. In February my state of health improved. Then I had a severe relapse in March 1942.

Q When were you detailed back to Berlin?

Q When did your successor take over SK 4-a?

THE PRESIDENT: Well, in February he was in Berlin, and I understood him to say he got the fever again in February.

DR. HEIM: Your Honor, the witness said he was recalled to Berlin -

or the order to return to Berlin reached him at the end of January 1942. He said before that in February 1942 his state of health improved. He did not yet say when he was relieved in the East.

THE PRESIDENT: I understood himto say that in February 1942 he had a relapse of the Wolhynian fever. But since he was in Berlin at that time, if he had any fever at all, it would have to have been the Berlin fever.

DR. HEIM: Your Honor, I did not -- (Interrruption)

THE PRESIDENT: Don't worry about it, Dr. Heim, it isn't that important.

DR. HEIM: How long were you in the East?

Q Before March 1942 you did not go to Berlin?

Q When did your successor take over the Special Commando SK 4-a? beginning of January, new officers of Gruppe C had been detailed to take over the administration of the current administrative matters.

Q Who was the successor as the leader of SK 4-a?

A My successor was Dr. Weinmann.

DR. HEIM: Your Honor, before I conclude with the activity of the defendant as the leader of SK 4-a, I want to cone back to a number of documents of the Prosecution. BY DR. HEIM:

Q A preliminary question. Witness, did you yourself ever order executions to be carried out?

A I never ordered executions, and never carried out executions. In each case I received orders for the execution from my superiors. In cases in which I myself received such orders there was documentary evidence on the basis of which the responsible bearer of the order had decided upon these measures, and which, in my opinion, were justified according to international law.

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Thus parts of the Commando under the Army, or under the Higher SS and Police leader who carried out these measures -- these units had been ordered by the commander of the AOK 6 or by the Higher SS and Police Leader to carry out these measures.

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on page 27 of the German text. It is exhibit No. 132, document No. N)-4438. In the English document book it is on page 20. It is an affidavit by the co-defendant Radetzky of the 25th of July 1947. Under figure No. 5 which is at the end of page 2 of the original of the affidavit, the defendant Radetzky says, I quote: "I also know that Stadartenfuehrer Blobel ordered executions." End of my quotation.

Witness does this affidavit not contradict your own statements? executions, but in each case 0 have received express orders to carry out executions from superior authority. My own explanation of Radetzky's statements is that he wanted thus to express that I had these executions carried out by members of the SK 4-a. As it becomes evident from the lines just before, in this affidavit, Radetzky hardly knew anything about the executive measures in regard to executions of the SK 4-a, so that he was not in a position to know on whose order these executions were based. 4-a carried out executions which had been ordered by AOK 6 or other authorities. Did you not have any moral scruples about carrying out executions -- that is, did you regard the carrying out of these executions as in agreement with international law and in agreement with humanitarian principles? indulging in espionage and sabotage, and those who were of a detrimental of ect to the German army, were, in my opinion, completely in accordance with the Hague Convention. I believe that the Allies could have acted differently in their advance into Germany if they had been faced with the violations of international law which the German Army faced inthe East. Inhuman treatment of German soldiers, the bestial treatment of such soldiers, and shooting of such soldiers by Russian civilians from ambush, and the unlawful warfare waged by the Russian would fill whole archives.

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The AOK 6 collected these incidents as proof. For this purpose special departments were established, and from the very beginning of the fighting, such cases could be established. As far as I know, the German Wehrmacht suffered about ten to fifteen dead each day -who had been killed on the march through these territories on the march to the front - shot from ambush, in violation of international law.

I myself saw one morning, five members of the German army shot and han gthe corpses. The reports from Department 6 show that five German airmen

THE PRESIDENT: There seems to be a question about the interpre tation.

Just a moment please.

INTERPRETER: Your Honor, it is actually "welding machines." I cannot imagine that that is what the defendant said. "Welding apparatus." Yes, it is a welding machine, your Honor.

(witness continuing.) taken part. In those localities which the German army passed on the advance, atrocities increased. The last incident which I know from the report myself, happened in Charkow. In the winter from 1941 to 1942 an engineer company on the march was attacked by Russian panje cars-which are horse-drawn vehicles loaded with straw, and they were attacked from those cars with machine guns and killed. The following Russian armored cars rolled over the corpses of the members of the German army. BY THE PRESIDENT: Eastern front?

been committed by the Allies. Your only experience with the enemy in this war was with Russia, was it not?

A What I am stating concerns only Russia. Yes. "Allies" -- at least, that is theway we got it.

DR. HEIM: Your Honor, may I say something here? The witness said, "I believe that the Allies during their march in Germany would not have acted in a much different manner if the same violations of international law had happened to them which happened to the Germans in their march to the East." Your Honor, I have laready noticed that through the translation the subjunctive does not come through. "Had" can mean in the German "Haette" or "Hatte". This, of course, gives the Tribunal a distorted picture.

THE PRESIDENT: He was only stating a supposition, then?

DR. HEIM: Yes.

THE PRESIDENT: Very well.

A (By the witness - continuing) As for this last incident in Charkow, it could be established that many partisan groups collaborated with the Russian army, and that was made possible because the frontal position was arranged in hedge-hog positions with large distances in between. The German dead are many - at least, those who were killed by invisible, armed civilians from ambush. One had to be very careful about the harmless-looking groups of fields workers who, in reality, were armed partisans bands, and only those who fought the Russians can really testify how ruthlessly and how brutally the Russians fought in this war. I wish, your Honor, you could seen these mutilated corpses and the brutality murdered German soldiers in Russia. for instance, where executions took place at the hands of Ukrainians and such people.

The supporters of the propagandists were the danger of the rear of the German army, and measures taken against these, and reprisals against such people are justifiable according to international law, or, at least, I regarded it as justifiable according to international law.

hostages I did not and do not regard justifiable. With such an order I do not agree and I do not agree with it today. the German text. It is Exhibit No. 31, Document No. 3825, and in the English document book it is on page 129. It is the affidavit of the Defendant Blobel of the 6th of June 1947. I refer to No. 7 in this affidavit, that is in the German document book on page 162, and in the English page 131. Your Honor, it is on 131 of the English document book. It says here, beginning with No. 7 end I quote:

"The Sonderkommando 4-a has killed women and children too." That is the end of my quotation. Witness, this sentence is in the affidavit which you gave to the Prosecution. Is this statement correct?

children for espionage and sabotage and a military court martial passed judgment on them. women and children?

A Not under these circumstances. Every spy and saboteur knew what he had to expect when he was arrested.

Q Why did you have no moral scruples? losses and damage on the German side, if the individual was sentenced to death by the German Wehrmacht. I must, however, call those executions as morally indefensible if special units had to take a part in the shooting of women and children, as for instance in Kiev where I cannot say whether women and children were actually shot. I myself have never seen an execution of women and children and I never experienced such an execution. 1947. As Mr. Wartenberg confirmed when he was on the witness stand, this affidavit is an escerpt from your interrogation by the Prosecutor.

tion. Witness, were you ever during this interrogation, before you made out this affidavit, warned by the Prosecution that you had the right to refuse to give testimony about any facts which might incriminate you?

Q Did you make out this affidavit yourself, or did you dictate it? an affidavit was there submitted to me. in this affidavit? changes, whereupon a new affidavit was made out. On the afternoon of the same day I was called in again to sign the new affidavit and after I had read through this new affidavit I told Mr. Wartenberg that there was an erroneous and distorted picture in this new affidavit and that some additional remarks concerning the individual points would have to be inserted. Herr Wartenberg told me then that the text must not be changed, and that we would have many discussions about it in the future and any desired additions could be made then.

Q Were you called in again for an interrogation? to explain in how far the present affidavit does not correspond to the contents of your interrogations?

the shooting of women and children. I have already dealt with it during my direct examination and I do not have to explain my attitude now.

Q Witness, under No. 5 of your affidavit it says: "It is page 161 in German, it is 130 of the English, and I quote:

" According to a superficial estimate the correctness of which I cannot guarantee - I presume that the number of executions in which the Sonderkommando 4-a took a part lies somewhere between 10,000 and 15,000."

correct in this form, or can you give us a few further explanations as to these figures? a maximum number of the executed people in which the SK 4-a together with other units participated, insofar as a commando or even one man of the SK 4-a was concerned, This number, in my opinion, includes all operations which were ordered by superior authorities and which were made known to me at the time. I stick to this estimate and this limitation of this particular figure, even after having been made acquainted with the documents in this trial. Apart from the retaliatory measures which had been ordered and the measures carried out by a order of the Higher SS and police leaders, or of the Supreme Commander of AOK 6, SK 4-a only then carried out other executions if actually cases were established and based on investigations in the files of the office of the Supreme Commander of AOK 6 or his deputy, as long as I was leader of the SK 4-a. During this whole time of my command I never had to make an independent decision to carry out an operation. the English Document Book I of the Prosecution, and it says, and I quote:

"Q I witnessed several mass executions and in two cases I was ordered to direct the executions." That is the end of my quotation. Witness, do you have to make any explanatory remarks as to this? the Einsatz Commandos in Sokal in the neighborhood of the headquarters of the AOK 6, which was ordered by Field Marshal Von Reichenau, executions of perpetrators which had carried out tortures and brutal measures against German soldiers and I had to report the carrying out of these two executions to the Field Marshal.

6 of the affidavit, and I quote:

"In August or September, 1941, an execution took place near Korosten. 700 to 1,000 men were shot and Dr. Rasch was present at the execution." End of quotation. The impression could be created that this mass execution was carried out by you or that,is, by the SK 4-a, if the preceding and subsequent sentences are scrutinized; will you comment on the wording of this particular sentence?

THE PRESIDENT: Dr. Heim, don't you think it will be better merely to call his attention to the statement and then let him give his comment? You proceded your question by indicating what the impression was. Now that may or may not be the impression of any one who reads it neutrally. Merely direct his attention to the sentence or paragraph which you think is subject to an interpretation in two ways and let him comment on it.

DR. HEIM: Thank you, Your Honor, for calling my attention to it. BY DR. HEIM:

Q Witness, you have heard the quotations from the affidavit. Please comment on the statement of that dry? Leader in August of 1941 near Korosten. The Higher SS and Police Leader had detailed police units as well as Ukrainian militia for this operation, and I found out about this operation because I received an order from Group "C" to look around among the prisoners and pick out members of the Ukrainian bandera and to bring them to Shitomir. At this time there were three interrogators and also a driver of SK 4-a who had been sent to Korosten to the community building in order to carry out interrogations. These officers had informed the G-2 of AOK via the Eastern Commandatura that the Higher SS and Police Leader had ordered the shooting of the arrested people, and as I have already explained AOK 6 had a special department for Ukrainian matters.

These people were in contact with this department and it was immediately ordered to pick these people out. The cause for this special operation by the Higher SS and police leader was the blowing up of the water tower and the railroad facilities in Korosten itself.

Q Will you further comment on your own connection with this, witness? fuehrer Mueller who was the Ukrainian interpreter in order to seek out 10 - 12 members of the Ukrainian bandera and to carry on long interrogations of these prisoners. These men were members of the bandera group who were active only in making propaganda for their own Ukrainian Nationalist idea. I picked out these people and took then with me to Shitomir and they were taken to Lemberg the next day. out in your own presence in Korosten?

A No, during my own presence no execution was carried out. When I had these people picked out in Korosten I found out that in a large operation in the whole area near Korosten, 700 to 100 persons had been arrested. I did not see the arrested people. The number of prisoners in Korosten from which I picked out those ten to twelve people, amounted to about sixty to seventy people.

Q In your affidavit you say that Dr. Rasch was present. How do you know that if you yourself were not present at the execution?

A I met Dr. Rasch at my departure from Korosten, having received a report by the AOK he had gone there to get his own information. Execution orders Rasch did not give in Korosten, as officers of Jeckeln, the Higher SS and Police Leader, were in charge of all of these operations there.

Q Witness, in your affidavit it says, under No. 6, page 130 of the English document book, and I quote: each". That is the end of my quotation. Does this statement refer to the statement of the executions in Korosten.

Please comment on the context and connection between these statements which you made to Mr. Wartenberg. an answer to the question as to the position of SK 4-a. At the time of the interrogation I said that the execution commandos of the SK 4-a were sub-commandos of the SK 4-a and at that time there were two sub-commandos which had been assigned to the front area, which contained 30 men of the protective police and approximately 30 to 35 People, state police, security police and men of the SD and, of course, drivers and interpreters. Each commando had half of the last mentioned category. In my interrogation I made this statement in answer to the question as to what was the strength of these execution commandos. But to put this sentence into the actual affidavit under No. 6 is illogical.

Q Furthermore, under No. 6 of your affidavit you describe explicitly the executions and that the President considered you as an expert in executions. Have you any comments or explanations or additions to make to that? answering individual questions about the actual carrying out of an execution, for instance. These statements are generally the description of an execution itself as they were carried out in the AOK under my leadership, and I think they also explain the matters regarding interrogations and sentences and examinations. The actual way of reproducing my statements were in a sort of a condensed form, as it is in paragraph 6 of the affidavit, and, of course, gives a distorted picture to the effect that the SK 4-a with the police and with the Ukrainian militia subordinated to it, actually carried out executions in Korosten and this is not the case. page 131 of the English document book. Have you any further comments regarding figure 8 of your affidavit, or have you anything to say in addition to it?

the following owrds are missing: "By order of the Higher SS and Police Leader took part in an operation."

Q This paragraph 8 of your affidavit deals with Kiev. In your testimony so far you have already commented on it, so that it is not necessary to repeat this subject. have you anything to say in addition to it, especially referring to your own person or your successor or your deputy, when you yourself were absent? Meyer who was in charge of SK 4-a when I was not present myself. I found this out later and I have already mentioned this during my testimony. come to Book 3-B of the Prosecution. It is on page 24 of the German text, it is Exhibit 119, it is Document No. 3842. BY THE PRESIDENT: Witness, you say Mr. Wartenberg did not indicate to you that you were not compelled to make any statement which might be interpreted as being adverse to your own interests?

Q Yes, that is what you said. Now had he said that, would you have withheld some of the statements which do appear in your affidavit? as I have already said.

Q Just a moment, please. You have gone over this affidavit paragraph by paragraph and almost sentence by sentence and we have understood your explanations so don't let us go into that. The question I am asking you is entirely separate and apart from what you have already told us. My question is simply this: Mr. Wartenberg failed to tell you that you were not required to make any statement which might be adverse to your interest? 1615

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THE PRESIDENT: Yes. Now my question is, if he had told you that would you have withheld some of the statements which you did make?

A No, I would not have withheld anything, your Honor. I said that I have nothing to withhold.

THE PRESIDENT: So the fact that he did not tell you that in no way prejudiced your case, because you would have spoken freely anyway, is that correct? this situation was only mentioned briefly in one point in the affidavit, and I had told him, Herr Wartenberg, this gives an erroneous and distorted picture.

THE PRESIDENT: I am not addressing myself as to that point of the affidavit at all. You have given us un some detail your version of what the interrogation really brought out, and you quarrel with some of the statements made here in the affidavit, and we understand that -

THE PRESIDENT: I will repeat it. Mr. Wartenberg didn't say to you "You are not required to make any statement which may be against your own interest."?

A No, he didn't say that.

THE PRESIDENT: Very well. Now let us suppose he had said to you, "Herr Blobel, you are not required to make any statement which may be against your own interest." Let us now suppose he did say that. Would you have told your story to him in any way different from the way in which you did tell it to him?

THE PRESIDENT: Very well, that is all.

THE PRESIDENT: Yes. I just wanted that answer, and you gave it to me very clearly.

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BY DR. HEIM: It is Exhibit No. 119, Document No. NO-3842. I am not in a position unfortunately as to give you the English page. It is the affidavit of Eugen Steimle on 14 December 1945. On page of the German copy Steimle describes you as a bloodhound, brutal, and without any inhibition, and not very well liked. That is the end of the quotation. I want to ask you, witness, did you as leader of SK-4-A over have any dealing with the co-defendant Steimle? past activity as leader of SK-4-A? seen him, and I didn't know him.

DR. HEIM: Your Honor, I shall now proceed in questioning the witness concerning the further events after his return and his further activities. BY DR. HEIM:

Q Witness, you were speaking of your recall to Berlin?

Q You mentioned your return to Berlin, didn't you?

Q For what reason were you detailed to Berlin?

Q When did you arrive in Berlin?

Q To whom did you report and what instructions were you given there? me that Heydrich would decide as to a further appointment, and I would have to wait for the return of Heydrich.

Q Where did you go after you had reported to Streckenbach?

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immediately, I went to see my family in Solingen.

Q Give us the details of your visit to Heydrich? Heydrich personally, in the middle of May 1942 I reported to Heydrich in his office. Heydrich sat at his desk. He looked at me, sitting in his chair, "Well, you have developed a "tummy" - a stomach. You are a soft person. You can only to be used as a china manufacturer," and this statement of his followed me through the years. "You will only be used in a porcelain or china factory, but I will put your nose very much deeper into it. You will report to Obergruppenfuehrer Mueller." I reported to Obergruppenfuehrer Mueller and he was very short. I was asked about my billet, then I was ordered to go to my accomodations in Berlin Wansee, and to wait for further instructions from Mueller. Department-IV, Obergruppenfuehrer Mueller? was assigned by Obergruppenfuehrer Mueller, who was chief of Office-IV, to deliver the order about burning of the places of execution to the Commanders of the Security Police in the east. this order?

A I had already been given the instruction to see Dr. Thomas, who was in charge of Security Police in Ukraine, in order to pass on this order to him. I had to wait further instructions, and, therefore, I could not leave immediately. In August '42 Obergruppenfuehrer Mueller ordered me to go to Litzmannstadt, and to report to the State Police Office there. In the vicinity of Litzmannstadt there were old tombs from the time of the Poles, where corpses had been cremated. Various kinds of cremations were carried out there. In September 1942 I had to pass on the order to the commander of the Security Police in the Ukraine. Dr. Thomas, Chief of Group-C, and at this time the commander of Security Police in Ukraine refused to carry this out pending a conference with Reichfuehrer Himmler.

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He thought that this was a very foolish order, and this I reported to Mueller after my return. It was in May 1943 that I had to see Thomas again in order to report to him, that the Reichfuehrer-SS, in disregard of his objection, demanded a burning of all these places on the whole Eastern Front. Dr. Thomas in June, July and August 1942 began with this work. According to his express wish, I had to prepare special fuels in Berlin for this purpose fuel quotas which were to be supplied from the fuel plants in the Ukraine. That demanded constant travel from Berlin to Ukraine. In September 1943 the front shifted within the Ukraine sector. Until that point only a few places had been scorched. With the front going back, the work was discontinued. In September 1943 I had to pass on the same order to the commander of the Security Police in Eastland, who was Brigadierfuehrer Piffraner. Piffaner was in Berlin for a conference and had already received directives from Mueller in Berlin. The Higher SS and Police Leader Jockeln, who was Piffraner's superior, in his own sector begun with the scorching in October but he had discontinued this activity during the winter, and, only in June and July 1944 did he begin again. Here also the work was discontinued when the front shifted.

Q In what territories were these schorchings carried out? the eastland. ditions caused that?

Q What was your further assignment? RSHA, the Reich Security Main Office, and Gruppenfuehrer Roesner, in Leibach, and I was to be assigned in the partisan warfare. he had refused to deal with me, giving the reason that he had been assigned the mission of fighting partisans from the Reichfuehrer-SS, and he himself would make his own arrangements. I was supposed to go back to Berlin.

Q Did you actually work as liaison officer at any time?

Q Where did you spend the following months?

A The following months I spent in Marburg, on the Drau River. In January 1945 I developed a liver and gallbladder ailment there, and until 15 April 1945 I was in the hospital of Dr. Greiner.

Q Did you ever receive a further assignment? gave me a teletype on 13 March -- rather, the 13th April 1945, a teletype from the Reich Security Main Office in Berlin to the effect that on 11 April that was to be two days before - was to be in Berlin and report to Office-I. Therefore, the deadline had already passed.

Q Where were you during the last months of the war?

A From Marburg on the Drau I went to Salzburg. During the end of April 1945 Kaltenbrunner arrived and I reported to him. He presented me to his staff, he said: "Please, gentlemen, dispose over him," and without awaiting any further orders or assignment, I went in a volkswagen to the south, and joined the troops there, and crossed the High Tower Mountains.

Q When and under what conditions did you become a prisoner? went back the same way, because the Russians were pressing towards the north. My car burned down and to save myself I was dressed in my undershirt and a pair of trousers - I went to Rastatt where I was arrested by the Americans on 8 May.

Q To what camps were you sent?

A The first camp was in Rastatt; then Wagrheim, and after that a camp in a forest that was called Edelfing - and the Eidling Reid (Lake); then the Field Hospital 504. From Field Hospital 504 I was moved to Hospital 2057. That was in Garmisch. That was in August 1945. you were arrested? times, and thirty-five centimeters of intestines had to be removed. These were the after effects of the Wohlhynian fever. Then I also had trouble with my heart muscle. On 23 May 1947 I arrived in Nurnberg.

DR. HEIM: I have finished with the direct examination of the witness Blobel in his own defense.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Defense counsel may now cross-examine Blobel if any defense counsel desires to cross-examine.

DR. RATZ: Dr. Ratz for Radetsky. BY DR. RATZ: affidavit contained in Document Book I, page 159 of the German text, page 129 of English. In the last paragraph in your affidavit you have said verbatim the following, I quote:

"9. Since, during the period from June 1941 until January 1942, I was several times seriously ill, and confined to various hospitals, I cannot be charged with responsibility for all the executions of the Sonderkommando 4-A. During the period of my absence the kommando was taken over by Dr. Rasch, Haupsturmfuehrer Waldemar von Radetsky, and Hauptsturmfuehrer Dr. Beyer; under their direction a number of mass executions took place too." that it was not Radetsky but Hauptsturmfuehrer Mayer that commanded Special Kommando 4-A in your absence. I now ask you to explain in detail how this No. 9 in your affidavit came to be made out.

A Paragraph No. 9 of the affidavit of on the 6th of June, 1947, came to be made out in the following manner: Mr. Wartenberg asked me who commanded the kommando during my absence, and he named a few officers who belonged to the Kommando. I certainly did not know for the simple reason because of illness I was absent and when I left I did not order that this man or the other man assume command, for I was unconscious and had high fever. Only later when I returned to the kommando in Zhitomir, I heard that Hauptsturmfuehrer Mayer had been in charge of the kommando. He was the permanent deputy of Group C with the Higher SS and Police Leader Jeckeln, and he was also present with him in Lutsk. At that time the SS and Police Leader Jeckeln ordered him to assume command of the Kommando. That is what I learned when I returned to Zhitomir; during the entire period of my absence Mayer actually did lead the kommando.

During my interrogation by Mr. Wertenberg, I did not remember this. I had been in the hospital in Garmisch for two years and came to prison right from my hospital bed, and on the second day after my arrival I was questioned about all these matters. Von Radetzky I always remembered as being the highest ranking officer, so that Mr. Wartenberg and I both assumed that von Radetzky must have taken over the command during my absence. But I had forgotten at that time that Radetzky was an interpreter and on a war emergency status. It would have been absolutely senseless to use an officer on a war emergency status and have him do police duties such as Dr.Funk did.

Dr. Rasch was the commander of Einsatzgruppe C. He doubtless led Special Kommando 4-A during my absence too, but he certainly must have given his consent to Jeckeln that Obersturmbannfuehrer Mayer should assume command. A Dr. Beyer at that time, during my absence was detailed to the SK from the Group in order to conduct an investigation about a dispute between myself and an Army officer. the mentioning of Radetzky in my affidavit, as my deputy,is not correct. It is to be traced back to an error on my part. This mistake can be explained by the face that after all this time had passed, and because of my weakened condition, I could not remember all the details. Mr. Wartenberg and I sort of discussed who could this have been, who could have been my deputy, and as a result of this discussion in this manner this paragraph 9 mentioned the name of Radetzky.

Q Another question. In another document it is said that the Defendant von Radetzky was commanding officer of the Advance Kommando Lutsk. please comment on this.

MR. HORLICK-HOCHWALD: If Dr. Ratz intends to ask the witness questions about a document, it seems to be only fair if he shows the witness the document and informs the Tribunal and the Prosecution to which document he refers.

THE PRESIDENT: That is proper.

DR. RATZ: Your Honors, this is an affidavit in Document Book III-C, page 47 of the German book. This is Document NO-4765, Exhibit 137.

MR. HOCHWALD: Page 30 of the English Document Book, your Honor. BY DR. RATZ: officer of Advance Kommando Lutsk?

A From Sokal an advance kommando of SK-4-A went to Lutsk. This was done as ordered by the Commander-in-Chief of AOK 6 northerly route, a middle route and southerly route. The commanding officer of this subkommando was this Dr. Funk. He was the senior ranking officer. He had to report to the division commander there and to receive his orders about security measures. von Radetzky was then sent along with the safe blasting unit. They dealt with cutting and welding instruments, finger-printing material etc., and it was his job to capture enemy documents. In Lutsk they found maps and charts of a Russian General Staff which were very important for the Army command. A courier called for this material, and as far as I remember it was Haeffner who was then liaison officer with Army Command 6. Radetzky was, therefore, free and independent of Dr. Funk with his six men and drivers. He had a special mission and was not tied down to any one locality, and I never heard that Redetzky participated in an execution in Lutsk, as I can say with my honest conviction he never participated in any execution.

Q Another question: Why shouldn't Radetzky be in command of the other men of Special Kommando 4-a? had been distributed there as per orders, I took Radetzky aside and I told him that as a wearer of the uniform and as a Hauptsturmfuehrer, he could not act as the commanding officer of the other leaders since, first of all, the others had previous police training and he was only assigned to the kommando as an interpreter on a war emergency status. The officers who had been trained in police measures, who had been criminal commissars by vocation and who were leaders of the Executive Service with Special Kommando 4-a were given the command of the sub-kommandos in the nature of a training course, whereas Radetzky and Mueller were interpreters and were too busy themweilves with interpreting jobs. Radetzky knew the Russian language and was competent for the Russian reports and Mueller knew the Ukrainian country since many years, especially as a business man, and was competent to deal with Ukrainian documents. the Army command 6? with Army command 6, which continued to be mutually exchanged in order to exchange reports. With Army Command 6 there was a Department of Economics and in this department, there was much more material to be found than in this small special kommando, and Radetzky evaluated this material in his reports. Later on, around September 1941, even laterit must have been later -- Radetzky was appointed by the group as permanent liaison officer to the Army command 6. As liaison officer, he operate between Army command 6 and Einsatzgruppe C, but he was listed in the personnel file under SK 4a. At that time he was active for SK 4-a and he lead the supply unit; as a liaison officer,his main job was to regulate the communications between Army command 6,Group C and the Army Group, but in detail I don't know about his activity.

Q Witness, do you know anything about Radetzky's further activity as liaison officer to the Army Command 6 when Radetzky was detailed as liaison officer to Army Command 6? the 26th of September, 1941. Until that time Carlton was liaison officer, because Army Command 6 was up in the north and he was close to it with his sub-kommando. When the leaders of the Executive Service were relieved, Radetzky was ordered to Army Command 6, for there was a great lack of officers and SK 4-a no longer had any officers and Radetzky after these leaders left, was ordered to report to the Army Command 6 by car, but the car broke down and he was brought into Kiev with a Horch car. I was in the sick room and the Chief of Staff Hoffmann visited me and asked me for a report about the conditions in Kiev and, since the Higher SS and Police leaders had ordered the action, we could not report about the total situation. One might merely have mentioned that the SK 4-a had been participating with 15 men. Therefore, I rejected Hoffmann's demand. I told him this would distort the picture, but, as I already said, I already had reports, but still he would not let well enough alone. However, Hoffmann did not receive any reports from me that day, but the possibility exists that subsequently on the next day Hoffmann did ask again and then dictated the report in his orderly room and might have had it signed. It was around this time that Radetzky broke down in his Horch car on his trip to the Army Command 6 and was then brought back to Kiev. perform? Radetzky always stayed with the Army Command. I saw him again when in the beginning of December, or on the 27th or 28th of November, we left Kiev, that is, around the turn of the month, we marched through Poltawa and I had to report to the Field Marshal in order to get an order to march into the front territory.

The front area could not be entered without having definite orders to that effect on the marching papers and one could not leave the front area either. At that time Radetzky told me about a furlough, but this did not depend on me, but it had to be granted by the Einsatzgruppe because the latter needed a new liaison officer to Army Command 6 and, as far as I recall, in the middle, or, in the last third of December, 1941, he left on furlough; but I can't remember that I ever saw him again. In this connection, I can emphasize once more that Radetzky never received any orders from me to conduct executions or to participate in such. What happened during my absence I don't know from my own knowledge.

Q Now a final question, Witness, in order to come back to Radetzky's position as going under a war emergency status, what position did Radetzky have in this status? as an interpreter. This could be seen clearly from his pay. Just like other interpreters on a war emergency status, Radetzky drew per diem pay, whereas the criminal kommissars, the criminal offices drew salaries at home. The Special Kommando consisted of officials of the State Police, of the Criminal Police, and of the SD, and further of active people of the sphere of the SS or so-called people ordered to the Waffen SS and furthermore of people on an officer emergency status. He did not have a rank as an official and as a man on an emergency status, he merely had the right to wear the uniform, according to his rank which he held in an SS formation and this does not mean anything and it separates him from the active leaders. That he was an SS-Hauptsturmfuehrer in the Security Police also separates him from the other people and among the drivers who were the uniform of Untersturmfuehrer that did not show,because in the General SS they held this rank and therefore it was not decisive in the SK 4-a what rank you held in the SS, hut what rank you held as a civil servant. If Radetzky was an honorary officer of an SS unit, he would have had to have been six or seven years with the SS in order to become an SS Untersturmfuehrer, but all told, the SS Hauptsturmfuehrer Radetzky did not have an equivalent rank and was not supposed to be considered in the same nature as Dr. Funk or Dr. Janssen, who held a civil service rating, that is, criminal commissar or officer of the Executive Service.

Radetsky was merely used there on the basis of his own personal knowledge.

DR. HEMM: I have no further questions.

THE PRESIDENT: Does any other defense counsel wish to cross-examine the witness Blobel? If not, the Prosecution may begin its cross examination. BY DR. HOCHWALD: May it please the Tribunal.

Q Mr. Blobel, what was your rank in May 1941?

Q That is the rank of a full colonel, is it not? colonel, it was just Standartenfuehrer in the SD. German army? Is it?

A No, not in this connection. This concept only arose after the war. It was not equivalent to a Standartanfuehrer in the Waffen SS, where this designation had army privileges. the rank of a lieutenant or a captain, -- or, what was it? I would like to know what equivalent it was.

A Well, in 1941 there was no equivalent. It was merely the agency leader of SD Unit, who could be an Obersturmbannfuehrer.

Q Let me rephrase my question now. When you came to the east as a Standartenfuehrer and you met a major or a lieutenant colonel of the army, who of you had the higher rank when you were both in uniform? rank. I had the rank of SS Standartenfuehrer in the SD, and the other was a major in the Wehrmacht.

Q Mr. Blobel, I don't think that you answered my question. It was a very simple question ... when you met a major or a lieutenant colonel of the army, and you were yourself in the uniform of a Standartenfuehrer - who of you was the higher ranking man? It's not a question whether uniforms were different.

A None. Because the officer of the Wehrmacht had his rank, and I was a Standartenfuehrer SS. I was addressed as such.

Q All right. In Germany officers used to salute each other, and the lower ranging officer saluted the higher ranking officer first. So when you, being a Standartenfuehrer, being in a uniform of the SS met a lieutenant colonel of the Wehrmacht, was he supposed to salute you first?

A We both saluted each other as officers. They could see that it was not an equivalent rank.

Q That is not the question. How long have you been wearing a uniform?

Q Will you give me an answer, please? How long have you been wearing a uniform in your career as an SS man? with the SD, temporarily.

Q All right. How many years was that?

Q So let us say approcimately ten years? of military and SS regulations is very scanty. It take it from your information that you do not know whether a Standartenfuehrer was in the rank of a colonel or was not.

We will ascertain that in another way.

Mr. Blobel, when you were first sent from Berlin to Pretsch in May 1941, did you know that you were supposed to take over a Command of an Einsatzkommando, or a Sonderkommando?

A No, I did not know that previously. I only heard that in Pretsch.

Q Why do you think you were sent to Pretsch? Did you have an idea what you were going to do there?

A No, I did not know it at all. I could just as well have been called to hear Heydrich or a conference with him, as he used to have them, or it could be anything. It was not known.

Q It could not be only a meeting, could it? you to report to Rasch?

A Yes, I had to report to Rasch. Rasch told us that the officers who had to report to him, were under his command, and on the same day on which I met Rasch there we were all ordered to report to the officers school in Pretsch. Streckenbach?

A Yes, that was the day of Streckenbach's speech. where Streckenbach spoke? What, exactly, did Rasch tell you , ... that you were under his command, you said? What kind of command? Did he tell you something about Einsatzgruppen? Did he tell you that you would be the leader of a Sonderkommando? What did he tell you?

A Dr. Rasch didn't tell me anything. He didn't know anything himself.

under his command, but he did not know what kind of command that would be? Is that what you. are telling the Tribunal? Dr. Rasch, and that Dr. Rasch would take us to this conference.

Q All right. You knew that you were commanded. What I wanted to find out is, what did Rasch tell you? It is very easy -- I do not think this question is complicated to understand, witness. What did Rasch tell you? He told you you are under his command. All right. Did he tell you what kind of command it would be?

A No, he did not know anything about it himself. He only said: "In the afternoon you have to report to Pretsch."

Q So he did not tell you that you were under his command?

A He told us, "You are now assigned to me and you have to report to the school in Pretsch this afternoon about three o'clock together with me. I'll meet you there."

Q That is all you heard?

Q And you were at that meeting where Streckenbach spoke?

Q Who, of the defendants, was present at that meeting?

A Dr. Rasch, Dr. Hoffmann. Of the defendants I think i saw Ohlendorf. The others ware strange to me, I didn't know them. present at this meeting were the defendant Ohlendorf and Rasch, is that right?

A Ohlendorf, Rasch, Dr.Hoffmann.

Q Dr. Hoffmann is not a defendant in this trial. So - these two, Ohlendorf and Rasch.

told you during this meeting? from this moment on you are officers under martial law, and you have to carry out missions which I am now going to tell you about. You have to execute them exactly as any soldier would before the enemy. Then he detailed the missions and the directives and he said. "During the march in the east which is to be expected, Einsatzgruppen will be formed which are sub-divided into commandos and you will lead these commandos. And the Einsatzgruppen and commandos will be under the Army commanders during this march to be expected in the east. And the mission which I am now going to explain to you is the following: all elements which endanger the security of the troops:

the activists, Communist agents the security are to be apprehended, and Jews in addition. the case which was very close to his heart.

Q May I interrupt. You did say 'arrests' did I understand you correctly?

A There are to be seized. Apprehended, to the German army? questions about it later.

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army? about it later. all Jews or the Jews who were dangerous for the security of the German army? formed and they discussed back and forth that they did not understand exactly what they did mean by that. Did they mean all Jews or do they mean only these persons who have to be prosecuted, for the whole picture was pretty much mixed up. It was not clearly delineated. am interested to know. to be considered out there and because we were under the army, we were under the supervision of the army, and in addition some directives of execution had to be issued, for the question was left open completely. I never saw a written order.

Q Witness, I don't think that you answered my question. I asked you: were you of the opinion that all Jews were to be arrested or only the Jews who would be dangerous for the German army and committed any crimes would be. arrested by the Einsatzgruppe.

Q Not all of them?

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this court room? Did you hear his testimony here?

AAt the beginning I wasn't here. Streckenbach gave in Pretsch? Did you hear that part of his testimony?

Q I unfortunately don't have the transcript here but I do think that I can say he made it unmistakeably clear that Streckenbach told and everybody understood him so, that by no means only the guilty Jews were to be arrested, but there was an order in existence which provided for the killing of all Jews, men, women and children alike, and of the killing of all gypsies and the killing of all communists and that this was made perfectly clear in this meeting, in which you, together with the defendant Ohlendorf, were present, is that correct? not here. Streckenbach, did you not? now and I must always say that this question was discussed so often out there. Therefore, something must have been said in this respect, but if I must repeat this precisely I cannot do so. description of what happened during this meeting and on my question you have been repeating the very same precise description again. So tell me now, who is telling a lie, you or the defendant Ohlendorf? You both heard the same statement by Streckenbach. You both tell us something completely different about that, what Streckenbach says.

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Will you tell me now, can you remember what Streckenbach said, did it escape your attention that he said all Jews were to be killed? "And Jews" we were to understand it that way at that time. between the testimony of Ohlendorf and yours. The defendant Ohlendorf told the Tribunal very openly and his testimony is corroborated by the testimony of four of your co-defendants, who testified after him, that it was an order to kill all Jews, not arrest them. It is entirely different. Will you explain that, why the differentiation between killing and arresting escaped your memory?

DR. HEIM: FOR BLOBEL: Your Honor, I ask that the Prosecution be directed that if he is recalling testimony of witnesses here, he should read the testimony. The Prosecution is not so much asking the witness questions but he is beginning to argue.

THE PRESIDENT: First let us clear up the initial point. The Prosecution asked the witness to relate what had happened at that meeting with Streckenbach, and the witness indicated those who came within the order, he listed spies, saboteurs and various others and then he ended with the phrase "and Jews". Now it is not necessary to labor that point. The Tribunal understands from that that whatever the witness was instructed to do with regard to certain categories, that it included all Jews. Now that is the first point, that is clear. The second point is what was the witness instructed to do with these categories which includes "and Jews", that is where we are at present. So you may proceed from that point, Mr. Hochwald, as to what he was instructed to do with regard to these various classifications, among which there was the item "and Jews."

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DR. HOCHWALD: I only want to remark the fact that I was not able to present the witness with the transcript. I have sent for the transcript and by mistake another part of the transcript was sent to me, otherwise I would have had the transcript in English and German available.

THE PRESIDENT: Yes, but he has not yet answered that question specifically. So get an answer to that and then you can begin to make whatever comparisons the situation logically calls for. BY MR. HOCHWALD: you heard from Streckenbach, whether all Jews should be killed or whether they should be only arrested? Streckenbach was concerned, but these execution, measures would also have to be conducted and these did include Jews also, "and the Jews", that's how I remember and I meant that the entire Jewry was meant by this. BY THE PRESIDENT: Now, you haven't answered the question, witness. You have already disposed of the first part that it includes all Jews, so it isn't necessary to repeat that. We understand that, but whatever the instructions were, were they to include all Jews. Now what Mr. Hochwald asked you, is what were you to do with all Jews, added to the other classifications, of course. Now that is what he wants you to answer. shoot. BY MR. HOCHWALD: all Jews were to be shot, is that right?

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Q That about the gypsies? more. This is all strange to me.

Q What about the communist functionaries? agitators were emphasized especially as the carriers of these political circles which would hinder the advance of the German army. were to be killed? that these cases had to be gone into and to be worked out that in order to apprehend these people the documentary evidence and the naming of people were to be found in this. And then it was concluded that these activists were the leaders of the communist party in that country. according to Streckenbach's statement sufficient that whenever somebody was found who was a communist the order was to kill him? be proven. knew when you left Pretsch that all Jews, whether they committed a crime or did not commit a crime, were to be killed by your unit, or that in the case of communists there was a difference made, as to whether a communist was guilty of a crime or not, is that what I take from your testimony.

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in general terms and the apprehension of other people and their sentencing also was ordered by that order. that at least a part of your function would be to kill defenseless people, is that correct? "The Jewry" there were definitely defenseless people among them and one could not assume that they were all to be considered as criminals. and your unit did not commit any acts which were against the laws of war and the laws of humanity. Do you consider the killing of people, just for the simple reason that they were Jews, in accordance with the laws of war and in accordance with the laws of humanity?

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A No, not at all. Not with this conclusion.

Q But you had your order from Streckenbach. Will you comment on that. Will you explain to the Tribunal and to me, how it is possible that you made this statement just now. It was an order that you received?

Q May I interrupt you. It took approximately half an hour to get you to say on this that all Jews were meant with these words, so we are so far that you said you knew that all Jews were to be killed. Please explain now the question I asked you. You told the Tribunal that no acts were committed by you and your unit, which are against the law and the laws of humanity. My question is, did you consider the killing of defenseless people, just for the simple reason that they were members of another race in conformity with the law of nations, and the laws of war, and. the law of humanity.Will you answer this question, please?

THE PRESIDENT: The trouble there, Mr. Hochwald, you put him a question and after you put these questions, then you said, will you answer the question please. Now he said, nein, nein., and. I don't know whether he gave one "no" for the first question, and the second "no" for the second question, or both "no's" for the second question, or both "no's" for the first question. Just ask one question at a time, please.

MR. HOCHWALD: I beg your pardon, Your Honor. BY MR. HOCHWALD: people just for the simple reason that they were members or another race, that is , in conformity with laws of war end laws of humanity? they are Jews, I don't consider in accordance with the conception of international law, and not according to the laws of humanity either.

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by your units. How do you reconcile the fact that you received the order from Streckenbach to kill all Jews on the one hand and on the other hand that you never carried out any acts which are against the laws of war and the laws of humanity. How did you reconcile these two statements? regulations which were to be issued by the chief of command 6 and I was under his command. This was the framework in which I was included in this order, and the opinion of this man was decisive.

Q You are speaking about Field Marshal von Reichenau, are you not? disregard this order which was handed down by Streckenbach, but came, as we have been very often told here, from the head of the

State and Highest Commander, Adolf, Hitler? at the Army Command 6, but he had a written order. Streckenbach, if Field Marshal von Reichenau did not even know about the order? exactly the same, and he had it in his document, and Major Paulsen read it to no when I reported to him. also by Field Marshal von Reichenau to kill all the Jews? Field Marshal had to see to it that the orders of his subordinate commanders were examined and that they were followed. the same order as it was handed down by Streckenbach, and this order was read to you. I do think that we agree that one of the most important part of this order, was the order to kill hundreds of thousands of defenseless people.

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The question to you is: Did Field Marshal Reichenau hand down the order for the killing of all Jews to you?

A In this order it said -- "as it is to be expected -can explain the whole thing, but I would be glad if you could so answer, yes or no. It is a very easy question, if you can say in this order the killing of all Jews was provided for?

A No, this order was not given to me by Reichenau. For the reason that the order which was in von Reichenau's hands and which read: "That during the advance of the German Wehrmacht the political people who would endanger the security of the Wehrmacht and then it enumerates: the agents, the saboteurs, the agitators, and so forth and - among them Jews - among: them Jews, were to be dealt with by the police officers.

Q I don't know, but I do think you did not answer my question. Is it true, on do I understand you correctly that you said that in the order which was given you by Field Marshal Reichenau, the killing of all Jews was not provided for? not given in this form. and was an order of Hitler. Who relieved you of this order? I was now under Field Marshal von Reichenau's command, to whom I was subordinated, and I had to comply with his orders. a Higher Authority than Field Marshal von Reichenau was?

Q Did you carry out the order you received from Streckenbach?

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given by the head, of the State. Can you explain that to the Tribunal? his area, and if he received the same order, he had to account for it to his superiors. Field Marshal von Reichenau the killing of the Jews was not provided, so he very likely did not receive the sane order. But did you report to Field Marshal von Reichenau when he gave you the information what your task would be that you had received in Pretsch, the special task to kill all the Jews with your unit? there was no question from von Reichenau which would have lend to that,to start this question, for I had no written order, I had only received an order from Rasch to report to Field Marshal von Reichenau he will give you further orders. order on your own discretion. That you just disregarded this order on your own discretion, the order from Streckenbach to kill all the Jews? Is that what you want to say? command at all. The Field Marshal might have said something else to me. immediate superior? chief of the group. Sofar as orders were concerned, the commander of Army Command Six.

Q Is it true that the defendant Rasch was your immediate superior?

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Q You were commander of Sonderkommando 4-A, is that correct? 4-A were subordinate to you? A These sub-commandos were under SK 4-A organizationally, and were part of SK 4-A and therefore were subordinated to me as the commanding officer.

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Q. And the officers?

A. Yes, the officers too,

Q. Did you have the duty to supervise the activities of these Teilkommandos?

A. To supervise the activity insofar as it convered the people conducting themselves in a soldierly manner and according to orders, a real job of leading men.

Q. You had no supervision of their activities, is that what you are going to imply?

A. In the activity I had no influence directly because the competent divisional commander or a member of the divisiona staff the G-II was the decisive factor.

Q. Did you or your office receive ever reports about the activities of these Teilkommandos?

A. Yes, of course, we received reports about the activity of these sub-kommandos.

Q. So you knew everything that was going on in those Teilkommandos, did you not?

A. Sooner or later, sometimes not at all.

Q. Can you tell the Tribunal whether the leaders of your Teilkommandos carried out the Hitler Order which provided for the killing of all Jews and gypsies?

A. How carried it out?

Q. I did not say "how" I said "whether".

A. In this concrete form in which Streckenbach gave it they did not. The officers carried out the execution ordered to them in the way the Army Commander of Army Command 6 had ordered them.

Q. It means they killed only people who were guilty of offenses against the Wehrmacht, is that right?

A. Yes, as far as there was no agreement between the Higher SS and Police Leader and the Commander-in-Chief about entire localities as far as retaliatory measures existed or from other reasons.

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Q. Were you informed about such reprisal measures?

A. Later and partly from the documents here,

Q. So you did not know during your activity that reprisals on a very great scale were carried out?

A. Yes, we knew that.

Q. And you considered those so-called reprisals justified before the laws of war and the laws of humanity, is that correct?

A. In my examination I emphasized that I considered that justified according to international law, What was done as a result of punitive action; but that people were shot who were not hold as hostages or were not guilty of anything, that I refused. I did not confirm that, and I objected to it.

Q. Were such people shot by the Teilkommandos under your command?

A. Yes, it is said here in the doucments that in Kiev it was the order of the Higher SS and Police Leader. The case of Radomischl was mentioned here where people of the kommando took part. These are incidents which I did not approve of at all.

Q. But you knew about that when you were commander of SK-4a, did you not?

A. Yes, certainly I knew about them. Yes, we heard about them, we were out there in that area.

Q. You have been very often ill during the time you were in command. You just told the Tribunal that you did not agree with those measures. Why did you stay in command of Sonderkommando 4a if you were so very much opposed to these measures?

A. Well I had no opportunity to go to a higher agency who would have taken a personal interest in it and would have immediately effected a transfer. That did not happen until later in Kiev when I spoke with Dr. Rasch.

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of the campaign, quite ill as an effect from imbibing too much alcohol? Is it not true that you were to be removed at that time, and did you meet an intervention with your superior, the Defendant Rasch, that you should stay in command of Sonderkommando 4a, is that right?

A. That is not right.

Q. That is not true?

A. No, at that time I was sent to the hospital at Lucks because of suspected typhoid and I was unconscious with high temperature.

Q. How were your relations to Dr. Rasch, your immediate superior?

A. I first knew Dr. Rasch at Pretsch, and then I saw him again when the order was given out at Crocow on the 25th. Thus I got to know Dr. Rasch as my superior. Outside of that I had no contact with Dr. Rasch.

Q. Did he know that you were ill?

A. Dr. Rasch later was reported about it, yes.

Q. What do you mean by later, please, after you had returned or during your illness?

A. No, on the march when the remaining kommando went to Lutsk from Skolan and changed quarters there was a dispute between an Army officer and myself- and that was reported to Dr. Rasch at the time by the kommando. How that was reported, I don't know. For that purpose he sent Hauptsturmfuehrer Dr. Beyer to the kommando.

Q. May I interrupt you? I do think my question was: did Rasch know that you were in the hospital? He was your immediate superior. I do think it should be natural that he was informed that you were not in charge of the kommando, but it is my question, and you can easily answer it with yes or no, that it was reported to him that you were not on duty, that you were in the hospital, a few kilometers from the front.

A. Yes, the kommando probably informed the Group C whenever it was possible, and since it could not maintain communications with the group, the Higher SS and Police Leader must have made the decision in Lutsk, and he must have reported to Dr. Rasch. This is how I assume it, but I don't know.

THE PRESIDENT: I am informed, Dr. Hochwald, that the film will expire in two or three minutes, so that I wouldn't want you to be right you see.

If it is agreeable to you we will recess at this point.

DR. HORLICK-HOCHWALD: Yes, Your Honor.

THE PRESIDENT: Very well. The Tribunal will recess until tomorrow morning at nine-thirty.

( The Tribunal adjourned until 30 October 1947, at 0930 hours).

on 30 Oct. 1947, at 0930-1630, Justice

THE MARSHAL: The Honorable, the Judges of Military Tribunal II-A.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

DR. MANDRY (for the defendant Sandberger): Your Honors, I would ask you to excuse the defendant Sandberger today and tomorrow, as I would like to prepare his defense with him.

THE PRESIDENT: You wish him to be excused now, immediately?

DR. MANDRY: Yes, end tomorrow.

THE PRESIDENT: The defendant Sandberger will be excused from attendance in Court today and tomorrow. He will be taken from the Courtroom under guard.

You may proceed, Mr. Hochwald. BY MR. HOCHWALD: May it please the Tribunal.

Q Mr. Blobel, I asked you yesterday whether you once made an attempt to be relieved from your duties as commander of Sonderkommando 4-a. Will you tell the Tribunal whether you made such an attempt?

A When I was ill I asked Dr. Rasch to be relieved from my post.

Q When was that? of October.

Q What were the reasons for your request?

A Dr. Rasch knew that I was ill and the doctor told him about my state of health and he agreed to my release.

correct?

A Yes, and this was supported by Dr. Rasch. tasks which you had as commander of Sonderkommando 4-a? utter.

Q And why had you such reasons... why did you not conform with those tasks? of interests. And the whole assignment was revulsive to me.

Q Why... why did you have a revulsion against this task?

A I had had a different profession. I had been an architect, and I had not been active in police matters, and I had not been trained in this, and the Einsatzgruppen and the Einsatzkommandos... even when I joined the Einsatzgruppen in the army my actual task was going to be the carrying out of police measures -- police assignment. givings about these executions which were carried out by Sonderkommando 4-a, is that correct?

A Of course, I had a revulsion against them. That was part of my state of health. that correct?

AAs far as criminals were concerned, yes. Not the others. I have already stated that... I felt revulsive toward them from the bottom of my heart. chain of command as far as your commando was concerned... your Exhibits 1, 2, 3 and 4. You have drawn these charts yourself, is that correct?

Q Did you make these charts according to your memory?

in reality. your disposal now , is that correct? which our channel of command worked, and showing the communication relations of the different commands to each other. your own memory, the correctness of this chain of command, is that correct? time prior to 1941.

Q Have you such documents? according to your recollection? ordination at the time. compiled from any documents which you have, is that correct? as I experienced them myself while I was with AOK 6, and the subordination of Gruppe C. to report to Heydrich, is that correct?

A No, I was not forced to report to Heydrich. I had to go and see him.

Q But he spoke to you, is that right? minutes, then I left. That was the first time I actually saw Heydrich in his office.

Q He was your high superior?

superior. soft, is that correct?

A He used the expression "effeminate man".

Q Why did he reproach you for being too soft?

A I don't know. I discussed that with Obergruppenfuehrer Mueller and I thought about it a lot, and I assume that he drew that conclusion from the fact that I had been ill all the time, and he must have received further reports from Dr. Rasch or from other people of the same group. out the Hitler Order? during those three minutes he merely insulted me.

Q So you actually do not know why he considered you to be too soft? being entitled to furlough.

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Q All right. I would like to discuss with you now your activities in the Sonderkommando 4-a. Were reports sent from your Sonderkommando to Eintsatzgruppe C?

Q Who made these reports? operational situation reports which were compiled either by Mueller or Radtzky or other leaders, -- they were submitted to the Group. to Einsatzgruppe C? these reports also contained information on the activities of the Teilkommandos, is that correct? happened in this sector, was compiled in these reports. leader of Einsatzgruppe C, who was also leader of Office No. 4, Hoffmann, received this information and out of this information he made his reports to the RSHA. Is that correct?

A Yes, that was Hoffman's task. reports which were made by his staff leader before they were sent on to the RSHA?

A I don't know. I was very seldom with this Group. means, how Hoffmann made his reports, and about Hoffmann's activities in Einsatzgruppen, how strong he was, how much he exaggerated ... I can presume you also know what Rasch did, as you were so well informed about Hoffmann's activities in this respect.

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A My knowledge I received from Dr. Krieger, Oberregierungsrat (Government Councillor), from the time when Dr. Rasch with part of his Commando, was in Novo Ukrainka, and this Dr. Krieger compiled these reports in Shitomir and Obersturmbannfuehrer Meier added his own reports and his own figures. This I experienced myself; and I also experienced myself how these people compiled these reports, which were meant to go to Berlin.

Q Did you over see Hoffmann make such a report?

A I also saw Hoffman making his reports,but I don't know whether Rasch ever read them. I do think he must have received knowledge of them. made strongly exaggerated the numbers of executions carried out -- of course, as far as Sonderkommando 4-a is concerned. Is that correct? have been compiled according to sectors as they were compiled by Special commandos and summed up of the events of various smaller locations and are reported as such, and those reports were then only very roughly compiled to give other events of other kinds, which these leaders reported. what you just told us ... did you ever voice any opposition against this way of reporting to Berlin? in Kiev wanted when I told him that these matters had to be reported to Berlin, and this would have a completely wrong picture and Berlin would not believe it -- but it was too late. He already reported it.

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Q Did you report to Dr. Rasch about these astonishing facts?

A No, I hardly ever saw Dr. Rasch. First of all he was in Shitomir all the time, then in Novo Ukrainka - he was in Novo Ukrainka first, then he came to Shitomir, then he held a raw with the Reich-Fuehrer, then he was in Berlin, and practically Hoffmann was the leader of the whole Group. numbers? the Group to the RSHA.

Q Did you do that, Mr. Blobel? you consider a number of ten to fifteen thousand people executed by Sonderkommando 4-a as the correct number? in which the Commando took part, from one man to the whole sub-commando. This is my estimate according to the documents, according to which events have been made known to me which I did not know in this form. BY THE PRESIDENT: were interrogated on June 6, 1947?

A Interrogation? Not before my interrogation. documents? estimate which I recollected from my own memory and I cannot vouch for the number. BY MR. HOCHWALD:

Higher SS and Police leader Jeckeln to Rasch in Shitomir, did you?

A Yes, the Gruppe staff passed on these reports. I think it must have been Dr. Krieger or some such person. That was before I fell ill in Shitomir. did you? leader had been there, and that very strict measures against the Jews were ordered by him as the measure carried out up to now displeased him, he was not in agreement with such measures carried out up to then.

Q Did you consider this order binding for you?

A Binding? That is a thought that has to be considered. One had to receive special orders, special executive orders. binding for you? ... Will you please answer first with yes or no, and then you may explain whatever you want to. had to comply with it.

Q So you did consider it binding for you? yes, binding. the stronger measures against the Jews? What kind of stronger measures were they? order, to apprehend the Jews living in that area for labor and those whom they didn't like were probably to be shot.

were to be used for labor, and if they should not comply with these reports they would be shot, is that what you want to say? the Jewish population according to their ability to work, those who would be able to work and those who would not.

Q What was to happen in the people who were not able to work?

Q You carried out this order, did you not?

Q Excuse me, I didn't understand your answer, will you repeat it, please? this order binding for you, and now you tell the Tribunal that nobody gave you this order, inspite of the fact that you admitted here that you were officially informed about the order. Will you explain this discrepancy between your answer, no, and your answer about two minutes ago?

A Well, that depended on conditions. In this territory, the Commander-in-Chief of AOK-VI had to approve of any operation, and on the same level of command was the higher SS and Police Leader: if these two authorities of command were in agreement with each other then the operation was carried out, because an operation was never allowed to interfere with the fighting units from any activity, and these two men had to agree upon them.

Q Rash was your superior, was he not?

Q He handed down this order to you, is that correct?

A Rasch not personally. Rasch was in Nove Ukrainka for a discussion of this order which came to us.

the Group Staff Chief, of which was Rasch, is that correct.

Q You said that this order was binding for you. Now you explain again that this order was not binding for you. As you didn't know whether Field Marshal Richenau and Jekeln had agreed upon this order. Is that what I have to understand from your answer? Reich Fuehrer to Dr. Rasch of this particular sector, the Commander-inChief of AOK-VI, was in charge who in any case had to give his agreement for any operation. the carrying out of this order? and at this time I did not go to AOK-VI for the reason that Group-C maintained the connection between AOK-VI itself and didn't want any overlapping of these particular channel commands. that you didn't know whether the order was approved by Reichenau, but at the same time you state here that you never heard from Reichenau whether he had approved of the order or not. Is that correct? Is that what you are going to tell the Tribunal? these orders, because I was not present myself. this order was valid or not? must have been valid but in the carrying out depended on other factors. you did not carry it out, is that correct?

it is perfectly clear to the Tribunal what you said. I do think this ground covers it. Did you communicate this order to the offices of your teilkommandos?

A They found out about it themselves. That was at the time when I was ill. received the information, I think, and they might have discussed the matter with Dr. Krieger, or some other member of Group Staff C. from the commander, Standartenfuehrer Blobel or nothing from his office Just by chance when they came to the office they were told by a clerk, we have received the order from Himmler to kill all the Jews who were unable to work, is that what you are going to imply? Leaders in that form, I believe, and when orders were carried out these leaders were dependent on the Wehrmacht leader, or the Army leader in this particular sector, and these commanders of the Army unit could only receive orders from their own superiors. valid for you but not valid for your subordinate officers, Is that just what you were going to say. Possibly you can be a little bit more specific, a little bit. I asked you very specifically a question which is extremely easy to answer, so probably you can be a little bit more specific than you are just now? commanders or only for myself? Did I understand you correctly? Police leader, and was passed onto Group-C, and it was valid for Group C and its subordinate commanders.

correct? attached to Sonderkommando-4-A, did you inform him officially about this order? sub-commando Leaders?

Q Let's say, a new officer came to your commend, Sonderkommando-4-A, after the order had been issued, and after you returned to active duty after your illness again, he came in and reported to you, did you inform this officer, or did you inform him about his task with Sonderkommanndo-4-A did you inform him about the order of Jeckeln? had happened in the sector, and about new orders which had been gives, and this major frame order which was give out by Jeckeln was also made known to him.

Q So you did inform him, is that correct?

Q That was the new leader?

A There was no new leader. It would have been my task to say so. received it? Did you consider such an order justified and in accordance with the laws of war?

Q Why? ings, because selections were first to be made which were supposes to be valid, and this was in direct contradiction to the general humane conception.

Q Did you have a revulsion to carry out this order?

Q Did you ever report to Rasch about this order?

could not even discuss them with him.

Q So you didn't do anything in order to be relieved from the carrying out of this order, and you did also not report to Rasch that you are not willing?

to carry out this order and you did also not report to Rasch thatyou were not willing to carry out this order, is that correct?

A. I was not quits as stupid as all that. I didn't want to show him my active mind, what was in my mind, there were other possibilities.

Q. Did you use the other possibilities, can you say?

A. The happy circumstances that my sub-commandos Were actually stationed in this front sector under the army units, and that one could evade the Supreme Power of the Higher SS and Police leader.

Q. and by that fact, you were able to avoid the carrying out of this order, is that what you want to say?

A. Yes, that is one of the facts which was so favorable, which put us in such a position.

Q. So you never carried out the order in spite of the fact it was valid for you, is that what you want to say?

A. No, it was not carried out by us directly, and indirectly.

Q. Indirectly, of course, it was the effect of that operation the Higher SS and police Leader was engaged in, with the AOK-VI when these two gentleman had that discussion.

Q. And in this case this order was carried out by you and your unit, is that right?

A. When the units were detailed to such assignment, they were carried out as the document here proves.

Q. And if that is what in this case Reichenau and Jeckeln agreed upon it was in accordance with the laws of war and the laws of humanity, is that what you want to say?

A. No, that is not what I want to say.

Q. You don't want to answer this question. Do you know whether thedefendant Radetsky know about the order of Jeckeln?

A. Whether he heard about this order during his work, or any reports, it is possible, but it is not necessarily so.

Q. You told the Tribunal just a few moments ago that your officers know about the order, or must have know about the order. Why do you say now that Radetsky, who was one of your officers, possibly didn't know about it?

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A. Because Radetsky was not the chief of the Sub-kommndo.

Q. That is Radetsky?

A. Yes, but he had nothing to do with the executive power. I can not say, he might have heard the report or discussion or talks of other leaders. As it was supposed to be asked, he might have discussed them with other leaders, that is.

Q. You don't know anything then?

A. I can say that he might have informed himself and probably did not just pass over the events.

Q. Who gave the order for the killing of the insane?

A. I never hoard of that order.

Q. It was never carried out by you and your unit?

A. No, SK-4-A never experienced such activity, and never carried out such orders.

Q. I shall refer to document II-C, page 52. Document NO 2832, Prosecution's Exhibit No. 79, I an sorry, it is page 55 Your Honor, I want to quote from Page 61 of the German, where were you on the 23rd and 24th of October? Were you ill or were you in your office?

A. On the 23rd and 24th of October I was in Kiev, where I had my head injury.

Q. Were you on duty, or were you ill?

A. I was not on duty. The whole unit or kommando was just being restored.

Q. Were you not on duty?

A. No.

Q. Did you see any reports of your teilkommandos when you returned to duty?

A. We had only one sub-kommando in Charkow, and on 23rd and 24th there was a sub-kommando stationed there for a short while. The whole SK-4-A had marched away in the direction of Lubny.

Q. Did you find the page which I wanted to quote from, in Document No-2832?

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A. Yes, I have it.

Q. That is page 55 of Document Book II-C, Your Honor. Page 6l of the German. There is the last sentence of the third paragraph from below. It says, on the same day, and it is the 24th of October, through the request of the director of the mental asylum at Czernikow, liquidation of 270 incurables was complied with, and if you read the whole paragraph you will see that that is a report of the teilkommando of the Sonderkommando-4-A. Do you want still to maintain that insane were never killed by units under your command?

A. Yes, I stick to my opinion, that Sonderkommando or a unit of SK-4-A never killed any insane people in Czernikow or anywhere else.

Q. What is your explanation then to this report?

A. Yesterday in my direct examination I said that this territory and this sector, and those reports came from EK-5, which was stationed there, and which was assigned to this sector, SK-4-A had no platoons. I can say it only had a sub-kommando and advanced kommando, which on the 18th, that can be seen from this document they marched off to Lubny.

Q. Do I understand then from your answer that this report is a mistake, is that right, and your memory is correct?

A. No, that is mistaking the kommandos.

Q. It is a mistake, is it not?

A. No, it is mistaking the kommandos, but it is a fact that the EK-5 is to have supposed to have carried out the task of SK-4-A, as it is mentioned here as SK-4-A, and that is the same also, referring to the number of the document, and I have named the location yesterday of the village where SK-4-A could never have been assigned, and these locations belonged in the field of activity of this EK-5.

Q. Herr Blobel, you commented yesterday on the document which is to be found in Document Book II-a, Your Honor, it is on page 81 of the English, and page 84 of the German. It is Document NO-2938, Prosecution's Exhibit No. 44 -- 81, Your Honor, and I shall quote from the first and second paragraphs on this page; under heading "Page 13 of the original cont'd." You commented yesterday on this document, which states that on 2nd July, 1160 Jews were shot as a reprisal,that this Was a justified measure, and I want to quote what you said yesterday:

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"I only had disgust for such enemies when I heard about these occurrences, because the most primitive people only did such things, and therefore, I considered the measures for a punishment of these criminals completely justified."

DR. HEIM: Mr. President, I would like to ask the Prosecutor to read the question again, as the translation is very bad and only came through in parts.

Mr. HOCHWALD: The question was not finished as yet, as a ratter of fact. You, Herr Blobel, commented on the facts which I stated here in the document, namely, that 1160 Jews were shot as a reprisal, and that these measures were justified, by say in: "I only had a disgust for such enemies when I heard about these occurrences because the most primitive people only did such things, and, therefore, I considered the measures for the punishment of these criminals completely justified." If you now examine the document more closely you will see that it has said here that a total of 10 German members of the wehrmacht were killed; as a reprisal 1160 Jews were shot. Do you want to imply that the shooting of 116 Jews for one German soldier is a justifiable measure?

A. During my testimony yesterday I spoke about the events which occurred in Sokal which I saw with my own eyes, and I drew my conclusion from this observation of mine. In Lucks, there were four German airmen who had been massacred, and then two-thousand Ukranians were slaughtered by the Russians, and whether these reprisals which was carried out and ordered by the Field Marshall -- were in agreement with the measures which are agreed upon by International Law, that I can not say in detail myself. I can not establish that formally myself, whether this number 116, or other figures, whether it is cor rect, as the correct figure of reprisals, I don't know, but that is entirely within the sphere of competency of the commander-in-Chief.

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Q. Would you consider it justified to kill 116 Jews as a reprisal for the killing of one German? Do you consider that justified? Yes or no. It is easy.

A. That did not only refer to the Germans. That is the general situation which is to blame for it, and that was also judged by the field marshal. Mathematically how many reprisals were shot for one German, I do not know.

Q. My question was completely different from that which you answered to, I asked you a question which you can easily answer with yes or no. Do you and did you consider the killing of lie Jews as reprisal for the killing of one German justified? Answer that with yes or no.

A. Well, I would then have to answer with the conscience of the field marshal, and if I were a field marshal and I had the whole perspective of the happenings and if I had the right to judge this, and if German blood is shed, I would, of course, have to order a justified punishment for it in order to have the necessary prestige as the supreme commander of my army, towards my soldiers.

Q. Do I understand that you do not want to answer this question which I put to you or do you want to answer it. It is a very simple question. Do you, not the field marshal, consider the killing of 116 Jews as a reprisal for the killing for one German justified?

A. 116 Jews for one German? I don't know. I am not a militarist, you see. One can only judge it from a sort of public sentiment and from one's own human ideas. If they are enemies and if they are equal enemies the question would have to be discussed whether one to 116 is a justified ratio of retaliation.

Q. That is what I am asking you all the time, nothing else. That is the only thing I want to know from you. Do you consider this justified? Nothing else, nothing about a field marshal and nothing about the fact that they were enemies or not. That is a reprisal measure, nothing to do with enemies.

A. Well, whether for these atrocities a reprisal measure had to be carried out, well I must answer to that. (Film had here)

Q. You considered it justified, is that what you said?

A. Some kind of reprisal measure, some kind of retaliation measure is called for in this situation.

Q. So I take it you do not want to answer my question. In the same document there is a mention made on the same page, Page 55, your Honors, about a Killing of 300 Jews - I am sorry, it is Page 81, your Honor 300 Jews and 20 looters.

THE PRESIDENT: What book?

MR. HORLICK-HOCWALD: This is Page 61 of Document Book II-a. It is still the same document, your honor.

THE PRESIDENT: Very well.

Q. (By Horlock-Hochwald) There is no mention made about a reprisal. Do you consider this shooting justified?

A. No, it is the effect of the general order which is not discussed in detail. This does not say why these Jews were shot, but it says twenty looters had beer apprehended. The death punishment for looters was justified. Now, you talk about 300 Jews but it does not say why they ware shot, so what have these people to do with the happenings? It is not stated what crimes they are accused of, this is in disagreement with the major Fuehrer order.

Q. So you consider this killing of the 300 Jews as not justified?

A. No, I do not think it is justified.

Q. It was done by units under your command, is that correct?

A. Not under my command.

Q. It was a Teilkommando of your Sonderkommando.

A. It was by a kommando but not by myself.

Q. You made it very clear here that these Teilkommandos were under your command, did you not?

A. The subkommandos. Of course I was, at that time, the leader of the subkommando until these events happened.

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Q. But you were still command or of sonder-kommando 4a, were you not, at that time?

A. Noo I was ill at that time and I was in the field hospital at the time when these retaliation measures were carried out.

Q. You were officially relieved of your command then, is that what you want to imply, at that time?

A. well, I cannot say relieved. I was ill, I was absent through illness.

Q. So you do not take any responsibility for the killings which were carried out in the time when you were ill in the hospital?

A. No, I do not.

Q. Did you read the reports about these killings when you returned from the hospital?

A. No, not that either.

Q. You were not interested in what was going On in your unit during the time you Were ill?

A. In those circles it was being discussed, and the people were not all together, not all collected. One could only find out, could only hear news from the cook or from this or the other person who told me that shots were fired there and some command moved to another place, but I did not have any official reports or copies of reports. I never got any information from Dr. Rasch either.

Q. You have told the tribunal not very long ago that you received reports from your Teilkommandos and that you read those. Now you say again that you have not got reports. It is not easy for me to reconcile this very different statement. Possibly you can advise us how that was possible, that you received the reports and you read them all the time, and then at once you did not read them any more.

A. That depended on conditions, of time, As long as the subKommandos were moving along with the army divisions, one didn't see them for days and weeks until they actually submitted their situation reports, and during the time that I was ill in hospital and reports of any kind or copies of such reports were not submitted, or at least not submitted to me.

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They went to the group. It was just a matter of personal information.

Q. You had no connection with the Teilkommandos at all, is that what you want to say?

A. Yes, connections I had via the liaison officer of G-2. Yes, there was some kind of connection and contact, but I never knew what would happen today or tomorrow. At this distance one could not find out about this and one had no influence on future happenings. One justhad to sit back and watch what would happen.

Q. So you want to say that the Teilkommandos did not report to you, they reported directly to Einsatzgruppe C, and also Einsatzgruppe C did not inform you what your own Teilkommandos were doing, is that what you want to say?

A. No I do not want to say that. what I want to say is that events which happened in the frontal area were investigated, preliminary investigations took place which took some time and that then the activities during certain periods were reported by kommando leaders to the liaison officer.

Q. Did you get those reports which were made to the liaison officer?

A. The reports which the liaison officer collected I read, or at least in parts, as I could get hold of them, and I also read those documents which were received in the orderly room, because a subkommando which was near our location in Sokal and who dealt with the ready files had to submit then through AUK.

Q. Am I mistaken in assuming that the reports which were sent from the Teilkommandos to the liaison officer were the same which were sent from the liaison officer to you and the same that were sent from the liaison officer to Einsatzgruppe C, is that correct?

A. Hardly anything was changed in those reports, or perhaps nothing at all.

Q. But you, have received the same reports from the liaison officer as Einsatzgruppe C, is that right?

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A. The reports, the situation reports, yes. It could not have been otherwise, could it?

Q. So let us now conclude a little bit. These reports which are in evidence are reports which were made at the RSHA from reports which were sent from Einsatzgruppe C to RSHA. These reports, as far as Sonderkommando 4a and its Teilkommandos were concerned, were based, as you just explained to the Tribunal now, on the reports of the liaison officer. The liaison officer had received his information from the Teilkommandos. He gave this information to you and to Einsatzgruppe C. Is it not true then, that you have received in your office exactly the same reports as these which are in evidence now?

A. That have been submitted here? No, not at all, not by any means. The original reports were concerned with all the little details. They were filed, discussed, and then there were additional operational reports. The liaison officer collected all these individual detailed reports. The Leader IV of Group C compiled and collected all the operational reports, because they had been too much detailed. Every little case would have been mentioned, and I don't know what Berlin would have done with all these detailed reports.

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Q. Well, as a matter of fact Berlin got its reportof executions from the same source as you received your reports, from the Teilkommandos, is that right or not? The source was the same , is that right?

A. Yes. The sources may have been of a different nature. For the Group C also got the situation reports of the Higher SS and Police Leader through their own liaison officer and also situation reports fromother agencies which went through the channel of reports.

Q. But Mr. Blobel -- you have described to the Tribunal very clearly that the sources for the information of the activities of Teilkommandos came from the Teilkommandos to the liaison officer. The liaison officer forwarded them to the Einsatzgruppe C and to you. TheEinsatzgruppe C, on the other hand, forwarded them to the RSHA, so is it not true that, as far as Sonderkommando 4a and its

Teilkommandos and subunits are concerned, the source of information which you received was absolutely the same as the source of information for these reports which are in evidence? Is that clear, or not? I do not speak about the Higher Police Leader and I do not speak about Field Marshal von Reichenau. I just speak -- at very most , I just speak about a small unit. I just speak about Sonderkommando 4a.

A. That was one of the sources

Q. All right. You have also commented here on another document. I refer, your Honors, to Document Book II-A, Page 89 of the English Page 93 of the German. This is Document NO-3149,Presecution's Exhibit 46. This document states that 1107 Jews were killed by Sonderkommando 4a for the simple reason that it was difficult to get food for them. You have commented on this document here by stating that this report could possibly not be correct as a small Teilkommando would have been physically unable to carry out so many executions in such a short time, is that right?

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A. I said during my direct examination that the men which were left in Radomyszl by the Commando, about three or four, had been detailed to this operation on the part of the Higher SS and Police Leader, and took part in this operation, and that this report must come from the source of Obersturmbannfuehrer Mayer who was the permanent deputy, of Group C with the Higher Police and SS Leader, and that this kommando, these three or four men, would not have been in a position to shoot these 1107 people. This is one of the most evident reports, as to how the situation reports were compiled from all sources.

Q. would it have been possible for the men of the Teilkommandos; as far as I remember you were not sure whether these Teilkommandos were 15 or persons. Let's take it there were 15. If they would have used automatic pistols or submachine guns and would have shot the people in the neck , would it then have been possible to carry out as many executions as are mentioned in this report?

A. I have already made a statement on this in my direct. examination , that certain particular measures, executive measures of the higher supreme leader had beenordered, and that it was impossible to reach this number of executions with only 15 men.

Q. Will you tell the Tribunal then that it is impossible that these Teilkommandos carried ou t shooting by submachine guns or by automatic pistols or by shooting in the neck ?

A. It was prohibited.

DR. HEIM (For Blobel): Your Honor, It is a hypothetical question and the witness is under no obligation to answer this question. Your Honor, I object to the admissibility of this question. It is a hypothetical question which the witness cannot answer and need not answer. According to my knowledge witnesses may only be asked questions which witnesses are able to answer according to their own knowledge or what they know from hearsay.

THE PRESIDENT: As the Tribunal heard the question it had to do with the methods of execution so that certainly would be within the sphere of the witness's knowledge, and as I recollect, the specific question was whether machine pistols were used or whether the method of shooting in the neck was employed.

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Now, the witness can answer whether those methods were used or not. That is not hypothetical. killing was done by means of machine pistols or the technique of shooting in the neck. Will the you please answer that question?

A. For execution the kommandos had rifles as ordered. Submachine guns or machine guns or hand pistols were prohibited. They were not used. Also the Russian method of shooting in the neck, was equally prohibited and it was not carried out. BY THE PRESIDENT:

Q. Do we understand that all those exectuions were done with rifles?

A. with rifles as ordered by the kommando.

Q. And we understand that you said yesterday that there were two riflemen per subject, per executee , is that right?

A. Two men, two rifles, for one person.

Q. Yes. Now leaving aside for the moment all discussion about the correctness or justice of an execution, we would like to have you describe an execution. Now, in your affidavit of June 6, 1947, there is one paragraph which states that out of the total number of persons designated for the execution 15 men were led in each case to the brink of the mass grave where they had to kneel down, their faces turned towards the grave. By whom was the grave dug?

A. Our men dug the grave, our men.

Q. The subjects had nothing to do with the digging of the grave, is that correct?

A. No.

Q. No, now you say, "their faces turned toward the grave. The execution squads were composed of men of the Sonderkommando." Well, we will leave that out, because we are now only describing or attempt ing to have you describe an execution.

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When the men were ready for the execution one of my leaders who was in charge of this execution squad gave the order to shoot. Since they were kneeling on the brink of the mass grave the victims fell, as a rule, at once into the mass grave." In order that the subjects would fall into the mass grave and in order to avoid shooting in the back of the neck, I take it then, that the shots would pass over the grave?

A. The shootings? No, the target was : heart and head.

Q. Yes, but the victims were on the other side of the grave. In other words, they had to be facing the riflemen and consequently the grave would be between the riflemen and the victims.

A. Up to ten steps; up to ten steps.

Q. No, no, please answer that question. The position of the grave as regards the riflemen and the executees, was the grave in between these two groups?

A. No, the grave was the last unit, grave, executees and the kommando - the firing squad, the grave and executees.

Q. Then they would fall over backwards into the grave?

A. No, they fell face down.

Q. Then you had to shoot them in the neck, in the back?

A. Yes, in the back.

Q. Oh, then , you did shoot them in the back?

A. They were shot in the back position.

Q. Well, if they were facing the grave and would fall into the grave upon being shot, then they would have had to be shot in the back, would they not?

A. Yes, that is what I say.

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Q. Yes, they would be shot in the back. You did not shoot into the neck, you say?

A. No, not the so-called shot in the neck of the Russians, the way we put it, the pistol shot, which is fired at a very close range of the executee.

Q. Now you say that the rifleman would aim at the heart. Was any placard or bull's eye or any kind of a marker placed on the executee's back so that the bullet would reach the heart of the subject?

A. Yes, there was a bull's eye over the heart and the middle of the head.

Q. Always on the subject's back?

A. No, the men know this from their military training where to aim.

Q. Yes, but the shot would always enter from the back.

A. Yes, they were shot from the back.

Q. Yes, now what distance was the rifleman from the subject?

A. Up to 10 steps.

Q. You say up to ten steps? Could it have been shorter?

A. 8 to 10 steps.

Q. 8 to 10 steps? Would that include the length of the rifle or not? In other words, would the ten paces extend from the muzzle of the weapon to the subject, or from the rifleman to the subject?

A. From the back of the subject , who was about 1 to 2 paces from the grave until the first member, there was always 8 steps, 7 to 8 feet, 7 to 8 steps were actually made; to one farthest back it was ten steps; when the order was given to fire, the first member kneeled down; the second member kneeled down in the place of the first; the first victim kneeled down; the next was supported by the next one; then the order was given to fire and rest arms, secure arms, arms down. The first man got up and the men stood at ease.

Q. You say that the victim was helped by the next person, you mean by the next victim?

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A. I do not understand.

Q. Who took the victim to his place?

A. There were other men, other units, when, for instance, 30 men were executed in these places and 6 to 3 men shot at a time, then the others were led in by a group of another 4 to 6 people and were put into position and the men who brought in those people also were the ones who put them into the graves and the death was confirmed by them.

Q. Yes, now you did say in answer to one question that a bulls eye was used and then later I understood you to say that the riflemen were so expert that they knew where to aim. Do I understand that in som instances a marker was used and in other cases no marker was used?

A. I did not say that markers were used, that bulls eyes were used and I am only trying to explain how a group was shot by a military Kommando and how the military kommandos carried out the shooting.

Q. Then I misunderstood you. I am sorry.

A. According to military rules.

Q. Yes.

DR.HEIM: (Attorney for the Defendant Blobel): Your Honor, the misunderstandings are the fault of the bad translation of this morning.

THE PRESIDENT: I see.

DR. HEIM: I found out that, for instance, it was said when Blobel said the following: that the Russians carried out the shooting into the neck, the word "Russians" was left out. This is not true, Your Honor. The witness said there were not markers or bulls eye. It is only the fault of the mistranslation. There are misunderstandings between the Tribunal and the witness.

THE PRESIDENT: Then I can clear that up very easily, Dr. Heim, I will put a direct question to him which, I am certain , will clarify the entire situation.

Q. Was any type of marker or sign used on the victim to guide the aim of the riflemen?

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A. No.

Q. Were these riflemen all previously qualified as expert shots ?

A. As far us people were members of the SK 4a, they were police officials or detachments of the Waffen-SS or the Army Units and they all had had a military training, and aiming training, and firing training were within the plan of instructions.

Q. Striking a vital spot in the body requires a very steady hand, a very good eye, and perfect control of the nervous system. Could you say that all these riflemen were so trained that they could bring home their shot to a vital spot in the victim's body at all times?

A. After the order had been given to fire the deed were examined and two men were detailed with this task. It was always clearly established that the aim had been reached.

Q. Were these physicians who examined?

A. Those were people who had been detailed by their Commanders to deal with it. Sometimes they were officers of the Army units or even the leader himself, and when Army units dealt with these executions there were also medical officers.

Q. But you did not always take with you a medical officer, did you?

A. In Sokal the executions of which I am describing, these medical officers and these military doctors were present.

Q. But in the Teilkommandos which were made up of small groups, would there be a physician available at all times at the execution?

A. The respective military commander of the unit had to give the order; had to report about it to his superiors. If he had to report about an execution to his superior officer, I can assume that he kept to the instructions.

Q. But it would happen would it not, thatat times there would be no physician present and then this examination would be done by one of the squad?

A. In sokal the exectuions of which I am describing , this was carried out to the samllest detail end I can assume that in other locations officers took great care that these rules were carried out.

Q. I am only asking you, Witness, wouldn't it happen that because of the small number in the squad that a medically trained person would not be present and then the examination would need to be done by one of ths soldiers or one of the officers not medically trained?

A. I hardly think that one would have trusted the judgment, of just one single person. The officer or the leader of the SK, whoever it was, must have confirmed himself the actual death of the victim, because that was his duty.

Q.Yes, I take it that an officer would confirm the fact of death, but this officer would not necessarilybe a physician. Now what tests would the officer apply? Would he listen for a beat of the heart, or would he touch the pulse? What methods would he usually employ to ascertain whether the victim was really dead or not?

A. When no doctor, no physician was available, I am sure that he must have gotten hold of a trained medical officer of some kind, whom he consulted.

Q. Well, now you said in your answer that "when no medical officer was abailable." That presupposes that none was available. Did the examining officer merely look down into the grave to see whether anyone was moving or not and be satisfied with that kind of an examination whether death had been inflicted?

A. No, no. After every shooting order this happened: After each firing order, when the shots were addressed, somebody looked at the victims because the victims were then put into the grave, when they did not fall into the graves themselves and these tasks were in the field of tasks of the men of the individual commandos. The edge of the grave had to be cleaned, for instance. Two men who had spades dealt with this.

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They had to clean it up and then the next group was lead there.

Q. Since this was all done rapidly, might it not be possible that a victim would be buried, even though not actually dead?

A. No, that is quite impossible, Your Honor.

Q. You exclude that possibility?

A. Yes, for the simple reason that if it was ascertained that the shots which had been aimed at the head had not actually hit the head, one of the men of the firing squad was called in, who fired again from a distance of 3 to 4 paces. He shot again and thus it was made absolutely certain that the person concerned was dead.

Q. In applying the coup de grace, was a pistol or the rifle again used?

A. Only the rifle was used.

Q. The rifle was used in every instance?

A. Yes.

Q. I understand that your regulations, as you pointed out yesterday, provided that two rifles were used for a non-German and five rifles for a German, in the event there had to be an execution of a German subject, is that correct?

A. No, that is not correct.

Q. Will you please tell us just what you said yesterday on that subject?

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A. The military regulations decree that if a German has to be shot, the man must be shot by five rifles; five rifles must point at the victim. That was the subject of the discussion which Field Marshal von Reichenau had who decreed that only two rifles should be used in disagreement with the regulations and who also further decreed that the grave should be dug and this grave had to be placed in a territory suitable for executions and executions had to be carried out either in the early morning or in the evening. After that the grave had to be filled in immediately. The ascertaining of death in each case was the duty of each leader and he had to make use of medical officers or Army physicians and these regulations were thus carried out by officers and leaders and they were followed.

Q. You told us that an execution would usually occupy about ten minutes. Would ten minutes include the marching to the grave and the placing into position and the firing, the examination of the victim, and the actual burial?

A. As I said that ten minutes was the minimum period, that is, of course, all according to the area and the various groups. It might have taken a little longer.

Q. But, generally, ten minutes or a little longer would include the entire operation from the moment that the victim marched to the grave until it was all over.

A. Ten to fifteen minutes.

Q. Yes, now was that also true when women and children were executed?

A. I never saw that.

Q. You never witnessed the execution of women and children?

A. No.

Q. We will come back to the question I put about a minute or so ago which I don't think you fully answered, namely, the German regulations which provide that five rifles shall be used in the execution of a German. Then you stated that the Field Marshal had reduced this number to two for non-Germans.

Is that what I understand you to say?

A. Yes, in this form it had been ordered.

Q. The original order which came from Hitler, Himmler, Heydrich, Streckenbach and all the way down to you, what did it say with regard to the number of rifles to be used per victim?

A. There were no directives about the carrying out of this order, or, at least, they were not announced. I received my instructions from the Supreme Commander.

Q. When he reduced the number from five rifles to two rifles, was there any discussion on the subject?

A. No. the Supreme Commander ordered this in his instructions. He said there used to be five men who participated in an execution of Germans. Now we shall use only two, and that was the order.

Q. Did he regard that two would be ample to do the job?

A. That must have been his opinion.

Q. Yes, well, then, do you know the original regulation provided for five, if two would have been ample?

A. I don't know the individual orders of the Army units.

Q. Very well. Now, isn't it possible that the reason five rifles were ordered originally was to exclude the possibility that the victim might not actually fall dead after the volley?

A. Whether the possibility exists that the victim might not be killed after two shots, is that what you meant, Your Honor?

Q. No, this was what I meant: That five rifles, or five bullets, were required by the regulation in order to lessen as much as possible the chance that one of these bullets, at least, did not strike a vital spot. In other words, there is more chance that a man will die when five rifles are firing at him than if only one is firing?

A. I do not understand. In the case of five shots, it is without doubt that death would occur.

Q. Yes.

A. If there are only two shots, death will also occur after the shots hit the head and the heart, but one rifle is not enough. Therefore, the Field Marshal ordered two shots.

Q. Yes, but with five being a certainty, two could mathematically be less than a certainty.

A. It had the same effect.

Q. Very well. The victims who were awaiting their turn to be shot, could they see what was happening before their turn arrived?

A. No.

Q. How were they hidden from the view, or how was the view concealed from them?

A. The victims were under guard in the territory farther away and in such a position that they could not see what was happening.

Q. How much distance would they need to travel after the order was given that they were to be shot until they actually arrived at the grave?

A. At least 100 paces, all according to the area, whether it was hilly, or even, or whether there were any buildings.

Q. If there were any physical objects large enough behind which they could be kept for a few minutes, you always endeavored to plate them behind these objects, is that what I understand you to say?

A. Yes, yes. People were led in back of these physical objects.

Q. Very well. Of course, they could hear the shots?

A. Yes, that is possible.

Q. Yes. Did you over have any experience with the victims being recalcitrant as they were being lead to the grave, attempting to break away or was there any demonstration, or any attempted struggle?

A. I could never observe when I was in Sokal that there was resistance.

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They were well guarded, and Eastern men get over things so very quickly and I was always surprised at that. Even when those executions took place in Sokal the same thing happened. It was quite unbelievable for us Germans.

Q. You mean that they resigned themselves easily to what was awaiting them?

A. Yes, that was the case. That was the case with these people. Human life was not as valuable as it was with us. They did not care so much. They did not know their own human value.

Q. In other words, they went to their death quite happily?

A. I would not say that they were happy. They know what was going to happen to them. Of course, they were told what was going to happen to them and they were resigned to their fate and that is the strange thing about these people in the East.

Q. And did that make the job easier for you, the fact that they did not resist?

A. In any case, the guards never met any resistance or, at least, not in Sokal. Everything went very quietly. It took time, of course, and I must say that our men who took part in these executions suffered more from nervous exhaustion than those who had to be shot.

Q. In other words, your pity was more for the men who had to shoot than for the victims?

A. Our men had to be cared for.

Q. They had to be guarded?

A. Cared for.

Q. I didn't catch that.

A. The men who shot had to be looked after, needed to be taken care of.

Q. And how were they cared for? Did you have nurses along to cheer them up in this task that they had to perform? In what way were they cared for?

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A. The people had to be told before these executions about the crimes of the executees, why they had been sentenced. They were told about those facts and that the order of the Supreme Commander was the death sentence and that they had to carry out these orders by actually shooting these people. These men of our Kommandos where did they come from? They came from all classes of the population. One was a criminologist. One had a free-lance profession. One had been a merchant. They had never shot anybody before and for those people it was something quite unusual.

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Q And you felt very sorry for them?

Q You didn't feel any pity for the victims because you felt that they were entitled to be shot? they actually committed. Those people had themselves committed murders and shootings, and shot soldiers, and who by their own will had brought death to other people. execution?

Q Now, you said that all these people had committed crimes. Mr. Hochwald was examining you not very long ago about the death of ten Germans and the killing of 1,160 Jews in retaliation. 116 Jews per German. Now, did each group of 116 participate in the killing of that one German?

A I don't know. killing of 10 Germans -- had they themselves committed the crimes which you have just mentioned? You said that all these victims themselves had committed murders, they themselves had killed people; therefore, there was no reason why you should waste any sympathy on them. But if 1160 people were killed for the death of 10 Germans, it follows that some of the 1160 had not actually killed anybody, doesn't it? Your Honor, you were mentioning the figures which refer to an incident in Luck where a number of Ukrainians were murdered by Russians -- and 10 German soldiers were murdered by Russians, as it says here in the document.

Q But Mr. Hochwald questioned you at length on that very subject, and he asked whether you would be filled with revulsion at the thought of 1160 people being killed for the death of 10 Germans, and you said, Well, I would have to consider that.

And after some consideration here in the witness stand you finally came to the conclusion that the reprisal was justified. Is that right? justifiable to kill 1160 people because 10 Germans had been brutally murdered. fluenced the Field Marshal, and upon which he ordered retaliation measures. Whether the number is just in any such instance I cannot say but retaliation measures are justified in any case.

Q But this is something which is very recent. The questioning took place a half hour ago or so. Mr. Hochwald asked you whether it was proper and just to kill 1160 people because 10 Germans had been killed. And you, after a great deal of deliberation and voicing your doubts, and expressing your opinion, finally concluded, here on the witness stand, that since 10 Germans had been killed, brutally killed, murdered, that it was entirely in order as a military measure to have a reprisal, and if 1160 were executed that was entirely correct. You said that, didn't you? measure, and the ratio of 1 to 116 is too much, too high. If it had been 1 to 10, veil, I could understand it, perhaps.

Q You would justify 10 killings to one as a reprisal? perhaps not even the ten, but at any rate nine wouldn't have committed any murders themselves.

Q We understand, you said that. It is a retaliation measure. It is reprisal measure. It is a military measure. You told us that. And we understand it.

But if ten are killed for one, then at least nine of the ten are innocent of killing. regarded as hostages, as it is used, generally judging it in the manner of the people, it must be said that if one person is murdered ten hostages must be shot. And if the Supreme Commander says one person must be shot, then he can take out one of these people. the supposed criminal, it is entirely in order to execute the ten?

A I imagine that they must be able people. That is what I mean. actions to be hostile to the German forces, if there is a death on the part of one of the German forces. it is entirely in order, and proper, to have reprisals. And you have indicated a ratio of ten to one would not be unreasonable. guilty in your eyes because he was part of the enemy? if he took part in a crime he had to get his punishment, but I do not know details about the extent of reprisal measures carried out by the army units. I have no judgment of it. From my own human feelings, from my own understanding, I can only say that such atrocities had to be avenged.

THE PRESIDENT: Do you wish to say something, Dr. Heim?

DR. HEIM: Before we have the recess, Your Honor, I would like the following question clarified. Is the defense allowed to speak to a witness who has been brought here by the prosecution as a prosecution witness. The prosecution itself is of the opposite opinion.

MR. HOCHWALD: I do think that Dr. Heim refers to the defendant, not to a third witness. As far as I can remember, the Tribunal ruled three or four sessions ago that during cross-examination the defendant is not to be spoken to by anyone.

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THE PRESIDENT: I don't understand Dr. Heim's question to be that at all.

MR. HOCHWALD: I do think that is Dr. Heim's question, sir. Therefore I tried to have it explained.

THE PRESIDENT: Will you please repeat your question. I understood that your question was -

DR. HEIM: An I permitted, as defense counsel, to speak to the defendant who is now in the witness stand after he is now in crossexamination. This morning the prosecutor told me that it was not allowed.

THE PRESIDENT: You were correct Mr. Hochwald, in your interpretation of what Dr. Heim said. When a witness is under cross-examination he is not to be spoken to by any one without the Court's approval. The Tribunal rules that while the present witness is under cross-examination he may not talk to his counsel or to any one else.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Mr. Hochwald, just Before you resume I have only one question to put. BY THE PRESIDENT: our questioning, there is something said about the collection of clothing of the victims. Were the victims unclothed before the actual shooting?

Q In your affidavit you said, "At that time, clothes and valuables were not yet collected. Later on this was changed." Did the rule become modified in that respect, later?

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by the Ukrainians and they took care of them. I know that.

Q Well, then, the clothes were removed Before the execution? taken away from them at all. This only happened in Kiev. How this was done, I don't know. In any case, the Ukrainians later took the clothes which were left behind and other items and distributed then.

Q. When the rule was changed, were the clothes removed before the execution?

A. In the SK 4a this never occurred. I couldn't describe any case and I don't remember any case where in any way the people who were to be shot had their clothes taken from them before they were shot.

Q. The reports take frequent references to the turning over of clothing to your commando SK 4a, clothing and valuables, was this clothing and were these valuables collected before the execution?

A. The SK 4a never received such collections as I pointed out yesterday, it was reported in Shitomir once that the SK 4a received valuables there and the SK 4a has never been in Shitomir. The secend case refers to Kiev.

THE PRESIDENT: You may proceed, Mr. Hochwald: BY MR. HOCHWALD: may it please the Tribunal:

Q. Herr Blobel, did the Sonderkommando 4a also report to the army authorities?

A. Sonderkommando 4a, the leaders of the sub-commandos had to them to him, at least those which concerned his unit. About special reporting about their activities I hardly think they had to do to the General of the Division. The G 2 officer dealt with this, who was in charge of this task.

Q. Who gave a report to the I-C officer about executions being carried out?

A. Well they gave him the records and the G-2 Officer either had to contact the G-2 section of AUK 6 or had to ask for authority or orders to carry out executions, and if the sub-commandos took part in these, an officer must have known a bout these facts.

Q. Do I understand you correctly, that they reported about the number of executions which were carried out, is that right? Will you answer that "yes" or "no", please?

A. I would like to hear your question again, please?

Q. It it correct that the Teilkommando leaders reported about the numbers of executions they had carried out to the army authorities?

A. These reports to the army authorities....

Q. I asked you to say first "yes" or "no", then you may explain to the Tribunal whatever you want to explain, but I am at a loss to understand whether you answered my question in the negative or positive. Therefore, please, answer first by "yes" or "no" and then explain,

A. As a reply to the question of whether the sub-commandos gave reports to the army authorities....

Q. About the executions, the number of executions which they carried out. This is the question. It is a very, easy, short question:

A. Of course.

Q. Did you read these reports?

A. How could I have read them, I never used to get them.

Q. They were not sent from the army authorities to you?

A. No, no.

Q. Do you remember having seen a report to the army authorities concerning the executions carried out in Kiev on the 29 and 30 of September?

A. From the army authorities?

Q. Or by the army authorities?

A. I don't remember ever having seen a report.

Q. Could it be true if the army got these reports, and as I understand you, the army got these reports not over staff leader Hoffman, who was exaggerating so very much the numbers, would it be true that if in such a report by the Army the number of 33,000 would appear, would you then still say that this number of killings was exaggerated?

A. According to the reports and all of the talk in Kiev about this occurrence at the time it couldn't have been that number of people. These were all estimations.

Q. Wherefrom do you know that those estimations were exaggerated?

A. Well because Hoffman already admitted that this figure was entirely wrong and that it was much too high, he should have know it from his discussions with the Higher SS and Police Leader and from the town commandant.

Q. The army authorities obviously were of a different opinion, I would like to introduce at this point document NOKW 2129, as Prosecution Exhibit 179, Your Honors. I am sorry I haven't got the English copy. I should have it.

THE PRESIDENT: This is the English.

MR. HOCHWALD: I know, but I don't have that copy.

THE PRESIDENT: You, yourself don't have one.

MR. HOCHWALD: Just the German. BY MR. HOCHWALD:

Q. This document is a number of copies which were handed over for the war diary. We have translated only a few short excerpts out of the Enclosure No. 2 of this document, and this document reads on page 9 Of the original, which is page 2 of Enclosure No. 2: about "Subject: Visit to the Field Command 195 Kiev."

"The total population is estimated at about half the normal number, for instance about 400,000. The Jews of the city were ordered to present themselves at a certain place and time for the purpose of numerical registration, and housing in a camp. About 34,000 reported, including women and children, After they had been made to give up their clothing and valuables, all were killed; this took several days."

Do you think that this estimate is correct, Mr. Blobel?

A. Only from what I heard, I can only keep to what I have said already, that is an estimate.

Q. It it patently clear from this report as it is from all other reports which speak about the killing in Kiev, that women and children were killed in this execution. It it not Mr. Blobel?

A. Whether women and children were executed here too, is that correctly, what I understand, that is what was said then, yes.

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Q. You testified here that retaliatory measures against Jews were necessary, and, therefore, in full agreement with the laws of war: would you be of the same opinion now as it is established that 34,000 were killed?

A. Such a measure, I consider now as ever to be incorrect and I could never testify to it as being correct.

Q. Did you find yourself bound by your orders to participate in executions of this kind?

A. May I ask to have that again, please?

Q. Did you find yourself bound by the orders you had received to participate in actions of this kind?

A. Yes, bound one was.

Q. You did feel yourself bound, is that right?

A. Yes, one felt bound to this order, yes.

Q. You testified here repeatedly that all reprisals were certainly justified, is that also correct in cases where at least one-third of the victims were woman and children?

A. I did not make any such statement on that or say it was justified if one-third of the victims were women or children. I did not state anything concerning this. I merely said it was wrong and incorrect to include women and children.

Q. The question is: Do you consider such an execution justified when approximately one-third of the victims are women and children, defenseless women, defenseless children? Will you answer this question, please?

A. No, I don't consider that to be correct. I have expressed that very clearly yesterday.

Q. Do you consider such killings murder?

A. Murder - in any case it was quite an incorrect order, and these are victims who would suffer in the course of war events whether it could be legally described as murder, that is a different question.

Q. What do you think - I do not ask the legal people, the legal people do know what it is to kill 33,000 people, but I asked your opinion:

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Do you consider these killings in Kiev, as they appear in the reports here and in the report which Was just handed to you. Do you consider these killings to be murder?

A. Well, if one describes the killings of these people as murder or homicide so still it is a unique phenomena in the course of these war events.

Q. But Mr. Blobel, I asked you whether you consider the killing of these 33,000 people to be murder, which is a question which you can answer with a "yes" or a "no". Do you consider it murder or not?

A. No, the expression "murder" can not be applied here because there were reprisal measures which came in answer to terroristic actions.

Q. Do you consider these reprisals justified if one third of the victims are women and children?

A. This reprisal being extended to women and children I do not consider to be right.

Q. So, do you consider then the killing of women and children as it happened in Kiev to be murder?

A. It is a reprisal measure, which extends also to those women and children, and the person who ordered this had to see clear whether he could be hold responsible for murder for this or whether this was permitted as a reprisal measure and whether it was in accordance with International Law.

Q. This was not the content of my question. I asked you whether you considered the killing of defenseless women and children in an act of reprisal to be murder, yes or no, what do you consider it?

DR. HEIM: For the Defendant Blobel: Prosecution, the witness in his cross examination is only at the disposal of the Prosecution on facts which he has seen and heard about and he can only now testify on this subject. The opinion of the wit ness about any facts as maintained by the Prosecution are irrelevant and in my opinion should not be used in cross examination.

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MR. HOCHWALD: Dr. Heim has interrogated the witness Blobel here for two days and during these two days the witness Blobel has a hundred times at least declared that the killings as carried out by Sonderkommando 4a and it's subcommandos were entirely justifiable in accordance with the laws of war and the laws of humanity. I should be at liberty to ask him now whether this statement which he certainly made of his own free will is also valid for the killing of women and children, that women and children were killed, is contended by the Prosecution and proved in it's case in chief.

THE PRESIDENT: There is one objection which has not been raised and which the Tribunal raises and sustains of it's awn accord, and that is the pounding with the pencil by the Prosecution on the podium which sounds like a sledge hammer in our ears.

MR. HOCHWALD: I am sorry.

THE PRESIDENT: So that objection is sustained on the part of the Tribunal. with regard to the Prosecution's question put to the defendant it is relevant but it seems as if the witness has given his answer and I don't know how a repetition can give us any more light than has already been shed on that particular inquiry.

MR HOCHWALD: I am sorry, Your Honor.

THE PRESIDENT: Very well. BY MR. HOCHWALD

Q. In connection with the killings in Kiev you testified that you do not know whether members of Sonderkommando 4a participated in this execution, is that correct?

A. I did not say that. I merely explained that the SK 4a through an order for the group sent people to take part in the action which had been ordered by the Higher SS and Police Leader, and that the SK 4a then in fact appointed 15 people.

Q. So you know that members of Sonderkommando 4a participated in these killings?

A. I know that, yes.

Q. But you are also sure that neither you nor one of your officers participated in these killings, is that correct?

A. That is also correct, yes.

Q. Do you know Sturmbannfuehrer Albert Hartl?

A. Hartl?

Q. Yes.

A. Yes, I know this Hartl as a church expert in the RSHA, in the Reich Main Security office.

Q. Did you meet him once in the East?

A. I believe he visited troop "C" on one occasion and traveled through the territory during the winter once.

Q. When were you acquainted with him in Kiev?

A. I couldn't say that.

Q. Approximately in the spring of 1942?

A. No, I remember having see this man Hartl when I went to Kiev later to visit Dr. Thomas in the office of the Commander of the Security Police, I saw this man Hartl there. Yes, he must have been there.

Q. But you did see him then, it was when you met him at Dr. Thomas' it was in Kiev, was it not?

A. At Dr. Thomas's in Kiev, in his office building.

Q. Did you show him then, when you met Hartl there in Kiev, did you show him the place where the Jews who were killed by you and your Sonderkommando, and were buried in Kiev, can you remember this affair?

A. Me, to have shown Hartl that place. I cannot remember that at all. That is all imagined. At the time Hartl was in a SS and Police procedure because of some internal occuppences in the building there and I recall having met and saluted him when passing him/in the corridor in August and did not talk to him any more since then.

Q. I would like to refresh your memory. Your Honors, I offer document No. 5384 as Prosecution Exhibit 180.

DR. HEIM: For Blobel:

Your Honor, I object to this document. It is an affidavit by a certain Hartl which the Prosecution submits as Exhibit No. 81. I request that this document only be admitted if I am given an opportunity to see the affiant, a certain man Hartl, and to cross-examine him here on the witness stand. On the principle of the best proof it is appropriate that Hartl who as far as I know is in the prison here be brought into this court room to be examined here on direct examination.

THE PRESIDENT: What do you have to say to that, Dr. Hochwald:

MR. HOCHWALD: If the Tribunal please, I do think that this affidavit is perfectly admissable. If the Defense wants to crossexamine Hartl on the affidavit, the Defense is at the liberty to do so. He only needs to file the request of that kind with the Secretary General.

THE PRESIDENT: If the affiant is available to the Defense for cross-examination and may be called by the Defense for cross-examination, then, of course, no harm may be done the Defense by the introduction of the affidavit.

MR. HOCHWALD: To the best of my knowledge, Your Honor, Hartl is here in the jail and can be called for cross examination by the defense any tine.

DR. HEIM: Thank you.

THE PRESIDENT: Proceed. BY MR. HOCHWALD:

Q. I want to read to you from this affidavit.

DR. FICHT: For the Defendant Biberstein: ted to us to be called as a witness and I, therefore, object to the admission of the document, because this person will be examined as a witness here any how, and according to the principle of the best evidence he should be examined here himself and not his affidavit introduced.

THE PRESIDENT: Let's hear what the Prosecution has to say in reply.

MR. HOCHWALD: If the Tribunal please, Dr. Ficht himself has said that Dr. Hartl will be a witness for Biberstein, that means that he will be available to the Defense for cross-examination and from what he said on behalf of the defendant Biberstein it seems to me impossible for the Prosecution to receive from this witness the information on which the affidavit is introduced, as the case of Biberstein has nothing whatseever to do with a meeting which took place between the Defendant Blobel and the affiant, so from the contention of Dr. Ficht alone it is perfectly clear that we are at liberty to put in the affidavit. When Dr. Ficht calls his witness to the stand Dr. Heim will have ample opportunity to cross-examine the witness on the affidavit, but we do not intend and see no reason to bring this witness into Court in order to let him testify on two very short excerpts.

THE PRESIDENT: we would recommend this procedure: That the Prosecution counsel proceed to examine the witness on the statements made by one Hartl and to the extent deemed necessary on that subject. He may read what Mr. Hartl has already stated but the affidavit itself should not be introduced as an exhibit at this moment. After Hartl has appeared and testified then the Prosecution nay determine whether to present the affidavit or not because it may be that the witness will repeat what he said in the affidavit, and, then, of course, the affidavit is superfluous. He may deny it and then the affidavit may be introduced to impeach him.

MR. HOCHWALD: I thank you very much, Your Honors. May I then reserve Prosecution Exhibit 180, document No. 5384?

THE PRESIDENT: That reservation will be given to you.

MR. HOCHWALD: I would like to read from paragraph 3 of the affidavit:

"In March or April 1942 I met Paul Blobel in Kiev." That is you, Mr. Blobel, is it not, Paul Blobel, is that you?

A. My name is Hermann Wilhelm Paul Blobel.

Q. "When we were both making a trip to the estate of the commander in chief in Kiev. Dr. Thomas, on the outskirts of the city, in the vicinity of the cemetery, Blobel Showed me a certain place and said that Jews whom he had killed with his Kommando were buried there. It was an old tank ditch, which was later filled in. Blobel mentioned that these executions were carried out on the advance march."

what do you have to say to that, Herr Blobel?

A. This Herr Hartl I did not meet in 1941 but in the year 1943. This was not in March or April but it was inthe summer months July or August 1943. There I met Hartl for the first time when he was with Thomas. Whether I travelled out to the estate of Dr. Thomas with Hartl I cannot remember, because not after all of this time I cannot remember that, but I don't see why I should have done that and that I showed him a tank (Panzer) ditch on the way and said to him that Jews had been shot by my Commando there during the advance March, I presume he just endeavored there

Q. Is it true or not that you told him that?

A. It cannot be correct.

Q. It is not true then?

A. Noo it is not true.

Q. Then I would like to read from paragraph 5 of the same document, Your Honor:

"Twice while I was in the East I had a chance to see executions. The first one I saw in Kiev from a distance. Oberfuehrer Erhlinger had the Kommando."

Do you know a man by the name of Erlinger, Oberfuehrer?

A. The Oberfuehrer Erhlinger at the time was still a Standartenfuehrer in 1943, and was the commander of Kiev with the Commander of Gruppenfuehrer Dr. Thomas. I know this man Erhlinger but definitely he was not an oberfuehrer in 1942 already.

Q. "I saw the second execution in Kremenstchug, where Sturmbannfuehrer Platt had the Kommando."

Do you know Sturmbannfuehrer Platt?

A. No, I don't know Sturmbannfuehrer Platt.

Q. We will go on with the quotation:

"In the first execution exactly 100 persons were executed. In the second execution more than 100 persons were executed. The people were executed by a shot in the neck. The corpses were buried in a large tank ditch. The candidates for execution Were already standing or kneeling in the ditch. One group had scarcely been shot before the next came and laid themselves on the corpses there." carried out. Do you still maintain this statement?

A. I maintain it now as ever. The executions which the SK 4a carried out under my command at the order of the Commander-in-Chief were carried out in the proper court martial manner as I have described here. What Ehrlinger and Platt did at that time and this cannot have been that year, because one time they say 1942, and the date is wrong. It should be 1943. Those were Commando agencies which were active there two years later and I don't know anything about that.

Q. Do you still maintain that by Sonderkommando 4a no other shootings were carried out than by rifle, two men for one execution?

A. Yes, I state that now as before.

Q. Do you know how it was possible to kill approximately 34,000 people in two days, and this number should be established by now?

A. I cannot make any statements about that. I did not see it and it was up to the Highest SS and Police Leader who had ordered this, and as far as I know ordered his police regiment and the Ukrainian militia to do this and the 15 men of SK 4a did participate in the course of this action. Whether these men actually shot I did net witness that personally.

Q. You told the Tribunal that you were rather often ill. Will you give for the sake of the record exactly when you were on duty and when you were ill in the time from May 1941 to the time you left the East, which was in April 1942?

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A. In the first third of July: 1941, throughout July I was in about hospital and at the beginning of August, during the first days I went back to the Commando.

Q. It would be correct that you were ill from the 10 of July to the 2nd or 3rd of August in the hospital?

A. That might be approximately correct.

Q. Proceed.

A. After my birthday I became ill again, around about my birthday, and approximately until the beginning of September, the 1st 3rd of September, shortly before the departure for Kiev, I was continually in the quarters there.

Q. Will you tell the Tribunal what time it was, from whichday to which day?

A. On the 13th of August was my birthday, 4-5 days before our departure, and that was on the 17th, or maybe on the 18th when we moved. It must have been the 12th or 13th of September.

Q. It was a complete month, was it not?

A. Please?

Q. You were ill a complete month, from the 13th of August until the 13th of September, is that right?

A. Yes I got up in between but then it started again. Malaria and Wolhynian fever are similar and you have occasional attacks.

Q. Did you get reports from your teilkommandos during this time?

A. Some might have been received. It is possible that when I was well, I read a few reports and that I was told where the commandos were and how individual people were because in the house itself we had accommodated 10 or 12 sick people for as I have said this fever spread immensely.

Q. When were you ill for a third time?

A. At Kiev I had been wounded owing to the blasting on the 24th the 24th of September.

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Q. How long were you ill?

A. It took a long time until I was cured. I still had scars when we left for Charkow. On the 27th or 28th of November we left Kiev and went to Cherkov and during this march, which in all took about ten days, and owing to the strain of the march -

THE PRESIDENT: Witness, the Prosecution is very obviously desirous of getting from you a chronology as to the perios of time that you were disabled because of illness. Now instead of going into a great detail, detail much of which has already been given to us, state the dates. Now you have told us from July 10 to August 10 you were in the hospital, August 13 to September 13 you were in the hospital. Now when was the next period of disablement. Give us the dates.

A. During the time of September I was in the commando in a special room because there were no hospitals or they were over-crowded.

Q. You were disabled from what day, from what date in September to what date?

A. About the 13th of August until about a month later.

Q. You have given us that and you have told us the first time that you were in a hospital. Now you tell me you were in a room. After September 13th when did you become disabled again?

A. I said that I became ill and remained with the commando and a staff physician of the AUK 6 looked after me there. In Kiev I had been wounded in the head and was kept in my quarters.

Q. I am sorry I don't speak German so I can't give it to you in German, out I am trying to make it as clear as possible and I am certain you are getting the translation accurately. Give us the dates that you were disabled. Now we have got as far as September 13th. when was the time you again because disabled after September 13th?

A. The 24/9/41.

Q. Until when?

A. Until the departure on the 27th or 28th of November from Kiev.

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Q. Very well, September 24th to November 28th?

A. Yes.

Q. All right, now the next time you were unabled to perform your duties?

A. At the end of December until the beginning of October or rather February, 1942, in the first third, I don't know the exact date, about the 10th of February, I was up for about ten days and from the end of February until the middle of March I was down again.

Q. That covers the whole period of your illnesses during that campaign?

A. Yes.

THE PRESIDENT: Very well, the Tribunal will not be in recess until five minutes past two.

(The Tribunal adjourned for the noon recess) (The Tribunal met pursuant to noon recess at 1400 hours)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Proceed, Mr. Hochwald.

MR. HOCHWALD: May it please the Tribunal. BY MR. HOCHWALD:

Q. Herr Blobel, you commented yesterday on Document Book I, page 131 in the English, and page 159 in the German book. This is your affidavit NO 3824, Exhibit No. 31. You commented on paragraph 8 of this affidavit, and I quote: "During the last days of September 1941 the Sonderkommando 4-A in cooperation with the group staff of the Einsatzgruppe-C, and two units of the police regiments stationed in Kiev, carried out the mass executions of Jews in Kiev." You said about this sentence, that the passage "By order of Higher SS and Police Leader" was missing, is that right?

A. Yes, I said that.

Q. And did also say, that this passage "By order of the Higher SS and Police Leader" was contained in the original which you signed, and, is that in the copies before the Tribunal? Is that what you want to say?

A. I had assumed that the supplement of this missing sentence had no ending, as it says here, "During the last days of September 1941 the Sonderkommando 4-A in cooperation with the group staff of the Einsatzgruppe-C, and two units of the police regiments stationed in Kiev." and there is no end of the sentence, and, then it just states the number which I had mentioned.

Q. I'll ask you another question. Do you want to say that in your original which you signed, and which is in the photostat before the Tribunal this sentence "By order of the Higher SS and Police Leader." is contained? Is that what you wanted to say yesterday when you said this passage was missing, or did you think that this passage was missing just in order to make the sentence complete, and this is an addition which you make only now?

and at the time when I made it out, it was to the effect that it was on the orders of the Higher Police and SS Leader. this passage "by order of the Higer SS and Police Leader" was not included, was it?

Q By whom? something missing in the sentence which has been overlooked. would now add the passage to it, do you not? But it was not contained in the original, which you cited, is that correct? This is an addition which you are making now, an explanation to the sentence, but not a part of the document, is that right? That is the only thing I am asking you. sentence, or rather, this addition was contained. before the Tribunal as an exhibit, this sentence, "by order of the Higher SS and Police Leader" is contained, is that what you say?

MR. HORLICK-HOCHWALD: If your Honor please, could the SecretaryGeneral get Exhibit No. 31 for the inspection of the Tribunal and of the interpreters?

THE PRESIDENT: The Secretary-General will please get that exhibit.

Q (By Mr. Horlick-Hochwald) Will you turn now

DR. HEIM: Dr. Heim for the Defendant Blobel. lowing fact: The witness just now said "should", "should" be contained in the original. I think it was translated "must be". The conjunction wasused in the German and not the indicative, because the witness did not say it was contained but it should be contained.

I would only like to say this, in order to prevent any misunderstandings, that the Prosecution should not say that it actually was contained in the document book in the original document, in case it is not contained in the document.

MR. HORLICK-HOCHWALD: Whether in the mimeographed copies which were made, this very important passage was left out by mistake or whether the witness signed a document in which this passage is not contained, wasthe only reason for this line of questioning, and I do think it was perfectly clear, I asked the witness whether he meant this as an explanation to the sentence or whether that was left out in the copies. It is not clear from his statement in direct examination, and I only wanted to make clear whether by mistake of the people who copied the document this sentence was left out. Nothing else is being implied.

THE PRESIDENT: Does the statement by Dr. Heim change your question?

MR. HORLICK-HOCHWALD: Not at all; not at all.

Q (By Mr. Horlick-Hochwald) In Paragraph 9 of the affidavit which is on the next page - your Honors, page 132 - you stated that the Defendants Rasch and Radetsky and a certain Dr. Beyer took over the Sonderkommando 4a when you were absent for reasons of health. You now say that none of these three persons replaced you but that it was a certain Oversturmbannfuehrer Meyer commanded Sonderkommando 4a in your absence, is that correct? fuehrer Meyer took over the kommando in my absence. Wartenberg, is that correct? time and when reading through the documents I suddenly remembered the exact facts of the case namely that it was not Radetzky who was the kommando leader in my absence but that it was actually Sturmbannfuehrer Meyer who wasappointed to this post by the Higher SS and Police Leader, and I said furthermore that I went through the names of leaders with Mr. Wartenberg and we consulted each other as it were, as to who could have been in charge of the kommando, and we suddenly remembered the name of Radetzky.

point in the meantime, between the execution of the affidavit which wasthe 6th of June, 1947, and your testimony here, is that right? corrected my statement, is that what you mean?

Q It was between the 6th of June and yesterday, is that right?

AAnd now, yes. I had suddenly remembered it when I went through the documents again. signed the affidavit? not a real officer, he was only a war emergency appointment, is that correct? appointment was valid only for service in the RSHA but not for an assignment in the Einsatzgruppe, is that true?

A No, that is not quite correct. We had various war emergency commissions or appointments who were men who had been drafted, like, for instance, the Interpreter Mueller or the Interpreter Radetzky. The difference between them and other leaders was that they had no military and no special training, but on the other hand, they had a special knowledge, like knowledge of languages, for instance, like Russian or Ukrainian, and for this purpose they were assigned and drafted to the East.

Hauptsturmfuehrer at all? wasn't a Hauptsturmfuehrer in the Security Police; he was just wearing the uniform of the unit in which he had been before. As far as I know it is the Volksdeutsche Mittelstelle.

Q Washe a Hauptsturmfuehrer or was he not a Hauptsturmfuehrer? I did not question you on what uniform he were. I am just questioning you on the rank, nothing else. reason that he would have been a Tribunal commissar and in that case he would have had a police rank, a service rank and corresponding certificate; with the aid of these certificates one recognized the actual official rank and also the civilian rank which goes with this service rank. The State Police had a red certificate; Criminal Police had a red certificate, red paper with a green line, and the members of the SD had a red certificate with a white crossing line. All those who were not in possession of such certificate either had their SS pass of the General SS according to which they held the same rank within the SS, or they had a temporary SS pass which only authorized them to the uniform.

Q Witness, I do not think that you answered my question. I asked you whether you know or you do not know whether Radetzky was a Hauptsturmfuehrer in the SS or not.

Q Radetzky was not a Hauptsturmfuehrer of the Security Police. He wore a uniform of an SS Hauptsturmfuehrer of an SS unit, of the VOMI, whichwas part of the SS, V-o-m-i, and was only on a war emergency basis.

Q I ask you this very specific question for the third time. I did not ask you what kind of uniform he wore. I do want to hear from you whether he was a commissioned officer, a Hauptsturmfuehrer in the SS.

Nothing else did I ask you. It is V-o-m-i, part military organization. If he was a Hauptsturmfuehrer he could have been a Hauptsturmfuehrer in the SS, is that correct, but he could not have been a Hauptsturmfuehrer in the Volksdeutsche Mittelstelle. So, was he a Hauptsturmfuehrer of the SS, and please, I have explained that now fifteen times, will you answer the question with yes or no? Mittelstelle, was an SS agency. SS the Defendant Radetzky was, would have been in the position to be a leader of Teilkommando or Vorkommando according to his rank? have been superior to other officers, and in this case he would have had certain experience in interrogations. We would have been an interrogations officer, because that was the purpose.

Q. I do not think that you answered the question. I asked you whether Hauptsturmfuehrer Radetzky, according to his rank, would have been in the position to become a leader of a Teilkommando or Vorkommando. Will you tell the Tribunal yes or no, then you can explain why he could have been or why he could not have been, but it is absolutely necessary that you answer these very specific and very clear questions with yes or no.

A. As a Haupsturmfuehrer of the SS, that is as Hauptsturmfuehrer of the General-SS, he could not become a leader, a commander of an Einsatzkommando.

Q. So it is your contention that it would have been impossible that Radetzky ever would have been in the position to become a leader of a Teilkommando or Vorkommando, is that your contention?

A. Radetzky could not in any case, in the form in which he appeared on the horizon in a war emergency commission, could, I say, not be superior to other officers in any shape or form. He only held a war emergency commission.

Q. Will you please answer the question and then explain. I am in no position to find out from your information whether you answer my questions in the affirmative or the negative. I do not know. Possibly I am not clever enough to understand it. The question is, could Radetzky, having been a Haupsturmfuehrer of the SS, ever have received the position of a leader of a Teilkommando or of a Vorkommando, or was it by the simple fact that he was, as you say, on a war emergency status, would this status exclude him from this position?

THE PRESIDENT: Mr. Hochwald, now you have put three questions into that one question. You can't get a yes or no answer.

MR. HORLICK-HOCHWALD: Two questions.

THE PRESIDENT: Well, two. Let's make it only one and then you can logically demand a yes or no answer.

MR. HORLICK-HOCHWALD: I am sorry, Your Honor. I only wanted to explain to the witness both the positive and negative side of the question.

I withdrew the question and repeat.

Q. ( By Mr. Horlick-Hochwald) Was it possible for Radetzky, having been a Haupsturmfuehrer in the SS, to become a leader of a Teilkommando or Vorkommando?

MR. HORLICK-HOCHWALD: Your Honor, is that a question which can be answered with yes or no?

THE PRESIDENT: Yes, certainly.

A. Ho, that was not possible.

Q. (By Mr. Horlick-Hochwald) All right, did you ever speak with Radetzky about the Fuehrer order as the order was handed down by Streckenbach?

A. The general information about happenings in Pretsch or what had been said by Streckenbach in Pretsch was in the presence of all the leaders, and they were, of course, immediately informed about it.

Q. So Radetzky knew about this order?

A. why, the leaders knew the order; the leaders were aware of the order.

Q. Did you ever speak to him about this order?

A. It was in fact discussed by us in Pretsch.

A. It was in fact discussed by us in Pretsch.

Q. Did you, Mr. Blobel, speak to Hauptsturmfuehrer Radetzky about the Hitler order?

A. As I said, it was made known generally to the leaders in Sokal when the Einsatzkommando was stationed there, and when it assigned to its task by the Oberfuehrer, by the Superior Commander, and Radetzky was present on that occasion.

Q. Shall I imply from that, what you said, that you do not want to answer this question? The question was, did you, Herr Blobel, speak to Hauptsturmfuehrer Radetzky about the Fuehrer order. Will you answer that with yes or no, please? You gave already explanations that he know about it. How I am interested to hear from you whether you spoke to him about it.

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A. Yes, Radetzky was present at this discussion with all the other leaders. I did not speak to him myself when alone with him, We were there when the information was made know.

Q. Did Radetzky ever voice an objection against this order to you?

A. At the time Radetzky waid that he had been assigned to the SK-4a as an interpreter and in my direct examination I stated that I drew Radetzky's attention to the fact, in Sokal, that he, as an untrained police expert, he could not ne put in change of a subkommando in the Army units; therefore he had to take over the safe-blasting kommando where he had been put in charge of security files and documents.

Q. Herr Blobel, you did not answer my question, and it is quite obvious that you evaded answering the questions I am putting to you. The question was very specific. Did Radetsky over voice to you objections against the Fuehrer order?

A. Yes, he talked to me about it, and the discussion took place that he would not be considered for this order he had gone to the S-III, and therefore he carried but those tasks.

Q. I do not think that what you have just said answers the question. Did he object specifically to the contents of the order, that means to the killing of all Jews, gypsies and Communists. Did he do that?

A. Do you mean to say -- Is that what I understood?

( The question was repeated by the interpreter.)

A. Yes, he drew my attention to the fact that he was only there as an interpreter and that he was not qualified. He said that he was not qualified to be with anything else, and of course, he thus expressed objections.

Q. What did he say as to the objection? You said, "You can't be," to him. You said that he had objected, What kind of objection did he voice?

A. He said, "I have been engaged, and I have been detailed here as an interpreter, and I do not have to deal with tasks of the assignment of the Einsatz itself.

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I must be used as an interpreter only." "Yes", I said, "as a police expert without any training you cannot be put in charge of a kommando and therefore you will be an interpreter."

Q. You have told us what he said?

A. Yes.

Q. Did he over ask you to be relieved from his position as he could not bear the fact that defenseless people were constantly killed in very great numbers by the unit in which he served as an officer?

A. Such a personal suggestion, or rather personal plea, Radetzky did not send to me, I don't know if he spoke to Dr. Rasch about it.

Q. What was done if Radetzky or others of your officers would have voiced such objections and asked to be relieved from the assignment?

A. It would have been my duty to send this gentleman to Dr. Rasch and ask him to discuss the question with this authority, As far as that is concerned, he could have gone.

Q. You would have sent him to Dr. Rasch, is that correct?

A. Yes, I would have sent him to Dr. Rasch.

Q. There would have been no action against this officer on your part?

A. Well, that depended on Dr. Rasch's stops or Dr. Rasch's attitude.

Q. I asked on your part, Herr Blobel, and not on the part of Dr. Rasch. You would have taken no action against Radetzky or another of the officers if he would have asked to be released as he did not want to carry out the Hitler order. You would have taken no action, is that correct?

A. If I had received the orders for it, but if he just said, "I want to be released from my post", as far as I am concerned, I would have said, "Go to Dr. Rasch. As far as I am concerned, you can go."

Q. I would like now to turn to your assignment in Einsatzkomando 1005, That was a special task of the burning of the corpses in mass graves, is that correct?

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THE PRESIDENT: Is that a document number, Mr. Hochwald?

MR. HORLICK HOCHWALD: No, if Your Honors please, this special assignment which was given to the witness by the Chief of the Gestapo, Mueller, was known under a code name, Einsatskommando 1005, and that was what my question was.

THE PRESIDENT: Yes, but I didn't get any question from your statment to him.

Q. (By Mr, Horlick-Hochwald) The question was whether Einsatzkommando 1005 was the code name for this special task of burning of the borpses in mass graves?

THE PRESIDENT: Very well.

MR. HORLICK HOCHWALD: That was the question, Your Honor.

THE PRESIDENT: Yes.

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DR. HEIN: (ATTORNEY FOR THE DEFENDANT BLOBEL) Your Honor, I object to this set of question. The Operation 1005, that is, the burning of corpses from the graves in the East is of no value for the proceedings here. In my opening statement I made statements to this effect and I said that the burning of corpses is not a punishable act and it does not matter by whom these persons were executed. In the opening of this set of questions, I only see an unnecessary extension of the proceedings here and I deem this set of questions of no probative value whatsoever. I would like, therefore, to ask you not to have these questions answered.

MR. HORLICK HOCHWALD: If Your Honors please, if I am not very much mistaken. Dr. Heim asked the witness many questions about these special assignments. It is in the nature of cross-examination that I should be permitted to ask the witness any questions which, were put to him during direct examination.

THE PRESIDENT: Regardless of whether Dr. Heim opened this subject in direct examination, the subject is mentioned in the documents and therefore it becomes part of the res gestae of the case. Cross examination may be continued.

MR. HORLICK HOCHWALD: Before I go into this point, it possibly would please the court to see the affidavit of Blobel in order to ascertain whether the passage "By order of the Higher SS and Police Leader" in para. 8 of the document is in the original.

THE PRESIDENT: Well, first indicate so that the record will be very specific on the subject what the mimeographed copy states, what the original photostat states, and what the witness himself stated so that if there is any discrepancy along the line it will appear in the record.

MR. HORLICK HOCHWALD: If Your Honors please, I want to quote from page 131 of Document Book I, in which this document is contained. This is NO-3824, Prosecution Exhibit 31. Paragraph 8 of the mimeographed copy, is contained in the document book roads: "During the last days of September 1941, the Sonderkommando 4a, in cooperation with the Group Staff of the Einsatzgruppe C and two units of the police regiments stationed in Kiew carried out the mass execution of Jews in Kiew."

Would it be agreeable to the Tribunal to have the interpreter check the German text of the exhibit with this English translation?

THE PRESIDENT: Now is that the sentence which is in dispute?

MR. HORLICK HOCHWALD: That is the sentence which is in dispute.

THE PRESIDENT: Yes. The photostat may be submitted to the interpreters. It is enough if the interpreters will compare the photostat with the mimeographed copy and indicate whether the translation in the mimeograph is faithful or not.

(The interpreters did as requested.)

INTERPRETER HILDESHEIMER: It is the exact wording, Your Honor. The wording of both sentences is identical.

THE PRESIDENT: Very well. Let us proceed now to something else.

Q. Herr Blobel, is it true that you entrusted with the special task of burning of corpses in mass graves by the Chief of the Gestapo Mueller, is that correct?

A. No, that is incorrect in this form. The assignment was turned over to the Commander of the Security Police and SD on the Eastern Front and I had merely the task to collect the order from Gruppenfuehrer Mueller.

Q. Did you not do anything else?

A. No.

Q. You didn't do anything else but go from Berlin to the Higher SS and Police leaders and tell then there is an order in existence to the effect that you have to burn these things?

A. No, I had nothing to do with Higher SS and Police readers either. I acted by order of the Gruppenfuehrer Mueller.

THE PRESIDENT: Let us get this very specifically, and see if we can avoid the wasting of unnecessary time. Your affidavit reads as follows: "In the Fall of 1942, I was assigned to go to the occupied territories as Mueller's deputy and to wipe out the traces of mass graves of people executed by the Einsatzgruppe," Is that correct?

TEE WITNESS: In this form it is not correct. I have the document here.

THE PRESIDENT: It is followee by the sentence, "This was my task until summer of 1944." Is that correct? Is that correct?

THE WITNESS: Gruppenfuehrer Mueller gave me the order to submit the order to the SS leaders to burn down the graves.

THE PRESIDENT: How does that differ from what appears in this affidavit?

THE WITNESS: There is no exact difference.

THE PRESIDENT: How, witness, you are causing us to lose a lot of time. When a question is put to you very specifically, you say it is not correct. Then we talk about it a little while and you say it is correct. How please listen to the questions and answer. How you tell us that this is correct, your statement in the affidavit is correct.

THE WITNESS: Yes.

THE PRESIDENT: Very well. How don't waste any time upon that feature. That is correct.

MR. HORLICK HOCHWALD: Thank you very much, Your Honor.

Q. When did you start with these tasks?

A. At the end of June 1942 Gruppenfuehrer Mueller gave me the order for the first time to go to the BDS, in the Ukraine, and to pass on the order to burn down the graves on his special order. This first journey had to be postponed, however, because I had received another order and I had to wait then in the vicinity of Litzmannstadt. The burning were carried out, test burnings, in fact, and in September 1942 I went to the Ukraine to see Dr. Thomas for the first time and I passed on the order to him. Dr. Thomas refused to carry out this order and he said it was non sensical.

MR. HORLICK HOCHWALD: May I interrupt the witness, Your Honor?

THE PRESIDENT: Yes.

Q. That was not what I asked you. I only asked you when did you start?

You have said all that which you have just told to Thomas already in direct examination. You started in summer 1942, is that right?

A. In Summer 1942, we had these test burnings. The actual task was only started in the next year, in June and July.

Q. 1943, I take it. Was it?

A. Yes, 1943, yes.

Q. Were you present during such operations?'

A. During the test burnings I was present, yes.

Q. And were you also present when mass graves were burned, later when the experiments were already finished?

A. Yes, on one particular soot, I saw a place near Kiew which had been burned.

Q. By when was the actual work carried out?

A. In Kiew there were Ukrainian SS men or a company of SS men, members of the BDS, and members of the SS and Police leadership Office and the Regular Police.

Q. Were no laborers used in order to carry out the dirty work? Only SS men would do that?

A. Ukrainian SS men were assigned to the digging works.

Q. He laborers, no Russian laborers or soldiers?

A. He, Uniformed Ukrainian SS men, a company.

Q. I didn't catch this, They were not in uniform, these SS, is that what you said?

A. They were in uniform, uniformed Ukrainian SS units.

Q. And they carried out -

A. They were uniforms.

Q. And they carried out all the dirty work. You did not use any Russian laborers at all?

A. For this purpose, no Russians were used.

Q. Only SS men?

A. Yes, these SS men.

Q. And what happened to these SS men, as you say, after such an operation was finished?

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Did you take then along with you, or did they stay at the place, or did you have some specialists, some special laborers, who did the work?

A. I was never in charge of any komnandos at that place. That was a matter to be dealt with by the competent commanders or the Supreme Commander of the Security Police. It was under his charge.

Q. Whose kommandos were they?

A. Those were the commandos of the Supreme Commander of the Security Police in the Ukraine.

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Q. Can you tell the Tribunal what Einsatzkommando 1005 was?

A. This name, this term, 1005, must have been invented by somebody or other. It wasn't an official term, It was coined, and that is a self-assumed name.

Q. I just want to know, you stated in your affidavit that Mueller entrusted you with the task of removing the tracesof executions carried out by Einsatzgruppen in the East. He entrusted you. You are going to tell me that you were not at all interested in this task, that you just locked on, when the Higher SS and Polizeifuehrers arrived there. Is that what you are going to imply?

A. He, no, that is not correct, as you say it. I had to take this order to the BDS and the BDS had to take care that in his territory all these places were actually burned. He had to assign his own kommandos for these tasks.

Q. Did you have some specialists with you who showed these people who were actually active in the burning, how they should do it, or did you advise them to, or how was the whole thing done?

A. No experts, no skilled workers were necessary for this assignment. The covers were lifted, the covers of the graves; motor fuel was filled into them, or any kind of fuel, and suddenly a great torch was lit. That was the whole task.

Q. And this task was carried out solely by SS men and no laborers were used, is that your contention?

A. He, we needed no civilian workers. I never saw any civilian workers in this task. They were all SS men. They were paid for their work. They got double and three times their ration for their work.

Q. But no civilians--

THE PRESIDENT: He has stated that several times, Mr. Hochwald. He civilians. They were SS men.

MR. HORLICK HOCHWALD: I am sorry. I would like to offer Document NO-5498, which is an affidavit of the affiant Adolf Ruebe, Your Honor, as Prosecution Exhibit 181.

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DR. HEIM (Attorney for the defendant Blobel): According to principle of the best evidence it would be possible for the Prosecution to call this affiant on the witness stand, especially as this affidavit was only made out seven days ago. At least, I want to apply to have this only admitted in evidence, if the affiant, a certain man called Ruebe, can be called in to the witness stand here.

MR. HORLICK HOCHWALD: If Your Honor please, I was not in a position to find out the whereabouts of Ruebe, but there can be no question that Dr. Heim can get the address of the affiant any time and that if he makes an application he can get the witness here for cross-examination. I therefore do think that the affidavit is perfectly admissible.

DR. HEIM: Your Honor, I would like to call your attention to the fact that in this affidavit, as well as in the affidavit by Hartel, submitted by the Prosecution this morning, the address is not mentioned, contrary to the regulations prevailing here for the submission of affidavits.

THE PRESIDENT: The Prosecution is called upon to furnish Dr. Heim with the address, if they have it, of the affiant Hartl and the affiant Adolf Ruebe. With regard to the doucment now before the Tribunal, the same ruling will be made as was made this morning in connection with the Hartl affidavit. It may be used for the purpose of cross-examination but it will not be admitted in evidence at the present time. If Ruebe is called as a witness by either side and he confirms what is in the affidavit, then the affidavit may be introduced for the purpose of contredic tion. In questioning the witness on this affidavit, it will be suggested to the Prosecution it will not be necessary to read the entire affidavit into the record but only to read such parts as are immediately relevant in the cross-examination of the present Defendant on the witness stand.

HR. HORLICK HOCHWALD: If Your Honor please, I intended to read only paragraph 4 of the affidavit.

THE PRESIDENT: Very well.

DR. HEIM: Thank you, Your Honor.

MR. HORLICK HOCHWALD: If Your Honor please, Mr. Schwarz, these interrogator is just here and I can ascertain now the whereabouts of the affiants, Hartl and Ruebe.

THE PRESIDENT: I wish you would do that immediately.

HR. HORLICK HOCHWALD: Would you excuse me for a minute?

THE PRESIDENT: Certainly.

MR. HORLICK HOCHWALD: If Your Honors please, the affiant Hartl is in the Hurnberg jail. The affiant Ruebe is hold by the Spruchkammer of Karlsruhe. Karlsruhe.

THE PRESIDENT: If Dr. Heim will present his application for the production of these witnesses, present his application to the Tribunal, it will be approved forthwith.

MR. HORLICK HOCKWALD: May I read not, Your Honor?

THE RESIDENT: Yes. please.

Q. (Reading) "In October 1943 I was transferred to Kommando 1005. This kommando was under the leadership of Standartenfuehrer Paul Blobel." Herr Blobel, is that you, Standartenfuehrer Paul Blobel?

A. I an Standartenfuehrer Paul Blobel, yes.

Q. (Reading) "It was the task of this kommando to destroy mass graves. This work was done by Hauptsturmfuehrer Harte. The graves were opened by Russian civilian prisoners, the corpses taken out by means of iron picks, piled up and later burned. After completion of the work, the Russian civilian prisoners were shot by the members of the kommando. The corpses were burned too. I was present at such shootings several times, namely at Minsk, Schmolewitzsche, Pinsk, Janow Koprin, and Slonim. At the beginning of December 1943, Standartenfuehrer Blobel, accompanied by Hauptsturmfuehrer Harter, arrived for the purposes of making an inspection of our work." End of quote. Do you want to comment on that, Herr Blobel?

A. Yes, I can comment on this that the Kommando 1005 was not under my leadership, but as I have already declared, that the Supreme Commander of the Security Police, I have not seen myself, or, that is, the commanders had this order.

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As this man here describes in Minsk, a burning of the corpses and I never met a Hauptsturmfuehrer Hartl. In September I went to Kiev in the Eastern Territory to Oberfuehrer Piffrader. The commanders, or, at least, the BDS were responsible for the carrying out of these tasks in their independent sectors.

Q. So you deny these facts stated in this affidavit, is that correct?

A. In Minsk I have not attended any burning of corpses. In Kiew I saw a burning of corpses with Ehrlinger and from there I was detailed to the Eastern territories to Piffrader, and I never had such kommandos as an actual kommando leader.

Q. If I sum up your testimony, so you told the Tribunal in essence that Sonderkommando 4-a executed 10 to 15000 people when you were in command of this unit, is that correct?

A. He, that is not correct. I said that the SK 4-a participated in such executions, but that the komnando itself carried out an execution of 10 to 15000 people is not correct.

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people. You have further stated that all these executions were justified in accordance with the laws of war, as reprisal against the inhuman and Criminal warfare on the part of the Russian enemy, and as just punishment for grave crimes the perpetrators had committed against the German armed forces. Is that correct?

AAgain, I did not say that. I especially emphasized that retialiation measures for crimes were judged by me apart from the retaliation measures, and that these executions were of 10 - 15000 people were never emphasized by myself, and was never in agreement with measures, but only which I have in time described in my direct testimony. against the carrying out of execution orders.

THE PRESIDENT: Well, I think that the defendant has testified a great deal on that subject, and that is pretty general.

MR. HOCHWALD: This, your Honor, concludes my cross-examination.

THE PRESIDENT: Very well. The Tribunal will now be in recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

MR. HOCHWALD: If the Tribunal please, I offer Document NO-5498, which is the Ruebe affidavit which I just quoted to the witness, and the Tribunal ruled that it will be held in suspense until the Defense decides whether the witness should be called or net. But I would respectfully request that the Exhibit No. 181 should be reserved for Document NO-5498.

THE PRESIDENT: I think by all means when a document is referred to that it should receive an exhibit number, whether it is accepted later or not is another matter. But for the purpose of continuity it would be well to give it a number and that number will be assigned to the document in question.

MR. HOGHWALD: Very well, your Honor.

THE PRESIDENT: The Tribunal will announce that this Tribunal will not be in session next Monday all day, so that when it recesses tomorrow afternoon at three o'clock it will be recess until next Tuesday morning at nine-thirty.

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Does defense counsel desire to question any further? BY DR. HEIM (for defendant Blobel): tion by the Prosecution. In the cross examination the so-called Fuehrer order was mentioned, as Streckenbach announced it in Pretsch. I want to ask you about this. Was this order as it was announced in Pretsch already binding for you.... that is, based on the order which was announced, could you start your activity? him in my opinion included the entire order, and I expected certain more detailed instructions about this order. And to me they were given as Dr. Rasch ordered me at Cracow, - to report to the commander of AOK 6 Reichenau and to take orders of lives and his orders were within the framework of this main order the so-called "Fuehrer decree". Commander-in-Chief Reichenau had approximately the same order in front of him, in writing. I would like to ask you about this. This order, as Reichenau had in front of him in writing, was it valid for you in the same form, that is, for your activity. hands of Major Palzhof. It was concerned with the subordination of the Commando of the Security Police and the SS under the army, and described the tasks in the same listing as I have mentioned it in the examination. This referred in particular to this Commando. could you only than become active according to these directives?

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or rather the divided SK-4-A, had to go to the army unite, and to work according to the sense, and the sense of this decree is issued with same order the division commander as it came from the AOK 6. order which Jeckeln announced. Based on this order which was announced by Jeckeln did you ever execute Jews merely because they were Jews, even when those Jews had not committed any crimes against war laws?

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A. I never gave an order of my own. authority for any such thing, and didn't have Jews executed at my order memely because they were Jews. That never happened.

Q. In the cross-examination you also said that only those leaders of the sub-kommandoes know about the Jeckeln order, who were active in the executive staff. Did I understand you correctly there?

A. The leaders who were active in the executive were familiar with the exact executive directions and when the leaders met the leaders of the remainder of the command (Rst-Kommando), whether administrative leaders or others, it can be understood that they discussed this matter.

Q. During the cross-examination the prosecution mentioned document in which the execution of 1160 Jews were mentioned. In this document it is mentioned that this reprisal action was carried out because ten German soldiers had been murdered. You said - when this subject was discussed that this proportion, or this ratio of 116:1 Seemed rather high to you and you continued to say that the ratio of one to nine, or the to ton seemed appropriate to you. Witness, do you know whether according to the valid International Law a ratio in reprisal measures is prescribed?

A. I don't know that. I only knew that other countries also carried out reprisal measures, and have given orders for such reprisals, about one to two hundred according to the well known order of General Eisenhower.

THE PRESIDENT: You say there is a well known order of General Eisenhower that two hundred were to be executed to one?

A. All the German people know, Your Honor, that an order was given by General Eisenhower that for every one American who was killed, two hundred Germans are to be shot.

Q. You say, all the Germans knew about an order of that kind?

A. It is well known in Germany. Whether all Germans know this, I don't know.

Q. You said that all the Germans know about this order. Now do you say that every German and every defense counsel here know of such an order?

A. Your Honor, I am convinced that many of the defense counsel know of this order.

Q. Can you point out one defense counsel who will make the statement that he knows that General Eisenhower issued an order that two hundred Germans would be killed for any one Allied soldier killed? Will you defense counsel make that statement?

A. Your Honor......

DR. HEIM: Your Honor, may I add something here. This matter so far as I know was mentioned in the proceedings against the Southeast Generals in this courthouse, a few days ago. I know that the Defense in the Southeast Case has requested that General Eisenhower and a French General, whose name I can't remember, be called as witnesses into the witness box, in order to examine both on the subject. Also I learned that in this case a witness, a German witness testified that during internment in Thuringia, at the end of the war or after he saw pesters of the American Power of Occupation, according to which for each American soldier who is killed, I believe, one hundred Germans should be shot as reprisals.

THE PRESIDENT: Will you state this of your own knowledge?

DR. HEIM: He, your Honor.

THE PRESIDENT: Very well. Now coming back to the statement of the witness, he said, first, all of Germany Knew about this - ALL Germans knew it. Now, we will retrace our steps. Do you say that all Germans knew of such an order? Answer that yes or no.

THE WITNESS: No.

THE PRESIDENT: Very well, then you modified it, and said that many Germans knew of it. I would assume that it would be those Germans who were very intelligent, and who were aware of current affairs. May I come to that assumption?

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A. That some Germans know about this, those Germans who read these announcements?

THE PRESIDENT: Yes. Did you yourself know of such an announcement?

A. In the individual camps like Garmisch.....

THE PRESIDENT: Did you yourself know of such an announcement?

A. I didn't read it myself.

THE PRESIDENT: No. Now you said that many Germans knew of it. In this Tribunal today, in this courtroom, there must be, undoubtedly, many Germans. Can you point out one who knew of this order which you have just stated. Your own counsel has denied that he knew of it. Does any counsel here know of this order?

A. I think the Defendant Ohlendorf for example....

THE PRESIDENT: I ask about counsel, first, the attorneys. Does any attorney here know about the order, yes or no?

A. Yes.

THE PRESIDENT: Which one?

A. Dr. Heim, for example, read about, it.

THE PRESIDENT: Dr. Heim already denied of knowing about an order. Mention the next person.

A. I don't know the other gentlemen as well. I said I presume that people knew it.

THE PRESIDENT: Yes, so, therefore, this bread statement that all of Germany knew about it has now been dwindled down to a statement that you just don't know of it, your own counsel does not know of it, and you can not point to one single German in this courtroom who knew about it, outside of the defendants' box. How is there anybody else you can call in all of Germany who can state that he knew of such an order?

A. Your Honor, such orders were announced in the camps as well as by letters of relatives.

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THE PRESIDENT: You yourself didn't see the order, or the announcement, that is correct, isn't it?

A. The announcement, yes.

THE PRESIDENT: You say you did see the announcement? Did you See the announcement?

A. I personally didn't see it. I didn't leave the camp.

THE PRESIDENT: Now, no one in Germany can be called by you to state that he saw the announcement. Then you refer to the defendants. Now can you refer to any defendant in that box there who will state that he saw this announcement?

A. Whether anyone personally saw the announcement? Your Honor, as to the people who knew about it......

THE PRESIDENT: I want you to answer that question, whether any defendants here in this courtroom today who can state that he saw this announcement which you mentioned a few moments ago?

A. I'd have to ask each one individually.

THE PRESIDENT: The Tribunal will direct a question to all of the defendants. The witness has stated, of course, you have heard what he just stated, that an order had been issued by General Eisenhower that for every Allied soldier killed two hundred Germans would be killed. You heard the Questioning back and forth between the Tribunal and the witness. Is there anybody here now to justify that statement insofar as the defense counsel, or any other citizen in all of Germany. Now, did any of the defendants here in the court ever see such an announcement. If any one did, he will please raise his hand. No defendant has raised his hand, so now we come back to your original statement, that all of Germany knew of this announcement. Do you want to withdraw that statement?

A. If that inquiry by the President to those people show this result, I must say the fact is only known to individuals.

THE PRESIDENT: Will you withdraw that statement in view of the results which has followed your original declaration?

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A. I shell have to do that because I personally didn't see it.

THE PRESIDENT: Yes, and will you now make an apology for having cast this aspersion upon the name of General Eisenhower, who up until this very time has earned the respect of not only those in his services on the Allied side, but even the respect of the foe?

A. Under those circumstances I have to beg your pardon.

THE PRESIDENT: Very well. Proceed, please.

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BY DR. HEIM:

Q. Witness, during the cross-examination you talked about the collection of the clothes of the people executed in Kiex. Were you present during that action?

A. During that action of collecting clothes I was not present.

Q. Did you not see how those clothes were collected?

A. No, I only heard later that the Ukrainians had to administer these clothes and also distributed them.

Q. Where were you in March and April 1942?

A. At the end of March 1942 I returned to Berlin and until the beginning of May I was in my apartment in Solingen.

Q. Can you tell me whether in March of 1942 you were called to the estate of Dr. Thomas in Charkow and traveled together with a certain man named Harter?

A. That is quite impossible. In March 1942 when I left Charkow Dr. Thomas did not have an estate but he was in Kiev in his office.

Q. Witness, I am referring to Document No. 5384, which has the temporary exhibit number 180. It is an affidavit by Harter. I refer to paragraph 5, executions by Oberfuehrer Erhlinger are mentioned here and executions by Sturmbanfurhrer Platt. Did these two men mentioned ever belong to your commando?

A. Neither Oberfuehrer Erhlinger nor Sturmbanfuehrer Platt ever were in my commando. Oberfuehrer Ehrlinger later on was commander of the security police in Kiev and Sturmbannfuehrer Platt I did not even know.

Q. Do you know how the executionswere carried out at the order of these two men?

A. I never heard about it and never witnessed it when these people carried out executions.

Q. I am referring to document number 5498, with a temporary exhibit number of 181.

The Prosecution submitted this affidavit by a man called Ruebe. I am referring to the Arabic figure 4 on page 2 of the original. Witness, do you have the document in front of you?

A. Yes.

Q. It says here in the second sentence, I quote:

"This Commando was under the leadership of Standartenfuehrer Paul Blobel. It was the task of this commando to destroy mass graves. This work was done by Hauptsturmfuehrer Harter."

Witness, do these statements of Ruebe's reveal that you were the leader of this commando?

MR. HOCHWALD: If your Honors, please, I object to that question. The document speaks for itself. The witness can not recommend whether Harter was correct or not correct, but he can state from his judgment whether it is clear from the document that he was in charge of the commando or not.

Moreover, Dr. Heim has announced here that he is going to call the witness and I do think this is a proper question to put to the affiant when he takes the witness stand but not to the defendant.

DR. HEIM: Your Honor, if the Prosecution objects to this affidavit which is not yet admitted, I think I am also entitled to refer to this affidavit on the principle of equal rights of Prosecution and Defense.

THE PRESIDENT: Well, Dr. Heim, I can assure you that there can be no question about the equal rights between the Prosecution and the Defense. Now if you will specify exactly just what it is you are socking to ascertain, the Tribunal will very happily cooperate with you. Now let us know just what it is you want to find out.

DR. HEIM: Your Honor, I shall not refer to the affidavit, but merely address questions to the witness without referring to the affidavit.

DR. HOCHWALD: If you please, Your Honor, the Prosecution has not objected that Dr. Heim may put the affidavit to the defendant and and ask him questions.

We have objected against one very specific question which was: "It is clear from this sentence that you were the commander of the Einsatz Commando." I have only objected against this question, not against the fact that Dr. Heim uses the affidavit. He is at liberty to ask the defendant about it and the things which are stated in the affidavit are true or not. Naturally we used it, why should he not use it? But I have only objected against this one very specific question, of Dr. Heim, as not being a proper question to put to the defendant.

THE PRESIDENT: Very well, you opened it up first on crossexamination and Dr. Heim is allowed to explore the possibilities of that subject.

DR. HEIM: I will not refer to the affidavit any more but merely want to address a few questions to you about the action 1005 to you: Apart from the experimental plants at Litzmannstadt, did you carry out any burnings yourself, that is, did you supervise personally any burning of corpses?

A. The commandos assigned for this task in Litzmannustadt had been assigned by the commando of the security police of the Inspector in Posen and he supplied these men. The command of the security police or rather the order was handed on by me and the organizational and factual questions were dealt with by the Commando of the security police. He had set up commandos and saw to it that it was carried out and was subordinate responsible personally to the Reich Main Security Office for the carrying out of this task.

Q. Herr Blobel, did you know a commando under Hauptsturmfuhrer Harter?

A. I don't know the name Harter and I don't know any commando of that kind.

Q. Do you know Hauptsturmfuehrer Sekel?

A. I don't know him either.

Q. Witness, upon your order or in your presence were civilians or prisoners ever used for this burning of corpses?

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A. In my presence and as far as I have witnessed it during the test burning of corpses in Litzmannustadt German Police, SS men, were used to carry this out and in the Ukraine and in Kiev where I was present myself, Ukrainian militia carried out this task who had been appointed for it. In these eases no civilians or prisoners of any kind were used for it.

Q. Did you hear that in any commandos dealing with this action 1005, civilian prisoners were used to carry out this burning or corpses?

A. I never heard of that because then I would have had to report to Gruppenfuehrer Mueller about it.

Q. Witness, my last question now. Since yesterday have I talked to you at all except here in public?

A. No.

Q. Thank you. I have no further questions.

THE PRESIDENT: Dr. Heim, your questioning an document No. 5498 causes the Tribunal to make the observation that the statement in the affidavit that civilian workers were shot after having participated in the exhumation and the destruction of bodies, can in no way, be imputed to the defendant, and the defendant will not be called upon to answer any charge which might scorn to arise from that declaration, because the indictment specifically charges the defendant with crimes only up to July 1943, unless the Tribunal will be corrected by the Prosecution in that respect?

MR. HOCHWALD: Your Honor, I only want to state that it is a fact in the statement by the Tribunal that the Prosecution refrains from offering this document at this time.

THE PRESIDENT: So that you will not be called upon, Dr. Heim, to present any evidence whatsoever regarding the statement that civilians were shot in October, 1943, because that is beyond the limit date specified in the indictment.

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DR. HEIM: Your Honor, thank you very much for making this statement. On my part I would like to state that under these circumstances I can do without the interrogation of Ruebe, the affiant. On the other hand, I think that the defense counsel of the Defendant Strauch I believe, wants Ruebe to be called to the witness stand.

THE PRESIDENT: If that is true, certainly he will be called. You do want to have the witness called?

DR. MENSEL for Dr. Lick for the Defendant Strauch: in case the Prosecution intends to introduce document 5498 against the Defendant Strauch as evidence.

THE PRESIDENT: We will hear from the Prosecution on that angle.

MR. CLANCY: I wish to assure the Tribunal that the witness Ruebe shall be brought here forthwith as a Prosecution witness and placed at the disposal for cross-examination for the defense.

THE PRESIDENT: That will answer all questions here and he will be available if he is needed he will be questioned and if he isn't needed he will not be questioned, so that, therefore, your rights will be protected from any point of view.

DR. DURCHOLZ: For the Defendant Rasch: questions to the witness.

THE PRESIDENT: You may. BY DR. DURCHOLZ:

Q. Witness, the Prosecution asked you during the examination about the tasks of Strechenbach at Trebsch. I would like to have a few circumstances explained by you: When Strechenbach had announced the tasks at Trebsch, did discussions take place between the persons concerned and about this order?

A. After the short speech which Strechenbach held the leaders went in two rooms of the school and little circles formed, some higher leaders sat down in a corner and discussed this subject, which Strechenbach had just announced and gave their personal views on it.

Little circles stood around to discuss this question.

Q. How many persons were concerned with this order?

A. If I remember correctly, say 25, 25 leaders.

Q. Can I understand the answer before the last that you tried to say that they did not part immediately, but that the participants stayed together for sometime and discussed the order?

A. That is right.

Q. Were the opinions about the contents of the new order, did they differ?

A. Yes, they did differ very much, some understood it one way as totalitarian order, some talked about individual points of the order, how it should be understood. Therefore, it was uncertain.

Q Therefore, it was necessary. No definite line existed?

Q Was Dr. Rasch present during that discussion?

A I remember that I was near Dr. Rasch but that he then together with other leaders went to the other rooms to talk to them, Host of these leaders I did not know.

Q Then the second subject. You said, before that your birthday is on 13th of August, and that on 13 August 1941 you were ill? were ill. Can you state approximately the dry when this order was handed, to Group-C by Rasch? 13th, aid sixteen days after that, certainly.

Q Then a, third subject. You said that in October 1941 the Reichsfuehrer visited Kiev, and that Rasch was disapproved by the Reichsfuehrer, When was it in the beginning of October or the middle of October? absence Hoffmann was in charge of Group-C, and after Rasch's return at the end of October, the commando was finally given over to Thomas. Does this - I understand to mean that after Rasch left for Berlin the commando was actually not taken back by him? Dr. Thomas, This happened at the end of October.

Q Now one more question. You just said that the Reichsfuehrer came at the beginning of the month and that Rasch left for Berlin immediately after the visit of the Reichsfuehrer.

Q And arrived, at the beginning of October as well, then?

Q A fourth question still. You talked about the gas-van of group VI. When did this gas-van arrive?

A This gas-van must have arrived about the middle of October. I think the middle of October.

DR. DURCHHOLZ: Thank you.

TEE PRESIDENT: Any other defense counsel wish to question the witness? Witness, are you a religious man?

TEE WITNESS: I was brought up in the Protestant Confession. confirmed, and our whole family grew up in that spirit.

THE PRESIDENT: Are you a religious man?

THE PRESIDENT: Are you a religious man?

THE PRESIDENT: Are you a member of any church?

THE PRESIDENT: Why did you leave the church? the Calvinist Movement in Wermelskirchen in the "Bergische Land", who are a separate sect. They are not tied to a church community of the State.

THE PRESIDENT: You thought you could do better without any connection with a church?

A One could not speak of a better treatment. Perhaps one could move more freely and bad closer contact with the other members.

THE PRESIDENT: So you left the church because you wanted, more freedom, more spiritual freedom? of life.

THE PRESIDENT: You felt that the church in some way hampered your spiritual independence? made.

THE PRESIDENT: Since you left the church in 1936, did you at my time attend any religious services of any character anywhere?

THE PRESIDENT: Yes, Where? attend church.

THE PRESIDENT: Yes, but between 1936 end 1945 you didn't feel that you needed the help end support of religion as you now apparently seen to welcome it?

A No. We also visited church service during that time.

THE PRESIDENT: Between 1936 and 1945?

THE PRESIDENT: You only visited hut not to worship? Land.

THE PRESIDENT: And when was that?

A When was this?

THE PRESIDENT: Yes?

A I don't understand you.

THE PRESIDENT: You said that you visited certain church services, and I an merely asking you when was it that you made these visits?

A. That was during the years after we had left the Protestant Community, and to together with our relatives in the Bergische Land we had close contact on these religious questions, and in this circle we spent many hours of worship.

THE PRESIDENT: You yourself worshipped in church after 1935?

THE PRESIDENT: Well now , there is a difference between visiting and worshipping. One nay visit a church to study the architecture, and to see what is going on, but when he goes to worship he goes with an entire different objective in view. He goes to get closer to the Supreme Being spiritually.

service was, together with wife and children, sofar as they are grown up.

THE PRESIDENT: Then you did worship in church after 1936?

THE PRESIDENT: Then the statement in your personal record that you left the church in 1936 is incorrect?

A Yes. Officially I belonged to the Protestant Community no longer. Officially I had left the Protestant Church, and we had became more acquainted with the Calvinistic Bund in Wermelskirchen. We were together with all our relatives there, and, this "being together included almost the whole local group (Ortsgruppe) in that locality.

THE PRESIDENT: You left one church and entered another church?

A If you can call it a church. You could call it a religious

THE PRESIDENT: Then you never really did abandon religion?

A No, we didn't leave it.

THE PRESIDENT: No, Did it occur to you that before every execution that it might have been consoling and comfortable to the executees if they could have had the benefit of some religious service? the spiritual life of these men in the East.

THE PRESIDENT: Yes.

THE PRESIDENT: Do I understand you to say that these individuals who were about to be executed were Atheists?

THE PRESIDENT: That most of these individuals who were executed were Atheists?

A Most of the people in this country have no religion. The people know no such thing. The churches were used as storehouses, and I never found that any place of worship existed, and that any religious services were held, but later after the German troops entered, some churches were opened a gain, where part of the Ukrainian population gathered again for religious services.

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TEE PRESIDENT: Did you not find any synagogues in your travels through Russia?

TEE PRESIDENT: You never saw a synagogue?

A I don't know how I could have found a synagogue....

THE PRESIDENT: I ma just asking you. You didn't see a synagogue in all the time you traveled in Russia and in the Ukraine?

THE PRESIDENT: In looking at your personal record I find a referennce to various decorations, and I am only asking as a matter of information what some of these decorations mean. What is meant by the decoration "Yuletide Candlesticks". Did you receive that decoration?

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THE WITNESS: Your Honor, the "Yuletide Candle sticks" is not really a distinction. It is an old Germanic object of cult. It is a candlestick where the Yuletide cnadle is put in and the remnant of the candle of the previous year is put under it so that the light continues to burn, and by the light of this candle all things concerning the family such as births and birthdays are celebrated while this candle is lighted in midst of a family circle. BY THE PRESIDENTS:

Q Well, is this in the form of a decoration or not? I don't know. I am only asking for information. among the leaders and SS men.

Q They were given by whom?

A By the Reich leadership of the SS. Every agency was constantly given a certain amount of Yuletide Candlesticks to be distributed to men and leaders.

Q And was this done during the Yuletide? the personel record if it was so generally done. If everybody got a candle why is it in this record next to the Gold Party Badge and the Deathhead Ring? candlestick and celebrates important dates of the family in the spirit of Yuletide.

Q Is this a religious ceremony?

Q What is the "Sword of Honor?" after he has been a leader for three years. He gets it from the Reichsfuehrer. That was a purely peacetime affair.

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Q And you got that too?

QAnd then you got the SA Badge in Bronze. How, what did you have to do to get that? SA within a prescribed sports program, marching, gymnastics, jumping, etc.

Q Yes, and then you got the Deathhead Ring. Now, what sport did you have to accomplish to receive the Deathhead Ring?

Q You say "you believe". Do I understand that you received a decoration and you don't know why you got it? automatically handed out,

Q Did you receive the Blood Medal?

Q Did you receive the Coburg Badge?

Q Did you receive the Riding Badge? you were involved the record of the victim was examined? were compiled and were handed to the AOK/6. military unit that was close to the scene, then it went to division headquarters, then it went to Army headquarters, is that correct? general and from there it was sent directly from G-2 to AOK.

Q Well, this was in G-2 of the division?

Q Yes, then AOK approved or disapproved? If it approved then the record came back?

A The records came hack?

Q And eventually got to where you were involved, to your kommando? listening to the witnesses, writing up the reports, giving them to 3-2, going to division headquarters, Army headquarters, and then coming back. How much time was consumed in that operation? interrogations had been partly carried out by the Army units already. Supplements were made and reports were added by our people, just as circumstances were. came from the commander in chief that a certain person should be executed? during the evening discussion or during the morning discussion respectively with the legal export came to his decision the following day.

Q I see. From the time the incident occurred until the papers got to the Army commander and returned, how much time expired? it was quite obvious that the actual culprit had been found, it did not take more than one or two days, while in other cases where it was necessary to do further work, it took longer. re followed?

A Three hundred, did you say?

Q No, thousands. The records here show,these documents show on some occasions....

A Thousands? Inasfar as it concerned retaliation, measures, it is said that Army units seized these people. As to these retaliation measures certainly there was no interrogation previously "but those were reprisals which, had been ordered by the commander in chief, how long they took in Lutsk, I don't know.

involved that each case had been examined.

A I couldn't answer to that, Your Honor, Every case, as far as I know, was examined by my leaders and also by those whom I knew personally. the statement you made about the Eisenhower Order?

Q You only heard about here?

Q Very well. How, the original order that Hitler issued provided for the execution of all Jews, that is correct, is it not? the entire Jewry, yes. bach? order, or rather to give such orders myself, I must say that I was fortunate enough, compared to others, to be subordinate to Oberbefehlshaber, a commander in chief. order, is that what we are to understand? importance to the fact that the culprits be seized who did harm to the troops, and within the advance march this Army corps, at the front, such actions could not be carried out; and he did not carry them out either; but later the situation changed when the front did not move any more and the Higher SS and Police Leader, also with his orders, became active besides the command of the AOK/6. Then the Fuehrer Decree came to effect in its entirety.

that all Jews were involved, then you said to your counsel or one of the attorneys who was questioning you that this meant only to seize the Jews. That is what you told Mr. Hochwald, that Streckenbach didn't mean to kill the Jews, but only to seize them, is that right? shot. This referred to the fact that the Jews were ordered to be shot right from the beginning, and one could see that Streckenbach did not like repeating this order, and that this was one of the worst moments of his life.

Q Very well. How the documents relate how tine after time when your commando was in the vicinity of a certain place the documents show that executions took place of Jews, not spies and saboteurs, but just Jews, For instance, one report shows that on a particular day there were 36 political functionaries, 32 saboteurs and looters, and 4372 Jews. How, when this particular operation occurred, naturally there was no detailed examination of the cases of these Jews. That is correct, is it not?

A Your Honor, I cannot say that. Those are affairs which concern another unit and these are figures which are mentioned for the Kiev territory.

where Jaws ware killed merely because they were Jews that you just happened to miss the train; you got there just as the train was leaving the station; you got there just as the parade went by, or you got there just as the circus tent was being pulled. down; you always got there, a little late. How did you happen to rime this so perfectly?

A Your Honor, this was not done, on. purpose. It just happens like that and it was as I have described here when part of the kommandos were assigned. Thye had to take part and the entire organisation of the SK 4a, that is, in. its two sub-divisions, were carried out at the dates fixed, as I have described. My personal illness has nothing to do with these dates. During these months I dragged along and I had to beg so that they at last recognized that I was ill. various doctors treated me. The same staff physician that treated the commander in chief treated me in Shitomir. The men died of the sans illness fight days later, and then the group physician treated me.

Q Just one final question, fitness. Have you ever had any personal differences with the Defendant Steimle? differences. reference to you as a "bloodhound." Can you imagine why a person who did not know you and had no differences with you, had no reason to dislike, you, would volunteer to make a statement of that kind? Let ms make this very clear that we are not giving any credence to this affidavit. I don't know whether he has any right to say or not. That is not the point and I don't want you to assume that we are underwriting what Steimle said. I am only asking you to make whatever explanation you can as to why a total stranger would go out of his way to use such deprivious language regarding yourself.

A your Honor, I am at a loss myself about this. I thought about it why Steimle should have done this. It may have been from my personal attitude, because I attempted to keep discipline and order end cleanliness in my unit and some people did not like it.

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all would call a person a blood hound because he was clean and insisted upon sanitation?

A Your Honor, that is the. contradiction which results and that is what I cannot understand.

THE PRESIDENT: Well, fortunately, we will be in a position to hoar from the affiant himself and perhaps at that time it may be less ambiguous.

DR. GAWLIK(Attorney for the Defendant Seibert) Your Honor, I ask that it be granted that the Defendant Seibert be excused for Friday and Tuesday in order to prepare his defense.

THE PRESIDENT: Yes, the Defendant Seibert may be excused from attendance in court tomorrow and Tuesday of next week in order to prepare his case with his counsel.

DR. FIGHT(Attorney for the Defendant Biberstein): Your Honor, following the questions which your Honor just addressed, I would like to address another question to the witness. May I?

THE PRESIDENT: Certainly, by all means.

DR. FICHT: As a result of your question.

THE PRESIDENT: Certainly. BY DR FICHT (ATTORNEY FOR DEFENDANT BIEBERSTEIN): Fuehrer Decree that Jews were to be shot, merely because they were Jews in its entirety only had its effect when the fronts did not vove any more. Concerning this, I would like to ask you, did you mean to say only in the territories where the Higher SS and Police Leaders had been assignee or in the operation territory where the Einsatzkommandos were active? personally experienced, the territory of the AOK 6, which was under Reichenaw.

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DR. FICHT: I have no further questions which interest me.

DR. HEIM( Attorney for the Defendant Blobel): Your Honor, would you permit me to address another question, following the questions of the Tribunal?

THE PRESIDENT: By all means. BY DR. HEIM (ATTORNEY FOR THE DEFENDANT BLOBEL): carried out under your personal supervision?

DR. HEIM: Thank you. That is all. your Honor, I have no further questions.

THE PRESIDENT: You said in Sokal, and then had he completed his statement?

DR. HEIM: Yes, Your Honor, he said in Sokal.

THE PRESIDENT: You asked him how many executions of the SK 4a occurred under his direction. Then, he says two in Sokal, well, does he mean in all? Did these two happen to take place in Sokal? I don't know whether his statement was finished or not, Q (By Dr. Heim) Witness, do you mean, altogether 2 exeuctions under your supervision?

Q And where did that take place? took place in Sokal.

DR. HEIM: Your Honor, the Tribunal will grant me another 5 minutes, I could finish the evidence of Blobel.

I wish to ask the Tribunal's permission chat I may ask that a criminal record be brought from the Defense Center concerning the witness who will be called to the witness box here.

THE PRESIDENT: I didn't quite catch your request.

DR. HEIM: I ask the Tribunal to grant that I may get a criminal record for the witness Hartl, whom I will call into the witness box here.

THE PRESIDENT: You want to present a document of some kind which refers to the witness that you will call?

DR. HEIM: Yes, Your Honor. In Germany, it is like this: Is a certain Court about every person who has been fined, a list is kept in this record, the fines and personal notes are entered.

THE PRESIDENT: The Tribunal authorizes you at obtain and submit that record.

DR. HEIM: Thank you, Your Honor. Now my last set of questions; During the case in chief of the Prosecution, the Tribunal was kind enough to allow ms, concerning a document submitted by the Prosecution during the case in chief of the Defendant Blobel, to make my final objection. It is an affidavit by a certain Hoess contained in Document Book III-C of the Prosecution, Exhibit No. 134. This document was only accepted temporarily at the time. Meanwhile, from the record of the Pohl case I have had an excerpt made concerning this document and, if the High Tribunal is pleased by this, I would like to read parts of it, which concern this document.

THE PRESIDENT: Proceed.

DR. HEIM: Your Honor, I read from page 6236 of the German Record of Case IV before the Military Tribunal No. II of 3 September 1947. It says:

"MR. ROBBINS: The next document -- I don't have the original hers in Court so that I shall mark Exhibit 196 as document 4498A & B, and. I will offer it as soon as I can get the original. The Document Room has not completed the document as yet.

"DR. SEIDEL (For Defendant Pohl):"

MR. HORLICK HOCHWALD: If Your Honors please, I probably can shorten this a little bit. I have inquired into the whereabouts of this document and into the ruling of the Tribunal in the Pohl case and the Prosecution, submits that this document was rejected by the Tribunal in the Pohl case for the reason, that it is not a sworn statement.

I have in the meantime inquired with the Polish delegation. As the Tribunal knows, this document was made before a Polish judge, before Judge Sane, who is the investigating judge of the Polish Government for War Crimes. Judge Sane was present in Nurnberg, or, is still present, and I have obtained a certificate from the Polish Delegation to the effect that this statement was taken by Judge. Sane himself and that this is riot a sworn statement, but that Judge Sane re quested from the affiant to tell the truth. At the time when Hoess made this statement, he was a defendant in his own case and it is not usual that statements of such persons are taken under oath. It is not usual in Poland. It is against regulations in Czechoslovakia. I do not knew what the current rule is in Germany. the Polish, delegation and I shall submit it to the Tribunal as soon, as it is translated so that I can get translations for the German defense counsel. I would request at this time that the Tribunal may defer its decision on the admissibility of the document until the Tribunal has received this certificate.

THE PRESIDENT: Is that agreeable to you, Dr. Heim?

DR. HEIM: Your Honor, I agree that the discussion about this document should be deferred to a later date.

I have now finished the case of chief of Defendant Blobel. At a later date, that is very soon, I shall submit Document Book II for Defendant Blobel. There are only a few documents contained in it.

THE PRESIDENT: Tomorrow morning we will begin with the case of Blume. The Tribunal will now be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 31 October 1947, at 0930 hours.)

of America; against Otto Ohlendorf, et al;

THE MARSHAL: The Honorable, the Judges of Military Tribunal II-a.

Military Tribunal II-A is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Dr. Lummert, you are ready to proceed?

DR. LUMMERT: Yes.

THE PRESIDENT: The defendant Blume will be taken to the witness box. as follows: BY JUDGE DIXON:

Q Defendant, raise your right hand and repeat after me: will speak the pure truth and will withhold and add nothing.

( The witness repeated the oath)

JUDGE DIXON: You may be seated. BY DR. LUMMERT: data?

A My name is Walter Blume. I am 41 years of age. Before the German collapse I was a ministerial councillor and Colonel in the police in Office I of the Reich Main Security Office. I am married and have five children. that my examination of the defendant Blume, will be subdivided into three main sections. In the first section I shall ask the defendant Blame about his education, about his career and a few general questions.

In the second section we will deal with the 7 weeks when he stayed in the East. The third section finally will refer to Count III of the Indictment, the membership in the organizations declared criminal by the International Military Tribunal. In connection with the examination I shall introduce a few documents as evidence. description of your education? Westphalia as the son of a schoolmaster of a girls' high school. In my home town Dortmund, I went to elementary school for four years and after that I attended Hindenburg High School for 9 years, and the so-called "Abitur" the matriculation, I passed on Easter 1925. After that I studied law for six terms in Bonn, Jena and Muenster, and in 1923 I passed the first legal state examination, the "Referendar" examination at the Law Courts in Hamm. In the following years I received the proper legal training with several legal authorities in Dortmund and in Hamm. In July 1932, I passed the main State examination for law, the "Assessor" examination in Berlin. In 1933 I passed an exam as a doctor of law at the University of Erlangen.

Q Did you have a special aim for your career? state. In particular I aimed to work as a County Councillor. of a County Councillor? The Landkreis county district contains a number of communities and smaller cities which are an administrative district, while the larger towns are independent.

That is, they form their own independent city districts. In the state Bavaria , for example, there are about 150 of such districts. examination of law in July 1932, what did you do after that in order to achieve your aim, that is, to become a County Councillor? to be accepted as a civil servant in the state administration department but as I found out everywhere, in the State of Prussia at the time one had to be a member either in the social democratic party or in the "Centrum" party. Since I did not belong to either party my efforts were in vain at the time. May I add that owing to the idea of the class struggle I objected to the principal of the social democratic party. The Catholic Center Party, I was not interested in because I was a Protestant and thus did not agree with its Catholic principles. the middle of 1932 when your attempts to become a civil servant failed?

A like most legal"assessors" after their first legal state-examination I first was given the position of an unpaid assistant to a Judge at the Court in Dortmund. I kept this position after my examination until the spring of 1933. this field? I knew very well pointed out to me that perhaps now there would be a chance to become a civil servant in the administrative service. He knew my desire to become an officer in the inner administration and he offered to help me to get a position with the Police in Dortmund because he knew the then Police President at the time, the SA Gruppenfuehrer Schepmann personally.

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I agreed to this because it would bring me closer to my professional aim. A few days later I was asked to see the Police President. At the time he just needed a lawyer in the Police in Dortmund, and, therefore, approved to my service there. After a few months of training time for which I was not paid, the Police President Schepmann, as he had told me during that first discussion, wanted me to go to the Prussian inner state administration, As a lawyer, therefore, I asked for leave of absence and started to work in the police in Dortmund about the end of March or the beginning of April 1933. I do not remember the exact date. with the NSDAP until that time in the spring of 1933? political party. My general political views were those of a good German citizen and of a man with nationalist views. My father was conservative in his political views. As for myself in the years before 1933, after I had become of age, I never felt any desire to become politically active. My interest in the problems and the political movements at the time was merely theoretical. I had not formed any ideology as yet but I was still searching. For that reason I had not joined any party.

Q Did you join the NSDAP or one of it's organizations or affiliations in 1933? Dortmund, the Police President Sehepmann told me one day the NSDAP had criticized him because he had employed a lawyer who was not a member of the Party.

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He asked me to join the Party and I replied to him that I intentionally had not joined any party as yet, because I objected to those many people who joined the party for opportunistic reasons. He replied to me that it was in his interest if I joined the party because he would not then have any more difficulties because of me. For the same reason he would also like to see to it that I became a member of the SA. He would then take me into his group staff, pro forma, I agreed to joining the Party and the SA and on the 1st of May 1933 I became a temporary party member and also a member of the SA, as a sturmfuehrer. That is the rank of a lieutenant in the staff of the SA in Westphalia. you said you became a member of the party and the SA and what were it's aims in your opinion? therefore, joined the party, and the SA I did not do that because I thought I would have an advantage in my profession but at the time I saw the connections between the national and social intentions as the NSDAP; I considered this to be an ideal solution of the very difficult economic and political problems in Germany, which, particularly, since 1930 made things very difficult in Germany. Most of all I objected to the idea of the class struggle which was the policy of the Leftist parties. Instead of this I considered the idea of an community as the NSDAP advocated to be right, I had not Party dogmas. The old and new party members were different kinds of people and the field of activities within the party seemed very extensive to me and to be based on just ideals. The unity in the Party, in my opinion, was the idea of the union within the people, and I realized that it was not the number of party members which would help Germany out of its misery by only the temporary voluntary subordination under one will.

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Apart from that I wanted the basic wellbeing of the economic situation in Germany and a good position of Germany in relation to the rest of the world. I was convinced that the NSDAP had wanted to achieve these aims in a legal and peaceful manner. The only difficulty was Russia, and I knew that there would have to be a. critical dispute. I considered this right from the very beginning and I even thought it probable because already then I saw no possibility of settling the differences between the Soviet aims of having a communist world revolution and the aims of the NSDAP concerning the national and social rebirth of Germany. a national-socialist dictatorship in Germany?

A No, I did not think of that. The reason was that I did not expect a dictatorship. I thought the NSDAP would do away with parliamentarism as such -

THE PRESIDENT: Just a moment, there seems to be a question.

DR. LUMMERT: The translation doesn't seem to follow all of the time. The witness just said that he agreed to the NSDAP, because it wanted to do away with the excesses of parliamentarism, that is the bad side of parliamentarism. It was translated that ha agreed to it because parliamentarism was eliminated. There is some difference. May the witness repeat his statement?

THE PRESIDENT: We understand what the witness intended to say or perhaps did say was that he was interested in seeing that the bad side of what he regarded as the excesses of parliamentarism should be eliminated, not a representative government as such?

DR. LUMMERT: Yes, that is quite right, Your Honor.

THE PRESIDENT: The record will show that. BY DR. LUMMERT: Chief of the State in these difficult times should deal with the responsibility and that only one man should have the responsibility. Hitler seemed suitable to me at the time for this because of his personal courageous character as the broad masses of the simple regarded him, and, therefore, he was given the opportunity to eliminate the bad idea of class fighting but personally and as a lawyer I fully approved of a legal state and believed that the NSDAP after a sort of revolutionary temporary period would set up a new legal state; the legal state is the opposite of a dictatorship,

Q Witness, what was your opinion on the so-called Jewish question? Jews in the public life of Germany, in the official positions, in the free professions, and so forth, he slowly reduced to a state of a low percentage in proportion with the total of the German population. I also considered it necessary to stop the increase of immigration of Jews from the last, from Poland to Germany, who had come into Germany since 1916 continuously, and had spread anti-Semitism in Germany. These so-called Eastern Jews culturally and in. their appearance were on a much lower level than those Jews who had always been in Germany. But Army measures beyound those which I mentioned, like expulsion, or extermination, I did not desire, nor did I in these and the following years. In my opinion the articles of the Party program of the NSDAP didn't say anything to the contrary.

Q witness, what was your professional career after that. Please give the Tribunal a short and precise description of this?

AAfter April 1933, as I already . mentioned, I worked for a few months without pay with the police in Dortmund, until about the middle of 1933, the inner Ministry of Interior of Prussia informed me that I would be employed in the Information Service in the Police in Dortmund. From that moment on 1 received the usual salary as a chief assessor. During my test time the Chief of the newly founded

Prussian Secret State Police Office in Berlin Oberregierungsrate Dieltz came to Schepmann in Dortmund in order to discuss the set up , a Prussian Police Office in Dortmund with him. After this discussion I was called in by Schepmann: he introduced me to Dieltz, and suggested to him that when having terminated my temporary position I should be put in charge of the police Office in Dortmund. Until than, during the test time, he, Schepmann would deal with the business connected with it, because the State Police Office was formed out of Department I-A, the police presidium. When I had finished my tests here in May or June 1944, I was appointed government assessor in the Prussian service of the inner administration and simultaneously was put in charge of the State Police Office, which had just been set up for the government district at Ansberg, with its headquarters in Dortmund.

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Dortmund belonged to the district of Ansberg, and in this position I remained until the Fall of 1934. At this time I was called to the Prussian State Police Office in Berlin as government assessor. There my tasks consisted of compiling out of the reports coming is from all over Prussia from the various State Police Offices, a general situational report, which the chief of the Prussian State Police Office handed on to various offices in Prussia, I worked in this office until June 1935. During that time the SA, in which I had not been active in Berlin either, transferred me to the SS. I had the same rank with the 33, SS-Untersturmfuehrer, that is lieutenant. The external reasons for this was that during a social event in Berlin I had come in White tie and tails and Heydrich, who had been present, had criticised this. The new chief of the Prussian State police Office even, and most of the other members of the Secret State Police, had appeared in SS-uniform. He said at the time he expected the people of his office would appear in the same color, and arranged for my transfer from the SA to the SS in the same rank. On. 6 June 1935 I married. In the same month the chief of the State Police Office for the District of Halle, transferred me to Merseburg, on the Sale River. I worked there for over two years. Then in the Fall of 1937 I was appointed chief of the. State Police Office for the District of Hanover, and was transferred to Hanover, and soon after that I became a government councillor. In this position I remained until the war started. In December I was appointed a Senior Government official for Berlin, and I was promoted a senior Government councillor. In this position I was until May 1941. During this month I was transferred as Personal Referendar to the Reich Security Main Office, that is, the RSHA, as it is usually abbreviated, I joined office I. When I had worked in this activity for about one month I was appointed for temporary security police tasks - as they told me at the time, - and was ordered to go to Pretsch on the Elbe River. Sofar as I can remember this was about eight days before the beginning of the Russian campaign had started on 22 June 1941.

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ask you more details. They are the real subjects of the trial here, concerning you personally. Please describe to me your professional career after you returned from Russia in the middle of August 1941? resumed my activity as Personal Referendar in the Reich Main Security Office. My superior was the Office Chief of Office-I, the SS-Gruppenfuehrer Streckenbach. During my activity there I was appointed ministerial councillor. I remained in this position until approximately July 1942. At this time I was transferred to Duesseldorf, as Inspector of the Security Police and the SD. Before I started my work, which was at the order of the RSHA, I had been given a special task in the Upper Ukraine, which took about eight weeks. Then I started to work in Duesseldorf, and remained their until October 1943.

Then I was appointed Commander of the Security police in the SD in Athens, in Greece, and retained these from October 1943 until August 1944. After we left Greece, I returned to Berlin. For a few weeks I was unemployed, because Kaltenbrunner, chief of the RSHA, disapproved of me, and he did not even receive me. Kaltehbrunner said at the time, and told my superior in Athens, Schimana who was in Athens, "Blume has supported the Greek policy, and not the German policy. He can not obey. I shall transfer him to the Reich Ministry of Finance," but this never actually happened. In any case, temporarily, as in 1941 and 1942, I was sent from there to a position in the RSHA, and paid by them, and in the Fall of 1944 the office chief of Office -I appointed me to assist in the customs supervision of the which Ministry of Finance, in the Security Police. My special subject was personnel transfers. Before completing this task in Marcy 1945, I was transferred to Blankenburg in Thuringia, in order to deal with vim censorship of the Wehrmacht there, and to transfer it into the Security Police. There my professional career ended, because the American troops approached.

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I did military service for a short while, and on 8 May 1945 I was taken into American captivity in Austria. second main section of your examination, namely, your activity during the -approximately- seven weeks in the Rest. I intend to sub-divide this into three parts. First of all, I shell question you concerning the time during those seven weeks. After that I shall question you in particular concerning some documents, in which the prosecution charges you with certain things. Finally I shall ask you about your views at the time. whether the Fuehrer's Decree concerning the executions was right or wrong, and when conclusion you drew owing to your opinion at the time. Witness, you already mentioned that in June 1941 for about eight days before the Russian campaign, you were sent to Pretsch on the Elba River. This was, as you were told, at the time for a temporary assignment in the Security Police. Please give me all details you remember? purpose of this assignment was not known to me. After arriving in Pretsch I found several leaders who held approximately the same rank as I did; the men and sub-leaders who had been in Pretsch and Duben for several weeks, I found doing military training. They had been formed into companies. The conclusion I drew from this was that it was to assist the Security Police during military enterprise. In the discussions, presumptions were mentioned concerning England or Russia. A few days before the Russian Campaign, suddenly SS-Obergruppenfuehrer Streckenbach, of Office-I of the RSHA appeared in Pretsch, and he told the leaders who were gathered there most of them late because the first leaders of the Einsatzgruppen and the Einsatz and Senderkommandos - that we were going to attack Russia.

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He announced the intentions of the Security Police task, and in particular the division in which the Einsatzgruppen and kommandos were formed, and, he explained our relations to the Army. During this speech he announced to us the Fuehrer Decree, which said that during the Russian Campaign the Eastern Jews in Soviet Russia were to be exterminated. These persons who were there were speechless about this decree. Then came the reaction. Those who held the same rank as Streckenbach called out loudly, and other people present in spite of the usual strict discipline were very restless, and remarks were made to the effect: how can this be done, it is impossible and can not be carried out. Steckenbach answered these remarks and said he could understand our reaction of disapproval, but nothing could be done here because it was a Fuehrer Decree, and this had to be complied with. For the Fuehrer Decree he gave the following reasons: First, a necessity of securing the conquered territory against partisan activity which was to be expected, as it was to be expected that Eastern Jews were the natural helpers of the partisans, and, secondly, that the Eastern Jews were the intellectual supporters of World Bolshevism, and this total destruction was necessary, in order to make the victory over Soviet Russia final. Finally Streckenbach pointed out the fact that for our activity in the Einsatzgruppen, military law applied, and he ordered us to instruct the men in our kommandos that each individual was under military law with all its consequences, in case they disobeyed an order; courtmartial or SSPolice Courts proceedings would be used, and possibly death sentences would be pronounced. Apart from that Streckenbach said expressly, that the Fuehrer had instructed the Army kommandos that the fight against Bolshevism could not be conducted under European laws and rules, it was not war in the usual sense, but a worldwide political ideological difference, thus, political police were appointed for the prospective war of the West, and had officially been built into an offical military plan, and that cooperation between the Army and the Security Police would have to be carried out.

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DR. LUMMERT: Your Honor, I would like here to submit Document Blume No. 1, before I continue to ask the witness questions. In order to explain this, I want to mention that disobedience against the State orders under the dictatorship of Hitler was a crime punishable by death. No matter whether the disobedience concerned military or civilian subjects. This fact is well known. I believe that this Tribunal might like me to compile the laws which applied to the police at the time, and, therefore, also for the defendant Blume. I only chose the most important laws and decrees for this, and ask the Tribunal to take official notice of this. Your Honor, to make the same easier to identify, I submit this as Blume Document No, 1. The document is in Document Book No. 1, pages 1 to 13. It contains first of all a few chapters on the military penal code, which concerns in particular desertion, disobedience, and refusal of obedience, which the Tribunal will find that for all of these offenses in case of war, part I, the death sentence can be passed as well as also other sentences. The second law is the so-called special war decree, which was published at the beginning of the war. It contains sentences which are stricter and concern in particular the subject of undermining the military strength.

MR. FERENCZ: Your Honor, please, I must object at this time to any detailed analysis of law in this case. These are matters which will probably be raised In the closing argument and have no place at this time.

THE TRIBUNAL: I do believe, Dr. Lummert, that we will get into some difficulties if we begin to argue on the law while the witness is on the stand. Now if there is any specific question you desired to put to the witness on the law with which he is personally familiar, that, of course, is entirely in order, but to address an argument of law to the Tribunal in the midst of an examination of a witness might be a little difficult to follow in accordance with the procedure.

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Another thing is that it places a rather unusual burden on the interpreters to translate extemperaneously a rather involved legal situation.

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DR. LUMMERT: Your Honor, I understand this to the effect that the introduction of Document 1, is not objected to, and that only the explanation on this document should take place at a later time?

THE PRESIDENT: Of course there is entirely no objection to the introduction of the document book. On the contrary we recommend the introduction of the book and congratulate you on the speed with which you prepared and submitted it to the Tribunal. He especially want to thank you for the trouble you went to to have it translated on your own motion and through your own energies. The only point we make at this time, Dr. Lummert, is that to present a legal argument while a witness is on the stand is just slightly contrary to the usual procedure in a trial.

DR. LUMMERT: May I hand you Document Book No, I, and I ask the Court to take judicial notice of it.

THE PRESIDENT: Yes, and do you wish to introduce it as your exhibit?

DR, LUMMERT: It is only an exhibit for identification only.

THE PRESIDENT: Yes, very well. The Secretary-General will note that exhibit.

DR. LUMMERT: I will then take the liberty to discuss the contents of this document after the examination of the Defendant Blume. I now continue with the examination of the Defendant Blume. BY DR. LUMMERT: Streckenbach in Pretsch. I now ask you, what were your personal considerations and feelings when Grupperfuehrer Streckenbach announced this Fuehrer Decree during his speech in Pretsch?

A. I remember very well that already during Streckenbach's speech a whole number of various questions and thoughts and feelings arose. I immediately realized that this was an unusual, even an immense decree, but I presumed at the time that the leadership of the German people and the German Reich had carefully considered this decree and had approved it.

I thought of all the authorities who obviously requested that this decree should be fulfilled, namely, the Fuehrer himself, the Reich Government, the supreme command of the Army, the Reichsfuehrer-SS and the Chief of the Security Police and the SD. At the time it did not even occur to me that all those authorities only had to obey one dictator in this, but for me at the time it was natural that such an important decree had been discussed by all high authorities. Also for me, like for all Germans an order was an ethical conception, and I was convinced that such a law soldiers had to obey unconditionally. the particular importance of the Fuehrer Decree which was law at the time in Germany. For that reason I realized the consequences of not obeying such an order according to the military code and to other codes. I emphasize here that the entire German police since the beginning of the war was considered to be carrying out a special commitment. A special decree had been issued, which my defense counsel has mentioned previously, and the competent regulations of increased severity for the police were also applied for the military forces. civilized people could carry out such an extermination order, and I felt particularly concerned that we who were present at the time all of us were intellectually inclined - had to be given such an order. The execution of such an order seemed impossible to me, although I thought of it that Soviet Russia itself would disregard the usual laws of civilied states neither for their own nationals nor for others. In particular I knew that Soviet Russia had not participated in the Geneva Convention. Added to this was the fact that during my work of many years as Chief of the State Police Offices I had read the interrogations of all people who had returned from Russia, and according to instructions had reported about all that happened; the State Police officers interrogated them about this.

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These interrogations confirmed to me that in Soviet Russia no European standards were applied, and that for Europe the Communist problem, was problem No, 1. I know that in Soviet Russia during the last twenty years many millions of people had been killed in order to materialize the ideology of Communism. I also knew that the Jews in Soviet Russia were one of the main supports of the Soviet dictatorship and the intellectual bearers of the idea of Bolshevism. In short, my thoughts and feelings were in a turmoil.

Q. What did you do, owing to these contradictions in your feelings and your thoughts?

A. I looked for a way out. After some consideration I thought I would be able to find this if I was not put in charge of a Hauptkommando, a main kommando in the rear Army territory but rather was put in charge of a small advance kommando, a Vorkommando, with the fighting units. I hoped to be able to remain with the fighting forces and through that restrict my activity and the activity of the subordinate men to combating partisans, whom we expected, and to Security Police assignments, and particularly securing documents of Soviet authorities, in particular of the N.K.W.D., and the study of the general and political situation of the newly occupied territories and the reporting of the findings.

That same day I went to Streckenbach for the reason. I knew him very well because he had been my superior in Berlin. I could fully trust him and I asked him, would he give me a small Vorkommando, an advance kommando, although owning to my rank I could have asked for a larger kommando. I told him as the reason quite openly that I did not want to have anything to do with mass executions and that I hoped as the leader of a Vorkommando to be restricted only to working in security tasks. Streckenbach replied to me that he could fully understand my views and agreed to give me a Vorkommando, Sonderkommando 7a.

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Q. Witness, apart from this discussion with Streckenbach, did you get any other instructions about the Russian assignment?

A. Yes, the future leaders for the Einsatzgruppen, for the Einsatz and Sonderkommandos, including myself, the following day or the day after the next, were called to Berlin, to the Prince Albert Palast, the headquarters of the RSHA. There Heydrich made a speech. He took for granted that we knew about the Fuehrer order and based his speech on this and therefore talked about our relation with the Army. He informed us that strict agreements had to be made with the Army chiefs about our assignment and our cooperation and had already been agreed upon and that our tactical orders concerning the advance and so forth, we would receive from the superior Army officers. He also mentioned as Streckenbach had done, that the Fuehrer had ordered that for the expected war in the East no European rules would be applied, but in this fight Germany would have to use the same ruthless methods as Bolshevism had always used in order to achieve its aims. Heydrich was very serious and said that the Security Police in the assignment in the East would have to make a test and prove themselves in their soldierly attitude. In the East, partisan fightings of serious proportions in the roar territory which had been captured, were expected. The rear territory according to the will of the Fuehrer, had to be secured against partisans and their assistants by all means. As was imminent danger Heydrich described at the time, the entirety of the Eastern Jews.

Q. What happened after that speech by Heydrich?

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AAfter that we traveled to Pretsch or a locality near Pretsch. We returned, if I remember correctly, to Schmiedeberg. There Heydrich appeared shortly before we left in order to supervise the march of the personnel of the kommandos. namely the speech by Streckenbach and the speech by Heydrich, get any special detailed instructions about the carrying out of the Fuehrer decree? at the time it was left open how it should be carried out in detail. In any case, I myself did not quite know how it would be done. I was moved by the fact that without instructions we were left to our own fate. This moved me almost as much as the actual Fuehrer decree. I could only calm myself a little because I had been given Sonderkommando 7a, and I hoped that because of this I could avoid carrying out the Fuehrer decree because of the immediate connection which I expected with the fighting units. I still want to mention that in Pretsch or Schmiedeberg I heard two other speeches. One, as far as I remember, concerned the Communist World organization, Comintern. The other lecture concerned general measures about the political, economical and military conditions in Soviet Russia, and was as far as I remember given by a younger member of the Ministry of the Exterior. other, from the very beginning, to avoid carrying out security assignments in the East?

A No. As I have already stated, without my knowledge and without my assistance, and without knowing what was concerned, I had been transferred from Berlin to Pretsch. After the fuehrer decree had been announced, owing to the strict discipline in the RSHA and in the entire German police, it was quite impossible, from the very beginning, to ask to be released from participation in the assignment which had been ordered. The written orders by Heydrich existed for all of us.

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A special penal code which applied for the police during the war I have already mentioned as well. Any pretense, pretending to be ill or something of that nature, I would not have considered worthy of myself. That never occurred to me. My immediate and almost instinctive reaction was, therefore, only the attempt to avoid myself, and to protect the men under my supervision, from having to carry out this Fuehrer decree and to protect them from a collision.

DR. LUMMERT: Your Honor, I would now like to introduce Document Flume No. 4 as evidence. I had the intention, in order to give a complete picture, to ask the witness Blume also about the organization and the personalities in his Sonderkommando 7a, and about a number of other smaller points, but since mostly they are technical details, it probably is not necessary that they all appear in the record. I, therefore, choose to use an affidavit by the Defendant Blume himself about this, and I ask for permission to Introduce it as Blume document No. 4. The affidavit is in Document Bock I, pages 15 to 29. On page 13 there is on index. The first part of the affidavit concerns the personalities in the

Sonderkommando 7a, the ranks, the organization, the most important Security Police tasks, the reporting, the medical supplies, and the organization of the group staff of Einsatzgruppe B which was superior to Sonderkommando 7a. with explanations of the channel of command. The third part finally contains a map - that is page 28 of Document Book I - and this map, the record of the march which Sonderkomnando 7a followed in Russia during the time when Defendant Blume was in charge of Sonderkommando 7a. More important cities are mentioned in this map. Also a time plan, a chart for the most important localities is given. I have a few other copies of this, photostatic copies of this sketch, and I ask for permission to give them to the Tribunal in order to make things easier.

BY DR. LUMMERT: Document Blume No. 4, in front of you and whether you know the contents of it?

Q Can you confirm the contents of this affidavit? tells me. berg toward the Best, and where did you go to first? East via Posen, Warsaw, East Prussia, to the Soviet-German demarkation line at the time, and our first point which we were ordered to reach by the Ninth Army was the city of Wilna. I arrived in Wilna with my Sonderkommando with our tracks. We were fully motorized. We arrived there on 30 June 1941 late in the evening.

THE PRESIDENT: Dr. Lummert, since the witness is now about to relate the events of a certain campaign or itinerary, perhaps we night begin with that immediately after the recess.

DR. LUMMERT: Yes, sir, certainly.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

Court No. II-A, Case No. IX.

THE MARSHAL: The Tribunal is again in session.

MR. HORLICK HOCHWALD: If the Tribunal please, yesterday afternoon Dr. Heim, defense counsel for Blobel, objected against Document No-4498B, which is a statement of Rudolf Hoess. The prosecution explained that this statement is an unsworn statement of said Rudolf Hoess and that prosecution has received a certificate verifying the fact that this statement could not be made by Hoess under oath, as he was at that time under indictment and the rules of evidence of Poland do not permit the administering of an oath to such a person. If the Tribunal please, I would like to submit to the Tribunal now this certificate. I however found out that Dr. Heim is not present. Dr. Lummert will be kind enough to hand a copy of this certificate to Dr. Heim.

THE PRESIDENT: The certificate outlines what you have just told the Tribunal?

MR. HORLICK HOCHWALD: Yes.

THE TRIBUNAL: Very well. It will be admitted.

MR. HORLICK HOCHWALD: May I hand it to you now, Your Honor?

THE PRESIDENT: Yes.

MR. HORLICK HOCHWALD: Thank you. If Your Honors please, I do not think it necessary that I read this certificate into the record, out if the Tribunal so desires, I certainly shall do so.

THE PRESIDENT: Will it have an exhibit number?

MR. HORLICK HOCHWALD: If the Tribunal desires that I mark it as an exhibit, I will do so. It is a certificate which belongs to an exhibit.

THE PRESIDENT: Yes.

MR. HORLICK HOCHWALD: But I do think it is not necessary.

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THE PRESIDENT: Judge Soeight makes this very good suggestion, that you give it the same exhibit number as the exhibit to which it referrs, or, if you wish to add the letter A to that exhibit number.

MR. HORLICK HOCHWALD: I do know, Your Honor, that it is in Document Book III-C on page 17, but as I haven't got the document book with me, I would respectfully suggest if the bench would -

THE PRESIDENT: He would ask the Secretary General to supply that number and see that it is affixed to the certificate which you have presented. It appears that the number is 134, Exhibit 134.

MR. HORLICK HOCHWALD: So Document No-4498C will then be Exhibit 134a.

THE PRESIDENT: Very well.

DR. LUMMERT (Attorney for the defendant Blume): Your Honor, I am very glad to give Dr. Heim a copy of this affidavit of the witness Hoess. I would merely like to reserve for him the right to raise any kind of objection against this document later.

THE PRESIDENT: That request will be granted in behalf of Dr. Heim.

DR. LUMMERT: May I now continue with the direct examination of the Defendant Blume?

THE PRESIDENT: You may. BY DR. LUMMERT (Attorney for the Defendant Blume): beginning of your advance into Russia and you had testified that you arrived in Wilna on the 30th of June, 1941 late in the evening. May I now ask you what was the activity of your Special Kommando 7-A in Wilna?

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Court No. II-A, Case No. IX.

A. Late in the evening when we arrived we put out vehicles on a market square in Wilna. I sent a small detachment immediately to the NKWD building in order to safeguard whatever was in that building. On the following morning, that is to say, the 1st of July, I moved my entire kommando into the NKWD building. Two of my groups searched the building and sorted out and translated the documentary material which was left there. The third group I sent into the city in order to gather information from Lithuanian and Polish leading circles, and in order to establish contact with officers and soldiers of the German army. After I had gathered general information I went to the town commandant and discussed the situation with him; especially, I recommended to him to restrain himself in the setting up of national Lithuanian combat commands since there were strong differences between the Lithuanian and the Polish population. Vilna had always been an object of dispute between the Poles and the Lithuanians. And it was still uncertain what attitude the German leadership would assume towards the Lithuanian ambition of independence. Furthermore, I was thinking that the army command would eventually intend to let me participate with the last detachment of the fighting troops in its advance. This would have conflicted with my intentions about avoiding the execution of the Fuehrer order about the mass executions by a stay in the front line. Therefore, on the same day on which I had spoken with the town commandant I went to the G-2 of the staff of Army Command 9, who was superior to me. The latter showed no understanding for my desire to say immediately with the combat troops. He pointed to the impediments to the troop movements caused by long columns since my special kommando always had 25 to 30 vehicles of various types. Furthermore, he pointed out that the forests were hiding many soviet troops with whom we could not cope, and he refused my request to give me an order to advance with the fighting troops.

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After I returned from this conference I made out a teletype to Einsategruppe 7-b -at that time it was still called C -- and in this message I informed them about the fact that I had been prohibited from advancing with the army. I also reported to them that there were armed national Lithuanian partisan bands who had already become active before the German troops came in, and that they had shot, summarily, Communists as well as Jews who has supported these Communists. All this was on the 1st of July. On the next day, the 2nd of July, I heard that a kommando of Einsatzgruppe 9 had also made its appearance in Wilma. At the same time I heard that Minsk had been captured by German troops. In my effort to accomplish my plan of advancing with the combat troops I gave my men orders against the directives of the G-2 to advance in the direction of Minsk on the next morning. On the 2nd of July we immediately began to prepare this advance. I reported the fact of my advance from Wilma toward Minsk to Nebe on the 2nd of July.

Q. Witness, what happened then?

A. Early in the morning of the 3d of July we left Wilna. The road between Wilna and Minsk made a good impression, good European impression, and was not destroyed. Out vehicles kept their prescribed distance because of air attacks. The tempo was set by the slowest truck. We did not take any rest, and therefore we arrived in Minsk on the same day, but very late at night, after it had become dark. The city of Minsk had not been cleaned of snipers. Units of the army gave us a place near the theater, where we awaited the next morning. This, then, was the 4th of July 1941. On this day I immediately occupied the most important building of the Soviet authorities, especially the big house of the Soviets with its two to three hundred rooms.

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It was completely undestroyed and contained most of its materials, especially documents and libraries. My three detachments had their hands full of work in order to safeguard this material, and also, to find a scientific institute in the city to safeguard their material, etc.

Q. Were the men of your special kommando 7-a in Minsk exclusively occupied with the safeguarding of material, or did they do anything else?

A. The men not suitable for safeguarding this material were ordered by me to go with the drivers to see that each inefficient equipment was completed, and to replace missing equipment from the military material which was lying around in the vicinity. Thus we received a field kitchen, trailers for out trucks, and tents.

Q. What else is noteworthy about your stay in Minsk?

A. On the 4th of July, in the evening, a part of Special Kommando 7-b also appeared in Minsk. On the 5th of July, early in the morning, I was ordered to report to G-2 of Army Command 9, who received, me very cooley and explained to me that the Chief of Staff wished, to speak with me. After I reported to the Chief of Staff he called me on the carpet because of my independent advance to Minsk. He spoke of lack of discipline and disobedience. I told him in a quiet manner the reasons for my conduct which was against orders. I pointed to the fact that as was well known the Soviets burned their cities when they evacuated them, and that we could only find material then if we would advance with the combat troops. I further pointed out that the soldiers were accustomed to destroy the documents in official buildings when they went through them, and that for this reason we would have to get there immediately with the fighting troops.

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Finally, I told him about sucesses in the case of Minsk. During this conversation I managed to gain the sympathy of the Chief of Staff, and his consent, that in the future he would give me orders to advance in time, so that I would get to the important places with the fighting troops. The G-2 was called in, and received his directives accordingly. Furthermore, my Special Kommando 7-a had their hands full with sorting out the material on the 5th and 6th of July in Minsk.

Q. Witness, you are charged with liquidations in Minsk. What do you have to comment on this?

A. On the evening of the 5th of July, to my great surprise Nebe suddenly appeared in Minsk. On the next day his staff followed him, that is, the Staff of Einsatzgruppe B. Nebe already called me on the carpet on the evening of his arrival in Minsk because of my independent action. But I was able to quieten him down by pointing to the success of my conference with the Chief of Staff of the Army Command 9. On the following morning, that is to say, the 6th of July, I received an order from Army Command 9, first to advance from Minsk in the direction of Polosk, which was the next object of the operations of the troops; and second, to advance in the direction of the Witebsk as soon as that city was taken. In that military operation it was a matter of the attack of the Stalin Line which was considered as the last Military fortress before Moscow. I immediately made the necessary preparations for my advance for the next day, that is, the 7th of July. I say Nebe on the afternoon of the 6th of July. I gave him a lengthy report about our findings and information in the house of the Soviets in Minsk. He was very much satisfied by this, out he did tell me very definitely after that, that he wanted to know why my Special Kommando did not attack according to the Fuehrer order so far, and why it had not undertaken executions of Jews.

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I tried to excuse my inactivity in this field by giving him practical reasons, for I could not discuss the Fuehrer order itself with Nebe, who was my superior and who demanded the execution of this order. I therefore pointed out to him that measures of my advance kommando would only cause the Jews to flee, and to make them thus join the partisans. Nebe did not see my point of view. He said it was impossible that he would mention the garrison of a kommando in a city in his reports without at the same time reporting about executions of Jews. They expected him, in Berlin, to show activity in this respect, and he would also have to demand that from me.

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Also, for temporary actions on the part of my advance kommando reasons would have to be found. He then pointed out that the Jews had set their houses in Minsk on fire when the local combat commander had told them to leave their houses to make them available to White Russians who no longer had homes. Nebe had seen these fires on the evening of his arrival, that is, the night before. This, he said to me, he an excellent reason for a reprisal action. He then asked me who my executive officer was. I answered him that in my special kommando I had formed three detachments. Each of these detachments included men from all branches of the security police. I the refore had not formed a special executive detachment and I did not need such. Nebe now explained to me that he wished, and he ordered, that before I left Minsk a Jewish execution were to take place, namely, as reprisal for the burning of those houses. I told him, therefore, that the officers of two detachments of those three detachments of my special kommando were still young and somewhat immature men who had not even received a military training, and who therefore were not suitable to carry out such an execution. The only officer who was militarily trained was the commanding officer of the third detachment, Obersturmfuehrer Voltis, who personally was a hard soldierly character. Since Nebe clearly realized my basic revulsion against such an execution he left me out of it and told me to get Voltis. This happened. In my presence Nebe gave Voltis the order to proceed with a reprisal action against the Jews on the next morning before leaving Minsk, and to start preparations for that immediately; especially, to set up the execution kommando. He ordered me to convince myself that this order be executed, and to report to him on the next morning that it had been carried out.

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After giving these orders he once more told Voltis about the necessity of such executions by pointing to the Fuehrer Order. He then again gave me, as well as Voltis, the basic order for the future to carry out such executions, for even an advance kommando could not exclude itself from such executions. Voltis and I then left Nebe. It was clear to me that I could not get around the order which Nebe directly had given to Voltis that as far as the reprisal actions are concerned only men could be considered, not women and children -- only able bodied men. Outside of that I did not bother for the preparation of this execution, for I was depressed that my hope had come to nothing -namely, that I might not be concerned with execution orders. Furthermore, I felt depressed because Voltis who was my inferior, had been given order directly and I resented it. Voltis carried out the executions ordered by Nebe on the next morning, that is, on the 7th of July. As far as I remember it lasted about one to one and one-half hours. How Voltis chose the men to be executed was, and is, unknown to me. I merely know because I was partly present at the execution that always ten men would be brought there to the execution place at a time with a truck from Minsk. There was a tank ditch. The ten men were put at that ditch and in a military manner were shot by rifles by the execution commando , which included about 40 men. Three men always shot at a victim because a part of the kommando was busy getting the people and blocking off the area. As I said, I was only partly present. No doctor was present because my special kommando did not have a doctor at all. But as far as I was present I convinced myself that the victims were dead. But any way, this was the job of the leader of the commando, Voltis.

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The number of victims amounted to about fifty to sixty. I cannot give the exact number. I then told Nebe about the execution of the order as I had been ordered. At the same time I said good-bye to him because on the some day I was to advance in the direction of Polosk. victims in Minsk? kommando. The victims were buried in their things without having had anything taken away from them, that is, they were covered with earth by the men of the kommando. executions there? departure from Minsk, we tried to join the fighting troops directly. How many days we spent on the way towards Polosk I do not exactly remember. At any rate, the roads were partly very bad, and the vehicles had to proceed second gear almost constantly. When we had reached the fighting troops we were about two days in the front lines until the tanks finally passed through the city. I went into the city with my commando immediately, and even before the infantry. Still we arrived too late, for the streets had already been set on fire by the Communist arson units and the NKVD building too, was up in flames.

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A (Continued) We were only able to enter for a moment on the first floor. This must have been between the 10th and 12th of July. We only spent one day in Polosk. I had the Ethnic Germans interrogated, whom we found among the Russian prisoners of war and had then asked about general conditions in the Soviet Union. We picked out two interpreters from among these ethnic Germans in Polosk. I did not prepare any executions nor did I carry any out. In order not to yet in a forced situation where I would have to undertake executions I proceeded on the next day in the direction of Vitebsk, which had been captured by the Germans on the 11 July. After my arrival in Vitobsk I wired a report to Nebe about the events in Polosk. In order to obviate his criticism about nonexecutions I emphasized that the city had been completely burned out and that the population was hardly there any more, and that was why I immediately proceeded, but this was somewhat exaggerated. In reality the conditions in Polosk were about the same as those in Minsk, that is to say, a considerable part of the population was, of course, still there, and certainly not all houses had been burned.

Q Witness, when did you arrive in Vitobsk? What general conditions did you find there and did you carry out any executions? commando in Vitobesk. At any rate we spent several days on the road between Polosk and Vitobsk. We probably arrived there about the 15th of July. The general conditions in Vitobsk were already somewhat orderly because the city had been in German hands since the 11th of July. I would have preferred just as I did in Polosk to advance very soon in the direction of Smolensk, but at that time during the advance of the 9th Army between Vitobsk and Smolensk we had been brought to a stop. The Ninth Army had advanced north of the Dnjepr and then waded ahead north of the Dnjepr to the smaller part of the city of Smolensk but could really not get near there, whereas the neighboring army advancing South of the Dnjepr already penetrated into the southern part of the city on the 16th of July.

Even after this, part of the city was still fought over in the following days. Therefore Army Command 9 did not give me permission and an order for the time being to proceed in my advance from Vitobsk. Therefore, in this interval in Vitobsk, I occupied Voltis,who was such an active man, with the forming of a Jewish Council registering and marking the Jews and drafting them for labor service with the army agencies. Furthermore, I kept my men busy with making out SD reports. I gave the order to solve the Jewish question in the white Ruthenian area. The number of Jews in Vitobsk was proportionally quite large. In all the White Ruthenian area about one and a half million Jews were living. We gathered material about the Jewish question with the cooperation of the Mayor of Vitobsk who was installed by us and with other members of the White Ruthenian intelligencia. I went over the entire material and made out a detailed report to Nebe. In this report I pointed out that an execution of Jews by small Einsatz commandos seemed impossible to me of execution. Instead, I suggested that the Jews be collected in ghettos and proposed that they wait there until the end of the war when they would then be re-settled. In this report I again made the attempt, which was not very hopeful, to point to the Fuehrer order in reference to it's impossibility of execution and to try to manage something in that respect. Furthermore, I thought I could find an escuse not to have to undertake executions in Vitobsk. Furthermore, from the situation reports which have become known to me in Nurnberg, I have seen that Nebe used this report of mine in his reports to Berlin.

Q Doesn't the fact that Nebe used your reports contradict his usual strict conduct about executions?

A No, even Nebe would have been glad to be rid of this order. Nevertheless, he continued his pressure on us, the pressure which was applied to him from Berlin.

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The use of my report on the part of Nebe was for him either an almost hopeless attempt to achieve a change in the Fuehrer Order or - whatsis more probable - with this report he wanted to excuse the bad execution of the Fuehrer Order up to this date.

Q How did Nebe react towards you as a result of your report? executions. For until his report would have an effect perhaps up on top, a lot of time had to pass by, even considering that such a change might occur, and for this long a time he probably did not dare to remain inactive. At any rate, a short time after sending my report, I received a very severe message from Nebe in which he demanded a detailed report about Vitobsk, and especially about the execution of Jews. I considered it certain that it was just my report which induced him to send me this message, because probably in it he saw a renewed attempt on my part not to have to undertake the executions.

Q What did you do then? lity to evade the execution of this order. I therefore gave Voltis the order to prepare a Jewish action and limited the order exclusively to able-bodied men and I directed that a labor detachment was to be set up and its members were then to be shot. Voltis did not stick very closely to this order, for even before the action which had been ordered and without my knowledge he had a number of Jews shot in the streets in Vitobsk because they had refused to appear at work which had been ordered of them. Voltis in this connection acted on the basis of the order which Nebe had given to him in Minsk. When Voltis reported this execution to me 1 reported to Nebe about Vitobsk by telling him about and announcing the action which I had ordered in order to quiet him down. One or two days later in my presence the announced execution was carried out. As far as I remember about 80 able-bodied men were shot in the same manner as they had been shot in Minsk.

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Voltis was the commanding officer of the execution commando. before or after the execution?

A No, this did not occur to me. The Jewish men when they were brought in were shot in their clothing and were then covered with earth by men of the commando. your own inner attitude which you had when you saw that execution in Vitobsk? ing and executing this execution, whereas I merely had to report to Nebe that the execution had been carried out. But in Vitobsk the case was different. Here I was myself under the immediate compulsion of an order on the part of Nebe, and this was because of this radio message. I myself gave Voltis that order to prepare and carry out this execution and differently from Minsk I attended the entire execution which lasted about two hours. By my presence I wanted to show the men of my execution commando that I would not ask of then any more than I would ask of myself. If I am now asked about my inner attitude which I then hold, I can only say that it was absolutely split. On the other hand there was the strict order of my superior about carrying out the Fuehrer Order and as a soldier I had to obey. On the other hand I considered the execution of this order cruel and humanly impossible. My very presence at this execution convinced me of this in a final manner. I still know that I wanted to make the situation easier for my men who were certainly moved by the same feelings. When ten men were shot there was always a pause until the next had been brought in. During these pauses I let my men sit down and rest and I joined them. I still know that I said exactly about the following words to them at that time: "As such it is no job for German men and soldiers to shoot defenseless people but the Fuehrer has ordered these shootings because he is convinced that these men otherwise would shoot at us as partisans or would shoot at our comrades and our women and children were also to be protected if we undertake this executions.

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This we would have to remember when we carried out this order." Furthermore, I tried by talking about neutral subjects to make the difficult spiritual situation easier and to overcome it. As for myself personally I did not know any way out of this repulsive situation. Had I refused to carry out the order of Nebe it was clear that I would be put before a Court Martial and would be sentenced to death because of disobedience since it was a specific Fuehrer order. A false report did not occur to me. I would have considered it unworthy of myself. Apart from this my personal altitude about giving a false report, it would- have been discovered very soon and it would have brought the same results as an open refusal to obey, namely, my sentence to death. BY THE PRESIDENT:

Q Well, witness, you gave us two explanations there. Now on which one do you depend. You said first that you did not contemplate a false report because that was unworthy of you and clashed with your principles, then you say you did not give a false report because they would have discovered it anyway and then you would still be in the same position as you were before. How, these two do not coincide. Which one do you give us as the real reason? which one of those two thoughts dominated at the time, but they were both very close and both faced me barring a way out.

Q But those two reasons can't be reconciled. It is like a person who must decide whether to steal a hundred dollars or not and this is the conflict in his mind: If I steal this money I am being dishonest and I would not be true to myself. It is not correct, it is not moral, that is one reason, and then for the second reason I may get caught and they might send me to jail and if we take the second reason that completely eliminates the first reason because he doesn't consider it upon principle or morality at all.

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Q I would assume that already the feeling that a false: report was unworthy of me induced me not to take such a way out. BY DR. LUMMERT: the execution in Vitobsk I ask you to continue. BY THE PRESIDENT: Pardon me, Judge Dixon seems to recall that the witness stated he sent a false report on the fire in Polosk. Did you send a false report on the fire in that town? not a false report. I think my soldierly conscience was not violated very seriously here if I changed the fact that the city was burned and the population had left and colored it in such a form that in it I found an escuse for my conduct.

THE PRESIDENT: Very well.

DR. LUMMERT: Hay I say something? As far as I remember the witness said that the report was somewhat exaggerated. shocking. When I came back to my office I was seized by stomach cramps and I had to vomit. I , therefore, renewed my earnest decision to avoid a further such situation with all possible means. In this I did succeed with my being recalled which happened about one month later. Vitobsk is the first and last case of an execution which was ordered by me and carried out. It probably took place on the 19th of 20th of July 1941. The total number of men shot in Vitobsk by my special commando amounted to about 100, as far as I recollect. This includes the 20 which were shot by Voltis who had refused to appear for work and the 80 who were shot during the execution about one or two days later.

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your special commando 7a then? Commando 9 had arrived in Vitobsk. At the same time I received the news from Army Command 9 that the advance through the railroad station area of Smolensk north of the Dnjepr was close at hand. Therefore, I left Vitobask and with my special commando I was in the artillery field position of the troops for several days. Then with the head of the company we advanced into the northern part of Smolensk where we immediately started to interrogate prisoners as soon as the fighting had stopped. I remained in Smolensk only one dry . Smolensk was then under heavy artillery bombardment, and since the public buildings were located in the southern pert of the city and therefore belonged to the area, of Special Commando 7b I was not competent there. I, therefore, limited myself to report to Nebe by radio that I had only undertaken temporary security measures. Later I heard that on the same day men of the advance commando Moscow were already in Smolensk. I now received from Army Commando 9 a mission for partisan counter-intelligence for the area Northwest of Smolensk and I stationed my commandos at a large lake, at Lake Loswitha, at a former estate. On order of the Army Commando 9. a short time later, I had to send a sub-commando to Welish where strong partisan units had set themselves up in the vicinity. I gave this independent mission of gathering intelligence about partisans to Hauptsturmfuehrer Voltis, the only trained officer of my commando.

DR. LUMMERT: Your Honor, I think this would be an excellent time to recess.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(The Tribunal adjourned for the noon recess).

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(The Hearing reconvened at 1345 hours, 31 October 1947.)

THE MARSHAL: The Tribunal is again in session.

DR. LUMMERT (Attorney for the Defendant Blobel): Your Honor, I would like to continue with my examination of the Defendant Blume. Sonderkommando 7-a advanced and went to Loswitha Lake, which the Tribunal can firm in the map I gave them as being northwest of Smolensk. The witness reported that from the Loswitha Lake he met Hauptsturmfuehrer Foltis and gave him the job of doing partisan reconnaisance with a part of the Sonderkommando at Welisch. Welisch is north east of the lake. BY DR. LUMMERT (ATTORNEY FOR THE DEFENDANT BLOBEL): Lake. for about ten days and then was given the job of doing band reconnaisance in the large wooded territories north east of Smolensk. The AOK-9 asked me to move there. I remember the localities Sloboda and Baklanowa, because the kommando was also stationed there close to beautiful lakes and I still have photographs of these, which I took during one of these transfers of the Kommando, when I once mere got in closer contact with Foltis after carrying out the reconnaisance mission in Welisch. Foltis reported to me that before he left he had carried out an anti-Jewish action and had dot about 50 to 60 able bodied men in Welisch. This was not to my like and I had not asked Foltis to do anything of the kind. My order, as well as the instructions of the AOK-9 merely referred to partisan reconnaisance, but Foltis by his execution, in Welisch-acted following the order which Nebe expressly had given to him in Minsk, and apart from that of course of the basis of the Fuehrer Order.

Q Did you report about the executions is Welisch? Did you report

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Q What was the population of Smolensk when you stopped there?

AAbout the 20th. Smolensk was lost on the 16th, the southern part of the city, but the northern part of the city belonging to the competency of my army was not reached immediately. North of the Dnjepr River the Germans only arrived a few days later, and arrived at the outskirts of the city. population? time following that. tarried long enough to care for the civilian population? north of these. It belongs, as far as I think, to White Ruthenia, but I think Smolensk does not belong to it any more, but I am not quits sure. point? borders. It was left to my initiative.

Q Just a moment, perhaps I can clarify this. You told us of how you and your command interested yourselves in the affairs of the civilian population.

Q Yes. Now, I want to know which civilian population this was.

A Those were the farmers in the country around there. For example, after they had heard about our presence and it was talked about, Russian farmers traveled, or rather rode on horseback all day in order to ask us for some decision, for example, for differences about the distribution of cattle of the individual collective farms.

Q How long were you there?

Q How many were there in your command?

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is about 15 men had gone to Welisch. wasn't centralized in a town? farms existed and were far away from each other. required for the trip in order to reach you?

A Not days. I remember one occasion when I was told that a farmer rode all day, ever since early in the morning, in order to be present in the afternoon at our troop which had an interpreter and an officer, he wanted to be there to get a decision.

Q And what was the decision which you rendered? early in the morning, and he came to you for a decision. Now, you remember all the details, how far he travelled and what time he got up in the morning. Certainly you would remember what the decision was. collected by some men.

Q By what man, by some Germans? land it be required that this ox be given to that group of partisans, and I made an investigation about this and we found that they weren't partisans at all who wanted to have this ox. Because of its good quality they particularly keen on having this particular animal. They were men of another collective farm further away who wanted to utilize the situation in order to be able to get a really good ox. They were, of course, forced to return the ox, and apart from that I left them, the persons concerned, to fight it out between them.

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to Nebe? carry out any kind of anti-Jewish action? What other activity did Sonderkommando 7-a carry out? in the country, did not order or carry out any Anti-Jewish Action. Apart from the band reconnaissance, I only did what which I had always done in my life. That is, I did administrative work. The agriculture was set going again. I had asked at the AOK 9 that the local inhabitants be asked by leaflets which were thrown down, by planes to carry out the harvest. The cattle running around loose in the woods was distributed among the Kolchosen.

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The harvest work was organized and small factories started to work. Education and schooling, religious life, medical care of the population, family life, etc., was reported on. Apart from that, within a short time, as the only authority in the whole district, the population, even asked us to deal with their private differences, particularly concerning the distribution of cattle. An officer with an interpreter for that purpose had to be at their disposal every day. asked my men to behave in the most correct manner. The inhabitants on the Loswitha Lake, for example, brought me all kinds of fowl, etc., and did not want to be paid for it and emphasized that it was a point of honor to them to be able to give me such presents. They also asked me to permit them to give me the harvest reef, and this happened.

During these weeks occasional individual shootings occurred. These were only armed partisans and Communist agents who had asked the farmers to destroy the stores of the harvest. In all, during the approximately four weeks for the entire Sonderkommando 7a at the most twenty partisans and saboteurs were shot, and the shooting, apart from actual fighting, was only done after detailed interrogation and examination of the subject matter. These shootings, I considered them end still consider them to me to be fully justified. Apart from that the interrogations often had the result that the persons concerned, were released because either it was proved that they were innocent or it was proved that the evidence against them was not sufficient. the town of Smolensk, until I was transferred in the middle of August. In the previous weeks, that is from Wilna to Smolensk, no such shootings occurred because at that time we had 'not been assigned to fight against partisans. BY THE PRESIDENT:

Q What is the population of Smolensk; what was it at that time?

had been taken by some Russians, is that right? to come to you for a decision.

A Oh, I only understand now. The farmer did, yes.

Q Yes. Now, you dropped everything, forgot all about the war, and started out to find this ox, is that right?

Q All right. Now, did you find the ox?

Q There did you find the ox? this pretext, end we made investigations about this.

Q And did you find the people who had taken the ox?

Q And were they Russians or not?

Q They were Russians?

Q And they had in effect stolen this ox?

Q Yes, and what did you do to the Russians?

A I already said, I left them to fight it out. I left the two groups to fight it out.

Q Well then, you didn't render any decision?

Q But you left it between them to fight it out, you say?

A Well, I didn't have a prison. What could I have done with the people?

Q Then you didn't render any decision?

Q All right, what else did you do for the civilian population? You told us that you helped the civilian population. This is one kind of case you told us about, about finding an ox, and then you left it to them to fight it out. Now, what else did you do for the civilian population? could survive the winter. Two things were necessary for this, a house and something to eat.

Q Well, they had a house; they had their house.

A Partly. Some houses had been destroyed owing to the war.

AAnd these people do not act without orders. It was like this. If a Russian lost his house, he did riot have the courage to go into another house which had been vacated by people who-let us say - had fled.

These men had to try to get a decision from some authority to permit them to move into these houses. These people came to us. Another casehouses which had. been abandoned?

A Yes. They were not satisfied until they had this decision in writing.

Q Yes. You would make up the decision in writing?

Q You were authorized to do that?

Q All right. And you were there ten days? and oxen?

to have one item of cattle for their own use on their collective farms. That was their source of food for the entire winter, but they did not dare to do this becausepopulation of that area? during those ten days than in the previous ones.

THE PRESIDENT: Proceed.

THE WITNESS: However, on the Loswitha Lake in particular, if I may add this, I had also shootings carried out. There was a troop of men who had come from the Russian side, the East side, and had been sent to ask the farmers not to bring in the harvest and that the harvest be destroyed in order to make it difficult for the troop to feed themselves. In this case, after a detailed examination by experts, When the facts had been established, these three men whom we had seized I had shot.

THE PRESIDENT: Was this also during this ten days?

THE WITNESS: Yes.

THE PRESIDENT: So that you didn't devote all your time to making decisions for the population; you also continued your regular job?

THE WITNESS: Of course, your Honor, I said that before.

THE PRESIDENT: Very well, proceed.

BY DR. LUMMERT: lasted about ten days. Do you mean the stay on the Loswitha Lake? Sloboda for a few days and then fora few days to Baklanowa. In these two places did you carry out the same activity? conditions were such that it was not possible. imately after your leaving Smolensk your Sonderkommando 7a altogether at the most had about 20 partisans and saboteurs shot, and you then said that in the previous weeks, namely between Wilna and Smolensk, no such shootings occurred, because at the time you had not been assigned to do partisan combatting. May I now ask on one occasion during these five weeks were there any shootings?

A Yes, there was a spy. It was concerning one we found in Witebsk.

Q At the time was there a detailed interrogation before the shooting?

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Q And, the spy was found guilty? stay in Russia? commando in Baklanowa northeast of Smolensk. There the activity of the partisans could have been fortified by fully armed Cosack units who filtered through the front line and they had increased to such an extent that we could not move any more, so that with a few telephone operators of the Army we had to settle down in one locality. The situation in the middle of August had the result that the ALK/9 ordered my kommando back to Welisch where strong partisan groups as well existed? but where regular Army units were at our disposal to fight them. Almost simultaneously I got a very urgent radio message with the order to return to Berlin immediately when my successor came. My successor was Sturmbannfuehrer Steimle according to this radio message. That same day I radioed Nebe and asked him even before my successor arrived to be allowed to leave, because the reasons for the urgent recall were not obvious to me, and I Add not want to start a new task, namely the task in Welisch. Nebe wired that he agreed to this and appointed as my deputy Obversturmfuehrer Foltis whom we knew from Minsk and who was the senior in rank and also a well-trained officer, and therefore was the only one suitable for this. where the road to Smolensk and Welisch divides. From there the kommando and Foltis continued to Welisch and I traveled to Smolensk with my driver. beautiful lake during those four weeks approximately after leabing Witebask until my recall, I consciously used in order to let myself and people get over the unworthy impression of the shootings in Minsk and Witebask. I felt exactly that the members of my kommando would be grateful 31 Oct 1947_A_MSD_16_3_Hoxsie (Juelich) to me for this, and also that no executions would he carried out.

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They were particularly grateful for this. We started every day with sports. In the evenings I had songs sung at the campfire. My men made a particularly nice evening for me when I left. recall, was visited by the physician of Einsatzgruppe B. I talked with him about the complex of questions, shootings and morale effects on the men of the execution kommandos. He agreed with my view but he mentioned that Nebe was already dissatisfied with me because of staying close to the beautiful lakes and was ironical about it. Soon after that I was recalled.

THE PRESIDENT: Just a moment. Doctor. BY THE PRESIDENT: the mission, what did you do to ease their minds and their spirits. You have told us what you did when they were camped on the lakes, that you allowed them to participate in sports, that you had campfires, etc. What did you do during the period they were actually engaged in the shooting to ease their spirits? of my men, ordo you mean my conscience? men when you were stationed or camped on the lake, that you gave them sports, that they sang songs. Well, the work had been done; the executions were over. taking place to comfort yourmen. Did you do these same things, did you give them sports, did you do anything to help them? and that during the execution-

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31 Oct 1947_A_MSD_16_4_Hoxsie (Juelich) every shooting, after every volley, you have the men sit down, you would talk to them and reason with them and tell them they were executing the Fuehrer order, etc. We recall that, but what did you do for them physically and recreationally to help them?

A I believe I had no other possibilities, your Honor. In any case, my assistance extended only to those things which I mentioned. about their clothing?

A That is natural, your Honor. I considered that the normal duties of any kommando leader. nerves? There was nothing that you did outside of what you told us, these little lectures that gave right on the field of execution?

Q There was nothing else that you did?

A No. On the whole I merely tried to establish a good spirit of comradeship in order to avoid any other differences. BY DR. LUMMERT: Welisch and Smolensk you separated from your Sonderkommando 7a and you yourself traveled on to Smolensk with your driver. What did you do there and where did you go to after you got to Smolensk?

A In Smolensk I reported to Nebe that I was leaving. He treated me in a reserved manner without stating anything about the reasons of my recall. I remained in Smolensk overnight and was mostly together with Regierungsrat Ehlers whom I know very well, who, as far as I remember, was the Chief of Department IV in the staff of Nebe, and he told me that he did not like Nebe at all. He asked me to mention in Berlin that Nebe made fantastic reports of imagination, adding zeros to the numbers of executions, etc. He, Ehlers, had disagreed very strongly with Nebe about this. The following day I left Smolensk and went to Witebask. I 31 Oct 1947_A_MSD_16_5_Hoxsie (Juelich) stayed there overnight.

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The following day I traveled towards Wilna. The distance to Wilna I covered in two days, and from there I traveled to Kowno. There we had to repair my car, and on the second day of our stay we travelled on to Koenigsberg. I stayed there overnight for the last time before going to Berlin, and thus reached Berlin on the 9th day after my departure from Baklanowa. This was approximately on 25 or 26 August. Security Serbice in the East? fuehrer Streckenbach. He did not tell me in a very clear manner why I had been recalled so suddenly.

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31 Oct 1947_A_MSD_17_1_Biolsi (Juelich) He first talked a great deal about work but then indicated that Nebe had not been satisfied with me. I told him about my work in Russia, and, most of all, talked with great concern about the disadvantageous effect of this shooting order, and about the moral results which the executions had caused among the men in the kommandos. I also reported to him about the things Sturmbannfuehrer Ehlers had told me about the untruthfulness and incorrectness of Nebe's reports. Streckenbach did not say much, but seemed very depressed. In Berlin I took up again my work as personal referent in Office I of the RSHA. which the prosecution charges you and Sonderkommando 7-a. On the other hand, you sometimes did not mention executions with which the Prosecution has charged you. I now ask you... Can you assure us expressly that concerning the executions by your Sonderkommando 7-a, you have said the full truth, and did not leave anything out?

A Yes. On oath I assure you that during my time with my Sonderkommando 7-a I did not command any executions apart from those I mentioned.

DR. LUMMERT: address a few questions to you which concern documents which the prosecution has used as evidence, not numbered, the socalled Situation Reports. Before I do this I would like to introduce two documents and evidence. They are Documents 5 and 6. I would like to give some explanations about these documents. The Prosecution has charged thedefendant Blume according to a number of Situation Reports numbered USSR, of the Chief of the Security Police and SD, and has introduced those documents. It is difficult to get an impression, and you can only get a survey if all the situation reports of that time are used and lo ked at; and concerning the defendant Blume the Situation Reports from the end of June until the beginning of September 1941, that is, the Situation Reports Nos. 8 31 Oct 1947_A_MSD_17_2_Biolsi (Juelich) to 73 - at least 20 of them have been used as exhibits by the Prosecution against various defendants here.

The other 40 reports I offered as exhibits myself. A small technical difficulty had to be overcome here, because those Situation Reports which the Prosecution did not introduce have only come to the Defense in one copy to look at, in Room 219 of the Palace of Justice. For that reason, in order to simplify matters, in Document Blume No. 5, I give excerpts of these more than 40 Situation Reports. All these parts which might be of importance in judging the Sonderkommando and its leader at the time, the defendant Blume, might be of importance here. When discussing the matter with Mr. Ferencz I assured myself that the Prosecution has no objections against this. Of course, we agree on it that when introducing the Document Blume No. 5, the Situation Reports mentioned in there be used in their full extent, and for that reason that every party concerned may refer to any part of the Situation Reports, not only to those parts and excerpts which I have mentioned as excerpts in the Document Blume No. 5.

I now ask the Tribunal to look at Document Blume No. 5 in the manner as I have offered it, and to accept it. The document is in Document Book I, pages 30 to 60.

The next Document, Blume No. 6, is the one of real interest. In it all the Situation Reports Nos. 8 to 73,-- everything is complied with in a clear manner which, on the one hand, the Prosecution and on the other hand the Defense - wants to prove concerning the defendant Blume. I ask the Tribunal to note the notes on page 61 of Document Book I. It will not be necessary, I presume, that I read these preliminary remarks into the record. It is particularly important to mention No. 4 of the preliminary remarks. This preliminary remark says that those parts of the reports of events which the Prosecution quoted as incriminating evidence against defendant Blume, in the Document Blume No. 6, are indicated with a blue line, and are numbered, 31 Oct 1947_A_MSD_17_3_Biolsi (Juelich) in blue, 0 to 6. The evidence of the Prosecution concerning these points is indicated with red figures, 1 to 6. I now ask the Tribunal to accept, Document Blume No. 6. It is in Document Book I, pages 61 to 86.

Q (By Dr. Lummert) Witness, I now come to my next question. The Prosecution has put it to you, that Sonde kommando 7-a killed Jewish and Communist party functionaries on 3 July in Vilna. This is Document No. No-4537, Exhibit 116, mentioned by the Prosecution in the English record pages 154 to 155, in the German page 160. The Quotation mentioned can be found by the Tribunal in the Document Blume No. 6 on page 3 at the bottom, Document Book page 63. It is indicated with a blue figure "1". Book in front of you?

Q Witness, what can you state about this charge? Minsk. My Sonderkommando 7-a could have carried out these shootings only on 1 or 2 July, but I can only testify again under oath that I did not order or carry out any such shootings in Vilna at the time. Only two explanations can be made to this report: Either there is a mixup with a report of Einsatzgruppe 9 which was in Vilna at the time -- the mixup may have happened through Nebe, who was in Berlin when the Situation Report can be explained in the following manner, and I think it is more probable: his superior, Heydrich, the Chief of the RSHA, and tried very hard to follow all his orders and to comply with them. For that reason he made these reports to Heydrich himself, and altered the reports of the subkommandos insofar as he thought it necessary in order to make a good impression in Berlin. Regierungsrat Ehlers told me about this. When I 31 Oct 1947_A_MSD_17_4_Biolsi (Juelich) returned to Germany in the middle of August via Smolensk, as I have already stated, at the time I had reported to Nebe from Vilna that Lithuanian national units already before the arrival of the German troops had shot Communists and Jews with Communist views.

Nebe probably wanted to report something positive about Vilna concerning executions by Sonderkommando 7-a, and for that reason simply said that my kommando had carried out the shootings in Lithuania --shootings of Communists and Jewish Communist functionaries. This was all imaginary. In any case, such an exception of party functionaries in Vilna I would certainly remember. They would have been the first functionaries of that kind whom we came across. We would have indicated them in detail, and I would have made a report about it. All this did not happen. Apart from that Vilna was a large city which was not destroyed. It had normal life so that shooting of people and getting rid of corpses would have been a difficult problem, the solution of which I certainly would still remember. I can only repeat, and certify again, that I and my Sonderkommando 7-a did not carry out any such shootings in Vilna.

Tribunal the figures in red, figure No. 1 in document Book Blume No. 6 on page 3, notes 3 and 5, document pages 62, 63 and 65. On page 62, it says:

"That attempts of anti-communists and anti-Jewish circles to clear themselves had been intensified." intensifying? shootings which the Lithuanians had carried out already before the arrival of the Germans, also about other police measures taken by us. The expression "intensify" is a typical Nebe expression.

Q May I return to document book No. 6, on page 63, the points indicated in I in red show that Einsatz Commando 9 was already in Vilna at the time and that Sonderkommando 7 a became free owing to the arrival of Einsatz Commando 9 in Minsk. Finally page 65 shows that the Einsatz Commando 9 already on the 29 of June moved on to Vilna, that is at the end of page 65. Einsatz Commando 9 at the latest must have arrived on the 30 of June or 31 July, that is about the same time when Sonderkommando 7a arrived. Therefore, one could only draw the conclusion that Einsatz Kommando 9 carried out executions of communists for this area in so far as Nebe has invented them. I now refer to document No. 2937, Exhibit 57 of the Prosecution, as mentioned in the English record on page 155 to 157 and in the German record on page 160-162. The Tribunal will find the quotation concerning the document

Blume No. 6 on page 9, document No. page 69. It is indicated with a blue "two". Since the quotation concerns two different points I have noted 2a and 2b.

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I first deal with point 2b because this point still concerns Vilna and I quote from the bottom of page 69:

"In Vilna the Einsatz Commando there liquidated 321 Jews up to the 8th of July." Witness, what do you say to this charge of the Prosecution? kommando 7a had nothing to do with these 321 shootings. I had left on the 3rd of July very early in the morning. I left Vilna on the 8th of July. I was already on my way between Minsk and Polosk. However, during those days and already since the end of June or since the first of July the Einsatz kommando 9 bad been in Vilna as the local Einsatz Commando there. This execution can, therefore, only have been carried out by Einsatz Commando 9. Tribunal's attention to the red figure "2b" in document Book Blume No. 6, on the pages 262-263-264-265-266-267 and also 71, 73, and 77. This shows that from the end of June until the end of July Einsatz Commando 9 was the local Einsatz Commando in Vilna. The case is so obvious that I believe the record will not have to contain any further details on this. I now come to point 2a and ask the Tribunal to open page 9 in document book Blume No. 6 again, that is document book 69.

THE PRESIDENT: Dr. Lummert, before we enter into this other discussion which I presume might take up some time I think it might be well to announce the recess. morning at nine-thirty o'clock.

(The Tribunal adjourned until 0930 hours November 4, 1947)

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THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: For the information of all concerned, this Tribunal which has heretofore been known as Military Tribunal II-A is now Military Tribunal II, this designation, resulting from General Order No. 100, dated 12 September, 1947. The original Tribunal II having yesterday completed Case No. 4 and being dissolved, this heretofore Military Tribunal II-A will be and is now Military Tribunal II. All records and all reports will now carry the designation Military Tribunal II. You may proceed.

DIRECT EXAMINATION - (Continued)

DR. LUMMERT: Your Honor, last Friday I had asked the Witness Blume about his education and his professional training and about his professional career in addition, and after that I asked him about the activities during the seven weeks of his assignment in the East. At the end of this session on Friday I had arrived at a number of questions in accordance with the situation reports which the prosecution used as evidence material against the Defendant Blume.

May I make a short remark here? The interpreter interpreted the word "Ereignismeldung" with "situation report", whereas it should have been "operation report". This is what I would like to say. In my opinion, it is the only correct translation. It should report events.

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The translation which is used in the document books themselves "operational situation report" is not quite correct. There is a mix-up between activity, "Tatigkeit zum Lagebericht" which is activity, and situation reports, which also are contained in some reports. These activity and situation reports were issued monthly, but the reports of events were issued daily. I would suggest that the word, "Ereignismeldung" or the term "Ereignismeldung" should be translated "reports of events".

On Friday I had arrived at Count II-A of the indictment. I would ask the Tribunal to look at Page 9 of Blume document, No. 6, which is in Document Book I, page 69. If the Tribunal will be so kind as to read a few lines which indicated in blue, II-A, then I will not read this into the record. This particular sentence is on Page 69 of Blume Document Book I, It is marked in blue II-A. It is a report of events of 13 July, and the prosecution has charged the Defendant Blume with having participated in the shooting of 1050 Jews in Minsk.

THE PRESIDENT: What do you attempt to establish by this explanation of II-A?

DR. LUMMERT: Your Honor, I intend to put a question to the Defendant Blume immediately in connection with this II-A, and I only want to explain this. I want to give a preliminary explanation. The charge of the prosecution is to the effect that the Defendant Blume had taken part in this shooting of 1050 Jews in Minsk, as well as in other daily executions. These executees had been taken from a civilian internment camp, which the Einsatzgruppe, so it says in this report, interrogated, together with the regular police. BY DR. LUMMERT:

Q Witness, what have you to say to this? by saying that Nebe talked to me on the 6th of July, in the afternoon, and that until that day I had never executed Jews, and that he gave the direct order to Obersturmfuehrer Foltes to carry out an execution the next morning as a retaliation measure against the burning of houses by Jews, and that he ordered me to report to him the carrying out of the execution.

It is not necessary that I repeat my previous testimony to that effect. In any case I certify and I confirm that I had nothing to do with this civilian internment camp and with other executions, that, as I say, I had nothing to do with them. On the 7th of July, after this execution, I proceeded from Minsk in the direction of Polosk. which are in Blume Document No. 6 on Pages 64, 65, 66, 67, 68, 69, and 72 of the document book. I particularly want to draw the Tribunal's attention to the following points. On the bottom of Page 4, it is 64, Nebe reports about his arrival in Minsk on the 5th of July. On Page 66 in the center it shows that the staff of Einsatzgruppe B, which was at that time still called "C", had been in Minsk from the 6th of July. The other reports of events of the following pages show that the Einsatzgruppe B remained in Minsk. The reports of events of the 13th of July which were quoted and cited by the Prosecution on Page 69, blue II-A, speak expressly of the Einsatzgruppe. The Special Kommando 7-A, according to the wording of this report, is not concerned. Finally the execution, which was carried out by Foltes on the order of Nebe, is also mentioned. In the preceding report of the 12th of July, the sentences I mean are red II-A on Page 68. On Page 68 the burning of houses is mentioned, and it says there, I quote, "a number of Jews were liquidated". According to the last reports of the Einsatzgruppe B, wooden houses in the western part of Minsk were set afire. It is at the bottom of Page 68 until the top of Page 69. As the Defendant Blume left Minsk after the execution, in which, as he says himself, 50 to 60 people were shot, he has nothing to do with the further executions which took place.

These executions were ordered by the Staff of Einsatzgruppe B, and Einsatzgruppe B made use of the Secret Police for the carrying out of the executions.

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ed there a number of weeks. It also took over the carrying out of executions in Minsk. I shall come hack to this Blue 5b later on. This point also concerns the town of Minsk. The points 2a and 5b belong together. 117, which was mentioned by the prosecution. It is in the Bullish Book on page 175, in the German Book on page 162. The sentences that are concerned here are in Blume Document No. 6, page 13. This is no. 78. It is marked blue and it is marked 3. There it says that 27 Jews who had not appeared nor turned up for work were shot in the streets of Witebsk in order to deter other people, and than an extensive execution would be carried out. It is on page 78, Mr. President.

THE PRESIDENT: Thank you.

Q. Witness, can you comment on this?

A. In my former testimony I have already declared that I ordered an execution at Witebsk by order of Nebe and I also gave details about this; especially, that I ordered Foltes to carry out the execution and that before the execution ever took place, he had, without my knowledge, shot a number of Jews in the streets of Witebsk, because they had not turned up for work. This operation on the part of Foltes is meant in this report when it says here that 27 Jews were shot who had not reported for work.

DR. LUMMERT: I would like to draw the attention of the Tribunal to the fact that the executions which were ordered by the Defendant Blume in Witebsk on the higher order of Nebe are not contained in the reports of events. Only the execution of the 27 Jews is mentioned, which Foltes carried out independently.

I now come to Document NO-2949. It is Exhibit No. 118. It is cited by the prosecution in the English Book, page 157, in the German, page 162. The quotation I am referring to is in Blume Document No. 6 on page 19. It is Document 79. It is marked in blue 4. There are thirty names of localities and villages, and it is said that executions were carried out in these villages.

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Q. Witness, may I ask you, have you the Quotation here in front of you?

A. Yes.

Q. Did you participate in executions in these mentioned villages or localities?

A. I did not take part in any executions in any of the mentioned localities, with the exception of Witebsk. I have already given testimony referring to this.

Q. At the end of this page 79, it says that Einsatzgruppe D until the 31st of July, 1941, had carried out liquidations of 11,084 people. That is at the bottom of page 79. Witness, what have you to say as to the participation of Sonderkommando 7a and your own participation in the execution of this number of people?

A. The execution carried out by Foltes on orders of Nebe in Minsk concerns 50 to 60 persons; in Witebsk Foltes had these 27 people shot who had not reported for work. The execution ordered by myself on higher orders by Nebe concerned 80 people, about 80 people. I have already said this. If we add these numbers, there about 160. If I add a number of people, a few others which were shot in individual cases, as determined partisans or for sabotage acts, we arrive at the number for the Sonderkommando 7a, that is from July 1941, of about 156 to 170 executed people and I only participated myself in about half of these.

DR. LUMMERT: AS for this point Blue 4, I would like the Tribunal to note that in former reports of events, I have marked red 4 those villages which have been mentioned before these. This red 4 concerns only villages which were not on the record of Sonderkommando 7a. A part of these 30 villages do not appear in former reports of events.

I now come to Document NO-3847, Exhibit No. 58, in Prosecution Document Book, of the English, 157 to 158; in the German book -- I beg your pardon, in the German transcript 163.

This is the report of events of 29 of August. The Quotation is Blume Document No. 6. It is on page 22. It is Document 82. It is marked 5a and 5b, blue. I start with 5b. There it says that in Minsk another 650 people were liquidated in the course of the combine-out action in the civilian prisoners camp.

A. Witness, what can you comment on this?

A. I had nothing to do with this execution. I left Minsk on the 7th of July. This report is dated the 29th of August.

DR. LUMMERT: I think I only have to mention a few more details here. I refer to Red numbers 5b, Document Blume No. 6, page 73, 77, 80, 83 and 84 of the Document Book. Furthermore, I refer to the testimony of the witness and what I said myself concerning this point 2a which also concerns the town of Minsk. I have already mentioned that Einsatzkommando 8 arrived in Minsk in the middle of July and remained there for a number of weeks, as the red numbers indicate, the red numbers 5b, at least, to the end of August, that also in Witebsk the executions of the Jewish intelligentsia were continued.

Q. Witness, what have you to say to this?

A. I have already given testimony as to the executions of Special Kommando 7a in Witebsk. It was the only execution which was ordered by myself on order of Nebe. It took place on the 19th or 20th of July. At the same time I moved and left Witebsk and proceeded in the direction of Smolensk. I had nothing to do with the further executions in Witebsk.

Q. I may refer again to Red Numbers 5a on page 22 and 24 of Blume Document No. 6. It is on page 82 and 84 of the Document Book. They show quite clearly that at that time the Einsatzkommando 9 was stationed in Witebsk. Sonderkommando 7a, however, had left Witebsk five or six weeks before. Finally, I come to Document 2844, which is Exhibit No. 61. It is cited by the prosecution in the English records, page 159 and in German 164.

The quotation I refer to is in Blume Document No. 6 on pages 24 and 25, document book 84 and 85. It is marked Blume 6. Here the total figures are mentioned for Einsatzgruppe D from 20 August 1941, the total executions, that is. The Vorkommando 7a has a figure of 996. Witness, what is your explanation of this figure?

A. For the period until the end of July 1941, I estimate the number of executions carried out by Sonderkommando 7a, according to my best knowledge, at from 156 or 170, as I have already said.

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Q. 156 up to 165 --- to 170?

A. If I add for the first event of August until I left Baklanova and went back to Germany, if I add, as I say 10 to 15 people which were executed as determined partisans or arrested saboteurs, and, if furthermore, I include the shooting of 50 to 60 people which Foltes carried out without my knowledge in the first part of August in Welisch, I arrive at a figure of about 230 to 240 people. There are no more. The number 996 I can only explain by the fact that Nebe intentionally gave a wrong and excessive figure, because he did not dare to report that low number to the office in Berlin. I refer to what I have already said about the incorrect way of reporting on the part of Nebe.

DR. LUMMERT: I would like to draw the Tribunal's attention to the fact that the Special Kommando 7a in this report for the first and only time has been called Vorkommando, that is Advance Kommando 7a, or Van Kommando. The figure 996, apparently, even was too low for Nebe and he wanted to invent an execution and he called therefore the Sonderkommando 7a, he called that a Vorkaommando, an advance Kommando. He did the same, as a matter of fact, concerning the Special Kommando 7b. the fact, although it is not a very important point, that the figure 996 covers the period until the 20th of August. Of course, while the Defendant Blume had already given up the command of the Sonderkommando 7a on the 16th or 17th ofAugust and had already left. He had turned it over to Foltes; as the witness has already said, Foltes was very active , and very ruthless, and very brutal; and it is very possible that after the Defendant Blume had been transferred, he added to the figures of executions.

Before I leave the Blume Document No. 6 I would like to draw the Tribunal's attention to the following points. On page 10 of the Blume Document No. 6, it is page 70 of the Document Book, first just underneath the actual center of the page, Nebe reports in the report of the 13th of July, that is NO-2937, I quote:

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"In Grodno and Lida, first of all, during the first days only 96 Jews were executed. I gave orders that considerable intensification was to take place there. The activity of all kommandos developed in a satisfactory manner. Above all , liquidations were brought into smooth running order and are being carried out daily at an increased rate. Anyway, the carrying out of the necessary liquidations is guaranteed under any circumstances. " Here we find the favorite word of Nebe, which is "intensification" and he says that in the carrying out of the necessary liquidations, he can guarantee it under any circumstances.

This corresponds to the fact that a few days before this report he forced an execution in Minsk, which Foltes carried out according to the order and which furthermore corresponds to the fact that a few days after the report of the 13th of July, this teletype message to the Defendant Blume forced this execution at Witebsk, which the Defendant Blume has already mentioned.

I now ask the Tribunal to go to the next-to-the-last page. It is page 72 of the Document Book below the center of the page, and it says in the report of the 23rd of July, Iquote: "The town Polosk had been systematically set on fire; all Party and administration buildings are completely destroyed; hardly any population is left. The Einsatzkommando therefore proceeded to Witebsk." That is the end of my quotation. one day in Polosk and left for Witebsk immediately, in order not to be put in the position of having to carry out an execution in Polosk, and that he signed a corresponding report to Nebe from Witebsk, which was slightly exaggerated. The Tribunal will remember that the witness stated that he believed he could justify this small exaggeration and that he could reconcile it completely with his soldier's attitude.

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This report of events of the 23rd of July, which I have here is mirrored in the report of the Defendant Blume. again. That is page 74 of the Document Book. There it says that it quotes the same report of the 23rd of July. It is about the center of the page. That is 74. I quote; "The solution of the Jewish problem during the war would, apparently, be impracticable, as , in view of the huge number of Jews, it could only be achieved by a large-scale expatriation. However, measures have been taken by Einsatzgruppe B, whereever it has taken up its work so far. " That is the end of my quotation. temporary measures on assigning Jews to labor, or at least measures which were recommended. The defendant Blume has stated that from Witebsk he sent a report to Nebe concerning the Jewish question in White Ruthenia, in which he tried to effect a change in the actual Fuehrer Order. Nebe compiled his report from this, and it was contained in his reports to Berlin. This becomes evident from the report of events of the 23rd of July, which I just quoted and which I have just summarized. The report of events of the following day, that is, the 24th of July, presents this report again as a special supplement. Book and I quote from the lower part of the page. "In the appendix please find the report of Einsatzgruppe B concerning the Jewish question in the White Ruthenia Settlement Area. " That is the end of my quotation. interesting. I quote from the center of page 76: "From the District of Witebsk Sonderkommando 7b reports in addition that most of the farmers on the collective farms are not working , as they are fighting for directives and instructions. If the peasants are not ruled and if no further directives are issued I think there is a danger of a large part of the harvest being lost.

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The Army Group has been urgently requested that the Commissioner for the camp economics issue a directive at this time and approve the dissemination of leaflets by airplanes ." This statement again is based on a report by the Defendant Blume. Last friday, the Defendant Blume talked about his administrative activities at the Loswitha Lake, which was not far from Witebsk and Smolensk, and he mentioned that he had leaflets distributed by air and had other measures taken for sake of the harvest.

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If this report speaks of Sonderkommando 7-b it is a mistake. It should read 7a. Special Kommando 7-b never operated in the region beyond Witebsk, but only south of the Dniepr River. It becomes evident from the report of events. This obvious mistake is an example that the reports of events are not always reliable.

THE PRESIDENT: Dr. Lummert, you say the witness testified to leaflet bombing. I confess to not recalling any such statement by the witness.

DR. LUMMERT: Your Honor, I remember that the witness mentioned this on Friday.

THE PRESIDENT: That he used airplanes to drop leaflets on the population?

DR. LUMMERT: Yes, your Honor. The witness stated that he caused the Army Group to throw leaflet bombs by which the population was requested to continue with harvesting work.

THE PRESIDENT: Very well. I think we do now recall it.

DR. LUMMERT: We can now leave Blume document No. 6, and in addition, and as a supplement, I offer Blume Document No. 7 excerpts from the German Army reports of the summer of 1941. They come from the newspaper Voelkischer Beobachter. The purpose of this document is merely to show when the three towns, Wilan, Witebsk and Smolensk fell into German hands: Wila, on the 24th of June; Witebsk on the 11th of July; and Smolensk on the 16th of July 1941. Furthermore, the excerpts show, as far as the town Polosk is concerned, that the fighting in this area took place on the 10th and 11th of July. This shows, and confirms, the statement of the defendant Blume. I would like to have the witness Blume testify to two documents which have been submitted by the Prosecution as evidence against him.

The first is an affidavit of the defendant Steimle. It is in Document B ook III-D of the Prosecution, in the English page 39, in the German 64. Document NO-3842, Exhibit No. 119. The Prosecution has the document in the English record, page 158, in the German 163.

Steimle was the successor of the defendant Blume, as the leader of Sonderkommando 7-a, and in this affidavit he states that the defendant Blume, in White Ruthenia, apart from combatting partisans also had Jews executed, and that from June until September 1941 he -was in charge of Sonderkommando 7a.

Q. (By Dr. Lummbert) Witness, what do you have to say to this?

A. As far as the shooting of Jews is concerned, the affidavit is true because on the order of Nebe I carried out a Jewish operation in Witebsk. I have already given testimony as far as this is concerned. It is incorrect, however, insofar as concerns the time, the period September, because I gave up the command of Sonderkommando 7-a on the 16th or 17th of August. I turned it over to Foltes. Steimle chose September as indicating the exact date, evidently because he himself was entrusted with the command of Sonderkommando 7-a in September 1941. I myself would like to draw the attention of the Tribunal to two other points in the affidavit of the defendant Steimle. First of all, in Document III-B, page 41, in the center. There Steimle says, concerning Blume, I quote:

"Character soft and bureaucratic." Furthermore, I would like to note in the following affidavit, NO-4458 , the same Document Book, III-B, page 44, at the bottom of the page, -I would like, as I say, the Tribunal to note this sentence in which Steimle reports that Nebe told him in October 1941 that the Special Kommando 7a until then had not shot any women and children, but the soft and bureaucractic character" of the defendant Blume means that the defendant Blume tried to avoid, actually avoided, these executions, and that he basically refused to shoot women or children, I shall examine the defendant Steimle in addition to this when he is in the witness stand. page 44, at the bottom.

I now come to the defendant Blume's own affidavit, which is in Document Book I of the Prosecution, in the English it is page 37, in the German page 43, Document No. NO-4145, Exhibit No. 7. This is Document Book I, page 37.

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The Prosecution has this affidavit in the English transcript, pages 151 to 152, and in the German pages 157 to 158. The Prosecution says there that this affidavit concerning the executions contains those points which the defendant Blume could not deny. The affidavit is dated 29 June 1947.

Q. (By Dr. Lummert) Witness, may I ask you first... When were you examined? when did Mr. Wartenberg take down the affidavit... Was it on the 28th or 29th of June?

A. On the 28th of June. That was the day before I signed the document.

Q. Witness, Mr. Wartenberg answered my questions explicitly, during the cross examination, that the interrogation was on the 29th of June. Which is the correct date? Perhaps you can give us some details, how your interrogation took place, and how it came about?

A. On the 15th May 1946 I was released from an interment camp as a prisoner of war. Under my right name, I stayed in Bielefeld or in the vicinity approximately one year, and worked on a farm with a farmer. On the 24th of June 1947 I was arrested and I was taken to a prisoner camp, Eselheide, and from there two days later I came to Nuernberg.

Q. Witness, may I interrupt you, and may I ask you... Is it correct that after your arrest in Detmold, and upon your interrogation there you were, as one says, ill-treated and brutally beaten?

A. Yes, that is quite correct. I was beaten by the interrogator in the region of my kidneys, and on the back of my head, and my face, so that I bled, and the traces of it were visible for days.

Q. Is it correct that you tried to commit suicide on two occasions at Eselheide? Did you do that because you felt guilty, or for what other reason?

A. I did not try to commit suicide because I felt guilty, but because my pride had been hurt during the interrogation. If I could have beaten back while I was interrogated probably I would have been shot, because while the interrogator boat me two others held two pistols pointed in my direction.

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I did not dare to hit back, because I have five children. But in thinking about this, and the fact that I did not resist when I was ill-treated, and that ill-treatment would probably continue when I was interrogated again-- these thoughts, as I say, I found so unbearable when I was in Eselheide that I decided I would commit suicide. For that purpose I used my bandages, but the bandages tore and therefore the attempts failed.

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BY THE PRESIDENT:

Q Where was this? Where did this interrogation take place? Where?

Q When did it occur?

Q What year?

Q And who was it that beat you?

A The interrogator. I was under the impression that it was the authoritative interrogator because he was the man who signed the records.

Q What nationality was he?

Q Was he an officer?

Q Do you know his name? because his name appears in the record of the interrogation.

Q You say he beat you over the kidneys?

Q With what did he strike you?

Q And is that the only place he hit you, in the kidneys? face. He stopped when I began to bleed.

Q Were these very severe cuts on your face?

A My lip opened, it broke open, and I had a wound. It was not severe.

Q Where were you bandaged? What part of your body was bandaged?

A No bandages were necessary. It was only my lip that had burst.

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with your bandages.

A No, that is a mistake your Honor. They were bandages for my legs. Leggings.

Q Oh, leggings! I understand. You say two men stood by with a pistol at your head?

A Yes, your Honor; one was in uniform and one was wearing a civilian suit. One was sitting, and the other was standing. while the third struck you with his fists?

Q What were they trying to have you say? during this interrogation I had told the truth, and I said that I had been an officer in the Security Police. That, apparently they had not known until then. In any case, this report caused the perpetrator to beat me and to maltreat me. The interrogation then was over. The man who maltreated me only arrived after the interrogation was over. told your story, then this person who was not even there when the interrogation took place struck you with his fists?

A Yes. This ill treatment had no influence on my statements in my statements in my testimony at this time. against you?

A In any case it happened, I don't know in detail what the reasons for it were. But it must have been -

Q You weren't beaten very badly, were you?

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head. I felt it. as the blows landed?

Q Well, you didn't feel any pain after the pummeling had ceased? not been so badly beaten that I could not actually walk, or that I could not answer questions. isn't that about what it was?

A Yes; there was no reason for the wrath

Q I am not trying to justify it, witness ... I am only trying to get at the facts. The reason you tell us this man gave you a punch or two was because he was angry at you. Isn't that what it was? or hatred?

Q You really didn't feel any ill effects of it after the actual striking? You didn't feel any ill affects after it was over, did you?

A Not of a special kind. The general pain one feels... so far as the results were concerned, to permanently disable you?

Q You didn't have to have any medical treatment, did you?

A No. In the camp at Eselheide I immediately reported to the doctor in order to inform him about it, and to show him the burst lip.

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Q And did he treat you? happened to you, and made that the basis for a suicide attempt, didn't you? that the psychological pain of the situation moved me very much. and you having been a soldier all those years -- that because of this temporary humiliation in the hands of an enemy that you wanted to commit suicide?

A Your Honor, it was not only one or two blows; it took quite some time.

Q Well, whatever they were, they weren't bad enough to cause you to be hospitalized, or to receive any medical treatment. Now, do you want to tell us that you, a bigstrapping follow who had been through a war, had fought, and encountered all kinds of difficulties, would want to commit suicide just because someone struck you with his fists this ill-treatment, after the interrogation; I was, of course overwhelmed by the fact that when questions were asked as to names of comrades, and I thought that I would be thus put into a forced situation, and I was, afraid of all this. some information which might implicate your comrades. Is that what I understand?

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A Yes; I thought I would not be hard enough, perhaps, to bear it in the long run .

THE PRESIDENT: Yes.

( A recess was taken.)

THE MARSHAL: Persons in the court room will please find their seats. The Tribunal is again in session. BY DR. LUMMERT: attempt to commit suicide and I now ask you were the marks of this attempted suicide still obvious when Mr. Wartenberg interrogated you here in Nuernberg on 28 June? neck which the prison physician saw too. Mr. Wartenberg. Is it correct, in particular, that you would have had to agree to the executions mentioned by you?

A No, that is not correct. At the time I explained to Mr. Wartenberg voluntarily in reply to his questions and without any duress, approximately the same about the executions as I have testified here on the witness stand. He did not make any remonstrations to me which would have caused me to make a confession. The two executions of Minsk and Vitebsk I mentioned on my own accord and have testified this was carried out because of the direct orders and the insistence of Nebe. Herr Wartenberg took this into the record in shorthand. That was on the 28th of June and the following day he came to me with a prepared affidavit and asked me to sign it. When reading through it I found that the affidavit contained mistakes and most of all that they had left out all of that which I had mentioned upon my discharge, in particular, Nebe's orders. When I objected to this Herr Wartenberg told me he had no time to make these additions, I could make a written statement and give to him and state in that written statement everything I wanted to add. For that reason I only confirmed or corrected those things in the prepared, affidavit that was absolutely necessary in order to avoid gross mistakes and the same day, on 29 June, I wrote a letter to Herr Wartenberg and gave it to the guard with the request to put it into the prison box.

DR. LUMMERT: In this connection I ask to be allowed to offer Document Blume VIII. It is Document Book I, page 91, It is a draft of the letter which the witness just mentioned, and which he wrote to Mr. Wartenburg at the time. It is page 91.

Q. Witness, I submit to you the original draft of this letter. Is this the draft of the letter which you wrote to Herr Wartenberg?

A. Yes, at the time I just made a draft of this letter, and tins is the draft, I then wrote the proper letter and gave it to the guard with the request to forward the letter. On the draft which, retained I mentioned at the bottom, "Have had it mailed today by the guard in the prison."

Q. Did you hear anything further about it as a result?

A. No, I didn't hear anything from Mr. Wartenberg.

Q. Why did you not remind him?

A. At the time as a result of my attempted suicide which had not succeeded I was in a state of not caring.

THE PRESIDENT: You quoted Document I, Did you mean your own Document Book I.

DR. LUMMERT: Yes, page 91. BY DR. LUMMERT:

Q. Witness, please repeat the reply?

A. At this time as a result of my suicide attempt which had not succeeded, I was in a state of not caring. A few days later I received the first indictment, dated 3 July, and soon after that I had my first discussion with you, as my defense counsel. At the time until 10 July I told you about it all, and handed you a draft of my letter to Mr. Wartenberg.

Q. Yes, that is right.

DR. LUMMERT: May I mention that I want to introduce this COURT II CASE IX draft of the letter as evidence, because in it the defendant Blume already made the exact statements which he has testified to here on the witness stand.

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It will not be necessary for me to read the letter into the record -- But I ask the Tribunal -- he wanted me to translate not "asked" but he wants "Request the Tribunal" in that the translation was not correct. I request the Tribunal to consider the letter in the case of the defendant Blume, and may I mention the following: When I asked Mr. Wartenberg during his cross examination at my request the Tribunal asked him to find out whether the original of the letter of the defendant Blume of 29 June perhaps might not be with the Prosecution after all, and I was to be informed about it. This is in the English Transcript, page 352, in the German page 354, and the reply has apparently been omitted by mistake. I would, therefore, like to ask the Prosecution to reply to this within the next few days if it is possible for them to do so. I now come to the last part of this second main section, other section.

THE PRESIDENT: Dr. Lummert, I see no reason why the Prosecution should have a couple days to reply. Let them reply immediately, they should be able to, whether they ever received the original of that letter.

DR. LUMMERT: Your Honor, may I add that at the time Mr. Wartenberg had then a folder before him on the witness stand in which the shorthand minutes of 28th or 29th of June was contained, and, also minutes which were probably taken in Detmolt. He said at the time that he had no other documents, and for that reason I requested at the time to look in the other documents of the Prosecution to see whether this letter might be among them.

DR. FERENCZ: Your Honor, I do have a typewritten copy of the letter under discussion. I have not found anywhere the COURT II CASE IX original of it.

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I don't know whether it was in Mr. Wartenberg's file, or whether it is in the document room here in the building. It may be In the original document room. However, I do have a typewritten copy of it, but I have no objection at all to defense counsel introducing it in evidence.

THE PRESIDENT: Very well.

DR. LUMMERT: Therefore, it leaves no doubt that the letter of the defendant -- with this the statement of Mr. Ferencz it leaves no doubt that this letter of the defendant Blume of 29 June was received by the

Prosecution, because this copy can only have been made iron the original. Mr. Wartenberg could not remember at the time to have received that letter. I now come to the last section of the second main portion in the examination of the defendant Blume. These few questions concern the defendant Blume, how he judged the Fuehrer Order concerning the shootings in the year of 1941, whether he considered it to be right or wrong, and what consequences he thought it would have in his opinion at the time. Witness, before I ask you about this in detail, please note the following: I am not asking you for your to-days opinion about the Fuehrer Order, but I am submitting to you purely witnesses questions, that is, questions about the facts at the time, which you are to answer to the best of your knowledge and belief as far as you remember. I therefore, ash you for the moment to forget everything that has happened since the bummer of 1941, and which might perhaps prevent you in some way to testify on this point. Please forget, therefore, completely that at a later period American and English airplanes destroyed the German Main cities, and hundreds and thousands of German women and children were killed. Please forget the atom bomb and its results.

MR. FERENCZ: Your Honor, I must object to, this type of question by the defense counsel; the atom bomb, and bombing of German cities are well known, there is no necessity of putting it in the form of a question for the witness. It is obviously being mentioned for the sole purposes of prejudicting either the answer, or the Court, and has no relevency in this case.

DR. LUMMERT: I may reply something to this. Other Defendants, I remember one case at least replied to this question that they were not willing to testify because those things happened later. For that reason I would like to have a reply from the witness, and, I, therefore, ask that he imagine himself back in the year of 1941. I, therefore, ask the witness -

THE PRESIDENT: Just a moment.

DR. LUMMERT: -- to imagine -

THE PRESIDENT: Just a moment, Just a moment, please.

DR. LUMMERT: Yes, sir.

THE PRESIDENT: In the first place you asked the witness to become a superman and to perform magic, you asked him to forget what happened since 1941. How you know as an educated person that it is absolutely impossible. If I tell you to forget what happened yesterday, with all the willpower in the world you can not forget, what is engraved upon the mind, remains there. If anything is forgotten, it is forgotten because of the natural evolution of time, but you can not by ordering a man have him forget something which is already there, so that question is absolutely without any meaning or sense. Now if you want him to say or describe what happened in 1941, then ask him: "what happened in 1941?" but don't tell him to tear up the calendar, and the almanac, because the archives of the memory can not be destroyed.

DR. LUMMERT: Your Honor, I beg your pardon. I probably COURT II CASE IX did not express my intentions very well, I merely asked the witness about things he thought at the time in 1941.

BY DR. LUMMERT:

Q. Witness, when at the end of June and July, 1941, you moved to Russia with your Sonderkommando-VII-A; did you at the time consider the Fuehrer Order concerning the destruction and elimination of Eastern Jews in the Southern Territory -to be right or wrong, and, what personal conclusions did you draw from this?

A. If I try to imagine myself back completely into the year of 1941, I must stop for a moment to mention Streckenbach's announcement to us about the Fuehrer's Order in Pretsch. I already testified last Friday that on that day my feelings and thoughts conflicted, and that finally I tried to find a way out by asking Streckenbach to put me in charge of a small Sonderkommando. I need not repeat my testimony on this in detail. If you now ask me whether I considered the Fuehrer Order right or wrong at the time, I must say that at the time I did not concentrate my thoughts on the three words, that is, "right or wrong," but according to my opinion at the time the Supreme German leadership was responsible for this order, and particularly concerning the laws of war, and International Law: Insofar at the time I did not allow myself any criticism on the order, but I merely said to myself that the Supreme German leadership would have considered every pro and con of such an important order, and they could judge the situation better than I could in my inferior Sonderkommando position: insofar as this was an order of the State, that is, of the Supreme Commander of the State, and as the Supreme Command of the State was beyond good or Evil for me. On the other hand it seemed cruel and impossible for me from a human point of view, simply to shoot defenseless people, and en masse, and I followed my inner-voice when I COURT II CASE IX tried at the time not to carry out this order personally if possible, and thus personally and with human sense I rejected the order at the time.

I considered the order wrong in the sense, not in this sense, even as concerned men of military age, and most of all concerning the shooting of women and children. Owing to this view I carried out this order only in one occasion, namely, in Witebsk, when Nebe forced me to do this through his immediate order.

THE PRESIDENT: Just a moment, please. I didn't quite understand the witness' statement that he thought that the execution order was wrong insofar as it applied to men of military age, and women and children. Did I understand that correctly?

THE WITNESS: Your Honor, I said that in my personal opinion I didn't consider the order to be right, also not as far as it concerned men of military age, and, in particular, concerning women and children.

THE PRESIDENT: Well, did you think it was all right for those who were not of military age?

A. No. In particular not so: I said that owing to this, my inner-conviction, I only carried out this order on one occasion, namely, in Witebsk, when Nebe ordered me through his immediate order to do this, and at the time I limited the shooting to men of military age. I have already testified to all of this previously. When I said previously that this order, as an order of a Supreme Commander of the State, was beyond good and evil for me. I must add a word about my personal relation to the leader, Adolf Hitler, I must confess that I believed in the Fuehrer to such a degree as one could possibly believe in a person. I considered him to be a great, intelligent man; as a political leader of Germany he had overcome the terrible crisis of the year of 1932. He had done away with unemployment, and had established a wonderful order in Germany. He had joined Austria and the Sudetanland with Germany, and these were not invasions, as I know myself that more than 95% the Austrians and the people from the Sudetenland were enthusiastic about it, to be accepted into the Union of German Reich. After all, war until then had led to success only and, in particular in the middle of 1941, at the time the order was given, Hitler was at the height of his power. sidered unavoidable for many years. When in June 1941, it was made known in Germany that beyond the Soviet Border large armies had been marched up, and that a German attack was only to be first before the Russians attacked us, I considered the war against the Soviet Russia quite justified, and, of course, naturally also wanted the German victory over Bolshevism.

According to all I had heard about Soviet Russia in previous years, and particularly when interrogating people who returned from Russia, I was also fully convinced and am so even now, that Jewery in Soviet Russia played an important part, and still does play an important part, and it has the especial support of Bolshevitic dictatorship, and still is. If now the Supreme German Command in this position issued an order for extermination, headed by Hitler, who was at the height of his power at the time, and whom I trusted deeply and admiringly, it can be understood that at the time I accepted the order as one takes any other order, or any other law by one's Supreme Power of the State; but independently of this I personally rejected the shooting of defenseless people, and for that reason I instinctively avoided this order. Through my report on the Jewish question, in White Ruthenia, I even tried through some other regulations the settlement of it, about which I already had testified last Friday. If I may summarize my opinion at the time, I would like to say the following: At the time there was a collision between my duty to obey, and my personal humane demands of my conscience. On the one hand I had a very bad conscience because I did not want to carry out the Fuehrer's Order if I could help it, and, on the other hand I could not bear the idea to carry out this order, and insofar as I did carry it out, I only did this because I was immediately forced by orders - which did not leave me any other way out.

DR. LUMMERT: At this point I would like to introduce Document Book Blume's No. IX. The witness testified at the time that in 1941 he believed in the Fuehrer as a wonderful great statesman and human being, and an outstanding man, whosoever expresses this conviction nowadays is mostly not understood, and especially in, the case of foreigners who do not understand this, who found it very difficult to judge the conditions as they existed, the conditions which existed in the decade since 1933 in Germany.

I considered it now my duty as defense counsel to submit at least one document to the Tribunal, instead of a hundred, or a thousand, which could be introduced, to support this testimony of the witness Blume. I request the Tribunal to consider this document as a kind of "window" through which you can get a view of the psychological condition of Germany under Hitler at the time. This document concerns Austria, the annexation of Austria, and it contains the statement of an Austrian Catholic Bishop, which wan given at the time in March 1938. The document is in Document Book page 95.

MR. FERENCZ: May it please the Tribunal. The document which is now being offered is as an opinion expressed in 1938 concerning the joining of Austria to Germany, The charges against the defendant Blume are very specific. They charge him with murder, mass murder, in the years following 1941. It is submitted that his opinion on anything in 1938 concerning the plebescite of Germany and Austria has absolutely no relevency in this case, and, we, therefore, object to the admission of the document.

DR. LUMMERT: Your Honor, may I reply to this. I believe the document is very relevent. The witness mentioned that the joining of Austria and Germany in his opinion was one of the great acheivements of Adolf Hitler, which improved his position in his opinion. In 1941 this still had effect, of course, and I intend to ask the witness now in detail about this statement by the Bishop, and on the joining of Austria.

THE PRESIDENT: Dr. Lummert, I just want to show you what difficulties you are going to get into with this kind of a document. You are asking the witness to express himself on the joining of Austria to Germany, You are going to ask him whether it was morally justified. If we permit this question then I am going to ask the witness several questions. BY THE PRESIDENT:

Q. Witness, did you believe that in 1940 it was justifiable to bomb London and other cities in England which brought about the destruction of women and children? Did you believe that was correct? Did you believe it was morally correct for airplanes to fly over cities in England and drop bombs killing women and children?

A. According to the way the propaganda put it at the time, nothing was described to us which made us conclude that in the enemy territory targets were bombed which were not of military importance.

Q. Then you do not believe that women and children were killed in those air raids over England which included the destruction of Coventry which was razed to the ground?

A. No, your Honor, of course I cannot say that. I merely wanted to say the destruction......

Q. Please answer the question. Did you believe that was just?

A. I did not know it, your Honor.

Q. Very well. You knew that Germany marched into Poland. Did you believe that was just?

A. Yes, your Honor, I believed that this happened because the Polish attitude toward us forced us to do this. I am now speaking of the attitude and the idea we had at the time, owing to the way it was explained to us.

Q. Did you believe that it was proper to bomb Rotterdam killing thousands of women and children? This was all prior to 1941.

A. I heard about this. I heard that Rotterdam had been previously asked not to defend themselves as an open city and that they did not do this.

Q. And you believe, therefore, it was proper to bomb that city killing thousands of women and children?

A. Your Honor, if an enemy defends a city........

Q. Will you answer that. You believe it was proper then, that is your answer, yes.

A. If it was defended by soldiers, yes. Then it is a fortress.

Q. You believe that it was proper to make war on Norway which had not declared war on Germany?

A. Your Honor, I can only repeat that at the time it was explained to us quite clearly and we believed this.

Q. You believed it was proper; you believed it was proper?

A. Because we believed......

Q. Now, please answer that question.

A. We would be first this way.

Q. Well, regardless of what was told you, you believed it was proper to invade Norway?

A. Only because of what I was told.

Q. You believed it to be proper in view of what had been told you?

A. Yes.

Q. And you believed it was proper to invade Denmark and Holland and Luxemburg?

A. All this was connected with the statement that we had to carry out this in order to avoid that they attack us.

Q. Well, you believe that it was proper?

A. From that point of view, yes.

Q. You believed it was proper to invade Greece?

A. At the time there were differences already.

Q. But you believed it was proper. That is the only thing I want to find out.

A. Yes, your Honor.

Q. You believe it was proper to invade Yugoslavia and Belgium?

A. Yes, we were told at the time.

Q. Yes, now, do you justify all those invasions today. Do you think today that it was proper to have invaded all these countries?

A. Your Honor, I have no possibility to study history here.

Q. Do you believe today it was proper to invade Norway, Denmark, Holland, Belgium, Luxemburg and the other countries?

A. I can't reply to this, your Honor.

Q. Very well.

A. Because I cannot judge this.

Q. Then how can you judge whether Austria was proper annexed to Germany?

A. At the time we heard how enthusiastic they were, and we were in Austria.

Q. Well, you were in Belgium; you were in Holland; you were in Norway; you were in Greece; and you were in Yugoslavia. You were in all these other countries too.

A. No, your Honor. I personally merely wanted to give the impression which the annexation had on the people in Austria at the time.

THE PRESIDENT: Now, Dr. Lummert, I am going to ask you a question. You have seen that the witness is unable or refuses to justify the invasion of all these countries, but he stands upon the annexation of Austria to Germany. Now, what has that got to do with what happened in 1941? If you intend to show that everything which Hitler did up until that time was proper and correct, then it is not in order to show what he thinks about Austria, but you must take all that history and not one specific episode.

DR. LUMMERT: Your Honor, may I add something about this? I am afraid that I have not been completely understood. The witness testified that he believed in Hitler, that he worshipped him, and that for that reason the order of 1941 concerning the executions had special importance for him, and simply as one example on what this special belief in Hitler is based, he mentioned the annexation of Austria, and in this connection, that is merely to support the testimony of the witness, I wanted to introduce this Document No. 9. I believe that in this connection it could be considered relevant.

THE PRESIDENT: You said you would offer this affidavit as a window. We are perfectly willing to have a window, but we don't want to have the view shut off from the one who is looking through the window, and if we look through a window we do not only see Austria, but we see all the other countries which I have mentioned.

DR. LUMMERT: Your Honor, I certainly did not have any such intention.

MR. FERENCZ: The explanation offered by defense counsel who is offering this document as it will explain why the Defendant Blume adored Hitler. The prosecution is ready to concede that the defendant adored Hitler and that in his opinion he had good reason for it.

THE PRESIDENT: With this concession on the part of the prosecution as to the reasons for the adoration of Adolf Hitler by the witness, it doesn't seem that this affidavit has much probative value. However, the Tribunal is willing to give you every possible latitude, Dr. Lummert. The objection of the prosecution is overruled, and you may introduce the affidavit.

DR. LUMMERT: Your Honor, may I point out the fact it is not an affidavit but it is a statement which the Austrian Catholic bishops published at the time and which appeared in all German papers in facsimile.

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Q. (By Dr. Lummert) I now ask, do you remember this statement by the Austrian bishops?

A. Yes. I remember the days in March 1938 because they Were the most beautiful days of my life and I know that many other Germans felt the same way. The statements by the bishops and the statements of many other authorities who all agreed to this at the time were, then, a confirmation for me of the fact that Adolf Hitler had a great mission for the German people.

DR. LUMMERT: The Document Blume No. 9 is in Document Book I, page 95 to 99. I will now read a few lines of the bottom half of page 96. I quote, page 96 - just below the middle:

"We, the Austrian bishops, after exhaustive deliberation, in view of the great historical times through which the Austrian people have lived, aware that in these days the thousand-year-old longing of our people for union with the great German Reich will find its fulfillment, have decided to make the fallowing appeal to all our faithful." ment on page 98 of the Document Book. I quote:

"Solemn Manifesto: We, the Austrian Bishops of the Austrian diocese declare, with serious conviction and of our own free will, on the occasion of the great historical events in German-Austria, we gladly recognize......."

THE PRESIDENT: Dr. Lummert, it isn't necessary to read the manifesto. If you desire to sum it up in a few phrases we will permit that, but certainly we shouldn't take time to read this manifesto issued in 1938 on a subject which is not involved in the indictment.

DR. LUMMERT: Yes, Your Honor. I then request that I may just refer to this statement. I think it is not necessary for me to summarize the contents.

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Blume on the witness stand. This section concerns Charge 3 of the indictment. That is the membership in organizations declared criminal by the International Military Tribunal. Only the time after 1 September 1939 is concerned here. 3, I first deal with the membership in the SS.

Q. (By Dr. Lummert) Witness, in your testimony you talked about your professional career and you mentioned that in June 1935, when you appeared on a scoial case in a civilian suit, Heydrich arranged that you be transferred from the SA to the SS in the same rank, namely in the rank of SS-Untersturmfuehrer. Untersturmfuehrer is the same as a lieutenant. Please give me further details now about your SS membership, in particular whether you did service in the SS.

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A. I was never active in the SS but as a police official I was merely a formal member of the SS, no real or active member of the SS. Already before 1936 certain relations existed through Himmler between the SS and the police. These became closer when Himmler, the Reichsfuehrer-SS in June, 1936, became chief of the entire German police in the Reich Ministry of the Interior. zations which served for the special protection of the state would be united, in particular the SS, the SD, and the entire police. This idea of the state protection corps was not realized until 1945. Only a few odd measures were taken concerning this. Concerning these measures, or some of them there was a sort of equivalent protective corps of the police with the SS about which a special decree was issued by Himmler in the year 1938. On the basis of this there was an assimulation of ranks since 1938. According to my promotion in the police service I was always promoted to the corresponding SS rank. Therefore, an Regierungsrat I became Sturmbannfuehrer. That is a major. As Oberregierungsrat I became Obersturmbannfuehrer. That is Lieutenant-Colonel. Finally as Ministerialrat, Standartenfuehrer. That is a Colonel. But these were only SS ranks. Official positions I did not hold in the SS, and as I said, I was not active in the SS either. Only in the last eight days of the war, approximately, I was drafted into the Waffen-SS.

DR. LUMMERT: In this connection I offer the Assimilation of Rank Decree of 23 June 1938 as evidence Blume No. 10. The document is in Document Book, Pages 100 to 105. The listing of the corresponding rank is on Pages 101 to 103. In section 1 of this decree, Page 100 of the document book, it sags that members of the Security policy, upon request, be received into the SS. That means voluntarily, apparently. Witness, how about this voluntary effort?

A. Since the assimilation of ranks of the members of the police and the members of the SS confirmed the wish of Himmler, it was put in practice. It was fixed that every member of the Security Police should make this application if he fulfilled the conditions required in the decree.

Q. In Section 3 of this decree, Page 103 of the document book, it is said, and I quote: "The employees of the Security Police will be put into that SS rank which corresponds to their rank as civil service members of the Security Police. Incorporated into the SS they will be assigned to the units of the Security Service of the Reichsfuehrer-SS according to the more detailed instructions of the Chief of the Security Police and of the Security Main Office of the Reichsfuehrer-SS." The quote was on Page 103 in the center. Witness, what was the sense and the meaning of this instruction?

A. Although Himmler ordered that the members of the police would be given a rank in the SS, on the other hand he did not want these members of the police to be subordinate to the SS Main Office. He, therefore, decreed that these police members, concerning their SS Activity, should be subordinate to the Chief of the Reich Main Security Office of the Reichsfuehrer-SS, that is the later Chief of the SD, and that formally they would be assigned to the units of the SD. The police members with SS ranks were, therefore, not subordinate to the SS-Main Office, but were subordinate to the SD-Main Office, and since the SD-Main Office was subordinate to the Chief of the Security Police and the SD, the whole matter more or less remained within the police. Thus is shown particularly clearly that the whole SS assimilation of ranks was only a formal matter because in reality the police members did this service according to their assimilation of ranks in the same manner as before, and only served in the police and were active neither in the SS nor in the SD. personal files for the persons who were assimilated in rank in the police, only, as far as I remember, in the year 1943 or 1944. These are files which the Prosecution has used against a few defendants, including myself; by the way, those personal files contain a great deal of inaccuracies. The SS-Personel Office could not find out the personal details at this stage of the war to such an extent and in such detail.

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Q. Witness, I do not intend to ask you about these small inaccuracies in detail, because in my opinion this is not the important point. You said that you were never active in the SS apart from a very few days at the end of the war when you were drafted into the Waffen-SS. Please give me some details about this.

A. At the end of April, 1945, I was drafted in Salzburg in the normal military drafting order and had to join the Waffen-SS. In Salzburg it was the branch, the Ausweichstelle of the Reich Security Main Office. From Blankenburg I had retired to Salzburg.

THE PRESIDENT: One moment plese. Mr. Ferencz, are you charging the witness under the count in question with the subject matter of his present testimony, namely his membership in the Waffen-SS in 1945.

MR. FERENCZ: Your Honor, we are charging the witness generally with membership in the SS after 1939.

THE PRESIDENT: Up to and including the day of surrender?

MR. FERENCZ: That is right.

THE PRESIDENT: Very well.

Q. (By Dr. Lummert) Witness, please continue with your testimony.

A. There the Reich Main Security Office released me from military service because they could not find any other work for me. I, therefore, received the normal drafting order to the Waffen-SS, which I had to follow like any other drafting for military service. Before the war I had had military training twice for eight weeks at a time, with the Fourth Antiaircraft Regiment in Dortmund and had been promoted to be a corporat and as a reserve officer. For that reason, when I was drafted into the Waffen-SS I was given the corresponding rank of an SS-Rottenfuehrer. Already, eight to ten days, Germany capitulated and I was taken prisoner of war.

DR. LUMMERT: Your Honor, "Gefreiter" has just been translated as corporal. I don't know whether that is quite correct. I believe the translation is Pfc., Private, First Class.

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THE INTERPRETER: I beg your pardon, your Honor. That is the English translation.

Q. (By Dr. Lummert) Witness, we now come to the membership in the SS. The indictment says under Count 3, Figure 13b you had been a member of Offices 3, 6 and 7 of the Reich Security main Office. Does this apply and were you active in these offices?

A. No, I never had an official position in these offices, and I was never active in those offices either. If it says so in my personal files, which, as I already said, were started in the years 1943 or 1944 in the SS personnel office, it means merely a matter of form which was based on my SS rank which was assimilated. In reality I only worked as an official in the Security Police.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, November 4, 1947.)

THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER (Attorney for the Defendant Haensch): Your Honor, I would like the Defendant Haensch to be excused for this afternoon and tomorrow morning in order to be able to prepare himself for his examination. I would like him to be brought to Room N. 57 now, if that would be possible.

THE PRESIDENT: The Defendant Haensch will be excused from attendance in court this afternoon and tomorrow. He will be taken to Room 57 under guard immediately.

(The Defendant Haensch was excused.)

DR. LUMMERT: May I proceed, Your Honor?

THE PRESIDENT: Yes, certainly. BY DR. LUMMERT (ATTORNEY FOR THE DEFENDANT BLUME): of the defendant in organizations which were declared criminal by the IMT. I had finished the questions referring to the SD and SS and I now deal with the membership in the Gestapo. Witness, the indictment says, referring to Count III, under No. 353C, that you had been a member of Office IV of the RSHA, the Reich Security Main Office. Is this true? In May and June 1941 and then again from the end of August 1941 to July 1942 I was Personnel Office Chief of Office I of the RSHA. Since my return from Greece, that is from August, 1944, I was again a member of Office I of the RSHA. This position did not change even when in March, 1945, I was detailed to Thuringia by the Office Chief of Office I in order to deal with personnel and organization of the censorship and to transfer it to the Reich Security Main office.

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This activity in Blankenburg was ceased after ten days, because the American troops were approaching. Incidentally, during those ten days, the activities were dissolved, because there was no longer any mail. Had I remained there longer it would have been probable that Kriminalrat Mueller who had been detailed to Blankenburg Office IV of the RSHA would have taken over, and, in this case, I would probably have been transferred to Office IV from Office I of the RSHA, but it never came to that.

DR. LUMMERT: Your Honor, I have now finished the direct examination of the witness, and I would now like to ask you to permit me to submit the documents 1 to 3 as exhibits. Document 1 I have already submitted on Friday for identification. I do not know whether it would be agreeable to the tribunal if I deal with the legal points, and if I would explain them --those points which are contained in Document No. 1. Perhaps the Tribunal would prefer it if I would just inform them of the content of the matter, I would like to comply with the express wishes of the Tribunal.

THE PRESIDENT: It is enough if you indicate with a phrase or two the purport of each document which you submit.

DR. LUMMERT: Yes, Your Honor.

THE PRESIDENT: However, if you come to some document in which appears a paragraph or more which you regard of extremely vital importance and want to read that, of course, you may.

DR. LUMMERT: Yes, Your Honors, In the proceedings on Friday I already mentioned that in Document 1, the most important points have been collected which concerned a more severe punishment because of refusal to obey, especially in police organizations, in special assignments.

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I had also mentioned last Friday the first paragraph, the concerning paragraphs from the military penal code and the second paragraph, the so-called Special War Penal code and I have quoted from this paragraph. In accordance with this special decree, I would like to make the following remarks. It was published at the beginning of the war and contained more severe punishment regulations. Especially, it concerned the socalled undermining of military strength. The reason I mention this here is that during the later years of the war in Germany the utterance of a more doubt of German victory or just a more doubt that the Fuehrer was right was deemed undermining German military strength and was punished with death. October 1939 by which special legal jurisdiction was being granted-

THE PRESIDENT: Where do you have the decree you just referred to, namely that the expression of doubt in the Fuehrer's perfection could result in a death sentence?

DR. LUMMERT: Your Honor, does this mean '2 or '3?

THE PRESIDENT: You have just said, Dr. Lummert, that in the latter days of the war that even an expression of doubt in the Fuehrer's infallability could result in death. Now where is that decree?

DR. LUMMERT: This is not a decree, your Honor, but this I remember as I was active as a lawyer during the war.

THE PRESIDENT: Well, are you, in effect, taking the witness stand now, Dr. Lummert?

DR. LUMMERT: No, no. Your Honor. That was neither a witness' statement nor a legal argument, but it was just an explanation to paragraph 5, No. 1, on page 6 of the Document Book.

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This paragraph was used in this particular sense.

THE PRESIDENT: What is meant by paragraph 3 on page 6, which reads: "In addition to the death penalty, a penitentiary sentence is also admissible." Did they put the corpse in the penitentiary?

DR. LUMMERT: Yes, Your Honor.

THE PRESIDENT: Did you catch my question, Dr. Lummert?

DR. LUMMERT: Yes, Your Honor.

THE PRESIDENT: I don't think you did.

DR. LUMMERT: Yes, Your Honor, the sense of it is, in addition to the death punishment also the property can be confiscated.

THE PRESIDENT: No, no. It says in addition to the death penalty a penitentiary sentence is also -

DR. LUMMERT: Your Honor, I am very sorry. There is a mistake here, a typographical error. It should read, instead of "In addition to the death punishment and the penitentiary sentence" -- "Or the penitentiary sentence, confiscation of property is also admissible."

THE PRESIDENT: Very well.

DR. LUMMERT: The third paragraph,of Document 1 concerns a special jurisdiction which also applied at the beginning of the war for members of the SS and members of the police, and other who were active in special assignments.

military law and with military jurisdiction, There was only just one difference. This difference was mentioned by the defendant Ohlendorf when he was on the witness stand. I may perhaps remind the Tribunal that the defendant Ohlendorf said -- it is in the English record 523, in the German 533 - "if war jurisdiction was very severe so the jurisdiction of SS was even more cruel." No. 6. That is page 3 in the center of the page. There it says that the SS and Police jurisdiction also concerned itself with police institutions in special assignment. The Einsatzgruppen whom we are dealing with here in these proceedings, and the Einsatz- and Special Kommandos were such police institutions employed in special assignment. I may mention here that this special assignment, this term is sometimes translated "on special, assignment" and sometimes "on special tasks," Both translations are correct and they mean the same. In German it is always "im besonderen Einsatz."

The next regulation which is No. 4, is on page 11, supplements the third decree and provided a special court in Munich as Highest SS and Police jurisdiction authority. contains a decree of Himmler as Reichsfuehrer SS and Chief of the German Police of the Spring of 1940, This decree was to the effect that the entire German police for the duration of the war was employed in the sense that has been mentioned before. The point therefore was that since 1940 the Special SS and the Police jurisdiction was valid for the entire German police, no matter whether the police was acting inside or outside Germany, Therefore, the severe penal regulations were valid for the police since Spring 1940 without restrictions of time or place. 2 and 3. I can deal with them in a very short way. Document 2 is an affidavit by the witness Soechting concerning a remark made by Heydrich which he had made in the year 1937.

He was then Chief of the Security Police and the SD. Heydrich on that occasion said and now I quote from page 14 of the document, "Nobody ever leaves the Security Police unless we don't want him any more. In such a case, however, he may leave through a concentration camp." This remark was the answer to applications of members of the Security Police,especially of the Intelligence Deportment,who had asked to be released, from a speech of Himmler of 1943, in which he responds and refers to former remarks. The document was introduced as evidence in the IMT Trial. Himmler on that occasion said, I quote, page 16, center of Document 1: "If within the sphere of your knowledge should there be anyone who is disloyal to the fuehrer or to ourselves even if it is only in thought, you must see to it that this man is thrown out of the organization and we will see to it that he departs this life." That is the end of my quotation. "that obedience must be carried out without reserve and blindly." These words of Himmler, of course, only refer to members of the SS, but Himmler was at the same time Chief of the German Police and in the year 1938 already had established a close contact between the Police and the SS.

I should also like to refer to Blume Document No. 10.

THE PRESIDENT: Dr. Lummert, by the introduction of these documents which tend to show that it was impossible for one to disobey an order or in any way to modify it, do we understand that you submit that your client did obey the order?

DR. LUMMERT: Your Honor, it is correct-

THE PRESIDENT: That he did disobey the Fuehrer Order?

DR. LUMMERTT: Your Honor, these quotations are merely meant to show that the defendant acted under force.

THE PRESIDENT: Well, that then he did obey the order? Witness, we will put the question to you. There have now been introduced in evid ence various documents which are copies of official decrees of the hierarchy in Germany during the war. These decrees all tend to show that if one disobeyed or qualified an order that serious consequences would follow. Do we understand that you did follow the order so that you would not come into conflict with these decrees?

THE WITNESS: Yes, Your Honor, in Vitobsk, for instance, as I described.

THE PRESIDENT: You did executes the Fuehrer Order?

THE WITNESS: Yes, however not to its full extent, but-

THE PRESIDENT: Well, now, just a moment. Then you did not execute the Fuehrer Order?

THE WITNESS: Not to its full extent.

THE PRESIDENT: Then why are you submitting all these documents as to the great difficulty you would incur if you did not obey the order. extent indicated by that order?

THE WITNESS: Yes.

THE PRESIDENT: Well, then, according to these documents, you should be dead right now for having disobeyed an order?

THE WITNESS: The modified way which I gave this order odd. not come before an SS and Military Court or Police Court, It did not come to any proceedings.

THE PRESIDENT: Well, then, these decrees in no way disturbed or affected you, is that right?

THE WITNESS: Of course, without this duress which was behind me I could, have followed my own intelligence and I would not have had carried out any shootings.

THE PRESIDENT: Now, please listen to the questions and answer directly. You received a Fuehrer Order which called upon you to perform certain executions.

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Bid you execute that order?

THE WITNESS: Hot to its full extent.

THE PRESIDENT: Yes, you modified the order which was given to you?

THE WITNESS: Yes.

THE PRESIDENT:You did not execute the order which was given to you?

THE WITNESS: No.

THE PRESIDENT: Then according to this decree you should have been court-martialled and shot, is that right?

THE WITNESS: If the matter had come before the court it would have been possible that the court would have drawn such conclusions, but I acted in a manner which one can call evasive, so that in such an action I would have been able to defend myself.

THE PRESIDENT: Well, so therefore all those decrees in no way distubed you, did they? You weren't court-martialled?

THE WITNESS: I said Your Honor, that there were particularly favorable circumstances so that nothing came of it.

THE PRESIDENT: I asked you whether you were court-martialled?

THE WITNESS: No,

THE PRESIDENT: Then these decrees in no way took hold upon you?

THE WITNESS: They were never used, Your Honor,

THE PRESIDENT: Yes, so far as your case is concerned, all these documents are irrelevant, is that right?

THE WITNESS: No, Your Honor, because I knew them and knowledge of these facts caused me to act in cases where I could see no way out to evade a direct order I remind you of the case of Vitobsk, for instance, where I tried to postpone the carrying out of the order until I got a new order by teletype message and, of course, now I had the last alternative, which, before I had evaded temporarily by joining the front troops.

THE PRESIDENT: You were ordered to execute all Jews, isn't that right?

THE WITNESS: Yes, that is right.

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Q. And according to your statement, you did not execute all Jews?

A. No.

Q. So, therefore, you did not follow the Fuehrer Decree?

A. No, not to that extent.

Q. You were very fond of Hitler at the time, weren't you?

A. Yes, your Honor.

Q. You adored Hitler?

A. Yes, your Honor.

Q. Then, why did you not follow out his order which was very expressly given to you?

A. For the first time, I was confronted with the fact that all my thoughts and my feelings could not follow the order of the Fuehrer.

Q. Then you had sworn undying allegiance to Hitler, hadn't you?

A. Yes, your Honor.

Q. And according to this oath which you took you were not permitted to change or modify any order... isn't that right?

A. No, your Honor.

Q. You were not permitted to change any order which was given to you by Hitler?

A. According to this oath, not.

Q. No. Then you were not faithful to Hitler when you changed his order?

A. I have had a baa conscience too, your Honor.

Q. You we re not faithful to Hitler when you did not obey his order. Answer that question.

A. Yes, you can call it that.

Q. You lied to Hitler?

A. Your Honor, I tried to find a way out-

Q. You did not obey the order that Hitler gave you?

A. In an advance kommando there were possibilities of following the Hitler order without being confronted with immediately an alternative. And this is what I tried, I tried to find consolation in the thought that I was doing my duty after all, without carrying out this special order.

Q. But you told us you did not follow out the order as it was given to you. How, you either must stand by that, or not. You told us very clearly you did not execute the order as it was given to you. Now, please give me that answer again. Yes or no. Did you follow out the Hitler order to execute all Jews?

A. No.

Q. Very well. Then to that extent you repudiated Hitler?

A. Yes, and I was suffering from a bad conscience, because I did not do my duty.

Q. All right, And you lied to Hitler, You did not follow out the oath which you took to Hitler?

A. Your Honor, the assignment was not only to shoot Jews.

Q. Answer that question, now. You have told us that you did not follow out the order. So that when you did not follow out the order, you lied to Hitler, you did not follow the oath. Answer that.

A. I did not feel it in this manner.

Q. You did not follow out the oath?

A. I deviated from the actual duties which were mine in Russia because I was still thinking that I was doing my duty, because in advance kommandos-

Q. Yes, we have heard all that... We got your explanation. But I an making it more simple. You took an oath to follow Hitler, to obey his orders explicitly...

Now, you have voluntarily told us, from the witness stand, that you did not obey that order completely. You attempted to modify it; you tried to get into a situation where you could change it; you tried to evade it. You told us all that. So, therefore, you did not follow Hitler implicitly?

A. Yes; it was the first time that I deviated from a Fuehrer order.

Q. Yes, Therefore, you were not true to the oath which you made to Hitler?

A. Yes, in this particular moment I deviated from the path of my duty.

Q. You lied to your adored leader?

A. Your Honor-

Q. Please answer that question. You told an untruth, by your deeds, to your adored leader. By your actions, not by words... but by your actions you told a lie, an untruth, to your adored leader, Adolf Hitler... Answer that!

A. One can formulate it so, your Honor.

Q. Yes so to that extent you repudiated Adolf Hitler-to that extent, that little bit.

A. Yes.

Q. Yes, So, therefore, Adolf Hitler to you was not infallible?

A. Yes. That was the first feeling I had.

Q. Now, how do you feel about Adolf Hitler today? Do you still think he was the perfect man you believed him to be before you lied to him?

A. The results of politics speak against it, your Honor.

Q. You had told us that when you marched into Russia you believed it was entirely justifiable because you thought Russia was going to attack Germany?

A. Yes.

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Q. And you thought that all these other countries which I enumerated to you... Poland, and Holland, and Belgium, - and all the other countriese... you thought they were going to attack Germany?

A. Yes.

Q. Did you think that the little country of Luxembourg was going to attack Germany?

A. No; but it could be a territory of combat for other powers.

Q. So you thought it was entirely justifiable for Germany to march into Luxembourg?

A. Yes, your Honor.

Q. So, therefore, you justified everything which Hitler did up until June 1941?

A. Yes.

Q. So you believed in Hitler, in everything, with the exception of part of this order which he gave you?

A. This was the first doubt, yes.

Q. Yes. So the only time you disagreed with Hitler was when it might in some way affect you, your own fate?

A. The motive, your Honor - was not only my own fate, but the reasons for my behavior were the psychological and moral doubts which had to come up when carrying out this order.

THE PRESIDENT: You may proceed. BY DR. LUMMERT:

Q. Your Honor, in conclusion, Document Book III. I only want to say that what Himmler said regarding the SS was also equally valied for the German police.

May I make a suggestion, your Honor. The ten documents in Document Book I, Blume, have not yet been numbered, they have no exhibit number. I would suggest that the exhibit COURT II CASE IX numbers be the same as the document numbers, which is the most simple way - which was also used in the proceedings before the IMT.

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THE PRESIDENT: That system will be followed.

DR. LUMMERT: In that case, your Honor, I have no further questions in the direct examination.

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THE PRESIDENT: Defense counsel may now cross-examine the witness. BY DR. ULMER (for the Defendant Six):

Q. Dr. Blume, when and where did you meet Dr. Six after the outbreak of the Russian campaign?

A. On the 6th or 7th of July at Minsk.

Q. What were you told about the tasks of Dr. Six?

A. My Kommando was moving towards Moscow. When I said good-bye to Nebe in Minsk, the Kommando was just about to cross the last resistance the so-called "Stalinlinie", and thought they would march to Moscow. For this reason, Nebe, when I said good-bye to him informed me to the effect that the so-called Kommando Moscow under Standartenfuehrer had been created -- the task of which was the safeguarding and maintenance of evidence material and documents in Moscow. Therefore, I did not have to prepare for this special purpose. He also cold me that the kommando had received special interpreters, and departmental experts, who knew circumstances and conditions. I remember this because I informed my men about these facts - the fact that we had competitors now, and that I expected that they would do everything in their power to arrive in Moscow before this advance kommando.

Q. How can I understand this? What do you mean "competitors?" Do you mean another Einsatzkommando, or do you mean only competitors as far as speed went?

A. I am only referring to the speed in reaching the aim.

Q. In your direct examination, Dr. Blume, which has already been read by the Prosecution, you used a term which I would like you to explain . In your examination, your testimony, you spoke about the sector , or the territory Six, or the sector or territory of the Advance Kommando Moscow. I would like you to tell us what you mean by this expression.

A. I would like to state first that this does not concern testimony but the transcript which were not signed by myself.

It was aremark which I made, and it referred to the fact that I rejected a reproach of the interrogator that I had stayed at Smolensk during this advance. I said that I had only remained at Smolensk for one day; and as I knew that the Advance Kommando Moscow took over with the safeguarding and maintenance of files and other materials in the Soviet House at Smolensk, after I had been there, I tried to express -- that Six was the competent authority at Smolensk, for the neighboring army, there can be no doubt , was the Special Kommando 7-b. I do not know anything about the local competence of the Advance Kommando Moscow.

Q. And you never learned about the competence, or, shall we say, the parallel or lateral competence of the Advance Kommando Moscow , in the sphere of tasks of an Einsatzkommando?

A. No, I never heard anything about it,

DR. ULMER: Thank you. I have no further questions.

THE PRESIDENT: Any other defense counsel wish to cross-examine? BY DR. MINSEL(Assistant to Dr. Gick, for the Defendant Strauch):

Q. witness, during the time of the drafting of Strauch to Latvia, and also later during the time of his transfer to White Ruthenia, you were personal Referent in the Reich Security Main Office. Is that correct?

A. Yes.

Q. Is it also correct that Strauch, after he had been appointed commander of the SD and the Security Police in Riga, that he rang you you upon the RSHA at Berlin and he said that he hadbroken his arm a short while ago, that the fracture had not been healed yet, and he was still receiving ambulant treatment, so that he could not occupy his position yet?

A. Yes, I remember this telephone call. Strauch asked for postponement of his being on duty, because his arm fracture had not not healed yet.

As the period he asked for was very short, I granted it to him that he should take his time , let us say a week, until he would have to take over his office.

Q. Witness, can you say anything as to the further circumstance of the transfer of Strauch from Riga to Minsk?

A. I only know that as far as this transfer of Strauch is concerned, considerable confusion was prevailing. He had hardly arrived in Riga, when, for reasons that are no longer known to me, the necessity came up to transfer a certain Dr. Lange in his position and recall him to Minsk; and Strauch broke his arm again when this plan was to be carried out, and in my opinion Streckenbach then decided that Strauch should have his arm healed definitely now -- he should do that at home, before he was to take over his office.

DR. MINSEL: I have no further questions.

THE PRESIDENT: Any other defense counsel wish to cross examine? If not, Mr. Ferencz will take up the cross examination on behalf of the Prosecution. BY MR. FERENCZ:

Q. Defendant Blume, there are, first , a few points I would like to clarify. You stated in your direct examination that when you were interrogated in the British zone, you were beaten by some of the people who held you in custody? Is that correct?

A. Yes.

Q. Did you ever make any statement under duress?

A. No.

Q. Has anything been introduced in this Court which you did not voluntarily give, without any force or violence?

THE PRESIDENT: Please repeat the answer.

A. I said that in my direct examination this morning by my Defense lawyer I have emphasized the fact that the statements I made to Mr. Warten berg were not made under duress.

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Q. By Mr. Ferencz) Inother words, there has not been introduced in Court here, any statement which you did not voluntarily make?

A. No. Everything was given voluntarily.

Q. Do you think it was an American authority who beat you while you were in confinement?

A. No. I know that it was not an American authority.

THE PRESIDENT: He did say that it was a British subject.

Q. (By Mr. Ferencz) You have told us that you were present in Duben and Pretsch when the Hitler order to kill all the Jews was passed on to the kommando leaders, is that correct?

A. Yes.

Q. Tell us, please, which of the defendants in this case you heard protesting against that order?

A. Yes. I have already said that the office chiefs themselves who were in the same official relations with Streckenbach, shouted while this lecture was given, and Ohlendorf was one of them. Furthermore, I also tried to give a general, impression which I had. I cannot of course, remember the individual people who expressed their disaproval.

Q. You do remember Ohlendorf shouting disapproval? Do you remember what he shouted?

A. During my interrogation I tried to express that I believe I have heard shoutings of that kind, cat-calls, saying, "How is this to be done!!! that is impossible!!! - -

Q. You say you believe that Ohlendorf shouted, "This is impossible". You are not sure that you heard him say that?

A. I can only emphasize again that the impressions of the situation then, are just general impressions, and as such they are not in front of me now in detail.

Q. Then you do not remember specifically any of these defendants protesting the extermination order?

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A. I said already, that in the case of Ohlendorf Ican confirm it -- or, I believe I can do so because the number of those who had this particularly high rank was very small.

Q. You don't remember anything specific about any other . Is that correct?

A. I can give no details.

Q. You stated also that the general task of extermination was explained , but the details were left to the kommando leaders. Is that correct?

A. As far as the carrying out goes, yes. We did not get any detailed instructions as to the carrying out.

Q. You say there that the kommando leaders themselves must be responsible for how these general orders were actually carried out. Is that correct.

A. I have said that we were left to our fate -- that is, I want to express by this that the general order was passed on to us, but unfortunately, we were not told how this order was to be carried out in detail.

Q. Therefore, it was the responsibility of the Einsatzkommando leaders as to how they carried out this Fuehrer order. Is that correct?

A. Yes, unless they did not get any special orders from their group leaders.

Q. You stated in your direct examination that in several localities you were kept busy collecting archives and documents for the purpose of study. That's correct, isn't it.

A. Yes, that's correct.

Q. Was that part of the task of all Einsatzkommandos?

A. Yes, certainly . We had to take care that interesting and relevant Communist material would be seized and used.

Q. Why, then would there be any need for a kommando whose special function it was to collect archives?

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A. You are thinking of Advance Kommando Moscow?

Q. Yes.

A. Apart from what I have stated before concerning the individual details of Vorkommando Moscow I have no knowledge, but the expression "Vorkommando" Moscow, shows that it means the seizure of very important material. Material in Moscow, the Communist capital. That does not change the fact that, of course, every kommando had the task of collecting Communist material which it found, and to safeguard it, to translate it, and to report things to the RSHA which might be of interest to

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Q. Are you able to state as a fact that you know that Vorkommando Moscow had the sole function of collecting archives?

A. I have already said that apart from the statement of Nebe which I just mentioned, I never heard anything about the Advance Kommando Moscow. I must ask you to be satisfied with this as I have nothing more to add.

Q. Then you actually don't know what the function of Vorkommando Moscow was?

A. The statement Nebe made to me dealt with this particular assignment but all I know about it is from what Nebe told me as I have already said.

Q. Do you recall meeting with Nebe and Six and some other persons in Warsaw?

A. No, nothing about this is known to me. A conference there is not known to me.

Q. Do you recall meeting there in the presence of a Police Commissioner named Muller?

A. I take it that it must be Police Kommissar Muller who has been talked about here before?

Q. That is correct.

A. We then went to Warsaw for assignment and in passing through Warsaw in the evening we were received by the named Muller. He invited us and we sat at his fire place and we talked a little. I think that happened the only evening when I was in Warsaw.

Q. Who else was present at that meeting?

A. I don't remember any details.

Q. Was Nebe there?

A. Yes, I think he was because Nebe was there at the same time I was there.

Q. Was Six there?

A. Six, I did not see.

Q. Isn't it a fact that the Vorkommando Moscow was part of Einsatz Gruppe B?

A. I cannot say it, apart from this discussion which I reported about I never had anything to do with Vorkommando Moscow and I never was in contact with it during this short time.

Q. In that discussion with Nebe, didn't he say Vorkommando Moscow is part of my Einsatz Group? How was it he talked about it if it was not a part of his Einsatz Group? other conclusion. I only received knowledge of the existence of this Kommando and the information that I would no longer have to deal with the safeguarding and maintenance of material in Moscow, and with this my interest ceased. As to questions of subordination I did not trouble about because they were not very interesting to me or at least not at that time.

Q. You mean he came to you and told you about Vorkommando Moscow which was a completely new name to you and you didn't ask him what it was, who it was attached to and what it was doing around there, is that what you are trying to say?

A. Nebe told me what assignment it had to deal with or at least insofar as I considered this new assignment concerning myself. This was all that interested me.

Q. You stated in your direct examination that in Wilna you went to G-2 of the Army Command and requested permission to advance with the troops, is that correct?

A. Yes, that is correct.

Q. And you stated that the permission was refused and your superior officer ordered you not to advance, is that correct?

A. That is correct.

Q. You also stated that you violated that order of your superior officer and did in fact advance on 2 July, is that correct?

A. Yes.

Q. Were you ever court martialed for violating the order of your superior in time of war?

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A. No, I have already explained the further development, as I have said myself, I reported to the Chief at Minsk who asked me to come to see him, for, of course, I had admitted, these reproaches were justified, but I could point out to him that I had been very successful at Minsk, and that I had many reasons for my decision on this particular point and I put them over so convincingly that he was very friendly to me. your military superior in time of war and nothing happened as a result except he became very friendly to you?

A. The disapproval of my request came from the G-2, who was a major. I myself was an Obersturmbannfuehrer, therefore, according to the military standing I was a Lieutenant Colonel and therefore, I decided for myself and later on I had this decision of mine sanctioned by the superior officer of the G-2.

Q. Now I asked you just a few moments ago whether you refused or violated the order of your superior officer and did in fact advance, and your answer was "yes". Are you now changing that answer and saying it was not your superior officer?

A. No, when I gave this answer I was trying to draw your attention to the disobedience, of course, the G-2 was not a superior officer in his rank as a major.

Q. In other words, you now change your answer from what you gave me a few moments ago to my question. My question then was that the permission was refused and your superior officer ordered you not to advance; and you said "yes" and I then asked you whether you violated that order of your superior officer and you said "yes" and now you tell us it was not your superior officer. Are you then changing your answer to the two previous questions?

A. I cannot see any change in this. I just wanted to emphasize a certain point, referring to the main point about which we are debating now.

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Q. You stated also in your direct examination that you reported to Nebe about events in Polosk, and in this report you emphasized that the city had been completely burned out and that the population was hardly there any more, is that correct? Did you make that report to Nebe?

A. Yes.

Q. You also stated that in reality a considerable part of the population was still there and certainly not all the houses had been burned, did you also state that?

A. Well, I don't know whether I used the expression "considerable", but in any case I said there were sufficient people who would justify the stationing of a Einsatz kommando of the Security Police there.

Q. Therefore, in an official report to your superior officer you reported one thing when you knew the opposite to be true, isn't that correct?

A. I said yesterday when the President dealt with this problem that in my opinion it was not a false report but that it was only colored with a tinge, which I thought I could justify in my own conscience.

Q. You regard that as just a coloring or a tinge, when the facts of the situation are that the city is not burned out and you say it is burned out and the population are largely still there and you say it is not hardly there any more. You don't regard that as anything more than a coloring or tinge, is that what you say?

A. Yes, that is what I said.

Q. Then if you make an official report to your superior officer in which you report one thing and you know the opposite to be true, you regard that as merely a coloring and a tinge?

A. I can only point out again that sharp contracts and the formulations which you are using at the moment, Mr. Prosecutor, do not describe the proper situation.

I must ask you to look at it as I formulated it yesterday, that is, I gave them a slight coloring in order to evade the psychological pressure of a possible execution.

Q. I am giving you your own words as I get it from the official transcript, and the way I read it you reported one thing when you knew the opposite to be true. Now do you deny that? Let me repeat it and make it more simple. You said the city had been completely burned out, was the city completely burned out in fact?

A. Not completely but to a large extent.

Q. Then your statement that the city was completely burned out was false, isn't that so?

A. No, not as far as this is concerned.

Q. Just a moment, you said in your report that the city was completely burned out; you tell me now that the city was not completely burned out, and I ask you, wasn't your report then false and what is your answer?

A. It is the same, that was mentioned by the President already yesterday and the President was satisfied with my statement that I did not regard this as a false report but only a coloring, which was considered justified because of the special situation.

THE PRESIDENT: Well now, witness, I am glad you are happy in thinking I was happy with your answer, but suppose you answer the Prosecutor's question. Now he puts it to you very simply, namely, you reported the city was completely burned out, and in point of fact you say it was not completely burned out. Now he asked you if your report to that extent was not false? Now please answer that.

WITNESS: I do not like to use the expression "falsify" or "false". I would like to say, "slightly exaggerated".

THE PRESIDENT: Does that make you happy, Mr. Prosecutor?

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MR. FERENCZ: No, Your Honor, but I think the answer is quite clear.

THE PRESIDENT: Well, I think we will all be happy if we have a little recess of fifteen minutes.

(A short recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. MAYER: Dr. Mayer for the defendant Steimle. Your Honor, I ask that the defendant Steimle be excused tomorrow afternoon from session, so that I may prepare his defense.

THE PRESIDENT: The defendant Steimle will be excused from attendance in court tomorrow afternoon in accordance with request of his attorney.

DR. MAYER: Thank you, Your Honor.

DR.HOFFMANN: Dr. Hoffmann for the defendant Nosske. Your Honor, I ask that the defendant Nosske be excused for tomorrow all day in order to prepare his defense.

THE PRESIDENT: The defendant Nosske will be excused from attendance in count all day tomorrow. BY MR. FERENCZ: You suggested or stated in your direct examination that you were not a member of the SD, is that correct?

A Yes. Not a fulltime member of the SD.

Q Were you a member of the SD after 1939?

Q Yes or no? Can you answer a very simple question. Were you or were you not a member of the SD after 1939? personnel file of the SD. One could not describe it in a different way. That is why one can not answer yes or no.

Q The question is, were you a member of the SD after 1939? Is your answer yes, because you were a Police Official too, or your answer no, because you were just a police official and not a member of the SD in any form? What is your answer? It is a simple question, and I would appreciate a simple answer.

DR. LUMMENT: Your Honor, may I raise on objection against this question. The Prosecutor should at least explain what he understands by SD.

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MR. FERENCZ: Your Honor, I am sure the defendant knows what SD means. If he does not, I will be glad to give him a copy of the IMT judgment to study tonight, but I am quite sure he must know what SD means.

THE PRESIDENT: The witness will answer the question. BY MR. FERENCZ:

Q Were you or were you not a member of the SD after 1939? organization was analyzed, only the question of fulltime membership was raised, the fulltime membership in the SS, or of the Security

Police, or of the General-SS, or of the Waffen-SS. That was the only question under debate. Court to Document Book III-B, page 24. It is Document No-3245. Here you will see at the beginning of the year of 1935, going through the year of 1941, there are six times listed your rank followed by the notation "Leader in SD Main Office." Do you say that all those six reports covering six year period are false?

DR. LUMMERT: Your Honor,I consider this question irrelevant for the following reasons: Before the afternoon recess I asked the witness on this vary question, and he gave a detailed and clear reply to it. It is possible that the reply may not have been noticed by Mr. Ferencz, but actually the witness could only repeat exactly what he said this morning, and for that reason I consider the question irrelevant.

MR. FERENCZ: Your Honor, the objection stated on the ground of irrelevancy , however, should be quite apparent as not well founded as to his membership in the SD, inasmuch as it has been charged in the indictment as a very relevant point.

THE PRESIDENT: If it was relevant in the direct examination, certainly, it is relevant in the cross examination. The witness will answer the question.

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BY MR. FERENCZ: is inaccurate in reporting six times, over a period of six years, that you were a lender in the SD Main Office?

A The manner in which it is written is misleading. The reason is a group leader - Gruppenleiter, in the SD Main Office, as mentioned in the document before us, is a fulltime SD leader, but in this Main Office, which is called SD Main Office, has the tasks of a group leader. He is paid by the SD, therefore, by the Party, and SD officials are his superiors and take care of his promotion. Deviating from this description which I just gave here, all police members who within the assimilation-system received ranks in the SS of equal grade. This was merely shown in order to enable them to keep a personnel file in this SD Main Office. The purpose was that the Chief of the Security Police who simultaneously was the Chief of the SD, would be given the possibility to promote SS personnel, and to promote these police officers in the SS at the same time. Therefore, I have known SS leaders in SS Main Offices which had nothing to do with theSD and the police, just the same way the personnel files were kept of these police members in the SD Main Office, which gave this misleading idea that I was Gruppenleiter in Office I of the Reich Security Main Office, therefore, a State Police authority. you to be a leader in the SD, they are incorrect or misleading?

Q Do you recall an interrogation you had by Mr. Wartenberg on 29 June 1947?

Q What did you tell Mr. Wartenberg about your Gestapo membership at that time?

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general?

Q What did you tell Mr. Wartenberg about your membership in the Gestapo when you were interrogated by him on 29 June? Therefore, if you want me to repeat it I can do this briefly. Brief activity with Gestapoleiter in Drotmund; after that Gestapoleiter activity in State Police or rather activity in the Prussian State Police Office; after that for two years active to the State Police Chief in

Halle on the Sale River; after that for about two years State Police Chief in Hanover; and then office as State Police Chief in Berlin; after that -

Q That is adequate. I shall ask you the questions more specifically. Didn't you state that in 1954 after the Roehm revolt, that you went into the Prussian Gestapo?

A Shortly before the Roehm revolt?

Q Yes, you went in the Gestapo shortly before 1934. is that correct?

A Shortly before the Roehm revolt; I think it was in June 1934.

Q Didn't you also state in the interrogation that at the beginning of the Russian War, you went as Personnel Referent to Gestapo Headquarters, and remained there until July 1942 with the exception of a short time that you were commander of Einsatzkommando-VII-A? 1942, is that correct?

Q Didn't you also state in the interrogation that in 1945, Ants-IV, or Gestapo sent you to Bad Blankenberg?

A I was sent by Office-I, if one wants to be quite correct. The censorship office which I was supposed to take over there was a matter which was part of Office-IV, the Reich Security Main Office.

Q That was the Gestapo, was it not, Office IV?

A Yes. I myself as I explained this morning, after my return from Greece I had my position in Office I of the Reich Security Main Office.

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I also emphasized that Kaltenbrunner's attitude of dislike towards me had the result that they tried to transfer me to the Reich Ministry of Finance. During this time of indecision this transfer to Blankenberg took place, and because of this state of indecision my fulltime job was not transferred. The censorship agency was to become part of OfficeIV; it also employed army officers who were also paid by the Army. All of this opened the question I was supposed to solve, and I already said this morning, if I may conclude, that if I had remained there longer, and if I would have incorporated this censorship office into S-IV, then probably Office-I would have transferred me to Office-IV of the RSHA. not fully explained, and I shall begin with Document Book II-B, page 27; page 29 of the German, Document NO-2844. Here you will see that the total figures of persons liquidated by Vorkommando VII-A up to 20 August were 996. You have told us that you were the commanding officer of Vorkonmando VII_A until the 15th or 17th of August,is that correct? inaccurate, is that correct? page 30, Document NO-2937. You will notice here that it says that the civilian prisoner camp was built in Minsk by the first troops, and almost all male inhabitants were placed in the camp, and the Einsatzgruppe B combed the camp and liquidated over one-thousand Jews, and they continued with daily executions of other Asiatic officials, and so forth. Now you have stated that you were in Minsk from 4 July until 7 July, is that correct?

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papers, and collecting archives, is that correct? inhabitants of the town, and putting them into the camp,and the execution by Einsatzgruppe B of over one thousand people?

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Q You don't know anything about that; you were in Minsk during the month of July, during the period while this was taking place, but you don't know anything about that?

A I don't know whether this happened during that time. The term "by the troops who first passed through there", this expression might mean a time which starts at a period when I had already left. In any case, I don't know about the civilian prison camp which was combed out by the Security Police or by the Group during those three days while I was in Minsk, I don't know anything about that.

Q Would you turn to Page 28 of the same document book. I don't know the German number. It is Document NO-4537 (B). You will notice under Einsatzkommando 7a -

A I beg your pardon, I haven't got it.

Q It is the next to the last page of Document NO-4537 (E) , which should he just a few pages before the document we have just been looking at.

A Do you mean page 32?

Q I don't know the German page. It is the report of 3 July 1941 under Einsatzkommando 7a, Document 4537 (E). time, were you not?

A You are talking about the report on Wilna? the Communist Party were liquidated. That was done under your command, was it not? ed particularly that I considered this report to be wrong. I also tried to explain it.

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your command and you said "Yes". Do you change your answer?

A No. I always emphasized and made it very clear that my kommando did not carry out any shootings in Wilna. out executions in Wilna is wrong? Blume Document Book, page 63. I don't know what page it is of the German, but it is a report of 2 July. It is page 63. It is the report of 2 July at which time you were in command of Einsatzkommando 7a, and it it says that operation started for the arrest of Communists and Jews, and approximately 8,000 Jews in Wilna. Does that mean that 5,000 Jews in Wilna were arrested? report does not talk of the arrest of 5,000 Jews, but the figure, 8,000 obviously is, according to the German wording, an objective statement of the figure of the Jews living in Wilna. Concerning the first sentense where it says that Sonderkommando 7a carried out an operation of arrest against Communists and Jews, I want to explain it like this Already this morning I described - or was it Friday - that I visited the local kommando in Wilna, I talked to this man when discussing security questions with him. I pointed out to him that in the interest of security the arrests of Communists in Wilna should he carried out and arranged by him, and that it was necessary that the Jews living in Wilna be put into ghettos and supervised there. I reported about this to Nebe and he formulated it as is written here. Wilna, and that they be put into a ghetto, is that correct? it was done because he was remaining there and he had under him the Secret Field Police for this purpose.

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that correct?

A "Order" is not the right expression because he was not subordinate to me. I merely informed him that this security measure was expected of him. kill all the Jews, did you not? into a ghetto, you knew that they would all be killed in accordance with the Hitler order, did you not? modify the Hitler order. in Wilna. That is, I did what I thought was possible in order not to evade the Fuehrer order very much. Anything beyond that I could not avoid. and put them into a ghetto, and yon knew at that time that there was an order outstanding to have all the Jews killed?

Q Didn't you know that in ordering them to be arrested and put into a ghetto you were assisting in the murder of defenseless people? the actual carrying out of this order would never come about or that at least it would be rescinded. My attempt in Vibosk proves this. why did you go out of your way to instruct somebody,who, you say, was not your subordinate, to arrest all the Jews. Why didn't you just let them escape?

and I only tried to evade the order to such an extent as I personally considered it intenable.

Q In other words, you didn't care if somebody else killed the Jews and if you helped them to do it as long as you didn't have to carry it out yourself, is that correct? draw that conclusion. I would have been glad if there had been an other possibility. kill the Jews or if the Jews were not killed, yet you instructed somebody who was not your subordinate to arrest them and put them in a ghetto.

A Well, I tried to explain it before: in carrying out the order I did what I considered justifiable. BY THE PRESIDENT:

Q Witness - Pardon me, Mr. Ferencz. In answer to Mr. Ferencz's question as to why you did a certain thing in Wilna , well, you did there what you did in Vitobsk, but Vitobsk followed Wilna. You were in Wilna in the early part of July or latter part of June and didn't reach the other city for another two weeks. That is true, isn't it?

Q Yes, well, then you couldn't use What you did in Vitobsk as a precedent for what you did in Wilna since it followed in point of timee. to believe this, what my ideas were, from the very beginning. Of course, this report by me on the Jews was only made in Vitobsk. My emphasis is merely to point out what feelings and ideas led me from the very beginning.

QWell, I don't think that you have answered Mr. Ferencz's question which was very specific, namely, if you did not want to see defense less Jews executed and you wished to evade that part of the Fuehrer order why did you in Wilna go out of your way to instruct someone who was not subordinate to you to arrest Jews end place them in a ghetto where, being isolated, they could very easily be subject to the Fuehrer order of execution.

Now, please answer that question directly and don't refer us to Vitobsk.

That part of the Fuehrer Order which I considered right and possible, I thought I had to carry out here. If I had not done anything, it would have been an absolute and complete refusal to obey which I could not do and which I did not do. place where there could be no doubt as to their identity that they could become subject to the Fuehrer Order which ordered their execution. hopes for a alteration of this order existed as ever. extent of having them collected, hoping that after they had been collected that then through some chance they might not be killed? BY MR. FERENCZ: Sec. Is that the same place as is shown in our documents to be Lachowicze?

A In my document?

Q No, you referred to your Kommando being in Loswitha See. The documents refer to a place spelled L-a-c-h-o-w-i-c-z-e. Is that the same place?

A I cannot say that. I only know the lake under the name of Loswitha Lake, L-o-s-w-i-t-h-a, but may I ask you which documents you are referring to? from the top, there is the word, Lachowicze. Is that the same place as what you described as Loswitha See? Is thus the Russian spelling for it, or is that another place?

A I still have not found the report. I hardly think so, because that is a completely different word. It doesn't say there is a lake. There is a locality that is named -

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and saboteurs were shot by your kommando, is that correct?

A No, I did not say that. I talked about the fact, that during the time of my command after Smolensk, approximately 20 partisans and saboteurs were shot by my kommando. There not only the time on the Loswitha Lake is concerned. had told the farmers not to bring in the harvest. Do you recall that ? think so, is that correct?

Q Tell me, what sort of a trial did these men have? selves and also through wetnesses who were questioned. I then personally judged then end sentenced them.

Q How long did the trial last? omitted. Of course, it depended on where those men had stopped the farmer's from bringing in the harvest.

Q How long did the trial last? shot under your command? decision.

Q what did the accused say in their defense? witnesses proved the opposite. Apart from that , they could not prove where they came from. Obviously they had been sent over by the Russians.

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Q Tell me with what crimes were those men charged? make them destroy the harvest; that is, only to keep back as much as they needed for their personal consumption. In other words, they wanted to make impossible for the German Army to get food from the country. their countrymen not to assist an aggressive invader? That was a crime which you deemed punishable by death? helped in seizing such men.

Q Answer my question, please. My question is: These men were charged with trying to have their countrymen refuse to assist an aggressive invader, and you consider this a crime punishable by death?

It was an appack on the possibility of the German Army to carry out the Russian campaign successfully.

Q Are yoy familiar with the rules of war? which decreed that saboteurs and functionairies were to be shot. the Nazi invaders as a saboteurs, because he refused to help the Nazis and that was worthy of the death sentence which you invoked?

Q Are you familiar with the rules of war? Order. That was my war Law.

Q You don't know any other war law than the Fuehrer Order? You followed none other, is that correct?

A You are thinking of the Hague Convention?

and disregarded any other rules of war? Convention would allow such a possibility, but according to the situation in the East and the attitude of most of the people themselves

THE PRESIDENT: Mr. Ferencz, are you leaving this incident?

MR. FERENCZ: Yes, Your Honor.

THE PRESIDENT: Yes, Your Honor.

THE PRESIDENT: I just wanted to ask one question. Witness, when you related your episode before you said that the crime of the men was that they had told the farmers not to bring in the harvest. Did I understand you correctly?

THE WITNESS: Yes, I ordered it.

THE PRESIDENT: So that whatever they did, it was confined to what they said? It was a matter of what they said?

THE WITNESS: Of course, people were threatened too and in the manner of the partisan combatting in Russia, one could expect that partisans who could not carry out their orders, because the population refused to help them, could be used as reprisals.

THE PRESIDENT: You told us when you volunteered this story that these three men had told the farmers not to bring in the harvest. Now is that what you told us on Friday?

THE WITNESS: Yes, Your Honor.

THE PRESIDENT: Yes, and do you still stand on that?

THE WITNESS: I want to extent my statement by saying what I just said.

THE PRESIDENT: But whatever they did,was confined to a speech. They themselvesdid not set fire to any harvest or in any way destroy the harvest?

THE WITNESS: No, they merely asked for this under threats.

Q (By Mr. Ferencz) I call your attention now to Document Book II-B, page 24 of the English, page 24 of the German. Here is says which 74 persons were shot. Was that once under your command? out during my time.

Q In that event, we'll turn to some things you admitted yesterday. You stated in your direct testimony that on about the 7th of July members of Einsatzkommando 7a, which was under your command at that time, executed about 50 or 60 persons in Minsk, is that correct? is that correct?

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Q. Describe, if you will, what you saw while your subordinated were shooting down these 50 or 60 people.

A. On Friday I gave a detailed description of this occurrence.

Q. Did your men use whips?

A. No.

Q. Here the victims all males?

A. Yes. Only men.

Q. Did they resist in any way?

A. No.

Q. Were they singing, as Ohlendorf told us the people were doing, whom this kommando shot?

A. No.

Q. In other words, they went along like sheep to the slaughter, without resistance, without comments, without struggle of any kind. Is that correct?

A. Yes.

Q. And 50 or 60 persons were shot at that time?

A. Yes.

Q. Yesterday you mentioned also that in Witebsk, as shown in the reports 27 Jews had been shot for not coming to work; and they were shot by Einsatzkommando 7-A, which was under your command at that time. Is that correct?

A. Yes.

Q. You say that Foltis did that on Nebe's order, is that correct?

A. Yes.

Q. Where is Nebe?

A. Nebe is dead.

Q. Where is Foltis?

A. Foltis was killed in the war.

Q. Did you reprimand Foltis for this action - shooting defenseless people down in the streets?

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A. No, I already mentioned that I even reported this event to Nebe in order to calm him down.

Q. In other words, you used this to your own advantage, rather than checking it, and reprimanding it as being something wrong?

A. It was impossible for me, after the scene in Minsk, to inform a leader subordinate to me about carrying out an order and to reprimand him about carrying out an order of a superior.

Q. In other words, you did nothing to reprimand Foltis, or to indicate your displeasure at his action in shooting down defenseless people?

A. That I, as a man, did not feel inclined towards this, Foltis certainly knew - but I had not the possibility of reproaching him.

Q. Now, you stated also that in Witebsk on the 13th of July you personally ordered the execution of about 80 people. Is that correct?

A. Yes.

Q. And you were present during the whole time, when these people were being killed, is that correct?

A. Yes.

Q. You knew at that time, did you not, that innocent people were being shot?

A. I knew that these shootings were part of the Fuehrer decree, and therefore I had to order it. I know that the individual could not be proven to have committed any crime. The general reason given here for the shooting order was the only reason I knew and the only one I had heard of.

Q. In other words, you did know that you were shooting innocent people, did you not?

A. I know, as I have already said, that none of them could be proven to have committed any crime.

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Q. Then they were innocent and defenseless people?

A. The Fuehrer decree had given a reason...... That was the only thing we thought of, and I said, myself, that it was not sufficient as a reason for me, personally.

Q. Why don't you answer my question, Blume? I am asking you...... I am asking you if you knew that innocent people were being shot, people who had committed no crime, people who had done nothing wrong against anyone, and they were being shot because they had Jewish blood, or because you thought they had Jewish blood.

A. Jewish blood was never mentioned. All that was mentioned in the Fuehrer decree was they they were bearers of the Bolshevist idea. That was the only thing we realized.

Q. Were they all Jews?

A. Yes.

Q. Did you make any investigation of any kind to determine whether they were Communists, or opposed to the Communists, or whether they had taken any political action at any time?

A. No.

Q. Then you assumed, by the mere fact that they were Jewish, that they were bearers of Bolshevism, and that they should be killed. Is that correct?

A. I have already stated that the Fuehrer decree maintained this as a motive for the order given to us. As part of this order, and pressure by Nebe, I have carried out these shootings.

Q. Were children shot at that time, and by your Gruppe?

A. I explained expressly, that women and children were never shot by me.

Q. In other words, you did not agree, and do not agree, with Ohlendorf's view that children had to be shot inasmuch as they constituted a future security threat to Germany? Do you agree, or did you agree, with that view?

A. No, or else I would have done it. I just could not do it.

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Q. And at this execution in Witebsk which you ordered and supervised, were there any beatings?

A. No.

Q. And 80 people again walked like lambs to slaughter quietly, and were shot?

A. Yes.

Q. And you described the methods you used to relieve your men of the mental strain...... You say you sat with them, and you told them this was necessary, you were protecting the German women, and you tried to divert their minds from their work....... Is that correct?

A. Yes.

Q. What did you do to ease the minds of the people who were about to be murdered?

A. I did everything I could. That is, I made them realize as late as possible what was going to happen to them, and then carried out the shooting as quickly as possible.

Q. Did you go and talk to them, and tell them...... People, you are going to be shot, but this is for the Fuehrer....... Did you say anything to them? What did you do?

A. No.

Q. In other words, you were very busy trying to cheer up the murderers, but you did nothing to help the victims? And that is the extent of your humanness?

A. I believe that I could not have done more for the victims.

Q. You mean you could not have done more than nothing except to shoot them?

A. I did it in as humane a manner as possible.

Q. You say you were so sick afterwards that you had to go home and vomit at the thought of the executions which were carried out under your command......is that true?

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A. Yes.

Q. Isn't it also true that later, in Kadari, you had a concentration camp under your command?

A. Yes. As far as administration work.

Q. Isn't it also true that you received an order when you were Security Police commander in June 1942, you received an order from Himmler to execute whole clans, or relatives, of anybody assisting the Partisans?

A. No. I did not got any such orders.

Q. Let me refresh your memory. We will just be a few moments, your Honor. I will show you the order from Himmler, saying that you are in charge of a group, and that if anyone assists partisans the whole.....all the relatives are to be killed. That order, which you have before you now, states, in paragraph 8, that SS Standartenfuehrer Blume will be in charge of certain security police actions, and on the next page the inclosure says that the men of a guilty family, in many cases the whole clan, are to be executed on principle. The women are to be arrested and taken to a concentration camp. But the children are to be removed from their homes, etcetera.

Do you remember that order now?

A. Yes. But may I explain and emphasize that you talk about Kadari, and not of Feldes. I therefore thought of Greece, and not of Feldes.

Q. I am talking of two different places. I am sorry you were confused. But in spite of the fact that you had to vomit at the sight of murders which you ordered, you still received from Himmler additional orders to carry out executions of defenseless people, and were the commander of a concentration camp, is that true?

A. This activity in Feldes I am very proud of. The reason is that here, for once, I succeeded in stopping the carrying out of this order and modifying it.

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Q. We are not charging you with any crimes in Feldes. And I am just asking you......is it true that you received such an order......and what is your answer? Is it true that you received such an order, did you or didn't you? An order from Himmler...... and it has your name on it.

A. Yes; I do not remember the order in detail, but I know the measures which had been ordered in Feldes, and if it suits you I would like to describe briefly how I reacted to this.

Q. I have only one more question. Is it correct to say that under your command, units killed 50 to 60 innocent people in Minsk - 50 to 60 in Wellesch - plus 27 on the streets of Witebsk plus 80 in Witebsk - under your supervision, giving a total of about 200 people killed by units under your command while you were in command?

A. Yes, I agree to this.

MR. FERENCZ: No further questions, Your Honor.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine-thirty.

(The Tribunal recessed until 0930 hours, 5 November 1947.)

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Otto Ohlendorf, et al., defendants, sitting at Nurnberg

THE MARHSAL: The Honorable, the Judges of Military Tribunal No. 2.

Military Tribunal 2 is now in session. God save the United States of America and this Honorable Tribunal.

DR. MAYER (Attorney for the defendant Steimle): Your Honor, after the witness Blume, who is now on the witness stand, it will be the turn of the defendant Sandberger, who is ill at the moment. Next would be the defendant Seibert and I am the defense counsel for Steimle. I have a request to make of the High Tribunal, that I may take the case of Steimle next, because Steimle took over Sonderkommando 7a from Blume and therefore this case would follow the present line.

THE PRESIDENT: Do we have a report from the prison that Sandberger is ill and unable to appear in court?

And what is the report on Seibert?

DR. MAYER: The defendant Seibert belongs to another Einsatzgruppe, while the defendant Steimle belongs to the same Einsatz group as the defendant Blume.

MR. FERENCZ: If your Honors please, the prosecution has no objection to the suggestion of the defense counsel.

THE PRESIDENT: Very well, Dr. Mayer, the Tribunal will then hear the defendant Steimle when the defendant Blume will have left the stand.

DR. MAYER: Thank you very much, your Honor.

THE PRESIDENT: You are very welcome.

DR. SCHWARZ (Attorney for the defendant Jost): Your Honor, I ask that the defendant Jost be excused today from the session. He just told me that he is not feeling well.

THE PRESIDENT: In view of the report made by counsel, the defendant Jost will be excused from attendance in court today on account of illness. The Marshal will see that he is taken from the court room.

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DR. SCHWARZ: Thank you, your Honor.

THE PRESIDENT: You are welcome.

(The defendant Jost was excused from court.)

DR. DURCHHOLZ (Attorney for the defendant Schulz): Your Honor, I take the liberty to ask that after having examined the defendant Blume, I should like to hear a witness. It is the witness, Dr. Lane. He arrived here a few days ago and has to go away on official business. The examination will be very short.

THE PRESIDENT: Your request is granted.

DR. DURCHHOLZ: Thank you.

THE PRESIDENT: Yes, Dr. Lummert.

DR. LUMMERT: Attorney for the Defendant Blume. I ask to be allowed to address a few questions to the witness in redirect examination.

THE PRESIDENT: You may proceed. BY DR. LUMMERT: had partisans shot, or saboteurs, after having examined these persons closely and finding them guilty. Mr. Ferencz asked you in this connection whether you knew the International Laws and the laws of warfare. You yourself pointed out the Hague Convention. In your reply you then said that you acted following a Fuehrer Order. At that point it was not quite clear which Fuehrer Decree was meant. Could you give an explanation about that, please? which, in view of the partisan fighting which was expected in Russia, and saboteur actions, and political activists, permitted and ordered that every officer of the German Army be allowed to shoot saboteurs and partisans on their own authority and sentence them to death. I thought of that decree.

THE PRESIDENT: This may have been an inversion of order on the part of the interpreter, or it may be this is the way the witness stated it, but the way we got it was that every officer was permitted to shoot partisans and then authorize their execution.

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DR. LUMMERT: Your Honor, may I add that the translation into English out of German has such great difficulties, because the verb in the German is only at the end and we have to guess it, while in the English, it is at the beginning of the sentence. In this case I noticed exactly that the translator imagined the word to be shot beforehand and then the witness used another word, and that is why the word "sentence" came after "shot."

THE PRESIDENT: The correction and the explanation will appear on the record. BY DR. LUMMERT: at the time told that saboteurs and partisans could be sentenced to death and how were they told about this?

A Such announcements were made by posters in cities. Leaflets were dropped by plane over the flat land. this Special Fuehrer Decree?

THE PRESIDENT: Well, Witness, were leaflets dropped to inform the Jews that they were going to be executed? THE WITNESS: No, your Honor. They only mentioned saboteurs and partisans in these leaflets.

DR. LUMMERT: Now, your Honor, I have one more question about the point Mr. Ferencz raised at the very end of the session yesterday. Mr. Ferencz gave the witnessra document and last night when I talked to the witness he told me that he did not have sufficient time to look at the document very closely; that he was not even able to determine whether his own name appeared in the document or not. I have no doubt about it, because Mr. Ferencz said so yesterday however it is not certain exactly where the name of the witness appears whether it was in the middle of the text or in the address.

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I could not find that myself yesterday either and before I am able to put further questions in the redirect examination I therefore wanted to ask Mr. Ferencz to let me have this document for a short moment to look into it, if he would be so kind.

MR. FERENCZ: Your Honor, I have just sent for the document. I do not have it with me. It was just shown to the witness for the purpose of refreshing his memory on a very collateral point and I don't think we should go into a lengthy examination of it, inasmuch as I do not intend to introduce it as an exhibit. I can assure the Tribunal that on page 1 Nauman is mentioned as Commanding Officer of a certain Group and the second part which I showed him was an Enclosure describing what actions should be taken against partisans. I showed the defendant the enclosure and asked him a question concerning that and that was all.

DR. LUMMERT: Mr. Ferencz just mentioned the name "Nauman". I presume that it is a mistake. He meant Blume.

I do not want to take the Tribunal's time unnecessarily. Perhaps it is not necessary of all that I address further questions to the witness, particularly since the document was not submitted as an exhibit, and therefore has not become part of the record, Perhaps it may be a good way out if I put the question aside for the moment and request from the Tribunal, after having seeing the document, to come back to this point.

THE PRESIDENT: The Tribunal is always disposed to assist counsel in the presentation of its case and will leave it to Dr. Lummert to decide whether he wishes to examine on this or not. If the document will be here in a matter of a minute or two, we would prefer that the examination on that subject be finished now. If it is a matter of ten minutes or more, then we could come back to it later.

DR. LUMMERT: Yes, your Honor, At the moment, I have no further questions of the witness and ask that the document be handed over.

THE PRESIDENT: Yes.

DR. LUMMERT: Apart from that, may I mention the following? I had the intention of having a witness Radl called to the witness stand yesterday.

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The Tribunal had granted me this witness. He arrived here in Nurnberg last Friday and our information center informed me that the witness must absolutely leave Nurnber today already and that this term could not be prolonged. At any rate, since there was no possibility yesterday to call the witness I took an affidavit from him last evening and the witness left this morning and I ask for permission that I may introduce this affidavit later on in Document Book II. Document Book II is not completed yet. It has not yet been translated. I shall also submit a few other affidavits by witness and will add them to Document Book II and will submit them later. These affidavits I have not got as yet. the witness stand. The name is Krugmayer. This witness has not arrived in Nurnberg as yet, and I therefore ask for permission that I may bring him here later on the witness stand, after he has arrived here.

THE PRESIDENT: I might say, Dr. Lummert, and to all defense counsel that if any of you find yourselves in the situation that Dr. Lummert found himself in yesterday with a witness whose stay was limited to a day that you should inform the Tribunal here in open court or even in chambers of your difficulties and we assure you that we will make every effort to see to it that the witness will be heard or proper documentation made of that fact that he is here in Nurnberg ready to testify; in some way or other we ought to be able to accommodate your requests along that line.

DR. LUMMERT: Thank you very much, Your honor. BY THE PRESIDENT:

Q Witness, in your affidavit there appears a paragraph which I don't quite thoroughly comprehend: No. 5, which says, "I received all orders regarding executions, directions and duties of Sonderkommando 7a which was subordinate to me in Dueben or in the Prinz Albrecht Palais in Berlin. During the campaign I never received any further orders". Did you not receive orders elsewhere? orders about the extermination of the Jews, but not the instructions given by Nebe later on.

Q I see. In referring to the executions themselves, you also say in this affidavit there was no physician present, but that the leader of the execution party was responsible for the completion of the job and had to make certain that the victims were actually dead. Did this mean, since the victims fell automatically in the pro-dug grave that the officer would have to get down into the ditch to make the examination after the firing had ceased? and only after the shooting the men of the Kommando put them into the grave.

different from that used by the defendant Blobel?

A Your Honor, at the moment I cannot remember Blobel's description. ditch and that as they were shot from the rear they fell into the ditch. They fell into the grave already prepared beforehand. That was the way he described an execution. to that, as they were shot from the front, as during any military shooting and the men were so far away from the grave that they did not fall into it immediately.

Q Yes. Were the executees blindfolded?

Q I see. Yesterday you indicated that the Jews were very active in Bolshevistic Russia politically; that they supported the Communist regime; that they were very active supporters then and now. Do we take from that that you believed that the Jews were a very formidable threat to the security of Germany because of their political allegiances?

A Yes, Your Honor. I believe and the investigations carried out in Peacetime gave me that impression that the Jews in the East, in Russia played a special part concerning Communist interests.

Q Were you in Russia prior to 1941?

A No, Your Honor. I already said that we had to examine and interrogate all those who had been active in Russia and who then returned to Germany. conditions in Eastern Russia. Did I understand you correctly? to get political information about the Russian territory. you, is that what I understand?

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A No, Your Honor, it was like this. At the time the Russians had hired many German experts and engineers in order to build up their economic sphere. These men returned after some time when the Russians believed that they could continue their own economy on their own accord. The National Socialist State realized this opportuState Police agencies were asked to interrogate these people who returned. the Jews were a threat and a menace to the security of Germany? regime. this threat to the security of the German Reich that they should be exterminated? necessity of the security measures were more limited and I would not have drawn this consequence if I had been able to give instructions myself. menace and therefore had to be eliminated? instead of extermination I suggested that the Jews be gathered in ghettos and be resettled after the war. That was what I, as a small private person, would have ordered, if I had been able to give orders.

Q Well, then, you did not agree entirely with the Fuehrer Order?

Q At the time, did you have this reservation, or has that come since? sequence of this order, as I have already described raised all these feelings within me immediately.

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order and reject part. You rejected that part which called upon you to exterminate indiscriminately men, women, and children Jews? Hitler being as wrong? Hitler as a murderer? first collision of my feelings with one of his orders, my reaction was not so strong that I would have allowed myself to think in that manner.

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Q. Well, the reason you refused to accept that part of the order is because you regarded as wrong to strike down women and children entirely innocent of crime, is that right?

A. Yes.

Q. And you would regard that kind of a killing as murder?

A. I beg your pardon. Would you please repeat that?

Q. You would regard the killing of innocent women and children as murder?

A. Well, now, I imagine it like that, of course; at the time, the Fuehrer was too great for me that I should have had such thoughts.

Q. Now, please answer my question. I will make the question more specific. You heard this order and the call for the extermination of all Jews. You said to yourself......"I will execute part of this order which calls for the liquidation of able-bodied Jews, but I will not execute that part which calls for the slaughter of innocent women and children because that is murder." Is that right?

A. This last conclusion I did not draw at the time, and could not have drawn.

Q. Then you did not regard the killing of innocent women and children as murder?

A. At the time, I certainly did not imagine it.

Q. You therefore at the time thought to kill women and children who had committed no crime as a perfectly proper procedure, and did not include murder?

A. No, your Honor.

Q. Well, why, then, didn't you follow out the order to kill women and children?

A. My consideration fought with the weight of the order, and my misgivings were so strong that I looked for a way out.

Q. Now, just a moment......did you regard the killing of women and children as proper?

A. No, your Honor.

Q. What was improper about it?

A. That the reason given did not convince me to that effect, or extent, that I would have found strength to carry out such an order.

Q. You regarded the killing of women and children as improper .......I come back to that........do you agree with that?

A. Yes.

Q. The Fuehrer had said that it was proper to kill them?

A. Yes.

Q. Well, you disagreed with the Fuehrer?

A. No, I fought against this conception, innerly.

Q. Now, please answer the question. You got this order. You agreed with it, so far as killing the men was concerned, you disagreed so far as killing women and children was concerned. The killing of women and children was improper, according to you. Is that right?

A. Yes.

Q. Now, what law did the killing of women and children violate that caused you to conclude that it was improper?

A. My feeling arose against this.

Q. Well, now, your feelings must be based upon some principle. One doesn't feel vacantly. That law was being violated which Caused you not to execute that part of the order which was very specific?

A. My general humane feelings, which I had. But I could not make them concrete.....could not form a judgment.

Q. Was it the moral law?

A. That is what I wanted to say, your Honor.

Q. Then you believed that it was legal, but not moral?

A. I was just trying to say, your Honor - moral, already, is a judgment somebody makes about feelings or actions which he has or does, and at the time I did not come to a judgment because the man who had given the order was on such a high level for me that I did not take the liberty to pass a judgment about his order owing to feelings and actions which I, as a small commando leader, had.

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I think that is the best way of expressing what I felt.

Q. Suppose a woman had been brought before you because of being a saboteur and a spy, and it was proven to you conclusively with plenty of evidence that she had been a spy against the German forces and had committed acts of sabotage. Would you have sentenced her to death?

A. Yes.

Q. Yes, because she would have committed a crime?

A. Yes, she would have committed a crime.

Q. Yes. Right. Now, let us suppose a woman had been brought before you who had committed no crime, and had you had this order of the Fuehrer saying that she should be shot because she was a Jewess....... Would you have shot her?

A. I would have to imagine myself back into that time.

Q. Well, imagine yourself back because your attorney told you yesterday to imagine yourself back in 1941, and to forget everything that happened since then.....so imagine yourself back. Here is a woman brought before you, and at the same time there is presented to you the Fuehrer order that this woman must be shot because she is a Jewess, but she has committed no crime......she is absolutely innocent. What would you do? Would you shoot her?

A. If I had had the order immediately before me, I probably could not have avoided following this order, but I didn't......

Q. Now just a moment. Then you would have shot her if you had this order?

A. I would have had to, yes.

Q. You would have shot her? Well, now, didn't you have this order all the time?

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A. It was not in front of me in this immediate consequence. I would have had a way to escape, to get around it.

Q. But you had this order in your mind.......you never actually had it written out on paper, did you?

A. Yes, but my inner contradictions were so strong that the situation in which I was at that time won, so that I could not carry out this order.

Q. You have just said that if a woman had been brought before you, entirely innocent of crime, and you were informed at that moment of the Hitler order that all Jewesses must be killed, that you would have had her shot. Do you go back on that answer?

A. No, your Honor.

Q. Very well. All right. Then the Tribunal accepts your answer. So therefore that completely eliminates all that you said yesterday about not agreeing with Hitler on the execution of women, at least.

A. It was translated "included"......."Eingeschlossen", which I do not understand.

Q. Now let's give another illustration. Suppose a child had been brought before you - let us say a boy ten years of age and absolutely innocent of any crime, wrong-doing or mischief and they present you with a Fuehrer order which says that this boy must be executed because he is a Jew, he is the son of Jewish parents, he is a full-blooded Jew. Would you execute that order? Would you shoot this ten-year-old boy? Let us say there were 100 ten-year-old boys and you had this order. Would you execute them, these children?

A. In that case I would have committed suicide. I don't think my conscience would have stood this, because if I imagine how a small incident like this ill-treatment had brought me to such a state, which caused me to commit suicide, I don't think I could have possible carried out such a thing.

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Q. Then you make a distinction between a woman who is absolutely innocent of crime and a child. You are a little more tender-hearted about children, is that right?

A. Yes, your Honor, I have 5 children myself. But I believe that a constant increase of impressions in examples which you gave, also in figures, had to come about, and that there is a limit somewhere, where a person in whom feeling is prevailing at it is the case with me, and who consequently stands up to it, Will get into a state where the connection between reason who commands and feeling who contradicts will bear and that he either goes mad or commits suicide.

Q. So you make a distinction with regard to numbers. If it is only one person it does not strike you as being too hard to accomplish; if there are a number, then the cumulative fact of the horror would cause you to hesitate in executing the order?

A. I would like to say it like this: The order which in itself is holy to me, in itself.

Q. The order was holy.......the Fuehrer order was holy to you.........is that what I understand you to say?

A. Which is sacred in itself, yes, for every German - had so much power that it needed a lot of upheaval either to vary it or not to obey it at all. And this strength of shock depends mostly on the impression which one has in such a situation; and, therefore, I mean that the number plays a part because there is a difference, of course, whether I shoot one person, or whether I have to do this repeatedly, and shoot many people. At one time there will be a moment when one's mind breaks. Even if one is ever prepared to obey.

Q. Since you were so prepared to obey, and you believed this Fuehrer order to be holy and sacred, then if only one child were brought before you, and you were presented with this order.... then you would have executed that one child?

A. I don't think, your Honor, that I would have been able to do it.

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Q. Well, then you would have refused to obey the Fuehrer order?

A. Well, I probably would not have been able to do so. I would have had to commit suicide. And I consider all that possible according to the experience I had with the reaction of the human conscience.

Q. If Hitler had told you personally, standing at your side, to execute this ten-year-old boy, would you have followed his order?

A. I don't think so, your Honor - that the authority would have been so strong that I would have overcome my feelings.

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Q So, then, you didn't adore Hitler to the extent that you would have committed murder?

A Surely the allegiance would have been broken. In any case, that would have been the beginning.

Q You would have executed a woman, but not a child?

A I really don't know, your Honor. I only said that I imagine that easier, but whether I could really have done this I cannot say now.

Q Now, Jews have been executed for burning houses, is that right? weren't they?

Q All right. We understood you to say that you had a bad conscience for only executing part of the order. Does that mean that you regretted that you had not obeyed entirely the Fuehrer order?

A Yes. This feeling of guilt was within me. The feeling of guilt about the fact that I, as an individual, was not able, and considered it impossible, to follow a Fuehrer order. you would have felt more at ease if you could have gone along with the entire order? received an order which I could have understood, or its consequence, and results, and thought it to be absolutely necessary, because then this order would have been supported by my feelings so that my rejection could have been overcome by reason and by feelings, just like it is with a soldier who also has to kill.

Q Well, now, you don't compare the duty of a soldier to kill in battle with the function that you were called upon to perform, do you? for the moral conflicts and strain, which could become so great that one had to try to evade the order.

had not lived up to the full extent of the Fuehrer order?

A Yes. The order was so forceful as an order for me. regrets to Hitler that you were unable to execute the entire order which he had given to you? the reasons which caused no to do so. allegiance to him? allegiance which you had made to him? would never have been convinced that this relation which seemed ideal to me would have brought me into such conflicts. him? not obey him to the full extent.

Q Yes. But in spite of this modification in your mind you want on from 1941 to 1945, still being faithful to him?

A That is in development, of course. Criticism awoke slowly owing to this first event, and solely criticism was expressed.

Q By you?

Q Were you criticising Hitler after 1941? order which I considered wrong.

Q What order was that? this order. That was in 1944.

Q But you went on still being faithful to him, did you not?

Q Well, you still were faithful to Adolf Hitler? it was my conviction that Hitler was as important as the German fate, and also when adoration and love began to vanish, I still had the feeling that I had to do my duty. did you not?

A Yes, your Honor; I did not lose that feeling immediately. victory to Germany, as he had up to 1941?

Q So you still had an admiration for him, up until the and?

Q I am speaking generall, now... You still had a great admiration for him as a leader and as a statesman? suicide and left you and the rest of Germany to face the problems alone?

Q Did that admiration still continue for him...did you still regard him as a great man?

A Concerning this action, no; but concerning all that had happened before, what he had done, and achieved, that remained. And when one comes to think of it, -- what other way out could he have found?

Q Well, then, you agreed with what he did.. to leave you and all your brother defendants and all of Germany to face the problems which were upon Germany, without his great assistance as a statesman? have helped any more, your Honor.

Q So that your admiration still went on...because he was up against a situation that he could not overcome?

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ings decisively. Only a factual investigation of everything that happened could clarify matters for me. I would have considered it my duty to consider what I thought and felt, at the time, based on what has become generally known, to examine everything in my mind, and surely I would not try to revise my judgment and to change it, if I was convinced that I had followed an idol. luck, but he was still a great figure in your mind and heart? thing that happened is the logical consequence of positive and negative matters.

Q Now, please answer this one question. Did you still admire him after April 1945, or not? could not have happened, not even concerning Hitler.

Q Well, then, you did not admire him after he committed suicide?

A There are some things, your Honor, which remain... and must, in my opinion be recognized as an achievement.

Q Well, then, you still do admire him? things which he did.

Q Yes; you still regard that he was a great man and had done a great deal for Germany? have opportunity to examine everything that has happened. now... you went through the war, you lived in Germany, and you had two and one-half years to reflect on what has happened. Now do you still regard Adolf Hitler a great man on the stage of history, and that he did accomplish many wonderful things for Germany, and, therefore, falls into the category of a great man?

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Do you believe that today? become more critical of events which occurred... I can only give a judgment when I have looked into things.

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Q Well then, you can give one of three answere: one, you do admire Hitler as a great man, a statesman and a leader; two, you do not admire him as a great man, a statesman and a leader; three, you have your doubts as to whether he was a great man, a statesman and leader. Now, which one of these three answers will you choose? which purported to be an excerpt from a newspaper published on 29 March 1938 regarding the annexation of Austria to Germany. You are familiar with that newspaper, are you? cardinals? was represented by these ecclesiastics, favored the union between Austria and Germany? its opinion on this political matter?

Q And you had faith in the church?

A I myself was neutral. I was not a member..... church?

A May I have that again, please? I beg your pardon, your Honor, I did not quite understand. regarding union between Austria and Germany. You were very much pleased with this statement. You had faith in the church in expressing this statement of approval?

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Q Yes, and you had a great deal of respect for the church?

Q Well then, why did you leave the church?

A I had left the church before, your Honor. The reason was that my religious ideas I could not combine with the dogma of the Protestant Church. it expressed a political judgment which agreed with your political judgment ?

A No, your Honor. My step was a private and personal step. As the functions and tasks of the church and their meaning for the education of the people and for the moral attitude of human beings was never doubted by me, I, therefore, believe that the declaration by the bishops in Austria was very welcome, because I realised that in the Eastern Territory, the Ostmarks in particular, the influence of the church towards the moral attitude of the people was a very strong one and that, therefore, the development of the state and the annexation could only be guaranteed if the church assisted. you because this is entirely a political matter. not avoid taking an interest in this.

Q It was a political act on the part of the church. It had nothing to do about a man's soul and his answerability to God, did it? the soul and a church should and can take an interest in this.

Q But you didn't think enough about the church for you to remain in the church. You left it yourself, didn't you? was like this: formerly the Protestant Church, to which I had belonged, for example, had among their principles a host of great spirits. For example, I had a clergyman who confirmed me who considered art and natural feelings very important and in his sermons he touched on all the great minds in German literature and philosophy.

That was a world where I liked to live. Later on the church developed to the opposite and became very orthodox and then I could not follow any more.

Q Therefore, to that extent you condemned the church? convinced-

Q You withdrew from the church? was when the church of Austria, insofar as represented by these bishops, approved of the annexation of Austria by Germany. important to me even then.

Q Now, just one final question. He asked you of your estimate of Hitler today, and we concluded from what you said that you entertained great doubts as to whether he was a great man or not. If he were here today, if he were in this courtroom, would you express that to him, that you have great doubts about his having done any good for Germany?

THE PRESIDENT: That is all. The defendant will be withdrawn from the witness stand.

DR. LUMMERT: I beg your pardon, your Honor.

THE PRESIDENT: Unless you have some further questions.

DR. LUMMERT: In the meantime I have looked at the document which Mr. Ferencz gave me, and I request that I may be permitted to ask him which is the section of this document which he read out yesterday?

Mr. Ferencz just told me that he did not read anything out of this document but that he merely showed the entire document to the witness, but I believe Mr. Ferencz has given the contents of a part of this document. That is what I understood, is that right?

MR. FERENCZ: Your Honor, I believe the defense counsel was here during the cross-examination when I asked the witness whether he had received an order from Himmler concerning the execution of whole families of persons who were believed to be partisans, and I showed him this document to refresh his memory.

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DR. LUMMERT: In that case, may I address a short question to the witness? May I state first that this document is not expressly addressed to the Defendant Blume, but thedocument contains an order by the Reichsfuehrer--SS Himmler of 25 June 1942 and is headed, "Order for the Suppression of Band Activity in the Territories Oberkrain and Untersteiermark." At one place the name of the Defendant Blume is mentioned. There it says, "SS-Standartenfuehrer Blume," Under the command of the Security Police, there was a certain General Roesener. His name was mentioned before. Under his order Blume was in charge of the Security Police tasks at the time during this partisan combating, and then the order says here, as Mr. Ferencz told us yesterday, that they were to act without consideration even against family members of any man and that the second aim was that the population who meant well be relieved of the pressure of the hands and to give them a feeling of security under the German Reich. BY DR. LUMMERT: the time you got this order about the treatment without consideration of family members, in particular of children, whether you carried this out or whether you did not carry it out, or what way cut you found. that I am very proud of my time in Slovenia. May I give the reason very briefly? The wording of this order I do not remember any more, but I knew the task I was given at the time, namely, to fight with all means at my disposal the band activity in Slovenia, inasfar as it meant the Security Police section. I did not interpret this order to this effect, that I had to carry out measures of suppressing people, but I considered it necessary immediately to find out the reasons why these people who had greeted our soldiers with flowers when they arrived, had brought them into the mountains with arms, chasing them there.

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I found the following. These Slovenians, who until then had lived in a Serbian state centrally governed, had expected from the Germans, at least, a certain autonomy, but certainly cultural autonomy instead of this, that part of the country around the capital of Laibach had been made part of Italy, incorporated in Italy. Cultural autonomy was never mentioned, but rather they tried very hard to make them German.

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And now came the decisive fact. In order to Germanize these people successfully, the Higher SS and Police Leader had arranged for the resettlement of all Slovenians of the territory near the border, fifteen kilometers wide along the entire border to the north of Laibach, and actually brought it about. He had the illusion that such resettlement and that settlement of Germans in that territory around the border, the two Slovenian parts, namely, the new Italian and the new German part, would be separated that way, and that the part belonging to the Reich would then become Germanized in peace. These measures had causedthe determined resistance of the population. This again caused the Germans to make reprisals, and therefore a continuous development resulted which caused a state that was something like civil war. The most impossible order which I found was to the effect that the children of band members who had been shot be taken from the remaining families and be brought into German families to be Germanized. They were to be taken in separately through the Security Police in the internment camps. I objected very strongly to this policy which I considered quite impossible. could not influence, being a political action, but in spite of great differences with my superior, the Higher SS and Police Leader Roesener, I managed directly and indirectly to influence all agencies in order to bring about a change. The settlement of the children away from their families I prohibited immediately and reported about it to the Reich Security Main Office with the request that the order be rescinded which Himmler must have given under some mistaken opinion. In the interests of calming down the situation as I stated in this report, I would have caused a preliminary change of the actual situation.

The Gauleiter, Dr. Reiner, was on my side. The Higher SS and Police Leader prohibited me to talk to him alone. Under some pretense I traveled to Berlin then and saw to it that the Reich Security Main Office supported me, who also approached the Reichsfuehrer.

Apart from the Gauleiter then, according to my suggestions, the resettlement of Slovenians from the whole territory was stopped, and instead of the reprisal shooting a proper legal system was announced. The Gauleiter announced this new line of German policy, during a spread in Kreiburg. I am convinced that I have saved the lives and the homes of thousands of Slovenians. That is what I did as a result of this order.

DR. LUMMERT: May I conclude my evidence with this?

DR. DURCHHOLZ: Dr. Durchholz for the defendant Schulz. Your Honor, I ask that I amy address a question to the defendant Blume in connection with the document which the Prosecution used in the cross-examination of the defendant Schulz. It is Exhibit 177, Document No-4957. I would like some explanation here. On Page 1 of this document, as of 9 November 1941, Himmler owing to special merits, promoted the defendant Schulz to SS-Oberfuehrer. May I remind you that a promotion of other defendants came about at the same time, as the documents presented show. BY DR. DURCHHOLZ: tives which Himmler gave concerning promotions, can you tell us anything about it?

A Yes. After the beginning of the war, Himmler gave an order that suggestions for promotion within the Security Police were only to be submitted to him if they showed quite clearly that the person to be promoted had proved valuable in his assignment. If not, a statement was to be given why he had not been active on an assignment as yet. The term Assignment Einsatz, meant any activity as part of the German Wehrmacht or as part of the Security Police in any of the occupied territories. The result was that in the personnel department of the Reich Security Main Office any suggestion for promotion was stopped for a while if it did not fulfill these requirements.

It was always the task of the person submitting the promotion to complete this. Q Can you tell me now when a promotion in an SS rank,of a policeman was effected, a man who was a professional police official, was he then regarded a member of the SS? system of officials, on special holidays, as for instance, the 9th of November. Q The last question. Was the Russian campaign of special significance for this promotion which was proclaimed on 9th November 1941, would the promotion also have been pronounced if the person concerned had been in another campaign? any occupied territory as part of the Security Police and the Army.

DR. DURCHHOLZ: No further questions.

THE PRESIDENT: Will you have your witness available?

DR. DURCHHOLZ: The witness is outside and is waiting to be called in, but I suggest perhaps after the recess so that it is not interrupted.

MR. HORLICK-HOCHWALD: If the Tribunal please, I would only have one question. It is in connection with the question of Dr. Durchholz. BY MR. HORLICK HOCHWALD: November, 1941?

Q At that time had you seen the application for the defendant Schulz? own knowledge, is that correct?

MR. HORLICK-HOCHWALD: No further questions.

THE PRESIDENT: During the recess the defendant will be returned to the defendants' box and the Schulz witness will be placed in the witness box so that we can begin with that witness when we reconvene in fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. WOLFGANG LAUE, a witness, took the stand and testified as follows:

JUDGE SPAIGHT: Witness, raise your right hand and repeat after me. I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPAIGHT: You may be seated.

DR. DURCHHOLZ: Your honor, Dr. Laue is a character witness, but also an eye witness who can report about the conduct of the defendant, Schulz in the last phase of the activity of the defendant as a high police official and officer. I will give the tribunal facts through the witness which will show the character of the defendant in situations in which another man certainly would have acted differently than the defendant did. BY DR. DURCHHOLZ: person.

A My name is Dr. Wolfgang Laue; and I was born on the 23rd of July 1905 in Mainz; I am a German citizen; and I live in Muehlthal near Rosenheim in Upper Bavaria in the U.S. Zone.

Q Witness, what official position did you hold lest? Regierungspresident with the Reichcommissioner in Salzburg. by the IMT?

A No. I was a member of the National Socialist Party since May 1933, and I held an honorary rank in the SKK, but I did not belong to any organizations declared criminal by the IMT, therefore, on the basis of the automatic arrest of higher officials, I was interned; and after this automatic arrest order had been revoked in July 1946 5 November 1947_M_MSD_8_2_Spears (Lea) I was released from the American internment camp at Ludwigsburg.

Q How long have you known the defendant Schulz? day after the invasion began.

Q What position and what rank did Schulz hold in Salzburg?

A Schulz was BDS, that is, commander of the Security Police; he was also representative of the higher SS and police leader Roesele for the jurisdiction of the District of Salzburg. In the last weeks a change in the organization took place whereby Herr Schulz became SS and police leader for the Reichdistrict of Salzburg.

Q Do you know that on the ocassion of the attempt on Hitler's life on the 20th of July 1944 any arrests were made in Salzburg?

A No. I know nothing about whether on the 20th of July 1944 or immediately afterwards arrests were made in the District of Salzburg on the occasion of this attempt.

Q How did Schulz act in the matter of the Officer Corps?

Herr Schulz had a friendly and good and even cordial relationship with the officer corns. conducted himself on the 20th of July, 1944, and immediately afterwards, as far as the officer corps is concerned? the officers of the General Command during the time of the 20th of July, 1944. Later too nothing changed in the cordial relationship between Herr Schulz and the Officer Corns. He always protected the honor of the Corps on every occasion, even after the 20th of July, 1944, I do not know of a single case in which Herr Schulz interfered in any job of the Army or exerted any pressure on they Army.

THE PRESIDENT: Dr. Durchholz, just what is the theory behind your story of the great cordiality between the Defendant Schulz and the Officer Corps? Just what do you intend to establish by that?

DR. DURCHHOLZ: Your Honor, the Defendant Schulz was the highest police officer in the District of Salzburg, and, after the attempt of July, 1944, the Police leaders had rather great power concerning the arrests after this attempt. Through this description of the relationship between Schulz and the Officer Corps I would like to prove that he did not make use of this power which we held.

THE PRESIDENT: Well, are you endeavoring to implant the thought or idea that Schulz to that extent approved of the attempt on Hitler's life or, at any rate, did not want to participate in any punishment of the group that was responsible for the attempt?

DR. DURCHHOLZ: I want to prove by this that the Defendant Schulz protected the Officer Corps which had been severely attacked on the part of the Party.

THE PRESIDENT: I wish you would give very specifically just what you are attempting to establish, how this affects Schulz's character and what it has to do with the charges against him.

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DR. DURCHHOLZ: It is supposed to prove the conduct of the Defendant Schulz, namely, that he did not make use of his full power as a police officer in the sense that the Party wanted him to. In other words, he did not misuse his power.

MR. HORLICK HOCHWALD: One moment please. The prosecution has submitted that we are not charging the Defendant Schulz after November 1, 1941, with having obtained criminal knowledge or having criminally participated in crimes committed by one of the three organizations of which he is indicted with having been a member, so that for this reason the questioning of the witness on these lines is completely immaterial.

DR. DURCHHOLZ: Your Honor, the point which just came up has already been answered. I shall come to other points, but I would like to ask that I be permitted to continue the questioning of the witness.

THE PRESIDENT: Dr. Durchholz, we will certainly permit you to question the witness. What we ware only hoping to learn was just what objective you were aiming at from this testimony.

DR. DURCHHOLZ: I only wanted to prove by means of this witness what the Defendant Schulz has already told us about these events. Then in my final plan I want to make statements that the Defendant Schulz from the beginning of his police career to the end of his activity in Salzburg conducted himself on the same level and that there ware many instances in which the Defendant Schulz in his capacity as High Police and SS Officer never acted in the way in which the indictment charges him as a member of that organization. From this conduct I shall draw conclusions for his conduct in Russia. That is the purpose of the interrogation.

THE PRESIDENT: Do we understand then, that during this period of turmoil following July 20th, 1944, that the Party hierarchy was eager that all Higher SS and Police Officers arrest indiscriminately and condemn the Officer Corps but that the defendant refused to go along with that demand on the part of the Party?

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Is that what we understand your object is?

DR. DURCHHOLZ: Yes, Your Honor.

THE PRESIDENT: Very well. BY DR. DURCHOLZ:

Q I am coming now to a different point. Witness, did the Defendant Schulz have anything to do with prisoners of war in Salzburg? second part of the year 1944 the Higher SS and Police Leader at the same time became commander for the prisoners of war. Since Herr Schulz was the representative of the

Higher SS and Police-Leader and since the Higher SS and police Leader never spent any time in Salzburg, he conducted the affairs concerning prisoners of war in the District of Salzburg.

Q Could you tell us how many prisoners of war were there? war,camp Pungau, now St. Johann in Pungau, there were many thousands of prisoners of war. There might have been about 30,000 prisoners of war in the District of Salzburg, all told. these prisoners of war?

A. Yes, I know a number of such facts. In the repeated conferences in which Schulz and I participated, representations were made that the work performed by the prisoners of war was not sufficient and that the prisoners of war were being treated too well; that the prisoners of war during an air alarm were merely-brought into the air raid shelters and that they took away the scarce space from the civilian population. I still remember exactly what Schulz answered against these very severe representations. He referred to the Geneva Convention which he insisted on keeping. Herr Schulz saw to it that the prisoners of war would continue to go into the air raid shelters and that no changes were allowed in their good treatment.

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treated in the District of Salzburg? as was true for the prisoners of war. There was an order to take the foreign workers from the so-called Alpine Fortress. By Alpine Fortress they meant the mountainous area south of the City of Salzburg. I do not know exactly what agency was supposed to handle this evacuation. Perhaps it was the police, because this was the only agency which was competent for this job. At any rate, no foreign workers were evacuated and Herr Schulz had objected to that. Salzburg? police? 1945 two enemy airmen who had bailed out and had jumped into the Salzach River were saved by members of the police. I remember this exactly because this conduct of the police had been criticized by the Party. events which lead to the non-defense of Salzburg in his capacity as High police Officer? decisive manner: the surrendering of Salzburg without defending it. I can give detailed testimony about this, because I had collaborated with Herr Schulz very closely in this question and I think that I can ask for the same recommendation in this matter for myself. I would like to testify between the following phases: First of all that he induced the city not to defend itself....

MR. HOHLICH HOCHWALD: If the Tribunal please, the Defendant Schulz in the witness-stand has explained the story of the surrender of Salzburg in detail.

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I do not think it necessary that the witness just repeat what the Defendant Schulz had said. The prosecution is willing to concede that what the Defendant Schulz has said about the surrender of Salzburg is true.

THE PRESIDENT: with that acknowledgment on the part of the prosecution, Dr. Durchholz, you can see that it is unnecessary to continue this line of questioning.

DR. DURCHHOLZ: Your Honor, after the prosecutor has explained that the considers the statements of the Defendant Schulz about these points correct, I think I can.

THE PRESIDENT: Yes, correct.

DR, DURCHHOLZ: I think I do not have to have the witness confirm these facts. I merely wanted to prove to the Tribunal that the statements of the Defendant Schulz are correct, even in this point.

THE PRESIDENT: Yes.

DR. DURCHHOLZ: I have no further questions to out to the witness.

THE PRESIDENT: Any cross-examination?

MR. HOHLICK HOCHWALD: No cross-examination by the prosecution.

THE PRESIDENT: The witness will be escorted from the witness box and excused.

(The witness was excused.)

THE PRESIDENT: Dr. Mayer are you ready now?

THE PRESIDENT: The defendant Steimle will be taken to the witness box.

JUDGE DIXON: Defendant, raise your right hand and repeat after me:

"I swear by God, the Almighty and Omnicient, that I will speak the pure truth, and will withhold and add nothing."

(The witness, repeated the oath.)

JUDGE DIXON: You may be seated. BY DR. MAYER:

Q. Dr. Mayer for the defendant Steimle. direct examination. The examination will be divided into three main parts. First, the brief biography and then the Russian camp assignment chronologically; secondly, a discussion of the documents; and third, the activity of the defendant in Office VI of the Reich Main Security Office.

THE PRESIDENT: You may proceed. BY DR. MAYER:

Q. Witness, may I first remind you to speak slowly and to watch that the questions have been completely translated before you begin your answer to them.

A. My name is Eugen Steimle.

Q. Please give a short biography.

A. I was born on 8 December 1909 and the seventh child of a small farmer in New Bulach in the Black Forest. I attended grammar school for four years. As a result of some efforts on the part of my teacher, and made possible by the financial support of an older brother, I got to attend high school and in the year 1929 I graduated. Since my father was not in a position to send me to the university I had to rely on scholarships and extra work during vacations and on aid during my student days.

From 1929 to 1935 I studied history, German history, French language and literature. In 1935 and 1936 I passed the two prescribed State examinations for teachers at higher schools. I married in the year 1936 and I have three children.

Q. Please describe briefly your political career down to your joining of the SD?

A. Already during my time in school I was very much interested in politics and history. I watched domestic and foreign events closely at the end of the 20s and after 1930. As far as one can speak of a political opinion at such a young age I had such an opinion. I was an adherent of the foreign policies of Stresemann. Domestically I did not have any set opinion, that is in the sense of rejecting the Republic. I was not in favor of returning to a Monarchy. At the time National chauvinism was not considered right in our family. Nevertheless, I as well as the major part of my generation was moved by the domestic political split, the weakness and economic distress of Germany as well as the decreasing prospect of Germany to overcome the Versailles Treaty. An almost Nihilistic realism became evident in my generation. We saw no absolute values any more and a pessimistic resignment was very common. A State without life, an economy without any prospect for recovery, the class struggle within our people - these are matters which moved us very deeply at that time. We suffered especially from the struggle between the great number of parties and we judged the Weimar Republic by the unemployment prevailing at the time. I personally from my political interests observed the increasing strength of the Communist party and I busied myself with those ideas. This was especially possible during my studies at the University of Berlin in the years 1931 and 1932. I arrived at a complete rejection of International Communism perhaps because of the tendency which existed in my home. On the other hand I was in favor of every social thought in the sense that it should be achieved, that every human being was to get as great a benefit as possible from the economic property of his country.

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My thoughts led me to believe that in a poor country one could not adopt a "Laisser faire" attitude to overcome distress but that poverty can only be overcome by plan and for this we needed National unity. This was the necessary premise which changed such a condition. For these reasons I became a National Socialist, less so under the influence of any particular National Socialistic personality but rather by way of theoretical thinking through of this idea. When I joined the National Socialist Party in May 1932 I believed in the possibility that if all National forces are gathered together in the interest of social improvement that the German economic distress could be overcome. In this sense I also believed in revision of the Versailles Treaty.

Q. I would like to interrupt you.........you mean a peaceful revision?

A. Yes, a peaceful revision. However, I joined the Party on the first of May 1932. My activity was restricted first to paying Party dues. In October 1932 I was asked to join the student union as a Party member which happened SIMULTANEOUSLY WITH JOINING THE students SA. I served as an SA man until in March 1933 I suffered a short accident which forced me to take a leave from the SA for an extended period of time. After that I belonged to the staff of SA Standarte without doing any service there but I was active in the National Socialist Student Union in which I held the rank of student leader at the University of Tuebingen. Later I held the position as Student District Leader in Wurtemberg. I was called to these positions without previous knowledge. Both of these functions were on an honorary basis, that is, without remuneration. I worked in these offices merely out of my enthusiasm as a student and out of patriotism.

Q. How did you come to join the SD?

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A. I met Dr. Scheel in my student work. Dr. Scheel was leader of the SD Sector Southwest in 1936. This sector comprised the districts of Wurtemberg, Baden, Halls and Saar. Dr. Scheel suggested to mo that after I passed my examination of assessor, I join the SD and that I take over a position to be determined later in the district of Wurtemberg. I held several conferences with Dr. Scheel about a job with the SD. Up to that time I had had no contact with the SD and did not know its jurisdiction. Dr. Scheel described the SD to me as a function of the SS whose job it is to observe the political development in domestic and foreign respect in order to be able to inform the leading agencies about what was going on. It was clearly evident that this was not police work of individual cases and not of the prosecution of individuals but that it was supposed to give a survey about the tendencies in all branches of public life. Personally I was especially interested in building up a foreign information service which at that time was in a very embryonic stage.

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Q. When did you join the SD?

A. First of April 1936.

Q. Was that connected with your membership in the SS, too?

A. Yes, I was taken into the SS a few weeks after the beginning of my activity in the SD. I became a member of the SS within the SD. I did not become a member of the General SS, the Allgemeine-SS.

Q. Did you have to go through any training in the SD before taking up your position?

A. I was active to get Information in the above mentioned Southwest Sector of the SD. I did not get to know the SD Main Office at that time. My membership in the SD depended entirely on my cooperation with Dr. Scheel.

Q. Did you have the intention of pursuing your SD work as a career?

A. No. I had myself furloughed from school service temporarily and had the intention of returning to that later on.

Q. Did any financial consideration play any role in your membership in the SD?

A. No, my starting salary in the SD was either the same or less than that of student assessor.

Q. What motivated you then to join the SD?

A. As I have already stated I was very much interested in politics from my early days on. At that time the SD seemed to me a good opportunity to get to know in detail the domestic and foreign political problems of Germany. As seen from the Stuttgart circle I believed that via the SD I could exert positive information on the political development of the German State. The other positive criticism which was the SD's function was often used and we made use of such criticism. My political tendencies which moved me to join the SD were supported by my disinclination to take up a civil service career at the age of 26.

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Q. What functions did you carry on in the SD?

A. From April 1936 until September 1936 I was Staff Leader of the SD Sector Stuttgart which at that time occupied 12 people full time. From September 1936 until my transfer to Office VI of the Reich Main Security Office in February 1943 I was leader of SD Sector Stuttgart.

Q. Of what did your activities consist as leader of this Sector, especially after the outbreak of the War?

A. As I have already explained the job of the SD was to observe all branches of public life such as culture, economics, etc. May I make reference here to what my co-defendant Ohlendort has already stated?

Q. As SD leader in Stuttgart did you have anything to do with foreign information service, too?

A. Yes, especially after the outbreak of the War. Then the Reich Main Security made an attempt to build up a functional foreign political service. In this matter a department of my sector was entrusted with the job.

Q. How many SS leaders were subordinated to you as department chiefs?

A. Until the outbreak of the War my sector had about 20 full time department chiefs. Waffen SS or Army or were just taken away. They were replaced by people on War emergency status.

Q. What was the area for which these 20 leaders were competent?

A. This area comprised the province of Wurtemberg with about 3-1/2 million inhabitants.

Q. Did you or your SD sector during the War occupy yourselves with combating so-called State enemies?

A. No, as already stated this was not the job of the SD.

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This is clearly evident in the organization of an SD sector which had no department or no expert to combat enemies of the State.

Q. What was the relationship of the Gestapo in the district of Wurtemberg to your sector?

A. The two organizations were completely independent of each other. Whereas the SD sector was under Office IV for the domestic service or under Office VI for foreign service the superior agency for the Gestapo was Office IV, the so-called Gestapo Office.

Q. Could the Gestapo give instructions or directives?

A. No, just as little as I could give directives to the Gestapo.

Q. Did you or your collaborators have the power to conduct interrogations or make arrests?

A. No, this was not within our job.

Q. Could the so-called reports of yours result in arrest?

A. No. These reports did not deal with individual people but with events - objective events.

Q. Can one designate the SD as an auxiliary organ of the Gestapo?

A. No. Both organizations were active in entirely different fields and locally in Wurtemberg, completely independent of each other.

Q. When did you hoar of the so-called assignment of the Security Police and SD for the first time?

A. Some time after the campaign in France, units were activated in Stuttgart which moved into France and which were composed of State Police, Criminal Police, and SD. As far as I know this was the first organizational get-together of all those three units in the person of the Unit Commander whereas the branches worked independently of each other under his direction.

Q. According to what you know then were these Einsatz units given now jobs which went beyond the jurisdiction of what was known to you to be the job of the State Police, Criminal Police, and the SD?

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A. No.

Q. When did you receive the order to go to Russia?

A. At the end of August 1941.

Q. Where were you at that time?

A. In Stuttgart.

Q. Do you know how this order came to be given?

A. Yes. As the order was given to me by teletype I also found an explanation why I received it. In the years 1939-1940 I tried to in various ways to join the combat troops.

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My applications were always refused. I was very unhappy about this because as a young man I did not want to stay at home -- whereas a brother of mine, who was 10 years older, was at the front. I was assured of myself before my family, and I was afraid of being called a slacker. I considered it my duty to be a soldier, and I considered my job in the SD as one fit for 4-F. For this reason in May or June 1941 I made another attempt to get away from the SD and to be able to join the troops. I went to Berlin, to the Main Security Office, and reported to Streckenbach, the Chief of Office I. I did not know Streckenbach personally -- just as little as I ever got to know Heydrich. I expressed my wish to him. Streckenbach rejected it Categorically, without any discussion, and he explained to me that I would soon have an opportunity to prove myself at the front. I could not find an explanation for this answer at that time, but when I received my marching order to Russia it was clear that this was what Streckenbach had meant.

Q What were the contents of this order? Commando 7-a, and that I was to report as soon as possible to Brigadefuehrer Nebe in Smolensk. The necessary equipment was to be gathered up in Berlin. Commando?

A No. I first heard the expression "Special Commando" at that time, and I could not imagine what that could mean.

Q Did you find any clarification about your mission in Berlin?

A No; while passing through Berlin I merely reported to the Quartermaster and received my equipment there.

Q Why didn't you report to the Chief of Office I when you passed through Berlin?

A There was no cause to do that. The report read definitely to report to Nebe in Smolensk.

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Soviet state and its regime?

A Yes. In about the year 1927, distant relatives of my family had returned from Russia to Germany. From their reports I got an idea about the Soviet state as a regime of an absolute wilfulness of the Communist party. A member of this family had been killed without any reason, aid others had been sent into exile. This impression about Russia became stronger during my student days, when I made the acquaintance of a Russian student who had left Russia about 1930 on a Finnish ship, and who had told me very much about his experiences. After all this I had to arrive at the conclusion that Bolshevism did not respect any human being if it was a matter of having its way about the world revolution. The Communist party in Germany, for example, the uprisings in Hamburg, etc., gave sufficient proof of this. From the statements of the German government at the outbreak of the war with Russia I further had to assume that Russia, by making use of the international situation, would try to spread Comnunism in order to find further basis for a world revolution. would not feel bound by international law in the war against Germany? it was very decisive for me that during my stay in Stuttgart in August 1941 I received an authentic report which was filled with photos, which showed the slaughter of a Wuertemberg infantry battalion which had become prisoners. After the battalion had been taken prisoners the men were undressed and the soldiers were tortured to death in individual groups. BY THE PRESIDENT:

Q When did that occur?

Q In June 1941?

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Q Where were you in the latter part of 1939?

Q You didn't get to the Eastern front at all during the Polish war?

THE PRESIDENT: Very well.

A (witness continuing) As a result of the fact that another battalion fought its way free a short time later and found a few survivors as witnesses, this data and its circumstances could be confirmed by witnesses and by photographs.

THE PRESIDENT: Perhaps my interruption caused the witness not to complete the description of the episode. He was at the point where he said an infantry battalion had been undressed. I don't know whether he completed that story or not.

WITNESS: I said that the soldiers were undressed after they had been taken prisoners, and were killed in groups. BY DR. MAYER: Continue.

A (by the witness) This incident was no rumor for me. It was reality.

QWhen did you arrive in Smolensk? you get any directives from him?

THE PRESIDENT: Dr. Mayer, you are just about to open up a new field of discussion. Suppose we recess now until one forty-five.

(The Tribunal recessed until 1345 hours).

(The hearing reconvened at 1355 hours, Nove. 5,1947) The Tribunal is again in session.

DIRECT EXAMINATION (Continued) DR. MAYER: Dr. Mayer for Defendant Steimle.THE PRESIDENT:

Proceed. BY DR. MAYER: ordered to report to Nebe in Smolensk and you told us that on 4 September 1941 you arrived in Smolensk. I non ask you, did you see the Chief of Einsatzgruppe B, Nebe, there, and did you get instructions from him?

A The day after my arrival in Smolensk I reported to Nebe. Nebe told me the following on that occasion: the activity of the Einsatzgruppe and the Einsatzkommandos and the Sonderkommandos in the Army territory is based on a Fuehrer order. It is the task of these units to look after the security in the rear Army territory and in the rear of the fighting troops. This had to be done by ruthless fighting, against all Communist forces which appeared, and their resistance. According to the experience gathered so far the Jews were to be considered as the main bearers of Bolshevism. Nebe did not leave any doubt that active Communist forces and also partisans were to be shot for the sake of security in the territory. He also told me that leaders and men were under war law during the assignment. gypsies, so-called Asiatics of nationally inferior people and asocial elements?

A No, I do not remember any such order. I don't think I ever received such an order.

security order concerning the shootings? not known him. Therefore, I did not know his attitude. Apart from that at that moment I was so confused about the contents of this information that I could not adopt a definite attitude at that time or at least I could not express my feelings. order known to you?

A No, only later did I realize how important the order was. I believed to understand from it that only Jews who were active opponents were to be shot. I did not understand that this meant the killing of all the Jews. Apart from that I assumed at the time that the details of my now task would be told me by the commander leader who would instruct no about it when the kommando was handed over to me.

Q Why were you so impressed by the order then? police importance to which I neither felt inclined nor was I trained for this. In my career until that time I had never carried out an arrest or examination. Such things were quite strange to me. To make decisions about life and death of human beings touched a sphere of life which was quite strange to me according to origin, inner attitude and education.

Q Did Nebe give you further instructions? securing interesting and important document material of the Soviets when advancing and utilizing then and sending them to the Einsatzgruppe to be utilized.

Q During your discussion did Nebe talk about reporting of the SD?

A Yes. He said that would give me all the information on this reporting.

Q Did you do this?

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he told me that the necessity of police security seemed to be more important than the security in the SD work. He asked me, since I had been SD section chief, to help him with the SD reporting. achieve? was a decisive factor for the security of the territory to realize clearly contents and meaning of Bolshevism. Only on the basis of such knowledge could the right measures for the security of the territory be established.

Q Can you give us an example for this conception? An objective questioning and inquiry had to find out how the system worked. In view, for example, of the harvest, it had to be determined how, what effect the system had on the country people, whether the system was approved of by the population or whether they did not like it, whether the farmers just wanted changes or whether they wanted to abolish the system altogether. Only after clearing all those questions one could come to a decision suitable for that territory, and the same system, in order to realize the necessity of the territory, had to be used when judging educational questions and schooling and similar set-ups which we came across in the Russian territory.

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Q When did yea start being in charge of Kommando 7a? 7a? 1941.

Q Who handed the kommando over to you? the kommando over to me. He had been in charge of it as deputy because my predecessor had already left for Berlin some time ago.

Q Where did you take over the kommando? stationed. Another subkommando was in Welikie-Luki. This city is about 150 to 200 kilometers from Welish.

Q Where were you stationed?

A I was in Welish. But about 15 September I visited the headquarters in Welikie-Luke and stayed there for about two days.

Q How strong was Sonderkommando 7a? composed of officials of the State Police, the Criminal Police, and a few SD members, also Waffen-SS reserve men and a number of active Waffen-SS men and drivers. about the situation in which the kommando was? kommando Welish made reconnaisance and fought partisans at the order of and in cooperation with the Army.

Q Why was the combating of partisans the most important?

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around Welish and the city of Demidow near Beij partisans had been very active and, according to Folte's statement, this had not occurred in the territory of the Ninth Army before.

THE PRESIDENT: Dr. Mayer, will you please indicate on the map about where this is taking place?

DR. MAYER: Yes, your Honor. It was the territory northwest, northeast of Smolensk and south of this lake, to the right of Staraya Rusa.

THE PRESIDENT: Would it be on the Volga River?

DR. MAYER: No, between the Dnjepr and the Volga, in this territory.

THE PRESIDENT: Very well.

DR. MAYER: And north of the railway from Smolensk to Moscow which is not mentioned on this map.

A (Continuing; According to Folte's statement, in the Army territory a number of heavy attacks were made daily on individual vehicles and small convoys, and also sabotage acts against bridges, cables, and other equipment of the Army, In Smolensk I had heard about this already. During the journey to Welish they had given me a escort vehicle because it was too dangerous that one vehicle alone should travel.

Q. During such actions were any German soldiers killed? casualties occurred. Communists and Jews as well? His explanations made me understand that according to experience so far the Communist party was the bearer and organizer of the partisan movement and that this was conducted by the functionaries.

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Communists? was the organization of the partisan bands. Of course they reported about and collected information regarding the troops. of the Jews? of the Fuehrer decree which he knew that during the advance a number of Jews of military age had been shot. He emphasized particularly that Jewish women or children had never been among them. This last remark, which I remember distinctly, struck me, of course. Until then I had thought that Jews had to be fought in the came way as Communists and partisans, if they had taken an active part in the resistance movement, but this could not apply in general to women and children end the discussion with Foltes advised me completely as to the extent of the Fuehrer decree.

Q When did Foltes report this? in Welish or the following day. Fuehrer decree? be approved of from a humane point of view. Inwardly I rejected it and my conscience was very worried. Simultaneously, however, I know that this order was binding for me and open refusal towards my superiors or an order to the opposite effect towards my subordinate would have been useless.

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All I would have achieved by this would have been that the order would have been repeated to me, and then if I did not carry it cut a courts martial would have been the consequence, and no doubt the result would have been terrible.

Q Did you see a way out of this false position?

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possibility by making the assignment of my commandos slightly different. Under consideration of the situation in the territory of the Ninth Army to evade carrying out this order, or at least, in the case of Jews, to delay carrying out the order by emphasizing the importance of partisan combating which actually was the most important thing at the moment, and owing to the fact that I tried to keep the commandoswith the fighting troops all the time as my predecessor before me had done. The small forces of the Commando had to be utilized to such an extent that for any other activity there was no time left. This could be justified any time.

QHow did your activity as Commandofuehrer develop? for two or three interruptions I remained until the 8th or 10th of October. That is about four weeks in all.

Q What interruptions were there?

A I was at Welikie-Lucki once or twice. Each time for two days. At the end of September or the beginning of October I visited the G-2 of the Army which had been transferred from Welish in the meantime in a small village near Tochowchina. Welish?

A The Kommandos in Welish consisted of about 30 to 40 people. The executive tasks I left to Obersturmfuehrer Voltes. Already previously he had been troop leader of an independent platoon.

Q What do you mean by executive activity? intelligence, arrests, interrogations, and if necessary, executions. in being in charge of this Sparte?

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to be carried out? to make such decisions. Leader exclusively to make all the decisions as the only competent person, out the division of the Kommandos, into sub-Kommandos automatically brought it about that the sub-Kommando Leaders decided on their own authority.

Q Did such sub-Kommando Leaders act as they wanted to?

A No. The sub-Kommando Leaders in my case were informed better about their tasks than I was. During sever al personal discussions, I told than in connection with the communist and partisan question which concerned us, and I told then my opinion and ordered them always to examine everything carefully and to be conscientious in their decisions. I actually made tests and examined their decisions when I visited the sub-Kommandos; but I must emphasize again that I had neither been trained militarily; nor did I have police experience, and therefore experts had to deal with these subjects in the subdepartments. For example, as a replacement for Voltes, an elderly criminal commissioner was appointed.

Q Of what did Voltes' activity in the Welish area consist? Russian ausiliary police ; also in connection with the auxiliary police, a number of agents had been appointed. The entire activity was aimed against the activity of partisans already described, against parachutists, and agents. particularly endangered? which. are very suitable for partisans. According to reports by Russians in these territories, terrorists and partisans had stayed

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Q In connection with partisan fighting, did you give any orders? principle of justice and examination of each case and I pointed this out to Foltis and the other sub-kommando leaders.

Q Were you always informed about the various operations? the G-2 or by the G-2 CIC: After returning Foltis always gave me oral reports.

Q Was a written report sent to Einsatzgruppe B? handed on the The Group. Communist resistance, as well. In what manner was this carried out? aries that is, at least in the territory of the 9th army, the carrier of the partisan combatting. The Communist functionaries and its active supporters had withdrawn into the woods and the smaller villages after the Red Army had withdrawn in order to carry on Guerilla Warfare from there. This was done in such a manner that in some villages bases here established and attack units stationed themselves in the woods. The securing of the territory against Communist resistance was identical with the partisan combatting. recognize them as Communist functionaries? territory, the Kommando found the papers and the records of the Communist Party and of the NKWD.

Q Did these documents contain specific material? of some leading personalities in case of invasion of the enemy and of the resistanee to be formed.

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The corpses were thrown under the trucks by the partisans and the trucks were then get afire. Such incidents occurred continuously in the territory around Welish.

Q Why was Voltes particularly active in the combating of partisans? important security task in the Welish territory. For that reason, it was natural that the Army had given the Kommando orders to combat the partisans. It was necessary, in order to fight these partisans, to have a reconnaissance service, and this service occupied the time of Voltes and his people completely.

Q When happened to the results of the reconnaissance? the nearest Army unit.

Q Was what the entire activity of your Kommando?

A No. On the basis of the reports given to the Army and their units the Army ordered actions wherein Voltes and the Kommando took part by way of fighting and interrogations.

Q Which Army units carried out these assignments?

A That depended on the extent of the assignment. There were assignments in which two divisions took part. Also the army had a special unit which dealt with partisans, the so-called Eingreifgruppe, whose only task was to fight partisans. After arranging with the Army, Voltes with his own forces helped them personally and together with the Russian police he carried out small actions.

Q Owing to such actions, were there any shootings carried out? be shot? group could be established. Also in a few cases people suspected of partisan activity were shot. Among then were people of whom it could at least be proved that they voluntarily had been active by assisting the partisans, either by giving reports to them or by assisting them in some other way.

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Q. Who established this during the investigations?

A. In common assignments together with the army, members of the secret field police and officials of Sonderkommando 7A conducted investigations and made written records about this. Based on these records, an army officer together with Foltes after listening to the accused person, passes the sentence.

Q. Who carried out the execution by shooting?

A. I cannot answer this question concerning all the actions because I am not sure of this.

Q. Howwas the procedure handled when Foltes acted independently?

A. Foltes only carried out a few assignments on his own, but the investigation was handled in the same manner. He passed the sentence after discussing it with the officials who had conducted the interrogation and listened to the defendant once more. During the examination the chief of the Russian Security Service was always consulted. The shooting was done under Foltes' supervision. The operations were not carried out in the city of Welish but in the territory around Welish.

Q. Did you yourself take part in such operations against partisans?

A. No.

Q. Why did you not do this?

A. Foltes was a very independent and energetic person. He was a soldier throughout, and formerly he had served in the army as an officer. I myself neither had a military rank nor any military experience. The rank in the SD only meant a rank as intelligence officer and not a military qualification.

BY THE PRESIDENT:

Q. Did you know Herr Foltes when you took over the commando?

A. No, but my predecessor. Dr. Blume, in a letter had mentioned him and the fuehrers of the commandos and described them to me in the letter.

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Q. And was he recommended to you as a very good soldier?

A. At least, he was recommended as a very clever SS official Who had high qualifications and higher qualifications than some of the other leaders. Another judgment about Foltes I could form after staying there a short time because the army had given him a decoration for his work against the partisans. This had not been applied for by me or my predecessor, but the army did this on its own initiative because of their cooperation.

Q. Here you thoroughly satisfied that he was reliable?

A. As a soldier, as far as I can judge this at all, and according to statements by the army authorities, he was a man who was suitable for this partisan combatting.

Q. Did you have a report on him when you took over the command, and was it because of this report that you were entirely satisfied that he was a man who could be depended upon?

A. I have already said that Dr. Blume was my predecessor, and he mentioned in a letter that he was reliable; and according to the evaluation by the army prior to my time - also because he was given a decoration, I presumed that as a soldier in this partisan combatting he had distinguished himself.

Q. Did you talk with any others of the command about Foltes?

A. One of the leaders of the commando who was a liaison officer of the army and also knew Foltes, sometimes discussed Foltes with me. A further judgment of Foltes consisted of the fact that he was a member of the so-called executive service. He therefore was a man who was qualified according to his activities and his attitude.

Q. You are thoroughly satisfied from all the reports you received that he was entirely reliable and dependable?

A. At least, I could expect that he would carry out his orders according to the instructions of the army.

Q. And Dr. Blame had recommended him highly to you?

A. He had given a description of him which justified that among all. the leaders of the commando he should be given this job, and he was the most suitable man among the leaders.

Q. And you talked with others about Foltes?

A. I cannot remember at the moment having discussed it with anybody else.

Q. You said just a few moments ago that you carried on a conversation about Foltes.

A. Yes. Apart from the discussion mentioned, I did not talk to anyone.

Q. Well, didn't you just say a few moments ago that you discussed with someone else Foltes' reliability and his dependability and his virtues?

A. Yes, Your Honor, and my reply was that apart from this discussion, with the liaison officer whom I mentioned, this liaison officer for the army, I did not discuss Foltes with anybody else but him.

THE PRESIDENT: Just as a matter of information, we will ask the gentlemen of the. prosecution and of the defense counsel whether Foltes is the man that Blume accused as having shot 27 jews on the streets.

DR. FERENCZ: Yes, Your Honor, that is the way the prosecution understands it. It is the same man to whom Blume referred. He said the execution of the 27 was done by Foltes. BY THE PRESIDENT:

Q. Did you consider that a very highly commendable action on the part of Foltes of shooting these Jews on the street without any trial, without any hearing, just shooting them down because they had failed to work?

A. But this action which was mentioned during the examination of the defendant, Blume, I heard here for the first time.

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Q. And Blume recommended him to you without any reservation?

A. He described the men whom he gave the commando temporarily, the man we had executive power in the commando.

Q. And he recommended him as to his attitude?

A. I cannot define this so exactly. He gave me a description of all the leaders of the commandos and the positions which they had under him.

Q. You used the word "attitude" just a moment ago in commenting on Foltes?

A. The letter expressed that Foltes was the suitable man to be in charge of the commando temporarily and to carry out the executive activity in the commando.

Q. Yes, Everyone was pleased with Foltes because he carried out the Fuehrer order?

A. I cannot say it like this because he did not refer to the fuehrer decree at that instance.

Q. That is what you were out there for, executing the fuehrer decree, isn't it?

A. The fuehrer decree also contained several security tasks, and in this special, field where Foltes was in charge temporarily, namely; in the Wacish area tasks of that kind were as important as the combatting of partisans, and Foltes, as former army officer among all the SS leaders there, he had the best practical military experience.

Q. And aid you ever have any occasion to be disappointed with him when he was working for you?

A.During the time when he was with me, that lasted for about 4 or 5 weeks, he exclusively dealt with the combatting of partisans, and as the documents can prove in detail, the army ordered him to these actions.

Q. Would you please answer my question, during the time that he was with you, were you ever disappointed with him?

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Q Would you please answer that question. During the time he was with you were you ever disappointed with him? out. ing shot down 27 Jews or 21 Jews on the street because they had not turned up for work? stated, that the Kommando carried out shootings of Jews.

Q And that was entirely satisfactory to you? ing my time, he did not carry out any shootings of Jews, but combatted partisans. killed 21 Jews on the street without any trial or investigation, merely because of not having turned up for work, would you still have been satisfied to put him in charge of a sub-kommando? official task in any different manner.

Q Then you would have been satisfied with him? feeling of satisfaction with this. out any investigation or hearing of any kind, would you still have been entirely satisfied to let him be one of your sub-kommandos? That is the question. open protest against this order.

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remain?

A May I have that repeated please? would have allowed him to remain as a sub-kommander, even though you had known of this episode? Witebsk would have meant the same as an open objection against the order given.

Q Will you please answer the question. If you had known of this episode, would you still have retained him as a sub-kommander, because of the circumstances in which you found yourself? would have been no way of having him dismissed.

Q Yes, would you have said to him: "Now I learned that you killed 21 or 27 Jews on the street and I don't approve of that kind of activity. From now on, do not execute anyone unless there is first a trial." Would you have told him that? I attached importance to it that the investigations....

Q Now, just a moment, please, Please listen to the question. Here you are out in the field and Foltis is under your command. It has come to your attention that he killed -- Oh, first let me ask you this question: Would you have executed 21 Jews on the street just because they were Jews and had not worked?

Q Please answer that question: Would you have shot them just because they were Jews who did not work, having in mind this Fuehrer Decree? Would you have shot them down?

Q If you would not have found a way out, you would have shot them? security, rather than shoot 27 Jews, theoretically speaking, I would have carried out the order.

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had this Feuhrer Decree that all Jews were to be executed and you found these Jews before you, you would have executed the decree and you would have shot,the Jews, even though they had had no trial? kommando.

Q Well, all right, how would you have circumvented the order? Here are these 27 Jews in front of you. They are Jews and the order says you must kill all Jews. How would you have circumvented that order?

A Because I also had other tasks and could give them priority. I could leave a place where there were Jews because the Army advanced and, therefore these Jews?

Q All right. Now, did you tell Foltis, if you had known of this episode, would you have said, to Foltis, "Now, listen, Foltis, when you can avoid killing Jews, please do so, because I don't like that idea of killing Jews without a hearing," Would you have told him that?

Q You said Foltis was far away from you. You gave him independent control. He didn't come and ask you each time he was going to shoot a Jew or anybody. He had to know beforehand what your attitude was and before you sent him out in the field, did you say to him, "Now, I don't agree with this Fuehrer order in all its extent, and don't you shoot anybody unless you first have a trial." Did you tell him that?

Q Foltis was with you all of the time? for the few days when I visited the Sub-Kommando Welikie-Lucki, and I conscientiously recommended anti-partisan combatting to him because Foltis on his part preferred to be active as a soldier against partisans and not to shoot Jews.

Q Well, you said here in your testimony just a few minutes ago: "you left it ot Foltis to determine what shootings were to take plac." You left it up to him, didn't you? accordingly I was forced to leave the decision up to him.

Q You left it up to him whom he was to shoot? ing.

Q You left it up to him to determine whom to shoot. He was to decide whether they were partisans or not, is that right? determine this in such a form as I have described during my direct examination . He was to determine whether to shoot or not?

A In the cases, and at least 80% of the cases it was the question of joint operations with the army in which officials, and the Field Police, not Foltis, carried out an investigation.

Q Well, take those cases where the Army wasn't there. You said in 80% of the cases. In 20% of the cases did he decide whom to shoot?

A In the rest of the case's he decided, but, after that, he reported to me orally and also in writing, so that I was informed.

Q After he did the shooting, he advised you what he had done? carried out.

Q Please answer the question. After he had conducted the operation, he reported to you what he had done?

Q Yes, so he did have some independence of judgement? way? Did you tell him "Now shoot partisans; shoot spies; shoot saboteurs, but don't shoot Jews, just because they are Jews, or just because they won't work." Did you tell him that? examine conscientiously and conduct examinations.

Q And then you let him decide what to do? been assigned.

Q. You at no time told him not to shoot Jews, just because they were Jews? leaders, that is what I tried to reply in the direct examination, I did not revoke this order.

Q The Fuehrer Order said to shoot all Jews, didn't it?

Q All right, now did you tell Foltis not to obey that order?

THE PRESIDENT: Yes, proceed. BY DR. MAYER: at any time against your combatting all partisans? partisan combatting was up to the military authorities, who ordered the operations. Secondly, there was not other possibility of fighting the partisans in their fighting which was contrary to international laws. this measure?

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Q In connection with partisan fighting, did you give any orders? principle of justice and examination of each case and I pointed this out to Foltis and the other sub-kommando leaders.

Q Were you always informed about the various operations? the G-2 or by the G-2 CIC: After returning Foltis always gave me oral reports.

Q Was a written report sent to Einsatzgruppe B? handed on the The Group. Communist resistance, as well. In what manner was this carried out? aries that is, at least in the territory of the 9th army, the carrier of the partisan combatting. The Communist functionaries and its active supporters had withdrawn into the woods and the smaller villages after the Red Army had withdrawn in order to carry on Guerilla Warfare from there. This was done in such a manner that in some villages bases here established and attack units stationed themselves in the woods. The securing of the territory against Communist resistance was identical with the partisan combatting. recognize them as Communist functionaries? territory, the Kommando found the papers and the records of the Communist Party and of the NKWD.

Q Did these documents contain specific material? of some leading personalities in case of invasion of the enemy and of the resistance to be formed.

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Q What measures were taken as a result of these documents? prerequisites for a systematic search for the active Communist leaders and of the NKWD. for shooting if a person before the German invasion had been a member of the Communist Party or had been a Communist functionary? shot. The functionaries owing to orders of the Russians which had become known had bean requested and bound to carry on active resistance.

THE PRESIDENT: We may have our recess now, if you don't mind. Recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Mayer, before you begin your direct examination the Tribunal will make the following announcement. When the Tribunal recesses on Friday afternoon, at the usual hour, it will not reconvene until the following Wednesday morning. Tuesday, November 11th, is an official holiday, a national holiday and Monday will also be a holiday. So that therefore anyone who wishes to make any arangements for that rather long week-end is now advised that he may make those arrangements.

DR. MAYER: I shall continue with my direct examination. of documents were the basis of the finding cut who the active Communists were among the partisans, and I have asked you the question ... Do you mean to say that, that in your Command it was no reason to shoot anybody if that person was a member of the Communist party before the invasion by the Germans? concerned, for that no one was shot.

Functionaries of the Communist party, through the orders that had been announced by Stalin and the Russian war leadership, had been obligated for active resistance behind the fronts. Of these functionaries were found to have offered such resistance shootings were carried out. This is not a persecution for political reasons, but The punishment for crimes against the occupation power, and its directives.

Q What directives do you mean by this? public everywhere, it was announced both in the Russian and the German language, that the Communist party was dissolved, and every type of activity on its part, as well as participation, and assistance in partisan warfare would be punishable by death.

and in the investigations and judgments? given about anti-partisan warfare, that I gave a Foltis free hand in this field, but, during personal discussions I told him my point of viewnamely, that he should treat all cases justly. In the same manner I had a long conference with the director of the Russian service for the maintenance of order in order to tell him the same things. After Foltes had left, about the 15th of October 1941, when his successor dealt with few cases which were still under way I always made tests in the cases which were still being dealt with by his successor, to see whether they were being treated justly.

Q Were you convinced of the legality of the measures adopted?

A Yes. It corresponded with the directives of the army, and it was a question of punishbale resistance against the German occupying power. territory of your Commando. What happened as far as this question is concerned, in the area of Welish? any action against Jews. Other leaders, too, of my Commando, no such operations. reference to the Jews was neither carried out by you, nor by any of your subordinate offices?

Q For what reasons did this not happen? partisans and the breaking up of Communist resistance, Through this activity this Commando was so busy, and had been given orders concerning partisan warfare by the Army directly, the Jewish, question was pushed into the background.

The order for the execution of Jews, only because they Were Jews, was considered by me as humanity impossible. Of course, this opinion was not valid for those cases in which individual Jews or groups of Jews had committed crimes. In such a case I would, of course, have approved measures against Jews because like every inhabitant of occupied territory, they were under German jurisdiction and subject to German laws. order in the area of Welish? to my office, and as it has been carried out in some cases that I did not revoke this order - but I did not renew it, for my part, nor did I issue it again.

Q Could you have revoked the order? punishment, namely an obvious punishment for refusing to obey the order of the chief of state. give the order or renew it? that I did not insist on the execution of this order. execution of the order? no Jews, or very few Jews. This was possible on the basis of Army instruction which I had. This was valid for the area of Moscow, with the exception of the city of Moscow itself. Because in this area up to the revolution of 1917 the settlement of Jews had been prohibited by the Czarist government.

Q Did you see any other ways of evading the order?

I could keep the Commando busy with fighting partisans, so that if my superior would ask me about it I could point out to this activity of my Commando. And the final possibility was that I might move the Commando so near the fronts that the execution of the order would be impossible. For this reason I did so in the following period. in Wellikie Lucki? spent about two days with it.

Q What was the security position in this area? of the sub-commando, the city was relatively quiet. As far as I remember, there were hardly any Jews, or no Jews at all. On the other hand, in the vicinity of Welikie Lucki a partisan movement had been formed and the commando had accomplished several missions there.

Q During your stay in Weliki_Luki did you give any orders for executions or did you confirm the orders already given, or did you demand that these orders be executed expressly?

A No. as far as this kommando is concerned. I asked that every individual case he thoroughly investigated and tried justly.

Q Were you later in Weliki_Luki again? that at the end of the month of September I was once more there for two days. kommando in Weliki_Luki carried out an anti-Jewish operation? and partisans? sent to me.

Q What were the following garrisons of your kommando? leadership of Foltis during the battle of Vyazma, moved toward Vyazama with a tank unit. with a mission to secure the documents in Vyazama. The kommando remained there for several days, about until the 15th of October Subkommanaos remained in Welish and Welikie_Luki at that time.

Q Where did you yourself stay in the following period of time? to discuss the advance of my kommando with the G_2, corresponding to the military Voperations as they had been laid down. As future garrisons Rshev and Kalinen were intended. I received the permission from the G_2 and his consent to move into these places with the combat troops. Order were issued by the Army to that effect. the front area?

of finding important documents, Secondly, the advance on Kalinin was considered a part of the operation against Moscow, the capture of which was expected. Thirdly, by moving my kommando up to the front troops, I hoped, as I just said, to evade the execution of the anti-Jewish order. about executing this order?

A Yes. After I returned to Welish from the G_2, after this conference which I have just mentioned, I found the news that Foltis had been recalled to Berlin, As a result I immediately had to go to the kommando in Vyazma. I did not know itsgarrison at that time but I had to go there to relieve Foltis. Therefore, I ordered the kommando Welish the order to bring in the subkommando in Weliki_Luki as soon as the road to Vyazma, was free, and to go there and to find out where the garrison was then I personally started the trip with twp vehicles, and since I went via Smolensk where Brigadier-General Nebe had his headquarters, I reported to him, and I informed him about my intention of advancing. On this occasion, Nebe came to talk about the prospective activity of the kommando in Moscow and he told me, among other things, that the kommando 7a had thus far not shot any Jewish women and children, but the Fuehrer order referred to all Jews, and the other would have to be carried out accordingly.

Q Did you object to Nebe about carrying out this order?

A No. After I clearly saw that this order had been given to this extent by the highest authority in the State, I considered expressing my opinion directly to Nebe impossible, impossible because of my tactics which I had started, I considered such an opinion as dangerous insofar as the order then certainly would have to be executed. knew that your kommando had not executed any Jews during your time? or my subordinate officers. He, therefore, could have only judged by 5 November 1947_A_MSD_22_3_Hoxsie (Lea) the experiences which he had made with my predecessor.

Q Did you go back to Welish or Weliki_Luki, after this conference? on this clear order of Nebe's to your subordinate offices?

A No. I did not pass it. on.

Q How did things develop after that? command of the subkommando Vyazma from Foltis who had now returned to There I set up a head quarters and moved to Kalinin with a small detachments of the subkommando in the last days of October, and in the early days of November. As far as I remember I reached Kalinin about the 7th of November. Up to my final departure from the kommando on the 10th of December, since approx. middle of November, Rshev and Kalinin were the garrisons of this kommando.

Q What happened to the subkommando Welish and Weliki_Luki? connections had been completely interrupted by partisan action. There fore, the end of October, beginning of November, they proceeded toward Rshev separately, Since a period of muddy weather had made the roads impassable and since a great number of vehicles got stuck because of this, the arrival of these subkommandos was delayed until the middle of November, Part of the time some detachments had spent some time in Smolensk with the Group. Kalinin? 27th of October, we were busy setting up a headquarters, end I also think I can remember that we made the beginning of setting up an auxiliary Russian police force. When I left for Kalinin its work had not yet started.

5 November 1947_A_MSD_22_4_Hoxsie (Lea) That happened whenever I reported to the Army Staff which was still a little further back. in Rshev?

A No, I don't remember any such details, I don't know whether executions were carried out there. Rshev? never heard of any, but if such an action had taken place I would certainly have hoard about it.

THE PRESIDENT: Then your answer to that question is that no execution did take place there?

THE WITNESS: That is right. As far as I was informed no such execution took place.

Q (By Dr. Mayer) What did your kommando do in Kalinin? front situation there were extraordinary conditions there. The front went along the northeastern border of the city. Therefore, during the entire time the city was under the artillery bombardment of the Russians. The German division staffs, for example, were still west of the city. The first house which we wanted to use as headquarters had to be evacuated because of direct hits.

The kommando suffered some casualties during this attack. The activity to secure the city area, which was always interrupted because of the front situation, was concerned exclusively with Russian espionage and with frequently appearing sabotage detachments. Here too we made an attempt to set up an auxiliary Russian police force, and at the request of the town commandant we picked out Rusian personalities and investigated them, who would be used for the preparation of the city.

Q Did any executions take place during that time? attacks.

Q Were any Jews living in Kalinin?

Q Did executions of Jews take place?

A No. Because of the immediate proximity of the front area, which was connected with the immediate action by the enemy, this question did not actually come up for the missions of the kommando could only consist here of fighting espionage and partisans. Every superior would have had to see this point of view.

Q How long were you in Kalinin with your kommando?

A The kommando was there from about the 7th of November. May I correct myself? I personally was there from the 7th of November to about the 7th of December. During this time I was absent from there about two weeks - although not consequently - once in Smolensk and a few times in Rshev.

Q When did you personally leave Kalinin for the last time? Rshev in order to go to Germany on furlough.

Q Did you have permission to leave your kommando?

A Yes. I had gotten the consent of my superior, and with his consent I had handed over the kommando to a deputy.

entire activity as a kommando leader. As a kommando leader did you ever attend, an execution?

Q Did you ever order such an execution in individual cases? investigated or made check-ups on measures carried out by my subordinate officers, this investigation sometimes would confirm such an order. made of them?

THE PRESIDENT: Dr. Mayer, I didn't quite understand his answer. You asked him if he ever ordered an execution. He says generally not. Now, he either did order an execution or he did not, 'Generally not' to me signifies that he did order some executions even though that was not his usual practive. Now, did he or did he not order executions?

THE WITNESS: Your Honors in the following sentence I said that in those cases in which I investigated. Some cases handled by my subordinate officers and in which I had one of these officers submit to me one of those cases, and when his decision was to execute, then by examing the case I confirmed such a decision and thereby ordered such an execution.

THE PRESIDENT: Well then, you did order an execution?

THE WITNESS: In a few individual cases which I examined myself I ordered executions, yes.

Q (By Dr. Mayer) during your activity was a current list of executions kept? the kommando nor was such a list kept during my time. listed in these documents originate from, where do they come from?

A I don't know. At any rate they were not listed by my kommando.

The documents submitted to me which show these total figures cannot possibly he correct in my opinion. May I come hack to this when I discuss the various documents?

Q On what was you collaboration with the Army based? Order which has been mentioned here before was assigned to the Ninth Army. On this the cooperation with the Army is based and the orders given by the Army to the kommando.

Q What did this order mean to you? tasks in the roar area of this Army and then safeguard important documentary material, furthermore, that that kommandoo as far as supply is concerned, was under the Army, and that for operational reasons the Army could exclude the activity of the kommando in certain localities.

Q Did such exclusions take place?

Q Were you only active in the rear Army area?

A No. When I received the order to go to Vyazma, Rshev and Kalinin I got the G_2's consent to use my kommando in the operational area, that is in the front area, as this had already been granted to predecessor. of the 9th Army?

A Yes. After my arrival I introduced myself to the G_2 of the Army, or rather I was introduced there by their liaison officer, and during my activity I had frequent conferences with the G_2.

Q Why did you just keep contact with the G_2? liaison with kommando. agencies?

A Yes, especially with the G_2 counter intellegence officer. That is with the officer working on counterintellegence under G_2. Other agencies were field commands and town commands and divisional staffs. influence on your activity? the 9th Army, in view, of the partisan question, carried with it the fact that the kommando during my time worked almost exclusively under the direct order of the Army or under subordinate units of that Army. The executions mentioned in the documents can be traced back to. direct orders by Army agencies, or they are the results of such order.

Q During your presence in your kommandoo what was your work? already mentioned, I devoted myself to SD reports, and I tried to give as exact a picture as possible of the area of the Soviet Union in which I found myself.

Q But what did you report in these SD reports? system and collected documents about the position of the Russian church and Bolshevist state.

Q How did you acquire the documents of such reports? in their fields, and I had them report to me partly orally, partly in written form then I inspected a collective farm, and I had them give me documents about the size, the harvest about the quota of harvest, handed over about the machinery, etc. then I sopke to the workers in the collective farms by means of an interpreter, and also with former real estate owners. I then collected these impressions in a report. BY THE PRESIDENT:

Q Where did this all take place?

Q And how far away was that from the front? the time fixed until the time of October.

Q Now, you say that when you were up close to the front you didn't have time to consider the Jewish question, but you had time to go around collecting statistics on farms and crops and agriculture, and finding out how things grew, and did not grow, and you completely forgot about the Fuehrerorder which demanded immediate and complete action? periods, the area Welish-Welikielucki, on one hand, secondly, the area Rshew-Kalinin, on the other hand. In the area Welish-Welikielucki, the described partisan activity was cause for orders, on the part of the army. weren't you?

Q And "Einsatz" means "action"?

Q You were sent into the field for action? Jews, that was the purpose of Einsatzgruppe, wasn't it? the countryside, looking over farmland, and leisurely writing up reports, which you sent back, what about this order which you had? even with the Einsatzgruppe staff were such that next to the chief of the Einsatzgruppe there was an officer of SD reports, a Leader 3 and Va Leader 4, who was competent for police executive measures. These two items were both mentioned in this report. activity quiet also?

Q They were active? and wheat,and land and so on, if the partisans were active? partisans to Foltis and militarily trained leaders, and according to my activity which I had carried on before the Russian campaign, I was devoting myself to SD reports. this Fuehrerorder was purely academic, you were just a country farmer, and a little tout, and that you weren't engaged in fighting partisans or killing Jews, you were just on a nice, little jaunt, gathering up these reports and sending them in, is that what we are to understand?

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5 November 1947_A_MSD_24_3_Spears (Lea) about these tasks, that I checked on their activities, and I have also explained why I, as a man with no militarily training did not participate in these partisan action. The documents show this action clearly, how they were carried out. partisans?

Q Well then you didn't have anything to do with shooting at all while you were in the field in charge of an Einsatzkommando? I carried out personal investigations. none? to the front in Kalinin, and to maintain contact with the army agencies.

Q Who appointed you to the Einsatzkommando?

Q Did Streckenbach know that you were gun shy? wildering to me how they could put you in charge of an active unit when you say that you didn't do any fighting against partisans, you didn't execute the Fuehrerorder to kill Jews, and you merely sat at a desk and wrote up reports on farms and confirmed reports which were sent to you by your subleaders. made check-ups, that I visited my subcommandos in the Welikielucki once or twick, and that I spoke to the subcommand officer about his activity. That I didn't lead a platoon of active SS men into the forests was due to the fact that I was not militarily in a position to lead such an expedition in the military manner, and as it had become evident 5 November 1947_A_MSD_24_4_Spears (Lea) in the documents, when two army divisions comb through a territory, clean out a territory, and the commando is supposed to furnish interrogation detachments, then I, as a commando leaders, who knew nothing about the interrogations until then would hardly be able to lead a tiny platoon of 5 interrogators in an Army unit.

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Apart from that in the firs two weeks.... nothing about partisan fighting, you knew nothing about the military, you knew nothing about actively conducting a platoon, and you could just as well have remained in Stuttgart, couldn't you, insofar as carrying out the program of the Fuehrer was concerned?

Q Where did you lead them to? to Kalinin at the moment when Foltis left.

Q You led them in an automobile?

Q Well, you were in a motor vehicle, weren't you?

Q You never led them into any action, you didn't lead them into any fight? so we will take you back to the farm, all right, Dr. Mayer. BY DR. MAYER:

Q Didn't you have an SD expert for these jobs that you described After he was transferred to Germany there was no such expert any more in my commando. Soviet State?

A Yes. I found an edition in the German langauge, published in 5 November 1947_A_MSD_24_5_Spears (Lea) Moscow, of Stalin's speeches.

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From this I made excerpts and sent them to the Einsatzgruppe.

Q Why didn't, you return to your commando after your furlough had expired? Reich Security Main Office to relieve me. Thereupon a certificate by a dentist was demanded which I submitted.

Q When were you relieved?

Q Where were you then sent?

Q When did you receive your renewed order to report to Russia?

Q How did this new order come about?

PRESIDENT: Now, if it is a lengthy story, I suppose we should hear it tomorrow morning. What did you wish to say, Dr, Gawlik?

DR. GAWLIK: Could I ask that the defendant, Seibert, be excused tomorrow morning in order to prepare the defense?

PRESIDENT: The defendant, Seibert, will be excused from attending court tomorrow morning in order that he may prepare his defense with his counsel. Do you have anything further, Dr. Mayer, to present?

DR. MAYER: No, Your Honor.

PRESIDENT: The Tribunal will be recessed until tomorrow morning at 9:30.

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

DR. RIEDIGER (for the defendant Haensch): Your Honor, I ask that the defendant Haensch be excused from today's session of Cour and that he be brought to Room 57 for the purpose of preparing his defense.

THE PRESIDENT: The defendant Haensch will he excused from today's session of Court and will be taken to Room 57 in accordance with the request of his counsel.

DR. HOFFMANN (for the defense Nosske): Your Honor, I ask that the defendant Nosske be excused from tomorrow entire session, in order to prepare for his defense.

THE PRESIDENT: The defendant Nosske also will be excused from today' session of Court.

DR. MAYER (For defendant Steimle): Your Honor, I would like to be permitted to continue with my direct examination.

DR. HOFFMANN: I beg your pardon .... my colleague has drawn my attention to the fact that the translation said the Court has excused my defendant for today.I meant for tomorrow.

THE PRESIDENT: The correction will he made in the record. The defendant Nosske will not he excused today, but from tomorrow's session of Court. BY DR. MAYER:

Q. Witness, we come now to your two commands for Russia. The question is, when did you receive your new order to report to Russia?

A. About the middle of August 1942.

Q. How did this order come about?

A. There is a lengthy story connected with this order. Since the beginning of the war I was in contact with Office VI, the Foreign Information Service, and I maintained foreign contacts for this office from my Stuttgart office. Within this activity I had gotten in touch with Schellenberg, the Chief of Office VI. After my first return from Russia, Schellenberg tried to transfer me to his office as a deaprtment chief. This was not successful because Streckenbach objected to it. Who, for reasons unknown to me, refused this request of Schellenberg's. When in August 1942, on my trip to Russia, I reported, to Schellenberg in order to have my renewed order to report to Russia revoked and to seek a support for that, he said that such an effort would probably be in vain. He knew that this order came about in order to prevent me from joining him as a collaborator. Nevertheless, on the occasion of the stay in Berlin Schellenberg continued to make efforts to have this order rescinded, and the then chief of personnel Schulz - tried this too but Streckenbach kept on refusing.

Q. After this refusal of Strechenbach, did you see any other possibility of evading this new order to report in Russia?

A. No. I would have had only the way of an open refusal to obey orders, with its clear and obvious consequences.

Q. What kommando was given to you this time?

A. The Special Kommando 4-a.

Q. During what time did you command this kommando?

A. During the end of August 1942, until the 15th of January 1943.

Q. To what Einsatzgruppe was 4-a subordinate?

A. The Kommando belonged to Einsatzgruppe C, and was subordinate to the commanding officer of this Gruppe, Gruppen Leader Thomas. The latter had his headquarters in Kiev. At the same time he was commander of the security police and SD in the entire Ukraine.

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His jurisdictional area, therefore, extended from the Polish border to the Valga River.

Q. From whom did you take o ver command of this Kommando 4-a?

A. My predecessor was Dr. Weinmann, who handed over the command to me.

Q. What was the situation in 4-a when you took over?

A. The main part of the kommando. which was not so strong as the Kommando 7-a, was in the area of the 6th German Army which at that time was advancing toward Stalingrad. Further: a liaison staff was with the Hungarian army. Sub-kommandos were in the sees of the Second German Army.

Q. Where were you, yourself?

A. The situation brought about such a spreading about of the kommando; because of the tremendous distances it was impossible for me to maintain contact with the entire kommando. Those were distances of about 800 kilometers. Therefore, I maintained the regulations set down by my predecessor, namely, that the small subkommandos in the Second German Army area would remain subordinated to the local field commands, and that the kommando would furnish a liaison officer to the Second German Army. The latter also maintained contact with the Hungarian Army.

Q. What was the relationship to the Hungarian Army, and how was it regulated?

A. The small staff there was to guarantee the exchange of information within the entire German liaison staff. It did not have an activity of its own since the area was under the Hungarian sovereignty.

Q. Describe your activity in the area of the Sixth Army.

A. The sequence of my garrisons were: Tschernishewkaya, NishnitsShirskaja and Kallarth on the Don River. The first mentioned place was a small village on the steppes of the Don River. As far as the other two are concerned, they are also small towns.

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Q. Why did you pick these places?

A. In order to be near the army staff.

Q. Was any activity carried out in the sense of your orders in this area?

A. No. The territory showed no Jewish inhabitants.... was very sparsely inhabited.... one could drive for hours without finding a single village; as far as I remember, active resistance was only met in one individual case. This was a staff of a partisan movement which was just begining to develop, which was betrayed to us by a deserter. Otherwise, the area gave no cause for partisan marriage. There were hardly any forests. During the advance towards the above mentioned group there was a fight during which the partisans were killed in the course of the fighting.

Q. Didn't they surrender?

A. No, they didn't.

Q. What did the other activity of your kommando consist of during this time?

THE PRESIDENT: Dr. Mayer, the witness stated that rather abstractly. There was a fight. We know partisans were on one side. Who was on the other side? Does he mean that his kommando fought the partisans? That is a little unclear.

WITNESS: I mean to say by this that this partisan unit was fought by my kommando.

THE PRESIDENT: Very well.

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BY DR. MAYER:

Q. Witness, I repeat my question. Of what did the other activity of your kommando consist during this time?

A. During the period of September and the beginning of October -the kommando was almost completely idle. The army already fought in the suburbs and the southern parts of Stalingrad, and we awaited the capture of Stalingrad. In view of this I had several conferences with the G-2, the Quartermaster of the Army, and the town commandant who was to command Stalingrad.

Q. What were the contents of these conference?

A. The activity of my kommando after the capture of Stalingrad.

Q. Was your kommando active in the area of Stalingrad?

A. No. This was impossible, considering the combat situation. There were only small parts of the city in the hands of the Army. At the end of September I personally was in this city for only one day. The kommando or parts of the kommando were never there. And no town commandant was installed there either at that time.

Q. When and why was your kommando relieved from the Sixth Army area?

A. After I received an order from Thomas, in the end of September, to take up contact with the Italian army which was being committed in the Don area, so that my competence was distributed to four armies, expressed justified misgivings to this distribution of the kommando in a radio message. I could not even take a semblance of responsibility for the kommando. Gruppenfuehrer Thomas, therefore, visited me. During this visit I suggested to him that he take my kommando out of the Sixth Army area because another kommando, namely, 4-b, was also marching on Stalingrad from the south with a tank unit. Thomas approved this, and he ordered that I join the Second Army. This was the area of Kursk. The liaison staffs to the Hungarian and Italian armies were to be continued to be supplied by me. After this decision I put the kommando under the leadership of my deputy and had it proceed toward Kursk. I personally handed over my headquarters to the Kommando leader of 4-b, and introduced the kommando leader of 4-b to the several army agencies.

After that, I installed the liaison staff with the Italian army, visited the leadership staff with the Hungarian army, and reached Kursk about the end of October 1942.

Q. What activity was your kommando engaged in, in Kursk?

A. I must say here that at this time Kursk had been in German hands for more than a year that a Russian auxilliary police force existed there, and German civilian administration was already active in many, varied fields. During my time cases of attacks against army members, carried out by illegal Communist activities were being dealt with. Furtheremore, I know of cases of Bolshevist agents and a very extensive case of sabotage. In two cases anti-partisan operations were carried out.

Q. In what manner were these cases dealt with?

A. The investigation was carried out partly independently by officers of my kommando, partly in collaboration with the secret field police; very frequently the Russian auxiliary police force was used in preliminary investigations because we had confidence men among them. My deputy, Sturmbannfuehrer Schmidt, made the conclusive investigation and proposed the sentence. If these cases involved Wehrmacht units in the area of the city of Kursk itself, I, or my deputy, submitted the case to the town commandant. In other cases, I confirmed, when I was present, the judgment by reviewing the case myself.

Q. During your activity in Kursk, were executions carried out of Jews, Gypsies and so-called social elements?

A. No; an execution of Jews was neither ordered by me, nor was it carried out by my kommando in Kursk. An order to shoot Gypsies or a social elements was not known to me at any time.

Q. In your affidavit you stated that your commando....

THE PRESIDENT: Pardon me, Dr, Mayer ... I am sorry to interrupt. I dodn't quite understand the answer of the witness to the effect that the killing of Jews, Gypsies and a-socials were not known to him at any time.

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Does he mean by that that he was not familiar with the Fuehrer order which specifically ordered the executions of peoples in those categories, or does he mean that he was familiar with the order but that no executions of those peoples occurred, to his knowledge. It is not clear.

WITNESS: My answer is to the effect that I knew the order about the treatment of Jews, but that this was not carried out in the area of Kursk. On the other hand, at no time did I know of any order to shoot Gypsies or a-social elements.

THE PRESIDENT: You did not know that that was included in the purport of the original order?

WITNESS: No, not as far as Gypsies and a-socials were concerned.

THE PRESIDENT: Very well.

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Q. Witness, in your affidavit you stated that your kommando IV A had a gas van? What is you comment on this?

A. Among the vehicles there was a so-called gas van. I did not speak of gas chambers during any interrogation, exit is claimed by the Prosecution. I heard of the existence of such a van in Kursk by the officer of the motor pool. He told me on the occasion of a conference that there was a so-called "G*van" among the vehicles which he had used as a transport-vehicle. The car was no longer usable for the original purpose, because it was being used for transportation purposes. I don't know whether this happened, because it had been reconstructed, or whether it was just being used for transportation.

Q. Thus during your activity as kommando leader, you never killed or had any one killed by means of this van?

A. No, I never did so.

Q. Were you never reprimanded by your group chief because of lack of activity?

A. Apart from the fact that my kommando took care of the matters currently, Kursk was so far away from Kiev, and Thomas was so busy with the activity in his wide area, that he did not even bother about my kommando. I merely saw him during a conference about the order for my kommando to leave Stalingrad.

Q. Didn't you ever receive any decisive orders from him?

A. The orders for example to proceed to the area of the Second Army; then once during the period of Kursk I once received the order that I was to furnish a number of officials and drivers to the commanding officer of Charkow, so that the kommando IV-A in Kursk still had five officials, several dirvers and a number of regular policemen.

Q. Were there any other factors which determined your activity in Kursk?

A. In the month of December typhus epidemic broke out in my kommando, just as well as it did in the prison, which stopped for weeks. Then in December in the southern sector of my area the fronts began to waver, i.e. in the Hungarian and Italian sector.

THE PRESIDENT: Dr. Mayer, pardon me, but when I interrupt you please understand it is purely to get information. I don't want in any way to impede you in proceeding with your case. The witness has stated that typhus broke out, and this made work impossible for weeks. Now, just what work were they engaged in at the time?

A. Investigations were currently carried out in those cases of which I spoke. The officials took out the arrestees, and put them into offices, to be interrogated there. Since they were mostly large complex questions, the interrogations lasted for weeks. Thus, if in the prison and in the house typhus broke out, the interrogations were interrupted and discontinued for medical reasons.

THE PRESIDENT: Very well, BY DR. MAYER:

Q. During your stay in Kursk, what were you engaged in?

A. Aside from supervising police activity I made a extensive report on the school question of the Soviet Union. Furthermore, I dealt with captured material, which came from the NKVD in Rostov, which was found by the Kommando IV-A. On the basis of this material I made out a report about the system of work of the NKVD.

Q. At what time and why did you leave your Kommando?

A. On l5th January I started a furlough which had been granted by Thomas. After I arrived in Stuttgart, I informed the chief of Office VI Schellenberg, of my presence in Germany, and I asked him once more to try to have me trasferred into his Office VI. This time I was successful. In the meantime, on 30 January Kaltenbrunner had taken over the Reich Main Security Office. The former chief of personnel, Schulz had become chief of Office I, and thus my transfer to Office VI became retroactive 8 January 1943, and, I, therefore, didn't return to Russia.

Q. Did you mean to say January or February?

A. I mean, 8 February.

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DR. MAYER: Your Honor, I now am to speak about the documents, which refer to this witness, and to his activity in Kommando VII-A. in as far as I must make reference to certain places in these documents which are not contained in the extracts submitted by the Prosecution, I shall submit these documents to the Tribunal. BY DR. MAYER:

Q. Witness, please lock at Document Book II-B, prosecution's Exhibit No. 64, Document No. NO-3143, page 42 of the English Text, page 47 of the German Text, it is operational report NO 92 of 23 September 1941. I ask you now, when you took over the Kommando, did y you know how many executions had been carried out by the Special Kommando VII-A, by that time?

A. In this operational report 7077 executions are listed for special Kommando VII-A. This is supposed to have been as of 13 September 1941. I must state in general here---

THE PRESIDENT: We don't find that figure. On what page does it appear?

DR.MEYER: Your Honor, the list is on the last page----

THE PRESIDENT: Yes. Thank you, very much. It is on page 53.

BY DR, MAYER:

Q. Please repeat your answer, witness?

A. This report lists 1011 executions for Special Kommando VII-A.This was supposed to be as of 13 September 1941. I must state in general here that during my command of Special Kommando VII-A, no numerical compilations were ever made which referred to executions. I saw such compilations when I took over the Kommando. During my time various individual figures were reported, which were evidently then compiled by a different agency. About the circumstance that the figure 1011 is supposed to represent the figure as of 13 September 1941, I would like to point out that on 7 September I took over the Kommando, and, accordingly I was then one week with the Kommando when this figure was al report No. 108, dated 9 October 1941, on page 17 of the English text.

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The excerpt about the Special Kommando VII-A might be understood thus as if your Special Kommando had delivered to prison every male person between the ages of 15 and 55, Can you comment on this?

A. I can remember a large action against partisans at that time, which took place in this area of Demidow by the Army. One part of Special Kommando VII-A participated in this action. The excerpt here gives t the situation in an er roneous fashion.

I, therefore, ask for permission to be able to read the complete text, relative to the matter as it is stated in the photostat.

THE PRESIDENT: Dr. Mayer; did I understand you to say that this report indicated that the witness' Kommando had executed all those between the ages of 15 and 55? The report does not say that, It merely says that they were arrested.

DR. MAYER: Yes, Your Honor, it looks as if the Kommando had arrested all persons between the ages of 15 and 55, and put them into prison in the Camp Demidow. The witness would like to explain what was the situation?

THE PRESIDENT: Very well. I understood you to ask him to explain why the report had said that all of those males between these ages had been executed. The report says they were arrested, not executed.

DR. MAYER: That is right.

DR. FERENCZ: May it please the Tribunal. The prosecution has not charged the witness with this particular crime, and if I may bear out some time to point to the fact that we made no mention to it in our case in chief, and have no intention of discussing this problem at all in the case against him.

THE PRESIDENT: Please make very specific then, Mr. Ferencz, your admission that the Prosecution does not charge him with any crime as could be possibly drawn from any certain document.

MR. FERENCZ: Yes, Your Honor, we do not charge him with crime for any of the event described in NO-3156, Section II.

THE PRESIDENT: You have heard that very specific reference, Dr, Mayer, that the present witness, or defendant Steimle is not charged with any crime arising out of Section II of Document NO-3156,

DR. MAYER: Your Honor, May I point out that subsequent to this Section II, there are dots, which means that there is a place where words have been omitted, which are to be found in the original document. The next sentence then reads: "The SK-VII-A was able to find 18? partisans and communists." Then from the same page more dots. Then there is another paragraph which ends by saying: "The remainder of the partisans were shot." This whole operation is, of course, described fully and is also described in the context in the original. It would now depend on whether the Prosecutor explains that, he does not charge the defendant with the entire report. Otherwise, for the sake of understanding the context of the entire report would have to be discussed.

MR. FERENCZ: No, Your Honor, we do not withdraw or fail to charge him with other crimes committed as shown in otherparts of this document, We have not made any mention of the arrest of males in the prison Camp Demidow, but I understood that the defendant was going to make a long explanation of it, so I wasjust trying to save some time.

THE PRESIDENT: I think Mr. Ferencz and Dr. Mayer, that in a situation of this kind, where a report weaves in and out of alleged criminality and not an alleged criminality, that it may be simpler to have the witness explain the entire situation, because other wise you may get into difficulty in trying to determine just what the witness did explain away and what he did not.

MR. FERENCZ: Yes.

THE PRESIDENT: So I think Dr. Mayer, it will be entirely in order for you to proceed asyou had originally intended, and let the witness explain in any way he sees fit this particular report.

DR. MAYER: Yes, Your Honor.

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Coutr 2, Case 9 BY DR. MAYER:

Q. Witness, please continue?

A. This report is included in the number of executions of Special Kommando VII-A, and the report was based on the following; The Army made up a report from the numbers given it by the kommando, and I ask for permission to cite briefly the original text of the operational report." Special Kommando VII-A had repeatedly determined that in the dense forest southeast of Demidow, a great number of plunderings and attacks on the part of partisans had been carried out This caused great restlessness in that area, and endangered the through fares. There were reports according to which one could court she strength of the partisans from 800 to 2000 men. The Army High Command furnished two divisions to clean up this area. Every male person between fifteen and fifty-five years of age was put into the prison Camp Demidow for screening. The various mopping up operations resulted in the arrest of 693 persons, 438 persons, mostly collective farmers, could be rebased asnon-suspects. 72 former Rod Army men who lived in this operation area were brought into the prison of war camp. 183 partisans and Communist were determined by Special Kommando VII-A. Five partisans admitted to have killed fourteen German soldiers. One German soldier was asphyxiated when he tried to get some eggs, and the others were shot. Hand granades were thrown into passenger cars and in trucks." End of quotation. The compilation of this report shows fights with partisans, and of the taking of prisoners of 693 persons. It shows that extensive interrogations were carried out. On the basis of the document as far as I remember I can say that in the course of the use of Special Kommando VII-A.in this document, it was based on orders of the Army. Any action against these partisans took place under the leadership of the Army. The action lasted from ten or twelve days, if I remember correctly, including the interrogations carried out. The interrogations were not carried out only by Special Kommando VII-A but jointly with members of the Secret Field Police.

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The sentences were not imposed by Foltis alone, the leader of the Sonderkommando, but after the review and investigation, the sentences were imposed after a deliberation by Foltis and army officers.

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I do not know myself who carried out the execution. The document does not say anything about that either. I assume that members of my kommando, as well as parts of the Army, participated in this. This same report of the 9th of October also shows that the number of executions of the kommando increased to 1252. That is from the 13th of September an increase of 241 executions are shown. It seems necessary for me to cite two statements which are also contained in the original document. On page 7 of the original the document says - this report is not in the document book - that Special Kommando 7a, in connection with the arrest group of the Army Command, did, on several days and in several localities, carry out several actions against partisan groups in that area. Furthermore, some more localities were cleaned out. During these actions all in all, 7 partisans were arrested and liquidated." End of quotation. At another place the report contains another reference according to which eight persons were arrested and executed at another locality. I cite these events to show why this number of executions increased from beginning of September to the end of September and to explain this increase. of the German, page 14 of the original, the fact which is emphasized by the prosecution is mentioned here, according to which Special Kommando 7a executed juvenile communists because of their intention to destroy a railroad bridge. The document here lists a repetition of one event in two versions, one after the other. One time it is reported, and I quote: "Special Kommando 7a reports of juvenile communists who were liquidated because they intended to destroy a railroad bridge which had been almost finished. Explosives had already been acquired and had been made available." Then the text continues: "In Wilikie Luki too, there were a group of youthful persons who were rendered harmless who intended to blow up a railroad bridge. The leader of the group had persuaded its members to participate in this."

have been carried out by EK 9. Then in the action mentioned in Point 5, there again Mogilew is mentioned as the garrison for the Einsatzkommando 8. Then the following paragraph of Point 5 refers to the location of a garrison at Asmoni. This village Asmoni is again mentioned on page 17 of the original of this report, but it says Esmoni here with an "E", "Esmoni" and I quote, "It is 40 kilometres to the north west of Mogilew". Mogilew is, as I have already mentioned, the garrison of Einsatzkommando 8. The EK 8 is also charged with executions against Jews which are mentioned in this third paragraph. It is further mentioned in this report that Gorki is northeast of Mogilew. The next location, which is Mistislawl, is said to be 80 kilometres to the east of Mogilew. The further operations refer to Mogilew. From these locations it becomes quite evident that 7A did not participate in these operations and did not carry them out. December 1941. It is in Document Book II-B, Exhibit 62, Document NO2824 on page 30 of the English and 31 of the German. Did your kommando participate in these individual actions mentioned here? Naumann, who mentions the locations which are mentioned in this particular report and he made statements concerning these locations. He said that none of these villages were within the field of actions of Special Kommando 7A at that time. This is correct. Without much difficulty I could, using the names of villages, confirm and establish which kommando Court No. II, Case No. IX.

was in charge. I could find out by using the names of the locations which are mentioned in this document and if the Situation Report of 3 days later of the 22d of December is used, it is easy to establish this, which is on page 15 of the English Document Book III-B and on page 17 of the German. Apart from this remark, I can only repeat that my kommando had nothing to do with these executions which are mentioned in Document NO-2824, Exhibit No. 62 and in the Report of Events of the 19th of December, 1941. events, No, 154 in II-A, 162 in Volume III-B and l68 in Book III-A. No. 154 is Exhibit No. 51. It is Document No-3273. It is on 105 of the English Document book and 113 of the German. The Report 162 is Exhibit No. 122, Document NO-4784, on page 53 of the English Document Book and page 82 of the German Book, and Report 168 is Exhibit No. 107 and Document KO-4533 on page 45 of the English Book and 63 of the German Book. All these reports name you as the leader of Special Kommando 7A. They are of January and February, 1942, and do not carry any reports of Einsatzgruppe B. Please, will you comment on this briefly? 10th of December 1941, I went on leave, from which I should have returned on the 15th of January normally. During this leave, I asked for relief via the SS and Police Leader in Stuttgart, who was my immediate superior. The reasons I gave were that my teeth had to be treated. This request for relieve was not complied with, because I had to submit a certificate by a dentist. This I did. The long channel caused my prececessor to be prevented from arriving immediately and, therefore, automatically my name was mentioned as the leader of Kommando 7b. I should like to emphasize again that after my return from Russia to Stuttgart on the 20th of December, 1941 - that is, I arrived on the 20th of December, 1941 in Stuttgart - I did not return to my kommando. This was by permission of my superiors.

the Reich Security Main Office. In what position and how long were you employed in the Office 6 of the RSHA? was active in this office until the end of the war. I was in charge of Group 6b and from August 1944, apart from this activity, I took over a department Mil B -- that means Military Office B. That means the military office of the RSHA.

Q What were the assignments of Office 6? task to deal with political reporting in enemy occupied and neutral territories.

Q What do you mean "political, report", "political information service." ities of war importance of enemy, neutral, and occupied territories. This I did just like any political information service for any other state: to receive news on secret, political and other matters of war importance. One could describe this activity as political espionage.

Q Witness, when was Office 6 in existence?

A I think since 1939. It had no tradition and no experience. There were no experienced people with any knowledge of foreign countries as collaborators and because of the war such assistants could not be found. There was a lack of understanding on the part of the Chiefs for the tasks of such an information service. Hitler refused to recognize our activity at times because he did not want to be irritated by the adversaries. Ribbentrop refused to recognize it because it was not under his leadership. special operations? Portugal.

Q How was your service organized? ordinated to me and in the countries themselves we maintained organizations who dealt with information services and people who were employed in these services. tried to change the Spanish foreign policy, a political and economical Spanish-English treaty was brought about. In this case the collaborators of the service succeeded in receiving secret information and through this they obtained the exact wording of the contract. utilized? situation in these countries and were passed to competent German authorities, and individual reports were immediately submitted to the authorities. German political refugees abroad, to watch them and to fight against them?

Mil, what was this?

Q What was this office? tion Service be created. This meant an organizational combination of the military espionage service which had been up to that moment under the OKW, which was called up to than Counter-Intelligence with the Political Information Service of Office 6. That is a cooperative Counter-Intelligence. Military espionage from this point on became the military office in the RSHA and was combined with the Office 6 as The German Secret Information Service. That is what it was called. Schellenberg who was the office chief of Office 6 took over this office Military, so that these two offices had a personnel union. In this development I became Department Chief in Department B of this military office and I remained at the same time Group Chief of 6 B.

Q What were your tasks as Chief of Mil B? leadership of the military espionage service against the Western Allies. Excluded from this field of activities was the so-called frontal enlightment, that is, Military Intelligence in the enemy operational territory. This was the task of another individual organization, while my department only dealt with territory behind the front lines. vice within your office? Service. According to your statements, you already dealt with these matters when you were in Stuttgart. How was that?

A I had always been very interested in foreign policy. There

fore, it was obvious that I was very much attracted by foreign information service. Therefore, after war broke out and when my Stuttgart SD Department was officially joined to Office 6, I devoted myself to this task.

Q I am now thinking of the years 1939 to 1942. Did you, during that time have a personal conception and idea of foreign political problems? European disaster. I nver believed that it would ever come to war with Poland either. According to this, my attitude, after the beginning of the war with the aid of this foreign information, I tried to find ways and means to maintain peace and to have peace negotiations.

Q Did you actually concretely bring about such negotiations? I had through liaison men connections with English circles. I had established such connections and I reported about these to Berlin.

Q What was your aim? tact between one German and one English personality and it seemed to me it should be aimed at to bring about a political understanding between the Western powers. In 1940, after the Western Campaign, it was quite obvious that an understanding with England could be achieved, if it was brought about cleverly. By this modification, I mean the bringing about of a loyal peace treaty with France. In 1942, however, I hoped for a union on an Anti-Bolshevist basis.

Q Did these discussions actually take place? came about, because Hitler or Ribbentrop prohibited getting in touch with the enemy at that time. period of your activities in Office 6?

chief tried himself to go to find this particular way.

Q Did you discuss this attitude of yours with other authorities? dealing with France, I expressed this attitude. Also my office chief made us of the material which was brought in by me and the oral and written reports. still be able to work in this particular way, that is, to bring about able compromise? so far. First of all, the success of the invasion on the German part meant that there would be a two-frontal war which they could not possibly stand. Furthermore, the Western Allies with their success had a strongly fortified position. The possibility was given now to Germany, of course, to keep the Bolshevist Army from the German borders with sacrifices.

Q. What caused you to believe in a possibility of an understanding with the Western powers at that time?

A. From our work dealing with foreign news the increased tensions between Russia and England were well known. Also the facts that there were American circles who were reserved as far as the question of unconditional surrender was concerned ... from our work dealing with foreign countries. the tensions which became stronger between Russia and England was well known to us. Also the fact that there were circles in America who took a doubtful attitude towards unconditional surrender.

MR. FERENCZ: Your Honor, I don't want to impede the Defense in any way. However, of this is going to continue much longer this line of questioning, I would like to point out that what the defendant did to improve relations between England or France or the Western powers as against Russia has absolutely nothing to do with this case.

THE PRESIDENT: Well, that is in the nature correct, Mr. Ferencz, but the Defense has the right to submit whatever evidence it has, and whatever line of reasoning it cares to present, in an attempted exculpation of the charges brought against it, and if the defendant believes that by establishing what he was attempting to do to bring about peace, that this tends to fortify his denial that he had anything to do with executions, it would be relevant and the Court will permit it. The objection is over-ruled.

DR. MAYER: Thank you, your Honor.

Q. (By Dr. Mayer) Did you have contacts which could have led to negotiations?

A. Yes, but those negotiations never came about because the final victory of Germany became the bible of the German people, so that any remarks as to the actual position became senseless and any foreign political attitude and thought were encircled by the two mottoes of unconditional surrender of the Allies and the final victory on the other side... that was the official German motto. For a political information service regarding this particular position there was no way out, and nothing could be done.

DR. MAYER: Your Honor, I have reached the end of my questioning within the direct examination of the witness. BY THE PRESIDENT:

Q. Witness, you made one statement with regard to your attempts to bring about peace with England, and the phrase that we captured through the translation was that this peace could be achieved...this end could be achieved...if you went about the operation cleverly. Did you regard the attempt of Rudolf Hess as a clever movement? Would you put that within the category of the cleverness of program which you referred to?

A. I don't know the actual reasons for Hess's flight, but if this flight had an official or inofficial aim to start peace negotiations without any preparations, then, of course, I cannot regard this as a very reasonable attempt, the manner which it was done.

Q. Did you know anything of it before it took place?

A. No, I did not.

Q. What was your rank during the time that you were chief of Office VI in the RSHA?

A. In June 1944 I was promoted to Standartenfuehrer.

Q. What is the equivalent in the military field... what rank?

A. If a comparison is at all possible, it is the rank of a colonel.

Q. Yes, While you were making all these efforts to bring about peace with the Allies, was there any resentment on the part of Ribbentrop that you, only a colonel, would attempt to usurp the functions which undoubtedly he was very jealous of?

A. I was merely an information service activity which would show that there was a possibility of confidential negotiation, and this fact does not necessarily need an attitude, although in this particular case there was an attitude and it was passed on the authorities, not by myself but by my office chief.

Q. The Foreign Office, then, was entirely satisfied that you conduct these efforts?

A. No, it did not go via the Foreign Office from our own office, but our office chief passed it on to Himmler, as far as I know, and Himmler decided.

THE PRESIDENT: Very well. Any defense counsel desire to cross examine the witness? I understand you are finished with the direct examination, Dr. Mayer?

DR. MAYER: Yes, Your Honor. BY DR. SURHOLT (for the defendant Dr. Rasch):

Q. When did you join the Eastern assignment, witness?

A. As I have already said yesterday, it was in the first days of September. It was then that I arrived in Russia.

Q. Who was your Gruppe chief?

A. Brigadefuehrer Nebe was in charge then.

Q. How long was Nebe your Gruppe chief?

A. During November the position changed.

Q. And who took his place?

A. Naumann.

Q. Do your know whether, in the meantime, Dr. Rasch had been Gruppe chief or whether he was not Gruppe chief?

A. During the time when I was in Russia I never heard that Rasch was a leader of my Gruppe.

Q. As kommando leader of Gruppe B, therefore, you only knew that Nebe was in charge of the Gruppe, when you came and Naumann took his place later on?

A. Yes.

DR. SURHOLT: Thank you.

COURT II CASE IX BY DR. FRITZ (for the defendant Fendler):

Q. Since when do you know defendant Fendler?

A. Since the fall 1943.

Q. Where and under what conditions did you meet him?

A. Office VI was looking for a departmental chief, a Referent in my Gruppe, 6-b, and Fendler was assigned to Office VI, it was part of my own Gruppe, and he was subordinated to me directly within the Gruppe.

Q. You said in your direct examination, witness, I think, that the Gruppe dealt with countries of western and south western Europe.

A. Yes.

Q. And what countries did Fendler deal with?

A. Fendler was "Referent" for the sub-department 6-b-4 which dealt with Spain and Portugal.

Q. You have already explained generally in your direct examination the task of Office VI. I would like you to tell us now what special tasks were the tasks of a Referent, as Mr. Fendler was.

A. A Referent in a Gruppe had to obtain information ab out the country with which he was dealing. In the case, of Fendler, it was Spain and Portugal. He also had to have the necessary technical qualifications, and he had to get the technical information and other informational material, and he had to compile such material. The office material was then evaluated, and was passed on. As far as information which he received concerned the country he dealt with, -- in this case Spain and Portugal -- he had the responsibility as a Referent for a Spain report which he had to compile. If information was received concerning other countries, they were passed on to the responsible Referents of other offices. These reports were submitted to the Office Chief, the Gruppe COURT II CASE IX Chief, who passed them on to competent authorities or to the Reich agencies.

Q. And who signed these reports?

A. That depended entirely on the receiver of the report. It depended on by what agency it was received.

Q. What authority to sign did Fendler have?

A. He had the authority to sign all reports which went to his own office, or his subordinates. All reports to his chiefs and superiors had to be signed by the Gruppe chief or by the proper office chief.

Q. Did Office VI, or the defendant Fendler - apart from receiving information from foreign countries have also tasks dealing with active foreign policy?

A. No, no.

Q. Did Office VI have to deal with assignments of a political or propagandistic nature in the foreign organization of the NSDAP?

A. No.

Q. Did the defendant Fendler have anything to do with observation or supervision of persons or groups in foreign countries with the aim of persecuting them, either politically or by police?

A. No, that was not within his sphere of activity in the department, Fendler had nothing to do with it.

Q. Can you tell the Tribunal whether, in the subdepartment 6-b-4, there were only members of the SD or the NSDAP or the SS, or that they had to be members of the NSDAP?

A. No. Within the sub-department it was of ho significance, of no importance, whether anybody was a member of the Party of the SS for instance, there were emergency conscriptions into the office, civilian employees who, some of them, were not even members of the NSDAP; and, of course, many of them were not members of the SS. Qualifications for COURT II CASE IX the passing on of foreign information was the most important thing.

Some of them were members of the Wehrmacht, who had been detailed for such work.

Q. Was the defendant Fendler, while he was employed in Office VI, was he active in the Party or any one of the departments?

A. I know nothing about it. According to my knowledge he was fully employed in the office.

Q. Was defendant Fendler a member of the General SS?

A. No, he was a member of the SD. He was a member of the SD.

Q. Was he a member of the armed SS, the Waffen-SS?

A. That was only a formal matter. At the end of 1944 he joined the so-called "Training Institution" Konitz, but he remained in the Office VI, and he went on with the assignments of Office VI.

Q. Is it correct that the defendant Fendler received the order from you -- it was in 1944 -- to take part in establishing negotiations with the Western powers and technical requirements, and that he carried out these tasks?

A. It was contained in the program which I mentioned before, that Fendler worked on this task which had been given by the Office Chief, and in various cases he submitted reports which were to this effect.

Q. Do you remember what rank the defendant Fendler held when in 1943 he joined the Gruppe?

A. According to my memory he was Hauptsturmfuehrerbecause during the period he was employed there he became Hauptsturmfuehrer -- Regierungsassessor -- when he joined my office.

Q. Do you remember when Fendler was promoted to SS Sturmbannfuehrer?

A. I cannot say with certainly, but that was at the COURT II CASE IX end, shortly before the collapse.

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Possibly in January 1945. I do not exclude the possibility that it was only in April 1945. It was at the end.

Q. It is supposed to have been in January 1945.

A. It is possible.

Q. It is possible?

A. Yes, it is possible.

Q. Did the Referent for 6-b-4, and there also Fendler, did he have any executive power?

A. No. There were no executive tasks contained in the foreign service, and therefore Fendler did not hold such an assignment.

Q. I have two conclusive questions concerning the personaltiy of the defendant Fendler. Do you know him as a brutal, and fanatic personality?

A. No, Fendler was not brutal, and he was not fanatical.

Q. Did he have tendencies to disregard authority?

A. No, Fendler was an independent personality who always did his duty in office VI.

DR. FRITZ: Thank you. Your Honor, I have no further questions. BY DR. VOGEL (for defendant von Radetzky):

Q. Witness, if I remember correctly, you were, from the middle of August 1942 until the middle of January 1943... you were active in SK 4-a.

A. Yes, that is correct.

Q. What were the assignments of the defendant von Radetzky in your Kommando?

A. When I took over the kommando he was liaison officer with the Second Army, and it was also his task to maintain contact with the Hungarian Army.

Q. Is it known to you that von Radetzky, before your Court II Case IX arrival to the SD 4-a, was the deputy of the kommando chief?

Page 2,023

A. No, that is not known to me. And I don't think it is very likely... because at that time there was a Sturmbannfuehrer and Regierungsrat, Government Councillor, in the kommando who, if there had been such a thing as a deputy, he would have been the deputy.

Q. Is it known to you that the defendant Radetzky attempted to be relieved from his activities and his assignment in the kommando?

A. He discussed the question of his release, or the question of his attitude and assignment in the kommando, with me. At this time he attempted to join a combat unit. Shortly after my return to Berlin in the year 1943, Radetzky visited me, and he told me that he wanted to try at Office I to be relieved from this war emergency assignment.

DR. VOGEL: Thank you. I have no further questions.

THE PRESIDENT: Any other Defense counsel desiring to cross examine may do so now. the Prosecution may be prepared to take up the cross examination after the Tribunal reconvenes at one forty-five.

(The Tribunal recessed until 1345 hours) (The hearing reconvened at 1345 hours, 6 November 1947)

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DR. LUMMERT: Your Honor, I just have two or three

THE PRESIDENT: You may proceed, Dr. Lummert.

BY DR. LUMMERT: Witness, may I ask, is it correct that women and children?

officer of EK-IX which was active in the area in your rear?

anything about the defendant Blume at that time?

A Yes, as the leader of the kommando behind Blume's,

Q Then I have one final question. In your first Blume as soft and bureaucratic.

What do you mean by this expression "soft"?the "soft" type, and that for this reason he was reticent

Q Was this expression "soft" to mean that the defendant Blume refrained from the executions?

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men were made. I also had the impression that he was very careful about caring for his men.

Q You mean that he treated them well?

THE PRESIDENT: Pardon me, I did not quite catch that last answer of the witness. Will you repeat it, please. The interpreter can repeat it?

THE INTERPRETER: The witness was asked whether he meant that Blume treated his men well, and he said, yes.

THE PRESIDENT: Is that what you mean by being "soft" because he treated his men well? characteristic.

DR. LUMMERT: Your Honor, I have no further question.

THE PRESIDENT: Very well. BY MR. FERENCZ:

Q Steimle, didn't the men in Sonderkommando VII-A also tell you that Blume was murdering Jews before you arrived? that the defendant Radetzky came to you while you were the commanding officer of Sonderkommando IV-A and tried to get out of Sonderkommando IV-A, is that correct?

Q Why did he want to got out of your kommando? and when his job as liaison officer to the Army had become unnecessary.

didn't like the activity that was taking place there? completely understandable that he wanted to get away. what took place? combat troop unit. Furthermore, he no longer had the job of liaison officer. dissatisfied with the type of activity that was taking place in Sonderkommando IV-A?

A During the time he was in my kommando he didn't express his opinion of that activity. VII-A?

A I can not give the exact date for that. At least he was not present when I took over kommando.

Q Didn't you ask the men in your kommando, where is your leader, or when did he leave? he left, but today I no longer know what the period of time was between his departure and my arrival.

Q You say today you do not know. Isn't it a fact that you know, or at least you expressed an opinion on it not long ago in the interrogation? or even longer.

Q You said that in your interrogations, and why don't you say it now. You say now, you don't know?

A I just said that at that time I didn't have a definite idea which I can give about the period which elapsed between his departure and my arrival.

eight or ten days, didn't you?

A I can not remember at the moment? the defendant Naumann? Smolensk.

Q When was that?

A I can not give you the exact date. It was before he visited me, and it was in the month of November. and I can count back from this visit. It may be about eight or ten days between our meeting in Smolensk and his visit to me in Kalinin. He was in Kalinin either in late November, or in the first days of December, it can by only that he met me about the 20th or 25th of November, or two or three days earlier. I can not give you the exact date.

Q Isn't it true that in the interrogations you said that you met Naumann about the middle of November? because, for instance, I included the 20th November in this period of time, namely, the middle of November. with any more exactness as to the date, and you think it was towards the end of November, as Naumann stated in his examination? beginning of December he had visited me, and our meeting was about eight to ten days before this visit.

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you discussed the extermination of the Jews with him? confirmed to me once more that the order provide for the execution of all Jew, and that we could not her around this order, and, I can remember that he said he had spent sleepless nights over this order.

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Q. In other words he told you and passed on to you as his subordinate the Fuehrer Order, is that correct?

A. He again confirmed to me this Fuehrer Order which I already knew.

Q. He passed it on to you then as your superior officer? If he said that here is a Fuehrer Order to kill all the Jews didn't he then pass on the order to you?

A. The Fuehrer Order existed for me because I had received it from Nebe, and from my experience in my kommando. This conference was merely a renewed confirmation that the order read that way.

Q. You mean that you didn't raise the question with him in order to try to get away from carrying out that order. You just raised it in a conversational way about killing Jews in there and anything he said was on a purely friendly personal basis, is that what you are trying to say?

A. The conference dealt with the misgivings which I and Nebe expressed about this. You can see this form the fact that he said he had spent sleepless nights about it; the order was of the type that one had to have misgivings about it.

Q. Then isn't it true that what happened is that you said, here we have this Fuehrer Order to kill defenseless people, and Naumann replied yes, I spent many sleepless nights over it, but it's a Fuehrer Order, and we have to carry it out. Didn't he then pass on the order to you in that sense at least?

A. If I can say it in one word, he confirmed it to me that it had to be carried out.

Q. You heard the defendant Naumann testify that he never discussed the killings of Jews with you, didn't you?

A. I didn't hear this in that form.

Q. In what form did you hear it?

A. I thought that he said that he talked with his officers about it.

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Q. When I questioned him on whether he had passed on the order to you he denied it. What have you got to say in that connection?

A. He didn't pass on the order in that sense, because I already knew it, but he confirmed it to me once more, because it came from Berlin, and he had received it from Heydrich as he told me.

Q. Then he clearly at least implied that you too were to carry out that order?

A. That was clear that I had to carry it out.

Q. When did you become a member of the regular SS?

A. I only was a member of the SS within the SD in 1936.

Q. Isn't it true that in an interrogation on 7 July, you were asked if you were a regular member of the SS and SD, and at that time you answered, yes?

A. I was a member of the SS as far as the SD was an SS unit.

Q. Will you answer my question, please? I am asking you whether you were asked on 7 July whether you were a regular SS and SD member, and you answered, yes. Now is that correct?

A. Yes, I am. Yes, I am.

Q. And when did you become a member of Amt-VII, which was declared to be a criminal organization by the IMT?

A. Did I understand you correctly, Office-VII?

Q. Amts-VI?

A. Amts-VI. I joined Office VI by an order of 8 February 1943.

Q. Why were you hiding under an assumed name as a farmer after the end of the war?

A. I didn't hide under an assumed name, but the passport which I had been using since '43 as an intelligence officer I continued to use in order to look after my family in the French Zone, and as long as I could not get there I registered myself with the police under that name, together with two other comrades who were department chiefs in Office VI and registered under their correct names, so there was no question of hiding.

I had no civilian papers in my name of Steimle but before my imprisonment I tried by all means to find out about the fate of my wife and children, and I wanted this information because shortly before the end of the war I heard through a rumor that my wife and my children had been shot during the advance of the French troops, but this was not true. Then when I got the pass, I agreed with my two comrades that after we had visited our families, we would report to the American authorities as soon as possible and we would register with them as members of Office-VI. When I was interrogated I gave my entire personal data without being asked and to the surprise of the interrogating officer.

Q. What name were you using when you were working as a farmer?

A. The name of Bulsch, which I already used in my office.

Q. What were the dates when you were in command of Sonderkommando-VII-A?

A. 6th or 7th of September 1941, until my furlough on 10th December 1941.

Q. You have seen the documents, have you not, which list you as commanding officer through 13 February 1942. Have you seen those?

A. Yes.

Q. You say that is a mistake, the document are wrong?

A. I explained this in my direct examination that during my furlough I asked for my transfer, and I submitted a certificate by a dentist, and, therefore, the formal transfer was possibly delayed sometime.

Q. Who made the reports for you to Einsatzgruppe-B Headquarters, or did you make them yourself?

A. No, they were made by the commanding officers of the subkommandos.

Q. You mean there was no report sent from Sonderkommando VII-A as a unit to Einsatzgruppe-B?

A. Certainly, the various individual reports were compiled and sent to the Einsatzgruppe.

Q. Who compiled them?

A. The reports were not compiled but reports were sent on together, so far as I remember.

Q. Did you read them?

A. Certainly, I read those reports so far as I was present.

Q. And were the reports that were made in Einsatzgruppe-B the consolidation of reports from the Sonderkommandos within the Einsatzgruppe-B?

A. I didn't get the question.

Q. You say you sent reports to Einsatzgruppe-B. Isn't it true that Einsatzgruppe-B sent those same reports onto Berlin?

A. I assume that Einsatzgruppe-B used these reports in making out its own reports.

Q. Do you know that the commanding officer of Einsatzgruppe-B exaggerated these reports when he sent them to Berlin?

A. At my time I didn't hear anything about this.

Q. When did you first learn of the functions of Sonderkommando VII-A?

A. What do you mean by functions? Do you mean missions?

Q. I mean, missions?

A. When I was informed about it by Nebe in Smolensk.

Q. When was that?

A. In September 1941.

Q. What did he tell you was the mission of this Sonderkommando that you were about to take over?

A. I explained this in my direct examination. He told me about the mission against Communist resistance movements and their helpers, the Jews. That is what he spoke about, and he also spoke about the making out of reports, and he also mentioned that important documents were to be collected.

Q. He told you then that at least part of your mission was to kill all the Jews and Communist leaders, is that correct?

A. He told that the active Communist forces and their helpers, Jews, are to be killed. At that conference I understood it to mean that resisting forces, whether they be Communist or Jews, are to be shot.

Q. In other words, in September you didn't know that all Jews were to be killed, but you thought only those who actively resisted were to be killed, is that correct?

A. I believed this until I heard of the complete order from Foltis, and then I also understood what Nebe meant.

Q. What did Foltis tell you?

A. I told that in my direct examination. He said that during the advance various adult and able-bodied Jews had been shot; that the kommando had not shot women and the children, and he spoke of the Fuehrer Order.

Q. You say that he spoke of the Fuehrer Order. Do you mean that he told you that there was an order that was issued by Hitler passed on through the channels that all Jews were to executed?

A. I had heard of the Fuehrer Order as such from Nebe; the extent of the Fuehrer Order was to be gathered clearly from Foltis statement.

Q. In other words, Nebe first mentioned the Fuehrer Order, but didn't go into told you that the order meant to kill women and children just because they were Jews, is that correct?

A. In this sense, yes, that is correct.

THE PRESIDENT: Mr. Ferencz, I would like to get the chronology of these various discussions of the Fuehrer Order. The defendant spoke with Naumann, he spoke to Nebe, he spoke with Foltis. Let's get the order of it and what he ascertained at each discussion about the Fuehrer 6 November 1947_A_MSD_16_1_Hoxsie (Lea) September 1941 with Nebe - when Nebe mentioned it but didn't go into details, is that correct?

Q You said you discussed it with Foltes after that. When was that?

Q When was that?

Q you would say it was about the 10th September? is that correct? that it was a general execution order for Jews, at any rate I was able to see from Foltes' statement what Nebe had actually meant. had passed on to you an order to execute all the Jews? execute the Jews?

Q And you didn't go into great detail there either. You expressed your regret at having such an order. Naumann expressed his regret at having such an order, but there was nothing that anyone could do. Naumann said, "It is a Fuehrer Order, and that is all there is to it." is that correct? a matter of an order. Jews, that such an order existed and that it had been decreed.

Q Didn't you tell Naumann at that time that you had managed to 6 November 1947_A_MSD_16_2_Hoxsie (Lea) evade the order?

You noted his regret at having to carry it out.

A I didn't get the question; I didn't get the first part of the question. nights over it. Didn't you tell him that you had managed to evade the carrying out of this order?

A No, I didn't tell him that. by having to carry out this order? that you had in fact carried out the order?

Q And he didn't ask you any questions whether you had or whether you had not carried out the order?

Q And he didn't ask you any questions whether you had or whether you had not carried out the order?

A I don't think that he asked me that. at any time when you discussed this order with your superior officers, did you express any dissatisfaction with the order? soldier without questioning it in any way, without indicating any disapproval?

A I expressed my misgivings to Naumann. Otherwise I did nothing.

Q What did you say to Naumann?

Q You say you expressed your misgivings. What do you mean by that?

Q Did you say to him "I can't carry out this order; it is too difficult or it is too inhumane?" Naumann, but I don't know the details any more. I merely know the one thing, that the conversation dealt with these misgivings. Otherwise Naumann would not have said that he had spent sleepless nights about it, and I remember definitely that he said that. order? Jewish problem, I asked Naumann for a furlough.

Q I didn't quite understand your answer. You say that not in connection with the Jewish problem, you asked for a furlough. Do you mean to say that you did not try to get out of carrying out this order, at least insofar as the Jews were concerned? because I wanted to evade the order.

Q Do you remember why you wanted a furlough?

THE PRESIDENT: Just a moment please. We understand the witness to say that he talked with Naumann about a furlough but this had nothing to do with the order. Did you say that just one minute ago?

THE WITNESS: I said that in connection with this discussion I asked for a furlough.

THE PRESIDENT: And then you added, "but had nothing to do with the order." Did you say that a minute ago?

THE WITNESS: No, I didn't add that, your Honor.

THE PRESIDENT: Miss Reporter, can you locate in your shorthand notes the answer of the defendant to a question by Mr. Ferencz about the 6 November 1947_A_MSD_16_4_Hoxsie Lea) furlough?

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All right, let's have it in German then. German or English.

German Reporter: I asked him in this connection or during that conversation to give me a furlough because I wanted to evade the order.

THE PRESIDENT: But he just said, a minute before, do you have that? Well, just look for it. witness which you read to us?

The record was read by the reporter as follows: "A. During this conversation, but not in connection with the Jewish problem, I asked for a furlough from Naumann.") BY THE PRESIDENT: you asked for a furlough but it had nothing to do with the Jewish question. In the last question put to you by Mr. Ferencz you have given us a modification of that. Now, do you stand on what you said originally, did you tell us the truth when you said that in asking the furlough it had nothing to do with the Jewish order?

Jewish question that I did not say, as a result of a conversation about the Jewish question, I didn't say at that moment, "I want to go on furlough." but this had nothing to do with the Jewish order. Now, that is the answer you gave us and it is on the record. Do you now want to change that, and do you tell us that you did not mean what you very specifically stated in so many words.

Q Please answer the question directly. Do you want to change that very specific answer?

Q Did you say that; is the record correct?

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6 November 1947_A_MSD_16_5_Hoxsie (Lea) that you mean something else, is that what we are to comprehend? clear words, is that correct?

A These clear words don't express what I wanted to say.

Q Very well. Then you used language which did not express your thought?

Q Very well. Now give us language which expresses your thought. me once more that for any length of time it was not possible to avoid the execution of the Jewish order. My request for a furlough was conditioned by that. That is what I wanted to say. And these two things, the discussion about the Jewish question and my request for furlough, took place during the same conference. furlough it did have to do with the Jewish order?

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Q. Therefore, it is just the direct contradiction to what you said just a few minute ago?

A. I wanted to say before that when I asked Naumann for a furlough, I did not give the Jewish question as a reason for the furlough.

Q. We, therefore, understand that you modify and alter your original answer, that when you said that you asked for a furlough but it had nothing to do with the Jewish order, what you really meant to tell the Tribunal was that when you asked for the furlough you did not tell Naumann that you wanted it to evade the Jewish order, but that is the reason you had in your mind. Is that what we are to comprehend?

A. Yes, your Honor. That is right.

THE PRESIDENT: Very well, proceed. BY MR. FERECZ:

Q. In other words, you were deliberately trying to evade your duties as a soldier?

A. I wanted to avoid it. This special duty I wanted to avoid.

Q. Now, you have noticed the documents which were introduced against you. Particularly you have noticed one of 13 September showing that 1011 people were killed by Sonderkommando 7a. You have noticed one of 14 November showing that 1517 persons were killed by Sonderkommando 7a. Now, you were in command of that unit during that period, weren't you?

A. Yes.

Q. And the reports show that more than 500 people were liquidated by you kommando during at least part of the time of your command, is that correct?

A. The reports show this, but they also show that this concerns executions because of partisan activity, and that these fights were not only carried out by my kommando but in 80 percent of the cases in cooperation with Army units. When two divisions are named, then the twenty-five men who participated cannot be the decisive factor, but they were merely auxiliary means. The figure appears in my kommando's report Court,II Case 9 but it also probably appears in every report of every Army unit that participated, and that is the same way with all the other reports when it is mentioned which Army units participated in any particular mission.

Q. You say then, that although these reports show that 500 people were killed by your kommando during the time of your command, you had assistance in this job from the Wehrmacht, is that correct?

A. My kommando was used to support the Army, not that I called in the Army to support me.

Q. Do you say that all 500 of these people who were killed were partisans?

A. At any rate, as far as I know it myself, and as far as I can see in the document, yes.

Q. What happened to the Jews in your area?

A. Nothing than what, for example, happened in Rshev where a Jewish Council was installed, as I can see from the document.

Q. What do you remember personally as having happened to the Jews in the area under your command?

A. I know that even before my arrival my kommando had installed a Jewish council in Welisch and I can see from the documents that a ghetto was installed there too. I know that in Rshev a Jewish council was installed and probably the Jews were obliged to wear the Jewish insignia. The same probably was the case in Kalinin.

Q. What did you do as the commanding officer as concerns the Jewish question?

A. I didn't do anything in this respect.

Q. You didn't even have the Jews arrested, is that correct?

A. I had no Jews arrested.

Q. Did you know that there were Jews in your area?

A. In Welisch where the Jews were already in the ghetto I knew it, and Rshev and Kalinin I undoubtedly that there were a few Jews in these towns.

Q. And you knew that Hitler had ordered the Jews to be exterminated yet you did nothing to the Jews who were under control, is that correct?

A. Yes.

Q. Then you violated an order from Hitler, did you not?

A. I didn't carry the order out immediately after it became known to me.

Q. Did you carry it out later?

A. No, later I wasn't there any more.

Q. Then you violated an order of Hitler inasmuch as he had ordered the Jews to be executed and you had Jews in you area and you did not execute them, isn't that correct?

A. The order did not say at what time the Jews would have to be executed.

Q. Are you trying to say now that the Hitler order, as you understood it, meant that the Jews were to be given special care of some kind and saved for the future to be executed?

A. No, the order did not have that content, but in its execution it could be modified for a certain time if one, for example, was busy, as my kommando was, with fighting partisans.

Q. Didn't you know that the order said specifically that all Jews were to be killed?

A. Yes, I heard that this order referred to all Jews?

Q. And as a soldier when you get an order to kill all Jews, do you interpret that as meaning to save them for the future, for somebody else?

A. One can have two or three orders at the same time -

Q. I ask you what you did, how do you interpret that as a soldier?

A. I relegated the order because I had a more important order for my area, namely, the security against partisans.

Q. What do you mean, you relegated the order?

A. I didn't carry it out at that time.

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Q. Then weren't you violating an order from your superior officer?

A. I simply tried to and did pigeon-hole the order, and if you consider this a violation of the order one can consider it that way.

Q. Nebe told you Vyasma on the 10th of October that you had better start shooting women and children too, did he not?

A. He told me that in Smolensk.

Q. Then he told you in Smolensk that you had to shoot women and children too. Now, did you obey that order to shoot Jewish women and children as well?

A. He didn't tell me that I had to show him execution reports about that two of five days later.

Q. I am asking you, did you obey that order from Nebe who was your superior officer, to execute Jewish women and children?

A. No, I did not obey this order.

Q. Then twice you have violated orders from your superiors. Were you ever court martialed for violating your orders?

A. No, but I always had proof that the security measures were urgent in my area because of conditions there.

Q. So that you were, as a Sonderkommando leader, able to avoid carrying out the Fuehrer Order without any action being taken against you in my form, is that correct?

A. I could make the attempt temporarily to evade this order because of the conditions, and the special conditions were that in the first four weeks my kommando was kept busy by the acute attacks of the partisans, that in the third period when I was in Kalinin one always had the excuse that under the bombardment of Russian artillery one could not undertake large-scale Jewish operations. These were the possibilities which remained open to me.

Q. Then you succeeded in violating the orders of your superior officers without any evil consequences to yourself, is that correct?

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A. Every Einsatzgruppe leader who knew the activity of my commando would certainly have recognized that the missions accomplished could be justified.

Q. Will you please answer the question--the questions was you succeeded in violating the orders of your superior officer without any evil consequences to yourself, now, is that correct?

A. I evaded it without any consequences, yes.

Q. Now, do you know that all the other commando leaders and Einsatzgruppe leaders had partisans in their zones, too?

A. But not to the extent as it was true in my commando area. Also in the other areas the commando leaders were in cities where there were a lot of Jews. This was not true in my area.

Q. You have told us that there were Jews in your area, that there was a ghetto full of Jews?

A. I said that in Rshew and Kalinin there were only a few Jews.

Q. Didn't you tell us that there was a ghetto?

A. I said that I read in the documents here that in Welisch there was a ghetto. I do not know how many Jews were in that ghetto because the ghetto had already been installed previously.

Q. And the first time you knew there were Jews in your area was when you read it in the documents given to you here in Nuernberg?

A. No, but I did not know that there was a ghetto in Welisch, but I knew that there were Jews.

Q. How many Jews would you estimate were in Welisch?

A. I cannot say that because I did not see the ghetto.

Q. Now, you have told us that you were the expert on SD reports and you spent all your time making these careful reports to send back to Berlin. Weren't you interested in the Jewish question, or were you just interested in the farmers?

A. I did not report on the Jewish question.

Q. Now, how is it that you as an SS Colonel experienced and used to making security reports and in possession of an order to murder all the Jews, spends his time making reports and takes no interest in the Jewish question?

A. The SD reporting the way I carried it on in the Reich, was not concerned with the security question but with the problems of domestic life, with domestic problems.

Q. Was the SD the security service?

A. SD means security service.

Q. And does that mean worrying about domestic problems or is that concerned with studies of those persons who threatened the security of Germany?

A. May I have reference to the many statements made here already that the SD work actually did concern itself with domestic problems, not about reporting of enemies.

Q. So that you say that you were not at all concerned with the Jewish problem, and you did not know how many Jewish persons were in your area, and you did not do anything with them although you had an order to murder them?

A. I said that ghettos were installed by my Commando during my time and that the towns established Jewish counsels.

THE PRESIDENT: Mr. Ferencz, I would like an amplification of this answer about the functions of the SD. The witness has stated that it was not concerned with security, but only with domestic problems. This answer followed a statement that SD was security police. It is difficult for me to reconcile those two answers. Would you please endeavor to have that illucidated? BY DR. FERENCZ:

Q. Witness, you have heard the question from the Tribunal. Would you please explain why it is that the security service was not concerned with security questions?

A. It has already been attempted here to keep those two concepts apart, the one concept is in the security service, and the other in the security police. The security service as a branch was occu pied, under the leadership of Ohlendorf, with reporting about domestic problems, about the economy, about culture, religion, etc.

The security police dealt with police security against the enemy, but both are combined in a single formation in an SS manner which finds its expression in the SD ensignia which these people wear on their sleeves, the man who deals with domestic problems as well as the man who does police work; in one case it is an SS unit where both branches are united under the same uniform, and in the SD it is a matter of an information function, an organization reporting on domestic trends. BY THE PRESIDENT:

Q. Did you function in both capacities, both in security police and security service?

A. I always belonged to the security service, the SD.

Q. You never had anything to do with the security police?

A. I had nothing to do with the security police outside of the fact when I was commando leader in Russian, before that I did not have anything to do with it, later not either.

Q. well, you say outside of when you were in Russia, that is what we are talking about. That's like saying, you never had anything to do with the war except between 1939 and 1945. You were in the Security Police when you were in Russia?

A. Yes. All branches were together. That was a new combination which we did not know in the Reich; the SD and security police were now combined in one unit in the assignment, but both functions within this unit remained intact and had to be carried on. Therefore, the Einsatzkommandos had a police mission as well as an SD mission.

Q. Yes, so while you were engrossed in writing up these reports on collective farming and crops and other domestic things, you occasionally gave an ear and an eye to security for the German forces, didn't you?

A. Yes. That is when I already said in my direct examination when I used my commando to fight partisans the way the army ordered it.

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That is when my commando worried about security measures.

Q. You told us yesterday , and it was very interesting, that you were studying the collective farming plan. Did you intend to import that into Germany, that plan?

A. No, I did not have that intention, Your Honor.

THE PRESIDENT: You may continue, Mr. Ferencz. BY DR. FERENCZ:

Q. Was there anybody in your commando who was concerned with the Jewish question?

A. During the time I was there the Jewish question was not treated in the sense in which you mean it.

Q. Was it so treated before you arrived.

A. Dr. Blume already described this, that on the order of Nebe he had some Jews executed in one case.

Q. Then your unit was actively engaged in carryingout the Fuehrer order before you arrived. Did you rescind that order?

A. No I did not revoke the order, I already said that.

Q. And your men just stopped being concerned all by themselves?

A. The men carried out the order which was given to them continously by fighting partisans.

Q. I am talking now about the Jewish question. You told us that they were carrying out the extermination of Jews before you arrived and that you did not rescind the order, then why did they stop?

A. Under Dr. Blume they did not carry the order out either, if he had not expressly received the order from Nebe in the cases cited.

Q. But they did carry it out, you told us they did, and Blume told us they did.

A. He said that in the one case he had ordered it-one or two cases he had ordered it

Q. I am asking you why did you men who were engaged in exterminating the Jews before you arrived stop carrying out an order given to them by Nebe, by Hitler, or anybody else?

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A. For a lengthy time, by order of the army, their job was to fight the partisans in this area. This was the first question which occupied them continually. The documents show this.

Q. What orders did you give to this commando which was under your command?

A. I did not give any orders in detail but the orders were given for the partisan warfare from the reports, from the conference with the army via the liaison officer and the missions which were then carried out against the partisans.

Q. You said the army gave those orders. I am asking you what orders you gave as the commanding officer who was there supposedly to be giving orders?

A. The commando was divided into detachments, and I can't remember this case, but if the army tells me on such and such a day an extensive action is to be carried out in the area of Demidov and that the special Commando 7A is to furnish so and so many men for interrogation purposes, then I passed this order on to my subordinate officers or I went to the G-2.

Q. Pardon me, Steimle, I am asking you specifically, not what you would have done, but what orders you actually did give.

A. I, for instance, gave the order that the commando in such and such a strength was to advance to Wyazma with such and such a tank unit.

Q. Did you know the purpose of this advance?

A. Yes. I gave the order and I told the army the reasons, to join the troops there and to safeguard the documentary material there, and to await the arrival of the rest of the commando there.

THE PRESIDENT: Mr. Ferencz, would you mind breaking at this moment for the afternoon recess. The Tribunal might indicate at this time because it never occurred to us to say it before, and this is without any reflection of any kind on the defense counsel or prosecution counsel, that when any witness isunder cross-examination and a recess intervenes that that witness may not talk with counsel.

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Of course, that same rule applies to prosecution witnesses.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. ULMER (ATTORNEY FOR THE DEFENDANT DR. SIX): Your Honor, I am about to submit my document books and I would like to have them finished over the weekend. I would like to be able to talk to my client for one afternoon. Therefore, I would like to ask the Tribunal to excuse him from court tomorrow afternoon.

THE PRESIDENT: The Defendant Six will be excused from attendance in court tomorrow afternoon that he may confer with his attorney.

DR. ERICH M. MAYER (ATTORNEY FOR THE DEFENDANT BRAUNE): Your Honor, I should like the Defendant Braune to be excused tomorrow afternoon in order to be able to prepare his examination on the witness stand.

THE PRESIDENT: The Defendant Braune will be excused from attendance in court tomorrow afternoon in order to prepare himself for testifying in court.

DR. MAYER: Thank you.

THE PRESIDENT: Very well.

Q. (By Mr. Ferencz): Steimle, you have been telling us about all the things you didn't do. You have seen the documents showing that 500 people were killed by your Kommando during only a part of the time that you were in command. Would you please explain in chronological order the executions which you know took place by the units under your command, giving us how many people were killed, when they were killed, where they were killed, and why they were killed.

A. I can only mention, with the aid of the documents, those events which I remember. They are shootings, the figures of which I do not remember, which took place in Welisch. They were shootings of partisans. These executions were connected with orders of the staff of the 9th Army, or the G-2, Counter-Intelligence Officer, or by order of the competent local commander.

Q. When was that?

A. During the months ofSeptember and October.

Q. How many people were killed?

A. I do not remember details. I can only according to the documents repeat the figures contained in the documents, I mean, as far as the territory of Welisch is concerned. It must have been about 200 to 250 people.

Q. Continue please. What is the next execution that you remember?

A. It is not an individual execution, but there are a number of assignments, and sentences; in connection with these assignments other executions were carried out. In the territory around Velikki Luki, I do not know how many executions were carried out. Furthermore, I know about executions which I ordered myself, partly, in Kalinin, during the time that I was present there.

Q. Now, one at a time; back in Velikki Luki, what type of people were killed? Were they also partisans?

A. Without the slightest doubt they were Communist functionaries, active either as partisans or working as Communists illegally. Furthermore, the event mentioned in the reports, this event of juveniles -

Q. And when was that?

A. That, according to the Report, must have been in September.

THE PRESIDENT: What is meant by a Communist working or someone working as a Communist illegally?

THE WITNESS: By this I mean a man carrying out Communist Party works by collecting circles in order to raise a resistence movement against the occupying power. This offense was prohibited through a decree by the occupying power. The Communist Party was dissolved and its illegal continuance was punishable, but I have already said that the Communist functionaries were under duty to resist with all means at their disposal and this resistance was expressed in partisan fighting and sabotage.

THE PRESIDENT: Well, then, it was considered that a man belonging to the Communist Party should be regarded as an enemy and as a partisan?

THE WITNESS: No. No, Your Honor. Only when he continued his activities in the sense of the order by resisting behind the lines. In that case it was an offense against this decree.

THE PRESIDENT: Then it wasn't because he was a Communist that he was executed; it was because he was resisting?

THE WITNESS: Yes.

Q. (By Mr. Ferencz) And approximately how many people would you say were killed in September in Velikki Luki?

A. That I cannot say. I have no idea.

Q. Was it more than 100? Was it less than 100?

A. I don't know. I think it must have been less than 100.

Q. Well, you say now that you know that in September you shot people in Velikki Luki and you have no idea of how many people it was. You just remember shooting people.

A. I was only in Velikki Luki once or at the most twice.

Q. And when was the action in Kalinin which you personally ordered?

A. I did not carry out any operations there in Kalinin. I was in Kalinin from the 7th of November until the 7th of December with interruptions and during this time, if I was present, I received the reports, that is, the minutes of interrogations and I confirmed or changed the sentences which were suggested in these reports. There might have been five or there might have been 15 or even 20 shootings.

Q. What type of people were they who were shot in Kalinin?

A. I remember one case in which an active spy, a female spy, was shot where Wehrmacht troops were active in the town and these small Russian groups, who had the order to carry out terror actions against part of the Wehrmacht and so on, threw grenades at the local kommandatura.

Q. Now are these three actions or those three locations the onlyplaces where units under your command executed people?

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A. Those three places? In Rzhev there was also a kommando.

Q. Did the kommando in Rzhev carry out any executions?

A. I don't remember, but I assume that also there were executions carried out.

Q. In other words, you assume that one kommando carried out executions in Rzhev too. Do you have any idea when that was?

A. I must assume that it was so. It could only have been in November, or, perhaps, it could have been in December after I had left.

Q. I am only interested in while you were there. And how many people do you think were killed by your Kommando in Rzhev in November?

A. I don't remember the number, because I wasn't informed about details. Any large scale shootings were not carried out in Rzhev. That depended on the resistence which was carried out in this area.

Q. And in Rzhev too you just shot partisans, is that correct?

A. We shot those who resisted or who carried on resistance in any form whatsoever, any form of resistance against German Wehrmacht units.

Q. And is there any other location where units under your command either in Einsatzkommando 7a or 4a carried out executions?

A. I already pointed out this morning that in Kursk executions were carried out.

Q. And when was that?

A. That could have been in October or November 1942.

Q. And about how many people were killed there?

A. I don't know. Individual cases were dealt with which I don remember. How many there were, however, I do not know.

Q. What do you estimate? Was it more than 100? Was it less than 100?

A. My estimate could be wrong, because I have no idea concerning these executions in Kursk.

Q. Are executions such an ordinary thing with you that you remember where they took place and when they took place, but you do not know or can't even estimate how many people were killed?

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A. I did not investigate these cases, the individual cases. I only assumed it in some individual cases which came to my command, but if I tell you that there were 20 cases, I might be wrong, just as wrong as if I said there might have been 30. In any case, not many executions were carried out in these kommandos. It only depended on what cases of resistance came up or what attempts had been made on Wehrmacht units; the number of shootings depended on this.

Q. And there again you just shot persons who resisted, is that correct?

A. Yes. Resistance in the form I mentioned.

Q. Now are there any other places that you can remember where units under your command carried out executions?

A. I mentioned this morning that when we marched towards Stalingrad we shot and destroyed a partisan advance group.

Q. Where was that?

A. That was in Kallatsch-Nichnichevskaya.

Q. And when was that?

A. That must have been in September, 1942, during the march towards Stalingrad.

Q. And about how many people were killed there?

A. There were killed in combat a small group of 6 to 8 people.

Q. And again they were persons who resisted?

A. Certainly.

Q. Are there any other places you remember where units under your command executed people?

A. No.

Q. In other words, executions were carried out by units under your command in Welisch, Velikki Luki, Kalinin, Rzhev, Kursk, towards Stalingrad, is that correct?

A. Yes.

Q. And in all you estimate about 300 people were killed in 400 people were killed?

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A. I spoke of my first kommando and I said that the number mentioned in the documents may have amounted to 500 and that these figures to a large extent were due to actiona -

Q. Just answer my question.

A. May I ask that the question be repeated?

Q. I was just looking at the figures you just gave me. It was about 300 to 400 people that were killed, is that correct?

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6 Nov 1947_A_MSD_22_1_Biolsi (Hildesheimer) hundred, of the Special Kommando 7-a, if all those are included who were shot in connection with units of the Wehrmacht or other such individual actions. order? order them. If investigation results would be submitted to me I would confirm or modify them. How many there are, I do Not know. The figure can't be very high -- but I don't think this is the question in this case. I did confirm judgments and sentences after I had the chance to examine them. BY THE PRESIDENT:

Q Let's get this clear, now. Did you ever order an execution?

Q How many did you order?

Q Was the number so many that you can't recall?

Q Then why don't you remember? Is the matter of an execution a pretty serious business?

Q Please answer the question. Is the matter of an execution a very serious business?

Q Is the matter of snuffing out the lives of people serious?

Q All right. Now, you say you don't remember the number. And it isn't because the number was so great. You exclude that. a grim and serious business. Why, then, wouldn't you remember how?

6 November 1947_A_MSD_22_2_Biolsi (Hildesheimer) many executions you ordered? Honor, or the number of judges' sentences examined by myself.

Q We asked you if you ever ordered an execution. You finally said yes. do so. I can't say with certainty that I ordered 20 or 25. In the case of Kalinin, for instance, I can give the exact number - perhaps, because approximately I ordered about 5 or 10 executions there.

Q When were you apprehended after the war?

Q When?

Q You have been two years awaiting this trial. That's right, isn't it? You have been reading from your statement, already prepared. Did it not occur to you in those two years' time, or at least during the last month or twoo after you had actually received the indictment, that a question would be put to you as to the number of executions, and did you not try to recall the exact number? think about it. I can have examined and confirmed 20 to 25 judgments.

Q All right. Then you ordered 25 exectuions...not less than 20, nor more than 25. Is that correct?

A I cannot say that exclusively, your Honor; it must have been approximately this number, at least, of orders given by me personally... orders given for execution. All other cases-which you can square with your conscience, and your oath to tell the 6 Nov 1947_A_MSD_22_3_Biolsi (Hildesheimer) the exact number -- the number must be between 15 and 25, possibly 30, cases which I personally investigated; investigations which led to an order of execution.

THE PRESIDENT: Mr. Ferencz, the witness has stated that the number of executions was not less than 15 nor more than 30. Proceed from that point. BY MR. FERENCA:

Q You told us where executions were carried out. I would like you to explain now where it was that you ordered these 15 to 30 executions. You have stated that 5 to 10 were ordered in Kalinin. Where did you order the others? Velikkiluki.

Q How many there?

A I don't remember. It might have been 4 or 5 cases submitted to me for investigation. Furthermore, most cases were submitted to me during my stay in Kursk. It might have been another 10 to 15.

Q Ten to fifteen in Kursk. Any Welisch?

A No, I can't remember at the moment, but there might have been a few cases there for my decision.

Q Any in Rzhev?

Q Any towards Stalingrad?

A No. The mentioned group was shot in combat, but not after an investigation.

Q Any in Tshernishowskaya?

Q Didn't you once state in interrogation that a group of people were killed under your command in Tschernishowskaya?

A I spoke of the partisan kommando... this partisan advance kommando, kommando head, was near Kallatsch or in Mishnitz-Shirskaja, not in Tschernishewskaya.

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Q Now, what did you say about Tschernishewskaya? I have here an interrogation where you said that a group of partisans were killed there. Do you now change your statement concerning that?

A Either the statement was mistakenly concluded... I never had the possibility to speak of Tschernishewskaya. It must have been a mistake if I did. This partisan group was in the neighborhood of NishnizShirskaja or Kallatsch. Czernitschewkera -- C-z-e-r-n-i-t-s-c-h-e-w-k-e-i-a?

Q You think they made that up?

A I don't think so. If so, I must have made a mistake in that case. your answer. You said that a group of from seven to five people wanted to form a partisan group, were found, and itwas discovered through a girl in the village who gave you the information about it, and you said that some of the men were shot in combat, and some of them were than "shot by us", and that "bei diesen Erchiessungen war ich dabei" -- which means "by this execution I was there" -- do you remember that?

A You mean the execution of the partisan heads?

Q You just said you don't remember anything about shootings in Tschernishewskaya, it wasn't in Tschernishewskaya. You are saying that the place is wrong... that the stenographer -

A It was on the road between Nishnitz Shirskaja and Kalatch; that is, on the route to Stalingrad. I do not say that the event as it is here actually took place. were present? Let me give you your interrogation, you read it, and then please explain it to the Court. Please the whole answer first, slowly and carefully, and then you may explain it in any way you see fit.

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6 November 1947_A_MSD_22_5_Biolsi (Hildesheimer) tioned, here I have nothing to say about executions except about a very small Einsatz assignment which was carried on in the territory of Tschernishewskaya," where a group of five to seven people were raided who were about to form a partisan group. Through treason on the part of a girl--"

THE PRESIDENT: Is the defendant reading, or commenting? We don't know.

MR. FERENCA: He is reading, your Honor.

THE PRESIDENT: Oh, he is reading. Very well.

A (witness continuing) "...given away by a girl. The village was found out. A few of the men were shot in combat, and a few were shot afterwards. I was present at this execution." statement in an interrogation, when now you tell us it is not true? is the same event about which I made statements in my direct examination, and this afternoon. It is a matter of raiding a partisan advance head. It was in the territory of Nishnits-Shirskaja and Kallatsch, but not in Tschernishewskaya.

Q Now where is this place in which you say it took place? You listed six places where executions took place. But you did not list Nishnits-Shirskaja or Tshernishewskaya. Now..... There was a partisan advance head which was destroyed, and these men were shot in combat.

Q Was that near Welisch?

Q Was that near Welikiki Luki?

Q Was that in Kalinin?

Q Was that in Rzhev?

Q Was that in Kursk?

Q Was that on the way to Stalingrad? executions on the way to Stalingrad. Do you now change your story? that on the way to Stalingrad there was no active resistance of any kind except in one case where, by treason of a woman, we succeeded in raiding one partisan group and we shot them in combat. of a kommando... I myself did not reach the location where the fighting took place because by accident we came across another group at this partisan place.

Q Now, let's get your story straight. How many groups did you kill there? us.

actually tried to fight us.

Q. How many were killed without combat?

A. Those were the ones who were shot after an interrogation.

Q. Now there were two groups. One group was killed in combat, and one group killed after an interrogation, is that correct?

A. Yes.

Q. You listed executions in both cases?

A. The first one was not executions.

Q. You listed executions in the second place?

A. Yes.

Q. You just told me when I asked you if you ordered any executions around Stalingrad, and you said, no, and now you told us, yes. Now which one is true?

A. I said just now that those who were taken prisoners, there were three girls among them, were shot after having been interrogated, and that had been ordered by myself.

Q. I went through the list of places and I asked you how many were killed in Welesch and you said, one or two. I asked you how many in Uelikky Luki and you said four or five. I asked you how many in Kalinin and you said five to ten. I asked how many in Welisch and you said, none. I asked how many in Kursk and you said from ten or fifteen. I asked you how many towards Stalingrad, and you said none. Now I ask you again how many were killed in the area towards Stalingrad under your command?

A. Partisan group of 4-6 men, and the three girls belonging to this group.

Q. In other words, 4-6 men plus the three girls, that is about nine people -- seven or nine people; you are now telling me that seven to nine people were killed by your order in that vicinity towards Stalingrad, is that correct?

A. No, the first group I said were actually killed in combat.

Q. How many were killed under your command not in combat?

A. Three.

Q. Why did you say none when I asked you that question the first time?

A. I had not remembered the details of this event at the time.

Q. In other words--

A. I have no reason to keep it back, as it was absolutely a justifiable shooting.

Q. You say that you didn't reveal it the first time because you had forgotten about it, but it was absolutely justifiable. You said in your interrogation you have just read, that these men were shot because they were about to form a partisan group. You regard that as absolutely justifiable?

A. Yes, they were not killed abter being made prisoners and then shot, but they were in a little forest which was encircled, and when my kommando arrived, or at least part of my kommando, there was fighting, and the men did not give up but they threw grenades and fired at us, and because of this fighting they were killed.

Q. You just said after an investigation, the interrogations you rodered they had to be shot. Did you interrogate them while they were throwing grenades? later on.

Q. You shot the three girls later on after an interrogation?

A. They were shot after an interrogation.

Q. After they formed a partisan group, is that correct?

A. They were participants in a partisan group, yes.

Q. You said they were about to form a partisan group, and that is why they were shot?

A. Yes.

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Q. Now you say the three girls who were about to form a partisan correct?

A. Yes, that is the fact of the case as true out in the eximation.

Q. How long did the trial last of these three girls who were about to form a partisan group?

A. The three girls were first in protective custody, and then

Q. How long did the whole trial last?

A. I don't remember but it could have gone on for about eight

Q. Is that eight days for each girl, or eight days for all three girls?

A. The examination and investigation of the whole case took a

Q. What were you doing during those eight days; were you pre sent all the time supervising this?

A. No.

Q. When did you get any information on the execution?

A. This event was reported to me. I read the whole minutes

Q. You studied it all very carefully?

A. Yes, I read it all.

Q. You forgot all about it when I asked you a few minutes ago, but now you remember all the details?

Q. Tell me, what was the charge against these girls who were trying to form a partisan group to resist an aggressive invader?

What was the crime these girls committed?

A. They were members of an illegal organization , and they were in contact with another group which was in possession of arms.

The girls were not only a part of a formal company, but they were about to build up an information sabotage service, and also the girl who gave them away was a girl who knew about all the preparations for such things.

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Q. Now when you witnessed the execution, will you please describe how it to the Court. How many men were present at the execution; were they shots were they beatened; were they hanged, what happened?

A. They were shot.

Q. How many men were present at the shooting?

A. About ten men were present.

Q. Who gave the order to fire?

A. One of the leaders.

Q. And you were present all the time?

A. At this shooting, yes.

Q. Did the girls resist in any way?

A. No.

Q. Was the same procedure followed in the case of all partisans who were caught?

A. I didn't participate in other partisan actions, but the procedure was always the same. I have already mentioned on direct examination that the individual cases were examined, as becomes evident from the records.

Q. In other words, you would have us believe that five-hundred people were killed as partisans by having a trial lasting about eight days, and that every one had their individual files examined, and then you passed sentence on them is that correct?

A. I said quite clearly that the sentence was not my own when these cases were tried, as becomes quite evident in the documents, and I must point out the document in which the situation becomes quite evident For instance, this one gives in it 180 partisans who were shot; that two divisions of the Army were assigned to the transport of prisoners to the camps, and that these divisions, or regiments, or companies, had prisoners who had been captured in the actual fighting, and, therefore, had been, made prisoners, because they were active partisans, and belonged to partisan movements.

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Then the whole case was investigated for about a few weeks, by the secret constabulary, and the official document shows quite clearly that one-hundred people were released because they had no connection Whatsoever with this partisan movement.

Q. Steimle, what did you do when you found a man who was a Communist functionary?

A. If he was---

Q. Say he was a plain ordinary Communist functionary, head of a collective farm, or a Communist official, aaptured, doing nothing but sitting in his office reading Communist literature, what did you do with him? part in any activity, he was freed. Possibly he was even employed by us as a liaison man in a confidential position.

Q. In other words, although you were at war with the people, concerning most of Communism and Bolshevism, if you found a Communist who was an official not doing anything, you gave him a job, and that is what you did to him?

A. He was prepared to work for us, we used him.

Q. And if he was not prepared to work for you, then what?

A. Nothing happened to him, if he himself was loyal.

Q. You sent him home again?

A. Yes, certainly.

Q. And you expect us to believe that?

A. I can only say what is true.

Q. Did you hear Ohlendorf say it was necessary to kill all Jewish children because it was possible that they might become Communist later on, and represent a future threat?

A. Yes, I heard that.

Q. And you did not regard Communist officials as a threat to German security at all.

You just sent them home, that is what you is the truth?

A. I can assure you that there were not many who were found out to be Communists functionaries.

Q. Although they were Communist officials, if you didn't catch them doing something against you, you just sent them home and forgot all about it?

A. Yes, but there were few such cases, because others would part of them had become quite clearly partisans, which is obvious if you study the document.

Q. You told us you had a gas-van in one of your kommandos, is that correct?

A. Yes.

Q. And that you never used it except to transport German soldiers around is that correct?

A. No, not to transport German soldiers but supplies.

Q. You didn't use it for the purpose of killing women and children, as it was directed, did you?

A. No, I didn't use it for that.

A. No, I did not use it for that.

Q. You didn't use it for the purpose of killing the Jews who were in your area, did you?

A. No, I did not use it for that either because I did not kill Jews in this sector and because I do not know whether I could have come, to the direction to actually use the gas van for this purpose.

Q. Tell me now, if you were such a good National Socialist and good SS man, tell me why was it, although you knew the Fuehrer policy as regards Jews and Communists, you didn't kill any Jews and Communists in your area?

A. I did not say that I did not kill any Communists in my kommando activity, but we killed all the Communists who actually resisted the German occupation-power, and as far as the killing of Jews is concerned, as I have already mentioned today, I tried to evade this order because it seemed to me impossible to carry out.

Q. You say you did not kill Communists just because they were Communists, and you did not, of course, kill Jews just because they were Jews, is that correct?

A. I diet not speak about Jews, but I said that I tried to evade the Jew order concerning the Jews because from the moral point of view it seemed very hard to carry out.

Q. Did you know at that time that it was the established policy of Hitler and your Government to exterminate the Jews and eliminate Communism?

A. I only knew the order concerning the Jews, which I talked about today. The killing of all Jews as an entire program I did not know.

Q. You did not know about the killing of Jews as an entire program? Did you forget about what you said this morning?

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A. I made the difference just now between the order valid for Russia as such contained in the Barbaressa Order, the Fuehrer Order, and the effort of the German Government to eliminate all Jews. I made a difference between those two. The first was an order which was passed on to me. The second I never heard about.

Q. Or was it because of your great friendship for the Jews that you tried to evade Hitler's order to exterminate them?

A. I already said that this is due to the fact that my kommando in these sectors was so busy with other security tasks that it was quite possible to relegat this order into the background or oven not to carry it out at all.

Q. I am trying to find out why it is that you, an SS-colonel and a good National Socialist, did not want to carry out the Fuehrer's Order to exterminate the Jews.

A. Because humanly I thought it was a very heighty, difficult decision to carry it out.

Q. It was not because of any friendship for the Jews then?

A. I said that the carrying out of an order and the purpose reached with it would have given reason for serious misgivings, not the question whether I myself would carry out the order or not, but the manner in which the Jewish solution of the question is handled, and the carrying out of the Jewish problem from this angle.

Q. My question was, then, you refused to carry out this order or tried to evade it, not because of any friendship for the Jews as such?

A. I tried to evade this order because the solution of the Jewish question just by shooting them, by the actual physical elimination I did not think the right human solution, and also politically I considered it wrong.

Q. Did you think it was better to beat the Jews than just to shoot them?

A. No, I would have considered it more proper to find a solution which, in fact, the world has not found up to this day, to establish a Jewish national state.

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In fact, there were negotiations concerning this question between agencies of the Reich Security Office and the Jews abroad prior to 1939 in order to find such a solution.

Q. Did you ever do anything to help the Jews?

A. Yes, individual Jews I did help.

Q. Did you ever participate in any actions against the Jews?

A. No, I did not participate in any action against the Jews.

Q. I want you to think very hard about it, and in order to refresh your memory I will give you the date, 13 July 1939, and I repeat my question.

A. What was the date?

Q. 13 July 1939. Did you ever participate in any action against the Jews?

A. No.

Q. Do you recall a letter concerning you, sent by the Security Service of the Reichsfuehrer-SS of the 14th of July 1939, concerning disciplinary action taken against you because of excesses in connection with the Jewish action?

A. I know what all this is about. It does not concern my own person, but it concerns my own staff leader.

Q. Tell us what it is about.

A. In connection with the events of the 8th or 9th of November, 1938.

THE PRESIDENT: '38 or '39?

THE WITNESS: 1938, your Honor, acht und dreissig.

MR. FERENCZ: '38, your Honor, is correct for the action.

THE WITNESS: I was in Belgium during those days. I was in Belgium which has been noted in the records which were confiscated.

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After I returned I found in my office, near my office, two or three cars. Also they contained files of the Jewish cultural community office. These files were secured by my then referent Haushann from the Jewish synagogue and were returned to the Jewish community. My staff leader kept these vehicles, and I tacitly gave my approval of this. They were to be turned over to the Secret State Police. In connection with this there also was an amount of money which my staff leader held, and as I covered this man, I got a reprimand. I did not participate in any Anti-Jewish action on my own part. That's what I remember of this matter.

Q. Now, you say because you stole all the Jewish money when you should have been writing reports you were disciplined?

A. No, because I covered my superior, my staff superior.

Q. What do you mean, you covered him......you took the money and divided it?

A. No. I did not give the order to hand this vehicle and the money to the Secret State Police.

Q. Where is the offense there that you are trying to tell us which would warrant the SS taking disciplinary action against you? Was it because you took the Jewish money and gave it to the SS?

A. Yes, because it had not been submitted to the State authority but it had been given to the SD.

Q. In other words, you are telling us that disciplinary action was taken against you by the SS because you stole Jewish money and gave it to the SS?

A. Because I found the money at my staff leader's and becasue the vehicles had remained in the SD, I got a reprimand from Heydrich. That is as I recall it.

MR. FERENCZ: No further questions, your Honor.

THE PRESIDENT: Well, this is all certainly left in midair.

MR. FERENCZ: Your Honor, I realize it is being left in midair, but there is no use pursuing a line of questioning on a Collateral matter when the answers are of the nature they have been.

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THE PRESIDENT: I see. Very well then. at nine-thirty.

(The Tribunal adjourned until 7 November 1947 at 0930 hours.)

Page 2,072

Otto Ohlendorf, et al., defendants sitting at Nurnberg Germany, on 7 November 1947, 0930 hours.

Justice Michael A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of American and this Honorable Tribunal.

DR. NEIF (Dr. Neif, for the defendant Steimle:) Your Honor, there are a few brief questions which I want to ask the defendant in redirect examination.

THE PRESIDENT: You may proceed. BY DR. NEIF: cross examination asked you whether you ever took part in actions against Jews. There upon you said, no. the date of 13 July 1947. I would like to ask you now what you understand by Jewish actions, if you disregarded the Fuehrer Order which was only valid sofar as you are concerned in Russia? in Germany. which are contained therein, can they be called such Jewish Actions?

A No. These are not Jewish Actions, but it is a disciplinary procedure which was carried out against my staff leader, and in connection with this I was charged with having neglected my duty, and I was reprimanded. This was an event which was only within my office, but sofar as the contents of the procedure are concerned, was in connection with the action of 8 November 1938. If you want me to do so I shall explain, and I shall give further detail about this event.

Q I would like you to do so, because I don't know the contents of the letter.

A I don't know the letter the Prosecution quoted yesterday, but sofar as my name is mentioned in this in connection, it can only be the following fact. During the time of 8 November 1938, and in the following days, I was journeying in Belgium; when I returned later from this journey, these events had already happened, in which my SD Section had not actually participated as such. The operation was under the leadership of Goebbels, and in the Gau (Districts) the Gau propaganda leaders were the leading agencies. During the course of Spring 1939 my staff leader came to see me, and told me the following. That he had in connection with the safeguarding of the Jewish property a matter which was then dealt with by the State Police, discussed the matter with a minor official of the State Police to the effect two vehicles, or trucks should be kept in the garage, which was not part of my own office. These two trucks were Jewish property and should have been turned over to the State Police to be made use of, which agency either sold this property in order to put money at the disposal of the Jewish Community for immigration or here I am not quite sure, though whether it could have been used for another purpose, for instance, for a fine, which was imposed by on some Reich Agency. The Jews, he said he had done this in order to secure these vehicles for the office, and, he suggest to me that it should be tried that these vehicles should receive a police number plate. He said he had paid the expenses for the garage from funds which had been in Jewish documents, which however a few days after 8 November were turned over to the Jewish Community, that is, the documents. After this had been reported to me, I hesitated a few days, to move that my staff leader, whom I essemed, investigated. However, I tried through a personal discussion with the State Police Leader to clean up the matter by asking him to have these vehicles taken over by the Secret State Police. This event was found out by my superior, of the SD, the Oberabscnittfuerer, Chief of the Department.

My staff leader was immediately sent on leave of absence as the suspicion arose that he himself tried to gain by this action.

I myself asked for my personal leave of absence which was not granted. A disciplinary action was taken against me, because of carrying out my office supervision in a bad manner and, because I had tried to clean up the matter directly with the State Police Leader. The offense was considered by my covering up the actions of my Staff Leader. After the proceedings had come to my staff leader was transferred as a punishment. A small place in the center part of Germany. He was barred from being promoted for four years, and I personally got a first reprimand. The only disciplinary punishment which I ever received. secution with a clear conscience, whether you had ever taken part in a Jewish action? were you on 9 November 1938?

AAs I already stated I was in Belgium. I heard about the events in Germany on the morning of 9 November 1938, in the Belgian papers in Brussel.

DR. NEIF: Your Honor, I have no further questions. The redirect examination of the defendant Steimle is thus concluded, and, with the permission of the Tribunal I shall submit further a few documents at a later date.

THE PRESIDENT: Very well. Witness, your attorney has called your attention to a subject which was under discussion yesterday afternoon just as the Court recessed. Immediately before this subject was taken up, the one which you have now related in some detail this morning, we were discussing the partisan action in the woods in which partisans were killed, and, then later an execution took place. Now I understand this was on the road to Stalingrad, is that correct?

Q About when was this?

Q Yes. I understand this took place in a forest, in the woods?

A The actual seizure of the partisan group took place in the forest; that is during the fighting in which the male participants of this partisan group were killed during this action three women were captured.

Q Yes. Let's take up first the fighting. The fighting took place in the woods?

Q How many men did you have with you in this fight? into two or three groups in order to seize these pieces of forest which had been betrayed by a female deserter. Actually in the fight only one group took part, whereas the other groups arrived at a later point. sans?

Q What weapons did the partisans have? grenades. One of the partisans, for instance, who was arrested pretended that he had a gun when one of my men approached, and he used a hand grenade.

Q Were any of your men killed in this action? by the woman, was seized so that there was very short fighting that took place, and they were practically taken immediately.

Q Were any partisans killed in the action? in actual combat?

Q About how many men were there in the partisan group?

men?

A Thirty men had been assigned to this fighting at this road: there was only one group which actually took part in the fight, one group of my thirty men.

Q Yes, when you seized the girls, were they actually fighting?

A No, they didn't fight. One of the women was slightly injured in this fight.

Q One of the women was fighting, you say?

A No, she was just injured by the fight that took place. She was in this particular territory where the fighting took place.

Q Yes. Now you were able to seize three girls after you fought with these partisans? three girls? taken to our office.

Q Where was your office?

Q Then you conducted an investigation which lasted how long? approximately eight days, including the examination and investigations, as also witnesses were heard.

Q Was all this written up?

Q Was this done on a typewriter?

Q And were the records kept? we advanced or when a large number had been accumulated, they were destroyed.

Einsatzgruppe? tained an information service at Kiev, which could be proved; that was the reason why these women were shot.

Q Then you did make a report to the Einsatzgruppe Headquarters? they were shot eight or nine days after they were seized, is that correct?

Q And the executions was done by your own men?

Q How old were these women or girls?

A They must have been women in the age group between 25 and 35. I remember that one was a school inspector, the other one was also a teacher. I don't remember the profession of the third one. them?

A No. One came from Stalingrad, the other one Dnjepo, and as for the third, I don't know where she came from.

that was done before you executed them? service because they were all three active Communists of no religious conviction. you executed them? and adherents to the Communist program, and this means that they can have no religious conviction. some religious comfort was afforded them? have been done. I myself wouldn't have bothered.

Q You are not a religious man yourself?

A No, I am not a member of any church. Personally I have disputed the religious question with myself. My education was very Christian, and until this very day I have been on good terms with my very Christian family. I have always had great respect of religious conviction. woods ? kilometers from Nishnits-shirskaja. place? away from the forest where the partisans were killed.

Q How many men did you have in your firing squad?

A Ten men took part in it. Three or four men shot at one woman.

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immediate?

Q Did you give the command to fire yourself? gave it, but I was present myself.

Q And you saw to it that it was done in a military, humans fashion?

Q Yes. Now, you witnessed this execution from beginning to end, didn't you.? death of them? was the leader of one of the groups, by group which approached from another direction, arrived too late at the place of fighting and at that moment the fight itself was over, but I arrived at the place. against the partisans?

Q Yes. Now do you have a pretty good memory? the execution and about the fight with the partisans. Yesterday afternoon, or the day before yesterday, between the hours of four o'clock and four-fifteen, and I will specifically refer to the transcript as Take 23, Page 1, this is what the English transcript says.

"Q I still have a few questions to ask of you which concern your entire activity as kommando office leader. As a kommando leader, did you ever attend an execution?

"A No."

Were you telling the truth day before yesterday; are you telling us the truth this morning?

Page 2,080

which was a conclusive question, after I had explained my first - my activity in the first kommando.

THE PRESIDENT: I have taken the trouble to have this dialogue looked up in the German copy, and I have handed it to the interpreter. The interpreter will please take out the German record and read that question and answer as it appears in the German transcript.

(Thereupon the German interpreter read the above question and answer in the German transcript to the witness.)

THE WITNESS: Yes. BY THE PRESIDENT. compared it with the English text, and the texts agree. The question was. "Did you ever attend an execution?" That was all embracing And your answer was "No." Now, you have given us in precise particulars the story of an execution which you not only attended but directed. Now your answer is, do I take it, that you misunderstood your attorney's question?

A Yes. In discussion ofmy first kommando 7a. I answered the question of my defense counsel, while this event we have now discussed took place during my second assignment in 4a. The question has already been put here before. He put the question about the Army to which my kommando 7a was also assigned, and only very much later, after this question had been asked, the question of my second kommando was taken up by my defense counsel. Therefore, from the text it is quite evident that the question as meant by myself, and probably also by my defense counsel only referred to my activities during my first kommando.

DR. LEIF (For Defendant Steimle): hay I say, your Honor, as an explanation, that the witness is correct in this particular thing, that in the direct examination in our case it was built up so that first his activities in Kommando 7a were discussed, and as conclusive question for this particular subject the question was put to him, if I may repeat it now, "I have another few questions to you which refer to the entire time as the kommando leader.

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Did you, as a kommando leader, ever take part or were you present at an execution?" This was the conclusive question referring to his activities in Special Kommando 7a.

THE PRESIDENT: All right. Now, let us see if he is referring to the same thing in this other matter. This morning he gave us a very detailed description of his participation in a fight with the partisans. The day before yesterday he made this statement. "Your Honor, I said that I spoke with my subordinate officers about these machines, that I test the activities." Apparently I was questioning him about his activities in the SD work. And then the witness goes on, "And I have also explained why I, as a militarily trained man, did not participate in these partisan actions. The documents show this action clearly, how they were carried out." Then later on when it seemed rather extraordinary to the Tribunal that this man who was in charge of an action group did not take part in any action, he was questioned further, and he said, "I didn't lead a platoon of active SS men into the forest." Then carrying the matter still further, we put this final question to him. "You never led them into any action; you didn't lead them into any fight?" And the answer is, "No."

THE WITNESS: Your Honor, these questions were put in connection with the explanation of my first kommando where these partisan combats were carried out under participation of and on order by the Wehrmacht, and my statements referred to this activity during this time, and I here also referred to the documents. They all refer to this first activity of mine, the first kommando 7a, and this answer is still valid for this particular activity even now. BY THE PRESIDENT: police work?

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the SD work was of much more importance to me. work of the police work? Service of the SD, but my SS duties, I thought more important.

Q And you devoted more time to that than to the police work?

Q And did your superior officers know this? the information service and they were satisfied. work? work in the partisan warfare during the time when, for instance, Foltes was there, was guaranteed; also the work which was carried out by myself, of course, and which I have already mentioned, as, for instance, the using of NKWD files at Kursk. That concerned mainly police work, and therefore it was approved, and it was looked upon with interest by my superiors. devoted considerable time, or more time to SD than the police work?

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A. I don't know whether they were very pleased about it. I didn't hear any utterances of disapporval, and certainly not during my second kommando where I was on very good terms with my superior.

Q. Didn't your superior officer ever tell you that you should devote more time to the police work than the SD work?

A. No, I was not told that as in my kommando there was also always somebody who was dealing with the police work.

Q. All right. Now, we will refer to your testimony of day before yesterday. You are talking with Nebe and this is your answer. "He told me that the necessity of police security seemed to be more important than the security in the SD work."

Q. Did I state that?

A. Yes, that is what you said.

Q. Nebe?

A. Your answer is, "He told me" - this is Nebe speaking. That is, it is your testimony. Nebe "told me that the necessity of police security seemed to be more important than the security in the SD work." Now, which statement are you going to stand on, the statement you made day before yesterday or what you are giving us this morning?

A. I can only just remember to have said that Nebe, when I was on my way to Moscow, and came to see him, that Nebe in fact, then told me that he had to ask me that as far as Jews are concerned children and women also have to be killed. A comparison between police work and SD work I cannot remember, and I can only imagine that it might have been a mistake in the translation, Your Honor.

Q. Then you challenge the correctness of the transcript in that respect?

A. No, I can find no other explanation for it, because I cannot remember having said it in this particular phase.

Q. Then you challenge the correctness; a mistake occurred in the translation or in the actual transcription, that is the only ex planation you can offer?

Page 2,084

A. It could have been a misunderstanding, Your Honor, yes.

Q. You say that you yourself did not utter these words which I have read to you?

A. I cannot remember really, Your Honor.

Q. Now, the reports which have been submitted here in the document books show very clearly that this kommando of which you were the leader, 7a, conducted many executions, As of 13 September the execution total is given as 1011. When you were asked about that you said that you only know of eight who had been executed, but you did not know whether they were killed by your predecessor or by yourself.

A. Of these eight people I spoke in this connection, and I said that between the report of the 20th of August, which says that 996 executions were carried out, and up to the report of September which mentions 1011, there is, in fact, an increase of about 15 executions. In connection with these 15 executions I said that of these, eight can be found in the document books as people who were shot in partisan warfare. I did not speak about the remainder of the people.

Q. I am asking you if you did not remember whether these eight were killed by yourself or your predecessor. Did you so testify?

A. I said approximately that. Whether they were shot in my absence or whether they were shot after the 20th of August or in my presence I do not know.

Q. Now, you include the possibility they may have been shot in your presence?

A. That they could have been shot during the time when I was already in charge of the kommando that would mean, the time from 7 of September up to the 13th. It is possible that in this time eight of these people were executed.

Q. The translation came through that they could have been shot in your presence. You don't remember, but they could have been, is that right?

Page 2,085

A. Not in my presence, but in the time when I had taken over the kommando, that is the leadership of the kommando.

Q. Didn't you make a report of the executions which you conducted or ordered?

A. The reports, written reports concerning individual actions, were made out, and I have said that these reports were made out by my kommando leader, and deputy, Foltes, but that in general I know about these reports.

Q. Then why wouldn't you remember whether these eight were executed by yourself or by your predecessor?

A. Because I was not present when these actions were carried out, and it would have been an event which would have been carried out during the first days of my activity in this kommando, when I had first arrived here in Welisch, or possibly at the garrison of the other kommando in Uelikki Luki.

Q. Do you now tell us they were not executed, these eight while you were in charge?

A. I do not know what to say. I can only say, based on the notes in the documents, that at one particular combat eight partisans were shot, and I can only say that it must have been so.

Q. The document reports show that the execution total for 7a, as of 28 September was 1252; asof 26 October, 1344; asof 14 November, 1517. Do you admit the correctness of these reports?

A. I cannot say whether this number is correct or wrong, because I don't remember the individual figures. I am sure that the basis of these figures are reports of my own kommando.

Q. Then you admit that these figures could be correct?

A. They could be correct, yes.

Q. That your kommando executed, as of 13 September, 1011; as of 28 September, 1252; as of 26 October 1344; as of 14 November 1517.

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You admit your kommando killed that many people?

A. I can only repeat that which I have already said and in clear from the documents and in my own memory, these shootings are, on the whole, shootings carried out in connection with the operations against partisans.

Q. Now, we are only speaking of the total number of people killed. Are these reports correct as to the total number of people killed, whether they were partisans or not?

A. I can likewise, as I have already said, only assume that it must be based on reports of my kommando, but the executions were carried out by the Army. I have already said in my direct examination that, for instance, the report concerning 183 shootings in connection with t the assignment of two divisions was not carried out, not only by my kommando, but also the participating Army units.

Q. You don't question these reports insofar as members are concerned, is that right?

A. And the carrying out of the executions, whether they were carried out by my own men or by the Wehrmacht, by the Army units taking part.

Q. Now, please answer the question. The reports in the document book show that Kommando 7a killed so many people, and I have given you the figures. Do you, or do you not question the figures? I am only speaking of the figures.

A. I cannot say with certainty that the figures are correct, but I can only say that they are based on reports by my kommando.

Q. Very well, You had approximately one hundred men in your kommando, is that right?

A. Yes.

Q. And they were divided up into various groups, various subkommandos?

A. In two subkommandos at that time.

Page 2,087

Q. Only two?

A. During the period of these partisan operations, two subkommandos, Welisch and Velikki-Luki.

Q. You were nine months in the field in all, weren't you, four the first time and five the second time?

A. The first was approximately three and a half months, yes, and the second time must have been about nine months, yes.

Q. Nine months the second time?

A. No, altogether.

Q. Yes, nine months, all right. Now, in these nine months' time, do we understand you to say that not one Jew was killed by your kommando?

A. Yes, as far as I know no Jews were shot by my own kommando,

Q. In nine months' time?

A. Yes.

Q. Now, during all this time the Fuehrer Order was well known of corse, wasn't it, that Jews were to be killed?

A. Yes,

Q. And your subkommandos who carried out independently of you had this order, didn't they?

A. It was known to them.

Q. Yes. And you never revoked the order as far as they were concerned, did you?

A. No, no.

Q. Why didn't they execute the order since they had it in all its completeness without modification and without any instruction from you to disregard it. Why didn't they execute the order?

A. The kommandos in Welisch and Velikki-Luki were, through security conditions prevailing there, so busied by partisan warfare that they could not cope with the order at the time. In RZHEV and Kalinin the frontal position was such--and anyway I was present in Kalinin--that the order for the shooting of Jews was conditioned by circumstances and was impossible.

In my second kommando, which was in the year "42, I was in the territory in which the Jewish population was practically not known to exist in any obvious manner. The advance towards Stalingrad went through the territory of the Don Cossacks. There were no Jews present, In addition to this, after the first halt in 1941, the halt of the German attack, the attitude of the Germans toward the Jews was known - by the Russians, and the Jews had tried to escape before the German advance, and, of course, in 1942 this was the same, even more extensively so.

Q. You yourself had an objection to the shooting of Jews, is that right?

A. I never protested to any superior about it but I uttered my misgivings and I tried to evade the order through the kind of which my assignment was.

Q. Why did you call Blume soft because he did not execute more Jews?

A. I never said that I called him soft, I said that the leader of EK-O said something to this effect about Blume.

Q. This was not your expression, that he was soft because he did not execute Jews?

A. No, that was certainly not my expression.

Q. Now, you say that you executed only partisans, is that right?

A. Partisans, yes.

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Q. And you would not execute a partisan unless he were actually engaged in some action against you?

A. If they had not by any action whatsoever damaged the security condition of the territory concerned.

Q. You would not shoot him unless he committed some overt act?

A. Yes, that is correct.

Q. Now, isn't it a fact that if you merely suspected a man of being a partisan that you shot him?

A. No. In that case he was an aid.

Q. He was what?

A. He helped -- he aided the partisans.

Q. And you would not shoot him?

A. If he helps or assists the partisans, then he is shot.

Q. Yes. Well, suppose you only suspected him of aiding, of being a partisan, would you shoot him?

A. If it had been confirmed that he helped the, then he should not be shot.

Q. Did you ever shoot anyone merely because he was suspected of being a partisan?

A. I never shot anybody myself. I know that it says in one report that people suspected of being partisans were shot.

Q. Well, that is not in a report, that is your own affidavit, isn't it?

A. That is not only my own affidavit, but is based on a report from the document in which it was said that in one particular operation of the commando in connection with wehrmacht units, partisans -- 40 partisans, or perhaps 41 partisans and people suspected of being partisans were shot. This report was read to me in my examination, and I said after the name of the village had been mentioned, that this village had been within my territory -- in the territory of my commando, and therefore it must have been my commando who carried it out.

Q. Your commando then executed people merely because they were suspected of being partisans in this instance?

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A. Based on this report which is in this document, partisans and people suspected of being partisans -- there are 40 people who are concerned here -- must have been shot.

Q. Yes. Now, in shooting a man merely because he was suspected of being a criminal or a partisan, it was entirely possible that some innocent people were shot?

A. I hope that this was not the case.

Q. Well, it is possible, isn't it?

A. If it is just a suspicion, I cannot exclude it, but I believe that these must have been people who assisted the partisans.

Q. Now, just a minute, please. We have gone through that, we are not talking about those who assisted, those who assisted were partisans, they were active partisans; I am speaking only of those who were suspected of being partisans, they were shot. Now I am asking you whether it is not possible that when you executed a group of people known only as being suspected partisans, that an innocent person might be included in that group suspected of being partisans.

A. I think that investigations were conducted to that this case would be excluded.

Q. Now, I am putting this question directly to you, and please don't circumvent the question. If there is an investigation and a man is proved to be a partisan, the man is a partisan; if there is an investigation and he is proved to have assisted and the rules could have been put in effect then he would have been shot. I am speaking merely of one who is a suspect and when you make a list you say so many partisans, so many suspected partisans -- now I am referring to so many suspected. There is a possibility that an innocent man might be included in that group, is that correct?

A. If this report -

Q. Now, please answer that question. We are speaking of suspected partisans. If you shoot suspected partisans, there is a possibility that in some instance the suspicion is unfounded.

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Do you admit that possibility?

A. If in any case people suspected to be partisans are executed without their guilt being proven ever of a smaller activity, in that case innocent people could have been shot, but I may assume, your Honor

Q. Well, you have told us the rest, that there was always an investigation, but you nonetheless in making up this statement very clearly said the persons executed were partisans, that is one group; persons suspected of being partisans, that is a second group; and members of the Russian army in the area of the 9th Army who had been hiding and disregarded our order, that is the third group. Now we have your explanation on suspected partisans. Day before yesterday we were on this subject and you stated in answer to a question, "Also in few questions so-called people suspected of partisan activity were shot." Now you went on further because -- we will give you the whole answer, "Among them were people of whom it could at least be proved that they voluntarily had been active for the partisans either by giving reports to the partisans or by assisting them in some manner voluntarily". Do you stand on that answer?

A. Yes. Thus was my conception of the term "suspected of being a partisan."

Q. I am calling your attention particularly to the wording. In referring to "Suspect", you said, "among them were people of whom it could at least be proved". "Among them", you don't say "all of them", but "among" those suspects.

A. According to my memory I said, "by people suspected to be partisans, were meant those who aided and abetted of an activity."

Q. Then you said the word "suspect".

A. Yes. I said the word "suspect."

Q. Well, do you understand what "suspect" means?

A. Yes.

Q. So when you say that in every case of an execution an exami nation was conducted and the guilt proved, and you used the term "suspect" with regard to individual, you are using the word incorrectly, are you aware of that?

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A. Your Honor, my concept is the following. A partisan is a man who is active within his group. Those who help these groups make themselves suspects of indulging in partisan activity, but through this help he contributes toward the partisans and, therefore, he becomes punishable. That is my conception of it. He himself is not a partisan by not actually standing in the woods. I cannot call him a partisan because he is not a partisan, but he assists the partisan movement because he gives them information and news. He gives them supplies.

Q. And that is what you call a suspect?

A. This is the suspect, yes, to be a partisan himself and at the same time commits an act which gives reason for his execution, as punishment for his action.

Q. I think you might do yourself a great deal of good in studying the meaning of the word suspect. When you took over the commando, you started out to fight communism, didn't you?

A. Yes, I was detailed to Russia to take over this special commando. The purpose of the special commando was only made known to me when I arrived in Russia.

Q. And you were out to fight the communists and destroy the communists, is that right?

A. I refused to recognize communism as such, my duty was mainly to pass on information. I was simultaneously assigned to a military task, but this I had not expected before.

Q. Well, you were out to fight coumminsm, and it was your order to execute communists?

A. To shoot active communists.

Q. What would you call as activity on the part of a communist?

A. If a communist who, in a territory occupied by a German army unit actively opposes the decrease of the German army actively, be it by following the proclamation of the communist party in Russia, and contributes towards making the occupation of the German troops intensible, in that case he is an active communist who resists the occupation power and expresses it actively; this is communism.

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Q. Suppose a communist makes a speech in which he merely talks about communism and speaks of his adherence to Karl Marx, makes no reference to Germany or its occupying forces, would you regard that as an activity calling for his execution?

A. He expresses his theories to me or any private person, this would hot be a reason for his execution, but if he -

Q. All right, now -

A. If he speaks to a larger public, then he is an active communist who acts against the decrease of the German occupation power which says that any activity for the communist party is prohibited, and will be punished by death.

Q. So that if you came into a room and found a communist speaking to 4 or 5 people, expounding the theory of Karl Marx and indicating his adherence to that theory, you would have him shot?

A. If he makes statements to the effect to resist the German cause, in this case I would have had him shot.

Q. Now, don't repeat my question. I said, you walk into a room and this man is making a speech for communsim to a group of 5 or 10 or 15 people, and he merely tells them how he likes the theory of Karl Marx, and he gives them a long speech about communism; he doesn't mention the Germans at all, would you take him out and shoot him?

A. I would first of all find out if there was an active resistance against the German occupation behind all his theory.

Q. Now, I have given you the question, don't introduce any other elements. You have had 8 days -- you had had an investigation of 8 days, and you find only that they made this speech and that he indicated a devout adherence to Karl Marx. Would you have him shot?

A. I would have got a look at the man, and if I was under the impression that he would put his theoretical conviction into seed, in that case I would have had him shot.

The actual speech or lecture could not be decided upon theoretically.

Q. So that you would listen to the speech and then you would look at him under a microscope, and after this big look, if you thought he might have done something, then you would have him shot. That is what we understand by your answer?

A. Yes.

Q. Very well. While you were in command of 7A, one report shows that 63 communists were killed. The report is dated 25 October.

A. Yes.

Q. Is that what these communists were doing about the type of activity which I have described to you?

A. No. That is an activity which largely is prevalent within the partisan movement. People were caught who were important functionaries of the communist party. Probably there also a few saboteurs and agents installed by the NKWD.

Q. Well, now, witness, since you were out to fight communism, why is it that you were so kind to the Jews when the Jews were the most active communists?

A. I have only been at those few places which I mentioned, and these places, Welisch-Welikki Luki, and at both these places the Jewish question was not as topical especially in comparison with the constant partisan danger so that the Jews in other places like Kalinin, for instance, where there were 30 and 40 Jews and the town was bombarded by Russian artillery fire, this question did not have to be dealt with immediately.

Q. Well, in all this time in the 9 months, do we understand you never saw a Jew?

A. I said also yesterday in my cross examination that in Welisch as well as in Kalinin and Rshow there were Jews, while in the sector of my second commando I cannot remember that there were any Jews. As I said, the Jews had left after the first stop of the German front, fled -after the first German holdup.

Q. Yes, but please answer the question. In all these 9-months' time, did you ever have to pass upon a Jew?

A. I said that in Welisch there were Jews and that in Kalinin there were Jews.

Q. All right, what did you do with the Jews in these two towns?

A. In the report, or in one of the reports it is mentioned that the Jews in Welisch -- in fact it is the report it is mentioned that that they put into ghettos. A further report from my commando chief says that a Jewish counsel was installed, and I am sure that in Rshow, Kalinin the regulations referring to Jews were made and were also a Jewish counsel was going to be formed.

Q. What did you do with the Jews that came before you either in examination or otherwise?

A. No Jews were put before me. I cannot remember any Jews.

Q. All right, well, then in all this time, coming back to the original question, in the 9-months' time you never had to pass sentence upon a Jew?

A. I did not conduct the investigations myself -- it is possible.

Q. In this time of 9-months while in command of one group and in command of another group, you never had to pass upon another Jew?

A. It is quite possible that there was one or two Jews among this or the other sentence and was shot under the general communist executions.

Q. You never had to pass upon a Jew as a Jew?

A. No, I don't remember that I ever sentenced a Jew as a Jew or that I confirmed such sentence. It is possible that among these partisans and communists there were Jews or could have been Jews.

Q. How many?

A. I don't know.

Q. You said a moment ago one or two Jews, now, were there more?

A. I said that there is the possibility that among these partisans or communists who were investigated were Jews.

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Q. You don't know as a fact from your investigation whether even one Jew was executed among all these people who were killed -- you don't know as a fact that there was even one Jew?

A. I do not remember a concrete case of such.

Q. Then so far as your memory is concerned you do not recall one Jew in the 9 months' time that you were in Russia?

A. No, I remember so such case, but it is very probable.

Q. Well, now, let's get this very straight because we don't want to have any question about it. In the 9 months' time that you were in Russia you do not recall having passed on the case of one Jew?

A. No, because such a case would not have been submitted to me, as in the case of a Jew, but it would have been just one of the communist cases.

Q. Well, if you had an investigation of each man, if a man was a Jew, that would appear in the report, would it not, that he was a Jew in addition of being an active partisan?

A. Not necessarily, Your Honor; it is possible.

Q. Do you mean to tell us that any investigation made of a partisan or an active person resisting would not include his nationality and especially if he was a Jew in Russia?

A. No, I don't want to say that. It is possibly noted down if he is actually arrested as a Jew.

Q. He is arrested as a partisan, but in the investigation it develops that he is a Jew, wouldn't that appear in the record?

A. It is probable that it would appear in the record, yes.

Q. Now, I ask you the question again. In these 9 months' time did you ever pass upon a Jew?

A. I don't remember, but I think it probable.

Q. How many do you think that you passed upon?

A. I cannot give an estimate, but I think it possible that among those people sentenced there were Jews?

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Q. How many Jews?

A. Your Honor, I can give no estimate; I can only say that I think that it possible that there were Jews among them.

Q. You think it possible, but you are not sure. Now, do you come back to the proposition that there were not Jews?

A. That I did not say, that there were no Jews.

Q. Well, you said it was possible, you doubt remember one instance where you saw definitely it was a Jew?

A. I cannot remember any individual cases.

Q. I certainly know that no Jew was sentenced because he was a Jew, but I thank it possible that among those executed there were individual Jews who were members of the partisan groups.

Q. But you don't remember how many?

A. No.

Q. Can you give us an estimate of the number?

A. No, I can give no estimate because, as I say, I don't remember any individual case, but I think it possible that there were possibly -at least I think it is probable even -- that there were Jews among these partisans or these communists.

Q. Perhaps two or three?

A. Your Honor, I can give no number because I would tell an untruth if I are to say that there were two or ten cases.

Q. Didn't you keep a report on the people that were executed -didn't you make a report on the people that were executed?

A. The reports were sent individually to the groups. Any sort of compilation was not carried out, as is mentioned in the situation reports.

Q. You got these reports, didn't you?

A. I generally received the individual reports of events if I was present.

Q. Yes, and from all these reports which you received of executions you do not recall whether any Jews were executed or not?

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A. In any case no reports were received according to which Jews were executed as Jews. The kind of reporting makes it absolutely necessary that this would have been reported if it would have happened.

Q. You don't remember one report of any Jew who was executed as a partisan because he was a Jew?

A. I say I cannot remember any individual case, but I do not exclude the possibility by that there were Jews among the partisans.

Q. Now is it that you remember so well all these other reports that you were making, the reports on the collective farm system, on the Russian church, on the Bolchevik state, and you even made a study of Stalin's speeches, but would you regard that as more important than keeping a report on all the people that were killed?

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A. Your Honor, I tried to explain that I did not regard the Police Department as work which was in my line and that I personally only tried to deal with the Information Service, reporting. Therefore, these activities were those which I was not interested in carrying out, because it was not my work, except for the one incident during the period which I have described when I was in my second commando.

Q. In spite of directives by Nebe that you give more attention to the Police Security Work, you still insist that your primary task was the making up of reports on farms and on Stalin's speeches?

A. My personal activity was through my field of activities until then, the SD reporting. For the Police and military organizations, I had collaborators which carried this out.

THE PRESIDENT: Are there any witnesses ready to be called? I have here Eugene.......no, that is the defendant.

DR. VON STEIN (ATTORNEY FOR THE DEFENDANT SANDBERGER):

Dr. Mae.

THE PRESIDENT: Dr. Mae? Very well. During the recess, unless there is any other redirect or recross, during the recess the present defendant witness will be brought in the box for examination.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. HJALMAR MAE, a witness, took the stand and testified as follows:

JUDGE DIXON: Witness, raise your right hand and repeat after me:

"I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing."

(The witness repeated the oath.)

JUDGE DIXON: You may be seated.

DR. VON STEIN (ATTORNEY FOR THE DEFENDANT SANDBERGER): May I start?

THE PRESIDENT: You may proceed. BY DR. VON STEIN (ATTORNEY FOR THE DEFENDANT SANDBERGER):

Q. Witness, please describe briefly the most important points of your career, in as far as it is necessary to judge in how far it concerns the answering of the questions to come.

A. My name is Hjalmar Mae, born the 24th of October in Tartu, Esthonia. I am an Esthonian citizen. I am married. I am a Doctor of Philosophy, a Doctor of Political Sciences. I am a Protestant. Since 1929 I have been active as a politician in Esthonia.

Q. Witness, in the year when Russia occupied Esthonia, that is, 1940 to 1941, were you in Esthonia at that time?

A. Yes, until March 1941 I was in Esthonia. After that I fled in order to escape the Communists, but until 16 March 1941, I witnessed the occupation of my homeland by the Communists.

Q. Witness, how do you know about events in Esthonia since March 1941 until summer of 1941?

A. I know them from the statements of people whom I know to be trustworthy and reliable, from statements by members of my family who were in Esthonia at that time and official documents, which I personally read.

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Q. When did you return to Esthonia?

A. I returned to Esthonia on the 16th of July, 1941 to Bernau, but I could only stay for one day, because the Field Commandant asked for my immediate return from Esthonia. After that I returned to Latvia. The Latvians gave me a house and on 18 August 1941, I was able to return to Esthonia to Bernau. Since then, I have been in Esthonia until 22 September 1944. Then I fled again in order to escape the new occupation by the Communist Troops there.

Q. When and where did you meet Dr. Sandberger?

A. I met Dr. Sandberger in Talinn. Talinn is the capital of Esthonia and in German it is called Reval. I met him there on 30 August 1941. I tried to meet him before, but I did not succeed. In Tartu, in German, Dorpat, and I did not manage to meet him in Ragnel, in German, Wesenberg, because Dr. Sandberger was always traveling and because of the attack on Talinn I was not able to reach him in Dorpat.

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Q. Did you hear anything from other Estonian circles about Dr. Sandberger?

A. Yes; the reason why I tried so hard to meet Dr. Sandberger was that in Estonian circles in the south of Estonia it was known that he had tried to help us and that he was very understanding and, therefore, I wanted to meet him. The deputy of Dr. Kleist, who enabled me to make the journey - I asked him to introduce me to him but I only succeeded on 30 August.

Q. Please give us some Estonian names, who particularly tried to help you concerning Dr. Sandberger?

A. The Estonian Colonel Tilgre was a political counsellor since the first days of his activity in Estonia. Colonel Tilgre was a very highly esteemed officer. For about fifteen years he had been adjutant to the Prime Minister, he knew a great number of important persons, and Estonian nationalist circles suggested him, and Dr. Sandberger used him as his personal political counsellor until Talinn was captured.

Q. Witness, please tell us which office you took over in the fall of 1941 in Estonia.

A. On 20 September 1941, at the order of the commander of the Rear Army Territory North, I was given the position of a Director for Education and Law, as a member of the Estonian self administration. My colleagues practically considered me the chief of the Estonian self administration and accepted me as such, and in their capacity I was active until I was officially confirmed in that position.

Q. Witness, to take up such an important position which was given to you by the Estonian president.........was this made legitimate?

A. Repeatedly I had discussions with our State president after the occupation of our homeland, who was convinced - like all of us - that the War between the Soviet Union and Germany would come about soon, only it was not obvious who would start this war. He was the Germans would win.

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He believed, however, that the United States of America would take part in the war and that this entry would bring about the final victory to the Allies. For that reason for us it was come about to recover the sovereignty of our State.

He gave me the Communism would regain their independence.

Q. Witness, may I ask you to speak a little slower so that to hold this important position in Estonia?

A. Dr. Kleist. Dr. Kleist was in the Foreign Office, and Dr. Kleist knew Estonia very well.

He was sympathetic towards it, Denmark.

Dr. Kleist shortly before the beginning of the war with right that the development of events through the so-called fait accompli

Q. Witness, how were you appointed in Estonia?

A. Dr. Kleist assisted here because he negotiated with Army agencies.

On 16 July I was able to travel to Bernau. I intended central Estonian administration agency.

Q. What was the situation which you found at the time in the city of Bernau?

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A. On 8 June Bernau had been liberated from the Communists, He called himself temporarily authorized president of state, and as

Q. What was the reaction of the Commander in Chief of the German Army?

A. The German Commander in Chief reacted to this with set up, particularly local or field command offices.

After that, and I had to return immediately.

I left for Latvia, and in Latvia had its effects in Latvia.

In Latvia, very early the German civilian and as part of the work of this Reich Commissar and the concerns of

Q. How were you pointed then?

A. I said before, on 18 August I returned to Bernau in Estonia together with Dr. Kleist, and in his presence I talked to and negotiated with him.

General von Rock was very understanding,

Q. What do you know about the situation in Tartu at the time?

A. I left Bernau the same dry, for Tartu. Tartu had been mained for some time on the Embach River.

This river goes right through the center of the city of Tartu, and serious fighting between the Estonian self-defense and the German army, and on the other hand between the Red Army, had taken place.

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In Tartu, owing to this fighting, people were very much embittered because, among others, Tartu was the place where mass murders had been carried out. In the prison of Tartu, 192 highly esteemed citizens were murdered by the Communists.

MR. GLANCY: May it please the Tribunal, we accept the good doctor as a political authority, but we fail to see the relevance of his statements as far as it concerns the activities of Sandberger. On these grounds we object to this line of testimony.

THE PRESIDENT: Dr. Mandry, it isn't yet evident just what the relevancy of this is. I presume he is leading up to something very specific. Would you please indicate to the Tribunal what you intend to establish by this witness?

DR. VON STEIN: Your Honor, the questions which I address as preliminary questions to the witness now have the purpose of describing whether the statements that the defendant himself will make later on in the witness stand are correct. First of all, the question whether it is right that at the time he heard in Pretzsch about the position in the Estonian territory, whether he was ordered to......... The truth I want to establish through statements of this witness, who is an expert on his country. I consider it important whether the witness came there from Estonia as one who was only informed through propaganda, or whether the actual facts which he saw himself conformed with the truth. For that reason I ask to be allowed to put all these questions.

THE PRESIDENT: Do I understand, Dr. von Stein......I think I got your name incorrectly first........that you are going to establish that the defendant Sandberger, when he arrived at Pretzsch, was confronted with a certain situation. He was informed that conditions were such in Estonia. And you want to confirm that the report given to him correspond with fact?

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DR. VON STEIN: Yes, your Honor.

THE PRESIDENT: Yes. Now, that is relevant, but we yet don't have the specific statement that the defendant was confronted with, so we don't know what this witness is going to confirm. That is our difficulty.

DR. VON STEIN: Your Honor, the further questions which this witness will confirm as actual facts are these questions....... that work was carried out in Estonia. He will describe exactly his activity, how Sandberger acted there, whether his activity mainly consisted of police security tasks, or whether his activity consisted of different subjects mainly.

THE PRESIDENT: Well, does this witness actually know Sandberger? Did he see him in Estonia?

DR. VON STEIN: Yes, your Honor. All these years.

THE PRESIDENT: Well, we will permit you to question, and then Mr. Glancy - if you find that you believe it is becoming irrelevant we will hear another objection.

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BY DR. VON STEIN:

Q: Witness, in the city of Dorpat, who was responsible at the time?

A: The first Germans who arrived in Dorpat on 11 July 1941 were the units and the men of the local commander of Dorpat. The field commander, Colonel Bosebruch, arrived on 12 July, and since fighting went on for weeks all authorities and units were subordinate to the field commandant of Dorpat.

Q: What measures did this Colonel Boseruch take?

A: I can only describe measures insofar as they concerned with prestige... he was very strict.

MR. GLANCY: One moment, please. If it please the Tribunal, we have had the testimony of this witness to the effect that he returned on the 18th of August. He is now testifying as to happenings on the 11th of July. This is merely hearsay.

THE PRESIDENTS: Isn't that correct, Dr. von Stein?

DR. VON STEIN: Your Honor, the witness testified before that certain conditions in Estonia he knows from reports and official documents; other facts he witnessed himself when he was in Estonia. What the witness tells us now probably concerns these things which he also knows, not only from hearsay but also from documents; and beyond that, your Honor, it does not depend so much on the actual facts but the witness also testified that this Collnel Bosebruch stayed not for one or two days, but two years. For that reason I submit that the objection of the Prosecutor be overruled.

THE PRESIDENT: Where the witness is testifying as to actual knowledge, he certainly can speak with greater amplitude than where he is speaking only from study. So it would seem to the Tribunal that when the witness is going to tell us something which he only read -- that then he abbreviate his statement and make it very short because obviously it isn't something of his own first-hand knowledge.

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BY DR. VON STEIN:

Q: Witness, may I therefore ask you to be very brief on the following questions. I repeat the question... What measures did Colonel Bosebruch take. Please only talk about the fact whether this Colonel Bosebruch carried out arrests immediately, and to what extent this was done.

A: Colonel Bosebruch had given orders that all persons arrested be handed over to the field commandant in Dorpat, and he judged these people and disposed of them.

Q: What happened to these persons who were arrested?

A: I cannot say this from my own knowledge, but I know from reports, that minor Communists who only deserved small punishment were shot by him, and we considered this to be brutal.

Q: Witness, when did the independent power of the field commanders cease to exist?

A: On 20 September 1941, when the Rear Army Territory because part of that area.

Q: Witness, I am now telling you about the document which the Prosecution filed against Sandberger.

DR. VON STEIN: Your Honor, this is a document in Volume II-A. I can state the contents very briefly. It may not be necessary, your Honor, that this be read out. There is only one question from the document. Volume II-A English page 86-a, the following is being said in this document:

"In the district of the city of Dorpat since the occupation of the city by German troops, 291 persons were arrested, were put into a camp which the field commander set up. In this time, that is, after the German troops occupied the city, 405 persons, 50 of them Jews, were executed."

THE PRESIDENT: Did you say this is on page 86?

DR. VON STEIN: 86-A.

THE PRESIDENT: What is the document number? We don't find it.

DR. VON STEIN: Exhibit 46.

THE PRESIDENT: What document number?

MR. GLANCY: Sir, it is NO-3149, to be found on page 88.

THE PRESIDENT: Oh, I see; he's reading from page 88. Very well, Thank you.

Q: (By Dr. von Stein): Witness, I presume that you did not know anything personally about these events. I address the general question to you. Insofar as conditions in this city in the district of Dorpat became known to you, do you consider it possible that these measures were carried out under the responsibility of the German field commander.

A: Yes.

Q: If I understand you correctly, at that time --- in July and August, and possibly beyond that --- in the city and district of Dorpat, it was like this... That subordinate authorities, whether Estonian or German, actually could not exercise any power but all tasks were handled by the field commandant exclusively... Is that right?

A: Yes, that is how it is. The field commandant of Dorpat had set up an administration department. I also had to deal with this at a later time.

Q: Witness, I now come back to the question, when and how you met Sandberger?

A: I met Dr. Sandberger, as I said, on 30 August 1941 in Talinn.

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Q: When were you assisted by Dr. Sandberger for the first time?

A: Immediately after meeting him I considered it the first task to help the families of tens of thousands of people who had been deported. For that purpose, all our charitable organizations and churches were invited to help, and together formed an organization of the Estonian People's Assistance and I asked Dr. Sandberger to obtain permission from the Army commanders. He did this.

Q: And what was your power, your authority?

A: On 20 September 1941, I was appointed as a member of the Estonian independent administration. Five men with the same rights were appointed, who were authorized to issue directives with legal strength. They were all independent, but, as I said, they considered me practically to be the chief, and accepted me as such because until then I had conducted all negotiations and was asked to continue to do so.

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Q Witness, what was the competency of the self administration? up, concerning the territory, we were not competent for the whole of Estonia because not the whole of Estonia had been freed from the enemy. Only on 21 October, 1941 the whole of Estonia was under our competence.

Q When was the German Civilian Administration set up in Estonia? with a general commissar at the head of it. The general commissar confirmed all laws and directives which we had made until then. and did Dr. Sandberger help you to overcome these difficulties? culties arose in every field. Whether it was a minor or a major question, the general and civilian administration wanted to take part in everything and interfere; and Dr. Sandberger took an interest in all minor or major questions and helped until a good relation with the German Civilian Administration had been established in August.

Q After the 30th of August, what did Dr. Sandberger hear from in on the Estonian personalities about the suffering of the Estonian people under the communists about the needs of the day and the discussions with Dr. Kleist, concerning the aims and the future of Estonia?

A I informed Dr. Sandberger about the fact of how Estonia had been occupied by the Soviet Union in 1940. I laid this down in an affidavit and submitted it to the Tribunal already, and I don't want to tire the Tribunal by repeating this orally, it deals with the violation of international law and of agreements between the Soviet Union and Estonia. I explained there the situation in detail and proved it through excerpts from documents. If the high Tribunal considers it right that I repeat this here orally, I will be glad to do so.

MR. GLANCY: If it please the Tribunal, international law, customs, usages and political background is not part of the charge. We are concerned with a very narrow channelized thing -- murder. I wish the witness would confine himself to his knowledge of Sandberger's activities and not concern himself with political surveys

THE PRESIDENT: I do believe, Dr. Von Stein, that your witness is sort of spreading out into territory which goes far beyond the limits of the indictment.

DR. VON STEIN: Your Honor, the witness just mentioned an affidavit which he submitted. I consider it helpful that the witness makes his statements before this Tribunal orally so that the Prosecution cross examine the witness afterwards about those points they want the witness to explain. I want to say the following: I consider it of great importance whether the witness will confirm to us here what he himself told the defendant Sandberger about conditions in the country, in which Sandberger was active at the time. Based upon these facts in particular, the Tribunal can get an opinion on the statements which might be used in the defense of the defendant; whether they are afterwards confirmed with the truth; whether they conform to the truth. is certainly relevant, but it doesn't seem that your question was restricted to such a narrow proposition as that. Put your question again.

DR. VON STEIN: Your Honor, my question is as follows: I addressed the question to the witness what he himself when he met Sandberger on the 30th of August told him about the suffering of the Estonian people as a consequence of the occupation by the Soviet Union. Your Honor, all those things were told the defendant in Pretzsch at the time, and the Tribunal should know whether this information was merely propaganda or whether these are facts and truths that actually occurred. Your Honor, it is also of importance for the attitude of any defendant, whether the defendants were lied to; it is a difficult thing when the defendants here heard something from people who should have been experts, or came to decisions through their own experiences.

THE PRESIDENT: Well, we will permit the question, Dr. Von Stein.

Do you know what the question is? I am asking the witness if he knows what the question is. BY DR. VON STEIN: asking you what information did you give to Dr. Sandberger on the 30th of August about the suffering of the Estonian people under the communists. Witness, I now ask you not to refer to your affidavit which we do not know, but I ask you to describe the things as they occurred at the time; therefore, what did you tell Sandberger at the time.

A It's like this. I informed Dr. Sandberger when I met him, about events in Estonia, and for that purpose, first of all I explained to him, since people abroad know very little about Estonia in general, that Estonia is a sovereign state and a member of the League of Nations. In the year 1939 it had been given an ultimatum by the Soviet Union, with the request to sign an agreement of assistance and friendship with the Soviet Union, on the basis of which the Soviet Union wanted to use some areas in Estonia for military purposes. In the agreement it has been expressly mentioned that the Soviet Union in no way wanted to interfere with the domestic affairs of Estonia. In the summer of 1940, the conference of the Baltic foreign ministers took place in Talinn, as had been previously announced by the Soviet Union; when the Ministers were asked whether they objected to this Treaty. During the conference of the Baltic foreign ministers, Estonia, like other Baltic states, was given an ultimatum of six hours saying that Estonia did not want to accept the Soviet Union together with all other Baltic states.

THE PRESIDENT: You had better repeat that entire statement so that there will be no question as to just what the witness said. Estonia wanted to attack the Soviet Union, and for that reason, for security sake, the Soviet Union requested that the Soviet troops enter Estonia immediately, and appointed a new government that would accept and sign this agreement of friendship.

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Soviet troops did enter Estonia; the government resigned. The Soviet Union, on their part, called its plenipotentiary to discussions with the state president; the president of the Soviets in Leningrad Shdanow, at the time he was president there. The Russian local commander immediately requested that they be given the right to held meetings as they wanted to.

THE PRESIDENT: When did all this take place? What was the date?

A On 26th June, 1940. May Icontinue?

THE PRESIDENT: Yes.

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ing of Faustenhof and announced that: He had appointed this government and this government would immediately arrange for elections to be held for the parliament. These elections were set for the 14 and 15th of July, 1940. During these elections, three days before the elections, all candidates who did not belong to the communist party were crossed off the list, and instead of elections which should have taken place according to the Estonian constitution, only those candidates were elected who belonged to the communist party. The votes were not publicly counted; the results of the election were not made known according to election districts; in Estonia election procedure is the same as that in England, but only the total result was made public namely that 92 per cent of the voters had voted for the communists after that. This first chamber of the parliament convened, while the second chamber, the second house of parliament which had been intended by the Estonian Constitution -

THE PRESIDENT: Witness, did you tell all this to Sandberger? about Estonia. I did not explain this only to him, but I had to explain it to every German who was active in Estonia because we could not expect them to understand us if we didn't explain to them what actually happened in Estonia, and we did not want to be governed-

THE PRESIDENT: Did you tell each German who came into your country about the election; and how many were in the one chamber and how many in the other chamber?

A Yes. To all functionaries who could make decisions concerning us I had to explain all this; nor only I, but possibly also my colleagues because I did not meet every functionary.

THE PRESIDENT: Well, suppose you try to abbreviate it; don't give it to us so much in detail.

A Yes, to say it briefly, I informed Dr. Sandberger that according to our opinion Estonia was governed in violation of the agreement with the Soviet Union, and of International law, and had been occupied illegally.

Immediately after the occupation by the Soviet Union, Estonia, was declared as a state, annexed to the Soviet Union, and the Soviet authorities started to be active in Estonia. As to the sufferings of the Estonian people in particular, this was first of all the activity of the NKWD; secondly, the deportations of ten thousands of Estonians carried out in an inhuman and brutal manner; and the activity of the elimination battalions.

MR. GLANCY: One moment, witness; one moment, please. If it pleas the Tribunal, the Prosecution has no desire to suppress any evidence which might help to clarify the defendant Sandberger's position and listening for almost twenty-five minutes, to the testimony which the witness has given

THE PRESIDENT: Do you still tell us, witness, that you told all this to Sandberger?

THE PRESIDENT: Sandberger had a lot of leisure time apparently.

A I didn't understand.

THE PRESIDENT: Sandberger had a lot of leisure time apparently.

A Well, I didn't tell him all this all at once.

THE PRESIDENT: What did you do, meet every once in a while and you would sit down in a rocking chair and you would tell him this long story about Estonia's history? And it was my duty to inform these German authorities who had to make decisions concerning us.

THE PRESIDENT: What did you do? we wanted to avoid. For that reason I explained to him the situation which he found there, and perhaps could understand. I told him the causes and the reasons. I told him that there were three institutions and actions. This was in connection with the NKWD, the deportations and the elimination battalions who terrorized our people to such an extent that we were really quite desperate, and for that reason the people asked that communists who had taken part in these actions be punished.

MR. GLANCY: In order to abbreviate proceedings, the Prosecution is willing to concede that the defendant Sandberger was fully briefed by the good Doctor, now present, on all political history in Estonia, and the things that brought the entry and the occupation which preceded the occupation. If he would just summarize, it would help a great deal.

THE PRESIDENT: There did all these conversations take place, witness, at your home or in his office; or, while you were out taking a little stroll?

A No, in the office of Dr. Sandberger, in Talinn.

THE PRESIDENT: And he would put aside all his affairs and listen to you talk?

THE PRESIDENT: He must have been. to him in several days. Unfortunately, my explanation to this question cannot be brief. I will be glad to restrict myself to the statement that the Estonian people were aroused because of all the communist functionaries, and that in Estonia there was not a single family who had not suffered personally under this.

THE PRESIDENT: Over what period of time did these conversations take place, so that you finally were rails to acquaint Sandberger with the story of your country's turmoils? How long did it take you to tell him this story?

THE PRESIDENT: I am afraid we can't give you that much time here. We are a little busier than Sandberger appeared to be at that time, so, during the recess, suppose you try in your mind to condense the story and then when we reconvene again at 1:45, give it to us a little more tersely than you gave it to Sandberger in 1941.

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(A recess was taken until 1345 hours, 7 November 1947.)

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(The hearing reconvened at 1345 hours, 7 November 1947)

THE MARSHAL: The Tribunal is again in session.

DR. HJALMAR MAE - Resumed DIRECT EXAMINATION (CONTINUED)

DR. VON STEIN: May I proceed?

THE PRESIDENT: You may. BY DR. VON STEIN:

Q. Witness, we stopped at your explanation of conditions in Esthonia. Now, in order to hasten the procedure, I want to put precise questions to you which I want you to answer briefly. What did Sandberger learn from you, about the first big action of the NKWD, which took place on 14 July 1941 in Esthonia?

A. I informed him that on the 14 June 1941, that is, before the beginning of the war and during the period of the peace and friendship agreement between the Soviet Union and Esthonia -- in the night of the 14th June -- that people were arrested and imprisoned: 3512 men, 3024 women and 3067 children. These victims were respected Esthonians and wellknown in public life or in local life. They were also workers, of course, even farmers; and of those seized and deported ones, in order to give an idea of it, were people from newly-born children to people of 82 years of age of all classes of the population. This deportation was quite unexpected and took place in front of the whole population because the trucks, with barbed wire, were at this railway station before the eyes of the population and the whole situation created among the population desperation and hate against Bolshzvism, because considering the population of Esthonia, practically every family was hit by this measure.

Q. That did Sandberger find out through you and other Esthonian personalities concerning Extermination Battalions.

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A. I told him that Extermination battalions were active in all circles and all territories in Esthonia, by order of...

MR. GLANCY: One moment, please. If it please the Tribunal, we again wish to renew our objections on the same basis as before. These occurrences, as far as we can see, have no relevancy to one charges as ledged against the defendant Sandberger in the indictment. These are purely collateral and are not connected in any way, matter or form which we can see.

DR. VON STEIN: Your Honor, the defendant Sandberger, as all the other defendants, is charged with being guilty of shooting many Communists. I want to clarify with the help of this witness which Communists were shot at that time and what the attitude of the Esthonian population was as to this. Therefore I think these questions are relevant.

MR. GLANCY: The Esthonian population is not being charged before this Tribunal, merely the defendant Sandberger, sir.

THE PRESIDENT: Dr. von Stein, what did the attitude of the population have to do with the defendant's action? Do you intend to submit that the defendant went there to execute the will of one Esthonian population?

DR. VON STEIN: No, your Honor. I want to emphasize two points. The first is what did Snadberger know about these things when he resolved the order in Pretzsch. Secondly, the execution of this order, as I shall prove, was not only carried out on the part of the German authorities but also largely by the Esthonian Civilian Guards in self defense. which Sandberger at that point entered, it is of great importance to show the attitude of the Esthonian people towards Communism.

THE PRESIDENT: Well, we will permit the question and the objection will be overruled; but I think you should try to bring it as quickly as possible to the real issue in the case, namely, whether Sandberger was guilty of any crimes.

DR. VON STEIN: Yes, your Honor. BY DR. VON STEIN:

Q. Witness, I repeat the question to you: What did you tell Sandberger concerning the extermination battalions?

A. Extermination battalions had been installed by order of the Commissar of Interior Matters in all the Sectors who had the order to work independently without any examination or investigation against everybody who spread rumors and who were regarded as Soviet enemy elements or those who were regarded to be against the occupation powers and to eliminate such elements which otherwise could come into the hands of the enemies. -- as regards the Deportation....

THE PRESIDENT: Just a moment. You used the words "enemy" and "occupying power." Now, in that part of the world who was an enemy today might be a friend tomorrow; who was occupying today would be an invader tomorrow because at one time Germany and Russia were fighting side by side. So that, use the name of the nation and of the nationals, otherwise some difficulty might arise in trying to determine just whom you are referring to.

THE WITNESS: Yes. I beg your pardon, your Honor.

A. (Continuing) there was an order by the People's Commissar for Interior Affairs. Germany was regarded as an enemy because, at that moment the country was in Soviet Russian hands.

THE RESIDENT: What year was that?

THE WITNESS: That was In July, 1941. War was at that time waging within the country. These extermination battalions COURT II CASE IX did not only fight the enemy, that is, Germany, but also they fought Esthonians at the actual places because Esthonian men, as they were afraid of deportation, had fled into the woods, and forests and the moors and there tried to protect their families when extermination battalions were approaching.

opinion, quite a number of defenseless, innocent people and not only murders alone, but also tortures which we regarded as inhuman; for this reason the population was so much enraged against the extermination battalions, that in the front lines in which Estonian Defense police had arrested members of the Extermination Battalions, these were dealt with immediately there and then.

THE PRESIDENT: These elimination battalions, who were they? I told you to use the name of the nation. Otherwise we are going to get into a lot of amgiguity.

THE WITNESS: Yes. These elimination battalions consisted on the Soviet side and the Esthonian side. The Esthonian self-defense organizations which operated in the woods and forests and in case of fights had arrested members of these battalions who had committed murders shot them there on the spot, through a court martial. Therefore, I made the effort, that is why I talked to Sandberger about this, to prevent these independent acts in these places and I tried to introduce an actual examination immediately because I did not want illegal and impossible circumstances to prevail in the front areas.

Q. Witness, did you tell the defendant Sandberger about the losses on the part of the Esthonians through the actions of these elimination battalions or other actions by the Communists?

A. On the whole, Esthonia lost, until the end of October 1941, 108,000 members of the population. Of these losses there are about 65,000 people which were lost in these actions.

Q. What is the whole population of Esthonia?

A. 1.2 million inhabitants.

Q. Witness, is it true that the Esthonian population was generally of the opinion that one had to recokno with the fact that these Esthonians which were deported by the Russians, were taken to Russia or would be taken to Russia and would be killed there and was it the opinion of the Esthonians that the German Security Police found out about this?

THE PRESIDENT: That question is not clear to the Tribunal. I don't know if it is to the witness.

DR. VON STEIN: The witness has just explained that large numbers, thousands and tens of thousands of the population were deported. He told us that the total losses were far beyond a hundred thousand of which a large part had already lost their lives before this action. I now put the question to the witness, what the attitude of the Esthonian population was and what they thought about the fate of the remainder of the deported people, whether the Esthonians were of the opinion at that time that they would over see their family members again or whether they had to reckon that they would probably be killed in Soviet Russia and would never return to their home country. I think this question important for the reason that the witness will tell us that the population must be very much embittered and that these matters must have influenced the population so much that they organized their own self defense and retaliation measures and that is how the number of thousandsof people appears in the documents.

THE PRESIDENT: Your question is entirely too broad. You want this witness to tell what every member of the population thought. In the first place, how can he tell what anybody thinks? Now he's already explained that they suffered great losses and he's told about deportations. The deeds speak more than thoughts. So he can't testify as to what everybody else thought. He can only testify as to what they said and what they did. Now, it seems you have indicated what he told Sandberger so the time ought to be ripe now to bring Sandberger in on the Scene.

DR. VON STEIN: What I meant, Your Honor, was this: The witness must know what the general atmosphere of the Esthonian people was at that time and I put the question to the witness, whether he gave Sandberger an idea of this attitude and atmosphere within the Esthonian people. That was my question.

THE PRESIDENT: That isn't what your question was originally. You asked him what the population thought. Now, if you will ask him what he told Sandberger, that is another thing; and, furthermore, it seems that he's already told us what he told Sandberger.

DR. VON STEIN: Yes, Your Honor, I shall withdraw the question. BY DR. VON STEIN:

Q. Witness, I put the following question to you: What did Sandberger learn from you about the regulations prevailing in the Esthonian Republic concerning Communist activities?

A. The Communist Party and activities in Esthonia was prohibited since the public riot attempt 1st December, 1924. Activities were regarded illegal and therefore punished by court martial.

MR. GLANCY: If it please the Court, the membersof the Prosecution do not wish to seem persistent, but again we enter the same objection on the same grounds, that of relevancy. That the population thought about the Communists has nothing to do with the crimes with which the defendant Sandberger is charged.

THE PRESIDENT: You are now going back to 1924 what the Esthonian population thought in 1924 or what the official attitude of the Republic was in 1924.

You are going back to 1924 and a great deal happened between 1924 and 1941 which could completely change a scene which occurred in 1924. That is certainly too far back.

DR. VON STEIN: This morning I heard the President put a question concerning Communists. This question wasput to the defendant Steimle and it was to the effect whether Steimle had had Communists shot just because they were Communists.

THE PRESIDENT: That was in 1941. I certainly didn't ask him what he did in 1924.

DR. VON STEIN: Your Honor, it does not refer to the years 1924 or 1920 but it merely refers to the time 1940, that is, even the time before Russia invaded Esthonia.

THE PRESIDENT: And there is a vast difference between the question which the Tribunal put to Steimle, who is a defendant charged with a specific crime, and this witness, who is not a defendant and who has come in here only to testify as to conditions which Sandberger was familiar with. Now, Sandberger certainly didn't know what was happening in Esthonia in 1924. At any rate, he isn't chaged with any knowledge of what happened in 1924, and even if we suppose that he did know, are you going to argue that because the Communists did certain things that Sandberger was privileged to do the same? Is that your theory?

DR. VON STEIN: No, Your Honor. My starting point is the following: I want to show the Tribunal what the legal rules were prevailing until 1941 concerning Communism or Communist activities and what did Communist action mean. Did it mean that a man would be punished severely just because he was merely a communist?

THE PRESIDENT: We have already allowed you to do that and we will allow you even further to do it, but its don't see how it is going to help anybody to have this witness tell us about 1924 which is the date the witness mentioned.

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DR. VON STEIN: Your Honor, I only asked the witness the question concerning the time until the time 1941 and how the situation was at that time. I don't want to know how it was in 1924, I only want to hear from the witness what he himself told Sandnerger about legal regulations in Esthonia before the Russians occupied Esthonia.

THE PRESIDENT: Well, it you don't want to hear about 1924 and the Tribunal doesn't want to hear about 1924, I guess we are unanimous, we don't want to hear about 1924.

DR. VON STEIN: No, I don't want to hear anything about 1924; I want to hear about 1940.

THE PRESIDENT: Very well. Let's hear about 1941. BY DR. VON STEIN:

Q. Witness, what were the regulations prevalent in Esthonia in 1940 concerning Communism or Communist activities?

A. It was legally forbidden; Communist activities were regarded illegal and was punished by court martial. The sentences were up to death sentences.

THE PRESIDENT: Well now, I don't quite follow you. Which government is issueing these decrees, now?

THE WITNESS: The government of the Esthonian Rupublic.

THE PRESIDENT: I thought that you had told us that the Soviet government had taken over; that they had won the election; that you had a Soviet government after 1940.

THE WITNESS: On the 22 June 1940 the Esthonian independent government ceased to exist. Until then Communism had been forbidden, as I said.

THE PRESIDENT: Yes, but who was your government in 1941?

THE WITNESS: 1941, Esthonia was part of the Soviet Union and had been annexed as such.

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THE PRESIDENT: Are you telling us that the Soviet government was putting up manifestoes that anyone advocating Communism would be shot?

THE WITNESS: No.

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THE PRESIDENT: Well, Dr. von Stein asked you to tell us about the conditions in 1914, and you proceeded to tell us about these decrees prohibiting Communist activity.

DR. VON STEIN: Your Honor, I put the question for the period before the occupation of Russia. I want to find out what was before. There are various periods of time concerned, Your Honor.

THE PRESIDENT: Just a moment.

DR. VON STEIN: There are various periods of time here. The first time until the occupation of Esthonia by the Soviet Union; then the second period, that is the time of the actual occupation by Soviet Russia, and the third stage is -

THE PRESIDENT: Dr. von Stein, the Tribunal is aware of these different periods. What we are endeavoring to have you do, and the witness also do, is to indicate what period you are referring to, but if you begin to talk without indicating the date, without indicating the nation, then this testimony is of no value whatsoever.

BY DR. VON STEIN:

Q? Witness, I shall put the following question. What were the legal regulation concerning the punishment of Communistic activities until the occupation of Esthonia by the Soviet Union?

A. As I said, Communism, until 22 June 1940 was prohibited in Esthonia by law, and was punishable by military law, up to death sentences.

Q. What punishments were imposed? Can you tell the Tribunal in what cases death sentences were imposed, and what usual punishments were imposed for other activity?

THE PRESIDENT: Dr von Stein, we have this much, that up until 22 June 1941, Esthonia officially prohibited the practice of Communism, and for the violation of that decree punishment could be meted out even up until death. Now, we have that. Now don't go back to that any more.

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DR. VON STEIN: May I point out Your Honor, apparantly it was a translation mistake, and apparently '40 and '41 have not been translated. properly. The witness in now dealing only with the period for '40.

The date in '40 is before the occupation of Esthonia by the Communist. He is now only talking about that period before this; that he is not speaking about 1941 when Russia was --

THE PRESIDENT: We got up tuntil June 22, 1941, that is what we have got. Is that wrong?

DR. VON STEIN: Can you tell the Tribunal the individual dates which we talked about. Tell us exactly the dates, and in part of the attitude of the government, and what the government of Esthonia had to do whether influenced by the Soviet Union at the time, or whether it was an independent nation?

THE PRESIDENT: You are giving him about fifteen question in one, long outpouring of words. Now, just a moment.

Q. Witness, there was a period of time during which Communism was prohibited, and the practice of Communism got severe penalties even including death; which period was that?

A. Until the 22 June 1940.

THE PRESIDENT: 1940. All right, now proceed from that point. BY DR. VON STEIN:

Q. Witness, what was the attitude of the Esthonian population from the Summer of 1941 concerning the punishment of those who participated in the actions of the Bolshevists in Esthonia?

A. The population asked for severe punishment for those who were actually quilty.

Q. Who carried out the arrests of those communists?

THE PRESIDENT: The population asked for severe punishment for what? For those who were guilty means nothing.

THE WITNESS: I beg your pardon. The population asked for severe punishment of all those who in 1940 and '41 during the occupation of the country by the Communists made themselves guilty of murder of individual persons in Esthonia.

BY DR. VON STEIN:

Q. Witness, I ask you again in order to establish the right dates. You spoke of people who made themselves guilty in such an action. When did they become guilty? What period was that?

A. The period is from the occupation of Estonia by the Soviet Union, 29 June, 1940, until the occupation of Esthonia by the German troops; that was in the course of June, July or August, until 21 October 1941.

Q. Tell the Tribunal what you mean by guilty. What does the term "guilty" mean? What did one do with people who were found guilty?

A. On the part of the elimination battalions, which we have been speaking about, and on the part of the NKWD, several thousand persons were murdered.

THE PRESIDENT: All right now, we understand up until June 22, 1940, those who practiced Communism were criminals, and could be executed; between June 22, 1940 and June 1941, those who did not practice Communism were guilty and could be killed, is that right?

THE WITNESS: Yes, that is correct.-----

THE PRESIDENT: All right, let's proceed on that point now. Dr. von Stein you ask the questions.

DR. VON STEIN: Yes. BY DR. VON STEIN:

Q. Witness, after Esthonia was not under Soviet Sovereignty, any more then if I understood you right, the population asked for punishment for those who during the period of occupation had denounced others to the NKWD Esthonians, or had handed them over; are those the guilty people who after the Red Army left, were punished by the Esthonia authority?

THE PRESIDENT: You have made a very complicated question. It is a very simple thing. After the Soviets withdrew, and the German forces took over, then Esthonia went back to its original attitude of being anti-Communist, and demanded punishment of those who had been violent Communists during the Soviet period?

THE WITNESS: Yes, that is so, Your Honor. BY DR. VON STEIN:

Q. Witness, who arrested these Communists who had been found guilty?

A. For the most part the Esthonia self-defense organization, partly the police.

Q. Were the investigations of any individual cases carried, out?

A. I cannot answer from my own knowledge, but so far as I have been informed, in most cases, yes.

THE PRESIDENT: Now, just a moment.

A. (continuning) - but also

THE PRESIDENT: You are not permitted to say you have no knowledge of a thing, and then give us an answer. If you have no knowledge then you have no knowledge. Now, you either have it or you don't have it. You can't guess at your answers. Now, do you have any knowledge on this subject?

THE WITNESS: Well, yes. I understand the question asked by the Tribunal that is, the last question.

THE PRESIDENT: I didn't put the question to you. It was your attorney who put to you the question. Put your last question again Dr. von Stein. BY DR. VON STEIN:

Q. Witness, I ask you now who conducted the investigations against these Communists?

A. The self-defense organization, and the political departments of the Police Main Office.

THE PRESIDENT: And you know this of your own knowledge?

THE WITNESS: Yes.

THE PRESIDENT: Very well. BY DR. VON STEIN:

Q. Now the German Security Police carried out such investigations in July and August?

A. I don't think I can answer this question. I have no knowledge of this.

Q. Witness, after the German Army marched into Esthonia, that is, in July and August, 1941, who ordered the executions of the Communists ?

A. The local and field commanders ordered the executions.

THE PRESIDENT: At the end of your answer you say "Local and field commanders," which does not mean a thing. Which local and field commanders? The Esthonia local commanders or the German local commanders?

THE WITNESS: I beg your pardon. I shall be more explicit. They were the field and local commanders of the German Wehrmacht, of the German Army who held the power.

THE PRESIDENT: Very well. BY DR. VON STEIN:

Q. Witness, as soon as a conditions became a little more quiet, and the German Security Police had the possibility to take over from the formerly mentioned authorities that actual procedures could be initiated how was the actual procedure in these cases then?

A. Investigations were carried out by the political department of the Police Main Offices, the Esthonia Police Main Office.

Q. And who decided in that case?

A. The investigation materials were examined and investigated by committees, by examination committees, and with the judgments they were turned over to the German authorities.

Q. Of whom did these committees consist?

A. They were former Esthonia judges and other legal authorities.

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Q. Who were the proposals submitted to, proposals for sentences?

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THE PRESIDENT: Did the Esthonia authorities themselves conduct any executions? I am referring to that plan -

A No, no, we didn't have power to do that.

THE PRESIDENT: Immediately following the Soviet withdrawal, did the Esthonia authorities conduct any examination, trials, and executions?

THE PRESIDENT: Why not? authority by the Germans. We would have preferred to do it ourselves.

THE PRESIDENT: The Germans took over all authority when the Soviets withdrew?

A No, it didn't take over all the authority, but a part of the functions of the government offices. Esthonians were in charge of the administration of local district offices.

THE PRESIDENT: Were you engaged in arresting people? Did Esthonia have authority to arrest people?

THE PRESIDENT: I didn't say, you. I said, the Esthonian authority. Were you the whole State?

A No. But the self defense organization who were subordinate to German field and local kommandateurs did carry out arrests of persons.

THE PRESIDENT: Yes, well, then the Esthonian authorities had no authority in police work, in arrests or in trials?

Q They had no authority to conduct investigations?

THE PRESIDENT: Allright, proceed. BY DR. VON STEIN: instituted which proposed the judgment and sentences, and submitted them to the German Security Police. I now ask you whether this kind of procedure was as thorough possible, and, whether it corresponded with the demands of Justice and Objectivity to such a degree as was possible at that time?

MR. GLANCY: We fail to see that he sets himself up as an expert to give an opinion as to whether or not these investigations and recommendations were justified. He said he had had no part of police work. We object to the question on that ground, if if pleases the Tribunal.

THE PRESIDENT: The witness has stated that the Esthonian authorities had no power to conduct any arrests or investigations.

DR. VON STEIN: May I repeat. The witness stated that there was a judgment commission; there were lawyers, Esthonian lawyers, and this commission collected and compiled the material, and then proposed the judgments to the German Security Police.

THE PRESIDENT: What is your question.

DR. VON STEIN: I now ask the witness whether he is of the opinion whether this kind of procedure was objective and thoroughly, and whether this kind of procedure ...

THE PRESIDENT: Witness, do you still stand on your answer made just a few moments ago, that the Esthonian authorities conducted no arrests or examinations?

THE WITNESS: Well, I must explain, Your Honor, I took over my office .....

THE PRESIDENT: No, just a moment. Just a moment, please. That is the answer you made to the Tribunal. Now do you stand on that or don't you?

THE WITNESS: Well, officially, these authorities were at that time authorities of the German field and local kommandenteurs. There was no Esthonian Central Government.

THE PRESIDENT: All right, the Esthonians worked under the German occupying power, is that right?

THE PRESIDENT: Very well, all right. Now your attorney, or rather Dr. von Stein has asked you to pass judgment upon some entirely independent body, and the Tribunal is unable to see how we can pass judgment on what somebody else did. The objection of the Prosecution in that respect will have to be sustained.

DR. VON STEIN: population at that time criticised this manner of investigation at that time?

Q Shall we put it in another way. Were the Esthonian population in agreement with large scale investigations being carried on against active Communists, or did the Esthonian population ---

MR. GLANCY: The witness has not stated that he performed a "gallup poll" of Esthonia, therefore, he is not qualified to answer that question. He does not know as a cross section what that opinion was.

THE PRESIDENT: In the first place we don't know what the judgments were.

DR. VON STEIN: Your Honor, I want to put the following question to the witness. The witness has been in Esthonia and he lived in Esthonia, and I want to ask whether he knows of the attitude of the population there, what he thought about it?

THE PRESIDENT: About what?

DR. VON STEIN: About the investigation of active Communists, whether the population, owing to the hardship they had suffered, they even defended themselves at the time. Your Honor, it is like this, that shortly after, or just before the invasion by the German Army the population was so angry that accesses occurred in great numbers, were Communists were shot by the Esthonians in self-defense. Therefore, the number of Communists shot increased to such an extent and they are mentioned in these documents which were submitted by the Prosecution, for this reason I want to ask the witness these questions.

MR. GLANCY: Perhaps, your Honor, I have misunderstood but I have understood from the witness that the Esthonians could not carry out these executions.

THE PRESIDENT: He very very specifically stated that.

DR. VON STEIN: Your Honor, these were not executions, but we must imagine back to the time immediately following the departure of the Russians. They were just shootings. These people about whom the witness told us that they were hiding in the woods, they came out of their hiding places, and these people who were responsible for the murder of their own families, were simply shot without sentence, without judgment, without being tried.

THE PRESIDENT: Dr. von Stein, you are not on the witness stand. The great difficulty here is that you have put the cart before the horse.

I don't know whether that can be translated correctly into German or not. If you had put the defendant on, then we could more easily follow what you are attempting to show by this witness, bu you are endeavoring to establish by this witness some things which apparently are predictated upon what you intend that your client will say, and we don't know what it is. Now let me suggest this to you. If this witness has the possibility of remaining in Nuernberg for whatever time is required, then you can put him on after the defendant testified, and then perhaps what he is now talking about will not be so ambigous, and foggy.

DR. VON STEIN: Your Honor, I think it is most important for us to hear from a neutral witness of facts or whether we more depend on the statement of one of the defendant's, and I would like to follow your suggestion, Your Honor -

THE PRESIDENT: Listen, Dr. von Stein: You are asking this witness to confirm what the defendant has not yet stated, isn't that true? You want him to say that the people of Esthonia shot the individuals that the Prosecution charges the defendant shot. That is what you are endeavoring to build up, but the trouble is that you don't have a foundation for that kind of a statement. We will permit you to examine this witness if you insist on presenting it that way, but we will have to adhere to the rules of evidence, and what is irrelevant we will exclude. We have indicated to you a way of getting this testimony in, but if you don't want to take that course, of course that is your privilege.

DR. VON STEIN: Your Honor, I would like to accept this suggestion, but I would like to draw your attention to the fact that the witness has been here for a month, and the witness comes from Austria.

Furthermore, I don't think he has very much time, not enough time to remain here. I have had difficulties, Your Honor, and I was asked again and again how long the witness would stay here in Nuernberg, but regarding the importance of the statement, I have declared again and again the witness would be examined very soon. Now he is here in the witness stand, and I would like, therefore, to ask the Tribunal to permit me to put this question so that the witness can go back to his home.

THE PRESIDENT: Did you over ask the Tribunal about this situation. About the witness, whether he should wait, and when he could come in?

DR. VON STEIN: The witness was asked to come here, Your Honor.

THE PRESIDENT: But you say -

DR. VON STEIN: Without my having told when he should appear here.

THE PRESIDENT: Now, Dr. von Stein, let me tell you, as I thought I made it clear to all defense counsel. That this Tribunal is ready at all times to hear attorneys either in the court, or in the chambers, and when you have any difficulty, come to see the Tribunal. If you had come to the Tribunal, and told us that you had a witness here a month ago, we certainly would have done something about it.

DR. VON STEIN: Your Honor, the reason was that my defendant was ill for some time. Therefore, I could not suggest this witness he examined before and request to have the Tribunal hear this witness. It was very important to me that this witness should be heard immediately before the examination of the defendant. I did not want to tear my case into two. Therefore, I had to wait until my turn came today, because my client is now well again. That was the reason for it.

THE PRESIDENT: The Tribunal will adjust itself to the situation in which you find yourself and you may continue with the examination.

DR. VON STEIN: Your Honor, I have now decided to follow the suggestion of the Tribunal and to -

THE PRESIDENT: You mean Dr. Gawlik has decided.

DR. VON STEIN: No, your Honor, it is not this, but to my regret I have found out that only a short time is at our disposal now anyway, and within this court I do not think I will be in the position to finish the examination of this witness in an hour, so therefore the witness has to remain here until Tuesday or Wednesday, and I think it will not be of such tremendous importance to the witness whether he can go back to his home two or three days before or after. For this reason I have now decided to wait with the examination of this witness and to discontinue it now.

THE PRESIDENT: I think, Dr. von Stein, in arriving at so momentous a decision that you had to wrestle with yourself a great deal, and you must feel a little tired now so we will give you a rest of fifteen minutes.

( A recess was taken.)

THE MARSHAL: The Tribunal is again in session. testified as follows:

JUDGE SPEIGHT: Witness, raise your right hand, and repeat the oath. speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated. BY DR. VON STEIN:

A My name is Martin Sandberger. I was born 17 August 1911 in Berlin. My father was a commercial employee. I attended the elementary school in Stuttgart and in Hoechst near Frankfort on the Main River. In Hoechst I also attended the high school from 1920 until 1929. In 1929 I graduated there. After that I studied from 1929 until May, 1933, I studied law in the Universities in Munich, Freiburg im Breisgau, Cologne and Tuebingen. I concluded these studies with the first state exam of law, the so-called "referendar exam" in May, 1933. After that, until November, 1936, I was legal Referendar. I concluded my service in the legal administration in November, 1936, with the second state exam of law, the so-called Assessorexam. Already before, namely in November, 1933, I got my doctor's degree at the University in Tuebingen.

My further career after passing the assesor exam November 1936 is as follows: As an assesor I joined the service of the Wuerttemberg inner administration and I remained there 1937 and 1938. For half a year at a time as an assessor in the inner administration of the county, as I shall describe later. The other half of the year 1937 and 1938 I was active in full capacity in the SD Main Section in Stuttgart.

In the Wuerttemberg innder administration, according to the prescribed time in March 1939, I was promoted to governor councillor, and, therefore, had the rank of a civil service in the inner administration.

Q When did you join the NSDAP? or any other political parties?

A No. Until then I had no interest in party politics until then.

Q What were your motives for joining the NSDAP?

A The impression I had gained in the year 1931 was as follows: The political and economical situation in Germany became worse more and more as mysery and unemployment spread more and more. In order to avoid repention, I wish to point in this connection to the explanations which my co-defendants have already detailed, concerning the impression which they gained in those years in Germany.

Q Which afficiation of the party did you join at the end of 1931? Students Association.

Q Were you active in the Students Association in 1933?

A Yes. From the middle of May until the middle of July 1933 I was chief of the Students Association in Tuebingen, after I had already been president of the General Student Committee of the Tuebingen Students Association for some weeks in 1932.

Q Why did you join the SA in 1933?

A The reasons was as follows: One of the most important motives of my joining the National Socialist Party was that it was my opinion that the then in Germany existing class-distinctions and class hate should have to be overcome by creating a community of the people.

As a student I felt the class distinctions even stronger than other people. For me, the question of joining the SA was so to say the only possible confession to a principle of a practical community of the people, doing service there once or twice a week together with men from all professions.

Q When did you first come in contact with the SD?

A That was in 1935. At the time I became an honorary co-operator of the SD on the subject of section situation reports regarding high school and scientific questions. operator of the SD? tion namely, Dr. Schoel pointed out the SD to me. At the same time when I was chief of the Students Association in Tuebingen he had been chief of the Students Association in Heidelberg, and thus I had become acquainted with him.

Q What did Dr. Schoel tell you when he won you over for honorary co-operation in the SD? political parties and independent press were eliminated that then the highest Reich authorities would not be properly informed about the real situation in the domestic sphere and that the real feeling of the people in these domestic spheres was not explained to them very clearly. Therefore, he explained to me, it be necessary that an independent, neutral information service be set up to bring objective situation reports on all domestic spheres of life. I must point out that Dr. Schoel had got contact with the SD through the same Professor Hoehn who has been mentioned here repeatedly by Herr Ohlendorf and Spongler in the witness box. This Professor Hoehn at the time was an lecturer on state law, and in 1935 he had taken it upon himself to set up such an information service on domestic spheres, particularly on the cultural sphere.

Q When did you become a full-time employee of the SD?

A That was in November 1936 after my second exam on law. I became then chief of Department II/2 in the SD Main Section South West.

Q What were your tasks in this department? German domestic sphere. It was not a security police task nor an information service but reports about German domestic spheres, as has been testified to in detail in the witness stand here by Herr Ohlendorf. My personal duties as department chief consisted mainly in choosing experts, and to train them. Section South West within the main framework of the SD--did they have to deal with getting information or with central evaluation?

A Neither the one nor the other. For the task of the information service was up to the SD sections, and the task of the central evaluation was up to the SD Main Office in Berlin. This main section was, therefore, an intermediate instant between the SD sectors on the one hand and the central office in Berlin on the other hand. They had to be passed on orders from Berlin to the subordinates offices, had to check the reports of the subordinated offices, and had to forward those reports.

Q During that time were you only active in the SD?

A No. As I indicated before, throughout these years of 1937 and 1938 I was simultaneously a civil servant in the inner state administration and simultaneously I had a part-time job in the Reichs Students' Association which can be explained by the fact that my superior in the SD, Dr. Schoel in 1936 also became Reich Leader of the Students Associations and these two functions were both dealt with by him.

Q What plans did you have at the time for your future? Inner Administration, a plan, which my superior in the SD, Dr. Schoel also approved of.

Q Did your activity change owing to the outbreak of the war?

as through the order of the chief of the security police of the SD at the outbreak of war all SD main sections were dissolved. Previously I had been chief of the inland department with this main sector. My task after the outbreak of the War was to dissolve the SD Main Section as far as organization and personnel was concerned.

Q How long did you hold this function?

Q What task were you given after that? the Reich. Office of the Reich?

Naturalization of German immigrants from Estonia and Latvia who according to international agreements between Germany on the one hand and Latvia and Estonia on the other hand, in the fall of 1939, had voluntarily emigrated from Estonia and Latvia. A directive provided for the appointment of experts from six different Reich sectors who worked independently in their own fields. My task consisted of dealing with the technical and organizational aspects of the directives issued by these experts.

Q Was the Central Immigration Office part of the SD?

A No. It was a special agency of the Interior Administration of the Reich. Its foundation had been ordered by a decree in the Reich Ministerial Gazette of the Interior Administration issued by the Reich Ministry of the Interior.

Q When did you become a referant in Office I?

Q What were your main tasks as referant in Office I? training of the Security Police and the SD. The most important part of this was to find new directives for the career and the training of the so-called executive service of the security police and the SD. To be brief May I refer to what Herr Schulz has testified in the witness stand about this executive service? Immigration Office, did you have the possibility to look into the affairs of other offices of the RSHA? Central Office?

Q Upon joining the SD, were you at the same time taken into the SS?

A Yes. At the request of my chief in the SD, Dr. Scheel, I was taken into the SS in January 1936 within the SD; I did not belong to the General SS or the Waffen SS.

in connection with Count III of the Indictment where you are charged with membership in the SD and the SS I just want to conclude those points which are connected with the questions of your activity in the SD and the question of your involuntary membership in the SD during the war. How long were you in the Eastern assignment?

Q What was your next assignment? of the commander of the security police and the SD in Verona in Italy. which you were in charge? al and economic spheres in that part of Italy which was occupied by German troops at the time. In order to give a picture of this activity, could you give us some examples of such reports? in the fall of 1943, whether the German economic leadership and particularly the armament industry should discontinue an important part of the northern Italian industrial production and deport the experts to Germany. In accordance with the feeling prevalent among the population of Northern Italy, Department III of which I was in charge at the time was very much in favor of continuing the Northern Italian industry to as great an extent as possible and to let the skilled workers remain in their regular factories in the industrial cities in Northern Italy as far as possible and continue to work there instead of sending them to Germany. Such reports went to Office III of the RSHA in Berlin whose job it was to come to conclusions about this, and they also were sent to the German plenopotentiary in Italy, to Ambassador Rahn.

Another example of questions which were acute in Italy, particularly in the fall of 1943, were questions of food supplies. At the time we pointed out to the competent German authorities that the Italian food situation was endangered and we made suggestions how the situation night he relieved and improved, suggestions which were made to us by the population. have any functions or auxiliary functions in connection with the secret state police? orders which are mentioned in the IMT verdict against Gestapo and SD?

Q How long did you carry on this function? RSHA as Chief of Department VI A.

Q When did you actually start this work? charge? Office VI, special training, office and files of Office VI, also the cultural information service and the Central Office of Office VI. an information organ of the Gestapo, the secret state police? information about any order or measure which is mentioned in the IMT verdict against the secret state police and the SD?

A No, I did not get information on this. May I add to the question that I was not Chief of Department VI, but Chief of Depart ment VI A. thing about any order or measures which are mentioned in the IMT verdict against the secret state police and the SD; you never heard about such in any of your positions from the beginning to the end of the war except for those orders with which you were concerned in the so-called Eastern assignment, is that right?

war is part of the indictment; were you a voluntary member of the SD during that time?

A No. The membership in the SD throughout the war was not voluntary; since the outbreak of war, leaving the SD was prohibited and, therefore, practically impossible. The entire full-time personnel of the SD was considered, after September 1939, as essential war work and was subject to military law, within the jurisdiction of the SS and police. compulsory?

Q Yes there a possibility for you to volunteer for the army? but nevertheless I tried this repeatedly in a hap-hazard manner about seven times in all between 1941 and 1945.

Q At which agencies?

AAt the agencies competent for this in Office I of the RSHA. In March 1941 I made a written application to the Chief of Office I, Streckenbach, in which I urgently requested transfer to the army.

Q What happened after that?

Q What did you do after that?

When I was granted this after a few weeks, I asked Streckenbach during a discussion lasting half an hour that he grant my application. He explained to me that the shortage of personnel in the RSHA was so great that nobody could be released, and he was very unfriendly when I left him because I was so insistent.

Q Was there another agency where you could have applied?

A No. As Office Chief I, Streckenbach was the only one competent for this. 1940 or 1941? I had been in the hospital for many months and during that time I was completely unfit for war service. At the beginning of the war the results of this illness were still so strong that I was fit for duty in an office but not for regular war service. I, therefore, did not actually have the possibility to volunteer for the army already then. service? your fitness? At the beginning of the winter 1940-41, I decided to do everything in order to eliminate the consdquences of my illness in order to restore my ability to do front-line service and thus to make it possible to join to the army and therefore to be able to leave the RSHA.

My first watering cure in the spring of 1940 was unsuccessful. With the permission of Office Chief I, Streckenbach, in February 1941 and March 1941, I made another cure for the special purpose of restoring my fitness to do front-line duty and thus to be able to join the army. Immediately after that, as I already explained, I asked Streckenbach for my release to join the Army. That is, at first, I wanted to take my basic military training and then go to the front as a private. I want to emphasize here that I did not know anything else at the time, except that the Germans had planned to attack England, as was announced in 1940. The Russian campaign was not mentioned, at least not to me at the time.

Q In 1941 and later, in spite of Streckenbach's refusal, did you continue to make attempts to go to the Army as a combat soldier? I asked every few months, in talking to the competent personnel chief, whether there could not be a way to release me to join the army; the first time in October, 1941, then again in March, 1942, and then every few months. Also in 1944 I tried again and in 1945, when I was in Office VI of the RSHA, I continued with these attempts, unfortunately unsuccessfully, due to the acute shortage of personnel in the SD.

Q Did you make any other attempts to leave the RSHA?

A Yes. My former SD chief, Dr. Scheel, at the time was still Chief of the Reich Student Association. At the end of 1941 I wrote to him asking whether he could not use me in his Reich Student Association and ask the RSHA that I be released for this. He agreed to this and addressed a letter to the RSHA with the urgent request to release me for an office in the Student Association. The matter dragged on for months, but finally his request was rejected, again due to the great shortage of leaders who were informed about affairs in Office III. war?

A No, there were only orders which one had to obey. I did what I could against my first, second and third order.

did you then try, during the time of the Eastern assignment, to get away from there? was Dr. Gengenbach, who was competent for personnel questions of the domestic SD. As I explained at the beginning, I had belonged to this domestic SD until 1939 and that was my special field. In the years 1941 to 1943, every time I was in Berlin, I visited Dr. Gengenbach and asked him to see to it that I be given another position in the SD service in the Reich which would have nothing to do with the police.

Q When, exactly, was this?

A The first time in October, 1941. That was my first official trip to Berlin from the Eastern assignment and the second time in the fall of 1942. Then about every 3 to 4 months, until finally I came to Verona as Department Chief III within the domestic SD. called Eastern assignment with the Security Police and the SD. When were you ordered to go to the Eastern assignment?

A That was in the first half of the month of June, 1941. I cannot remember the exact date.

Q Did you object to this order? release me for the Army, as I have already explained.

Q What did Streckenbach reply to you?

A He told me a war with Russia was at hand. An assignment by the Security Police and the SD had been provided for this. There was an acute shortage of personnel. He even had to bring people back from the Army, and, therefore, the question of releasing any one for the Army was beyond discussion.

Q Had you been trained for the police?

Q Was there a possibility for you to evade the Eastern assignment?

A No, I was under military law. One could not try more than I had tried with Streckenbach. units assigned to the East?

Q What happened in Pretsch?

A The units were set up and distributed. I was appointed Chief of Sonderkommando I A. As for the details about the time in Pretsch, I would like to refer to what has already been said in detail on the witness stand here, particularly by Herr Ohlendorf. I myself was present during the discussions in the Palais Prinz Albrecht in Berlin and during the speech by Streckenbach which has been mentioned here repeatedly and during which the well-known Fuehrer Order was announced.

Q What rank did you have at the time?

A My rank was that of a Sturmbannfuehrer. That is the same as a major in the Army.

Q What orders did you receive before the Eastern assignment? expected, about the conditions in regard to international law, and other information and instructions which Herr Ohlendorf and Herr Blume have explained in detail on the witness stand here. May I refer to this. Also, Streckenbach personally informed me about the Fuehrer Order, which said that in order to secure the Eastern territory permanently, all Jews, Gypsies, and Communist functionaries were to be eliminated, together with all other elements which might endanger the security. orders to you?

Q What was your reaction to the Fuehrer Order?

think it was possible that such an order was at all thinkable. The contents of the order were so entirely beyond my imagination that I could not imagine a realization of this. In particular, I could not imagine that I myself would be able to do this and, on the other hand, I believed I could not ask my men to do something which I could not do myself.

Q Did you see a way out of the situation?

A No, I saw no way out. For me it was a position of great inner compulsion and a conflict between duty and feelings in the most extreme manner which I could imagine.

Q In what way do you speak of a conflict? and the Supreme Commander, the duty of submission of the individual will to the authority of the State. On the other hand there was the human feeling which revolted against such measures.

Q Why did your feelings revolt against such measures?

A Such feelings in such a situation are very hard to explain. I believe I can express it best when I say that I considered the order inhuman and wrong for social and ethical reasons, that is, because of its inescapable reaction on the community life of our own people and that of others and on the relationship of our people to other peoples.

Q How did you judge the actual correctness of this order? measure by the Chief of State was objectively necessary or not, what his motives were and whether these motives were correct. which you found yourself?

A Open objection would have meant death. Such death, however, would have been a completely senseless martyrdom, senseless because it would not have helped anyone and because it would not have stopped things from going the way they were going.

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Q What decision did you make in this compulsive position? as far as it was possible without openly disobeying the order, which would have been senseless. this order completely?

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A. At the time, of course, I could not picture this very clearly. On the one hand, I knew now the moment the Fuehrer Order was announced ` that I was to be the leader of the Sonderkommando, that is, a commando which was always to be with the fighting forces at the very front...... Thus it seemed possible to me to a certain extent to evade carrying out this order, On the other hand, I played with the thought that perhaps, owing to enemy activity, it could not be done, or that one could come to a territory where there were hardly any Jews. Also, I had the idea that these orders - for me at least - were inconceivable, that perhaps they might be revoked; that, therefore, the most important thing was, at the moment, to delay carrying it out.

Q. How could you have the idea that Hitler could revoke such a fundamental order?

A. Here, too, my thoughts were not clear, and could not have been clear. These orders were so far beyond my imagination that I simply could not believe that they actually should be carried out. Also, I thought that if one were to start now to carry out this order in the East, this would become known abroad very quickly, and that then the reaction would be so strong from abroad; that, due to this, Hitler would feel forced to change his ideas about this matter. I also thought, for example, that the German diplomats abroad, in carrying out their official duties, would report about such strong reaction abroad if such an order were carried out, and that in this way the German diplomatic circles would be given reasons which would seem so decisive to Hitler, that he would change this order without changing his basic conception about the destruction of Jewery and Communists, in the East in particular.

Q. What did you think about the illegaliby of this order?

A. The illegality of a Fuehere order was out of the question. It corresponded to the German constitutional situation at the time that the Fuehrer was the supreme and unrestricted legislator, that he could legally decree anything which would then have the force of law, and that he was master over life and death.

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A Fuehrer decree was the supreme law.

Q. What were you told at the time about the situation in regard to international law concerning the Soviet Union?

A. I was informed that it was the opinion of the Reich government, and also of the command of the Army, that the Soviet Union on its part considered itself outside of international law. It was said that the Soviet Union had expressly declared itself not bound by the Hague Convention and the Geneva Convention. Therefore, it was said, Germany was not bound by international law within the entire territory of the Soviet Union.

Q. That wasyour opinion about this Fuehrer decree being contrary to international law?

A. Even if it had been contrary to international law - at home it was binding for us, because according to German opinion at the time and not only at the time, but for decades - or since time immemorial -the citizen is bound by every internal state order which takes precedence over any other obligation. Therefore, an opposition to international law in any measure for the individual citizen was of no relevance.....if an internal law existed it was legal for him.

Q. What communications were made by the official propaganda in Germany in the Fuehrer speech, and by the army command at the time concerning the position of Germany towards the Soviet Union?

A. Here the following announcements were made. The Soviet Union, for ideological reasons alone, had an aggressive attitude on principle, and planned a war against Germany, and even the whole of Europe. German interference would therefore be necessary to ensure the continual existence of Germany and Central Europe. Therefore, Germany was in a state of emergency and there was no other way out.

Q. At the time, did you hear anything about the attitude of the Soviet Union in the areas which the Soviet Union in 1939 and 1940 attacked, or occupied?

A. Yes. We were told that the Soviet Union had violated international law as regards Finnland, the Baltic countries. In the commando of which I was in charge there were about four interpreters - Germans from the Baltic states, from Estonia and Latvia, who until the Spring of 1941 at the request of the Voldsdeutsche Mittelstelle, had been in the Baltic states, and they reported to me already in Schmiedeberg that is a locality near Protzsch where we were- about the actions in the Soviet Union in the Baltic states in 1940 to 1941.

Q. Who was the Einsatzgruppen Chief who was your superior?

A. That was the SS Brigadefuehrer, General Major of the Police, Dr. Stahlecker.

Q. Will you give us a short description of the character of Stahlecker?

A. He was energetic, intelligent, and ambitious. His temperment was sanguine. He was lively; he was jumpy; and unpredictable. As a superior he did not tolerate any open disobedience, but under certain circumstances he allowed arguments with him. He took interest in small matters in carrying out his inspections; but, on the other hand, he had no orderly method of working, and therefore he could not always overlook the entire sphere of his command.

Q. Was Stahlecker decided to have this order carried out to the last degree?

A. Yes, definitely. In particular, he was interested that they would realize in Berlin that he was absolutely obedient concerning this order; and, not only obedient, but a special ambition in carrying this out. This may be based on the fact that Heydrich doubted Stahlecker's obedience and devotion towards Heydrich, In the witness stand it had been expressed repeatedly that Heydrich was a very mistrusting superior, and as far as I could find out from conversations with Stahlecker at the time, Stahlecker was also being distrusted by Heydrich, and Stahlecker seemed to be very worried about this, and he therefore wanted to show Heydrich and Himmler that he was very obedient and completely devoted.

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Q. What was the decision point of interest in Stahlecker?

A. The reasons which I just indicated consisted of those four points about which he know that in Berlin Heydrich and Himmler considered them the most important points, namely, first of all, a good relationship with the army as far as possible; secondly, a strict and energetic leadership of the kommandos under his command; thirdly, as quick and through an execution of an order as possible, in particular concerning the Jews; and fourth, aspart of this Fuehrer order, a bitter fight against Communism. Concerning the first point, that as an Einsatzgruppe chief, at the request of Himmler and Heydrich, he was to have a particularly good relationship with the Army, -- this request by his superiors corresponded to hiw own inclinations. In the previous years he had been an enthusiastic reserve officer, and he quite often said at the time, in 1941, that he would much rather remain in his tank battalion as squardron chief than be in charge of this damn Einsatzgruppe.

Q. Did you express your great misgivings concerning the Fuehrer order to Stahlecker?

A. Yes; this happened two or three times, in July and August 1941.

Q. How did Stahlecker react to this?

A. He emphasized energetically that this was a Fuehrer order, and that it could not be changed and could not be discussed.

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Q. Was anybody present during those discussions?

A. By perchance my deputy was present in one case, Hauptstrmfuehrer Carstens. By the way he was the only man in my kommnado whom I informed about the existence of this fuehrer order, but I added very confidentially that I would try to do everything to avoid carrying this out as far as my commando was concerned or to delay it. This deputy was the only man in my commando whith whom I had a personal and confidential relationship. He was the only man in my commando whom I had known previously; I knew him from a former office.

Q. How strong was Sonderkommando I-A of which you were in charge?

A. At first when it was set up in Schmiedeberg near Pretzsch there were about one hundred men in it. Of these more than one quarter were drivers. There were five officers in the commando; twenty five police officials. Except for two, none of these had been trained in questions concerning communism, and none of them know the Russian or Estonian language.

Q. What other kommandos belonged to Einsatzgruppe A?

A. Sonderkommando 1-B and Einsatzkommandos 2 and 3.

Q. When did you march to the northeast from Schmiedeberg?

A. On 23rd June, 1941.

Q. How did Stahlecker distribute the competence of the commandos?

A. On 25th June he ordered that Einsatzkommando 2 be competent for Latvia, and that Sonderkommando 1-A, of which I was in charge, belonged to the territory of the 18th Army, and particularly for Estonia at that time.

Q. Tell us what happened when you first reported to AOK 18.

A. On 25th June I met Stahlecker near the German-Lithuanian border. He was with the headquarters of the Army group there, and with the headquarters of the 16th and 18th Armies. There he had discussed our attachment to the army group. The Group had expressed on that occasion that the two Sonderkommandos, 1-A and 1-B, which were assigned to the 16th and 18th Armies, were not to stay in the rear army territ primarily, but with the advanced units of the army.

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In any case not only in the rear army territories, but most of all in the combat area. On the basis of this agreement, I had to report to headquarters of the 18th Army in order to discuss everything there. On 26th June I visited the G-2 of 18th Army Headquarters. I reported to the commander in chief, and then visited the counter-intelligence department of the Army Headquarters to whom I wassubordinated in a way, that is, all questions of individual missions of my commando within the army were to be discussed with the counter-intelligence department. The G-2 of the army headquarters was the highest superior of this counterintelligence department. This counter-intelligence department gave me the papers, which were needed and all export information which was needed in order to incorporate us into the army. According to a general agreement between Stahlecker, the Army group Headquarters, and the two armies, it was my mission as soon as possible to reach the city of Riga together with those advance units of the army which would be the first ones to reach Riga.

Q. When did you reach the city of Riga?

A. On 26th June I left Memel and the last headquarters on Reich territory. With a sub-commando I went to the area of Schaulen, and there I was told by the commanding general of an army corps of the army to whom I had been sent by the army headquarters that an advance command of his army corps under the command of Colonel Lasch had already advanced to the Western suburbs of Riga. For that reason, on the 27th June, I left Schaulen with this sub-kommando and with a sub-kommando of the Einsatzkommando 2 which Stahlecker had added to my unit for the march. I left Schaulen via Abaiska toward Riga. The advance unit Lasch of the army at the time was in the western suburbs of the city of Riga. They were fighting very hard and the sane day, the 27th of June, units of the Red army cut them off from contact with the rear. This condition remained from the 27th of June until the 30th June. On 30th June a division came from Mitau.

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With them came the Einsatzgruppen Chief, Dr. Stahlecker. On the 1st of July, the city of Riga was captured by this division.

Q. What forces of the security police arrived in Riga on the 1st of July?

A. First of all, Stahlecker himself with a small staff; then twenty men from Einsatzcommando 2, with the deputy leader of that Einsatzcommando 2; that was a criminal director of the state police, and of Einsatzcommando 1-A, about fifteen men under my charge. I beg your pardon, I meant Sonderkommando.

Q. What instructions did Stahlecker give?

A. Stahlecker immediately gave instructions to Einsatzkommando 2, that is, to the deputy leader of this commando, the criminal director just mentioned of the state police, to deal with security tasks in Riga. On 1st and 2nd July a few men of my commando, were to help him temporarily to securematerial in offices and office buildings. I myself was to prepare for the further advance of my commando towards Estonia.

Q. What did Stahlecker do himself during these days?

A. I cannot say in detail because during those days I hardly contacted Stahlecker. In general he dealt with the setting up of Latvian police and Latvian auxilliary police. Stahlecker himself had his headquarters during those days in the Latvian police building. I myself had no office and did not need one because I did not have to carry out any official functions in Riga. Stahlecker himself constantly negotiated in those days with leading Latvian personalities.

Q. Were the ten men in your sub-commando active on security police tasks in Riga?

A. Only insofar as they helped Einsatzkommando 2-A to secure material which was in Soviet offices and which was later to be evaluated for security police tasks.

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Q. Did you or your sub-kommando leader carry out security police tasks in Riga?

A. No, that was up to Einsatzkommando 2, insofar as Stahlecker did not do it personally.

Q. During the time between 1 and 3 July, did you give instructions to the deputy commando leader of Einsatzkommando 2?

A. No. I was not entitled to do this. He was not subordinated to me, but he was subordinated to Stahlecker.

THE PRESIDENT: Since you are now going to get into the action in the field, perhaps we might wait until Wednesday morning and then we can start that new subject completely fresh. So that the Tribunal will now be in recess until Wednesday morning -- do you have something?

DR. MANDRY: No, Your Honor.

THE PRESIDENT: You are just trying to get out first. 9:30 o'clock. Very well.

(The Tribunal adjourned until Wednesday morning, 0930 hours, 12th November 1947.)

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No. II in the matter of the United States of America against

THE MARSHAL: The Honorable, The Judges of Military Tribunal II.

THE PRESIDENT: You may proceed. BY DR. von STEIN:

Q. Witness, we had stopped on your direct examination with the facts that you had arrived in Riga 1 July 1941 together with a subcommando of 15 men of your commando and at the same time with another sub-commando of 20 men of E.K. 2. In order to restore the connection with your direct examination which has already been given, summarize in a few sentences, please, what you answered to the last questions I asked you.

A. On the 1st of July 1941 the Einsatzkommando Chief Stahlecker had arrived in Riga. He had given the order of E.K. 2 to start with the Security Police job in Riga. Some men in my commando were to help them on the first and second of July temporarily in securing material in the buildings. Stahlecker himself during those days was concerned generally in setting up the Latvian Police and Latvian Auxiliary Police. He had his headquarters in the Latvian Police Building and conducted his consultations with the Latvian personalities.

Q. What did you do yourself in those days?

A. I had my commando follow up which had been in Memel so far. That was the last territory on the Reich Territory. I had this order from Stahlecker to proceed to Estonia is quickly as possible for the advance of the Army which had been proceeding very quickly up to that moment was proceeding evidently in the same quick tempo. I had to conduct negotiations with Headquarters of the Army Groups and Army Corps in order to find out what further military position was to be made by the Army and was dependent on these dispositions as to how I was to distribute my sub-commandos as time went on.

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These Headquarters of the Army Corps and Divisions were all distributed over the territory in the area of central Latvia and it was a time-consuming task to find all these Headquarters and then to carry on the necessary negotiations with them.

Q. What did you find out during these negotiations?

A. I heard that the 38th Army Corps of the Army was to advance in the direction of Pleskau-Narva. I further learned that an advanced department of the Army under the leadership of General von Zelle was to proceed towardReval as quickly as possible. Other battalions were to proceed toward other southern parts of Estonia.

Q. What measures did you take after that?

A. I formed three sub-commandos. One sub-commando was assigned to the 38th Army Corps which was to advance together with this Army Corps via Pleskau along the eastern shore of the Peipus Lake toward Narva. In order to explain this further may I say that on the map here in the Courtroom the Peipus Lake is that lake which forms the eastern border of Estonia. The town of Pleskau which I mentioned is not listed on that map. It is situated on the southern end of the Peipus Lake about 15 kilometers east of the Estonian border, that is on Russian Territory. The town of Narva is listed here but there is an error on this map. It looks as if the City of Narva is not on Estonian territory but on Russian territory. In reality the City of Narva belongs to Estonia and, therefore, should have been shown on the map about 2 kilimeters left of where it is now listed. A second sub-commando was formed by me for the central Estonian area. That is for the area west of the Peipus Lake. I formed a third sub-commando to have it advance on Reval. This sub-commando was to join with the Advance Unit of the Army under the leadership of General von Zelle which I have mentioned before. I myself took over the leadership of this commando since the Advance Unit of von Zelle hoped to reach Reval in a few days and since Reval, being the capital of Estonia, was the most important objective.

In order to understand the further development may I add that this intention of the Advance Unit of von Zelle to reach Reval within a few days did not succeed but that on the first day after crossing the Latvian-Estonian frontier it met strong enemy resistance and that city of Reval was not actually captured until 28 August, that is one and one-half months later.

Q. When did the three sub-commandos start their march from Reval?

A. 4 June 1941.

Q. What information did you give to your subcommandos leaders about the message you were given in Pretsch?

A. I summarized the ideas to my sub-commando officers which had been given to the Einsatz Group Chiefs and Einsatzkommando leaders during the conferences in Pretsch and in the Prinz Albrecht Palace in Berlin but I did not tell them about the order which was announced by Streckenbach to eliminate the Jews and the Gypsies and to elimate all Communistic functionaries collectively.

Q. Why didn't you tell them that?

A. As I have already said when I described my reaction to the Fuehrer order I had made the decision as far as possible to evade the order for myself and my commandos. It was a logical consequence of this discussion that I would not inform my subordinate officers about the Streckenbach order, or rather that I would not tell them about the Fuehrer order which had been passed on by Streckenbach.

Q. Did you give your subordinate officers any definite instructions about carrying out their missions?

A. Yes, I told them to take all necessary measures in order to secure the area and especially to keep the rear of the fighting troops free in order to secure the fighting line but no collective measures were to be undertaken. Executions were to be carried out only in exceptional cases and only if an individual heavy guilt was established and only after the individual concerned was given a chance to defend himself orally.

Q. Did you give any special instructions about the advance of your commandos through Lithuania and Latvia?

A. Yes, I told them that for Lithuania and Latvia not our commando was responsible but Einsatzkommandos II and III and the subcommando of my commando were, therefore, during their march through Lithuania and Lativa only to carry out these security jobs which were absolutely necessary as immediate measures, that is, only during danger on the march.

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Everything further was to be left to Einsatzkommandos II and III.

Q. During your march through Lithuania and Latvia did you yourself order arrests or executions?

A. No, in no case.

Q. Were you a sub-commando officer?

THE PRESIDENT: Dr. von Stein, your question was, "Did he on this march order any arrests or executions" and his answer was "No". Do we understand by this that he arrested no one?

DR. VON STEIN: Your Honor, this was a question for a defeinite period of time only - that march through Lithuania and Latvia. For this period of time the defendant says that he himself ordered no arrests or executions.

THE PRESIDENT: Very well. What period of time was that?

DR. VON STEIN: Will you please tell the Tribunal how long this march through Lithuania and Latvia lasted - what period of time was concerned here?

THE WITNESS: This period of time was as far as I am concerned from the 25 or 26 of June until about 5 July.

THE PRESIDENT: We understand that he really had no jurisdiction in those two countries and, therefore, it would not be incumbent on him to take anyone into custody. Is that right?

DR. VON STEIN: Will you please give an explanation to the question of the Tribunal. Was it because there was no judicial competency during that time?

THE WITNESS: No, that wasn't the question which I was asked. I understood it in such a way that I should answer whether I personally during this march through Lithuania and Latvia ordered an arrest or an execution. In the preceding question I have already explained the fact that the sub-commandos or- my commando were, of course, justified.

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....

THE PRESIDENT: Just a moment, please. Now you are going to tell us everything that you have told us before and the question was very simple. You have said that you did not arrest or execute anyone in Lithuania and Latvia. Now the question is, was that because other commandos had been assigned to those two areas? Answer that yes or no.

THE WITNESS: No.

THE PRESIDENT: Very well. Then was it because you saw nothing which would occasion your arresting or executing anybody?

THE WITNESS: I didn't understand the question.

march you did not have occasion to arrest anybody.

A The reason was as follows: The Einsatz Group Chief, Stahlecker, had ordered from the beginning that Einsatz Commando 2 was competent for Latvia and that my commando, that is to say, the Special Commando I A was to be competent for the area of Estonia primarily and the Eastern territory adjoining that, namely, that of the 18th Army. The advance of the 13th Army through Lithuania and Latvia was very quick. Of course, the subcommandos of my commando, if they had to be at one place during the march for several days, had the duty and the right to take security measures, but I told them right away that we were only to pass through Lithuania and Latvia, and that they were to limit themselves to those jobs which were absolutely necessary for an immediate security of the army rear area, and in this manner it may be explained that during the advance one or two sub-commandos during short stays in individual villages undertook security police missions on the responsibility of the sub-commando leaders, but that I myself because of the rapidity of the advance personally ordered no arrests or executions there.

Q Did any of your sub-commandos perform any executions?

A I don't know of any concrete case. Your Honor, that any of my sub-commandos carried out executions there. One or two of the sub-commandos probably did undertake arrests.

Q Well, now, you say you do not know of any precise case. Your sub-commandos had to report to you, did they not? by wide areas. Between me and my sub-commandos there were no communications for several days.

Q Well, but they eventually did report to you? of the sub-commando leaders, they, of course, reported to me.

Q Well, they eventually had to report to you, did they not?

Q Very well, did they report any executions? they may have not?

A Yes. It is possible that executions took place, but I don't know it concretely, or rather I do not remember. BY DR. VON STEIN: decisions?

A Yes. According to a general order of the Einsatzgruppe Chief Stahlecker, the sub-commando leaders in the entire area of Einsatzgruppe A had basic permission to make independent decisions, and they had full responsibility in individual cases. to pass judgment in individual cases?

A Yes, absolutely. They we re all members of the security service of the security police and SD. They had good experience and good qualifications. ecker's opinion in general was that the indigenous population was to be induced to start measures against the Jews. Did you on your march through Lithuania and Latvia have anything to do with one of these operations?

Q Did any of your subordinates have anything to do with this?

A No. I am convinced that this was not the case, otherwise, I would have found out about it in the course of time.

Q Did Stahlecker give you any special order in reference to Estonia?

A Yes. Not in the form of a compulsive order, that is to say, but he gave me directives which were to be followed, if possible.

Q Did you carry out this directive?

Q Why not? ethical reasons.

Q Did you tell Stahlecker that you did not approve of such measures?

A Yes. In a careful but unmistakable manner I expressed to him that I did not consider this correct. BY PRE PRESIDENT:

Q When was that, please? on the 4th of July.

Q And where was it?

Q And just what did you tell him?

A I cannot remember the wording of it. It is a long time ago, but I told him in a cautious manner that I did not consider it correct.

Q Well, now, don't be so cautious with us. Just tell us what you said. How, you told him in a cautious way that it was not correct but try to construct, if you can, just how you told it to him and use as well as you can remember the phraseology.

Q Well, we don't ask you to remember verbatim, of course, but you do remember that you were very cautious. Well, now, how did you go about this caution - tell us as well as you can remember what you said to Stahlecker on July 4 in Riga. about the following: That through such events public order and public morale would be affected in such a manner....

Q Well, now, just a minute, you say "through such events", what "events"? which I was asked, namely, pogroms of the indigenous population against Jews.

that the pogroms were in order?

AAll right, now, what else?

AAn I to continue with the reasons which I gave him?

A The main thought was as follows: That I thought that such events would affect the public order and morale and that there was grave danger that if such things happened at all and are permitted to happen, it would be very difficult in other respects, too, to keep up public order. Another thought which I also implied cautiously was that the event, especially for the Jews, was inhuman. but I certainly did not use the literal expression "inhuman" when I was specking to Stahlecker because it would not have had any meaning to him at that time since Stahlecker was completely under the influence of the Fuehrer Order. the word? As far as I remember, I could have said it about as follows: If the Fuehrer order would have to be carried out, then this was certainly not the best way of carrying it out - approximately in this manner. merely indicated that a more efficient manner might be found to carry out the fuehrer order.

A No, in no manner. On Friday I have already said that I had the most basic and most severe misgivings about that. to Stahlecker that it was inhumane to do this, that it was against humanity, but you did not use that phrase. You did not couch the ex expression in that rank - now, I would like to know just exactly how you told him that this was an act of inhumanity and not use the word.

if this severe order has to her carried out, this was not the correct way of doing it, this meaning by way of pogroms as Stahlecker considered it correct. At least in the tone in which I said it, it was clear and evident that I wanted to express what I have just meant by the expression that I considered this type of carrying the order out as especially inhumane. conveyed to Stahlecker the idea that this was inhumane. All you have told us is that you said to him that if the Fuehrer Order had to be carried out, this was not the way to do it. Nov, is that what you told him?

A Yes, this is the sense. I explained it in about these words, but I do not remember the exact words I used. remark that Stahlecker was able to understand that you regarded that business as inhumane. had to understand the sense of my words without any question. when you spoke so guardedly and so cautiously that even today we are unable to gather from your remark that you were opposed to this on the grounds of inhumanity. that he rejected my objections on my part in very harsh language; and he reproached me with not being hard enough with these matters in the East; I was too soft, and did not have any understanding for the necessities of the time and the area. The conversation took about 15 minutes. Of course, I cannot remember any individual words he used, but the thoughts which he had were about the way I just expressed them.

Q A nd then what did he order you to do?

of the Jews in Estonia in such a way that in Estonia pogroms of the population against the Jews were to be induced. He did not give it to me in the form of an absolutely binding order, out in that form, that this was his wish, and this was a directive which he was giving, and which was, if at all possible, to be carried out, but he left the possibility open to me to tell him later on that for some reasons it was not possible. executed?

A Yes, Your Honor, we spoke about this expressly. I knew the Fuehrer Order from Pretsch, and before I left for Estonia he again expressly repeated it to me as having to be carried out.

THE PRESIDENT: You may proceed, Dr. von Stein, you may proceed. BY DR. VON STEIN: synagogues in Estonia still intact?

Q What orders did Stahlecker give to you before you left Riga?

A He gave me two orders particularly. the first order was to have as good a relationship as possible with the army and, secondly, as I have just said, according to the Fuehrer Order to have all Estonian Jews eliminated. BY THE PRESIDENT: suggested to him that there might be a better way to carry out the order. Did you indicate to him what that better way might be?

A Your Honor, I must have expressed myself mistakenly. I did not suggest to him that there was a better way, I merely said that if this Fuehrer Order had to be carried out at all, this way, namely, the pogroms, was certainly not the correct way. Perhaps the translation brought it out differently.

Q No, no, I protect the interpreter in this. That is exactly what came over to us, that this was not the correct way to do it.

Nov, what I am asking, and the question was suggested by my colleague, Judge Dixon, if you indicated to him that this was not the correct way, did you not tell him then what was the correct way; didn't Stahlecker ask you then what was your suggestion as to the correct way?

Q The matter stood there?

A Yes. Stahlecker did not take back his directives. BY DR. VON STEIN: you. Did you carry out those two orders? carried this out correctly; the order about the Jews, I did not.

Q Why not? when it was given in Pretsch that I had decided to do everything in order to avoid the execution of the order for my part and for my commando's part.

Q Why did he just give you those two orders? these two points most important; the special order about the Jews in Estonia, he gave me because he knew that there was only a relatively small number of Jews in Estonia and because he believed and wished here to be able to report for a part of his area very quickly that this area was free of Jews. By this he wanted to show Berlin that he was especially ambitious about carrying out this order. Q Will you please comment on two situation reports which are contained in two reports of the events, namely, about the situation report which is contained in Volume III A, Document No. 4536. There is no exhibit number available as yet for this exhibit.

This is the report of the 1st of July 1941. On page 50 of the German text - page 35 in the English.

A This report is wrong. On the 28th of June I was not in Mitau, as is stated in this situation report, but on that day I was already before Riga, already on the day before, namely, since the 27th of June. Since the 27th of June I was, as I already stated on Friday, in a western suburb of Riga with an advance unit of the army under the command of Colonel Lasch. On the way to Riga I did not even come through the town of Mitau because on the 27th of June the commanding general of an army corps told me that Mitau was still in the hands of the enemy, that one, therefore, could not pass through Mitau at all, therefore, I took a different route, namely, by way of the city of Bausk. This town is southeast of Mitau. I was in Mitau for the first time end of October 1941 when I went from Riga to Tilsit on a subiness trip. I do not know whether on the 28th of June even a single man of my commando was in Mitau. The fact that parts of my commando were in Libau at that time is correct. From there they were to move on to Riga together with the 219th Infantry Division. The largest part of my commando was at that time from the 28th of June to the 30th of June in the town of Memel. That is the last headquarters on Reich territory. It doesn't say anything about this in this operation report, it says on one part was in Schaulen, whether this is correct, I do not know. The various parts of this situation report cannot possibly come from me because the advance unit Lasch with which I was from the 27th to the 30th of June, right before Riga, had been cut off from its rear communications.

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Einsatzgruppe, or with my commandos. On top of the page in this operational report it says that the leader of the Einsatzgruppe, Brigadier General Stahlecker, was on his way to Riga on 30 June. This report is Correct. II-A, Exhibit No. 37, Document NO-2935. A The first page of this report reads as follows: "Group Leader, together with Einsatzcommandos I-A and II, has moved into Riga," End of quote. This sentence is correct. of page 2, and there it reads that,"The subcommandos of the Commando I-A were to move to the City of Wenden, to Derpat, and possibly for Psckew, and it also says here, page 1 of the English, Your Honor, and it also says that another part of Einsatzcommando I-A is intended for Reval, and is already on the move." End of quote. This is correct. This subcommando destined for Reval left Riga on 4 July in order, as I have already said, to join up with the advanced unit of General von Zelle, and to reach Reval by way of Velini. I commanded this subcommando myself. the area of the 18th Army?

THE PRESIDENT: Just a moment, please. Just which document and which page are you now commenting on?

DR. VONSTEIN: Up to this time it was in Vol. II-A, Exhibit No. 37, Document NO-2935, page 41 of the English text.

THE PRESIDENT: You were referring then, I take it, to what is marked as page 5 of the original?

MR. GLANCY: I believe that he is referring to page 5 of the original found on page 41 of the Document Book, Your Honor.

THE PRESIDENT: Yes. Now on page 4 of the original there is a state ment that Einsatzcommando I-A entered Riga.

Is that correct?

THE WITNESS: Yes, I stated that the first sentence of this report is correct.

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THE PRESIDENT: Yes. Now how about the sentence in the second paragraph: "All synagogues have been destroyed." Is that correct?

THE WITNESS: I didn't know anything about this at the time. I didn't hear this until later. During a conversation which I had with Stahlecker on 4 July, which was described in detail before, Stahlecker merely told me that he had made attempts to induce the Latvian Auxiliary Police to carry out such measures. I personally never had any dealings with the Latvian Police or the Latvian Auxiliary Police, and had no contact with them, and I had nothing to do with these measures.

THE PRESIDENT: Well, you were in Riga, Didn't it come to your attention that the synagogues had been destroyed?

THE WITNESS: Your Honor, at the time when the synagogues were destroyed I had already left Riga. On 4 July, as I stated, I left Riga, Whether this took place on the 4th or 5th or later on, I don't know, Stahlecker told me later, about the 20th of July, that he personally had induced Latvian Police forces under Latvian officers to carry out these measures. Whether the Einsatzcommando II had any knowledge of this, which also was in Riga from 1 July on, and which remained in Riga constantly, and which was competent constantly for police missions in Riga, I don't know.

THE PRESIDENT: Now you were in Riga on July 4th?

THE WITNESS: On the morning of 4 July I left the town of Riga.

THE PRESIDENT: You left Riga on the morning of July 4th?

THE WITNESS: Yes.

THE PRESIDENT: Didn't you tell us you had a conversation with Stahlecker on July 4th, in Riga?

THE WITNESS: Yes. In the early morning of 4 July, before I left Riga, I reported to Stahlecker before leaving, in order to join with the advance unit Zelle, and on the occasion of this conversation the conference between Stahlecker and myself took place.

THE PRESIDENT: What time in the morning did you speak to Stahlecker?

THE WITNESS: Between eight and nine. It was in the hotel, in his hotel room.

THE PRESIDENT: Then after the conversation you immediately left?

THE WITNESS: After an hour, yes, sir.

THE PRESIDENT: Then you don't know anything about the hundred Jews who were shot on that day by a commando of the Security Police and SD?

THE WITNESS: I merely knew that they were shot by a Commando of Einsatzcommando II on order of Stahlecker. Stahlecker also told me about this on that morning.

THE PRESIDENT: He told you about this on the morning of July 4th that he had ordered the shooting of one-hundred Jews?

THE WITNESS: Yes.

THE PRESIDENT: What time did the execution take place?

THE WITNESS: I don't know.

THE PRESIDENT: What other commando was In Riga on that date?

THE WITNESS: Your Honor, the first sentence of this document shows that Einsatzcommando II also was in Riga during the same time. Stahlecker and my commando and this commando moved into Riga simultaneously on 1 July. My commando was to move on as quickly as possible, and Commando II was to remain in Riga, and always remained in Riga, and later became the agency of the Security Police and SD for Latvia.

THE PRESIDENT: You may proceed, Dr. von Stein. DR. VON STEIN: destruction of the synagogues, I would like to ask you the following questions: Your commando was destined for Estonia, is that right? Estonia were still intact in 1943 with a "yes"? were still intact when I left Estonia.

the destruction of the synagogues in Riga? through the area of the 18th Army about the conduct of the Soviets? received reports from the population about the measures which had been taken there in the preceding year by the Soviets and, under their leadership, by the indigenous Communists, There were numerous executions and deportations. I don't think I have to go into details here, because sofar as this concerns Estonia, the witness Dr Mae has already reported on this. I would only like to say that all this which we heard about this from all classes of the population was to a large extent a confirmation for us of what we had been told before the march started. your attitude? change because of these experiences or findings, but these experiences did influence.- -

THE PRESIDENT: Give us just in a word what you mean by "these experiences."? measures which had been taken in the years of 1940 and 1941 by the Soviets and, together with them, by the indigenous Communists, in reference to the killings and deportations of many inhabitants, and the measures connected with this. I said to the preceding question that through this my human attitude did not change, but when judging the legal situation I was influenced. It was clear from the beginning, as I already said when explaining my thoughts in Pretsch, that any illegality was out of the question for a Fuehrer Order, but when we saw in this Baltic area to what a large extent the forces then in power there had deviated in the preceding years from the basic principles of law, we were doubtlessly influenced in the sense that any possible misgivings about the legality which one still might have had were removed by this.

We had to consider that in an area in which law and morality were disregarded to such a large extent, extraordinary measures might be justified, even these measures which were beyond our imagination up to this moment.

Q what situation did you find when you got to Estonia? advance met stubborn resistance. This resistance was met in the whole area of Central Estonia. On the German side voluntary formations of the Estonian Home Guard participated in these fights, on the side of the Red Army destruction battalions participated primarily. The expression "fight" is actually the wrong word here, for it was the nature of these destruction battalions never to be committed in battle, but after the withdrawal of the Red Army from a certain area, they were to be left behind, and they were to destroy everything behind the German lines, which was still there and which would be important for the German troops. In a sense, those destruction battalions were thus to operate behind the lines of the German Army, and they were to destroy the bridges, public installations of every kind, buildings to a large extent, and etc.

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Estonia is a country which has many forests and many swamps. Through all these pecularities of the situation, a condition arose which can only be designated as a Civil War. The larger part of the Estonian people was anti-Communist, only a small part was Communist.

THE PRESIDENT: Were these Destruction Battalions organized? You use the word "Battalions" which suggests organization. I merely went a confirmation of that?

THE WITNESS: Yes, the name was "Destruction Battalions". These were units of the Red Army which were not committed in combat, but which were committed behind the German lines.

THE PRESIDENT: But they formed part of the Red Army?

THE FITNESS: They were no regular part of the Red Army, but they were in some form subordinate to the commanding general or the divisional commander.

THE PRESIDENT: Very well.

THE FITNESS: In order to understand the intervention of the Estonian Home Guard in these fights on the German side, I must explain in a few words what this Estonian Home Guard was. A short time after the foundation of the Estonian Republic was formed, a Communist uprising took place in 1924. Since the Sovietization of Estonia would have meant less of sovereignty for Estonia, that is, absorption into the Soviet State, this was not only an ideological and political question, but the Nationalist Estonian circles considered this as a question of existence for the State Itself. Therefore, a militia was set up of volunteer citizens and farmers in the whole country, who had their arms with them constantly. Only part of the officer corps was concerned full-time with this militia, and this militia, the so-called Home Guard, was the armed organization of all ablebodied men of the country. This organization existed up to 1940, until the country was annexed by the Soviet Union. During the fights, before the German Army moved in, units of the Home Guards were reformed spontaneously and voluntarily by the men who had fled into the forests and swamps before, and these units now intervened partly independently, and partly on the German side of these fights.

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The Estonian Home Guard, during the entire time of the German occupation, from 1941 to '44, continued to exist as an armed national militia, and it was the actual bearer of the security of the country from 1941 to '44. This was an advantage to the German Army leadership, because thus hardly any German troops had to be in Estonia, because all the functions which had to be assumed by the German troops could thus be handled by the Estonian Home Guard. This solution had the great advantage for the Estonians, that they did not have to surrender their arms, as it had to be enforced with strict directives in the rest of the Eastern area; but (every home guard member) that is, every farmer and citizen, was able to keep his arms, and that was so-to-speak a question of his national honor for him. BY DR VON STEIN: and the Estonian Communists?

THE PRESIDENT: Dr Von Stein, this might be an appropriate moment to have our recess, since you are going to open up another field of discussion. The Tribunal will be in recess for fifteen minutes.

THE MARSHAL: The Tribunal is in recess for fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session.

DR. ASCHENAUER (Counsel for Ohlendorf) Your Honor, I ask that the defendant Ohlendorf he excused from this afternoon's session, because the prosecution wants to interrogate Ohlendorf for Case 6 in my presence.

THE PRESIDENT: In accordance with the statement made by Dr. Aschenauer, attorney for the defendant Ohlendorf, the defendant Ohlendorf will he excused from attendance in Court this afternoon. Dr. Aschenauer, will it take all afternoon?

DR. ASCHENAUER: I don't know yet, your Honor,

THE PRESIDENT: Well, for as long as will be required for the interrogations the defendant Ohlendorf will be excused from attendance in Court. this afternoon. Dr. Aschenauer, will it take all afternoon?

DR. ASCHENAUER: I don't know yet, your Honor.

THE PRESIDENT: Well, for as long as will be required for the interrogations the defendant Ohlendorf will be excused from attendance in Court.

DR ASCHENAUER: Thank you, your Honor.

THE PRESIDENT: You are very welcome.

DR. KOESSLER (Counsel for Ott): Koessler for Ott and also as deputy for Dr. Stubinger for defendant Braune. In order to prepare the defense I ask that the defendants Ott and Braune be excused this afternoon from attending sessions.

THE PRESIDENT: The defendants Ott and Braune will be excused from attendance in Court afternoon.

DR. KOESSLER: Thank you.

THE PRESIDENT: You are welcome. You may proceed.

Q (By Dr. Von Stein) Witness, I repeat the question, what did you hear in Estonia about the activity of the Soviets. and the Estonian Communists? Estonian people had anti-Communist views and were not in agreement with the annexation of Estonia by the Soviet Union.

This annexation was rather considered as illegal and all measures which were taken in the time of the annexation of the Bolsheviste in 1940 to '41 and had occurred then were also considered as a violation of the Estonian law and as incorrect and inhumane towards the Estonian population. areas, had Communist views, but a great number, in fact the majority of the population, were national Estonians and anti-Communists. This was not equivalent to being pro-German tendency only resulted in the summer of 1941 insofar as the Estonians could not expect help against the Russians from England, but could only expect it from Germany at that time.

innumerable Estonians who reported to us what they and their relatives and their friends had suffered in the preceding months through the measures during the time under the Soviets. This was particularly characterized by the fact that the Estonians held the opinion that the great number of persons who had been deported most probably would sooner or later meet certain death. I cannot judge in how far this opinion was correct. I can only say that at the time it was the opinion of the Estonians that they would most probably never again see their relatives and friends who had been deported in the previous months and because of this circumstance in particular, the feelings and opinions of the Estonians were particularly articulate. In detail I believe that the things which happened in this time, 1940 - 1941, through the Soviets and through the Estonian Communists in Estonia, I think I can limit myself to merely indicating them, because the witness who has been heard here in part last Friday, Dr. Mae, has testified about the things in his official position since he is better informed because of his position than I am and since, I believe, that in as far as these things have not been cleared up sufficiently, he will be permitted to complete his statement.

Q What did you hear about the Jews in Estonia? of the Soviet annexation, had been very active for the Bolshevists.

Q I refer to Document L-180. This is an extensive report by Stahlecker. I shall come back to this document in detail, hut just now I would like to ask you to look at pages 122 to 124 of the photostatic copy, and for identification, to state your views on the most important points.

THE PRESIDENT: Which document is this, Dr. von Stein?

DR. VON STEIN: The document is in Volume II-A, Exhibit 34, probably also on page 1 of the German text - of the English text.

Your Honor, this document is only contained as an excerpt. The pages to which the witness will now refer are only in the photostatic copy. I don't know whether they are already contained in the English text.

A (Continuing) I believe the most important sentences in this report are the following: The report contains three typewritten pages concerning the Jews in Estonia. The most important sentences are the following: "Estonia, until the middle of the last century, belonged to a blocked-off zone of the Russian state where it was prohibited -"

THE INTERPRETER: I am having the sentence repeated.

A (Continuing) "Until the middle of the previous century Estonia belonged to a blocked zone of the Russian State where it was prohibited for Jews to move into this territory. For that reason there are very few Jews in Estonia. In the free state of Estonia, of a total population of 1.2 million inhabitants, about 4,500 Jews were counted". I pass over several sentences. Another sentence: "Of the minorities in Estonia, the Germans and the Jews were the only ones who had the right of cultural autonomy according to an Estonian law of the year 1942". I now leave out a few sentences again and continue: "The Jews in Estonia, contrary to the loyalty pretended to the Estonians, changed their attitude when the Bolshevists took over power and put themselves at their disposal. Some of the young Jews were under Communist influence and some of them were organized. The most important figure in the Bolshevist coup d'etat is the Jew Kutkin from Reval, the son of the representative of the Jews in the Estonian State Council. He was NKWD agent, and together with the Jew Freigin , who became prominent in the coup d'etat, he entered into the NKWD on a completely full time basis. Exactly as in the other Baltic States, Jewish private property was also nationalized. The Jews themselves, however, were left as directors of their former enterprises. A great number of Estonian business enterprises were given Jewish directors upon nationalization.

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Immediately after the coup d'etat a great number of Jews were sent to Reval and the other Estonian cities as a result of the Bolshevization. These escaped from the German troops without exception. In Estonia the NKWD was the stronghold of the Jews, Haring the Bolshevist regime. From it they exercized their influence, not always visible, out decisively, in all spheres of life. A great number of indigenous Jews, particularly in Reval, joined the NKWD. She economic commissars in Estonia were all Jews. Here Jews were given specialized positions without training. For example, a, Jewish shoemaker became director of a. glove factory. Jews were given positions in the press of Estonia by the Bolshevists. The greatest number of-Cultural institutes passed into the hands of Jews who immediately introduced tne kind of cultural life which existed in the Soviet Union." End of quote. office by the Estonians at the time? reported to us at the time, but I am convinced that today hardly any Estonian will confess to having made such a report, commando?

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A. According to the necessities as they arose, three, four or five subkommandos were established. According to military circumstance it had to be changed. One subkommando was in Derpat and had to deal with South Estonia from there. Another one was in Pernau. That is a harbor town in the southwest of Estonia. A third subkommando had remained with the Thirty-Eighth Army Corps of the Army and was with them in the east of the Peipus Lake, about a hundred kilometers to the south of the City of Narva, and there they had met with strong enemy resistance which could not be overcome for many weeks. Smaller subkommandos, when necessary, were formed. A larger subkommando, of which I was in charge, at the beginning of August was assigned to the fighting territory in the northeast of Estonia, All these subkommandos, but in particular the latter one under my charge, were active to assist the G-2 of the Army. Only to a very small extent did they carry out security Police measures. Almost through the entire time they were occupied by conforming with the wishes of the G-2 sections of the Army Corps of the divisions, and the I-A's of the advance kommandos. that this G-2 service in the German Army is about the same as, as far as I know, the Department G-2 in the American Army, only there is a great difference in the following: In the German Army these tasks of enemy reconnaisance were given less consideration than they were given in the American Army. If I am not very much mistaken in the American Army there often are G-2 officers - that is, the American Army has the G-2 service also in the regiments, while in the German Army this G-2 service is only extended to the divisions. The result of this is that in the German Army the regiment does not have a G-2 section and an advance kommando does not have a G-2 section either. The advance department, meant units COURT II CASE IX of the Army which had been taken out of a division, and the G-2 of the division remained with the division staff and did not move up with the advance unit.

The result was that, as I have often witnessed myself, an advance unit who got stuck somewhere in the forests of Estonia, not only did not have a G-2 officer, but did not have one single man who could speak Estonian, so that a commander of an advance unit once told me, he was stuck. Now since the forests in the territory were full of enemies and he did not have one man who could speak one word of Estonian or Russian in his advance unit. The result of these total conditions was that those parts of my kommando which, according to the orders of the Commander-in-Chief and of the Einsatzgruppe Chief were in the combat territory, were constantly asked by the Regiments to help with their tasks.

THE PRESIDENT: Witness, I, of course, do not know the make-up of the German Army organizations, but it is rather difficult to grasp that there would not be, below the division organization in the regiments and even in the battalions, something which corresponds to the G-2. Certainly in the German Army organization there must be something below the division to handle enemy intelligence. A regiment may be quite far removed from division headquarter and must be aware of enemy intelligence. Do I understand from you that there is nothing in the regiment which corresponds to G-2?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: Very well,

THE WITNESS: The case which I just explained, that a commander of an advance unit which had the strength of a strong regiment, did not have an officer with them who was able to make enemy reconnaissance and did not have any men with him who spoke Estonian, this happened, as I can COURT II CASE IX say decisively in the time between the 10th and 15th of June in Meriamar.

That is a village about one hundred and fifty kilometers to the south of Reval, and the commander of this advanced unit was a Colonel of the Peoneers, with the name of Ullesberger. Owing to these conditions it came about that each G-2 of a division and each regiment commander employed those people of my subkommandos who appeared there immediately for their G-2 jobs. These members of my kommando who were qualified for such tasks were not very numerous, I myself only had four interpreters and only very few officials who were able to carry out such interrogations; but these few people, nearly all of them, had been assigned to help with these military G-2 duties and it corresponded completely with the orders which I had received from my Einsatzgruppen chief and from the high kommando of the Army: that all such wishes by the front troops were to be conformed with and any other task be put aside.

Q. During what period were you absent from the headquarters of your kommando in July and August?

A. In July and August there was no kommando leader in my Kommando. I was always traveling and had no staff, and wherever I was present at subkommandos I inquired about the news. I made decisions which had to be made concerning the general tasks, I called on the commanding generals and division commanders and the regimental commanders and took along any written reports which were there.

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Q When did you set up a fixed commando leadership office?

A That happened after Reval had been captured. On the 28th of August, after that time, everything was centralized in Reval. in Estonia. You already testified that on entering Estonia, state of civil war existed. Please describe the situation in the territory On the German side, the forces of the Estonian homeguard, who fought together with the Germans, were four to five times as strong as the forces of the German army itself. Concerning the arms, the Russians were very much superior. The situation became more serious owing to the territory which contained forests and swamps, and owing to the fact that in the city of Dorpat itself, for several weeks fighting had been going on in the streets, and owing to the feet that the communists had formed terror groups who were in that part of Estonia which the Russians had already left, and they were to carry out terroristic actions and operations there. They had dynamite; they had poison in order to poison wells, and so forth. The situation became more serious because as I already said wherever the Russians had retreated the Russians had left behind them so-called destruction battalions who on their part had been given the order to destroy everything which might be of any military value to the German forces. Things were destroyed here which were not of immediate military value and amongst those there were many things which were important for the survival of the population and which were absolutely necessary for their survival. had any, they were not regular uniforms. They had been organized centrally by the "highest partisan movement" in Moscow. I cannot say whether the designation "highest partisan leadership" is the proper designation for this, but in general in military usage, it was called thus. The tasks for these destruction battalions were directed by this highest partisan movement.

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As for the Russian partisan movement, they were given instructions from Moscow mostly by radio or from headquarters near Moscow. part of the Russians only existed in so far as they had to determine from what time onwards such a destruction unit was to be left behind and where they were to remain. All in all, owing to these circumstances, which I have tried to outline here and about which the witness, Dr. Mae, has already talked about, two things occurred. the swamps, in the forests and in the streets. And an extraordinary... BY THE PRESIDENT: Understandably. You say "for weeks," now when was this? ended about the 10th or the 15th of August. Where?

Q City of where?

A In the city of Dorpat: D-O-R-P-A-T, which is marked on the map here as Tartu. Tartu is the Estonian name; Dorpat is the German name. Apart from that, street fightings took place in the city of Pelsamau and in other small localities in central Estonia. In the city of Dorpat itself, the main direction of the fighting for about two to three weeks was a river which flows right through the city.

Q Was there any street fighting in Pleskau? there. I only was there one day later for a few hours. I did not hear anything about street fightings there, but I cannot say that with certainty

Q Was there any visible popular excitement when you arrived there?

A May I ask, in which city?

not arrive there with a subcommando but only with an interpreter and one man in my car, and not for the purpose of taking over an assignment there but only to ascertain whether the 18th Army was competent there or the fourth Armored Unit, who were on their right flank.

Q When did you arrive there? turbulence in. the city or not, couldn't you? did not notice any unrest there, which I would have noticed, but I only traveled through two streets and left the city of Pleskau a few hours later after having ascertained that the 18th Army was not competent there. of unrest, but you did not know of it because you only passed through two streets?

A It depends, Your Honor, on what you understand by the word "unrest": unrest, in the form of great numbers of people collecting in order to demonstrate against something---many dozens or many hundreds of people who want to demonstrate. In these two streets, of course, I would have noticed it, and this was not the case. I don't know whether you mean that by the word "unrest."

Q Well, did you learn of demonstrations elsewhere in the city? city at the time and did not have that intention because it wasn't my task.

Q Well, you had all of Estonia, didn't you? May I point it out on the map to show where the city is?

(Witness points out the city of Pleskau on the map)

Q About how far from the lake?

A From the lake? kilometers.

PRESIDENT: I see.

Q How long did you remain in this city?

Q Did your commando remain any longer than that?

A On that day, a commando did not move in there. As I said, I only arrived with my driver and with my interpreter and with another man.

Q And you say your commando didn't remain there at all---didn't even come into the town? move on immediately along the eastern bank of the Peipus lake towards Narva. which is in Document Book II-A? It begins on the English page 110. It's the Situation Report, No. 165. Now that report very clearly states that on July 10, 1941, the Sonderkommando 1 a established an office in Pleskau.

Q Dr. von Stein, will you please help him to locate that.

DR. von STEIN: Your Honor, may I ask again what number was the document?

THE PRESIDENT: The Document No. is NO-3401.

DR. von STEIN: That is, in the German text, on Page 121.

THE WITNESS: Yes, I have the situation report here: Situation Report No. 165.

DR. von STEIN: Situation Report No. 165, yes.

BY THE PRESIDENT:

Q. Now under Paragraph 2, which begins, "Reports of Einsatzgruppe and Einsatz commandos, Page 6 of original."

A. Yes.

Q. Now, do you see that first paragraph: "Reports on the situation in Pleskau?"

A. This paragraph, Your Honor, is not contained in the excerpt which is here, - but I have had the opportunity to read it in the photostatic copy and I know that there a long situation report by Department III dealt with Pleskau, and that it says there at the beginning that, "In Pleskau, since 10th July, an office of the Commando had existed." This sentence is incorrect---just as incorrect as many other sentences in these documents which can be misunderstood. When this report was made in February or January 1942, no official was there at all who had ever been there in July. Therefore, he could not know this from his own knowledge. Perhaps he heard about it some time or other that on 12th July a commando passed through towards Narva or that I personally was there on the 10th July, and he came to a wrong conclusion from this.

Q. Well, don't you assume that these reports are made up from records? A man wouldn't guess and give a date like July 10th specifically, would he?

A. Your Honor, these situation reports about January of 1942 certainly were never based on records from July or August. As to the fact about my presence there for a few hours, and so forth, no record or anything like that was made. The expert who wrote this can only know this from hearsay. May I point out in two other documents where it shows--

Q. Just a moment, just a moment, now. You kept the headquarters informed as to where you were, did you not?

A. Yes.

Q. Well, and they would keep some record of what you were doing, Wouldn't they?

A. It is probable that the reports which I made were kept there for some time.

Q. Yes, well then why do you assume that someone would have to guess to determine where you were on July 10th?

A. Your Honor, I presume that this situation report---Pleskau, which contains about three pages, and which I have read carefully, was made by a minor official of this detail in Pleskau, who at the time in July, had not been there at all. This report---Pleaskau, certainly was not made by the Einsatzgruppe in this form. This sentence was not entered in the Einsatzgruppe report but in the sub-commando report and it is an error. May I say that in the Situation Report, No. 24, the Einsatzgruppe---in particular, Einsatzgruppe A, made a report which is contained here that the city of Pskow---that is the Russian for Pleskau---belonged to the territory of Einsatzgruppe 1 B. If you will permit it, Your Honor, I will read the sentence out of the copy.

Q. Just a moment. I want to find out whether this report which says that on July 10th, sonderkommando 1 a established an office in Pleskau is correct or not.

A. This sentence in this report is not correct.

Q. Yes now, do you offer as an explanation for that incorrect statement that the compiler of this report merely guesses at it?

A. I cannot state, which reasons caused him......

Q. Yes. Do you exclude the possibility that he made it up from some kind of a record which he found in the Einsatzgruppen-headquarters or elsewhere? Do you exclude that possibility?

A. Yes, Your Honor, That possibility I must exclude definitely because this report was compiled---I can see from the contents--by an expert of Department III in Pleskau and not by a person who was in the headquarters of the Einsatzgruppe,

Q. Well, if it was made by someone in Pleskau, that is all the more reason why it might be accurate, isn't it?

A. No, Your Honor. The fact that I was in Pleskau on 10th July and loft again, and that only many weeks later, namely about the middle of September or the end of September, a detail of my commando was set up in Pleskau, about this intermediate time no documents existed at all, other than this report-----

Q. Do you exclude the possibility that someone noted that you had arrived in Pleskau, that someone wrote it down? Do you exclude that possibility?

A. Yes, I can exclude that possibility.

Q. You exclude the possibility that you, coming through the town, with your obvious authority, made no impression on anyone; that you came in and just drifted away like the mist of the morning without anyone seeing you or paying any attention to you?

A. Yes, Your Honor, First of all, at the time I held the rank of a major. According to conditions at the time, I was not an important personality.

Q. Well, I think every major in the army would disagree with you that a major is not an important officer.

A. Your Honor, in this case it's a relative question. In Pleskau there were so many generals at the time that a major was not considered to be anything, and there were innumerable majors and colonels and lieutenants colonels, who were all more representative than I was because I arrived in an open car and had been travelling on the open highway at night and was so dirty and unshaven that I made a completely unrepresentative impression.

Q. Well, just how long did you remain in this town now?

A. Four to five hours.

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Q. Four to five hours. And where did you go in that time?

A. First of all, I called on the local commander.

Q. Yes. Now, all right, you visited the local commander. Now don't you suppose that he made some record of the fact that you were there?

A. Certainly not. He had only just arrived and nothing was written down in that office. It was not written that I visited him. But it is impossible, Your Honor, that in February some expert could go to the local commander to find out whether I was there.

Q. Don't let us talk about February. I am talking about the day you were there. You went to the local commander and you reported there. Then where did you go?

A. Yes. Then I visited the staff of the armored unit 4, which was about 25 kilometers to the south of Pleskau, and the local commander had told me about this, in order to find out whether Pleskau actually belonged to the territory of the armored group 4 and not to the territory of the 18th Army.

Q. And then where did you go from there?

A. From there, I went down to the river in order to clean myself and to have a bath and to shave. There I stayed about minutes.

Q. And then where did you go?

A. From there, I went to the NKWD prison. A local inhabitant had pointed this out to mo. I ascertained there that in the NKWD prison about 25 or 30 prisoners were in the cells of this prison.

Q. And then where did you go?

A. From there, I went to the local commander again in order to tell him that I was leaving the city again because I was not competent for Pleskau.-----

Q. All right. And then where did you go?

A. From there, I crossed the river again---the Velifaya--which flows to the east of Pleskau and there I looked for the subcommando which I had assigned to the 38th corps from Riga in order to find out what the sub-commando had been doing and what his further intentions were.

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Q. And then from there where did you go?

A. From there I returned to the advance unit of General von Zelle, south of Velim, which I had left two days previously----

Q. Now you want us to believe that during all these official visits that you travelled like a phantom: no one saw you, no one made any reference to it, no one made any record of it? That is your explanation of this incorrect report?

A. Your Honor, nobody there could have recognized me because there was nobody in Pleskau who knew me. But perhaps I can explain this report by the fact that I presume that it was set up in the following manner: this expert who wrote it, either during my stay in Pleskau or while this expert was in Reval, I once told him briefly that I had been in Pleskau for a few hours on 10 July, and what I had found in the NKWD prison there. May I add that two or three other documents show that in the time from the middle of July, for at least six weeks, in Pleskau or in Russian Pskow, asit is written in the document, Einsatzcommando Ib was there, and that Einsatzcommando Ib was competent there for six weeks. After Einsatzcommando Ib had left Pleskau Stahlecker gave me the order in September to set up a command in Pleskau. This detail existed after about the 15th or 20th of September. The one document which reveals this is this Situation Report, No 24, where Stahlecker reports to Berlin that as the most important aims, this was given:

"Report of 16th July. Einsatzcommando Ib--I beg your parodn--Einsatzcommando Ia, Estonia, with the cities Pernau, Reval Dorpat, Narva, the commandos will remain in this territory there until they receive further orders. Secondly, Einsatzcommando Ib, the territory to the South of Petersburg, the cities Pskow--that is Pleskau--Ostrow, Opotschka."

tion Report No. 34 of 26 July 19141, Document No. 2954, Document Volume III-B, that Pleskau was the main headquarters of Sondercommando I B; therefore the headquarters of the commando leader personally. It is quite impossible that such a long time, apart from Sondercommando Ib, that any one of the Sondercommando Ia could have been there.

THE PRESIDENT: The Tribunal will be in recess until one-fortyfive.

( The Tribunal recessed until 1345 hours.)

(The Tribunal reconvened at 1330 hours, 12 November 1947.)

DR. HEIM: ( Attorney for the Defendant Blobel) before, in writing that is, because of its basic importance. On Friday of last week I asked for, I requested, that the film sound--track of the interrogation of Blobel of 16th June, in the morning and afternoon, should be reporduced before the Prosecution in this Court.

THE PRESIDENT: June 16th?

DR. HEIM: requested it on Friday last week The actual examination was on the 6th of June, that was before the beginning of the trial and before the Prosecution began, Your Honor, I would like to make the following comment.

THE PRESIDENT: I know just a moment Let's first make certain that we understand what you are referring to. This is the sound track of an interrogation.

DR. HEIM: Yes, Your Honor,

THE PRESIDENT: Between what persons?

DR. HEIM: Between the defendant Blobel and Herr Wartennurg as representative of the prosecution,

THE PRESIDENT: ALL right, now proceed.

DR. HEIM: Your honor my request for this motion is for the following reason; I questioned Mr. Wartenberg in this Court when he was on the witness stand, and I questioned him in detail about this interrogation. The defendant Blobel. also testified about this as a witness in his own case. The two statements contradicted each other, and I think in order to find out the absolute truth of the matter, these sound tracks should serve a very useful purpose if they are produced here in Court.

THE PRESIDENT: You say the two statements contradict each other Which two statements?

DR. HEIM: The testimony of Mr. Wartenberg when he was in the witness stand here and the testimony of the defendant Blobel when he was a witness in his own case, concerning his interrogation by MrWartenberg on the 6th of June, 1947.

THE PRESIDENT: You say the 6th of June? or, the 16th?

DR. HEIM: The 6th of June.

THE PRESIDENT: 6th of June, yes. How, on what particular subject did the contradiction occur?

DR. HEIM; Your Honor, the contradiction was that the defendant Blobel declared that he had drawn Mr. Wartenberger's attention to the fact that the affidavit in the form submitted to him was incorrect, and contained many omissions which would have to be filled in later. The defendant Blobel furthermore stated that he asked Mr. Wartenberg to let him make these corrections. Mr. Wartenberg had then told him that the affidait in the form submitted to him would only be changed in unimportant details. Furthermore the defendant Blobel says that at the time he had been promised that at a later date he would have the opportunity to make the necessary corrections. Mr. Wartenberg did not confirm this testimony of the defendant Blobel when he was in the witness stand here. It is his statement against another statement. In view of the question of the defendant Blobel's credibility, I think it is necessary that the sound track of this interrogation in question be reproduced so it can be established if the defendant Blobel told the truth when he was in the witness stand.

THE PRESIDENT: Well, did the defendant then sign the affidavit?

DR. HEIM: The defendant Blobel signed the affidavit, and it is in Document Book I of the Prosecution.

THE PRESIDENT: Yes; well, did he make the necessary corrections before he signed it?

DR. HEIM: No, he did not, Your Honor, As I have already said, the defendant Blobel stated here that he had been told at the time that the text had to remain unchanged and, therefore, he did not have the possibility to make the necessary changes.

THE PRESIDENT: Well, Dr. Heim, as Judge Speight suggests, didn't Blobel make the corrections on the stand when he testified here?

DR. HEIM: Yes, that is correct, Your Honor, but it is here a matter of credibility, Can we believe the defendant Blobel? In the final analysis, the credibility of the defendant Blobel is at stake. I have no further witnesses at my disposal for my case, but only the testimony of the defendant Blobel in his own case, and it is of basic importance whether the Tribunal believes the testimony of the defendant Blobel when he was in the witness stand or not.

THE PRESIDENT: We will hear from the prosecution.

MR. GLANCY: If it please, Your Honors, the Prosecution is of the opinion, as it has been voiced before, that the interrogations, sound tracks and other devices for recording pre-trial interrogations are not an issue in this case; and, therefore, have no relevancy. The defendant Blobel had adequate opportunity, through counsel, to examine the interrogator, Mr. Wartenberg; every opportunity was afforded the defendant Blobel to make any corrections which he deemed fit, proper and right on the stand. excluded.

THE PRESIDENT: Dr. Heim, can you refresh our recollection on whether you questioned Mr. Wartenberg on this very thing?

DR. HEIM: Your Honor, I questioned Mr. Wartenberg intensively about this subject for almost an hour.

THE PRESIDENT: And what, in brief, did Mr. Wartenberg reply?

DR. HEIM: Mr. Wartenberg, Your Honor, did not essentially confirm the testimony of the defendant Blobel, but said the contrary.

THE PRESIDENT: Well now, as I understand it, Dr. Heim, you are submitting to the Tribunal that when the affidavit was prepared that Blobel pointed out that there were incorrect statements in the affidavit, is that right?

DR. HEIM: Yes, Your Honor.

THE PRESIDENT: And that then Blobel signed the affidavit anyway, upon the assurance that corrections would be make later; is that what you tell us?

DR. HEIM: Your Honor, that is correct.

THE PRESIDENT: Yes. Now, when you asked Mr. Wartenberg the question, did he affirm or deny that he had assured Blobel that the corrections would be made?

DR. HEIM: Your Honor, decisive seems the question which I put to Mr. Wartenberg whether at the time he had stated to the defendant Blobel that the text had to remain as it was, that is, no changes could be made in the actual text as such. This question was denied by Mr. Wartenberg. He said that the defendant Blobel had had the ***sibility to make any necessary changes of any kind, which became evident, he said, from the fact that the affidavit which had been made out on the morning of 6 June had been changed by Blobel and that on the afternoon of the same day the existing affidavit had been changed and the new version of it signed by the defendant Blobel.

MR. GLANCY: If it please Your Honor, the Prosecution merely wishes to repeat its objections on the same grounds which it stated. It would seem that it would serve no purpose to grant the request of the Defense. However, I would like an opportunity to consult with Dr. Hochwald and answer in writing if it is deemed necessary.

THE PRESIDENT: Do I understand, Dr. Heim, that you have already made this request in writing?

DR. HEIM: Yes, Your Honor, on Friday of last week.

THE PRESIDENT: Very well, the Tribunal will examine itself the transcript in order to refresh its memory on what transpired when you, yourself, Dr. Heim, questioned Mr. Wartenberg.

After that scrutiny, then we will determine whether the sound track or any other record which was kept of the interrogation should or should not be produced. We will assure you that every opportunity will be allowed you, in any field at all, to present your case, and if you regard this as bing vital and important, with regard to the credibility of your client, then you will have that record produced. Of course, the prosecution will be given an opportunity to answer the request and oppose it if it sees fit, and then, naturally, we will have the issue before us and the decision Will be made on what we ascertain.

MR. GLANCE: Thank you, lour Honor.

DR. REIN: Thank you, Your Honor, I am only attempting to produce the absolute truth and make it known to the Tribunal.

THE PRESIDENT: And the Tribunal will assist you in this, because after all the credibility of any witness is very vital, and anything which can shed light upon the credibility of any one who takes the witness stand is always very helpful to the Tribunal.

DR. HEIM: Thank you, Your Honor.

THE PRESIDENT: You're welcome. You may now proceed, Dr. von Stein.

DIRECT EXAMINATION - (Continued) BY DR. VON STEIN:

Q. Witness, how were the security measures organized at that time, that is the time of July and August, in the territory Dorpat?

A. I have said that at that time, that is July and August, in the territory of central Estonia, the center of which is Dorpat, very confused circumstances prevailed. As for guaranteeing interior security in the city and district of Dorpat, the field command, of the Army was responsible for it; it was responsible for all questions of security, and the field commander was also the combat commander, whenever the commander of the advance unit was not there himself at the time.

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The field commander was also the chief of the Estonian police prefecture and the Estonian home guard. In order to clarify this point may I say that an army field command was that command which was responsible for all army matters in a certain area under the command of an army headquarters. A field commander and also a town commander were immediately subordinate to the chief QM of the army's headquarters. In a territory like Estonia the most important towns had field commanders; in the less important towns there were town commanders. Each field commander and each local commander of the army were responsible and competent for this Estonian sector in the capitol in which they were stationed. In Dorpat there was a special case because there was continous fighting going on there, and the field command was fully responsible for all subjects.

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Q. Were the conditions the same in the other parts of Estonia?

A. It wasn't quite as clear in other parts of Estonia, but in the larger parts of southern Estonia and central Estonia there were similar conditions, especially in the sector Pernau and in the sector Wald.

Q. As far the cases mentioned by you are concerned, the field and town commanders were responsible for all field security measures; how was the normal procedure at that time in combatting Communism?

A. The normal procedure was the following: Arrests were undertaken, first by the Estonian home guard; to a lesser extent also by the Estonian police, especially by the so-called constabulary of the Estonian police in the rural districts. Investigations were carried out only rarely by the Estonian home guards; in other cases by the Estonian police prefectures.

THE PRESIDENT: Just a moment. Now, you tell us arrests were made by the Estonian home guard and so on. Then you follow with a statement, investigations were made. Do we understand you arrested first and then made investigations later?

A. In most cases it was, Your Honor, that most people who were known to have cooperated with the communists, or had sympathized with the communists during the year of annexation were arrested first by the home guard on their own initiative, and only after that the homeguard and Estonian police started investigations.

THE PRESIDENT: Very well.

A. This does not exclude that in individual cases, of course, first on the part of the Estonian police offices investigations were carried out and then the subject was arrested. The judgments and proposals for sentences in those cases were prepared and completed in the Estonian police offices where they were submitted in writing, giving the motives --and especially --making suggestions for the sentences. The final confirmation of the decisions was given of the German sub-kommando leaders. In the months of July and august and Sept ember the general tendency , however, on the part of my commando and on the part of my sub-kommando leaders was that only temporary measures had to be taken and executions had to be limited to the most necessary and the most unambiguous cases.

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BY Dr. VON STEIN:

Q. If now you arrived at a new locality with your sonderkommando, or even by yourself, what did you do?

A. The answer to that question refers first to the time, approximately from the 28th of June or July (?) until the 17th of August, that is 1941. In those cases when I arrived in a town. I first tried to establish what kind of Estonian agencies existed there, because Estonian agencies were not set up by the Germans, but in most cases Estonian home guard units and Estonian agencies had already formed when the Germans, be it of the army or the security police, arrived there. As a result, it would first have to be established what Estonian agencies existed at all; that is mayors, counts office and other administrative offices. home guard units, police offices, Then I discussed matters with the Estonian police, and I tried to make it quite clear to them that first of all written material had to be secured and safeguarded; material, that is, from the administration and government offices of Soviet party organizations and state organizations. This material then had to be Sent to the Estonian police prefecture in the County seat; in each of the 12 country scats there was one Estonian police prefecture.

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A (continued) I also emphasized that Communists should, if Necessary, be arrested but certainly not executed. It was necessary to emphasize this because the attitude of the population was so embittered that in many cases the Eastonian Home Guard was inclined to carry out immediate measures. I tried to prevent that as far as I could by talking to the Estonian Administrative Offices that they should use their influence on the Estonian Home Guard with the effect that no immediate executions would be carried out - only arrests. to you?

A No they were not. The Home Guard and Police Authorities were not subordinate to me but to the Field and Town commands of the Army.

THE PRESIDENT: Do we understand, witness, that you called in the leaders of the Estonian Home Guard and gave them directions as to what to do?

A No, I had talked about the Estonian Police Authorities. That is something different. That is not the Home Guard.

THE PRESIDENT: Very well. And you called in these Police Authorities and you told them under no circumstances were they to execute any Communists, they were merely to arrest them?

THE PRESIDENT: And did you also tell them that they were not to execute any Jews, merely to arrest them?

A Yes. Jews were not even talked about. Except in one case in Pervau in the middle of July 1941, I never gave any orders to arrest Jews. That was only later, in the end of September or the beginning of October, 1941. During this time that I have just talked about there were no Jews arrested.

THE PRESIDENT: But you told the Police not to execute any Communists or Jews, merely to arrest them?

THE PRESIDENT: So that in effect you instructed these Police officials to flat-footedly disobey the order which you had from the Fuehrer down through Stahlecker?

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or from Stahlecker, that everywhere I went I should immediately see that all Jews and Communists should immediately be shot. As far as the Communists were concerned I was of the opinion, first of all, that it would have to be established who came under the category of this Fuehrer order, that is who was a Communist functionary who was so dangerous in fact that an execution could be considered. That, in my opinion, would at least have to be investigated.

THE PRESIDENT: Tell, what you very specifically stated was that all Communist functionaries and all Jews were to be liquidated, is that correct?

THE PRESIDENT: Now, you told the Police officials not to execute Communist functionaries or Jews, merely to arrest them.

A Your Honor, I did not say that Jews should be arrested. I said that arrests of Jews at this time, July or August, were not carried out except for one case in the middle of July in Pervau; in the period which I just talked about, approximately 17 July to the 28 august no Jews were arrested in the sector I was in, that is the Northeast Estonian Sector between Togotapsk and Narva.

THE PRESIDENT: Did you say anything to these Police Officials about Jews? No. BY DR. VON STEIN:

Q Would you like to proceed with this question? am sorry that the Estonian Home Guard and Estonian Police Authorities were not subordinate to me but to the Field and Town Commands of the army. My command had the right to give directives to the Police Prefecture if security police questions were concerned and only with the agreement of the Field and Town Commands.

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In the matter of the Home Guard, for instance, we could only give directives via the Field and Town Commands. If I may emphasize again the difference in the relationship of my own commando to the Estonian Home Guard on one hand and to the Estonian Police on the other hand, it is that we could not give any direct directives to the Estonian Home Guard but only by way of the Field and Town commands, but we could give directives to the Estonian Police Prefecture in matters of security police matters. Nevertheless, Estonian Police Prefecture was actually subordinate to the Field end Town commands. Police when Reval was captured in the end of August and you installed a permanent local Army administration? centralized in Reval and now the sub-commando leaders were no longer responsible for all individual decisions the way Stahlecker had basically ordered. Now the competence for all Security Police decisions in Estonia was in the hands of the Department Chief IV in Reval. This was a change which was brought about in order to unify matters and to make things more objective. Stahlecker gave his agreement to this change. Also the matter of reporting and information was centralized. Even within the Estonian Police a centralization took place for call individual decisions and for the channels of command. The Estonian Police Prefecture in Reval was the central administration office of the Estonian Police for the whole of Estonia. of Communist activities in Estonia at this point? time from 20 August and the following weeks. This Soviet leadership in Estonia had left an underground movement in Estonia in order, after the military struggles had been finished, to carry out espionage and sabotage activities in Estonia.

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Many Communist functionaries, even leading functionaries had been left behind for this purpose. Apart from this, as I have already mentioned, special Communist terrorist groups had been supplied and armed. They had explosives and poisons, chiefly to be used to poison wells. The situation had become very critical because even in the following weeks, in September and even late in October and November, the front was very near. Even at the time when the front was in the sector south of Leningrad, that was from the middle of September, the front was comparatively near Estonia, and in the sector between Leningrad and the Peipus Lake an extraordinarily strong Partisan activity had developed. This was favored by the territory which consisted mainly of forests and swamps and also favored by the fact that from the Leningrad front as well as from the Moscow front Partisans could be sent to this area. This became especially acute when the winter came which, we know, arrived very early and very severely in 1941. These Partisans came from the east of Peipus Lake. They came across the ice of the Peipus Lake and came into Estonia. The activity concerning the infiltration of the Partisans to Estonia during the whole time from September 1941,on was a very strong one. On the other hand, however, from approximately the beginning of September there were very few German troops in Estonia. As from October there were hardly any, as far as active combat units were concerned, of the strength of but one regiment. But, in Estonia at that time there were a number of staffs of the Army and coastal troops consisting of coastal units of the marines and the Navy, but no actual combat units. The actual security of the country in this time, as I explained, was only secured by the Estonian Home Guard which was practically a militia of Estonian citizens and farmers.

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the country and the rear connections of the Army succeed? of the Estonian Home Guards and the Estonian Police the combat of Communism was very successful. The centrally organized espionage and sabotage machinery for this underground organization, which was to exist and which was to contain members of the functionary corps of the Communist Party in Estonia was eliminated very soon and many arrests were carried out, arrests of Communist functionaries and agents of all kinds. further danger averted? the whole time tremendous activity developed on the Russian side and in Estonia sabotage and espionage was carried out and the population, in order to influence the Estonian population in a Communist way, and against Germany. It becomes evident from a number of reports of events that strong Communist activity took place. It becomes evident in fact from parts not submitted by the Prosecution so far. May I now give a few examples?

THE PRESIDENT: Who made all the arrests you spoke of, the arrests of the Communist functionaries? lesser extent by the Estonian Police and the Constabulary in the rural districts, but to a lesser extent also in the towns.

THE PRESIDENT: Did you not make any arrests yourself, that is, your organization?

A No, this wasn't possible mainly for the reason that we had only four German interpreters who knew the Estonian language. One cannot carry out arrests without knowing their language and these four German interpreters were fully used for other tasks and not for arrests only. Furthermore, these Estonian authorities arrested rather more Communists than too few, so there was no necessity in our paying too much attention to it.

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THE PRESIDENT: You just sat back and reviewed the sentences which were passed by the Home organization, is that right?

A No. I did not speak about sentences just now, only spoke about arrests. The question - -

THE PRESIDENT: Just a moment. Don't tell me what the question was. I know what the question was. You had stated some time today that you reviewed - you and the sub-commando leaders reviewed all sentences, is that right? shall come back to. That is, I personally. Otherwise, the suggestion for sentences were submitted to the Estonian Police Authorities based on an investigation which had been carried out locally, then affirmed and confirmed by the sub-commando leader....

THE PRESIDENT: In all the time you were in Estonia you only passed on six cases?

A I personally dealt with six cases and made my decision. That is, I personally. It was actually the task of my department chief IV to examine and investigate the judgments and to confirm them. I may say now that I shall deal with this procedure at a later point.

THE PRESIDENT: But do I understand you to say that all the time you were in Estonia you passed on only six cases - you reviewed only six cases? cutions. That means six death sentences. The whole number of cases which were examined by myself was 25, on two different occasions. Among those there were six executions.

THE PRESIDENT: So that in all the time that you were in Estonia you reviewed 25 cases and from these 25 six executions resulted? to deal with this. BY DR. von STEIN:

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the danger of Communism had been averted?

A I said that I can see examples in many reports of events. In fact such reports which have not been mentioned and submitted by the Prosecution, especially from the report of events #95 which is 26 October 1941, document 3347, that's page 15. Then #130 of 7 November 1941, document #2823, page 10. Then #155 of the 14 January 1942, document #3279, page 21. And then from the report of Einsatzkommando A of 15 October 1941, document no 1180. That's inclosure VII, A large part of other reports which were issued in Reval in this department deal with this too. It was not included in reports in Berlin then, so now it is not contained in the documents here. From inclosure 7 which I mentioned last, that Is document 1180, the activity of the so-called Illegal Central Committee is described which had been left after the end of military operations. The President of this Committee was the former President of the Central Committee of the Communist Party when they were legal. He had therefore been left as an illegal chief of the underground organization. As members of this illegal Central Committee of the Underground Movement there are marked former leading members of the Central

Committee of the Communist Party in Estonia or the council of the People's commissars of the Soviet Republic. In one case even a people's commissar, that is the leading man in charge of the Ministry of the former Soviet Republic was concerned. It becomes evident that no loss than five leading personalities had been left in order to deal with this underground movement and to be in charge of it. The number of the rather minor and small functionaries was relatively larger. From another report of events I take the confirmation that in Narva the Communists among the working population formed about 15% and that small groups were still in hiding in cellars on top of the buildings and operated from there and organized plunderings and attacks. It is furthermore proved that the Russian population of Narva was Communisticly infected so that espionage aid to refugees of this illegal organization and partisans could only be stopped by systematic combing operations.

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In another report of events, that is January which reports about the events in December, it is mentioned that in Narva and in Petschura, that is again in the border territory, the atmosphere and attitude of the Russian population was connected with evacuation of Rostov and Ritwin by German troops and a consequence of the entry into the War of the USA, that through this in fact the Russian population that had Communistic tendencies the general mood improved. In another report of events in November, that talks about events which happened in October it is mentioned that experiences so far in the sector south of Leningrad make one conclude that the system of mass assignment of agents which had already been used by the Russians in World War of 1914 - 1918, would now be used again. I may add that this report was not issued by my own commando but by Einsatzgruppe A, that is south of Leningrad, but that these events reported about had repercusions on Estonia. Furthermore it is mentioned that for espionage and sabotage actions young people between 14 and 20 and women were employed.

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In another report of event of January concerning events until up to the end of December, there is mention made of difficulties in food supply and accommodations and that, therefore, smaller troops are non formed from the partisan units which are active as terror groups, Furthermore, it is stated in this report that at the Estonian northern coast in the middle of November 1941 a hundred partisans had been landed who were to start operations in the vest of Narva. I may add here that such an event repeatedly happened. I remember now that even in later months it was attempted again and again to land via the Finnish Bay and to smuggle through large units of partisans consisting of 100 to 120 men......

THE PRESIDENT: Dr. von Stein, the witness has given us quite a report of the reports that have been turned in, but he has sort of forgotten himself. It will be interesting to know just what he was doing during this period. After all, any report can be relative only as long as it throws light on the defendant himself. He has sort of taken himself out of the picture completely and he is just giving us a general account, which is interesting, but we would like to know hour he fits into the picture.

DR. VON STEIN: Your Honor, we shall come back to those questions in individual details. The witness only wants to paint a general picture of Estonia at the time. He only wanted to express the Communist danger and he wanted to say that the Communist danger was the same before and after the occupation, and I shall come back to the individual details later.

THE PRESIDENT: Very well.

MR. SANDBERGER: I may conclude at this point and say that the lack of any combat units in the sector of Narva was very dangerous for the security because in the vicinity of Narva there were a number of extensive slate mines which was the most Important industrial enterprise in Estonia, and was of tremendous importance because of the oil which was produced there for the German Navy. Sabotage attempts on this industry would have had most serious effects on the German Navy.

I may furthermore say briefly that in the whole of the winter 1941 to 1942 and even later, as it becomes evident from the report, parachute partisan operations were caried out over Estonia. These partisans were equipped with explosives, with wireless sets and with plans of arms dumps, and addresses of Communist agents in Estonia and so forth. I believe in December 1941 one of these parachutists stated that in partisan schools of the Soviets there were approximately 3,500 men who were trained and these men should land over Estonia in the spring of 1942. Even attempts on army information units were made again and again which was most irritating because the most important information and news channels went via Estonia; especially in the southeastern corner of Estonia that is the area bordering the Pleskau sector. BY DR. VON STEIN:

Q I now come to the documents submitted by the prosecution. They are based apparently largely on reports which were issued by your officials. Please tell us first what kind of reports were issued by your office. five departments. This concerned, as far as Departments I and II were concerned, general changes referring to own personnel, administration and information service. As far as Department III was concorned there were reports made about the modestic spheres and the atmosphere within the population concerning the domistic spheres. As far as Departments IV and V we e concerned, security measures and matters of security police were discussed. There were reports which dealt with the situation and with the activity until the end of the month. Those had to be submitted at the latest, the last day of the month, at the Einsatzgruppe Riga.

Q What was contained in these situation reports?

A In these their own activity was mentioned. First of all, the activities of Department 4 and 5, but also the acitivities of other offices concerning general security, and then general events which concerned the security situation in Estonia, and which neither had to do with our own security nor with the German Army. and the activity of other authorities concerning the general security position? Was this difference clearly understandable?

A No. The difference is not easily recognizable in the documents submitted here, I would almost say that in most cases it is not recognizable.

THE PRESIDENT That in not the question which Dr. von Stein asked you. He asked whether your reports differentiated between your activity and the activities of local authorities. Please answer that question.

MR. SANDBERGER: I beg your pardon. In the reports of Department 4 in Reval the difference between our own activity and the activity of other authorities was generally distinguishable but not always. BY THE PRESIDENT.

Q Well, why wasn't it always?

Q No, no not deduced. You had charge of these reports. You are sending in a report on what is happening with your organization. How, tell the Tribunal why you wouldn't distinguish between what you would do and what somebody else does in a report which you submitted to your own headquarters, reports dealing with situation and activity of Department 4, were not issued by mo personally and in a majority of cases I did not even know them before they were sent off for the mre reason that I was absent; if, however, I was present -

Q You were in charge of that commando, were you not?

Q And, therefore, you were charged with making reports?

Q All right, how long were you up in this part of the world?

Q Yes, and you sent in a report each month?

Q How, when you were, of course, you saw the reports? Now, you are there, and you are sending in a report. Let us take that situation.

Q All right, now when you send in this report, don't you distinguish between what you do and what somebody else does?

Q Now, please don't go back over that again. We have a situation where you are sending in a report. Now, you don't need to modify that. You have the report. Here is your report. You are going to send it in. You are in charge of the commando. How, in this report you distinguish between what you do and what somebody else does, don't you? when these reports were sent in?

Q Now, just a minute. Didn't you say just a moment ago in most cases you were present?

Q Well, then, just a minute, let us correct this. If there is a mistake, we want to correct that. That is what we got over the earphones. At least, that is what I get. Did you get that, Judge, that he said "in most cases"? Will the German reporter please look at her notes and tell us if the witness said that "in most cases" he was present when the reports were sent in?

That is the way I understood it.

(Whereupon the German reporter read from the record as follows:

"Your Honor, I have had no opportunity so far to say that this position and these situation reports of the Department 4 were not issued by me personally, and that in a number of cases I did not see them before they were sent off for the mere reason that I was not present; if I was present"-- and then it is interrupted,) THE PRESIDENT: Well, and then what follows?

(Whereupon the German reporter continued to read from the record as follows:

"This commando was under your command" -- and the next answer is again "Yes", then "about two years" is the next answer, then there was another answer "Yes", then the other answer "As far as I was present, in most cases", and then again it was interrupted.)

THE PRESIDENT: Just a minute, just a minute. That is what I am referring to. Please read the question which preceded and the answer very slowly -- that very question and answer.

GERMAN COURT REPORTER: The question I did not quite understand because I immediately wrote down the answer.

THE PRESIDENT: You didn't catch the question?

GERMAN COURT REPORTER: I haven't got the question -not quite.

THE PRESIDENT: I see, and what was the answer that you got?

(Whereupon the German Court Reporter again read from the record as follows:

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"As far as I was present, in most cases" I heard, and then it was interrupted).

THE PRESIDENT: Very well, I thank you very much. We can check that answer in the sound track, but let us proceed from this point.

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BY THE PRESIDENT:

Q. Were you present in most cases or not when the report was sent in?

A. Your Honor, that depends on what sector or what period you -

Q. Well, you say, you were there two years, were you present in most cases when the report was sent in?

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A. Approximately in this time in about half or up to two thirds of these cases I was present.

Q. Well, now, just a minute, there is quite a difference between one-half and one-third. One half is 12 and one third of 24 is 8. Now, were you there 12 times or 8 times that the reports were sent in? You don't remember?

A. No, because it depends whether I was present on days when this report was to be sent off, which was on the 27th or 28th of the month-whether I was there or whether I was on leave.

Q. If you were there when the report was sent in you distinguished between what you did and what somebody else did?

A. I certainly made a distinction in most cases, yes.

Q. Why do you always say "in most cases", you would in every case, wouldn't you?

A. Your Honor, I am not saying it because I do not exclude the possibility that I did not make this distinction in this or the other case. Therefore I say "in most cases". May I proceed?

A. Yes, certainly.

Q. For the reason that in my commando in some sphere less might have happened than requested by the staff or by Stahlecker himself. As a consequence of this, it is possible -- I cannot quite exclude the possibility -- that is, in one or the other case I will say, I left this question open. The question was whether a certain activity was carried out by the sub-commando, by myself, or by another commando.

Q. I didn't quite catch that, did you say that something less might have happened than was expected - is that what you said -- I am only trying to catch that.

A. What I mean, Your Honor, is that the activity of Stahlecker and his staff, concerning measures of a state police sphere was a very extensive one, and that my attitude was not quite his own, in these matters; resulting from this disagreements came up between us; therefore, I cannot quite exclude the possibility absolutely that in order to overbridge this disagreement with Stahlecker and his staff or to improve our relations, perhaps in this or the other case, on one or two occasions, it might have been assumed that a certain security measure was carried out by my staff, which really might have been carried out by another authority.

tion, is that right -- is that what I understand you to say -- in order to satisfy Stahlecker you would include in the report something which would please him, out which had not actually been done by your organization -- is that what you are telling us?

A No. I did not want to say that....

Q Well, let's get this correct. You said you do not exclude the possibility that because Stahlecker expected you to do certain things that, therefore, in your report, there may have been included something which did not correspond with the facts, is that what you have told us -- I am only trying to repeat what you said?

Q Well, now, let us stick to the reports. I asked you whether in these reports which you yourself made you distinguished between what you did and what somebody else did -- then you gave me a long story about a disagreement you had with Stahlecker. Now, what has that got to do with the report? distinctions should be made between the activity of our own authorities and of other authorities, but this does not exclude the possibility that in individual cases this distinction was not made.

Q Why was it not made? insufficient activity on my own part.

as to give him an impression of something which had not taken place?

A No, Your Honor. The matter reported about, of course, had taken place. But it is possible that it had taken place, not based on an order by the own authority, but perhaps by another authority, and this question had possibly been left open.

Q Let's get back to the original question. In the reports which you made, did you distinguish between what you did and what somebody else did -- did you, or did you not?

Q Sometimes you did not distinguish? it did not report about as to who gave the order for it. It did not say that it had been ordered by us necessarily, but it also was not maintained that somebody else had ordered it. and it is naturally understood that your report reflects events as they occurred. How, did you always distinguish between what you did and what somebody else did -- answer that "yes" or "no".

Q. Then sometimes your reports were misleading?

Q Well, if you didn't distinguish between what you did and what somebody else did, then they didn't tell the exact truth? whole this and this measure was taken in Estonia without adding who carried it out and who ordered this action. Stahlecker's wrath?

Q. Yes, so, therefore, the reports were misleading?

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occur?

A No. The report said that this and this measure had been carried out. It was a situation report, but it was not contained in the report that these actions had been initiated by myself or by my collaborators. This was neither expressed positively nor negatively. May I also add that Stahlecker was informed about conditions in Estonia, that he knew in fact that I had very few people, and that other agencies had more people.

Q Now, we are getting off the subject; we are talking about the report. How, you would have us believe that these reports didn't amount to anything because he had his own reports. You had to send in a report every month? somebody else did - you have answered that "no"? with Stahlecker? when they were sent in. When you weren't there the reports went in just the same, didn't they?

Q All right, when you returned, did you see a copy of the report? want to know what went on while you were away? I was first on leave and then I was ill. It was absolutely impossible to read, after I returned, all the reports which had been received in the meantime.

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A That also wasn't possible because the number was too high.

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THE PRESIDENT: Well, if you were away two months, there would be only two reports. Why is it impossible to read two reports?

A. Your Honor, there were not only two reports that were made by Department IV, reports we are talking about here, but a large number of very extensive reports were made by Department-III. They were bulks of reports, which were sent on within two months, and it was impossible to read them.

THE PRESIDENT: You told us the reports were made at the end of every month, and they had to reach headquarters on the 2nd or 3rd of the month, of each month were the reports, so when you came back from your leave, did you read the copies of these two reports?

A. I certainly read those reports in most cases, but I cannot exclude the possibility that in one or the other case I did not read it.

THE PRESIDENT: So that over a period of two years you saw practically all the reports, or there may be one or two that you missed?

A. Yes.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(recess)

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THE MARSHAL: The Tribunal is again in session.

DR. HOFFMANN( for the defendant Nosske): tendance in court tomorrow, Thursday, in order to prepare his defense.

THE PRESIDENT: The defendant Nosske will be excused from attendance in court tomorrow in order to prepare his defense. BY DR. VON STEIN:

Q. Witness, were there other reports, apart from this monthly report which had to be made to the Einsatzgruppen at the end of the month?

A. Yes, there were individual security police reports which also could concern the activity of Department IV and V and also the activity of other agencies--German and Estonian agencies--and also the situation concerning security in general. Such individual reports did not have to be made at definite intervals. In Department III, the domestic sphere, there also were a number of reports which were not fixed to any deadline. They were short individual reports about events in the domestic sphere and also special reports which had nothing to do with the situation in that month, but dealt with a subject of greater importance, such as economic problems, administration problems, cultural questions, and so forth. These reports were often very extensive. They were not bound to any deadline. Not only the agency of the SD in Riga and the agency in Berlin were given these reports, but also a great number of other agencies had these reports sent to them; in particular, German civilian and military agencies.

Q. Owing to your experience at the time and based on the document submitted, by the prosecution, do you have the impression that these reports always applied objectively?

A. No, it is soubtful; expert officials with the Kommando H.Q. and also the staff of the Einsatzgruppen and also to Office IV of Berlin, often had reports given to them and formulations were chosen which gave an impression which did not conform with the actual situation,

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Q. In your opinion, what was the reason why these reports were made so carelessly?

A. There were various reasons. On the one hand, there was lack of training and experience by the experts in making exact reports; in view of the difficult personnel situation in all offices, officials had often to be asked to make such reports who had not done this previously and therefore they did not have the qualification to do this. Secondly, in all agencies concerned, in particular in the staff of the Einsatzgruppen in Riga, there was the tendency to conceal from superior agencies - in the case of the Einsatzgruppe A- this was Berlin- something that should have been done but actually hadn't been done. Also there was a tendency by higher authorities in this case in Riga and Berlin, to retouch methods of subordinate agencies which in their opinion was too soft; for examply, if that report from Reval about the difference between their own activity and the activity of other agencies was made in detail, this difference might have keen left out in Riga or in Berlin, -- in Riga mainly, because they wanted to give Berlin the impression that the subordinate Kommandos themselves did more than they actually did.

refer here in particular to what Schulz testified on the witness stand here about the methods of Referent Hoffmann in Einsatzgruppe C. Similar tendencies existed also in Einsatzgruppe A, not only with Department Chief IV, but also with the Chief of the Einsatzgruppe itself. Many of the things Stahlecker himself dealt with and what he saw or arranged is doubtlessly exaggerated, and when looking through the documents, most of which I have seen here for the first time, in particular things concerning the actions and the sphere of actions of Stahlecker himself, these actions caused by him or by his staff are, I saw, fantastic exaggerations and falsifications and distortions.

THE PRESIDENT: Witness, in these reports which you yourself saw, did you find these faults which you have just referred to?

THE WITNESS: I was just going to say---

THE PRESIDENT: I don't mean the reports you saw here, the reports which you yourself sent in and those which you read when you returned from a temporary absence. First let's take up your own reports. In reports which you sent in, did they carry these faults which you have just now outlined?

THE WITNESS: Reports which I found after I had been absent?

THE PRESIDENT: Let's take up those which you sent in yourself. Did they carry these faults?

THE WITNESS: Reports which I personally sent off, that is, if I was present and if I saw them in general did not contain mistakes of the kind which I have just described.

THE PRESIDENT: Those reports which you read when you returned did they contain these faults?

THE WITNESS: In individual cases very important mistakes occurred.

THE PRESIDENT: And when you saw these mistakes, did you do anything to correct them?

THE WITNESS: Yes, I reprimanded the experts very energetically.

THE PRESIDENT: And you sent in a correcting report?

THE WITNESS: In general I used the next opportunity when I talked to Stahlecker personally, I discussed the matter.

THE PRESIDENT: But in some way or another you always endeavored to correct an incorrect report?

THE WITNESS: I cannot say that it always happened. I must leave open the possibility that in individual cases it was not done and Stahlecker was not consulted personally on this.

THE PRESIDENT: In most cases you endeavored to correct obvious mistakes or exaggerations?

THE WITNESS: Afterwards as far as it was possible, yes.

Q. (By Dr. von Stein) mitted against you concerning measures against Communists contained in Volume I, Exhibit 21, Page 108 of the German text, Document NO-3279.

MR. GLANCY: On Page 78-A of the English.

Q. (continuing) Situation Report No. 155 of the 14th January, 1942. Do you find it?

A. Yes.

Q. Is that a report which you made yourself?

A. No, the original of this report is contained in the monthly report of the month of December. It was, therefore, - it left Reval at the end of December, 1941. It was made by Department 4 of my agency in Reval. At the time I was not in Revel but most probably I saw the report after returning.

Q. Do you believe that great changes were made between the Berlin report and the original report from Reval?

A. Yes, the original report from Reval about this subject was much more extensive, of course. Now, I cannot remember the exact extent, but I can estimate it to one to two pages. What is written in the situation report here in Berlin is a very brief excerpt ox summary of an extensive report from Reval, but, of course, I do not know whether the alterations and the summarization was already done the previous year or only in Berlin.

It is also possible that changes were made in both places. This text exists here and is an independent, own work done at Berlin, and it is not certain that any one word was written in Reval in that manner except for the figures perhaps and some specialized expressions.

Q. Is this report a situation report or a report of events?

A. This report is a situation report and a report of events. It means, therefore, the reports about the activity of the home offices and other offices---they are all German and Estonian offices---during the time from July until the end of December, 1941, which occurred at all in Estonia during that time, searchings, arrests, interrogations, committment into comps and executions.

Q. What agencies were those in particular?

A. Those were German local and field commanders of the Army.

THE PRESIDENT: Where are you reading from, please?

DR. VON STEIN: Your Honor, I am still on the same document.

THE PRESIDENT: Where on the document; what is the original page?

DR. VON STEIN: page 10.

A. (Continuing) These were German local and field commanders of the Army commandos of the Estonian Home Guard, in particular in July, August, and partly even in September.

THE PRESIDENT: Page 10 isn't in our book.

MR. GLANCY: There is an errata sheet. It should be Page 78-A. It is a long page of corrections, if it please, Your Honor.

THE PRESIDENT: Well, does this errata sheet carry the omission?

MR. GLANCY: Yes, sir; it does.

THE PRESIDENT: Is it the one which begins with Page 5 in line after insert?

MR. GLANCY: Local cross number, it does.

THE PRESIDENT: Very well. Thank you, yes.

THE WITNESS: May I repeat the last sentence? "The agencies which participated in this Security Police situation and activity were all German and Estonian agencies which at all carried out measures in the time from June until the end of December, 1941, which is, namely, measures, searchings, arrests, transfers into camps and executions, and these individual agencies were German Local and field H.Q.'s of the Army and commanders of the Estonian Home Guard; these three in particular during the time from July and August 1941, hardly still in September, to a lesser extent even in October 1941, apart from that, Estonian police and German Security Police.

THE PRESIDENT: Do I understand that these arrests and internments in concentration camps and shootings were done by organizations other than the kommando groups.

THE WITNESS: Your Honor, not altogether by other organizations, but to a considerable part. A part of these measures was under the responsibility of the German Security Police, that is, myself, but a very important part and a major part, as I shall explain in detail yet, concerns the responsibility of other German and Estonian agencies, namely, those agencies which I have just mentioned.

THE PRESIDENT: Do I understand that later on you will break down these figures for us?

THE WITNESS: Yes, I shall explain that in detail.

THE PRESIDENT: Very well.

Q. (By Dr. Von Stein) Which reports were used in your opinion in the original report made by Department 4 in Reval?

A. May I emphasize again that between the original report from Reval and this report as it exists here an intermediate office existed, namely Einsatzgruppe A in Riga, who certainly made considerable changes in the original reports were evaluated, reports which Department 4 of the German Security Police had received, firstly, from their own experts, from their own agencies of the German Security Police; secondly, from the Estonian police agencies; and thirdly, from the Estonian Home Guard, whether from the district staffs of the Home Guard or by the Reval Central Office of the Home Guard.

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Apart from that reports by the local commanders and the field commanders of the Army were used.

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Q In such a procedure wasn't there the acute danger of countings occurring twice? very often. The reason for this does not have to be intentional exaggerations but the reason was the administrational mixup. During all these months from July until December, 1941 this existed in Estonia and this mixup could not be avoided for the time being. If I can explain this with an example; for example, it could occur that about 25 Communist functionaries whom the Estonian Home Guard in the District of Pernau at the beginning of July, 1941 had been arrested and examined, and then had been executed on their own authority. Guard unit to the Estonian police prefecture in Pernau and later also in a report to the central office of the Estonian Home Guard in Reval. The Estonian police prefecture in Pernau then perhaps gave the same figure, 25, again in their reports to the Reval central office of the Estonian police, and apart from that, to the German security police in Pernau, the same place, but finally so the same 25 cases could be reported to the German security police in Reval independently of each other and from various offices, namely, from the office in Pernau of the German security police and by the Central Office of the Estonian police in Reval, and thirdly, by the central office of the Estonian Home Guard in Reval, therefore three times. And finally one could not quite overlook this because these reports did not give names but merely gave figures indicating that this was the same case. That is how the danger arose that unintentional double countings occurred.

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THE PRESIDENT: I understood you to say, when you were first asked about this report from Reval, as to whether it was correct, you said that - at least that's what I have here in my book -- that there were errors but the figures were correct.

THE WITNESS: I said that it is possible that the figures which are contained here are the same figures which are contained in the original Reval report. That does not mean that these figures which were contained in the original Reval report were correct because the danger of double counting could have occurred even before they came to Reval.

THE PRESIDENT: Who passed on the report last in Reval? Who was the one who actually sent it on to Riga?

THE WITNESS: That was department 4 of the German security police in Reval.

THE PRESIDENT: Well, wouldn't department 4 make some effort to verify those figures to see that there were no duplications?

THE WITNESS: Such attempts were sometimes made, but in general this could not be taken for security. I must leave open the possibility that such attempts were not made carefully enough.

THE PRESIDENT: Well, department 4 was part of your organization, of course?

THE WITNESS: Yes.

THE PRESIDENT: And your organization was part of the German armed forces?

THE WITNESS: Yes.

THE PRESIDENT: And one of the things that the German armed forces is known for is its meticulousness in making reports, isn't that right?

THE WITNESS: Your Honor, this applies in principle but it does not exclude the fact that where there is rather a mixup in administration and offices run next to each other, it can happen that countings occur twice which are not intended and in other Einsatzgruppen and other Einsatzkommando this has happened as well as what has been reported here.

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THE PRESIDENT: Well, this reputation that the German Army has is not an unmerited one, is it?

THE WITNESS: Your Honor, those reports which are contained in this report do not concern this to a very great extent objectively, mainly because many instances have been very careless, in Berlin, in Riga and in the local instances.

THE PRESIDENT: Well, generally you would still say that the German Army is very careful about its reports?

THE WITNESS: Doubtlessly one can not say this on these reports which are being discussed here.

THE PRESIDENT: Generally speaking the entire Wehrmacht is very careful about its reports?

THE WITNESS: Your Honor, I understood you to say that the reports by the entire Army meant mostly military reports. I can only say that these reports which are being discussed here can be proved to be objectively wrong.

THE PRESIDENT: I am saying that generally the German officer receives as part of his training, the idea that he must be careful about reports, generally speaking.

THE WITNESS: Your Honor, the officials who worked on these reports did not have any training in the German Army for this.

THE PRESIDENT: Well, they were part of the German armed forces?

THE WITNESS: They were attached to the German Army concerning this assignment, but concerning making reports for the security police they did not have any training by the Army, and many of them had never made any such reports previously and therefore were quite untrained in this.

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THE PRESIDENT: Well, you know that no military movement could be a success unless those at the top could depend upon the accuracy of reports coming in from the field?

THE WITNESS: Your Honor, unfortunately it is a historical fact that in the last war, in the entire German Army to a very large extent, false, that is exaggerated reports were made also concerning matters of military importance which are exaggerated to a great extent.

THE PRESIDENT: Well then, you would say that this general idea that the German Army is very acurate and that its reports can be depended upon is not merited?

THE WITNESS: Owing to the position which I held I cannot overlook this in order to pass a general judgment on this.

THE PRESIDENT: Well then, you won't pass any judgment upon whether that reputation is merited or not?

THE WITNESS: Concerning the last war, in particular, since 1941, I cannot pass a judgment on this. I can only say that I heard a lot of rumors, that military agencies of all kinds very often made wrong reports and that many failures were the result of this, in the East in particular.

Q (By Dr. von Stein) Do I understand you right when you say that the thousand executions can be put to the charge of various agencies and they are responsible for them, first for the months of July and August, 1941, Estonian home guard commanders and German local and field commanders, later field and local commanders, and the Home Guard subordinate to them, and apart from that, German security police and Estonian police. Finally, unintentional double countings are mentioned by you.

Is that right? your opinion?

A Yes. One reason is that in this report in an obvious manner it is avoided to say that these measures were carried out by the German security police insofar as I was able to read through these reports. Now generally it is expressly said there that the Einsatzgruppe or the Einsatzkommando with that figure or other, took certain measures. That is not written here but it merely gives us a local name. It says in Estonia these or these measures were taken without one word adding who took these measures. If all these measures had been carried out by the German security police in Estonia I am convinced that the official who made this report would not have omitted mentioning this expressively. I should think that even in the original report from Reval it is pointed out that the other agencies mentioned took part in these measures to some extent. The experts in Rige or in Berlin then left it out because it did not fit into their general line of reporting. In any case I would like to emphasize that the chief of Einsatzgruppe A Stahlecker, and his Chief Department IV, already through many oral reports by me, particularly Stahlecker through oral reports, were very well informed as to how great an extent Estonian agencies and agencies of the German Army had carried out such measures and how to a relatively small an extent their own forces did this. of Communists transferred to camps is stated exactly with 5,377 but the figure of the people executed is not stated exactly.

A. In my opinion that is proof again of the fact which I mentioned that in these measures various German and Estonian agencies took part in these measures, because the Estonian police knew exactly who was in the camps, and, therefore, they could report this to the department office in detail, but during the executions, the other agencies, namely, Estonian Home Guard and German Kommandantura of the army were not in a position to make exact statements, and, therefore, their's is only an estimated figure here.

Q. How far was the German Security Police responsible for these thousands of executions?

A. The German Security Police, for the reasons I gave is not at all responsible for this figure of approximately a thousand, but only for a fraction; I do not think it right to give an estimated figure here. I shall give more concrete points of view later of concerning other reports of events which reveal which figures concern other agencies without doubt, but, of course, it is right, and I would like to establish this: that executions of communist functionaries and agents to a certain extent were approved by my sonderkommando leaders, by my Department Chief IV, and my myself, according to suggestion, to interrogations, and mobulated suggestous by the Estonian police authorities. But these cases which come under the responsibility of my subordinates and myself, as I said, only concerned a fraction of the mentioned figure.

THE PRESIDENT: Witness, your attorney asked you to what extent was the German Security Police responsible for the one thousand deaths. We gathered from that question that he was trying to find out about how many the German Security Police executed, but you did not answer that question.

A. Your Honor, the question which was put to me was not how many executions the German Security Police are concerned with, but what was the responsibility of the German Security Police.

THE PRESIDENT: Then the Tribunal will ask you to what extent, numerically, was the German Security Police responsible for the shootings of one thousand.

A. Your Honor, I am not able to give a definite figure on this.

THE PRESIDENT: Why not?

A. Because I cannot remember such a figure, and, therefore, cannot state it.

THE PRESIDENT: Was it a large figure; or, a small figure?

A. If I have to make an estimate, which might be wrong, however, then I would give a figure of about three hundred to three hundred and fifty for which the German Security Police was responsible.

THE PRESIDENT: Very well.

A. Only such cases were concerned, however, which had been examined very carefully previously, and where it had been ascertained that there were communist functionaries who had endangered the security gravely; and that simultaneously there was serious guilt which even according to national Estonian law would call for a death sentence. That careful individual examinations were carried out, is shown by this document and shown by the fact of other decisions; namely, as it says here, that 3,785 people who had minor charges filed against them were released; that is, these persons were also communists and they were also incriminated as communists, but the incrimination was not so serious, in a sense that during that time, this time of reporting up to December, it was possible to release them. To the expression "concentration camp captivity," which is mentioned here, I shall say more about later on when describing the execution of penalty in Estonia. BYDR. VON STEIN:

Q. Please look at the report of events, No. 88. It is contained in Volume II-A, Exhibit 46, Document No. NO-3149, page 92 of the German text, page 86-A of the English text, your Honor. Page 87. Here it is reported that in the Dorpat district since the occupation by German troops, 405 executions took place. Is this figure of 405 executions contained in the figure of one thousand executions in the Report of events No. 155?

A. Yes, doubtlessly. This figure surely is part of that figure one thousand, except perhaps of the 50 Jewish communists mentioned here. I shall give more explanations of this question also later on when talking about measures against Jews. May I reply to your question now that according to the instructions by Einsatzgruppe A it was actually laid down that Jews, even if measures were taken against them because they were communists, were to be classified as Jews and reported as such, and not to be classified as communists; but in spite of these Riga regulations it is possible that these 50 Jewish communists are contained in the Figure 405 -

THE PRESIDENT: Where is that reference, please, 405.

MR. GLANCY: On page 88, the last paragraph on page 88.

A. The figure of these 50 Jews, I shall come back to when explaining measures against Jews later on.

THE PRESIDENT: I didn't quite catch your explanation about the 405. Would you please repeat it?

A. Yes. The question which was addressed to me was whether the figure of 405 in the territory Dorpat, people who were executed there, which is mentioned here, whether this figure is included in the figure of one thousand which is mentioned in the report mentioned before. I answered yes to this question. The Report of events of 19th September, the other report is one of 14th January; therefore, they are not 405 different persons but they are included in the figure of one thousand. In any case, as I emphasized, it is possible except of the 50 Jews mentioned here, which are included in this report, in this figure 405 and about which I shall speak again later on. This exception is possible because according to the regulations of Einsatzgruppe A, measures against Jews in general were to be classified under the term of Jews, even if these measures had been taken because of communist activity, as communist functionaries add agents, and not only because of the fact that they were Jews. That was the general instruction and according to this general instruction, these 50 Jews should actually not be contained in the figure one thousand, but in spite of this, it is possible that owing to a mistake they are still contained in the figure owing to the reason that they appear here in this total figure 405, and this figure 405 possibly was included in the figure one thousand, BY DR. VON STEIN:

Q. Can you give detailed statements from what time this original report originated on which this report of events No. 88 is based?

A. It is this report of events in Berlin, of the 19th September 1941. The original report from Dorpat must have originated from the 3rd of August 1941. In the original report there must have been a report which was made at the end of the month of August, 1941, by the Sonderkommando Dorpat, and sent off to Einsatzgruppe A in Riga, that is, actually, presumably the report was made on the 26th or 27th august and on 28th or 29th august it was sent to Riga.

Q. Could you give us a point, from the document itself, concerning the organizational circumstances at the time?

A. Yes. Such a report by a individual Sonderkommando immediately was sent to the Einsatzgruppe in Riga concerning organization was possible only during the time when a central headquarters for the office had not yet been set up. As I said, such a central headquarters was set up after Reval was conquered at the end of August of 1941. Therefore, this report must have been made before that time, and must have been sent off from Dorpat immediately to Riga. If not, it would have been sent via Reval and this obviously didn't happen, because from Reval one could never have written such a report or sent it off which only concerned one city in one district.

Q. In this report it is mentioned, -

THE PRESIDENT: Dr. Von Stein, suppose we recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 0930 hours, 13 November 1947.)

THE MARSHAL: The Honorable, the judges of Military Tribunal II.

DR. RIEDIGER: Your Honor, may I ask that Haensch be excused is examined in the witness stand.

I ask him to be brought to Room

THE PRESIDENT: The defendant, Haensch, will be excused from Room 57.

You may proceed.

BY DR. VON STEIN:

Q. We finished discussing the situation report Number 88 in Volume Number IIA, Exhibit 46, on page 87 of the English text;in this report there is mentioned the custody camp in Dorpat.

Why did the field commandatura have a custody camp there?

A. I already mentioned yesterday, and the witness, Dr. Mae, stances.

These conditions were caused by the fighting which had beengoing on for a long time.

During these fights -

THE PRESIDENT: Herr Von Stein, when you refer us to a document, try to indicate that to us also please so that we can have it.

Now we have the document but we don't know which particular page or

MR. GLANCY: If you please, Your Honor, it is page 88 of the English, the paragraph headed "Operations in the town and district of Dorpat.

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THE PRESIDENT: Very well, thank you.

MR. SANDBERGER: May I continue?

THE PRESIDENT:Please.

MR. SANDBERGER: During these fights and following them the Estonian home guard in the city of Dorpat and the vicinity had carried out arrests and interrogations and executions partly on their own authority and partly under the supervision of the German field commandos of the army. In connection with these arrests and interrogations the Estonian home guard also had set up this custody camp which is mentioned in this report from Dorpat here. The Estonian Police Prefecture who had also been set up during the time of fighting was subordinate to the Estonian homeguard commander. And apart from the very first days of the fighting when the homeguard commander was independent , he was then subordinate to the German field commanders of the German army. This Germanfield commander, a colonel, and first of all, his deputy, a major, were very energetic and active and particularly interested in security questions, including all police questions. They were not at all prepared to hand the security tasks and police tasks over to anybody else, in particular if a subcommando of the German security police came to Dorpat. The German subcommando leader alone, owing to the fact of his rank, was not able to maintain his views towards the field commander, his deputy and the commander of the home guard. Therefore, the full responsibility of the field commander remained in existance until the month of September, also for all police matters. Only in September in security police tasks the supervision over the political and criminal department of the Estonian police prefectura was handed over to the subcommander of the security police. BY THE PRESIDENT:

Q. Pardon me, witness. While you are commenting on this para graph, you see the statement at the end of the paragraph, "There are no more Jews in prison".

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A. Yes.

Q. Now, does that mean that they were executed?

A. Your Honor, about the details of this report, I cannot tell you anything since all occurrences throughout these entire reports were not the responsibility of the security police, but, as I have said -

Q. But, Witness, you have just given us a report, a story, a comment on this entire paragraph. You have told us about the subcommandos, about the Estonian guard, and so on. Now, when we ask you a very specific question, you say you are not familiar with the details, why are you commenting on this at all if you don't know this very important detail?

A. Your Honor, I just talked about the organizational conditions as they were in this time from July until September in Dorpat.

Q. How, I will call your attention to the proceeding sentence, "The Total number of persons executed in Dorpat is 405, among them 50 Jews." Now, you told us about that yesterday, didn't you?

A. Yes.

Q. All right, you were able to give us enlightenment on that sentence. Why can't you shed the same kind of illumination on the succeeding sentence, "There are no more Jews in prison"?

A. Your Honor, what I said yesterday about this figure of 405 executions concerned exclusively the fact that it was my opinion that this figure is contained in the total figure of approximately one thousand executions.

Q. Very well, now, that is your opinion on the 405. Now, give us your opinion on the other sentence, "There are no more Jews in prison". Give us your opinion on that, since you volunteered your opinion on the preceding sentence.

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A. Your Honor, I cannot state anything about this because I was not informed about the details. All these occurrences happened exclusively under the responsibility of the field commanders. I can merely presume, and when talking about measures against Jews I shall explain it, that the 50 Jews who are mentioned here are part of the 405 persons executed and were arrested by the Estonian home guard as Communists. In particular as NKWD agents and as such they were interrogated and executed.

Q. Now, you read all that into this simple sentence, but yet you can't read anything into the other clearer sentence, "There are no more Jews in prison"?

A. Your Honor, I said that the things I mentioned just now. I can only assume from the general conditions, but I cannot say how it can be explained that at that time no more Jews were in prison. But it is certain that at that time a great number of Jews were free in that district. In that district in all there were about a thousand Jews before the war.

Q. In this same paragraph there is the statement, "150 persons were released". Were there any Jews in these 150 people?

A. Your Honor, I do not know, because all occurrences mentioned in this report I do not know about in detail. I can only assume that as far as these 450 and these 150 are concerned, the facts are as I mentioned them. I do not know about any individual occurrences mentioned in these reports, nor about the previous figures of releases either. I am only certain that at the time of this report a great number of Jews in the district of Dorpat were at liberty.

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Q. Weren't you up there with specific orders to arrest all Jews?

A. Your Honor, at that time I did not carry out this order in the district of Dorpat, as can be shown from this report, because if it had happened it would have been mentioned in this report. In this district, the city and district of Dorpat, about a thousand Jews lived in the year 1935. If we assume.....

Q. Will you please answer my question. Weren't you up there with orders to arrest all Jews.

A. I had this order, yes.

Q. Yes. Now, why do you now say that there were a thousand Jews walking around free?

A. Because at that time I had not yet carried out the order, but only at the end of September. This is shown from this report, Your Honor, that the order was not yet carried out at that time or else it would be mentioned in this report.

Q. Well, then, you can offer no comment on the statement, "There are no more Jews in prison"?

A. No, not for that reason, because all these measures...

THE PRESIDENT: You may proceed, Dr. Von Stein. BY DR. VON STEIN:

Q. Who carried out the arrests mentioned in this report?

A. The Estonian home guard and the Estonian police.

Q. The Interrogations and transfers into camp mentioned before, who carried these out?

A. The Estonian home guard and the Estonian police.

Q. Under whose supervision--under whose responsibility did the Estonian police carry out these arrests, interrogation, and transfers into camps?

A. Under the supervision and the responsibility of the COURT II CASE IX Estonian home guard.

Q. Under whose supervision was the Estonian home guard?

A. During the first days of the state of civil war at the time and during the fights in the district of Dorpat, they acted on their own responsibility because from the Germans there was nobody there yet at the time who could have been in charge or put in charge of the Estonian home guard. After the first few days had passed the home guard was under the supervision and responsibility exclusively of the German field commanders.

Q. The executions mentioned in this report, who ordered them?

A. In as far as it concerns the first days, the commander of the Dorpat home guard, later the field commander of Dorpat or his deputy.

Q. Who carried out these executions?

A. The Estonian home guard.

Q. Can you give arguments based on this report for the facts mentioned by you?

A. The report itself proves, and I am only basing my argument on the text of the report, there are a few points showing that this report does not concern the activity of the security police but the activity of the field commanders and the home guard. These are the four points of view: First of all, in this entire report in the heading and also in the text the absence of any mention of any own activity of the German security police is conspicuous. In other reports--in those reports of events it is nearly always mentioned that an Einsatzkommando had done something, or the security police. This is not mentioned here, but it is simply said here that this or that measure was dealt with, was carried out, and so forth without mentioning who COURT II CASE IX did this.

A second point is shown from the heading of this paragraph where it is said that measures in the city and district of Dorpat were carried out. This district was under the competency of the field commanders of the army; not the competency of the subcommando of the security police. The jursidiction of the subcommando of the security police apart from the city and district of Dorpat was concerned also with three other districts in the south of Estonia, namely, the district, Vero, Walk, and Petschur. If this subcommando reported about their own activity and their own responsibility or would have reported about this, then, of course, they would have reported about the three other districts as well.

Q. You, therefore, mean to say that the subcommando had nothing to do with the events mentioned here?

A. Yes. It is in so for a security police situation report and not an activity report. BY THE PRESIDENT:

Q. Witness, do you categorically exclude that a subcommando had anything to do with these activities in Dorpat?

A. Yes.

Q. And you do it just merely from reading this report?

A. No, Your Honor, but from my own knowledge of conditions at the time about which the subcommando leaders reported to me.

Q. Didn't the Estonian home guard have to submit their recommendations for executions to you or a subcommando leader?

A. No, Your Honor. In the district of Dorpat it was like this, that he submitted it to the German field commander.

Q. Didn't you tell us that all recommendations for executions had to be passed on by the subcommando leaders?

A. Your Honor, I explained yesterday that in the COURT II CASE IX district of Dorpat, in particular, the conditions were different.

Q. Why was Dorpat different from any other place?

A. The reason was that the field commandant from the very beginning had a very strong position. He was very energetic and on his part wanted to keep the jurisdiction for everything.

Q. When you told us yesterday about the recommendations for executions being approved by subcommandos, you did not make any exception in favor of Dorpat, did you?

A. Yes, Your Honor. I am absolutely certain that I explained that these suggestions to the subcommandos and these regulations existed only there where no special regulations had been laid down as in Dorpat and in several localities in the south of Estonia. I am quite sure of that.

Q. Well, we gather from what you have said that you personally are not at all familiar with everything that is stated in this paragraph to which you have been directing your attention in the past half hour. You are personally not acquainted with those facts?

A. Your Honor, I do not know about the individual occurrences. I know the organizational situation, that at that time....

Q. Well, please answer the question. Do you personally have any knowledge of the facts contained in this paragraph?

A. No.

Q. Were you involved in any way in any of these incidents referred to in the paragraph?

A. No.

Q. Well, then, why are you spending so much time defending the statements in that paragraph if you are not involved?

A. I wanted to explain how the responsibility was in COURT II CASE IX connection with the jurisdiction in Dorpat, and that for this report.

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...

THE PRESIDENT: You may proceed, Dr. Von Stein. BY DR. VON STEIN:

Q. Witness, why did your subcommando make this report if you said they had nothing to do with the events mentioned?

A. Why it made this report I do not definitely know, or at least I do not definitely remember, but there can be only one reason for that, that the Einsatzgruppe in Riga requested from the subcommando in Dorpat an activity or situation report at the end of the month of August.

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Q How did the expert get the statements for this report?

A I don't concretely know, but according to the circumstances it can only have happened in one way. Namely, that he went to the field commanders of the army, and to the Estonia Home Guard, and to the Estonian Police, and there asked for the documents concerned, or copied from the documents listed there, and made a situational report of the Security Police based on these documents. this report exclusively were under the jurisdiction of the German Field commanders, or, under the Estonian Home Guard, and not under the jurisdiction of the sub-commander of the Security Police?

Q The conditions regarding competency, in Dorpat, i.e. independent power of the Estonian Home Guard and total responsibility of the German local and field commanders; did that also exist in other localities in Estonia?

A Yes. Not to such an extent, but temporarily in a similar manner in some district towns in the south of Estonia, in the month of July, and partly also in August 1941. for these measures? issued at the beginning of the Eastern Campaign, about the question of the disposition of the population, and the combatting of Communists. The orders applied to the entire Eastern Army, and to the German Police assigned to the East. on the organization of the German SIPO, the German Security and the Estonian Police in Estonia at the time. the various succeeding periods are to be distinguished. Concerning the Estonian Police, this is first of all the period until the introduction Court No. II, Case No. IX.

of the Estonian independent administration, that is, 20 September 1941. The second period is that of 20 September 1941 up until the introduction of the German Civilian Administration, on 5 December 1941. In the first period the Estonian Police Prefectures ware auxiliary agencies of the field commanders on all question of public security. Centralized District Authority did not exist until the 20 September 1941. In the time from 20 September 1941 until 5 December 1941, the Estonian Police Prefectures were subordinate to the Police Department of the Estonia Ministry of the Interior. That was part of the Estonian self admininstration, and these were subordinate to the Commander Rear Army Area North. In the third period, from 5 December 1941, the Estonian self administration was subordinate to the German Commissary General as Chief of the Civilian Administration. The period about which I shall now talk in detail is that of October until December 1941, because this is the decisive period for these cases which are mentioned in the Report No. 111, that is, executions of Communists after careful examination. The Estonian P Police was subdivided into twelve Police Prefectures; in each Estonian District there was a Police Prefecture. The Estonian Police in general had a general police department, a political police department, and a criminal department. The political and criminal departments together on an average had a personnel of approximately 800 people. Among them were sixty to eighty lawyers, that is, persons who had received full legal training at the University of Dorpat. In this....

THE PRESIDENT: Where was this all taking place, in Reval? Was this all in Reval?

THE WITNESS: No, in the entire country of Estonia.

THE PRESIDENT: Where were these eighty lawyers, scattered throughout the country?

THE WITNESS: These sixty to eighty lawyers, were, most of them, in Reval, and some were distributed among the twelve agencies throughout the country. Apart from that among the personnel of this Estonian Police and Criminal Department, there were sixty to eighty professional officers Court No. II, Case No. IX.

from the former Estonian Army, who had been assigned partly for organizational functions, and partly for the verdict commission, which I shall explain later on. From 5 December onwards, that is, since the Civilian Administration was introduced, the political and criminal departments of the Estonian Police were united, and became the special organization of the Estonian Police for Inner Security, whose headquarters were in Reval. In the previous period the Police Prefecture in Reval was the most important headquarters and the leading agency for the entire police concerning specialized questions; that is, all recommendations for judgments from the entire country came together there. During that time the organization of Department IV of the German Security Police, that is, the German State Police within Estonia contained the following personnel: With the commando headquarters in Reval there was a Department Chief IV with four intermediate officials. Department Chief IV had the rank of Kriminalrat, a criminal director of the German Security Police; that is the same rank as a Major, that is the same rank I had. In most cases it was an official who himself had been trained for law. In general his age was about ten years older than my age, and he had a lot of police experience. The four intermediate officials who were his assistants had the rank of a sergeant -- a top sergeant.

THE PRESIDENT: Dr von Stein, what is the purpose of all of these very detailed descriptions of these officers, indicating their ages? We have not as yet heard about their home life, but it seems that we are getting into a greet deal of unnecessary detail. What is your purpose?

DR. VON STEIN: Your Honor, that is of importance in order to prove what forces were at his disposal. The country of Estonia is about as big as Holland, and he wants to show that the police forces at his disposal were by far not sufficient in order to carry out the police affairs satisfactorily. He further wants to prove that he could not supervise those forces at all, because they were distributed all over the country. That is largely what he wants to prove.

THE PRESIDENT: You say, all these forces were at his disposal?

DR. VON STEIN: For his district yes, but all the forces Estonia, no.

THE PRESIDENT: Just a moment. I understood you to say that all these forces were at his disposal. Now, is that correct?

DR. VON STEIN: Your Honor, he is now giving us the figure of the people who were subordinated to him.

THE PRESIDENT: All these police forces were at his disposal?

DR. VON STEIN: Yes, Your Honor.

THE PRESIDENT: He was the Chief Police Officer in Estonia?

DR. VON STEIN: Not to that extent, no. He only had certain functions and about these functions he will tell us more later on.

THE PRESIDENT: Everything is going to come later on. Let's have something now. Let's get right to the very issue. He is charged with certain crimes. Now, if he didn't commit these crimes, then let him tell us why and how he didn't commit them, but we are getting into a great deal of academic discussion and description of activities in Estonia which may or may not enter into the picture. Let's get to the real issue.

DR. VON STEIN: Your Honor, it is of importance, because if the defendant would tall us now that he only received a certain amount of knowledge of all of this, then it would seem incredible for us to receive an exact impression how conditions actually were in the country at the time. For that reason unfortunately it is necessary that we have to discuss these points as well.

THE PRESIDENT: You may proceed. BY DR. VON STEIN: tion, That police forces were under you? Police, Department IV in Estonia had the following personnel: Department Chief IV in Reval, plus four intermediate officials with the rank of NCO.

In the offices in Reval, Dorpat, Pernaw and Norva, and Arensburg, one intermediate official, who had the rank of an NCO, For the State Police task in Estonia of German officials, there was an executive official, and nine intermediate officials. were subordinate to you?

A Yes, for State Police tasks, yes. Apart from that there was those for the criminal, police tasks, which are not under discussion here now. introduced as substitute for the instructions of the OKH and the RSHA in Estonia? 1941, those general directives applied which I had announced to the subcommando leaders before I moved; that is, first, only to arrests, executions only in special, exceptional cases in the manner as I have described yesterday. Now in the first half of October I initiated the following directives for the treatment of all districts concerning the Communists in Estonia. May I explain the procedure briefly that when reports came from the population to the Estonian Police, and to the Estonian Home Guard. In the political department of the Estonian Police, Prefecture the reports were received, investigations were carried out, records were made, arrests were carried out whenever required, and the witnesses were questioned; particularly, these witnesses were questioned whom the defendant, the accused, wanted called in order not to be incriminated. After the examination had been concluded, a Commission sat, consisting of three members. This Commission examined the entire procedure, and an expert gave a lecture on it, and explained same; they listened to the accused, and, in particular, they had to consider everything that he stated for his defense. They examined all the documents, discussed all questions in the case, and then came to a final decision.

THE PRESIDENT: What would the accused be charged with?

THE WITNESS: As Communist functionaries and agents. There were many persons who worked for the Communist Party in Estonia, or for the Soviet Communists, and had been executed as such.

THE PRESIDENT: What if they proved to be Communist functionaries, then what happened?

THE WITNESS: Then in each individual case according to the facts, and according to the personality, it was decided whether the person was to be executed, or was to be transferred into a camp.

THE PRESIDENT: What would they decide as to whether he could be executed, or sent to a camp. Let's suppose now it is established that he was a Communist functionary?

THE WITNESS: There were a great number of Communist functionaries, of various kinds and various characters. Not every Communist functionary down to the smallest and the most minor functionary were executed.

THE PRESIDENT: Well, let's suppose that he was a functionary of some importance; let's say, he had been a Burgermeister or a mayor of a town, and had acted as such up until the occupation of Germany, what would happen to him?

THE WITNESS: It can not be judged in this manner. It only depended on what he did in this office, and it depended on how we judged his general personality.

THE PRESIDENT: Well, let's suppose a case where you have a mayor of a term, and he conducted his office as a mayor should; he was very active, he was a Communist, and he attended the meetings of the Communist party, and he discharged his duties of the office with a Communistic point of view.

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Now, that is the evidence.

THE WITNESS: If he had not done anything other then what you just mentioned; if he had not carried out any activity for the Communists, and didn't act as a functionary of the NKWD, then he was not executed.

THE PRESIDENT: No, I said, if he was a full Communist, carried our the functions of his office as a Communist, belonged to the Communist Party, was active, believed in the doctrines of the Communist Party, talked about Communism. Now what happened to him?

THE WITNESS: It depended, Your Honor, when he talked about Communism, whether this happened in the time after the occupation by the Germans.

THE PRESIDENT: No, up until the time the Germans arrived. All of this happened before the Germans arrived.

THE WITNESS: If he had been nothing but a mayor, and had no other functions, and had not done anything else as a Communist, he was not executed.

THE PRESIDENT: Well, didn't your Fuehrer Order say, all Communist functionaries had to be executed?

THE WITNESS: I didn't understand the Order that way, that every Communist functionary, without any distinction, and without examination of the individual case was to be executed. BY DR. VON STEIN:

THE PRESIDENT: You have used the phrase over and over "Communistic activity." What do you mean by "Communistic activity"?

THE WITNESS: In Estonia when examining these cases it was understood that they had actively taken part in the killings and deportations.

THE PRESIDENT: Well, now, witness, if a man killed someone, illegally, then you would have to be concerned whether he was a Communist or not, because the law of the land would take care of him; so let's exclude these very clear cut cases of illegal killings.

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Define for me the Communistic activity.

THE WITNESS: An I to understand the question to the effect that you mean such Communistic activity which would result in a death sentence, or such Communistic activity which would cause transfer into an internment camp?

THE PRESIDENT: You have used the phrase yourself, "Communistic activity." which would subject an individual to arrest and possible execution. How, what was this Communistic activity which would result in that?

THE WITNESS: Your Honor, there were Communist activities which could result in execution. There was another which could result in an internment into a camp and other activities which did not even result in internment but in many cases in a release after a few weeks. I read this in a document yesterday. 3,700 minor incriminated Communists who had also been active in Communist activity.

THE PRESIDENT: However, you have not as yet told us just what you mean by "Communist activity" which would result in a man's execution?

THE WITNESS: That cannot be explained to the full extent. May I give you some examples. One example is an active pant in an underground organization which was created so that when the Russian Army had left Estonia, they should carry on espionage and sabotage.

THE PRESIDENT: Now, that is another thing, that comes under the category of espionage and sabotage. That is now Communist activity as such?

THE WITNESS: Your Honor, these cases were to be dealt with and were classed as Communism, which consisted of sabotage and espionage, and were done for Communistic reasons and motives. Under the category Communism which I am going to explain here comes everything that happened in the service of Soviet authorities, of the Communist Party of Estonia, no matter what the activity was, sabotage or espionage, and so forth.

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THE PRESIDENT: Let's get back to the original issue in this entire trial. You know that this trial is based upon the original Fuehrer Order, which has been discussed at length by every defendant who has taken the witness stand. Now you tell us what that Fuehrer Order was.

THE WITNESS: The content of the Fuehrer Order was apart from the Jews and the Gypsies -

THE PRESIDENT: Not apart from. Tell me what it was. Did it include Jews and Gypsies, to execute Jews and Gypsies?

THE WITNESS: Yes.

THE PRESIDENT: All right, now.

THE WITNESS: Jews and Gypsies and Communist functionaries and such elements who endangered the security of the country.

THE PRESIDENT: Did it include in that phrase "Communist functionaries"?

THE WITNESS: Yes.

THE PRESIDENT: You may proceed, Dr. von Stein. BY DR. VON STEIN:

Q Witness, may I address the question to you again. In Estonia was anybody punished because of Communistic views?

THE PRESIDENT: How, do you know that as a fact? Do you know as a fact that no person in Estonia was punished because he held Communistic views?

THE WITNESS: I ordered this expressly.

THE PRESIDENT: Do you know as a fact that no one was executed because he held Communistic views?

THE WITNESS: Under my responsibility, no.

THE PRESIDENT: Then you can not answer the question which the attorney put to you.

THE WITNESS: I beg your pardon, I understand the question to mean that the defense counsel meant my responsibility. I don't know whether he meant this.

THE PRESIDENT: You put the question again, now. BY DR. VON STEIN:

Q The question which I addressed to you was as fellows: Whether anybody was punished in Estonia merely because he held Communistic views. You said, no in reply to this, and in this connection I shall address another question to you. What have you got to prove this? I went to refer you to documents. Is it right that it can mistakenly had at first been arrested, and later when the case was examined and. it had been found out they were released again because they had not been active in a criminal sense, but they had been arrested merely because of Communistic views?

THE PRESIDENT: Just a moment now. That is not the question at all, Dr. von Stein. You asked the question, were any people executed in Estonia, because they held Communistic views, and his answer was a categorical no.

DR. VON STEIN: Yes.

THE PRESIDENT: All right, now I ask you, do you know that as a fact?

DR. VON STEIN: Yes, Your Honor.

THE PRESIDENT: I ask the witness, do you know as a fact that no one was executed in Estonia because he held Communistic views?

DR. VON STEIN: May I address a question to the witness in order to refresh his memory and point out the documents to him, which prove quite obviously -

BY THE PRESIDENT:

Q He can answer that question. It's your own question so you can't get away from it. he held communistic views. How you know that as a fact? bility and to the orders which I save.

Q Don't you know as a matter of fact that many were executed as a result of error? Police. I do not know of any such case.

Q You don't know of any execution that took place based upon error?

Q You do not admit that that could happen? police, I do not know of any case where an execution was carried out following a death sentence by mistake.

Q You do not know. You exclude the possibility that someone could have been executed as a result of error?

Q All right. Now, just a moment. I read from your own affidavit, signed on 23 April 1947: "Although I do not remember a definite case, there was a possibility that some members of the Estonian police who made these investigations and summaries of the facts, or the interpreter who acted as translator falsified part of the facts with a view to having a person sentenced to death. The summaries were later signed by Chief 4 of the Estonian Police, who was converwithin the staff of the German Department 4, two Estonian internees were employed who had to check on all cases which had been handled by the Estonian Police."

Now, do you change your answer in view of that statement made by you?

ly to Mr. Wartenberg, that I never heard of any case where a falsification was ever made. These things are not based on facts or statements by me, but great importance has often been attached to it by Mr. Wartenberg, to bring in the possibility of a falsification.

Q Just a moment. You said a while ago that you excluded the possibility that someone could have been executed unjustly. Now I read to you your own statement in which you say: "There was a possibility that because of falsification or difficulty in translation a person could have been sentenced to death who should not have been sentenced to death." Do you withdraw your statement of April 23 in that respect? statements on this point I wish to boil down to this: that I never heard of any such case. I said this at the tine and I want to say that now.

Q But your affidavit says, "There was a possibility." Today you say there was no possibility. Now which do you stand on: the statement that there was a possibility that someone was unjustly done to death, or that there was no possibility that someone was unjustly done to death? Now, what do you stand on? tions. Herr Wartenberg asked me whether it might have been possible that Estonians might have smuggled false documents into the files. unjustly in Estonia while you were in Estonia?

Q Now please answer that question. Was there the possibility that someone may have been done to death unjustly while you were in Estonia? responsible? Do you mean, Your Honor -

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of a case and then how this was reviewed by the Chief 4 of the Estonian Police and then it came to the staff of the German Department 4. Now I am reading from your own statement. Now, do you say that there was a possibility that someone could have been executed unjustly? Estonian Police a false document -

Q Now please answer the question. Was there a possibility that an innocent person could have been executed?

Q All right. Then your categorical answer that no person was killed unjustly while you were up there has to be modified, doesn't it? hear of any such case and did everything to avoid it. to reply to the question directly and precisely. BY DR. VON STEIN: far as humanly possible, I would like an exact description of the procedure of reviewing. the police prefectura had passed was done in the following manner. May I add, this decision within the Estonian authorities was called "Judgment". In German, correctly stated, it is called, "Recommendation for Judgment." This verdict with the findings and with a detailed explanation of the degree of punishment and with the entire documents was sent to the branch office of the German Security Police. There the official of the German Security Police looked through it. If no objections could be made, the file was returned to the Prefectura. Following that, the verdict with the reasons given for it and the entire documents were sent to the headquarters of the Estonian Police, the Prefectura in Revel, and later to the headquarters of the Estonian Police for internal security.

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There the entire procedure was thoroughly examined. The entire documents were looked through and reviewed, and again another commission, consisting of three who were also lawyers and professional officers, came to a decision and examined or confirmed the decision passed by the police prefectura. These statements -BY THE PRESIDENT: as much attention as apparently was given to an Estonian citizen: having one board pass upon it and another board and then still another board? police court I would not have such a careful procedure as was carried cut there.

Q Yes. So you gave more care and consideration to the Estonians than would he accorded even a member of the SS? procedure correct, then they closed the case. The verdict and the basis for the verdict were translated, and on a special sheet the reasons for the degree of punishment were mentioned, and the entire file was handed on to the German Department 4 of the German Security Police. Only if the verdict was "imprisonment for up to six months", then the chief of the Estonian political police was entitled to pronounce this punishment. In Department 4 of the German Security Police, there was another high Estonian legal official who again examined the entire file, a legal official who held a high fulltime position in the Estonian legal administration, and for five hours a day he only did this job. He checked everything, examined the documents for being proper and also stated his opinion about the degree of punish ment, and returned, the file to the Estonian Security Police, if he objected to it.

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If there were no objections to it, then he prepared the statement of the German Department Chief 4. In the statement which he made it was shown - and he signed this -- that he had checked the files, that he found them correct, and that in his opinion the judgment of the judgment commission was correct. This procedure was then submitted to the German department chief 4. The German department chief 4 read this verdict, the reasons for the verdict and the enclosed motivation of the degree of punishment - and the enclosed statement of the Estonian official just mentioned. If he approved of the verdict, he confirmed it.

MR. GLANCY: May it please the Tribunal, it seems to me that we have been through this same line about two or three times now, and this is merely cumulative or reiterative, and I object to it on these grounds.

THE PRESIDENT: I think that is entirely a proper observation, Dr. von Stein. Hasn't he told us this before?

THE WITNESS: I beg your pardon, Your Honor. This is another agency of which I am talking now. This is a third agency which again examined this case.

BY THE PRESIDENT: and review a case? Just count them: the three men - the first boardand so on. Just tell us how many.

A In the first commission, there were three. Apart from this, there was the referent who had prepared the case and the expert.

A That makes five. And then in the headquarters of the police in Reval there were three persons of the judgment commission and a referent.

Q That's four more. itself and not in the province. Then there was -

A Yes. Then there was the Estonian legal official in the German Department 4.

Q And how many were there?

A One: the department chief.

Q That makes eleven, is that right?

Q Eleven people passed on each case. Very well. in which the judgment commission in the district did not function. After the department chief 4 had confirmed it, the entire file was sent back to the headquarters of the Estonian police, who on their part had to see to everything else. Another agency which was independent was the so-called Department for Reprieves within the German securith police.

Q Well, then, there were more than eleven?

Q All right. Then who else reviewed the case? This court of appeal, you say, of whom was that made up? there, not together but separately, to deal with such cases where the persons concerned or the members of their families had made applications for release. This caused a new investigation of all cases which had been applied for and there were, of course, a great number. The procedure was here as follows: the applications were handed in -

Q How many persons reviewed the case?

A In the central office, one person; and apart from that, in the reviewing section, again the persons in the subordinate offices. Sometimes it was the same ones who had already taken part in the previous procedure, but partly different persons as well.

Q Then this court of appeal only consisted of one person?

Q All right. Then we have had eleven and two more. That makes thirteen. cases independently. Therefore one should not add two persons here but only one.

Q Well, that is the reason I said "one"; so, that makes it twelve. assured that he was worthy of execution? same opinion. It was possible that a few of the persons were in favor of executions, and others were in favor of internment. But all of these twelve persons, at least the first eleven, took part in the making of the decision.

Q Well, then, at least eleven people had to pass upon a man's case before he could be executed in Estonia?

called "Mercy Applications", were handed in constantly - a great number of then to the chief of the Estonian administration, to the chief of the German civilian administration, the German general commissar, and to the agency of the German Security Police. All such applications were now sent to the court of appeal which existed within the German Department 4 and consisted of these two lawyers. The court of appeal reviewed the case very carefully. May I leave out here the details as to how this was actually done? In any case, all original documents were consulted again.

THE PRESIDENT: I am sure that Mr. Glancy will not object to your leaving out the details.

THE WITNESS: The conclusion was that an opinion of the court of appeal was made out whether the application for release could be granted or not. In many cases, the application for release was made on the fact that the family was in great financial difficulties. In such cases, it was seen to that the Estonian people's welfare board, that is the general welfare organization, looked after the family. I believe that is a sufficient answer to your question. BY DR. VON STEIN: entire procedure. Is it now your opinion that everything was done, as far as humanly possible, that could be done in order to avoid wrong decisions? this very careful procedure, I did everything in order to avoid mistakes, as far as possible. BY THE PRESIDENT:

Q Were all these safeguards given to Jews? questions.

Q Oh, yes, it does. A man could be arrested, and he happened to be a Jews Now,was he given the same consideration as everybody else?

Q I am not speaking of the internment of a Jew. You, yourself, pointed out in one of the reports where , out of a certain number, 50 were Jews. And then you said, "But these Jews had committed some other crime." Now, a man is arrested for resistance, let us say, and he happens to be a Jew. Is he given all these safeguards, and is his case reviewed just as many times as everybody else's? in the district of Dorpat about which I said and explained that I was not responsible for them.

Q You know nothing about that? not under my responsibility. reviews are made. Now, did that cover all of Estonia?

Q And is Dorpat in Estonia? the time from the first half of October. Only at that time was I in a position to decide on measures throughout Estonia and only then did I give the order. crime, and he happens to be a Jew. Now is he given all the care and consideration and thought that you have indicated is given to someone before he is finally executed? examined according to this procedure very carefully.

Q And eventually executed?

guarantees and safeguards which you have described? period when through instructions by superior officers, a general execution of the Jews in Estonia had been enforced. lined to us, and I only ask: if the defendant happened to be a Jew, was he also given the same care and thought and consideration as someone who was not a Jew? superior agencies. to the order which you just mentioned, the Germans who passed upon the cases were aware of the Fuehrer Order, were they not? the Fuehrer Decree to the sub-commando leaders under my charge. Department chief 4 did not know the Fuehrer Decree. I said this expressly on Friday.

Q None of your commandos knew of this order? did not give him the order telling him to carry it out; I only informed him about it -- that this decree existed -- but that I would do everything in order to avoid that I and my commando would have to carry out this decree.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal desires to make an announcement with regard to tomorrow's session. The Court will convene at the usual hour of 9:30 and will recess at the usual 12:30 hour, but it will have no session in the afternoon. Tomorrow afternoon there will be no session of Court.

Dr. Von Stein, before you take up thecontinuation of direct examination, I would like to ask the witness another question about a situation which was presented this morning. BY THE PRESIDENT: Communistic Mayor, who had lived up to all the rules of Communism, and then the Germans arrived and he was arrested and he was tried, and we understand that you said that if that's all they had against him, that he was a Communist, then he would be released.

A If he didn't do anything else than what the President has just said, then he would not be released, but he would be interned. However, he would not be executed.

Q Oh, I thought he would be released outright?

Q He would be interned? of all he would have to be interned if he was a convinced Communist. indefinitely?

A That depended on the individual case. There was such a thing as internment for the duration of thewar or internment for one year or two years or half a year. proved Communist, who had been the Mayor of a town in Estonia, still a Communist; what would be his term of imprisonment?

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13 November 1947_M_MSD_9_2_Ninabuck (Lea) termination of the war?

A No, your Honor. That was not up to me to decide what would happen at the termination of the war. I always told the officials here in this area we could make no decision with regard to security police matters. We could not make permanent decision. I mean decisions for the end of the war.

THE PRESIDENT: You may proceed.

DIRECT EXAMINATION (Continued) BY DR. VON STEIN: a Communist Mayor the result of a sentence or was it a security measure? measure. have just mentioned develop? of October, that is, around the 10th or 15th of October, 1941, when the conditions in Estonia became stabilized. The reason for setting up this procedure in this fashion, together with directives which covered about three or four typewritten pages, was that a great number of qualified Estonians were at our disposal, lawyers, and civil servants, as well as authorities of the Estonian administration, who were employed in such tasks. Thus the conditions here were quite different from those in the other areas in the Soviet Union which had been discussed previously. directives. Was this the result of the military situation? arrests and to undertake executions only in exceptional cases when there was danger.

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13 November 1947_M_MSD_9_3_Ninabuck (Lea) was it impossible to maintain such directives? in this form.

Q You spoke of thespecial objectivity of this procedure. Was the task of these police authorities limited only to finding out what was of disadvantage for the individual concerned?

A No, not at all. It was the express duty of these police authorities to investigate everything objectively and thoroughly, even that which was favorable to the indicted man, and to bring all proof which the man who was charged was requesting. That was what was writeen in those directives and it was repeated by me orally during general conferences of Estonian policemen and during individual conversations which I had with Estonian police officials.

Q Did you yourself make judgments in individual cases? his documents, and in these three cases I made the final decision which otherwise, according to the directives, was the job of the chief of Department 4.

Q How many individual cases were concerned here?

A There were about 25 persons involved in these three cases. Among them were six death sentences. were imposed? mentioned Communist underground movement, and of volunteer functionaries of the NKWD in which cases it was clearly proven that they were a constant danger to security for the

German Army, and that furthermore they had participated in a responsible manner in killing Estonian citizens on the part of the NKWD in which cases these killings, in the opinion of the Estonians, had happened without any crime. BY THE PRESIDENT:

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13 November 1947_M_MSD_9_4_Ninabuck (Lea) Estonians had committed no crime, that was out end out murder so now why are you taking up the time of the Tribunal telling us that you reviewed their cases and showed that they had been resisting and that they were a threat to German security and so on? That was just a case of murder, wasn't it?

Q Well now, please tell me, had these men committed murder?

Q How many? espionage cases.....

Q Now, you sentence six men to death and you don't recall what you sentence them to death for?

Q You don't recall? Do you or do you not recall why you sentenced them to death?

Q You do remember these six cases?

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detail what you did when you were in Pleskau. You went there, all the people you saw, whom you talked with, where those places were located, that you went to the river and washed yourself and shaved yourself, and gave us all those details on an inconsequential business as you tried to make us believe it was. Yet you do not recall why you sent sixpeople to their death; is that right?

Q And you toldme in great detail, didn't you? cannot even recall what it was about, much less the detail? of espionage.... by one why you sent these people to their death. Number 1.

Q Number 4. You cannot tell us why you sent these six people to their death? espionage and because they were functionaries of the NKWD, but I cannot say how many of these six were spies and how many were functionaries of the NKWD. functionaries and members of the NKWD? in killing of Estonians.

Q Now, how many of these six participated in killing of Estonians?

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THE PRESIDENT: You may proceed, In Von Stein, DIRECT EXAMINATION (Continued) BY DR. von STEIN: incorrect statements or forgery in them? become known to me.

Q Was a forgery theoretically possible? the same manner as anywhere in the world. Any type of documents could be forged by people who were not supposed to fool with them. Practically it was the way I have explained it, that ten to eleven Estonian officials in three to four different agencies were concerned with such -

MR. GLANCY: Your Honor, the prosecution objects for the same reason as it has before. It is merely repetition and reiteration. I think this ground has been fully covered.

THE PRESIDENT: Why are you going into this again, Dr. von Stein?

DR. von STEIN: I now come to the affidavit of the defendant in which he mentions a different opinion. BY THE PRESIDENT: facts with all the reviews that you have spoken of?

Q And you reviewed all those deliberations, did you? was the responsibility of Department Chief 4.

Q Yes, and you reviewed all the papers and all the deliberations?

Q Oh, well, were there some documents there that you didn't read?

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this, these documents I did not read because I do not know the Estonian language.

Q And you don't know what was contained in those documents? read a large amount of reading matter, and therefore I do not have any concrete recollection of these six cases.

Q Well, you couldn't read the Estonian documents? German?

Q You approved the executions in these cases? the deliberations?

A There was no definite regulation for this. They could take several months. documents which were submitted either for or against them? German language in detail, with four signatures of reliable.....

Q But you didn't read the Estonian documents? couldn't they?

Q How do you know; you didn't read them? language gave a survey about the contents of the documents.

Q It didn't occur to you to say that when I first asked you the question, did it? When I asked you whether you read the Estonian documents, it didn't occur to you to then say that the summary had been translated, into German?

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That didn't, occur to you, did it? translated, but, as I have already stated, the said judgment, reason for the judgment, and motivation.

Q Well then, there were some documents which you did not read? fact that there were documents in the files which might have established their innocence? all important matters were contained in the summary.

Q Well, how do you know whether they were important or not? You didn't read them. They were in the Estonian language. reliable lawyers and professional soldiers.

Q Yes. So then you were merely passing upon what somebody else passed upon, and not on your own initiative and your own deliberation. You merely approved what somebody else had done because you had faith in them? documents was a mere formality because you merely took the opinion of those who had preceded you? that I was of the opinion after what had been submitted to me, that an internment would have been sufficient.

Q Yes. Then we come back to the original proposition which I put to you that there were documents in the files which you did not read. were documents submitted for or against them which did not even have the benefit of an understanding perusal by you, the supreme authority?

of the essential points, which I did read.

Q Yes. It didn't occur to you to say that when I asked you that question about five minutes ago, did it? This just came to you as you deliberated in your mind as you were speaking?

A May I ask what question? I didn't get this. documents, you said no. I asked you if you knew what was in those documents, and you said no. Then, after many other questions had been put and answers had been given, then it occurred to you to reflect upon that and then you said that you had read a summary: is that right? the procedure which I have described before the recess. review, but on the fact that ten or eleven people had passed upon this beforehand, or ten? suggestions of these eleven people were not approved. question. You do not remember what these six people had done in order to be sent to their death. You cannot tell us today what each one had done?

Q All right, did you make a report on these executions? the next monthly report to the Einsatzgruppe.

Q Yes. Now those were the only six executions which you ordered while you were in Estonia?

Q. And in which year did they occur?

A. In the fall of 1941.

Q. 1941. Now, that was six years ago, wasn't it?

A. Yes.

Q. And all these six years you never gave any thought to these six executions, and, therefore, couldn't recall why they were sent to their death; why these people were sent to their death.

A. Your Honor, in the six years I have seen and read such a great number of documents, and had so many impressions that the recollection of the individual cases no longer exists.

Q. But these were the only six that you, yourself, ordered executed.

A. Yes.

Q. And although you studied the record, and although it was your act eventually which sent them to their death, and although these were the only six people in the whole world that you ever sent to their death, yet, you cannot tell us now, with all this time for deliberations, and with all the time you had to prepare for your case, why they were killed.

A. Your Honor, I said they were killed either for espionage activity or as functionaries of the NKWD. Other than those two categories were not among these six; that I remember definitely.

Q. They were sent to their death because they were communist functionaries or belonged to the NKWD?

A. No, pardon me. There were two groups: there were two types of people among them. One type was persons who were convicted of espionage. I don't know whether there were one, two, three or four. The others were people who were voluntary functionaries in the NKWD. and in this capacity they were criminal participants in the killing of Estonian citizens.

Q. So there were two categories; you don't remember who fell into either category.

A. No, I don't remember whether one or two or three fell into one category.

Q. That is as much as you can tell about the crimes committed by the six people who were executed?

A. Yes.

THE PRESIDENT: You may proceed. Dr. von Stein. BY DR. VON STEIN:

Q. Witness, were all essential points contained in these motivated suggestions of sentence which would show what sentence would have to be imposed?

A. Yes, I already said that the procedure had to be absolutely objective, and all exonerating circumstances had to be mentioned too, and were mentioned in the summary.

Q. You just said that the Estonian documents were not read by you because you did not know the language. Did you discuss the suggestion of the judgment with the Estonian officials who read these documents?

A. No, I have.....

THE PRESIDENT: What was that answer. Repeat the answer.

A. What question? BY DR. VON STEIN:

Q. My last question was the following: Whether you as a man did not know the Estonian language discussed with the authors of the judgment the matters of the judgment and about what the judgment was arrived at, and about the contents of the documents on which the judgment was based?

A. I did not discuss with these people these concrete six cases, but I often spoke with them about the thoroughness of the procedure; and about what would have to be considered when arriving at these judgments; and what the summary would have to have in them.

Q. Witness, if you were in doubt whether the judgments proposed were correct, didn't you discuss them with the authors?

A. If I had had any doubts about it, this would have certainly happened.

THE PRESIDENT: Dr. Von Stein, I must congratulate you an insisting upon your leading questions until you get the answer which you desire. Now, it was very obvious that your other question was a leading question. Didn't you discuss this with the Estonian home guard and with the judges. You know, that is a leading question. You practically suggest to the witness what he is to answer. If you say to someone: Now, didn't you discuss with someone when you were in doubt as to what you should do, his answer inevitably is going to be yes. He would have to be a fool to say no. So, that is known as a leading question, and you know a leading question is not permitted. BY DR. VON STEIN:

Q. Witness, we now come to a statement in your affidavit, of the 21st of April, 1947, in Volume III-A, Exhibit 102, Document NO-2891, page 100 of the German text, page 73 of the English text. Your affidavit twice mentions the fact that forgeries were not completely excluded, were not completely out of the question. Please comment on this.

A. These statements are not based upon the statements by me, but on the fact that the interrogating officer attached great importance to putting these statements about the distortion, the forgeries, into this.

MR. GLANCY: If it please the Court, I believe that the defendant had ample opportunity previously; in fact, this, morning, to explain all this. All this is cummulative.

THE PRESIDENT: What do you say about that, Dr. Von Stein? Can you offer a new phase of this situation which would justify the re-questioning?

DR. VON STEIN: Your Honor, I wish to withdraw the question, and I shall take up another question about the same affidavit. BY DR. VON STEIN:

Q. Witness, how is it that in the same affidavit when discussing this procedure nothing is mentioned about a judgment commission and about the directives issued by you about establishing the individual guilt?

A. I wanted all these things to be contained in the affidavit, and I mentioned them to Mr. Wartenberg, and I asked him that the directives issued by me, the way I have described them this morning, be taken in, and as I have already described them a long time previously to other interrogating officers -

MR. GLANCE: I think the affidavit speaks for itself, sir. He makes the observation here before he signs it: I have had the opportunity to make alterations and corrections in the above statement. I made this declaration voluntarily without any promise of reward: I was not subjected to any duress or threat whatsoever. I think this is the highest and best evidence.

THE PRESIDENT: We will permit the witness to offer any explanation which he has on this matter.

A. I had the opportunity to make changes in this affidavit: I also had the opportunity to take in two additional sentences, but I did not have an opportunity to add anything more than those two sentences; and the statement which I had to sign here speaks only of changes and of corrections, not of additions. Mr. Wartenberg said expressely in answer to my request, that I would have such opportunity very shortly-I thought this would be in April or May--to mention all this exactly. Therefore, I had prepared it in my cell in order to give it to him, and I still have this; but he did not call for me again. I no longer had an opportunity to make these additions. BY THE PRESIDENT:

Q. Well, witness, you actually made up four affidavits, didn't you?

A. In April only one affidavit was made, the one that I have before me. The others are of November, 1945. At that time we did not speak about these things.

Q. Well, why didn't it occur to you when you wrote up the other three affidavits to tell this very important item?

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A. In these affidavits in November, 1945, we did not talk about communists at all. The statements were not made out by me, but the prepared text in November, 1945, was brought by Mr. Wartenberg; and in November, 1945, to a lesser extent than here, the possibility existed to make changes. I could not touch upon the subject of communism in Estonia when talking to Mr. Wartenberg in November 1945 if he does not even ask me for it.

Q. Well, it never occurred to you, even though you are a lawyer, in preparing four affidavits to add the very simple statement that no execution was ever performed without the case having been duly tried, duly reviewed, and duly passed upon by supreme authority.

A. Your Honor, this thought occurred to me and for almost half an hour I discussed this matter with Dr. Wartenberg, asking that he permit me to add all this, but he did not permit it.

Q. Well, why couldn't you, when the affidavit was finally given, back to you to sign, add that very simple statement. You could do all that in one sentence.

A. Your Honor, it was not permitted. Mr. Wartenberg took it upon himself to figure which auditions and corrections he would allow and which corrections he would not allow. Such corrections were typewritten in the office of Mr. Wartenberg.

THE PRESIDENT: Dr. Von Stein, did you question Mr. Wartenberg on this particular subject when he was in court?

DR. VON STEIN: No, your Honor. At that time I did not have the defense of Sandberger.

THE PRESIDENT: Well, who was his counsel at that time?

DR. VON STEIN: My colleague, Dr. Mandry.

THE PRESIDENT: Did he question Mr. Wartenberg?

DR. VON STEIN: I do not know, Your Honor: I cannot give you any information.

THE PRESIDENT: Very well; proceed. BY DR. VON STEIN:

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Q. Witness, what instruction did you give about the manner of carrying out the executions?

A. The instructions were for an absolutely militarily correct carrying out; end letting them keep on their clothing.

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Q. Were you present during executions?

A. No, I didn't consider this my duty. They were carried out by the Estonian home guard, under the command of an Estonian officer; a German official from Department IV was present as a witness.

Q. You said that you supervised the activity of Department IV as an inspector. Do you remember any definite individual case?

A. An individual case which I remember especially well was the following. I was addressed about it by a high German official. A respectable Estonian citizen, lawyer by profession; his name was contained in the list of my D agents which was found the and of September in the NKWD building. Thereupon he, of course, was arrested. When about six to eight weeks my attention was drawn to this case by German official. The case had not been known to me previously. I asked the director of the Estonian police and the following story came out: This personality had already been released again. The case stood as follows: He was actually an agent of the NKWD; therefore, he was justly listed in that list, but he gave the following facts: That he had been forced to participate in that activity as an NKWD agent, and that in case of refusal he would have to suffer great disadvantages; and he assured that he did not make out any reports which would be of disadvantage to other people. We could not prove this because his superiors in the NKWD were not there at the time; but he was known as a respected national personality. Thereupon, he was released becaused it could not be proven that as a forced NKWD agent he had done anything which would have injured others.

Q. Witness, in view of the lesser communists you have already said that these were released after their cases had been reviewed. Who decreed these releases?

A. Investigations of arrest took place currently, and the activity of the board of pardon also led to releases. Amnesties were undertaken on the occasion of national holidays; in February and August 1912; always of several communists who were less incriminated such amnesties were decreed by the Chief of the Civil Administration in Estonia, by the General Commissioner.

BY THE PRESIDENT:

Q. Do I understand, witness, that some communists were released?

A. Yes.

Q. Not even put in jail or sent to a concentration camp?

A. No.

Q. Well then, conditions were much better in Estonia for a communist directly under the German armed forces than they were in Germany itself during the war.

A. Yes, perhaps; I don't know.

Q. Well, you know, don't you, that any one who professed communism in Germany, during the war, was immediately apprehended and placed in custody; don't you?

A. No, I don't know this because I did not have any insight into the activity of Department IV.

Q. So a man in Estonia could be a communist and talk communism, and yet not suffer any penalty of any kind?

A. During the time of the German occupation, he could not talk about communism to others without his being immediately arrested thereupon.

Q. Well then, what do you mean by a lesser communist?

A. I mean by the following: In Estonia there were people, perhaps ten thousand, who during the communist period of 1940-1941, had actively professed to believe in communism. Not all of these people were then interned furing the German occupation or kept in internment, but only if there were special reasons, such as danger of the security of the German army.

Q. Well, suppose a man was a communist during the Soviet regime, and he still remained a communist; he did not revoke communism; he did not in any way indicate that he had out with the past; that he was still a communist. Would he be released?

A. It depends how he expressed his attitude; whether he expressed it at all.

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Q. Well, suppose he merely in conversations told someone: Yes, I am a communist; I believe in communism; and that is all.

A. Then he was interned.

THE PRESIDENT: All right; that is all. BY DR. VON STEIN:

Q. How did the population react to these releases?

A. The population severely criticized these releases; they said that the Germans were too soft; that they did not know communism as it was in practice; and that was completely wrong to release less incriminated communist after so short,a period.

Q. What experiences did you have with these releases?

A. One part of the released people was quiet, that is to say, refrained from taking part in any activities. Another part, however, again took up communist activities and, therefore, had to be again interned.

Q. Did you do anything to prevent excesses on the part of the population who was aroused?

A. Yes, I did two things. First of all, in the summer, via the Estonian police prefectures, I tried to have the Estonian home guard refrain from independent operations, that is, not to undertake any executions on their own responsibility. Later, in the fall of 1941, I issued an energetic decree against denouncers, that is, persons who wrongly or out of negligence, accused others of communist activities. This decree was made public over the radio.

Q. Do you believe that you did the best in your power with these proclamations in the sense of actual justice. Did you do the best that was possible under the circumstances?

A. Yes, I think I did.

THE PRESIDENT: Do you think he could have answered no to that? If you ask a man if he is really good and kind, and wonderful, and smart, do you think he is going to say no?

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DR. VON STEIN: Your Honor, if he were of the opinion that he did everything, then he would have that opinion. There are some people who say that they had not done everything.

THE PRESIDENT: Do you think Sandberger would?

DR. VON STEIN: Mr. Sandberger is under oath; I imagine he is going to answer correctly.

THE PRESIDENT: Very well. I think it is a good time to go to lunch. We will recess until 1:45.

(A recess was taken.)

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(The hearing reconvened at 1345 hours. November 13, 1947.)

THE MARSHAL: The Tribunal is again in session.

Q Witness, in the document L-180, in the Volume II-A. Exhibit 34, page 1, in Enclosure No. 8, it is stated that in Estonia, 684 Communists were executed. Are the 405 executions which took place in Dorpat without the assistance by the SIPO, through the Field Kommandos and the Home Guard mentioned in the Report of Events No. 88, are they contained in these figures?

A Yes, they are contained therein. The report of Events No. 88 originates from the end of August.

MR. GLANCY: It is in Book II-A, sir, page 26.

THE PRESIDENT: Proceed.

A (Continued) Yes, they are included. The Report of Events No. 88 originates from the end of August, and the report L-180 is from a later date in October. the responsibility of the German SIPO?

Q Won't you tell about the figures. By this figure you mean the difference between 684 Communists contained in the L-180 and the formerly mentioned 405 executions mentioned in a former report? German Security Police, most of them don't. Among them are such executions which occurred in other localities in Estonia apart from Dorpat, and were carried out in a similar manner as in Dorpat, that is, without the participation of the German Security Police, with the Field Kommandos and local commanders of the Army and Estonian Home Guard.

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Those are the temporary conditions in July and August, 1941, about which I talked in detail. January, 1942. This is contained in Volume II.D. Exhibit 87, Document NO-2834, page 27 of the German text and 22 of the English text. Please comment on the report on page 32 of the German text, page 26 of the English text about political police events in Reval. Please tell us first why the report covers the time from the 1st to the 22nd of January.

A May I have the document, please?

Q It is Document NO. 2831. about because this paragraph is obviously taken from amonthly report by Department IV in Reval. The term for reports from the Estonian Police to the Security Police was always the 25th of each month, in this case, the 25th of November. The German Security Police processed it on the 27th, and sent it off on the 28th or 29th. this report? that the following conclusions can be drawn. The political department of the Police Presidium at Reval, as it is written here, what it actually means is the Estonian Police Prefecture in Reval submitted recommendations for sentences to Department I-A. This formulation shows that a procedure took place whereby recommendations for sentences were decided on after being worked out and were submitted by the Estonia Police Prefecture to the German Security Police. We are concerned here with three kinds of dcisions, partly executions, partly transfers to concentration camps, and partly releases.

Q In this document, the expression "concentration camp imprisonment" is mentioned. Please explain how and where these prisoners were interned.

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spent their time of internment in prisons and in prison camps of the Estonian Justice Administration. The Estonian Justice Administration had put at the disposal of the police part of these camps and prisons. The expression "concentration camp" is therefore wrong". This is merely an abbreviation by a German official who, instead of using the correct expression "prison" or "internment camp" used this abbreviation. The personnel and the instructions in these Estonian prisons and in these camps were subordinated to the Estonian Legal Administration arid were exactly the same as foremerly in the Estonian Free State. BY THE PRESIDENT:

Q Did you pass upon the 282 sentences mentioned in this document?

A Your Honor, I personally confirmed 6 verdicts. I am not sure and cannot say whether these six cases are contained in these 79 cases. described this morning happened during that time.

Q But you were in charge of the Kommando, weren't you? chargeable with their receipt, weren't you?

Q Well, Department IV was under you, wasn't it? Department V, for instance. kommano I-A, they were, in fact, sent to you. You may not have personally received them, but they were sent to you, as a matter of fact.

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Q. Yes, and of these sentences you only examined 25. Is that what you tell me?

A. I said this morning that altogether in the fall of 1941 I had 25 cases submitted to me. It is possible that these 25 cases were during that time, but it is not certain. I cannot say it.

Q. Were you interested in the others at all?

A. I had organized this procedure in such a manner that I was certain, or believed to be certain that it was done with reliability and justice as far as possible. The Department Chief IV who had arrived at this decision was a man who had the same rank as I had, namely, that of a major, and had been used to these things for many years, which I had not been, because I never had anything to do with such things.

Q. Now, you approved of six executions. There were 79 in all. Did you interest yourself in the other 73?

A. I did not have them submitted to me.

Q. Did you interest yourself at all in these other 73 executions?

A. Your Honor, I did not quite understand what you mean by the expression "interested."

Q. Yes, well, under your authority, because you were the Chief of Einsatzkommano I-A, there were 79 executions. 6 of these you were personally familiar with. Did you know of these other 73?

A. About no individual case, no.

Q. Did you know of these other 73 executions?

A. No.

Q. 73 executions took place under your command and you did not know about them?

A. I knew the figures and that these executions took place, but I did not know the individual cases.

Q. You did know, then, that 73 executions were going to take place?

A. Yes,

Q. And you yourself didn't interest yourself in any of these execution with the exception of the 6 you have mentioned?

A. That was not my task, Your Honor.

Q. Well, your answer is, you did not concern yourself with these 73.

A. I personally did not concern myself with them.

Q. Very well. Who actually ordered the executions? You were the Chief. Who finally put his O.K. on "Let this man be shot."

A. It was the man who confirmed the judgment of this Commission of 3. The procedure was first were these where the persons participated -

Q. Well, just a moment. We have gone through this. Now the recommendations for executions are before Einsatzkommando I-A, is that right?

A. Yes.

Q. All right. You tell me that Department IV passes upon these sentences, is that right?

A. Yes.

Q. All right. Now who was the individual officer that finally O.K.'d the executions in your Einsatzkommando?

A. During the time which is concerned in that report of events it was a Criminal Councillor, Dr. Merten.

Q. Doctor who?

A. Dr. Merten.

Q. Dr. Merten, Yes, now he put his O.K. on it and it didn't come to you at all?

A. No.

Q. So, therefore, as Chief of the Einsatzkommando, executions took place in the name of the kommando without your being familiar with what was taking place?

A. Your Honor, that was not my task. Originally, it had been the task of the subkommando leaders to be able to carry out executions themselves. Later on I asked the Einsatzgruppe Chief to change this and at least that the Department Chief IV should decide for the entire kommando. I already considered this an improvement of the situation in the interest of those concerned.

Q. Well, do you think it might be a further improvement, if you passed upon sentences of execution?

A. Your Honor, as far as work was concerned, this was not possible for me to do, because according to the will of my superiors the main point of my work was concerned with Department III. That is, most of my time I had to work, according to the wish of my superiors -- I had to work on tasks in Department III. I did not have a Department Chief of Department III. I therefore was personally in charge of this department.

Q. And what did you do in Department III?

A. In Department III I had to make reports about the domestic sphere in Estonia and passed on political advice of the Army commander in Reval, political reporting to the Army High Command, to the Commander of the rear army territory, to the German General Commissar in Reval.

Q. Wouldn't you think that in the domestic sphere it would be interesting to find out why 73 people were about to be executed?

A. Your Honor, this did not belong to the task of Department III. Executions belonged to the tasks of Department IV.

Q. Well, it was still part of the domestic sphere. It happened right there in Estonia.

A. Yes, but it was not part of domestic sphere work; according to Department III -

Q. Well, you had Department III in your immediate charge, but Department IV was also under your control.

A. But there was a difference, Your Honor. I was in charge of Department III personally and here all my superiors constantly made requests to me personally.

Q. And Department IV was under you?

A. In Department IV had been assigned to me as an official of the Security Police also in the rank of major.

Q. Very well, then you were satisfied with the competence of Department IV to approve executions without your reviewing or in any way looking into the individual cases?

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A. I don't understand the main verb in this sentence.

Q. You were satisfied with the competence of the major in Department IV, so much that you could depend upon him entirely to authorize executions without your interesting yourself in those individual cases?

A. Your Honor, it was not a matter of my being satisfied. My superiors had settled it that way because of my.-

Q. Now, Witness, we are losing a lot of time. If you will only try to answer the question directly -- Now, you were the Chief of the Einsatzkommando?

A. Yes.

Q. And Department IV was under you?

A. It was one of the 5 departments under my charge.

Q. Very well, now if the major in charge of Department IV were very incompetent and was executing people carelessly, that would be your concern, wouldn't it?

A. Yes.

Q. Yes, so therefore you were satisfied with his competence and you allowed him to make the decisions of life and death and you didn't review any of those cases.

A. Your Honor, not I would allow him, but my superiors, whom I told about, determined it so.

Q. Well, suppose that this major were very incompetent and he was executing people without the required evidence and this came to your attention, would you do anything?

A. Of course.

Q. Well, all light, then. When I say to you and it is a very simple question; you are just losing a lot of time -- that you were satisfied with his competence and therefore you didn't bother to look into the cases because you were satisfied.

A. I beg your pardon. It is not a matter of my being satisfied with his competence, but his competence was established by my superiors and it

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Q. Suppose that your superiors had given you a man and they were satisfied with his competence, but you found that he was incompetent, that he was careless, that he was reckless, and that he was drunk all the time; that he signed executions without looking into the cases. Would it be your job to do something about it?

A. Yes.

Q. Yes, well, if you could have passed on his incompetence, then you could have also passed on his competence.

A. I don't quite understand the question.

Q. If you could decide that the man was incompetent, as you said that you could, then you could also decide that he was competent.

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A. No, your Honor, there is a difference. The basic question, that the Department chief........

Q. Well, listen. We are not going to get anywhere with this, so let's drop it. Now, who actually signed the death warrant?

A. The confirmation of the death warrant was given by Department chief IV except for the six cases where I did it myself.

Q. So that is was the signature of this Department IV man that sent 73 to their death?

A. Yes.

Q. And then who performed the execution?

A. As I mentioned briefly when describing the procedure, the entire further execution of the procedure was dealt with by the Estonian police.

Q. And you had someone from Department IV to supervise it?

A. An official of Department IV was present as witness during such executions.

Q. And so far as these 73 were concerned you knew nothing about them?

A. I knew that executions occurred.

Q. But you didn't know for what reason?

A. I did not know the individual cases.

Q. You didn't know why these 73 were being executed because you didn't investigate the cases?

A. I did not know why it was done in each individual case.

THE PRESIDENT: Very well. BY DR. VON STEIN:

Q. The witness, Dr. Mae, mentioned that in the Estonian Republic until 1940, Communism had been prohibited by law and in major cases, serious cases a death warrant was passed.

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Do you and your officials know all about this.....at the beginning of your service in Estonia?

A. Yes, we know that. We knew that Estonian court martinis were competent for the punishment of such occurrences in the time of the Estonian Republic until the time of 1940.

Q. The Prosecution stated that all Einsatzkommandos had to do with sorting out political functionaries out of POW camps. Please state your opinion on this.

A. I remember for certain that such orders were not carried out in Estonia.

Q. During the fighting in Estonia were there a great number of POW's?

A. No, there were relatively few. Many POW's were other parts of the Eastern front there where so-called local fights took place. This did not happen in Estonia.

Q. In that year, 1941, were there POW's quickly transported to the south from Estonia, or did they remain in the country?

A. Most of them were transported to the south immediately in order to be assigned to work there.

Q. Were POW's who were taken prisoner in Estonia not used for work assignment in Estonia proper where they were required?

A. No, except for a few exceptions, this was not the usual thing because in Estonia in 1941 there were many unemployed among the population, for example, in the city of Reval alone 20,000, as one of the situation reports in the document shows; 20,000 unemployed in a city like Reval of 100,000 inhabitants is a relatively very high figure.

Q. I now want to discuss measures against the Jews. You said previously that Dr. Stahlecker had told you at the exterminated, and he ordered you to do so, and he expressed this order towards you repeatedly.

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Did you inform your subcommando leaders or your Department Chief IV of this order, and did you give them orders concerning the Jews?

A. I did not tell my sub-commando leaders, as I already said, and my Department Chief IV about the Fuehrer Decree announded in Pretzsch. As I have already mentioned, I only told my deputy because I had great, confidence in him. I Informed him of the existence of this decree not for the purpose of having him carry out this order, and I added that I would do everything whenever possible in order to evade this order as far as the commando and myself were concerned. In the following time in July and August measures were taken against the Jews in Estonia only to that extent as measures were taken against other people, for instance, Estonians, Russians, and so forth, and with the same procedure except for a few internment cases which I shall discuss in detail later on. BY THE PRESIDENT:

Q. Witness, I notice that every few minutes you tell us that you are going to discuss something later on. This trial is going to end sometime; it isn't going to go on forever; and I wish that when you come to a point, you would discuss it then and there because you have a half dozen things hanging in mid-air, so (describe these things just as you go along. And in that respect since we are now on that subject, we want to ask you directly whether you did or did not believe in the Fuehrer Decree which called for the execution of Jews and communist functionaries, gypsies, and so on?

A. I did not quite understand the question, whether I believed in it, it is better to mean whether I believed in the existence of the decree.

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Q. Whether you believed in the execution of the decree.

A. I don't understand the expression in the German, the execution of the order".

Q. Well, did you believe.........let's put it this way.........did you accept the Fuehrer Decree as something which should be put into effect?

A. I already explained that my reaction to the Fuehrer Decree........

Q. Now, please don't go into all that. Why don't you answer the question directly? Did you accept the Fuehrer Decree as something to be enforced?

A. It was my intention to avoid carrying out this order as far as possible concerning myself and my commandos.

Q. Then you did not accept it as something which should be enforced?

A. I did not doubt its legality.

Q. Now, you have been trained in law and I presume you have been trained very unwisely in how to evade questions, but forgot your training now if you were trained that way and try to answer questions directly. Did you accept this order as an order to be enforced?

A. Your Honor, this question cannot be answered with "yes" or "no".

Q. Well, why can't it? Here is an order. We will give you an order. You read the order, and your conclusion is, "I will enforce it", "I will not enforce it". Now what is your answer?

A. In this case I can say I decided not to offer any open disobedience.

Q. Then your answer is, "I will not enforce it"?

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A. I beg your pardon, I did not understand it.

Q. Here is the order, and order says that you are commanded to execute Jews, communists, functionaries, gypsies and so on. Now, you look at that order. You are a soldier, and you come to a conclusions. "I will execute that order" or "I will not". Now, which conclusion did you come to?

A. Neither to the one nor to the other, but to this conclusion, that if at all possible I would have nothing to do with the execution of this order.

Q. Well, then you concluded you would not enforce it. You are either on a horse or you are not on it.....you can't be half on a horse and half on the ground, if you are in that situation, you are in a pretty bad situation.

A. Your Honor, I was in a forced situation where I could not come to a clear decision, as it happened to many of my comrades as well.

Q. Now, don't bring your comrades into it, they have been answering for themselves, and some have been a little more forthright than you have been, let me tell you that now. You have this order; you are going to enforce it, or you are not going to enforce it. Now, what conclusion did you come to?

A. I first came to the conclusion to delay the execution as long as possible.

Q. All right. For that moment you are not going to execute it. Now, did there come a time when you said, "yes, I will execute it"?

A. No.

Q. So, therefore, you refused to enforce the order?

A. I did not express my disobedience.

Q. Well, to yourself?

A. Myself, yes.

Q. Yes. Now, you have given us quite a long speech on the propriety of the order. You said that even if the Fuehrer decree was contrary to International Law it had to be enforced because it was German law. Did you say that?

International Law it was German law and, therefore, had to be enforced-did you say that? was German law?

Q You did say that?

Q Then at that moment you were accepting the decree as German law?

Q Yes. And you refused to obey German law, is that what you are telling us?

A I did not refuse it, but I talked to my superior, Dr. Stahlecker repeatedly, and asked him to delay the enforcement of this order.

Q Did you speak to your sub-commando leaders about this order? tioned before.

Q Did they know about the order?

A The Fuehrer decree?

Q You didn't revoke it so far as they were concerned?

A I did not pass on the Fuehrer decree to these men; consequently I did not have to revoke it.

Q Well, they knew that it existed?

A No, Your Honor. I already said that I did not hand this order on to these men.

Q Did your sub-commando leaders know of thei Fuehrer decree?

Q They didn't know of it?

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A No. I did not inform them of the Fuehrer decree.

Q Well, did they learn of it by themselves? me.

Q You don't think that they knew about the Fuehrer decree? whose name is Karstens with whom I talked about it. people then, and don't tell me all about this business of the trials and so on. I mean where they had independent commands. The measures under discussion until now concerned communists, and concerning communists I did announce the decree however not in a collective form. performed some executions. Now, on what authority did they perform these executions? merely said that it is possible that this happened. I also explained that I told the sub-commando leaders about everything that was told us in Pretzsch and Schmiedeberg, however, with the exception of the Fuehrer decree concerning the Jews, gypsies, and the collective destruction of functionaries, everything else was known to the sub-commando Leaders. in the Baltic countries your sub-commando leaders and those under you did not know about the Fuehrer decree calling for the execution of Jews? concerned with the period up to the end of September when for the Einsatzgruppe during my absence the execution of 400 Jews was ordered. At this time at the end of September, the beginning of October, the first four sub-commando leaders were ordered back. the Fuehrer decree calling for execution of Jews?

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PRESIDENT: Proceed, Dr. Von Stein. BY DR. VON STEIN: Number 88 in Volume IIA, Exhibit 46, Document No. 3149, page 92 of the German text, page 91 of the English text? been people who because of a communist activity and endangering security were arrested by the Estonian home guard and the commander of the home guard or the field commander in Dorpat, because of this communist activity sentenced them to death.

PRESIDENT: Are you going back to these 50 Jews again? Well, for someone who didn't know anything about Jews you are spending a great deal of time about these 50 Jews. He has given this explanation a number of times.

DR. VON STEIN: Your Honor, at the beginning of this case we only talked about communists and we now intend to speak only about the Jews. It is right that the 50 Jews were mentioned at the time in connection with the figure of the communists, but in order to give a unified impression to the Tribunal concerning the Jewish question and how it was dealt within Estonia, we now want to give a general explanation about all the points contained in the documents about the extermination of Jews in Estonia.

PRESIDENT: Proceed.

MR. SANDBERGER: I believe the question has been answered. BY DR. VON STEIN: of the 12th of October 41, Exhibit 38, Document No. 3155, page 40 of the German text, page 43 of the English text.

PRESIDENT: What is the delay about? We are all ready.

DR. VON STEIN: I was only waiting for the page--the English page in the English document book.

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PRESIDENT: I thought it had been announced. It is page 43. All right, proceed.

DR. VON STEIN: Yes, page 43.

MR. SANDBERGER: What was the question, please? BY DR. VON STEIN: The question was how many Jews approximately were in Estonia when the German army arrived there? mentioned that after the occupation of the country about 2,000 Jews might still have been in the country at the time. This estimate is incorrect. In reality less than 1,000 Jews were still living in Estonia after the occupation of the country. This is merely an estimate which was not confirmed later on. under what circumstances it was written? monthly report of the month of September to the Einsatzgruppe. It was sent off from Reval on 29 September. I was absent from Estonia at the time, namely, in the combat area of the 18th army near Leningrad for several weeks. The Department Chief IV of my commando had previously suddenly been recalled to Berlin. My deputy who was actually chief of Department III but also had to take care of Department IV simultaneously, did not know much about this subject because the Department Chief IV who had been dealing with the subject on his own written document obviously did not exist. Now suddenly with very short notice a report had been made to Einsatzgruppe A about the measures against Jews so far and simultaneously the Einsatzgruppe had approached us because nothing much had been done until then, and the deputy of the Department Chief IV on his part had to ask the Estonian police and the Estonian home guard to give him the documents about all that had been done until then. This explains that in this report many things are completely wrong, and many things are very unclear, and strong contradictions arise out of this report.

Estonia was started by you. Why did you do this--Stahlecker had ordered you to eliminate all Jews in Estonia immediately according to the Fuehrer decree? this order as far as possible hoping that it would be revoked or rescinded. On the other hand, I did not want to show any open disobedience. When I talked to Stahlecker at the end of July 1941 I asked him to agree to this, that executions in general would not be carried out by German commando members but by the volunteer Estonian guard, but I emphasized that this would mean a delay of executions because the home guard at first was busy dealing with the anti-communist measures.

Q What did Stahlecker say to this? he gave instructions that then at least all Jews in Estonia be interned for security reasons immediately. of events Number 111. It says here it was carried out immediately for the following groups, for all Jewish men over 16 years of age, and for all Jewish women of working age in Reval and vicinity, in Dorpat, and vicinity, and Pernau and vicinity, is that right?

No, that is not right in that form. This report is therefore wrong to that extent. It only applies concerning the case of Pernau. There it concerned internment of about one-hundred Jews in the middle of July 1941. In the District of Pernau there was a special situation; combat had been going on around the forest surrounding the city for some time. For their pro-Soviet attitude a great number of the Jewish population had become known in the meantime. Therefore, this internment of the Jews and Jewesses in Pernau, and the surrounding territory of about one-hundred persons was carried out about the middle of July.

Q And how about the case of Dorpat and Reval? Was internment of Jewish men and Jewish women carried out here immediately after the Germans arrived there? September. Consequently, they were mistaken in this report.

Q The following sentence in the report "Events No. 111" on page 3, does it apply which reads as follows: "For the Jews living in Reval and vicinity, at the moment in Harku, District of Reval, a camp is being prepared which after receiving the Jews from Reval shall be expanded to *---*tain the Jews from Estonia"?

A Yes, this sentence is correct. That is plan which I made at the *---*ginning of September. About the 10th of September I gave the order *---*at Jews be prepared for transfer to camps at Reval and Karku, and *---*ring the following week, in time, this be carried out at first con*---*erning the Reval people, later on the Dorpat people, and later on the *---*ernau people, and in time also concerning the Jews in the rest of the country, during the Fall of 1941.

THE PRESIDENT: Witness, how do you explain that this statement is correct. You give unqualified approval of the correctness of the statement you just read. How did you explain this is correct, but the other statement about all male Jews over sixteen with the exception of physicians and appointed Jewish elders being executed by the Estonian Unit under Sonderkommando, how do you explain that is not correct. It is THE WITNESS:

May I ask Your Honor which sentence you mean, which I considered quite correct.

THE PRESIDENT: On page 3 there is the statement of male Jews -I am sorry. (interruption) Of male Jews over sixteen with the exception of physicians and appointed Jewish Elders." Do you find the place?

THE WITNESS: Yes, Your Honor. I have not yet given an anation of this. If you wish I will comment as follows:

THE PRESIDENT: I thought your attorney asked you on that, you not asked him that?

DR. VON STEIN: Your Honor, the question will come up later.

THE PRESIDENT: I am sorry to proceed on that. Let's ask out that, as I was under the impression you had commented on that. *---*ll, allright, is that statement correct, or not correct?

THE WITNESS: It is correct that all male Jews over sixteen *---*ears of age except physicians and Jewish elders were executed by the Extonian homeguard unit under supervision of Sonderkommando 440, it so says here; that is right, it was done in the time between the 26th and 29th of September, without my knowledge while I was absent from Estonia in the combat area south of Leningrad at the immediate order of Stahlecker.

THE PRESIDENT: Is that the item you referred to in your affidavit? Do you explain that in your affidavit?

THE WITNESS: No, Your Honor, I didn't mention this in the affidavit. This point is not contained in that affidavit.

THE PRESIDENT: Well, in your affidavit of 23 April, "On the basis of orders issued by Stahlecker I arrested all the Jews in Estonia. In October of November, 1941, Stahlecker ordered these people to be executed."

THE WITNESS: No, that is not this order but a later order. This affidavit refers to these Estonian Jews who remained alive after this first order of Stahlecker's had been carried out, there were fivehundred to six-hundred.

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THE PRESIDENT: Well, then there were two groups of Jews that were executed?

THE PRESIDENT: I am sorry I interrupted you, Dr. von Stein. You may continue. BY DR VON STEIN: sentence in the Einsatz Report 111, which I quoted, and it deals with the question whether at the time in Harku a camp was prepared for the Jews. You replied, that is right. I see it is in time about 10 September 1941, the order on this?

Q I now ask you; why could it never have been earlier. Your instruction, why was this not given at an earlier date than 10 September 1941? Reval at the end of August before we did not know anything about the existence of Camp Harku. In the following days, the beginning of September, I gave the order that a suitable site be found, and I was informed that a suitable camp existed here, and then I gave the order which I described here.

Q Witness, in this report of Events No. 111, concerning the issuance which showed that you tried not to carry out this order, doesn't that contradict the general attitude of Stahlecker? Did Stahlecker not reproach you about this? and not execution measures, which are only a small extent at least. On the basis of this report by Stahlecker, I was reprimanded severely by him in the middle of October. I told him how such a report had come about, namely, that I had been absent, he knew this, that the Department Chief had been absent, and that my deputy had not been informed, and that the expert had made this wrong report.

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the time when this report was made you could not have been present in. *---*e he did not like it, and if I had been present such a report to I would have also objected very strongly would not have been made. *---* A statement made by Herr Jost on the witness stand tells here during the execution of your office he noticed that you personally making out reports always used a very clear wording. Order that of view could you give us the points in this report of Events No. which are so incorrect and full of inconsistencies that you *---*inly would not have written them, or would have approved them, or *---* have signed them? for a decision; not only do they talk about an execution of 440 but on the other hand statements are made which make no sense. *---* very quick execution was forcible for example, it is said that the *---*sh population was to be seized according to their capability of *---* On page 2 in the center, and on the following page 3 in the center, it is said they were prohibited from trading, taking part in trade, and so forth. All of those are instructions which were given, and it would have had no point if an execution would have been considered by me to be carried out very soon, or even been ordered by me. beyond doubt that the original report in which this report is based would have been submitted to you, if yen ha a been staying Reval at the time?

THE PRESIDENT: Dr. von Stein, is that a statement by you, or is that a question?

DR. VON STEIN: The question, your Honor --the question, Your Honor.

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is, whether the defendant Sandberger would have received this original report which would have been submitted to the defendant Sandberger, and in particular, would it have been submitted to him if he had been in Reval?

THE PRESIDENT: All right. Answer the question.

THE WITNESS: Even if I didn't see all reports of Department IV, owing to the great importance of this report, there is no doubt that I would have seen this report if I had been stationed in Reval.

THE PRESIDENT: We take it from that that you didn't see the report?

THE WITNESS: Yes, Your Honor, at the time, about from 12 September until 3 October 1942, I was certainly absent from Reval as Chief of the sub-commando in charge of the area south of Leningrad, and throughout this entire time my deputy acted quite independently with the transactions of the office. I only heard about this report later on when about 3 or 4 October I returned to Reval.

THE PRESIDENT: You had absented yourself from Estonia;

THE WITNESS: Yes, during the time I just mentioned.

THE PRESIDENT: What were you doing on this trip south of Leningrad?

THE WITNESS: I came at the time to my main job which was to be Kommando Chief with the 18th Army. My task with the 18th Army consisted from the very beginning of dealing with sub-kommandos in combat areas, and to be present there. From the middle of September onwards the combat area of the 18th Army was no longer in Estonia but to the south of Leningrad.

THE PRESIDENT: And were any Jews executed on this trip?

THE WITNESS: No, this was not my task. My task during that journey consisted of assisting the G-II Section, just as I had done in July and August in Estonia, as well, and as I have already described here.

THE PRESIDENT: Was it ever your task to execute Jews?

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THE WITNESS: In my assignment as Einsatzgruppen Chief Stahlecker did give me the task but I never carried it out.

THE PRESIDENT: You were able to travel all through the Baltic countries, Lithuania, Latvia and Estonia, up into Russia, and you remained up there two years, and in all of that time you never executed a Jew?

THE WITNESS: Your Honor, first of all, may I reply to the statement with an affirmative, but this part of conditions existed in such manner that after February 1942 Estonian Jews did not exist any more.

THE PRESIDENT: They had been all executed?

THE WITNESS: They had been executed at the order of Jeckeln in Pleskav.

THE PRESIDENT: In all this time you yourself never ordered the execution of a Jew?

THE WITNESS: No Jews except those who could have proved to have been active as Communists, who had been examined and had been sentenced.

THE PRESIDENT: And during all this time you were never courtmartialed, you never got into difficulties with your superiors?

THE WITNESS: I repeatedly had difficulties with my superios Stahlecker.

THE PRESIDENT: I mean any serious difficulties?

THE WITNESS: I didn't show any open disobedience towards Stahlecker.

THE PRESIDENT: Now what more open disobedience could you show than to refuse to obey a very clear order. He ordered you to start pograms and you didn't start the pogroms; he ordered you to eliminate Jews, you didn't eliminate Jews; he ordered you to execute Communist functionaries, you didn't do that. Now, what more open disobedience could have been manifested than that?

THE WITNESS: Your Honor, concerning the question of pogroms, I told Stahlecker that it was not possible.

THE PRESIDENT: All right, you disobeyed. He wanted you to do it, and you didn't want to do it and you didn't do it.

That is disobedience, isn't it?

THE WITNESS: Your Honor. I said that Stahlecker didn't give this to me as an order to be enforced, but as a directive which should be followed as far as possible.

THE PRESIDENT: What is the difference between a directive and an order? A directive commands you to do certain things, doesn't it?

THE WITNESS: The difference in this case consist of the fact that an order is an absolute and compulsory order, a binding order.

THE PRESIDENT: Is that the reason you didn't obey the directive, because it was not compulsory?

THE WITNESS: Stahlecker told me to carry out the pogrom against the Jews.

THE PRESIDENT: Now please answer the question, why you didn't start the pogroms, and now you tell us it was not an order, but it was a directive, is that right?

THE WITNESS: No, I didn't use the word "order" but I used the word "directive", there is a difference there is a slight difference in the German, Your Honor, which, if possible, didn't absolutely have to be obeyed. I especially meant this difference.

THE PRESIDENT: All right, the reason you didn't obey a directive to carry out a pogrom, because it was not a direct order, is that right?

THE WITNESS: The reason was that I didn't want to enforce a pogrom.

THE PRESIDENT: Then you disobeyed an order, didn't you?

THE WITNESS: Your Honor, it was not an order in that sense.

THE PRESIDENT: All right. Then it was not an order, and you didn't have to follow it at all, is that right?

THE WITNESS: Yes.

THE PRESIDENT: Now the Fuehrer Order was an order, there is no question about that, is there?

THE WITNESS: Yes.

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THE PRESIDENT: And you disobeyed that?

THE WITNESS: The order didn't say that the Jews be executed within a certain period.

THE PRESIDENT: Oh, that is the reason you were able to do it, you could defer it two years, and in that way you didn't disobey the order?

THE WITNESS: I wanted to delay and defer the execution of this order, and I did this.

THE PRESIDENT: Your explaination then for the reason you didn't obey the Fuehrer Order is that it didn't say to execute the Jews Immediately?

THE WITNESS: No, Your honor, the reason was--

THE PRESIDENT: There will be a recess for fifteen minutes.

THE MARSHALL: The Tribunal is in recess for fifteen minutes.

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THE MARSHAL: The Tribunal is again in session. BY THE PRESIDENT.

Q. Witness, is there anything in the reports on this trip of yours, this mission or yours to Leningrad? A. Did I understand you correctly, that you mean whether there is anything in this report about my stay in Leningrad?

Q. Yes.

A. No, that is not possible.

Q. Why not?

A. Because this report only covers the question of the Jews in Estonia within a report by Department IV.

Q. Well, just a moment, is there anything an all these reports........you had an opportunity to study them ........which talks about your mission to Leningrad?

A. Yes, there are several reports which are concerned with the reconnaissance in Leningrad, that is with the G-2 auxiliary service.

Q. Does it refer to you or to your kommando?

A. Part of this activity, or this G-2 auxiliary service for Leningrad, concerns me.

Q. Is there any reference in reports to you, Sandberger, or to your kommando, I-A, being on a mission to the south of Leningrad?

A. Yes.

Q. What document? Let us see it.

A. I can't tell you by heart, your Honor, I didn't write it down. If you permit I shall try to look for it by tomorrow.

THE PRESIDENT: Very well. BY DR. VON STEIN:

Q. Witness, we were discussing Situation Report 111, namely, those points about the internment of Estonian Jews.

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I now ask you from what parts of Operation Report 111 can you tell that in July 1941, that is, after your arrival in Estonia, you did not order at first an internment of all Estonian Jews?

A. From page 2 of this report it can be gathered first of all that no general internment of all Jews was at first ordered, for it says expressly here that internment measures were taken at Reval. Dorpat, Pernau, but there were nine other Estonian counties. Your Honor, this is document NO-3155, Operation Report 111, page 2. It says here expressing that internment took place in three different localities. Reval, Dorpat, and Pernau. These are only three counties. Outside of that there were nine other Estonian counties in which Jews also lived. That Jews lived in these other counties and how many can be gathered from Document L-180. On the next page of this operation report, that is on page 3, it is shown that some measures were ordered which would be completely incomprehensible if an internment would hare been ordered simultaneously, namely, forbidding of the public trade, forbidding school attendance, forbidding the use of theaters, and movie theaters, inns, etc.

Q. Why did you have to decide in favor of the internment of all Jews in September?

A. The pressure of Stahlecker became stronger. During a conference Stahlecker had asked me again around the first of September why the executions had not yet been carried out. I told him then repeatedly that the Home Guard, which was to carry out the executions, with his permission was still fully occupied with searching for Communists. Thus I accomplished that for the time being Stahlecker again consented with postponing the execution. But he again demanded categorically that the immediate internment be undertaken for reasons of political security.

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Under these conditions I considered the internment as the lesser evil. Added to this was the fact, looked at from a Security Police point of view, that the underground movement which had been underway repeatedly was uncovered, whose leaders were leading Communists and NKVD officials, and further there was the realization of a strong implication of Estonian Jewry in Communism, especially within the NKVD.

Q. Did this internment correspond to your personal feeling?

A. No, the internment of all Jews did not correspond to my personal attitude, but it was unavoidable under these circumstances. BY THE PRESIDENT:

Q. Did this internment correspond to your personal feeling?

A. No, the internment of all Jews did not correspond to my personal attitude, but it was unavoidable under these circumstances. BY THE PRESIDENT:

Q. Witnees, when did you join the NSDAP?

A. In November 1931.

Q. And when did you join the 88?

A. On the 1st of January 1936.

Q. When you joined the NSDAP in 1931, did you know the policy of the Nazi Party with regard to Jews?

A. I had no idea that measures of this kind.......

Q. Now, listen Witness, please answer my question. Did you, in 1931, knew the policy of the Nazi Party with regard to Jews?

A. I knew the points of the Party program.

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Q. Very well, now what was that program?

A. These points I understood to mean that a Numerus Clausus would have to be introduced, that is, that the Jews in Germany would have to be restricted in their professions corresponding to the ratio in the population which they held, and that a sort of minority right would have to be created for them.

Q. Then in 1935 did you learn of the Nurnberg Laws?

A. Yes.

Q. And what did they provide for?

A. I cannot give the exact contents, your Honor.

Q. You knew they were deprived of citizenship?

A. I cannot remember, but this is possible.

Q. You don't know the Jews were deprived of German citizenship in 1935?

A. I cannot concretely remember this.

Q. Do you know what happened November 10, 1938?

A. Yes.

Q. What happened?

A. The burning of synagogues at the order of Goebbels and on the next day arrests by Heydrich, by the Gestapo.

Q. Yes, and what happened to the Jews in Germany?

A. Many Jews were arrested.

Q. Well, they were sent to concentration camps, weren't they?

A. A part of the Jews were sent to concentration camps. Yes, I heard about that.

Q. Well, generally the policy was to put them all in concentration camps, isn't that right?

A. I did not know anything about this at that time.

Q. Well, you know now, don't you?

A. Now, of course I know that Hitler in the year 1941 gave the well-known order, and in the year 1942 he gave the general order for the extermination of the Jews.

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That I know now.

Q. But you know between 1935 and 1941 Jews were sent to concentration camps?

A. I only know this in connection with the 10th of November 1938.

Q. You know that in Germany and in practically all occupied countries; it happened in Holland; it happened in France; it happened in practically all the countries the Jews were herded into concentration camps, if not worse?

A. Your Honor, about the conditions in the occupied territories I had no knowledge.

Q. Well, did you knew that in Germany Jews were sent to concentration camps?

A. Only in connection with the 19th of November. Then I hoard about it.

Q. However, in 1939 or 1940, do you remember that Jews were being sent to concentration camps?

A. In the year 1939 and 1940 I merely saw on the street in Lodz that there the Jews had to wear the Star of David, and I later saw that they were put into a special part of the city. I did not see and I did not hear that any of those Jews were put into concentration camps.

Q. You knew that their liberty was restricted, they were herded, put into ghettos or in concentration camps. You knew generally that was the policy?

A. No, no, that that was the general policy I did not know.

Q. Where were you at this time?

A. Partly in Berlin, partly in......

Q. In what office?

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A. Office I of the RSHA.

Q. And you did not know that Heydrich's and Himmler's policy was to put Jews in concentration camps?

A. No.

Q. In which office were you?

A. Office I of the RSHA, that is the personal office.

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Q How long were you there?

Q Well, tell me the time?

Q Well, beginning from what time? you did not know that it was the policy of the Reich to put Jews in concentration camps? camps. camps?

A You mean to send them all into concentration camps? cerned Jews?

Q You didn't agree with the Party so far as it referred to Jews? the restriction as to numbers is concerned, not as far as taking the citizenship away from them.

Q You disagreed with the Nuenrberg Laws?

A I wasn't asked.

Q Well, I ask you now, did you disagree with the Nuernberg Laws? it, I would not have approved it.

Q All right. You took the oath to Hitler, didn't you?

Q Now, you believed in German law, didn't you?

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answer it concretely. I didn't quite understand it.

Q Did you believe in German Law? As a lawyer that should not be a difficult question. it be the Reichstag, passes a law and it becomes then binding on all German citizens, did you feel yourself compelled to obey that law?

A But I didn't approve of many decrees. it referred to Jews? rights.

Q And when did you come to that conclusion?

Q In 1935? became a member of the SS, and you got an important office in the Reich Main Security Office although you did not agree with the Party program insofar as it referred to Jews: is that right? with whom you worked? these things.

Q You deceived your superiors, did you not?

Q They knew that you were in favor of the Jews?

A Your Honor, I didn't say that I favored the Jews.

approve of their loss of citizenship, the confiscation of property, the placing in concentration camps, and further deprivations? remained in the SS? these measures.

Q The SD had nothing to do with Jews?

Q Don't tell us about Mr. Ohlendorf. He takes care of himself and he has been far more forthright then you have been. Now, can you tell us -- what can you tell us that the SD had nothing to do with Jews?

A No, I don't mean to say that, but I wanted to say that the SD, for example, after the 10th of November, 1938, made out several detailed reports which were against these measures of Goebbels in an economic respect which. Mr. Ohlendorf has already mentioned, as well as in a general respect about the morale of the population. knew that one of the cardinal policies of the SS and of the Nazi Party was the persecution of the Jews? aim was the persecution of the Jews.

Q I didn't say the main aim. Let me ask you this question. Did you know that there were Jews in the concentration camps of Germany? ment camp in Estonia? terned because of an individual guilt.

Germany, did you approve of that?

Q So therefore you did not believe in German law? agreement.

Q I didn't say directives. You told us this morning or yesterday rather, that the Fuehrer Order, even though it violated international law, if it did, was German law and therefore had to be enforced. You paid your respects to law in that instance; is that right?

A I didn't get the question. of Jews may have violated International Law but whether it did or not, it was German Law and therefore should be enforced. Did you say that?

Q Did you say that here in Court?

Q All right. So therefore you approved of the Fuehrer Order insofar as it was German law, but you disapproved of the German law which put Jews into the concentration camps?

THE PRESIDENT: Dr. von Stein, you take up two other questions.

DR. VON STEIN: Shall I continue with the same point or shell I continue with my direct examination?

THE PRESIDENT: You continue with your direct examination.

DIRECT EXAMINATION (Continued) BY DR. VON STEIN:

Q Witness, did you have any legal misgivings about the internment? just given, because a Fuehrer Order existed. But -

THE PRESIDENT: Now, witness, you say that the reason you had no mis givings about putting Jews in the camp, the internment camp, was that there was a Fuehrer Order to that effect.

Well, there was a Fuehrer Order with regard to the execution of Jews. Why did you not have some misgiving about that, or why did you have misgivings about that?

THE WITNESS: Your Honor, I did not approve of either, neither of the execution nor of the internment of all Jews, but I had to decide in favor of the internment as the lesser evil because of the pressure of Stahlecker.

THE PRESIDENT: Proceed.

A (Cont'd) Independent of the fact that I neither approved of the one or the other, according to my personal feelings, it was no question that this order in reference to the execution and of course in reference to an internment also justified this measure but there was a special reason here about the Jews in Estonia. In any Case I looked at it from that point of view. I had no possibility to examine whether it was completely in accordance with international law.

This point of view was the following. The Jews in Estonia were distinguished from the Estonians, the Russians and the Swedes and the Germans, not in reference to the race or to the religion, but the practical difference as it was politically acute in Estonia was the difference in their ethnic characteristics. That became evident in the legislation which the Estonian Free State permitted its minorities, namely, it permitted them cultural autonomy. This right of a cultural autonomy was granted by the Estonian Free State to the Russian minority, was a question of voluntariness on the part of these groups whether they made use of this or not. The Russian and Swedish minorities made no use of this. The German and the Jewish minorities did. Thereby the Jewish group had become an ethnic unit and thus it came about that within the Estonian Republic the Jews living in Estonia had their own cultural autonomy and therefore they were different in an ethnic respect from the remaining inhabitants of the country. Since this ethnic group

THE PRESIDENT: Well now, just a moment. What is all this leading up to? Now, you have established this ethnic group. Now what's this got to do with putting them into an internment camp. You said it was easy for you to put them into a camp and then you gave us this long explanation. How, bring those two points together.

THE WITNESS: Yes, the conclusion of this train of thought is the following: since this is a special ethnic group, and since this ethnic group had adopted a hostile attitude for the most part against Germany, as the Estonians had reported to us, it seemed justified to undertake such an internment and analogous to the same directives which of war.

THE PRESIDENT: Well then, because of their hostile attitude you found it comparatively easy to confine them to this internment comp. That's what it sums up to?

THE WITNESS: Yes.

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Q. Well then, it didn't break your heart too much to put them into an internment camp, did it?

A. I said before that I was against an internment, or rather, that I had personal misgivings about it without establishing individual guilt.

Q. Well now, you have given us two propositions. One, that it was with great regret and reluctance and against your own feelings, and with many misgivings, that you put them into an internment comp; that is one proposition. Then, you give us a long story on how because of their ethnic quality, becuase of the homogeneity of opposition to the German forces, that it was entirely justified to put them in camps; so, on one side your heart is broken; on the other side it is very gay. Now, if you can reconcile those two statements, please do so. If not, which one do you now give us an representing the facts?

A. Your Honor, in this statement is a matter of additional points of justification for these measures, the way it was discussed by me and my collaborators at the time, and the way it is described in an affidavit.

Q. Please answer the question. Were you satisfied to intern these Jews or not?

A. I had personal misgivings.

Q. Even though you know that they were enemies of the state?

A. In the case of those with whom it had been individually established.

Q. (interposing) Now, you put them all into one group. You went to great pains to tell us how you put them into one ethnic group.

A. Your Honor, I had no misgivings about those in whose cases it had been established concretely, but I had misgivings, not legal misgivings, personal misgivings with COURT II CASE IX the others.

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Q. How many Jews did you put into that camp?

A. There were about eight to nine hundred.

Q. Did you examine each and every one of these eight to nine hundred to determine whether he was personally hostile to the Reich or not?

A. No.

Q. Then, how could you decide whether one should be confined or not, as against another.

A. Your Honor, perhaps I expressed myself mistakenly. I did not say that this was decided in each individual case,, but I said that all had to be interned, even those in whose cases no investigation had been made, and that is those cases I did not personally confirm it; nevertheless, it was unavoidable.

Q. Did you investigate the cases of any of these eight hundred to nine hundred Jews?

A. Yes.

Q. How many?

A. I cannot give you the number.

Q. Well, why can't you give us the number. You have given us a great deal of details on the Jews, why can't you tell us how many of the eight to nine hundred you examined.

A. I cannot remember this figure.

Q. Well, was it five hundred?

A. If I must give an estimate, it may be about eighty to one hundred.

Q. You examined eighty to one hundred; why didn't you examine the other eight hundred, or seven hundred? Do you think it was fair to examine only eighty to one hundred and not examine the rest? Is that your idea of justice?

A. For two reasons this did not happen, Your Honor.

Q. Why?

A. One reason is that Stahlecker had urgently ordered a COURT II CASE IX general internment, and I could not evade this.

Q. Why did you evade it for the eighty to one hundred you did examine?

A. There the investigations took place because in connection with other cases which were investigated, namely, Estonian communists, with whom these Jewish cases were connected; and, therefore, interrogations had to take place.

Q. Did you examine these eighty yourself?

A. I personally took no investigations myself.

Q. Then you didn't examine the case of any of these nine hundred?

A. I personally did not make any investigations; that was not my job.

Q. So you committed these eight hundred to nine hundred Jews without knowing whether they were enemies of the Reich or not; but only because they formed part of a racial group which had been condemned by Stahlecker and those above him; is that right?

A. Yes.

THE PRESIDENT: All right; proceed. BY DR. VON STEIN:

Q. Witness, is it correct that you faced a choice at that time, a choice of either executing Jewry on the basis of the Fuehrer Order; or, to intern Jewry.

A. After the conferences I had with Stahlecker, and which I have described, an internment was no longer avoidable under any circumstances; the compulsion of the order was too strong.

Q. Witness, is it correct that first of all an order for the execution of the Jewry existed?

A. Yes, of course, I have already said that.

Q. Is it also correct that you chose only the internment COURT II CASE IX of the Jews?

A. Yes, I have said that too.

Q. How was it possible that you were able to delay these internment measures for so long?

A. When Stahlecker addressed me on this question, I repeatedly asked him to agree to a delay in the executions for the reasons which I have already given. He was in a state of unrest about this, but he finally consented to it; but he ordered that the internment was to be carried out immediately, and the executions as soon as possible.

Q. What reasons did you give Stahlecker in order to accomplish a delay?

A. First of all, during a conference in the second half of July, I asked him to agree to a delay-BY THE PRESIDENT:

Q. When was this conversation with Stahlecker?

A. In the second half of July.

Q. I thought you told us it was July 4th at Riga. Was there another conversation?

A. That was one conversation, and the next one was around the 20th of July in the Staff Headquarters of Stahlecker.

Q. When did you first speak to Stahlecker when he arrived in Riga?

A. That must have been on the 1st of July.

Q. Then you spoke to him on July 4th again?

A. On the 1st of July we did not speak about the Jews in Estonia, but on the 4th of July we did speak about the Jews in Estonia, yes.

Q. Then the 1st of July he said nothing about the Jews.

A. No.

Q. On the 4th of July he did.

A. Yes.

Q. On the 20th he did.

A. Around the 20th of July, yes.

Q. Yes, Did he ever tell you in all these conversations anything like the following: It was intended from the very beginning to obtain the cooperation of the reliable population for the fight against vermin, that is mainly the Jews and communists? Did he refer to the Jews as vermin?

A. The word vernim was not used.

Q. I am quoting from his language. He never used that word to you?

A. No. The word Vermin in reference to Jews I never remembered that Stahlecker used this.

Q. Did he ever use a more tender term?

A. I cannot remember the expressions he used. I cannot remember that he spoke of them any differently than Jews.

THE PRESIDENT: Proceed. BY DR. VON STEIN:

A. Through the fact that Stahlecker in this conference on the 20th of July agreed that the executions not be carried out by members of the German commandos, but by Estonian home guard volunteers, a first delay of the executions was achieved. BY THE PRESIDENT:

Q. Do I understand you to say that Stahlecker agreed that you were not then to execute any Jews?

A. This conference had about the following content. I told him what the conditions were in Estonia, and that thus far -

Q. (Interposing) Please tell us what he said to you with regard to the Jews. Were you or were you not -

A. (Interposing) Your Honor, I think it is necessary in order to explain this answer that I say what I reported COURT II CASE IX to him and what I suggested to him.

Q. How long did you talk to him on July 20th?

A. I cannot say how long we discussed the Jewish question in this conference.

Q. How long was the conference?

A. About two hours.

Q. Very well. What did you tell him? And what did he say to you about the Jews, but give it to us briefly.

A. I told him the following. Thus far no Jews had been executed in Estonia. No pogroms had taken place. This was not possible in Estonia; I would ask him to agree that my commando members would not carry out any executions in Estonia, but that this would only happen on the part of volunteer members of the Estonian home guard. Stahlecker agreed to this. Thereupon I told him -

Q. (Interposing) Well all right; you know that he agreed to that.

A. Yes.

Q. Yes. All right; let us -- and he still had that thought when you dismissed him or he dismissed you after the two hour conference?

Q Now, do you know that in his report he said, "In accordance with the basic orders received, however, the screening activities of the Security Police had to aim at a complete annihilation of the Jews"; was he telling you one thing and reporting something else? discussed with me and what he discussed with others and what he reported to Berlin.

Q Well, then, that is what I say. He told you one thing and reported another to Berlin.

Q You think that it wasn't his purpose to execute the Jews?

Q Then his language wasn't exaggerated. He did believe in the annihilation of the Jews? but he made an exception in your case. Was he especially fond of you?

Q So to that extent he made an exception in your favor?

Q Which ones?

A For example, in Lithuania and Latvia, even after Stahlecker's death, tens of thousands of Jews were still living.

Q Wait. You say he made these exceptions after he died? not have all Jews executed in his entire area.

Q Well, he might not have gotten around to it. That doesn't mean that he exempted them, just because there are some Jews living. It doesn't mean that out of the kindness of Stahlecker they are still alive, does it?

A I didn't get the question.

THE INTERPRETER: I will repeat it.

THE PRESIDENT: Don't bother repeating it.

Q (By the President) Did Stahlecker give every evidence of executing the Fuehrer Decree or not?

Q But he made an exception in your case?

A No. He only approved a delay. The Fuehrer -

Q He made an exception to the extent he didn't say to you, "You execute these Jews at once." He made that exception.

THE PRESIDENT: Proceed, Dr. Von Stein.

THE WITNESS: Shall I continue with the question

DR. VON STEIN (ATTORNEY FOR THE DEFENDANT SANDBERGER). No, I will ask you another question. BY DR. VON STEIN:

Q What were your thoughts during these repeated delays? Did you keep on hoping that Hitler would revoke the order or limit it?

A Yes, I kept on hoping this? BY THE PRESIDENT:

Q Did you ever hear any of Hitler's speeches?

Q And did you hear what he said about Jews? Jews. hope that he would change his views about the Jews? spoke about the Jews.

Q You knew something about Hitler's character, didn't you, that he was very adament and perservering once he made a decision?

the papers.

Q You didn't know he was a very resolute man? some instances it was said that he was not resolute and soft.

Q So you thought he might soften in his attitude about the Jews? That's what you were hoping for?

A "Soft" is not the right expression here.

A I was hoping --- May I continue? he had given, or at least restrict in.

Q Do you know whether he ever did restrict it or revoke it?

Q Who told you this?

A I cannot remember exactly who it was. It might have been the Chief of my office in the RSHA, but this is not quite certain.

THE PRESIDENT: Proceed Dr. Von Stein. BY DR. VON STEIN (ATTORNEY FOR THE DEFENDANT SANDBERGER): would revoke this order?

THE PRESIDENT: He has covered that now. You don't need to ask a question just because you have it on your book there, if it has already been discussed.

DR. VON STEIN: No, Your Honor, I ask this question, because the Tribunal just asked this question about Hitler and a possibility of revoking the order and I asked the defendant this question.

THE PRESIDENT: He gave his views on it. He hoped that Hitler would revoke the order. He was living in hope. You can't blame a man for living in hope.

DR. VON STEIN: Your Honor, this answer is not sufficient. I would like to extend this answer and --

THE PRESIDENT: All right, we'll see what you get now. You ask the question.

Q (By Dr. Von Stein) Witness, you have told the High Tribunal that you had the hope that Hitler would after all revoke this order concerning the Jews. Could you give us any thoughts which induced you to adopt this hope? hope that the reaction abroad in reference to the execution of such measures in the Eastern front would be so strong that the German diplomats would report about this in such terms that Hitler in regard for the reaction abroad would come to change his opinion, not in reference to his opinion but in reference to the Jews, that is, the danger of the Jews in reference to Bolshovism, but in the sense that in the sense that in consideration of the reverse reacgion abroad would be stronger.

THE PRESIDENT: Dr. Von Stein. Now you may like this answer. You may think it is pretty good and that's the reason why you want to have him keep telling you this same answer, but I heard all that take place yesterday. I have that here in my notes. He hoped the order would be revoked, and he considered the thoughts --- I have it here in my notes that he hoped the order would be revoked. He considered the thought that if the order were executed the reaction would be so strong that Hitler would be compelled to revoke the order. Now he is merely giving you some warmed up --- warmed over agin, nothing fresh in this answer.

DR. VON STEIN: No, Your Honor. The question was a result of the High Tribunal's question whether he hoped that the delays would--

THE PRESIDENT: It doesn't mean that because the Tribunal asks a question that you must begin at the beginning all over again. This question has been answered. Let us go on to something else.

Q (By Dr. Von Stein) Witness, what thought did you yourself have about the questions of the order, in view of your own person?

than that.

THE PRESIDENT: You see, Counsel, even he is tired of that same question now.

Q (By Dr. Von Stein) Witness, you said before, when explaining the contradictions in the Operational Report III that you were not in Estonia when the report was made out and sent out. When was the Reval report which is contained in Operational Report III sent out from Reval?

A It was within the monthly report for September. The monthly report had to be sent out, had to be in Riga at the latest on the 30th of September, that is why it must have been made out on the 28th of September.

Q Where were you at that time? south of Leningrad for the purpose of doing auxilary service and helping the Army.

Q Since when were you absent from Estonia?

Q Why did you leave Estonia? beginning of the assignment. I was not Director of the Security Police at the time as my most important position. At this time during the second half of September the main job which I had, which I had to do for the 18th Army was, of course, not in Estonia, but in the combat area of the 18th Army, that is to say, in the area south of Leningrad. Everything else also was of secondary importance to the Army. The Army headquarters demanded that I was to be present with a subkommando in the combat area. Stahlecker gave a corresponding order.

Q When did you return to Reval from the combat area?

October. in Estonia? deptuy. these reports go on automatically without you? nor did I make any reports to Reval. In Reval everything went on without me. According to the conditions there, because of bridges having been blown up or for other reasons, the distance Reval Leningrad was about 10 hours by car. Between Leningrad and the Estonian frontier, there was a Russian Army corps. Therefore, the traffic between the details south of Leningrad and Estonia was very difficult and I wag not constantly at one place, but I was on the road frequently and difficult to get in touch with. On the Order of Stahlecker, my deputy who remained in Reval had complete power to continue my office there. That I was supposed to command my office in Reval from my office near Leningrad would have been almost impossible, just as impossible as when an infantry division is divided into two parts and one half is 300 kilometres away from the other and the communications are bad. Then the commander cannot command the part which is 300 kilometres away.

THE PRESIDENT: Dr. Von Stein, I think perhaps this might be a good point at which to recess until tomorrow morning. The Tribunal will be in recess until 9:30 tomorrow morning.

(The Tribunal adjourned until 14 November 1947 at 0930 hours.)

of America, against Otto Ohlendorf, et al.,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America, and this Honorable Tribunal.

THE PRESIDENT: You may proceed Dr. von Stein. BR. DR. VON STEIN:

Q. We were discussing the operational report No.111. Witness, didn't you have any knowledge of this report, or of the facts mentioned in it?

A. In the period of time which was the last to be discussed yesterday, that is, when I was with my subcommando south of Leningrad, the period between 11 September and about the 3 October, I had no knowledge of this report , and of the facts reported in it only sofar as they had been ordered before my departure on approximately 11 September, namely, that the general internment of the Estonian Jews was to take place during the following weeks.

Q. That did your deputy report to you when you returned to Reval between the 3rd and 5th of October about the question of the executions of 450 male Jews contained in this report?

A. He told me the following: Around approximately 26 September there had been a telephone call from Department IV of Einsatzgruppe in Riga, with an order of Stahlecker that in the monthly report which was going to be given within the next two days everything was to be reported what had so far been done with regard to measures against the Jews, including all special treatment so far taken. My deputy answered that so far no special treatment had been undertaken. Thereupon, another telephone call came after a short time from Department IV in Riga with the strict order of Stahlecker to immediately undertake special treatment of considerable number of Jews, and to report about this immediately in the monthly report about to be made out, that is, within two days.

Q. What did your deputy do thereupon?

A. He passed the order on for immediate executions, namely , of those executions which are mentioned in this report. He passed this order onto the Estonian Home Guard, to the Central Offices of the Home Guard in Reval, and he had the executions supervised by German officials of Department IV.

Q. What happened to the Jews who were interned?

A. They were transferred in 3 November 1942, upon my orders from Camp Harku near Reval to Pleskau.

Q. What reasons induced you to take this step?

A. In October and November 1941, Stahlecker again ordered the carrying out of the executions. It was of special importance to him to be able to report tint Estonia was free of Jews. Since I knew that it would be decisive for him to be able to make this formal report, I tried to bring the Jews into a camp which was outside of Estonia, thereby he was in a position to report that Estonia was free of Jews. Another point of view was that the introduction of a civilian administration in Estonia was to be expected very soon, at the beginning of December, 1941. The installation of the civilian administration was to be connected with the High SS and Police Leader. I knew that the latter was a confidant of Jeckeln, and that for this reason alone it would be impossible that the 500 Jews would remain in a camp near Reval.

Q. What finally did happen to these internees?

A. In the second half of January, or in the first half of February the Higher SS and Police Leader Jeckeln travelled through Pleskau.

He heard by a coincidence that there were about 500 Jews fromEstonia in this camp in Pleskau. He was very much irritated by this, and gave the order to the subcommando-leader in a very severe and emphatic form to carry out the executions of these 400 or 450 Jews immediately. The subcommando-leader did this immediately without my knowledge.

Q. When did you hear of this operation of Jeckeln's ?

A. A few days after this event I came by coincidence through Pleskau on an official trip. On this occasionthe subcommando reported to me about this action.

Q. Can you remember the date?

A. I cannot remember the exact date, since I have no definite documents for this. But it must have been in the second half of January or in the first half of February.

Q. What makes you conclude this?

A.I remember that between this event and the death of Stahlecker, a few weeks passed, but during this time I no longer spoke to Stahlecker for at that time Stahlecker was in Lokvia for six to eight weeks, that is, with a commando of Einsatzgruppe-A with the 16th Army, north of Welikie Luki, and there Stahlecker had the military command himself of this commando. In the middle of March 1942 he was severely wounded there, and died shortly afterwards.

Q. Witness, you have testified that the main part of your personal work was not concerned with Security Police matters , but with other fields? Do tell us what these were?

A. In the first three months, that is to say , from July to September 1941, until the first days of October I was mainly commandoleader for the 18th Army, and to a very large extent occupied with the Auxilliary service for G-II of the 18th Army. This was the primary task from the viewpoint of the Army. For this reason I had during most of my time a constant liaison officer with Army Headquarters. In the

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Q. In order to picture your political and critical mission, please give a few examples with which you were concerned, especially, and primarily in your reports?

A. Primarily I worked for the equalization in the status of the Estonians with the Germans, in principle and in practice. I tried to influence the German agencies, especially the German Civilian Administration in order to increase the automony to be granted to the Estonians in the economic field. I believe that this question will not be of interest here in detail.

Q. Your total mission in Estonia ten was to look after the security of this area. Will you please tell us how far these missions you have just described to us are concerned with the security of this area, that is, with the missions which were given to you?

THE PRESIDENT: Dr. Von Stein, you said in the very beginning of your question, "Your total mission in Estonia then was to look after the security of this area." Now that is stated as a fact, is it?

DR. VON STEIN: Yes, Your Honor.

THE PRESIDENT: Very well.

DR. VON STEIN: Witness.

THE WITNESS: The work of Department II about which I just spoke was to try through their Political and Critical Reports, to show all those points which contributed to the discontent of the population, and to fight all these tendencies on the part of the German Administration, which would lead to such discontent. The line of thought in reference to the security of the area was that the security of the area taken care of through our Estonian forces would be all the better, the less there was discontent on the part of the population with regard to the burden of the war. Therefore the question of the equal status of the Estonians and the Germans was not only a material question but also a psychological one. I think that answers the question.

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DR. VON STEIN: Your Honor, I have no further questions on direct examination.

THE PRESIDENT: Any defense counsel desire to cross examine the witness?

DR. GICK: Dr. Gick for the defendant Strauch. BY DR. GICK:

Q. Witness, were you in the beginning of November 1941 when Strauch was ordered to take up duties in Riga, leader of Special commando I-A with headquarters in Reval?

A. Yes.

Q. Could Strauch, who had been appointed commander of the security Police in Riga have, in your opinion, lead the Einsatzkommando II from Riga?

A. In this time, in November 1941, this was not possible. In the course of the Summer 1941 Stahlecker had collected all parts of Einsatzko mando II and III. All those who were not needed to fill the area of the 4th Army, and later into the 16th and 18th Armies; later on these elements of Einsatzkommandos II and III were committed with the 16th and 18th Armies, that is to say, also in the areas south of Leningrad, and in the area of Locknia, north of Welirie Luki. These commandos were lead directly by Einsatzgruppe-A, and not from the rear area in Riga or anywhere else.

Q. The Staff of Einsatzgruppe-A was in Krasnbgvardeisk?

A. The Staff of Einsatzgruppe-A was in Krasnbgvardeisk, yes.

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Q. Witness, when was the agency of command of the Security Police and SD for Latvia installed in Riga?

A. What was automatic together with the introduction of the civil administration. When that happened in Latvia, I don't know exactly. It must have been around July or August.

Q. July or August 1941?

A. Yes, 1941.

Q. Since Latvia is the southern neighbor of your area, Estonia, you probably knew the name of the then commander in Riga. Did you know at this time that Strauch was commander of the Sipo and the SD in Riga?

A. I must say here that during this entire period in the fall of 1941, that is also in November 1941, to which your question refers I was not in Riga and had no official contact with the agency of the command of the Security Police and SD in Riga. At that time in November 1941, evidently through a coincidence, I didn't hear anything of Strauch being the commander there. My recollection is only that first Sturmbannfuehrer Barth was commander in Latvia, and then after him Dr. Lange.

DR. GLANCY: Just a moment. The witness is attempting to testify to something which he has just admitted he couldn't possibly know. He is going by recollection. He says he had no contact with Riga at that time and he heard nothing about it; therefore, he cannot be qualified to answer.

THE PRESIDENT: What about that, Dr. Gick?

DR. GICK: The question refers to whether the witness had knowledge of this and the witness has to give us the reasons for this, and the reasons are essential.

THE PRESIDENT: Ask him what is the basis of his knowledge. BY DR. GICK:

Q. Witness, since Latvia was your neighboring area, would you have had to find out that Strauch was commander of the Security Police and the SD in Riga if he had been commander there for a lengthy time?

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A. Yes.

THE PRESIDENT: Just a moment, Dr. Gick. I don't know why you put it in such a hypothetical form, "if" and "suppose." Just ask him if he did know that Strauch was in Riga and had charge of a certain outfit.

DR. GICK: Your Honor, I think the witness has already answered this question. He did not know. Thereupon, I made it hypothetical, would he have had to know it.

THE PRESIDENT: He answered that, "yes."

DR. GICK: Yes.

THE PRESIDENT: Well, then, in effect he didn't know but he should know.

DR. GICK: Actually, he didn't know; at least, that is what he says, but -----

THE PRESIDENT: Witness, did you know or didn't you know?

THE WITNESS: I did not know that in November 1941 Strauch was commander in Riga.

THE PRESIDENT: What furthermore do you want than that? That is very definite.

DR. GICK: Yes, the question suffices, but I only wanted to know why he did not know. The question was answered by the witness. I have no further questions in this respect. BY DR. GICK:

Q. Witness, did you know that in Latvia all Jewish matters were in the hands of the chief of Department 4, with the commander of the Security Police and SD for the Eastern Area Lange?

DR. GLANCY: Just a moment. I would like to know which commando the witness was in command of. He can't be an expert on two. He tells us he was much occupied with many, many different, diverse affairs in Estonia. He left Latvia, to the best of my knowledge, around the 4th of July, the 5th of July.

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THE PRESIDENT: Just what is your specific purpose here, Dr. Gick? What is it you are trying to get from the witness?

DR. GICK: I wanted to find out from the witness whether on the basis of his knowledge of the conditions in Latvia and in Estonia, which are after all connected, whether he knew or knows by whom the Jewish matters were handled, and the witness has this knowledge, and therefore he can answer the question.

DR. GLANCY: The witness has gone to great lengths in his direct examination to impress upon the Tribunal that he spent only an hour or so on the morning of the 4th of July with Stahlecker.

THE PRESIDENT: Fifteen minutes he was with Stahlecker.

DR. GLANCY: Thank you, Your Honor, fifteen minutes. In that time even a person of giant intellect cannot absorb so much.

THE PRESIDENT: How do you know he doesn't have a giant intellect?

DR. GLANCY: That I don't know, sir.

THE PRESIDENT: All right now, if he knows, he will tell us; if he doesn't know then he can't tell us. So now ask the witness if he knows. If he knows about this Jewish situation in Latvia, he is qualified to answer. Find out if he knows. BY DR. GICK:

Q. Witness, did you know how the Jewish questions were handled in Latvia, and by whom they were handled?

A. About conditions in Latvia itself during the time which you have in mind, I don't know any details. But with regard to the handling of the Jewish matters in the staff of Einsatzgruppe A in Riga or with the commander of the Security Police and SD in Riga, I knew that the Chief of Department 4, Dr. Lange, apart of Stahlecker, was the driving force with regard to the Jewish question. And this was at the time when the first Einsatzkommando leader of Einsatzkommando 2 Bartach was in Riga. Otherwise, I don't know any more about this question.

Q. Do you also know that Dr. Lange, after he had become command er in Latvia, continued to handle these Jewish matters?

A. Do you mean in the staff of the R D S. ?

Q. Yes, on the staff of the commander.

A. Yes, that is correct.

Q. Witness, in the document Book 3 A, page 17, Exhibit 110, Document No. 3372 -- there is your affidavit of the 19th of November, 1945, --In this affidavit, under No. 4, you said that Strauch had participated in the Jewish persecutions in Minsk. How did you come to make this statement?

A. This is an interrogation of November, 1945. During the course of which I was asked, among other things, for names of people who had anything to do with Jewish Questions. During these interrogations, we did not speak of any specific events or of any occurrences apart from my own case, but we spoke exclusively of names. In this case, when the name Strauch was mentioned, there was no talk of any specific event.

Q. This affidavit was taken by Mr. Wartenberg. You heard here in court how Mr. Wartenberg described the procedure of taking down affidavits.

THE PRESIDENT: I think you are going to ask a long question on a fact which is not established. You said that this affidavit was taken by Wartenberg. It was not taken by Wartenberg. Do you have the affidavit there before you?

DR. GICK: Yes, I have it with me.

THE PRESIDENT: Well, who took the affidavit?

DR. GICK: I read here, English, "Subscribed and sworn to before us at Oberoursel, Germany, 19 November 1945. Signed, Rudolf Urbach and Rolf Wartenberg."

THE PRESIDENT: Well, it seems that Wartenberg only translated the document. Dr. Glancy, isn't that the situation or isn't it? There is a phrase even in Wartenberg's declaration which is a little confusing, we must admit.

DR. GICK: Perhaps the witness can clarify the question.

THE PRESIDENT: Well, all right, who took this affidavit, witness, from you?

THE WITNESS: Both of these officers, Captain Urbach and 1st Lt. Wartenberg, were both present. Mr. Wartenberg had carried out the interrogation, the interrogation which led to the interview, and called Captain Urbach in and both participated in the taking of the oath. They were both present.

THE PRESIDENT: I beg your pardon. You may proceed, Dr. Gick. BY DR. GICK:

Q. Witness, would you please describe how this interrogation was carried on?

A. The procedure wasn't exactly the same as it was here in the courthouse and as it was described by Mr. Wartenberg; that is to say, no oath was taken before the interrogation as it was done here, and it was not recognizable that this was a matter of an affidavit. It could not be seen either that the possibility would be granted to refuse the testimony or to refuse giving such an affidavit.

Q. Was this affidavit submitted to you after preliminary discussion, all written our, ready for your signature?

A. It was brought in by Mr. Wartenberg in a typewritten form, like the others. He brought in four statements on that day.

Q. Therefore, you cannot and could not designate Strauch as being in connection with any definite measures concerning Jews in Minsk?

THE PRESIDENT: Dr. Gick, that is not a question, it is a statement. You will have to put a question to the witness. BY DR. GICK:

Q. Witness, may I ask you to give an answer about this?

THE PRESIDENT: No, you can't, because that was a very leading question. You practically gave the answer yourself. You must put a question to the witness, not a statement.

DR. GICK: Your Honor, am I not in cross examination? I am ask--ing the question in cross examination.

THE PRESIDENT: Very well, I beg your pardon. Dr. Von Stein has been here so long a time that I thought it was still the direct examination in effect. The question will be permitted. You may answer that statement question.

DR. GICK: May I please repeat the question, Your Honor? BY DR. GICK:

Q. Witness, therefore you couldn't and cannot mention Strauch in connection with any concrete measures against Jews in Minsk?

A. No, I cannot, and this statement was not supposed to express that, either. During the interrogation, we did not speak of any definite fact, only of the fact that Strauch was commander in Minsk. BY THE PRESIDENT:

Q. Witness, you signed this statement voluntarily, didn't you?

A. I wasn't under immediate pressure.

Q. You signed this statement voluntarily, didn't you?

A. In such a case, it is a relative question, this being voluntary.

Q. Did you sign this statement voluntarily?

A. I did not refuse because of force.

Q. Did you sign this statement voluntarily?

A. Yes.

Q. All right, now. The fact that you were not sworn, although the statement very definitely indicates that you were sworn, would have no effect on your telling the truth, would it? Let me put it another way. The statement declares that you made the statement under oath.

A. Yes.

Q. Now, did you make it under oath?

A. Yes.

Q. Then what is declared here in this statement is correct, is it not?

A. To the best of my knowledge.

DR. GICK: Your Honor, my I say here that the witness has made a statement about this matter which I was able to get from the witness by questioning him.

THE PRESIDENT: That is not quite clear to the tribunal. Please make it a little clearer what you have in mind.

DR. GICK: I mean to say, Your Honor, that the witness here on my questions has given a clarifying answer about the point at issue in the affidavit is to be interpreted. And that was the purpose of my question.

THE PRESIDENT: I still don't know what you are trying to put over to the Tribunal. You say you put him a question. Very well, and he answered it. Now, what is it you are complaining about? I don't quite understand you.

DR. GICK: I beg your pardon, Your Honor, I don't want to complain. I merely wanted to point out that today the witness has given us an explanation to this affidavit.

THE PRESIDENT: And the explanation is what he just told the Tribunal, that to the best of his knowledge and belief what he put into the statement is correct.

DR. GICK: Yes, that is what he said here.

THE PRESIDENT: Well, are you satisfied with that?

DR. GICK: Yes, of course.

THE PRESIDENT: All right then.

DR. WALTON: Your Honor, it may shed some light on this. I gathered from the good Doctor's remarks that he was trying to plead entrapment.

THE PRESIDENT: Dr. Walton, Dr. Gick is satisfied; Sandberger is satisfied; the Tribunal is satisfied, so why stir up muddy waters?

MR. WALTON: Maybe he pleads entrapment on cross examination. I couldn't tell him how to proceed.

THE PRESIDENT: You are entirely at ease? You are satisfied, Dr. Gick?

DR. GICK: Yes, Your Honor.

BY DR. GICK:

Q. Witness, over and about the more knowledge of Strauch's presence in Minsk -- did you have yet any real knowledge about the conditions and circumstances in Minsk?

A. No, I had no such knowledge as I never was in Minsk, and Strauch was never in Reval. During the entire time during which Strauch was in Minsk, no mutual official conference ever took place with the B.D.S. in Riga where we might have been both present. During this ontire period, I only met Strauch once or twice by coincidence in Riga. We only exchanged a few unimportant words; at any rate, we discussed nothing official. In other respects, I had no knowledge of events in Minsk either.

Q. What does the question mark mean after the name "Strauch" where the designation "SS and Police Leader" occurs under No. 4 of the document?

A. This question mark means that here, at the request of Mr. Wartenberg, the name of the SS and Police Leader in Minsk was to be put in as being mainly responsible for the orders of Jeckeln. But I could not remember the name, so that this space had to remain blank.

Q. In Document Book 3 A, German page 15, Document No. 3681-I don't know the exhibit number--how did this statement come about with regard to agencies of the Security Police and SD in the Ostland in which it is noted commander in White Puthenia, Strauch---

DR. GLANCY: May it please the Tribunal, if he is adapting this as his own testimony, I wish he would introduce it. We have never introduced this document. It is not before the court; however, we have no objection to its introduction by the defense.

THE PRESIDENT: Well, Dr. Gick, you will be permitted to cross examine from the document, but if you intend to have the Tribunal accept it as a document, then you would need to introduce it yourself, because it has not been introduced.

DR. GICK: I beg your pardon, I did not know that this had not yet been introduced as an exhibit of the Prosecution.

THE PRESIDENT: No, it has not been introduced, out we will allow you to question from it since it bears Sandberger's name and therefore is relevant.

DR. GICK: May I repeat the question then? BY DR. GICK:

Q. Witness, in this document which is in Document Book 3 A, German Page 15, and which bears the number 3681, there is a sketch on which it is noted "Commander of the Security Police for White Ruthenia, Strauch, around the first of November, 1942." How was this sketch made out?

A. During an interrogation, I was asked for about five or six names of leading personalities in the area of the Eastern Area, and the interrogating, officer took them down and put them into a sketch which he was making at the same time. As far as I remember, the name Strauch was not mentioned. During the next interrogation, the sketch as it is submitted hero, was submitted to me for my signature and then the name Strauch was put in in the box headed Einsatzkommando 2. I objected to this, that as far as I know Strauch was not the commanding officer of Einsatzkommando 2, but that he was commander of the Security Police for white Ruthenia. Thereupon, I was requested by the interrogating officer to put the name Strauch into the box headed White Ruthenia and I was also requested to give the dates which have reference to this sketch. I answered that this sketch the way it is now refers to many various dates, and therefore I was requested to specify the various dates and put them in. I answered that I really could not remember from when on Strauch has been commander in White Ruthenia, that I could only remember that it was--must have been--sometime in the winter of 1941 to 1942. The interrogating officer said that the exact date was of importance and we agreed that we would put in about from the first of January, 1942.

had a very general recollection that somewhere in the winter, '41-'42 Strauch was there.

DR. GICK: Thank you, I have no further questions.

DR. SCHWARZ: Dr. Schwarz for the Defendant Jost. BY DR. SCHWARZ:

Q Witness, I would like to ask you a few questions. Mr. Jost was your commander and Einsatzgruppe chief, I think, from the end of March to August or beginning of September, 1942. When was your first official contact with Jost? refer to the treatment of Jews?

A Yes. We briefly mentioned the Jewish question also. question at the time? wanted to make the attempt to achieve that an exception be made for the Reich Commissioner Eastland or the Baltic States as far as the Jewish measures or the Hitler Order were concerned. Therefore, right from the beginning he wished that for the time being nothing should happen to the Jews.

Q What did you say yourself to this? Jews existed. I briefly implied to him how this had happened, and I also told him that from my part I considered this Jewish order as impossible. conversation with the Higher SS and Police Leader, Jeckeln? statement made by Jocelyn to the effect that Jeckeln would possibly even have SS men shot who were not spiritually up to the demands of carrying these measures out.

the time?

A Yes. Jost told me that in Riga around May some hundred Communist had been released or were to be released. He asked me how this situation was in Estonia and I told him that in February an amnesty had already taken place and another amnesty was expected for August. tion. Was the leadership of Einsatzgruppe A in the area of the kommando of the Security Police and SD separated organizationally? A was commended from the staff headquarters in Krasnoguardeisk, and the agency of the Security Police Commander was commanded from Riga. Estonia? Revel the Commissioner General as Chief of Civil Administration, then the SS and Police Leader in Reval, and furthermore the commander of the Security Police in Riga. spent in Riga how often you reported to your above-mentioned three superiors? times a week; to the SS and Police Leader somewhat less; to the Commander of the Security Police about every six weeks. Litzmann, as far as Security Police measures were concerned?

Q Could you give me some examples for this?

A This is, first of all, a question of Communist matters. Many applications by relatives reached Litzmann, and there were cases in which women described their economic position very impressionably and for which the Commissioner General ordered a release of the men concerned.

Also the amnesties which I have mentioned took place because of a decree promulgated by the Commissioner General.

DR. SCHWARZ: Your Honor, I have no further question.

THE PRESIDENT: Very well. Any other cross-examination on the part of defense counsel?

(No response).

THE PRESIDENT: Mr. Glancy, you may take up the cross-examination on behalf of the Prosecution.
BY MR. GLANCY:

Q Dr. Sandberger, when did you join the Party? been a National Socialist for ten years, is that correct? during your student days, you were a speaker on behalf of the National Socialist movement, weren't you?

A I don't know what you mean by the expression "speaker". speeches, yes, that is correct. the ideologies and aims of the National Socialist movement? attitude toward the Jews, is that right?

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of the Party. There were some circles which did not approve of the things which some other circles of the Party did in the Jewish question, or said.

Q When did you join the SS?

Q That was unified organizationally, wasn't it? ideologies and aims, is that right? SD especially.

A Yes. I only joined the SS by way of the SD.

Q I don't want any explanation now. When did you join the SS?

Q Did you join the SS on the 11th of May, 1935?

A No, that is not correct. I joined the SS on the 1st of January 1936.

Q Were you born on the 17th of August, 1911?

Q Both these dates are contained in your service record. Do you have any comment on that?

A I think that is a mistake. The date of May, 1935, which is contained herein, is not the date of my membership in the SS but is the time when I first got in contact with the SD. I am quite sure of this.

Q When did you join the Party?

Q Couldn't that have been the first of December, 1931?

Q When did you apply to become a member of the SS?

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but my recollection is not quite exact.

Q I think that your recollection fails you. A record is more permanent than a memory. On the first of December, 1931, you became a Party member; on the 11th of May, 1935, you became a member of the SS.

A Pardon me, Mr. Prosecutor. This is doubtlessly a mistake. I am absolutely certain that the date of May, 1935, is the date of my first contact with the SD and that on the 30th of January, 1936, I received my admission into the SS, retroactive to the 1st of January, 1936.

Q What is your SS number? of May, 1935. Do you expect us to believe that they got the number correctly; they got your birthday correctly; your Party record correctly, and make a mistake on the date of your joining, which is all important as far as seniority is concerned?

A Mr. Prosecutor, I don't know whether it says on that record that this is SS membership for this date. I am absolutely certain about this, that I was admitted to the SS on the first of January 1936. My superior at that time, Dr. Scheel, is here in the house and will be able to confirm this at any time. Einsatz mission in the East, were you aware of the attitude of the National Socialists towards Jews and Communists?

A May I ask, Mr. Prosecutor, which concrete attitude you mean? For example, I did not know, and I never heard of this, that prior to 1941 Jews were systematically sent in concentration camps in Germany, in case that is what you mean.

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A No, I was not aware of this. I didn't hear about this. I already said yesterday that I learned that after the 10th of November, 1938. Jews were sent to concentration camps, but that they were again released after a few weeks, as far as I heard, and I know nothing, that later, until 1941, in any case, any systematic internments into concentration camps took place for Jews.

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Q When did you join the SD?

A My first contact with the SD was in May, 1935. That is the date which you mentioned before. that your first contact with the SD was in january of 1935.

A Mr. Prosecutor, this is a mix-up. In January, 1936, is the membership into the SS and May, 1935, the contact with the SD. I am absolutely certain of this. subervience, subordination and obedience to the Fuehrer, did you not? of allgiance to Hitler as a justice official, and in 1936.

A I am asking you about your oath as an SS man. Answer that question.

Q Can you repeat it for the Tribunal?

Q Give us the sense of it. You must remember it. You lived with it for years.

A The sense of the oath is as follows: That I vowed allegiance to Adolf Hitler, and to the superiors designated by him.

Q Didn't it say complete faithfulness without questions, wasn' it more likely the sense of it?

Q I am asking you if that was not the sense of the oath?

Q Was it or was it not?

Q Was it or was it not, yes or no?

A Pardon me, may I ask you to repeat the question?

GGladly, Wasn't it the sense of the oath that you swore, vowed complete and utter obediance to the Fuehrer and to such superiors as he would place over you, without question?

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happened later.

Q Did you take the oath?

Q Do you consider an oath binding?

Q Did you consider this oath binding at that time?

Q Were you released from that oath? the two speeches, one in Berlin and one in Pretsch, were you aware of the Hitler order to exte minute Jews, Communists, gypsies and other asocial elements? people whenever and wherever found it they were Jews, Communists or other elements odious to the German people? it that way, that anywhere where I would go this happen through my kommando, but I was convinced that a delay was possible.

Q I didn't ask you that. Was it your understanding that the wording of the order was such that would call for the annihilation and extermination of the Jews, gypsies, Communists? obedience to any order, or any commander, that Hitler issued or placed over you, do you not consider that it was necessary that you obey this order? them, to give them my reasons whatever they were, to delay the carrying out of this order.

Q Let us stop right hero. Let's remove the other people between you and the Fuehrer. The Fuehrer issued the order. He issued it through channels, that is true, but in effect he issued it directly to you. You had sworn an oath. Was this oath binding?

Q Did you receive this order? given?

A It wasn't given to me in such a way that I had to carry it out by a certain deadline, that is, immediately or within four weeks. any clause or stipulation as a part of the order that it would be up to your discretion that you could not, or that you could fail to carry out this order? ed not much interpretation. This order that you would kill the Jews; you would kill the Communists, you would kill the gypsies, or anything that was concerned or deemed a threat to security of the German Army. the Jews, Communists, etc.? officer of the grade of Obersturmfuehrer, or major, receives an order from a Brigadefuehrer, or a General, that he will question this order? General and requests him for certain reasons not to have to execute this order for the time being.

Q What were the orders that Stahlecker received?

people whom you have enumerated, but no deadline was given Stahlecker either, and at the time of Stahlecker's death, that is after nine months tens of thousand of Jews lived in the area of Stahlecker.

Thus, he also did not carry out the order to its complete extent in nine months, either. remained is because you needed manpower?

Q Wasn't the final aim or the final solution that all Jews, wherever and whenever encountered, when they served no further usefulness or if they ever were considered a security threat, would be annihilated?

A May I ask do you mean the aim of the Fuehrer Order?

A I didn't quite understand the question.

THE PRESIDENT: Mr. Glancy, would you mind refraining the question after recess?

MR. GLANCY: Yes, sir.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed.

MR. GLANCY: Thank you. BY MR. GLANCY: final solution of the Jewish problem in the East was a complete and total annihilation insofar as possible after they had served their purpose as workers and laborers.

A There was no period of time, no time limit; no deadline.

Q I didn't ask you that; just a moment. I didn't ask you that. Answer my question as it was phrased .. yes or no.

A If you attach particular importance to the word immediately. I must say no.

Q I didn't say immediately. I said the final aim or final Solution.

A In that case I misunderstood; yes. May I ask the question to be repeated? I understood immediately; I am sorry. aim or the final solution of the problem, insofar as it concerned Jews, Gypsies and communists in the East, their total extermination and annihilation whenever it was possible after they had served their purpose as laborers?

Q You answered yes to the question; did you not? BY THE PRESIDENT:

Q When did you think -- excuse me for interrupting, Mr. Glancy -when did you think that deadline might finally be decided upon? when the territory had been reached all Jews should be eliminated. There was no time limit; no deadline. tion should take place; that is right?

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Q When did you think that finally a deadline would be established; that from a certain day then the order had to go into effect? of the Chief of the Einsatzgruppe or at least within Einsatzgruppe A; it might have been different with other groups.

Q Yes. When was the deadline reached in your case? order that could not be contradicted at the end of September, referring to one part.

Q Very well. So that then the Fuehrer Order was held in abeyance from the early part of June until the end of September.

A No. Stahlecker knew that; it becomes quite evident from the reports that it was not absolutely carried out. I will also explain the reasons why.

Q Just a moment, please; just a moment. You said the order did not have to go into effect immediately. Then I asked you when it did go into effect. You said about the end of September; is that right? of us at the end of September.

Q Now just a moment, please. Answer the question. We lose so much time because you pay no attention to the question. The order did not require you to put it into effect immediately, you tell us; is that correct?

Q All right. Now, when did you finally get an order; when did the order finally go into effect so far as you were concerned?

Q Well, you told us before the end of September; is that date incorrect?

not totally, not for all of them. finally to exterminate Jews, as the Fuehrer Order indicated?

Q Well, what month? The autumn has three months?

Q Well, all right; the first of September was the first time that you finally were called upon to give some effect to this order; is that correct?

Q All right; now, I am coming back to that original question, so far as that Fuehrer Order, as far as you were concerned, was held in abeyance during the months of June, July, August, so that this order was held up three months so far as you were concerned. should not be carried out.

Q Then it wasn't out into effect for three months.

THE PRESIDENT: It took me a long time to get that very simple question. Proceed, Mr. Glancy. BY MR. GLANCY: as far as you are concerned with regard to the Fuehrer Order, you must have at all times been aware that at some time you would be called on to carry out this order; is that correct? order must be obeyed; is that right?

A Yes; there was no deadline though. Time. I am sure that my question have been clear and concise, where there is only one interpretation.

We won't waste any time if you will be a little more responsive to my question; consider it and answer it as it is asked, please. You knew that as far as the Hitler order for the extermination of Jews, Gypsies and communists was concerned, that at some time you would be called upon to carry this out; is that correct?

Q Very well. You have said that you were a commanding officer of Sonderkommando I.-A; is that right?

Q You broke your commando up into five Amts divisions, or offices; is that correct?

Q You had subordinates in each one of these offices; is that correct?

Q You issued orders and expected them to be carried out? Sonderkommandos to exterminate Jews, Gypsies and communists; is that right?

Q That was their main task; that was the reason for their formation and organization -- the security of the army's rear area and the extermination of Jews, Gypsies and communists.

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commando.

Q Answer the question yes or no; then you may explain after you have given an answer. Was that not the reason for the formation, of the organization of the Einsatzgruppen, the extermination of Jews, Gypsies and communists because they were considered a threat to the security of the army? gruppen existed as organizations at the time when the Fuehrer Order had not been made known that their assignment would be that of a general securing of the rear army territory.

Q At some time you received the Fuehrer Order; is that right? mination of the Jews, Gypsies and communists? felt so inclined you obeyed them; otherwise you relegated them to a position of secondary importance.

A No, that is not how it was. There were many cases in which we hesitated to carry out the orders.

Q Hesitancy is not what I am driving at here. You were to carry out the Hitler order as the Chief of Sonderkommando; is that right? 1941? delay.

Q You said that the deadline was reached in September? 2nd of September, he wasn't very well, and he gave me that order.

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When hegave me that order he agreed to a delay on that date. At the end of September, in my absence, he repeated this order at my office, but he did not refer to the execution of the whole, but only of a part of it.

Q This order in part?

A I wasn't there. Therefore, I couldn't obey it either in part or wholly.

Q Did the members of your commando obey it? carried out whether you were present or not?

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Q. Did you realize this when you assumed command of Sonderkommando I-A?

A. Yes.

Q. Was it carried out in part by you or by your subordinates in Sonderkommando I-A?

A. By my subordinates, yes, without, my knowledge; in my absence.

Q. Were you in command of Sonderkommando I-A?

A. Yes.

Q. How many Jews were killed in September by members of your command?

A. The report says that there were four hundred forty; I do not know from my own knowledge.

Q. Did't you say that your subordinates reported to you as to this affair?

A. After I had returned.

Q. Did they report to you?

A. After I had returned from the Leningrad area, in the beginning of October they reported to me, yes.

Q. They reported to you?

A. Yes, after it had happened. BY THE PRESIDENT:

Q. Did you reprimand them for doing it?

A. I couldn't reprimand. At least the next day...

Q. (Interposing) I didn't ask you whether you could; I asked you whether you did.

A. No.

Q. Did you talk about it at all?

A. Yes.

Q. What did you tell them?

A. I said that I regretted that this order which he knew was going to be delayed by me, that it had to be

Q. Did you tell him not to do it again?

A. I had no choice to do that because he was transferred the next day to Berlin.

Q. Well, during the conversation that you had with him, when you expressed your regret this had happened, did you say: Now, I don't want you to do this again.

A. Your Honor, that was not topical at the time because this man was about to be transferred to Berlin anyway.

Q. Witness, answer me: How old are you?

A. Thirty-six years.

Q. Very well. Now, a man thirty-six years of age ought to be able to understand a question and to reply to it directly.

A. Yes.

Q. Now, you talked with this sub-commando leader when you returned?

A. Yes.

Q. And you expressed your regret that he had executed these Jews in your absence.

A. Yes,

Q. How long was this conversation with him?

A. I don't remember that.

Q. Well, a matter of minutes?

A. I think it must have been longer.

Q. Well, about how long? An hour or two?

A. Approximately an hour; it could have been an hour; I have no recollection at the moment.

Q. Yes, all right. Now, all I asked you was that in this conversation which you had with him, did you or did you not say to him: I don't want you to do this again.

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Don't tell me about where he went the next day.

A. No, I didn't tell him.

Q. What is the name of that Sonderkommando leader?

A. It wasn't the Sonderkommando leader; it was my deputy; his name was Carstens.

Q. Spell that, please.

A. C-a-r-s-t-e-n-s-.

THE PRESIDENT: Very well, proceed Mr. Glancy. I am sorry to have interrupted.

MR. GLANCY: Not at all, Sir. BY MR. GLANCY:

Q. Dr. Sandberger, where were these Jews located when they were executed in September?

A. The larger part was in the camp Harku; a few had been left outside in the sectors where they had been living and in the prisons.

Q. How were they collected in these concentration camps?

A. They were arrested by the Estonian home guard on my initiative.

Q. On your orders?

A. Yes, on my orders.

Q. When did this take place?

A. It must have been during the last days of them.

I had given it in fact on the 10th of September, as Q. You gave this order which collected these defenseless Jews in concentration camps?

A. Yes, I gave this order.

Q. As a result of this collection, these Jews were shot?

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A. That was one of the primary conditions; the main condition of course was the order by Stahlecker.

Q. You didn't possibly understand my question. I said as a result of the collection of these Jews into central points, they were shot.

A. No, the shooting was the result of the order by Stahlecker. It is correct that of course they could not have been snot if they had not seen collected and arrested. The arrest, of course, I ordered.

Q. They were shot?

A. Yes.

Q. You collected these men in the camps?

A. Yes, I gave the order.

A. You knew that at some future time they could expect nothing out death?

A. I was hoping that Hitler would withdraw the order or change it.

Q. You knew that the probability, bordering on certainty, was that they would be shot after being collected?

A. I knew that there was the possibility, yes.

Q. In fact, almost a certainty; isn't that right?

A. It was probable.

A. N ow, at a later time you collected more Jews didn't you?

A. No, the order that Jews and Estonian should be arrested, that all Jews within time should be arrested, I ordered on the 10th of September approximately, and this order was carried out gradually during the months September and October. It was one order by myself which was issued on the 10th of September.

Q. Was there not another occasion on which, according to you, you were absent and more Jews were shot?

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A. Yes,

Q. You collected these Jews according to the basic order, didn't you, the Hilter order?

A. Yes.

Q. And then they were shot; they were shot; isn't that right?

A. Yes.

A. By members of your command?

A. From Estonian men who were subordinated to * y Sonderkommando leaders; that is also myself then.

Q. Then, in fact, they were shot by members under your command?

A. Yes.

Q. Was not in fact........were not in fact the Estonian political police and the criminal police subordinated to you?

A. They were under my supreme command at least as far as the factual matters were concerned.

Q. If you needed aid in carrying out executions, you could so order these forces, couldn't you?

A. No, excuse me. It wasn't the Estonian police which carried out the executions, but it was the Estonian home guard.

Q. Was the Home Guard known as the Selbstschutz?

A. Did you ask me whether the Home Guard was known as Selbstschutz? We haven't translated that.

Q. Thank you, that is what I wanted to know. Wasn't the Selbstschutz or Home Guard under your command?

A. No, he was under the.......he was subordinated to the local commandatura of the army.

Q. Did they army; strike that. Were you aware of an order given to the Wehrmacht that they should not execute 14 N ov 47-M-DC-10-6-Sampson (Hildesheimer) Jews and Gypsies and communists but leave that to the forces of the SIPO and SD as that was their primary task?

command? must have teen 950 Jews shot, or 960.

Q They were shot? as such, that they were really dangerous? were also Jews who individually and personally were not a concrete danger for the security.

Q As a class, they were not actually dangerous, were they? by the Reich leadership and that therefore this order had been given.

Q Then, as a result of the Fuehrer Order these Jews were shot? their collection and their final solution, their deaths?

A No. I did not regard this order as satisfactory. I gave no order regarding their death or shooting. I have said so.

Q You knew the purpose of the Hitler Order, did you not?

Q You ware in Riga on the 4th of July, 1941?

A Yes, in the early morning hours. I left Riga at about nine o'clock in the morning. destroyed and Jews would he murdered on this day, is that right?

A No, he did not tell me on the very day. He told me later. I explained that explicitly. on that morning, that is, on the 4th of July, he told you of his intent to murder these Jews?

A No. When we had this discussion, he said that in Estonia this should happen, in Estonia, and that he caused it himself; of the 4th of July in Riga, he only told me later on the occasion of a discussion on the 20th of July in Novaselia at Staff Headquarters and I said that yesterday.

Q You took a Teilkommando from Riga to Estonia, is that correct?

Q How many subkommandos did you leave in Riga?

A I did not leave a subkommando in Riga. It is possible that individual men were left there, because their vehicles were out of order. They had the order to join us. Parts of my kommandoes, these individual men, were there, but not a whole kommando. left in Riga, report to you that they had joined in an action against the Jews in Riga? Riga, otherwise they would have reported to me about it, but they did not. Therefore, they did not take part. Stahlecker himself told me that this action was run exclusively by the Latvian Auxiliary Police without the help and aid of the Germans and without his own initiative. It is possible that his interpreter took part in it.

Q It was supervised by the Einsatzgruppen, was it not?

A That I don't know. in Riga took part in this action? himself told me that this action had only been carried out by Latvians. Therefore, no man of my own kommando could have taken part in it, no interpreters, even, because I did not leave any interpreter in Riga.

Q I was not quite so specific as to mention interpreters. Are you aware of the Einsatzgruppen Situation Reports?

by the Latvian Police carried out an action against the Jews?

Q In a few moments I'll come back to this and refresh your memory. On page 41 of the English, in Document Book II-A, in view of your basic mission, how do you interpret the following: "The following places will still be searched by our Security Police: Wenden, Dorpat, perhaps Pskow -Teilkommando of Sonderkommando I-A"?

A I interpreted it thus. Stahlecker put into this report that he gave his directives to me to the effect that subkommandos should be sent to these mentioned places to deal with tasks of Security Police. and execute Jews, Communists, and Gypsies, is that not right?

Q You again were an exception? the very first days these measures were carried out. I am not the only exception here. Document Book II-A, page 26. Sandberger, I call your attention to the list of figures and locations under the original page 16.

A May I ask what document that is? I have forgotten the document number.

A Yes, and what page, did you say, what page of the original?

A Thank you. In the German text there is only one sentence concerning the Lithuanian Auxiliary Police. I do not thirds that is what you mean.

Q You have Document L-180?

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Q Page 16 of the original?

Q Do you see there Enclosure 8?

A No, there is no Enclosure 8, but I may say, Mr. Prosecutor, I know the figures which should be in Enclosure 8, as for as they concern Estonia so that I can answer your question. 684 executed total, 1,158. that correct?

A No, no. Until the 25th of October. and I have tried to show that this figure 650 Communists contains also amongst other things the number of 405 Communists in Dorpat, according to the Report of Events 88, which was under the subordination of the Field Commanders and the responsibility of the Field Commanders. This figure is contained in this. I am myself concerned with the figure 650 Communists. According to my approximate estimate this is a number which is less than 100. That is my responsibility, because this included everything that happened in July and August by the Field Commander and the Estonia Home Guard, and the Communists; as far as the Jews are concerned -

Q Just a moment. Let's be a little more responsive. As part of this figure some Communists were murdered under your command in Estonia is that right? or is some other agency responsible for part of these? carrying out an order, the order by Stahlecker at the end of September, by my officer of operation.

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My kommando is responsible. No, I did not carry it out.

Q Members of your command carried it out? Home Guard. The Estonian Home Guard carried this order out.

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October, 1941, were you not? German.

Q You will notice: "The following orders were therefore issued by us." This under the heading of "Sonderkommando I-A." "The arrest of all male Jews over 16; the arrest of all Jewesses fit for work between the ages of 16 and 60."

Q "Who were utilized to work in the peat bogs."

Q Did you have Jews working in the peat bogs?

Q You ordered that they would work in the peat bogs?

Q Did you also order the arrest of all Jews over 16? residents of Dorpat and vicinity in the synagogue and a tenement house in Dorpat? order where they should be accommodated. I only found out later that they were put into the synagogue and I reproached them for that.

THE PRESIDENT: Mr. Glancy, in reading Item 2, did you say, "Jews" or "Jewesses"?

MR. GLANCY: "Jewesses", Sir. BY MR. GLANCY:

Q You recognized this report as coming from you, do you not?

A No, it did not come from myself. I was absent for three weeks. The report was made at the end of September, on the 28th of September, approximately, and I was south of Leningrad at that time and I was not in charge of any subkommandos in Estonia, or, at least, of parts of any subkommandos in Estonia.

Sonderkommando I-A?

Q Were you relieved of the command of I-A?

Q Then you were responsible for those Teilkommandos in Estonia? and during this time I was not in charge personally of the Sonderkomnandos in Estonia. Consequently, I could not be held responsible for them. in October of '41?

Q Do you recognize this order?

A Excuse me, what order?

Q This report. The orders for the arrest of all Jews, the working of the Jewesses in the peat bogs, quartering of the female Jewish residents.

A No. I just said that the accommodation of Jewesses in the synagogues or in the vicinity of the synagogues, I did not order. I did not approve of the housing in the vicinity of the synagogues, when I found out about it, but it is true that I gave the internment order for all Jews in Estonia, approximately on the 10th of September. This should have been carried out gradually.

Q You approved of the arrest of all the Jews, didn't you? You ordered it, in fact?

Q You approved of 60 year old women working in peat bogs, didn't you?

A I was told that this was not heavy work. The suggestion was made by Estonian officials who knew these conditions and who were acquainted with them.

Q You approved of it? disapprove of it.

Q You knew of it? females in synagogues?

Q But it was all right to work them to death in a peat bog?

A Excuse me, Mr. Prosecutor. The work in the peat bogs does not refer to Dorpat, but that concerns the camp Harku near Reval. Here in an old institution -

Q Just a moment. Just a moment. I am not concerned with the location, merely with the truth and the facts. You said that you approved of the working of 60 year old women in peat bogs?

A In the case of Reval, this was approved, yes. In the case of Dorpat this did not come up at all. of concentration camps to accommodate more Jews?

Q You knew what their fate must be as a result of this, didn't you?

Q Didn't you know the Hitler order?

Q Didn't it follow if they were collected, they'd be shot?

Q The certainty was there, wasn't it?

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it is 108 of the German-

A May I ask you what document it is?

Q I read here on page 5 of the original under "Communism" "With the exception of one, all leading Communist officials in Estonia have new been seized and rendered harmless." What is your interpretation of "rendering harmless" as far as it applies to the Communists?

Q What is your interpretation of this phrase "Rendering harmless"? they were probably executed.

Q This is dated the 14th of January, 1942? 1942? time, weren't they?

A Only the leading officials are being described in this. The leading Communist functionaries were rendered harmless, yes.

Q How many leading officials were there? and who, with the exception of one, were arrested, are meant definite people's Commissars and members of the Central Party of the Estonian Socialist Republic, as they were listed in an enclosure to the Document 1180; the number of the personalities to which your question referred may have been 6 or 7%. you see that?

Q That means 1,000 were shot?

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Q Did you know of it? Do you remember it?

Q Then at one time at least, you knew of it?

Q Were you in Estonia then?

A Yes, hut they were not shot on my own responsibility. I am only responsible for 350.

Q You are responsible for 350?

Q That will be enough. In Document Book III-A, page 13 of the English -- I will withdraw that Question. In Document Book II-A, page 49 of the English -

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: Yes.

THE PRESIDENT: I think the hour has arrived. Would you mind deferring that until our next session?

MR. GLANCY: Not at all, Sir.

THE PRESIDENT: The Tribunal will now be in recess until Monday morning at 9:30.

(The Tribunal adjourned until 17 November 1947 at 0930 hours.)

Military Tribunal No. II in the matter 0930-1630, Judge Michael A. Musmanno,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal No. II is now in session. God save the United States of America and this Honorable Tribunal. There will be order in the Court.

DR. GAWLIK (for the defendant Seibert): Your Honor, on Saturday I could not talk to my client because all the cells we usually have our discussions in, were occupied. For this reason I would ask you to permit me to have the defendant Seibert excused this morning so that I may talk to him in order to prepare his defense.

THE PRESIDENT: It is entirely satisfactory, but suppose we reach him some time this morning, as is not unlikely; it is entirely agreeable to the Tribunal that Dr. Gawlik speak with his client this morning, but in the event we should reach his case before the morning terminates, then of course he would need to be immediately available.

DR. GAWLIK: Yes.

THE PRESIDENT: Suppose we do this then: suppose that we allow him to go to the room where you will confer with him until recess time. The defendant Seibert will be excused from attendance in court so that he may confer with his attorney until recess this morning; that is to say, until about 11:15. The Marshal will attend to the details.

MR. GLANCY: Thank you, Your Honor. BY MR. GLANCY:

Q Dr. Sandberger, when on Friday the prosecution posed the question to you -- the question was: "Was the Estonian self-defense movement under your command?"

, the record will show that you replied in the negative. Do you wish to reconsider at this time and perhaps reframe your answer?

A The answer exactly is as follows: the Estonian homeguard came under the field and local kommandatura of the army. The security police was authorized to give them directives via the field and local kommandatura. That is what I said in the direct examination and that is the exact answer. group was under your command?

A No, Mr. Prosecutor, it was subordinated fully to the field and local kommandaturas of the army. I was merely authorized to pass on orders to them via these kommandaturas -- of course, only with their agreement. using or employing the Selbstschutz, that was always done, was it not?

Q Then in effect they were subordinate to your commandos? mentioned and as I have also mentioned in the direct examination.

Q You speak of limitations. Might we not pay that there were no limitations, for any order which you gave you fully expected to have it carried out by this group?

A No, Mr. Prosecutor, I could not expect that absolutely because the field and local kommandaturas could come between, and of course so could the homeguard by getting in direct contact with the field and local kommandaturas and thus they could avoid contact with my own office. protection troops and were refused?

Q Thank you. Do you recall the name "Bleimel?"

on Jeckeln's orders; you say that these executions were carried out by your Chief IV or your gestapo chief, is that correct?

A I don't know what affidavit you're referring to at the moment.

Q It's in Document Book III-A, Page 13 in the English.

A Is it No. 3844, Mr. Prosecutor? That is Document No. 3844. but merely about the subcommando leaders in Pleskau. IV.

Q They were subordinate to your command? yes.

Q He was never subordinate to you?

Q And they ordered the shooting or execution of these Jews?

A May I ask what document number that is?

Q That is NO-3340. We see that it reads, on Page 3 of the original: "In the course of the general Security Police screening of an additional part"-

A Pardon me. I can't find the document. May I ask the number again?

QNO-3340. It's Page 118 of the German.

Q I will repeat. "In the course of the general Security Police screening of an additional part of the civilian population around Leningrad, 140 more persons had to be shot."

Do you recall that incident when you were on the Leningrad front with the Teilkommando?

A I am sorry, I haven't found the place yet. It isn't 3340, is it?

Q That is right. It's on Page 3 of the original German. 119 and has only two pages.

Q I am very sorry. Do you have it now? Pare 3 of the original. A No, it only has the reported events on 173, and in this copy that I have it only has two pages.

Q That is all that I am going to refer to. Do you see the paragraph beginning: "In the course of the General Police screening of an additional part of the civilian population around Leningrad"'? about at all. But it says: Location: Krasnowardeisk, and behind that there are a few dots, so that means an omission.

A Behind that there are a few dots then the words: Excerpt from Page 4 of the original, and again a few dots, and then there is a line about Einsatzgruppe B that there are no reports having been received from Einsatzgruppe B; and what you are mentioning, I cannot find.

THE PRESIDENT: Mr. Glancy, you better send for the photostat then.

THE WITNESS: I am sorry. It's one page -- the page proceeding that and it has the caption: Correction. BY MR. GLANCY:

Q Do you have it now, Mr. Sandberger?

A Yes, I beg your pardon, it is the proceeding page. It has the caption: Correction. I cannot say anything, however, about it.

Q Can you answer one or two of my questions? Can you recall for what basic reason these people were considered a threat to security?

A I can't remember it because it did not fall under my jurisdiction.

Q Were you in Leningrad? October 1941; but this is areport concerning Berlin, dated the 25th of February 1942. February?

Q Were any of your command there? least as far as food and administration went, but not as regards the actual work of Department III and IV.

Q Was this one of your Teilkommandos? was subordinate to the Commando Krasnowardeisk. This report was neither issued by myself nor did it go through my channel at all, nor did I order it.

Q I want to ask you a hypothetical question. If you had a person subordinate to you who was continuously rebellious and dilatory in the carrying out of orders which you issued, would you consider him worthy of promotion? to me the reason which would have initialed his not carrying out of a directive or an order. er to be carried out. Isn't that military activity and custom?

to give me reasons which would have caused his hesitancy in carrying out an order, or his refusal to carry it out.

Q How long were you in command of Sonderkommando I-A? January or the first of February 1943. I don't know exactly. superiors if you were reluctant to carry out orders whichhad been issued to you? gave him the reasons why I asked for a delay.

Q Please answer my question. Would it not become apparent to your superiors if you had been dilatory or delaying in the carrying out of standing orders?

A It did strike my superiors that I did so. That becomes evident from his own reports from Riga and Berlin: L-180 and 111. In these reports it says that I delayed it. can assure you. On the 9th of November 1942, you were deemed so worthy and showed such a soldierly attitude--an attitude of obedience to the Fuehrer and your superiors--that you were promoted to Obersturmbannfuehrer, is that right? were you not? bly. your activities in the east, is that right? grave testimony to the contrary, and I heard other people mention that my activity in the east was looked upon very negatively.

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Of course, there were a few people who looked at it positively, but those were not the ones who had anything to do with my promotion.

Q I see. Let us take a look at a document. It's a recommendation for your promotion from Obersturmbannfuehrer to Standartenfuehrer Did you not say that you were in ill health and therefore were not able to take part in the Wehrmacht activities or to join the Wehrmacht? stated on direct examination that ill health--a rheumatic attack-prevented your joining the Wehrmacht.

A Up to March 1941, yes; then I asked to be released.

Q Released from what? Main Office--in order to join the Wehrmacht.

Q T join the Wehrmacht? unit.

Q I offer Document No. NO-5045, as Prosecution Exhibit 182. In this exhibit, we find as part of your recommendation for promotion -

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THE PRESIDENT: Proceed, Mr. Glancy. BY MR. GLANCY:

Q Thank you, sir. This document, I am sure, will service to clear up many difficulties which we have found in your direct examination. First you stated on direct examination that you were in ill health and therefore were unable to join the Wehrmacht. Under your fitness rating it says, "Fit for general service." Under military service it says, "No service. Deferred for the Reich Security Main Office." Another thing that will serve to clarify, it says, "SS since 11 May 1935, SS No. 272495." When I asked you on Friday when you joined the SS you were adamant in your assertion it was 1936 and the record must have been mistaken. However, here again we see repealed "SS, 11 May 1935." You joined the SD in 1936 in January. Perhaps this will serve to refresh your memory. Going on -

A May I ask where it says so here? Yes, I see.

Q Do you see it now?

A But it is not correct, all the same. My superior at that time, Dr. Scheel, is in prison here. He can be asked about it. The codefendant Steimle who is here in the dock was in Stuttgart in the SD at the time and can also be asked whether I joined the SS in May 35 or in January 1936 -

Q The memory of man might fail. Records, if they are not destroyed, stand. Looking at your decorations we see that you got the Service Medal of the NSDAP in bronze, the Iron Cross, the Meritorious War Service Cross I and II Class with Swords, II Class without Swords, the East Medal, Ostmark Medal and the Sudeten Medal. As part of your recommendation further before that we see "Position: Group Leader in Amt VI-B/3." Then it says: "SS-Sturmbannfuehrer Dr. Sandberger who already in the battle period advocated the movement among the students, is irreproachable in his politics and his world point of view.

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And is without fault in his character. Sandberger is an SS-Leader of better than average gifts, who possesses a particularly good spiritual fluidity and a gift for grasping quickly. He is distinguished by his great industry and better than average intensity in his work. From the professional point of view, Sandberger has proved himself in the Reich as well" and mark this - "as in his assignment in the East." a preferential promotion. Can we not deduce from this that you as an SS man had carried out all duties and all orders as they were given to you?

A I beg your pardon, may I give my comment on this now?

Q I am not interested in your attitude now. It is what it was in 1941.

THE PRESIDENT: Witness, perhaps we got the wrong impression from your statement that you would like to express your attitude now. Well, if it is your attitude, of course that isn't really material, but if you have any explanation to offer to what is contained in this personnel record, of course, you are free to do so.

THE WITNESS: May I do so now. Your Honor?

THE PRESIDENT: Yes, certainly, you can comment on anything that the Prosecution has referred to.

THE WITNESS: As far as the degree of ability is concerned, capable for military service, yes, it is true that in 1944 I was fit for military service. I stated so. I was fit for military service from 1941. I said in direct examination that since 1941, based on my own attempts, I became fit for military service, and that I reported for troop service. It is true that I did not serve, I said so in the direct examination. I said that it was my intention to report for service to the Wehrmacht, first of all to get some basic training before and then to join some frontal unit. It is correct that I was deferred for the RSHA.

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That was in the beginning of the war, and it was against my express wishes. I said so in my testimony. is a mistake in the files. It must be a mix-up, and I think my defense counsel will be in the position to prove this. As far as the general question is concerned, why my superior at that time, Schellenberg, gave such a strong recommendation for my promotion, at the time, in autumn 1944, after it had been refused twice by Kaltenbrunner, as I know from Schellenberg, Schellenberg himself will make a statement referring to this. I may point out that there is a handwritten note at the end of this document to the effect that the Chief of the SS, Himmler, ordered that at the suggested period I should not be promoted, the date is 9 November, 1944, so that I should only be promoted at a later point, the 30th of January, 1945. As far as the reasoning is concerned, Schellenberg will be able to give better testimony as to this to you. Thank you.

MR. GLANCY: May it please the Tribunal, the Prosecution has no further questions.

THE PRESIDENT: Any further redirect examination, Dr. von Stein? BY DR. VON STEIN:

Q I have only one question to put to the witness, Your Honor. Witness, you were questioned during the last days concerning the number of shootings, and you stated a figure of approximately 350. You were going to proceed with your answering this question, but you were interrupted. I think it important that you should give us a suppelmentary statement what people were contained in this figure of 350 Communists, and why and for what reason this hooting took place at all. December, 1941, I would like to refer to the whole extent of what I said in my direct examination. It is a confirmation of suggestions for executions by the Estonian Deliberation-Committee, explicit examinations and investigations according to the lines which I talked about.

That is what I meant to say in my answer.

THE PRESIDENT: Are you finished now with your direct examination?

DR. VON STEIN: I have no further questions to the witness, and I now ask -

THE PRESIDENT: Do you have a question? Very well.

DR. SURHOLT: Dr. Surholt for the Defendant Dr. Rasch. BY DR. SURHOLT: of the English and page 17 of the English text. It is Document No. 3872. It is Prosecution Exhibit No. 110.

THE WITNESS: Excuse me, what page is it in the German book?

Q It is page 17 in the German book. The Prosecution mentioned this document in its case in chief and said that Dr. Rasch was made responsible for the persecution of the Jews in the Ukraine. Do you have the document in front of you? Baltic countries and in White Ruthenia is Jeckeln." Then there are figures, 1, 2, 3, 4, 5, and then it says under 5) "Other information regarding persecution of Jews." Then under "b" it says: "Ukraine. Rasch." Will you please comment on whether the interpretation of the Prosecution in your affidavit is correct and is based on facts? prosecution in the Ukraine, Rasch. The reason why I presumed that Dr. Rasch could give us some information as to this is that I knew that he was the chief of an Einsatzgruppe. Another reason - I had no other reason for my assumption. I can't see that here I asserted any responsibility on the part of Dr. Rasch.

Q Can you confirm any responsibility of Dr. Rasch from your own position?

Q Do you know Dr. Rasch's position in the Ukraine?

A No. When I was asked by the Defense Counsel for Dr. Strauch I said I did not even know about it in Minsk and, of course, I know it less as far as the Ukraine is concerned. the Prosecution and their interpretation of your affidavit?

Q You were in Pretsch also? ed order?

A Yes. I said no in my direct examination and I made an explicit statement concerning this. also in Document Book III-A, Document 3873, page 97 of the German document book. You say in this that in September of 1941 the order came through to shoot all Jews. May I assume from this that there were two phases of channels of orders in the East?

A No, I do not know, Mr. Defense Counsel, whether you were present during my direct examination. May I repeat for your information shortly I learned about the general order in Pretsch. My superior gruppen chief did not wait to see whether I would do anything or whether I would not do anything, but he repeated this order on various occasions. What is talked about here is an explicit explanation of the order in September. It had happened before in July and August, but I mentioned all this in the direct examination.

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THE PRESIDENT: I thought you wanted to say something to me, but apparently you want me to say something to you.

DR. VON STEIN: No, your Honor, I only wanted to put another brief question to the witness which is now based on the new document which is just submitted. May I ask the question?

THE PRESIDENT: Please do.

DR. VON STEIN: In this new document I find an incorrect statement. The defendant was told that it became evident from this document that already in 1935 he had joined the SS. In the copy which I have, it says, "P.G." - that means party member - "since the 11th of May, 1933."

THE WITNESS: This is also wrong because the Party I joined in November, 1931.

DR. VON STEIN: I only want to point out the incorrectness, the incompleteness, of the document. It does not become evident from the document.

THE PRESIDENT: Let us ask the witness directly, when did you join the SS?

THE WITNESS: I was admitted to the SS with effect from 1 January, 1933 - '35 - and my superior was -BY DR. VON STEIN:

Q. Is it true that you are supposed to have been a Party member since the 11th of May, 1935?

A. I am sorry I have lost the document now. Noo I have found it now. I have found it. I don't know what it means. "P.G., Party member since 11th May 1937." I don't think it is usual that somebody says he was a Party member since November, 1931 if it becomes quite evident from the document that he has only joined the Party in 1937. I can assure you that I joined in November 1931. What was the official date, I don't remember.

Q. But I must direct your attention to the second line where it says, "P.G" - that means Party member - "since 11 May, 1935."

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A. I have already explained the dates now, and I cannot add anything.

DR. VON STEIN: I have no further Question, your Honor. BY THE PRESIDENT:

Q. Well then I understand that you joined the SS in January, 1936, is that right?

A. On the 30th of January, 1936, I received the document confirming my joining the SS, which was back-dated to the 1st January, 1936. It was given to me by Dr. Scheel who is in prison in Nurnberg.

Q. Did you join voluntarily?

A. Yes.

Q. Then, when did you join the SD?

A. In May, 1935.

Q. I see. And you joined that voluntarily?

A. Yes.

Q. Witness, did you prepare any reports yourself while you were in the field?

A. You mean whether I wrote, reports to superiors?

Q. Yes.

A. I believe that I must have dictated three or four reports personally.

Q. Yes, in any of these reports which you made did you outline the system of review of cases which you have told us in detail?

A. You mean, your Honor, review concerning Communists, investigations within the actual procedure?

Q. Yes. You told us how each case was examined and tried by-

A. Yes.

Q. Yes. Now, did you make any report on that to your superiors?

A. I reported orally to Stahlecker, also orally to my later superior Jost, and I also showed him the order which I had issued concerning it.

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Q. You had made a written order that these reviews should take place?

A. These directives which I described were contained in an under issued by me which contained about three or four typewritten pages.

Q. Did you ever make that report in writing to your superiors?

A. I don't remember that, your Honor, I don't think so. I may have shown it to Herr Jost.

Q. You have had an opportunity to study all the document books which have been presented by the Prosecution. Have you found in your study any reference at all to this detailed procedure for review and appeal which you have outlined to us?

A. No, I did not find anything at all about this, your Honor. This would not have been approved of in Office IV in Berlin and Stahlecker attached great importance when I reported to him orally that if it was carried out at all, which he agreed to, it should not be emphasized in front of Office IV.

Q. Berlin would rather that you did not conduct these investigations and trials and reviews, is that what we understand from you?

A. Yes, it was not in the line of the Chief of Office IV that matters were being dealt with so thoroughly.

Q. They preferred you would deal more summarily with those who came within the scope of the Fuehrer order?

A. Office Chief IV, yes, would have considered a summary dealing more correct.

Q. Yes. This affidavit which you prepared on 19 November, 1945, NO-3872, was that prepared entirely from memory?

A. Just a moment, your Honor, please.

Q. The one which contains all the names.

A. Yes, the following took place. Herr Wartenberg asked me for such names. I told him that I could not remember many names offhand. Whereupon, he asked me to think about it for eight days in my cell. He gave me pencil and paper and ordered me to concentrate upon this.

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He would have me called after eight days and he wanted me to have a few names by then, and he wanted me to give him then the names. After eight days he called for me and asked for these names, and he himself made up the wording from these names. This is, therefore, the result of an eight-day concentration on this subject only which was ordered by Herr Wartenberg, while in making out the other affidavits I had no opportunity to concentrate as long as that, but the questions were unprepared.

Q. Very well. In these reports we find many references to executions where we find the statement, so many Communists and so many Jews executed. If a Communist also happens to be a Jew, is he mentioned in the report as a Communist or as a Jew?

A. Your Honor, both was possible. According to orders of Einsatzgruppe A, Jews should always be mentioned under the heading "Jews", even when they were communists. But it is possible that other procedures were followed, i.e. that by mistake Jewish Communists were not mentioned under the heading "Jews" but under "Communists".

Q. Very well. Where were you between February and April, 1942?

A. In the time, February, until approximately the 10th of March, 1942, I was in Estonia, From the 10th of March, 1942.

Q. Let us have those dates again, please, now.

A. In February and approximately until the 10th of March, 1942, I was in Estonia in my own field of activities, and approximately from the 10th of March, 1942, I was on an official trip in Berlin, and then I was on leave at home.

Q. witness, let us get it a little more precisely. On March 10th you left to go to Berlin?

A. Approximately the 10th of March. It might have been the 9th or the 11th.

Q. Very well. And now, tell us where you were during the remainder of March.

A. Partly in Berlin on an official trip and partly on leave with my family.

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Q. And when did you return then?

A. Excuse me, I must add something here. Partly, that is three days in March, I was in Prague. By official order, to attend the funeral of Stahlecker. During the last days of March, I don't remember the date exactly, I returned to Estonia, but on the way I fell seriously ill, and from that day on I was suffering from scarlet fever, and I was in the Department for Infectious Diseases in the hospital, Pernau, and I was absent from duty. That was until the first days of the month of May.

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Q About when did you become ill?

A During the last days of March. I can't say the exact date. It might have been the 25th or the 27th.

Q And when did you return to your duties in Estonia?

AAgain I can't say the exact date. It might have been around the 5th of May.

Q Where were you hospitalized? at that time was in a school in Pernau. There I was in the department for infectious diseases.

Q When did you go to Prague?

Q Why did you go to Prague? the Einsatzgruppe with the official order to attend the funeral of Stahlecker in Prague. In order to comply with this order I went to Prague.

Q Stahlecker was buried in Prague?

Q What was the date of the funeral?

A I don't remember the date, it was during the second part of March. March 10 until May 5, is that right, from your duties? 10, on your return? When did you physically return to Estonia? Therefore, in a state of ill health, I was in Estonia in the field hospital.

Q When was that?

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you had placed in Pleskau?

A I don't remember the exact date. As I said in my direct examination, this event took place a few weeks before Stahlecker's death which must have been during the second part of January or possibly in the first half of February. I learned about it a few days after it had happened.

Q When did you say the execution occurred? of February.

Q Well then, you were in Estonia when this occurred?

Q Well, were you there at the time of the execution? The execution took place in Pleskau without my knowledge.

Q That were you doing in Reval?

A That's where I was stationed. That's where my office was, where I usually stayed. I did not know that Jeckeln would go to Pleskau on that very day and would be present in Pleskau.

Q And then when did you actually learn of the execution? official trip during which I also passed through Pleskau.

Q And about when was that?

A Your Honor, I told you I couldn't state a more exact date than the second half of January or the first half of February, 1942.

Q How many days after the actual execution?

A I can't remember that exactly. They were few days, two or three days.

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had taken place? place?

A No. I knew nothing about it. not in Pleskau?

A Yes. They were under the command of the Sub Kommando Pleskau. And the Sub-Kommando Pleskau was under my command.

Q What's his name?

A It was called "Sub-Kommando Pleskau" of the Specific Command I A. Kommando Leader? often at that time.

Q Pleimehl. Did he get in touch with you when Jeckeln arrived? Reval.

Q How far is it from Pleskau to Reval?

AApproximately 350 km by Road. There was practically no telephone connection.

Q How about the Radio System?

AAt the time, the H.W. in Pleskau had no Radio-Station. connection. Does that mean none at all or six or seven?

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there were so many interruptions, that an actual conversation between the offices was not possible, neither at that time nor at another time.

Q Was there any airplane service at all?

Q No military planes available? tell you what had happened? before it occurred?

Q Why not? and therefore I could not reproach him. that no executions were to take place? executed. Therefore this question was not topical at the time, your Honor. camp and left Pleimehl in charge? executed?

A I had told him -- I hadn't given him an order to execute them but this man was most hesitant in every order. He was very soft, and I was absolutely certain that he would never act without having received an order before. This, my opinion of him, was based on my judgment of his character.

He was a very soft personality. execute the Jews. You merely depended upon your knowledge of his character? would never carry out these executions without an order.

Q But he already had the Fuehrer order, didn't he, to execute all Jews just like all sub-commando leaders had? known to him. of this Fuehrer order that Jews were to be executed? I asked him whether he had known about this Fuehrer order. I told him that after all, I had not talked to him about this order, whether some other agency had informed him about it. Whereupon he replied that before he joined my office in October, he had been within the staff of the Einsatzgruppe in Riga and there he found out about this Fuehrer order. I had not known anything about that.

Q Well then, he did know about the order?

Q. Well, you conversed with him when he arrived and you talked about this, and he told you that he had seen the order?

A. Your Honor, perhaps my statement gave reason for misunderstanding. The discussion which I just mentioned happened when he reported to me and told me that Jeckeln had given the order for the execution, and he had carried out the order which was given. Thereupon, I asked him whether he had known about this Fuehrer order, and then he said this to me.

Q. Well, when he first reported to you did you discuss with him his duties?

A. Yes, but these duties, at least in my opinion as I have said, did not concern elimination of Jews. Therefore, I did not discuss the Fuehrer order with him. His duties were mainly concerning tasks of security police, not regarding the Fuehrer order.

Q. And in all your conversations with him the Fuehrer order never was mentioned?

A. No, I did not have many discussions with him.

Q. When you made up your affidavit in 1947, 23 April 1947, why is it that you referred to the period of execution as being between February and April, 1942?

A. Your Honor, the reason is that I had no opportnity to concentrate on the date. I did not have the possibility to deal with these matters so much in detail as I have done during the last few months, and remember things so well. The deadline becomes evident to me based on the following: It was a few weeks before Stahlecker's death which took place the second part of March, and therefore I can now work out exactly that it must have been at that period which I have mentioned. This exact working out did not occur to me then and it seemed to me that Mr. Wartenberg was not so anxious COURT II CASE IX to know the exact date at the time.

Q. That was a very important episode and yet you indicated that it occurred within a two month period. Your memory would have been a little more exact in a thing of that importance, would it not, even if you hadn't sat down and concentrated for eight days on it?

A. I was asked without having had the opportunity beforehand to concentrate upon this question of the date. Mr. Wartenberg did not seem to attach any importance to the exactness of the date, or at least not very much. I told him that I could not remember the exact date and he asked me when had it been approximately, and that is what I told him.

Q. In the personnel report which Mr. Glancy referred to this morning you are praised for possessing the gift of grasping quickly. Could you not have grasped quickly when Mr. Wartenberg asked you the date of this execution?

A. I did not know then, your Honor, that he wanted to know details as to the date, but I told him that I could not exactly remember.

Q. How many were executed that day?

A. That again I did not remember exactly, and I still don't remember it very well, but there must have been about five hundred people, your Honor.

Q. Well, even you returned to Pleskau and found that five hundred persons had been executed without your having been contacted, even though you were in charge, did you not make some report on it?

A. I certainly did not make an immediate report, your Honor, because I intended to report orally to Stahlecker about this event.

Q. And did you?

A. I never had the chance because after a few weeks he die COURT II CASE IX Otherwise it would have happened obviously, but the figure of these executions was reported about in a report which went to Riga but without giving any details.

No doubt there were no details concerning this particular event. That is what I wanted to report about to Stahlecker.

Q. So you never officially complained to anybody about the execution of these Jews?

A. Your Honor, I could not complain to Jeckeln himself. After all, he was my highest chief.

Q. Well, you didn't complain to anybody then?

A. There was nobody there, nobody I could have complained to at that place.

Q. Well, because you couldn't see anybody, because you couldn't talk to anyone, because Jackeln was the only one that you could have complained to and you couldn't because he was your superior, it resulted then that you made no official complaint about this?

A. No, I couldn't do that.

THE PRESIDENT: Any other questions, Dr. Von Stein?

DR. VON STEIN: No, I have no further questions.

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: If it please the Tribunal, I wish to rectify an error on the part of the prosecution, one which was misleading, understandably so, to the defense. In the presentation of exhibit 182 which is NO-5045, in the German copy where it says "Party member since" and then "SS since", on the American copy, if your Honor will notice, it says "Party member", underneath that, the 774980 reentry, then "SS since". However, in the German mimeograph, rather than putting "SS underneath the Party membership, they have made it a ditto mark, sir. However, on the photostat it is clearly apparent that it says "SS" and not "Party member".

THE PRESIDENT: Very well. You explanation will appear COURT II CASE IX as part of the record.

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MR. GLANCY: Thank you, sir.

THE PRESIDENT: Anything further, Dr. Von Stein?

DR. VON STEIN: Your Honor, the examination of the witness, Dr. Mae, was interrupted last Friday, I would now like the opportunity to call this witness to the stand.

THE PRESIDENT: The Marshal will be instructed that during the recess, which is now about to take place, the defendant will be returned to the dock and the witness, Dr. Mae, will be in the stand when the Tribunal reconvenes in fifteen minutes.

(Recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed, Dr. Von Stein. BY DR. VON STEIN:

Q. Witness, I will point out to you that you are still under oath. I have a very few individual questions about the defendant Sandberger. Can you tell me whether Sandberger was often in his office or whether he was often on the road.

A. He was often on the road. It was not easy to speak to him. One had to make a previous appointment with him.

Q. Can you perhaps remember whether in September 1941, Sandberger was absent for a long time from Tallin or from Estonia?

THE PRESIDENT: Dr. Von. Stein, when you say Tallin, it is what we know as Revel; is that correct?

DR. VON STEIN: Yes, Your Honor.

THE PRESIDENT: Yes.

A. Yes, I can very well remember one case.

Q. Why can you remember this case so exactly?

A. It was a case in which I had to negotiate with a deputy of Dr. Sandberger; in the rooms of the former NKVD, a list of agents was found in which very respected people in public life were also contained, and I was to intervene in their favor. I tried to speak to Dr. Sandberger, but he was not there, and I spoke to his deputy several times as to whether it would be possible to release these people since they were able to give their signature only under strong pressure, and I am convinced that they did not do anything bad.

Q Who was Sandberger's deputy at that time?

A This was Mr. Karstens.

Q Why can you remember this name so exactly? whether he was related to this man.

Q Can you remember about when this absence of Dr. Sandberger was? Administration, that is, on the 20th of September, 1941.

Q Can you indicate how long Dr. Sandberger's absence lasted? than a week or ten days, for if it had been shorter, it would have been possible to prevent the arrest of these people, or, at least could have been postponed.

Q Can you remember any other lengthy absences of Sandberger? the exact period.

Q Witness, how large is Estonia? somewhat like Holland.

Q Is there a place named Ussaditsche in Estonia?

A I know of no such place. Ussaditsche is a Russian name, and must be in the Russian territory. army, was any Communist activity still in existence? and leaflets were dropped and agents constantly came in in some way, and they were arrested.

MR. GLANCY: If the Tribunal please, the Prosecution fails to see the relevancy of this line of questioning; however, perhaps Defense Counsel can clarify the connection.

DR. VON STEIN: Your Honor, the relevancy of this question is that I would like to grove by this witness that the Communists who were shot were such Communists who were at that time a danger to the German occupation, and, therefore, the executions were justified. Several documents show that considerable Communist activity existed in Estonia even after the withdrawal of the Red Army. Whether these statements are only contained in the German document books or whether they actually correspond to the truth, that is what this witness is supposed to tell us as an expert.

MR. GLANCY: If the witness is not in a position to testify as to the actions of each and every Communist whether they were guilty or innocent or whether they participated in any sabotage, I do not think he is qualified to answer.

DR. VON STEIN: Your Honor, I assume that the witness will confirm to us that not only so-called convinced Communists were still in Estonia, but that they were activists; and this question is of great importance in this trial, because Sandberger often discussed the question what type of Communists were meant against whom these measures were taken in Estonia. For this reason I consider this question very relevant.

MR. GLANCY: The only relevant testimony that could be heard here is anything that comes from the personal knowledge, now what he heard from Sandberger.

THE PRESIDENT: Yes, we presume that his testimony will be restricted to what he knows personally.

DR. VON STEIN: Yes, I just wanted to mention that. May the witness answer the question?

THE PRESIDENT: You had better put it to him again. BY DR. VON STEIN: was there still a political activity by the Communists existent in Estonia?

DR. VON STEIN: May the witness answer this?

THE PRESIDENT: Well, the answer is very obvious not only because he has told it to us, but because it has been indicated by the defendant and some references to it in the reports also. BY DR. VON STEIN:

Q Witness, please give examples for this?

A Pardon me - examples for what?

MR. GLANCY: One moment, please. The Prosecution, Your Honor, is willing to concede that there was Communist activity there, but the point it wishes to make at this time is that unless the witness is conversant with each and every case of a person who was executed, I can see no relevancy to his testimony at all. I think the point the Defense is attempting to make here is that each and every Communist was killed because he was a Communist, and not only that, had been an active Communist in their sense of the word.

THE PRESIDENT: Well, Dr. von Stein, your question to the witness was whether Communist activity existed after the withdrawal of the Soviet Army.

DR. VON STEIN: Yes. Your Honor.

THE PRESIDENT: In effect he answered yes. That itself is a very general answer. All right now, let's see what you can put in the way of a specific question.

DR. VON STEIN: Your Honor, I wanted him to give examples, cases, that actually the witness knows individual cases which show to what extent this Communist activity in Estonia was carried out. He is to describe things to us which he himself knows from his own personal knowledge and experience.

THE PRESIDENT: And will he then show that these were the ones that were arrested and tried and executed?

DR. VON STEIN: Yes, Your Honor, I assume that the witness will answer this question in such a way that it will show only such cases their crimes they had committed, or that they wanted to commit, they were executed, and even after an investigation, but this goes too far. I want to ask that later.

MR. GLANCY: The only relevancy the Prosecution can see is if in the case of 14,500 executed communists he is conversant with each and every case, all the facts thereof that went into the reviewing authorities.

THE PRESIDENT: Why do you mean that number?

MR. GLANCY: That number is contained in one of the documents, and I just want to use that as a typical example.

THE PRESIDENT: 14,500?

MR. GLANCY: Three thousand released; one thousand shot.

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THE PRESIDENT: He may answer the question.

Q (By Dr. von Stein) Witness, may I ask you to answer it, please? Russian planes dropped parachutists into various parts of the country. At the same time leaflets were dropped. These parachutists were mostly arrested, but I do not know the individual cases about the way the investigation went on further.

THE PRESIDENT: Proceed.

Q (By Dr. von Stein) Witness, I come now to another question. Was there in Estonia a number of people who were active against Germany in a nationalistic sense and for whom an arrest might very well have been possible at that time? towards England. Our whole intelligentsia had that tendency and did not try to hide it, but actually Dr. Sandberger avoided that these people were arrested because of these pro British tendencies or because of nationalistic tendencies.

Q Witness, what was Sandberger's attitude regarding the occupation of people in influential circles who were of a pro-British attitude?

MR. GLANCY: Just one moment. Again, Sir, on the previous grounds of relevancy, the Prosecution objects.

THE PRESIDENT: Well, Dr. von Stein, are you going to attempt to show by this witness that the Defendant Sandberger was really on the side of England in this war?

DR. VON STEIN: Your Honor, I want to prove by means of this witness that the main tasks of the Defendant Sandberger were not in the police matters, but mainly in matters of politics and administration.

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Furthermore, I want to prove that Sandberger conducted himself completely objectively and that he was not one of those who wanted to have his way in a brutal manner, but that he kept in mind the interests of other people who were of other opinions than he was.

THE PRESIDENT: He is charged with the execution of Jews, Communists, Gypsies, and socially inferior people. I don't see where, the English should come into any of those categories.

DR. VON STEIN: Your Honor, it is not the matter of the English people it is a matter of drawing a conclusion about Sandberger's general attitude. England was in a state of war with Germany at that time and, nevertheless, Sandberger did not harm those people or persecute them in any manner who were pro-English. If the witness confirms this, important conclusions can be drawn about the character and conduct of Sandberger. BY THE PRESIDENT: those who had pro-English views, is that right?

Q Did he arrest those who had pro-Russian views?

Q He didn't arrest those who had pro-Russian views? not arrested, but because of their activity.

Q Then he didn't arrest anybody because of their views?

Q Well, then it isn't necessary to talk about whether he arrested those who held pro-English views or not. He didn't arrest anybody because of their views. form of government, it is your impression that he would not arrest him? pro-English views nor anyone holding pro-Russians views. Do you know of anyone who advocated the Russian form of government and hoped that Russia would win in the War and yet Sandberger did not arrest him? Do you know of any such cases? telling us about his character, suppose that Sandberger did hear some one advocate the Russian form of government and state that he hoped that Russia would win the war, would Sandberger arrest that man or not? would win and German would lose the war -- and Sandberger would not arrest him?

A It is possible that he would arrest him. I really cannot answer such a question.

THE PRESIDENT: Proceed, Dr. von Stein. BY DR. VON STEIN:

Q Now, to another point. Witness, were any limitations of the churches enacted during Sandberger's time in Estonia?

A No, Dr. Sandberger personally kept contact with the church authorities.

As far as you observed, Sandberger's interests and activities were more concerned with police activity or more with politics and information service and with administration and economics? very interested in all political questions. political questions put to him by you and be other Estonian officials and by the German Army and the German civil administration? questions, do you consider it possible that he was in a position to bother about other individual matters? difficulties which arose and, in my opinion, not much time was left to him beyond that. BY THE PRESIDENT:

Q Witness, you saw him pretty regularly, didn't you?

Q I How often? Every two or three days, or so? perhaps, but I spoke to him over the telephone almost every day, when I negotiated with him about various difficulties.

Q And during what period was this? When did you sec him, every two or three days? During all the time that he was up there?

A Pardon me. I didn't get the question.

the entire time?

Q How long did he remain in Estonia?

Q You saw him throughout 1942, did you? he was there?

Q Was he there during the first half of 1942?

Q Did you see him during the month of January? in Estonia generally in the first half of 1942, wasn't he? you would know about it, wouldn't you? times, but I do not remember when he was away. the first half of 1942.

Q Now, was he there during the second half of 1942?

A. If the question means that he was there every day, then I cannot answer it with "Yes," but I saw him every two or three days when he was in Reval or in Estonia.

Q. You saw him every two or three days during the first few months of 1942?

A. Yes, I am convinced of that.

Q. Yes, that included the months of, let us say, February and March?

A. I cannot say when he was about, but, if he was there, I certainly saw him.

Q. Well, now, if you saw him every two or three days, he would have to be there, he wouldn't be there in spirit, would he?

A. Yes.

Q. Well, you did see him every two or three days during February and March?

A. Yes.

THE PRESIDENT: All right, you may proceed, Dr. Von Stein. BY DR. VON STEIN:

Q. Let us remain with this point. Did it happen that Sandberger was on furlough during the time he was in Estonia?

THE PRESIDENT: Dr. Von Stein, the Tribunal will instruct you that that is a leading question end is not permitted and you will please not ask a question like that again. That is a very leading question. You ask him a question which does not put the answer in his mouth.

DR. VON STEIN: This question is a general question of whether the Defendant Sandberger was on furlough.

THE PRESIDENT: There was no discussion of furlough there. He has just been questioned as to whether the Defendant was in Estonia during the first half of 1942 and he answered that and whether the defendant was there in February and March and he has answered that, he saw him every two or three days. Now, if he wants to make any modification of his answer that the defendant was there during the first six months of 1942, which he answered very specifically, then that is up to him, but you can't suggest to him an answer.

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DR. VON STEIN: But, Your Honor, I can ask him in some manner which will refresh his memory that he can now say that he remembers a certain period during which time things were different.

THE PRESIDENT: You can ask him generally whether during these two or three years he was there, whether he was absent any time, and he has already answered that question, but if you want to put it again, you may, but you can't specify any particular period and give him practically the answer.

DR. VON STEIN: Your Honor, I will ask the witness the question whether he was away at all at any time and the witness will say, "Yes," without any question, because it is known that every soldier in the course of a year was once on furlough at some time.

THE PRESIDENT: You can ask him whether he was away and ask him when. That's the way to put it.

DR. VON STEIN: Your Honor, this general question maybe not of very great importance, but it is just of importance to ask him at what time the defendant was away and I want to come back to this question. I therefore can only ask the witness a definite question for a definite month when I want to refresh his memory.

THE PRESIDENT: No, you can't do that. This is the way you can put the question, and, it will be entirely unobjectionable. You can ask the witness how long the defendant was in Estonia and how frequently he saw him and was the defendant ever absent. If he answers that question in the affirmative, then you ask him when. That is entirely fair and will be unobjectionable.

DR. VON STEIN: Your Honor, but in order to refresh his memory-

THE PRESIDENT: No, it is not for you to refresh his memory. He is your witness. You called this man. You are not cross-examining him.

Q. (By Dr. Von Stein) Witness, do you know that Sandberger was once sick and was in a hospital in Estonia for a long period of time?

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A. Yes, I know this. He was at Pernau, and I once visited him there, because of questions which could no longer be postponed, but I cannot say when this was.

Q. Can you tell us approximately when it was?

A. I can only say that it was in the year 1942, but I really cannot tell you any more exactly. I believe it was in the summer.

Q. Do you know how long this illness lasted?

A. No, I cannot say that, but it was not for a short period of time.

Q. After this illness, did he return to Germany for a rest?

THE PRESIDENT: Well, now, Dr. Von Stein, you see, now that's a leading question. I don't want you to understand that I am scolding you because perhaps the rules of evidence ore a little different in Germany from what they are in Anglo-American procedure, but that is a leading question. Now, in order to avoid that fault, you can g et your answer just the same, but you must put the question a different way. Now he has answered that the defendant was ill and to his best recollection it was in the summer of 1942. Now you can ask him, after his illness, where did he go, if he knows. In this way, you get the answer and you get an answer which is uninfluenced by the question, but, if you say to him, "Now, after he was ill, did he go home to Berlin to see his wife and children, "well, then, you suggest something very specific to him.

DR. VON STEIN: Your Honor, these characteristics between a leading question and a general question are very hard to distinguish. Every general question can be a leading question. I would have to emphasize some word. This could even be interpreted as a leading question.

THE PRESIDENT: A leading question is only a leading question if the Tribunal rules it so and if we don't say anything and the Prosecution makes no objection, then it is not a leading question, and you got away with it, so don't worry about every question being bad.

DR. VON STEIN: Your Honor, then I understand you to mean that I can continue to ask questions, but that in any case when the Tribunal stops me, this might be a leading question.

THE PRESIDENT: I don't want you to put the burden on the Tribunal all the time, but now you want to know what happened to the Defendant after he recovered from his illness, so just ask him that question. Just ask him what happened after his illness.

Q. (By Dr. Von Stein) Witness, was the Defendant Sandberger frequently on official trips?

THE PRESIDENT: We'll let you get away with that. That is a very leading question, but we'll let you got away with it.

A. I have already answered that Dr. Sandberger was frequently on the road and that in order to speak to him, one had to make a previous appointment.

THE PRESIDENT: You recall, Witness, that you also answered that you did see him every two or three days.

THE WITNESS: Yes, as long as he was present, I saw him every two or three days.

THE PRESIDENT: Please, proceed, Dr. Von Stein.

Q(By Dr. Von Stein) Was Sandberger frequently absent from Estonia?

THE PRESIDENT: Well, now you have to first find out if he knows where the defendant went when he was absent from Reval. You see, you presuppose that he knows where the defendant went and we have no way of knowing whether he knows or not.

DR. VON STEIN: I will ask him later how he knows.

THE PRESIDENT: No, you ask him first.

Q. (By Dr. Von Stein) Witness, I shall stop talking about the theme of Sandberger's absence for the moment and I shall come to another subject. What do you know about the attitude of Sandberger about the question of the equal status of the Estonian people and what examples can you give for that?

A. On the part of German officials, we Estonians were considered very much inferior to the Germans. Dr. Sandberger was in favor of considering us equal and he was one of the few who conducted himself in this manner toward Estonians. After the occupation of Estonia by the German Army and after the introduction of the civilian administration, the tendency began in Estonia to have all the economic enterprises in Estonia taken over by Germans and to discuss Estonians, at least in -

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MR. GLANCY: One moment please: Again, Sir, on the basis of relevancy, we see no connection between his testimony and the charges raised against the Defendant Sandberger.

THE PRESIDENT: That does seem a little general, Dr. Von Stein, a discussion on the economic situation of Estonia.

DR. VON STEIN: Your Honor, my question only said that he was to tell us about the attitude of Sandberger in his fields in Estonia and that he should give us examples for this.

THE PRESIDENT: You asked him his attitude towards Estonians.

DR. VON STEIN: Yes, that is connected Your Honor, with his activity which he carried out in Estonia.

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PRESIDENT: Would you not deny that he had many activities in Estonia. What we are faced with is whether or not he executed Jews, Communists, gypsies, and other social elements, not his attitude toward different classes of people with whom we are not concerned here.

DR. VON STEIN: Your Honor, if the question is doubtful of whether Sandberger ordered the execution of gypsies, Jaws, and communists, then it is important to determine how his attitude was in general, whether one could imagine Sandberger doing such things at all, and in order to establish this character of Sandberger, I asked the witness this question.

PRESIDENT: Well, Dr. Von stein, you see the difficulty is, this, Dr. Sandberger's attitude toward the Estonians as such could be a very commendable one, and yet that in itself Would not exclude the possibility that he executed Jews, so it has no relevancy. If you want to ask him "what was Dr. Sandberger's character, as a gentle person, as a kind person," just that general question, that is permissible, but to ask him his attitude toward the Estonians or toward the Finns, or toward the Lithuanians would not be of any assistance to the tribunal. BY DR. VON STEIN:

Q. Witness, how would you judge Sandberger's character, and what did you hear from other people about how they thought about Sandberger?

A. On the basis of my official experience with Dr. Sandberger, I can say that he was very correct toward us and that he was very accommodating and just towards us. I believe that it might be a good illustration from the Estonian side if I say that Professor Uncorts, the last Estonian Prime Minister and the center of all nationalistic circles, said on the occasion of Dr. Sandberger's recall he was a politician and no policeman; It is a shame that he left for there might possibly be a police regime succeeding him.

Q. Witness, in order to avoid mistakes, I would like you to describe the organization and the competence of the Estonian administration in the various periods of time.

MR. GLANCY: Just a minute. I do not believe the he has as yet qualified as an expert, it has not been shown what position he held and, therefore, we have no way of knowing what his qualifications are to answer that question.

PRESIDENT: Well, there is an even greater fault, and that is the question is entirely too general.

DR. VON STEIN: Your Honor, as for the objection which the Prosecution raised, I mentioned-

PRESIDENT: Well, don't bother about his objections, be worried a little bit about what the Tribunal said. The question is too general, he can't answer it in any way as the question is now.

DR. VON STEIN: About the question of competence, I consider it very important to be clarified in the procedure of this trial.

PRESIDENT: Well, Dr. Von Stein, put a specific question and then we will determine whether he can answer it or not. BY DR. VON STEIN: ties until the 22nd of June 1941?

PRESIDENT: Well, that is too general. In the first place, Sendberger wasn't there before June 1941.

DR. VON STEIN: Your Honor, this is only a brief question, and I only want to briefly note the developmental history of these authorities so that we can get a picture of what power these authorities had later, during the German occupation.

PRESIDENT: He already testified when he was here several days ago as to how first Estonia was free, then the Russians took over the country, then the Russians withdrew--we have that history. Proceed, Dr. Stein. BY DR. VON STEIN: was installed, that is, until the 20th of September 1941, was the Home Guard and the police entitled to undertake arrests and investigations or rather, did they have a right to do that?

A. Yes, as organs of the German field command, they did that.

Q. Witness, in the first few weeks of the civil war, according to your description, there was a great mixup. I now ask you, did Sandberger ever express the desire to you to restore orderly conditions as soon as possible in the Question about the investigation of communists?

MR. GLANCY: This, too, we consider leading, but beside that, we have the objection again of relevancy. We don't see the connections yet, Sir.

DR. VON STEIN: Your Honor, Sandberger said on the witness stand that the proceedings against the communists were all reviewed. Whether this is the case -

PRESIDENT: Why don't you just ask him directly what procedure, if any, was established by the Estonian Government to dispose of cases of individuals arrested for political activity?

DR. VON STEIN: Now Your Honor, the question was not put this way.

PRESIDENT: well, that is the trouble, it wasn't put that way.

DR. VON STEIN: The witness was the highest official of his country. Sandberger came into this country and he found it in a condition of civil war. I now would like to know from the witness what-

PRESIDENT: You have used the phrase, "civil war" very often. What civil war was there in Estonia?

DR. VON STEIN: After the withdrawal of the Red Army when the people of the Home Guard came out from the woods and exercised retaliation against the communists who had murdered members of their families and had committed other acts of violence, these conditions were described by the witness as "civil war", and in order to alter these conditions, a conference took place between Sandberger and this witness. BY THE PRESIDENT:

Q. Witness, was there civil war in Estonia?

A. Yes, on the part of the Estonian population there-

Q. I asked you a question, was there civil war in Estonia?

A. Yes.

Q. What is a civil war?

A. A civil war is a war between two, different segments of the population who have different political opinions.

Q. You must have two difference Governments, must you not?

A. The Estonians who were anti-communists considered the government as continuing to exist, they claimed it could he only prevented by communist violence to continue. Even today the Estonian republic is recognized by the United States of America, and not the annexation by the Soviet Union. Thus there was another power outside of the communist power, but it did not organize this war because it could not exercise any power.

Q. Witness, let's find out something about you. What are you in Estonia right now, if anything?

A. Right now, I am nothing.

Q. Where do you live?

A. In Austria.

Q. Did you ever hold office in Estonia?

A. Yes.

Q. What office did you hold?

A. My last position was chief of the Estonian administration from 1941 to 1944 --September 144.

Q. Now, when you say "chief of the Estonia Administration", what do you mean, what was the name of your office--were you the Prime Minister, were you the Chancellor--what were you?

A. No. It was forbidden by the Germans to have an Estonian Government in action.

Q. Where were you prior to 1941?

A. In June 1940, as I have already said, I was ordered by the president of the state to represent Estonian interests during the German occupation, and I was ordered to do this by the Estonian liberation committee in May.....

Q. In June 1940?

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A. Yes, end of June 1940, immediately after the communists came into power.

Q. And the Estonian government sent you where?

A. The Estonian president ordered me in some way which I had to find myself to get out of Estonia and to take up contact with German authorities in case that Germany might start war with Soviet Russia and Estonia might come under German occupation.

Q. You came into Estonia with the Einsatz-Gruppe, didn't you?

A. No. I have already said that Dr. Von Kleist made it possible for me to make this trip by negotiating with the army, and I came to Estonia on the l6th of July 1941.

Q. Did you know Dr. Stahlecker?

A. No. With Von Kleist Herrn Petersen of Herrn Von Kleist I came to Estonia.

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Stahlecker, and let's see if this refers to you. It says, "In an agreement with the RSHA the action group brought with them the Estonian Dr. Mae as presumptive political advisor for the Estonians". Are you the man they referred to here?

my name was mixed up with the name of Lieutenant Colonel Tildre, for he was the political advisor.

Q Your name was mixed up with that of whom? was the political advisor.

Q Well, you think then this does not refer to you? German officials between 1940--between June 1940 and July 1941, is that correct? into Estonia?

Q Well, you know the German forces were going to enter Estonia? Russia and Germany would begin and that Germany--this was the opinion of the president--would be at first victorious and Estonia would come under German occupation.

PRESIDENT: You may proceed, Dr. von Stein. BY DR. VON ST$IN:

Q Witness, in a Prosecution document the expression "concentration camp custody" is used. Was there a concentration camp in Estonia?

A No. There were only prisons in Estonia, but it was generally customary with Germans that they used expressions which were current with them and they were such expressions then, but actually there were no concentration camps.

minated communists were released? es?

A It was provided that a so-called "Board of Pardons" was to submit these applications to the office of Dr. Sandberger and the Commissioner General Litzmann would then announce them.

Q Who did the work in these agencies?

Q Do you know how these applications were processed? embitterment against communists to avoid implicating guiltness people-innocent people? the legislation of the Estonian Republic possessed a cultural autonomy?

A Yes, that is correct. The Jewish group according to the constitution -

MR. GLANCY: One moment; again, Sir, we cannot see the connection with the charges that are connected against the defendant Sandberger. Again we object on the grounds of its relevancy. What possible connection Jewish autonomy can have to the fact as to whether or not the Defendant Sandberger executed these people is not relevant to the Prosecution.

PRESIDENT: In addition to that, it is very confusing now. Here the witness is to telling us the local legislature was very favored to the Jews, and a moment ago he said that when Jews and communists were released that the population was angry.

However, aside from that, and perhaps he only said communists, it is really not germane to the issue, Dr. Von Stein. He is giving us a lecture on Estonia, its history, its culture, and so on, but it is rather far-fetched. BY DR. VON STEIN. 1940-41 members of the Jewish group in Estonia were active in the NKVD and the destruction battalions?

MR. GLANCY: Again, Sir, anything that preceded Sandberger's reign in Estonia and is unconnected we cannot see the relevancy of. Sandberger is charged with criminal acts, war crimes, and crimes against humanity in Estonia during a certain period of time. We would like to see the connection with Sandberger, with Sandberger alone. Collateral matters such as here are, while very interesting, not germane, as the Court has phrased it, with the issue at hand.

THE PRESIDENT: The objection is sustained. BY DR. VON STEIN: September 1941 on competent for all people in Estonia?

A No. The Estonian administration was not competent for members of the German Army, for Reich Germans, for ethnic Germans, for Jews, and for foreigners. the synagogue in Reval was destroyed? in Reval was completely intact?

A Yes. It was respected like any church. BY THE PRESIDENT: relations with churches that he was interested in the activity in the churches in Estonia--did that include contact with the synagogues?

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A I do not know. I know that he maintained contact with the Estonian Luthern Bishop and the Greek Orthodox Metropolitan. Those are the two large confessions in Estonia.

Q Was the synagogue in Reval a pretty large synagogue?

A I do not know any standard. It was the only synagogue in Estonia?

Q The only one in all of Estonia? synagogue? and the other denominational clergy, why don't you know whether he contacted the Rabbi of the synagogue? they told me so.

Q As, and is it bee use the Rabbi didn't exist that he didn't tell you about any contact with the synagogue?

Q You said that he maintained contact with the churches. In making that statement dod you exclude the synagogue--did you in making that statement assume that the synagogue was not a church? we had many churches -- very many small churches, but the Lutheran and the Greek Orthodox are always meant by "churches", and outside of those there are quite a number of small chruches which are not included, in this answer. in your general term "churches"? Is that right, you excluded the synagogue from your answer?

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Q You excluded the synagogue?

Q How many Jews were there in Estonia?

Q You excluded all them in your answer on churches? most Jews in Estonia with whom we were on good terms, had withdrawn together with Russian troops, there were very few Jews there at that time, and the Jewish chruch, the synagogue as a guilty was there, but the community as such was practically nonexistent.

Q Did you know that Sandberger int rmed all the Jews of Estonia?

A I did now know that at that time. I asked the Commissioner General Litzmann where the Jews who had been in Estonia had been put for this, after all, was a matter of our fellow citizens. The Commissioner General answered me that the Jews and foreigners had been interned and he pointed to the decree that the Estonian Administration was not competent for Reich Germans, ethnic Germans, Jews and foreigners.

Q Well, you did know that they were interned? been installed.

Q And di you make any complaints about this?

A Yes. I spoke about this matter with the Commissioner General, for, as I said, these were our fellow citizens, and if they were interned, they had to be able to represent their interests, interests which citizens generally have and which are to be fulfilled in the various civilian questions. But the

Commissioner General answered me that all these questions have nothing to do with the Estonian administration and according to the decree which I have mentioned it was our duty to refer all questions up to legal decisions, concerning Reich Germans, Ethnic Germans, Jews, or foreigners to the German authorities.

Jews? learned that he was the one who actually interned them? you?

A No. I interested myself for them. had disappeared from the streets of Estonia?

A No, not him. I asked the Commissioner General. you had with him every two or three days to take an interest in these follow citizens who had dissappeared from the life of Estonia? days, did you ever say to him: "Dr. Sandberger, the Jews have dissappeared from Estonia, I heard they were interned; I hope that their citizenship rights are protected," did you ever say anything like that to Sandberger?

A No. I reserved their rights, as far as the General Commissioner as bearer of the German authority is concerned, I spoke for their rights as far as the General Commissioner is concerned.

Q You never spoke to Sandberger about the Jews in any way?

PRESIDENT: The Tribunal will be in recess until 1.50.

(A recess was taken until 1350 hours.)

(The hearing reconvened at 1345 hours, 17 November 1947)

THE MARSHAL: The Tribunal is again in session.

DR. VON STEIN: Your Honor, I have no further questions to put to this witness.

THE PRESIDENT: Any defense counsel wish to cross examine? Does the Prosecution desire to cross examine?

MR. GLANCY: May it please the Tribunal, the Prosecution has no desire at all to question this witness.

THE PRESIDENT: Very well. If you will wait just a minute or two to see if any defense counsel might come in who might have the desire to cross examine. Is Dr. Gawlik here? Yes, here he is.

DR. DURCHHOLZ: Dr. Durchholz for the defendant Schulz. Your Honor. Before the case is commenced or so started with the defense, I intend to submit my documents to the Tribunal in the two Document Books I and II. I assume that Dr. Hochwald of the Prosecution will be present. He is being notified just now, so he is coming. Before the case is started again, therefore, I would like the Tribunal to permit me to submit my documents.

THE PRESIDENT: By all means you will be so permitted. The witness Mae will now be excused. (witness excused).

MR. WALTON: If Your Honor please, as I understand the answer of the attorney for the defendant Schulz on the question he wants to submit document books, I just want the record to show that since

Dr. Hochwald is familiar with the subject matter. I would like to reserve for him any objections to be made later.

THE PRESIDENT: I understand that they had already sent for Dr. Hochwald, so he may be present as the document books are being presented.

MR. WALTON: I am sorry, I didn't understand it so.

THE PRESIDENT: Very well, Mr. Walton. Dr. Durchholz, have you already submitted a copy of the document books I and II to Mr. Hochwald.

DR. DURCHHOLZ: Yes, Your Honor.

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MR. GLANCY: I expect Dr. Hochwald momentarily, sir.

THE PRESIDENT: Very well. Does the Tribunal have copies of the books?

DR. DURCHHOLZ: So far as I know the Tribunal has already received these two document books.

THE PRESIDENT: You may now proceed, Dr. Durchholz.

DR. DURCHHOLZ: Your Honor, I herewith submit the defense documents for the defendant Schulz. They are Document Books I and II, and I should like to submit the documents in the following order: Under Roman I they are documents which refer to the activity and the promotion of the defendant Schulz within the police department. Under Roman II are the documents which refer to his activity as a police official and a police officer in Bremen during the years of 1923 until 1939 inclusive. Under III are documents which refer to his activity in Gratz for the year 1938. IV: documents referring to his activity in Reichenberg in 1939; V: documents referring to his activity in Hamburg, from 1940 to 1941; VI: documents which refer to his activity as a leader of Group I-B in the RSHA, and as a commander of the Leader-School, or Fuehrerschule of the Security Police in Charlottenburg in 1941 until 1942: VII: documents refering to his activity in the Russian campaign; as leader of Einsatzcommando-V from June until 21 September 1941; VIII: documents refer to his activity as the leader of Group I-A and Office-I in the RSHA from 1942 until 1944, and, finally, IX: documents refer to his activity in Salzburg as commander of the local Security Police Office from 1 April 1944 until the capitulation in May 1945. I may draw the attention of the Tribunal to the fact that the page numbers in the document books as I quote them are also simultaneously the German and English numbers, as the page numbers, etc. are exactly the same in both document books.

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the Tribunal. In Document Book I, page 95 I offer as Exhibit No. 1, the Dokument No. 26, which is the dokument of 25 November 1945, concerning the employment of the Defendant Schulz as police official, Hauptwachtmeister. The next document in Document Book I on page 96 is Exhibit No. 2, Document No. 27, that is document dated 25 August 1931 on the promotion of the Defendant to the rank of Polizei-Oberleutnant, that is lieutenant of police. The next document is in Book No. I, on page 97, Exhibit No. 3, Document No. 25, which is the dokument of 29 January 1934, concerning the promotion of the Defendant to a police captain. The next is in Document Book I, on page 98, as Exhibit

No. 4, Document No. 29. It is a document dated 26 April 1938, about the transfer of a job as Regierungsrat with the police guard at Bremen. The next is in Document Book No. I, on page 99, as Exhibit No. 5, Document No. 30. This is document dated 8 June 1938, concerning the transfer of the Defendant Schulz to the State Police Office in Gratz, and transfer of this particular office as a subordination. On Page 100 of Document Book No. I, Exhibit No. 6, Document No. 31, which is referring to transfer of 31 May 1939, according to which the Defendant Schulz is appointed to the job in the State Police Office in Reichenberg. The next is in Document Book No. I, on page 101, Exhibit No. 7, Document No. 32, that is the document of 12 April 1940, according to which the defendant was appointed as Commissar Inspector of the Security Police of the military District 10 in Hamburg. Furthermore, in Document Book No. I, on page 102, Exhibit No. 8, Document No. 33, that is the document of 10 July 1940, according to which the defendant is being appointed Oberregierungsrat, Senior Government counsel, in Hamburg. The next is in Document Book I, page 103, Exhibit No. 9, Document No. 34, document dated 28 January 1941, according to which the defendant is promoted to Lt. Colonel. The next in Document Book No. I, on page 104, Exhibit No. 10, Document No. 35, it is document dated 14 February 1941, according to which the defendant is being appointed as group leader in the Office I in the RSHA in Berlin.

Furthermore, in Document Book No. I, on page 105, Exhibit 11, Document No. 26 it is document of 22 February 1941, according to which the Defendant Schulz is promoted Colonel of the Police. Schulz in May 1945, submitted to the American CIC all the original documents and the documents which I have submitted toddy are the remainder of these documents which he got back in Nurnberg; the others were missing.

MR. HOCHWALD: If Your Honor please, I would like to know whether Dr. Durchholz intends to submit Document No. 39.

DR. DURCHHOLZ: This will come later, the document which the Prosecutor just mentioned. I shall submit it in connection with the documents concerning the Russian campaign. This is proof material or consisting mainly of affidavits which I shall break down to the following: They were given (a) by members of offices, (b) by political opponents.Concerning Point II, I submit the following questions:

MR. HOCHWALD: If Your Honor please, as to this affidavits I want to make a statement. We, of course, have no objection against the offering of these affidavits but we have the reservation, of course, of the right to make an application for the cross examination of one or the other of the file.

THE PRESIDENT: That reservation can be held by every attorney before the Tribunal.

DR. DURCHHOLZ: This is Document Book No. I, page 1, Exhibit No. 12, Document No. 1, which is an affidavit of a criminal senior clerk, Friedrich Rietstaedt. I would like Your Honors to take Document Book No. II. I regret very much not to be able to go through the documents as they come up, that is, Document Book No. I, and then Document Book No. II, but I don't want to disrupt the connections, to current compiling the documents was unfortunately technically impossible, and, I, therefore, ask the Tribunal and also the Prosecution to follow me in this way.

In Document Book No. I, on page 107, it is Exhibit No. 13, which is Document No. 39. It is an affidavit of the criminal commissar, Hans Hafemann. The next document in Document Book No. II, is on page 11, is Exhibit No. 14, Document No. 40, which is an affidavit of the driver Hans Wuelfers. Further, in Document Book II, on page 137, is Exhibit No. 15, Document No. 46, which is an affidavit of the criminal clerk, Alfred Schwarting. Furthermore, in Document Book No. II, on page 114, is Exhibit No. 16, Document No. 41. It is an affidavit of the criminal clerk, Ernst Mueller. Also in Document Book No. II, on pane 115, is Exhibit No. 17, Document No. 42. That is an affidavit of the criminal senior assistant Heinrich Schmitzger. In Document Book II, on page 127, is Exhibit No. 18, Document No. 44, which is the affidavit of the criminal clerk Karl Ripken. In Document Book II, on page 133, is Exhibit No. 19, Document No. 45, which is the affidavit of the criminal clerk, Heinrich Korte.

I would like Your Honors to take up Document Book No. I, on page 23, Exhibit No. 20, Document No. 9, which is the affidavit of the former Police Wachtmeister Karl Roehrssen. In Document Book No. II, on page 179, is Exhibit No. 21, Document No. 60, an affidavit of a former police senator of Bremen, Theodor Laue. I should like this witness not to be mixed up with the government president (Regierungspraesident) Dr. Wolfgang Laue.

THE PRESIDENT: What is a police senator, just for our information, what is the office? I have never heard of it before, a police senator?

DR. DURCHHOLZ: Bremen is known as a town of the State or a Free City, and in that sense a police senator in Bremen is an equivalent for Minister of Interior, he was called a police senator there, and it is again so now.

He is called so in the Free German Hanseatic towns, and Hamburg, Bremen and Luebeck today have this same officialship.

THE PRESIDENT: All right, thank you.

DR. DURCHHOLZ: In Document Book No. I on page 36 I offer as Exhibit No. 22, Document No. 13. It is an affidavit of Marguere the Obenauer. In Document Book No. II, on page 12, is Exhibit No. 23, which I offer as Document No. 4. That is the affidavit of Elsa Tronnier. In Document Book No. I, page 14, Exhibit No. 24, Document No. 5, is an affidavit of Sophie Budelmann. In Document Book No. I, page 16, Exhibit No. 25, Document No. 6, is an affidavit of Betty Hickstein. In Document Book No. I, page 18, Exhibit 26, Document No. 7, is an affidavit of Margarethe Kettler.

Now follows an exhibit in Document Book No. II, on page 125, as Exhibit No. 27, Document No. 43. That is the affidavit by Marianne Melchers. Also in Document Book II, on page 186, is Exhibit No. 28 Document No. 63, which is an affidavit of a former Public Prosecutor in Hamburg, Dr. Wilhelm Stegemann, with whom the Defendant Schulz had close permanent official contacts, and, the last document concerning this point is in Document Book No. II, on page 42, Exhibit No. 29, Document No. 14, which is an affidavit of a merchant in Bremen by the name of Verges, a leading Free Mason. All these witnesses confirm briefly the general human attitude of the Defendant Schulz, his absolute tolerant attitude towards political opponents; the same attitude towards the Jews, his open refusal of taking measures against the Jews, e.g. for the reason of their being Jews. Furthermore, his objection to these so-called Jewish pogroms in 1938; his attitude towards the church; his absolute moderate political altitude; his absolute incorruptibility, and impartiality; his attitude towards the questions of protective custody; also his care for the welfare of those in protective custody, and their families during and after the protective custody, and, finally, the respect he was held in by all his subordinates, and by his superiors, and even by political opponents.

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Concerning this last point I shall submit a number of affidavits by political opponents. In the Document Book No. I, on page 6, is Exhibit No. 30, Document No. 2, which is the affidavit of a school director of Bremen, Oskar Drees, a leader of a social democratic papter, Reichsbanner, and today the editor of a very important political social democratic paper. Furthermore in Document Book No. I, on page 8, Exhibit No. 31, Document No. 3, which is an affidavit of Albert Meyer.

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Also in Document Book I, page 27, Exhibit 32, Document 10. That is the affidavit of Klaus Buecking, whose Communist family members the Defendant Schulz helped and supported. which is the affidavit of a former attorney, today a parson, Kurt Mueller. an affidavit of the present Police President of Bremen, Helmut Ystroem, who is a well-known Free Mason.

In Document Book I, page 29, Exhibit 33, Document 11. This is an affidavit of the editor Alfred Faust, a former Reichstag member for the Social Democratic Party of Germany and Chief Editor of a Social Democratic paper in Bremen, who today is living in France. loyally, cordially and humanely, and when they were in protective custody, he released them, and partly enabled then to get work and supplies. of the Defendant in Graitz. To this point I submit, in Document Book I, on page 44, Exhibit 35, Document 15, which is an affidavit of the former Ambassador and Minister of the Reich, Freiherr Erwin Gudenus. an affidavit of the wife of a university professor, Dr. Edith Spath. affidavit of the Austrian Government Councillor, Wilhelm von Lahousen. vit of the Episcopal Ordinariete , Chancellor, Dr. Josef Steiner (Fuerstbischoeflicher Ordinariatskanzler).

In Document Book II, page 184, Exhibit No. Document 62, an affidavit of the Lord Bishop Dr. Ferdinand Pawlikowski of Graz. of the Graz State Police Office, dealt them as well as with a number of leading Austrian personalities who had been arrested by Austrian National Socialists and either got them out of custody himself or caused their being released from custody.

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the defendant in Reichenberg. I submit in Document Book II, page 142, Exhibit 41, Document 47, an affidavit of Police Senior clerk, Fritz Weise. the Defendant Schulz in Hamburg. I submit Document Book I, Exhibit 42, page 59, Document 19, an affidavit of the then Personnel Chief of the Department in the Office of the defendant, Reinhard Breder. as the leader of Gruppe I-b, in the Reich Security Main Office, and as commander of the Security Police, I submit from Document Book I, page 89, Exhibit 43, Document 24, an affidavit of Criminal Councillor Dr. Georg Fleischmann. in the Russian campaign. I submit in Document Book I, page 69, Exhibit 44, Document 20, an affidavit of Karl Weber, who was in Einsatzkommando 5 under Schulz. witness deals explicitly with the statements of the Defendant Schulz on the witness stand concerning the events in Lemberg, and also that he confirms them. an affidavit of Karl Hennicke. This witness also confirms the happenings in Lemberg, and the setting free of the Jews who had been driven together on the Lemberg sport fields. He also talks about the tension in the relationship between Schulz and his superior Gruppen Leader Dr. Rasch, and his Staff Leader Hoffmann. From this explanation it becomes furthermore evident that the Defendant Schulz was never in Kiev.

an affidavit of Helene Loh, who confirms that Schulz in August 1941 was in Berlin. Document 49, an affidavit of Fritz Sperrhake. He confirms that Schulz had rows with Gruppenfuehrer Rasch and often did not obey his campaign for quite some time and stayed in Berlin. 37. That is a letter from Heydrich, of the 26th of September 1941, to the Defendant Schulz, according to which he was released from the leadership of Einsatzkommando 5 and was being recalled to Berlin. document. The defendant stated on the witness stand, that on the 21st of September 1940, as the leader of Einsatzkommando 5, he was released from his job. The date of this document, which is the 26th of September, is explained through the fact that the defendant received the formal note of release only after his return from Russia, in Berlin. His release actually happened on the occasion of his visit in Berlin when he went to see Streckenbach and it was confirmed by him orally. Einsatzgruppe C thereupon had already been told of the release through radio, and the defendant returned only to give over his kommando to his successor, SS-Obersturmbannfuehrer Meier.

Only for this purpose he returned to Russia and went back to Berlin immediately. 49, the Document 57. That is an affidavit of August Haefner. He confirms that on the 27th of September 1941 the training course of the leaderschool, the Gruppe for the training course of those who were to take part in the Russian campaign, was recalled, and that Schulz then in Berlin expressed his disapproval of the executions of Jews which had been ordered.

the Defendant Schulz as Gruppe Chief I-a, and Chief of Office I of the RSHA. Concerning this point I offer from Document Book II, on page 144, as Exhibit 50, the Document 48. That is an affidavit of the government official, Kurt Dommick. And in Document Book I, page 46, as Exhibit 51, Document 16. That is an affidavit of the government councillor, Regierungsrat, Gustav Gottwald. 17. That is an affidavit of the government councillor, Heinz Wanninger. information service and in executive measures, was in no way native and never responsible; that as a personnel chief he tried to avoid all injustices and other severe measures that he could possibly avoid, and that, therefore, he could not make his way within the Reich Security Main Office. the activity of the Defendant Schulz in Salzburg. Referring to this I submit from Document Book I, page 86, as Exhibit 53, the Document 23. That is an affidavit of Kurt Egmont Damn. an affidavit of the former Gauleiter and Reich Governor of Salzburg, Dr. Gustav Adolf Scheel. davit of the former general, Julius Ringel. an affidavit of the former Police Lieutenant Colonel, Wilhelm Kirchhoff. davit of the former Police Lieutenant Colonel, Otto Barck,retired. vit of Franz Schubert.

affidavit of Government Assessor Karl Peukert. 55, an affidavit of Kaethe Froeschauer. vit of the present Mayor of Salzburg, Anton Neumayr. Document 38. That is a confirmation of the supreme commando of the Army Group G at Leogang, of 17 May 1945, to the effect that the Defendant Schulz had surrendered to the American delegation and had put himself at the disposal of this delegation as far as his person goes. document the name of Schulz has unfortunately often been omitted. In the photo copy , however, which I have just submitted as an exhibit, the name is shown. It is a typing error here. ments made by the Defendant Schulz when he was in the witness stand concerning his activity and his attitude in Salzburg;especially, that the Defendant Schulz propagated unconditional surrender of the town of Salzburg. Schulz - at least for the time being - but I should like the Tribunal to allow me to submit a few very important documents which I could not get so far because of bad mail connections, that I may be allowed to submit them at a later time but still in due time as supplement to my document books. which I have mentioned, and the testimony of the Defendant Schulz, and also other testimonies of other witnesses, an well as other documents submitted by the Prosecution as evidence which I shall reserve for my trial brief which has been suggested and approved by the Tribunal at the end of my case.

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DR. HORLICK-HOCHWALD: If the Tribunal please, I have only one question. Dr. Durchholz has presented an affidavit of a Major Lahousen. I unfortunately do not have the document number, but Dr. Durchholz will certainly know.... I do presume that this affiant is not identical with the witness before the IMT, but I would like Dr. Durchholz to inform the Tribunal and the Prosecution about this fact.

DR. DURCHHOLZ: The affidavit of the witness Lahousen which I have offered is not made by the well-known Lahusen who was a witness during the IMT trial, but I believe he is a brother, or at least a relative, of that witness. In any cane, this witness Lahousen whose affidavit I have submitted up to this point has never been mentioned in connection with these trials and has never been heard an a witness yet. At the time, I think, he was a major in the Austrian Army.

THE PRESIDENT: The record will contain your clarification.

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Dr. Gawlik, will you proceed now, please. stand. as follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me: will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated. BY DR. GAWLIK:

Q. Give the Tribunal your first and your surname.

A. Willy Seibert.

Q. When and where were you born?

A. On the 17th of June 1908, in Hannover.

Q. Please, describe for the sake of the Tribunal your life until the year 1935.

A. My youth I spent first in the country near Hannover, and then I lived in Hannover; I went to secondary school there. I left school Master 1928, after I had passed my matriculation. My father had been a merchant by profession. I myself intended to become a building merchant, and be active in building administration and take up an activity in this field. For this purpose I wanted to study building and economics. My father was killed in the first world war. He had no property, so that before I could begin my studies I had to work on various building sites near Hannover, and on the Midland Canal near Hannover, in sluice building. Thus I worked practically in order to earn myself some money, and at the same time I trained myself in craft.......which would be of value in my building, activities.

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school in Hannover, and I studied building, and at the same time economics. I studied for four terms on the whole, but during the holidays and also during two of the terms, I worked practically as a mason. From Hannover I went, after four terms, to Goettingen University.......economics again.... that laster for four terms; and after four terms, I graduated. I passed my State examinations at the Goettingen University, and received a diploma in economics.

Q. When was that?

A. That was in the autumn of 1932.

Q. What was your further activity from then on?

A. I attempted to join the Chamber of Trades in Hannover, or in other economic establishments, but at that time I could not get any work. Then I learned at the University of Goettingen, through a poster which I saw, that referendars and all kinds of young students were given the opportunity to become a soldier and later on if they proved themselves suitable, they would be promoted to officers. This opportunity I made use of because I imagined that after I had been promoted an officer I could join some administrative unit of the Army, and I could thus make use of my professional training and could work in the sphere of my interest.

Q. How long were you a soldier?

A. On the 1st of November 1932 I join ed Infantry Regiment No. 17 at Goettingen, as a private, and I remained a soldier until autumn 1935.

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soldier?

A During this period I was trained as an infantry soldier; later, as a non-commissioned officer, a platoon leader, and then a company leader of a motorized unit. But in between for some time, I was detached for training schools by the Chief of Training Affairs of the Army. That was an independent organization. In the summer and autumn of 1935, I was active in the infantry school in Doebritz near Berlin. I went through an officer's training course and after that I joined the guard-battalion in Berlin--Wach Battalion--where I passed the practical part of my examination for an officer. That was in the autumn--I think it was October 1935.

Q What activities did you carry out in the following years? economic expert--a Referent, in the SD Information Service.

Q How did it come about that you joined the SD? met, quite by accident in a Berlin restaurant, an acquaintance of mine who was meanwhile employed in this SD organization as an expert on agricultural questions. During our conversation I told him about my professional aims, and then he explained to me the tasks of this SD organization and the specialized training with this organization. He asked me whether I could succeed in being transferred from the army to the SD if I received the same rank and the same field of tasks in this economy department. I told him that I had, on various occasions, spoken to my superior officers of Defense District III, the personnel department of Berlin, and had asked for a transfer into the administration unit of the army. The major of this department in Defense District III liked me, but he could not help me because there were very few openings, or at least jobs, which were not taken yet. I therefore suggested that there would be a possibility to join this SD organization holding the same rank and dealing with the question of economy--that is the field I was trained in-

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and this major-get me this transfer to the SD. the SD? Berlin, I had not known anything at all about the existence of the SD; therefore, I did not know about the tasks of the SD.

Q Were you a member of the SS in those days?

Q Did you leave the Wehrmacht when you joined the SD? officer and every year I served with the Wehrmacht, for a certain time and I remained a reserve officer until the end of the war. not, or did you join the SS voluntarily?

AAt that time; I joined the SD and with that I automatically became a member of the SS-formation, the SD. I was never a member of the General SS. I never did a day's service in the fomations of the SS and I was not a member either of the Waffen SS or the armed SS. German and Page 50 in the English, Exhibit 152, Document No. NO-2969. It's the promotion suggestion of the 14 January 1943. When did you learn about this document for the first time? submission of documents by the Prosecution. SA from the first of May 1933 and that you were a member of the SS from the 6 November 1935. Are these statements correct?

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from the document itself, because the periods of time, mentioned in the documents do not correspond. Thus it says on page 1 of the original, at the bottom: On the first of November 1932, S. reported voluntarily for service in the Wehrmacht; and until the first of July 1933, he was in military training. That is the same time during which I was mentioned here as serving in the SA. This date, the first of May 1933, can be explained through the fact that at the time I was registered in the Office for Physical Training of the University of Goettingen, and I was mentioned by them that I should be put at the disposal of the schools of this organization for further training. That the periods are incorrect becomes evident from Page 7 of the original. There it says under SA, a dot--or at least an asterik--a few dots, then a diagonal 7 W. This has become evident from the photostat that it is: Chief A W, and that is the organization with which I actually was active as a physical trainer.

Q Was this the organization which belonged to the SA? former members of the SA and men who could deal with military training and to whom military trainers were detached. There are various mix-ups, but I don't think they are of importance now.

Q What about the membership in the SS?

A The date: 6 November 1935 may mean the date since I was active in the SS formation--the SD; especially as the service ranks contained in this document show that I was not, as it was usual and as I should have been, transferred to holding the same service rank, but that on the 6 November 1935 I was Unterscharfuehrer, and then I became a Scharfuehrer a few months later, and then again a few months later I received the service rank of Oberscharfuehrer-- all non-commissioned officer ranks. They are all ranks not corresponding to my rank which I held in the Wehrmacht.

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Q. Is the statement correct that on 6 November 1935, you joined the SS as an organization?

A. No, I joined the SD, and not the SS.

THE PRESIDENT: Dr. Gawlik, shall we have our recess now?

DR. GAWLIK: I would like to ask you one thing, your Honor. My colleague, Dr. Aschenauer, sent me a note saying that he would like the Defendant Ohlendorf to be excused from the session this afternoon. The reason is an interrogation with Herr Schonfeld, as I see here.

THE PRESIDENT: The request, of course, is granted, and the Defendant Ohlendorf will be accompanied by the Marshal to what room number, Dr. Gawlik?

DR. GAWLIK: It does not mention the number of the room. It says Mr. Schonfeld.

MR. GLANCY: That is Mr. Walter Schonfeld, Sir, associated with the I. G. Farben trial.

THE PRESIDENT: Do we have a room number?

MR. GLANCY: I can find out in just a moment, Sir.

THE PRESIDENT: Will the Marshal please inform himself as to the destination of the Defendant Ohlendorf for this afternoon and have him in custody and properly delivered to the person who desires to interrogate him?

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

Q. (By Dr. Gawlik) Witness, please comment on the document, especially about the statements on page 92 of the German document book, where it is noted, "joined the SS, 1 November" and under the same date "Unterscharfuehrer SD."

A. I did not become active in the SD on the 1st of November, but I assume that this date is due to the fact that the negotiations about transfer from the Army to the scharfuehrer, corresponding to a PFC in the German Army, was dated retroactively before I became active in order that I might reach more quickly the further dates of promotion, 20 April 1936 and 13 September 1936, which had been promised me, and in the same manner in which such transfers usually were carried out, namely, with the same rank.

Q. How do you explain the mistakes mentioned by you in this document?

A. I trace them back to typographical errors which can arise when these matters are entered into the files, when they are copied on other files, in correspondence, et cetera.

Q. What activity did you carry out in the SD?

A. I was used as an expert in the then department economics; that is to say, in the section trade, traffic and commerce and later I became head of the department, and after 1938 I also became deputy of the group chief economics.

Q. When did you become department chief?

A. I became department chief due to the reorganization in 1939, through the fact that Office 3 was created and the referats were now prom oted to departments from that time on. But I want to say that the designation referat or department in correspondence as well as in the usual custom of using the word, was not uniform in the SD organization.

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In the one SD organization, for example, for instance,the office in Frankfurt on the Main, the economic expert was called department chief; the same expert in Brauschweig was called an economic referent.

DR. GAWLIK: Your Honor, as Seibert Exhibit No. 1 I submit a sketch about the organization of the agencies of the Chief of the Security Police and the SD. us in which group you were active. are listed on this sketch. We did not bother to list all sub-divisions of offices, merely Office III is subdivided. As sub-divisions of Office III there were four groups; Group III-A, administration and law, Group III-B, public health and folkdom; Group III-C, cultural questions; and Group III-D, economics. In this sketch we did not list the office of the adjutant or the post office which were under Office III as independent agencies, but we merely showed these four groups. Of these four groups, the Group III-D was again sub-divided. If the picture were complete, the other groups would be sub-divided in a similar manner. The listed five departments belong to this Group III-D: III-D-1, agriculture; III-D-2, trade, commerce and transportation; III-D-3, banks and finance; III-D-4, industry; and III-D-5 , labor and social welfare. Looking at it from a personnel point of view, the Chief of Office III-D was Ohlendorf; the head of III-A was Gehlenbach; of Group III-B, Dr. Ehlich; Group III-C, Dr. Spengler; and Group III-D, Ohlendorf. I was deputy of the Group Chief of Economics, that is Ohlendorf in his capacity as Department Chief of Economics; and my position was under Department III-D-2 until the 1st of February 1944, that is to say, commerce, transportation and trade; and at the same time I was deputy for the Group Chief Economics. Only in the last year of the war did I become chief of Department Economics.

Q Can you describe your activity in detail?

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economic department and to observe them; to gather information in the entire Reich, and to pass on these reports to the economic ministry and to other agencies. For my department, or later it was a group, I received my reports from the thousands of honorary confidence men from all classes of the population who sent their reports to the local SD agencies, who then passed them on to the RSHA. In order to describe this activity which took all my time, apart from the Russian assignment, I may give two or three examples to show how this activity was carried on. When, in the first few months of the war it was seen that for the agricultural and industrial workers too few shoes were available, and this began to have its effect upon the morale of the workers, as well as on the economy itself, we received reports about this from all parts of the Reich, which I compiled and sent on to the proper economic agency. I was informed by that agency at the time that almost the entire allocation for leather had been requisitioned by the supreme commander of the army, and could no longer be made available to the civilian population; but these reports did not decrease. In the spring of 1940 -

THE PRESIDENT: (Interposing) Dr. Gawlik, why is it necessary to go into so much detail on the activities of this office?

DR. GAWLIK: Your Honor, the witness is accused here of membership in the SD, as a criminal organization; and, therefore, is supposed to be punished for the activity which he had described here; and, therefore, I consider it relevant that he describe in detail what he actually did during the time in which he was not in Russia and for which he is supposed to be punished too.

THE PRESIDENT: Mr. Walton, are you basing that Count in the indictment regarding membership in a criminal organization on activities in the office, activities such as he is now going into?

MR. WALTON: No, Your Honor, that count in the indictment is based merely upon the first IMT judgment. I have no doubt that the majority of his activities outside of Russia were perfectly legal. We do not contend that membership in an organization declared to be criminal by the International Military Tribunal is the basis for the count in the indictment.

Now, we intend to show that members of the SD as well as members of other organizations committed criminal acts, but I don't care to say where or when at this particular time.

THE PRESIDENT: No. Well, Dr. Gawlik, it is entirely proper for you to show that his work in the offices was entirely legal and proper. We do not at all discount the importance of that, but I don't see why it is necessary to go into so much detail. If you point out that he was in this office and he had charge of a certain department which had to do with economics of the nation, it seems to be that it might be enough, but to give us the names of the head of each one of these sub-departments can't be of much assistance in determining the real issue.

DR. GAWLIK: Well, this question is finished now. He described his activity which is supposed to be considered, according to the Prosecution criminal, and in order to clarify this for the Tribunal what he actually did, he must give a few examples in my opinion.

THE PRESIDENT: Yes, that is entirely in order, Dr. Gawlik, but now you have covered that; and if the Prosecution does not rebut it, then it stands that his activities when he was in charge of this particular department did not involve criminality. Now, if the Prosecution attacks that, then you certainly have the right to go into it in a great deal more detail.

DR. GAWLIK: It has already attacked it through the indictment.

THE PRESIDENT: And then you replied to it now.

DR. GAWLIK: It is my duty to defend him against what he has done. If the Prosecution says that it does not consider this activity in his office criminal, then I shall interrupt at this point. It is only up to the Prosecution to make an express statement.

THE PRESIDENT: I don't know if the Prosecution is going that far.

DR. GAWLIK: I don't know, Your Honor, how far the Prosecution goes.

THE PRESIDENT: Well -

DR. GAWLIK: Therefore, I must defend myself in all directions. If the Prosecution gives me a precise answer how far its contention of criminality goes -

THE PRESIDENT: (Interposing) It is very obvious you are going in all directions with all these shoes that you are getting.

Proceed, Dr. Gawlik. BY DR. GAWLIK: your activity in Office III-D. I have occupied myself all the time and personally. These are several extensive reports about the organization of the economic administration which is just red-tape and paper work. The reports showed, just to cite one example, that for the question of labor allocation alone more than twenty agencies were competent for this field, and that this was very difficult for the people concerned and for the population.

I mention only one brief example from all these reports. We have tried through these reports to achieve a reform in the organization. Reforms were started in this direction, but they did not become very effective.

Q. Outisde of the measures and the jobs you have listed in Group III-D, did you have any other jobs to do or did you carry on any other activities?

A. No, at no time. I was not in any other departments, either in an informational or an organizational manner.

Q. Did you have the possibility of having your way about the proposals made in these reports?

A. The suggestions for improvement listed in these reports came from experts and were merely given to the leading agencies for their information. Whether a regulation was thereupon changed was only decided by this ministry or the organization. That had to be this way and we could not take over this responsibility.

Q. During your activity in this Group III-D, did you have anything to do about investigating sabotage activities?

A. No, we were not an economic police, no trade police either, merely an informational organization.

Q. Who was competent for the investigation of sabotage cases in economics?

A. Outside of the police, there was a Department of Economics in Office IV and there was a Department of Economics in Office V of the Criminal Police.

Q. Did you carry on your activity secretly?

A. No, at no time did I use an alias and I always participated openly and officially in all conferences, mostly in uniform.

Q. When were you detailed to Einsatzgruppe D?

A. In the middle of June, 1941.

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Q. What rank did you have at that time?

A. SS Sturmbannfuehrer, which is equivalent to a Major.

Q. Were you relieved of your post in the Group III-D when you were ordered to Russia?

A. No, a deputy was appointed for that time and I retained this service.

Q. How long were you with Einsatzgruppe D?

A. About ten months.

Q. Did you report voluntarily to Einsatzgruppe D?

A. No.

Q. How did you come to go to Einsatzgruppe D?

A. Office I of the RSHA ordered me to.

Q. Did you have a possibility not to obey this order?

A. No, I was under military law.

Q. Since when were you subject to military law?

A. Since the 1st of September, 1939.

Q. What would have happened if you had not obeyed this order?

A. I would have been put before an SS and Police Court and punished.

Q. When you were ordered there, did you know about the missions of the Einsatzgruppe?

A. The measures of the Einsatzgruppe were not known to me in detail, but I knew that the missions which an Einsatz agency had to carry out in the occupied territories consisted of the following: First, security missions in order to secure the occupied area, including measures for the interior administration, and, second, SD mission, that is, to report about the morale and about the situation of public life of this occupied area. As for myself, personally, I assumed that I was to gather material for these reports.

Q. Which missions were you destined for in the Einsatzgruppe?

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A. I was supposed to become head of Office III, namely, for these SD missions, within the staff of the Einsatzgruppe.

Q. What were your missions to be in detail?

A. As Director III, I was concerned with gathering material about the morale of the population, about the administrative situation, about health, education, and all economic questions, and I was to send on these reports to the local agencies and to Berlin.

Q. Could this mission be gathered from the designation which you received?

A. Yes, there was an order for me to become Director III.

Q. Perhaps you can explain to the Tribunal what this "No. III" means. Whey was this "No. III" chosen?

A. The "No. III" was chosen because this was the same mission which the Department III had in making out its reports. It, of course, applied here to the occupied foreign area.

Q. Was this mission as Director III mentioned in the order of transfer expressly?

A. Yes.

Q. What were the reasons that you were ordered to be used for this purpose?

A. For this SD mission, namely, this III mission, only a collaborator of Office III could be used.

Q. Were you also supposed to carry out any executive measures?

A. No, no provision was made for this.

Q. Who was destined to carry out the executive measures?

A. Office I of the RSHA had designated a Director IV and ordered him to join the staff, but he did not become active, because Ohlendorf, after conferring with Office I, had ordered that the staff should not carry out any executive measures and this Director IV, who had been provided for COURT II CASE IX them, received a commando when the Russian war started.

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There was no other collaborator in the staff, no interrogating officer.

Q. Who was Chief of Einsatzgruppe D during your assignment?

A. The Chief was Ohlendorf.

Q. When you were transferred, were you designated to become the deputy of Einsatzgruppe Chief Ohlendorf?

A. No.

Q. Who was designated as the Deputy Chief?

A. Office I Gruppenfuehrer Streckenbach had designated the senior Commando leader, commando Leader Setzen, as Deputy Chief of the Einsatzgruppe.

Q. Whey was Setzen designated as the Deputy Chief?

A. I can not imagine, because he was an old experienced executive officer.

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of Einsatzgruppe D? and gypsies and communist functionaries? other commando leaders. BY THE PRESIDENT:

A On the trip to the garrison called Piatra Neamt. That is in Rumania.

Q Did you not go to Pretsch first?

A No. I was not in Pretsch, Your Honor. BY DR. GAWLIK: Ohlendorf, too, and with the commando leaders about this order,

Q When was that? July 1941. announced to you in Pretsch? Einsatzgruppen had been called together in Pretsch. I was not even asked to participate in that.

Q Well, did you go at all to Pretsch? I was in Pretsch School once or twice. being given and preparations were being made for the mission to Russia? the middle of June, and I retained my residence in Berlin and merely went to Dueben by car not every day because I still had to complete my affairs in the department economics.

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being made for the mission?

Q You were in Dueben during the preparation for the mission? say any more exactly. I went to Dueben for several hours and when the advance was at hand, one day before I remained in Dueben.

Q Was Ohlendorf there?

Q Did you see Ohlendorf in Dueben?

Q And didn't he talk with you about the mission which was to be performed in Russia?

Q No one mentioned the Fuehrerorder at all to you in Dueben?

Q Did Ohlendorf tell you what the purpose of the mission was? Jobs in the occupied areas; I did not get to hear the Fuehrerorder until we left Dueben by speaking to commando leadersand with Ohlendorf.

Q When did Ohlendorf tell you about the Fuehrer order? today whether we spoke about it already on the way when I spoke about It to the commando leaders.

Q Did you travel with Ohlendorf from Dueben?

Q Did you travel in the same car with him?

A No. There ware 180 vehicles and a fewdays before Ohlendorf gave me the job to carry out this motorized advance and to see that it was correctly carried out; therefore, I was on a motocycle during the entire advance.

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Q When did he tell you that you were to be his deputy?

Q Well, now, you were his deputy, weren't you?

A No. I wasnever his deputy. I merely was representative for my sphere as chief in department III.

Q Do you remember when you left Dueben, what day? you exactly.

PRESIDENT: Very well, I am sorry to have interrupted you, Dr. Gawlik. BY Dr. GAWLIK: you did not attend this gathering in Pretsch when the Fuehrerorder was known? whom this order was given for its execution. As the future head of Department 3 I was not even asked to participate in this meeting. to which persons? Tint is to say, to those people who had something to do with the execution of the order. order?

A No. This did not belong to the missions of Leader 3. it in this first garrison?. killing of defenseless people and because I considered the killing of defenseless people generally as incorrect no matter with what weapons it is carried out.

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carrying out of the order as Director 3. Can you motivate this answer a little more in detail? out reports, of gathering material, of maintaining constant contact with the local agencies, and not of the carrying out of this order.

Q Where was the garrison of the group staff -- during' the time you belongedto the group staff? the 11th Army or nearby.

Q How large was the number of members of the group staff?

A The group staff consisted of eight officers. The administrative officer for the Departments 1 and 2, that is, Personnel and Administration, the Director 3, that wasmyself; the adjutant; the interpreter; the doctor; the chief of the police company; the motor pool expert - I think that is all.

Q What was your job and mission within the group staff? Ohlendorf had told me to keep up liaison with the 11th Army and he made that my field, too, Director 3, just a few brief examples? members of the commando. Every commando had either an officer or an appropriate non-commissioned officer, but unfortunately only one person usually who had the same mission in his area. That is to say, he had to make reports about the morale of the population, about the situation in the spheres off public life which I have mentioned before, and to report to his agency, that is, the Division of Corp and keep them informed currently and also to pass on these reports to the group.

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These could only be symptomatic reports about such large areas. I would merely like to mention that the expert 3 of the commando 10A, for example, had to work in an area which is half as large as Bavaria.

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receive their money? population, that is to say, from the Ukrainians and the Tartars, who because of their political opinions voluntarily put themselves at the disposal of such work, and also from the agriculture leaders so far as they were available and other agencies. authorities. That is, a report as to the harvest for instance went to the Food Ministry by way of the RSHA, and, moreover, these reports went to the various staff sections of the 11th Army. For example, to the Chief of Staff, and to the Commanding General himself if it was important, and to the C-II; to the Economic Commanders, to the agriculture leadership, to the Quartermaster with C-IV, and to I-B, that is also C-IV. in these reports during this time which you made them out? there is only one or two reports which are concerned with those missions, but such reports were currently made out, and the were included in the Situational Report to much a greater extent. Furthermore, more extensive special reports, for example, asreport which I made out myself about the entire economic structure of the Crimea, or about the Tartars. Such reports are not included in these Situational Reports. Furthermore, the almost daily reports which were sent to the local agencies are missing in these Situational Reports. In order to give only two or three examples, in every report there was something said about the morale, not once but in every locality which was newly conquered; and the food, situation of the population, the re-establishment of industry, and so forth. The reports show that all phases of public life were considered, so that I don't think I need give any other examples.

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DR. GAWLIK: Your Honor, in order to prove the activity of the witness in Einsatzgruppe, I shall submit parts of these documents as exhibits in order to prove what the defendant actually did in the Einsatzgruppe.

THE PRESIDENT: Are you submitting it now, or will you submit them with your document book -- I am sorry. Do you intent to submit them now, or with your document book?

DR. GAWLIK: In my document book.

THE PRESIDENT: Very well. BY DR. GAWLIK:

Q What mission did you have as an expert for Army matters? which I don't want to go into detail again. Furthermore, the reports about partisan intelligence, which were always given to Einsatzgruppe by the kommandos, I had to make out these partisan reports, and sent them to the 11th Army in care of the staff for combatting partisans. Furthermore, I had to take care of the military decorations for members of the Einsatzgruppe-D, and I had to discuss these with the G-I, and to submit them to him. commando? Communist functionaries?

Q Did you ever give an order to kill such people?

Q Did you ever pass on such an order to kill these people? execution of these people?

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the English, I submit to you Exhibit 28, Document No. 3055, which is Schubert's affidavit. In this affidavit Schubert states the following: In December 1941 I was ordered by Ohlendorf-Seibert to supervise the execution of about 700 to 800 people, and to inspect it, which was near Simferopol," Are these statements correct? say how Schubert came about to make this statement, for I was not in Russia at all during this period of time, I was in Berlin. Only for this reason I could not have given this order to Schubert; whether he formulated the statement, I don't know. group-staff? Einsatzspecial-commandos?

Q When did you hear about the individual executions? learned about then through the reports which the Einsatzcommando sent to the Einsatzgruppe. on by the Einsatzcommandos and special commandos?

A I didn't see this possibility because the chief of Einsatzgruppe himself didn't have this possibility. I had a lower rank, a lower ranking position. Once I witnessed when the chief of Einsatzgruppe tried to do something about this order. This was in Nikolajew, the occasion of Himmler's visit at the beginning of October 1941, during a dinner which took place at that time in which I participated. There were in attendance about twenty or twenty-five persons, and these were officers from the offices of commanders in the vicinity who had been called together for this occasion, and, there were several escorting officers of Himmler's present.

I was a witness on this occasion when after the dinner Ohlendorf addressed Himmler concerning this order, mentioning especially the difficulty of carrying it out; the difficulty for the men who had to carry out this order. I was sitting across the table, Ohlendorf was sitting next to Himmler, and I waited with, great expectancy of what Himmler mould answer to this, but Himmler did not react at all on this. I personally saw no possibility of speaking to Himmler. He was constantly surrounded by high ranking officers.

THE PRESIDENT: I don't quite understand what you mean, witness, by saying, "That Himmler didn't react at all," Did he say anything?

THE WITNESS: No, he said nothing, Your Honor. I notice from his reaction that he was unwilling, and didn't want to go into a debate.

THE PRESIDENT: Well, now, going into a debate goes far beyond a mere answer. Did he not say something; to Ohlendorf who had addressed a proposition to him?

THE WITNESS: No, he didn't say anything, but he turned to his righthand neighbor in order to discuss something with him.

THE PRESIDENT: He didn't say a word to Ohlendorf?

THE WITNESS: About this subject nothing, but, of course, later they discussed something about other things.

THE PRESIDENT: When Ohlendorf presented his proposition to him, was it a long statement or a short statement?

THE WITNESS: It was not much longer than I just described it. He especially pointedout the difficulty of his men when carrying out this order.

THE PRESIDENT: Did Himmler apparently listen to Ohlendorf's statement?

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THE WITNESS: By all meanshe listened to it. He must have heard it, because I heard it, and I was sitting across the table.

THE PRESIDENT: And you say Himmler made no reply?

THE WITNESS: That is right, Himmler made no reply, and I considered that as an answer.

THE PRESIDENT: Did Himmler by any action, by any facial expression, reprove Ohlendorf for having made the suggestion which he did?

THE WITNESS: He was evidently dissatisfied by turning to his righthand neighbor, and he didn't react at all.

THE PRESIDENT: Well, you say he didn't react at all. You mean he didn't react favorably?

THE WITNESS: I mean by this, Your Honor, that he merely didn't give an answer, but turned definitely to his righthand neighbor in order to discuss something else.

THE PRESIDENT: Well, he turned to his righthand neighbor and spoke about something else?

THE WITNESS: Yes, that is right. That I must assume.

THE PRESIDENT: Yes. The Tribunal will be in recess until tomorrow morning. Do you have something to say, Mr. Walton? No. The Tribunal will be in recess until tomorrow morning at 9:30.

THE MARSHAL: The Tribunal is in recess until 0930 tomorrow morning.

(The Tribunal adjourned until 0930 hours, 17 November 1947) 0930-1630, Justice Michael A. Musmanno,

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THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DIRECT EXAMINATION (Continued) BY DR. GAWLIK:

Q Witness, from Document Book III_D, Page 34 of the English, Page 60 of the German book I submit to you Exhibit 158, Document No-2859. This is your affidavit. In this affidavit you have said the following: "Since I took an officer's training course in the Army, my chief, Ohlendorf, ordered me to concern myself with questions of training within the unit." Can you explain these statements in detail? two days before, I assembled the drivers of the entire Einsatzgruppe in order to organize a motorized march column, because these drivers were not trained for driving in a motorized column. For this purpose I conducted several driving tests. During the advance of the column to the garrison I also saw to it that this motorized column proceeded in good order. After reaching our garrison I no longer had anything to do with this training since the commandos were now distributed. The men were all trained. The members of the Security Police had been trained in the school in Pretsch. The members of the Waffen-SS had been trained in their units, and the men of the police had also been trained, in their units.

Q What do you mean "by the expression "training"?

Q What kind of training is this? column, for every officer who was in a motorized unit knows that this is not taken for granted.

Q Were you ever deputy of the Chief of Einsatzgruppe D?

Q From Document Book III_D, Page 1 of the English Document Book, Page 1 of the German, I submit to you Exhibit 148, Document NO. 2856. This is Ohlendorf's affidavit of the 2nd of April, 1947. In this affidavit Ohlendorf has made the following statements: "Since he" -- and this means you -- "was the senior officer in point of service after me, he was entrusted by me with the duties of a deputy during my absence." When Ohlendorf was examined on the witness stand he said the following about this point. This is the transcript of the 9th of October, 1947, Page 577 of the German transcript. I don't know the page in the English transcript. "This means that he was my deputy in the staff of the Einsatzgruppe, "but not the deputy for the entire area of the Einsatzgruppe." Please comment on this. commando leaders Seetzen and Mueller had higher ranks, and two commando leaders had the same rank, As far as my sphere 3 is concerned I represented Ohlendorf in it in the staff of the Einsatzgruppe. That is, for the SD reports and for the liaison with the Army, As far as any executive missions are concerned, I was not competent for them during my time. Page 141 of the German text. I submit to you Exhibit 28, Document NO3055. This is Schubert's affidavit. In this affidavit Schubert states the following: "In October 1941 I was assigned to the Einsatzgruppe D. Ohlendorf was the chief of the Einsatzgruppe and Willy Seibert his deputy."

Are these statements correct? to my position in the staff, which he must have been thinking of when he said this, but this does not include a competence as deputy as far as dealing with the commando leaders was concerned. German. I submit to you Exhibit 4, Document NO. 2716. This is Schubert's affidavit of the 4th of February, 1947. Under No. 8 Schubert said the following: "When Ohlendorf was absent from the staff of the Einsatzgruppe no reports were sent to Berlin. As a rule his deputy Seibert accompanied him on these tours of inspection and I was ordered to look after the house', without, however, being allowed to solve any problems which might occur. I have never been initiated into secret orders and when Ohlendorf and Seibert were absent from the staff, no decisions could be made." Is it correct that no decisions could be made when Ohlendorf and you were absent from the staff? himself when he said this, for if Ohlendorf whom I usually accompanied was absent from the staff of the Einsatzgruppe, then no decisions could actually be made by Schubert in any manner, but this also shows that no current decisions were to be made in the staff, for otherwise the chief of the Einsatzgruppe would have had to appoint an authorized deputy during his absence. D with other agencies in the Army? the senior regimental commander. This regimental commander cannot worry about the usual business transactions in the staff, but in the staff the divisional commander is represented by the senior staff officer for these transactions.

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THE PRESIDENT: Witness, do you not have in the German Army a vice-divisional commander?

THE WITNESS: No, as far as I know there is no vice-divisional commander.

THE PRESIDENT: Very well.

Q. (By Dr. Gawlik) From Document Book III-D, Page 34 of the English, Page 60 of the German, I submit to you Exhibit 158, Document NO-2859. This is your affidavit of the 1st of April, 1947. In this affidavit you have said the following; "I never was appointed Ohlendorf's deputy for Einsatzgruppe D." Is this statement correct?

A. Yes, the statement is correct.

Q. In this affidavit you further stated, "However, I regarded myself as his deputy in all matters which Chief 3 had to work cut. As senior officer on the staff of the Einsatzgruppe I took over all tasks within the group whenever Ohlendorf was absent from the group." What do you mean by tasks of the group?

A. Tasks within the group meant within the staff. That was not the usual, customary use of the word, but an inclusion of the commandos would have been a wrong conclusion.

Q. In what matters were you the deputy of Ohlendorf within the staff during his absence?

A. In the staff I was the deputy for my sphere, for the SD reports, and for the liaison with the Army, and during his absence I was deputy for the current transactions of the staff.

Q. Were you also the deputy for my executive missions?

A. No, I have already said that for executive missions I was competent neither when Ohlendorf was present nor when he was absent.

DR. KOESSEL: Dr. Koessel deputising for Dr. Hoffmann for the Defendant Nosske.

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The Defendant Nosske is sick and asks that he be excused for a moment.

THE PRESIDENT: The Marshal will take Defendant Nosske out because of his illness.

Q. (By Dr. Gawlik) the staff when Ohlendorf was absent from the group?

A. For this purpose the missions of the staff would have to be described briefly. It was not that current requests of the commandos had to be handled which would have made it necessary to come to immediate decisions.

THE PRESIDENT: Dr. Gawlik; the Defendant Schulz will be excused for a few moments.

A. (continuing) This was especially true of the executive missions. The orders had been given clearly. The additional orders of the 11th Army were known to the commandos. They were announced publicly everywhere, and the directives for carrying out executions had been regulated by the chief of the Einsatzgruppe at the beginning, May I briefly describe a day as it passed, as it went on when Ohlendorf was on leave between March and the second half of April, 1942? I had to collect the reports coming from the commandos. I had to discuss these reports with the agencies, Thus, every day appointments for conferences were made, for there was not only one Army agency but five to six. Visitors from these agencies had to be received. In the meantime the Army had called up and asked for an immediate submission of the result of the partisan reconnaissance mission of the last few days, and may I add that these months were the climax in the partisan warfare in the Crimea. I had to compile these reports too, and to submit them to the Staff for Partisan Warfare of the Eleventh Army. Just in these very weeks it happened that I was ordered to three or four front assignments of the Army, and often I was not with the staff for about two or three days myself.

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I can prove these front assignments. After my return reports which had come in in the meantime had to be worked on again.

THE PRESIDENT: Witness, these reports which you received, from the commandos, did they cover all activities of the commandos?

THE WITNESS: Yes, Your Honor.

THE PRESIDENT: That would include executions?

THE WITNESS: I also received reports and passed on reports which included executions, where it was reported that commandos had carried out executions.

THE PRESIDENT: Very well.

Q. (By Dr. Gawlik) Was during Ohlendorf's absence the group staff active at all in reference to executions?

A. The group staff hardly became active when Ohlendorf was there, and when Ohlendorf was not there any work with executions or any inspections of executions did not take place.

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Q. Perhaps you can comment in this connection on this: Were the executions missions of the staff or were they in other fields?

A. The group staff, during my entire presence in Russia., did not have to carry out any executions. Therefore, it never occurs in documents. We did not have to deal with such questions in the staff.

Q. Did you ever during Ohlendorf's absence give any executive orders to the leaders of the special and Einsatz Kommandos?

A. No, I did not.

Q. According to page 236 of the German record, the prosecution has interpreted your affidavit as follows: Seibert says in his affidavit that in certain questions he was the deputy of Ohlendorf. Is this interpretation correct?

A. I agree to this interpretation by the prosecution, for it is not said that I was complete deputy of Ohlendorf but only for certain questions. For certain questions means for those fields which I have already listed in my own affidavit, namely, for the SD reports and for the liaison with the Army.

Q. Did executive questions belong to this list of questions which you had to deal with?

A. No, as I have already said, they did not.

Q. Who was deputy in the place of the group staff when you accompanied Ohlendorf on his trips?

A. At the garrison of the staff there was no authorized deputy in the staff during these official trips for the entire Einsatzgruppe, If Ohlendorf was on official trips I usually accompanied him, and it certainly would, have been senseless to take along his deputy on all these many COURT II CASE IX trips, for just during these periods of absence a deputy in all matters would have had to remain at the garrison or at the headquarters of the staff, especially since these official trips often lasted one week.

Because of the large distances in Russia and becuase of the bad road conditions, may I add here that if it rained we could not proceed for one or two days because 80% of the roads were merely field paths.

Q. Who was Ohlendorf's deputy at the end of April and in May, 1942, when Ohlendorf was in Prague?

A. When Ohlendorf went to Prague, end of April, beginning of May, 1942, I accompanied him. I participated in the conference in Prague which lasted several days. In this time too there was no deputy for all questions with the headquarters of the staff.

Q. According to page 236 of the German record the prosecution has said that you were Ohlendorf's chief of staff for security questions. Is that statement correct?

A. There was never a chief of staff for security questions with Einsatzgruppe D. Therefore, I could never have been it.

Q. Were you ever chief of staff of the Einsatzgruppe D?

A. During my entire presence in Russia there never was a chief of staff or a leader of the staff in the Einsatzgruppe D?

Q. Did you ever handle any security questions in Einsatzgruppe D?

A. I do not know exactly what is meant by security questions. As far as any orders or measures are concerned about the security of the operational area, I did not deal with such. Of course, I worked on reports from the Kommandos which also concerned the security in the entire area.

Q. What do you mean by working on reports?

A. The Kommandos sent the reports to the group, that is, the staff. What I mean by this is that these reports were compiled, by me and were submitted to the chief of the Einsatzgruppe as a draft. As far as they were concerned with summarized activity reports all reports were, as far as I remember, signed by the chief of the Einsatzgruppe and they were then sent on to the RSHA.

Q. Did I understand you correctly that you meant by working on reports that you compiled the reports from the Kommandos and then passed them on to the superior agencies; is that correct?

A. I must distinguish between my own work and the SD reports. Here, whenever reports came in I questioned the Kommandos, I laid down directives, I decided what matter was to be treated in the reports and how it was to be treated. These statements, which also included executions, were included by me in the situation reports in many cases. Otherwise, I had nothing to do with handling this matter,

Q. Is it correct then that your work was only concerned with making out the reports?

A. That is correct, for I would not have been in a position to make any inquiry or to even make decisions about facts in these reports, because I was not trained for this and because there were no other trained officers in the group. The staff did not have one single interrogating officer.

Q. Did your work also include the ordering or carrying out of security measures?

A. No, I heard about these measures afterwards through reports.

THE PRESIDENT: Witness, I don't understand your statement. The staff did not have a single interrogating officer.

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THE WITNESS: Yes, a director 4 in a staff, as I heard later from other Einsatzgruppe, usually had several executive officers to handle such questions and interrogating officers were included in this.

THE PRESIDENT: My question was whether the table of organization in the German Army includes a designation "interrogating officer".

THE WITNESS: In the Army, certainly not, your Honor.

THE PRESIDENT: Well then, in your organization, Security Police and Security Service?

THE WITNESS: In the Security Police there were officers who carried out interrogations....

THE PRESIDENT: That isn't the question that I put. Certainly there were officers who carried out interrogations. I want to know if there was a certain position, a certain title called interrogating officer?

THE WITNESS: I know of no such title, your Honor.

THE PRESIDENT: Well then, why do you say that the staff did not have a single interrogating officer? Any officer is capable of interrogating, isn't he?

THE WITNESS: No, your Honor. An officer who came from Office 3 to make out reports for the SD was not entitled to carry out an interrogation at all.

THE PRESIDENT: Supposing a Russian prisoner were brought to you and you were the only one there. Could you interrogate him?

THE WITNESS: I certainly could have done.

THE PRESIDENT: Would you interrogate him?

THE WITNESS: Your Honor, this never happened....

THE PRESIDENT: If a Russian prisoner were brought to you and you were the only officer around, would you interrogate him?

THE WITNESS: Certainly I would have asked-him where he COURT II CASE IX had come from.

...

THE PRESIDENT: Yes, you would, have Interrogated him. You would have got from him as much information as you could.

THE WITNESS: The information which would, have showed me by which unit he would have to be interrogated further.

THE PRESIDENT: But you would have asked him questions?

THE WITNESS: Yes, of course, your Honor.

THE PRESIDENT: So that any officer with a little bit of intelligence, and he would have had to have some intelligence in order to become an officer, would certainly be capable of interrogating?

THE WITNESS: In this respect, your Honor, as you express it, certainly. When I was testifying I had in mind that for these interrogations carried on by the Security Police, officers had been specially trained, but in the form in which you put it, your Honor, it was of course true.

THE PRESIDENT: Proceed, Dr. Gawlik.

Q (By dr. Gawlik) Where does the expression "interrogating officer" come from, witness?

A I am no expert. It may be that I have used an entirely wrong expression. I imagine an executive officer.

Q What did you want to say by using the expression "interrogating officer"? What did you mean by it? to carry out executive missions and does and is trained for it. More than an interrogation is necessary for that.

DR. GAWLIK: Your Honor, in order to clarify this matter I would like to say a few words. We have a different procedure than in America and our criminal matters are first handled by the police and there are certain officials with the criminal police, and then from '33 to '45 there were certain officials with the Secret State Police who were specially trained in interrogations, and those were called interrogation officers. They carried out interrogations of defendants with witnesses present. And only then passed matters on to the prosecution authorities. They had been especially trained for this to carry out interrogations.

THE PRESIDENT: But the witness has now just stated that by an interrogating officer he meant one who was competent to carry out executive missions.

DR. GAWLIK: We designated this as an executive mission. This has nothing to do with executions. We designated the whole mission of the police as an executive function.

THE PRESIDENT: Well, I wasn't referring to executions when I said executive mission, but an executive mission would certainly go far beyond that of interrogation.

DR. GAWLIK: Yes, of course, there were other tasks concerned with that, but the entire prosecution of a criminal action, the investigation of a criminal action of course there is more to it than interrogation -- but the technique of interrogation this belongs to the executive function.

THE PRESIDENT: Well, then, if it is broader than merely interrogating, and the witness would so indicate, I do not understand how so important an organization as an Einsatzgruppe headquaters would not have that type of an officer. Can you explain that to us, witness?

THE WITNESS: I can explain this, your Honor. Ohlendorf, as chief of the Einsatzgruppe, had these executive missions carried out by the Kommandos. No prisoner was ever brought to the staff. No civilian prisoner either during the entire time that I was in Russia, where there would have been a necessity for interrogating him. Only thus can it be understood that no authorized deputy was with staff at certain times. Otherwise it would have been completely impossible.

THE PRESIDENT: Proceed, Dr. Gawlik.

Q (By Dr. Gawlik) Was there ever an expert for executive missions with the staff? of the Russian assignment, Office 1 of RSHA detailed a Chief 4 who immediately after the Russian invasion received a Kommando, after Ohlendorf had conferred with the chief of Office 1; and this man was never replaced.

Q Who was this? From which office did this man come? Mueller, and an official who had been only active in the security police. matters? 1936 until the end of the war, I never was active in any other department, not even in an information service. Therefore, I never received such training. tion has claimed that you were the senior officer within the group. Is that statement correct?

A I was not the senior officer in the Einsatzgruppe. The Kommando leaders, Standartenfuehrers Setzen abd Mueller, had higher ranks. of the German, I submit to you exhibit 159, document NOKW-629. This is a report of the 9th of October, 1941, to the headquaters of the Air Force. This is signed by you as an acting deputy and from document book 3-D, I submit to you, on page 39 of the English and 69 of the German, exhibit 160, document NOKW-628. This is a report of the 16th of April, 1942, This report is also signed by you as a deputy. In the German book this is missing. The letter IV as a deputy are missing, but in the original it is mentioned. I ask you now, was Ohlendorf absent during the time listed? remember that, but I do not want to doubt it for I have seen from the documents that Ohlendorf was on an official trip, but this happened very frequently. Sometimes it was short, sometimes for a lengthy period. In April, that is, in the second document, Ohlendorf was in Berlin on leave.

Q Concerning the first document, I have another question. If Ohlendorf was absent at all, can you comment on whether it was a short absence or a long absence? I said, I don't even remember it, and any kind of question of being his deputy did not even come up. April, 1942, his deputy, that is, Ohlendorf's deputy?

A No, I was not Ohlendorf's deputy.

Q It was first divided. First describe the October '41 situation and then the April situation. for my sphere, the SD reports and the liaison with the Army, and in this capacity I signed this document and this happened also if Ohlendorfwas there.

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It was not the reason that he was absent but this happened if he was present too. In the manner in which Ohlendorf worked this is no special in Office 3 one of his department chiefs for his field had the right to sign documents for Ohlendorf as a representative for his particular sphere of work, but he did not become the representative for the entire Office 3. interpreted. In April, 1942 the same facts existed, but at this time I was in the staff as the senior officer and I was Ohlendorf's deputy for the current transactions of the staff. But this has nothing to do with the signature.

Q And who was the actual deputy of Ohlendorf. in 1942? is, from the middle of March to the second half of April, Ohlendorf had ordered that the Kommando leaders were to represent him in their different spheres.

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Q Did Ohlendorf have anyone deputy at all; or, to clarify this point how many deputies were there? said, the commando leaders represented him in their spheres because Ohlendorf was of the opinion as he had been during the entire years of his activity that he could only be represented by a man who knows his area well himself. German; this is page 39 of the English, your Honor; this is Exhibit 160, NOKW 628. This is the report of the 16th April, 1942. Here a transfer of sub-commandos is mentioned. Did you order the transfer of these subcommandos?

A No, I did not. They were ordered by the commander to which these sub-commandos belonged. commandos? reports of the commando. commandos?

Q How about when Ohlendorf was absent? subordinated to the commando to which they belonged, Jews, gypsies or communists. BY THE PRESIDENT: for general direction in their activities?

Q To whom did the commando leaders turn for general directions?

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Q When Ohlendorf was absent? army corps to which they had been attached; or, if it was a matter of an important general directive, they had to get in touch with Ohlendorf, and this was possible because we had radio communication with Ohlendorf. no matter where he might be, he still commanded the entire Einsatzgruppen? quiries by commando leaders or their request for new directives did not occur during this time at all, but if they had occurred, a decision would have been made by way of this radio communication.

Q Suppose that you were unable to reach him; suppose a commando leader was unable to reach him when he went to Prague; he might be enroute; he might be in a plane; he might be anywhere; that he could not be reached, and a decision had to be made. To whom would the commando leader turn for direction and guidance? responsibility for the security of the area. help this commando leader in reaching a decision? made. to what the other commando leaders were doing. Wouldn't he have to clear through the Einsatzgruppen headquarters? mean? to know what the other commandos were doing; he would naturally turn to the headquarters, the Einsatzgruppen headquarters to find out just what was being done in all the other commandos.

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Now, to whom would he turn at the headquarters for direction and guidance? the other commandos in the orderly room in order to see how this commando solved a question. would look at these reports and then advise the commando leader who was making the inquiry. staff...

Q Some one would have to take the authority. Now, who would at the headquarters receive this inquiry from the commando leader in the field and would make the necessary investigation, and then finally transmit a message to the commando leaders? Who would do this at headquarters?

A If the commando commander came to the staff in Ohlendorf's absence, then I certainly would have said in this case: in the orderly room there are the reports of the commandos there; you have the possibility of looking at them and of seeing how the commando worked it out.

Q Let's suppose he didn't come personally, but contacted by radio or sent a message by courier, addressed to Ohlendorf; Ohlendorf isn't there, and it is impossible for Ohlendorf to be reached, and this commando leader must know just what the situation is among the other commando leaders. He is confronted with a problem; he wants to solve it; he needs information; he needs guidance. How, who at headquarters would help him out? these reports to take along to his commando leader.

Q Who would give him the reports to take along? I cannot say off-hand.

Q what rank did the adjutant have?

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Q Yes. Then you out-ranked the adjutant. the guidance. to do that.

THE PRESIDENT: Very well. BY DR. GAWLIK:

Q May I ask you a question about this, witness. What do you mean by help. Does that mean that you had given the commando leader a decision; that you would have to decide the matter? Or, that you could have been able to give the commando leader advice. decision, and that I could not have given any advice in any field which I did not work on; but it could have been only a matter of giving the commando leader a report from another commando, but how he then decides, whether he depends upon the decision made by the other commando, that was up to hiw own responsibility. if Ohlendorf was absent for a lengthy time? with me, made a large number of trips, when no authorized deputy was with the staff.

Q Witness, you did not understand me. Look at this sketch here. Who was Ohlendorf's deputy when Ohlendorf was absent; if he was absent for a longer period of time, who were the deputies?

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the commando leader for his area, that is, for the area of the Special Commando 10-A he was represented by the Commando Leader 10-A, etc. Ohlendorf would have made had he been there? Ohlendorf's representative.

Q And did he therefore have any cause to apply to the Group Staff? deputy would always have had to be present at the staff, and these things did not even happen; these inquiries didn't occur.

Q And why did they not happen, witness? guously; the additional orders from the army were also well known; the executive directives had been regulated, so it can thus be explained that no inquiries had to be made to the Group Staff. BY THE PRESIDENT:

Q How many persons were there in the Group Staff? enlisted men -- about thirty or thirty-five men, including guard personnel, signal personnel, kitchen personnel, etc. a group of soldiers and officers together, that some one must command. You know that?

Q Very well. Let us take the illustration of a battalion with four companies; the companies are in the field -- A, B, C, D. The company commander of Company C wants to know what A, B and D are doing because he is confronted with a situation whereby it is important that he know what his brother commanders are doing so that he can coordinate his efforts with their's. Now, he can't go around to see the captains of A, B and D; so, the captain of Company C goes to Battalion Headquarters the major isn't there; the battalion major, the battalion commanding officer isn't there.

He would be the person he would naturally turn to, but he isn't there. Now witness, you know that there would be soma one in the battalion headquarters who would take this company commander and talk over the situation with him.

Q. That would have been necessary, yes. Now, I just want to know who would be that person at the Croup Staff Headquarters when Ohlendorf isn't there, You have thirty-five people there; you have eight officers, and a commando leader comes or sends a courier and he wants to coordinate his efforts with the efforts of all the other leaders. Now, you cannot say, witness, that every situation had been anticipated; that no one would need to make any inquiries, because everything had already been worked out before. In war any situation can develop. When a commando leader is confronted with the necessity of making a decision, and he can't make the decision unless he has information, a little bit of advice, and he goes to the Staff Headquarters and Ohlendorf is not there, with whom would he speak?

A. Your Honor, during my presence he would have spoken with me of course, but may I say in connection that this comparison between the battalion and the Einsatzgruppen is incorrect insofar as a battalion could never have been commanded without a battalion commander; the commander was necessary there every day....

Q. Well, but you have the battalion commander with Ohlendorf -- to use the illustration, use his as the battalion commander in the illustration which I have given.

A. Yes.

Q. Yes, and then the battalion commander, the major isn't there; the major is killed in the illustration I have given. Certainly some one takes over.

A. Then somebody would have been designated to take over this past, Your Honor. And if I may clarify this, I . would not have any doubt that in our case of the Einsatzgruppenif Ohlendorf had been killed, the senior commando leader would have taken over his place. That would have been ordered by radio from Berlin on the same day.

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Q. Yes, but before this happens, Ohlendorf isn't there and it isn't known whether he is missing because of casualty or if he is away on an important mission. He is just not there. Certainly if a successor is appointed immediately there is no question. We are in the twilight zone where we don't know what happened to Ohlendorf; he is not there. Somebody has to make a decision. You are in war, and a man arrives at Staff Headquarters; Who does he talk to? He talks to you.

A. Yes, but I could, never have made the decision if it hadn't concerned my sphere.

Q. In other words the commando leader comes to you and he says: The partisans are attacking on a one hundred mile front. I want to know what these other three commando leaders are doing. How shall I meet the situation? would you say we will see; I am going to write you a nice report on this; is that what you would do? You wouldn't give him a report.

A. No case -

Q. (Interposing) Well, of course you would talk over the situation with him; advise him, give him counsel, call for reinforcements. You would do something.

A. In thiscase I would have done something immediately.

THE PRESIDENT: Why of course you would have done something. That is all I wanted to know.

Proceed, Dr. Gawlik. BY DR. GAWLIK:

Q. Witness, what would you have done; what could you have done in this case?

A. In this case which Your Honor has just mentioned, that is if our office had been threatened by partisans, I as the senior officer, I would have done everything in order to fight these partisans.

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Q. In what way?

A. In the way I just described.

Q. What units?

A. The units of the staff which would have been attacked in this case. BY THE PRESIDENT:

Q. No, that isn't what I said, I wasn't speaking of the staff headquarters being attacked. Any one would know what to do if your own headquarters was attacked. I am speaking of this commando leader who comes in and gives a story of trouble in the field, Didn't you understand my question to be that?

A. Your Honor, that the commando leader comes with a message that the area had been threatened by partisans?

Q. Yes, he must know just what all the other commando leaders are doing; he must coordinate his efforts with their's; and he comes to you for a little bit of counsel; and you in a situation like that certainly you would immediately take over and talk with him and issue whatever orders the situation required.

A. Your Honor, in this example the commander would have immediately applied to the army, and the army had in such a case every power of order in the occupied area.

Q. Now, witness, what would the army have done. The army would have to find out what companies A, B and D were doing in the illustration which I have given. They would immediately then contact the battalion headquarters to find out what the situation was. The army wouldn't act blindly. So, it would come back to you again.

A. Your Honor, there was a liaison officer with the army from the Einsatzgruppen who consulted with the chief of staff and the G-2 and informed them about the garrison activity of the commando, that is to say, the army had very close connections.

Q. Well, the liaison officer isn't there, and this commando leader of Company C is demanding immediate action. He can't wait until you find the liaison officer and he can't wait until you find these reports. He wants immediate action. In that situation you would have to take over, wouldn't you?

A. Your Honor, practically speaking, the commander would have got in touch with his neighboring commando leaders and they would have made the decision themselves.

Q. Without any coordination from headquarters?

A. Of course the staff would have been informed about any changes in the situation, but they would never have required a decision.

Q. They would have made a decision?

A. No, Your Honor, due to the fact that it never happened.

Q. All right, suppose you have four commando leaders and they don't agree. Two say we will attack from the east, and two say we will attack from the west. Now, who makes the decision? Do they go off and attack in all directions without any direction, without any control?

A. Your Honor, we did not have these missions at all, but if it is a matter of military operations; then Wehrmacht officers were always used for this by the army. I cannot even compare this.

Q. You were being attacked; the army is one hundred miles away, and you do nothing; you send out reports and sit there; you send out a report and sit there -- is that what you want me to believe?

A. No, Your Honor.

Q. You would do something in the meantime, would't you?

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A. your Honor, but the army was in our garrison; it never happened that way; we were there in order to be in their vicinity.

Q. You were always with A.O.H.?

A. The staff was always in the vicinity or in the town itself where the army headquarters was, anyway, the whole time in Russia.

Q. Well then, you really didn't have much use for a headquarters because the army controlled everything.

A. Your Honor, for all the examples which you have listed, the army had all the complete power of command.

Q. Well then, there wasn't much use for Ohlendorf to be there because the army had control; the army did everything; Ohlendorf was merely a figure-head.

A. In these examples which Your Honor has mentioned, the army gave the orders, but we had more missions.

Q. Well, all right. Take the missions which you did have. Ohlendorf was the man who gave the orders; is that right?

A. Ohlendorf, yes.

Q. All right; Ohlendorf isn't there; now who does it?

A. In that case orders would be given by myself in the sphere in which I worked. Furthermore, the commander was the deputy in Ohlendorf's absence, Therefore, in spheres which were not my own, that is for the executive missions, I could not give any orders and did not give them.

Q. So that if a commando leader arrived and said that we are confronted with a certain situation in the field, whether it be partisans, whether it be Jews, security, or counter-intelligence, all you could do would be to sit down and write a report on economics.

A. No, I was able to do more.

Q. What did you do besides sitting down and writing a beautiful, fat report on economics?

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What did you do?

A. Myself you mean?

Q. Yes, in this situation I gave. Ohlendorf isn't there and a commando leader comes in and wants some help in the field to which he is assigned, whether it be partisan, Jews, Gypsies or security; no matter what.

A. Your Honor, I could not have made a decision and I did not, but, if such a decision had been necessary -- but it was not necessary, because all orders were known -- if a decision had been necessary,

Q. Well, I have said, you cannot contact Ohlendorf. Ohlendorf is away somewhere. Now who would make the decision?

A. I could not have made it. I, -

Q. And then when Ohlendorf would return, you would say to him, "Herr Ohlendorff, a commando leader came here demanding that I make a decision. A very serious problem arose in the field. He had to know what the other kommando leaders were doing, and I just couldn't help him. All I did was sit down and write a nice report for him on economics." Is that what you would have told Ohlendorf?

A. No, I would not have said that to him. I would have told him that the kommando leader had looked at the reports and the directives which the other kommando leaders had made and he depended on those.

THE PRESIDENT: Thr Tribunal will be in recess 15 minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER: Riediger for the defendant, Haensch. Your Honor, may I ask that the defendant, Haensch be excused from this afternoon's session in order to prepare his defense, and also to direct that he be brought to Room 57.

PRESIDENT: The defendant, Haensch, will be excused from attendance in court this afternoon and the marshal is directed to see to it that the defendant, Haensch, "will be in Room 57 this afternoon so that he nay confer with his attorney.

DR. ROESSEL: Roessel for the defendant, Ott. I ask that the defendant, Ott, be excused from tomorrow's session in order to prepare the defense.

PRESIDENT: The defendant, Ott, will be excused from attendance in court tomorrow so that me may prepare his defense with his counsel.

DR. GAWLIK: Your Honor, as a representative for Dr. Aschenauer, I ask that the defendant, Ohlendorf, be excused from tomorrow's session in order to prepare the documents.

PRESIDENT: The defendant will be excused from the session tomorrow. You may proceed.

DR. GAWLIK: Your Honor, after the question which Your Honor put to the witness, I have some questions of my own to put to the witness, and may I ask that the witness be permitted to rise and point out on the map where the group staff was and where the commandos were?

PRESIDENT: By all means.

THE WITNESS: The group staff was at that time in Simferopol in the Crimea. The Commando 11B was at the same place and had several of its subcommandos south and west of Simferopol. The Commando 103 was in Feodosia. That is 150 kilometers from Simferopol.

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The commando 11A was southwest of Simferopol in the Jaila Mountains, for some time in Bachtschissaraij and in Kokoai. I estimate the distance as far as I remember at more than 100 kilometers. The Commando 10A was in Taganrog, had some subcommandos in Mariupol and as I estimate it, about six to seven hundred kilometers. The Commando 12 was north of the Commando 10A, that is, in the area north of Malitopol-Mariupol. The distance was more than 700 kilometers from Simferopol.

BY DR. GAWLIK:

Q. Now, I have the following question. If the commando leader at Taganrok needed an immediate decision and he would have come to the group staff, how long would it have taken him?

A. With the best possible conditions, that is, with good driving weather, it would have taken him about two days, but on our trip we often needed more than one week in order to reach that place, for the roads which led there were usually field paths. Usually we got stuck one or two days.

Q. And to whom would the commando leader in Taganrok have turned if he needed an immediate decision?

A. If he could not make it himself, he could only turn to his army corps which was in his area, in his garrison. BY THE PRESIDENT:

Q. What were the communication facilities between that point and the staff headquarters?

A. Outside of the courier service there were radio communications.

Q. Well, it wouldn't take a radio communication two days to get to staff headquarters, would it?

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A. No, No. It would not have taken that long.

Q. It wouldn't have taken practically any time, it would have been almost instantaneous, would it not?

A. Yes. BY DR. GAWLIK:

Q. And if such a radio message had come, the commando leader in Taganrok would have radioed you, "I need an immediate decision in such and such question", Ohlendorf was not te to reached, what would you have answered him then?

A. I could only have said to him, "You are the representative of Ohlendorf in this area, you must decide by yourself", Of course, I would have given him information if it were possible, and I would have given him good advice if that would have been necessary, but he only could make the decision.

Q. And if all four commando leaders had come together to the group staff and a decision would have had to be made and those four commando leaders could not have agreed, Ohlendorf was not to be reached, who would then have made the decision?

A. Only the senior commando leader could make such decision especially since it was known to air commando leaders that Office I had formally designated him as the deputy.

Q. Who was that?

A. That was Standartenfuehrer Seetzen, the commando leader of 10A. BY THE PRESIDENT:

Q. What is his name, I didn't catch it, please?

A. The name is Seetzen, S-E-E-T-Z-E-N. BY DR. GAWLIK:

Q. Please look at Document Book IIID, page 69 of the German, page 39 of the English text. This is Document Exhibit 116, Document NOKW 628, on page 71 of the German text under Number 1 it is listed that it is said that the Crimea has been freed of Jews.

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This is the second page of the original, your Honor, page 48 of the English text. Did you give any orders to carry out this measure?

A. No. This could only have been done on the basis of the given Fuehrerorder.

Q. Did you participate in these measures in any way?

A. No.

Q. On the basis of which orders were these measures carried out?

A. On the basis of the order given in Pretsch to the Einsatzgruppen chiefs and to the commando leaders.

Q. Could you have prevented the execution of this order?

A. I had no possibility to do that. I did not have the authority to prevent the order of the chief of state in any form from being carried out. I did not have the necessary rank nor the position.

Q. Did you order the shootings of partisans and their accomplices and terror groups?

A. No. I did not. This was not possible because I heard of these facts, rather I was informed about them through the reports of the commandos, that is to say, I only heard about them after the events had happened; therefore, I cannot say who was the individual who carried out these executions.

Q. In this report, the shooting of the Red Army man, Tor, is mentioned and of other people. Have you ordered this shooting?

A. The same thing is true here, what I have said before. I heard of this fact afterwards through a report, and the orders for this can only be traced back to the orders of the 11th army which were posted everywhere.

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Q. Furthermore, this report mentions the execution of the NKVD agent, Kotschkelli as well as the execution of other people mentioned on page 72.

Q. Did you order these executions?

A. For all these cases the same is true, as I have said before. I heard about them afterwards through the reports, and I did not give such orders.

Q. On page 73 of the German text the hanging of communists in mentioned especially. This was emphasized especially by the prosecution. What is your comment on this?

A. On page 5 of the original there is a mistake, which changes the sense.

DR. GAWLIK: This is page 42 of the English document book, your Honor.

THE WITNESS: May I repeat that on this page 5 of the original, this is on page 43 of the English, there is a mistake which distorts the sense completely. In the middle of the page behind the word "hanged" there is a colon, and the persons who are listed here as having been hanged are the persons who were listed afterwards. When comparing this with the photostat, that is, with the original, it can be determined that behind the word "hanged" there is no colon but a period, and that the following sentence is omitted. I quote, "Furthermore, the following were arrested:" end of quote. That is, the people who are listed here as having been hanged, In reality.........

PRESIDENT: We don't seem to locate that, Dr. Gawlik, we don't seem to locate that in our copy. Do you have it, Mr. Walton?

DR. WALTON; Well, I am having the same difficulty as the court. I can't locate it.

DR. GAWLIK: It is on page 42 of the English transcript in the center.

THE PRESIDENT: Well, then it is page 5 of the original, as you told us?

DR. GAWLIK: I beg your pardon, page 4 of the original, and I see that the English document book is correctly translated. In the German document book the words "further were apprehended" are missing.

THE PRESIDENT: Well, that has made it clear.

THE WITNESS: The hangings then refers to the chief of the NKVD, to the saboteur, and to two partisan leaders who are mentioned before this sentence, but even as far as these hangings are concerned, I had nothing to do as far as giving orders and the carrying out are concerned, but these were announced to me through these reports. BY DR. GAWLIK:

Q. On the basis of which orders were these measures carried out?

A. On the basis of orders given by the 11th army, or as far as was necessary on the basis of the Fuehrerorder.

Q. Who passed these orders on to the Einsatzkommandos?

A. The Fuehrerorder was known to the Einsatzkommandos and the orders of the 11th Army were posted everywhere, as I have said.

Q. On page 80 of the German text, this is page 8 of the original, the last page, mention is made of the planned further assignment of the subcommandos. This is on page 46 of the English. Did you order this assignment?

A. The order for the assignment of the commandos did not belong to my sphere. Here the commando 11A states that the main commando had been transferred from Bachtschissaraij to Kokosi, The message from this commando was received by me and incorporated into the report.

That is all that I had to do with the transfer of this commando.

Q. Now, I come to another point. Did you make any inspection trips within the area of Einsatzgruppe D?

A. Yes.

Q. What was your job and your mission in these inspection trips?

A. I had to deal with the SD reports, and I had the mission to speak to the Number 3 expert of the commando to give him directives, to make inspections with him, and visit his agencies in the army corps or divisions and, of course, I spoke to the commando leader, too.

Q. Did you make the inspection trips by yourself?

A. Most of the trips I made with the chief of the Einsatzgruppe, but some I made by myself.

Q. Was your job and your activity different in those trips in which you made alone from those activities during the inspection trips which you made with Ohlendorf?

A. No. There was no difference, During the trips with Ohlendorf I used the possibility his vehicle for these large distances and with the short amount of gasoline which we had, the scarce amount of gasoline which we had, this is why I used this possibility of getting transportation, but my mission had nothing to do with this.

Q. During your inspection trips did you ever attend any executions which were carried out on the basis of the Fuehrerorder?

A. No.

Q. From Document Book IIID, page 61 of the German, page 34 of the English, I submit to you Exhibit 158, Document 2859. This is your affidavit of the first of April 1947; under Number 3 in this affidavit, page 2 of the original, you have made statements about inspection trips, and your attendance during two executions.

What is your comment on this?

A. These are not executions of people on the basis of the Fuehrerorder but people who had committed violations against martial law, and they were executed for this reason. BY THE PRESIDENT:

Q. Did you know that before you went to the execution?

A. No, Your Honor, I did not knew that.

Q. When did you find out the purpose of the exeuction?

A. I learned it at the place by conversing with the commando leader and the Einsatzgruppe leader.

Q. Here you refer to, "I became a witness to these executions." How many exeuctions?

A. These two executions, Your Honor.

Q. Well, the reading of the affidavit is not very specific as to how many exeuctions, "I remember that on at least two of these trips executions took place; I became a witness to these executions". These were two trips, but it doesn't say "two executions", it could have been more executions?

A. These were two inspection trips, Your Honor.

Q. Yes, but it says that on at least two of these trips executions took place which leaves the possibility of interpretation that on each trip more than one execution took place.

A. When reading this text this possibility of interpretation exists but, Your Honor, may I say that during my interrogation I clearly testified that these were two executions. I did not formulate this.

Q. All right, now give us the places of these executions.

A. One execution took place during a trip to the Commando 10A, May I point it out on the map?

Q. Please.

A. It was east of Jampol, as far as I remember, it might be the village of Petschanka, but I may be wrong. And when visiting this commando chief of the Einsatzgruppe and I arrived near the headquarters. This was a house which was away from the village. An execution took place there of four or five persons. I witnessed this execution and through the conversation I learned why these people had been executed.

Q. Do you remember the date?

A. I do not know exactly, Your Honor, but as far as I remember it must have been in August--August 1941.

Q. And then where was the second execution which you witnessed?

A. The second execution took place in the area of the Commando 11A near a place east of Kitschinew. I don't know exactly but on either side of this border east of Kitschinew.

Q. And how many were executed this time?

A. As far as I remember, about six people.

Q. And what were they executed for?

A. As the commando leader told us, they were executed because they had looted.

Q. And what were the people at Petschada executed for?

A. I remember that the commando leader told us that these people had set fire to a barn and had hoarded supplies, and had destroyed some sort of agricultural machinery.

Q. You didn't know about either of these cases before you went to the executions?

A. No, Your Honor. This was not the purpose of the trip, it was not known beforehand. We visited these commandos without previous announcement.

Q. Did your official duties require that you attend these executions?

A. No.

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Q. Why did you go?

A. I did not go there, Your Honor, I became a witness because this happened at the Commando 10A near the headquarters. I was in the vehicle and by coincidence I became a witness to it.

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THE PRESIDENT: How far away from the headquarters did these executions take place?

A. About three to four-hundred meters from a lonely house there.

Q. Well, let's take them individually. Let's take the one at Petschada. How far away from the headquarters did that execution take place;

A. As I just said, several hunder meters, about three to fourhundred meters from this house.

Q. Yes, four-hundred meters, that is about a half of a kilometer, isn't it?

A. Yes.

Q. So you drove to the place of the execution from the headquarters in your vehicle?

A. Yes.

Q. So, therefore, you went entirely voluntarily to witness this execution?

A. I didn't know anything about the execution, Your Honor.

Q. Why did you go to this place four-hundred meters away if your duties only required you to be at the headquarters?

A. Your Honor, we came to this house on the way, and we passed this place on the road. That is before we had entered the headquarters, and during this time I became a witness to it.

Q. Your didn't go to the headquarters first?

A. When the commando-leader had spoken with the Einsatzgruppe chief, we went into the headquarters.

Q. I still don't understand how you got to this execution without it being the result of your will. Tell us just how it happened. You were in a vehicle, and you were proceeding to what point?

A. I was riding in a vehcile with the chief of the Einsatzgruppe. We reached the town where the Einsatzcommando 10-A was stationed, and on the road which lead to this house -

Q. Which house?

A. Where the headquarters of the Einsatzcommando was located. Befor we arrived there on the road, before the house, about three or four hundred meters before the house we passed the place, and s topped at that place because the Einsatzcommando leader was there, and the road had been blocked off there.

Q. Did this execution take place on the road?

A. No, this was not a main road. This road which we had to take was nearby.

Q. How far from the actual road did the shooting take place?

A. Maybe one-hundred meters.

Q. So you got out of the vehicle and walked one-hundred meters and there witnessed the shooting?

A. That is one-hundred meters, yes.

Q. But you could tell before you walked these one-hundred meters what was about to take place there?

A. Yes, I could. I noticed this by the blocking off and a guard told us.

Q. So of your own free will you went to actually witness this shooting

A. This road or this path was about one-hundred meters from the vehcile, and I walked to accompany the Einsatzgruppe Chief, yes.

Q. All right. Now tell us about the second place?

A. This was a place near Kitschinew.

Q. How far away was that scene of execution from the headquarters of Kommando XI-A?

A. This was not the commando itself, Your Honor, but a subkommando near Kitschinew.

Q. All right.

A. He had visited the commando in Kitschinew, and had spent the night there, and on the next morning we proceeded on the way back to our garrison, and we also visited a subkommando, and at the place where this subkommando was, this execution took place. The people of this subkommando were not in the headquarters. There was merely a non-commissioned officer, or a private, who gave the information that the men were carrying out this execution in a certain direction from here.

This was the road, or the place where we had to pass, and we didn't spend any more time at this subkommando garrison, but we proceeded immediately, and thus I became a witness to an execution which I had mentioned.

Q. How far from the road did this execution take place?

A. It was in the woods. I can not give you an exact distance, but several hundred meters.

Q. So you got out of the vehicle and walked several hundred meters to witness this execution?

A. Yes, I walked that distance.

Q. Yes, now before you actually got to the scene of the execution, yo didn't know for what purposes the victims were to be shot?

A. I can not say that any more today.

Q. But did you or did you not know as you got out of the vehicle and walked to the scene of the execution, in both instances, what the victims were accused of having done, or why they were being shot, did you or did you not know?

A. Your Honor, I can not answer this yes or no, because I simply no longer know whether the non-commissioned officer at the headquarters of the sub-kommando told us what kind of people were to be executed there. I really don't know, or whether I heard it at the place from the officer there.

Q. Then you include the possibility that as you walked to the scene o the execution it was possible that these people were being shot merely because they were Jews?

A. It could have been, yes.

Q. It could have been that you were aware of the fact that they were being shot, or, at least that you were informed that they were being shot because they were Jews. You included that possibility?

Q. Then you include the possibility that as you walked to the scene o the execution it was possible that these people were being shot merely because they were Jews?

A. It could have been, yes.

Q. It could have been that you were aware of the fact that they were being shot, or, at least that you were informed that they were being shot because they were Jews. You included that possibility?

A. Your Honor, I didn't know about this before, and I can no longer say today whether in this second case I was informed previously what these people had done.

Q. Let's take the first case, then. Did you know in the first case, as you got out of your vehicle and walked to the scene of the execution, did you know for what the men were being shot?

A. No.

Q. No. So, therefore, they could have been sentenced for racial reasons so far as you knew?

A. That was entirely possible, Your Honor.

Q. And was that also possible in the second case?

A. The possibility existed, yes.

Q. Yes, so it was only by sheer chance that although you witnessed only two executions insofar as this particular paragraph three is concerned, it was only by chance that although the victims could have been shot only for racial reasons, that it developed that they were not shot for this purpose but because they were sabotuers and looters?

A. Yes, I was informed of this, that these were looters and sabotuers.

Q. It was only by chance that these two executions which you -witness happened to be executions of sabotuers and looters?

A. Yes.

Q. Because you didn't know before you went for what they were being shot?

A. No, I didn't.

THE PRESIDENT: Proceed, Dr. Gawlik. BY DR. GAWLIK.:

Q. During these events were you alone?

A. No, I was in the escort of Einsatzgruppe Chief.

Q. During these trips were you, therefore, independent to make your own decision, or will you please describe the condition. Who gave the order for the trip?

A. Of course, the Chief. The Chief determined the direction of the trip, I travelled with him.

Q. And who gave the order when the car was to stop?

A. Of course, the Chief also.

Q. Who ordered when you were to get out of the vehicle?

A. The same thing, the Chief.

Q. And if the Chief got out, could you remain in the vehicle?

A. This was not customary. Then I would have to get out, too.

Q. Was this the reason why you got out?

A. Because I had to, you mean? Yes, this was the customary way in which I had to act.

THE PRESIDENT: Witness, I understood you to say in answer to one of my questions that you went of your own free will from the vehicle to the scenes of these executions. Do I now understand you to say that in effect Ohlendorf ordered you to accompany him is that right?

THE WITNESS: No, Ohlendorf didn't order me to.

Q. Therefore, you went in accordance with your will?

A. I got out of my own free will and accompanied Ohlendorf, but it would not have been customary that I should have remained in the vehicle by myself. BY DR. GAWLIK:

Q. Maybe you can explain to the Tribunal why Ohlendorf didn't give you the order to get out and come along?

THE PRESIDENT: I think we can assume Dr. Gawlik, that if he is travelling with his Chief, and the Chief gets out of the car, that he would naturally get out with him. I think that is a natural thing.

DR. GAWLIK: Well, I just thought in order to clarify this that I'd have to ask this question, whether he got out of this vehicle of his own free will, completely at his own free will.

THE PRESIDENT: The only point that it seems the Tribunal wanted to clear up was the fact he was not directly ordered to nor on the other hand was he denied the possibility of remaining in the vehicle, if he chose to do so.

DR. GAWLIK: May I ask another question about this?

THE PRESIDENT: Certainly.

BY DR. GAWLIK:

Q. Could you have remained in the vehicle?

A. It would not have occurred to me to remain in it.

THE PRESIDENT: It certainly would not be customary for you to remain in the vehicle when your Chief got out of the car. Let me put this question to you. If for any reasons of your own you didn't want to witness an execution, you could have said to your Chief, "I would prefer to remain in the vehicle." That you could have done, could you not?

THE WITNESS: Yes, Your Honor. BY DR. GAWLIK:

Q. Was the participation in these executions the purpose of these trips?

A. Usually the trips took place without preparation, that is, without previous announcements to the commando. Especially in the case when the Chief was present himself, never the purpose of these trips.

Q. Was it part of your mission and your activity to attend these executions?

A. No.

Q. Did you have any function or activity that you exercised during the executions?

A. No, I didn't.

Q. Would you have had the possibility to prevent these executions?

A. I didn't see this possibility. Certainly it would have been made clear to me that this is none of my business.

Q. Now, I come to another point. Did you give any orders for the isolation of Communists in the Russian Prisoner of War Camps?

A. No, I gave no such orders.

Q. Who gave such orders, or on the basis of what orders did those measures rest?

A. These measures were based on an agreement between the Chief of the Security Police and the Supreme Command of the Army, and were made known to the Einsatzgruppen and the Einsatzkommandos, and also were known to the Army Units.

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Q. Did you ever pass on such orders?

A. No, I didn't pass on such orders.

Q. Do you know whether such orders were carried out in the area of Einsatzgruppe-D?

A. In the area of Einsatzgruppe-D I know of no such case. I said the in the affidavit when Mr. Wartenberg questioned me.

Q. Please look at this affidavit of 1 April 1947, this is in Document Book III-D, page 36, in the English text, and, page 63, in the German text, which is Exhibit No. 158, Document NO-2859. It is on the bottom of page 3 and on page 4 may I direct your attention to No. 5 of this affidavit. What did you mean to say by this statement under No. 5?

A. I meant to express, and I think I did express that I didn't have the order to seggregate, or to make any seggregation in the prisoner of war camps, and the fact that anything like that happened was only generally known to me.

Q. I now come to another point, on page 239 of the German Record, the Prosecution has stated that your cooperation with Ohlendorf was close and complete in every detail. Please comment on this?

A. The cooperation with the Chief of the Einsatzgruppe Ohlendorf was not any closer and more distant than it was between a military superior and a subordinate in the operational area.

A. Furthermore, the Prosecution has stated that you knew of the most secret details with which the Einsatzgruppe had dealings. This is on page 239 of the German transcript. Are these statements correct?

A. I do not know what is meant by the "Most secret details." I was not present at all conferences, for example, I was never present when the Chief of the Einsatzgruppen spoke to the commander of the 11th Army, or in many cases even with other officers; in many cases with kommando-leaders. Therefore, I do not know that there were conferences, and about the special situations where discussions took place, or which didn't come to my knowledge. I personally didn't handle any secret matters or documents; but all documents and files and orders, that is, the secret orders and secret reports were all in the Orderly Room, and were deposited there.

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I personally didn't handle any of them.

Q. On the basis of the knowledge which you obtained through the reports, could you have prevented any measures which Einsatzgruppe-D had carried out?

A. I saw no possibility to do this. For apart from the fact that I heard through reports later on about these events, the Chief of the Einsatzgruppe could not do so himself and I even less so.

Q. Did you give any order for the killing or the mistreatment of Russian citizens?

A. No, I didn't.

Q. Did you pass on any such orders?

A. No.

Q. From Document Book III-D, page 50 of the English text, page 84 of the German, I submit to you Exhibit No. 162, Document NO-2969, which is the recommendation for you promotion. There it says that from the 15 May 1941 to the 15 August you had been transferred to Einsatzgruppe-D, is that correct? That is page 52 of the English.

A. May I have the German page, please?

Q. Page 84. From 15 May 1941 to 15 August, 1942, SS-Sturmbannfuehre Seibert had been transferred to Einsatzgruppe-D.

A. The dates are not correct. I can merely explain this by saying that on 15 May 1941 is the date on which the Einsatzgruppen were generally activated. I personally was called to this staff of Einsatzgruppe the middle of June. The date, 15 august 1942, is also incorrect. During that time I was already in Berlin for six weeks. It may be that through the furlough afterwards, and when I later reported to the RSHA, such date came up. I don't know. It is the same document in which the typographical error can be shown which can be gathered from the comparison of the various pages

Q. Several lines farther down it reads: "That you were especially meritorious in your assignments." Will you please comment on this?

A. I can not judge this very well myself.

Q. This is the fourth sentence after the one which I have just mentioned: "He was very meritorious in his assignments," on page 2 of the original. Will you please comment on this?

A. I have already said that I can not judge this very well, but I might say that it was not the job alone of the Einsatzgruppen or the Einsatzkommandos to execute the Fuehrer Order, for even if there had been no Fuehrer Order, there certainly would have been Einsatz-agencies, as in every occupied area which was occupied by the German Army. The commissions of the Einsatzgruppen outside of executing this Fuehrer Order was quite unambiguous, the ones which exist in every occupied area namely, first of all, the Securit Commission for order, as was quite common in occupied areas, and, secondly, the SD Commission, namely, the report about the morale and the situation in the fields in which I have mentioned, and, thirdly, orders which resulted from the liaison with the Army, and which came from the Army. That is, from the harvest down to the front assignments; so that there were possibilities gain some merit in other fields. Especially, if the fact applied that the individual concerned had distinguished himself in combat, this was always important for such recommendations.

THE PRESIDENT: Shall we take our recess now, Dr. Gawlik. The Tribunal will be in recess until 1:45 P.M.

THE MARSHAL: The Tribunal will recess until 1345 hours.

(The Tribunal recessed until 1345 house, 18 November 1945) (The Tribunal reconvened at 1345 hours)

THE MARSHAL: The Tribunal is again in session. BY DR. GAWLIK:

Q Before the recess we discussed Document No. 2969 in Document Book III-D, page 50 of the English, page 84 of the German, Exhibit 162 - the recommendation for promotion - and you made a statement about the promotion. Please tell the Tribunal why this recommendation for promotion was made during the war, and on what it was based. always depended on whether the person concerned had proved himself well in the assignment at the front.

Q Did this apply to you as well?

A Yes, this applied to me. Repeatedly I had opportunity - ment at the front?

A If I may give an example concerning this: By orders of the Eleventh Army, Major Stephanus -- he was a general staff officer -I took part in the recapture of the locality of Feodosia. It is on the southern coast of the Crimea. The Russian troops had landed there, had recaptured the city, and had advanced towards the road to Simferopol. I was engaged in combat during the recapturing of the city, upon the order of this Major, and also owing to other assignments against partisans, and against troops who had landed - troops constantly landed throughout the entire coast of the Crimea.... owing to all these assignments, but in particular the assignment near Feodosia, the Commander in Chief of the Eleventh Army, General Field Marshal von Mannstein gave me the Iron Cross as a distinction for special merit. For that reason it can be explained that another recommendation for promotion which is also contained in this document may have had a quite different basis

Q I beg your pardon, witness, which document are you referring to?

DR. GAWLIK: It is in Document Book III-D, Your Honor; Exhibit 162, No. 2969, page 50 of the English text. 1941. At that time, after I had already been in Russia for five months it was stated as follows as the foundation for the promotion: "Seibert is permanent deputy of Gruppenleiter III-D, Economics Department in the RSHA, and has proved himsefl worthy in every respect." It is mentioned at the end that I was informed in writing. I also explained it by the fact that all my assignments at the front took plane between January 1942 until about May 1942. special merits are mentioned - were you promoted after that?

A No, I was not promoted. The qualification apparently was not sufficient. I was promoted a year later.

Q I now come to another point. When did you return from Russia? of June 1942.

A Where were you active after that? in the Economics Group. after you returned from Russian until the end of the war? year of the wax, 1944, I became Gruppenleiter Economics myself.

Q Were you deputy of the Office Chief of Office III?

Q Who was the deputy of Office Chief III?

any of the four chiefs deputized for the Chief during his absence. Everyone in his sphere, in his group. reached, who made the decision as deputy to the Office Chief? sphere this question fell.

Q How did you sign your reports?

A Reports which I signed myself, I signed: "Acting For", because in this sphere of the Group Economics I was the deputy to the Office Chief. This did not only apply to me, but it was the same with any other Group leader.

Q This signature, "Acting For" - does it not prove that you were the deputy of the Office Chief? and if the Group Chief signed "Acting For" for his branch, for law and administration, then he was deputy for the Office Chief of his branch, Law and Administration. other group or in any office of the RSHA?

A No. I was never ordered to go there to receive information, not even when I started my work, but I resumed my activity immediately in the Department Economics at the time. return from Russia?

A The work was exactly the same. I had the same position as I had before my assignment in Russia. Now, as ever, I had to observe, and to report, the effects of the decrees and measures by the Ministries of Economics and other agencies on the population and in the economic sphere. It was always the some task.

Q Did you ever deal with any executive measures at all?

81 of the German, Exhibit 161, Document No. 2858. This is your affidavit. Under paragraph 2 you state that in the fall of 1933 you joined the NSDAP. Do you want to add anything to this statement? local group of the Party in Hannover, my old home town, and in April 1933 I was accepted in the Party. In the actual active life of the Party I was never able to take part. I never got to know the local group.

Q Where were you in May 1945? received an order to go to Northern Germany.

Q Were you taken prisoner there? members of the last Doenitz government - I officially reported to the English military authorities. The English liaison officer with the Doenitz government asked me after the capitulation to secure officers, both members of this last government. I was in Hamburg repeatedly... In Luebeck, and Kiel, and other cities - with the approval of the English authorities, with papers which have been transferred to Nuernberg here among my personal files. On 23 May 1945 I was arrested, together with the members of this last government, and came to a prisoner-of-war camp, and I have been in prison ever since.

DR. GAWLIK: Your Honor, thank you. I have no further questions.

THE PRESIDENT: Do any of defense counsel wish to cross examine? BY DR. KOESSL (for Defendant Schubert): authority?

A Schubert could not make reports on his own authority. Naturally he did make some reports, as the occasion arose, about personnel, and the personnel situation, and these reports were utilized in the entire reporting service.

in reporting? tive situations, and from time to time he utilized this in a report.

Q Were there independent reports about the personnel situation?

A These items were added to a report, and I made the report. Then Schubert gave me the documents for this, which have been accepted.

Q Do I understand you correctly.... these were contributions to that part of reports which were called, the so-called "Local Reports"? situation?

A Yes. While being questioned by Mr. Wartenberg I explained this to him unambiguously, and Mr. Wartenberg told me that this could be shown from my affidavit, where it says, "from time to time or as the occasion arose" and that was all that concerned Schubert. you described the reports, and as they were not submitted as documents. given to relatives of people who had taken part in the war was part of your task. Can you tell us why Schubert received the Iron Cross, Second Class? who had been wounded, in which I also took part. That was in March and April 1942. Apart from that he had also taken part in anti-partisan fighting; and that was the basis which led to a recommendation for a distinction of merit. This recommendation, of course, did not originate from me. The officer of the Army who was concerned, who was in charge during this combat action, that is, the Battalion Commander of the German Battalion, or in one case it was the Battalion Commander of a Rumanian Battalion.

.. they made the recommendations, and these recommendations were submitted to the Eleventh Army, to the G-1 officer there. BY THE PRESIDENT:

Q Was the Iron Cross purely a combat decoration?

Q It was never awarded for administrative achievements? If I may add, at the beginning of the war, and during the first World War, the Iron Cross was awarded - first as a distinction for bravery, and secondly to higher troop officers in the staffs, but only from the staff of an army upwards. The operation officer of that army received it without having taken part in the fighting. The second way was prohibited, as far as I remember, in 1941 or 1942, and from that time onwards the Iron Cross was only given for actual bravery in combat. you the Iron Cross? charge of Kommando 10, or rather, I was to look for it.

Q Why were you to look for it? in Feodosia, and that the city had been captured by the Russians, the city where the Kommando had been. And I looked for the Kommando in order to find out whether they got away at all. I found this Kommando in a locality called the Stari Krim, that is on the road from

Simferopol and Feodosia, about 20 kilometers to the west of Feodosia. The Russians had already advanced very close to this locality. There I found the Kommando leader and the major in the general staff, Stephanus, of the Eleventh Army, and this major was in charge of the entire Kommando 10-B, and had already joined them under the leadership of his kommando leader.

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As soon as I arrived he gave me the order to set up an armed reconnaissance troop, and to see to it that the troops who were withdrawing to the left and the right of the street would be put into a position again, and I arranged that.

Q And for that you got the Iron Cross?

A No, Your Honor, I carried out this task. I brought back reconnaissance reports - how far the Russians had advanced. Secondly, when I had put the German and Rumanian soldiers back into a position, in these positions, I fought with the unit myself, and advanced with this very unit until we recaptured the city of Feodosia.

Q What weapon did you use at the front?

AApart from the infantry arms, there was only anti-aircraft. No other big guns existed. The Russians had already captured them because they were at the coast for advance purposes. The situation was so grave that the commander in chief of the army at that time himself considered the Crimea lost because apart from technical companies, no large units existed any more.

Q Well, then, you had command of a detachment actually in combat?

Q How many men did you have under you?

Q Were they riflemen?

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Q. Well now, while you were in charge of this detachment, were you still part of the Einsatzgruppen?

A. Yes, owing to the agreement between the Chief of the Security Police and the Commander-in-Chief of the Army, we always had the right to assign units of the Einsatgruppen and also to give orders to individuals if the military situation required it.

Q. So that while you were with the Einsatzgruppen you did more than merely make up reports?

A. Yes, I did more than just write reports, Your Honor.

Q. I noticed in the personnel record that you received the Sword of Honor. What was the exploit which brought about this decoration?

A. I received the Sword of Honor of the SS already before the war, as far as I remember. It was awarded after a certain period of time of membership with this formation-a measure merely based on time without having to show any special merits.

Q. Was this given to all those who had achieved a certain seniority in SS ranks?

A. Yes, Your Honor, all leaders.

Q. How many years were required to earn the Sword of Honor?

A. I may be mistaken but I estimate two or three years membership in the SS, Your Honor, as leader.

Q. Did you actually get a sword?

A. A sword?

Q. Well, the personnel record calls the decoration a "Sword of Honor." Did they actually give you a sword?

A. As a weapon I received a real officer's sword.

Q. How long was this sword?

A. The sword was rather uncomfortable, Your Honor. I preferred to wear my officer's sword because it was much COURT II CASE IX shorter and it was much easier to carry.

Q. Well, they had to give out a lot of swords then, didn't they?

A. Yes. I, myself, had four swords at home: 2 from the Army, one long sword, and a short one--a dagger--the officer's dagger. I had the same again for the SS: the long sword, and an SS leader's dagger.

Q. Did you ever use these swords to attack anybody?

A. No, never, Your Honor.

Q. Well, I see you also received the Yule Candlesticks. Now what did you do to get the Yule Candlesticks?

A. Your Honor, these Yule Candlesticks were the same gift by the SS for every SS leader at yuletide. If one had become an SS leader, according to his files, he automatically had these candlesticks sent to him, and he received a new candle every year for each candlestick. This all happened according to the files.

Q. Well, between all your swords and all your candles you must have had quite a collection?

A. I only had one candlestick.

Q. All right, you may proceed, please. BY DR. KOESSL:

Q. Witness, Schubert received the Iron Cross for bravery in combat against the armed enemy?

A. Yes.

Q. Who awarded Schubert the Iron Cross?

A. The commander-in-chief of the 11th army personally issued the award and signed it for this distinction for Schubert.

Q. With the permission of the Tribunal, I would like to address a few more questions as deputy for Dr. Hoffmann for the defendant Nosske.

THE PRESIDENT: You may. BY DR. KOESSL:

Q. Witness, under whom was the area of Transnistria? Under whose sovereignty?

A. The territory of Transnistria was to the northwest of Nikolaev and was under the sovereignty, after August of 1941 approximately, of the Rumanians. It was Rumanian sovereign territory.

Q. Which offices of the ethnic German settlement offices were located in Transnistria?

A. At first Commando 12 had to deal with these ethnic German settlements; later on this commando was relieved by a commando of the ethnic German office.

Q. Who made agreements with the Rumanians which were regulated by the conditions of the ethnic German office?

A. The final arrangments were made by the chief Hoffmeier--Oberfuehrer Hoffmeier--for ethnic German office with the Rumanian General.

Q. Did the German army command also take part in these agreements?

A. The Army command also had to take part, yes.

Q. Between the Rumanian and the German army staff, did they make any agreements after the territory of Transnistria had already been declared Rumanian sovereign territory?

A. I don't know that; I cannot give any details about that.

Q. Thank you. I have no further questions.

THE PRESIDENT: Any other defense counsel desire to cross examine? You may proceed, Mr. Walton. BY MR. WALTON:

Q. Did you testify on direct examination that you had gone to the officers' training school and had successfully passed your officer's examination?

A. Yes.

Q. This was in the year 1935, was it not?

A. Yes.

Q. When you left the army for work in the SD, did you not state on direct examination that you were put on a reserve officer's status?

A. The status of a reserve officer, yes.

Q. Now from the facts which you related yesterday, service in the SD was a voluntary act on your part, was it not?

A. At the time, if I may say that, I had received instructions by the District III--or rather it had been intended that I, as a Lieutenant, was to go to the infantry regiment 46 in Spandau. The Military Command III assigned me to the infantry regiment 46 in Spandau. The Military Command III assigned me to Spandau near Berlin. I did not want to remain this type of officer, but because I could not realize my aims to go into the economic department of the army, I therefore agreed that the SD main office should release me from the Military Command III--and they approved this, yes.

Q. You applied for relief from active duty in Military Command III in order to go into the SD, is that not true?

A. I went voluntarily; whether I personally made an application, I don't remember now.

Q. Then you entered the SD service voluntarily, you say?

A. Yes.

Q. Now, I believe you testified further yesterday that when you first came to service in the SD your rating compared COURT II CASE IX with a private first-class, or you were given the rating of Unterscharfuehrer in the SD when you reported?

A. My first rank in the SD was Unterscharfuehrer, yes.

Q. And also you spoke yesterday that you were promised a commensurate rating with the rank that you held in the army if you would come into the SD for service?

A. Yes.

Q. Well, didn't you feel when you left the army as a lieutenant and was given only a low ranking non-commissioned officer's rating in the SS that you were unfairly treated?

A. Yes, I not only believed this but I also expressed this continuously.

Q. Then why did you stay in the SS?

A. Mr. Prosecutor, I did not join the SS but I went into the economic department of the SD as referent for a certain task, and this was the profession which I had chosen.

Q. In other words, you were willing to undertake any task since you had determined to make your career with the SS and the SD, were you not?

A. No, that is quite wrong, Mr. Prosecutor, for I agreed to it for that reason of transfer because here the economic department was being set up, and national economic experts, lawyers, technicians, and so forth, were required. I would never have acepted any other position.

Q. Did you continue your military training as a reserve officer after you went on an inactive status?

A. Yes.

THE PRESIDENT: Mr. Walton, I don't know that an answer has been forthcoming to your question about a willingness to take a non-commissioned officer's status in the SD an against a commissioned officer's status in the Wehrmacht.

MR. WALTON: Sir, I understood the witness to say that COURT II CASE IX this department was being set up; that in effect he wanted to get in the department as it started; and therefore he went in while he acted as a referent or SD referent.

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His SD rank was merely Unterscharfuehrer. Now that is what I gather; I don't know whether the Tribunal got that.

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BY THE PRESIDENT:

Q Well, witness, let's get it very specific. In the army you were an officer?

Q When you entered the SD you were a non-commissioned officer? of an officer, but I received the rank as NCO and not as had been promised me as an officer; but several promotions followed, only spaced a few months apart so that this rank should become the same as my position as referent and should be a similar one. to you than a career in the army? too I would work in an economic department because I had always been interested in economics. BY MR. WALTON: officer, is that correct? officer? the document are not quite right here--I was in my home regiment-that is in the infantry regiment No. 33 in Zerbst near Anhalt--and from this battalion I was recalled to Berlin by wire. officer or as a reserve officer in the Wehrmacht?

AAfter I had been recalled? broke out a telegram from Berlin came and recalled you to Berlin.

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the SD.

Q Now the next question I ask you: did you, after you had been recalled from your regiment, ever at any time see active service from 1939 to 1945 as a Wehrmacht reserve officer? regular army man, was not called to service because your services were deemed more valuable in the SD, is that correct?

A This was not up to me, Mr. Prosecutor. If it had been up to me I would have remained with the troops right from the start.

Q Let me interrupt you for a minute. Is that your opinion why you did not serve with the Wehrmacht for which you had been trained because you were valuable to the SD?

A No, Mr. Prosecutor, this happened because the mobilization orders provided that in case of war I immediately be put at the disposal of the RSHA I already knew this before the war--and one received a notice about this which stated this suite explicitly. SD and go with your regiment? until I was prohibited from making any further applications. Heydrich already threatened me with punishment if I made any more such applications. BY THE PRESIDENT:

Q Well, that is after your service in Russia? You say, when you returned to Berlin?

Q Well, you say after you returned to Berlin. Please give us the date.

A From Russia?

Q No. We understood you to say that-

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tried to join the Wehrmacht and were prohibited from doing so. I am only asking the date that took place. September 1939. BY DR. WALTON: joined the SD but that you did not join the SS, is that true? formation--the SD. which is Document 2858, Prosecution Exhibit 161, which is your own affidavit. Now in Paragraph 2, the second sentence thereof, it states, and I quote: "In the beginning of the year 1936 I joined the SS; my SS number is 272375."

Q Was this a voluntary act on your part?

A That was a voluntary act, yes; only in this formulation there is missing the expression: SD, and that is why it might be misleading; but it was a. voluntary action. September 1939? under orders from the RSHA, did you ever make any attempt to have those orders rescinded and to go on duty with your 33rd infantry regiment?

A Yes, Mr. Prosecutor.

Q How soon after you reached Berlin did you make this effort? commander. General Von Herr would have liked very much to take me along and I, myself, urgently desired to remain with him.

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lieutenant, was it not? D two years later in 1941? army, is it not? higher rank and higher pay, did you not?

A Mr. Prosecutor, if I had not been at least a captain or a major in 1941--and if I had remained on active duty in the army, I would have dropped in grade but I left the active service and went into the administrative service and owing to that I could not he promoted any further. lieutenant, you still at some time was subject to redraft back in the army at your rank of lieutenant, were you not? continued to rise in rank, didn't you? a regular troop leader--but this major's rank can only he compared with an officer in the army administrative department. reserve, would it not?

A Salary? Pay? Of course. Einsatzgruppe D that you would serve with your old chief, General Ohlendorf?

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you not?

A I beg your pardon, I didn't quite understand. I would not say "career," but apart from that I had no regrets, of course.

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Q Now, who told you first about the Fuehrer Order?

DR. GAWLIK: I object to that question. The subject was discussed in detail yesterday. The witness replied to the question when he first heard about the Fuehrer decree, and I asked this question myself, and your Honor also addressed this question. I, therefore, consider this question irrelevant. The witness stated the localities where and under what circumstances this happened.

MR. WALTON: I did not ask him where, your Honor.

THE PRESIDENT: You do not need to argue this point. Dr. Gawlik, this is cross-examination. He can ask him every question you asked if he wants to. In cross-examination he can go over the same field. That is entirely proper. Answer the question.

Q (By Mr. Walton) I will repeat the question, Colonel. Who was the first men who told you about the Fuehrer Order? the Kommando Chief Zapp. Einsatzgruppen headquarters in Pretsch, after he had attended this meeting of group leaders and commando leaders at which this order was given by Streckenbach and Mueller? when this discussion took place in Pretsch, and I already said that I remained in Berlin and every day as required I traveled to Dueben. as well as a very large order? chief topic of conversation, and this order would be in the front of everyone's mind who was a member of the Einsatzgruppe, wouldn't it?

A Mr. Prosecutor, it was like this: A very strong prohibition had been issued not to discuss any matter which concerned somebody else at that moment. In all offices this had been posted in writing.

There was no general discussion about it. Einsatzgruppe, certainly affected you, did it not? nothing to do with my job as Chief 3. to Pretsch or Dueben? for a number of years before the service with the Einsatzgruppe? associate of many years, and deputy for the group commander, certainly for economic questions, and more than likely a personal friend of General Ohlendorf, had to learn of the Fuehrer Order only from the gossip of commando leaders?

A No. Of course, I used the next opportunity to discuss this with Ohlendorf in the garrison in detail, but he did not inform me about this before that, and I am convinced that during these years many things occurred of which Ohlendorf knew and of which I did not know. Fuehrer Order your reaction was that this order was, and I quote the word that you used, "incorrect". Does this mean that you considered this order illegal?

A No, Mr. Prosecutor.

Q Does it mean that you considered this order inhumane? considered it wrong.

Q Did you consider this order, from your inner attitude, inhumane?

A I don't know how one can express such feelings. I mean my feelings revolted against this.

order, did you not?

A I could not look into this, Mr. Prosecutor. I had no opportunity.

Q We were not speaking of your opportunity to overlook it. We are sneaking of the way you felt when you first learned of the Fuehrer Order. Did you consider this order, even though you knew you had to carry it out, to be unjustifiable? for the officer's examination, in your career in the Army and the SD, did you ever learn of the recognized rules and customs of war? Hague Conventions? these Conventions?

Q Also, wasn't it known to you from your studies that the killing of civilians in occupied areas without trial is considered by international law and the laws of recognized warfare to be murder?

A I cannot reply to that, Mr. Prosecutor, because I simply don't know where murder starts and murder ends. It was no war of man against man. There were only exceptions. Tens of thousands of defenseless people were killed in all countries, and by all means. I, therefore, cannot say whether this is murder or whether this is not murder.

Q All right, you read these reports. You saw where reports of Einsatzgruppe D rounded up people, took them out and shot them without trial, did you not?

A I beg your pardon. I did not quite understand that. Einsatzgruppe D collected or rounded up people, and without trial sentenced then and shot them to death, did you not?

Q Did you consider this to be murder? by the commander in chief, the group commando, and by the commander of the Army. to be unjustifiable, namely because it was followed, you had no feeling that it vas murder? but I said that owing to my inner attitude I considered it wrong and improper.

Q All right. Who first accuainted you with your tasks in Einsatzgruppe D? activity in Office 3. I knew about my position very well, that on the first day of marching in I could start reporting. what specific duties you would have in addition to your SD duties in the group headquarters? task of working together with the Army. commando leaders begin to reach your desk?

A You mean to say how long it took, Mr. Prosecutor?

Q No. The march toward Russia started around the 22nd day of June, 1941, did it not?

A Yes, as far as I remember. we left a little later, but about that time, yes. was it not?

A End of June?

were commanded to action about what time?

A When they started, Mr. Prosecutor? I beg your pardon.

Q I withdraw the question and ask you this question. After leaving Dueben and Pretsch do you remember the approximate date when you reached the Russian border or Russian territory? territory, and one of the staffs and the Kommando 12 namely, remained at Pjatraneamt for sometime. Before that, the Army had left there, rather had withdrawn two advanced kommandos, and had also assigned them before we ever arrived at Pjatraneamt, but I myself, I cannot say the exact time I remained in the

Rumanian territory in Pjatraneamt. what month of 1941? D been committed against the enemies of the Reich? engaged in in July of 1941?

A Reports came to the Einsatzgruppe only very late. Of course, the actual connection, the direct connection, between these two kommandos existed with the divisions assigned to them.

Q All right. Again I ask you the question, about what time did you see the first activity and situation report from an Einsatz Kommando?

Q Did these reports show executions? executions by a Kommando of Einsatzgruppe D? was the first one to report about it. I don't remember that. executions by Kommandos? your pardon --may I say this -- which executions were concerned and who carried out such executions. exterminate Jews, Gypsies and Communists? necessary to execute these people in July, 1941?

A Mr. Prosecutor, very often we talked to UnterKommando leaders and to Ohlendorf about this and expressed our objection against this. I did not meet anyone among the leaders of the Einsatzgruppe who agreed to such an order.

THE PRESIDENT: Mr. Walton, would you mind deferring for fifteen minutes now? The Tribunal will be in recess for fifteen minutes.

(Recess was taken)

THE MARSHAL: The Tribunal is again in session.

DR. ERICH M. MAYER (Attorney for the Defendant Braune): morrow's session, in order that he may prepare his defense.

THE PRESIDENT: The Defendant Braune will be excused from attendance in court tomorrow so that he may prepare his defense.

DR. ERICH M. MAYER: Thank you very much.

THE PRESIDENT: Proceed, Mr. Walton.

Q. (By Mr. Walton): Colonel, just before the recess, I believe you stated on cross-examination that the Kommando Fuehrer Order, is that right?

A. Yes.

Q. Then you said that at some time later you had occasion to discuss this Order with General Ohlendorf. Did you also say that?

A. Yes.

Q. What was said at this discussion with General Ohlendorf?

A. During this conference the refusal, the revulsion, and the objection which everyone had about this order were discussed.

Q. Did you have anything to say at this discussion?

A. That was a conversation in which everyone had his say, yes.

Q. Did you express any regrets that this Order had to be carried out?

A. Yes, I regretted that such an Order, against which I objected, had been given.

Q. You told this to General Ohlendorf?

A. Yes

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Q. Did you ask General Ohlendorf to relieve you and send you back to Berlin?

A. I did not do that because I saw no opportunity. As a soldier, it was completely clear to me that without any reason I could not simply be sent to Berlin, and therefore, I saw no possibility for Ohlendorf to do that. I had no personal connections with Streckenbach either. I hardly knew him.

Q. Could you have applied through regular channels for transfer, since you were considered too valuable to serve with the Wehrmacht? Couldn't you have applied through regular channels for transfer back to your job in Berlin?

A. In peacetime this was possible in Germany, but in time of war, I had to do my duty wherever I was ordered.

Q. You considered it your duty to carry out this Fuehrer Order, regardless of your own convictions?

A. I did not carry out this Fuehrer Order.

Q. You didn't know thaw though when you were in Duebin and Pretzsch whether you would have to carry it out or not?

A. No, of course not.

Q. That's where the discussion took place with General Ohlendorf, didn't it?

A. The reason was that in the meantime I had been informed of the Fuehrer Order and the kommando leaders and I discussed this matter with Ohlendorf.

Q. Let us pass on to another point. What was your principal duty when Einsatzgruppe D Headquarters moved into a town?

A. My mission was the same as If we were in a small locality. I immediately had to start making out reports about the attitude of the population and to make up reports about the fields which I have already mentioned.

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Q. From what sources did you take samples of the morale of the population?

A. My sources were the reports of the kommandos.

Q. Did you ever negotiate yourself with the Jewish Council of Elders to find out what the morale of the population was?

A. I never negotiated with the Jewish Council of Elders.

A. Did you ever receive the registration lists of the Jewish Council of Elders?

A. No, I had nothing to do with that.

Q. Did you ever see any?

A. No, there was no such list in the staff.

Q. Were lists ever made up of gypsies, Soviet party members and commissars within an area?

A. I do not know. There were no such lists in the staff.

Q. You knew that these people were being given special treatment, because they were a threat to the security of the armed forces, did you not.

A. Yes, I knew that.

Q. As a matter of your own opinion, based on your experience as an army of officer and based on your service with Einsatzgruppe D, would not it have been an adequate security measure, both from a police and a military standpoint to have deprived all Jews and gypsies and Soviet party members who were not partisans of their liberty?

A. I cannot judge this, Mr. Prosecutor. I do not have the possibility of judging this.

Q. You had experience as an army officer, didn't you?

A. Yes, but not about such extensive questions which occur during wars between ideologies. My experience did not fit this situation.

Q. You read activity and situation reports of the kommandos, didn't you?

A. I have read many reports, yes.

Q. And it was then your job to determine what parts of those situation and activity reports should be extracted for transmission to Berlin, wasn't it?

A. The reports in which executions were listed......

Q. That's not what I asked you, Witness. I asked you if it was your job to extract from these reports.....

A. Yes.

Q. .......facts to be transmitted to Berlin. Now, these reports from the Einsatzkommando leaders gave you the situation and activities, didn't they?

A. They didn't describe it to me, but I got them, yes.

Q. Yes, and from your knowledge of the activities you were able to judge whether or not these people should be liquidated from a standpoint of security in your own mind, were you not?

A. N o, I could not judge that.

Q. Could not or would not?

A. I could not, because the facts at the particular place were never known to me.

Q. Did you ever personally conduct an investigation to determine what an individual Jew or gypsy had done in order to deserve to be executed?

A. I never did this during my entire stay in Russia.

Q. Did you ever see a report of investigation made by someone else that such people were guilty of some crime against the German forces?

A. No, I cannot recall........

Q. As a matter of fact, were ever such reports made in individual cases?

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A. I cannot say, Mr. Prosecutor. I only saw the summarized reports which the kommandos sent on to the group. No documents were attached to this.

Q. You made inspections to the different kommando headquarters from time to time, did you not?

A. Yes.

Q. And you inspected the files in each kommando, didn't you?

A. No, I didn't inspect the files, but with my expert III I discussed matters in detail and I gave this man advice and guidance.

Q. When you made an inspection of a kommando alone and General Ohlendorf was not with you, would not your Inspection include all phases of the activity of a kommando?

A. No, they did not. I have already told.....

Q. How did you know then that the reports which they sent to you were true?

A. I could not know. I did not know. I did not know whether the reports were true.

Q. And you sent these reports on to Berlin as a true factual picture of the situation not knowing whether they were true or not?

A. I did not pass them on, but I drafted them and then submitted them to the Chief of the Einsatzgruppe for his signature.

Q. Yes, but you put in there facts which you had gotten from the reports of the kommando leaders?

A. I did not put them in there, but this was merely repeating whatever the kommando report said.

Q. That's right. Now, then, how did you know this to be the truth?

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A. To determine that was not my job. In view of these reports, I neither had the right nor the mission to make any inquiries or to make any decisions or to make any inspections.

Q. All right. It was your responsibility to protect the Chief of Einsatzgruppe D in the matter of making report, was it not?

A. Yes.

Q. And to discharge this responsibility you had to put in these reports facts, did you not?

A. Yes, I had the responsibility.

Q. And in 12 months' time you never questioned a single fact which was submitted to you by a kommando leader?

A. My answer was not complete, Mr. Prosecutor. I had the responsibility that whatever was summarized in the report from the kommando or was added to another situation report that these two would agree. That was my responsibility, but it was never my mission to start investigations whether in this particular field this report was correct.

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two reports were alike could have been the same for anyone who could use a typewriter, could it not? could use a typewriter could have performed that job, couldn't he? them to the General for his signature, couldn't he? sturmbannfuehrer while you were with the group part of the time. Do you mean to tell me that it was a responsibility and a job of a Lieutenant Colonel or an Obersturmbannfuehrer to make the reports that a Private could make?

A No. I do not mean to say this. Furthermore, I was not a Lieutenant Colonel during the whole time, was drafted as a major and later after five or six months was promoted. But in the spheres in which I made out the reports, namely my SD reports, I, of course, had to worry about these matters, and I did so. 1941, weren't you?

Q And you didn't leave Einsatzgruppe D until June of 1942? Einsatzgruppe D you were a lieutenant colonel, were you not?

A Yes. I merely said, "not during the entire time".

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preparing reports during this time?

A No, it wasn't that simple. I had to do the work which an information man would have to perform. assignments of the Einsatzgruppe come through you? The daily orders or any orders were sent to the commandos from the army by the liaison officer who was with Army for that purpose. officer of Einsatzgruppe D with the army?

A No. This was another major. The difference is the following: With the staff of the 11th Army for the entire period of the assignment there was an SS liaison officer who lived with the staff and who worked with the staff every day mostly in the office of the G-2. In the staff of Einsatzgruppe D it was my job first to make out the reports for the Army, to maintain contact with the agencies who got the reports, to carry on conferences with these agencies, to report results of partisan reconnaissance, and to work on all military decorations for members of the Einsatzgruppe D. discharge of your task? between the chief of staff and the agencies under his command so that it might happen that for example I would frequently visit the G-4 officer more frequently than I would visit any other officer.

Q What was the task of the G-4 in the army?

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chief quarter master, and as such he was ordered to concern himself with our reports because the economic commandos were under his command and the agricultural matters were also under his jurisdiction. gasoline equipment had to be given to the group by him? gruppe D, were you not -- it was part of your task to draw supplies through this officer?

A No. This job of supply was the mission of the administrative officer in Einsatzgruppe D who was in charge of the actual administration.

Q Who was this officer? almost daily contacts with the army you know pretty well what was going on so far as it concerned Einsatzgruppe D in Army Headquarters, did you not?

Q Didn't you know generally what was contemplated in the way of assignments for Einsatzgruppe D through these daily contacts? for the liquidation of hostages through these contacts? hostages?

Q No, an order. Your chief has testified that the order for the execution of hostages came from the 11th Army.

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Did you know that they were issuing orders for the execution of hostages? whether it was in July or August 1941, I had dinner in the club of the staff and at this occasion I sat together with other officers and the then chief of the army, General von Schobert came to our table in order to discuss matters with the officer sitting at the table or to ask them something. On this occasion I was introduced to him. He asked me immediately, "Are you from Ohlendorf"; I said, "Yes , I belong to the Einsatzgruppe." Then Schobert told me very agitatedly that he had just again received reports according to which German troops during their advance had been shot at from hedgerows and from houses and he had ordered that this was to be retaliated immediately, he would now have those hostages arrested and if something happened, he would have them shot, "please tell this to Mr. Ohlendorf."

Q Did you carry this message back to General Ohlendorf? of the army to the Einsatzgruppe, didn't you?

A No. This was not an order for the Einsatzgruppe, I merely told him that the general was dissatisfied with the situation in this area, and that he had ordered or he was going to order that he would have hostages arrested, and if something happened that he would have them shot. assignments of Einsatzgruppe D come into Einsatzgruppe D headquarters ?

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did these orders and requests come? Officer. Army for the chief of Einsatzgruppe D, which was an assignment or a commitment for the commandos of that group and General Ohlendorf was absent from his headquarters, who opened this communication and read it?

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Q. Who had the responsibility of transmitting this to the Einsatzkommando leaders concerned if General Ohlendorf was still gone?

A. Ohlendorf was absent, and it was an order by the army, then I would have passed on the order for the information of the commando concerned as an order of the army.

Q. Did you issue any separate orders for the commando leaders based upon this original order.....

A. No..

Q. .....if General Ohlendorf was not there?

A. No, I could not.

Q. You passed the order on in the oritinal form?

A. I may say that I do not remember such a case, for I was almost always with Ohlendorf when he was away, but of course I would have passed it on to the commandos for their information.

Q. Would you address any communication to accompany that letter; for instance, a cover-letter which right say in effect these words: "For your information and compliance" and signed either representing General Ohlendorf or with your own signature?

A. No, I could have only written, if I would have made a cover letter "for your information."

Q. Did any requests or orders for the execution of the insane come through you as liaison officer?

A. No, I did not hear about them, and I got no such orders.

Q. So far as you know, Einsatzgruppe D never received an order to execute an insane person?

A. I recall that it was attempted by some unit of the army to approach the commando concerned in order to evacuate an insane asylum. I remember exactly that this was refused and was not carried out for the army.

Q. Were copies of all orders to the commandos by the 11th Army sent to your headquarters?

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A. No, this was not always the case.

Q. How did you obtain knowledge of usch orders or requests?

A. Either through the commando or through the fact that the liaison officer called us up and told us that the Commando 11-A had just received this or that order.

Q. Then would a copy of the order which had been sent to Commando 11-A come to your office?

A. Yes, certainly.

Q. Your headquarters received orders both from General von Schobert and General von Manstein later and at the same they received orders from the RSHA in Berlin, did they not?

A. Yes.

Q. Suppose General Ohlendorf was again absent and there was a definite conflict in the orders of Heydrich in Berlin and General von Schobert's orders which you had right there on your desk, whose responsibility was it to call on General von Schobert and explain to him the conflict between the two sets of orders which were in the headquarters of the Einsatzgruppe D?

A. First of all there were no such conflicts, but even if there had been one, I am of the opinion that an army order in an operational area would have precedence in every case, for the army, that is the commanding general, had the responsibility for the entire security in the area and could give such orders that at any time would be given precedence.

Q. Now, Colonel, it has been repeatedly testified from this stand that orders regarding the tactical situation were army orders and they, of course, were given precedence, but that all other orders involving security measures came from Berlin and they, since they were a police function entirely were given preference over the army orders.

A. I didn't quite get this, pardon me; now I understand. Now, they were not given preference, but the army would have had the possibility at any time to give precedence to its orders, for it was responsible for the area.

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Q. Then you could use as an excuse for not carrying out an order from Berlin -- superior orders from the army is that right?

A. If this order had existed, yes, of course.

Q. Did the army ever order you not to execute any one?

A. No, never.

Q. Colonel, did the Einsatzgruppen or its commandos over sentence any one to death for the crime of looting?

A. The staff of the Einsatzgruppen did not, but the commandos Certainly.

Q. Were each one of these looters given a trial by courtsmartial?

A. I don't know. I was not present at such proceedings, but I merely knew in general that for the area Barbarossa, which is Russia, by a decree of the supreme command of the armed forces the jurisdiction was excluded, but how this was carried out, I don't know.

Q. Do you know of your own knowledge whether any executions were performed without any sentence whatsoever?

A. No, I could not say.

Q. Well, in an interrogation which you had here you stated that Jews, communists, people of that nature, who were captured in groups were shot without sentence. Do you wish to take that statement back now?

A. I don't know what the testimony reads like, but I know, of course, that Jews and communist functionaries were shot without investigations taking place, yes.

Q. So you know that of your own knowledge that people were sentenced to be shot without any investigation or trial.

A. Yes, I had to assume that from the Fuehrer Order.

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Q. Yes, now coming back to your sources of information for your Reports. These reports gave from time to time totals of executions performed by the commandos, did they not?

A. These reports did not contain any total figures which came from the commandos, but those statements applied to the period of time concerned for which the report was valid.

Q. Well, in the Prosecution documents here, Einsatzgruppe D is credited with a steadily increasing total of executions. Did you send in those totals of executions to Berlin?

A. No, I did not report them to Berlin.

Q. How did they get in those reports which Berlin issued?

A. I can only imagine that the figures were compiled in Berlin.

Q. You are familiar with the activity and situation reports issued by the RSHA in Berlin, which is a part of the Prosecution's case, are you not?

A. Yes, I know them.

Q. Yes, and they are divided into sections corresponding to the Einsatzgruppen are they not?

A. Yes.

Q. And that section devoted to Einsatzgruppe D contains the fact that people were executed, does it not?

A. Yes.

Q. Then occasionally it gives a total of the number of people executed within a given time, don't they?

A. Yes. That can be seen from the documents.

Q. Now, where did the RSHA in Berlin get the information for these figures?

A. Certainly from the Einsatzgruppen.

Q. And since you had the responsibility of making these reports to Berlin, these figures came from you, didn't they?

A. A part of these figures were passed on with these reports by me.

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Q. And whore did you get the figures to send on to Berlin?

A. From the reports of the Einsatzkommado leaders.

Q. Yes, that is right; and then the answer to my question that the Einsatzkommando leaders reported their total executions to you from time to time is correct, is it not?

A. That the commandos reported totals?

Q. The total numbers of executions for a period of time to you.

A. That could have happened; I cannot remember any individual case.

Q. I don't want to dwell on this point too long. We are in agreement that the RSHA got the figures of the number of people executed by Einsatzgruppe D from your reports. We agree on that, do we not?

A. The reports which I made out were submitted and were passed on; that is right.

Q. And you also said that your information for making these reports came from the commando leaders or the commandos themselves, did you not?

A. Yes.

Q. So then you would compile the total number of executions for the commandos of Einsatzgruppe D and put it into your regular report to Berlin, would you not?

A. I did not compile them, Mr. Prosecutor. They could only have been compiled in Berlin.

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Q. The total number of executions performed by the kommandos of Einsatzgruppe D - who compiled it?

A. There was a man in the orderly room by the name of Fritsch as a signal man and he maintained contact between the orderly room and the signal tower, for these reports were generally sent by radio to Berlin,and this signal man in the orderly room who took care of all the paper work there handed these figures to the signal installations, and they did not appear in the reports.

Q. where did... Was this man Fritsch an officer?

A. No, he was a sergeant. He belonged to the staff as a signal and an orderly.

Q. And as a senior officer in that staff, certainly when the general was away from his headquarters he was under your supervision, was he not?

A. He wasn't subordinated to me in his daily work, but there was an adjutant who was in charge of the orderly room; but, of course, as the highest ranking officer, when Ohlendorf was away, I was in charge of the whole staff.

Q. Did you supply Fritsch with his copy when he sent radio messages to Berlin?

A. Fritsch wrote out those reports.

Q. I thought you said you wrote out the reports that went to Berlin, and now you say an enlisted man wrote them out.

A. No, this is a mistake -- pardon me. He wrote it on the typewriter. Of course, he did not make them out.

Q. Did he submit this copy to you, or to anyone in the Einsatzgruppe staff headquarters, before he transmitted it to Berlin?

A. I do not know how I am to understand this question. Of course, the individual figures were known to me.

Q. And you approved his messages before he sent them on?

A. I had nothing to approve there. It was merely repeating the reports.

Q. How do you know that the kommando leaders did not add their figures, or increase their figures, that you saw from their reports?

A. Mr. Prosecutor, it might have occurred of course that the kommando leaders exaggerated figures. I could not have seen this.

Q. You knew of (General Ohlendorf's orders to his kommando leaders not to increase these figures but to make an actual count, did you not?

A. Yes, I knew.

Q. And it was your responsibility to write reports some time for General Ohlendorf's signature, wasn't it?

A. Yes.

Q. And it was also your responsibility to see that all facts, including totals of executions, were as correct as you could make them, wasn't it?

A. If Ohlendorf gave this order to the kommando leaders, then the kommando leader had the responsibility to see that he would not violate this order.

Q. Now, what steps did you take to see that there was a minimum of this double counting of executed persons?

A. I had no documentary evidence that this happened. and I could not have taken any steps against it.

Q. You could have inspected the files of these kommando leaders when you went out there, couldn't you... didn't you have enough rank and enough authority to do that?

A. No, I did not have the authority. I had the authority for my sphere of work, but not to examine these files or to investigate them.

I would not have been in a position to do so.

Q. You were with the commanding officer of the Gruppe on a great many of these inspection tours, were you not?

A. Yes.

Q. And if General Ohlendorf had wanted those files inspected, but he didn't want to take time to Inspect them himself, who would have inspected the files?

A. Even if he would have done this -- I don't remember it at the moment -- he could make spot checks, but it never happened that he said, "Look at these documents or investigate them". It was always that I had to use the time in order to discuss matters with my three experts and discuss all that had occurred.

Q. If he had ordered you to inspect those files you could have, though, couldn't you?

A. Yes, of course.

Q. Now, from your familiarity with the reports in Einsatzgruppe D, this meant that you had to have excess to the secret files of Einsatzgruppe D, didn't it?

A. Yes.

Q. You could go even to the top secret files of Einsatzgruppe D, and examine them, couldn't you?

A. Yes, Of course.

Q. So that was available to you in those secret files, or top secret files -- the total number of people executed by Einsatzgruppe D, wasn't it?

A. I didn't see any list of total figures.

Q. Was that information contained in those files?

A. I do not know.

Q. I want to submit to you Document Book II-D.

MR, WALTON: May it please the Tribunal, I don't want to COURT II CASE IX waste the time of the Court, but I now wish to question him on a phase concerning five documents, and in my opinion it is a good place to stop.

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THE PRESIDENT: Yes, I would think so, especially if you are going to take up a series of documents.

MR. WALTON: Yes, they are all connected and inter-related.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine-thirty.

(The Tribunal recessed until 0930, 19 November 1947) A. Musmanno,presiding.

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may proceed, Mr. Walton.

CROSS EXAMINATION (Continued) BY MR. WALTON: record of your testimony for the last day and a half and briefly stated it appears to be the following: That you were deputy to General Ohlendorf for economic questions in the staff of Einsatzgruppe D; that you were liaison officer to the 11th Army in your same sphere of economic questions, and that your chief function outside of your sphere of economic matters was the compilation of activity and situation reports gathered from the Kommandos of Einsatzgruppe D for transmission to the RSHA in Berlin. In detail, your sphere dealt with such questions as economics, agriculture, morale of the population in that area of the occupied territory assigned to Einsatzgruppe D. Is this summary a broad outline of your activities in Einsatzgruppe D?

A It is not quite correctly summarized. May I briefly repeat? I was not the economic expert with General Ohlendorf, but I was Chief III and thus the only information officer for the SD work in the area of Einsatzgruppe D. That does not only comprise economics but also the morale of the population for all fields of domestic life. liaison officer was with the Army who was permanently stationed there and who had his office there. In the staff of Einsatzgruppe D I had the job of collaborating with the Army, that is, all the reports which I have already mentioned for the agencies of the Army end the constant contact with these Army agencies.

Mr. Prosecutor, the third thing you mentioned, the activity reports, this was a part of the SD work, 90% of it. It was that part of the work where reports did not have to be copied, but real problems had to be dealt with. Questions arose as, for example, the food situation in a city where I became active as an advisor for the Army agencies, but this is only one small example, and furthermore, I received reports from the Kommandos which were concerned with executions and I incorporated them into summarized situation reports which were then submitted to the chief and which were passed on. sphere of tasks?

A I cannot say exactly, Mr. Prosecutor, for any servicesin the war area brings up daily questions and daily problems so that it might very well happen that the chief gives me some order to do something quickly.

Q I will inquire further. Did you ever make any agreements with the Army involving the future activities of the Kommandos of Einsatzgruppe D?

AAgreements would not be the right expression. At best I could receive directives and orders from the Army for my information. time Einsatzgruppe D would perform, through its Kommandos, certain specific tasks in certain specific localities?

Q Let's take a specific example. I now direct your attention to Document Book III-D, page 39 of the English, page 69 of the German, which is Document NOKW-628 -

THE PRESIDENT: 3, what, Mr. Walton?

MR. WALTON: 3-D, sir.

BY MR. WALTON, continued:

Q -- Prosecution's Exhibit 160. I hand you herewith, Colonel, a photostatic copy of the original document. This is a report of the activity of Einsatzgruppe D from 1 February 1942 to 16 April 1942 and if you will look at the last page you will see that it is signed by you for the Army High Command of the 11th Army. Did you prepare this report?

Q Now, again this report is signed after the abbreviation "IV" which means "In Vertretung", does it not?

Q And "In Vertretung" means the representative or acting for General Ohlendorf at the time you signed this report, does it not? with in the staff I was the constant deputy of the chief and I signed these papers as such.

Q All right. Now, let's see if all these spheres you dealt with are contained in this report. Now, you have testified that a man named Zietzen was appointed the deputy to Ohlendorf, have you not?

Q What other task did Zietzen have?

Q Now, isn't it true that the headquarters of Einsatzgruppe D was usually in the same locality as 11th Army headquarters?

Q Isn't it further true that Zietzen was usually in the field with his Kommando 10-A often many kilometers distant from the group headquarters?

A Yes, that's correct. was a great distance away from headquarters, could he? which I have pointed out, which is seven hundred kilometers away from Simferopol up to Taganrog.

Q All right. Let's consider this document. In the first paragraph of this report when you speak of the operation detachment 12, you speak of the extended activities of this Kommando and you say that they were carried, out in spite of the handicap of weather, What specific activities did you mean?

A Excuse me, Mr. Prosecutor, is this page 1 or nay I ask where this is?

Q Do you see Roman I paragraph which is headed "Activities since February 1942" on the first page? in effect, that Einsatz Kommando 12 had its headquarters in Fedorowka?

Q All right. And it continued to be handicapped by the severe cold of winter?

Q Now, in the third sentence it says that "The sphere of activities could nevertheless" -- which means in spite of the cold weather - "be extended by transferring Teil Kommandos to certain named places" Now my question was what were these extended activities which you mention were performed by Einsatz Kommando 12? to what the Kommando 12 has reported. I did not have any knowledge of my own about this.

I understand extensive to mean that the Kommando was again in a position to send out sub-kommandos from their garrisons.

Q For what purpose, Colonel? leaders. als, did it not?

Q You have answered my question. Now, continuing on toward the bottom of page 1 of the original, it is shown there that in agreement with the intelligence officer of the staff of the 11th Army, part of Sonderkommando 10-B, was employed for the protection of the railway area. Who made this agreement? the liaison officer. I do not know.

Q By the Kommando, do you mean General Ohlendorf? D? read here myself and what the Kommando had reported. I had no approval to give on this. This is a summarization of the report of the Kommando just as I mentioned under 12, so that I cannot say whether, on the basis of this transfer of the sub-kommandos any execution took place.

Q I didn't ask you whether an execution took plane. I was asking you about an agreement. Now, since General Ohlendorf was the group commander would it not be possible for the Army High Command of the 11th Army to agree with him that a Teilkommando of 10-B would be used for a time to guard a certain railway area which would be of benefit both to the 11th Army and to the Einsatzgroup? Could not General Ohlendorf have made the agreement with the Army?

or the first of April he was absent from the group? as the senior officer present in that staff before they took the matter up with the commanding officer of Kommando 10-B? they could only make an agreement with that Kommando leader who in this case represented Ohlendorf in his area. Suppose that you informed the Army High Command that it was not feasible or practical to use this portion of Sonderkommando 10-B. Could you have objected to their use of the Kommando for these duties? and could have given this information, so that during the negotiations with the Kommando Leader this was known. that you had discussed the employment of his forces to guard a railway area and advised him to grant the Army's request? Kommando was active, with what missions, that is, whether it was in combat or what the situation was. Only the Kommando leader himself could take this, because only he could say, "I have this mission to perform at the moment and the Army must take this job away from me if it wants to assign the other mission."

Q All right. Let's continue on down to two-third of the way down page 2 of the original which, Your Honors, is the last paragraph on page 40, and you use a term there, "The Crimea is freed of Jews", which is a quotation. What did you mean by that sentence when you wrote it?

THE PRESIDENT: Mr.Walton, you say "which is a quotation." It doesn't appear as a quotation in our book. It is a statement by him.

MR. WALTON: It is a statement by him which I meant to say I quoted from the document to him to call his attention to those words.

THE PRESIDENT: Oh yes, very well.

Q. Colonel, what did you mean by the words the Crimea is freed of Jews?

A. With this I repeated what the commando had reported, and I can only understand by this that no Jews were left on the Crimea.

Q. Is that the conclusion which you, yourself, reached when you had carefully analyzed the reports of the commandos; or, did each commando report definitely and specifically that his area was completely free of Jews?

A. The commando reported that the commando area is free of Jews, and I did not make any analysis or I did not make any countings, or did not draw any of my own conclusions, because they could have been completely wrong.

Q. Didn't you make any check to see that this statement was, could be true before you put it in your report?

A. That was not my task; I did not make any spotchecks, but may I say one thing: If the chief had ordered me to make spot-checks, that is to look through the files of the commando, then I would not nave found any more than the copy of the report which the commando actually sent to the staff of the Einsatzgruppe. It would have been completely impossible to investigate any further, so that the chief had to depend that his commando leaders would carry out orders which they received.

Q. It seems to me that this whole report, after reading it carefully, makes the group show up in a very favorable light. Now, it follows that your reports generally showed the group favorably. Would you pad it with facts which you did not know to be true or false?

A. I could not have put in any facts which I did not see in the reports, or which I did not take from the reports.

Q. But you accepted them as a complete truth, and put them in the report.

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A. The responsibility that the facts in the commando reports were correct lay with the commando leader.

Q. Answer my question, Colonel. You accepted them as a truth and put them in a report?

A. Yes, of course.

Q. Thank you.

A. Because I had no possibility to investigate further, and it was not my job.

Q. Now, as a matter of policy, did you while General Ohlendorf was absent, during this period, authorize any rewards or grant any special privileges to those Crimeans who denounced Jews to the Einsatzkommandos?

A. No.

Q. Do you know whether any rewards were given to denunciators by the commando leaders?

A. This is completely new to me.

Q. You don't know then, in other words; is that your answer?

A. I cannot know this because the manner in which the commandos did its work in its execution missions was not known to me.

Q. Let's go on to the paragraph relating the facts about the burgomaster of Kutschka-Eli and a communist woman president of the town council; that is the last sentence on page 41, Your Honors. Now, your report follows: Five main communists who were rendered harmless. Does this mean that they were killed?

A. Pardon me, Mr. Prosecutor, are these the five communists headed by the name Ibraimow?

Q. Yes, together with the burgomaster, and the communist woman president of the town council. Were these people all rendered harmless and, if so, what does the term rendered harmless mean to you?

A. Pardon me; I don't find the place where the word harmless is mentioned.

Q. Towards the latter half, latter third of page 3 of the original; just before the names, the five names given.

A. Page 3 of the original is missing here. It says page 1, page 4, page 6, etc.

Q. All right. You see the name Ibraimow, do you not, for it says on page 6 -

A. Yes, on page 6.

Q. Well, what does the sentence just prior to that list of names read?

A. There it says of leading communists the following were rendered harmless.

Q. Yes, now I want to know what that term means to you.

A. In this case the matter is completely clear, because on the top of page 7 the sentence had been added and shows that these people were publicly hanged.

Q. Who ordered their deaths?

A. I do not know. As far as I know, through the reports, I cannot say, but if it is a matter of a public hanging, it could have never happened without the town commandant of the army for the town in which this happened having ordered the commando to do it.

Q. Is there any proof?

A. But I do not know.

Q. Was any proof offered to you that these five in fact did hold a position that you gave in your report?

A. No, in this form I merely incorporated the reports of this commando report in the report.

Q. Why was the execution of these five individuals so important that you felt you had to give their names and their position in your report?

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A. It was not neither my job to investigate not could I see this.

Q. Did you usually give the names of all the executed persons in your reports?

A. No.

Q. All right, Colonel, let's go to page 6 of the original. This has to do with the punitive action against the village of Laki, which is on page 45 -- your Honors -just before the middle of the page. Have you found the place where on the 23rd of March, in collaboration with the Wehrmacht, the punitive action was carried out against the village of Laki; on page 6 of the original report.

A. Yes, I found the place.

Q. Who ordered this action?

A. There are two possibilities according to what I read, here, for I do not know any more than that. First of all it could have been ordered by the leader of the army unit there; secondly, it could have been ordered by the Kommando Leader 11-A, which was in Bachtschissaraij.

Q. Who reported this fact to you?

A. This report came from the Kommando 11-A.

Q. Now, your report states that fifteen persons were involved in the giving of aid to partisans and were shot; and the rest of the population evacuated and the village burned to the ground. Were other homes or places of shelter provided for these people whose homes were completely destroyed?

A. I do not know, and I cannot know, Mr. Prosecutor, because I wasn't in this place at all where this happened. I don't know the town Laik at all.

Q. Did the reports state any provision for the people who were evacuated from their homes before they were burned?

A. I cannot say; I do not know.

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Q. Did the reports state how many people from the village of Laki were made homeless by this action?

A. I cannot assume it because otherwise it would say so.

Q. Did the fifteen persons executed have any kind of trial before a court prior to their execution?

A. Mr. Prosecutor, to all these questions I can only repeat one answer. I do not know these events from my own knowledge. I did not have the job to investigate them. Therefore, I cannot know whether a trial was given here by the Kommando leader.

Q. All right; let's pass on to page 8 of the original, the paragraph headed Roman II, which is on page 46 -- Your Honors. Now then, this paragraph is headed planned further assignments of kommando detachments. Way would this go into the reports unless you in the absence of General Ohlendorf had the right or the power to order the kommandos to carry out these assignments?

A. This was put in here because this decision was up to the army alone.

Q. Well, if the decision was up to the army alone, they knew what they were going to do with the kommandos. Why would it be necessary for you to cite in your report the future assignments of the five sub-units of Einsatzgruppe D?

A. Because the kommandos mentioned in their reports, for example, the Special Kommando 11-A had reported that it would now transfer its headquarters from Bachtschissaraij to to Kokosi, and this was mentioned in these reports.

Q. Did they have to receive approval from the headquarters of the Einsatzgruppe D before they could make this transfer?

A. As a rule it was done with the approval of the chief of the Einsatzgruppe.

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Q. Yes, but during the period 16th of April, and for some time after that, General Ohlendorf was absent, either on leave or on business in Berlin when you wrote this report on the middle of April. Now, who had to make the approval?

A. His Kommando leaders were his representatives, there was no condition without any order; if the army had not been agreeable, then via the liaison officer it would have called up the Kommando 11-A and said that the Kommando was to stay at that one place.

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it was well known to the army and well known to the Kommando leaders and the staff had nothing to do with it? Why was it necessary for you to put it in the report?

A That was customary; it was done this way at all times in all reports; it could have been omitted just as well.

Q So it served no purpose for you to put this in the report? Did it serve a purpose of any kind for you to put it in the report? Kommando was in case the army officer did not yet have this information. of them. We will leave that. The next thing I want you to do is to point out for the Tribunal in this report any statement made by you which concerned your field of domestic questions of economy, or of agriculture, or the morale of the population. Point out one statement in that report which was definitely in the field you have stated was yours.

A The spheres which you have just mentioned, Mr. Prosecutor, is my sphere as Chief III for the SD reports; as my second sphere, of all the summarizing of these reports; secondly, the partisan reconnaissance; and thirdly, the working on the military decorations.

THE PRESIDENT: You didn't answer Mr. Walton's question, or rather, you did not do what he asked you to do. economics or of the field which I mentioned as Chief III as far as I can see. BY MR. WALTON: Einsatzkommandos of Einsatzgruppe D, were you not?

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of them, were you not? important or secret matters if the kommando leaders reported to the chief personally -- which happened very frequently.

Q You didn't know of important or secret matters; is that correct?

A I did not mean to say that. Of course I knew about secret matters, but I cannot say that I heard about all secret or top secret matters, for I have already mentioned that during conferences with the commanding general of the army, between him and Ohlendorf, I was never present during these conferences. the English, page 1 of the German, document Book III-D, Sir, I am sorry, Document Book III-D, page 1 of the English, page 1 of the German, which is Document No. NO-2856, Prosecution's Exhibit 148; specifically to paragraph 2, the sentence there which reads at the end of page 1 of the original. Seibert had full access to all secret files, including those which were designated as top secret. I am sorry, Colonel, I thought you had it in your hands.

Let me repeat: In paragraph 2, toward the end of page 1 of the original, the sentence reads, and I quote: "Seibert had full access to all secret files, including those which were designated as top secret." Now, does not this sentence mean that you knew, as well as General Ohlendorf, all matters which concerned Einsatzgruppe D, or, certainly all official matters which concerned Einsatzgruppe D? far as the matters are concerned which are designated as secret, that I had access to them, but outside of secret documents there are matters which have not been laid down in the reports or orders, or there can be such things, so thus this does not exclude that I did not hear about those.

Q All right: let's go a little further down on page 2 of the original where General Ohlendorf says that Seibert was acquainted with all the duties and problems within the framework of Einsatzgruppe D. Only two people -- I am still reading from the affidavit -- could have complete knowledge of the number of executions which took place; namely, Seibert and myself.

Well, Colonel, was not the number of executions the most carefully guarded top secret of the affairs of the Einsatzgruppe D? I know.

Q All right; let's inquire into some of the reports from Berlin. Document Book II-D, please; II-D, page 8 of the German. Colonel, let me call your attention to Document Book II-D, page 8 of the German, page 9 of the English, which is Document No. NO-3159, and Prosecution's Exhibit 85. Now, this is a rather lengthy document, and on page 18 of the English copy -- I don't know exactly what page in the German, but it is on page 13 of the original, where the section of this RSHA report is devoted to the activities of Einsatzgruppe D. Will you kindly indicate when you have found this section of that document?

A Einsatzgruppe D begins on page 14 of the original; is that right in the German text? description. Right under the paragraph marked Einsatzgruppe D, it gives a location as being in Nikolajew. executions of 31,767. Did you report this figure to Berlin? were sent to Berlin. The situation and activity reports which were sent to Berlin contained at the end always the same sentence; during the time of the report so and so many people were executed. The number had been omitted in the report, and in this report which the signal man Fritsch made out, of course as a result of a dictation by me, or, by Ohlendorf, in this report he went into the signal room and from the reports of the

Einsatzkommandos during the period that the report was covering, he took out the numbers and he added them for this period of the report, and this figure then was coded by him personally in the signal room, and did not appear in the written reports for reasons of secrecy; this had been ordered by Ohlendorf.

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total number of executions that he was to send to Berlin?

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room and were at the disposal there every day for his work. everything in the report, except the total number of executions? matter to get the total number and figure them up from the reports of the 5 kommandos and it was his sole responsibility to determine what these totals were and his sole responsibility to transmit this information to B erlin? signal man, Fritsch, just as any signal man who gets such a report for transmission. executions during your whole service with Einsatzgruppe D? have been done by Fritsch.

THE PRESIDENT: That wasn't the question which was put to you. Tour answer was an argument and not a response. Mr. Walton asked you if throughout your entire service you ever gave Fritsch the number of the executions.

THE WITNESS: No, he did not get a total figure from me.

THE PRESIDENT: At no time?

THE WITNESS: At no time, Your Honor.

THE PRESIDENT: Did you yourself know what number he then transmitted?

THE WITNESS: I knew the figure in the reports, Your Honor. Q (By Mr. Walton): Then I ask you a question on Document 3159, which is now before you.

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Is that total of 31,767 the correct total for the date of the report? compiled in Berlin and many mistakes could have happened. You said that you knew the total figures in the report. All right, we'll see if we can refresh your memory further. Will you turn in the same Document Book II-D to page 25 of the German, page 20 of the English, to Document NO-2825, to a report from Einsatzgruppe D, as published by the RSHA in Berlin, which shows that by the 12th of December, 1941, the total executions performed by Einsatzgruppe D, are 54,696 persons. Is this a reasonably correct figure for that time?

A I cannot say, Mr. Prosecutor. Berlin figured that out.

Q All right. The first five documents in this document book -

THE PRESIDENT: Mr. Walton, I would like to know whether he is familiar with the sentence which preceded the sum total of executions.

MR. WALTON: Very good, Sir, I will inquire into that. Q (By Mr. Walton): Under the paragraph marked "Shootings" it says that 2,910 Jews, plus 19 Communist officials were shot. Where did Berlin get this fact? These figures could have been sent on to Berlin by the Einsatzgruppe, but whether these are the figures I cannot say. I mean to say by this that here mistakes might have cropped up, but these figures were sent by the Einsatzgruppe to Berlin. I merely cannot say whether these are the very figures.

also sent to Berlin?

Q How do you know it was not?

A Because this was never done. Fritsch had the job to add up the figures for all the kommandos for the period covered by the report, and a place would be left open for this figure on the report, but otherwise no figure was provided for. sent to Berlin, is that what you say? or a month period was sent to Berlin, were they not? 1941 to June 1942, how many people were executed by Einsatzgruppe D? reported figures correspond with those which were actually executed.

Q Forget the reports. From your general knowledge, you know that some people were executed by Einsatzgruppe D, do you not? an approximate figure from you as to how many people in your best estimate Einsatzgruppe D executed?

AAny figure I would mention would be incorrect. I didn't see all reports for I had a chief who worked himself and who often made out reports himself.

Therefore this would give a completely wrong picture, since I did not know any list where the figures were compiled. says in his same affidavit, which I have already called to your attention in Document Book III-D, page 1 of the German, page 1 of the English Document NO-2856, and Prosecution Exhibit 148. Let's go back to paragraph 2. "In rare cases only," says General Ohlendorf, "if very important reports had to be written, I dictated them myself and later informed Seibert of the contents as a routine matter." Is this statement true?

DR. GAWLIK (Attorney for the Defendant Seibert) Your Honor I would like to point out a translation mistake. In the German document it says "customarily". "I later informed Seibert customarily of the contents," and, as far as I have just heard, the word, "customarily" which is very important and gives the sentence an entirely different sense was not contained in the English.

MR. HORLICK HOCHWALD: If your Honor please, "as a routine matter" covers the word "ueblicherweise". I do think it is there in the translation.

THE PRESIDENT: Well, whatever was said, the affidavit which we have before us reads "and later informed Seibert of the contents as a routine matter." Now, "as a routine matter" is different from "customarily".

DR. GAWLICK: Yes.

THE PRESIDENT: "Customarily" would mean "generally". "As a routine matter" -- it would mean"without exception".

DR. GAWLICK: Yes.

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THE PRESIDENT: Very well.

DR. GAWLICK: I ask then that this be corrected, Your Honor.

THE PRESIDENT: Well, I think that the discussion, as it has now taken place, up to this moment, will all appear in the transcript and therefore it will be clear just what was meant.

Q (By Mr. Walton): I ask you, Colonel, if this statement is correct that General Ohlendorf made?

A The statement is correct, Mr. Prosecutor, for you must know that many reports were made out daily, that is to say, within a period of two or four weeks, a great number of reports were made out and these rare cases where actually secret matters were reported they concerned those reports which happened once or twice a month and it wasn't that I merely passed on these two reports to the Army which have been submitted here. There was a very large number of reports which I made out, almost all of which concerned themselves with my work as Chief III, but they do not appear here.

Q All right. We will return to my other question. From the information which you gained and which you were able to gather while you served with Einsatzgruppe D, according to your best recollection and belief, how many people were executed by Einsatzgruppe D from June 1941 to June 1942? or belief, because my figure could be incorrect. by Einsatzgruppe D? what I should say. Of course, I know that executions took place and I saw the figures in the various reports, but to give you a total figure, I cannot do it.

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Q All right, I'll ask you this: Do not the total number of executions present a fairly accurate picture of the number performed by Einsatzgruppe D during the time that you were with the unit? kommando.

Q You mean that you won't say.

A No, Mr. Prosecutor, I am aware of the fact that my figure could be wrong and therefore I cannot mention any and I did not perform any service with a kommando and therefore I have no way of knowing the answer to the questions which you put to me.

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an inspection trip? before this Tribunal make the statement that you had the authority to stop bad conditions of an execution? That's found on the transcript of the record, English text, page 730. You still insist that you did not have this authority to stop improper or bad conditions of an execution?

A I know of no such authority, Mr. Prosecutor.

Q All right, Let's go on to another subject. Is it true that the deeper into Russian territory that EinsatzGroup D proceeded the more difficult became the communications with Berlin? territory the difficulties of communications between the Kommandos increased did it not?

A Here I must make a difference. We were in radio communication with the Kommandos and we had radio communications with Berlin. These communications did exist but otherwise it was very difficult. For example, the Crimea in the first months of 1942 was always cut off and the Army had ordered that only ammunition could be brought to the Crimea. Otherwise no traffic took place. virtually a free hand in carrying out their missions in the area assigned to them?

A Mr. Prosecutor, this is a matter of interpretation. The Kommando leader was able to get in touch with Ohlendorf, by radio any day.

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variance with the statement you made on 11 March this year. In that interrogation you stated they had virtually a free hand in the areas assigned to them. Now which one do you stand on, the one in the interrogation or the one you just made?

A I see no difference in that, Mr. Prosecutor. Of course, the Kommando leaders, after they had received an order, had the possibility to carry out an order the way it was appropriate in their area and as it was suitable to their division, etc. But, this does not exclude that in questions which the Kommando leader thought he could not decide himself he could apply to the chief by radio. I see no contradiction in this. the Kommando leader acted on his own initiative, did he not? gas van? parked in the courtyard at the headquarters in Simferopol?

A There was a gas van there. I saw a gas van but it was not there all the time. I do not know this exactly and by inquiring from the driver I found out it was the so-called gas van. van when they needed it?

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that they might have turned to the chief. I do not know.

Q Did you ever dispatch the gas van to a Kommando?

A No. I never did that. was not there of dispatching this gas van? April. That's when I was on the staff by myself. Simferopol?

A I cannot give you the date. I could even be wrong in giving the month. leave the courtyard at Simferopol and then it would come back later? does not exclude that the gas van had been requisitioned and brought to the Kommando but in no case was it a continuous traffic during the periods which I was present. van in the courtyard at Simferopol, haven't you? later, was it not? in Simferopol?

Q It could have been there, you just don't remember?

A I do not know. I saw it one single time. It could have been there. There was a very large garage in the courtyard where all vehicles were kept.

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that they had used the gas van?

A No, I did not see such a report. It never mentioned that - whether they were executed by the gas van or whether they were shot. The expression shot was used but I do not know that the gas van was mentioned.

Q Well, are you familiar with Himmler's order that women and children should be executed by gas rather than shooting which was published to your group in the early spring of 1942?

A I do not remember such an order as Himmler's order in this form.

Q Whose order was it? have described. the first place? but I did not see any express Himmler order to this effect.

Q Did you ever see anybody's order to that effect?

A Saw the order? Pardon me, I don't understand the question. women and children by the use of gas vans?

Q Well, didn't it excite your curiosity as to why the gas van should be there and didn't you seek to find out the reason for its presence in the courtyard in Einsatzgruppe D?

A I didn't bother about these things, Mr. Prosecutor. I know, of course, that people were to be executed by gas vans or I could unfortunately imagine it but I did not investigate the matter because it was none of my business.

saw situations which needed improvement didn't you offer suggestions for dealing with these situations to the Kommando leader?

A Prdon me, what conditions do you mean, Mr. Prosecutor?

Q All right. Suppose that the Kommando leader when you arrived at his headquarters said, "Colonel Seibert, I have a problem here which concerns the morale of my men. I should like your advice and counsel on it." Would you discuss such a matter with a Kommando leader? comradely fashion and would have given him personal advice but if I visited a Kommando leader it wasn't that he said, "Colonel, may I ask you this?" but the relationship was much more friendly, so that one was able to discuss it. getting worried about the fact that his execution squads seemed to enjoy their duties as an execution squad and asked for your advice about replacements, what advice would you give him?

A I didn't get the question. The Kommando was to enjoy the execution you mean? That is completely impossible. so many executions until it was the impression of the Kommando leader that these men enjoyed their duties. Now General Ohlendorf has testified here that he always saw that men who reached this frame of mind were shipped out of the group. Suppose this Kommando leader told you that this situation existed in his Kommando and asked your advice about getting replacements for these men. What advice would you give him?

DR. GAWLICK: Your Honor, I object to this question. First of all the question is so long I must say I didn't even understand it myself and there is great danger the witness may give an answer that may be wrongly understood because of the translation. First of all, I ask about a definite rule about hypothetical questions. According to German procedure hypothetical questions are inadmissable and I would like to refer myself here to rulings in criminal procedure - even in American criminal procedure hypothetical questions are inadmissable. What the witness should testify is what he did, what he said, what he saw, and only facts but he cannot imagine himself what he would have done if a, b, c, d, e, or f had happened. This is impossiple for one to demand of the witness and, therefore, I ask of the Tribunal that the Tribunal make a basic ruling about hypothetical questions.

THE PRESIDENT: Gawlik, have you ever read any standard work on evidence as presented in Anglo-American Criminal procedure?

DR. GAWLIK: Yes, "Wharton's Evidence in Criminal Cases".

THE PRESIDENT: Now, can you point out to the Tribunal any section in "Warton's Criminal Evidence" which states that hypothetical questions are not permitted?

DR. GAWLIK: Yes, I could do this if the book is put at my disposal.

THE PRESIDENT: All right, where did you see this book?

DR. GAWLIK: The book is here in the library but it is difficult for me to get hold of it, when I go to the library on Saturday and Sunday maybe.

THE PRESIDENT: All right, Mr. Walton will have that book available for you to persue during the recess, and when we reconvene I want you to read to the Tribunal the section you refer to where it says that hypothetical questions are not permitted.

( A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Professor Gawlik, are you ready now to give us the law?

DR. GAWLIK: I am sorry, Your Honor, there are three fat volumes, and I shall have to look at these fat volumes first. At the moment I have no objection to the actual questions until I find it. I only would like the last question to be put so that it is understandable to me; otherwise, I don't want to hold up proceedings for the time being.

THE PRESIDENT: Rephrase the question, Mr. Walton, and put it very briefly.

CROSS EXAMINATION (Continued) BY MR. WALTON:

Q. Colonel, if a commando leader felt that his members of an execution squad were no longer of any furhter use to him and he wished to have them replaced, would he informally discuss his replacements with you on one of your inspection trips?

A. That is quite possible, Mr. Prosecutor, that the commando leader would have informed me about it and would have talked to me about it. Yes, that is possible.

Q. And you would have discussed the matter with him, is that correct?

A. I certainly would have talked to him.

Q. And you would have given him that advice as to how to proceed?

A. If personally I had been in the position to do so and to give him some comradely advice I would have done so.

Q. Would you have also discussed the tactical situation, confronting the commando leader with him while you made a visit to his commando headquarters?

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A. You mean the tactical situation, the military tactical situation, is that what you mean --Yes, we talked about it.

Q. Well, would the security tactical situation also be discussed?

A. It obviously happened when I talked to commando leaders that, of course, they informed me about the situation.

Q. Did you give them advice and counsel toward the solution of their immediate problems?

A. He did not expect me to do so because he was certain that such advice concerning security I could not tell him more than he knew himself because I wasn't an expert as far as that goes.

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Q Who was the acting Commander when Ohlendorf was away?

A What absence are you referring to, Mr. Prosecutor? Commander? mentioned before, which sometimes lasted a week -- there was no deputy for him. When he was absent for a longer time, like the absence which was mentioned, he, as I have said, appointed as his deputy for their areas the respective commando-leaders. which is page 737, and which is in the English transcript of the Record at page 727. This is the cross examination of General Ohlendorf, and I ask you to look at the portion which is marked, and the question that was asked General Ohlendorf: "Who was the acting Commander of your group while you were away?" Do you see that?

A Yes, in the German transcript it says, "Who was during your absence your deputy in the Einsatzgruppe?" Yes,

Q All right, what was the answer?

A "The deputy in the staff of my group was the co-defendant Seibert." words? he was gone,does it not? statement unless it was true?

A I beg your pardon -- I didn't understand that question.

Q That is a true statement, is it not?

A The statement that during Ohlendorf's absence I was his deputy on the staff is correct, yes.

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Q Isn't it a fact that due to yourposition or rank, you were well acquainted with all the duties and problems of Einsatzgruppe-D? because I held this particular rank, but they were just know to all the members of the Einsatzgruppe.

Q All the duties and all the problems?

A Excuse me. All the problems is a bit too far, Mr. Prosecutor. I have already stated that I could never say that I was acquainted with all problems, or all matters concerning Einsatzgruppe, for as I said, I wasnot present in a number of discussions which Ohlendorf had. Book III-D, page 1 of the English, page 1 of the German, which is Document NO-2856, and is Prosecutor's Exhibit No, 148; the same being Ohlendorf's affidavit. Let's look at page 2 of the original, which is the second complete sentence on page 2 of the original, and it says, and I quote: "Seibert wasacquainted with all the duties and problems within the framework of Einsatzgruppe-D." Is that statement true? the fact that one question might have cropped up that I didn't find out and I didn't learn about in some form or other, because it is quite impossible during a period of one year to say all questions and all problems have been made know to me. We would have again to discuss the term "problems."

THE PRESIDENT: I am sorry.

MR. GAWLIK: Mr. President, I think I found it. In the following words which are found in the volume of Wharton's, volume 3, it is page 1301, about cross examination. It says here: "Irrelevant, collateral, improper, or repetitious testimony," and it says the following, I shall translate it and I shall give it to the translators in case I make a mistake in the translation. "The cross examination should be confined to the question of factual questions, and should exclude questions concerning expressions of opinion, or speculative questions, or all argumentative questions, especially questions of an argumentative nature which call for an opinion or conclusions, or of some assumed knowledge of facts improper.

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"And an exception so far as I know has only been made within scope of an expert when one can, of course, ask speculative questions of an expert, hypothetical questions based on facts. This is expressed here. It says here, it is maintained that a hypothetical question to an expert witness can be put in the cross examination, and it must be based on the basis of material which is offered in this particular case, and this is not the case here because he is not an expert witness. I shall not passit unto the interpreter, or to Mr. President, if you would like it, I shall show it then to the President.

THE PRESIDENT: Well, Professor Gawlik, what you have read is, of course, the law, and your interpretation is absolutely correct, and the best evidence on that is that the witness replied to the question which is now a matter of record, namely, the question put to him was of a factual nature. Mr. Walton asked the witness, what happened when he called on the commando leaders, what wasthe relation between then, and the witness stated, it was a very friendly one, and that they discussed what occurred. Then Mr. Walton askedhim, if the commando leader sought your advice in the matter of replacements, what would you have said to him. You see, it is purely factual, and it is entirely relevant. If Mr. Walton had said to the witness, now witness, suppose while you were in the wilds of Crimea, you were attacked by ten tigers, and you did not have a pistol, what would you do? Now that would not be permissible, because up to this point we have not heard anything about tigers in the Crimea. So long asit is based on facts in the case, a question such as Mr. Walton put is entirely proper.

Dr. GAWLIK: Yes, but it follows, Your Honor, that repeatedly the following happened. The witness said these things had not happened, and then he was asked if it had happened what would have happened, and I believe.......

THE PRESIDENT: Yes, oh ---

DR. GAWLIK: And I think in this case the question is inadmissible. I would like Your Honor to tell me whether I am right in this?

THE PRESIDENTS Yes, again, Dr. Gawlik, we go back to whether it is factual, if it is based upon what has actually been testified to, and it is entirely relevant, and the mere form of the question does not make it inadmissible, because in cross examination that is the only way you can arrive at the truth, because if you allow a witness to say that didn't happen, and you stop there, then you cannot delve into it any further, and there is no use having a cross examination; so long as it stay within the realm of the subject of discussion, questions of the nature which were put by Mr. Walton, which you call hypothetical questions, which are not really hypothetical questions, are entirely in order. However, I do not exclude to you, Dr. Gawlik, the right to object any time you feel that the question is improper.

DR. GAWLIK: Thank you, Your Honor.

THE PRESIDENT: You are welcome.

MR. WALTON: If it please the Tribunal, may I confer with the court stenographer to find what was the last question. I don't think the answer was complete.

THE PRESIDENT: Mr. Gallagher, will you please read that last question.

(Whereupon the last question was read before the Tribunal as follows)

"Allright, I can only call your attention again to Document Book Document No. 2868, and is Prosecutor's Exhibit No. 148; the same being Ohlendorf's affidavit.

Let's look at page 2 of the original, and it says, and I quote:

"Seibert was acquainted with all the duties and problems within the framework of Einsatzgruppe-D." Is that statement true?"

) BY MR. WALTON: before you?

Q Is that sentence quoted true?

A The sentence as quoted here is correct. I have already added to it that it did not exclude -- that it never could exclude that discussions took place, the contents of which I was not informed about, and, secondly, I do not know how far the concept a "problem" can be defined. Ohlendorf was away?

A I cannot answer this. It is quite possible that orders came, but I don't know. a commando? the order, that order would be given to the Commando itself. If, however, I had received it, I would, have passedit on to the authorities of the Commando. headquarters were located, there was one or more commandos nearby? your headquarters was there?

A In Simferopol itself there was Kommando-XI-B. The other units were according to my present estimate, the nearest commandos were at a distance of about eighty to one-hundred kilometers to the south, and to the east and to the west.

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one near your headquarters. There was just one commando, was there not?

Q And you answered, this was XI-B? in the town?

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while they were in Simferopol, and while they were in Nikolaev? one of these commandos while General Ohlendorf was away from his headquarters? were summoned to the executions were collected, have you not?

A What order are you referring to? To what order may I ask? were summoned to execution was collected before the execution, have you not? but generally I think I did know about it. money, or valuables turned over to Einsatzgruppe-D by the commando performing the execution? administrative leader. D Headquarters?

A I would assume so. He might have been absent sometimes, but so far as I remember he was always there.

Q Well, now, isn't this clothing collected for a specific purpose? use of.

Q Don't you know as a matter of fact, this clothing was turned over to the National Socialist Welfare Organization for redistribution?

A I don't know that this did happen in all cases, but I remember now that it did happen.

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to clothe Ethnic Germans?

A No, in this case we misunderstand each other. My economic question I dealt with as an intelligence officer, I had to deal with the problems in occupied territories of that nature, but not the economic questions of supply. All those questions an administrative officer or economic officer had to deal with, and that is something entirely different.

Q Well, now, Colonel, if these men didn't have enough food in the occupied territories, or these people didn't have enough food in the occupied territories, you would report such fact to Berlin, would you not?

Q And if they didn't have enough clothes for the winter, would you report that?

A Yes, I would have reported that, too. Excuse me, not men of Einsatzgruppe, but the population. We must understand each other here. It is the population. cluded the ethnic Germans who were being settled in this occupied territory, didn't it?

Q Now if these people didn't have enough clothing, enough coal, or enough furnishings, that would be a question which you would deal in with as Chief of Leiter III. Germans. your office as to the distribution of these clothes collected from people who were shot, wouldn't you?

ethnic Germans, and, if I now assume, that they had not enough clothes, as to how this situation was being dealt with, that was not for me to decide, it was never a matter for the SD official. I only had to report about it. point I am making is, that you have reported to Berlin that the Ethnic German Settlers who were part of the population didn't have enough clothing; later, did you ever make an inspection to see if this lack of clothing situation was relieved?

A I cannot remember that. Obviously I visited the ethnic Germans' territory, but not to inspect them concerning these questions, but in order to inform myself generally about the position.

Q All right. Now the information that if you had made a report to Berlin that they lacked essential clothing, would you not consider it a matter of information to later on see if your report about this lack of clothing had been acted upon? after each report. But many of these reports were only meant for information, and whether these matters were being dealt with was something for the SD, the competent authority to deal with which received these reports. the fact that the matter was attended to later on? had sufficient clothing, now in that case, yes, of course, I would have reported about it. of clothing from all sources whatsoever, weren't you?

A What do you mean by interested, Mr. Prosecutor? I reported about these matters, and if they changed I reported again.

Q All right, you had enough interest that they didn't have clothing, and to report that fact. Now didn't you have enough interest to report possible sources of clothing for these people who lacked it?

You had enough interest to report the fact that they lacked clothing. Didn't you have enough interest to go one step farther in your report, and report to the proper authorities the sources of the clothing so these people could have their needs relieved? included in the reports. it was remote?

A That is not of remote interest. I did this according to the reports, and if I found out the source I just reported about the source, and if the fact that the shortage was over, then, of course, I reported about that fact.

Q Let's go back to these people who were executed. Was that clothing kept for any length of time in Einsatzgruppe-D Headquarters?

Q I didn't ask you about a camp. was read to you, in which you stated the valuables and clothing were collected by an inspector from AMT-I. They were registered, and sent to Germany, and the money and valuables were either deposited in a local bank or sent to Germany, and that this inspector was responsible to Ohlendorf?

A That is correct, Mr. Prosecutor, this administrative officer had to deal with such tasks; the money and valuables, as I said, were sent to the group, but no clothing was taken to the group, but this administrative officer just took care of it. In the Commando he was the competent authority. That was within his competence.

Q Took care of what?

Q In the headquarters of Einsatzgruppe D?

A Yes. It did not mean, however, that a transport of all these things to the Einsatzgruppe took place. or valuables in Einsatzgruppe D... there was no store for these items.

A I don't know whether that was translated differently. I said the same just now. I said, Mr. Prosecutor, that that does not mean a transport of clothing from the kommandos to the Einsatzgruppe. stored in Einzatzgruppe D for a day, or a week, or a month?

Q I didn't ask you whether you ever saw it; I asked you whether it was there.

A I do not know, Mr. Prosecutor.

Q It could have been there, then?

AA large store would have struck me... I would have seen it.

Q All right. What was the name of this inspector or administrative officer to whom these items were entrusted for transmission to Berlin?

Q Was he on the staff of Einsatzgruppe D?

A Yes. He was a member of the staff. headquarters of Einsatzgruppe D?

Q Did you know what his duties were? were eight different sections which were under a staff officer who dealt with the section pertaining to his work. Of course, what became generally known, became also known to me.

Q Yes. And he reported his disposition of these items, did he not?

Q Well wasn't that a matter to be included in the reports to Berlin?

A I don't remember any report in which there was anything to this effect. There could have been individual memoranda or letters from this administrative officer. not go through the general report which you made out? entirely different department.

Q I am not speaking of your reports as Chief of Office III; I am speaking of the general reports which you drew up for the whole Gruppe. Were his activities ever included in those reports?

A He made out his own reports. And a listing of these reports within the general situation reports, I cannot remember. Berlin besides the general situation reports?

A Many of the departments, yes. For instance, the motor pool expert reported about the Office II, about conditions in the field of transport; the medical officer had to report continually to the medical office in the RSHA. The interpreter, of course, did not make any reports. The departments had been given deadlines from the offices in Berlin. lected by the kommandos, had been sent in to Einsatzgruppe D headquarters, were they not?

A No, I have already said they were not sent there. If they had, I would have seen larger stores. concerning watches and rubels - which is contained in Document Book III-D?

Q Now, where did these watches come from...and these rubels? the administrative officer of the Einsatzgruppe. The administrative officer knew about this.

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Q From where did they come - from the kommandos?

Q Now, the Einsatzgruppe did not keep these items, did they...of money and watches? says, to the Wehrmacht - didn't they?

Q Did they take receipts for deliveries to other authorities?

A Not personally. I personally didn't get a receipt. But I am sure that the administrative officer had these receipts. He had to have them. shipments of clothing and watches and valuables from Einsatzgruppe D? Einsatzgruppe.

Q All right. Valuables, watches, fountain pens, eye-glass frames, jewels, rubels... how many times do you estimate that shipments were made to higher authority from Einsatzgruppe D? was there. It is possible that this happened in the army a third time.

Q Then of all the executions performed by Einsatzgruppe D... only twice or three times valuables were sent in to the headquarters?

A They were not sent to headquarters. That was so in this one case... that is mentioned in this letter. were selected for executions, didn't you?

A Yes, I learned about that... but whether they were items which were generally confiscated I could see that, of course - I did not know any details. They may have been of other people who had to give up their valuables for other reasons. That I don't know.

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Q All right. Wasn't it the responsibility of every man in that headquarter to see that no Einsatzgruppe personnel enriched himself by keeping such items for his own use? once, and of course I also was informed about it.

Q Well, isn't it a fact that these shipments were made regularly, from time to time, out of Einsatzgruppe D headquarters?

A I really can't say that. It is quite possible that I made a mistake when I said twice, and that it might have happened more often, but that there could have been a shipment weekly or fortnightly, I don't know. I think it quite impossible. General Ohlendorf's adjutant, have you not?

Q How well did you and Schubert know each other? Office I of the RSHA. Before the assignment I must have talked with him on one or two occasions in Berlin, but I did not know him better than that. I only met him again in the assignment. they not? contact with Lt. Schubert, didn't you? other daily; but I have already said that I was often away with Ohlendorf, or by myself; but otherwise, of course, I saw him daily when he was there and I was there. from his headquarters? that I did not order Schubert because he was a personnel acquaintance of mine, but I just told him to do something.

Q Yes. Did Schubert know your functions and duties in the Gruppe?

Q Now, if Schubert made the statement that, and I quote: "In matters where one did not want to bother the chief, one turned to Seibert" - would that be a true statement? or for some reason or other was away, he came to see me because I held the highest rank... that is quite correct in that form. which you have stated? Would you render a decision in these matters? called to my attention. If it was pertaining to my own sphere, certainly would have been able to make a decision. Otherwise, I could only have given advice, and I could have said who the expert was for this particular shpere. gave any directives or orders? the special situation in the Crimea, I can never say generally that this was absolutely excluded as a possibility; but I do not remember any directives which have anything to do with spheres that I have mentioned.

Q But it could have happened, even though you don't remember?

A I don't know.

Q It is possible, isn't it? in there, and their duties - if Schubert considered you the full deputy of Ohlendorf he had a basis for this assumption didn't he?

A Hour he had it personally, I do not know. I can only imagine, as I already said, that he was aware of my position within the staff, yes.

Q All right. Let me call your attention to his affidavit of 24 February 1947, which is contained in Document Book I, page 108 of the English, 141 of the German, and which is his affidavit 3055, Prosecution Exhibit 28. Let me call your particular attention to paragraph 2, the second sentence thereof, which reads, and I quote: "In October 1941 I was assigned to Einsatzgruppe D. Otto Ohlendorf was the Chief of the Einsatzgruppe, and Willy Seibert was his deputy." Do you find that sentence?

A Yes, I've got it, Mr. Prosecutor.

Q That is a true statement, isn't it?

A I have already given my opinion on that. Schubert was detailed to the staff and he found me there -- as the highest ranking officer and as the deputy for the Staff, and this is the only way I can regard this statement.

Q Do you know Karl Jonas, J-o-n-a-s?

A Jonas? I seem to remember the name, surely.

Q Well, I'll tell you. He was second in command to Hans Gabel, the chief of the order police company attached to Einsatzgruppe D.

Q Do you remember the name now? gruppe D? I saw Jonas very rarely - that means not very often; I am just thinking over to what kommando he was assigned. I cannot remember exactly.

A Yes. Yes. That is correct. I don't know at the moment in what kommando he served.

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Q. Now, if he considered you as General Ohlendorft's deputy, would he have some basis for that statement?

A. Mr. Prosecutor, this basis can only result from the picture that he found when he arrived at the staff, and the reason was that.........I was the senior officer on the staff.

Q. All right. Let us go a little further. Let us consider your own affidavit which is contained in Document Book III-D, page 34 of the English, page 60 of the German, which is Document 2859, and is Prosecution's Exhibit 158. What does the last sentence in the first paragraph read?

A. As senior officer of the staff of the Einsatzgruppe I took over all tasks within the Gruppe whenever Ohlendorf was absent from the Gruppe.

Q. Isn't this a normal function of a deputy when the chief is absent......to take over all the tasks?

A. Mr. Prosecutor, then I could not have already stated, one or two sentences, before, and I quote, "I was never appointed the deputy of Ohlendorf for the Einsatzgruppe D." I would not have made this statement and then said the contrary two sentences afterwards; but this only applies to "within the Gruppe".......the staff itself, and I think I have made that quite clear. But that does not mean that I had any authority over the kommando leaders.

Q. Well, did Ohlendorf when he was present, issue orders to kommandos?

A. Certainly.

Q. And this was one of his tasks, as Chief of the Einsatzgruppe D?

A. Yes.

Q. Now, when he was absent did you take over this task, too?

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A. Mr. Prosecutor, there were no daily tasks or orders. Otherwise, Ohlendorf could not have been on the road for weeks at a stretch without authorizing and appointing a deputy within the staff. But basic orders had been given before. And when Ohlendorf was absent in April he could, of course, not have passed on any orders to the kommando, but that does not include the fact that at this time I could have given the orders, but the kommando leaders were his deputies for their own departments.

Q. You stated you could have given orders during the time in April and May 1942 when Ohlendorf was absent?

A. No. Not in that form.

Q. You just stated that you could have, while Ohlendorf was absent on the road, give orders.

A. I must have expressed it wrongly somehow. The opportunity could have been given for my giving orders, but I could only have given orders in those matters for which I held the authority, namely, for my sphere of tasks in Department III.

Q. Well, then, in effect you state that the sentence which you have just read to the Tribunal isn't true.

A. No, I did not state that. This sentence is true.

Q. Well, which is correct? You say now that you could only give orders for your own spere, and in your affidavit, you could take over all tasks and give orders.

A. Tasks which were dealt with within the staff, yes.

Q. Then you stated that Ohlendorf gave orders to Einsatzkommandos when he was there.

A. Yes.

Q. That was the normal task of a Chief of a Gruppe? That order was given in the staff for transmission to the kommandos?

A. Yes.

Q. Now, could you take over this same task when Ohlendorf was not there?

A. No. It says, at the beginning of the page, "Chief of the Einsatzgruppe."

Q. Let me interrupt you a minute. Let us go back to this sentence. This sentence as you wrote it in you affidavit and signed it, is not correct, is it?

A. What sentence, Mr. Prosecutor?

Q. The last sentence in paragraph one of your own affidavit. That should be on page 60 of the German copy.

A. The sentence is correct. I have stated that within the Gruppe........that is the term which we used......and that actually means the staff only......and insofar this sentence is correct.

Q. All right. What does the word "all" mean? "For all tasks"?

A. You mean where it says "all"...... Those were the tasks which happened, which came up during my time.

Q. That's right. And if they involved giving orders to kommandos in the field that was part of your tasks when General Ohlendorf was absent, wasn't it?

A. No, that could not have been my task because I was not the deputy of Ohlendorf for the kommando leaders.

Q. Well, then, this sentence does not mean "all" tasks, then?

A. It means, as it says here, all tasks within the Gruppe, which means within the staff.

Q. Perhaps the German says that, but the English certainly doesn't.

THE PRESIDENT: Well, let's get the German, then. Don't let's stop there. Let's find out what the German says. If the German is as he says, then the English should be corrected.

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BY THE PRESIDENT:

Q. Witness, do you distinguish between the staff as such and all the kommandos which go to make up the Einsatzgruppe?

A. Yes.

Q. Then explain, if you will, why.......in this statement you say, "as senior officer on the staff of the Einsatzgruppe".........there we have the distinction......."staff of the Einsatzgruppe", you say, "I took over all tasks within the Group" - not within the staff, but within the Group. Now please explain that .

A. There it says within the Group. That can only mean within the staff, your Honor.

Q. But why can it only mean that, when in the very previous clause you go to the trouble of saying "staff of the Einsatzgruppe"?

A. Because it is the usual term, the terminology which says.......

Q. Why would you not have said, if the meaning is what you now tell us, "As senior officer on the staff of the Einsatzgruppe I took over all tasks within the staff"? Why didn't you use "staff" there, instead of Group?

A. Your Honor, if I had formulated this affidavit myself I would have written "staff".....but I, in this case, understood this to be staff, and therefore I made no correction.

Q. Well, why did you understand it to be staff when it said Group, especially when you now tell us that had you written it out in your own hand you would have used the word staff and not Group?

A. Because the expression can be misunderstood, as actually is happening at the moment. For me it was clean...

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Q. Yes, and that is the very reason why, when you had the affidavit before you, and you saw that a misunderstanding could arise, why didn't you correct it then?

A. I could not assume that, your Honor, after I had affirmed a few minutes before that I had not been deputy chief of the Einsatzgruppe. That's on the same page.

Q. Did you read this over carefully before you signed it?

A. I read through it, and then Mr. Wartenberg told me that if I had any corrections or changes to make I had to announce it before each change, and then I had to discuss it with Mr. Wartenberg for quite some time, in what shape or form I could change it, and in eight or ten cases this was done.

Q. Yes, well, then, why didn't you change this particular statement?

A. First of all, because two sentences before I stated that I was not the deputy chief; and secondly, this distinction did not strike me because that was the terminology we used within the assignment. We just meant by Group, the staff.

Q. But in the sentences before you are merely pointing out that you were his deputy in all matters under Department III. Then you go on to another subject. What happens when Ohlendorf is absent? And you point out that when he is absent that you took over all tasks within the Group. Not within the staff. But within the Group. Now, do you want to tell us that this is a mistake?

A. An interpretation to the effect that by Group the whole Einsatzgruppe would be meant, would be wrong, your Honor. Within the Group can only mean within the staff, as was actually the case. I was not the chief of the higher ranking kommando leaders.

Q. Well, do you then say that anyone unfamiliar with what happened there, reading this statement, and concluding from the statement that you took over all tasks within the Group......anyone so concluding would not read the statement correctly?

A. No, your Honor. If it would say here, in the absence of the commander-in-chief of the army I took over all tasks........this would never mean either the task concerning the divisions because it says here when the commander-in-chief was absent from the army, that means from his H. Q., of the army, and not from the divisions.

Q. Well, we didn't get your answer. Now let me put the question very specifically. Someone who does not know you, and has not heard you testify, picks up this document and wants to know what you did when Ohlendorf was not there, and he reads, "As senior officer on the staff of the Einsatzgruppe I took over all tasks within the Group whenever Ohlendorf was absent from the Group." Now, please keep in mind what I have said. This individual does not know you, and does not know anything about the case. He only has this paper before him. After he has read the paper he says, "My understanding of this document is that when Ohlendorf was not in charge because of his absence, that Seibert took over all tasks within the Einsatzgruppe, that he had control over everything within the Einsatzgruppe"......... would such a person coming to such a conclusion be justified in the conclusion?

A. A person, your Honor, who does not know anything about this matter could come to such a wrong final conclusion, yes.

Q. Then, wasn't it incumbent upon you, when you read this statement, and not knowing who might read it, to correct it if you thought that it was capable of that wrong interpretation?

A. Your Honor, if I had had the peace and the time and also the concentration, of course I would have read the document word for word so that such a thing could not have happened. But if shortly before, and through discussions I had with Mr. Wartenberg, I had told him quite clearly that I was not deputy as far as the kammando leaders were concerned, I could not assume that Mr. Wartenberg, or generally here, these people who deal with these matters here, would come to another final conclusion than the one that is actually correct and which I testified to here.

THE PRESIDENT: The Tribunal will be in recess until one-fifty.

(The Tribunal recessed until 1350 hours.)

(The hearing reconvened at 1350 hours, 19 Nov. '47)

THE MARSHAL: The Tribunal is again in session.

DR. VON STEIN (Counsel for defendant Sandberger): Your Honor, I ask that, my client Sandberger be excused from this afternoon's and tomorrow's afternoon session to prepare the document book.

THE PRESIDENT: The defendant Sandberger will be excused from attendance in court tomorrow so that he may confer with his attorney in connection with a document book.

DR. VON STEIN: Thank you.

DR. FRITZ (Counsel for defendant Fendler): I ask that the defendant Fendler be excused from tomorrow's (Thursday's) session in order to prerare his defense.

THE PRESIDENT: The defendant Fendler will be excused from attendance in court tomorrow in accordance with the request of his counsel.

DR. LEIZ (Counsel for defendant Klingelhoefer): Your Honor, I ask that the defendant Klingelhoefer be excused from tomorrow's session, Thursday, and Friday in order to prepare his defense.

THE PRESIDENT: The defendant Klingelhoefer will be excused from attendance in court tomorrow, Thursday, and the following day, Friday.

DR. LEIZ: Thank you.

THE PRESIDENT: Dr. von Stein, did you want to see your client this afternoon?

DR. VON STEIN: Yes, this afternoon too, please.

THE PRESIDENT: Well, I didn't understand you to have requested that he be excused this afternoon also.

DR. VON STEIN: Your Honor, I requested for this afternoon and for tomorrow afternoon.

THE PRESIDENT: For this afternoon and tomorrow afternoon?

DR. VON STEIN: Yes.

THE PRESIDENT: Not tomorrow morning?

DR. VON STEIN: Not tomorrow morning - no, not tomorrow morning: just the afternoon

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THE PRESIDENT: Very well. The defendant Sandberger will be excused this afternoon and will be accompanied by the Provost Marshal and he will be excused also tomorrow afternoon to confer with his counsel.

DR. VON STEIN: Thank you.

THE PRESIDENT: Proceed, please.

CROSS-EXAMINATION (Continued) Col.

seibert - Resumed BY MR. WALTON: the initials "I.V.", did you not?

Q And these initials stand for the term "representing" or "in place of" the Chief of the Einsatzgruppe, does it not? gruppe D headquarters a full-time, regular deputy to the chief. If he made out a report over his own signature, would he use the initials "I.V." or not? A I did not get it exactly, you mean above his own signature?

DR. GAWLIK (Counsel for defendant Seibert): Your Honor, I believe this is a hypothetical question.

THE PRESIDENT: The question perhaps was not too clear. Suppose we have it repeated, and then we will see..... BY MR. WALTON: duty in the headquarters of Einsatzgruppe D, how would he sign a report, if he had made it out?

A He would sign "Acting For".

Q Under the initials "I.V.", is that not so?

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tion in Document Book III-D, page 34, and Document NO-2859, Prosecution Exhibit 148 -

THE PRESIDENT: It is 158.

MR. WALTON: I am sorry: 158. The last sentence in paragraph 2 of our affidavit reads as follows, does it not, and I quote? "The reports which I signed in the capacity of his deputy were signed with 'I.V.". Does your affidavit state that?

WITNESS: Yes; because in your previous example it was an assumption which never existed in the Einsatzgruppe, and here the facts are given as they really were, namely, that I signed "Acting for....." in my sphere, as it had been done according to Ohlendorf's order during his six to eight years' activities. BY MR. WALTON: same Document Book III-D, page 39, which is Document NOKW-628, you admitted that none of these topics were in your sphere, but did you not sign that report under the initials "I.V."?

A May I see the document, Mr. Prosecutor? Without the document I cannot understand the question.

Q Do you have Document Book III D before you?

(Document book presented to witness)

Q And you signed that report after the initials "I.V.", did you not? report was specifically in your sphere as chief of Department III. but my reports to the Army which was my second sphere and what is concerned here.

Q So you signed this as Ohlendorf's deputy?

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Q Even though nothing in your sphere is contained in this report? was my sphere, in addition to my sphere as Chief III.

Q Well, don't you think the making-out and signing of reports about all activities is the normal duty of a deputy of an organization like Einsatzgruppe D?

A No; I do not think so because every department chief made out reports, and if the chief was absent and I represented him for this sphere - then I signed them.

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Q. All right. Let's go back to your affidavit which we were discussing and which yesterday you testified at great length concerning two executions which you witnessed. This is in III-D, Page 34 of the English, Page 60 of the German, and is Document NO-2859, Prosecution's Exhibit 158. Will you explain to the Tribunal why when you wrote this affidavit or signed this affidavit you did not give any details about the two executions you witnessed?

A. I do not even know whether I was questioned about it, Mr. Prosecutor.

Q. You mean that you were not asked a question while you were discussing the material to go into this affidavit whether or not you had participated or seen or had anything to do with the execution of Russian nationals?

A. I do not remember any details.

Q. Well, yesterday when the President of the Tribunal asked you, you remembered great details about these executions, didn't you?

A. As to whether I remembered the details about the day when it happened --no, I did not remember the details; I merely remember what I described yesterday.

Q. Well, why didn't you put these details in this report or in this affidavit?

A. Mr. Prosecutor, I do not know whether I was questioned about it.

Q. All right, let's go to the final paragraph. Right above your signature you say that you have read the above statement which consists of four pages in the German language and that you declare this to be the whole truth. Isn't that right?

A. Yes.

Q. Well, it's not the whole truth because you testified at length concerngING two executions.

THE PRESIDENT: Mr. Walton, if the witness states that he was not interrogated on that subject then he cannot be blamed because it is not in the affidavit; because after all it was not he who controlled the interrogation but the interrogator.

Now if you have some evidence that he did talk about this in the interrogation, then you can question him on it, but he cannot be blamed for the omission of anything from the affidavit because that was the matter of the interrogator.

MR. WALTON: I realize that, Your Honor, and in no way mean to argue with the court, but this is supposed to by an affidavit of his activities with the Einsatzgruppen -- the entire affidavit.

THE PRESIDENT: Well, it's very obvious that an affidavit, no matter how long, could not contain every detail of 12 month's work; something would necessarily have to be omitted.

MR. WALTON: That is true, but the two executions which he testified about were of such clarity in his mind yesterday, certainly I am at a loss to understand why he didn't insist that these were included in this affidavit.

THE PRESIDENT: Well, it wasn't for him to insist. Mr. Wartenberg was questioning him and he replied. Then his replies were put into an affidavit and he signed the affidavit. There was no duty on his part to tell Mr. Wartenberg, "How you didn't question me about this; you didn't question me about that."

MR. WALTON: Very well, sir. BY MR. WALTON:

Q. Colonel Seibert, will you turn in Document Book III-D, to Page 65 of the German, Page 36 of the English, to Document NOKW* 629, which is Prosecution's Exhibit 159. I have here in court a photostat copy of the original of that report which I will submit to you.

(Copy submitted to the witness) ished will you so indicate to me?

A. Yes.

(Witness reads the report.)

Q. You signed this report also, did you not?

A. Yes.

Q. And you signed it under the initials "I.V." is that right?

A. Yes.

Q. Or as deputy of General Ohlendorf?

A. For my sphere, yes.

Q. Are there any economic questions or domestic questions discussed in this report?

A. Yes.

Q. Will you point out to the Tribunal what they are?

A. On Page 1 it says, in the second paragraph, about the middle of the page, and I quote: "As regards the activity in the areas of settlement of ethnic Germans, I beg to be permitted to refer to the special report which was submitted for your knowledge sometime ago." But the special report is not here.

Q. All right, and it refers to SS-Oberfuehrer Hoffmeyer -HOFFMEYER --head of the liaison office for racial Germans. Did you have any dealings with him?

A. With Hoffmeyer I had no personal dealings no, pardon me, he took over the jobs in the ethnic German territory in which the commando 12 was stationed.

Q. All right. Let's go on to the latter part of this report, and it says, "The following suggestions are submitted for the future activity and assignment of forces that have become available in the meantime." Then it follows that these assignments and locations are given. Is this your work?

A. The designation of the garrisons and assignments was not my job.

Q. Even though you put it in the report?

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A. Yes, it says so in the report.

Q. Whose orders was it that the commandos occupied the stated garrisons?

A. It was on the basis of the army order.

Q. All right, then, now let's go to the last paragraph just above your signature. That paragraph states that General Ohlendorf was away from the group, does it not?

A. Yes.

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you could give an oral report on the 11th of October? says here.

Q What conference, with whom? the Chief of Staff. Chief of Staff at this conference?

A Well, Mr. Prosecutor, it is completely impossible for me to tell you what was discussed on this particular conference in detail. I had several discussions with the Chief of Staff. Almost daily or almost every other day I spoke with other officers of the Army, so that in detail I could not say. Of course, I spoke about the general situation during those conferences as it could be gathered from the reports, and I reported to him about the situation. assignments? about this; I do not know that any more. the officer who was the Chief of Staff of the Eleventh Army, isn't that a normal function of a deputy when the commanding officer is away from his command?

A No, this is not at all the case. As an information officer for the entire SD reports, I had to report to these offices continually, no matter whether Ohlendorf was present or not.

Q Isn't it one of the functions of a deputy commander to propose future commitments of his group when a commander is not there to give his judgment in the matter?

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gruppe he would, of course, have made the suggestion.

Q Well, weren't you acting as deputy for the entire group during this specific time?

THE PRESIDENT: Witness, Mr. Walton has called your attention to that sentence which reads: "The following suggestions are submitted," etc. Now, by whom were those suggestions submitted.

THE WITNESS: They were submitted by the commandos, your Honor, and they were incorporated into the report and summarized.

THE PRESIDENT: Didn't you submit them as the acting commander?

THE WITNESS: I did not, your Honor, but this was summarized by me from the suggestions from the commandos which appeared in the report, and I summarized it in this report.

THE PRESIDENT: If there was any discussion to be made about the suggestions, would the Chief of Staff have conferred with you on them or would he have called in each Einsatzkommando chief?

THE WITNESS: If he would have had any discussions he would have certainly informed me about them, and I would have had the duty to inform the commandos concerning the opinion of the Army. BY MR. WALTON: General Ohlendorf didn't return you could commit these commandos to tactical security questions, could you not?

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questions.

Q All right. Let's go back to your affidavit on Page 34 of the English of the same document book, III, which you have, and on Page 60 of the German, your own affidavit, and specifically Paragraph 5 of your affidavit. In Paragraph 5 of this affidavit you stated that it was known to you that members of the Security Police and SD received the order to interrogate camp inmates in the Russian prisoner of war camps and to carry out execution measures. What was the source of your information?

THE PRESIDENT: It was "executive measures". You read it "execution".

MR. WALTON: I am sorry, executive measures. Q (By Mr. Walton): What was the source of your information about screening these prisoners of war in these camps? order which concerned this, but it may also be that I heard it later in Berlin, somehow. It told Mr. Wartenberg at the time clearly that I cannot give any detail, and I do not know at the moment whether this general knowledge was based on an order which I read or whether I heard it through a conversation. I do not know exactly. gruppen or Einsatzkommando personnel? screening team, and from the reports which are now in the documents I read that the orders say that special kommandos are to be formed which are subordinate directly to the chief of the Security Police and that they are to report to him.

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personnel of the Einsatzgruppe D? such team in Einsatzgruppe D. which included the execution of prisoners of war?

Q All right. Let's look at Document Book I, Page 54 of the English, Page 62 of the German. This is Document 3414 and is prosecution's Exhibit 14. Look this over and tell the Court whether you have seen this order or a copy of it before.

A I have looked it over, Mr. Prosecutor. As I said, the fact, which is evident from the order, is known to me, but the names mentioned here I do not recall at all, but I cannot say whether I read about it six years ago or not. received a copy of this order? the distribution list that this order was sent to the commandos and to Einsatzgruppe D for their information, but not for their execution of it. copy of this order then, is it not? files of the headquarters of Einsatzgruppe D, woult it not? to this order - midway of Page 55, your Honors, this same document - where it says, "I request that the chiefs of the Einsatzgruppen try to execute the purge of the transit camps with their own forces, as far as possible." Did Einsatzgruppe D have the task to purge the transit camps in its area of activity?

mission, but as I remember the conditions in the Crimea, I did not see any single camp in the Crimea, and I explain the reason to be that we were with a group up in the operational area and the prisoner of war camps were further back. gruppe D, not permanent prisoner of war camps but transit camps? have been one, because in the Crimea prisoners were taken too. So I would assume so. reports to Berlin? leaders in Einsatzgruppe D? that is those who were in the Crimea, the relationship was good. a commando leader? a commando leader. the co-defendant Braune?

A Between Braune and myself? In words and in conversation certainly, for this happened frequently, but a serious dispute, I cannot say.

issued to the co-defendant Braune in your official capacity? conversation. I ask you whether these disagreements arose over the fact you had issued him orders in your official capacity? reason. you had with Braune?

A Mr. Prosecutor, these were conv ersations among officers, or comrades, which usually brought various opinions about various problems. To give any details about these is very difficult.

had read reports from members of the SD in Russia which told about the kidnapping of labor for Germany, do you remember that incident?

A Yes, I said that. This was generally known to me by reports, that is correct.

Q From whence came these reports? of the Security Police in the East. Einsatzgruppe D? in the operational area, during the time I was in Russia, I did not see anything of transports of workers. Therefore, no reports could be made about them. This was chronologically later. This was, perhaps, in 1943, and I told Mr. Wartenberg at the time that I saw these reports generally probably in Berlin. then that you over saw any reports where laborers were shanghaied or kidnapped while attending a movie? example was known in practically all agencies in Germany which were concerned with labor allocation. Only every agency named a different movie. I do not mean to say by this that this did not happen. It might very well have happened, and I told this to Mr. Wartenberg, but a case from the area during the time I was present is not known to me, not as having happened. either remotely or directly, to do with an execution?

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the seizure of the property of people who were sentenced to execution? except when you made inspection trips, and work on reports which went to Berlin or to the Army? of all the SD reports and all materials for the SD, and one man was so occupied with this job, for such a large area, that I was able to do only one small part of my job. you had charge of the training of Tartar defense companies? of the training of the Tartar defense companies?

A Yes, I understand now. During my inspection trips I inspected the Tartar companies which the Eleventh Army had put at the disposal and which had been distributed and stationed in platoons in the endangered villages in the Jaila Mountains, that is to say, in those villages which were continually attacked by partisans, and I visited these units during my inspection trips; not every time, but it did happen. their daily tasks? the men who carried out the training. that were not partisans?

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A No. I never learned about that, and this was not their mission, for the Army itself had ordered that these subunits be stationed in the villages for the protection of their villages and not for any kind of other mission. properly armed?

A No, the Army supplied their arms. These were rifles and hand grenades. They did not have any automatic weapons. inspection of these companies?

Q Did you ever report to Berlin about these companies? mentioned. inspection, that they were adequately trained for the task at hand?

A They were never sufficiently trained, Mr. Prosecutor, for these were volunteer Tartars who volunteered on the basis of call by the Eleventh Army, and who were currently trained. That is, actually they were trained in their daily combat with partisans. Of course, their unit leaders trained them in the localities where they were stationed. before they were ever committed against the partisans? so that they could be committed? training was relatively brief, and in no unit was it ever completed while I was in the Crimea.

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training before they should be committed against the partisans?

A No, I did not do that either. They were immediately committed in the villages,.and it might certainly have happened that on the next day, as far as they were in a position to do so, they had to fight if the village was attacked. interested in the efficiency, training efficiency which they had achieved, shouldn't you? look after the condition of the training during my inspections and to speak with the unit officers. in an action? company in three or four cases.

Q Did your outfit ever take any prisoners? all German Army units were committed. In the case in which I participated with one batallion, Rumanians were committed and Tartar Home Guard units were committed. These Tartars were not employed to start the frontal attack but to secure a large area. At the flanks they were to secure the left or right flank because better trained soldiers were available. Tartar companies under your command went into an area to search out all of the enemy who left there when a line moved forward, didn't they?

A No, the combat took place differently, Mr.Prosecutor. The German battalion had attacked the fortified areas, and the tactics of the partisans was as follows:

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Either when they thought they were strong enough to defend themselves to do so or to see that they could flee as quickly as possible and to retreat, and this was to be prevented and stopped by the security belt at the rear and at the front and on the flanks. Otherwise the partisan camps could never be attacked. They would have immediately retreated to the next forest.

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Q. All right. Well come back to my original question. Did -at any time you lead a fighting force -- did the unit under your command ever take any prisoners?

A. That happened, yes.

Q. That happened to them?

A. The prisoners were -- if they were soldiers -- among them were Russian troops and Partisans as armed civilians, then the soldiers were turned over to the army as prisoners of war, and the rest were either turned over to the secret field police or they were handed over to the unit which was committed there.

Q. That included your unit that was committed there?

A. Well, Mr. Prosecutor, not in the form that the Tarter companies would have taken prisoners along.

Q. Isn't it a matter of fact, Colonel, that under the Hitler Order, that where any Partisan was found with arms in his hand, he was immediately liquidated, you and your Tartar defense companies immediately liquidated all Partisans you captured?

A. This did not correspond to the Fuehrer Order, but this was an army order which had been posted in all places, which had been disseminated by leaflets, according to which armed civiliang and any people who aided armed civilians would be punished by death.

Q. All right. Did you and your Tartar defense companies ever execute people who had aupplied food or ammunition or medical supplies to the Partisans?

A. I never experienced it, Mr. Prosecutor, But in the combats I took part in ---

THE PRESIDENT: Well, Mr. Walton, I don't know whether you got an answer to your first question, what happened to prisoners.

MR. WALTON: As I understood it, sir, he said if it was a Russian army man.....

THE PRESIDENT: Well, now but then you made it more specific. You spoke of armed Partisans being captured. Now, what happened to them?

Did you liquidate them at once? That's the question you put and I don't recall hearing an answer.

THE WITNESS: I didn't experience that they were immediately liquidated at the place, but I am convinced that they were shot.

MR. WALTON: Were they shot by members of the unit under your command?

THE WITNESS: Now by these Tartars companies. They never carried out an execution as far as I know. BY THE PRESIDENT:

Q. Why not get it more specific? Now, you led a detachment into action against Partisans, is that right?

A. Yes.

Q. You captured some armed Partisans? Right?

A. I personally did not capture any.

Q. Well, you lead a detachment which captured armed Partisans?

A. Yes.

Q. Did you order these Partisans shot?

A. No, I could not have ordered that because ---

Q. Why not?

A. Your Honor, because I did not have the total order about this action. I led one of the four or five committed units.

Q. Who then ordered them shot?

A. The order could only have been given by the officer who had the command over this action?

Q. You said that you led a detachment into action against Partisans. You said that this detachment captured Partisans. You said that these Partisans were then shot. Who ordered them shot?

A. Your Honor, I said I am convinced that these prisoners were shot.

Q. Well, who ordered them shot?

A. Only the officer who had the command over this operation. I was merely commanding officer of one unit of four or five which participated.

In this way I was only a subordinate officer.

Q. Well, very well. Who was the officer that ordered them shot?

A. That was the battalion commander of this German battalion.

Q. And what was his name?

A. Once it was Lieutenant Colonel Meyer. Another time it was the battalion commander of the Roumanian battalion.

Q. Well, he was the one who ordered them shot? These two that you have mentioned?

A. Yes. BY MR. WALTON:

Q. Did he ever order you to execute any of the Partisans which were captured?

A. No, he never gave me that order.

Q. Did you ever order men under your command to execute Partisans that were captured?

A. No. The auxiliary units were not used for this purpose, but regular units.

MR. WALTON: The Prosecution has no further questions at this time.

THE PRESIDENT: Dr. Gawlik, any redirect examination?

DR. GAWLIK: Yes.

THE PRESIDENT: Proceed.

Perhaps Dr. Gawlik, we would gain time if we would recess now and then you may begin immediately after the recess. The Tribunal will recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. STUEBINGER (Attorney for the Defendant Braune): Your Honor, I ask that the Defendant Braune be excused from tomorrow's attendance in court in order to be able to prepare his defense.

THE PRESIDENT: The Defendant Braune will be excused from attendence in court tomorrow.

DR. STUEBINGER: Thank you.

THE PRESIDENT: Proceed, Dr. Gawlik: BY DR. GAWLIK (Attorney for the Defendant Seibert):

Q. First now, let us come to the last point your assignment as leader of a Tartar Company. In order to clarify the situation, I have four questions to ask you, concerning your activity in the Tartar Company. Did you, as the leader of the Tartar Company, did you ever shoot a prisoner?

A. NO.

Q. Did you ever give an order for the shooting of one?

A. No, I never gave such an order.

THE PRESIDENT: Witness, do you see anything wrong about shooting a partisan?

THE WITNESS: No, Your Honor, because this man had forfeited his life after the Army had ordered clearly that armed civilians should be shot.

THE PRESIDENT: But the only reason that you didn't order any partisan to be shot is that it just did not happen to fall within your activity at that time.

THE WITNESS: Yes, I could say that, Your Honor.

THE PRESIDENT: Very well. BY DR. GAWLIK:

Q. For what reasons are you of the opinion that a partisan deserves death?

A. The Army order had proclaimed that persons who offend against the security of the German Armed Forces, to this category belonged armed civilians for thus the term "partisans" has to be understood in the Russian campaign.

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It is therefore not a matter of regular soldiers and these people had been warned beforehand by these orders and they knew that if they armed themselves and fought the German Armed Forces that thus they would lose their lives.

Q. Perhaps you could tell us quite clearly what you mean by a partisan.

A. By a partisan I mean a civilian who is armed, therefore, carries arms and therefore is not a regular soldier.

Q. Is it known who, according to International Law, is entitled to be treated as a prisoner-of-war?

A. It is generally known to me that such persons are concerned who wear a uniform or some uniform badge, who carry their arms openly.

Q. If you had caught a partisan, what would you have done?

A. That depends on the situation.

Q. I mean, as a prisoner, how would you have treated him?

A. A partisan, as I am now describing him, would have been shot by myself.

Q. Did you receive any knowledge about the fact that members of the unit under you shot prisoners?

A. No, I never knew anything about it.

Q. I now come to another point. In the cross-examination, your joining the SD was discussed and you were asked why you remained in the service of the SD, although you received a lower rank than you had held in the Wehrmacht. Was the rank of decisive value to you, or was it something else that moved you to remain with the SD?

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A. I should first like to answer the question of rank. I joined the SD and I became a department chief, a referent. This corresponded to a position which I held in the Wehrmacht before. As such I was paid. Therefore, I still received the same pay that I had received before from the army. The rank

"Underscharfuehrer" of the SS formation SD is only a rank which was given to me as a member of this SS formation SD, but I was not paid according to it and that did not correspond to my activity, either.

Q. What was therefore decisive for you?

A. Decisive for me was the work. During my studies and also later practially before I became a soldier, I concerned myself with economy only and from the very beginning my aim was -- even after I had become a soldier -- to become an officer in order to be able to take part in an economic unit of the Army. I succeeded in getting one thing, but I could not find a position in an economic unit and therefore I joined the SD, Department of Economy, in order to carry on my profession.

MR. WALTON: May it please the Tribunal, the Defendant has gone very thoroughly into this same material which he is giving at the present time on his direct examination; about his aims and his training and his reasons for taking a position with the SD. My own opinion is that since this ground has been covered and covered thoroughly, that it serves no point at this particular time. It is in the record it's for consideration of all parties concerned in this case and to go over it at this time merely wastes the time of the court and of the rest of us here.

DR. GAWLIK: May I say something, Your Honor? The witness does not want to repeat anything that has already been stated, but he is supposed to clarify the following point: In the cross-examination he was asked, that it was unusual to be transferred to the SD with a lower rank than he held before and I want to clarify that it was not at all unusual.

That, as far as I remember, was at the end of the cross-examination, the question was, "Wasn't there something unusual." The prosecutor therefore regards it as something unusual that the witness, as a lieutenant in the Wehrmacht, should become a noncommission officer, an untersharfuehrer, in the SD and therefore I want to clarify the reasons why he had himself transferred to the SD. It is only a supplement of the cross-examination and I think that is is admissible in the redirect examination.

THE PRESIDENT: Dr. Gawlik, the clarification is entirely in order, but he has already given us that clarification. The very thing which you have just now mentioned was explained by him in detail. The Tribunal itself asked that very question which you have put and the witness replied in great detail. Now it isn't required of him to repeat an explanation, just because in cross-examination it is referred to again.

DR. GAWLIK: May I then put the following question, Your Honor?

Q. (By Dr. Gawlik): Was your rank decisive for the transfer into the SD or was it something else?

A. Decisive was the work and my job as a Department Chief, as an expert for economic questions. I only received the rank later on, although as far as the date goes, the retroactive date is shown as November, but I entered the service as a referent for economic questions. That was decisive.

Q. During the cross-examination it was further discussed -- I am now coming to another point -- whether you remained voluntarily in the SD. I ask you now, after the year 1939, would there have been a possibility for you to leave the SD?

A. No, leaving from the SD was impossible. I never succeeded even, although I applied in applications which I made out immediately after the war, to rejoin my own troop.

Q. Was your membership in the SD therefore after 1 September 1939 voluntary or not?

A. No, it was not voluntary.

Q. Furthermore, in the cross examination it was mentioned that you joined the Einsatzgruppe, and on another occasion the prosecutor asked you concerning your relationship with Ohlendorf, and he stated that you put yourself at the disposal of the Einsatzgruppe. I now ask you: Did you join the Einsatzgruppe or did you put yourself at the disposal of the Einsatzgruppe ?

A. It was a very unequivocal order of command to become chief 3 of an Einsatzgruppe.

Q. In detail mention has been made in the cross examination concerning your work of reporting and you were asked, or it was put to you that you sent reports to Berlin although you did not know whether these reports were true, and there were no further questions put in this connection. I now want to examine you redirectly concerning this question and ask you; in how far could you take a responsibility for the correctness of the reports?

A. In so far as I had to take over the reports from the commandos-

MR. WALTON: This line of questioning is in the nature of a cross examination on a cross examination. Now, if I understand the rules of evidence, the counsel for the defendant can touch on what he wishes to on what came out in direct examination, but to cross examine him on the cross examination is going too far. I want to object to this line of questioning.

THE PRESIDENT: Well, I don't think Dr. Gawlik intends to cross examine his own witness. He is of the impression that this matter which was brought out by you in cross examination is not entirely cleared up, and he is permitted to ask some brief questions for a further clarification, but, of course, he may not go into the matter entirely since the witness has already given his explanation. If the witness in any particular instance desires to modify an answer which he has given, to change it, of course, he is privileged to do so, but there is no point in having him repeat what he has already stated.

DR. GAWLIK: In order to clarify this point, Your Honor, I am of the opinion -

THE PRESIDENT: I think it is simpler if you put the question instead of telling me why you are going to put it. BY DR. GAWLIK:

Q. In how far can you take a guarantee for the correctness of your reports?

A. These reports which are being discussed here, I can take the responsibility for the correct transmission of the reports of the commandos to Berlin, but not for the actual facts which are contained in these reports, or, the facts on which they are based.

Q. Was it your task, and was it your duty to find out and examine the correctness of these facts?

A. It was not my task and I did not regard it as my duty.

Q. If a matter is mentioned in your reports -- does it then become evident that you are responsible for the facts?

A. No, that does not become evident from it. BY THE PRESIDENT:

Q. Let us suppose, Witness, that the report contains a palpable error, something very obviously wrong, would you send it on just the same only because it was reported to you?

A. If it was so obvious, Your Honor, then I would have noticed it while compiling my report. I would not have transmitted it.

Q. And to that extent you would correct the report which was sent on to you by a commando?

A. I could not have done so on my own accord, Your Honor, only the commando leader could have done so. He was to point it out to me.

Q. You would have contacted the commando leader and you would have said to him, "Now, you have reported this, which to me doesn't seem to be in accordance with the facts, now would you please tell me, whether this is right or not", would you do that?

A. I would have done so, Your Honor, if it had happened.

Q. Yes, so that nothing was sent to you which did not appear to be absolutely correct?

A. Well, according to my memory nothing struck me to be particularly out of the usual way that I would have had to clarify it.

Q. To that extent, therefore, you placed your approval on the correctness of the reports sent to you by the commandos?

A. No, Your Honor. I only took the responsibility for the correct incorporation of commando reports into the situation reports.

Q. Now, we are starting to go around a circle. You get a report from a commando, and there is something in this report which doesn't seem to satisfy you as being correct; what do you do, do you send that on to Berlin without inquiry, or do you inquire?

A. I said already that if it had been such a striking instance -

Q. Don't tell me what you said, tell me now, answer that question. You have a report from a commando, it contains something which doesn't seem right, what do you do, do you turn it over to Fritsche, the radio operator, and it goes out, or do you call up the commando leader and discuss it with him?

A. That would certainly have been discussed, Your Honor.

Q. Yes, and then you would have got the real facts?

A. In that case I would have got a correction or an explanation of the commando-leader.

Q. Yes. So, therefore, the reports which you sent in were satisfactory to you insofar as correctness was concerned?

A. In as far as they could satisfy me in my own H.Q., because I did not know the local conditions and local events. If nothing particular struck me.

Q. Did you ever have occasion to call a commando leader and ask him whether a certain item was correct or not?

A. I did not call a commando leader, Your Honor, but it is quite possible that I discussed it with commando leaders in general discussions which we had.

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Q. Well, when I said "call in", I meant, did you communicate with him in any way to correct anything which appeared in a report?

A. Yes, providing the case which I have just mentioned, that something extraordinary happened.

Q. Yes, and then after the discussion you got the facts straight and that is what you put into the report?

A. The fact was corrected by the commando leader and then I put it in my report.

Q. So that, therefore, the number of executions reported by you corresponded with the facts?

A. I cannot say that, Your Honor.

Q. Well, then they never struck you as being wrong?

A. No, that never struck me, and it could not strike me, either.

Q. So that regardless of the number which you received, you were satisfied that that number was correct?

A. I had to assume that the figure mentioned by the commando leader was correct, Your Honor.

Q. Well, now, how many executions in all did you actually witness?

A. I only saw those two executions which I mentioned, Your Honor.

Q. In your affidavit you speak of having witnessed two executions while you were with Ohlendorf, but then in the following sentence of that affidavit you said that occasionally you would make inspection trips alone, the same kind of inspection trips which you made with Ohlendorf. On these inspection trips which you made alone did you witness any executions?

A. No, Your Honor. These inspection trips were of the same kind because during those inspections trips which I did with Ohlendorf I did not have to deal with my own work with the commando and, of course, in the last six months there was also the inspection of Tarter companies.

Q. Although I am now going to violate a rule which I imposed a little while ago, I would like to have you tell me now just where were these executions which you witnessed and which you told us about yesterday.

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A. The first execution took place in the town, as far as I remember, Petschanka, Your Honor.

Q. Yes, and how many were executed?

A. As far as I remember, four or five people were executed.

Q. And what had they been accused of doing?

A. According to statements of commando fuehrer to the chief of the Einsatzgruppe they were guilty of sabotage.

Q. What was the nature of the sabotage?

A. They had acquired supplies. They had obtained supplies illegally, and they also burned a barn. That is what I remember, Your Honor.

Q. And in the second case how many were executed?

A. Again five or six cases.

Q. You are sure that is the number?

A. Well, anyway there couldn't have been more than six, Your Honor.

Q. What did you tell us yesterday how many were executed?

A. Again I can only have said the number five or six, Your Honor.

Q. And what did they do -- the victims?

A. They were looters who for that reason were shot.

Q. That was the nationality of these victims?

A. I am not able to say, Your Honor.

Q. Did you not make any inquiry?

A. No.

Q. How long were you in the Crimea with Einsatzgruppe D?

A. In the Crimea, Your Honor?

Q. Well, how long were you with the Einsatzgruppe?

A. If I don't count the interruptions when I was in Berlin, it was about 10 months.

Q. When did you join the Einsatzgruppe?

A. Approximately in the middle of June 1941 I was detailed, so I was with it from the very beginning.

Q. Yes. When did you go to Berlin?

A. Approximately the middle of November 1941, and I returned on Christmas Eve, on the 24th of December 1941. I was able to join a Christmas celebration. I can remember this exactly because I could give some members the mail from their families.

Q. You know that Schubert made an affidavit in which he said that you ordered him to conduct some executions, about this time?

A. I know this affidavit, yes.

Q. Do you have any explanation of how he could have made this mistake?

A. I can find no explanation, Your Honor, because I never gave him such an order, and this particular one I couldn't have given him at all, because I was not then in Russia.

Q. You mean you weren't in Russia at that time?

A. Yes, Your Honor.

Q. Now, when you first began to testify you said from 1936 to the end of the war you were not active in any other department but Department 3, is that correct?

A. That is correct, Your Honor.

Q. Well, you have been telling us how you organized motor units, how you trained infantrymen, how you participated in a combat action which won for you the Iron Cross, how you led a detachment in partisan warfare -- does that all come under Department 3 of Economics?

A. No, that is not part of the Department 3, Your Honor.

Q. Well then how do you reconcile all these activities with the scholastic preparation of reports on economics?

A. I can justify it by the fact that the chief of the Einsatzgruppe entrusted me with this particular department in addition, and secondly my assignments and my work with the Tartar companies were done on direct order of the 11th Army.

Q. Well, then your statement that you were active only in Department 3 is incorrect?

A. No, Your Honor, I was active in Department 3 from 1936 until the middle of June 1941, and after return from my assignment in Russia until the end of the war.

Q. Then the transcript must be wrong or my recollection must be wrong because I distinctly wrote in my notes that you said from 1936 to the end of the war you were not active in any other department but Department 3, At any rate, you say that is incorrect?

A. No, your Honor, according to my recollection I said, "apart from the Russian assignment, I was from 1936 to the end of the war that I was active in Office 3."

Q. Then, while you were in Russia you were active in other departments, above Department 3?

A. I received the additional assignments which I carried out, yes, Your Honor.

Q. Yes, so when you wrote up your reports, you were writing on matters other than Department 3, is that right?

A. Yes, yes, that happened.

Q. Yes, so that when in your report of October 9 you begin a paragraph with the phrase, "Apart from the settlement of the Jewish problem, searches for and the apprehension of partisans played a considerable role," which contained a reference to the settlement of the Jewish problem?

A. Yes, that was known to me, Your Honor.

Q. You know that Jews were being executed?

A. Yes, Your Honor.

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Q. And when you signed that report you signed it with the full knowledge of the implications in those statement?

A. I beg your pardon, I don't quite understand the question, Your Honor.

Q. When you signed the report which contained a reference to the settlement of the Jewish problem, you were aware that the settlement of the Jewish problem meant the execution of Jews?

A. That did not have to be the case, Your Honor, because in the country Jews were not executed, or at least during the first time; they were assigned to labor, and then they were collected for such purpose, and, of course, Jews were also executed.

Q. Eventually they were executed?

A. Yes, that is probably the case, Your Honor.

Q. And when you signed the report which contained the phrase, "The Crimea is freed of Jews," you knew what had happened to the Jews?

A. Yes, I knew that.

Q. And when you signed the report which contained the statement, "In the southwestern part of the Crimea, a number of villages known as the very strongholds of the Communists were cleaned," you knew that that meant liquidation?

A. "The strongholds were cleaned", that did not necessarily mean that that meant liquidation, Your Honor, because I could only see what actually was mentioned in the reports which had been given to me by the Commando.

Q. You made one statement which requires a little clarification. In cross examination a question was put which elicited from you the statement that you could not say where murder began and murder ended. Do you recall having made that statement?

A. Yes, in connection with the ideological war events, as it showed as a climax during the last World War.

Q. Well, do you intend to have the Tribunal understand that you were unable to distinguish between murder and lawful killing?

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A. I am aware of the difference, Your Honor, but I was asked for the expression "murder"; and I wanted to explain that I really was at a loss how I am to begin. It was a question which I couldn't answer, at the moment, Your Honor,

Q. Well, let us put the question very simply. Suppose an individual is arrested, no charge of crime is brought against him, and he is taken out and shot. Not a word of evidence is introduced to show that this person was deserving a death because of the commission of a crime. Would you call that murder?

A. Yes.

Q. Yes, now, let us suppose that a person is arrested, and the only thing that is said about him is that he is a Jew, and he is killed. Would you call that murder?

A. If the order is non-existent, that the Jews were to be killed for some reason, in that case it is murder.

Q. Would you kindly repeat that answer, Mr. Interpreter, I didn't quite catch it.

A. If the order is not in existence that for some reason or other the Jew was to be killed, giving a certain reason, in that case it is murder.

Q. Then, if there is an order that this man must be executed only because he is a Jew, then it is not murder, is that what you tell us?

A. I am not a lawyer, I understand this to be "killing by order", Your Honor.

Q. If someone in Berlin, several thousand miles away, says that every Jew found must be exterminated, and that is done, do you call that murder or not?

A. If it is being said by a man who does not hold the competence to give an unambiguous order, in that case it is murder.

Q. Well, let us say that this man is a Fuehrer, let us say he happens to be Adolf Hitler, and he issues an order, that every Jew must be killed.

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You are in the Crimea, thousands of miles away, and you see a half dozen SS-men grab a child, and they say, "This child is a Jew." Let's say a boy 12 years of age, and it is proved he is a Jew, and they shoot this child down. Is that or is that not murder according to you?

A. That is "killing by order," Your Honor.

Q. Then it is not murder?

A. I may add again, I am not a lawyer. According to my knowledge, I consider it killing on express orders.

Q. If you had to give an answer, you would say under those circumstances it is not murder?

A. Well, if this order is in existence, in my opinion it is not murder.

Q. Very well, then, you do know where murder begins and murder ends, at least, you have a code.

A. This general conception, of course, I have but I don't know whether it is legally absolutely well defined or whether it is exactly correct.

Q. Are you familiar with the German law that one is not excused if he executes an order which he knows to be criminal? Are you familiar with that law?

A. I beg your pardon, may I have the question repeated, Your Honor, I did not quite understand it.

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Q. Are you familiar with that section of the German Military Code which says that anyone who executes an order, knowing it to be criminal, will not be absolved, from blame?

A. Yes, I know that.

Q. So therefore you stake everything on your answer that anyone executing the Fuehrer order does it because it is a superior order and because in his conscience it is not a crime?

A. I say that if he carries it out he carries it out because this order exists....perhaps in spite of his inner attitude against it.

Q. Then he is absolved from blame, is that what you intend to tell us?

A. In my opinion he cannot be blamed if an authorized man as a head of a state gives an unambiguous order....then the man who gives the order can be made responsible because only he had the knowledge and the basic material which led him to give such an order.

Q. And in your estimation the one who executes the order is entirely freed of blame?

A. I can only say yes, Your Honor.

Q. And you are aware that that is in conflict with the German Military Code?

A. No, that I cannot say, for I could not tell you the wording, Your Honor.

Q. All right then---

A. I could never state actually the wording because I am not --I don't know the German Penal codes very well.

Q. Well, I'll read it to you:

"If the execution of a military order in the course of duty violates the criminal law, then the superior officer giving the order will bear the sole responsibility therefor. However, the obeying subordinates will share the punishment of the participant (1) if he has exceeded the order given to him, or (2) it was within his knowledge that the order of his superior officer concerned an act by which it was intended to commit a civil or military crime or transgression."

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A. Your Honor, if the man is unable to recognize that such a civilian or military offense or crime is not being committed, then it does not refer to him - according to my view.

Q. You think that five men about to kill a twelve-year-old Jewish boy would not know that this, in civil law, is a crime?

A. If there is an order by the head of the state in existence, that for reasons of security such a shooting has to be carried out, then I cannot say it to be murder, but I must modify here...I am not a lawyer...it may be I am quite unable to answer the question as it is beyond my legal knowledge.

A. Then you are entirely satisfied that since the order was issued by the head of the state and he declared it was for security reasons, then you were satisfied that it was entirely proper to execute the order?

A. No, Your Honor, I did not think it proper.

THE PRESIDENT: Dr. Gawlik, you may carry on. BY DR. GAWLIK:

Q. Witness, in the decree mentioned by the president, paragraph 47 of the Military Penal Code, it says, "Superior Officer". Was Hitler a "superior officer?"

A. Yes, Hitler was the supreme commander of the Wehrmacht.

Q. Was he an officer in this particular sense?

A. Of course, he was never actually connected directly with the events - and of course he was not the officer who is meant in this particular case.

Q. Well, what case is meant by paragraph 47 of the Military Penal Code? Do you know the provision at all, or do you not know it?

A. Well, of course I don't know it so well that I could explain it here. Anyway, I cannot remember it now....I am sure I used to know it.

Q. Can you tell the Tribunal what legal significance an order of Hitler had?

A. In my point of view an order by Hitler as the head of the state was law; it was corresponding to a law.

THE PRESIDENT: Mr. Hildesheimer, you said Himmler....You meant Hitler?

INTERPRETER: I am sorry. BY THE PRESIDENT:

Q. And according to that, witness, regardless of what Hitler said, it was a law?

A. No, not that. But orders widen were given by him unambiguously I as a layman, of course, consider them to be law.

Q. Regardless of what the subject, an order issued by Hitler would be law?

A. The order of the head of State, Hitler, is equivalent to a law, in my opinion, as I have said.

Q. Well, let us suppose you received an order directly from Hitler....it came down the line of command.....that you were to execute the chief of the Einsatzgruppe. Would you execute that order?

A. No. I would have been open for punishment.

Q. You would have been open for punishment. If you executed it?

A. No, I would not have carried it out. No, I would have put myself at the disposal for punishment.

Q. You would not have carried it out?

A. (No answer.)

Q. Well, then suppose you received an order to shoot a 12-yearold Jew. Would you shoot him?

A. Your Honor, I cannot possibly answer to such an isolated example I cannot say, what my psychological reaction would have been, because on the one hand there is the inexorability of an order, and on the other hand there is the pity for the child...which I think I feel also as a decent human being, so that I could never have carried it out.

Q. You had not trouble in answering that you would have refused to shoot Ohlendorf, but you do have some hesitancy in saying whether you would have refused to shoot a Jewish boy of twelve. And the answer, would you say, is that Ohlendorf means something to you, but a 12-year-old Jewish lad means nothing - except the abstract inhumanity of wiping out an innocent child?

A. No, this is not what I want to say, Your Honor. It is quite possible that my psychological reaction was such that I would not have been able to carry it out.

Q. In your affidavit, which is NO-2859, I find this statement: "During the time that Ohlendorf was on trips, officially or otherwise, I signed all reports." That is correct, isn't it?

A. Yes.

Q. "The reports which I signed in the capacity of his deputy were signed with 'I.V."---"By Order".....is that correct?

A. Yes.

THE PRESIDENT: All right. Proceed, Dr. Gawlik. BY DR. GAWLIK:

Q. Witness, do you remember a maxim of a German Kaiser concerning the execution of orders by soldiers?

A. I don't know whether it was William the First or William the Second, but any how one Kaiser, Emperor, used the expression "If the military situation or the entire situation makes it necessary, a soldier has to execute an order even if he would have to shoot at his own parents." BY THE PRESIDENT:

Q. And you subscribe to that? You believe that?

A. That is a question I cannot answer.

Q. Well, your attorney certainly put it to you for the purpose of obtaining an approval, or otherwise he would not have put it. What is the purpose of putting this if you don't intend to put it into effect?

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Now this unknown William declared that if the situation called for it, that you would shoot your own parents. Now, does Willian Seibert agree to that?

A. I understand the question, and also my answer to the effect, Your Honor, that perhaps from that it becomes evident what an order : meant in Germany, and, of course, especially in the Wehrmacht --what tremendous significance it held. It has not to be regarded literally, or at least not in my opinion, and it is a state of affairs which, according to my own opinion ----Q. Q. Do you agree with it, or not? Do you agree with that statement which Dr. Gawlik asked you to quote? Do you agree with it or not?

A. Your Honor, I cannot answer this in so isolated a manner. If the military situation requires it, or some special situation ---it can come to that.

Q. Then you agree with the Willian who issued that statement?

A. I don't want to say that. I only understand it to the effect, Your Honor, that if regarded by a foreigner - the exaggerated importance of an order is conveyed to him.

Q. Well, this emperor was a German, wasn't he?

A. Yes.

Q. William the First, or William the Second?

A. Yes.

Q. And he made this statement?

A. According to my memory, yes.

Q. Yes. Well, is anyone authorized to assume that he was telling the truth, and that he meant it?

A. Your Honor, it cannot have been meant that somebody would have found himself in the situation to shoot his parents at some time in the near future.

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A. Your Honor, It cannot have been meant that somebody will have to shoot his parents in the near future.

Q. Then the first William or the second did not mean this when he said it?

A. I cannot say personally what he meant exactly, but in my opinion...

Q. Now you tell me what you mean by it. Do you accept it or not?

A. I, myself, regard this declaration merely for expressing to the soldiers what significance an order has the troops and that obedience and discipline are the main ties of a fighting unit, and if this tie is loosened then the unit is no longer of value.

Q. Then you tell us that this statement was not supposed to be obeyed, if the situation called for it?

A. I can only understand it so as I have just said it now, Your Honor.

Q. Well now you have given us a lot of words but you haven't answered the question. Of your own volition you quoted this. The Court didn't quote it; it wasn't in the testimony. Now if you quote something you will either have to stand by it or repudiate it. Now the question is very specific. This statement which you have quoted is to the effect that in the German army it is understood that if the military or situation--whatever nature--calls for it, that a soldier must shoot his own parents if he is ordered to do so. Now do you accept that or not? You have had enough time to give us the explanation. Now give us the answer. Do you accept this or you do not accept it as a fact? If it is meaningless, if it's just a lot of words thrown together without any intention of impressing anyone with its veracity, then say so; but if it's intended to be obeyed, then say so.

Then we will get a clarification of this.

A. In my opinion this declaration was a made in order to create an impression.

Q. But not to be obeyed literally?

A. That depends on the circumstances.

Q. Well, let us suppose a situation where your superior officer tells you that the situation is such that the only way we can get out of it is for you to shoot your parents. Now that's an order. All right, now, are you going to live up to William the first or William the second, or not?

A. In this situation it would have to be obeyed, Your Honor.

Q. You would shoot your own parents if the situation required it?

A. In so far I would have my psychological reaction, and I do not know whether based on this psychological reaction I carry out the order which has to be obeyed or whether I subject myself to punishment.

Q. Now you must answer the question. If the military situation is such that the only way you can be saved according to what your officer tells you is to shoot your parents, will you shoot them or not?

A. I cannot answer such a question, Your Honor, in such a short time. That is a psychological struggle that I am not in a position to say yes or no.

Q. Would you be ready to answer it tomorrow morning?

A. I don't know, Your Honor.

Q. Well, we will give him until tomorrow morning to think it over. at nine-thirty.

(The Tribunal adjourned until 20 November 1947 at 0930 hours.)

THE MARSHAL: The Honorable, the Judges of Military Tribunal No.II Military Tribunal No. II is now in session. God save the United States of America and this Honorable Tribunal.

DR. HOFFMANN (Attorney for the defendant Nosske): Your Honor, I should like the defendant Nosske to be excused this afternoon and during the whole day tomorrow in order to be able to prepare his defense.

THE PRESIDENT: The Defendant Nosske will be excused from attendance in court this afternoon and all day tomorrow, in order that he may confer with his counsel.

Dr. Gawlik, yesterday afternoon, just before the adjournment, the witness was being examined on a matter which was mentioned by you and by him and we will refer to that examination. BY THE PRESIDENT:

"Q Witness, I am now reading from the transcript of yesterday's session, on page 5 of Take 23 appears the following: "By Dr. Gawlik:

"Q Witness, do you remember a proverb said by a German Kaiser concerning the carrying out of orders by soldiers?

"A I do not know whether it was William I or William II, but certainly one Kaiser-Emperor used the expression, 'If the military situation or the entire situation makes it necessary, a soldier has to carry out an order, even if he has to shoot his own parents'". Now, Witness, you are a German soldier, are you not, or, were?

of the German Empire at the time, the military situation made it necessary for you, after receiving an order to that effect from a superior officer, to shoot your own parents, would you do so?

A Mr. President, I would not do so. which may be disobeyed? State but as a symbolic example towards the whole soldiery how far obedience had to go, but never actually asking a son to shoot his own parents. I imagine it only as follows, Your Honor; if I am an artillery officer in the war and I have to fire at a very important sector, which is decisive for the whole military situation and I receive the order to fire at a certain village and I know that in this village my parents are living, then I would have to shoot at this village. This is the only way in which I can imagine this order, but never -- it is inhuman -- to ask a son to shoot his parents. the line, you would disincline to obey it. You would not obey it. someone else, let us say, a Jew and his wife, and in your view you see the children of these parents. Now, it is established beyond any doubt that this Jewish father and Jewish mother have not committed any crime, absolutely guiltless,blemishless. The only thing that is established is that they are Jews and you have this order coming down the line to shoot these parents. The children are standing by and they implore you not to shoot their parents. Would you shoot the parents? Jews indiscriminately did not have to be obeyed by the German soldiers in your estimation?

war, in the combat against Bolshevism, in which two countries fight each other and try to destroy each other and disregard all customs of war and all laws of war - and they were disobeyed on both sides in the totality of this event it was a matter of life and death, which was said quite clearly on both sides;

now, in the totality of this event an order by the Supreme Commander is given; in that case it must be carried out by the soldiers, Your Honor, but I would never have carried out an order if the order had been given to me to shoot these parents, just because they were Jews.

Q Yes, now you had a certain rank in the German Armed Forced. You were a Lt. Colonel, was it? rank in the SS was Lt. Colonel?

Q You were a full colonel, is that right? A full colonel is a very high rank in the Armed Forces. It is next to General. a colonel as an official and a colonal as an active officer. I had never had the training nor the ability, for that matter, to be an active colonel and I was never promoted to such or, at least, comparable to one in the active Wehrmacht.

Q But you had the training as a German officer? that is an order were submitted to you, coming down the line militarily to execute two innocent parents only because they were Jews, you would refuse to obey that order?

A Your Honor, I answered your example affirmatively. I said, "Yes, I could not have obeyed."

THE PRESIDENT: Very well, you may proceed, Dr. Gawlik.

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BY DR. GAWLIK: in the cross-examination. I want to confirm this quite clearly for the record. Did you have to pass on any order from General Schober to Ohlendorf? he was arresting hostages in order to shoot them under the slightest pretext.

Q That is enough. That will suffice for your answer. By whom were these hostages to be arrested?

A He did not say that. He said, "I shall have hostages arrested."

Q I now come to another point. To whom was the order given, Ohlendorf's order, that the figures were not to be exaggerated? could only be directed to the kommando leaders in whose kommandos orders had to be obeyed.

DR. GAWLIK: I am sorry, Your Honor, it is from Document Book III-D, page 72 of the German, Document NOKW-628.

Q (C ontinued* That, as I say, was mentioned again and I have a few questions to put in connection with it. May I just have the document handed to you? the G-2, which you were asked about in the cross -examination.

DR. GAWLIK: It is page 1 of the original, Your Honor.

Q (Continued): Was it necessary that you give your approval to the agreement between the Special Kommando 10-B and the G-2? report that the Crimea was actually cleared of Jews was correct?

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Q What was your task? have them passed on to the offices to which they went. Communists. Was it your task to check up for what reasons these Communists were made harmless? showed that in Luki the inhabitants were being taken, care of, was it your task to take care of the accommodation of the inhabitants of the village of Luki? action to be carried out. housing of these inhabitants?

A I would have only found out about it after weeks. I would not have had the possibility before. of the original, II, the report about the further assignments which were planned. Was it your task to order the further assignments of the kommandos?

MR. WALTON: May it please the Tribunal, the prosecution desires to object to the form of the questions. He is putting the answer in the witness mouth. While this was gone over and I know he has the right to recover it in redirect examination, to ask a question, "Was it your task to make future assignments with the Einsatzgruppe", to me it seems the proper form of the question would be. "What was your task with regard to the future assignments".

DR. GAWLIK: May I now say something, Your Honor? As far as I am informed, a question that can be answered with yes or no is not a leading question.

I must here guide the witness, If I put the questions as it is suggested by the prosecutor, "What was your task", in that case, of course, it will take the witness a half an hour to answer it, and it is only in the way of completing the story and a matter of saving time. Otherwise there would be no possibility to guide the witness.

THE PRESIDENT: Dr. Gawlik, you are laboring under a very serious misimpression if you think that the test of a leading question is whether it can be answered yes or No. That is not the test, and I will give you an illustration. Suppose I say to you, "Dr. Gawlik, are you a smart and brilliant lawyer?" I would naturally suggest the answer which would undoubtedly be correct and would be yes. It is not the test if it can be answered yes or no. The test is whether the question in itself suggests the answer, and, if you say to your client here that "Was it your duty to make assignments for these kommandos", in view of what has already been stated with regard to this defendant, it is very obvious what the answer should be, so far as you are concerned. You must not suggest to the witness the answer. Gawlik. You covered that in your direct examination. The witness had an opportunity to explain further in cross-examination. Now nothing is served in going over it again. If, in the cross-examination, some doubts have arisen which need to be clarified, then you may direct your question to those doubts. Figure 2 had not been accepted?

A You mean, not accepted by the Army?

cerning your own activity in this report. Do you have anything to add to your answer which you gave during your cross-examination.

A May I just ask for one moment, I haven't the report in front of me.

Q I shall put the question a different way: In what reports did you report about your activity? my activity as the Director of Department III.

Q To what authorities?

Q I now come to the point of gas vans. Did you ask for the gas van?

Who had asked for the gas van?

A I do not know. I did not ask for it.

Q Who was responsible for the upkeep of the gas van? responsible.

Q Was that one of your tasks? Did you ever give any orders for the distribution of the clothing? Who was responsible for any difficulties which might crop up, economic difficulties, that is of the Ethnic Germans? that is, in which these Ethnic German settlements were situated. obtain clothing for Ethnic Germans? because that was not within the field of activities of an intelligence officer.

Q. I now come to the point: Valuables. Did you ever take part in collecting watches and valuables?

A. No. I never took part in it.

Q. Did you ever make any decisions in their distributions?

A. No. I never did. BY THE PRESIDENT:

Q? Witness, did you know about the watches that Ohlendorf had at headquarters, taken from executed people?

A. Yes, I heard about that.

Q. And you know what distribution was made of these watches?

A. I know that these watches were asked for by the army. They were requested in a letter, and I must assume that they were delivered to the Army, Your Honor. If and when they actually arrived, or whether the administrative officer had to report that they had been deposited at a bank - that I don't know. BY DR. GAWLIK:

Q. Now I come to the point which has been mentioned in the cross examination, which you mentioned: "Acting For", I submit to you Seibert Document 1. of the Department Chief of III-A?

A. He signed "Acting For" -- "I.V."

Q. Was he thus the representative for the whole office?

A. No, he was only the representative for his own field of activity, III-A.

Q. What was the significance of your own signature when you signed "Acting For" -- "I.V." - for the Einsatzgruppe?

A. It had the same significance which I have just now mentioned.

Q. Now I come to document NO-3414 in Document Book I, page 62, To whom is this decree immediately addressed? Please give a general answer. Not the individual agencies.

A. The decree was directed to the commanders of the Security Police and to a few state police agencies, names that are mentioned here.

Q. What does that show concerning this decree?

A. That the assignments had to be carried out by those agencies which are mentioned here.

Q. How was the decree addressed to the Einsatzgruppen?

A. To the Einxatzgruppen it went for their information.

Q. Please explain to the Tribunal what "information" means in this respect.

A. The difference wasoften made when orders were concerned; in the distribution list, it said first to this and this agency that meant for compliance; secondly, it went for information - that meant for the information of all concerned.

DR. GAWLIK: Thank you, Your Honor, I have no further questions.

THE PRESIDENT: ...Oh, pardon me. Yes, Dr. Hoffmann?

DR. HOFFMANN: Your Honor, may I now ask my questions of the witness, or shall I do so after you have asked your questions?

THE PRESIDENT: No. The Tribunal has no further questions. You may ask.

DR. HOFFMANN: Witness, the Prosecutor in the corss-examination yesterday asked you about a report which had gone to AOK II from February to March, and in which the activities of the Einsatzkommando 12 are mentioned, Do you remember that?

A. Yes.

Q. In this report it says that because of bad conditions due to snow, AOK 12 could not go into action, but that its activities would be resumed very shortly. Do you remember that?

A. Yes, I remember.

Q. You then pointed out that in this report, no executions are mentioned.

I now ask you, according to your own experiences.... if, in a report, no executions are mentioned concerning the period of time of the report, does that mean that no executions had taken place, or were they just not reported?

A. I can only say that from the picture I get from this report, I think it must be that they did not take place. I don't know whether this is due to an oversight or whether they were not reported for some reason, but to me it would mean that none took place.

Q. Did every Einsatzkommando leader have to report his executions, or didn't he have to do so?

A. Obviously he had to report them, not only his own executions, but he also had to report all happenings in the entire sector.

Q. In that case the leader of Kommando 12 would have acted against orders if he had not reported executions which had taken place there?

A. If in this report no executions were mentioned, and they had been carried out, in that case he would have acted against orders.

DR. GAWLIK: Your Honor, with this I have for the time being, completed my presentation of evidence in the case of Seibert. I would like to reserve the right to submit documents later.

THE PRESIDENT: That right will be reserved.

MR. WALTON: May it please the Tribunal, I should like to put a very few questions to the defendant.

THE PRESIDENT: Very well, Proceed. BY MR. WALTON:

Q. Colonel, I should appreciate it if you would turn to Document Book I, page 93 of the German, page 71 in the English, your Honors -- to Document NO-3422, which is Prosecution Exhibit 19. Will you indicate, please, Colonel, when you have found the place?

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A. Page 93, Mr. Prosecutor, German text?

Q. 93.

A. Yes, I have found that page.

DR. GAWLIK: I object to this question, Your Honor.

THE PRESIDENT: He hasn't put a question yet. What question are you objecting to?

DR. GAWLIK: I object to any question that might refer to this document, because the re-cross examination-

THE PRESIDENT: You say you object to any question he might put regarding this document. Suppose the question which he will put shows that your client is innocent? Would you object to that?

DR GAWLIK: All right, I shall wait. I shall wait for that.

THE PRESIDENT: Proceed, Mr. Walton. BY MR. WALTON:

Q. This document is an Operations order which had a subsequent date than the one you have just testified was distributed to the Einsatzgruppen for information....is it not?

A. Yes.

Q. Also, this is a directive for the purging of prisoner of war camps and the transit camps containing Soviet prisoners of war -- the same subject as the other documents.....is that not true?

A. Yes.

Q. Now, right at the bottom of page one of the original it says that the Einsatzgruppen will immediately detail Sonderkommandos in appropriate strength under the command of an SS-officer....that is said in the document, isn't it?

A. Yes.

Q. Now, down at the distribution list....is this distribution made for information to the Einsatzgruppen, according to the face of the document?

A. No, Mr. Prosecutor. This is just the opposite example. The distribution list says first to the Einsatzgruppen, and the Einsatz kommandos; and secondly for information, to the higher SS and police leader.

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Q. All right. Now, then, it is reasonable to suppose from the face of this document that this Operation order was sent to these named Einsatzgruppen for compliance, or for execution....is it not?

A. It becomes ecident from the distribution list that this order went to the Einsatzgruppen and the Einsatzkommandos.

Q. Did you ever see a copy of this order?

A. I have already said that I cannot ever say whether I read this particular order or not.

Q. Do you remember whether or not you ever took any action in connection with this order?

DR. GAWLIK: Your Honor, I object to this type of questioning. The questions, in my opinion, may only refer to the document which was mentioned by myself, because the re-cross examination can only refer to my re-direct examination. Only in this connection could questions be put in the re-cross examination, but these questions exceed that limit.

THE PRESIDENT: Mr. Walton, was this document referred to by Dr. Gawlik in the re-direct examination?

MR. WALTON: No, Your Honor, but this is part of the same story. It would be like referring to one paragraph in a story, and not getting the complete story.

THE PRESIDENT: Did you have the opportunity to cross-examine him on this when you had the defendant for cross-examination?

MR. WALTON: I didn't intend to go further than the question which I just asked and which he has answered. I am through at the present time.

THE PRESIDENT: Your objection is sustained, Dr. Gawlik. The witness, Willy Seibert, will be returned to the defendants' box; and the witness Biberstein will be taken to the witness box.

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follows:

JUDGE SPAIGHT: Defendant, please raise your right hand and repeat after me: speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPAIGHT: You may be seated.

DR. BERGOLD: Your Honors, before I begin with the direct examination of the defendant Biberstein I would like to submit my Document Book. It only contains three numbers. English , has not been received by him. It has been turned ever to me, in the English, and I was told that it had been submitted to the Tribunal and, to the prosecution, and I assumed that I could rely on this.

MR. HORLIK- HOCHWALD: The Prosecution hasnot received the Document Book yet. However, if Dr. Bergold is in a position to hand the English copy to me, which possibly he has, for a short examination, I will have no objection to his presenting this Document Book now.

THE PRESIDENT: Dr. Bergold, the Tribunal has your Document Book, so there is no reason why you can't immediately proceed. Mr. Hochwald can be scrutinizing it as we go along.

MR. HORLIK-HOCHWALD I have just received a copy.

THE PRESIDENT: Yes, Yes You proceed, Dr. Bergold.

DR. BERGOLD: I submit from my Document Book, Document No. 1, Exhibit No. 1. This is an excerpt from the Defense Exhibit 52 in Case II against Erhard Milch, and concerns the examination of Mr. Neurath. Your Honor will remember that since he was present at the examination.

As Exhibit No. 2, Document No. 2, I now submit an excerpt from the German General Lexikon, that is the Encyclopedia, and waspublished in 1926, by Meyer. It concerns the types of executions which are customary in the more important states of the world. In my final plea I shall come back to that.

And as the last, No. 3, I submit Document No. 3, Exhibit 3, the affidavit of the defendant Biberstein which he gave in Eselheide. This is an excerpt which I received from the Prosecution itself. Your Honor will remember that I asked for it at the time. BY DR. BERGOLD:

Q. Witness, what is your name; when and where you you born?

A. My name is Ernst Emil Heinrich Biberstein. I was born on the 15th of February 1899 in Hilchenbach, that is in the District Siegen, in Westphalia.

Q. Did you always carry the name Biberstein?

A. No, I used to have another name. My name used to be ... I now spell it: S-z-y-m-a-n-o-w-s-k-i- , Szymanowski.

Q. Why did you change your name?

A. When I just mentioned my former name now, I spelled it in order to go the safe way. I always had to do that because otherwise this name as always misspelled. Apart from that, A German could never pronounce the name properly. I always had quite a bit of trouble with it. My family was originally German, and I knew an old German name which goes back to 938. What is more understandable than having the express wish of adopting this old family name? In 1939 there was an order issued by the Party that all foreign-sounding names should be changed into German names. This decree was not actually carried out because of the outbreak of the war. In 1941 I used a very favorable opportunity to apply for a change of name, under the pretext that I had received an order to do so. Thus it came about that my name was changed on the 9th of June 1941 by a decree of the Police President of Berlin.

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Q. Were there any other reasons why you changed your name?

A. No, there were no other reasons.

Q. Who were your parents?

A. My father was a railway official. At the last he was Reichbahnrat, that means, Reich Railway Counsel, and came from an old artisan family. My mother is nee Giesler, and comes from a family of officials and farmers.

Q. Do you have any brothers or sisters?

A. Yes, I had a younger brother who was an artist by profession. As he was lame, he never became a soldier. On Christmas Eve 1943 when he tried to save victims of the bombs in Berlin, he was killed in an air attack on Berlin.

Q. What special impressions did your parents give you?

A. I was educated in a Prussian family of officials. I learned to know and to esteem all the virtues which once made Prussia one of the most orderly, and best states in Germany. I learned respect for God, obedience and faithfulness towards the State leadership, decency and honesty and conscientiousness in my profession and in my life. BY THE PRESIDENT:

Q. Why do you say, witness, that Prussia was one of the best states in Germany?

A. I said best organized, your Honor.

Q. Oh -

A. I must attach particular value to the order in public life and in the life of the population.

Q. Well, her was it better organized then Bavaria, for instance?

A. Well, it is well-known that the Prussian state was very painstaking in keeping order and organizing matters, in a manner which was not usual -- or at least not to that extent in other states.

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Q. You mean it was well known in Prussia?

A. No, no.

Q. You think a Bavarian would admit that Prussia was better organized?

A. I don't know that. That is a kind of local patriotism which, of course, would not admit that this was so.

DR. BERGOLD: If I may say something, your Honor ... we Bavarians -- we were convinced that Prussia was better organized. We Bavarians are of the conviction that we lead a more cozy and freer life. That has always been our conviction.

THE PRESIDENT: In view of the admission by the Senator from Bavaria, the statement will stand uncontradicted.

DR. BERGOLD: I now return to my question, your Honor.

Q. Witness, I would advise you to put on your earphones, because suddenly a question comes from the Tribunal and you are not ready.

What schools did you go to?

A. After going to elementary shcool from 1905 to 1908 I graduated from the Humanistic Gymnasium in Muehlheim-Holstein, which is a secondary school. In 1917 I graduated, as the best in my class.

Q. What profession did you take up?

A. I intended to study Protestant Theology.

Q. What were the reasons for this?

A. From the time that I went to school I intended to do so; it had been decided by my parents that I should become a clergyman. It was the quiet wish of my mother, although It was hardly ever discussed in the family; and I respected this profession, although I was awed by it. In the secondary school I learned the Hebrew language.

Q. What did you do in spring 1917?

A. I matriculated at the University of Kiel as a student of theology, and I applied for my first semester; but on the 16th of June 1917 I was drafted into the Army and I took part in the defensive fights as an Infantryman until the end of the first World War.

Q. What effect did the war experience have on you, especially in the choice of your professional training?

A. The fact that I would have to take part in the war made me -especially during the last years of school -- conscious of establishing a particularly intimate relation to God. I remember extremely well my experiences and my feelings at that time, because they became basic for my whole life.

of mind I took part in the war; these war experiences fortified my belief in God especially, and also, therefore, my decision to continue with my theological studies.

THE PRESIDENT: I don't quite follow that, Witness. You say that your experiences in the war fortified your vows to the Supreme Being. That is not quite clear to me.

THE WITNESS: Yes, the experiences I had as a soldier have fortified me in my relationship to God, my personal experiences.

THE PRESIDENT: Your experiences in the war made you all the more religious, is that what you are telling us?

THE WITNESS: No, all I wanted to sap is that my own personal experiences as far as guidance and protection go, fortified me in my belief in God.

THE PRESIDENT: Well, did you believe in God before you went into the war?

THE WITNESS: As I said, I did. I already said the thought of my having to take part in the war made me look for and find a relationship to God which I found at that time became even fortified through the fact that I was saved in the war. It was fortified through this very fact.

THE PRESIDENT: Very well.

Q. (By Dr. Bergold) Did you want to become a pastor, a clergyman, or did you have other plans?

A. When in 1919 I resumed my theological studies in Kiel I intended to become a clergyman, but the meeting with the professor of theological studies of the Old Testament,Dr. Salinawakened other wishes in me. His simple manner, his activity and his teaching fascinated me so much that I specialized more and more in the Old Testament. In a successful work on an academical paper, in which I dealt with the influence of Egyptian religion on the Jewish race, I drew professor Salin's attention to my work.

I became his pupil, and I studied Assyrian and Babylonic history, their life and their writing, and Arabic. As an aim I had a lectureship for ancient Oriental languages, history and history of religion. Inflation put an end to this plan. Apart from that the salary as a private lecturer was so small that it made marraige impossible, or at least for the time being. Thus I was forced to lock for another job in order to find a firm basis for my existence.

Q. Will you now tell us of your life from university days until you were first ordained?

A. I shall be brief. After six semesters (terms) of theological studies, on the 29th of April, 1922, I graduated in Kiel, and I passed my first theological examination. Then I got some practical training which consisted of attending classes at the theological preachers seminary, in Pretsch in Holstein, which lasted for six months, and in the so-called training vicarage with the dean in Neumunster in Holstein. After this period of practical training I passed on the 23rd of October, 1923, the second practical theological examination. As this profession was very much filled up, I was without a job for one year. On the 9th of November 1924, I was ordained as a pastor in Kiel, and after that I became alocal vicar, as a deputy of the regular pastor who had become ill, and I was sent to Angeln near Flensburg, On the 24th of September, 1925, I was elected the pastor of the small community Kasing, near Tonning at the Eider River, which is at the west coast of SchleswigHolstein. This was my first permanent job. I married in January, 19241925, and I have three children.

Q. Did you give up your scientific plans?

A. First I was, of course, taken in completely by my duties of the vicarage. Then I again became interested in the ancient Orient and in the Old Testament, and especially when in 1926 in Berlin, I accidentally met Professor Salin - in front of the university, who had been called to Berlin in 1922. He asked me to take up my habilitation, and I asked for my literature thesis in Kiel entitled, "The language of the Book of Hiob."

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But I had no intellectual stimulus living in the country. Apart from that, I went through a psychological change under the influence of the NSDAP. Those questions and problems of many kinds which were my field of interest, cropping up in the ancient Orient, I recognized more and more that we Germans, apart from the scientific interest in other parts of the world, we neglected and forgot our own little piece of the world. I turned my interests to the German home history, and the European pre-history, especially the old Germanic religious history in myth, saga and fairy tale, It took all my attention. And in this frame there was also genealogy, which also had taken my interest when I was a student. Thus it came about that I lost interest in my scientific works dealing with the Orient, and I became more and more interested in the subjects which I have just mentioned, the subjects concerning the German man in history and the present.

Q. When did you join the NSDAP?

A. On the 19th of July, 1926.

Q. Will you make a small interruption, Witness, so that the interpreter has the chance to translate the sentences? How did it come about that you joined the NSDAP?

A. My very religious mother, who had died who had never cared very much about politics formerly, asked me at the beginning of the 20's to subscribe to the Voelkischer Beobachter, which was then a weekly. It was my first contact with National Socialism. My father was at that time a leading member of the Social Democrat Party in Neumuenster, and he tried to win me over into this party. Through my mother, in contact with the Voelkischer Beobachter, it came about that my father, as well as myself, got very interested in this young party. My father joined the party in 1925. The following ideological thoughts made me join in 1926: collapse of the Reich in 1919. Therefore, for me as a soldier it was the duty of conscience to do everything in order to have rescinded the Versailles Treaty, which I regarded as very humiliating.

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I imagined that this could be done by an agreement. I regarded the Versailles Treaty as so humiliating because every one-sided agreement is always a chain.

THE PRESIDENT: Witness, when you joined the NSDAP, you were already an ordained minister?

THE WITNESS: Yes.

THE PRESIDENT: Just as a matter of information, did ministers generally join the NSDAP in Germany?

THE WITNESS: Yes, a large number.

THE PRESIDENT: Had you read "Mein Kampf" before you joined the National Socialist Party?

THE WITNESS: No, I had not.

THE PRESIDENT: Were you familiar with Hitler's views on religion generally before you joined tha Party?

THE WITNESS: I only knew what was generally known at the time.

THE PRESIDENT: Did you regard Hitler as a God-fearing man?

THE WITNESS: At the time, yes.

THE PRESIDENT: Did you ever have occasion to change your views?

THE WITNESS: Personally, yes.

THE PRESIDENT: When?

THE WITNESS: I was asked whether I had ever had the opportunity to change my opinions.

THE PRESIDENT: Well, did you ever change your views about Hitler being a God-fearing man?

THE WITNESS: After what I heard, after 1945, a number of things now appear in a different light to me.

THE PRESIDENT: You did not change your views about Hitler's religious attitude until after 1945?

THE WITNESS: No.

THE PRESIDENT: Did you know about the persecution of the Jews in Germany?

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THE WITNESS: It depends , your Honor, what you mean by the persecution of the Jews .......

THE PRESIDENT: Did you know that Jews were deprived of their citizenship rights?

THE WITNESS: Yes.

THE PRESIDENT: Did you know they were deprived of their property?

THE WITNESS: No, I did not know that their property was taken away from them.

DR. BERGOLD: Your Honor, I shall deal more explicitly with this set of questions in the course of my direct examination, if you will permit me to mention this, within the frame of the whole thing.

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THE PRESIDENT: Very well, Dr. Bergold, proceed.

THE WITNESS: I spoke of the Versaille Treaty which I regarded, as it meant a chain, as most humiliating. I hope that this mistake - this one-sided treaty - that in fact a mistake of that kind, will be avoided by the American Government so that no animosity of any kind will be brought up again. then nationalist parties did not seem capable, because they worked on too small a base. In this young National Socialist Party, a simple man of the working population who had begun as a simple soldier and had helped bear the whole hardship of a war, became the expression of the people' s will, and he became the expression of a strong national will whom one could not resist as a German man. Equally strong in me was the war experiences. I had lived in very close community with workingmen during the war, and I had experienced the comradeship which is unforgettable. Added to this is the fact that I, as a clergyman, regard the human responsibility especially towards those who are socially inferior, as an order of God. The solution of this social question, the urgent necessity to include the worker in the human system, of human society, was a necessity for me. I experienced in the NSDAP, a workman's party, which wanted to materialize this aim, and which was led by a man who knew and who had the same experience at the front during the war and who had shared the hard lot of the working man. A national and social element worked hand in hand with each other in the National Socialist Party, and promised to fight all destructive elements, and to create a people's community which wanted to equalize all classes of the population.

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That was an ideal which none of all the other parties had, because they were to a larger or lesser extent only communities of interests of part groups of the population. The one man was the leader of this party who had a power of will and a power of reaching his aim which made the materialization of these aims -

MR. HORLICK-HOCHWALD: If the Tribunal please, it seems to the Prosecution the witness by no means gives his own impression. He gives a general lecture about National Socialism and about Hitler. I do not think that his lecture is relevant in this place, and I further think that the Tribunal is very well informed about what Hitler and the National Socialist Party were and what they did. I do not think that it is necessary for the witness to expound on this point further.

DR. BERGOLD: I must contradict the honorable representative of the Prosecution. The witness speaks merely about his own impression here of the party. It is correct, it sounds like a National Socialist speech, but it was just his own world of ideology and thought, which, of course, one must understand.

MR. HORLICK-HOCHWALD: I had the impression that it was by no means understandable from the lecture of the witness that this was his personal view. He stated these things as established facts, never saying that, "I had the impression that it was that". He said Hitler was that; the National Socialist Party was that. He gave all these impressions entirely as established facts. He never said, "I had the impression, it seems to me for that and that reason," etc. He just lectured to us for about twenty-five minutes now what a wonderful thing National Socialism was.

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DR. BERGOLD: I have to contradict the representative of the Prosecution again. Before the witness began he said the following sentence: "The following ideological thoughts were responsible for my decision to join the Party," and then he gave these thoughts as they struck him at that time as facts.

THE PRESIDENT: We will allow the witness to continue.

THE WITNESS: For my decision to enter the party was also responsible the very clear program of the NSDAP against materialistic Marxism and Communism. Q (By Dr. Bergold) Could you be a little more brief? thought, we want to destroy all culture, the thought of a class struggle, and a campaign against any religion, as it was called "opium for the people", through the creation of a larger extended Atheist community, as the Communist idea was in fact materialized in Russia, employing bloody means and catastrophical famines. Especially as a religious person I was confronted with the alternative, on the one hand, Bolshevism, that means the decline of the Occident with its religion and its culture, or Anti-Bolshevism, as I could only find in National Socialism at the time. I was under no doubt at the time that the churches will have to subscribe against Bolshevism, and the most shaking, the most overwhelming thing for me today is, that everything has come different, that National Socialism had to -

THE PRESIDENT: Now, are you talking about today or when you joined the National Socialist Party?

THE WITNESS: No, I just said something about today. My last sentence is an expression of what I feel today. Only the last sentence, your Honor. The other, the remainder of what I said was all the ideology, my thoughts which made me join the NSDAP.

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I have just said that at the time I was of the clear conviction that the churches would -

THE PRESIDENT: We heard you. You don't need to repeat it. Continue.

THE WITNESS: What shakes me now is that the development became so different and that the Pope can still speak about Bolshevism in the same way as National Socialism used to at the time.

THE PRESIDENT: Dr. Bergold, do you think that that is relevant, what he just said now?

DR. BERGOLD: That is his attitude today. I think it is of superior importance here, but I think he has now exhausted this subject. Q (By DR. Bergold) Witness, did any personal interest take any part in this decision to join the Party?

A No, never. I had my own profession which secured me a safe existence. I did not think of myself when I joined the party. I only thought of my people and this attitude I never changed. My life was spent in the service of the people and serving God. service to the church? Was there no conflict? service and my service in the party. The Evangelical the Protestant Lutheran Church had always been national until 1918. The head of the State was also the head of the church. Also the Protestant Lutheran Church always attached great value to sacrificing the highest percentage of blood when waging war. The solution of the social question is the nucleus of the existence, existence of the church, and the highest order of God are the words of Jesus:

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"you must love your neighbor as you love yourself." Also Point 24 contains recognition of the positive Christianity.

Q What do you call Point 24?

Q What about the racial question? His Honor, the President, has directed your attention to the racial question.

THE PRESIDENT: Dr. Bergold, suppose we take that up after the recess? The Tribunal will be in recess fifteen minutes.

(A recess was taken).

THE MARSHAL: Take your seats, please. The Tribunal is again in session.

DR. RIEDIGER: Your Honor, may I ask that the defendant Haensch be excused this afternoon from session, so that he will be able to prepare himself for his appearance on the witness stand, and, I also ask you to instruct for him to be brought to Room 57.

THE PRESIDENT: The defendant will be excused from session in the court this afternoon, and arrangements will be made with the Marshal to see to it that he is taken to Room 57, so he may there consult with his attorney.

DR. BERGOLD: Your Honor, I have been asked to request that the defendant Ohlendorf be excused from attending session this afternoon because the Prosecution in Case 8 wants to interrogate him, and the fact that he would like to do some work of his own in his cell.

THE PRESIDENT: In accordance with the statement just made, the defendant Ohlendorf will be excused from attendance in court this afternoon. First, he will be taken to Room 57, then after the business there is completed, he will be allowed to confer with his attorney in connection with his own case.

BY DR. BERGOLD:

Q. Witness, the last discussion just before recess was on the Party Program, and I now ask you what is your opinion concerning the racisl question, and what was your opinion at the time to what was contained in the party Program?

A. I wish to comment on this in the following, firstly, the Racial question, in particular the Jewish Program is not a religious question, but a biological question and a question of communal like; secondly, the question of various races is a fact which exist by the will of God, therefore, has to be respected.

Q. That is your opinion?

A. Yes, that is the opinion which I had at the time, which even in my theological capacity was not in contradiction with my opinion concerning the Party Program; thirdly, that the relation of various races among themselves be brought to a satisfactory solution, is, in my opinion is no crime against the Will of God, but rather a fulfillment of His Will; fourthly, violation of races results from race throry in my opinion is wrong.

Apart from that, the NSDAP was not the first Party to think about the racial problem, but in their early beginning they made an orderly and just solution of this problem a point of their program; that many things were changed later on no one could know; and I could not know if either, and no one intended this at the time.

THE PRESIDENT: Witness, just when was that you formulated the idea that the program of the National Socialist Party coincided and harmonized with your views on religion?

THE WITNESS: At the time when I joined the Party, I would like to point out that all views at that time were quite different from those things which became known to the public later on, ------------------

THE PRESIDENT: Then from 1926 until what thime did you still entertain the conviction which you have just expressed, namely, that the program of the NSDAP insofar as it pertained to racial questions harmonized with your views on religion?

THE WITNESS: Until the very end.

THE PRESIDENT: And you Lave told us that you were a student on the Old Testament?

THE WITNESS: Yes.

THE PRESIDENT: And you were able to reconcile the National Socialist Party program insofar as it pertained to the Jewish question with the teachings of the Old Testament?

THE WITNESS: I hardly think, Your Honor, that the teachings of the Old Testament have anything to do with the later events in Germany, because, as I already said it was not a religious matter which was concerned, but merely a biological matter.

THE PRESIDENT: Well, then, let's put it this way, that there was nothing in the Party Program which conflicted with the Old Testament insofar as it pertained to Jews?

THE WITNESS: No, I don't see any contradiction there.

THE PRESIDENT: Very well.

THE WITNESS: I only want to say particularly that according to known at the time of what the NSDAP intended to do.

THE PRESIDENT: You say "What you could have known." Did you know?

THE WITNESS: What I knew at the time. I mean to say, that this formulation of these facts refer to all that the NSDAP had shown to the public about these questions at the time.

THE PRESIDENT: You make a distinction between what the program said, and what actually happened insofar as your knowledge is concerned?

THE WITNESS: I witnessed this personally, but later on things occurred which had nothing to do with the program, and that all we old National Socialists in particular felt very bitter about this.

THE PRESIDENT: You may proceed, Dr. Bergold.

Q. (By Dr. Bergold) Witness, As for the racial question, did it not include the theory that a master race existed which was superior to the other races?

A. No, considering the racial question as such, it does not express the thought that a master race or inferior races existed. This idea is a distortion of the subsequent propaganda. I always considered all races equal before God, but in the fact that various races exist I saw the will of God that these should continue to exist separately.

THE PRESIDENT: DR. Bergold, I am sorry that I interrupt you, but I think it is best that we clear up a point while it is fresh in the minds of everybody. Now, the witness referred to Point 24 of the Party program and he told the Tribunal that in this Point 24 he saw a guarantee of religion. Now, we would like to read that paragraph, that Point 24, and have the witness tell us how he reconciles this point with the religion which he studied in the Old Testament and of which he has now told us a great deal. I will read it:

"Point 24: We demand freedom of religion for all religious denominations within the State so long as they do not endanger its existence or oppose the moral senses of the Germanic race. The Party, as such, advocates the standpoint of a positive Christinaity without binding itself confessionally to any one denomination. It combats the Jewish materialistic spirit within and around us and is convinced that a lasting recovery of our nation can only succeed from within on the framework - common utility precedes individual utility." in this Point 24 which you yourself referred to, that the COURT II CASE IX Party combats the Jewish spirit, how do you reconcile that with your teachings gleaned from the Old Testament?

THE WITNESS: Your Honor, I am not a student of the Old Testament in the sense that for me the Old Testament is my basic book of religion. But I worked on the Old Testament as a Scholar within the Protestant Lutheran Church, so that it was a purely scholarly interest, and the teachings of the Old Testament were not binding for me, because for a Protestant the personality of Jesus stands above everything, and therefore, in referring to the Old Testament in this connection I cannot consider that correct.

THE PRESIDENT: Then, do you reconcile that Point 24 with the New Testament and its teachings?

THE WITNESS: I did not understand why the teachings -may I have the question repeated please?

THE PRESIDENT: Yes. You have told us that you did not accept the Old Testament as your Bible, that for you the Old Testament was merely a subject of scientific study, and that you were not bound by the teachings of the Old Testament. I understood you correctly there, didn't I?

THE WITNESS: Yes.

THE PRESIDENT: Now, I ask you whether the Point 24 which you referred to can be reconciled with the teachings in the New Testament?

THE WITNESS: It says expressly that the Party believes in a positive Christianity. This word, contained in the Party program was decisive for a great number of Christians and religious people when joining the Party.

THE PRESIDENT: Well then, you would say that it does reconcile itself with the teachings in the New Testament?

THE WITNESS: What do you mean, your Honor? What cannot be reconciled?

THE PRESIDENT: Do you believe in the New Testament?

TEE WITNESS: Yes.

THE PRESIDENT: Can you believe in the New Testament and also believe in Point 24 of the Nazi program?

THE WITNESS: Yes, why not?

THE PRESIDENT: Yes, Now, that Point 24 advocates the combating a certain Jewish spirit within Germany and in that combat you know that synagogues were destroyed. You know that, do you?

THE WITNESS: Yes, I know it, but I never approved of it. As a religious person I was very much disgusted that this happened.

THE PRESIDENT: Well, but you saw that in the Point it says "We combat a Jewish materialistic spirit"?

THE WITNESS: The materialistic Jewish spirit.

THE PRESIDENT: And that was interpreted by certain groups in Germany to countenance the destruction of Jewish property, including synagogues?

THE WITNESS: Never had anything to do with this. The other is a spiritual argument.

THE PRESIDENT: Well then, you did not approve of any action against the Jewish synagogues?

THE WITNESS: Never.

THE PRESIDENT: Very well.

THE WITNESS: Your Honor, at the time it was explained to me, and I can only say what I heard at the time and what calmed me very much in 1938. That was the news that the Fuehrer was supposed to have had a fit of rage about it. I say what I heard.

THE PRESIDENT: You must understand, witness, and I think Dr. Bergold understands it, that these questions are put only for the purpose of securing information, to find COURT II CASE IX out what you thought and what you did,

THE WITNESS: Yes, of course, I understand.

THE PRESIDENT: Very well.

Q. (By Dr. Bergold) Witness, as a member of the Party what did you do until 1933?

A. When I joined the Party I pointed out my special profession. They respected this and the Gauleiter especially certified and said that I would not have to take part in any political activity, because I did not intend to be particularly active politically or to become a politician even. I never had that idea, and I have never been a politician. At the time, when joining the Party, I was still an individual member because in 1926, in Schleswig-Holstein there was hardly a local group in the country. Later on, after 1929, I conducted field services for the SA, flag dedications and services for the dead and Christmas services. I was always asked for this expreslly. When dedicating flags, I had discussions with Church authorities. I justified my activity by pointing out that these men, when making propaganda, constantly had to expect to be shot or beaten from ambush. At their express request I considered it my duty to give them the consolation of the faith.

Q. You did not have any political office before 1933?

A. No, before 1933 I did not have any kind of political office.

Q. What was your political activity until 1933?

A. From December, 1924 until 1927 I was pastor of a small congregation on the West Coast of Schleswig-Holstein, and from November, 1927 onwards until November, 1933, I was pastor of the large rural congregation, Kaltenkirchen, District of Segeberg.

Q. Witness, what is your attitude to the Church dogma?

Your Honor, I have to discuss this question because later on it will be shown that the defendant left the Church. That is why I have to show his religious development.

A. As I have already mentioned at the beginning, when I was a young man at school I already felt a close contact with God which became stronger owing to the war and my experiences there. This relationship to God was not at all connected with Jesus of Nazareth as Christ, that is, as the second person in the picture of the Trinity. In my theological studies, moreover, I particularly took an interest in studying the old Orient.

nucleus question more and more: what is your attitude towards Jesus of Nazareth as Christ? The dogma says that Christ is God Himself Who, as the Son of God, redeemed humanity by dying on the cross and relieved them of their sins. About this central problem I was never able to find a positive answer in myself. I did not know any belief in Jesus as Christ, but I firmly believed in one God alone as Jesus himself talked about in his speeches.......

THE PRESIDENT: Is this what you were preaching in your church?

THE WITNESS: Yes, I realized this more and ore clearly and also preached about it....

THE PRESIDENT: Then you say that you believed in the New Testament?

THE WITNESS: Yes.

THE PRESIDENT: You believed in the New Testament and yet you expressed in Church what you have just now told the Tribunal?

THE WITNESS: Yes.

THE PRESIDENT: Very well.

A (Cont'd) I consider Jesus a brother like myself and anyone who believes in God and is a child of God. This, attitude, was nothing exceptional or anything in particular. In the Protestant Church there were all kinds of views on religious questions, from the orthodox people down to the pantheism, out already at that time I perceived the idea: whether it could be combined with truth whether with this, my attitude, I could remain in church office.

THE PRESIDENT: You said that views ran the entire gamut from orthodox views to pantheism. Was pantheism taught in some of the Christian churches?

THE WITNESS: Yes, there were a great number in the Protestant Church. The idea of God as such on the one hand was considered in a very strict manner according to the dogma and very orthodox, and on the other hand, it was vaguely dissolved in pantheism.

Q (By Dr. Bergold) Did you belong to any particular group within the Church?

THE PRESIDENT: What was the name of your church?

THE WITNESS: The Protestant Lutheran Church of the Province Schleswig-Holstein. That's a State church.

THE PRESIDENT: And is this what is taught in all Protestant Lutheran churches, what you have just told us?

THE WITNESS: No, that depends on the clergyman. One clergyman had orthodox views and another had pantheistic views, and every one of them preached in his own way. The Protestant church existed in this tension.

Q (By Dr. Bergold) Now let us go back to this religious group. group at the time. I was an individualist and have remained one. However, in that time, like in many other clergymen who had joined the NSDAP before 1933, the wish in me arose to discuss matters. The formation of the National-Socialism Clergymen's Association was not permitted. As an answer, in order to form an orthodox group, the movement, so-called the German Christians was formed which I joined in 1932.

THE PRESIDENT: Did the German Christians believe in Christ as being divine?

THE WITNESS: Yes.

THE PRESIDENT: Did you believe in Christ as being divine?

THE WITNESS: No, as I already said....

THE PRESIDENT: Could you preach just what you pleased in your church?

THE WITNESS: Yes, provided it was part of the New Testament. I mean, the person of Christ is always in the center of all these sermons and all these thoughts, but not Christ as a God, as a Christ, as a Messiah, but Christ as a human being, as brother, as leader towards God.

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THE PRESIDENT: And do we understand that it is your interpretation of the New Testament that Christ is not considered a divine being?

THE WITNESS: Yes, not only I do this, but a great number of university professors have the same view.

THE PRESIDENT: Now, I am saying the New Testament. You read the New Testament and you conclude from what is contained in the Testament that Christ was not divine?

THE WITNESS: Yes.

Q (By Dr. Bergold) Witness, talking about an orthodox group, what do you mean by that? With the starting and growing of the NSDAP and with the joining of a great number of clergymen in this Party orthodox religious circles, started to worry whether they would be able to keep up their dogma. In the year 1931 when the SA marched through the streets of Altona the Communists attacked them with weapons and many SA men died. The following Sunday church circles called for a special religious service because of this event. The SA men and Party members followed enthusiastically and joined the church service. They were disappointed in one thing. They were described as partly guilty because, owing to the march, they had asked for this attack. In a solemn manifesto the Clergymen laid down certain directives, the so-called Altona confession. From this, resulted the emergency assocation of clergymen, and finally the so-called confession front. dogma, this organization finally became a fighting front of the religious sphere; ad this organization started to object to National Socialism more and more. This confessional front was opposed by the German Christians.

Q You were a member of the German Christians. What were the aims of these German Christians? The beginning was promising. As the name implies, it was a confessional movement.

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Belief had created an interest because of the dogma, that is, the modern problems were to become one with the old traditions, with the aim to make faith alive again among the people.

Q That was the program? German Christians. Unfortunately, all this led people astray because some people were ambitious who were not concerned with belief but with the power position within the church. In 1933 church elections were proclaimed: the Party was misused. The old church governments collapsed and the leading positions were taken by leading German Christians. The election of the Reich Bishop belongs to this. According to the report of a participant it was a power act. After the executive positions had been occupied the interest in the movement of the German Christians was no longer so great. The group disintegrated and was divided into several subunits, such as the Thuringia German Christians, who had serious beliefs, or another group, the Mecklenburg German Christians and many other parts which were of no imporatnce. were concerned with real belief? the Thuringia German Christians, which seems ridiculous to me, I could not join. It consisted of the idea to make Jesus into an

Aryan. I consisdered this childish. In Jesus I always saw and still see a human being who, being closely connected with God, the sovereignty and dignity of the human being is considered the will of God. Racial standards do not apply to Him at all. He was a human being who had the Power of God like nobody else. That He was a Jew does not change the truth of His message.

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That he was a Jew does not change the truth of his message. from 1933 to 1935? appointed me commissary church dean in Muenster, and later I became dean in Segeberg. As I heard later, my choice for church leader at Segeberg was made at the request of the area leader of the party at Segeberg. On the Tuesday of the following week in 1934 I was called up from Luebeck asking me to come to Luebeck immediately, because of the occupation of the senior position of the bishopric which had become vacant. I travelled to Luebeck by car and in the city house the mayor and a number of senators received me who asked me to become bishop. I accepted the offer. After about six months had passed I was again called to Luebeck by phone where the mayor told me that for my appointment as bishop, according to the regulations of the German Protestant Church I still had to get a certificate, namely, the approval of the party. The Gauleiter had refused this. I was asked to discuss this with him in order to get his approval. I travelled to Kiel to the Gauleiter and he told me that the Kreisleiter, the area leader of the party had refused his approval because I had not asked the Kreisleiter for permission previously to take this office. I had no discipline, and he had to continue refusing. The Gauleiter approved of the Kreisleiter's opinion and, therefore, I could not become bishop of Luebeck. politics because of this?

A Yes. This event moved me very deeply because I could not understand why the political circles would make such difficulties for me.

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I was disgusted about the selfish way of acting of the district treatment since I was an old party member and still he treated me like a stupid boy. But in the meantime I had already learned that there often were great differences between the ideas of the party and some of the persons who represented the party. I considered this due to human incompetences of individuals in the NSDAP without however have any misgivings about the Party itself. But it did leave a painful memory. years 1933 until 1935? I was made honorary district training chief in the district of Segeberg. I want to point out that this was a year before this disappointment, I gave lectures to various local groups in the district Segeberg. The peculiarity of my profession showed in my lectures. The ideas of the social people's community were mostly the contents of my lectures, namely, that the farmers and the working people should be one union within the union of the entire people, that the classes be at peace, that work was a noble art, the task of the women among the people and similar practical questions of the organizational setup among the people. active in your profession, this political activity?

A Yes. In the manner in which I carried out this political activity, I already pointed out that the peculiarity of my work as politician destined my work in this. Even if I spoke as a political chief, the people considered me a dean and I was always addressed as "Dean", and, therefore, it was quite natural that the lectures before the local groups of the smallest hamlets were more like a solemn hour than a normal political gathering.

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This activity I liked because that way I could visit the villages of my district as dean where I would not have come to merely as a church official. Through this political activity, the basis of my position as a church official became more established. the church, did you not -- why did you want to do this? and for this I had three reasons. When I talked about my attitude toward the dogma I pointed out that I was bothered about the Question whether it could be combined with inner truth and sincerity to remain active in the church service.

THE PRESIDENT: Dr. Bergold, I think it would be clearer if he gave us the three reasons, then if he wishes to amplify any particular reason you can determine that, but for clarification purposes, let him give us 1, 2, 3, the reasons.

A First, there were reasons of belief; secondly, church political reasons; and thirdly, political reasons. Explaining the belief, I was just explaining the question of belief.

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and reconcile it with the continuance of work in the church. Beyond that, I realized more fully how strong the religious attitude of the greatest part of the people in the Schleswig-Holstein Church differed from the actual dogma. If truth were set aside here, in my opinion, the greatest part of the Schleswig-Holstein Church people had to separate from the Protestant Lutheran Church and set up a new church organization. But whether the time had come for this already then, I doubt. In any case, in order to clarify all these questions of belief I needed time and perpective. Now, the church political reasons. The general church political differences between the confessional front and the German Christians had shown so many unpleasant events that I was ashamed of being a clergyman. Both groups, were, in their measures, not suitable for church offices. I was deeply disappointed about the power political attempts and the religious sterility of the German Christians. In 1934 I left this group. Among the clergymen of both movements a degrading difference arose, which impedimented their dignity and one could not think that any real belief existed here. I began to doubt the meaning of the message to the people and needed sitance to think about this , the political reasons.

Q. Please be brief.

A. The attitude of the political public to me as a clergyman was good because they esteemed me as a human being but unfortunately the clergymen behaved so stupidly in respect to the party. I am fully convinced that if all clergymen had been fully aware of the responsibility concerning the tasks of the time the party would never have started a conflict with the church and that, secondly, through the influence of the church in the party they might have stopped them from taking the wrong road, so that Germany and Europe wouldhave been saved a great deal of misfortune, perhaps Bolchevism which threatens the world now would not exist any more. Through stupid contradiction in un important things at the wrong time, as in 1933 , the new relations which were formed again in 1939 between the party and the church became looser again.

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The party was prejudiced against the church and the church finally rejected them as an organization which conspired against the state. Owing to my personal experience, I cannot say that the church is free of this historical guilt. As a clergyman, I watched this development and liter on in Berlin I realized that to its full extent. I had had to think of this bed development. The attitude of rejection of the party towards the church made itself felt as well, I stood between the church and party who in my opinion both had the wrong attitude. This finally brought me to the decision to leave the church service. BY THE PRESIDENT:

Q. You said you stood between the church and the party and between those two you chose the party?

A. Yes, I was still in the party, and I was also still in the church, but the official measures I could not approve of in this connection.

Q. Well, did you leave the church?

A. No, not at that time. Only laid down my office.

Q. When did you leave the church?

A. Only in 1933. I shall talk about that later. Owing to my experiences in Berlin in my decision to leave the church service, the tyrannical attitude of the local leader also played a part, who kept me in his district and I tried to get away from him. But later on my existence was threatened by this again. These were three reasons of belief, church political reasons and political reasons which forced me to lay down my office in order to get away from this mixup and the confusion and to be able to understand my own feelings. The decision was very hard for me because during my activity of 10 years I had learned to love my profession. In my opinion there is no more noble profession than to look after the souls and to assist people in need and in happiness.

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Q. How did you imagine your future work?

A. I wanted to become a state official and work in the educational department of the state.

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a request to the Reich Minister of Education to employ in the above mentioned office. I never received a reply. In July 1935 owing to difficulties, with the German Christian government in Kiel, I had a discussion with the gauleiter. On that occasion I informed him that I intended to become a civil servant. Then I pointed out a notice in the newspaper that Hitler had commissioned Kerrl to deal with church questions we agreed that this would be suitable work for me. The gauleiter promised to talk to Kerrl about my employment in his field, of which the church could only approve. Therefore, in August 1935 I was called into the Reich Ministry for Church Affairs.

Q How long were you in this Reich Ministry for Church Affairs? 1940. negatively against your aims and interfered. Was that in this connection?

A Yes. That is connected with my transfer into state service. It wason 20 April 1936. Reich Minister Kerrl told me that day that he had received a letter from Kiel which included a letter by my former district leadernot to transferme into the state service because I had not shown sufficient discipline towards the NSDAF. The cause for this letter was a religious service which conducted on a Sunday in March 1936 in the church at Segeberg. A great number of people had taken part, even party members. The church and also the district leaders had been informed about this previously. After all, at the time I was still dean of Segeberg, because I hadnot yet finally bean transferred to the state service, I could not understand why the district leader should have written this letter. The ministery informed me that in spite of this he wanted to appoint me Oberregierungsrat, the same rank as a dean in the church, but I had to promise him not to carry out any church actions in the future.

This request was unusual because I retained the rights of the church which could only have been taken away from me in a special legal procedure by the church against me. I gave the promise which he asked for and 20 May 1936 I was appointed Oberregierungsrat in the state service. being a country pastor to an official in the Reich Ministry for Church Affairs? go to the capital and to go to the Reich Ministry in particular as I was to meet men here who were old national-socialists and who held high positions in the Reich and, therefore represented National Socialism. I arrived in Berlin with great expectations. I was disappointed very soon. Here I got to know a kind of people who were not known in the country and who only existed in state offices and ministries. I got to know the painful difference between national socialists and Hitlerites. I shall explain their expressions. National socialists are people who had approved of the national socialist idea as idealists as the supreme basis of their political actions, and who were ambitious to follow unselfishly the ideals and to realize them in their own lives. To the old national socialists it is a matter of course that all party members including Hitler come under this idea. Even if any of them, including Hitler, should violate any of the laws, they should have to leave the party. That is the attitude of the old national socialists which Hitler himself had expressed repeatedly. We as free citizens, were following one idea, namely, the ideal of Reich where all classes were equal and all citizens were free and one man, namely. Hitler only, should guarantee this idea but never as a human being who abused the idea for dictatorship in order to make slaves out of free citizens. This attitude I passed on to my sons because it wasof basic importance to me in the necessary defense against the so-called Hitlerites. BY THE PRESIDENT:

Q Now, he has told us what a national socialist is. Let him tell us what a Hitlerite is.

A That is coming up now, Your Honor. The Hitlerites are such party members who conducted a personal cult with Hitler, who approved of him and anything he did, whether it was right or wrong, who flattered him in order to be noticed by him and to be awarded by him. The more powerful Hitler became they thought they would be able to get greater power, too, for themselves as his followers. They did not care much about the idea of national socialism any more. Most of them were opportunists, who had joined the party in 1933, opposed to the plans of Hitler. included all those who believed in the principles of the national socialist party and that included Hitler. Now, you have given us the description -phrase included all those who believed in the program of the national socialist party and that included Hitler?

Q Now, you were describing to us the Hitlerites. Now, please tell us whether Hitler himself belonged to the first group or the second group? Did he believe in following himself or did he believe in following the national socialist party?

A That still had to be decided in the following time; according to the experiences I had at the time I could not realize this....... socialists or did he belong to the Hitler group?

Q Hitler belonged to the Hitler group? socialist group?

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the national socialist idea for me in its full purity.

Q At one time then Hitler was not a Hitlerite? Hitlerite. In that case he would have to consider himself a god and I do not know in how far he did this.

Q Did you ever consider that?

PRESIDENT: The Tribunal will be in recess until 1:45 (A recess was taken until 1345 hours.

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(The hearing reconvened at 1345 hours.)

THE MARSHAL: The Tribunal is again in session.

MR. GLANCY: May it please the Tribunal, I would like at this time to introduce formally two exhibits which were used in the cross-examination of Defendant Nauman. They were given the identification number of 175, which consists of three documents, namely, NO-5444, 5445, and 5446. I wish at this time to formally introduce these three as Prosecution Exhibit 175. If the Tribunal deems it proper, we can introduce it as "a", "b", "c" to maintain the continuity.

THE PRESIDENT: I think it would be well, if you did do that.

MR. GLANCY: Yes, sir. Then I offer Document NO-5444as Eshibit 175, Document No. NO-5445, as Prosecution Exhibit 175a, and Document NO-5446, as Prosecution Exhibit 175b. is a note written by the Defendant Nauman to the Defendant Kilingelhofer, which was introduced in the record at page 884. The Document is NO-5450.

THE PRESIDENT: The record will indicate that these exhibits have been introduced.

MR. GLANCY: Thank you, Sir.

THE PRESIDENT: You may proceed, Dr. Bergold. BY DR. BERGOLD (ATTORNEY FOR THE DEFENDANT BIBERSTEIN):

Q. Witness, what was the assignment of the newly created Reich Ministry for Church Matters?

A. The task of the Ministry was to eliminate the disquiet which had arisen through the fight between the COURT II CASE IX churches by just decisions.

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This unrest in matters of church, which prevented building up a social community of the people, tasks which so far had been dealt with partly by the Reich Education Ministry and partly, of course, by the Reich Ministry of Interior. Affairs were to be combined in one hand in order to prevent the working against one another of various Reich agencies. With the creation of this ministry, the Department for Cultural Peace was dissolved in the Staff of the Fuehrer, because also for these matters the Ministry was now competent. The task of the Ministry therefore was a task of creating order. It was, in fact, to confirm the competincies of state and church, which more or less, in spite of a certain independence, were still churches of the State, and to watch that the peace between these departments was not disturbed.

Q. You spoke about the fight between the churches. What do you mean by that, and what were the causes?

A. I shall shortly explain these matters. The fight between the churches is merely a Protestant matter and only confines itself to the Protestant State Churches. There is a brother war between the so-called Confessional Front, the Bekenninis Church, and the German Christians. It has to be stated here that the Confession was a front of belief, but in their origins in the Altona confession they had already held a political attitude against National Socialism. Therefore it was not purely a religious matter, but it had a political attitude. The German Christians came from the side of the National Socialism and wanted to create newly all religious problems and both had heavy encounters. The German Christians made an inexcusable mistake by abusing the Party in 1933, when they waged a church poltical war within the German Protestant Churches.

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THE PRESIDENT: Dr. Bergold, as Mr. Hochwald pointed out this morning, insofar as this history applies to the Defendant himself, it is relevant, hut when he merely recites what is happening generally and in which he has not a participant, we do not need to have it in so much detail. It seems to me that with a sentence or two, he can dispose of a certain development.

DR. BERGOLD: Your Honor, it is relevant, because only in this way will you be able to understand what task he was entrusted with within this church struggle. In the Ministry he had to deal with it.

THE PRESIDENT: Proceed.

DR. BERGOLD (To the witness) Please be a, little more brief.

Q. (By Dr. Bergold) Witness, what you have already said, you could put in a little more concise form.

A. The German Christians were entrusted with the leadership of the German people under the Reich Bishop Mueller and a number of other leading positions. The Confessional Front did not want to put up with this terror and objected against the German Church Movement, the movement which no longer was given any power whatsoever. As a consequence, a great confusion was created in the individual churches of the country. These churches were no longer in the position now to create order and quiet among their own people.

Q. Witness, that is sufficient. What was your field of activities then in the Reich Ministry for Church matters?

A. Reich Minister Korl appointed me a liaison officer at the Secret State Police Office in Berlin.

Q. What was your activity as this liaison officer, as it were? What connection did you have with the Gestapo?

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had to carry out a number of police measures against institutions and individuals of the Protestant and Catholic Church in order to enforce their State authority. In my opinion, this was the solution of the conflict. One had to succeed to gain some influence in the Gestapo activity. It was clear to me that the Minister, in order to be able to deal with his task, must have the power to give directives to the State Police in church matters. For this purpose, I drafted a decree which appointed the State Ministers the highest authority in police measures with regard to church matters, Kerl agreed. He signed it and in a chief discussion, he got Frick to counter-sign as the Chief of Police, and with this Kerl had the complete power. The Gestapo, of course, was angry that they had not been asked before. It was my task now to take up all the reports and suggestions which were made in church matters and to report about these matters immediately to the Minister in order to get a decision. Unfortunately, it turned out that Kerl could neither revoke nor could he order any measures. Thus he did not have the courage to impose an amnesty, which was so necessary and to revoke all measures against the church which had beenimposed so far and thus to have shown the readiness of the state through a generous deed. Obviously, Kerl did not feel himself strong enough. He hesitated with his decisions until the Gestapo office eventually proceded to more and more make their decisions over the head of the hesitating Minister.

Q Witness, did you come into difficulties as a result of this? always expressed his anger towards me. That with this attitude no progress in the church affairs was achieved was not surprising, Kerl evidently did not know what he wanted. He protested every now and then, but nothing actually happened. Conditions in the country became worse and worse and thus peace was not created. The Confession Front became a sort of collective basin of a political resistance composed of members from the parties which had been dissolved by the new government from the Nationals to the Communists and the State authority was more and more based on Gestapo measures.

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THE PRESIDENT: Dr. Bergold, this discussion is becoming entirely too academic. Now, I know it isn't your fault. The Defendant apparently has prepared this lecture and he is going to give it to us just like, I presume, he preached to his parish when he was a pastor. Why don't you try just to give him questions? He already has his material and I am sure he is alert enough so that he can draw from the material and give you the answers which are pertinent to the issue.

DR. BERGOLD: Your Honor, I may remind you that in my opening speech, I spoke about this case as being particularly difficult for the defense for the reason that there is no document in evidence against the Defendant apart from his own affidavit. You will remember that in my opening speech I protested very strongly against the actual making out of this affidavit and you can only judge this man and his case if you know his whole profession and life. Only then can you judge from these statements which he is making about this one incriminating document that it is not correct whether what he says is correct or not. If I only refer to the prosecution documents, then, of course, the case can be dealt with in ten minutes, but in that case you have no possibility of judging this man. Therefore, this case is so different from all the other cases. I may remind the Tribunal that I have represented more than one client, from Milch to Klein. This is certainly a difficult case and you can only judge it if you have a complete knowledge of this man. That is my reason -

THE PRESIDENT: Well, it won't help us to decide the case nor will it help you in the defense of the case if he gives a long dissertation on something which is entirely irrelevant. He might be giving us a dissertation on the life of the kangaroo in Australia. That wouldn't help us any.

DR. BERGOLD: No, but he is describing his activities in Berlin.

THE PRESIDENT: He is telling about the fight on the Confessional Front, on the Baptismal Front, and on the Gestapo Front and all these fronts which have nothing to do with the issue here. Now, we certainly will allow you every latitude, Dr. Bergold, and it is the policy of the Tribunal to talk on anything at all, except, perhaps, the social life of the penguins in the Antartic Zone. Now, we will draw the line there.

DR. BERGOLD: Certainly, I am of the opinion, Your Honor, that you will not be able to judge this man. His activity, for instance, only in 1942, October 1942 he arrived in Russia. He was there for three months. From this activity of three months you cannot judge him. You can only judge him from his complete activity, if you have a complete picture of it, because with other men who were active in the East for months it is very much easier than here where there is just nothing against him. That is not his own fault; this accusation which is based only on one own affidavit is very strange and I must say it is very strange in this proceedings, especially in a Military Tribunal. He said he wanted to be the originator of the peace -- that he did not succeed.

THE PRESIDENT: You said something is very strange. What do you mean, "very strange"?

DR. BERGOLD: These accusations, the charge which only is supported by his own affidavit and which has no proof, and this affidavit was made under circumstances against which I must protest and I shall prove....

THE PRESIDENT: But, Dr. Bergold, that -

DR. BERGOLD: I think this affidavit was not brought about in a proper way.

MR. HORLICK-HOCHWALD: If Your Honors please, this is the third time that Dr. Bergold starts to make objections against the way the prosecu tion acts in this case.

The prosecution has, on the 7th of November, of 1947, brought a memorandum to the knowledge of the Tribunal pointing out the first two cases. The first case was during the opening speech of Dr. Bergold. The second case was in a written application which Dr. Bergold made on the 15th of October and which was handed to the Prosecution for information. In its memorandum of 7 November 1947, the Prosecution has respectfully requested that Dr. Bergold might be informed that the Prosecution under no circumstances will tolerate such remarks which Dr. Bergold makes end that either he may withdraw these remarks or be prepared to support them. We respectfully request at this time that Dr. Bergold with no delay may either prove his accusations against the Prosecution or may withdraw them and that all these three statements, the statement today, the statement on the 15th of October and the statement in his opening statement may be stricken from the record and the Tribunal take such steps which it considers necessary in the case. I do not think it is necessary to point out that the prosecution has, as a matter of course, done everything which was possible to make a fair trial of the defendants here possible. I do think that we have been doing at least as much as it is usual in other cases and I do think that if Dr. Bergold makes such statements repeatedly, he should be called upon to prove the correctness of his statements.

DR. BERGOLD: I may say that this letter of the 7th of November of the prosecution is not known to me until this very day.

DR. HORLICK-HOCHWALD: I can only say that certainly the Tribunal has knowledge of this.

THE PRESIDENT: Well, Dr. Bergold should have knowledge himself and must not be called upon here to respond to a statement of which he is ignorant. The prosecution will see to it that Dr. Bergold gets a copy of the letter referred to.

DR. HORLICK-HOCHWALD: If the Tribunal please, in order that the thing may be completely clear and as the accusation made by Dr. Bergold is at least partly in the record of this trial, we would prefer to read at this time the memorandum into the record.

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THE PRESIDENT: Well, I think first It will be letter if Dr. Bergold gets a copy of the letter so that he will be informed as to what the prosecution is saying. It would not he fair to call upon him to make any statement in answer to a memorandum which is only brought to his attention this moment.

DR. HORLICK-HOCHWALD: Very well, Your Honor.

THE PRESIDENT: Now, Dr. Bergold, what we were saying is simply this, that certainly the Tribunal will allow you every latitude in the presentation of your case, but with your experience and your knowledge and your alertness you of course comprehend that what the defendant talks about must be mere or less relevant to the issue involved and the only thin; that we wanted to call to your attention was that on these collateral matters the defendant was going into too much detail. Now that is all.

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DR. BERGOLD: I have expressed my opinion why, your Honor, why I took up this particular way of procedure. It was a reason which I thought about a lot.

THE PRESIDENT: I think, Dr. Bergold, we will allow you to present your case in your way. You may proceed. we will not allow the Prosecution to interrupt you. So you may proceed with your case. You will present everything you have in this case and there will be no limitation, and you can even talk about the life of the penguins in the Artic Zone, if you believe that is relevant.

DR. BERGOLD: No, I do not intend to do so. But I shall try to keep my client a little more brief.

BY DR. BERGOLD:

Q. Witness, as to these difficulties with the Minister did you remain in office or were you dismissed from it?

A. No, I was dismissed, and the Minister also revoked the decree which he had made at that time and I was put in charge of another department. That was in autumn 1936.

Q. Was that the only reason for the change of your Department?

A. No, there was another reason.

Q. Be more concise. Give us the gist of it. I think you will succeed in being a little briefer.

A. On the occasion of the drafting of a letter which was submitted to me by the minister for my taking over a new department, I took the liberty, as an old National Socialist, to express a basic attitude to the policy of the Ministry. I refused unambiguously the romantic intentions of the Minister concerning his church reformation plans. I could not agree with this way of dealing with these matters, because it was merely the task of church circles or of a religious personality, but not the task of a Reich Minister.

He, the Reich Minister was only to create order in the church and to give the church the possibility of settling their own matters.

Q. That will suffice. What was Kerl's attitude when you suggested these matters to him?

A. He was rather hurt, and he drew my attention to the fact that he did not need my directives. He was the Reich Minister, and I had nothing to do but carry out his orders. He told me that he would have me expelled from the Party, and if I did not ask to be released from the Ministry he would throw me out.

Q. What consequen ce did this dispute have for you? Were you actually thrown out?

A. No, I was not thrown out; but in January 1937 I received a reprimand by the Minister.

Q. Did you do anything about this reprimand?

A. In my emergency situation I applied to Dr. Best of the Gestapo office.......I knew him as a liaison man, in whom I had some confidence; otherwise I knew of nobody in Berlin who could have given me advice. Dr. Best listened to my report about all that happened; he took note of it, and offered me a job as Ministerial Counsel in the Gestapo office. As I had no inclination toward police activity, however, I refused, thanking him.....but I was assured that I could always trust him and could always count on his help. That, he assured me.

Q. What were your assignments in the new department? Were they also of a political nature?

A. No, they were only church matters. The department itself was called "church life". Only, of course, the Pro testant department. In this department I had to deal with all questions concerning practical religious life.

...as, for instance, church service, church office, institutions, mission, interior and exterior, military church service, and religious services in prison.

Q. That will suffice, these examples. I have to deal with another question, and I have to ask for patience on the part of the Tribunal. You were a religious man. The whole world seems to think that National socialism was an enemy of the church. Did that not worry you, the so-called animosity of National socialism against the church? Please be very brief in answering this question, witness.

A. I object definitely against the contention that the national socialist state was an enemy of the church or religion. All difficulties or conflicts between church and state, or party, are rooted in the state church - that means the still existing connection of church, and state which has not changed, as far as they were not free churches, of course. It is very significant that the free churches had no difficulties whatsoever. In the Ministry, on various occasions I talked with representatives of the Methodist and the Baptist churches, and I asked them whether they had encountered any difficulties - to which they always gave me a negative answer - and this is the decisive point. Because the religious activity in Germany was never limited in Germany, as a representative of a complete religious tolerance, as no representative of Orthodox, Protestant or Catholic religion, I should have found out about it. Limitations came about only ........ BY THE PRESIDENT:

Q. Did this include the Jewish religion. You say there was complete religious freedom and tolerance. Did this include the Jewish religion?

A. Yes. I don't know that the carrying out of the Mosaic, that is the Jewish cult, was forbidden in Germany. I know nothing about it.

Q. Do you tell us that the Jews were permitted to worship in their synagogues untrammeled and entirely free?

A. Yes, that is what I assume; in the Reich Ministry these matters were not being dealt with. Modifications were only enforced which did not concern religious belief, but only the authority of the state. Measures were only taken and issued against people who left their religious sphere and disturbed the state with their political remarks or actions.

Q. Witness, do you know of what you said before, that the Jews were allowed to worship in their synagogues freely?

A. I said that I am not sure, because these matters were not dealt with in the Reich Ministry of Church Matters. I never heard anything about it that this was not the case.

Q. Is a synagogue regarded as a church? was it regarded as a church in your Ministry of Churches?

A. By the Ministry of Churches or by myself?

Q. By your Ministry, in your work, was the......

A. I said I only had to deal with the Protestant department, and the work of the Ministry extended only to Christian churches and their formations, or similar churches; b ut only Christian churches.

Q. Well, but you made the statement that there was complete religious tolerance in Germany. Now, did you make that statement, and if so, do you still affirm it? I ask you.......was there religious tolerance in Germany during the regime of the National Socialist Party?

A. Yes, as far as I know......yes.

Q. Very well. All right. Now you have affirmed what you said before.

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Now I ask you.......were the Jews given religious freedom? Were they allowed to worship in their own church?

A. I don't know from my own knowledge, but I have no reason to doubt it.

Q. Well, then, you would say that so far as you knew, Jews were allowed to worship in the synagogues?

A. Yes, that is what I assume, as long as there was synagogues to worship in.

Q. There Weren't very many after November 10, 1938, were there?

A. I don't know whether they were all destroyed. I don't know.

Q. You do know that many were destroyed, don't you?

A. Yes.

Q. Yes. And does that coincide with religious tolerance, to burn down the churches.....

A. No, I have already pointed out.....

Q. Well, then, why do you say that there was complete religious tolerance?

A. That was not a measure of the National Socialist state.....the burning of the synagogues.

Q. The destruction of the synagogues in November 1938, you now say, was not the result of Party action?

A. Of the state, I said. I said....of the National socialist State. I was in the Reich Ministry.

Q. Well, wasn't the State and the dirty one?

A. On paper. But not in reality.

Q. Was Hitler the State or the Party?

A. Hitler was both.

Q. He was both. All right. What was Himmler. Was he the State or the Party?

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A. Well, he used to be only a Party official, but then lie became an official of the State as Chief of the German Police.

Q. Yes. And what was Goering? was he the State or the Party?

A. He was, as far as I can remember, only State. Yes, yes. Only State. I don't know whether he was part of any Party office. As far as I know he was only State. A State official.

Q. So then you tell us that after 1933 up until 1945 there was a definite cleavage between the State and the Party, they were not amalgamated?

A. I did not say cleavage. I only talked about disputes between these two authorities.

Q. Well, let us get back to the original question. You said that there was religious tolerance and you said that the Jews were allowed to worship in the synagogues; and then we call your attention that in November 10th synagogues were destroyed, or a great many of them were.....and then you said that that was not an action of the State, but an action of the Party. Is that correct?

A. Yes. As far as I know.

Q. Well, do you know.... or don't you know?

A. Well, I only know that it was not an action of the State.

Q. So that so far as the State was concerned the Jews were allowed to worship as they chose?

A. I said I cannot know this from my own knowledge because these matters were not being dealt with by the Reich Ministry for Church Matters. An opposite opinion or fact I have never heard.

Q. I don't understand what you mean by an opposite opinion.

A. I mean an order, or a measure whatsoever, which forbids the Jews to worship.

Q. You don't know of any order which forbade Jews to worship in their synagogues?

A. The synagogues, of course, were collecting points, or in private houses.

DR. BERGOLD: May I now tell the Tribunal that at least until the year 1938 the actual worship, the carrying out of worship, was allowed... there were regulations concerning this. At least until the year 1938. I don't remember for certain as from then, as there were so many who emigrated. BY THE PRESIDENT: accordance with their conscience - after 1938?

A (by the witness) I have already said I don't know, but I assume so. Because I never heard that it was forbidden. I cannot remember, I cannot imagine such a prohibition.

Q You can't imagine that there was any prohibition against the Jews with regard to the expression of their religion?

A No. That one could forbid people to carry out their worship -

Q They were allowed complete religious freedom?

AAs for as I know.... I don't knew of all the regulations, but that was the impression that I had.

Q Very well. Was it also your impression that they were allowed complete freedom of movement?

Q Well, if they were limited how could they go to the synagogue? If they were not allowed freedom of movement, how could they travel?

A Freedom of movement.... of course they could go out. There was no law that they could not go out. Freedom of movement - I mean, not only the actual movement in the street, but I mean living conditions.

Q You knew that they were sent to concentration camps, didn't you

A No, I didn't know.

Q You did not know that Jews were sent to concentration camps?

A No, I didn't know.

THE PRESIDENT: Proceed, Dr. Bergold. BY DR. BERGOLD:

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Q I think we have exhausted this question, witness. I think the other points are only marginal notes. Did your had relations with the Ministry continue, or was a personal cooperation brought about?

Q Did you feel all right under these circumstances?

Q But you tried to improve the situation?

A Yes. As I knew that the Minister would only be pleased if I left the Ministry I asked the Reich Ministry of the Interior via the Minister to give me the position of county counsellor, "Landrat". This application was refused with the remark that I was not a lawyer. That was in the beginning of 1938.

Q Did you indulge in any Party political activities in Berlin?

Q You were a member of the SS. How did it come about that you joined the SS? the Gestapo from 1935 to 1936 I met a number of SS leaders. One day it was put to me whether I did not want to become an honorary leader in the SS. I considered this offer. And the following thoughts made me decide to accept this offer: Firstly the SS was known at that time as the most ideal, and the most unselfish expression of National Socialism, and was highly respected by the population.

THE PRESIDENT: For my own notes, what year was that, please?

DR. BERGOLD: 1936.

A (witness continuing) Secondly, the detachment from my homo, and being the only theologian under all those lawyers coming from the province this position as honorary leader in the SS appealed to me, and it contributed a certain prestige which I would have among my colleagues. Thirdly a position of honorary leader for civilian officers was then general practice, and did not oblige to anything, as no tasks were connected with it.

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With the approval of the Minister, on the 13th of September 1936, I was admitted to the SS with the rank of an Untersturmfuehrer. When did you actually leave the church? ber 1938.

Q Why? political and church reasons.... did not have the same significance to me, but became more and more important. Therefore, it was only an act of sincerity and of belief, that in 1938 - after three years of inner struggle for the truth in the Christmas week - I applied for my release from the Protestant State Church. National Socialism?

A Never. It was not in agreement with my principles of religious tolerance which I claimed for myself as well.

THE PRESIDENT: Dr. Bergold, we got it..... "Did you ask anybody else to Join"? Is that what your question was?

DR. BERGOLD: Is leave the church.

THE PRESIDENT: Oh, to leave the church. Very well.

Q (By the President) Well, then, witness, we understand that you definitely covered all connections with the church on December 28, 1933?

Q Yes. Have you ever regretted having left the church?

A No, never. Concerning this leaving the church, which I discussed with other people, I can say, when somebody came to me and asked me whether I deemed it right that the man who asked this question should leave the church or not, I always talked to him about his personal attitude and about his belief, and told him that he could only follow his Court No. II, Case No. IX.

own religious vocation. Utilitarian ideas would be a crime in this particular case. that you gave up contact or connection with the belief in God you talked about? You said your relationship with God was very close. Did you lose this belief?

A Never. On the contrary, my leaving the church only meant that I would remain faithful to my own conviction which I had formed from childhood. As I pointed out on one occasion, in my opinion a large part of the Protestant population described themselves unjustly as members of the Protestant church, that these people were not actually believing in Christ, but that they believed in God. I realized that here a new organization of religious life had to be created. Such an organization of people who believe in God was in my own conviction not to have a dogma. No priests, and no cult actions, as, for instance, sacraments. Their religious activities would have to consist firstly of constant realizing of one's Connection with God by praying, and through silent contemplation of Jesus by common worship. Secondly, through love in daily life to your fellow beings similar as it was realized in the organization of Quakers.

PRESIDENT: Does a Quaker church exist in Germany? This is a matter of information.

A Yes, but only in a very small form. I believe Piermont is the place where their center is.

Q You approve of the Quaker religion, do you? cause you didn't like the Protestant church, why didn't you join the Quaker church.

A. One does not join and embrace a confession quite as fast as that. It must grow on one. I had my own -

Q. When did you feel that you had fully grown and you liked the Quaker religion?

A. It is not a matter of my actually liking the religion of the Quakers, but I imagined a new development similar to the lines of the Quaker movement.

Q. But now you have told us of your own volition that you liked the way the Quakers conducted themselves, that you approved of their church. Now, do you stand on that?

A. I like them and I sympathize with them. I didn't say I agreed. I sympathized with them .

Q. Oh, you do not approve of their church either?

A. Well, I mean I have no close relations. I did not maintain any close relations with them. I only know that they are a religious congregation and they create a religious community on, their own lines.

Q. You left your church in 1938, and you had seven years to join another church. At that time did you know of the Quaker church?

A. No, I did not consider any of the existing religions, but my plans were different. I wanted to create a new organization.

Q. You wanted to create your own church?

A. Yes, if you want to express it thus. I would never call it church though.

Q. What would you call it?

A. I shall come back to this question.

A. No, no, tell me now. You are going to start a new church, what is the name of this new church?

Q. Community of People of Believers in God.

Q. I will write that down. Community

A. Community of Believers in God. I shall take the liberty togive some further explanation concerning this.

DR. BERGOLD: Your Honor, there are some translation difficulties. There is a special word in German, "Gottglaeubig", which cannot be translated. It has a certain philosophical meaning, and the witness coined this word, "Gottglaeubig". It did not exist so far in the German language. This word only existed in the German language since 1936 and he coined it.

Q. (By the President) You created this word in 1936?

A. Yes.

Q. You were thinking about another church while you were already a part of the Lutheran church, because you didn't leave the Lutheran church until 1938?

A. Yes.

Q. You were sort of a heretic in your own church, weren't you?

A. Yes, I have already stated that. I put this question of sincerity to myself before, and therefore I left my office in 1935.

Q. Yes. Now, what have you done toward the establishment of this new church?

A. In order to prepare its organization, that is a difficulty which I shall now come to. I was not permitted to do so by the National Socialist State, to collect all those believers in God and to unite them in one big congregation. Only now after the collapse I have found out, as far as that is possible being interned, that circles of Thuringian Christians and those believers in God, with the permission of the British and American Military Government, formed their own religious groups in the way I have already said, and I myself spoke to representatives, and I am expecting thow that this congregation will mean a rebirth of religion in Germany, as I do not expect it of the existing churches any longer, because they always complain that so little living belief exists today in a population. BY DR. BERGOLD:

Q. Witness, I think you can leave this sphere now. You have already given us an idea that you coined this word, "Gottglaeubig," believing in God, and I don't think that we have to deal with any details now. You say the word, believing in God, "Gottglaeubig," does not mean being an atheist.

A. No, for me this word, "Gottglaeubig," is the strongest emphasis of a belief in God, not that a man says generally, "Well, there probably is a God." Believing in God in the true sense of the wordmeans to seriously reckon with God in all matters of daily life.

Q. Thank you, witness, that will suffice. Did you join the Army when war broke out?

A. No, not immediately. From autumn 1939 to autumn 1940 I remained in the Church ministry, and on the 10th of March, 1940, I joined the Wehrmacht, the Army.

Q. How long were you in the Wehrmacht?

A. From the 10th of March until the 22nd of October 1940.

Q. What rank did you hold?

A. I was private;in July 1940 I became a PFC and on the 6th of October, 1940 I became a non-commissioned officer.

Q. What were you employed for as a soldier?

A. I was a member of an infantry battalion, a home guard battalion which was attached to a Field Kommandature, for guard duty and reconnaissance duty in Mastricht, Arras and Rouen. After the Armistice with France I detached from the Army in order to join the military government. In this connection I made out an application to the Field Kommandature so that I should be taken over into the Military Administration Service. I was to be taken over and according to my rank become senior military administrative councillor.

Q. What was the end of your membership in the Wehrmacht?

A. One day I was ordered to see my battalion commander who told me that I was requested for special service, and that I would have to leave the Wehrmacht.

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Q. Did you initiate that by a wish of your own?

A. No, that was a surprise to me. No, it was a surprise to me. On the contrary, I had expressed the wish to remain in the Wehrmacht for the duration of the war, and to be used in the Military Administrative Service. The detail for special service was not what I had wanted.

Q. When were you released?

A. On the 22nd of October, 1940.

Q. What happened after that?

A. A short while later I was told that I had to put myself at the disposal of the Chief of the Security Police and the SD for the duration of the war. This order was an order of the Wehrmacht in which it was said where I was to go for war service.

Q. Through this order then you went to see the Chief of the Security Service and the SD, without your wish?

A. Yes, against my wish.

Q. When did you report to the Reich Security Main Office?

A. That was about the end of October, but I first went on a recreation leave, in order to put myself at their disposal at the end of November for further use.

Q. What assignment were you entrusted with in the RSHA?

A. Nobody in the RSHA knew anything about my situation nor what was going to happen to me. First of all it was ordered that I should for general instruction, go through all the offices, that is through the Offices I to V.

Q.What impression did this create, this information tour?

A. The information I received only gave me a general impression which was, however, strong, but as between my actual professional work and this new sphere, there was no connection of any kind, all these impressions had no basis and vanished only too soon. Only a very few remained.

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Q. What was it that remained?

A. Especially what I saw in the Jewish department concerning the solution of the Jewish problem, that is the very department which was competent to deal with these questions. According to this, nothing less had been planned than to give the Jews of Europe a new home which was on the island of Madagasgar. Negotiations with the French government had been started, to buy in an exchange for other objects, Madagasgar from France for this very purpose. Innummerable plans and charts, pictures, statistics on tables, on walls, showed how everything was to be carried out. Favorable climatic conditions, in connection with the fertility for the Jews, as it will not be possible in the case of Palestine, for instance. Here I got for the first time a concrete idea of a practical solution of the Jewish problem. The memory of this information which I received on that occasion remained with me.

Q. That is enough, Witness. Did you thus get the impression that in this information tour that you received a definite idea of what was happening in the RSHA?

A. No, never, because the information was so general that concerning the individual departments it was only very superficial. I had the impression that I was only shown the very best of everything. Secret matters, for instance, were not mentioned. One did not know, however, and I myself couldn't say what I was to do.

Q. Well, what happened after you received this information, this general information?

A. Shortly before this information tour was over I got a telephone call which said Heydrich had decided that I should not get a job with the state police, because I had refused to take over such a job.

Q. What did you do when you heard this?

A. I was very much surprised. I could find no explanation for this telephone message. I went to the then Personnel Chief, Streckenbach, in order to ask him what this telephone call meant.

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I learned that the then Office Chief II, Lockermann, a man whom I did not know and a man I had never seen , had submitted a report to Heydrich concerning my own person on the basis of which Heydrich, in anger, decided against me in this manner. That was the first attack against me in this new office.

Q. What did you say to Streckenbach?

A. I told him unambiguously that I had never said anything of the kind, that I had never spoken to Lockermann; any taking over of a State Police job had never been mentioned.

Q. What advice did Streckenbach give you thereupon?

A. He advised me to revoke the letter of Lockermann and ask Heydrich for an interview. I did so, and Streckenbach promised me to bring about an interview. In order to clarify this event, I should like to add now, that it was, of course, true, that on the occasion of this information tour I very often touched the question whether a non-lawyer could ever take over a State Police office. I had the impression that this would not be possible, and I only wanted to hear the opinion of lawyers, who, of course, confirmed this, my opinion. Thereupon, maliciously, a refusal had been constructed, Heydrich had been informed of it , and therefore had been influenced against me.

THE PRESIDENT: Dr. Bergold, would you mind deferring now for fifteen minutes?

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session. BY DR. BERGOLD: advised to do something against Heydrich's order that you were not to get that office in the State Police. Why did you not let the matter go, if it was your own opinion that you were not able to do this, no being a lawyer?

A I considered it very seriously at the time. I thought that Heydrich was offended by my rashness. Since I was in his power completely. I could not know what kind of task would be given by him. I was only interested not to spoil my relations with him through false reports by third parties; what I had to say I wanted to tell him myself, because I was convinced that he would understand me. That is why I believed to have acted in the right manner.

Q Did this discussion with Heydrich come about?

AAt first it didn't come off. I applied again and again until on 5 May 1941 I was ordered to Heydrich.

Q What happened during this discussion? What did you agree on with him? expressed his approval of me, because of my attitude and my character, which he considered decent. He asked me whether I would not like to be put into the Einsatz assignment, although I could not quite imagine what this meant. I only knew that it was some kind of police activity abroad. I asked him not to put me into such a position. I pointed out that I had been in the First World War, in combat, and only just now returned from the Western campaign. Heydrich agreed to this, and said that actually he had intended me as a Police Director or Police President, but owing to my knowledge of the church, and church politics, he considered it suitable to employ me in his office.

Q What did he suggest in this connection? Police Office. I explained to him how far removed the world of my spiritual profession was from the activity of the police; that I had no training and knowledge of police duties, and moreover, also that I was not even an officer, and, therefore, I was not certain whether I could carry out this task to his satisfaction. considerations? of character, which he thought I had, and he suggested to me that I should be given a State Police Office assignment for one year on a test. If he was satisfied with me, and I liked this work, he wanted to take me into the Security Police permanently, and at the same time promote me to Regierungsdirektor. If, however, he should not be satisfied with me, he wanted to assist me to be transferred into the inner administration, and also to be promoted to a government direktor. This promotion had already been due, since I had been a Regierungsrat since 20 May 1936. After considering this for a short time I accepted this offer. Police Office? would have done then, I do not know. It seems to me that I had achieved a good deal , and that it would be dangerous to risk this. I had the assurance not to be sent to the Einsatz assignment. I had his assurance to be allowed to leave after one year.

I had his assurance of a position in the inner administration, which was suitable for me. Finally, he wanted to support me to be promoted as a civil servant to become a government director, which had been omitted owing to my conflict with Kerrl at the time. This seemed more to me than I had over expected. he had intended you?

A No, he didn't tell me at the time. State Police Office, Oppeln, and when did this happen?

A Yes, about the middle of June, 1941. I was appointed, dated 1 June.

Q When did you start in the office?

Q What was your task in the State Police Office? departments. One dealt with the personnel department of the administration, and was lead by a Police Counsellor, and the other dealt with the actual police tasks, and was in the charge of a criminal counsellor. The actual police task was again subdivided into sub-departments, which were conducted by criminal commissars, under whose charge the criminal officials worked. The task of the Police Department was to make investigations of such persons who had been arrested because of political crimes. There were several possibilities of dealing with individual cases, and finding the person concerned not guilty, after being interrogated he was released; and, in minor matters the person was warned in writing or verbally, and also released. If serious matters had occurred, the procedure was started and handed over to the prosecution in order to bring it up in court, or to the Reich Security Main Office, Department IV for further decision.

Q Did the State Police Office have any other tasks? matters in public life. experience?

A Yes. It was basically prohibited without instructions from the Reich Security Main Office to take any measures for the State Police concerning the charge. One day it was reported to me that in several villages there had been trouble because a mob had gathered because the kreisleiter (district leader), and the landrat, had ordered between them that when the school vacation started, the crucifixes were to be taken out of the school buildings. When this had been carried out there was unrest. Through my officials I ordered that the crucifixes be brought back into the schools, because the action of the district leader and the local leader was illegal; and order was then restored. thousand voluntarily Bulgarian workers were working under certain conditions which they had been promised. One day a report was given by the supervising officer of the plant district that the Bulgarians intended to return home. The plant asked for the protection of the State Police. I immediately sent a criminal commissar, asking him to settle the matter. He called for a meeting of the one thousand Bulgarians and talked to them, reminding them of the duties which they had promised to carry out. The Bulgarian speaker informed me that the plant had not fulfilled the promises which they had made concerning the work, clothing and shoes, and also about transferring of their salaries to their home country.

their work again immediately. The official, then asked for the executive staff of the works and issued the police order to fulfill the justified requests of the Bulgarian workers. This proved that the executive staff had intended to do this but they themselves had difficulties sometimes, but here we could interfere and thus we managed to eliminate all difficulties. or a large one? and compared them to the other state police offices in the Reich, I could see from the statistics that this was one of the smallest and the quietest state police offices in the Reich. From 1944 it did not exist any longer as an independent state office. during your time was anybody sent to a concentration camp?

A If anybody was sent there it was done by the RSHA. During my time, as far as I remember, within the area of the state police office at Oppeln nobody was sent to a concentration camp, but I remember just one case when somebody was released from a concentration camp. concentration camp? man, did not know them all.

THE PRESIDENT: Witness, you say this so far as you remember. As you remember no one was sent to a concentration camp from your office in Oppeln. Can't you tell us a little more definitely whether someone was sent or not? Certainly you would remember, wouldn't you, if you had consigned someone to a concentration camp?

THE WITNESS: These directives were not given by me, if any such existed; but the whole procedure was worked on by the department chief and through the criminal counselor who was the chief of the actual state Court No. II, Case No. IX.

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police offices, who examined the matter carefully....

THE PRESIDENT: Did you recommend anyone for consignment to a concentration camp?

THE WITNESS: I do not remember that.

THE PRESIDENT: Well, would you say definitely that you did not?

THE WITNESS: As far as I know, I never did that. I would have remembered now.

THE PRESIDENT: Well, you put it in a negative fashion. You say you don't remember. That includes the possibility that you did send someone.

THE WITNESS: I want to exclude that possibility.

THE PRESIDENT: You say now that you definitely remember that you did not send anyone?

THE WITNESS: Of course, this is a very difficult matter. I have to think about this and it takes time to think it over, and I have thought about it, and I cannot remember any case. Therefore, nobody would have been sent.

THE PRESIDENT: Well then, do you say definitely you did not send anyone to a concentration camp or recommend that anyone be sent to a concentration camp?

THE WITNESS: Well, I say I do not know of any case.

THE PRESIDENT: Well, that means then you did not send anyone?

THE WITNESS: Yes.

THE PRESIDENT: Why didn't you say that at the very beginning instead of putting us to all this trouble of questioning you to finally get that answer? Why did you first say you didn't remember?

THE WITNESS: I had no reason. I just wanted to be careful.

THE PRESIDENT: Well, aren't you careful now?

THE WITNESS: Yes, I think I am.

THE PRESIDENT: Well, tell us very definitely, did you or did you not, during the whole year that you were in charge of the state police, recommend that anyone be sent to a concentration camp?

THE WITNESS: As far as I know, no.

THE PRESIDENT: Now, we: are back to where we started from. Go ahead, Dr. Bergold. BY DR. BERGOLD: directives about sending people to concentration camps. Were you up to your tasks at all? Was it your impression that you could manage such a task?

A I had nad no training. When I started my work I intended to work myself into the matter, but I found such a great number of regulations and orders that I soon gave up my intention. Since it proved everywhere that even the simplest ideas were not known to me which one needed to understand the regulations legally and from a police point of view, I did not even have the most preliminary knowledge which any police official, however minor, did know about. Therefore, I depended entirely on my officials. Of course, they were all well established officials whom I could trust, but I could not act as a leader in order not to make myself ridiculous.

THE PRESIDENT: You knew nothing about police matters?

THE WITNESS: No.

THE PRESIDENT: And you remained there a year and knew nothing about police matters?

THE WITNESS: There was nothing else for me to do. I had to stay there for this test year.

THE PRESIDENT: And Heydrich sent you there himself and you knew nothing about police matters?

THE WITNESS: Yes, I pointed this out to him.

THE PRESIDENT: And in the whole year's time you never learned what the procedure was to send someone to a concentration camp?

THE WITNESS: No, a whole professional training one cannot acquire in such a short time, particularly if one comes from an entirely different sphere of life like somebody who has had a spiritual profession.

THE PRESIDENT: Suppose that you learned that in the town of Oppeln there was, let us say, a Hans Smith, who made a declaration to the effect that he hoped that Germany would lose the war because it was an unjust war that she was waging.

That would you do?

THE WITNESS: I would have asked the man to come to me and would have told him to hold onto his own views and keep them to himself and just would have warned him; that is, I wouldn't even have done it because the matter would not even have come to me, but the officials would have settled it.

THE PRESIDENT: Well, suppose that you -

THE WITNESS: I never worked with individuals. I never carried out an interrogation.

THE PRESIDENT: Well, suppose it came to your attention that this man was talking against Germany? What would you do?

THE WITNESS: Well, I personally would not have done anything. The man would have been interrogated by the officials.....

THE PRESIDENT: No, you find out about this. You are on your way home one evening from the office and someone comes up to you and tells you that he overheard Hans Smith inveigh against the German Army, the German Government, Hitler and the whole National Socialist regime. He tells you. What do you do?

THE WITNESS: Nobody would have done this, I don't think.

THE PRESIDENT: Well, let us suppose someone did. Peculiar things happen.

THE WITNESS: I would have told him, "Don't talk about it. Keep it to yourself, keep it quiet."

THE PRESIDENT: And you are the man that Heydrich thought was worthwhile having as a man in charge of the state police?

THE WITNESS: Well, I told him that I could not do this but he said, "You have common sense and good character; you will manage. We will try it."

THE PRESIDENT: Well, let's go a little further. This man who stops you on your way home, says "By the way, I just found out that there is a plot on here to kill Hitler.

I heard the men talking about this; I know the house in which they gather; I saw some bombs being taken into the house and I want you to know about this, Herr Biberstein." What would you do?

THE WITNESS: I would have told him, "Go to Official So and So and report it to him."

THE PRESIDENT: And you would have done nothing?

THE WITNESS: Why, what could I have done? I didn't know what to do. I had no police directives.

THE PRESIDENT: That's all. Proceed, Dr. Bergold. BY DR. BERGOLD: that year? time I came to the conclusion to talk to Heydrich at the end of the year and to leave my office then. I only hoped and wished that nothing might happen for which they might make me responsible.

THE PRESIDENT: Just how did you out in your time during this whole year, beside avoiding people who told you about plots? Just how did you put in your time? You didn't read the directives; you didn't investigate; you didn't interrogate; you sent no one to the concentratin camps; you had a hard time putting in the whole year. Now, tell us just what you did.

THE WITNESS: Yes, that's quite true. At the same time I was political referent with the government president and I helped the deputy of the government president, I worked on files with him and I got detailed information about the tasks of the inner administration. Of course, I signed and sent reports to the RSHA but on the whole I always had to keep quiet because I didn't know all those matters. It would have made nonsense. I saw the things as they actually are and were.

THE PRESIDENT: So your big job was to keep quiet, keep invisible, and avoid people telling you about plots against Hitler.

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That's the way you put in the whole year?

THE WITNESS: Yes, about this plot against Hitler I don't ouite understand. I said if anything like that came up I would have told this man who told me, to report this to the police official. He would be interested in this.

THE PRESIDENT: You would not be interested?

THE WITNESS: No, when I say, "Go to him", that is, then I had done everything that was necessary in my opinion because I can't arrest the people.

THE PRESIDENT: And you would go home feeling fine and entirely content that you had done your duty to your Fuehrer?

THE WITNESS: Yes, the official would then deal with it. I wouldn't know what to do concerning police matters.

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THE PRESIDENT: Well then, on the following day suppose you found out that nothing had been reported to the official in charge of investigations? Would you just lie low and do nothing?

THE WITNESS: In that case I would have told some official, "Go and see that man. He told me some story yesterday and examine the case." That would have been my duty as it is the duty of any citizen.

THE PRESIDENT: But not because you were the chief of the State police?

THE WITNESS: In that position I was a strange figure, I know that. I felt this very deeply, your Honor, because in Germany there was hardly any man of my kind to hold such office.

THE PRESIDENT: But in the meantime how can you tell this official to go find this man. You had not taken his address. You brushed him off by telling him, "Go see the police official. I just happen to be the chief. Don't bother me with this. I have to go home to go to sleep." You didn't even take his address. Now, how would this investigator know the next day whom to go see?

THE WITNESS: Probably I would have known the man if he had talked to me. I would have asked him, "Who are you?"

THE PRESIDENT: Oh, you would have asked him, "Who are you?"

THE WITNESS: Yes, I would have asked him, to be sure....

THE PRESIDENT: And would you have written down his name and address?

THE WITNESS: I did not have a notebook with me.

THE PRESIDENT: Oh, I see.

DR. BERGOLD: Your Honor, may I say something?

THE PRESIDENT: Certainly, Dr. Bergold, surely.

DR. BERGOLD: I think this is a hypothetical question. The misfortune is, and that is what I wanted to show with my question, here a man came out of a purely religious life and was suddenly ordered to take part in this office and he behaved like a surprised outsider and withdrew and did nothing.

THE PRESIDENT: But even a preacher would carry a notebook, wouldn't he?

DR. BERGOLD: True but this is only hypothetical. This case never arose.

THE PRESIDENT: Proceed, Dr. Bergold.

Q (By Dr. Bergold) Witness, how did it come about that you were transferred to Russia?

A In May 1942 Heydrich died. While I was still considering how I would have to act under these changed circumstances, after the end of the test year and how I should be able to be relieved from the duty with the security police at the end of that year. Unexpectedly in the second half of July I received a letter from the RSHA which drafted me to Russia as Chief of Einsatzkommando 6 of Einsatzgruppe C.

Q What did you do in view of that order? by Heydrich completely. Heydrich was dead, and I did not know to whom I could talk about this. Therefor, I could do nothing except obey the order which was given to me as a war time measure. I did not imagine what kind of tasks I would have to do but I thought it would be something similar to the job in the stae police office. I made the preparations which were prescribed, namely, I had amedical examination and I was inoculated. I was in no hurry because I still hoped for the possibility that this order would be rescinded, During the examination by the official physician it was found that owing to a chronic gall bladder ailment, I was only able to do service to a certain extent. This certificate I immediately sent, not without hope, to Berlin. After that I received a teletype message instructing me to report to Berlin before going to Russia and to report to the RSHA there.

Q What was the result of this discussion in Berlin?

A In Berlin I was sent to Obersturmbannfuehrer Trautmann. He wanted to talk to me about my state of health.

During that discussion I heard that allegedly I had applied for a job as a commander in Russia. I was horrified about this lie and strongly denied ever having talked to anyone about an assignment in Russia, nor to have applied for a position as commander. On the contrary on that occasion I pointed out that Heydrich had expressly assured me and promised me that I would not be used in an Esternt assignment. I requested that my supposed application be given to me to see. Trautmann could not give me such a report to see because it did not exist. I understood from his words that somebody had made a wrong report again. I could not find out who had done this. An assumption on my part was denied and the name was refused to be mentioned to me. Trautmann then asked me what I intended to do. I pointed out that I had no choice as long as the order existed, but that I intended, by describing all that had happened, to ask that this order concerning the security police be revoked immediately and that I would not only not be sent to Russia. Trautmann advised me to go to Russia for the time being and to make application from there concerning this because that would make a better impression. order revoked from Russia? remain in Russia. I asked for my rights because, first of all, I had been promised by Heydrich not to be sent on Einsatz assignment; secondly, I did not want to be sent to Russia because of a false report; thridly, according to the discussion with Heydrich at the end of the test year, at last I wanted to be released from my duty in the secuirty police; fourthly, the entire work in the security police did not agree with me at all because of my personal manner of living as a theologian, without giving an estimation of the work as such; and fifthly, I could not belong and did not want to belong to any organization where I constantly met false reports as it happened in the security police and SD, according to the experiences which I had had.

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I was tired of this terror, but still I had to go about it carefully. I thought I could not trust in anyone anymore.

Q What did you do as a result of that discussion? message and sent it to berlin.

Q How did Berlin react to your teletype message? message, not to leave for the time being that I regained some hope. After a week a teletype message arrived with the laconic information that nothing could be done about my transfer.

Q When did you receive the order of transfer to Russia? received on 16 or 17 July 1942.

Q When did you go to Russia?

Q There was a long period between that. Why did this take so long? of my offices to my successor. He was still in Riga at the time. After his return, before taking over the offices in Oppeln, he took leave for two weeks. Therefore, the transfer took place about the middle of August. A week later I had my discussion in Berlin and again a wekk later I received the teletype message that nothing could be done about my transfer. That is why I left for Russia at the beginning of September.

Q Where did you go to first in Russia? Chief Dr. Thomas, and he told me about the headquarters of the EK 6 which I did not yet know before I left because not even Berlin knew it.

Q How did your report go to Dr. Thomas, how did it take place?

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could even report. Dr. Thomas made an inspection tour by plane over the Bent area. Then I was ordered to report on a certain date. I traveled with Dr. Thomas' adjutant to the Birkenhof, a small home near Kiev, where Dr. Thomas used to stay. Having arrived there a lady met us who was introduced by the adjutant to me as Dr. Thomas's wife.

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Q. Did you talk to this lady then, and what did you find out?

A. Since there still was time, she talked to me on about SchleswigHolstein. She said she had a daughter there who had married a kreisleiter. I thought I had heard something there. I asked for the name and the location of the kreisleiter, (the district leader), and I found that her daughter had in her first marriage been the wife of kreisleiter Stier from Segeberg whom I had married in 1935 at the Segeberg. Thus my official reports gained rather a private character.

Q. Witness, did you utilize this private connection with Dr. Thomas to start some closer relations and to state your wishes?

A. The cause for this was not given by me because was not the adjutant doctor-- who announced me to Dr. Thomas but his wife simply took me to him in order to tell him about the strange meeting. That is why I came into a familiar discussion, and that caused me to express myself freely and to tell the doctor of medicine, Thomas - he was a nerve specialist to the security police up to the assignment in Russia.

Q. What did Thomas say in reply to this?

A. Thomas took very great interest in this and he told me that he had made it his task that all promises which Heydrich had made before he died be fulfilled in some way, in the way Heydrich meant them to be fulfilled.

Q. Why did he want to do it in the way Heydrich meant it -- who had ordered this?

A. At that time there was talk that he believed that he would become heydrich's successor, and for me this was just what I needed. He agreed to my intention to make application to leave, but before that he instructed me to travel to Rostov and to take over the commando officially Then for the meeting which was to take place at the beginning of October I was to return to Kiev and after looking into conditions and the task of the commandos to discuss further matters with him.

Q. Therefore, if I understand you rightly, already in this report you told your commander that you wanted to report to leave?

A. Yes. I told the Einsatzgruppe chief, Dr. Thomas, expressly that I intended to make this application according to my discussion with Trautmann in Berlin.

Q. And Thomas approved this?

A. Yes. He did not try to change my mind at all.

Q. What did Thomas tell you about the assignment in the EK 6?

A. He did not explain anything about it to me but merely told me in view of the meeting at the beginning of October 1942 would I describe to him my personal impression, after looking at the conditions and tasks of the commando on the spot.

Q. On that occasion, did Thomas tell you about the extermination orders concerning Jews?

A. No. No, he did not make this order known to me.

Q. How did you come to the EK 6 then and when?

A. As far as I remember, it was on 18 September 1942 when I arrived in Rostov with the EK 6.

Q. Did your predecessor then hand over the commando to you in Rostov?

A. No. My predecessor, SS Sturmbannfuehrer and Government Counsellor Moor had already left; before I had travelled to Rostov I had met him in Kiev during a luncheon and talked to him for a short while. He had to be in the Reich on a certain date. Heinformed me briefly about a few persons in the commando and apart from that told me to turn to Chief 4 in the staff. He, Moor, could say that the commando in its setup was in every way clean and conscientious is its work. He attached importance to it, that the officials as a whole carefully worked out their written interrogations, as they did in the Reich. Apart from that, the commando was already permanently stationed. He also told me that it was important always to see to it that the men of the commando carried out the written regulations carefully and cleanly. Apart from that, he had put everything in order.

This calmed me, because Moor, in contrast to me, was a trained lawyer and because he was an expert on procedure and so forth.

Q. Did Moor inform you about the extermination order of Jews?

A. No. Moor never as much as mentioned this.

Q. Please describe what you found in the EK 6.

A. The Einsatzkommando 6, when I arrived at the end of September '42 was no longer advancing but had been stationed already for some time. As I heard at the time, in winter of '41-'42 they had been in Stalino and there already they had started to adopt the same manner of working as the civilian office. When they received the order in the summer of 1942 to go to Rostov, this whole territory had already been worked on by other einsatzkommandos when advancing. The transfer to Rostov, therefore, was not an actual advance but transfer of locality of the commando which had already become stationary. Einsatzkommando 6 with its outer offices, had those headquarters which had been intended as fixed offices for the transfer which had been intended to be carried out very soon; the change within the Einsatzkommando to a commando office, on the occasion of the transfer to the civilian administration. The headquarters were in Rostov, permanent subcommandos were in Taganrog, Novo, Tscherrask and Schachty. Einsatzkommando 6 with its subcommandos was a permanent part of the setup of the army commando. The staff at the time was under the command of the army territory Don, the newly established army group Don with the commander Antonescu, the then government chief of Roumania. When starting my service I reported according to my duty to the commander of the army territory, a General Rothkirch. He gave me the order to look after the security of the army territory Don as before, and to safeguard it against civilian saboteurs, terrorists, and so forth. All military offices had been instructed in all cases which might occur to use the Einsatzkommando to assist them. The subcommandos were subordinate to the local commanders of the army, to the field commandos, or the local commandos, concerning their work. All these military offices and agencies had created a Russian criminal police consisting of indigenous personnel who worked under Wehrmacht supervision.

These detected crimes, investigated and worked on them and submitted them to the army office who handed this on to the Einsatzkommando or dealt with it themselves as the case may be. To the Einsatzkommando all those cases were given which were part of the task of the Einsatzkommando, namely, security of the army territory. All other cases were dealt with by the army on their own authority.

THE PRESIDENT: I think this may be a good point to adjourn, Dr. Bergold. The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal in recess until 0930 hours, 21 November 1947.)

THE MARSHAL: The Honorable, the Judges of Military Tribunal II. Military Tribunal II is now in session. God save the United States of America and this honorable Tribunal.

DR. von STEIN for Sandberger: Your Honor, I would like to ask that my client, Sandberger, be excused from attendance in Court all day today in order to complete his document book.

THE PRESIDENT: Will you want to see him in room 57?

DR. von STEIN: Yes, your honor.

THE PRESIDENT: The defendant Sandberger will be excused from attendance in Court today all day and he will now be taken by the Marshal to room 57 so he may confer with his attorney.

You may proceed, Dr. Bergold. BY DR. BERGOLD: the Einsatskommando 6 and you also talked about orders, about facts. What did you find out about the orders and activities on which this Kommando was based? between the high command of the Army and the chief of the Security Police and the SD which I did not see in writing but the basic ideas were told to me by the men of the Kommando and from conversations with the Army I found them confirmed. According to these the Einsatzkommando had to report all events which concerned the security of Army territory and which were threatened by non-military circles and had to deal with them under its own authority. The special order for Kommando 6 was an order by the Commander of the Army territory Don who put up notices in the houses everywhere in two languages.

In Rostov, for example the announcement was made by radio messages to the civilian population. This order especially mentioned that a death sentence would be imposed on the following cases: looting, owning weapons, attacks on military establishments, and information, attacks on military persons, espionge, sabotage, terror, and similar things. With these Army orders the Einsatzkommando 6 was therefore given the task to deal in an orderly police procedure similar to the State Police in the Reich, to deal with individual cases through their qualified criminal officials, and pass judgment in a written judgment, and finally to carry out the punishments. By carrying out these three things the sub-offices had to deal with details under charge of executive criminal officials, police officers. BY THE PRESIDENT: the province of the State Police. We ask that question because yesterday you said that you were entirely ignorant of State Police procedure when you were in Oppeln for a year?

A Yes. I said what was the task of the Kommando; about my personal position with the Kommando I have not yet talked but I shall make detailed statements about this yet. made that your Einsatzkommando was given the task to deal in the ordinary police procedure similar to that policy in the Reich to deal in such cases. Now yesterday you told us that you were not competent to pass upon State Police procedure because you were ignorant of this procedure. Now we ask you if you felt yourself competent in Russia to do what you told us yesterday you were unable to do in Germany.

Q You still didn't feel competent to handle State Police procedure?

Q well, let's make certain now about your answer. You were not competent to handle State Police matters?

Q In Russia?

Q And while we are on the subject, and it's important that we know as we go along - otherwise we can't follow the testimony comprehensively, before you left Germany did you know of the Fuehrer-order to kill Jews? did you know of the order to liquidate Jews?

Q When did you first learn of this Fuehrer-order? arrived in Nurnberg?

Q On what day did you learn about it in Nurnberg?

Q What day was that?

A It was the beginning of July. I don't know - 7 July - I am not quite sure that is correct.

Q Well, July 1947? that Jews were to be liquidated?

Q Even after your arrest didn't you speak; with your follow prisoners and in the conversation didn't it develop some time that there had been such a Fuehrer order?

A No, I never talked with men of the Security Police and SD. I myself was not known. The men at the camp hardly knew me.

Q Didn't you read in any of the periodicals about this order?

A I beg your pardon, your Honor, I hardly read any newspapers. All that happened after 1945 and the impressions I had after that were so tremendous that I could not quite digest it all, and therefore I kept away from all those things.

I hardly read a German newspaper. said about executing Jews? shooting of Jews I must answer in the affirmative. I did once hear about it-that was during the second half of June 1943 when I was in Kiev on my way to the Reich. At that time in Kiev I was told that many Jews had been shot in Kiev but in that connection I also heard that this is supposed to have happened because of burnings and dynamitings in the City of Kiev following the invesion by the German troops. I had the impression that this was retaliation measure against the people who had committed crimes.

Q What we are inquiring is whether you knew of the Fuehrer-order?

Q You don't know what I am going to ask you - whether you knew of the Fuehrer-order that Jews, Gypsies and asocial elements were to be liquidated?

Q Who was the leader of the Einsatzgruppe? Jews were to be killed?

A No. My conversations always dealt with certain subjects.

explained.

Q And your brother Kommando leaders - they never talked about Jews?

A Well, we never had say reason to do this. I only met other Kommando leaders who were leaders in Perpapetrowsla and in Stalino where I spent the night on my way from Kiev to Rostov. killing Jews? because I was inexperienced in that and I did not like to show any inexperience constantly.

Q And they never mentioned Jews? statement on the record let me repeat - you tell the Tribunal that the first time you learned - -

Q Now, what am I going to ask you? Tell me what question I am going to put to you? first time that a Fuehrer-order existed. Fuehrer-order for the first time and what the Fuhrer-order was? trials.

Q Well, when? testimony made here in this trial. the Fuehrer-order? ants .

the Fuehrer-order was when you received the Indictment. Is this correct?

Q Now, please answer this question. The first time you learned of the Fuehrer-order was when you got the Indictment, is that correct? mentioned in the Indictment. Fuehrer-order is when you got the Indictment- that is what you told us, isn't it.

Q No. You said to us that the first time you learned of the Fuehrer order was when you got the Indictment on July 7. Did you say that?

Q All right. Now do you stand on that? could I see what I was charged with and what the Prosecution charged me with. the Fuehrer-order was when you got the Indictment?

A Well, I don't know whether the word Fuehrer-order is contained in the Indictment and whether the contents of the Fuehrer-order is contained in the Indictment. first time you learned of the Fuehrer-order was when you read the Indictment? Do you stand on that statement? Do you confirm it? You made it a few moments ago.

Q Just a moment please. I ask if you stand on it. If you don't say "No, I didn't mean that" or "Yes, I did mean it." Now, did you mean it when you said the first time you learned of the Fuehrer-order was when you got the Indictment?

Did you mean it or did you not?

Q You did not mean it. All right, well, that's clear. When did you learn of the Fuehrer-order for the first time? during discussions with my co-defendants. I am not certain of that. It happened here in Nurnberg and I am not sure whether I talked to my codefendants or heard it from the trial.

Q Was it after you got the Indictment? co-defendants. place, the first time you learned of the Fuehrer-order was subsequent to July 7, 1947?

Q Which defendant told you about the Fuehrer-order?

A I don't know that, your Honor. I believe as far as I remember somebody asked me whether I knew the Fuehrer order and I said that I didn't know what you are talking about. But who asked me I don't remember.

Q When you said you didn't know what he was talking about then did this defendant tell you what the Fuehrer-order was? question was discussed here in the trial or whether it was before this. I don't quite remember, your Honor.

Q Witness, when you learned of this Fuehrer-order did it shock you? learned here in Nurnberg.

Q Well, we are talking about the Fuehrer-order. When you first heard of it you were shocked?

Q Now from whom did you learn of it?

A This shock I remember quite distinctly. This happened here in Court.

Q Yes. Then you did not get it from your co-defendants, you got it here in Court? in this Courtroom? after you had received the Indictment? here in this Courtroom? Court, is that what you are telling us or isn't it what you are telling us? you were shocked, Now where was this and when was it? of their race, that is what I mean. This....

Q All right. That's what the Tribunal is talking about. Now, when did you first find out that Jews were to be shot merely because of their race, merely because they were Jews, when did you first find that out?

Q And who was it that said it?

room when Ohlendorf was sitting where you are now?

A Yes. Of course, I read that Jews were shot but I did not know -that I saw in the Indictment but I did not know that the Fuehrer-order to that effect was the basis of this.

Nov.21-M-IL-3-1-Hoxsie (Int. Juelich) in the other large courtroom? opening statement? published.

Q Well, but you heard it being read in court, didn't you?

A It was read out in the Tribunal here, I don't know whether it is contained in this. was made to the Fuehrer Order?

A I don't know.

Q well then, it isn't true that the first time you heard it is when Hr. Ohlendorf mentioned it from this witness stand, is that right

A I don't know. deal, and when one is shocked one remembers later on when the shock took place. Now, tell us when you first learned of the Fuehrer Order which calls for the execution of Jews and gypsies just merely because they were Jews and gypsies, absolutely innocent, but they had to be liquidated. When did you first find that out, that such a Fuehrer Order had been made way back in 1941? When did you first find that out? the Prosecution, I remember it again. I didn't think of it at the moment.

Q Do you recall now the Prosecution's statement?

Q And was it mentioned in the Prosecution's statement? quite certain. I was particularly impressed by what Ohlendorf said here. This had made a stronger impression on me than the entire indictment and also the opening statement of the Prosecution. Fuehrer Order was when you heard Ohlendorf describe it and talk about it from the witness stand where you are now sitting? it was made by one of my comrades who spoke of his own experience about these things. subject, when did you first learn of the Fuehrer Order which decreed that Jews had to be killed because of their race? When did you first hear of that Fuehrer Order? trials. when you first learned it? indictment or in the opening statement by the Prosecution, then I must have heard it there already, but what I remember, and what impressed me, was that one of my comrades explained these things so clearly here, and that is what shocked me so. Fuehrer Order was when Ohlendorf described it here in this courtroom?

learned of the Fuehrer Order you would say that it was in October, 1947?

A It must have been about then, yes. I cannot remember now when Ohlendorf spoke. I cannot remember the month.

Q Well, it was last month, wasn't it, in October 1947?

DR. BERGOLD: Your Honor, may I add something to this discussion. I know about the other defendants, that my client always kept away from all the others, and in this aim he was also supported by me, because I wanted to have my client to myself. That is an old method of mine.

THE PRESIDENT: Well, when did you first see your client, Dr. Bergold?

DR. BERGOLD: I saw him in July, 1947, shortly after he was brought to Nuernberg. He was only brought to Nuernberg a few days before the indictment was served.

THE PRESIDENT: Of course, you didn't know him before he became your client here?

DR. BERGOLD: No, never.

THE PRESIDENT: So you wouldn't know what he had done prior to that of your own knowledge?

DR. BERGOLD: No. I only say that I know of the defendant that he was always very retiring and reserved. His colleagues told me that, and I know from his own talk that he always kept away from his comrades, and I supported him in that attitude and advised him to keep on his own.

THE PRESIDENT: Well, Dr. Bergold, you had many conversations with him before he actually came into court, didn't you?

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DR. BERGOLD: Yes.

THE PRESIDENT: Didn't you yourself ever tell him what he was charged with?

DR. BERGOLD: Your Honor, even I only heard about the Fuehrer Order when the case in chief was presented. I did not see sufficient from the indictment either.

THE PRESIDENT: So you didn't mention the fuehrer Order before he came here into the courtroom either?

DR. BERGOLD: No, no.

THE PRESIDENT: I don't mean to question you, Dr. Bergold, but we are just trying to get at the truth here.

DR. BERGOLD: I understand.

THE PRESIDENT: And do I understand that you didn't know about the Fuehrer Order until you got here in the courtroom?

DR. BERGOLD: Mr. President -

THE PRESIDENT: You don't need to answer that, Dr. Bergold. The only reason is you volunteered it, and when a person volunteers he has to stand a little bit of questioning on it.

DR. BERGOLD: Of course, your Honor, of course. I don't know whether I heard about this Fuehrer Order in the IMT trials, I cannot exclude such a possibility, but I confess-

THE PRESIDENT: Dr. Bergold, just a moment. Let me tell you, Dr. Bergold, you are an attorney at the bar, and the Tribunal has admiration for you, and I would advise you to say nothing further about this because the whole IMT trial certainly discussed this Fuehrer Order, and I don't want you to be placed in any embarrassing position. Now, you may have not talked about it with your client, but please don't tell us that you did not know about the Fuehrer Order until you came into the courtroom, because we have the decision right here, the IMT decision, which talks about the Fuehrer Order.

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DR. BERGOLD: That is right, your Honor, but I am telling you, don't forget one thing. I don't work only here. I am in charge of a lot of cases, and when one case is finished, I usually forget it immediately or else I cannot follow all my duties. I said it might have been in the IMT trials, but at that moment I did not remember it any more, and therefore, I did not talk to him about it, and that is a true statement.

THE PRESIDENT: We take your statement as being the truth, but we did want to, in a friendly way, suggest not to talk about it too much, because you only embarrass yourself, because the decision of the International Military Tribunal certainly makes a reference to this very sad event of the killing of the Jews because of the Fuehrer Order, that they had to be killed because they were Jews.

DR. BERGOLD: That is right. I told you I forgot it. I didn't think of it. One can forget the most terrible things.

THE PRESIDENT: Right.

DR. BERGOLD: The wisdom of life, which I learned from Goethe, his wisdom consisted of the fact that he forgot all terrible things immediately, and may I perhaps remind the Tribunal that when his own son died nobody was to remind him of this because he tried to forget it so that he could continue to live on his high level. Since Goethe has always been my ideal, I have always followed him, to forget terrible things.

THE PRESIDENT: I can assure you that although Goethe was very heroic in his resolve to forget this sadness which entered his life, once it was written on his heart, he never forgot it.

You don't forget deaths like that, Dr. Bergold. All right, let's proceed. BY DR. BERGOLD: tell us what did you hear about this written procedure? Police who investigated all the criminals and witnesses in writing, and if a crime had been committed, and if somebody had participated in a crime, the arrested person and his files were sent to the subkommando. The prisoners were sent to a prison and all objects were taken from them, which they had with them, as it is the custom in all prisons in legal procedure, in Germany. The objects were kept. Then the investigation started by the men of the kommando, and the judgment was passed, and every now and then, according to the death sentences, the executions were carried out. I want to mention that also prison terms were conferred. After the death sentences had been carried out, the personal property of the person concerned was confiscated by the German state inasfar as it existed, as this is done with usual death penalties based on such crimes.

Q Did you know the Hague Convention of land warfare?

A No. Owing to my entirely different training I never heard about it. I did not even know when I was interned that the Hague Convention of land warfare existed. During my presence here my defense counsel asked me about it, and he found that at first I misunderstood him. I thought he said Court "procedure" and he laughed at me and found that in fact I did not know about this.

legal procedure with judges and a Tribunal and witnesses took place? thought about it. In particular as I found everything In that condition, I was not a lawyer, and it was my opinion that all those things had been organized in such a manner as they should be in order to insure proper procedure. My predecessor who had organized this and instituted it was a trained lawyer, and also expressed himself to me to the effect that everything was proper. I had to rely on that. carried out?

executions, one by shooting, and another manner of execution, in particular by the office in Rostov, by means of gas vans. BY THE PRESIDENT:

Q Witness, you say you heard of. Didn't you know as a matter of personal knowledge?

A Yes. I shall talk about that presently. I only made a general statement that two kinds of executions existed, and I will now give details about these. The shooting was done in a military manner by single shots, by a machine rifle or by a rifle. In Rostov itself they used the gas van. In order to be Informed about this, I had the action of the gas van described to me on the occasion of an execution, and I asked the chief of the detachment in Rostov to show it to me. This seemed to me a procedure which tried to conduct the execution in a manner which made it easier for both, the victim and the executioner. Like the electric chair, the procedure has been invented for humanitarian reasons. I know that in a few states of the United States of America already many years ago executions through gas had been carried out. by gas van was easier on the victim and easier on the executionor, is that what I understood you to say?

Q More pleasant for both parties?

Q The victim and the executioner?

Q That is that?

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Q Did you hear Mr. Ohlendorf describe that men of the kommando objected to the use of gas vans because of the impression it made upon them? because my experiences had been to the contrary. is less difficult?

A It is not so difficult by means of gas? No. I can say that I saw the bodies, all of whom made a very calm and peaceful impression. I also know that, through carbon dioxide, people who are in a closed garage and work on a car where the motor is running, without noticing it, are suddenly surprised by death. I was of the impression that death in that manner approaches the person in a very gentle manner. Ohlendorf's observations. You have a disagreement on that?

THE PRESIDENT: Very well. BY DR. BERGOLD:

Q Witness, did you order the manner of execution? accepted them and thought everything was all right.

THE PRESIDENT: Well, did you order the execution yourself?

THE WITNESS: No.

THE PRESIDENT: Who did order the execution?

THE WITNESS: Those were the subkommando leaders: Q (By Dr. Bergold) What impression did the activity of Einsatzkommando VI have on you, which you described? thought it highly unpleasant but I thought I could not be expected to do this, that under my charge death sentences were passed and expected to be carried out.

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After all,I was not brought up for that kind of task. A pastor has the task to help souls but never to judge. BY THE PRESIDENT:

Q Did you ever order an execution?

Q Did you witness an execution? prior to the execution?

Q Well, I am asking you if you did or not. Did you? before the execution?

A I never saw the persons and didn't talk to them.

Q You didn't see the executees?

A Yes, if I witnessed the execution I did. Otherwise I did not. attempt to comfort those who were executed; did you talk to them along religious lines since you were trained to do a function of that kind?

Q Well, didn't you, out of the bigness of your heart, out of your religious training and inclination, feel disposed to comfort these individuals who were now to take that long last walk into eternity? if I, as representative of the komnando who passed judgment and who carried out the sentence, at the same time approached the people with religious consolation.

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I think the people would never have understood that. One could hardly do this at the sane time. The serious necessity of war, and then one tries to console people, in my opinion this is tasteless. a word or two of comfort to these individuals on the verge of coming before their supreme Creator. You thought you might be criticised if you did that? was done, when an execution was carried out by a gas van. I have only described my impression so far.

Q I perhaps didn't make my question very clear. I said that had you offered a word of solace and comfort to these individuals who in a few moments would be standing before their Supreme Creator, had you done that, you feared that you would be criticised for having done this? not know who I was. They did not know I was a clergyman. hey didn't know that, and possibly they would have considered this irony if I, as a representative of the kommando, would have said such words then. at any time to talk about God?

Q Well now, here is a man who is going to be shot; he is going to be killed.

Q He is going to pass out of existence. You are the pastor, or were a pastor. You are religiously trained. It didn't occur to you to say a word to this individual that was starting on this long journey?

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It didn't occur to you to do that?

A I had no, opportunity to do this. If I describe this to you you may understand it, Your Honor. You were the kommando leader. Why didn't you have the opportunity to talk to these individuals, just give them a word or two of comfort? Why didn't you have that opportunity?

Q Yes, well, why didn't you do it? rejected him, but to force myself on somebody, that is not my way. who is about to be executed, to tell him that he would soon be standing before his God, and to have strength in this final moment? Would it have been so difficult to do that? Bolshevist views, had fought against the German troops illegally. It is known that the Bolshevist ideology advocate the movement of the Atheists. There is a word which sounds very harsh, in particular if I say it in this connection. This word is, "One should not throw pearls before swine". I say that is a parable. When using the word of God one should not use it in situations where it does not fit in, in particular if one is innerly convinced that the ground is not prepared for such a message. If I had gained the conviction that in these people there would have been a longing for God, if 1 had heard this somehow from some men who had to do with them -

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had been fighting Germany that they did not have souls?

Q You did believe they had souls then, didn't you? have expressed, you did not think it was worthwhile to try to save those souls? are people who do not believe in God, who have turned away from God, and if I tell such a man a word of God, I run the danger that the person will become ironic. be any worse than the fact that he was going to be killed rather soon, Suppose he did become ironic, how did that harm anyone? them in such situations.

Q You were a pastor, and wasn't it your duty to try to convert these lost souls? lot of tolerance. I do not think it is my duty to convert people. It is my duty to help men if they approach me with wishes and questions, but I always have to know whether the person has an open mind for these things. I do not go to any Atheist and tell him, "You must believe in God", but if he comes to me and says, "I cannot believe in God, what might be the reason, can you help me?" I then would, of course. to be executed whether he believed in God?

Q Then, how did you know that he didn't believe in God?

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the Bolshevist ideology who stubbornly followed the orders of their Communist leaders, and therefore attacked us. Their acts were not honest acts, but crimes, of which they themselves were convinced, and about which they knew that death sentence was the punishment for it, and after all, they were unusual cases. Apart from that I don't know whether the people who believed in orthodox religion in Russia shared my opinion, which after all arose from a German heart, whether they could understand it in that form.

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THE PRESIDENT: Then because they had committed a crime, you believed they were not worthy of absolution, or of a word of comfort?

THE WITNESS: No, Your Honor, not like that, but -

THE PRESIDENT: Just a minute, let's truncate this discussion. Did you or did you not, being a man of God, and having been a Pastor, and having devoted much of your life to studying religion, and to preaching religion, did you at any time in any of these executions after any religious comfort to any of the executees. Now answer that question yes or no?

THE WITNESS? No.

THE PRESIDENT: Very well. Now yesterday you told us that you had established a new religion, and one of the tenets of that new religion was "Love of fellowmen"?

THE WITNESS: Yes.

THE PRESIDENT: Do you think that you demonstrated that "Love of fellowmen" by letting these people go to their deaths without a word of comfort along religious lines, considering that you were a Pastor? Did you demonstrate there a "Love of fellowmen"? Answer that question yes or no?

THE WITNESS: I didn't sin against the Commandment of Love, Your Honor.

DR. BERGOLD: Your Honor, if I may intervene in this long discussion and say: Your Honor, the victims did not know that this man was a Pastor, seeing he was wearing an SS or SD uniform, that, therefore, he was an exponent of that authority who condemned them to death and I really believe the defendant that the executees would have considered it strange and would have considered it foul and unworthy if such a man had suddenly come to them, who was the chief of such a commando, and tried to console them In a religious manner. They didn't even know he was a clergyman. I must say I cannot quite understand the discussion because one is to imagine oneself back into that time and imagine the appearance of this man as he approached victims.

THE PRESIDENT: Dr. Bergold, ordinarily, a discussion of this kind would be entirely irrelevant, but yesterday when we tried to confine the issue to the charges in the Indictment, you said we had to allow your client to give his full discussion on religion, because only in that way could we decide whether he was telling the truth, or not.

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Now because of these circumstances it is entirely in order to ascertain whether a man with the religious training, with the religious background, in a situation so solumn as an execution, could not have advanced towards the executees, those about to be killed, and say to them, "You see me in uniform of the SS, but I am a man of God. I was a Pastor", and then to comfort them in any way that he could. How, he said he didn't do that. All right, that ends the discussion, let's proceed.

DR. BERGOLD: I have one more question to put to the defendant. BY DR. BBRGOLD:

Q Tell me, can you speak Russian?

Q How could you have talked to these victims about religion?

Q Was an interpreter present during the execution?

DR. BERGOLD: Thank you.

THE PRESIDENT: Was an interpreter present when the men were investigated for the purpose of determining whether they were guilty or not?

THE PRESIDENT: Yes. You could have taken -

THE PRESIDENT: You could have taken an interpreter to the execution if you desired, could you not?

THE PRESIDENT: Yes, but you did not?

THE PRESIDENT: Very well. BY DR. BERGOLD: How many executions did you witness?

Q Which territory was under the charge of Einsatzcommando VI? three-hundred kilometers long, that is, about 60,000 square kilometers. saw Thomas again?

Q What was the subject, the main subject of this meeting? tory around Kiev, which had become the most important part in the war against Russia, and the entire interest of Thomas was concentrated on this subject.

Q What was the result of the second discussion with Thomas?

A My second discussion with Dr. Thomas during the meeting was only brief. I described him my impression as I have described it before, that is, I told him what I had seen there, and told him that owi owing to my theological training, I could not have been expected to have to pass judgments and to have executions under my change. At the same time I explained to him that I was now convinced and determined, as I had already told him before, to apply immediately to be released from my duties, not only from Russia but also from the Security Police all together. Dr. Thomas listen to all of this very calmly and without a word of criticism he said that he would support my application, and that he would send a Sturmbannfuehrer to me who was to share the responsibility for the Einsatzcommando VI with me, and that he was to supervise the work of Department IV while I who had the same function for the Departments I to III, I was in charge of the entire Einsatzcommando, and from that I realized that he fully recognized my personal misgivings and I was very grateful to him for understanding me so well.

Q Please describe to us the tasks of Departments I to IV?

A The tasks of the individual departments were as fellows: Department I and II were joined in Russia, and, handled personnel and administrative questions; Department III was the information service dealing with the domestic spheres in the occupied, territory in which the Einsatzcommando was working; and, Department IV dealt with actual security tasks. statement that the decision of Dr. Thomas to send you a Sturmbahnfuehrer to help you, the purposes of this was to have this man handle the security tasks?

A Yes. Dr. Thomas intended to save me from actually touching these subjects.

Q Please tell me if Dr. Thomas was so obliging, could you have got a better job from him, which you would have liked better, which would have suited, you better? appointed no Chief of Einsatzcommando VI. This order could not be rescinded by Thomas or amended but this could only be done by Berlin. Bridging the tension, as Thomas did by giving me a Sturmbannfuehrer to assist me, seemed to me the only solution, owing to difficulties in my special position.

Q When did you return to Rostov from Kiev?

Q Did you travel back to Rostov on your own - by yourself? of the Civil Administration in Rostov, who was an SS and Police Leader, a general of the police who had been intended for that job, Paul Hennicke. He was about to make all the preparations for taking over his office, and, later on I met him quite frequently.

In fact, I spent a great deal of my time with him.

DR. BERGOLD: If the Tribunal will permit me to comment here; I wanted to bring this man. Paul Heinnecke, here as a witness, but unfortunately he was so seriously ill with diabetics that the prison administration told me that they could not guarantee for his life unless I released him immediately. Of course, for humane reasons I released the witness immediately, or else I would have introduced the witness here. That is just comment.

THE PRESIDENT: Well, he can come later if you can obtain him. We will permit him to come in any time at all before the termination of the trial, and, then if his health still will not permit his attendance, then perhaps you can obtain an affidavit from him.

DR. BERGOLD: I have tried that already, but he was just before his coma, and you know people who suffer from diabetics are not able to make a very clear statement, and I don't went to give the Tribunal a statement of a man of whom I did not have the impression that his mind was quite clear.

THE PRESIDENT: Well, you adjust yourself according to the circumstances, and if you can get any coherent statement from him, the Tribunal will be very happy to have it.

DR. BERGOLD: Very well. BY DR. BERGOLD: come to you?

AAt the end of October this Sturmbannfuehrer arrived. His name was Joachim Noshing. He was a lawyer, and his main job was SSleader, and until then he had been a deputy commander in Kiev. Apart from that he was a son of a Protestant eclesiastical counsel, had been brought up in a strict Protestant manner, and very interested in religion, these were conditions which assured that work would be conducted in a proper and clean manner.

the channels of commands were? staff, and four staff sub-commanders and four district officess, similar to the commander offices, namely, Rostov, Taganrog, Novotscherkaskh, and Schafhty. The staff consisted of the commandoleader, and the deputy, under them were the Chiefs I and II, Chief III an and Chief IV. The sub-division in the commando-leadership resulted in the fact that the Chiefs I and II and III were subordinate to me, and Nehring was in charge of Department IV. The sub-commandos or local offices were supervised by police officers who were Ober- or Hauptsturmfuehrer, and who did this on their authority. That is, they carried out the tasks of the commandos concerning the security of the Army territory for their sub-territory, and they were competent on their own to do this, and they were responsible for this themselves, concerning the passing of judgments, investigations and carrying out of executions. There is to be mentioned that the subcommando leader of Rost v and Chief IV in the staff was the same man. In this activity the sub-commando leaders were directed in an expert manner by the Chiefs I and II, III and IV, and supervised by me or Nehring.

Q Did you pass death sentences yourself?

A I never did that, I already said that I explained to Dr. Thomas that they could not expect me to do this kind, of thing; apart from that it was the task of the sub-commando leaders. In cases of doubt, it was up to Chief IV of the staff or of my deputy, Nehring, according to special instructions of Thomas.

THE PRESIDENT: Witness, up to the point that you said that you didn't want to pass any death sentence yourself, because of your background and training we can understand it, but when you say that it was now up to a commando leader to pass a death sentence, we can not understand, it. Now, tell us whether commando leaders were permitted to pass death sentences?

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THE PRESIDENT: Now, just a moment please. If you will try to answer the question, we will save a great deal of tine. I ask you now, if commando-leaders were authorized to pass death sentences? BY DR. BERGOLD:

Q Witness, we already discussed the fact that you don't give any order for an execution?

A No. And I didn't witness any executions.

Q Did your commando shoot any hostages?

TEE PRESIDENT: Just a moment, Dr. Bergold. A little while ago you said that he didn't witness any executions,

DR. BERGOLD: I didn't say that.

THE PRESIDENT: I am sorry, that is what we got - that is the way we got it. BY DR. BERGOLD: any reason?

A No, no hostages were shot by Einsatzcommando VI. Taking of hostages was generally up to the Army.

Q Did your commando carry out any mass-executions without a procedure? individual shootings nor mass executions were carried out.

Q Did your commando shoot Jews? procedure because of crimes, or participation in crimes according to a special order by the Army, who had done some kind of action for which death sentence had been announced, among those persons there night have been Jews sometimes. Apart from that no Jews were shot specifically.

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Q You never did this just because they were Jews?

THE PRESIDENT: Now, witness, you say that no Jew was shot just because he was a Jew, or that Einsatzcommando VI didn't do that?

THE WITNESS: Never during my time.

THE PRESIDENT: Yes.

THE WITNESS: There was no reason for that.

THE PRESIDENT: Yes, how many people in all were executed by your Commando for the reasons which you have given us, namely, they had committed a crime. How many executions in all, how many people in all were killed by Einsatzcomnando VI while you were there?

THE BERGOLD: Your Honor, before the defendant speaks I have a request. This question, how many people he executed....

THE PRESIDENT: No, I didn't say that. I didn't say that, I said, how many people were executed by his commando while he was in charge of that commando.

DR. BERGOLD: That is what I meant to say, Your Honor. I have a request that this particular question, which the President asked, may be answered in a different context; it is connected with his own affidavit where he refers to this figure, and, I, therefore, ask that the question of the President be not asked in this connection, but be grateful.

THE PRESIDENT: Very well, certainly. BY DR. BERGOLD:

Q Witness, in your territory were there any Jews at all?

A I never noticed any Jews. In Rostov there were a great number of Armenians whom I thought to be Jews at first. When I happened to see one in my office one day, I thought he was a Jew, this person told me in German, and I was very much surprised at this, he told me that he was not a Jew, but a Karain.

He was at the office in order to hand in a report about the Karains. He showed me a written report, about his tribe. I asked him to give me this leaflet he had, and after that he made a report to Berlin about the Karains in Russia. The man himself, of course, was not harmed. Then I remember that at the end of May, or the beginning of June, 1943, at the office in Taganrog I happened to hear something about the fact that Jews lived in Taganrog who were only registered, and according to this, if I think about it now, Jews might have been in that territory then, and that the circumstances didn't become obvious to me at the time, or I didn't notice it, must be owing to the fact that I had no reason at the time for this observation.

DR. BERGOLD: Your Honor, I now come to a different complex of questions, and I would like to ask if the Tribunal would like to have a recess now.

THE PRESIDENT: A good idea to have a recess now. The Tribunal will be in recess for fifteen minutes.

THE MARSHAL: The Tribunal is in recess fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session. BY DR. BERGOLD: heard about the Fuehrer Order to kill Jews here in this trial. If you had known it in Russia at the time, would you have approved of it at all? question. No, I would not have approved of it and I cannot approve of it today in any form, since it does not only violate morality, but also an obviously divine law, just as the bombardment of Large cities by large fleets of airplanes or by atom bombs is disapproved by me as immoral and undivine. BY THE PRESIDENT: took place?

A No, may I say why?

Q No, that's enough. You said you disapprove of the bombardment of cities but you did not disapprove of the bombardment of London. All right, that is your opinion. why, why I once approved it and once disapproved of it.

Q Did you approve of it or not?

Q Then you do approve of the bombardment of cities in war? and I meant by this the bombardment of certain areas of a city and blanketing it with bombs, not the attack of military objectives or armament factories.

Q You said you did not approve of the bombardment of cities. Did you say that or did you not?

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of London? to us expressly. with large fleets of planes. Now London is certainly a large city and it certainly was bombed by large fleets of planes. Now, do you approve of that or not?

Q Do you know that St. Paul's Cathedral was damaged in one of those raids?

Q You never heard of that?

A No, I don't recall. which I remember. BY DR. BERGOLD: have carried it out or not? it and I say, if my predecessor had given the order to me for my information, I would not have accepted it. As far as such an oral information was concerned, I would have never had people executed on such an oral passing on of an order. At least, this order would have had to be given to me expressly as an order by my superior, but even then I would not have carried it out. I would have pointed to my spiritual profession and thus I would have asked that no such order be given to me.

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A That is correct. I was obligated to obey by oath, but obedience has a limit for no at that moment, when the order so obviously violates the will of God, as this killing order does. Thus, I was not obligated to obey all orders without any consideration. There are moments in our life, when, for a human being who really believes in God and who really knows that he is tied to God, the obedience towards the will of God is higher than obedience to an anti-divine order. order? What would you have done about these difficulties?

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A. I already said that I would have pointed to my particular profession and that thus the acceptance and the carrying out of such an order could not he asked of me. I believe that after what I have experienced, namely, when I had the conference with Heydrich on the 5th of May, 1941, and during the conferences with Thomas, that in this case, one would have left me well enough alone, in other words, that one would have had consideration for me. If matters had been different, then, for a man who not only by name but really in his heart believes in God, there is only one thing left. He must obey God more than any human beings. I would have had to take the consequences.

Q. But you must explain one thing to us. Your comrades partly knew about the killing order and received it. How do you explain and can you explain it at all that you did not receive the extermination order?

A. Here in Nurnberg, I, of course, thought about this matter. I can only explain this matter as follows: In the area of Rostov and vicinity there were no Jews, outside of a few individuals, and therefore the passing on of this order to me was no longer necessary. It is not impossible that my profession, which Thomas had remembered, was the reason why he did not give me such an order, since the order had no importance in my area and since he knew that I wanted to leave anyway pretty soon. Furthermore, the order was secret and there was a general directive -- I think it was an express Fuehrer Order which had been laid down in written form -- that only so many people should know about secret matters as was absolutely necessary. BY THE PRESIDENT:

Q. Well, do you think that a secret order becomes so secret that it isn't even transmitted to the person who is to execute the order?

A. I have already said that I had the impression that there were no Jews there.

Q. Well, that's the reason you give.

A. Yes, I gave that as the first reason.

Q. And another reason is that Thomas was very much concerned about your religious background. That's also a reason.

A. Yes, these are the possibilities and I do not know what caused Thomas to act the way he did. These are only the thoughts which I thought over here in Nurnberg.

Q. Didn't occur to you, while you are thinking about that subject, that, if Thomas was disinclined to pass on the order to execute Jews out of deference to your religious background that he also would have done something to relieve you of the duty of conducting any kind of an execution?

A. He did so by the fact that he sent me Sturmbannfuehrer Nehring.

Q. Well, would he not then have seen to it that you would not be required to witness an execution?

A. I attended them in order to get to know the activities of the kommando, as Thomas had ordered and then to report to him my impressions.

Q. Well, Thomas ordered you to witness an execution?

A. No, Thomas ordered me at that time in September to go to the kommando and then after inspecting matters, to report to him and tell him about my impressions.

Q. Then you witnessed an execution of your own free will?

A. Yes, because of the assignment which had been given to me.

Q. Well, did he order you to witness an execution?

A. No, not specifically, but if Dr. Thomas tells me that I should describe to him my impressions, that is, to give him a report about what I felt, then that includes my looking at things down to the last detail, even looking at an execution, for otherwise, my report would be wrong.

Q. Then did you make a report on the execution?

A. I told him about what I had seen, yes.

Q. And did you tell him how you felt?

A. Yes, I explained to him, as I have already said, that all these matters, the sentences and the executions, were against my feelings.

Q. You didn't know that before you witnessed the execution that you would have a feeling of revulsion against the execution. You didn't feel that before you actually witnessed the execution?

A. Of course not, Your Honor, for before I had never seen an execution.

Q. So you had to see an execution in order to know that it offended against your sentiments?

A. Yes, I had to see what kind of an effect this would have on me.

THE PRESIDENT: Very well. BY DR. BERGOLD:

Q. Witness, you've already told us that you only heard once about Jewish executions. That was in June, 1943, during your stay in Kiew in connection with crimes such as arson and explosions.

A. Yes, that is what was mentioned to me.

Q. Did you also hear about the executions of Jewish women and children?

A. No, at that time nothing was said about this and I heard nothing about it.

Q. What activity did you carry out in Rostov?

A. I already mentioned that the inspection of the work in the Offices 1, 2, and 3 had been given to me. My activity included the actual command of the kommando, especially to represent the kommando's interests to the other agencies, especially towards the German and Rumanian armies. I did not detail any liaison officer for this purpose, but I took care of this activity myself. Thus almost daily I had discussions with the G-2 of the Army area Don, especially when the military situation became very serious around Rostov. That is, when the withdrawals of the Army started. I also assisted the administration officer in the care and the supply questions of the kommando by negotiating with the military agencies. I also had connections with G-2 of the German Liaison Staff with the Rumanian Army in Rostov. I also was the disciplinary superior of all men in the kommando. As such, I was in charge of the personal files of the men, that is, recommendations and judging their type of service and taking care of their individual matters by conferring with them personally These jobs were the special duty of the kommando leader.

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Q. Did you have anything to do in reference to administration?

A. Yes, of course. I was the only one who could sign papers. In addition, the kommando had two agricultural estates which had to be administered. One was a small estate with an orchard. It was to be a rest area for German combat troops in the Einsatzgruppe C and had to be arranged for that purpose. Since the Army wanted to use this place for its purposes also, there were often long negotiations with the various agencies. The other was an estate of 1,000 hectars with agriculture and live stock for whose upkeep and maintenance the kommando was responsible.

Q. Witness, did you have anything to do with the future civil administration of Rostov or its reorganization into a future civil administration?

A. Yes, as Dr. Thomas told me, and as the presence of the future SS and Police Leaders in Rostov showed.

Q. Please give the name.

A. Haencke. The taking over of this area by the civil administration was at hand. In order to have the necessary material for the civil administration about the various problems in that area, various extensive investigations and reports had to be made out. These extended to the presence of certain ethnic groups and to their political espectations, as, for example, in this area, the Russian-Germans, who were very small in number, but especially the Cossacks and then the Armenians and the Karaims. Furthermore, the investigations extended to the presence of cultural institutions, such as schools, universities, technical schools, libraries --

Q. That is sufficient.

A. And of grest interest was the presence of Russian scholars from the Pre-Bolchevist time. I had the opportunity to speak to such scholars of former European repute and to receive them in my office. Their condition impressed me deeply and to see to it that their old activity were again taken up under the German Army.

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In this connection there was a Russian professor who already served for the Reichsfuehrer SS who had a special mission to excavate graves of the Goths from the time of the Eastern Gothic king Ermanerich, whose empire once extended down to the Volga River. He was with my kommando and received German supplies. One day before Christmas 20 trucks appeared at my agency in Rostov with the mission from the Reichsfuehrer to go to the Museum in Novotscherkask and transport it to Western Russia. Since this was the Don Cossack Museum, which was considered a sacred national symbol by the Don Cossaks, I sent a teletype to the Reichsfuehrer SS where I spoke of a positive cultural cooperation with the Don Cossacks and I asked that this be reconsidered. The instruction came down that the Museum was to remain in Novotscherkask. Then there were reports about the existence factories, about mines, food supplies, and about the ability to carry on with these factories, and also about hospital and medical facilities.

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A. .......and then Prof. Brandt gave me the mission .....

Q. The details are not interesting, witness. This is sufficient. Just proceed.

A. -- Reports about agriculture, about institutions, about rubber plants, then the food situation among the civilian population; as an example I might give, that after a conference with me the Army decided not to forbid the black market in Rostov, since through it more food got into the city than if the German troops had attempted to bring food to Rostov on their vehicles. All these things I had to deal with, since the actual SD export of the kommando, that is, the Chief III was in close collaboration with the garrison headquarters and was occupied almost exclusively with the building of a theatre with Russian Forces for the troops and he was very successful in this.

Q. Witness, I would like to get one other thing. I interrupted you when you spoke about the mission of Professor Brandt and I gave the impression that I wanted to keep something away from the court. Please describe this matter briefly since this mission was completely harmless.

A. As far as the mission of Professor Brandt is concerned, the following is to be said here. Under the Russians here was an institute in Rostov for studying the plague. This institute had sub-departments down as far as the Kaukasus. It was in the interest of the health of the German Army to restors and resume the activity of this plague institute. Thus, I was given the mission to get all material about this plague institute, above all to find out Where these sub-departments were and to find out where the workers of these departments were and to win them over for this Work.

Q. This suffices. Witness, did you do anything for Paul Hennicke of the SS and Police Leaders who was to be appointed?

A. The leader Hennicke was not yet in service. Therefore he was there as a private citizen. I helped him in all matters in order to make him find his way into the work and into the life of this area, what work had already been done about this area, and I gave him the material for his own information.

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Furthermore, he used me as a guide for all enterprises which were connected with installing his own office and he used me as an impartial witness during conferences which he had with Army generals when they visited him or when he visited them.

Q. This suffices.

A. May I add that, since we were pretty far apart in the city, he had his own telephone line.

Q. Witness, what general military situation did you find in Rostov?

A. I already said that the activity of the Einsatzkommando was restricted to the area of the Army Croup Don. This Army Croup consisted of a German Army under Field Marshal Paulus with the objective of Stalingrad and of Romanian Armies at both flanks. Through the flight of these Roumanian Armies a very serious situation arose, which has been designated by the name Stalingrad. The desparate struggle for this city threw its shadow on the Army Croup Don and also on the activity of the kommando. Rostov became more and more the next objective of the Red Army. Even during the struggle for Stalingrad small units of Red Army people advanced toward Rostov, As early as in December they tried in the north and in the south, by tank attacks to regain the city by sudden attacks. The military situation, especially after the fall of Stalingrad was very bad and very serious. At the time we counted on an all-out defense of Rostov.

Q. Witness, was there any reason that in your district proceedings had to be carried on to a large extent against members of the civilian population who had violated orders?

A. Whether this was the case, I do not know, but it is true that this desperate situation encouraged the illegal activity of all Bolschevists and therefore this made many proceedings necessary. Through the disorderly and undiscuplined flight of the Rumanian unrest and confusion arose everywhere in the Army area. Attacks, plundering, looting and rape were common, namely through the fleeing marauding Rumanians.

Therefore it was very easy for the underground agitators to win the population over for crimes against the German Army on whose account the Rumanian Army had come. Much more acute was the danger that the civilian population was taking possession of the arms which had been thrown away by the Rumanians. One could find guns which had been abandoned in hedges. The Rumanians even sold their arms for food and tobacco and liquor, not only to the German soldiers, but as has been proven to the Russian forces. Finally, this whole area around Rostov did not actually belong any more to the Ukraine, but here Asia became noticeable with its brutality and ruthlessness unimaginable to the Western mind.

German troops, wounded ones and prisoners found terrible examples of this, as they became eveident through the two-fold occupation of Rostov. Investigations of the Russian auxiliary police have shown innumerable cases, since the civilian population after the Russians recaptured Rostov in 1941 not only killed German prisoners of war but mistreated German wounded people who were being cared for in Russian or Rumanian homes and killed these together with those families in a most brutal manner.

One did not even leave the German soldier at rest after he was in his grave. One excavated German graves and tore apart the bodies and chopped them to pieces and threw them away. BY THE PRESIDENT:

Q. Witness, do you know this of your own personal knowledge?

A. I just wanted to say I read this expressly in the interrogation report which was submitted to me.

Q. When?

A. At the time when I was there. The case was investigated by the Kommando.

Q. Very well.

A. As an eye witness reported to me -- in another case the Russians dragged a German officer who had been captured to death. They hit him on the chin and chained him to a car which drove so long until the officer was dead. But the most terrible which I experienced was the following, that is, I heard it from eye-witnesses who saw it. It is well-known that the Russians buried prisoners up to the head so that they could not flee. When the Germans advanced toward Rostov a German soldier was found who had been buried up to his head. He was shouting with all his powers. They called back to him that help would come. He could not answer back, he could merely shout so that he was foaming at the mouth. They excavated him while he was shouting and raging. They found the following, the soldier had been covered by blankets. When the blankets were removed one found that a steel helmet had been tied to his body and under the helmet there was a living rat which had eaten its way into the body of the soldier.

BY DR. BERGOLD:

Q. This case was also being investigated?

A. No. This was a report from eye witnesses---German eyewitnesses.

Q. I now come to your affidavit which is in Volume 1, that is, it is the fifth to the last, Document No. 4314, Exhibit 29, page 111 in the English. You speak in this affidavit of the fact that in your commando two or three thousand executions were carfied out. Can you recall that you said this, and is this number correct?

A. The figure which I give in my affidavit is meaningless since I cannot give such a figure to the best of my knowledge. It came to be given in the following manner. During an interrogation under oath at the camp Eselheide near Paderborn in the British Zone by an American interrogation officer I was requested by the interrogator to give the figure of those who were executed by the BK 6 during my time. Since I did not know it, and since I was not skillful at making an estimate, I told the interrogator that I could not even give him an estimate. The interrogator would not let go. Finally, he said it would not have to be so exact, a thousand more or less did not matter, thus he gave me the cue, and I said "Two to three thousand". That is how this number came to be put in the affidavit shich wasmade out at Eselheide. During my interrogation here at Nurnberg I had the same figure put in, even though I knew that this figure had just been given ny me arbitrarily. But since I saw that certain other statements were not exactly correct anyway, and since the interrogator, when I pointed this out to him, answered me that I would get an opportunity to make additional statements, I did not want to argue with him any more, but I wanted to correct this matter at the occasion which was promised to me. If I am now asked how high the figure of those executed by EK 6 during my time was, I can say truthfully that I do not know this figure.

BY THE PRESIDENT:

Q? Excuse me, Dr. Bergold. You say that the interrogator indicated that even if you erred to the extent of 1,000 that it didn't matter, and then upon that declaration you estimated the deaths to have been from 2,000 to 3,000 is that correct?

A. No, not quite.

Q. No, no. I am merely repeating -- I am trying to repeat what you said -- is that what you told us?

A. I did not say that.

Q. Well, then please repeat just what the interrogator told you.

A. The interrogator wanted to know the figure. I told him, "I do not know the figure". The officer said I should estimate the figure. I said, "I cannot." Then he said, "Well, it doesn't have to be so exact; I don't care whether it is a thousand more or less. Whether you can give it exactly by the thousand I don't care", and when I heard t the word "thousand", I said, "Well, just two or three thousand."

Q. Well, he said it didn't matter if it was incorrect by a thousand more or less?

A. Yes.

Q. Well, let us suppose that these figures are wrong to the extent of 1,000 as the interrogator suggested, it wouldn't matter if it was wrong to 1,000, would you then say that your estimate would be, allowing for all those errors, one to two thousand instead of 2,000 to 3,000?

A. I cannot say, Your Honor at this time, as I already explained it. I do not know the figure, and I only finally was persuaded to give it because he did not seem to bother about the figure, because I told him that the cases were all investigated, so that I personally did not exactly care about the number, and now I let him persuade me when he said"two or three thousand" without thinking much about it.

Q. Well, he said, "Give us an estimate", you said, "I cannot give you an estimate", he said, "Well, even if you make a mistake as high as 1,000, it still will not matter", "now give us your estimate" and then you said "two to three thousand"?

A. Yes, I just said that impulsively.

Q. So you allowed yourself a margin of error of 1,000 in accordance with his suggestion?

A. No. It isn't to be taken this literally. If he says, "Don't worry about a thousand more or less," this means, "Well, just give me any figure, it doesn't matter, a thousand more or less."

Q. Well, that is what you have now told us two or three times, that he said that if you made a mistake by a thousand it wouldn't matter, and that you gave your estimate?

A. Yes.

Q. Your estimate as you gave it that day would be within a thousand of being correct?

A. I cannot give any information about this because I do not know the figure, and any estimate would be wrong.

Q. Well, then you do not know how many were executed?

A. No.

Q. And you allowed this interrogator to persuade you to give some kind of an estimate?

A. Yes, that is correct.

Q. How, these executions occurred in 1941?

A. 1942 - 1943.

Q. Very well. So that four to five years have passed since then. Can you give us an estimate today how many were executed during the nine months that you were in Russia?

A. I was only four months in Rostov. Afterwards, I was in Taganrog and no more executions took place there.

Q. Well, all right. Then within those four months how many executions occurred?

A. I do not know since I never saw them -- I never saw the f figure.

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As I have explained, I did not bother about these matters because Brigadier General Thomas gave me Sturmbannfuehrer Nehring just for this purpose.

Q. Well, can you give us some figure of the number that you know of your own personal knowledge were executed?

A. I know of none of my own knowledge, your Honor.

Q. Can you give us a figure of the number that you know were executed -- any figure that you know of your own personal knowledge were executed?

A. Then it could only be that figure which was executed during those two executions.

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Q. And how many were they?

A. I don't know this number exactly, either, the first time during the gas executions it was one vanful. The gasvan then was fully occupied. What the capacity of the van is I don't know, but I think 40 or 50; and during the shooting -- at the most 15 persons.....

Q. Well, just a moment. Let's take care of the gasvan, please. Now, you say there were 40 to 50 people in the gasvan?

A. Yes.

Q. And you stand on that figure?

A. Yes.

Q. Why is it in your affidavit you said "50 to 60"?

A. It could have been 50 to 60. I don't know the capacity, I just thought it was higher then.

Q. Ten, more or less didn't make much difference to you?

A. I had no insight into these matters, I heard here......

Q. Well, you had eyesight, didn't you?

A. Yes, but I didn't count them,

Q. Well, you looked at them?

A. Yes, I saw them, but didn't count them. I only know approximately what the capacity of this gas-van is.

Q. Well then you saw the bodies -- it wasn't the capacity, you say the bodies?

A. Yes. I saw the bodies but I didn't count them.

Q. When you made your report to Thomas on your reaction to the execution, did you tell him how many were executed in the van?

A. No, I did not.

Q. It didn't occur to you in a report of an execution to tell your superior how many were executed?

A. No. That was not the point at issue. He merely wanted to know what my impression was of what I had seen, and how I felt about it.

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Q. Well, all right. You are making a report to your superior and you are telling him that you witnessed an execution by gas in a van. Wouldn't it be the most logical thing in the world to say, "in this gas van there were so many people?"

A. No. It was not an official report about the execution. I did give him a report about the execution, but I merely gave him a report about the impressions which I had in Rostov, that includes an execution.

Q. Now, you studied the corpses rather carefully, didn't you?

A. Yes. Not individually. The gas van was opened and I looked into it in order to look at the condition inside, and when I did that I saw what I have already explained.

Q. Well, you looked at their faces, didn't you?

A. Yes, I did.

Q. And you looked at most of the faces, didn't you?

A. I cannot say.

Q. Well, you looked at the majority, didn't you?

A. No.

Q. Well, then, how could you give a report on the appearance of the faces if you didn't look at the larger number of the faces?

A. Your Honor, what I saw is that these faces had a completely peaceful expression.

Q. How many faces did you see of these 40 to 60 corpses?

A. Considering such an experience, the number does not make an impression, only what one sees.

Q. Well, what did you see, how many faces did you see?

A. I said I do not know the number. This was not important for me. It was merely an impression which I had to report.

Q. Well, but you cannot get an impression of faces unless you look at the faces. You described the appearance of the faces in your statement here. Now, you had to see some faces. How many faces did you see?

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A. If I look into the van I see the people lying in the van. They were still sitting, in face, part of them, and this impression which I gleaned from this was the one that, in their position and in their expression they looked peaceful.

Q. Well, all right. You saw their expression,-- facial expressions. Now, how many did you see?

A. I do not know. I only saw a general impression.

Q. Yes. You cannot tell us how many faces you actually saw?

A. No.

Q. So that if you only saw some of the faces, it is very possible that the faces which you did not see carried the distorted expressions and carried expressions indicative of great pain? That is possible, isn't it?

A. Whether this is possible, I cannot judge.

Q. Well, now let's be logival about it. There are 60 people in the van, and let us say that you see about 10 faces, and on the expressions which you witness you find complacency, peace, and tranquility. Now, it is within the realm of possibility that on the faces of the other 50 you will find registered terror, pain, and great suffering. That is possible, isn't it?

A. It would be strange that I just happened to see those faces which looked peaceful. It was an average which I saw, and this had the effect which I described.

Q. Very well, all right. And you cannot give us any better estimate than what you gave of the number in the van?

A. That is right.

Q. Very well. Now, hour many were shot in the execution which you witnessed.

A. Fifteen men, approximately.

Q. Yes. All right, then 15 added to 50, taking the average, would give you 65 executions. Now, you personally know there were 65 people killed by your commando?

A. Yes, I saw that.

Q. Yes. Now, you made up reports right along, didn't you, to send to the Einsatzgruppe headquarters?

A. Yes, reports were made out.

Q. Yes, and didn't these reports carry the number of executions?

A. I assume so, but I do not know since these reports were made out by Nehring.

Q. Well, did you see the reports before they were sent in?

A. No, I did not. Department 4 was in charge of Nehring and he had to do it himself.

Q. And you did not see these reports?

A. No.

Q. If Thomas were to ask you at that time, at the determination of your encumbancy as to how many executions had taken place, you would not be able to give him any figure?

A. No, I could not have given him a figure.

Q. So that after four months of activity at Rostov you left not knowing how many people were killed by your kommando?

A. That is correct.

Q. Yes, but you do know, however, that every person killed had had a trial and his case had been investigated?

A. That was the general directive in the kommando.

Q. Do you know whether every person executed had had the opportunity to explain his case?

A. As far as I know, every individual was interrogated and was heard.

Q. Do you know as a matter of fact, as the head of the kommando that there was an investigation in each case which resulted in an execution?

A. In every case not, because I did not see every case.

Q. Well, then, there were people executed by your kommando that you knew nothing about?

A. The most of them, because this was not my mission. Brigadier General Thomas took this job away from no expressly.

Q. Yes, all right. How many cases do you know of which were investigated?

A. I do not know any. I can't say anything about it.

Q. Well, yes, you can say something about. You are here on trial, and you will say something about it. You said that the interrogator was demanding that you give an estimate of the number killed you said, "I am not interested in that because each case was investigated."

A. No, I said, "I do not know, I do not know the figure, and I cannot know it because I did not work on these matters."

Q. Did you not tell tills Tribunal during the last hald hour that when the interrogator questioned you as to the number who were executed, you replied that you did not know the figure, you were not interested because there was an investigation of each case of death anyway, did you say that?

A. Yes, yes, that is how it was ordered for the kommando.

Q. Then every case was investigated, wasn't it?

A. As far as I know, yes, for I did not investigate it myself.

Q. As the man in charge of the kommando, did you order that there would be an investigation before a person was killed?

A. No. I already said that all these directives already existed when I arrived at the komnando; they had all been ordered by my predecessor, by the lawyer, Regierungsrat Moor.

Q. Did you carry out that order that there should be an investigation of each case before an execution?

A. I said that this was to be continued in the old manner in which Moor had started.

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Q. Then you reaffirmed the order?

A. Yes.

Q. Then you know that investigations took place?

A. Yes, I said that.

THE PRESIDENT: Well, now, between now and 1:45, we will give you time to recollect how many cases were investigated. The Tribunal will be in recess until 1:45.

( A recess was taken until 1335 hours.)

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(The hearing reconvened at 1345 hours, 21 November 1947)

THE MARSHAL: The Tirbunal is again in session.

DR. KOBELT for von Radetsky: Your Honor, I ask for your permission that the defendant von Radetsky be excused coming Monday 24 November from the morning and afternoon sessions.

THE PRESIDENT: The defendant von Radetsky will be excused from attendance in Court next Monday all day. BY THE PRESIDENT: to you. Now let it be known beforehand that you are not required to answer that question or any question which is put to you if you do not desire to do so. No one is compelled to answer. No defendant is required to take the stand if he prefers not to but once a defendant goes onto the stand voluntarily and makes certain statements it inevitably follows that those statements will be scrutinized and if a statement is made which challenges common observation or logic or rules of cause and effect then inquiry will be made. So these questions which are put to you are only for the purpose of ascertaining the truth but we repeat that you are not compelled to answer them if you do not desire to. If you do not answer a question when the discussion has reached a point where the answer would considerably illuminate such matter then whatever inferences might naturally follow will, of course, have to follow. Now, you were asked just before the recess how many investigations were made of cases prior to execution. The reason that question was put is that in your affidavit you stated that during your time of office as commander of Einsatzkommando 6, between September 1942 and June 1943, there had been some 2000 to 3000 executions performed in the area of your Einsatzkommando. Asked about this this morning you said that you told the interrogator this number because apparently he did not insist upon precision and, therefore, you gave him this number. And you added, also, that it didn't matter how many were executed because there was an investigation in each case.

So now you are asked, since you yourself said there was an investigation in each case, how many cases were there? not only in this noon recess, and even now I can only say one thing I do not know the figure. I do not intend to refuse to make an answer but I want to testify everything that helps to point out the truth but if I am to state a figure here it is not the truth in any case because I simply do not know the figure. you were the commander, you were the leader, the commanding officer, a certain number of men in the field to insure security to the German troops, that although you were involved in an action which was bound to result in death, and although as commanding officer you were bound to know that reports were made on some of these deaths at any rate. In spite of all that you do not know how many executions there were. Now you are willing to let the record remain that way? mate number? THE PRESIDENT: You may proceed, Dr. Bergold. BY DR. BERGOLD: made. The way I understood it you explained that in every case an investigation took place and you explained that it was ordered by Herr Mohr, your predecessor, who was a trained lawyer, and that you kept up this order and continued with it. I now ask you how do you know that this order was carried out.

a proper investigation had been taking place. carry out your orders and disobeyed and deceived you? personal impression I had of them was that if they tried to deceive me any one working in the Einsatzkommando did not notice it or any other irregularities among them.

THE PRESIDENT: Dr. Bergold, please develop that point. It isn't clear just what that answer was. He said that - at least we got it that if the men tried to deceive him - is that what he said?

DR. BERGOLD: Whether he convinced himself that nobody deceived him in such a manner.

THE PRESIDENT: It is not clear. Did the men deceive him or not?

DR. BERGOLD: No. It is my opinion, your Honor, that if when a leader of a Kommando has been given an order to a certain effect every now and then he had to convince himself whether the order is being carried out. I asked him if he did this and he said he made spot checks. I understand he did not check up on every case and I, therefore, asked him whether with respect to other activities he found that cause existed which proved that these people deceived him in some manner and allowed irregularities to occur and he told us he did not find any such things. That is the only manner in which a subordinate can check up on his people, that he was always watching them, and see whether they were carrying out orders. A superior can only make spot checks when he has such a large field to cover to find out if one is deceiving him.

THE PRESIDENT: The word is coming through that a subordinate would check. I don't know whether it is the interpreter or the lawyer who is saying that. Naturally what is meant is that a superior officer makes the check.

DR. BERGOLD: The officer has to check upon that. In this case, the defendant.

BY THE PRESIDENT: you?

Q And you were satisfied that they were very obedient soldiers? received?

Q Now did they themselves receive the Fuehrer-order?

Q Did you talk with the men?

AAbout this no. I could not, your Honor, because I did not know anything about it. unless you talked with them?

Q Well, did you talk with your men, that's the question? Fuehrer-order?

Q Did you talk with your men, that's the question?

Q Yes, and how long were you the leader of this Einsatzkommando? your men the question of executing Jews never came up once? Communist Functionaries?

A No. I only know one thing about this that somehow, even before my time, Thomas gave an order that Communist Functionaries were to be sent to Kiev for further investigation. I happen to remember that.

Functionaries?

A No. During my time that did not have to be, only in connection with the procedure.

shoot Communist Functionaries? Gypsies?

A Gypsies were never mentioned. I never saw Gypsies. made to shooting Asiatic inferiors? made which challenges the usual routine an inquiry naturally follows. Now, can you explain why it is that all the other defendants in this case knew of this order, or at least all those who have testified, have spoken, have made some reference to it. What mysterious process shielded you from this order? From even the knowledge of it? Can you offer an explanation?

Q Well, give it new. Just what mysterious process it was that took you apart, the commanding officer of an Einsatzkommando, and although every other Kommando leader and sub-Kommando leader, knew about the order to shoot Jews, that by some miracle you were saved from even the knowledge of this shocking order which you heard of for the first time when Ohlendorf took the stand in this very Courtroom. Can you give an observation, can you give an explanation as to what it was that protected you, one person out of all the others that were involved? anything certain about this but only possibilities that might explain this, the fact that in this territory there were hardly any Jews. Therefore, it was not necessary to give such an order. There just were no Jews and, therefore, one did not have to get this order. Apart from that from the very beginning I told Gruppenfuehrer Thomas that I wanted to leave, that I have been a clergyman.

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I told him that they could not expect me to carry out executions. All these are matters that are in line and which might have caused it. that you didn't conduct executions of Jews. We ore merely wondering why it is you didn't know about it. Now, were your sub-Kommando leaders all preachers, ministers, Lutheran ministers? with the men in that respect because I was not interested in this at all.

Q Now please answer the question. You were a Lutheran pastor, you were a minister of the Gospel, and you have explained to us that that may have been one reason why Thomas didn't ask you to execute Jews. Is that correct? That is what you told us. Gospel?

Q So, therefore, there would be no reason on Thomas' part to abstain from telling them about the execution of Jews would there on that basis?

A I said that I do not know the way Dr. Thomas thoughts. I only found that no Jews existed in that territory and, therefore, I drew the conclusion that order had no legal importance for that territory. you do tell us that some people were shot - you saw them being shot. Now, what nationality were they,who were they? investigated. That is possible.

Q Well, then there were Jews in that territory. You told us a little while ago there were no Jews.

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Q About how many Jews were there?

A That I don't know. beginning, that when you make a statement which is a challenge to common sense you must give an explanation. You say first there were no Jews. Then you indicate there must have been some Jews. Then we question you about that and you say some and now we question you about how many. If you say there were some you would have an idea about the number. Now, tell us how many Jews were in that territory?

A I cannot give any information about this. I do not know

Q You said there were some Jews. Now, what do you mean about some?

Q Well, not this morning. What do you mean by some?

Q Very well. What kind of people were shot? the Army territory Don.

Q You saw 65 people executed. Now, what kind of people were these 65?

A What people, you ask me?

Q Were any of them German? Were any of these 65 Germans?

A I don't think so.

Q All right then what were they?

Q Russian citizens. Now was there an investigation made in each one of these cases of these 65?

A I did not see the files of these 65 cases. I only know that men of the Kommando had received orders ever since the time of my predecessor to investigate the cases. investigated? These 65 deaths?

Q No. So, therefore, you permitted 65 people to go to their deaths without knowing yourself whether they were guilty or not?

Q Did you make any spot checks in these 65? to go to their deaths without even a spot check.

Q Yes. Now we come back to the original point about sub-Kommando leaders. In the ordinary course of events the sub-Kommando leaders would know about orders by the Fuehrer in connection with activities in that area, wouldn't they?

Q And you spoke with your sub-Kommando leaders from time to time? once did the question of the Fuehrer-order with regard to execution of Jews come up?

Q Very well. Take the witness, Dr. Bergold. BY DR. BERGOLD: your Kommando in general that you had been a clergyman for many years? your general attitude and opinions? me than with my predecessor.

Q Did people have to notice this?

generally known you were a clergyman? did not consider you a normal human being or did they consider you as good as anybody else?

A In general the clergymen, did not have a very good reputation. They were always afraid of the church which might stop people from putting in all the strength for tasks that might be demanded of them. BY THE PRESIDENT: in 1941 and 1942? with ones whole soul one remains for the rest of ones life.

Q But in 1935 you gave up your parish, didn't you?

Q All right, in 1938 you formally left the church?

Q You were in no way connected with the church after 1938 were you?

Q You left the church in 1938, didn't you? the church in 1938?

A If the term "clergyman" is understood as the word for a profession, as a main job, I no longer held that profession, but after all a clergyman is not tied down to practicing his profession in a certain manner. I trained for this profession and it will he part of me as long as I live.

Q But you severed all connection with the church. It is by being a member of a church and by preaching to the members of the church that you are a clergyman. You repudiated the church in 1938. How can you still claim to have been a clergyman in 1942? to the churches.

Q We are not speaking about religious life. In order to be a clergyman you must have a church, mustn't you? Ecclesia Invisibilis, a church which cannot be seen.

Q You were a clergyman of an invisible church? ready explained, to create a parish of my own, a community of my own.

Q Where do the members of this invisible church gather?

Q Where was this invisible church in Rostov in Russia? You were parading as a pastor there, asking certain privileges because you were a clergyman. Did you have an invisible church there?

A Your Honor, the matter is like this. If two people talk about religious problems and their beliefs, yes. Then these two form an invisible church.

Q That makes a church. Two people talking about religion makes a church. Now, did you have church services with your sub-kommando leaders and your commando members? tions from me on that subject which were valuable to him. At Christmas and on New Year's Eve I talked to my kommando in Rostov, and what I said on that occasion were not only masters dealing with outer matters, but inner matters which go deeply into the soul and the matters of the church and God. I know what kind of impression it made on my men. On Christmas Eve - in general I don't like to talk about this - Nehring came to me, took my hand, and said, "What you have learned, you have learned." What he was trying to say was, "You know how to deal with these things and can talk to people, in particular about these innermost things."

Q Did you have a religious service on Christmas?

Q That is a question. Now, answer it directly. Don't take us all the way to Russia. Just answer it directly, did you have a religious service in Russia on Christmas?

Q "Wherever there are two or three gathered together in my name, I shall be among then", says Jesus, and wherever people gather and talk about religious questions, that is a religious service.

Q Did you speak about the divinity of Christ on Christmas? your invisible church, every say to you, "I am in distress. I am being compelled to shoot people, and I have a struggle with my soul, and it is hard for me to do this. Can you assist me and give me comfort in this very difficult job which I have, to snuff out the lives of my fellowmen." Did anyone everyday anything like that to you? this. I mean, they knew what they did, that these judgments and these executions were done because these people were criminals, and had committed criminal acts.

Nothing unjust was requested of them,

Q Therefore it was a perfectly easy thing to shoot a man? soldier in the field does not find it easy to shoot the soldiers on the opponent's side. and night kill him unless he fired first, but in executions, you take the victim, you lead him up to a grave already dug, he looks into this hole in the gound, and he is shot in the back, so there is a great difference. There is a greater spiritual fortitude required on the part of the executor to do that kind of killing than there is to kill in the heat and the passion of battle. I think you recognize that. comfort and never once talked to you about executions. We will let it remain that way. Is that right? discussed in particular. with your men?

A I don't think so, no.

THE PRESIDENT: Dr. Bergold, will you please continue?

DIRECT EXAMINATION (Continued) BY DR. BERGOLD: deviated, so far, and talked about matters of the soul, this affidavit in which you stated that two to three thousand, executions were carried out by you. I now ask you, is the affidavit which was submitted to the Tribunal, is it correct in that form?

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A No. This affidavit does not contain a great number of important points which I made in the general interrogation, and according to my conviction, I think, Your Honors, in order to understand me correctly - for example, during my interrogation I discussed in detail, as I have done here, what procedure was kept to until the death sentence was carried out. happened before the affidavit was set up, you made the following statement?

DR. BERGOLD: Your Honor, a moment, please. May I add the following to this? I have seen and read the record of this interrogation of the defendant. I know that this was a mistake, and I want to read something out of this affidavit, and I want to ask him whether he said this. I quote.

MR. HORLICK-HOCHWALD: Just a moment, please. Dr. Bergold, of course, is at liberty to ask the witness questions. Dr. Bergold hasn't got the affidavit, and he himself admits he read it by mistake. I don't think it is proper that he reads something out of the affidavit. He may ask the witness whether he remembered that and that, having said that and that, and in any case the witness was interrogated. It is not so long ago. If it is so important the witness will certainly remember, and I do think it is only proper that the witness says what the witness remembers, not what Dr. her Bergold remembers.

THE PRESIDENT: Well, is Dr. Beregold -

DR. BERGOLD: Just a moment, may I say one thing? I think that the defense has the same right as the prosecution, and I have been active here as a defense counsel for sometime now, and I can remember a lot of cases when during the cross-examination the prosecution asked the defendants, "Witness, is it right that during the interrogation you said, this or that, yes or no?" And in all these questions this manner of questioning was allowed. It is, therefore, my opinion -

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THE PRESIDENT: We think in the first place, Dr. Bergold, your illustration is not a good one. I am not saying your point is not a mood one, but the illustration is very had because you are talking about cross-examination. This is direct examination. Anyhow, that point is out. Now, submit something else. That is not a proper illustration. That is cross-examination. You can cross-examine in the same way. How, give us your other reason.

DR. BERGOLD: A moment, Your Honor, please. Please tell me how one should do this? I am quite willing to receive some instruction, A person who has made a statement some months ago I want to ask him whether he has made it, because no one in the words has such a memory that he can verbally remember what he said during an interrogation several months ago, namely,in July, 1947.

THE PRESIDENT: The Tribunal is not yet aware of just what you are about to do, Dr. Bergold. Mr. Hochwald intervened, so we really don't know what you have here, and if you will let us know, of course, we will rule on it.

MR. HORLICK-HOCHWALD: If I may suggest, Your Honors, I had the impression from the question of the defense counsel for the Defendant Biberstein, that he wanted to put the answer of the witnessin the witness' month by quoting, that was something that was not in the document.

THE PRESIDENT: No, as I understood all that Dr. Bergold wanted to do was to read from the affidavit, and he certainly has the right to do this.

MR. HORLICK-HOCHWALD: I do think, Your Honors, that I understand probably I am mistaken - I did understand Dr. Bergold that way, that he wanted to quote something out of an interrogation which he read, an interrogation of the witness which he read which, however, is not in evidence, and which he admittingly read by mistake, by mistake of the prosecution, of course. So what he wants to do is to quote something which is not submitted in evidence and which is not before the Court.

THE PRESIDENT: Dr. Bergold -

DR. BERGOLD: One moment. May I add something? I, and I say this quite frankly, I want to prove here that this affidavit is not in order, Hey dear opponent already pointed this out yesterday in a letter, and he submitted, he agreed at the time I made the application, that this written record be submitted so that it can be proved that this affidavit is not in order. At the time the prosecution told me, no, we don't have to submit that, that is not the custom. But I have read the record and I know that things are contained in it which in my opinion should have been put into the affidavit, according to the principle which Lord Justice Lawrence announced in the IMT, namely that the Prosecution should order everything incriminating, as well as everything that is exonerating, heard. How I have no other way of doing this to prove the truth, that my statement is wrong. The prosecution told me that I should either withdraw my statement or prove it. I am just trying to prove it, but they make it impossible for me to prove it. I don't know what kind of method that is.

THE PRESIDENT: New, just a moment , Dr. Bergold. Here is an affidavit, and you want to attack this affidavit?

DR. BERGOLD: Yes.

THE PRESIDENT: All right, you question, the witness and you attack the affidavit. The witness is here. The witness certainly knows what are the facts and what are not the facts. Let the witness state what the facts are, not counsel.

DR. BERGOLD: Your Honor, may I point out one thing? My last question refers to the previous question. I asked him whether the affidavit was in order. He said, "No, for example the procedure was not recorded concerning the executions, although I explained it in detail." And now I wanted to show him these words which he said concerning this procedure during his interrogation, but it is impossible to do this verbally. Nobody can do that.

MR. HORLICK-HOCHWALD: If the Tribunal please, it is absolutely not necessary that the witness quote word by word what the witness said four months ago, but the witness certainly will know what the witness said four months ago, and, therefore, Dr. Bergold is at liberty to ask the witness what the witness knows, but Dr. Bergold is not at liberty to ask the witness what Dr. Bergold knows.

THE PRESIDENT: Dr. Bergold, suppose you and Mr. Hochwald have a conversation which lasts for two hours, and then after your conversation is ended you go into your office and prepare a statement which contains the salient features of the conversation. You go to Mr. Hochwald and say, "Mr, Hochwald, I would like to have a little record of what we talked about. You please read this. There is no use putting down all we said in two hours, because much is irrelevant, but these are the salient features. Now, please look at it. If you agree with it, all right; if you don't all right too." You look at it and Mr. Hochwald looks it over very carefully. Finally he says, "Yes, this contains the salient features," and he signs it.

DR. BERGOLD: Now-

THE PRESIDENT: Now, just a moment, Dr. Bergold. Then later on, you want to point out that there were other things said which are not in this document. Then you take the stand and you tell about the other things.

Now, that is the situation you have here. The witness was questioned for some time, and from what he said a paper was drawn up, and the paper was given to him to sign, and the paper very clearly indicates, "I have had the opportunity to make alterations and corrections in the above statement, and I make this declaration voluntarily without any promise of reward, and I was not subjected to any duress or threat whatsoever," Now, you have indicated that he wants to attack this, and he has every right in the world to attack it, not anybody else. Now, you ask him to point out wherein this affidavit is wrong, wherein it is incomplete, wherein he was compelled to make a statement against his wishes, wherein he was persuaded to say something which he did not agree with. The field is open, to him. There is no limit to what he can tell here from the witness stand, but it must be the witness,,

DR. BERGOLD: Your Honor, the example does not quite apply, because the witness said on one occasion already that he wanted to make corrections from the start, but too interrogator said he could do this later, and may I point out that Mr. Wartenberg, who was cross-examined by Dr. Ficht at my request, said it was possible, and he cannot deny it, that he told the witness that he could make corrections later on. That is shown in the record by the interrogation through Herr Wartenberg.

MR. HORLICK-HOCHWALD: As Dr. Bergold pointed out, there was a possibility to question Mr. Wartenberg on this particular subject. Dr. Bergold has another possibility, to question the witness on this subject, the two persons who were present. I do think that this should be completely sufficient to prove the point. There is no necessity to try to prove something which is not before the Tribunal, Your Honor, I only want to make for the record a statement as to the ruling of the IMT to which Dr. Bergold referred in his opening statement, and namely suggests the prosecution is compelled, Dr. Bergold said it was ruled before the International Military Tribunal that it should be the duty of the prosecution also to submit evidence which is favorable for the defendants, not only which implicates them.

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Mr. Justice Jackson has vigorously objected to this motion of Dr. Bergold. But as far as I remember the ruling of the International military Tribunal was only that if a document is submitted in evidence it should be submitted in full. I don't know that the International Military Tribunal ruled ever that the prosecution has to submit documents which are in favor of the defense or-

THE PRESIDENT: Mr. Hochwald, if the International Military Tribunal did not so declare, this Tribunal will declare that whatever the prosecution has which is favorable to the defense must be submitted. Nothing will be permitted not to be presented which will be of benefit to the defense.

MR. HORLICK-HOCHWALD: If your Honor please, I don't want to challenge this statement. I only wanted to explain here what the International Military Tribunal ruled, nothing else. I did not want-

THE PRESIDENT: Well, if the International Military Tribunal said that, this Tribunal overrules the International Military Tribunal because it is not in accordance with the principles of justice that either side may retain anything which may shed light on the issues before the court.

MR. HORLICK-HOCKWALD: If your Honor please, I only wanted to clarify. I had not the slightest wish to request a ruling from the Tribunal on that point. I only wanted to clarify the statement of Dr. Bergold, and I am absolutely sure that Dr. Bergold agrees with me the procedure before the IMT. Is that correct?

THE PRESIDENT: We won't debate now what took place before the IMT. The IMT--It seems I am having trouble with the interpreters here. I will state a little more slowly so I won't get into trouble with my friends in the cage, that whatever evidence is available which will shed light on this most serious issue which we must decide must be presented. Now, so far as the present situation is concerned, Dr. Bergold, I would recommend to you that at least for the moment you question the witness and have him point out wherein the affidavit does not represent what he said or corresponds with the facts.

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Have him point out where it does not go far enough, Point out where it is in error. Point out where he would *** add to it, and then he can also say, "I told this to the interrogator; he didn't put it in the affidavit." Everything.

DR. BERGOLD: Very well, your Honor, I shall try, but as far as I was informed, my client was interrogated for a very long time. He cannot remember all of that, the defense, all concerning that. I dad not want him to talk for too long, but I will ask him now.

Q (By Dr. Bergold) Herr Biberstein, can you tell me what is not contained in the affidavit and what seems important to you? in this affidavit, which was made in Nurnberg, it is not contained that the executees who were executed, by Einsatzkommando VI were cases where a crime had been committed and which had been dealt with in the proper manner, Because this is missing it gives the impression several of these executions would have been made arbitrarily. In my affidavit of Esel-Heide, this point is still contained, and I pointed out when the affidavit was made, and I referred to this affidavit in Esel Heide, and there I was told, "Yes, we know that," but as I said, it is not recorded and that is what I objected to, and then I said told, "Well, you can do that later on." But because this was missing, I was rather confused because I always told myself, "This will give the wrong impression," and that is how I explained to myself that some other points might have been overlooked but not completely. That is the point which states that one execution was carried out under my supervision. This word "supervision" I did not notice, I overlooked it. This is the execution which I witnessed.

THE PRESIDENT: Just a moment until we find that place in the affidavit, Will you point it out, Dr. Bergold?

DR. BERGOLD: Yes. It is on Page 2 of the original, Page 112, the first sentence on the top after the sentence with the 2,000 to 3,000 executions. There it says, "I personally superintended an execution in Rostov which was performed by means of a gas truck:"

THE PRESIDENT: Well now, you want to change that?

DR. BERGOLD: Yes, the defendant says that he did not express himself in that manner, and that he overlooked it because he was excited that so much had not been recorded, BY THE PRESIDENT:

Q Tell us just how you would word that? In order to have it correct, suppose that as you were reading the affidavit you noticed that this was in error, and you wanted to correct it. Just how would you state it instead of the phrase, "I personally superintended an execution"? Just how would you say that? Show him the affidavit, Dr. Bergold so that he can make the correction right here. Let him have the affidavit. Does he have the affidavit?

A No, I don't have it. As I already said during my interrogation at the time I asked Chief IV at the time to show me an execution by means of the gas van. I took part in this in order to gain an impression about this manner of execution. This was Chief of Department IV.

Q Well now, you have used the phrase, "I took part in this ,"

Q Then your correction is you did not superintend it; you merely witnessed it?

Q So that if we change for the word "superintended" the word "witnessed" then that would correctly express your thought, would it?

Q The correction will be made. Are there any other errors or incomplete statements?

MR. WALTON: May it please the Tribunal, I would like to ask, for a point of information, if Your Honor's order, nunc pro tunc, for making these changes it stops the Prosecution, in their rebuttal, from putting in evidence as to the original form of the affidavit.

THE PRESIDENT: No. What eve are doing here is allowing the witness to tell the story as it occurred. There is no order being made at all, Your exhibit which you have presented is an exhibit, and naturally it remains as you presented it.

MR. WALTON: Yes.

THE PRESIDENT: But now, for the information of the Tribunal, we are having the witness indicate wherein he declares that an error was made.

MR. WALTON: That is all I wanted to know, sir.

THE PRESIDENT: That is right. BY THE PRESIDENT: the number of executions.

A No, not about the figure as such. I did not discuss this with the prosecutor at the time here in Nuernberg, but I had intended to do that later on, which he said I could. However, I would like to have added that these executions were done according to a proper procedure, owing to a certain activity of the person concerned, That is, the person was not shot arbitrarily, but after a carefully detailed examination That is not expressed here. the affidavit regarding the executions that in each instance, before the man was shot, there was an investigation to determine his guilt?

Q Are there any other corrections you desire to make? that the Einsatzkommando had a surplus of 100,000 marks derived from people to be executed. It states, and I quote: "This amount originated from the people who were to be executed, who had to hand over their money and valuables."

This sum of 100,000 marks came about like this. In August or September. 1943, when I was in Germany, my bookkeeper at that time, who kept books in Berlin, visited me because certain papers had to be signed by me, which I had not yet signed. On that occasion he told me that the money affairs and his settlement were in order, and that there was surprise in Berlin that he had a surplus because this, did not occur in other Commandos, On that occasion he named a figure to me, which I remember was 100,000 marks. I only happened to hear about this, but did not see it. necessary to ascertain this. Nor did I ever say that in this 100,000 marks certain amounts were included which, as I explained this morning, were used for the benefit of the Reich and were confiscated by the Reich from the people who were condemned to death and executed. further information insofar as I ordered, for example, that the black cash register which existed in the Commando be dissolved. That was done by me because it was not permissible for legal funds. This money was then put into the cash register of the entire Commando. I do not know where these funds originated; I found them there.

A Please? to you by the bookkeeper.

Q Yes. Now, was there actually that much money available? Did that much money exist?

A I don't know in detail, but I presume so.

Q All right. Now, where did this money come from?

A I just explained that. It could only have come because, on the one hand, we were very economical, and, on the other hand, because of that illegal fund which was kept in the Commando. This was a fund which was unofficial, which was kept separately. executed?

A I do not know about the origin of this illegal fund; I don't know where it came from. the money was derived from people to be executed? Did you say that to him?

Q Oh, I see. Some of the 100,000 marks represented money taken from people to be executed?

Q You don't know how much of that?

A No, that I can't say.

A Very well; we will make that correction ourselves. All right, any other correction?

A Yes. The decisive point of the whole matter is what I explained in detail today concerning my entire attitude and position within the Commando:

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Brigadefuehrer Thomas obliged me by the fact that he sent Sturmbannfuehrer Nehring to help me, to deal with all these questions which had to do with the security of the army territory. For me, this seems to be very important, and this is missing completely.

Q Any other observations on the affidavit?

A Well, at the moment I can't see anything.

Q Well now, we have two affidavits. You are, of course, referring to the one of July 2, 1947.

Q Then there is the one dated 25 June. Do you want to offer any comments on that?

A In Esclheide? from my document book, yes.

Q That is correct. You are not making any observations on this? affidavit: When I was in Esclheide and was interrogated there for the first time, a member of the American Army approached me, and I had full confidence in him at that time. May I point out that before signing this affidavit I did not read it because I had left my glasses in the cell. However, he pointed out to me that that might cause difficulties, but I said that I trusted him blindly because I had a member of the American Army in front of me, and therefore I was not afraid. Up until that time I had not seen the affidavit again. I only have some vague memories about it, but I know that something is contained in this affidavit about the Jews, as I stated, today.

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These matters are not contained in the Nuernberg affidavit. therefore I cannot pass judgment on this from memory.

THE PRESIDENT: Dr. Bergold, suppose he looks at it during the recess, and then looks at both affidavits. And then, when we reconvene in 15 minutes, let him give us a complete up-to-date account of what the affidavit should have said.

( A recess was taken.)

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THE MARSHAL: Please take your seats. The Tribunal is again in session.

THE PRESIDENT: You may continue, Dr. Bergold

DR. BERGOLD: Yes. BY DR BERGOLD: davit?

A First of all the affidavit of Nurnberg. Here I would like to say that on page -- I think page one of the originals. it says, "The people destined for execution after their money, valuables, and sometimes even clothing was taken away from them," End of quote. In my interrogation I have already said that money and valuables customarily were taken away as soon as the persons ware brought into prison, and not only when the execution took place. Furthermore, it said, sometimes clothing, too. The word "sometimes" may give an erroneous impression insofar as the talking "way of clothing happened in individual cases, if a piece of clothing was needed for other prisoners, where was no definite system for this and there was no definite order to take away the clothing from these people, Concerning the fact given, here, that during execution by gas-van, it says, a few lines farther, "There was no physician present when the bodies were unloaded to certify that the people were really dead." One would have to add that this typo of gas execution guaranteed certain death, and, therefore, a special examination was not necessary. Furthermore, on point five at the end of the paragraph, it says: "In this type of execution no physician was present either." Sofar as I recall I said that in the individual case it was determined whether the person concerned was dead.

THE PRESIDENT: Without any reference to a physician, you didn't mention it, do I understand that what you told the interrogator there, in the individual cases it was determined that the victim was dead but you said nothing about a physician.

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Is that what I understand. I just want to find out what you said?

THE PRESIDENT: I understand that. Now you are commenting on paragraph 5, and it is not clear to me--

THE PRESIDENT: Just what change you desire to make in the statement in the affidavit about the physician, that is not clear? cution no physician, was present either. The sentence would have to continue, but in every case it was determined whether the persons concerned were dead, not through a physician, to be sure, but at most by the medical non-commissioned officer. About the affidavit made out at Eselheide, I only have one thing to say. That near the end it says, "I didn't find Jews in Rostov any more." It looks as if I knew something about their presence. I might have said, "I didn't find any Jews in Rostov." By this I mean as I have already said today, I saw no Jewish settlement. The word "more" gives a wrong impression. BY DR. BERGOLD:

Q Is this all that you have to say about this?

DR. BERGOLD: Your Honor, may I now ask the following. As for the ruling which the Tribunal made before, about presenting all exonerating material, I understood that the Prosecution was asked to submit the interrogation transcript.

MR. HOCHWALD: If the Tribunal please, if I am not mistaken, I don't think Dr. Bergold will agree with me on that, Dr. Bergold me de application.

DR. BERGOLD: Yes.

MR. HOCHWALD: For this interrogation record, the Prosecution has answered the application of Dr. Bergold.

DR. BERGOLD: Yes.

MR. HOCHWALD: And he is in possession of an order of the court saying that interrogation transcript must not be submitted by the Prosecution. Moreover, the Prosecution intends to use this transcript at a later time.

DR. BERGOLD: I thank the Prosecution. BY DR BERGOLD:

Q Witness, now I come to your testimony itself. In this affidavit, it says that you made your testimony voluntarily. Would you also like to maintain this statement, or would you like to change it?

A I didn't make this testimony voluntarily.

Q Why. What reasons could you give for this?

Q What were you told after you took the oath?

A I was told; you know that it is considered just as serious an offense to omit something from your testimony than if you give some false statement under oath.

Q What conclusions did you draw from this statement? I was asked about. would incriminate you personally? served to you?

A No, I was not told that. The manner of the interrogation gave me the impression that I was to be examined as a witness.

DR. BERGOLD: Thank you. Mr. Hochwald, yesterday, we had a disagreement about the fact that you reproached me on the fact I had made slanderous remarks about the Prosecution, and that I had no proof for it.

May I now point out to you. Mr Hochwald, that in my opening speech I listed three points in which I criticised your procedure. These were briefly the following three points: First, that something had been omitted which was exonerating; secondly, one had told the defendant that he could correct his affidavit later on; and thirdly, that he was not told that he could refuse testimony. In reference to the last mentioned point, Mr Wartenberg admitted during his interrogation that he didn't explain this to the defendant. I would like to say one thing now. I have great esteem for the Prosecution, but I believe that it would be democratic to be allowed to exercise criticism for this thing which is not supposed to be a slander. Criticism is the duty of a lawyer, and I would like to interpret the democratic right, as a son of autocratic Germany, different to the Prosecution, or, perhaps I have too high an opinion of Democracy, but I did only want to criticise, and I didn't want to make any slanderous remark, and, I hope that Mr Hochwald is now convinced I don't want to slander the Prosecution, but merely want to criticize it.

MR HOCHWALD: If Your Honors please, criticism on the part of Dr Bergold is, of course, invited also from the part of the Prosecution, wherever he is in a position to criticize our way of procedure, he certainly is at liberty to do so, and, nobody will object, nor say at least that the Prosecution will try to stop him of that. The only objection is against the form and not against the facts, so I think then that Dr Bergold should not hesitate to say that the form was a little bit too sharp.

THE PRESIDENT: Very well.

DR. BERGOLD: Mr Hochwald, if one fights one has to use strong weapons, that is the battle order, this is not a cozy conversation or a bridge game, but it concerns life and death, and it is a very serious matter, and, therefore, I have to be harsh because I want to save the life of my client, and, in view of this serious background one must be a little more harsh, but we agree and I am glad that this misunderstanding has been clarified.

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THE PRESIDENT: Very well, the Tribunal shares your happiness in it. BY DR. BERGOLD: carried out the investigations, and the general penal procedure. Do you have any proof for the fact that the Russians considered this procedure as inhuman?

A No, on the contrary. First of all Russians usually first denounced the perpetrators; secondly, it was the Russian who did preliminary work on the case before submitting it to the commando; and, thirdly, the Russian civilian population was accustomed to something completely different in this respect, Through an interpreter I heard that the Russians, in view of the activity of the commando, had the following to say: "Germany will never win the war since the Germans are not harsh enough." These words male a deep impression on me at the time and disquited me. I often found out with deep concern how little value human life had for a Soviet Russian Citizen, and how easily he dealt with human life, but it is completely so that it is of no matter at all in this case whether he takes some one's life, or whether he is to give his own life.

Q Witness, let's now leave Russia at last. When did you make your application for transfer from your commando? made this application on 9 November 1942. I made this in duplicate, one going to Brigadier General Thomas personally, and the other to the RSHA. Attention Gruppenfuehrer Streckenbach.

Q Did you know that no such application was allowed to be made?

A No, I didn't know this. My case was different anyway, since I could refer to the agreement with Heydrich, and which I had already presented as documentary evidence for Berlin.

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Furthermore, I had spoken to the Obersturmbannfuehrer Trautmann in Berlin, and also with the Einsatzgruppen Chief, Dr. Thomas.

Q When did you get an answer to your application? returned to Russia after a leave.

Q How did this answer say?

A It contained only three sentences. It read approximately as follows: As concerns your application of 9 November 1942, I release you from the Security Police, and I have got in touch with the Reich Ministry of Interior about your employment in the Interior Administration. After your return will you please report immediately to the Reich Ministry of Interior.

Q Who signed this? Office-I.

Q What date did it bear?

Q Then it was a long time until this reached you. How do you explain that? communications, such letters unfortunately were often delayed in Russia.

Q Until when were you in Rostov? Army, I had to evacuate the city. Rostov? had actually been completed. On order of the Army, the supply column of the commando was moved back into the rear area, that is, into an area where the civil administration was functioning. Only the staff with a few officials remained in Taganrog, in order to put itself at the disposal of the Division stationed in Tagenrog.

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The men of the commandos were at rest, and were recalled by Dr Thomas gradually for the purposes of partisan warfare around Kiev.

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Q Were you ever absent from EK 6 and when? 1943 there was a conference in Kiev. Afterwards I went on furlough for four weeks to Germany, and I extended this by having Thomas give me his approval from Kiev by teletype and permitting me to attend a conference in Berlin. Thus it came about that from the beginning of April 1943 until about the 20th or 22nd of May 1943 I was absent from Russia. May 1943 which is contained in Document Book III C, the third to the last, Document Number 2901, Exhibit 145, on page 70 of the English text. Do you recall this teletype message?

Q How do you understand this teletype message? to two other teletype messages which I had received from Kiev, These two messages referred to the recall of the commando from Taganrog into the partisan area. The first teletype message is a general announcement, and the second message is a direct order. It says in there that I was to subordinate myself to the commander at Rowno. I sent this teletype message to Kiev because at the time I already know that my recall was being kept in Berlin. I wanted to point out to the group that it, the group, could not subordinate me to the commander at Rowno since it, the group, could not take the commando away from me. I wanted to prevent my getting a new mission for it is a well-known fact that, if one comes into a new situation, it is sometimes difficult to get out of it again. Upon my teletype message 1 expected some information from Kiev that my order to lead EinsatzKommando 6 would be rescinded and that I could return to Germany.

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When I did not got any answer to this teletype message, I personally went to Kiev.

A In Kiev I was not received by Thomas. His adjutant told me that I should immediately put the commando into the partisan area as had been ordered, and now came the decisive thing for me, namely, for me to go to Germany via Kiev.

Q Did you carry out this order in this manner? not ready to proceed, therefore, I had to transport it by rail

Q You don't have to give us all the details. was very difficult under the conditions and could only be approved by the army transportation corps.

Q When did you leave the EK 6?

A On the 16th of June 1943. The train with the commando left for the partisan area where, while 1 went to Kiev by motorcar.

Q What happened in Kiev? with the group told me that Thomas had ordered him to start an investigation against me because of passive military disobedience. This message distressed me greatly, since I knew what kind of an attitude the SS and police court had about military disobedience. I was reproached that I did not move quickly enough. In the meantime, however, I heard that Thomas had reported, to the SS and police leader, that my commando was ready for action too early; since the commando then did not show up for that occasion, he was reprimanded.

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Q What punishment were you given then?

A I was glad that I got off easy. I was punished 12 days of house arrest because of passive military disobedience. I was told about this when I bid farewell to Thomas. He said that he attached importance to the fact that we should separate in a friendly manner. Therefore, he would permit me to leave immediately.

Q When did you return to Germany?

Q What did you do in Germany? the RSHA and to the Reich Minister of the Interior, as I had been instructed to do. Interior? the ministerial director. Kramer, who was mentioned to me in the RSHA as the expert about my transfer into the interior administration. From him I learned that it was intended to use me in the Civil Administration in Italy,

THE PRESIDENT: Dr. Bergold, the date came through as June 1942 when he returned to Germany. I presume it is 1943.

THE WITNESS: '43. BY DR. BERGOLD:

Q When did you get your order to report there? assignment end of February 1944. It told me to report to the Reich Commissioner in Klagenfurt to be employed in the German Civil Administration in the operational area of the Adriatic Coast down to Trieste.

Q Then you were an official in the Civil Administration?

in Trieste.

Q In what department were you active?

Q What was the mission of this department? subdepartment for black market affairs. This subdepartment for blank market affairs was the central organ of the Supreme Commissioner, which cooperated with all agencies dealing in black market affairs. That is, it had to make directives for all German and Italian agencies.

Q Until when were you in Trieste?

A Until the 29th of April 1945. On that day I left the city of Trieste with the last officials following orders and returned to Germany via Klagenfurt.

Q Now, I just have a few more questions. What position did you have in the SS? SS as an Untersturmfuehrer, and I was assigned to the SD main office in an honorary position. I never was an active SS man, that is, one who does his job in full capacity or in honorary capacity, but like many ministry officials, as an honorary, officer. I was a passive member of the SS, that is to say, I had the honor to be allowed to wear the SS uniform but I was no leader of a formation. I had no competence, and I had no other duties other than to behave myself decently as an SS man. On the 30th of January 1939 I was promoted for the last time to Sturmbannfuehrer. Thus I reached the rank which I could customarily reach as an honorary officer and a government councillor, namely, one rank below the rank of officials. Since I remained a government councillor, I was not promoted in the SS. As an honorary officer in the SS with the rank of a Sturmbannfuehrer, I was not an officer, that is, major in the sense of the army or the police because in 1940, even though I was SS Sturmbannfuehrer, I was drafted as a private in the army, and I was discharged as a noncommissioned officer, as an honorary officer.

Does that mean that you were an SD member?

A No. I did not belong to the SD because I had made no application for membership in the SD. Furthermore, in the spring of 1937 through the intervention of a government councillor Flesch, I had given an affidavit for Heydrich that I was not in the SD and had not been given any orders by Heydrich. And, finally, 1 did not do any work for the SD.

Q Were you a member of the Gestapo?

A I was not a member of the Gestapo. As a soldier in 1940, by an order of the army, without knowledge and without my will, I was drafted for war service and I was ordered to go to the chief of the security police and SD, and I was used by him provisionally for one year as a state police officer where in pointing out always my spiritual profession this type of work. Only after this provisional year if I had wanted to do so, the final acceptance of me in the Gestapo could have come about. This did not happen, rather on my application I left without any difficulties. Because of this war order -- because of this provisional war order, I was not given an equivalent rank as official to that in the SS, as this was customary in the police, that is, I was not promoted to Obersturmbannfuehrer as this would correspond to my rank as Senior Government Councillor.

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Therefore, I was transferred there as an auxiliary provisional war member and I was not a member of the Gestapo.

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Q. And now, the last. You have told me that you wanted to make a correction about the testimony when the President asked you whether you saw a report which mentioned executions. You informed me that you would like to make a statement about this. Please do so now.

A. This morning, Your Honor asked me for the number of people executed by the commando. I said in this connection when the reports were shown to me, as far as I remember, that these reports were made out by Nehring and not by me, that I therefore, saw no reports. It is absolutely possible that during this time I happened to sec a report in which a number was given for a certain period of time. I do not recall such a thing, but to be quite exact, I must point out to this possibility.

DR. BERGOLD: This concludes my direct examination. I would like to thank the Tribunal for their patience and their fairness with which they listened to this difficult case, and I also thank the prosecution that they were so patient.

THE PRESIDENT: Very well. Do any of the defense counsel desire to cross examine the witness?

DR. BELZER: Belzer for Graf. BY DR. BELZER:

Q. Witness, if you look straight ahead you see this diagram and you see under EK 6 your own name, Biberstein, and below it the name of Graf. I would like to ask you since when do you know the defendant, Matthias Graf?

A. I know the defendant, Matthias Graf, since my stay here in Nuernberg after the indictment was served.

Q. Thus you did not meet the defendant Matthias Graf, at Einsatzkommando 6 either in an official manner nor did you ever hear that name at the trial?

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A. During my time with the kommando I had no official contact with Graf. I had no contact whatever with him, but in the Kommando I heard the name of Graf somewhere in some connection.

Q. Did you hear anything of the name, Matthias Graf before you came to Nuernberg and outside of your service in Kommando 6?

A. No, but I add that I never heard the first name. At the time I heard something about a man named Graf but I heard the name, Matthias, I heard the first name for the first time when I was interrogated in

Eselheide. I was asked by the interrogator whether I knew a certain Matthias Graf, which I denied because it was the truth.

Q. I understand your answer to me that you do not know anything about a special mission which the defendant, Matthias Graf, had in October 1942 in Rostov and which he is alleged to have carried out there?

A. No, the interrogator asked me about such a special mission. I was not able to give him any information about it.

Q. Since you only got to know Graf here and did not know anything about him before in an official manner, I must submit to you two statements before I can ask my next question. According to his own statement, the highest rank of the defendant, Graf, during his membership in EK 6 was Oberscharfuehrer. According to his further statement, Herr Graf only was concerned with making out SD reports about Department III. I now ask you according to your official knowledge-

MR. HOCHWALD: If the Tribunal please, the defense counsel for the defendant, Graf, has questioned the witness now for several minutes and the witness has answered several times COURT II CASE IX that he did not know Graf, he had no knowledge about his position, and so on.

I do think this question which the defense counsel is just going to ask is not admissible. He said he did not know him, that is all he can say. I do not think that he can ask him whether he know that something was not said. He did not know anything; he heard the name of Graf, and nothing also, and I do think that that covers the ground the defense counsel is supposed to cover with this question.

THE PRESIDENT: Dr. Belzer, if somebody excludes all knowledge on a subject, then it is unnecessary to ask him if he is also ignorant of the little bite which fit into this all ignorance.

DR. BELZER: I am coming to the question, "Could Graf have been the Chief of Department III or was he only an expert?" That was the purpose of the question.

DR. HORLICK--HOCHWALD: But I do think, Your Honor, that this question is absolutely inadmissible.

THE PRESIDENT: If someone says he knows nothing about Abyssinia, then could you ask him, "Well, is it possible that Mr. X is the Chief of Police there?"

DR. BELZER: Not in this form, but I can put the question generally, "Could an Oberscharfuehrer be head of Department III?

THE PRESIDENT: Well, that's a different thing. Then you qualify this man as an expert in SS -

DR. BELZER: Yes, as a kommando leader, according to his official experience in the departments of EK. 6.

THE PRESIDENT: Yes, that would be proper, If you want to ask him whether someone with a certain rank could hold a certain position, yes, that's proper.

Q. (By Dr. Belzer) Then I ask you generally, Witness, could a Scharfuehrer or an Oberscharfuehrer in the Einsatzkommando 6 be the Chief of Department III?

A. From what I found in EK 6, the chiefs of the various departments in the staff of the Einsatzkommando were officers. The Chief of Department III was SS Obersturmfuehrer in my kommando.

Q. Then I have one final question. In Einsatzkommando 6, as far as you knew the conditions, were the Experts III used for police measures in Department IV?

A. No, for they had enough to do with their SD work, because partly they were not experienced men and therefore they needed a long time to get accustomed. I cannot remember such a case.

DR. BELZER: I thank you. I have no further questions.

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THE PRESIDENT: Very well. Any other defense, counsel who desires to cross-examine the witness may do so.

MR. Hochwald, there being no other cross-examination on the part of defense counsel, will you now proceed?

DR. BERGOLD (ATTORNEY FOR THE DEFENDANT BIBERSTEIN): Your Honor, I have a request. I observe that my client has become blue in the fact. He has a heart ailment and after this strenuous day I want to know if he is able to stand it; I don't want him to get sick.

THE PRESIDENT: Dr. Bergold, it is a quarter after four and we are certainly willing to accept your suggestion that the Tribunal will now recess. 9:30.

(The Tribunal adjourned until 24 November 1947, at 0930 hours.)

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A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

ALBERT HARTEL, a witness, took the stand and testified as follows;

JUDGE SPEIGHT: Raise your right hand and repeat after me: pure truth and will withhold and add nothing.

( The witness repeated the oath.)

JUDGE SPEIGHT: Be seated. BY DR. BERGOLD:

Q. Witness, please speak slowly because of the translation. Furthermore, I ask you to pause after each of my questions so that the interpreter can finish translating the question before you gegin with your answer. Do we understand each other?

A. Yes.

Q. Thank you. What is your name; when and where were you born?

A. My name is Albert Hartel, H-A-R-T-E-L. I was born on the 13th of November, 1904, in Ross-Holzen, Upper Bavaria.

Q. Who were your parents?

A. My father was Albert Hartel, a teacher. My mother was Babette Hartel. Her maiden name was Obermayer.

Q. What was your original profession?

A. I studied philosophy and Chatholic theology, and I was originally a Catholic theologian.

Q. What did you do during the Third Reich down to the end of the war?

A. Down to the end of 1933-1934 I was a teacher of religion at different seminaries and higher institutions of learning. Around the trun of the year, 1933-1934, for reasons of religious conviction, and for reasons of common sense, I left the church service. I was asked by the church to return several times. When I did not comply with this request I was suspended from my offices for reasons of refusal to obey the church order. At the beginning of the year, 1934, Himmler whose father and cousin I knew very well, gave me a scholarly commission, and in 1940 I got the order to take care of the Church Information Service in the SD Main Office, that is to say the later RSHA, and to build this service up. It was my job in this to get in touch with high-ranking church personalities of all confessions and to win them over for cooperation with the SD. Around the turn of the year, 194142, I was sent to Russia. There I obtained a special mission to study the spiritual situation in the Soviet Union, and in the second half of the year 1942, I was temporarily charged with leadership of the Departments I and II with the command of the Security Police in Kiev. The first half of the year 1943 I spent in several hospitals. After that I left the service in the full capacity and lived as a free-lance writer, and was known as a so-called V-man, in which capacity I worked for Office VI of the RSHA.

Q. When did you get to know the Defendant Biberstein?

A. I met him about the end of 1935 or beginning of 1936.

Q. On what occasion did you meet him?

A. Biberstein was in the church Ministry. He was a liaison officer from the Church Ministry to the Gestapo, and merely the facr that he was a Protestant thrologian and I was a former Catholic theologian, of course, brought with it many common interests.

Q. Is the fact that Biberstein was liaison between the church Ministry and the Gestapo, was that something special, or did the Ministry have liaison officers to other agencies?

A. All ministries had liaison officers to all kinds of agencies and in the Church Ministry too there were liaison officers detailed to various agencies, such as the Office Rosenberg, and to similar agencies.

Q. Do you know that the Catholic department in the Church Ministry had a liaison man to the Gestapo?

A. On the Catholic side the situation was as follows: A Catholic priest, Joseph Roth, was himself a director of the Catholic department in the Church Ministry.

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Q. Was he a liaison man with the Gestapo?

A. He maintained contact with the most varied agencies. Mr. Roth, the catholic priest, was, for example, liaison man between the Church Ministry and the Office Rosenberg. In addition to that the Catholic Church also had another institution. It had its own Bishop Wienken, who had his own office in Berlin where he maintained contact with all Reich Agencies.

Q. Was this man Roth active without the approval of the Catholic Church, or did Cardinal Faulhaber approve?

A. According to the Concordate between the Vatican and the Reich Government, the regulation was that Catholic Priests who wanted to have a State Office needed the approval of the Catholic Church, or of their Bishop. That applied to all the religious teachers, theological teachers, and so forth since they all were civil servants in the Third Reich. Roth, before he came to the Church Ministry was already a religious teacher at the Maria Theresia High School, thus he did no longer need a formal approval before he could take over the position at the Church Ministry. Of course the church could have revoked the approval at any time. Such a revocation did not take place, and, therefore, Roth was considered an official recognized by the church. He always was on terms of cordian understanding with the various Bishops, they frequently called on him. He also enjoyed great respect with the Party, and, for instance received honorary tickets for the Party rally from Hitler for the Papal Easter Celebrations in Rome.

Q. That suffices. What job did these liaison men to the Gestapo have?

A. Their mission was partly merely a missenger role when it was a matter of transmitting requests or messages from the Bishop to the Chief of the Gestapo, and partly when it was a matter of subordinate a gencies, as of the office chief of the Gruppen-leiter of the Gestapo.

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Then he had in all matters that concerned the Gestapo and the Church Ministry mutually to negotiate directly.

Q. Did these liaison men thus become members of the Gestapo?

A. No.

Q. Did they become members of the SD in this way?

A. No, they didn't.

Q. Are you of the opinion that Biberstein because of these activities already had an exact insight into the activities and aims of the Gestapo or the SD?

A. No, this in itself contradicted the purpose of the Information Service.

MR. HOCHWALD: Your Honor, I would think that is is necessary to rephrase this question. Dr. Bergold asked the witness what was his opinion: it would probably be good to have the witness say why he came to that conclusion, what the basis of this opinion was.

THE PRESIDENT: Yes, Dr. Bergold, it is not a question of opinion but a question of what he knows?

DR. BERGOLD: No, it is a question of his judgement here. He cannot know exactly what Biberstein knew, but he can only judge in general, whether it was possible or impossible, but then I shall ask him how he came to this judgment?

THE PRESIDENT: Very well.

THE WITNESS: It was in contradiction to the manner of conducting the Information Service to allow an outsider any insight into the details of activity. That was the basic principle with every Information Service. If the Information Service had to give the newest and often most secret information to these official agencies, then this must not be immediately publicized, and later there was an express order from Hitler that no one must learn about anything except what was absolutely necessary for his special activity. Furthermore, the SD Main Office handled matters in such a way, that within the various departments, there was a law of secrecy, and there were many secrets, and no department would initiate another department into its activity as long as it was not absolutely necessary, and this was certainly true for an outsider.

Q. In the course of these activities, did Biberstein get into any contact with the SS?

A. In the course of the activity, he was taken into the SS as an honorary officer. I do not know exactly whether as an Untersturmfuehrer, or as an Obersturmfuehrer, but in any case it was one of the lowest officers rands.

Q. Did this appointment result in the fact that he had to perform a professional activity for the SS?

A. This appointment didn't change anything in the activity he was carrying out.

Q. Was Biberstein promoted quickly in the SS, or was he not promoted quickly?

A. Up to the rank of Sturmbannfuehrer he was promoted normally. After that he was no longer promoted. He didn't even get the rank to which he was entitled on the basis of his official position, because he was in the Senior Government Counsellorship, but he remained a Sturmbannfuehrer, however.

Q. Can you tell me for what reason the promotion didn't go through? Do you know the reason?

A. In the later time there was a strong lack of confidence and a great distrust for all theologians: partly there was a fight against former theologians. They were suspected of being Jesuits, and were not promoted in the same degree as they had been previously. At the same time it must be added in the case of Biberstein, that he was considered very soft, and, therefore, it was said about him that he didn't fit into the Gestapo.

Q. Did the activity of Biberstein in the Church Ministry proceed in a satisfactory manner, or did he have differences of opinion with the Ministry?

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A. With the exception of the early days, Biberstein had very many differences with the Church Ministry. His Chief, Minister Kerl was of a very explosive temperament, on the one hand he would decide this way today, the other way tomorrow, and on the other hand, he had a basic principle in his church policy, which contradicted our philosophy, for we from the SS tried basically to achieve a peaceful separation between the church and the State in an agreement with the Vatican, the way it was done in many Democracies. The Church Ministry, however tried to achieve a State Church which according to our convictions, was absolete. Thus there were great objective differences outside of the personal differences between Biberstein and his chief.

Q. What results did these differences have as far as the promotion of Biberstein was concerned?

A. Biberstein was no longer promoted, whereas his Catholic Colleague, the Catholic Priest Roth very quickly was promoted Ministerial Director, but Biberstein was taken into the Ministry as a Senior Government Counsellor, as it corresponded to his previous position -- the position of Dean -- and then he was no longer promoted after that.

Q. Can you tell me -- I withdraw the question. What picture do you have of the character of Biberstein; was he an idealist, or just an ambitious man?

A. May I answer this question at the end, please?

Q. Yes.

A. I think it will become clearer then.

Q. Do you know that Biberst ein was drafted in the beginning of the war?

A. Yes, at the beginning of the war Biberstein was drafted, and he had a very low rank in the Army. I once saw him in uniform, and I believe he was a PFC, or at the most a corporal.

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In any case, he wasn't more than a corporal.

Q. Do you know for what reason Biberstein was disignated indispensable, and was transferred to the SD?

A. Yes. One day I was ordered to report to Heydrich, and Heydrich told me very harshly, "Hartel, what do you have against Biverstein? Why do you want to see him out of the Church Ministry?" I told him that I had nothing against him, but that he himself had personally expressed the wish to leave the Church Ministry at the very next opportunity. Heydrich thereupon told me, "Good, I will get him out of there," and shortly afterwards Biberstein was made indispensable for the Reich Ministry, or the Gestapo. I don't know exactly what it was.

Q. Did Biberstein apply for such a transfer?

A. Biberstein told me at the time that he didn't know anything about it previously.

Q. Is it correct then that this transfer resulted merely from a conference between Heydrich and you, in your opinion?

A. Yes, but I never heard of the reasons by which that question of Heydrich of what I had against Biberstein could have been caused.

Q. But you understood the question to mean..or, how did you understand the question, whether Heydrich wanted to keep Biberstein in the Church Ministry, or whether he wanted to get him out of there?

A. First when Heydrich wanted to know whether I had any objections against Biberstein, or was he my enemy, or if I had anything against him. He must have heard from somebody, or sother, a remark to the effect that it would be a good idea if Biberstein would leave the Church Ministry, but I don't know the exact background. In any case, the result of this conference was that Heydrich immediately planned on his part to get Biberstein out of the Ministry.

Q. What job or position did Heydrich want to give Biberstein?

A. Heydrich wanted to make Biberstein a Police President, or at least a Police Director.

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Q. And what position did he get?

A. There were continuous tensions at the time between the regular police and the security police, and, therefore, as he told me later, Heydrich didn't succeed immediately to get Biberstein a position as Police president, because there were many applicants for that position within the regular police ranks, and Heydrich explained to me that until a position as Police President became available, he would make Biberstein the head of a State Police Agency.

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Q. Was this command to be his final position, his final mission?

A. No. Heydrich told me from the beginning that this was only a temporary solution until he would get a position as Police President.

Q. Because of his former profession as a Priest, did Biberstein have difficulties among the Gestapo people, or didn't his early profession make any difference?

A. Biberstein had great difficulties. I was a witness when the then Chief of Office I, Streckenbach, told the then Chief of Office IV, Mueller, by telephone that he had received the order to give Biberstein a State Police position, and that both were angry due to the fact that Biberstein had no previous training in the police department, and that in view of his soft attitude it was senseless to give him such a position.

Q. Did you see Biberstein again during the war?

A. Biberstein was commanding officer of an Einsatzcommando in Rostov, and I do not know exactly whether it was the name of Einsatzcommando, or a special commando, or a commander I don't know, and his job was of two-fold mission, Information Service and Executive; the two missions which in the Reich were subdivided, one to the Gestapo and the Criminal Police as Security Police, and the other to the SD, as the Information Service.

Q. Did he thus become a full time member of the SD through this activity?

A. Through this activity he didn't. There were a number of people from other agencies who had been detailed for the Einsatz, but through the fact of the Einsatz they didn't automatically become members of the SD.

Q. When you met Biberstein again in Kiev, did you hear from him that he had made an application to be transferred back to Germany?

A. Whether he told me about this, I don't know. In any case, he was very unhappy in this position, was very angry, and explained again and again that he wanted to get out of this "pig-sty".

Q. Did Biberstein have a deputy in his office?

A. Originally he had not, but in the course of time, I don't know exactly when, so far as I recall, a Sturmbannfuehrer or Obersturmbannfuehrer Nehring was given to him as a deputy.

THE PRESIDENT: Witness, just what was Biberstein referring to as a "pig-sty"?

THE WITNESS: Well, I had used the term "sauladen", but it is about the same. I think he was disgusted.

Q. Well, naturally, he was disgusted, but just what did he mean by a "pig-sty"? When you call something a "pig-sty" certainly you are disgusted, but just what were you referring to?

A. He referred partly to his chief or commander of the Einsatzgruppe, Dr. Thomas, with whom he had very violent differences, and then it referred to his entire activity. It did not agree with his character to carry out executive measures.

Q. What do you mean by executive measures?

A. Execution of sabotuers, or other cases, I didn't know what were the individual cases.

Q. Well, did you understand that Biberstein was conducting executions himself?

A. Whether persoanlly, I don't know, but he gave the order, to rather, sofar as I remember after a through investigation he probably had given the order.

Q. Did he himself give the orders for executions?

A. That was the mission of a commander, to decide these things so far as I know.

Q. How many executions did he order, do you know?

A. I don't know. BY DR. BERGOLD:

Q. Witness, did you see or did you observe Biberstein in his ac tivities in Rostov?

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A. No, at the time he was in Rostov I was not in Rostov, but I observed the activity of his predecessor in Stalino, or rather I heard people tell about it.

Q. You only saw Biberstein in Kiev?

A. Yes.

Q. As you say, in June 1943?

A. Yes, that is right.

Q. Is that the correct year? He then went back to the Reich with you?

A. Yes, that is right. We travelled together for a short distance, and somewhere in Rovno we separated.

Q. Do you know whether in the District of Biberstein, mass executions took place at any time?

A. I didn't hear anything about this.

Q. What job did Einsatzgruppefuehrer Thomas have primarily?

A. From the Spring on, when I could observe his activity, Dr. Thomas considered the partisan warfare as his basic mission. The partisan problem in 1942 was the center of his whole activity.

Q. Do you know anything about Thomas' motive for such a specific activity?

A. That was a two-fold motive: For one thing the partisan danger in the north of his area, and in the forests, in the Pripjat marshes, in the upper Dnjepr River, was very great; whereas, in the south, in the plains, where there were no forests, there were, of course, no partisans to this extent, and in the south, therefore, the partisan danger was actually very great and the Army, complained about the interruption of the supply lines by the partisans, and the civil agencies, especially the agricultural leaders, had very much to suffer from the partisans; that was a very objective necessity. At the same time Dr. Thomas was very ambitious, and he wanted to earn his medals, he had a "sore throat", as we used to say.

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That also probably played a part, but the basic reason which was the objective necessity.

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"sore throat" means in German War language. which one wore around the neck. keen nature of this partisan warfare?

A Yes. Dr. Thomas set up his own partisan combatting staff into which a number of officers were called and the higher SS and police leader Pruetzmann also set up his own partisan combatting staff. Then they took care of the ordnance supply which was necessary to fight partisans, for instance mortars. During the second half of the year 1942 I had the temporary direction of the supply of arms which belonged to Department 2, and I had to worry about mortars and heavy arms in order to combat the partisans. The people of the partisan staff always had access to Thomas, whereas the other people often had to wait very long to see him. Then he himself flow around with an airplane, or he travelled in a special train in the especially crucial partisan areas.

Q Such arms which you have just mentioned weren't they usually with the Einsatzkommandos or Einsatzkommando groups? the army.

Q Is it true or don't you know whether Thomas had a special partisan fighting staff within his staff?

A Yes. I think I have mentioned that he had his own partisan staff. The chief of his partisan staff was simultaneously the G-2 of the partisan fighting staff of the Obergruppenfuehrer Pruetzmann.

units in order to fight the partisans. any statements from Thomas on the subject? he did not like the former theologians and because Biberstein was much too soft for him. Furthermore, Biberstein had a disciplinary proceeding at the end, but what the matter concerned was, I don't know exactly. It was some kind of a complicated matter, but Thomas was very furious and even threatened to have Biberstein shot for military disobedience at the front, but afterwards this proceeding must have been pigeon-holed.

Q Who was Biberstein's predecessor in the EK-6? not know. I know the predecessor in Stalino. I think that was EK-6 but I cannot say this exactly. I was in Stalino twice and there I met Sturmbannfuehrer Moor. Perhaps he was his predecessor, but I do not know exactly.

Q That is correct. Did you have a conference with this Moor about the executions? through southern Russia, and make an extensive report about the spiritual situation in the Soviet Union. At this occasion I visited hundreds of artists, scholars, bishops, etc. and I visited all the scholarly institutes in this area, and I also visited the Einsatzkommandos and asked their commanding officers about the spiritual life in their area. During this conference Moor also told me about his activity, and he told me that after very thorough investigations, after exact examinations he frequently had to have executions carried out. I also remember a statement made by Gruppenfuehrer Dr. Thomas that he was not very sympathetic to this method.

He once objected very strenuously to it that once could not get anywhere with these pedantic legal methods as practiced by Moor .... BY THE PRESIDENT:

Q We don't know who the "he" is. You spoke of Thomas and Moor. Then you have been using a pronoun since, "he". Now, do you mean "Moor" or "Thomas"?

A The last time I meant Thomas. Thomas told me that he had no patience with the correct methods of Moor, and likewise with the correct methods, the way Herr Ohlendorf carried them out, that he did not agree with these methods. Thomas had great antipathy for Ohlendorf just because of his bureaucratic pedantic correctness, as he called it. Thomas said that in Russia one would have to be more generous. BY DR. BERGOLD: explained that he was carrying out executions only after exact investigations? second time in June, I think. The second visit was occasioned by a report which the local SD expert, Graf, had made about the orthodox theologians and their various contacts with the NKVD or to the monarchists or other circles. And this report of the intelligence man at that commando, Graf, interested me very much, of course. So that I visited Stalino once more. Whether the conversation took place during the first or the second visit, I cannot say any more. there were Ukrainians -- Ukrainian militia competent for investigations?

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commanders that members of the Ukrainian militia were in the office of the commanding officer and handed in reports about certain occurrences. activity in Russia altogether, did you get to know the so-called Jewish Order, that is an order by Hitler according to which Jews, according to their membership in the Jewish race had to be executed? an order, but on the basis of various facts I concluded that somebody, namely, a very high instance, had given such an order. within the RSHA? BY THE PRESIDENT: spiritual life in Russia? my report. I made out a very extensive report at the time.

Q Did you see him from time to time in Russia?

A No. I only saw him in Russia in 1943 when he had his proceeding against him.

Q Where was this? and he was also in Kiev at the same time because of a disciplinary proceeding. He had been called away from his headquarters. He was inactive in Kiev at the time, and I was inactive and because of our former acquaintance we, of course, talked about various matters.

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spiritual things, did you not? specific problem which we might have discussed. each of you found it through your own theological eyes? any specific details about this conversation because I talked with many people about my observations. churches in Russia, the different denominations? there were still smaller groups, such as the Baptists, the Mennonites, and similar groups, but the Orthodox church was subdivided into three main tendencies.

Q I don't mean for you to give me the description of the various churches, you also naturally discussed the Jewish religion, didn't you - the Jewish church? out of my sphere. There was a completely independent Jewish department. It is true that, before the beginning of the war, I was supposed to direct the Jewish Department 2, but .....

Q Well, now, just a minute. You went to Russia to study the spiritual attitude of the people, and you called on various commando leaders and asked them what they found among the population from the spiritual point of view, that is correct, isn't it?

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of the Jewish attitude would come up, would it not, from the spiritual side? it would be the natural thing talking about these various churches, the Orthodox Church, the Baptist Church, and so on, also to say something about the Jewish spiritual attitude in Russia? remote because as far as I know there were very few Jews in this area. had many discussions with him, you were both there awaiting some further orders. You had leisure time, and you talked. Now, in these various conversations it would be a natural thing in talking about those churches, the different religions, to say something about the Jews also, wouldn't that be the natural thing, especially for two theologians in conversation? the Jewish problem was such an unpleasant problem for all of us, and such a delicate problem that if one had nothing direct to do with it, one evaded it. interesting subject to you, would it not, your discussing the spiritual values of a people and there are many Jews among those people - wouldn't you naturally, especially in conversation with a brother theologian, say something about what you found among the Jews, or what people said about the Jews?

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Q No, No. We are talking about your conversation with Biberstein. I cannot remember that we discussed this problem in detail.

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Q In your report did you talk about the Jews? you did not discuss the Jewish situation in detail, but you did make some reference to the Jewish situation in Russia, didn't you?

A I did not say that I didn't say anything about it, but I merely cannot remember any specific detail. conversations?

A Yes. We discussed various things, but whether during my conversation with Biberstein, I do not know, but in various conversations I had.

Q I am speaking about Biberstein. Now, please, in your conversation with Biberstein, did you not, as two brother theologians, make some reference to the Jewish situation and talk about it, it would be the most natural thing in the world, I see nothing illogical about that? natural, of course, it is very probable that we talked about it.

Q All right, now, if you talked about it, wouldn't the most logical thing in the world be to discuss this business of the execution of the Jews? Wouldn't that be natural? That would be the biggest subject, the Jews were being killed and you didn't approve of it, and wouldn't you mention that to him, you know about this, you didn't see the order, but you had heard about it as you have told us, on the basis of certain facts you came to the conclusion that someone in high office had ordered the Jews be killed, and here you are with your brother theologian discussing things leisurely, and you talk about Jews.

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Now, wouldn't it be the most logical thing to talk about this order, about killing the Jews? rather I would have to lie if I said we talked about it because I cannot remember that we did, but it is very possible, in fact, very probable that we talked about it. BY DR. BERGOLD:

Q Witness, but you know nothing definite? basis of what the president has said? talked about it, but I cannot remember details. was housed in a special building separate from all the others?

A Yes. It was in its own building under the leadership of Eichmann. This building in the Kurfuerstenstreet was completely separate and was guarded, and no member of any other department of the RSHA was able to enter if he had no proof that he had some official business there. RSHA about the so-called "Jewish Order"? about this order and didn't hear anything. I didn't see the order myself nor did I read it, nor did I hear its wording, but I knew from various facts, or rather, I could conclude from various facts that such an order had been given.

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of the RSHA told you positively about the order.

Q Then I have a last question. When did you see Biberstein the last time in Russia?

Q Thank you. Oh pardon me, I have another question. Witness, please give a picture of Biberstein's character as it appeared to you. This is a question which you didn't answer before. I knew from people who know him in his capacity as dean, for example, Brigadier General Hahn, who lived in the same community in which Biberstein was dean, that Biberstein was a great idealist, and he was a national socialist because of full conviction and idealism. I do not consider him as a more ambitious man, but as an absolute idealist. On the basis of the conversations in Kiev, this picture became a little more complete. If I want to mention this, I must go into some detail. I got to know three main groups of people in the Einsatzgruppen. The one group consisted of those who carried out their orders correctly and exactly and for whom the authority who gave the orders was valid, who were very conscious about exact investigations and proceedings the way Thomas reproached Ohlendorf, who either because they were accustomed to comply with the orders exactly or because of their blind adoration of Adolf Hitler carried out the orders and who did not consider themselves competent to criticize these orders in any fashion.

The second group were people who received their orders, but, because they were somewhat different people, soft people, they immediately developed conflicts between their conscience and these orders, who suffered very much, because of these orders and because of their activity. I got to know people who went completely to pieces, who were completely broken and sometimes there were even individual catastrophes. Certain cases -

THE PRESIDENT: Dr. Bergold, now he has mentioned Group No. II. Now if he is going to start to give us a lot of individual cases, I think we might be drifting quite far afield, don't you think? He mentioned a third group. I should like him to start on group 3.

THE WITNESS: The third group consists of people who also developed conflicts about these orders and immediately tried to got out of the kommando as soon as possible or who knew how to evade the orders and who very soon were relieved because they were too soft, as one was telling in general about Brigadier General Schulz. It was said that he was relieved because he was too soft. Whether this is correct I do not know, but that is what people were saying.

Q (By Dr. Bergold) Witness, now it would interest me to have you say something about Biberstein.

A Biberstein belonged to this third group. He tried by all means to get out of these conflicts and to get into some other activity.

DR. BERGOLD: Thank you.

THE PRESIDENT: I would really like to say, Dr. Bergold, I think we ought to inform Dr. Mayer for the Defendant Braune that in the event the Defendant Biberstein is not well enough to take the stand for the cross-examination which is still pending then, when you have completed with this witness entirely, Dr. Mayer will take up the defense of the Witness Braune.

Very well. The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER (for defendant Haensch): Your Honor, I would like you to permit me to put a few questions to the witness, for the defendand Haensch.

THE PRESIDENT: Certainly you may do so. Just before you begin, I would like to make an announcement for the benefit of Dr. Bergold. Dr. Bergold, it seems that your client will be in condition to come to the courtroom to testify and I think it would be much better if we could dispose of the cross examination today rather than put it off to a later time.

Very well. You may proceed. BY DR. RIEDIGER:

Q Witness, do you know the defendant Haensch?

Q Where did you meet him? Office.

Q When and how, and in what capacity, was he active in this office? my memory, joined the SD Main Office. At that time he was in charge of disciplinary and welfare questions in Office I. If I am not mistaken this department was formed into a Gruppe later on.

Q How long was he in this office, in your opinion? campaign.

Q Do you know when that was? because when, in the beginning of January, I arrived at Kiev he was not yet there. That was during the first days of January. Reich Security Main Office went to the Gruppe leaders of Office I.

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A I do not think so. Reports from the East, according to my memory, were only submitted to those people who had something to do with the contents of those reports - that is, the Eastern situation. I myself received the Eastern reports as long as I was active in the Berlin office because on various occasions notices were brought in about connections of the NKWD and the Orthodox clergy and other problems. These were mentioned quite shortly, by the way. According to the secrecy decree, I consider it impossible that a sub-department chief, or Referent of Office I, ever received these reports. Even later, during the first half of 1942, when I was, very briefly, in charge of Departments I and II in Kiev, I did not receive these reports any longer, but only during my activity in Berlin, that is, until the end of 1941. As I said, therefore, according to my experiences I deem it impossible that these department chiefs and Referents of Department I ever received these reports. Russian campaign. Will you please do so now.

A That was in the end of 1941 end the beginning of 1942. At the end of 1941 I received the order to go to Russia and in the beginning of 1942, the beginning of January, I arrived in Kiev.

DR. RIEDIGER: Thank you very much.

THE PRESIDENT: Any other defense counsel desiring to cross examine the witness will please step to the podium. BY DR. HEIM (for the defendant Blobel): examination, you arrived at the end of 1941 or the beginning of 1942.

Q Where were you during the first half of 1942?

A I was partly in Kiev, partly on the way; but I always arrived back in Kiev.

that time? because I was subordinated to him.

Q That suffices, witness. Witness, do you know where SK 4-a was stationed at that time?

Q Do you know who was the leader of SK 4-a at that time?

A I do not know. I am not acquainted with the figures. I always had a bad memory for figures, and if you tell me now where the SK-4 was stationed I might be able to find it because my memory for locations is better than my memory for figures.

Q Do you know where Blobel was at that time? remember - he was at Charkov.

Q Do you know how long he was there? mately... it was either at the beginning of March - in fact, it is very probable it was in the beginning of March - that Heydrich was in Kiev, and on that occasion Blobel was also in Kiev, and he told me that Heydrich had informed him that he was going to be relieved and that he had a new assignment for him, but that before this would take place he would go on recreation leave.

Q Do you know when Blobel arrived back in Berlin?

A I assume, if he wasn't in Berlin before this transfer, that he must have arrived in Berlin immediately after. That must have been in March or April - presumably, at least, and he must have gone on recreation leave after that. Any way, he was not in Kiev at that time. This visit of Heydrich was a short while before he was shot. According to my memory Heydrich was shot at the end of April 1942. The visit, therefore, was before that. At the same time there is another date which I remember. That is the fact that Heydrich at that time said, "Hartel, your three months in Russia are almost over now.

I shall fetch you back to Berlin very soon. I shall no longer need you here." But this transfer did not come about because Heydrich was shot. According to this, therefore, I can assume that the visit must have been approximately at the beginning of March because he said that three months of my assignment would be over soon.

Q Did you know Dr. Thomas, witness?

A Yes. I knew him. I had known him since the first beginnings of his activities in the SD. It was in Wiesbaden at that time. I think he held the rank of Hauptscharfuhrer, or something of that sort, and I certainly watched his rapid promotion to Gruppenfuehrer.

Q Witness, do you know that Dr. Thomas had an estate in the vicinity of Kiev, by the name of Birkenhof? put at the disposal of Dr. Thomas? not move until Spring 1942. That is my estimate. Of course, I am not quite certain but he wont there quite often in winter already because it was being worked upon; but I believe that he only moved in in Spring. the Prosecution. In this affidavit you maintain, under number 3, that in March or April 1942 you met the defendant Blobel in Kiev and that on that occasion you had a little drive to the estate of Dr. Thomas.

A Yes, yes...along that road, in the direction of the estate... because that was the usual road if one wanted to go into the neighborhood for some fresh air...it was quite beautiful as far as landscape was concerned, and if one did not want to take the other possibility, over the Dneper, one went there because the Dneper road was really not so good, and there was a lot of traffic there, one could not go there so quickly. If one wanted to get some fresh air this was the best road, in the direction of the estate.

the first half of 1942, Blobel had been... that according to your opinion he had been in the vicinity of Charkov. beginning of 1942.

Q Where was Blobel in February or March or April 1942?

Q When did he go on leave? because he said that Heydrich had told him that he would go into a new assignment but before that he would go on leave, because physically Blobel was in a bad condition, and even psychologically he seemed somewhat exhausted and Thomas told me at that time, in his own way of speaking... he said that with Blobel the film constantly tears -- that means that psychologically he was extensively exhausted because he could no longer carry out decent work. in Kiev in the presence of Heydrich... you saw him there.

A Yes, at least during those days. I cannot remember it exactly. It must have been during those days because the conversation revolved around this subject about Heydrich's activities. that, or just once?

A I do not remember. In any case, I don't remember any discussions lasting any length of time. Blobel to Birkenhof? according to my memory, at the beginning of March. Originally I thought that it might have been a little later than that, but now, realizing the connections I believe that according to what Heydrich said at that time it cannot have been later than the beginning of April because Heydrich was no longer living then, and it could not have been in February, in my opinion, because at the latest or the earliest day it could have been the last day of February because Heydrich said to me on that occasion that my three months are almost up and he would take me back to Berlin.

From that I must conclude that it must have been at the beginning of March.

Q Witness, did you go by car?

Q Was that the service car of the Defendant Blobel?

A No, I believe not. I think it must have been an office car.

Q Witness, did you meet Dr. Thomas on his estate at Birkenhof? Thomas or some such person, but it was only our intention to have some fresh air, and I don't think that Thomas on that occasion lived at Birkenhof yet. statement, I mean, to the effect that you took a common drive to get to the estate. I did not say in the affidavit that I went for a discussion with Thomas. We just drove along the road because it was the nicest and the most comfortable road, and that is why we went there. That was the locality where one could go if one wanted to leave the town for a bit and where one could have some fresh air. pointed out a place to you in the vicinity of the cemetery saying that Jews had been buried there who had been executed by him and his commando.

THE PRESIDENT: Dr. Heim, can you refer us to that document?

DR. HEIM: Your Honor, I only have the document number. The document number is NO-5384.

MR. HORLICK-HOCHWALD: If the Tribunal please, this document was offered as Prosecution's Exhibit 180 during the cross-examination of Defendant Blobel, but the Tribunal ruled that the exhibit should be accepted after the examination of the witness.

THE PRESIDENT: Oh, I see.

MR. HORLICK-HOCHWALD: So it was only offered for identification then.

THE PRESIDENT: So that we physically do not possess it?

MR. HORLICK-HOCHWALD: The copy was handed to the Tribunal, and I do think that also the exhibit is in the archives of the General Secretary, but I am sure that your Honors have received copies of the affidavit.

THE PRESIDENT: Very well.

Q (By Dr. Heim) Witness, I repeat my question. In your document, you said, I quote. It is on Page 1 of the original document, Page 2 of the German copy, "On a common drive to the estate of the Commander in Chief in Kiev, Dr. Thomas, in the vicinity of the town near a cemetery, Blobel pointed out a place to me, told me that Jews had been buried there whom he had shot with his commando." That is the end of my quotation. Witness, is this statement exactly - is it correct as it is put in the affidavit?

Q In the affidavit it says, furthermore, I quota, "There was an old tank ditch which was dug Later." That is the end of my quotation.

THE PRESIDENT: Not which was dug later, which was later filled in. There is a great difference.

THE INTERPRETER: Yes, that is a mistake on my part, I think, my mistake. I didn't hear. Which was patched later or filled in, yes.

THE PRESIDENT: All right.

Q (By Dr. Heim) Witness, if that had been a ditch and had been filled in, how could you see that it had been a tank ditch? a shattering impression on me at the time. It was snowy, and on one particular spot we touched the spot, the earth still exploded. There were some kind of eruptions , a kind of explosion, and I asked Blobel what that was, and he said, "Here my Jews are buried." And it was that in this tank ditch there were so many corpses heaped up that when they disintegrated, the dirt over this ditch, this earth, of course, tore on occasions.

Q Witness, you haven't answered my question. How could you see that on this point former tank ditches had been? buried whom he had executed with his commando?

Q Or did he say to you, as you just said, "Here my Jews are buried"?

A He said, "Here my Jews - here are my Jews." And when I asked him, he told me that this was tank ditch, had been a tank ditch, and that there were two points in the vicinity of Kiev, the one place which we were just touching, and there was another place or another spot which I do not know and I did not know, and I didn't ask for, and he told me that on this spot he had shot Jews with his commando, and thus the explanation, "Here are my Jews," has to be understood.

Q If I understood you correctly, Dr. Hartel, you contend that Blobel, on that occasion, told you that the Jews buried there had been shot by his commando on his order in his presence?

Q Have you not been under a disciplinary punishment once?

Q Was there no disciplinary procedure against you in 1943?

A That wan't a disciplinary procedure. Then there was only a preliminary investigation against me. In 1941 there were two disciplinary procedures. One ended with four days' house arrest. I had to remain in my apartment for four days. The second ended without any result because I was sent into the Einsatz assignment. reproached with being after the female personnel of the German offices? the Sturmbannfuehrer Hilf was asked to carry out a preliminary investigation, and when a number of female witnesses were heard he came to the conclusion that during my whole stay in Russia I had never had intimate sexual relations with any female member of the personnel, but only sometimes, of course, hearty friendly relations, but without any intimate connection.

The reason for my recall to Berlin, as you have just touched upon, since you put this confessor question, was the following. I had expressed a number of misgivings to Thomas by writing concerning his activity and his kind of a administration, his way of administration, and these misgivings, of course, were highly unpleasant to him. Therefore, he looked for a reason, a pretext, in fact, to got rid of me, and when he dismissed me - you, of course, force me through your question to say so - when he dismissed me in fact he said, "You go back to Berlin. I warn you not to mention any word whatsoever about me or against me in Berlin. If you say the slightest detail about me in Berlin I shall, within a few hours, arrive in Berlin, and I shall eliminate you."

Q Witness, that is enough. I now want to confirm and I want to establish the fact that I have nothing to do with confessing. That used to be your concern in former times.

Q Witness, were you interned in Hammelburg in the internment camp?

Q Did you lecture on religious matters on that occasion? the CIC, partly supported by material of the American Protestant priest, and sometimes even in the camp of Westheim and supported by material of the CIC officer, I lectured with the basic tendency of tolerance. The basic tendency of these lectures was the sentence by Nikolaus Kusanus that all religions of humanity are rays of devine light and that the individual religions of humanity, only in, of course, its various degrees and various kinds, display device wisdom and devine completeness, and in every lecture I pointed out this thought of tolerance, and therefore admittedly I was

THE PRESIDENT: Just a moment please, Dr. Heim. It seems that we are going far afield.

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You have questioned him about his private sex life; you have questioned him about his fresh-air trips. Now you are going to have him repeat to us his lectures. I am afraid we don't have time to listen to all those lectures.

DR. HEIM: Your Honor, I have a few questions to put which refer merely to the credibility of the witness. I did not intend to have the witness repeat his lecture which he has given, and I would like to ask the witness to give brief answers to the questions I put to him and only answer the question and do not make any other remarks.

Q (By Dr. Heim) Witness, did your lectures not attack Christianity and religion?

DR. HORLICK-HOCHWALD: If the Tribunal please, this question certainly is not admissible. The witness has said that he has lectured with the permission of the CIC, with the permission or support of American authorities. If Dr. Heim wants to challenge him on that he can prove he had not the permission to lecture, but I do think it is absolutely incorrect to ask the witness this question which Dr. Heim just put.

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DR. BERGOLD: I subscribe to the opinion of the Prosecutor. I think this is not a part of the subject that the witness should be asked about, and I think the content matter os his lectures is reasonable but has nothing to do with the actual subject, and I should like this question not be be admitted.

DR. HEIM: Your Honor, the content matter of these lectures has not been criticized by myself, but I only asked the witness whether his lectures attacked Christianity, as I deem this question concerning credibility very important.

DR. BERGOLD: I may just say that my colleague is wrong. If anybody thinks that this lecture has a damaging effect and the witness thinks that the lecture is not damaging Christianity, the lawyer cannot prove anything at all. He can only prove that another authority or another person can be of a different opinion, but this does not speak against or for the credibility of the witness.

THE PRESIDENT: Dr. Heim, it would seem that the majority is against you. You have the Prosecution and the defense firmly allied against you on this point.

DR. HEIM: I understand.

THE PRESIDENT: That isn't so sad for you as it is that the Tribunal also is against you on this point. You see, Dr. Heim, I know you are attacking the credibility of the witness, and that is entirely proper, but to question him on what he talked about in a religious lecture, and in an attempt to draw from his answer something unfavorable to the witness, you would need to assume that the person deciding that question would have to have a certain religious attitude on that particular point, and naturally we are not here to pass upon religious attitudes. We are here to ascertain the facts in an absolutely impartial manner insofar as those facts appertain to the charges in the indictment. The objection in sustained from both sides. Proceed with your next question, Dr. Heim.

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church, is that correct?

A Yes. The church, since 1934, with great care and with motherly love, tried to get me back.

Q That is enough Witness. Witness, did you not, in the Third Reich, did you not denounce Herr Regens in Freysing when he was sentenced to imprisonment for nine months? in detail as it actually was.

THE PRESIDENT: Not in detail. Now, he has asked you a question and you have answered in the affirmative, you did denounce this individual. Now, Dr. Heim, take up your next question.

THE WITNESS: I did not denounce him.

THE PRESIDENT: Oh. Well, I am sorry.

THE WITNESS: Yes. I told the Mayor of Freysing, who was the brother of my best friend and a Catholic theologian, about these things. He reported this matter further on. I had assumed I could tell things like this to the brother of my friend who was a clergyman himself. Therefore the thing happened. The Gestapo found out about it and I had to confess the truth, and he, therefore, was sentenced for nine months in prison. That is the actual fact of the matter.

Q (By Dr. Heim) Was not that the reason why your activity why you liquidated, as it were, your activity as a clergyman? to tell you in answering this question. That would mean the development of a young man, how psychological religious difficulties arise, from what points of view one can doubt the dogma and the church itself, or the tie to the church service, and how one can be irritated by such matters. I should then have to tell you about my journey to Rome, and if you-

THE PRESIDENT: Now, Witness, I don't know whether you went to Rome for fresh air or for some other reason, but we really don't have time for an additional travelogue.

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Now, Dr. Heim, let your questions be very specific, and see that he answers specifically, and don't let him get away from you.

Q (By Dr. Heim) Witness, please answer my question, if you can, by yes or no. Did you, in 1933 or 34, did you not ask for protection of the Gestapo?

A I was arrested in protective custody. That was the matter of Rosberger, which was the outside pretext to be connected about my leaving the church, but that was not the psychological reason.

Q Witness, did you adhere to the German movement of believers? but inside I confess to being a free religious man who believes in a divine power without adhering to any dogma.

DR. HEIM: Your Honor, unfortunately I only have German copies of this document as the translation of individual documents is not admissible. I shall submit the English translation at a later point.

THE PRESIDENT: Has Dr. Bergold received a copy?

DR. BERGOLD: No.

THE PRESIDENT: He should have one.

MR. HORLICK-HOCHWALD: If your Honors please, as far as I see from the copy which I have received from the copy which I have recieved from defense counsel, this is a letter to Dr. Heim from a representative of Mr. Buchwese, representative of the ordinary - I do not know how to translate it - "ordinariat" of the Archbishop in Munich. This letter obviously should substitute or is supposed to substitute either for affidavit or testimony. According to the rules of the Tribunal such a letter is inadmissible and I therefore object against this document.

DR. BERGOLD: Your Honor, I subscribe to the views of the Prosecutor, and I point out that in the decisions of the IMT it was constantly refused to accept letters. That was always explained and on various occasions repeated by the IMT.

DR. HEIM: Your Honor, I do not intend anyway to submit this as a document into evidence, but I only want to show this document to the witness in order to refresh his memory and in order to have him identify it. I don't know whether he can refresh his memory in so short a time.

DR. BERGOLD: My colleague apologized that it wasn't in English and he said he would add it to his document book. That I understand to the effect, as I am quite well aware of the German language, as a statement that this document he intends to submit as an exhibit. I may point out that it is printed here, "Document Blobel No. 5 Exhibit No."

DR. HEIM: Your Honor, dealing with the objection from all sides, I have now decided to submit it only for identification.

MR. HORLICK-HOCHWALD: It is obviously a letter to Dr. Heim is at liberty to question the witness to information that he has received in the letter, but I do not understand why he hands this letter to the witness. The witness cannot identify this letter as this letter is neither written by the witness nor sent to the witness.

THE PRESIDENT: It isn't necessary to argue this point any furthery. It is very clear that the document is not admissible as a document. Dr. Heim may refer to any information contained in the letter and may cross-examine the witness on that information, but not on the letter which the witness does not know, never saw before and has no knowledge of.

Suppose, Dr. Heim, we recess now and you can take that up immediately after the recess? I might say, please, that the Tribunal will reconvene at two o'clock today.

(A recess was taken until 1400 hours.)

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(The hearing reconvened at 1400 hours, 24 November 1947

THE MARSHAL: The Tribunal is again in session.

DR. ULMER: Dr. Ulmer for the defendant Six. Your Honor, I ask permission that I may draw your attention to an incident which prevents the defense, and my colleague Dr. Durchholz seriously from work. Apparently electric bulbs had been stolen from the building, in the wing of the building in which the defense has its offices. Therefore, Captain **is has announced that these bulbs can not be replaced, and that the defense counsel have to replace the bulb themselves. The treatment of the Counsels they are subjected to is such as if they were the thieves. Last Thursday, around five o'clock there was a cordon of guards around the defense offices, and all members, and all users of the offices in the wing of the defense who wanted to leave the building were stopped by these guards and were searched bodily down to the watch pocket, where certainly there would be no electric bulbs hidden, and, then finally they were let out, When after seven or seven-thirty o(clock, the time for conferences with the defendants in Room 57 was over, this search was continued, and so that all the defense counsel could be searched who must work later, and then the light was turned off, and thereby it was accomplished that those people who were still working in the offices had to come out. On Friday afternoon another such cordon of guards was drawn up and the electricity was turned off again in the wing used by the defense counsel, but I can not say, neither do I claim that it was done intentionally. However, it produced the result that when Dr. Durchholz was ready to read a document, he could not do so without having to go out into the corridor.

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THE PRESIDENT: Dr. Ulmer, what you are leading up to, apparently, is a request that you get more light?

DR. ULMER: No, Your Honor, I have this request, that outside of the Tribunal one is recognized in the position of which one can be so proud as inside of this court. I would like to see to it that it be avoided that I personally as Defense Counsel, would be forced to visit the building only at such time when I appear before you. Your Honors, and have complete protection of my honor and that I would not like to be forced to have to spend any time outside where I am treated in such a manner, and that I can not be treated in such a manner, and I cannot perform my necessary work outside of this court-room under the circumstances, at least not with as much dispatch and joy which you would want me to and in which I would want to do it.

THE PRESIDENT: Dr. Ulmer, the Tribunal, of course, knows nothing of these facts, but we are ready to go immediately upon record as condemning any act which casts any reflection on the honesty of the counsel who have appeared before this Tribunal, and if now you are in need of electric bulbs in order that you may perform your work properly, the Tribunal will be happy to interest itself at once to see to it that the quarters in which you work are adequately illuminated.

DR. ULMER: Thank you very much for this, your Honor, but it is not so much the requisitioning of bulbs. If a bulb is stolen in my room, I didn't steal it, but I certainly will find a way of replacing it, but I would like to avoid that, if any bulbs are stolen anywhere, that I be treated in such a manner as though I might be the thief.

THE PRESIDENT: Well, we have been placed upon the record and we repeat it, that this Tribunal regrets considerably that there should be even a remotest suggestion here that you could in any way have been responsible for the disappearance of those bulbs, and the Tribunal will go further, and communicate with the official in change of this room in which you work to see to it that not only lights are furnished but that you be treated with the respect and the decorum, which is your due as an attorney at this Bar.

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DR. ULMER: Thank you very much, Your Honor.

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DR. HEIM: Dr. Heim for the Defendant Blobel.

THE PRESIDENT: Dr. Heim, just before the recess you put a question which we excluded. My colleague, Judge Speight, has called to my attention a certain feature of that question which we would like to put to you. If you asked this witness what doctrine, what religious doctrine he was teaching and you asked if only for the purpose of ascertaining what the doctrine was, properly, that question is excluded. But if you asked the question for the purpose of contrasting his answer with some previous statement thereby to show an inconsistency and thereby attacking the credibility of the witness, that question would be in order.

DR. HEIM: Thank you, Your Honor. testified further as follows:

CROSS EXAMINATION (Continued) BY DR. HEIM: to be identified by you. I would like to submit it once more.

MR. HOCHWALD: If the Tribunal please, as far as I remember, the prosecution has objected against this document which is a letter to Dr. Heim from a person different from the witness. There is no possibility for identification for the witness. The witness has neither seen nor is he the writer of the letter and I object against the fact that this document is handed to the witness.

THE PRESIDENT: Yes, Dr. Heim, the witness never saw this document so far as we understand, so, therefore, he would have no way of identifying it.

DR. HEIM: Your Honor, I shall withdraw this document and I will merely ask questions and will make an affidavit about it later on.

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THE PRESIDENT: Very well. BY DR. HEIM: possible, with Yes or No in order to abbreviation the proceeding. In your capacity as prefect in the boys seminary of the Archdiocese in Freising did you denounce a certain man by the name of Rossberger?

MR. HOCHWALD: If I am not mistaken, this line of questioning was already taken up by Dr. Heim before he handed the letter to the witness. I do think he has covered the ground. The witness has answered she question. If Dr. Heim wants to add something to his question, it will be perfectly all right, but this question was certainly already asked. DR. HEIM: Witness, I shall do without the answer to the question.

THE WITNESS: I have answered the question. I spoke to the mayor and the Kreisleiter.

THE PRESIDENT: Well, you have answered the question. You don't have to -

DR. HEIM: I shall do without it. BY DR. HEIM: articles?

A No. I wrote articles for the official party correspondence which was edited by Suentermann. In this paper I wrote articles for the official party bulletin, and all German papers were entitled to copy and reprint articles from this official correspondence. Later these articles were published in book form under the name of Anton Holzner as I have already stated a dozen times.

There the lawyer can see in the preface that these articles were originally written for the party correspondence and, of course, it was free to all newspapers to reprint these.

Q Witness, I have another question to this. In your lectures in Hammelburg didn't you put the Christian religion on the same level as the Buddhist?

MR. HOCHWALD: Just a minute, If I understood the Tribunal correctly the Tribunal admitted this question only in connection with the previous answer of the witness, in order to impeach his credibility. If Dr. Heim asked the question in this form, it is impossible to figure out how he will impeach the witness. It would be necessary to ask the witness first, didn't you say in your previous question that and that, and then ask him the question he wanted to ask.

THE PRESIDENT: It might be clearer, Dr. Heim, if you evidenced the contrast, if you indicated first just what the witness said which you now claim is in contradiction to what he is about to say.

DR. HEIM: Your Honor, it was merely my intention to have this question answered merely with "Yes" or "No" because at the proper time I shall introduce affidavits concerning this subject of statements of the witness. I would, therefore, like this question to be answered.

MR. HOCHWALD, If I understood correctly that was just the way the Tribunal ruled the question out before the recess it was just what the Tribunal did not consider admissable.

THE PRESIDENT: If it is Dr. Heim merely to point out what doctrine he taught and then -- because you might not agree with that doctrine -- you will attack his credibility, that would not be proper because everyone has the right to teach what he pleases, everyone has the right to worship as he chooses.

If, however, you claim that on Monday he preached one thing, one Tuesday he preached something else, on Wednesday still another thing, then you can show the contradiction in his own statements and in that way you can argue that his credibility has been impeached.

DR. HEIM: Witness, I want to go over to another subject now.

THE WITNESS: I can answer this question if you attach any value to it.

DR. HEIM: Thank you.

THE WITNESS: Thank you. BY DR. HEIM: ditch you saw some explosions which were the cause of the gasses of decomposition coming out of these ditches, and that through these explosions the ground allegedly lifted itself. Did I understand this correctly?

A Generally, yes. Only, of course, you must not regard it as a big explosion but it was a small one, sort of an earth fountain. Not any extensive shakings, but just a small loosening of the frozen earth, and there was a small earth fountain. That was only for a moment. lifted itself -- became loose? So at that time the ground was still frozen?

Q You mean to say that the earth was still frozen?

A How long?

Q Witness, please answer just my question. Was the earth frozen at that time?

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A Yes. Snow was still lying and, therefore, the earth was still frozen.

Q Thank you, Witness. Is it known to you that a decomposition of corpses cannot take place if the corpses are frozen?

A That I don't know because -- but sometimes, of course, the sun is very hot. The sun was shining, and if you know the climate of southern Russia and especially this territory, you would know that sometimes in January the sun shines very hotly, and there were hot days in January and February, and then, of course, it became cooler then. It therefore, caused a change, it is possible that on one day it was so hot that one became quite sunburnt in the midst of winter. and a few days after that the grounds frozen again. in January actually thaws the frozen earth there?

A I don't think so. Certainly not in January, but it wasn't January, it was later.

Q You have just said that it was the sun in January? sometimes, but did not say at that time it was January. In order to give you an example of the climate in southern Russia, I gave you that particular example stating that in January it was even very hot in January. On the other hand there were very cool nights in summer, sometimes. Russia. Please answer the following question. Do you think it possible that in spite of the frozen earth corpses underneath could be in decomposition?

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they must have bean under the earth for quite some time. The actual chemical process I do not understand, I can only say what I saw at that time, about the chemical details. you have to ask somebody else.

Q Witness, did you know Erlinger? ditch for a mass grave for executed Jews?

A I can't imagine that at that time in 1942 there were any mass executions. I don't know for certain, but I heard nothing about it -- as far as minor executions are concerned, about a hundred people, that has actually taken place. which you mentioned this morning. Is it known to you that at the time Heydrich visited Einsatzgruppe A as well as Einsatzgruppe B?

A I do not know. I only know that he visited Einsatzgruppe C.

Q You know that he visited Einsatzgruppe C? examination that during the second half of 1942 you had been the chief of 1 and 2? I mean I could be called the chief of both these offices. Sturmbannfuehrer Heinz was the leader I with Dr. Thomas?

A Yes. He had this office shortly before, until September approximately and the remainder of the year I was the chief.

quarter? A number of things happened before, but at that time Heydrich was Chief of 1, and 2, and when I came back to Berlin I took over both departments 1 and 2. I believe it must have been September. I did not say that only during the whole second part of the year I was in charge, I only said that during the second part I was the chief of 1 and 2.

Q Were you not in SK 4A for sight week's when this was under the leadership of Dr. Weinmann?

A I can't remember the exact time but approximately two months I stayed at Gharkow, and I visited all the scientific institutes and old museums and scientific institutions. I took part in examination etc, and I started with the institute of atom splitting up to agricultural institutes. All institutes existing in Gharkov were visited by me. I spoke to a number of scientists, professors, artists, and I also met von Radetzky, who introduced me to a number of people, and I lived in the head quarters of the Commander of the Einsatzgruppe. BY THE PRESIDENT: up to agriculture. Did you consider atom splitting very simple?

A No. I said I visited these institutions for the atom splitting up to the smallest agricultural institutions. I saw these. I visited them. I am not a specialist in this field myself, therefore, I could only be informed of What others performed there. I was more interested in other institutes of a more spiritual kind.

BY DR. HEIM: Document No. 5384, you say in the third sentence or Number 2, which in the first page. I quote, "In spring of 1941 I arrived at the office IV". That is the end of my quotation. Can you tell us what office IV of the RSHA meant? Office IV Was that the Criminal Police?

A No, It was Gestapo. I was detailed for this particular office.

Q What did you do there? information service which I had to deal with before. For executive questions, government councillor. Roth was active and another government councillor. Office III the SD was competent for information questions. Can you not give us any more details concerning your activity in Office IV? one office to another. First, it was in the office E. It was in the main department of that, then it came to the information department, then it came to office 2, then to office 3, then for a short while to office 7, then for a short time it came to office 4, and then it left. The task I had to deal with, that is information service for this subject dealing with church matters in the field of the various religions which existed together with these church liaison men whom I have just mentioned, and this task generally was always the same but then, of course, it was detailed a little, one part of it, for instance was given over to office 3, that is religious life as a domestic sphere.

That was given over to office 3, but the actual information service of the various churches was an assignment of office 4, for a short while and as I have already mentioned, I was in the office 6, my task I only had to deal with matters of office 6. Therefore, it changed all the time.

Q I have only another three or four questions. When you made out your affidavits concerning the charges of the defendant Blobel, did you not make a mistake as to the personality concerned? I remembered with great intensity. However, it is thus Dr. Thomas said at the time, as I have already mentioned, that Blobel's film was tearing all the time, i.e, that Blobel physically and psychologically was exhausted and was a broken man so that it is possible that Blobel said something at the time which he did not know any mere afterwards and even that, if I may use that phrase, his film had been torn, but I can only say what Blobel told me at the time himself. voluntarily, or were you asked by the prosecution to make the statement?

MR. HOCHWALD: I do think it is necessary that Dr. Heim specifies a little bit as requested by the prosecution, whether he was questioned by the prosecution or whether the prosecution asked him to make this statement or whatever it is, but I do think this important question should be a little bit more specific.

THE PRESIDENT: Well, but Mr. Hochwald, this is cross examination and he can put it in the best possible way that he can for his own client. He can put any question at all practically.

BY DR. HEIM: put to you. shootings of Jews and whether I knew the order. Thereupon, in criminating myself, I declared that I did not know the order, but that I had to assume that such an order was existing, so these were the two points I made. Then I was asked what made me conclude that this order was existing, practically that meant my incriminating myself. I knew of the eastern reports, that means the resorts of the UDSSR which I got until 1944. I also knew it from conversations, for since I was in the East it could not be avoided to be told about it, and then I was questioned for details. There was a second element. I had to answer this question in order to exonerate the defendant Radetzky, who also was charged with it. I had to free him from any charges that may be made against him, but the prosecution had nothing to do with it. last fortnight, to the effect that when you made out the affidavit you only had the choice between incriminating either the defendant, Radetzky or the defendant, Blobel. and that you would rather incriminate the defendant Blobel than the defendant Radetzky?

MR. BERGOLD: Your Honor, I object to this question; it is a result of a discussion that I had with my colleague, Heim, in the course of which he misunderstood me. In this form, as my colleague is putting it here, I, myself, did not tell him.

THE WITNESS: But I want to answer the question. I have stated:

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In the case in which it is the question whether two people are guilty or whether one man whom I personally deem innocent, while I knew for certain that the other called himself guilty, that in this case I would, of course, certainly have to speak the truth, that if a psychological incriminate one and declare the other one innocent, I had to say what I considered necessary from my own conscience. By DR. HEIM: the moral quality of a man who being a priest denounces another clergyman.

DR. BERGOLD: Witness, you need not answer the question.

THE PRESIDENT: Any other defense counsel desire to cross examine the witness? BY THE PRESIDENT: question that at a particular place there was only a small execution of 100. Do you consider the killing of 100 people as a small matter?

A Not at all. Not at all. I think it is a grays offense, but I only used it in relation to the rather larger mass executions about which the reports speak. I want to object to the opinion that I might regard the execution of 100 people as a negligent matter. with the large figures which had been stated in describing mass murders?

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THE PRESIDENT: Very well. All right. Proceed please. By DR. RATZ (ATTORNEY FOR THE DEFENDANT VON RADETZKY). in Charkov and that on that occasion you visited scientific institutions beginning with the Institution for Atom Splitting and going on to Agricultural Institutions and that on that occasion you also met the Defendant Radetzky. I now want to ask you do you know what functions Radetzky had to deal with in Charkov at the time? also by Chief Radetzky himself, as well as other personalities. Radetzky owing to this linguistic capabilities was merely employed as an interpreter. It was late that he was assigned to other tasks, being employed first as a liaison officer between the Einsatz Commander and General Paulus, the then Supreme Commander of the 6th Army. At the same time he was liaison officer with the authorities of the Ukrainian Service Government, mainly the Ukrainian municipalities. This I only know from statements of the SD itself and also from Ukrainian people especially those living in Charkov, a professor of chemistry with whom I had a number of interesting discussions, told me on various occasions -about Radetzky whom he liked very much and to told me that Radetzky was taking care that the town Charkov was supplied with food and that in this manner he was well acquainted with municipal matters in the Ukraine and he was in close touch with himself -- with Professor Katicuitz. when you saw him in Charkov and you spoke to him that he was participating in any executions whatsoever.

A No. I cannot imagine that very well. First of all, I did not hear anything at all myself, of executions at the time, but I think it impossible because Radetzky was fully occupied with his two special tasks. He had to travel between the offices of the SD commanders and the offices of General Paulus and then again he was with the Ukraine administrative offices.

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I cannot imagine, therefore, that in addition to this he could have been employed for other matters. about the personality of the Defendant von Radetzky, especially whether you are of the opinion that Radetzky might have placed himself at disposal for execution on his own initiative?

A I don't think so, because Radetzky was one of those people whom one designated as being soft at that time. Of course I don't know him too well, but the impression that I got of him at the time according to this impression, I think it impossible that he in addition to his other tasks, would have pieced himself at disposal for executions. I think it is impossible. Radetzky took part in executions in any way whatsoever?

A I don't think that is possible, for the reason that he was mainly employed as an interpreter previously, as many people told me, and interpreters were at the time a very rare group of people. There were so few people who really knew any languages at the time so that in my opinion one could not take the liberty of sending these interpreters to an executive job.

DR. RATZ: Thank you. Your Honor, I have no further questions.

THE PRESIDENT: Any other defense counsel ready to cross-examine?

Mr. Hochwald, you may cross-examine this witness BY DR. HORLICK-HOCHWALD: are you a personal enemy of the Defendant Blobel?

DR. HEIM (ATTORNEY FOR THE DEFENDANT BLOBEL): Your Honor, I object to the adminissibility of this question. The prosecution is asking the witness for a judgment, that is, an opinion, but we are just trying to find out facts.

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MR. HOCHLICK-HOCHWALD: Your Honor, the reason why I asked this question was, I just wanted to ascertain whether this question ---

THE PRESIDENT: Dr. Heim, the pure truth can come only when the speaker is uninfluenced by emotion or by incorrect observations. You have attempted in your cross-examination to show that the witness could not have spoken the pure truth, because he did not observe carefully. In other words, there was some defect in his observation, physical observation. Now Mr. Hochwald wants to inquire if there was any defect in his intellectual appraisement of the Defendant Blobel, because of any emotional interference which would come from one who is an enemy. The question is entirely in order, Dr. Heim. completely exhausted by all the events in the East and by his activity. This impression became even stronger later on when in 1945 -- it was about Spring -- the first months. or, it might be the last months of 1944, I met the Deputy of Blobel in Yugoslavia, where I -

THE PRESIDENT: Don't make these answers too long. You have answered the question. on this journey by car and he told you the story about the mass grave where the Jews killed by him and his Sonderkommando were burried, did you have the impression then that Blobel was not in possession of his mental faculties? seemed most exhausted but according to what I heard from Thomas I had to come to the conclusion that he was psychologically exhausted as well or at least to a large extent and this condition, according to the judgment of other people, became even stronger towards the end of the war. not deranged mentally, is that correct?

A I don't want to say that I had the impression that he was mentally deranged in any way, but he seemed very nervous and psychologically somewhat weak.

That was my impression. It was my impression that physically and physiologically he was in a bad condition. Where as Thomas used the word, "the film had torn" that would mean that he was somewhat mentally deranged, but in my own observation was not that of a mentally deranged man. these killed Jews, had no reason whatsoever to doubt the correctness of his statement? made to you?

THE PRESIDENT: Well, Dr. Hochwald, he has stated very clearly now what Blobel said to him, what his observations were that the man was physcially exhausted, somewhat psychologically exhausted, but not mentally affected. That seems to cover it.

MR. HORLICK-HOCHWALD: That is what I wanted to cover. Your Honor, personally.

Q (By Mr. Horlick-Hochwald) I want to ask you Witness, a few questions about your affidavit to which you swore and signed on the 9th of October, 1947.

MR. HORLICK-HOCHWALD: Your Honors, this is Document No_5384, for which Exhibit No. 180 was reserved and I would like at this time to offer it in evidence.

THE PRESIDENT: Exhibit 180 by the prosecution?

MR. HORLICK-HOCHWALD: 180, Prosecution Exhibit 180-

THE PRESIDENT: Prosecution Exhibit 180 -

MR. HORLICK-HOCHWALD: Yes.

THE PRESIDENT: *-* will not be accepted as part of the record.

Q (By Mr. Horlick-Hochwald) Is it true, what you stated in this affidavit, that you had opportunities to make changes and corrections in the affidavit?

Q Did you make this statement voluntarily? within my interrogation.

Q Were you promised any rewards?

Q And were you subjected to duress or threat of any kind?

Q I asked you only in connection with the affidavit, Witness. You came to the East at the end of 1941 or beginning of 1943, Is that correct? beginning of 1942. already present at this unit, is that correct? at the time when he arrived I happened not to be present in Kiev.

Q Do you know when he came there?

A I can't say exactly. I can only state that he arrived a short while after I arrived but when exactly that was I don't know, whether it was in summer or fail of 1941.

Q Aren't you mistaken: Wasn't it 1942?

A I mean 1942, of course. I only arrived in January 1942.

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deputy in his command in the person of a Sturmbannfuehrer Nehring, is that correct? and this Nehring then came to Rostov.

Q Can you tell the Tribunal when that was? at the end of 1942, in any case in the second half of 1942. It could not have been the first half of 1943.

Q You are not able to give the date a little bit more explicitly? What do you call the second part of 1942? for instance, but I can't give an exact date because I can't do it.

Q Could it have been before the end of October 1943?

A I don't know, but I think it very unlikely. an order that all Jews were to be killed, that means that you never heard about this order officially, but that you know that such an order must have existed, as it was clear from everything that happened in the East, is that correct? of it, but from all the conditions I had to conclude that such an order was in existence.

Q When did you learn first about this fact? How long were you in the East before you learned that? because I had always taken notice of the Eastern reports.

Q So you came there and knew already about it? East without having any knowledge of such an order?

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Q Immediately after your arrival? immediately, during the first few days, but very soon after that. Einsatzgruppen, Sonderkommandos, and Einsatzkommandos must have known as a matter of course of the existence of such an order? to answer your question in detail. I can only say what I was told when I arrived in the last and that is that Mueller told me at the time "You are to go to the last," or he said, "You have to go to the last, because you must gain the necessary toughness because actually you should have been called 'Weichel' and not 'Hatrel'. That means "soft" and you have to learn in Russia that a sort of exaggerated comradeship is not a good thing and you will not get on with it in life." Furthermore Mueller told me "In order to get this toughness, you are to take part in the shootings." commanders. Was it known as a matter of course among these people that there was a very high order, an order from very high up. to kill all the Jews? have carried out these measures without having received orders from the highest authority. impression or whether you knew that all these commanders and officers knew as a matter of course of this order. time when the kommando leader is actually in charge of the kommando, if Jews were actually living in the territory that in that case he would just be told about this order by his chief, that is the chief of the Einsatzgruppe. such executions?

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of the Einsatzgruppe was competent, the chief, in fact, who was partly in agreement with the Wehrmacht agencies, partly in agreement with the Higher SS and Police leaders who carried out these actions. There were various channels of command. The commander of the Security Police and the SD was on the one side subordinated to the SS and Police Leaders, that is the local leaders. On the other hand however, he came under the command of the Security Police. At the same time he also had contacts with the Wehrmacht, that is, the Army and he had to inform the Wehrmacht about these happenings so that there were various channels of command in relation to each other had not just a one sided subordination to the Einsatzgruppe Chief. It depended entirely on the personality in each case. In some cases the Wehrmacht bothered a lot, in some cases very little and sometimes the Higher SS and Police Leader was not interested at all, and sometimes he was interested in dealing with the matters himself in order to gain some merits, thus there were different channels of command -the Einsatzgruppen, the Sonderkommandos, and the Einsatzkommandos took responsibility for such executions. Can you answer that with yes or no. ority, but he was tied down to the order and to the other authorities. However, he, of course, had a very important voice in this, of course, he had the power of decision, but there were other authorities who also had to decide and to be in agreement. That is, one couldn't say that it was the commander himself on his own authority who was responsible, but there were other authorities responsible too.

THE PRESIDENT: Shall we recess, Mr. Hochwald fifteen minutes?

(A recess was taken.)

THE MARSHAL: The Tribunal is agin in session.

DR. MAYER: (for the defendant Klingelhoefer): Your Honor, I would like the defendant Klingelhoefer to be excused tomorrow and the day after tomorrow because I want to prepare his defense with him.

THE PRESIDENT: For tomorrow, did you say?

DR. MAYER: Tomorrow and the day after tomorrow.

THE PRESIDENT: The defendant Klingelhoefer will be excused from attendance in court tomorrow, Tuesday and Wednesday.

DR. MAYER: Thank you, your Honor.

DR. RATZ (for the defendant von Radetzky): Your Honor, I also would like the defendant von Radetzky to be excused from attendance in court tomorrow and the day after tomorrow in order to prepare his defense with him.

THE PRESIDENT: The defendant von Radetzky will also be excused from attendance in court tomorrow, Tuesday, and Wednesday. the question directly, and do not amplify your answer unless you are called to do so. BY MR. HORLIK-HOCHWALD: responsibility of the different commanders to order executions, and that they were dependent on certain other orders and certain other chain of commando. Is that correct? out of the executions was given by those commanders? by the commanders? As far as I am informed, yes, under the given channels of command which I have already mentioned.

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different groups of commanders, according to your experience, commanders who carried out their orders faithfully and correctly; commanders who were unable to carry them out as they were too soft for such jobs, and a third type who, when he received these orders, tried to get himself transferred or to circumvent these orders, you have stated that the defendant Biberstein belonged to the third type, is that correct? and Sonderkommandos who never received such execution orders? people... do you mean the execution of saboteurs, and the like, or do you mean order for the shooting of Jews? Orders for the shooting of Jews, according to my opinion. only such commanders received them in whose area jews were still existing at the time. On the other hand, orders for the executions of saboteurs according to prescribed procedure, and so on, in my opinion all commanders received them, because that was in their field of activities and there was also the possibility for all commanders to have such men in their area. Haensch from 1936 on? gruppe C? first days of January 1942, when I arrived in Kiev, he was not there yet but he must have arrived shortly afterwards. I don't know how many weeks afterwards. And according to my memory he wasn't there for a very long time. In any case when I arrived he wasn't there.

Q To what type of commanders would you count Haensch ... was he type one, type two, or type three, as you have explained to the Tribunal?

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types in between but as I know Haensch one can say that he is a very conscientious lawyer, and that in the SD Main Office he with tremendous conscientiousness dealt with disciplinary matters -- in fact, such conscientiousness that some people called it bureaucracy, but I believe that simultaneously he was a very humane and sometimes even soft man, so that I would put him in the second or third category. that Haensch would certainly be a person who would carry out an order to the last letters? Is that correct? conscientious and correct, and as an excerpt dealing with disciplinary matters, as I have stated already in my affidavit, he could be called a fussy person, conscientious to the last degree, and very correct, and in this manner he carried out his order. I am referring to the interrogation which was carried out by the Prosecution on the 16th of July 1947. Did you not, in this interrogation say that Haensch would have been a person who would have carried out every order he received to the last latter? Will you answer this question please with yes or no?

A In this decisive form I cannot remember. I only made the statement that he was very correct in the office procedure, and according to my foiling, and according to my memory, that is all that I said to the lawyers at the time, that he carried out the orders he received very correctly and conscientiously. I know that this statement, of course can be interpreted to the detriment of Haensch, but --

Q That is sifficient, witness, I think. Isn't it true that in Einsatzgruppe C, when Thomas was in command, it was possible for a commander of an Einsatzgruppe who did not want to carry out an execution, to refuse orders?

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who could not reconsile with their conscience to carry out such orders, should be sent back to Germany or should be assigned to other tasks. Thus, at the time a numner of people, also commanders, just because they were too soft to carry out orders, were sent back by Thomas to the Reich. But I want to emphasize that this was only so under Thomas. How other commanders, or at least other chiefs of Einsatzgruppen, who had a stronger and more severe discipline, required an unconditional obedience to orders, but in Kiev it was so that people who were too soft were sent back. Also, people - especially SD experts could stay away from executions -answered the question I put to you. Can you tell the Tribunal how long Thomas was in command of Einsatzgruppen C?

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in June, 1943, when I left Kiev after having been in the hospital for a very long time, together with Biberstein. He was still the commander of the Einsatzgruppe, and when I arrived in Kiev in January, 1942, he had by then taken over the job, but I think it was then, he then held the rank Chief of the Einsatzgruppe. That is what he was called at the time, and later on he was called Commander of the Security police and SD. is that correct? it was immediately sent back. He was released and came to Vienna. stayed in his position he must have approved and ordered executions? that somebody kept quiet about these matters and tried not to deal with these tasks without expressly refusing it. is that correct?

A He would have sent him home saying that he was too soft. In a number of cases this happened, that Thomas actually sent these people back to Germany.

Q Will you tell me a last question, isn't it a fact that all German personnel of Einsatzgruppen Einsatzkommandos. Sonderkommandos knew that Jews, Communists and other undesirables were being killed without trial?

A How it was until the time, until I came to Russia, I don't know; later on when I myself stayed in Russia, that is from the beginning of 1942, I myself learned personally that just before a number of Jewish executions on a large scale had taken place, and I presume that a number of other people learned it from conversations.

MR. HORLICK-HOCHWALD: No further questions.

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BY DR. BERGOLD:

Q I have only two very brief questions. You said that you found out about the shootings in the East. Is there a difference to be made, a distinction to be made between the first part of 1942 and the second part of 1942, or is the statement valid for the whole year, 1942?

A That in the East there were no large scale shootings?

A I did not say that it was so. I only said in my opinion a number of people will have found out about these shootings. I personally found out about them. How the later development, when these matters became less and less important and then only partisans were fought, how at that time it was, I can't testify to now, but at the time in the second half of 1942, the partisan warfare was the so-called point of any discussion, and I believe that on occasions, of course, such an important matter must have been touched on in a discussion, but whether everybody must have learned about these matters, I couldn't say now.

DR. BERGOLD: Thank you.

DR. RIEDIGER: Dr. Riediger for Haenach. BY DR. RIEDIGER: the Einsatzgruppen knew the Fuehrer extermination order, you said then that this knowledge was existant as long as such eliminations and shootings actually took place. When do you think that in Einsatzgruppe C these executions were terminated? see any more Jews there. to Einsatz Gruppe C -- in the middle of March a commander had received the command over such a unit, would there have been any Jewish round ups of any kind, and did any shootings, therefore, take place at that time?

that is in the more distant vicinity, and in February, 1942, I never saw any Jews. SK-4b, that is in the middle of March was taken over by a new commander, would he ever have found out about it?

MR. HORLICK-HOCHWALD: If your Honor please, I do think that the question as put by Dr. Riediger is inadmissible, he has asked one hypothetical question. The witness has answered this hypothetical question in the negative by saying directly that he never was in Gerlowka, which is exactly in the place where Defendant Haensch was, with his H.Q. I do think that a number of further hypothetical questions to the same effect would not give any information, any correct information to the Tribunal.

THE PRESIDENT: If the witness was not there, how would he know what conditions were?

DR. RIEDIGER: The witness was with Einsatzgruppe C. Part of this Einsatzgruppe C were Special Kommandos 4a and 4b. Both these kommandos were subordinate to Einsatzgruppe C whose commander was Thomas. But since the Prosecutor objects to this question, I can put it in another way, and I will ask the witness-

Q (By Dr. Riediger) Do you believe that as from the middle of March 1942 in the the area of the Einsatzgruppe SK-4b or 4a, whether at the time any shootings of Jews took place?

THE PRESIDENT: Your Objection?

MR. HORLICK-HOCHWALD: If the Tribunal please, the objection is the same as to the first question. The witness has stated that in Stalino there were no executions of such kind, that he himself was not in Gerlowka, so he cannot say anything about Gerlowka obviously. I do think he has answered this question. From the part of Dr. Riediger there is no further question Dr. Riediger can ask him. He expressly stated, "I was in Stalino.

There were no such executions. I was not in Gerlowka."

DR. RIEDIGER: I may take the liberty to point out the following. Part of Einsatzgruppe SK-4b in the area of this Einsatzgruppe, it was not only Gerlowka and Stalino but it was a much larger district, and there were a number of other localities, and the question to the witness is to the effect whether in the whole area any executions took place.

THE PRESIDENT: Well, in the whole area of what?

DR. RIEDIGER: In the area of SK-4b, and I take the liberty to point out-

THE PRESIDENT: Well, first we must find out if the witness knows what area was covered by SK-4b during the period that you have in mind. First establish that.

Q (By Dr. Riediger) Witness, do you know the area of SK-4b, I mean geographically speaking? the industrial area, but I can't give any details, and I can't say what localities were part of this particular area. were also within this area?

A I don't know, but I know that it is within the general area of the Southern Russian industrial area of the Don territory. spring of that year?

A I have already answered this question. In those towns which I passed, for instance, Stalino, Makayev, I met no Jews, and I saw none, and I never heard of any executions of Jews. extensive previously that all Jews were eliminated more or less.

MR. HORLICK-HOCKWALD: If your Honors please, the Witness has given everything what the witness knows, but the defense counsel requests answers, yes and no, for an opinion which the witness cannot give if the witness was not there before 1942, and it obviously is a leading question.

to put answers in the mouth of the witness.

THE PRESIDENT: The leading question matter does not enter here because it is cross-examination, but it isn't clear to the Tribunal that the witness knows the specific area controlled by SK-4b. We would only go so far as to say that it was in the vicinity of the industrial area. That is rather vague.

DR. RIEDIGER: The witness ought to know whether in the areas which came into the field of activities of the Einsatzgruppe, that is Einsatz SK-4a and SK-4b, in the spring of 1942 any executions took place.

THE PRESIDENT: You say he ought to knew. It isn't a question whether he ought to know. It is whether he did know.

Witness, what area was covered by SK-4b; do you know? Do you know of your own knowledge what area was covered by Kommando SK-4b, please?

THE WITNESS: No, not in detail.

THE PRESIDENT: Well, then how can you ask him what conditions were in that area when he says he doesn't know the area?

DR. RIEDIGER: Your Honor, I went on the assumption that SK-4a came under Einsatzgruppe C, that the witness knew this area because SK-4b was part of the Einsatzgruppe C.

THE PRESIDENT: Yes, but Einsatzgruppe C covers a much larger area than the mere kommando. You are inquiring about the kommando area, are you not, about SK-4b, that is what you are asking about?

DR. RIEDIGER: Yes.

THE PRESIDENT: Yes. Well, then you have to find out if he knows what territory was covered by Kommando SK-4b and if he says he doesn't know, how can he answer your question?

THE WITNESS: I did know the general territory, but I don't know the concrete borders. I know that it was in a general district of the southern Russian industrial area, but I can not say that this particular locality was part of it.

DR. RIEDIGER: This answer is sufficient for me for since it is without the slightest doubt that SK IV-B came under Einsatzgruppe-C, it is of no importance whether the localities are mentioned, but that mainly whether there were any executions which took place at the time in the whole area. I have only one more question for the witness. BY DR. RIEDIGER:

Q The witness just mentioned Stalino. Witness, do you know that Stalino was not in the area of SK IV-B; that Stalino was supposed to belong to SK VI?

A I already stated that I don't remember the exact borders, or the exact names of these commandos, but I know that Moor, Sturmbannfuehrer Moor was the commander in Stalino, because I talked to him. Whether this Commando was called SK-VI, or what it was called, I can not say under oath, but I know that the commando was called Moor.

THE PRESIDENT: Mr. Hochwald. BY MR. HOCHWALD:

Q Witness, have you ever been in Gorlowka? Gorlawka? Is that correct? ern Russia industrial area, and not especially this locality of Gorlowka.

THE PRESIDENT: The witness will be excused, and the defendant Biberstein will be returned to the witness stand immediately.

You may proceed, Mr. Hochwald.

BY MR. HOCHWALD: heide on 25 June 1947, which is your Exhibit No. 3, and another here in Nurnberg, on 2 July 1947, which is prosecution's Exhibit No. 29. Is it correct that the affidavits which you made in Eselheide contained essentially the same facts as the affidavit which was submitted by the Prosecution?

A I didn't quite get the question, whether the contents -

Q (Question repeated to the witness.) essentially the same, is that correct? Nurnberg, it is omitted that executions took place according to a certain procedure. that correct? You have pointed in which incidents the affidavits do not or are not alike?

Q But certain points there are essentially the same, are they not? burg.

A Reward? No, never. affidavit? the affidavit? wrting before you signed the affidavit in Eselheide?

A In Eselheide as I said when signing the affidavit I didn't have my glasses with me, and I did not read the entire affidavit, but I told the interrogator to please read it to me, as "I have confidence in you," and I signed it.

Q But he read it to you aloud, did he not? signed it, and you would have had the possibility to make changes if you would have wanted to do so, is that correct? Eselheide and your first interrogation in Nurnberg? on the proceeding Monday I think I was interrogated in Eselheide.

Q So approximately a week, is that right?

Q Who made your first interrogation in Nurnberg?

A I was only interrogated once. The second time I merely was given the prepared affidavit for my signature, and that was by Mr. Wartenberg, as I have learned here. At the time I didn't know his name. of any kind for any statement which you made in the interrogation or in the affidavit? an interrogation here in Nurnberg? statements from you while you were here in Nurnberg? interrogated very long hours. How long at any one time have you ever been questioned by an interrogator here in Nurnberg?

A That was on Sunday morning. I don't know the exact time.

Q Was it more than two hours? with the interrogation that I didn't look at the watch, and I am very bad at estimations.

Q Was it more than three hours? my time for the meal. excessive time?

A Well, I don't know how long an interrogation had to take. I never had an interrogation before.

Q Were you exhausted? During this interrogation? does not always proceed without leaving any trace of it. hours, were you? interrogated? hours? fess to your activity in Einsatzcommando VI? of your mental faculties?

Q Were you suffering from delusions or hallucinations?

Q So you were in possession of your mental faculties, then? examined Mr. Wartenberg concerning the circumstances of the taking of your affidavit, is that correct?

A Yes. That was the assistant, yes.

Q I wanted to know if you were present, Mr. Biberstein?

Q Were Mr. Wartenberg's statements in accord with the events that took place during your interrogation by him?

A I can not remember any details what Mr. Wartenberg said, but I think I seem to remember that something that he said was not correct? If I am not mistaken, but I can not say exactly, that it was concerned with a correction, or with changes, which I would have liked to have made, and, where he said to me at the time during the interrogation that I would later have an opportunity to make these additions. I think Mr. Wartenberg didn't confirm this here, if I am not mistaken.

Q If I am not mistaken, Mr. Wartenberg said that's entirely possible that a thing he answered you in that way, but can you remember whether it was during the first or during the second interrogation, the second interrogation when the affidavit was presented to you?

Q. If I understood your direct testimony correctly, you stated that you were compelled to tell the whole truth by the nature of the oath which you took. Isn't it true that your religious training and your inner convictions compelled you so strongly to tell the truth in your affidavit that you were unable to resist it?

A. That is probably true of every man because an oath is an important matter and a person has the obligation to testify to the best of his knowledge and to the best of his conscience.

Q. Mr. Biberstein, would you have withheld certain facts if you had been told you are entitled to refuse testimony?

A. Well, I am thinking of mentioning names. Yes, I think I mentioned a few, and I said, -- you see, thats ---

Q. I do not recollect that you -- but with the exception of these names, let's go away from the names. Would you have told the whole story as you told this story in your interrogation and as you signed it in your affidavit even if you would have been told that you are in a position to refuse this?

A. Certainly.

Q. You would have?

A. Probably I would not have mentioned a few things the way I did. That would be possible -- it is possible.

Q. Why?

A. Only because one can construct an incriminating fact out of it for me, because opinions are different about different problems.

Q. Would you tell the Tribunal then you would not have said the truth if you would have been informed that you can refuse testimony?

A. If I get the right to refuse testimony, then I make use of a right which has been given me without my saying an untruth.

Q. I do think the whole truth is just telling the truth without withholding anything, but in this respect we may be of a different opinion. Would you have refused to give testimony about executions which you witnessed?

A. I testified to everything, the other questions are all hypothetical. I testified as far as I could.

Q. Regardless of what inner motives impelled you to relate these facts, in your interrogation here in Nurnberg and in your affidavit, are not these facts as true today as at the time when you, compelled by the oath, related then first to Mr. Wartenberg?

A. As far as I remember, I described matters as I did here to Mr. Wartenberg.

Q. So what you then told in these two affidavits and in your interrogation of 29 June, I think is the date, that is the whole truth without withholding anything -- the whole truth, is that correct?

A. Not the affidavit. The affidavit is only an excerpt.

Q. I said everything together, the two affidavits, one at Bielheide, the one here, and the interrogation of yours of the 29th of June together are the whole truth about that what you have to say about Einsatzgruppe 6, is that correct?

A. No. I did not have the request to relate everything I have experienced. I answered to questions, and if I am not asked about anything, I did not make any testimony about it.

Q. You have testified here that you were told that the withholding of certain facts would be a breach of your oath in the same way as giving a false testimony, and that compelled by this statement, you told your story in this interrogation, is that so?

A. No. I merely answered the questions of the interrogating officer.

Q. That means you have not told the whole truth?

A. I was not asked for the truth, the complete truth.

Q. Is it not true that you have been told by the interrogator that the withholding of certain statements would be as much a branch of oath as giving a false statement?

A. Only if it is in a question which he put to me.

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Q. That is how you understood it, is that right?

A. Yes. That is how it is to be understood.

Q. So it is then correct that you understood it in that way?

A. Yes.

Q. Will you answer now the question which you did not answer? These things which you told Mr. Wartenberg are the truth?

THE PRESIDENT: What is the question now. I don't know that I catch the question?

MR. HOCHWALD: I asked him whether he, giving testimony, or relating his story to Mr. Wartenberg, spoke the truth, nothing else?

THE PRESIDENT: Yes.

THE WITNESS: Do you mean by "complete" the extent?

MR. HOCHWALD: I do not recall to have said "complete". I said the truth. Did you tell Mr. Wartenberg the truth in answer to his questions?

THE WITNESS: It is a strange question. I must confirm it, of course, for I think - - - BY MR. HOCHWALD:

Q. I am going back now to 1926 . Mr. Biberstein, you told the Tribunal that under the influence of your mother, and of the "Voelkischer Beobachter" you became a member of the Nazi Party in 1926, is that correct?

A. Yes.

Q. Did you continue in later years to read the "Voelkischer Beobachter"?

A. Yes, as far as it interested me.

Q. Did you read this newspaper or other German newspapers until the end of the war?

A. No. I was not always in Germany.

Q. You had no newspapers in the East?

A. No.

Q. But when you were in Germany you read German newspapers, did you not?

A. I hardly think so. The various political things did not interest me because they were all somehow stereotyped.

Q. Did you ever read the "Angriff" of Dr. Goebbels?

A. In the earlier years, occasionally.

Q. May I ask you what you call the "earlier years"?

A. When I was in Berlin I sometimes bought am "Angriff".

Q. Will you tell the Tribunal just the times, the years which you read it?

A. I do not know, when I was in Berlin , 1935 to 1940.

Q. Did you listen regularly to the German radio?

A. No.

Q. Did you ever listen to the frequent speeches which were made by Hitler?

A. Yes. I heard Hitler's speeches over the radio.

Q. All of them?

A. I cannot say. I don't think so, I was not always in Germany.

Q. In the spring of 1939 you were in the Reich, were you not?

A. Yes.

Q. Do you recall particularly one speech which Hitler made in the spring of 1939 after the occupation of Czechoslovakia ?

A. After the occupation, I do not remember such a speech. As for its content, I assume that he spoke and that he made a statement, but unfortunately I cannot say anything about its content. If I have to give any information about this, I would have to lie. One would have to submit the speech to me so that I could maybe remember one or the other expression, otherwise, I do not know.

Q. Do you remember that Hitler threatened in this particular speech that if war should break out that the European Jews would be exterminated

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A. No, I don't remember. I consider this out of the question, since in 1940-41, I heard about a completely different plan about the Jews.

Q. Was it known to you that a national socialist state and a national socialist party were violently anti-semitic?

A. Yes.

Q. Is the name "Streicher" known to you?

A. Unfortunately.

Q. You yesterday gave the Tribunal a description, or was it Friday, I am sorry, -- a description of national socialists and of Hitlerites. To what type do you consider belongs Streicher?

A. I only know Streicher from his papers, otherwise , I know nothing about Streicher.

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Q. You cannot say whether he was a national socialist or Hitlerite, is that right?

A. I don't know him personally, I could only judge on the basis of his paper.

Q. Do you refer to the "Stuermer" when you speak about the "newspaper"?

A. Yes.

Q. Did you read this newspaper?

A. In the early days, Yes, but never again afterwards. It was a dirty sheet.

Q. Is it known to you that in November 1938 when the synagogue in Germany was burned that it was Streicher in Nurnberg who led the destruction of then here?

A. I do not know.

Q. You did not learn that in the Ministry of Church Affairs?

A. No. Officially, I certainly didn't.

Q. You were at that time in the Ministry of Church Affairs, that is correct, isn't it?

A. Yes.

Q. May I presume that in this Ministry, among your colleagues, these events were widely discussed?

A. Yes. In the Ministry I heard from my officials what had happened during the night.

Q. You disapproved of this burning for religious reasons, is that correct?

A. Basically, I didn't.

PRESIDENT: I didn't catch it. Would you please repeat it?

INTERPRETER: I did not on principle approve of this. BY MR. HOCHWALD:

Q. What principle was this, if it was not religious?

A. That was an action which was completely illegal and we lived in an orderly state, and there can't be suddenly overnight some kind of events which contradict every legal order and order in generals.

Q. Did you approve of the other measures against the Jews just for the simple reason that they were legal?

A. Which measures do you mean, Mr. Prosecutor?

Q. The Nurnberg laws, the depriving of professions, of personal property, of citizenship rights, of living in certain quarters, of hundreds and hundreds of things which were known to every German citizen, whether he was an official or not, as every German citizen could read them every day in the German newspaper, hear them every day on the German radio, and see them every day on the street. So will you tell me now whether you approved of these measures just for the simple reason that they were so-called "legal"?

A. First of all, they were law, and secondly, the laws had a certain justification, in my conviction.

Q. Do I understand you correctly that you approved of them then?

A. Well, I did not have any influence specifically on their extent, but that something, had to happen in order to remove certain irregularities within the German people was clear to me and seemed a matter of course to me.

Q. You did approve then of these measures, Please answer with "Yes" or "No".

A. Nuernberg laws, Yes. What else did you mean?

Q. Everything else which was decreed by the German state between 1933 and 1945 against the Jews? It was common knowledge of the German people?

A. No. This was not known, I do not know what you mean by this. You would have to tell me specifically what measures you mean.

Q. For instance, the wearing of the "David Star", which was completely legal in Germany, as it was a decree to work. Did you approve of this decree, completely legal?

A. It was a matter of taste, but that some kind of an insignia would be worn, I did not consider unjust.

Q. You did approve of it then?

A. Yes.

Q. You only disapproved of the burning of the synagogues?

A. Because it was an act of violence.

Q. Did you voice your disapproval to somebody concerning the burning of the synagogues?

A. At home. Certainly, I told my wife about it. Whether we talked about it in the office, I assume so. Yes. I remember at the time I had a conference with a man from the Gestapo Office and we spoke about it and he told me that, "You can gain some merit here". Yes, we have instructions to determine by whom these measures were taken and at this occasion we spoke about them. Mr. Prosecutor, you are smiling, because by now you probably have found out differently, but I also heard about them, but at the time matters were this way, andyou must believe me if I tell you that this was told to me, and that many circles within the people were firmly convinced of the fact that the Fuehrer not only did not know anything about it, but that he was enraged about it.

Q. So, do I understand you that you say that these measures were not ordered by the Nazi State, is that correct?

A. I cannot imagine.

Q. Can you tell the Tribunal by whom these measures were ordered and carried out?

A. It was later claimed that it was Goebbels who was alleged to have given these instructions, otherwise, I know nothing.

Q. What did you think who did do that when you heard of it the first day, the first morning after your employees came and told you that that happened?

A. We were told that it was the So.

Q. So you knew as a matter of fact that it was a party organization who carried out these measures?

A. Yes.

Q. Did you also know that the SS participated in the thing?

A. I know that the SS did not participate, but I heard in Berlin that the SS was partly committed in order to limit these measures.

Q. But you know as a matter of fact that a party organization had carried out these measures?

A. Yes. There were quite a few party organizations which did bad things.

Q. You were a member of the Party then, were you not?

A. Yes.

Q. Why did you not leave the party when you were so much opposed to those measures?

A. The question of leaving is a question which has much deeper roots than that, it could be solved by one single measure. I explained in my direct examination that I joined the Party at the time because it represented a great and lofty ideal, we clung to this ideal with the first love of a young man. That was the first Party I joined.

Q. I do not want to interrupt you, of course, but I do think the Tribunal knows, and I understood perfectly why you did not leave the Party, you were just too much interested in national Socialism in order to do that for just one incident, is that what you wanted to say?

A. No, No, it was an individual incident.

Q. That is what I wanted to say.

A. As I heard, it was not even approved. If somewhere people do stupid things, and I could mention more such things, then one could have left it a long time ago, then one would leave any party, for stupidities are carried on everywhere and human beings for some reasons are always going beyond the limit somewhere.

Q. Did you learn at that time, too, that at the same time when the synagogues were burned great numbers of Jews were arrested and put in concentration camps?

A. No. I did not hear anything about this at the time. I heard it here in the courtroom for the first time.

Q. You joined the SS in 1936, Is that correct?

A. Yes.

Q. You have told the Tribunal that the SS was known at that time as the most ideal and nest unselfish representative of National Socialism and was highly regarded by the population, is that correct?

A. Yes.

Q. May I assume that you also were of this opinion?

A. Yes, of course, otherwise I wouldn't have said it.

Q. That was in 1936, was it not?

A. Yes.

Q. Have you between 1936 and 1945 changed your opinion about the SS?

A. You mean until '45?

Q. Between 1936 when you joined until 1945 when Germany collapsed --May, 1945 to be perfectly correct?

A. No. If I look at the entire matter, I did not.

Q. Will you explain this statement. If you considered the entire matter, you said--if you consider details, what is it then?

A. The important thing about the SS was the Waffen SS, and as far as I am convinced, it belonged to the best German troops there were, whom I always look up to in admiration and gratitude.

Q. What about the other SS organizations?

A. They hardly appeared during the war.

Q. Do you intend to tell the Tribunal that there Was no Gestapo during, the war in Germany, in the occupied countries, for instance?

A. These were not actually SS men, as far as I saw it for they had a professional activity, that is, not so much a Party mission as SS officers.

Q. Is it then correct that it is your opinion that only a member of the so-called "General" SS or later, the Waffen SS, is an SS member at all, and everybody else, whether the Totenkopf, or SD, I don't knew what all organizations existed, was not a member of the SS just for the simple reason that he had a fulltime job with the SS. Will you tell that to the tribunal?

A. As far as I know, the members of the SD and the Gestapo were more or less taken into the SS on a compulsory basis, as a result of their profession.

Q. Would you consider Himmler a member of the SS?

A. Yes, of course.

Q. Thank you, that answers my Question. Was Heydrich a member of the SS--Heydrich?

A. Yes, Yes, he was in it.

Q. Was Kaltenbrunner a member of the SS?

A. I said, all the members of the Security Police and the SD were professionally SS officers and SS members.

Q. when you were an official in the ministry of Church Affairs, did you also have to deal with the affairs of the Catholic Church?

A. I said that I had two departments. First of all, I was liaison man to the Gestapo, and there I had to deal with Catholic matters also.

PRESIDENT: Witness, why don't you answer the question directly. You did tell us all that-You heard the Question of Mr. Hochwald, it was very specific. Now, please answer that directly.

THE WITNESS: Yes. As a liaison man to the Gestapo I had to deal with Catholic matters, too; as expert in church matters, I had to deal only with Protestant matters. BY MR. HOCHWALD:

Q. Will you tell the Tribunal whether it is true or not that National Socialism was strongly opposed to the Catholic Church for the reason of its internationality and of its position in the racial Question?

A. I didn't suite yet the question.

Q. I asked you whether it is true that National Socialism was strongly opposed to the Catholic Church for the reason of its internationality and of its position in the racial Question?

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A. As far as I knew, these were not the reasons, why the National Socialist state was supposed to have had a hostile attitude against the Catholic Church.

Q. Is it true that National Socialism was opposed to the Catholic Church?

A. The National Socialist as such? No. There were innumerable Catholics in the Nazi Party.

Q. Then I do not think that you answered the Question. I asked you, whether National Socialism was opposed to the church, not to certain Catholic members of the church who preferred to join an antichurch party. It has nothing to do with the individual.

A. No.

Q. But I am speaking now is the organization of the Catholic Church in Germany.

A. Against the organization of the Catholic Church as such, National Socialism had no hostile attitude, for I have already said that even the members of the Catholic Church were members of the Party.

Q. All right, now, I just asked you that I did not want to ask you about individuals but about a complete organization--but I do not think it is such an important Question, so I will have the question.

PRESIDENT: He is going to give that to you whether you want it or not, so there is no use your trying to refuse it. BY MR. HOCHWALD:

Q. Did you once learn when you were an official in the Ministry or later that in Germany program for the extermination of insane and feeble-minded existed, the so-called Euthansia program?

A. Yes, I heard about that.

Q. Where did you learn about it?

A. If you ask me where and when, I could not give any exact answer, and I cannot say when this was first mentioned. I could not state it specifically because this was outside of my sphere.

Q. Was it known to you that this program was violently opposed by the Catholic and by the Protestant Church?

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A. Yes.

Q. Did you, having been a Protestant minister, approve of this program?

A. This question is very crucial, and I cannot merely answer this with "Yes" or "No". I personally asked myself this question frequently, and I came to the conclusion that if I personally had a child which was incurable, I would have given my approval as a father to have this child freed from his sufferings in this manner. Certainly, I know the philosophy of the church that in every insane person it sees a divine will, namely, that the child would yet special love, but I personally came to the conviction that it would be a greater love of your neighbor to prevent the birth of such poor people, and if these who have legal responsibility for these people give their approval to put an end to the suffering by way of Euthanasia, the suffering of these people who no longer are human beings, that they be eliminated in this fashion, I did not have anything against this from my religious point of view, but this question is so difficult and so important that to judge it one has to be an attorney in order to know what conclusions to draw and what consequences this could lead to.

Q. I did not ask you about the consequences, but I do understand your answer, that in spite of the fact that you knew that there were strong religious objections you approved of the Euthanasia program in principle, is that correct, is that what you just explained to the Tribunal?

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A I mean, one cannot act against the will of the relatives, I'm against that, but with the approval of the family would favor it. Moreover, this has been a contraversy among physicians for decades and many points of view have been expressed on the subject.

TEE PRESIDENT: Witness, did you know that in many instances invalids were executed because they could not work?

THE WITNESS: No.

THE PRESIDENT: You didn't know that?

THE WITNESS: Because they did not want to work?

THE PRESIDENT: No, no, no, because they could, not work. They were invalids, they weren't insane and they weren't completely helpless, but they could not work. Did you know that in many cases they were executed?

THE WITNESS: No, never.

THE PRESIDENT: Could you see that the euthanasia program could lead to very grave abuses and that people could be killed not for medical reasons, but for ideological reasons, could you see that?

THE WITHESS: No, I would never have considered, it possible, because this could only concern a case when the physicians are convinced to the best of their knowledge that this human being cannot be cured.

THE PRESIDENT: And do you know that physicians could, sign a statement indicating that the invalid was to be executed although the physician knew that the invalid did not fall into that category of incurable? Did you know that?

TEE WITNESS: No, I do not consider that possible, because a physician has an obligation towards life and this question always played a big role among physicians and was a matter of conscience, and I am convinced that even though it was forbidden physicians did something like that here or there; I could, tell something from my own time as a priest. Of course, I don't know the details, but I saw the most varied illnesses -

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THE PRESIDENT: That is enough. You answered the question. Proceed, Mr. Hochwald. BY MR. HOCHWALD:

Q Thank you. Did you know that concentration camps existed in Germany?

Q When did you learn for the first time that such camps existed? detail, but I think it happened right after 1933, because thus a bloody revolution in Germany was prevented, as it happened in other countries where it resulted in the deaths of thousands.

Q Which concentration camps did you know about? Dachau, Buchenwald, Oranienburg, Auschwitz, and Lublin?

A That is asking too much. At what time?

Q Let's say 1940. had an official who lived in Oranienburg and thus I got acquainted with an SS officer who was on duty there. Later, of course, I got to know the names of various concentration camps, since they were made generally public.

Q Did you know that Auschwitz was a concentration camp? the Gestapo office in Oppeln that prisoners of war who were Bolshevists were sent to Auschwitz?

Q It was known to you?

A Yes, but not what they were supposed to do there. In Auschwitz there were many buildings being put up and many people were sent there to work there.

not? were sent to concentration camps, isn't that a logical effect of what you said? office in Oppeln that Jews were sent to the Theresienstadt in Czechoslovakia, did you know that?

Q Were they sent from Oppeln at the time when you were there?

A Yes. I have already said during my interrogation that a transport went there on instructions from Berlin. so-called model ghetto, a town which had been when to the Jews completely, in which they were by themselves and in which they had their own municipal institutions without other people being there. liberty or that they were imprisoned there?

A They were not in prison. They lived in houses like any other human being.

Q Were they at liberty to leave the place?

A I don't know the directives, because I wasn't there. the Gestapo in Oppeln? Were you of the opinion that the Jews were resettled in Theresienstadt and when they did not like to stay in Theresienstadt they could take the next railway and go by train back to Berlin or back to Oppeln, or back to I don't know where they came from?

had about Jews and I could understand if they were collected in order to send them to Madagascar. whether these Jews who were sent to Theresienstadt had committed any crimes?

A No, no, not at all, that wasn't the point. This was the solution of that question which had for many years played a role in Germany. that these people were deprived of their personal liberty, is that what you want to tell the Tribunal? A No, that's only a temporary condition. The misfortune of the Jewish people is that they have no homeland on this earth. Q I do not think that you answered the question, but I do think it is unnecessary to answer this question. You have told the Tribunal and just referred to it now that before you were appointed Chief of the Gestapo in Oppeln you went to the RSHA in order to get acquainted with the different departments of this organization, is that correct? you saw the Jewish Department concerning the resettlement of the Jews in Madagascar?

Q When exactly was that? When was that? Jewish Department of the RSHA?

Q Do you know what the task of this Adolf Eichmann was?

A Yes, he was an expert for Jewish questions. That is why he described this plan to me.

the Jews, out to exterminate all of them?Wasn't that the official task he had received?

A No, I hear this for the first time. Then, he wouldn't have been able to tell me this or he would have deceived me. for the first time now?

A What?

Q That Eichmann had the task to exterminate all the Jews?

Q You heard that just now in this courtroom for the first time? on it and what it was I don't know. I only saw this man once and never again. Oppeln, you volunteered to carry out this job, is that correct? refuse this assignment? Didn't you say that in direct examination? been unpleasant for me. One could refuse any order, but one would also have to know what was behind it. Furthermore, I was under military law and I was detailed by the Army to take further orders from the Security Police and SD: As I said in the examination, I had reported to the military administration as a soldier and I personally could, only have wished that I would not have gotten this deferred status. choice between a position with an Einsatzkommando and a position with the Gestapo Office in Oppeln, is that correct?

A No, no. The two things are not opposed to each other. These were two different questions.

First I was asked whether I wanted to go to the Einsatzgruppe and I said no, and mentioned, the reasons

THE PRESIDENT: Mr. Hochwald, may I interrupt, please. Dr. Bergold, would you please come to the podium?

DR. BERGOLD (Attorney for the defendant Biberstein): Yes.

THE PRESIDENT: Do you think, Dr. Bergold, you could come here tomorrow morning and still get away in tine for your other appointment. You see, we are in a very peculiar situation here now. We are in the very midst of a cross-examination and we can't let a dry go by.

DR. BERGOLD: Yes, I know that, but I thought that the witness could be cross-examined this morning and the whole thing dragged out for a pretty long time and because Hartel was brought to court another day was lost and now my own hopes and calculations are all wrong.

THE PRESIDENT: What time must you be at your appointment?

DR. BERGOLD: At 8:30, I must leave with a car; otherwise I would have to leave by train at six, but I am getting a car, Your Honor. I don't went to make any difficulties for the Tribunal. I hope that Dr. Ficht when I sent away for some job will return, as we agreed, and that perhaps we can reserve the right for me to conduct my redirect examination when I get back.

THE PRESIDENT: Very well.

DR. BERGOLD: I entrust my fate to the Tribunal; so that no questions will be admitted which are inadmissible and I trust in my opponent, that he will be correct.

THE PRESIDENT: Well, will Dr. Ficht be here tomorrow morning? You are sure of that?

DR. BERGOLD: I hope that he will be here. I hope so. I sent him away with a definite order, and one cannot know today whether the communications are such that a plan can be carried out to completion. The communications are not certain. Trains may be late, so that he may not come at the right time, but he is to appear here.

MR. HORLICK-HOCHWALD: If the Tribunal please, I do think that if the Tribunal reserves the right of redirect examination to Dr. Bergold for a later date and Dr. Bergold appoints one of his colleagues as his deputy for tomorrow, objections against questions on the part of the prosecution can naturally only be on just a formal basis. An objection on a formal basis can be raised by any one of the defense counsel.

THE PRESIDENT: Very well, suppose we agree upon this plan. We hope that Dr. Ficht Will be here tomorrow. If he is here, of course he will handle the situation completely, and we will always reserve the right to you, Dr. Bergold, to call your client for any question which you wish to put to him because of what has arisen in the cross-examination. In the event Dr. Ficht cannot be here, we would appreciate your appointing one of your colleagues to stand by for the purpose of controlling objections which might be in order during the crossexamination.

DR. BERGOLD: I ask that my colleague Belser would take over this job.

THE PRESIDENT: Very well, and I assure you that you have selected a very able attorney to handle your affairs in your absence, because we know Dr. Belser very well. thirty.

(The Tribunal adjourned until 25 November 1947 at 0930 hours.)

Otto Ohlendorf, et al., defendants, Sitting at Justice Michael A. Musmanno presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. RIEDIGER: Dr. Riediger for the defendant Haensch. Your Honor, I should like the Defendant Defendant Haensch to be excused all day today, and to be taken to Room 57.

THE PRESIDENT: The Defendant Haensch will be excused from attendance in court all day today. He will be immediately taken under guard to Room 57 so he may confer with his attorney. Mr. Hochwald, you may resume the cross examination.

MR. HOCHWALD: May it please the Tribunal. BY MR. HOCHWALD: spoke about the question whether you took voluntarily the position as Chief of the Gestapo in Oppeln, and you have already told the Tribunal that you didn't. Now in the meantime I have obtained a copy of the transcript. If Your Honor please, this is not yet the mimeograph copy which I have. I have only a carbon copy, and for identification I can only say it was the afternoon session of 20 November 1947, immediately after the afternoon recess, that is at 1515 hours. Witness, you were asked by your counsel about your discussion with Heydrich on May 5, 1941, and you said there that Heydrich received you in a very friendly manner, and asked you would you not like to be put in an Einsatz assignment.

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Also you had no idea what such an assignment would be, and you asked him not to put you into such a position by pointing out that you had served in the First and in the Second World War, and that you just had returned from the Western Campaign. Then you said Heydrich agreed to this, and said that actually he had intended me to be a police director or a police president but owing to my knowledge of the church and church politics, he considered it suitable to employ me in his office. The question of your counsel then was, what did he suggest in this connection, and, you said, he suggested to me I should take over the State Police Office. Doesn't that indicate, Herr Biberstein, that you actually had the choice between taking the position in an Einsatzkommando, of which according to your own testimony you didn't know anything, or, the office of the State Police in Oppeln, of which you didn't know anything, either. Would you tell the Tribunal whether you were forced by Heydrich to take this position in Oppeln?

A This question, Mr. Prosecutor, which you just asked me I had already answered in my direct examination as far as I know. I said I think that I could have refused that but what would have happened then I must have had in "inkling of" because I was under military law and by military order I could be employed in other tasks of war, and had been put at the disposal of the SD and the Chief of Security Police. What I just read to you was that what you said about it.

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Will you tell the Tribunal whether it is not true from your own testimony that you actually had the choice to take this position?

A The choice between what offices? Police Office in the Gestapo Office in Oppeln. between these two agencies. The first question of Heydrich's as to giving the assignment had nothing to do with the second matter. is that correct?

Q All right. Why where you then not in a position to refuse the second one?

A The second assignment? He said in the second assignment, that he wanted to make me a police director, and apart from that I told him on the first occasion - you forget this - that I was not the man for this job, therefore, we compromised, and I accepted this compromise suggestion, and I had no other choice, and that is not voluntarily. I didn't go to him voluntarily at all. suggestion, so if you had to agree your voluntarity is, in my opinion, quite obvious, but possibly you are not - - Oppeln, you testified that you were also Political Referent to the Regierungspraesident, is that correct?

Political Referent in more detail? for families who had children. I had a number of files which dealt with this question only.

Q Which question is that? which even non-employees or people who were not officials could receive money for children through this welfare. That was the assignment of the Landrat, District counsel. These files would come in as complaints to the Regierungspraesident, and I handled a great number of these files together with the Vice-president in the government office in Oppeln. I was not fully employed there.

THE PRESIDENT: Why not place the microphone on the left side, since naturally he will look towards the crossexaminer. BY MR. HOCHWALD:

Q It was your only task as Political Referent? In any case there were not many tasks. I, of course, consulted with the Vice-president, on occasions when we want through the files and discussed them, but I can not remember at the moment any details. In any case, there were no "exciting"matters to deal with. described a political one? objected to the granting of this child welfare support. to the Regierungspraesident, is that correct?

A Well, I don't know, I only saw the files, and in the discussions which I had with the vice-president these files were handled, and that is all.

I can not remember anything else. the Regierungspraesident was in charge of the entire police force in the District of Oppeln?

A Mr. Prosecutor, if you are going to ask me details about the channels of command, you will find no unable to give an exact answer. I can only speak about my impressions and not about the legal and actual matters. what you did as Chief of the Gestapo, you said, I didn't do a thing but I was Political Referent to the Regierungspraesident, I was active in this field, and I asked you, what did you do in this field, and the answer to my question was again negative; so may I then assume that all the time you were in Oppeln you just didn't do a thing, is that correct? That you didn't know what happened in the Gestapo; you didn't know what happened at the Regierungspraesident; you do not know the chain of command; you just do not know a thing which happened in Oppeln, is that correct?

A Mr. Prosecutor - -

DR. FIRCHT: Dr. Ficht for the defendant Biberstein. Your Honor, I would like to object to this question, insofar as the statements of the Prosecutor are not correct. The witness didn't say that he didn't do anything when he was in this Gestapo Office or the State Police Office. On the contrary he told in detail his activity. It is not that he denied it that definitely, but in my opinion the facts as of his own statement which are now being discussed are misunderstood, or at least a little distorted.

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THE PRESIDENT: That is right. The cross-examiner always attempts to take the worst possible interpretation from what his victim has said, and it is up to the man who is on the fire to extract himself as best he can. That is what cross-examination is. It is a very cruel process.

THE WITNESS: May I say something about the last statement which was mentioned by the Prosecutor. If it has not yet been brought out from my direct examination, I want to emphasize again that during this whole period I hold a very miserable position, and I would like to consider whether it is not understandable how a human being with my training feels in such a position. It was the most unfortunate and unhappy time of my life. There was only one hope and that was that Heydrich gave me only a year in this activity after which I could leave this job. It is not so unnatural that I should have felt unhappy there and remained inactive. I should like to consider this.

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your life, is that correct? Einsatzkommando 6 was more agreeable than in Oppeln? periods. It is one concept for me, that is, my activity with the SD and the security police. I always combined these activities and regarded them as one.

Q How long were you in Oppeln? two minutes ago that this was the most unhappy year of your life. You have been another year in the Einsatzgruppen. May I assume then that your first remark was just referring to your activities in Oppeln?

A You misunderstood me, Mr. Prosecutor. It is absolutely clear for me and I emphasize this, that far be it from me to distinguish between the state police and the assignment in the cast. I have said quite clearly, and I have explained my attitude to the Einsatz; in my direct examination I gave details of it. It had its consequences, too, but I must emphasize again that I did not want to leave the Einsatz alone; I did not only want to be dismissed from the Einsatz alone but also from the assignment of the state police, and I always combined these two. office in Oppeln in your time had a special department for Jewish affairs?

Q Was this department under your supervision?

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A Yes. It was part of the Gestapo state police in Oppeln. reported to the commander of Einsatzgruppe C, Thomas, in Kiev, is that correct? in your new assignment, you reported to the commander of Einsatzgruppe C, Thomas, is that correct?

Q When was that, Herr Biberstein?

Q The first days of September, what days in September? days. I stayed in Kiev. I presume I must have left Oppeln on the 3rd or 4th of the month, so on the 6th I would have arrived in Kiev. the commend?

Q You took over the commando 6? Kommando 6 was?

Q How many subkommandos? Novocherkassk, and Schachty.

Q How many officers were in the commando?

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these eight officers, how many of them were at the subcommandos how many of them were at your headquarters, just how was the thing distributed? commando consisted of the staff and the four subcammandos. In the staff there was the Einsatzkommando leader, his deputy, and the leader of 1 and 2, an officer, also the leader of 3 and 4, an officer. They were also leaders, officers. Then there was also one officer at the outpost Schachty, and one in Novo-Tscherkask. And then there was another officer in Solchose. that correct?

A Nine, yes. Yes, and that would make nine officers. I had miscounted. in each subcommando?

Q Then only three?

A No. At my time there was no officer stationed at Taganrog. He was only a Sturmscharfuehrer, who was a noncommissioned officer at that time. officers at the subcommandos, is that correct -- six officers at headquarters and three officers at subcommandos, is that what you said -- I only want to keep the record straight. If you are mistaken, you can make a correction. Is that correct?

A I must count again. I left somebody out, and I want to point out that my heart attack which I had on Friday has not been fully cured yet. This is not supposed to be an excuse though. I am trying hard to follow and I am trying to answer all the questions.

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As I said, deputy officer, 1, 2, 3, 4. That is five officers in the staff. Then one in Solchose, one in Schachty, and one in NovoTscherkask. There are only eight. and three officers in subcommandos, and there was a fourth subcommando which was under the command of a noncommissioned officer?

A No. He was wearing an officers' cap.

Q Warrant officer?

A He had the insignia of an officer and an officer's cap, but he had not quite the officers' rank.

THE PRESIDENT: You may not have In the German army an officer who is known as a "warrant officer" in the American Army. A warrant officer is one who holds a commission from the War Department and not from the ruler or the chief executive officer of the country, which would be the President in the United States. He is higher than a noncommissioned officer, and not quite a commissioned officer. We call it a warrant officer. BY MR. HOCHWALD:

Q How many officers were in Office 4, Herr Biberstein? was the chief of the subcommando Rostov. As I have already said in my direct examination, he was the only one. were carrying out investigations and passed sentences and ordered executions?

A Only from the subcommando up. It depended on the position that the person concerned held. An administrative officer was not entitled to do so.

Q My question is, how many of these could do it. You have enumerated to the Tribunal that you had eight officers, together with you, that you were eight. In office 4 there was only one. In every subcommando, with the exception of one, was only one. In one there was no commissioned officer at all. My question is now, who of these persons was entitled to carry out investigations, entitled to pass sentences, and to order executions?

Q All in all?

A Yes. The others were not entitled to do it. subcommando leaders and the leader 4?

A No. The leader 4, as I said, in Taganrog there was no officer. In Schachty and Novo Tscherkask, and Rostov. There were five. Aid then Nehring and, of course, I also was authorized.

Q Five?

Q How many people carried out executions? out -- you mean shootings? That I don't know. That are the subcommandos, Schachty, Novo Tscherkask, and Rostov.

Q How strong were the three commandos? You do not know?

A That I cannot say. The men were detailed for these assignments. instructions about your task as commander of Einsatzkommando 6, is that correct?

A Yes, that is correct. I only got the directives to go to Rostov, take over the commando, and to inspect it and then report about it. when you came on the 18th of September to Rostov?

A No one informed me about my tasks. The commando was shown to me, I inspected it, and the leader 4 arranged this.

Q That was all you did. You did not question anybody, "What am I supposed to do as commander of Einsatzkommando 6"?

A I told him, "What do you do, and how do you do it" and "Please show me". information?

Q Can you tell the Tribunal his name?

A Yes. This is already in the files. His name is Heidelberger. Thomas to give you information on your task? do not know.

A He never told me that he had any such order. In any case, I do not remember. had no experience in security matters, is that right?

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of war to an important unit as its leader and neither information you about the security tasks or aid he instruct anybody to give you at least the basic information which was necessary for the carrying out of your tasks?

A I have dealt with this in detail in try direct examination. From my training, my professional training and my attitude to these matters, he drew the conclusions. He did not order me to this particular position, but I was sent there from the Berlin office. Berlin detailed me to this position, and I discussed the question in detail as to whether Thomas could not have, given me another assignment. He just couldn't do so. He found a solution which satisfied both parties. would be logical to me what he would have tried to make yourself acquainted with this job, just for the simile reason that he knew that you had to stay there as commander. He should have done something to make you able to fill out this position.

AActually, of course, I can't understand it. I told Thomas that I wanted to leave, I wanted to apply for a release. This he accepted. He said, "Well, go there. Of course, you have been detailed there by Berlin; one cannot do anything about it, but please go to that place and inspect it, and we shall see about it". That I did according to my duty, and he came to the decision, as I have already said, that the leadership task within the commando should be divided between Nehring and myself.

Q That was and of October, wasn't it? you were in command of the entire Einsatzkammando 6, is that right?

A No, not quite. I think we misunderstood each other. Nehring arrived the end of October end the meeting was at the beginning of October, which I already said in my interrogations--on the 13th of October I returned to Rostov.

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beginning of October--when you went to Kiev--in command of the entire Einsatzkommando 6?

A I always was, in the final analysis. I never denied that, and it always was that way. subordinate? officer and chief of a commando, and I think I confirmed this expressly in my direct examination. just enumerated, the three subcommanders and the leader of office 4 who were entitled to pass sentences and ordered executions, were all the time, when they did so, your subordinates, is that correct? about the Fuehrer order, is that correct? before your mind, when the defendant Ohlendorf testified here, is that also correct? in the time when you were in the East and earlier to kill all Jews there?

Q When did you learn about this fact for the first time?

Q When?

A Well, the word, "final solution," I heard for the first time here.

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interrogation?

A In the interrogation. I don't know whether I was asked for it then. I can't say anything about that. I can't say whether I heard it here or somewhere else, but here one is so mixed up that one doesn't really know where it is.

Q You did not hear about the so-called "final solution" before you came to Nuernberg?

Q Then you don't remember whether you were interrogated by Mr. Wartenberg about the extermination of the Jews?

A I don't think so, but I can't say with certainty. I can't remember it.

Q Well, it is an important matter. I do think you should have a recollection when you heard about that. You do not know?

A I said yesterday, if one is interrogated, one can't keep all the impressions that one gets, especially if there are strange matters which one isn't used to.

Q You just don't know any more? described to the Tribunal and which you witnessed, one by gas van and one by shooting, were carried out between the 18th of September and the beginning of October 1942?

Q Who was chief of the detachment who carried out this execution? particular service. I don't know who it was at that time, but I went there with Heidelberger, at least, I drove there with him.

Q Did you have a special execution section in your Einsatzkommando?

A No, No. I already said the whole subcommando took part in it.

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The men were detailed for these tasks, with the exception of the administration and the kitchen, of course.

Q Everybody else?

A Yes. Well, according to the requirements of the officer, who orders how many people are to be employed in it, and I did not have to deal with it. the exception of the personnel of the cookhouse and of the administration took part in -

A Well, I don't know. I couldn't say anything else.

Q You watched an execution by asphyxiation? according to German criminal law? I said that I did not order this particular way of execution, but I found it when I arrived, and I had to assume that a lawyer had regulated it, and that all decrees had been examined, and I could not pass judgment myself. that kind? the outfit, and that all the people who carried out these orders were under your command, and I do think that it would have been necessary if you had satisfied your own conscience if that which was going on around you, and under your supervision, was legal or not.

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which was carried out under your command was legal and justified? me that he had regulated everything in the proper manner and that everything was all right, and then whom I supposed to ask--

whom am I supposed to ask. I knew that everything was all right, or at least I thought I knew, and I myself had no power of judgment concerning these matters.

Q So you never made inquiries in this respect?

A What do you mean--what happened? I saw that the execution by gas van was carried out according to order, and I saw that it was not a wild, extreme measure which somebody was doing, but that was an orderly matter which had been instituted by the authorities. in this place?

A Yes. I said in my direct examination that I never noticed any Jews. that there were no Jews any more when you came there?

A I can't testify anything about this because I don't know anything about it.

Q Will you tell the Tribunal how many inhabitants Rostov has? If I am correct--or at least according to my memory, vaguely, there must have been 200,000.

Q 250,000 now, correct?

A 250,000? Yes, about.

Q Do you know how many of these inhabitants were Armenians?

A No, I couldn't say that because I don't know whether in these 200,000 the suburb Nahichova is included. living in this suburb?

A No, I don't know how many Armenians lived there. I did not inquire about ethnic groups.

possible that there were some Jews, not very many in Rostov, how many would that be?

A I don't know. I said I don't know that there were any Jews. That does not mean that there is no Jew actually living there because this question was never brought up. I onlu know in general that there were no Jews, but that doesn't mean that Jews didn't come there. There was a constant wandering between the towns and villages. The town, Rostov, did not have a fixed population. Those who saw this constant migration must have been most amazed about these tremendous wanderings by all these Russians over these distances. The population fluctuated largely, some had escaped and, of course, returned on occasions to the places they came from.

of the population in Rostov Jewish?

A I can't testify anything concerning this because this question was never mentioned at the time. not to inform you about the Hitler order, as this order was not valid for Rostov as there were no Jews, is that correct?

A The answer to this question can only be my opinion. Yes.

Q How was it then with Taganrog? In Taganrog there were Jews, were there not? of June in 1943, and quite accidentally without any particular excitement about this fact.

Q But you knew that these Jews were registered, were they not?

Q So there were Jews in Taganrog, were there not?

Q Will you tell the Tribunal approximately how many?

A That I did not know. I didn't interest myself in it as there was no cause for doing so. for these Jews in Taganrog?

A That question I asked myself. I ask myself this question today. There were Jews. the first step to their extermination? by Mr. Wartenberg?

A The Jewish question was mentioned in Eselheide. Whether, however, it was mentioned here I can't say, because in the affidavit nothing is mentioned which surprised me at that time.

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Q I think there is mention, I am not quite sure. But I want to ask you another question. Is it not ---

Q Is it not true that Mr. Wartenberg asked you whether Jews were exterminated by you or by your unit and your answer was, approximately, "That I cannot say. I only know the Jews were registered in Taganrog. Could that be?

A No, I said the same as I said here. The other statement is a combination. the arrival of Nehring -- in charge of the Einsatzkommando from 18 September to -- what was the date when you went to Kino -- beginning of October, is that right?

A What? you were in Kiev? carried out between the 18th of September and the day you left for Kiev? kommando to the Einsatzgruppe at the time before Nehring arrived?

Q Did you forward these reports to Einsatzkommando 6? the reports. That does not mean that I remember a figure or a special event. went to the Einsatzgruppe?

A whether I always saw them, I don't know. At that time, exactly as it was later, I had the deputy Heidelberger work on as he had done before my time, and this situation Thomas regulated to the effect that as the responsible man between myself and Heidelberger he put Nehring.

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Q What do you mean, earlier than? At the end of October, is that correct? cuted by Einsatzkommando 6 at the time when you were in command was thoroughly investigated and proved guilty of having committed a crime and sentenced duly to death by, as you have stated in your testimony, orderly procedure. Will you please explain to the Tribunal what you understand by the expression "orderly procedure?" explain this in my direct examination the best I could. As far as I knew, the case arrived, -- it was the Russian police who found out about the facts by investigations and sent the criminal with the documents concerning this case to the local Kommandatura. Then the Commando started working, that is, the sub-commando Rostov, investigated this case again. New interrogations were carried out and a final report was made. Then, according to my knowledge, a meeting took place with the chief of Department 4, who was the subcommando leader, and in this meeting the sentence was established.

Q How long would such a procedure take, usually?

A That varied. I again cannot make any statements concerning this, because I did not deal with anyone of those procedures, but there was a prison where these men were imprisoned and we had enough time to deal with each individual case according to order as it had been regulated by my predecessor.

Q An approximate time, one hour, one day, one week?

A I can't say, because I did not take part in such matters. I have tried to explain and I can only repeat it again, that I wasn't to deal with such tasks as I did not know anything about them, even less than the officials. They were all criminal officials who dealt with these matters.

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Tribunal that you have checked these things and that you have read sometimes some of the files.

Q What did you find in these spot checks? I found the interrogation and the statement and I was able to ascertain that all the requirements for possible execution were met. of these crimes could appear in this meeting where the sentence was passed?

A I don't think so. never heard the defendants is that right? were present.

Q Some of them?

Q How many people would that be in every case?

A I don't know, I wasn't present at such a meeting; therefore, I can't give any details of it. I wasn't supposed to deal with such matters and I did not want to do so. not?

A If you like to put it that way, yes, but I didn't give any orders as far as that is concerned. I did not use the authority which I held but I left it to Nehring, in fact. and what later Nehring after the end of October, 1942, did, did you? known to Thomas and with whose activities. Thomas was satisfied.

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by these people, don't you? matters. prisonment. Will you tell the Tribunal whether these people were sent to a concentration camp, or whether they were kept in prison?

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of these procedures?

A I don't think so. appeal?

A No, I don't know anything about appeals, about the rights of appeal, no. long such a procedure took? dividual concerned, or whether more people were involved. can't say anything about it from my knowledge.

Q How often did you make these spot checks about which you spoke? Daily? Weekly?

Q Once a month?

A It wasn't at regular intervals. so-called trials? event. He sometimes told me about the content matter on occasions when something special had happened.

Q Did you ever investigate one of the prisoners your self?

A No, never. I did not have any practice in interrogations. Also, it is not the task which I can deal with. I regard it as something awful not that I am thinking of myself now. number, how many executions were carried out by Einsatzkommando 6 in your time, and that the two estimates which you gave in your two affidavits may be correct and may be incorrect. You just can't say, is that correct?

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Q Let's presume for a moment that the number which you gave in these two affidavits, 2 to 3,000 is correct. You have said here in your statement that only during the four months you were in Rostov executions were carried out by Einsatzkommando 6, is that correct? Only during four months when you were in Rostov there were executions carried out all of the time when you were there?

A You mean in Rostov? carried out only during the four months you were in Rostov?

Q All of the time?

A Yes, yes, but I don't know how many there could have taken place in Taganrog, because at that time we worked in collaboration with the divisions and the divisions acted on their own, independently, and I put this commando at the disposal of these divisions only for purposes of investigations and interrogations. I remember cases in which, for instance, the Wehrmacht put the commando into action. Whether the commando at that time independently carried out executions, I don't know. It is possible, but I don't know. In any way, they collaborated with the Wehrmacht. That was combat zone at that time. numbers of executions were still reported to the RSHA, that means from you to the Einsatzgruppe, not to the RSHA?

A You mean that reports went from the E. K. 6 to the Einsatzgruppe 6? It must have been assumed. been already detached.

Q Let's go back to our first question. Let's assume for a minute that the number of 2 to 3,000 is correct.

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You have been in the east for 9 months, haven't you? during this time, if Einsatzkommando 6 carried out executions daily, including Sundays, including Christmas and including Easter, there would be a daily average of 8 to 10 executions, provided that the number in your affidavit is correct, is that correct?

A I haven't calculated it yet, but if you did then it must be correct. four investigating officers -- and they were the people who investigated the cases -- could have been able to investigate, pass sentence and order executions of 8 to 10 cases a day?

A You seem to overlook one fact, Mr. Prosecutor. The interrogations are not being carried out in the commando by the officers, but by the criminal officials. You use the word investigation officer, the secretary, the chief secretary -- all these are criminal officials who carry out investigations. The officer, the leader, is only responsible for the decisions but not for the interrogations and investigations.

A I can't give you an opinion, because I cannot think myself into the situation. Whether this is possible or whether it is impossible I cannot decide. manner, that 8 to 10 sentences --approximately correct, is that right? heide and the second time here. I think these statements I made were quite clear and I reserved the right, and I tried to express that, that I should be allowed to a statement concerning this figure here before this Tribunal.

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Q When did you do that, in your first interrogation here?

Q Your first interrogation here? sent to Einsatzgruppe C, is that right?

Q How often did you read this report?

A I don't remember.

Q Regularly? during the winter there were no written reports issued.

Q But there were reports by radio, were there not?

A Yes, that is possible they went by radio, but I don't know how often. I don't remember any details.

Q I do think that you misunderstood my question. I asked you how often did you read them, not how often were they sent.

A That I also do not know. I cannot give any details. reports?

A What was the question?

Q When you were interrogated by Mr. Wartenberg?

A Whether I was interrogated concerning this question? Yes, I assume that I was, I can't say. sent by Heidelberger and later by Nehring, is that correct?

A Yes, and it is possible that I signed such a report. It is possible that I was shown a report and if I saw it I must have signed it, but I don't know in detail because it was not one of my assignments.

Q Don't you remember that you stated, when Mr. Wartenberg asked you about the number of executions carried out, that you had reported in these reports the number of 2 to 3,000 people?

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Q No, I asked you something completely different. I asked you whether you did not say that you have reported 2 to 3,000 killings in these reports which went to Einsatzgruppe C, nothing to do with the Eselheide affidavit? mentioned it in Eselheide. question with yes or no -- did you say to Mr. Wartenberg, according to your recollection, that you personally, you, Mr. Biberstein, reported to Einsatzgruppe C 2 to 3,000 killings?

Q You never did?

THE PRESIDENT: Mr. Hochwald, could your refreshment take place during the recess?

MR. HOCHWALD: If your honor please, it takes one minute. I do think it would be ---

THE PRESIDENT: All right. You would prefer to do it now? Very well.

MR. HOCHWALD: I hand the original first. I offer at this time Document NO 4997 as Prosecution Exhibit 183. This, your Honor, is the interrogation of the defendant Biberstein, which was requested by

Dr. Bergold. I then, in answer to the request of Dr. Bergold, I informed the Tribunal that the Prosecution will use this document at another time. I offer it now. Will your Honor turn to page 13 of the document?

DR. FICHT: Ficht, for Biberstein. Your Honor, I may make the following remark on the occasion of the presentation of this document.

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As the prosecutor has already mentioned, we have requested this document at a period, when we would have been in a position to question Mr. Wartenberg about this document. I see that the document is not signed by the defendant Biberstein. Therefore, I am not in a position today to question Mr. Wartenberg today in cross examination as he has already left, but as Mr. Wartenberg has been examined in this case and could have been questioned by the Prosecution as well, I object to the submission of this document in evidence.

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MR. HOCHWALD: If the Tribunal please, this is a transcript of an original record. Mr. Wartenberg has testified here as to the interrogation of the defendant Biberstein. Dr. Ficht was in a position to cross examine him, and did cross examine him. Dr. Ficht has at his disposal the defendant Biberstein. I do not see why this document should not be admissible in evidence. However, I only wanted to fulfill the wish of Dr. Bergold, which was certainly mentioned a long time after Mr. Wartenberg was on the stand here. Dr. Bergold made his application for this document last Friday, if your Honors remember. I do not see any reason why I should not be in a position to offer it.

DR. FICHT: Your Honor, I want to state that even before the examination of Mr. Wartenberg we asked for this document and that I am not in a position, and I was not in a position, at the time, to question Mr. Wartenberg in cross examination concerning these matters which are now to be submitted.

MR. HOCHWALD: The Tribunal will certainly recall that I yesterday I asked the witness very carefully and very specifically whether he was mistreated, whether something -

THE PRESIDENT: Just a minute... Dr. Ficht, please... didn't Dr. Bergold, as late as yesterday, ask for this very interrogation?

DR. FICHT: Yes.

THE PRESIDENT: Well, now, why do you object to its being presented?

DR. FICHT: That it is being submitted in evidence by the Prosecution, because I am not in a position now to cross examine Mr. Wartenberg.

THE PRESIDENT: Well, but you were not in a position to cross examine Mr. Wartenberg yesterday.

DR. FICHT: That is correct. But after I would have had the document I could have seen whether I would submit it as a document or not, and I would only nave introduced it if I had not deemed a cross examination of Dr. Wartenberg necessary.

THE PRESIDENT: But yesterday you asked for the document. Now the document is here. Now, why don't you want it since you have been asking for this?

Dr. Bergold has made several references to this very interrogation, indicating that he needed it, and he wanted it, to establish that the testimony of his client was being confirmed.

DR. FICHT: Your Honor, I believe that there is a difference as to who introduces a document -- whether it is the defense or the prosecution and the defense wanted this document in order to make up their minds.

MR. HOCHWALD: If the Tribunal please, if a copy of this interrogation would have been handed to the Defense it is absolutely clear that that would not have prevented us from putting in this very document for cross examination if we would have liked to.

DR. FICHT: I do not object to the questioning in the cross examination, but to the submission of the document as evidence.

THE PRESIDENT: Have you seen this interrogation before?

DR. FICHT: No, your Honor.

THE PRESIDENT: The Prosecution will hand a copy of the interrogation to the Defense counsel and he will have an opportunity to look it over during the recess and then the Prosecution may continue its cross examination immediately after the recess.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. FICHT: Dr. Ficht for Biberstein.

Your Honor, I only want to formulate my motion. I object to the submission of this document as evidence for the following reasons: First, because the 24-hour period has not been adhered to; secondly, because Mr. Wartenberg was here on the witness stand, and the Prosecution could have addressed appropriate questions to Mr. Wartenberg; and thirdly, because this is a transcript not signed by anyone, a transcript of an interrogation signed neither by Mr. Wartenberg nor by Herr Biberstein, and I am not able, through cross-examination of Mr. Wartenberg, to show inconsistencies in this long transcript. As for the question of the President, why I object to this after having asked for this document, may I mention that I am objecting now because the prosecution did not give us the document until now and therefore wanted to gain a tactical advantage by using it in cross-examination. That is why I object.

THE PRESIDENT: The 24-hour rule, if one side insists on it, must be adhered to, so, therefore, the document will not be introduced as evidence now. It may, however, be used in cross-examination of the witness.

MR. HORLICK-HOCHWALD: Do you have a copy, witness?

(The witness was handed a copy of the document)

MR. HORLICK-HOCHWALD: If your Honors will turn to Page No. 13, which is also Page N o. 13 in German -Q (By Mr. Horlick-Hochwald) You were asked, Herr Biberstein, by Mr. Wartenberg, "How many people have been executed during this time?" It was the time when you were in command. Your answer was, "I cannot say with any certainty. I had to submit the reports less in writing than by radio."

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Next questions: "How many then?" Answer: "I mentioned there from two to three thousand." Is that correct?

A This "there" refers to the two to three thousand mentioned in the Eselheide affidavit.

Q Witness, will you look again at this thing? There are many questions before which were asked you. None of them refers to the Eselheide affidavit. You said something about an Eselheide affidavit but in a completely different connection, and there is a sentence, an answer just before you said, where you said, "I had to submit the reports." So it seems to me completely impossible that you, by the word "there" meant the Eselheide affidavit, which is not mentioned in this connection at all. Will you, witness, change your testimony to the effect that not you -- that not Nehring or Heidelberger made these reports to Einsatzgruppe C but you?

THE PRESIDENT: Well, Mr. Hochwald, why not find out first if this transcript is correct. Now, Witness, you read -- Witness, please, you have seen in the document which Mr. Hochwald has submitted to you a list of questions and answers, yes?

THE WITNESS: Yes.

THE PRESIDENT: Now, do they conform to what actually transpired in the interrogation? Did you actually give the answers which appear in this paper?

THE WITNESS: I don't know exactly any more. I said before that if I talked about two to three thousand, it always referred to this figure which I gave at Eselheide, and I also assume that I said here that an affidavit was made in Eselheide where I mentioned the figure two to three thousand, and that is why it is here.

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THE PRESIDENT: But did you actually give the answer which appears on Page 13, "I mentioned in the reports from two to three thousand"?

THE WITNESS: This answer is not given here. It says here, I said so, "there".

MR. HORLICK-HOCHWALD: If your Honor please, the correct translation would be, "I mentioned there", instead of "I mentioned in the reports."

THE PRESIDENT: Very well, proceed. Proceed, Mr. Hochwald. BY MR. HORLICK-HOCHWALD:

Q Did you give these answers to these questions?

A I cannot say that any more in this connection. I repeat that if I talked about two to three thousand, I only thought of those two to three thousand, which I had mentioned in Eselheide. Not that I suddenly made a difference here and said here that I had reported two or three thousand to Kiev; it is the same figure which I gave in Eselheide. There I said two to three thousand. that you had to submit reports?

Q You, not the Kommando. You said here, "I had to submit the reports."

A I was the leader of that kommando, and "I" is equivalent to "Kommando". that you, and not Nehring or Heidelberger, submitted these reports to Einsatzgruppe C, is that correct?

A That I did that? No. I is the kommando. I was the kommando leader, and after all I am responsible for the kommando.

DR. FICHT: Dr. Ficht for Biberstein. whether the witness wishes to change his testimony. In my opinion it has not been established yet that he made any different statement.

MR. HORLICK-HOCHWALD: If your Honor please, Dr. Ficht is mistaken. I asked him whether he wanted to change his testimony in direct examination that not he but Nehring and Heidelberger made these reports. That was my question, and I do think that Dr. Ficht will agree with no on that, that the witness has repeatedly said here that reports to Einsatzgruppe C were made, first by Heidelberger, and later by Nehring. So my question is whether he wants to change his testimony and say that these reports were made by him.

DR. FICHT: Your Honor, my statement only referred to those questions which are contained in this document. That was the way I understood it.

THE PRESIDENT: Yes. Q (BY MR. HORLICK-HOCHWALD) So, do you want to change your testimony, that Nehring and Heidelberger made these reports?

A No, I do not want to change my opinion. I say this is a false interpretation of the word "I". Something is interpreted that I did not express, because "I" is the kommando. number of two to three thousand? Do you want to admit that a number of two to three thousand was given by you on the basis of your recollection of these reports which you made, and that the estimate of two to three thousand therefore is correct?

thousand to Kiev, neither I nor the kommando. The figure two to three thousand always refers only to the question, "How many did the kommando execute during that time?" this two to three thousand were executed by your command in the time when you were in command of Einsatzkommando 6? question of the President, I explained that I cannot give the figure of those executed by the kommando. own answers given to Mr. Wartenberg, you do not change your testimony here?

A I do not understand how I should change it. Please give me more detailed information.

THE PRESIDENT: He has said he does not change it, that he stands on it.

MR. HORLICK-HOCHWALD: No further questions, your Honor.

THE PRESIDENT: Do you have any question, Doctor?

DR. FICHT: Just a few, your Honor. BY DR. FICHT: about the discussion with Heydrich. You were asked to the effect as if you had said during the direct examination that you know very well what an Einsatz assignment meant. What did you imagine an Einsatz assignment to be, or what did you say during the direct examination to that effect?

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that actually I did not know what an Einsatz assignment meant. I only know that it was abroad and probably involved State Police tasks.

Q Did you mean the Einsatzkommandos by this?

A No, I did not know any details about Einsatzkommandos; I know that it would be an Einsatz assignment abroad.

Q Wasn't it like this in Germany, that the word "Einsatzassignment" was used generally if a soldier was assigned to some soldierly task?

A Yes. Also one says that officials have assignments given to them. That is a general expression for a special task. the State Police office in Oppeln, did you not refuse at the beginning, as you said in the direct examination, to take over this post? knowledge to be in charge of a State Police office. I pointed out from what profession I came. I pointed out that I was not a lawyer, not a trained police official, and that I wasn't even an officer.

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you this office? which you made concerning the exact interrogation and examination in Rostov. You said that investigations were carried out here about the defendants themselves. Did you not have witnesses then?

Q Were these only odd sheets, or were they whole files? weren't they? took in such cases. I want to ask you now, surely according to the documents you saw, it took at least several days, such an investigation?

MR. HORLICK-HOCHWALD: Just a minute, if the Tribunal please. The witness has said that he is unable to give an estimate. I do object against the question for the simple reason that Dr. Ficht gave a very strong lead by saying several days. I do think the question is not admissible.

DR. FICHT: Your Honor, I withdraw this question because that is sufficient for me. I have no further questions about the crossexamination. I only would like to reserve the right that if this document is to be submitted after all, to be able to address further questions to the witness in the witness stand.

MR. HORLICK-HOCHWALD: If the Tribunal please, I do think Dr. Ficht should be able to put the questions out of the interrogation now to the Defendant Biberstein. It is the general rule in cross-examination, always as long as the witness is on the stand, that questions are put to him. The prosecution declares that the prosecution intends to offer the document as Prosecution Exhibit 183 as soon as the 24 hours are expired.

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DR. FICHT: Your Honor, for purely practical reasons I cannot do this because this transcript is so long that in the recess I was only able to read through it once.

but in the end refers to this. May I read this?

THE PRESIDENT: Dr. Ficht, now you are going into something which I don't think Mr. Hochwald mentioned in the cross-examination. Now it would appear that you are having a redirect examination on the on the document generally. If you intend to do that, that is entirely proper.

DR. FICHT: Your Honor, I only know that one point, because I noticed this particularly and because it is also connected with the questions asked by the prosecution, namely the Eselheide affidavit.

THE PRESIDENT: Very well.

Q (By Dr. Ficht) It says here, the second part, if I may come to that now, "I have already given an affidavit about this, but you only read this to me, and I believe that there is a word too much written in it, one word or two too many in fact." Then there is a second question, "We shall make our own affidavit." That is what Mr. Wartenberg said.

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I now ask you, Witness, what did you mean by saying, "There is a word or two too many in it"?

A This referred to the word, "No more Jews in Rostov."

Q No, I mean in general. Which testimony?

Q The Eselheide affidavit? Isn't that mentioned here?

DR. FICHT: I have no further Questions now, your Honor. I hope no further cross-examination will be necessary. I only make this reservation just in case.

THE PRESIDENT: Very well. BY THE PRESIDENT: means of the gas van, the execution which you witnessed, you didn't specify who the individuals were that you saw. Were there any women in the gas van?

Q Were there any children?

Q I see. When you first testified, that is during the first few hours of your testimony here, you asked - or rather you stated , that one of the reasons why you joined the National Socialist Party was that you were quite disturbed about the Versailles Treaty?

Q You are student of history, are you not?

Q But you have read history? of history.

Q And you said that the Versailles Treaty was one-sided?

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other side?

Q Now, which Versailles Treaty did you refer to? in 1871?

Q Was that one-sided? conditions to the one he is victorious over, but it always depends how much chance they give the opponent to start over again. one-sided? simply is forced to accept the treaty of the victor.

THE PRESIDENT: That was purely on the matter of history and had nothing to do with the trial. Thank you very much. The defendant will now be -

Q (By the President) Witness, fudge Speight has asked that you tell us, if you will, just what you meant by a spot check of the reports which were sent in from your kommando. a few cases out of a great number and examines them. I went there and took a few fils out of a great number of files and took them along and read them through and then returned them. I call that spot checks.

Q About how often would you do that?

A I cannot say anything definite about that: occasionally. of reports to check on?

more than I could carry. I picked them out at random.

Q Yes, and then did you check on them for accuracy? general regulations had been followed in the way the whole files were drawn up. would you check to see that that number was correct?

A The figure in the report and in the files?

A No, I assumed that that was right. That is not so important. To me it was more important that the procedure as such, as far as I could see was carried out in the proper manner, and I gained that impression during the spot checks which I made. the actual facts?

A No, I did not do that. Department IV was responsible for this, and I did not think that they could change the figures at all, and I saw no reason for doing this. Why should they falsify the figures?

THE PRESIDENT: All right, thank you. The witness will be returned to the dock, and the Defendant Braune will be taken to the witness box.

(Witness excused).

ERNST BRAUNE, a witness, took the stand and testified as follows:

DR. MAYER: Dr. Erich M. Mayer for Braune. Your Honor, I ask that the defendant be examined by me as a witness on his own behalf.

JUDGE DIXON: Defendant, raise your right hand and repeat after me, the pure truth and will withhold and add nothing.

(The witness repeated the oath).

JUDGE DIXON: You may be seated.

THE PRESIDENT: Dr. Payer, what is the pronunciation of the defendant's name? I think perhaps I mispronounced it very badly.

DR. MAYER: Browna.

THE PRESIDENT: Just Brown?

DR. MAYER: Browna.

DR. FICHT: Dr. Ficht for Bibwrstein.

I beg your pardon, your Honor. I ask that Biberstein be execused for this afternoon so that his medical treatment my be continued. He is under medical care just now.

THE PRESIDENT: Yes, the Defendant Biberstein will be excused from attendance in court this afternoon.

Q Witness, please tell the Tribunal your full name?

Q When and where were you born? in Thuringia.

Q From where did your parents originate? my mother comes from Thuringia of a farmer's family.

Q Are you married, and if so, how many children do you have? years of age. school? the elementary school from 1915 until 1920.

Q Where did you go to school after that? attended this from 1920 until 1928, and in 1929 I graduated there. activity? older students were very depressed at the time about the political situation, and the weakness among our people. political events which you will always remember? age, I saw how the Communists from the neighboring town would come to our village and take the cattle from the farmers. I would like to say that the Communists in Central Germany already were very strong at that time.

Q What did you do after your graduation? in Bonn, and then the Summer Term of 1930 in Munich, and the final terms from the Ball of 1930 until the Summer of 1932 in Jena.

On 9 July 1932 I passed my Referendar examination. time?

A Our professional prospects were very "poor," I wanted to become an educator, but my teachers advised me against it, because there was no chance of ever getting a job as a teacher. possibilities in the legal field?

A No, it was not better for the lawyers, either. At the time in Prussia alone there were about six-thousand surplus assessors and it was not rare that in the large cities trained lawyers served as cab drivers and porters. My teachers advised me to study this subject because it was their opinion that the legal profession offered most varied opportunities all the way around, and, therefore, I became a lawyer.

Q Your father was a minor employee. Did he have the financial means to let you study? to send me to high school, and to let me study. Already as an older student I gave lessons myself in order to earn a little money, and as a student from the first term onwards, and during the holidays I worked for a lawyer in order to help to pay partly for my studies. the first time? several students and myself attended a National Socialist meeting, and joined them. the attendance at that meeting?

A I must say I was very much impressed and enthusiastic. We students had mostly national views; we suffered greatly from the political dissension and weakness in Germany; class struggle and class hatred governed public life.

The moral decay increased. For the first time I came across a movement here which didn't want to separate people. They didn't want to emphasize class differences. but they emphasized that all Germans were alike, who were bound together by fate, and they belonged together; but I got the deepest impressions from the fact that here for the first time a movement tried to combine nationalism and socialism. impression which you then gained, did you continue to attend meetings of the NSDAP? from conversations and by reading the newspapers I continued to take an interest in National Socialism. My next meeting I attended in the Summer of 1930. I remember this so exactly because it was the first public meeting where I heard Adolph Hitler speak. At the time Hitler opened the campaign for the historic election in September 1930. With the election in 1930 the National Socialist movement increased from twelve to one-hundred and seven delegates in the Reichstag.

Q During that election did you vote for the NSDAP?

Q When did you join the NSDAP? was 15 May, and I was accepted in the membership book on 1 July 1931.

Q Why did you join? Bolshevism was gaining strongly in Germany, and I, as a convinced National Socialist, which I was at the time, wanted to be active in the political happenings.

Q After that, when did you join the SA?

Q Were you active in the Party life then? meethings, marches, distributed leaflets, and advertised the movement from house to house. One of the nicest political tasks I ever had at the time was in a small farm village near Jena which was assigned to me, where together with a comrade, I promoted National Socialism, and I shall never forget how the people in this village, the poor farm workers and the rich farmers with their farms, who previously were almost enemies, came together under our ideas, and finally marched side by side. Sturm to which you belonged? Sturm unit; the Reichbanner, or the Iron Front, the combination of Communists and Social Democrats at the time at least twenty to thirty times as many members as we did. you Wave a rank in the SA? I have a rank. I was a simple SA man.

Q When did you finish your studies? examination as a Referendar.

Q In Jena? what were your prospects in the profession?

A The prospects had become worse rather than better. The conditions which I indicated before had become worse and in that time in Germany there were seven million unemployed. The referendar exams were made more difficult during my time, about fifty percent of all candidates failed.

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Q When did you pass your Doctor's exam? I wrote my doctor's thesis, and on 27 January, and not on 27 February as shown in the SS personnel files, I passed my Doctor's exam in Jena with, the doctor's thesis, Zwangsvollstreckrung, distraint.

Q What did you do after the doctor's exam? at the local court with the district attorney in Sonderhausen. From the Fall of 1933 until April 1934 I was at the County Court in Meiningen as referendar, and, from April 1934 until the Fall of 1934 I worked for a lawyer.

Q When did you join the SD?

Q At the time were you already a member of the SS?

A No, as before I was a member of the SA. I was a SA Obertruppfuehrer, that is the same rank, if you compare it to a military rank, as sergeant.

Q Did you ever belong to the General SS, or the Allgemeine-SS? I was immediately transferred to the SD. I thus became a member of the SS formation, the SD.

Q Through whom did you get to the SD? cause why I went there. He wrote to me that I should visit him in Berlin, and I did that. There he introduced me to Professor Hoehn.

Q Who was Professor Hoehn, whom you just mentioned? special professor for State and constitutional law at the University of Heidelberg. He was a lecturer there. I knew him from my time as a student in Jena, because ther he prepared me for my exams as a referendar.

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Q What did Professor Hoehn tell you during that first meeting? What did he tell you about the SD? set up a new department in the SD. This department, in contrast to the work which so fax was to deal with the various opponents of Optional Socialism was to handle the different domestic spheres, that is, the situation concerning law, administration, education, economics, public health, science and the arts, and so forth. new department should he founded? stronger, to says yes from the lowliest to the highest, and to say that everything was under control. Apart from that there was a tendency that a steadily growing number of leaders ceased to criticize at all, and demanded that everybody obey unconditionally. Thus, the leadership of the Reich didn't get an objective impression of the actual situation in the different spheres, and of the feelings and needs of the German people, and didn't hear anything about the effects of its measures; all of that made it necessary that an information service be established, and in particular, as public criticism didn't exist very much any more. Already then, Hoehn expressed the idea that this information service after all should be subordinated to theSupreme Commander of the State in order to give him a chance to hear about all difficulties, and all power struggles and all the troubles within the State.

Q Why did Professor Hoehn choose you in particular? he picked me was my critical views, my search for the truth, and my tendency not to say yes, to everything I was told.

Hoehn described to you through discussion and explained to you? very strongly, because I was also convinced that this development which I tried to indicate before was not a fortunate development, and that it didn't conform in every sense to what we had struggled for during the time of our fight. had gained during the time of your fight? and I can only indicate it. I know that they were not enthusiastic at the time about the inflating development of the various units. An innumerable amount of people joined the movement, and a great number didn't quite know what National Socialism actually was? and, again, people had influence in this movement who really were a danger; a danger insofar as we were afraid that our ideas might be misunderstood in a way. Also, due to the power which many people had suddenly acquired overnight, they could not quite digest it, and it went to their heads, and the tendency grew to demand that what they did should be accepted without criticism. In all those matters there was a, certain danger, and at the time I was convinced that through objective and extensive reporting, sources of dangers and misdevelopments would be shown up on the National State, and in that way we would be able to help to stop them.

doubt about the National Socialist idea and its truth in your mind?

A No. They never awakened any doubts. We had the opinion that these were growing pains; after all every revolutionary, spiritual movement has to go through this.

Q This didn't keep you from joining the SD on a full-time basis? joined the SD, believing that I would be able to do my small part to do away with these bad conditions. Hoehn at the time? I would be dealing with the legal and administrative questions in the SD. These were, therefore, questions which concerned my own profession, and I hoped to be able to increase my knowledge and to enlarge it. cision?

A Yes, there were also economic reasons. I already said that my parents were not in very good financial condition, and at the time I was happy to be able to earn my own living.

Q When did you start to work for the SD?

Q I must correct something there, witness. Surely you mean 1934?

Q What official situation did you find when you joined the SD? in its very early beginnings, and, actually I found the following situation: outside of Professor Hoehn who travelled to Heidelberg twice a week to give lectures, there were two referendars and I active in this department. Apart from that there were three assistants. We had neither a file department nor a file cabinet, nor did we have a record department according to subject matter. All the documents consisted of two or three loose bundles, and five or six men carried on the work in three attic rooms in the Prinz Albrecht Palais.

DR. MEYER: Your Honor, I have finished, one phase, and shall now come to the acceptance in the SD, and I think it is a splendid time to have the noon recess.

THE PRESIDENT: Yes, I think that is a very good idea. The Tribunal will be in recess until 1:45.

THE MARSHAL: The Tribunal will be in recess until 1345 hours.

(The court recessed until 1345 hours, 25 November 1947.)

(The hearing reconvened at 1355 hours, 25 November 1947)

THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER: Your Honor, the Tribunal has granted me that in the case of Haensch, Mrs. Elisabeth Reimann will be heard as a witness. The witness is present. She is in a very delicate position because her father, who is 75 years old has to be operated upon. It is a complicated operation, and the father only wants to be operated upon if he can see his daughter again before undertaking it. The physician cannot wait the operation, and I would, therefore, like the Tribunal to grant me to hear the witness, Reimann, in the witness stand tomorrow morning. The prosecutor and also the defense counsel of the defendant Braune agreed to it. The examination will only take a very short time as the witness is only supposed to be asked when Haensch left fot the front.

PRESIDENT: Yes, especially in view of the fact that you tell us that the examination won't take too much time. I don't think that that little interruption will unduly spoil the continuity of the present defendant's case; so that it will be entirely in order for you to present that witness tomorrow morning.

DR. RIEDIGER: Thank you.

PRESIDENT: Yes. We might make an announcement to the defense counsel now about the weekend. Thursday is a holiday known as Thanksgiving. It is an American holiday. It comes the fourth Thursday of each November, and since it comes toward the end of the week and many like to avail themselves of that continuous three or four day period, we won't have court on Friday either, so that when we recess tomorrow afternoon we will reconvene the following Monday at the usual time. And while we are discussing things of this character, it might be well that the defense counsel who have already completed their cases see to it now that their document books are presented without undue delay to the defense information center so that the translation and the mimeographing may be done now, because if you wait until later there will be such a congestion

that it will be impossible to get out all the document books. So, please, those who have completed their cases, get their document books in as soon as possible.

DR. MAYER: Your Honor, before I begin with the direct examination of the witness, I would like to make one little observation. When before the recess I asked the witness for the subject of his thesis, he mentioned that the subject of his thesis was the Distraint. This was not contained in the translation of the interpreter. In order to prevent any doubts or any distortion, I want to mention here that this thesis from civil law, it dealt merely with the question, how a sentence, resulting from a personal action of an obligee can be carried out in practice. It has nothing to do with the police matters or with the subject of police.

PRESIDENT: That explanation is very clear and it will now appear in the transcript, of course.

DIRECT EXAMINATION - (Continued) BY DR. MAYER: and you explained to us the situation which you found after your arrival in Berlin. With this, we now want to come to the subject of your activity within the SD, and I ask you to explain to the Tribunal your activity in Berlin during the first months. practically nothing, therefore, the first month was spent in organizing, in creating the technical organization and the general organization. We started files, and a card index. Apart from that, in the rural districts, in the sectors in the then prevailing SD sectors, people had to be found who were capable of dealing with such tasks and problems. After this was done, in March or April 1935, these new collaborators were called together in Berlin and here for the first time the new collaborators were told about these new tasks and the purpose of this new department. ceived by the old SD man? fight difficulties. These difficulties varied from the lack of understanding until open refusal. As people who had studied, we were called members of the intelligencia.

Q What was Heydrich's own attitude concerning this new assignment? judging from the situation at the time, I presumed that he was in favor of this particular department, at least at the time. men?

A No, unfortunately not. In the course of years, I began to realize that Heydrich did not do anything about these contrasts but on the contrary that he supported them. He did not want unity but he was of the opinion, Court No. II, Case No. IX.

divide and rule. with Heydrich. Is that quite true in spite of your activity of three and a half years in the SD main office?

A Yes, that is correct. I never reported to Heydrich officially, although I was for almost four years in the SD main office. I only heard Heydrich speak on bigger meetings.

Q Is the same true for Himmler?

Q What, was your actual work in the SD? istration was my task. In addition I was given the department education where I had to deal with student and university matters and also the department party and state which, however, never got over a sort of embryonic state. of the SD?

A I shall illustrate it with a few examples. On the legal field, the problem of the contrasts of the legal institutions of the state and the legal institutions of the party was dealt with. The contrasts, for instance, between the Reich Ministry of Justice on the one side, and the National Socialist Lawyers League, that is the Academy for German Law under the later Reich Minister Frank were so strong that I experienced that the Minister of Justice officially prohibited his own officials to participate in dealing with legal problems which the Academy of German Law had taken up and forbade them to participate in any of the work of the German Academy of Law. We also reported about the training problem. While until 1933 numerous assessors were without work, in 1935 already there were the first symptoms of a lack of lawyers. This again has had as its consequence that for the new generation of lawyers, conditions were made easier which were looked upon in a critical way for the purpose of agood legal training. This also was reported about. Generally, reports were made about new laws and their practical Court No. II, Case No. IX.

effects and their reception in lawyers' circles, and in larger circles of the population. In the field of administration there was the problem of the Reich reform which was dealt with mainly. The question of the increasing subdivision of the administration and in this connection the problem of a unified administration, here again, contrasts were pointed out of the lower authorities, for instance, I think in particular about the contrasts in district areas between the local counsel and the area leader, the kreisleiter. In the field of education, I remember in particular a detailed report concerning the Adolf Hitler schools. I am still convinced until this very day, that is, thanks to the SD, that these schools were not as largely as was planned,before, instituted in all districts and areas, but that it was only one of the experiments on the way to a final school reform and was also regarded as such. We reported about the problem, Hitler Youth, Parents and School, which concerned larger circles, especially after 1933. On many occasions we pointed out how unfortunate it was that the then Reichsjugendfuehrer, the leader of the German Youth, Baldur von Schirach, did not try to achieve a cooperation between the parents and school and Youth Leader, but by attacking the teachers increased these contrasts. We were of the conviction that he did not do a good service to the German youth with that. criticised the existing institutions. Did you want to say that you worked against national socialism?

A No, on the contrary. If we criticized, for instance, the Adolf Hitler schools, then this happened for the reason that we were of the conviction, and this was clearly expressed from all the voices coming from all over the country, from national socialist circles as well as from educators, that these Adolf Hitler schools were, if expressed in a slightly exaggerated manner, were very bad for national socialism. I don't want to maintain in any way that we worked against national socialism as it was understood by us. Just the contrary was true.

Q Did you deal with matters of students and universities at that time?

A Yes, I was particularly interested in student problems. And I believe that the information service of the SD contributed to the fact that at the end of 1936 or 1937, I don't remember exactly, that the then student leader was released and that that was the end of a very unfortunate development which had taken place until then. training?

A Yes, but it was not easy. I either had to do my work in the evening or at night, or if I was working in the law courts in the daytime, I had to do my SD work at night.

Q What salary did you receive when you were in the SD? per month. Later on 300 RM gross amount. My first salary when I was married in 1936 was as chief of a department just under 300 reichsmarks net.

Q But you were in charge of the main department, were you not?

A Yes. From April 1945 I was practically in charge of a main department which, however, was in its early stages at that time. I am sorry, that was 1935. The salary as chief of a main department, I never received. Until '37 or the beginning of '38 I was paid as a referent, and later on I was paid as a chief of a department.

that it could not pay its officials betters.

Q When did you pass your assessor examination?

A On the 11th of May, 1936. I graduated as assessor at the Reich Legal Commission in Berlin.

Q What was the course of your official career? official.

Q But you were an Oberregierungsrat finally?

A That is correct. That, perhaps, I may explain very briefly how this came about. After I had left the state service for one and a half years, the budget was cut down and the SD came into financial difficulties so that it could not pay its officials any longer. At that time the personnel chief, and I also thing the staff leader of the Main SD Office, approached my and asked me to have myself appointed as assessor formally with the Gestapo but only for a short time. I was assured that it was only a matter of form in order to save the SD from paying my salary. My practical activities would not change. I would work in the SD as I had done before.

Q Did you agree to this arrangement? which was done for financial reasons in the interest of the SD, not in my own interest, I agreed.

Q Was this promise then kept?

A No, unfortunately, if was not kept. As early as spring, 1938, Dr. Best, the deputy chief of the Gestapo Office, requested that after all, since I was paid by the State Police, that I should also serve in the State Police.

Q Were there any other reasons which moved Dr. Best to take up this attitude?

the authorities, between the department law and administration in the Gestapo Office, which was subordinated to Dr. Best, and between my department, law and administration. Perhaps I may, in order to throw light on this development, in order to make these conflicts understandable. From the very beginning, that is, from early 1933, Heydrich on one hand was Chief of the SD, and on the other hand, he was first of all inspector of the Gestapo, but only in Bavaria, because both these agencies were in Munich at the time. It autumn, 1934, the SD Main Office was transferred to Berlin and became an independent office of the SS, and Heydrich became chief of the Gestapo Office in Berlin. The situation at that time was such that the SD, through its intelligence service, was legitimised by the party but not through its activity in the domistic service information which were dealt with at the time by Professor Hoehn. The next stept of development was, I think in November, 1936, when the Main Office Security Police was created after the appointment of the Reichsfuehrer SS as Chief of the German Police. At that time, there were certain tensions between the State Police and the SD in its enemy intelligence service, because the State Police, which dealt with the problems of opponents of the Reich, wanted for reasons understandable that they should also have to deal with the intelligence service in this particular field and thus it came about that eventually even the intelligence service was taken over more and more by the State Police. The decree concerning the separation of these two spheres from 1938 was to a certain degree only the confirmation of a state of affairs which had already been largely created before, and only 1939, when the RSHA was founded, brought a clear and final solution of these problems. All the activities concerning enemy intelligence became the task of the State Police, and Office 3 became an office merely dealing with domestic spheres. In the course of this development, the Secret State Police Office went further and expressed their misgivings and claimed authority in the field of law and administration.

THE PRESIDENT: Dr. Mayer, a certain amount of background is not only in order, but really necessary; however, do you think that it is necessary to go into a great deal of detail on these various office ramifications?

THE WITNESS: I think I may answer this. I had, just finished. I only wanted to say now that Dr. Best claimed tasks for the State Police which we claimed for the SD, and those were the conflicts which I tried, to explain, and therefore I tried to display the development. Dr. Best used this pretext and tried to solve the problem by insisting that I be appointed to the State Police Office, and therefore the source of all the trouble was once and for all eliminated. these promiese, without objection?

A No, I did not. In autumn, 1938, I was transferred as the Deputy State Police leader to Muenster.

Q Why did you not leave the SD at that time? of the opinion that one must go on with a task which one has recognised as justified, that one must not give it up just because one doesn't succeed, the first time. Furthermore, I succeeded, with the aid of Herr Ohlendorf to be appointed the Chief of the SD office in Muenster, so that I practically remained in the SD service. combined when you were in Muenster?

A No, it could not. I did not want to combine these two tasks because I wanted to force my remaining in the SD, and therefore I did not indulge in any activities as Deputy Chief in Muenster, but I only dealt with my SD work.

Q Did you Stapo chief approve of your attitude?

A No. After, a few months, I think it was in February 1939, he left for Berlin. He complained about me, said that I was not doing any work, and he asked for my release.

Q Were you then transferred? Instead of returning me to my SD activities, I was taken out from the SD completely and I was transferred to Koblenz as Deputy State Police Chief without giving me an SD office.

Q Were you content with this transfer?

A No, I wasn't. I tried again to return to the SD, and in summer, it was in July 1939, I had actual hopes that I would be eventually succeed. In the course of the planning of the new Office III in the RSHA, which was founded in September 1939, I was recalled from my leave by Herr Ohlendorf, in order to assist him with the working-out of an organization plan of the new Office III. During this collaboration, Ohlendorf told me that he had asked Heydrich to transfer me into this office which was to be created and that Heydrich had agreed to it. It had already assumed, such concrete shape that Herr Ohlendorf asked me to look for a new apartment in Berlin and to prepare my moving.

Q Why did this plan fail? this re-transfer and he achieved his aim, which was that I should remain in Koblenz. This I found out shortly after the outbreak of the war, when the new Office III had. already been created and I was not called to Berlin. I went to Berlin, and there I found out through Ohlendorf that Dr. Best had prevented my recall.

Q Why did you then not leave the State Police?

A War had broken out meanwhile. I was appointed for the Security Police for a war essential task, and all attempts to go back to the SD had failed and now I could not do anything because during the war there was only one motto for all of us, which was to obey and do one's task where one was put.

I may add I did not try to be re-transferred to the SD from the State Police, not because I was against this work as such, because I regarded it as necessary and absolutely legal, but from the very first beginning of the SD I was so interested in this vital task of the SD that I wanted to go back to it. Police activity was not my line. as having joined the State Police voluntarily?

A No, I must reject this. Concrete promises were made and assurances which induced me to join the State Police formally, but no actual activity was connected with it. One had promised me expressly that I would remain in my SD work. This formal joining of the Stapo in connection with certain promises, was then used in order to command, to order me about. I tried to have these orders revoked, and in summer 1939 I had concrete hope that this was really only a temporary state of affairs and that I would he able to return to the SD very soon, but now I found out shortly after the outbreak of the war that this effort had failed and I was under the war law assigned to State Police work, and I had no possibility now to leave the Stapo and return to the SD. This was made impossible by the legal decrees from Berlin at that time. I think this was confirmed explicitly during the IMT. return to the SD Hauptamt, Main Office? What consequences did it have for your SD membership? ship because I remained SD Abschnittsfuehrer -- that means leader of a section -- in Muenster, and therefore I was still in the SD. Also, my transfer to Koblenz in April, 1939,I did not regard, as an actual leaving of the SD but only as a temporary state of affairs, as I expected to be called into the newly created Office III to Berlin. As my final leaving the SD, I regard that moment when Dr. Best presented my being recalled to office III. That must have been August or September, and I found out about it in the end of October when I was in Berlin. That was actually the date when I left the SD. From that moment on, as every other member of the State Police in my position. I only were the SD uniform I had no function within the SD and no activity. I only were the uniform, the SS uniform with the SD insignia.

Q When were you transferred to Wesermuende?

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April, 1940, If I remember correctly.

Q For how long were you active in Wesermuende? to Halle on the Saale River, also as the Chief of the State Police Office.

Q What were the reasons that Caused your new transfer to Halle?

A I never learned the reasons. I can only say that I wasn't very pleased about this new transfer, but I already said that I was unable to protests. We had to obey. questions. First of all, the one -- were you ever favored as an official promoted by favor?

A No, I think I can say the contrary. According to the regulations of the Ministry of the Interior, I could have claimed as a Praedikatsjurist, an honor graduate to be promoted to government councillor (Regierungsrat) after two years. I may explain here, of course, that the word "praedikatsjurist" is difficult to translate. I must point out here that it means that both exams are passed with honors, above average. As such a lawyer, I could have become a government councillor after two years, but I only was appointed Regierungsrat, government councillor after three and a half years, and until my promotion to the chief government councillor, senior government councillor, it took more than four years. Even there, it took exceptionally long.

Q What do you think are the reasons for this? Berlin and then later in Muenster provoked a certain anger with Heydrich and Best and also the Chief of the Office IV. BY THE PRESIDENT:

Q What were you angry about? silence, but that I objected, I put up a fight, and also that in Muenster I did not carry out any activity.

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Q Put up a fight against what? in Muenster, and I put up a fight and I tried therefore to suceed by not doing anything in my job; therefore the chief went to Berlin and said, "Braune is not working, therefore he must berecalled," and that contributed towards my transfer and I was no longer in charge of an SD sector. The State Police was then my main job in Koblenz, and even there I made efforts supported by Ohlendorf to get away, contrary, to the order from Berlin.

Q You were transferred to the State Police in April, 1939?

A No. First in August or September 1938 I was taken from the SD office and I became Deputy Chief of the office in Muenster, of the Gestapo office. There I achieved that I should at the same time get the SD sector, and with this, of course, they were not pleased.

Q But you finally were transferred from the SD into the Gestapo?

Q All right. Then you worked In Muenster, you worked in Koblenz, and you worked in Halle?

A In Muenster, I did not do any work. Through the very fact that I did not do any work I tried to achieve my re-transfer to the SD and therefore people were angry with me. sent you to Koblenz, is that right?

Q And how long did you remain in Koblenz?

Q Well, one year is a long time. You say "only one year." Now, in your whole one year, did you do any work in the office of the Gestapo?

Q Then what were they angry about? You said that you were constantly fighting with them? What was the fighting about?

Heydrich did not like it.

Q How were you fighting? This word "fight" is rather a broad term. Just what did you do? You were there in Koblenz and you were carrying out the duties of your office, weren't you?

A Perhpas, Your Honor. I should say I tried very hard to come back to the SD.

Q Yes, but in Koblenz you carried out the duties of your office? which was not without reason because I had told him that I wanted to come back to the SD.

Q. Yes, we understand that, that you were always eager to get back to the SD, out at the same time you were holding the office as Chief of the Gestapo, and you worked at that for a whole year.

A. In Koblenz I was not Chief; I was Deputy Chief.

Q. All right. AS Deputy Chief, then, you worked for a whole year.

A. Yes.

Q. Then you became Chief of the office in Wesermuende.

A. Yes.

Q. How long did you remain there?

A. There I remained one year.

Q. Yes. That was another year there. So that in two years you worked at Gestapo work?

A. Yes.

Q. And you threw all your energies into that job as a public servant would?

A. I think I have done my duty there.

THE PRESIDENT: That is all I want to find out. Proceed, Dr. Meyer.

DR. MEYER: Your Honor, I want to point out a mistake in the translation. The witness said in his examination that his promotion to government councillor took three-andone-half years. The translation said three years. I should like to rectify this mistake.

THE PRESIDENT: That it took him three-and-one-half years to get the promotion, instead of three? Very well, the record will show that correction.

DR. MEYER: With this, your honor, I come to a new set of Questions.........Questions dealing with the assignment of the witness in the East.

Q. (By Dr. Meyer) Witness, how did it cone about that you were assigned to the East?

A. In Halle, I think during the first days of October I received the order iron RSHA that I had been assigned to the eastern assignment and that I had to report at Nikolajew; and there I was to report to the Chief of Einsatzgruppe D, Oberfuehrer Ohlendorf. The original document of this order will be submitted in my Document Book.

Q. What did you do when you received this order?

A. After I had concluded all my affairs in Halle and passed them on to my Deputy, I went to Berlin, where I tried to get some transportation to Nikolajew.......after all, it was more than two thousand kilometers.......I tried with the assistance of the commanding officer of the Wehrmacht to get courier plane passage.

Q. Were you informed by the Reich Security main Office about your new tasks?

A. No, I received no information about my tasks in one East.

Q. Had you been informed by somebody else what tasks you would have to carry out in the East?

A. No, I was not informed by any one. When I left for Russia I did not know any detail of the tasks I was to deal with. The picture I had of at was the usual SD and Security Police work, as it had been carried out in the Western occupied territories. When I left I did not even know what my position would be, because not even that was contained in this order.

Q. Was not the task of a commando chief the only possible one for you?

A. No, not at all. I could have been a liaison officer with the Wehrmacht, apart from kommando chief; or I could have obtained a position in the staff of the Einsatzgruppe.

Q. How did you get from Berlin to Nikolajew?

A. When I tried to get some transportation to Nikolajew in Berlin I met, I think it was in the anteroom of Ohlendorf, Ohlendorf, who happened to be in Berlin to carry out some official tasks..........I told him that I had been assigned to his Einsatzgruppe.

Q. If I understand you correctly, Ohlendorf did not know at the time about your assignment to his Einsatzgruppe?

A. No, he was just as surprised, and I think that I can say that he was as pleased as I was that I was to join him. He had not known about it. But he only learned about it from me.

Q. Did you then go to Nikolajew together with Oberfuehrer Ohlendorf?

A. Yes, I even remember the day. On the 18th of October we left Berlin, with three cars altogether, and arrived in Nikolajew in the night of the 20th or 21st of October. Ohlendorf had with him the Norwegian Police Chief Lie, who inspected the East for about a fortnight in order to get acquainted with the conditions prevailing there.

THE PRESIDENT: Please let me have those dates again. You left Berlin October 18th, and you arrived in Nikolajew when?

WITNESS: In the morning of the 18th we left Berlin, your honor, and we arrived either in the night of the 20th or 21st, or in the night from the 21st to the 22nd of October.

THE PRESIDENT: And when had you met Ohlendorf in Berlin?

WITNESS: That was two or three days before our departure, when I tried to get a plane passage. Of course, when this new situation came up I got a car with a driver in order to be able to accompany Ohlendorf by car, because it was at that time that he assigned me the tasks of taking care of the Norwegian Police Minister Lie, and he attached particular importance to my going with him.

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THE PRESIDENT: Very well. BY DR. MEYER:

Q. Therefore, after your arrival in Nikolajew your first task was to look alter the Norwegian Police minister Lie?

A. Yes, after we had arrived in Nikolajew, Ohlendorf asked me to look after the Norwegian Police minister and to acquaint myself with the tasks in the Eastern assignment by asking comrades, or by reading files and reports, and so on.

Q. Had you meanwhile learned what position you were to take over?

A. Yes, a few days after our arrival, Ohlendorf told me that I should take over the Kommando 11-b as the Kommando Chief who had been Chief up to now had been transferred to Berlin. Whether my appointment from Berlin had already been received at that point I cannot say now; it is possible that it only had been officially received from Berlin a few days later, but I am not quite certain about this.

Q. How did you find out about the tasks you were to deal with?

A. During the Vary first days I found out about the tasks of an Einsatzkommando from discussions with comrades in the staff of the kommando; also through discussions with the two kommando chiefs, Bersterer and Zapp, who were present at Ohlendorf's office for the purpose of reporting; also by reading files and reports.

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Q. What aid you Earn concerning the tasks?

A. There I learned that it was the task of the Einsatzgruppen and Einsatzkommandos to combat enemy sabotage and terror, and to combat enemy intelligence and to carry partisan reconnaissance and SD reporting and information service, as It was done in the Reich; to look after the Ethnic Germans, as far as there were any in existence; and, finally, the difficult task of eliminating Jews, Gypsies, and Communist functionaries and active Communists, on the basis of a Fuehrer order, as far as they could be caught.

Q. Did you have any conversation concerning this task with your Chief?

A. Yes, I had a conversation with Ohlendorf as my superior, a few days later. On that occasion he confirmed these tasks about which I had learned from previous discussions with my comrades and from reading files and reports.

Q. Did he also confirm the order for the shooting of Jews, Gypsies, active Communists?

A. Yes, this also was confirmed by him as an order of the Chief of the state and Superior Commander, Adolf Hitler. Tales hears from him which I had already heard in discussions with comrades, that this order had been made known in Pretzsch and Dueben shortly before they left for Russia, by the Chiefs Streckenbach and Mueller, to all Gruppe chiefs and kommando leaders as an order of Adolf Hitler.

THE PRESIDENT: Dr. Meyer, would you mind deferring now until after recess for the continuation of the examination?

DR. MEYER: Yes, your Honor.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

DR. FICHT: Dr. Ficht representing Hoffmann for Nosske. his defense.

THE PRESIDENT: The Defendant Nosske will be excused all day tomorrow from attendance in court in order that be may prepare his defense.

DIRECT EXAMINATION (Continued) BY DR. MAYER: in Nikolaev, and you said that, apart from looking after the Norwegian Police Minister we who was there as a guest and that your superior, Ohlendorf, you received information concerning your tasks, and that Herr Ohlendorf also confirmed the Fuehrer Order to you. Did you believe in this confirmation by your superior? something that was not true. Apart from that, already during the first few days I got some definite instructions concerning this. All comrades to whom I talked about this remembered very well that Himmler had been in Nikolaev at the beginning of October. According to all my comrades, Himmler also talked to the leaders and the men there. Among other things he said that he knew very well how very difficult it was for every individual to carry out this Fuehrer Order, but this Fuehrer Order had been issued by Adolf Hitler as being absolutely necessary in the fight against Bolshevism, a fight for our very existence, and had to be carried through under all circumstances. Adolf Hitler and he, Himmler, alone were responsible for this order and its execution and not the individual leaders or the men who were forced to carry out these orders during the war at the front under martial law. This speech and this manner or speaking was confirmed to me by Herr Ohlendorf expressly, in his capacity as my superior.

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issued by Himmler and not by Hitler?

A I considered it quite impossible, and I still do now. that Himmler could have issued such an order of such tremendous significance on his own authority, but it seemed quite impossible to me that he would tell all leaders and men in his speech that this order was definitely confirmed unless this conformed with actual facts

Q Did any other fact show, that this was a Fuehrer decree?

A Yes, several. First of all I thought it impossible that the office chiefs, Streckenbach and Mueller, should announce such an order before the leaders in Dueben and Pretsch unless it was a Fuehrer Order. Furthermore, already during the first few days, I saw from a few reports which I read in the group staff that this order was to be carried out along a front approximately two thousand kilometers long. Also, this order was to be carried out under the sovereign right and the executive power of four Army group chiefs, and fifteen German Army leaders In addition there was the fact that about sixty or seventy reports, contained in the reports of events were given to various agencies, which showed that this order had been carried out, and that reports even up to 100 copies were passed on to Reich Ministries. The prosecution submitted one here which shows that within one month more than twenty thousand Jews were shot. This report, as I saw myself from the original document was shown to about ten people in the Foreign Office. All this confirmed to me without doubt that this could only be an order by the Supreme Commander and head of the State. 6th or 9th of June, 1941, was given in writing, but the Fuehrer Order was not given in writing? Please comment about this question and refer to the documents NOKW-1076 and NOKW-484.

THE PRESIDENT: What page, please?

DR. MAYER: Your Honor, these documents were not submitted by the prosecution, but I shall introduce both documents in my document book.

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I only ask the witness to identify them and to make statements concerning these documents which are of importance to the court.

THE PRESIDENT: Dr. Mayer, it would help very much if you could introduce them as you go along.

DR. MAYER: Of course, I only have the two documents at my disposal which belong to the prosecution and were only out at my disposal Actually I have to return both documents to the prosecution. I have so far not had any copies adds.

THE PRESIDENT: MR. Walton couldn't you assist Dr. Mayer in having these documents reproduced immediately so that they can be before the Tribunal while Braune is actually presenting his case?

MR. WALTON: Your Honor, I hesitate to answer that question until I know the length of the document.

THE PRESIDENT: I see.

MR. WALTON: I will have to make some estimate because our stenographic force is only so large.

THE PRESIDENT: I didn't mean your own personal staff, I meant in the regular procedure, if we could get the reproduction section.

MR. WALTON: I think we had better depend on the stenographic staff for matters of expediency from former experience with the regular channels of reproduction. In this connection, sir, the prosecution would have no objection to his introducing them or treating them in this way if the Court will reserve to the prosecution the right of objection, if such is pertinent, at such tine as the prosecution can examine the particular document.

THE PRESIDENT: Yes, that right is always reserved to either side when the opposite side presents a document, but we are only saying for the benefit of the defense, in order that the Tribunal can follow the argument which is being presented at the time, it will be quite helpful if we could see the document.

MR. WATSON: Very well. I presume, sir, that Dr. Mayer got these particular documents from the photostatic copies which have been made available to all defense counsel and to all defendants through their counsel.

THE PRESIDENT: Dr. Mayer, how long are these documents?

DR. MAYER: Your Honor, there is only one very brief point I want to establish by this, and perhaps the witness could read this into the records so that these short notices be made known to the Tribunal. We merely want to establish from the headings of the documents that these orders, which are also extensive orders, only went to the very highest authorities but were not given to lower authorities in writing. That is all I want to prove by these documents. May I ask the Tribunal, with their Permission that the witness read our these passages into the record?

THE PRESIDENT: That is entirely in order, Dr. Mayer, I would only make this suggestion that if you have an extra copy it be given to the interpreter so that the translation won't need to demand entirely upon the oral hearing of the document.

DR. MAYER: That will be rather difficult since I myself did not have any copies made of this document.

THE PRESIDENT: I thought you said there were two copies.

DR. MAYER: No, two documents.

THE PRESIDENT: All right, Then release read very slowly.

THE WITNESS: This is Document NOKW-484. The heading is "High Command of the Wehrmacht" and there is a distribution list of about ten agencies. I now quote four lines of this letter signed by General Warlimont. I quote, "It is requested that distribution only be made to the highest commanders of the Army and the Air Force Chiefs, and the further announcements be made to the commanders orally." This is a letter which does not bear a date, but in the second document which has the head, "Commander in Chief of the Army" and which is dated 8 June 1941, there is a reference made and it says, and I quote: "The following order by the OKW of 6 June 1941 is announced." In this second document, NOKW-1076 the Commander in Chief of the Army now forwards this order again, namely this Commissar Order, to a certain circle.

The result is, and it is shown here, that the Commissar Order, to a certain circle. The result is, and it is shown here, that the Commissar Order of the Fuehrer again was only distributed as far as the Commanders in Chief of the Army in writing, but subordinate officers were only informed of this orally. to your highest officers, that is Himmler and Heydrich, in writing?

A Of course I don't know that, but I presume that the order about the shooting of the Jews, gypsies and Communist functionaries was made known to the highest authorities in writing, but apart from that it was to be made known orally, as Streckenback and Lueller had actually done in Dueben and Pretsch. had received a written order by Hitler? must have had this order made known to them, because otherwise the execution of this order would have fallen to the competency of the Armies, under the executive power of the commanders in chief, and the documents show in many cases, that active participation in the carrying out would have been unthinkable. I do not think the Army commanders would have helped to carry out such an order if it had not been a Fuehrer Order. over the commando in Odessa?

A Yes. When I arrived in Odessa during the first days of November, my predecessor confirmed to me that this Fuehrer Order had been announced in Pretsch. He personally was a close friend of Gruppenfuehrer Streckenbach, and he told me that Streckenbach had already expressed in Pretsch that he himself objected to this order but could not change it because it was a Fuehrer Order and that had to be carried out.

as well? me about this statement by Streckehbach, but I am not quite sure of it anymore. defenseless people, women and children?

Q What do you mean by humane reasons? having defenseless People killed and shot, and I cannot imagine that there is any human being who does not feel this inner struggle. this feeling within you? for me to answer this.

BY THE PRESIDENT:

Q.- Witness, I would just like to refer to your previous answer, and of course, then you will be able to take up the question which your counsel just put to you. You said that you could, not imagine that any human being could execute such an order without having some kind of an inner objection to it. Did I understand you correctly?

A.- Yes, your Honor.

Q.- Do you exclude the possibility that there could be any human being at all that could execute such an order willingly and with entire assurance morally, inwardly, and in every way?

A.- Your Honor, that would nave to be a person without a heart and without a soul.

Q.- Well now, I am merely taking up this statement of yours, and I want to see how you appraise it. You say you cannot imagine a human being, Now, a human being in a walking anatomy. You know what a human being is, a person?

A.- Yes.

Q.- With a brain?

A.- Yes.

Q.- Very well. Don't let us deal in abstractions and say "without a heart and without a soul". You say you cannot imagine a human being affirming such an order. Now, do you stand on that statement?

A.- Yes, that is my opinion, unless it is a person whose whole mentality I cannot understand.

Q.- Well then, you do make an exception then, you say that there could be such a human being?

A.- Well, your Honor, after all there are people who are born as criminals who become mass murderes, these are, of course, exceptions.

Q.- Then if you mean you did not mean your statement when you said you cannot imagine a human being executing such an order without some inner revulsion, that statement is not correct, is it?

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A.- I did not think of that exception, your Honor. That is right.

Q.- Then you say that there can be human beings who would kill defenseless people and yet not feel any inner remorse?

A.- Will your Honor permit me to gave an example, which I don't want you to misunderstand. I don't know whether there are cannibals in the world now who do such things which a normal man cannot understand.

Q.- But witness, you made the statement yourself, that you cannot imagine. You even put it into the realm of fantasy, that it would be even possible to conceive that there could be such a person who could kill without some inner revulsion Now, I am only asking you whether you affirm that statement which you made?

A.- No, I have to keep that mentioned limitation, I forgot to think of that.

Q.- All right, Then there are human beings who could kill defenseless people and go about their affairs and sleep of nights?

A.- Whether they can sleep quietly at night, I don't know, but -

Q.- Well, at any rate let us leave out the sleeping business. There are human beings who could kill defenseless people and not give any manifestation of regret in having killed defenseless people?

A.- Yes, I think that is possible.

DIRECT EXAMINATION (Continued) BY DR. MAYER:

Q.- Witness, may I repeat the last question? Was it the feeling of being unethical that caused these inner misgivings of yours?

A.- I already said it is very difficult for me to answer that question because it cannot be separated from the situation at the time and from the total events. I, therefore, ask that I may be permitted to say a few brief sentences about this. I do not hesitate for one moment in normal times to consider the killing of defenseless people unethical, but in modern warfare it is different.

In the First World War already the principle came up that not only armies fought armies but that the entire other people were considered enemies who were to be fought. Already in the First World War on the one side there was the famine blockade and on the other side there was the unlimited U-boat war. This development continued in the Second World War, They have one great line in common. Defenseless people, women and children, sick people and old men are the victims. They are sacrified for one aim in the war, namely the final decision of the war. Those people who believe that these events, starting with the hunger blockade down to the event of the atom bomb are unethical, should ball the events in the last unethical too, but I don't think I am in the position, after really serious considerations, to come to such a decision, We have on both sides measures which, after serious considerations were approved by the supreme war chiefs and the supreme chiefs of state. I am not in the position to decide upon the basic reasons and principles; I cannot judge therefore. Those supreme heads of state, after all, can only come under one judgment.

THE PRESIDENT: Witness, just so that I may know your viewpoint on this, and not for the purpose of any way challenging your right to say what you choose, do I understand that you have summed it up this way, that since in modern warfare noncombatants are bound to be killed, and you have illustrated the business of the blockade and the bombing, even including the atom bombing, that because noncombatants are bound to be killed in the prosecution of a war, that, therefore, you could see nothing unethical about the killing of noncombatants in the East? Do I correctly represent what you said?

THE WITNESS: Your Honor, I believe I have to explain it a little further. As a comparatively unimportant man in these great events, I cannot judge what considerations and what last necessities moved Adolf Hitler to order that in the East the Jews, gypsies and Communists were to be shot.

I can not judge here, that it is unethical and criminal on both sides, just because I do not know the very last reasons which caused the supreme commanders of States togive such orders.

THE PRESIDENT: Well, then if the Chiefs of States decree a certain program, then it is not for you to say if that program is legal; is that what you are telling us?

THE WITNESS: First, it is my opinion that I am not entitled to judge the highest authorities of a State; I am not competent to tell, but I can not overlook the entire connection and the valid reason which would enable me to judge now: ethical or unethical.

THE PRESIDENT: Well, I understood you to say that taking everything into consideration, the nature of modern warfare, and you even gave an illustration from the First World War, that in taking all that into consideration, you don't see how it would be just, to declare that the war in the East was unethical, that is, the methods of the prosecution of the war in the East were unethical. Did I understand you correctly to say that?

THE WITNESS: Yes, Your Honor, as part of these total events which were so great and so important, not only on this one point but on many other points, I can not pass such a judgment. BY DR. MAYER: agreed with International Law? right nor a duty to examine whether an order agrees with International Law. In Germany, according to German circumstances, neither at the time of the Weimar Republic, nor after 1933, was this possible. From my study of law I remember that already in peacetime not even a judge was entitled to examine whether a law conformed to the International Law or not, but so far as I remember there was only one agency, and this was the National Court. I remember that the officials and the soldiers even more so had Court No. II, Case No. IX.

to carry out such orders and laws, and it was up to the administrative officials to think of the difficulties which might arise, concerning International Law. was also mentioned by the prosecution make it a duty for you to check up on this? the company leader, or, towards a battalion commander, for example. But in every state there is and must be one highest authority where nobody can examine this any further, because Adolph Hitler as the legislator could have changed this any time through a law which could have taken this limitation out of paragraph 47. He had the right to do that in accordance with the Constitution.

THE PRESIDENT: That as a matter of fact he did not say so, therefore, it was not in existence, was it?

THE WITNESS: Right, Your Honor, but I think it is not applicable to the Supreme Commander and the Legislator.

BY DR. MAYER:

Q This order of Hitler you, therefore, consider legal? The supreme head of state had the right by constitution to decide about war or peace and, therefore, as reality showed in modern warfare, to decide about the lives of millions of people. He also had to decide what was necessary in order to win this war. came to such conclusions on your own decision and on your own will, did you carry out the order and act according to the order on your own authority?

A No. I did not carry out this order on my own free will and on my own decision. I would never have acted in such a manner if I had been able to make a decision myself. I considered myself here a small wheel in a large machinery, the connection of which I could not overlook, although it was my absolute duty as a soldier to obey. And, therefore, I had no possibility of evading, avoiding or preventing this order in any way.

BY THE PRESIDENT: issue orders? the war is the only competent authority. the right to issue such orders as he deemed necessary to win the war?

A No, Your Honor. I believe that one has to leave the decision of what is necessary in a war up to the supreme commander. He is responsible for it. of the state to issue such orders as he deemed necessary to Win the war? supreme Head of State according to the constitution. Another question is Court No. II, Case No. IX.

whether one entirely agrees to it.

Q Well, you have merely put it in other words. I said that you intellectually agreed that since Hitler was the supreme chief of the German Reich that ha had the right to issue such orders as he deemed necessary to win the war. That is a logical conclusion on your part, is it not? that right. But, he must be held responsible. the situation in which I was in the east there was no choice for me but to obey.

DR. MAYER: Your Honor, I believe that part of the testimony of the witness did not quite come through in the translation. Seeing the importance of this matter, it seems necessary to me to explain and establish this, because such omissions may help to give this a different sense. I, therefore, ask that the interpreter be so kind and go back three or four sentences and read out the sentence again which left out the statement of the witness "in order to win the war". I ask the witness in particular to take note of this. My colleague, Gawlik, just tells me it concerns the question where this sentence "in order to win the war" was not translated.

PRESIDENT: Yes, Dr. Mayer. Why don't you do it this way, just please repeat the question and we will go over that ground again so that there can be no doubt that the witness views acre actually reported?

WITNESS: Well, I don't know which sentence you are referring to.

PRESIDENT: Why don't you ask that question again?

DR. MAYER: Your Honor, I think this will be explained when I see the transcript and then I can correct this with the aid of the English record. Your Honor, it was your own question where this part was left out in the interpretation. The reporter will have it in the English record. It is a question which the President addressed to the witness.

I, therefore, ask that the reporter would mention this in this report.

PRESIDENT: If you would like to have the reporter read it back now, we will gladly ask her to do so, if you can identify the sentence or give us an idea where that sentence occurred, and then she can read a little before and go through to a little bit afterward.

DR. MAYER: I, myself, of course, did not take stenographic notes so that the actual formation of the question I cannot remember any more in particular, as I eagerly followed the answers by the witness. The question was, as my colleague, Gawlik, just tells me, was whether in the opinion of the witness the supreme head of State would be allowed to issue any order which he considered necessary in order to win the war, and "in order to win the war" was left out on the record.

PRESIDENT: Yes. Now, that is a very important part of the question.

BY THE PRESIDENT: tellectually accept that the supreme ruler of the state, Adolf Hitler, had the right to issue such orders as he deemed necessary to win the war? head of state such power to give such orders which he considers necessary in his inner conviction in order to win the war.

Q Well, then you answered it, "Yes"? personal view of this order and, therefore, I have to say "Yes" from a legal point of view. BY DR. MAYER: object to obeying this order? I was only a small wheel, there was for me no such possibility. To refuse to obey an order in front of the enemy would have only meant death for me. BY THE PRESIDENT:

meant that as a humane individual you did not like to put into affect an order which would destroy innocent human beings, is that right? thought this was necessary then it was necessary because we have to obey the supreme chief--did you come to that conclusion intellectually? then I, as a small wheel cannot judge and decide that such a thing is not necessary. May I conclude this, Your Honor, I would like to make the same restriction here as on the question of being ethical or unethical, Here again I can only say what is necessary, after all and what is not necessary can only be decided by that man who can overlook the entire situation and who bears the entire responsibility.

Q Yes. You have told us that, and there is no question about your statement in that respect. Now, did it ever occur to you intellectually-let's leave out the sentiment--just intellectually to revolve in your mind without expressing it whether there was the necessity to kill these people or not--did you ever in your brain just try to reason out whether in your own mental laboratory you tried to figure out whether Hitler had a logical reason to say it was necessary to kill these people in order to win the war? as how -

Q Well, no, you didn't answer my question. I only asked you whether you at any time in your own thoughts deliberated as to whether Hitler was right in his conclusion that it was necessary to kill these people in order to win the war? whether this conclusion by Hitler was right or not because-

Q But, witness, you don't listen to the question. I have only asked you whether you ever thought about it. I am not asking what conclusion you came to. result somehow. I would like to say I considered the order wrong because of the effects which would result from it, but whether it was necessary, whether Hitler considered it necessary in order to win this fight, for our existence, that I cannot judge. war to carry out this order?

DR. MAYER: Your Honor, may I address another question which will probably make the witness understand?

THE PRESIDENT: Surely.

BY DR. MAYER: after you had left the East, from discussions with comrades or from your studies, or from the situation reports that you somehow doubted the necessity of this Fuehrer order? about it, whether it was necessary, but I could not draw any conclusion and I still cannot until now, because I could not understand the conditions and overlook the entire situation. consider what were the motives of this order? necessary was the dispute with Russia which was not only a war between the West and the East, but where he had an enemy who from the very beginning put himself beyond all rules of international law. I would like to say that he thought that the end justified the means that owing to this special situation he drew this conclusion and took this responsibility before God and History.

you learnt: Did you not go through considerations to the effect that concerning the facts themselves you drew soma conclusions about what might have caused this order to be given? the first day on,the enemy fought beyond all rules of international law. I know that Russia throughout the revolution, fought in the partisan battles, where women, man and children took part and considered this part of the warfare. I can imagine that such considerations caused the supreme head of the state to give such orders with the conviction that against an enemy who fought with such means, the war would be lost right from the start if one fought it on a basis of a Geneva Convention of the Hague Laws of warfare, but this is only an idea. Whether this is so, I don't know. I only know so much, that the order was made known and the reason which was given was that it was a fight for our existence, that the Jews in the East were the decisive bearer of Communism and its illegal manner of fighting. As far as I remember, those were the official reasons which were made known. BY THE PRESIDENT: enemy was fighting illegally, and that Hitler, having this over-all view of everything, could know what to do, do you now tell us that since Hitler had that benefit of knowledge and facts and you yourself knew that the enemy was fighting illegally, that you therefore accepted the order intellectually in order to win the war? considered it necessary, but whether it really was necessary, I cannot judge from my own limited experience. I cannot pass a judgment about orders given by the supreme commander and the head of the state.

Q Let's use an illustration. Suppose a soldier in war, let's say an artillery officer, is ordered to destroy a certain bridge on the theory that by destroying that bridge the enemy may not be able to get supplies. Now, the soldier knows that even if he destroys this bridge, there are

five other bridges so therefore nothing is accomplished in destroying this one bridge, but since it is an order he destroys the bridge. But in his own mind, he is of the opinion that the order was certainly a very bad order because it didn't achieve and couldn't achieve what it was supposed to do. You can understand that illustration, can't you?

Q All right, we at least got that far. Now, did you at any time reason in your mind whether what Hitler was attempting to do with this order would achieve its objective? judgment whether it achieved its purpose. I cannot judge this.

Q Then you say that it could possible leave achieved its objective?

Q Well, you won't say that it would not achieve its objective and you won't say that it could achieve its objective, but you didn't in your own mind attempt to determine whether there was any sense to the order or not? not decide. I cannot come to any decision, because I simply do not have the basis for it. Your Honor, I am under oath here. I do not know when I say yes or no now what is the right thing to do. What can my conscience answer for?

Q Well, please don't ever entertain in your mind the thought for an instant that attempt is being made to have you answer on, way or another for the purpose of in any way tripping you in your position. It is merely an effort to get at your conclusions, just why you did curtain things. That is the only way the issue can be decided by the Tribunal.

A I understand, Your Honor, and I don't think of anything else,

PRESIDENT: Proceed, Doctor Mayer. BY DR. MAYER:

of refusing to obey the order, and you explained that in your opinion a refusal to obey the order by you would have meant death for you. What reasons did you have to believe that? enemy could only result in execution. gruppe you came under a particularly severe martial law? already said about the SS and police jurisdiction, I cannot add anything further.

Q In view of the situation, should you not have made that sacrifice?

A I don't know whether one can expect a man to sacrifice himself to such an extent, end in particular under such circumstances, but such a self-sacrifice would at least have to have some purpose, but any sacrifice would not have helped at all. In my opinion, it would not have stopped this order from being carried out.

Q Could you not evade this task under some pretense? seeing that I was in the East in the middle of these events. by being sick, and, therefore, have made it impossible to be sent to the East? of tasks would be given to me in the Fast, and every soldier knows that one cannot go to a superior and tell him, "I am sick, please send me home," In any case, in my situation it wouldn't have been like that.

Q But didn't you have a possibility of desertion? existence, but I shall certainly not desert and run over to an enemy like the Bolshevists. BY THE PRESIDENT:

Ohlendorf, did ha discuss with you the nature of the duties which were awaiting you in Russia? already mentioned. He was in a hurry. We only talked briefly about matters and then I made efforts to get the car and the driver. During the journey, I wasn't in Ohlendorf's car for three or four days. That must have been a mistake in his statement, because he travelled together with Minister Lie and I travelled in my car with my driver throughout the whole journey, so that even there I had no opportunity to discuss this with Herr Ohlendorf, but I can only assure you again that the special task which is contained in the Fuehrer order I heard about for the first time in Nikolaiew.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal recessed until 26 November 1947 at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II. able Tribunal.

JUDGE SPEIGHT: Witness, raise your right hand. Now, repeat the oath after me: will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated.

DR. RIEDIGER: Your Honor, may I now start to examine the witness?

PRESIDENT: You may if you will, Dr. Riediger. testified as follows:

Q. Frau Weinmann, will you please tell us when and where you were born?

A. I was born 7 August 1911 in Reutlingen, in Wuertemberg.

Q. Where is your permanent address now?

A. In Reutlingen, Schumann Street 15.

Q. Do you know Herr Walter Haensch?

A. Yes.

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Q. When and where did you meet him?

A. In Berlin during a small invitation. It might have been in '39 or '40.

Q. After meeting him did you meet him again repeatedly, after this?

A. No, I cannot remember that.

Q. When did you meet Haensch again?

A. At the end of February 1942.

Q. On what occasion?

A. Herr Haensch and my husband travelled together from a station in Berlin, I believe it was Charlottenburg station.......they travelled to the East.

Q. Do you know exactly that this was at the end of February 1942, and do you have a special reason for remembering that?

A. Yes. On 6 February 1942 my second child was born in Berlin.

Q. How old was the child when your husband and Herr Haensch started to go to the East......started out on this journey?

A. I know this almost exactly, because my mother-inlaw was in Berlin at the time, and I told her, "Well, the child is just three weeks old, and father already has to leave". I was very worried about this because already then things were very dangerous because of the air raids attacks. We women were Very much afraid to be left alone like this with the two small children and to have to do without my husband.

Q. Do you know whether your husband and Haensch travelled immediately to this commando of which he was going to put in charge, or whether this journey was interrupted at all?

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A. Yes. In the first letter which I received from my husband it said that they had stayed in Luov and Kiev for a few days during the journey, and after they had finished travelling by train they had to travel by car for some distance.

Q. Do you know when your husband arrived at the front?

A. That must have taken a long time from Berlin to the point where he was assigned because I had to wait a long time for the first letter, but from his explanations I realized that he had already written from the place from where he had arrived one or two days after he arrived there.

Q. Can you not give any further dates.....no more exact dates?

A. No, I cannot do that.

Q. Do you know when your husband heard that he was to be assigned in the East?

A. That must have been sometime before the child was born because I always said I hoped that he would still be there when the child would be born; and then he was there on 6 February. The actual time of his departure he only heard about a week before because everything happened very quickly, then.

Q. That was the actual departure. But concerning his assignment to the East, you just said he already heard about it before the child was born?

A. Yes.

DR. RIEDIGER: I have no further questions of the witness.

PRESIDENT: Very well. Cross examination, Mr. Hochwald.

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By MR. HOCHWALD:

Q. Witness, were you a member of the Nazi Party?

A. No.

Q. Were you a member of one of the affiliations of the Nazi Party?

A. No.

Q. Your husband was a member of the SS, was he not?

A. Yes.

Q. What was his rank?

A. At what time?

Q. 1939 to 1945.

A. In 1939 my husband was Sturmbannfuehrer to Obersturmbannfuehrer. I am sorry, I don't know exactly any more, but in 1945 he was Oberfuehrer.

Q. You said that you met the defendant, Haensch in 1939, and then you did not see him up to February 1942, is that correct?

A. Yes.

Q. When he went with your husband to the East, was your husband assigned to an Einsatzkommando or an Einsatzgruppe in the East?

A. The word "Einsatzkommando" I believe, I only properly got to know. At the time I Knew that my man was going to be put in charge of a commando in the East.

Q. Is it known to you whether Haensch was supposed to serve together with your husband?

A. I Knew that they left Berlin at the same time, but I also knew at the time that they were being sent to different destinations.

Q. Now I want to speak to you about a letter to which you have referred, which was written by your husband and and from which you deduced that Haensch came very much later to his assignment.

There were different assignments. May I assume that your husband wrote to you in this letter "Haensch and I" or "I and Haensch", or that he wrote "we", and you were of the opinion that that was Haensch. Can you tell the Tribunal whether the name of Haensch appeared in this letter you have been referring to just now, or whether your husband wrote just generally about the delay of his assignment?

A. My husband wrote "we". I am certain of that.

Q. So you can't say, in other words, the name of Haensch did not appear in this letter?

A. I cannot say this for certain any more.

Q. You told the Tribunal that it took a very long time before you got your first information from your husband. Can you tell the Tribunal.......you very likely have received later letters, too.......how long it usually took to get a letter from the East to Berlin?

A. Of course, I did receive some letters from my husband from the front, and for a wife who is waiting, it took rather long.

Q. I understand that. Can you tell the Tribunal how long approximately it took?

A. No, I don't know exactly. I cannot determine a definite period.

MR. HOCHWALD: Thank you very much. No further questions.

PRESIDENT: The witness will be excused. You have no further questions, Dr. Riediger?

DR. RIEDIGER: No.

PRESIDENT: Very well. The witness will be excused.

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PRESIDENT: The defendant, Braune, will be taken to the witness stand.

DR. MAYER: Dr. Mayer for Braune. Your Honor, I ask that I may continue with the examination of yesterday of the defendant, Braune.

PRESIDENT: Please do. BY DR. MAYER:

Q Dr. Braune, yesterday we had arrived at the question whether you had the possibility of desertion, and thus evade carrying out the Fuehrerorder; you answered "No" to this question. I now ask you the question: Was there a possibility for you to avoid the carrying out the order?

A No. Even with the strictest measures and the strictest standards, I saw no possibility in my situation to do so. silently, that is, sabotage its execution?

A No. There was no such possibility for me either. Please consider, I took over the commando in November. For months the commando had been in the assignment already, and under my predecessor they had carried out their tasks. The Fuehrerorder was known to the leaders and the men. Under those circumstances, there was no such possibility. In addition, the measures in Simferopol were given through an order by the army which was at the headquarters of the Einsatzgruppe. reasons, but you considered it your duty to carry it out, being an order from your supreme commander, and you saw no possibility of avoiding its being carried out?

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Q But couldn't you have tried through your superior, Herr Ohlendorf, to have the order changed somehow -- did you try that? Ohlendorf, too, could not change the Fuehrerorder because of the prevailing situation. I knew Herr Ohlendorf. I Knew his inner attitude towards this order. Until this day I am convinced if there had been one possibility for him to change or have the order revoked, he would have done this. In October, when Himmler was present, he made a last attempt. He wasn't even given a reply. What could I do as his subordinate in such a situation . After this, Herr Ohlendorf expressed that such an attempt on my part would have had no sense. BY THE PRESIDENT: Ohlendorf? between us on a comradely and human basis. about some personal problem in which you thought that he might be able to assist you with counsel and advice? Ohlendorf with personal matters.

Q Well, then, why didn't you talk with him about this -- why didn't you say to him, "that it is very difficult for me to execute this order, can't you do something to save me from it, can't you put me on some other assignment", why didn't you ask him to use his efforts to cause you to avoid the execution of the order?

I think during the winter months we talked about it repeatedly, but I knew from these very discussions that in spite of the very good relation between us and considering our friendship, Herr Ohlendorf would not have understood me at all if I had come to him and said, "Please send me home, and let somebody else do this very difficult task instead of me." I believe Herr Ohlendorf would have considered me a shirker if I had done this and he would not have had the slightest understanding in spite of our good relation. That is how I understood him, even during our conversations which we had. coward than to take the chance in asking him to relieve you from this task which you found so onerous and distateful?

A No, Your Honor. I was convinced that there would be no point in it, and that Herr Ohlendorf would not have been able to do anything. without even putting the question to him? and his general attitude toward these things -- I knew his opinion about this, but I think one thought never occurred to him which was to go and say, "Take me away from this difficult task, allow me to withdraw from this difficult task, and give it to somebody else", and that is why I was convinced that he would not understand such a request on my part. I point out that such a request would have been considered shirking and cowardice in front of the enemy, and, therefore, it would have been considered a crime according to martial law. A soldier who comes and says, "I want to go away from the front, I want to go home", in my conviction will be put before a court martial.

Q But that wasn't the situation as you described it; you had a very friendly relationship with Ohlendorf. You discussed this very question. Why couldn't you have said to him, "General, I find myself in a very difficult situation, I want to do my duty where it comes to fighting the enemy, but where it comes to shooting down defenseless people, I just can't do it; now, can't you, as a friend, see to it that I will not be called upon to do this, assign me to some other work, have me relieved anything so that I won't have to do this", why couldn't you have said this in effect, not those words, but that thought -- why couldn't you have expressed that thought to him? of Herr Ohlendorf that it was not easy for me to do this task, but I can only repeat what I said before, and this is how it was, in fact; according to the general situation, I thought there was no point in asking for this request because I was convinced that the answer would be in the negative.

Q Well, then you decide Ohlendorf's mind without giving him a chance to express it to you? to that effect, and that is why I never mentioned it to him. What also played a part in this way was that I felt somehow at the time myself that it would not be decent to try to shirk from a very difficult task in wartime, and to give it to somebody else, to get rid of inner misgivings and worries myself and pass them on to somebody else. sensitive than others, and it is no reflection upon an individual if he happens to be in that category of hypersensitive people.

You know that to be a fact, don't you?

A Yes, Your Honor. And I believe I can say with a clear conscience that I consider myself one of them.

Q Yes. Very well. If you considered yourself a hypersensitive individual, you could visualize that there would be others not so hypersensitive, couldn't you?

Q So that you could have said to Ohlendorf, "Now, I am a very hypersensitive person, perhaps you can find someone who doesn't feel such a revulsion in performing this very disagreeable task", there would have been nothing wrong about that, would there? I did not think it would be any good if I asked; I was fully convinced that the answer would be in the negative, and that was the very reason why I never made this request. My personal attitude towards these matters, I believe Herr Ohlendorf knew at the time and knows now, and if there had been a possibility for him, I am convinced that I would not even have had to ask, and he would have acted in that manner on his own, but since he never opened that chain of thought, I did not make this special request to him.

PRESIDENT: You may proceed, Dr. Mayer. BY DR. MAYER:

Q Dr. Braune, why, in your opinion, did Hitler give this order?

A I can only repeat what we were told at the time; it was that it was a fight for our existence in the East, that these measures were necessary in order to secure the rear of the army in the occupied territory, and that communist functionaries and Eastern Jews were the decisive bearers of this fight which the Bolshevists fought, which was outside all rules.

BY THE PRESIDENT: decisive bearers of Bolshevism? the assignment, the comrades who had been out there for months, confirmed this to me. This was also confirmed to me in the reports which I read, also from the spheres from other Einsatzgruppen, and I must say quite frankly I made my own experience in the assignment, and in the Crimea there were particularly those. Detailed investigations were made during the months while we were in one place and we made them conscientiously and very carefully. In the Crimea about five or five and a half percent of the entire population were Jews. Our investigations showed that the leadership of the communist party and also the state administration of the authonomic republic on the average was held by Eastern Jews, from 50 to 80 or 90 percent. And according to this they shared in the fight which was being carried out in the rear of the German troops, destruction battalions and elimination battalions, sabotage troops, agents and information service, partisan warfare, and many other things. We realized again and again that apart from communist functionaries who purposefully had been left behind and were assigned to a decisive degree, these Jews in the Crimea took a decisive part in this. and played the active part which you have indicated, then they were definitely enemies and dangerous enemies of the Reich, weren't they?

A Yes, Your Honor. I could not say anything different. dispose of them, didn't you? enemies of the Reich, but they were decisive bearers of a fight which I believe no army can take.

Q Yes. Well then, it was entirely in order to fight this enemy in every way possible, wasn't it? personally saw there in practice, made me realize a little more why Hitler had given this order, but my inner rejection and my conviction that it was not quite right was not changed in a decisive manner because of this. I agree that to a certain degree I could understand this because of the situation, but my basic opinion was not changed on account of this. were defending your country, and you were in the field, and you were fighting the enemy, and you say that you knew that the Jews were your most implacable foe, that they carried the banner of Bolshevism, that they assisted in partisan activity, that they were saboteurs, that they formed private destruction battalions, well, with all that you should certainly have no hesitancy in fighting them, should you?

A Your Honor, the order went further. The order was not only given for the individual leader of a battalion or some individual saboteur, but Adolf Hitler drew the conclusion that it was necessary that all the Jew be exterminated. the Jews should be eliminated? humane point of view entirely and also that I considered it wrong.

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felt that you had to obey the order?

A Yes, Your Honor. In that situation in which I was during these events in the East I believed that I had to carry out the order of the supreme commander, and I saw no possibility of evading it.

PRESIDENT: Proceed, Dr. Mayer, please.

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Q (By Dr. Mayer) Did you know that Hitler had given these orders already before the Eastern campaign? already announced in Pretzsch but I can imagine that it was issued already at the time, because Adolf Hitler, as supreme commander, realized fully in what form this fighting in the East would be taking place.

Q In your opinion, how could Hitler know this beforehand? example, ever since the Bolshevist revolution, was conducted by the Bolshevists as a considerable part of its warfare. Already in peace time the Bolshevist Army and the people had been prepared to conduct such a manner of fighting. I would like to say it was the highest maxim that one held the opinion that in a war, men and women, children and old men have to help to fight behind the front and at the front and to fight the enemy wherever they can. I believe that documents have been submitted or will be submitted which will confirm this opinion, as said by Lenin or at least by Stalin and I believe we also have documents which show that after the end of the war Bolshevist leader announced with great pride that they had conducted the fighting in that manner. I have read documents where they emphasized proudly that it was like this in the rear territory of the enemy that no soldier knew whether the farmer's wife or the farmer, who was working in the field, did not carry a weapon under their clothes. BY THE PRESIDENT: children were aiding in this partisan warfare and were assisting the cause of the enemy? this. as war is fought?

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who opposed us with weapons or with poison or with intelligence service or by any other means, by dynamite in the most horrible manner, I would lie if I would say here that I felt any great hesitancy about this, but I have pointed out before that the order went further. It wasn't said kill the Jews or the Jewesses when you catch him or her in the act, but this was not mentioned in the order, but the order said to kill all of them without proving any actual individual guilt, and that is the tremendousness and the great difficulty in this task. cause? Did you believe that all Jews helped that cause? the possibility that there were people who were not interested in politics. Bolshevist cause? majority of the Jews? Communist actually meant in the rear of the Army. In fact, he wasn't a human being who simply kept his own opinion to himself, but according to the Communist education and upbringing, the natural result of his conviction was to take part actively in this fight wherever he could.

Q Well, that's what I said. You believe that the vast majority of the Jews supported Bolshevism and therefore you believed it was proper to fight the vast majority of the Jews? agree with the order which said, without examination, from the very start, every Jew should be killed.

before you executed the individual?

A I don't know whether I should actually formulate it like that, Your Honor, whether one could have solved the question to a certain degree by interning them, but here again, I can only repeat what I said yesterday, what the real motives were to cause this man to give the order and why he considered it necessary, that is beyond me. ing Bolshevism and therefore were opposing your forces could you have conducted an investigation before you executed particular group to find out if these individuals had actually supported the Bolshevist cause.

A Your Honor, I don't know whether this would have been possible practically and technically, but the difficulty of our situation arises from the fact that we did not have that right but our order was that they were to be shot and that they were considered to be a danger from the start and therefore we could not have used our own judgment to make any such examination or investigation. summary investigation before you executed any particular group? excellent interrogating officials and criminal officials, and if these had examined the cases for weeks, for months, down to the last detail, if I had called witnesses and all that, certainly the impression one would have gotten was that not a small percentage of these Jews were active in some form or other in resisting in the rear territory of the German Army, but that was the very reason why we were told right from the start this order is to be carried out without examinations. any way, so therefore an investigation would not have added anything to your conclusion? results of examinations. Only actual practice could have shown this because the question always remains open for one, how many people could one prove to be guilty and how many people could one not prove to be guilty.

One cannot make a general statement here, Your Honor.

Q Well, you conducted some investigations didn't you when you executed a saboteur; you had someone who would indicate that the saboteur had actually committed sabotage, assuming that he was not a Jew? Jews were active as saboteurs, there also investigations were carried out. active in the Communist cause?

A Your Honor, I cannot talk of percentages here. I tried to express it as clearly as possible. knew it; when I asked you that question, you said there was no doubt about your belief, but you know it as a fact that the vast majority of Jews were active with the Communist Party. Is that true or not true?

A Your Honor, I don't think I said that the vast majority was active, but that the vast majority was in favor of Bolshevism and I also said that our experience was there that the convinced Communists who remained in the rear territory of the enemy-- most of the people always escaped-they remained and were active in some way, but we never definitely insisted that the great majority actually was active.

Q Very well. If you conclude that the vast majority were in favor of Bolshevism, it necessarily follows that only a small minority did not approve of Bolshevism, is that right? 30%.

Q Well, all right. Let's say 30%. 30% did not approve of Bolshevism. It would not be unreasonable to come to that conclusion?

A Not approved, Your Honor? I would doubt that, but, as I said before, surely there were a number of people who never cared one way or another.

approve of Bolshevism among the Jews and those who did not. You say the vast majority did, would you say that is 70%?

Q Well, let it remain the majority. The majority then did approve of Bolshevism?

A There is something between pro and anti. Somebody can be convinced and fanatical and prepared to fight to the bitter end and somebody can approve, but say, "I don't want to have anything to do with fighting," and somebody can be indifferent. Somebody can doubt and not be sure and somebody can conscientiously oppose it.

Q Well, let's group them together just for the purposes of discussion . The vast majority approved. Let us say that is 60%., That is not quite as strong as vast majority, but it is a majority; 60% that leaves 40% who either did not approve or were indifferent. That would be a just way of dividing it, wouldn't it? to follow an example.

Q Yes,well, you say the vast majority. Let's say that is 60%, to be on the safe side, did actually approve of Bolshevism, then 40%, we are speaking of Jews all the time, either did not approve or either were absolutely indifferent either one way or the other. Now, when it came to executing a group, if you had excluded 40% from the execution order, would that have caused any great difficulty?

A Your Honor, there was not choice for me. I was in a war under martial law. I had an order from the supreme commander to shoot all Jews for the reasons given to us and it was not possible for me except to obey this order in war under martial law.

Q Well, let's suppose that you had a way of determining that these 40% were not active Communists, couldn't you have found a way not to execute them?

A. No, your Honor, I must say that this possibility did not exist. Take four or five thousand people......if two or three thousand of these were not Communists and the others constituted a danger........this is an estimate, I cannot look into the people's minds; and with a handful of the Crimea the Army Commander-in-Chief told me before Christmas already this must be carried out, I do not see a possibility of doing such a thing.

Q. Did you ever excuse one Jew just because there may have been some doubt as to whether he was a participant in Communism or not?

A. No, your Honor, because the order excluded such a thing. I could not decide on this any more since the Supreme Commander had given this order. This was beyond my rights.

Q. Don't you think that it would have helped your inner feelings if you had said, "Now, I am going to excuse one Jew just so I will know in my heart that I did not carry out this inhumane order to its utmost. Did that ever occur to you? I am going to excuse one Jew, one miserable Jew, so that then I can have on my conscience that I at least, in some way, I tried not to carry out this inhumane order to its merciless extent." Did that ever occur to you?

A. Your Honor, I do not know whether this would have changed my situation and my distress; but I agree I had been given this task, and I carried it out as I considered it to be my duty and as I thought I could not evade it in a military manner.

THE PRESIDENT: Dr. Mayer, I am sorry I interrupted your examination.

Will you please continue? BY DR. MAYER:

Q. Witness, even now.......are you still convinced that Hitler's order was only given in order to secure the territory, and not to exterminate people?

A. To the best of my knowledge and belief I can answer, even now, only yes. In my Einsatz it was never mentioned that the Jews were to be exterminated, that a plan existed to exterminate all the Jews; but I remember very well that during that time in particular it was discussed very often that the aim existed that the Jews be given a national home......the name, Madagascar, even came down to the Crimea, and here in Nuernberg in the prison I learned the confirmation that a plan for a national home was seriously considered at the time. Added to it is the fact for me that I heard here that the order by Adolf Hitler should be a final solution, that is, to kill all Jews, according to what has been determined in the IMT, was given in April and May 1942; in any case, the affidavit by Wisliszeny, a co-worker of Eichmann, I read here.......according to which the order which he thinks he has seen in writing bears the date of April or May 1942. That is what I remember, your Honor, and therefore I am convinced, even now, that this order given in May or June 1941 was not connected with this so-called final solution which was found one year later.

THE PRESIDENT: Dr. Mayer, I am a little bit confused about these dates. Once he said May 1942, then he says June 1941. Would you try to get a more......

THE WITNESS: May I explain this, your Honor, May and June the order by Adolf Hitler must have been made out.

THE PRESIDENT: Please give us the year, now, that is what we are talking about.

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There is a confusion about the years. Now, May and June 1941. Is that right?

THE WITNESS: I beg your pardon, your Honor, I forgot to mention the year. In May or June 1941 the order by Adolf Hitler came out that the Jews be shot at the Eastern front. The reason given was that they constituted a great danger to the security of the Rear Army, that this measure was necessary in order to secure the Rear Army territory. What I heard and read here is the statement by Wisliszeny, during the IMT..........as far as I remember he stated under oath that the order for the final solution was given one year later, April-May 1942.

THE PRESIDENT: That is very clear. Thank you very much. BY DR. MAYER:

Q. DR. Braune, when did you go to Kommando 11-b in Odessa?

A. On 2 or 3 November, I think, I am sure of this..... I travelled to Odessa from Nikolajew where the Einsatzgruppe was stationed and where I stayed the first ten or fourteen days in order to gather information and to look after Minister Lie.

Q. After arriving in Odessa, were you put in a charge of the Kommando immediately?

A. No. I remained there for one week first, where my predecessor was in charge of the Kommando. I think I took over the Kommando on 10 November 1941.

DR. KOESSL: The defendant Schulz, your Honor.....

THE PRESIDENT: The defendant Schulz will be excused for a few minutes. BY DR. MAYER:

Q. Witness, in your statement of 8 July 1947.....it is in Document Book III-D, Document 4234, page 54 of the English, page 94 of the German.

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.....please explain.......that you were given your assignment in October 1941. The Prosecution draws the conclusion from this you were Kommando Chief of 11-b already in October 1941. Is that correct?

A. That I received the order in October 1941 is right. The conclusion from this that I had taken over already in October, is wrong. If I had Known that this statement would be used against me in a trial I would have attached importance to its clarification; and at the place where it says, I quote:

"I travelled to Odessa"........I would have added the date there, but Mr. Wartenberg told me at the time that I would be examined as a witness, and not as a defendant, and therefore I did not attach very much importance to this minor matter.

Q. When did you move to the Crimea?

A. That must have been after 20 November.

Q. In Odessa, did you carry out the execution of the Jews living there?

A. No. In Odessa I did not carry out the execution of Jews. The Rumanian Army, an officer of the Commander of Odessa, approached me and asked that this be carried out. But already before I took the Kommando.........I meant to say it already before I came to Odessa.......the Rumanians had the sovereign right in that territory, and also in Odessa, and the Einsatzgruppe had given directions that the transactions be concluded and that they should prepare to move on. I pointed out to this Rumanian officer that they had Rumanian sovereign rights, and therefore rejected his request that the execution of Jews should be carried out in Odessa by me.

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Q. Were the Rumanians satisfied with that attitude?

A. No; the following day, or the day after the next, another officer approached me......I believe it was a major or a lieutenant colonel. He repeated this request, and also pointed out, or at least maintained, that it was the task of the Einsatzkommando, and they knew that, and threatened to make a complaint through diplomatic channels or through his war commander to Berlin. I still rejected, in spite of this, but in order to calm him down I told him that I shall turn to my superior officer in Nikolajew although there was no doubt in my mind that the decision would be. I did that. Herr Ohlendorf gave me the instructions which I had expected.........to continue to refuse; and I informed the Rumanians of this, as the decision of my superior office, and then nothing further happened.

Q. How many Jews were concerned in this case?

A. Odessa was a very large city. I believe in peacetime there were between five hundred or six hundred thousand inhabitants there. I think I can remember that about one hundred thousand Jews lived in Odessa in peacetime. Of course, a great number had escaped from there, but tens of thousands must still have been there.

Q. When did you arrive in the Crimea?

A. That must have been in the lest days of November. I arrived with only a few vehicles, as the first one there. I remember exactly. It was terrible weather. And the greater number of my vehicles had actually gotten stuck in the mud.

Q. When did the last vehicles of your detachment arrive?

A. I think that took two weeks.

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Q After your arrival in the Grimea, where were you stationed? Einsatzgruppe Chief, Oberfuehrer Ohlendorf. Simferopol? the first days of November, that is, for weeks, a sub-kommando of the Kommando 10-a was in Simferopol. by Herr Ohlendorf until after a few weeks -- I don't know the exact date any longer -- they were sent back to Kommando 10-a. arrival? first of all saw to it that the vehicles which had gotten stuck were partly repaired; some of them were pulled away; and thus the kommando was gathered together again. Oberfuehrer Ohlendorf? There it was fixed where the sub-kommandos were to be assigned and and which territory was to fall within my competency. such sub-kommandos? Karasubasar, Aluschta and Eupatoria. Apart from the sub-kommando which already existed in Simferopol. when did you make them move? before the first few days of December.

other kommandos or sub-kommandos there, or had they already been active there? explain it -- on the basis of documents I am convinced that Kommando 10-b during their advance to Feodosia were active in Karasubasar as well, but I am not sure of this. since when other kommandos or sub-kommandos had been active before yours in your later Einsatz territory. Please look at Document Book I, page 34 of the German, page 30 of the English text. It is Document No. No-4134, Exhibit 7. Apart from that, Document Book II_D, page 11 of the German and page 12 of the English, Document No. NO_3159, Exhibit 85. Also Document Book II_C, page 59-60 of the German, and page 54 of the English. It is Document No. NO_2832, Exhibit No. 79. And finally, Document Book II_A, page 108 of the German, page 101 of the English. It is Document No. 2822, Exhibit 50. Please explain to me, on the basis of these documents, from when onwards your kommando was assigned in the Crimea, and was active there, and in how far other kommands had previously been active - namely, the kommandos 10-a, 10-b and 11-a, in your area of your later competency. NO-4134, Exhibit 7.

DR. MAYER: Your Honor, this is page 30 of the English text.

A (by the witness, continuing) This is page 4 of the original, your Honor. There it says, under Einsatzkommando 11-a, on 28 October, Majhtschka, with Advance Kommando, south of Perekop.... your Honor, may I show on the map where Perekop is?

THE PRESIDENT: Yes, please do.

WITNESS: (continuing) Perekop is here. Therefore sub-kommando was to the south, while advancing south.

Q (By Dr. Mayer) On that occasion I would like to ask you to show the Tribunal the situation of Karasubasar, Aluschtka and Eupatoria, which will clarify the entire situation.

A (by the witness) It is not simply on this small scale, but Simferopol, it would be about here, at the lower end or the letter "M". Karasubasar was to the east Of it. Half way to Feodosia, which was about here. Karasubasar was about here, on letter "A". Eupatoria was west of Simferopol, on the coast about here; and Aluschta was on the other side of the Jala Mountains, on the south coast, about here, southeast of Simferopol.

THE PRESIDENT: Very well.

WITNESS (continuing): If I may repeat, it is shown here that on the 28th October a sub-kommando of 11-a was already south of Perekop.

I now refer to the next Volume, that is, II_D, page 11 of the German text -

DR. MAYER: Page 12 of the English, y ur Honor.

WITNESS: NO_3159. Exhibit 85. It is a Situation Report of the report of events, No. 129, Of 5 November, with the locations as can be shown on page 1. There on the top it says: "Location and Communications. As of 5 November." And here on page 4 of the original it can be seen that. "Sonderkommando 10-a, Taganrog, Advance Kommando to the north of Simferopol. "That is this sub-kommandoo your Honor, which in my opinion from the beginning of November had already been active in Simferopol. It can also be shown, 11-a, also an Advanced Kommandoo already in Simferopol... Therefore one sub-kommando of 11-a must have been active in Simferopol before a sub-kommand of 10-a. It can also be seen that 11-b, on 5 November, was still in Odessa, a time when I was not yet in charge of the kommado.

DR. MAKER: Page 54 of the English, your Honor) A (witness continuing) Document 2832, Exhibit 79.

Here on page 3 of the original it can he seen, "Sonderkommando 10-b, Feodosia, Advance Kommando in Kertsch," sub-kommando in Alushta, at the place where later on my sub-kommando went to.

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On the next page, Einsatzkommando 11_a, Jalta, sub_kommando before Sevastaopol and Bachtschisaraj and Eupatoria. That is a location where later on one of my sub_kommandos also went to. Here under 11_b, my kommando is listed enroute for the first time as of 19 November. This cannot be quite correct, however, but I explain it to myself like this, your Honor, that I believe that the day when the departure should have taken place originally, I had already reported to the Gruppe that we were going to move; but during the night there was a severe frost, as a surprise, and a great number or cars froze, and cylinders burst etc., so that we had to remain another two or three days, if not more, until we finally were able to depart. That is how I explain to myself that this report came about. It cannot be right because I explain that my kommando, on the 28th of November, for the first time were reported in Simferopol. On 26 November they were reported to be en route.

And the last one, II_a, page 108 of the German-

DR. MAYER: Page 101 of the English text, your Honor, WITNESS (continuing) It is NO_2822, Exhibit 50.

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There it says on Page 1 of the original in the Situation Report No. 135, that is the one I just mentioned before, there it is mentioned that on 19 November, 1941 the stations were not changed. Here too in Eupatoria and Alutschka subkommandos of 10b and 11a, my commando, still en route. And finally I have certified excerpts by my defense counsel from the reports of events 138 to 144. Unfortunately, we were not able, your Honor, to get them because these things were only found a few days ago.

DR. MAYER: Your Honor, may I interpolate here? These excerpts from the reports of events of the prosecution, I shall introduce them in my Document Book I. My Document Book I may have been received by the Tribunal already. Document Book II will follow within the next few days.

THE PRESIDENT: Dr. Mayer, shall we take our recess now? The Tribunal will be in recess fifteen minutes.

(A recess was taken).

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THE MARSHAL: The Tribu*el is again in session.

DR. FICHT: Dr Ficht for the defendant Biberstein. Your Honor, I ask that the defendant Biberstein be excused from the afternoon session since on advice of doctors he is supposed to lie down because of his heart condition.

THE PRESIDENT: We will not only excuse him for this afternoon, but at any time and for whatever period the doctor and his counsel believe he should be absent from the courtroom, I trust you will inform the Tribunal. The defendant Biberstein will be excused from attendance in court this afternoon.

DR. MAYER: Your Honor, before the recess, the witness was discussing those documents which he mentioned in order to show which Einsatzcommandos were already active in the Crimea in his future district before he got there. On the basis of excerpts from the operational reports which I have in my Document Book and which I shall submit as evidence, I shall ask the witness to mention the dates, especially when his own subcommandos became active in the Crimea, when they first became active. ing: The Operational Report 138 of 26 November 1941 reports my Commando XI-B still enroute to Simferopol. The next operational Report no. 139 of 28 November has the typewritten note, still enroute to Simferopol, sofar as my Commando is concerned, but here the two words "marching towards" are crossed out in the original, which would mean just Simferopol. That means the Commando would have had to be there. Whether this penciled correction, which I don't know by whom it was made, or the original text corresponds to the truth, I can not say today after six years. Here at the same time subcommandos of mine are first mentioned in Alustchka, Karasubasar; furthermore, it says Juschon and this Juschon is also situated on the isthmus near Perikop. May I emphasize the fact that no subcommando of mine was ever there, but Jaschon was the last place where we spent the night,and there most of my vehicles had remained and were gradually brought forward later.

That is how I explain the mention of Juschon in this report. The next Operational Report No. 141 of 3 December 1941 still reports the Commando XI-A, that is not my Commando with a subcommando in Eupatoria where later one of my subcommandos came to be stationed, and my commando is again reported in Simferopol in this report with subcommandos in Alustchka, Karasubasar and again Juschon. That is, the forces in Juschon had still not been brought forward. The report of 8 December reports these same garrisons unchanged. That is, still no subcommando of mine is reported as being in Eupatoria, but it is not until the Operational Report No. 144 of 10th December, that is two days later, that a subcommando of mine is first mentioned in Eupatoria. I am through.

Q Before you, was another subcommando active at Karasubasar? but I assume that 10-B during the advance on Feodosia briefly was active in Karasubasar. mandos?

A I didn't have to give any specific orders to the subcommando leaders, outside of telling them where their garrisons were, and telling them generally about their missions, for the missions had been set up from the beginning, and in Odessa I came into this situation when I took over the commando. and Krimchak executions with which you have been charged, and, first of all, sofar as the figures mentioned are concerned. About the executions in Simferopol on the order of the Army I shall speak later, Your Honor. Witness, will you please look at the following documents: In Document Book II-D, page 26 of the German, page 21 of the English text; Document NO-2828, Exhibit No. 86. Furthermore, in volume II-C, pages 61 and 64 of the German, pages 55 and 58 of the English text.

This is Document No. 2832, Exhibit No. 79, and, finally, in Document Book III-D, page 36 of the German, and page 18 of the English, Document No. NO-4538, Exhibit No. 153?

A (continuing) This is NO-2828, Exhibit No. 86. Here it says on page 11 of the original about Jews, the total number of Jews is about 40,000, approximately one-forth of whom lived in Simferopol. It is an Operational Report of 12 December. In my opinion these figures can only represent the original number of Jews in the Crimea in time of peace, and, here, this does not include Sebastopol, which was then still occupied by the Russians, and, that, therefore, we had no way of getting any material. I remember how we got these figures, and I remember also that this original figure of about 10,000 in Simferopol was no longer there when we got to the city; a considerable number had fled, sofar as I remember it was more than half, and, as one document shows, they fled because rumors had been spread in the Crimea, which reported about the fate which awaited the Jews. Therefore, at considerable number from the entire Crimes,and carefully from Simferopol, had fled to the harbor cities, that is Sebastopol, Kertch, Feodosia and Jalta, in order to get away by ship. How large this flight was in the East can be seen in Document Book II-C, German page 61, which is NO-2832, Exhibit No. 79. There it says for the town of Ghernikov for 23 October 1941, that is about at the same time, that of about 10,000 Jews no more than 260 were left. Three pages further in the same volume, this is Document NO-2832, page 23 of the original, it says, and I quote:"Of the original 1,000 Jews in Dniepropatrovs, about 70,000 escaped before the German troops entered the town."

THE PRESIDENT: The translation came through "1,000". Should it have been "100,000"?

THE WITNESS: Yes, of 100,000, yes.

THE PRESIDENT: Very well.

THE WITNESS: That this flight was very considerable in the beginning is shown in Volume III-D, German page 36 and English page 18. This is Document NO 4538, Exhibit No. 153. Here it says, and I quote: This is a report of 25 August 1941, that is considerably earlier. In Kishenev before the war there were about 60 to 80,000 Jews, and a great number of these fled, when the Russians withdrew. when the town was occupied there were approximately 4,000 Jews left. Even if the escapes from Simferopol were not as strong as shown in these three documents, still I remember very exactly that a considerable number had fled, more than half so for as I remember. The number quoted before of about 10,000 could only be the figure before the war.

DR. MAYER: Your Honor, at this time may I make a statement which I consider necessary. It is not the intention of the defense, to prevent all misunderstandings, to try to bargain with figures here. on the other hand, however, it seems to me necessary to exonerate the defendant who confesses to the carrying out of the orders, from what he had not done and what he therefore cannot take responsibility for otherwise, the Tribunal may get the impression that it would have been all the same to my client whether he had to take more or less lives on his conscience. Therefore, I have to discuss these tiresome matters to this extent. I ask that you consider this and pardon me for it.

THE PRESIDENT: The defense counsel always has the right, privilege and duty to present his case in such a way as he deems best for his client, and, we will say, Dr Meyer, that up to this point there is nothing you have done which would lack of intelligence, and any lack of consideration in the way you have presented your case. BY DR MAYER:

Q Witness, please look at operational Report No. 150, 2 January 1942. It is also in Volume II-D, page 33 of the German, page 28 of the English.

It is Document NO-2834, Exhibit No. 87. Furthermore, I ask you --

A May I interrupt a minute. I had to look for the volume, and could not get the pages.

Q Also look at Operational Report No. 157, of 19 January 1942, which is available here in a photostat, and, finally the Operational Report No. 149, of 22 December 1941, and also in photostat. It is in Volume III-B pegs 24 of the German, and NO, 2833, Exhibit No. 114, which is only here in an excerpt, and, please read the brief passages into the record, and comment on these documents? is Document NO-2834, Exhibit No. 87, on page 20 of the original, page 7 of the excerpt. There it says, on page 28 of the English, Simferopol, Eupatoria, Alutska, Kertsch, Feodosia and Karasubasar and other districts of Western Crimea have been cleaned of Jews. From 16th November through the 15 December 1941, 17,645 Jews, 2,504 Krimchaks, 324 Gypsies, and 212 Communists and Partisans have bean shot. The Prosecution has charged me with these figures, by claiming that Kertsch and Fedosia belonged to my Commando. By means of documents, I shall prove later that this is not the case. I assume that the Prosecution made a mistake here.

tially part of Commando XI-A. So much for the area. Sofar as time is concerned, I have just show by the Operational Reports When my commando Came to the Crimea; when the subcommandos ware activated, and may I call your attention to the fact that in Alutska and Karasubasar only at the beginning of December, and in Eupatoria, only from 10th December, subcommandos of mine were present. That is even from the point of view of the time I can not be Charged with these events, because they refers to the period of 16 November to 15 of December, whereas my commando and my subcommandos were in any case active in the second part of this period; that during this period other subcommandos carried on Jewish executions in my later area I can show by means of Operational Report No. 149 of 22 December 1941. This is Document No 2833. From it on page 9 it says and I quote from the photostatic copy: "Einsatzgruppe-D garrison at Simferopol, activity of the special commando XI-A." On the next pages this activity is described, and on page 14 it says under the paragraph "Jews": "After the appointment of a Jewish Council of elders and the registration of the Jews, whose number amounts to 750, their concentration was carried through on 21 November 1941 in one area." This is the proof that three weeks before my subcommando, the subcommando XI-A had collected the Jews in Eupatoria, and that meant practically their executions only a few days later, for the concentration was only carried out when it was known that the executions would follow within a few days.

Now may I say something about the figures 17,645 and 2,504? that is altogether about 20,000, Even though this figure does not fully concern me as for as location and time are concerned, and even though it cannot be seen exactly to what extent I am charged with these figures, still I consider it my duty to point out that even these figures cannot be correct. 1942. This is NO-3338. This is two weeks after the one which mentioned the figures in Volume II-D and here it says, I quote, "The resettlement of the Jews, Krimshaks, and Gypsies can be seen as almost a complete liquidation, almost without exception -- "I beg your pardon, I just see that I took the wrong quotation. It must be on the preceding page and it says on page 6 of the photostat, When in the beginning of December, the preparations for the resettlement -- "and it can be seen from the context that this refers to the entire Einsatz area of the Crimea -"the resettlement of the 12,000 to 13,000 Jews, Krimchaks, and Gypsies has been started." Here two figures are opposed to each other. On the one hand it is reported that in the beginning of December in Einsatz area of the Crimea the execution of the Jews, Gypsies and Krimchaks had been prepared and that these amounted to from 12,000 to 13,000 and in the report which wasmade out two weeks before,about 21,000, that it, to 7,000-8,000 more, are reported as being executed there. I cannot resolve the contradictions. I merely consider it duty to point them out and to express my serious doubts about the figures, 17,000 and so forth. Operation Report 170, Volume II-D, page 51 of the German, page 47 of the English text. This is Document NO-3339, Exhibit 93. of the excerpt, that is page 47 of the English, it says, in the last paragraph: "In Simferopol, from the 9th of January to the 13th of February, more than 300 Jews were arrested and executed.

The number of persons executed in Simferopol increased, therefore, to almost 10,000 Jews, about 300 more than the numbers of Jews registered," I already said, I cannot mention any other specific figure opposed to this 10,000, because I do not know any specific figure. I can only assure you again that this figure cannot be correct for the reasons mentioned before. How it came to be calculated I cannot say. Whether it is a typographical error or whether a mistake was made during transmission by the Einsatzgruppe or in Berlin, I do not know. Perhaps I may mention one example, in which mistakes came to be made in figures: December 1941 from 700 to 300 people were executed in Simferopol. The prosecution in its charges against me has mentioned 7,000 to 8,000. I assume that this is a mistake also. May I just point out that it is possible that wrong figures can be obtained. with which you are charged?

Q How did these executions come about? officer of the 11th Army came to see HerrOhlendorf and told him that the Army demanded the carrying out of e executions before Christmas.

Army told this to Herr Ohlendorf? present too.

Q How did you conduct yourself in the face of this Army order? would be impossible to carry out these executions before Christmas. strength of your unit.

but all told, including drivers, interpreters, auxiliary forces, etc. In Simferopol, outside of an administrative officer and two aides on my staff I had no other people, outside of an officer who took care of the SD reports temporarily for two months and at times I had a non-com who helped me in the handling of partisan questions which had become so extensive that I could not handle them myself.

Everything else was assigned to the sub-kommandos, that is, the sub-kommando Simferopol, including the guard personnel and drivers who were necessary. Certainly it was not more than 25 to 30 men strong and the other sub-kommandos also were about the same strength. Enpatoria was a little stronger than Karasubasar and Aluschta. I know that in the sub-kommando in Simferopol there were about three or four,trained police and interrogation officials. With these forces it waspractically impossible for me to carry out the required executions in Simferopol. were too weak to carry out the execution which was demanded by the Army? his agreement I went to see the G-2 of the Army, Colonel Hauch and described the situation to him.

Q What was the result? number o trucks with drivers, to furnish the gasoline, and a certain number, I don't remember how many, of field police, all of whom were placed at the disposal to help in this execution.

Q Another question, Witness. Isn't it a mistake on your part when you say that Col. Hauch wasthe G-2 of the Army?

A I beg your pardon. I made a mistake. Colonel Hauch was the Chief Quartermaster of the Army.

Q Therefore, he was the 20A?

Whether he was the 2-A, I do not know. of your conference with the G-2? conference, did they also take part in the executions?

Q Who then carried out the executions? responsible for carrying out the details. He had at his disposal the people furnished by the Army, the newly arrived police company who was to relieve the company so far in operation and who had not yet been distributed among the subkommandos. Furthermore, I think I recall that the 11-A kommando, or the 10-B, or even both, furnished forces by order of Ohlendorf. Finally there were the forces of the subkommando and my guard personnel.

Q Who carried out the execution itself? furnished mostly by the police company, but here I cannot give any specific details, who was used for the transport, who was used to block off the area, and who was used to do the shooting. I believe that people rotated.

Q Witness, did you supervise the execution?

A Yes, I did. It took place under my responsibility. Once I was at the place of execution with Mr. Ohlendorf and there we convinced ourselves that the execution took place according to the directives laid down by Ohlendorf at the beginning of the assignment. I personally was there several times more, and I supervised. As I heard, the adjutant of Ohlendorf was there once, and saw that everything was carried out according to the instructions. Furthermore, my subkomman do leader, Sturmbannfuehrer Schulz, was always present, the company commander of the police company, and, I think, another captain.

THE PRESIDENT: Who was the adjutant, please?

THE WITNESS: That is the co-defendant Schubert, your Honor.

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Q (By Dr. Mayer) Witness, did your supervision extend to blocking off the area and the transporting of the victims?

Q In these executions were Krimtschaks shot also?

THE PRESIDENT: Dr. Mayer, just on a point of Krimtschaks?

DR. MAYER: Your Honor, I was just going to come to

THE PRESIDENT: Very well.

Q (By Dr. Mayer) Dr. Braune, please tell the Tribunal Krimtschaks.

They were of Jewish race and of Jewish faith, Jews.

Therefore, they came under the Fuehrer Order.

a Jew, particularly also who was a Krimtschak and who was not? was the only Jewish execution which I saw personally. Even Council of Elders and carried out the registration.

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According to what I heart this took place in the following. manner: The Jewish council of Elders was installed, a number of locally well-known and respected people,and this council of Elders itself called the Jews up for the registration. Whether in its own name or on the orders of the Subkammando or Kommando, I don't know, but they proclaimed that the Jews would have to register. That is two say, the Jews registered themselves as Jews. They identified themselves. Furthermore, the Council of Elders established it. That was two-fold control,and that is also how it was done with the Krimtschaks as far as I recall.

THE PRESIDENT: I don't understand what do you meant by two-fold control. You mean the subkommando and the council?

THE WITNESS: Once that way, namely that the persons concerned reported themselves and said, "We are Jews".

THE PRESIDENT: Oh, I see.

THE WITNESS: Furthermore the Council of Elders which was locally known.

THE PRESIDENT: Usually how many were on the council?

THE WITNESS: Your Honor, I cannot give you an exact number, but it could have been eight, ten or fifteen. I don't know exactly.

THE PRESIDENT: When you used the phrase that they were usually well-known and respected people, I understand that you mean that they were Jews well-known and respected in the community.

THE WITNESS: Yes, your honor. Among the Jews were well-known and respected people, who were locally known.

THE PRESIDENT: Very well. Thank you. Q (By Dr. Mayer) Witness, what happened with the Tartars?

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before the Bolshevik revolution. They were Mongols, an Asiatic tribe, and they were of Mohammedan faith. From the first day on these were in favor of the German occupation and their liberators. The Tartars had to suffer very much under Bolshevism. Of about 450,000 at the time of the Bolshevist revolution, only 220,000 were left. All the rest had been deported or liquidated. They were oppressed in every respect, and we restored to them their opportunity to worship and we gave them the opportunity to speak their own language, to continue in their customs and usages, so that I can claim that particularly Einsatzgruppe D under Ohlendorf had a very positive relationship to the Tartars. I think the most moving proof of the favorable attitude of the Tartars is that after the capitulation I read in the papers in Norway that the rest of these Tartars were also deported by the Bolshevists because of their friendly attitude toward the Germans. Not only did nothing happen to the Tartars from our side, but they collaborated closely with us. I recall that when the military situation had become hopeless in the Crimea that the Tartars put themselves at our disposal spontaneously in order to fight Bolshevism, that they came on their own accord and asked to be allowed to fight with us, and I was personally in small villages and I saw it, and I recall a very old Tartar who could not grasp that we refused him because he was too old. Within a few weeks more than 10,000 Tartars reported for battle, and in the shortest time the Einsatzgruppe had set up 18 Tartar companies which were armed and supplied and equipped by the Army, and whom we sent to the most endangered villages on the edge of the Jaila Mountains, and in the Jaila Mountains themselves, those villages which had to suffer the most from the partisans.

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I think that this is the best repudiation of the contention of the prosecution that we had exterminated Asiatics. Here we had more than 200,000 Asiatics in the Crimea, and I can only assure you that neither did I ever get an order to exterminate Asiatics nor did my kommando exterminate any Asiatics.

THE PRESIDENT: Witness, dod you know that in some of the reports a reference is made to liquidation of Asiatics, are you familiar with that?

THE WITNESS: I read it, your Honor. I cannot explain the statement. I don't know who made it or whether actually something like that happened. I only know that we didn't have such an order or that anything.

DR. MAYER: Your Honor, I think this would be a proper occasion to have a recess. I come to a new subject.

THE PRESIDENT: Yes, I might announce that we will recess shortly after three and then not reconvene today, that when we recess this afternoon, which will be between three and three-thirty, we will recess for the entire day and then reconvene next Monday. moment until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 26 November 1947).

THE MARSHAL: The Tribunal is again in session.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution new wants to offer Document NO-4997 as Prosecution Exhibit 183.

DR. FIGHT (FOR THE DEFENDANT BIBERSTEIN): Your Honor, in view of my statement yesterday, may I say the following now Having been able to study this document, I withdraw my objection of yesterday against the submission of this is evidence without recognizing the correctness of the statements by Herr Biberstein which are contained in there; may I only point out the following dates: are 29 June 1947, 10:00 to 11:15, taken by a reporter, Margarete Fritsche. On the last page here it says in the text.

"Question: You are the same Biberstein whom I have interrogated under oath before? May I point out to you that you are still under oath.

"Answer: Yes. was made from former interrogations. The date contained is the same date, 29 June 1947, at ten oclock. If the basis of the affidavit was taken between ten and eleven, considering the facts contained, cannot have been made at the same time.

MR. HORLICK-HOCHWALD: If the Tribunal please, it seems apparent from the document that this document contains two different interrogations, one interrogation during which information was obtained from the defendant which was the basis of the affidavit, so, if I am not mistaken, I haven't got my document book with me -- the affidavit was sworn to and signed on the 2d of July and it is the contention of the prosecution that this second interrogation which is the last page of the document was carried out on this day. The correct date of the second interrogation appears certainly on the affidavit which is in Document Book I, as far as I remember.

THE PRESIDENT: All the Tribunal has before it now the offer by the prosecution of Document NO-4997, Prosecution Exhibit 183. Yesterday the defense objected to the introduction of this document. Today it withdraws its objection. In view of the fact, therefore, that both sides are agreed that the document is to be accepted as an exhibit, it will be accepted. Both sides, of course, have the right to comment on this document or to attack it in any way that they feel is in order.

MR. HORLICK-HOCHWALD: Very well, Your Honor.

THE PRESIDENT: Very well.

DR. ERICH MAYER (ATTORNEY FOR THE DEFENDANT BRAUNE): Your Honor, I ask to be able to continue with the direct examination of the Defendant B raune.

DR. ERICH MAYER: I now come to a new set of questions, namely those questions to the witness which refer to the case in chief and to the document which are submitted. BY DR. ERICH MAYER ( ATTORNEY FOR THE DEFENDANT BRAUNE):

Q. Dr. Braune, in the Report of Events No. 156 of the 16th of January, 1942 it was reported that in Aluschta on 21 November 32 Jews and 32 Communists were shot. This report of events was not submitted against you, but still please make some statements about this, because you were in charge of a sub-kommando in Aluschta.

DR. ERICH MAYER: Your Honor, I want to mention that this report of events was only submitted by the prosecution in in excerpt. It is in Document II-A as Document No. 3405, Exhibit 42, page 72 of the German and page 57 of the English text.

Q. (Continued) Witness, would you please comment on that report of events, referring to the photostatic copy?

A. I have the photostatic copy of this document before me, the complete photostatic copy, and I quote from page 54. Only the first paragraph is contained in the prosecution documents. It says - this first paragraph shows that on the 23rd of November, '41, partisans northwest of Aluschta, attacked a column with hand grenades and the German Army suffered three deaths, and 6 wounded; apart from that, three trucks were badly damaged. It then says as retaliation, and now it says on the photostatic copy, in the German copy, 21 November; perhpas I may correct this here, because this never could have happened on the 21st and no retaliation could have been carried out then for an action which only occurred on the 23rd of November by the partisans. The photostatic copy here shows me that the figure is printed so badly that could read it as "21" but doubtlessly it is meant to be 24. I think one could read this with a magnifying glass. reprisals concerning the investigations on my arrival in the Crimea, I have already explained that on the 23rd of November, no sub-kommando of mine was in Aluschta yet, but a sub-kommando of 10B was in Aluschta. The second paragraph confirms this beyond doubt which is not contained in the prosecution documents. There it says that on the 26th of November, that is, three days later, that a tank fighting battalion, which was in Aluschta, supported by anti-aircraft and part of a Rumanian Mountain Brigade, carried out an action against those partisans and that the Kommando 10B had prepared this action. The second paragraph of the document itself shows that this was a sub-kommando of 10B and not my men.

DR. ERICH MAYER: Your Honor, may I mention that this report of events, insofar as it concerns this part, which is the report of events for this part, I shall introduce in my Document Book No. 11.

On this occasion, I would like to make supplement. It is a supplement to a reply of the witness to a question by the President before the recess. The President asked the witness how the Krimchacks differed from the others and the witness only answered that the Krimchacks are of the Jewish origin, but of Mosaic creed.

This alone does not make them different from other Jews in the Crimea. The fact which makes them different from the other is that for reasons that are not known here they speak a language similar to the Turkish language and therefore they were different from the rest of the Jewish population. I merely would like to say this in order to explain this to the Tribunal.

THE PRESIDENT: We are glad that you have offered that further explanation Dr. Mayer.

DR. ERICH MAYER: Thank you, Your Honor.

Q. (By Dr. Mayer) Witness, did it happen repeatedly that in the reports of events measures were reported which were carried out by the Wehrmacht?

A. I presume that the reprisal measure, which was just mentioned was carried out by the Wehrmacht, because I do not remember that such retaliation measures were ever carried out by us in such a form, but in order to reply to your question, of course, constantly events were contained in our reports which concerned the Army. It does not say here, "Report of Events of a Kommando" or an Einsatzgruppe, but they are reports of events of the entire territory and may I just point out that there are numerous reports about partisan combatting contained in these reports of events and that these were events in 95% of the cases which were handled by the Army.

Q. The prosecution also maintains in their prosecution statement that according to Document 2828 Exhibit 86, contained in Document Book II-D, page 25 of the German and page 20 of the English text, the executions of 2,910 Jews and 19 Communists in the area of Simferopol, that is, in the territory of your kommando, were carried out there. Witness, will you please look at this document and comment on it?

A. I have this document in front of me and may I ask you to look at page 1 of your excerpt. It is page 11 of the original, and it says, "Einsatzgruppe D, Garrison Simferopol," and too in three paragraphs it is reported about shootings of Communists and Jews. All three paragraphs obviously and evidently refer to the entire territory Of the Einsatzgruppe under the heading over to the left, under "Shootings" it says "2,910 more Jews and 9 Communist officials were shot after summary proceedings.

Thus the sum total of executions has risen to 54,696." This total figure alone shows that this is a summary report of the Einsatzgruppe and not of my kommando. I cannot say either why the prosecution deduces that these 2,929 persons were shot by my kommando, because it all comes under Einsatzgruppe D, Garrison, Simferopol. Kommando 11B is not mentioned at all, but may I also say that the report of events dates from the 12th of December 1941, The events which are mentioned here must therefore have at least occurred few days before this date. This morning I explained when my kommando went to the Crimea and when the sub-kommandos started to move. It will be understandable that a sub-kommando did not carry out executions the first or second day. From a more time point of view I consider it impossible that among these figures executions for my sub-kommando are contained. I know at least concerning Simferopol that from the day of my arrival, no executions were carried out, which was mentioned here this mornings. I therefore considered it impossible that these figures, all of which I am charged with, concern my kommando at all from a mere time point of view. On this occasion, may I point out how questionable these reports are and how incorrect. That is shown by the fact that it says on the top of t Report of Events 145, under "Garrison and Signal Communications" it says, I quote, "The Garrison and Signal Communications reported in Operational Situation Report No. 156 of 16 January, 1942, have remained unchanged." I believe it is evident that a Situation Report of 12 December cannot refer to a Report of Events of the middle of January. That is one month later.

Q. The prosecution charges you in their case in chief with the fact that you had sub-kommandos in Kersch and Feodosia and therefore you are responsible for the shootings which occurred there. Witness, this morning you already touched upon this question and answered it in the negative, but on the basis of the prosecution documents, please comment on this question.

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These are the documents in Document Book II-A, page 30 of the German text, Document No. 2834. Exhibit 87, and in Document Book II-B, page 34 of the German and 35 of the English text. Here it is Document No. NO-2824, Exhibit 62.

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A. At first I refer to Document Book II_D, page 30 of the German text, that is NO-2834, Exhibit 87. On page 4 of the Exhibit it says, under "Location Sonderkommando 10-b" -- Kertch and Feodosia are not mentioned any more -- but it says Sudak and radio communications while on route. For my Kommando 11-b it is mentioned, "Garrisen Simferopol, with parts in Aluschta, Karasubassa and Eupatoria." Those Garrisens are correct. May I explain why Kertch and Feodosia are not mentioned under 10-b. The Kommando 10-b, after their arrival in the Crimes, had their location in Feodosia, Kertch and Sudak. At the end of December, that is shortly before this situation report, the Russians carried out a surprise landing in Feodosia and Kertch, recaptured Feodosia and Kertch and the whole peninsula, and, as mentioned repeatedly, a very difficult military situation arose. During these events the Kommando 10-b had to withdraw from Feodosia..... And may I remind you, that my co-defendant Seibert explained how he was looking for this Kommando which had to escape from Feodosia....I now refer to Document Book II-b, page 34 of the German text, it is NO-2824--

DR. MAYER: Page 33 of the English text, your Honor.

A(Continuing) It is a report of events of 19 December, that is two weeks before the previous one, when the landing had not yet occurred. And here, on page 4 of the excerpt, under Sonderkommando 10-b, it is shown under "Garrison Feodosia, with divisions in Kertch and Sudak".....it is shown that, before the landing 10-b was in Feodosia and Kertsch; and may I show you that after the recapture, 10-b was active in these two locations again, and neither my Kommando nor any of my sub-kommandos were over stationed in Feodosia or Kertsch, or ever operated there.

Q. Witness, perhaps you would be good enough to show the position of Sudak on the map.

A. This morning I showed approximately where approximately Feodosia is -- it must be about here.... the Russians landed here ..... and at the same time they landed here, in Kertsch, and practically recaptured this whole part here.... and then they advanced in this region, and tried to block off the Crimea up here. This was a very dangerous situation. Apart from that, they advanced to Simferopol from here.

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Later on I shall explain that a few days later they landed on the other coast as well; the obvious aim was to connect those two coasts and, therefore, the entire army in the East, near Sevastopol, should be cut off, and destroyed. Sudak is also on the south coast, not far from Feodosia, southwest about here. Sudak is here... Feodosia about here .....Kertsch about there .... while my territory, here, is Simferopol; east of it, Karasubassa; south of it, Aluschta; and to the west of it, Eupatoria.

Q. Witness, the Prosecution also maintains in their case in chief that the affidavit of the co-defendant, Schubert, of 24 February 1947, proves that in December 1941 the Kommando 11-b shot seven to eight thousand people in the area of Simferopol.

During this morning's session you already touched upon this question, too; but I would like you now to explain this question, based on these documents. I refer to Document Book I, page 141 of the German, page 108 of the English text. It is Document No. NO-3055, Exhibit 28.

A. I have the document book in front of me. And may I just quote from it: "In December 1941, I do not remember the exact date, I was assigned my Ohlendorf or Seibert to supervise and inspect the shooting of about 700 to 800 people." The document shows quite clearly that Schubert did not mention seven to eight thousand, but only seven to eight hundred. Already this morning I mentioned that in my opinion there must be a mistake. Hey I point out that this morning it was translated by "mistake". I would like to attach importance to it that I do not want to show some error which was done on purpose, but I think it is an error rather than a mistake.

THE PRESIDENT: Well... I would like to have a little conference here with the interpreter. The interpreter has just said that the witness has said it was an error, and not a mistake. I would like to have some linguist give us the hair-breadth distinction between an error and a mistake.

THE WITNESS: Your Honor, in our language the meaning "mistake" may be more serious, as if one tried to explain that something was done on purposel while an error would exclude any such possibility.

THE PRESIDENT: Well, we would term the former situation as a deception, and not a mistake. If someone purposely endeavors to mislead, it drops out of the category of a mistake; but if it is something done on purpose, therefore, it would be deceit, or deception.

THE WITNESS: Yes, your Honor, I agree to this.

THE PRESIDENT: Very well. I am glad it wasn't the fault of the interpreter. BY DR. MAYER:

Q. Dr. Braune, does this concern the execution carried out by order of the Army before Christmas 1941, which you have already mentioned?

A. Yes, that is what was meant.

Q. The Prosecution also charges you that the shootings of 1154 partisans in Eupatoria on 7 January 1942, was ordered by you, and as evidence for this they submit a letter from G-2, Major Riesen. It is in Document Book III-D, pages 104, 105 of the German text, and page 62 of the English text, Document NOKW-584, Exhibit 165. Would you like to comment about this?

A. I have this document in front of me as well, and may I comment on it. I just said that after the landings in Feodosia and Kertsch the Russians landed again in the first days of January 1942. It might have been the 5th or 6th. They landed here, in Eupatoria. This landing also succeeded. The city was conquered by Bolshevists, and the German troops had to withdraw from the city. The situation became even more hopeless from a military point of view because of this. During this recapture of the city, the civilian population of Eupatoria, to the greatest extent, had assisted the Bolshevists and had acted as guerillas and snipers. These civilians also had captured two trucks with heavily wounded German soldiers who were not able to escape from the city any longer, and cut them off from the rest, and all these wounded German soldiers had their throats cut by them. This fact was revealed to the commandant of Eupatoria, one of the most brilliant German officers who already had a high distinction Chief of the Army because the Russians were very pleased about having killed these wounded German soldiers.

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The Commander-in-Chief of the 11th Army, General Field Marshal von Mannstein, felt that the male population who were rproven to be able to carry arms, who lived in Eupatoria, were to be executed as snipers and guerillas and partisans. On the basis of this Order the G-2 AO, Major Riesen, went to Einsatzgruppen Chief Ohlendorf, and requested the Einsatzgruppe, in this case my Kommando of the sub-Kommando there, should carry out this execution. I myself was present during that conversation as well, and I remember distcintly how we were in our sitting room, and Major Riesen came in the evening. Oberfuehrer Ohlendorf rejected this, and explained that this was a matter to be dealt with by the Army. At further urgent request he finally agreed that I be sent along to support Major Riesen, and apart from that Oberfuehrer Ohlendorf wanted to being about that among those arrested snipers and partisans, through my sub-kommando in Eupatoria, those were to be combed out, who were known to kommando the sub-kommando, and their units. Some of them had even worked for our units very conscientiously for some time; some of them were even employed by our kommando, and we know them to be reliable; and he wanted that those men should not be shot as well. The following day, 7 January, which Major Riesen mentions here, may be right. According to the order given to me, I also travelled to Eupatoria. For order's sake, I must correct here that not three SS leaders, as it says here, travelled alone to Eupatoria, but only me. Major Riesen must have made an error here. He only wrote this down about a year after the events. When we arrived in Eupatoria Major Riesen reported to the combat commandant, and informed him of the order of the Commander-in-Chief of the Army. The Colonel at the time said, almost verbally, "the Commander in Chief would not have had to send me for this. I would have done this on my own authority because in this case these are only snipers and bandits who have forfeited their lives."

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I then brought in my sub-kommando, and this sub-kommando, with our local and indigenous aids, who assisted us sorted out from the 1500 people who had been arrested about 300, who were known to be reliable, for it must be right that about 1184 people remained. It is not that from 1500 people 1184 were chosen, and it was said they should to be shot, the original order had been that all men of military age were to be shot. And out of these, 300 were selected who were exempt from shooting. During this selection Major Riesen, who says himself in his statement on page one, that he had to carry out the order of the Commander-in-Chief, ordered an Air Force communications battalion to carry out these shootings on the order of the Army. Those persons were taken in a line through the city, where fighting still took place. It is right that snipers still shot at us from houses, and that these snipers threw hand grenades, and we shot at then with automatic rifles to stop them. These persons were then shot by the Air Force unit, according to order in the outskirts of the city in a tank ditch.

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Q. Is it right.......that of these 1184 people from the city many tried to escape when you arrived at the ouskirts?

A. Yes. En route, as far as I remember, about 80 to 90 people tried to escape, and not only 20 to 30 of these snipers. They were shot down with automatic rifles by this Air Force unit. This caused a very dangerous and critical situation. I presume that Major Riesen, who says on the following page, "SS Sturmbannfuehrer Dr. Braune gave instructions on the place of execution to carry out the shootings." He means by that, that after this attempt to escape I was very excited, and therefore told him that he should not hesitate any longer and have this longstretched column with so few guards, go in a closer formation. Furthermore at the collection point - about 200 to 300 meters from the place of execution - I pointed out to him that he should not put guards on either side of those to be executed. This was on the railway platform which was on a lower level than the rest of them. "If they tried to escape again your soldiers will shoot each other." If he means that, by instructions, then he is right. Apart from that, he gave the order; he could only give orders to this Air Force unit, and I could not, and these measures were carried out under his orders. order to fire. I cannot see from the document in how far I gave an order to fire. But I can only assure you that I did not give such an order. But I stated that I was merely at the place where those snipers were collected, and that was two to three hundred meters away from the ditch, where the shootings were carried out by this Air Force unit. Apart from that, I would like to add that in my position, and with my rank, it would not have been my task to give an order to fire, to nine of ten men who shot; but such orders to fire were given by an NCO, at the most by a lieutenant, and not by a man with the rank of a major.

Q. Witness, I have one more question. I noticed that you said you shot the people who tried to escape with machine. Is this nor an error?

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A. No, this Air Force unit also had two or three automatic rifles and they fired with these.

Q. I only noticed it because I considered this impossible, to set this up so quickly.

A. No, they were light automatic rifles, which were put into position.

DR. MAYER: Your Honor, may I concerning the statement of Colonel Mueller, referring to Major Riesen and the witness here, submit a statement with the request that the witness read this short excerpt out of thisl this will make the order clear, and will show that in cases like in the one here, through the Fuehrer order, this was made legal, and it was entirely up to the commander or the officer to deal with this task. The Fuehrer order of 13 May 1941, Document C 50; I shall also introduce it in my Document Book II.

A. (by the witness) I have the order in its photostatic copy in front of me. Its heading is: "Fuehrer headquarters, 13 May 1941. The Fuehrer and Supreme Commander of the Army." Then under Roman I it says: "Treatment of crimes by enemy civilians." Figure 1. "Crimes committed by Enemy civilians are not to be dealt with by court-martial, or military courts until further notice." Figure 2. "Snipers are to be shot by the unit while fighting or while escapingwithout consideration." Figure 3. "All other attacks of enemy nationals against the Wehrmacht and its members are to be shot by the units, on the spot, and have not or can temporarily not be carried out -- suspects will be taken to an officer immediately and he shall decide whether they are to be shot."

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"In localities in which the Army is attacked from ambush, immediately by order of an officer, whose rank must at least be a battalion commander, collective measures are to be carried out immediately if the circumstances do not make it possible to find out the actual criminals." And finally the last sentence. "It is expressly prohibited that suspicous persons be kept in prison." I must assumes that the commander thought of this Fuehrer order when he said: The Commander in Chief would not have had to send you. I would have done this on my own anyhow. to carry out a surprise raid and refers to Document Book III-D for "Dog", page 58 of the English text, page 98 of the German text, Document NOKW1863, Exhibit 164. Please comment on this as well.

A I have this document in front of me as well. It is on page 98 of the German Volume. The first page of this document, consisting of six pages, unambiguously shows that this is a measure, I quote: "Which was carried out at the order of the AOK 11 -O-Qu-" on 12 January 1942. exactly that this order was given because of the situation. In Simferopol the rear Army units and the reserves units, a mixed crowd set up barricades in a hurry. The city was divided into defense sectors and everything was prepared for battle against the Russians approaching from Feodosia. At that moment the Army ordered that the city be combed out in order to be saved from surprises from the city, and that is how this order came about. That this was a purely military measure and that the Army took a very active part is shown also from the distribution list on the last page. This shows that this order was given to the AOK, to the Einsatzgruppe, to the Town Area Commander, the local commandant, counterintelligence, etc. Now it says again on the first page, "On 12 January 1942, a surprise action will be carried out to apprehend unreliable elements (partisans, saboteurs, possibly enemy troops, parachutists in civilian clothes, Jews, leading Communists, etc.)" May I draw your attention to the Jews here noted to show that from the Army as well the Jews were listed under the term of unreliable elements and were considered a danger in the rear Army territory.

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The actual carrying out is shown clearly from the order. There were almost two-and-a-half thousand members of all Wehrmacht units who took part in this, 55 members of the Military Police, and 20 men of the Secret Field Police, also, if one adds it, exactly 48 men of the Einsatzgruppe, because I remember that at that time a few men from the group staff also took a part because I did not have 48 men at my disposal.

THE PRESIDENT: Can you explain what was meant by the phrase, "possibly enemy troops?" Do they mean by that that they weren't certain there were enemy troops there or not and therefore said "possibly enemy troops?"

THE WITNESS: I explain it in this way, your Honor, after six years; that owing to the prolonged fighting for the entrace into the Crimea some of the former regular troops took off their uniforms already before they were captured and carried out sabotage and set up part of the units, etc., and therefore were to stay in the Crimea to do this, and I believe that these kind of people are meant by this. I may assure you these were not military units who were in uniform and openly carried their arms who had come into the city, but former soldiers who had not been left behind with special tasks. and all these six districts during that action were under the charge of an Army officer. That is, what actually happened in these districts during the action was done under the command of an Army officer, and finally, on page 5, it can be seen how it was in effect carried out and instructions were given that these districts were to be blocked and be combed out street by street and as far as was possible that the houses be searched as well. But I remember that they could not do that with the forces at their disposal. It was also determined that male persons who were on the street and any suspected female persons were to be checked up in these areas and all suspicious individuals were to be brought to assembly points. There There they were rechecked again with the assistance of persons familiar to the police and the inhabitants, and then finally they were checked for a third time.

tical circumstances as we had then at the time in the Crimea must be allowed to take such precautions for their own security. I think that such actions and similar once are being carried out in Germany as well after the capitulation repeatedly.

DR. MAYER: Your Honor, in view of the advanced time I would only like to tell the Tribunal that I have just finished a section here. I will now start on a new complex of questions, so that if the Tribunal wishes to close down here, this seems to be a good point.

THE PRESIDENT: There is merit to your suggestion, not only for what 3 you have said but also the fact that there will be quite an interval before we reconvene, an interval of time, and therefore we would have to sort of refresh our memories anyway. The Tribunal will be in recess now until Monday morning at nine-thirty o'clock.

(The Tribunal adjourned until l December 1947, at 0930 hours.)

of America, against Otto Ohlendorf, et al., l December 1947, 0930-1630.

Justice Musmanno,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

DR. MAYER: Dr. Eric M. Mayer for the defendant Werner Braune. Your Honor, as to the witness Braune we concluded on Wednesday of last week with questioning, and I would like to continue now.

THE PRESIDENT: Continue Dr. Mayer.

DR. MAYER: On Wednesday we were discussing the charge of the Prosecution in the document which the Prosecution had submitted against my client. I shall now come to a different section. BY DR. MAYER:

Q.- Dr. Braune, during your assignment in the East, did you go on a leave?

A.- Yes, after having taken part in the anti-Partisan action, which lasted for three days, in the first half of March 1942, together with Herr Ohlendorf, I went on leave, and, exactly on 26 April 1942, I travelled by plane together with him back to Simferopol.

Q.- When did the gas-vans arrive in Simferopol?

A.- Sofar as I remember that must have been at the end of February 1942.

Q.- How many vans were there when you arrived in Simferopol?

A.- There were two vans.

Q.- Do you remember how they were distributed?

A.- Sofar as I remember one of these two vans was given to Commando X-B, or XI-A. The other van was in Simferopol, but I am not quite certain of this. I know that Herr Ohlendorf testified that two vans were standing in Simferopol, and were always requested by the other commandos, but that is quite possible too, I think.

Q.- Were they used immediately after they arrived?

A.- Immediately after their arrival they certainly were not used, because after the long journey from Berlin to the Crimea, which is more than two-thousand kilometers, their condition on account of the weather was such that they had to be repaired.

Q.- The van which was moved to Simferopol, was it used by you?

A.- I already testified to the Prosecution that I didn't use the van but the van must have been used by my commando in Simferopol once, because I remember exactly that Sturmbannfuehrer Schulz came to me and told me he didn't want to use the van again, because he considered the unloading and the burying of the bodies to great a strain for his men. The men objected to the use of the van as well. But at what time exactly Sturmbannfuehrer Schulz said this to me, I do not remember any more. It is possible that it happened on the day when I returned from the antiPartisan operation, but it is also possible that he only said this to me after I returned from my leave.

Q.- During your leave was the van still used?

A.- I am not quite certain of this, but I don't think so. According to what Sturmbannfuehrer Schulz said to me.

Q.- The Prosecution said in the opening speech that defenseless civilians were often shot as Partisans. Did this occur in your Commando?

A.- In my commando it didn't occur. I can only assure you that these Partisans with whom we dealt were anything but defenseless civilians.

Q.- Can you tell us anything about theanti-partisan fighting, and the Partisan situation in the Crimea in general?

A.- In the Crimea the Paritsan problem was particularly difficult for three different reasons. One reason was there had been weeks of fighting for the Crimea. The Bolshevists had sufficient time to prepare their Partisan warfare in detail. Apart from that the Haila Mountains in the farther part of the Crimea was particularly suitable for Partisan fighting, and also the fact that the Crimea is practically an island which is only connected with the Continent by the small isthmus near Pericope, and because of that the Partisans were an especially great danger.

Q.- Witness, how did the Partisans make themselves felt?

A.- This can be seen from the reports of events, which were submitted here. From the very first day they attacked small army columns, single rear posts; they attacked from ambush; they killed German soldiers; they took their papers from them, their uniforms, and their weapons.

DR. MAYER: Your Honor, in Document Book II I shall include excerpts from the Reports of events 136 and 143, and shall submit them to the Tribunal to show how extensively the Partisan movement was in Crimea, and how great was the danger for the small numbers of German troops stationed in the Crimea.

Q.- Did the Partisans wear uniforms, or any recognizable insignia or did they carry their weapons openly?

A.- I never saw such an instance nor did I over hear of it, but it occurred repeatedly that the Partisans wore the German uniform, which they had captured in order to look like the German soldiers, in order to carry out their attacks better and more unobserved.

Q.- Were the Partisans recognized as combattants by the Army?

A.- No, the Army never recognized them as combattants, but considered them and treated them as what they were - Franc-tireurs, namely, people who attacked from ambush.

Q.- How were the Partisans supplied?

A.- First of all, before the Crimea was captured, the Partisans had a great amount of food, cattle, weapons and so forth, which they kept in the mountains.

The two reports to which my counsel referred show these particulars clearly. Apart from that they currently attacked villages on the edge of the mountains, as well as in the mountains themselves, they plundered and looted, and took anything they needed. They also forced men of military age, and even women to join them. Also those, who opposed them or who defended themselves were killed, and very often their farms were burned down.

Q.- Witness, please describe briefly what attacks were carried out against the Partisans, attacks which are constantly mentioned in the report of events?

A.- The operations by the Army were limited, to the time when the mountains were more or less passable that is before the severest winter started, and after the snow had melted. Of course, several small operations were carried out in spite of the snow and the cold, but in the decisive winter months the most effective protection were the Tartars Home Guard Companies which were sent into the individual villages, in small detail detachments, which thus protected these villages, and, to a certain extent, also the communications. During that time serious fighting took place between the Partisans on the one, and the Tartars Home Guard Companies on the other side, since the Partisans still tried to attack the villages. After the snow had melted in the spring and of course also before we constantly sent patrols on reconnaissance; the results of these reconnaissance operations were passed on to the Einsatzgruppen, some of them even directly to the Partisan combatting department, where then the individual operations were planned and carried out under Military Leadership by Army forces.

Q.- When carrying out such Anti-Partisan operations, were men of your Commando also assigned to this task?

A.- Yes, my men also were assigned to this task by the Army. I myself took part in a few operations, but the Army was completely in charge of it, Q.- How strong were the detachments which were assigned to fight the Partisans?

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A.- That depended on the individual case. We had operations with two divisions took part.

Accordingly, the operation took sometimes one Q.- What experiences did you have in the Crimea concerning sabotage and terror group of Bolshevists?

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Already before the Crimea was captured, destruction and demolition battalions had been set up; that is, battalions which destroyed everything which they considered important, in particular the gas, electricity and water works, railroad stations, very important public buildings, the Party buildings were practically destroyed, and in Simferopol, as I have heard, the MKVD Building was blown up after the German troops had occupied it. These destruction and demolition battalions consisted mostly of Communist functionaries, and active Communists. After the capture, then they were left behind on purpose and they again formed a certain nucleus which strengthened the Partisan group, and as Partisans they now attacked in the rear the German Army troops.

Q Did women and young people take part? eleven years of age took part. Bolshevism now knew no limitation here. They called on the entire population to take part in the fighting in the rear of the enemy army, and this appeal was followed. I remember quite well that they acted in the most cunning manner. They would put in dynamite which could blow up after a while. These explosives were set up in large buildings, and also in buildings where they were expecting the German troops would make searches; they were fixed to doors, and cupboards, so that when the door was opened the explosive exploded; even short waive explosives were used. I remember in Krasnodar, after the German occupation, on one day, I believe, six or eight large public buildings were blown up in that way. after the Ethnic Germans. Please tell us something about the situation and the fate of the Ethnic Germans?

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in the Crimea. Before the war there lived about 50,000 German people in the Crimea. For generations they had retained their language, their culture, and their customs. Under Bolshevism they had suffered greatly. When we occupied the Crimca, Of these 50,000 Germans who used to live there only six to seven hundred remained. All the rest had been deported or Killed. According to detailed information, we obtained at first, the mass of Ethnic Germans were taken, if I may point out on the map (Witness stands in front of map on wall) via this point here, Kerch, to the Kaukasus Mountains, over this channel, this narrow channel here (indicating on the map). They then had been deported to the Siberia, or were supposed to have been sent there, (Returns to the witness stand). Those who were not fit to work or to be moved by train, so far as we heard at the time, were shot according to our information. I received confirmation of the fate of the Ethnic Germans when at the end of July, or the beginning of August, I moved with the First German. Armored Army from Rostock into the Kaukasus Mountain area. We entered Armaria with the first Army unit. We had moved in with the First German troops which invaded that country, and late one evening three Ethnic German women reported to me. They were in a terrible condition, beyond description. Their report showed us that they had been in a train which was to go farther East, but during a German airplane attack the railroad track had been destroyed, and the whole train load of Ethnic Germans, about 2,000, was left burning alive in locked ears by the Russians. One car had been damaged, and thus these three women had managed to escape at the last minute. We also heard there that these approximately 50,000 German people, that is those who had as yet not been killed were sent to Siberia from the Kuban area.

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There again it was said that they who were not fit for work, or were not fit for transportation, were shot.

Q Dr. Braune, from reports in the daily newspapers, did you hear about the interview of the wellknown author of a recent book on Stalingrad, Theodor Plivier, which he had with the Dutch reporter Scheffler? It reveals that the Wolga German Republic where many Germans lived suffered the same fate as the Ethnic Germans in the Crimea.

MR. WALTON: Your Honor, I feel that I must protest, or object to this line of questioning. There has been no basic foundation which has been laid for the introduction of the work of this author, whether he is an expert, and no connection has been shown between this book, or this author and the defendant, on the grounds of immateriality, Your Honor.

THE PRESIDENT: Dr. Mayer.

DR. MAYER: Your Honor, may I mention here that Theodor Plivier gave this interview during this summer, after he himself had returned from the East, and he confirms from his own experience what he found there during many years of stay. So far Theodor Plivier has expert knowledge in this matter, and, therefore, it is of great importance what he says.

THE PRESIDENT: Dr. Mayer, it is entirely agreeable that you present this book with such parts of it as you believe are material and relevant, and that can be done in your document book. This witness did not write the book, so, therefore, he can not tell us about the book.

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If we permit witness to tell us about books, then they can just start in the libraries of the world. I had assumed that you had intended that he only refer to the book, and with a sentence or two indicate the nature of its contents, which he has now already done, and, I would think that would be sufficient. You can supplement that in your document book, of course.

DR. MAYER: Your Honor, I have finished with this question anyhow, and I shall give a small excerpt in the document book.

DR. MAYER: Your Honor, I have finished with this question now.

THE PRESIDENT: Very well.

DR. MAYER: And I shall give a small excerpt in the document book.

THE WITNESS: May I explain something further on this? I do have the newspaper cutting in front of me, but I may assure you that what I said was from my memory after I read this newspaper cutting a few days ago.

THE PRESIDENT: Very well.

Q (By Dr. Mayer) To conclude this complex of questions connections with your assignment in the East, I would like to ask you, Witness, how long you worked in the Crimea? I was then attached to the First Armored Army. I joined it in the area of Rostov. From there I advanced, together with my commando, and in the second half of August I reached Maikop in the northern part of the Caucasus, but already after a few days I was recalled from there. This recall had already been issued in July, but owing to this advance it only reached me at this time.

Q When did you return to the Reich? was made my successor. At the end of August I handed the commando over to him, and in the last days of August, as far as I remember, I travelled to Vorosilov. I informed Einsatzgruppen Chief Vierkamp that I was going to the Reich. I had to wait for the plane for a few days and then traveled by plane via Nikolaev, Bucharest, Belgrade, Vienna, Berlin back to the Reich.

Q What did you do after you returned to Germany?

entitled, which amounted to four to five weeks. Then in the second half of October I took over the State Police Office at Halle again for a short period. of students, and how did this come about? January, 1942, the Reich student leader, Dr. Scheele, at the time called me to see him in Salzburg and informed me that I had leave to join his office. I was to be put in charge of the German Academic Exchange Service, and also was to become honorary chief of the Foreign office of the Reich Students Association.

Q You were also prepared to take up this appointment? because they were matters which had always interested me very much. task? suggested me for this position, just because he knew that I was interested in students and high school problems in particular in other words, that he recommended me. Exchange Service? association and had the task to take care of an exchange of students, teachers and professors with other people abroad.

Q What were your tasks in the Reich Student Association?

A My office had several departments. First of all it was my task to look after the relations between the student association in other countries and the cooperation with them, the cultural political cooperation, the care of the foreign students studying in Germany.

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Even in 1943 and 1944 we had about eight thousand foreign students in the Reich. This was my main task during those two years, the cooperation and the care for these foreign students. Beyond that, we looked after German students who had been injured during the war so that they could study abroad, in as far as this was possible, in spite of the war. Apart from that, in the German Academic Exchange Service it was my task to administer all the means and the financial department of the Studienwerk fuer Auslaender, a student association for students abroad. It gave scholarships to about 2000 foreign students per year. This amounted to about two to three millions. The Exchange Service also gave such exchange scholarships for German students who wanted to go abroad and study there.

Q Were lecture evenings also arranged? Reich, everything was done that was possible to be done during the war. The cooperation was very close in spite of the war. In most German high schools I still started German Foreign Student Associations. They were particularly keen on cooperation, and part of this work was cultural evenings, lecture evenings, musical evenings. Inspection trips, etc., were carried out by them, and sightseeing trips. One of the nicest tasks I remember was looking after about two or three thousand French students. These French students, through a law by their Government, had to do labor service and had been sent to Germany for that purpose. Of course, they were very bitter about being called up to do this. Many of them had been sent to locations where they had to do work which was not in line with their training and their interest.

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Here, for once, I saw an opportunity to bring the academic youth of Germany and France closer together in spite of the war. Everywhere I appointed or had suitable German students appointed to visit these French students wherever they worked, and after getting over their first distress they really were in very close and friendly contact. I saw to it that these students were given positions which suited their ability and their interests. As far as possible we got literature for them, newspapers and periodicals. We invited them to our entertainments. We tried to get leave for them to attend and in 1944 I finally even succeeded to get a number of the students to study in German universities and to be released for this purpose.

Q Why did this work finish in the winter of 1944? which made this work senseless. The enemy was on the borders of the Reich. The communications with other countries had been cut off, and in the Reich there was no room for such activity.

Q When did Kaltenbrunner send you to Norway? as commander of the Security Police and the SD in Oslo, and Kaltenbrunner ordered me to go there. In the middle of January, 1945, I left for Oslo. and the SD?

Q How long were you in Norway then? capitulation, and then as a prisoner until 1 July 1947.

Q In Norway did they start proceedings against you? me. For about fifteen months I was in a single cell. At the end of March, 1947, after twenty-one months, for the first time the Norwegian police interrogated me. Shortly afterwards the interrogation officer told me, it was suggested to the prosecution that they should stop proceedings against me. The proceedings were discontinued, and in the middle of June '47, after two years of imprisonment, I was transferred to an internment camp. to find out that there was nothing against you?

DR. MAYER: Your Honor, this concludes my direct examination with this witness. I have no further questions to address to him. On this occasion I would like to thank the Tribunal very sincerely for giving me opportunity to carry out the questioning of the witness to such an extent.

THE PRESIDENT: And I want too to congratulate you on the very systematic manner in which you disposed of the direct examination. Do any defense counsel desire to crossexamine the witness?

DR. GAWLIK: Dr. Gawlik for Seibert. BY DR. GAWLIK:

Q Witness, do you know the co-defendant Seibert?

Q When did this happen? in 1936. After all these years I am not quite sure of it any more.

in Russia? At the time Seibert was in charge of Department III in the reporting section, and already at that time had close contact with the Army. tasks? orders for executive tasks. Seibert had nothing to do with executive tasks. to you. Next question, during your work as commando leader, did Herr Seibert ever inspect an execution by your commando?

A No, I did not personally observe that. During the executions in Simferopol in December, 1941, Herr Seibert was on leave. Apart from that I never heard anything of the kind, that he ever inspected executions.

Q You just talked about Herr Seibert's leave in December '41. Do you know how long Herr Seibert was on leave at the time?

A When he left I do not know. I only remember that he had already gone when I arrived in the Crimea at the end of November. His return however I remember very well.

Q When was this?

A That was on Christmas Eve 1941. Seibert was Father Christmas to us at the time. He brought us parcels and letters from home. He came right into our Christmas celebrations.

DR. GAWLIK: Thank you. I have no further questions.

DR. KOESSL: Dr. Koessl for Schubert. BY DR. KOESSL: is a document, NO_3055, Prosecution's Exhibit No. 28. It is the affidavit by Schubert of 24 February 1947. Witness, do you know this affidavit? have it in front of me. by you in the direct examination? and his activity during the execution, do they conform with the facts as far as you know? quite honest, I was surprised when I read this affidavit. At the moment I cannot find the place, but I think at one place Schubert even says that the execution, the place of execution was a bit remote, and could not be seen from outside.

A Oh, yes, I have found it now. It says here, I quote: "to see that the location of the shooting be remote enough." I don't understand this because when Schubert went out there the place Of execution was fixed already and the execution was carried out. There was nothing to be inspected or arrange that this place be remote because this place was already fixed and determined, and Herr Schubert could not change this. But also the rest of the contents.... I already said I did not meet Schubert on the place there. Only when I went out there with Herr Ohlendorf, or late in the afternoon or evening I heard from Herr Ohlendorf that he had sent Schubert out as well in order to see whether everything had been carried out according to the directives given by him.

On the place out there, I saw this myself, was a subkommando leader, a Sturmbannfuehrer, there was the Chief of Police, another captain, and then, I still remember, another Hauptsturmfuehrer who was out there. All these were people who had higher positions and higher ranks than Schubert. I do not understand, therefore, why he should say here and explain it in a way as if he was the head of everything, as if he was in charge of everything.

Q Could Schubert give instructions to the leaders mentioned? impossible. I am convinced that if Herr Schubert had tried to give orders to the Sturmbannfuehrer or the two captains, that it would have been pointed out that he was of lower rank.

Q What tasks did Schubert have on that day as far as you know? he had no other tasks except to see to it on the place that the directives given by Herr Ohlendorf were complied with. I did not understand it to mean at the time that Schubert had been given special instructions to interfere with the actual event. Schubert had taken a hand? course, if he made some arrangements for the guarding and some guard would not do his duty, he could have said, "You must do your duty here." In that way he could do it, yes, but on the actual place several leaders who had superior ranks to Schubert were present and they were in charge there. carrying out of the executions?

A Noo Schubert had nothing to do with this. He was adjutant and pay master of the corps and had nothing to do with the actual tasks of a subkommando.

DR. KOESSL: Thank you, I have no further questions.

THE PRESIDENT: Does any other defense counsel desire to crossexamine the witness?

(No response.)

THE PRESIDENT: If not, Mr. Walton will proceed with the crossexamination on behalf of the prosecution.

CROSS_EXAMINATION BY MR. WALTON:

Q Dr. Braune, it is true, is it not, that you joined the SD voluntarily?

Q And that was in 1934, was it not? entry into the SD you became a member of the SS?

A I already said this in my direct examination. By joining the SD I became a member of the SS special formation called SD. knew that when you entered the SD you, as a matter of course, became at the same time a member of the SS, did you not?

A Yes, I can only repeat what I said before; I became part of the special formation of the SS which was called SD. didn't you? known in 1936 as the most ideal and most unselfish representative of National Socialism and was highly regarded by the population. May we assume that you also were of this opinion?

A Yes, I had the same opinion, Mr. Prosecutor. the SS? and from my own knowledge I have no reason to change this opinion basically at all.

I believe that in the last years before the end of the war many people would have liked to join the SS and become SS leaders who don't want to have anything to do with it now. made to you that you should have yourself appointed to a position in the Gestapo in order that your salary might be paid by the Gestapo, you agreed to this suggestion, did you not?

A I believe, Mr. Prosecutor, I have explained this in my direct examination in all detail and cannot add anything further to this.

Q Well, you can at least answer this question. If it is true you can say it is true. If it is not you can deny it. You agreed to the suggestion, didn't you? agreed to this purely formal solution.

Q When Dr. Best requested you to serve actually in the Gestapo in '38, you would have been at liberty to quit, would you not?

A Mr. Prosecutor, I was not asked at the time. It was anything but a request in the situation in which I was. could you not?

A Mr. Prosecutor, it wasn't as simple as all that. I believe in this Tribunal it has been quoted once before, that already in peace time Heydrich said, "The road away from us leads via the concentration camp." I explained in detail how the situation was for me. At the time after I had become an official formally, of course, I had to accept this order. In what manner I accepted it and how I carried it out I explained here and it is quite clear I did everything that was in my power at the time in order to be able to return to the SD work and I would like to assure you I would not have been sorry if, according to these attempts, they had released me again from being an official, but the financial situation in the SD at the time was such that one attached greatest importance to my saving the SD from paying me.

Q When were you removed from the membership rolls of the Gestapo?

A I didn't quite understand the question. Gestapo duties; is that correct? to definite promises

Q All right, 1937 you entered you entered upon your Gestapo duties?

A But I believe, Mr. Prosecutor, that one cannot separate the reasons from these facts. It would give entirely the wrong impression. I said what my opinion was, and I said because of which promises I joined the State Police, and must..... we are perfectly familiar with it. I merely want to establish the fact that in 1937 or 1938 you entered upon your Gestapo duties.

Now, you had further testified that upon your return from Russia you went back to the State Police office in Halle; is that correct?

A Yes. But I also said Gestapo when you went to Norway? it until the end of the war.

Q That's what I wanted to know.

A I wish to correct one thing, Mr. Prosecutor, I had forgotten at the moment that during the two years when I was in the Reich Student Association I was not.

Q All right. Then I would like to know when your name came off the membership rolls of the Gestapo. That's what I asked you. continue to neglect your duties in Gestapo matters intentionally? transferred. deputy chief of the Gestapo office at Coblenz? three and a half years I was made government councilor, Regierungsrat, but when I had been appointed Regierungsrat, government councilor, I was bound to get an office. Except for the very large offices in Berlin where it might have been that a government councilor was only a deputy. I do not think there was an office throughout the Reich where this could happen.

Q After you entered on your Gestapo duties, isn't it true that in less than a year you were made deputy chief, regardless of your rank, in the Gestapo office at Coblenz?

A I can only say that this rank cannot be segregated here. As government assessor, I could only become a deputy in a place like Coblenz. you remained for about a year, did you not? Wesermuende.

Q And then you became chief of the Gestapo at Halle. Now, which is the larger Gestapo office, the one a Wesermuende or the one at Halle?

A The one in Halle is larger. They had more offials. Whether the territory was larger or smaller, I don't know at the moment. more responsibility if you had continued to neglect your Gestapo duties in favor of your SD work?

A Mr. Prosecutor, after I had been given this responsible position during the war as an official, I considered it my duty to do my duty in this position as well. very best of your ability; is that true?

Q Well, isn't it true that each transfer in the Gestapo service from 1939 to October, 1941 in reality was a promotion for you even though not a promotion in rank? as a Standartenfuehrer which became a Brigadefuehrer office, after 1939, the development in the State Police which did not advance me any further than to an Obersturmfuehrer, I did not consider an advantage.

Q All right, Doctor, let's consider your statement made not under oath, which is in document book 3_D, page 54 of the English, page 94 or the German, and is document NO-4234, prosecution's exhibit 163.

Now, Doctor, you state in October, 1941 that you were detailed for service in Einsatzgruppe D?

A Yes, that is right. I said that in the first days of October I received the decree from Berlin.

Q Now let's consider, in connection with your statement, your service record which is in document book 3-D, that same book, and. which is on page 64 of the English, 106 of the German and is document NO-3249, prosecution's exhibit 166. Now, on page 67, your Honors, and on page 111 of the German, almost at the bottom of the page it says in this service record, from September 1941 until July 1942 he was assigned to Einsatzgruppe D and was a Kommandofuehrer. Now, your service record then is at variance with your statement, or what I would like to know now, which is the correct statement of fact; that you were a Kommandofuehrer from November of '41 or from September of '41 as stated in your service record? tion. It says here from September '41 until July '42. The author of this promotion, recommendation by promotion, had decrees in his files like this. My actual order to go into the assignment and my recall from the assignment are shown here. It is quite possible and it is nothing exceptional that the order into the assignment was given at the end of September. I can only assure you again that on 18 October I left Berlin. I believe my document book, Mr. Prosecutor, will contain the original document according to which, on 17 October in Berlin, I was given the order to move, and the trip ticket was given to my driver and myself so I could not have left before the 18th. I also explained that I was in Nikolajew first and that at the beginning of November I went to Odessa and exactly on 10 November was put in charge of the Kommando. This will become obvious and clear when I add that I certainly have no reason to extend my assignment six weeks longer. I said that at the end of August I handed over a Kommando and returned at the end of October.

It says in these files here, July '42. It can be shown but there is a difference between the document and the actually starting service which is six weeks, but this time also exists when I finished with my assignment.

Q All right. On your service record which we are considering in connection with your statement on page 66 of the English in document book 3_D, and on page 109 of the German, it shows that in 1939 on the 20th of April you were promoted to SS_Sturmbannfuehrer. Is that correct? over two years since you had had a promotion, even in wartime; is that not correct? that you would never be promoted further unless you had had foreign service with troops, did you not? the troops abroad, foreign service? No, I cannot confirm this as an exclusive fact. I am sure that a great number of promotions were made although the individuals had not been assigned. little slow? You testified that you had done your duty as best you could, and here it is over two years in wartime and you were not promoted. For that reason were you not willing to take service in Russia or any foreign service to see if it wouldn't speed up your promotion?

A Mr. Prosecutor, it is an error if you presume that holding the rank which I had and my age, I should have been promoted every year. There were very few exceptions, but I believe those were exceptional people. I did not consider my promotion to Obersturmbannfuehrer after four or five years between being a Sturnbannfuehrer and an Obersturm bannfuehrer was nothing exceptional, and I can only assure you that at the time when I was sent to the assignment I really did not think of promotion.

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were you not, at the time of your assignment to Russian territory? and I knew my tasks as chief of a state police office when I joined the assignment, yes. Einsatzgruppe unless you had been familiar with the SD and Gestapo matters or in either of these spheres of activity?

A Mr. Prosecutor, this is a hypothetical question. What might have happened to a person in the war, I really cannot say now. I don't know whether fate would have given me such a task if I had not belonged to the State Police at the time.

Q It's been repeatedly testified here that certain members of Einsatzgruppes attempted to get out and join the Wehrmacht. Now, I ask you essentially the sane question. Do you believe that you would have been assigned to an Einsatzgruppe unless you had been familiar with the tasks of the State Police or the Gestapo and the SD?

A Mr. Prosecutor, you refer to my Army service I must tell you unfortunately that my state of health was such that I could not have become a soldier. I was examined repeatedly and every time I was found not suitable for military service. May I explain it in one sentence? I have two serious defects in the shoulder joints. rendered a Kommandofuehrer and a comparable rank in the Wehrmacht. You had plenty of hard work to do while you were in Russia, did you not?

A I don't know what you consider hard work. Mr. Prosecutor. In any case with my state of health I was able to carry out this task, but to give an example, I could not throw hand grenades or overcome obstacles because my shoulder joints easily became dislocated.

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Major, was it not? one could compare it to a Major. they?

A Mr. Prosecutor, I don't know whether you have been a soldier, but I believe that the war would have been quite different to what you imagine it.

Q When and where did you first learn of the Fuehrer order?

A I explained this in detail here already, Mr. Prosecutor. and it wasmy task to gather information about my task. humanitarian reasons, but that you considered it your duty to carry out the order as it was an order of your supreme commander; is that correct? other possibility in the situation in which I was. General Ohlendorf to release you from your assignment as you were sure that he would have refused you? not do it. assignment with an Einsatzgruppe; is that correct?

A Mr. Prosecutor, please tell me what I should have done. I don't know what I should have done. ever did anything to be relieved from the assignment that forced you to carry out an order of which you disapproved?

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Fuehrer order? what force would have been used if I had disobeyed it.

Q That's not what I asked you. I asked you what force was used in order to get you to carry it out? was there any force used?

A I said that the refusal to obey would have meant my end. I I believe it has been said very often during this trial. any force. You didn't try to get away from it. The order was given to you and you carried it out and you communicated to no one your reluctance and your revulsion to carry out this order. You only acted because you were convinced that you had to obey orders issued by your supreme commander; is that correct?

A These are several questions you mention now, Mr. Prosecutor, about the first question I can only say that there is a very effective power which can be used not in a physical sense. I don't know what should threaten a person more than the fact that he can lose his life. On the second point I can only say that an assumption by you. I believe, there is no doubt what my attitude was to the order and how difficult it was for no to carry it out. by Hitler were not aimed to the extermination of the Jews as a race, but were security measures which were necessary as the Jews were the most active and powerful part of the Communists; have you not? or a number of persons are killed for security reasons or racial inferiority reasons?

the front as a soldier, they give me theorder to shoot somebody because it is essential for the war, or whether one tells no without any reasons that people are to be killed arbitrarily. for the purpose of preventing acts which they eventually would carry out in the future, be less criminal than the killing of the same person for reasons that they were members of an inferior race?

A I did not quite understand the question, Mr. Prosecutor. May I have it again?

Q Yes. Would not the killing of people for security reasons, that is, for the purpose of preventing acts which they would carry out eventually in the future, be less criminal than the killing of the same persons for the reasons that they were members of an inferior race?

A Mr. Prosecutor, durin this war millions of people were killed and one cannot say that they constituted an immediate danger. They were killed at the order of the supreme commanders of the state or the supreme war commanders, and I already said that I do not assume the right to judge this as being criminal. of crimes?

A Mr. Prosecutor, I can only reply again they were not guilty of any crimes any more than hundreds of thousands of German women and children who were killed by bombs. They were just as guilty and just as innocent. In both cases I start from the assumption that the responsible men gave these orders because they considered it necessary in order to attain their end for the war. your Kommando without their casesbeing investigated as to whether they had committed any acts against the German Reich or not?

gation was made because there wasnot time for investigation anymore.

MR. WALTON: At this time, Your Honor, I am just about to go into the documents.

THE PRESIDENT: Yes. Witness, I would just like to ask one question on a statement you made by way of comparison between those that you were compelled to kill and German women and children who met their death as a result of bombing. Do you know of any case where an order was issued by Allied authorities specifically that certain German women and children should be killed?

THE WITNESS: Your Honor, I do not know that kind of an order, but I can only assume that the bombs were thrown without an order and I cannot assume that somebody would have had the hope, the deceptive hope, that when thousands of planes bombed a certain area systematically that no women and children should be killed on that occasion and what I witnessed in Germany, your Honor, was so extensive that the consideration one could have hoped not to hit women and children is completely excluded in my mind.

THE PRESIDENT: But you do not know of any order which called upon any designated unit of the Allied Armed Forces to go into any German area and to kill women and children by shooting?

THE WITNESS: Your Honor, I did not get to know any such order, but I must assume that in Dresden, for example, where the city was bombed with heavy bombs, shortly afterwards, according to what I heard, those places where the survivors had escaped to were bombed, and during the next days as I heard, people were attacked by dive bombers when they were in the street. I cannot assume that this was done without orders.

THE PRESIDENT: Well, it wasall the result of bombing?

THE WITNESS: Of course, your Honor, although during the different bombing in centuries one cannot call this bombing.

THE PRESIDENT: Well, it falls into the same category as the bombing of cities by German forces, for instance, the bombing of London, the bombing of Rotterdam, the bombing of Coventry. We all understand that. There was bombing on both sides.

THE WITNESS: Your Honor, I cannot make any great difference there. We were told at the time that they were taking military posts but I am convinced that those who gave orders to attack the city of London also had to expect this, that innocent defenseless people were killed.

THE PRESIDENT: Yes. The Tribunal will be in recess for fifteen minutes.

(Recess was taken.)

THE MARSHAL: The Tribunal is again in session.

Q. (By Mr. Walton) Doctor, let us pass to some of your specific activities. In your statement, which is in Document Book III-D on page 54 of the English, page 94 of the German. It is Document NO-4234, Prosecution Exhibit 163. In paragraph 3 thereof, you relate one instance of the execution of a number of Jews. Who rounded up these Jews?

A. Under direct examination I said that prior to my term of office, identification and registration was carried out, that is to say, before I assumed office, and it was the commander of 10-A that dealt with it; when orders had been received from the Army for the Commander to concentrate the Jews, they were rounded up.

Q. Did I understand you to say that the commnader of 10-A -- What is this designation? Will you go a little further into details?

A. Under direct examination I said that at Simferopol a subkommando, which was part of Kommando 10-A, a few days after arrival was subordinated to me. The way I remember it is that originally it was Kommando 10-A.

Q. Thank you. The translation came aver in better shape that time. Well, approximately how many Jews were there in this number which were executed?

A. I have already said here that I cannot give you a definite figure. As far as I remember, I gave you the exact number of Jews present in peacetime in Simferopol. I also told you that at least half of them had escaped, but I cannot give you the exact figure.

Q. Can you give me an approximate figure?

A. No, I cannot do that either, unless I can just work it out this way: There were approximately 10,000 before, COURT II CASE IX half of whom had escaped and from that I can deduce that in all circumstances there must have been fewer than 4,000 to 5,000, but I cannot give you an exact figure.

Q. Then there were more than 1,000 executed during this one instance, is that what I am to gather?

A. I think I am certain that there were more than 1,000.

Q. Were women and children included in this number in this incident?

A. Yes, but I have to add that on account of the rumors and on account of people escaping I think there were only a very few children. Any way I myself never saw children being shot, but there were women among them for certain.

Q. Do you remember approximately how large the execution squad was that performed this execution?

A. They were detachments, I believe, of ten men. In each case there was a military commander. The exact number of these squads I cannot give you.

Q. Were they composed of Ordnungs Police or State Police and Wehrmacht and Gestapo?

A. I have already told you that the majority of them were companies from the regular police, Ordnungs Polizei, but I cannot give you any details as to their composition, all the more so because I believe that I remember that they were being relieved at the time.

Q. Am I to assume that these executions were ordered by the Army?

A. Mr. Prosecutor, it happened the way I described it to you. The Liaison Leader came and told Herr Ohlendorf the the Army demanded the execution to be carried out before Christmas. Naturally, above all, there was the COURT II CASE IX Fuehrer Order, unchanged and valid as before.

Q. Well, why didn't you include this fact, since it was so important, in your affidavit, or, I am sorry, in your statement?

A. Mr. Prosecutor, I believe I can remember perfectly well that I told Herr Wartenberg at the time that the things which he had put into the affidavit only constituted a small fraction, but I believe, I am certain I told him that it was the Army which gave that order. In fact, I believe that I can remember just new that that is contained in my statement. Perhaps I can just have alook. Yes, I have found it. May I quote:

"The 11th Army had ordered that the execution at Simferopol was to be finished before Christmas." time. It is on page 2, Mr. Prosecutor, and it is the last paragraph.

Q. By that you meant that the Army ordered all executions of Jews in Simforopol to be finished by Christmas, is that correct? Was it this one that you specifically state, or all others?

A. Mr. Prosecutor, the Fuehrer Order was there and now the Army said "We want it finished before Christmas." I wasn't able at the time to find out all the reasons. Maybe the reasons were strategic reasons, military reasons, which caused the Army to issue that order. Maybe they were territorial questions. Maybe they were questions of food. The Army at that time was afraid that hundreds of thousands of people might have to starve to death during that winter, because of the food situation, but all these are suppositions on my part and I cannot tell you what was the ultimate reason for that order given by the Army.

Q. Are you trying to tell us now that the execution of all undesirables was ordered because there might not be enough food for them?

A. No, Mr. Prosecutor, all I wanted to say was that might have been the reason for the Army to issue that order at that particular time. The over-all principles of the matter were not affected by that.

Q. Were there any executions carried out in Simferopol after Christmas, 1941?

A. Certainly, executions were carried out after Christmas, 1941, Mr. Prosecutor.

Q. Isn't it a fact that the morale factor of the German soldier was of concern to the Army and it felt that it had to restrain the zeal of the Security Police for executions during the Christmas season?

A. I am sorry, Mr. Prosecutor, I didn't quite get the meaning of your question.

Q. You have testified, and others have testified, that the killing of Jews and Gypsies, and other undesirables affected the morale of the men. Isn't it true that as a morale factor for the German soldiers the Army felt that it had to restrain the executions during the Christmas season and therefore it hastened the execution of those people who were selected for execution prior to Christmas so that there would be no executions during the Christmas season?

THE PRESIDENT: Mr. Walton, before that question is answered, do I understand you heard the witness say that executions affected the morale of his men? I don't recall that statement.

MR. WALTON: More specifically, Sir, he testified that Obersturmbann-fuehrer Schulz came to him on his return from his anti partisan activities and told him of the execution COURT II CASE IX by the use of the gas van and that he didn't like to use it any more because there was a great effect on the morale of his men.

THE PRESIDENT: That is true with regard to gas vans. That is an established fact. We have heard that from the witness stand, even from Ohlendorf, but generally I don't recall that the witness stated that executions in themselves affected the morale of his men, and, if he did not make that statement, then your question is founded upon something which is not in the evidence and that will make it all the more difficult to give you a precise answer.

MR. WALTON: And it is also not a question for crossexamination, if he did not mention it. I am sorry.

THE WITNESS: May I add something, Your Honor? May I correct one point? Mr. Prosecutor, as far as I recall, I did not mention morale in connection with the gas vans. I never mentioned the word, "morale." I believe I told you that Schulz had said to me that there was a heavier strain on the men than in shooting. The word, "morale", I did not mention.

MR. WALTON: I will withdraw the previous question.

Q. (By Mr. Walton) Did your kommando perform any executions during the Christmas season of 1941?

A. As far as I remember, after the shootings which have already been mentioned, up to Christmas no further shootings were carried out. They were carried out approximately between the 10th and 15th. That is why I am surprised at the figures which are contained in further reports, because that was when the landings happened in Feodesia, Eupatonia etc.

Q. Was this execution carried out in a military and humane manner in accordance with General Ohlendorf's directives?

A. Yes.

Q. Did you ever discuss the methods or any facts concerning this execution with your superior, General Ohlendorf?

A. I believe, I did discuss it with Aim and that once we had been placed before such a difficult task, I essentially agreed with his directives.

Q. Did he have any criticism to make of the manner in which these executions were performed, to you?

A. Concerning the executions at Simferopol? No, because these executions were carried out in accordance with those directives.

Q. Doctor, the weather in Simferopol during December is quite cold, is it not?

A. In December, no, Mr. Prosecutor, As far as I remember it isn't very cold, only a heavy frost. In the Grimea, the southern part of which is almost sub-tropical, where one can go for walks under palms the severe winter of 1941-42 set in only in January I believe, and we had it between Christmas and New Year, because I can remember very well New Year's Eve, when we had to expect enemy parachutists and when the landing at Feodosia had taken place, I can remember that it was a white night.

Q. Well, prior t the actual shootings, these victims had to remove their outer clothing, didn't they?

A. I believe I told Herr Wartenberg something on that point and I said to him that they had to take off their heavy overcoats, but all their other clothes were left to them.

Q. Let me call your attention to paragraph 3 again, which is on page 55 of the English and on page 96 of the German and I quote, "Immediately before the execution the COURT II CASE IX outer garments, that is, heavy winter overcoats and similar things were taken away from the persons to be executed.

They kept their other clothes." were removed from them before they were marched to the place of execution?

A. As far as I remember it, yes, that is correct.

Q. Now where was this salvaged clothing taken after the execution of its owners?

A. The delegate of the N.S.V., who was with the Army, had them transported away immediately from the place of execution, and he then took them over.

from these people? accordance with the orders from Berlin. The money? Well, I don't Know whether that was handed over to the administrative leader of the Einsatzgruppe or whether it was my administrative leader who took it directly to the branch of the Reich Credit Office or the Reichsbank, anyhow, some German agency. The valuables, as far as I remember were sealed and were sent as parcels either directly or through the group to Berlin, but I do not know whether that was done directly or via the group. 1941 the only ones which you personally witnessed? Of Jews, I mean? the measures at Eupatoria, which I mentioned under direct examination, but that was a different matter altogether,

Q That was 1,184 men?

A Mr. Prosecutor, I cannot give you the exact figure. That is the figure that is mentioned in Major Riese's letter. I have no reason to doubt this figure.

Q Yes, we will discuss that later. Doctor, are you acquainted with a certain Karl Jonas, which is spelled, J-o-n-a-s?

A Mr. Prosecutor, I assume that you are referring to 2d Lt. or Lt. Jonas, who belonged to the police company. in command to Hans Gabel, G-a-b-e-l of the police unit. fuehrer. Perhaps he became a Hauptsturmfuehrer during the war.

That is possible, but at that time he was a Police Lt. or a Police Captain. Whether he belonged to the SS I cannot tell you for certain. statements capable of belief?

A Well, Mr. Prosecutor, it is hard to answer that question. Please show me these statements, put his statements to me and then I will tell you whether according to my views they are capable of belief. It is rather difficult to give a power of attorney carte blanche that everything which Jones said was true.

Q Not everything. I am just asking you generally whether in your knowledge of him the man told the truth when he made a statement.

A I know him only so superficially, Mr. Prosecutor that I cannot permit myself to judge his love for the truth. enough to say either yes or no, certainly. Now was this Karl Jonas ever under our command, either temporarily or permanently?

A He was at Odessa when I took over the command; as far as I remember, he was Marschoffizier, officer in command of the march, when we went from Odessa to Simferopol and, as far as I remember, the Chief of a Company asked him to deal with the preparation for the moving of the old company. They had to move out as the new company had already arrived. connections with him after you left Simferopol that you remember?

A Well, Mr. Prosecutor, he led the march and, as far as I remember, formally speaking, he belonged to the kommando until he left, but I believe that Hauptmann Gabel was asked to take over his duties as leader.

matter of executions?

A Mr. Prosecutor, I don't remember that. with an execution which occurred in December 1941 from ten to fifteen kilometers outside of Simferopol?

AAccording to my recollection, Mr. Prosecutor, Jonas was not involved in that, but, as I pointed out before, six years have gone past and I cannot exclude the possibility that my memory may be wrong. the question, did you ever direct him to place a cordon of men around the site of execution in December 1941?

A I have already said, Mr. Prosecutor, that there was Sturmfuehrer Schulz who dealt with the details in my subkommando, but that does not exclude the possibility that I said to Jonas, will you supervise the matter, or will you throw a cordon around, but I cannot remember it.

Q Let me show you his affidavit. Indicate to me when you have finished readint it, if you please.

THE PRESIDENT: Will you see that Dr. Mayer gets a copy in German?

MR. WALTON: Just as soon as the page comes back, Sir.

A I have read it, Mr. Prosecutor. of that affidavit -

Q And I quote: "During my activity with Einsatzgruppe D, I had the opportunity of attending an execution. In December, 1941, Dr. Werner Braune, Chief of Sonderkommando II-B, gave the order to rope off the site of the execution" and so forth and so on.

execution about which you have just finished testifying?

A It can only be the same execution, Mr. Prosecutor, because that is the only one that I attended. reasonably correct Statement of fact.

A Well, I have read through paragraph 3. I have just glanced through it and in doing so I did not spot any important mistakes, but if you wish me to give you a concrete answer, perhaps you would allow me to read through it quickly again. It is always possible that one can overlook something. concerning paragraph 3.

MR. WALTON: If it please the Tribunal, at this time the prosecution desires to offer into evidence Document NO-5273, which is the Jonas affidavit and which will be Prosecution Exhibit 184.

DR. GAWLIK (ATTORNEY FOR THE DEFENDANT SEIBERT): Your Honor, I object to the admission of this affidavit in this form and with regard to paragraph 4, as far as Jonas' statements concern the Defendant Seibert. I do not Know to what extent these statements in this phase of the trial are supposed to be of evidential value. If the prosecution intends to submit this affidavit, including paragraph 4, it should have, at the latest, submitted it during the crossexamination of Seibert. At this time it would have been of evidential value then. If the prosecution submits this affidavit without the first sentence of paragraph 4, in that case I do not have any objections, but at the moment this can only be submitted to examine the credibility of the witness Braune and in that connection is of no evidential value.

For that reason I object to the affidavit being introduced in this form.

MR. WALTON: The prosecution desires to submit the whole affidavit, Your Honor. We cannot submit parts of affidavits.

THE PRESIDENT: There is no question that if the affidavit is submitted, it must be submitted in its entirety because otherwise there is no way of studying it for authenticity. Now, with regard to paragraph four, we have another situation. It is true -- and Dr. Gawlik has the right to complain -- that if this document is to be used against Seibert, Seibert should have had an opportunity to answer to that paragraph four if he chose to do so. Now, Mr. Walton, What do you submit in connection with paragraph four? As it stands now the affidavit is accepted insofar as it concerns the present witness Braune. Now please indicate to the Tribunal What you have to present regarding paragraph four.

MR. WALTON: Your Honor, if the Tribunal feels that this is not fair, so far as Seibert is concerned, I don't know how I am going to do it... but I should like to submit the entire affidavit with the exception of the first sentence of paragraph four until the rebuttal, and then I want to submit the first sentence of paragraph four.

THE PRESIDENT: Yes... yes... yes. We will accept the document in its entirety only for the purpose of determining the authenticity of the document; but so far as probative value is concerned, the document is before us now only in connection with paragraph three. Paragraph four -- and particularly the first sentence of paragraph four-is excluded at the present time from the consideration of the Tribunal insofar as that paragraph has probative value.

MR. WALTON: That doesn't prevent me, sir, from presenting it in the rebuttal document also?

THE PRESIDENT: It doesn't prevent you from re-submitting the affidavit with reference to paragraph four, nor does it prevent Dr. Gawlik -- and I know this is superfluous -- does it prevent him from objecting at that time against the document.

MR. WALTON: Your Honor, please allow me to make one short note here.

Q (By Mr. Walton) Now, Doctor, let's go to the fourth paragraph of your own affidavit.

.. do you still have the German copy of the German document, Book III-D, page 55? disposal but that you did not use it for executions because in your opinion the shooting of victims was more honorable for both parties; and I listened carefully to your direct examination today, in which you stated that you were told by your second in command, the officer Schulz, that while you were engaged in any partisan warfare, away from your headquarters, this van was used. That's correct, isn't it?

A It is not quite correct. What I said was that I did not remember exactly whether Schulz told me that then I returned from several days' action against the partisans -- in fact, I don't remember for certain if it was then that he told me about the gas van, or after; when I returned from leave. I believe that is what I said here.

Q Schulz was still under your command, even if you were away? of gas vans to carry out the Himmler order -- would be your responsibility as commander of that unit, wouldn't it?

A Yes... that, too, was my responsibility... for, Mr. Prosecutor, I had not issued a prohibition, but I don't believe that Schulz would use a gas van for we were disinclined to use the gas vans from the very first day onward. luctance in using the gas vans? like that and we did not intend to use it, but there was no possibility for me to issue any express prohibition, for, as has been testified here before, the gas van arrived with a direct order from Himmler; but I believed that I could by-pass that order because apparently somebody in Berlin -- as it was not right when we had assumed that people in Berlin thought we should make it a little easier for the men to carry out their tasks.

Q Doctor, let's turn now to the same Document Book III-D, page 1 of the English, page 1 of the German, Document NO-2856, which is Prosecution Exhibit 148. This is the affidavit of General Ohlendorf, and I particularly direct your attention to paragraph three, and that part of it, your Honors, in paragraph 3 on page 2 of Document Book it is the general-

A On the second page of the affidavit? text. I think it is on page 3 of the German text.

THE PRESIDENT: Page 3 of the original.

MR. WALTON: Your Honor, I have my book paginated in conformity with the German text; in other words, on page 1 of my book I note where it begins where the German page 2 begins... and pages two, three and four--

THE PRESIDENT: The only point I make is that the page of an original document may be different from the page in the German document book en masse.

MR. WALTON: That's right. That's why I had my book paginated so I could talk to the witness.

Q (By Mr. Walton) Does the General in his affidavit refer to the same execution as you mention in Your statement, and as you have talked about on the stand?

Q So that we understand each other, let me quote: "For this reason I personally inspected a number of executions -- for example, executions" -- the plural is used -- "which were carried out by Kommando 11-b under the direction of Dr. Werner Braune; executions by Kommando 11-a under Sturmbannfuehrer Zapp in Nikolajew; and a smaller execution by Kommando 10-b under the leadership of Alois Persterer and Ameniev." That is what I have reference to; and your answer also applies to that sentence -can only refer to that execution at Simferopol of which I have spoken so far.

.. in his affidavit about supervising an execution on December 1941 in Simferopol, which is contained in Document Book 1, page 108 of the English, page 141 of the German, and is Document NO-3055, Prosecution Exhibit 28, and the incident referred to is in paragraphs 3, 4 and 5. Is your answer the same, that this was the same execution about which all testimony has been given? Prosecutor. your career as commanding officer of Kommando 11-b, Krimchaks were also killed. Can you tell the Tribunal whether Krimchaks constituted any particular threat for the security of the German army?

A Mr. Prosecutor, I can only say the same again as I said about the Jews - they were Jews... they came under the Fuehrer Order... and in accordance with that order it was not for us to examine whether the individual person constituted an acute danger. That was outside our power of decision. the Communist party?

A Mr. Prosecutor, the general public considered them to be Jews. At this moment I cannot tell you, whether we made any difference at the time when making general investigations about the Jews. I cannot remember any differences being made.

THE PRESIDENT: What language did Krimchaks speak, witness?

A Mr. President, if I remember it properly, they were Jews, they were of Jewish origin, they were of the Jewish faith, and the Jews themselves, and the population, considered them to be Jews; but in my view they spoke a language which was similar to the Turkish language.

THE PRESIDENT: Very well. BY MR. WALTON: lines as with the other Jews... that is, was it effected through a Council of Elders?

A Mr. Prosecutor, I was not present when the registration took place. It is possible that they were registered together; but it is also possible that a second committee dealt with them, but I cannot tell you for certain. Elders was, in the individual case, requested to register the Jews; or, where the Jews had registered themselves, the Council of Elders was to turn this list over to the Kommando. Can you tell the Tribunal whether the members of the Jewish Council knew for what reasons this registration was carried out?

A I don't think that they knew of that, Mr. Prosecutor, but I am bound to assume that things were handled the same way as elsewhere -that is to say, that the sub-kommando leader told them at the time that this was being done for the purpose of resettlement into other areas. collaborated in the registration were also killed together with the registered Jews after their work had been completed? Kommando was located in Simferopol, the city of Simferopol itself?

A Not my Kommando, Mr. Prosecutor... I gave a detailed explanation of that matter. When I arrived, where sub-kommandos were sent -and may I refer to that because I gave a detailed account and I used documents in giving my account...

taining security in the Simferopol area during the month of December 1941, was it not?

A Yes, Mr. Prosecutor.

Q Now, Doctor, let's refer to Document Book II-D, page 20 of the English, page 25 of the German, which is Document 2828, Prosecution Exhibit 86. I have very carefully read the transcript of Your testimony as you spoke of this document last week. How many of this total, or what percent of this total of 2929 Jews and Communists executed, as shown in this report, were chargeable to Kommando 11-b?

A I believe, Mr. Prosecutor, in My direct examination I pointed out that I an of the conviction that my Kommando did not take part in those shootings, and I also gave the reasons. I said that my sub-kommandos began their march in the first days of December, and that certainly they did not take part in executions on the very first day. On the other hand, that report of the 12th of December, that is to say -- we are speaking of the report which was written on the 12th of December in Berlin, which means that even if it had been sent by wireless, a few days would have passed before the report would have reached Berlin from my sub-kommando, and for that reason I think it was out of the question that my sub-kommandos were involved in this matter.

Q All right. I accept your explanation at this particular time. Now let's go on in the some Document Book II-D, to the next report, which is on page 22 of the English, page 27 of the German, and is Document NO-2834, and is Prosecution Exhibit 87.

MR. WALTON: Your Honors, I refer specifically to page 28 of the English, and to the last page of the excerpt, witness, which is page 20 of the original..

Q (By Mr Walton, continuing) Now, in your direct examination you testified that you could not be charged with these executions, because your Kommandos were active in the second part, of this period only, is that correct?

A That is not all, Mr. Prosecutor. I made some reservations concerning the time, and concerning the area; and thirdly, I doubted the total figure as such, contrasting it with other figures.

Q Doctor, you anticipated my next question. But just to keep the record clear... you stated that Karasubsar and Feodosia were never in your area of command, and your sub-units of your command were active approximately five days in Jewpatoria and for ten days in Alustchka and Kerch, did you not? Was it Kerch? I did not get that word, I am not sure what it was.

MR. WALTON: The English-

A (continuing) I beg your pardon, but my trouble was that I did not get the German text at all.

THE PRESIDENT: Please repeat the question, Mr. Walton. BY MR. WALTON: in your area of command, is that correct?

A No, that is not correct. What I said was that Kerch and Feodosia did not belong to my Kommando. Mr. Prosecutor, you must have made a mistake there.

Q All right. Kerch and Feodosia were not in your command.

WITNESS: May I interrupt for a second? There is something wrong with the German translation. I get it very weakly. I can only just about understand it. The strength of it is only a fraction above the normal. Will you repeat it? Yes, I can get it properly. I just moved the switch. Thank you.

Q (By Mr. Walton) So that we can understand each other, the towns of Kerch and Feodosia were never in your command, but that you did have sub-units of your command for approximately five days during the period covered by this report in Jewpatoria, and for approximately ten days covered by this report in Alustchka and Karasubasar? into a town or village before you began to carry out your security missions? How many hours would lapse?

A Mr. Prosecutor, that is a purely theoretical question, and in that form I cannot answer it for that depends on the tasks with which one had to deal, and what the actual situation was. If what you want to know is, whether in the first twenty-four hours the sub-Kommando had been attacked by partisans, if that is what you want to know I can tell you that probably that is how I imagine it...within the first twenty-four hours the partisans would have been shot. Forward elements of your Kommando reach a town. This town has already been taken by the German Wehrmacht, and they moved on, and now it is time for the police to come into the town. All right. I will ask it this way: As soon as you reached a town with your Kommando, wasn't the first task which confronted you, for your own safety, to apprehend and to remove all potential threats to your security...wasn't that your first task, as soon as you reached a place?

A Well, Mr. Prosecutor, they immediately tackled all their tasks. They made contact with the agency of the Army forces, they tried to find people who would give them data, with Intelligence, who knew the place...certainly, they also tried to find out whether the important objects, such as the water works and the gas works which were of special importance had been made safe and were in order. personnel reached the town, then?

A I believe so, for certain; but actually I was never there when a sub-kommando did these things. But that is what I imagine. I imagine that the commander of the sub-kommando would have tackled all his tasks. or to collect up the Jewish Council of Elders in order to get the registration list of the Jews and the Communist functionaries in the place, at the same time they looked after the water works and the same time they took over from the elements of the Army, they also treated the Jewish problem, is that correct?

A Well, perhaps I may stick to this example. Before one has made acquaintance of people who had a particular knowledge in the place, one has to find out, who are the most suitable people, and that means in enemy territory that first of all you have to get hold of other people who, in their turn, can give you information, and in the meantime, time passes.

Q Yes, what I want to know is how much of this time passed. Was it a matter of hours, or a matter of days, or a matter of weeks?

A Mr. Prosecutor, perhaps I can give you a concrete example. The Sub-Kommando 10-a, as far as the documents show, reached Simferopol on the 3rd or 5th of November...that at the beginning of December orders were received from the Army, that is to say, four weeks later, the execution had not yet been carried out. I cannot tell you whether the sub-kommando leader after two days, or after ten days, had the registration carried out.

Perhaps this example will show you that it isn't days one goes by in such matters. tration of the Jews was concerned...how long did it take there?

A I really can't tell you, Mr. Prosecutor. I don't think it out of the question that both executions too, as far as any executions were necessary, were carried out before Christmas - but I think it highly improbable. I am more included to believe that they took place in January, but I cannot tell you for certain.

Q Well, as a matter of fact, Doctor, isn't it possible-- I don't say that it happened, but isn't it possible -- in some of the smaller places to get the registration lists from the Jewish Council of Elders and know of the name of every Jew and Communist functionary in a few hours after the arrival of your units in a specified town? Isn't it possible?

A I think that is practically out of the question, Mr. Prosecutor. For it meant entering a town which was destroyed...the zone was practically destroyed... and you have to have seen those Russian town..."towns", in quotes... I am firmly convinced that the first thing my sub-kommando did was to look for accommodations. Perhaps after that the sub-kommando leader went out to see where the nearest army place was, where he and his people would get something to eat in the evening and next morning. That is probably how it happened.

THE PRESIDENT: The Tribunal will be in recess until one-forty-five.

(The Tribunal recessed until 1345 hours) (The hearing reconvened at 1345 hours, 1 December 1947)
BY MR. WALTON:

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Q. Doctor, prior to recess for the lunch hour, we were speaking of the duties of the commandos upon entering a given town. You testified that they had duties which were in connection with the preservation of utilities, public utilities, electricity, and water, taking over the police duties from the Wehrmacht; you also said that they were concerned with the finding of billets in these badly shot up towns for the Einsatz Personnel and the German Personnel, and they also entered upon the solving of security questions in the Jewish problems, is that correct?

A. Yes, it is.

Q. Now these activities went on simultaneously. I mean, enough personnel was present to start handling all questions concerning the safety and security or the German forces, and the preservation of whatever you found there?

A. Unfortunately there was not sufficient personnel. There was such a small subcommando, and we had everything in such a short time to finish as a job, but I have only given a concrete example. I told you in Simferopol that it was more than a month before the Jewish problem had been solved.

Q. Now sometimes in the smaller places could not your commando in a space of a few days have every Jew report to a place designated by the authorities through the council of elders for registration?

A. Mr. Prosecutor, I said this morning that I can remember for certain that as far as these small places it was necessary to carry out any executions.

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I told you that in the case of Jewpatoria XI-A carried out the executions, as I said, I believe I can remember for certain that before Sinferopol, that is to say, prior to the middle of December, these executions were not carried out in other places either.

Q. In January 1942 didn't you take any more towns, January and Febuary of 1942?

A. No. Mr. Prosecutor, I told you how it was in the Crimea; it was in the second half of October that we took the Crimea, and I have already testified how it began with the individual subcommandos entering the Crimes, and I have said what time my commando entered that it was at the beginning of January when the town of Alushta was occupied, and it was from that time until the end of July the men were stationed there and at that time we left. That is where they were.

Q. Well, according to your own testimony subcommandos also went into Karasubasar and Alushta, your subcommondos, didn't they?

A. That is correct. After my commando had arrived, after the vehicles had been brought up slowly, that was at the beginning of January, after that the various commandos were organized, and they marched off. I repeat: They went to Karasubasar, they went to Alushta, and they wont to Eupatoria later and that is where they stayed until we left the Crimea. There was no change in the locations.

Q. Well, you also testified, I believe, that in December some of your commandos, certainly the forward elements, went into some of these towns, didn't they?

A. Yes, yes, that is what I said. So far as I remember that was the first half of January.

Q. They were not there in December at all in spite of What you testified?

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A. No, there must be a misunderstanding. Will you repeat your question, please? If I understand you correctly, you want me to confirm that in December the subcommandos were sent to these various localities, and there they stayed until we left the Crimea.

Q. I do not have a transcript of the record before me, but as I remember it in studying the document for Wednesday's testimony of last week, you said that your forward elements of your entire commandos reached Karasubasar, Alushta and Eupatoria approximately the 5th to the 10th of December 1941?

A. Yes.

Q. Now with.......

A. Yes, yes, it was at that period, at that time,

Q. So that five to ten days, the way your commando operated, was sufficient length of time for this unit to begin to perform executions in Eupatoria and Alushta, wasn't it?

A. No, it was not enough time, for I said that during the first few days no executions took place, and that sofar as I remember, sofar as any executions did take place they were carried out after those at Simferopol, and, that is why I am saying that those executions which had been reported in Berlin on 12th December; that in these executions my commandos had not taken part.

Q. We had left the document dated 12th of December, and the one before us is dated 2nd January, and refers on its face from 16th November through the 15th of December 1941?

A. Yes, yes, I beg your pardon, the mistake was mine. I thought you were still referring to the document of 12th of December.

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Q. All right. This document which we are discussing now is in Document Book III-D, and the beginning of it is on page 22. We are referring to that portion which appears on page 28 of the English text, and on the last gage of the German text, and is Document NO-2834. being Prosecution's Exhibit No. 87. Now, will you state under oath that none of these 21,185 Russian citizens were killed by members of Commando XI-B from 15th of November to 16th of December 1941?

A. No. Mr. Prosecutor, I never meant to say that. What I said just no' is that we have been mistaken on the other points, because I have thought you were still referring to the Document of December 12th. I believe that under direct examination I conceded that during the last few days of the period from 16th of November until 15th of December, shootings might have occurred with my subcommandos, too.

Q. In Karasubasar and Alushta?

A. In karasobasar and Alushta that is possible. As to Jewpatoria I want to exclude that, because as I showed in the document the subcommando for the first time on is mentioned on 10th of December.

Q. Did your commando to your knowledge, your subcommando to your knowledge, ever execute any Communists or Soviet officials during the time that you were its commanding officer?

A. Communists and officials, I don't think that is the right expression, if you are referring to Communist functionaries.......

Q. Yes.

A. .....or Communists who were engaged in actions against the German Wehrmacht, and who had violated those regulations which were threatened with the death penalty by the Wehrmacht, in that case I have to answer in the affirmative.

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Q. Who finally determined whether respective persons were Communists or Soviet Functionaries?

A. In direct examination I read out of a document the Fuehrer Order, according to which the decision had to be made by an officer, and that was how it was with my subcommandos before I took over the command, and that is, also, how, of course it was after I had assumed the command, that is, to say, the leader of the subcommando was the person who had to make the decision in accordance with that Fuehrer Order.

Q. Did you ever make such a decision yourself?

A. I can not recall that, but it is testified to that at Simferopol my subcommando leader notified me in a case before that had been dealt with, and that we agreed that a person who had committed sabotage, or whatever also he had committed, and had to be shot in accordance with the order that had been issued.

Q. Now down to what level were Communist party functionaries considered a danger to your security, for example, the town mayor and council were always considered security threats, were they not?

A. I believe, Mr. Prosecutor, that is a point here which needs clarification.

Q. Yes.

A. I have in the course of my previous examination had the impression that by a functionary in our language is meant something different from what the English word "functionary" means. We understand by the term "A Communist Functionary" a political functionary; that is to say, a political leader of the Communist Party. I myself in my direct examination explained this, and, I believe it has been mentioned here a great many times, that the bulk of those functionaries fled, but of those who had remained, concerning them, I never witnessed a case of such a functionary not having stayed behind but with a definite task, and in all those cases these men stayed behind in accordance with Lenin's and Stalin's orders, in order to become active.

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I can not remember one single case where such functionary was not apprehended without our discovering that he was in charge of a Sabotage group, or was engaged in intelligence work, or to engage the enemy in support of a Partisan group, or was a person who had sabotage action carried out in the Wehrmacht, by other saboteurs. I can remember a case, Where a certain large drive with poisoning was initiated. There was one case, Where they had planned a poisoning with Arsenic, and if they had succeeded 10,000 German soldiers would have been killed. Behing that action there was the fun ctionary, who was in charge of that action; and, I should also like to say that an official, say, an official of a Municipal savings Bank, or any other administrative official, was not considered as dangerous, because of his work, but if you mention this Lord Mayor of Simferopol, I should like to point out that in the Bolshevist system, the entanglements between the State and the Party was such in such a position that the Lord Mayor at the same time also carried out very important functions in the Party, and, if he did remain behind he did so with definite concrete aims.

THE PRESIDENT: Witness, we understand the communist system and the Nazi system were alike, were they not?

A. Your Honor, I believe that in the National socialistic era the important positions of the State were occupied by reliable National Socialists, and the offices of these persons carried out two-fold functions, insofar, that is correct.

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BY MR. WALTON:

Q. Then as I understand your testimony, it was not the position which a man might hold in the Communist Party which made him a security threat, but the task he had before him, after the occupation by the German authorities, or the German forces, which made him a threat, is that correct?

A. I should like to emphasize that the Fuehrer Order was intended to have the Communist functionaries, in the meaning in which I described them just now, in my conviction, because it was known what part those functionaries played at the rear of the German Army. What we saw in actual practice was what I have just described. I never heard of one case, and I never saw one case, but where a man had not played an active part.

THE PRESIDENT: Well, the original question of Mr. Walton's remained unanswered, not through any fault of yours, witness, but since we have now clarified what was meant by the answer to the question, suppose we have an answer to it. What he wants to know is, down to what level were the Communist functionaries considered dangerous. The difficulty with the question was that Mr. Walton apparently was thinking along political lines, and you corrected him, properly on that, insofar as the Fuehrer Order was concerned. Now, let's have an answer to that question, keeping in mind the correction and the clarification, which you have so well given us.

A. I should like to answer the question as follows, your Honor: The Communist functionaries were all those persons who had any leading function within the Communist Party, either they fled, or they remained behind to carry out a mission.

THE PRESIDENT: The question is answered. Proceed Mr. Walton.

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BY MR. WALTON:

Q. Doctor, let me direct your attention to Document Book III-D. page 58 of the English, and page 98 of the German, Document NOKW-1863, which is Prosecution's Exhibit no. 164, Your counsel questioned you on this document, but in the transcript of the record I read, a few questions were not answered, I would like to put a few of those to you. Who signed this document?

A. I signed the document as you can see from the document.

Q. Now you have said in direct examination that this was purely a military measure. If this is so, why were you selected as a commander or the whole operation?

A. It is impossible for me to repeat all the terms which I used in those two days. What I can say, and what I believe I did say, after I had given detailed explanations, was that this was a definite order from the Wehrmacht, which was an order issued in a given certain situation, and that in that situation it referred to the communication of the Barbarossa order, which had been quoted, that is to any, for tactical reasons the Wehrmacht could issue orders at any time, and as I have said, that was the situation which we were faced with in those days in January.

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All commandos and all men were under the immediate orders of the Wehrmacht. Strong points were built. Defense installations were built. The entire intelligence service was organizaed so as to meet the plans of the partisans. The men were committed for action as in Feodosia and *upatoria, and in that extremely precarious situation, not to call it a hopeless istuation, we received that order from the Wehrmacht. I further testified that it was the Wehrmacht which dealt with the practical carrying out of the measures, and I told you that approximately 2500 soldiers were committed not quite 50 of our men, and finally all six districts through which fighting went, as you can see on Page 2 of this document that is Page 1 of the original - that all that was carried out under the orders of officers of the Wehrmacht.

Q Well, let's come back. How was it that you were selected to command the whole operation? Did the Army select you or did General Ohlendorf select you to command the whole operation?

A Mr. Prosecutor, the document shows, I do not believe that I could ever have sent an order to the Army as you can tell from the last page, distribution, AOK 11, 1*Qu. I should think that is supposed to be O - Qu there, where I write "By order of AOK". If, in fact, such an order had not been issued, I believe in that case the Army would have had something too to say to me, if I had arrogated that right to myself. Command of AOK 11 addressed to you to command the operation, or did it come to the Chief of Einsatzgruppe D, and the Chief of Einsatzgruppe D said, "Dr. Braune, you have to carry out this order of the Army High Command." Which happened?

A Mr. Prosecutor, I cannot tell you for certain now, whether that order first went to the Einsatzgruppe and then to me, but I believe in the situation in which we found ourselves at the time that order must have gone direct to me, and I had to obey it.

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which at that time was in this particular place? divisions here or table organization shows that there was presentation each one of the districts of the city one leader of the Security Police and the SD, if this operation in the districts was under the command of an Army officer? the measures just as the 350 members of the Armed forces in that area which are mentioned there. in officer class? I did not have six leaders under my command in Simferopol. Maybe others were involved as well. This altogether shows that it says leaders here because that was what the O. Qu had laid down, but perhaps one of them was a Haupscharfuehrer or Sturmscharfuehrer, and those men, and the order makes that quite clear, were subordinate to the Wehrmacht officer in the area who is designated here as the district leasers.

THE PRESIDENT: Mr. Walton. I don't know just what your are attempting to gain from this questioning. As we understand the documents the Army High Command gave an order and he executed it, using personnel of his own or personnel furnished by the Wehrmacht. What is there more to it than that?

MR. WALTON: He has testified, sir that these districts which are shown here were under the command of the Wehrmacht. Now, I was asking him to explain the reason for one SS leader who, from experience and testimony here, an SS leader is generally of the officer class, what he was doing in these districts if it was under the command of a Wehrmacht officer? In other words, I wanted to know how far his 47 men infiltrated into the districts to carry out his orders, or the participation, the actual participation or the membership of the Einsatzgruppe 11b in the action.

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That was all.

THE PRESIDENT: We understand that one of his men was in charge of each detachment, when they went into this district and executed the order.

MR. WALTON: Yes, sir: he has explained that now.

THE PRESIDENT: Yes, I see.

THE WITNESS: Your Honor, may I correct one point? It wasn't that one of my men had the leadership in those districts, but as you will see from Page 2 of the document -

THE PRESIDENT: Not the district, the action, the operation.

THE WITNESS: Yes, your Honor. Now I understand.

Q (By Mr. Walton) How many suspected persons were brought to the assembly points at the conclusion of this action?

A Really, Mr. Prosecutor. I can't tell you but I may assure you that the experience which I had during all those years was the same experience that we have had here. In all those large scale operations as a rule the result was nil. Two and a half thousand men were deployed, and that deployment caused such an upheaval that persons, who were really suspicious and dangerous probably had escaped to safety a long time ago and that is how I remember vaguely that this operation in effect too was a failure. assembly points for further screening?

A I cannot exclude that possibility, Mr. Prosecutor. That was our task, and if we encountered any people who constituted an acute danger in that difficult situation, in that case we arrested them. The officers did not let a man go they thought he was a partisan.

Q Were there any executions as a result of this raid?

A Mr. President, I can't tell you. All I can say is I cannot exclude the possibility. I am correct, when this document has first shown to you you told your attorney that, "I remember in detail about this action."

I don't have the transcript of the record, but I studied it very carefully. Now, I am asking you some of the details. If your memory fails in these, that is quite all right. It is your right and your privilege to testify according to your memory, but I do ask that you carefully consider your answer to see if you cannot remember the answer to some of the questions which I am asking you. Is your answer the same to the question if there were any women and children rounded up in this action? children among them. I can assure you that. We never searched for children. We screened the people who were on the streets, pedestrians. We asked them for their papers, etc. As far as I remember, in spite of the large personnel we had, it was impossible to go through every house, although it said "if possible." I can also assure you that when I said that I remember a certain thing very well. I was referring to the situation in which that action, that operation was carried out at the time. I remember the atmosphere Very well and I have given an adequate account of that atmosphere. the bottom of Page 60 of the English text of this same document. "The then," and I quote, "The then remaining persons will be taken to the transient camp 241 in trucks available for that purpose, where the Sonderkommando 11b will determine their further treatment." Did you have to determine any further treatment on any of the people which you rounded up? something of the kind, in that case I believe that my subkommando kept them under arrest and decided about them in the same manner in which they decided about other saboteurs and partisans, but I repeat once again that I can't give you any detailed definite instances.

rounded up as separate from the saboteurs and partisans?

A If there were any Jews. Mr. Prosecutor, they were shot just as the other Jews. afforded these people?

A Mr. Prosecutor I believe that it has been made adequately clear here that under the order which has been issued there was no scope to hold trials of Jews. English, Page 104 of the German. It is Document NOKW-584, which is Prosecution's Exhibit 165, and which is the official report of a certain Wehrmacht Major Riesen. You have testified on direct examination that the population of Eupatoria assisted the Russian troops, when they drove your forces out of the city, did you not?

A Mr. Prosecutor, it was a little different. Military aid given by military units would have had to be regarded as ordinary soldiers. If it had been like that the Commander in Chief of the Army would not have ordered, would not have issued that order, but prisoners of war would have been taken. But in this case franc tireurs and snipers got their weapons out of hiding and fought as franc tireurs or snipers, and two or three trucks full of German soldiers were attacked an the German soldiers had their throats cut, and the partisans dano*d around these murdered German soldiers. When a report was made to the Commander in Chief, and, in accordance with the Fuehrer Order which I have quoted, he ordered those men as Snipers, franc tireurs and partisans to be shot and -

Q I understand that. I understand that, and from your testimony of last Wednesday, but the population did assist the Russian troops which landed? That is what I asked you. all right, you can use that expression.

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their troops came into the city to throw the German forces out. That is what they did, did they not?

A Mr. Prosecutor. I wasn't there. I don't know, whether the German soldiers were still fighting within the town. The Russians were getting in from the beach. They had made landings, and nobody knew what was that. The soldiers had to defend themselves everywhere. Shots were fired from the houses. Perhaps they were thrown out of the city by the regular Army. I have already pointed out that the center of the town was still occupied, when we got there on the 7th of January. There was still fighting for the town going on then, but you cannot say that the town had been taken and that after it was taken the civilians had come along and said, "Well now, we are going to fight as Russians, and how we are going to join ordinary units of the Wehrmacht, and how we are going to join in the fighting." That is not how it was.

Q Well, when these troops landed isn't that a natural action for patriotic people to rise up against, what they called the invader. to help expel him from the town, isn't that a perfectly natural action?

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A Mr. Prosecutor, the reaction may be normal, but I think the natural reaction in war concerning francti**eurs and snipers has at all times been that you treat then as such. their place? that if I were caught by the enemy I would lose my head. that were murdered by the civilian population in Eupatoria?

A I can't give you the exact figure, but there were two or three trucks full of soldiers. It may be there were forty or fifty men. I can't give you the exact figure though.

Q Isn't 1184 executions as reported here a hard price to pay for the killing of forty Germans?

A Mr. Prosecutor, that is a matter of opinion. I have just now read an order, or to put it more clearly, I have read a sworn statement according to which for one killed American soldier two hundred German are to be shot. Mr. Prosecutor, not that I want to condemn that, all I want to do is to say that during this war evidently such measures were taken, and I believe it would be wrong to say that forty or fifty, twelve hundred were shot, but I understood the officer in change to be of the conviction that hardly one of these men who were able to bear arms had not taken part in that illegal fighting in one way or another. BY THE PRESIDENT:

A Your Honor, just recently. One of the last few days, but I don't know what case it was. I read through a transcript, and a German, I think he was a German officer, confirmed under oath that in April or May, 1945-

question. I asked you a very simple question. Where did you read this sworn statement?

A In the prison here. Your Honor. It was a copy from a transcript from some other tribunal, from another case. I don't know whether it was Case VI or Case VIII. Anyway, it is a trial pending here now.

Q Who gave you this transcript?

A I can't tell you just now whether it was one of my comrades who gave it to me or whether it was a defense counsel who gave it to me. I believe it was one of my comrades who gave it to me

Q Which comrade was it?

A Yes, I have remembered. Your Honor. It must have been Blobel.

Q Who?

Q And you remember Paul Blobel's testifying on this very business here in court, can't you? for having made it? Do you recall that? for having made it? Do you recall that?

A I know that Your Honor. Yes, I know that..

Q Now, do you want to go further than Blobel went? copy of a transcript. *nthfurther than Blobel did here on the witness stand in this very courtroom?

A No, Your Honor, I don't want to go further.

Q Yes, All right. Now, Blobel withdrew his statement and declared here that he was in error and apologized for the statement. You heard that, didn't you? than Blobel himself did?

A Your Honor,I should like to correct something. I did not repeat Blobel's statement.May I just repeat what I said? It was this. I read the copy of a transcript from a case which is pending here now. I said that according to that transcript -

Q I know what you said. Now, please don't take up a lot of time repeating. I heard what you said. Do you have that transcript?

A I do not have it with me. I don't know whether my comrade Blobel has it. Maybe he has.

DR. KOHR: Your Honor, perhaps I can clarify this matter. Dr. Kohr for the defendant Blobel, deputizing for Dr. Heim. that there had been an order according to which for one killed American two hundred hostages were to be taken, it is correct that the defendant Blobel had to apologize for having made that statement.

THE PRESIDENT: He didn't have to. I wish to correct you. He didn't have to apologize. He apologized voluntarily.

DR. KOHR: Yes, because he could not maintain the statement that he had actually read that himself. In the mean time from the transcript Of the case against - from the Southeast case. We have found out that a witness was examined under oath there, his name was Wollny. He was formerly a German officer, and that witness in his testimony confirmed that in a small town in Thuringia in the Harz Mountains in Horensen, he read an order according to which for one killed American two hundred Germans were to be taken as hostages. In our Document Book II we shall submit extracts from that transcript, and we shall introduce it in evidence, and it is evident that Dr. Braune has just referred to that extract from the transcript taken down in the case against the Southeast Generals. I believe that this has clarified the matter.

THE PRESIDENT: No, it hasn't clarified it at all. BY THE PRESIDENT:

Q How, witness, you say that Paul Blobel handed you a transcript?

THE PRESIDENT: Now I will ask you, counsel, how did Paul Blobel get this transcript, do you know?

DR. KOHR: He got it from us.

THE PRESIDENT: Very well. And when you gave him this transcript to read, did you call his attention to this particular statement which is now under discussion?

DR. KOHR: After his testimony -

THE PRESIDENT: No, before his testimony.

DR. KOHR: No, no. He only heard that it in the course of the conversation, and it has only afterwards that we found that in the Southeast case actually than have been proved.

THE PRESIDENT: Did Blobel actually have the transcript?

DR. KOHR: Yes.

THE PRESIDENT: Who gave him transcript?

DR. KOHR: He got it from defense counsel, Dr. Heim.

THE PRESIDENT: Dr. Heim then got this transcript and took it to Blobel,is that what you are telling me?

DR. KOHR: Yes.

THE PRESIDENT: And had Dr. Heim talk to Blobel about this particular incident before Blobel testified?

DR. KOHR: No.

THE PRESIDENT: What was the purpose of his giving this transcript to Blobel?

DR. KOHR: The purpose evidently was in order to produce evidence, to bring proof afterwards that Blobel had first of all talked about a rumor only, but that in the meantime it had been proved, that in the Southeast case against the generals that point had been corroborated by a witness.

THE PRESIDENT: Now, you are using words -- I don't know whether the translation is coming through in accordance with what you say. You say it was proved and then corroborated and confirmed.

Now, those are very strong words, and I went to call your attention to the fact, counsel that unless you are able to establish the correctness of what you are saying that you should not use such conclusive phraseology. Now, I will ask you, since you apparently are volunteering this, de you believe, did you such an order, did you, yourself, see such an order?

DR. KOHR: No, Your Honor.

THE PRESIDENT: Then you cannot, say that anything was proved, can you?

DR. KOHR: No, nor do I want to do that.

THE PRESIDENT: Very well, let's make that clear.

DR. KOHR: And I want to clarify was that such an extract from a transcript exists. Whether the witness himself spoke the truth or not, that I cannot determine.

THE PRESIDENT: Very well. Then please do not use the word "prove", because that suggests that judicially it has been determined and established as fact that a certain proposition is correct, and on that you can say nothing. That is true, is it not?

DR. KOHR: No, I can't. All I can do is say that a witness is the case against the generals testified to that, and beyond that I don't want to say anything. I merely believed that I had to clarify the matter because the name of the defendant Blobel had been mentioned.

THE PRESIDENT: What you clarify is simply this, that is same way it came to Blobel's attention, and you now explain that it was because a copy of a transcript was handed to him by Dr. Heim, and that in this transcript there appeared a statement made by a witness that he knew of such an alleged order. Is that correct, do I sum up your position?

DR. KOHR: Not that Bible knew of it, but merely that testimony by a witness concerning that quota of one for two hundred then exists.

THE PRESIDENT: Very well, that a witness did make that statement.

DR. KOHR: Yes, that is what I wanted to say.

THE PRESIDENT: Correct. You yourself know nothing of this order.

DR. KOHR: I myself have no knowledge of the matter at that time....

THE PRESIDENT: Very well. Now we will turn back to the witness. So that your information was obtained from Blobel, is that correct, or from the transcript?

THE WITNESS: Not from Blobel but from the transcript that he had given to me, and that is how I put it, your Honor. That is what I said.

THE PRESIDENT: All right, yes. And you are quoting from a statement made by a witness?

THE WITNESS: Yes, from a statement made under oath by a witness.

THE PRESIDENT: Very well, did you know this witness?

THE WITNESS: No, your Honor, I cannot give any opinion about him.

THE PRESIDENT: Yes. Now, when you say this statement was made by him under oath, you place great stock in the statement "under oath", don't you?

THE WITNESS: Your Honor, I can say no more but that I have read that statement made under oath and that is all I wanted to say.

THE PRESIDENT: You don't know who the man was, do you?

THE WITNESS: No, I don't, your Honor.

THE PRESIDENT: You don't know, whether he was telling the truth or not?

THE WITNESS: I cannot exclude the possibility that he committed perjury.

THE PRESIDENT: So far as you are concerned he could be the biggest liar in the world, so far as you personally know?

THE WITNESS: Theoretically that is possible, your Honor.

THE PRESIDENT: You do not yourself know of any such order?

THE WITNESS: No, your Honor, nor did I say so.

THE PRESIDENT: No, and you never heard of such an order it all the years that you were in the armed forces when your country was at war?

THE WITNESS: No not from the West, your Honor.

THE PRESIDENT: We just want to make it clear on the record that these statements cannot be made recklessly, and when anyone quotes a statements of that kind he must indicate the source. We do not in any way criticize the witness for what he said. He had the right to say that and to his credit he did give the source of his information. He only made one mistake in putting it in such a way as if it represented fact which, as it now develops, has not in any way been established, and he goes no further than did Blobel, who here in Court admitted that he knew nothing about any such order and because of having stated it in the way he did, he apologized.

THE WITNESS: Your Honor, may I just add one more sentence? If I remember correctly I did not maintain that this was a fact. I merely said that I had read that testimony. that is what I said.

THE PRESIDENT: The record will indicate your statement.

THE WITNESS: Very well, your Honor.

THE PRESIDENT: It is not that you put it in those words but in the argumentation with counsel it seemed a casual observer might have got the impression that you were attempting to assert that as fact, but now it is clear, where you got this and you do not yourself assert that statement as a fact and that closes the incident you may proceed Mr. Walton.

THE WITNESS: No, I did not wish to assert that.

THE PRESIDENT: Very well.

MR. WALTON: One that has been told to be about what that testimony actually was. I would like to ask him two question. He said he read the transcript of the testimony. If your Honor's ruling is final that the incident is closed I will proceed on, but -

THE PRESIDENT: Yes, I think it is closed. The witness has very clearly stated how he happened to learn of such a rumor or statement. He knows nothing about it and has very clearly and emphatically so stated it, did not know about it during the war and does not exclude the possibility that the man who made this statement may have committed perjury.

MR. WALTON: Yes, sir Q. (By Mr. Walton) Dr. Braune, you stated on direct examination that when you, rather than the three SS leaders, but that, when you alone went to Eupatoria and you reported to the Wehrmacht Colonel, he was at a loss to understand why you were there because your presence was not needed.

Is that what he has told you?

A. No, Mr. Prosecutor, that referred not to my person but by that he wanted to say that a special order and a special delegate from the Army, such as Major Riesen was not required because, without such an order and without such a special delegate, he would have adopted the same measures in accordance with the situation. That did not refer to my person.

Q. Well, he, in effect, told you that your presence there was superfluous, didn't he?

A. No, that's what he said to Major Riesen, when Major Riesen told him with what orders he had got from the Commanderin-Chief. He then said in reply to Major Riesen, "In that case the Commander-in-Chief did not need to send you. I would have done that at my own initiative, for all of them are franctireurs and snipers."

Q. Well, why didn't you get in touch with your headquarters and explain the situation that your presence was more or less superfluous and ask for further directions or ask couldn't you come back to headquarters where you were needed?

A. I believe I also said that among other things it was my mission to choose from those 1500 persons who had been arrested, those people who were known to have served in the German Wehrmacht and our subkommando, and in effect I with my subkommando, I think I can say that we saved the lives of those three hundred men, for if I had not been sent along the original order from the Commander-in-Chief would have been carried out and all the men would have been shot, including those three hundred.

Q. In screening your suspects was the denunciation of your former local Russian employees sufficient to cause a suspect to be included in this 1184 selected for execution?

A. Mr. Prosecutor, that sellction was made by my subkommando leader, together with some people who knew the place -I don't know whether they were Russians or Tartars, or whether they were Volksdeutsche, ethnic Germans, people who knew their way about the place. It is possible that also people from the Wehrmacht took part, and those people found out who of the men were reliable and they selected them. I could not make any decisions, for I did not know one single one of these people. I had to rely on my men.

Q. All right. The denunciation of the people you trusted plus the decision of your subkommando leader was sufficient for their execution, wasn't it?

A. No, it was the other way around, Mr. Prosecutor. The Commander-in-Chief of the Army had ordered that those men, who had been arrested and who were fit for military service, were to be shot without exception, and now my subkommando, in spite of that order, picked out three hundred men who were not shot; that is to say, my people adopted the measure which Was a limitation comparing it with the order from the Commanderin-Chief.

My can did not have to decide in such a way that they could have said, "These 1184 men are to be shot." That was the order that had come from the Commander-in-Chief.

Q. Who gave the order to fire upon all these people, Doctor, at the place of execution?

A. Mr. Prosecutor, I have already pointed out that contrary to the submission of the prosecution, it was not I who gave the order to fire. I wasn't on the spot where the shootings took place. Major Riessen was in charge of the matter as he says himself on page 1. It is his own letter which indicates that this was so. It was he who gave the order to this Luftwaffe company and that is how that measure was actually carried out.

Q. Well, let me call your attention to the next to the last sentence on cage 62 of the English text, and on page 105 of the German text, which is the last paragraph, first sentence: "SS Sturmbannfuehrer Dr. Braune gave orders on the place of execution for the carrying out of the shootings." Now, why would Major Riesen in an official resort out in anything that wasn't so?

A. Mr. Prosecutor, nothing is mentioned of an order to shoot or an order to fire. I have already attemtped to explain that phrase from what I remember, and I cannot say anymore. At the best I can point out that that was written by Major Riesen one year after the event, but I believe that it is clearly evident that he was in charge and that he, as a member of the Wehrmacht, did not allow we to take his authority away from him. In accordance with the truth I have testified here as to what I did and I cannot say anymore.

Q. And you absolutely deny that sentence as being true?

A. I have tried to give an explanation. I have said that twice I intervened.

Q. I know what you said, but I am asking you now that you deny that sentence there as being the truth? You have a right to do it if you want to.

A. In this form it is wrong. In this form it is wrong.

Q. All right. Now, how long after your arrival in Eupatoria were these people executed?

A. We left Simferopol early in the morning and around noon these men were moving through the town, and until dusk that Luftwaffe company continued carrying out the shootings.

Q. Now, the shootings occurred then within eight to ten hours after you reached Eupatoria; is that right?

A. Yes, that may be approximately right.

Q. Were you personally satisfied that every one of these people was actually guilty of killing or of shooting at German soldiers?

A. Mr. Prosecutor, I can merely repeat, it was an extremely dangerous situation, and for the whole Army it was a question of to be or not to be. The Commander-in-Chief of the Army, Field Marshal von Manstein, issued that order on the basis of the Fuehrer order which I have quoted. He had the excutive authority in this military area, and he considered this measure necessary and therefore ordered it.

Q. Doctor, I am not asking you about the reasons. I asked you if you personally were satisfied that every one of these people was actually guilty of killing or at least shooting at German soldiers?

A. That was not my order, Mr. Prosecutor, not did I have any possibility. The Wehrmacht would have told me something quite different, if at that highly critical moment I had said, "Now, let's have some investigation for a few weeks."

It was not left to my discretion to do such a thing. I believe Major Riesen would have said to me. "Well, how does it come that that's your business?" It was a very critical situation and I, talking for Major Riesen, have to carry out orders.

Q. You still haven't answered the question. Did you have any thoughts about the guilt of these people or did you fail to think about whether they were guilty or not? I wont to know if you were personally satisfied that they were all guilty?

A. Well, according to the information I had at the time I was convinced that the whole lot of them had engaged in illegal activities and that the Commander-in-Chief of the Army was carrying out a Fuehrer order.

Q. And you thought they were all guilty, didn't you?

A. I can only say again theoretically there was a possibility that among them there was some people, who had not participated in murdering the German soldiers, or who had not participated in sniping activities.

THE PRESIDENT: Dr. Walton, would you care to defer your further questions until after the recess?

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. MAYER: Dr. Erich Mayer for Klingelhoefer. Your Honor, I ask the High Tribunal that the defendant, Klingelhoefer, be excused tomorrow. Tuesday, and the day after, Wednesday, in the order to prepare his examination and excused from the sessions.

PRESIDENT: The defendant, Klingelhoefer, will be excused from court tomorrow, Tuesday, and the following day, Wednesday, in order that he may prepare his defense.

DR. MAYER: Thank you, Your Honor.

CROSS EXAMINATION (Continued) BY MR. WALTON: Book IIID, page 62 of the English, page 104 of the German, Document NOKW 584, which is prosecution's exhibit 165. Doctor, did you hear me cite this document before? is about two-thirds of the way down, of the page 62 of the English text, Your Honor, where Major Risen says "These", and he refers to the 1184 man who were picked out, "were marched in close ranks and guarded by 90 soldiers of the anti-aircraft unit, some SS leaders, and me, in a more then one hour's march, to the place of execution and shot there". Now, you have testified that there was only one SS leader there, being yourself. Did you march with these condemned men to their place of execution? I was the only SS leader who went along. On the place of execution, as far as I remember, the men of the subcommando-

PRESIDENT: Witness, Mr. Walton asked you a very simple question, did you march with the men to be executed--now please answer that question.

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THE WITNESS: Yes, Your Honor.

PRESIDENT: All right, now give us the next question. BY MR. WALTON: nessed one execution, that one at Simferopol, is not exactly correct, is that true now? nessed one, but it is possible that when I talked to Mr. Wartenberg I said it to mean that I personally only witnessed one execution of Jews. Here a retaliation measure was concerned, shooting of partisans and saboteurs. I expressly told Herr Wartenberg at the time that I was quite prepared to answer him quite openly about this as I had done about the event in Simferopol. cuted your commando during your term as commander of the unit?

A Mr. Prosecutor, I have already repeatedly I cannot name any figure.

Q Were you held in prison in Oslo, Norway? two years, and for 15 months in single cell.

Q You were held in Akershuus prison in Norway, weren't you? for a very brief time I came into a camp and was told that no procedings against me was to be expected, then two comrades escaped from this camp, 25 men of us were returned to the prison because of this. prison?

A No, not yet, Mr. Prosecutor. I returned to Akershuus October 1946. After another four weeks I came to the examination prison, Molokar. I don't want to give the impression that I was only in Akershuus. Their proceedings were discontinued and I was brought back in the internment camp.

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not? Germany, while you were in Akershuus Prison? from that several times by Norwegian officials, but this did not concern myself or anything I was being charged with, but I was interrogated as a witness for other matters. For my own case, I was not questioned on charges against me, On the 29th or 30th of March 1947 I was interrogated for the first time. sergeant. Did this British personnel ever interrogate you on your Einsatz activities?

A Yes. He asked me, whether I had been in Russia. I confirmed this. He asked me to make a report about the organization, the task, and the activities, and I did that. registration and the execution of Jews, did he not?

A Not about details it the time. He asked me how many shootings, approximately, were carried out. Already then I told him that I could not give him a definite figure. Any figure which I might name could be wrong, and he was satisfied with this. your unit, that is, Kommando IIB, disposed of between 1500 and 2000 Jews between November '41 and August of '42?

A I never said that. If anyone says that, he lies, or is mistaken. I know exactly how I explained to the sergeant I could say a hundred or two hundred as well as a thousand or two thousand. Any figure would be as wrong as the other one. I was never given a record of these interrogations or a transcript.

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I never signed anything. I made a report in which no figure is mentioned. He did not ask me to give him any figures.

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Service Report No. 93, which is a report on the interrogation of Obersturmbannfuehrer Dr. Braune, Werner. It was made at Akershus Prison, Oslo, on the 23d of March 1946. I show you a copy of this report in German. Now glance through your personal history and see if that is generally correct. Does that reflect proper dates and the proper facts. page there is the first mistake: "November 1937, employed in the SD Main Office." I never made any statement, but that I came to the SD on the 18th of November 1934. I never asserted that I was Chief of the Police Office in Koblenz, but I always asserted that I was Deputy Chief there. Then the expression gives entirely the wrong picture that I was in charge of the Executive Office of the German Student Association. An Executive Office of the German Student Association did not exist. I said what was my task there. essentially correct, is it not?

A Please may I read through, Mr. Prosecutor? I cannot make any statement before I have read it, because I see another mistake again. It says in November 1932 I joined the SS. That is not true.

A May I not mention the mistakes as I find them. Otherwise I will have to start all over. There is the next mistake, I became SS Untersturmfuehrer in November 1935, 1935 not 1936.

Mr. Prosecutor, what values can such a statement have? Please read the sentence, "He rose to an important position in the Third Reich by entirely disregarding any moral law."

THE PRESIDENT: Witness, Mr. Walton, insofar as this document points out facts you may call upon the witness to confirm the facts, deny them or alter them.

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MR. WALTON: Yes, sir.

THE PRESIDENT: But where the statement merely contains opinion, the opinion of someone else, you certainly cannot ask this witness to pass upon that opinion, and we see no probative value whatsoever in these statements by this anonymous individual as to the character of the witness, and we will inform the prosecution that the Tribunal will absolutely disregard any statement in the document passing upon the witness? character.

MR. WALTON: If Your Honors please, I haven't offered it,

THE WETWESS: Your Honor, that is whatdisgusts me so much that it is asserted here in one sentence that I completely disregarded all moral laws without giving one reason for this.

THE PRESIDENT: Witness, I think the Tribunal has come to your defense in this instance and I don't knew whether you can argue it better than the way we have put it.

MR. WALTON: May I say something at the present time, Sir?

THE WITNESS: I am very grateful, Your Honor.

MR. WALTON: I haven't offered this document at the present time into evidences I merely asked him if his personal history was correct. The next question I would like to ask him; the paragraph headed "Activity on the Russian Front," is that substantially true, and I think if I go on, Sir, I'll prove my contention that at least it wasreported that this witness told this British official that he himself or his kommando accounted for between 1,500 and 2,000 Jews.

THE PRESIDENT: Well, we have indicated that, where a definite objective fact is indicated in the document, certainly you can question him on it.

MR. WALTON: Well, I didn't ask him to read it - of course, he has a right to read it, Sir -- but I didn't ask him to comment on this man's personal estimation of the man.whom he interrogated. This was Dr. Braune at the time.

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THE WITNESS: Your Honor, but I would like your permission, if this document is to be submitted, that as far as facts are stated, I can comment as to the truth.

DR. MAYER (ATTORNEY FOR THE DEFENDANT BRAUNE): Your Honor, if I have not taken part in the debate about this document until now, the only reason is that I considered it important that my client on the basis of some challenges, would show up some obvious errors and should clarify right from the start that his statements which he made here under oath are in contradiction to the statements in this document. I do not see the value of further discussions concerning this document, since the document submitted here is not in proper form and also the inconsistencies could only be proved if the witness was brought here. Therefore, I object to the further submission of this document and the explanation of its contents.

THE PRESIDENT: Mr. Walton, we are of the opinion from a quick scrutiny of this document that the prosecution should withdraw it. If the prosecution does not withdraw it, we will refuse to accept it.

MR. WALTON: As I understand it, Sir, anything of a probative value can be introduced by the prosecution on cross-examination. I think the objection to this document would be in order when it is offered into evidence. I merely want to question him.

THE PRESIDENT: You have laid the ground work for the crossexamination of the witness on his interrogation in Oslo, so that part is entirely in order, but you have not laid the ground work for authenticity and probative value of this document, in order to submit it as a document.

MR. WALTON: That is all I want, Sir.

THE PRESIDENT: We will permit you to use it in cross-examination, because the witness admits that he was interrogated, but under no circumstances in its present condition can it be accepted as a document in this trial.

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MR. WALTON: I am fully aware of that, Sir, and at the time of submission the proper certificates will be attached Since I have to defend this action. Sir, I state, in my place, that this is an official communication from the War Crimes Commission in London, which was sent to us in the normal course of business, and the proper certificates of the person, who received it in the mail will accompany the document at the time it is formally introduced into evidence.

THE PRESIDENT: Certainly that type of authentication is not apparent now.

MR. WALTON: Precisely, Sir, neither is the document offered into evidence.

THE PRESIDENT: Very well,

DR. MAYER: Your Honor; I only want to point to my former explanations and I have nothing further to add, I hardly believe that the fact of the original of this document, which I do not contest, has any value here as concerning the probative value, because the form in which documents are to be submitted until new has not been kept to with this document. I contest that this document has any probative value and therefore I do not seewhy it should be discussed at all.

THE PRESIDENT: Well, Dr. Mayer, the ruling is as follows: The court will not accept it. The Tribunal will not accept the document in its present form. It may be used for the purpose of crossexamination only, because the witness has admitted submitting himself to an interrogation in Norway, Then the document is authenticated and then submitted; the Tribunal will at that time determine, whether it has any probative value and will be accepted asan exhibit in the case.

DR. MAYER: Very well. I understand.

Q (By Mr. Walton) Witness, let us proceed then to the paragraph headed "Activities on the Russian Front." Is this statement as it appears in this report of this interrogation essentially correct?

A This paragraph "In October 1941, the prisoner via the RSHAwas sent to the Eastern Front". He proceeded to Nikolajew and reported to Oberfuehrer Ohlendorf, at that time the Chief of Einsatzgruppe D. In November 1941, Einsatzkommando 11b wasgiven to his charge, which was in Odessa at the time." This paragraph is right, These are my own statements. headed "Tasks of SD Einsatzkommando."

MR. WALTON: Page 3 of this document, Your Honor.

Q (Continued) Particularly sub-paragraph d, which is headed. "Registration and Execution of Jews." I would like for you to read that subparagraph D and when you have finished, please indicate to me so that I can ask you a question on it.

A That is wrong too, Mr. Prosecutor. I regret very deeply that Sgt. Lessing did not forward my report as well because that would clarify the matter I told him quite unambiguously that this was a Fuehrer Order, which I did not receive in writings I don't know why he should write in spite of this statement that he maintains that this order came either direct from the Einsatzgruppe or from the Wehrmacht.

because in my document it says that the prisoner, which is you, denies any knowledge of a written order, "denies any knowledge". Does your document say that you deny my knowledge.

A Yes, the written order. I never said that I saw a written order and one can formulate it this way, saying, no, I never saw a written order, but may I point out here, and I think you are right, Mr. Prosecutor, that in fact decisive errors were made, because obviously you mentioned the figure 15,000 to 20,000 and I now reed about 1,500 to 2,000. In fact at the time I said, and I report this now, I can not give any figure. 100 to 200 would be just as wrong as 1,000 to 2,000, whether Sgt. Lessing deduced from this that 1,500 should be right, I didn't know. I never gave him that figure. bility for this atrocity? examination here I explained that these things happened under my responsibility, as the Fuehrer order had been given, Norway today? on it. I regretted at the time and under these circumstances I regret it even more that Sgt. Lessing after the interrogation did not keep a record which he asked me to sign, because in that case, my written statement would exist now. If I had read any such a thing at the time I would have objected to it then. deaths were never admitted by you while you were in Akershus prison in Norway?

A I can only repeat or confirm what I said before. I cannot say anything more. I explained that I did not know any figure. As an example I said that 100 to 200 might be just as wrong as 1,000 to 2,000.

MR. WALTON: The prosecution has no further questions at this time. BY THE PRESIDENT:

Q Witness, do we understand by what you just said that you didn't mention any figures at all to the the interrogating official in Oslo?

A I replied to Sgt. Lessing questions, "Well Mr. Braune, how many were there approximately?" I answered, "Well, Sgt. Lessing, I cannot give you a figure. 100 to 200 may be just as wrong as 1,000 to 2,000." That was my reply and he was satisfied.

Q We didn't understand that the illustration which you gives us here was a more repetition of the illustration you had given to the interrogating official. Witness, you participated in the actions against the partisans in the Crimea didn't you?

Q Did you take an active part in the fighting of the partisans? divisions were assigned -

Q Please answer the question directly. You did take an active part?

Q Did you lead any detachment into action against the partisans?

A No, I did not lead any detachment, Your Honor. I had no military training and in that case, in spite of my shoulders troubles, I went along with the Battalion just like any enlisted man. I had no right to give orders, but a Rumanian major had this authority, but in that case, I took part like a simple enlisted man. done some fighting?

A Yes, Your Honor. With this Battalion I marched for two days up and down mountains, through woods....

a carbine?

AAs it was most suitable for fighting in the woods. I had a machine rifle for close range fighting and also my pistol.

Q And did you have occasion to use those weapons at times? where there were some ruins on tap, behind which partisans were hiding, we suddenly were attacked by machine guns. Apart from that grenades were thrown at us from another place. at you.

A No, your Honor, I did not have any hand grenades. Apart from that we were not so close to them, but we also fought with automatic rifles and also with machine guns, I believe. The partisans then withdrew after they had been fighting about a quarter of an hour and they retired and we pursued them. One of my comrades managed to shoot one of the partisans when escaping, but apart from that they managed to get down the other side of the mountain. posing of the partisans?

A No, Your Honor, No. Your Honor. That was the only occasion, when we actually came in contact with the enemy. Apart from that the partisans always left.

Q But you did act as a soldier in these combats? could not join the Wehrmacht because of your physical condition? If you could use a pistol, fire a carbine, go on long marches, climb hills, what prevented you from making a good Wehrmacht soldier?

A Your Honor, I can only reply to you, the Army examined me. The Army found that my shoulder joints were injured and this so seriously that even when I dressed and undressed I dislocated my shoulder joints and that at night when sleeping during dreams I also dislocated them.

I passed through several university clinics because of this and owing to this fact the Army found me unfit. putting on your shirt and yet be able to fire a carbine and a rifle and not have any difficulty? with me and particularly my driver, who also witnessed how I did. located my arm in the Caucasus.

Q But you did fire the gun? my arm. I regarded it my duty to stand by my men.

Q Very well. Looking over your personal record, it seems that you obtained some decorations and you received the usual Yule Candlestick, is that right?

A Your Honor, at the moment I don't have the document in front of me, but, in fact, I did get the Yuletide Candlestick.

Q Now, you can't tell me you can't remember what medals you received. You would certainly be the only soldier in the world who didn't remember that. the Yuletide Candlestick. tions which took place just before Christmas, 1941? Christmas 1935, at the latest, 1936, as far as I remember, because when I married I already had it.

Q You did not receive any decoration for the action in the Crimea?

A For the operation in the Crimea? No, I did not. If I learned it correctly, I was recommended for the Iron Cross Second Class, because of my participation in the Anti-Partisan fight, but I never received the Iron Cross.

Later on, when I was at home, I got a War Merit Cross, Second Class. At the time I don't know how many hundreds of thousands or millions of Germans had it already who had never been at the front.

Q Do you consider yourself a religious person? conscience.

Q You left the church?

Q Now, do you celebrate Christmas every year? ce or is it merely a period of celebration without any religious implication? of Christian origin, but I believe every German knows that it is the most beautiful festival among German families and I always celebrated it in that spirit, I feel.

Q And did you celebrate Christmas 1941 in the field with your men? dorf conducted and I like to remember it.

Q And did it have a religious significance? give a sermon. I believe those who heard Ohlendorf speak about religious matters only once will confirm that he was very well able to touch upon religious questions.

Q Did he make a speech on that day, on Christmas Day of 1941?

Q And did he talk on religious matters?

A Your Honor, I cannot give any details of the words any more. I don't know whether he mentioned Christ, but I know Herr Ohlendorf's attitude on all this.

Q What was his attitude as he delivered it in his speech? What did he say that was of a religious significance?

Q Did anybody offer any prayers on Christmas Day of 1941?

A Your Honor, I do not know. I was not present, but I feel certain that in those days in particular many persons said prayers, because the situation in which we were was such that we did not know whether we would still be living within the next few days, whether we would fall into the hands of the Russians. just killed ten days before?

A. Your Honor, I don't know whether anyone prayed for these many thousands of Jews.

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Q.- All right. Now... when the order came down from the Army that you had to kill these ten thousand Jews before Christmas, was any objection offered that it was highly inopportune to kill these defenseless people during the religious period?

A.- No, your Honor, nobody mentioned this to me.

Q.- Did you have any misgivings about ordering the execution of these Jews on the Eve of Christmas which you, as a religious person, celebrated every year?

A.- Your Honor, the order had come from the Army. Perhaps I would have preferred it at the time if it had not come at Christmas time, about two weeks before Christmas. Perhaps if the decision had been left to us the measures would have been carried out later. Our thoughts at the time were home with wife and children.

Q.- Were there any women and children among those Jews who were executed just before Christmas?

A.- I already said, Your Honor, I never saw any children. There were women among them.

Q.- You know that children were executed, don't you?

A.- Yes, Your Honor. That was the most difficult part of this order, for us.

Q.- Now, in all the time that you were an Einsatzkommando leader, did you, at any time, just out of sheer sympathy, release some defenseless woman or some whimpering child of the Jewish faith, who was scheduled for execution?

A.- Your Honor, I did not see any whimpering child. I said how hard it was for us, and for me, and my men, to have this order carried out.

Q.- Well, you know that if children -

A.- No, no exceptions were made to that effect, as you mention.

Q.- Yes. And you know that since children were killed, that they certainly wouldn't go to their death laughing -- since you seem to take objection to the phrase "whimpering child."

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A.- No, your Honor, I do not object to it. I don't think that anyone went laughing -- that none of these many hundreds and thousands of women and children who had to die in this war.

Q.- You joined the SS or the SD - and then eventually the SS, voluntarily?

A.- I volunteered on the 18th of November 1934, to join the special formation of the SS - which is called the SD.

Q.- And you joined the National Socialist Party voluntarily?

A.- Yes, I had on 1 July -- that is, I applied to become a member on 15th of May 1931.

Q.- And you were familiar with the National Socialist program?

A.- I knew it, your Honor, yes.

Q.- And you knew that it was definitely anti-semitic?

A.- Your Honor, perhaps it would be necessary to explain the idea of anti-semitism here... but I know that this program attacked Jewry.

Q.- Yes. And you know that the program called for the disfranchissement of the Jews?

A.- Your Honor, I don't know what You mean by disfranchisement.

Q.- That they were deprived of the right of citizenship, and the right to vote.

A.- Yes, they lost their civic rights because of the Nurngerg laws, through a national law.

Q.- Yes. And you know that in most instances they lost their property?

A.- Your Honor, if I remember it correctly - until 1941 the emigration of the Jews from Germany was assisted and favored -- I cannot say how much money they were allowed to take along, but I think I remember that the rest of their property was to be put on a blocked account.

Q.- Well, you know that in fact they lost their valuables and their property, don't you?

A.- The final result came about because of the war, and at the end, in April or May 1942, when the final solution has been ordered... this was the final result. But, your Honor, we had no idea of this and we did not think of it when we joined the party. It was never mentioned when I came to the SD, and this final solution was never mentioned when I went to the East.

Q.- Did you know what happened on November 10, 1938?

A.- Yes, your Honor, I know that. At the time I was in Munich myself and that evening I was together with Herr Ohlendorf.

Q.- And did you approve of what happened?

A.- No, your Honor. I wish the SD report still existed which I made from Muenster at the time.....they would not only show how many people among the population thought about this, but it would also prove how we thought of it.

Q.- Well, it was very obvious to you at that time that National So cialism was leading to stricter and severer measures against the Jews, was it not?

A.- Your Honor, I don't know what you mean by more severe measures; in any case, such a solution as come about in practive, I never thought of. To be quite honest, I could not understand it.

Q.- Well, but you could see, because of your position, that from time to time stricter measures were enforced... they were being sent to concentration camps.... they had to wear certain insignie on their bodies...their property was taken away from them...Synagogues were being burned down....You could see this progression of hostility towards the Jewish race, couldn't you?

A.- Your Honor, I do not remember any case where a Jew, just because he was a Jew, was sent to a concentration camp - apart from the moment on, when they were sent to the East in order to be eliminated.

I can say with a clean conscience that I heard about this measure only after the capitulation and I admit quite openly when I heard it for the first time in Norway at first I thought it was just propaganda.

Q.- It is very difficult to comprehend how you could recognize that a Jew would be sent to his death because of his nationality, and yet not recognize that he could be sent to a concentration camp and merely be deprived of his liberty. How do you reconcile those two statements?

A.- I don't know what you mean... at the time, your Honor. Do you mean the measures in the East, your Honor?

Q.- Well,you knew that the Jews were being killed.

A.- But, your Honor, may I emphasize again, in the East it was expressly ordered as part of the entire events... a Fuehrer order was issued for the sake of security. At the time, nobody was told that the entire Jewry in Europe should be eliminated/

Q.- You know who Heydrich was, of course, don't you?

A.- Yes, your Honor.

Q.- Did you have any contact with him?

A.- I said, your Honor, that I never met Heydrich personally, and to discuss things with him. I only heard him when he made speeches during meetings.

Q.- Do you know that on July 31, 1941, he ordered the complete solution of the Jewish question?

A.- No, I do not know that, your Honor. I did not know what he meant by complete solution at the time... all I know is that at the time I was in charge of the State police office in Halle, the Jews were still there. I was never told that these Jews were to be eliminated.

Q.- You know that Heydrich sent a telegram to all officers of the Gestapo and SD on November 10, 1938, urging the pogroms, didn't you?

A.- Your Honor, I never heard about it, that in a telegram... in November 1938 he sent a telegram.

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.. Do you mean by that, the events of 9 November 1938?

Q.- Yes, A.- On 9 November 1938 -Q.- No, the morning of November 10, 1938, Heydrich sent a telegram to all officers of the Gestapo and SD, giving instructions for the organization of the pogroms of that date, and instructing them to arrest as many Jews as the prison could hold.

Did you know about that?

A.- Your Honor, I never received an order to start pogroms. I never participated. I never heard about it. I heard about it here in Nuernberg that in all 20,000 Jews were arrested that day, when I was still in Munich. I don't know how I could explain it.... that I do not remember anything from Muenster at the time. I only know that the instruction was given at the time to prevent excesses, and that we made a great number of reports which, in my opinion, brought about proceedings.

Q.- Well, you knew that these excesses of November 10th or November 11th 1938 took place with the complete approval of Heydrich, didn't you?

A.- According to what I remember from Munich, your Honor, Heydrich and Himmler were deeply shocked. I never heard, and I had thought this had been asserted in the IMT already....I don't know whether I read it in the judgment or somewhere else.

Q.- It so happens that I am reading from the IMT decision.

A.- Your Honor, I can only assure you that I did not get to know it in that form, but just the opposite.

Q.- You took the oath to Hitler, did you not.... the oath to Hitler of fealty and allegiance?

A.- Yes, your Honor, as official and as an SS leader.

Q.- And when you took that oath you swore to follow him and all leaders that he might appoint?

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A.- I believe the oath was to that effect, your Honor... yes.

Q.- And you heard some of Hitler's speeches?

A.- Yes, Your Honor.

Q.- And you knew of his violent attitude toward the Jews?

A.- Yes, I knew that, your Honor.

Q.- Yes, Well, didn't it occur to you that some time sooner or later, that you would be called upon to execute one of his orders which had to do with Jewry, and you were bound by oath to execute that order? Didn't it occur to you in the early days that that would come about?

A.- Your Honor, that I would ever receive an order in the war to kill Jews never occurred to me. Of course, we expected at the time that the Jews would be restricted considerably... that they might be interned during the war because they constituted a danger... but measures as they were carried out at the end, I never thought of!

Q.- Did you yourself believe they were a danger in Germany to the security of the Reich?

A.- Your Honor, according to all that had been done against the Jews until the beginning of the war, I believe that no German held the opinion that they would feel friendly towards the German people in their war, and insofar I would like to compare it with the fact that in war time enemy aliens, for example, are interned in order to avoid any danger which they might constitute.

Q.- Although you say you never witnessed the execution of any Jewish children, you know that some were executed. Now, I ask you, were any children,but Jewish children executed?

A.- No, Your Honor, I wouldn't know what kind of children.

Q.- Did you do anything after 1938, when these excesses occurred, to in some way separate yourself from this oath of allegiance to a man who was obviously leading to the demanding of greater and greater excesses against the Jews?

A.- Your Honor, the 9th of November 1938 -- and I still retain that opinion, even now -- was an independent measure by Goebbles and the SA on their own authority, and I regretted it deeply at the time, and I considered it a pity for out people; and at the time I did not think that such measures would ever be taken as finally were taken.

Q.- Well, did you consider it a pity when a couple of days later a fine of one billion marks was levied on the Jewish people in Germany, who had nothing to do with the killing in Paris. Did you regard that with pity and sympathy?

A.- I don't know anything about this. You justmentioned a killing of Jews in Paris. This is the first time I hear about this.

Q.- Well, now, you know that because of an incident in Paris a fine of one billion marks was levied on the Jewish people in Germany... You know that, of course.

A.- I believe it was more, your Honor. I considered this measure also wrong.

Q.- Yes. Well, then, when you say these wrong things happened, why didn't you do something to withdraw from the organization which was doing these wrong things?

A.- Your Honor, the organization to which I belonged did not do it. But we objected to it. And if the SD reports existed now, they would prove this. I just said I considered it my task in the SD to tell the Leadership how the people thought about these things, and through my report I thought I would be able to stop such things in the future.

Q.- Witness, it was the Reich government which levied this fine, and you were part of the Reich government.

A.- If I remember correctly, Hermann Goering levied this money... I don't know on what authority, your Honor.

Q.- Well, it was collected, and it went to the benefit of the Reich Government, of which you were a part.

A.- I presume so, that it was for the benefit of the Reich government - but I was not part of the Reich government, your Honor.

Q.- You weren't part of the Reich Government?

A.- No, I could not say that, your Honor. By Reich government I mean the Ministers -- that was the Reich government.

Q.- Is it your idea that the government is made up only of Ministers? Is that your idea of the government?

A.- NO, but, your Honor, perhaps we misunderstand each other here. We in Germany mean by Reich government only the Reich ministers, That is the Reich Government.

Q.- Well, then, we will use the generic term of the Reich..... you were part of the Reich weren't you?

A.- I was an official of the Reich, yes.

Q.- Yes. So to that extent you were interested in what the government was doing?

A.- Yes, I had to carry out the laws of the government as a civil servant. That was my duty.

Q.- Yes, Well..... therefore, you were part of an organization which was doing these things which you condemned, weren't you?

A.- Your Honor, I can only repeat -- the events of 9 November was a measure by Goebbles and the SA only, and not by the Reich government. As far as I remember, Adolf Hitler himself was disgusted about this measure. That is what we were told at the time. I believe I was already in Munich when Himmler talked to Adolf Hitler at the time.

Q.- And do you now give us the striking information that Hitler repudiated these excesses against the Jews?

A.- Your Honor, I can only say what we were told. I never heard Hitler's personal opinion about this.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine-thirty.

(The Tribunal recessed until 0930 hours, 2 December 1947.)

of America, against Otto Ohlendorf, et al., A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. STUEBINGER: Stuebinger for Braune. but, on the other hand, I should like to come back to the document which was submitted by the prosecution. The Prosecution expressed the wish to refer to this document in the rebuttal and to use it for that purpose. I would like to ask your Honor to tell me whether we have the same right, that is, to come back to this document on a later occasion? Otherwise, I have only one question to put to the witness for the following reason: The sergeant who signed this report behaved in a manner, which certainly is of very great importance for the probative value of this report, and the witness might be able to inform us if the Tribunal deems it necessary.

THE PRESIDENT: The document is not yet in evidence. It has not even been offered. When it is presented, if it is presented, you will make your objection to its introduction as an exhibit and the court will then decide whether it should be accepted. If it is not accepted, then, of course, it will be unnecessary for you to make any comment on it at all or to inquire into how it was made up. If it is accepted, full opportunity will be given to you to recall the defendant and question him about it in any way and to any extent that you deem in order.

DR. STUEBINGER: Yes, your Honor. I only want to direct your attention to the fact today that for the case of the submission of this document this sergeant must be heard as a witness here, because a personal questioning will probably be necessary in this case, as far as I know,

THE PRESIDENT: You have now indicated your position and the transcript will show it. We only add that in the event this document is presented that full opportunity will be allowed you to question or attack it in any way by questioning, by calling witnesses, or in any way that a document is attacked.

DR. STUEBINGER: Also in this form that I can call this witness who made out this report.

THE PRESIDENT: I did say that, by calling witnesses.

DR. STUEBINGER: Thank you, yes.

THE PRESIDENT: Yes. BY THE PRESIDENT:

Q.- Witness, I am not certain whether I understood an answer which you made yesterday, and I will call your attention to the way it appears before me and indicate whether this is what you said. "We faced a situation," this refers to Christmas Day in the Crimea, "which put us before the question whether we would have to take our own lives in the coming days or whether we would fall into the hands of the Russians." Were you correctly reported?

A.- Your Honor, I wanted to express the following: The military situation was such, so serious and so hopeless and it was also even seen by the Commander of the Army to be thus, that each individual of us had to be prepared to be conquered by the Russians, and I only wanted to say that I would have been put before the question either to fall into the hands of the Russians, but I think if we had the strength to do so, we would have preferred to commit suicide. That is what I wanted to express, your Honor.

Q.- Very well, that clears it up. Just one more question. You accepted the National-Socialist ideology sincerely and with full faith, did you?

A.- Yes, at the time when I joined the movement I did, yes.

Q.- And did you still retain faith in that ideology throughout your service?

A.- Your Honor, as I saw it then, and as I understood it at the time, stantially.

On the other hand, I think I have expressed that even when did not agree with some individual details.

I, therefore expressed my Q.- But you accepted the National-Socialist ideology, did you not, and accepted it with enthusiasm?

A.- Yes, I accepted it, your Honor, but I may say quite openly it wasn't that one moved on absolute certain grounds.

We had the possibility Q.- But as far as dealing with your comrades was concerned and with Socialist Party?

A.- I spoke to Ohlendorf on many occasions during these years, and But I think it was expressed in the direct examination of Ohlendorf how he saw a number of things, and I can't express it in a better way than Q.- Yours superiors looked upon you as one who accepted the National Socialist ideology?

A.- Your Honor, I could not talk to them about it. I never heard immediate superior, then, of course, this is correct, and as based on a number of critical and worried reports, The opinion that Heydrich thought that I was one of these men who accepted practically everything without criticism, I dare to doubt, your Honor.

Q.- Well, in addition to what Ohlendorf thought, your own personal record showed that you were one who could be depended upon in the acting out of the ideology of the National Socialist Party, is that correct?

A.- Yes, that is correct, as I already said, however, with the limitation that those who expressed this did not mean the same perhaps, by the ideology, as what I meant.

Q.- Well, the ideology was not subject to much doubt. It was expressed in speeches of the Fuehrer, and it appeared in the National Socialist Party rpogram. There wasn't much doubt about what the ideology of the National Socialist Partly was, was there?

A.- I think, that also was expressed by Ohlendorf. That wasone of our worries; that the ideology did not express the last clarities which it should have done. That was one of our worries, your Honor, that after 1933 the idea was not strengthened and clarified, but that one moved very much on the outside, that one was so much influenced by propaganda. That was one of our worries, your Honor.

Q.- But no one could have doubted that the National-Socialist Party looked upon members of the Jewish race as enemies of the Reich?

A. Your Honor, enemy of the Reich may be said too much perhaps. I may say openly, I myself held the point of view, that is after 1933, that it was necessary to modify the tremendous influence that Jewry held in Germany after 1918 and to bring it back to a healthy status. I thought of a numerus clausus which would have caused that in relation to the percertages of Jews in the German population they should take part in the public life of the people. I think it my duty that I should express this at this point too. But apart from this, your Honor, we never thought of a 9th of November, 1938, nor did we think of what happened eventually, and I may assure you again that even when war broke out, and even in 1941, I never knew and we would never have believed that it would come to this development.

Q. Well, you said that you knew that the Jews were the most active of the Communists, and certainly the Reich had declared war on Communism.

A. Your Honor, one cannot say this for Germany; one could not have said that the German.......

Q. I don't mean to declare war in the official sense, but the entire policy of the National Socialist Party was to fight Communism in every form.

A. Yes, certainly to fight Communism, because we thought that was a great danger, not only for our people but for the whole of Europe.

Q. Yes. Then you said that the Jews were the most active of Communists.

A. I would like to clarify this, your Honor, I spoke of the Eastern J ews which we met there. I do not want to say this for Jewry in Germany. I would like to make this very clear distinction there.

Q. Then the Jews in Eastern Europe were the most active of the Communists, is that right

A: Your Honor, they were described that way to us in the Fuehrer Order, that is as an acute danger, and I have expressed that what we experienced there......

Q. But you said.....

A. Had to confirm this attitude according to what it said in this order.

Q. But you said, Witness, that you were of the opinion at the time that they were the most active of the Communists and therefore constituted a great danger, and then you said you were of that same opinion today.

A. That is how I found it confirmed in Russia, your Honor, after what I found out there.

Q. Yes.

A. I described the Crimea.

Q. Yes, all right. So that when you got this order from the High Command to get the Jews into their graves by Christmas you more or less approved of the principle that the Jews had to be eliminated because they were active enemies there in the Crimes against the security of the Reich?

A. No, your Honor, I would not like you to draw this conclusion. I said in my direct examination if it had been up to my decision I would not have decided in this manner because of the tremendous consequences of such a measure and the tremendous consequence in fact which they had, but I was confronted with an order within the whole event of the war and had to comply with it.

Q. But you did not, in the compliance with that order, attempt to salve your conscience by releasing one single individual human creature of the Jewish race, man, woman or child?

A. Your Honor, I have already said that I did not search for children. I can only say the truth. There were no exceptions, and I did not see any possibility.

Q. All right. Now, just one final question, and in this respect I am just as bad as defense counsel when they say only one question and then ask about ten, in the matter of the execution, witness, you stated in your affidavit that the executees were placed in such a position that they did not face the grave and they were shot from the rear. Do I understand, in reconstructing that scene, that the executors had to fire over the open grave?

A. Yes, your Honor.

THE PRESIDENT: Yes. The only reason I put that question is that it had been described to us differently in other executions, and I presume that different methods were used in the performance of that unpleasant function. Very well. The witness will now be returned to the defendants' dock.

(Witness excused)

THE PRESIDENT: Is Dr. Riediger present and ready to proceed? Yes, all right, and Defendant Haensch will be taken to the witness box.

WALTER HAENSCH: A witness, took the stand and testified as follows:

JUDGE SPEIGHT: Raise your right hand and repeat after me: will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

JUDGE SPEIGHT: You may be seated.

DR. RIEDIGER: Your Honor, may I take the liberty, before the direct examination of the defendant, to point out that the evidence will take place so that after the examination I shall call the female witness Schreier to the witness stand.

THE PRESIDENT: That is, after the examination and cross examination of the defendant?

DR. RIEDIGER: Yes, yes, after the cross examination.

THE PRESIDENT: Very well, you may proceed. BY DR. RIEDIGER:

Q Dr. Haensch, will you give the Tribunal the place of your birth and birthdate? small hamlet between Goerlitz and Zittau on the Neisse River.

Q What did your parents do?

A My father was a physician. He practiced in Hirschfelde. He had a most extensive rural practice and he held this practice over fifty years until shortly before his death in February, 1945.

Q What was your education? wards a secondary school, the gymnasium, (classical education). I remained in my parents' home while I received my education. My own and my sister's education was

Christian. The profession of my father as a physician carried with it that we met all classes and circles of the population and that we were in close contact with these. Thus, we children, from the very first beginning, were brought up, therefore, in an atmosphere in which we met human beings as human beings, and we learned to estimate their values not regarding what they achieved in their further life and what distinguished them from each other in further life, be it political opinions, religious beliefs or profession or class. up give you a certain impression which was of importance for your further development and your further profession? economic structure of my native village, until the end of the first World War, approximately until 1947, was merely agricultural.

From 1917 this changed especially owing to the very rich coal fields in the neighborhood. A very powerful industry developed. As a consequence of this, the population which up to that moment had been mainly agricultural and rural. now became industrial workers; they now became the majority. Several thousand foreign workers, by that I mean not inhabitants of the village -- I mean from other villages -- and also many officials from other districts came to Hirschfelde and changed the whole character of my native village completely. form. They became more and more evident. At that time, when I was a small boy, being well acquainted with the inhabitants of my village, as I have already said, and having close contacts with these inhabitants, I became very interested in these administrative authorities which, of course, I saw with the eyes of youth. I think that already at that time the psychological basis in myself was so that later on I should become more and more eager to work in administration, but this only took shape later on when I studied and when I received my professional training.

Q You therefore studied law and political science. When and where did you study? science in the University in Leipzig. There, in 1930, I passed my first legal examination.

Q Where did you receive you practical training? the time, working in several law courts, local courts, district courts, courts of appeal, as well as in my own practice as a lawyer.

Q When did you pass your state examination? examination.

you joined the NSDAP, did you not? What were your reasons, at the time, for joining the NSDAP? development. In my home politics were not discussed. My father was only interested in his work. The first initiative to be interested in political problems I received through the special conditions which I have already explained, the conditions in my native village. I have already said that the people of my environment at the time were very close to me. I was in contact with them through the children of my own age in elementary school. I knew their parents and their brothers and sisters, and I was in close daily contact with them. Through the increasing industrialization of my native village and the district, the social structure of this district also changed. This had, as its consequence, that from now on even political differences were brought up which until that moment had never appeared. They developed now so fast that they influenced public life most severely, and they led more and more towards terrific tensions. These events impressed me very deeply. I might almost say that at the time they shook me very deeply. Political propaganda influenced public life and it caused enmities among people who were very close to me, even touching individual families.

May I just finish this? I may say in order to illustrate what I have just said, I myself saw at the time that playmates of mine suddenly, without any evident reason, parted from my sister and myself and withdraw. The actual reason was nothing but this: their parents not wanting to be suspected of having given away the unity front of the proletariat and did not want their children to play with other children of other classes, of middle class parents. But this wonderful thing I remember, that most of these children and their parents, after a short while, put down their reticence and their reserve and parents again quite openly took up contact again with my father who had always been in such close contact with the population itself and discussed matters with him as they actually were.

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district at the time of the November Revolution in 1948 and the following years? agitators the industrial population disintegrated. I would almost rather say, the industrial workers disintegrated into a kind of intoxication. The class struggle of the proletariat, the dictatorship of the proletariat, the elimination of the bougeois or middle class, and all these slogans influenced the working population very much. Meetings, propaganda speeches, mass demonstrations took place in turn and created a psychoses which did away with all inhibitions. I myself experienced at the time that citizens were taken from their apartments and ill-treated. I myself saw the general director of the large power plant of Hirschfelde was ill-treated and wounded and thrown into the Neisse River. Of the other accesses and acts against the property I do not want to speak of now. I myself at the suggestion of third persons, as a boy had to warn people who were in danger in order to save them from an such terror acts or ill treatment by incited elements with which they were threatened. I am thinking in particular case of the owner of a factory, and the came of a farmer, and the case of a dentist. I believe very few boys have had such a vivid political lesson concerning the consequence of Communist activities. Nobody has ever learned as much about it as we did when we were children. riots under Communist leader Hoelz?

A Yes. Hoelz himself was never in Hirschfelde himself but the wave of his terror acts influenced also my own home district which was a very favorable ground for this slogan activities. Currently events took place of tremendous extensions during this time, happenings of the kind I have already described but they were also regular organized riots of large extensions of a proper insurgent character.

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Hirschfelde was occupied by the Army for more than a year and a quarter in order to be able to master all the riots and unrest that took place. Explosions of railroad installations were the order of the day in order to prevent the military from occupying the village. The bricket factory of the coal plants was also blown up. This is only an example of conditions prevailing at the time. Conditions were such that no citizen was safe. I think the work "buergerlicher" does not quite give the right meaning. What I actually mean is a citizen who likes order and place. The Bolshivist or Communist did not shrink from attacking member of Marxist parties. I myself saw, in my own home country and the twon where I visited high school, that formations of Marxist state and members of the Social Democratic Party were ill treated and in two cases were actually murdered. at the time? youth. I have also said that this considerably shook me psychologically. I could not imagine this hatred with which individual fought individual.

Party political ideas I did not have at the time. On the contrary the Parties, or at least as I saw them at the time and as they actually were, fought each other and tried to tear each other down without any recognizable positive program. At least, as a boy sees it who loves his native country, his parents, and a native village and who looks upon everything with idealism or at least who wants to look at it with idealism.

Q Did you at that time begin to become active politically? always meant a lot to me.

THE PRESIDENT: Dr. Riadiger, what year as this and how old was the witness at the time?

is, 1920 to 1922.

THE PRESIDENT: And how old were you?

THE PRESIDENT: Well, let us move along because that was an adolescent age and let us learn what you thought as an adult. BY DR. RIEDIGER: following years? it was 1922, I joined the Jung Deutsche Orden. The causes for this were that the Jung Deutsche Orden, Young German Youth Group, was not based on any Party and was a collective movement or at least, it promised to be such, and in this movement I saw the possibility to form a bond from human being to human being. However, I left the Jung Deutsche Orden again in 1923, perhaps the beginning of 1924. At that time almost our whole local group left because the leader of this organization, Maraun, seemed to deviate from the original idea and tried to afiliate this movement to a political Party.

studies, or what did you experience politically? on the one hand, and on the other hand, I saw the strong contrast, I became acquainted with the craving for extreme luxury and moral baseness, especially, I got to know it's large extant, the consequences of communist extreme propaganda. I currently saw demonstrations or at least it was demonstrated to me what an extreme danger Bolshevism had become. I may point out perhaps this one thing. On an Easter Sunday, it must have been in 1929 or 1928, I witnessed the invader of a police officer. It was Police Captain Galls, I was close to the spot where it happened. Augustus Square in Leipzig, I was only a few steps away from the spot. It became known that Galle himself was a Marxist, and in spite of this, the Communists by the incited mob trampled him to death and played football with the pieces of his uniform. examination just before you joined the NSDAP? saw the same thing. Plauen had been very peaceful and a flourishing industrial town, but at the time the workers were unemployed and as a consequence of this a strong communist element was prevailing. So was the case in many other places. This was the time when 32 political parties confronted each other and seven million unemployed workers ran around idle.

Q When did you join the NSDAP?

A During those years I joined the NSDAP__that was in 1931. As I have already said, that was a well-considered step which I took. During the time of my studies, during the time of my referendar, I saw that the general misery affected now even such people who had been reasonable and careful up to that moment.

2 Dec 1947_M_MSD_5_2_Spears (Hilde) BY THE PRESIDENT: step on your part. Had you read the platform of the national socialist party before you joined?

A No, Your Honor. During that time then when I had recognized communism had become an immediae danger and when it was a certainty for me that there was only one decision on could take either to become a communist oneself or to oppose this movement which, according to my experience, could only mean chaos. stood for and you chose that against communism?

Q Well, had you read "Mein Kampf"?

A I had not read "Mein Kampf" before. I read "Mein Kampf later on in the year 1932.

Q Well, when you read "Mein Kampf" in 1932, you were already a member of national socialist party? party?

PRESIDENT: Very well. Proceed. BY DR. RIEDIGER:

Q Did you held any office or function within the party? at any time. My short activity in the places of my legal training meant that I could not accept such offices. But in spite of this I expressed openly my political conviction. I advocated for it and I propaganda for it. I have already said, my joining the NSDAP was not the result of a momentary decision but a decision which I had well-considered before, a step which I had taken and a 2 Dec 1947_M_MSD_5_3_Spears (Hilde.)

step which was based on my experiences and the happenings that I had seen. From 1936 I belonged to the local group, Braunes Haus, Brown House, in Munich. So from that time onwards, I had no personal or actual organizational connection with the political organizations of the party. was being issued after a service of five or ten years? training, after you had passed your state examination, what did you do--after you passed this state examination? the General Interior State Administration, but at the time conditions were such that a great number of people applied so that one only was put down on a waiting list, and this happened in my case. In order to make use of the time until my employment in the Interior State Administration and to use it in my further task, I applied for a job of counsel assessor in the municial administration in Doebeln.

Q How long were you employed there?

A I got this job and I started in February 1935. In this position I remained from July '35. Originally I had not had the intention to remain in this position permanently or to regard it as a permanent position, therefore, the contract said that within one year I would be able to decide to leave this job if I felt so inclined or if I had the possibility to enter a State Administration career. On the other hand, however, I was told that after one year I might be able to apply for the vice mayor office of this town. My activity in Doebeln was ended after a very short time, that is, in July 1936, caused by events which were of decisive importance for my future professional development.

As I have already said in my curriculum vitae, they were of decisive importance in a negative sort of way == in a negative sort of way, because for years ahead they hindered my further professional training.

Q.- Of what nature were these happenings?

A.- Shortly after I had started my service in Doebeln, a dispute started between Dr. Dennicke, the mayor, and the local party, the Kreisleiter, district leader, Baer. It was a very severe dispute which took very serious shape eventually. This dispute was about the basis clarification of administrative function, even of institutional questions, The subject of the debate was the following, how much authority the Kreisheiter was entitled to, was he authorized and justified to deal with municipal activities and to use his authority in such sphere. The district leader had taken over authority or at least he tried to do so, which was not in compliance with clean and orderly administration. There were also personal reasons, a sort of craving for power which he had and intrigues and attacks on the mayor were in the order of the day.

Q.- What was your attitude in this dispute?

A.- For me, as lawyer, as an official, a municipal official who could look into the files it was not difficult to find out about the facts of the ease and the real background of the dispute and to recognize these reasons. It was equally clear to me that municipalities can only be administered properly according to actual constitution if such power acts on the part of the party authorities would be prevented in the future. Therefore, I took sides with the mayor and the town administration... of course I took up their side. The mayor fought because of its basic importance, and he fought to the last consequences, and took the matter up to the highest authorities asking for his right, to be iven the authority for the municipal administration. I myself was of the opinion at the time that just then at that time when such disputes were comparatively new, a basic clarification would have to be brought about. The Kreisleiter, district leader, tried with all means at his disposal to change my mind and he went rather far.

all his attempts rejected quite consciously. During the course of this dispute, I think it was Berlin the mayor contacted authorities of the SS, and one day he asked me whether I would not be prepared, with help of the file material, to write report, a factual report about the true conditions- to write such a report in fact for the SS. He had been asked for such a report by the SS authorities. Dr. Dennicke thought it would be a good idea if I would make out such a report as a comparatively new man in the municipal administration.

THE PRESIDENT: Dr. Riediger, do you think it is necessary to go into such painstaking detail on this episode?

Dr. RIEDIGER: your Honor, if I may take liberty to point out, this dispute, and the witness will come to that immediately, with the reasons for his taking over a job in the SD. Because of this report the defendant first contacted the SS, that is, the SD and, therefore, I think it is significant,and it will show the conditions as they were.

THE PRESIDENT: well,I think that is entirely in order. I would suggest however, that when you start into the woods you would tell us just what point you are aiming at because otherwise we are wondering just what is going to happen.

DR. RIEDIGER: Yes.

THE PRESIDENT: Very well. By DR. RIEDIGER:

Q.- What use did this report find which you made out?

A.- I may perhaps add one thing. Until that moment I personally had no connections or relation to the SS. At the time I was the in the NSKK or at least the NSKK had been formed from the motorized SA.

THE PRESIDENT: Well, what is the NSKK? That is a part of the woods that I am not familiar with.

DR. RIEDIGER: That is the National Socialist motorized corps of the party.

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It included all civilian owners of cars and drivers, It was a formation of the party and does play a great part here.

THE PRESIDENT: Very well.

THE WITNESS: The report, through an indiscretion of a secretary was put into the hand of the Kreisleiter, the district leader, and the result of this was that I was released from the municipal administration, caused by the Kreisleiter, and that by a decree of the Kreisleiter I would be excluded from the party, This exclusion from the party was confirmed by the district leader, the gauleiter and, therefore, I was unemployed at the time. At that time it was not possible or at least it would not have been possible for me to get any job as an excluded party member. BY DR. RIEDIGER:

Q.- What did you do when were confronted with this exclusion?

A.- I appealed and I wanted to put the whole matter before the party court. But here again I was confronted with difficulties because one did not want recognize my right to appeal, and at that time an SS man arrived who again bold me what Dr. Dennicke, the mayor, had already told me, namely, that the SS was that authority who dealt with the cleanliness and the order of state and party and had to supervise this. Therefore, they had created their own organization which was still in the development stage and this organization was the SD. In order to deal with this supervisory task, this organization collected reports concerning such happenings as for instance had taken place in Doebeln. In order to see and prevent bad conditions. This was the first time that I heard about the SD and its existence.

THE PRESIDENT: Dr. Riediger, now that we have arrived at the SD, we have come out of the woods and before we plunge into another forest, suppose we have our recess of 15 minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session, DR. LINCK (Attorney for the Defendant Ruehl); Dr. President, would you please excuse my client from attendance this afternoon so that he can continue to prepare his own defense?

THE PRESIDENT: I didn't catch the name of the defendant.

DR. LINCK: Ruehl, Felix Ruehl.

THE PRESIDENT: Oh, yes, yes. The Defendant Ruehl will be excused from attendance in court this afternoon in accordance with the request of his attorney.

DR. LINCK: Thank you very much, Your Honor.

THE PRESIDENT: Very well

DR. HOFFMANN (Attorney for the Defendant Nosske): I have the same request to make for this afternoon for the defendant Nosske.

THE PRESIDENT: And the some ruling will be made,

DR. KOESSL ( Attorney for the Defendant Ott): May it please the Tribunal, the mother of the Defendant Ott has died very suddenly and I therefore wish to ask you to afford the Defendant Ott on opportunity to attend the funeral of his mother which will take place in Augsburg this afternoon. If the Tribunal would be kind enough to allow the defendant to leave the court room immediately, and would five him an opportunity to be taken to Augsburg immediately, he would still be able to attend the funeral there this afternoon.

THE PRESIDENT: Dr. Koessl, the Court has already been informed of the misfortune in Defendant Ott's family and we have already made the necessary arrangements. The Military Commander of the District has been informed and transportation and the necessary military guard will be supplied. The Defendant Ott will now be excused from attendance in court for the remainder of the day so that he may be taken to Augsburg to attend his mother's funeral and then will be returned in due course to Nurnberg.

DR. KOESSL: Thank you very much indeed, Your Honor.

Dr. RIEDIGER (Attorney for the Defendant Haensch) May I continue?

THE PRESIDENT: Please do. BY DR. RIEDIGER:

Q.- Dr. Haensch, how was it that you became an employee of the SD?

A.- As I have already stated, to begin with, I had no opportunity to find a job any where. I had no means of my own and I did not wish, nor was I able, to live with my parents. I tried everywhere to get a job and I always failed. into such a situation, made me an offer. It offered me to join the SD Oberabschnitt in Chemnitz which was at the time being organized and there I was to be placed in charge of legal affairs. intelligence. I had nothing to do with that, nor was I expected to do so. I would not have agreed to undertake any such functions for the reasons that I was always interested in obtaining a position in the Government administration and I continued to adhere to that aim of mine. I refused a full time position in professional Party Work, as such and I had already refused it. For example, after I had taken my examination as an assessor I had had an offer to work for the German Labor Front as a lawyer and that offer I had refused. At a later time I refused a similar offer to take a position, a full time position, in the Party. It was in 1940 when I refused that offer. August, 1935, I joined the Chemnitz office as a civilian employee. To bein with, I nothing but a civilian employee and this was considered only a transitional solution by me and I was given assurance that at any time I could leave again as soon as an opportunity arose for me to change over into the career of these aims.

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2. The proceedings to exclude you from the party had in the meantime come to an end, and what was the result?

A. No, the proceedings excluding me from the party -I want to say, the decision about the exclusion from the party -was in effect for more than a year -- a year and three months, in fact; -- naturally, I wanted to let justice. I was at that time convinced, and I am convinced now, that I had merely intended to serve a good cause, and that I had served for the cause of purity; therefore, I faught, and I was more or less on my own, fighting out this case, and I took it as far as the highest party court, that in to say, the Supreme Reich Court when, in August 1935, I joined the SD I was thrown out of the Party. The Supreme Reich Party Court in the late summer of 1936 revoked the decision to exclude me from the Party - that is to say, a decision to revoke was not made, but the Reich Party Court referred the matter back to the Gau Party Court, saying that the report had been made by the Supreme party Court and that all pre-conditions to exclude me from the party were looking. Now, the Gau Party Court was being asked to re-examine the matter. All the same, the Gau Party Court - apparently on the instigation of the Gauleiter, punished me. The decision to exclude me from the party was revoked, but I was punished... that is to say, I was reprimanded. There were two kinds of reprimands. -- I don't know which kind it was... any way, it was the more serous reprimand, and that reprimand was unto--d in the Party Court. Furthermore, the Gauleiter, on his own initiative, made a ruling which was grotesque even at that time. He ruled that I was to be prohibited, for three years, from taking employment in Party work.

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Q. In the meantime you have received these documents from another quarter?

A. At that time, in 1935, the Gauleiter had actually

Q. That judgment by the Gau Party Court, did it exercise any influence on your future career?

A. Yes, it did, inasmuch as - to begin with - I did Internal Administration.

In that connection I had a talk upon me by the Party was uphold.

Therefore, I was advised I was advised to let a certain amount of time elapse.

I hopeless.

Therefore, for the time being I remained as a legal adviser with the oberabschnitt at Chemnitz.

On the 1st of May 1936 I joined the SS formation of the SD.

There formality.

I did not have to submit any particular documents submit curriculum vitae.

On the 1st of November... just a second - just a second.

.. 1936... In 1936 I came to the SD Main Office; I was transferred there again as a legal expert.

time. That, again, was the predecessor of the later Department COURT II CASE IX One of the RSHA.

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Q. Were you satisfied with the work you did in that office?

A. No, that work did not only not satisfy me - but at the RSHA and at the SD Main Office I never felt happy or at home. As I saw it, this was a different world, and according to my inner inclination as such, and according to my inner professional inclinations, I did not fit into that world. I was removed from the work of the other offices - I was isolated from it. I must say I was not interested in their work, either, and therefore I had no contact with them. I suffered greatly form the fact that my own professional plans had come to naught. I suffered from the continued obstacles which had been placed in the way of the career in the Administration service which I had planned for myself, I wanted to work in some administrative agency which was close to life and close to the people in order to now work in according with my inner inclinations. Again and again that opportunity was denied to me. Also, there were personal disappointments in the human field. As I have pointed out here, I tried again and again to leave that work.

Q. Did you take any serious steps before the war, or during the war, to leave that work?

A Yes, I made continuous attempts to get out. I think I can say I started to make such attempts from the day I was transferred to Berlin, until the end.

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BY THE PRESIDENT:

Q When was the day that you were transferred to Berlin? 1936, your Honor. I cannot tell you at the moment whether it was the 1st of December or the 1st of November 1936.

Q Let's suppose it was December 1st, - taking the latest date 1936. why couldn't you have left on December 2, 1936?

A Mr. President, that was connected with the proceedings against me, which had been instituted by the Party Court. I have already testified that immediately after the decision to exclude me from the Party had been revoked - and that happened in the late summer of 1936 - immediately at that time I went to see my superior - I went to Berlin.

Q Well, now, just a second... We are going into those woods again. Now, you have this job, and you are very dissatisfied with the job - you are very unhappy. It is not your world, and all your great hopes have crashed at your feet. Now... why can't you leave? position which would have been in accordance with my professional inclinations, that is, to join the Administrative service. I had planned to enter a career in the government Administration, and that had become impossible. found this world better than any other world that you could migrate to... is that right?

A No, your Honor, I don't understand that.

Q All right. You are working in the SD... is that right... in December 1936?

Q Right. And you are very dissatisfied... is that right?

have turned to ashes... is that right?

Q Right. Well... why didn't you leave... this world which is so cold and bleak... namely, the SD?

A Mr. President, I believe there is a misunderstanding. I could not leave.

Q Why -- Now tell me why you couldn't leave. That is what I want to know! would have been in accordance with the aim I had set for myself.

Q Yes... yes... so you were not bound to this job in any way-officially or physically, you were free to leave if you chose to leave, weren't you? a job, or an opportunity, for me to transfer to the Administrative career offered itself, no difficulties would be put in my way. That is what I had been told.

Q Well, you weren't under any military orders which prevented you from leaving, were you? Were you?

A Mr. President, I believe-

Q Well, answer that question!

A It wasn't as if I could have left that job -- as if I could have run away form it just any old day. notice that you were dissatisfied and unhappy in this work, and that you desired to leave, and on a certain day take your hat and walk out. was there anything which prevented you form during that?

A No... that isn't how it was. No... that wasn't how it was! I couldn't have left just any day.

Q Why couldn't you leave? Why couldn't you leave? Now, please answer that question. Why couldn't you leave, since you were so unhappy there? Did your bosssay that you couldn't leave?

A No; this is how it was... Immediately after the decision to exclude me from the Party had been revoked I asked, and I made efforts, to find out whether the way was open for me now to enter the Administrative career. I was told that there was a little hope -- in fact, I was told that there was no hope. I was told to put these wishes aside until the penalty and so forth had been wiped out. Therefore, I remained in my work at the RSHA.

Q Ware you under military orders at the RSHA in 1936 and 1937?

A Well, if I may put it this way... well, of course, I couldn't simply leave... I couldn't leave the RSHA any old day; for that, I had to receive that approval of the chief of the RSHA.

Q Did you make a request for the approval to leave?

A I submitted several applications... I made several requests, but at that time, in 1936, at the very beginning, I did not submit a further request, but it was barbed at the stage of the preliminary discussions which I had with the head of the Central Department One - at that time Oberfuehrer Brigadefuehrer Albert - who indicated to me that at this moment there was no point in making further application.

Q Were you under military orders in the RSHA in 1936 and 1937? longed to the SS formation SD, and that without the approval or the consent of the chief of the formation or of the chief of my agency I could not leave the Service. superior, and he told you that there was no point in making your request then Did you make a request later, when there would be a point in making it? years later. That was when my penalty was wiped out. At that time I made a regular application, and I was then transferred to the Internal Administration. That application was made, as far as I remember, either at the beginning of 1939 or at the end of 1938.

THE PRESIDENT: Dr. Riediger, I am getting lost myself in the woods. So you better take the witness. BY DR. RIEDIGER:

Q Dr. Haensch, after the outbreak of war, did you make any attempts to get to the front, if possible, and thus to get out of the RSHA?

A What happened was that we had the wish... most of us had the wish... at the outbreak of war, to do our duty to our Fatherland; and, just as a friend of mine named Krueger - I told my superiors that I had that wish. It was cut of the question for that wish to be fulfilled. And the chief of the office at that time - Best, as well as Heydrich both, with great determination, refused all such applications. All of us were given an endorsement in our Army pass in 1939, to the effect that in the event of war the chief of the Security police and the SD would be our superior, we would be subordinate to him, and we would have to obey his orders. Heydrich, -- and I know that because I was an expert on disciplinary matters -- went as far as instituting disciplinary proceedings, or rather, threatened to institute disciplinary proceedings against officials or employees of the Security Police and the SD if they approached him with such request. He demanded that from the point of view of total war, everybody was to remain at the post at which he had been placed. of a leader of an Einsatz squad? kommando. of the Einsatzkommando 4-b, or rather, that you were intended to be given that position... and how did you hear it? middle of January 1942, that I heard of it. I remember that exactly because in November or December my mother was dangerously ill. At that Court No. II, Case No. IX.

time, and in the first days of January, I went to see her and I stayed with her for about a fortnight in Hirschfelde. When I came back from my visit to her, the chief of office -- it was Streckenbach at that time -told me over the telephone that I had been appointed leader of a special kommando in the East.

Q Was that in accordance with your own wish?

A No, it was not; and, above, all, it was not in accordance with my wish at that particular moment. At that time I had again been making special efforts to leave my work. BY THE PRESIDENT:

Q Did you ever get a job which pleased you. Every job you mentioned so far made you very unhappy. Now, you joined the NSDAP, quite willingly, enthusiastically - you wanted to serve this ideology... yet every job you got made you unhappy. Now, can you tell us one job you got because of your association with the NSDAP which left you tranquil, and at peace with your mind, and with the world?

A Mr. President, I never obtained any position in connection with my membership in the NSDAP.

Q Well, did you ever have any job in your life... let us make it broad... did you ever have any job which you liked? Now, tell us that!

Q Now, what job was that? the administrative work I did in Doebeln; and I was particularly satisfied -and in spite of the serious situation, I was happy in the position which later on I obtained in the Administration with the Reich Delegation in Denmark. And that, too, was purely administrative-

Q Give us the year. Now, in Doebeln, when were you there?

Q For how long?

Q All right. And then when were you in Denmark?

Q How long? in 1935, and two years, from 1943 to 1945, that you were happy with your work?

A Yes. Yes.

THE PRESIDENT: All right. Proceed, Dr. Riediger.

BY DR. REIDIGER: you take. and what did you know at the time about functions of the Einsatzkommandos? of the Security Police and of the SD, and sofar as I know the military units were with the troops in the East. As for details about their functions and their task, I know nothing of those. did you know of those during the time that you were working for the RSHA?

A No, I didn't. Those reports on the events, and those reports from the Last I didn't know; as I gather from the documents here the various and sections of this one didn't receive of those reports. of the Einsatzgruppen? that I was to be sent to a commando in the East, I immediately asked him to see me and talk to me. Once again I must mention briefly that at the time the order to go to the East was in no way opportune, for achieve to be requested by another unit to go to the front, as I had come to realize that that was an opportunity for getting out of the RSHA. The only possibility, in fact, was if another agency asked for me which was strong enough to support such a request.

At that time, I think in December 1941, among other things, I could on my colleague Six, and asked him to let me know as such as he heard of anything to the effect that some other agency needed an administrative official. in the same way friends of mine were making attempts through other means to help me to find a way of getting out of the RSHA.

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To clarify this point as to why I was not feeling happy, and as to why I think I could not have felt happy in my work, perhaps I may make the following statement: I believe every referendar works as and official and defense counsel had more freedom or actions; more freedom matters of the RSHA was that of power-investigating activities, I had no authority to make any decisions. Streckenbach, and I am now asking you what he told you about the work that you would have to do with the special commando.

Now what was it that Streckenbach told you? and it was to protect fighting troops in the front area, and the word Streckenbach said that the commando was part of the Army. He said that I myself would always have to have my headquaters at a place where the Army had its headquarters. The work of a commando as such, so he told me, was based on decrees and orders received from the Army to the Einsatzgruppe. He told me that those orders had to be obeyed, and that I was to see to it that those orders were obeyed. As such orders were a novel to me, I asked Streckenbach in the course of our talk for further information. Above all, I asked him whether he wanted of our talk for further information.

Above all, I asked him whether he wanted me to take this position as a permanent position. I had a vague person pointed out, told me about the dangerous elements which threatened the German troops in the Last from the Partisans. He said it was the task of the kommando to deal with such saboteurs, and obstructionists to contact activities.

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Streckenbach pointed out to me that the executive work of the kommando was in the hands of experts, that is to say, experts trained of the men of the Gestapo and of the Crinimal Police. At the express instructions of Heydrich he drew attention to the fact that I was to stay in the East for a short time, and at the upmost three months. That therefore I was to leave things as they had been, and that I was to handle them as they had been handled up to then. Strechenbach also drew my attention to the fact that in particular, in case of executive decisions I was to rely on the investigations of the experts who had the necessary experience in the Last. In connection with my work against the saboteurs and obstructionists, formal court proceedings such as we were accustomed to carrying out in the Homeland, in the police courts, or another courts, didn't exist in the East, but that a decree by the highest neutral authority, that is, by the OKA, that by that decree matters in the East had been settled in a different way; that the chiefs or chief of the executive department or kommandos and the Armies proceed in accordance with these decrees, or, rather the decrees by the highest political authorities. Sofar as I recall that is what Streckenbach told me when I had my first talk with him, and during that talk I asked him for information, and, he particularly impressed on me that there was close contact, and that close contact had to be maintained with the Army authorities in question. somewhere also at the front, and why?

A That at a later time. I talked to Streckenbach again, and the second time I went to see him it was very different. After our first talk, I heard the next day, that the chief of Einsatzgruppe-C was Thomas. There had been a considerable amount of tension between Thomas and myself before. He used to be the Oberabschnittsfuchrer in Wiesbaden -

anyhow, it was somewhere in the West, and in disciplinary matters, of a certain unpleasantness.

He suggested to me openly to ask Streckenbach when I called on him again, after I had heard that Thomas was the chief and that I didn't like it, if it were possible to use me in some other Eisantzgruppen in Streckenbach's group. Streckenbach saud, no, that it could not be done, and it was taken that he told me that the SK-IV-B was destined to be for me by Heydrich. There had been special reasons. On the one hand my positions in the East was only to be held by me for a short time, and, it was to serve the purposes of acquainting myself with conditions in the East, disciplinary matters, as for that time I had to deal with the disciplinary matters only, and as I was to stay there only a short time things were to be left as they were. In particular in the executive sphere, and in the case of SK-IV-B, it was easy to proceed in that way, because there the higher officials were already installed as chief of the executive department. February, in 1942. It was either on the last day of February, or the or also with Heydrich, or any of the other gentlemen, and if so, what were you told about your job?

told me I was to go to the East, and he added that my written marching orders would be sent to me later. For the moment I was to continue in my old job. My predescessor was on leave, and during this time at Heydrich's request, he was to return to the commando.

I only got an opportunity to talk to Heydrich when I reported my departure to him, and that was when I received my marching orders, and, sofar as I remember it was only a week or ten days before I left that I received my marching orders.

your work in SK-IV-B? already told me. He emphasized the fact that I was to deal with the job of front security. That it was the Army which was in command, and that orders and decrees from who Army to the Einsatzgruppe had to be obeyed; that those orders and decrees had to be carried out exactly, and at that point Heydrich made particular refrence to the activities of bands of organized resistance, and he mentioned the dagers which threatened the German troops. In his usual brief manner he told me of the urgency where lives of every German soldier needed special protection, and that I was always to remain conscious of the fact that in such situation the lives of fathers of German families and and the lives of the German men were at stake. He also told me - I can not at the moment fully recall, but he drew my attention to the wartime laws; he told me about the laws which I would get from the Army, and, he told me that the orders would have to be obeyed. He told me he was to receive no complaint; if I didn't obey orders, he said, that I need not tell you as an expert in disciplinary matters, that you just like every soldier at the front were subject to the laws of war, and that any delay or any dereliction of duty is subject to heavy penalty. That is substantially what Heydrich told me.

Q And did you go anywhere to report your departure? Executive field that I was not to make any change, and I was to rely on the findings in that connection, he said, by just call on Karl Mueller. I never had anything to don with Mueller, as Chief of Department I, and I would have no reason to report my departure to him Now, I did go Mueller who received me, just by the door of his office, the door that led from the anti-chambre to the main office.

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He just spoke a few brief words to me. He was rather rude. I thought that he didn't like the idea that as an expert in disciplinary matters was sent up there, for he said something to the effect that it was his officials, men who has been trained by him who worked out there, and they were all men who had the necessary expert knowledge. February. When was it that you arrived at SK-IV-B? arrived was 15th of March. what happened was - - - - - I didn't go by myself.

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Q. The Prosecution has mentioned that it was as early as 16 January 1942 that you were the Fuehrer of SK-IV-B Einsatzcommando, that is to say, that you had arrived at the front at that time. Could you give us any special reasons to show that at that time and even at a subsequent time you were still in Berlin. Could you tell for how long after that day you remained in Berlin?

A. Yes, I can say for one things, at the beginning of January I spent a fortnight with my parents, stayed with my mother who was sick, and went to Hirschfelde for that purpose. Secondly, I can remember for certain that within the last few days of January, either on the 25 of January, or 27 of January, a friend introduced me and invited me for the first time to beginning at a birthday party of a Herr Sattler, who was then the president of the central grain office. I also know for certain that in February I attended a party that was given by a family who lived in our house. And at the wish of my parents, before I went to Russia, I had a photograph taken at Berlin, the Berlin Seylendorf, that was, and as I had mentioned before, II didn't leave alone, I went together with Obersturmbannfuehrer Dr. Weinmann. Frau Dr. Weinmann, the witness for Dr. Weinmann, testified to that.

Q. Did you at the end of February 1942, go straight to the East, or were there any other interruptions or delays?

A. There were interruptions, and there were very long interruptions, that was Lemberg and Roff and Kiev. You must remember what the conditions were like at that time in Lemberg and Roff. There were certain German soldiers on leave. They had been there for a number of days. There had been some of them down there for weeks and could not go on, which was due to the climate, due to frost, due to the state of the railways, the trains were unable to keep up with all of this traffic, at least for four days, that is the minimum. I don't know how much you have investigated, or did I ask you to make an investigation, but it could be possible to find that the communications, postcards, and letters were lost unless they had been looted.

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Q. And when in your estimate did you actually arrive at SK-IV-D?

A. As I said, the earliest stage I could have arrived was the 15th of March.

Dr. REIDIGER: Mr. President, there is only one more question I want to ask on this point before the recess. BY DR. REIDIGER:

Q. Witness, could you no explain to us why in the report of 16th of January 1942, Einsatzgruppe II-A, on page 61 of the English text, and page 64 of the German text, that is Exhibit No. 42, NO-3405, and the later reports of 26 February 1942, Document Book I, page 86 in the English text, and page 18 of the German text, Exhibit NO. 22, No-3340, and, in particular, in the report of 6 March 1942, Document Book II-C, page 61 of the English, and page 65 of the German text, Exhibit number being 80, NO-3240, why in all of these documents you are referred to as "Fuehrer SK IV-B?"

A. Yes, I can explain this now. When I was interrogated by Mr. Wartenberg, I could not explain that point. I just didn't know what to say to that assertion, or to that fact. I could merely believe or assume that my name must have been misused, but now I have come to another explanation, and, I think that is a true explanation, I have discovered that not only in my case such incorrect statements have appeared in the documents. I heard the order for me to go to the front, that I know for certain. That order I knew at the end of January. I knew at that birthday party at Dachlers, at that time I knew about that order. At that time I knew II was to be sent to the East, therefore, I assume the personnel department, or the expert on personnel matters immediately and automatically passed on the order to the agency within this Office IV-B, and that there automatically the name was entered without bothering to find out whether the person concerned was or had actually arrived at the front, or not.

This is not only the case with me but it happened to Dr. Weinmann, and also I refer to a few other comrades of mine, or any other cases, where it was alleged that they had actually assumed their new position which didn't occur that day mentioned in such reports.

THE PRESIDENT: Do I understand, witness, that while you were attending this party in Berlin, some one sent your name to headquarters, and because of this information picked up at the party you were officially designated as being in Russia?

THE WITNESS: Well, Mr. President, that is a misunderstanding.

THE PRESIDENT: I understood you to say as your explanation, that it is a conjecture on your part as to how your name could have been mentioned as leading a commando in Russia, although you were still in Berlin, that your conjecture is you were seen at the party, and your name was sent in, and there through some carelessness it was entered in the records, that you were leading a commando in Russia?

THE WITNESS: yes, after the order was issued, -- well, the order was in January, that was , at the end of January, and after that order was issued, the personnel department in the RSHA apparently informed the agency which made up these reports, and that agency simply entered my name as leader of the commando on the reports without making sure whether the person concerned had actually arrived in Russia, or not.

THE PRESIDENT: What has this got to do with the party?

THE WITNESS: To make an explanation of the other.

THE PRESIDENT: yes, what has this got to do with the party. You drag in a party in your explanation, as to how this misunderstanding occurred, and, it is very difficult for me to comprehend how some one attending a party, like a party in Germany, or like a party anywhere else in the world, how can the fact of a person at a party who was drinking cocktails, which was four-thousand miles away in Russia, I don't understand, what the party has to do with this misunderstanding?

THE WITNESS: Your, I believe the misunderstanding must have occurred, and that the birthday party had nothing whatsoever to do with it. A little while ago I was asked whether I could show any proof for substantiating the statement that in January and February I was in Berlin, and now I can remember among other things that at the end of January that was that birthday party, the date that I attended it.
THE PRESIDENT: Then the point you want to tell us is that the fact you were at a party proves that you were not in Russia in January, and, the fact that you were at the party has nothing to do with the mistake made in the headquarters of the RSHA in its listing you as being in Russia at the time, is that correct?

THE WITNESS: Yes.

THE PRESIDENT: Very well.

THE WITNESS: yes, that is correct.

THE PRESIDENT: The Tribunal will be in recess until 1:50 P.M.

THE MARSHAL: The Tribunal is in recess until 1350 hours.

(Recess until 1350 hours, 2 December 1947.)

(The hearing reconvened at 1345 hours, 2 December 1947).

THE MARSHAL: The Tribunal is again in session.

DR. HOFFMANN: Hoffmann for the Defendant Nosske. the Defendant Nosske was excused from attendance in court, so that I might confer with him. I made a mistake by not ordering Nosske to come to 57 at eleven o'clock sharp, but fifteen minutes later. Thus, from an administrating point of view I cannot talk to him any more this afternoon. I ask you now, your Honor, to help me get the chance to talk to him this afternoon in spite of this mistake this afternoon.

THE PRESIDENT: Well, we can remedy a mistake, and especially for Dr. Hoffmann it is a pleasure to do so. The marshal will be instructed to speak with the person in charge of Room 57 and see to it that Dr. Hoffmann may communicate and confer with his client Nosske this afternoon, in view of the fact that Nosske is the next defendant ready to go into the witness stand.

DR. HOFFMANN: Thank you, Your Honor.

THE PRESIDENT: You are welcome.

DR. RIEDIGER: Your Honor, may I beg on behalf of the Defense-Counsels for the Defendants Blume and Sandberger that the two defendants be excused from attendance in court this afternoon, and may I also ask you to arrange that Blume and Sandberger be sent to Room 57? Both need this spare afternoon in order to prepare their defense, Blume and Sandberger.

THE PRESIDENT: Is that in connection with their document books?

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DR. RIEDIGER: Yes, Your Honor.

THE PRESIDENT: Yes. The defendants Blume and Sandberger will be excused from attendance in court for the purpose indicated by counsel.

THE PRESIDENT: Dr. Riediger, before you proceed with the examination of the witness as to his activities in Russia, let us have in a very succinct form just what he was to do in Russia. BY THE PRESIDENT: were instructed by Stahlecker and later by Heydrich that you were to go into Russia and that you were to fight saboteurs, partisans and obstructionists, and that you were also to offer protection to the German Army. Did that constitute your mission in Russia, briefly put, of course? Streckenbach and by Heydrich too, was an assignment at the front for the security of the front. That is to say, to guard the rear of the German troops immediately in the front area from elements which endangered the security of the individual German soldier and the front area. Communist functionaries? Heydrich never mentioned to me. The word never occurred. The mission was not given to me down to the last detail.... regarding Jews, Communist functionaries and gypsies? gypsies were never mentioned. The word was never mentioned even.

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word "Jews" was never mentioned? and in offering security to the Army it was necessary to be on guard against the Jews?

A No, your Honor, this was never mentioned. If I may repeat, the individual persons or elements who might endanger the security of the troops was never mentioned at all by Streckenbach in any way, nor did Heydrich do so, but I was told that corresponding orders existed with the Army, and that the mission of the commando was already fixed, and it was pointed out that it was permanent. That was during the second discussion with Streckenbach.

Q Did you know that Jews were active Communists; did you know that from other sources?

A No, your Honor. If I am to reply to this question now, at the time it was never mentioned; the word was never mentioned ...... Jews in Eastern Russia, or in Western Russia, Eastern Europe, were very active Communists; did you know that from other sources?

A No, I cannot say that in this form. At the time, as I said, it was never mentioned, and I would like to say every Russian citizen who was a Belshevist was inclined and suitable to be specially radical in action. which called for a liquidation-

Q Well, I didn't finish the sentence, but you apparently know what I am referring to.

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What was the Fuehrer Order? What was the Fuehrer Order? You answered before I finished the question, so, therefore, you are familiar with it. Now, what was the Fuehrer Order? Tell me.

got to know it here, says that Jews, I don't remember the exact wording now, it was mentioned here that Jews and gypsies and dangerous elements were to be killed.

Q And when said you first learn of the Fuehrer Order? of the Fuehrer Order - for the first time here from Mr. Wartenberg. The question was never asked or never addressed to me whether I knew the Fuehrer Order, but Mr. Wartenberg told me the fact that the Fuehrer Order Existed.

Q And when was that?

A that was during an interrogation. It must have been the last interrogation, I believe on 23rd July.

Q '47, A '47, yes.

or perhaps even in May, but at any rate in that period, six years went by before you learned of it, is that right? about the order to liquidate Jews?

Q How long were you in Russia? altogether. From the middle of March until about middle of July I was in Russia, but there were interruptions. with your subkommando leaders? told anything about the existence of such a Fuchrer Order.

leaders? That was the question.

Q And did you discuss with them what had to be done?

Q Now, please answer the question. Did you discuss with your subkommando leaders what you had to do?

Q That is all. Now you have answered the question. when you arrived in Russia were you told about the orders which were pending, and which had been executed by your predecessor in the course of his duties?

A No, nothing was mentioned. As orders I merely got to know those orders which the Army had issued concerning the civilian population. you would go to Russia and there would find detailed orders. Did you say that? existed, yes. prior to your arrival there?

Q And who was the previous commando leader?

Q Braune? Did you talk with him when you arrived?

received and which he was putting into effect?

A No. He merely pointed out to me, in the general conversation, the general orders and decrees from the Army High command -he was called upon to execute?

A Your Honor, I misunderstood you then. We did not talk about the detailed orders, about each individual decree by the Army High Command, but we merely discussed the general affairs. He told me in broad outline that certain decrees and orders from the Army existed for the civilian population which had been publicly announced, and these orders were in the hands of the Chief of the Executive Department. upon to put into effect, didn't he? of the commando from the time when I took over the commando.

Q Now, you please answer the question? It is not a difficult question, and I don't see why you won't answer it. I merely ask you, did you talk with your predecessor Braune, had been executing prior to your arrival? to turn over to you to put into effect? A Braune did not have to turn over orders or decrees to me, and he did not do it in fact. He merely told me and showed me how the front area was and the present situation in the front area, and apart from that he introduced me immediately in the Army High Command and with the liaison officer who was appointed for this. The situation I saw was this, that - -

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Q. Just a moment now, did he not say to you, "Now, Haensch, I am turning over the Kommando to you. I have been here so long and this is what we have done. I have here certain orders and I turn then over to you to put into effect." Did he say anything like that?

A. No, your Honor, not in that form.

Q. Now, tell me ....... but very briefly, briefly please, just what he told you to do? Keep in mind, here is a man who is in charge of an organization an he turns it over to his successor who has just arrived.

Now, what did he tell you, briefly?

A. Braune told me that the front area had to be guarded and the Kommando had to look after this, in particular to guard it against partisans and newly infiltrating elements who constantly increased in the front area and were enclosed there, .........

Q. All right. Now, that's one item, to cover the front line area and to guard against elements infiltrating through, one, all right. Two, what's the next thing he told you to do?

A. That was the Mission of the Kommando. He emphasized particularly that it was the word of the Kommando and was running according to schedule.......I could rely on the executive officials and beyond that, I should and could turn to the liaison officers of the Army who had been in good relations with him and his predecessor, and of whom.......

Q. He did not mention Jews at all?

A. No.

Q. Did the word "Jew" ever fall from his lips in his conversations with you?

A. Your Honor, I don't know now but I can't imagine, the idea of measures against Jews.

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.....

Q. Now, just a moment please, witness. Witness, now you must answer questions, not make a speech each time something is directed to you. Did the word "Jew" ever fall from the lips of Werner Braune when he discussed with you what were your duties as his successor?

A. I don't know, your Honor. I cannot remember, that.......

Q. Did it or did it not?

A. No. I can't remember.

Q. No. All right. Did the word "Jew" issue from the lips of Streckenbach when he instructed you as to what you were to do in Russia?

A. No.

Q. Did Heydrich ever mention the word "Jew' to you in his conversation with you?

A. Yes.

Q. Who?

A. Well, I am just thinking that it was mentioned during discussions which I had. for example.....

Q. Not for example. I want to know who mentioned the word "Jew" to you.

A. I could name Thomas himself. When Thomas came on an inspection visit.

Q. All right.

A. When Thomas came on an inspection.

Q. Yes, and what did Thomas way about Jews?

A. When Thomas came on an inspection visit he asked.

You see, whether in the territory any Jewish craftsmen existed, any Jewish workers......as there was a great lack of craftsmen in the Ukraine altogether and in the Ukrainian territory the Jews mostly did the skilled labor.

Q. And what did Thomas ask about the Jews? Did he ask you to get some Jewish workers for him

A. This was not necessary, your Honor, because he did not know that in our territory, that in the territory under the Kommando such Jewish craftsmen did not exist.

Q. Well, he mentioned Jewish skilled labor. Did he ask you to get some for him, or did he tell you that there was a great lack of them? In what connection did he talk about this Jewish skilled labor?

A. That is what I wanted to mention before. In this connection he said craftsmen were urgently required for workers essential for the war and in Dnepopetrovsk large workshops were being set up for which craftsmen were particularly required and who were to be used there to do work essential for the war, in particular tailors.....

Q. But now please restrict it to the Jews. Please don't ramble all over the place. What did he say that he were to be assigned to these jobs.

Q. Yes. Then he asked you to gather whatever Jewish craftsmen you could and send them to these plants; is that what he told you?

A. Yes, your Honor, but this not only concerned Jewish craftsmen but it was like this......

Q. Now, just a moment. Did he tell you, "I want you to get some Jewish craftsmen or as many craftsmen as you can, but where they are Jews you are not to liquidate them, in spite of the fact that there is a Fuehrer order out, the Jews are to be liquidated."

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Did he tell you that?

A. Your Honor, liquidation of Jews was never mentioned at all, and I cannot say anything else. I already said this to Mr. Wartenberg, that for the first time I heard about this fact Here and may I add one thing now? The following happened during my time in the territory of SK4B. I know that quite a number of Jews, and as far as I remember there must have been more than a hundred, were used as panje drivers for the Army. From the rear Army territory, or at least from the rear, they brought up new vehicles to the front, that must have been in April or May.....

Q. All right. That's enough. You told us that you know that a hundred Jews were use as drivers for the Army. It isn't necessary to go into so much detail. Proceed, Dr. Riediger.

Q. (By Dr. Riediger) Witness, the Tribunal just asked you whether, in the time from February until June or July, when you were with SK4B, Jews were ever mentioned. I would like to clarify during what time you were with SK4B?

A. Formally I was Kommando leader from the middle of March until the middle of June approximately. I was physically there, except for the time for about three weeks when I was on an official trip to which I had been ordered to Berlin and Prague. The days in Berlin before were considered furlough and also another two weeks previously on the occasion of an official trip to which I had been ordered to Kiev.

THE PRESIDENT: Dr. Riediger, if you are going to give us the periods, have him give the dates, he arrived March 15, went to Prague.

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Let us have it specific, if you are going to go into that, because if he just gives it generally we have no better picture than what existed before.

Q. (By Dr. Riediger) Dr. Haensch, when did you arrive at the Kommando?

A. As I said, at the earliest in the middle of March, on 15 March, at the earliest.

Q. And when were you ordered to go back?

A. Middle of June.

Q. During that time, from 15 March until the middle of June, were you constantly with the Kommando?

A. No.

Q. During what time were you absent from the Kommando?

A. I was absent from the Kommando for about two weeks in April. I cannot say now. I do not know the exact date anymore. I don't know it anymore; that was on the occasion of the official trip to Kiev.

Q. And you say for two weeks?

A. Yes, about fourteen days.

Q. During which time were you in Berlin and Prague?

A. In Berlin and Prague......I left for Berlin and Prague either in the last days of April or in the first days of May 1942.

Q. And how long were you absent?

A. And then about the end of May, about 20 to 25, it must have been about then that I returned.

Q. Who was in charge of the Kommando while you were absent?

A. During my absence automatically the chief of the executive department was in charge of the Kommando, who also automatically continued to be in charge of the Kommando when I finally left in the middle of June for Berlin.

A special kommando leader was not appointed at the time, at least not as far as I know, and I did not hand my kommando over to any kommando leader.

Q. Witness, the prosecution charges you that during your time the following executions took place. They are, in document book l, pages 36 and 87 of the English, page 118 of the German, exhibit number 22, No-3340, report of events of 25 February 1942. I quote: "Sonderkommando 4 b, in the time from 14 January unitl 12 February 1942, 861 people were shot after court martial. Of these, 649 were political functionaries, 52 were saboteurs and partisans, and 139 were Jews."

THE PRESIDENT: Just a moment, people. The translation came through as court martial. In our document book the phrase appears as summary court. Would you please check on that, Miss Interpreter?

THE INTERPRETER: Summary courts is right.

THE PRESIDENT: Thank you. The correction is made.

DR. RIEDIGER: I want to correct myself, The translation is summary courts.

THE PRESIDENT: Very well, the record will show that correction.

Q. (By Dr. Riedeger cont'd) Also, in document book 2 C, page 60 of the English, page 65 of the German, exhibit number 80, No-3240, I quote: "Sonderkommando 4 b executed 317 persons, among them 63 political activists, 30 saboteurs, and partisans and 1224 Jews."

THE PRESIDENT: I think there is another slight slip. It is 1317 instead of 317.

DR. RIEDIGER: Yes, 1317.

THE PRESIDENT: Can we blame that on the lawyer and not the interpreter?

DR. RIEDIGER: Please blame it on me, your Honor.

THE PRESIDENT: Fine, I am gland that it is you this time.

Q. (By Dr. Riedeger cont'd) "By these measures the City of Artemowsk was freed of Jews." Witness, did you have anything to do with these executions during the time when you were in charge of the Kommando?

A. No, I had nothing to do with executions. The period of time shows this, As that time I wasn't in Russia yet, and I heard about these executions here for the first time. But may I draw your attention to the following: What I saw here in a document, this same report of 6 March 1942, is already contained and appears already in a report of events, or rather in an activity and situation report, number 9, dated 27 February 1942. That is document number 3876-PS in document book 3-A.

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THE PRESIDENT: Witness, when you arrived to take over the command of 4 b did you study the reports which had been submitted on the activities of that Kommando in the immediate past?

THE WITNESS: Your Honor, no reports existed and no reports of events either. It was prohibited. There was an order that my written records should not be kept because of the nearness of the front, but these reports of events, during my time at least, and I think it was like this in general, were not sent to the Kommando from Einsatzgruppe C.

THE PRESIDENT: Well, but each Kommando sent in reports, did it not?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: You made up reports yourself, didn't you?

THE WITNESS: One report, a so-called situation report, was made when I was there, just one situation report was made. I remember that.

THE PRESIDENT: And you didn't find any reports at headquarters when you reported?

THE WITNESS: No, Your Honor. It was like this, that of this situation report which I mentioned no copies were kept and were not allowed to be kept.

Q. (By Dr. Riediger) Witness, you said that you had nothing to do with these executions which mention such large figures of people. Did any executions to that extent take please at all or any executions of Jews?

A. Executions of Jews or such mass executions I never witnessed and I did not get to know of them.

Q. During your time were Jews or Gypsies killed merely because they were Jews or because they were Gypsies?

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A. No, and I would like to mention here expressly that this question neither in thought nor in words was ever discussed.

THE PRESIDENT: Witness, do you doubt today that this situation report, number 177, dated 6 March, is correct?

THE WITNESS: Well, your Honor, after seeing these reports and after knowing them I have no reason to assume any longer that this did not happen.

THE PRESIDENT: Very well. Now, assuming that you were not there when this happened and it would have had to happen prior to March 4, and you didn't arrive until March 15, and 1224 Jews had been shot within a month preceding your arrival, don't you think that some time or another something would have been said about the execution of these Jews by the very men that you had now taken over in your command?

THE WITNESS: No, your Honor.

THE PRESIDENT: Did you not see anything unnatural about silence on a matter of this enormity al though you were with the men from two to three months? You see nothing unnatural about that?

THE WITNESS: Your Honor, I would like to assure the Tribunal that I thought about it seriously ever since my interrogation in order to find an explanation for the fact that these events occurred during that time as can be seen from the reports. I came to the folllwing conclusion came to my mind. I personally do not believe that these executions should have occurred such a short time previously. I don't think so because of what I have seen in these documents. Here is mentioned that every thing was quiet on the front, may I see the document?

THE PRESIDENT: You are talking about the operation report 177 which shows that 1224 Jews were shot some time COURT II CASE IX March of '42 or a few days before?

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THE WITNESS: Yes.

THE PRESIDENT: Now, my only question is that, and please do not give so extended an answer. You have now stated that you have no reason to doubt the correctness of these reports. Therefore, if 1224 Jews were shot by your organization before you took over, does it not seem strange to you that in all the time that you were with the very men who conducted these executions, that not a word was ever said about so extraordinary a phenomenon as the execution of 1224 human beings because they were Jews?

THE WITNESS: Your Honor, I can only say, I did not know anything or hear anything about this at the time. In particular I did not know the Fuehrer order until the moment here in Nurnberg.

THE PRESIDENT: No please, listen witness. The trouble is that either you pay no attention to the question or you listen to the question and then you figure out in your brain how you can answer everything in the would but the question put to you. You give yourself a lot of mental exercise, but you give us very little information. If you don't understand the question just say, "I am sorry, I don't understand the question." third time I am putting it. You admit the correctness of the reports. If you admit the correctness of the reports then you must admit that some time before March 4, 1224 Jews were shot by your Kommando. You were not there. Now, I only ask you, does it not seem strange to you that although these very men that you were now commanding had just a short time before, killed 1224 people because they were Jews, that nothing was ever said about it? Does that not seem strange COURT II CASE IX to you?

THE WITNESS: Well, your Honor, nothing was mentioned and nothing was said about it.

THE PRESIDENT: That's all, thank you. Proceed, Dr. Riediger, with your next question. I see we can never get together on these things.

BY DR. RIEDIGER: did any executions take place?

Q Can you remember how many executions took place during your time?

A Yes. I personally know of four executions. were the victims of these killings?

A Yes. One execution occurred in April, that is to say my main commando in Gorlowka. This execution, like any other executions, included the smallest group of persons as far as I remember. There were about 25 people to be executed. Also in April by the subcommando in the area of Artemowsk an execution tool place during which also a group of saboteurs had to be executed. These were approximately - I don't know the exact figure - approximately 15 to 20 people. A third execution took place in the end of May, again in my commando, the main commando in the area of Gorlowka, and this concerned six or seven persons. I know exactly that these were fewer than ten. As far as I remember, there were six or seven. And the fourth execution occurred also at the end of May or beginning of June. It was carried out by a subcommando which had been newly formed when the Russian attempt of invasion near Kramatorskaya had been cleared there carried it out. It was a group of about ten persons whose case was not decided by the subcommando, but these persons were sent to the subcommando by the army with the order to carry out the execution. the army sent people to SK 4B to be executed?

A No. This case near Barvenkova and which I witnessed there at the time, occasioned me to discuss the order with the army immediately, the competent office, pointing out to them that in my opinion that in such cases in which the army carried out the investigations and had made the decision, that then units of the army or the secret field police, that was the one concerned at the time, should also carry out the executions.

This was recognized too. necessary?

A I don't quite understand. to the army high command? the away were, of course, informed of it, that is, they knew about it already because while making investigations about individual cases, they also took a part. Apart from that, the army was informed of this, of course. there any women or children among them?

Q What was the cause for these executions? who had violated the war laws, and this had been proved unambiguously. These were saboteurs, obstructioners, looters and so forth. I can not say it exactly any more now, of course. arrested who were then executed?

A May I tell about the kind of activity of the commando? The commando guarded the security of the front area. Of course, its own limited forces, including the subcommandos, there were not even a hundred men, about 70 or 80 men, could not look after the complete security of the front area. Its activity consisted mainly of observation and through reports received from the civilian population, from army units or army offices, it checked these reports, followed up suspicious traces and, if necessary, made arrests.

First of all, searchings were made by officials. After that, if the arrest of persons was necessary, the persons arrested were kept in custody by the main commando or by the subcommandos and against these persons a very careful procedure of investigation was carried out. Proof had to be brought; witnesses were questioned. Of course, the accused person was heard - was heard repeatedly. About these investigations minutes and records were made. And these investigations and interrogations were carried out by the chief of the executive department, the information chief, and the interpreter, and also by the person in charge of the screening. BY THE PRESIDENT: the records, if necessary? first of all until the case was decided and then for sometime afterwards, but then they had to be destroyed according to the orders that no written material was to be kept. But partly they were -

Q How long would they be kept? here, some of them -these records kept? at first, and some of them -

Q Now, just a moment, how long were they kept? "A short while" means nothing, because it is a relative expression. "A short while" under certain circumstances could be five minutes, it could under other circumstances be five years. Now, how long were they kept? the t ime when the execution was carried out, there was a certain period of time.

During that period the records were kept.

Q Well, were they destroyed?

A Then after the execution had been carried out, they were destroyed: whether this was done immediately by the chief of the executive department or the executive officials -I don't know that any more now.

Q How soon after the execution were those papers destroyed? eight days. I am not quite sure. Instructions were given that they were to be destroyed then.

Q They were to be destroyed eight days after the execution?

A No. There was no instruction that they were to be destroyed eight days after the execution. anyone who wanted to know why the men were executed could look at the records and find out? Now, how long were these records kept? records of the cases be not kept after the case had been concluded, but that they were to be destroyed. I said before that they existed for some time yet, and that is what I was trying to explain before, It was like this.

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Q Now, witness, don't make your answers so long. It is obvious that records are made in order that those who have the right to know as to what took place may examine them. And it is obvious that after an execution if one wanted to find out why the people were executed that it would be necessary to look at records, otherwise, people could just be killed indiscriminately and no one would know why they were killed. Now, that is the reason records are kept, and that is the reason I presume you kept your records, so they would be kept a reasonable period of time after the execution. Now, I want to know what was that period of time. final report which was made by those conduction the investigation and everything connected with it, after all, were those documents which were needed in order to come to a verdict by the commands leader.

Q Well now, won't you please answer the question, how long after the execution were these papers kept before they were destroyed? remember it.

Q No, no. You either have to tell us that they were kept a certain period of time or that you don't know. Now, don't try to think of something else to tell us, but answer that question. Now, how long were they kept? case had been concluded and they were destroyed, but I would like to add that it was like this that in most cases the records were sent to the secret field police of officers of the army who, if necessary, were interested in this concerning information in general. That is what I meant when I said "for a certain time these records were kept". but the order existed, as I said at the beginning to destroy them and they were destroyed - that is to say to be destroyed after the case had been concluded and the case had been concluded when the execution was carried out.

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I cannot say any were now whether the executive department destroyed these documents the following day or one day or eight days after the execution, that is in such cases in which there was no more interest in these cases from an information point of view.

THE PRESIDENT: The Tribunal will be in recess 15 minutes.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Representing Dr. Aschenauer for the Defendant Ohlendorf. I would ask the Tribunal to excuse the Defendant Ohlendorf from attending the court tomorrow so that the Defendant Ohlendorf can finish his document books.

THE PRESIDENT: The Defendant Ohlendorf will be excused from attendance in court tomorrow so that he may work with his counsel on his document book.

DR. RIEDIGER (Attorney for the Defendant Haensch): May I proceed?

THE PRESIDENT: please do.

Q. (By Dr. Riediger) Dr. Haensch, did you conclude your explanations and statements concerning the procedure of investigations, or did you want to add something? of investigations, or did your want to add something?

A. As far as I know, I have only explained the actual scarlites and the investigations carried out, but I have not come to the conclusion yet.

Q. How were the decisions made then?

A. The investigation executive officials who were all experts, confirmed guilt or innocence on the basis of their investigations, of the person concerned and they put this into a conclusive report, putting down all the details and suggested the sentence and the participants in this investigation, the leaders and the officials, then in a number of cases reported to the kommando leader, convened at his place, and then deliberated on the final conclusionThe Kommando leader then made the decision, and, in this case, it was myself who decided upon those cases, whether the suggestion was to be approved, whether it was to be amended, or whether any other elements had come up which made further investigation necessary.

Q. If the results justified the necessity of execution, how was the execution carried out?

A. The executions were carried out by shooting.

THE PRESIDENT: Witness, was this procedure in effect review, decision, and so on?

THE WITNESS: Yes, it was carried out in the same way as it had been done before.

I carried it on in the same manner.

There was an existing regulation -

THE PRESIDENT: WHO told you about the manner of the procedure?

THE WITNESS: When I asked predecessor Braune, he told me briefly about the manner of procedures.

He said the investigation result is being reported and then leaders

THE PRESIDENT: Did he tell you about the procedure?

THE WITNESS: Yes, but -

THE PRESIDENT: That's all that was asked you. Did he involved executions where he had been the kommando leader?

THE WITNESS: He did not use those words, of course, THE PRESIDENT: Now, you don't need to--Why must you tell us again now what the procedure is.

We know what the procedure is.

You have outlined it to us. All I ask is, all cases which came before his kommando?

THE WITNESS: No, that he did not tell me.

THE PRESIDENT: Did he say that he used that procedure?

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THE WITNESS: Well he told me it is proceeded in the following manner: The Executive Officials reported about it -

THE PRESIDENT: No, no, no. I'll be able to recite this backwards, if you tell it to me again, what the procedure is. I only asked you if your predecessor said to you that that was procedure which he followed, the procedure which he outlined to you.

THE WITNESS: Yes, yes. He told me this is the manner in which it is being done.

THE PRESIDENT: Proceed, please proceed, before he starts again. Ask him another question Dr. Riediger.

Q (By Dr. Riediger) How were the shootings carried out. Sometimes there were ten, or under ten, or then to twenty people, as I understood you, who were shot together. Did they have to take off their outor clothing, or, how was it gone about? tive authorities to the effect that the persons concerned who were to he shot should not witness a preceding execution. With these executions it was thus that the people who were to be executed were formed into groups, and three were led to the place of execution. The execution was carried out and before the next group arrived at the place of execution the corpses were taken away. There was an explicit order to that effect. the part if other units? mations of army units. For instance, in the AOK of the Army there was an anti-partisan combat unit.

THE PRESIDENT: Witness, you said that corpses were taken away. We don't quite understand that. Were they not buried there?

THE WITNESS: Your Honor, the corpses were buried and they were put into the ditch which had been dug and they were carried into this ditch, but --

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THE PRESIDENT: I see. And they were shot three at a time?

THE WITNESS: One, two, three persons, that is so.

THE PRESIDENT: How many made up the execution squad?

THE WITNESS: The execution squad consisted of six to seven people. It was a group of six to seven people who fired.

THE PRESIDENT: ALL right Q. (By Dr. Riediger) Were there extensive executions on the part of other units during your time and did that effect the frontal situation and how was that frontal situation at your time?

A. The situation at the front concerning the security of the frontal zone was such that insecurity became stronger and stronger, as I was told by people in the Army with the Russian invasion in the northern frontal area which took place at the end of January or the beginning of February, as I was told.

Q. Did SK 4B have anything to do with these anti-partisan combats through the Army?

A. Yes, in so far as on the part of the Wehrmacht such anti-partisan combat actions were also dealt with by their kommandos. I had extensive discussions with the officers of the Army and I was under the impression that -- it was, in fact, expressed that the Army in order to support the officials of the Secret Field Police, recommended the fact that they had officials of the kommando and men of the kommando for their use; as far as operations for executions were concerned, which were carried out by units of the Wehrmacht, the Kommando had nothing to do. The officials or the men who were detailed for such purposes in this case came under the commander of the Army, the military commander, that is, of the unit.

Q. Did the execution activity or general activities in this sphere -- did this take up all your time, or what was your main activity during the time you were with Einsatzkommando?

A. The executive activity of the kommando was not the sale task of the kommando, as such. Perhaps I can make it even clearer if I say that the securing of the frontal zone which was the task of the kommando did not only mean the apprehending of people and execution of guilty persons, but it also contained the apprehension and investigation of the general morale within the population, and I want to point out one things here.

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During my time in the frontal areas of the 17th Army, there was famine. There was even a famine that the military authorities were very worried about it. That was also a part of the assignments of the kommando to find ways and means and assist the Army in order to cope with these conditions, because otherwise, of course, they were contributing towards the insecurity of these areas, and just this assignment alone took up very much time and we took it very much to heart. At the beginning of Spring, it was tried with every means to further the cultivating of products of the fields, and to be able to cope with the food supply. The roving about of the population was a problem in itself. The roving about of civilian outside of their local residence was forbidden and was liable to be punished by death: but it could not be prevented that the population left their places and a solution had to be found to this particular problem. During my time it was found and the roving about of the population was no longer punishable except at on particular area if 10 kilometres width, which was behind the front line, but there was a threat that every civilian who was met there was punishable by death and that, of course, he would immediately be shot at, but in this manner we were able to free one particular sector in which the population could find food which was hidden here and there and they could proceed to search for it.

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THE PRESIDENT: Do I understand you to say, witness, that part of your activities consisted of planting fruit tress in order to relieve the famine?

A. Your Honor, no. There were other measures.

THE PRESIDENT: Well, I have here in my notes that you planted fruit trees. Did I misunderstand you?

A. No, no, no. We did not plant fruit trees, but we tried to employ the population who could work to encourage them that in the spring they would plant various kinds of things - food.

THE PRESIDENT: Well, did you say something about planting fruit trees?

A. I am not aware of hiving used that word.

THE PRESIDENT: Well, then perhaps I misunderstood. That's what I got - that either you planted fruit trees or you had somebody plant fruit trees and I was wondering what kind of a tree it was that would fructify so quickly that in two months time you would have fruit to pass around to the population.

MR. HILDESHEIMER: I think it must have been my mistake, Your Honor.

THE PRESIDENT: Very well, Mr. Hildesheimer. BY DR. RIEDIGER:

Q. How and when were you detailed from your Kommando and recalled?

A. In the middle of June I was recalled. I got a radio message and I was supposed to leave immediately.

Q. When did you leave the kommando and who did you turn it over to?

A. I have already said I left the kommando a few days after this, after I received another radio message to leave immediately. The leadership of the Kommando was given over to the leader of the executive department.

Q. Where did you go? Did you go back to the RSHA?

A. First of all I was taken over again to my former position in the RSHA.

Q. How long did you remain there?

A. There I remained until July 1943.

Q. Did you go on with your attempts to leave?

A. Yes. I used Heydrich's death as and occasion to talk to Streckenbach and request from him to agree that now I would be able to leave. Streckenbach basically agreed to it but he thought that at the moment it would not be feasible. I would like to add here this was due to conditions of the War and that there was a lack of staff and that leads to the fact that my attempts until then had been of no avail.

Q. Were you offered any positions during that time?

A. During that time - not at first. I tried - this again I had reported to Streckenbach - I, as I said, tried myself to get s some authority to ask for my services and when, I think, that must have been in January, Kaltenbrunner took over office in the RSHA I approached him immediately with the same request i.e.

to release me. I was under the impression that he basically agreed but he again said it would not be feasible at the moment but in a few months he would not object. Then I learned - that was the beginning of 1943, the spring of 1943 - that the Plenipotentiary in Denmark, Dr. Best, was looking for a higher administrative official for his administration department and I applied for this job. In the spring of 1943 this job was actually offered to me and I immediately accepted it.

Q. Had you not been offered a position before-that is what I meant when I asked you this question.

A. Yes, two positions were offered to me. One was the position offered to my by Kaltenbrunner immediately, for the second time by Kaltenbrunner through the then office chief Schulz, a position in the General Government which I refused.

The next offer made to me was that I was requested whether I should take over a position in the party Chancelery. This I refused also.

Q. Why did you refuse?

A. I refused because my aims and my attempts for the last years and my only wish had been to work in the General Administration.

Q. When you accepted the position in Denkark with Dr. Best did you actually leave the RSHA or were you only detailed to another position?

A. I left the RSHA as far as personnel goes and also physically.

Q. What did your activities in Denmark consist of and was it in connection with the SD or RSHA?

A. No it was not connected with that as I have already answered in my preceding answer. It was pruely a position of Interior Administration. I was detailed by the Reich Minister of the Interior via the Reich Minister of Foreign Affairs to the Plenipotentiary and I was active there in the section administration and law with the office of the Plenipotentiary in Denmark.

Q. What did your activities consist of in detail? Your activities, that is, with Dr. Best?

A. It was a purely administrative task and my special assignment under War conditions prevailing was to reconcile the interests of the German Occupation Power and the relationship of the Danish authorities and the Danish population.

Q. How was your relationship in Denmark with the Security Police and SD?

A. I had no particular relation but the relationship with the German Police as such did exist naturally. That was conditioned through the situation in Denmark and I was in strong opposition with them eventually.

Q. How did this opposition come about?

A. When I arrived in Denmark, in the end of August 1943, the disarmament of the Danish Remaining Army had just been brought into effect. That happened in the manner which pointed out the contrast very strongly between the Germans and Danes. In the course of these measures numerous arrests had been carried out, arrests of Danish civilians. The Retch Plenipotentiary, when I reported for service, assigned to me a special task which was to investigate the individual cases of the arrested persons by the requests of the Danish Central Government and which resulted that the larger part of those people who had been arrested had to be released as sufficient reasons had not been established to keep them under arrest.

Q. Do you remember any other cases in which you assisted people who had been arrested or interned?

A. Yes on numbrous occasions I tried to assist and find out about individual cases and tried to avoid any unnecessary harshness which I thought was in our mutual interest. On occasions the German Police by orders, I should think as, however, I only found out after 1945, of higher authorities in Berlin carried out vigorous measures. This in fact resulted in severe opposition to the German Police and, as I said, I tried to settle this.

Q. Did you have anything to do with internment camps?

A. Yes, as far as American and English internment camps were concerned. English and American citizens when the country was occupied had been interned in internment camps in Denmark under Danish supervision, but the general control of this supervision was in the hands of the authorities of the Plenipotentiary.

Q. In what direction did you develop your activities concerning interment camps?

A. A number of things had to be settled and directed. For instance, schooling for children of these internes, mail service that had to be discussed with the Danish authorities, religious ser vices, films, literature, and so on, - everything that concerned internment life.

It became even more topical, I think, in the spring of 1944 when camps had to be shifted and now it was necessary to find inhabitable areas.

Q. Didn't you have anything to do with Dr. Schirmer at the time and who was he?

A. Yes in 1944 these internment camps matters were dealt with by the Vice President of the Red Cross the Swiss gentleman Dr. Schirmer and I convened with Dr. Schirmer on various occasions d during a few days and talked matters over with him.

Q. Did he give any judgment concerning internment camps which you had under your supervision?

A. Yes. Dr. Schirmer, as well as the Danish authorities, always approved of my measures and Dr. Schirmer especially said that the supervision of these camps had been the best he had seen in Europe, the best of all the camps. Therefore, he approved explicitly of my measures.

Q. Did you not also have to deal extensively with seizures in Denmark?

A. Yes. That was within my assignment - to settle between the occupation power and the population, the claims and demands of the population. The occupation authorities, of course, needed apartments and offices and, of course, as is always the case, minor petty officials took very rigorous and inconsiderate measures and wherever I could I intervened and tried to settle the harshness and misunderstanding.

Q. Did you not also have to do with a certain actress Lulu Ziegler and did you help her to escape into a foreign country?

A. That is the following case of the Danish actress Lulu Ziegler, her husband, during the course of these arrests in the autumn of 1943, had also been arrested. He was suspected and accused of having indulged in Communistic activities, thus acting hostile to the German Reich.

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She applied to the Plenipotenitary Dr. Best. Of course he knew her. So, I said, she applied and in the course of the investigation of these cases I came upon this particular case and I had to establish that there was nothing against her husband, nothing but the fact that years ago, about five or six years ago, he had on one occasion travelled to Moscow. According to the information of the Danish authorities he wasn't a Communist nor indulged in Communistic activities - far from it. I attempted to have him released.

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Q. What was the attitude of the Danish population toward your activity?

A. Many Danes who had approached me, or who had been sent to me by the authorities, - from these many Danes I received letters of thanks on many occasions.

Q. And what impression did you have of your own activity in Denmark?

A. The activity in Denmark was for me very successful --psychologically, it was satisfactory, and, for the first time in yea rs, I felt that I was acting in a way which was satisfactory to myself.

Q. How did you leave Denmark, and when?

A. I left Denmark after the capitulation, following German directives which I had received, when the unit of my own office had to leave Denmark, and that was --BY THE PRESIDENT:

Q. Witness, you say you were quite happy with your services in Denmark, and you came away feeling that the Danish population were quite happy with your administration.

Have I understood you correctly?

A. Yes.

Q. And no one ever voiced any complaint about your occupation there -- to you?

A. Your Honor, you mean the occupation as such?

Q. Well, --- yes, you as a representative of the German occupation. If they were satisfied with you as a representative, then I presume you intend to convey the idea that they were satisfied with

A. I don't understand.

Q. Well, you have told us that the Danish people were quite happy with your administration in Denmark.

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A. Yes, yes.

Q. They were happy to the extent that they came and thanked you, they wrote you letters, they sent you flowers. Is that right?

A. Yes, that's correct.

Q. Yes....now, do we gain from all this that the Danish people were very happy about their country being occupied by Germans?

A. No, that is not the case.

Q. Very well. Then you were the exception?

A. Not I, personally, was the exception, but I would say the authority, the office of the Plenipotentiary of the Reich and the population, - the line that was kept as far as administration goes, was only borne by the thought of the idea to settle any harshness that might have cropped up. After all, Your Honor, we were not at war with Denmark. They were conditions of occupation, and they were all regulated by contract, and it was our task, or at least we saw it as out task, to take care that the points of the contract were kept, also on the part of the occupation power, that was the German Wehrmacht and the German police.

Q. You were not at war with Denmark?

A. No.

Q. Well were you at war with Norway?

A. Yes.....there conditions were different.

Q.Were you at war with the Netherlands?

A. Yes.

Q. Were you at war with Belgium?

A. Yes.

Q. Well, how do you distinguish between Denmark and these other countries?

A. Your Honor, officially we were not at war with Denmark. When the occupation of the country took place......

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Q. Were you officially at war with Holland?

A. As far as I know, yes.

Q. Well, distinguish to me between Denmark and the Netherlands-insofar as German official action is concerned.

A. I am not acquainted with conditions in the Netherlands, but in Denmark it was thus that as soon as the country was occupied --it wasn't that war was declared.

Q. Well, was war declared against any country -- with the exception of two or three? Was war declared against Russia?

A. Your Honor, that, of course, depended on the attitude of each individual country.

Q. Well, now, listen ... witness, the Tribunal has no desire at all to enter into any political discussion; but when you make a statement, then you must be prepared to explain it. If the statement seens in conflict with the general historical knowledge of any situation, then we must know whether you stand by that statement. That is the way we can determine the credibility of a witness. Now, you say that Germany was not at war with Denmark?

A. Yes.

Q. And you stand on that?

A. Yes.

Q. All right. Now, for the purpose of understanding why you make the remark, when history indicates that Germany invaded Denmark and performed all a nation does in the manner of waging a war in order to occupy and control a country, -- when you tell us that there was no state of war there, then we would like to have you tell us why you make that statement and differentiate between Denmark, which was invaded in the same way as Luxembourg? If you can make that distinction, tell us; if you cannot, say nothing, and we will pass to the next subject. Can you distinguish between the invasion of Denmark and the invasion of Luxembourg?

A. Yes.

Q. In a few words, tell us the distinction.

A. I see the difference in the following: In Denmark an independent government remained in force even after the occupation, an independent government, headed by the king. The entire administration of the country remained, and was, until 1945, Danish. In the other occupied territories it must have been different. I did not want to explain anything else, Your Honor...anything else, when I said that we were not at war with Denmark - which was the case, as the administrative structure.

Q. Very well. We only wanted an explanation as to why you came to that conclusion, and you have given us your explanation.

THE PRESIDENT: BY DR. RIEDIGER:

Q. Witness, what was your own attitude concerning the Jewish policy of National Socialism?

A. When I joined the NSDAP in 1937 I, as everybody else, did not think that any power acts would be carried out towards Jewry. Evidently, the years of distress after the first World War had opened up the question for some solution concerning the communal life -- a life, that is, of German citizens and Jewish citizens. As has been mentioned here before, the percentage of the Jewish element in public positions was in no relation of the Reich. If one wants to express it in that way now, the Jewish question did not exist, but nobody thought of using force in solving the problem. Added to this, during the post war years Jews immigrated, after 1918, into the Reich in great numbers, and also these Jews were soon in leading positions in German economic life and became very influential in these circles; and this of course, was regarded with dismay by the German citizens.

DR. RIEDIGER: Your Honor, I have the impression that Hannsch has not been able to follow, for quite some time now--and I would like to request that the session be interrupted now.

I have been aware of it for some time...that he has not been able to answer my questions, and I think that tomorrow morning he will be able to follow.

THE PRESIDENT: You would want us, then to recess because you fear that at the present moment the defendant Haensch is not in the best physical and mental state?

DR. RIEDIGER: Yes.

THE PRESIDENT: Very well, in view of that request made by Dr. Riediger, the Tribunal will now be in recess until tomorrow morning at nine-thirty o'clock.

(The Tribunal recessed until 0930 hours 3 December 1947.)

against Otto Ohlendorf, et al., defendants, sitting

THE MARSHAL: The Honorable, the Judges of Military Tribunal II. Tribunal.

DR. RIEDIGER: Your Honor, before I proceed with the direct examination of the witness, I would like to thank the Tribunal for stopping proceedings yesterday regarding the Defendant's bad state of health. The defense is in a very delicate and difficult position because even in the evening the witness was in a very bad mental state. The responsibility, of course, is a large one. I had the feeling all the time during the proceedings yesterday that the witness did not react properly and even today I have my doubts and almost misgivings, but I do not want to create the impression that the defense in any way whatsoever wants to interrupt the proceedings. Especially I do not want to create the impression that the witness wants to evade being questioned. the direct examination has been concluded, that the witness should be examined by a physician, as the result of this examination would clear up the state of health of the witness. I myself as a layman cannot take the responsibility and I cannot judge the state of health of the witness.

THE PRESIDENT: Your request, Dr. Riediger, is entirely a reasonable one and the Tribunal will be pleased to act upon it. You may now proceed with the direct examination, conclude it, and then in the meantime we will have had some COURT II CASE IX doctor prepared to examine the defendant just as soon as your examination is completed.

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DR. RIEDIGER: Your Honor, if I may take the liberty to suggest that even the cross examination could be carried out later on, because I could imagine that if the physician examines the defendant immediately after his examination in Court he would get the proper picture concerning his state of health.

THE PRESIDENT: Well then, it is your recommendation that we proceed normally, you concluding the direct examination and Mr. Hochwald conducting the cross examination, and then we have the medical examination?

DR. RIEDIGER: Yes.

THE PRESIDENT: Very well. Proceed, Dr. Riediger. BY DR. RIEDIGER:

Q. Witness, we concluded yesterday's session with your attitude towards the Jewish question raised by National Socialism. How did the problems look regarded from your point of view?

A. I may say first that at that time, especially in 1933 and the years following 1933. I did not occupy myself immediately with the Jewish question. I want to say this for a possible clarification, but if I think back to that time then, I can only emphasize one thing again and again. The question was not so much in the foreground at that time when the power was taken over by the National Socialists and during the following years. At least it was not as important as it looks today. The matter which took up all our interest at the time was the elimination of unemployment and the attempt to get a new order, but I have already said COURT II CASE IX yesterday, the problem as such, that is, the Jewish problem, did exist, of course, insofar as after the last World War it had shown that the two parts of the population, the Jewish sector that is, and the Gentile sector in the Reich, came into collision with each other more and more, and this had as its reason in my opinion, the following:

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After the last World War there was an especially strong immigration into the Reich from the East which now, in quite a disproportionate manner, took positions in public life.

Q. Did you discuss these matters at the time with Jews themselves?

A. Yes. Therefore, I remember it now; especially concerning the question of immigration after the last World War. I remember discussions in my own home town with a physician, Professor Klineberger, and I also had discussions with an old Jewish lady with whom I lived during my referendar period, a certain Mrs. Markus. It was in Leipzig. These two people by no means rejected this attitude that newly immigrated Jews, those who had immigrated after 1918, were in a certain way unjustified to occupy such posts in German public life of all spheres.

Q. How did you yourself react to these Jews and what was your attitude? Did you not on one occasion have to deal with one case in the RSHA, a case which dealt with an assessor and proceedings against him, who had illtreated Jews, and when was that, what year?

A. My attitude towards the Jewish question I adjusted according to the point of view of the entirety more than anything, and as becomes evident from the fact that I lived with this Mrs. Markus and that I and her other lodgers were on very good relationship with her, that shows, as I said, COURT II CASE IX that individual Jews I did not regard as enemies and I had never thought in any way of ill-treating them, and so exactly as in all other cases I tried to obtain order and cleanliness in the same way in my activity as an expert dealing with disciplinary matters in the RSHA at the time.

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I, of course, took steps immediately in this particular case and I know that I was very much upset about this assessor, especially as he was a high official of a certain personal standard who had acted in this manner, I mean, had illtreated this Jew. Therefore, I proceeded according to my memory that must have been either the end of 1942 or at the beginning of 1943 -- in any case it was after I had returned from Russia and after I was again in charge of disciplinary matters, because I am sure that it was after the death of Heydrich.

Q. Excuse my interrupting you, witness, Could you not say clearly what the case was, what the facts were and what happened about this particular case?

A. A report had been received according to which a Jew had been illtreated in public by an official of the State Police office in Berlin. I remember that the report arrived and it had been sent off by officials of a newspaper who had, from the window or in any case from the building, observed and watched this action. The individual happenings I cannot remember today, but I immediately caused an investigation to be conducted against this person concerned; he was released immediately, and, I think, he was arrested. I don't quite remember how he was punished but I do know that at that time, I from a basic point of view advocated that for disciplinary reasons he should be released immediately. I don't know what the outcome was. As the man was an official he must have been dealt with by the disciplinary court.

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Q. Witness, excuse me for interrupting you. The outcome of this procedure you do not know; did you never know?

A. I do not remember.

Q. Did you deal with this case personally?

A. It was dealt with in my office. I received that report. I took measures immediately and the matter itself was dealt with by one of my officials.

Q. Witness, please speak a little slower because the reporters can't follow.

A. I immediately initiated the investigation of this particular case and I immediately caused this man to be released, and then the case was dealt with in detail and examined and investigated by an official and government councillor (Regierungsrat) in my own department.

Q. Do you remember the name of the assessor concerned?

A. The assessor, that is, the official of the State Police office in Berlin who had illtreated the Jew, I do not remember. The official who dealt with the whole matter in detail must have been a Regierungsrat, either Regierungsrat Friedrich Schulz or Regierungsrat Fenz. Both these gentlemen were working in my office, but not at the same time. Friedrich Schulz was relieved and replaced. I don't know whether that was during the time of Schulz or Fenz.

Q. Witness, can you remember another case or a number of cases which show your attitude towards the Jewish question?

A. I can only say that when in Denmark, for instance, information was received that Danish citizens of Jewish faith, were to be deported to the Reich, we, and of course especially myself, were absolutely speechless and very much upset about it. I remember it so well because the office of the Reich Plenipotentiary had actually nothing to do with these matters and they did not learn about these things immediately, to begin with.

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It was just an accident that one day through the visit of this well known actress, Lulu Ziegler, at my office, through this visit as I say, I found out that rumors circulated in Copenhagen to the effect that Danish Jews were to be deported to the Reich. I was speechless at the time and I did not believe it, that this actually was to happen.

Q. You just said "we were surprised about these measures". What did you mean?

A. Everybody was upset about it. I think there must have been few people perhaps who were of another opinion within the office of the Reich Plenipotentiary and the other offices; they were all who had experience in official and also worldly affairs.

Q. Did you discuss this with your superior at your office and who was the superior?

A. In Denmark, this bit of information which came as a surprise to me from Lulu Ziegler, I immediately passed on to the Reich Plenipotentiary, Dr. Best, and I think before I passed it on to my immediate superior, Dr. Staumann. I went into the office and.........

Q. What was the purpose of this visit of this actress? Did she have a special request?

A. That was in connection with her request and her wish. She applied to me, after her husband had been released, asking me whether she would not be permitted to go with her family......she had a number of children......to emigrate to Sweden. It would have been comparatively easy for her illegally, of course, but she emphasized that she did not want to do so and she asked me whether it would not be possible for me to do this officially for her.

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should be done as there was nothing against her. It was really quite an unjustified suspicion against her. In this connection she told me about this rumor and she asked me about it. She added that she was very worried about her friends and acquaintances of her family who were partly Jewish, and she asked me whether she should not advise them to leave Denmark in some way or other. I did not know anything about the whole matter. I had heard about it for the first time and I, after all, was an officially.

Therefore, I could not advise her with words but I told her....... and this was approved later on and I was told that that was completely justified and right......I, as I say, through my whole personel attitude and even through the expression on my face, I let her know that I was of the opinion and of the conviction that she should leave Denmark.

Q. Witness, what was your won attitude toward the measures on the part of the government or rather the party against the Jews?

A. I would like to make a destination there, State and Party. Those measures were taken on the part of the State and I saw in these measures that they would serve the purpose of bringing about the solution of the Jewish problem insofar as the Jews would be brought about to emigrate and leave Germany. At that time, as far as I know, the solution of the Jewish problem was always discussed and as it has been mentioned in this trial, this Madagasgar plan was also mentioned. I have, before this examination, told my defense counsel that I seem to remember just Madagasgar and Palestine and that at the time this was also discussed in the press and that negotiations were in progress with France, I believe, in order to have Jews migrate to Madagasgar.

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Thus in these measures on the part of the State, or at least as far as they concerned these laws, I saw a sort of legal gap between the two enemy parts of the population which was to serve the purpose of forcing the Jewish population to emigrate on the one hand, and furthermore, regarded from the foreign policy point of view, to cause the other states, who would have been prepared to take in Jews, to carry this out. I must emphasize again that acts of violence were never mentioned to me and I never found out anything about them. I never experienced anything, but acts of violence and terror. I objected psychologically and I still do. only I alone; have strongly objected to the acts of terror which took place in 1938 in November. Again I can only say I did not find out anything else about them until this very day, I, as I say, regard them as purely arbitrary acts of the Party authorities.

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As I say I regard them as purely arbitrary acts of party authorities. I was told at the time, and I found out about these things in November, in the shape of rumors that behind these acts was the party leadership under Goebbels. I think it must have been the 8th of November 1938. At that time I was not the Berlin myself, but on this day and the following day I was in Munich and I did not see or experience anything immediately myself but it was at night after midnight in the hotel when suddenly the rumor circulated that excess had happened and were still happening. The largest part of the departmental officials and the leader of the SD main office had come to Munich to take part in the 9 November celebrations. And I know that this bit of information we received in the hotel. There were a number of other leader present. I can certify that generally the whole chain of events was regarded with strong misgivings. This was expressed by all these men. And after that, the next day, not the next but the next but one, I left for Berlin and only in Berlin I learned the facts from acquaintances and friends in the vicinity of our apartment. I found out, I said, in what incredible manner these actions had been carried out. That must have been a day later when it was made known through the press, that acts of terror of any kind, would be punished severely by the police. Until this very day I am of the opinion that these acts were events which were merely arbitrary acts carried out by radical party members and which according to my opinion then had been

PRESIDENT: Dr. Riediger, when the witness has narrated an incident or episode, is it unnecessary for him to repeat it? I would suggest that you keep a central over his testimony. Now, he has told us this episode, that of the responsibility of the party. He referred to it yesterday. He has given it to us today. Now, he is again telling us the responsibility of the party, which is naturally repetitious and unnecessary. I would suggest that when he goes on to an unnecessary length, and it most be apparent to you when that happens, that you ask another question. In that way we will keep it moving.

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DR. RIEDIGER: Your Honor, I shall follow this example. BY DR. RIEDIGER:

Q. Witness, I believe we can now leave this particular sphere. What is your attitude toward Christianity?

A. I already said that I was educated and grew up ion a Christian home, and my religious psychological attitude was and in a positive affirmation of God, or the Christian term of God. Since my early childhood I never felt myself of confronted with any problems concerning this my conviction. For this reason, I did not have to search for God, but for me it is an unvielable firm possession, and the highest one, governing all matters of this earch. And we all have to bow to it; scientists as well as philosophers, because after all the very essential questions cannot be answered by these scientists.

Q. Why did you leave the church, and when was that?

A. I may add now that my leaving the church has nothing to do with my religious conviction or my membership of the party or the SS. I never discussed this with any superior or with any responsible party member of the SS, and I was never asked about these matters, about my own attitude toward these matters, but that is my own private matter, and here again there is a long development until I arrived at the solution: it started after the first world war. I then regarded the church as a mundane organization. I saw and I believe that they had given up their real Christian task, the care of sould of human beings, and had become a mere or less political power. Already in 1922 and '23 I saw church elections of the church parties, that is, in the Protestant Church of Germany, which actually reflected the political parties, and that way one found conservative Christians, liberal Christians, and the church steered more and more towards political power. After '33 the impression became stronger and stronger. by press and radio we learned of the dispute between the various churches. One heard of remarks against the state, on the part of the clergy, and all this brought up the conviction within me that the church was not any longer a church as it should be, namely, the binding member or the spiritual organization and spiritual unit of all these believing in Christ.

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BY THE PRESIDENT:

Q. Witness, do we understand from what you have just said that you learned from the press and radio that the church in some way was opposed to the state government?

A. Yes.

Q. And you looked with regret upon the dispute between the church and the state?

A. Yes, Your Honor.

Q. And I understand that you felt that that was an improper attitude of the church, and therefore you were willing to withdraw from the church?

A. Yes.

THE PRESIDENT: Very well, I just wanted to know. BY DR RIEDIGER:

Q. Did your leaving the church mean that you gave up the belief in Christ?

A. No. In no manner, but I may now add to the words of the President, I was confronted with the psychological conflict not caused by the press information which I received but by the events which I experienced myself, that the gap within the population came into existence again, and that it even touched individual families. The cause of my leaving the church was a visit to my own home village; when I found out there that in one individual family, a family of a clergyman, the conflict had become so extensive between father and son-in-law and children that family life as such split up and Christian love could not even be discussed. I have already said that I learned belief from earliest childhood on, and I have always been happiest when I saw the close contact from man to man or from people to people.

Q. Witness, did you have any advantages from your leaving the church?

A. No. There were no advantages gained by my leaving the church, and I never attempted to have any advantages. I should like to say now that my promotion, within the SS especially, took place before my leaving the church. Apart from the last promotion to obersturmbannfuehrer, which had to come as an assimilation of ranks in my office as oberregierungsrat, (Senior Government Counsellor), and this promotion itself came about almost four years after my last promotion to Sturmbannfuehrer.

Q. Witness, I think we can now leave this subject and I would now like to clarify the point concerning your membership in the SD and the SS. When did you enter the SD?

A. I joined the SD as a civilian employee on the 1st of August 1935.

Q. When did you join the SS, Witness?

A. On the 1st of May 1936 I joined the SS, that is, the SS formation SD. This was caused by my new office within the SD.

Q. What offices did you hold in the RSHA?

A. In the RSHA I was only a member of office I.

Q. What tasks did you have to deal with?

A. I had to deal with disciplinary matters--official disciplinary matters and penal matters within my group.

Q. Did you membership of Office I change when you were promoted to Regierungsrat, Government Counsellor?

A. I am sorry, I did not understand the beginning of the question.

Q. Did your membership of Office I change when you were promoted to the Regierungsrat, and when you were taken over in the state service?

A. No. Unfortunately not. At the time it was my wish that it should be so, and it was again a period in which I attempted to apply for another office. With the moment of my promotion to Regierungsrat (Government Counsellor), I became a member of the Ministry of Interior, but I remained a deputy to the Reich Security main office, I requested this, and my request was refused owing to the condition of the war.

PRESIDENT: Just what did the witness mean when he said that he dealt with "disciplinary, and penal matters" within his group? Which group?

DR. RIEDIGER: In my knowledge, it is the group within the Office I.

THE WITNESS: Your Honor, may I clarify this? BY THE PRESIDENT:

Q. Well, just tell me what group, whom do you mean by "group"? Now, just tell me that.

A. I only wanted to express that I was in charge of the group which dealt with disciplinary and penal matters; Office I, was sub divided into various groups.

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By this I mean departments, and one of these departments dealt with disciplinary matters and penal matters concerning officials.

Q. Which officials?

A. These were the officials, first of all, members of SD, then officials of other departments of security police or belonging to the Reich Security Main Office.

PRESIDENT: Very well. That answers the question. BY DR. RIEDIGER:

Q. Did your leaving the RSHA change your relationship and your membership in the SS?

A. I never understand this until now; through the documents I found out the real state of affairs. I was explained at that time when I left, that from now on I would be transferred to the Fuehrungshauptamt (leadership main office), but really nothing happened. I, myself, from the very day of my leaving this office, heard nothing about it any more. The validity stamp on the SS membership cards, it was only valid for about three months, then a new stamp had to be entered. I never received any more, and I never requested it. I had no contact whatsoever except through one questionnaire which I was sent, I believe, in 1944 for me to fill out--a personnel questionnaire. I never sent it back. This becomes evident from my SS personnel files. They show that the old personnel questionnaire of 1937 is contained, but this new questionnaire is not contained. Therefore, practically, if I may call it that, a la suite, I was carried on the files of the Reich Security Main Office as a member of the SS, as it becomes evident from these documents now.

Q. Did you ever serve in the General SS?

A. No. I was never a member of the General SS, and I never did any General SS Service or any other SS Service, as for instance, Sturm service, as we had been used to from the motorized SA or the NSKK (the motorized units of the SS). Not a single member of the RSHA or the SD ever did any service.

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DR. RIEDIGER: Actually, Your Honor, I have no more questions, but I would like to correct the affidavit, that is, the translation of the affidavit of the Witness of Volume III C.

PRESIDENT: Tell us in what particular.

DR. RIEDIGER: It is page 54, German: I don't know the English at the moment.

MR. HOCHWALD: It is page 35 of Document Book III C.

DR. RIEDIGER: Exhibit 140, No. 4567. There on a number of cocasions "parteitraeger" is mentioned ("official"). This does not correspond to the actual statement of the witness.

PRESIDENT: What page of the original, Dr. Riediger?

DR. RIEDIGER: It is page 71 in my book.

RESIDENT: No. What page of the documents, original -- the original documents is divided into many pages.

MR. HOCHWALD: It is page 18 of the original, Your Honor.

PRESIDENT: All right, proceed.

DR. RIEDIGER: There are a number of other mistakes in the translation which, however, are not as irritating. This is a mistake here which is of some consequence. I would like this to be noted in the record.

PRESIDENT: Please repeat it. I didn't catch it at first because I didn't have the page.

DR. RIEDIGER: The wording is page 40.

MR. HOCHWALD: From the top, para. 4, on page 43.

PRESIDENT: Now please, just a minute, we are confusing this. Dr. Riediger, refer to the page in the original document, and then read it the way it appears now and the way you believe it should appear.

MR. HOCHWALD: Your Honor, it is page 18 of the original, page 43 of the English document book, second para from the top, and signed as para 4. There are some paragraphs mentioned in the other page before that.

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PRESIDENT: Well, perhaps Mr. Hochwald, you can assist Dr. Riediger by your reading from the original and then determining from Dr. Riediger wherein he claims there is an error in the translation from the German.

MR. HOCHWALD: If I understand Dr. Riediger correctly, Your Honor, he does not claim that it is an error in the translation but he claims that when the document was transcribed from the handwriting of the witness into the mimeographed copy here, a mistake was made in the German.

PRESIDENT: Yes. Well, then tell us what that error is.

MR. HOCHWALD: He claims that instead of the word "parteitraeger" which means party officials, which appears in the mimeographed copy, the witness wrote himself the word "pertepetraeger", which would mean an officer, an officer who was permitted to wear a strap on his sword, and this strap means "pertepetraeger". "Pertepetraeger" would then be an officer. As far as I can see from the English, that is not a very big difference, as the English says, "Occasionally officer or authorized persons also attended the executions." It is not said in the translation, which very likely was made from the photostat of the original, that there were party officials present.

PRESIDENT: Very well. That explanation will appear in the transcript. Now, what is next, Dr. Riediger?

DR RIEDIGER: The others are negligent matters which I do not have to mention.

THE PRESIDENT: Very well. Does any defense counsel desire to cross-examine the witness? If not, Mr. Hochwald will proceed with the cross-examination. questions put to you?

THE WITNESS: I beg your pardon, Your Honor, if I have answered the questions today and yesterday slightly haltingly. It is no bad intention. I sometimes do not find the right words. I think it is mainly due to a state of exhaustion and I thought I had overcome it, but it is due to some kind of disease, which I had from 1946 until 1947. I was in the hospital then and I was in a complete state of exhaustion after I had broken down.

THE PRESIDENT: I would suggest that when a question is put to you, you make certain that you understand it thoroughly and then respond and you take just asmuch time as you believe is necessary to understand with a full comprehension of what you are saying.

THE WITNESS: Thank you. BY MR. HORLICK-HOCHWALD:

Q. May it please the Tribunal; Dr. Haensch, we can just start where your counsel left off about your membership in the NSDAP and the SS and the SD. Is it correct that you joined -- is it correct that you joined the NSDAP in 1931?

A. That is correct.

Q. And the SS in 1935?

A. No, I have already mentioned that I joined the SS on the 1st of May 1936.

Q. 1936?

A. Yes.

Q. Did you ever swear the oath of allegiance to Adolf Hitler?

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that moment when I became amember of the SS, the SS oath became equally valid. Personally, I cannot remember now whether I swore a personal oath, by making the oath itself, or whether it was so automatic and regarded as my transfer altogether was automatic, my transfer into the SS, but that, of course, is negligent and of minor importance. Of course, the oath wasjust asvalid for me asit was for others.

Q You felt you were bound to this oath?

Q When actually did you first contact with SD take place?

AAs I have already said. my first contact with the SD was into Doebeln in connection with this dispute which I mentioned, after the consequences had made themselves felt. Until that point, I had perhaps, shall we say anonymous contact, because I had not known that the report was meant for the SD, but I was told that it was for the SS. That again is of negligent importance.

Q. So, if I am correct, you had your first contact with the SD after you were dismissed from your position in Doebeln. That was in autumn, 1935, is that correct?

A. No, both these statements are not quite correct. Just a moment, may I ask you to ask the first part of this question again. I have already forgotten.

Q. Did you not state that your first contact with the SD took place after you had been dismissed from Doebeln?

A This first question is not quite correct, Mr. Prosecutor. No, not after I had been released, a ccording to my memory, because then I was for some time -- I don't know whether it was eight or fourteen day -I was released before the first measures. On the same day the Kroisleiter, (District Leader), came and at that time immediately after my first contact, I would say, my onlightenment concerning the SD cam about; my report to the SD.

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Doebeln, making this report, you had never had any contact with the SD. That is right? here at great length about the facts, how it came about that you joined the SD and consequently the SS. In your affidavit, which is Document Book III-C on page 47, German 80, Document 4567, Prosecution Exhibit 140, you said that you were forced to join the SD and the SS. You have amended this statement by testifying that you received an officer from the SD which you accepted as you had no opportunity to get a job in Civil Service, is that correct?

Q Mr. Prosecution, I think a number of questions are contained in this one question that you have just asked. First of all say that I had stated in some place that I had been forced to join the SS and the SD. Is that what you mean? I never and in no place said that I was forced to join. I don't know what point you mean.

Q On page 46 of the English. I do think it is on page 80 of the German.

Q You will find the sentence, "My activity there, involuntarily, became of decisive importance in my further professional career and this in a negative sense in as far as I was prevented for years from my endeavors of becoming active in the service of the general state administration, and was forced to judicial activity within the SD and the SS." Possibly; I do only want to make it clear; is it correct that you received an offer from the SD and accepted this offer?

A I answered this, Your Honor, but I must clarify this. There must be a mistake in the translation in the English text. Apparently it says, as I hear from you now that I had been forced, because it says, in the original document, I quote, "My activity there" -- that is, in Doebeln -- "became of major importance eventually for my further professional career and was" -- and here it should not say "war" but "zwar."

There is a letter left out. "It was of minor significance in so far as for years I had made attempts to take up activity within the service of the State Administration and I was prevented and automatically" -- It doesn't say "forced", "zwangslaufig" ("Zwangslaufig" is "automatically") and again there is a mistake, "juristiarisch" (legal activity) within the SD and therefore the SS."

Q May I then ask you whether the word "zwangsweise" means -- or whether you intended to say that you were forced to enter the SD?

A No, it does not say "zwangsweise." It means "zwangslaufig." "zwangslaufig" does not mean that I was forced to join the SD, personally, in any way, but the ill conditions, as such, the fact that I had no job as an excluded Party member, I could not find any corresponding activity. This automatically meant that I accepted the offer of the SD to do work with them in some legal activity, as a legal counsel. correct?

A Nobody forced me. I joined voluntarily. I took over this activity voluntarily in this department. Psychologically, of course, I was in a sort of forced position. Otherwise, of course, I would have chosen another activity; the activity in the General Administration which I had been offered, for which I had been put down on the waiting list, and I was waiting to be called, and, as I had been put down on the list in Dresden, the District Leader, the (Gauleiter), of course, was In the position to cross all my plans, and, now, of course...... the Tribunal all this which you have just said now in your direct examination. I do think it will be easier for you and for all of usif you just answer the question and give information only, information you did not volunteer for your direct examination.

Q How was it with your entrance into the SS? Your entrance into the SS was a voluntary one too, is that correct?

A Well, this I may perhaps explain. The real state of affairs was that it really came about automatically. Again even now it says -

THE PRESIDENT: Well, he has stated, Mr. Hochwald -

THE WITNESS:You want to know whether I voluntarily joined the SS, well, in any way I was not forced, -

THE PRESIDENT: The witness stated when he joined the SD voluntarily, he became a member of the SS automatically. The joining of the SD carried with it whatever naturally followed, so, therefore, when he joined the SD, he automatically, and, therefore, voluntarily joined the SS because that followed.

MR. HORLICK-HOCHWALD: The only question I wanted to ask; I wanted to ask the witness in this connection, whether this joining of the SS was the automatic result of his membership in the SD. Nothing else.

THE PRESIDENT: Yes.

Q (By Mr. Horlick-Hochwald) is that correct that your transfer to the SS was the automatic result of your membership in the SD?

A Yes, I want to correct one thing, though, Mr. Prosecutor, that it carried it with it -- but I do not want you to conclude that the 1st of August I actually joined the SS. I joined in 1936 on the 1st of August not in 1935, because I see from the expressions used here, that it is all somewhat strange.

Q Witness, you were asked by the Tribunal -- I beg the Tribunal's pardon for touching this point again -- you had testified that even before the war you tried to be released from the SD, is that correct?

Q. For this reason, you made frequent applications, did you not?

A. Yes.

Q. What exactly were the contents of these applications?

A. The content of these applications, Mr. Prosecutor, were nothing but my request to give me now the opportunity, as I had originally intended, to be transferred into the interior administration of the State.

Q. So, I am then correct in assuming that these applications were applications for transfer in the internal administration, is that right?

A. Yes.

Q. But you actually never made an application to be released from the SD just for the reason that you were unwilling to do the job in the SD. Is it not clear from your statement, Dr. Haensch, that you just wanted to make a better choice, but that, as you did not get the position in the Civil Service you just stayed in the SD, is that right?

A. I don't understand your question. There are too many questions again contained there.

Q. It is very simple. Did you ever make an application to be released from the SD, just released from the SD, as you did not want to be a member of this organization?

A. I did not ever see anything detrimental concerning the SD. I had no cause to threw dirt at the SD.

THE PRESIDENT: Mr. Hockwald, that answers your question. It is a sort of round about way. You asked him whether he ever sought to leave the SD. He says he saw no reason to leave the SD. That means that he never tried to leave the SD.

Q. (By Mr. Herlick-Hockwald) So you were not actually under military orders to stay in the SD. You would have been able to leave this organization if you would have requested to do so?

A. But, Mr. Prosecutor, you can see it from the fact that my requests were constantly refused that I could not do what I wanted to. I was, after all, a member of this machinery and this organization of the RSHA and therefore, also, of he SD and the Security Police and SD.

Of course I was subordinated to the Chief of the Security Police and the SD. If you want to call that military power; the word "military" I don't know what to do with. Of course, I was in a sort of position-

Q. Witness, may I interrupt you? May I interrupt you for a minute? Would it have been possible for you between 1936 and 1939 to leave the SD, be released from the SD or will you tell the Tribunal that at the moment you joined the SD you must -- you had to stay in the SD all your life? That is what I am asking you.

A. Well, Mr. Prosecutor, then, of course, I must say that I would not have had this possibility. Even if the Chief of the SD had approved my leaving the service, I myself could not have left on my own initiative. That was the forced position that I was in. I can say that here: it worried me very much mentally.

Q. Was that during the war or before the war, Dr. Haensch?

A. We have talked now about the time before the war.

Q. Will you tell the Tribunal that membership in the SD and the SS before the war was involuntary and that anybody who once joined one of these organizations could never leave it any more. Will you tell me that? Are you going to tell that to the Tribunal? Please make your answer clear. It is a very case question to answer.

A. If you see anything involuntary in this, then, of course, this corresponds to the fact, and, of course, now all the directives and regulations were valid for me that were valid for all the other members, and now, of course, as I say, I was not free any longer. I could not take my own fate into my hands, as I would have liked to do, but, as I always constantly-

Q. You don't understand. This is not the question. The question is whether you would have been able to make an application for a release from the SD and whether there was an actual order or decree which made it impossible for somebody to ask for a release and to be . released from one of the two organizations in which you were from 1936.

You do not answer my question. I think there is only one question. Was there an order or a decree existing in Germany that a person who once joined the SS or the SD could never be released any more? Can you anser that?

A. No, I do not know of an order or a decree to this effect or, at least, not in that shape. The following directives were valid.....

THE PRESIDENT: You have answered the question. Mr. Hochwald, when your question have been answered, ask another question because -

Q. (By Mr. Horlick-Hochwald) So there was no decree or order, was there?

A. Well, there was a decree to the following effect; that I would like to mention. This was really valid in connection with the SS members. A man who had been transferred to the SS, and, in my case, that would have been to the SD, he, -- I don't remember after how long. I think perhaps one year -- he could leave for reasons of health. Only there were three or four points. I think it was for health, reasons of health, if physicians confirmed it. Then there was also automatic exclusion resulting from any actions, and there was one other point, but I don't remember clearly. These were the regulations which, of course, were also valid for the SS and SD. I never saw these matters as complicated as you put them, Mr. Prosecutor. I have tried to achieve some kind of professional satisfaction, but that was not possible, because it was refused. I myself was not free, therefore in any full power of decision.

Q. I don't want to press this point. You have said about -

THE PRESIDENT: Mr. Hochwald, I think the witness made it very clear that he never desired to leave the SD, except to get a better job. Now, if he never desired to leave, then it is evident that he was satisfied to stay.

MR. HORLICK*HOCHWALD: If the Tribunal understands the testimony of the witness in that way. I am perfectly satisfied, but the witness, of course, has just said "no" again in contradiction to that which he has said ten months ago, that he was never free, so he tries obviously to give the impression that he was involuntarily a member of this criminal organization.

If he states here -- and that is what I am asking him all the time -- he remained in these two organization voluntarily, I do think there should be no further line of questioning on this point, but it is very hard, I am sorry to say, to follow his explanations, although he, is a lawyer, he does not know the difference between legal force and inner force, force which is the wish for a better job, a better position, and he mixes it up in a way, I don't understand really, so may I ask one last question?

organizations - the SD and the SS, voluntarily. Will you answer this question with yes or no, please?

THE PRESIDENT: The trouble is -

THE WITNESS: I can only answer it in the affirmative. I could not leave the organization.

THE PRESIDENT: You see, Mr. Hochwald, you put two questions in your last proposition. Did you join, and did you remain.

MR. HOCHWALD: Yes, sir, I did.

THE PRESIDENT: Well, those are two questions.

MR. HOCHWALD: I said, did you join ... that seems to be -

THE PRESIDENT: You joined voluntarily. That's clear, isn't it?

THE WITNESS: Yes.

THE PRESIDENT: Now that is disposed of. Don't ask that question again. And the next question - we are able to recuperate in the next fifteen minutes from what has proceeded.

( A recess was taken)

THE MARSHAL: The Tribunal is again in session.

DR. RIEDIGER: Your Honor, I must ask your pardon if I come with a special request -- I beg that the witness Schreyer be interrogated....

THE PRESIDENT: Your request is granted without even your putting it. Yes. We will hear this witness, even though we have to break into the cross examination - so that the witness, as we understand, can get away as she would like to, this afternoon. Very well.

DR. RIEDIGER: Thank you.

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testified as follows:

JUDGE DIXON: Witness, raise your right hand and repeat after me: speak the pure truth and will withhold and add nothing.

( The witness repeated the oath)

JUDGE DIXON: You may be seated. BY DR. RIEDIGER:

Q Witness, will you please state your name?

Q When were you born?

Q Where is your permanent residence?

Q Witness, do you know Dr. Walter Haensch?

A Yes, Dr. Walter Haensch was in my photographic studio in Berlin, Zehlendorf, to have his photo taken, on 21 February, 1942.

Q How do you know the exact date?

Q Is an error in date possible? exact file. personally?

Q Can you produce this book?

DR. RIEDIGER: Mr. President, I will present this book, to be admitted in the document book.

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MR. HOCHWALD: May the Prosecution examine the original?

THE PRESIDENT: By all means. Well, let Dr. Riediger finish his examination; then, of course, you can go into the cross examination thoroughly.

MR. HOCHWALD: If Dr. Riediger needs the book to further examine, of course I won't look into it just now.

DR. RIEDIGER: I also see in this book, copies of certificates. is entered. photographic copy about which you can give me some further details. What does this reveal?

A Dr. Haensch was in my place on 21 February 1942. The proofs were sent to his wife in Zittau, marked 2071.

DR. RIEDIGER: I have no more questions.

THE PRESIDENT: Proceed with the cross examination.

MR. HOCHWALD: If the Tribunal please, I only want a minute to look into those two exhibits.

THE PRESIDENT: By all means. while you are looking at that, the Tribunal may put a few questions for the purpose of illumination, to the witness.

Q (By the President): Witness, where do you live now? where I lived before.

Q Did anything happen to your building during the war? profession?

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business because of the bombing?

because of the damaged condition?

Q When did the bombing occur?

occurred?

Q How did it happen that you were not there?

Q How many are in your family?

March 1, 1943?

A No one either. My sisters and brothers are all dead.

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Q You live alone?

A I live alone. I have been separated from any husband for ten years.

Q How many rooms did you have at this place?

Q At what time in the evening did the bombing occur?

A It was after the movie was over. It must have been between eleven and eleven-thirty.

Q When did you get back to the house?

AAbout two o'clock at night. I walked from Steglitz.

Q You arrived at two o'clock in the morning?

A Yes, two o'clock in the morning.

Q Were movies going until that late, to eleven o'clock in Berlin during the war?

A I presume, it might have been ten o'clock. I don't remember exactly.

Q What time did the show let out?

A I assume it was ten or eleven o'clock, I can not say exactly. night, late at night, until eleven o'clock?

A I assume until ten o'clock, from eight to ten, or ten-thirty in the first year of the war.

Q Well, that was not the first year of the war. That was 1943, you were already in the fourth year of the war?

Q Did you have blackouts on the streets at the time?

Q And how far was the movie from your place of business?

the movie to your home?

Q How many kilometers was that? I waited for the bombing to end, it was very heavy, and then I went home on foot. I was about two o'clock at night.

A From Zimmermannstr., Steglitz to Teltower Damm 33, Zehlendorf.

Q Well, I am not familiar with Berlin, How far is that?

Q Well how many kilometers? distance, is that right?

Q And you were alone?

Q And you were walking in the streets at two o'clock in the morning after a heavy bombing, alone?

Q Why didn't you stay with your acquaintances that night?

Q Couldn't you wait until the next day instead of travelling at midnight, or in the middle of the night during a blackout?

A No, I didn't want to do that. I wanted to know what had happened to my home, and if everything was all right.

Q What did you find when you got there? walls had been damaged, and furniture had been damaged, but probably miraculously my equipment and my technical equipment had not been damaged.

Q Did you stay there then that night?

Q Even though the roof had caved in?

Q I don't understand the answer.

Q Well, were your quarters undamaged?

A No, inside much was damaged. Doors were broken, windows were broken, and soforth.

Q How about your bed, was it touched in any way?

Q And you stayed there for the rest of the night? clean it up.

MR. HOCHWALD: You may cross examine. BY MR. HOCHWALD:

Q Witness, did you meet Dr. Haensch before the 21 February 1942? shop to be photographed? approximately used to photograph during one day? photographed, and how many were there the proceeding day. would you say was the average?

Q And six days a week?

Q Did you meet Dr. Haensch once after you had made his picture on 21 February 1942? eight persons a day, six days a week, you remember exactly that he was personally in your place, and you personally photographed him, is that what you are telling the Tribunal?

A Yes. As a photographer I have a very good memory for persons, and when I saw the negative I immediately knew that I made the picture myself.

Q When did you see this negative?

Q Who asked you that? a look at the negative, and it certainly was not the Tribunal? Who showed you the negative? my closet where it was kept in the filed, and looked at it then.

Q That is what I am trying to get at?

THE PRESIDENT: It is not clear yet how she first Learned about the necessity of looking for the negative. clear that up please. BY MR. HOCHWALD:

Q And who asked you to testify? You never heard before that you were to testify when you got the information form the court, or were you interrogated before this by somebody else?

A During a trip the wife of Dr. Haensch came over to my studio, and requested me for a copy, or some documentary evidence that her husband had been photographed in my studio, and when I returned from this trip my employee informed me of this, and later on Dr. Riediger came over to my studio, and requested me to appear if requested as a witness.

Q Who requested you to look at the photograph?

A No one requested me. I saw that myself in order to Ascertain whether I myself personally took the picture. and that you have very likely photograph hundreds, possibly thousands of persons, you immediately found out when you looked at the photograph that that was the man who was in your place, and that it was Herr Haensch, and all this detail, did you? picture, and I approximately remembered his person.

Q Do you have that photograph?

A No, I don't have it with me.

Q Then you don't have the picture? I didn't make any copy. picture is on the negative?

A I believe so. At any rate, the number and the name are on it. Everything I have is listed under the names and the numbers. ascertain from the negative which you didn't see for five years, that you have made the picture, and that it was this Dr. Haensch.

I can understand, that you can say, that you can testify, in my book there is a name of Dr. Haensch in it, but I fail to understand how you were able to find it out? better than in anyone's else mind. I also worked in theatres very much, and I have kept many actors' faces in mind, and when one actor came to request one picture I immediately from the face on the negative could say where it was, because as a photographer I see the negative as though it was a positive, and so I found it very quickly what it was, and I remembered that I personally took a picture of this man, and with the type of picture I can say I did that myself. the Tribunal whether Haensch was when he was photographed by you in uniform, or not?

Q Can you tell the Tribunal the rank?

A No, unfortunately I don't know much about that. I can not say anything about it. appeared in your place in uniform, is it not?

A Not always. I could never remember the uniform or the rank; the rank or the insignia. is just one day before you photographed Haensch, and you said here that somebody was a Wachtmeister, which is a warrant officer.

why didn't you give Dr. Haensch who was in uniform an appropriate title as an SS Sturmbannfuehrer?

A. This whole bookeeping was done by an employee. You can see from the handwriting that I didn't write it myself.

Q. I am sorry, I am not familiar with your handwriting, I can not find that out.

A. Yes. Yes, I would hardly present such to you, but I didn't write it but an employee did that, and she wrote it accoring to our own way of writing orders, as she wanted to, and didn't give any position which had no significance at all.

Q. All right, if you have such an excellent memory, can you tell the Tribunal whether you photographed this Watchmeister Dresch?

A. I would first have to see the negative, or rather a picture.

Q. Can you describe to the Tribunal what this Watchmeister looked like?

A. No, I can only do that when I have seen the negative.

Q. Will you be good enough to hand to us a negative of the Picture of Watchmeister Dresch, No. 385, on 20 February 1942; is there anything in your memory so wonderful and so orderly, that if you found immediately a picture of Haensch, you will certainly find immediately a picture of Watchmeister Dresch?

A. Yes.

MR. HOCHWALD: No further questions. Will you tell the Tribunal, I notice in this book there are in the beginning approximately six or seven pages cut out. Do you think that if somebody has an orderly book that he would have such a thing?

THE WITNESS: I want to comment on the following: I used to be a dancing teacher, and I kept the namesof my pupils and since there were no new books to be gotten, I was forced to use an old book and started over anew.

Q. You have been doing this yourself, starting on page 71, is that right?

A. I don't know the number exactly.

Q. Can you tell the Tribunal that at no other time has anybody tampered with this "aufnahmebuck" - this photograph book?

A. I don't think so. I didn't change anything at all. It is entered by seminal number and by the orders.

MR. HOCHWALD: No further questions.

THE PRESIDENT: Let the Tribunal see those two documents, please. On what page did that entry appear?

MR. HOCHWALD: I don't know. It is on the second page, sir, I shall find it.

THE WITNESS: Number 391.

THE PRESIDENT: And where is the item. Is it this one here with the "x"?

MR. HOCHWALD: Yes, with the "X".

THE PRESIDENT: Will some one who can decipher this book please come to the bench and help the Tribunal. Perhaps both counsels, please, just come up here. (Discussion ensued before the bench with Mr. Hochwald and Dr. Riediger Present.)

Q. Did you take any pictures after the bombing?

A. I don't understand the question.

Q. Did you do any work after the place had been bombed?

A. For at least three to five months I interrupted my work and then started again.

Q. When did you start again?

A. It happened on the first of March. About November I started working again, about September, October or November.

Q And did you keep records of those pictures also?

A. Only these block lists.

Q. Now please answer the question. Did you also keep records of those pictures which you took after September 1943?

A. Yes.

Q. And where are the records of those pictures?

A. I have them in Berlin. I only took this book along because this order was in it.

Q. Yes. You started a new book when you resumed your work in September 1943?

A. No, I didn't start a new book but I continued to keep these blocks.

Q. I don't understand what you mean by blocks. I presume you mean, books?

A. No, it is merely a small pad, which can be part of business papers. It is so called "daypads"

Q. Well, let's understand it. That each day that you took a picture, a record was kept in this book, is that right, or a large book?

A. Yes, in this book.

Q. yes, very well. Now on March 1st your place was bombed?

A. Yes.

Q. In September, or perhaps, October 1943, you resumed your business?

A. Yes.

Q. And you continues to keep records of the pictures which you made?

A. Yes, but only on this pad, these so called "daypads", not in a big pad.

Q. Why did you not continue the work of keeping records in this large book when you resumed your business in September or October 1943?

A. Because its continuance was so much work, and it was not needed for the purpose of tax estimate.

Q. Well, why was it necessary before March 1, 1943?

A. It was not necessary. I only kept it for the sake of order.

Q. Well, what caused you to abandon this sense of order after September 1943?

A. Because I was alone then, and it amounted to too much work for me which I could not do.

Q. How much work was necessary to work after each picture was taken, which consisted of one line, giving the date, the number and the name of the person . How much work was required to do that? How much time was required?

A. In this it only took half an hour but -

Q. About half an hour to write this one line in a book?

A. Not one line, for the days work, but for the days work.

Q. What happened to the assistant that you had in February 1943?

A. After the bombing attack she did not return to work because she married.

Q. Well, do they stop work when they marry?

A. In this case, yes.

Q. All right. Now you would take eight to ten pictures every day, is that right, on the average?

A. Yes, sometimes more.

Q. All right.

A. I cannot say exactly.

Q. Well, the average was eight to ten?

A. Yes.

Q. All right. So it meant writing eight to ten lines in your book at night?

A. Yes.

Q. Were you so busy during the war that you didn't have time to write eight to ten lines at night?

A. Yes, I kept my household, my business, and took all the pictures by myself.

Q. But you didn't have time to write these eight to ten lines at night?

A. No, because it was not absolutely necessary and I omitted.

Q. Then it was not necessary to keep this book prior to March 1, 1943, either was it?

A. That is true, but I had started it and I wanted to continue it, if I had the time. However, I can do that now, even now, because if my business records are in my office I can do that, even now, to write and fill in the book, even now.

Q. I don't understand it, you can fill in the book now. I don't understand what you mean by that?

A. Of course, I would take an assistant to do that.

Q. Well, we are at least in the same room together. We certainly are not in the same thought together. I asked you why you didn't keep this book after March 1, 1943 and you answered that it wasn't necessary. Now, you tell me that you can, if you want to, keep such a book. If you would keep such a book you would believe it would be necessary, wouldn't you?

A. For me personally later an. but it won't be used for tax purposes.

Q. Did you fail to keep books because you wanted to avoid the payment of taxes?

A. Oh, no. Tax is kept in a very proper and orderly way. That was not the reason. - I see from this case that it is perhaps necessary to keep a book like that. There might be other cases which are important, so it is perhaps good to have a book like that.

Q. When did you start to keep this book?

A. When I began?

Q. Yes.

A. I think 1 November 1941.

Q. Yes, so you kept this book all throught 1941,1942, and two months of 1943. That is 26 months. and then suddenly you abandoned this very orderly way or keeping your records, is that right?

A. I beg your pardon? After the bombing attack -

THE PRESIDENT: Mr. Hochwald, please, I want to find out just what those items indicate. This is the date, this is the number, this is the name. What is this? Is that the address?

MR. HORLICK-HOCHWALD: Yes.

THE PRESIDENT: All right. and what is this?

MR. HORLICK HOCHWALD: It seems to be the number of the picture.

THE PRESIDENT: And what is that?

MR. HORLICK HOCHWALD: Cards.

THE PRESIDENT: The size, What is that?

MR. HORLICK HOCHWALD: Price.

THE PRESIDENT: Price.

MR. HORLICK HOCHWALD: The day which the price was paid.

THE PRESIDENT: The price was paid?

Q. (By the President): write the date the picture was taken, the number of the order, the person whose picture was taken, his address, the number of pictures ordered, the price, and the amount paid, is that correct?

A. Yes.

Q. Now after September 1943, did you not keep that kind of record in order to know just what you were doing in your business?

A. Oh yes, the pad shows it exactly.

Q. Where are these pads after September 1943?

A. I have all of them; they are all being kept.

DR. RIEDIGER: Your Honor, the witness means to say that this pad is one of the pad which concerns Haensch, and Haensch is on the pad which is in front of you.

THE PRESIDENT: Please indicate the page.

THE WITNESS: 391.

Q. (By the President) so that in February, 1942, you were keeping a double record, the large book and the block pad?

A. Yes.

Q. And after September 1943---

A. I only had the pads because the book was superfluous.

Q. You didn't think it was superfluous prior to March 1, 1943 did you?

A. When I began the business in Zehlendorf I started the book, and afterwards I realized that it was just double work, because the pads shows everything, what the tax needed from me.

Q. Where are the pages that you tore out of this book from 1 to 70?

A. They do not concern this matter, but I gave ballet instructions, as I said, and the names of my pupils were in these pages, which are not concerned in this matter.

Q. I asked you, where are the pages which you tore out of this book?

A. I probably destroyed them.

Q. Well wasn't it just as important to know the people that you taught dancing as the people you made pictures of?

A. The matter lost its interest because it was from 1913 until 1915.

Q. 1913 to 1915?

A. Yes.

Q. you were giving lessons then?

A. Yes.

Q. I perhaps may be very indiscreet, but how old were you then?

A. Nineteen. I was going on twenty. I was born in 1892.

Q. What was this book doing between 1915 and 1941?

A. It must have been kept in some closet or other.

Q. So that for twenty-six years this lonely book did nothing?

A. Yes.

Q. Then suddendly you decided to put it to use to keep records of the picture which were taken?

A. Yes.

Q. Yes, now, what caused you to keep this book after March 1, 1943, and not keep the record of the people you had taught dancing?

A. Because it had lost all interest to me.

Q. Well, what interest did this book have to you; what enter tainment and joy did you derive from turning the pages of this book which caused you to keep it through all the war years after March 1, 1943?

What was it that endeared this to your heart to such an extent that you kept it during those troublesome times?

A. It had no special reason. I kept all my things for a long time, and since there were no books to be bought afterwards, I looked up this book, cut out the pages, and used the rest for my business purposes.

Q. I don't quite understand what you mean. You cut out the pages and used the rest for your business purposes?

A. Yes.

Q. You mean you cut out the unused pages and used them for other purposes?

A. No.

Q. Well, it isn't clear just what you mean by: you cut the pages out and used them.

A. No I took the pages which had been written on and destroyed them and used the rest of the book for my business because no new books could be bought.

Q. All right. Since you are such a thrifty person, why is it that you allowed all these blank pages to go unused, from page 138 to - 349? How is it that you didn't use all this good blank paper with paper probably so expensive?

A. Because I intended to keep the book for myself personally but I didn't have the time to do that.

Q. You intended to keep the book personally, but you didn't have time to do what?

A. To enter all these addresses of the customers.

Q. You did intend to enter the addressed of the customers?

A. Yes, I had this intention, but I lacked the time to do so.

Q. Well, you had six to eight customers a day, eight to ten customers a day, and you want the Tribunal to believe that because of this volume of business you were unable to keep a book which you desired to keep?

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A. I already testified that I kept my household, did all my work alone and my business.

Q. Where is the woman who made this record?

A. She lives in Berlin in Zehlendorf.

Q. What is her name?

A. Frau Friedel Reich.

Q. Spell it please.

A.R-e-i-c-h.

Q. What is her address?

A. Zehlendorf, Teltower Damm 44.

Q. I don't know whether the reporters are able to get that or not. Perhaps you had better spell it.

A. The name, R-e-i-c-h.

Q. What is her first name?

A. Friedel. Spell that.

Q. Spell that.

A.F-r-i-e-d-e-l.

Q. All right, give us the street address.

A. Toltower Damm.

Q. I didn't catch it.

A. Teltower Damm, T-e-l-t-o-w-e-r D-a-m-m, 44.

Q. What section of Berlin?

A. Berlin-Zehlendorf.

Q. When did you see this woman last?

A. I only met her superficially somewhere on the stree in Berlin.

Q. When did you see her last?

A. Perhaps four weeks ago; four to six weeks ago.

Q. Four to six weeks ago? Did you talk to her about this trial?

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A. No.

Q. When did you first learn that you had to come to Nurnberg to testify in this case?

A. The beginning of November. I don't remember the exact day. I was supposed to appear here on the 10th of November, but I became ill.

Q. November of this year?

A. November of this year.

Q. so when you saw this woman you didn't know that you were going to testify?

A. I don't think so, and I would not have talked about it either.

Q. Why wouldn't you have talked about it?

A. I had no occasion to do that.

Q. But you are submitting a document here which is not made up by yourself. Why wouldn't you want to talk with the person who made up the document?

A. I had no thought of it, and I don't think that it was during that time that I met her. It must have been sometime before this, before I received the telegram.

Q. So the last time you saw her was four to six weeks ago, and it was prior to the time that you received the telegram to come to Nurnberg?

A. Yes, I didn't talk with her we simply passed one another.

Q. When did Mrs. Haensch speak to you for the first time about this case?

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I cannot tell exactly, but it must have been in October, the end of October. was an inquiry about Haensch's picture, didn't you?

A No, I don't think so.

Q Mrs. Haensch spoke to you employee and then your employee spoke to you, is that right?

Q And that was in October?

A Yes, end of October/

Q End of October, and what did the employee tell you? photostatic copy of the business books for this trial.

Q And then you looked it up in the book?

Q And you got out the negative?

Q Then you remembered that you had taken that picture yourself?

Q And then when did Mrs. Haensch talk to you personally?

A She did not talk to me at all. I did not see her again.

Q You never saw Mrs. Haensch?

A I don't think I know her at all. At least I don't remember her. I don't know who was sent with the picture. She didn't come to my place at all.

Q Then you saw the positive of this picture a month or so ago?

Q Did someone bring to your office a picture of Haensch?

Q Then all you did was to look up the negative?

Q You never saw the positive; that is until recently?

Q All right. Now were the pictures delivered back in 1942, did Mrs. Haensch come for them herself?

Q Who paid for the pictures?

A I don't know. I did not accept the money myself. It my have come by mail. I don't remember exactly. you?

A The one that works for me now? Three years, but only for my household and for reception.

Q Why couldn't this employee have kept the book that you previous employee kept?

Q then you don't have to devote all your time to household working do you?

Q Well, you didn't three years ago. couldn't you? often. I had two operations behind me.

Q You didn't tell us that when we asked you. You said you were just too busy with your household work.

A Of course I had. The employee can't take off all the work I have to do.

Q Doesn't this employee do your household work?

Q What do you keep her for?

Q You have two rooms, is that right?

order? fact th t you have someone to assist you in the household work, that you cannot devote a few minutes at the end of the day to keeping a record of the business of that day, is that right? for that reason I let it go.

Q Well then, it wasn't because you didn't have time? and consequently I couldn't work so much in the household, and I took in this assistant because I was often sick.

Q Who did your professional work when you were sick? was closed. 1943?

Q Yes, except the dancing records. You don't have those?

Q Very well. Now, Mrs. Haensch came to your office, came to your place of business, and informed your employee that she would like to have the records? negative. When was the next time you heard about this case, after that?

A Dr. Riediger visited me in Berlin.

Q And when was that?

A I don't remember the exact date.

A The first days of November perhaps, I can't say exactly. It might have been at the end of October.

Q Did you show him the negative?

Q Did you ever see Mrs. Haensch in your life?

A No, I can't remember ever having seen her.

Q You say you brought this negative along with you? header and one without.

Q What kind of a uniform?

A I don't remember the color. I don't know; I didn't ask him for it.

Q You didn't ask him for it? What about your eyes? Didn't you see the color?

A I don't remember the color.

Q What kind of shoulder straps did it have?

Q What kind of shoulder straps did the uniform have?

A That I don't know. these pictures very well, and not only that, you have had an opportunity to look at the negative since. Now, you can't tell us what shoulder straps the subject were?

Q You don't have any memory for clothes? a good memory for clothes.

A Perhaps for women's clothes, but not for men's lapels, etc.?

A I couldn't describe it exactly.

Q Can you give us any idea? sure.

Q When did you see the negative last?

A Before a left for Nurnberg. I can put it at you disposal. It is in my room in Nurnberg.

Q And you hadn't seen Haensch since February, 1942? negative? myself. There was no one in my business who might have taken the picture. I was the only one there, the only one who took pictures. made quite a point of it, that you took the picture yourself. When you say that you took the picture yourself, it naturally suggests that someone else could have taken it, and you said that you remembered it very well because you have a photographic memory. Are you changing that testimony now?

A No, I don't want to change that, but--is because you are the only one who could have taken it, is that right?

A No one else. I had no assistant who could have taken the picture.

Q so it wasn't because you recognized the picture that you say that you knew that you took the picture ?

A No. I do remember the type of picture.

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Q Do you remember the face?

Q Now you remember the time. What time of the day was it in the forenoon?

A I can't tell you that exactly. I can't say that exactly. 1942?

Q What day of the week was it?

A I don't know that? Do you remember the face ? You haven't answered that question yet.

Q You remembered having seen that person before your lens?

Q Do you remember everyone whose picture you took? you took?

THE PRESIDENT: During the noon recess the witness will be accompanied by a guard to her personal quarters in Nurnberg so that the negative which she has with her may be obtained and brought to the Tribunal when it reconvenes.

Mr. Hochwald?

MR. HORLICK-HOCHWALD: May I respectfully request the Tribunal also to rule that the witness is not supposed to look at this negative?

THE PRESIDENT: The guard will accompany the witness and she will hand the negative to the guard without looking at it, and the Secretary-general is instructed to do whatever is required to have brought to Nurnberg the witness, Frau Friedel Reich. And the present witness is instructed, under no circumstances must she speak with Frau Friedel Reich.

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MR. HORLICK HOCHWALD: Thank you very much, your Honor.

THE PRESIDENT: The Tribunal will now be in recess until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 345 hours, 3 December 1947.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Yes, Mr. Walton.

MR. WALTON: Walton for the defense counsel Dr. Meyer for the defendant Braune. In the absence of Dr. Meyer it has come to the attention of the prosecution that tomorrow Dr. Braune's wife arrives in Nurnberg and the purpose of her visit is that she has just suffered a loss through death of her father and she wishes to speak with her husband on certain family matters. had not been in the actual custody of the Court. Therefore, we request this Tribunal, if it is agreeable with the Tribunal, to instruct the Marshal to permit Mrs. Braune to see her husband tomorrow afternoon contingent upon his excuse from attendance on these proceedings.

THE PRESIDENT: Acting defense counsel Walton, we are pleased to accede to your request and we will be grateful if you will make the necessary arrangements so that the interview between Mrs. Braune and the defendant Braune may take place.

MR. WALTON: Then I have permission of the Tribunal to instruct the prison officer?

THE PRESIDENT: You do have the permission.

MR. WALTON: In the name of the Tribunal?

THE PRESIDENT: Yes, you may do it in the name of the Tribunal. Mr. Walton, will this be during Court hours?

MR. WALTON: Yes sir.

THE PRESIDENT: Yes, and so that then the record will be complete the Tribunal will excuse the defendant during that period when he will be conferri with his wife. BY THE PRESIDENT:

so far as dancing lessons were concerned?

A. Yes.

Q. What happened to this book between 1915 and 1941?

A. It will have been kept in some cupboard.

Q. Did you always live at the same place between 1915 and 1941?

A. No, I lived in different apartments.

Q. How many apartments?

A. I will have to think it over for some time. I moved several times, five or six times, I think.

Q. And each time you moved you took with you the record of these dancing pupils for which you had no use; is that right?

A. Yes, I took all my things along. Among them was this book.

Q. Now, after 1943 you had no further use for this book, did you?

A. No.

Q. Why did you continue to keep it?

A. I kept all my things and this book was among my things.

Q. Well, why did you not keep then the record of the dancing students?

A. when I used this book for the business I took the first few pages out in order to have a new book for the business, because I was not able to buy one.

Q. Well, how would it affect the keeping of the record of the photographs taken if you kept in the same book these other pages with the names of your dancing students?

A. It would not have quite fitted, in my opinion. That's why I took it out. I didn't think about it any further. I wanted to start the book new.

Q. When Dr. Haensch entered your studio on February 21, 1942, as you have testified, was he wearing his glasses?

A. I don't think so.

Q. Did he wear glasses at all during this period?

A. I don't know.

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Q. Well now, you remembered what he looked like. Why wouldn't you remember whether he was wearing glasses or not?

A. When the picture was taken he did not wear glasses.

Q. Well, of course, that could have been verified by simply looking at the negative, but we want to know whether he was wearing glasses when he came into the studio?

A. I cannot say that now anymore.

Q. So that you didn't remember his face well enough independently of refreshing your memory from the negative as to just what he looked like?

A. No, I only refreshed my memory when I saw the negative.

Q. So that you really cannot remember the faces of the hundreds whose pictures you have taken independently of the negatives and the pictures?

A. No. If I was asked how the person concerned looked, it would have to be an exceptional face for me to remember it exactly.

Q. You wouldn't remember the face unless there was something extraordinarily unusual about it?

A. Yes.

Q. Well, what do you find so unusual about Dr. Haensch's face that you remembered his?

A. I said already that I only remembered it when I looked at the negative again.

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Q. Well, when you looked at the negative you had to compare it with your memory, with you image of a face. Merely looking at the picture would mean nothing unless you could make a comparison, and that's the only way you recall a mental image. Now, when you saw the picture in the negative, the you recognized it as the man whose picture you had taken; is that correct?

A. Yes, I recognized him as a person of whom I had taken a photo, but whether his name was Dr. Haensch I did not know. I only compared it with the book.

Q. Yes, and you say that you remember only these faces which are unusual?

A. Yes.

Q. All right. Now, what was there unusual about Dr. Haensch's face that you recalled it when you saw the negative as the one whose picture you had made five years before?

A. There was nothing exceptional. Only I recalled it when I heard the whole context.

Q. What do you mean by the whole context?

A. I took out the negative and I found the name in the book and compared it to the negative, and I then remembered that I had seen that face and that I had taken the photo myself.

Q. By looking at the name you recalled the face?

A. About that, yes.

Q. Can you recall the faces of all these names that are in this book?

A. No, I cannot do that. I would have to look at a negative or a picture of the person concerned. Then I would remember that I have already seen the person and retouched the picture. By retouching the picture the impression of the person becomes even deeper than when one just looks at it for a short time.

Q. Yes, but what does referring to the book do to help you recall the features of the face?

A. The book only helps to find the negative.

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Q. You said that you looked at the negative. Then you looked in the to remember that that was the person whose picture you had taken.

Is that what you just said or said a few moments ago?

A. Yes, quite right.

Q. All right. Now, I want you to tell us how looking at a nme in, this book helps you to recall features?

A. No, I looked for the negative after seeing the name, and then I

Q. Well then, you only look in the book to find the negative?

A. Quite right.

Q. So that you recollection is from the negative and not from the book?

A. Yes.

Q. So then we come back to the original proposition. What is there recall the features of Dr. Haensch?

A. I don't quite know what to say. I described the whole process in detail, and I can only repeat myself.

The moment I saw the negative

Q. When you saw the negative you remembered the person, you remembere about when he came for the picture, and you recalled the time of the day?

A. Not the exact day, no. I only saw that from the book.

Q. But you did remember the time of the day. You remembered it was in the forenoon?

A. I cannot say this under oath, but I think it must have been in the morning.

somehow I seem to remember that subconsciously.

Q. Can you tell by looking at every negative whether the picture was taken in the morning or the afternoon?

A. No, I cannot do that.

THE PRESIDENT: Mr. Hochwald, would you please continue with your cross examination?

MR. HOCHWALD: If the Tribunal please; may I have the three exhibits which are before the Tribunal?

THE PRESIDENT: YES. BY MR. HOCHWALD:

Q. Witness, will you tell the Tribunal whether on the negative themselves there is some number or some date?

A. The number and the name is on it in any case. Whether the date is also on there, I don't know. Yes, on the negative the number and the name should be there.

THE PRESIDENT: Was it your custom to add the date to the negative?

THE WITNESS: Not always, no, because we looked for these negatives according to names and figures and not according to dates.

Q. (By Mr. Hochwald) But name and number must be on it?

A. Should be on it, yes.

Q. Will you just examine these two pictures? Can you tell the Tribunal whether on these two negatives -

A. No, there is no number on them.

Q. Name? Is there a name on it?

A. No, no name either unfortunately.

THE PRESIDENT: Why do you say unfortunately? Why did you add that? What difference does it make whether they are there or not?

THE WITNESS: Because my employees did not do this properly when they wrote on the negatives. It really should not have occurred.

THE PRESIDENT: Did you have an assistant in the actual photographic process?

THE WITNESS: No, I developed these things myself at the time.

THE PRESIDENT: Well then, you are the one who should have added the name and number?

THE WITNESS: No, I developed the plates and the next day when the employee came she settled these writing matters.

THE PRESIDENT: And she would write on the negative?

THE WITNESS: Yes, she should have written the name and the number on it.

THE PRESIDENT: Do the names and numbers appear on all the other negatives?

THE WITNESS: Yes. name and number?

THE WITNESS: It is possible that this occurred repeatedly, I am not sure. But every negative should bear the name and the number in order to find it afterwards.

THE PRESIDENT: All right. Let us say in a hundred negatives how many would bear the names and numbers?

THE WITNESS: Among a hundred negatives it might have happened once that it was omitted.

THE PRESIDENT: And it happened to be Dr. Haensch?

THE WITNESS: Yes.

THE PRESIDENT: Proceed.

Q. (By Mr. Hochwald) Will you tell the Tribunal what that is? Do you know what it is or shall I hand it to you? Will you be good enough to hand it to the witness.

A. Yes, that is the photostatic copy of the writing pad which I put at the disposal of the Tribunal.

Q. When was this copy made?

A. It was made by my employee during my absence.

Q. I still do not know when it was made?

THE PRESIDENT: Have you made it clear that it is the photostat? Isn't that what you mean? I don't think the witness understood that.

Q. (By Mr. Hochwald) When was the photo copy made?

A. It was made during my absence. Frau Dr. Haensch visited me in the studio while I was away on a journey and my employee made this photostatic copy for Dr. Riediger.

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Q. Is it not true

THE PRESIDENT: I don't quite understand it. She said Dr. Haensch visited her?

DR. HOCHWALD: As far as I understood it, your Honor, the witness said that Mrs. Haensch visited her employee in her absence and that in her absence this copy was made on the request of Dr. Riediger; is that right?

THE WITNESS: Yes.

THE PRESIDENT: Very well.

Q. (By Mr. Hochwald) As far as I remember you have just this morning told the Tribunal that this employee of yours was not an employee in your business. It was only a servant in your house, a housekeeper. How do you explain,to the Tribunal that your employee, who was not in your place, or in your business when you made this photograph, who did not keep these books, that she was able to give Mrs. Haensch not only the necessary information but also a photo copy just of this little book, or the page of the little books?

A. My employee had once been in the MPA, that is, the Military Testing office, and there she must have done that kind of work, and at the request of Dr. Haensch she made this photostatic copy.

Q. Who requested you -- Dr. Haensch requested you or Dr. Riediger?

A. I meant Dr. Riediger.

Q. How would this employee have found the negative without number? The negative is not numbered. Will you tell that to the Tribunal?

A. On the envelope will be the number of the negative inside it.

Q. Are you sure of that?

A. No, I am not quite sure, but it might have been filed under the name as well and she found it under the name.

Q. I hand you the envelope and will you tell me what you find on there?

A. That is the name and number written on it.

Q. Will you please compare pencilmark of the name and the number on the negative and the envelope and will you tell the Tribunal whether you see a difference?

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A. Yes, the one on the top I wrote myself on the negative, no, I mean the envelope, and the other one my employee must have written.

Q When did you write the number?

Q At the same time? the 21st February 1942, this number and the name of Haensch were written by you on this envelope, is that correct? when the picture was taken. the same date approximately?

Q How is that -- will you explain that to the Tribunal? You have just said that you wrote it, the name and the number.

A I can explain that. I develop at the end of the day. I develop my negatives in the evening, and the next day they are sorted and filed when they are dry, and the name and number is put on them. that correct?

Q You have examined the envelope, by now, did you not--did you? Did you not examine the envelope, I said? ferent pencil than the name--is it not, Witness--please answer?

A I don't think that it was a different pencil.

Q You are here under oath. Did you not find when you just now examined the envelope that the pencil of the number is much fresher than the pencil of the name?

Q Very well. The Tribunal has the envelope before it. I would now turn to the page in this notebook. By whom was this filled out?

book, is that right. a place for the amount which was paid before hand, and the date. This is the normal form, is it not? Can you remember when Dr. Haensch gave the order that these pictures should be sent to his wife?

A No. I only found that again in the book. My employee wrote this down.

Q Was he more than one time in your place?

A No. He was there only once. pictures should be sent to his wife, is that correct?

Q Under "Street", however, here it is said, "Hartmannsweiler Weg 16", and between "Name" and "Street" there is squeezed in a second address, which is the second address?

A That is the address which Dr. Haensch gave where the sample pictures were to be sent to. place which is provided for it? down the home address, and then later on the custormer might have said, "but I would like to have it sent to another address", and then we added the address where it is to be sent to. In the large book I remember that immediately under this there is an order which also gave us another address where the pictures are to be sent to.

Q It would be then Number 392?.

A Yes, that is possible--'93, I believe.

Q You can find out there. It is in the large book. This is 393, is it not? If you will just look into that in this case, 393, where you gave as an example, too, there is only one address in it.

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which you make? into this little notebook?

A No. I was not present, but here under 406 it says-

Q But I want your answer, do you, or don't you know how this second address came into the little notebook?

A I don't know offhand. My employee wrote it here in her own handwriting.

THE PRESIDENT: What about this illustration of 393, was that cleared up?

MR. HOCHWALD: Your Honor, 393 bears also a remark where the pictures were to be sent to, and the witness said it happened very often that it was to be sent somewhere, and I looked up in the book the number she gave, and just under 393 there is only one address, the address where the pictures were to be sent to. Possibly the witness will tell the Tribunal whether this contention of mine is correct.

THE WITNESS: Yes, this contention is right, but in my book it is shown repeatedly that the home address is written here and the sample prints are to be sent somewhere else. May I give you the numbers for this?

THE PRESIDENT: Well, Witness, you volunteered that under 393, the double address will be found. Now, Mr. Hochwald tells us that a double address does not appear under 393. Do you want to offer any explanation as to why you said that under 393 there would be a double address?

A I cannot say this. Probably only this one address was given where it was to be sent to, but wherever I could get a home address.....

MR. HOCHWALD: Will you hand the clerk, the big book, please---will you hand it to me?

THE WITNESS: Yes.

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BY MR. HOCHWALD:

Q Did you find some other number where you had two addresses?

A Yes, several. If possible, I always asked people to give me their home address in case fees have to be received so that I can have the home address to obtain these amounts.

MR. HOCHWALD: I have no further questions, your Honor.

THE PRESIDENT: Very well. BY DR. RIEDIGER: photo of Dr. Haensch. According to the normal way of business, when could you assume that the rough prints would be ready to be sent off?

Q That is two to three weeks?

Q Then I have here this picture which was sent to me. Is this a copy of these plates?

Q Was it taken by you?

Q And can you determine when you made this copy?

A No. I cannot determine that now, but these must be the pictures which were sent to Hirschfelde.

Q But you can't determine this from the picture yourself?

THE PRESIDENT: Might the Tribunal see that picture? BY THE PRESIDENT:

Q What is your custom with regard to receiving payment for pictures?

A In most cases I have a small amount paid at the beginning; if they are acquaintances, I do not ask them to pay on account, and when the pictures are delivered, the rest is paid, but it happens repeatedly that the customers don't have any money with them, and then they pay for the pictures when they collect them.

Q Well, these pictures were sent to Mrs. Haensch?

Q Were they sent by messenger?

Q Then how did the mailman collect the money?

A I don't know whether it was sent by mail or whether Mrs. Haensch sent the money or whether she brought it herself-- I don't know. It is possible that my employee received it. call and pay?

A I don't know that any more now. delivered, wouldn't you?

A I don't know exactly. It is possible that it was sent later on, either the messenger brought it to me--I am not sure. pictures and later on the money would be paid? receive the money for the pictures?

PRESIDENT: Dr. Riediger, if you have no further questions to put to the witness, the witness may be excused.

DR. RIEDIGER: I have no further questions of the witness.

PRESIDENT: The witness will be excused and the defendant will be taken back to the witness stand. And you are instructed, witness, not converse or communicate with Frau Reich until such time as she has testified in the Tribunal. Do you understand that?

THE WITNESS: Yes, I know that.

MR. HOCHWALD: May I proceed, your Honor?

PRESIDENT: Please.

CROSS EXAMINATION (Continued) BY MR. HOCHWALD:

Q Dr. Haensch, you have told the Tribunal that you were dismissed from your position in Doebeln as you made a report on behalf of the mayor with a difference of the kreisleiter? Is that correct? of this city administration on behalf of the city administration for the Foreign Office, namely, the SD.

Q Was it the only reason that made this report?

A Yes. I don't know what other reasons I might have had.

Q You did not know about the existence of the SD, is that correct? of the SS who were competent for such things. Only I heard about this for the first time through this SS leader; after the report had gotten into the hands of the kreisleiter, this SS man came to me and told me about it.

Q I would like to refer to Document Book IIIC; page 53, of the English, page 86 of the German; document No. 3261; Prosecution Exhibit 141. This document, Herr Haensch, is your life history which you made out yourself in August 1937 for your SS files. just above the heading, "page 5 of the original". It is in the middle of page 53 in the English, Your Honor. This paragraph needs, "on 15 February 1935 I entered the employment of the Municipal Administration Doebeln as an Assessor. There I was dismissed on 15 July 1935. The underlying cause were discrepancies between the Municipality and the NSDAP Kreisleiter (district leader) in the course of which I, in my capacity of confidential agent of the sub-Regional Headquaters of the Security Service Dresden, had given the Security service reports which through no fault of mine had come to the knowledge of the district leader."

Does that now show, Dr. Haensch, that this report of yours was made for the simple reason that you were the confidence agent of the SD? text, it cannot mean that . The life history was made a year and 3 months later, 1937, and at the request of the SS personnal office who wanted me to write a life history. As I can see, I wrote very briefly everything concerning the dispute in Doebeln, according to the truth. Of couese, I said that this report, was added to later on. It might have come into the hands of the kreisleiter that I made these reports; how else should I express it, as a trustee of the SD. As a confidential man of the SD, I did not know that at the time, I did it for the SS, but of course, I realized that the department to whom the report want was the SD. Therefore, it is quite right if a year and three months later I wrote it in order to explain what the situation was, I made these reports in my capacity as confidential man for the SD. the report the confidential agent of the SD, is that correct? man of the SD at the moment? I could not regard myself to be a confidential man of the SD but of the SS, but I heard afterwards that the department to whom this report was sent was the SD. In fact, it was like this, that this confidential report, which this is, I wrote as a confidential man of the SD. right?

A Yes. It does not say anything incorrect.

Q You have testified here, Dr. Haensch, that before you came or before you started your activities of Sonderkommando 4B you were instructed about your duties by Heydrich, by Mueller, the Chief of the Gestapo in the RSHA, by Thomas, the commander of Einsatzgruppe C, is that correct?

A Yes. That is not quite right. I was not introduced by Mueller in any way, and as I said, Heydrich simply bade me goodbye, and I said, as far as I can remember, what Heydrich said to me at the time. to your predecessor Braune, and to the commanders of the sub-commandos, is that correct?

A I talked to Braune, as far as I remember; a few days passed before I talked to the leaders of the subcammandos--before I could have talked to them -- I don't know exactly.

Q You spoke to him at the time you were in command?

whom know the Hitler Order, ever mentioned this order to you. I only want to recapitulate. Haydrich was the first person, very likely, who received this order. Streckenbach and Mueller had handed down the order. Thomas and Braune and the subcommando leaders undoubtedly have carried out this order. All these people were very familiar with this order.

None of them told you a word about it. Can you explain to the Tribunal how that could have happened?

and on the basis of all I have heard during the proceedings here, and I can assure the Tribunal that I thought about it seriously how this might have been cnnected. If I give an explanation now, it is an explanation I can give because I know about all the facts which have come in here. In my opinion things which had already been passed were discussed in the commando.

Q May I interrupte you for a minute? You said, "things which were in the past". We have reports here to which we shall come later. It is stated 6 of March, which shows between the first and sixth of March 1942, it is exactly ten days you came to Sonderkommando 4B, 1224 Jews were killed in Artenowsk, and that by this action Artenowsk was freed of Jews, that you cannot r member whether it is very much in the past, Dr. Haensch, this Fuchrerorder was not executed by your commando, Just exactly ton days before you came to be commander of Sonderkommando 4b? the Tribunal that at the very earliest I arrived on 15 March.

Q That is what you said? assume to have been event mentioned in the document should have occured shortly before. Perhaps, I may draw your attention to what I said yesterday. It is not true that this report appeared for the first time on 6 March. The same report is already contained in a report of events 27 February.

Q I think that you are mistaken. This is a report which covers a period between the first and the last of March, Dr. Haensch, and therefore it is absolutely clear that these killings were carried out between the first and the sixth of March.

I will show that to you. I wanted to show it to you later. The document is in Document Book IIIA.

This is Document 3876-PS. It is on page 42 of the English, Your Honors, and I don't know just now which page it is in the German.

It was page 57 of the German. There you came to Sonderkommando 4B. According to your own contention you have been there the 15th.

It was therefore that it did not appear like this.

Only it seems quite impossible to me, and I will prove this, but I don't understand one thing concerning this document.

This is the Situation Report of events No. 9 of the 27th of February.

were referring is by no means the report No. 9. It is the Report No. 11.

A No, that is the strange thing about it. I wanted In the Situation and Operation report No. 11 of the 23rd shooting of the Jews on the 23 of April, 1942.

Dr. Hochwald, I don't quite understand your explanation here.

I have read with my own eyes and perhaps Dr. Riediger will submit the a Situation Report, or Report of Events No. 9 of 27 February, Activity and Situation Report NO.

9. The document which you now submit to me is the Activity and Situation Report No. 9. That is, it is a copy on a -- on a -

Q You are mistaken. You will note it is No. 11. It shows that the period covered -

A No. 9.

Q I know it is No. 11. I can't help this. I can read.

A It states there No. 9. document, the report you have been referring to is the Report No. 11 and this report covers the period from the first to the last of March and in this report the killing of the 1,224 Jews in Artenowsk is listed, so if you -which you refer, No. 11 of the 23rd of April , 1942. The copy which I have in front of me here shows that time of report of 1 March until 31 March 1942, but what you mentioned to me before that -- what you named to me, is not the Situation and Activity Report No. 11, but a Situation and Activity Report No. 9, which you have opened in the book here and this Situation and Activity Report No. 9 is dated 27 February, 1942. I have seen that with my own eyes. The date is missing here. No date is anywhere, but it is neither the report 1 March -

DR. HORLICK-HOCHWALD: If Your Honors please, the witness, if I may say so, is a little bit confused. This Document 3876-PS, to which I referred, contains two reports, but the report about the killing of the 1,1224 Jews, which is also a part of Document 3876, and I have given the witness the page number. I think it is absolutely clear.

Q (By Dr. Horlick-Hochwald) Let us, without going into the document then, let us assume for a minute, Dr. Haensch, that what I have stated is correct, that these 1,224 people were killed just about ten or fourteen days before you came in and would it not be very strange that you have found no information, no trace, no oral statement, from one of your officers, no report from the officer who was in charge of Office 4 what had happened a few days before you came in?

to me, but there is one thing I would like to draw your attention to first of all and I shall explain this to you further in a minute; it is quite impossible in my opinion that this event should have happened so shortly before it was reported -

THE PRESIDENT: Now, Witness, please, please. I think the question has been answered. Mr. Hochwald put to you what was in the nature of a hypothetical question. "Let us suppose that 14 days before your arrival, this number of Jews had been killed. If that were true, it would be strange, wouldn't it, that there wouldn't be some talk about it?" And you answered it. "Yes, that would have been strange." That is the question and that's the answer.

MR. HORLICK-HOCHWALD: Thank you very much, Your Honor, may I ask the next question?

THE WITNESS: Dr. Hochwald wanted -- well, I wanted to add something. In that case I won't do it.

THE PRESIDENT: No, you can add it, but what you are going to add there I think we know. It is your contention to deny that it did not happen. Is that what you are going to add, Yes or no.

THE WITNESS: I wanted to add that it really did not

THE PRESIDENT: All right, that's it. You have added it.

Next question, Mr. Hochwald.

MR. HORLICK-HOCHWALD: Thank you very much, Your Honors.

Q (By Mr. Horlick-Hochwald) It is correct that when you unchanged is that right?

Thomas?

THE PRESIDENT: Mr. Hochwald you might develop

MR. HORLICK-HOCHWALD: I was going to ask this question

THE PRESIDENT: Very well.

Q (By Mr. Horlick-Hochwald) Will you please turn to Document Book II-A. This is page 60 of the English, Your Honors, page 64 of the German.

This is Document 3405, Prosecution Exhibit 42.

Here you are mentioned as leader of Sonderkommando 4 B the 16th of January, 1942.

If I than the 15th of March to Sonderkommando 4B, is that right?

Q Therefore, you don't take responsibility for the killings of 861 persons by Sonderkommando 4B, which took place between the 14th of January and the 12th of February.

You deny any responsibility for that, is that correct? This is Document Book I, Your Honors, page 87, Document 3340, Exhibit 22. Document Book I. facts; these events did not take place during my time and I was not in Russia any earlier than, at the earliest, the 15th of March. that out of these people which were executed, 861 persons were killed because they were Jews? correct? I don't know if that is correct.

A You asked me is that right. I cannot give you any information or that.

Q I only asked you if you know that report. The only question -

A I see the report and I know the report. I saw from the document that it is the Report of Events of 25 February. other report about the killing of 1,224 Jews in Artenowsk, about which we have just spoken. This is in Document Book II-c on page 60 of the English, 64 of the German, Document 3240 of the Prosecution, Exhibit 80. which appear three dates, 27 February, or 6 March, and then at the latest on the 23rd of April.

Q How do you explain then, Dr. Haensch, if you were advised not to change anything in the management, in the executive measures of the Sonderkommando, how then suddenly, after you arrived, the general policy of Sonderkommando 4B to carry out the Hitler Order suddenly stopped?

Will you tell that to the Tribunal?

A I did not know the Hitler Order. I was not told of it, and during my time no Jews were executed at all just because they were Jews. I repeat this one thing: Such a thing neither occurred nor was it mentioned, or was ever expressed in my presence. I now ask you to give me an opportunity to explain why I say this and what I found concerning this and how I can explain this on the basis of the documents and how this was possible. May I state very briefly, quite briefly -

THE PRESIDENT: Suppose that this explanation be given after the recess. The Tribunal will be in recess 15 minutes.

( A recess was taken.)

THE MARSHAL: The tribunal is again in session.

DR. LINK ( for the defendant Felix Ruehl): Mr. President, for the sake of order I would like to point out that I am missing my client, Felix Ruehl. He was excused yesterday afternoon. The last time I saw him was at eight o'clock last night. May I call your attention to this.

THE PRESIDENT: WELL -- he has already been reported ill, and that is the reason he is not in court today, so you need not fear that you lost your client.

DR. LINK: Thank you, your Honor.

THE PRESIDENT: Proceed, please Mr. Hochwald.

MR. HOCHWALD: Thank you very much, your Honor.

CROSS EXAMINATION (Continued) BY MR. HOCHWALD:

Q. Before the intermission we spoke of the Hitler order, and I understood your testimony to be that understood your command, Sonderkommando 4-b never executed any Jews, is that correct?

A. I testified that no Jew was ever killed just because he was a Jew. I never found out what the Hitler decree was. I think I cannot remember, and I think I may say, that this was not the case -- that among the executions necessary during my time there wasn't any Jew, because he violated the laws of war. As I said, I cannot remember. I might be possible that a Jew might have been among them, but I don't know.

Q. But people who had committed crimes, or a crime, were executed actually by Sonderkommando 4-b, is that your contention?

A. Whoever committed a crime, and his guilt was ascertained beyond doubt, such person was made to bear the consequences.

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Q. How did you obtain knowledge of such executions? Were reports made by the sub-commanders to you?

A. No. This concerns two executions within the sphere of my main command, and there the decisive word was said, under my leadership. Concerning both executions -- within the sub-commandos -- it was thus, that one took care of the Artemowsk sphere, and it occurred during an inspection trip on my part in Artemowsk that the sub-commander gave me information about these incidents. The sub-commanders were independent. I merely made an inspection of the sub-commandos. And the last execution, it was ture, - it was, as I said, in connection with this purification of the Russian break-in sector of the northern front, that is to say, in May, while I was in Prague, When I returned this frontal sector was in a flowing state, and, as I was told, there was a certain degree of insecurity, and I came there without any knowledge of the executions. I arrived when the local sub-commando had completed the executions. The execution itself had been completed, and the concerned persons, as the sub-commando told me, had been handed over to the sub-commando by the Wehrmacht after examination and decision had been made by that part of the Army concerned, with the order to carry out the execution; and in a discussion at the AOK I objected to this, that is to say, I requested that these executions not be carried out. My viewpoint was understood by the AOK -

Q. Do I understand you to say that all the time that you were in command of Sonderkommando 4-b only the four executions which you described to the Tribunal, in direct examination, were carried out?

A. Yes. Immediately, through the SK 4-b, these executions took place.

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As I believe I said yesterday in direct examination, there were several large military partisan actions carried out against dangerous elements.

THE PRESIDENT: Mr. Hochwald, you needn't repeat -

MR. HOCHWALD: I only wanted to ask him whether these four executions are the only executions which were carried out during his activity with Sonderkommando 4-b.

THE PRESIDENT: Witness, please keep in mind that when a question is put to you, answer it directly; and if you have already gone into the field, it isn't necessary to repeat it. Just merely answer the question, and stop there. BY MR. HOCHWALD:

Q. Yesterday you gave the numbers of people executed in these four executions. You have said that in April there were approximately 25 people executed in Gorlowka; and in the same month, between 15 to 20 in Artemowsk; and then again in Gorlowka at the end of May, six to seven; and in Barvenkova, on the order of the Army, there were approximately 10 people. Is that correct?

A. Yes.

Q. So that would mean that all the executions carried out by Sonderkommando 4-b in the time between the middle of March and the middle of June 1942, would be approximately 60 people. Is that right?

A. Yes. Approximately. I cannot say the exact figure.

Q. Those, definitely, are all the executions which were carried out under your command?

A. These were all executions which became necessary, and of which I have knowledge, which were known to me; and I have no reason to assume that immediately from the Sonderkommando 4-b other executions were carried out.

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Q. Let us speak now about the two executions in Gorlowka and the one in Artemowsk. Can you tell the Tribunal how you checked -- how, and by whom, these people who were executed there, were interrogated?

A. I think I gave an exact description yesterday, However, I can repeat it.

Q. You just tell the Tribunal whether you did check, or whether you did not check.

A. Yes, I knew exactly about the individual cases -that is to say, the decision in both these executions in the Gorlowka district. I also knew about the other executions and I was able to convince myself that these were only cases which occurred in accordance with law and order, and where the people concerned were actually proven violators against the laws of war and against security of the people.

Q. The decision about people to be executed in Artemowsk rested with the sub-commander, is that correct?

A. Yes, the sub-commander was authorized -- the sub-commander commands were independent -- and not only the sub-commander in Artemowsk. It happened thus, that I handled it in this way, that I received the information.

Q. The sub-kommando leader, as a matter of fact, was subordinated to you, was he not?

A. He was subordinated to me.

Q. And in principle -

A. That is not to say that we were responsible.

Q. In principle, then, you were the person who was ultimately to decide whether someone should be executed or not -- in the area of Sonderkommando 4-b, of course?

A. That is not quite correct. I was the final instance with the main commando in Golowka; the sub-commando leaders as such decided and could make independent decisions.

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The whole situation and situation and structure showed this. They also cooperated with other military units and agencies.

Q. But you told the Tribunal just now that you got information about the execution in Artemowsk.

A. Yes.

Q. Would you have been able to reverse the decisions of the sub-kommando leader if you would have been of the opinion that the execution of a certain individual was not justified?

A. Yes, without any trouble. If I had become convinced that something was not quite in order, I certainly would have been able to do that.

Q. Can you tell the Tribunal how long, actually, the whole procedure -- and that means investigation, interrogation of the defendant, interrogation of witnesses, and decision of the officers, and the supreme decision by you -took, in the case of an accused? The whole procedure from the moment when a man was arrested, to the moment you made your final decision that he was to be executed or was to be set free?

A. I really can't set that down. Each case had a certain number of facts, and the facts differed. It might happen -- please, I only cite these examples from my memory I have no single case in mind -- it might happen, and it happened in most cases -- yes, in most cases this happened, where a man was found to be in possession of pieces of unauthorized weapons - something which often happened or he was caught when committing acts of sabotage on buildings, warehouses, and railroad installations... BY THE PRESIDENT:

Q. Would the unauthorized possession of a weapon bring about the death sentence?

A. Whoever in the combat zone was caught with a weapon in his possession was to be sentenced to death, that is how the order was, yes.

Q. How many sentences did you authorize for that violation? How many executions did you authorize for that violation?

A. Mr. President, I can't say now which, or how many, of these cases were decided for this, or that, offense -or had to be shot for these offenses. That is why I emphasized before that I was only reconstructing these cases -- I know that in general it was that in Wehrmacht units over and over again it was pointed out, and it was discussed, with the reinforcement and the equipment of partisans, and the sabotage of civilians -

THE PRESIDENT: It isn't necessary to tell us that; I only asked you how many executions were ordered by you because the executees had been proven to have carried unauthorized weapons, and you answered you don't know. Stop. Next question. BY MR. HOCHWALD:

Q. How many officers did you have in you unit?

A. I estimate, from my memory -- together with subkommando leaders, eight to ten. I may be mistaken, though. Eight to ten.

Q. That would be more than 10% of the complete strength, would it not?

A. Yes. I can tell you these sub-kommands -- there were one, two, three and then four -- four sub-kommands. There were four officers. Then there was a communication officer in the main command. There were five. The head of the executive department, that makes six. The interpreter in the main command, to my recollection also an officer.

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Furthermore, one or two officers, I don't exactly remember -which were also in the command with orders concerning this enterprise Zeppelin. that is, they had this task Zeppelin, but it was not carried out. It was in the Army sphere.

Q. May I interrupt you, witness. The question was only -- How many officers did you have in you unit. Eight to ten.

A. Eight or ten. Perhaps up to ten. That is correct.

Q. Were investigations carried out by all of these officers?

A. I have already testified that the proceedings were as follows -

THE PRESIDENT: Stop.

Q. (By Mr. Hochwald) It would be much easier if you would say so and so many officers carried out investigations and executions. Nothing else was asked of you. You have already explained how it was. I did not ask you about the way it was carried out. I only want to know how many officers took part in these interrogations.

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THE PRESIDENT: Put your question very specifically, now. Now, what is your question?

MR. HOCHWALD: The original question was -

THE PRESIDENT: Put your question now, BY MR. HOCHWALD:

Q. Were investigations carried out by all officers of your unit?

THE PRESIDENT: Answer that.

THE WITNESS: Yes.

THE PRESIDENT: All right. The next question. That is enough now. The next question. BY MR. HOCHWALD:

Q. The Army passed the sentence. For instance, in the execution in Barvenkova, did you get any written findings on the part of the army authorities why these people actually were condemned to death?

A. No, just this was the reason why I went to the Army, to the high command. This sub-command had a local leader, a responsible local leader to carry out the orders of the Army unit. They had to carry out the orders for the execution. It may also be that the order came through from a superior office of the local unit.

THE PRESIDENT: Witness, if you received no written account of the offenses, how did you review the evidence in order to determine whether the death penalty was justified?

THE Witness: Mr. President, I think there is a misunderstanding. I said that I was able to get the information, and to ascertain at the execution which took place in my sphere of the main command, which were at Artemowsk and at Barbenkova.

THE PRESIDENT: Witness, Mr. Hochwald asked you if, when you were ordered by the Army to conduct an execution, you received at the same time a written record of the offense, and you said, no, is that correct?

THE WITNESS: Yes.

Q. Now, he asked you if you didn't receive a written record outlining the offense committed by the person, that you were now to execute, how did you know what was his offense, and how could you review the evidence to determine whether it justified an execution?

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A. Mr. President, the facts of the penalty for the crime committed by them were named to the sub-commander by the military person ordered to carry it out.

Q. Then you personally didn't review the facts, but the Army conveyed the information orally to the sub-commander leader, and the execution occurred?

A. Yes, in this case it happened. This was the occasion why I went to the Army High Command.

Q. Witness, Mr. Hochwald asked you about sixty executions which you testified to. You remember that?

A. Yes.

Q. There were sixty people killed under your orders?

A. Yes.

Q. Allright. Four separate executions, and sixty people in all, is that correct?

A. Yes.

Q. All right. Now in each one of these instances, were you satisfied that the person to be executed had committed an offense which justified execution?

A. Yes, Mr. President, but -

Q. Very well. You have answered that. We will give you an opportunity to explain. Did you give the final order for the execution of these sixty?

A. No, not in all these cases, but I gave the order in twentyfive cases of the executions in my main command in Gerlowka, and, at the second execution it took place at the end of May, or at the beginning of June, at the main command in Gerlowka, and this concerned a group of six or seven persons....

Q. No, do not give us the number. There were sixty executed under your orders.

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How many of these did you know about yourself? Sixty were executed because you gave the orders for them to be killed, that you have testified to several times. Now, how many of these sixty did you investigate yourself, or reviewed the evidence on?

A. The evidence? I only looked through the evidence and made a final decision for about twenty-five case, and seven that -

Q. All right.

A. (Continuing) came there after.

Q. That is thirty-two that you investigated yourself?

A. Yes.

Q. So that means that twenty-eight went to their deaths under your orders without your having reviewed the evidence?

A. No, Mr. President.

Q. Sixty were killed under your orders?

A. Yes, Mr. President.

Q. Thirty-two you investigated?

A. Yes.

Q. What is the difference between sixty and thirty-two? What is the difference between sixty and thirty-two?

THE PRESIDENT: I didn't hear that, the switch was not on.

THE WITNESS: The executions in the Artimowsk district must be added. These were the executions where the investigation was not conducted by the main command.

Q. Now, don't let us get away from the question. You say sixty were killed by your orders. Thirty-two you investigated, that leaves twenty-eight. Why did you allow these twenty-eight to go to their deaths without reviewing the evidence?

A. Apart from the ten cases, the last execution at Barvenkova, I was informed of these cased in Artimowsk, that is to say, I personally informed myself of these cased a couple of days before the execution took place.

Q. Then you investigated the whole sixty?

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A. Yes, apart from the group of ten persons which were executed in Barvenkova.

Q. Well of each of the sixty cases which Mr. Hochwald mentioned, you yourself were satisfied that they committed and offense which merited death?

A. Yes.

Q. Now, all right.

A. (Continuing) -- concerning the reports I had to assume about some things on the basis of the reports submitted to no by the sub-commander.

Q. very well.

A. I had to, because I had to depend on what the military persons authorized to execute the orders.

Q. Very well. Now we come back to the question which Mr. Hochwald put to you a long time ago. When the Army sent through a request, or an order that certain persons be killed, because they had committed certain offenses, Mr. Hochwald asked you, if a written order, or a written report of the offense was sent along. You said, no. Then the question was, how could you then determine whether these deaths were justified if you didn't have the written record. Now please answer that question and them lot us proceed to something also?

A. Mr. President, these cases of executions which I was question on in Barvenkova became known to me when by accident I happened to the place, and the corresponding report about the respective orders of the Army units were given to no for information today. I cannot state exactly, from memory or with certainty, that the sub-commander received this order from the military officer, who had the right to give this order, and he was also told the crime itself which had been committed by the defendants. I considered this type of handling not correct, and I expressed my opinion to this effect at the AOK, namely, that in my opinion the Army when it conducted the investigation and made the decision itself should carry out the execution by its own commandos.

THE PRESIDENT: Very well. Mr. Hochwald, proceed, BY MR. HOCHWALD:

Q. How many executions did you watch yourself, Dr. Haensch?

A. Three executions were watched by myself and inspected. The fourth at Barvenkova, which is the one where I happened to be when the execution itself had been completed and carried out, but I was a witness to the fact that its took place.

Q. You did attend this execution in order to check with the directive as to the way how these executions were to be carried out, or actually complied with, is that correct?

A. I was not there during the whole time in every case, but I considered it my duty to make sure for myself that the executions were carried out in accordance with official instructions, that is to say, under observance of regulations that every thing must be done accordingly...

Q. So you actually watched three of the four executions which were carried out in your time, is that right?

A. Yes.

Q. Will you please turn to document Book III-C, Your Honor, that is, I want to refer to page 42 of the Document Book III-C, page 72 of the German. This is again the affidavit of the defendant and I quote from the bottom of the page, where he said: "I myself watched a few executions where possible. This was done in that manner so as to surprise the execution command with my sudden appearance," and, on the next page, in the middle of the next page, second paragraph, under the heading - - page 19 of the original, you said: "I myself watched three or four executions." Is it not apparent from the wording of this affidavit of yours, that much more executions than the three or four that you have been referring to must have been carried out according to your own statement?

A. I don't know how you - -

Q. I asked you - -

A. (Continuing) - - mean that.

Q. I asked you and you can say so; I just asked you your opinion whether you would not have had the feeling if you read the two passages, that you just made a check on the three or four executions in order to find out whether your orders were complied with, as to the way how these executions should be carried out, and, further, as a matter of fact, there were much more executions in that area than these three or four that you actually had seen?

A. I think this passage must be considered in connection with the whole.

Q. Was this your opinion that from your recollection only four executions were carried out in your time, is that right?

A. There was a special Sendercommando-IV-B. I already said I knew of no other which took place, or might have taken place.

Q. You had been twice absent during the time between the middle of March and the middle of June, 1942, when you were commander; you were twice absent from your commando, is that correct?

A. Yes.

Q. One was in April about fourteen days?

A. Yes.

Q. Yes, I was absent, either....

A. How long were you away in May?

A. I was absent in May for about, I believe, that was at least three weeks.

Q. And are you sure -

A. Yes, three weeks.

Q. Are you sure, as you said yesterday that you returned to your command between the 20th and 25th of May?

A. Yes I reckon so, that must have been around this time.

Q. So it can be assumed that you left Gerlowka in the first week of May, is that right?

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A. Yes, to my recollection, if not, in the last days of April.

Q. In March - - from 15th of March to the first of April, you remembered having been with your commando?

A. Yes, to my recollection I must have been there.

Q. Will you tell the Tribunal when you appointed your deputy for the time or your absence?

A. That was automatic: It was the head of the executive department.

Q. Who was this officer?

A. It was an assessor by the name of Trieberg or Triebelt, who was substituted by another, namely, a Hauptsturmfuehrer, who was also a lawyer.

Q. I want to know the name now, do you understand? You didn't say the name?

A. Hussinger.

Q. What was the rank of the first deputy, I didn't catch the name?

A. To my recollection it was Obersturmfuehrer or Hautsturmfuehrer.

Q. What kind of orders in respect to executions did you give to these two deputies of yours during the time of your absence?

A. Mr. Prosecutor, I didn't give them any orders concerning the manner of execution, or any such thing. I would not know in what mannor or shape I should have given such orders. It is quite obvious that in a frontal sector immediately behind the lines, no one can know what can happen next, as it actually happened during my absence.

Q. I shall ask you the question again, in the orders you gave these people - - I'll ask you specifically what kind of orders in respect to executions did you give to the people. I may be possibly a little bit more specific. You have told the Tribunal you were the person who had to decide upon whether a person should be executed or not. Did you tell these deputies when you left; "you have this decision in My absence," or, did you tell then "The cases had to be deferred until I returned, as I want myself--"?

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A. No, no.

Q. - - (continuing) "To know whether these people are guilty or not."?

A. No.

Q. That is the question.

A. No. I had orders, express orders, in every case in my absence that my authority would go to the head the executive department, and, in both cases when I went to Kiev the following happened: I received orders to make the official trip, but I had to return - -

THE PRESIDENT: Just a moment. Just a moment, witness, just a moment. Don't give that long story about you receiving your orders. If you want to tell us something which happened while you were away, now tell us in twenty-five words, as to what happened, what happened while you were in Kiev, if you are so anxious to tell us about that, allright.

THE WITNESS: Mr. President, I only wanted to tell of the fact that I had to return. I inquired in Kiev as I could not come in time for the discussion which was to take place there, and I considered it suitable to stay with the command. But I was told to come in any case--

THE PRESIDENT: Now, you -

THE WITNESS: (Continuing) and both deputies were entrusted with these matters. I want to emphasize this again.

THE PRESIDENT: Very well, it is emphasized. Proceed. BY MR. HOCHWALD:

Q. Did you get any reports from your deputies when you returned from your two journeys? Did they tell you what they had been doing in your absence?

A. Yes. I remember the incident in.....

Q. Now may I interrupt you again. I didn't ask whether they reported to you, or whether they told you what ahppened. Can you say first you or no to that question?

A. Naturally, of course.

Q. By next question. Did they report to you about any executions which were carried out in your absence?

THE PRESIDENT: Yes or no?

THE WITNESS: I was told - -

THE PRESIDENT: Please answer the question. Did they report any executions to you. Now answer that, yes or no?

THE WITNESS: No. executions were reported to me by SE-IV-B. just want to say something - -

THE PRESIDENT: Now, witness. BY MR. HOCHWALD:

Q. Can you tell the Tribunal exactly in which area your Sendercommando operated?

A. The frontal sector of the 17th Army, Which ended in the south on the border of Gerlowka. Gerlowka to my recollection is at most twenty kilometers north of Staline. May I Point it cut to you?

Q. First, may I ask you for the information of the Tribunal at the same time another question.

A. (The witness goes over to the map located on the wall and talks)

THE PRESIDENT: Very well. All right. Thank you.

THE WITNESS: The northern part ended and the frontal sector at the time of my service on the border of Kramatorskaya. Unfortunately I have no exact map but to my recollection, but it must have been there near Gerlowka. I reckon it was about 120 kilometers distant. It might have been 150 kilometers.. BY MR. HOCHWALD:

Q. Is it correct that Shitomir, Rovno and Vinis belonged to this area where Sonderkommando IV-B operated?

A. Mr. Prosecutor, I have already been asked during my interrogation about the cities of Rovno the Vinis. I never visited them, asked the cities never belonged within this sphere of Sonderkommando IVOB. May I ask you, Mr. Prosecutor, whether I may show you on the map where these cities are located.

THE PRESIDENT: You have indicated that these cities did no come within the area in which your Sonderkommando operated?

THE WITNESS: Yes.

THE PRESIDENT: I think that will be enough on it, thank you. BY MR. HOCHWALD:

Q. Will you turn to Document Book II-D, where I am referring to page 4 of the Document Book, I don't know for the moment just where the quote is in the German text, but in the English it started at page 1 of the Document Book. There it is said that Sonderkommando IV-B under you had operated and had location at Kramatorskaya, in units at Shitomir, Rovno and Vinnis. (continued with question)

Q. There it says that Sonderkommando 4b under you operated in the location of Kramatorskaya with units of Zhitomir, Rowno and Vinis, and the lines of communication Gorlovka? Is this entry in the report --which is in the report of 8 April at the time when you were in command, April 1942....

A. Yes.

Q. At the time when you were in command of Sonderkommando 4b. Is this entry incorrect?

A. Yes, that is correct, but the entry is false. The command-

Q. All right, you said it is incorrect. I do think that answers the question. Were you in Garlovka. Dr. Haensch. at the end of April and beginning of May? Try to remember.

A. As much, as exactly as I could, I endeavored to find out about it. As I said, it was either the end of April or the beginning of May that I left for Kiev the Prague.

Q. Do you think in late April or beginning of May a large-scale action against partisans and communication was carried out by your commando in the area of Gorlovka?

A. Yes, I testified to that yesterday in the direct examination It is correct that at the end of April and in the course during May, as I was told later on when I returned, that large partisan actions took place which were ordered by the Army and carried out by the Army and that officials of the SK-4b were requested to go along and took part in this action.

Q. Who took part in this action?

A. I can't say that. I really don't know that any more. With this action and executions, the commando and especially the commando leader had no decision and no investigation. This was a request for personnel, officials etc., for a purely military operation which was carried out by the Army.

Q. It is true or is it not true that members of a unit under

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Q. Is it true or is it not true that members of a unit under your command took part in this action?

A. I already said that officials were requested.

Q. They were people actually under your command, or were they not?

A. Yes, they were otherwise part of my commando or my subcommando. For the duration of this action my commando powers expired and the officials concerned were under orders of the military units.

Q. Did you receive a report?

THE PRESIDENT: Mr. Hochwald, the work is coming through "officials". Interpreter, is that the word? MR. HORLICK-HOCHWALD: Yes, it is the correct word. He said there "officials".

THE PRESIDENT: "officials" I see. Very well, thank you. port to you about this action?

A. Certainly afterwards the corresponding reports were made to the responsible superior or whoever it was, the officials or senior leader. whoever participated, who went along with these officials, certainly they made reports afterwards.

Q. To you was this report made? You was this report made? You have received this report?

A. Pardon?

Q. You have received a report from the senior officer, the question was.

A. I was orally informed about it afterwards.

Q. Can you tell the Tribunal from your own recollection, as you have received a report, some details about this question?

A. No, I really can't do that because it was thus, and I believe it was the same with other commands, that these military actions of a large nature and type which became necessary were carried out outside the jurisdiction of the command.

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Certainly they were interested in the -

Q. All right. Then you say you can't say anything in detail any more in spite of the fact that you have received a report. I would like to refresh your memory on this point, and I want to offer Document No-5187 as Prosecution's Exhibit, I do think it is 184.

THE SECRETARY GENERAL: 185.

MR. HORLICK HOCHWALD: 185. I beg the Tribunal's pardon. It is Exhibit 185 which is a report from the occupied Eastern Terrtory dated 5 June 1942. On Page 5 of this document, Your Honor will find Sonderkommando 4b. On Page 5 the Tribunal will find sonderkommando 4b listed under the command of the defendant, location, Gorlovka.

Q. (By Mr. Horlick-Hochwald) Will you turn now to Page 7. It says under the heading, "Page 4 of the original" - it is on the bottom of the page, Page 10 of the German.

A. Yes.

Q. "Several large-scale actions against partisans and Communists were carried out in the district of the Gorlovka Command in late April or early May 1942. 727 out of 1,038 persons arrested were given special treatment. Among them there were 461 partisans; members of destruction battalions, saboteurs, looters and some Communist activists and NKVD agents." Do you remember now anything about this action?

A. It says here -

Q. No, I don't want explaining what it said here. I asked you what you remember. Do you personally remember about this action?

A. I cannot remember individual figures.

Q. All right.

A. Apparently this concerns large-scale actions which took place at this time in frontal sector.

It says here: "in the commando district Gorlovka"

THE PRESIDENT: Please answer the attorney's question.

Q. (By Mr. Horlick-Hochwald) I did not ask you that. I asked you only whether you remember now anything about this action?

A. No, I only still know from memory that about this time saboteurs and bandits became especially strong, and that was apparently connected with the pressure by the Russians exerted from their breaking point in the north, since one knew since long ago that this individual point had to be cleared.

THE PRESIDENT: Witness, you either remember this action or you do not. Mr. Hochwald asked you if you remembered this action. Now, please answer that once again. You answered it directly once, and t then you waiver. Now tell us specifically whether--

THE INTERPRETER: I am sorry, I couldn't get that.

THE PRESIDENT: Just a moment, let's start over again. Mr. Hochwald asked you, after making it very clear just what he was talking about, whether you remember this action. Now, please answer that yes or no, then you can go into the details, but do you remember this action which appears?

THE WITNESS: Yes, but not details.

THE PRESIDENT: Now, you do remember the action?

THE WITNESS: I remember the fact that large-scale actions took place at this time.

THE PRESIDENT: All right. Now, proceed, Mr. Hochwald.

Q. (By Mr. Horlick-Hochwald): Can you tell the Tribunal how many out of the 727 people who were executed were Communist activists and NKVD agents?

Mr. HORLICK HOCHWALD: If the Tribunal please, I have only a very few more questions, but it will take very likely about five or ten minutes longer than the usual sitting time of the Tribunal.

May I be permitted to take a little bit longer?

THE PRESIDENT: Certainly.

Q. (By Mr. Horlick-Hochwald): Then will you tell the Tribunal your commando or subkommandos of Sonderkommando 4b ever executed hostages?

A. No, I know of no shootings of hostages, and I am convinced that the Army and Wehrmacht never did any such thing.

Q. Did you command or the subcommando?

A. No, never.

Q. You have already said that your commando in the time when you were in charge never shot any Jews in great numbers, is that cor rect?

A. Yes, and I especially said that Jews were never executed just because they were Jews, It just couldn't be possible.

Q. Can you remember an incident where insanes were shot by your Sonderkommando?

A. No, never, and I may add to this that I heard of these matters for the first time from documents which I read here. I never knew that such things happened.

Q. Such executions of hostages, Jews and eventually of insanes, of course could not have been carried out at the time when you were in charge of the command without your knowledge and approval, is that correct?

A. Yes. I consider that impossible, completely impossible, that such a thing could have happened without my knowledge, and I may say to the Tribunal by explaining the following--

THE PRESIDENT: You have answered. The next question.

Q. (By Mr. Horlick-Hochwald) I would like to hand you situation Report NO. 188.

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THE PRESIDENT: Mr. Hochwald, if you are going to refer to another document, I am afraid it might take longer than what you indicated.

MR. HORLICK HOCHWALD: I definitely do not think so, Your Honors. These are two very short documents which I want to put in, but if the Tribunal pleases, of course I can defer my questioning until tomorrow.

THE PRESIDENT: We will be glad to remain another five minutes, only because of an appointment which has been made. Otherwise it wouldn't matter if you stayed another hour, but five minutes will be entirely in accordance with our plans.

MR. HORLICK HOCHWALD: I do think I can have it finished in five minutes, Your Honor.

Mr. PRESIDENT: I am glad you have such faith in the witness.

Q. (By Mr. Horlick Hochwald) Take a look into situation Report No. 188 which is Document No. No-5941. This is only offered to show the location of the Sonderkommando 4b on the 1st of April, and I would like Your Honors to note that at that time the location was again Zhitomir. Do you recall, Dr. Haensch, that between the 28th and 31st of March when you admit you were with Sonderkommando 4b approximately 440 persons were specially treated, that is killed, is it not, by sonderkommando 4b in Zhitomir?

A. No.

Q. You said no?

A. Sonderkommando 4b had nothing to do with Rowno and Zhitomir. It is impossible in point of space. Rowno and Zhitomir are by direct distance at least seven hundred kilometers behind Gorlovka, behind the front. Furthermore -

Q. So it si contention that this report No. 188 of the 1st of April, 1942, is incorrect?

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A. It is wrong to the extent --- It also says here Vinis, whereas in other reports it says Vinnitsa. I also want to make an explanation to the effect that kommando SD 4b on 19 December, according to the report of 19 December was in the Artemowsk district in Kramatorskaya, it was stationed there. According to situation Report of the 19 December 1941 in Artemowsk, these executions of Jews took place and afterwards by the 5th or 6th of January.---

THE PRESIDENT: Just---

A. (Continuing) in Rowno or Zhitomir was never indicated. It is impossible, therefore, that suddenly a front kommando, a subkommando, was moved seven hundred kilometers.

THE PRESIDENT: You see, this is in the nature of argument, Witness, and you want to leave something for Dr. Riediger to do. That is his forte, to argue the case.

MR. HORLICK HOCHWALD: and to introduce Document No-3238. As these two documents,NO-5941 and 3238 belong together, as the first report gives only the location without which the whole second report would not be understandable,I would suggest they be given Prosecution No. 186-A and 186-B.

THE PRESENT: Very well.

Mr. HORLICK HOCHWALD: On the first page of this report it is stated that the location and communications as reported in Situation Report NO. 188, which I have just handed to the Tribunal, remain unchanged, and now I would like to quote from the excerpt which we have made from the document.

"Einsatzgruppe C:

Location, Kiev:

- - - - - - - unknown vandals desecrated the soldier's cemetary in Gayssen, "Shitomir.

50 hostages from Gayssen and vicinity were "From 26 March up to and inclusive 31 March a total of 434 persons were subjected to 'special measures'.Q. (By Mr. Horlick Hochwald) Does that mean killed, Herr Haensch, 'special measures'?

THE WITNESS: The witness says executed.

THE PRESIDENT: The witness say executed.

A. The terms of this report this probable means killed.

Q. "The figure breaks down as follows: 33 political officials; 48 saboteurs and plunderers; 352 Jews, and 1 insane." Do you want to change your statement that Sonderkommando 4b under your command never shot any Jews?

A. No, I do not want to change my testimony, Sonderkommando 4b had nothing to do with Zhitomir and Rowno during my time, and at this time there was a Dr. Ratzeberger in charge of the SD in Zhitomir and was stationed there with a corresponding command of the SD, as is apparent from the situation report of the 27th of March, Docu ment 3236. This report gives the compilation of location, Zhitomir, and commander Dr. Ratzeberger, and in Rowno, Dr. Puetz. The grotesque thing about this is that it was said again that SK 4b, and 4b is listed in Rowno and Zhitomir. I can't explain this, and I do not remember it, that when these offices were set up, that when the commandos were set up in Zhitomir and Rowno, that the order was given perhaps by the Einsatzgruppe, that men would have to be appointed for their experience in the East.

Q. I ask the Tribunal's pardon. It is only one very short question. Was this unit a part of Einsatzgruppe C?

A. Yes.

MR. HORLICK HOSHWALD: No further questions, Your Honor.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine thirty.

( The Tribunal adjourned until 4 December 1947, at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

PRESIDENT: The Tribunal desires to make an announcement. There will be no session of the Tribunal tomorrow, Friday, so that when we adjourn this evening we will be in adjournment until next Monday morning. Proceed, Dr. Reidiger.

DR. RIEDIGIR: Your Honor, first of all, I would like to have an explanation by the prosecution. I would like to point out the following: Yesterday, the prosecution introduced Document No. 3238. In ;the excerpt of the copy of this document there are only two paragraphs. one is "in Shitomir" and so forth as part of the investigation, "50 hostages", first, "these were arrested," "half of them were shot". The next paragraph I quote, "In the time from 28 March until -- inclusive of 31 March, altogether 434 persons were given special treatment". In the photostatic copy of the original there are several paragraphs before these two paragraphs. In the previous paragraphs several other places are named, so that the second paragraph in the copy does ot only refer to Shitomir but also to the proceding paragraphs, and I am interested to show that the prosecution will clarify that the paragraph which mentions that all the 434 persons were given special treatment refers only to Shitomir and, therefore, wants to charge the witness with this or whether the context clearly shows that this paragraph refers to all the localities which could never have had anything to do with SK 4B.

PRESIDENT: Well, what you would like to do then is to introduce the entire document?

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DR. REIDIGIR: Yes.

PRESIDENT: Yes, Mr. Hochwald.

MR. Hochwald: If the Tribunal please, the entire document is in evidence.

We have only made a part translation, but we have put the whole document into evidence.

So Dr. Riediger, of course,

PRESIDENT: Where is it?

MR. HOCHWALD: It is in the keeping of the General Secretary.

As far as I know. the General Secretary left the photostatic copy which is the exhibit to Dr. Reidiger over last night so that Dr.

PRESIDENT: Well, Dr. Riediger, you may take from the document

DR. RIEDIGER: Yes, but I would like to har from the prosecution the charges of the defendant.

In my opinion the defendant has to

MR. HOCHWALD: If the Trubunal please, this document was intro not.

The only argument which we have to make is the argument that the document has probative value.

This fact is not denied by the defense.

I do not think that there is another argument from the part of the prosecution necessary at this time.

We will argue the

PRESIDENT: Have you introduced the whole document?

MR. HOCHWALD: We have introduced the whole document. It is the ruling of the Tribunal that the document is always introduced in its entirety.

What is before the court is only a partial translation but the document is introduced in its entirety.

PRESIDENT: Very well. Dr. Riediger, you can comment on this to any degree you desire in your closing argument. It isn't necessary that the matter be argued now. The prosecution has introduced the entire document. He h s translated a part so that he could examine the witness on it. The witness was cross examined on the part which Mr. Hochwald introduced, so there is nothing further to be done now. You have the document and you may quote as much of it as you desire in your document book.

MR. HOCHWALD: I only want to add, Your Honors, that these two documents which I introduced are among the situation reports which were at the disposal of the trial on. As Your Honors know, we have photostatic copies made of all these reports, whether we have them introduced into evidence or not, and these two documents were from the beginning of the tiral at the disposal of the defense, so the defense knows or could have known these documents.

PRESIDENT: Well, I think the matter is cleared up now, Dr. Riediger. All right, anything further on it, Dr. Riediger?

DR. RIEDIGER: No, thank you.

PRESIDENT: Do you have any redirect of your witness--any redirect examination of your witness, or are you finished with him?

DR. RIEDIGER: No. If I may, I have two more question to ask the witness. BY DR. RIEDIGER:

Q Dr. Haensch, you said yesterday that Shitomir did not belong to your commando district, in particular, as this would be impossible from the point of view of distance. You stated that Shitomir was about 700 kilometers away from your commando?

Rowno, not only did not belong to the commando area of SK 4B, so that the commando had nothing at all to do with Shitomir or Rowno, nothing even concerning personnel or anything else. Sonderkommando or Einsatzkommando--what could they have done in an area where civil administration existed? Apart from that, the figure "700 kilometers" I gave as an approximate. I have no map. And I merely mentioned this because I remember this approximately, that the distance by air to

Kiev was 550 or 600 kilometers. I don't lmpw mpw jpw far tje ptjer 1/2;aces are away from Kiev, but during the discussion I heard when leaving last night that this is not quite right, 700 kilometers, but that it is 1,500 kilometers rather, the distance between those two cities from the area where the SK 4B was during my time.

Q. Dr. Haensch, how do you explain the circumstance that in the report of events of 27 March 1942, Document Book IIIA, page 92, No. 3236, and also in later ones, Shitomir, a special commander for the security police and the SD is named?

A. How shall I explain this. The fact is proven by the fact that during that time permanent officers of the German police were in the area of the civilian administration and, therefore, as I said yesterday, from that point of view it does not make sense that there should have been another police unit or another Einsatzkommando there.

Q. On the other hand, in reports of events which preceded this one, -- Your Honor, I shall bring this in detail in another document book, -- I would only like to start this question. On the other hand, in previous situation reports it is mentioned that parts of SK 4B were in Shitomir, Winniza, and Rowna, in the report of events of 12 January '42.

A. That is incorrect that it is always mentioned that parts were there, but it suddenly appears, this report of events, I believe, during the middle of January, and then suddenly they stop in between. I think I remember there is another report where this is not mentioned, and explanation.

Q. Do you consider the contents of the situation reports incorrect in so far?

A. Yes. I must consider them to be incorrect. SK 4B did not have any parts there, or had anything to do with these locations.

Q. Dr. Haensch, I would like to refer to the other document which was submitted yesterday. It is the report from the East of 5 June '42. This report also contains in it "Commmando Region Gorlovka". I quote: "At the end of April, beginning of May 1942, several large actions were carried out against partisans and communists. From 1,038 arrested persons, 727 received special treatment. Among them were 431 partisan, members of destruction battalions, saboteurs, plunderers, and also a few communist activists and NKVD agents". According to this, these events are supposed to have happened at the end of April, beginning of May 1942.

Did you hear anything about this, and to what extant did this action take place?

A. I already explained yesterday that at the en -

THE PRESIDENT: Dr. Riediger, the witness' first words already indicate the lact of necessity to go into this again. He says, "As I already explained yesterday". Now, if he has already explained, it is unnecessary for him to repeat his explanation. If you find there is something which he should state in addition to what he stated yesterday, some angle which he did not touch upon, then direct his attention precisely to that angle, but don't have him repeat the explanation he gave us yesterday.

DR. RIEDIGER: Your Honor, I do not intend to have the witness repeat his statements.

THE PRESIDENT: But you see how he started out, didn't you?

DR. RIEDIGER: Yes-- only I believe this was not quite clear yesterday when the witness explained it yesterday, and that is the reason ....

THE PRESIDENT: The witness is saying, "As I explained yesterday". Now, we don't want him to tell us what he explained yesterday. Let him tell what there is to state additionally to that. Call his attention to that. BY DR. RIEDIGER:

Q. Were those measures which were carried out by SK 4B itself?

A. These investigation or decisive measures which were carried out had nothing to do with SK 4B, but here there were large anti-partisan activities. I don't know any more now how many there were, but I know that such anti-partisan operations took place about that time, carried out by the special unit of the army assigned to this.

And I know that in individual cases, I don't know whether on one occasion or on two occasions. I don't know how many there were there, individual officials from the commando or subcommando were asked to support the secret field police.

Q. Were you present with SK 4B while these actions were carried out?

A. No. This was during the time when I was on my journey. I only know that shortly before either I knew that these actions were going to be carried out, but I don't know any more whether already then the request had been made to the commando to detail officials. I don't know that any more. I don't know whether I heard this afterwards in reports.

DR. RIEDIGER: I have no further questions to ask the witness, but I have another request. Yesterday the prosecution submitted two documents of importance. I, therefore ask that I might be allowed some time to obtain some evidence against this.

THE PRESIDENT: The defense counsel will always have an opportunity to present any evidence which is relevant. BY THE PRESIDENT:

Q. Witness, you leave the stand, I would like to direct your attention to your own handwritten statement prepared this summer, which contains in all 36 pages. You recall this statement, do you?

A. Yes.

Q. Are you aware of the fact that in this long statement which you wrote up yourself that you do not mention the word "Jew" once?

Do you recall that? Now, please answer that "Yes" or "No".

A. Yes, Your Honor.

Q. Very well. Was this question of the Jew so utterly unknown to you that it did not occur to you in writing, this long story of your activities, to mention the Jewish problem once?

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A. Your Honor, this statement was made by me in order to correct and clarify questions which had been asked in previous interrogations. On the question of executions of Jews, merely because they were Jews, I was never questioned. The fact was brought to me for the first time not in the form of a question but in the form of a fact, that the fuehrerorder existed, after this affidavit which I made. I only commented on those question which were mentioned to me at the time.

Q. Very well. Now, on page 69 of your original, you relate a conversation with Heydrich, and you stated, "I recall that Heydrich impressed upon me always to keep before my eyes the cruelty of the Bolchevists". Heydrich said nothing about the Jews being Bolchevists? I ask you whether he did or not.

A. He did not say the word "Jew"

Q. He did not mention "Jews" at all in the entire conversation?

A. No.

THE PRESIDENT: Very well.

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Q. Very well. And he asked you that you were to look after the welfare of the kommando members relating to the proper accommodations and personal needs. Do you affirm that?

A. Yes, Your Honor, he was particularly keen on this and he emphasized this particularly, also towards Streckenbach, when there was a danger of typhoid fever.

Q. And he also impressed upon you the necessity of watching over the life of each German soldier. That is on page 6 of the original. Do you affirm that?

A. Yes, Your Honor.

Q. Very well. On page 14 of original, you relate in some detail an episode when the Army had ordered the search of a village, because, according to a report, German soldiers had been shot there and some of then killed or wounded. Do you recall that episode?

A. Yes, Your Honor.

Q. And you say that upon investigation it was determined that no one had been shot at, no one had been wounded and no one had been killed, is that right?

A. Yes, your Honor.

Q. As a matter of fact, all that had happened was that A German's rifle had been fired off accidentally?

A. Yes. There were ........

Q. Very well, so therefore in some of these reports about atrocities committed on German soldiers, there was the possibility of error, wasn't there?

A. Yes, absolutely, as this case showed, your Honor.

Q. Yes. Do you know who it was who made the incorrect report originally? Was it a German officer?

A. That was -- I don't know whether it was an officer, but I presume so, but in any case it was a report which was received by the Army from some unit, some local unit there. Whether it was transient column I don't know, or whether the local commander sent it, I don't know, and this report was then sent on to the competent men with the Army who dealt with this.

That is why I remember this incident.

Q. But one officer was reprimanded, wasn't he, because of this incorrect report?

A. Yes. Yes.

Q. Very well. On page 15 of your original you stated that in executions you observed no excesses on the part of the kommando members?

A. Yes.

Q. How what excesses could there be? They performed the ultimate harm that can come to a human being. They killed him. Now what do you mean by an excess? When you have an execution you have the ultimate and complete excess of snuffing out the life of the subject. Now what do you mean by an excess? What more could they do to a man beside kill him?

A. Your Honor, the killing of people which was necessary on these occasions, they were not excesses. These were persons who were proven to be guilty.

Q. Witness, perhaps I didn't make myself clear. You said in your statement, "I never, not even subsequently, observed any excesses on the part of the kommando members, even at executions."

A. Your Honor, Mr. Wartenberg, I don't quite know now -- told me things and charged me with things which upset no very much and it appeared as if he thought as if people had been tortured.

Q. Very well. I understand what you mean. What you mean is that the victims were not subjected to torture or painful treatment prior to the moment that they were actually shot.

A. Yes.

Q. Very well. Your kommando was equipped with sub-machine guns, as well as rifles, that is correct, isn't it?

A. Yes.

Q. In fact, your kommando had a predominance of sub-machine guns, as against rifles?

A. Your Honor I don't know for sure any more; as far as I remember, it seams to me as if the men mostly had sub-machine guns. But I can't........

Q. All right, I just wanted to check on that. You say that certificates of death were made out. Do I understand that in each case of an execution, a death certificates was written out fir each person executed.

A. Your Honor. I did not say that.

Q. Well, I read from your affidavit or your statement "And the carrying out of the executions, including the issue of the certificate of death by a medical orderly."

A. No, your Honor, I could not have said that. I would like to compare it to the original.

DR. RIEDIGER: (Attorney for the defendant Haensch): In the German text, as far as I know, the sentence is not contained. I will just have a look.

THE PRESIDENT: Yes, will you please do so.

MR. HORLICK-HOCHWALD: If the Tribunal please, I do think it would be advisable if the Secretary-General would get the exhibit.

THE PRESIDENT: The document itself. Would you please give me the German translation now?

THE PRESIDENT: Yes, he is now trying to locate it -- on page 16 of the original, the first sentence onpage 16 of the original.

THE WITNESS: Your Honor, it reads here as I think I said it. It says here, "Including the determination of death by the medical officer, the responsible officer, or the Party official." In the original it probably says, "by the medical officer and the competent officer, or the General officer."

Q. (By the president) What was meant then is that after the execution one of your men, a medical orderly, or otherwise, made certain that the subject was actually dead. Is that what you mean?

A. Yes.

Q. Not that an official death certificate was written out?

A. No.

Q. All right; still talking about executions, you say, "I do not recall either ever having heard a cry of pain."

A. Your Honor, I only wrote this into my affidavit, because of the charges made against me. I cannot remember during these events which I witnessed and which, as I can only repeat, of course, moved me very deeply, ever having heard a cry of pain. I must even say, I have never seen a movement or a sign, from these people. I never saw as far as I remember, any sign of emotion. That is what I am trying to explain.

Q. You mean that of these 60 whom you actually saw killed, not in one instance was there ever a cry of protest or of self-pity or of any indication that great sorrow was upon then because of what was about to happen?

A. Your Honor, no, as I said, I never heard a cry of pain or anything like that ever.

Q. On page 21, you say, "In this connection I must point again to the monstrous suspicion against me, that the persons to be executed were placed before a grave, shot, and their bodies thrown into it." Now what was monstrous about this? You yourself directed the execution and certainly they were shot and certainly their bodies were placed in the grave. Why do you use the phrase, "The monstrous suspicion against me."

A. Your Honor, this is in connection with my interrogations. This affidavit and I may explain this now; at my request to have an opportunity to explain, I was given this opportunity; after I had been asked to put my signature under the transcript, the contents of which did not give exactly what I had tried to express and in this transcript it was put in such a manner as if the people who were to be shot would be placed before the grave and were shot in front of the grave; and may I add here that I know for certain that this never happened and that special instructions were given from the execution Department that it had to be watched closely that the grave and the place of internment was not at the same location as the place where the persons concerned were being executed.

Q. From which department did that directive come?

A. Those were instructions which already existed, and, as far as I remember, they probably were given by the Einsatzgruppe, but it can only be like this because the Einsatzgruppe -

Q. Please answer the question. I asked you from which department did this directive come that you told us about?

A. These instructions concerning the way it was to be handled, accordind to special -

Q. Will you please answer that question. It is a very simple question. You have told us that there was a directive that the victims should not see the grave into which their bodies were to be placed. From where did these directives come?

A. From the Einsatzgruppe.

Q. From Einsatzgruppe C?

A. Einsatzgruppe C.

Q. Now, you do know, don't you, that in many, if not in most cases, the victims actually were placed right in front of the anti-tank ditch into which the bodies were to be later placed?

A. Your Honorr, I learnt this during the trial here in a few cases, or in one case in the trial here when this subject came up.

Q. Very well. All right. Let's proceed to something else. Now, how soon after your picture was taken did you leave for the East?

A Your Honor, I don't know exactly, but I can only say, as far as I remember, that would be perhaps about eight days later. Either that is what I said right at the beginning on my very first interrogation, in the last days of February, or in the first few days of March.

Q. Can you get this please? Just answer the question. Now you left about eight days after the picture was taken?

Q All right. Where were you living at the time? Where were you living at the time?

Q Where, what address?

Q Were you living there with your wife? be sent to her at another address? have my picture taken again. I myself never thought of it and never had the intention to do so; by phone I called up my parents from Berlin several times, and there my parents and my father asked me to have my picture taken, and, as far as I remember, your Honor, but I don't know for certain just now, I believe after my departure my wife travelled to my parents. your wife? giving the address of my parents' house. My wife, possibly, yes, I even believe it was so, at the time immediately afterwards visited my parents. This was connected with my mother's recovery. My wife visited my mother Court No. II, Case No. IX.

early in January and looked after her and then she helped her later on and at Neisse.

Q Where were your parents living?

Q At what number?

Q Who actually paid for the pictures, your wife or your parents?

A Your Honor, I don't know that any more now; I assume -parents were to pay or your wife was to pay?

A I don't know any more, Your Honor. Generally, I paid things myself; I presume that I might have paid, but I am not sure.

Q Who eventually got the pictures, your parents or your wife? that day?

THE PRESIDENT: The witness will be returned to the defendants' dock.

Oh, you have another question?

MR. HORLICK-HOCHWALD : Yes, if the Tribunal please, I will have two or three questions which came up during the examination. Here is the document, NO-4567, the affidavit of the witness and the witness possibly can read to the Tribunal now the sentence which was in question.

THE PRESIDENT: On page 16. Will you help him to find it, please, Mr. Hochwald. He seems to be having difficulty.

MR. HORLICK-HOCHWALD: Yes, Your Honor.

THE WITNESS: Your Honor, it says page 13 here and then page 26, and the photostatic copy is done in such a manner that I cannot recognize it at all.

THE PRESIDENT: Will you find it, Mr. Hochwald?

MR. HORLICK-HOCHWALD : If the Tribunal will kindly tell me -

that is a sentence about an orderly?

THE PRESIDENT: Yes.

MR. HORLICK-HOCHWAID: Page 16. I do think this is it, but I am not sure.

THE PRESIDENT: If it corresponds -

THE WITNESS: "Inclusive", your Honor, "Inclusive determination of death by the medical officer or by the officer, or by the trained NCO -- this was established."

THE PRESIDENT: That is what he explained, so that clears that up. BY MR. HORLICK-HOCHWALD:

Q Dr. Haensch, I have one question about your picture which was taken from you. Do you remember to whom you gave the order that the samples of these pictures should be sent to your parents? Did you give this order to the Witness Schreyer or did you give this order to somebody else? heard -- I -- probably gave the order immediately when the picture was made --it is true, at the time -- but it is possible that my wife came there later and said "I am leaving now to see my parents at Hirschfelde" and to send the pictures, but I don't know anymore. of yesterday, to Witness Schreyer, or a third person. I do not want you to tell the Tribunal what you head from the witness yesterday. I do want you to tell the Tribunal what you remember.

A Well, I can only tell you I don't know any more. I cannot remember it.

Q Another question. You have referred, when questioned by the Tribunal, you have referred to the interrogations which were carried out previous to your executing this affidavit, which is before the Tribunal and you have given the reason to the Tribunal that you never mentioned Court No. II, Case NO.

the word "Jews" in your affidavit for the simple reason that nobody asked you anything about Jews in these previous interrogations, is that correct?

A That is not correct. I did not say so, either. I said I was never asked before about the execution order and also I was not asked whether Jews were shot for being Jews only, but merely, I believe, during the first interrogation, immediately, I was shown reports which mentioned a great number of persons who were supposed to have been shot by my kommando at the time, among them Jews. Thus, merely in this connection I was told about this and charged with it. I was asked again afterwards in detail. In my affidavit I referred to those questions which had brought about misunderstandings and clarified them; that is, during the interrogations where these misunderstandings occurred, I tried to correct this with Mr. Wartenberg and Mr. Wartenberg said immediately, "Alright then, we will cross this out and then we will correct this, or make a new affidavit." a great number of Jews were executed? remember that? Did you yourself say something about the Jews in this interrogation previously? that this was one of the important questions of the interrogation? given to me and submitted to me and I immediately said, I said, that it is impossible, it is not understandable, because there were no Jews -that right? You yourself reacted to these reports by saying, by denying that there were so many Jews?

then -well, can you tell the Tribunal what you told the interrogator then about executions in this interrogation. your first interrogation? You have been all the time referring to this. as I said during the interrogations and in my affidavit. During the interrogation I was in such a state of excitement -- as I was during these interrogations -- that I could not say at all what I wanted to say. I myself, was so upset because of these reports which the prosecutor gave me that I just could not say anything further and apart from that constantly charges were made against me and I get so upset about this and so excited that I could not give a reply.

Tribunal, about the sixty people who were killed in four executions, very detailed, about the time, the place and everything or just what did you tell him?

A Mr. Prosecutor, Mr. Wartenberg did not ask me about this.

Mr. Wartenberg wanted -

Q I do not want you to tell --tell us "no" if you like. Tell us now, "I did tell him that", or "I did not tell him that"; you answered that, "I was not asked by Mr. Wartenberg"; -- you were asked by me, and not by Mr. Wartenberg. me to describe one execution to him. I was to describe an execution to him from my memory; and there he wanted me to name a total num ber of people killed. That is what he wanted to have at the time -- the total figure was impossible for me to give. I constantly refused to do this.

Q Why did you do that? The witness doesn't answer, and tells a story which is no answer to the question.

THE PRESIDENT: Please put the question again, and we will see that you get an answer.

Q (By Mr. Hochwald) Did Mr. Wartenberg ask you whether you knew how many peopl were shot during your time?

THE PRESIDENT: Now please answer that -- yes or no?

A (By the witness) Yes.

Q (By Mr. Hochwald) Did you not yesterday, limit this number very specifically to approximately sixty people who were shot in four execution?

THE PRESIDENT: Yes, or no?

A (By the witness) Yes.

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Q (By Mr. Hochwald) Did you give this same explanation and information to Mr. Wartenberg?

THE PRESIDENT: Yes or no?

A (By the witness) I replied to his question, "How many were shot during one execution? " -- that is what he wanted to know -I told him, as far as I remember it must have been small groups -in my opinion a group of persons numbering between fifteen and thirty. That was the impression I got. I named this figure to Mr. "artenberg.

Q (By Mr. Hochwald) Did you tell that in the first interrogation on the 8th of July 1947?

A (By the witness) I no longer knew. I don't think so. I don't think I was asked. time?

THE PRESIDENT: But you didn't finish your question, Mr. Hochwald.

Q (By Mr. Hochwald) The question, is -- Do you remember when the question, "How many people were killed during your time", was put to you the first time.

THE PRESIDENT: Do you remember now?

THE WITNESS: Yes.

THE PRESIDENT: Very well. He does remember. Put your next question.

Q (By Mr. Hochwald) Was that the first interrogation in Nuernberg? to you for the first time?

Q How many people were shot in your time? question was, for the first time, put to you?

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Q Why did you do that? Why did you do that? at that moment--I well--I could not remember just then what, and how many persons were killed at the time, because they had to be shot, because I knew -- I immediately remembered -- the SK 4-B had -- I emphasize this -- to execute smaller groups, and I ....

Q Witness, you do not answer my--My I? -- You do not answer my question. I want to tell the Tribunal whether you gave to the interrogator, when first interrogated here in Nuenberg, the same information about these four executions -- whether sixty people were killed at three different places which you have stated here in direct and cross examinations.

Nothing else do I want to hear from you -

about examinations? Is that right or not?

A That is not true. I said, I refused to name -- when I was tortured again and again, in the end -- please understand me, now -I was so excited when I was asked again and again for a figure, I said "No, I cannot do this, I cannot name a figure. It would not have any basis." He did not ask me for a figure -- for a certain figure, a total figure "what happened during your time " -- and he later asked for the figures of the three executions mentioned -- I said fifteen to thirty persons.

THE PRESIDENT: Witness, when you use the word "tirture", I presume you meant figuratively?

THE WITNESS: Yes. That is what I meant.

Q (By Mr. Hochwald) Is it not true that I have asked you the same question; I have asked you know many people were shot by your kommando during your time. You said, "approximately sixty." Absolutely the same question that was put to you in the interrogation. I, also, want an actual figure. A general figure -- nothing else.

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A No, Mr. Hochwald-

THE PRESIDENT: I am afraid now it is becoming argument.

MR. HOCHWALD: I withdraw the question. I only want to put in, the interrogation in question, of course.

THE PRESIDENT: That's all right.

MR. HOCHWALD: This is Document NO-5572, and that will be Prosecution Exhibit 187, as far as I know.

THE PRESIDENT: Very well. Dr. Riediger, do you want to say anything further, before we withdraw the witness?

DR. RIEDIGER: Your Honor, may I use this occasion to say that an expert should determine how old the document is in the photograph book. A chemical expert find out when this entry was made, approximately, whether these entires were made -- at least whether they were made several years age. It seems to me that this would clarify the case. The book can be put at the disposal of the Tribunal at any time.

MR. HOCHWALD: It is a matter of course that the Prosecution has no objection against such a submission by Defense counsel. However, I think it is premature at this time. It is the contention of the Prosecution that it would be more convenient to first hear the Court witness, who herself, allegedly made these entires, and then, eventually, call an expert on the hand-writing.

THE PRESIDENT: Yes.

DR. RIEDIGER: At the proper time I shall repeat my request.

THE PRESIDENT: That will be entirely in order.

The witness will be returned to the defendants' dock. And the defendant Nosske will be taken into the witness stand.

Dr. Riediger please, I would suggest that you give the exhibits, numbers -- defendant exhibit numbers -- then they can officially become part of the records of the Tribunal.

DR. RIEDIGER: Yes.

THE PRESIDENT: If you have not yet presented any exhibits, you may start with "One." I would suggest you to do that, Dr. Riediger.

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I would suggest -

DR. RIEDIGER: I beg your pardon, your Honor. I overlooked that a new document is being submitted now. Please give me an opportunity to look at this, and state my opinion.

THE PRESIDENT: Well, does this have to do with the case just finished.

Mr. HOCHWALD: If the Tribunal please, I just have introduced the interrogation about which the cross examination was concerned. This is new. This is a new document, 5572. And I think it is Prosecution Exhibit 187, is that right?

THE SECRETARY GENERAL: Correct.

MR. HOCHWALD: And I have offered it as such, about ten minutes age.

DR. RIEDIGER: Your Honor, the document is rather long, and I shall hardly be able to read it through at the moment. I therefore want to ask that I be permitted to refer to this document later on, Iwant to reserve this right. I must give it to the defendant Haensch first; in particular, I must reserve the right to make objection against the submission of this document. I can't do this at the moment, of course, because I don't knew the contents.

MR. HOCHWALD: If the Tribunal please, the contents of the document, certainly, are not based for objection by Defense counsel. Defense counsel has the possibility of saying the document is a forgery, or to say it has no probative value -- but as to the contents -

THE PRESIDENT: Well, in any event, Dr. Riediger has the right to examine it, and he cannot do it in a few seconds.

MR. HOCHWALD: I only wanted to make this clear.

THE PRESIDENT: Yes. So that we will reserve to Dr. Riediger every right and every protection which goes with the submission of a document. But I would suggest that immediately, Dr. Riediger, you present to the Tribunal these exhibits. Just number them -- one, two, three -- so that officially they will become part of the records.

DR. RIEDIGER: I submit the writing the orders as Exhibit No. 1;

and I refer to the loose page which is contained in the pad. I submit as Exhibit No. 2, two negative prints -- two negatives concerning the person of the witness Haensch. Also, as Exhibit No. 3, I submit a book containing the orders for photographs, and draw your attention to number 391, page 94, of 21 February 1942.

And also, as No. 4 I submit a photograph of the witness.

DR. HOCHWALD: The Prosecution has no objection against the submission of these exhibits, but reserves the right to have then examined at a later date by experts. The books, and, eventually, also the negatives.

THE PRESIDENT: Yes. The exhibits will be accepted, and the Secretary General is instructed that Exhibit I will include, in addition to the black pad, the photostatic page. Exhibit 2 will include, in addition to the negatives, the envelope in which the negatives were contained, and the box in which the negatives and envelope were contained.

GUSTAV NOSSKE, a witness, took the stand and testified as follows:

JUDGE SPAIGHT: Raise your right hand, witness, and repeat after me: pure truth, and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPAIGHT: You may be seated.

DR. HOFFMANN (for the defendant Nosske): Your Honors, I would like to start the evidence in the case by questioning the witness himself.

THE PRESIDENT: You may proceed, Dr. Hoffmann. BY DR. HOFFMANN: the prison? tenable and unethical.

Q Witness, when ;you received the order at the time, did you feel to be an official, or a soldier -- or what attitude did you have concerning your office? tary assignment, as part of the army. I was under martial law-and martial law applied to me.

Q Witness, why did you consider this order immoral, being a soldier? in order to break up Bolshevism -- which was the aim of the war -- to kill a section of the population indiscriminately merely for that purpose.

of Bolshevism, I could not recognize, and could not realize, that it should be necessary for our own security to kill women and children. carrying out the order?

Q What did you reply to me at the time? the order in Pretzsch, could I have evaded carrying out this order. If I had said that I would never carry out this order, I would have been put before a court-martial, and would have been shot. If I had escaped, they would have seized me, and the same result would have been the consequence. And the public would never have heard why, and my relatives would have considered me dishonored, because they would only be told that I had deserted.

Q Witness, could you have turned to the press? had no relations with the press, and it just did not occur to me to approach the press at all, because this would be like giving myself up to an authority, so that they could arrest me. it -- and since you thought you could not evade it, what way-out did you find?

A I could only wait. I could not imagine at all whether, and how, such an order would ever to carried out. I could only hope that I myself would never be put into such a situation where I would have to carry out this order, or that any other circumstances might arise which might make it possible for me not carry out this order.

Q Witness, I would like to talk about you career now. Please tell the Tribunal very briefly how you career was, until the year 1933/

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THE PRESIDENT: Dr. Hoffmann, it is so close to the recess period. Don't you think it might be well to recess now, and then take up the curriculum vitae?

DR. HOFFMANN: Yes.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

DR. HOFFMANN: Mr. President, before we start with the examination of the defendant Noske, may I first make a motion that the defendant Braune be excused form the session this afternoon, since he expects afternoon visit from his wife.

THE PRESIDENT: In order that the defendant Braune may be available when his wife arrives, he may be excused from attendance in court this afternoon. BY DR HOFFMANN: your life history up to the year of 1933? school for four years, afterwards, the high school in Halle. There II graduated in 1922. Since the money for my university studies was lacking, I started as an apprentice at the Halle branch of the Deutsche Bank and Diskonto Gesellschaft and, after an apprenticeship of two years, until the year of 1925, I remained in the banking business. Then I started my studies in political science and law. In 1930 I passed my first State examination; in 1933 I was in legal training as a legal referendar. in any other organization?

A No, I neither belonged to the Party, nor any organization. At this time I had no kind of political interests. I spent my leisure time rowing or with other friends without any political tendency playing any part among us.

Q In what position were you when Hitler came to power in 1933? as a referendar in the courts. Furthermore, I was active as no auxiliary worker with an attorney for which I got paid a small amount.

Q How old were you then?

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referendar?

A The marches and mass meetings of the Party didn't have any attraction for me, and I did not participate in them. But when the order was given that young lawyers were to join the Party, or one of its organizations, I joined the party without any particular reluctance, but also without any special enthusiasm.

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Q Exactly when did you join the Party?

Q Did you join any other organization outside the Party?

A Yes, in the summer of 1933 I joined the SA. That had the following reasons. As I have already described, I worked for an attorney as an aide. This attorney was the legal consultant for an SA unit, but because of his professional activity, which kept him very busy, he could no longer perform this activity. He, therefore, asked me that I should take over this legal information service in his stcad. Connected with that was that I joined the SA. or the SA?

A No. I neither held a position nor did I do any service in the SA. I were the SA uniform, namely the uniform of a private in the SA, and I performed the service of legal consultant for this SA unit. How did this develop from 1933 on until the completion of your legal training? examination as assessor, which enabled me to become a judge, district attorney, or just a lawyer, but a position, or any final definite position was not connected with this. In the letters of the Ministry of Justice which confirmed to me the fact that I had passed the examination, it said that for the next few years one could not count on such a position since in Prussia at that time more than 3,000 assessors were available but any 250 could be employed annually.

or did you have to earn a living? a job. The occasional deputizing for judges who were on furlough or who were sick was not sufficient to make a living. Therefore I had to find a permanent job.

Q What did you do to secure such a position; did you go to various authorities or agencies? ministries, among them the Finance Ministry, the Ministry of Interior, and after a long time the Ministry of the Interior was the only one which reacted to such an application. I was allowed to introduce myself, and I was accepted professionally.

Q When and where were you called? The time was the 1st of June, 1935. government in Aachen? isis customary in such a district government, I was occupied with frontier matters.

Q How long did this activity last?

Q Where were you transferred then? to the Border Police which was a part of the Gestapo and was being organizationally built up as such. This included the fact that I was active with the State Police in an informational capacity, and I performed this activity in the State Police office in Aachen, which was in the same building as the district headquarters with whom I had worked thus far.

Q How long did this position last? provisional year expired.

Q And after this what happened? to Frankfurt on the Oder River, and there I was given the directorship of the State Police Agency in Frankfurt with the special mission to carry out the organization of the Border Police which had already been approved. Police Agency in Frankfurt on the Oder?

A The district was very great. It corresponded to the district area of Frankfurt on the Oder. It contained about 800,000 inhabitants. transferred to the Gestapo by the Ministry of the Interior? I did not have the slightest misgivings for already during my informational work in Aachen I got to know the activity of the Gestapo in its legal foundations. The State Police had the job to prosecute political; crimes, and in this capacity it is an auxiliary organ of the State prosecution, just like the criminal police was the auxiliary organ to the State prosecution for crime. intelligence. That is the mission to prevent the spying and detecting of state secrets. This is an activity as it is carried on in all modern states of the world, especially in the Western World, and as we know it as the Surete in France and Belgium and as the Second Bureau of the Surete, which corresponds to the counter-intelligence.

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Q Witness, didn't you know the funny feeling that people had about the Gestapo in Germany, was this not known to you?

A I must say honestly, no. At least I had lost this feeling when I took up my job, not because nothing could have happened to me any more, but because things only happened actually which I could approve, even if applying the strictest standard, and I could approve of it as justified and moral. Furthermore one has to consider that these were the years 1936 to 1939, that is to the outbreak of war and that here no matters can be brought in, which at a later period couldn't be approved by me, under any circumstances. concentration camps in Germany, did you not? Officially I did not hear their names, but they were known to me.

Q Didn't you undertake to send people to these concentration camps? State Police Agency, or rather to the authority of a director of such an agency to send people to concentration camps. Only the Chief of the Security Police personally held this authority. As far as the regional agencies were concerned, it was only their obligation to report. Reporting was done by transmitting a carbon copy of the entire action, of the entire record, and then a duplicate of the files which was to be filed in the central index in Berlin. Sending people to a concentration camp was prepared by the Office for Protective Custody in Berlin. Suggestions were made by the expert office of the RSHA, and the order to send the person there was always signed personally by the Chief of the Security Police, that is Heydrich at the time.

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For him sometimes a stamp was put in, the seal. The transfer, the transport of an inmate was done by the local police authorities who always were the transport agency for prisoners in Germany. confine someone to a concentration camp was signed by Heydrich and later Kaltenbrunner?

Q And before that Heydrich? Police.

Q And this was there, that is, with each order? concentration camp was signed by him personally or the Chief of Office IV was provided with the stamp of his name in his absence, but always it bore the signature of the Chief of the Security Police. BY THE PRESIDENT:

Q Witness, how long were you in the Gestapo? Gestapo until the 20th of September, 1944. That is to say, for this period I differentiate the following. As director of a regional State Police Agency, I was active from the fall of 1936 until the fall of 1937. That is, one year I was active as such. In between I had another occupation. Later I became again a director of a regional police agency, from July 1938, until July, 1939, and then a third time from October 1943, until September 1944.

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that all commitments to concentration camps were signed either by Heydrich or by Kaltenbrunner?

AAbsolutely. It never happened any differently. In this case I refer to the time before the war. 1943, '44, the commitments which were connected with the regional authority of a State Police Agency also happened as a result of an individual paper which carried the facsimile stamp of Kaltenbrunner. Heydrich or Kaltenbrunner was more or less a formality, wasn't it?

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Q. Now, Witness, do you want to tell us that Heydrich investigated every case of a concentration-camp consignment or commitment?

A. Your Honor, I personally was not in the RSHA in this activity, and I can only judge these circumstances from my own activity in a regional office, but later when I was active in the RSHA and got to know one or the other officials who dealt with this matter, I heard then that these commitments to concentration camps were actually signed by the chief or by the office chief.

Q. Well, Witness, what I am asking you is this, Heydrich and later Kaltenbrunner could not have investigated every commitment to a concentration camp, could they?

A. No, certainly not.

Q. All right. Then it was a mere formality, the adding of a facsimile signature with a stamp, or the signing of their name by one of may deputies?

A. Still I don't believe so, your Honor, for in view of the number, and I am now speaking for the time before the war, it was very easy and absolutely possible to have the cases brought before you, those cases which were supposed to be consigned to concentration camps, for I know from my time in Frankfurt on the Oder, and later in Graz, that in this area of 800,000 people not more than thirty to forty people were in a concentration camp.

Q. Now, just a moment, Witness, don't let's drift. In 1939, on September 1st, about how many people were in the concentration camps of Germany?

A. Your Honor, from my state police activity I never was able to find this out.

Q. Well, you know now, don't you, that there were tens of thousands at least, don't you?

A. Yes, through the Expert for Protective Custody, Dr. Berndorf, whom I met in one of the interment camps, I talked to him about what is true of the concentration camps what is not true.

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Q. Just a moment now. By September 1, 1939, there were many tens of thousands in concentration camps in Germany, that is correct, isn't it?

A. After his - according to his statement about 30,000.

Q. All right. Now, do you seriously believe that Heydrich examined or investigated or reviewed the cases of these 30,000?

A. Your Honor, certainly not.

Q. Very well. Then let's work this out logically. Then it isn't true that Heydrich could review every case which bore his signature?

A. Your Honor, the following has to be explained.

Q. Now, please answer that question. Just a moment, it isn't true that Heydrich investigated every case which bore his signature?

A. No, your Honor.

Q. All right. Then there were other people who had to pass upon the case, and his signature was attached without even his knowledge. That happened in most of the cases, didn't it?

A. No, no, your Honor.

Q. New, how many these 30,000 did Heydrich himself personally review?

A. Your Honor, that is a question which goes beyond my knowledge.

Q. Well now listen, Witness, you are there in the witness stand to give us the truth, and please be careful about the statements you make. Now you have told the Tribunal that Heydrich signed every commitment to the concentration camps. I asked you whether Heydrich could possibly have investigated every case.

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You said no. You said there were 30,000 about in the concentration camps in September, 1939. I asked you whether in most of these cases Heydrich could not possibly have reviewed the cases, and you did not agree with that statement. Now, tell me of the 30, how many do you believe Heydrich actually reviewed?

A. Your Honor, I cannot give a precise answer because I do not know, but I can say the following: The increase of the number of inmates, who in the year 1937 amounted to about six to seven thousand, to the number of about 30,000, did not come about through an increase of activity of the Gestapo but through one single action, through one wholesale operation where the Reich Criminal Police Office arrested or took twenty to thirty thousand professional criminals and put them in protective custody into the concentration camps.

Q. Did Heydrich sign these commitments of the 30,000 which you have just mentioned?

A. I do not know.

Q. Well. why do you say then that Heydrich signed

A. I can only speak of my sector, and I can only say what I experienced with the State Police.

Q. You said very emphatically that Heydrich signed every commitment, Now, did he or did he not?

A. Those of the state Police Agency, yes.

Q. Heydrich signed every commitment to a concentration camp in Germany while he was still alive?

A. I do not know. Those of the State Police with which we had to do, yes, he signed everyone of those.

Q. Why did you say that every commitment to a concentration camp was signed by Heydrich?

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A. Because I could not make this addition this explanation which I now was able to make.

Q. Then now we come back to the original propsition, Heydrich did not sign every commitment to a concentration, camp?

A. I do not know; I cannot say.

Q. All right then, your answer is you do not know whether Heydrich signed every commitment to a concentration camp.

A. No, but those concerned with the Security Police, or the State Police with which we were concerned officially, and we were only speaking in connection with my service, those Heydrich signed, all.

Q. Did Heydrich sign every commitment to a concentration camp by the Gestapo?

A. I suppose so, from the conversations I had with other friends, that it did not happen in any other way with the other agencies.

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signed every commitment to a concentration camp through the Gestapo? police offices under my supervision was any different from the other agencies in the rest of the Reich. camp commitment that was recommended by the Gestapo? in, let us say, the year 1938? by my regional agencies. recommended by the Gestapo? concentration camp commitment through the Gestapo?

A I cannot say. he signed them and he had people present documents to him about it. reviewed the case? commitment through the Gestapo?

AAbsolutely,. your Honor. THE PRESIDENT: Very well, proceed Dr. Hoffmann. BY DR. HOFFMANN: asked you. Did you, in your agency in Frankfurt on the Oder, have a stamp with the name Heydrich?

A Never. The forms which were sent from Berlin, the printed forms to consign people to camps were sent from Berlin in duplicate and we ourselves had nothing to do with this and could not print them outselves.

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That was out of the question.

Q Thus you sent your cases to Berlin?

Q And Berlin decided? camp or not, but I may add that a report was made about every case, no matter what the RSHA or its chief would decide in the individual case. If any crimes were committed against the State laws, the cases had to be turned over to the courts and if any doubts existed whether a court had jurisdiction, then Berlin would examine and would ask for completions and additions, renewed interrogations, and then Berlin made its decision and said the individual concerned is to be handed over to the court or is to be dismissed or is to be reprimanded or something else.

THE PRESIDENT: Dr. Hoffmann, Heydrich was made chief of the Security Police and SD on June 26, 1936. I would like to have defense counsel or prosecution counsel obtain for the Tribunal, if it is possible, the figures as to the number of people committed to concentration camps between June, 1936 and June, 1942 when Heydrich died, in view of the witness's statement that he knows that Heydrich reviewed every case of people sent to the concentration camps during that period via the Gestapo.

DR. HOFFMANN: Your Honor, may I say the following. If I remember correctly in the case against Pohl the prosecution stated the exact number of the inmates in the concentration camps until 1939 and had them submitted. May I take the liberty to look for this, and since it is a public document I don't have to submit it specially. I also remember the trial of the IMT and the interrogation of Kaltenbrunner where actually it was Said that facsimile stamps with the name Kaltenbrunner were distributed among the Berlin agencies and that the departments concerned used this facsimile stamp. May I take the liberty to look for those things, and to submit them?

THE PRESIDENT: Yes, any information which can be obtained regarding the number of people committed to concentration camps via the Gestapo will be in order. BY DR. HOFFMANN: you did as director of the State police agency in Frankfurt on the Oder? I had the overall direction, that is, the organization and the administration which took up most of my time. In addition there was the responsible leadership of the executive activities, for every report, except for the fact that I may have been absent to the RSHA, was personally signed by me. The main activity was already in the field of counter intelligence. The counter intelligence activity of the police was carried on in agreement with the military agencies who did not themselves have any executive officers, that is, in their investigation capacity they had to rely on our officials. active with the supervision, shadowing and prosecution of political opponents? which came to our attention had. of course. to be prosecuted. attention? Did you make a report?

A Yes. of course, the necessary investigations were made, interrogations were conducted, and a report was made to me or the executive official and the result of the investigation was submitted.

Q Did you yourself undertake arrests? regional police agency arrests were necessary, but the number of the arrests was actually not large for this whole district and at this time it was an exceptional case, for the regional state police agency only had the right to arrest a man for the duration of ten days.

After these ten days had expired the arrested man would either have to be dismissed or be handed over to the courts. legal basis or directive or decree? On what did you base yourselves when making these arrests? the Secret State Police which is organized on Article 48 of the Reich Constitution and then the other Reich laws, and above all the civil penal code about treason were wholly valid and were used just as they were used before Hitler took over.

THE PRESIDENT: Dr. Hoffmann, would you also try to submit to the Tribunal the directive, decree, law, order or legislation which stated that the Gestapo could hold a detainee only ten days? Upon the termination of the ten days he either had to be released or turned over to the courts. That is the statement made by the witness and we would be very grateful if you could submit to us the documentary proof of that order or decree.

DR HOFFMANN: Yes.

THE PRESIDENT: Thank you. BY DR. HOFFMANN: the Jewish faith? in this connection of my own personal activity.

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Q. Did this happen in your agency in Frankfurt on the Oder in the years 1936 to 1939, and to what extent and on what basis?

A. During the activity in the direction of these state police agencies in Frankfurt on the Oder and Graz no Jews were arrested, only because they were Jews, but as anyone else who violated any Reich Law or any decree, that is, a cumulative arrest was not carried out by me.

Q. For what period are you saying this, witness?

A. I say this for the period from September, 1937 -- no, from September, 1936 to September, 1937, and from July, 1938 to July, 1939.

Q. Did you ever get orders from Berlin to arrest Jews?

A. I remember very clearly one decisive case, but that was the only case which, for the periods I have named, was concerned at all.

THE PRESIDENT: Witness, why don't you answer your attorney's question very directly? He said did you ever receive any orders from Berlin to are rest Jews. Now, the answer to that is yes or no.

THE WITNESS: Yes, in this one case.

THE PRESIDENT: All right. Then you want to say there was only once that you received such an order?

THE WITNESS: For this period, yes.

THE PRESIDENT: Al right, let's be very specific. All right, proceed, Dr. Hoffmann.

Q. (By Dr. Hoffmann) When was this?

A. That was in connection with the incidents of the 9th and 10th of November, 1938.

DR. HOFFMANN: Your Honor, may I take the liberty to come back to this later?

THE PRESIDENT: Yes, certainly.

Q. (By Dr. Hoffmann) Witness, I now want to determine definitely from when to when were you in Frankfurt on the Oder?

A. I was in Frankfurt on the Oder from the fall of 1936 until September, 1937 as director of the State Police; after that, as a coworker for the border inspector.

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He was senor Government Councilor Damzog, who at that time had moved his office from Breslau to Frankfurt on the Oder.

Q. And what happened to you when your activity in Frankfurt on the Oder ceased? Where did you go then?

A. My activity in Frankfurt on the Oder ended in July, 1938, but in the period in between, that is to say, from the 10th of March on, for the duration of three months, I was used as a liaison officer between the security police and the regular police and was sent to Graz in Austria in this capacity. From this time on I returned to Frankfurt and from July, 1938 on I was again given the direction of the State police office, and this activity ended after one year, end of July, 1939, At that time the border inspector Southeast was transferred and was not replaced by another person. Therefore, I was put in charge of the border inspector's job for this part of Southeastern frontier of the Reich, as a deputy. I was in this position when war broke out.

Q. And what happened after the war broke out?

A. I remained in this position after war broke out until Easter, 1941. At that time the Southeastern campaign in the Balkans was finished and that ended my activity and my security job and my customs job ceased because the border was occupied by the military.

Q. Witness, in Graz up to the period which you stated in the year 1941, did you have any activity other than in Frankfurt or was it the same?

A. If you mean Frankfurt, the time when I was with the inspector, yes, but if you mean the time during which I was with the state police, then no.

Q. I understand you correctly then that you performed the same activity in Frankfurt on the Oder as you did in Graz?

A. Yes. First of al, direction of a state police agency and then a purely inspectional job with the border police.

Q. What happened to you when your job in Graz became superfluous?

A. I was called to Berlin and I was given a temporary job. This job was to suspend the state police agency at Aachen.

I was to be changed and reorganized into another agency in another city. Furthermore, the organization of the border police as it had existed thus far in the West was to be adapted to the new conditions in the West owing to the newly acquired territory there.

Q. Witness, how long did this position last?

A. This activity was almost completed when, on the 17th of June, 1941, as I recall, I was called up by the personnel office in Berlin to report to Berlin the next day. When I asked what was the matter they could not answer me. They just told me that I had to count on a lengthy absence.

Q. What happened on the next day?

A. I want ot Berlin, reported to the personnel office, and there they told me that in place of the director of the police agency at Hamburg who had become ill, Government Councilor Creutzer, I was to be sent to an assignment abroad. Creutzer had become ill and the day before they had received an official certificate of his illness and I was taken in his stead.

THE PRESIDENT: What was the date of this, Dr. Hoffmann?

DR. HOFFMANN: I believe the 18th of June.

THE PRESIDENT: Thank you.

Q. (By Dr. Hoffmann) 18th of June?

A. Yes.

Q. Did they tell you on the 18th of June where this assignment would take you and what it was concerned with? A. No, the personnel office told me nothing. They only told me hat on the same day I was to report to the Prinz Albrecht Palace of RSHA and there I would receive my orders and all further information.

Q. Did you then go to the RSHA?

A. Yes, I went there at appointed time and I found 25 to 30 higher ranking SS officers there, of whom two to three were known to me from my previous activities. I knew the chief of Office I, Strecken bach, who was there.

Of other officials I saw other SS officers, such as Nebe, Stahlecker, Rasch, also Standartenfuehrer Ohlendorf. I did not know him at the time. For the first time I found myself in such surroundings and in such a circle of people and I could not find out what was the matter. The officers who were gathered there had already been in Pretzsch or Dueben several days and they only told us that men and vehicles had been collected there.

Q. What was the result of this conference in which you participated? with what result did you leave this place?

A. When we sat down at eh conference table Heydrich appeared and told us the following: The Fuehrer had to decide to take up the fight against the Soviet Union. It was a matter of getting ahead of Bolshevism, but his time it was not only a matter of a military opponent but an ideological one, and this opponent is a fanatic fighter and the fight would be ruthless. The breaking of the Bolshevist system was, however, not only the job of the security police but was also the job of the Army, and the Fuehrer had made this clear to the Army unequivocable and had given it the same orders. Ont the basis of the Fuehrer order it had become possible or arrange an agreement between the Wehrmacht and the security police.

THE PRESIDENT: Dr. Hoffmann, he is now going to go into the details of his instructions, and I think this might be a good point at which to break off for the recess, don't you?

DR. HOFFMANN: Yes.

THE PRESIDENT: Very well, the Tribunal will reconvene at 1:45 (A recess was taken until 1345 hours.)

(The hearing reconvened at 1345 hours, 4 December 1947.)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION (Continued) BY DR. HOFFMANN: that you described to the Tribunal what happened in the Prinz Albrecht street. When you gave this description I noticed that you talked about the fuehrerorder on that occasion without having mentioned it before. would you just describe how you got to know about the feuhrerorder first, and the contents of it? Albrecht Palais I had not yet spoken about the fuehrerorder, but Heydrich had told us that war with Russia was unavoidable and that on the basis, of the Hitler order an agreement between the army and the security police could be made on the basis of which Einsatzgruppen and Einsatzkommandos were being set up, and were assigned as part of the army.

Q Witness, that was all you were told there? afterwards? were still being set up. The same day, together with quite a number of the leaders who had been also present there, I travelled to Pretsch or to the Duebener Heide, the Duebener Heath, to the stations provided for the units. I myself travelled to Dueben, and one or two days later, I don't exactly remember, we were asked to go to Pretsch because further orders would be given to us there. Together with Herr Ohlendorf, II went there. Streckenbach appeared as deputy of Heydrich, Office Chief 4 was also present. In general, it was almost the same circle of officers whom I had already met in Berlin.

Q What were you told there? we knew the situation, he assumed. The Einsatzgruppen would march with the fighting units. This was the most difficult assignment which the security police would ever deal with. He described to us the difficulties of the task in detail in view of the enemy we would have to deal with. In this connection, I can remember one sentecne verbally which impressed me particularly. He said, "Keep the last bullet for yourself so that you won't fall alive, into the hands of the enemy." Apart from that, he announced to us the order of the fuehrer, that in order to break the bolchevist system it was necessary to eliminate the Bolchevist leading circles, and since the Eastern Jews were its most important bearers, they were to be liquidated, including women and children. This was the order from Hitler. We were under military law, and absolutely had to obey this order.

Q What was the first personal impression you had of this? the others who were present. I could see that the higher officers reacted in such a manner that they immediately went to Streckenbach and disputed the matter very vividly and objected to it. I was one of the lowest ranks present there and, therefore, saw no reason to take part in this objection, because I realized that the high officers were already doing this; and in view of the personal connections which they seemed to have, it would be much better for them to deal with this matter, but I also realized, or I heard that Streckenbach recognized the misgivings, but finally he pointed out that this was the fuehrerorder which could not be charged and which had to be carried out.

Q You witnessed then, Witness, that the order continued to exist?

A Yes. It continued to exist and was not changed. BY THE PRESIDENT:

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Q Witness, what was Streckenbach's rank? in Army terms?

Q Major General. What was the rank of the highest officer in the group that spoke with him?

Q Was there anyone who had a rank higher than Streckenbach?

A I don't quite know. I don't know whether the Office Chief 4, Mueller, was already a Gruppenfuehrer or still a Brigadefuehrer?

Q Were there several at least of the same rank as Streckenbach's rank?

A I think so. Nebe, I believe; Rasch; whether Stahlecker already had that rank, I don't know, but I think so; then there were people, who were one or two ranks lower; some oberfuehrers, and some standartenfuehrers, and then obersturmbannfuehrers, and people of my rank which was the lowest one; the rank of a major, there was perhaps a dozen people. bach?

A Yes. Gruppenfuehrer Mueller was there, but I don't think that he took an important part in the discussion, because, as Streckenbach had said, he had been instructed by Heydrich to tell us about this order. rank according to Streckenbach's did not go further, that is to say, appeal to Heydrich directly? even on the basis of their personal relations which they had, I think that certainly a few of them might have been on familiar terms with Streckenbach-- that they knew Streckenbach so well that he had the authority to say that and that they never doubted that Streckenbach would announce anything or take an authority to which he was not entitled. On the other hand, Office Chief 4 was with him.

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The fact that he was present alone and his attitude, even if I don't remember his words, showed that there simply was no doubt about the commission of Streckenbach. Mueller and Ohlendorf and the others?

Q Well, then why couldn't all the officers who objected strenuously to this, including Streckenbach, go to heydrich and point out that it was impossible for them to perform this task?

A It is very difficult for me to answer this question. It originates, rather, it can be answered with the same reasons I gave before. We also expected and it had been said that, before the Einsatzgruppen and commandos were to move Heydrich himself would carry out an inspection. On that occasion the opportunity would arise for those officers to talk to Heydrich himself; whether this happened, I don't know. task I am speaking of, this day when you first learned of the fueherorder, and you say that you heard it with not only misgivings but with some shock, and this revulsion was shared by other officers, and officers equivalent in rank to Streckenbach attempted to reason with him about it, and Streckenbach received their protests sympathetically and agreed it was a very difficult order but said that his hands were tied and couldn't do anything about it. Arriving at that stage, why couldn't all the officers, including Streckenbach, then go to the next higher level, the next higher exhelon, and again in a very friendly and rationalizing manner, point out that this order was impossible of fulfillment? Why couldn't that have been done? the fuehrerorder had been given and it could not be evaded and absolutely had to be obeyed, I assume that these higher officers who knew the situation much better and who firmly believed that in fact it was a fuehrerorder, they therefore refrained from making representations to the chief of the security police.

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at all, they merely objected to Streckenbach, that is right, isn't it?

PRESIDENT: Very well, proceed, Dr. Hoffmann.

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BY DR. HOFFMANN: did you have the impression that these officers who protested were afraid of going to Heydrich?

A I don't think so at all, because I am convinced that Streckenbach or the other officers who objected could have found a way of going to Heydrich, but obviously in view of the situation they were convinced that Heydrich would only confirm this order again and nothing else. BY THE PRESIDENT: Wouldn't their consciences be relieved somewhat if at least they would have made the attempt and not left it to conjecture as to what Heydrich would say? to Dueben and there he inspected the units which were about to advance. I am convinced that in this connection, too, the officers, the higher officers, who had reported to the chief of the security police talked to him and debated this question again, but could not come to another result; but in my own sphere I did not hear anything about it, and it was only confirmed to me again that this fuehrerorder was to be carried out.

PRESIDENT: Dr. Hoffmann, that answer is not very clear to me, is it clear to you?

DR. HOFFMANN: No, but I will ask him something about this. BY DR. HOFFMANN: general opinion perhaps that Hitler as well as Himmler and also Heydrich basically would never revoke a once given order, only because of requests and objections made by normal human beings?

A I think so. I think one was quite convinced of this. BY THE PRESIDENT:

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this, he merely made his inspection, left, and then the detail moved on to Eastern Russia--Western Russia? was when the inspection in Dueben took place, the units which had since been set up were standing in an open place and the unit officers, those who had the same rank as I had, were standing immediately in front of their units. We, therefore, stood there before the chief came, then marched past him and we personally had no opportunity to talk to him, but the higher officer, who then accompanied the personal staff of the inspecting officer, had an opportunity to talk to him, and I saw them talking.

Q Well, you saw them talking, but you didn't hear what they were talking about?

A No. I say I cannot pass a judgment from my level. these protesting officers never brought it to the attention of Heydrich?

Q Well, just a minute. You are convinced of what? I ask you now, do you know of your own personal knowledge whether these other officers spoke to Heydrich about the fuehrerorder before you actually moved into Russia--of your own personal knowledge?

Q Now, please answer that question. Do you, or do you not know of your own personal knowledge, whether they spoke to Heydrich about the fuehrerorder and the possibility of its fulfillment?

PRESIDENT: Very well. Proceed, Doctor.

THE WITNESS: Well, in this connection, may I add that before the units he made a speech in which he again pointed out the task which was to be carried out. This convinced us that this order could not be altered and, therefore, was an order about which Heydrich could not decide either, but that it was a fuehrerorder which had come from the supreme head of the state.

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BY MR. HOFFMANN:

Q. Witness, let us go back to yourself. I would like to first ask you what was your own attitude toward the order when you received it?

A. This order and the general situation upset me very much. For me personally there were two facts, which shocked me particularly. The first fact was that a war with Russia should break out at all. This fact to which our attention had been drawn upset the ideas which I had of a war and of a possible conclusion of the war. In my profession I had no opportunity to take an interest in higher politics and conducting war. I had only imagined a war with certain limits and I now faced the fact that the war was being expanded, the consequences of which were unimaginable.

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had heard officially. Particularly with regard to Russia the press and other official statements did not mention anything, so that the fact of the war surprised me all the more. Also a war with the Bolshevist opponent would be a difficult one and was also bound to entail cruelty and atrocities. The order itself I considered impossible and I could not imagine if and how it could be carried out.

Q. Witness, what did you object to in this order? Did your upbringing not agree with it or your inner attitude? What effect did this order have on your feelings?

A. When attitude is the result of upbringing, it concerned both, but in the end it was my conscience.

Q. How did you think you could get out of this difficulty?

A. In those days I could not imagine that at all. I could only wait and see how things would develop. Apart from that we had been told that I with my Einsatzkommando 12, as part of the Einsatzgruppe D, was assigned to the Caucasus Mountains. The Army Group to which the Einsatzgruppe was attached had not yet been set up. It was still in the southeast territory. There were still thousands of kilometers which had to be fought for first, before we could over reach the Caucasus Mountains, and when this would be and should I ever reach the Caucasus Mountains, these were questions for me which remained unanswered and to which I could not find a reply. Perhaps I myself would never have occasion to carry out this order and such a situation might never arise for me. Perhaps by then things might occur which might make it unnecessary to carry it out.

Q. What happened actually? If I remember rightly, you were appointed to be in charge to Einsatzkommando 12?

A. Yes.

Q. Where was your Einsatzkommando?

A. As I have already stated, when we came to Dueben, - incidentally the enlisted men were gathered there and they vehicles, they were all in a large parking lot--after the order had been announced in Pretsch, the units were divided and I was told that one unit was Einsatzkommando 12, of which I was to be in charge.

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Q. How strong was this Einsatzkommando?

A. The Einsatzkommando had about 130 to 140 men.

Q. What was their equipment?

A. I would first like to add here that this was the strength when it was set up. Later on, of course, some changes took place because of losses and other circumstances. The kommandos were fully motorized units. With vehicles as the offices in the Reich had sent them. They were not special Army vehicles, but common vehicles as you use in the city.

Q. And, witness, what were the weapons you had?

A. The weapons were nothing special either. The men of the Regular Police and the Reserve had carbines and the men of the Waffen SS they had one or two machine guns. Apart from that they only had pistols. In all in my unit there were perhaps at the most six to eight submachine guns, and no heavy weapons.

Q. Were the members of your Einsatzkommando 12 volunteers, or were they forced to join?

A. No one was a volunteer. They had all been drafted and ordered to go there. The members of the Security Police had been drafted by Regional Offices of the State Police and the Criminal Police, sometimes also by SD offices.

THE PRESIDENT: Well, you don't mean, witness, that every member of your detachment was drafted into the SS, do you?

THE WITNESS: No.

THE PRESIDENT: Then your statement they were under compulsion is not entirely correct?

THE WITNESS: Yes.

THE PRESIDENT: Were you drafted? Did you join the SS voluntarily?

THE WITNESS: I only belonged to the SS, Special Formation SD and because of my position I had the same rank as an officer but for the actual assignment not one was a volunteer and the members of the Regular P Police, perhaps, were only drafted a few months earlier, and until that time they had carried out their jobs as tailors or business men or whatever they were.

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THE PRESIDENT: Well, what you mean is that the order to move into Russia was a military order and therefore you were acting under the compulsion of the military order, but you don't mean that each and everyone in your Einsatzkommando or in the Einsatzkommando was drafted into the SS, because you know that there were many who were volunteers.

THE WITNESS: It is definitely right, yes, absolutely, but I talked about matters generally, in as far as the actual assignment was concerned. For the actual assignment nobody could volunteer. The men from the Regular Police were age groups which the Army did not require, who had been released for police jobs. They had been drafted, at least, and the Main Office of the Regular Police had assigned then to the Security Police. The Waffen SS men had been drafted by a Police company in Berlin and the members of the Security Police originated. as I already said, mostly from the Regional Police Offices. who had been released because member of small offices had been dissolved and therefore the men were available.

Q. Witness, did you notice that when the members of Einsatzkommando 12 were selected only special directives were observed or was everything mixed up that is, were there all kinds of people at all ages?

A. Yes, they were all kinds of people, and I am convinced that often there were mere coincidences that these men came to the Einsatz assignment.

Q. How was the attitude of these men with regard to this assignment?

A. First of all, my recollection is not quite clear, whether even before leaving Pretzsch every individual officer and man know about this Fuehrer Order and had been told about it. In this connection, it was not yet necessary. First of all we had to advance, in order to reach the area to which we were assigned.

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Q. When did Einsatzkommando 12 leave Dueben?

A. While the other Einsatzkommando moved on already the day after Heydrich had made the inspection, Einsatzkommando D, as far as I remember it remained for about another week in Dueben and as I thought, because they had been assigned to the Caucasus Mountains and the assignment for the Caucasus any way was not yet necessary. The day of departure, as far as I remember, was fixed for the 28th or 29th of June, 1941.

Q. Please describe to the Tribunal the route after the 28th or 29th of June until you came to your permanent station.

A. In a closed column, the Einsatzkommando moved from Dueben via Bohemia. In two days they reached the Austrian Hungarian border. On the third day, the Hungarian territory was crossed and the city of Chesburg in Siebenbuergen was reached. As far as I remember, already one or two kommandos of the Einsatzgruppe were branched off. These two kommandos, or this one, marched over the mountains into Roumanian territory The Einsatzgruppe staff and the other kommandos made their first station in Piatraneamt, which was a barracks camp. The Group Staff remained there for some time, perhaps ten, perhaps 14 days. I can't say exactly, and then the Einsatzgruppe Staff and the other kommandos, except for Kommando 12 marched into Roumanian territory.

Q. Where did your kommandos stay?

A. I said already that Einsatzkommando 12 remained at Piatraneamt.

Q. How long did you stay there.

A. Kommando 12 remained stationed until the end of July 1941, partly in Piatraneamt, partly near Jassy, in the original Rumanian territory.

Q. When did your Einsatzkommando move to Russia and where to?

A. While the Einsatzgruppe staff and the other commandos had already advanced Pruth and Jassy, following the fighting units, the connection between them and Einsatzkommando 12 had become very loose. Therefore, Einsatzkommando 12 followed into the Russian territory and the first location they reached was Olschanka on the other side of the Knjestr River. Olschanka at that time was the headquarters of the Group Staff.

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AA few days later, perhaps a week later, I don't know quite exactly, the group staff and together with them the Einsatzkommando 12 moved their garrison to Charnomin. Charnomin was not a village it was an old castle in the side buildings of which the Einsatzkommando and Kommando 12 were quartered. that time? August, was kept there as reserve, but about two weeks previously, the Einsatzkommando chief gave orders and instructions to detachments of Kommando 12 and to me personally, too. the kommando? August, that two platoons of Einsatzkommando 12, two platoons consisting of 10 to 15 men, were to help to bring in the harvest and to help the Army do this.

This was a mission of the Army of the socalled economic kommando, for short, in German, W.i.k.o. The job consisted of working together with units of the Army who were available for this purpose and to in collecting the crop which had became overripe in this territory and to organize the harvesting. These platsoon were therefore assigned certain territory or some localities where they had to carry out these measures. If I understood you correctly, at the order of Ohlendorf this subcommando left? you visit the commandos as well which had been detailed. of course I wanted to have a look at the work out there, and I don't know exactly, whether I made one or two trips to those distant areas in order to have a look at the work.

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Q You say "work of the commando." Do you mean to say mass executions, or what are you referring to by work of the commando? in the harvest and to help the Army to do this, and not to carry out the Fuehrer order.

Q Why not? under the reasons of the Wehrmacht, a very specialized mission. This that time, because of an agreement or because of some request made by the Army, there existed a directive that the Jews in the flat country should be exempted from the registration, which had been ordered by the Hitler orders. Because of these special considerations the Army did not want these measures to be carried out yet.

Q How could you prove that this existed? I was not subordinated to a special unit of the Army yet, but this was an instruction which I expressly received from the Einsatzgruppen chief in this connection.

Q The Einsatzgruppen chief was? the harvest, did you hear of any special occurences there? events reported to me. I could convince myself, that the harvest measures were being carried out as it could be expected.

Q How about shootings? Did any shootings take place during these actions? BY THE PRESIDENT:

Q Let's have the date, Dr. Hoffmann, please, of this particular activity. haps, I am not quite certain, until about the 23rd or 25th of August, 1941. bringing in the harvest? men of my commando under my responsibility.

Q Did you yourself participate in the harvesting? of the commando, of the rest of the commando in Chanomin, but I cannot quite say whether once or twice I travelled to the district where my two platoons, were working. I believe only once, on another occasion, I had an economic mission to travel somewhere else.

Q Were your men all farmers?

Q What did they know about harvesting? measures had to be taken, and, as happens so often, something had to be done in a matter which, although one does not really understand the matter, but that was not what was needed, whether one understood. agriculture or not here. dorf told you, "Now, you go ahead and harvest this wheat." What would you do? Would you know what to do?

DR. HOFFMANN: May I say something just briefly?

THE PRESIDENT: Are you a farmer, Dr. Hoffmann?

DR. HOFFMANN: No, I am not. Witness. may I add another question to the question of the President? By "bringing in the harvest", did you mean that you people themselves filled the hay wagon or that they cut the horn, or what do you understand by bringing in the harvest in this connection?

THE WITNESS: I have already expressed myself to the effect, the organization of bringing in the harvest. They did not operate the machines themselves and cut the wheat, but to see to it that the harvesting was done by the people in the rural districts. And may I say two sentences here to describe the situation which we found in this fertile part of the Ukraine?

DR. HOFFMANN: Witness, one question. Your people did not work. themselves, they merely supervised?

THE WITNESS: Yes, they gave instructions. BY THE PRESIDENT:

Q Did they know enough about agriculture to give instructions? It takes a smarter man to give the instructions than to do the work.

A Your Honor, I quite understand you. I was not able to say my two sentences yet. They were not to give expert instructions here, but merely to give some intiative orders, to make the population in the country carry out the work to their expert knowledge and according to their expert knowledge and according to their old experience, but the following was necessary for this. The population in Bolshevist Russia was only used to do something when ordered, not on their own initiative and not as necessity arose. But since the administration of the districts did notexist any more, no district administration gave any instructions that the collective farms so-and-so collect their harvest tomorrow, and since no order came, they just did not do anything. ratively--the organization for bringing in the harvest was there but someone had merely to see that the machine was put into motion and supervise its operation. That is what you did?

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A Yes. Also, there was the special task of overcoming the difficulties which arose owing to the fact that fighting had been going on in these areas -- in particular, the Red Army, in order to prevent the bringing in of the harvest in as far as they could, had destroyed all the machinery, or destroyed parts of it, and now it was the task to manage it so that one machine which would work, could be built out of several parts that the seythes, which were brought by airplane from the Reich in tens of thousands, be distributed to the various localities, so That the population, inasfar as they did not have machines, could at least bring in the harvest as far as possible with these primitive means.

Q (By Dr. Hoffmann) Now, witness, concerning the charges which are raised against you, I ask you again -During such time, did any shooting take place, or did you hear of any? place in the village of Bobchinski. The troop officer of one platoon, who was in charge of the locality of Babchinski there -- reported a shooting to me when he reported back to the headquarters in Chanomin.

DR. HOFFMANN: Very well. Just as you wish, Dr. Hoffmann. It would be well if you always -- if you recall it -- give the date of the particular episode which is being discussed -- approximately.

Q (By DR. Hoffmann) What was the date, approximately?

A I cannot say exactly. I said it must have been in this time -- that is during the time between the 10th and 23rd of August 1941.

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Q When did the platoon return -- on the 23rd? platoon reported back?

Q Is this in the document which I already mentioned? assignments?

A Yes, I, personally, did. The Einsatzgruppen chief gave me the order to go to Jampol, and, through negotiations with the German commander, or with the Roumanian agencies or the Roumanian officer, to achieve that a larger number of Roumanian Jews be brought back to their district, who, some time before, through the Roumanian troops, had been moved out of Roumanian across the Dnestr River into the German rear army territory.

Q When was this? 20th of August.

Q And you obeyed this order -- you obeyed it? it necessary in order to carry this out, and one or two other vehicles came along, and some officers, and some more men -perhaps three or four men -- or perhaps a second car -perhaps two cars, aside from mine -- I am not quite sure now. I then travelled the long distance to Jampol. I returned, because I had already passed Jampol once, when travelling from Orchanka and Chanomin -- the distance, I think, was about 80 or perhaps 100 kilometers.

tell us precisely how many of you there were when you travelled to Jampol, and how you were equipped, if you can remember.

AAt least two officers. Also an interpreter, and five or six men.

Q And what equipment did you have?

A I probably had my automatic rifle with me. The men had carbines, or pistols.

Q Why did you carry your automatic rifle? Was there any particular reason?

A No, certainly not. But instructions had been given that no vehicle should travel alone -- and may I say that all this time in Russia I never travelled without my automatic pistol, whether I travelled to the hospital, or whether I went anywhere else.

Q Why? Why -- was it dangerous? Why did you have to carry an automatic pistol? as much, but later on one noticed it much more, and it became more and more necessary -- and, may I say that in the winter it became necessary to sleep with one's clothes on and to have the automatic pistol next to the bed. Jampol when you arrived there. I found out that a second bridge had been built since, which was just about to be completed. Then I travelled on the road which led from Jampol toward Mogilew. Just outside the town cooking.

I did not see any German soldiers and members of the security police guarding it.

They moved about freely, order was in that situation.

What were you to do?

Not to shoot them. But the order from the Einsatzgruppen

Q We have not come to that yet, witness. When you order meant?

Why importance was attached to it?

Roumanian Jews. I had heard that in Mogilew a number of resisted.

I think I even heard that they had tried to Jews to return.

In any case -

THE PRESIDENT: Dr. Hoffmann, this episode will be of it first.

Now, these Jews were in a camp. Is that right?

DR. HOFFMANN: No. Not a closed camp, but they were just in an open field.

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That is how I understand the witness.

THE PRESIDENT: In his affidavit he said, "There was in Jampol a camp of I should say, three thousand Jews." Is that right, witness? Were they in some sort of a camp?

THE WITNESS: No, your Honor, this expression is rather unfortunate. There are camps, and there are camps! I already said they were not guarded. I did not see any German soldiers, nor members of the security police guarding it, but they were free and just camping there.

THE PRESIDENT: Well, it was ca camp?

THE WITNESS: No, they were camping there.

THE PRESIDENT: Well, if they were camping, it is a camp, isn't it. If you camp, you camp -- then it becomes a camp. I think this would be a good place for us to camp for fifteen minutes.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. MAYER: Dr. Mayer for the defendant Steimle. Your Honor, I ask that the defendant Steimle be excused this coming Monday from that session in order to prepare the documents.

THE PRESIDENT: The defendant Steimle will be excused from attendance in court next Monday all day so he may work with his attorney in the preparation of the document book.

DR. MAYER: Thank you.

THE PRESIDENT: Now, Dr. Hoffman, we were talking about camps before we decamped, and we would like to get this situation so then we can understand the unfolding of the narrative. Now, we understand there were three-thousand Jews in Jampol, is that right?

DR. HOFFMAN: Yes.

THE PRESIDENT: And they remained in a meadow?

DR. HOFFMAN: Yes.

THE WITNESS: Your Honor, the number three-thousand I mentioned as a quick estimate, and I had to give it here during my examination which was after I had driven here for half a day and a whole night, and half an hour stay here, when I was immediately interrogated here.

THE PRESIDENT: Yes, but we will go into that later. what I want to do now is to get a rough idea of what this episode is about.

THE WITNESS: Everything else is correct, but the estimate of three-thousand was too small. After I thought this over it must have been six to seven-thousand people.

THE PRESIDENT: Very well. There were six to seven thousand Jews in the group living together at least temporarily at a certain spot in Jampol, is that correct?

THE WITNESS: Yes.

THE PRESIDENT: Now were they under guard?

THE WITNESS: No.

THE PRESIDENT: Then you received orders to do something with these Jews. Now what were the orders?

THE WITNESS: Yes.

THE PRESIDENT: What were the orders, what you were to do with the Jews?

THE WITNESS: The order was as follows: These Jews who had been brought to Jampol from Mogilew, as I knew it, were to be lead across the bridge, and this was to be done by overcoming the Rumanian resistance which had been shown in Mogilew, and the retransfer had to be effected there, because there was the only bridge where this could be done.

THE PRESIDENT: What did this bridge span? Was it a river?

THE WITNESS: Yes, the bridge was over the Dnjestr River.

DR. HOFFMAN: Your Honor, the Dnjestr River is missing on the map.

THE PRESIDENT: I see. Then you were to take these Jews over the Dnjestr River to where?

THE WITNESS: Yes, merely into the Rumanian territory.

THE PRESIDENT: Well, all right, now generally we have an idea what it is about and you may develop it further, Dr. Hoffman. BY DR. HOFFMAN:

Q. Witness, first of all a question, do you think that a camp must always have a fence?

A. No.

Q. Thus, if there were six to seven thousand Jews camping, there was a camp also, and the President is correct?

A. The President is always correct, yes.

Q. Why were these Jews to be brought back into the Rumanian territory?

A. The last decisions, or better the preliminary thoughts I can not give you, because this was not my job, but, of course, it seems credible to me and understandable that in this situation it was not up to us to have a helpless population driven into our territory, which only had to cause us difficulties, because they were staying there and they could not be sheltered there, and didn't even belong to us, they were Rumanian citizens.

Q. But there was an order to shoot Jews?

A. Yes, certainly, but I would say that we had nothing to do with Rumanian citizens, and the Hitler Order could not extend to Rumanian citizens, and could not be valid in the Rumanian territory.

Q. And why did the Rumanians not want to take back their own citizens?

A. I can not explain that. I could not have insight into Rumanian affairs. It was certain that we had to get rid of the Jews in some manner or other, and, it was the simple way that one would drive them out of ones own territory and to leave them to the Germans.

THE PRESIDENT: And how did they get over there in the first place?

THE WITNESS: The way I heard about it, the Rumanians drove them out of their own old Rumanian territory, that is, Bessarabia, across the Dnjestr River, and after that they blocked off the bridge, and now they were at our charge.

DR. HOFFMAN: Your Honor, maybe it would be helpful to the Tribunal if I submitted a map, which gives the territory in detail.

We have only one copy.

THE PRESIDENT: Yes, it would be very interesting to see it, Dr. Hoffmann. (Shows map at the Bench) You show it to him, and then you show it to us afterwards.

DR. HOFFMAN: Yes. (Shows map to the witness, thereafter Dr. Hoffman returns to the bench with the same map, where a discussion ensues outside the record).

THE PRESIDENT: Thank you. BY DR. HOFFMAN:

Q. What did you do to see to it that the Jews be brought back to Rumanian territory?

A. I already said that I left Jampol and arrived at the large camping site, and I went right into the midst tive, or might speak for them. After some talking back and forth a coup of men came to see me. I asked them whether they came from Mogilew, and they said, yes. I told them that they would be brought across the bridge, and could go back to their homeland, but I can not as yet tell them exactly when. I hoped it would be the same day. They were very joyous about this.

Q. Did these Rumanian citizens want to go back there?

A. Absolutely. According to my impression it was the greatest desire to go back home.

Q. And how do you know that these were Rumanian Jews. Did you understand their language, or what was it?

A. They told me from where they came. I had an interto the German language, even in these areas, where I could make myself understood well enough.

Q. And now please describe for us briefly what you actually did?

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A. We went to the bridge, and when I arrived there I found a German engineer bridge building company. I asked for their commanding officer. A technical master sergeant reported to me. I told him what my mission was. In the course of the conversation we established the fact we were somehow known to each other, and, when we went into the matter further we found out that he come from my hometown. He was a lawyer in Hallo, and his name is DR. Harsch. He knew me from my activity with my attorney, and from work in the courts. He promises to be of help to me. He told me that the other bridge would be possible within a few hours, and it would then be possible to take care of the west-East supply columns by transferring this traffic to the new bridge so that the other bridge would be at my disposal in order to bring the Rumanians back. Then we would have to set up second bridge command and the signs would have to be changed. He promised to take care of that. Then I went to the Rumanians and asked for their commanding officer. He was not present. It was of no use to speak to the Rumanian enlisted men. I told them that the traffic on this bridge would be re-routed today. They should occupy the other bridge and change the sign, but only when the German bridge commander would tell them to do so. All of this was taken care of. I agreed with the German bridge commander at about six or eight o'clock at night, safer as I remember, that the traffic would be re-routed to the new bridge, and then I had the camping Jews notified that they should stop preparing their meals, and should arrange their stuff and to place themselves in formation one hour after the traffic had been rerouted and they would be brought back across the bridge.

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I remained until this had taken place; left the village and already at the appointed edge of the town the point of the column was standing at the determined time and then started marching. I was up in the front at the Rumanian side of the shore, and let this column pass by me. They left in about one to one and a half hours, I can not say exactly, it was a close column. A few times there were interruptions but the thing took its course in one go.

There were some officers I had, or some man, to find out whether anybody was left at that camp site. I can not say whether I was there myself. I would assume so, but no one was there, and we didn't expect any one who would want to remain there, That completed my mission. I thanked the men. I thanked the German bridge commander, and early the next morning I went back to the Garrison in Tscharnomin and made a report about it to the Satzgruppe chief, and told them about the fact this camp had been quickly taken care of, for which I had to thank nobody but the German bridge commander.

Q. Witness who was the German bridge commander?

A. The German bridge commander was the then master sergeant in the engineers company, by profession, an attorney, Dr. Harsch of Halle.

Q. Could this German bridge commander observe this whole procession from the beginning to the end?

A. Yes absolutely.

Q. And did any shootings take place on this occasion?

A. Certainly not.

DR. HOFFMAN: Your Honor, may I notify the Tribunal that just today I received the address of this German bridge commander by telegram, therefore, I would want to make an application to hear this witness, perhaps. I would be glad if I might suggest that neither I nor the Prosecutor examine this witness, but that the witness be interrogated by the Tribunal here in the interest of an immediate hearing.

THE PRESIDENT: That is entirely satisfactory to the Tribunal, and I would suggest that you notify the defense information center to telegraph this man to proceed to Nurnberg to testify in this case, and to report to the defense information center.

DR. HOFFMANN: Yes. BY DR. HOFFMANN:

Q. How long did your command remain in Tscharnomin?

A. Only a few more days. I think that on the 23rd the Group-staff left this place and went to Ananjew, and there the Commando X-B was transferred also. One or two days later Einsatzcommando XII left Tscharnomin, all of it.

Q. Where did your commando go?

A. It had the order to proceed to the Ethnic German areas, into that area which includes the German Settlement Area in Tscharnomin.

Q. What was the cause and what was the nature of the work assigned up there?

A. The cause of this was the following: not be discussed here, and which in its Eastern frontier border at the Bug River, was declared to be part of the Rumanian Sovereign territory at that time. That is, the Rumanian Sovereign territory was extended up to that point, East. I assume that because of this the commandos which were to bring in the harvest had to interrupt their work because the German Economic Command of the Army, as well as all the other agencies, had to leave this area because If it became Rumanian Sovereign territory, then it was no longer German rear Army area, End, therefore, all German agencies in this area evacuated that territory, and, thus, the necessity of the new work which Einsatzcommando XII got, was the protection of the interest of the large settlements of Ethnic Germans in this area.

Q Was this also Rumanian sovereign territory? never became an area of the German civil administration. On one of the maps existing the Bug is denoted as a special border. such a German occupation? between the German Army agencies there and between the Rumanian Army leadership and between the German agencies there, and were made in Berlin. I can imagine that it was the Army Staff of the 11th Army and that it agreed with the Rumanian war leadership, and that because of this agreement it was permitted to a German commando to look after the interests of these ethnic Germans.

Q Against what were they to be protected? immediate protection against excesses of military units or other people from the population. Without passing any judgment on our then Allies, the Rumanians it can be said , as is shown by many reports, and as we are able to establish it from our own experience, that the Rumanians soldiers were very much undisciplined.

Q When did the advance from Tscharnomin come about?

Q And what was your objective? definite objective, if I disregard the fact that Speyer was the Center of this area, in which place, weeks ago, the Special Commando 10-A of Einsatzgruppe D had been stationed and had been active. Furthermore, it was our mission to distribute the commando in the smallest detachments over the whole area in such a manner of ten that often there were only two, three or four men; that it might be possible to get hold of these ethnic Germans, to register them, and as far as they were living in mixed settlements with Ukrainians, to get them out by exchanging them, and resettle them in purely German areas.

Q Why did the Special Commando 10-A not remain there? 10-A was attached to d definite Army unit and that it always moved with this Army unit. The front had been advanced further forward and the Commando 10-A probably had kept its Army unit to the front, but Einsatzkommando 12 was not subordinate to any Army unit. activity cease there? that is, until the 15th of October, the last remnants of it had been taken out. I, personally, was not able to do much during this period. Until the first days of September at the latest, I remained active as commanding officer of the commando. Already in the first weeks of our stay in Russia I had to suffer from dysentery and hardly any of the officers or men were spared from this disease,I think not even Herr Ohlendorf himself.

THE PRESIDENT: Was there any special reason why it did not hit him.

THE WITNESS: No. BY DR. HOFFMANN:

Q Witness please don't become so extended. We know that you got dysentery, Herr Ohlendorf too, and that you got sick of another disease.

A It was a complication. I had an intestinal ailment, and after the examination it was found that only by hospital treatment could I be cured. I had myself examined at a field hospital. When I reported to the Einsatzgruppe Chief in Ananjev, that is about a week after we had left, and after I had distributed some parts of my unit among the area, the Einsatzgruppe Chief noted that I was painfully ill. He asked me about it, and I told him what the examination had resulted in, and he ordered that I should go into a hospital, that he would give the command of the commando to Captain Haussmann and "when you are all right again, report back to me."

Q When was this exactly?

Q And how long did you stay in the hospital and where? had been moved. I had even the commando to Haussmann, and it must have been around the 6th or 8th of September that I was admitted into the Field Hospital 227. The Hospital was in Hove Odessa on the other side of the Bug River. That is in the in the German rear Army area.

Q How long did you stay in the hospital? September.

Q And where did you go them? Nikolaev.

Q What orders did you get where you reported there? thus commando, and that I wanted to go back into the area where the Einsatzkommando 12 was active. Then the Einsatzgruppe Chief told me that this whole work had been interrupted, a detail of the Office for Registration of Ethnic Germans was moving in. That was the Reich agency or the Reich organization which was competent for such tasks, namely the registration and supply and care of these people, and when the commando of this agency moved in, the units of Einsatzkommando 12, after handing over their functions, were to be relieved.

Q And where was the commando to go then? Nikolaev in order to await new orders there, namely, to be attached to a new Army.

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Q And when did the commando actually arrive in Nikolaev?

A The various detachments came after each other. I executed the order by notifying the various detachments that after the command of the agency for ethnic Germans had arrived that they should leave, and the first ones arrived in the first days of October, and the last around the 15th of October. That is when the last part must have arrived in Nikolaev.

Q What activity did you have in Nikolaev?

A In Nikolaev I reorganized the commando. We went into the billets of Commando 11-A, I believe, which had been active in Nikolaev previously. The Chief III of the Group Staff and others assigned the commando various missions in the reporting service about the domestic problem there, about the economic reconstruction, about industry, shipbuilding, social structure, etc. you received? the commando from the 15th of October on lasted only ten days. Then again parts of the commando were already on the march.

Q And where were they supposed to go? attached to the 17th Army which was then about seven hundred kilometers further east, in the area between Rostov and Stalino, where it was active and where it was advancing. it had been with the 17th Army?

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A. It would have been committed . the way the Commando 10-A was committed with the 11th Army. They moved along and took care of all Security Police measures as the others did.

Q. Did you proceed?

A. As far as the time is concerned, nothing was changed, but during those days messaged had been received about increasing partisan activity in the Dnjepr Bend. These were bands which had come from the swamp area and which threatened the supply columns.

Q. Witness, you now use the word "band" for the first time. When were you aware of this and when did these partisan groups appear?

A. Until I went to Nikolaev I personally did not experience a anything of an express partisan warfare.

Q. When was this?

A. Until I arrived in Nikolaev on the 15th of October.

Q. What year?

A. 1941. That refers to my commando and my own experience.

Q. And now you suddenly heard something about partisan groups?

A. I had already heard partisan groups from other commandos which were already operating hundreds of kilometers east of myself; the reports came from the Einsatzgruppe of from the Army. The Army now decreed that the Einsatzgruppe was to become active in such a way that security was maintained.

Q. And what definite mission did you get now in this connection?

A. There was another area which was especially threated by bands. That was the dune territory of the Dnjepr Delta. That was a completely opposite direction from the Dnjepr Bend. The one was northwards, the other southeast. Therefore the commando was divided into two parts, and one-half was attached to Sturmbannfuehrer Dr. Bolte who had just arrived and subordinated to him who was equivalent in rank to myself.

He received the order to operate in this area. I don't know his orders, and I don't know exactly, but I assume that he operated with Army units.

Q. Thus there was another half of Commando 12 which remained?

A. Yes, and I went on with his half.

Q. What was the first objective?

A. The mission was partisan warfare in the Dnjepr Bend. Thus I picked out a point on the map which might serve as our first objective, and purely by the map I established the village Mikailowka.

Q. How far was Mikailowka from your garrison?

A. As the crow flies it was at least 300 kilometers from Nikolaev.

Q. When did you get there?

A. I personally got there around the 8th or 10th of November, but now it must be mentioned that this detachment which I led did not march in one column but in two for the following reason: Because vehicles had dropped out and because vehicles had been surrendered to other units I was forced to equip half of the detachment with horses; horses disturbed the supply column of the road, of the main road, which was only provided for heavy trucks.

THE PRESIDENT: Dr. Hoffmann, is all this detail necessary?

DR. HOFFMANN: No, it is a little bit too extended. I shall shorten it a little.

THE PRESIDENT: He went into action, and get to the action, what it was, but how many horses they had and the dust they created and the flies, etc., is a little bit excessive.

Q. (By Dr. Hoffman) When did you arrive in Mikailowka?

A. I personally got there on the 6th of November, and the equipment of the other detachment with horses -

Q. I just want to ask you directly, when did you arrive there?

A. Half of my men came in on the 6th of November with me by vehicle about.

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Q. That is, on the 6th of November you could start with your mission?

A. Partly, because now another half was missing.

Q. How many were you there?

A. The people that arrived with me included the administrative people, and other people who were fit for combat were about 25 men.

Q. What did you do there; how did you fight the partisans?

A. First I tried to determine where the other people were because I wanted to know what was the matter, and then I heard through a courier who had come from Nikopol that the other half had got stuck in Nikopol and had been already committed by the Army to fight partisans in the Dnjepr Bend. Then I got the first report about fights and arrests and shootings of partisans. I handed this report to the group.

Q. Did you make any other reports at this time?

A. Yes, several. I personally went around. I was active in reconnaissance of partisans. We advanced from Mikailowka in a northerly direction, and several times we had fights with partisans though not very severe as the group led by the Army, but we found out that these were only minor units with which we were dealing, and that the decisive cleaning of these islands was handled by that group which included half of my own detachment.

Q. What was the report like which you made out?

A. Well, there were several reports. The fights took place at various times, and I got various reports. Thus in the first report it was stated how many groups there were, how they were equipped, who commanded. We found this out through deserters, and thing like this: How many were shot in the fight; who were the leading partisans; and that partisan prisoners had been released because they had just been recruited under threats. Thus in three or four reports these matters were handed down to Group.

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Q. These reports which you handed on, did you make these out from your own experience, or were those events reported to you and passed on by you?

A. Well, essentially I only passed them on. I never was in Nikopol. I could only report what my men who were fighting with the Army experienced themselves, but what I experienced I reported from my own experience.

Q. What did you do; what did you report from your own experience?

A. I reported that we had fights but we ourselves made no prisoners.

Q. How did such a reconnaissance action take place? Briefly describe it, will you?

A. We did this in several actions. Three or four villages which we wanted to attack from various directions, that is the unit was divided up in several vehicles and ordered to be there at a certain time.

THE PRESIDENT: Dr. Hoffmann, this is purely a technical matter, giving us the history of how he attacked. How is that going to help us in solving the real issue which is in the indictment. He was fighting partisans. All right, he fought partisans. He fought in one village; he fought in another village. We have a general idea of how this fight occurred, but to give us all the minute movements of various platoons and men is just a little bit of unnecessary detail.

Q. (By Dr. Hoffmann) Witness, apart from partisan warfare you know that you are charged here with having executed Jews, women, and children, on the basis of the Fuehrer Order. Did this happen during this period?

A. No.

Q. Why not?

A. There was a special mission here to fight the Partisans in this area, that is to stop the disturbance to the supply columns. That was the mission in which kept the Kommando from reaching the 17th Army. That was an unpleasant interruption of the march and I was constantly on the march. to? a large area and on this flat land the prerequisites did not exist. We would have had to search and we didn't do that, and I may add that I was in the German settlement area, North-East of this area for a brief period or one trip. Of the population of thirty thousand people, none were left. They had been committed to dig an anti-tank ditch and they had been sent back into the interior of Russai when the Germans approached. The villages were empty. Only a few inhabitants had remained.

Q Did you ever get to the 17th Army?

A Never. The only person from the 17th Army I talked to was the G-2 of the 17th Army.

Q Where was he?

Q And where was your Kommando at that time? had gotten stuck there in the winter. the officer of the 17th Army?

A I think this distance is not so important. Mariupol is at least another two hundred kilometers away.

Q What did you speak about with the officer of the 17th Army? the Einsatzgruppe chief had visited Milkailowka and that winter had set in, that I had only been able to travel ten kilometers a day and that I had finally been forced to stop at a place, Fedorowka, which was not my objective at all and which was not even on the map, that I could neither proceed nor go back, whether he had any orders for me where I should proceed to.

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Then he described to me the situation of the Army as a result of the setting in of winter. The advance had stopped; the Army had fallen back on the Mius front. There was no combat activity. The supply line was endangered and now everything would remain where it was. I asked him whether I should go any place else. At least I wanted better shelter for the winter. Thereupon, he said, "Just remain where you are. Everyone wants to move now in winter. It would make the supply problem more difficult. Just stay where you are. I have no orders to give you, and now there is nothing else to do but to wait till we can consider advancing.

Q When was this?

A I arrived at Fedorowka about the 18th. A few days later, before Christmas, I visited the G_2 in Mariupol, about the 20th, or 21st. D?

Q Did you report the result of the conference with the G_2 to the Einsatzgruppe?

Q Was, the Einsatzgruppe in agreement?

A Yes, I did not get any other directives. At any rate in this situation there was nothing else for me to do. Of course, there was a reaction when I received the radio order to take a detachment of about 30 to 35 men and send it to the Crimea where it was needed urgently because of the military situation.

Q When did you set this Kommado started?

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Q And how many were left with your Kommando in January?

Q And where were all these people?

Q And what were the local conditions?

A Fedorowka was a very primitive settlement. The shelters were accordingly. The winter was especially severe in this steppe area. There were snow storms and impassibility of the few existing roads which prevented any activity. Vehicles had already gotten stuck some distance back and one could only more around by sled.

Q Witness, how long did this condition last in Fedorowka? Crimea, it was only a short way to get to the coast at least they had a better opportunity to get moving along the coast because a supply line had been laboriously established along the shore, and my Einsatz Kommando remained there until the first days of March. Then a change came in the weather. At this time the other half Kommando under Sturmbannfuehrer Dr. Bolte joined me in Fedorowka then I was relieved.

Q When did this happen?

DR. HOFFMANN: Your Honor, I must now come to talk about the documents and the points with which the Prosecution charges the defendant Noeske. I would be grateful if I could start this on Monday.

THE PRESIDENT: Yes, I think that would be a very logical thing to do. The Tribunal will now adjourn until Monday morning at the usual time of 9:30 o'clock.

(The Tribunal adjourned until 8 December 1947 at 0930 hours.)

America, against Otto Ohlendorf, et al., defendants, 0930-1630.

Justice Musmanno, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II. Tribunal.

DR. KOESSL: Dr. Koessl for the defendant Ott. In the name of the defendant Ott, and my own name also, I would like to express to the Tribunal my thanks for the generous favor, namely, that the defendant Ott was allowed to attend the funeral of his mother in Augsburg. For the defendant it was a significant event, and it was a great relief for him that the Tribunal granted him that favor.

THE PRESIDENT: You are very welcome indeed, and we are happy that we were able to grant a very reasonable request which was made by you on behalf of your client, and we can not help but express a regret and sympathy with the defendant for the great loss which he has suffered.

DR. KOESSL: Thank you.

THE PRESIDENT: You may proceed, Dr. Hoffmann. BY DR. HOFFMANN: if I remember correctly. Now I should like to go through the Prosecution's documents with you very briefly. I refer to the Prosecution's charge in which it says, which is on page 246 of the German record of the 30th of September, the case against the defendant Gustav Nosske - - - - and the Prosecution there says, in accordance with your own declaration

THE PRESIDENT: Dr. Hoffmann, you have n ot given us the number of the book.

DR: HOFFMAN: Excuse me. Your Honor, I said from the record on page 246.

THE PRESIDENT: I see. BY DR. HOFFMAN: that from June 1941 to March 1942 you were the commander of Einsatzkommando XII, is that correct? your activities after you were relieved in Russia, and the Prosecution assumed that you were in charge of a type of Commando Staff. Now, I Would like to discuss this activity in Berlin with you. What happened to you when you returned to the Reich?

MR. WALTON: May it please the Tribunal, that is Document Book III, page 69 of the English -

THE PRESIDENT: Even you are not giving it to us. III what?

MR. WALTON: Document Book III-B, Your Honor, page 69 of the English, page 114 of the German, and it is Prosecution's Document NO4146, Exhibit No. 167. He particularly refers to paragraph 4 of that affidavit, which is on page 2 of the Original. BY DR. HOFFMAN: the Reich?

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reported for the second time to the Personnel office. That was the beginning of May. My final employment had not been deceided upon as yet. That is what I found out there. Probably I would be employed in office IV. In the meantime, Office I asked me to work there as an Auditor, and, they asked me as such to go to the Security Training School in Charlottenburg. Q What was your activity exactly as an Auditor? A Correction - it was as Pruefer, Examiner, not an Auditor. I was active as an examiner in Penal Procedure, Administrative Law, and Civil Law. Q Did you also work in office IV at that time? A No, not at that time. Q Who was your immediate superior? A May I ask you, you mean of Office IV? Q No, I mean during this time. A During this time, of course. I was subordinate to Office I. My final activity had not been decided upon, and I was subordinate to the director of the Fuehrer School. Q When did you start your office activity? A In June 1942, I reported to Office IV, that was about ten days after Heydrich's death. When I reported to the Chief of Office IV, he told me that I was to take over a new department. That would be Department IV-D-5, which had been part of Lindergruppe, of Group-D, and one job of this office was to evaluate the reports concerning the Partisan warfare. Attached to this particular department was a sub-department for the evaluation in which the documents which had been seized in the Soviet Zone would be translated. All other matters I would find out eventually when I would report to my immediate superior.

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Q Who was that? Oberregierungsrat, Senior Government Councillor, Dr. Jonas. to you? he acquainted me with it, and concerning my own activity, he gave me the following explanation: With the beginning of the Russian Campaign, the position of information and intelligence officer had been created in the RSHA, and this man would have to deal with all reports from the Einsatzgruppen via the office chief, and they would then pass into Office IV-A-I, which would deal with the actual evaluation and report almost daily about the reports coming from Soviet Russia. In the Autumn of 1941 the office of the Einsatz Intelligence Officer had been given up. But actually the activity itself had not changed, and the Department IV-A-I, now called"Commando staff" still evaluated the Eastern reports. Since, however, the reports were very unreliable, incorrect and inaccurate, a basic change had to be made in the Spring of 1942. The evaluation of the Eastern Reports from this time on, was not undertaken by this one Department IV-A-I, but by the competent sub-departments off all the departments to which these reports were sent. Since the reports about partisan activity and warfare could not be handled by any existing department, the new department IV-D-5 has been created, of which I was going to be in charge from then on. asked you quite specifically, did you find out about the reports coming from Russia and dealing with executions on the part of Einsatzkommando, and did you receive such reports?

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Order, after this change in making reports, were, in my own time, no longer incorporated in the reports. I know that these reports went via the Office Chief IV to the GroupEichmann IV-B-IV. As a consequence,of this, in the compiling of the reports, the individual contributions furnished by the various departments, as for instance, Jewish actions, could no longer be incorporated in the new report from the Eastern Occupied territory.

Q Witness, who was Eichmann? deal with all Jewish matters. the RSHA hear anything about the assignment which Eichmann had, and of the activity that he carried on? the small circle around him. actual elimination order in the safe? this fact? Even his office, geographically speaking, was not in the Main Building of the RSHA, and was in a special building. I never entered this building, and when the secrecy in the office was very strict, Eichmann's seclusion was almost hermetic.

THE PRESIDENT: Dr. Hoffmann, you state that the elimination order - - - you stated the elimination order was in Eichmann's safe.

By whom was that order signed?

DR. HOFFMANN: Your Honor, this order was also signed by Hitler. I now refer to a statement by Vitzizety in the IMT, who described how he first learned from Eichmann that 250,000 Czechoslovakian Jews had been exterminated in Auschwitz; that it what this defendant said when he was on the witness stand for the IMT, and when he asked Eichmann in Berlin how these 250,000 Jews were exterminated, Eichmann went to the safe and showed him this particular order which was signed by Hitler. I believe Mr. Walton also will remember this episode.

THE PRESIDENT: Was this the Fuehrer Order, or another order?

DR. HOFFMANN: That was another order.

THE PRESIDENT: If you know the reference number, or can without too much trouble locate it, we would appreciate your letting us have the page number in the IMT record in which this episode is related.

DR. HOFFMANN: Very well. Your Honor, I just learned that it is contained in the Document Book of Ohlendorf's, and was submitted, and even though it is, I shall submit it to the Tribunal.

THE PRESIDENT: Very well. BY DR. HOFFMANN:

Q. You say, therefore, that you didn't find out anything about this particular part that Eichmann played, as he was in a secluded soot, as it were?

A. It was only known that he received immediately from the office chief, or from Himmler himself, as I said; apart from their small circle nobody of those employed on the office found out anything about that.

Q. I now return to your activity. You were then in charge of a department on this office, and what was the size of this department?

A. The department consisted besides myself of four people, one collaborator, one registrar, and two stenotypists.

Q. And what was your task in detail?

A. My task was to deal with reports which had been sent us by the Main Office about Partisan activity warfare, espionage, and to evaluate those reports, and to compile them clearly and concisely. Particular care had to be taken that the organization of the Partisan groups were to be recognized, their tactics had to be established, the means with which they work, and so forth, in order to inform the authorities in the East who had to deal with the actual Partisan warfare, and to show them the Partisan activity as it developed in the whole Eastern territory.

Q. Did you have to combine any executive power with this activity?

A. No, executive power in this respective activity I would say didn't exist. Furthermore, no directives where even prepared in this particular department. The directives could only be given through the ordinary channel of com and in existence, that was only by the office chief, and chief of the Security Police, or Himmler himself.

THE PRESIDENT: Dr. Hoffmann, was it his office which prepared the operational reports, his office?

DR. HOFFMANN: As the witness says, only those concerning Partisan activity, whereas reports concerning shootings, based on the Hitler order mentioned here, went to Eichmann who was in charge of the Jewish problems.

THE PRESIDENT: But the operational reports covered all activities. Activities against Partisans, activities against Jews, activity against saboteurs, everything.

DR. HOFFMANN: Perhaps the witness can comment on this again, very briefly and concisely.

A. Your Honor, those activity reports which were issued in the Reich Security Main Office are to be distinguished from those which bear the title "Reports from Soviet Russia". These reports, about two hundred copies, which also are here the subject of the charge were issued between June until the end of April 1942. These reports contained everything, partisan warfare as well as Jewish actions and all the activities talking place in the Eastern Occupies Territories and everything reported by Einsatzgruppen. These reports only appeared as top secret matters. In the spring, the basic change was brought; from this time on reports were not issued concerning the whole of Soviet Russia but new reports were called "Reports from Eastern Occupied Territories". Already the name shows that there was a basic difference in these reports, and these new reports which are also available here in the Document Center but which have not been introduced as evidence contain these reports from the Eastern Occupied Territories.

THE PRESIDENT: But who actually made up the reports in that office, the reports that have been introduced here in the Document Books?

A. The reports which have been submitted here as evidence by the Prosecution were issued by the Department 4-A-I. That is a sub-department of Office IV in the RSHA. The people concerned are known, the man in charge was Lindow, and his collaborators Dr. Knobloch and Fumy.

THE PRESIDENT: And who?

A. Fumy and Dr. Knobloch.

THE PRESIDENT: Then those three men are the ones who actually prepared the reports which we have here as evidence, Lindow, Knobloch, and Fumy?

A. That is correct.

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COURT II CASE IX BY DR. HOFFMANN:

Q. Until when, witness?

A. These reports of events from USSR came to a stop at the end of April 1942. The last copies bear numbers about 194 or 196. The reports from the Eastern Occupied Territories which were issued after that, and only weekly, bear new numbers which begin with one.

THE PRESIDENT: Then, do I understand that the modus operendae was for these three men, either acting separately or collectively, to receive the reports from the field and then to combine them and issue them as reports from Berlin?

A. Yes, that is correct. BY DR. HOFFMANN:

Q. But, Herr Nosske, that was not your activity, was it?

A. I and nothing to do with reports that have been submitted here as evidence by the Prosecution. They and been concluded at a time when I had not joined the office yet.

Q. Do you know what the reason was for this new kind of reporting?

A. As my predecessor had told me, it was for the reason that the manner of reporting until then had been most unreliable, incorrect, and inaccurate. I myself personally learned from Fumy at a later into that these two people, Dr. Knoblech and Fumy, were so much overworked and had to work under such bad conditions that it can easily be explained why these such bad conditions that it can easily be explained why these reports were so inaccurate. Therefore, the evaluation of the reports later on was not only transferred to this one particular office but were distributed to a number of individual departments.

Q. Your Honor, I take the liberty to introduce as Document No. 1 for identification the organizational plan of the RSHA. This chart is in English on order to make it easier COURT II CASE IX for the Tribunal and there the position of the defendant himself becomes quite evident from this.

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Would you now comment on this and tell the Tribunal what your own position was?

A. I was in Department 4-D-5 which is Office IV in the center. The chief was Mueller. Then there are Groups A, B, B-4, C and D. The next-to-the-last department was the group to which my own sub-department was attached, and the last one is 4-D-5, Eastern Partisan Organization.

Q. Did you carry out any other special activity in connection with reporting, for instance?

A. Yes, Since the evaluation of the reports was carried out by a number of sub-departments of other departments one special department had to compile the results, and that was done by the departments concerned sent a representative to attend an auditors meeting once a week to which they brought along their own parts of the reports and their own contributions which had been approved by their chiefs. They were proofread, Sometimes objections were made of factual or technical matters and then the parts were put on steal plates and then they were printed and distributed by the Main Office. I want to point out to you the departments which actually contributed to those reports and this general report. First is Office IV in the center under Group A, Department I Communism, Marxism. Then Dept II, antisabotage activity. Then in the group of the same office B, B-1, Division 3, foreign churches, the Greek orthodox Church. Group 4-B-4, for instance, did not take part in this. Then there was in Group 4-D the subdivision 4-D-3, foreign emigrants. My own sub-department 4-D-5 and Group IV-E, counter-espionage and V, Espionage East. The contributions of Office III in the domestic sphere were complied by Group III-B and were brought to the editing meeting by COURT II CASE IX a representative of the sub-office III-B-1. As for the individual sub-departments in Department III, I do not have to deal with them here because more or loss all of them had the opportunity to contribute, be it in the sphere of culture, economy, or the already mentioned field, public health.

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Q. How, witness - -

A. Finally, Office VI, that is the next-to-the-last office in the Reich. There was Group C represented by Department II, Russia evaluation.

Q. Would you also be able to explain based on this chart where the reports about execution on the basis of the Hitler order went, for you are new speaking of Partisan and other matters?

A. Yes. What I am crying to explain new concerns reports as they were issued after April 1942 in the new reports from the Eastern Occupied Territories. The Jewish matters, however, - all matters concerning Jewish Operations went immediately from the office chief to Office 4-B-4 Eichmann which is immediately in the center of the chart.

Q. Did you have say liberties as the editor of such reports from the East?

A. I, of course, had to submit the compilations of the reports to the office chief first for his approval. He either approved or changed them. Sometimes he even asked for the original reports but apart from that I had no particular power.

Q. How, as to such reports in which you yourself had participated were they also submitted here?

A. They appear in the new reports form the Eastern Occupied Territories but not in those which are the subject of the indictment here.

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DR. HOFFMANN: Your Honor, may I say that in order not to be boring I should like to ask you whether the witness made it quite clear what his position was because perhaps the complication of this chart and also the translation make it very difficult. He takes the responsibility for the reports from June 1942 but he points out emphatically that reports concerning shootings went to the man dealing with the Jewish problem, Eichmann, in the RSHA.

THE PRESIDENT: Yes, I am very glad you did present this chart because I think for the first time I have been able to get an overall clear picture of the RSHA activities. where?

DR. HOFFMANN: Who issued these reports?

A. They must have come from the East, either from the THE PRESIDENT: They came from the field? DR. HOFFMANN: Yes, certainly. THE PRESIDENT: Dr. Hoffmann, I still don't quite understand prior to the time that a change was made in the method of reporting how a report originating in the field and containing a number of subjects could go to any but one office in the RSHA. The report came on as one entity and it contained reference to Jews, Saboteurs and Partisans, and so on. It had to go to one office, it couldn't be divided up because it was all combined.

DR. HOFFMANN: That is quite correct, your Honor. Perhaps the witness can explain it.

A. During the time until April 1942 the reports from the Eastern Occupied Territories went as one entity, without being distributed to various offices, to this one office IV-A-1. Therefore, they did not have to be distributed.

Later or a new scheme was started and we were told in what shape reports had to be issued. Then after this these reports consisted of separate parts. They were separate of subdivided and passed on to the various department and then it came about that for this particular part, Office IV-B-4, Eichmann, became competent.

Q. I still don't understand. Did they all appear on one shoot or were they separate?

A. They were separate.

Q. Therefore, the executions based on the Hitler order came on a separate shoot?

A. Yes, exactly. In the same way sabotage, economic subjects, domestic spheres - they again were not on the same shoot with Partisan Warfare, and again there was a new shoot.

Q. Witness, I was not in the RSHA. I ask you - -

A. Yes, I understand. The scheme of reporting caused the sub-dividing of the reports so that it was possible for us to distribute reports when they arrived in the Security Main Office.

Q. Do you mean a whole parcel of reports was received from one Einsatzgruppe in Berlin.

A. Yes.

Q. And there was one office - -

A. That was the Main Office who distributed the reports. They signed them and they marked them for these individual departments for which they were destined.

THE PRESIDENT: Dr. Hoffmann, this has nothing at all to do with reports but I am always curious to know just what a place in which activities took place looked like. Was the RSHA all in one building?

A. No, the main building was in Prinz Albrechtstrasse. Several groups of Office IV were housed there. In the COURT II CASE IX surrounding buildings in Wilhelmstrasse there were other offices of Office IV and Office III; apart from this, the offices of Office IV as well as other offices were distributed all over town, sometimes as far as 15 to 20 kilometers.

Q. Where was Eichmann?

A. Eichmann was in Kurfuerstenstrasse.

Q. What was the distance between his and your office?

A. From my office approximately 8 kilometers.

THE PRESIDENT: Did Heydrich have his office in the large building?

A. Yes, it was in the main building.

THE PRESIDENT: Did Himmler also have his office there?

A. No, not from the beginning of the War on. He had his field command post. BY DR. HOFFMANN:

Q. I think, witness, I have already asked you, how long did you work in IV-D-5.?

A. Until October 1942. of IV-D-3.

Q. What did IV-D-3 deal with?

A. IV-D-3 dealt with foreigners within the Reich. That was the circle of people who had migrated to Germany and were granted refuse in the Reich because of their political attitude in their own countries. There were two large groups, one group of Russian immigrants. That was the group of people who has gone to Western European countries after the Russian Revolution of 1917. The other group comprised the Rumanian group of immigrants. That was the part of the so-called Iron Guard, that was the National movement in Rumania, who had been indispute with the Chief of State Antonescu.

Q. What did your activities consist of? You said you were in charge of taking care of these people.

A. This office had the function of guidance. In fact it was the only office of the Reich Government to which they could turn in order to protect their own interests. These groups of refugees were mainly pro--German and, of course, on account of their knowledge of languages they already worked in a number of German Governmental offices. Therefore, they had to be investigated, and this was also done by this particular sub-department.

Q. Did anything unpleasant for you happen during this activity?

A. I had only been in this department for 20 days when the leader of the Iron Guard who was called Horia Shima, who with his close circle of so-called Captains, was housed in an SD recreation home in Bergenbrueck near Furstenwalde in the vicinity of Berlin. Horia Shima and his followers had given their word of honor not to be active politically in any way and not to leave the Reich territory. Shortly before Christmas - -

Q. Excuse me, Was Shima Rumanian?

A. Yes, he was a Rumanian citizen. He had the right of asylum in the Reich and was considered a guest of the Fuehrer.

Q. Who was in charge of the Romanian government at that time?

A. Antonescu.

Q. Why was Shima against Antonescu?

A. Antonosecu had himself been a follower of the Iron Guard but he had left it, and with the aid of the Army had made himself chief of State of Romania. Therefore, the position of the Iron Guard had become untenable.

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MR. WALTON: May it please the Tribunal. This is extremely interesting. I don't think it has anything to do with the issue involved. If he lost his job in connection with this Horia Shima, of course, that would be relevant but to go into his connection with the Third Reich authorities is going a little too far afield. I would like this man to confine his answers a little more.

THE PRESIDENT: I think that is correct, Dr. Hoffmann. BY DR. HOFFMANN:

Q. You deviate, witness, please describe to us very briefly what happened concerning Horia Shima.

A. Horia Shima had leaf the country. As a result, foreign political complications had come about, riots in Roumania. The Reichfuehrer raged and ordered immediately that these people responsible for this should be punished. The man is charge of the SD Recreation Home, Untersturmfuehrer Hartung, was to be shot immediately because he had not reported about it immediately.

Q. What happened to you?

A. I was discharged temporarily and the office chief was afraid that the same thing would happen to me and my friends.

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Q The whole think quited down, did it, or did it not? Therefore, regarding my own person, no further orders were issued.

THE PRESIDENT: When were you discharged?

THE WITNESS: That was after Christmas. BY DR. HOFFMANN:

Q. Witness-

THE PRESIDENT: After Christmas? Give us the time.

THE WITNESS: I am sorry, Christmas, 1942. BY DR. HOFFMANN:

Q. Witness, the President asked you when you were discharged. Was it actually a discharge, or were you just transferred?

A. I was just released from my office, I was not allowed to carry out my work. I was, as it were, without work.

Q. How long?

A. About ten weeks.

Q. What did you do after these ten weeks?

A. I used this opportunity to ask Office Chief IV to relieve me altogether from my duties, because I was no longer a valuable person to have. The Office Chief seamed to be agreeable to this, but he said that it was not up to him to decide on this. I never leaned anything further. Ten weeks later I had to deal with the job of the liaison officer with the Eastern Ministry as a deputy. I think he was ill, or anyway, he was not present In this activity I remained until July, until June, 1943.

Q. Did this activity last?

A. No, it was only a temporary activity, anyway. I was - that was the decision of the Office Chief - no longer to do any work in Office IV.

Q. What did you do after your work in the Eastern Ministry, what was your next assignment?

A. I was transferred to Dusseldorf as deputy of the inspector, or at least as assistant secretary of the inspector.

Q What, exactly, was your activity in Dusseldorf?

A. My assignment in the inspectorate consisted mainly of preparation of the organizational incorporation of the customs protection into the border Police of the Security Police and the transfer of the counterintelligence of the Wehrmacht into the the counter-intelligence of the Security Police.

Q How long did this activity of yours last?

Q What happened then? and a new one had not been appointed yet. The Chief of the State Police Office in Dusseldorf took over. Then he then took over the office of the inspectorate, I became the Chief of the State Police Office in Dusseldorf.

Q When was that?

Q Who was your chief? and SD, Senior Government Counsellor, Dr. Albert.

Q Did he remain your superior then, or did this change? inspector, that is in the time following this, that is one wear before the end of the war, were extended, of course, out the activity of an inspector was confined, in its territory which, in this case, was the Defense Area No. 6, to promotion, decoration, and to disciplinary and welfare matters. He was the deputy of Kaltenbrunner in this particular area. Dusseldorf?

Q Why only to the 20th of September, 1944?

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date when Kaltenbrunner decided that I should be relieved of my office.

Q What was the reason for your being relieved from this office?

A There were a number of reasons. The main reason was the following: On the 11th or the 12th of September, 1944, I got a telephone call from the inspectorate that I should report for a conference the next day at eleven o'clock. I appeared, and there I met the State Police officers of Munster, the Senior Government Councillor, Landgraf and Government Councillor Hoffmann. A short while after that the inspector arrived and he said that he had seen the Higher SS and Police Leader and he had to pass on the following order to us: In the sector near the front all half-Jews, including their Aryan Spouse, had to be shot. Immediately places were to be found at which this measure could be carried out. The actions have to be carried out without anybody noticing them.

Q Witness, When was that?

Q Where was it?

Q Why was Dusseldorf near the front? invasion these sectors in the western frontier of the Reich had become from sectors, and in these front sectors the Higher SS and Police Leaders were made the plenipotentiaries by Himmler, and were, in effect, his deputies, and they could make all decisions.

Q What did you say when this order was made know to you? Who passed this order on to you, the Higher SS and Police Leader himself? who, at the same time, was a member of the staff of the Higher SS and Police Leader.

Q What was your reaction to this order? I did not think it could be carried out. I also made it clear that I could not carry out this order.

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one of the other State chiefs remarked how it was that the Higher SS and Police Leader passed this order on to us. The answer to that was that the Higher SS and Police Leader has all executive power passed on to him by Himmler.

Q You made objections therefore, yes or no?

Q Were they of any use?

A No, there were of no avail. The inspector listened to our objections, but he said the order had been given and had to be carried out. First off all, anyway, the places themselves had to be found, and they had to be reported, and any discussion would be of no avail, and therefore we left the office.

Q What did you do when you returned from this discussion? to consider what I could do now in order to evade this order. First I did not arrive at any conclusion. If, indeed, it was a fact that the Higher SS and Police Leader really had all executive power of Himmler, and if really he had followed directives given to him by Himmler, then it was clear to me that there was no authority to whom I could apply in order to evade, in order to revoke this order. In this case even the RSHA would be of no use.

Q Did you, in spite of this, find a way out? phoned the competent departmental chief and asked him to come and see me - he was a Sturmbannfuehrer Brochorst - and I asked him about the situation concerning half-Jews and their spouses, how many people there were. He named the number. There were several thousand. His own opinion, however, was that perhaps they were not all present any more, that perhaps a number of them had evacuated the frontal zone with the rest of the population and had gone to the interior of the country, of the Reich. I asked him how we would get in touch with these people. He told we he had confidence men and this would be done your quickly.

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But I had not informed him about the order yet. The next morning the State Police Officer of Cologne telephoned me and we discussed the order. He wanted my advice, but I could not give him any decision that I had made. On the same evening the inspector reminded us of the order and he asked us for the places that were to be chosen by use for this action. I replied again that this action, which had got the name "Vesuv", could not be carried out.

MR. WALTON: The defendant is being charged with his action as chief of an Einsatzkommando and again as chief of a commandano stab handling Einsatzgruppen matters. As to his subsequent employment after he left the RSHA I am sure the prosecution is not interested, and I don't believe that the Tribunal is. I believe that this immaterial to the issues in the case.

DR. HOFFMANN: Your Honor. may I comment on this and say that the Defendant Nosske has always been charged with membership in a criminal organization, and there are certain prerequisites according to which the defendant can be convicted of membership. Therefore, I attach particular value to this, without, however, of course giving directives to the Tribunal as to how to judge this particular case, but in any case the statement of the defendant will show that he himself left the RSHA because of this particular event, Therefore, it seems of importance to me to explain this event in all detail, especially as the story is very unusual, and, of course, it would have to be investigated in order to determine the credibility of the story, whether it is correct that the Higher SS and Police Leader ordered the murder of a number of thousands of people at the last minute and whether the defendant objected and was punished for that, Whether this is correct or not seems of great importance to me in judging the defendant.

THE PRESIDENT: Dr. Hoffmann, we ruled, not too long ago, that what defense counsel deems relevant is relevant to the trial so far as the Tribunal is concerned. We will allow you to discuss anything and everything with the exception of the social life of the penguins in the Antarctic zone, and in some instance we will allow that too, if you make a special request to discuss it.

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The only limitation we make, Dr. Hoffmann, is that you do not go into too much detail on things which are not immediately mentioned in the indictment. Now, this is relevant, not only because you say so, but because it is part of the res gestae of the whole activity of the RSHA and indirectly an aftermath of the Einsatzgruppen. We only request that you endeavor to hod a tight rain on the witness and see that he does not gallop off into fields of unnecessary detail.

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Q What did you do to prevent this order form bring carried out? fuehrer Mueller, and I informed him about the content of the order of the Higher SS and Police Leader, including the reason that was given to us, that this measure was necessary for the security of the frontal sector, and in case the country would be occupied by the enemy these people would have to be prevented from carrying our reprisal measures on the German population. I explained that this order could not be carried out, and I also said that the security was not regarded as endangered by myself.

Q Did you receive a reply to this?

A No, for the time being I did not. I was reminded again --

Q By whom?

A By the inspector, to report about the places. When, however, I did not report to him about the places, he turned to my executive officer, Colonel Preckeln behind my back - Preckeln, the name isand asked him to find the places. or what happened? type message was received from the office chief of office IV.

THE PRESIDENT: You said Saturday the 16th. Give up the month.

THE WITNESS: 16 September, 1944. The following teletype message was received. I remember the first sentence of this teletype message. It started "It is incomprehensible to me how ameasure of this kind can even be considered without the knowledge of the Higher SS and Police Leader was challenged, and it said that it only went into effect if contact with the oriental offices could no longer be maintained. BY DR. HOFFMANN:

THE PRESIDENT: Who sent this telegram?

THE WITNESS: Office Chief IV, Gruppenfuehrer Mueller, of the RSHA.

THE PRESIDENT: Well, did that then close the incident?

THE WITNESS: No.

THE PRESIDENT: Proceed.

THE WITNESS: Concerning the security, it said in the teletype message, further directives would be issued. I called my collaborators into my office and I told them of the order I had received a few days ago, and of the answer I had received from the RSHA; they should be prepared for further directives coming from Berlin. They were received in the night of Sunday, the 17th of September, 1944. They were to the effect that he make half-Jews able to work should join certain units of the Organization Todt, an auxiliary organization of the Army in this particular case, should, as I say, be assigned to this organization. The others should be accommodated with people of the same race in Mecklenburg and Brandenburg. BY DR. HOFFMANN:

" Did you actually experience the carrying out of this order when you were Chief of the State Police Office in Duesseldorf? ing Wednesday the directive was received that I was dismissed. been a reason that you were relieved from your office? took place in the sector Arnhem-Wesel. The inspector ordered me, after I had given him preliminary reports concerning the situation, to go to Wesel immediately with ten to fifteen people as reinforce ments.

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I did that on Sunday afternoon, and we arrived just when these Allied landings took place. There were no German troops and there was no front. The enemy remained there, but he advanced at various points, and crossed the German-Dutch border, and I, myself, was forced to withdraw two guard units, staffed with four to five men.

Q Witness, did you do that?

Q Did the Higher SS & Police Leader object to this withdrawal? as disobedience.

Q What happened to you in September 1944? was received by the Chief of the Security Police, Kaltenbrunner, I would be relieved immediately from my office. The successor was on the way, and I would have to report to the personnel office.

THE PRESIDENT: When was that, please?

THE WITNESS: That was the 20th of September, 1944.

THE PRESIDENT: Dr. Hoffmann, in order that we may be certain that we understand this episode about the half-Jews, is it correct that the Higher SS and Police Leader, or rather the inspector in the witness' area, informed him that all Half-Jews had to be executed, half-Jews in the area and partners, that he protested, that eventually he contacted the RSHA department involved. He received a teletype message to the effect that it was incomprehensible that an order of this kind could be issued and much less executed without knowledge of the RSHA, that finally this order was in some way limited in its affect so that all able male Jews in that area were to be required to work in the that Organization, and all others were to be put into protective custody. Would you please correct that very brief summation of this episode?

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DR. HOFFMANN: I Agree, only about the protective custody. On that protective custody, I want to ask the witness again. BY DR. HOFFMANN:

Q Was it protective custody?

A No, they weren't arrested, but it was only an evacuation.

THE PRESIDENT: Well, the word that came through was that they were accommodated, and then came some geographical terminology which I was unable to catch, but I assume that in some way they were assembled and put into a restricted locality. You, please correct me if I am wrong on that interpretation.

THE WITNESS: No, the order was to the effect that the remaining ones should be accommodated with the people of the same race, or, in this case, half-Jews, and families in Mecklenburg - the two German provinces, that is in Mecklenburg and Brandenburg, in the interior of the Reich, they should be accommodated there as free people.

THE PRESIDENT: Very well, Then after that you received a message that you were being relieved, is that correct?

THE WITNESS: First of all, relieved of my duties. Later on investigations were carried out, but I was actually dismissed from the service of the SD and the Security Police. Then there was a level investigation.

DR. HOFFMANN: May I say, Your Honor, in order to clarify this, a in Germany an official was first of all suspended if he was charged with anything. That means he is not allowed to enter his office and carry out his functions, but whether he is to be dismissed or not, that was established later on, based on investigations. First of all he was suspended, then proceedings were instituted against him for military disobedience, and this is also contained in his personal papers which are submitted by the prosecution.

THE PRESIDENT: Yes. Then we do understand that the witness describes his eventual release on September 20, 1944, to his uncooperative attitude in connection with the Half-Jew order?

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THE WITNESS": Yes.

THE PRESIDENT: Well, I just wanted that clear. The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

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( The hearing reconvened at 1125 hours.)

THE MARSHAL: The Tribunal is again in session.

DIRECT EXAMINATION (Continued) BY DR. HOFFMANN:

Q. Mr. Nosske, in order to clarify your dismissal from the SD, I want to ask you a few brief further questions. After you were suspended from office, was a procedure started against you?

A. Yes.

Q. Where did this procedure take place?

A. In the investigation office of the government counsel, police and SD, who had his office in Potsdam.

Q. Did the investigation office interrogate you?

A. Yes, the investigation officer senior government counsillor, Dr. Hussmann, personally interrogated me.

Q. Was your lack in willingness of cooperation in Duesseldorf and Wesel, the main reason for this, or the disobedience against the higher police and SS leader?

A. The most important reason was the refusal to obey the order, but I couldn't help noticing already in Wessel that the inspector looked for reasons in order to find further charges against me, for a procedure.

Q. And your cowardice when the enemy approached was the reason for this?

A. Yes, this and several other things were the reasons which made me be regarded as unsuitable to continue to be in the security police.

Q. Did you have to take off your uniform?

A. When I returned to Duesseldorf, a few days later, a teletype message came that I was dismissed from the security police and the SD. Instructions were given to the office that I hand in my service papers and that all articles belonging to the state which I had received from the SD, including the uniform I had to surrender, and I know that they had been taken from the equipment store of the SD.

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Q. In your opinion you were actually dismissed from the security police and the SD.

A. Yes, I was actually dismissed from the security police and the SD.

Q. And for the rest of the war, what did you do?

A. I was with the frontal troops as a private. I had been dismissed from the security police and the SD and had been released for the army at the same time, and then tried with the districe commandor to be called up as soon as possible. Only during the second discussion did I hear that I was not to be drafted into the army but into the Waffen SS; since I had to be afraid that within the Waffen SS I might be under immediate orders from Himmler again, I objected to this and referred to my teletype message. Who officer told me that didn't matter at all where I was drafted to, probably they only needed people in the artillery in the Waffen SS.

Q. In any case, you were a private until the end of the war at the front?

A. Yes. At first I was sent to the reserve regiment Number 5 in Prague; and afterwards so the fourth reserve Army in Olmuetz, and in the middle of November, with 300 men of the reserve, I went to the front in Hungary.

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THE PRESIDENT: I want to ask you whether you got into the Waffen-SS or the Wehrmacht.

THE WITNESS: Noo in the Waffen-SS. I was drafted into the WaffenSS. I came to the Seventh Battalion of the artillery regiment of the SS Division Death Head and was assigned to the advance observer and take part in the combat near Budapest, throughout Hungary and in Vienna and Lower Austria and was taken prisoner when we capitulated. BY DR. HOFFMANN: you were not drafed into the army but drafted into the Waffen-SS. is that not a reason to assume that you were not actually dismissed, but they only wanted to degrade you?

A No, this had nothing to do with it. I was drafted into the Waffen-SS together with members of free professions who never had had anything to do with the SS or the Security Police.

Q You mean to say this was the general manner of drafting? DR. HOFFMANN: Your Honor, I would like to discuss a number of documents concerning the activity of the defendant Nosske as Einsatzkommando leader and which have been submitted against him.

THE PRESIDENT: Do so. BY DR. HOFFMANN: page 54 of the German document book, Document 2841. I will give you this document. DR. HOFFMANN: Your Honor, the Tribunal will remember this is the Harvesting Action which the defendant Nosske has already mentioned once. is mentioned. I ask you now -

THE PRESIDENT: In my book it is ninety-four.

DR. HOFFMANN: Yes, ninety-four.

BY DR. HOFFMANN:

Q I will ask you about this document. Did you carry cut this execution? detachments of whom a chief was in charge of the harvesting affair. the Hitler order or for other reasons? sabotage which had been carried out there. He had come to this locality some time before. When he started the organizations he had taken the necessary measures and had then gone to other localities. A few days later it was reported to him that the harvesting action in Babtschinzy did not get on. He, therefore, returned to Babtschinzy and found there that it actually was so, and from statements from the people who were willing to work he heard the further connections. It was as it is mentioned in this report, and beyond that he told me that the people who did these things had posted guards to stop people from going into the fields, and machine parts which were needed in order to repair machines they took away and buried them. Strict measures were taken because of the emergency; notices of the army were published, and he carried out the investigations and found that there were come of them that were Jews who had only come to this area some time before quite recently, in fact, for the N.K.W.D, and he had then decided to short those persons.

Q But you only heard this?

A Yes. He reported this to me orally, and afterwards he gave me a written report which was about three times as long as the statement here.

Q How, witness, isn't it surprising that the saboteurs should have been only Jews? There were others there, too, weren't there?

A Yes, of course. I don't know whether the leader made his task that way because of the attitude among the population and the attitude which existed among the people because of the Fuehrer Order against the Jews.

also might have been carried out because of the Hitler Order?

A Yes. This might have played a part in the deliberations, but according to his statement I had the impression that he shot people who had been convicted by him.

DR. HOFFMANN: Your Honor, I now come to a new document, Document Book 3-D, page 72 of the English, the document NOKW-634. prisoners and the shooting of Russian soldiers. in this document. I remember this event insofar as it was reported, and at the time I had returned from the hospital to Nikolajew. I travelled to this territory in order to meet the commando, in particular in consideration of the report that several members of the commando had been lost and dispersed and had not found their way back to the commando. I found the c mmando in some villages where also Ethnic Germans had been evacuated. The incidents themselves I did not witness myself. They had happened days before, but I had the impression that it was as it is described here. This written report originates from the subcommando leader. I myself did not get the impression that any shootings had occurred. On the contrary, I met a battalion commander, Back, who had lost part of his costal battery because of these landings, and by his staff interrogations were carried out of a number of prisoners and parachutists who had been taken prisoners. One considered them to be of great importance in order to find out what aims the Soviet Russians had and what objective they were after. killed prisoners of war in violation of international law? The Prosecution says that this report says that eleven parachutists were made harmless and they conclude that this means they were killed:

the impression that these parachutists had been killed. It says here expressly they were finished off or they were taken prisoners. That means that prisoners was shot who had thrown a hand grenade. All the others were prisoners, and it is said at another place that they were handed over to the army as prisoners. Rendering harmless in in this connection, as we mean it, never means killing. It does not mean killing.

THE PRESIDENT: Do I understand, witness, that you say that that phrase never means killing?

THE WITNESS: No. In this connection. The way it is put makes it quite clear that it cannot mean killing because it says here expressly what happened to the prisoners. It does explain that the prisoners were handed over to the army. Apsry from that only a few were taken by the commando and the others were taken prisoners by the army themselves.

THE PRESIDENT: But you are only offering that interpretation insofar as this particular document is concerned?

THE WITNESS: Yes.

THE PRESIDENT: What was meant by the phrase. "Apart from these parachutists which Kommando 12 took care if"? What do you mean by the phrase, "took care of" have?

THE WITNESS: Apart from these taken care of or made prisoner by Kommando 12. I presume you refer to this paragraph?

THE PRESIDENT: Yes, that is right.

THE WITNESS: There it says in the German text, "Apart from these parachutists taken care of by the Kommando 12 themselves" or taken prisoner by them. "Taken care of" here means they were killed, That is only one man who throw the hand grenade, and it says here expressly the others were taken prisoner.

THE PRESIDENT: Well, we have it in the English that it must have been mere than one because the plural form is used of the word "parachutist". It says, "Apart from these parachutists" which would mean more than one.

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THE WITNESS: This sentence has been put very badly because they referred two verbs to several persons. It would have been easier to say, "Apart from the one killed and the others who were taken prisoner." According to the German sense, it is understood this way.

THE PRESIDENT: Well, it certainly isn't understood that way in English.

THE WITNESS: Well, I don't know English well enough to judge this. For us there cannot be any doubt that the difference is made here between "taken care of" and taken prisoner", and if we say ourselves that "apart from these people taken care of", we should have to say, "apart from the person taken care of and the prisoners". In the one case it is singles and in the other case it is plural, and that is what the German language does not clearly express.

THE PRESIDENT: If you tell us, witness, that "to take care of" means to kill, then the entire clause. "Apart from these parachutist which Kommando 12 took care of", you can only conclude that Kommando 12 killed more than one parachutists. German text and give us how direct interpretation now from the German text.

THE WITNESS: Yes.

THE PRESIDENT: Would you please do that? Do you have that, Miss Juelich? The German?

The Witness: In the following sentence, too, to a certain extent, it is mentioned again what Kommando 12 did because there it is mentioned that the army, too seized parachutists who had been taken prisoners. In this connection, too, the work "prisoner" is again "taken prisoner", and afterwards the conclusion is drawn that this figure was taken care of. That means they were made harmless and they could not take part in further combat.

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Apart from that I already said that a number of parachutists -- I meant when they were being interrogated by the staff. Of course, I cannot say that there were just these persons because I did not see the previous ones, but I certainly would have hoard of it if any shootings had taken place. And importance was attached to the fact that these persons were kept alive because of the information onecould get from them.

THE PRESIDENT: Well, let us go back now to the sentence which aroused the original query as to the phrase, "these parachutists". and then indicate that you will give us the translation?

THE INTERPRETER: "Apart from these parachutists" in plural.

MR. WALTON: I offer a suggestion that the photostatic copy be submitted to the translator so that there will be no doubt.

THE PRESIDENT: That is a very good suggestion. Do you have it there?

MR. WALTON: It is in the archives of the court now, sir.

THE PRESIDENT: Do you have it with you, Mr. Knapp?

MR. KNAPP: No, I don't have it, Judge.

THE PRESIDENT: Well, suppose we now read it as it appears in the German mimeograph production, and then later on we can compare it with the photostat, in order to save time.

THE INTERPRETER: I will read it as it is. "Apart from these parachutists which Kommando 12 took care of, respectively took prisoner and which were transferred to the Wehrmacht, the Kommando participated in the seizure of four more parachutists, taken during 22 September during the commual combing of the area north of Neu-Annental."

THE PRESIDENT: I now address myself to the interpreter and ask whether the translation which she has given agrees with the translation as it appears in the document before the Court?

THE INTERPRETER: Yes, it is quite correct.

THE PRESIDENT: Very well.

Now, witness, in the latter part of that paragraph we come across the phrase "taken care of" again, and you have told us that in the early part of the paragraph "took care of" means to kill, so that keeping in mind that translation when we come to the latter part of the paragraph we read "so that the number of parachutists taken care of in that area", we mean again, don't we, that Einsatzkommando 12 killed more than one parachutist?

THE WITNESS: Noo Your Honor. Here, tooo the German expression makes a difference. In the English text I have just heard from you that the same expression is being used. We say first "taken care of" and later when the figure "11" is mentioned, we say "made harmless" or "rendered harmless".

THE PRESIDENT: Well, perhaps you are not looking at the same part of the paragraph that I am. Both the phrases "taken care of" and "rendered harmless".are used in the concluding clause of the sentence in question, which appears at the very and of the paragraph.

THE WITNESS: Yes, Mr. President. I thought of this particular word. At the end of this paragraph it says in the German text -it does not say "taken care of", but it says "rendered harmless". If I said that, therefore, at the beginning of this paragraph, it is to be assumed that the words "taken care of" mean killing, but this is not a contradiction because at the end of this paragraph another German word is used, not "taken care of" but "rendered harmless".

THE PRESIDENT: I want to ask now the interpreter if the German equivalent of "taken care of" appears in the next to the last line of the paragraph in question.

THE INTERPRETER: Yes, it dies.

THE PRESIDENT: So I say to you, witness, that if "to take care of" in the first part of the same paragraph should mean something else.

THE WITNESS: Well, this one word "taken care of"-

THE PRESIDENT: Very well, Dr. Hoffmann, the witness has given his explanation, and we have heard the retranslation by the interpreter, so I don't think we need spend anymore time on it.

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DR. HOFFMANN: I only have one more question. BY DR. HOFFMANN:

Q Did you make this report yourself?

A No, I didn't make this report myself, but the subkommando leader made it.

Q Do your descriptions refer to what you remember yourself? none of these parachutists, neither by us nor as far as our people could know, were shot by the Wehrmacht. It is out of the question.

DR. HOFFMANN: Your Honor, I now come to another document.

THE PRESIDENT: Very well.

DR. HOFFMANN: It is a document in Document Book 2-D, page 52 of the English, Document NO 3147, Prosecution Exhibit No. 96. BY DR. HOFFMANN:

Q Do you have that document? shooting of several thousand Jews. In this document do you find that Einsatzkommando 12 is mentioned at all?

A No. Einsatzkommando 12 is neither mentioned nor meant in this connection. 12 took a part, "yes" of "no"? all that the document can incriminate Einsatzgruppe 12? figure of 1,890 persons who were shot. It appears again. In this other report it is also mentioned that shootings took place in the location of Ananjew.

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In the other document which has already been submitted -- it is the document 3841 concerning the harvesting action.

Q It is Document Book 2-D, page 49 of the English text. That is the one we discussed before.

A On the top it says, "Einsatzgruppe D. Location: Anajew." That is right for the group. What follows then is the report made by Einsatzkommando 12, but this does not that Einsatzkommando 12 had its location in Ananjew.

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THE PRESIDENT: Well, witness, you were part of Einsatzgruppe D, were you not?

THE WITNESS: Yes. sentence, "Field of activity of the Commandos free of all Jews." That necessarily would include your commando, would it not?

A This description "Made free of Jews" is such a general statement ....

Q Let's dispose, witness, of the work "Commandos", and in the phrase we have, the "field of activity of the commandos" you would have the inclusion of the Einsatzkommando XII, would you not? 15 September is correct, Einsatzcommando XII must be found to have been in reserve until 25 August, and from there went to the Rumanian territory which was affiliated to the German Reich. included in the Generic work "Kommandos"? used in such a general manner to give a general impression, so that one can not say, that it does apply to this place and not to the other.

Q Well, it tells very specifically. Now was Commando XII engaged in this area at the time indicated?

Q Where was it? Beresana territory.

Q What territory?

territory, and in this territory the Einsatzcommando X-A... German Beresana territory.

Q We must have the beginning - - when to when? of August until the last days of September. included in the commandos referred to in this document, which conducted executions between 19 August and 15 September? refer to, yes.

THE PRESIDENT: Proceed, Dr. Hoffmann. BY DR. HOFFMANN: to which these reports refer? have been about one-hundred or two-hundred kilometers. I want to comment briefly here on Document No. 2841. One cannot draw conclusions here, because under location Ananjew XII, it is mentioned that Einsatzcommando XII was also in this location, in the territory or this Einsatzgruppe; it was like this; the sub-departments were separated, and went in different directions, and thus it is explained, that those reports on the Harvests, which originates with Einsatzcommando XII, was sent to Berlin, as a report from the group from their location in Ananjew.

DR. HOFFMANN: Your Honor, may I now refer to the last document with which the Prosecution charges the defendant Nosske.

It is in Document Book II-B, page 7 of the English and page 6 of the German text, Document No.2837, Prosecution Exhibit No. 56. If I may comment on this document, Your Honor, you will find there Einsatzgruppe-D mentioned as well as that location Ananjew, and insofar as my German text says, of page 11, from this description, Location Einsatzgruppe-D, location Ananjew, no further explanation is given. What do you want to say about this, Herr Nosske? either. The report was handed to Berlin, or to be quite correct, by the Berlin office it was made part of the report of events at the time when Einsatzgruppe-D was already in Ananjew. The location reports are not immediately connected with the report, sofar as the time is concerned. Furthermore, the report from Dniestr, Ghotin, and including Jampol, obviously mentions a time when these events, which are described here, had already happened a long time before. That is, a long time before Einsatzgruppe-D was in Ananjew; My task in Jampol, and my special mission there, of course. I already explained during my direct examination. I already said, that before I received this mission I had heard of difficulties which arose, because of the re-transportation of the Rumanian Jews who were to be sent back to Rumania territory, and, on that occasion I remember a figure which was about the same as I found in Jampol. 27,000 Jews were never mentioned at the time. I can not state how this figure was made up at all. Looking through the documents, and comparing them. I found this report is the first collective report which was issued at all for Einsatzgruppe-D, and sofar as I know the locations, I realized that it is the territory extending much further than the Einsatzgruppe-D territory.

The documents show that the areas mentioned here also contain units of Einsatzgruppe-C, and these documents prove it. from this document that your Einsatzkommando is mentioned, or not?

A No, it is not mentioned, and didn't take part in these occurrences.

DR. HOFFMANN: Your Honor, I have no further questions.

THE PRESIDENT: Has any defense counsel a desire to cross examine the witness. If so, please step forward.

DR. GAWLIK: Dr. Gawlik for the defendant Seibert? BY DR. GAWLIK:

Q Witness, do you know the co=defendant Seibert?

Q Since when have you know him? Roumania.

Q What do you know about Herr Seibert's activity in the Staff of Einsatzgruppe-D? and was chief III there, and had to deal with the Wehrmacht.

Q Did Herr Seibert ever give you any executive orders?

Q What do you know about Herr Seibert's absence from the Staff Einsatzgruppe-D? was absent from the Einsatzgruppe, that is, the Staff.

Q Thank you. Did Herr Seibert ever inspect an execution by your commando?

DR. GAWLIK: I have no further questions.

THE PRESIDENT: Any other defense counsel desires to cross examine? If not, Mr. Walton will proceed with the cross examination for the Prosecution.

MR. WALTON: Your Honor, at this time I should like to interpose an objection to the defendant Nosske's Exhibit No.1. I would have objected at the time it was offered. This chart was offered, but I didn't hear the offer into evidence, and I want to know if I am in order now to interpose an objection.

THE PRESIDENT: It is entirely in order for you to address yourself about the document in any way you see fit, Mr. Walton.

MR. WALTON: The prosecution objected to this document on the grounds that it is not authenticated, it is not sworn to, and it is not identified other than by his exhibit number one. I do not know it he made this document, or if his counsel made this document, or some other defendant made this document, and, on that grounds we object to the offer as proved.

DR: HOFFMANN: He is quite right, Your Honor. The Tribunal granted me the permission to put on the witness Hopenkoteiv, who has arrived here, and this witness at my suggestion, presented this chart, and he is prepared to give an affidavit that it is correct. And if the Prosecution would like to withdraw the objection until I hand this affidavit to the Tribunal .....

THE PRESIDENT: The defense has the right to submit any document which is relevant. If you submit this sketch of the activities of the RSHA, and indicate who made this sketch, it will be accepted, because it is not for the Prosecution to say which sketch is correct, so long as it is authenticated, the Tribunal will accept it.

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If the Prosecution believes that this sketch is in error, it may cross-examine upon it, and it may submit its own sketch, but it cannot prevent you of the defense from introducing this document, provided, of course, it is authenticated.

MR. WALTON: That is all the Prosecution objected to, was its present form.

THE PRESIDENT: Very well.

MR: WALTON: Now Your Honor, please, and counsel for the defendant Nosske. I relied on the fact that he would go certainly until the dinner hour. I was having my questions revised, and, if the Tribunal please. I would appreciate if the dinner hour would be from now until one-thirty instead of one-forty-five.

THE PRESIDENT: Well, on that basis, we will. We would not want to lose the fifteen minutes. Would that in any way conflict with defense in having enough time to get their lunch if we come back at one-thirty? It would conflict, yes. Well, then, the Tribunal may ask several questions to take up that time.

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THE PRESIDENT: Witness, this episode which you have described, of the shepherding of the Jews from one side of the river to the other side of the river, is still a little vague to me. Why were you so much concerned about getting these Jews back to Roumania? mission.

Q Who gave you the special mission? chief.

Q Well, you must have known of the reason for it. Give us the reason why were these Jews sent back to Rumania? gruppe chief himself. What deeper reasons he had for this I could not find out. I can only imagine what he thought. major operation of a sending six or seven thousand Jews across the river. You had to confer with the authorities there, and you say you don't know why you were doing it? known to me, they were the following: They didn't want the Rumanians to simply send those persons whom they didn't like across the river into another territory, namely, into the German territory, and, thereby make difficulties for us in our territory, and, particularly because of the partly destroyed villages there was no means of housing these persons.

Q Well, you had ordered to execute Jews, why weren't these Jews executed? and because these Rumanian citizens would be brought back from this territory without having to shoot them, because there was no reason for it, not to bother with them.

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Rumanian citizenship were immune from the Fuehrer Order? Was there that exclusion in the Fuehrer's Order? Why were they excluded? in the instruction which we received from the Einsatzgrupee chief, and it was confirmed that the Fuehrer Order should only apply to those living in Germany proper, and for persons who were lot of foreign citizenship, or allied to Germany. shot?

A I can nor judge this. If we could not recognize them as Rumanian Jews, it could have been possible, but it was quite obvious here, that the greatest number of these had come from the Rumanian territory, and this condition the Einsatzgruppe chief did not want. Rumanian Jews were shot don't you?

A I didn't quite understand the question. reports that Rumanian Jews were shot? doubt the truth in this. the reference. It was the document which was being discussed just ten or fifteen minutes ago. I have in my notes, Document II-D, page 11, but I must have made a mistake. Can any one assist me in finding that document? In it very specific reference is made to the fact that Jews who had been driven over from Rumania were shot, and, it also indicated that the younger Jews were shot?

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Herr Ohlendorf testified on the witness stand that he doubted its possibility and its credibility to a large extent.

Q Yes. I have it now. It is II-B, not II-D. I'll read to you from this document, No 2837, under designation "Einsatzgruppe-D" which reads as follows: "In the vicinity of Swaniza-Mogilew-Poiolaski and Jampol, a total of approximately 27,500 Jews were driven back to the Rumanian territory, and 1,265, in part younger ones, were shot." Now these were Rumanian Jews who were shot by Einsatzgruppe-D. How do you explain that?

A Your Honor, I said already: how this report was made up, I don't know. Neither did I report anything like that, nor did anyone with that group ever make any such report, and, since I myself was in Jampol, I would have heard something later about such a report being made.

Q Then you claim that this report is in error?

Q The report goes on and says: "3,105 more Jews and 34 Communists were liquidated in Czernowitz", is that also incorrect? in those territories, and at the time I only had one mission to report, about the bridge in Jampol. I can not give my opinion on such a report. of comment on your statement that "Rumanian Jews were not executed." Now do we understand you to say that the Jews of Germany's allies were not subjected to the usual order "Jewish program as outlined by the German Reich."

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Is that what we are to understand ? arises, every time the Einsatzgruppe chief decided that Rumanian Jews, or Jews in Rumania territory should not be shot, and I remember - -

Q Well, just a moment, now wait. I will ask you if you understand that it was the policy of the RSHA not to subject Jews of a nationality allied to Germany to the usual program of Jewish persecution?

A I can not judge this, Your Honor. It was certain that the RSHA didn't, because the RSHA knew the local conditions which pertained here, and particularly concerning these southern territories ..... German allied Nations from the Jewish policy of the Reich? of thousands of Hungarian Jews that were transported to the concentration camps, and to the extermination camps, and, therefore, certainly they were part of the anti-Jewish program. You know that, didn't you? and I also heard that this happened at a time after the time mentioned here. As I heard now it was carried on at a time when Heydrich had the mission to deal with the final solution of the Jewish question in Europe. In 1941 this mission of

Heydrich by Hitler didn't as yet exist. At that time I can not imagine that in Hungary Jews were deported and executed at another place.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

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THE MARSHAL: The Tribunal is in recess until 1345 hours.

(Recess until 1345 hours, 8 December 1947.)

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(The hearing reconvened at 1345 hours, 8 December 1947)

THE MARSHAL: The Tribunal is again in session. DR. FRITZ FOR THE DEFENDANT FENDLER:

Q Your Honor, may I just put one question to the witness?

THE PRESIDENT: By all means do so. week, you said that before the Einsatzgruppen marched off Heydrich inspected them in Schmiedeberg, and in this connection you also mentioned that you regarded what Heydrich said on this occasion before these men as confirmation of what Streckenbach had said in the Fuehrer meeting at Pretsch to the higher raking leaders. Can this be understood to the effect that the men and the non-coms found out through Heydrich about this Fuehrer order? That is how I understood you. Is that correct? either. When Heydrich inspected these units and addressed a few words to these men he did not at all mention the Hitler order. The men could not have known at that time of the Hitler order. As far as I personally am concerned, it seemed to me that it was confirmation. I, after all, had order of the Hitler order in Pretsch and as Heydrich did not modify this order this order was still in effect.

THE PRESIDENT: Very well. Mr. Walton will you now proceed with the cross-examination. BY MR. WALTON:

Q Mr. Nosske, you become a member of the Nazi Party on 1 May 1933, did you not?

Q This was a voluntary act on your part, wasn't it?

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in this organization until July 1936, is this correct?

Q Did not you leave the SA in order to join the SS? Department, Legal Information Department that is, which I carried out for my lawyer. When I left this post I had no reason to stay and even though I left Halle before I actually left the SA, or earlier than has been noted, then the reason is that the confirmation of my having left was not made until later. part, were you not?

A I joined the SS through the special formation SD. That was an automatic procedure connected with my activity in the Security Police and it left no free decision for myself. not? the State Police then and later on I was assigned to the special formation SD automatically. of the SD, the approximate date?

Q Now how was it according to your service record that in 3 1/2 months after having attained the rank SS-Untersturmfuehrer of the comparable rank of 2nd Lieutenant you were promoted to the rank of

Sturmbannfuehrer or Major in the equivalent rank? That is found in your service record which is contained in Document Book III-D on page 80 of the English text, page 120 of the German text, and is Document NO-3505 which is Prosecution Exhibit 170.

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the document?

A That is not necessary. I only want to see the Document Book. That is the typical case of the assimilation of ranks because at that point I was promoted to Regierungsrat (Government Councillor). And, first of all, as I had not been an officer yet, I became Untersturmfuehrer (2nd Lieutenant) and after a short while - - - No - -

Q Now, then approximately 3 months later, or 31/2 months later, according to this record you were promoted to Sturmbannfuehrer or Major. been promoted to Regierungsrat (Government Councillor) and a short while after that the assimilated rank took effect. professionally, is that correct? the Beginning of the Russian campaign, did you not?

A That is not correct. You can't speak of reporting at all. On the contrary I have just tried to explain that at the last moment I was detailed because the Regierungsrat (Government Councillor) Kreutzer who was destined for the Einsatz, had become ill. I found out about that so late that unlike many others assigned to the Einsatzgruppen I was not able to be in Pretzsch or Dueben beforehand as many other who were. toward the Russian border?

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campaign, did you not? go from Berlin to Pretsch. That was a few days before the Russian campaign.

Q Well, that is what I asked you. Now, prior to the time you reported for duty with the Einsatgruppen did you have any knowledge whatsoever of their purpose and their missions?

Q When did you first learn of the Fuehrer order? Was it, as you tesfitied on direct examination, in Berlin?

A No. I learned of the existence of the Fuehrer order for the first time in Pretsch from the Chief of Office I, Streckenbach.

Q Did he personally tell you of the Fuehrer order? order demanded the killing of people on racial or religious grounds?

A The Fuehrer order was not given for that reason. Its purpose was the securing of the fighting sector but at the same time I was horrified by it.

Q Well, the Fuehrer order speaks for itself. I won't quibble over what the Fuehrer order demanded but that is what happened in obedience to the Fuehrer order, isn't it? Streckenbach. to obey this Fuehrer order? present on that occasion were so spontaneous and so quick that I myself never had a chance, apart from the fact I hold a lower rank.

Q Then you made no protest? That is your answer, is it not?

A The higher raking officers' protests were mine as well.

Q. Witness, I am not interested in what others did. I ask you for a direct answer. Your answer to my previous question was that you personally did not make a protest to having to carry out the Fuehrer order. Did you or did you not?

A. I did not have to do so because others did so for me.

Q. Then your answer is no, you made no protest.

A. I did not protest - out the conclusions which you want to draw are not the same.

Q. Did you ever ask to be relieved or service in the Einsatzgruppe when you learned what the mission of this organization was?

A. That was not possible because if I had refused to march or to carry out any orders whatsoever I would had to face the consequences which were made known to us according to martial law.

Q. Well, before the lunch hour - -

THE PRESIDENT: Just a moment, please, Mr. Hildesheimer I think the phrase is military law. There is a distinction between military law and material law. BY MR. WALTON:

Q. Before the lunch hour, you gave a detailed explanation how in the last days as the front moved closer towards Germany you deliberately sabotaged the carrying out of the killing of Jews while you were in Duesseldorf. Now that was the difference in the opportunity here and the opportunity in Duesseldorf to fail to carry out the order for the killing of Jews?

A. The reason for my protest in Duesseldorf was that nobody else could protest for me. Apart from this in Pretsch the order came through as an order of the Chief of State. Here, of course, I had to find out for certain whether this order was actually final for me. A further state of affairs was that the word security which, of course, had cropped up before in 1941 and had conflicted with my conscience in Duesseldorf seemed to me a pretext because for me there was no ranking officer responsible for security.

I could see and I could realize what would endanger the security and what would not endanger the security and for these reasons I protested.

THE PRESIDENT: Mr. Walton, I would be grateful if you could develop this point because, up to this moment, it isn't clear to me just what he did in Russia. He has explained that he was considerably horrified with the Fuehrer order, that it shocked him no end, that he marched into Russia, that on one occasion he shepherded some Jews across the river, and according to the reports Jews were being killed right and left of him, but never once has there been any statement as to whether he killed any Jews. I think if you make that clear immediately or reasonably soon we can follow your cross-examination a little more intelligently.

MR. WALTON: I am discussing with him his career in Dueben and Pretsch just before the Einsatzgruppen marched off. As I understood it this morning he testified he got a similar order that said even half-Jews together with the Aryan spouses would be killed and he sabotaged that order.

THE PRESIDENT: Yes. Your question is entirely in order but we can follow the cross-examination perhaps with more interest and with more keenness of observation if we find out whether he killed any Jews in Russia. Personally I don't know how he was able to get through this long examination in direct examination without telling us that very essential thing.

MR. WALTON: That will develop, Sir, according to plan. However, I might call the Tribunal's attention to the fact that on direct examination this morning concerning the Babtschinzy incident or the Hogus incident he stated that those 94 Jews were killed by a Jeil-Kommando Fuehrer belonging to his Kommando.

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THE PRESIDENT: Yes, but Dr. Hoffmann never asked him so far as I remember the very specific question, did you kill any Jews in Russia?

MR. WALTON: That will be the crux of my examination. BY MR. WALTON:

Q. Then, from what you said in answer to the comparison between Duesseldorf and Pretsch and Dueben you had more opportunity to sabotage the order in Duesseldorf than you did in Dueben. Is that what we are to assume from your answer?

A. Not to sabotage but I could achieve a modification of this order and I would not do that in Russia or before.

Q. That's what I wanted to find out. Now, when and where were you given command of Einsatz Kommando XII?

A. I was put in chage of Einsatz-Kommando XII after the units had been set up and that was one or two days after the proclamation of the Fuehrer order in Pretsch by Streckenbach.

Q. And the approximate date, was it June of 1941?

A. Yes.

Q. And was it a few days before the beginning of the campaign against Russia, before the 21st of June?

A. Yes.

Q. Then roughly you would estimate it between the middle of the month of June and the beginning of the Russian campaign, some date?

A. Yes.

Q. Did you ever make a speech to your Kommando in Schaesburg? It is spelled S-c-h-a-e-s-b-u-r-g. Before your Kommando in which you are alleged to have said and I quote: "The Fuehrer has ordered that all elements who endanger or undermine the fighting troops in the rear must be destroyed."

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Or words to that effect?

A. That is correct. Yes, I spoke to the men with words to this effect. I can give you a further explanation concerning this. The days before we left in Dueben were so short and were so filled up with necessary tasks of a technical and organizational manner that I could not talk to the men immediately and could not get to know them properly because these were a lot of people entirely new to me. The first place where we remained for one or a few days, was in Schaesburg in Siebenbuergen. I lined up the men in order to introduce myself, as it were. The essential words which I spoke at the time were that I appealed to their sense of duty and to their comradeship. Apart from that, of course, I pointed out their tasks and said that we had to do everything in order to safeguard the troops.

Q. Did you further state in this same speech the thought that your Kommando would carry out this order in such a way that no criticism would ever be directed toward the Kommando by anyone?

A I don't remember having put it that way. I certainly said, and what I meant was, that there must be cleanliness and order, and especially that nobody should act for selfish motives. That means that as far as his character and his own person is concerned, he should remain clean. the essential Fuehrer Order certainly in your own words. Isn't it natural that you should next take up the question of how the men under your command would carry out this order, and were you not anxious that it should be carried out in a military manner, in a complete manner, so that no criticism would attach to your command; isn't that the natural sequence in a speech of this kind? the purpose were certainly different. Obviously, I don't know whether it was at this time or later, I acquainted my unit with the Fuehrer order.

Q Well, as a matter of fact, since you think back on it, weren't you anxious that your command actually carry out all its orders so that no criticism could attach to your command?

A No, no, not in this sense. My own attitude was different from this. What I wanted to achieve was that these men should follow my leadership, that they should not act on their own initiative and break out, but they should only do what I had ordered them to do or carry out special orders which I had given them. only act under your orders and carry out your special tasks as you ordered them during the time that you were in command; did they follow your ideas in your speech generally? the discipline was in accordance with this.

Q We will return to this at a future time. How many Gestapo officials did you have of officer rank in your commando?

Police, who held officers' ranks, I think there was only one, as far as I remember, at the most, two. self? commando?

Q Did you have a Leiter 3, or Department 3? to the offices 3 and 4. In view of the special tasks which the commando had, this was not necessary. When special tasks had to be dealt with I detailed those leaders who seemed to be best acquainted with the task ahead of them. an inspection tour? on inspections, with conferring with Leiter 3 of each commando. To whom did you refer him when he came on an inspection to your commando?

A He only came on an inspection tour once. That was in November, 1941. That was in Mikailowka where he was in the staff of the Einsatzgruppe Chief. They arrived at night, and they left the next morning. He spoke about special matters with myself and other people who were competent in this particular activity. At that time, I had asked the officer Klaus to deal with these matters. I don't know what his rank was at the time. In Nikolaev I had ordered another officer to deal with special jobs. Seibert only made one inspection in your commando, and that was when he was with the staff of Ohlendorf?

Q Now, who was your chief of Leiter 4?

Q Weren't you, from your previous experience and your work in the Gestapo, competent for being the chief of the Leiter 4, to write that type of report? were you not? the latter half of August, 1941? approximately.

Q How far is that from the group headquarters in Ananjev?

A Mr. Prosecutor, may I first say that in the garrison Tscharnomin the Einsatzkommando 12 was stationed in one garrison, with the group staff. The group staff left Tscharnomin a few days before I left, in the direction of Ananjev, while I myself, on order, went into the Ethnic German area, in another direction. headquarters staff of your commando left for Ananjev, and you went off on an inspection tour. Am I correct in that statement?

A No, I think I misunderstood the question. Perhaps it wasn't quite clear, but it wasn't that I had a staff; it was only a matter of the staff of the group. I, myself, did not have a staff. If, of course, the staff of the group is meant, then it is clear that I was not on an inspection trip, but I was stationed in the garrison Tscharnomin, and the group staff left on its own, went to Ananjev, and I made all the preparations in order to march into the other area.

Q How far from Tscharnomin was Ananjev?

A I couldn't tell you exactly, but it may have been about eighty

or one hundred, even more, kilometers, perhaps even one hundred to two hundred. I cannot make any statement concerning this. It would be incorrect. It can be established from the map.

Q You don't know?

A It is at least this distance, but I don't want to state a definite figure.

Q Were any elements of your Commando 12 ever in Ananjev?

A No, but I don't know, of course, whether when I reported to the Einsatz group chief personally and went to Ananjev whether there wasn't an officer or some person accompanying me, but apart from this, that is,nobody of my Kommando ever went to Ananjev.

Q Well, I will ask you this question. Did your Commando 12 make reports to the Einsatzgruppe? made regular reports, every two weeks, or every week, to Einsatzgruppe D, is that correct? There was no deadline so that on the 1st or the 15th I would have to issue a report, but it was whenever there was anything to report.

Q Who wrote these reports to the group?

A Most reports were made out by myself. When I was not in charge of my own commando because of illness, I presume the deputy must have made out the report. That was Hausmann. But it is, of course, possible that during that time the subkommandos sent their independent reports to the group because they were nearer. activities also? I should like to say that I didn't have subkommandos at any time everywhere. If I may make that clear very briefly again, when the commando was at rest during sometime it only carried out a few activities. Then Court No. II, Case No. IX.

it was distributed in the form of subkommandos and small units in the Ethnic German area. Then again it was assembled. Parts were separated which were not under my leadership from then on, and the part that was to join the 17th Army under my command remained under my command as a unit.

Q let's consider an example. Let's say, for instance, that you sent an officer and ten men on a special mission, regardless of what this mission is, and this mission consumed about five days, and your orders to him, as soon as he had completed his mission, he was to return to where your headquarters of the commando was stationed at that time, where you were with the rest of the kommando. At the end of the five days, or the ten days, the officer and the ten men reported back. Would you have him make out a report of his activities during the time he was away from you? me, he, of course, would have had to report on his return. report which went to the group headquarters, would you not?

A Yes. I wouldn't have done so only with this report, but all reports, all situation reports which I received from other places concerning events which happened in my sector, and even outside.

village or a particular area, they were gone sometime. Whenever you would receive a report from them about any particular happening, would you include that in your report to Einsatzgrupee D?

Q Now, let's consider Document Book II-D, page 49 of the English, page 54 of the German, which is Document NO-2841, Prosecution Exhibit 94. This is a harvesting action document about which you spoke this morning. There are a few questions which I would like to ask concerning the document. The report in this situation report originated from your commando, did it not? report which I sent to the group staff concerning this particular event was twice or three times as extensive. It has been condensed here, that is evident to me here. Who, however, condensed it, whether that was the Einsatzgruppe or the office at Berlin, and what changes were made, I do not know. even though they are not all the facts, but these facts in connection with the others, came from your commando originally? Jews in this area were guilty of keeping people from the fields to gather the harvest, and in addition to that somebody was guilty of destroying farm machinery. Is that the type of resistance which is mentioned here? machinery when it was not in use; couldn't you stop this sabotage of machinery? in other villages and localities. If we should have put a guard at every bit of machinery, then we wouldn't have got very much further. But re Court No. II, Case No. IX.

garding this particular thing, that even in these territories where there wasn't always a German soldier, the basic German measures were not sabotaged, it was proclaimed by the Wehrmacht that any one who would resist the regulations as proclaimed by the Wehrmacht, would be severely punished. where your commando was? at least not in that form, because the harvest was over, and I did not experience another one. to the harvesting? tachment found out through investigations and reports from the populations and by interrogating the perpetrators, as he reported to me.

Q All right. What directions did you give him when he reported to you that Jews were sabotaging the harvest in the Babtschinzy area: what directions did you give the commando leader?

A I did not tell him anything at all. He carried out the measures. He carried out investigations, found out about the perpetrators, and he had them executed, and he came to me reporting these facts. ing out these executions he was under your command, was he not?

Q All right. Now, from the same or similar sources, couldn't this unnamed Commando Fuehrer have determined exactly who it was that fomented this resistance? was decided upon for execution.

that they had violated an order which had been issued and proclaimed by the Wehrmacht. It was a deed which had been carried out contrary to the Wehrmacht orders and it was punishable by death according to Wehrmacht regulations. satisfied that every single one of these 94 Jews had actually formented resistance to the orderly harvest of the crops? sume that it was right.

Q You presumed; you never tool steps to satisfy yourself that it was correct?

AAfter it had been carried out, I couldn't convince myselfafter all it had happened. I couldn't again start investigations. your orders to take care of the security were followed 100 percent, could you not? Jews and had turned them all loose or sent the others out and had just executed 94, or did he report to you that he had arrested 94 and executed 94 Jews? those arrested was larger than the figure mentioned here; the figure of those who were actually punished, shot.

Q Were there any women and children included in these 94 Jews? possibly have been the perpetrators. In any case, a report to that effect was not made, and according to what he reported to me, women and children were not included. up there in the Babtschinzy army?

A I don't now for certain, but I think it must have been Court No. II, Case No. IX.

twelve to fifteen, possibly eighteen. made was the execution of the 94 Jews carried out?

A I don't remember that. arrests were made that the executions happened? ment of these detachments lasted only two weeks, but I have already said that the officer of this particular unit reported to me saying that he had arrived in Babtschinzy, and this Babtschinzy had been one of the first villages he had arrived at.

Q Now then, in two weeks' time, eighteen people, some of whom, I am sure, could not speak Russian, thoroughly investigated 94 cases of sabotage, and the commando fuehrer passed sentence and had them executed, all in two weeks' time? 94 Jews? these suspects to offer proof of their innocence to him?

A Certainly. They were interrogated. I am convinced that some of them were interrogated, and they could exonerate themselves through witnesses who proved their innocence. I can only say what he reported to me, and I can only refer to his careful report which he also gave me in writing even at the time. to supervise the harvest, and he was acting in your stead, was he not?

Q. And as your military subordinate, he was in effect carrying out your duty for you in the Babtschinzy area, wasn't he?

A. Yes, by order of the Wehrmacht -- because it was a Wehrmacht order and I myself visited the area and I convinced myself of the order and the condition in this area.

Q. Was the fomenting of this type of situation such a heinous offense against the Third Reich that is deserved the sentence of death?

A. This sabotage was one of the offenses which was regarded a major offense by the Wehrmacht just as the carrying of arms, for instance, was also punishable by death, although he fact in itself in other times -- normal times, that is -was not an offense to be punished by death, in my opinion.

Q. Well, couldn't this particular situation be controlled in view of thefact that it was near the end of the harvest season by apprehending these 94 people or 94 Jews who were fomenting this resistance and putting them in prison or behind barbed wire -- couldn't they have controlled the situation?

A. For this, one must know the Russian sector, Russian conditions. There was no barbed wire nor could any measures have been carried out there. Regarding these special conditions, it seems to me that the Wehrmacht leadership was forced to issue such strict directives or warnings to the population because this large Russian sector could not be manned with soldiers at each little corner.

Q. Then is was expedient to control the situation by shooting people when they had done anything against the orders of the Wehrmacht or the Einsatzgruppen, is that correct?

A. If special cases were involved, yes, and if the warning as in conformity with such special cases.

Q. Now, according to this report, it mentions that these same 94 Jews were guilty of spying on the population and had already created a basis for numerous deportations to Siberia. Did these deportations occur under the Russian Government or under German occupation?

A. That was when the Russians were still there, but these people were not arrested and convicted for that reason, but the results established by the staff leader were mentioned in his reports, in order to confirm the thoroughness of his searches and investigations, perhaps it was that he wanted to show me in this connection that the people concerned were perpetrators who would be capable of carrying out such a deed in such times.

THE PRESIDENT: Mr. Walton, I don't draw from this document what seems to be implied in your last ---- I don't gather from this document what seems to be the basis of your entire cross-examination on this particular episode. The report indicates a certain situation in this area, that Jews were interfering with the harvest, that other Jews had apied on the population, that as a result of that there had been deportations to Siberia, then comes this statement, "as a countter-measure, 94 Jews were executed". It doesn't say that these who had been interfering with the harvest and those who have been saying on the population were executed. It indicates that 94 Jews were seized and executed in the nature of a hostage business.

MR. WALTON: I am coming to that, sir. He testified, however, that through investigations this Teilkommandofuehrer had determined that 94 Jews were guilty of these two offenses.

THE PRESIDENT: But the report itself says, "as a counter-measure", it doesn't say, "as a result of investigations and as a result of apprehension of certain guilty elements that there were executions".

MR. WALTON: That is right. That is what I want to ask the witness, how does he reconcile his statement that these careful investigations were made over a fortnight by this commando fuehrer and 18 men, and that 94 Jews -- no one else in the population, but 94 Jews -- were found to have either sabotaged the harvest or to have reported these people and had had them sent to Siberia. How does he reconcile these executions with the fact that this was a counter or hostage me asure? Now, I have just come to that, and I wanted to establish the deportation before I ask him that question.

THE PRESIDENT: He has indicated that this report was made up from his own report, so call his attention to that actual language. BY MR. WALTON:

Q. Witness, according to this report which is lifted out of your report, did you state in your report that as a counter-measure 94 Jews were executed?

A. I don't know whether this formulation was contained in it. I only know that important and even supplementing parts in this report are not included this report, and the context is not very clear, as it was clear in the summarized report. I would also like to draw the attention of the Tribunal to the fact that also in the original, that is, in the photostat, that is the original text, the original document from Berlin, the sentences are not complete, that one sentence does not ale sense -- I am just looking for the sentence. The sentence reads, "These Jews had" -- well, this really doesn't make any sence "had supplied documents concerning this agent for the guarding of the population". In the original it says, "These Jaws had supplied documents for these deportations to Siberia via this agent, was the agent for whom" -- this again shows that the report has been made either in a hurry or that it just doesn't actually show the facts. It isn't complete.

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THE PRESIDENT: Read the sentence that follows the word "Siberia".

THE WITNESS: "As counter-measures, 94 Jews were executed".

THE PRESIDENT: There is no trouble about understanding that sentence, is there?

MR. WALTON: No, not at all.

THE WITNESS: This sentence is not in immediate connection with the preceding sentence, and I must point that out. BY MR. WALTON:

Q. I will ask you to state to the Tribunal according to your best recollection and belief, was every one of these 94 Jews guilty of sabotage in that harvest and of having people deported to Siberia or not?

A. Aiding the deportation is only a supporting element. It is mentioned, and I know that it is mentioned in another connection, in the original report. I can only remember the report as given to me by the unit officer. In his report he showed me the circle of perpetrators whom he punished in this way. BY THE PRESIDENT:

Q. Now, Witness, we are getting the Siberian deportation and harvesting business intermingled in a way, but it's not clear why these 94 Jews were executed. Let's put it very directly, why were these 94 Jews executed, what had they done? Let's put that in one sentence.

A. Only because of having taken part in sabotage acts and because they were later convicted.

Q. Yes, They had nothing to do with this Siberian deportation?

A. The punishment did not have anything to do with it BY MR. WALTON:

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Q. Then why does the report state that a number of 94 Jews were executed as a counter-measure, why didn't it say, "The guilty ones were executed"?

A. This must have been contained in the complete report in another context.

Q. Now, Witness, as a matter of fact, isn't the basic reason that these Jews were executed, that they came under the provisions of the fuehrer order?

A. No. The subcommandos were only sent out in order to carry out their measures in connection with the harvest. I am convinced -- I don't want to maintain anything specific because I myself had never visited these villages, and it was never determined whether there were any Jews in these villages other villages where the harvest had been organized there should have been no Jews. In this connection, I would like to emphasize that at that time, that is, until the Reichfuehrer in Nikolajew refused to give consideration to the Wehrmacht in the plains, especially to its needs until then the Hitler order was not generally carried out, and was even suspended.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed, Mr. Walton. BY MR. WALTON: were absent from your kommando because you were in the hospital in Nikolajew, is that correct? absent from kommando because you were in the hospital in Nikolajew, is that correct?

A Not in Nikolajew. I was in the hospital but in Novo-Odessa on the Bug River at the time from the first days of September until about 24 or 25 September.

Q To whom did you relinquish command of your unit when you left? sturmfuehrer Hausmann at the time.

Q That is former SS-Hauptsturmfuehrer Emil Hausmann, is it not?

Q How long did you know Hausmann during his lifetime?

Q Did you know his general reputation for truth or varacity? although I don't like to talk that way about a dead man.

Q No. No. Just a moment. Did you know it? That's all I asked you. him -

THE PRESIDENT: Witness, please answer the question. He merely asked you if you knew him. Now "yes" or "no".

MR. WALTON: I asked him did he know his general reputation for truth or veracity.

THE PRESIDENT: Yes. Did you know what his reputation was for being a truthful person?

THE WITNESS: When the kommando was being set up - not yet, but later on... BY MR. WALTON:

Q Just a moment, witness. Witness, answer the question "yes" or "no", end wait for my next question. You will be given an opportunity.

A May I ask the time you are referring to? time that the kommandos were being set up in 1941, and the next question I ask you I assume that you continued to know him all during the service in the kommando and I assume that you still knew him up to the time of his death. Certainly you knew who he was. My question was did you know his general reputation for truth or veracity since June of 1941. Now I would like for you to answer that question "yes" or "no".

Q Was is good or bad? discuss the duties of a kommando leader with Hausmann?

A What do you mean by Kommando chief? I was kommando leader, and after me Hausmann was in charge of the kommando while I was in the hospital. actual command of the kommando to go to the hospital? did you have any discussion with him concerning the duties of a kommando leader?

Q Hausmann was a member of your kommando, was he not?

Q And what was his usual duty in Einsatzkommando 12? while en route to Roumania I gave him the task of keeping the column together when we marched in close unit.

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But later on, until the end of August, Hausmann was in reserve together with a kommando. The work only started when we came into the Ethnic German territory, and, therefore, the activity extended only to a few days. Apart from that in my personal relationship I had already gained a personal impression.

Q. Now what was his usual function when you reached the territory of the Ethnic Germans? What generally did he do? What duties did he perform in the kommando? the few days which remained for this -- he was the chief of a small detachment which was located in Speyer, as successor of the kommando 10-A which had been there previously. were turning over to him the temporary command?

A I don't quite know whether I discussed reports with him, but I do know that he objected to the manner of reporting, and that during my time in the hospital he used to say bad things about me to the Einsatzgruppe chief behind my back.

Q Isn't it a fact that you showed him one of your reports where a total of three hundred to three hundred fifty executions had been performed by Einsatzkommando 12 in Kantakuchinka, Speyer, Hoffmanstal and NikolaJew?

A No. That is quite impossible because, during that time in particular, not a single man of Einsatzkommando 12 was in Nikolajew, and in the few days in which I was still in charge of the kommando I could not possibly have been in the out-of-the-way places. Such a measure could not have been carried out.

Q I am not speaking of you personally, but weren't units of your command in Kantakuchinka, Speyer and Hoffmanstal? Speyer did not know anything about such executions, you soothed him by telling him that he had eternal conscientiousness, or words to that effect, didn't you?

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A No, that is not at all clear. I can't make sense of that question. That Iremember is after I had handed the kommando over to him -

THE PRESIDENT: I didn't quite catch that phrase, Mr. Walton, eternal conscientiousness?

MR. WALTON: That is the way it is translated, sir. I will make it clear in a minute.

BY MR. WALTON: all, because I did not find it at the usual place. The reason was because the territory was now Roumanian sovereign territory, and all the German offices had withdrawn from this territory beyond the Bug River -

Q Well, witness, we are not interested in this. Just a minute; just a minute.

Q Just a minute. Did you have a conversation with Hausmann concerning executions prior to the time you left the actual command of EinsatzKommando 12?

A No. No.

Q You did not. On this occasion when Hausmann was talking to you about taking over the kommando, didn't you request him to sign a report of executions in Speyer of ninety-one persons which he know the true number to be nineteen, and he flatly refused to sign such a lying report?

A Matters were slightly different. That is just what I was trying to describe. I did not personally hand the kommando over to him. That means I did not travel to him and tell him about it, but I had the order handed over to him in a suitable manner. He now travelled around in the area as the new kommando leader and came to the location in particular where I had been with my unit. The radio equipment which I had there he wanted to take over as kommando leader.

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He had a report with him about shootings of -- I don't know how many -- it might have been nineteen looters. I don't quite remember, and information existed, which had been given by Wehrmacht office with which we were connected, of another location Wosjnesensk on the other bank of the river in German territory, and outside my field of activity where shootings had been carried out by the Secret Field Police, and this made up this difference between nineteen and ninety-one. When Hausmann arrived at this office where I was not present at the moment, the chiefs made up a figure from these two reports, and Hausmann assumed that I had changed his figure nineteen around and made it into ninety-one. Events about which I heard - no matter whether they concerned my unit or other units, - I had to report about; that is what I did. executions at Kanakuchinka when in truth and in fact these executions happened at a place called Wossnesensk?

THE PRESIDENT: Mr. Walton, Dr. Hoffman wishes to object.

MR. WALTON: Yes, Sir.

DR. HOFFMAN: Your honor, I have the impression that the Prosecuter submits documents to the witness which have not been introduced yet. I therefore ask that these documents be shown to him because the Prosecutor is talking about what the witness says about some location, the name of which I did not catch. He has to know the document or else he cannot comment on it. Apart from that I think the document was not Introduced.

MR. WALTON: He was there with Haussmann, Your Honor, I am asking him about events which were in his personal knowledge.

THE PRESIDENT: Yes, Dr. Hoffman. He is not now questioning him on a document. He is questioning him on facts. He asked him whether a certain thing did or did not happen, and the witness, of course, is privileged to answer any way he sees fit. It is likely that later on the cross-examiner may confront him with a document in order to show some contradiction, if there is any contradiction, and then at that time you have the right to demand that the identity of the document is given to the witness and to his Counsel.

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DR. HOFFMAN: Mr. President, may I discuss one question on these cases which will crop up. It is my opinion that the Prosecution has an affidavit of Hausmann. Hausmann was here and committed suicide. In my opinion it is not admissible that such an affidavit should be introduced at this time because I cannot cross-examine that man anymore. A similar decision was reached by President Shake in Court No. VI a few days ago. Added to this is the fact that Hausmann committed suicide so that his character also is doubtful. This affidavit has not been submitted yet, but doubtlessly the Prosecution is asking question out of this affidavit. The position of my client is therefore unfavorable, and I ask you to rule whether questions can be asked from this affidavit or not.

THE PRESIDENT: The cross-examiner can put any question at all which is relevant. He can take it from an affidavit; he can take it from the thin air, so that it doesn't matter that he happens to be looking at an affidavit, if he is. He hasn't yet offered that document in evidence. He can certainly question the witness on any subject whatsoever which is relevant to the case, and it is up to the witness to reply as he sees fit, but we have nothing before us now to rule upon at all. He is conducting a cross examination entirely in accordance with the rules.

MR. WALTON: Your Honor, that question is a little premature now. In just a few minutes the Tribunal will be asked to rule on it. However, I should like for them to hear from the Prosecution, too, at that particular time.

THE PRESIDENT: Yes, surely BY MR. WALTON:

Q If I heard your last answer, I certainly don't remember it now.

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Can you tell the Tribunal your reasons for reporting 150 to 200 executions at Kanakuchinka when in truth and in fact these executions happened at a place called Wossnesensk?

A I do not remember that. I cannot imagine that this was thought to have been changed to another location. In my opinion Hausmann should have known under all circumstances and did know that a shooting -- I don't know how many -- by an outside unit took place in Wossnesensk. Under no circumstances could Hausmann have testified anything else. I simply cannot imagine that. Why he wants to make me responsible for transferring the shooting to another place I simply cannot understand. The only explanation I can find is conditioned by his own personality. weren't they?

A Wossnesensk was not occupied by me. Wossnesensk was on the other side of the Bug River in the German Rear Army territory in an area which was not under my competency and where we were never active, and took place while you were in the hospital, after you came back to take active command again?

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A I didn't get the words, what did you say? Reporting on the time when Hausmann was in charge of the commando was that no reports were made to me at that time. The file of the commando I received, of course, from which I saw the activity of the commando in general. For other reasons I also believe that not all reports were contained in this record, but to talk to Hausmann himself, I was hardly over able to, at least, not to conduct an official transfer because Hausmann was the last man who had to remain in his garrison in Speyer. He was chief of the Executive Service and had to be relieved in October, and he also returned to Berlin. The transfer, sofar as I remember, was never transacted personally with me for lack of time; in any case, I was never able to conduct any detailed discussion about his activity. under your command, you were not friendly towards each other, is that correct?

MR. WALTON: Your Honor, please, at this time the Prosecution offers into evidence Document MI-4147, which, if accepted, will be Prosecution's Exhibit No. 188. This is the affidavit of one Emil Hausmann.

DR. HOFFMANN: I knew it was coming. Your Honor, if I mentioned Tribunal No. 6, before, where that same question arose, it was only because I believed that I wanted to introduce such a case, as it already had been dealt with before. I know, of course, that this Tribunal is not controlled by the rulings of the other Tribunal.

THE PRESIDENT: Was it also a co-defendant in this case, Dr. Hoffmann? Did the affidavit come from a potential co-defendant?

DR. HOFFMANN: No. There it was the question whether the affidavit of a dead person could be introduced. The affiant in this case has died and I cannot cross-examine him, therefore.

THE PRESIDENT: Well, Dr. Hoffmann, we have many affidavits in these trials from people who have since died. The mere fact of death does not vitiate a document. There must be something move than mere death.

DR. HOFFMANN: Yes, that is a fact, but this Hausmann committed suicide, and I think that the fact that he committed suicide after giving an affidavit has thrown doubt upon his character and his credibility.

THE PRESIDENT: Well.

DR. HOFFMANN: So that his testimony because of this suicide seems par ticularly incredible; the fact that somebody commits suicide must have special reasons.

THE PRESIDENT: Well. we have many documents in this case, and other cases, in the War Crimes trials program, which came from individuals who have committed suicide. We have documents signed by Himmler, documents signed by Goebbels, documents signed by Ley, documents by any number of suicides which are in evidence.

DR. HOFFMANN: Yes, Your Honor, but these documents were all introduced while the affiant was still alive, these persons could be crossexamined.

THE PRESIDENT: Himmler?

DR. HOFFMANN: Not Himmler.

THE PRESIDENT: Goebbels?

DR. HOFFMANN: Not Goebbels.

THE PRESIDENT: Ley?

DR. HOFFMANN: No, Your Honor. We have not any affidavit of Himmler. He was already dead when the trial started.

THE PRESIDENT: Yes, but in the IMT there were any number of documents introduced.

DR. HOFFMANN: No, Your Honor. Today we have affidavits of twentyone defendants in the INT who have been executed, but they all could have been cross-examined while they were alive, and these documents because they, too, became official documents, can be introduced, But to introduce new ones now of people who are already dead, Tribunal Six ruled not admissible.

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It is not that all statements and documents become void but these people were all cross-examined at some time, like Hoess, who was also cross-examined by the IMT; these documents can be used, if necessary, but we never had the opportunity to cross-examine Hausmann.

THE PRESIDENT: Mr. Walton.

MR. Walton: Your Honot, please, in the deciding of this question, I concur with the defense counsel, Dr. Hoffmann, that this man in a matter of hours after he gave this affidavit did commit suicide. A strong presumption arises that this affidavit, therefore, is a true statement of a true fact, since he was in his own mind in the presence of death. While I know it is not a dying declaration, it definitely, in view of the circumstances surrounding it, is an affidavit of probative value , and should come under the probative value rule. I might add one thing more, sir, without giving any circumstances in the same document is the conviction on the decision of a murder of an Ethnic German, and in the same document it contains the facts on which I have cross-examined the witness.

DR. HOFFMANN: Your Honor, the fact just mentioned by the Prosecutor here, that Hausmann committed suicide soon after giving the affidavit does not prove that it is the truth. I deny this, the fact that Hausmann committed suicide, because he know he had said an untruth. I think one reason can be considered as well as the other, and to point this out to you again, Your Honor, you mentioned documents concerning Himmler, Ley and so forth. In this sense, as these were documents which were signed by those persons, they were only being discussed because this was only an affidavit.

THE PRESIDENT: Dr. Hoffmann, I can put even a better argument in your favor in this respect; that these papers, or most of them, with the Himmler signatures, that is, Himmler's and Goebbels' signatures, were all perhaps part of official business, and would be introducible in that ground, so you have an argument there that the documents can be distinguished.

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The Tribunal will reserve decision on this point. You may continue with the cross examination and we will render our decision tomorrow morning, as to whether this document should or should not be accepted as an exhibit.

MR. WALTON: In that case, until the Tribunal's decision, I should like to reserve the Exhibit No. 188 for that document.

THE PRESIDENT: Yes, that number will be reserved.

MR. WALTON: And in this connection I assume that the Tribunal through deference of its decision, does not went to see the document at the present.

THE PRESIDENT: No, it is not necessary. We understand the contentions of both sides now.

BY MR. WALTON: page 52 of the English text, and page 58 of the German text, Document No. 3147, Prosecution Exhibit No. 96. This is a report of the activities of Einsatzgruppe-D from 19 August to 15 September 1941.

A 19 August until 15 September, did you say? where it is continued in the first line, saying, "from 19 August until 15 September, 8,890 Jews and Communists were executed." Document you see that sentence? that group can be chargeable to Einsatzcommando XII? Einsatzcommando XII is neither mentioned nor does what happened here have any geographical connection with Einsatzcommando XII, because Einsatzcommando XII was in a different area.

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during this period? have indicated, was at some distance, which I have mentioned before, from the district of Ananjew and also distant from Nikolajew.

Q Had your commando left Tschanamin at this time?

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left Tscharnomin. had not yet left Tscharnomin. All this indicates that there is not connection with my Kommando and cannot be. by Einsatzkommando XII? BY THE PRESIDENT:

Q When did you leave Tscharnomin? took place?

Q How long would it take you to drive 100 to 200 kilometers?

A Well, it all depends on the road conditions in Russia. In this connection I would like to emphasize again that in this territory first Kommando X-A and later Kommando X-3 were stationed.

THE PRESIDENT; Proceed, Mr. Walton.

BY MR. WALTON:

Q All right. I will ask you the same question. It says that the total number which is the total to this particular date of the report, is 12,315 executions. During this time, did Einsatzkommando XII perform any executions from 21 June up until 15 September 1141? time from 10 to 25 or 23, the shooting in Babtshinzy took place and then later on several shootings took place. For example, the one by Hausmann at the time when he was in charge of the Kommando. Whether these figures are contained here I cannot judge. In any case these figures and the places named in this report are not at all connected with my Einsatzkommado and it is not named but certificates and affidavits have already proved that Einsatzkommado X-A and B were stationed there.

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were performed in the Babtschinzy area and the executions which were performed at the time when Hausmann was in temporary command were the only executions performed by Einsatzkommado XII? I cannot remember exactly because from 15, to, 25 August onwards the Kommando was on route and small units were dispersed throughout all localities. This territory where the Kommando XII moved was declared Rumanian sovereign territory; certain shootings occurred but didn't quite know. Our own and other people's reports mentioned this. I already said, after looking at the final records of the Kommando I read it. Of course, shootings were carried out, in particular in this whole territory and shootings were reported about on the principle that not only our own shootings but also shootings by the others were reported later on including events which had been in other territories. awarded to Rumania and go into Russian territory which constituted the rear Away area? October.

Q 1941? distributing your whole Kommando in different localities, 4, 5, 8 or 10 men in different villages or towns?

A No. My explanation just showed the opposite. The following occurred. The Kommando was halved and with the half which I retained I want to the territory around Mikailowka. From that time onwards until Federowka I was in charge of the entire Kommando, that is the half under my command.

The other part which had been separated, those who had horses, went via Nikopol to meet me again, in Mikailowka.

Q I remember that explanation. Let's come to this point. Now the half of the Kommando with you, how long from the time that the Kommando split until the entire Kommando was more or less under your command again, how much time elapsed from the time it split in half until it came back together again?

A It was combined again a few days before I was released. Weather conditions improved, therefore, the Kommando, that is the other half with Dr. Bolte could come up from Dnjepr and come back to me, five hundred kilometers back. forces under your command, is that correct? you did they round up any Jews? German territory?

A I said already I was given an order to meet the 17th Army. That was the first time that I, similarly to the other Kommandos, was going to be attached to an Army unit. This immediate march was interrupted by a special task, because Partisans had been reported in the Dnjepr area and we had to fight them as they endangered the supply line. Incidents occurred of which I could not speak in detail yesterday or Thursday, namely that the other half who had the horses in Nikopol were stopped by the local Wehrmacht officers and had to fight together with other Wehrmacht units against Partisans in their hide-outs in the Dnjepr area. The other half with whom I was, about 6 or 8 November, arrived in Mirailowka with me. I myself at the other side made reconnaissance and combat operations; this was the only time I interrupted the march before I finally reached the 17th Army at last.

Kommando never had to carry out the Fuehrer order at all?

A Mr. Prosecutor, This is my personal opinion. There are several bases, the most important of them....

THE PRESIDENT: Mr. Walton, now please see that you get direct answers. We don't want a long discussion on philosophy. Now, put a specific question and see that you get a specific answer. days of

October until some time in March your Kommando never had to carry out the Fuehrer order for the execution of Jews at all? same period of time when it was split off from the main body?

A I don't know. I did not hear what this Kommando did. It reported immediately to the group and before Bolte joined my in Fedorowka a wireless message was in hand already for a few days in which Bolte had been instructed to go to Simferopol Immediately to the group. But I believe that because of the situation in the territory which was similar to mine he would hardly have had the opportunity to apply the Fuehrer order.

Q All right, witness. Let's travel on to the crossing of the Jewish transport which is Document Book II-B, page 7 of the English, page 5 of the German, Document no-2837, Prosecution Exhibit 58. is found on page 11 of the English text and page 29 of the original. German? that what you mean?

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Several pages later on, it says "Einsatzgruppe D - location Ananjew." incident which is referred to in the affidavit of your co-defendant Felix Ruehl which is in Document Book III-B page 76 of the English, page 121 of the German, and is Document No-4149, Prosecution Exhibit 169. Your Honors, I especially refer in that document to paragraph 3. Now the question I would like to ask you after you have read paragraph 3 of Ruehl's affidavit is this one and the same incident?

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Court No. II, Case No. IX.

A. I would like to comment on this fact. It is not quite the same event. The affidavit of the co-defendant, Ruehl, refers, and can only refer to a small excerpt of what is mentioned in the entire report of the Document 2837.

Q. Well, what I mean is, it is the same transport of Jews, is it not?

A. I wouldn't like to assume that; it could not be the same transport. In Ruehl's affidavit there is an inconsistency it does not agree with this report, and my opinion, and also the opinion of Herr Ohlendorf.

Q. Let me ask you this, did you receive another transport of Jews from the Co-defendant Ruehl; were there two transports of Jews that you handled there near the Dnjestr River?

A. What we brought back, that is where Ruehl was the messenger was an order to the subkommando leader Mogilev, which he had to hand over, which said that the Jews were to be moved fro Mogilev, and on the other side, the part which I received as an order, that the Jews which had arrived and collected in Jampol should be brought across the bridge, that is, to make it possible for the Rumanians, that they be brought back to the other territory again. That is the same event. But these two reports contained in document , No. 2837, I cannot identify as the same.

Q. All right, Now answer the question, did you ever receive any Jewish transport of Rumanian Jews from the Co-defendant Ruehl?

A. I assume, and I cannot assume anything else, that they were those Jews who had come from Mogilev and were to be moved to Jampol, and were not taken over by Reuhl personally at all. As far as

I know he had nothing to do with it, but the subkommando of the Commando 10-B in Mogilev moved them and crossed over quite alone without any guards.

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Q. Crossed over into your territory, the EinsatzKommando 12 territory?

A. Well, to Jampol, where I found them.

Q. Well, this is part of the same Rumanian Jewish transport?

A. Ruehl's order referred to the same as my order. Ruehl's part was the first part and mine was the last one.

Q. Yes, it was the same Rumanian Jews that had been expelled into German territory?

A. I assume so. I cannot imagine anything else, but I cannot say, of course. What happened in Mogilev and what -

Q. I am not asking you what happened in Mogilev. I am asking you if you got from Herr Ruehl or Lippert a part of the Jews which you took over to Rumanian territory?

A. I neither talked to Lippert nor Ruehl about this, nor did I take anything over from them, but the Jews were moved, and I found them at Jampol. Probably they are the same ones. I did not ask them because there were no guards, no soldiers nor any Security Police with them. I did ask them where they came from. They said from Jampol, I mean from Mogilev.

Q. All right, what is your estimate of the number of Jews in this transport?

A. I estimated this figure, but I am not quite sure how many there were. I must say that, under the circumstances as they were at the tiie, I never tried to find out or to estimate how many there were, but I hope that the witness who has been found at the commando of the bridge will make a statement concerning this. As far as I know there were about 6,000 to 7,000. I don't want to tie myself down. That is not possible.

Q. About how many of this number were women and children that you saw there?

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A. There were -- I can't estimate this either.

Q. There were some?

A. In any case there were women and children among them.

Q. Now, do you know why these Jews were expelled from their homeland by the Rumanians?

A. I have no idea. I assume that the Rumanians wanted to get rid of them and send them into the German Territory so that we would have to shoot them, and we would have the trouble of shooting them. We didn't want to do that. We didn't want to do the work for Rumanians, and we never did, nor at all other places where something similar happened. We refused it, and, therefore, we sent them back.

Q. You testified here that the Rumanians attempted to damaged the bridge across the Dnjestr River in order to prevent the return of these Jews, did you not?

A.. I said that I remember vaguely that the events in Jampol were such that because a few boards had been taken out it was quite impossible to take them across the bridge in Mogilev. I did not see this myself. I only remember it as as possible memory.

Q. Did you assume when you found out about the damage to this bridge that the Rumanians wanted to prevent the return of these Jews to Rumanian territory?

A. Of course, certainly.

Q. All right.

A. But the following played a part here. I could be expected, or it had already been determined, in view of the attitude of the Rumanians, that between the German and the Rumanian sovereign territory transfer of persons, of civilian persons, should not take place. I believe that hose measures which the Rumanians took, namely to sent the Jews across to German territory, were used as causes by the German Wehrmacht to tell the Rumanians not to do this in the future, but I assume -- although I am not certain -- that the Rumanians received instructions and they were told at last that conditions were to be the same as they had been before.

Q. All right. You said that you talked to the Jews that were camped around Jampol through interpreters and you could make yourself understood through similiarity of the language to German?

A. Yes.

Q. Did the Jews generally know that they were not wanted by the Rumanians?

A. No, I don't think so. They had to assume that the whole matter had been settled. They were very pleased that they were able to return to Rumania, and I tried to express this.

Q. Did they know any reason why they had been brought over into German territory; did the Jews themselves give you any reason?

A. That they wanted to return; they wanted to go home.

Q. No. When you went into the Jewish encampment and spoke to them, did you ask them why they were there in the first place?

A. Yes.

Q. And did you further ask them for a reason for their being expelled from Bukovina or wherever they came from?

A. I did not ask them about that. I only asked where they came from, that is, that they came from Mogilev, that they were the ones whom I had to accept and to lead across the bridge.

Q. Well, weren't they fully aware that the Rumanian authorities wanted to get rid of them, were they not, the Jews that you talked to?

A. Yes, I knew that before, but I also knew -

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Q. No, not you, the Jews were fully aware that the Rumanian authorities wanted to get rid of the, were they not?

A. They knew, of course they had heard it, that they had been expelled.

Q. That is right. Now -

A. May I add this? I heard from German authorities that I had to bring them back to Rumanian territory....

THE PRESIDENT: Witness-

Q. (By Mr. Walton) Witness, I didn't ask you about that. I just wanted an answer to my question.

A. I believe it is incomplete....

Q. These Jews knew; these Jews knew that they were expelled or were unwanted in Rumanian territory, and you answered that yes. Now, will you explain to the Tribunal why, since these Jews knew they were not wanted in Rumanian Territory, why they were so anxious to go back into Rumanian Territory under your leadership?

A. They were not anxious. On the contrary they were glad that they were able to return home, and there I want to add that they were able to believe, in spite of being expelled before, because of the fact that we took care of them, that the matter had been settled with the Rumanian authorities and they were able to return home.

THE PRESIDENT: Do you suppose that those Jews were eager to get back into Rumania because they had learned of the Fuehrer Order?

THE WITNESS: I don't know, but they wanted to return home.

MR. WALTON: Your Honor--

THE WITNESS: I don't think that they knew anything about the Fuehrer Order and that they had an opportunity to hear about the Fuerher Order. I think that is quite impossible.

THE PRESIDENT: Well, Witness, I have here in my notes 8 Dec 47_A_BJ_24_6_Hoxsie_(Juelich) that you said the Jews didn't know that the Rumanians didn't want them.

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Now, did you say that?

THE WITNESS: May I have that again, please?

THE PRESIDENT: That the Jews did not know that the Rumanians did not want them.

THE WITNESS: of course, that is right. Certainly, that is right, but they still had the hope and the expectation, since German offices took care of them, that their stay in their home had been settled.

THE PRESIDENT: Just a moment. I don't know whether you understood the question or not. You follow up with something that doesn't agree with you previous answer.

DR. HOFFMANN: The translation was incorrect, your Honor. You asked that the Jews did not know that the Rumanians did not want them, Is that what you said? Did they know that they had not wanted them?

THE PRESIDENT: That is right, that the Jews did not know that the Rumanians disliked them?

THE WITNESS: Did not like them? At what time? It depends. In connection-

THE PRESIDENT: Just a moment. You said that in your conversation with the Jews you learned that they were ignorant of the fact that the Rumanians did not want them.

THE WITNESS: Yes, that is right.

THE PRESIDENT: That is correct?

THE WITNESS: That is right.

THE PRESIDENT: Very well. Then Mr. Walton has asked you, and we would like to put it to you again, how could the Jews not know that the Rumanians didn't want them when the Rumanians had expelled them? If someone kicks you out of his house, you have reason to assume that they don't want you.

THE WITNESS: Right.

THE PRESIDENT: All right. How do you explain that?

THE WITNESS: I thought I had already explained in my previous reply that the Rumanian Jews knew that they had been expelled. At that time the Rumanians did not like them, out in the meantime we had taken care of them. They believed, therefore, that an agreement had been made between German and Rumanian offices, Wehrmacht agencies and others, and not the matter had been settled so that they could go back, that the reasons for expelling them had been eliminated.

THE PRESIDENT: I see.

MR. WALTON: Your Honor, in view of the lateness of the hour, I would like to go into this question in the morning from another angle. I think it would be a good place to stop.

THE PRESIDENT: Very well. The Tribunal will adjourn until tomorrow morning at nine-thirty.

(The Tribunal adjourned until 9 December 1947, at 0930 hours.)

Otto Ohlendorf, et al., defendants, sitting at Nuernberg, Germany, on 9 December 1947, 0930-1630.

Justice

THE MARSHAL; The Honorable, the Judges of Military Tribunal II. Tribunal.

DR. HOFFMANN: Your Honor, the Tribunal wanted to make a ruling today about the admissibility of an affidavit. I have asked my colleague, Dr. Gawlik, whether he would support me in this legal explanation.

THE PRESIDENT: Listen, Dr. Hoffmann, I think that you have a stronger support with all the respect we have for Dr. Gawlik. You have the Tribunal's support.

DR. HOFFMANN: Only because your Honor once described my colleague, Dr. Gawlik, as a professor. if that pleases the Tribunal.

THE PRESIDENT: Mr. Walton, do you have anything to add to what you stated yesterday with regard to the presentation of this affidavit prepared by someone now deceased end, thereby, depriving the person against whom it is to be used of the right of cross examination which is inherent in Anglo American procedure and in every system of justice.

Mr. WALTON: Yes, your Honor, I have a motion, or I am prepared to argue from the basis of twelve points on this motion as a matter of precedence at the Nuernberg Tribunals already set up, particularly in four cases - the medical case, the Milch case, the Justices case, and the Pohl case.

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THE PRESIDENT: Let us try, Mr. Walton, to have precise precedence, and not general precedence.

Mr. WALTON: I can give them to you, sir. It is a little long.

THE PRESIDENT: What I mean is that we must have a duplication of facts, a co-defendant .....

MR. WALTON: Yes. I am prepared, if the Tribunal desires to hear me, I can go into that argument at the present time. was in the medical case and it involved document number NI-2057. It was the affidavit of Dr. Erwin Ding alias Dr. Erwin Schueler who committed suicide after giving the affidavit which is exactly the case in point here. This affidavit was admitted over objection and after argument as Prosecution Exhibit 283, the transcript of Case I for 6 January 1947, page 1093. The argument for the defense was, just as in this case, a denial of the alleged right of cross examination. The Tribunal referred to this affidavit, or to facts recited in the affidavit, in its decision which is found in the transcript of the case at page 11465 and page 11517. The Ding precedent has been followed ever since in Nuernberg until the ruling of the Farben Tribunal, and I might add, in that citation Mr. Justice Herbert dissented so it was not an unanimous decision. remember, document 3721-PS, Exhibit 41-A, an interrogation of Fritz Sauckel, who was executed as a major war criminal, was objected to by the defense, transcript of Case II 6 January 1947, pages 134 to 135. The Tribunal deferred ruling until it could confer with Tribunal I on the Ding precedent.

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On 7 January 1947 Tribunal II admitted the affidavit,according to the transcript of the record, page 194, and stated, and I quote: "The Court has determined that under the Charter and Ordinance this exhibit is admissible. Its weight, however, in view of the peculiar circumstances attending it, is of course still for the Tribunal to determine. This ruling is made after a conference with the Judges of Tribunal I who had a similar problem presented and which made the same ruling as this Tribunal now makes." who committed suicide after having been sentenced to death by the IMT, was also admitted over objection as Prosecution Exhibit 311, transcript of said Case II 8 January 1947, page 280. The Tribunal again made appropriate references to the Charter of the IMT and Ordinance No. 7. Case III or the Justice case. Document NG-401, an affidavit of Karl Foch, deceased at the time of the offer, was admitted over defense's objection as Prosecution Exhibit 147. The Tribunal noted that "those portions which appear to be experiences of the witness, that is the affiant, will be considered." That quotation is taken from the transcript of Case III, 25 March 1947, pages 976 and 977. in Nuernberg was in Case IV, the Pohl case. This was document 3868-PS, an affidavit of Rudolf Hoess who at that time was being tried in Poland and could not be produced for cross examination. This document was admitted over defense's objection as Prosecution Exhibit 51. Judge Thoms as President of the Tribunal ruled "that the affiant could not be produced.

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Therefore, the case is as much in point as where the affiant cannot be produced because he is dead. That is taken from the transcript of the Pohl case, pages 129 to 131. later admitted without objection as Prosecution Exhibit 297, transcript of Case IV, 17 April 1947, pages 571 to 575. In its judgment this Tribunal stated that it had received proof from Rudolf Hoess, transcript of Case IV, 3 November 1947, page 8069. taking up the Model Code of Evidence of the American Law Institute. I can go even further and take up precedence of the German order of 1870 of the Reich Gesetzblatt with quotations from that, if the Tribunal would like to hear it. Also, I would like, if they wish to hear further, to argue from both Control Council Law No. 10 and Ordinance 7. can go further into it if desired.

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THE PRESIDENT: Mr. Walton, first, we are very grateful for the exhaustive manner in which you have treated this and apparently you have gone even further as you indicate. We would like to avail ourselves of what you have prepared, perhaps in the form of a brief. Just in passing, because this will have nothing to do with our decision on the matter - the Saukel, Goering, and Hoess affidavits scarcely seem to be exact duplicates of the situation before us because in each of those instances those affiants were subjected to cross examination. Saukel and Goering, as everyone knows, were defendants in a trial and most ample opportunity was given to everybody to cross examine them on the subject of the affidavit. And, in the Hoess case the same thing is true because he later was tried end he was under oath and the opportunity for cross examination was there. Foch one to which you refer.

MR. WALTON: Well, if your Honors please, I would like for the Tribunal to keep in mind that at the time Saukel and Goering, et al, were questioned on these particular matters there was no defendant in the case in which they were finally introduced. Therefore, there was no defense counsel to cross examine them in an interrogation.

THE PRESIDENT: That is true but none the less they were in the witness box end everything that they hid written and said was open to the world for inquiry, scrutiny, and interrogation. Whereas in this case the man makes up in affidavit and then seals the door for ever for any cross examination or inquiry on any subjects discussed by leaving the world. So, it is slightly different. However, we feel under all circumstances it is of great importance, Mr. Walton, and what we will do is to refuse the admittance of the affidavit now but when it comes to rebuttal, if you still desire to present it, you may present it for the consideration of the Tribunal. In the meantime you may prepare a brief on this subject because you have other material and if you submit it to the Tribunal we will be happy to receive it.

The same thing is true with the defense. Dr. Gawlik, anything in the way of legal precedent you have can be submitted to Dr. Hoffmann and we would be happy to receive it and I think both sides should exchange briefs. In that way when it comes up in rebuttal, and that would be the proper time for the presentation of the document anyway, and at that time exclusively the subject can be treated and the decision rendered in accordance with the facts and in accordance with what the Tribunal deems justice in the matter.

DR. HOFFMANN: Your Honor, I only wanted to add for interest the fact that Dr. Gawlik who was in the doctor's proceedings as a defense counsel when the Ding diary was introduced based his appeal on - - -

THE PRESIDENT: There is one word that we don't have.

DR. HOFFMANN: In the doctor's trial Dr. Gawlik made a habeas corpus and sent it to the Supreme Court in Washington and he based it on the fact that the Tribunal I introduced this Ding affidavit.

THE PRESIDENT: Yes, but what did the Supreme Court do? the briefs. You might not used to wait until the actual moment of rebuttal, Mr. Walton, so that we can prepare and hand down a written opinion on this point for it is certainly important and might be helpful in other cases.

MR. WALTON: Very good, sir. I shell be prepared to proceed with my brief as soon as the record of today's proceedings are out so I can cite the Tribunal's deferred ruling.

THE PRESIDENT: It can be done in that why and Dr. HOffmann when you get Mr. Walton's brief I should be happy if you would immediately prepare your reply brief.

CROSS EXAMINATION(continued) BY MR. WALTON:

Q Witness, at the close of yesterday's session we were discussing that portion of document NO-2837 - I am sorry, your Honors, Document Book II-B, page 7 in the English - we were referring, your Honors, to page 11 of the English text which is Document NO-2837 and is Prosecution Exhibit 58.

This again is the crossing of the Jews over the Dnjestr River. Now, witness, if these Jews were aware, as from what you have said, that Roumanian authorities wanted to get rid of them why were they so anxious to return to Roumanian territory where they could only expect further difficulties and even danger to life itself?

A The Roumanians wanted to go home again. What happened to them over there and what reasons they had to come across I never experienced. These were not organized measures but obviously excesses and had occurred in Roumanian territories. seven thousand Jews in this unguarded camp, is that correct? stay in Jampol or refused to return to Roumanian territories?

A None of them. They all desired to return home. once you consigned them to the administration of the Roumanians? once you consigned them to the administration of the Roumanian authorities? nothing happened to the Jews but I saw how they walked up the road between the few houses on the other bank of the river, toward their home country. The Roumanian soldiers who were on the other side of the bridge let the people pass. That is all I saw. And because my mission was thus finished I immediately, that is, the following morning because it became dark so early, I returned back to Tscharnamin in order to report to the chief of the Einsatzgruppen that my mission had been carried out according to orders.

what the German policy was toward all Jews and particularly toward Russian Jews?

A I cannot tell you that. I did not talk to them.

Q Well, wouldn't your Allied Roumanians be in agreement with such a policy when they expelled Jews from newly conquered territories?

A I cannot say anything about that. The Jewish question at the time was not an European question. That can be shown by facts which have become known now. wasn't it. the campaign, that is, in order to secure the territory and the supply lines in combat with the Red Army, that is with Bolchevism. There was one special order which we got and which only referred to this and, as we know now, was not at all connected with all the measures which Eichmann had to carry out at a later time. Eichmann himself had nothing at all to do with Russia but this was an order which we were given under the slogan of "Barbarossa" in the entire Russian campaign. the Roumanians, that other disposition of this sect of people would have to be made later rather than driving them into, as the report of the incident so clearly put it, and I quote "the territory within the sphere of German influence", did it not?

A. I did not quite understand the question. Your words were fairly clear, but I did not quite get the interpreter. Will you please repeat the question?

Q. I will state the question a little differently. When you took these Jews back and turned them over to the Rumanian allies, did you do this for the purpose of showing these Rumanian allies that other disposition would have to be made of Jews than sending them into territory under German domination or under German occupation and control? Is that why you sent them back to Rumania?

A. No, I sent them back, to say it quite simply, just because I got the order. I did not think about it any further because it was not my own decision. This question would be justified if I had known the entire background and had therefore decided on such a measure. I had not got this problem previously. I only happened to hear about it, but I didn't know the extent of it, because I had not been in that territory otherwise. But I was called from Tscharnomin, which was far away, only to carry out this special mission on this bridge. Therefore, I cannot tell you anything about this further.

Q. Well, can you tell the Tribunal the reason why this order was issued by your chief, General Ohlendorf?

A. Why the Einsatzgruppe chief-did this, and what motives he had, I don't know . In any case he did not want to put up with it that Jews should be sent, or rather helpless people should be sent to the German territory.

Q. Was it not for the reason that it was his viewpoint that it was not the task of Einsatzgruppe D but solely the task of the Rumanians to dispose of these Jews, was not that the reason why he gave the order?

A. Certainly not. I am convinced that Herr Ohlendorf would also have sent back other circles of persons who would have been sent to the territory and would have been a burden to us, because I heard that the Army strictly prohibited any civilian traffic -- that is the passing of any number or groups of persons from one bank of the river to the other bank, from one territory to another territory was prohibited.

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Q. You have stated that the Fuehrer Order did not apply to these Jews as they were Rumanian citizens, have you not?

A. Yes, that was an assumption. I did not check up on that. I only wanted to say people who came from Rumanian sovereign territory don't concern us.

Q. Were these Jews less dangerous to the security of the German Armed Forces simply because they were not Soviet citizens.

A. That question does not play a part here at all. What mattered here there were no houses to accommodate large numbers of people who had been sent over to our territory, so that we could not help them under those circumstances. That is the only reason, and it is a burden, if you cannot take care of them and not house them -- We had no organization at the time like the U.N. who looked after these people. We had too few soldiers, and the rear Army territory had to remain in security and in order without too much effort, without too many people.

Q. All right, Witness, now you have explained the answer, let's give the answer to the same question. In your opinion, as a commando leader, were these Jews less dangerous to the security of the German Armed Forces simply because they were not Soviet citizens, or were they as dangerous as Soviet citizens?

A. At the moment I nevered considered this as a commando leader, but I simply had to carry out an order of the Einsatzgruppe Chief, which I had to do in respect to security. How much it would endanger the security I never thought about. Apart from that you must consider the fact that I had been in Russia only for a few weeks and knew nothing about this kind of thing.

Q. All right. Now that you think back on it and are able to judge now, from the facts you observed then, were these Jews less dangerous to the security of the German Armed Forces just because they were not Soviet citizens?

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A. Even now I cannot decide upon that question. Wherever an emergency arises -

Q. All right. If you cannot decide upon it, why didn't you answer the question the first time I asked it by saying, "I don't know"? There is no need to go into a long explanation. Simply answer the question that is put to you. Witness, is it not a fact that in all territories which were under the control and influence of Germans the non-Jewish population was encouraged to turn over Jews to the Security Police for disposition?

A. I did not say anything of the kind.

Q. All right. From what you heard then, isn't it a fact that they were encouraged to turn over Jews to the Security Police for disposition?

A. I did not hear anything about that either.

Q. Well, let me call your attention to Document Book II-D, Page 20 of the English, Page 25 of the German. This is Document 2828, Prosecution's Exhibit 86. Now, the last paragraph of this quarter of this excerpt contains these words, "The population of the Crimea," and for a time your commando was in the Crimea, was it not?

A. No, Mr. Prosecutor, a stronger subkommando of mine was sent to the Crimea by me, during the first days of January, upon order of the Einsatzgruppe Chief.

Q. All right.

A. In some of the documents where you can see it for yourself, it says expressly that this subkommando was subordinated to a commando active in the Crimea. This subkommando which might have become active in the Crimea here was not subordinate to me. I could not give them orders, and for reasons of distance I could not have control over them at all.

Q. Now, let me ask you, was a formal order given you to send part of your commando to the Crimea and to put that part of your commando under the command of some other person?

A. The order was: so many men, N.C.O.'s and enlisted men - not even and officer went along -- are to be moved to Simferopol, who have to report to the Einsatzgruppe chief or report to some definite place. That is all I know. I never saw the men again. Please understand, this was a transfer of men to another unit.

Q. That is what I wanted to know, was it a formal transfer by order? You have answered the question. Let's come back to the other question now. This document says that the population of the Crimea is anti-Jewish and in some cases spontaneously bring Jews to the commandos to be liquidated. Did this ever happen to you in the territory which you occupied?

A. No, I never experienced that.

Q. All right. Let's come back once more to this document 2837 which we were discussing. Since the Rumanians knew the German policy to liquidate Eastern Jewry, were they not, as any good ally would, cooperating by seeing that all Jewry, including their own, were removed as a security threat by sending them to you for disposition?

A. Well, I did not catch all the question.

Q. Since the Rumanians knew about the German policy to liquidate Eastern Jewry, were they not, as any good ally would do, cooperating by seeing that all Jewry, including their own, were removed as a security threat by sending them to you for disposition, or to the territory occupied by the Germans?

A. No, I cannot pass a judgment on this. What I heard was only the following. Insome individual locations in the Rumanian territories excesses occurred as a result of which the people came over here. What the Rumanians thought as our allies, I don't know. I simply cannot tell you that. I never considered that problem.

Q. Well, do you agree with this report, the Rumanians had driven thousands of selected persons unfit for labor from Bessarabia and Bukovania into the German sphere of interest. Is that correct, about this incident?

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A. This is not quite in line with my experiences. The large majority of those whom I led back across the bridge from that camp, were healthy strong men.They were mixed, like any other population, not selected men for any particular reason. At least I did not notice that.

Q. Let me ask you this, Witness, do you think these Jews would have wandered into the German territory if they hadn't been forced there by the Rumanians?

A. Certainly. That is quite possible.

Q. So they were driven into the German territory?

A. Well, I read it in the reports. I did not experience it. I do not know the events as they happened there. I only noticed them from the report here.

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THE PRESIDENT: Just a moment, we have two answers from the witness on this subject, and let's clear it up at once. BY THE PRESIDENT: volition, or were they driven over?

Q Well, you talked with them, What did they tell you?

A They did not talk about their former troubles and worries. They just wanted to go home. with these Jews, that you took them across the river and yet did not find out how they happened to be on your side of the river, whether they were driven over or came over voluntarily. That kind of statement is absolutely contrary to all human observation. The most natural thing in the world would be to ascertain why and how they not over there. Now, you answer that question. You have answered it two ways. How answer that question and tell us whether they came over voluntarily or were driven over.

Q Then they were driven over? case they were led across.

Q Well, were they compelled to cross?

CROSS-EXAMINATION (Continued) BY MR. WALTON: into German territory?

A I should think Rumanian soldiers. I don't know the previous events in that territory.

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Q I know you weren't in the territory but you at least inquired about these facts through people, through the interpreter, for you gave in direct examination full details of the event. Now, as a matter of fact, isn't it reasonable to suppose that your Rumanian allies sent you these Jews for disposition? reason. I don't know. Excesses occurred in some places.

Q You testified on this several times. We have gone further, since you are very reluctant to give all the facts of the incident. Did you personally negotiate with the Rumanian troop commander for the passage of these Jews over the Dnjestr River bridge?

Q Who negotiated with this officer? across the bridge not knowing what kind of reception they would set on the other side?

A Well, I saw the soldiers, and I just led then across. The soldiers simply let them loose on the other side. I told these soldiers: here comes a convoy. Then we led them across and the soldiers stood by and the people walked along the road, away from the bridge, somewhere into the country.

Q You never conferred with anyone; you simply took these Jews across that bridge and said, "Now no on back to your homes." Is that what was done?

A Well, I didn't know that any measures had been taken. I just assumed that they would find their way home, wherever they were to go.

Q Now, this report was written in Berlin, was it not? report?

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A I don't know. They could have come from various places. Some of it might have come from Einsatzgruppe D, from Einsatzgruppe C, or, and this seems the most probable, that can have come from the Higher SS and police Leader who, together with a few units, according to the documents, was in this territory. facts from Einsatzgruppe C and put them under a section of their report which said "Einsatzgruppe D"? Einsatzgruppe D, yes, I think so. They have to accommodate it somewhere. Einsatzgruppe D headquarters directly?

Q Yes, and where did Einsatzgruppe D headquarters get those facts?

A What facts they used for this, I am afraid I can't tell you.

Q I didn't ask you that; I didn't ask you that. When activities of Einsatzkommando 12 were reported by Einsatzgruppe D, where did they get the facts about Einsatzkommando 12? group.

Q That is right. So then -gruppe D?

A I cannot tell you. I don't know how the report was made up. I consider this report, according to what I heard in the area of Einsatzgruppe D, I consider this quite improbable. reports, changing the figures from 19 murdered Jews to 91 murdered Jews, isn't it reasonable for us to suppose that this is a report of yours based on a hyperactive imagination which has improved since you have been in this courtroom?

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nor the other fact is right either. I described how it happened with Hausmann. This was not exaggeration, and another figure was added, and here I went to emphasize again, I did not give a written report which dealt with this subject at all, but merely reported verbally very briefly, "I have carried out the mission, and thanks to the support of the German bridge commander, the matter went very easily and very quickly." That is all I had to do with this.

Q All right, Let's so to Document Book III-D again, page 72 of the English, page 118 of the German, which is Document NOKW-634, Prosecution's Exhibit 168. Now, on page 74 of the English text, your Honors, and on page 119 of the German text, this gives a detailed account of the capture and subsequent interrogation of a Russian paratrooper by the name of - I will have to swell it, I can't pronounce it - K-r-a-p-i-w-n-i-k-o-w. Was this report based on your report of the capture of this man?

A No, Mr. Prosecutor. This report occurred or is based on a report by the subkommando leader who was near Grigojevka, that is New Anantal, and was doing ethnic German work. command, was he not?

A He was under Hausmann's command because I said on 24 -of your command, he was subordinate to you. Now, this man that wrote this original report was a member of Einsatzkommando 12, was he not?

A Well, Mr. Prosecutor, you draw wrong conclusions. When I was in the hospital the Einsatzgruppe Chief told me to transfer the command to somebody else. Then this man is the chief -

Q That is what I want to know. Why didn't you state you were in the hospital and temporarily relieved of command when this incident occurred?

A We have talked about that in detail. It seemed too boring to me to repeat that again.

Q Just a minute, just a minute. Witness, it makes no difference how many times you have talked about it in detail. You will now talk about it to me, and I shall conduct the cross-examination. Let's understand each-other. Now, answer this question. Since the man was caught behind the German lines in civilian clothes and armed, under the rules of warfare he had a right to be executed, or the Germans had the right of executing this man, did they not?

A Not at all. These parachutists are not to be mixed up with any agents, but they were soldiers, and if a soldier tries here to break through to his lines, well, he is lucky if he manages it. If he doesn't, he is treated like a prisoner, provided that the interrogation gives a satisfactory result. And he was treated like a prisoner, and never did the sub-kommando leader tell me that even one man was shot, and the Detachment Commander Beck never said one word that one of those men was ever shot. all eleven of these parachutists were made prisoners of war and were never executed?

A These POW's as far as I can judge, and as long as I was there, were never shot. They were in the custody of the Wehrmacht, and it was one of my official actions to look after this dispersed commando, how they were doing, and when I arrived there three or four days later, I found the conditions as I have described them here. I could not object to the attitude, and neither the Wehrmacht nor anyone ever told me that they were shot, but I still found prisoners, quite a number, who were being interrogated.

Q All right. Were you in command of Einsatzkommando 12 during January, 1942?

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A In January, '42 , yes -

Q You were in active command of it, or at least half of it? Crimea. This was the second lot that went to the Crimea.

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in the Crimea?

A I personally, Yes. Only I alone with my driver made an official trip in January to the Crimea. When I received the radio message to take care of winter supplies which had arrived late and to collect them with a recently consigned truck and I had to abandon this truck in which I travelled, after a short while.... is that what you said? Yes.

Q Well, that is what I wanted to know. Now, you have stated that in January 1942 your activity was hampered because your commando was split and because of extreme cold weather, have you not? 121 of the German, Document No. 3401, which is Prosecution's Exhibit 52. Now, I would like for you to turn to page 12 of the original, at the latter part of the document, and on page 115, Your Honors. This is a report of Einsatzgruppe D. report and indicate to me when you have finished reading it. Teilkommandos for the purpose of combing out the northern Crimea. What combing operation did you order your men to perform in northern Crimea?

A Mr. Prosecutor, I believe the sense is quite different to how you are trying to interpret it. Einsatzkommando 12 is never mentioned here. I believe the paragraph is so short that I would like to read it to understand it better. "In the time of reporting, Sonderkommando 10 b was in Feodosia, and they were able to resume its security police operations after the Russians were driven out.

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On 30 January the Sonderkommando could, after the Russian beachhead in Sudak had been eliminated, establish again a Teilkommando in Sudak. Besides, two further Teilkommandos were established with the assistance of men of the Einsatzkommando 12 for the purpose of combing out the northern Crimea.

A that is quite clear. Now, two further subcommandos--and this refers to 10 b--two further subcommandos of 10 b were assigned with the assistance of my man. If where were two subcommandos of 12, then all men of 12 were there, one would not have to add any more men from 12 to this. All this would be subcommandos of 12 then, but quite obviously these are two subcommandos of 10 b, where the men mentioned here, and this quite agrees with the time... The report in my opinion originates from the end of January or about that time.

PRESIDENT: Aren't we losing a lot of time here? You are not arguing that the whole Einsatzkommando 12 was there, just what the paragraph states, that men of his organization were there.

MR. WALTON: He denied in a previous answer that any of his men were ever in the northern Crimea.

PRESIDENT: Well, yes. Why go into this long discussion--I am not saying you, I am saying you are allowing the witness to do it, however, because you do not claim any more than what appears here, is that right?

MR. WALTON: I merely want to point out that northern Crimea is a large territory, and the men from Einsatzkommando 12 helped in clearing out that.

PRESIDENT: Well, that is what it says. Well, Witness, do you affirm that men of your commando assisted other Teilkommandos in the combing out of the northern Crimea?

THE WITNESS: Your Honor, what happened in the Crimea, I did not know.

PRESIDENT: Well, just a minute please, you have read this to yourself and you have read it aloud.

Now the question is very simple, do you affirm that last sentence that men of your commando assisted two Teilkommandos in the combing cut of northern Crimea, Yes or No.?

THE WITNESS: Yes, but I want to add something.

PRESIDENT : You have already added plenty on that subject.

THE WITNESS: But these men were not under my command, I want to express that particularly.

PRESIDENT: You stated that a number of times, but they were men of your commando.

THE WITNESS: Yes, in the same manner as men of a battery are assigned to another unit and are subordinate to this other unit.

MR. WALTON: You have said already, the Tribunal is completely satisfied that that is the way you testify about this document. BY MR. WALTON: was claimed by Roumania you concerned yourself with tasks in connection with the problems of ethnic Germans in that territory, did you not? look after the German settlement and gave me the mission to do this because at this time this territory became Roumanian sovereign territory.

Q Well, the proper answer to my question was "Yes", there is no need to take 150 words just to say "Yes". Let's confine our answers to short, precise, factual answers. Now, was this the territory between the Bug and Dniester rivers where these ethnic Germans were located? assistance?

A Yes. I already indicated the task. and house furnishings?

as a place to live or furniture for a house in which they lived? cannot say what happened in detail during that time.

Q Now, let's go back. documents, as far as I remember, do not enable me to recollect this so clearly. Germans? left event earlier. It happened according to how the commandos of the ethnic German office came in and relieved my commandos, my detachments-Dueben and Pretzsch, you said that about two ways you actively inspected the duties of your commandowith the ethnic German groups? of your commando who was dealing for four months with ethnic Germans? of October, or somebody in your commando did, and you left Dueben in June? Now, I am asking you, during those four months did you ever receive reports from anyone who was dealing with the ethnic German problem?

A There must be a misunderstanding somewhere. I showed very clearly what I did; until the end of July I wasn't even in Russia, then I was in Tscharnomin as reserve until the end of August, and only then we marched into the ethnic German territory. That was the time of say six weeks, six to seven weeks.

Q All right, I will ask you the same question. about the six or seven weeks. Did you ever receive any reports from your commando or subunits of your commando who were directly dealing with the ethnic German problem?

A I myself did not. Hausmann would have received them, I think, and. I read many reports later on and read many reports at a later time, I found many of them here again in the documents.

Q. Well, from what you stated, about the time that you went to the hospital, certainly these six or seven weeks is part of the time that you were in active command of Einsatzkommando 12. You stated that you were at the hospital only three weeks during September, and now you state that your group dealt with this for six weeks or seven weeks. Certainly during part of this time you were in command of Einsatzkommando 12, and they dealt with ethnic German problems. Now, during the time that you were in active command, did you receive any reports from anyone in your commando about the ethnic German activities?

A. Well, may I explain the following here? After the various small detachments were stationed in their locations, in order to carry out their missions there, that is, to get the farms going again and so forth, there of course someone or other made reports to Hausmann. Hausmann will have made out a general report, a summary of all these, but after a certain time no further written reports were made. I assume so. Several reports were made and reports were made about events which had occurred in their territory.

PRESIDENT: Witness, please, why don't you answer the question? It was very simply this, did you receive any reports from the Teilkommandos or from others on the ethnic Germans? Now, you are telling us about reports, but you haven't answered the question whether you received any reports. Please direct yourself to that question immediately.

THE WITNESS: I don't think so--No.

PRESIDENT: All right. BY MR. WALTON:

Q. Now, I ask you to look at Document Book III D, page 16 of the English text, page 17 of the German, Document No. 4489, Prosecution's Exhibit 152. Will you indicate when you have read that?

A. Which paragraph, all the paragraphs on Einsatzgruppe D?

MR. WALTON: Have Your Honors found the place?

PRESIDENT: What page?

MR. WALTON: Page 16, in Document Book III D.

THE WITNESS: That is quite right.

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PRESIDENT: All right, that isn't a long paragraph. Proceed. BY MR. WALTON:

Q. Now, Witness, it states that within the area of Einsatzgruppe D the greatest want was relieved by placing homes of Jews or furniture at the disposal, that is, of the ethnic Germans and by delivering children's beds and other necessary items. Did you ever make this or a similar report to Einsatzgruppe D?

A. No. I did not know anything about these events but I did hear about it. It says here, that children's beds and necessary items were brought in. Hausmann told me that he got repeatedly items from Nikolajew to distribute among the ethnic German people or from various villages. He asked mayors to go into Nikolajew, he said.

Q. Do you know if any other of the commandos of Einsatzgruppe D were engaged in handling the ethnic German problem besides Einsatzkommando 12?

A. I did not quite catch it. I just would like the sentence again, I did not catch the verb.

Q. Do you know whether or not any other commando in Einstazgruppe D besides Einsatzkommando 12 was engaged in dealint with the ethnic German problem?

A. Yes, as I had described, Einsatzkommando 10 A. The Einsatzkommando 10 A was stationed in this territory until my commando moved in, and the leader of Einsatzkommando 10 A himself had his headquarters near Speyer in the same location into which Hausmann moved with his headquarters, too.

Q. All right, let me ask you this question as between the Berg and Dniester rivers, this particular area on 4 October 1941 and a few days immediately preceding that date, where was Einsatzkommando 12?

A. A few days before 4 October in this territory, and some small detachments were already being relieved and were taken from Nikolajew.

Q. Do you know for a fact that Einsatz-or Sonderkommando 10 A was also in this territory at this particular time?

A. At that time, Einsatzkommando 10A was not there any more.

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They had already moved out, but may I add that this is a summary report on the ethnic problem which in my opinion was made by the Einsatzgruppe during that time when all the ethnic German work had been concluded. The Einsatzgruppe obviously wanted to show to Berlin how the entire territory looks and what had been done in their territory until then. Such a report on the domestic sphere is not a report which refers to a certain date, but it just gives a general impression.

Q. That is exactly what I want. Now, what part did Einsatzkommando 12 contribute in the way of facts to this report? Did they engage in those activities?

A. In these activities which I find in the report is here, No.

Q. They never supplied ethnic Germans with furniture or homes to live in?

A. No. I know nothing about it.

Q. Well, then their settling of ethnic German problems was not concerned with the basic problem of the ethnic Germans, was it, that is, a place to live, with enough furniture in it for reasonable comfort--they had other tasks with the ethnic Germans, did they not?

A. The task which we carried out concerning ethnic Germans I have already explained in detail. It was the task of registration. We had to register them and to bring them together into one area so that we should know where Germans were living and then taking care of them and looking after their security.

Q. Your answer to my question was "No". That is all, there is no need to go into detail.

A. Yes, but if I say only "No", the possibility arises that you may draw a wrong conclusion.

PRESIDENT: The trouble with your question, Mr. Walton, was the first part of your question was very specific, namely, did his commando have anything to do with the basic comfort of the ethnic Germans, but then you tacked on an observation and he addressed himself to the observation rather th to the question. Now, let's put the question very directly, did your Einsatzkommando 12 interest itself at all in the basic living conditions of the ethnic Germans by seeing to it that they were supplied with habitation, with furniture, and other necessary equipment for a decent living?

THE WITNESS: Yes. BY THE PRESIDENT:

Q. Well, then you were interested in seeing to it that they got furniture?

A. Your Honor, I did not take care of it, I know nothing about it but the commando who were stationed there would have taken care of it, Yes.

Q. Well, then, your commando was interested in that?

A. The commando was interested, Yes.

Q. And you were the leader of Einsatzkommando 12?

A. Except for the time when I was in the hospital, Yes.

PRESIDENT: Yes. Proceed Mr. Walton. BY MR. WALTON:

Q. When did you report to duty in the Reich Security main office?

A. I reported to the RSHA at the beginning of April 1942.

Q. Now, was this a normal or routine change of duty from frontline service to service in the homeland?

A. Well, it happened repeatedly that I myself tried to get away from the Einsatz, the assignment, but what they decided by my assignment, I did not know, of course.

Q. Well, was 10 months the usual service for the Eastern f ront for an Einsatzkommando?

A. I cannot answer that--that varied,

Q. All right, now let's consider your service record which is in Document Book III D, page 80 in the English, page 126 in the German. Now, did your service as commander of Einsatzkommando 12 have anything to do w ith your promotion?

A. Certainly not. Concerning the SS or SD promotions, I was only assilmilated to my promotion as an official. The SS promotion often was behind, from two to eight months behind the promotion as official.

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Q. As a matter of information, right opposite that promotion it has in my Document Book a paragraph headed "Investigation Procedure", and under that, "Reason: Suspicion of Military Insubordination and Violation of Official Duty in the Field". Now, yesterday you talked about something of this same nature. What I want to know is if this entry of "Investigation Procedure" occurred in 1942 or as you stated in 1944?

A . It was done in the year 1944. If this is a copy of form, the field is made very large for this entry. As it cannot be seen in this copy, a conclusions can be drawn from this. It is the last one, the last subject contained in my SD files, namely, the "Investigation Procedure", for I had not been promoted since '42. It says here at the end: promotion date and only for this '42 is mentioned, and not for carrying cut the investigations.

That is shown quite clearly here in this section, promotion only at '42. disobedience and violation of official duty in 1944.

MR. WALTON: You Your Honors please, the hours is 11 o'clock.

PRESIDENT: Very well. The Tribunal will be in recess for 15 minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. DURCHHOLZ: Durchholz for Schulz. tomorrow, Wednesday, all day since I want to discuss the trial brief with him, which I shall submit to the Tribunal shortly.

THE PRESIDENT: The defendant Schulz will be excused from attendance in court all day tomorrow in order that he may confer with his attorney.

DR. DURCHHOLZ: Thank you. BY MR. WALTON:

Q. Witness, was your only service in the field prior to September, 1942, that of kommando leader of Einsatzkommando 12?

A. Y es, from June till March, beginning of March, 1942.

Q. What was your last day of command in Einsatzkommando 12?

A. I cannot tell you exactly, It was the time between the 5th and 15th of March.

Q. Do you consider your service with Einsatzgruppe D to have been satisfactory?

A. I really cannot say that. I really cannot designate it as such.

Q. Well, do you mean to tell us that in your opinion your service with Einsatzgruppe D was unsatisfactory?

A. Well, it was an assignment, and an order had been given which certainly could not satisfy anyone. I personally was glad that I got out of the Einsatz and that I got out in the form which accidentally happened.

Q. While you were in command of Einsatzkommando 12, did you ever hear of General Ohlendorf or anyone asking for your removal?

A. I didn't hear anything about this.

Q. All right. Were you ever reprimanded or tried for any offense you were commander of Einsatzkommando 12?

A. No, I never was.

Q. Then your service with Einsatzkommando 12 was satisfactory, was it not?

A. Within my assignment no reprimand could be brought up, but I know that during the proceeding instigated against me in 1944-

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Q. No. No, I am only talking about your service with Einsatzgruppe D. We are not going into 1944.

A. Yes. Correct, and I only want to answer from that. In that time I first saw my reports, the reports about me, because they reprimanded me because of my bad achievements.

Q. Who made out these reports? General Ohlendorf?

A. All my predecessors made them out, and Herr Ohlendorf, of course, for the Einsatzgruppe.

Q. Did General Ohlendorf criticize you for your activities in Einsatzgruppe D?

A. It was not a good recommendation. It was just fair. There were few reprimands which were contained in this report. Otherwise they wouldn't have reproached me with them.

Q. You haven't answered my question. Did General Ohlendorf put a reprimand in there about your service with Einsatzgruppe D? He is shaking his head in the box. He says not.

A. I don't think that any conclusions have to be drawn from the gesture, which Herr Ohlendorf exhibits here in the dock.

Q. Well, how could your service have been more or less satisfactory unless you had killed Jews, Communists and Soviet Party functionaries in obedience to the Fuehrer Order?

A. Herr Ohlendorf knew himself in whit areas I was stationed and what he could expect of me. That, however, I was rather inactive could be seen from the report.

Q. Well, in September, 1942, do you suppose that you would have been promoted in rank unless you had had a satisfactory service up to that date?

A. When in September, 1942, I was made Obersturmbannfuehrer, (Lieutenant Colonel) is in assimilated rank, this came about automatically my promotion to Senior Government Councillor, and this promotion to Senior Government Councillor I received before H err Ohlendorf's report about me had reached my files.

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Q. Yes, I don't doubt that, but do you suppose that you would have been in September, 1942, promoted to Senior Government Councillor unless your entire service to that point had been satisfactory?

A. I was promoted very late, and my promotion as can be seen from my record did not come about very quickly and was not very high. That was rather in automatic promotion.

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has been most unsatisfactory in Einsatzgruppe D, or in the Gestapo Office prior to your service in Einsatzgruppe D; if any of your service had been unsatisfactory, you would have still got this promotion as Senior Government Counsellor? recommendations which do not weigh so heavily that I would be out of the question to be promoted within a certain time as on official. unsatisfactory remarks, your services generally were considered satisfactory, weren't they? had a recommendation from Dr. Best in 1939 in the files; that was a good recommendation.

Q All right. Let's come to the time when you were in service in the Reich Security Main Office after your return to Berlin. You have stated that you were designated to take over the staff command of the Security Police and SD, have you not?

A I did not make this statement in this form. Herr Wartenberg asked me: "You were to take over the staff-commando, weren't you?" I said: "First of all it was not e staff-commando. Secondly, I don't know whether I was to take it over." And, he said: "Yes, but I know that you were." I made so many corrections in this thing, about every first, second end third line you can see my initials, and this was so difficult to read that nobody could make head or tail of it, and some unclarity was left in it, which I didn't even basically object to, because the context is quite clear. a school in the suburbs of Berlin, end then you were called for duty in the Reich Security Main Office. What were you first told that you would have to do when you reported to the Reich Security Main Office?

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That is all I want to know. that no decision had been arrived at as to what use I was to be put to. an inspector of some kind for a few months, or a few weeks, and after that, after you were relieved of this duty as an auditor or inspector. Then what were you assigned to do? them, Mr. Prosecutor. Please do not mind if I do so, I was not an inspector, I was an examiner in examinations; that was temporary job because they had nothing to do for me, and it was customary that they take practically experienced people to take part as an examiner, and they had to put questions in examinations. it. What did you next do? Chief IV, and report to him. I did so.

Q What did you do? What duties were you assigned to in Office IV?

Q What did the Department IV-D-V concern itself with? of the reports about partisans in the Eastern area of partisans. consolidation, and distribution of operational situation reports from USER, wasn't it? form. They had nothing to do with distribution, I merely got the reports which were competent for my department. They were sit distributed by the Main Office. four Einsatzgruppen?

Q Well, give us some approximate date? Every two weeks, every three weeks, every two months?

A Such report? Every day.

Q All right. How often would your committee of your commando staff meet for discussions and consolidation of these reports? from the East were discussed, but we read through those exceprts which had been written by various departments about the messages from the East, and of which these departments contributed, or made contributions. Every one came in there with the sheets, which had already been prepared as a contribution.

Q Do you know Dr. Knobloch, K-N-O-B-L-O-C-H?

Q Did you know Friedrich Rang, R-A-N-G?

Q Did you know Kurt Lindow, L-I-N-D-O-W?

Q Did you collaborate with him in these reports?

A Not with Lindow. During my time Lindow didn't have any idea about this. He sent reports, but how it was handled at my time Lindow didn't know. Rang was chief of a different group which had nothing to do with Russia. That was Rang, but he didn't know anything about these matters, I stayed with him in Nendorf, and, I stayed with him in the same cell when I was interrogated by the British, and he always said he knew nothing about these matters. After I was relieved from my office he may have participated in these editorial meetings, I don't know, but about whet happened during my time Rang didn't know anything, and he didn't work with me.

MR. WALTON: All right. At this time the Prosecution in refutation of his statement which has been made by the witness, that one Friedrich Rang knew nothing about his activity, and didn't attend any meetings of his commando-staff, I should like to offer into evidence Document NO-5153, which will become Prosecution Exhibit 189, and which is an affidavit of the witness Friedrich Rang, and respectfully submit a basis has been laid for the introduction of this affidavit.

THE PRESIDENT: Is the affiant alive?

MR. WALTON: Yes. Well, I'll say, I think, yes, he was the last time I heard from him, which was some time after he signed the affidavit.

THE PRESIDENT: Yes, I don't know whether Dr. Hoffmann was harboring a hope that he might have been dead.

MR. WALTON: I take it, it is not necessary for me to comment on that, Your Honor, I shall pass unto further questions.

THE PRESIDENT: Yes, very well. BY MR. WALTON: of an Einsatzgruppe, or Einsatzcommando, was not suppelemented or altered in any way by your committee when they acted on these reports, was it?

Q I am not even asking you about the document. You can have that and read it when you leave. I am completely through with that document, The question which I asked you is about your general nature and not what Rang said about it, your general duties?

THE PRESIDENT: Better repeat the question, Mr. Walton.

MR. WALTON: Yes. BY MR. WALTON: of an Einsatzgruppe, or an Einsatzcommando, was this supplemented by Your committee, or altered in any way by your committee before it was issued?

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A Yes, of course, he could do so. I shall give you an example, which might make these things very clear. Let's say a report coming from White Ruthenia, a report about the youth there. That the newly founded White Ruthenian Youth Movement was anti-Soviet and that the support of all youth, and another report about partisans which another department contributed said that this applied to the partisans....

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Q I think you misunderstand the question. Let me rephrase the question?

AA mong the partisans there were many youths? Then that was a contradiction.

Q Let me rephrase the question. Would your committee alter such facts as the location of a specific Einsatzgruppe or a specific Einsatzcommando.If the commando reported that it was at Tarnopol, would you think the committee would alter that statement in the report? reports, is that correct, never supplemented, or never altered in any way?

AAt my time it was handled in the following manner:

THE PRESIDENT: Just a moment. Just a moment.

MR. WALTON: Just a moment.

THE PRESIDENT: Just a moment, witness, all the examiner desires to know is whether you reported whet cane to you; you didn't change the geographical facts, did you?

THE WITNESS: No, I did not alter geographical facts.

THE PRESIDENT: Well, so you did not alter any facts?

THE WITNESS: No.

THE PRESIDENT: Well, that is all. BY MR. WALTON: the total number of executions during a reported period, would you?

A Mr. Prosecutor, I have expected this question, and that is why I tried to make this limitation, and to give this explanation. Those things in which I participated -

THE PRESIDENT: Just a moment. Just a moment. You say you anticipated the question but you certainly did not have your answer ready, because you are going into a long discussion now. What Mr. Walton is really putting to you is, did you falsify any report which came from the field, that is the whole story, did you falsify any report?

A I didn't. But he referred to executions....

A But he spoke of shooting and executions, which didn't occur in these reports on which I worked, those on the basis of Hitler's order, actions against Jews, that is. This is the decisive question for me. BY MR. WALTON: committee of the Commando-staff, weren't you?

A Mr. Prosecutor, to be a senior officer on such low level is a very simple thing, because the departments only delegated pretty low-ranking officers, and it was not very difficult for me to be the Obersturmfuehrer, the highest ranking officer. What I had to do I have already explained in my direct examination. It was merely technical -- purely a technical matter of proof-reading of this material, and the processing of it, to see to it that these contributions were stencilled and distributed. Discussions about measures did not take place in this connection.

Q All right. Were you in charge of the group which met to consider your share of the duties on these reports?

Q All right. Now, let's turn to Document Book II-D again. Page 20 of the English, page 25 of the German. Prosecution's Exhibit No. 86. This document, as you will see, gives the total of executions performed by Einsatzgruppe D to the date of reporting, on 12 December 1941, to be 54,696. Do you still state that the 94 Jews killed in the Harvesting Action, and a few Killed by Einsatzgruppe XII, when Hausmann was in command during your absence, are the only executions contributed to this total of Russian Nationals by Einsatzcommando XII?

committee as being done for racial reasons. It was a measure that I have already made clear. In this connection many reports were made out by me about many executions, that is our own executions, as well as foreign executions. I never got into such a situation as to carry out a purely Jewish action. is that what I understand you to say? necessary. I can not remember a figure but a usual number of measures was necessary in this period. share to this total of 54,696 Russian Nationals? the Fuehrer Order, and anything else, and this number must include my figures, of course. English, and page 27 of the German, the Document NO-2634, Prosecution's Exhibit No. 87, if you will turn to page 20 of the original Your Honor, that is page 28 in the book, under paragraph 4, headed "Jews". That is almost at the end of the document,witness. Do you make the same answer to the total of 75,881 persons?

A Mr. Prosecutor, I can not give you an answer in this connection. I an merely asking if you make the same answer to this, if Einsatzcommando XII, in the total number of shootings it contributed some of them, or its share of them? included again,that is obvious.

Q And one more document, witness. In the same Document Book, page 29 of the English, page 34 of the German, which is Document NO-3338, Prosecution's Exhibit No. 88 -- I am sorry, Your Honor, I think the page is wrong.

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THE PRESIDENT: There is something on page 30, and carried over to 31.

MR. WALTON: You are right, sir. It is 31. The Document is NO3338-A, and that is, witness, on the page right at the bottom of page 10 of the original. You were in command of Einsatzcommando XII on the date of this report, were you not?

A I have not found the passage you mean. Is it the report of the 19 January on?

AAnd what place do you refer to? it is right at the end of page 10 of the original, where it says, 685 Jews, 1639 Partisans and Communists were shot between 1 and 15 January, the total number being accordingly, 80,160. The question I asked: On this date, between 1 and 15 January, you were still in command of Einsatzcommando XII, were you not? XII contributed its share to this total is the same as to the other two documents which I have just shown you?

A No, Mr. Prosecutor, I must explain it more clearly, As for the previous questions, I have said that the total figure included these people that the Einsatzcommando has reported as executed, but in this case the number reeds as another total figure, so this report and the previous one refers to actions which happened between Sinferopol and there, and they always referred to incidents in which Einsatzcommando XII is never mentioned, and that is decisive.

Q I have no interest in this 685 Jews, and the 1639 Partisans. What I am asking you is that in this total of executions of 80,160 , performed by Einsatzcomnando D to the date of this report, I put to you, witness, the same question that I put to you on the other two documents; of this total of 80,160, is it your opinion that Einsatzcommando XII contributed some executions to this grand total?

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of 75,881 executions, that it contributed its total or its share to the total of 54,696 executions. Why didn't it contribute its share to this total, when the total killed was 90,000 in the whole time that you were?

A Mr. Prosecutor, you asked the question more precisely here in the last instance, you always took the periods of time covered in the report, and that is now shown here at all. If in my reports of September, or October any executions are mentioned, these are included in the figure of the fifty, or seventy-five thousand, or eightythousand, but our contribution is not always listed as for each period, so I con not comment on this. These are all reports which refer to clear incidents, and to areas with which Einsatzcommando XII had nothing to do. accordingly 80,160 executions, as that many after the date of the report which gave the total of 75,881, is that what you are trying to say?

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A. About the activities of Einsatzkommando XII I cannot say anything at all. Einsatzkommando XII is not mentioned at all.

THE PRESIDENT: Mr. Walton, I wouldn't spend any further time with this. He has admitted that Einsatzkommando XII contributed its share to the grand total of 75,000. I wouldn't waste half an hour trying to determine whether it contributed its share to the 80,000.

MR. WALTON: I have no further questions. BY THE PRESIDENT:

Q. Witness, how many executions did you personally order?

A. Your Honor, it is not possible for me to give you a definite specific figure for that.

Q. Well, give us your best recollection of the number of executions that you personally ordered?

Q. Even that, your honor, is not possible for me to do.

A. Well, is it because the number is so great or the number so small that you cannot remember how many people you ordered to their deaths?

A . The figure as such would not be possible for me to remember exactly. There are a lot of lapses in my memory and I wouldn't want to give any figure which might be wrong or right.

Q. Did you order anybody to be killed?

A. Yes.

Q. Did you regard that as a grave matter to send someone to his death?

A. Yes, very.

Q. Then wouldn't that have made such an impression upon your mind that you could recall now after these years how many you had sent to their Creator?

A. Your Honor, this is due to the fact that one had records on incidents concerned. There are many persons and one had an idea of those persona and people - so and so many - were sent to their death and others were released. I only remember the incident as a whole that I investigated then but I cannot say what the ratio was exactly.

Q. You will not or can not tell the Tribunal how many people you personally ordered killed during the time you were in Russia?

A. No, I cannot do so.

Q. Was it as many as six or seven thousand?

A. Certainly not but it is useless to give any figure.

Q. Well, you remembered six or seven thousand Jews that you escorted across the Dnjestr River. You mentioned that number specifically. You regard taking someone across the river of less moment than of sending him to his death?

A. Your Honor, as much as I was mistaken in this figure can be seen from the fact that in my first interrogetion I mentioned three thousand and afterwards it seemed to me too little. If I look at places full of people it is very difficult to estimate. So, again it is not a true recollection.

Q. But your best recollection today is -- and you went out of your way to call it to the Tribunal's attention -that there were six to seven thousand in that camp, is that right?

A. I estimated them. After I thought it over now how long they marched and how many people there might have been I think perhaps it was inaccurate.

Q. All right, Now you recollect people that you say marching to their death, the people that were brought up before the execution Squad - it certainly would have produced as vivid an image in your mind as these people marching across the bridge and you tell us now to your best recollection how many you ordered shot while you were in Russia?

A. Never. I cannot give you any figure.

Q. All right then, how many people did you see killed? How many executions did you witness?

A. I saw two men shot.

Q. In ell the time that you were in Russia you say only two people shot?

A. NO. I personally saw these two people shot. Otherwise the execution took place where the incidents took place

Q. In all the time that you were in Russia how many people did you see shot?

A. I personally saw two men who were shot by my kommando.

Q. Tell us about these two.

A. These were two people who were arrested with four or five other people because they were people for whom the Wehrmacht was looking. they had set up a secret radio transmitter in Pologi and sent news to the Russian Army. As the investigations reveald they were ordered...

Q. Did you conduct these investigations?

A. No, not myself but I was very much interested in them.

Q. Did you review the Investigation?

A. In this case, yes.

Q. And then did you order them shot after you investigated the case, after you read the investigation?

A. NO.

Q. who ordered them shot?

A. I did, but not immediately.

Q. Well then you ordered these two shot? Well, then you do remember two that you ordered shot? You told us a moment ago you wouldn't hazard any estimate. Now you do remember two people you ordered shot, is that right?

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A. I said I cannot remember a definite figure which were executed on my orders. I saw these two men shot.

Q. Did you order these two people shot?

A. Yes.

Q. Yes. So you do remember two people that you ordered executed?

A. Yes.

Q. Now can you recall anybody else that you ordered executed?

A. Yes.

Q. All right. Give us the others.

A. Well, for example, I cannot tell you exactly, I think it was in Guljapole, a large number of persons were first of all arrested. Part of them were shot against whom the investigations showed that they had mined the Front Intelligence of the Army to blow it up.

A. And how many of them did you order shot?

A. I cannot exactly remember because I only remember the number by how many incidents, how many cases, there were and against how many persons investigations were carried out.

Q. Well, this incident that you have just now mentioned resulted in some executions. How many did you order shot after investigations and after acts which entitled them to be killed? How many were there?

A. I cannot say, your Honor.

Q. Was it 50?

A. Any number is wrong or correct. I cannot give any number.

Q. Did you see them shot after you ordered their execution?

A. NO.

Q. Now you tell us just what the episode was, where was it, in Guljapole?

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A. In Guljapole.

Q. Please spell that for me, Mr. Lea.

A. G-u-l-j-a-p-o-l-e.

Q. All right. when did this happen?

A. In January or February in the New Year 1942. I don't know the exact date.

Q. Now tell us just what happened?

A. Well I only remember this much. Some Wehrmacht agency sent a courier and asked for a few people who might carry out investigations. Something was not right. The personnel in the Intelligence Center, the Russian auxiliary personnel, had found some sort of suspicious people who had connections with the outside and wanted to investigate the matter. The investigation took some time. I don't know how long.

Q. Were these your investigators?

A. Yes.

Q. And did you follow the investigation yourself?

A, No. I always got reports from time to time.

Q. Fine. You got the reports. Now you tell us what these reports said.

A. Well the final result was that a certain circle of people was considered very hostile to the Germans and that they had made preparations to blow the center up.

Q. How many were in this circle?

A. I cannot tell you how many.

Q. All right. A circle of people - they were going to blow up the Germans. Now tell us something further. What else was in the report?

A. Well nothing more. Afterwards there was the result and I don't remember that exactly. I only remember it as an incident because it was interesting. Any details I do not remember.

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Q. It was interesting to you that these men were going to blow up somebody but it wasn't interesting to you that you Killed them, is that right?

A. Your Honor, we were interested in the matter and it was out duty to investigate such matters.

Q. And you reviewed the investigations?

A. Yes.

Q. And after you reviewed the investigations you gave the order for execution?

A. Yes.

Q. And how many were there?

A. I cannot tell you exactly. My recollection is only of the incident as such. I cannot give you the figure.

Q. Were there 500 shot?

A. Not that many.

Q. Tell were there 100 shot?

A. I don't think so. Any figure is wrong.

Q. Were there 50 shot?

A. Your Honor --

Q. Answer that question yes or no.

A. I cannot give a number.

Q. Were there 10 shot?

A. Even this question I cannot answer.

Q. Were there 5 shot?

A. That would be the same answer.

Q. Yes there one shot?

A. Yes, some were shot.

Q. All right. How many were shot?.

A. Your Honor, I must repeat the same thing over and over again.

Q. You just reconstruct in your mind this scene. Here is an incident which you recall after five years, You volunteer this incident. Certainly there must be a picture in your mind of this circle of people that are conspiring to do harm and damage to the German forces, that you are requested to send out investigators. These investigators go out and conduct their inquiries and interrogations. They make up a report. This report is submitted to you and you read this resort and as a result of the report you order certain people to be shot. Now it is incomprehensible that you could recall an incident of this importance with all the details which you have given us and leave out that most essential, vital part of the number of people killed. That does not square with common sense or logic. You are an attorney. You are a man of ability and you have conducted yourself on the witness stand with accumen and clear thinking, Now you answer question. Take as much time as you require and tell us how many were shot.

If you don't answer that question the Tribunal will be compelled to draw whatever conclusion will come from so illogical a refusal to answer such a very natural logical question.

A. Your Honor, I cannot give any figure of those shot under my responsibility. I remember the incident and my memory is supported by the reports here when the reports were submitted to me. But even here, some matters I could not remember. Only could I remember them when I saw the reports again and recalled them more clearly. In my situation reports I reported everything which took place in my area .........

Q. Just a moment. Just a moment. You told us of the two people you did see shot, Where did this occur? Where did this occur these two people that you did admit having seen shot?

A. In Pologi:

Q. And when did this take place?

A. It must have been at the end of February or the beginning of March.

Q. How many people were in the Execution Squad?

A. About six men.

Q. Did you make certain that the execution was conducted in a military and humane fashion?

A. Yes.

Q. Yes. How, how is it you recall the execution of these two in February 1942 but you do not recall the execution of a much larger number in January of 1942? Explain that to the Court, please?

A. This execution of two people I attended myself. I witnessed it. Therefore, I remember it especially well. Then it was such an interesting case as it was very rare in Russia that here one captured a man who sent messages to the enemy, Then the following had to be considered. In winter when we didn't undertake many activities and when we were cut off for weeks, every detail became something big for us, bigger than if it had happened at a time when in the areas around Nikolajew when the Roumanians came in and the Germans left there were so many agencies around us and so many units operating around us that when these matters were mentioned to the group - all of this sort of thing escapes me and I cannot remember specifically.

Q. Do we understand that you remember the Pologi incident because it happened in the winter time? Is that what you told us?

A. I remember this last mentioned incident especially because this was a typical case as......

Q. You said something about winter. You remember it because it was in the winter?

A. Yes.

Q. All right,

A. That was during a time when we were inactive.

Q. Don't you regard January in Russia as winter?

A. Yes, it's winter.

Q. What distinction do you make between the episode which occurred in February because it was winter and the episode which occurred in January?

A. No distinction. Not that big a distinction anyway but just the fact that there were two people whom I witnessed being executed. That is more impressionable then the incident of a large number of people who were executed and some that were left over.

Q. And some of whom you ordered killed? That's right, isn't it?

A. Yes.

Q. All right. Now, you mill not tell the Tribunal how many you ordered executed as the result of this episode in Guljapole?

A. I cannot mention that figure.

Q. Yes, and you have nothing further to add to this episode which you yourself volunteered on this matter of not regarding knowing how many were executed?

A. No, it is impossible for me because in the meantime I have forgotten the details and don't know how many were executed.

Q. You said that there were some people killed. When you use the adjective some you naturally mean more than one or two?

A. Yes.

Q. All right. So that when you say some already you project yourself into an estimate. Now what do you mean by some?

A. By some I mean more than one - several.

Q. All right. Several takes you up to about three or four. So, were there three or four executed?

A. Your Honor, it is useless. I cannot remember and I would cast a doubt on my credibility as some report might be found in the future and if the figure reported might not correspond with the figure I reported.

Q. Do you think, witness, that any doubt is being cast on your credibility when you tell an entirely impartial Tribunal that you do not remember how many people you ordered killed. Do you think any doubt would be cast upon your credibility? Answer that question frankly. Do you think the Tribunal would be justified in entertaining a doubt on your credibility when you say that you do not remember how many people you ordered killed arising out of an episode which you yourself have recalled vividly. Answer that question frankly.

A. Your Honor, if ther is any conclusion drawn from my words you cannot judge them.....

Q. Very well, how many Jews did you order killed in Russia?

A. As for Jews just because they were Jews I ordered none to be executed.

Q. How many Jews did you order killed not because they were Jews?

A. Your Honor, I gave no special order not to use the Hitler order. My tendency......

Q. Now please answer the question. Witness, you will please answer the questions.

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We will give you every opportunity of explanation but we can never arrive at a meeting of minds if you don't address yourself to the case. Now I asked you first how many Jews you ordered killed and you said you did not order the execution of any Jew because he was a Jew. That naturally infers that you did order the execution of some Jews not because they were Jews but for some other reasons - they were saboteurs, looters or anytning that called for the death sentence. Now, I ask you: how many Jews did you order killed for a reason other than their race or nationality?

A. Even that I cannot say because this was not investigated and was essentially uninteresting. If a group of Partisans was captured which was active as Partisans and they were shot they were shot because of this deed. Nobody bothered to find out how many Jews were among them. Apart from the fact how could one find out that?

Q. All right, now you have brought up from your memory a Partisan action and you say that once demonstrated they are Partisans they are shot under the rules of war. Now you must have had in mind some particular episode when you volunteered that. Now tell us of one particular case where Partisans were captured and then shot. Tell us of the episode that you must have been thinking about when you volunteered that illustration.

A. I do not relate this as a recollection but I am repeating what was repeated to me from the Partisan area.

Q. Did you shoot any Partisans while you were in Russia?

A. My Kommando shot Partisans in Russia under my responsibility.

Q. Did you order the execution of any Partisans in Russia?

A. I did not need to give it as in an area in a definite case the Army leader approved of the undertaking.

Q. Witness, we are now going to have our recess and between now and 1:45 I want you to rake through your memory, comb through your recollections, and be prepared to answer when we reconvene at 1:45 the details of the executions in Russia, Russian executions which you ordered for any reason whatsoever.

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The Tribunal will be in recess until 1:45 and during that time the witness will not talk to anybody.

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(The hearing reconvened at 1345 hours, 9 December 1947).

THE MARSHAL: The Tribunal is again in session.

MR. WALTON: If it please the Tribunal, there is a matter of a witness which concerns Dr. Gawlik and myself. I feel that I should have an expression from the Tribunal on the matter, and I would appreciate if the Tribunal would instruct the Marshal to call Dr. Gawlik to be in court at such times as the present witness is finished with his examination, if the Tribunal will permit it.

THE PRESIDENT: Yes. The provost marshal will please instruct Dr. Gawlik to be available this afternoon so that he may be present when the succeeding witness takes the stand.

EXAMINATION (Continued) BY THE PRESIDENT: just before recess we were discussing certain features of your activities in Russia. Now, we hope you understand that there is no intention on the part of the Tribunal to have you answer a question in any way other than the truth. We don't want you to believe that we press you unduly for an answer, but you must understand this is a very serious business. You have taken the witness stand and have voluntarily decided to give evidence. No defendant is required to testify unless he so desires, and his refusal to testify cannot be used against him. But since you have taken the stand and have volunteered to reply to questions put to you by your counsel and you have stated certain propositions, then naturally you must be subjected to further inquiry as to the correctness of these positions which you have advanced.

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It is entirely immaterial to the Tribunal what the eventual result will be in any given case, but it is very important to the Tribunal that the truth be known, and if we do not receive the truth, then it is very difficult to arrive at a correct determination in any given instance. months. You went there as a soldier. You went there specifically as a leader of a certain group of men, maybe 130. Now, you conducted certain activities there, and how you conducted those activities will determine whether you are guilty or innocent of the crimes charged against you in the indictment. Now we ask you specifically in all this period of time that you were in Russia how many executions you ordered, and we have been unable yet to determine with some assurance that your answer is the answer which you desire. Just how many executions took place as a result of your order? Now, we will ask you again, in all the time that you were in Russia as leader of Einsatzkommando 12, how many executions did you order?

A. Your Honor, I understand how serious your words are, and I have always considered this to be very serious. When searching my conscience before I was not able to find out, and the hour you granted me did not help either to find an answer. A final conclusion I consider impossible in view of the circumstances. Why, I can't establish a definite figure, is because of the particularity of my assignment since my actual work started from October onwards. This makes it impossible for me to give a precise figure. The overlapping in the previous time in the commando make it difficult for me to decide what happened during the time when I was in charge of the commando and what happened during the time when I was not in charge of the commando, events which might possibly have happened during the time I was in charge and about which I only heard later on only could hear about later through reports.

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to me which we will let you have because we think it is very helpful. We do not ask yo give us a precise figure and then hold you to that figure. That isn't the purpose of the Tribunal at all. We know that memory is a fallible function of the body and of the brain, but we also know that memory cannot discard the recollection of horrible events. Now, the killing of a human being is the sum total of horror. It is the ultimate in human distress, and whether you are on the receiving end or the giving end of death, it makes its imprint on the brain and on the heart in a way that nothing can eradicate it. So when we ask you to recall how many people you ordered executed, we don't expect you to give one definite precise, unchangeable figure, and then if that should vary from another figure that it would appear that you had purposely lied, but we do expect that you can as a reasonable and rational person give some judgment, some estimate on this very serious business of killing people. your question, I should like you to consider that however difficult each killing must be for the person who carries it out, an event about which one only learns from a piece of paper does not impress one so deeply, and one does not notice particularly whether this concerns only one event reported by a subkommando far away or whether it is reported from a foreign unit, because a definite idea and imagination cannot be connected with this.

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That it should particularly have been done by a unit of mine and under my charge, the majority of reports which were received in my territory, and particularly up to October, mostly concerned events in other units, which are also used in my reports, as it was my duty to do. of 94 Jews during the harvest season, don't you? deeply because it was a single event, the only one which had happened before August. This was the one event of the commandos which was discussed. is that the way you recollect that? during the entire period from June until the end of August when I was stationed there, this was the only event which occurred, the only event of its kind, and therefore it impressed itself on my mind as a special event. I gave no collective reports about other events at that time. This event is, therefore, an individual incident and impressed my memory as something special.

Q All right. You remember this because it happened between June and August and it was the only episode which occurred at that time. Now, do you remember anything between September and November of that year? the time which I can overlook the least throughout my entire activity.

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November? after taking over the commando again, I also found reports about shootings.

Q Did you know that these 94 were to be killed? were to be executed?

Q When did you find out that they had been executed? execution when the troop officer reported this to me verbally. these executions had been properly done?

Q Please answer my question. Did you investigate to determine whether each one of these 94 was worthy of death? happened. and decided whether in each case the person who had been killed had done something which merited death under the laws under which you were operating? so far away and could not come to me first. didn't even trouble yourself to find out whether the 94 had been properly killed? on the report ...

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of these people were innocent, could you have done anything?

A. Certainly, I could have made the troop leader responsible for this..

Q. Yes. Then there was a point in investigating to determine whether the 94 deaths were in order, wasn't there?

A. Could I have that again?

Q. Then there would have been a reason to investigate these 94 deaths to determine whether they were in accordance with the law?

A. Not according to the explanation which the troop leader gave me.

Q I don't think that you caught the question. You said first that since the people were already killed there was nothing to be done. Then I asked you, suppose you had found that 20 had been innocently killed, or rather done to death although innocent. I asked you if you could have done something in that event. You said yes, you could have punished the person who brought about the improper deaths. Do we understand each other to that point?

Q Then there was a purpose, wasn't there, in reviewing these cases to make certain that these 94 had been killed because they committed a crime, there was a purpose, wasn't there?

Q Yes, but you did not do this; you did not investigate the cases. tell me that the persons concerned were to be considered as the perpetrators.

Q Witness, did you or did you not review these cases? subkommando leader had investigated the cases properly, I could not take a part in the investigations any more.

Q Then you did not investigate the cases; you were satisfied with what the subkommando leader had done?

Q You gave him authority to shoot. In certain cases he shot 94 people. He reported to you, "I have killed 94", and you said, "Very well". authority, but assumed the authority according to the authority and the orders given by the Wehrmacht.

to follow your leadership, hadn't you? had the special mission to do what they had been commissioned to do, and since it was an order from the Wehrmacht, they had to keep within that sphere for which they were authorized. know were shot; you told us about two more you saw shot. Now, how many more do you know were shot under you leadership? special episode which impressed me. Then comes the period of time from the end of August until October where the command of the commando was taken over by somebody else, and I am not at all certain about the figure of those shot, and I am not sure how many were shot on my responsibility during that time. For the following time since I was only in command of a part of the commando I knew more about it.

Q You told us abour having seen two people shot. Then we asked you just before recess if you know of any others that were shot. I asked you if they were the only two that you knew that were actually done to death by your commando, and you said, "Oh, no, there were many killed in partisan actions." How many were killed in partisan actions?

A That figure I cannot recollect any more. I can estimate that, but this estimate might be roughly between 100 and 200. two hundred partisans, is that right?

A No, your Honor, I did. not give orders for this. These shootings were carried out with the participation of a part of my commando, and I go so far as to say under my responsibility.

I assume responsibility for this, but I did not give orders for this. to 200, is that what you are telling us? Wehrmacht, those persons who were caught as active partisans, were shot.

Q All right. Now, did you order the killing?

A No. I was far away.

Q. Who ordered the killings? Wehrmacht officer in Nikopol who set the whole thing going.

Q Did you have anything to do with it at all?

Q What did you have to do with it now? actively took part in these actions and in the shootings.

Q Were you present when these partisans were shot?

Q All right. Now, up to the present moment we have the tally that you actucally saw two people shot, you know of 94 others who were shot, and then you know of from 100 to 200 partisans who were shot, so let's say 150. That is 244 people that you know were shot by your command in all the time you were in Russia, is that correct? period in September and therefore I cannot give an estimate.

Q Then there were more than 244. I have only counted up to this point. There were at least 244 killed by your commando?

A. Yes, your Honor.

Q. Yes, all right.

A. Even more were shot.

Q. All right, now how many were shot? Now we are getting some place.

A. About that, even if I most carefully search my conscience I cannot arrive at any figure.

Q. well, you couldn't arrive at any figure no matter how much you scrutinized your conscience just before lunch. You didn't remember any figure. But now after a little bit of nourishment you are apparently able to extract from this elusive conscience which apparently does not answer too quickly to the demands of your brain, that 244 were Killed. Now, let's see if you cannot scrutinize a little more thoroughly.

A. No, your Honor, I have scrutinized my conscience so thoroughly, and my former testimony that I gave about this .......

Q. All right, we want to make certain you stand at the figure of 244. That is the most you know of that were Killed by your commando during the nine months you were in Russia, is that right?

A. No,"this is not the most. The total figure I simply cannot determine however hard I try.

Q. Tell us how many people in all you saw killed while you were in Russia, that you with your own eyes saw killed.

A. I already told you.

Q. How many.

A. The two where I was present.

Q. In all the time that you were in Russia, in the very midst of one of the most sanguinary wars of all times, in the field for nine months, you only saw two people Killed?

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A. Yes, and this can only be explained and can only be appreciated in connection with the special conditions under which I was active in Russia. It cannot be separated or simply be judged somehow in a vacuum, but until October, I was in reserve - -

Q. But you have given us that. Now, how many Jews did you Kill while you were in Russia?

A. I cannot give a figure, because, as I already said in some cases of the shootings, the figure of the Jews participating was never found out and never reported to me.

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Q. How many Jews did your commando kill?

A. Your Honor, I can only give the Same reply to this.

Q. Did they kill any because they were Jews?

A. NO. A more anti-Jewish action was not carried out by my commando.

Q. Did your commando at any time Kill any Jews under the Fuehrer Order?

A. No. That did not correspond with my attitude to the Fuehrer Order, and it did not happen.

Q. You know that Einsatzgruppe D Killed 90,000 people during the time it was in action in Russia. How do you explain the fact that your commando did not contribute any to that 90,000?

A. I can explain this by the fact that, first of all, the figure of 90,000 in my opinion, as far as I have heard from others and what I got to Know, is a figure which I simply cannot imagine.

Q. Well, don't let us talk about your imagination now. we are talking about -- do you think it was about one-half of the figure -- 45,000?

A. I cannot say this any more, than I can give the total figure of the shooting taken place under my responsibility.

Q. You just said you can't imagine 90,000, how many can you imagine?

A. I cannot imagine this at all.

Q. Can you not imagine the 90,000?

A. I can imagine a figure, but I cannot imagine this because I do not Know the circumstances - -

Q. Well, now, Witness, can you not tell us you weren't present you were in Russia?

A. For example, I was four to five hundred Kilometers away from the Crimea.

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Anything that happened in the Crimea, I cannot imagine at all. figure? doubted this figure and have questioned this figure, and because I have heard of individual events at the time, that there were different figures.

Q Do you know Ohlendorf?

Q You served with him in the field, didn't you? of credence? he gave before the International Military Tribunal. He is questioned by Colonel Amen: "Do you Know how many persons were liquidated by Einsatzgruppe D under your direction?" Answer: Ohlendorf, "In the year between June 1941 to June 1942, the Einsatzkommandos reported 90,000 people liquidated," Question, "Did that include men, women and children?" Answer, "Yes." Do you still question the figure? not want to establish such a figure, and he does not -- I am sure he cannot think this possible or probable.

Q Do you Know what Ohlendorf is thinking about? other people, but have great difficulty in finding anything in your own conscience. How many people were killed by the Einsatzgruppe D during the time they were in Russia, since you challenge these figures?

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cannot give a definite figure on this either. has been far more fortright than you have been from the witness stand. We might as well add that gratuitously. Why did you take the six or seven thousand Jewish People across the Dnjestr River? given an order to do so. by taking them back to Rumania? about it. them back to Rumania? wanted to go home, I could assume that the Jews were satisfied that they were allowed to go home.

Q Didn't you know that they were going to be shot when they got back to Rumania?

Q You assumed that, didn't you? Now, tell us whether you confirm what you said yesterday afternoon, "I assume that the Rumanians wanted to get rid of them and send them into the German territory so that we would have to shoot them and we would have the trouble of shooting them. We didn't want to do the work for the Rumanians."

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Did you answer that yesterday in answer to Mr. Walton's question? back to their death didn't you? and I did not want to express that in my testimony yesterday. outside of this lending them across the river?

Q Did you ever arrest a Jew? which were taken, I believe that there were Jews among the people.

Q Did you ever arrest a Jew because he was a Jew?

Q Not even when you were in the Gestapo? already.

Q Did you arrest a Jew as a member of the Gestapo?

Q Well, you did then, how many?

A I don't know any longer.

Q Well, was it 500? they were Jews, I did not arrest any Jews while I was in the State Police, at least not without reason. you were in the Gestapo?

Q How many?

A That was not an order. The order was the one ..... a Jew when you were in the Gestapo? received once.

Q Yes. Now, tell us about that case. November 1938. At the time I was in Munich at a meeting.

Q Well, we don't want too much of it in detail. You arrested a Jew out of the incidents that occurred on November 9 and 10. What did you do with that Jew?

A No, that is not correct your Honor. In Graz and in Styria, the Reichsstatthalter who was present there stopped this action right at the start, and it saved me the trouble of carrying out this order.

Q Then you didn't arrest this Jew? did you not follow out this order to arrest a Jew?

Q All right, when did you join the SD? time you never Killed a Jew, you never arrested a Jew, is that right? war, my activity in the State police. were with the SS, did you ever kill a Jew in your whole life?

Q Did you ever arrest a Jew in your whole life?

arrested a Jew. Now, which answer are we supposed to believe -- did you arrest a Jew, or did you not arrest a Jew? arrested. and you finally were able, after great searching of your conscience, to say that you once received an order to arrest a Jew and then you didn't even execute that order. Now, you tell us that you did arrest some Jews. Now, how many Jews did you arrest in all your life?

Q Well, was it 100? which took place and I cannot possibly remember all those episodes.

Q How many Jews did you arrest in ell your life?

Q 25? the whole time while I worked in the Security Police, I did not carry out.

Q. Did you ever have any individual arrests? Let's leave aside mass arrests -- individual arrests?

A. They also occurred.

Q. How many -- how many Jews did you arrest individually?

A. Your Honor, in view of the numerous State Police events throughout those years, I cannot recollect this at all.

Q. You remembered this one single solitary episode of the order which you received and went into great detail as to why it wasn't necessary to execute it, but yet you cannot remember how many you actually arrested?

A. Your Honor, this one case was a special event.

Q. All right, now you have told us that. Now, answer this question, how many Jews in all your life did you arrest?

A. I cannot possible give that figure.

Q. Would you say it was 50?

A. Your Honor, any figure is wrong.

Q. Would you say it was 5?

A. Your Honor, my testimony will not become any more concrete if I also have to refuse to answer this question.

Q. Did you ever molest a Jew?

A. No.

Q. Did you ever beat a Jew?

A. Never, your Honor.

Q. Did you ever take away his property?

A. No, your Honor.

Q. In all the time that you were in Russia, did you ever execute the Fuehrer Order insofar as it pertained to Jews?

A. No, I evaded it.

Q. Well, why did you go to so much trouble yesterday and on Thursday in telling us how heartbroken, how conscience-stricken, how morally depressed you were because of Fuehrer Order -- you never executed it?

A. Because I was worried and because I was afraid to be put into a situation, where I would have had to carry out this order, where I could not have evaded this order.

Q. When you took the witness stand you immediately began your testimony with the expression of the great shock which you experienced when receiving this Fuehrer Order. Now, if you never killed a Jew, doesn't it occur to you that it would have been far more logical to begin your testimony by saying, "I never killed a Jew, never arrested a Jew, never molested a Jew, so therefore the Fuehrer Order in no way affected me", might that have been a little more logical?

A. Your Honor, the testimony which I make here under oath in the witness stand I did not make from a point of view of logic, but only according to my conscience.

Q. Do you find a great difference between logic and conscience?

A. Between mind and feelings and that what I consider conscience, there is a difference.

Q. Are you adjusting your answers according to the reports which you have studied or according to your memory of the events as they occurred?

A. I make them according to my conscience.

Q. Do you believe in the Nazi ideology?

A. That question would have to be replied to in a different way now, than it would have been replied to formerly.

Q. Well, did you believe in it then -- I don't mean now -- all the time that you were the uniform -- did you believe in the SS?

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A. Only for some parts of it, not the entire Nazi ideology.

Q. Did you take the oath to Hitler?

A. Yes,

Q. Did you hear his speeches -- some of them?

A. Several, certainly.

Q. Did you read the Nazi Party program?

A. If I must also scrutinize my conscience, in this respect -- no.

Q. Did you read "Mein Kampf"?

A. Certainly not.

Q. Did you associate with other Nazi members?

A. I was bound to.

Q. Well, then you knew generally what the policy of the Nazi Party was with regard to Jews?

A. In general, yes.

Q. Yes. And did you agree with that policy?

A. No, or only with part of it, Q. which part did you agree with?

A. In fact, I had no objections -- no important objections to the fact that the Jews before the War be limited to a proportion in accordance with their number and could only have an influence in accordance with this proportion.

Q. That is the extent to which you agreed with the Nazi program insofar as it pertained to Jews?

A. I can confirm this even more because I talked to Jews myself, who also held this opinion.

Q. Well, now, I am just -

A. Who themselves had that opinion.

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Q. Yes. Did you believe that they should wear signs on their breasts and on their backs pointing out to the world that they were Jews?

A. Those things I consider unworthy.

Q. Did you believe that they should be disfranchised and deprived of citizenship, no matter how long they had lived in Germany?

A. They were not deprived of their citizen rights, they continued to be citizens even after the Nuernberg laws.

Q. Did you believe that their property should be taken from them?

A. No

Q. Did you believe they should be sent to concentration camps?

A. No definitely not.

Q. Did you believe that they should be put into ghettos?

A. No.

Q. Did you believe that they should be made to work without pay?

A. No.

Q. Did you believe that they should be publicly humiliated and degraded?

A. No

Q. Why then did you remain a member of organization which did these things?

A. All these things, your Honor, which mentioned here are events which developed at a later time.

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Q. When did they develop?

A. The most important things which you mentioned here occurred only after the beginning of the war when I was under military law and had no choice but was forced.

Q. You said that none of these things happened before 1939 -- September 1, 1939?

A. I said expressly, your Honor, a few of them, and those which occurred before the war could not give me the impression that they were such as to oblige me to leave my organization already at that time.

Q. November 10, 1938 is chronologically prior to September 1, 1939, isn't it?

A. Your Honor -

Q. Please answer that question.

A. That is right.

Q. Yes. And you knew of your own personal knowledge of the excesses against the Jews on those two disgraceful days, November 10 and 11 -- you knew of your own personal Knowledge, didn't you, of what happened?

A. I heard about it.

Q. Yes. Did you leave the SS after you heard of these excesses?

A. No, your Honor, I did not leave it because these excesses had nothing to do with my organization.

Q. You Knew that the synagogues were being destroyed, didn't you?

A. I heard about it, and I was just as disgusted about these matters.

Q. And you Knew that Jews were being sent to concentration camps prior to September 1939, didn't you?

A. No, your Honor.

Q. You didn't know that?

A. I only heard of it, and according to what I heard of the events of the 9th and 10th, only the following happened: at the order of Heydrich the Jews were arrested and were released again some weeks later. This was a measure to which Heydrich felt himself compelled and, which was not his original intention. This was merely done in order to stop those wild actions which Goebbels organized. That is what the Reichstatthalter told me, and from those who disapproved of this in the highest circles, I did not get the impression that this was the intention of the state and of the responsible persons.

Q. Nonetheless, you Know that Heydrich issued an order to arrest Jews, especially the rich ones, and to take them into protective custody, and you Know that he issued orders that the police were not to in any way interfere with any violence against Jews and Jewish property, you Knew about that didn't you?

A. The order did not read like that, your Honor. The order read, the Jews and in particular the rich Jews, were to be arrested and this was done in particular during the wild actions which were initiated by the SA and through Goebbels in order to take these persons into protective custody, to really protect them so that no excesses would occur which necessarily according to Goebbels orders would affect the rich Jews.

Q. Then we conclude from what you said that you approved of Heydrich's order of November 10, 1938 you approved of that order:

A. I did not approve of this order, but I considered that this order could be explained.

Q. You were defending Heydrich's order. Now we ask you, did you approve of it, or did you not?

A. If I considered Heydrich's order understandable insofar, I still did not approve of it, but I can imagine that in this forced situation Heydrich hardly had any other way out to legalize these violent excesses.

Q. Then you did not approve of what he did, is that right?

A. On a whole, I did not agree to it.

Q. But you still remained with the SS?

A. I remained because those were no measures which my organization had started at all, and I could not make my organization responsible for what Heydrich might have done in a state of compulsion, and I could not consider them to be the cause for having increased the severity of the Jewish Question. I am convinced that without those violent actions Heydrich on his own would never have given such an order at that time.

Q. I will read to you from the decision of the International Military Tribunal, "In the early morning of November 10, 1938, Heydrich sent a telegram to all offices of the Gestapo and SD giving instructions for the organization of the programs of that date and instructing them to arrest as many Jews as the prison could hold, especially rich ones, but to be careful that those arrested were healthy and not too old." Did you approve of that action?

A. Your Honor, what is contained in this IMT judgement I did not know, I only knew Heydrich's original order, and since this original order in my territory and from that Reichstatthalter in Styria was considered as being settled, because no violent actions had occurred in my territory, I had no reason to disapprove.

Q. We asked you only simply whether you approved of the order or not.

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Do you defend Heydrich's order or not?

A. I was horrified about this order, but after I heard the reasons, why this order had been given by Heydrich, I could not consider this order quite as dangerous, because Heydrich did not originally initiate this order, but was forced to carry out such a measure of arrest.

Q. Then we come to the conclusion that originally it horrified you, but after inquiry you were satisfied that it was an order dictated by necessity -- do we correctly interpret your view?

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A. It was not a measure originally intended by Heydrich, and when I realized that, I could not condemn Heydrich as much, if I may say so new - because he would not have done it ----

Q. Very well. Now you are just repeating what you said before, so that we will conclude from whit you say you could not condemn Heydrich. How we ask you if you condemned the events which followed the Heydrich orders?

A. In my territory nothing happened, and since I thought it was similar in other territories, I thought that with reasonable consideration of all the events this measure would not be carried out to its full extent.

Q. You know from the newspapers and from your conversations with your associates what actually happened on those two days, don't you? You know of the violent excesses?

A. In the newspapers in consideration of the foreign countries no details were mentioned about these events, at least not in our newspaper in the Reich, and when weeks later I managed to talk to so someone or other, these people were able to inform me that in their territories, too, this action had been carried out in such a manner that the Jews, some of whom had been arrested, were already released and that, therefore, the entire action which Goebbels had started, through interference of the Security Police had been done away with.

Q. Well, did you know that some of those Jews had been sent to concentration camps?

A. I did not hear anything about that.

Q. So you were telling this Tribunal that in all that time you were in the Gestapo you never heard of any Jews being sent to concentration camps because they were Jews?

A. Of course. Your Honor, only now I thought to speak about this question in connection with 9 November.

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Q. Well, let us make it very specific. Prior to September 1, 1939, were any Jews sent to concentration camps because they were Jews?

A. Through my Police Security activity there were not, and I do not assume that it happened owing to the Security Police activity of other state police chiefs.

Q. Well, then you tell us that so far as you knew prior to September 1, 1939, no Jews were sent to concentration camps because they were Jews?

A. Hot through my Police Security work. Yes, I confirm that.

Q. So far as you know generally, not only your own particular district but in all of Germany, no Fews were sent to concentration camps because they were Jews?

A. Basic instructions to arrest any Jews only because they were Jews-----

Q. Don't tell me what the basic instructions were. Please answer the question. Did you of your own personal knowledge know that any Jews were sent to concentration camps prior to September 1, 1939, because they were Jews?

A. No.

Q. Did you know of any Jews being sent to concentration camps after September 1, 1939, because they were Jews?

Q. Did you have a hand in sending any to concentration camps?

A. No.

Q. Why were they sent to concentration camps after September 1, 1939?

A. I cannot imagine this either, because I was not doing that kind of work which was concerned with this problem.

Q. Did you disapprove of that?

A. Yes, I disapproved of it.

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Q. Very well. Now when you heard this speech by Heydrich and Streckenbach that you were to go into Russia and liquidate Jews, did you believe that that was a necessary development of the antiSemitic program of the Nazi Party?

A. No.

Q. You said that Streckenbach indicated that the Eastern Jews were the most important bearers of Bolshevism and that the main purpose of the German forces was to destroy Bolshevism. Did you agree with that proposition?

A. I did not agree with the extermination of the Eastern Jews without making any distinctions.

Q. Did you believe that the Jews were a threat to the Reich?

A. I could not judge that, and I doubted it.

Q. You did not believe that they were a threat to the Reich?

A. I could not judge it; I could not realize it.

Q. Did you believe in Hitler?

A. In general I believed that he wanted the best for the German people.

Q. When you made your speech to the men, did you tell them about the Fuehrer Order?

A. No.

Q. Did you tell them about your orders in Russia, what you were to do?

A. No. I only spoke general words, about discipline ---

Q. Here you are, the commanding officer of an organization of a military organization in the field, and you make a speech to them and you don't tell them what their instructions are?

A. Mr. President, the circumstances in this connection did not make this possible. he men had been lined up in the street, German speaking people were standing around, and, therefore, I could not possibly tell the men about one of the most secret orders.

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Q. Well, did you tell them privately then?

A. Of course. I was stationed together with the staff of the Einsatzgruppen in several garrisons at first.

Q. Did you tell your men of Einsatzkommando 12 about the Fuehere order?

A. I had to because the officers would have addressed me concerning this; what is going on here, whether I didn't know anything about that. Of course I had to tell them ---

Q. Very well. Now you told then about the Fuehrer order which called for the liquidation of Jews, gypsies, Communists functionaries and certain Asiatic or social inferiors. Did you after you spoke to them of the order then say, "Now, I don't want you to obey this order because I do not agree with it?"

Did you add that?

A. Your Honor, such an order I could not give, and I did not give.

Q. So then the Tribunal may draw from what you have just said that you passed on this order to your man who took orders from you, and you did not add any veto or prohibition to the execution of the order, is that correct?

A. I arranged it in such a manner that those men were in my hands and depended on me.

Q. Well, very often it happened as you testified here that your kommando was far away from you and you couldn't reach them. You couldn't reach them by physical contact; you couldn't reach them by communication. Couldn't they then have been executing the order, the Fuehrer order, to kill the Jews?

A. Your Honor, if you describe that situation and consider that period, - there were the following circumstances of which I was able to tell the men because they were orders of the Einsatzgruppen chief or generally known.--

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Q. Well, then now, do you tell us that you instructed them not to obey the Fuehrer order? Is that what you tell us now?

A. For a certain period, yes, insofar as they were in a foreign territory where they had to know that the Fuehrer order was not to be carried out in foreign territory and not on the flat land.

Q. On the flat land? But they could kill them up in the high lands? Is that you want to tell us?

A. Your loner, the expression flat land means for us the village previously by other witnesses.

Q. Let us be precise about this. I asked you if you passed on the Fuehrer order to kill Jews and others, You said that you did not do it in this public speech because there were German-speaking people about and this was a secret order. You added, however, you told the men privately that they had to execute this Fuehrer order. Then I asked you if you added to that instruction that although they heard the order, they were not to obey it. You said, "No." I asked you then if it wouldn't be proper to draw from what you had said that you had passed on an order and had never in any way vetoed it, and, therefore, it was being executed by your men. Then you said, "Well, but I had immediate contact with the men." Then we called your attention that you had testified that these men. were often so far away from you that you couldn't control them. New that brings it up to date. were not to obey the Fuehrer order?

A. No. Your Honor, but I told them that they had to obey my orders and were only to do what I told them and when. For example -

Q. And what you told them was to obey the Fuehrer order. That is what you had told them, wasn't it?

A. To obey my orders.

Q. And what were your orders?

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A. My orders were - for example, when they were carrying out the harvesting action there was the order from the Einsatzgruppen chief which was generally valid that in the flat land, in the rural district, the Fuehrer order was not to be carried out. The order was that in foreign territory the Fuehrer order also was not to be applied. I could tell them that because it was a well-known order from the Einsatzgruppen chief -

Q. Then you changed your statement which you made just a moment ago that you never told the men not to obey the Fuehrer order? You changed the statement which you made just a moment ago that you had vetoed the order? Do you change that?

A. No. Your Honor, I do not change it. I see no contradiction.

Q. You see no contradiction from your very direct statement that you never vetoed the Order and your statement that you told the men not to obey it? You see no contradiction in that? Suppose you think it over during the fifteen minutes, and then tell us after the recess whether there is any contradiction in those two statements.

( A recess was taken.)

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THE MARSHAL: This Tribunal is again in session.

DR. RATZ: Dr. Ratz for the defendant von Radetzky. Your Honor, I ask that the defendant von Radetzky be excused from tommorows' session, Wednesday, so that I can prepare his defense.

THE PRESIDENT: The defendant von Radetzky will be excused from attendance in court tomorrow so that he may prepare his defense. BY THE PRESIDENT:

Q. Witness, in answering several questions, put to you by Mr. Walton on the number of executions performed by Einsatzgruppe D, it was indicated on page 20 of Document Book II-D, that the total figure of executions was 54,000. Then later on in Document Book II-D, page 28, the total figure of executions performed by Einsatzgruppe-D was 75,881, and, you confirmed that Einsatzcommando XII contributed whatever number the figures would show towards this total of 75, 881; that Einsatzcommando XII was included in the commandos was included in the commandos whose activities had brought about a total of 75,881 executions up to the time indicated, is that correct?

A. Yes.

Q. Now why did you make such a distinction between this total figure of 75,881 and the 90,000 indicated by the defendant Ohlendorf, which covers a much larger period. Why do you distinguish between 75,000 and 90,000 a matter of 15,000?

A. Your Honor, when I commented on this and gave my explanation for this, I wanted and could only say that in the total figures of the Einsatzgruppe-D my numbers were necessarily included, that they just happened to be included in the figure 54,000, or 70,000, I didn't mean to express.

Q. Well, the figure 75,881 is a figure taken from an official report, that is correct, isn't it?

A. Yes, but I can not say anything about how this report was drawn up and about the correctness of this figure. I never knew of it before, and I find out from the document here without knowing anything about it.

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Q. In the same document book, on page 52, there is a reference made to 5,000 Jews rounded up in each town by Einsatzgruppe-D, after a statement that 13,000 odd Jews and Communists had been executed. I ask you, how many Jews you rounded up during the period that you were in Russia?

A. Your Honor, that is the gist of my testimony that I was not in a position to go to any city but Nikolzjew, in which such measures would have been necessary; I must go further and say, I never got into any city at all.

Q. Did you round up any Jews during all the time that you were in Russia?

A. No, I had no special opportunity.

Q. All right. Now, let's sum up the situation: You shot no Jews, you arrested no Jews, you rounded up no Jews, is right?

A. Yes.

Q. The only contact you ever had with the Jews was when you led six or seven-thousand of them across the river?

A. In this connection, yes. In connection with the general Security Police measures, no.

Q. Well, what did you have to do with the Jews?

A. If Jews were among those people against whom I had to carry out some investigation , or measures to be taken, they were arrested along with the others, but I already said they were arrested as suspect to have committed something , not because they were Jews.

Q. Neither did you when you were in the Gestapo, nor the time that you were in the Security Police, you never arrested a man because he was a Jew; you never maltreated him because he was a Jew. You never subjected him to any discomfort because he was a Jew, is that correct?

A. Until the time of the war, absolutely.

Q. Well, what about after the war, or the starting of it?

A. After the war began I was no longer in a State Police executive function,until I took over the office in Duesseldorf.

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Q. The statement is correct, that during your whole life, we will make it broader than what was said before, you never killed a Jew, you never ordered the death of a Jew, you never ordered the arrest of a Jew, you never maltreated a Jew, you never in any way caused discomfort inconveneince or a heartache to a Jew because he was a Jew, is that right?

A. Not just because he was a Jew, but at the time at Duesseldorf, it is possible that on the basis of special instructions several arrests were made.

Q. That is the time of the half-Jew incident?

A. it is the time, I whole time I was active in Duesseldorf.

Q. Are you referring to the episode of the half-Jew, which you described heretofore?

A. This appertains to that time.

Q. Yes, are you referring to this half-Jew that you arrested?

A. No. when sometime or other some special occasion existed, which I can not remember, I only want to reconcile them with my conscience, and I didn't want to absolutely exclude it for this time.

Q. Do you admit that you never arrested a whole Jew, but you may have arrested a half-Jew? You will grant us that much. In all you life you may have arrested half a Jew, is that whet it comes down to now? Is that the concession you are making, that you admit having arrested half a Jew?

A. Not only because he was a half-Jew.

Q. Well, then, you never arrested the one-half of his body; you didn't arrest the one-half which was Jewish but you did arrest the other half which was not Jewish, is that what you are telling us now?

A. Your Honor, I can not find an answer to give to this.

Q. Well, listen witness. You must admit that it is pretty difficult to accept the fact that a member of the SS, a member on the Gestapo, a member of the SD, of the SP, of the Einsatzgruppe, or the Nazi Party, who "heiled Hitler" for twelve years, who knew of the constant, very progressive campaign against the Jew, you must admit it is a little difficult to assume when a man tells us that in all these years he never once laid a rough hand on a Jew, you will admit that is a little extraordinary, don't you?

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You admit that is a little unusual?

A. Only a man can understand it who knew the conditions. That in our Security Police Mission, at that time I didn't get any special Jewish orders besides the one I have mentioned, and, I personally and in my attitude had no cause just to be rough simply because they were Jews.

Q.Well, how do you explain, witness, that the chief of your organization in the field had admitted that the report showed that 90,000 were executed by all the commandos in that group. If you don't want to accept the 90,000, take a figure less than that. Let's take one-half. Let's say that 45,000 were executed. How do you explain that although your commando was one of the five in the group, that it could have avoided, and did avoid the killing of one, single, solitary Jew, when your orders were specifically to kill Jews?

A. Your Honor, this can be explained by the following: First of all this figure which you assume to be 45,000 in this case does not at all include the number who were shot merely as Jews. I am con inced that I can say from the report that a very large part of these executions happened as the result of the special order. The number, 90,000, which is given here as a total are not executions, just on the basis of the Fuehrer Order, but the numerous executions of Partisans, sabotuers or sabotage cases, and other cases, which take up a large part in this figure, and, my personal assignment, I would say, the good forture i and my commander had in that assignment brought with it the fact that until October I had no chance to apply the Hitler Order, because I was not assigned in a city where measures were carried out, because I was in a foreign territory in which the Hitler Order did not need to be applied, and in the following time, from November on, I was active in a territory far away from the group, with a small remainder, and in a Steppe area where no Jewish question had to be solved, and I on the basis of my attitude did not look for any opportunity to arrest any one.

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Q. There were no Jews in the Steppe area?

A. I think a documentary source of material about Jewish settlements will show that in this sparsely settled area there was hardly any Jewish population, and, if so, one would have had to look for them individually, and this special searching I did not conscientiously engage in.

Q. Then you have had nothing to do with whole Jews, half-Jews, or Steppe-Jews?

A. Your Honor, this is a distinction which I .....

Q. Witness, do you admit that any Jews were killed by Einsatzgruppe-D in Russia in accordance with the Fuehrer Order?

A. Yes.

Q. And you put the blame on the other commandos, that Einsatzcommando XII never executed any Jews?

A. I don't put the blame on the other Einsatzcommandos, but it was unfortunate for other Einsatz-commandos to be put in a situation where they had to carry it out. If I had come to the Crimea, for example, then I probably would have had to carry out the Order, and not to have evaded it, as I was able to do here.

Q. All right. Now, you would have carried out the Order, if you had found some Jews?

A. If I had received the Order, and could not have evaded the Order any longer in any other manner, in other words, if the final consequence would have compelled me to be shot myself, then I would have carried out the Order.

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You need not indulge in that supposition, you did receive the order, didn't you?

Q Yes, you had the Fuehrer order. And let's suppose that you were confronted with five-hundred Jews, and you had this Fuehrer Order in your hands, would you execute them? have been in a position to reprimand me for disobeying the Hitler Order, and had stressed it, then probably I would have done it.

Q You would have killed the five-hundred Jews? probably.

Q If the chief had told you, if you don't do this you would have been reprimanded, then you would have killed the Jews? would then have to suffer the consequences of my own shooting, I probably would have obeyed the Order. gave to your commando. First, you made a speech to them, and in your speech you told them to obey orders, that is correct, isn't it? pline, and to their obedience towards me.

Q Yes, "obedience to me" meant obedience to orders?

Q Very well. You have answered that. Then later on you told them privately about the Fuehrer Order? didn't want to keep this from all of them; I told them about this Fuehrer Order, and I told them to obey my orders, that is, to do what I told them to do.

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Q Did you tell them not to obey the Fuehrer Order?

A I didn't tell them not to carry out the Fuehrer Order for all time but to follow my directives, and one of my instructions which I gave them for the first time was the basis directive that in the rural districts the Fuehrer Order was not applicable. The officers were satisfied, I think, that they did not need to do such work, as they really were not ambitious to do it, and when they learned they didn't have to carry it out, I had to just send them off without any worry. That was at the time before the territory was declared to be under Roumanian sovereignity. Fuehrer Order? passed by the Einsatzgruppe chief in agreement with the Army, and this applied of course also to my commando.

Q That no Jews were to be killed in the rural districts?

Q What regulation was that? had given, and which he mentioned at various times on the witness stand, and where he added that Himmler in October 1941 no longer wanted such consideration for the Army.

Q Then you didn't in any way modify the Fuehrer Order, sofar as you were concerned; the Fuehrer Order still remained; you merely passed a limitation which Ohlendorf had submitted, that is right, isn't it? outside of the rural districts? away from you, where you could not control them, they could execute Jews?

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my commando. in a city to carry out such measures there. command, or some members of your command, or some entire commando executed Jews because they were Jews? vinced that the men for whom the execution of such terrible measures was unpleasant would not have gone on their own part to carry out something which I, or the Einsatzgruppe chief had liberated them from.

Q But you didn't liberate them from it in the cities?

A I didn't get into any city.

Q How about your own men when they were away from you. You told us they were away so far from you that you could not control their actions? German territory, that it is the Roumanian Sovereign territory, and for this time the same exception is valid which has been mentioned in another connection before, namely, that we refused in this foreign territory to apply the Fuehrer Order, that is valid for Odessa and for other cases, and this was always expressly emphasized for those areas, that if they were foreign areas it was an exception, the Fuehrer Order was not to be carried out and I was glad that I was in a position to move into an area where this exception of not applying the Fuehrer Order was valid. If this had not been the case, it would have been my misfortune, and I would not have been spared this thing, namely, what the commandos on the march with the troops had to do. would have killed Jews, too, just as the other commando-leaders did?

said, if the final consequences would have been valid for me, yes, I would have had to do it.

9 Dec 1947_A_MSD_22_1_Gross (Lea) orders you would have killed the 500 Jews? myself or to have to let the other die then I would have preferred not to die myself because with my death I could not have prevented the result for in my stead an other man would have been ordered to take my place and to carry out the order. to decide between the death of 500 innocent people and yourself?

A Well I was spared that situation. I cannot quite imagine it. it. Now, you are before 500 innocent people, men, women, and children Jews - and you are presented with this order to kill them. Now, are you going to confer with your conscience and if so what is going to be your conclusion?

Q And you would have killed them?

Q Yes. All right, that's all. You may continue with the examination, Dr. Hoffmann, if you have any further questions to put to him.

Just one other thing. Referring to these figures, Dr. Hoffmann, which you presented to me the witness had stated with all the emphasis which he could summon to his words that every committment to a concentration camp via the Gestapo was approved by Heydrich, not only approved, that he reviewed the case and then later by Kaltenbrunner. I ask you, witness, if you still stand on that statement? to the War when I was the director of a State Police office I personally never saw it any differently than that an order to commit someone into a concentration camp was only signed by the Chief of the State Police Heydrich. I confirm this expressly and I know it from so many comrades 9 Dec 1947_A_22_2_Gross (Lea) who were also active at that time and that it was not different with them either.

reviewed every case of a committment to a concentration camp via the Gestapo. Do you confirm that statement? activity. I personally never experienced it differently and the Security Police had no different way of handling it. at least 25,000 prisoners in concentration camps you want to tell us that Heydrich had reviewed everyone of these cases? about 8 to 10,000 were political prisoners who for security police reasons were committed into concentration camps and I am convinced that in the same manner as I know it from my own police activity that these political prisoners of the Gestapo were only put in the concentration camps on the basis of the committment order which bore the signature of Heydrich or a facsimile stamp of it. self reviewed 8 to 10,000 cases of committments to concentration camps? custody referent told me he always went to Mueller or Heydrich with various cases and got the confirmation for these committments. common sense and observation that a busy man like Heydrich would not have the time to personally review 8 to 10,000 cases of people being sent to the concentration camps? Does that occur to you?

A. Your Honor, this thought does not occur to me because it corresponds to the truth and because I can confirm this by dozens of witnesses. I went to call any State Police officer into the witness stand and he must or will only confirm again and again what I know from my own experience. Therefore, I can make this explanation in my conscience.

you will and can call many witness we support you, that you know from your own knowledge that 8 to 10,000 cases of concentration camp committments were reviewed by Heydrich before the people were sent to a concentration camp committments were reviewed by Heydrich before the people were sent to a concentration camp. Now, we ask you how is it that you can remember with such vividness and with such emphasis this number that were sent to concentration camps via the Gestapo but you cannot remember how many people you ordered killed in Russia. I only heard this number of 8 to 10,900 only a short time ago and this was confirmed to me by someone. It was not a matter of what I know from my own experiences for from that time I cannot remember any number of people who were in concentration camps. I never knew such a number. I only knew those cases who were in the concentration camp from my district. Even for that I cannot give a definite number. a figure told to you by someone than your own experiences of sending someone to his death?

A Your Honor, this last mentioned figure _ I want to be quite frank _ I got to knew particularly from reading the record and I have convinced myself of it the last few days.

Q We ask you as the final question: how many people did you ordered killed in Russia? figure.

Q Very well, that's all.

Any re_direct examination, Dr. Hoffmann?

MR. HOFFMANN: May I just ask a few question, your Honor.

THE PRESIDENT: Certainly by all means.

BY DR. HOFFMANN: when you refused to obey an order of the Higher SS and Police Leader didn't you at that time also have to fear that you would he punished by death under certain circumstances? Just answer yes or no. had taken if you had to shoot 500 innocent people or would rather have chosen death itself. Could you give the answer very clearly if you remember what you risked in Duesseldorf?

What do you think of this?

THE PRESIDENT: We don't quite catch the question, Dr. Hoffmann. while we are always very glad to have yes and no answers it doesn't seem this question admits that type of response. Perhaps you might amplify it a little more. It is not quite clear to the witness and it is not clear to the Tribunal either. BY DR. HOFFMANN: year 1944 he also risked hislife. Thereupon he said yes.

THE PRESIDENT: When you say also risked his life it suggests that he at one time did. It isn't apparent that he had from his own statement. He never saw Jews, never had contact with them, had the sweetest time imaginable and even in Russia didn't risk his life. BY DR. HOFFMANN: he did not obey an order of the Higher SS and Police leader?

THE PRESIDENT: Yes you can put that question.

BY DR. HOFFMANN:

Q Thereupon he said yes. How I ask him whether he would answer the question which you, your Honor, asked him if on the one hand there were 500 innocent people and on the other hand he has to risk his life for them, whether in view of the fact that he acted differently in Duesseldorf, he would not have to review his answer once more.

as well as I experienced it in Dusseldorf. In Dusseldorf things happened one after the other. When I was confronted with the final decision, that is when the order was once more confirmed from Berlin only then I would have been confronted with a new situation. your life? though the order of the Higher SS and Police Leader would have been confirmed by Berlin, I could have had the half-Jews notified by confidence men and told them to disappear.

Q Witness, I don't want to know and I just want to know whether you saw a chance in Dusseldorf to escape with y ur life, yes or no?

Q But you don't dare to say that you would have refused an order if you would have had to count on certain death; you don't think you have such a strong character, yes or no?

DR HOFFMAN: I have no further questions. BY THE PRESIDENT:

Q Did you actually disobey the order at Dusseldorf?

Q Yes, and you are still alive?

Q So therefore it doesn't follow that because you disobey an order you are going to be killed right off the bat; that doesn't follow, does it, in the German Army?

500 innocent men, women and children, and you have the order to kill them, and you go to your chief, Ohlendorf, privately, and you say to him, "Chief, I really can't do this. I am a good soldier; I want to follow Hitler; I want to obey orders, but can't you help me in some way to evade this? I just don't have the conscience and the heart to do it." Now do you want to tell us that Ohlendorf wouldn't have lent a sympathetic ear and wouldn't have tried to assist you in some way? Now, answer that. the Fuehrer Order. ear, and would he have considered your case? Do you recognize him as that kind of a man, as a deliberating person, intelligent, comprehensive, and sympathetic to his comrades in the field? recognized for this order he would not have hesitated to draw the necessary conclusions from it as he saw them.

Q Well, that does not mean anything. You mean he would, have shot you right then and there? it would have been in the field, that is at the place, then he would have had to give the order to put me before court martial.

Q Oh, before a court martial, but he wouldn't have ordered you shot right then and there, would be?

DR. HOFFMANN: Then I have a few more question, Witness.

RE_DIRECT EXAMINATION (Continued) BY DR. HOFFMANN:

Q What was your relationship to Ohlendorf?

A My relationship with Mr. Ohlendorf was colorless, we didn't know one another at all.....

Q Did you have any special liking for him? matter of conversation, his description and the way he was able to dramatize matters. President assumed it here, to bring this matter to him and to talk to him in this way, yes or no?

Q Why not? out the Hitler Order was known to me on his part.

Q Was Ohlendorf, therefore, uncomppromising? yes or no?

A No, I don't think so. BY THE PRESIDENT: across the river, wasn't it, to save these poor Jews, because otherwise he would have had to shoot them? He was considerate enough there, wasn't he? He didn't kill these 6,000, did he? that is if he comes to such a decision, then I, of course, welcome such a decision very much, but this, in my opinion, has nothing to do with it because this was a special case, according to his attitude.....

his mission in Russia, and he doesn't kill them. He tells you to make some arrangement to take them across the river, not to shoot them. Well, he was certainly considerate there, wasn't he, and if he would be considerate with 6,000 he would be considerate with 500, under some special circumstance, of course?

A No, your Honor, this was a very special case. Certainly Herr Ohlendorf did not seek to do things which went beyond the Hitler Order, that is to say, to give himself over to measures for others.

THE PRESIDENT; Do you have a question?

DR. KRUASE: Dr. Kruase as a representative for Dr. Riediger for the Defendant Haensch, your Honor. I take the liberty to ask a few more questions if you permit me to.

THE PRESIDENT: Yes, certainly. BY DR. KRUASE: measures of which the witness spoke on the occasion of the escape of the Rumanian Logion Leader, Horia Sima. Witness, you stated yesterday that at the time you were threatened with disciplinary measures and that they threatened you even with execution. Who expressed this threat?

A First of all I want to correct this. They did not threaten me with disciplinary measures, but they threatened me with execution, and this was a spontaneous fit of rage on the part of the Reichsfuehrer which evolved from this circumstance.

Q Was this threat expressed, to you personally? was, was expressed to me by the chief of Office N. tween Reichsfuehrer Himmler and the Chief of Office IV in which this threat was expressed?

A One can say it that way, but I want to complete it. The Reichsfuehrer had already given instructions to Mueller.

THE PRESIDENT: Just a moment. As a matter of information what has this got to do with the Defendant Haensch?

DR. KRAUSE: The defendant Haensch at that time was the disciplinary expert in Office I, and I want to try to find out whether Office I, that is disciplinary agency, had anything to do with this case that might interest interest Herr-Haensch, or conclusions might be drawn against Herr Haensch, against whcih we want to defend ourselves.

THE PRESIDENT: Well, but you say with this case. It isn't clear just what--the escape of Horia Sima proceedings were initiated or at least threatened against Herr Nosske, which according to my information he described yesterday as disciplinary measures. If they were disciplinary measures these would have had to come before the disciplinary agency of Office I. I am curious to hoar information about this, whether such a proceeding was pending before Office I, namely the disciplinary agency of Office I.

THE PRESIDENT: Well, if you think that is going to help you we want to hear it. It isn't too obvious just what you are driving at, but you may put a question.

DR. KRAUSE: I just have a few questions. We will find out immediately.

Q (By Dr. Krause) You say then, Witness, that thiswas a conservation between Himmler and Mueller, orat least you assume so. Did a formal disciplinary proceeding pend against you?

A No, not in this connection. Office I and the investigating officer had nothing at all to do with this. The reaction of the Reichfuehrer because of these consequences of this escape were directed against the allegedly guilty people, and it was ordered that Mueller in view of my person, or rather no directives had yet been received as far as my person was concerned. Still Mueller feared seriously that a similar fate threatened me and Geissler.

on the part of your superiors in Office IV, but no punitive proceeding? fuehrer too spontaneous.

DR. KRAUSE: Thank You. No further questions.

PRESIDENT: Any redirect, Dr. Hoffmann?

DR. HOFFMANN: No.

PRESIDENT: Any recross, Mr. Walton?

MR. WALTON: No.

PRESIDENT: Do I understand there is a witness available? Now, the witness, Nosske, will be returned to a defendants' box, and the witness will be brought in. Well, I thought that there was a witness waiting. Well, Nosske can be returned to the witness' dock, I understood that there was a witness waiting, and Dr. Gawlik had been sent for. Well, I am mistaken, Well, the defendant, Ott, will be taken to the witness stand. Didn't you say something, Mr. Walton, about a witness, and you wanted Dr. Gawlik to be here?

MR. WALTON: No, Your Honor, I said, there was a matter that I wanted to bring to the attention of the court, I would appreciate that he be here since this matter originated at a prior session of this court, and a decision was made, and I would like to present a matter to the court for ruling at this particular time. Now, if you think it will interfere with the process of the court, I shall be glad to come with Dr. Gawlik in your chambers.

PRESIDENT: I think it would be better.

JUDGE SPEIGHT: Witness, raise your right hand. Repeat the oath, "I swear by God, the Almighty and Omniscient, that I will speak the pure truth, and will withhold and add nothing".

(The witness repeated the oath).

JUDGE SPEIGHT: You may be seated.

DR. KOESSL: Koessl for Ott. Before starting the direct

examination of Ott, I would like to ask the Tribunal one question which bothers several other defense counsel and myself. It is a matter of what time is given the defense on Christmas. We have several witnesses to visit, and some work to do, so it would be very nice if in some form we could make our arrangements and find out what the sessions will be for the court, therefore, I would kindly ask the Tribunal to make known how long the Christmas recess will last.

PRESIDENT: Do I understand, Dr. Koessl, that you would avail yourself of some of that time in connection with work having to do with the trial?

DR. KOESSL: Yes.

PRESIDENT: Yes. We will confer an that matter this evening and make an announcement tomorrow morning.

DR. KOESSL: Thank you. I ask that I may be permitted to start the direct examination of the defendant, Ott.

PRESIDENT: I wish you would, Dr. Koessl BY DR. KOESSL: were born.

A My name is Adolf Hermann ott; and I was born on the 29th of December 1904 in Waidhaus in the Oberpfalz province.

Q What profession did your father have?

Q From what conditions did your parents come?

MR. FERENCZ: May it please the Tribunal, in the case of almost every defendant we have begun with the history of his father. In order to save time, solely in order to save time, and because of the history of his father is completely irrelevant in this case, I request that the defense counsel submit an affidavit on anything concerned with the father of the defendant and immediately get down to the charges in this case.

PRESIDENT: The Tribunal is interested in having a little background on each defendant. The great trouble is though occasionally we go into a great deal of detail which really doesn't help us too much. Now, a few questions about his family life are in order, but if you are going to go into it too thoroughly, Dr. Koessl, or more than that is required, we would be very glad to have you make up an affidavit and submit it, and, of course, it will have the full consideration of the Tribunal.

DR. KOESSL: I just have a few questions, Your Honor, of a personal nature, and as fast as possible I shall come to speak about the activity of the defendant in the organization.

PRESIDENT: Very well. BY DR. KOESSL:

A My father comes from a business in the Rheinpfalz; my mother from an old farmer's family in the Oberpfalz.

Q Did you have any brothers or sisters?

A Yes, two. I had a brother twelve years older than myself who after being active 23 years abroad died in Mexico; and I have a sister who is married to an engineer.

Q Do you have a wife or children? was killed by an American grenade. My child is with my mother-in-law.

Q There is your home town? and I remained there.

Q What schools did you attend and where? stance.

Q Where did you pass your childhood?

Q What professional training did you have?

A It was my desire to become a farmer or a forester. My parents lived in modest circumstances, and my father demanded of me that, like my brother, I should become a merchant, and in the very difficult time that I should go abroad. My brother had already been in Mexico for 12 years where my uncle was commercial consul, and all my relatives on my father's side were for decades in the United States.

Q Where were you apprenticed? brother was studying 12 years before. I learned for two and a half years and remained as a correspondent and a bookkeeper in the same company. ment before coming to the SD? the same branch, and even though it became a victim to the bad economic situation or had to be reduced so much that the personnel almost all of it had to be dismissed, I was with one of my sport friends in a sporting goods house. On the first of January 1993, approximately, I became office manager of a barrel factory. Before that I was unemployed for about one year, but I refused to take any unemployment compensation, and in order not to be a burden to my parents, I managed to make a living on odd jobs.

Q Did you mention all your positions?

A No. In 1933 in the fall or in the spring of 1934 the German labor front put me in charge of an administrative office. During that time it was my duty to work for the Security Service-SD-Reichsfuehrer SS in an honorary capacity and I did so for one year. Then it was suggested by the sector in Munich as well as by the then SD Main Office that I go into the SD in full capacity.

Q What positions did you have in the SD from 1935 to 1945? in full capacity--full time, and then I negotiated with my gauleiter Court No. II, Case No. IX.

in Augsburg about my dismissal. It was approved and on the first of October 1935 I was taken into the SD on a full-time basis.

Q What positions did you hold in the SD? Lindau, Lake Constance, that is, in my home town. It included six other agencies in the Allgaeu Region which were honorary positions.

Q What positions did you hold after that? I was transferred to the sector Munich and there I was put in charge of Department III. atically. Hanover-Brunswick as a staff leader.

Q That was again in the SD?

A Yes. On the first of January 1938, that is, three and a half months later, I was transferred to Koenigsberg in Prussia as a staff leader of the SD Main sector Northeast.

Q Next position? took over the than SD sector Neustadt, on the Weinstrasse, that is, in the Rheinpfalz. Shortly after, I assumed this job, the former sector Saarbruecken was incorporated into this sector. From the year 1941 on

PRESIDENT: Well, Dr. Koessl, suppose we begin with 1941 tomorrow morning?

DR. KOESSL: It is almost finished, Your Honor, and then tomorrow we can begin with something else.

PRESIDENT: Very well. All right.

DR. KOESSL: Thus you held this position until the end of the war?

THE WITNESS: Yes.

THE PRESIDENT: That was very simple. (Laughter in the dock).

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Court No. II, Case No. IX.

DR. GICK: Dr. Gick for Strauch. Your Honor, after Nosske, the turn would be the defendant, Strauch. The defendant, Strauch, is still in the hospital and is tied down to his bed--is confined to his bed-therefore, I cannot call him to the witness stand. My application for separate trial has not yet been ruled on. I ask that the defendant, Strauch, be put at the bottom of the list for the time being.

PRESIDENT: Dr. Gick, we have now ordered a medical examination, and it is in the process of being accomplished at the present time. we expect by the end of the week to have a report on your client's condition. Naturally, we will not take him up until we get this report so that if the Tribunal does not dispose of your motion for a severence prior to the time that the defendant, Ott, has completed his case, we will then take up the case of Klingelhoefer.

DR. GICK: Thank you.

PRESIDENT: The Tribunal will be in recess until tomorrow at 9:30.

(The Tribunal adjourned until 10 December 1947, at 0930 hours.)

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0930-1630, Justice Michael A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America, and this Honorable Tribunal.

THE PRESIDENT: Dr. Koessl, yesterday you addressed an inquiry to the Tribunal regarding the Christmas holiday season. The question arose during our deliberation on the subject whether the Tribunal should be in session on the Monday and Tuesday preceding Christmas, and we have come to this conclusion, that is if counsel desire to use the complete fortnight, the two-week period between December 22 and January 3 of the new year, that perhaps time would be gained, rather than lost by letting them have that fortnight complete and uninterrupted in their work of research and preparation for the final briefs and arguments, and so forth. all the Tribunals will recess on the 24th anyway, it has been thought reasonable to hold court on the preceding two Saturdays which would be December 13th and December 20th. Will it be agreeable to defense counsel generally to hold court these two Saturdays so that you can have the two days, Monday and Tuesday?

DR. KOESSL: Yes, I am convinced that the defense counsels would prefer that, Your Honor.

THE PRESIDENT: Yes. Very well, the Tribunal will announce that we will be in session all of this week, including Saturday, the 13th, and all of next week, including Saturday, Dec. 20th, and then the Tribunal will adjourn for the Christmas and New Year holidays and reconvene on 5 January 1948.

DR. KOESSL: I thank you.

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THE PRESIDENT: And I trust that all defense counsel will really make use of that time in the preparation of document books, briefs, and even final argument. There is no reason why they should wait until the very completion of the testimony in order to prepare their summations, because we always have before us that barrier of the translation section, and we must get through that barrier, and the only way to get through is to have the documents ready in plenty of time so that there will not be any undue congestion at the termination of the case. Very well.

DIRECT EXAMINATION (Continued)

DR. KOESSL: May I now continue with my direct examination?

THE PRESIDENT: Yes.

DR. KOESSL: My attention was drawn to the fact yesterday that in the translation one place was not quite correctly translated. The witness testified that on the 1st of October 1935, he became director of the SD sector Lindau, that in this capacity six people were under his direction, who, at various places, worked for the SD in an honorary capacity outside of their own jobs. These were not six big offices, but these were six people at various localities who worked for the SD outside of their own jobs.

THE PRESIDENT: Your statement will appear in the transcript and in that way bring about the necessary correction.

DR. KOESSL: Thank you. BY DR. KOESSL: your activity during the war. Will you please state once more where you were active during the war? sector in Neustadt an der Weinstrasse, that is in the Rhine Palatinate. Shortly after taking over this office the former SD sector of Saar bruecken was dissolved as such and was incorporated into my sector.

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In July, 1941, I moved my headquarters from Neustadt to Saarbruecken. At the some time I took up quarters in Lorraine because there were no apartments in Saarbruecken.

Q Did you ever get any police training?

Q Were you everractive in the Gestapo?

Q Were you ever active in the criminal police?

Q What foreign assignments did you have?

A I was in the Sudetenland in the fall of 1938; in the spring of 1939 I was in Bohemia; in the spring of 1940 I was in Norway; and in 1942 I was in Russia. were you subordinate there? and SD, in Kolin in Bohemia and in Bergen, which is in Norway.

Q When were you in Bergen in Norway? Norway? measures against Jews or members of other races? Norway, and against the religious activity of peoples of other faith?

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Reich by force? country and exploiting it? or Saarbruecken? the reports to the Office III of the RSHA in all domestic spheres and to concern myself with these problems in an informational capacity. Saarbruecken, after the 1st of September, 1939, remain the same as the ones before the war? the foundation of the Office III the informational service in the so-called enemy spheres was dropped, that is, it was transferred to the State Police. the war did not belong to Germany? the SD matters for Lorraine in the staff of the command of the Security Police and SD in Metz, Lorraine. In the fall of 1944 the former French Department Lorraine came under my sector. in the old Reich area? tion?

A No. That was purely a policematter with which the SD was not concerned.

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Lorraine? but actually on my own responsibility. by the population of Lorraine? Province of Moselle, without my request declared himself ready and prepared to certify my conduct in Lorraine during my three years stay there. He got in touch with my relatives on his own, and he sent off a certificate. In an accompanying letter to my mother of the 10th of April, 1947, he writes expressly that he is sending off the certificate without it being requested and that it concerns my conduct during the four years of work in Lorraine, and that it relates about my conduct. He is asking that this certificate be given to the British authorities. I was then in a British internment camp. After I heard from my mother about the certificate, a few weeks later I confirmed to him the receipt of this paper, and dated the 21st of June, 1947, he wrote me a letter to Nurnberg. May I quote two sentences from this lengthy letter? At one place he says: "Even I always said to my wife how Ott must be pretty well off as far as his conduct is concerned, because he helped wherever he could." At the end of his letter he says: "I hope that we will see you again with us. You are welcome and you don't have to fear anything." I am reading this in this bad German because he is writing in French. "All right, if you can go where you have spent four years within the National Socialist State. This is surely not permitted to all your colleagues."

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Document Book II. BY THE PRESIDENT:

Q Was this letter written in July of 1947?

Q I didn't quite understand the reference to the national socialist state. of April 1947. phrase, "national socialist state" appeared?

Q I didn't quite grasp the connection between that phrase and the rest of the sentence. Just in which way was that phrase used - he said something about the four years, and then he used the "national socialist state".

A He writes as follows, "It is nice if you can go back to a place where you have spent four years in the national socialist state."

PRESIDENT: I see. He is referring to the past. Very well. Thank you.

THE WITNESS: He means the four years of the German occupation. This is the former French province Lorraine. BY DR. KOESSL:

Q How long were you director of the SD sector, Sarbruecken?

Q How did your transfer to Russia come about? RSHA in Berlin on duty. When I was there I went to see the chief of Office I, that was Gruppenfuehrer Streckenbach at that time, who used to be my superior, and I asked him to release me for the Waffen SS or the Army since I did not want to remain at home any longer. I didn't want to stay at home, while others were engaged in hard fights.

12 Dec 1947_M_MSD_3_2_Spears (Lea) In addition, because of my SD reporting, I had repeated severe disputes with Gauleiter and Reichcommissioner Buerckel. Streckenbach told me when I saw him that there was no prospect of releasing me for the Waffen SS or the army, but perhpas I might be employed in the Einsatz. He could make no promises, but he would speak about it to the other office chiefs and would notify me later on. officer of Sonder-Commando 7B? letter from the RSHA by mail. This special delivery letter was dated, Berlin, 24th of January 1942. letter, and this is the same letter which is referred to in Book IIIB, No. 4747, Exhibit 123, page 6. What did you know at that time about the missions of the Einsatzgruppe and the Einsatz and Sondercommandos and of the security police and SD in Russia? and Einsatzkommandos and Sondercommandos were in existence. At that time I had not met any comrade who was in Russia.

DR. KOESSL: One moment, this is on page 6 of this document.

THE PRESIDENT: Well, that does not correspond with our 6--do you know what page it is in the English Document Book?

DR. KOESSL: Unfortunately, I could not tell you.

THE PRESIDENT: What is the document number?

DR. KOESSL: Page 70 of the English Document Book.

PRESIDENT: Yes. Thank you very much. Proceed. BY IR. KOESSL: Russia, and the agencies at home did not get any reports from the Einsatz area through the RSHA. First of all, I thought of a similar activity as it existed in Norway or in other areas.

Russia? BY THE PRESIDENT:

Q Pardon me, Dr. Koessl, did they have Einsatzgruppen in Norway? were subordinate.

Q I asked yet whether in Norway they had Einsatzgruppen?

A I think they weren't called "Einsatzgruppe" at that time. that it was something different from that they had in Norway because a different terminology was used? time to me. did it not?

THE PRESIDENT? Very well. Proceed. BY DR. KOESSL:

Q Where did you report in Berlin before leaving? morning of the 5th of February 1942 I arrived at the RSHA. I wanted to report to Streckenbach before leaving. I had waited about threequarters of an hour in the ante-room, and finally got to see Streckenbach. I had spoken to him about two minutes when the telephone rang. He was speaking in the telephone and asked me once more to wait in the anteroom. After a very short time, after two minutes, I was called back into Streckenbach's office and he told me that he would have to go to a Ministry immediately, it was a long distance, and I would not have to wait for him, and I should go to the next house. Prinz Albrecht Streot 9, where I was to see a Mr. Schrefeld who had the travel orders for Russia and the railroad ticket.

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according to which all Jews were to be killed? either officially or privately, nor did I get any instructions about my activity in Russia. arrived there? depot at Warsaw, received a vehicle there, and left for Smolensk by vehicle. I arrived in Smolensk on the 15th of February 1942, and there I reported to the chief Einsatzgruppe B, the then SS Oberfuehrer Naumann, for duty.

Q How long did you stay in Smolensk, and for what purpose? days for my information. I was with the then SS Obersturmbannfuehrer Hennicke, who was the chief III there, and he acquainted me with the SD informational material in order to got a picture of the political, economic, and cultural structure of the Soviet Union. Furthermore, I reported to Chiefs I and II, where I acquainted myself with the headquarters of the commandoo its strength, its leader and the army to which the commando was attached. I also found out about accomodation, about signal equipment, et cetera.

Q What instructions did the chief of Einsatzgruppe B give you? explained to me the area and acquainted me with the second armored army, commanded by General Schmidt, to which the commando was attached. As my primary mission, Herr Neumann designated to me the roar security of this army together with an intensive partisan reconnaisance. He told me that the trouble the partisans were causing was increasing more and more lately and had become a vital danger in the army area. He also told me that a close corporation and exchange of the information was necessary with the army and the Ko-Rueck, that is short for commanding general of the rear army area.

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Furthermore, he told me that I should got my instructions from Hennicke about Hennicle's special mission. That war an SD job entitled. "Research about the actual life in the Soviet Union". Finally, Oberfuehrer Neumann told me that the commissars and officers who had been with the commando thus far were to remain with me in the future because it is my first independent commando leadership and my first police job. Rausch, the commando fuehrer until then was to acquaint me with the job for about three weeks and then Oberfuehrer Naumann would then come to Bryansk to the headquarters of the commando in order to bid farewell to Rausch and to instal me as the commanding officer.

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Q. Was not the fuehrer order made known to you about the killing of the Jews in Smolensk?

A. No, Strangely, not one single word either from Oberfuehrer Naumann nor from Hannicke or of the other two officers I spoke of.

Q. Didn't you read any reports about it?

A. No, the SD reports said nothing about a fuehrer order or Jewish executions.

Q. When and where did you reach Sonder-Commando 7B?

A. On the 18th or 19th of February 1942 I reached Sonder-Commando 7 B in Bryansk.

Q. How large was this commando and how was it divided up -how was it organized?

A. The commando had approximately a hundred men, about 50 officers and men came from the state police and the criminal police, 10 came from the SD, about 10 to 15 drivers came from the security police and the same number of drivers who were on an emergency war status. Then there were two signal men. The organization was as follows. In each town, Kursk and Orel there was a sub-commando.

Q. Wasn't there one in Bryansk, too?

A. Bryansk had the headquarters of the commando and also the local subcommando.

Q. Were any subcommandos dissolved, transferred, or newly activated during your time?

A. Yes, about the end of March the subcommando Kursk was dissolved because the Kursk area was placed under another army. Furthermore, around May or June I set up the commando in Karatschew and shortly afterwards about the end of June, on instructions from the army, I sent a small detachment to Lokot -- L-O-K-O-T.

Q. How many officers did you have in Sonder Commando 7 B?

A. 8.

Q. To what branches of the SS and police did the officers of your staff and those in the subcommandos belong?

inspector of the state police. Chief 3 was an Obersturmfuehrer of the SD. Chief 4 was a Hauptsturmfuehrer, Captain, and a police inspector of the state police at the same time, he was the commanding officer of the subcommando located at the same time where the headquarters of the commando was. Further, there was an Untersturmfuehrer who was the motor pool officer. I think he came from the SD or he came from Berlin, I think. The commanding officers of the subcommandos, in as far as there were sufficient in munbers, were police inspectors.

DR. KOESSL: The witness has made a sketch or a chart in order to show his own area, and I would like to submit to the Tribunal photostats of this chart.

THE PRESIDENT: Dr. Koessl, would you please first indicate on the large map where this area is located?

DR. KOESSL: Yes, Sir. Witness, will you please go over to the map and show where your Einsatz area is?

THE WITNESS: The headquarters of the commando was first in Bryansk, and then at the end of March I moved it to Orel where the headquarters of the army was. Here was the subcommandoo Kursk, which was later dissolved, and the later established subcommando Karatschew was set up a few weeks later in Lokot was south of Bryansk in a large forest.

THE PRESIDENT: Very well.

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the Kommando 7-B on the basis of the chart. in the Army area of the Second Armored Army. That is the area as I have drawn in on the chart. In the East the border is the front line which is shown on the chart by thick lines interspersed with dots. In the South the Army area bordered on the line of Ver Yove Malo Archangelsk. In the west the border runs eastward along the villages Sseredina Buda, Trubtschewsk, Potschep, in the north the line Bytosch Kletnia. from Mr. Naumann. I indicated Kletnia in the northwest of the chart. The border must run where the vertical rod line is. What is left of that line belongs to the Rear Army area, not to my subkommando.

THE PRESIDENT: when you speak of the red line, do you mean actually the color red or the Soviet line?

THE WITNESS: It is marked in by pencil on these photostats.

THE PRESIDENT: Well, it is only black and white on ours. Oh, I see.

THE WITNESS: Everything that is left of that line belongs to the Rear Army area, not to my Kommando.

THE PRESIDENT: I see.

THE WITNESS: The area is traversed by the main road Bryansk-Orel and by the railroad on the same line, and this road cuts the area into two parts, into a northeastern one and into a southwestern part. The main towns were Bryansk and Orel where the roads and railroads were converging in a radius. First Bryansk was the headquarters of the kommando, but the end of March, 1942, I moved it to Orel which is about 130 kilometers away from Bryansk. The chart is drawn according to a scale 1 to 1,250,000. One centimeter on the chart represents twelve and a half kilometers in the actual area. This chart shows at various places areas which are marked by criss-crossing lines. These are those areas where members of the Kommando hardly over wont to because there the danger of the partisans was not so great as on the road Bryansk-Orel and its surroundings.

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Some areas are dotted. That is the area of the socalled self-administration Lokot which was subordinate to the well-known Russian Kaminsky. The Sonder Kommando 7-B had to concentrate its forces in combatting the partisan and sabotage acts on the road Bryansk-KaratschewOrel. In the front line area the Kommando was active in the towns Schistra near Jagodnija, Krassnikowo and Bolchoff as well as Dumtschino. These are the areas directly at the front. In the south the area between Mokrasi Malo Archangelsk and Nischne Salegosch -- that is at the bottom right -

THE PRESIDENT: Dr. Koessl, don't you think it might be more interesting if he points out these places on the map as he relates the story of the actions of his Kommando? It would be more helpful to us, if he gives it to us abstractly, geographically, doesn't convey the image and picture which I am sure you want us to have.

DR. KOESSL: We shall then refer to the map when the witness talks about individual actions.

THE PRESIDENT: Yes. I think that would be much more illuminating. BY DR. KOESSL:

Q What communications existed between the subkommandos? or if the roads were not impassable because of mud in the spring, were to be reached by vehicle without any trouble. The Kommando in Lokot which was in the so-called partisan war area could only be reached by going via Bryansk. From Bryansk to Lokot an armored column of the Army traveled about twice a week, and the rail line was guarded by security troops.

Q Did you have any telephone or radio communications? Einsatzgruppe but telephone communications existed via the Army headquarters to every subkommando.

Q How often did you have an opportunity to visit the Sub-Kommandos? kommandos was often disturbed.

dos? and Bryansk. As far as the subkomnando Lokot is concerned, which was about two hundred kilometers away and which would mean a trip of four hundred kilometers both ways. I visited this Kommando three times altogether, once with the armored train of the Army. The trip lasted five days even though the conference in Lokot took only two hours. The second time the General made available to me his airplane, and the third time I flew by plane with Oberfuehrer Naumann -- who I think had become a Brigadier General by this time.

Q Did the assignment area change during your time? away from us and given to an army in the South, and along the front line there were only small gains and small losses.

Q To whom was the special Kommando 7-B subordinate? taneously it was subordinate to the Second Armored Army in Orel.

DR. KOESSL: Your Honor, the witness has also made a chart in order to make clear the various channels of command, and I would like to submit this to the Tribunal because the relationship to the Army is important. two channels, the straight lines, those which are not interrupted, that is, the channel of command of the Security Police, and SD. That is to say, that is the channel of the orders which came through Einsatzgruppe B, or those orders which the Sonder Kommando 7-B passed on to its subkommando. The dotted line is that channel of command the Army used to give orders to the Einsatzgruppe and which were then passed on to the Sonder Kommando or to the subkommandos.

from the Security Police and SD in Berlin, Also from the Higher SS and Police Leader of central Russia, and from the Army, and from the Army group center, and from the Commander of the rear Army area. The Sonder Commando VII-B, which is drawn in as a triangle to the right at the bottom (referring to the chart) received orders or the one hand from Einsatzgruppe-B; on the ether hand from the Second Armored Army, and from the Commander of the rear Army area of Bryansk.

Q. What orders did you get from Einsatzgruppe-B, and which one did you get from the Armored Army?

A. From Einsatzgruppe-B I received those orders which concerned the activity of the Commandos which were necessary as the situation demanded it. Furthermore, I got orders about the SD reporting, as well as about changes in personnel and changes in the situation. The Second Armored Army gave orders about the Security police measures of most varied types, as well as orders about Partisan warfare, and anti-sabotage acts.

Q. What orders did you get

A. I have some more. Furthermore, the Army demanded reports continuously about the conditions in the civilian sphere, and about the Partisan reconnaisance. Outside the Commander of the rear area, . the Field Commander in Orel also gave orders, and sofar as the subcommanders were concerned, they received orders from the town commandants, and the local commandants.

Q. With the agency of the Army did you cooperate? In order to show these many Army agencies, the witness has made a third and final chart from which the Tribunal can see the great number of Army agencies which cooperated with the Sonder Commando. Just explain this chart briefly?

A. Yes. In this Chart I have drawn in the triangle which re presents Sonder-Commando 1 B, and the three samll triangles below represent the sub-commandos.

Up on top is the Army group center, which gave orders via Einsatzgruppe-B. Then to the right is the second Armored Army in Orel. I mention these agencies which belong to the Staff of this Army, and with which I had to deal directly. First of all the Commander-in-chief himself, second of all the Chief of Staff, third the Department I-A, the Department I-C, G-II; then the counter-intelligence officer, and then the Quartermaster General the Economic Command, as well as the Department for Agriculture. All the way on the right I put in the town and field commandant in Orel, that was General Theo Haman. Then I listed the G-II of the Corps, and below the Combat Division. Then comes Counter Intelligence of the Army. Then comes the Field Police; another Army Police Unit, and the Command Hutzel and the Combat Field Police; another Army Police Unit, and the Command Hutzel and the Combat Command Fuchs. Then the Air Squadron Moelders, a unit of his was in Orel, as well as the Special Unit of the socalled Indigenous people, these were the Russian volunteers who fought against the Russians under German leadership. At the left top we have the Commanding General of the rear Army area, center, in Smolensk, that was General von Schenkendorf, who gave instructions via Einsatzgruppe-B. Then comes the Commending General of the rear Army area, who gave directives and orders directly to the Commando. Then comes the Security Divisions of Counter Intelligence No. 1, the Secret Field Police and which was called G.F.P.; then the town and village commandants, the Administrative Chief, these were administrative districts under the charge of an Army administrative officer. Then the socalled Liaison Staff Lokot. That was the liaison Staff between the militia of Kaminsky and the Chief of the self Administrative Lokot, the Russian Kaminsky.

Q. You have already described this?

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A. No, I have not. This Russian Kaminsky had his own militia with the approval of the Commanding General, of about two-thousand men strong. That was the detachment of Russian volunteers trained by German non-comms but led by Russian officers against Partisans.

Q. That suffices, witness. After you arrived at the Sender commando VII-B, did you immediately take over the leadership of the commando?

A. No. I have already said that for about three weeks I acquainted myself with the work.

Q. When did you take over the leadership?

A. The 15th of 16th of March, 1942, the then Oberfuehrer Naumann came to Smolensk and said farewell to commander leader Rausch gave me the command.

Q. In Document Book II-D, that is, in the English page 64, and the German page 57, which is your affidavit of 24 April 1947, NO-2393Prosecution Exhibit No. 67, under No. 3 of this affidavit it reads: "On the 15th February 1942 I was sent to Sender commando VII-B of Einstazgruppe-B. I became commanding officer of this commando and successor of Obersturmbannfuehrer Rausch." End of quote. When you were interrogated by Mr. Wartenberg, did you mention to him the time that you spent in acquainting yourself with the work?

A. Yes.

Q. Did you also tell him that you did not finally take over the commando until three weeks later?

A. Yes. I told him in great detail about my information in Smolensk, and I told him about the way in which the commando was handed over to me by Naumann.

Q. How long did you lead the Commando VII-B?

A. I was in charge of the Sonder Commando VII-B from the 15th or 16th of March until the 27th or 28th of January, 1943.

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Q. In what periods of time between the 15 March 1942 and the end of January, 1943, were you prevented from conducing the leadership of the Commando?

A. The leadership of the Commando can be divided up into three phases. The first period -

THE PRESIDENT: Dr. Koessl, you are now going into a more active phase of the narrative. Suppose we take it up after our usual morning recess.

DR. KOESSEL: Yes, Your Honor.

( recess.)

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THE MARSHAL: The Tribunal is again in session.

DR. FRITZ: Dr. Fritz for the defendant Fendler. excused this afternoon from attendance in Court, and for you to rule that he report to Room 57, because I want to discuss his defense with him.

THE PRESIDENT: The defendant Fendler will be excused from attendance in Court this afternoon, and the appropriate authorities are hereby instructed he be conducted to Room 57 so he may there confer with his attorney.

DR. FRITZ: Thank you very much, your Honor.

THE PRESIDENT: You are welcome.

DR. KOESSL: I would like to proceed now.

THE PRESIDENT: Yes, Dr. Koessl. BY DR. KOESSL:

Q. During what period, witness, between 15 March 1942, and the end of January, 1943, were you the leader of the Commando?

A. The first time, from 27 April 1942, until 3 June 1942; then I was appointed to Einsatzgruppe-B in order to get supplies, a number of articles, and I went to my home country, and to Lorraine. On 27 April I left; the 3rd of June I returned, and on the 4th of June I was in charge again of the Commando.

THE PRESIDENT: I didn't quite catch that?

DR. KOESSL: From 27 April until 3rd June the witness was not with the Commando.

THE PRESIDENT: Very well. You mean he was in Germany.

DR. KOESSL: Yes, he was in Germany. BY DR. KOESSL:

Q. Any further interruptions?

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A. The next interruption began on 14 August. I fell off a horse and broke my left lower thigh. On 14 August I came to the Field Hospital No. 156 in Orel. I was there for about four or six days, and then I was to be taken to Warsaw in a train for wounded. At that tide, at least for a few days before the attack near Bolchoff had started, and the Field Hospital was "full-up". Then I went to my own quarters in Orel. I was lying there and the physician of the Field Hospital attended me. He visited me every two or three days, and apart from that I was also treated by the physician of the Unit Moelders.

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Q How long was this interruption of your service with the Kommando? Government Councillor Dr. Allinger came who was to be put in charge of the Kommando. He remained for a few weeks in Orel but he was then transferred back to Einsatzgruppen B and the new Kommando chief SS_ Sturmbannfuehrer Wilhelm Bluhm was appointed. At this time I was to be retransferred which is noted in the documents here. mentioned, 4747, in Document Book III_B which the President already looked at during the morning.

THE PRESIDENT: How long was he disabled after August 14th?

Q How long had you been away? September. When I could walk with crutches, on 28 September 1943 when my retransfer had already been decided I went homo first.

Q Did you remain at home? I could only walk on crutches at the time. After five weeks when my leg had more or less been healed I was ordered to Russia again. I was detailed to Russia again upon special request by the supreme chief of the 2nd Armored Army Corps General Schmidt who had sent a report about Einsatzgruppen B to the Reich Security Main Office. This request of the General was supported by the chief of Einsatzgruppen B Brigadefuehrer Naumann.

Q How long did you then remain with the Kommando?

THE PRESIDENT: When did he return first?

Q And when did you take over the Kommando?

THE PRESIDENT: You went on 28 September 1942, is that correct?

AApproximately on the 8 September I went back. It took me seven days to get there and then I took over the Kommando.

tion until January 1943?

THE PRESIDENT: It came through that approximately September 8, undoubtedly November 8 is intended.

A Yes. I left home on 8 November and on the 15th I arrived or there abouts and on the next day, 16 November 1942. I took over the Kommando again. were they in agreement with your idea of what the work was going to consist of? the information service and intelligence work I knew from former assignments. Apart from that I had certain experiences which I had already at the beginning in the Russian territory during my Russian assignment made in connection with combating partisans. Already at that time a part of the roads could only be passed in convoys and only in daytime.

Q Did your expectations conform to conditions as they were?

A No I couldn't say that because Rausch informed me about the fact that this Fuehrer order was in existence.

Q What did Rausch tell you about the Fuehrer order?

THE PRESIDENT: When was this?

A That was when I arrived at Kommando VII_B in Bryansk. That was 18 or possibly 19 February 1942.

THE PRESIDENT: That's the first time you had heard of the Fuehrer order, February 1943? carrying out within the territory of sub-Kommando VII_B. in the evening. He was on a short service trip and in the evening we sat down in his own room and we discussed matters until midnight.

He first explained to me the marching route of the Kommando since it had left in June 1941 from Pretsch and Dueben. He also told me about the collaborations with the Wehrmacht and also he said, "Now, I am going to explain to you the hardest task which I had". And that was the Fuehrer order. I asked Bausch what Fuehrer order and Bausch said, "Of course, the Fuehrer order concerning the extermination of the Jews." Upon that I said, "What extermination of the Jews?" So Bausch said, "Were you not informed in Smolensk about that?" So I said "No, not a word was mentioned to me". Thereupon Bausch informed me about the Fuehrer order as he had informed the marching Kommando in June of the preceding year in Pretsch and Dueben or as the Fuehrer order had then been made known by Heydrich and Streckenbach. I requested Bausch to tell me whether this order had also been issued in writing. He said, "No, this order has not been written down." people concerned? Fuehrer order, the Jews would have to be eliminated for reasons of security. I asked him"what Jews" and he said, "All Jews". When I asked him "does that also concern women and children" he said "Yes, they also have to be eliminated".

Q What did he direct you to do or what did he give you as a tank? that the front had come to a stop near Orel as early as October, I think at the end of October 1941, and that the front line from that date on could not be moved forward. He told me that the Kommando for as long as five months had been stationed in Orel and Bryansk and had carried out the Fuehrer order concerning the elimination of the Jews. As far as I was concerned the order would become topical when Tula had been reached. The chief cities which by then were still occupied by the Russians were Suchinitschi and Mzensk.

main Russian part. They mention Mzensk which is east of Orel and Suchinitschi which is east of Bryansk. As far as your own territory was concerned which had already been in the hands of sub-Kommando VII-B for some time was this Fuehrer order to be carried out in this territory? concluded more or less in this particular territory. He said that towns were already free from Jews; that, however, probably in the far away places between the woods and swamps there would probably without any doubt be Jews, but that the Kommando was not string enough and not well manned enough to carry at operations in this territory which was over three hundred kilometers wide.

Q What was your reaction to this order then?

complete surprise to me and came out of the blue, I was horrified and I intended after the period of three weeks of my getting used to my work and when, Brigadefuehrer Naumann would arrive, I should have this order confirmed by Naumann. I did not only consdier this order very severe and serious for the people concerned but also for the men who had to carry out this order.

Q Didn't it occur to you to refuse to carry out this order, to object to it, and refuse the carrying out of it?

A That wasn't possible for me because as far as this territory was concerned it had already been carried out for five months. Naumann and what did he tell you?

A Yes. Brigadefuehrer Naumann arrived the 15 or 16 of March. It was a Saturday and he remained until Sunday noon and when he turned over the Kommando to me on this Sunday morning I asked him whether this order would have to be carried out in the form as told to me by Rausch and whether it was quite correct in this shape. Brigadefuehrer Naumann replied, "Yes, this order has been given in this particular form. I myself have very serious misgivings about it and I reject it psychologically but we have to carry it out." were chief of the Kommando to apprehend Jews and to execute them according by the Fuehrer order?

A No. When I took over Kommando VII_B there were no operations of any kind in order to seize Jews. which might possibly be in the territory concerned? confirmed, I could not detail this small unit of about 100 men into these partisan infested territories. I could not dispurse them there.

I depended on my own securing of supply routes, mainly the road BryanskKapatschew-Orel and the parallel railway line and in making partisan reconnaissance. Added to this in the southwest and south of Bryansk there was a forest and swamp area around Lokot. In this territory there were partisans numbering about 3,000 men strong.

Q How did the partisan warfare express itself in your territory? question because it is very decisive for conditions in the territory of the 2nd Armored Army, As I have already said that Lokot, south of Bryansk, could only be reached by an armoured train. The road Bryansk-Kapatschew-Orel and the railway line of the same route was in constant danger of partisan attacks. The same applied for the supply routes and the railway lines from Bryansk and Lokot to the frontal sector. In the territory in the north of Bryansk near Biat, Kowo, I put into this sketch, there also was partisan and sabotage not work here. The partisans even had an air base and they had regular aerial service. The losses through partisan warfare were very high. In the fall of 1942 shortly before I left at that time, for instance, the railway administration authorities Orel had lost 80% of their locomotives through blastings and sabotage acts. Each month hundreds of German soldiers and numerous Russian civilians were killed through partisan warfare. Even the trains with wounded and the supply trains were often blasted by mines. On the main road Bryansk_Orel according to statistics received by the Army.

THE PRESIDENT: How large was this partisan organization? territory?

A It was 6 to 7,000 men. We had groups of partisans.

THE PRESIDENT: Very well. There were 5 to 7,000 engaged in those activities which you have now described is that what you are saying?

THE PRESIDENT: How many men did you have? 100 men.

THE PRESIDENT: You are not going to try to tell us that you with 100 men were going to try to compete with 6 to 7,,000 armed forces who had an air drome and possessed of explosives and were organized and carried out what really amounted to organized warfare? the reconnaissance of the Partisans, a number of Wehrmacht units also took part, The 6 to 7,000 -

THE PRESIDENT: Well, that really became then a military operation?

THE PRESIDENT: The Wehrmacht wouldn't allow such a major situation as that to be solved only by your small group?

THE PRESIDENT: well then what you are doing at present is merely giving us a history of the situation of the area.

A Your Honor, I want to make clear the following things. One has to distinguish here between two different activities, First is partisan combating and the other is the reconnaissance,

THE PRESIDENT: That is enough that you indicate that there were vast partisan groups, in fact of such size and of such force that they engaged the attention of the Wehrmacht. Now, tell us what you did, what your Kommando did because if you go into the history of the whole partisan movement in Russia, it is entirely too vast to be related here in your own case. I would suggest, Dr. Koessl, that you would try to confine your questions to what his Kommando did. BY DR. KOESSL: Kommando in the whole of the Partisan warfare. Therefore, witness, tell us briefly about the tasks of your own Kommando.

two things were necessary. First was to actually fight the partisans which was mainly being dealt with by the Wehrmacht and the other thing was the Partisan reconnaissance which was mainly the task of my Kommando. I may point out, this is mentioned in a number of documents from which it becomes evident that the Kommando first of all dealt with reconnaissance of the partisan bands. documents. Please proceed witness.

so many units from the security sectors, for these tasks even temporarily in fact not enough to carry out a successful combat of partisan hands. The Wehrmacht was merely in the position, sometimes, only for a few days, anyway only temporarily, to put at our disposal a unit of the size of a regiments and to take from the front, and thus try and carry out an effective partisan warfare. I may refer here to a document which is contained in the document books here and which deals with the Operation Eisbaer, which is Polar Bear. That was a partisan operation in which I myself took part and which was conducted by the Wehrmacht, in January, 1943, briefly, how was it possible that you, with your lack of men and manpower, that you could do anything at all in the matter of the partisan warfare? O.D. That is the regualr service, Ordnungsdienst, the Ordnungsdienst, the regular service in the territory of the Einsatzgruppe B, as ordered by the Wehrmacht, was set up by ken from the Sonder commandos, selected men, who were then trained. They were Russian volunteers who had volunteered for police service. Added to this it was the task of the commandos to create a network of intelligence and agents who were in position to find out about all movements and changes in the partisan bands as far as possible, and as far as possible find out the directives issued by the partisans among themselves. It was by no means the task of the partisans to form closed units and to fight openly. It was rather the aim of the partisans to disperse into smallest units and carry out acts of sabotage and small attacks. actions. partisans then?

under greatest difficulties, to take men from fighting units, from the security units in these vast territories, even temporarily and to detail them for partisan combat units. a small nature against other small, movile units on the part of the partisans? tasks. There was first of all the espinonage and reconnaissance of small sabotage groups up to the actual warfare in which on both sides thousands of men confronted each other.

Q In what way did you take part yourself in partisan warfare? and when, in time, I received a perfect knowledge, not only of the manner of fighting of the partisans but also of the organization and of the territory, I participated in the assignments of the Wehrmacht with my own commando within the whole task of partisan warfare. I was in charge of the intellegence of armed and unarmed units with the aid of my agents and with my Russian police. Wehrmacht took extensive actions and more than one company participated? in command, I took part in seven large scale partisan operations of the Wehrmacht.

THE PRESIDENT: Witness, you mentioned Russian police?

THE WITNESS: Yes.

THE PRESIDENT: They augmented your number to what extent so that what was the final total strength of your commando?

THE WITNESS: Your Honor, the Russian police, the so-called O.D. or regular service, was not an integral part of my commando, but it was Russian police which was merely being set up by us and it was trained by us.

THE PRESIDENT: Your commando always remained the same size?

THE WITNESS: Yes, it was equally strong at any time.

THE PRESIDENT: What was the maximum number of men that you commanded?

THE WITNESS: Of my own commando only those one hundred men that I mentioned, and the Russian O.D. they had about four hundred and fifty men.

THE PRESIDENT: But you did not immediately command the O.D., did you?

THE WITNESS: Yes, your Honor. We were in charge of this particular O.D. service. They were in a building which was attached to ours, and one of my officials, or at least I think two together with two interpreters were constantly in the central office of this Russian police.

THE PRESIDENT: Then you in effect had five hundred men under you?

THE WITNESS: Not quite this, because the Russian police had been assigned to other tasks by the Wehrmacht, tasks of the kind which in Germany are being handled by the constabulary, but I was authorized to detail men for the partisan reconnaissance of those O.D. I was authorized to employ them.

THE PRESIDENT: All I am trying to find out is whether these Russian police were under your command or not. If they were under your command, they necessarily increased the strength of your organization. If they were not under your command, they did not, How, the question is a very simple one. Did you have command over these Russian police so that they in effect became part of your organization, or did you not have such command over them?

THE WITNESS: No, this power of command was not mine, but exclusively the local commander or the city commander of the Wehrmacht had this power.

THE PRESIDENT: So that -

THE WITNESS: I only was in charge of the actual work to be done by order of the Wehrmacht.

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THE PRESIDENT: Yes, so that your command strength always remained about one hundred?

THE WITNESS: Yes. The fluctuation was only a very slight one. Sometimes there were only eight-nine men, or even more, but approximately one hundred men.

THE PRESIDENT: Yes.

Q (By Dr. Koessl) will you describe to us any extensive operations that you took part in?

A You mean partisan operations? part in?

A You mean partisan operations? part in? Shurinitschi, S_h_u_ It is at the east of Bryansk, and in the second part--.

DR. KOESSL: It is on the map. It is on the railroad running north east. It is on the other righthand corner. It is about 30 kilometers from Bryansk.

THE PRESIDENT: Very well.

Q (By Dr. Koessl) When did this take place? sent me to the Reich for getting further supplies between the 20th and 24th of April.

Q Were any partisans killed during such action?

A The G.F.B. in the actual fight in the towns only suffered two or three wounded, and two or three - two partisans were shot.

Q And what was the second undertaking? At thebeginning of June, 1942, together with two Wehrmacht companies, a colonel was in charge of this operation. It was in the territory of Trosna-Ploskoje.

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That is to the south and southwest of Orel. southwest of Orel. I remember the event very clearly because the officer had this shooting carried out without interrogating these partisans.

Q And what was the third operation? by the counterintelligence group Witter, assisted hy twenty officers and men of my own commando and two companies of indigenous counterintelligence members who were Russian volunteers who were working under German leadership, and they were fighting against the partisans.

Q And what was the result? Werchopolie. That is in the vicinity of Bryansk. One officer....

DR. KOESSL: Your Honor, it is marked on the map at the east of Bryansk, about 30 kilometers to the east of Bryansk, on the map.

A (Continuing) One officer was killed and three men, or at least non-commissioned officers they were had stopped on mines in the partisan forest. The second operation in July - I don't remember whether it was in the middle or towards the end of July, 1943. That was an operation in collaboration with the fighting unit Fuchs and two squadrons of Russian cavalry who were also fighting on the German side in the sector Trojanowo-Michailowka. That was an operation which took about two or three days. There was not any result, success, which could be mentioned, I think two men were killed during this whole operation.

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in the forests near the railroad line, Bryansk-Karatschew, and in this operation, the fortifications of the bonds were destroyed. A number of mines were unearthed, hut it was not possible to catch a single partisan. November shortly after my second return to Russia. That was in the sector of Bolchoff. That is immediately behind the front line. In this operation two battalions of the Wehrmacht had been combined from various units, fortified by another company, in order to comb out a territory infested by partisans, it was a thick forest. On our part seven or eight men were killed. There were about fifteen wounded, and the partisans suffered losses of about twenty-five killed and wounded, or at least the numbers I do not know because they did not fall in our hands, but on the evening of the third day we had to withdraw because the partisan bands had succeeded to cut us off in the back and therefore there was the danger that we would be encircled in the night. Polar Bear No. 1, 2, and 3. I was asked concerning this during my interrogation by Mr. Wartenberg, and I could give him minute details about this because I myself took part in this operation, which took place in January 1943, at 35 degrees below freezing point and it lasted ten days, Later on, after I had received the indictment, I could see from the documents that the Operation Eisbaer is contained in the reports in March '43 concerning the reports of the Eastern Occupied Territory. May I just finish this? The Operation Eisbaer was under the leadership of the Wehrmacht. Colonel Ruebsam was in charge of the operation. Among the German participants there were about 2500 men from various units of the Wehrmacht. The partisan bands who were chased into the forests and swamp territories there were about 3000 men, and here I may mention something which seems to me most characteristic, which is the fact, that this operation which took ten clays and in which 2200 German officers and men took part, did not bring into our hands one prisoner, one man or one dead member of this partisan group.

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This becomes evident from the document which has been submitted to the Tribunal.

Q How many smaller operations did Commando 7-B carry out?

THE PRESIDENT: I understood you to say that the Eisbaer Operation endured three days. Few you tell us of one phase of it lasting ten days.

THE WITNESS: No, that must have been a mix-up, The Operation Eisbaer had three phases, Eisbaer 1, Eisbaer 2, and Eisbaer 3. In each phase there was a new territory. It lasted from 15 January until the 24th or 25th of January. That is ten days.

THE PRESIDENT: Very well.

THE WITNESS: It is mentioned in the documents that I took part in it. I was in charge of the reconnaissance with 25 men of my commando. BY DR. KOESSL: How many lesser operations, reconnaissance operations, did the Sonderkommando 7b carry out during your time? because the partisan reconnaissance was almost a daily task, and it had currently to be dealt with. The partisans always changed their locations, and they sent out their sabotage and terror groups, which sometimes only consisted of three or four men, into the cities and everywhere. German 57, you have just mentioned the Operation Eisbaer. Why did you just mention this particular event and not the other operations?

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tion by Mr. Wartenberg on the 21st of February of this year a list was shown to me, or at least it was read to me, which contained names for those various partisan operations. Mr. Wartenberg asked me to tell him about those operations in which I had taken part myself. When he read these names to me I said that the only operations in which I took part was 1, 2, 3 Eisbaer and that I had actually taken part in them.

Q Mr. Wartenberg said when he was heard on the witness stand on the 7th of October, it is in a German book on page 389. but I don't know the English page, he said that you stated that the Operation Eisbaer had taken place at various points, that it had taken from the middle of February to the middle of May, and that you then went on recreation leave, and after that you had spoken about executions. How, what did you tell Mr. Wartenberg at the time?

A In these explanations which Mr. Wartenberg made when he was in the witness stand, these statements contain a number of incorrectnesses. It was correct, however, that mention was made of the Operation Eisbaer which took place at various points, as Mr. Wartenberg quite rightly said. Although it wasn't my way of expressing it, but of course it must have taken place at various points, because if thousands of soldiers fight thousands of partisans these partisans do not stand still. That the operation, according to Mr. Wartenberg, according apparently to my statements, took from middle of February to May, of course, I did not say. I think I gave the exact dates; I gave the exact time which was from the 15th of January to the 24th of January, 1943, and a few days after that I was finally recalled.

Q Did you say that you went on recreation leave at that time?

A Then? No, I didnot say that I went on leave then. That is not correct. I told, him that I ceased to be in command immediately after that, that is at the end of January, and that Obersturmbannfuehrer Raabe had been appointed my successor and had already arrived at Orel in the meantime.

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Q During this interrogation by Mr. Wartenberg, after you had made your statement concerning this operation Eisbaer, did you speak about the executions which were carried out afterwards?

A No. Again, unfortunately, this is incorrect. After I had made these statements concerning Eisbaer I did not speak about any executions of any kind, but what happened was this. At the beginning of my interrogation on the 21st of February of this year Mr. Wartenberg asked me "How many thousand Jews did you shoot?" I told him that this was not at all the case because in 1942 there were no antiJewish actions in my territory. Herr Wartenberg therefore asked me to give him a detailed description concerning my first execution which I had seen in Russia, and I told himiin detail, or at least as well as I remembered it, an execution which had taken place in Ordshonikidsegrad which is near Bryansk during the tine of my initial training. At that tine four to five partisans or members of sabotage groups

Q Just a moment, Witness, did this execution take place in Bryansk?

Q It was, therefore, not in Ordshonikidsegrad? turned over by the local commander of Ordshonikidsegrad to Bryansk. Ordshonikidsegrad and Bryansk are almost one town. It is about like Nurnberg and Furth.

THE PRESIDENT: Dr. Koessl, would you want to interrupt now for the noon recess?

DR. KOESSL: Yes.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

(The hearing reconvened at 1345 hours, 10 December 1947.)

MARSHAL: The Tribunal is again in session.

DR. STUEBINGER: Dr. Stuebinger for Braune. Your Honor, I ask that the defendant Braune be excused from tomorrow's session in order to prepare the document book.

THE PRESIDENT: The defendant,Braune, will be excused from tomorrow's session so that he may help in the preparation of the document book.

DR. STUEBINGER: Thank you.

DR. KRAUSE: Krause, as representative for Dr. Riediger, for the defendant Haensch. Your Honor, I have the same request for the defendant Haensch. I ask that he be excused from tomorrow's session, both morning and afternoon, and to direct that he be brought to Room 57 to discuss his defense.

PRESIDENT: For both the morning and afternoon?

DR. KRAUSE: Yes, Sir.

PRESIDENT: The defendant Haensch will be excused from attendance in court tomorrow and will be conducted to Room 57 where he nay confer with his counsel.

DR. STUBENHOLT: Stubenholt for Ohlendorf. Your Honor, I ask that the defendant Ohlendorf be excused from the session on Thursday and Friday, both days, in order to prepare further document books.

PRESIDENT: The defendant Ohlendorf will be excused from attendance in court on Thursday and Friday of this week in order to work on his document book.

DR. STUBENHOLT: Thank you.

DR. KOESSL: May I please continue?

PRESIDENT: Please do.

DR. KOESSL: The defendant Ohlendorf called my attention to the fact, Your Honor, that I did not use an expression quite correctly.

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The official designation of the Einsatzgroups did not say "Einsatzgroups of the Security Police and SD" but the Einsatzgroups were named "Einsatzgroup A", Einsatzgroup B", "Einsatzgroup C", and "Einsatzgroup D" without the addition "Security Police and SD."

PRESIDENT: Very well.

DIRECT EXAMINATION ( Continued) BY DR. KOESSL: Mr. Wartenberg. Whad did you tell Mr. Wartenberg about the events during your presence at the Einsatzkommando 7B?

A The question Mr. Wartenberg asked was, "How many thousand of Jews did you have shot? " I told him that in 1942 when I took over the commando no Jewish actions took place any more but that, of course, here and there a Jew was shot if he was involved in partisan or sabotage acts. He told me then, "please describe to me the first execution which you saw while you were in Russia," thereupon, I described the execution which took place in Bryansk, and of February or beginning of March, during the time I became acquainted with the work in 1942. These were five or six saboteurs whom the army had captured near Ordshonikidsograd. These were saboteurs who had intended to smuggle poison into an army mess in order to poison a whole army unit. This execution took place during severely cold weather and there was snow, and this is what I described to him. At this occasion I was asked by Mr. Wartenberg whether the Einsatzkommando had taken valuables from the victims, and I explained to him that these valuables had been transferred to Einsatzgroup B or via Einsatzgroup B to an agency of the Reich, and that they had to be delivered to that agency.

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Q How many executions did you list to Mr. Wartenberg as a total figure?

A I told Mr. Wartenberg that in the six months during which I actually commanded the commando and during which I was responsible for it, altogether 80 to a hundred executions took place.

Q What did you mean by so to a hundred executions? How many persons were involved each tine?

Q This figure is then the total number of persons? partisan units and of sabotage groups. BY THE PRESIDENT:

Q How many people were killed at each execution?

A That varied. Altogether there were 80 to100 persons who were executed during the six months.

Q Well, you said already that it varied. How many usually were killed in one execution -- one action?

A This varied. I recall that sometimes it was 1 or 2 and I recall one execution where there were 11 people. refer to it collectively as one execution, don't you? of executions but of people who were shot.

Q Well, if 11 people were shot at one time, you wouldn't say, "11 executions", would you? person.

Q If 11 people are shot, at one tine, you wouldn't say "11 executions", would you?

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Q Well, then why would you use the phrase "80 to a hundred executions", if you meant "80 to a hundred people" when in only one execution, there night be 11 people killed?

A Well, because the word "execution" as well as the word "shooting" can refer to one parson as well as to several. past and you have in mind various executions, you would mean each collective act of shooting of individuals and each collective act would be one execution, isn't that the way you would do it ordinarily? can mean the collective killing of 50 or a hundred people, Yes.

Q Well, when you say "80 to a hundred executions", you mean 80 to 100 collective killings?

A No, Your Honor. During my interrogation I expressly said, and the stenotyped record will show this, that I spoke of 80 to a hundred people who were shot.

Q Don't you think that when you signed this affidavit that if you meant only 80 to 100 people killed that you should have made a correction there? Didn't it occur to you that it would be subject to misinterpretation?

A No, because the word "execution" can mean one individual case. spoken of 80 to a hundred executions, you say in the next sentence, "I remember one execution which took place in the vicinity of Bryasnk", then you say, "the people to be executed were handed over to my unit by the local commandant. The corpses were temporarily buried In the snow, and later buried by the army". Now let me call your attention to this.

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In one paragraph you describe an individual execution which involved several or many people. Then in that same paragraph you refer to 80 or 100 executions. Wouldn't it be logical for someone to assume that when in the description of one execution you talk of "many" people, that when you talk of "from 80 to a hundred executions", you also mean 80 or 100 times a certain number of people more than one?

A Yes. One could interpret it that way. During my interrogation it was not a question of how many executions were carried out but the question was concerned only with how many people were shot altogether.

Q Well, why didn't you make that correction in the affidavit? submitted to me two months afterwards. Before I was to sign it, I read it and first I noticed an important distortion concerning the operation Eisbaer which had been put into the affidavit. I immediately corrected this matter, and I shall come to talk about it later. But I did overlook the correction of minor matters and matters which seemed less important to me, especially since I have already said that 80 to a hundred executions were to me equivalent to 80 or a hundred people shot.

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Q Well, you said you had said that, hut you don't say it in the affidavit?

A I didn't notice it when I read it through two months afterwards, but I nay emphasize once more that during the interrogations it was a matter of establishing the total number of people shot; of the number of executions, nothing was said. casual reading of this affidavit could only convoy the impression that by "executions" you meant collective slayings, because not only in the paragraph do you have this reference to the executions at Bryansk, but then later on you say, "This was ordered by command of Naumann, the head of Einsatzgruppe B. And the same was true for other executions." Then still again in paragraph 3 you say, "It is known to me that aside from my unit, other units carried out executions". How, certainly, in paragraph 3 the word "executions" cannot be substituted for the killing of one person. And then still again in that sane paragraph you have once more the phrase, "frequent executions".

A Your Honor, in my opinion this is a matter of the words "80 to a hundred executions" not coming from my lips, but that I actually spoke of "80 to a hundred people shot". The word "executions" was put in by Mr. Wartenberg, and the stenographed record will show this, but two months later I overlooked this when I read through it because for me "executions" and "shootings" are the sane. I ask that the stenographic record be submitted by the prosecution and this will confirm my words. careless in reading this affidavit not to note that the word "executions" four or five times refers to collective shootings and only in this one instance to individual shootings.

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BY DR. KOESSL:

Q Witness, one moment please. I think you were just about to explain this, why you were so careless and in this connection you spoke about the operation Eisbaer. What did you notice about the statements in the affidavit about this matter, and what struck you in this respect? two months later, because I heard nothing about it and was not interrogated again in these two months, and when it was submitted to me, I saw to my surprise the following sentence; may I quote, "I participated among other things in the Operation Eisbaer which was carried out under the leadership of Colonel Ruebsam (from the army) . This operation had the mission to fight partisans in the vicinity of Bryansk. During this many partisans and partisan suspects were shot." of partisan groups were shot, and did you speak at all about people suspected of being partisans? the operation Eisbaer to Mr. Wartenberg in all details, and I told him that during this operation, even though it lasted 10 days, no contact with enemy took place so that there were neither prisoners nor was any one shot. This is confirmed by the document which is available, and about whose presence I did not know anything in February. The word "suspected" of being partisans was not even mentioned either by myself or by Mr. Wartenberg.

Q Were you told that"this affidavit will be used as evidence against you"?

A No. Before I signed the affidavit I said to Mr. Wartenberg in the course of the conversation whether he would permit me to ask him a private question. I asked him then, "Please tell me, do I have to consider myself as a witness or as a future defendant", and he said, "Oh, well, if you were a defendant, you would long before have received on indictment", therefore, I considered myself as a witness.

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Q But when you were interrogated by Mr. Wartenberg, were you put under any duress because you did not immediately remove the irregularities in the affidavit, especially the unclarity about the period of time when you took over the commando and about the word "execution"? February which was stated in the affidavit is correct as such, but it says only, I then became commanding officer of the special commando 7B.

THE PRESIDENT: Well, he is not answering the question you put to him, you asked him if he was under any duress.

DR. KOESSL: Yes, Sir.

THE PRESIDENT: Well, let him answer that question. BY DR. KOESSL:

Q Please answer that question, were you under any duress. You can give the explanations afterwards.

A I don't know how far one should apply the concept of "duress". If one has been interned for years and comes here from an internment camp and is then interrogated a few days later, one is, of course, under a certain compulsion, but during the interrogation Mr. Wartenberg was very polite and very friendly, and he offered me cigarettes repeatedly, but I always had the feeling that a trap would be set for me, and that 1 would be caught somehow.

THE PRESIDENT: You have not yet answered the question. Were you under duress? If you do not know the meaning of the word "duress" it will be defined to you. Were you under duress when you were being interrogated by Mr. Wartneberg and when you signed this affidavit which is now in evidence?

THE WITNESS: No, sir.

THE PRESIDENT: Now if he had told you that you were to be a defendant, would your answers be any different from those which you gave when you thought you were to be a witness, only a witness?

THE WITNESS: Your Honor, my answers would have been the same which I then gave to Mr. Wartenberg, hut two months later when the affidavit was submitted to me, I would have been much more careful, and if I had to count on the fact that those statements would he used against me. I would have, of course, seen to it that both incriminating and exonerating matters would have been put in, and I would have also seen to it that not only the complete invention about the operation Eisbaer would have been crossed out, but that all other questions would have been put in, and I would have also seen to it that not only the complete invention about the operation Eisbaer would have been crossed out, but that all other questions would have been put in unequivocally and unambig uously.

THE PRESIDENT: Well, now you have mode the explanation about the 80 to 100 executions. You tell us that you only meant 80 to 100 people executed. Now that is one correction. What other corrections so you want to make in this affidavit? Did you take part in the action Eisbaer?

THE WITNESS: Yes.

THE PRESIDENT: Yes. Well it is not incorrect then to say that you took part in that action, is it?

THE WITNESS: Your Honor, the fact of my participation I did not mention.

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THE PRESIDENT: Well, is it incorrect that you took part in the action Eisbaer?

THE WITNESS: Noo that is correct. I did participate,

THE PRESIDENT: Very well. All right now, what else is ther in the affidavit that you take exception to?

THE WITNESS: In addition to my testimony, Mr, Wartenberg added that many partisan members and those suspected of being parties were shot.

THE PRESIDENT: Well, where is that in the affidavit?

THE WITNESS: That was not put in, Tour Honor, but the original affidavit which was what Mr. Wartenberg had when he was on the witness stand shows that before signing this affidavit I crossed out that sentence.

THE PRESIDENT: But this is the affidavit which is in evidence, Document NO-2993: Exhibit 67. What is there in this affidavit which does not conform to the truth?

THE WITNESS. Your Honor, this additional sentence invented by Mr. Wartenberg was put into the original affidavit and was crossed out by me.

THE PRESIDENT: Well, witness, we don't have that affidavit before us. This is the only one you have to answer to. What is wrong with this affidavit ?

THE WITNESS: Your Honor, I want to emphasize by this what methods Mr. Wartenberg used in order to set a trap for me,

THE PRESIDENT: Well, but we are not trying Mr. Wartenberg, and this is the only thing which is before us. Suppose somebody fooled you fifteen years ago somewhere else. It wouldn't interest us any. This is the only thing you are being charged with insofar as Mr. Wartenberg is concerned. This is the affidavit which is before us. Whether he fooled you or didn't fool you doesn't concern us insofar as this paper is concerned, because this is the one you signed, and this is the one which you now say is correct.

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BY DR. KOESSL: ful with your statements about the beginning of your activity in special Kommando 7-B. What did you state at the time, and to what do you object in this respect in the affidavit? What did you want to say exactly, and what did you tell Mr. Wartenberg?

THE PRESIDENT: Now listen, Dr. Koessl, we are not interested in what he told Mr. Wartenberg. He is charged with certain crimes. He is here on the witness stand. He can answer to those charges and certain evidence has been introduced against him. One piece of evidence is this affidavit. If this affidavit is not correct, let him point out wherein it is incorrect. Any passage at arms that he had with Mr. Wartenberg is of no consequence unless it can be shown that there is something in this affidavit which is incorrect.

DR. KOESSL: Your Honor, the witness was to clarify what is not complete in the affidavit, and, therefore-

THE PRESIDENT: Well, listen, first let him point out wherein the affidavit is incorrect. After he has done that, then let him tell his story as to what he did and did not do insofar as it is relevant to the charges in the Indictment. BY DR. KOESSL:

Q Witness: repeat the point which you objected to in the affidavit.

A First of all, on page 2 of the original. I want to correct the following. It says here, "The valuables which were collected from these people were sent to Einsatzgruppe B." This was the order of Einsatzgruppe Chief Naumann of Einsatzgruppe B. and it was always handled this way in other executions.

Q What is wrong with this? to my statements, but it was not Naumann who was the chief of Einsatzgruppe B who gave this order to my predecessor, but it was Nebe who commanded Einsatzgruppe B before Naumann did.

THE PRESIDENT: Very well. Now we have made a note of that that the witness states that there was an error in the affidavit. Instead of the name "Naumann" it should have been "Nebe". Now proceed to the next incorrection. BY DR. KOESSL:

Q What other point do you have to complete or clarify? says, "80 to 100 executions". want to clarify? out of context and only lists excerpts from my interrogation. and you have already wanted to make a statement about the beginning when you took over the Kommando. Now tell us about that.

A Well, I think I have already described it. It says here in the affidavit that "On the 15th of February, 1943, I was ordered to report to special Kommando 7-B of Einsatzgruppe B. I became the commanding officer of this Kommando."

THE PRESIDENT: Well, this is not incorrect, is it? You were ordered to Sonderkommando 7-b on 15 February, weren't you?

THE WITNESS: On 15 February I had arrived in Smolensk.

THE PRESIDENT: Yes, Well, is this incorrect that you were ordered to take-

THE WITNESS: No, that is correct.

THE PRESIDENT: All right, don't tell us about the correct statements. Tell us about this affidavit insofar as it is incorrect. Now what else is wrong about the affidavit, and let us move along.

THE WITNESS: The date of my arrival in,Bryansk is missing and the date when I took over the Kommando is missing.

THE PRESIDENT: Well, we are not asking about what is missing. We are asking about what is incorrect. You can supply the omissions very easily and have already done so. Anything else incorrect in the affidavit?

THE WITNESS: Otherwise I think everything is correct.

THE PRESIDENT: Very well, then let us proceed. BY DR. KOESSL: reconnaissance, that is, when you were not on the road investigation partisans? jobs. My primary assignment was, as I have already sad, the partisan reconnaissance.

THE PRESIDENT; Now, please, witness, don't give us a lot of repetition and unnecessary words. The question was what were you doing when you were not taken up with partisan reconnaissance. Now you tell us about partisan reconnaissance. What did you do aside from partisan reconnaissance? That is the question.

THE WITNESS: I organized the Russian Criminal Police as well as the regular service, and I supervised this organization. I kept the Army informed every other day about the reports which we received from the partisan areas. I participated in conferences at the G-2 Section of the Second Armored Army. Once a month when all the G-2's of the corps and divisions were present, I had to give a report about the partisan situation and about the cooperation between the Army and special Kommando. Furthermore, I had to report to the Army about the morale and administration and about all other matters in the civil affairs. Furthermore, I had an exchange of information with the Commanding General of the Rear Army Area in Bryansk. I had to continue the cooperation with the Secret Field Police, with the Economic Command, with combat Commands, as I have already described on the chart. I had to make out SD reports about all spheres, and I had to send reports to Einsatzgruppe B. Then I had to cooperate in the special mission on research about the actual life in the Soviet Union.

I had to command my staff and my subkommandos. I had to take care of my men, and I had to work on organizing the network of agents and intelligence men, I had plenty of work to do with the proof-reading of reports which the Commissars of my Kommandos handed in. BY DR. KOESSL: responsibility of your command? leadership took place in March, 1942. As I recall, those were six partisans who had been apprehended after they had mined the roads near Bryansk and had murdered the drivers of German vehicles passing on this road. At the same time in the second half of March there was an execution in Bryansk of one partisan who made an attack of an Army officers' billet in Bryansk. This was shortly before the Komnando moved to Orel, and partly I listened to the interrogation myself. the German there is Document NO-3276, which is Exhibit 66. According to this Report 194 of the 21st of April, 1942, the special Kommando 7-B in the period of 6 to 30 March 1942 was to have executed eighty-two people altogether. What is your comment on this document.

A I have the following to say about this. The document itself shows-special Kommando 7-B at the time of your responsible leadership in March, 1942, execute eighty-two people?

B during this period covered by the report more so than in any case thus far extended to the field of partisan reconnaissance. The entire paragraph about the police activity in this document is concerned with the partisan situation and with the fighting of the still active Communists. The report names a period of time during March which is not mentioned in any report, namely, from 6 until 30 March. All Kommandos of the Einsatzgruppe B had the order to make reports every 1st and 15th of the month. It is striking that this extraordinary period, namely, from 6 to March, refers to all Einsatz Kommandos of Einsatzgruppe B so that it is easy to assume that this is an arbitrary compilation of reports of a longer period of time, and that a superior agency, either Einsatzgruppe B or the RSHA had compiled reports about events of the period further back in this particular report. Favoring this assumption is the fact that since December a large number of situation reports of Einsatzgruppe B were not submitted at all and that since December not a single execution is mentioned in those reports.

DR. KOESSL: May I mention here, Your Honor, that in Document Book No. I of Ott's I shall submit appropriate excerpts of documents and I shall prove thereby that from December until this month no executions were reported.

THE PRESIDENT: From December until when?

DR. KOESSL: From December 1941 until this report in April, 1942 no execution is reported.

THE PRESIDENT: Well, how does that prove that there were no executions between 6 and 30 March? The fact that no executions occurred between December and March, how does that prove that there were no executions between the 6th and the 30th of March?

DR. KOESSL: To prove that no execution took place between the 6th and the 30th of March is not possible for us, nor do we seek to prove this, and the defendant has already named a few executions.

THE PRESIDENT: Well, I am merely drying to get, Dr. Koessl, your reasoning in the matter. You show us that between 1 December and 1 March it did not rain. Therefore, it couldn't have rained between 6 March and 30 March, and I don't get the connection there. It doesn't follow.

DR. KOESSL: In connection with the other matters in the report which have already been established, and in connection with the recollection which the witness has and has already confirmed here, furthermore in connection with the other evidence which we shall present, the possibility is absolutely probable that in the previous months for which no reports are available executions took place which were arbitrarily compiled in a central agency and only reported in April. The details how we arrive at this conclusion will be mentioned by the defendant and partly it will be my job when I discuss the evidence.

THE PRESIDENT: Very well. Proceed.

THE WITNESS: In the Situation Report No. 180 in my document book on page 37 and page 39--.

DR. KOESSL: We shall submit this document, Your Honor.

THE PRESIDENT: Well, is it Document Book I?

DR. KOESSL: Document Book I for Ott.

THE PRESIDENT: Yes. Well, I have it. All right, let us have it. Let us have the reference. I have the book.

DR. KOESSL: Pages 37 and 39 contain the passage which Ott wants to bring up. I do not have the English document book, and I assume they are the same pares.

THE PRESIDENT: Proceed. Proceed.

THE WITNESS: At this place reconnaissance actions of special Kommando 7-B against partisans and against NKVD network of agents is reported during the course of which an agent by the name of Seyditz in Orel was a rested. It is expressly noted here that the investigations have not yet been concluded.

DR. KOESSL: This is the last sentence on page 39, Your Honor.

THE PRESIDENT: Yes. "The investigations are still in progress".

THE WITNESS: That is correct. In the Situation Report No. 183 of 20 March 1942-

DR. KOESSL: This Situation Report is in the same volume, page 42, but it can also be found in Book 3-A of the Prosecution. BY DR. KOESSL: tion which was detected between January and February. In this connection the names Dimitry of the NKVD, Stepano, Scwczenko and Kesanova are mentioned. The report concludes with the sentence, "The investigations are still in progress". In these two reports, too, nothing is said of an execution. If in March eighty-two people had been executed, I would, of course, have to remember them, because just during the very first few wekks of my responsibility such an event would have made so much more of an impression on me.

THE PRESIDENT: Well, is it your statement now that there were no executions in March?

THE WITNESS: Your Honor, we had heavy snow in March.

THE PRESIDENT: Well, now, please answer the question. You are telling us now from what you have read to us that there couldn't have been any executions in March and you add to it that there was a big snow. Is that right?

THE WITNESS: Yes, sir.

THE PRESIDENT: All right now, you refer to your own document book on page 33 and read the last paragraph on that page.

THE WITNESS: Is this in Document Book 2-A or 2-B?

THE PRESIDENT: No. No, your own document book. The one that you have presented on page 33, taken from Operational Report No. 178 dated 9 March. I will read it for you. It begins at the top of the page with a description of the situation and mood of the people in Bryansk. Then it ends up. "In Kursk, too, the population has calmed down noticeably. It looks as if proceedings against rumor mongers as well as the liquidation of some of these people had contributed substantially to this."

THE WITNESS: Your Honor, I believe this translation is not quite correct. May I read it in the original text, that is, in the German version?

THE PRESIDENT: Very well.

THE WITNESS: And there it reads after the previous paragraph which describes how the situation and morale of the people in Bryansk is quiet, and "In Kursk, too, the population has noticeably quieted down. It looks as if the proceedings against rumor mongers as well as the elimination of part of these people has contributed essentially to this."

THE PRESIDENT: Well, how do you eliminate people? Do you make a distinction between elimination and liquidation?

THE WITNESS: No, Your Honor.

THE PRESIDENT: Well, so, therefore, there were some executions during that period.

THE WITNESS: But this report, Your Honor, dated 9 March, can, therefore, refer to an incident which happened several weeks before, because the report was made out in Berlin and my experience with these reports shows - and I point to the Operation Eisbaer - that the report in this case was made out seven weeks later. By this I mean to say that what Berlin reports here in its report of 9 March normally took place two weeks before.

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THE PRESIDENT: Two weeks before would take it into the latter part of February.

THE WITNESS: Yes.

THE PRESIDENT: Would you say that it would be prior to February 22?

THE WITNESS: Your Honor, I cannot give you a definite date. I can only assume so as a result of the usual handling of these reports.

THE PRESIDENT: Well, if you will look at that report, you will notice that there is a reference already made to a report on February 25 so that the incidents described in this report of 178 would necessarily have had to occur following February 25, wouldn't they?

THE WITNESS: Yes sir.

THE PRESIDENT: All right. Proceed, Doctor.

THE WITNESS: It says here, Your Honor, that the garrisons and communications as of the report of February 25 remained unchanged. Therefore, this report was probably written a few days after the 25th and it must have been written two weeks before, but in the operation Eisbaer the report shows that it was written seven weeks later.

THE PRESIDENT: How, but this present report shows that some executions occurred in the latter part of February or the early part of March, doesn't it?

THE WITNESS: Yes, Your Honor, I said so before.

THE PRESIDENT: So, therefore, it is not so extraordinary that this other report says that there were killings between the 6th of March and the 30th of March.

THE WITNESS: Yes, Your Honor. On the 6th of March I was already with the Kommando and I took over the responsible leadership on the 15th of March or the l6th when Neumann was there, but without a doubt I could well remember an execution of this extent if it had taken place.

BY DR. KOESSL: period before your first absence from the Kommando, that is to say, until you left for the Reich? Up to this point you mentioned the execution in Bryansk which is mentioned in the affidavit and which was not carried out under your responsibility. You Mentioned the execution of six partisans and of one partisan. What other executions took place? period of my responsible command. These were six or seven people who belonged to a larger partisan and sabotage organization and this organization was to a large extent captured in the preceding months. The investigations had been carried out very carefully and took very long because it was a matter of trying to apprehend this organization totally, all of them. These partisans also had mines and had made attacks on Army vehicles during the night.

THE PRESIDENT: Dr. Koessl, when the witness explains that there was a partisan action, is it necessary to go into so much detail as to what the partisan action was?

DR. KOESSL: I would be very glad if he wouldn't have to describe all this, but I considered it necessary that he would try to give his recollection to the Tribunal about the executions and the reasons for that.

THE PRESIDENT: All right, very well. BY DR. KOESSL

Q You don't have to be so extended, witness. cerned which took place after I took over the responsible command and which was the first one that I saw when I was the responsible commanding officer that I can recall this so very well because the snow had begun to melt and we had to look for a long time to find a dry place near Orel.

arrested and five or six days later were shot in Bryansk.

Q Wasn't there an incident about arson?

A This arson case was in Orel. These were three perpetrators who set fire to a part of the Army Supply Dump which was situated right near the railroad in Orel, and these men were apprehended because they were denounced by others. during your absence in May?

A I described these to Mr. Wartenberg, too, during my interrogation. There were about twenty to twenty-five.

Q What executions do you remember from the summer months of 1942? at Karatschew delivered about fourteen to sixteen persons on a truck and that they brought these people who belonged to a sabotage organization to the commando in Orel.

Q Why do you remember this incident?

A Because I remember a woman who was very ugly and brutal. She was a fanatic Communist and she had been photographed by one of my non-coms with all her weapons end explosives in her home and I put this in my souvenir album.

Q How many people were executed of this group? seven were shot. The others were brought to prison. The transfer to Orel took place because parts of this organization were also in Orel and because the perpetrators were to be confronted with them.

THE PRESIDENT: Suppose we have our afternoon recess now.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: I ask to be permitted to go on.

THE PRESIDENT: Please. BY DR. KOESSL: executions. a few more executions took place in Orel, with the Kommando as well as with the sub-Kommandos. The events are similar to each other and, therefore, I do not exactly remember-the numbers fluctuated between approximately two or three and more executees.

Q Do you remember this or the other case more exactly perhaps? after a lot of Searching with the aid of the OD, that is the Russian Regular Service, two or three saboteurs were apprehend who had caused a supply train to be blown up between Orel and Witzensk, toward the front line. Two or three days after the attack I was in the neighborhood of this village myself and I saw the actual place where the ruins of the whole train, including the locomotive, were next to the railway tracks. Approximately shortly before or after this time a number of perpetrators were apprehended who had attacked a column of Army supply trucks and shot at a gun of the Wehrmacht.

THE PRESIDENT: I do not think that the Prosecution, and if I am in error Mr. Ferencz may correct me, charges the defendant with any offense in the execution of partisans, saboteurs, and looters. He is charged with murder. The execution of partisans comes within the rules of war. To go into a great deal of detail as to what each one of these partisans did does not help the solution of the Very grave issue before the Tribunal. The defendant remembers with a great deal of particularity every little incident connected with partisans, saboteurs, and looters. We trust that he will recollect with as much particularity when you direct his attention to the question of the Court No. II, Case No. IX.

business of liquidation under the Fuehrer order.

DR. KOESSL: I presume that the Prosecution affirms this question.

Mr. FERENCZ: The Prosecution concurs in the statements made by the Tribunal. However, we have also charged the defendant with violations of the laws and customs of war and war crimes and if defense counsel intends to go into the question of partisan warfare to show solely that it was done as legitimate warfare we have no objection to his proceeding briefly along those lines.

THE PRESIDENT: Once the defense indicates that certain partisans were shot because of violations of the rules of war and that is not challenged by the Prosecution then that should dispose of that episode without going into so much detail. Certainly the defendant has the right to show, as he has been showing, that he was engaged in what he regards as legitimate warfare, but it seems you are going into too much unnecessary detail. BY DR. KOESSL: were executions of partisans and saboteurs carried out also during the last period of your activity in your Commando? Please give a general answer to that. active in this particular manner? Did you order that - that is what I mean - people wars to be shot only because they belonged to a certain race? seized and do not belong to a partisan movement or sabotage organization must be shot on the basis of the Fuehrer order. The Kommando and sub-Kommandos, in accordance with the Fuehrer order from the very beginning of their assignment, that is from June 1941, had worked in accordance with these rules. That is, the sub-Kommandos worked Court No. II.

independently. I would like to say the following. I was lucky enough, owing to the fact that I only joined the Einsatzkommandos in 1942, that in my own area this order had been practically carried out, that the cities, after the Kommando had been stationed there for five months, were free of Jews. BY THE PRESIDENT:

Q Did I understand him correctly? I merely want to be certain. Kommando leaders that if they found Jews they were to seize them and shoot them in accordance with the Fuehrer order? Is that what you said? I merely want to be correct in my notes here. DR. KOESSL:

Q Then you seized Jews who were not partisans? been seized without belonging to a sabotage or partisan organization or a Communist organization. findings? who had been arrested had not only to be proven guilty and had to be investigated in this connection but also because one had to get information from his interrogation what people, what extent, and what size this organization had of which he was a member. PRESIDENT: are telling us. In each instance where a Jew was apprehended it developed that he was a member of a partisan or sabotage organization. Is that what I understand you to tell us - that you were lucky never to have found a Jew that belonged to an organization which entitled him to be shot?

that in my area, when I arrived in 1942, the Fuehrer order had already practically been carried out.

Q Well, this is what I have in my notes. Let's see if I took it down correctly. "I do not remember a single case in which Jews were seized without it being proven that they were members of a sabotage organization." Now, that is what you said? your organization belonged to a sabotage organization.

Q That's right. So, every Jew which your organization seized was shot because he belonged to a partisan or sabotage organization? within the grasp of your organization were shot?

Q Were there any nationals who were not shot? Were there people of other nationalities who were seized, cases investigated, and released?

A Yes, naturally. I said so in my examination. that he belonged to one of these organizations and was therefore shot?

A Yes. He would have been shot even, your Honor, if he had not been a member of one of these organizations. shot anyway? rators but if for some reason he had merely been hiding with the group because he had to be seized in accordance with the Fuehrer Order.

Q That's right. So that whether ha belonged to an illegal organization, that is, partisan or saboteurs, or not, he was bound to be shot becauseif he wasn't shot as a saboteur, as an active partisan, Court No. II, Case No. IX.

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he would be shot under the Fuehrer Order? That's correct, isn't it?

A He was shot in accordance with the Fuehrer Order - yes. I would like to add, your Honor, that of course an interrogation was carried out in this particular case to see "is he a member of an organization or is he not". tion, an illegal organization? of these illegal organizations, saboteur or partisan or a resistance movement, you would have shot him anyway because he was a Jew and fell under the Fuehrer Order, that's right, isn't it?

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that he always would be shot? What was the reason for wasting all this time on a man you were going to shoot anyway? member of an organization. If such was the case he was carefully questioned concerning all liaison members, number of members of this particular organization, and their activities. That was the purpose of the interrogation. his plans? too? the same time in a few cases we got on the wrong track. I even remember that people constantly refused to state anything concerning their organization.

Q Some of them refused to talk?

Q And they were shot just the same?

Q Well, then you did shoot some Jews because they were Jews? had to be shot. Never mind whether he was a perpetrator or not.

Q How many Jews did you shoot just because they were Jews? BY DR. KOESSL: always proved to be members of a party or organization?

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being members of these groups. interrogation was to establish the extent of partisan organizations and to find out about their activities? to be guilty. found guilty through statements by another member of these organizations. BY THE PRESIDENT:

Q Just a moment. The Tribunal asked you very specifically how many Jews were shot because they were Jews and you replied "20". Is that correct? Fuehrer order?

Q Well I don't quite comprehend Dr. Koessl's questioning.

DR. FOESSL: The contradiction in the statement of the witness is that on one hand he says that Jews were always proven to be members of an organization

PRESIDENT: They were always seized and questioned - but he said in some oases they refused to talk and then they were shot because they were Jews. That's what he said.

MR. FERENCZ: I object to defense counsel pointing out a contradiction in his client's testimony unless he intends to impeach his client.

THE PRESIDENT: Yes, that's a rule of law.

DR. KOESSL: I think I can clear up the inconsistencies in the statements of my client which the Tribunal refers to. I don't think it is hardly a matter of the Prosecution to prevent that.

THE PRESIDENT: Dr. Koessl, you are permitted to question him but you are not supposed to suggest any answer.

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If you want to go into that field again, of course, you will be permitted to do so but it is not for you to contradict your own witness.

DR. KOESSL: I did not want to do so. I only heard two contradictory statements.

THE PRESIDENT: Well, if you want to go over the field again you may do so.

DR. KOESSL: I only want to address one question to him and that will settle the matter.

THE PRESIDENT: But don't put it in a leading form. BY DR. KOESSL: not established that he was a member of a partisan organization?

MR. FERENCZ: I object to the question. The question has been asked twice by the Tribunal and answered twice clearly by the defendant.

BY THE PRESIDENT: Witness, I will repeat what you said which the Tribunal directly called to your attention and which you confirmed. Now did you say, "I do not remember a single case in which Jews were seized without it being proven that they were members of a sabotage organization." Did you say that? said, " Yes, they were interrogated for the purposes of determining what they knew about these illegal organizations." which led to the arrest of others? ation and you were unable to arrest anybody else?

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to answer at all and you said, "Yes."

Q Then you were asked whether then he wouldn't be shot because he was a Jew and as we recall it you said "Yes." organization or not was bound to be shot because if it was not established that he belonged to a saboteur or partisans organization then he fell into the category of the Fuehrer order and was shot for that reason, is that correct? under your order by your Kommando, because they were Jews and as we have it written down here 20 Jews -- is that correct?

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DIRECT EXAMINATION (Continued) BY DR. KOESSL:

Q Were women and children shot, witness?

A Children were not shot in any case. Women were among these people here and there. I have already mentioned this Communist woman functionary with all these many weapons who came from Karatschew. That was one of these cases. mention all the other cases which have come up, and I would like to put my last question to the witness. Did you participate in the deportation of Eastern workers to the Reich?

A No, I did not participate in this. On the contrary, I contributed to having the deportation of Eastern workers to the Reich stopped. I refer to a document which has been submitted in this matter and which makes this quite evident.

Q I shall submit this part of the document later. It does not become evident from the excerpts which I have at the moment. Did you, during your assignment in Russia, meet the leaders of those Einsatzkommandos which were stationed in the surrounding territories? ferences at Einsatzgruppe B in Smolensk, I met the leaders of commandos, as far as they were members of the Einsatzgruppe B.

Q Where did you meet?

Q That is with the chief of the Einsatzgruppe? Einsatzgruppen in the vicinity? and to sort out certain categories of prisoners and execute them?

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Q You had a very low party number. Do you hold the golden party badge that was given to all party members who held a number under 100 ,000?

A My membership number was 2433 which I obtained in autumn. 1922, when I joined the Party. I left the Party in '27. In September, 1931, I rejoined the Party, and I automatically got back my old membership number, 2433.

Q Did you receive the golden party badge?

THE PRESIDENT: Why did you leave the Party, Witness, in 1927?

THE WITNESS: Your Honor, in the fall of 1922 I was a member of the Party, and I had become a member of the Party and an SA man. I want to explain why I left the Party. In 1923 after the Munich Putsch the Party became illegal, and it was illegal until 1925. After this tine our small local group could not re-establish itself properly any longer, and owing to personal differences concerning the leadership of this local group, a. number of comrades and myself left the Party.

THE PRESIDENT: You didn't leave it because you disagreed with its ideology?

THE WITNESS: No, the ideology as such I regarded then and ever as the right one. I only left because of the incompetence of the local leadership.

THE PRESIDENT: I see. BY DR. KOESSL: you joined the Party and the SA?

A No, that was of no significance to me. What was of major importance to me was the social question, and the concern for the existence of the Fatherland.

1942, and which became known as the so-called final solution of the Jewish question, the final solution in this case being the elimination of the Jews?

A This Fuehrer Order I first learned about here in Nurnberg. I can assure the Tribunal that not a single member of my commando, just as little as I, myself, ever knew anything about this Fuehrer Order before.

Q Witness, of course you can't really assure us of that. for hours the Jewish question and the Fuehrer Order.

Q Do you mean at that time it was never discussed?

THE PRESIDENT: Well, I don't know whether I understood correctly. Did he say he did not hear the Fuehrer Order or of it until he arrived in Nurnberg?

DR. KOESSL: Your Honor, as for that Fuehrer Order which decreed the so-called final solution, he only heard about that here. The other Fuehrer Order, however, which has become the subject of this trial, concerning the elimination of Jews in the East, that, of course, he knew, but he did not know the Fuehrer Order concerning the extermination of the entire Jewish population in Europe. I think this latter order was decreed in April, 1942.

THE WITNESS: This is the one that I only found out about in Nurnberg. BY DR. KOESSL:

Q Did you servo in the SS during the war?

A Only within the SD, otherwise never. Of course, the SD is part of the SS.

Q Did you receive any decoration for your assignment in Russia? in Russia received after having been there for some time in Russia, especially in the winter, no matter whether he was a clerk in the office or he was a cook in the kitchen or a soldier in the field.

Q Did you receive no other decorations?

Q When were you promoted last?

Q That then was before the Russian assignment? order to hush up your activity with the Special Commando 7b and your activity in the SD?

A No, after the capitulation on the l6th of May, 1945. I voluntarily turned myself over to the English secret service in Rendsburg, and in my first short interrogation I mentioned the fact of my Russian assignment.

DR. KOESSL: This ends my direct examination, Your Honor.

My colleague, Dr. Gawlik, wanted to put a few questions to the witness, but he happens not to be here. If Your Honor agrees, I shall put the questions to the witness which my colleague Gawlik wanted to ask him.

THE PRESIDENT: We will certainly permit you to do that, and when Dr. Gawlik does actually return to the Courtroom, if you have not covered what he desires that you put to the witness, we will permit him to put those questions.

DR. KOESSL: Thank you.

THE WITNESS: May I say something? Your Honor, I have one request. I would like to point out two mistakes in the documents, and I would like to clarify them.

THE PRESIDENT: All right.

THE WITNESS: They are only two short statements which I would make. In Document 3943-PS. page 261, it says: "In the report -- "

THE PRESIDENT: Which book? Which book, do you know?

THE WITNESS: I am not in a position to say, Your Honor.

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DR. KOESSL: Which is the report concerned here?

THE WITNESS: It is the report of my recall, which is wrongly stated in there. It is in the report of events of July 1942, report of events, No. 13, of 24 July 1942.

DR. KOESSL: Which is the place which you want to point out to us?

THE PRESIDENT: Have you found the book?

DR. KOESSL: No, I haven't found the book, and I can't imagine what the witness can mean. It is the location report.

THE PRESIDENT: We ought to have the document before us so we can follow his explanation. Is it your personnel record; is that the one?

THE WITNESS: Your Honor, a short while ago I copied that from the files, and I unfortunately forgot to mention the document volume in my notes.

DR. KOESSL: Which is the report of events?

THE WITNESS: No. 13 of the 24th of July, July.

DR. KOESSL: No. 13. It is possible that it is a situation and reports of events, a situation and operation report. This is the kind of report which was only issued after April and was sent to Berlin. It is on page 261.

THE PRESIDENT: But which book? That is what we are trying to determine.

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DR. KOESSL: I think I can clarify this mistake, Your Honor, myself. I don't think we need the clarification.

PRESIDENT: It couldn't be in a document book with that page number because it is doubtful that there is a document book that goes as high as page 261.

DR. KOESSL: I think it has not been submitted, Your Honor. I would like to clarify this, and I would like to correct it tomorrow morning.

THE WITNESS: It is the collective volume--the collective reports from the occupied eastern territories.

DR. KOESSL: The volumes concerned have only been submitted in the original, and the excerpts at your disposal do not contain, of course, the entire reports, and for this reason the witness seems to be thinking of a particular point which is not contained here. I shall clarify it tomorrow morning.

PRESIDENT: Very well.

WITNESS: It says here-

PRESIDENT: Witness, we will be able to follow you much better if we have the document, and perhaps by tomorrow morning we will have it, and then you can tell us about it. You may proceed with the questions for Dr. Gawlik. BY DR. KOESSL: Document Book IIB, you state that the chief of the Einsatzgruppe B, Neumann, ordered that valuables which had belonged to executed people should be turned over to the Einsatzgruppe D. Did you receive this order from Naumann himself?

A No. I have already pointed out on one occasion that my predecessor, Obersturmbannfuehrer Rausch, told me that the chief of Einsatzgruppe B had ordered that all valuables be turned over via the Einsatzgruppe B. Involuntarily I thought of the name, Naumann, because at that time when I was told this, Naumann was the chief of the Court No. II, Case No. IX.

Einsatzgruppe B. I didn't think of the fact then that Naumann had not been there from the beginning but that before him Obergruppenfuahrer Nebehad been in charge.

Q Did Naumann ever give you any order for any execution? the carrying out of an execution. make the measures of your Commando more severe and to increase your activity?

Q Did you ever receive a proof personally of Naumann's activity as chief of Einsatzgruppe B and what the general judgment was? Oh, there is Dr. Gawlik.

A Yes, in a very curious manner. In the fall 1944 Einsatzgruppe B, I think it was in Eastern Prussia, was dissolved. The personnel files which had arrived at Einsatzgruppe B during the war were sent off to the home stations of the commandos concerned or to the members of the group staff.

PRESIDENT: Dr. Gawlik, are you aware that Dr. Koessl is putting these questions for you?

DR. GAWLIK: Yes, I am aware of it.

PRESIDENT: Very well.

THE WITNESS: The man in charge of administration of Einsatzgruppe B in Smolensk was the administrative chief of the state police office in Saarbruecken. And my original office had been the SD Department Saarbruecken. Therefore, when these files in the fall 1944 were sent to the home stations, I, in my own office, received the personnel files of this administrative chief and my papers want to the chief of police in Saarbruecken. They thus got mixed up. Since it was an ordinary open letter, not a secret of any kind, I, of course, took the liberty to read the file, especially as I knew the man and his activity. And this file contained a correspondence between the Third Chief of Court No. II, Case No. IX.

Einsatzgruppe B and, therefore, the successor of Naumann, Boehme, and the Chief of the Security Police and SD, Kaltenbrunner. Boehme had written a lengthy report to Kaltenbrunner concerning Naumann's leadership of the Einsatzgruppe. The copy of this report was in this file because this report dealt to a large extent with this administrative chief from Saarbrucken. I remember perfectly and I told Neumann that when I saw him here that among other things, Boehme had said in his letter to Kaltenbruhner that Naumann's leadership of the Einsatzgruppe had not been severs enough, Naumann had not given his officers enough leeway and had watched them like a sergeant. A copy of this report by Boehme was the answer to an original inquiry by Kaltanbruhner, included in these files.

PRESIDENT: Dr. Koessl, do you want all this, or are you just taking it just because you can't get out of it?

DR. KOESSL: It only was supposed to give us a picture of Naumann's activity as seen, from his immediate vicinity and by his superior at the time. The witness could express it a little more briefly.

PRESIDENT: We do not say that it is irrelevant if it refers to the defendant Naumann. He certainly has the right to have the witness tell this episode, but perhaps it should be related under the control of either you or Dr. Gawlik because obviously the witness is telling it in a very rambling fashion and not getting directly to the point which perhaps you desire.

DR. KOESSL: Then, witness, be a little more brief and tell me how was the activity of Naumann regarded by others.

THE WITNESS: Your Honor, I can express this in one single sentence.

DR. KOESSL: Please do that.

THE WITNESS: In the second copy of the letter from Boehme to Kaltenbrunner it said that Naumann's leadership was not severe enough and that he did not give his officers enough freedom of action. The Court No. II, Case No. IX.

report furthermore dealt with the conditions in the Einsatzgruppe, with the personal changes requested by Boehme, and also dealt with the relationship to the Wehrmacht. BY DR. KOESSL: the Jewish question, that is, that his measures were not severe enough? report.

DR. KOESSL: I have no other questions.

PRESIDENT: Does any other defense counsel wish to cross examine the witness?

DR. BLUME: Dr. Blume representing Dr. Lummert for the defendant Blume. BY DR. BLUME: the manner of reporting of the first chief of Einsatzgruppe B, SS Brigadefuehrer Nebe? to Berlin and was about to return from Berlin to Russia, I went to Prinz Albrecht Strasse Number 9 where a certain official, Schreefelt, issued my travel orders. manner of reporting of Nebe? the first time. He asked me concerning the conditions in the commandos and in Einsatzgruppe B, and he asked me whether Einsatzgruppe B i ny opinion sent out modified reports because Nebe had written a number of so-called modified reports. He said a few more things, I don't remember what, but I think he said that he had exaggerated his figures and had overemphasized his own capability. Men and officers who had arrived from the front had told him that. That is all I have to say Court No. II, Case No. IX.

on that.

DR. BLUME: I have no further questions, Sir.

PRESIDENT: Any other defense counsel wish to cross examine? If not, Mr. Ferencz may begin the cross examination for the prosecution.

BY MR. FERENCZ:

Q Ott, when did you join, the SD? collaborator for the SD Sector in Munich. At that time, however, I was still a member of the General SS. I joined the SD on a full-time basis on 1 October 1935. not? is that correct? ination that on 15 or 16 March when Naumann came to see you, you discussed with him the Fuehrer Order for the extermination of the Jews, is that correct? about the Fuehrer Order because I asked Naumann whether the manner in which it had been reported to my by my predecessor, Bausch, was correct. and had to be carried out. That is correct, is it not?

A I have made a statement to this effect before, Mr. Prosecutor. Naumann said to me - I think I remember it almost literally, although it is five years ago. He said, "This Fuehrer Order gives me misgivings, and as far as my own feeling is concerned I object to it, but we have to carry it out as soldiers, and nobody will be able to help us. on to you?

A That is completely mistaken. The order was passed on to me by my predecessor who was Obersturmbannfuehrer Rausch. Naumann merely, three weeks later, confirmed the existence and the content matter of the order to me, upon my own request.

Rausch was correct or was not, and it was correct.

Q And your conclusion is that Naumann confirmed the order?

DR. GAWLICK: I object to this question, Your Honor. The witness only has to give us the facts but cannot draw conclusions. He has made a statement concerning the facts, that is, the discussion between

Naumann and the witness, and the legal validity of the conclusion to be drawn is a matter for the Tribunal and not a matter for the witness.

MR. FERENCZ: Your Honor, I asked the witness if as a subordinate to Naumann be considered it a fact that Naumann had passed the order on to him. He said that was not quite accurate. My present question to which the objection has been raised is whether Naumann then confirmed the order which he had already received. I am just trying to clarify the witness' answer.

THE PRESIDENT: Ordinarily this question could not be objected to because it is cross examination, but the cross examination in this instance is a little bit different from the ordinary cross examination because the question does not refer only to the witness but to someone else, and someone else should not be made to suffer from a question put to the witness when he is not able to control that question or answer. In other words, Dr. Gawlick's observation, we believe, is a just one, because you were putting in the form of a leading question which tends to damage Naumann, and this witness is not in any way representing Naumann.

MR. FERENCZ: Your Honor, I would like to point out that this witness was asked by a defense counsel representing the defendant Naumann questions concerning Naumann and that I am simply trying to clarify on cross examination questions and matters which have already been raised on the direct examination of this defendant.

THE PRESIDENT: If in the examination put by the attorney for Naumann the witness stated something to which you take exception, you may cross examine on that.

MR. FERENCZ: Yes, Your Honor. As I understood it, the defense counsel was trying to elicit from this witness the statement that Naumann did not order any executions to be carried out as a result of the Fuehrer Order. I am questioning him directly on that point to try to refute that point inasmuch as on his direct examination he stated that he discussed the question with Naumann on 15 and 16 March and at that time Naumann told him it had to be carried out.

THE PRESIDENT: Try to put the question, Mr. Ferencz, perhaps a little more objectively so that in it you do not have a conclusion. BY MR. FERENCZ: him tell you that the Fuehrer Order had to be carried out?

THE PRESIDENT: Judge Dixon makes the observation that it would appear that Naumann had reiterated the order from what the witness stated, and if that be true, then you don't need to go into whether it was confirmed or not because when you say "confirm" it implies so many other things.

MR. FERENCZ: I asked the witness first whether Naumann had passed on the order.

THE PRESIDENT: Yes.

MR. FERENCZ: He said that was not quite accurate. Perhaps the word "confirmed" is also a bit vague.

THE PRESIDENT: Yes.

MR. FERENCZ: And I thank the Tribunal for the correction.

THE PRESIDENT: Yes. BY MR. FERENCZ:

Q I will use the wording of the Tribunal. Did Naumann reiterate the Fuehrer Order to you?

A Mr. Prosecutor, I should like to say the same as I have said on 21 February in my interrogation at a time when my comrades and I generally believed that Naumann was dead. I was here for three months last year as a witness, and everybody said, beginning with the former Higher-SS and Police Leader Dr. Martin, that Naumann had taken poison after the capitulation. Therefore, there was no reason for me, if I was of the firm belief that Naumann was dead, to withhold anything about about him and that is how it was; and as I have stated now, after my arrival on 17 or 18 February in Bryansk, Rausch told me about the Fuehrer Order. I believed him because all the leaders of the Kommandos confirmed to me that they had been working according to this order for seven or eight months, and when Naumann on 15 or 16 March came to see me in Orel in order to turn over the Kommando to me, I told him Rausch announced this order to me in this and that form; is that correct? And he said, "Yes, that is correct", and that is how it was, and that is how I stated it in my interrogation. He said, "I have serious misgivings about this order, but we are soldiers; we have to carry it out, and no God will help us." He furthermore said, "Please work in a correct manner; be a good leader to your men. I do not chase after high execution figures."

Q Do you remember the interrogation by Mr. Wartenberg when he asked you about the collection of the valuables of the victims of executions? these valuables in so many words? "What happened to the valuables of those people?" I was surprised because the term "valuables" was a little exaggerated considering Russian conditions. The old junk that they had could hardly be called valuables. I told him that Rausch had informed me that by order of the Einsatzgruppe B these objects had to be turned over via the ordinary channel of command.

he asked you about the collection of valuables? Did he say, "Were these collected upon the order of Naumann?" received at the time from Rausch in which Rausch talked about this chief of the Einsatzgruppe B, and because at that time it happened to be Brigadefuehrer Naumann, I involuntarily thought at the time that this could be correct. collection of valuables was "yes", isn't that correct? had ever had a predecessor in Russia. you repeated the statement that Naumann had ordered the collection of valuables, and in which you stated that eighty to one hundred executions took place under your command, do you recall the circumstances under which that affidavit was taken? signed it? opportunity to read it and study it before you signed it?

A Mr. Wartenberg, whose name at the time I did not know, handed to the affidavit, I think including five copies, across the table. He gave to a fountain pen and he also gave me a cigaret, and he said, "Sign it". Of course, I read it first and what seemed to me the most obvious was that he added - and which was taken out of thin air concerning the operation Eisbaer, - that men were shot and that Partisan suspects had been shot.

That was the most striking point for me.

Q what was it that he had added specifically? bands and people suspected of belonging to bands had been shot. If you look at the original, you can confirm that I crossed out this sentence and that I put my own initials in front of this.

Q Now would you please answer my first question? Were you given an opportunity to read and study the affidavit before you were asked to sign it?

THE PRESIDENT: Well, Mr. Ferencz, it appears that there were two affidavits, one which was submitted and the witness corrected, is that right?

THE WITNESS: Your Honor, on the 21st of February I was interrogated and on the 24th of April an excerpt of my interrogation in the shape of an affidavit was shown to me.

THE PRESIDENT: Yes.

THE WITNESS: Otherwise there was nothing.

THE PRESIDENT: That is right. Now this affidavit which was given to you in April, is that the affidavit which we have before us here?

THE WITNESS: Yes, that is the one. The interrogation was in February, and the affidavit was made in April.

THE PRESIDENT: Yes, With the elimination or the cancellation which you referred to not actually reproduced in this document which we have before us; that was omitted bodily.

THE WITNESS: Yes.

THE PRESIDENT: I see.

THE WITNESS: It is only contained in the original.

THE PRESIDENT: That is right.

Mr. Ferencz, would you want to suspend until tomorrow morning, or de you have a question or two which you would prefer to put right now?

MR. FERENCZ; Well, I just have one or two questions in a few minutes and then I will be through with the question of the affidavit.

THE PRESIDENT: Very well, BY MR. FERENCZ:

Q. Will you please answer the question then? Did you have time to read and study the affidavit which is now before the Court before you signed it?

A. Mr. Wartenberg gave me the fountain pen and gave me a cigaret, a he thought I would sign blindly. I said I would like to read it, and immediately this distortion struck me about thus Eisbaer (polar bear) operation. I said I would. not sign it. You've invented this; I have already described the operation Eisbaer to you for about a quarter of an hour with all details. I think I made a remark to the effect that this was too clumsy a remark and I asked him to cross it out. He made no further objection and laughed.

Q. Would you please answer my questions, and I would appreciate it if you would answer them briefly. Did you have time to read it and did you : fact read the affidavit before you signed it, "yes" or "no"?

A. Yes, sir, I reread it.

Q. And you have just told us you made certain corrections, is that correct?

A. Yes, It was quite an extensive job because I took great care to cross it out in the copies. There were about five or six copies. The whole desk was full of papers.

Q. And you initialled each of those corrections on all five or six copies, isn't that so?

A. Yes.

Q. And Were you reminded before signing this paper, this affidavit, that you were under oath?

A. This I had been told during the interrogation two months previously, and it said so, I think, at either the beginning or the end of the affidavit, I believe so.

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Q. You recall having been reminded by Mr. Wartenberg that you were still under oath before he gave you this affidavit?

A. Yes, that is correct.

Q. And there is another oath at the end of the affidavit, isn't that correct?

A. Yes, that is what I said.

Q. And there was no throat or force used in any way or any promise of immunity, isn't that correct?

A. No. I already mentioned, Mr. Prosecutor, that no pressure or duress was used against me. On the contrary, he was very nice to me. He offered me a cigaret repeatedly, but I was still under the suspicion all th time that he was trying to cheat me. After all, I had to be very careful, but I did not suspect that he would cheat me two months after the interrogation, in that he put in there.

THE PRESIDENT: Well, witness, he handed you the document with his fountain pen and a cigaret. You read over the document. You made there eliminations on all the five copies. You signed with his fountain pen. You lit the cigaret. You gave him back the fountain pen, and that ended the transaction. Is that the way it was?

THE WITNESS: That is the way.

THE PRESIDENT: All right. thirty.

(Tribunal No II adjourned until 0930 hours, 11 December 1947.)

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of America; against Otto Ohlendorf, et al;

defendants, sitting' at Nuernberg, Germany,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II. Tribunal.

DR. GAWLIK: Gawlik for Seibert, Your Honor, please permit me to have the defendant, Seibert, excused this afternoon and tomorrow afternoon, because I want to prepare the Document Books with him.

PRESIDENT: The defendant, Seibert, will be excused from attendance in court this afternoon. And also for tomorrow all day?

DR. GAWLIK: In the afternoon.

PRESIDENT: He will be excused from attendance in court this afternoon and tomorrow afternoon.

DR. KOESSL: Koessl for the defendant, Schubert. I would like the defendant, Schubert, to be excused tomorrow the whole day in order to be able to prepare his defense with him.

PRESIDENT: The defendant, Schubert, will be excused from attendance in court tomorrow in accordance with the request of his counsel. You may proceed, Mr. Ferencz.

CROSS EXAMINATION (Continued) BY MR. FERENCZ: defendant, Blume?

A Is that right -- do I understand Blume? No.

Q Did you ever meet the defendant, Steimler?

Q Did you ever meet the defendant Six?

Q Did you ever meet the defendant, Klingelhoefer?

Q Under what'circumstances did you meet the defendant, Klingelhoefer? B, for the first time, I think in June or the beginning of July 1942, and we had on this occasion a discussion - a service discussion. After that I met him a second time when on the occasion of the supply trip on the second or third of June I returned and I spent the night in Smolensk. when you spoke to him in Smolensk? was sitting at the same table with all the other leaders who were present for the Conference. If I am not mistaken, he was at the far corner of the table with the administrative officers. When I was in Smolensk again the second time, that was on a morning Klingelhoefer was sitting in a room and took excerpts from a Russian book. Klingelhoefer? first time, I did not discuss any official matters with him, but I do know that when I met him again for the second time upon my return from my trip, I sat with him for quite a long time, in the evening and on that occasion we discussed matters explicitly for about two hours, particularly the problems of the Russian territory.

It was only on that occasion that I learned that Klingelheefer had been born in Moscow and had been living in Russia for some time. Fuehrer Order?

A No. I did not discuss it with him.

Q Did you discuss with him the executions of partisans?

A I don't think so because the subject of discussion was mainly the political, economical, and cultural structure of the Soviet Union. time?

A Neumann's deputy? No, certainly not. 15th of February 1942 you reported to Naumann at Smolensk, is that correct? commando leader of Commando 7B, is that correct? and 19th of February? to that time, Rausch, remained with you to acquaint you with the tasks until the 15th or the 16th of March, is that correct? the 16th of March, who was actually in command -- were you in command, but he remained to familiarize you with the tasks or did he still retain the title of Commander of Commando 7B? to be in charge of the commando.

The decisions concerning this were up to him. He conducted discussions with the Wehrmacht authorities. He signed the reports. On the 15th or the 16th of March the then Oberfuehrer and police chief, Naumann, arrived at Bryansk which at that time was the H.Q. of the commando; he had a social evening with us and the next morning, I think it was a Sunday, before lined-up the men, he dismissed Rausch and turned the commando over to me. the 15th of February, does that mean that there were two commanders between February and March?

A No, not two commanders. I had been detailed from Berlin, and Naumann had orders that Rausch should familiarize me with my tasks for about three weeks, because this was my first independent and responsible assignment in a commando and because it was my first work in a police assignment, Rausch in any way?

A No. I could not do so. what the commando should do, whose order controlled, yours or Rausch's, during 15th of February and the 19th of March 16th of March? fact. did you ever oppose the fuehrerorder by word or by deed?

A How am I to understand this, what you mean "object", "oppose"?

Fuehrer Order should not be enforced?

A No. The members of my commando were, since the beginning of the Russian campaign, that is since June 1941, acted according to the fuehrer order, as it had been made known to them in Pretzsch or Dueben. Even the subcommandos worked in accordance with this order and quite independently at that.

Q Did you ever do anything to oppose the order?

A Yes, and I said in my interrogation to Mr. Wartenberg in February on one occasion, it was I think in June, I gave the orders to my three subcommando leaders in writing that they, on their own responsibility and independence must no longer work as they had worked up to then, I made it the duty of the subcommando leaders to submit all the documents pertaining to investigations, my commando in Orol for review. or to hinder the carrying out of the fuehrerorder? because when in 1942 I arrived in Russia, the fuehrerorder had already been carried out for five months in my territory, and it was, therefore, no longer topical. unable to, and did not do anything to oppose the fuehrerorder, is that correct?

A I cannot deduce that. Not having had a possibility, I had other tasks to deal with. because of the circumstances, do anything to oppose the fuehrerorder? upon my arrival did not necessitate the execution of the fuehrerorder any longer.

PRESIDENT; I think, Mr. Ferencz, he answered the question right at the very beginning. Now, if he wants to amplify on that or if you want some further specification, that is another matter, but that question, it seems to me, was spoken in this language, "Did you ever oppose the fuehrerorder by word or deed." It seems to me that is the way you put the question, and I heard the defendant reply in the German "Nein", then translated, "NO".

MR. FERENCZ: Is that correct, Witness?

THE WITNESS: I said that I saw no point any longer in doing anything because the fuehrerorder was no longer topical in my territory. BY MR. FERENCZ:

Q Then you answered that question with "No", is that correct? thereupon I said that I gave my subcommandos the order that they could not independently carry out executions any longer but the document pertaining to these masters should be sent to the commando for investigation. That is what I said. question the Tribunal just put. I asked you -- the first question was "Did you ever oppose the fuehrerorder by word or deed", did you answer "Nein", Yes or No?

A Thank you. To the best of my knowledge, as a commando leader, you would say, wouldn't you, that all the commandos regularly carried out the executions?

DR. KOESSL: I object to this question, Your Honor, because the defendant cannot possibly state what other commandos did.

This is different in time and locality. This is a question which cannot be answered for one particular period, and certainly not for all the commandos.

PRESIDENT: Well, Dr. Koessl, in the first place, this defendant was the company commander, he was the leader of the commando and, therefore, chargeable with all activities of the commando. In the second place, Mr. Ferencz included in his question, "to the best of my knowledge and belief", did his subcommandos conduct executions. There can certainly be no objection to a question put in that form. It seems entirely fair and reasonable. BY MR. FERENCZ:

Q Would you answer the question, please?

A I think we do not meet on this point. The prosecutor did not ask me concerning subcommandos, but he asked me about the activity of the commandos, that is how it was, wasn't it?

PRESIDENT: Well, then answer it with regard to the commandos.

THE WITNESS: This question I am unable to answer clearly and explicitly. From March '42 until January 1943, I saw the leaders of other commandos only twice during official discussions in Smolensk and as a result of those meetings I have no clear impressions about the activities of the other commandos. After all, one must consider especially concerning the bad conditions of roads and transport in Russia, that my neighboring commando, 7A, was for instance about 500 kilometers distant.

PRESIDENT: Mr. Ferencz, apparently I made a mistake. Did you ask whether he know that other commandos had carried out the executions?

MR. FERENCZ: Your Honor, my question was, "To the best of your knowledge as a commando leader, you would say, wouldn't you, that all the commandos regularly carried out such executions ?"

PRESIDENT: Well, I misunderstood that. I thought you were asking him to express whether his commando carried out the executions; but I see now what it is, and you may proceed along that line, and I can understand more thoroughly now, Dr. Koessl's objection that certainly he wouldn't be charged with knowledge as to what other commando leaders did; however, if he does know, then certainly he can answer it, if he doesn't know, then he doesn't know, then that answers that.

THE WITNESS: I believe, Your Honor, I have answered this question by saying that I only saw the other commando leaders on two occasions and that did not give me a clear picture of the situation. BY MR. FERENCZ: for the executions carried out by Sonderkommando 7B while under you commando? and coldly but one sat down for hours for the examination of the interrogation records. One thought it over and one asked the criminal commissars and the departmental chiefs, experts for explanation and for details. If the cases were particularly serious, one interviewed personally with one's interpreter, sometimes one even attended those interrogations and I can assure you honestly, Mr. Prosecutor, that often I sat in my office for whole nights with my staff examining the documents.

carefully. My question is, however, that now as you look back upon what occurred in Sonderkommando 7-B under your command, do you have any feeling of regret or remorse? Do you feel that something wrong was done? wrong happened. I have pity for those people who during the course of the war have lost their lives, somewhere and I was convinced that our opponents in Russia had also their own ideology as well as I had my own ideology, and if in accordance with the Fuehrer Order and in accordance with the necessity for the security of the troops we had to shoot people here and there, than it was certainly not an easy task for us. These executions were not only very serious for those people concerned, but without the slightest doubt also for those who had to carry them out.

MR. FERENCZ: We have no further questions, Your Honor.

THE PRESIDENT: Any redirect examination, Dr. Koessl?

DR. GAWLIK: Gawlick for the defendant Naumann. the cross examination, concerning the relationship with the defendant Naumann.

THE PRESIDENT: You may proceed. BY DR. GAWLICK: yesterday whether the defendant Naumann confirmed the Fuehrer Order. In accordance with this I have the following question: Can you make statements as to whether the defendant Naumann attached particular attention to the Kommandos under his leadership developing a special activity in the carrying out of the Fuehrer Order? following: I do remember that Herr Naumann told me on 15 or 16 March Court No. II, Case No. IX.

when I asked him to confirm to me the accuracy of the Fuehrer Order as it was handed to me by Rausch, "I am not a hunter for high figures." That is what he said, and that is what I remember, and Herr Naumann knew then very well that in the area of the Second Panzer Army, which was also my field of activity, there were a number of sectors which we had not dealt with because they were practically impossible to deal with.

Q That is sufficient, witness. Is it correct that the reproach was made by the superior of the defendant Naumann that in the carrying out of the Fuehrer Order he showed too little activity and that he mainly tried to develop activities concerning another field, which has nothing to do with this. Do you remember that? in your absence, Dr. Gawlick, my defense counsel, Dr. Koessl, asked me concerning these particular points.

Q Perhaps you can answer the question "yes" or "no". Is it correct that the superiors of the defendant Naumann reproached him that in the carrying out of the Fuehrer Order he did not develop enough activity?

A I can neither answer the question "yes" or "no". This reproach was not raised by Kaltenbrunner, who was his superior, but Naumann's successor, Boehme, and that is what I said yesterday, I think. fendant Naumann was active in another field. It wasn't quite clearly expressed, witness, yesterday. Please, therefore, repeat it, will you? personal file -

Q What was it that became evident from this file, witness?

A Well, please let me tell you the story. There were two copies of letters from Naumann's successor filed and in this the reproach was made that Naumann had not sufficient power of command over his Einsatzgruppe and his officers, He was not strict enough with his officers, and, therefore, he should contact the officers of the Rear Army Territory concerning partisan activity and partisan combat.

DR. GAWLICK: Thank you. I have no further questions.

DR. KOESSL: Yesterday, Your Honor, the witness wanted to make a statement concerning an alleged mistake in a document. I now have obtained the document from the office of Mr. Niebergall, and perhaps it would be the best thing if the witness would point out the place that he wanted to object to.

THE PRESIDENT: Let him have the document.

MR. FERENCZ: Your Honor, before the witness points out any objection to the document, I would like to ask whether the document has been offered in evidence here either by the Prosecution or the Defense.

THE PRESIDENT: Dr. Koessl, is the document in evidence?

DR. KOESSL: It has not been submitted yet, Your Honor, In my Document Book 2 there are excerpts from it, but I am not quite certain whether the defendant wanted to refer to one of these excerpts. I had no occasion to speak to him last night because he was being cross examined. I, therefore, would like to show him the document, and it will immediately become evident.

MR. FERENCZ: Your Honor, if the document has not been offered in evidence and the defendant does not propose to offer it at this time,I object to any comment being made on the document and ask that the correction be made at the time it is offered.

THE PRESIDENT: We can't very well, Dr. Koessl, go into a discussion of a document which is not before the Tribunal. It would only be in the nature of a private conversation.

DR. KOESSL: I don't deem it necessary for this document to be discussed. What seemed necessary to me I shall submit, and I only wanted to comply with the order of the President in ascertaining the document concerned.

THE PRESIDENT: If you desire, we will gladly give you whatever time you desire, right now. It is only a question of,two or three minutes, five minutes, to take that to the witness and, off the record, discuss the matter with him, and then if because of what you learned from him you wish to introduce a document, then you may introduce it and then he can make whatever statement he desires about that document, but your discussion with him cannot be a part of the record because there is no document before us for discussion.

DR. KOESSL: I thank you very much for your kindness, Your Honor. I think I can do this in two minutes.

THE PRESIDENT: Very well. Please do not talk into the micro

DR. KOESSL: Yes.

THE WITNESS: May I say something else, Your Honor.

THE PRESIDENT: Well, after you have conferred with your counsel, you may.

DR. KOESSL: Your Honor, what the witness wanted to say appears in my Document Book 4 Ott, and will be submitted later. His statements deal very briefly only with one particular point in connection with the probative value of the documents themselves, and therefore I would like him to make a brief statement.

MR. FERENCZ: Your Honor, the probative value of any document is a matter for the Tribunal, and I repeat my objection to any discussion of a document which has not been offered in evidence.

DR. KOESSL: Your Honor, in that case I shall not hear the witness make this statement, but I can assure the Prosecution that it would have been to their advantage if the witness had made the statement.

BY DR. KCESSL: voluntary?

( Did you have a special war assignment during the war?

the SD. have left the SD if you had wanted to? his unit. ritory which you also reported about?

A You mean in Russia?

A Yes. Repeatedly the executions carried out by other units were also reported about, but certainly with a remark saying that these were other units or other detachments which had carried than out. I dealt briefly yesterday with the existence of the self-administrative detachment Lokot. That was an administrative district which was under a Russian leader and which also upheld quite an extensive militia. This particular militia unit carried out operations independently and also executions,

DR. KOESSL: Thank you, Your Honor. I have no further questions. BY THE PRESIDENT: on page 58. Yesterday you stated that under your orders and instructions your Kommando executed twenty Jews because they were Jews. In the report which appears on pages 57 and 58 you will find on page 58 the phrase, "specially treated by Sonderkommando 7-B", and then the enumeration of the people who were killed. The last item is "twentyseven Jews", Now you said yesterday that you only killed twenty because they were Jews. This report indicates that there were twentyseven Jews killed because they were Jews. How do you account for the difference in numbers?

did yesterday during my direct examination. In the preceding months and that is during a period of three months no reports were supplied concerning executions and other police activities of the Einsatzgruppe B. This report deals with a period from 6 to 30 March. That covers a period of reporting which did not exist for us at the time, because according to orders our reports were made at the deadline of the. 1st and 15th of each month. The compiling of reports from the 6th to the 30th is something so unusual that doubtlessly one of the superior agencies either the Einsatzgruppe or RSHA, to whom these reports after all went, an arbitrary compiling had been made. This I presume even more so since in this document all Kommandos of the Einsatzgruppe B are combined in this period from the 6th to the 30th. My neighboring Kommando, if this report would be assumed correct, would have executed two weeks after the happenings described therein occurred, This report is dated 21 April. Therefore, the executions would have occurred still in April, in the first week of April, when you were actually in the field with the Kommando. So, therefore, why wouldn't this enumeration be correct? necessarily as a basis. I remind you of the document containing the report about the operation "Eisbaer" which only appeared seven weeks after the actual operation. Therefore, one cannot always say it is two weeks. I can remember that on occasions four or five weeks passed and then a report was made. Now are we to understand that the report was delayed in each instance just long enough to get beyond the time that you were involved? apparently made after a few weeks, apparently two weeks, but another report was made after seven weeks, I do not want to say that it was Court No. II, Case No. IX.

always made after two weeks.

Q Well, tell us about this episode. Do you know anything about it; when your Kommando killed eighty-two persons, nineteen of whom had collaborated with partisans, twenty-two had spread Communist propaganda, fourteen had made inflammatory statements, and twentyseven were simply Jews? Do you know of this episode? out during the first time of my activity of my Kommando, and if that had actually happened, I would remember the cases individually even today; but I can assure you that neither during March nor during April executions of eighty-two people were carried out. just about come within that period; you took over the Kommando in the early part of March, This is dated April 21st so that even allowing for the maximum delay, this happening would still have occurred within the period of your incumbency, would it net? number of eighty-two, if it is correct, would, have been at the beginning of March or at the end of March, or at the beginning of April or at the end of April, but I can assure you that neither in March nor in April executions of this high number have been carried out, The first impressions which I would have gained during my first period of command would doubtlessly recall such happenings. mentioned yesterday? of six months, there were a number of miner cases and several operations, during which these twenty Jaws mentioned were apprehended, I said already yesterday that when operations were carried out against saboteurs and partisans, these Jews were seized too and they had to be shot. No matter whether or not they were partisans, whether or not they confessed because the Fuehrer Order automatically came into Court No. II,Case No. IX.

effect. about this Fuehrer Order when you first heard it, and then you said this morning to Mr. Ferencz's questioning that you never in any way opposed the order. If you were so shocked by it, why didn't you release some of these Jews? You had the opportunity, You were in command. Why didn't you release some of them? thing, namely consistency. Either I must shoot them all whom I capture or I have to release them all. To shoot some and let others escape would have been impossible for me. anybody, why couldn't you after having investigated the case of a Jew or several Jews have released them on the ground that they were innocent? and because I did not feel myself authorized and in the position to evade this order which had been given to me as a soldier. which you operated?

Q Did the Jews also speak Russian?

Q Yes. What designating characteristic proved that a Jew was a Jew? a Jew were not very difficult to establish, whether they be White Ruthenians or Great Russians or whatever they were, The Eastern Jew especially in Russia in his appearance is so characteristic that you cannot mix them up for anybody else. Furthermore, the people concerned when asked did always volunteer to give us their race or nationality. They never denied that.

as contrary to humanity, could you not have "salved " your conscience and your sensibilities by having released one helpless, piteous, defenseless Jew?

A Your Honor, first of all I didn't see a defenseless Jew, because wherever we captured Jews it was in the territories of the Partisan groups, they were rather militarilly fit , but even if a defenseless Jew had been sent to me and I would have to reach a decision and I could not have made an exception. and because of the Fuehrer Order which you felt compelled to follow? shot them down? defenseless. That is correct, isn't it?

Q Yes. How, witness, you spoke yesterday of executing a Jewess. On page 45 of your Document Book a reference is made to Jewesses. Did you kill more than one woman Jew?

A Your Honor, this is a report of 23 March 1942. This matter is unknown to me.

Q Very well, we won't waste any time on it then. How many executions did you witness, Ott?

Q How many people were involved in those executions? rogation was discussed. This was in Bryansk during my training period -

Q I just want to know, how many?

Q Six. The second execution how many were killed? near or at least in the vicinity of Orel -

Q How many were killed?

Q The third execution, how many were killed? to my recollection there were eleven people involved. I remember the incident why they were executed.

Q Yes. You indicated that when you went into Russia, that you didn't know the object of your mission. As we recall your testimony, you went to the RSHA in Berlin, and asked for on assignment; you indicated you wanted to go to the front; at any rate, later on you were called and you were given this assignment in Russia. In view of the fact that you had particularly asked for an assignment, why is it that you did not learn what the assignment was to be? I received by writing, and in this decree it merely said, "You are detailed to Einsatzgruppe D, and you will be in charge of the Special commando VII-B", and it said a little more there, "You will have to report to the chief of Einsatzgruppe" in Smolensk or something to that effect. would be?

Q And you didn't inquire? and Bohemia.

Q You joined the Nazi Party in 1922?

Q You were out of it how long, about a year?

Q Yes. You were out then about three years because of this difficulty you had had with the leader?

Q You, at no time, denounced the ideology of the Nazi Party? National Socialist at heart.

Q Yes, You took the oath to Hitler?

Q You took it voluntarily? oath to Hitler? to me that Adolf Hitler said, in 1933, in the Braune Haus in Munich, during a training course, for the SA: "No SA man and no Party member need ever have any pangs of conscience - if he gives his oath of allegiance to me".

Q And you accepted that?

Q And acted according to it during all the time of your service?

Q Do you regret ever having taken that oath to Hitler? with just one word. I was a National Socialist, and until the very last days of this war I was convinced of this idea, and I was of the conviction that Hitler had wanted to do his best for his Fatherland, and, I believe if the and of this war had been different, than we had expected during good times, then those were not the ideas which were at fault but the bearers of the idea who were at fault.

aims? conquered by Hitler?

A We, at the time, didn't think of it in that way as a conqueror of Europe, but as a protection to Europe.

Q Yes. You would have been satisfied to have see, all of Europe protected by Hitler?

Q Just as Czechoslovakia was protected; just as Holland was protected; just as Belgium was protected; just as France was protected; just as Norway was protected, and all those countries were protected, that is the way you would like to have seen it? completely different possibilities and conditions would have been obtained and that a satisfied and happy collaboration of all European countries could have been brought about. I was convinced of that.

Q Did you ever hear any of Himmler's speeches?

Q Did you also believe in Himmler?

A Your Honor, just I answer this question?

THE PRESIDENT: You do not. The witness will be returned to the defendants, dock and the defendant Klingelhoefer will be taken to the witness stand.

(witness excused)

JUDGE DIXON: Witness, hold up your right hand and repeat after me:

"I swear by God -- "

THE PRESIDENT: Just a moment, please. Can you hear it now. Do you hear that?

THE INTERPRETER: Yes, Your Honor.

THE PRESIDENT: Very well.

JUDGE DIXON: "I swear by God, the Almighty and Omniscient, that I will speak the pure truth, end will withhold and add nothing." You may be seated.

(Whereupon the witness repeated the oath)

DR. MAYER: Dr. Erich Karl Meyer for the defendant Klingelhoefer. Your Honor, before I begin with the direct examination of the defendant, I would like something to be corrected in the records. In the German record of 16 October 1947, in the afternoon session, approximately 1330 to 1630 hours, during my examination of the defendant Naumann in the witness stand, it was established that the witness Naumann helped, recommended the defendant Klingelhoefer to receive a decoration of war merit cross,1st class; it is on page 855 and page 856 of the German record, and the English record concerning the same examination, on page 846, talks about the defendant Klingelhoefer having received the Iron Cross of first class "Iron-Cross (Eiserne kreuz)". I want to correct the records and show now that the English record shows a mistake in translation, and that the defendant Klingelhoefer only got a minor decoration, the War Merit Cross, first class.

THE COURT: Mr. Ferencz, do you see any reasons why that correction should not be made?

MR. FERENCZ: No, Your Honor.

THE COURT: Dr. Mayer's statement will be made a part of the record, and of itself will work the correction of the transcript.

DR. MAYER: Thank you.

BY DR. MAYER:

Q. Witness, before I put my first question to you, I shall remind you to speak slowly and take great care that the question is translated before you start answering it. The direct examination, your Honor, will be in three parts, the political activity, including the Russian assignment; part two I shall deal with discussion of documents, and in part three: The activity of his in Office VI of the Reich Security Main Office.

THE PRESIDENT: Very well. BY MR. MAYER:

Q. Witness, please give us your full name.

A. My name is Waldemar Klingelhoefer.

Q. Please give us the date of your birth, your birthplace, and tell about your family.

A. I was born on 4 April 1900 in Moscow. Son of a Cemetery Director, Hans Klingelhoefer. I have been married since 1932, and I have bee married since 1932, and I have four children.

Q. What training did you receive before you joined the SS and the SD?

A. I attended school first of all in Moscow and then in Kassel the High School with a scholastic education, and in 1919 I passed my matriculation. After that I studied music. Then I became a concert singer, and a singing tutor. From 1933 until 1934 I was employed as en opera singer at the State Theatre of Kassel.

Q. Why and when did you join the NSDAP?

A. Through my relationship and connection in Russian circles in Germany, and my interest in my native country of Russia, I recognized the grave danger which Germany, and moreover Europe was threatened with by Bolshevism and its world revolutionary ideas; the development of conditions in Germany made me accept the conviction that the political opinions as held by the NSDAP were the only possible solution in order to fight the Bolshevist attacks on Europe which could be expected, and which was able to resist this attack.

This conviction made me decide to join the NSDAP as a member. On 1 June 1930 I became a member of the Party.

Q. When and for what reasons did you join the General-SS?

A. When in the Summer of 1932 I reckoned with a lengthy stay in Kassel, I applied for membership in the SS, the reason for the enlistment in the SS was due to the fact that immediately afterwards I was engaged in a concert tour, this enlistment didn't come into effect; but after I returned from this concert tour on 1 February 1933, I finally joined the General-SS.

Q. How and when did you go to the SD?

A. Through my membership in the General-SS, 1, as a native German, living abroad due to my linguistic capability was acquainted with the information service of the SD; when for reasons of health I had been forced to relinguish my profession as a singer, the suggestion was made to me to join the SD, which for reasons of my special knowledge was of great interest for the SD. As I had had no other training, and as I had to support my family, I accepted this proposal, and, on 1 December 1934 I joined the SD full time in the Kassel sector.

Q. What activity did you indulge up to the beginning of the war?

A. First, I became just an office worker without any special duties, as the SD sector in Kassel was only just being built up. From the Fall of 1936, I took in charge of the cultural department, and in 1937 I was confirmed a departmental expert for the department of culture in the SD sector of Kassel.

My assignment contained reporting, conditions the SD sector of Kassel.

In details there were the subjects ture. These reports served the purpose of information for the higher administrative authorities.

Q. Did you have anything to do with the executive?

A. No, my activity mostly consisted of compiling reports

Q. What kind of material was it then?

A. There were reports by the sub-offices which were re ceived for the individual subjects of culture.

These reports

Q. What happened to your reports?

A. Those reports were submitted to the chief of the SD

Q. Could your reports be used as the basis for persecu tion of any people, by the Gestapo?

A. No, these reports, in shape and content matter, dealt

Q. Did your activity change when the war broke out?

A. Yes. With the beginning of the war in September 1939, the population; and to the evaluation of propaganda end film government and conditioned by the war.

This reporting was a matter of two or three times a week.

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Apart from this, from the middle of 1940, approximately, I translated Russian material concerning the Russian emigration in France, which was submitted to me from the agency of the Reich Security main Office in Paris. This work I continued until May 1941, that is, until I was detailed to Pretsch.

THE PRESIDENT: I think that seems a very likely point at which to stop for recess, Dr. Mayer.

DR. MAYER: Your Honor, I have two questions to ask before I start on a new subject. There questions are very brief. May I put them to the witness?

THE PRESIDENT: Certainly.

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Q. Witness, these situation reports which you issued after the outbreak of the War, could they be used against people on the part of the prosecution authorities.

A. No. The whole nature of these reports about morale was the same as the nature of the reports which I had issued before the War.

Q. Your Honor, thank you. I think the next question can be put after the recess.

THE PRESIDENT: Very well. The Tribunal will be in recess for fifteen minutes.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Mayer proceed. DR. MAYER for Klingelhoefer: Einsatzkommando? order from the RSHA according to which I was to be sent to the Police Training School in Pretsch immediately. The purpose of this order was not given.

Q What happened in Pretsch?

A Nothing of importance happened in Pretsch. I was merely uniformed and equipped suitable for a frontal campaign. I was taken to the neighboring village of Schmiedeberg where I was injected against typhus, cholera and pox. BY THE PRESIDENT:

Q Witness, before you wont to Pretsch were you already in uniform? field uniform?

A Yes, in Pretsch I received a new uniform. When I received the order it said expressly I should go there in civilian clothes and that I would get a new uniform in Pretsch.

Q Did you sometimes wear civilian clothes during the war?

Q I see. Thank you. BY DR. MAYER:

Q Witness, was the purpose of these measures made known to you? Pretsch were called for a roll-call. On that occasion Streckenbach appeared together with a number of SS officers. There the officers and men who were lined up were divided into groups end Kommandos.

I myself came to Kommando VII-B as an interpreter. During this rollcall the officers and men were told by Streckenbach that this was an assignment which required from all officers and men their utmost in duty and the utmost in discipline. The Reichsfuehrer expected everyone to do his duty to the bitter end. After this roll-call the Einsatzgruppen were distributed. BY THE PRESIDENT:

Q How many men were at this meeting, please?

A Your Honor, this was not a meeting. This was a roll cell in the open air. All the men were lined up there who were assigned to all the Einsatzgruppen A, B, C, or D, and during this roll call all the men were subdivided into Kommandos or Groups.

Q Well how many men in all were at this roll call?

A Your Honor, it is very difficult to estimate this. I cannot do that. gruppen A, B, C and D?

Q And who made speeches, only Streckenbach?

A Only Streckenbach spoke at this roll call. He just stated general instructions to the men for this assignment, without further instructions.

Q Did he go into details of any kind?

A No. Not at all. It was just e general speech.

Q Yes. Did Heydrich appear at this meeting?

A No. Heydrich arrived later.

Q I see, and do you remember the date of this roll call?

A No, Your Honor, I cannot remember that. That was about - well, I was ordered from Kassel in the end of May or the beginning of June and about two weeks later this roll call took place - about the middle of June.

BY DR. MAYER: Bad Dueben in the following time.

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THE PRESIDENT: Proceed, Mr. Mayer. BY DR. MAYER: kommandos were going to perform; what did Streckenbach say about this? the Einsatzkommandos. The speech was merely limited to general orientation about the duties of officers and men as soldiers during an assignment.

Q What tasks were carried out in Dueben? Sonderkommando 7b, and subdivided it. It was split up into two executive platoon and one SD platoon.

Q What tasks and orders did you yourself receive? of the Russian language, as an interpreter in the commando. The Commando Leader Rausch, however, gave me, being on SD man, the special order to organize the SD platoon. From the men I had. I selected those men who had come from the SD, or who because of their ability and their previous training seemed suitable for intelligence tasks. take place? before the Einsatzgruppe left Dueben to go to the Russian border, my Commando Chief Rausch made a roll call of his commando on which occasion he announced that Russia was the destination of the assignment. chief?

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the security of the territory in the rear of the fighting units and the reporting on of important material, and also the usual reporting of the SD. Concerning the manner of warfare with Russia which was to be expected, Rausch said that Russia neither has recognized neither respected international law nor the Geneva Convention nor The Hague hale of Land Warfare, and therefore are had to expect that the enemy would conduct this war by all means possible and ruthlessly. Therefore, we would have to combat them in the same manner, and in the came ruthless manner. Therefore, the war laws and the courts martial were rescinded for this assignment by an order of the High Command of the Army as to the treatment of this enemy.

THE PRESIDENT: Pardon me, may I have that again? I didn't quite catch it. BY DR. MAYER:

Q Witness, would you please repeat?

A From the beginning? consisting in the securing of the rear Army territory, reporting of all important material, as well as the general reporting of the S.D. Concerning the manner of warfare with Russia which we had to expect, Rausch said that Russia disregarded international law and the Geneva Convention or The Hague Convention of Land Warfare, and therefore, it had to be expected that the enemy would conduct this war ruthlessly and by using all possible means to achieve their end.

THE PRESIDENT: Yes, now I did get that much of it. It is from this point on that it was a little difficult to grasp. How, state what you are going to state now a little slowly, please. BY DR. Mayer:

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Therefore, the war laws and the courts martial were not to be applied concerning the enemy. These laws had been given by the Sigh Command. and they were to be disregarded as far as the enemy was concerned.

THE PRESIDENT: Well, here is where the difficulty arises. You say these laws had been given by the High Command and were to be disregarded so far as the enemy was concerned?

THE WITNESS: Yes, the commando leader said this, that this military law and this martial law should not be applied concerning the enemy in this case the USSR at the order of the High council.

THE PRESIDENT: Oh.

THE WITNESS: In this case this means Russia.

THE PRESIDENT: Could I state it this way, that the laws concerning the treatment of the enemy did not need to be followed in the fight against Russia because Russia itself was disregarding those some love?

THE WITNESS: Yes, that is the meaning.

THE PRESIDENT: Yes.

THE WITNESS: Since great activity on the past of the opponent had to be expected in the rear of the fighting unit, all officers and men must be prepared to do their duty to the end. BY DR. MAYER:

Q What did Rausch say about the manner of securing the territory? Einsatzkommandos because of the fact that the Fuehrer had given an order to the effect that the Jews in the USSR were to be shot as being the strongest bearers of Bolshevism in Russia. The commander of the Security Police and the SD realized fully how hard this would be for the officers and men psychologically to execute this task. An attempt had been made to revoke,this order, but nothing was of avail, the order must be carried out by the commandos because of its necessity for the security. He refusal can be allowed because it is en order from the Supreme Command.

For he same reason, according to this Fuehrer Order, all political functionaries and Gypsies were to be shot as factors of danger in the occupied territory, women and children should also be shot?

A No, women and children were not mentioned expressly. It merely said, "Jews, functionaries end Gypsies". the Einsetzkommandos? his opinion that his commando, as a Sonderkommando, would have nothing to do with these measures. The Sonderkommandos would follow the advance troops without delay and would merely have to carry out the first security tasks; while carrying out the measures contained in the Fuehrer Order would be dealt with only by the following Einsatzkommandos who had been especially assigned to do this, and who would be stationary. the orders for the Einsatzkommando? beginning was that something extremely severe end sinister was to come about, My inner reaction was immediately to evade this as far me possible, although I fully realized at the time that the special situation raising from this war, this war again Russia, required special measures, and although I fully realized that the Jewry in Russia in its entirety as convinced followers of Bolshevism would constitute a great danger in the rear of the German Armies, my inner attitude however objected to this, that people should be killed without prowled any guilt. On the other hand, there was the order by the Supreme Commander of the State, and no one could contradict it, and not understanding the higher conceptions and ideas behind this, which the higher political and military Leadership of the state had, I had to assume that this measure was absolutely necessary in the interests of the successful ending of the war in the East, and therefore in the interest of the people and the State.

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In this dissension of my feelings I avoided discussing this, and therefore did not mention it to anyone so as not to let anyone see too much of my reaction. I also noticed that the other officers and men felt similarly. The Fuehrer order was hardly mentioned, therefore, and was hardly ever discussed. Everyone knew that he would be forced to carry out this order if the situation should arise, and therefore, considered all discussions about it as useless.

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THE PRESIDENT: Witness, after this inner conflict that you have described, your feelings as against your conception of patriotism, your sensibilities as against your obedience to your superior officers, including the Chief of State, did you finally come to a conclusion?

THE WITNESS: Your Honor, I Came to the conclusion that the order had to be carried out, and that I also would have to carry it out if the situation should arise for me, but that I would use every opportunity in order to evade this order as for as possible.

THE PRESIDENT: You felt that your sense of duty was stronger than your aversion to the nature of the deed you were culled upon to perform?

THE WITNESS: My sense of duty, of course, was stronger.

THE PRESIDENT: Yes. BY DR. MAYER: task I had been given as an expert in the SD, would have nothing to do with these executive tasks and therefore I would not be forced to carry then out. In fact, during my entire assignment in Russia. I never was given an order to carry out the Fuehrer Order.

Q Could you have objected to your being ordered to Pretsch? known to me. Beyond that, this was a military order in wartime which I could not disobey, for that reason alone. to staying in the Sonderkommando? Police and the SD, and was under military laws.

Q When did you cross the Russian border? Brest-Litowsk.

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Q what road did it take? The advance on this route Jested from 25 June until about 9 July, 1941. Russian border? into an executive platoon end an SD platoon. I as chief of the SD platoon, merely had to deal with the reporting. At the locations where the commando stayed for a short time while advancing, I searched the offices of the YKWD, the party and the state organization, and looked for important documents, and I inquired from the population about any questions which might be of importance for the information services. Also the members of my SD platoon who were partly new to this task I introduced Into these tasks, and I gave lectures about the people and the country in Russia.

Q In Sonderkommando 7b, did you have anything to to with executions? and to name them?

Q How long were you a member of Sonderkommando 7b? July, 1941, in Minsk.

Q Why were you transferred to the Advance Kommando Moscow? local knowledge and my knowledge of the language.

Q Who was the chief of the Advance Kommando Moscow?

A The then SS-Standertenfuehrer Professor Dr. Six.

Q What were the tasks of the Advance Kommando Moscow?

with the troop behind Moscow or in Moscow, and to secure important buildings and material that might be of importance concerning information, culture, politics or science.

Q What was your took and your work? country, was limited to this: I determined which objects in Moscow were to be secured.

Q What route did the Advance Kommando Moscow take? they remained without any verb for sometime. On 21 July, 1941, Six sent me to Smolensk to arrange for billets where I arrived the same dry and arranged for billets for the Advance Kommando Moscow in the NKWD building in Smolensk.

THE PRESIDENT: In Moscow?

THE WITNESS: In Smolensk.

THE PRESIDENT: You never got to Moscow, did you?

THE WITNESS: About five or six days later the entire Advance Kommando Moscow left. BY DR. MAYER:

Q What was the situation for the Advance Kommando Moscow in Smolensk? work because Smolensk was still being attacked by artillery. After the situation had calmed down, the Advance Kommando Moscow first searched the MKWD offices of the "Soviet House" and other objects for any remaining material. Apart from that the general conditions in Smolensk were considered.

Q What was the result?

A The city was badly damaged and void of any people. A provisional city administration had been set up which the Army had appointed, but they could not handle matters. They asked the Advance Kommando Moscow to support them end to give them instructions for the work.

Moscow for this support? German troop in Smolensk who had personnel knowing both languages and being familiar with the country. Particular?

A The cultural equipment like museums, collections, etc., which were left in Smolensk were secured from looting. The cathedral, where there was a Pagan museum was opened so that the population could attend service, was a pagan museum.

THE PRESIDENT: I din't catch that word, a museum of what?

THE INTERPRETER: A pagan museum. I said atheists.

THE PRESIDENT: A pagan museum. Very well.

A (Continuing) The search for important material was continued.

Q What was your personal work there? suitable for evaluation and to evaluate it, and to obtain and work on in this connection by questioning the population a survey about all spheres of public life and to make reports about this.

Q What happened with the material you found? in more detail was prepared to be sent to Berlin. in Smelensk?

Q Where did the group staff take up its quarters? where the advance commando Moscow already was stationed. arrived? work of the advance commando Moscow. arrived? of this. I simply dealt with the so-reporting and evaluation of material, as I have already explained.

Q What happened when your chief, Dr. Six, went away?

A When on 20 August 141, Dr. Six left Smolensk in order to return to Germany, the chief of Einsatzgruppe B, Nebe, on instructions from Berlin, took over personally the Command of the advance commando Moscow until the new commando chief arrived.

Q Did this change affect you personally?

advance commando Moscow, in case Nebe should be away from the garrison.

Q Did you carry out this function as deputy? this pending period Nebe was continually in Smolensk. The case never arose that I had to act as deputy, therefore, the individual departments of the advance commando Moscow worked quite independently reporting immediately to Nebe, so that I beyond the tasks of the SD, was not informed about the activity of the other departments except for the work done in my section. Also Nebe gave his orders immediately to the persons he had personally appointed. Nebe never made a differentiation between 'Group Staff' and "VKM". The VKM at that time, until the now chief arrived, was practically an independent unit. this with the summary expression "VKM" and "Group Staff" as meaning the same thing or working on the same field? departments of the VKM were sent by Nebe immediately as chief and, therefore, the advance commando Moscow was closely connected with the Group Staff, the reports of the different departments were immediately sent to Nebe or to the competent departments in the Group Staff. This explains the fact that the reports submitted as documents contained formulations like Group Staff and VKM as one unit. arrive? advance commando Moscow, SS Obersturmbannfuehrer Koerting, arrived about the middle of September 1941 and was in charge of the advance commando Moscow after that.

that?

A No. I myself at the same time, that is, about the middle of September 1941, transferred to the Group Staff of Einsatzgruppe B, to the SD Deportment as expert for Russian captured material and as interpreter.

Q How long worn you in Advance Commando Moscow then? July 1941 until the middle of September 1941. '41 onwards you worn transferred to the Einsatzgruppe B Group Staff to the SD as export on Russian captured material and as interpreter. How long did you work in that capacity? October 1941.

Q After the end of October 1941, what did you do? Moscow, about 9 October 1941, at the and of October 1941, Nebe set up a small advance commando, the advance commando group staff, and I was put in charge of it. This Advance Commando Group Staff went to Gshatsk together with me where I reported to the competent army high command.

Q Did Nebe recognize anything else?

A Yes. About the middle of October 1941 people from the group staff and various exports in the advance commando Moscow were formed into another subcommando, the so-called Sonderkommando Moscow, that is, Special Commando. This was under the charge of the up till than SD men of the staff of the Einsatzgruppe B, the SS Hauptsturmfuehrer Dr. Buchardt.

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DR. MAYER: Your Honor, in order to illustrate the following questions,I have made a sketch, and in order to make it easier for you to understand it, I would like to submit it.

PRESIDENT: We would be very happy to receive it.

DR. MAYER: There are three sketches, Your Honor, each sketch for a certain period about which the witness will speak now. BY DR. MAYER: situation -- the development after taking over the subcommando -- advance commando was taken over by Koerting -please describe to us what happened chronologically. Commando Moscow in the middle of September 1941;apart from the advance commando Moscow of which Koerting was in command, Note created in the middle of October 1941 the Sonderkommando Moscow, and at the end of October 1941 he created the advance commando group staff of which I was in command. At the end of October 1941; therefore, three different commandos existed -- simultaneously, which were under Einsatzgroup B. Apart from those commandos known; namely, first, the Advance Commando Moscow; second, the Sonderkommando Moscow; third, the Advance Commando Group Staff. new commandos? Group Staff had the same tasks, namely, to occupy important buildings in Moscow immediately and to secure all documentary material. Nebe had the ambition that if Moscow should be taken that he and his office should establish themselves there.

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as soon as possible, so that the destruction of document material which can always be expected when a town is captured, be reduced as far as possible. He, therefore, created the two commandos I mentioned, attached each one to a different army and, therefore, he felt guaranteed that one of the commandos would certainly be on the spot when Moscow was captured. Therefore, every commando was given the special task to look for quarters for headquarters of the staff of Einsatzgruppe B immediately. The advance commando Moscow, which originally had been intended for those purposes, I just mentioned, retained its name, but at the period last mentioned it had lost its original purpose. Its Moscow experts had been taken away, when the Sonderkommando Moscow was set up and the Advance Commando Staff, and its task was only that of a normal Sonderkommando. This may sound strange, but it was like that. The designation "Advance Commando Moscow" was retained for reasons of convenience. Commando Group Staff of which you were in command. the mission to go with the combat unit, or immediately behind them, to Moscow and there to deal with the tasks of the security police and the SD and to secure all the buildings and equipment important for this; apart from that, to set up headquarters for the group staff.

Q Where was the advance commando Moscow when you loft Smolensk? Commando Moscow was in Spass-Demenskt cast of Smolensk, As far as I can remember, the advance commando Moscow under Koerting at the end of September 1941 left Smolensk, therefore, it left Smolensk before me,

Q Where was the Sonderkommando Moscow? middle of October 1941, marched from Smolensk via Roslawl to Malojareslawez and remained there.

Q How long did you stay with the Advance Commando Group Staff? of October 1941 the end of December '41. At that time I wont on leave.

Q when did you return from leave? Smolensk to the Group Staff.

Q What was the situation when you returned? Naumann, told me that the Advance Commando Group Staff in the meantime had been dissolved and that I was to remain with the Group Staff.

PRESIDENT: Just a minute, please, so that we don't got into a confusion in the record, Nov, the Advance Commando Group Staff was dissolved, then he became a member of the Group Staff. You have the same phrase there. I presume you mean Group Staff of the Einsatzgruppe?

THE WITNESS: Group Staff of Einsatzgruppe B.

THE PRESIDENT: Yes, which would be in the nature of Headquartersthe Headquarters Staff?

THE WITNESS: Yes. BY DR, MAYER:

Q Why had the Advance Commando Group Staff been dissolved?

Moscow would be delayed for an indefinite period. you were waiting for Moscow to to captured? for further advances of the Army, I prepared myself for my work in Moscow. I particularly studied the local conditions.

Q Did the Advance Commando Group Staff carry out any executions?

A While I was in command of the Advance Commando; it did not carry out any executions. other units of the Einsatzgruppe there? of the Einsatskommando 9 which was competent in that area, and which dealt with all security police tasks and all SD tasks. Group Staff? Germany in December 1943, December 1945 in the Group Staff? of the language and my experience in Russia. I dealt with reports on the immediate orders from the chief of Einsatzgruppe B. Naumann. Einsatzgruppe B after the

Advance Commando Group Staff was dissolved in December 1941? after Christmas 1941 consisted of making reports. The Chief of the Einsatzgruppe, Naumann, gave me immediate instructions to do this. These reports soon became a kind of evaluation medium for captured Russian material, which constantly and continually was turned in by the commandos to the Einsatzgruppe staff, or was handed over by the army.

I looked through this material. I translated it and I used it for reports. Any unclear points which might have been contained in it or anything that might have been missing in those documents was supplemerited by making special inquiries. This evaluation office consisted apart from the SD Department of the Group Staffs. I did not deal with the daily reports which the Commandos gave to the Group Staff in the SD sector but I made comprehensive reports about the large organizations and problems of the Russian Bolchevist life, In details the reports calt with detailed explanations about the various political, cultural, and governmental forms of organization of the USSR, the history of their development, their manner of working their sphere of influence, and the effects on public life. Since these explanations were always made in great detail, making them took a long time because we had to tudy documents and literature, question Russians of various professions and of various classes, and interrogate reports of the various organizations. Moreover, Naumann gave me the assignment that a detailed plan of the assignment should be worked out by me for the entire Einsatzgruppe in Moscow, but since the existing material was only incomplete and completions and corrections had to be made to a large extent. it took a lot of time to work out this plan. A completely new register of streets had to be worked out alphabetically because we did not have any such register. For the work in Moscow, a large city of four million inhabitants, this was absolutely necessary; in order to speed up the printing of this list and in order to correct any possible mistakes, I had to make a special trip to Berlin, This is only an example to show how many difficulties we had to overcome. Preparing this assignment plan took up three months. It took almost as long for me to give detailed explanations about the NKVD and other political organizations in the USSR. During my two years' activity, from December 1941 until December 1943, five or six such large reports were made out by me. Apart from that, I continuously dealt with small translations. When the attitude of the Russian people towards the German occupation authorities became noticeably Worse, I received the order to organize a special Russian information service which had the task to find the causes why the reactions and the attitude of the people had become so much worse in regard to the German occupation forces and to report about this in current reports.

As part of this reporting, for example, in summer 1943, I collected extensive material about the excesses of the administrative office, when recruiting volunteer workers to be sent to Germany. The then chief of Einsatzgruppe B, Standartenfuehrer Boehme, handed this on to the chief of the Einsatzgruppe center of the Army Group Center. When I wanted to submit some more material on this later on, the chief of the Einsatzgruppe told me he did not think that I should continue to work against our own German offices and agencies.

THE PRESIDENT: Mr. Ferencz, do you wish to offer something?

MR. FERENCZ: Your Honor, I didn't want to interrupt the defendant's reading of his carefully prepared answers, but in order to save time, we are prepared to concede that the defendant wrote reports without going into all the details.

THE PRESIDENT: I do think, Dr. Mayer, that those reports are perhaps too much in detail, his report of the reports. Might you during the recess see the defendant and determine if you can't abbreviate a little bit of this long story on his reports and get right down to the essential parts of the indictment.

DR. MAYER: Yes, Your Honor. The witness has finished replying to this question, but since this activity extended over two years for which he has to account, in my opinion, we cannot avoid going into detail about this, but the question has been replied to now.

THE PRESIDENT: Yes, but I was only thinking about what he might still have further to say, and it would not be necessary to go into any greater detail on the matter of reports which he was making.

DR. MAYER: Yes.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

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THE MARSHAL: The Tribunal is again in session.

DR. GICK: Dr. Gick representing Dr. von Stein for the defendant Sandberger. excused from this afternoon's session because Dr. von Stein needs him in order to conclude a document book which he is preparing. I would like your Honor to rule that he be removed and brought to room 57 immediately, under guard to room 57 so he may there consult with his attorney.

DR. MAYER: Mayer for the defendant Klingelhoefer. examination of the defendant Klingelhoefer.

THE PRESIDENT: Please do. BY DR. MAYER: until December, 1943, you described your intelligence activity in Smolensk. I now ask you what tasks you had to deal with after Smolensk was evacuated. the staff of Einsatzgroppe B was transferred to Minsk, In Minsk I was ordered to collect the well-working indigenous Russian police forces which were in good working order and to reorganize them for Ninsk; They were to be assigned to reconnaissance against partisan activity and to fight the partisans and other rioters who were becoming very dangerous in the vicinity of Minsk. After these units had been reorganized, I was relieved, and on 20 December 1943 I returned to Germany, 1941, until December, 1943, receive any mission from Neumann, outside your own sphere of activities?

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A Yes. At the end of May approximately or the beginning of June, 1942, I was assigned by Neumann to go to Krassniy which is about forty kilometers to the west of Smolensk and to carry out a reconnaissance activity against partisans. order? as this was a very urgent mission for the Army Group and he did not have another officer who could deal with it at the moment. It was only a very short period so that my current assignments would not be delayed too much.

Q What exactly was the mission in Krassniy? activity and movement of a partisan group in the forest territories near Krassniy in order to give the Wehrmacht the necessary information for the fight against this partisan group. I had to deal with this mission in close collaboration with the local Kommandantura of the Wehrmacht in Krassniy.

Q How long did this take you? out against the partisans, and who carried it out? of the Wehrmacht together with a police unit.

Q Were executions carried out on this occasion?

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had been warned and evaded the blow. of his successors? late in the evening I received the order from the Chief of the Einsatzgruppe B, Naumann to go to the estate Wissokojo which was in the vicinity of Smolensk, and which was run by the Einsatzgruppe B, as apparently mutiny had occurred with the Russians of the enterprise "Zeppelin", As I knew the Russian language I was supposed to carry out the investigation of this matter. I did so according to orders within the next three days.

Q What was the result of your investigations? following result. The Russians housed on this particular estate who had taken part in the operation "Zeppelin", after they had been trained in Germany for their espionage and sabotage activity, had been sent to Smolensk where they were equipped, end after a short stay they were to be brought by airplanes of the German Luftwaffe to the Hinterland, the rear territory of the Russian Army. Owing to bad weather conditions, this was delayed so that these Russians -- they were about fifteen or sixteen men -- had to be kept in this estate for two to three weeks, In the meantime some of these Russians had smarted to persuade their comrades not to carry out the mission to which they had consented and to influence them to commit treason. Especially, two or three of the Russians were found guilty of trying to give away some of their comrades who had been anti-Bolshevists all the time to the NKWD after the landing. As a result of the investigations I established the fact that apart from these two or three Russians which I mentioned, who, pretending to be loyal without the slightest doubt had smuggled themselves into this operation "Zeppelin" from the very beginning with the intention of sabotaging the work, but that the others had remained faithful in their attitude and in their work and were absolutely blameless as far as this matter was concerned.

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I gave a report to the Chief of Einsntzgruppe B, Neumann, to this effect. particular case? the subsequent action in this matter after I left; as my own activity was thus concluded, and I went to Germany on leave immediately. in Krassniy and Wissokoje which were outside the actual program of your assignment, have any other assignment of this kind?

A Yes. Already before those events which I just mentioned took place -- before Krassniy and Wissokoje -I received at the beginning of September 1941, the order from Nebe to obtain winter clothing for the unit, that is, furs and fur lining,, He told me on that occasion that it was not possible to supply the necessary clothing for the winter from Berlin, and his attempt to this effect with the first quartermaster of the Army Group had had no result. Nebe furthermore told me that he had received a directive from the Army to requisition the necessary winter clothing in the territory. Several agencies and Army units had done the same thing.

Q Why did Nebe choose you for this task?

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AAlthough as it was a task of the administration. I had nothing to do with assignments of this kind Nebe regarded merely the fact that I know the Russian language as sufficient reason for entrusting this to me, Furthermore he thought this would be a good opportunity for mo to collect more information for my SD reports. out of his assignment? Jews from the large Justice had fled to these two places, as the Einsatz Group had found out and it could on assumed that the Jews owing to their good living conditions which they had in the USSR possessed winter clothing. in fact, so much of it that a seizure for the purposes of the occupation forces would not matter to them very much, Simultaneously Nebe asked me to institute a ghetto in both of these places for the Jews, which up till then, bad not been done, I, however, evaded this part of the mission, pointing out than I had had nothing to do with these matters up till then and had had no experience whatsever. I did not know how a ghetto was to be instituted and what directives I had to pass on to the Jews, I, therefore, suggested to Nebo to entrust SS-Hauptsturmfuehr Noack with the carrying out of this task, who as a departmental expert for the Jewish question was competent to deal with such matters. Thereupon Noack received the order from Nebe to carry out the antiJewish operation in Mstislawl and Tatarsk.

Q How did you carry out your own assignment? been allotted to us for these tasks went to Mstislawl. After our arrival in Mstislawl -- that was in the afternoon of the same day -- I immediately took up contact with the mayor while Noack carried out his assignment with the local Russian police chief, I ordered the mayor to inform the Jews living in Mstislawl to deliver the furs and fur clothing which they had in their possession to him for selection purposes.

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I told the mayor that I was ordered to requisition winter and fur clothing against a receipt, The redeeming of this requisition slip would have to be done at the Wehrmacht offices and the amount had to be used for the supply of the Jewish population of Mstislawl. Raids of houses ware neither threatened nor carried out. In the meantime I had myself informed about general conditions in the Jewish section of Mstislawl by the mayor, and I asked him for details concerning the inhabitants of the place who would be in a position to give us information concerning the conditions before the occupation by the German troops. I discussed matters with these people in detail. In the meanwhile the fur clothing was delivered into the mayor's place.

Q Do you know anything about Noack's mission and how he dealt with it at the same time? Noack had not finished his mission, I went in search for him. My investigations revealed that he had left Mstislawl in a southerly direction with his Kommando. As it was wellknown that the territory around Mstislawl was invested with partisans, I decided to follow Noack in my car and in case there might be any incidents, I thought I could support him. I took the remainder of the Kommando consisting of six men and found him about two kilometers from Mstislawl in a scrub land where he was just carrying out an execution.

Q Had he concluded the execution when you joined him?

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A No. When I arrived ten Jews had just been lined up in front of a grave, a ditch. Behind them there was the detachment. This consisted of about twenty men who were firing rifles.

Q How was the execution carried out? which I have just described. I had arrived immediately before the order to fire. I saw the fire and I also saw the Jews falling with their fronts into the grave. After they had fired, the medical officer who had been present, an SS noncommissioned officer who in civilian life had been a medical student, went into the ditch and convinced himself that the people were dead. As far as I remember, apparently everybody was dead, as I heard no further shooting.

Q Did you return with Noack to Mstislawl then?

A No. The reason why I went to see Noack at the place of execution was the worry that through some unforeseen incident he might have come into difficulty with the partisans, On account of my attitude against such matters, the execution as just described, moved me so much that I immediately went back to Mstislawl, after I had made sure that no danger threatened Noack and his men in the way I have just tried to explain.

THE PRESIDENT: Witness, you have related this episode with some detail. Are you aware of the fact that it differs from the affidavit which you singed about five months ago, four months ago? Are you aware of that fact, that it differs from that affidavit?

THE WITNESS: I am aware of that, Your Honor.

THE PRESIDENT: Which is correct, the narrative which you related to Wartenberg or the story which you have now related today?

DR. MAYER: I beg your pardon, Your Honor. May I interrupt here and say that when the documents are discussed, we can come back to this question because the defendant has written another affidavit which has not yet been submitted but which is contained in my document book and will be submitted.

THE PRESIDENT: Well, yon intend to take up this discrepancy between accounts?

DR. MAYER: Yes, Your Honor, when the documents are being discussed.

THE PRESIDENT: Very well. BY DR. MAYER;

Q Witness did you go to Tatarsk as had been ordered by Nebe?

Q What happened there? Tatarsk, as Nebe had ordered, where things happened in the same way as in Matislawl, Here again I worked on collaboration with the mayor while Noack carried out his mission in collaboration with the Russian Police. In Tatarsk I didn't visit the execution place. and I never saw any executions being carried out there.

THE PRESIDENT: You say when you arrived at this next town, the same thing happened again. De we understand that you got there just as the execution was to take place?

THE WITNESS: No, that is now when I meant, Your Honor, On the contrary what I mean to say is that at Tatarsk I did not visit the execution place, I merely dealt with the task which I had to deal with, which was the obtaining of winter clothing.

THE PRESIDENT: Of course, that also differs from your affidavit, and I presume you will explain that later, is that right?

THE WITNESS: Yes, Your Honor. BY DR, MAYER:

Q Please proceed, witness, with your answer? and I didn't witness any executions carried out there. Later on Noack informed me that he had shot about twenty Jews in Tatarsk, and thirty in Mstislawl. Apparently they were old men, and I do not know whether women or children were shot in those executions in Tatarsk.

carried out executions in Tatarsk and Mstislawl? insofar asfrom now on only those Jews would be shot, who were not able to work;for this reason he had acted accordingly in Tatarsk and Matislawl. I heard about this modification later on during my activity in the grou-staff. the advance commando in Moscow? entrusted me with -- the requisitioning of this clothing.

Q Was this requisition within the program of the Fuehrer Order? were carried out in Tatarsk and Mstislawl? to Noack concerning his mission, and, therefore. I did not order Noack to do so. he had Jews shot in Tatarsk and Mstislawl? to him.

Q Were you engaged in this activity, as Noack's supervisor? Noack wasonly responsible to Nebe insofar as these orders were concorned. upon whose orders?

A Yes, on Nobe's order.

Q For what reason? messenger of the Mayor of Tatarsk arrived at the office of the Einsatzgruppen in Smolensk with a message that in Tatarsk the Jews had begun to leave the Ghettos to which they had been confined, and had taken up contact with the Partisans who infested the forests in that visinity. The Mayor had been threatened by the Jews, that they would eliminate him and his police with the aid of these Partisans. The layer asked for immediate help and support, as it was not possible for him to master the situation thus created, and that his security was threatened by these conditions. order you again to deal with the situation? had mentioned before as pertaining to the field of tasks of Hauptsturmfuehrer Noack, who at the time instituted the Ghetto in Tatarsk, and who was no longer in Smolensk but had shortly left when called back to Berlin as a possible candidate for another job in the executive service, and Nobe gave me this order; as I was the only officer in the group staff who had some knowledge of the locality and area of Tatarsk and who had knowledge of the language which in this case was particularly necessary. This condition was emphasized by Nebe as it was an operation in the Partisan infested territory, and it was also a matter of carrying out investigations and interrogations, in which knowledge of the language would be of decisive value. For this reason the whole unit of Waffen-SS and Police of about thirty men was put at my disposal.

Q What detailed order did Nebe give you in this case? of Tatarsk, which had been delivered by the messenger, and find out whether it was accurate.

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In case it was, to carry out ruthlessly the punishment the Jews had been threatened with in case they left the Ghetto.

Q What do you mean by the term: to proceed ruthlessly in accordance with the punishment provided for such deeds?

A By this I meant the following: the prohibition for all the Jews in these Ghettos installed by Noack, according to which they were not allowed to leave the Ghetto under death penalty was given largely for the reason that the Security Police wanted to prevent the Jews from taking up contact with the Partisans. This prohibition was a supplement of the Wehrmacht directive for all indigenous civilians which imposed death penalty for such deeds. Therefore, it was my task to investigate which Jews had left the Ghetto in order to contact the Partisans. As far as I could establish some Jews were guilty of these offenses and they had to be shot.

Q What then did you establish when you arrived in Tatarsk? males just going into the woods. I, therefore, had the forest surrounded and had it combed thoroughly. Furthermore, I also established that the Ghetto of Tatarsk was empty, and that part of the Jews had returned to their former homes. Then, after all the Jews who were still in Tatarsk, and also in the woods, had been arrested, they were brought to the market place, I established that only a small part of the original population of the Ghetto had been found, while by far the larger part apparently had joined the Partisans. Thereupon I had the events and facts described to me by the Mayor and by the Russian Police Chief. message? leave the Ghetto the morning before. When the Mayor wanted to take action in collaboration with the Russian police, pointing but the punishments to the Jews concerned, he was threatened, abused, and the Jews said they were going to fetch the Partisans, and they were going to hang him and the police.

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The Mayor was not in a position to prevent the exodus of the Jews from the Ghetto, and he found out that a very large number of men immediately had left Tatarsk and fled into the surrounding woods. Therefore, he made up his mind, as he saw himself and his man threatened by the Jews to send off the message with an appeal for help to Smolensk, which, arrived there in the evening of the same day, and was received. Mayor? former Jewish Council was no longer in existence in its full number, and my extensive questions to the elders of the Jews brought forth an admission that the missing members of the council had joined the Partisans in the forest, as well as all the missing male Jews, and that the Jews had taken up contact with the Partisans in the forests where they were promised help and support by them if they would leave the Ghetto. As that locality of Tatarsk was almost off the map, and as it had no connection with a railroad or road, and was in a wooded territory, the Jews had relied upon these promises on the part of the Partisans. When investigations were made to find the liaison men between the Partisans, and the individual Jews, it was established that three Jewish women were the inspirers of this mutiny. interrogation of the Jaws? apprehended male Jews had acted contrary to the instructions not to leave the Ghetto which they had been given at the time and apart from that, that they had taken up contact with the Partisans, and that these happenings and events were in accordance with the facts, which, according to the order of Nobe and the Wehrmacht directive, constituted a case requiring the death penalty.

I, therefore, issued the directive to shoot these thirty male Jews whose guilt had just been proved. This investigation, however, also revealed that women and children were not guilty of having taken part in these activities.

Partisans. I, therefore, decided not to have the woman and children shot but to have them put back into the Ghetto. This was done . In contrast to this, the already mentioned three women had been shown to be particularly active in this mutiny, and as Partisan agents constituted even for the future a tremendous danger to the Security: therefore, I had to treat them as I was treating the men, and as I could not take the responsibility of sparing their lives in accordance with the facts which I had established, I had them executed.

Q Who carried out that execution? police under the leadership of a NCO, I was only present at the beginning of the execution, because I was called away, and I had to go back to Tatarsk where during this resettlement of the Jewish women and children riots had broken out and disputes arose between the Russian and the Jews regarding some property, and they had asked for my presence to make a decision. The execution of the three women, upon my especial directive, was carried out separated from the execution of the men. These women were, as confirmed to me by the NCO who was in charge of the execution, were shot while standing there about ten paces from the detachment, and were immediately buried. The clothing and any valuables were not taken from any of those executees. This directive I gave expressly to the man in charge of the execution. THE PRESIDENT: which you have described as having taken place at Mstislawl?

A I don't understand Your Honor, how was this question? town, which name I can not pronounce, but it looks like Mistislawl. You told how the executees faced the grave and were shot from the rear, then fell face forward into the grave. Is that the way the women were executed also?

A Your Honor, that I don't know, because I was not present at the execution in Tatarsk. The execution which I described, and which I myself witnessed; had happened a month earlier, that was another different operation. the women should be executed?

Q Very well. Then what instructions did you give about the graves, about the guns, about the places, about the burial. Just tell us what directions you gave in regard to the execution of these three women?

A I didn't give a detailed directive how it was to be carried out, because that was the task of the NCO in charge of the execution. The only directive I had given to the NCO was to shoot these thirty Jews. about ten paces away. You went into that. Didn't you, just a few moments ago?

Q All right, well, did you see the execution?

A No, I didn't witness it.

Q Why do you give this detail as to how they were shot, then? three woman.

Q Alright. Now, you tell us just what directions you gave for shooting the three women? from the men to be shot, and to carry out the execution in an orderly manner. I asked the NCO to have them blindfolded, and that the women should be shot blindfolded, and, then they should be taken to a separate grave. rear of them, as they were shot?

A No, the grave was not behind them. They were shot next to the grave, not so they fell into the grave. I gave a special directive concerning this, and that they be shot with their fronts to the squad, because they were shot blindfolded. I was not there myself. I only gave the directive, and I asked for an orderly and correct execution.

Q And they were shot at ten paces? expressly whether he had followed my directive concerning the shooting of these three women.

Q And how many men were on the firing squad?

Q How soon after the execution did you leave?

A. I was only there when it was prepared. I spoke to the NCO that the Jews should he lined up, five men in each group. When the first five men were led in a message arrived from the Mayor saying that in Latarsk Jewish women were having trouble with the Russian women and that I should come immediately because they were beating up each other. I immediately had to leave as I was the only one who could settle the matter.

Q. Who were beating up each other? Russian women?

A. The Russian women and the Jewish women - they were squabbling over their property.

Q. And you regarded that of more importance - a fight between women, pulling each other's hair. I imagine, than the execution of three women and thirty men? You regarded that of more importance, did you?

A. Your Honor, the situation was such that the Mayor sent a messenger and asked that I should come immediately because a fight had broken out between Russian and Jewish women and it wasn't possible to create order. I had to leave. There was no other man who could speak Russian and could handle the situation. I also knew that the NCO had received the orders to carry out the executions in proper order and he certainly was a man who was serious and correct, and therefore it was guaranteed to me that these executions would be carried out in a correct manner.

Q. How far away was the town from the scene of the execution?

A. One kilometer approximately.

Q. Did you go back after you had settled the fight between the women to the scene of the execution at make certain that all had gone well?

A. No, no, I didn't have the opportunity to do so because I had to be careful that no new fights should break out.

Q. You were the guardian of the peace in this town to see that the women didn't fight with each other?

A. Well, your Honor, after all if women fight one has to do something, hasn't one?

Q. Well, I don't think so. I think I would let them fight. What certainly isn't of more importance than a matter of life and death. Did you conduct an investigation yourself into the cases of these thirty men and the three women?

A. Yes, your Honor. I have stated to this effect that I carried out extensive investigations.

Q. You said that they had been in contact with the Partisans?

A. Yes.

Q. Well, how did you seize them if they had already gotten in contact with Partisans and were cooperating with them?

A. I arrest them. They were the men who had remained in Tatarsk and on these I could establish the fact that they were in contact with Partisans and had caused the mutiny.

Q. Well, they had not joined the Partisans?

A. They had contact with the Partisans and they had declared themselves prepared to spy for the Partisans, a so-called reconnaissance service. They confessed that to me. Therefore, they had remained in Tatarsk in contrast to those Jews who had left.

Q. Where did they contact the Partisans? Right in the Ghetto?

A. Yes. May I give an explanation of the whole event. First of all - -

Q. Did they contact the Partisans in the Ghetto?

A. The Partisans had taken up contact with the Jews via these three women.

Q. Did these thirty men contact the Partisans in the Ghetto?

A. Yes.

Q. The Partisans came right into the Ghetto and talked with the Jews?

A. No. These three women, these three agents, established connections between the Jews and the Partisans and cited the Jews to leave the Ghetto.

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Q. The three women left the Ghetto and talked, with the Partisans, is that right?

A. Yes.

Q. And then came back.

A. And then they came back.

Q. And they talked with these other thirty man that were left in the Ghetto?

A. No, they spoke to all of the men in the Ghetto.

Q. Well, you sh** thirty. I am talking about these thirty. These never left the town. Now, when these three women came back did they talk to these thirty?

A. To these thirty and others.

Q. But these thirty did not join the Partisans they were there?

A. They remained, They remained with the intention to Work for the Partisans, these that remained - otherwise they would't have been there.

Q. Wouldn't have been, where

A. If they had had the intention to escape into the woods and work actively as Partisans, rifle in hard, then they wouldn't have been there. They would have been in the woods but they had expressly remained to do work for the Partisans in the Ghetto.

Q. They remained in the Ghetto - they were not armed?

A. Then were not in the Ghetto when I came.

Q. Well, they were in Tatarsk.

A. They were in Tatarsk and they had come back into their former apartments to hide themselves as there.

Q. They were living in their homes? The homos in which they lived before you arrived, is that right?

A. Yes, they had unrightfully returned to their apartments although it was forbidden.

Q. They returned home and you regarded that as being illegal, were they armed?

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A. No, they were not armed. That they wouldn't hare dared in the town to show arms.

Q. So that the evidence you had was that these three women had left the Ghetto, gone into the woods and conferred with Partisans and cams back and talked with these thirty?

A. That is the fact but not only those so but also the other men.

Q. Yes, I know, they talked to others but we are talking about the thirty you shot. The evidence you had against them was that these three women had gone into the woods, spoken with the Partisans and returned and spoke in these thirty, We will forget about the others for a report.

A. I did not quite understand this question.

Q. The three women, the Jewesses had left the Ghetto, gone into the woods, contacted the Partisans, and then returned to Tatarsk and had talked with these thirty men?

A. Yes.

Q. And because of that contact that the 30 man had had with these three women you regarded them as having committed a crime which could only be expiated by being shot?

A. No, your Honor, not because they had spoken to the women but I had proved, based on these investigations, that through these three women contact had been taken up with Partisans and they had declared themselves prepared to work with Partisans in Tatarsk and had remained there for this express purpose.

Q. The only evert act which they had committed was to leave the Ghetto, return to their homes, speak with the three women, and for what they did they had to expiate this offense with their lives, is that correct?

A. No.

Q. What did they do overtly which was criminal?

A. They had taker, up contact with Partisans which by a directive of the Wehrmacht was punishable by the death penalty.

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Q. But this had been done through the three women, that's right isn't it? The 30 men themselves did not leave Tatarsk?

A. No.

Q. So that they personally physically had had no contact with the Partisans?

A. Not physically but mentally, your Honor.

Q. Mentally, yes and the only contact they had was through these three Women?

A. Yes, through these three women.

Q. All right. So, therefore, the evidence which you had upon which to kill these thirty Jews was that they had mentally communicated with the Partisans and they were in their homes mentally determined to resist you. That's the evidence you had, isn't it?

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A With the promise to do agent service for the Partisans. This was an important element, your Honor. They had confessed in the interrogations that they were about to conduce espionage acts. This in itself was sufficient to identify them with the Partisans and there was a Wehrmacht regulation for the death penalty no matter in whatever shape this contact was established. act of an agent, had they?

A This was not necessary according to regulations. your Honor. The fact itself that the people had been proved guilty of having taken up contact with the Partisans was sufficient for the death penalty according to the Wehrmacht regulation. In view of the special situation in which we found ourselves in in the Eastern territories the Partisan danger made this measure necessary. their homes where they had been living for years and you isolated them in a ghetto, you forbade them to have contact with the rest of the world. then they left the Ghetto. three women went away from the Ghetto. and returned and these thirty and the three women and in accordance with information which you obtained you believed conscientiously chat they deserved death? Does that distinctly tell the story? into the Ghetto. That was carried out by others and was in accordance with a special order. It was merely for me to establish who had left the ghetto and who had taken up contact with the Partisans. That was what I had to carry out, and there was nothing else, your Honor. Once for all the order had been given to Jews that leaving the Ghetto was punished by death. There was, in addition, the Wehrmacht directive that contact with Partisans was punishable by death and I had to act according to these directives and orders given by higher authorities.

to impose the death penalty on Jews leaving the Ghetto. work for Partisans.

Q Just what do you mean by contact with the Partisans?

Q Well repeating the same word doesn't help us a bit. That is like asking what is a cook and saying a cook is one who cooks. Tell us what you mean by contact with Partisans. You told us before that it was a mental contact. a man is prepared to work for Partisans. That then in itself is a contact with them. He makes himself guilty of being partisan and is thereby treated as a Partisan in accordance with regulations. If these men furthermore had contributed through their attitude to the fact that the others had the possibility to escape into the woods and to reenforce the partisan gangs for the combat against the Wehrmacht...

Q If a Jew in this town said "I will work with the Partisans" and nothing else happened would that be enough to bring about the death penalty?

A If there was evidence to his saying "I will work with the Partisans", or if he........

Q No, please don't add to it. This Jew says to you. "I intend to work with Partisans' and that's all you have in the way of evidence. Would that be enough so shoot him. Partisans-- and I cannot produce evidence against him....

Q No, it isn't a wish. So says. "I intend to work with the Partisans". Those are the words - would you shoot him? intention to work with the Partisans?

Partisans. They had not ....

Q What did they do? Tell us what they did. Tell us what they did more than express an intention to work with Partisans. Tell us what they did? or an least had evidence of. Partisans had left the Ghetto and carried out espionage acts for Partisans. act in time. work with Partisans? Partisans it was more than just more intention in my opinion it was already beyond that.....

Q Had these thirty actually contacted face to face Partisans? Had they gone into the woods and talked with them?

A No. But they.... partisans....

Q Very well. You found them in their homes. You arrested them and according to what you say they confessed that they wanted to act with the Partisans, is that right?

Q Now witness, isn't the real turth of the matter that you executed these thirty because of the Fuehrer order because they were Jews. isn't that the reason you executed them?

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Q Did you know the Fuehrer order?

Q Where you executing the Fauhrer order? order which said you has he execute Jews and they hadn't done anything. with 30 Jews who were to be shot in accordance with the Fuehrer order, but with 30 Jews there were allies of the partisans. investigation and you come to the conclusion that they are absolutely innocent of any contact with Partisans and you have this Fuehrer order before you or in your pocket or in your head, certainly in your mind, that you must kill Jews, would you release these 30 Jews?

Q What would you do? You would shoot them? have reinstalled the Jews in the Ghetto.

Q And then you would have shot them later?

Q What did you do with the Fuehrer order? Jews in accordance with the Fuehrer order then I would have shot them but in this case the Fuehrer order did not necessitate this action. Partisans, whether they had contact with Partisans or merely remained innocently in their homes they were Jews and under the Fuehrer order they were to be shot, that is correct isn't it? that time those people who were able to work were not to be shot and as a matter of fact an Anti-Jewish action on the basis of the Fuehrer order had already been carried out a month earlier by Noack. As I 11 Dec 1947_A_MSD_19_5_Gross (Hildesheimer) have already said, at that time the Jews were settled in the Tatarsk ghetto that had also been based on the Fuehrer order.

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Jews now living in Tatarsk did not practically come under the Fuehrer order as it was formulated at that time where it says that only old Jews who could not work any longer were to be shot. Therefore, I would have had the possibility in case of their established innocence to reinstall them in the Ghetto.

Q How many old Jews did you shoot?

A You mean among those 30?

Q No No. How many old Jews did you shoot because the order said you should, shoot only old Jews, according to what you now tell us, how many old Jews did you shoot? enough to flee into the woods, Did the older Jews also go into the woods?

A No, there weren't old Jews, as far as I can remember no Jew was more than 55 years old.

Q Were they any old Jews in Tatarsk at all?

A Not at that time any more. They had been shot by Noack before.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Mayer, I am sorry I interrupted you in your examination of your client. You may take it up, of course. There is just one question I would like to ask. You say that the ablebodied Jews were not to be shot immediately, and the natural implica tion is that they were being saved for working purposes. What work were they doing?

THE WITNESS: Your Honor, as I had nothing to do with the Jewish question I cannot say anything from my personal experiences. I only know that able-bodied Jews were assigned for labor generally, in what way and in what capacity I do not know.

THE PRESIDENT: Here you are in this town carrying on a very extensive investigation. Certainly in that investigation it must have come to your attention and knowledge what work they were doing.

THE WITNESS: Your Honor, it wasn't really a city. It was only a larger village, and during the time of my presence in this place I did not actually see the Jews work. I never asked the mayor what labor they were allocated to. That had nothing to do with my original assignment. I merely knew that Jews were used for labor.

THE PRESIDENT: You may continue Dr. Mayor, please.

DIRECT EXAMINATION (Continued) BY DR. MAYER: I have to put one question. which is. whether you were a commando chief?

Q What authority, therefore, was missing in your case? Order as I had no executive power, without having received the express order by my superior.

Q Did you ever receive his order?

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you arrived in Tatarsk you saw Jews who were just about to vanish in the woods, and you had the woods surrounded and combed through. Did this combine operation have any result whatsoever?

A Yes, in this wood five or six Jews were caught. They were Jews trying to escape when they saw my column approach Tatarsk.

THE PRESIDENT: How many men were in this column?

THE WITNESS: Dive or six men, Your Honor. BY DR. MAYER: shot? that he would he handed. Who uttered this threat? who had remained in Tatarsk and now were guarding the place.

Q I see. Yes, now proceed with the direct examination, Witness.

THE PRESIDENT: I am sorry, I didn't catch that statement, that the threat was expressed by the Jews and they were now guarding the place. There must be something wrong there.

THE WITNESS: These Jews had threatened the mayor, and, of course, they remained there.

THE PRESIDENT: The phrase, "guarding the place", who was guarding?

THE WITNESS: The Jews who had remained in Tatarsk were supposed to guard the mayor so that he would not vanish, or watch him. BY DR. MAYER: The next question, Witness, is: was this operation an undertaking of the Advance Kommando Moscow? was again independent and was stationed in Spass-Demensk. That was not in Smolensk.

contradiction of your attitude toward the Fuehrer Order as you had stated before? matter to be discussed, and because I had no order to this effect it was here merely a matter of an acute danger which threatened the security of the rear Army territory. The severity of the order as passed on to me by Nebe was conditioned by the very dangerous activity on the part of the partisans , and it was here not a matter of an anti-Jewish action in accordance with the Fuehrer Order but solely and merely a necessary military measure in order to maintain security of the Army for whom the Einsatzgruppe B was responsible to the Wehrmacht.

Q. I now come to the documents. Witness, the Prosecution has submitted an affidavit of 2 July 1947 which you have signed. It is in Document Book III-B. It is on English page 57, German page 112. It is No. NO-4235 Exhibit 124. I would like you to look at this. Have you anything to add to this? whole statement which I made on the 1st of June, 1947. When, before I signed, I complained about some distorting remarks which I had made, the interrogator, Mr. Wartenberg, informed me that this did not mean very much and that any rectifications and corrections I could make at a later point. Upon this statement I took the opportunity to make out a new affidavit, on the 17th of September, 1947, using the necessary supplements, additions and corrections which I then submitted to the Prosecution, which was accepted by Mr. Wartenberg and signed. This affidavit of the 17th of September, 1947, contained the exact statements concerning events and developments, as well as my own position within the Advance Kommando Moscow, or at least the staff of the Einsatzgruppe B. But the Prosecution did not submit it to the Tribunal.

My counsel, however, will submit it in his document book.

THE PRESIDENT: When did you receive a copy of the indictment?

THE WITNESS: I received a copy of the indictment, Your Honor, at the beginning of August. I don't remember the exact date.

THE PRESIDENT: This affidavit was made out -

THE WITNESS: I beg your pardon, Your Honor. I now remember it was during the last day s of July.

THE PRESIDENT: So that this affidavit of which you speak was written about two months after you received a copy of the indictment?

THE WITNESS: Yes.

THE PRESIDENT: All right, Dr. Mayer.

THE WITNESS: Because I had no opportunity to do so before.

THE PRESIDENT: Very well. BY DR. MAYER: Moscow, and at no period whatsoever I held any executive power within the formation. After Dr. Six was released in August, 1941, the Chief of Einsatzgruppe B, Nebe, upon directives from Berlin, took over personally the leadership of the Advance Kommando Moscow as this group consisted of special experts.

THE PRESIDENT: Dr. Mayer, is your document book ready. I don't have a copy of it.

DR. MAYER: It is not ready yet. It is just being translated, Your Honor.

THE PRESIDENT: Do you have this affidavit ready?

DR. MAYER: Only in German, Your Honor. May I, therefore, suggest perhaps. Your Honor, that the witness should deal with the essential point which the Tribunal wants to know, the points out of the affidavit of the 17th of September.

THE PRESIDENT: Well, we thought for your own benefit it might be well if you could get that affidavit before us while the witness is still on the stand.

DR. MAYER: I don't think there will be time enough as far as translation is concerned.

THE PRESIDENT: You asked him about the differences. Now, by all means you can proceed just as if you do have that affidavit before you, which you do have in the German.

DR. MAYER: Yes, Your Honor.

MR. FERENCZ: If Your Honors please, the Prosecution has had the affidavit translated and mimeographed, and I am sure I can have it for the defense by tomorrow morning.

THE PRESIDENT: Yes. You nay proceed to have the witness make any explanations that he believes are in order with regard to what is contained in the affidavits which are actually before the tribunal, whether you have another one or not.

DR. MAYER: Yes, Your Honor. BY DR. MAYER: was put to you. absence. This case, however, never happened as early as the middle of September, 1941, the new chief of the Advance Kommando Moscow appointed in Berlin, Obersturmbannfuehrer Koerting, arrived in Smolensk and took over the command of the VKM. At the end of October 1941, the small advance commando group staff which was leaving in the direction of Moscow was a completely new unit which had nothing to do with the actual Advance Kommando Moscow.

The advance commando Moscow was at that time under Koerting in Spass Demensk, a locality, about 100 kilometers to the east of Smolensk. in Mstislawl and Tatarsk mentioned in the prosecution documents against you?

Q Can you say in what document it is mentioned?

A Yes. It is mentioned in the document which I have just received, No. 4809. It is Exhibit No. 125; English page 116-I am sorry, 161; it is in Document Book IIIB.

Q Yes, but I don:t mean the affidavit itself, but the documents which have been submitted concerning Russia, that is, the Reports of Events. is contained. second affidavit? operation in your first report independently, without the prosecution material to the effect having been shown to you, and used against you? mutiny in Tatarsk contained in the Reports of Events?

A Yes. The Tatarsk mutiny is mentioned in the document. your assignment given by Nebe to carry out investigations in Tatarsk? affidavit before the indictment was served you described this action-

this operation in Tatarsk? as it actually happened?

Q I now come to the next question; the prosecution charges you, that is in Document Book IIB, English page 22; German page 22, document No. 2344; Exhibit 61; Report of Events Number 73 of the 4th of September 1941, in order to prove two things, first, your participation as a member of the Special Commando 7B and, secondly, your participation in the Advance Commando Moscow. As far as Special Commando 7B is concerned, the total figure of executions until the 20th of August 1941 are on page 7 of the original document is 886. I now ask you, did you participate in these executions carried out by Special Commando 7B? Commando 7B, that is, from the 22nd of June until the 10th of July 141, that is, during the first three weeks of its existence, Special Commando 7B as it was a constantly advancing, according to my knowledge, never carried out any executions, as there was no possibility to do so. Executions that resulted in these figures can only have been carried out in my opinion after the Special Commando 7B had left Minsk. Since Minsk, I was not in Special Commando 7B, and I can, therefore, not say anything about its further activity. the same document, it is stated that Advance Commando Moscow had to load 46 people to executions, and on page 17 of the document it says that the total figure of people executed of this staff and the Advance Commando Moscow until the 20th of August 141 is 144. Can you comment on this? and the VKM. During my activity in the Advance Commando Moscow from the 10th or 11th July 1941 until Six left, neither of the Group Staff nor of Court No. II, Case No. IX.

the Advance Commando Moscow, did I know about any executions, nor did I participate in any form whatsoever in such executions. on page 47, and German page 42, Document No. 3143, Exhibit Number

64. That is Report of Events Number 92 of the 23rd of December 1941. On page 6 of the original, the total figure of executions of the staff and Advance Commando Moscow, according to the statistics of 13th of September, 141, the number 312 is mentioned, in contrast to the former figure of the 20th of August, it is 168 more. Can you explain this increase?

PRESIDENT: Dr. Mayer, you gave us the page of the original, but it doesn't coincide with -

DR. MAYER: English on page 47.

PRESIDENT: Then you said page 6 of the original, but page 6 of the original doesn't appear. It begins with page 14, page 15, page 24, page 32.

DR. MAYER: It is 6 within the document book; it is page 53 of the English Document Book.

PRESIDENT: Oh, I see, thank you. Proceed. BY DR. MAYER:

Q Witness, can you explain this 168 increase? it was raised. The Advance Commando Moscow was at that time together with the Group Staff, under the chief of the staff of the Einsatzgruppe B, Nebe, who, therefore, combined the execution figures of these two groups. Since Smolensk, I know that the Group Staff of the Einsatzgruppe B carried out their own operations and executions, which, in detail, I am equally unaware of, as well as the operation and measures Carried out by the individual departmental experts of the Verkommando Moscow, who ware assigned by Nebe for their special functions and received their directives and orders from him, and reported to Nebe independently. I can merely assume that the figures which I directly learned of execution in Mstislawl and Tatarsk, which I was informed

about by Hauptsturmfuehrer Noack, are contained in these.

Q The next document will be in Document Book IIB. Please take that out. Page 16 in the English, page 15 of the German, No. 3156; it is Exhibit 60, Report of Events 108 of 9 October 1941. On page 7 of the document it states in contrast to the preceding figure, 312, and it contains 2029. That is an increase again of 1717. Did you participate in these further executions?

A. These increased figures of executions refer, as is proven by th date it bears and regarding the preceding reports, to the period of time from 13 September 1941 until 28 September 1941. As I have already mentioned, the Advance Kommando Moscow was taken over by Koerting in the middle of September 1941. I personally was transferred from the VKM to the group staff in the SD department where in the period of reporting I was only dealing in intelligence matters. Since during my activity in the Advance Kommando Moscow, as far as it comes under this period of reporting, I neither had any executive power in this formation nor had I actively taken part in executions or anti-Jewish operations in any shape or form, it is not possible for me to comment upon these execution figures or to find myself responsible for any of these figures.

Q. On page 3 of the same document it says furthermore that the VKM Advance Kommando Moscow, liquidated 114 Jews in Choslawitschi. Can you comme on that?

A. As a member of the Advance Kommando Moscow, of course, it was known to me as it was generally known that since the taking over of the Advance Kommando Moscow by Nebe until his release and the transfer of Koertin anti-Jewish operations were carried out. The individual places and times and the numbers of people executed were not known to me. According to directives by Nebe the figures were only given to him in the shape of reports. From the circumstances as described, it was not made known to me that an anti-Jewish operation took place in this mentioned locality Choslawitschi. I, however, left the Advance Kommando Moscow in the middle of September, 1941. and I do not know if, and if so, what, actions were carried out under Koerting. It is qui possible that the operation Choslawitschi was carried out by Koerting.

Q. Now will you please look at Document Book 2-B, page 54 in the English and 48 in the German. It is Document 3160, and it is Exhibit No. 65 It is a Report of Events #24 of 25 September 1941. On page 1 of the original an operation of the group staff and Advance Kommando Moscow is mentioned agai the Jews in Tatarsk. Does this refer to the operation which you have just mentioned to the Court in the preceding session?

A. Yes. I described the happening.

THE PRESIDENT: Dr. Mayer, this report says all male Jews and three women were shot. Now he has specified thirty. Does that constitute the entire Jewish population of Tatarsk?

DR. MAYER: Will you answer the question, witness?

THE WITNESS: Your Honor, those were the only thirty male people left in Tatarsk. The others had all joined the partisans, and those were the men who had remained in Tatarsk as I had explained. BY THE PRESIDENT:

Q. So that you shot all the Jews that there were in Tatarsk?

A. All remaining Jews in Tatarsk -- those were the thirty male members who had been left.

Q. You explain -- and Judge Speight reminds us of this -- that after you made the investigation that some were acquitted of any complicity in the partisan action and were returned to the ghetto. Now you tell us that you shot all the Jews. How do you reconcile those two statements?

A. Your Honor, I do not remember having said that I found some of them innocent and led them back into the ghetto. I only said that of the thirty male Jews which I apprehended in Tatarsk, I found them all guilty and convicted them because they were guilty, -- those were the thirty men whom I had shot. I never spoke of innocent men remaining in Tatrsk. Only woman and children who could be proven innocent, those I led back into the ghetto.

Q. Well, then you did not find any of the men innocent?

A. The entire male population, as I have already said, in some way or other were active participants.

Q. So, therefore, you did not find any of the men innocent?

A. No.

Q. Did you find some of the women and children innocent?

A. From the investigation carried out together with the Jewish Council I established that in the whole mutiny and the taking up of contact with the partisans the women could not have taken part except, of course, t three who had been employed as direct agents with the partisans.

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Q. Well, why couldn't they have taken part? Why couldn't the othe women just like the three who were shot have taken part in this?

A. Because I established this fact through the investigations which I carried on. Conditions were such that in fact the women could not ha taken part in this mutiny in any active capacity.

Q. Now, you keep calling this a mutiny. What is a mutiny? A mutiny is a rebellion, is it not?

A. Mutiny is a riot against a directive or an order which has been proclaimed.

Q. Yes. Well, now were these Jews rioting in the streets, tearing down buildings? Was there turmoil and tumult in this little village when you arrived?

A. The Jews using force, had loft the ghetto and had threatened th mayor that they would hang him with the aid of the partisans, hang him and hi police force: that is what they threatened; and I established that all men took active part in it added to the contact they had taken up with the partis

Q. Of course, when you say "taking up contact with the partisans" the Tribunal understands that it was only a mental contact, so that your repeating the contact with the partisans does not add anything to what you said before, namely, that they did not physically soc the partisans or in an way communicate with them directly.

A. I did not understand the question, Your Honor.

Q. Well, I was coming to the question. You keep repeating that those thirty had had contact with the partisans, and we remind you that you said that you found these thirty in their homes, that they had in no way actually spoken with the partisans, that the only contact they had with the partisans was through the three women and that the only contact they had was a mental contact. That is correct, isn't it?

A. No, that is not quite correct, Your Honor. By contact through these two women -- or at least these three women were active partisans and agents -- through the fact that these men spoke to these three women, there was direct contact, not only mental contact, and that had been established,

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Q. Very well. We understand what you mean. Now in this report to which you have called our attention, indicate to us one reference to partisans.

A. Your Honor, I was just about to explain that.

Q. Well, explain it now.

A. I don't know it, as Nebe made out this report personally and changed it as he did all other reports. I reported to him verbally on the evening of my return immediately. The explicit report with all documents and records was submitted only two days after that as all the records and under lying documents which were in the Russian language had to be translated first.

Q. Why did Nebe falsify the report which you gave him?

A. I was just about to go on, Your Honor.

Q. All right, go on.

A. I can only assume that in the meantime Nebe in accordance with my original first short report had already made out his own report which he sent to Berlin.

Q. Well, did you make out two conflicting reports? Did your first report differ from your second report?

A. No, Your Honor, but I made a very brief report the first time: it was an oral report, and,.

Q. And what did you say in the brief report?

A. In this brief report I reported that I conducted the investigatio that I confirmed that all Jews had left the Ghettos, that they had taken up contact with the partisans, and that for that reason I had had thirty men and three women shot.

Q. Well, show us that in the report which you have before us.

A. Well, no, Your Honor, it doesn't say anything about it.

Q. Well, then please explain why N ebe made up a report which is absolutely a fabrication insofar as the report which you made to him is concerned? Why did he falsify what you told him?

A. I can't give you any information about this, Your Honor, because I do not know it. I made a verbal report and, based it on this oral report which I made to him, he probably made out some report to Berlin -- probably.

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In Berlin this was edited. It was probable that some lines were left out, It was chan ged, and that is how it might have come about. The fact is that I gave a verbalreport first and two days later I made out a very extensive report giving all the necessary underlying documents, and I do not know why he did not make use of my second report. It is probable that he presumed the this first report was probably sufficient for him and that it would not be necessary to -

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THE PRESIDENT: Witness, witness, your first report does not coincide with this; if Nebe had filed your first report, he could not have written this, because in your first report, your oral brief report, you told about the investigation, and you told about contact with the Partisans?

Q Yes, and that is not in this report; why would Nebe ignore what you told him in the first report, and in the second report not only ignore it but absolutely construct something out of the whole-cloth entirely different from what you told him. Why would Nebe do that?

A Well, I can not find another reason. I can not find another construction. I only find what it says here that they have left the Ghetto and had gone to the woods, that is what I reported to him.

Q What does it say about the Partisans?

A I don't know why he omitted the Partisans. Perhaps he had mentioned them and perhaps in Berlin, as the conditions in the East were not so well known there, and in order to make it a little briefer, it was just omitted. I don't know that. I neither made out the report myself in Smolensk, nor did I have any influence on happenings in Berlin. I only made my oral report, and based on this short oral report, this report went through three or four hands to Berlin, and these people on these three or four stages had formulated it in a different manner, and therefore, that formulation is quite different than what I made myself.

Q Why did they omit the business about threatening the Mayor?

A I don't know.

Q That certainly would be a very important item. Here were Jews in the Ghetto who rebelled, mutiny with violence, break out, threatened the Mayor, and, yet, not a word of it in the report. Explain that? found his own terminology, and found his own wording, which did not contain this essential thing because these less important matters had already been known before, because of the message of the Mayor, which had arrived, and which said that the Jews had threatened him, and that they wanted to hang him, and, therefore, he had asked for the protection of the Einsatzgruppe Staff.

He had known about these circumstances before.

Q It is not a question of what Nebe knew. It is what Nebe reported; in the making of the report of this very vital operation, why does he omit all these facts which you tell us with such drama, the breaking out of the Ghetto, running into the woods, three women running back and forth, conspiring, threat to kill the Mayor, and not one single word in the report. Why was it all omitted? reported, and what was crossed out in Berlin. I can't know what Nebe reported.

Q Why would they omit it in Berlin? Certainly it would be of great interest to those in Berlin who were conducting the campaign to know just how the population was reacting, and mutiny and rebellion threatening a constituted authority was a menace; and to hang a Mayor is certainly a matter of importance, Why would they omit that in a report?

A I could not tell you, Your Honor. Probably it was just the fault of the office machinery in Berlin. I know conditions there. Perhaps, also, they were overworked, and somebody had to deal with the matter, somebody very much overworked, who didn't know much about the conditions. copy what came in, rather than to change it. Here they changed it?

Q Let me read it: "As punishment for not following the orders of the German Security Police, all male Jews and three women who were in Tatarsk at the time were shot." If these clerks were overburdened, and they wanted to cut down their work, it would be simpler to copy what game in there rather than to pick up something fictitious and put it into the report, wouldn't it.

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Explain that? reporting, and therefore, I can give no explanation why this very important and necessary formulation was left out.

Q Not only left out but changed. Keep that in mind, there was a change, an alteration in that report. Can you explain why they would alter it?

Q I'll read for you again, and please listen to it attentively. You told us that the reason that you executed these thirty Jews was that they were in contact with the Partisans; that they had threatened to kill the Mayor; that they had become a menace. Now let me read to you what the report says: "As punishment for not following the orders of the German Security Police, all male Jews and three women who were in Tatarsk at the time were shot." Now, that is different, isn't it? Nebe sent this in the way you told him? for the reason that the Jews had broken out from the Ghetto; as long as I was in Tatarsk -

Q Just a moment, we are talking about the report now. We have gone into the business of how you were notified. I am only asking you why, if Nebe sent in the report correctly, as you gave it to him, why it was changed in Berlin. If you can not explain so, say you don't know. Do you know why they changed that?

A I am unable to explain. I don't know whether it was changed, or whether it was Nebe who made it as it is now.

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punishable by death, on whatever it was, I don't know. I don't know according to what principles Nebe made out this report. and Nebe because he wanted to falsify or because he was careless, or because he wanted to convey a different story, did not transmit what you told him, that is one possibility? Berlin for some reason which you can not fathom they falsified the report, is that correct?

Q They changed it, they changed it for reasons you can not tell us?

Q They changed the report, that is your explanation?

THE PRESIDENT: Very well. Proceed Dr. Mayer. BY DR MAYER: complete, and that the word "Partisans" was missing in this paragraph. It said in that report that Jews were in the woods, What does it mean, that Jews escaped to the woods? were afraid of being arrested.

Q Where were the Partisans, then, generally staying?

THE PRESIDENT: I'll have to give you credit for trying hard there, but let the witness testify.

DR. MAYER: I have no more questions, Your Honor, as to this subject matter. I'll proceed with the witness. BY DR. MAYER:

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this action was that the Jews independently, and on their own, started to leave the Ghettos, and went into the surrounding woods, You partly answered this question when asked by the President. But, I would like to take this up again in its proper context? tions was the contact with the Partisans which constitut ed a special danger. your own report?

A That I don't know, as Nebe personally modified or changed the report, as he did with all the other reports. I reported to Nebe immediately after my return in the evening when I gave him a brief oral report. The detailed report in writing was submitted by me giving all the underlying details and documents as the underlying documents, and records, which were in Russian, had to be translated. I can, therefore, only assume that Nebe in accordance with my original oral report had already made his own report, which he sent to Berlin, and, in Berlin these reports were even more abbreviated and expurgated. It is a possibility that in the report of events on the 24th this inconceivable formulation has been brought about. that you didn't have Jews so treated because they were Jews, but because they had made contact with the Partisans, and been guilty of mutiny, and, therefore, had evaded the regulations imposed upon them?

THE PRESIDENT: Doctor Mayer has not he been telling us that now for about thirty-five minutes. Why is it necessary to repeat it. He has said over and over again that the Jews mutinied; they escaped into the woods; they were contacting the Partisans; they were going to kill the Mayor.

He has told us all that.

DR. MAYER: Your Honor, I only wanted to make sure that it was taken in the record, that is the answer. But I withdraw the question.

THE PRESIDENT: I think it is adequately in the record, you need not worry about that.

DR. MAYER: Yes, Your Honor.

THE PRESIDENT: If it is not in the record, we will get after these court reporters. BY DR. MAYER:

Q In your two affidavits, which were made by you before Mr. Wartenberg, you mentioned these executions in Tatarsk, but you didn't say that three women were also shot, as the document showed. Can you explain to the Tribunal why you didn't speak of these happenings? memory somewhat, when I gave the first and second affidavits. It was only when I looked at the documents submitted by the Prosecution that I suddenly remembered about the three women. These three women whom I has shot in Tatarsk, I had forgotten, because of my own personal attitude which was against the shooting of innocent people, and, of course, especially against the shooting of women and children. I constantly had in my mind the two-hundred women who were re-installed in the Ghetto in Tatarsk.

Q What was the guilt that was proven against these three women? Jewish Council, and they were found guilty of having established connection with the Partisans, and having taken active part in the mutiny.

THE PRESIDENT: Witness, you say that when you made up this affidavit, or when you signed it, after you had read it, that you forgot that you had killed three women. Now as difficult as it is to believe that one who had sent to their death three women could forget so horrible an episode in his life, it seems even a little more difficult to understand how you could make reference to women in your statement, and then not mention that you had killed three women, because your statement contains, "Although I had orders to shoot women and children too I did not comply with this part of the order."

It is not a matter of forgetting, it is a matter of distinct negation. Explain that? was so nervous and excited that I had no proper perspective of what had happened at the time, and even later, I can not explain, but I am now stating it quite openly and honestly and frankly that I had not remembered these three women. It was only when I saw this document, it immediately struck me that there were also three women among those people executed at Tatarsk, and , that at the moment I suddenly remembered the further details of the whole affair. evidence of the fact that you saw three women mentioned, that then you suddenly realized that you had shot three women, was that the reason?

Q The interrogator, Mr. Wartenberg, must have asked you, did you shoot any women and children? Did he ask you that question?

A He asked me whether I had shot any women and children; thereupon, I told him at the time that on principle my attitude was against the shooting of women and children; in this connection I said that I led them back into the Ghetto, because I remembered, as I said, this picture of the two-hundred women and children. these ten men out in the woods, ready to go to their Creator, with their graves dug close by; did you remember that picture?

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A I didn't take part in the execution, Your Honor. them at ten places, to blindfold them; don't take away their clothing, Do you remember that picture?

A No, I didn't remember it at the time. I didn't remember any of these details.

Q Now this happened in 1942, didn't it? shooting of the three women. Now many years had to go by before your brain finally revolved and came to the point where it could recollect this picture of three women about to be shot. How long did it take you to recall that?

A I can not state that, I don't know.

Q When did you first remember that you shot the three women? me this document to the effect that in Tatarsk, apart from those thirty men were also three women who were shot; at the moment I remembered these three women. Before that it had all disappeared from my memory, I didn't remember it. I cannot explain it.

Q Six Years later you remembered it? you said, " By Joe", that is right, they killed three women? you had killed three women , and how did you acquaint him with the fact that now you remembered that you killed three women. What was your reaction?

Q You were shocked that they had made the report?

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to tell the truth, had omitted to tell that originally, that I had forgotten these three women, and, therefore, I was suspected of having made a false affidavit and embezzled these three women, as it were, that was the shock that I had.

THE PRESIDENT: Is that the right word,"embezzled"?

THE WITNESS: That was I didn't name these three women. That this can be regarded as my bad intention, that is what I meant, that was my reaction when these three women cropped up. false statement to Mr. Wartenberg?

AAn incomplete statement. Your Honor.

THE PRESIDENT: Very well, thank you. Shall we recess, Dr.Mayer, or is there something you want to say?

DR. MAYER: No, Your Honor.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine-thirty.

THE MARSHAL: The Tribunal is in recess until 9:30 o'clock tomorrow morning.

(The Tribunal adjourned until 0930 hours, 12 December '47) Court No. II, Case No. IX.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. SCHWARZ: (Attorney for the defendant stein) I would like the defendant Sandberger be excused from attendance in court this afternoon. I ask this for Defense Counsel Stein, who is not here. He wants to prepare his document books.

THE PRESIDENT: The Defendant Sandberger will be excused from attendance in court this afternoon.

DR. KRAUSE: Deputizing for Ridieger for the Defendant Haensch. Your Honor, I have the same request concerning the Defendant Haensch. He needs him also in order to prepare document books and ask him to be excused from attendance in court this afternoon.

THE PRESIDENT: The Defendant Haensch will be excused from attendance in court this afternoon.

DR. MAYER: For Klingelhoefer.

THE PRESIDENT: Would you mind awaiting just a moment or two, Dr. Mayer, until a member of the prosecution arrives?

DR. MAYER: Yes, Your Honor.

THE PRESIDENT: Thank you.

You may proceed, Dr. Mayer. BY DR. MAYER (Attorney for the defendant Klingelhoefer): page 41 of the English, page 39 of the German, Document NO-3403, Exhibit No. 63. It is the Report of Events No. 125 of 26 October 1941 and on Court No. II, Case No. IX.

page 4 of the original for Staff and VKM, a figure of shootings of 2457 is mentioned, an increase of 428 shootings, as compared with the Report of Events No, 108, discussed before. What can you tell us about this. Staff and the VKM I have to say the same as I have said before. At that time I was not a member of the VKM any more but belonged to the Group Staff. In the Group Staff I belonged to Department SD where I had nothing to do wit other tasks, except the three missions which I have already mentioned in detail which I carried out on orders from Nebe or from Naumann because of this special situation and the special circumstances. The figures of shootings I can merely explain this way: That I assume that the persons executed in Tatarsk, these 30 Jewish men and the 3 Jewish women are contained in this total report. participated or which you witnessed? other executions, nor did I have them carried out, nor did I witness them. Naumann was questioned on the witness stand. You know that the Defendant Naumann, after he arrived here in prison, gave you a sheet of paper. What did you do with this note? Mr. Wartenberg, without reading it and enclosed it in an envelope, with a letter.

Q What way was the accompanying letter worded? the following, approximately: "Enclosed, I forward to you a note given to me on 3 July, after the evening walk, handed to me by Erich Naumann." I refuse to do such things. I did not open it and did not know its contents.

Q Why did you act in that manner?

MR. FERENCZ: Your Honor, the witness has been purporting to give us the contents of a note he sent to Mr. Wartenberg. He said he has given it to us to the best of his memory. I have the original of that note here and request that the witness, if he intends to give the contents, he give the complete contents and not that part of it he recalls and that is a very small part, be admitted into the record.

THE PRESIDENT: Well, Mr. Ferencz, you will have the opportunity to cross-examine him on that very statement, on that letter. Proceed, Dr. Mayer.

Q (By Dr. Mayer) What was your motive in acting that way? I tried to say the pure truth and describe everything as it actually happened. It is my opinion that when Naumann gave me such a note this was in order to induce me to make certain statements which did not conform with the truth. I could not answer for such action which are in conflict with my conscience. BY THE PRESIDENT: jure yourself without seeing the note? has sent you a note that he was going to try to induce you to say something which was not the truth. Why should you come to that conclusion without reading the note?

DR. MAYER: Your Honor, may I interrupt here. I think there was a mistake in the translation. Perhaps the reply could be repeated and retranslated.

Q (By the President) Yes, Witness, you started that when you received this note from Naumann , you refused to read it because you Court No. II, Case No. IX.

assumed that Naumann wanted you to tell an untruth. How could you determine that Naumann was endeavoring to persuade you to perjure yourself without seeing the note? note is given to me secretly, I must assume that somebody is trying to induce me to do something.

Q Well, had Naumann ever lied to you before? to lie in this note.

A Well, because of the general situation, I thought so. I had never met Naumann in such a situation. any sign or any indication that he was going to transmit a message to you? which I had to read.

Q And what more did he say?

A He said nothing else. He merely said he had written a note for me and I absolutely had to read it.

Q Did he tell you what he was going to put in the note? Did he indicate the subject matter of the note?

A No, he did not tell me that. There was no possibility to talk during that time. and you received a note from someone, who had never been unfriendly to you, you concluded that he was going to ask you to do something wrong? order to induce me to make false statements. That was my personal assumption.

Q Is that the only reason a note is written?

A I thought so, Your Honors. In the state I was in at the moment -I was very nervous at the time --, of course, I reacted to this in that manner, that I objected to it.

THE PRESIDENT: Proceed, Dr. Mayer. BY DR. MAYER: were ordered back from Russia on 20 December, 1943. When did you start to work in Office VI? after my leave from the Russian assignment had expired.

Q What did you do Office VI?

A In Office VI, I was assigned to Group VIC. This Group Detachment dealt with the subject of Eastern Europe; the so-called "Operation Zeppelin" was part of it, which included Department VI-C, 1 to 3. I worked in the Department VI-2. In this department we worked on evaluation of the information material, namely, concerning Russia. After starting to work there for the "Operation Zeppelin" at first, I remained there in Berlin for a few days for general information and after that, as far as information work was concerned, I was ordered to Special Department VI-C2, in a special camp. This special camp had to cope with the first systematic work on the incoming Russian material which was received at Berlin, sent to the camp and then it returned to Berlin where work was continued. This utilization work was done by Russian specialists of all departments who were under the charge of a German expert who spoke Russian. These Russian specialists mostly were formerly POW's who on account of the "Operation Zepplin" had been selected from POW camps. Recruiting of Russian POW's was done on a voluntary basis. The Russians thus selected were released by the Army for the Operation Zeppelin and were released from captivity as POW's. There were not considered POW's any more in working for the "Operation Zeppelin" but they were considered foreign co-workers of the RSHA. They were paid according to a special day order. They had free housing, free clothing, and free food. They were allowed to move about freely and apart from the neutral uniform for work, they received civilian clothes for their spare time and they could move about freely without supervision. Roll calls or any measures of a military nature were not held, as there was nothing similar to a military manner at all, because that work was purely scientific so that these Russian xco-workers would not feel they were forced to work. of this special department, being instructed that questions of war economics and armament were going to be dealt with by this special de partment and that it was to be extended to all other domestic spheres in Russia.

That means from then onwards cultural, inner political and other problems of public life in Russia were to be dealt with. At that time the department was called Sonderlager L, Special Camp L. This "L" here stands for "Lebensgebiet," which is domestic sphere. camp was to be transferred from Breslau to Upper Austria in a camp of the Labor Service near Gross-Hollenstein, where I continued to work until it was dissolved in April 1945.

Q What happened to the Russian experts when the camp was dissolved? the Labor Office in Linz, or, at their own request, they were given an opportunity to volunteer for the Zlasow Army. a question. In a document the locality Zadrudub is mentioned. This is Document NO-316, Exhibit 65 in Document II-B, English page 54, German page.48, page 1 of the original. This locality Zadrudub is not mentioned on any map. You yourself know the Russian language; could you tell me from what this name originates?

A The word, "Zadrudub" appears to me to be a remnant of a word, because the word makes no sense. "Dub" in Russian means "oak", but a word on the basis of "Zadru" does not exist in the Russian language, but I know that the word "Starudub" or "Starudubsk" exists as a Russian town name. The meaning of thiw work in both cases would mean "Old Oak". "Zadrudub" I consider a corruption of "Starudub" or "Starudubsk."

Q "Starudub" actually is between Gomel and Orel; Would you know which kommando operated in this territory? Special Kommando 7B was the only one operating there.

DR. MAYER: Your honor, this concludes my direct examination.

THE PRESIDENT: Dr. Mayer, in connection with your last question, do we understand that the witness says that in his opinion there is no such town called Zadrudub, and that in his opinion the town referred to is "Starudub?"

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Is that what his explanation was?

DR. LAYER: Yes.

THE PRESIDENT: Very well. Any other defense counsel desiring to cross-examine please advance to the podium. BY THE DR. KINNERT (ATTORNEY FOR THE DEFENDANT NAUMAN):

Q Witness, where did you get to know the Defendant Nauman first?

Q When was this? this particularly? an accident and therefore I had to remain in Smolensk for six days for medical treatment. Therefore, I remember this time so exactly.

Q During that time, was Naumann's predecessor, Nebe, still in Smolensk?

Q Did you see Nebe yourself during those days?

Q Do you know when Nebe left Smolensk?

A I don't know exactly, because those six days which I stayed in Smolensk I had to stay in bed and did not know anything of events happening outside my room. I therefore must assume he left during those six days.

Q Do you have any further recollection confirming this period? Nauman to Gshatsk, that is, Nauman only went as far as Jasma and the following day he followed me to Gshatsk.

Q And when did Naumann visit you in Gshatsk?

Q When and why did you see Naumann again? leave, and went to the Group-staff in Smolensk.

Q When did you start your leave?

A I started this leave immediately after Naumann's visit in Gshatsk, on 2nd of December 1941.

Q The read from Gshatsk goes right by Smolensk, doesn't it? When going on leave while passing through Smolensk, did you visit Naumann's office?

Q Did you meet Naumann on that occasion?

Q And why not? told that Naumann was on a journey visiting commanders.

Q What day was this?

Q One further question. Did you ever receive any execution orders from Naumann?

Dr. KINNERT: Thank you. I have no further questions.

THE PRESIDENT: Is there any defense counsel desires to cross examine? If not, Mr. Ferencz may conduct the cross examination for the Prosecution.

CROSS_EXAMINATION BY MR. FERENCZ: a typewritten sheet, is that correct?

Q Who wrote the answers for you?

Q And did you type out the copy you now have in front of you?

A No, I didn't type it. I didn't have a typewriter.

Q Who typed them out for you? you brought them into the courtroom?

A The answers? Well, of course, he showed the questions to me, of course, and, I answered as I would answer naturally, of course.

THE PRESIDENT: I don't think that he understand the question, Mr. Ferencz.

MR. FERENCZ: I am having a little difficulty in getting the switch on. BY MR. FERENCZ: Naumann before you read them to the Tribunal? I wrote down the questions -- no, the answers as far as I could remember them, and then had then had them copied.

THE PRESIDENT: I don't think he still got your question correctly. BY MR. FERENCZ:

Q I am not referring now to those questions which Naumann's counsel directed to you, but to all the questions which were put to you by your counsel on direct examination, Did you show him all of the questions, and all the answers that you were going to make in court?

THE PRESIDENT: Did you sow whom, ought you to say in order to make that clear. BY MR. FERENCZ:

Q Did you show the defendant Naumann?

THE PRESIDENT: Yes.

DR. MAYER: Your Honor, I Object to those questions because I myself discussed the questions with the defendant, and, therefore, had an opportunity to discuss that examination with any other defendant.

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The only question that can be put, is whether they have been discussed before.

THE PRESIDENT: Well, the Prosecution counsel certainly has the right to inquire as to whether the witness discussed his answers with the defendant Naumann. There is nothing wrong about that question, especially in view of the fact that this witness has already testified at some length about the note he had received from Naumann. The objection is overruled. BY MR. FERENCZ:

Q I repeat my question. Did you discuss with the defendant Naumann the answers which you read in this court before you came into the court to testify?

A I didn't really discuss them with him. Probably I just told him what I would answer to his questions. put by Naumann's defense counsel, or are you trying to say that Naumann gave you all the questions and all the answers?

A I don't understand the questions, Mr.Prosecutor. your counsel of direct examination were read by you from a type_ written sheet, which you have before you. I am sking you if you discussed all these questions and answers with the defendant Naumann before you took the stand? went into the witness stand. additions to your answers?

DR. MAYER: I beg your pardon, Your Honor.

THE PRESIDENT: Yes.

DR. MAYER: It is like this. The defendant Klingelhoefer does not understand the question.

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THE PRESIDENT: Well, but just a moment, please, the witness must answer this. It is not for counsel to indicate what he did. You will have an opportunity in redirect examination if there is something which must be cleared up because of the cross examination, but Mr. Ferencz, now, is conducting the cross examination on a certain feature of the case, which is certainly amenable to cross examination. It is not necessary for you, Dr. Mayer, at this point to make any statement. The Witness can do that. You, of course, will have the right when Mr. Ferencz finishes to clear up anything which you believe needs to be cleared up.

DR. MAYER: Yes, I merely want to point out that the defendant does not understand the questions as they are put.

THE PRESIDENT: I see, all right, now, Mr. Ferencz, in putting the questions don't use any pronouns; repeat the names of the individuals involved, and perhaps that will make it very precise and incapable of any ambiguity. BY MR. FERENCZ: you read them to the court?

A The replies to Naumann you are referring to? direct examination?

Q You stated that you were a member of Sondercommando VII_B from June to 10 July 1941, is that correct? when the Commando was set up, approximately, until 10th or 11th of July, yes.

Q Didn't you say in your affidavit that you were a member of the VII_B until August 1941?

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Q I call your attention to Document Book III_B, page 57 of the English, page 105 of the German. You will notice there in your first paragraph you state that is Document NO_4235, page 105, of the German copy, Document Book III_B.

A I don't find it here.

Q Well, never mind. I shall withdraw my question if you are having difficulties. That is page 112 of the German? on page 57 of the English copy, where you are describing your duties, and, your say that "Dr, Six was recalled to Berlin in August, and you were then transferred from VII_B to the Vorkommando_Moscow, which Six had just left."?

A No. that is not right, Mr. Prosecutor.

Q What did you mean by your statement in your affidavit?

A It says here, "After this unit had reached the city of Minsk," that is 7B and the sentence before that: " Nebe transferred me to the Vorcommando_Moscow, Advance Commando Moscow." The commander of the unit at the time, Professor Dr. A Six, was recalled to Berlin in August 1941, and already in Minsck, I was transferred to Advance Commando Moscow. transferred to Vorcommando_Moscow?

A I belonged to the Vorcommando_Moscow, and I prepared myself for work in Moscow, and afterwards when we had rested at Smolensk and were stationed in Smolensk for sometime, as I have already explained, I made search in the NKWD offices, and Soviet houses to evaluate material, as Six had ordered me to do. with him in Vorcommando_Moscow, is that correct?

Q Returning now to your activity in Sondercommando VII_B, you stated in your direct examination that Rausch, the commanding officer addresses the Commando before you went into Russia, and told you that the rules of war will be disregarded, is that correct?

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Law, didn't recognize the Hague Rules of Land Warfare and the Geneva Convection, and, therefore, we wanted to conduct our war in a ruthless manner, and would have to expect the Soviets to conduct it in a ruthless manner. He also said that the Military Law and Material Law as used by the High Command of the Army were not going to be applied. disregard the rules of war, isn't that correct?

A That was not ordered, no. It was merely said that the Soviet Union didn't keep to the rules of war of the Geneva Convention and the Hauge Rules of Land War are, and, therefore, would not recognize them, and would not apply them.

Q At that time, you were not really at war with Russia, were you?

A Well, at the time when this was announced, I don't exactly remember that date, but it must have been on the evening before the war started. you would have to conduct your war ruthlessly, because Russia was not following the rules of warfare, is that correct?

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A. I don't know whether this was on the eve before the war started. I don't remember the exact date when this happened. That might have been one or two days earlier, or later. We left, I believe, the day after the German troops had crossed the border. On the 21st we left Dueben, and later in the evening before this was announced to the Commando that we were going to declare war on Russia, just as the units at the border had also had this drawn to their attention, that we were going to wage war against Russia.

Q. So that all the troops had had announced to them before the war, that the rules of war would be disregarded?

A. Yes, this was announced to us. We were not told that we would not have to keep the rules of war, but that we were told the Soviet Union would not keep the rules of war, because they didn't recognize these three agreements.

Q. You told us yesterday that Rausch told you that the Army courts martial were to be disregarded, and that the rules of war were to be disregarded. Do you now change your testimony?

A. No, I merely said that the war would be conducted severely and ruthlessly.

Q. Let me read your answer to you inasmuch as you have apparently forgotten it. Your counsel said to you, following the question by the President of the Tribunal: "Q Please continue slowly" and you answered, quote: "Therefore, we had to fight them just as ruthlessly. Therefore, the war laws and courts martials were not to be applied concerning the enemy. These laws had been given by the High Command, and they were to be disregarded as far as the enemy were concerned." End of quote. Now do you intend to change your testimony on that point at this time?

A. No.

Q. You deny that you said that?

A. Yes.

Q. You, therefore, deny that you said it?

A. I didn't say that. I didn't say it like that.

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Q. Yes certainly intend to change that statement at this time then?

A. No, not at all. What I said, once more, was not that martial law was not going to be adhered to, as far as I remember, I said that the enemy, that is, the Soviet Union did not recognize the argeements, and, therefore, we had to expect a ruthless manner of warfare, and that, therefore, the Germans would have to conduct their war accordingly, very ruthlessly.

Q. Now I have just read to you where you said specifically, the rules of war were to be disregarded, and you have stated that the transcript is wrong in that respect, that you didn't say that. Therefore, isn't it true, that you intend to change your testimony, and say the rules of law were to be followed?

A. No, I do not want to change my testimony at all, but I never said we would not keep to the regulations of war. I merely said that we would fight severely and ruthlessly if we were to conquer our enemy.

Q. And he didn't tell you to disregard the rules of law?

A. No, that was not said.

THE PRESIDENT: Mr. Ferencz, may I interrupt just a moment and thus let's clear this up whether he did or didn't say what you have read to him. I have in my notes an answer as follows: "Now witness please listen to this, and tell us whether you said this or not: "we had to fight them just as ruthlessly; therefore, the war laws and the courts martial were not to be applied concerning the enemy. These laws had been given by the High Command, and were to be disregarded so far as the enemy was concerned." Now all we want is an answer as to whether or not you did or didn't say that yesterday?

THE WITNESS: I said words to that effect, your Honor, that is what I meant. BY MR. FERENCZ:

Q. I read the said question just a few moments ago, and you said specifically, "no, I didn't say that."

Now you say you did, which one is the truth?

Q. Well, I said, as I expressed it before, I said that Rausch said ---

Q. No, no.

A. --that the Soviet Union -

Q. I am just asking you --

A. --that the Soviet Union rejected all these laws, and, therefore, we would have to conduct the war very ruthlessly, and that the Wehrmacht -

Q. Just a moment. I am not asking you to repeat the whole story. I read the question to you. You said to me, "I didn't say that." The President of the Tribunal read the same quotation to you, and asked you if you said that, and you said, yes, you did say that, Now your answer is, well --

DR. MAYER: Your Honor, I believe that question is settled, through the reply the witness made to the President's question.

Mr. FERENCZ: Your Honor, there are two contradictory replies. I am just trying to find out which one the defendant intends to rest.

THE PRESIDENT: Well, let's ask him it direct. BY MR. FERENCZ:

Q. Your answer is correct in the reply to the President, that you did say that, or the reply that you gave me, that you didn't say that, which is it?

A. Well, the reply that I made to the President is right.

Q. Thank you. You were also told at that time that Hitler had ordered that all Jews, Gypsies and Political functionaries were to be shot, is that correct?

A. Yes.

Q. Did you take an oath of allegiance to obey the orders of your Fuehrer?

A. Yes, I swore an oath like every one else.

Q. You also stated that you noticed that all the persons who heard the order had a certain conflict in their feelings, just as you did, is that correct?

DR. MAYER: Your Honor, I believe I can clear up this misunderstanding. It is due to a translation mistake. The witness said -

MR. FERENCZ: Pardon me, Your Honor, sofar there has been no misunderstanding. I just put the question to the witness, and if the defense counsel intends to read me his answer which the defendant read yesterday to the Tribunal, I object to it.

DR. MAYER: Well, no. I don't intend to read the reply, but to say that the witness spoke of material law and military law, and the translation was " Rules of warfare." That means rules of war, and the witness didn't talk of rules of war in general, but of the military and martial law.

THE PRESIDENT: Well, I think that the phrase "courts martial" was incorrectly used anyway. I don't know what it is in German, but we understand from all that has been said by the witness that he was informed that the rule of warfare as laid down by the custom of war, and also as established by International Conventions, were to be disregarded, because it was anticipated that Russia would disregard those rules. That is what I gather there by what has been said about this. That was the witness understanding. Isn't that what it amounts to?

DR. MAYER: Perhaps it it possible that the President ask the witness in view of this misunderstanding between rules of and martial laws.

THE PRESIDENT: Witness, you have heard what your counsel has stated. Now tell us very briefly, just what you understand when you went into Russia with regard to ruthless warfare?

enemy but it did not mean that the rules of war are going to be disregarded. I only said that the martial law was not to be applied towards the enemy but that the rules of war were not going to be applied by the Germans, I did not say.

THE PRESIDENT: I think we need to have a little orientation on these phrases. Unaware of the phraseology actually being employed by the witness in German I am unable to make the correction myself if a correction is in order. But, I would suggest to the interpreter that in translating what I am now about to say that the phrases "military law, and courts martial" be used in the English with whatever explanation will be necessary later one. Armies, the actual forces in the field. an Army that has taken over a designated territory. the inquiry and disposition of a case involving a transgression or an alleges transgression by a member of the military and the Tribunal inquiring is the military itself. So, that I don't think that courts martial enters into the discussion at all. A courts martial is handled by German officers over German soldiers. A Russian courts martial is handled by the Russian military over Russians. with regard to the manner in which the enemy would fight. Now, keeping in mind these distinctions which we have drawn, tell us very briefly now what you heard and what you did in following out those orders concerning the manner in which you were to fight the enemy. Army for the assignment in the East excluded applying martial law and Court Martials as far as the enemy was concerned. Then we were told that the enemy, as I have already said, disregarded the agreement about the rules of warfare and, therefore, it had to be expected that they would fight ruthlessly in their warfare and that the Germans on their part would have to deal accordingly but it was not said that Germany on their own were going to disregard the rules of war.

THE PRESIDENT: I think you had better go on now, Mr. Ferencz, BY MR. FERENCZ: received the order that the Jews, gypsies, and political functionaries were to be killed you had a certain conflict in your feelings and you noticed that all who heard the order had a similar conflict, is that correct? is that correct?

A I was very reserved. We talked about it but we did not discuss it. It was sad the Fushrer order would be difficult in general but --

Q What do you mean, you talked about it but did not discuss it? Either you talked about it or you didn't talk about it. opinion about it. Everyone wanted to keep his opinion to himself. why didn't they discuss it?

A I don't know. My personal attitude was to settle the matter within myself. Whether the others did it in a different manner I don't know. In my small circle I did not see any one who started a lively discussion about this order. in opposition to the order why were you afraid or why didn't you discuss the order with them?

it could not be changed. That was my personal opinion. order would have to be carried out, is that correct? a matter came to my attention which made it necessary. formed three groups out of Sonderkommando VII-B, is that correct? Two you called executive groups and one group was to write reports, is that correct? people, isn't that correct?

A No, not at all. These are groups who have State Police members and of the Criminal Police who carry out the task of security. I said that the Kommando was given two kinds of missions. First of all, security in the rear of the Army territory and secondly, to make reports and seize material, etc. VII-B would it be these two executive groups or would it be your group which was supposed to write reports, you tell us. by the 2 Troop Kommandos which had members of the State Police and the Criminal Police. have to carry out any executions which were carried out by Sonderkommando VII-B, is that correct? VII-B is two groups carrying out executions and your group writing reports, is that correct?

Q And was it that way actually in practice or was it just a theory?

was changed because of experiences during campaigns because individual departments had to be formed where executive tasks and reporting had to be made by them. Therefore, this arrangement which Rausch made at the beginning was not regarded later on. and those who were to carry out executions only could write reports, is that correct?

A No, that was not possible, Mr. Prosecutor, because .... report afterwards?

A No. There were special experts, State Policemen for example, could never make SD reports. They were not able to do so as they..... groups, executive groups, that would have to carry out any executions there would be and one group to write reports. You said that in the beginning this was not only theory but practice and later it changed. Now the only way it could have changed is that either the executive groups would start writing reports or the reporting group would start executing people, or all would start writing reports, or all would start executing. Now which of those alternatives was_it? cutive groups and the SD troops, in time were mixed up so that in the three detachments, the troops, the executive people, and the SD people, were all mixed up.

Q All three groups then had the same function?

Q When did the changes take place?

A Well, I didn't know that, at the time in Minsk the Kommando was active as Rausch had planned it because the Kommando was always en route.

Q Did those changes take place while you were still there?

Dr. Mayer: I beg your pardon, your Honor. I would like to point out to the defendant Klingelhoeffer that he should talk a little slower. I don't think the translation and the court reporters can keep up.

THE PRESIDENT: You have heard that, witness, please be governed accordingly. BY MR. FERENCZ: time in Sonderkommando VII-B there were three groups in theory and in practice, two groups carried out executions and your group wrote reports?

Q. How many officers were there in Sonderkommando VII_B?

A. Officers? There were 1,2,3, - about 8, I estimate.

Q. What was the highest ranking officer's grade?

A. The highest ranking officer was SS_Sturmbannfuehrer Rausch, the Kommando chief.

Q. Would the interpreter please give the rank in English?

A. SS. Sturmbannfuehrer - A captain.

THE PRESIDENT: Let the witness himself indicate what the appropriate rank would be in the military.

A. That was major. BY MR. FERENCZ:

Q. And what was your grade at that time?

A. I was also major at the time.

Q. Were there more than two majors?

A. Not in the Kommando.

Q. So that next to the highest ranking officer or the Kommander of the Kommando you were next in line.

A. Yes, I was the next one in that sense.

Q. Now, tell we, during the time that you were a member, or second in command, of Sonderkommando VII-B how many people were killed by that Kommando?

A. When I was there I did not hear of anything while I was in the Kommando.

Q. You mean that in all this time you were so busy writing reports that you didn't even hear about executions?

A. Well, Mr. Prosecutor, it is like this. In Brest-Litowsk we crossed the border - - - -

Q. Witness, you just stated that you didn't hear about executions. I am not interested in what you did in Breat-Litowsk.

A. I did not hear anything about executions.

Q. How do you explain the fact that you were the second highest ranking officer in Sonderkommando VII_B and you never heard about executions in that Kommando?

How do you explain that? Did you speak to other officers? Did you speak to the men or were you in the hospital all the time? How do you explain the fact that you didn't hear anything about it?

A. In the time when we were in Brest-Litowsk - I want to explain this in more detail - I, together with my SD Troop, separate from the rest of the Kommando who were in Brest-Litowsk for a few days, were in the NKWD building and there carried out investigations of material and documents, while the rest of the Kommando was at some distance in some nn or somewhere on some farm. What happened there I don't know. I just went there sometimes. Nothing else. Apart from that I was in the NKWD building.

Q. So your answer is the reason you didn't hear anything about executions was that the rest of the Kommando was in an inn or on a farm or somewhere and that you went there some times but that you were very busy in the NKWD building.

A. All furing those days I made investigations in the NKWD building of documents. I did not deal with anything ----

Q. So you never spoke to any of the other officers in Sonderkommando VII-B or men in Sonderkommando VII-B about anything else except the documents you were busy just reading in the NKWD building?

A. Well, of course I talked about the things I was working on, of course.

Q. And while you were in that NKWD building were you looking for lists of Communists or Party functionaries?

A. No, I looked for the material I found. I found some lists as well. Whether these were execution members of the NKWD I don't know. I simply utilized and compiled the material and handed it over to the chief for further evaluation.

Q. So, therefore, you found some lists giving you the names of all the Party functionaries in that area and you just gave that list to Rausch, is that correct?

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A. Yes, that was my duty.

Q. Now, you knew that Hitler had given an order that all Party functionaries were to be exterminated, did you not?

A. Yes, I knew.

Q. So you took the list of names and gave it to Rausch. Didn't you know at that time he was going to exterminate all those people he could catch?

A. I only knew that I had the order to utilize the material and pass it on.

Q. I asked you, witness, didn't you know that when you were giving him these lists of Communist Party functionaries that he was going to exterminate all those he could? You either knew it or you didn't know it.

A. Of course, I did.

Q. Therefore, your share in this murder enterprise was giving him the names and his share was to shoot them.

A. I only did my duty as a soldier and did what was expected and nothing else. What happened with them I do not know.

Q. So the picture you are trying to give us of your activity in this, is a very busy major writing reports. Of course, you gave the list to other people who had to do the shooting but you never discussed anything about shootings of heard anything say anything about executions? Is that correct?

A. I did not hear anything of shootings in Brest-Litowsk, and never .......

THE PRESIDENT: Mr. Ferencz, I don't know that there seems to have been a contradiction or perhaps I am in error - you asked one question as to whether he knew what would be done with this list. As I recall the answer he said, "Well, of course, I had to know." Then just now you asked, two or three questions back, whether he knew and he says he didn't know what was to be done with the list. BY MR FERENCZ:

Q. Witness, as I understood, you said you know what was to be done with list but didn't know about the execution. Now did you say you didn't know what was to be done with this list which you gave the Kommandofuehrer?

A. Yes, I knew, owing to the Fuehrer order, I knew that functionaries were to be shot. Of course, I knew that but it was my task to utilize and to look into the material which I found and to hand it on and I did this. What happened with the list and whether Rausch, the chief of the Kommando, evaluated them I don't know because I heard nothing about shootings. Whether Rausch later handed on the list I don't know and I didn't hear.

Q. So you never heard anything about shootings by Sonderkommando VII-B during the time you were there, is that correct?

A. In the time until I arrived in Minsk, that is 9 July 1941, those were the first three weeks when the Kommando existed and I did not hear anything about shootings then.

Q. I want to draw your attention to Document Book II_B, page 25 of the English, page 26 of the German, document NO_2844. Here near the top of the page in the English copy it discusses the activities by Sonderkommando VII-B and it says among other things that 20 Jews who had been active as Communists were also executed. It is on page 26 of the German, witness.

A. Where is this, please?

Q. Page 26 of the German, page 25 of the English, top of the page of the English copy. How, so you know anything about those executions?

A. No, Mr. Prosecutor, it says here that a unit of Sonderkommando VII-B in Tschautzy carried out search actions for Communist functionaries. As far as I can remember Sonderkommando VII-B was in Tschautzy after the time in Minsk. Therefore, on that occasion I could not have been in Sonderkommando VII-B anymore. The report is dated 4 September 1941.

Q. You mean at that time you were in V.K. Moscow, is that correct?

A. Yes, at that time. That is correct.

Q. Please now, turn to the next page, page 26 of the English, page 28 of the German, and you will see that Vorkommando Moskau was executing people, too.

Now you have just told us that at this time you were in Vorkommando Moskau. Here the report says that 46 persons were executed, 38 people among them being intellectual Jews by V.K.M. Do you know anything about this?

A. In my direct examination I made statements as to this - that I did not hear anything about these executions, because I had nothing to do with these executive tasks.

Q. So you don't know anything about this?

A. I do not know that 38 intellectual Jews were shot in Smolensk.

Q. Do you know that any Jews were shot by Vorkommando Moskau while you were there?

A. While I was in Advance Kommando Moskau of course I know that executions were carried out by the Department for Jewish Affairs. Of course, I know that. I said that I know that the groups staff and also the Advanced Kommando Moskau constantly carried out executions, and operations. I never denied that. But I do not know the details.

Q. We will come to the details shortly as concerns this particular execution. However, you say you know nothing. is that correct?

A. No, I did not know anything.

Q. But you were in Vorkommando Moskau at that time, were you not?

A. Yes, I was in Advanced Kommando Moskau.

Q. Who was the commanding officer of Vorkommando Moskau at that time?

A. That was Brigadefuehrer Nebe.

Q. Were you his deputy?

A. I was appointed deputy but never carried out that function

Q. What were the dates when you were with Vorkammando Moskau?

A. I belonged to Vorkommando Moskau, (Advanced Kommando Moskau,) from the day it was set up, that is 10 or 11 June 1941, until the middle of September 1941, until that time when the new Kommando leader came and took it over from Nebe. Then I was released.

Q. Now on page 27 of the same document you have before you, that is document No-2844, it says that Vorkommando VII-B killed 886 people as per 20 August and staff in Vorkommando Moskau killed 144.

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That's on page 29 of the German. You were during that time either in Vorkommando VII-B or in Vorkommando Moskau, is that correct?

A. Until 9 June 1941 I was in the I was in Sonderkommando VII-B.

Q. So that up to the 20 August you were in either one of these two groups?

A. Either/or, yes.

Q. You have told us --

THE PRESIDENT: Mr. Ferencz, Judge Dixon calls attention to a matter of Chronology here. The witness stated that he was with the Kommando VII-B from June 22 to July 10 1941. Then another occasion that he was with Vorkommando Moskau from June 10 to September 15, of to the middle of September; from June 20 to September 15 - oh, June 10 or June 11 - which is correct?

A. From the beginning, 22 June when the Kommando VII-B was set up until 9 July I was in VII-B and that in Minsk on 10 to 11 July in Minsk I came to Advance Kommando Moskau and was in Advanced Kommando Moskau until the middle of September.

THE PRESIDENT: Very well, that clears it up.

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groups and between the two of them they killed over one thousand people. Of about how many of these executions did you have knowledge?

A Mr. Prosecutor, I have already explained during the direct examination that in the time when I belonged to Sonderkommando 7b I did not hear of any executions. It, therefore, can be assumed that the figure of the total executions of the Sonderkommando 7b occurs during the time between Minsk, when they were active in Minsk, until 20 August. after you left the kommando, Sonderkommando 7b?

Q I see. Then the two executive sections of Vorkommando 7b, or Sonderkommando 7b, did nothing while you were a member of that kommando, or were they writing reports too?

A Well, they didn't do it and didn't have time to do it because the kommando was always en route until they came to Minsk. Those were the first three weeks of the assignment. to carry out executions, one to write reports, that this was the theory and the practice during the time you were there, but now you say they didn't actually carry out executions during your time, they were always marching, so it was just a theory then? for those three days in Brest-Litowsk, and there in Brest-Litowsk I did not hear anything, that any executions occurred there.

Q Now, Witness, you have just contradicted yourself. When I asked you a few minutes before whether the organization of two to carry out executions and one to write reports was theory or practice, you said it was theory and practice. Now you have told us that the two who were supposed to carry out executions were marching all the time instead and therefore it was only theory and not practice. Now, which of these two answers do you now hold to be correct?

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A Well, I don't know; I didn't say that. had said previously? route and, therefore, had no opportunity of being stationed anywhere for any length of time. That is what I said. it theory and practice that two were to carry out executions, and you answered to that question, yes, it was both the theory and the practice that they carried out executions. Now you change your answer and say, no, it was just a theory, they never got down to it because they were marching, is that correct? of any executions. That is all I can tell you.

Q That is not my question; that is not my question. My question is, do you now change your testimony to say that it was just theory about the organization of these three groups in Sonderkommando 7b, that they didn't actually carry out executions during your time? time.

Q You have just told is a minute ago that they didn't carry out executions, and your explanation for these 886 people killed was that it happened after you left. Now, are you saying again that it did happen while you were there? start at the time when the kommando had left Minsk. That is when they came to the territory of the action.

THE PRESIDENT: What I think the prosecution desires to learn from you is whether these executions did take place before you left 7b. You say that you didn't hear of them. Do you exclude the possibility that they may have occurred without your being aware of them?

THE WITNESS: That possibility I do not exclude, your Honor. It is possible that executions occurred, might have occurred in Brest-Litowsk, for example, where the kommando was stationed for three days, but I personally did not hear of any executions.

THE PRESIDENT: Do you think that so extraordinary a thing as the killing of eight hundred people could happen and you would not know about it, be done by your own organization and yet you be entirely ignorant of it?

THE WITNESS: Your Honor, these are not 886 people. What I mean is that possibly from Brest-Litowsk the executive troops possibly carried out a few executions. They might have done this, but not that 886 people were shot in Brest-Litowsk. I merely maintain that the executions were apparently carried out after I was relieved from the kommando because while belonging to Sonderkommando 7b in the time from 22nd June until 10th or 11th july - first June, then July - I did not hear of any executions.

THE PRESIDENT: The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

(The hearing reconvened at 1130 hours. )

THE MARSHAL: The Tribunal is again in session.

CROSS EXAMINATION (Continued) BY MR. FERENCZ:

Q. Klingelhoefer, I draw your attention to Document Book IIB, page 53 of the English, page 47 of the German, Document No. 3143. There we have the total of liquidations as of 13 September 1941. You were with the Vorkommando Moscow from the 20th of August until the 13th of September 1941, were you not?

A. I was in the Advance Commando Moscow during the period covered by the report, Yes, from the 20th of August until the 13th of September.

Q. Do you remember the 20th of August report gave the total number killed as 144, whereas up to the 13th of September it had advanced to 312? Now, of these additional persons killed, how many did you receive knowledge of?

A. Out of this number I had direct knowledge, as I have already said in my direct examination, of those executions in Matislawl and Tatarsk which were carried out by Noack. Once it was 30 in Matislawl, and 20 in Tatarsk. These are the only direct numbers which became known to me.

Q. In other words, of 168 people killed, you only had knowledge of about 50, is that correct?

A. 50, Yes.

Q. And did anyone ever discuss with you the more than 100 others who were killed?

A. Of course, it was known to me, as I have already said in my direct examination, that the Group Staff as well as the Advance Commando Moscow carried out executions currently and, of course, shootings took place. This is in general, but in detail, I know nothing but these two figures.

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PRESIDENT: Mr. Ferencz, the witness has stated that there were 20 killed in Tatarsk. Yesterday he said 30. I don't know if there is just a slip in transmission, but I would like to keep these records straight from my own book here.

MR. FERENCZ: Your Honor, we will go into detail in the Tatarsk executions very shortly. BY MR. FERENCZ:

Q. It is true, isn't it, Witness, that you just stated that there were 20 killed in Tatarsk?

A. In the first case, Yes, but there were two executions in Tatarsk.

Q. But you just said that there were two executions, one in Matislawl, and one in Tatarsk--Matislawl 30, and Tatarsk 20. Now, do you want to add another?

A. For the period covered by the report to the 13th of September 1941, this is merely the figure of 312 executions which we are discussing. For this period I only know these two executions which were carried out by Noack in Tatarsk and Matislawl. These were these Jewish actions by Noack on the basis of the Fuehrerorder.

Q. Very well. I draw your attention now to page 48 of the English, the same document, the same Document Book, page 43 of the German. There you have enumerated the killing of Jews by Vorkommando Moscow in the different places. The report says that, "A commando of the Vorkommando caused all Jews in these villages to be marked, transferred into a ghetto, forced to work and registered by names; it also shot the existing Jewish council and another 20 Jews."

A. May I ask where this is?

Q. On page 43 of the German, page 33 of the original.

A. Yes, I have got it.

Q. You were in the Vorkommando Moscow at that time, were you not?

A. Yes, I was in the Advance Commando Moscow.

Q. Do you know anything about this particular action or these two actions?

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A. No. I do not know anything about it.

Q. Did you ever hear about it from anybody in the commando?

A. I heard--I know that Noack, as I have already mentioned, was the expert for Jewish questions for which Mebe had appointed him and that he carried out these executions and I assume that he carried out these actions, too, in Choslawitschi.

Q. So your answer to this document is, "Noack did it", is that correct? Your explanation to this particular document is that Noack did it, is that correct?

A. Yes. I have no idea about this.

Q. Incidentally, where is Noack?

A. I don't know.

Q. Do you know whether he is dead?

A. I don't know.

Q. Did you hear testify in this court that he is dead?

A. No.

Q. Were you here when the defendant, Naumann, was testifying?

A. Yes, I was here.

Q. And you don't recall him saying that Noack is known to be dead?

A. I do not know, No.

Q. I would now like you to turn to Document Book IIB, page 18; it is page 17 of the German; it is page 13 of the original document. There again you have an action by Vorkommando Moscow in which 114 Jews were killed. Do you know anything about this particular actions?

A. No, I know nothing about this action either since, as I have already mentioned, I was only in the Advance Commando Moscow until the middle of September. As for the few days which fall into this report beyond this period, I must say the same, I have said before, that I had nothing to do with these matters and that only Noack was competent for this matter. I did not know in detail who carried out this action, and where and how it was carried out, therefore, it can also be assumed that this action in Choslawitschi already took place under the leadership of koerting and at this time I did not belong to Advance Commando Moscow any longer.

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Q. Well, you said you were a member of Advance Commando Moscow until the 15th of September 1947?

A. Until the middle of September, Yes.

Q. And this document is dated the 9th of October.

A. Yes, 9th of October.

Q. You have heard many of the defendants explain that the date of the reports was always a few weeks after the actual event, so that this particular event would have taken place in September, is that correct?

A. Yes, but may I point out that when compiling the total figures, the deadline of the 28th of September is given at the end, therefore, this must be the period between the 13th of September 1941 and the 28th of September 1941, since the preceding compilation is mentioned as of the 13th of September. Therefore, I conclude, as I must conclude, that this action took place within this period of time.

Q. In any event, you say this was done by Noack, is that correct?

A. In any case, I must say if Noack didn't do it, it must have been Koerting.

Q. Now, I raw your attention -

A. I had nothing to do with actions.

Q. I draw your attention to page 21 of the same document--page 21 of the German, which gives the total killed as of September 28. Now, you say that you were with the Vorkommando Moscow from the 20th of August through the middle of September. We have the total here of over 2,000 people killed during most of that period or just a few days over. Of these 2,000 who were killed, how many of them did you assist in killing?

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A. I didn't assist in any of them.

Q. You had knowledge about how many killed during that period?

A. In the period of what?

Q. From the 20th of August.

A. Yes. I have already mentioned that I had direct knowledge for this entire period of time of the two executions in Matislaw and Tatarsk by Noack, one is 30, and one is 20.

Q. That would mean that of these 2,000 or more people killed you had knowledge of only 50, is that correct?

A. Directly, Yes.

Q. And indirectly?

A. Indirectly, I knew in general that the group staff itself, as well as the advance commando Moscow continually carried out executions. Of course, I knew this.

Q. You say "continually carried out executions", you mean by that as long as they existed they were busy killing people in accordance with the Fuehrerorder, is that correct?

A. Yes. Well, by "continually", I meant during this period of time. I don't know whether it happened every day. Other executions were carried out, too, outside of the Fuehrerorder.

Q. Now, let us turn now to your affidavit which is in Document Book IIIB, page 57, page 105 or 112 of the German copy. Do you remember the circumstances under which you gave this affidavit on the 2nd of July?

A. Yes.

Q. Was there any duress in connection with the taking of this affidavit?

A. No.

Q. Was there any threat made in connection with the taking of this affidavit?

A. No.

Q. Was there any threat made in connection with the taking of this affidavit?

A. No.

Q. Was there any promise of immunity made in connection with the taking of this affidavit?

A. Promise for reward--No. May I add something?

Q. Yes.

A. But upon my objections against certain phraseologies which I made, Mr. Wartenberg told me that I would have the possibility of correcting these incorrect formulations at another day. I was told this. And after I had objected to these formulations, I gave my signature because I had this statement by Mr. Wartenberg.

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Q. Were you reminded before you signed this statement that you were under oath?

A. I was put under oath before, Yes.

Q. And was the oath administered to you just before you signed it, and doesn't it appear at the end of the affidavit?

A. The oath was administered to me as soon as I entered the room, without anything being told me before I entered the room, and Mr. Wartenberg was standing and immediately administered the oath to me. That was the first thing that I heard Mr. Wartenberg say.

Q. Were you given the opportunity to make changes and corrections in the statement?

A. Of course, I did, but only in the small details. But as far as more important objections which I made, I was told that this was not necessary now, and I would have an opportunity to make these corrections later. This was told to me. Thereupon, I said, "Well, under these circumstances, I am prepared to sign this affidavit in this form, if I will have an opportunity to correct it later.": and I got this later. Of course, I was very excited.

Q. You swore at that time when you signed the affidavit that the affidavit was true, did you act?

A. I signed this affidavit, of course, because I tried to tell the truth to the best of my knowledge and belief, which I then had. I was interrogated so quickly that I had no time to think over these matters and really to remember all these things. Thus, I said whatever I remembered at the moment.

Q. Was this affidavit given to you to sign the first time you spoke to Mr. Wartenberg?

A. No. The first time I saw Mr. Wartenberg before, the day before, the 1st of June.

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Q. So, at least one day elapsed between the time you spoke to Mr. Wartenberg and the time you signed this affidavit?

A. Yes, and on the second day I even made additions, after I used this interval to think the matter over and think about what I might have forgotten.

Q. Now, we have just gone over the reports which show that the Vorkommando Moscow between August and September, together with the Group Staff killed about 2,000 people. In this affidavit which you made and swore to, you stated, and I quote from paragraph 1: "Professor Dr. A. Six, who led this unit at that time, was recalled to Berlin in August 1941, and during August/ September 1941 I acted as his deputy and led this unit".

A. Yes, and that is just one of the points to which I objected, Mr. Prosecutor. During my interrogation I stated that I did not command the unit, but Nobe commanded It, and that I had been designated as his deputy, but that all orders and instructions were given by Nobe. These were my words. It was formulated in this way, and I said that this isn't correct, I was never commander of Advance Commando Moscow, I was only his deputy, therefore, I was told that this was not so important, so essential, and that I could correct this later on, and I did that in my second affidavit.

Q. In other words, your statement--your sworn statement of this affidavit is which you state that you led the Vorkommando Moscow is false?

A. It is incorrect, and I corrected it accordingly or objected to it.

Q. Yet you signed this affidavit knowing that it contained an incorrect statement, is that correct?

A. I signed it with reservations on the basis of the promise given to me.

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Q. And you did have the opportunity to make corrections, however?

A. I had the opportunity to make corrections, but not this correction.

Q. Are you trying to say that you said to Mr. Wartenberg, "Here, I want to correct this mistake because this mistake would mean that I killed 2,000 people", and Mr. Wartenberg said, "No, don't correct that, you will do that some other time", is that what you are trying to tell the Tribunal?

A. It is not a matter of the 2,000 people, Mr. Prosecutor, it is merely about the commando of a unit, which I was to have led allegedly, but which I did not command, and I clarified this, that I never personally commanded the commando, but I was a deputy without performing its function. I corrected this in my second affidavit.

Q. Your second affidavit was made after you had received the indictment, is that correct?

A. The second affidavit was made after I got the indictment, Yes, because before that I had no opportunity.

Q. Didn't you state in your interrogation, that is before you received the indictment, that you led the Vorkommando Moscow until September--Yes or No, then you can explain it?

A. It says here, Yes.

Q. But you also stated it in your interrogation the day before-

A. No. In my interrogation I described the matter differently.

Q. Allow me to read to you a question to refresh your memory. I will read it in the German from the transcript:

"Q Thus you headed it from August until when?

A Until September."

Do you remember that?

A. Yes. the deputy leadership--as long as I belonged to the Advance Commando Moscow, I was the deputy, but I did not perform my duties as a deputy. That is that point which I objected to in the affidavit.

Q. Why did you sign the affidavit, which stated that you had the opportunity to make corrections, that you swore that it was true when you knew that on a vital point that it was false?

A. I called his attention to this very important point, and I was told that it was not so important, I would get the opportunity later to correct these mistaken formulations and errors.

Q. So that on that simple statement-

A. I was in such a state of mind at the time that I relied on this, and I signed it under the--with the reservation that I would later be allowed to correct this, and I did so at the next occasion which I had.

Q. Isn't that a little naive?

A. Mr. Prosecutor, I was at that time is a state of mind which one could not call naive.

Q. Why were you in such a state of mind?

A. Because I was very excited, and that is very clear. I had had so many experiences in these two years I had been interned after the collapse, and I experienced so many disappointments and misfortunes that I was so excited, and when I was transported to Nuernberg I did not know what was coming, and after I arrived here, one hour later I was called to interrogation. I was immediately brought into a room. Immediately they said, "Raise your right hand and awear", and I was so mixed up that I didn't have all my logical thinking in order.

commanded the Vorkommando Moscow, you gave him the dates, and you didn't change the testimony between then and the next day when you -dates so that the prosecution had to make a correction. where you state concerning the executions in Tatarsk, the first one, the executions proper were carried out by Noack under my supervision. vision and I discussed this concept with Mr. Wartenberg in detail. I said right away I had no mission to supervise. that it was under your supervision. After you thought it over, and, particularly, after you got the indictment and the documents, you discovered it is a false statement. the first moment and I always said, "This is not correct. I did not supervise" and that's the same thing -- I got the same answer. I could correct all these matters later on. make corrections. You stated here on the stand that you had had the opportunity to make corrections. Why didn't you make that correction?

A Because I was told that these corrections were not necessary. I could make these corrections later, at a later date. I signed it with this reservation.

Q What corrections did you make?

A I do not know. I do not have the copy here.

A You mean, objections made which were not corrected?

Q No, no. I mean, which corrections did you make actually in the affidavit?

changed, as far as I remember. when you came to the important parts as to who supervised the executions, and who was in command during the time that these thousands of executions were carried out, you didn't make changes, you signed it, saying you had the opportunity to make corrections, saying that it was correct and waited for a later chance, is that who you want us to believe?

A Yes, because Mr. Wartenberg expressly told me that I would have an opportunity to correct these matters later, that I would get a chance to do so.

Q Now turn to Paragraph 4. This discusses your second execution in Tatarsk. In it you stated that "I had the remaining Jews, approximately 30, shot. I carried out this order to prevent these people from joining the partisans. Although I had orders to shoot women and children too, I did not comply with this part of the order." Now, you are going to tell us, aren't you, that this again is wrong and here you wanted to change it, but Mr. Wartenberg said "Some other time", and you said, "Yes, Sir", and you state everything in this affidavit is false. Is that what you intend to say?

A No, Mr. Prosecutor, I did not object to this point. Jews shot?

A I had the 30 men in Tatarsk who remained shot. It was for the reasons which I mentioned yesterday in my direct examination.

Q Didn't you say yesterday in your direct examination that you didn't have all of them shot? You just had the guilty ones shot. Jews remaining in Tatarsk were guilty.

Q Then all the Jews were guilty. There were none innocent and therefore you had them all shot, but all after a careful trial, of course?

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guilty, of course. Hitler had ordered all Jews to be killed? I had the order to examine the messages of the Mayor of Tatarsk and after investigating the matter to execute the guilty ones. That was my mission. I did not have an assignment to carry out a Jewish execution on the basis of the Fuehrer Order. killed and that order was given to all Einsatzkommandos, did you not? had you not? Hitler had ordered that all Jews were to be killed and you had sworn to follow his orders? I was not a commando leader. I could not give the order on my own initiative. That was only a matter of a decision for a commando leader. I was a member of the Group Staff at the time. My chief of the Einsatzgruppe only gave me the order to investigate this subject carefully and then to shoot the guilty ones.

Q It's just a coincidence, isn't it, that they were all guilty?

A No, that is no coincidence. That was exactly determined.

Q What would you have done to an innocent one?

A I have already said that yesterday. If I had found an innocent one, I would not have shot him. I would have put him back in the Ghetto, the same as I did with the women and children.

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Q Now, the same as you did with the women and children. You stated in your affidavit that you did not shoot any women and children. Let me draw your attention again to Document Book II-B, page 54 of the English, page 48 of the German. Let me read you "As punishment for not following the orders of the German Security Police, all male Jews and the three women who were in Tatarsk at that time were shot." Now you told us that you studied reports for a long time; while everybody was killing Jews you were busy studying reports. Now study this one and tell us what your interpretation of that report is.

A I never studied the other reports, Mr. Prosecutor.

Q You are trying to apalogize for making your affidavit?

A I don't understand your question.

Q I am just asking you: Study this report. Here it says that "all male Jews and the three women who were in Tatarsk at that time were shot". You stated that no women were shot. Here it says that three women were shot. What is your explanation for the discrepancy?

A I have already given this explanation yesterday, Mr. Prosecutor. I had forgotten all about these three women. I cannot give you any other explanation. have mentioned these three women, because I had no reason to keep it from you. There was an investigation. According to the instructions, the women were found guilty so why should I have some reason to keep this from you? remember it in great detail that the women were very ugly, that they had been the contact between the males and the partisans, isn't that correct?

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able to shoot the others, is that correct?

A No, that was not the case. The women did not give me any information. I got the information on the basis of interrogating the Jews concerned or the Jewish Council of Elders and the men. partisans when their only contact was through the women and forget all about the women?

A Well, Mr. Prosecutor, that's it. I cannot give any explanation for this. In this six years I completely forgot about it. I did know that the men had contact with the partisans, but I had completely forgotten about the three women. At the moment when I first saw the document, when I gave my second affidavit, when I read there that three woman were also shot, I, of course, remembered everything, but actually it was missing in my memory and I have no explanation for it. were in Tatarsk, that is, all the Jewish women, were shot, and is just happened that there were only three. Isn't that the way you read the report? children, but whom I sent back into the Ghetto.

Q What does this report men then, "Three women who were in Tatarsk at that time were shot"? Why do they say, "The three women who were there were shot"?

A Here it says,"as well as three women", not, "the three women".

Q Did you say it is an error in the translation?

A There must be a mistake in the translation, yes. It only says, "As well as three women", not, "just these three women." get a translation at this time. Don't leave out any words.

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A "As punishment for not complying with the orders of the German Security Police, all male Jews being in Tatarsk, as well as three women were shot."

Q What happened to the children?

A Well, the children remained with the women. Women and children were sent back. there, the fathers, plus these three women.

A I shot no fathers, Mr. Prosecutor. I shot people who had come into contact with the partisans and who thus violated the instructions of the Army and the directives of the Security Police. that they left the Ghetto and, second, that --or they did not leave the Ghetto - they all remained in the Ghetto, but they had some mental contact with these partisans, is that correct?

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basis of this contact they had left the Ghetto. When I arrived in Tatarsk they were no longer in the Ghetto. For the most part they had fled into the forest. That is why there were only 30 men left in Tatarsk. With definite intentions they had all left the Ghetto when I arrived in Tatarsk.

Q So the crime then was this: You ordered them to stay in the Ghetto where as Jews they had to wait until you could carry out the Fuehrer Order and murder them and because they left the Ghetto and tried to seek some refuge, that is the crime which justifies your killing them. Is that what you are trying to say? By trying to evade your murder, that justifies your killing them. Is that correct?

A Mr. Prosecutor, first of all, I did not send the Jews into the Ghetto. The Jews were sent into the Ghetto on the basis of the Fuehrer Order, by the men who had this order, second, they were obliged to adhere to some directives which were given for security reasons. If, for some reasons, they would leave the Ghetto on their own initiative they violated the directives of the Security Police and thereby the security of the rear Army area. That was one point. The second point, as I have already stated, is that this leaving of the Ghetto happened at the instigation of the partisans and that for the most part the men immediately had left Tatarsk in order to join the partisans and that those 30 had been left over with the express intention to work for the partisans. Thus, they had practically allied themselves with the partisans. These were the reasons, the one and the other. The one was the forbidding to leave the Ghetto for security reasons and the other was the violation of the general prohibition which the Army had decreed: to join the partisans or to support the partisans any way or to establish contact with them in any way. These were the reasons which caused me to have these 30 men and these 3 women shot.

Q Aren't you then saying in substance, that the crime which you regarded as punishable by death , was the failure of the Jews to wait where they had been ordered to wait until they could be killed in accordance with the Fuehrer Order?

orders which said that thed were all to be murdered? killed? there for the purpose of being killed?

A No, I don't know this. The Jews were collected in the Ghetto in order to guard them.

Q To protect them, are you trying to say? To guard them against what? To guard them against what? in the sense of the security of the rear Army areas.

Q What happened to the Fuehrer Order? limited by this time, so that the able-bodied Jews would be used for labor. I knew this. That is all what I knew. out about that limitation?

A I do not know when it was limited. I heard about it the first time when I was in Mstislawl with Noack; that is when he told me about it and I later gathered it from the conversations of the group, but when it was issued, I don't know.

Q And even with the limitation, didn't it mean that all Jews who were unable to work were to be killed, isn't that so?

A I don't understand the question.

Q What was the limitation on the Fuehrer Order? far as it concerns the old, the woman and the children, the sick, who were unable to work until the Einsatzkommando could get around to shoot them in accordance with the Fuehrer Order, even with the limitation.

Q They were guarded by units under your command?

Q They were guarded by German units?

Q By when were they guarded? Jews, put them in the Ghetto, and said, "Now you wait here." the Security Police, who were competent for this, but when they were once in the Ghetto then they were under the supervision of the local mayor. put the Jews in the Ghetto who were too old or too week to work?

A I do not know, Mr. Prosecutor.

Q Did you ever hear of the Fuehrer Order? Jews?

Ghetto You don't know. Did you suddenly have a lapse of memory? because they were being used for labor.

Q How about the old ones and the sick ones who couldn't work? was limited at that time, so that only those not able to work would be shot. until you could get around, or the Einsatzkommando could get around to shooting them, is that correct?

A I don't know, I do not know what to answer.

Q I know you don't know what to answer, because the answer is "Yes, it is correct", now, isn't that true?

A I don't know.

Q Why don't you know?

Q Your answer then is "Yes"? they were shot afterwards, well, it probably happened on the basis of the Fuehrer Order.

Q You say, "it probably happened". Do you think the Fuehrer Order was not carried out?

Q Then They were killed?

Q So then, what we have is this: The Jews are put into the Ghetto for the purpose either of working or for the purpose of being killed if they couldn't work and because they leave the Ghetto and try to escape or contact the partisans in any vagye way, that justifies your killing them afterwards, is that correct?

the investigations, others, non-Jews, because the directives were there to be obeyed and especially during war.

Q You regarded it then as a crime to try to save your life?

A I don't know whether that was the reason, to save their life. After people established contact with partisans and wanted to go outside, I don't know whether that could be considered as saying one's life.

Q Now, just a moment. If a Jew left the Ghetto, what happened to him? When a Jew left the Ghetto what happened to him?

A If a Jew left the Ghetto without permission, I don't know, I do not know what measures were taken then. killed. Now, if he left the Ghetto, was he then set free? given.

Q So that he was killed anyway?

Q So, actually, it didn't matter what a Jew did, whether he stayed or whether he went, he was killed.

Q You told us that if he stayed he was killed. You told us that if he went he was killed. Now I asked you if he stayed or if he went he was killed, you say you don't know. Why is it you don't know? Is the question -was killed.

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he was killed. If he stayed in the Ghetto and if he left the Ghetto he was killed. If he contacted the partisans he was killed. If he did not contact the partisans he was killed. No matter what a Jew did he was killed, is that correct? you defense, is it?

A Which investigations? There was a big fuss and interrogations. You determined if they were contacting partisans. What was the purpose of this if Jews were killed any way, as you have just told us. Did you have so much time to waste that you could go around making all kinds of useless investigations and trials?

A Only once I was given an executive measure. This was in Tatarsk.

Q Just a moment, Witness. Before you proceed, let's classify a term. By "executive measure" you mean the murder of the Jews, is that correct?

A No, executive measures are not the execution of the Jews. These are investigations of some kind of violation of the directives given, That is, generally, an executive measure as contrasted to an informational measure.

Q When you say "executive measure", isn't that always connected with executions?

A Not necessarily. If the investigation shows that the man is innocent, or did not commit a very severe violation, then he is either released or he is imprisoned for a certain time.

Q Continue with your explanation. Continue with your explanation.

A I don't understand the question.

Q You mean you have nothing more to say on the subject?

A I did have something to say, but I don't know what it was.

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Mr. FERENCZ: I will come back with some more questions for you then after the noon recess.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 12 December 1947.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Proceed, Mr. Ferencz. BY MR. FERENCZ: Jews than they were in the Ghetto, or out of the Ghetto, were all shot?

A I didn't get the question. the Ghetto or out of the Ghetto, were all to be killed, and were killed. You also told us that you has conducted an extensive investigation to determine whether the Jews were Partisans, or what they had done. Now the question is, in view of the foot that all Jews were killed simply because of the Fuehrer Order, why was it necessary to have any investigation at all?

A First of all, Mr. Prosecutor, I said that all Jews were outside the Ghetto, not that Jews were inside the Ghetto. That was in Tatarsk. In the second place, I didn't carry out the execution based on the Fuehrer Order, but because of the order given to me by the Chief of Einsatzgruppe-D to make investigations, and to shoot persons or those guilty. were in the Ghetto, or out of the Ghetto, that just because they were Jews they were to be killed under the Fuehrer Order. If that was true, and you told us that it is true, why was it necessary to have any kind of investigation to prove any crimes on the part of the Jews?

A I didn't have the order to carry out the Fuehrer Order, Mr. Prosecutor. It was my order in this special case to stop this mutiny and not to carry out the Fuehrer Order.

Q What mutiny are you referring to?

had left the Ghetto, making their way out by force thus violating the instructions which had been given. tions, or not, and you told us that was the case, that you knew it was the case, why was it necessary in the case of Jews to have any kind of investigation to prove any kind of a crime, if because of the fact that he was a Jew he was to be killed anyway?

A Mr. Prosecutor, at the beginning I said that I made every attempt to evade being forced to have to carry out the Fuehrer Order, because inwardly I objected to and against this measure of killing innocent people. In this case it was not a matter of carrying out the Fuehrer's Order, but this was a violation of the regulations issued by the Security Police, and of orders by the Wehrmacht.

Q I know that witness. But we have this situation. There is an order that all Jews are to be killed, the Einsatzkommandos received the order, and carried it out. Why should Nebe, or any Einsatzcommando leader tell you to conduct an investigation as concerned Jews, and to see whether they were members of the Partisan band, or whether they had violated anything the Wehrmacht directed when they would have been killed simply on the Fuehrer Order. Why was all of that necessary. It does not make sense to me. Can you explain it?

A I can not explain it. I can merely say that I received orders from Nebe to find out what I could, and then to act rigorously, with the sharpest means in the most ruthless manner, that is what he told me.

Q Did Nebe anticipate, do you know, that you would kill all the Jews?

A I didn't get the question. whether the investigation was just a matter of form?

A No, Nebe didn't tell me I could kill all the Jews. Nebe merely said I should go there and investigate the matter, whether it was true what the Mayor had reported, and then I was to act accordingly.

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that is the order he gave me.

Q Witness, isn't it true, that Nebe already carried out the Fuehrer Order in other cases? tell you to carry out the Fuehrer Order instead of going through all this useless investigation, which according to you might mean that some Jews might escape the death penalty?

A Well, I don't know why he didn't give me the order. Why he didn't tell me to carry out the Fuehrer Order. He just didn't tell me to do it.

THE PRESIDENT: Mr. Ferencz, will you please clear up in his affidavit a matter, because you are right on the very subject, and I don't know whether you now are coming to it, or not, or intend to come to it, of Nebe giving an order to establish an example, as he just said now that Nebe told him to conduct investigations. That is paragraph 4 of the affidavit.

MR. FERENCZ: Will you please explain that, witness?

THE WITNESS: Your Honor, that is the affidavit of 2 July, In this affidavit I formulated it in that manner but it is not complete, and, at the time I gave my testimony under psychological pressure, and I was nervous, and, therefore, my testimony was not as complete as when I completed it afterwards.

THE PRESIDENT: All right, proceed, Mr. Ferencz. BY MR. FERENCZ:

Q To come back to this situation. Nebe received the Fuehrer Order, and Nebe carried out the Fuehrer Order. That has been established here by several witnesses, and by the documents. Now, we have a situation in Tatarsk where there was a group of Jews, and in accordance with the Fuehrer Order they should all be killed. You told us that they were all killed, whether they were in the Ghetto, or out of the Ghetto, that all Jews were to be killed.

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It does not make sense to me that he would then say, go out and make a big investigation; see if you can find out whether they had intimidated the Mayor; find out if they had violated the Wehrmacht regulations; find out if they had contact with Partisans. And on the basis of your findings take such ruthless action that is necessary; why was that all necessary, why did not he just tell you to go and kill all Jews in accordance with the Fuehrer Order, in accordance with everything we have been doing up to now. Can you explain that, please? this limitation really existed, and that, therefore, he didn't give the order to shoot all Jews as mentioned in the Fuehrer Order, buy only those who had not been shot because being fit to work, but now, if they violated regulations, were to be executed just because they had violated the regulations issued by the Security Police and the Wehrmacht.

A That is the only explanation I can give. I don't know why Nebe didn't give me the order to shoot all Jews rigorously, because in that case he would have given me the order to shoot women and children because they were included, buy I didn't do that because I could very well see that this was not necessary; that the mission was not such that I had to carry out the Fuehrer Order, but said, that those persons who had left the Ghetto and those persons who had threatened the Mayor were to be punished, that I had to investigate this matter and to proceed accordingly. Ghetto, whether they had left the Ghetto or whether they didn't leave the Ghetto, were to be killed, and that this was the fact, generally?

A No, I didn't say that of all those who were in the Ghetto. This was not possible, because the Jews were not in the Ghetto any more, not there in the Ghetto in Tatarsk.

Q Were not all Jews to be killed?

A I beg your pardon?

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Jews were to be killed? Order was not decisive. didn't make any difference as concerned Jews. The mere fact that they were Jews was sufficient. Isn't that correct? for the purpose of being shot?

AAt the time, Mr. Prosecutor, I certainly didn't think this, or know it.

Q You heard about the Fuehrer Order, had you not?

Q Why do you think they were collecting these Jews. You had an order that all Jews were to be killed, and you put Jews into the Ghetto. Why did you think they were there? then they partly were not killed, they were used for work, every kind of work. the women and children, the old persons and the sick persons?

Q Let's limit our discussion to those under the Fuehrer Order, either in its full context, or as modified, these people were to be killed, is that correct? that correct?

Q Then why did they put the Jews into the Ghettos?

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work. into the Ghetto?

A Well, I don't know that. were supposed to be killed by the Einsatzcommandos. Now I ask you, why did they put them into the Ghetto, and you can not figure out the particular answer?

A Mr. Prosecutor, I never had anything to do with this Jewish affair. I never arranged the Ghetto, or set it up. I am not very familiar with this matter; that is why my testimony might have contained contradictions. I don't know exactly which Jews were brought into the Ghetto, and which were not brought into the Ghetto; whether sick people and old people were kept in the Ghetto; or whether they were shot, in whatever manner the policy varried greatly in this matter. I say I don't know. Really, I don't know how this was done. I never had anything to do with bringing Jews into the Ghetto, and shooting of Jews, because of the Fuehrer.

Q How long were you a SS-major on the Eastern front? December 1943, that is two and one-half years. or to hear or learn that Jews were collected in the Ghetto for the purposes of being killed? Jews were in the Ghetto to be assigned for work. unable to find out in all this time that you were a high ranking SS officer, when millions of people were killed by the Einsatzcommandos; you were unable to find out what was happening to these people? Do you expect us to believe that thing, Klingelhoefer?

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A Well, I knew that Jews were being shot of course. Of course, I knew that from the Fuehrer Order, and also that some of the Jews were being saved in order to do the work. for the purpose of being killed in accordance with the Fuehrer Order, isn't that a fact?

Q Now, I am asking you, isn't it a fact? Why do you say "probably?" You were there for two and one-half years as a high ranking SS-officer?

Q Didn't you know as a fact that Jews were collected in the Ghettos and killed if they were unable to work? them to work.

Q How about the children?

Q They were put to work, too? were killed? Jewish people fit for work were killed.

Q And that it was what happened generally. Those were the orders, and that is the reason they were brought together, so it would be easier for the Einsatzcommandos to kill them, that is correct, isn't it?

A Well, that can be supposed. I don't know whether it was like that.

Q How was it then? brought Jews back into the Ghetto in order to utilize them for work, and, that later on at the end the Fuehrer Order was and had to be carried out, that is quite possible, and I said I personally had nothing to do with this matter, and didn't know anything about these things which happened.

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I didn't bother about it. Purposely, I didn't take any interest in these cases because I felt uncomfortable to talk about that problem.

Q But you do admit that you knew?

A Please? and in the Ghetto were killed in accordance with the Fuehrer Order, not by you, but by others? ren and put them into the Ghetto? them back to the Ghetto, yes. into the Ghetto were going to be killed by some one else, and you took care of the men yourself, that is true, isn't it?

A No, Mr. Prosecutor, at the time when I carried out the action, and I brought the women and children back to the Ghetto, I didn't do that with the idea and awareness that these Jews, these women and children were to be shot. That never occurred to me. in the Ghetto, and who were unable to work, were killed in accordance with the Fuehrer Order? inwardly didn't think of it, and didn't expect it, that I brought these women and children into the Ghetto, especially so they could be shot later on. I didn't think of that.

Q You didn't think if for the purpose of having them killed, but you know at the time you shot the male Jews in Tatarsk that you put the children and females into the Ghetto, that they would be killed, or some, and that all of those were killed in the Ghetto who were unable to work, that is correct, isn't it?

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Q Is that correct, or is it not correct?

AAs I already said at the time I didn't think of that, Mr. Prosecutor. I can not say anything else.

Q You didn't give it any thought? knew that a modification existed, not to shoot people, because during the action at the time which I knew was carried out based on the Fuehrer Order, the women and children were not shot. I assumed that at the time these Jews were not to be shot, but that perhaps they were going to be subjected to a resettlement at a later time. I believe that was my idea. I never thought that the Fuehrer Order and this final solution should be carried out in such a radical manner. I only learned about it much later.

AAt the moment when I carried out the action in Tatarsk, I didn't have that idea.

Q You told us you knew that all Jews were to be killed? You knew there was a modification later on, that those Jews who were able to work didn't have to be killed. You told us that you knew that all Jews in the Ghettos who were unable to work were killed, and you told us that you took a group of Jewish women and children into a Ghetto. Now are you saying that you did it without giving it any thought; you just put them in there to save them? Ghetto according to general instructions. That was all.

Q Do you know what happened to those women and children?

A Pardom me?

Q Do you know what happened to those women and children?

A When they had been brought back into the Ghetto? I don't know, no.

never heard about them again? of the German, I have this description: "The action in Tatarsk" and it says that the village was combed very systematically, and the Jews were herded together in the market square. Some of them had fled and had to be driven out of the nearby woods."

Q Who carried out that action?

A Pardon me? that the Jews had left the Ghetto, and I had to come out the woods. were beaten when they were herded back to the Ghetto?

A No, Not so far as I know, I didn't see any Jews being beaten. years as a SS-major in the Einsatzgruppe? beaten, certainly not.

Q What happened to the Jews that resisted arrest?

A I beg your pardon?

Q What happened to the Jews tried to resist arrest?

A Well, I don't know. they marched nicely down to the Ghetto. Never resisted, there was not beating, it was all a very nice affair. Is that what you are trying to say? course.

Q Give us some particular cases?

A I can not generalize here. It can, of course, happen, that someone does resist arrest.

Q You ever knew of any case, and you don't know of any case in which the Jews were beaten, generally. Why were they brought together. What was it, that they were herded together in the Market square and driven out of the woods. What does that mean? Nebe and treated in the manner indicated there, just as it is usual during raids, when people are taken out of the forests and houses and the guard make them walk in front of them. I can not explain it in a different manner.

Q Were any of them shot on the way?

A On the way? the market square?

A No. I don't know. Certainly not in Tatarsk. who were able to work were not shot?

A That wasn't my order to look after that - not to shoot those fit for work. My order was that I had to carry out the investigations and put those in the ghetto and not to select people.

Q Didn't you ever tell Noack that he shouldn't shoot those who were able to work? carried out.

A Noack did not have to say anything here. He merely received the order for his action from Nebe. I could not interfere. This was an order by the Fuehrer which had been passed on to him by Nebe. I had no influence whatever on this matter. that only those -- or to save those who were able to work? acted according to the order by the Fuehrer. And he actually did not shoot those suitable for work, according to what he told me. He told me that, at Tatarsk, he once shot twenty Jews unfit for work because at the time this modified order existed.

Q Did you ever discuss this question with Mr. Wartenberg.

A Which question?

who were able to work?

A I did not tell Noack anything to this effect. Noack knew this himself because he was an expert of Jewish affairs. I myself did not know about it. It was Noack who told me about the fact that only Jews unfit for work were to be shot after he had carried out this action in Tatarsk. matter with Mr. Wartenberg during your interrogation?

A Which question? everybody or only kill those who were unable to work? with him. I believe I only made general statements about the anti-Jewish action, I do not remember having gone into details. your recollection. I will read it through in German. Q. "How many men approximately were brought together? A. In Tatarsk all Jews were brought together. However, I insisted on it that if he wanted to shoot these people and had to do it the old people and the sick people were to be shot and the others were not to be shot." Do you remember that now?

A No, I did not say that. I don't know that. statement to the interrogator Wartenberg? because I had no influence on these matters. I had explained to Mr. Wartenberg that I was neither in charge of or had supervision over Noack nor could I give him any instructions.

execution which you had ordered when suddenly you were called away because there were some Jewish women having some dispute with some Russian women, is that correct?

Q What did you do to those Jewish women?

A I did not do anything with these Jewesses. It was like this. The Jewesses wanted to bring back their property into the Ghetto which they had brought out the previous day and the Russian quarreled about their property claiming it was theirs, and I saw to it that the Jewesses got their property back and could take it back into the Ghetto. women to see that the Jewish women got their property back and it was safely taken back into the Ghetto?

A Yes, that's what I said. had ordered all Jews to be killed? this action in the Tatarsk occurred it never occurred to me that these Jewesses were to be shot later on. I did not think of that. I said so before. and you took them back into the Ghetto and you knew there was a general order to kill all Jews and you had been a Kommando leader in an Einsatzgruppe but it never occurred to you that these women might all be shot; is that what you say? objected to all this. I cannot express it differently. It repulsed me. It never occurred to me.

occurred to you that somebody might be killing the Jews, is that what you are trying to tell us, Herr Klingelhoefer?

A I don't get the question. want to kill these Jewish women. If you didn't know it then, you see now in the reports that millions of Jews were killed. You were a commando leader in an Einsatz you were an SS-major, you had heard about the Fuehrer order, and now you say it never occurred to you that these women might be killed. not occur to me, Mr. Prosecutor. Later on, of course , I knew that women and children and all Jews were to be killed, but at that time when I sis this - what should I say - from a humans impulse I acted in that manner and protected the property of the Jews. This was purely a humans idea without thinking about it until later on.

Q You say at that time you didn't know these women were to be killed? When did you first learn of the Fuehrer order? Give us the date as boat you can remember. Dueben during the roll call which Sturmbannfuehrer Rausch carried out and conducted. This roll call took place shortly before we left for the Russian border.

Q That was on what date approximately?

Q 1941? take place? end of September or the beginning of October 1941.

this execution of the Jews and in June you had the order to kill all Jews. What do you mean when you say that you never heard about it, that up until the time of the Tatarsk action you didn't know that all Jews were to be killed? Did you forget it from the time you heard it in June and the time you had to marry it out in September? Nebe in Tatarsk to stop munity and to act severely and to investigate the cases of disobedience and I did not get the order to carry out anti-Jewish action according to the Fuehrer Order. and to act severely. As were discussing this secret of the return of the Jewish property to the jewish women and your taking them back into the Ghetto. I am trying to understand how it is possible for a Kommando leader to prior, to return Jews, goes out of his many to return property to them and to escort them back into the Ghetto where they would later be killed.

A Mr. Prosecutor, first of all I wasn't in charge of a Kommando. I was merely assigned by the Einsatz Group chief and the Einsatz chief did not give me the order to carry out anti-Jewish actions. Ghetto where they had left unlawfully and so I did according to orders. confused and I would like to give you the opportunity to clarify them. You say that you took the property away from the Russians and that you gave it back to these Jewish women in view of the fact that you know that there were orders to execute all the Jews.

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Why sis you go to the trouble of giving them back the property? that was the only reason I did this. I did not have any other thoughts. killed, why did you go to the trouble of having investigations to determine whether they were Partisans or had violated Wehrmacht orders?

Q Do you find any sense in such an order. Can you find any justification in giving an order and wasting a lot of time when Jews were going to be shot anyway?

You said all male Jews were found guilty. It might have been a fortunate coincidence. It might have been unfortunate. But you say on investigation all were found guilty. I don't understand why if all Jews were to be killed why anybody should bother with investigations to determine any facts. Can you explain that? of regulations and I said that especially I personally evaded or tried to evade the execution of the Fuehrer order. order. Perhaps there is something in particular that hasn't been brought out but we have - -

THE PRESIDENT: I think you have exhausted this episode pretty thoroughly. Now he has given his explanation whether you accept it or not is up to you. But he said he got these orders, he want there, he investigated them, He knew of the Fuehrer order and does not know why he took the women back when he knew they were going to be killed.

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He said all that and I don't think there is any use going over it again.

MR. FARENCZ: Yes, your Honor.

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BY MR. FARENCZ: make false reports showing the killing of Jews without any indication of investigation?

A It says here because they disobeyed orders. Why other explanations are not mentioned I already explained to the President yesterday - that this is a report based on a verbal report which I made personally to Nebe. He didn't know hoe he formulated this report. Why he wrote it this way I don't know. I did not write the report in that manner. It does not originate from me.

Q How long were you on the Staff of Einsatzgruppe B? middle of September 1941 until the end of October 1941. Then I was in charge of Advanced Kommando Group Staff until 2 December and then finally 25 December 1941 I returned to the Group staff and ever since I have constantly been in the Group Staff.

Q Until when?

Q Therefore we have this as dates: you were a member of Einsatzgruppe B. From the middle of September to the end of October 1941 and from 25 December 1941 until December 1943 - is that correct? two years. of Einsatzgruppe B staff how many executions took place? Approximately?

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A I cannot say that. I don't think that executions occurred, in any case I did not hear of any in the staff.

Q During these two years? gruppe B?

A In Einsatzgruppen B in general, yes. Of course. But in the staff itself I did not hear anything of executions. that was not the job of the staff to carry out executions. by the units under the command of Einsatzgruppen B?

A I don't understand that. Units under the command of the staff. What units are you referring to?

A I don't know that. I never had anything to do with that. doing?

A No, I did not hear that. They did their own duty as SS Police. I had to deal with a very special work. I worked quite independently and had no connection at all with the other work of the Einsatzgruppen. staff, who had higher rank than you did?

A That varied very much because people changed. In general, in the staff, apart from the chief himself there was his deputy. That was Obersturmbannfuehrer, Senior Government Councillor. Then there were various departments, this is department chief for personnel matters -

Q What were their ranks?

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those two years had a rank higher than your rank in Staff Einsatzgruppen B?

A I can tell you that. In the staff there were mostly the chief, his deputy and the department chiefs. Those were the people who if they had the rank of Sturmbannfuehrer, or major, that was my rank, they had higher ranks because they were department chiefs in the Einsatzgruppen B. Just like the Kommander of the Einsatzgruppen they were all required to have been in charge of an office in the Reich. gruppe B?

Q Think about it. Approximately. It doesn't have to be very exact. 20. Something like that.

Q Naumann commanded all of these officers? various departments, in administration there was an administrative chief. power to order the activities of all the Sonderkommandos as shown on that chart?

A The staff did not have to give any orders. Instructions were given by the chief. responsible for all of the Sonderkommandos and Einsatzkommandos which comprised the Einsatzgruppe B? responsible for his own work and the chief of the Einsatz gruppen Naumann was in charge, to whom all the Kommando leaders were responsible.

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was in charge of all Einsatzkommando chiefs but the rest of the staff, namely you, had no responsibility?

A No. The command channels went directly from the Kommando leader to the group leader, who gave his instructions to the Kommando chief. All other - -

Q Didn't the staff in Einsatzgruppe B Headquarters assist him in carrying out his duties or were they just remaining there independantly? military channels of command. The department leaders were subordinate to the chief of the Einsatzgruppen and the members of the staff were experts within that staff who worked on material coming from the Kommando but according to orders of the Einsatzgruppen chief. That is an organization for military and administration purposes. headquarters with Einsatzgruppe B did you ever hear about executions being carried out by units of Einsatzgruppen B. Einsatzkommando carried out these executive tasks, that is, security police tasks were carried out in the course of which executions took place. Of course, I knew that. It was our assignment to guard the security of the territories. communists just because they were Jews, gypsies or Communists? that is what you are referring to, was being carried out by the kommandos.

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get out of Einsatzgruppen B during those two years?

A Yes, I tried once. But Naumann would not let me go.

Q Why did you try?

A I did not immediately go to Naumann because I didn't feel comfortable, because I did not like the whole job of Einsatz, that is why I tried but did no succeed. tried to get out of your assignment?

A I did not go directly to Naumann. I was in Berlin and in Berlin talked to a leader of Office VI of the Operations "Zeppelin" and he told me he would try to get me free for Office VI and then he sent a teletype to Naumann which Naumann showed me, and said: "Obersturmbannfuehrer Grefe at the time asked for you but I can't release you. You have to deal with these tasks - I can't do without you." That is what Naumann told me. out of Einsatz Headquarters, did you? it. He would not have released me.

Q How do you know he would not have released you?

A I knew that he would not release me. I knew that quite well because I was a special expert speaking Russian perfectly and knowing the conditions. Therefore he could not do without me. Naumann regarded you as indispensable and didn't want to release you, is that correct, particular task and considered me indispensable.

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Q Therefore, you would say, wouldn't you, that Naumann regarded you as indispensable to the successful functioning of Einsatzgruppe B?

A What? functioning of Einsatzgruppe B?

A I don't get the question. interpretor and because I knew Russian conditions. That is why he needed me. operate successfully without you? Is that correct? on me but the department I worked in considered me indispensable but this was not connected with the entire Einsatzgruppen. reports and had nothing to do with killings in any way?

A What?

A No, I was alone in the department. I had no assistance. I was sitting on my own and I evaluated documents and printed material, I interrogated people and talked to them when I wanted to hear something for my extensive reports.

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Q. Why did you feel uneasy in that job? It sounds pretty good to me.

A. It was the general impression I had of the entire assignment that depressed me so much.

Q. Were you depressed when you thought about the activities of Einsatzkommandos and Einsatzgruppes when you sitting here in the jail in Nurnberg?

A. I beg your pardon?

Q. You say you were depressed about all this activity of the Einsatzgruppe. I am asking you, were you depressed when you were here in Nurnberg in the jail and you had plenty of time to think about it?

A. I was depressed, of course, but not only about my work in the East, and about the whole atmosphere there, but in general I was depressed about the collapse of the German Reich and about the things that I heard later on which I did not know anything about before. Those were the things that depressed me particularly.

Q. Did you attempt to commit suicide while you were down here in the jail?

A. Yes.

Q. Why?

A. That was as a result of sending the letter to Mr. Wartenberg. I had such an inward conflict that I no longer realized whether I had acted in the right manner. On the one hand, I was trying to say the truth as far as possible, knowing the catastrophe which had happened and my responsibility for the development of things; on the other hand, I felt that I had to give away here a comrade, a former superior, In this state of excitement and in this conflict I found no way out, and my nerves were in such a bad state that I tried to commit suicide. I thought I could not live honestly this way. That was the reason I tried to commit suicide.

Q. You say, knowing your responsibility for the development of things you tried to commit suicide, is that correct?

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A. No, I tried to commit suicide because I had such conflicts that, on the one hand, I surrendered this smuggled note, because I did not want to give somebody else away, but, on the other hand, I felt that I gave a comrade away, and my honor was lost, and the thing upset me so I didn't know what to do.

Q. You did not think you lost your honor when you shot Jews, did you?

A. I shot Jews, Mr. Prosecutor, because during the war

Q. We have gone through all that already. Tell me, did you feel that you lose your honor when you took these Jews out and shot them in the back?

A. No, in that case I acted according to orders to look after the security of the rear Army territory of the German Wehrmacht.

Q. You told us this morning or yesterday that you gave this note which Naumann had slipped to you, you gave it up without reading it because you didn't want to be coerced into telling an untruth, that you were afraid that Naumann was trying to coerce you to say something that wasn't true, is that correct?

A. Yes.

Q. Why should Naumann try to conceal the truth?

A. I thought so, I assumed so at the moment. When I got this note I assumed that Naumann would try to persuade me to camouflage something. That was my immediate reaction to his giving me this secret note in prison.

Q. But why, The question is, do you know of any facts that would lead you to believe that Naumann would attempt to conceal the truth, and for you to be so much convinced of that, that without even reading the note you betrayed your comrade, as you put it? What facts do you know about Naumann which leads you to believe that he is attempting to conceal the truth?

A. I did not quite get the question.

THE PRESIDENT: You did have quite a number of questions thrown in there, Mr. Ferencz.

I think the last one would probably sum up everything.

Q. (By Mr. Ferencz) What facts do you know about Naumann which convinced you that he was attempting to conceal the truth?

A. I do not know any fact from Naumann. This was merely my instinctive reaction because a note was being handed to me. I would not only have treated it in that manner because it came from Naumann, but if it had come from anyone else. I consider a clandestine note which is granted to me in prison, an attempt to persuade me to do something which is not correct.

Q. Naumann testified that he just did that from a comradely attitude.

A. Well, that is true. I can't quite explain it perhaps. That was the one reason why I reacted in that manner and therefore tried to commit suicide, that he perhaps did not want to make me say a lie, but merely wanted to help me. That was the idea why my conscience was so troubled, but instinctively, in the state of excitement, I had acted in that way, and later on when I thought about it, I realized that thus I had perhaps betrayed a comrade and had lost my honor.

Q. You started to tell us this morning what you had written to Mr. Wartenberg, and you told us part of it.

A. Yes.

Q. I am now going to give you the note that you wrote to Mr. Wartenberg, and I am going to ask you to read it out loud to the Tribunal.

A. Yes.

Q. Is that a photostatic copy of the note which you sent to Mr. Wartenberg upon receiving the message from Naumann?

A. Yes, that is right.

Q. Would you please read it slowly and carefully?

A. Yes. "Nurnberg, 4 July, 1947." Addressed to the interrogator, Mr. Wartenberg.

"I am handing over the enclosed note which was given to me secretly by Erich Naumann on Thursday, the 3rd of July, 1947, in the evening hours after the walk. I have not opened it and have no knowledge about the contents. I refuse to have anything to do with things of this sort. Already in peacetime and even more in the course of the war, when observing the measures and their results, I have had doubts about their moral and ethical advocability, doubts which estranged me with ever growing intensity from the atmosphere in which I lived and worked in good trust and in a discipline born of long training. Too late, unfortunately, after the collapse I gained complete insight into the full extent of the horrible blasphemy which was carried out here. Nevertheless, I ask that this stop of mine not be interpreted as an attempt to excuse myself in any way or to ask for good weather. I am fully conscious of the fact that I must bear the consequences completely for my personal attitude and my acts. But, I will not burden my conscience with acts which are in complete contradition to the attitude I have now again achieved. Waldemar Klingelhoefer," signed.

MR. FERENCZ: Your Honor, I would now like to offer this statement by the defendant as Prosecutions Exhibit -- I believe the number in 190. I will distribute it at this time to the Tribunal and to the defense council.

THE PRESIDENT: The exhibit will be accepted.

MR. FERENCZ: Klingelhoefer, I am going to ask you some questions about this statement and about your attitude concerning the activities which took place in the East. I want you to think about it and read your statement over again during the recess. recess, in order to give the defendant the opportunity to consider his questions carefully.

THE PRESIDENT: Very well. The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

(The hearing reconvened at 1515 hours.)

THE MARSHAL: The Tribunal is again in session.

PRESIDENT: Proceed, Mr. Ferencz.

CROSS EXAMINATION (Continued) BY MR. FERENCZ:

Q. Herr Klingelhoefer, in this statement you gave Mr. Wartenberg before attempting suicide, you spoke about the horrible blasphemy which had been carried out; you said there was no attempt being made to excuse yourself, and that you didn't want to burden you conscience with acts which were in complete opposition to the attitude you had again achieved. Do you still have the same attitude you had achieved when you wrote this message?

A. Yes, of course.

Q. Do you have any feeling of regret or remorse about what happened under your command in the East?

A. I actually never led the commando in the East, Mr. Prosecutor; I never led a commando. The only commando which I led was the small Advance Commando Group Staff, and whatever was done by it does not cause me to have any remorse. That was just destined for the assignment in Moscow. Everything else I did on order, which I have described and mentioned. And as far as I know, that whatever I did, I did it in a manner that I could not consider as a burdening of my conscience.

Q. Do you have the feeling that you did anything wrong while you were with the Einsatz in the East?

A. No.

Q. And do you still contend that everything you have told us in this courtroom has been ture?

A. Yes, to the best of my knowledge.

MR. FERENCZ: We have no further questions, Your Honor. BY THE PRESIDENT:

Q. One point I want to clear up. I understood you to say that you knew of 50 who had been executed. Does that constitute the maximum number of d oaths of which you were personally aware--deaths by execution?

A. That is the figure of the executions which I personally knew about. Outside of these 30 Jews and the 3 Jewesses whom I had executed, that is the figure which I personally got to knew about.

Q. Then, in all, you know about 83?

A. Yes.

Q. I wanted to clear that. This affidavit of yours was signed on July 2, 1947?

A. Yes.

Q. Then on August 27, 1947, you made a supplement to the affidavit, didn't you?

A. Yes.

Q. When you made this supplement which consisted of a correction in the date of the period that you were in charge of a certain commando, why did you not make the other correction of which you now complain?

A. Your honor,it was just on this day when I was called upon to make those corrections by Mr. Wartenberg when I explained to him that after I had now had the time to think matters over,and also pointed out that those various corrections existed that I would like to make those corrections and Mr. Wartenberg told me it would be the best thing if in the case of extensive corrections we would make a new affidavit, and thereupon he explained to me that I should prepare the new affidavit and the facts for it,and he would call me at a later date and then he would accept from me the new and corrected affidavit. That is what he told me. Of course, I visited him with my attorney who heard and listened to all these negotiations. Then Mr. Wartenberg called me on the 17th of September and I gave him the second affidavit.

Q. This affidavit of November 27, was it written up on your own initiative?

A. This second affidavit was made out by me on the basic of the first affidavit, together with the corresponding corrections and additions. Yes, I did that myself. Mr. Wartenberg then read through it and accepted it.

Q. Did you write it out in your own hand?

A. No. I did not write this in my own hand. First, I wrote it down by hand and then my attorney typed it.

Q. This is the one of August 27 -- the one of August 27?

A. Not the corrections. I did not write the corrections. Mr. Wartenberg prepared the corrections and he then filled them in. I was called to see him. you mean the correction of the date, is that what you mean, Your Honor.

A. Yes. The one, it was made up on August 27, was this made on your own initiative?

A. No. I was asked to go to see Mr. Wartenberg because Mr. Wartenberg had determined the mistakes of the first affidavit which I had overlooked.

Q. And that is when you called his attention to these other mistakes, is that what I understand you to say?

A. At this occasion I immediately told Mr. Wartenberg that I was referring to the conversation I had with him about the first affidavit. While pointing out that many developments and conditions as they were described there were not quite according to the truth, and that I new had had the time to think about all these matters thoroughly and that I recalled many things again, and now I would like to make these corrections and additions.

Q. When you signed the affidavit on July 2, 1947, did you at that time believe that the facts which you expressed in that affidavit were correct?

A. I didn't quite understand.

Q. Just a minute. You have explained to me that on August 27, 1947, when you spoke to Mr. Wartenberg you said to him that now that you had had an opportunity to reflect on what you had stated in your affidavit of July 2, things were clearer to you and, therefore, you wished to make some corrections.

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Now, am I correct in that, or am I not?

A. Yes.

Q. So when you signed the affidavit on July 2, 1947, you believed that the facts written up in that affidavit were correct?

A. When I signed it, I thought that that was true, but at the same time, as I have said repeatedly, Your Honor, I made the reservation which Mr. Wartenberg gave me, namely, he told me that I could make the corrections at a later date, as far as the formulation is concerned and with this reservation given to me orally, by him, I signed the affidavit.

Q. Did you, or did you not believe the facts stated in the affidavit of July 2 to be true when you signed the affidavit?

A. Not quite, Your Honor, because I made this reservation and I signed it with this reservation.

Q. You permitted yourself to sign a paper in which you went into the description of executions with reservations that you anted to make some corrections, is that what we are to understand?

A. Pardon me, Your Honor, as far as the facts given by me in this affidavit are concerned, I did not want to deny these or correct them, I merely wanted to correct the fact about my position and clarify it. I never wanted to deny the incidents and events as such.

Q. Well, then, the facts contained in this affidavit of July 2nd are correct?

A. The facts are correct, that as far as the two actions are concerned, I undertook the Tatarsk action independently and I attended also the other action, Matislawl and that I was a witness to this action, of course; these are the two actions which I experienced, and which I listed in the first affidavit and which I confirmed in the second affidavit and completed them there.

Q. And do you confirm this statement, "The executions proper were carried out by Noack under my supervision"?

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A. No. I do not confirm that.

Q. Did you tell Mr. Wartenberg this?

A. I spoke about it, of course.

Q. Did you tell Mr. Wartenberg that the executions were carried out by Noack under your supervision?

A. I told Mr. Wartenberg that I did not have the order to carry out the supervision thereupon Mr. Wartenberg told me that I was the senior officer at the place and automatically it was up to me to carry out the supervision, and this formulation was put into the affidavit by Mr. Wartenberg. It was not put in by me.

Q. Did you see that particular statement when you signed the affidavit?

A. Yes, Sir.

Q. And you approved it?

A. Yes.

Q. You describe the execution in some detail. You explain how the executees would fall into the pit, then "in case it was noted that someone in the pit was still alive, he received a coup de grace". How did you determine whether a person was alive or dead, only by observing whether there was still movement in the body?

A. Your Honor, I personally never had anything to do with this matter. I merely gave this description on the basis of what I saw or heard at this execution of these 10 Jews by Noack. That is what I have described, that's all.

Q. This statement says "approximately 50 Jews were shot during these two executions". Then you saw two executions and observed the manner of death, is that right?

A. That is what can be gathered from the affidavit. That is how it was put in, but it doesn't refer to the 50 Jews when I saw, but as I later explained, it refers only to the 10 Jews when I saw.

Q. Well, you saw these 10 Jews shot?

A. I saw how the 10 Jews in Matislawl were shot, Yes.

or not since, they had fallen into a pit?

A No. That was not my business. I had nothing to do with that. I later explained that a medical noncom was there who had to take care of this matter. pulse of each executee?

A I do not know; I was too far away.

Q How far away were you?

Q You saw this execution? by the bullets, didn't you? in that instance?

A No. I don't know how to explain it. I was about 100 meters away, and I could, of course, see how the Jews fell in, but what the medical noncom did in the pit, I could not see.

Q You were 100 meters away when this execution occurred?

Q Did you talk to Noack?

Q What did you do, talk to him by field telephone?

A NO, NO. He came to see me when I approached it.

Q Where was he standing at the point of execution? noncom. Noack had the supervision.

Q How far was Noack away from the actual scene of execution?

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supervising? he was supervising? about. scene of the execution? that what you are telling us?

Q Well, that is exactly what you said. Now, explain it. Noack is supervising the execution. Tell us how far he was away from the execution squad. moment when the shots were fired he was 100 meters away from the execution place. He was standing with me.

Q That is the way he supervised? when he was supervising the execution, he was a hundred meters away talking to you, is that what you want the Tribunal to believe?

Q And from a hundred meters' distance you observed what this noncommissioned medical officer did at a hundred meters' distance? from a hundred meters away before, for you can recognize him a hundred meters away, I saw that he stepped into the pit, but what he did, I could only imagine, that is he would go in there to establish whether the victims were dead.

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Q And did he deliver the coup de grace to any of the victims?

Q Why did you say here, "in case it was noted that someone in the pit was still alive he received the coup de grace"? tion in order to refer to this incident, and when I was asked about this, I said it was customary that the victims would receive the coup de grace. accustomed to executions, aren't you? who weren't killed outrightly received the coup de grace? You knew that was the custom, didn't you, from experience? living gets a coup de grace. I didn't find that out from my own experience buy from the general usage. I did not mean to say that.

Q How do you understand "general usage". Not everybody knows that. I don't know; I never saw it; how does one know that in the event the victim is not killed outrightly and is still squirming and screaming on the ground that then someone comes along and shoots him down--how does one know that--how did you know it?

A I don't know what you mean by the question.

Q Well, I will tell you what I mean by the question. How many executions did you actually witness? reported.

Q And how many were killed there?

Q Did you see the 10 fall into the pit?

A Yes, I saw it. I saw it from the distance how they fell in.

Q Yes. How many were there in the execution squad?

Q And how many shots were fired?

A Every man shot. I just could see the shots. I couldn't see from the badk. I merely saw that the order was given by the noncom and that they fired.

Q Were the victims blindfolded or not?

A No. They were standing there with their back towards it.

Q Were they standing or kneeling--you say they were standing?

Q Were they facing the grave?

Q Did they have their outer clothing off?

A No. They were dressed, as far as I saw, they were all dressed. that right?

Q Then the NCO leaped into the pit, is that right?

Q How deep was the pit?

A I do not know, Your Honor, I wasn't at the pit. the NCO's head?

A No, I could not because the men were surrounding him. I could not see the sergeant himself. I just saw when he jumped in and when the other men surrounded him.

Q How did you know he was a sergeant?

A Because I knew him personally. He was the medical noncom of the group staff. the sergeant at a hundred meters?

people there.

Q You could recognize this man at a hundred meters?

Q And were there any shots fired when he was in the pit?

A No, I didn't hear any.

Q Well, then no one received the coup de grace? noted that someone in the pit was still alive, he received the coup de grace? was customary. I did not mean to refer to this special case, but I said that as a general statement. I didn't think of any special case.

Q Because in other executions you had seen that done?

Q That is the only execution you saw in three years in Russia? weren't ordering it? long, and I wanted to see what had happened because I heard that Mstislawl had been disturbed by partisans, and I thought that Noack had trouble with partisans. That is why I drove out there, in order to help him. About how many partisans were in that area? Mstislawl. The mayor told me about it.

Q. You told us that the place was infested with partisans generally. About how many did you assume were in that area?

A. I cannot say.

Q. Well, do you assume that there might be hundreds?

A. It might be 50; it could be 100; it could be 200. No figures were kept.

Q. All right. 50 from 200. How many men did you have?

A. Under my command there were six men whom I had with me and Noack had about 30 men.

Q. You started out to relieve Noack with a column of six men when there might be 50 to 200 men to oppose, is that right?

A. Yes, of course, Your Honor, because at that moment I didn't think of that, whether these were five or six men, so I feared that a comrade of mine had got into trouble with his men and then I must assume that even with my six men I could help him. These were my thoughts.

Q. Were you trained as a soldier?

A. I was a soldier in the first World War, yes.

Q. Is that the reason you were taken into the Einsatzkommando because of your military training?

A. No, I was sent to the Einsatzkommando because of my linguistic knowledge. My military training was not so thorough that it would warrant this.

Q. When Nebe sent you to Tatarsk to execute Jews, to conduct an operation which in your affidavit you say was to establish an example and you knew that it would result in a killing of people, if you were so conscientiously opposed to killing, why didn't you say to Nebe, "I was brought in as a translator, not as an executioner."?

A. Your Honor, in this case I was the only officer in the Group Staff who knew the conditions and the roads in Tatarsk, because I had been there once before.

Nebe told me this expressly. This was a territory which was evidently in danger of partisays and at the same time my Russian linguistic knowledge was always important, but at this moment it was only important that the only leader who was in a position to do anything was Noack and he was already in Berlin. That was the reason why Nebe gave me this special mission.

Q. Did he order you to establish an example?

A. He didn't say this. He didn't express himself in that manner. He merely said that in all severity and ruthlessness I should act, after it had been determined that the message of the mayor corresponds to the truth.

Q. Why did you sign the affidavit with this phraseology after you knew what Nebe told you; your affidavit says, "Nebe ordered me to establish an examply." Did you tell that to Wartenberg?

A. These were my words. That is what I said at the time. Yes, of course.

Q. Oh, you did say that? Very well.

A. Yes, one moment. I said that. Yes, Your Honor.

Q. All right, now, one thing I didn't quite get clear. Mr. Ferencz asked you if you had discussed with the Defendant Naumann the answers which you read here in court, whether you discussed with him those answers before you actually delivered the answers in court. It didn't become clear to me whether you answered that in the affirmative or not. You did answer it in the affirmative and then your attorney made an objection and it was left not too clear. Did you discuss your testimony with Naumann before you delivered it here from the witness stand?

A. Naumann just gave me the questions, Your Honor, and thereupon I formulated my answers, of course.

Q. Naumann gave you the questions? The Defendant Naumann?

A. Yes.

Q. Well, you collaborated with your co-defendant before you came in to testify?

A. Well, I didn't collaborate. I got the questions from him and to the best of my knowledge I answered them without collaborating.

DR. MAYER (Attorney for the Defendant Klingelhoefer): Your Honor, there is another misunderstanding here. The witness is mixing up the questions asked of him by the defense counsel for Naumann and the questions put to him by me.

Q. (By the President) You are not referring then to the testimony which was elicited by your own attorney, Dr. Mayer?

A. No, no. I refer to the questions which I was asked by Naumann, or by the defense counsel of Naumann.

Q. And you received these questions from Naumann and then you formulated your answers?

A. I received those questions from Naumann and I formulated the answers to the best of my knowledge, yes.

Q. Did he suggest the answers to you?

A. No, I made them up myself.

Q. Did you talk with him at any time about the answers you were going to make?

A. Yes, I told them to him, yes.

Q. Why is it that on this occasion you were on the most cordial terms with Naumann, received his questions, formulated the answers, talked with him about what you were going to say, where several months before you were so disturbed over a note that he sent you that you wanted to commit suicide? Why was there this vast change in attitude?

A. There is nothing different in the attitude, Your Honor. I said I had tried to commit suicide because I had respect for Naumann as a comrade and that was the conflict which I developed, that on the one hand I had to do my duty and on the other hand I had respect for Naumann as a comrade whom I had to bestray in this manner.

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Thus I did not think of Naumann purely in personal terms.

Q. One final question on this affidavit, Witness. Your affidavit of July 2, 1947, do you confirm the statements made in that affidavit?

A. Of the 2d of July?

Q. 2d of July, yes.

A. I confirm the statements in this affidavit with the addition that I have supplemented and made statements in the second affidavit , according to the possibility granted me by Mr. Wartenberg.

Q. I am speaking only of the affidavit of July 2 divorced completely from any other statement with the exception of the affidavit of August 27, in which you change one date. This document standing alone, do you confirm it or not?

A. The document as it is, I cannot confirm without reservations.

Q. Why did you not tell Wartenberg the whole truth when he interrogated you and why did you give him statements which you now seem to refute? Why did you tell him things which according to your statements now are not true?

A. Your Honor, at the time I was interrogated I was in a very excited state of mind.

Q. Very well.

A. And I was very briefly interrogated so that I had no possibility to think thoroughly of these matters, which had happened so long ago.

Q. All right, let's look at this affidavit. You say that you were excited and that the events discussed happened six years before and therefore they were vague in your mind, is that correct?

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A. Yes.

Q. Now, how is it that you recall that back in 1923 you worked in a bank for nine months, is that statement correct?

A. Yes.

Q. Were you excited when you said you were a banker for nine months?

A. Your Honor -

Q. Answer that question. Were you excited when you said that you had worked in a bank for nine months?

A. Yes, of course, I was in the same state of mind; that was quite clear.

Q. But you told the truth, didn't you? Even though excited, you did state the correct number of months you worked in a bank?

A. Yes.

Q. Then you told Wartenberg that in 1927 you started on a concert tour, is that correct?

A. Yes.

Q. Were you excited when you said that?

A. I was in the same state of mind.

Q. But you told the truth?

A. Yes.

Q. In 1928 you received a State Certificate as a voice teacher. Were you excited when you said that?

A. Yes.

Q. But the statement corresponds with the truth, doesn't it?

A. Yes.

Q. In the Spring of 1935 you became an opera singer in Kassel?

A. No, that was in the Spring of 1932, 1932, 1933.

That's a mistake in the affidavit, which I also overlooked.

Q. So you were too excited to indicate when you became an opera singer in Kassel?

A. No, no, Your Honor. That is a typographical error, evidently.

Q. A typographical error? All right. In 1935 you became a co-worker of the SD in Kassel and two years in 1934 you took over the Department Culture III-C in Kassel and you held all this until September 1939, That's all correct, isn't it?

A. Yes.

Q. And you gave that statement also under the stress of excitement?

A. Yes.

Q. So that everything in this affidavit which has nothing to do with the Russian operation is correct?

A. Yes, that's correct.

Q. And you only made mistakes when you told about these operations in Russia?

A. Your Honor, that's quite clear. May I explain that?

Q. You have explained it. You were excited and this excitement did not prevent you from telling the truth about your whole life up until 1939 or until 1941, but the excitement was such that you constantly fall into error after 1941?

A. I remembered my biography so well, because I already had to report about it from ten to twenty times before, but as for the events in the East were concerned, they were mentioned practically for the first time in this form in this interrogation. That is why I still had some lapses when I was interrogated in this respect.

Q. Do you want the Tribunal to believe that you remembered more vividly all the facts of your scholastic career then you did the facts which involved blood and death in Russia.

A. Your Honor, I don't know what to answer. These events in my life were, of course, very impressionable and they were firmly in my memory, but, as for the events in the Russian assignment, I tried to forget them and to get over this period and this is the reason why I perhaps did not remember all the details.

12 Dec 1947_A_MSD_Gallagher (Juelich ) 23_1_ the Reich had collapsed? its aims of the conquest of Europe?

A Your Honor. I don't know whether the aims of the Reich were to make conquest of Europe? I don't know that. But of course, I would have been happy if Germany had won the war. That is quite natural. the expense of its present condition, two million Germans killed, the nation in utter ruins, all of Europe devastated. You would have still been happy if Germany had won the war?

Q Would you?

A Yes. Well, that is quite natural. That is a matter of course.

THE PRESIDENT: Maybe it may be a matter of course for you, but I don't think it is for the rest of mankind. Dr. Mayer, any other questions?

DR. MAYER: Yes, Your Honor.

RE_DIRECT EXAMINATION BY DR. MAYER: (Dr. Mayer for the defendant Klingelhoefer) tion prepared by Mr. Wartenberg to the witness, and the witness has stated at the time that he told Mr. Wartneberg there were detailed facts which were not taken into the affidavit. It seems that this interrogation also contained exonerating points for the witness. After the Tribunal has expressed that the Prosecution must also submit the exonerating circumstances, I would like to suggest that the interrogation of Mr.

12 Dec 1947_A_MSD_23_2_Gallagher (Juelich) Wartenberg in its entirety be submitted, or be read.

MR. FERENCZ: Your Honor I shall introduce the interrogation because it has been asked for. However, I would not like to see a ruling that it is a matter of law or a requirement that every interrogation be introduced. The defendant is on the stand, he can be asked about the interrogation, he can be asked by the Tribunal and by any of the counsel about the interrogation. The interrogator was on the stand, and has testified, and could have been asked at the time. There is no necessity why an interrogation will have to be intorduced. However, I shall voluntarily introduce the complete interrogation as an exhibit in the Prosecution's rebuttal document book to show that the defendant made false statements on the stand both this morning and this afternoon.

THE PRESIDENT: No ruling is required in this case, and even if it were every ruling pertains to the particular set of circumstances before it, and it could not be expected that because a certain thing is done in one instance, it necessarily would have to be done again in a similar buy yet vitally different set of circumstances.

MR. MAYER: In this case, Your Honor, where the contradictions in the first and second affidavits, and testimony have been repeatedly pointed out, it would be useful if I could ask the defendant about this; if the interrogation will be submitted later, then I won't have any opportunity to ask him, or I shall ask the Tribunal to reserve the right for me that in case this interrogation is submitted, I may again ask the witness questions.

THE PRESIDENT: We will never close the door on relevant and vital facts, and if it appears when you get the interrogation, that it is entirely fair that you should be allowed to call the defendant for a few questions, that privilege will be accorded you.

DR. MAYER: I thank the Tribunal. BY DR. MAYER:

12 Dec 1947_A_MSD_23_3_Gallagher (Juelich) I think I can gather that it has not been clarified that twice, at different times, you were in Tatarsk. Please tell us in what connection that you were in Tatarsk that first time, and when was this? on the occasion of the requisition of winter clothing. At this occasion Noack received the order from the Chief of the Einsatzgruppe, the then Chief of the advance Commando to undertake a anti_Jewish action in Tatarsk and Mstillawl, and during this drive to Tatarsk and Mstislawl I was in Tatarsk for the first time. Tatarsk?

Q What happened the second time in Tatarsk?

THE PRESIDENT: Well, he has told us the second time what happened. He has told what happened the second time at Tatarsk at great length, hasn't he?

DR. MAYER: Yes.

THE PRESIDENT: You certainly don't want him to tell us that whole story again?

DR. MAYER: All right. BY DR. MAYER: to Tatarsk the second time?

THE PRESIDENT: Dr. Mayer, now you have gone over that, the Tribunal has questioned him on it, and the Prosecution at great length. If there is still some outstanding complexity which must be cleared up, then, of course, a question will be in order.

DR. MAYER: Yes.

THE PRESIDENT: But to ask what order he received is going into the whole episode again.

DR MAYER: I shall go right to the next question, and I shall come to those question which are still in doubt.

BY DR. MAYER: in regard to the Jews, as it had existed previously, still to be carried out?

Q Then what purpose did the preceding action of Noack have? on the order of the Chief of Advance Commando_Moscow, with the limitation that at that time only those Jews unfit to work were to be shot, while the others were to be sent to a Ghetto.

Q Yes, did this order still exist when you came to Tatarsk?

A I don't know exactly. the execution on the basis of the Fuehrer Order? alive any longer. opinion? Tatarsk with the intention to work for the Partisans, and to be "stoogies" for the Partisans. interrogation, were in the Ghetto in Tatarsk before the Munity? hundred and twenty, about at that time, and that was the figure before they left the Ghetto. if you would have come to the conclusion that none of the Jews apprehended by you in Tatarsk, and in the vicinity, was in contact with the Partisans? because I had an order.

THE PRESIDENT: Now you told us that. He already said that. Now is he going to tell the whole story again. He would send them back to the Ghetto. BY DR. MAYER:

Q Why wouldn't you have shot the Jews anyway?

Q Did the thirty Jews participate in threatening the Mayor? part in your decision? the Partisans, because the promise of help by the Partisans encouraged them.

THE PRESIDENT: Dr. Mayer, now don't you agree that it is unnecessary for him to tell the story all over again. The purpose of redirect examination is not to re-emphasize facts, it is only to clear up what may have been obscurated by the cross examination.

DR. MAYER: I am afraid, Your Honor, that in the excitement of cross examination, it was not possible for the defendant to describe the events correctly. By a few individual questions I would like to clarify it once more.

THE PRESIDENT: Well then put it this way, Dr. Mayer. Ask the witness if he wants to make any correction in a statement he has made because to repeat what he has already told us two or three times serves nobody at all. Ask him if he wants to make any correction or to point out where you think a correction is in order. BY DR. MAYER: been shot regardless of the result of the investigation. What did you mean to say by this? Was this also true of the time while you were busy with investigations in Tatarsk during your mission? the special assignment of the investigations about the sentences. time? Nebe had intended such an action?

THE PRESIDENT: Dr. Mayer, you see the difficulties you are going to get into. Now he told us only ten or fifteen minutes ago that the only reason Nebe sent him out there was that he had no other officer. Now he is telling you that if it had been purely an action of execution that some other officer would have been sent, some other officer who didn't exist.

Witness, didn't you say to the Tribunal that the reason you were sent out was because no other officer was available? and the road to Tatarsk.

THE PRESIDENT: Now why do you tell counsel that if it had been a different king of an action one purely involving executions they would have sent another officer. It would still have been the same roads, wouldn't it? You would still have to go over the same roads?

necessary because this action on the basis of the Fuehrer order had already been carried out in Tatarsk in the beginning of September by Noack. There would have been no reason to send me for an execution action.

THE PRESIDENT: You see the circle you get into. He now says it would have been impossible because there wouldn't have been such an action. do with the execution of the Fuehrer order would you have been sent there. You replied "No, they would have sent another officer."

THE PRESIDENT: Well I think it is simpler if you just go right ahead, Dr. Mayer. BY DR. MAYER:

Q Witness, didn't you also say that your linguistic knowledge was the decisive thing because Nebe knew investigations had to be carried on? been necessary if the mission was carried out purely according to the Fuehrer order?

Q Now I come to another point. You said that the leader of Kommando VII-B Rausch held roll call in the moment of the Russian assignment and he reported that the leadership assumed that the Russians would not adhere to the rules of war. From what did they conclude that Russians would not adhere to the rules of war? recognize the Geneva Convention and the Hague rules of land warfare.

Q And what was the reaction of the German leadership to this fact? carried on ruthlessly and therefore had to act accordingly.

Q What did the German leaders revoke?

Q Thus the rules of war were not revoked on the German side? assignment the Kommando was distributed in such a manner that two execitive detachments and one SD detachment were set up. When did this organization occur? departments were evidently mixed up. When was this change? belonged to Kommando VII B because afterwards, as I knew as a member of the staff, the tactics of the Kommandos was completely changed. Kommando. as a member of Kommando VII B.

DR. MAYER: Your Honor, my attention is called to the fact that "stangericht"is translated by jurisdiction. I assume that the correct translation for "standgericht"is emergency military law.

THE PRESIDENT: I don't know the German word.

INTERPRETER: I think it is court martial, your Honor.

DR. MAYER: I beg your pardon, Your Honor, I do not know the English language so well and another defense counsel may clarify this. May I suggest Dr. Leist.

THE PRESIDENT: I don't think it can mean court martial because court martial only comes into play when a member of a military organization is accused of having committed an offense and then officers of that same military organization try him. It is not international. It is purely national. So it cannot be court martial.

DR. MAYER: Well, I think so, too, your Honor. The translation court martial doesn't translate the word "standgericht".

THE PRESIDENT: Of course, if the member of an Armed Force, let us say, A German soldier violates one of the international rules of land warfare then he could be tried by German officers for this offense against International law and that would be a court martial. Is that what you had in mind?

DR. MAYER: No, not a court martial buy a summary court.

THE PRESIDENT: Well, a military court set up by the Germans, by German officers, to try German soldiers? Well, no, well you see there's where the trouble comes. If a German court made up of officers tries a German soldier or a German officer that's a court martial. If a German court tries a civilian of another nation then it may be called a Military Commission. Well, that's what you are referring to, I see. BY DR. MAYER: Yes. who were identified from lists or other material which you found in the NKVD building could be shot if they were considered to be endangering the security and if they were apprehended. Do you know of any case that on the basis of your capture of material a man was apprehended and shot?

Q Another point. Witness, when did you try to commit suicide? letter off to Mr. Wartenberg. first affidavit through Mr. Wartenberg?

A No that was after the first affidavit was made out. I signed the first affidavit on 2 July and I sent off the letter to Mr. Wartenberg on 4 July as far as I remember.

Q Did you repudiate the first affidavit in you second affidavit?

A Yes, I repudiated the first affidavit in your second affidavit?

THE PRESIDENT: Dr. Mayer, suppose you call that the third affidavit so as not to get this confused. We have the first affidavit of July 2, then we have that very fragmentary correction of 27 August and there was the third affidavit.

Of course, if you call it the second large affidavit that might cover it.

DR. MAYER: Yes, I mean by second affidavit the one of 17 September whereas the one of 27 August is merely a correction of a date.

A final question, witness. During the noon recess today did a member of the Prosectuion speak to you?

A In the recess?

Q Before the beginning of the afternoon session?

Q What was discussed?

A Nothing special was discussed. Mr. Ferencz merely admonished me to tell the truth. Thereupon I told him that I was doing that to the best of my knowledge. That was all. That was about the content of the discussion.

DR. MAYER: Your Honor, I thank you. I have no further questions and I am at the end of the case until I submit my Document Book.

THE PRESIDENT: The Tribunal will now take a recess until tomorrow morning and we will be in session all day. Everyone will remain in their seats at the present moment until the judges have actually left the bench then the defendant will be returned to the defendant's box and then the Tribunal will actually be in recess.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II, Military Tribunal II is now in session.

God save the United states of America and this Honorable Tribunal.

THE PRESIDENT: The Tribunal has been informed that the Defendants Braune, Ott, Nosske, Seibert, and Six were taken ill yesterday evening and for that reason will not be in court today. The record will show this.

It was reported that you were ill. I am glad that you are better.

LOTHAR FENDER, a witness, took the stand and testified as follows:

JUDGE SPEIGHT: Witness raise your right hand and repeat after me: pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated.

THE PRESIDENT: You may proceed.

DR. FRITZ (Attorney for the Defendant Fendler): Your Honor, the Document Book of Fendler has already been submitted for some time, both in the German and in the English versions. Therefore, it is my intention to use the documents during the direct examination of Fendley, partly to refer to their contents and to read several important passages to the record.

THE PRESIDENT: You may do so. BY DR. FRITZ (ATTORY FOR THE DEFENDANT FENDLER)

Q. Mr. Fendler, give me your personal data.

A. My name is Lothar Fendler. I was born on the 13th of August, 1913, in Breslau. My father was a dentist. I am married.

Q. Briefly describe your education.

A. In Breslau I attended primary and high school and in 1932 I graduated.

Q. What profession did you choose?

A. I started the study of dentistry and in the fall of 1934 I took my examinations as a dentist. In order to do that I served one year in the Army voluntarily. At the end of 1935 I was released as a sergeant in the Reserve.

Q. Why did you report voluntarily at that time during your studies?

A. My financial means had been exhausted and I had to interrupt my studies. Furthermore, it had been announced at the university that one had to count on a law requiring military service of two years. After I had passed my first examination, I was able to interrupt my studies at that point for the period of my military service and this also freed my parents from supporting me. Therefore, I voluntarily reported for military service.

Q. Did you continue to study dentistry after you were released from the military service?

A. No, because of an illness of my father, the financial situation of my parents had become worse. Therefore, I had to try to earn my money by working part time. A comrade in the Army called my attention to the fact that the SS Agency in Breslau was looking for people. Through one of his relatives I came to the South East Sector of the SD in Breslau.

Q. What did you know about the SD at that time?

A. Nothing. I did not even know it existed.

Q. When did you join the SD?

A. In January 1936.

Q. Did you continue to study dentistry later?

A. No, when I joined the SD, it was my intention, as I have already said, to earn my own expenses in order to continue my studies. In August 1936 my father died. My mother remarried behind without any resources and I had to support her. I could not save enough money to continue my studies at that time, because I only earn ed 115 Marks a month, Therefore, I remained with the SD.

Q. What was your first activity in this SD Sector South East?

A. In the beginning I was a guard, a telephone operator, and I worked on the files. Later on I worked on the files and in the office in the then Department 3 of the SD Counter-Intelligence, After that I was used in the Department 321 -- that is Counter-Intelligence -- where I issued messages and prepared reports to the then SD Main Office. In April 1937 I was sent to the then SD Sector Breslau as an expert for Counter-Intelligence

Q. What do you mean by this, "Counter-Intelligence"? Do you mean the protection of industrial plants?

A. Yes, we had to support important industrial plants in their prevention measures against sabotage and espionage and we had to advise them in this work, This was done practically by organizing a kind of plant protection unit order to guard the plant and the organization of technical controls.

Q. Did you have any executive powers in this respect?

A. No, the work was done as result of voluntary agreements with the responsible managers.

Q. How long did you remain in this position?

A. Until the spring of 1939, with one interruption, during the time that the Sudetenland was occupied. At that time I was called upon to organized the department for Counter-Intelligence for a few weeks in the newly organized SD Sector in Troppau.

DR. FRITZ: Your Honor, at this point I would like to offer two affidavits: First of all, Fendler Document No. 2, Affidavit Schoenborn on page 3 of the Document Book. I want to offer this as Fendler Exhibit No. 1. I would like to read the second paragraph of this into the record and I quote:

"From 1936 on, I was in charge, in an honorary capacity, of legal question for the SD in Breslau. Through this I often saw Mr. Fendler privately. H e was active in the SD Sector Breslau in 1937 in a full time capacity He worked in the Department III, Counter-Intelligence information Service."

Furthermore, I would like to offer Affidavit Hanke. This is the next affidavit in the Document Book Fendler. I would like to offer this as Fendler Exhibit 2. From this affidavit I would like to read paragraph 2 an part of 3. I quote:

" In the year 1935 I became an employee of Security Service Administration East District Breslau through the Labor Exchange Breslau. I worked in the "Counter Intelligence Department" and, to be precise, in sub Department "Intelligence from abroad," where information of a political and economic nature or intelligence material from the southeastern States was evaluated, i.e., dispatched to the Security Service Main Office in Berlin through business channels in the form of a news report. Questions of "Plant Security" were handled in the other sub department.

"I learned to know Herr Lothar Fendler approximately at the beginning of the year 1936. He was born in Breslau, if I remember correctly, and started to work at that time in the same Security Service Administration District "Southeast". At first he worked in the capacity of an assistant for the guard in the file-room and as a sideline worked as a coach for sport activities. Later on he worked in the Sub-Department "Plant Security" which activity was, just like the "Intelligence from Abroad", purely reportorial, and did not extend to executive and police measure as executive authority was in any case not proper to a Security Service employee. Fendler was transferred to the Security Service Sub-District Breslau approximately a year later where he also worked in the Plant Security Sector. Fendler has to my knowledge not displayed any political activity for the Party, by giving talks or by writing articles."

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THE PRESIDENT: Dr. Fritz, it is entirely probable to call our attentions to the essential parts of affidavits submitted but I do not believe it is necessary for you to read such material as where the defendant was born and it certainly isn't necessary to read the curriculum vitae or the man who has given the affidavit, because now that first paragraph you read told about the affiant. Then it isn't until you get into the second paragraph that you began to talk about the defendant and much of you read is known already. He has mentioned he was born in Breslau and so on.

Now I don't want to curtail you in the presentation of any material but we will lose a great deal of time if you are going to read matters which can't be or much assistance in the disposition of this case. necessary for you to emphasize as that the defendant worked in the Sub-Department Plant Security and his work there did not extent to executive and police measures. Then the fact that according to the party by giving talks or by writing articles.

I only call this to your attention now because if we didn't say something about it now you might follow the same procedure in other affidavits and you would be emphasizing what is not of great essential value in the final appraisement of the questions involved in the indictment.

Q. (By Dr. Fritz) Dr. Fendler, what activities were you given in March of 1939? Olmuetz of the SD with an Einsatzkommando. It was the job of this kommando to organize SD agencies and to take up the work of the SD. At that time, I was Scharfuehrer. That is the same as a sergeant.

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organize a local agency together with the confidence men. I became the director or this agency. This agency had to do the same jobs as the SD Office III. Thus I had to gather material and reports from all domestic spheres about the morale of the population and from that material I had to make out reports for my superior agency. or was your agency active as a Counter agency of the Gestapo?

A No, neither I nor my assistants had any executive powers. The agency was completely independent. It had no connection with the Gestapo.

DR. FRITZ: Your Honor, at this point I would like to offer the affidavit of Remmers, Fender Document 21. This is the last document in Document Book Fendler on page 66. I offer it as Fendler Exhibit No. 3. Remmmers was also the director of an agency in the Sudetenland. He describes the work of the SD in the Sudetenland and he essentially confirms everything which the Defendant Fendler has just stated about his activity.

Q (By Dr. Fritz) Mr. Fendler, how long were you the Director of this agency in Olmuetz? examination, I became a candidate for the so-called "Executive Service" and thus I got the possibility of studying law.

Q And how did your training proceed? attended my first semester there. Until the end of 1940 I continued to direct the agency at Olmuetz. Then I left the professional work of the SD and was transferred to the Office of the RSHA, that is to say, the Personnel and Training Office. Then in the beginning of 1941 I attended the University of Frankfurt on Main for one semester and then moved to Berlin where I finished my studies at the university.

Q How did you come to be assigned in the East? confidants for the Executive Service by the then chief of Office I to interrupt my studies at once and to go to Pretzsch on the Elbe River.

DR. FRITZ: One moment. At this point, Your honor, I would like to offer Fendler Document No. 4 on page 6 of the Document Book. I would like to offer this as Fendler Exhibit No. 4. This is the affidavit Hotzel. I do not want to read anything from this. Among Hotzel's jobs was the care for the candidates for the Executive Service. In this affidavit he describes how these candidates for the executive Service came to be assigned to the Einsatz.

Q (By Dr. Fritz) Continue, please, Mr. Fendler. to arrive and members of the Waffen SS and SD, both officers and men. Companies were set up. The man were clothed and given a brief course of military training. Finally Einsatzgruppen and Einsatzkommandos were set up. I personally was sent to Sonderkommando 4B as its Commanding Officer. The then Government Councillor and Sturmbannfuehrer Hermann was then designated as the leader of the Kommando.

THE PRESIDENT: Dr. Fritz, how long did that training last, this military training he spoke of?

DR. FRITZ: Witness, did you understand the question, how long did this military training last in Pretzsch?

THE WITNESS: Your Honor, the military training was very brief. It was limited to firing of weapons. The men and the NCOs had the possibility to go on a range and fire their weapons. At that time no intensive military training was possible, because the physical condition of the men didn't permit this in most cases; as already had been mentioned here, all the men intended to be sent to Einsatz were innoculated, and the results of this innoculation brought fever and weakness in its wake, so that a military training was not possible. BY DR FRITZ: you to go to Pretzsch?

BY THE PRESIDENT: Witness, how long were you in Pretzsch when you had this limited training on the firing of the weapons?

THE WITNESS: I was in Pretzsch from the end of May until the beginning of June - - I mean, the beginning of the war, that is, 22nd of June, or 23rd of June.

Q A matter of two or three weeks? on a target on a range?

Q Yes, you didn't receive any training in map reading, and in tactical movements?

Q In strategy?

Q None of that regular military training?

were just sent out to the target range and allowed to shoot small arms?

A I can not say. The men gathered at Pretzsch were distributed over several localities. I personally came in contact at Pretzsch only with a limited number of people. I heard that the NCOs and men who were in companies received a short training in the regular service. I don't know whether this means anything to the President, this expression.

Q A short training in the service. You mean there in Pretzsch? ing because of these innoculations which they received?

A Well, I did not mean it so exclusively. I don't mean to say to such an extent at the time the innoculation was performed, but the next innoculation was to take place one or two days later, and this days was used to train the men, to teach them how to behave themselves as soldiers in uniform. Most of the men had had no military training thus far.

Q You say this training period lasted two or three weeks? be used for training.

THE PRESIDENT: Very well. Dr Fritz. BY DR FRITZ: order given when you had to go to Pretzsch. Was the SD under military law at that time?

DR. FRITZ: Your Honor, at this point I would like to offer the affidavit of Alfons Pfoser. That is Fendler's Document No. 5, which is page 8 of the Document Book. I offer it as Fendler's Exhibit No. 5. It was one of Pfoser's jobs to take care of candidates for the executive service, and in the second paragraph of this affidavit he confirms that the candidate for the executive service didn't voluntarily report to this Einsatz, and refusal would have been prosecuted under military law.

BY DR FRITZ: there? We assumed that it would be against England. Only immediately before the breaking out of the war against Russia was the purpose of the objective and the destination of the assignment known.

Q What mission did you expect to get in this assignment? missions, as I knew them from the Sudentenland and Czechoslovakia. That is, the mission for security of the area, and the customary SD work, as well as the work of the organization of stationary SD agencies. to liquidate the Jews and other groups of people was made known?

Q As it was made known by Heydrich or Streckenbach? Russia, that outside of the usual Security Police tasks, the Einsatzcommandos had been ordered to execute Jews and other people from the East?

A. No.

DR. FRITZ: Your Honor, at this point I would like to refer to several affidavits. First of all, the affidavit of Haefner as Fendler's Document No. 6, on page 10 of the Document Book, which I am offering as Fendler's Exhibit No. 6. Haefner was also a candidate for the executive service, and he confirms in his affidavit the description which Mr. Fendler has just given.

THE PRESIDENT: Dr Fritz, can you tell us just a few words just what "executive service of the Security Police and SD" consisted of?

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This affidavit says, they were candidates for the executive service. Just tell us in a few words what is meant by that, what kind of service that would be?

DR FRITZ: Yes. Your Honor, I don't know very much about it myself, this field, but during this trial I think I have learned the following in this respect. The SD tried to get new people for its leading agencies, from persons who had academic studies to their credit.

THE PRESIDENT: I don't think I made myself clear, Dr. Fritz. Several of these affidavits point to the fact that the witness was a candidate for the "executive service" of the SIPO and the SD. I want to know very briefly what is meant by "Executive service of Security Police and SD." Can you tell us that, witness?

THE WITNESS: Yes. There were three careers within the Security Police, and within the SD also, a lower one - a medium, and a leading one. The prerequisites for admission into the leading career was completion of a university course of studies.

THE PRESIDENT: Now witness, we are going into it too deeply. What is "Executive service"? Let's suppose we have a man in the Executive Service of the Security Police and SD. What does he do? Or maybe he does not sit at a desk, maybe he is up in a balloon somewhere. Tell us just what he does? was the function of the leader of a SD Sector.

THE PRESIDENT: Well, what did you do? We still don't know what this man in the Executive Service does. In the Reich it would include normally the area of a government district. He had the job in this district to gather material in all domestic spheres.

THE PRESIDENT: All right. I would like to have that with a certainty.

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DR FRITZ: Herr Ohlendorf just called to my attention that the translation of the word "Leitender Dienst" had been translated "Executive service" but that it would have to be translated "Leading service".

THE PRESIDENT: Then the affidavit to that extent is not translated correctly. This affidavit on page 10 reads: "There from Spring until the Autumn of 1940 election camps for candidates for the executive service of the Security Police and the SD took place."

DR FRITZ: Yes.

THE PRESIDENT: Do I understand now that what was really meant is "Candidates for the lending service?"

DR FRITZ: Yes, Your Honor.

THE PRESIDENT: I see, very well.

THE WITNESS: If I may make another addition to this, Your Honor. It is the same as a career of a higher administrative official.

THE PRESIDENT: Yes, that is very clear, Thank you.

DR FRITZ: At this point I would also like to offer an affidavit of one Johannes Feder. Fendler's Document No. 7, page 13 of the Document Book. That is Fendler's Exhibit No. 7. Feder was also a candidate of the Leading Service. In paragraph 2 he describes how he came to Pretzsch, and I would like to read the next to the last paragraph into the record. I quote: "It was announced to candidates for the Leading Service mission, that outside of the Security Police measures Einsatzcommandos would have the job also to liquidate certain population groups in the East. I didn't hear about this in Pretzsch, not even through rumors." I would also like to offer the affidavit of Otto Heyer. That is Fendler's Document No. 11, page 26 of the Document Book. I am offering this as Fendler's Exhibit No. 8, I point out especially paragraphs 2 and 3, and I would like to read the beginning of paragraph 3 into the record. "I can state with certainty that neither in Berlin nor in Pretzsch were we informed of the task of Einsatzgruppen in the East was the solution of the Jewish problem. I was of the opinion rather that we SD people in this Einsatz would have to perform intelligence tasks such as fell to the lot of the SD, otherwise, that is, investigation and screening of the economic, cultural and food position, prevailing political feeling, relations in the sphere of law and administration, taking into consideration military requirements and necessities." I shall come back to this affidavit later. It is Fendler's Document No. 9, on page 19 of the Document Book. I am calling it Fendler's Exhibit NO. 9. This affidavit is of special interest, Your Honor, because Koenig was also an SD expert under Fendler in Sondercommando IV-B. I shall point to the fourth sentence which confirms what Fendler has just testified about what was made

THE PRESIDENT: That is the fourth paragraph, Dr. Fritz,

DR. FRITZ: The fourth paragraph, yes.

THE PRESIDENT: Very well. BY DR. FRITZ:

Q. Herr Fendler, what did Lommando Leader Herrmann tell you about the jobs of the commandos in Pretzsch, that is, your Kommandoleader. What did he tell you?

A. The Kommando-leader announced it would be the job of the commandos to look after the secrity of the rear areas, and to investigate the various domestic fields in the manner of the SD report. Finally, he announced that the Special-commando for Einsatzgruppe-C, to advance with the combat troops.

Q. What did the Sonderkommando IV-B consist of?

A. The Sonderkommando IV-B consisted of officers, of non-coms and of men who had been taken from the Gestapo, the Criminal Police, the Waffen-SS and the SD. There were also people on the emergency war status, such as drivers and interpreters. The commando had about sixty men altogether.

Q. Who were the officers?

A. The commanding officer Herrmann was, as I have already said, the SS-Sturmbannfuehrer, that is, Major. There was also the Police Inspector with the rank of an SS-1st Lt., and a SS-2nd Lt., who came from the Gestapo, that is, three altogether. A Police Inspector with the rank of 1st Lt. came from the Criminal Police.

A. SS-2nd Lt., and I, who was the Captain, came from the SD. An Interpreter in the emergency war status had the rank of a 2nd Lt.

Q. The Commanding Officer, Herrmann, also came from the Gestapo?

A. He belonged to the three offices from the Gestapo, of which I spoke. Maybe it was a little unclear.

Page 4,000

Q. Were the various fields distributed among the various people in the commando according to previous carreers?

A. Yes, at Pretzsch already I was appointed Expert-III, that is for the SD work. The others from the Gestapo and the Criminal Police; those officers coming from the Gestapo and the Criminal Police were designated for the Security Police mission. The Senior Police Inspector who came from the Gestapo became Expert-IV.

Q. That is the executive?

A. Yes.

Q. During the entire duration of your assignment in the East, did this arrangement remain this way?

A. Yes.

Page 4,001

A. How was this possible?

A. The Kommando Leader Hermann kept the whole of Kommando 4-B under his leadership all during this time. Therefore, he did not subdivide it into independently operating sub-Kommandos as has been reported frequently about other Kommandos in this Court. This, of course, does not exclude that small parts of the Kommando were used to carry out definite missions and that in this they were separated from the Kommando for a short period of time. Since the Kommando was essentially always together this sharp determination of the various fields of work could be maintained as the work required.

Q. Did the Kommando officer Hermann always have complete power of command during your time?

A. Yes.

Q. Please describe to the Tribunal what your various missions were in the Einsatz?

A. As I have already said I was designated as expert III in Pretsch, that is, for the SD work. At the beginning of the assignment the Kommando leader assigned liaison officers to the Third Army Corps belonging to the 17th Army. I personally was sent as liaison officer to the 49th Mountain Corps. Finally there were also jobs which I had to do, as well as the other officers, which resulted from the necessities of our military advance, for example, as Kommando officer of an Advanced Kommando.

Q. When did this assignment begin? When did you get to Russia. I just want to establish the date.

A. I cannot tell you exactly whether it was the 22 or 23 of June that we left Pretsch. We crossed the Russian border in the last days of June.

Q. Now we must briefly concern ourselves with these various missions. What work did you have to do as department leader III of Special Kommando 4-B? Just limit yourself to describing you own practical activity because general statements about SD work in Russia have already been made here in the course of this trial.

Page 4,002

A. After the Kommando took up its new activity at a new garrison the first thing to do was to sift the captured material, documents, etc., and to pick out that material which was important for the SD work, to evaluate this material and to pass it on to the agencies concerned with it. That might be the Army, but usually the group. Secondly, liaison had to be established with the town Commandant and especially with the indigenuous personnel working for him. These were the Commissar Mayor, technicians, teachers, so-called agronomists. With their aid it was attempted to get a survey of the various domestic spheres, together with information about the morale of the population. This information was complied in situation and morale reports. After this survey had been established important individual problems were investigated more thoroughly and in a more extensive form and for this work indigenous experts were used. Usually this information was then utilized for individual reports.

Q. And where did these reports go?

A. As I have already indicated these reports were usually sent to the group, that is, via the Kommando leader. They were passed on, if the courier service would permit, usually once a week. At the same time the Army was informed either in a written form or orally. The Kommando leader would decide this and he usually informed the Army himself.

Q. Perhaps you can give a few examples briefly about your reports in the SD field?

A. One would have to add generally that during the advance, and that's true for the entire time of my assignment in Russia, that the SD work which would threat all spheres equally was not possible. The work had to be improvised and had to be started all over again at every now place. Reports were made about the expectations and about the morale of the population. The situation reports emphasized economic facts from subject matters including the care and the food situation, the supply situation of the population, the reconstruction of the industries and services, the bringing in of the harvest, the distribution of the land, the lack of agricultural machinery.

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Furthermore we were concerned with questions of administration. Investigations were made of the strength of the organizational activities, National groups, about autonomy ambitious, about school questions, questions of the medical care of the population. Finally individual problems were discussed such as the research about the planting of the Russian rubber plant, cocsacis, and the compilation of reports about the Bolshevik industrial centers on the other side of the Ural Mountains.

tivities, National groups, about autonomy ambitious, about school questions, questions of the medical care of the population. Finally individual problems were discussed such as the research about the planting of the Russian rubber plant, cocsacis, and the compilation of reports about the Bolshevik industrial centers on the other side of the Ural Mountains.

Q. Your Honor, within the next few days I shall submit a document which will describe the manner of reporting which the defendant Fendler has just described.

THE PRESIDENT: Very well. BY DR. FRITZ:

Q. What assistants did you have in the SD work?

A. As I have already said there was another officer next to me who came from the SD, a 2nd Lieutenant Koenig who has already been mentioned, We were the only experts with the Kommando. There were no NCOs or men who came from the professional SD service. This 2nd Lieutenant and an interpreter were always at my disposal to assist me. And, according to requirements, members of the Waffen-SS were added and another interpreter if he was available.

Q. Your Honor, as far as the SD work is concerned which the defendant Fendler performed and which he described I would like to refer to a few affidavits. I first offer the affidavit of Henicke. This is on page 31 of the Document Book, Fendler document #12. I offer this as Fendler Exhibit 10.

Henicke was chief of Department III with Einsatzgruppe C. Thus he had the same activity in the Einsatzgruppe that the defendant Fendler had with the Einsatzkommando 4-B. record, your Honor, because of its significance. This is the 4th paragraph I quote:

"From the beginning of the Einsatz to the end of October 1941, I myself was with the staff of Einsatzgruppe C as Referent III. As such, I had to perform purely intelligence work, reports on public opinion and the situation in all spheres of Russian life, for instance, economy, culture, administration, etc. Fendler as SD-Reference for Einsatzkommando 4-B had the same tasks. It did not come to my knowledge that Fendler performed works other than SD work. Since the groups and Kommandos were poorly staffed by SD people and Fendler was the only specialist in the SD department in Einsatzkommando 4-B, SD people were used only as specialists. Fendler was fully occupied with SD tasks for his Kommando. Reports drawn up by Fendler were sent to me as his technical superior. In the Einsatzgruppe I did not receive reports about executions of the group and am of the opinion that Fendler also in his Einsatzkommando had no insight into these reports. On principle, the Referent III in the Einsatz, that is technical Department IV, performed no informers services for the Executive either."

Q. Your Honor, at this point I would once more like to refer to the affidavit of Heyer, which has already been offered, on page 26 of the Document Book. This is Fendler document #11, Exhibit #8, on page 27 and 28 of the Document Book, in the second half of the last paragraph on page 27, he also describes the SD work and he makes statements about the composition of the Kommando. I would like to read one passage into the record, page 27, the second paragraph, last sentence:

"Traveling back also were Obersturmfuehrer and Kriminalkommissar Bussinger and Kriminalkommissar Kaerger. Bussinger told me he was IV Referent, therefore, was in charge of the executive. The fact was also discussed that enough specialists were available for the Executive while Herr Fendler in his specialized sphere was the only expert and therefore extremely overburdened with work. From conversations with Herr Fendler and other commanders of Einsatzkommando 4-B it was clear that Herr Fendler was the SD-Referent (III) with Einsatzkommando 4-B and, apart from that, Liaison Commander with 49th Mountain Army Corps, and to that extent, had the same task as I had. I gathered from the conversations that Einsatzkommando 4-B did not operate split up into subsidiary kommandos as was the case with same Einsatzkommandos, but always operated as a whole. Therefore, there was a clearly defined distinction from the point of view of work. Herr Fendler told me about his work and his reports which he prepared about the provisions situation, supply of the people, setting in motion of industry, strength and organization of national groups, condition and care of ethnic Germans, religious life, that is, concerning the 4 spheres of live about which in general the SD reported." ler Document 10. At this point I call attention to the second paragraph of this affidavit of Martens.

THE PRESIDENT: Exhibit number?

DR. FRITZ: 11, your Honor. Martens was in the same Einsatzkommando 4-B. I shall come back to this affidavit later on.

fidavit Koenig. This is Fendler Document #9, on page 20, page 21 of the Document Book on top. And from page 20 I would like to read the second paragraph. I quote:

"The executive tasks of the Kommando came under category IV. During the entire period of our assignment, Fendler and I never handled this category. Many specialists from the Secret Police and Criminal Police-officers and NCOs-were available for category IV. On the other hand, Fendler and I were the only ones who worked on category III (Security Service matters). Category Iv - that is, the executive part was handled completely separately from category III. These working on it were subject exclusively to the directions of the Kommando commander, but not to these of the specialists working on category III. On the other hand, the executive department did not have the right to give technical directions to the specialists of category III. The intelligence work of the Security Service branch was in no way connected with the executive side.

"It also never happened, while we were there, that technical directions of the Kommando commander for the Executive Department were perhaps issued through those working in category III." Koenig who made out this affidavit worked under Fendler in Special Kommando 4-B. BY DR. FRITZ:

Q. Herr Fendler, you have described your SD work in the assignment. What job did you have as liaison officer to the 49th Mountain Army Corps?

A. The Kommando leader Hermann at the beginning of the assignment told the liaison officers who had been designated as such about the general mission. First of all, the establishing and maintenance of continuous contact with G-q. Secondly, mutual exchange of political and military intelligence material and third, clarification of the questions concerning the advance garrison and supplies of the Kommando.

Page 4,007

Only that liaison officer would handle these matters who was designated for the particular Army Corps and in whose operational area the Kommando was just stationed at that time. In my capacity as liaison officer to the 49th Mountain Army Corps I only was active once. The 49th Mountain Corps was at that time 40 kilometers east of Tarnopol in Trembowla. I took up contact with this G-2 and carried out the orders of the Kommando leader to secure the approval of G-2 for the advance of the Kommando. Thereupon I prepared quarters in Trembowla for myself and a small detachment. The Kommando advanced on Trembowla from Tarnopol two days later. About a week after the Kommando arrived in Trembowla I had another discussion with G-2 about the move of the Kommando, at that time into the area of Proskurow. I don't recall that later during my assignment I have spoken again with G-2 of the 49th Mountain Corps and I did not receive any orders later as liaison officer to another Army Corps of to the Army Headquarters and to perform any function in this capacity.

DR. FRITZ: YOUR Honor, this would be a nice point to recess.

THE PRESIDENT: The Tribunal will be in recess for 15 minutes.

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THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Dr. Koessl, deputizing for my colleague. Dr. Gawlik. I would like to ask the high Tribunal that the Defendant Naumann be excused from attendance in court this afternoon so that he can assist in getting the document books ready.

THE PRESIDENT: The Defendant Naumann will be excused from attendance in court this afternoon Proceed, please.

DIRECT EXAMINATION (Continued) BY DR. FRITZ: work as SD referent and also your work as liaison officer. Were you then given any other tasks during your assignment in the East?

A Yes, for example, as chief of an advance kommando. As I described already before the recess, I was in charge of an advance kommando on two occasions in Trembowla as well. I was assigned in these advance kommandos because the experience in the first weeks of our advance in the East had soon proved that the intelligence material which the Bolshevists had left behind could only then be secured if we succeeded to advance with the front troops and to occupy these offices before the material was taken away by the advancing German Wehrmacht members who used these rooms as staff quarters and scattered the documents in a number of cases. As far as I remember, during the whole time of my assignment it was not possible, to achieve a good cooperation of the entire kommando. It was necessary to operate with small advance kommandos. The advance kommandos of which I was in charge had each about sic to eight men. The mission given to me was; first; securing material left behind by the

Bolshevists, any document material or information material; secondly, securing billets and the supplies of the kommando which was following us. other tasks except those you just described?

Page 4,009

any other tasks.

Q In particular then, you did not carry out any police measures?

A No, never. The Security Police work and the SD work only started when the kommando arrived at this new garrison. In both cases I just mentioned the kommando followed already the day following my arrival. That is, their work started then under the command of the commander of the kommando.

Q But the prosecution maintains, and I quote, "that repeatedly you carried out the function of a deputy chief of this unit".

A No, this was never true. While I was assigned I never had full authority of command over the kommandoo not even in the case that the kommando chief was absent. Even when the commander of the kommando was absent. Even when the commander of the kommando was absent I could not give any instructions to the executive and certainly could not give any orders for executions.

Q Your own affidavit which is contained in Document Book III_C in the English book Page 55, in the German, Page 89, it is the Document No_4144, Prosecution's Exhibit 142, says on Page 2 of the original under number 3, I quote: "I have never been officially designated as a deputy to Hermann. I have, however, taken charge of official matters during his absence." How am I to understand this? However, I want to explain in more detail, why it was formulated in that manner. While signing the affidavit in the presence of Mr. Wartenberg, I asked to add something at this particular point according to the statements I had made concerning these problems. Mr. Wartenberg told me that there would be no point in it, and he refused to have this addition made. My statement on this point I had made in sufficient detail during the interrogation.

Page 4,010

trying to put into it. At that time Mr. Wartenberg did not tell me what this affidavit was going to be used for. He persuaded me to sign it; had I known I would have insisted on these supplements.

Q. Mr. Fendler, another question. Do you believe that the record of the interrogation shows that explanations were made which must now be in the hands of the Prosecution?

A. I am not sure of that at all. During my interrogation I had to find repeatedly that the secretary either on instructions of the interrogator or simply because she could not keep up with the speed, did not keep up and I had to repeat some matters. I don't know, therefore, whether this particular passage was included with all the clarity and detail necessary in the record about my interrogation. I can only say that I described this point to Mr. Wartenberg in great detail as I shall try here myself now in order to clarify any misunderstandings.

Q. Please, do so.

A. During my assignment, as I emphasized before, I was never fully authorized deputy of the Chief and in practice I was never responsible for all the functions of the Kommando. During the whole time of my assignment, the Kommando Chief Hermann, was never absent for any length of time from the Kommando. I myself remember only one occasion when he was absent for more than one day from the Kommando. At that time the Kommando was in a village because they could not move on because of heavy rains which made the roads unusable. The Kommando chief himself at the time was with a staff near the Kommando. While the Kommando Chief was absent for a few hours or a day there was no deputy appointed by him. For the work in the various fields the expert on each field acted as his deputy in their field and had to make their decisions on their own, independently. They were responsible for these decisions, for what the Commando Chief did. That is how it was handled in the Reich office as well when no permanent deputies had been appointed. The senior officer, if it became necessary, represented the Kommando to others and and in case of an emergency he was in charge of the Kommando.

Page 4,011

Except Chief be handed on.

The senior officer present in such a case did not have full commanding power then.

I must add here that very often I

Q. Your Honor, at this point I would like to refer to a few graph and page 29 of the top. This is the affidavit by Heyer who at this point confirms the explanation given by the witness.

Also I would the paragraph before the last on this page; I quote:

"It is not known to me that Fendler was deputy of the Kommando Commander; he did not appear as such in reports or group conferences."

I also want to refer Beginning on page 24, the last paragraph, I would like to read.

I quote:

"Sturmbannfuehrer Hermann was the Commanding Officer of the Einsatzkommando.

So far as I remember, he was never absent from the this time he was neither ill nor on leave.

Hermann never had a deputy Hermann."

I would like to mention here that Martens was in the same third paragraph on this page.

I must correct myself, your Honor, the is, Department 4?

A. No, the departments were independent. Department 4, in order

Q. Who made out the reports about the entire activity of Commando 4 B which was sent to Einsatzgruppe 4 C?

Page 4,012

A. This task was handled by the Commander personally on the basis of the reports which his experts gave him for this purpose.

Q. Do I understand you correctly that you had nothing to do with the drafting of the reports on the overall activity of the Einsatzkommando?

A. Yes.

Q. Were these activity reports which the Commander Hermann made brought to your knowledge?

A. No.

Q. Your Honor, at this point I would like to refer to paragraph in the affidavit Koenig on page 22 of my document book. I would like to read the first paragraph into the record; I quote: "The Security Service reports or other information collected and assembled by Fendler and myself went, through Kommando Commander Hermann, to the official in charge of Security Service matters at Einsatzgruppe C. On the other hand, Kommando Commander Hermann made up the general activity reports of Einsatzkommando 4 B himself, without exception. He did not, however, make these reports available to the specialists, so that these did not know their content." As Chief of 3 could you give instructions to Department 4?

A. No.

Q. Did you ever receive an order to carry out an execution?

A. No.

Q. Did you yourself ever give an order to carry out an execution?

A. No.

Q. Not even as a Liaison Officer to the Wehrmacht?

A. No.

Q. Did you ever attend an execution?

A. No.

Q. Did you find out in the assignment about executions which the Commando 4 B carried out because that executions occurred in 4 B you will not doubt since you have seen reports of events here in the meantime.

A. When we were in Lemberg at the end of July 1941?

Q. Yes, 1941.

A. The Commander Leader announced that orders had been given to the Commando when carrying out the general security tasks to proceed in the severest manner against the bearers of Bolshevism and if necessary to execute them. Similar directives for similar treatment of Commissars, agents, looters, saboteurs were allegedly given to the Wehrmacht. It was also said that for the East military law did not apply and in its place it was left to every officer to make his own decisions. He, the Commander Chief, reserved the right for Einsatzkommando 4 B for all executions which might become necessary. During the assignment I heard that Sondercommando 4 B did carry out executions, but I did not get any information how many persons were involved or what king of persons they were.

Page 4,014

COURT II CASE IX BY THE PRESIDENT:

Q. You say you did not get any official information. Did you get any unofficial information as to the number of people executed?

A. I learned from hearsay that executions occurred. I remember at the moment only one case that a figure was mentioned to me. It is possible that I know at the time, that I heard about it, that I have forgotten in the meantime.

Q. How many people did they say were executed?

A. In that one case, to which I just referred, 20 to 30 persons were mentioned. BY DR. FRITZ:

Q. Herr Fendler, do you refuse to confess that people were executed merely because of their race or because of their political convictions?

A. Yes.

THE PRESIDENT: I don't understand the phraseology of your question, Dr. Fritz. You sounded almost like a prosecuting attorney with that question: Do you refuse to confess.

DR. FRITZ: No, no. What I asked the witness, Your Honor, was whether he himself declined to believe, whether he agreed to it that persons were executed in the East merely because of their race or political convictions.

THE PRESIDENT: Why put it in such a complicated way? Just ask him directly, did he know that people were being executed because of their race.

DR. FRITZ: There is a difference, your Honor. I want to hear about his attitude concerning these executions.

THE PRESIDENT: I didn't quite grasp the question the way you put it the first time. We will see what happens now.

Page 4,015

COURT II CASE IX BY DR. FRITZ:

Q. Herr Fendler, did you agree that in the East at the time people were executed by the Einsatzkommandos only because of their race, because they were Jews or, for example because of their political convictions. What was your inner attitude?

A. No, I deny this.

THE PRESIDENT: No, it isn't clear Dr. Fritz because the question mingles the factuality with the spirituality of it. Why not find out first if he knew that Jews were being executed because they were Jews; then find out if he approved of that policy; then you can go into his inner soul. BY DR. FRITZ:

Q. Herr Fendler, you heard the question the President asked. Did you hear about the fact that persons were executed in the Eastern territory merely because of their race, or political convictions? A. I heard about it after the assignment. BY THE PRESIDENT:

Q. You knew of the Fuehrer order?

A. No, your Honor. BY DR. FRITZ: Your Honor, I shall come to this in my further examination. Your Honor, in this connection I would like to refer to the affidavit Koenig on page 22 of my document book. It is in the third last paragraph and I quote:

"In the executions which were carried out on the order of Kommando leader Hermann by the Executive Department (category IV), as far as I know Fendler never participated; nor did he ever arrange any of these. He would, furthermore, not have been either authorized or empowered to do this."

Q. Herr Fendler, in the afternoon session of 30 September 1947 when the Prosecution talked about your case, they referred to the following documents. First of all in Document Book 2-A, NO 2938; that was on page 81 of the English text, page 79 of the German text, Prosecution Exhibit No. 44. The passage concerned is on page 14 of the original. Also in Document Book 2-C, document NO 2934, page 49 of the English text, page 52 of the German text, Prosecution Exhibit No. 79. In the original the passage referred to is on page 5; and also in the Document Book 2-A. NO 3155, page 44 of the English, page 40 of the German text. Prosecution Exhibit No. 38. The passage concerned here is on page 4 of the original. In these documents, Herr Fendler, the executive activity of Sonder kommando 4 B in Tarnopol and Krementchug is reported on. Your own affidavit shows that you were in those locations. I now ask you, did you take any part in the executions and excesses which took place about which the document reports?

A. No; I had nothing at all to do with it; these events, just as well as all of these events mentioned by the Prosecution I have seen here for the first time. I don't know either what the Kommando leader reported at the time about the events in Tarnopol and Krementschug. I heard at the time that in Tarnopol and Krementschug. I heard at the time that in Tarnopol and Krementschug executions were carried out.

Q. Did you hear about the extent and the reasons for these executions in the reports shown of the events?

A. I can only say that I heard about it in Krendogla, which I mentioned before that the Kommando in Tarnopol shot 20 to 30 persons. I cannot give a more detailed COURT II CASE IX explanations about figures?

A. I only know that in Krementschug shortly before the Kommando left for Poltawa an execution was carried out. What kind of persons they were and how many they were I can't say. The Prosecution on 30 September as well as also on the 3rd, in Document Book 2-G, Document No. 2830, which is on page 25 of the English and page 23 of the German text, Prosecution Exhibit No. 72; on page 18 of the original it says, and I quote:...

THE PRESIDENT: I didn't get the English page, Dr. Fritz.

DR. FRITZ: Page 25, your Honor. I will read the quotation:

"The garrison of Sonderkommando 4b is stationed at Poltawa, according to a report dated 16 October 1941." paragraph soon after the passage just read that the Kommando 4b from 4 October 1941 to 10 October 1941 executed 186 persons.

Q. Were you still in the Einsatz during that time?

A. No, on 13 September -- it must have been 1941, that is -in Sonderkommando 4B the Einsatzgruppe received an order from Berlin that the candidates for the leading service including myself were to report back in Berlin on 1 October. The order had been delayed obviously at the gruppe and I left the kommando then on 2 October and travelled via Kiev and Lemberg to return to Berlin where I arrived on 6 or 7 October.

DR. FRITZ: Your Honors, in order to support the statement of the defendant Fendler, I would like to refer to affidavits again. The first one is the affidavit Heyer, page 27 of my document book. There it, says in the second paragraph from the second sentence -and I quote: "I met him again in the East in Poltawa on 2 October 1941. At that time Herr Fendler and I, as well as other candidates for the leading service, had been ordered back from the Einsatz and we were on the return journey, on 2nd to 4th of October. I travelled by express coach back to Berlin while Herr Fendler went on into Reich territory by train." graph in the affidavit Koenig, page 22 of my document book, which also confirms that at the end of September 1941 Fendler had been relieved from the Einsatz assignment -- document 9, in the last paragraph of the affidavit.

I also offer at this point the affidait Brass, Document No. 13 on page 34 of my document book. I offer it as Fendler Exhibit No. 12and I refer to the second paragraph whereat the witness says that Fendler at the beginning of Octoner visited him. That was 1941. which I have already submitted, also the last paragraph of 32. It is on page 32 of the document book. This last paragraph shows the same, what Fendler has testified at this point.

Q. What did you do after you returned from the Einsatz assignment?

A. After my return from the assignment, I continued to study law at the university in Berlin. In the year of 1942 I passed my Referendar Exam. After that, as a Referendar, in order to do my duty and practice, I came to the county counselor in Waldenburg in Silesia to the government of the Liegnitz. In August 1943 I passed the major State Examination and became government counselor, government assessor.

Q. Where were you active after passing this final examination and having passed the training you just mentioned?

A. In September 1943 I was transferred from Office I of the RSHA to which I had belonged until that time to Office VI in the RSHA

Q. How long were you there?

A. Until the collapse.

Q. In Office VI you dealt with the political information servie from abroad, was it?

A. Yes.

DR. FRITZ: Your Honors, the tasks of Office VI have already been explained by other defendants. Apart from that, Schellenberg in his affidavit of 12 July 1946 in the IMT gave explanations about this. to assist the Tribunal. I have included Schellenberg's affidavit into my document book. The affidavit has the document number SD-61 and I offer it as Fendler Exhibit No. 13.

THE PRESIDENT: What page is that on?

DR. FRITZ: 636.

MR. HOCHWALD: If the Tribunal please, the prosecution would like to object to this document in this connection as entirely immaterial. This document is going to be introduced obviously to show that the Department, No. VI, of the SD was not a criminal organization.

Page 4,020

According to the judgment of the International Military Tribunal, Department VI is precisely named among the departments of the SD which were considered by the International Military Tribunal to be criminal organizations. The verdict of Control Council Low No. 10 makes it absolutely clear that in this respect the decision of the International Military Tribunal is binding. Therefore, it seems to me that defense counsel for defendant Fendler tries to introduce proof as to the criminality of this special department and this seems to be immaterial in this case. Only the membership of the defendant Fendler to Department VI can be contested by the defense. It can be further contested that he had knowledge of criminal acts committed by the organization but the fact that Department VI was criminal cannot be contested before this Tribunal.

THE PRESIDENT: What have you to say that, Dr. Fritz?

DR. FRITZ: Your Honors, I limit myself exclusively to the person of the defendant Fendler.

THE PRESIDENT: You can show that he was either not amember of that organization or that being a member of the organization he was entirely ignorant of its criminal operations, but you cannot contest what is now res judicata, that that organization has been declared a criminal organization.

DR. FRITZ: I do not intend to do that by introducing this documtnt, Your Honor. I only wanted to talk about the general activity of Office VI, for the convenience of the Tribunal. That is why wanted the affidavit to be introduced in my document book. It has nothing to do with the question whether Military Tribunal No. II is bound to the decision of the IMT.

THE PRESIDENT: We will permit the document only for the purpose of enlightening the Tribunal on the knowledge of the defendant that this organization was conducting criminal operations.

Page 4,021

BY DR. FRITZ:

Q. Since other defendants also talked about the tasks of Office VI, I ask you. Herr Fendler, just to describe briefly your arm activity in Office VI.

A. With the assistance of confidential non, I had to obtain secret and official matters in time by means of a certain information service about the political and economical situation in the countries Spain and Portugal and about the other foreign countries inasfar as such information could be obtained in these countries. Also it was my task to make the necessary technical arrangements and to maintain them, which was necessary in order to get this information. The information obtained inas far as it concerned Spain and Portugal, they revaluated in my department and were compiled into reports, according to periods or as required. These reports I submitted to my group leader and he handed them over to Office VI; that is, Schellenberg. These persons decided how these reports were going to be used.

Q. You were only responsible, then for obtaining and working on reports?

A. Yes, I had to give a picture of the situation as objectively as possible and about the symptoms of the development of the political and economic development in those countries.

Q. Did you have anything to do with Keeping a check on foreigners or Germans in Germany and abroad in order to persecute them by the police?

A. No, my assistants had no executive power, nor did I.

Q. Did you have the task to organize the NSKAP abroad?

A. No.

DR. FRITZ: Your Honors, at this point I would like to introduce three more affidavits. I offer the affidavit of the witness Neubourg on page 49 of the document book as Fendler Exhibit 14. I would refer to the contents.

I also offer the next affidavit in the Document book page 51. That is Fendler Document No. 15, an affidavit by Elizabeth Custodius. I offer it as Fendler Exhibit No. 15. I also refer to the contents and, finally, I offer the next affidavit, page 55 of the document book by the witness Bernhard, Document No. 16 Exhibit No 17. I refer to the contents as well

Q. How long were you in Office VI, Herr Fendler?

A. Until the collapse, May 1945.

Q. While you were working in the SD did you ever have to fulfill missions or did you have to carry out acts which violate the internationally recognized rules of warfare or which might be considered inhumane?

A. No.

Q. Was your membership in the SD after the war broke out -voluntary?

A. No, I had been deferred for service in the SD; that is, at the beginning of the war I had received a note. In my pay book a note was contained that in case of war I was to serve in the SD. Not obeying this order would have been punishable by court martial; I beg your pardon, military law.

THE PRESIDENT: That is one time where court martial is correct. I think that is the first time it was used correctly and now you don't want to keep it.

A. Because at this service I could not leave this job voluntarily as has been described reportedly; your application to be released to the fighting forces was subject to punishment.

DR. FRITZ: Your Honors, the personnel file of the defendant Fendler in the Document Book III-C -- that is Document NO 4958, page 56 of the English, page 92 of the German text, Prosecution Exhibit 143 -- this persnnel file shows on the first page of the original some incorrectness concerning dates.

Inasfar as these inconsistencies are of importance here, I would like to address a few questions to the defendant Fendler.

Q. In the German Document Book the date of joining the SS is given 15 April 1947. In the English text they give 15 April 1933. In the photostatic copy of your personal file I cannot see any such entry. In your own affidavit, which is in Document Book III-C, Document NO-4144, Exhibit 142 of the prosecution, page 55 of the English text, page 89 to 90 of the German text, there it says on page 1 of the original under figure 2 -- and I quote: "In the year 1933 I joined the SS."

What is the truth of the matter concerning your entry in the SS?

A. May I correct the figure of a year here which was just given incorrectly? It says in the document book in German here not 1947 but 1937. In the year 1933, in the Forst/Niederlausitz I applied to be allowed to join the General SS. In the fall of 1933 I was tranferred into the SS Reserve as a candidate in Breslau because I had resumed my studies there in the meantime. As I have already mentioned, from 1934 until 1935 I served as a soldier. When I was released from the army I heard that my application for admission in the General SS had become obsolete because I had not done any service since 1933. I, therefore, was never a member of the Allgemeine SS, only when admitted into the SS formation called the SD in the Spring of 1936 I was admitted into the SS. The date of admission, therefore, is wrong both in the English and German; in the German document books and in my own affidavit it is missing and I want to add here that in 1944 I joined as a canidate.

MR. HORLICK HOCHWALD: If the Tribunal please, inasmuch as the date can be ascertained only from the exhibit, neither from the German nor from the English mimeographed copy, I would respectfully request that the Tribunal advise the secretary-general to bring the exhibit into the courtroom after the recess.

THE PRESIDENT: The secretary-general is so informed.

Q. Concerning your promotion to SS Sturmbannfuehrer in the German document book, this is not mentioned at all. In the English document Book this promotion is mentioned as 9 November 1944. In the photostatic copy of your personal file I also cannot find any such entry. I, therefore, ask you when were you promoted to SS Sturmbannfuehrer?

A. On 13 January 1945.

Q. Why did you apply in the year 1933 for admittance in the SS? A. At the time I was 20 years old and I had no political experience. I shared the hope of many Germans that the German people would be led towards better times and as a young person I decided to join this movement, being an idealist. Therefore, like many of my other sport comrades in those days, I had applied for admittance in this affiliation of the Party.

Q. Your were a member of the NSDAP since 1937?

A. Yes.

Q. Did you ever hold any office in the Party?

A. No, I was only a nominal Party member.

DR. FRITZ: Your Honors, I have finished my direct examination of the defendant Fendler.

THE PRESIDENT: The Tribunal will be in recess until one-fortyfive.

(The Tribunal adjourned until 1345 hours.)

(The hearing reconvened at 1345 hours, 13 December 1947.

DR. KRAUSE (DEPUTIZING FOR DR. RIEDIGER FOR THE DEFENDANT HAENSCH): witness Fendler concerning the fact that the witness belonged to the same Sonder-kommando, which later on, that is, in the year 1942, was under the command of Haensch for a time.

THE PRESIDENT: Please do. BY DR. KRAUSE (DEPUTIZING FOR DR. RIEDINGER FOR THE DEFENDANT HAENSCH):

Q. Witness, I understood you to say tat you belonged to the kommando right from the beginning of the Eastern campaign.

A. Yes, that is right.

Q. And you went with the kommando as far as Poltawa, is that right?

A. Yes, that is right.

Q. When the kommando advanced, did they also pass the places, Shitomir, Rowno, and Vinnitsa?

A. The Kommando 4B, while advancing in the time while I was with the kommando, only passed across Vinnitsa.

Q. When was this? If you do not know the exact time, please tell me approximately.

A. It must have been about the last week of July when the kommando arrived there.

Q. Did the kommando stay there?

A. Yes.

Q. And can you tell us approximately how long they stayed there?

A. As far as I remember -- the Reports of Events could not help me to reconstruct this -- it must have been the matter of eight to ten days.

Q. Do you know whether detachments of the kommando while advancing further stayed behind in Vinnitsa or in the vicinity of Vinnitsa?

Page 4,026

A. No, certainly not. I know that the entire Sonderkommando 4B left Vinnitsa.

Q. Did Sonderkommando 4B while advancing to Poltawa, as you told us, did they always stay together?

A. How do you mean that, did they always stay together?

Q. At no stage of the advance were any detachments of the kommando left behind at any localities.

A. No, I do not know of that.

Q. At a later time, when they advanced further, were parts left behind in the rear Army territory?

A. No, I do not know that.

Q. In Vinnitsa or the vicinity of Vinnitsa, did the kommando have any connections with that town at a later time?

MR. HORLICH-HOCHWALD: If the Tribunal please, it would be necessary to specify this question a little bit more as to the time. I do think it is clear that the witness can only testify as to the time he was there and if he has information other than at the time he was there, he may state how he got it.

DR. KRAUSE: A moment please. The translation did not come through.

THE PRESIDENT: Well, what Mr. Hochwald has said is that you should indicate the period of time that you are asking about.

DR. KRAUSE: It always only the period until October 1941; that is about the time when the witness was with the Kommando SK-4B. I am not asking him about any other period.

THE WITNESS: Until the 2d of Oct. 1941, that is the day when I left the kommando in Poltawa.

Q. (By Dr. Krause) Yes, of course. The question was whether the kommando during your time, that is up to 2 October 1941, during their further advance, kept in contact with locations left in the meantime, Vinnitsa in particular.

Page 4,027

A. I only remember that from Poltawa, which you just mentioned, an officer once travelled back to Kirowograd in order to talk to a confidential agent there with whom he had worked for a long time, in order to contact this man. A certain personal relationship had developed and that is the only case I remember. I cannot say anything concerning Vinnitsa.

Q. Thank you. Now a final question to you: Can you tell us to whom the tasks of the kommando were handed over as soon as the kommando left a certain garrison and went further cast?

A. Well, I cannot make a general statement about this. As I already said in my direct examination, the only person who had full command over the kommando was the kommando leader himself. Of course, it could occur that when the kommando was being transferred from one locality to another the kommando leader travelled in advance and that he gave a mission to one of the other officers to be in charge of the kommando while on route from one locality to another. That happened.

Q. The question which I put to you was this: If the entire kommando moved from one location, say, Vinnitsa, and if no one remained behind form the kommando there, who took over the tasks which the kommando had dealt with until then, in the location Vinnitsa which had been left, the security tasks in particular?

A. Vinnitsa is a special case. On the whole it was like this: When the kommando moved, no new forces followed who took over the tasks. If I may say so, a vacuum remained for the work, that is, during the time of my advance. This was general experience which I had in the assignment, there were two exceptions: One concerns Lemberg where Kommando 5, as has already been said, and Kommando 6 moved in after us. When they had moved in, we left Lemberg again and the second case is Vinnitsa.

THE PRESIDENT: Counsel, is this what you want?

DR. KRAUSE: Yes.

A. (Continued) The second case in Vinnitsa. Sonderkommando 4B was relieved by Einsatzkommando 6 in Vinnitsa.

Q. Thank you.

A. Or say I just add that I don't know whether it was the entire Einsatzkommando or whether it was only a detachment of 6. I don't know.

Q. A final question. Do you know whether, in the locations which you left, very soon commanders of the Security Police and the SD followed, or how much time elapsed before these commanders arrived there?

A. I cannot say anything about this from my own experience.

DR. KRAUSE: Thank you.

THE PRESIDENT: Does any other defense counsel desire to crossexamine the witness? If not, Mr. Hochwald will proceed with the crossexamination for the prosecution.

MR. HORLICH-HOCHWALD: If Your Honors, please, before I start with the cross-examination, I would like to present to the Tribunal and to Dr. Fritz the photostat of the document which was in question this morning, the personal file of Fendler.

THE PRESIDENT: Yes.

MR. HORLICH-HOCHWALD: I shall ask Dr. Fritz to look through the magnifying class and tell the Tribunal whether he can read the entry.

DR. FRITZ (ATTORNEY FOR THE DEFENDANT FENDLER): Yes, Your Honor. My photostatic copy is so poor that I cannot see anything at all, but here I can see with the magnifying glass the date 15 April 1933. The figure "33" however, can hardly be seen.

MR. HORLICH-HOCHWALD: Does that satisfy the Tribunal?

THE PRESIDENT: Yes, very well. The record will indicate what has transpired.

BY MR. HORLICK-HOCHWALD:

Q. Herr Fendler, you have just testified that in Vinnitsa Einsatzkommando 4B was replaced by Einsatzkommando 6, is that correct?

A. Yes.

Q. Will you tell the Tribunal when that was?

A. I cannot tell you the exact date, unfortunately. It must have been in the last days of July, 1941.

Q. Thank you very much.

A. Or the beginning of August, possibly.

Q. When you entered the SD, that was in 1937, was it not?

A. 1936.

Q. 1936. Your decision to enter this organization then was entirely voluntary, wasn't it?

A. Yes.

Q. Am I correct in assuming that you were deferred for SD service when war broke out?

A. Yes, I believe that I was drafted even before the outbreak of the war. I do not have this any more and therefore cannot give the exact date.

Q. Is it correct, Herr Fendler, that you were deferred for this SD service for the simple reason that you already had been previously a member of the SD, is that correct?

A. That is possible.

Q. You do not know that?

A. I was never told this. I could only say concerning the general situation, the situation at the time. Even now when I look back at it, I believe that I an justified in drawing that conclusion because the Security Police had a lack of personnel and especially in war time the were interested in retaining and keeping their trained experts at their disposal.

Q. Can you tell the Tribunal whether other people who had not been active in the SD as voluntary members were deferred when war broke out to the SD service or whether that was only a measure which was taken in cases of people who already had been active in the SD?

Page 4,030

A. I don't quite get that.

Q. Whether you know a case in which somebody was deferred for SD service when war broke out without having been a member of the SD previous to that time?

A. I heard that at the outbreak of war so-called honorary assistants existed, who were deferred for the SD because they could not be spared in the future work.

Q. But they had, as a matter of fact, already been honorary collaborators before that time, hadn't they, I mean honorary collaborators of the SD?

A. That was not necessary, Mr. Prosecutor. It wasn't necessary, If I may explain this, after the outbreak of war, it did occur that a man was declared indispensible from the SD. An economic chief, for example, could be accepted after war broke out. They were interested in has further colaboration and saw to it he was not sent to the front but would be at their disposal to work in the SD.

Q. That is not my question. The question was: Do you know if somebody, when war broke out or before war broke out, was deferred for SD service without having been a member or honorary collaborator of the SD previous to the outbreak of the war -- do forget what happened during the war. I am only asking what happened before the war, when you were deferred, at that time when you were deferred to the SD.

A. I did not hear of any such case, but I do not want to exclude the possibility.

Q. You have told the Tribunal that actually you never were a member of the General SS. You do not want to say by that that you never were a member of the SS, I presume, is that correct?

A. I merely wanted to say, Mr. Prosecutor, that I never was a member of the Allgemeine SS, the General SS, as you just said. When joining the SD, that is, the joining of the SS Special Formation called SD, I be came a member of the large organization SS, in that way only.

Page 4,031

Q. When you were a candidate for the leading service, did you go to the training school of which the Defendant Schulz was the commander?

A. No.

Q. You never were a member of this school?

A. May I explain this briefly? I cannot answer just yes or no to the question. As a pupil I was never a member of his training school. The course for the candidates for the leading service had nothing to do with the general training at the officers training school. Only officials for the intermediate and lower service were being trained there, but it is like this that a few members of the leading service, while studying at the university in Berlin simply did not find an apartment. Therefore the Officers Training

School used another building, which was not attached to the school, it was an apartment house. They put apartments at their disposal. If I may so say. we lodged there.

Q. Can you tell the Tribunal whether when you were sent home from your assignment in the East, whether it was with other members of the school at the same time and on the basis of the same order?

A. I believe so, yes, However, I must add immediately that apparently the date for reporting, 1 October, could not always be met because the individuals concerned heard about it too late, sometimes on purpose and sometimes accidently. Sometimes on purpose, because, as I have already said, the Einsatzgruppen kept the order back because they did not want to release the persons before they had been replaced.

Q. But it was on the basis of the same order, wasn't it?

A. Yes, on the basis of the same order about which the Defendant Schulz has already spoken.

Q. Herr Fendler, can you tell the Tribunal when did you hear first about the Fuehrer Order?

A. After the collapse, Mr. Prosecutor, in connection with the publications in the press concerning the proceedings in the IMT I heard about it that the Einsatzkommando were supposed to have killed certain groups of persons.

Page 4,032

Only then after the indictment had been served when Mr. Ohlendorf indicated it and testified to that effect in the witness stand here in court I finally became certain that such an order did in fact exist and what the contents of this order were.

Q. During this time in the East and afterwards when you were in Department 6 of the RSHA you never heard, neither officially nor privately about the Fuehrer Order, is that correct?

A. Yes,

Q. You heard about an order which was given to you in Lemberg, if I understood your testimony correctly, by Hermann, who told all the officers in the Sonderkommando?

A. Yes, he did not hand it on, he announced it, if I may say so.

Q. He informed you about it?

A. Yes, he informed us about it

Q. He did not tell you at that time that there was an order by the highest commander who fixed the tasks of the Einsatzgruppen as to the executions of Jews and Gypsies, and A-socials. He did not tell you that?

A. No, not in that form, Mr. Prosecutor.

Q. What exactly did Hermann tell you during this meeting about the execution of Jews?

A. He said that as part of carrying out the general security tasks, of which the commandos in the East were in charge the severest measured would have to be applied against the bearers of the Soviet

System. Here in particular I would like to say in the civilian sphere concerning the Einsatzkommandoes, the Bolshevist functionaries and the Jews were considered the most important bearers of Bolshevism.

Q. That was all he said?

A. In this connection he also explained several Wehrmacht regulations and that martial law would not be applied any more. I beg your pardon, there is something important I left out here, he said that mass executions would have to be carried out if necessary but in Sonderkommando 4B he would make all the decisions.

Page 4,033

Q. What did you understand when you heard what would happen then to the Jews and the Communists on the basis of this order. Did you understand on the basis of this order that the Jews and Communists were to be killed?

A. I understand it to mean that they could be killed if the situation required it. In this case the situation meant the security. It was never intended nor did I understand it to mean that everyone of them was going to be killed, without examining individual cases.

Q. What did you understand, that the great part, or the greater Part of the Jewish Population was to be killed on the basis of this order?

A. No, I don't understand it to mean that, Mr. Prosecutor.

Q. What did you understand then by the word "necessity" which you used just now in your explanation. You must have had some idea what would make it necessary to kill these people, under which circumstances it would be necessary to kill these people?

A. At the time I didn't have a general conception of this fact. I thought that according to the circumstances, according to the local situation which the Sonderkommando found, orders which the commandoleader might receive from other agencies, would then have to be decided upon by him, and he would decide which of these persons would have to be killed. Q. I understand that. What I want to learn form you is whether you ever did entertain any idea under which circumstances the circumstances would and could make it necessary according to this order to kill the people. Did you ever have in mind if that or that would happen, it would be necessary to kill the people? Did you understand the order in that way, that they would have to have committed first a crime against the security of the German Wehrmacht before it would be permitted to kill them according to the order -the officer had to decide, that is what you said, but, I would like to know whether you had an idea under which circumstances an officer was entitled to order an execution of these people?

Page 4,034

A. At the time I thought that a definite state of affairs would have to exist to justify the execution of the groups of persons concerned. That is what I thought.

Q. You mean by that, an investigation of a suspected person which resulted in the proof that he was guilty?

A. Yes, I had that conception.

Q. But you knew as a matter of fact that there was no trial contemplated; that on the contrary, any form of trial was excluded by this order?

A. I knew that, Mr. Prosecutor, but I may add here that there were two elements which caused strong reaction when we heard about this order. The first fact was that it would be the teak of the commando, as part of the Security Police tasks which they had to handle, to carry out the execution of persons captured who endangered the security, and the second fact was the realization that the procedure itself was considered too summary.

Q. Do I understand you correctly that you were of the opinion that there was an insufficient safeguard for the suspected person, as there was no trial, that his rights as a defendant were not sufficiently safeguarded. Is that what you want to say, that that was your opinion; was that your opinion?

A. That was my theoretical opinion, Mr. Prosecutor.

Q. This order about which we spoke just now you received in Lemberg, it was at the end of June, was it not?

A. In Lemberg, yes.

Q. It was the end of June?

A. Yes, approximately.

Q. Sometime later, during the other three months you were in the East, it was the general practice of the Einsatzgruppen to kill all Jews?

A I can not say this quite like that. I would like to give an explanation about this. During the assignment I heard, it must have been about the middle of August, when the Commando-leader returned from a discussion with the Einsatzgruppe Shitomir, at the time that he was rather shocked and depressed, and said that he had been reproached because the Einsatzcommando IV-B had carried out too few executions, and he, the commando-leader, when being thus reproached, had had the feeling that they judged the efficiency of a commando according to the figures of persons executed by the commando. efficient commander of Einsatzcommando, or Sondercommando, if many executions were carried out by his unit. Is that what you want to say, is it not? Einsatzgruppe. Herrmann. Was it the commander of Einsatzgruppe C?

A I am not quite sure of this. I don't know whether I just don't remember it, or whether he didn't even tell me at the time. I only know and I can only remember generally in that connection that he described the government expert Hoffmann as a savage who held such an opinion. alone, without the support of the leader of the Einsatzgruppe - that is right - to live such information to a Sonderkommando-leader, when Hoffmann was subordinate to the leader of the Einsatzgruppe, or would he have to have had the approval and even the order of the commander of the Einsatzgruppe. Do you think that Hoffmann alone could have done such a thing? gruppe Chief, nor Hoffmann talked to me about that sufficiently on the subject.

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Am I correct in assuming that from that time on you knew the Jews and other undesirables were indiscriminately killed by the different units of the Einsatzgruppe and Einsatzgruppe C?

A No, I didn't know that much. tion you received from Herrmann in August? What did you think he wanted to convey to you?

A He didn't have any special intentions in this. He mereley expressed his worry.

Q How did you understand his expression? What did you understand by that when he told you that it was his impression that only such a leader was considered a good leader of a Sonderkommando who executed many people? Didn't you find out then that it was not a question whether somebody was builty or not in order to be executed. It was rather a question that somebody was for some reason undesirable, that would have been the reason for execution? Did you find it out then?

A No. May I explain this in more detail. I said already that the procedure as such was considered rather summary insofar as for the officer who decided in special cases had only the alternative either, the man is going to be shot, or he is not going to be shot, and I said, when Herrmann informed us of the order in Lemberg, it was said very unambiguously, or at least that is how I understood it, that it would have to be decided in each individual case. It was, therefore, up to the commando leader, and such an explanation by Herrmann I could only understand to mean that this scope of decisions was being handled in too generous a manner. form Shitomir, up to the time he returned to Berlin, which was in the beginning of October 1941, did you learn, as a matter of fact, that Jews were killed deliberately, and that there was no decision in any single case; that these people were just killed for the simple reason that they were Jews and for no other reason, and that there was, of course, no decision on the part of the officer necessary in the individual cases.

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Did you learn that sometime during the time that you in the East?

A No, I'll just describe to you briefly what I heard after leaving the commando and returning to Berlin. During my trip back I stayed in Kiev for one right, and there I heard at the group - I can not say any more who told me, certainly it was not Hoffmann, that during those days in Kiev large scale executions had taken place, mostly of Jews. At the time this was based on the fact that this was a retaliation measure against the large dynamiting actions and arson which hand occurred after the Bolsievists left Kiev. Later on I heard in Lemberg where I also spent one night that a large scale shooting of Jews had taken place. At the time these shootings were also connected with another event, namely, the murders the Bolshevists had committed before leaving, about which the defendant Schulz has spoken. At the time I think there were 7,000 persons concerned who had been murdered in the prison by the Bolshevists, at the time. from Poltawa, or when you came to Lemberg on you way to the East with the group?

Q That must have been then one of the last days of June?

A Or one of the first days of July. The first days of July. Unfortunately I could not reconstruct this from the report of events, and I didn't have any other calendars.

executions according to you memory, which was in Tarnopol, is that right?

A No, I didn't say that, Mr. Prosecutor.

Q What was it?

Q Yes? more executions during the time that you were with Sondercommando IV-B but only in one case you knew how many people approximately were killed, is that correct?

A I remembered that, yes. I still remember the figure.

Q How you can remember that? carried out by Sondercommando IV-B in the time when you were with the commando, can you remember?

A May I think about it for a moment. I have had no time to prepare myself. There must have been six or seven instances. tely the three months you were with the commando? least some of these executions?

A Yes. I heard that these were saboteurs and looters. I also heard that Communist functionaries were being shot. I also heard that Jews were being shot, but I didn't hear that Jews were shot mereley because they were Jews.

Q Did you learn way these Jews were shot?

Page 4,039

A No, not in each individual case. I assumed at the time they were shot because they had been connected in some events which endangered the security of the Army in the operational territory.

Q How many instances was it that Sonderkommando IV-B had done that?

A Seven. Seven, including the commando-leader.

Q Did you have personal contact with these officers?

A Well, I don't know to what extent.

Q were you on friendly terms with them?

A Not particularly friendly. It was a correct comradely relation.

Q Were you on friendly terms with Herrmann?

A No, certainly not. If I may explain this, the commando-leader Herrmann was a very secretive person, and rather a hermit who didn't look for company in others but avoided them. the time together with the seven officers, is that correct?

A One can not say this so briefly, Mr. Prosecutor. I travelled a great deal in order to deal with the jobs I had been given as an SD Expert. I had to contact as many persons as possible in order to receive the necessary information. It occurred that I was absent for one or two days, for example, on an occasion that I mentioned, as chief of an advanced commando; it also occurred that the others officers who were absent, because they were in charge of advanced commandos. other commandos, that Sonderkommando IV-B kept very much together. That you were not divided up into sub-units, and part-units, and, if such a sub-unit was formed for a special task, they immediately again returned after having carried out this special task, but if I understand you correctly the quarters of the whole commando was in one place, is that right? Either in Poltawa or in another place you have mentioned here?

Page 4,040

A Yes; in general it was like that. often. Did never one ever tell you that it was the official duty of the Sonderkommando to kill Jews indiscriminately. I am not asking you now whether you got any official information about that. I ask whether you learned from one of your fellow officers, any one of them, if it was that way, was that the way?

Q No?

A No. No. different reports, you learned what the population was doing, didn't you?

A That depended. I would have been satisfied if I had been able to hear everything the population thought.

Q But you know more than other people, didn't you?

A I would like to say the following here. That it was very difficult in Russia to hear anything at all. The Russians were used to keeping very quiet about certain things, even more than it was the case in Germany. held about the activities of the Einsatzgruppe?

A no, I can not remember. If I may explain this. It really would have needed unusual courage by the Russians to tell us, after we had been there for about eight days, that they didn't like the way we treated them. had informers form the civilian part of the population, did you not, and they certainly told you what the other civilian part, who were not the informers, said about the Germans; did they not?

Page 4,041

A May I say something about that, Mr. Prosecutor. In my SD work I could not use informers. An informer is a person who says something bad about another person or group. That is not what I wanted. Such a man goes to the police but does not go to a person who wants to gather information, say about economics or the administration of a city. I do think that part of the morale of the population is, undoubtedly, this part of their opinions. You must have known how the population reacted to the killings of Jews. There were people who certainly had an impression. It was a kind of terror and we know that in the Ukraine there were many anti-Semites. They were very likely happy that Jews were killed. There are documents before the Tribunal that show that, for instance, in the Crimea. So you would have learned how the population reacted to these killings, favorably or unfavorably. You never heard anything about this?

A I did not hear of any such cases. If I may explain this further, Mr. Prosecutor, I think this is owing to the fact that our general information was too incomplete. I do not doubt that these reports would have come to my knowledge, if I had remained in that locality some weeks or months and conducted regular information service with a permanent staff and confidential agents. But, in the eight days one may have stayed in one location this was not possible except for coincidences or chance but this did not occur as far as I know.

Q May I ask now something else. You were the second highest ranking officer in Sonderkommando IV-B, is that correct? not represent him, you were not this deputy, but that in everyone's sphere of work the designated expert had to decide for himself when the commander was not there. That means, in other words, you in SD matters and the men who was in charge of Department IV, in Gestapo matters, executivematters?

Is that right? that Herrmann was away either for hours or for a day. in charge of Department IV were away at the same time? executive field, in the field of Department IV, the order to shoot somebody or people, or the order to arrest some people, or an order regarding executive measures, to whom would it have been left to order this measure? the other SS-Obersturmfuehrer who present who acted as deputy for executive measures because he was an expert on such matters.

Q That was an Officer?

Q Would not that have been your task?

A No. Apart from the face, Mr. Prosecutor, if I may add thisyou talked about executions. I doubt here whether this is a case which we can consider as an example - a person who was to be shot, say it is quite obvious in that case and would not depend on waiting until the Kommando leader would return in two hours or the same evening.

Q Might well have happened? It would have been against security measures to take the boy with you. You have told the Tribunal yourself that it happened that the Kommando leader sometimes left the Kommando and left the marching orders to a deputy.

It could have happened in such a time that such a case would arise - anyhow it is a hypothetical question and it would not have been your task so I do not think you need to go into that much further. I to Department VI of the RSHA?

Q Can you tell us why this transfer was carried out? training as candidate for the leasing service. Therefore, I held the lowest rank as a member of the leading service. Therefore, I returned to the expert field of the SD which I left during the time of my training and study. At the time inquiries were being made which tasks the individuals would like to work on. I myself was interested in the information from abroad. I therefore asked that I would be assigned to this, Office VI at that time needed people for this particularly and, therefore, I was sent to office VI. ties of the Einsatzgruppen which, as you have told the Tribunal in direct examination, did not like very much. You have also told me just now that you were shocked by the fact that it was a summary procedure and that your units were to carry out executions themselves. Did you ever, after having returned from the East, try to leave the SD service? forces. In every case I was refused, After 1944 it wasn't possible any more because having been ill I was no longer able to do service in the fighting forces. the SD and go into the Wehrmacht? Was it for the reason that you wanted to fight on the front or was it for the reason that you considered that your work with the SD was not a work you wanted, for instance?

I considered myself too young, before 1943, just to study while the others were fighting. And, secondly, after 1943, I considered myself too young to work in the staff in Berlin and not to be with the fighting forces. sidered the SD to be an organization which did things you did not like? You just wanted to leave the SD for patriotic reasons as you wanted to fight on the front, is that right? tion, if I may use that expression in this connection. and so on. Did you consider these measures about which you had learned in the East to be justified?

Q Did you consider them to be humane?

Q Nevertheless you did you not want to leave the SD for these reasons? Is that correct?

A Yes. If I may just explain this in one sentence, Mr. Prosecutor. I did not consider these things to be the affair of the SD. If I may explain this - in the Einsatzkommandos there were members from all parts of the SS working together. The SD itself held the smallest number among this. It was once worked out. I think it was only 38 and I knew from my own experiences, from my work until then, that executions and executive tasks were not being handled by the SD, that they merely handled information.

Q You have said that only 3% of the members of the Einsatzgruppen were members of the SD, is that correct, approximately?

A Yes. To explain this, not in the entire organization, but in the reporting section, that is a formation of the SS. members of the SD, most of the officers in the Einsatzgruppen?

A No, Mr. Prosecutor, if I may express it in that manner. Please excuse officers of the SD, were drafted into these Einsatzcommandos through unauthorized military power which actually had nothing to do with the SD as it had existed until then. It wasn't the initiative of these individual men and the work of these men in the Einsatzgruppen which is the subject being debated in this trial which resulted in the work done, but I don't know quite all the connections, whether Himmler or Heydrich were responsible for it.

THE PRESIDENT: The Tribunal will now take its afternoon recess for 15 minutes.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Proceed.

CROSS-EXAMINATION (Continued) BY MR. HORLICK-HOCHWALD: documents in evidence which show that in a time when you were second highest ranking officer in Sonderkommando 4b, people werekilled in great numbers by this unit, and I would like you to lllok now at Document Book II-A. This is on page 81 of the English, your Honor. Document NO-2938, Prosecution's Exhibit No. 44. The quote to which I refer is on Page 81 under the heading, "Page 14 of the original". It reads: "The Einsatzkommando 4b is at work at present in the Tarnopol area. It is planned to have the Kommando proceed to Preskurow. Out of the 54 Poles and Jews who had been working as agents for the NKWD, 8 persons, two of them being Jewish woman, could be arrested and executed, the remainder having taken to their heels apparently." It goes on: " At Tarnolop also 10 soldiers were found to be among the murdered in the prison, one of them being a lieutenant of the air force, 6 pilots and 3 soldiers off the mountain troops. Of the Jews assigned to the excavation of the corpses, about 180 were slain, partly in the prison court, party in the streets. Moreover, Jewish residences were destroyed by members of the Waffen-SS with hand-grenades and set on fire." Did you know anything about the things reported in this situation report?

A May I clarify something about your introductory statement? I wasn't the second in command of the kommando.

Q You were second highest ranking officer, weren't you? kommando.

THE PRESIDENT: Who was the second in command?

THE WITNESS: There was no on in general.

THE PRESIDENT: Well, if you are the second senior officer, who would be the second in command?

THE WITNESS: The second in command was that person who was appointed by the commander in each individual case.

THE PRESIDENT: Well, suppose he didn't appoint, suppose that the commander were killed, who would take over?

THE WITNESS: The senior officer present at that moment.

THE PRESIDENT: That would be you, wouldn't it?

THE WITNESS: That might have been me, yes.

THE PRESIDENT: Yes, proceed.

Q (By Mr. Horlick-Hochwald) Did you know, Herr Fendler, about the happenings which are described in this report? Paragraph 5, on Page 14 of the original of the 54 Poles and Jews who worked for the NKWD as agents, I heard about this here for the first time. assigned to the excavation of the corpses of the members of the German Wehrmacht and were killed partly in the prison court and partly in the streets? and the Ukrainian militia, directed against the Jews in Tarnopol.

Q Did you hear how many Jews were killed during these excesses? correct? by the Ukrainians, mostly by those who guarded this excavation work, that is the Ukrainians, and secondly, in the first hours of the occupation of Tarnopol, excesses also occurred done by the German troops against the Jews, because among the few hundred corpses, the figure of 500 is given in the reports, several German prisoners were found, which the Bolshevists, before they had left, had killed in a cruel manner.

The mutilated corpses were found. these excesses were Waffen-SS units? macht, particularly the Mountain Corps had taken part, because they were found as corpses in the prison. to supervise the excavations? Am I correct in assuming that that was a German agency who ordered these Ukrainians?

A In this particular case I cannot give you any information. I can only make a general statement and draw a personal conclusion. This Ukrainians militia or the regular police, they were called different names in various localities, were always under the command, as far as I heard, of the competent local town commandant to whom they were subordinated, who employed them as provisional police. about these happenings here, so may I assume then that you knew that Jews here were deliberately killed either by members of the German Wehrmacht or by members of the German Waffen-SS or by members of the Ukrainian militia which was nothing else than a submit of some German agency in these places, is that correct? are described here in this report, is that right? occur. out by agencies either of the German Wehrmacht or of the German WaffenSS or of the SD? and you knew that the killers of these 180 Jews were Ukrainian militia which were active under German supervision, did you not?

inally and whether actually somebody instigated this action. At the time I heard that spontaneous actions occurred which are to be regretted and I was sorrowful about that.

Q Who were the people who acted spontaneously? They were Germans and people who had authority from the Germans, is that correct? That means the Ukrainian militia, is that correct?

A No. As I just said, at the time when I heard about these things, I gained the impression, that no authority existed, but that these were merely excesses done by individuals who then, as it is usual on such occasions, increased, because they were not conducted and not corrected. Jews were killed, is that right?

A I did not hear of a great number. I did not hear any figure concerning this or concerning these excesses. The figures mentioned in the reports of events here I saw for the first time when I read these reports here, during the trial. you the story about these excesses, approximately how many Jews were killed during these excesses? about this.

executions. You have told us now a story about excesses so I would ask you whether you know or whether you were told how many Jews were killed during these excesses?

A I beg your pardon. It appears we have been talking on different subjects all the time. I only talked about the excesses. excesses.

MR. HORLICK-HOCHWALD: You will see in document book IIC, the document I am referring too your Honors, on Page 49 of the English. It is Document No-2934, Prosecution's Exhibit 78.

THE PRESIDENT: What book?

MR. HORLICK-HOCHWALD: II-C, on page 49. It is the first paragraph under the heading, "Einsatzkommando 4b". This is an operational situation report which is dated 16th of July - no, I am sorry, 11th of July, 1941, and it is reported here that Einsatzkommando 4b has finished its activity in Tarnopol. 127 executions. Parallel to that, liquidation of 600 Jews in the course of the persecutions of Jews as induced by the Einsatzkommando.

Q (BY Mr. HORLICK-HOCHWALD) Of about 127 executions, if I am not mistaken, you have told the Tribunal that you know only about twenty to thirty, is that correct? You do not know about the--

Q You don't know about the others, approximately one hundred? course of the persecution of Jews as induced by the Einsatzkommando? excesses referred to the statements made in this report here as well. I cannot make any statements about this.

were by no means spontaneous, as you have said, but that they were induced by the units of which you were the second highest officer, isn't that right? Prosecutor. I personally can only doubt its credibility.

Q Why? You have just told the Tribunal that you have no personal knowledge of it, so either you change this statement or you have no reason to doubt the correctness of this report. I have questioned you at great length, and you have said, "I do not know a thing, I do not know who carried it out; I do not know whether it was instigated; I do not know how many people were killed." Why, then, do you doubt a report which gives all the details about which you profess, just now, to have no knowledge? It can be right; cannot be right, because according to what you have said just a minute ago, you do not know it. Am I mistaken in that?

A Mr. Prosecutor, I don't think that the one testimony excludes the other one. I said that looking back at it now I doubt the correctness.

Q Why? cannot imagine it according to the character of the kommando chief, that he should have given such instructions or that he should have approved of such a thing if he had heard about this in time and could have stopped it, and secondly, I heard that the kommando leader expressly prohibited members of the kommando to take part in the excesses at all.

Q When did you learn that?

Q Why did you give this order?

Q Why did he give it?

in these excesses. Nevertheless, he issued an order telling them that it was not permitted to take part in it. Wouldn't it be more logical to assume that some, at least some of the members of the Einsatzkommando, the Sonderkommando, participated in them, and that the result, of this participation was the order by Hermann?

A No, I don't think so. This was how he cared for it.

Q Can you tell the Tribunal whether Hermann was in Pretsch? of leaders where Streckenbach handed down the order about the killing of the Jews? an order?

A During the time of my assignment "I heard nothing about it, which might have given me reason to assume this. he did know about the Fuehrer Order? If a kommando leader had received this order in Pretsch, then he did not have to hand on, of course.

Q But is it not very unlikely that he was ignorant of this order? You think that he --- Was he a priest?

A Please?

Q Was he a minister? Or was he an officer?

A Officers; by description I would call him an officer. He was not a soldier.

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were to be killed, why should he have been a safeguard for you, that this order which is in accord with the Hitler Order, was not carried out? Why should he have reluctance to kill these 600 or 180 Jews? It was a part of the order to instigate pogroms, to instigate such excesses. The Defendant Ohlendorf has testified here on the stand that he was requested by the RSHA to instigate such pogroms, and that he refused to do so. Why should the person of a Sonderkommando leader be a safeguard, if that was not carried out in contradiction to this document?

A No, this would be a conclusion going too far. Mr. Prosecutor but I would like to add something here. If a kommando leader in this case - these are assumptions and conclusions of mine if a kommando leader had received the order in Pretsch, then he personally could have decided not to carry out this order to its full extent, but to limit it to that extent which he considered necessary in each individual case. His announcement in Lemberg was therefore accordingly. I shall also talk about this now because you indicated indicated it. If in Berlin, I bog your pardon, or rather in Pretsch, he received the order to instigate pogroms, I cannot say this from my own knowledge, because he did not talk about it, at least not with me, and if he did not want to do it, then the possibility existed for him that he reported to Berlin the fact that a pogrom had occurred in Tarnopol and described it in such manner as if it had been done on his initiative.

Q But from personal knowledge you don't know anything about it?

Q Will you turn now to Document Book II-A. This particular quote, your Honors, is on Page 44 of the document book. It is Document NO3144, Prosecution's Exhibit 38. It is said here that Special Kommando -

THE WITNESS: I beg your pardon, what page of the original, please?

MR. HORLICK-HOCHWALD: It is Page 4 of the original.

THE WITNESS: Thank you.

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Q (By Mr. Horlick-Hochwald) Under the heading "Einsatzgruppe", "Security Police Measures." Page 44 of the English, your Honors. The next to the last paragraph form the bottom, it says "Special Kommando 4b, in the period between 13 and 26 September, executed 103 political officials, 9 saboteurs and looters and 125 Jews were killed for the simple reason that they were Jews? Otherwise they would have been either labeled as political officials or as saboteurs or looters, or I do not know for what crime, but is it not patently clear from this report that these 125 people were killed for the simple reason that they were Jews? the possibility exists that these were Jews who actually connected with matters and events which would have listed them in the other categories as well, or classified them as such, but they were classified individually because perhaps it was required for the reports that in each individual case the Jews were to be classified separately.

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Q. Did you participate in the drafting of the reports which were sent from your Sonderkommando to the Einsatzgruppe?

A. No, I talked here about an assumption.

Q. How did the reports from the Sonderkommando to the Gruppe, how were they drafted, how were they made? Am I correct in assuming that you made the SD reports to the Gruppe?

A. I made my reports to the Kommandofuehrer and he decided that they were used after that. In most cases he handed them on himself, that is, he handed a note to the Gruppe, or he handed them on to the Wehrmacht.

Q. Did you ever see such a report, that was made by the Kommanda Fuehrer?

A. An SD report?

Q. A complete report which was entered.

A. No, I don't think he made complete reports buy that does not cover individual reports so that he saved work; that material submitted by theexperts and the reports submitted by the experts he handed on was just a note or a covering letter or else he would have to require everything.

Q. If I want to sum up your testimony though, is it correct that you know and know that at a time when you were in the East the Jews were killed there in great numbers?

A. What do you mean by in great numbers?

Q. I understand you to have said the killing of 20 to 100 people is already a great number of people. Of course if you compare it with other numbers of situation reports we have heard here it might be possibly a smaller number but I just want to say approximately 50 or approximately 100 at a time?

A. I heard that Jews were being shot in the East at the time when I was with Sonderkommando 4 B.

Q. I want to turn now to your affidavit which is in Document Book 3-C, your Honors, on page 55, document NO 4144, Prosecution Exhibit 142.

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Did you sign this affidavit, Mr. Fendler?

A. Yes.

Q. Did you swear to it, after reading it through?

A. Yes.

Q. Did you have the opportunity to make changes in this affidavit?

A. Yes, and no, Mr. Prosecutor. A few important minor matters I think of corrections in typographical errors --were allowed me but a few additions which mattered to me and certain impressions which I wanted to clarify unfortunately I was not allowed to make.

Q. May I ask a simple question then. Why did you sign the affidavit?

A. Because I was no native.

Q. Were you under duress when you signed the affidavit?

A. Not while signing, no.

Q. Do you now want to say that you were under duress before the signing of the affidavit during the interrogation by Mr. Warterberg?

A. I would almost like to say that; not a physical duress.

Q. What kind of compulsion was it then?

A. Two kinds. Mr. Wartenberg first threatened me with more severe arrest, and secondly, he threatened me with extradition.

Q. Extradition to whom?

A. I beg your pardon?

Q. To whom?

A. He threatened to extradite me to the Czechs.

Q. Did you have a fear the extradition to the Czechoslovakian Government?

A. No, I told him that.

Q. So that was no duress?

A. I was not so sure whether I would be extradited even if I was not guilty at all.

Q. If you are not guilty and not extradited you are better off than here.

Here you are under indictment?

A. At the time I was not indicted; I only assumed that I was called here to be used as a witness. When signing this affidavit I did not know, as I have already said during my direct examination, that this would be used as evidence against me.

Q. Would you have changed your testimony in your affidavit if you would have known that you were to be indicted?

A. I would have completed it and clarified it in order to avoid misunderstandings.

Q. Did your counsel know about this fact which you have told the Tribunal just now when Mr. Wartenburg was interrogated here as a witness from the 6th to the 7th of October?

A. I don't know for certain whether at that time I had talked about it to my defense counsel Dr. Fritz; he only took over my defense a few days before the trial started.

Q. That was considerably later and it was made clear by the Tribunal to all defense counsel that Mr. Wartenberg would be at the disposal of defense counsel for cross examination just for one reason, in order to find out all the interrogations were conducted by him and how the affidavits were made out. I have checked the record today and I did not find any question which was put by your counsel to Mr. Wartenberg, the only competent witness present. Can you explain to the Tribunal when Mr. Wartenberg was at the disposal of defense counsel for cross examination?

A. If I remember correctly at the time I believe the Tribunal established that corrections or supplements on the contents could be made during the proceedings by each one of the defendants. I, on my part, had no reason to have Mr. Wartenberg questioned about this because at the moment I was satisfied telling myself there are no obvious mistakes or errors contained in the affidavit, but there are only a few explanations necessary in order to clarify matters and that I would have the opportunity to make the supplements finally as I tried to do during my direct examination today.

DR. FRITZ: Your Honor, may I give an explanation about this, since it is my duty as defense counsel. I don't know any more why whether I was absent on a journey - I didn't know that Mr. Wartenberg was being questioned and I wasn't present; secondly, these matters which Mr. Fendler just mentioned, I only heard about afterwards.

A I only heard about them afterwards.

He only told me he wanted to make

THE PRESIDENT: You have given an explanation as to why you weren't here when Mr. Wartenberg was ready for cross examination, BY MR. HORLICK-HOCHWALD:

Q. Did I understand you then corectly that you say that tents of the affidavit are correct?

A. Except for a few supplements which I wanted to add, yes.

Q. You have been in Czechoslovakia, have you not?

A. Yes.

Q. You were in Olmuetz, is that correct?

A. Yes

Q. Can you tell the Tribunal where your office was located there?

A. Yes, in the first days the Commando was housed or rather Richard Wagner Square.

Then they were billeted in the building at the

Q. Is it true that in the same house of the Moravian Sugar factory there was also the Gestapo?

A. Yes.

Q. Did you ever learn while you were in Olmuetz what the Gestapo was doing there?

A. First I have to explain the following, that the small kommando of the SD, at the time as I said was in the same house under the same roof as the Gestapo, but they had a separate set of four rooms. This was some apartment with a separate entrance.

Q. You did not know anything about the activity of the Gestapo there in spite of the fact that your offices were actually in the same house?

A. I know and I heard about it, that investigations were made about persons who endangered or might endanger the security. These kommandos had been given a screening book for that purpose.

Q. Is it known to you that in Olmuetz when the Gestapo came in most of the Jews were arrested?

A. I can say the following here. I know that a great number of the Jews had escaped and therefore were not present any more. Whether most of them were arrested I cannot say. I know that Jews were arrested at the time; the ratio between the two groups, which I just mentioned, I can't say about exactly.

Q. Can you tell the Tribunal that most of the Jews who did not flee, who were still there, were arrested?

A. Whether the Gestapo arrested them or whether they already were arrested I cannot say.

Q. Then when did the Gestapo come in?

A. I don't know exactly any more whether it was 15th or 16th March 1939.

Q. When did the German troops come in?

A. The German troops arrived the same date.

Q. Who could have the Jews arrested before the Gestapo came?

A. That would have been possible by the Home Guard units of the ethnic Germans.

Q. Do you want to tell the Tribunal that this German Selbstschutz was in charge of the city before the German troops and the Gestapo came in?

A. If I remember correctly it was like this: That for a few hours no other authority existed in the city insofar as I recall because of unexpected snowfalls the coming in of the German troops was delayed, for many hours.

Q. And you presumed that during these few hours the German Selbstschutz arrested all the Jews?

A. I don't assume that they all were. I don't know the ratio of figures.

Q. Do you know what happened to these Jews?

A. I know that some of these Jews for some time were in the so-called camp Stefanau. This was an internment camp.

Q. What happened then?

A. I know then that this camp was dissolved. What happened to the individual inmates I cannot say.

Q. Were you in Olmuetz when war broke out?

A. You mean in September 1939?

Q. Yes.

A. Yes.

Q. Do you know most of the Jews who had returned either from Prague or were unable to flee were arrested, and then sent to Buchenwald? Is that known to you?

A. Yes.

Q. Do you know by whom these people were arrested?

A. That must have been done by the State Police at the time.

Q. Is it known to you that these people were arrested and sent to a concentration camp only for the simple reason that they were Jews?

A. No, I did not know that at the time.

Q. What did you think why they had been arrested?

A. For general security reasons as a precautious measure. That's how I heard people talk about it at the time, pointing out as they said at the time during the first World War the Home Front had been disintergrated because of Jewish elements.

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Q. Did you believe that that was correct?

A. I cannot say anything about that; at the time I was still too young.

Q. I possibly made myself not enough clear. I, of course, wanted to say if you considered it correct if these people were arrested and sent to concentration camps just in order to clean the Heimatfront from the Jews.

A. Do you mean my attitude to the question at that time or now?

Q. Not today; then, when you did see how the people were sent to the concentration camps, and you knew about it.

A. At the time I did not know that they were sent to concentration camps. I only knew that they were sent into camps. I assumed that those were some kind of internment camps.

Q. Did you know that concentration camps existed in Germany?

A. Yes.

Q. How many did you know about in 1939?

A. In 1939 I should have heard of two, one was the socalled Camp Sachsenhausen near Berlin; and the other one was at Dachau.

Q. Did you learn about Buchenwald during your activity in *---*

A. I don't think so. The existence of the Camp Buchenwald I think I only heard about later.

Q. There is an affidavit in your document book which was not submitted by your counsel. If the Tribunal pleases, on pages 60 and 61 of the document book Fendler. The affiant here tells the story that you assisted here Frau Suessmuth and her Jewish husband in the camp of Stefanau, the existence of which you have here testified just 15 minutes ago, and she goes on to say that her husband died in 1940 in the concentration camp at Buchenwald. Did she, meaning herself, an Aryan, get arrested by the Gestapo in the same year and did you make an intervention that she got out.

Did she not tell you ever that her husband was later sent to Buchenwald?

A. I do not remember that. Probably Frau Suessmuth at the time did not even know where her husband was; she probably only knew he was in a concentration camp, or at least he was not with her any longer. She only heard afterwards that he had been brought to Buchenwald at the time.

Q. Was it known to you that Czechoslovakian citizens were sent for forced labor to Germany at that time?

A. At this time I don't think so. At that time, if I am correctly informed, people were asked to work in Germany voluntarily.

Q. I think there is also an affidavit in existence which shows that you might have known at least something about that and this is on page 64 of the document book Fendler. I do not want to take the time of the Tribunal to read that into the record buy it is clear from the document that you, Mr. Fendler, were of some assistance to Czechoslovakian citizens when they were not sent to Germany, so you must have known by then that arrangements were not so voluntary?

A. Mr. Prosecutor, may I give a brief explanation here. This assistance took place after I left Olmuetz. Until the collapse, I must say now, unfortunately, I retained my apartment at Olmuetz and stayed there occasionally. This event to which this refers as far as I remember happened in the year 1944.

Q. But you knew then before the collapse of Germany that Czechoslovakian citizens were forcibly sent to Germany for work?

A. Of course. My denial only referred to the time that I was active in Olmuetz until the end of 1944.

Q. You have given the Tribunal information about your knowledge, what happened in the East, about your knowledge as to what happened in Czechoslovakia; about your knowledge as to what happened or did not happen to the Jews.

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Did you consider during the time you were a member of the SD, of the Party and of the SS, these measures were justified?

A. To this rather general question unfortunately I have to give a general answer. I must say that collective measures of that sort are rejected by me on principles and that I regret them for these persons who are concerned buy this applies to all such things and for all times.

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of law so you would know something about international law. Do you think the orders as they were known to you about the summary procedure, where people could be executed at the discretion of the officer, where no procedures according to martial law -- that would be the right word -were held -- did you consider these orders correct according to the laws and customs of war according to the law valid in Germany and common to all civilized nations? Did you consider them in accordance with these norms? this question with "yes" or "no." Then you explain; but this question would be nice if you could answer it first with "yes" or "no." question was too complicated and put in a too general way.

Q I can possibly make it a little bit more specific. Do you think that the order which abandoned procedure according to martial law and gave discretion to an officer, who must not have any legal training, who must have only had a commission, to shoot people and to order executions was in accordance with the laws and customs of war and the Hague Convention? but please, may I give further explanations on this? During the time of my assignment in the East I was shocked and moved by the impressions I received there, about the manner of warfare by the Russians. I don't want to say now afterwards, nor do I feel called upon to do this, that I want to justify any German measures; I can only say that in the condition that I was at the time I could not arrive at any ambiguous decision above the necessity and justification of the measures ordered by the German leadership. I can only say that concerning the orders given I was shocked.

MR. HORLICK-HOCHWALD: I have no further questions.

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BY THE PRESIDENT: voluntarily. was it now?

Q You say that Mr. Wartenberg threatened with sending you back to Czechoslovakia. Now, do you stand on that statement? Honor, not when signing the affidavit.

Q Very well. During the interrogation did he threaten with sending you back to Czechoslovakia?

Q Why should you worry about going back to Czechoslovakia? With all the people you helped there they would probably have received you with open arms, wouldn't they? you returned to Czechoslovakia harm would visit you? What did you do there?

A Please, may I explain the situation?

Q Please answer that. What did you do in Czechoslovakia that, if Mr. Wartenberg threatened be put into effect, would have caused you harm?

A I myself did not do anything there, buy Mr. Wartenberg told me: "You know how your kind of people are dealt with there. You can expect to hang two hours after the verdict is pronounced." That is what Mr. Wartenberg said so I replied to him: "I am not afraid of facing any Czech authorities." Of course, all that matters is if they would give a just verdict on my attitude in Olmuetz. which were not true?

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no way affected the truthfulness of what you told him? of interrogation by Mr. Wartenberg rather excited me and it is possible that in that state my recollection failed me partly but, none the less, in spite of these threats, I tried, to the best of my knowledge and belief, to speak the truth as far as possible.

Q Did you tell him in fact the following: "I have never been officially designated as a deputy of Hermann's. I have, however, taken charge of official matters during his absence." Did you tell him that?

Q Is that true? today affirm, is there? affidavit, your Honor. I merely asked that some supplementary remarks should be inserted in order to make the meaning of that what I had said quite clear.

Q Very well; so far as it goes, it is correct. as the truth and the actual facts as I related them at the time. between 13 and 26 September, were you? 133 political officials, 9 sabateurs and looters and 125 Jews. Did you know of that execution? either.

Q Please answer my question. Do you know of this execution?

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by the Kommando. There might have been several executions. As I said in my direct examination, I heard about it in Krementschug that one execution was carried out, shortly before the transfer of the Kommando to Poltawa. Whether those persons were excuted on that occasion mentioned in this report here now, I cannot say. done by Special Kommando 4-B in the period already indicated and that execution brought about the death of the individuals I have mentioned. Do you know of that execution -- yes or no? I know that an execution took place in Krementschug.

Q Why don't you know of this execution which occurred while you were with the organization which performed it? Explain why you, the senior officer in command of an organization which only consisted of 80 men or a hundred at the most, always one compact unit, why you would not know of an episode of this gravity? been carried out I should probably have heard about it or possibly I assume so, but I cannot say in detail whether this execution occurred. I only know -- I don't know whether the persons mentioned here were executed then; I only know that some execution took place. ing occurred at this time?

A In Krementschug? You mean in this time we are now discussing, your Honor?

Q Do you remember the execution? carried out or was carried out. numerous execution?

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A I cannot say that. I do not recollect the preparations on that I would have noticed them.

THE PRESIDENT: Between now and Monday morning you try and recollect just box many were executed at that execution and all other relevant facts.

(The Tribunal adjourned until 15 December 1947 at 0930 hours).

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of America; against Otto Ohlendorf, et al., 15 December 1947.

0930-10.00. Justice Musmanno,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II. United States of America and this Honorable Tribunal.

DR. SUSS: Dr. Suss, representative for the attorney Dr. Linck for the defendant Ruehl. Your Honor, I ask that the defendant Ruehl be excused from this afternoon session, and from tomorrows session the entire day, in order to prepare his defense.

THE PRESIDENT: Do you want him sent to Room 57 this afternoon?

DR. SUSS: Yes, I would like to ask for this.

THE PRESIDENT: The defendant Ruehl will be excused from attendance in court this afternoon, and tomorrow all day. This afternoon he will be taken to Room 57 where he may confer with his counsel.

DR. SUSS: Thank you, Your Honor.

THE PRESIDENT: You are welcome. adjournment, we were discussing the action which occurred while you were with Einsatzcommando IV-B, which resulted in the execution of 103 Political officials, 9 saboteurs and looters, and 125 Jews. Now tell us about this action. You were with the Einsatzcommando at the time, you were the next senior officer in rank in the commando, and it is inconceivable that you would not know about this operation?

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my assignment I had nothing to do with the executive jobs, that is, the arrests, investigations, and finally with the carrying out of the sentence which led to the executions. In addition, I didn't know about the files of these cases -

Q Just a moment. Did you know about this particular action which occurred between 13th and 26th of September which brought about the execution of 103 Political Officials, 9 Saboteurs and Looters, and 125 Jews?

A I don't know, Your Honor, whether this was one action - it in Kremenchug that one execution took place, but I don't know what people were concerned there. you were with the IV-B? of which I heard.

Q And how many were killed in these six executions?

A I can not say, Your Honor, as I don't know.

Q For what were the executions? to the document, or, rather to the report to which the president has just referred, if I may refer to this, that is in Document Book II-A, Document No. 3155. There are two paragraphs after the passage which Your Honor has cited, and, in this it is stated in general that the following motives are at the basis for the execution carried out by the commando: Political functionaries, looters, saboteurs, active Communists, carriers of such political ideas.

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is why they were being executed; that these various things which you are now enumerating to us are the reasons why the individuals were executed, is that right?

Q Very well, proceed with your answer. Continue to read. Continue to read. prison camp under false pretenses, agents, and assistants of the NKWD, people who had participated in the deportation of Ethnic Germans, of making false statements, a socialists, and Jewish and the search for the undesirable elements.

Q Whom do you mean by the "Undesirable Elements." That is a rather large and broad category, and wide, so who would be "Undesirable elements. "Would they be Jews?

A I can not say, Your Honor, I don't know what they mean by this. members of the Russian Partisan bands. epidemics?

A I think I mentioned it, yes. I beg your pardon. Russians with food, agitators, and instigators, juvenile delinquents, Jews in general.

Q Yes. Now tell us about this last phrase, "Jews in general. "That means all Jews, doesn't it?

A I don't know, Your Honor, whether they mean all Jews.

Q What does "Jews in general" mean?

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Q Yes. Now you have on your own volition called out attention to this list of people who were killed, so it must be assumed that you are familiar with this. You were advancing this as an explanation of the operation which resulted in the death of 103 Political officials, 9 Saboteurs and Looters and 125 Jews. You knew then, didn't you, that Jews were being killed because they were Jews? didn't know this. categories of executees? kind of people were concerned.

AAnd here in this report these people are listed? before, not only in Commando IV-B, but also of V and IV-A, that is to say, they refer to the activity of all commandos of the different Einsatzgruppe-C. were Jews? at Pretzsch?

A I didn't command in Pretzsch personally.

Q When you arrived in Pretzsch weren't you for a few days in command of Einsatzcommando IV-B?

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Q We had understood something to that effect? not the case.

Q When did you first learn of the Fuehrer Order? with the Press Report at the IMT. That is, after the collapse, after I was in camp.

Q When did you first learn that Jews were to be executed?

A Were to be executed, Your Honor?

Q Yes. You know it.

A I don't think I understood your question correctly? the Einsatzgruppen?

Q What did Herrmann tell you in Lemberg? to take action against the bearers of the Bolshevist System, within the security mission of the commandos, and to take very severe actions against these.

Q What did he say about the Jews? Bolshevist System, or as Bolshevist functionaries, that is, rather, Jewish Bolshevist functionaries, as the Jews who were to be considered as bearers of Bolshevist system. as bearers of the Bolshevist Doctrine?

A If the security demanded it. He didn't say at the time that all Jews were to be executed, Your Honor.

with Jews who were among those who were active in carrying on the flag of Bolshevism, isn't that what he told you? should or should not be executed?

Q Well, how was the decision reached?

Q And how would they decide it?

A I personally, Your Honor? whether a certain number of Jews were to be executed or not?

A I don't think that I can answer this question so very generally. a certain number of Jews, didn't he? One-hundred Jews were brought before him, he knows of the one-hundred Jews, he must decide whether they were to be executed or not, How does he decide?

A I don't know, your Honor. the unit was never separated. You were the Senior Officer in command, and if you are a man of intelligence, you knew how Hermann finally decided whether to execute or not to execute; either you knew, or you are trying to make us believe you are an ignoramus, which you certainly do not appear to be. Herrmann made.

in the same mission. You were there for the same purpose, that is the reason? didn't bring them over, then they were brought to him because he had given an order for that, and he would not have given this order to me, but he would have given this to a member of the Department IV. That is why I can not say what he would have done in a theoretical case, because the one-hundred Jews would be brought to him.

Q It is not a theoretical case. It is a natural case in this very incidence of the killing.

Q No, it is not theoretical, you were there. While you were there, while you held the High Office in this commando were there 230 people who were killed in one operation. Now, how did Herrmann come to his conclusion as to whether he should kill these people, and did kill them, how did he arrive at his decision to kill these people? just said, kill these people? Maybe something happened in this period which led to this. Maybe he had an order from the Army to do it. tell us? gations?

A I can not say, I don't know.

Q You were there?

A I was with the Commando Your Honor? commando?

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A I don't know, Your Honor.

Q Give us an estimate? right? many were killed. An execution is not an abstract thing, It is a very tangible material thing?

Q All right. How many were executed?

Q Now don't give us "maybe". It is an actual thing. How did you find out about these executions, and how many were executed?

Q How many were executed in each execution? Ten?

A I don't know.

Q Fifteen?

A I don't know. were killed. How did you know that?

Q Were you present at that execution?

Q How did you know twenty or thirty were killed? the men were excited about the fact they had to carry out an execution.

Q They talked about it a great deal, did they?

A I beg your pardon? About this first execution, yes, they talked a lot.

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twenty or thirty? said why they killed those twenty or thirty; what was charged against these twenty or thirty; what did they say as the reason why these twenty or thirty were killed?

A I don't know.

Q Did they talk about it?

Q Did they say they were Jews?

Q Did they say why these Jews were killed? these twenty or thirty? the murdered prisoners who had been found, whom the Bolshevists had left behind; that these were people who had something to do with these incidents.

Q Then you did know why they were executed, don't you?

Q But you didn't tell us that when I first asked you, did you? people were killed.

Q And you said, no?

Q Yes, now you tell us you did know why they were executed. Where did you get your knowledge?

Q Upon what do you base your conclusion?

Page 4,079

Q And what is your knowledge based upon? in the prison -- pardon me, were found. because one-hundred bodies were found there?

A No one told me that, Your Honor. This is a conclusion I drew myself.

Q Did you talk to any men about that?

Q All right, and what did they say?

AAbout the question of the motive, I don't know that.

Q Tell us exactly what did they say about the motive for the killing? found out that there were people who were executed. Did you ask any one as to whether these two events were connected with each other in any way? Honor. which to base your conclusion?

A Yes, as I said. Your Honor, I had heard that five-hundred murdered prisoners, among them German prisoners of war, had been found in the prison. it to five-hundred, which is correct?

A Pardon me, the translation must have been wrong. I spoke of several hundred.

Q How many is it now? You have given one-hundred, several hundred, and five hundred. How many were there?

Q Five-hundred. All right now. Did they tell you that they had executed these twenty or thirty because the five-hundred prisoners who had been murdered?

Page 4,080

Q Then how did you come to that conclusion? murder of the German prisoners of war had been carried out.

Page 4,081

of German prisoners of war had been carried out.

Q Well, someone must have said something to that effect. Suppose they were killed because they had done something else? Suppose they had been killed because they were looters? You had to have some facts upon which to draw your conclusion which you have now given us. What fact did you base it upon? discussed - that there was great excitement on the part of the German Army among the troops stationed there and that there were excesses on the part of these troops because they found members of this unit brutally murdered in this prison. said "We have killed 20 to 30 people because of the murder." Is that what you want us to believe? No one ever made that statement?

A I can not say. In general maybe somebody did.

Q Well, then some one did tell you why the executions took place?

A He wouldn't have had to give this explanation to me.

Q Well, you said everybody was talking about them. You did hear someone say that men were executed because of the murders which had occurred in the prison, is that right? said why these 20 to 30 had been killed, is that right?

Q Now you will have to remember. You heard these people talking about executions, it was the first execution. The men were quite disturbed over the fact that they had to conduct these executions, shooting down defenseless people. The Army was tremendously excited about it, everyone was talking about these executions. Now, in all this talk no one said why these 20 to 30 were killed? You want us to believe that?

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A Perhaps they didn't talk about it because it seemed obvious that it was in connection with the murder of German soldiers. right on the spot that that's the reason why they were shot?

Q Did you, right at the time it happened, know that that was the reason?

A I don't quite get the question. therefore, it wasn't necessary to make any inquiry. Did you know right at the time of the execution why these 20 or 30 were killed? that was the reason the men were executed? killed, why didn't you immediately give that answer instead of requiring about 15 to 20 minutes of talking back and forth to have you give what to you was so obvious immediately when you heard about the execution? Why didn't you tell us that at once? said no, didn't I? what I assumed at that time. and read to us the first part of the interrogation, when the witness was being questioned as to why these individuals were executed. Were you here at that time?

(Reporter indicates "no")

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THE PRESIDENT: No, it was before that. And who was the reporter proceeding you, Gallagher?

Would you please have call Mr. Gallagher and tell him what we are seeking and whether he can find it in his notes?

Q What did your work consist of with Einsatzkommando IV-B?

Q And what did the SD work consist of? life in the area in which we were stationed and to report about it.

Q You were to gather intelligence, weren't you? economics, administration, etc.

A You had to make reports on conditions among the population? the Germans, weren't there? looters, and there were bearers of Bolshevism? And all these were scheduled for execution when it was determined that they were such?

Q Yes. So, therefore, you had to make reports on the potential enemies of the German forces?

Q Well, why not? questions which concerned the enemy. All such questions were already handled by the police in Germany and the same was done in the assignment.

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Q You were liaison officer with the Army, too, weren't you?

Q And you conferred with them on intelligence, didn't you?

A I only functioned as liaison officer once. And, at that time I conferred with G-2 of the Army.

Q And what is G-2 of the Army doing? It gathers intelligence with regard to the enemy, doesn't it? to the German Army, didn't you?

A No, Your Honor, this is the way it is. The "Barbarossa" order, which was the basic order and it has already been cited here, had ordered that the liaison from the Einsatzkommandos to the Army would run via G-2. That was the man who was the liaison agency of the Army. activities in Russia, is that correct?

A In what field prepared myself - in what field? did in Germany - SD work?

Q And that included counter-intelligence, did it not?

A No, not at that time any more. Counter-intelligence, if I remember correctly, since 1938 or the beginning of 1939 was taken away from the SD completely.

Q So you were trained in counter-intelligence work, weren't you? rity, not about the entire counter-intelligence field. The SD intelligence was only of an informational nature, not connected with police or executive missions. Police prosecution of sabotage and espionage, which are the main components of counter-intelligence, were completely in the hands of the State Police from the very beginning.

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enemy which may be of assistance to ones own forces. That's right, isn't it? I can only speak of what we called SD work. That's what I did in the assignment. SD work means that I would have to gather intelligence about the situation in the various domestic spheres within the indigenous population, that is, Russian population - questions of law, administration, culture, science, and economics, especially economic problems were uppermost during the advance in Russia. the population, wasn't there? about that. I was never able to determine that. you. I only asked you whether when an execution occurred if there wasn't some reaction among the population to it?

A That depended on two matters, Your Honor. First of all how the execution was carried out. I am speaking theoretically ' whether there was the possibility that the large population learned about it. And, second the question of information service. If such a reaction existed on the part of the population it doesn't mean that I heard about it or had to hear about it.

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it and the question hasn't been put to you. this assignment I did not know of any reaction of the people to these executions or, rather, I was not able to determine any such reaction. I heard nothing about this through my intelligence channels. them it would be known in the town if it wasn't too large a place, wouldn't it? of the population you would have to make some reference to the fact that there was terror and fright in the town because of the execution, wouldn't you?

A Well, your Honor, I didn't hear about the fact that Kommando 4-B marched into a town and then seized the Jews.

Q Were you in the town of K-l-o-c-z-o-w?

Q What happened in that town? How many did 4-B kill in that town?

Q Well, was it a large number of a small number?

A I didn't spend any time in Kloczow. I drove through it. How many did the Kommando kill in Kloczow?

A In Kloczow?

Q Yes, how many did the Kommando kill in Kloczow?

A I do not know. I assume that they killed none because I think I read in some situation report that the group staff of Einsatzgruppen C was active in Kloczow. And in this connection it is mentioned that the Kommando 4-B - I hope I am repeating this correctly - that is had passed by Kloczow.

If I understand this expression correctly in the report then this refers to the fact that Kloczow was by-passed by the forces of Kommando 4-B or rather that Kommando 4-B searched the town of Kloczow for material left behind by the Bolchivists.

Q You are trying to adjust your explanation to the report. I want you to tell me what you know that 4-B did in Kloczow.

A I can't tell you anything about that, your Honor.

Q Did the group staff conduct any executions in Kloczow?

A I do not know. I just referred to the group staff because I saw this incident in the report. When I went through Kloczow I did not come into contact with the group staff. The Group staff must have come to Kloczow after the Kommando because the group staff was still in Lemberg at that time.

Q What did 4-B do in Kloczow? just quoted.

Q Don't tell me about the situation report. I want you to tell me what you know. I can read the situation report. What did you do in Kloczow? other --

Q And what did the Kommando do in Kloczow?

Q Well you were with the Kommando, weren't you? I drove through Kloczow.

Q Didn't the Kommando stop at all? that parts of the Kommando did stop there.

Q And what did they do? What did they do when they stopped there?

Q What did you do in Kloczow?

A I do not know. I wasn't there.

Q The Kommando always remained intact did it not?

A On the march it often fell apart. That was unavoidable and there were interruptions of hours between various parts so that parts would come up later. I just want to give you an example, When we crossed the Djnepr River in order to get near the bridge there was a distance of 4 kilometers and I needed ten hours for this while others immediately able to cross the bridge.

Q Didn't you tell us in the early part of your direct examination that 4-B was a unit which did not separate? your Honor. the Kommando remained there and that you went straight on, is that right?

A No. That's not the way it was. Your Honor.

Q Well, tell us just what happened in Kloczow? Did any part of your Kommando remain after you went through? Kloczow?

A Your Honor, may I briefly describe this? it was in Kloczow?

A Parts of the Kommando came through Kloczow before me. That is to say the first parts must have come through Kloczow about a day before me. The advance took place in groups and I came with the last few vehicles.

Q Then 4-B did separate occasionally, didn't it?

the conditions of War made it necessary that the Kommando would separate temporarily for hours or days. But it was not so - - formed executions in Kloczow before you arrived, wasn't it? had been ordered by the Kommando leader. for hours and some times for days, is that what you tell us now?

Q Well, you said days just a moment ago, didn't you? Hours and days. Did you say that?

Q How many days?

Q Well, days would be more than one day, wouldn't it?

Q Well, when you say days you mean more than one day, don't you?

Q So, therefore, you didn't tell us the truth when you said in the very early part of your examination that the unit never separated, did you? as I think I remember them, this does not exclude the fact that small parts of the Kommando in order to carry out definite missions were briefly or temporarily separated from the Kommando. tion. At the time you were describing this other situation it was to your benefit to say that the unit did not separate. Now, since you assume it will be to your benefit to say that it does separate, you said it did separate. That's the way you are answering these questions, isn't it?

A No, one does not exclude the other. The situation has been that it was reported that other Kommandos were separated into two or three sub-Kommandos which operated independently, that is, one Kommando was hundreds of kilometers away from another Kommando. This was not the case in our Kommando. We were not separated that way. weren't you? Kommando? to arrive at the new garrison as quickly as possible.

Q How many men did you have? any situation weren't you?

A Yes, I was prepared. Whether my forces would have sufficed I do not know.

Q If you met Partisans you would fight them, wouldn't you? wouldn't have looked for it with the strength of 8 men. was in the town, not a large group, would you try to locate them? and they were in a house, would you send your eight men there and try to capture them? to set fire to some houses, four people. Would you go and try to arrest them?

A My own house in which I was staying?

Page 4,091

Q No, a house in the town. They were saboteurs and they assumed you were going to take over this house for your quarters and they were going to burn it. Would you go and arrest them?

A I can't decide this generally.

Q Well, no this isn't general. This is a specific question. You are marching through a town with six to eight men and you learn that there are some saboteurs contrary to German regulations and against the German forces and you know they are going to blow up a house and you know where these four men are. Would you go and arrest them?

Page 4,092

men in charge of the Communist Party, four of them, and they are about to hold a meeting in a house, and they are going to preach to the population and ask them to oppose the German forces, there are only four, would you go and arrest them? competent military commander about it, the local commander. a town and you know of this Bolshevist meeting, four men are going to Call the population together and to sell them the Communist doctrine, they are going to spread Bolshevism, would you go and arrest these four men?

Q Did you take an oath to Hitler?

A Please?

Q Did you take an oath to Hitler?

Q Did you take an oath as a soldier in the German armed forces?

Q Did you believe in the German cause?

A In what connection, your Honor?

Q Well, the German cause. You were in the German armed forces, you were marching into Russia. You know that you had marched into other countries. Did you believe generally in the policies of the Reich? threat of Europe by Bolshevism. threat of Europe by Bolshevism. some people who are going to blow up a house in which German soldiers are going to be quartered, you know that four Bolshevist functionaries, who are listed to be executed according to the orders, are about to attempt to proselyte the whole population against the German forces, and yet you do nothing?

Page 4,093

What kind of a soldier are you? danger and in which I myself had only eight men at my disposal, I would inform the competent military commander about this case.

Q Let's suppose there is no competent military commander around. This is a town and here are these four men standing on the corners asking the people to come into this great mass meeting, and these four are going to make speeches against Hitler, against the German armed forces to resist the invasion, would you arrest these four people?

Q If there was such a case, would you arrest them?

A --for the men that I led, then I would do something about it; I would have arrested the men.

Q Well, there is no acute danger to your men. These four are merely standing on the street corners telling the people to come in, they are going to listen to a fiery speech against the German forces, no danger to you but this very active political resistance. Would you arrest the men, the four men? I would not have had time so I wouldn't have had any opportunity to do so.

Q You wouldn't have any opportunity? You have eight men, and they are armed.

A Because I didn't have the forces to do this. four on the other side. Two Germans to one Bolshevist are certainly ample, aren't they, especially if you subscribe to the master theory?

Q All right. Well, you believe that two could overcome one, don't you, especially if two are armed. That is why I couldn't arrest four men.

Q Very well. Then your answer stands.

A I wouldn't have arrested them. uniform of the German Army, although you have sworn allegiance to the Fuehrer, although you are engaged in a war, yet you come across a force only one-half the size of your own, it is preaching sedition, it is preaching resistance, and you wouldn't even arrest them, that is the way you want your answer to stand? my forces. military commander who had better forces for such actions, and it would have depended upon his decision what he would have done to protect the German Army. that although you had twice as many as those who would be opposed to you, yet you would do nothing. All right, we understand how you feel about these things.

A I wouldn't have done anything because I had other missions to perform with my men. blow up a building, you still would not do anything, because you had other things to attend to. Did you consider the measures in the East justified? After you got back to Berlin and you reflected on what your kommando had done in the East, were you satisfied that those measures taken were justified?

A What measures, your Honor?

Q Well, the measures which the kommando took, the executions. You answered that question once before, why can't you answer it now?

A I beg your pardon, your Honor. I didn't quite understand it completely.

Q All right. This very same question was put to you on Saturday: "when you returned to Berlin after your service in Russia, did you consider the measures taken by the Einsatzkommando in the East to have been justified?"

Q What was wrong?

Q Did you consider it was wrong to shoot Jews?

A Please?

Q Did you consider it was wrong to shoot Jews?

Q Then you did know they shot Jews, didn't you?

Q When did you learn that?.

Q How far away was that from your organization which you had left?

Q How many miles or kilometers was that?

Q All right. Nov, you were with an organization for three months the commander, and you didn't know--You were with Kommando 4b for three months in constant daily association with the men who were doing the shooting, in daily contact with the commander, and you did not know that Jews were being shot because they were Jews, but then when you were five hundred kilometers away, then you knew they were shooting Jews because they were Jews, is that correct?

Perhaps I didn't express myself quite clearly, your Honor. In Kiev I heard that in the days preceding, that is in the last week of September, or it must have been around that time, mass executions of Jews had taken place in Kiev, and that in this case there were executions of Jews just because they were Jews.

Q And these executions were done by kommandos of the Einsatzgruppen?

A The Higher SS and Police Leader Jeckeln was mentioned. Which units he had used for this I only saw in the reports.

Q Well, what units were they; were Einsatzgruppen involved?

Q So that you had to travel five hundred kilometers and two days' distance from the very heart of this execution district before you learned that executions were being performed upon Jews because they were Jews, is that right?

Q All right. Now, we call your attention to Document Book II-C, Page 49, referring to Einsatzkommando 4b. It says: "The Einsatzkommando 4b has finished its activity in Tarnopol. 127 executions. Parallel to that, liquidation of 600 Jews in the course of the persecutions of Jews as induced by the Einsatzkommando. In Zborow, 600 Jews liquidated by the Waffen-SS as a retaliation measure for Soviet atrocities." All this is under the heading of Kommando 4b. Did you know about these executions and this liquidation of 600 Jews?

Q You don't know the figure, but do you know the incident?

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living in Tarnopol had occurred, first of all excesses on the part of the Ukrainian population, and secondly, unfortunately, on the part of the German Army. you know about them at the time they occurred?

A Your Honor, it says here only 127 executions. The report does not clearly show that these were carried out by the Kommando 4b, Did the kommando conduct these 127 executions? thirty people were shot by the kommando in Tarnopol.

Q These were included in the 127, were they?

Page 4,098

Q. Did you make up any report on the excesses perpetrated by the population on the Jews?

A. No, I did not make any reports about this.

Q. Well, why wouldn't you? That was certainly a matter involving the population. Why wouldn't you include that in your report?

A. I personally only spent half a day in Tarnopol in order to go on to Trembovla to join the Army corps.

Q. You were there long enough to find out about these things, and it didn't matter how long you were there, once you got the information, then it was part of your knowledge. Why didn't you report this?

A. That was not my business, your Honor. As I said, this whole reporting about the enemy, and that included the reports about the Jews, was the business of the police executive.

Q. Well, it was your job to report upon the morale of the population, wasn't it?

A. Yes.

Q. Well then, why wouldn't you report on the fact that a good portion of the population had participated in a pogrom?

A. That might have been mentioned in a morale report, yes.

Q. Well then, it was mentioned.

A. I don't think so; I cannot remember, your Honor.

Q. Was it or was it not mentioned by you that a part of the population participated in a pogrom?

A. I cannot remember to have made out a morale report about Tarnopol because I didn't get a chance to do so in Tarnopol. I arrived in Tarnopol, found the great number of COURT II CASE IX and I looked at that material when I was there.

Page 4,099

Then I went on to Trembovla.

Q. Did you or did you not make a report on this excess which resulted in the killing of 600 Jews, 600 people, 600 human beings, did you include that in your report or not?

A. No.

Q. You did not consider that of sufficient importance?

A. I did not consider it unimportant, I did not knew at that time.

Q. Well, you told us that you did know it.

A. Your Honor, this report shows the basis of the situation report was made out by the kommando leader.

Q. We are not talking about this report; I am talking about your reports. Here you are the export of Department III, the SD, which has to do with giving reports on the morale of the population. You come to a town and you find that 600 people had been murdered in he streets by part of the population. In making your report on the morale of the population in that town, did you include this fact?

A. If I had known about it, your Honor, and if I would have made a morale report at this time, I would have possibly included it.

Q. Well, did you know about it?

A. I merely knew that excesses had taken place in Tarnopol, which I regretted.

Q. All right. Then you knew about it so that part of the condition is satisfied. You knew about the excesses, is that right?

A. I learned that excesses had taken place, yes.

Q. All right. Then did you make an SD report on conditions?

A. No, I already said I made no report.

Q. Why didn't you make a report? Here you are an expert. Your commander depends upon you for information; the Einsatzgruppe headquarters depends upon you for information; and in Berlin they depend upon your direct channels for information. Why didn't you make a report on these excesses which you learned about?

A. Because I personally did not get a chance.

Q. Why didn't you get a chance to make a report?

A. Because I was busy with another task, namely to evaluate the documents which had been captured.

Q. And you didn't consider the matter of a mass murder of 600 people of sufficient importance to write a report on, is that what you are telling the Tribunal?

A. Your Honor, if I got the order from the kommando leader to evaluate the material which is available there, then I have to do so.

Q. Well, how much time would it take in an SD report, which you were compelled to make, and which it was your job to make, to say that there were excesses in Tarnopol to the extent that 600 Jews were murdered, or you didn't want to say murdered, were killed by the population. How much time would it take to include that, with your fingers on the typewriter, into a report? How much time would it take to say that.

A. Two seconds.

Q. Well then, why didn't you have the two seconds to write that?

A. Because I made no report.

Q. Why didn't you make a report?

A. Because I was given the order by the kommando leader to evaluate this material.

Q. Very well, we will let your answer stand, and it will COURT II CASE IX be evaluated later.

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Now, you had time to be interested in the politics of the Ukraine, didn't you?

A. Yes.

Q. Now you had time to consider, to take part in the desire of the Ukraine population to achieve independence, didn't you?

A. Yes.

Q. But you didn't have time to write into a report something which would take only two seconds to write?

A. If I did not make such a report, your Honor, because I had a different order, then, of course, the prerequisite is not existant.

Q. Did your order say that you should participate in Ukrainian politics and help them to achieve independence, was that part of your orders?

A. Yes, a part of my general order.

Q. That you were to work for the achievement of Ukrainian independence, is that part of your orders?

A. No, this was not my order. The order read as follows: "To determine what autonomy ambition existed within the Ukrainians."

Q. But you were interested in seeing them get independence, weren't you?

A. Yes, it interested me.

Q. And you helped where you could?

A. I had no opportunity to help at that time, It didn't become effective. I would rather put it that way.

Q. Did you or did you not help the Ukrainian population in their desires to achieve independence?

A. In this, insofar as I had a positive attitude towards the autonomy ambitions of the Ukrainians, in this respect I did, because this positive attitude was expressed in my reports.

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THE PRESIDENT: Mr. Gallagher, will you please come forward? I am sorry. I didn't know you were sitting there. I would have called you before. I would like to have you speak into the microphone here, and first in the early part of the examination of the witness he was asked if he knew why a certain execution occurred. Would you please read what appears in your record on that? I want you to read that into the record. Read it aloud; read it slowly.

COURT REPORTER GALLAGHER: Court Reporter Gallagher reading from the record.

"THE COURT: Q. Just a moment, did you know about this particular action which occurred between the 13th and the 26th of September which brought about the execution of 103 political officials; 9 saboteurs and looters; and 125 Jews?

"A. I don't know, your Honor, whether this was one action.

"THE COURT: Well, proceed.

"A. As I have already said on Saturday, I heard about it in Kremenchug that one execution took place, but I don't know what people were concerned up there.

"Q. How many executions occurred during the time that you were with 4b?

"A. As I said on Saturday, it must have been about six of which I hoard.

"Q. And now many were killed in these six executions?

"A. I cannot say, your Honor, I don't know.

"Q. What were the executions for?

"A. I cannot give you details, but if I may refer to the document, or rather to the report to which the President has just referred, if I may refer to these, which is in Document Book II-A, Document No.--"

THE PRESIDENT: Just a moment, Mr. Gallagher. The question which we wish to decide is whether a question of this nature was put to the witness: "Do you know why these individuals were executed?" Now, I am not referring to the long answer which he gives enumerating certain categories on Page 45, but why the 103 political officials, 9 saboteurs and looters, and 125 Jews were executed. I think now, Mr. Gallagher, that you know just what the Tribunal desires to obtain. Would you please look a little more carefully through your notes during the recess period and perhaps you can put your finger on that very question and answer if it exists.

Yes, Dr. Fritz, you want to say something?

DR. FRITZ: Your Honor, the Tribunal evidently intends to read the English transcript and thus to examine the credibility of the witness. Since this is first of all a matter of what the defendant has heard in the German language, because it was translated, I make the motion that the German transcript be read also, because I understood it just the way that the defendant did.

THE PRESIDENT: Very well. By all means we want to have it in the German. The only reason I asked Mr. Gallagher first was that I thought we could locate it and then by comparison find it in the German transcript, but if you can, during the recess, Dr. Fritz, locate it in the German, we would be very grateful for your pointing it out to us. Specifically we want to know if the Tribunal asked the witness if he knew why these twenty or thirty were executed.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. WISSTIAN: Assistant of Dr. Schwarz for the Defendant Jost. this afternoon and tomorrow afternoon's session, as he wants to prepare the remainder of the document book.

THE PRESIDENT: That's for this afternoon and tomorrow afternoon?

DR. WISSTIAN: This afternoon and tomorrow afternoon.

THE PRESIDENT: The Defendant Jost will be excused from attendance in court this afternoon and tomorrow, Tuesday, afternoon.

DR. WISSTIANN: Thank you.

DR. BELZER. (ATTORNEY FOR THE DEFENDANT MATTIAS GRAF): afternoon because I want to prepare his defense with him.

THE PRESIDENT: Which defendant?

DR. BELZER: Mattias Graf, Your Honor.

THE PRESIDENT: For this afternoon?

DR. BELZER: Tomorrow afternoon.

THE PRESIDENT: Only tomorrow afternoon?

DR. BELZER: Yes, only tomorrow afternoon. Not today.

THE PRESIDENT: You are very modest in your request. The defendent Graf will be excused from attendance in court tomorrow afternoon.

DR. FRITZ (ATTORNEY FOR THE DEFENDANT FENDLER): Dr. Fritz-

THE PRESIDENT: Yes, Dr. Fritz, were you able to find that in the German transcript?

DR. FRITZ: No, Your Honor, the two ladies who took the transcript this morning are present at the moment, but unfortunately the crossecamination was so fast that they could only concentrate in putting down the answers of the Defendant Fendler, but not the questions. The questions they did not take.

THE PRESIDENT: Yes, well, suppose then because of that fact that we wait until the transcript is prepared, both the English and the German and then we can arrive more quickly at a precise determination of just what was said.

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Is that satisfactory?

DR. FRITZ: Yes.

THE PRESIDENT: Yes? Very well.

DR. FRITZ: Of course, we have to note here that apparently the German stenographers have to wait for the English Transcript and only then they con translate the questions from the English transcript into the German, so that a precise examination is not possible.

THE PRESIDENT: Well, how about the film, the sound film? Wouldn't that give it to them precisely?

GERMAN COURT REPORTER: The film is only in English, the questions in English, and the answers in German.

THE PRESIDENT: Well, at any rate, I presume we will need to wait until the transcript is prepared. BY THE PRESIDENT:

Q. I have a final question, Witness. Now, you know of six to seven executions in the three months that you were with Einsatzkommando 4B?

A. From twenty to thirty, if I remember correctly, Your Honor.

Q. No, the number of executions. You knew of six to seven executions?

A. You mean actual proceedings? Yes.

Q. Actual executions.

A. Yes, execution proceedings.

Q. Well, I don't know why you add the word, "proceedings; I mean. The executions, the killing of people, you know of six or seven of these?

A. Your Honor, I can clarify this, I think. It is a matter of translation. In the German at the moment when 20 people are executed we speak of 20 executions, but we also speak of 20 executions if there are execution procedures and in each one of these procedures a number of people are concerned.

Q. I used the term "executions" in the sense of collective killings.

A. Yes.

Q. All right. New, you know of six or seven of these collective killings?

A. Yes, Your Honor.

Q. How did you know about them?

A. Through conversations.

Q. With whom?

A. With members of the kommando.

Q. And in those conversations did they tell you why they had executed people on six or seven different occasions?

A. No, that I never found out, Your Honor.

Q. You conversed with your comrades about the business of killing people and they never told you why they were killing them?

A. Quite by accident I learned that executions had taken place, Your Honor, but I did not try to find out what people were concerned, six or seven different occasions these people had been killed en masse?

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A It could be celled an accident. I myself had nothing to do with it. the merest chance that on six or seven different occasions the kommando had gone out and killed people. What was the accident which brought this to your attention?

Q No, now, no "perhaps". Tell us what you did. You found out about six or seven executions. How did you find out about them? kommando leader was not present, because an execution was just "being carried out at which he had to be present.

Q And who told you about these executions? officer.

Q Did you have headquarters? speak with the commander and he is not there. you say,"By the way, where is the commander?" and he says, "Oh, he's out killing some people". Is that the way it happened?

A No, I don't think it was in this form. Your Honor.

Q Now, tell us how it happened. You are sitting in your office and you suddenly need the counsel or advice or guidance of the commander. Tell us what transpires.

A I looked for the kommando chief. I did not find him. Therefore, I asked this man where the kommando leader is.

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Q Who was this man?

Q The sergeant? All right.

A So he said, "The kommando chief has just gone out in order to be present at the execution."

Q And that is the way you found out? the sergeant and say to the sergeant, "I report to you I am about to go out and kill some people and if anyone asks for me, let them know that I am out conducting an execution." Is that what he told the sergeant?

Q Did this happen this way in all the six cases: that you always had to turn to the sergeant and ask him where the kommando chief was? kommando leader in one or two cases what was going on. I do not remember the details. He could have said to me, "I am now leaving. I have to conduct an execution." did the kommando chief tell you?

A That I really can not say; if I tried -learned about the executions. Do you call it an accident if the commanding officer of your organization says to you: "I an now about to go out to perform an execution." Is that what you call in the classification of "accidental knowledge"? kommando leader, shall we say, in the afternoon to grant me an interview of half an hour because there might be something which I wanted to discuss concerning my reporting and he might have said, "No, it is impossible; I will not be present this afternoon because I have to go out to supervise the carrying out of an execution."

Q How many times did it happen that way?

A I couldn't say, Your Honor, this information come to you via the kommando chief himself?

AAfter six years I couldn't tell you precisely. I would have to estimate that and it night be wrong. The reasons would he mostly

Q You can remember there were six executions. Could you remember whether more times the sergeant told you or whether more times the kommando chief himself told you? you learned of these. Now, what was this accident which caused you to learn of these executions? form an execution, was your interest aroused?

Q He was going out to kill some people end it didn't interest you a bit? It didn't interest you at all that he was going out to send to their creator a number of human beings? That was of no interest to you whatsoever?

A I wasn't curious to find out the details about this. There may he people whose reaction is entirely different in such situations, who are very anxious because they like sensation, to find out each little detail and to delight in such details, but this was not the case with me, tells you he is going out and kill some people. Tell me whether you have any reaction whatsoever.

Honor.

Q Then you did have a reaction; you had an emotional reaction when he told you he was going out to kill some people, didn't you?

Q All right. Did this emotional reaction go to the extent of wanting to know how any were going to be killed? how many were going to be killed? end death a man, tells you on six different occasions that he is going out to kill people and you pursue your curiosity no further. He tells you, "I am going to go out and perform an execution and you, in effect, say, "OK, I'll see you tomorrow". Is that what you are trying to have the Tribunal believe? is possible. been killed during this war and with this basic attitude of mind I was not interested to learn even more which would be more of a burden to me even than the fact that I had already learned that men were executed.

Q You wanted to do your duty, didn't you?

Q You were the senior officer, next to the commander, weren't you? Your Honor.

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Q You were in charge of the office when he went away, weren't you?

Q You were in charge of the office when he went away, weren't you? become necessary, I, as the senior officer, appeared, but, as I have already said in my direct examination, the actual activities just went on automatically and were under departmental experts. was away. Let's say the Einsatzgruppe Chief or a representative from the Army command had wanted to know where he was, where the kommando chief was. He turned to you, as the senior officer present, for information, wouldn't he?

Q Hot "he could". "He would". You know militarily that's what would happen. That's right, isn't it?

A It depended on whet his questions were, Your Honor. If he only wanted to know whether the kommando leader was present, for instance, the ordinary guard outside at the gate could give him that information. In any case, he would hove seen that the kommando leader had left. He probably would have left immediately and he would have said he would come hack when the kommando leader was there.

Q This is quibbling, Witness. Someone arrives from Army headquarters. You are in a war. You are in the field. He asks to see the kommando leader. The sentry tells him he's away and so he says, I will come back some other day. He would demand to know the senior officer present and that would he you. gone to them. in order to fight some partisans. That is what he has come for. Whom would he see?

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A I would have sent him to Departmental Expert No. 4.

Q He sees you, doesn't he, as the senior officer? followings "Only the kommando leader can make a decision as far as this is concerned, but if you want to find out the possibility for your information, I shall put you in contact with Department 4's Chief, who has information about this matter generally. He can give you general information concerning this matter.

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Q He would ask you where the kommando chief was, wouldn't he? you are at all eager to let the Tribunal know just what you know about these situations, Please be very frank. When you answer a question so frivously in that manner, it doesn't cast any credit upon you as being one who is sincere and eager to acquaint the Tribunal with the facts. I have stated a situation where a man comes from the Army command and the kommando chief is not there and he asks to see the senior officer and you are the senior officer. Then I say to you, he would ask you where the kommando chief Is any your answer is "possibly". Do you call that being honest with the Tribunal?

A Your Honor, Your Honor, I beg your pardon. I do not want to he frivolous. Your Honor, and I do not want to give frivolous answers to the Tribunal.

Q You tell me if that isn't a frivolous answer: Here's a high ranking officer on a very important mission; he calls on you and asks for the kommando chief and where is he, and I ask you if this wouldn't be the most natural and normal inquiry and you said, "possibly;" isn't that a frivolous answer? I would have to give you a further explanation of course, and, the possibility, of course, should have to be explained.

Q Answer me. Answer me. Here is someone -here is someone from the Army command. He is seeking the kommando chief. He calls at your office. He asks for the senior officer and he is presented to you and he says, "Major I want to talk to the kommando chief. I don't see him about where is he?" Would that be a natural inquiry? the kommando chief has told you that he has gone to perform an execution?

A In that case, I would have said, "I very much regret to tell you that the kommando leader is not here. If I can do anything for you, or if I can bring a message from you to the kommando leader, I am at your disposal". the execution? He told you where the executions were taking place, didn't he? didn't know where he was, where the kommando chief was? personally to tell me or that I found out in another way that he was not present.

Q And he didn't tell you where he was going?

A He did not say so in each case. Sometimes he just left and said he would he back in one hour. the execution would be performed and where he could be founds in the event it would be necessary to locate him?

Q And you weren't, as a senior officer, interested in finding out where your commanding officer would be? about this matter, but, if he does not regard it as necessary, then, of course, I am not informed. in all?

Q Why were they killed?

kommando, you learned of six or seven executions. Then you left, and you don't know to this day how many were killed in these six or seven executions or why they were killed. could reconstruct this from the reports of events, but not from my own knowledge and experiences.

Q And you don't know why they were killed? security of the operational area.

Q You only assumed that. You don't know from your own knowledge?

A I did not investigate, Your Honor,'

Q You don't know then why they were killed. Your assumption is that they were killed because they threatened the security, is that right? been killed just because they were Jews? days, of course, I did not assume so. because they were Jews?

Q And, you stand on that answer?

THE PRESIDENT: Dr. Fritz, any further questions?

DR. SUESS (Attorney for the Defendant Schulz): Your Honor, I should like to put a few questions to the witness.

THE PRESIDENT: Please do.

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DR. SUESS: Thank you. BY DR. SUESS (Attorney for the Defendant Schulz): return from Russia to Berlin you learned that in Lemberg mass executions of Jews had taken place.

MR. HORLICK-HOCHWALD: As far as I recall, this question was answered by the witness in direct examination. Dr. Suess would have had to ask the witness this question before the cross examination by the prosecution took place. This is not a question which came out during cross-examination or during direct examination, or subsequent examination of the Tribunal.

THE PRESIDENT: Yes you can only question on matters which have come up after the direct examination terminated because you had the opportunity when the direct examination ended to put questions,

DR. SUESS: Your Honor, in my knowledge, as far as I remember, there was no opportunity for the defense counsel of the remaining defendants to put questions to the witness immediately after the direct examination, The questions by the President began.

THE PRESIDENT: There was no opportunity for you just because you weren't here.

MR. HORLICK-HOCHWALD: If the Tribunal please, Counsel for Defendant Schulz is certainly not correct in this respect.

THE PRESIDENT: Well, he's correct. He didn't have any opportunity because he wasn't here.

MR. HORLICK-HOCHWALD: If Your Honors please, that doesn't change the ruling.

THE PRESIDENT: Were you here, Counsel, or not?

DR. SUESS: I was not here, Your Honor, No.

THE PRESIDENT: Yes, well, why do you say that no opportunity was allowed defense counsel?

DR. SUESS: I asked my colleagues because I assumed that I would be in a position to put these questions.

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I therefore now withdraw my question. am just told that these questions which refer to Lemberg and Olmoetz, I want to mention them as key words, that these questions only came up during the cross-examination. That is, not before that.

MR. HORLICK-HOCHWALD: If Your Honors please--

THE PRESIDENT: Now we will make our ruling, Mr. Hochwald. The ruling is that Mr. Hochwald is absolutely right in his examination, hut we are going to pay no attention to Mr. Hochwald's objections and we are going to let you put the questions.

DR. SUESS: Thank you, Your Honor.

Q Witness, I repeat: In your direct examination you said that upon your return from Russia to Berlin you heard that in Lemberg mass executions of Jews had taken place. At what period were you in Lemberg at the time.

Q Who carried out these executions you heard about? office of the commander of the Security Police and SD in Lemberg. the prosecutor that you heard about the arrest of Jews who had remained-this could create the impression that at that time'

MR. HORLICK-HOCHWALD: Just a minute I do not like to raise the point, Your Honor, but it is absolutely clear that the impression which can be caused by this answer -- this is a question of argument, but not a question to be put to the witness.

THE PRESIDENT: Yes this is not the time for argumentation. You can ask him any question which will elicit an objective answer, but to argue with him is not within the province of cross-examination.

DR. SUESS: Yes, Your Honor, I think you for pointing this out, I shall put the question in another form.

15 Dec 1947_M_MSD_10_6_Arminger (Hildesheimer) Q (By Dr. Suess): Witness, were all Jews, the entire Jewish population that is, arrested in Olmuetz?

A I don't know, I saw Jews in the street.

Q A further question: Did you know the Defendant Schulz in Olmuetz?

A Yes, I saw him in Olmuetz. He was the Chief of the Einsatzkommando. Einsatzkommando in Olmuetz?

A I couldn't tell you exactly, I am afraid. According to my memory it could only have been a few weeks. sent to concentration camps. This was a subject that the prosecutor discussed two days ago? concentration camps?

MR. HORLICK_HOCHWALD: This question is obviously inadmissable; as the witness has said he can't say when these people were sent to the concentration camp, how can he say whether it was done by Schulz or not?

DR. SUESS: I withdraw the question, Your Honor. Thank you very much.

DR. HOCHWALD: If the Tribunal please, I have one question only in connection with the question put by Dr. Suss. BY DR. HOCHWALD: out of executions in Lemberg, and you answered the executions in Lem berg, they must have been carried out under order of the local commander of the Security Police find SD, is that correct, did you say that? spent the night. this execution, do you? carried out during those days.

Q That is all you know? participated in it, that is what I heard.

Q In the beginning of October, is that right?

Q At what time did these killings take place? place during the days before I arrived, which is during the previous weeks.

Q All during September 1941?

A Yes. That is how I understood it.

Q It was not then at the end of June or the beginning of July 1941?

THE PRESIDENT: Did you find out who the local commander was?

MR. HOCHWALD: Your Honors, I do not think that this question is of importance here, as in September 1941 the Einsatzcommando was under the command of the defendant Schulz who had already left Lemberg, hut I asked this question as the impression was created that the killings which happened at the end of June, or at the beginning of July, 41, were carried out by the local commander, and I have elicited a note from the witness that these killings he heard about are not in connection with the killings with which the defendant Schulz is charged.

THE PRESIDENT: All right. All right.

MR. HOCHWALD: No further questions, Your Honor.

THE PRESIDENT: Dr. Fritz, any further questions?

DR. FRITZ: Your Honor, I had only one question, this was to correct something which has been discussed repeatedly on Saturday. The defendant Fendler answered to a question which Mr. Hochwald put to him, that in June 1941 in Lemberg he learned of mass executions.

Q That is what you said on such a day, isn't it?

MR. HOCHWALD: I think that I asked the witness whether he heard about executions when he was there in June 1941, or when he returned in October 1941, and he answered that he heard about it when he returned at the beginning of October 1941. I think that is clear.

THE WITNESS: My remark also refers to the finding of the corpses in prison of Lemberg. There were 7,000 about which I learned in June when staying in Lemberg. This perhaps caused a misunderstanding that these two events are mixed up.

DR. FRITZ: I have no more questions, Your Honor, on re-cross examination,

THE PRESIDENT: The witness will be returned to the defendants' dock, and the defendant von Radetsky will take the stand.

DR. FRITZ: Your Honor -

THE PRESIDENT: I am sorry.

DR. FRITZ: Your Honor, I have not quite concluded the submission of my document book, and I would like to use this opportunity. There are only a few documents I would like to offer now.

THE PRESIDENT: You -don't need the witness on the witness stand?

DR. FRITZ: NO.

THE PRESIDENT: the Marshal will please return the defendant to the defendants' dock.

(Witness excused)

DR. FRITZ: I offer as my next document, the first document in the Document Book of Fendler's on pages 1 and 2. It is an affidavit of Dittrich, as Fendler's Exhibit No. 18. I do not want to read from its' contents, Your Honor, but it certifies the statements that the defendant made concerning his activity in Breslau, also in Sudentenland, and concerning his activities in the Einsatz, and, later in the Office VI, of the Reich Security Main Office. I furthermore offer the document on pages 15 to 18, of Document Book, Fendler's Document No. 8, the affidavit of Wilhelm Waneck. I offer it as IT Fendler's Exhibit No. 19. It is en affidavit again which I am not going to read. The witness Waneck was group chief, and Obersturmbannfuehrer in Office VI, of the Reich Security Main Office, and here described the creation of the Einsatzgruppen, or Einsatzcommandos. In the paragraph before the last of this affidavit he deals with the personality of the defendant Fendler. Furthermore, I offer another affidavit by Schellenberg, which is on pages 57 to 59 of the Document Book. It is Fendler's Document Not 17. I offer it as Exhibit No. 20. In addition, the next three documents in the defendant's document book, that is, Fendler's Document 18 on pages 60 to 61, I offer it as Fendler's Exhibit No. 21; the affidavit of Richard Brass, on pages 62 and 63, that is Fendler's Document No. 19 as Fendler's Exhibit No. 23, and, affidavit of Marie Bartl on pages 64 and 65, Document 20. 20, I offer as Fendler's Exhibit No. 24. These last four affidavits, that is, Schellenberg, Susmuth, Bartl, Brass, Your Honor, consist of personal opinion of character. I do not want to read them into the record, but I should like the Tribunal to take note of their contents, as, especially the affidavit of Sussmuth and Bartl -

THE PRESIDENT: Dr. Fritz, did you purposely skip No, 22? You gave Exhibit Nos. 21 and then Exhibit No. 23. DR. FRITZ: Your Honor, I think I made a mistake. In this case I offer Bartl's affidavit, that is Fendler Document No. 20 as Exhibit Fendler No. 22.

THE PRESIDENT: Very well. What page is that? DR. FRITZ: Pages 64 - 65. These affidavits show that Fendler while he was a member of the SD, supported and helped prosecute people, even Jews, so that these affidavits bear out his statement on the witness stand that he did not participate in and didn't possibly give orders for executions in the East and that he kept away from them, Finally, I point out that a number of those affidavits which I already submitted on Saturday also-contain statements concerning the conduct of the defendant Fendler, and again I would like the Tribunal to take note of these statements contained in the affidavits. With this I have submitted all the documents contained in the document Book No. I of Fendler's and this for the time being concludes my case for the defendant Fendler. I should like, Your Honor, to submit a few further documents at a later date, for which I still an waiting at the present time.

THE PRESIDENT: You may submit them when you are able to Set them into your hands.

DB. FRITZ: Thank you.

THE PRESIDENT: The defendant von Radetzky will be taken to the witness box.

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THE PRESIDENT: The defendant von Salt sky will be taken to the witness stand. follows:

JUDGE DIXON: Defendant, raise your right hand and repeat the oath after me. I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing (The witness repeated the oath). You may be seated.

TEE PRESIDENT: You may proceed, please.

DR. RATZ: Dr. Ratz for the defendant von Radetzky.

BY DR. RATZ:

A My name is Waldemar von Radetzky. I was born on 3 May 1910 in Moscow. My father came from Riga, and my mother came from Bremen. Our family had emigrated to the Baltic States in 1730 Q. Where did you spend your childhood? Black Sea, and in Riga. The First World War surprised us when we were in Moscow where we escaped deportation to Siberia as Germans but our stay in Moscow was restricted, while relatives of mine were actually deported to Siberia. In 1918 we succeeded in escaping to my ancestral city Riga. Moscow had already been occupied by the Bolshevists. My father had died in the meantime. city of Riga? bourgeois we lost everything. Many of us went to prison, were deported or shot.

THE PRESIDENT: You say "Many of us were deported or shot"?

THE WITNESS: By that I mean the Germans who lived in the Baltic the population.

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BY DR, RAZZ: later? groops who drove out the Bolshevists and Latvia became a newly established State. The new State could only build up its existence from the arailable resources and these were largely in German hands. I must briefly discuss the historical development of the Baltic States and I would like the Tribunal to be patient for a few minutes while I do so. That is, the situation as regards the States as they are today, Estonia, and Latvia. At the beginning of the Thirteenth Century the then Livonia was populated and colonized by Germans and at that time in those centuries, the Germans emigrated to this country, and they administered the country under German, Swedish, Danish, Russian and Polish sovereignty, all according to the developments even though they were never more than six percent of the total population. I say and I emphasize this because only this shows my personal attitude towards other national groups with whom we always lived together, end we supplemented each other in many respects. The first translation of the Bible, the first grammar, all churches and public institutions, were erected by the Germans. The rest of the population was admitted to the State University just as the Germans were and during the three last centuries we also had to suffer from the Russian domination. This was especially the case when Bismarck declared in 1882 that Germany was not interested in the Baltic States, and from 1890 a ruthless Russification took place which affected everybody. There were only Russian schools from then on, a Russian administration, although the percentage of the Russian population was minimal, because Latvians, Estonians populated the country. Only the World War put an end to this development, and after the post-war chaos in my home country, the independent States of Estonia and Latvia were created.

of these countries?

A Yes. In my home country Latvia, we had six of the one-hundred deputies, and a number of ministers, but it could not be prevented that the entire German real estate property was expropriated without compensation, although we had contributed our share in liberating the country from Bolshevism, This expropriation robbed the German community of its material basis, but this didn't prevent-

MR. HOCHWALD: Your Honors, I hate to interrupt the witness-but the witness has been lecturing now about, things which he absolutely can not testify to. All these happenings about which he spoke and which I believe are completely immaterial for the case before the Tribunal, happened either before he was born, or when he was an infant. Everything which he told the Tribunal here may be so or may not be so, but the Prosecution in any case does not want to offer evidence that his information in this respect is incorrect, and the Prosecution thinks it is immaterial in the case before the Tribunal but there are two things: First, the witness can not testify to facts which he has not experienced himself, and, secondly I do not think that what the witness says here is material for the case.

THE PRESIDENT: Dr. Ratz, the big mistake the witness made was that when he began to testify on this subject, he said, I hope that the Tribunal will be patient, but he didn't hope that Mr. Hochwald would be patient. Now there is the big mistake he made. The Tribunal was patient, but Mr. Hochwald was not. So suppose that we have a recess and during that time Mr. Hochwald will get over his impatience, and the witness will resolve to be just a little briefer, and then I think we will all be happy. The Tribunal will be in recess until 1: 45 o'clock.

THE MARSHAL: The Tribunal will be in recess until 1345 hours.

(Recess taken until 1345 hours, 15 December 1947) (The hearing reconvened at 1345 hours, 15 December 1947) THE MARSHAL:

The Tribunal is again in session. BY DR. RATZ: Your Honor, may I be permitted to say something to the objection of the Prosecutor. Of course, while preparing the examination of the defendant I saw to it that the statement would be as concentrated as possible, and does not become too diffused. In the case at issue here it is necessary however in my opinion for the defense of the defendant that he is allowed to make certain statements about his background before 1939 since he was a foreigner until 1939 in Germany and since he comes from a background which is completely different from any type of background prevailing in Germany. But, I shall try to limit myself only to what is necessary.

THE PRESIDENT: You will proceed, Dr. Ratz, BY DR. RATZ: Germans participated in the construction of these Baltic States and you answered this question in part. Now you wanted to say something about the expropriation of property which happened to the Germans?

A Yes. I said that our property was expropriated and that this expropriation robbed the Germans of their material foundation. Nevertheless they cooperated in the welfare of the country because Chauvinistic motives were strange to them. influence on your development?

start from the beginning. My family had furnished for the country officers, farmers, intellectuals and was used to a high level of life. It was a matter of getting back to this level and it was decided, against my early tendencies, for me to become a farmer, that I should become a business man, a career which determined my schooling. I spent the summer in the countryside and during the winter I went to school.

Q What did you do after completing your schooling? managed an export department. Later, after I completed my military service, in the year 1933 I joined an import business as an employee in Riga and became a Prokurist. I succeeded in this firm which dealt with Germany, England, and Czechoslovakia despite difficult economic conditions to help this firm get started. I held this position until 1939 when the resettlement of Germans to Germany took place and when the firm where I was to become a partner in 1940 was dissolved. Furthermore, I worked at the Herder Institute. Riga? lectures of economics at the Herder Institute which was under the direction of the Latvian Ministry of Education. I was requested then to take over the direction of the economic research agency because they needed someone who was trained both in theory and practice. The job of this research agency was to introduce practical tasks to the young students as they had to be performed in the daily business life, in order to base their theoretical knowledge on it.

Q What were your extracurricular interests?

A Sports and art. I was a member of a sport club and liked to sail in the Riga Yacht Club where in the year 1936 I passed an examination as a navigator.

THE PRESIDENT: Dr. Ratz, I think you are commencing to ruffle the sails of Mr. Hochwald again. He is beginning to show a little impatience about this yachting trip. If he could sail with somebody else aboard a yacht I think he would feel much happier than he is right now.

DR. RATZ: I shall come to another more important question, your Honor, right away, but perhaps the defendant may add one other sentence which concerns his extra-curricular interests. and of the Goethe Organization and the Herder Organization.

THE PRESIDENT: That pleases Mr. Hochwald much more. BY DR. RATZ: at that time? Socialism, from that moment on when it seized power in Germany, because this did not remain without effect on the countries near Germany, from Estonia down to the Balkans and on the two million Germans living there. A number of countries answered the seizure of power in Germany by measures of suppression against the Germans and these Germans were put in a position of defense which was neither desired nor looked for by them. Germany started to get concerned about its suppressed peoples abroad, but in our country it limited itself to a cultural taking care of the schools and the public institutions. Whatever came to us by way of ideology had to go through the State censorship. Thus, for example, the books "Mein Kampf" and the "Mythos" were forbidden.

Travels to Germany were limited and the contact with the old mother country had become very loose. But, what prejudiced me in favor of this was the "Maxim", the love of ones own country as conditioned by respect for another country, Since I saw a new possibility here of mutual respect and thus a new order of the completely chaotic minority -

THE PRESIDENT: Don't you think, witness, that the exclusion of the book "The Myth" by Rosenberg was of great benefit to everybody? was of great benefit? THE PRESIDENT: Yes, don't you think it was a great benefit, because don't you think it would have added greatly to the chaos?

A Your Honor, I don't think that the effect of this book could have been very great. I later tried to read from it and I didn't understand anything of it. THIS PRESIDENT: Well, that's the reason I say it was of great benefit to keep out a book like that. I haven't yet found anyone who understood it.

A Well, that is why I don't think it was important. In any way, I merely meant to express by that that a number of ideas did not reach us. THE PRESIDENT: Well I assure you you were better of not to get those ideas.

THE PRESIDENT: Proceed, please. BY DR. RATZ:

Q Will you then continue with your contacts to National Socialism? religious basis. There was no so-called time of struggle because there was no one against whom to struggle. From abroad too it was tried to bring matters to an extremity when on the instigation of a foreign power an effort was made to disturb the peaceful economic conditions prevailing between Germany and Latvia, in the year 1936, arrests of Germans took place indiscriminately, and during the course of which I was also arrested. After I was released I protested to the Senate, the supreme court of the land in order to achieve my rehabilitation and I was granted this in full measure. In order to conclude this, I never did understand the Fuehrer principle and the race theory, But one thing did result from this development: That was the possibility to do justice to my social conscience on the one hand and my position as merchant on the other. After a lengthy period of co-operation, I took over an office for vocational-guidance and furtherance with the German Community of the country and I made the attempt to extend this and make it into an economic agency.

Q What do you mean by German community? cognized by International Law and had partly autonomous powers.

Q What did you do within the German community, witness? was most important. I helped found a fund with which craftsmen were given a possibility to make a living, and with the help of industrialists whom I knew I founded homes in which families of small workers and employees could find recreation. I can say that this was the happiest time in my life because every day I was able to look into grateful eyes. Thus, when the resettlement to Germany took place I had achieved my economic and social position by my own power.

and the Fuehrer principle. See why such a principle, outside of the purely military field, could do any benefit because necessarily it excludes any competition; but as far as the race theory is concerned I grew up in daily contact with other peoples. I saw that without distinction of race or position successes and lack of successes were registered and I explained how a young people in my country registered considerable achievements in the social and cultural spheres even though first by using foreign materials but this was a question of development. In school I had many Jewish comrades because their parents were glad to send them to our school and I used to visit Jewish homes in my own home town. If we had not been as tolerant as we were in our home town we would have long disappeared from there. As the measures of suppression effected each one of us, we tried to overcome them with patience and conviction. I experienced myself what a national intolerance would bring with it and that it always comes from a weakness, not a strength of national selfreliance. gained an insight into motives and conflicts of other races. How do you mean this? cribed to me as such. Due to the free manner of our education at home and the church, the Bible had always been interpreted as national history of the Jewish people. But I not only mixed with socially but also in my business for 50% of my customers were Jewish firms; I often discussed this matter with them. We were all sitting in the same boat. We had the same cares and worries and the State, whose minority we were, had consideration for the Geneva minority protection decrees of Geneva only in as far as it concerned the worship and schooling. As part of a nation they overlooked us; when then from 1936 the expropriation Court No. II, Case No. IX.

also extended to commerce and industry by which every property of minorities was equally effected, we helped each other and the rise of my own firm in these difficult years I do ascribe to this circumstance. I never noticed any trace to support Goebbels' propaganda in what it said about the Jews. position and still you settled in Germany? speech in which he announced that because of the continuous conflicts with ethnic Germans abroad agreements would have to be made once and for all with States in which these Germans were living in order to bring all Germans into one area. After a short time negotiators from Germany arrived and with the aid of the German ambassador they started negotia tions to this effect with the government concerned.

Q Were you in agreement with this resettlement? one else and I didn't want to go to Germany - Germany was strange to me.

Q. But then you did resettle, and even were active in this resettlement?

A. Yes, when the rumor turned out to be the truth, that on the basis of the negotiations between the Soviet Union and Estonia and Latvia the occupation of these countries by the Bolshevists was imminent, I had no other choice, and the more so as thus, my existence now, my firm would be dissolved. Latvia also demanded that with this intended resettlement the minority statute for the Germans would be considered as revoked, since all Germans had to leave the country. I was now asked as a co-worker of the German community to make an account of the economic values, which were to be settled and I did this with a commission in the German Legation.

Q. Was the resettlement then a compulsory one in your opinion?

A. It was not a compulsory one as far as the treaty is concerned which was signed on the 30th of October, 1939, between the two states, for no one was herded into ships by Rifles, but it left us no choice insofar as the treaty of assistance, concluded between the Soviet Union and Latvia, opened the country to Bolshevism, and on the other side the treaty about the resettlement, at the request of the Latvian Government, provided that every German was considered outlawed because he belonged to the German minority. Thus there could be no such thing as German property any longer, apart from all other considerations.

Q. What was your activity during this resettlement?

A. On the basis of my exact knowledge of the economy I had to advise in the restitution of the German property of such firms as estates, companies, insurance, etc., and to see to it that the resettlers would be resettled in Germany with a legal claim and with the prerequisites mentioned in the treaty, to be compensated for the property they had left behind.

Q. How long did you do this work, and when did you yourself resettle?

A. I did this work for about a month. I had to conclude all the business affairs in my firm, and in the middle of November, 1939, I myself resettled, I had been informed that the resettlers who had already left had been housed in various towns, but only temporarily, and as refugees, and that it was necessary to care for them from an economic viewpoint, because the competence of the German Office for the Repatriation of Ethnic Germans, which was responsible for the resettlement, had ceased to be effective at the German border, and no one knew his way around the chaos of the directives which contradicted each other.

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Q. Thus, do you think that the Baltic Germans left their country voluntarily, or not?

A. They did not leave voluntarily because they fled from Bolshevism which was approaching, and because of the fact that their fate was decreed by treaties without their being asked about it.

THE PRESIDENT: Where did you go to, Witness? I don't think that you have told us.

THE PRESIDENT: Your Honor, I went to Posen.

THE PRESIDENT: I see. Very well. Did you go there because you chose that place, or did this organization for resettlement indicate where you were to go?

THE WITNESS: Your Honor, it was prescribed exactly who was to go where.

THE PRESIDENT: I see.

THE WITNESS: The population of Riga had to go to Posen. There was no free choice of where one wanted to live.

THE PRESIDENT: Very well.

Q. (By Dr. Ratz) Witness, you said that you resettled to Posen. Can you say on the basis of what directives the Baltic Germans were sent to Posen?

A. I learned about this later, that Himmler, as the Commissar for the Strengthening of Germanism, had issued a certain decree according to which the various people were to be transported on trucks, I was asked to work along in an advisory capacity at a Baltic agency since I had a lot of economic information at my disposal which I had learned in the brief activity at home, and in order to help take care of the economic interests of my fellow Baltics who, like myself, did not know the conditions inside Germany, and to advise them on this.

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Q. was this agency an institution of the Party or of the State?

A. No, this advisory gency was founded by the r esettlers themselves, On the part of the State there were very many organizations who were all competent for us in some way, and we were only able to find cur way through them very slowly. Because of these many various agencies, an agency for the Baltics was not provided, and apart from a few Reich agencies, they put obstacles in its way.

Q. Witness, will you please tell the Tribunal what jobs t is advisory agency had in detail.

A. The jobs were as follows: A thorough investigation of the economic problems of the resettlers had not been possible in the homeland because time was short. This was done subsequently. The second job was that of getting hold of the property of the resettlers, that is about more than fifty shiploads of cattle and all sorts of property, machines, to help them in transporting this matter, and to see that they were recompensated for any damage for which the Reich was responsible. As the third job I must list the address register; as the fourth, a general human advisory council, and finally the protection of the funds of the German Association in Estonia and Latvia and of the cultural property we had brought along.

Q. what was the personnel composition of this agency; were there any Reich Germans in it?

A. No Reich German participated, and it was composed of businessmen, industrialists, craftsmen and employees who had already worked on this resettlement problem in the homeland.

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Q. How were you received in the new home?

A. while the Office for the Repatriation of Ethnic Germans had done everything in order to relieve the fate of the homeless people, the competent district leader received us with a speech in which he told us that he would drive our ideas of mastery out of us and he would teach us National Socialism, which he didn't achieve though in the sense in which he indicated, but he enlightened us in good time, and thus conditioned our actions by what he said.

Q. Did you expect such a reception personally?

A. In no sense. I developed a conflict under which many decent Germans suffered; on the one hand, tohelp the old Fatherland in its most serious war, and, on the other hand, to have to refuse its ideology in most essential points.

Q. Did these events change your attitude towards National Socialism?

A. It confirmed my opinion that good and decent people want more things, the more I saw, that there were enough people of my own circle and old National Socialists, drew the same conclusion. But this resulted in the fact that I became self-absorbed, especially when I established the fact that neither I nor myself could change anything in the matters as they existed.

THE PRESIDENT: That answer is a little involved, Dr. Ratz. Could he state it more succinctly? Your question was very relevant. The answer seemed to have rambled somewhat. If he could put that a little more briefly and a little more objectively.

Q. (By Dr. Ratz) Witness, you heard what my question said.

It said whether through the events which you experienced at the time the resettlement was accomplished your attitude towards National Socialism changed any?

A. Well, it changed in a very essential point. I was able to see how that there was no concern about individual phenomenon within the people but that everything had to be brought on a common denominator which, in my opinion at the time, had to bring about a lower and not a higher level.

THE PRESIDENT: Would you say that your conclusion was that National Socialism was not genuinely and sincerely interested in the individual but was interested more in an ideological program involving munbers which did not effect or did not concern itself with the individual?

THE WITNESS: Yes, Your Honor. The general policy of making everything uniform in all variations had the final goal of making everything equal, and this was completely incomprehensible to me, which I had not expected.

THE PRESIDENT: Proceed, please.

BY DR. RATZ:

Q. You said before that you could not change anything in the development as it existed and that, therefore, you became introverted to a largo degree. Could you work undistrubed in your advisory agency?

A. No, In the middle of December, 1939, Himmler made an appearance in Poson in order to inspect his agencies. He was immediately informed about the existence of our own advisory agency. He decreed its dissolution. The head of this department for the repatriation of ethnic Germans who was escorting him - succeeded in having this decree revoked by suggesting that he would take over this advisory agency in its entirety, and I must frankly admit, we had to be grateful and happy about this at the moment, because this solution helped many people for now their material interests could be taken care of to an even greater extent, by the fellow-country men

Q. Did the fact that this agency was taken over into the Office for the Repatriation of Ethnic Germans change anything in the character of your activity or the type of the agency?

A. No, it regained an advisory agency, had no powers, whatsoever and merely received a new designation. It was as follows: Office for the Repatriation of Ethnic Germsns, Advising Resettlers in the District of Poson. I no longer was the representative of this agency for advising resettlers, since the reorganization was carried out according to German models I received a per diem salary of 12 marks and continued to recieve this salary until the end of the war uninterruptedly, even after I was put on an emergency war status for the RSHA. I had no contract. Everything continued as before, apart from the 1 letterhead which was of good use to us, and apart from the fact that in March of the coming year when I reported to the Army this was answered by deferring mo, against which I protested without success.

THE PRESIDENT: Well, did they pay you even when you weren't working at that job?

THE WITNESS: Yes, Your Honor; until the end of the war.

THE PRESIDENT: What did they do, just forget you were on the payroll and continue to pay you even though you weren't working?

THE WITNESS: No, Your Honor, in this emergency war status there are two types. The first type of emergency war service was with a position and one was without a position. The Emergency war service with a position includes the full salary, but on the service without a position, or without a contract, the agency with whom I worked thus far had to continue my salary.

I personally was always interested in not changing my emergency war status with the RSHA, into the other type, because this would have been equivalent to the position of an employee, and I would have had no prospect of ever getting out of this emergency war status.

THE PRESIDENT: Very well.

Q. (BY Dr. Ratz) Witness, if I understood you correctly, you said that your emergency war orders to the RSHA was a service without contract. This would mean then that your contract thus far with the resettlers agency continued?

A. Yes.

Q. And thus this is the reason that this agency continued to pay your salary until the end of the war, is that right?

A. Yes, Beyond that, during the time of my furlough, I had to work in this agency, and I always worked there again.

Exhibit 139, page 39 of the German text, page 22 of the English.

MR. HORLICIK-HOCHWALD: Your Honors, this document starts on page 22 of the English.

THE PRESIDENT: Yes, thank you.

DR. RATZ: It says there: SS Untersturmfuehrer von Radetzky was admitted to the SS Schutzstaffel by the Reichsfuehrer SS personally at the occasion of his visit in Posen on the 12th or 13th of December, and was promoted to SS Untersturmfuehrer.

MR. HORLICK-HOCHWALD: Your Honors, the quote is on page 26 under the heading of page 4 of the original.

THE PRESIDENT: Yes, I see it now. BY DR. RATZ: the dissolution of this Advisory Agency for Baltic Germans. After, however, the Director of the Office for the Repatriation for Ethnic Germans had incorporated this agency into his office, Himmler gave the order to take the employees of this advisory agency into the SS and at the same time to express a recognition of the services already rendered for the resettling work. These negotiations were supposed to have lasted for two whole days while Himmler was in Posen, since in any case he did not want to see this advisory agency. That's how I suddenly got into the SS. I neither made an application for admission nor was I asked about it.

Q Could you at that time object to being taken into the SS?

Q How did you get into uniform? put in uniform. At this occasion I heard the expression "wearer of the uniform" for the first time. I was told I was to consider myself as such and that I would incur no obligation.

At this occasion I wore the uniform for the first time. oath for the SS or did you obligate yourself to do any duty for the SS? such obligations or myself nor did I take an oath. I did not have to show any so-called proof of my Aryan descent, did not have to ask for any marriage permission, did not have to leave the church, did not have to join the Lebensborn, did not have to pay any membership fees and never attended a rally of the SS. Therefore, I, could never assume, on my part, that my membership in the SS was anything but a nominal one. since the conditions for such a membership were not met. circumstance to be especially careful, since I never contested a formal membership. This would be absurd, but I don't see why I should be called to account today for obligations which to avoid I never had the rights to.

Q Witness, I come to a new point: When did you come to Schmiedeberg? old homeland, where I was employed for the subsequent resettlement of the Baltics, when I had come back frommy furlough, an order by the school for Border Police in Pretzsch called no to duty, and I had to comply with this order within 24 hours. This was in the middle of May. about your mission?

this was a war assignment which would be concluded by December at the latest. I was not told anything further.

Q As what were you being called to duty for? office for the repatriation of ethnic Germans, since December of the year 1940, I was not even allowed to wear any insignia of rank and did not wear any such. Book III-C, page 45 of the German text. It is Document NO-4771 (i), Exhibit 139.

THE PRESIDENT: Page 22?

MR. HORLICK-HOCHWALD: It starts on page 22 but Dr. Ratz wants to read from a later date, 1 will try to get the page.

INTERPRETED: The letter "i" is on page 29, your Honor.

DR. HORLICK-HOCHWALD: It is on page 29, Your Honor.

THE PRESIDENT: Very well. BY DR. RATZ:

Q. There it says, "Under cancellation of his assignment to the BdS Ukraine, the SS Sturmbannfuehrer (NDV) Waldemar von Radetzky was transferred." Will you the Tribunal what the initials "NDV" mean?

Q Who put you on such p status? of personnel for the performing of missions of special state political importance on 15 October 1938. This status was immediately announced by the regional office, by the Mayor of the City of Posen, who was competent according to an announcement which said that government agencies could demand emergency service. This was on the 8th of July 1939. During my war emergency status in May 1941 I was busy with the advisory agency for Baltic Germans in Posen.

this emergency status or of evading it?

Q What effect did this have? order to be drafted which had to be complied with. Whoever refused to comply with this had to expect the same consequences as one who would have refused to do any war service. The compulsion of this war emergency status can be seen from the fact that this was announce, even though the office for the repatriation of ethnic Germans, who had incorporated the advisory agency for resettlers, had deferred me.

Q Would you please explain what the designation "UK" means, to be deferred? man power and means that the person concerned can not be drafted for the army. became a member of the SD? of the SD, either in full time capacity or in an honorary capacity. The war emergency status merely started an activity in the SD and this activity had to last as long as this status was effective.

THE PRESIDENT: Dr. Ratz, would you went to suspend now for the afternoon recess? The Tribunal will be in recess 15 minutes.

(A recess was taken) Court No. II, Case No. IX.

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Proceed.

Q (By Dr. Ratz) Witness, we spoke of your war emergency status. Could you on such a status, object to your call to report to Schmiedeberg? on that basis, I came under the jurisdiction of the Chief of the RSHA and apart from that I was subordinated to the SS and Police court. As I have already said, war emergency service had the same effect as a military draft. Blobel on the 19th of October, 1947, -- it is in the transcript, German text page 1751 -- in connection with your own person, witness, the question was raised whether it was true that those on a war emergency status were supposed only to serve in the Reich Security Main Office, but they would not serve in an Einsatzgruppe. Would you please comment on this? in the RSHA and not for service in the Einsatzgruppe. I would like to clarify this again. The war emergency status is imposed by the Department I, Personnel Department of RSHA, for service in the Einsatzkommandos. Only based on the war emergency status could I begin my activity in the SK 4A. Until the end of my activity in the SK 4A and after that, up to the end of my activity in the Reich Security Main Office, I was on this war emergency status.

Q When did you first learn of your war emergency status?

AAbout two weeks after I had arrived in Schmiedeberg. I received a temporary registration card, in which my war emergency service for the Department I of the RSHA was explained, and a certain Hauptsturmfuehrer Ulrich in Schmiedeberg informed me that I, in accordance with my recruitment, was due to have war emergency status for the Reich Security Main Office and would have to take part regularly in military training.

and did you also receive a police training? consisted of exercises and weapons training and than regularly physical exercises and games. ever discussed at that time?

Q Witness, we are now coming to the SK 4A. When did you join the SK 4A? of June, 1941.

Q Who was the chief of SK 4A? often mentioned here, with Streckenbach or in Berlin? learn anything about the discussions having taken place, except here in Nurnberg.

Q What ware you told when you were detailed to the SK 4A? as expert on the country. Furthermore, I had to take part in a discussion at which general directives for reporting were given and I had such a discussion with an officer of the Office VI of the RSHA. reporting? Dept III on the Staff of Einsatzgruppe C, in Schmiedeberg at the beginning of our activities. The Departmental Chiefs were present and were informed about the character of their futura work. It was explicitly pointed out that the Departmental Experts for reporting would work in their own sphere of activities.

MR. HORLICK-HOCHWALD : If the Tribunal please, it seems inadmissible

that the witness testifies to facts which he does not know. He told the Tribunal very explicitly that he did not know a thing about these meetings in Schmiedeberg, but now he is going into great detail in order to explain to the Tribunal what happened there.

THE PRESIDENT: The observation is entirely a logical one. What do you have to say to that, Dr. Ratz?

DR. RATZ: I believe that the witness is testifying from his own experience, and he has said this remark only concerns the name of this chief who was discussed, Hennicke, of whom I shall submit an affidavit and whose name the witness probably did not know at the time.

MR. HORLICK-HOCHWALD: If the Tribunal please, if Dr. Ratz has some proof for these facts from Hennicke it seems to be entirely immaterial that the witness testifies what Hennicke told him here in the jail or what are the contents of the affidavit. The affidavit is the proof before the Tribunal, but what the witness says he heard here from Hennecke generally, meanwhile, after the trial here started, is no proof at all, no proof whatsoever. An affidavit of Hennecke is available. The witness is available for cross-examination, but I do not think that this is the proper subject for the interrogation of a third person, in this case, the defendant, who does not know anything from his own knowledge about this fact.

DR. RATZ: Your Honor, it is here a matter of two discussions. One is the discussion with Streckenbach and one is the discussion with Hennecke. As for the discussion with Hennecke, the witness can tell us about it from his own experience. I should like to ask the witness whether he himself can state facts about this discussion according to his own experience or only by way of the affidavit, Witness, will you please comment on this?

THE WITNESS: I answered your question whether I took part in any discussions with Streckenbach or in Berlin, by saying that I did not take part in these discussions. I further went on to say that I took part in other discussions, for instance, one discussion concerning Court No. II, Case No. IX.

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reports and reporting and then another discussion with an officer from Office VI. In those days I was new and I do not know the names of these people who had these discussions, but I made sure that this discussion about reporting was presided over by Hennecke at the time in Schmiedeberg and therefore I said, "As I know now."

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Q (By Dr. Ratz) But you know from your own memory about this discussion? don't know whether it was Hennicke or somebody else from my recollection of that time, but when I attempted to clarify matters now, I found out that Hennicke must have actually preside over the discussion then.

Q A further question. What special subjects did these reports include? education, theatres, religion, and so on.

Q How were the reports actually issued?

A The work was of a reporting nature. First, the material for the reports had to be found. This was done by contacting the population and by looking for the sources for reports. Then reports were made out of this material. Responsible for this were the departmental experts of Office III,

Q To whom did these reports go?

A That depended. They went to the Chief III who was with the Staff of the Einsatzgruppe.

Q Was executive activity mentioned in these reports? and they were issued by experts, that is, the Departmental Experts IV, but I had nothing to do with that, because I was Departmental Expert III, time?

Q When did you leave Schmiedeberg and where did you go? went via Liegnitz, Gleiwitz, Cracow, to Rubirshow Here, Blobel, who had left the kommando meanwhile, rejoined it and with one part of the kommando he went to Sokal, while the remainder, including myself, followed him.

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Q Did you on that occasion have discussions with Blobel? that ruthless security measures against Communist functionaries had been ordered by the Fuehrer, I asked that my activity to be outlined because I did not want to have nothing to do with this kind of police task. When this order was proclaimed, Blobel said that in this, Jewry had to be regarded as the essential bearer of Bolshevism. Healso said that when the security of the unit made it necessary, collective measures were possible too, however, these could only be ordered by the battalion commander or a higher-ranking officer. Blobel then ordered me, after I had objected to deal with the documents and utilize them for my reports for the SD as the Departmental Chief of Office III and to report to him and to the Einsatzgruppe about Ukrainian affairs. Further directives I did not receive from him concerning this activity. He only said that I would not be employed in the same manner as all the other officers of the commando as I did not fulfill the necessary conditions.

Q What conditions were these? of the kommandos? SD insignia, the distinction perhaps be comes most evident from the fact that I received a daily payment of One Mark Twenty, that is the price of a pack of cigarettes, while a Hauptsturmfuehrer or one of the officers of the RSHA in those days received Twelve Marks for his personal expenses. That is about ten times as much.

Q You said, "apart from a few external insignia." Did you wear SD insignia on your sleeve, or did you not? the course of time?

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A No, no, and I had to use my own money occasionally. Later I received 75 Marks on one occasion when I was no longer in a position to pay my debts at the Officers Club. officer in the SK 4A?

A No, no. I was and I remained under war emergency status. I brought along my uniform from the Volksdeutsche Mittelstelle. Neither the uniform nor the rank would give any cause to think that I was an officer in the Security Police and SD. For this, other conditions were necessary; by that I mean, membership and previous training. executions? fact that I had an officer's rank did not alter this fact. My executive power did not go beyond my field of activities. This field of activities was the field of interpreting and reporting, and, later on, I became a liaison officer, as well. commander of SK 4A, Blobel, of 6 June 1947. It is contained in Document Book I, page 129 of the English text, page 163 of the German text, No 3824, Exhibit 31, and it says:

MR. HORLICK-HOCHWALD: If the Tribunal please, I do think that Dr. Ratz will quote from para. 9, which is on the top of page 132.

Q (By Dr. Ratz) There it says, and I quote: "During the period of my absence the kommando was taken over by Dr. Rasch, Hauptsturmfuehrer Waldemar von Radetzky and Hauptsturmfuehrer Dr. Beyerp and under their direction a jumber of mass executions took place too." I now ask you, Witness, were you appointed by Blobel as his deputy or were you given the leadership of SK 4a in any form? ing this question when he was on the witness stand and he said that I was not his deputy, just as little as, according to my knowledge, Dr.

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Rasch and Dr. Beyer were his deputies, and I wasn't either.

THE PRESIDENT: Dr. Ratz, will you refresh my memory? Perhaps my colleagues recall it, but at the moment I don't recall whether the Defendant Blobel was questioned by you on this statement of his that the present defendant von Radetzky conducted mass executions.

DR. RATZ: Your Honor, I asked the Defendant Blobel on the 29th of October in detail about this matter. This is on page 1660 of the German transcript and it goes on to page 1667.

THE PRESIDENT: Mr. Hochwald, can you give us the reference in the English transcript?

MR. HORLICK-HOCHWALD: If the Tribunal please, I do not have the English transcript with me at the moment, but tomorrow morning I shall be glad to inform the Tribunal,

THE PRESIDENT: I should like to know this afternoon so that I can read it tonight and tomorrow morning I will know what it's all about.

MR. HORLICK-HOCHWALD: If Your Honors please, I will have it ready about five o'clock this afternoon.

THE PRESIDENT: Fine. Thank you very much.

DR. RATZ: It was the afternoon session of the 29th of October.

THE PRESIDENT: Thank you.

Q (By Dr. Ratz) Witness, you said that you moved on to Sokal. What happened in Sokal? Kommando to Luck.

Q In what capacity did you join the kommando in Luck? written material which was an activity within the general acitivy of an interpretar and as a departmental expert III.

Q What did you have to do in this assignment? material in the interest of the Reich, as the term was then used, and to safeguard such material. For this purpose I received a packet of confiscation posters which I had to affix to the buildings for this purpose. Then I was given the order on the way to Luck to pass by the Army Headquarters and to obtain general staff maps of the advance area and to take care of them in the future. Apart from that I was supposed to take care of the reporting.

Q Who was in charge of the kommando that proceeded to Luck? kommando. Funk was in charge of the kommando, as I found out later, that is, in Luck. He had to prepare the quarters for the SK 4A which was due there and Janssen was in charge of the executive activities.

Q To whom were you responsible in the fulfillment of your task?

Q And who gave you the order? othar officers in the Kommando were concerned?

Q What did you do in Luck? quarters. Then with the aid of the inhabitants, I searched public buildings and inspected them briefly. Wherever I thought there would be files I put up these confiscation posters in order to safeguard them in this way. Then I recruited some Poles and Ukrainians who knew Russian as well as German, and with the six men, who had been put at my disposal by the kommando and those inhabitants I started working on these files. The main task had to be done by myself as the German members of the kommando were vary difficult to train. For this purpose, I had to make many changes in the personnel. The files thus seized were always transported to the main building and there they were stacked up. Then I looked carefully through these files. In this activity I was helped by Counter-Intelligence officers, who also deposited their files in my office. We worked day and night in this activity and we managed to secure extensive material of which one part was sent to the Army. submitted concerning the responsibility of the Defendant Radetzky, in Document Book III-C, on page 20 of the English copy, it is page 28 of the German text, there is Document NO-4438. It is Exhibit 132. It is the affidavit of Radetzky of the 25th of July, 1947. In the summary it is said that you were in charge of an advance kommando in Luck. Did you ever make such a statement?

A No, in my affidavit of the 25th of July, 1947, under No. 3, I said the following, and I quote:

A. (continued) I quote: "First I went to Hrubgoschow with the Special Kommando and from there to Luck, where I was assigned to a subunit of Sonderkommando 4-A."

THE PRESIDENT: What are you reading from there, witness? You say this is what you said.

DR. HOCHWALD: This is the affidavit of the defendant in Document Book III-C page 20, your Honor.

THE PRESIDENT: I know, I have that affidavit before me but he indicates that the affidavit is in error and he says that he said something different from what appeared in the affidavit and then he read a statement.

DR. HOCHWALD: As far as I could understand he wanted to say that the statement of the Prosecution that he was a leader of a sub-kommando is in error and that he has said in his affidavit only that he was in this sub-komnando. That is how I understood the testimony.

THE PRESIDENT: Well, then the affidavit remains as it is before us.

DR. HOCHWALD: He did not contest the affidavit.

THE PRESIDENT: I am very sorry, I had misunderstood that. BY DR. RATZ:

Q. Your Honor, I merely showed the witness the summarization of the Prosecution documents concerning the affidavit of the defendant Radetzky and in contrast to this I showed him his own affidavit. On the basis of this affidavit it is confirmed that he was not the leader of this advance Kommando Luck. 21 August 1947, Document Book III-C, page 30 of the English document book, page 47 of the German text, NO-4765 which is Exhibit 137, made a statement where it says, and I quote:

"The Vorkommando had three officers, namely SS-Hauptsturmfuehrer Waldemar von Radetzky and two Obersturmfuehrers whose names I do not remember any more. I remember that one evening a conference was held during our stay at Ludsk, in the course of which Waldemar von Rudetzky as senior officer gave orders to the assembled non-coms safeguard documents and other important materisl in certain buildings.

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At that time I had the impression that Radetzky was the head of the Vorkommando although he had never been pointed out to me as such."

Will you comment on this?

A. I have already explained that I was not the chief of Vorkommando Luck, and that it could not have been so. I have already mentioned that I was not familiar with Security Police tasks and for this purpose there were special experts in the advance Kommando who had to deal with these assignments. If the witness Kraege believes that he had gained the impression at the time that I was in charge of the Advanced Kommando then this impression can only have been created because I had a higher rank than the two actual officers of the Kommando. This fact itself, however, does not justify the assumption that I was the responsible officer, especially for exective measures. The chief of Sonderkommando 4-A, Blobel, stated who the officer was in charge of Vorkommando Luck when he was on the witness stand.

Q. Your Honor, I shall submit this statement from the testimony of the defendant Blobel immediately to the Tribunal. Perhaps I can meanwhile proceed. Witness, what rank did you hold at the time and what rank did the other officers hold?

A. I was Hauptsturmfuehrer, or Captain, and the two others were Obersturmfuehrer, or 1st Lieutenants.

Q. The witness Kraege in the affidavit which has just been mentioned also said that in Ludsk one evening there was a discussion in which you, as the highest-ranking officer, gave instructions to the other officers. Now, what did you discuss on that occasion?

A. Soon after my arrival in Ludsk I had a discussion with the non-coms, that is with those people who had been assigned to me for the carrying out of my mission. I gave them directives for securing of enemy documents but no officer of the Kommando was present here because this discussion concerned my particular sphere of activities which was the securing of documents.

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Q. Your Honor, I would now like to show you this particular passage from the Blobel statement. It is the transcript of 28 October 1947. It is the morning session and is page 1549 of the German.

Witness, what kind of documents did you then find and secure?

A. There was a great mass of material which had been left behind by the surprising withdrawal of the Russians. I had to pay particular attention to those documents which were of a basic and general significance. I now only remember the following spheres. First of all, documents dealing with the mobilization of the Russian armed forces in case of war with Germany; secondly, documents dealing with the line of advance of a Russian Army; third, purely military files; 4, material concerning activities of Russian agents in non-European states. I remember distinctly I was most surprised to find these documents at Luck of all places covering a period of five years. The remainder were economic files, land distribution schemes, food quotas, taking over of industry by the State, and State decrees to that effect.

Q. Witness, I may show you Document Book II-A, page 76 of the English text, page 84 of the German text, NO-2938, Exhibit 44, "Report of Events No. 24" of the 16 July 1941, and it says, I quote:

"In Luck, furthermore, in the buildings of the Soviet Administration and in various Communist centers, important material was seized in safes, among other things, a list of agents in various countries."

That's the end of the quotation, Please comment on this.

THE PRESIDENT: Let us find it, please, first. What is the original page number?

DR. HOCHWALD: Page 14 of the original. If I am not mistaken your Honor, it's on page 81 of the Document Book.

THE PRESIDENT: Yes, we found it.

DR. RATZ: May I perhaps repeat my quotation. "In Luck, furthermore, in the fuildings of the Soviet Administration and in various other Communist centers, after the safes had been forces open, important material, including, among other things, records relating to Russian agents in various countries, could be discovered."

THE PRESIDENT: Well I don't find that.

MR. HILDESHEIMER: Middle of the page, page 81, page 14 of the original.

THE PRESIDENT: Well, yes, I find some of it but I don't see the reference to "In Luck". There is one paragraph which begins "Moreover, important material, including, among other things, etc," but I don't find this reference to Luch.

DR. HOCHWALD: In the German mileograph it says "in Luck", your Honor. But, it says a little later in the next sentence "buildings of the Luch authorities".

THE PRESIDENT: Well, the phraseology differs between the German and the English.

MR. HILDESHEIMER: Well, I am afraid I just translated it as the defense cousel said it, I didn't have the document. I didn't read it from the document.

THE PRESIDENT: Very well, that explains it. BY DR. RATZ:

Q. What did the remainder of the Kommando do during this time as far as you know?

A. The Kommando had secured a number of Wehrmacht camps and was guarding these, otherwise it was occupied with finding quarters.

Q. When did special Kommando 4-A arrive in Luck?

A. I don't remember today exactly. It arrived with Standartenfuehrer Blobel after 4 to six days it arrived in Luck and took up quarters in the quarters that had been prepared.

Q. Were there any other Kommandos in Luck?

A. Yes, one Kommando of the Security Police and SD of the Commander of the General Government and after that the Higher SS and Police Leader Jeckeln arrived with his staff and subordinate units in Luck.

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Jeckeln took up quarters in the billets of the Kommando.

Q. The Prosecution, witness, in their submission of evidence on 30 September 1945, has made you responsible for the killing of 1460 Jews, 20 saboteurs, and deputized for the chief of Sonderkommando 4-A. I refer to Document Book II-A, page 76 of the English document book, page 84 of the German document book, NO-2938, Exhibit 44. It is the report of events No. 24, of 16 July 1941.

MR. HOCHWALD: That's page 80, your Honors. The second to the last paragraph on the bottom.

THE PRESIDENT: Yes, we have it.

Well, it's the same document that he has been quoting from.

DR. RATZ: There it says and I quote: "We succeeded in arresting 200 Jews as well as 20 plunderers who were shot on 30 June. As the corpses of a total of 10 German members of the Wehrmacht had been found on 2 July, 1060 Jews were shot as reprisal for the assassination of the German soldiers and the Ukrainians with the help of one platoon of the police and one platoon of the infantry. Finally on 6 July, it was possible to disciver altogether 50 Polish agents and spies who were liquidated also."

Did you find out anything about these executions?

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A. Yes one or two days after my arrival in Luck Janssen informed me that the local commander or the responsible division commander had ordered a retaliation measure for these 3000 Ukrainians who had been shot by the Russians, If and when such an operation took place I don't know because neither I nor any of the men who were subordinated to me for this particular operation took part in such an action.

THE PRESIDENT: Who did you say ordered the execution?

THE WITNESS: Your Honor, I heard that it was the town commander of Luck who had ordered a retaliation measure.

THE PRESIDENT: Well, there is nothing in the report to suggest that.

THE WITNESS: Your Honor, I can only say what I heard then.

THE PRESIDENT: Well, all this is listed under the activities of Einsatzkommando 4a, isn't it?

THE WITNESS: Yes, that is so. It says so in the report of events.

THE PRESIDENT: Well, do you attack the reliability of that statement, that all this was done by Einsatzkommando 4a?

THE WITNESS: That I cannot doubt, your Honor, I have no exact knowledge about who carried out this execution, and I can only say what I know about it, and I know that I was informed at the time by Janssen that the town major had ordered a retaliation measure to take place.

THE PRESIDENT: Who is Janssen?

THE WITNESS: Janssen was an officer of the kommando who had the order for the executive activity. He was in charge of executive measures in the Vorkommando Luck.

Q. (By Dr. Ratz) Do you mean one of the officers of SK 4a?

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A. Yes, an officer of SK 4a.

THE PRESIDENT: Well, proceed.

Q. (By Dr. Ratz) What else did you learn about this?

A. When Blobel arrived in Luck he informed us that Field Marshal Reichenau, the Supreme Commander of the Sixth Army; had issued the order to eliminate an equal number of Jews for the murdered 3,000 Ukrainian members of the intelligentsia. Blobel had arrived in Luck and he was ill. According to my memory, a physician was called immediately who wanted to take him to the field hospital. As far as I heard, Blobel resisted this and agreed with the physician on intensive treatment. The officers of the kommando met, and discussed what to do next, Hauptsturmfuehrer Karlsen to whom Blobel had transferred the command of the Einsatzkommando presided over this meeting. At the end of this discussion my advice was sought. Nobody knew what was to be done, and I suggested to take Blobel to the field hospital in any case, as on the one hand the physician thought he had dysentery, and on the other hand this would be a good opportunity not to carry out the order. I said that I would be prepared to take over the job of taking Blobel to the field hospital. I went to see the chief of the Wehrmacht field hospital in Luck. I described to him what it was all about, and I went to see Blobel, together with him. He was the Oberstabsarzt, Dr. Braeuer, chief medical officer of the hospital. Blobel had a high temperature and was delirious. The physician was most upset about the state of health of his colleague. He made out an admission card for the field hospital in Lublin, and he treated Blobel. Blobel was taken to his car, and I went to Lublin with him the same evening, where we arrived in the morning and took him to the hospital there. I took a disinfecting bath the next day in Lublin, and I returned to Luck the day after that where I confirmed the task of seizing documents which I have already dealt with.

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ated the execution that had been ordered, and the liaison officer of Group C to Jeckeln, Sturmbannfuehrer Meyer, had taken over the kommando. I cannot make any statements concerning figures because I was not informed about them, and I only know that it was a large-scale execution.

Q. Witness, did you, as far as the ordering or carrying out of the execution was concerned, have anything to do with this execution?

A. No.

Q. This was the first case in which you found out about an execution. In this connection, therefore, I want to put a few questions to you which have cropped up in these proceedings repeatedly. My first question is, what was your attitude to the Fuehrer Order as passed on to you by the Chief of SK 4a in Sokal, the order, that is, of ruthlessly proceeding against Communist functionaries?

A. As I have explained, when this Fuehrer Order was made known in Sokal, I immediately approached Blobel, and asked him for an exact delimitation of my assignment. I told him on that occasion that I was ordered to join the SK 4a as an interpreter and I only wanted to be used in this function. I cannot remember the exact wording of that particular discussion, but I remember that I added that I did not want to be used in security measures of the kommando.

Q. Why did you not want to have anything to do with such measures?

A. I had a different idea of a future German Eastern policy than the one I now found in its severity. At the beginning of the war I was put into these conditions, and I had no clear picture of the aims of the German Eastern policy at that time.

In my naive way, at the time, I thought that with persuasion and with clever political activity one could perhaps break Bolshevism.

Q. What was your attitude concerning, especially, the so-called Fuehrer Order?

A. First I regarded the possible measures to be carried out in compliance with the Fuehrer Order as purely military necessities for the security of the German Wehrmacht. At that time I could not tell to what extent these measures were regarded as necessary by the Army as military measures in the face of an enemy who in his ruthless and brutal attitude would use any means of combat, leaving out any basic principles. But I was not absolutely clear about this or the other necessity; the extent of these measures later on, but especially the extension of the measures to anti-Jewish operations was against my attitude towards other nationalities who had grown up with me in a centuries-old cultural environment.

Q. If I understand you correctly, your attitude, therefore, was against the effects of the Fuehrer Order?

A. Yes, that is correct.

Q. And how did you react to the happenings in Luck?

A. I asked the leader of the kommando about the possibility of my leaving. He said that I could only be relieved if I was prepared to go to a concentration camp from which I would not return.

THE PRESIDENT: Who said this?

THE WITNESS: Your Honor, he was one of the leaders of the kommando. I think it was Janssen. I don't remember exactly today.

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THE PRESIDENT: When you say one of the leaders, what do you mean? How many leaders were there of the kommando?

THE WITNESS: In the kommando there were seven officers.

THE PRESIDENT: Were they all leaders?

THE WITNESS; Well, they had an officer's rank. They did not lead the kommando, but they had an officer's rank. I mean officers.

THE PRESIDENT: Well, you had an officer's rank too, didn't you?

THE WITNESS: Yes.

THE PRESIDENT: Then were you a leader of the kommando?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at nine-thirty. (The Tribunal adjourned until 16 December 1947, at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II. Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may proceed, Dr. Ratz. BY DR. RATZ:

Q Witness, my last question to you yesterday was: "how did you react to the happenings in Luck?" You talked about the discussion with an officer of the kommando - then you did not conclude your report concerning this yesterday. from the service, and if one would want to do so it was only possible via a concentration camp. The only possibility would be to have myself recalled by the office I had been working with up till then. Thereupon I sent an urgent request to the office for the repatriation of ethnic Germansim in Berlin and asked to be released from this assignment and to give another task to me. BY THE PRESIDENT:

Q You don't recall the name of the officer with whom you spoke?

A I can't say exactly, your Honor. I think it must have been Janssen.

Q This was in Pretzsch?

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the duties to which the Kommando would be assigned? not know the tasks of the Kommando. be required to execute Jews?

A No, your Honor. That I learned only in Sokal. I stated yesterday that these discussions mentioned here with Streckenbach and Heydrich in Berlin I did not take part in and that I did not know about these discussions. The Proclamation of the Fuehrer order was only made after we had arrived in Russia in

Sokol before the Kommando had started its activity and after Blobel had returned from his first visit to General Field Marshal Reichenau.

Q Very well, proceed, Dr. Ratz. BY DR. RATZ:

Q When did you leave Lutzk? for the seizure of documents. I spent an afternoon there and then went back to Lutzk, as in Rowno I had convinced myself that this had been evacuated according to plan and that any important material as we had gathered in Lutzk could not be taken. BY THE PRESIDENT:

Q Dr. Ratz-----Of course, witness, you are not responsible for what any other defendant says, but since your name is mentioned very specifically in this interrogation, or rather examination of Blobel on the witness stand, it is certainly relevant to call it to your attention. Blobel was questioned by Mr. Hochwald and the questions and answers ran something like this:

"Q All right, Did you ever speak with Radetsky about the Fuehrer order as the order was handed down by Streckehbach?

"A The general information about happenings in Pretzsch or what had been said by Streckenbach in Pretzsch was in the presence of all the leaders and they, of couse, were immediately informed about it.

"Q So Radetsky knew about this order?

"A Why, the leaders knew the order, the leaders were aware of the order.

"Q Did you ever speak to him about this order?

"A It was in fact discussed by us in Pretzsch.

"Q Did you, Mr. Blobel, speak to Hautsturmfuehrer Radetsky about the Hitler order?

"A Yes, and then so on. Now you heard, what I have just read and you see what Blobel said. Do you contest the correctness of what Blobel said? assume, then, I have to contest it, I understood Blobel to another effect when he gave his testimony because I did not learn of this order in Pretsch and I don't think that another Kommando officer had knowledge about it at that time because otherwise it would have been discussed publicly. Personally two days before we left when the Kommando had already been set up, I joined the Kommando. It is possible, I don't know when, this discussion with Streckenbach had taken place but it is possible if Blobel informed the officers at that time simultaneously that this Information was given before I joined the Kommando, but I believe I can exclude this possibility because other wise I would have heard something about it. I do not believe that such an important and essential question would not have been discussed in any shape whatsoever or not mentioned. were to execute the order? You have heard many defendants speak here about receiving the order in Pretzsch.

A No, your Honor, it was not discussed. The order was proclaimed to us in Sokal when we reached the Russian border.

Q Well, but you don't say that it wasn't proclaimed in Pretzsch also, do you?

Q Proceed, Dr. Ratz. BY DR. RATZ: after a short stay in Rowno you returned to Lutzk. What did you do then in Lutzk? I went on going through the documents again and sifted them until an order reached me to come to Rowno, in order to join another advance Kommando which was supposed to go to Shitomir. In Lutzk before I left I equipped a truck with material which was going to Berlin. stay there?

A No. I arrived late and I immediately joined the Kommando which was advancing to Shitomir. text.

MR. HOCHWALD: Page 48 of the English, the last paragraph from the bottom, your Honor.

DR. RATZ: 2934, Exhibit 78. It is a report of events #19 of 11 July 1941 and it says: I quote:

"Einsatzkommando 4-A still in Rowno where executions took place of 240 Bolshevist, predominantly Jewish functionaries Officials, agents, etc. Vorkommando of 4-A set in march via Cudnow to proceed to Shitomir as soon as that area is secure to some extent. Another section of 4-A, in accordance with a wish expressed by Army Headquarters, takes over the area south of Rowno, in a width of 20 kilometers to the Fast as a security measure, One section of the Sonderkommando from Lublin has arrived.

Did you have anything to do with this execution mentioned here? joined the Kommando which was advancing to Shitomir.

BY DR. RATZ:

Q Did you over learn anything about this execution?

Q When did you arrive at Shitomir? Shitomir, as the front had been broken meanwhile and we had to take a number of detours covered by tanks and had to push through to Shitomir.

Q What did the Kommando do and what did you do in Shitomir? become sort of an alarm unit as the military unit in the place. Then I searched the buildings for documents and secured them and I found billets for the Kommando, secured these billets and I equipped them.

Q Do you know when the group staff arrived in Shitomir?

A No, I do not know when the group staff arrived. I only know that it arrived from the road between Rowno and Shitomir a few days after the Kommando. I was informed that the Adjutant of Rasch the commander of the Einsatzgruppe had been killed when the unit had been transferred. Document Book.

DR. HOCHWALD: Page 16 of the English, Your Honors. That's the third paragraph from the bottom under the heading "page 7".

BY DR. RATZ:

Q No.-2952, Exhibit 71. This is the report of event #37 of the 29 July 1941 and it says, I quote:

"In Shitomir itself Gruppenstab and Vorauskommando 4-A in cooperation have up to date shot, all in all, approximately 400 Jews, Communists, and informants for the NKWD." Do you know anything about this execution? I informed about anything concerning it. Personally I assumed, but as I say it is only an assumption, that if the Einsatzgruppe ordered such an execution, it must have been responsible for the carrying out of the execution itself.

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Q What did you do then in Shitomir? addressed to the office for the repatriation of ethnic Germans to be released from the Einsatzgruppe and since it could not he expected very soon I dedicated myself intensively to my actual task of reporting. I had to do this the more as the additional assignment tive of the Einsatzgruppe, Dr. Beyer, had been turned over to the interpreter Mueller. Mueller had spent all his life in the Ukraine and knew the Ukrainian language which I did not know. Ukrainian questions?

A The situation was the following. In 1917 after the Russian Revolution -BY THE PRESIDENT:

Q Witness, just before you go into that, please. Do you say that you did not understand the Ukrainian language? your linguistic talents. knew where the Kommando was going to operate, and if they took you as in interpreter certainly they would assume that you would speak the language of the territory in which the unit was to operate. because I know Latvian and I know a little Estonian and it would have been the most natural thing to do to send me to my old home country, but this was not done but I was assigned to the Kommando which went to the Ukraine.

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language?

A To the Kommando officer?

Q Yes. When you were being considered for this post did you have them believe, because of what you said, or because of your attitude, did you lead them to believe that you were familiar with the Ukrainian language? the Ukrainian language, couldn't they? ge? nil in this Kommando?

A No, Your Honor. There is a great distinction between the Ukrainian language and the Russian. The difference is one of dialect. One can make one self understood in emergency cases.

Q Well, did you then know the Ukrainian language? Ukrainian language? speak the Ukrainian language, and I understood your question to the effect whether I know, whether I was aware of the Ukrainian language, whether I knew its consistance, whether there is a distinction between the Russian and the Ukrainian, I knew the distinction.

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asking him?

Q whether he can understand it and speak it. That is what is understood by knowing a language, isn't it?

Q You wouldn't ask a person if he knows a language end expect him to give you an etymological discussion on the language, would you?

A I am sorry I didn't understand your question, Your Honor. obvious that I was not asking you to give us the history of the Ukrainian language and all the theory of its creation and development. That was obvious, wasn't it? I did not master the Ukrainian language. and now you tell us you do know it. badly. I could not speak Ukrainian but I understood your last question to be whether I knew whether the Ukrainian was different from. Russian, whether I had knowledge at all of the Ukrainian language. In its distinction and in its spoken form and that I know, later on I learned Ukrainian and I could converse in the Ukrainian language. stand it and to speck it. ignorance of the language to a complete possession of the language, to speak it.

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Ukrainian language you said no. Then a minute or two later you said, Well, you understood it, now you tell us that you could speck it.

A Your Honor, may I clarify this which I had misunderstood? When I arrived in Russia I only spoke Russian. I knew that the Ukrainian language was different from the Russian and only later, during my stay in Ukrainia I gradually learned to speak the language.

Q When I asked you if you knew the Ukrainian language why didn't you say yes, I didn't know it when I went to Russia but I learned it. That would be a forthright simple answer, wouldn't it? knew the Ukrainian language.

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Q Well then, let's sum this up, when you reached the Ukraine you could understand the Ukrainian language, but could not speak it, is that correct? then could speak it? familiarity with the language which permitted you to converse in it?

Q Well, how long were you in the Ukraine? speak it?

THE PRESIDENT: Proceed.

DIRECT EXAMINATION (Continued) BY DR. RATZ: questions, Witness?

A The situation was the following: In 1917. after the Russian revolution, the Ukraine proclaimed their independence, and defended this independence against the Soviets for four years until it was overpowered.

MR. HORLICK-HOCHWALD: If your Honor please, I do think that the witness goes again into a lecture on Eastern politics starting in 1917 at a time when he was seven years of age.

THE PRESIDENT: Well, if it isn't too long, Mr. Hochwald, we will hear it. Very well, the Ukraine declared its independence and defended if for four years. Then what?

A (Continuing) When the Eastern compaign began the Ukraine Government proclaimed their independence again in Lemberg, after all authorities in question, like the OKW, Eastern Ministry, and so on, had declared themselves prepared to agree to it.

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In spite of this an order was issued that the Ukraine administration would be taken in so-called honorary custody, and all attempts for independence would have to be stopped. I had a discussion concerning this with Dr. Beyer who was the departmental expert for Ukrainian questions in the Einstazgruppe, in the course of which it was decided that he would immediately go to Berlin to the Reich Security Main Office in order to achieve a revocation or pacilitation of the proclamation. I personally saw myself not in the position to participate in a matter which had been negatively decided from its very beginning. In addition to this there was the fact I did not master the Ukrainian language because I had been employed as an interpreter for the Russian language. The Interpreter Mueller, however, believed, supported by the moderate party in the Ukraine, to achieve a success in time. He became interested in this question, especially as he was hoping that Beyer would he successful in his attempts in Berlin. My assumption, however, did not cheat me as Beyer came back not having achieved a thing.

THE PRESIDENT: Did Mueller speak the Ukrainian language?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: Very well.

THE WITNESS: Therefore I never dealt with Ukrainian nor did I ever deal with the Jewish question as far as reporting goes.

Q (By Dr. Ratz) why did you not deal with the Jewish question?

AAgain on the same occasion I had a discussion with Dr. Beyer. In this Question, as well as in the Ukrainian question, he wanted to report to Heydrich in order to try that another attitude toward Jews in the Ukraine would he effected. This again he did not achieve. I, on my part, had to fear that if any reporting whatsoever on these two questions should be done by me I would automatically drift into executive activities as the whole dealing with the Jewish question went via Chief IV of Einsatzgruppen C, and the whole dealing of the Ukrainian problem went via the Ukraine expert, Dr. Beyer with this, my reports, as It actually happened in the future, would not only go to the Chief III of the Einsatzgruppe and then, as I have already said, I would have to come into contact with those who ordered executions, which I wanted to prevent and which I managed to avoid.

BY THE PRESIDENT:

Q I didn't quite catch that, you managed to prevent executions? tact with the authorities who were responsible for executive activity, that is the whole Security Police activity. If I had reported to them about a question which, on the other hand, would have been dealt with by the Security Police authorities, I might have been employed in some further Security Police activity. Perhaps I may give an example to clarify this.

Q Well now, wait there, now what did you do? You were not an interpreter, and you had nothing to do with executions. Why did they carry you along in this outfit? Now, we have that settled. What did you do with this Einsatzkommando? You didn't interpret; you had nothing to do with executions. Why did they carry you along? documents. If I had the time, I mad out reports, and then I was employed as the liaison officer with the Wehrmacht, first of all because that was my express wish.

Q What did you report on? You say, if you had the time. When you had the time, what did you report on? and then I reported about cultural questions. My main attention went to questions of economy because that was something I knew something about.

Jews, wouldn't you? who were being executed, didn't you? affect the economy of that territory, wouldn't it? state, at that time.

Q Please answer that question. If the Jews were executed in-any given territory, that mere fact would have a very grave effect on the economy, wouldn't it? because of the depletion of the labor supply due to the execution of Jews, a certain situation has resulted, You would have to say that, wouldn't you? sphere of activities of Departments 3 and 4, and I did not report about these activities.

Q You did not answer my question. Making a report on the economy you would naturally have to talk about labor, and if a great number of those constituting the labor element were executed, that would affect seriously the economy of the country on which you were reporting, and you would need to include that in your reports, would you not? economy had been ruined and had to be built up. There was no shop in which you could buy anything.

Q The economy wasn't helped by shooting off further labor supply, was it?

Q Did you report this in your reports?

A I may say the following: were being killed and thereby the labor market being affected adversely that the economy was made worse? Did you report that? in the Ukraine constituted an essential part of trade.

Q And did you report that Jews were beint decimated?

Q You didn't put in any report that Jews were being killed and this affected the economy of the Ukraine?

A No, in this shape I did not report about it. I only reported about the fact that the Jews were an important economic potential, but I did not report to the effect as you mention it.

Q.- Well, you say that you reported that the Jews were an important economic potential. Did you then say -- You say that you did include in your report the statement that the Jews constituted an important economic potential. Did you then add that this important economic potential was rapidly disappearing because of the executions?

A.- No, your Honor, I did not report that.

Q.- And yet you want to tell the Tribunal seriously that you made a report on the economy of the Ukraine?

A.- Yes.

THE PRESIDENT: Proceed, Dr. Ratz.

DIRECT EXAMINATION (Continued) BY DR. RATZ:

Q.- Witness, did you do anything in the Ukrainian and the Jewish question outside your kommando?

A.- Yes, in the discussion with Dr. Beyer we had agreed upon my writing two memoranda to the Eastern Ministry. I sent these memoranda from Zhitomir, and after about two months I received the information from the ministry that the minister would submit a few of the points which I had mentioned, to Himmler who was competent to deal with such questions at an opportune time. In other words, that meant that this step that I had taken was of no avail.

Q.- Did you these reporting activities which you mentioned take up your full time?

A.- Yes, the more so as I came in close contact with the competent Army agencies, and, mainly with the economic agencies. I made large and extensive reports concerning the agricultural situation, trade and commerce, and I attempted in these reports, as I have already said in answering the questions of the President to have an objective point of view. I believe I may say that my reports, in the manner in which they were made out at that time, were the only way to bring about a change of the basic attitude of the German Reich towards the Eastern problems, and I found this confirmed on repeated occasions.

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BY THE PRESIDENT:

Q.- Witness, do you consider that your reports were very objective when you failed to indicate that a certain segment of the population was being wiped out?

A.- Your Honor, in the answer to the next question, which is in my notes, I want to come back to this.

Q.- Well, come back to it right now. You said that your reports were very objective, and I asked you if you consider a report objective when you fail to mention that a segment of the population is being exterminated?

A.- Your Honor, may I come back to what I wanted to say in my next answer? Towards the Army agencies I expressed this. Towards the Einsatzgruppe C who received my reports this was not necessary because it knew about these conditions better than I did.

Q.- Well, these reports were going to Berlin. Berlin had to know, and the Einsatzgruppe headquarters could only send in such reports as came from the field, and if you did not include any reference to the execution of Jews in your report to the headquarters, how could the headquarters send on a complete and reliable report?

A.- But, your Honor, the Einsatzgruppe simultaneously received reports from the executive authorities, about executions which were to take place and which had taken place.

Q.- You say -

A.- And these as well as Berlin had the possibility to formulate their opinion according to these.

Q.- Now, you say you did report executions to the Army, is that right?

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A.- I expressed this to the army economic agencies, but I admit, your Honor, that personally, in order to keep away from the whole question I avoided this topic in my reports to the Einsatzgruppe because I believed that the Einsatzgruppe knew about these matters in detail.

Q.- Let's come back to your report to the Army agencies. You said you did notify them about the executions, is that correct? Do you affirm what you just said a minute ago?

A.- About the effects of executions, yes.

Q.- Did you deplore the execution of Jews because they were Jews to the Army agencies?

A.- I did it in the following manner, and this seemed to me the only way, your Honor. I tried to point out that the economic power of the Jewish sector of the population, especially in the Ukraine, would have to be maintained because the whole trade was in their hands. I was not authorized according to the secrecy rules as they were made known to us in RSHA to report about details which had come to my knowledge.

Q.- Did you or did you not know that Jews were being executed by your kommando because they were Jews?

A.- Yes, I learned about that.

THE PRESIDENT? Proceed.

DIRECT EXAMINATION (Continued) BY DR. RATZ:

Q.- witness, you spoke just now about Army authorities whom you were indulging in further activities as a reporter, did you?

A.- Yes, in agreement with the subordinate Army Offices, I dealt with the setting up of independent administrations, in order to have a body of independent administrators, or independent as far as possible, in order to, put the civilian population before a fait accompli when the army advanced. I tried to support the Army in their attempts to this effect.

Q.- How did your assignment as liaison officer come about, witness.

A.- From the Office for the Repatriation of Ethnic Germans in Gerlin I only received an answer to my letter which I had sent them to the effect that they would try to have me released from the Reich Security Main Office in order to employ me in the Resettlement Office. A few days later I received the notice that the Reich Security Main Office would not release me. As I want to leave the kommando, the only position which I could take up was the position of a liaison officer which now I quite consciously tried to get. At the beginning of August, I managed to be assigned as such, which was made simple insofar as, on account of my close collaboration with Army staffs, I could go on with my reporting activity/

Q.- That was the beginning of August of what year?

A.- 1941.

Q.- Of what nature was your activity as liaison officer?

A.- I was assigned to the G-2, AO-III, and I had to take care that supplies for the SK4a were brought about without difficulties. My special official assignments were the following: Information concerning the military advance, the course of military advance, the front, information to the front, of the front and Army borders. This information was currently passed on to the SK-4a. BY THE PRESIDENT?

Q.- Witness, when you were concerned about having supplies brought in to your kommando. What supplies were involved?

A.- Food and fuel, your Honor.

Q.- How about ammunition?

A.- No, ammunition I do not remembers I do not remember having requested ammunition.

Q.- Now, listen, Witness, you either remember or you don't remember. If you remember food and fuel, you can remember whether you ordered ammunition or not. Did you order ammunition?

A.- No, your Honor.

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ammunition?

Q Why did you say just a minute ago that you did not remember? the wrong way. I said I did not remember ever having requested ammunition.

Q Well, that is the way it came through. How, do you, or do you not remember having ordered ammunition for your commando?

Q Do you say definitely that you did not order ammunition?

Q Do you say now definitely that you did not order ammunition? obtained ammunition for the commando.

Q And you say you did not order ammunition? that you were ordering supplies and you said that you had ordered food and fuel, then I asked you "Did you order ammunition", you said, "I do not remember". You said that, didn't you?

Q Now, why didn't you say then, "No, I did not order ammunition"? Why did it require three or four questions for me finally to get your negative answer? more clear, in a more precise manner.

Q It isn't that I am concerned about how you answer the questions please don't believe that. I want to get at the truth, and when you tell me that you don't remember so important an item as ordering ammunition and then just a minute later you say you are sure you did not order ammunition, the question arises as to whether you are attempting to conceal something or not.

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That is the only reason I am concerned.

A Your Honor, nay I spy it again. I feel-that if I had obtained end requested ammunition, I would remember it today, but I do not remember having done so and, therefore, I am of the conviction and of the belief that I never obtained ammunition. a way which could include that you did order ammunition.

That is right, isn't it? If someone says. "I do not remember", it means he may have done it but does not recall it - that is logical, isn't it? commando? officer.

Q Well, why didn't the administrative officer also order the food and the fuel? tion slips very often for fuel and food at the army authorities. From time to time the strength of the Kommando was reported, and the competent authorities then allotted the food and the fuel for a longer period of time. the fuel, although this was the job of the administrative officer, why wouldn't you have to get requisition slips for the ammunition as well? an officer designated to obtain supplies for the commando and that was the so-called administrative officer, why did you have to order the fuel and the food?

had to take Care of these matters at Army Headquarters. When I was asked, for instance, that I should settle this and this matter with the army authorities, I had to do so. the administrative officer to the extent of ordering food and fuel, why would you not assist him also since the supplies had to come from the army, why did you not assist him also in the obtaining of ammunition, which certainly was a very important item?

THE PRESIDENT: Proceed, Dr. Ratz. BY DR. RATZ: officer, and you said just then that among other things your task was to inform authorities about the advance of the army units. What further tasks did you have as a liaison officer? out from the interrogation of prisoners of war about the Russian Hinterland and evaluate them for the RSHA, Office 6. The commander of the SK 4A, Blobel, himself, independently maintained contacts with the Supreme Commander, Field Marshal Reichenau. this man?

A If I may correct this, it wasn't the G-2 of the AOK III, it was G-2, AO III, that means counter-intelligence officer. The then counter-intelligence officer of the 6th Army was Captain Luley, who came under the G-2 of the army. Luley himself was asked by the army to maintain contact with me. When I started my activities, the army was stationed in the vicinity of Shitomir. I was in close contact with Luley.

activities of the army? a No. power of the leaders of the special commando or any such authority?

AAgain, I had no influence on these. My activity as liaison officer with the army was only concerned with reporting activities, apart from the assignments which have already been mentioned. the activity of the Special Commando? BY THE PRESIDENT: report? of reports, one type is the SD reports, which I was writing myself, and which I exchanged with army authorities. The other type were so-called situation reports which were received from the commando dealing with the general political situation and security and which I had to pass on to the army. many executions, so many Jews, so many Communist functionaries, so many saboteurs, so many looters, and so on?

Q Well, if you were reporting on activities, wouldn't that be a very important item of the activities of the commando? situation reports dealt with the whole situation in the army territory, the political situation as it became evident in various spheres, but detailed activities of the commando were not given in these reports. Those were the so-called situation reports.

tions, there are hundreds of them here in these document books how about the SD reports? any executions. One was the field of activities IV, the other was the field of activities III. the army, and it was your duty to keep the army informed on the activities of your commando, and yet you would fail to notify them of the number of executions being performed by the commando, is that what you are telling the Tribunal? deplored to the army these executions? between the two types of reports; one are the SD reports with which I supplied, subordinate army authorities on an exchange basis. The others are situation reports as issued by the commando to the army and which described the general political situation in the army territory.

formed by your commando? your assignment. the army agencies these executions? expressed myself. If I Bay "army", I mean the staff, the operational department of :the VI Army. In the future I shall make a clear distinction here - the army staff -

Q well, we will take a broader term, say military authorities. Did you report to the military authorities the executions being performed by your commando?

THE PRESIDENT: Proceed. BY DR. RATZ: activity of the Special Commando?

A I can not give details about this. I know that the Army decided on the transfer of the Sonderkommando, or at least of parts of it. special commando?

A No, I do not know. The special commando or parts of it operated in the territories to which they had been assigned, and were under the command of the competent divisional commander. As far as I could see the so-called sub-commandos received their directives from these agencies under which they operated.

Q Did you, as a liaison officer, pass on any such directives?

A No. I was with the G-a, AO III, that is, counter-intelligence officer, and as I said, no such orders for executions went to this office.

place - actually, of course, you have already given testimony concerning this?

Q Did any further activity result out of this for you? agriculture, a sub-department of the army staff, and through my reporting activity, we took an important part in the bringing in of the harvest and, of course, members of the commando were employed in the harvest. Book, page 74 of the German, Document Number 2947, Exhibit 82. It is Report of Events 47 of the 9th of August 1941. There it says, I quote:

MR. HORLICK-HOCHWALD: I do think that Dr. Dr. Ratz will quote from page 69 of the English under the - or it will be 68 - sorry, 67 -- under the heading "page 8 of the original".

DR. RATZ: I quote, "Particular attention, especially in the villages, is given to the gathering of the coming harvest. The population is in a helpless situation, since the Russians have carried away or have destroyed, respectively, the most needed agricultural machines. The individual labor-squads are therefore working systematically on the preparation of the harvest. Since no Buergermeisters have so far been installed by the Wehrmacht, especially in the remote villages, this has been taken in hand everywhere, subject to later regulations, by the Kommandos and with great success." BY DR. RATZ:

A The situation as it is partly described here was as follows: It was my task to negotiate with the group agriculture and the commando and to arranger that the commando put a number of people at the disposal of the agricultural group in order to repair the agricultural machinery.

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I mention here that, for instance, in the vicinity of Shitomir, of 3,000 tractors, 2,700 were partly or wholly destroyed "by the Russians when they left and that one machine was constructed from many which were out of use in order to use it for the harvest. answer, did you undertake any further steps in your personal matter?

A Yes. When the entire kommando moved into Shitomir, a company of the Waffen SS consisting of two platoons had been assigned to it for the military security in the northern territory of Shitomir in the band-infested area. One day in the beginning of August, the CO of this company came to my office and asked for a confidential discussion. He said that the Einsatzgruppe to which he was subordinated had ordered him to disperse his company and to put the men at the disposal of other Einsatzkommandos. He feared that these could then be used for executions and that they would no longer be under his control and supervision as from then. I supported the company commander in his attempts to keep his unit from the activity of the other Einsatzkommandos and the success we achieved was that the Waffen SS company was released. In the course of this procedure, I, together with this above-mentioned company commander, went to the officer of the Einsatzkommando 6, as we wanted to ask him to intervene at the Einsatzgruppe and it was at that time in the vicinity of the Einsatzkommando 6. On this occasion I described to him my personal situation. He warned me very urgently not to take any direct steps concerning my release. Shitomir. How long did you remain in the Shitomir sector?

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Then I received the assignment, not to proceed with the stiff of the army, that is, the operational department which was to by-pass Kiev with the advancing troops -- but to go to Kiev immediately in order to seize documents and secure them and then to rejoin the army staff which intended to take up quarters in Kiev.

THE PRESIDENT: The Tribunal will he in recess 15 minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. LEIS: Dr. Leis representing Dr. Aschenauer for the defendant Ohlendorf. Your Honor, I would like to ask that the defendant Ohlendorf be excused from attendance in court this afternoon, and all day tomorrow in order to prepare the Document Books. Concerning this afternoon, I ask that the defendant Ohlendorf be brought to Room 57.

THE PRESIDENT:- The defendant Ohlendorf will he excused from attendance in Court this afternoon and all day tomorrow. This afternoon he will he taken to Room 57 where he may confer with his counsel. DR. LEIS: Representing Dr. Koessl for the defendant Ott, Your Honor, I also ask that the defendant Ott be excused from attendance in court this afternoon and tomorrow afternoon in order to prepare document books.

THE PRESIDENT: The defendant Ott will he excused from attendance in court this afternoon and all day tomorrow. This afternoon he will be taken to Room 57 where he may confer with his counsel.

DR. LEIS: It will he sufficient if he be excused only this afternoon and tomorrow afternoon.

THE PRESIDENT: There will he a correction in the defendant Ott's case. He will he excused from attendance in court this afternoon and tomorrow, Wednesday, afternoon.

DR. LEIS: I think you.

DR. GICK: Dr. Gick representing Herr von Stein for the defendant Sandberger. Your Honor, I also ask that the defendant Sandberger be excused for the entire day tomorrow from attendance in court in order to prepare his document books.

THE PRESIDENT: The defendant Sandberger will he excused from attendance in court all attendance in court all day tomorrow in order that he may work on his document book. BY DR. RATZ:

Q Witness, when did you arrive in Kiev?

However, I didn't find them, and contacted the combat troops.

THE PRESIDENT: What question did you ask, Dr. Ratz?

DR. RATZ: When did you arrive in Kiev?

THE PRESIDENT: Yes, now why can't you tell us when you arrived? Why is it necessary to start with the beginning of the World to tell us when you arrived in Kiev? Give the precise answer, and then if it's necessary to explain it, then you can explain, but you keep us in suspense for a long time before you tell us what your counsel has so clearly asked, isn't that right?

THE WITNESS: Yes.

THE PRESIDENT: Now, answer the question directly, and when it is necessary to tell us about all of Germany, and how you got there, all right, then we will have it, hut let's have the answer directly.

THE WITNESS: I can not give any date for this, because I have no possibility of reconstructing this.

THE PRESIDENT: Then your answer is, I don't know when I arrived in Kiev.

THE WITNESS: Yes, Your Honor.

THE PRESIDENT: Now put your next question, Dr. Ratz, and I presume it is, why don't you know, then he will tell us why he does not know. Or maybe, it will be, I don't know why I don't know, and then we will get into a very nice discussion on why he does not know, why he does not know. BY DR. RATZ:

Q Did you come to Kiev with an Advance Commando? However, I didn't find them, and contacted the fighting troops, namely, the Division of General Obstfelder in the City of Kiev when the city was captured.

Q In Kiev did you join the SK IV-A and its advance commando again?

Q What did the advance commando do in Kiev?

securing NKWD buildings as billets for the Einsatzgruppe and SK IV-A.

Q What did you do in Kiev? documents, as usual. This activity was made more difficult because lots of buildings had been destroyed, and the results were small because the Soviets had had sufficient time to clear everything away according to plan. Nonetheless, here in the capital of the Ukraine where the central authorities existed, I looked in the institutions concerned for such material.

THE PRESIDENT: Dr. Ratz, while, of course, the defendant has stated he does not know when he arrived in Kiev that settles it; still we ought to have some general idea as to the year, as to the season, the month, if possible, but some general idea, so we can chronologically fit it into the general picture. BY DR. RATZ:

Q Witness, please, will you answer the question of the President? 1941, Kiev was captured. It must have been the 19th or 20th when I arrived in Kiev. rest of SK IV-A come to Kiev? had been captured.

Q What did you continue to do in Kiev? because almost all public buildings had been mined had to be dynamited.

Q Was the Higher SS and Police Leader Jeckeln present in Kiev? commando took up new billets. The billets of the Group-staff and the units under the supervision of High SS and Police Leader Jeckeln were on the other side of the street.

Kiev which had been intended originally? but the operational department changed their original intentions, because of the insecurity in Kiev, and because the Army continued to advance to Charkow.

Q When did EK-V come to Kiev? the same time as the Group-staff.

Q How long did you stay in Kiev? department of the Army staff was not coming to Kiev, I received the order to go to the Army staff, and simultaneously to set up a liaison between the Army group and the Einsatzcommando. I travelled to the Staff of the Army, which was stationed in a small locality northeast of Kiev, but about twenty-five kilometers from Kiev, I had to turn back because my car broke down, and the car had to be towed away.

Q At that time did any changes take place in SK-IV-A?

A In the meantime the command had changed in Kiev. Together with the Group Staff arrived a great number of new officers who were to be distributed among all the various commandos in exchange for officers who were ordered back to Berlin. These new officers partly were stationed at the garrison of SK IV-A, and some were with the Groupstaff, and some were with Einsatzcommando-V, and participated in the work of the various commandos to which they had been distributed. I myself was temporarily given the job of supervising the work within SK IV-A until my car had been repaired.

Q What do you mean by work within the unit? the kitchen down to the incoming and outgoing mail, in fact.

Q How long did this temporary work last?

A This lasted until my car had been repaired. This was about four to five days. in SK IV-A, did you also make an attempt to try to be released? deal with this in the Group and asked him for my release. He told me that this was impossible, that I could not be relieved either, because there I had no central office in the Homeland to which I could he sent back.

THE PRESIDENT: With whom did you speak, witness?

THE WITNESS: Your Honor, with he competent personnel department chief in Einsatzgruppe-C.

Q Now wait here. With the competent personnel chief. With whom was that, tell us with whom did you speak?

Q All right. And who was he?

A I don't know his name. I can not remember.

Q What was his rank?

Q And when did this happen?

Q. What year?

A. 1941.

Q. And where did this take place?

A. That was in Kiev.

Q. Now you had told us about an attempt of this character sometime before. Where was that, and when was it?

A. Your Honor, this was a letter to the Ethnic German Resettlement Office, which I wrote in Luck, at the beginning of July 1941.

Q. Did you get a reply to that letter?

A. Yes, about a month later I first got a semi-approval, and a few days later I received a final rejection.

Q. The first letter said that possible you would be released?

A. Yes.

Q. And then a few days later, another letter came saying that you would not be released?

A. Yes.

Q. Then wrote two letters on the same subject?

A. Yes, In the first letter it said they would try to release me from the RSHA, and to return me to the Ethnic German Resettlement Office, and the second letter said that they had not succeeded in this.

Q. All right, Now this was in the beginning of July 1941 when you made your effort to get out of Einsatzcommando?

A. Yes.

Q. And then you tried again in September?

A. Yes.

Q. 1941, by talking to the competent personnel chief of Einsatzgruppe-C?

A. Yes.

Q. And what did he say?

A. He told me that I could not be released because I had been assigned to an assignment in the East on an emergency war status, and he also told me that I could not be relieved either like other officers, because I had no domestic agency to where they could return me in such a case.

Q. That I don't understand. You had no domestic agency to which you could be returned. Just what does that mean?

A. Your Honor, the individual officers of the commando came from the various agencies in the Reichs Security Main Office in the Reich.

Q. I see?

A. They were put on TDY and were returned to these agencies but I was on an emergency war status for an assignment in the East, and I could not be sent back, I could only be released.

Q. Did a replacement always have to come from the office which had ariginally supplied the officer?

A. Later on it was handled in that manner. I don't think it was that way at the time because the officers of the leading service returned to their studies, and other officers were brought in from other agencies. Later on it was handled in that manner in practice, that officers who wanted to be released contacted an officer in their home agency in the Reich, and if he was prepared to go out in his place, then they could try an exchange in that manner.

Q. Well, I asked you, did the regulations provide that a replacement could only come from the office which had originally supplied the officer involved?

A. I presume so, but I cannot say anything definite about this.

Q. Suppose that some one had originally been supplied by Office II of the RSHA, and then this officer was killed in the field, and Office II could not supply a replacement. Well, they would try to get an officer from somewhere else, wouldn't they?

A. I assume so.

Q. But in your case they said that he had to come from the Ethnic German Resettlement Mission, and there was no one there to take his place?

A. Yes, the RSHA had no influence over the Ethnic German Resettle ment Office, and the Ethnic Resettlement Office would probably not have requested a replacement for me.

Q All right. Then that was two occasions while you were with the Einsatz Kommando that you tried to be relieved? Office in July, 41, and another occasion with the Einsatzgruppe in September, 1941. you were with the Einsatz Kommando? 6.

Q When was that?

Q Whom did you speak to there?

Q And what was his position?

Q And what did you ask him? East, and he told me that this could not be done in a direct manner and that he would not advise me to try; that I should wait until there is an opportunity to be relieved and this opportunity came at the end of September or the beginning of October in Kiev.

THE PRESIDENT: All right. Proceed, Dr. Rats.

DIRECT EXAMINATION (Continued) BY DR. RATZ: involuntarily because of the breakdown of your car. This stay lasted how long?

A It took until the car had been repaired. That was about four to five days.

Q. Where did you go after that time elapsed? time in Perjaslaw because in the meantime the Army staff had been trans ferred there.

THE PRESIDENT: How many days did you say you were held up because of the repair of the car?

THE WITNESS: Yes.

THE PRESIDENT: I say how long did it take to repair the car?

THE WITNESS: I can't say exactly. It might have been four or six days.

THE PRESIDENT: Just about the same length of time it takes to repair a car in Nurnberg. I think you had better service in Kiev than we have here. Very well, proceed, Dr. Ratz.

Q (By Dr. Ratz) Witness, I give to you document book 2-C, page 49 of the German text -

MR. HOCHWALD: Page 43 of the English, your Honors, the first paragraph on the top.

THE PRESIDENT: You are a pretty good mind reader, Mr. Hochwald.

MR. HOCHWALD: The assistant of Dr. Ratz told me your Honor.

THE PRESIDENT: Oh, I see. I was giving you credit for clairvoyance.

MR. HOCHWALD: And there is no other quotation in this particular document which refers to the case of the defendant von Radetzky.

Q (By Dr. Ratz cont'd) Document NO-3137, exhibit number 76, report of events number 101 of 2 October 1941. It says here on the first page, and I quote: "Sonderkommando 4 in collaboration with the group staff and two Kommandos of police regiment South executed 33,771 Jews in Kiev on the 29th and 30th September 1941." When did you hear something about this execution? through Blobel.

Q Do you know in how far the Kommando took part in this?

Q Do you know which other units took part in the execution?

A I do not know exactly. I did hear that the execution was carried out by police units under the supervision of Jeckeln.

cution?

A I know nothing from my own knowledge concerning this either. I merely know from hearsay that the Higher SS and Police Leader and the Einsatzgruppe had ordered the execution and taken part in it.

Q Who told you this? like to address to you the unambiguous question, did you personally in any manner take part in this execution?

A I did not participate in the execution. As I have already said, only through official channels did I hear about it. which was necessary to have your car repaired, you again rejoined the Army. Why did you again go to the Army? Army as liaison officer. I had to do this as soon as possible.

Q Where did you rejoin, the Army? That is why I went there. In Perjaslaw I only met a rear-guard Kommando of the Army. I reached the Army Staff which was on the way to Poltawa in Lubny then.

Q Did the activity you already described as liaison officer continue? situation, that is, the changes in the front lines as available at the G-2 department of the Army, to the Einsatzgruppe and to the Kommando. Army Group in general? visited the G-2 of the Army perhaps two or three times, every time I needed the large situation map for which I needed special permission from him.

The competent office for me was the G-2, AO III, counter-intelligence officer. Neither the Chief of the Staff nor Reichenau himself ever received me; the first one because he did not want to hear of me, and as for the latter, I had already introduced myself to him on the road from Sokal to Luck. At the Army Group I met a man from the same district when I was with the G-2, Lt. Col. Freytag-Loringhofen, with whom I became friends. Group? visits of officers who had been assigned for that job. document NO-3405, exhibit number 42.

MR. HOCHWALD: Page 57 of the English document book, but Dr. Ratz will quote from page 65 under the heading, "Activity of Teilkommando, Sonderkommando 4-A at Poltawa."

Q (By Dr. Ratz) It is the report of events number 156 of 16 January 1942. There it says about the activity of the Sub-Kommando of SK 4 A in Poltawa: "A major Jewish action took place on 23 November 1941, after the Jewish population had been requested by means of posters to report on the previous day. Altogether 1,538 Jews were shot." Did you have anything to do with this action?

A No. In Poltawa while I was there, a Kommando of Sonderkommando 4B was there, also the advance Kommando Charkow, and a Subkommando of the SK 4 A as well as the remaining Kommando passed through Poltawa. Also a subkommando of Einsatzkommando 5 was there during that time. The Einsatzkommando 4 B had their quarters in the center of the city, while I, with the Army department with which I was, lived outside of Poltawa. The Kommandos that passed through always took up their quarters with Sonderkommando 4 B, and I know about their presence because they had to turn to me if they wanted to have orders to advance or if they wanted supplies from the Army, because the economic and administrative offices of the Army sent them to me as the competent liaison officer.

mentioned in the prosecution documents insofar as your personal responsibility is concerned. Beyond that, further executions are mentioned of which you heard, according to the prosecution documents. Did you take part in these executions in some manner? the AOK 6 or Einsatzgruppe C?

the time when the SK 4 A was under Blobel's command, you did not take part in the executive tasks of the SK 4 A?. training, and only in time got used to the SD reporting. Concerning the first, the Commander of SK 4 A, Blobel, had given me the limits of my work as interpreter. Two possibilities existed here, either to be active as interpreter during interrogations or to assist in making reports, since the mission of seizing documents alone could not take up my entire time of work, in particular at the time when the front was not moving and no new localities were captured. Work as interpreter during interrogations would necessarily have brought me in connection with the executive work. That is why I tried repeatedly to avoid this. I never carried out interrogations. My activity as liaison officer right from the beginning excluded the possibility of executive work. My position in the Kommando as non-member of the RSHA made me appear not suitable for this. BY THE PRESIDENT: interpreter during interrogations? beginning of the assignment I had been intended for work in the reporting service and could withdraw to that field. interpreter? commanding officer assigned you to interpret at an interrogation, how could you refuse to follow his order?

Q Well then, how did you avoid interpreting at interrogations?

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ing officer knew you were an interpreter and they needed an interpreter, wouldn't it be the most logical thing for him to assign you as an interpreter at interrogations? I was expert for the department III and later on I was liaison officer.

Q. Well, how did you become an expert in department III? You had not had SD training.

A No, I did not have that, your Honor. I said -

Q Well then, how did you become an expert so quickly? and my knowledge of languages.

Q Well now, we come back to languages again. If you were appointed because of your linguistic accomplishments and your commanding officer needed an interpreter why wouldn't he naturally turn to you who was already known to be a good translator and interpreter? the Commander used these interpreters.

Q Then you were not used as an interpreter?

A I was never used as interpreter by the Commander. I was never used in interrogations as interpreter either. directed your attention, and observe the last item on that page which says: "On 18 October 1941 the Teilkommando of SK 4 A at Lubny took over the evaluations of the NKWD files left behind by the Vor-kommando and the handling of current correspondence." Did you do that work?

Q Do you see the item?

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Q Well, why didn't you? You were qualified to make this investigation, this evaluation rather?

A That was not cart of my task. It says here a Subkommando of the SK 4 A, a Teilkommando. I was not in charge of a Teilkommando, a Subkommando, but I was merely liaison officer with the Army Staff. evaluating them. You have told us that.

Q Yes. Well then, why wouldn't you, in October, 1941, be engaged in the evaluation of files taken but your own Kommando?

A No, your Honor, at the time I was liaison officer already. I was with the Army Staff and it would have been quite impossible that the files would have been put at my disposal to work on them there, Evaluation of files by myself when seizing them in Wtek, or Shitomir or Kiev only occurred to that extent that I looked through them, I made a list of them, where it said what the contents of these files were and got then ready to send them to Berlin. I had the mission only to collect documents of basic nature and the question of languages may be cleared up at this point. Russian is the official language in the Ukraine as well, and all documents and decrees throughout the entire Soviet Union which are valid there, were written in Russian.

Q Yes. Well, now the NKWD files would be basic files, wouldn't they? department. until you looked them over and indicated what their contents were? tion in the Soviet Union and I knew where I should look for those matters which concerned me and which had to be of interest to me. as you entered new territory?

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Q Yes, all right. Then when you came into Lubny why wouldn't you get these NKWD files? your Honor. with evaluating files because of your knowledge of the Russian language in which these documents were written. Why wouldn't you be charged with responsibility of getting these NKWD files which were very important? with the Army Staff.

Q Weren't you doing these two jobs simultaneously, evaluating files and then also acting as liaison officer? officer and what period you acted in seizing files. Give us the dates.

Q Well, that's from June until August?

Q What date in August?

Q All right. Then what did you do?

Q Liaison between the 6th Army and Kommando 4 A?

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Q How long were you engaged in that kind of work? until the end of May 1942.

Q Then what did you do? Hungarian Army.

Q But always with 4-A?

Q And how long did that last, from May 1942 until when?

Q Then what did you do?

Q Always with Kommando 4-A?

Q All right. And how long did that last?

Q Now wait there. You said from December 15, 1942 you were liaison officer with the 8th Hungarian Corps. For how long?

Q For one year? So that takes us up to December 1943.

A No. From October until December 1943 I was liaison officer with the 2nd Army and the 8th Hungarian Corps.

Q Well, now just a moment. You told us that you were liaison officer with the 2nd Hungarian Army from May 1942 until the middle of December 1942. Then from December 15, the middle of December, 1942 you were liaison officer with the 8th Hungarian Corps operating with Einsatzgruppe C. You did that for one year? Now, what followed that?

A No, your Honor, there is a misunderstanding. I was liaison officer for the 8th Hungarian Corps from March 1943 until September 1943. In between I was on leave. Army, from August 10, 1941 until May 1942 there were certain exceptions, certain interruptions?

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Q What did you do during these interruptions? Lubny? done by you only between June and August 1 to 10? months?

Q Well, when was that?

Q What year?

Q And how long did you do that? work with the Einsatzkommando and for the 12 to 14 days in Kiev at the end of September 1941 you did not at any time do this work of seizing and evaluating files? in Russia you were used only for about 21/2 months for this very important work of seizing and evaluating files? that was my main work.

Q Proceed, Dr. Ratz. How far is Lubny from Kiev?

this activity, into the Einsatzgruppe, generally, because of your linguistic attainments. Yet, in a period involving about three years, you were used for this work for which you were especially gifted only for 21/2 months. liaison officer with the 6th Army.

Q Yes, I know. You have told us that but we come back to this proposition that you were taken into the Einsatzgruppe activity because you were an interpreter, because you knew the Russian language, because you could read documents in the Russian language, and you could evaluate them. In spite of this qualification, highly vital and important to any military organization, you were used for this work for only 21/2 months? That's what you tell us? BY DR. RATZ:

Q Witness, about the turn of 1941-42 did you go on leave? the middle of March 1942 from my leave.

Q Why did you take this leave? told him about my attempts to be released from my war emergency status. We discussed together in what manner I could be, or rather would be transferred to an assignment in the Wehrmacht and we agreed that I should go on leave while the G-2 settled this matter in the meantime, The plan was that through intermediation of the superior office of G-2 I should be released from the RSHA and I would then be transferred to the regular army unit.

Q Did you go home then?

A Yes. I made reports accordingly and returned to my family awaiting for a reply from G-2.

Q Did your attempts succeed?

A. No. At the end of January I received Information from Colonel Freytag Loringhofen that his suggestion had been rejected by his superior office and he could not help me for the time being.

Q Were you satisfied with this?

A No. I went to the labor office who sent me to the office of the Mayor who had put me on the War emergency status. Here I was told that the war emergency status could only be cancelled by the office who imposed it and only they could release me. I then went to the office of the RSHA in Berlin and asked the department chief competent, Sturmbannfuehrer Trautmann, to release me. I mentioned the emergency and the need in my family, and I said that I wanted to volunteer for the Army. Trautmann listened to me and asked me to come back after two days. After a short discussion in the doorway he talked to me in a very brief manner which could not be misunderstood.

Q One more question to supplement this. You said you went to the Mayor. In which city was this? rescinded? understood and I should not do this in the future.

Q What did you do after that? Agency on the one hand and with the attempt of setting my domestic affairs. This is what I did until I received a telegram that I was to go to Charkow. Immediately, I travelled to Charkow in the beginning of March.

Q Your Honor, I now come to a new sector. This might be a good place for the recess.

THE PRESIDENT: I would think so. The Tribunal will be in recess until 1:45.

(The hearing reconvened at 1345 hours, 16 December 1947)

THE MARSHAL: The Tribunal is again in session.

DR. BLUME: Dr. Blume, assistant for Dr. Lummert for Defendant Blume. Your Honor, I would like the defendant Blume to be excused tomorrow morning and tomorrow afternoon as his defense has to be prepared.

THE PRESIDENT: The defendant Blume will he excused from attendance in Court all day tomorrow, Wednesday.

DR. BLUME: Thank you, Your Honor. BY THE PRESIDENT: which we would like some enlightenment. These documents, enemy documents, would naturally contain information regarding activities against the German forces, activities which would call for executive measures. Would you make a report on these activities which would result in executive measures being taken against the authors of those activities?

A No, Your Honor, I did not report about such matters. The task of seizure of documents as it was assigned to me was the following: The basic and general material which enlightens on the structure and activity of the various Soviet institutions, this has to be seized, and by the first possible way has to be transported to Berlin. All these dispatches either went directly or via, the Einsatzgruppe to Berlin, and I had to deal with this. I had to pack them, either in cases or in reams, and each case or ream had to have a register and a list pertaining to the documents giving their content matter, but these documents did not serve the purpose to combat the enemy locally, but, as far as I know, they served the purpose of elucidating the Reich Government as to the structure and government of the Soviet Union.

individuals who were actively working against the German Armed Forces, what would you do with this list?

A I would have passed it on to Berlin. This was according to my assignment, but I can not remember -

Q Allright, let's suppose that you find in Kiev, you have seized the files, and in these files you find a report on a meeting which took place in a certain building, and in these reports there was an indication that a conspiracy was forming, a conspiracy already had been formed, that explosives were to be brought in, dynamite was to be brought in, and that certain roads were to be mined so that when the German forces traveled over them they would all be killed. This report gives the names of conspirators. Would you send that off to Berlin without doing anything? inform the competent authority immediately. The simplest thing would have been to inform the kommando itself about this state of affairs.

Q And then executive measures would be taken? evaluate them?

A I don't think so, Your Honor, This would have been done be the executive authority or those who dealt with executive activities. These would have to start their work then. Communist Party who according to the Fuehrer Order were to be executed. You find this list of Communist functionaries. What would you do with the list?

A Your Honor, I don't know. Such a case never happened.

Q What would you do with such a list?

because, contrary to the example you mentioned before, there was no acute danger here; but I am not able to answer this exactly, what I would have done in such a case. as resisting the German Armed Forces, what would you do with that list, would you still send that on to Berlin? ins of the list?

Q And you would have done nothing further? have translated it for them? translators who had to interpret it or translate it.

Q You take a list to them. It is drawn up in Russian and you hand it to them. Wouldn't you explain that, "Here is a list of individuals who are dangerous. They are resisting the German Armed Forces. They met at a certain place. They have certain plans." Wouldn't you tell them what the report was about?

Q Now, how many times did you do just such a thing?

A Such matters I did not carry out. As I said, the material seized by myself I regularly sent to Berlin in all the cases which I have mentioned. I think that I also read this in reports - I can't exactly remember that - this is also being confirmed by these reports of the local situation. seizing files, did it never happen that you found in those NKWD files names of individuals who were opposing the German Armed Forces or who were in the category of those listed to be executed under the Fuehrer Order?

Did that never happen once? buildings were always empty because the NKWD had no reason..... enemies of the German Armed Forces?

A That is possible. I do not remember a special case, but it is absolutely possible that that happened. those who were to be in some way made the subject of summary action on the part of the German Armed Forces? some of these seizures, find documents which gave information on persons opposing the German Armed Forces, you said that, didn't you? certain individuals, certain organizations opposed to the occupational forces? were seized by me I sent off to Berlin. opposing the German forces, what did you do with those lists?

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A Your Honor, I do not remember any case. I have already said that I never found such lists. have found some documents which called for action, for executive action on the part of the commando or on the part of the Wehrmacht. You said that, didn't you? fore include it? cases where you would find something which called for executive action? what would be the primary condition for an executive measure and what was not. I acted according to my assignment, and personally I saw no reason to go any further than this particular assignment. It was my task to seize documents and to transport them to Berlin, and this is what I did.

Q Now you can getting away from the question. I said, what did you do in those cases where you did find information acting upon which would call for executive action? did not know about such cases. I said that I did not exclude

Q Therefore, you include the possibility? executive action?

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sion on your mind, that you can't recall it? thing, but it is that I do not know of any case in which I passed on a list to anybody on the basis of which -Russians, you immediately been to look for papers, is that right? department and leave the others to another department? the time, had to be secured in the interest of the Reich. those which pertained to your department of agriculture, economy, and so forth? activities. I remember one particular case in which later -only documents which you would pick up, those which referred to your department?

Q You would leave the others there? which after I had been there, officials - and by officials I mean members of the Security Police - arrived and organized another supervisory control for their own purpose. glancing at the filing cases, those which contained information of interest to your department? set a proper perspective, and then I decided upon what I would take with me and upon the material which I did not need and which should remain there.

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Q And you would look at everything, wouldn't you? at the material which seemed important end of special significance to me. it was of importance to you, wouldn't you? whole material, out with a glance I can establish what I need for my own purposes, I took that material, and at the office I looked at it and made the registers and lists. if a tomato plant was growing in there then you knew that referred to agriculture and you would take those papers, You looked in another file and if there was some indication of economy in the way of a toy train or something, you would like that file? Witness, to reduce it to its very simple element, we indicate to you that it seems very unlikely that someone charged with the grave responsibility of seizing, enemy papers would not take every paper and evaluate every paper end report to his kommando leader. tremendous in Russia, I have already said that from Lutsk itself I sent a whole truckfull of material to Berlin. I had to work day and night on this together with men and officers of the Wehrmacht, and so it was impossible for me to busy myself with material which I regarded as of no consequence for my own purposes. referred to the security of your own comrades and of the armed forces in Russia just because it didn't fall within your department. That is what you are telling us, isn't it?

A This wasn't my task in this particular case.

THE PRESIDENT: Proceed, Dr. Ratz.

DIRECT EXAMINATION (Continued) BY DR. RATZ:

Q Witness, when did you arrive in Charkov?

Q Who had meanwhile been appointed commander of SK 4-A?

A The commander was Obersturmbannfuehrer Dr. Weinmann.

Q What was your new assignment in this kommando? liaison officer with the Army and the Army groups.

Q Where were they stationed?

A The Army was in Poltava then in Charkov. The Army group was in Poltava.

Q Did you have any further tasks to deal with? ing with cultural questions. tion in Charkov? my stay in Charkov as I saw that the Russian municipal administration could not cope with feeding the 3 - 400,000 inhabitants and I, knowing the economical structure of the Army, could support them. your own activity? kommando for too long. He had learned that I had not been ill but that I had been seen in Berlin. I described my futile attempt to be released to Weinmann and he, on his part, tried to convince me of the contrary of my attitude. In this discussion I asked for my release, which he refused. Security Police and the SD?

A Yes. Starting from the point that he as a former physician had never thought himself of joing such a service BY THE PRESIDENT: the Teilkommando of SK 4A, how did you answer that question--you said "No", didn't you? davit, "I went with the Sonderkommando to Rutkoschow and from there to Lutsk where I was assigned to a Teilkommando of Sonderkommando IVA. How do you reconcile those two statements? to a subcommando of the SK IVA. With that I did not say that I was in charge of this subcommando. IVA? reading from Document Number 3405? when asked whether I was with the Suncommando. IVA at Lukni, and you said you were never a member of a Teilkommando of IVA a member of the subcommando in Lukni, and to this my answer was in the negative, but yesterday in my direct examination I have stated that I was with the subcommando in Lutsk, and I said so in my affidavit.

Q Very well, I might been mistaken. Proceed. BY DR. RATZ: concerning your appointment in the security police and the SD?

A Yes. Starting at the point that he as a former physician never had thought himself to change into such a service and only when he had joined he had been convinced of its necessity and thus he also wanted to persuade me to give up my futile--or at least he regarded them as futile-attempts to leave the RuSHA and to have himself transferred. I refused his offer, as I have alreadu said. I asked for my release.

Q Were there any other agencies in Charkow?

A Yes. I said Dr. Kranebitter was his kommando. There was also the term SK IVA as in the army territory--there were not supposed to be any commanding agecnies as they were in the territories of civil administration. And on the part of the Einsatzgruppe the solution was found in this manner, that Kranebitter, was appointed the deputy of Weinmann in special districts in order to legalize him.

Q What did you do in this army group? another attempts to join the army group direct, for the setting up of a partisan combat unit. Furthermore, I received the order-in discussions-concerning the taking up of reporting activities, for Office 6, but all counter intelligence agencies of the army resisted so that the discussions took weeks.

Q What did you do in the army? for the population of the town Charkow with the aid of the army supply officer, Lt. Col. Meyer and the counselors of the Supply Office IB.

Q What did you do in the self-administration?

A I found the following situation. In the course of a very severe winter, the population had hoarded their supplies, but they had used them up, and they had nothing to eat. The rear territory was only in the west of the city, and the counter-intelligence wanted to limit the transport to the country in the rear territory to a minimum to have to cutt off supplies therefore, I suggested that consumers' associations should be formed who had their own territories for purchases which, as there were no transport possibilities could not be seized by the army.

In this way 60 cooperative societies came into being and checks resulted in the fact that daily on the average 300 tons of food supplies were taken into the city. Simultaneously with the investigations of the secret field police, the misgivings of the counter-intelligence were allayed. In order to regulate the prices, price committees were established, and it was achieved by the army that daily 100,000 hot meals could be supplied to workers and their families from army rations.

MR. HORLICK HOCHWALD: If the Tribunal please, I do not want to interrupt the witness again, but I do not think that this line of questioning will inform the Tribunal very much about the indictment, about the counts of the indictment and about the case before the Tribunal.

PRESIDENT: What are you trying to show by this line of questioning, Dr. Ratz, that they took care of the workers who were providing munitions for the German armed forces?

DR. RATZ: I want to clarify with this the activities of the defendant at that time in Charkow, what he did.

PRESIDENT: Well, do you want to establish by this line of testimony that the witness was concerned only with humanity ' with the feeling of the population, and that he was not at all concerned with the execution of Jews and saboteurs and looters and a-socialist and all those listed in the fuehrerorder. You are attempting to establish that contrast?

DR. RATZ: Your Honor, I shall question him immediately as to his other task he had in Charkov. BY THE PRESIDENT:

Q Did you have this 300 tons of food supplies brought in yourself? food would be regulated, otherwise, the population of the town would have starved.

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Q Did you see that some of this food went to the Jews? therefore, it went to the Jews also.

Q Did you see that some of it went to the Jews? of the food. soup from this 300 tons of food which you brought into Charkow?

Q You don't know where this food went ti, do you?

Q Did any of this food go to any Jewish family?

Q Did you see it being served to any Jewish family?

Q Well, how do you know that any Jews received this supply?

Q Well, you know also that Jews were being killed, don't you? You know that, don't you?

Q You do not know that Jews were being killed? them and then shoot them?

A I don't know anything about it, Your Honor, therefore, I can't say anything about it. was killing Jews, don't you? naturally follows, would you feed them and then shoot them?

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Jews. I only took care that the civil administration, the municipal administration via their cooperative societies would receive food supplies. the Jews, did you?

Q No. Would you say that you are a person of humane impulses?

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didn't you? body else, didn't you? I do not know. I would doubt that because the town was near to starvation. as much as you can do to a person, isn't it?

Q And you knew that they were being driven from their homes' you knew that didn't you?

A. No, that I did not know.

Q. You knew they were being put into ghettos in some instances, didn't you?

A. No, Your Honor, there were no ghettos in this sector.

Q. There were no ghettos because they were being executed right off the bat, is that the reason?

A. I cannot give any judgment as to this.

Q. well, then you stand on the statement that you yourself made no effort to see to it that any of these 300 tons of food went to any of these Jewish families?

A. I took care, Your Honor, that the cooperative societies were supplied with food and every citizen of this town could go to these; that this food was distributed in a just manner so that the town would not starve.

Q. What was the population of the town?

A. Three to four hundred thousand inhabitants.

Q. And you saw to it that every citizen of this 300,000 to 400,000 citizens got food, is that what you are telling us?

A. No, Your Honor.

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Q. Isn't that what you just said, that you saw to it that every citizen got food, isn't that what you just said?

A. Your Honor, I urged the municipal administration that these foodstuffs should be distributed justly to everyone, but I did not supervise each individual receiving his share of it. I did not have the possibility to do it.

Q. No. Nor did you say to them, "Now, I want to make certain the Jewish people also are beneficiaries of this largess of the German armed forces". You didn't say that either, did you?

A. That I did not emphasize.

Q. No. You didn't even mention it?

A. In one meeting, we held we discussed a just distribution scheme and, whether, in this, there should be any additions or exceptions, and it was decided in this meeting that nobody should receive an additional ration or nobody should be omitted. This is what I mean, and this is what I mean when I speak about a just distribution.

Q. When you made your report to Berlin, did you say that you helped to feed Jews in Charkow?

A. No, Your Honor.

Q. Did you say that Jews were being fed in Charkow?

A. No, Your Honor.

Q. Can you honestly say today that you know of your own personal knowledge that one Jew received any of this food that you spoke about in Charkow from your own personal knowledge?

A. According to my own personal knowledge and experience, I cannot say that, I can only say that I urged the administrative bodies that the whole population should receive this food.

Q. It wouldn't have been very difficult for you to get into your vehicle and go to the Jewish section to see whether they were included as beneficiaries of this food distributing policy, would it?

A. Your Honor, I only went to Charkow temporarily for a very short time, and I always was very busy as people saw me about admin istrative functions and I wanted to see that I should achieve the best results with this distribution scheme.

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Of course, I admit that I didn't do enough, but as it was not my task to deal with such matters at all, I believe that I did my utmost in this particular case. If I did not do enough, then it is not my fault.

PRESIDENT: Proceed. Dr. Ratz. BY DR. RATZ:

Q. Did you, during your time in Charkow, have any other assignments?

A. No. I did not have time to make out reports or hardly any time because the Russians took up all my time and I had to deal with a number of problems for the army and with the army. BY THE PRESIDENT:

Q. Were you with IVA as of November 30, 1941?

A. Yes, I was a member of Special Commando IVA. I was liaison officer with the Sixth Army.

Q. Did you know that by November 30, 1941, this commando had killed 59,318 people?

A. No, I did not, Your Honor.

Q. Do you know that that is in the report?

A. Yes, Your Honor.

Q. Do you know whether any of these 59,000 were given free food by the German armed forces before they were shot?

A. I don't know, Your Honor, I don't think so.

Q. Why was it necessary to feed these 300,000 when your commando was on the job of killing people--what difference did it make whether they lived or not, some of them were going to be shot anyway?

A. Your Honor, all I can say is that I arrived in Charkow then, and I saw the situation and found it my duty that I should help them. The Russians came and saw me about it, so I did.

Q. Did you help in any other Russian town to help to feed the population?

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A. No.

Q. And you helped here because the Russians asked you, is that right?

A. Yes.

Q. Well were you now allied with Russia?

A. No, Your Honor.

Q. You were helping the enemy out of a chivalrous nature?

A. I don't think, Your Honor, that that Was the reason I was confronted with the situation. I was asked this request, and I helped,

Q. Why did you do it, just because they asked you?

A. Because I was asked for it, and the hardship of the inhabitants of this town was described to me.

Q. You were very much moved by the condition of the people of the city, is that what you are telling us?

A. Yes. I saw that this town sooner or later....

Q. But you figured that some might die of starvation, that is right?

A. Yes.

Q. Did you ever help any Jew to escape execution just because you were moved by humane impulses?

A. Yes. I can mention an example.

Q. Give us the example.

A. In Shitemir I told the self-administrative authorities that the passes without which one could not move about freely or at least not go from one town to another without which one could not go from the town to the villages, for example, that these passes should be given to Jews who were asking for them without further ado, because the Jews would thus have the possibility to visit the country, and, there, to obtain food or to remain there, even. It was the mayor of Shitomir, a certain man called Gsatzenuk to when I repeatedly told this and who complied with this at least as long as it was under my supervision. Your Honor, it was only by such an indirect method that I could help at all, in any way whatsoever.

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Q. Did you include this in your report to Berlin, that you urged that passes be given to Jews so that they could go out into the country and enjoy the fresh air? Did you include that in your report?

A. No. Your Honor. I certainly did not do anything of the sort.

Q. Did you tell your Kommando leader that you did this?

A. I certainly did not.

Q. Do you know whether the mayor actually did this or not?

A. Yes, he did comply with it, Your Honor.

Q. Were any Jews shot in Shitomir?

A. Yes.

Q. Did you help any of them not to be shot?

A. Through this measure, in this manner, numerous Jews could escape or leave the town.

Q. Did they escape?

A. They just left the town and did not return.

Q. Do you know that they actually left?

A. Yes, Your Honor, I know that.

Q. This mayor, what nationality was he?

A. He was a Ukranian.

Q. How did he feel about the Jews?

A. His attitude was altogether very humane.

Q. Well, that's the one instance you give us where you helped Jews? You got passes for them so that they could leave the city?

A. Yes.

THE PRESIDENT: Very well. Proceed, Dr. Ratz.

DR. RATZ: I want to put a question, Your Honor, concerning the activity of the defendant in Charkow. I do not put this question in order to emphasize his activity as a special merit for the defendant, but only in order to clarify the fact of what he did during the time and to support the credibility of his statement that he did not take part in executions. BY DR. RATZ(Attorney for the Defendant Radetsky):

Q. Witness, you said that you took special care of the civil administration, especially concerning food supplies and that you thus supported the civilian population. Can you give us another example, Witness, of whether you also helped the population in other matters.

A. Yes, I also interested myself in the institution of agricultural societies because in my opinion that was the only way to help the farmers to regain their land.

Q. I now want to show you Document Book III-.C, page 51 of the German, -

MR. HORLICK-HOCHWALD: Page 34, of the English, Your Honor. That is in the middle of the page, I think, above the heading "Page 16 of the original".

Q. (Continued) It is Document NO-3237, Exhibit No. 138, Report of Events 187 of the 30th of March 1942, under "Einsatzgruppe C, Garrison, Kiew," and under the caption, "Communists." It is said there that "Within the framework of the defense measures ordered for the city of Charkov, and in order to prevent the increase of dangerous Bolshevist influence, security police measures have been taken against members of the Communist Party in those districts of the city which are particularly affected.

At this occasion 236 persons could be arrested and interrogated. 193 persons were established as being agitators and dangerous, disintegrating elements, and were shot. In the same way 64 Jews were treated who were equipped with falsified passports, were hiding, or could be established as carriers of disintegrating rumors in connection with the enemy propaganda." Do you know anything about these events?

A. No, I do not know anything about these shootings nor did I have anything to do with them, I want to point out that the commander of the Security Police, Dr. Kranebitter was also in Charkov at the same time, and, as far as I can see the situation, he was responsible for police measures at that time. The defense state of Charkow had not started in March, as mentioned here, but it was not in effect when I was there and the front was absolutely quiet at that time and the actual operations only began againat the beginning of May.

Q. When did you leave Charkow?

A. At the end of May or beginning of June, 1942, after the Timoschenko offensive had failed. We advanced and the kommando got the sector.

Q. What was your assignment?

A. I was assigned as a liaison officer to the Second German and Second Hungarian Army.

Q. What were the objectives of this Army?

A. The Upper Don River.

Q. Did you hold any special assignments on this occasion?

A. No, everything had been settled.

Q. When was Weinmann released and who was put in his place?

A. Weinmann was replaced in 1942 in the middle of August and Steimle was put in charge of the kommando.

Q. What did you do when Steimle was commanding?

A. Under Steimle's command I was liaison officer with the Second Army. Also it was my assignment to maintain liaison with the Second Hungarian Army.

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Q. The prosecution asks Steimle on the 6th of November 1947, -it is in the record, German text page 2072 ' the question whether the reason for your wanting to leave the kommando was because you were bored with the activity. Will you please comment on this.

A. This assumption is without any basis. I have repeatedly wanted to leave the kommando. Also I have explained that this had been my attitude from the very beginning.

Q. In Document Book III-B on page 69 of the German, it is NO-3842, Exhibit 119, Affidavit Steimle, it says that you, Witness, were held in high esteem.

MR. HORLICK-HOCHWALD: I am sorry, Your Honor. I do not have the English Document book.

THE INTERPRETER: Page 39, Your Honor, I believe.

THE PRESIDENT: That's where it begins.

Q. (Continued) It is the last page of the affidavit Steimle. It is page 4 of the original-How am I to understand your utterance? -It is page 42.

A. I cannot say of myself whether I was liked or whether I was disliked, but I was held in esteem by the Army, because it was well known that, if I was able to do so, I was always with the front unit and that 1 had destroyed a tank on one occasion and that I was held in esteem by the officers as a soldier as they knew that I would have liked to join the Wehrmacht.

Q. When did you leave the SK 4 A?

A. When Steimle left; Sturmbannfuehrer Schmidt, the man who had been his deputy until then, took over the kommando. I had meanwhile seen that Schulz had become Personnel Referat in the Reich Security Main Office and therefore he had been appointed my superior chief in Berlin.

THE PRESIDENT: Will you give us the date, please?

THE WITNESS: That was in the middle of January, 1943.

A. (Continued) I entertained hopes of having myself released from the war emergency status. In addition, there was another factor: That was my promotion. I joined the Einsatzgruppe where I spoke to Gruppenfuehrer Thomas and asked him to be released. We had a heated dispute in the course of which he kicked me out. On the next day he asked me to come to see him again, as I had expressly asked him to receive me again. He released me as far as he was concerned, but he also warned me that I should not go too far in Berlin in order not to contract the wrath of the Chief of the Security Police and the SD.

Q. Could you then ask for your release in Berlin?

A. Yes, I made out a request and I went to see Schulz who had meanwhile been appointed Chief of Office I. I could expect him to see my point. Schulz told me that he would support me. However, he told me that according to the regulations in effect nobody could be released from his war emergency status and that the decision was with the Chief of the Reich Security Main Office to whom he would send my request with his own personal approval.

DR. RATZ: Your Honor, I questioned the Defendant Schulz concerning these matters on the 20th of October, 1947, page 1061 of the German record.

Q. (By Dr. Ratz) Witness, did you take any other steps?

A. Yes, Office VI had wanted to employ me even before that time and a discussion was held with Schellenberg in the course of which he, Schellenberg, promised me that if my request for release would not be granted, he would arrange to take me over in his office for a job in the Foreign Information Service.

Q. Were these interviews successful?

A. No, my request was refused and Schellenberg did not get in touch with me again. Thus in the middle of March 1943 I had to return to Russia.

THE PRESIDENT: Just before he goes back to Russia suppose we have a breathing spell of fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. SUESS (DEPUTIZING FOR DR. DURCHHOLZ FOR THE DEFENDANT SCHULZ): The Witness, August Haefner of the prosecution on the 13th of December at twelve o'clock was asked to come, for a discussion on Wednesday the 17th of December at 1300 hours. Captain Reiz from the Defense Center has affixed to the bulletin board for the defense counsels a publication with the date of 16 December, according to which witnesses of the prosecution may not be asked to come for discussions after 1600 hours. This witness Haefner is supposed to be taken away from the court house on the 18th of December -- that is the day after tomorrow- and will not be available to us any mere after that date. I would like to ask politely to make it possible for us that we may talk to this witness at 1800 hours, as an exception, tomorrow, the 17th of December.

THE PRESIDENT: That is the Witness Haefner.

MR. HORLICK-HOCHWALD: H-a-e-fn-e-r, Your Honor.

THE PRESIDENT: For whom?

DR. SUESS: For Durchholz for the Defendant Schulz.

THE PRESIDENT: Yes.

DR. SUESS: I have the request here which was given back to me. I would like to give a copy to the prosecution.

MR. HORLICK-HOCHWALD: Possibly Dr. Suess can tell us whether it could not be possible to talk to the witness at an earlier hour We have no interrogators and no personnel at our disposal at that late hour. It is extremely hard to get them transportation to go home and so on and so on. We, of course, have no objections that the witness may be interrogated by Dr. Durchholz. We only would suggest whether it would not be possible that an earlier hour nay be chosen for this interrogation.

THE PRESIDENT: Why couldn't you make the hour earlier?

DR. SUESS: we have to book the witness a few days before hand Your Honor, and, at the moment, Herr Durchholz works as defense counsel in Case VIII where his client is on the witness stand now and therefore he cannot get away during the session and cannot talk to the witness during court hours, but he would like to talk to him personally. While court is in session, it is difficult to ask the witness to come earlier.

THE PRESIDENT: Mr. Hochwald?

MR. HORLICK-HOCHWALD: I do think, Your Honor, there would still be a possibility to start the interrogation at 4:30; that means at 1630, instead of 1800 hours which would make it very much easier for us to provide an interrogator for this interrogation.

THE PRESIDENT: How about 1645, allowing him time to leave the court room.

DR. SUESS: I am very much obliged; thank you very much, Your Honor.

THE PRESIDENT: That would be satisfactory then to you, 1645?

DR. SUESS: Yes.

THE PRESIDENT. Mr. Hochwald, will you take care of the mechanics of it?

MR. HORLICK-HOCHWALD: I do think, Your Honors, that I cannot give any orders to the Defense Information Center. I do think it would be necessary that the Secretary-General informs them.

THE PRESIDENT: The Secretary-General is informed that the Tribunal approves of Dr. Durchholz interrogating the Witness Haefner for the Defendant Schulz on December 17 at 1645 and the Secretary General will please make all arrangements necessary to see that this recommendation of the Tribunal is executed.

DR. HORLICK HOCHWALD: I thank you.

MR. HOCHWALD: I take this as the official information to the prosecution that the interrogation will take place at that time.

THE PRESIDENT: Yes, you are correct.

DR. SUESS: Thank you very much, your Honor.

THE PRESIDENT: You are very welcome.

Q (By Dr. Ratz) Witness, you just said in the middle of March, 1943, you had to return to Russia what kind of instructions did you get then? had to make reports about the Partisan situation in collaboration with the G-2 of the Corps, and the office of the Commander of the Security Police in Chernikov, and also I had to make SD reports.

Q When did you leave there? 1943. I was assigned as part of the 12th Tank Army, and I was wounded in the head. I was sent to the hospital and from there into an Army recovery home.

Q How long were you in this A., my recuperation home?

A I was there for about ten days. Then I got my orders to go home in order to have special treatment there. I received a teletype message here that I was to go to Lemberg immediately. There I received an order from Sturmbannfuehrer of Office I to report to Einsatzgruppe B to be utilized as liaison officer with 2d Army and the 8th Hungarian Corps, I asked for my release again. Also, I had not yet completely recovered and I was told again that according to the regulations I could not be released.

Q What was your work there and how long were you active there? Partisan situation I had to make reports, as in my previous work and forward these reports to the G-2 of the Einsatzgruppe. These sources were those agencies of the 2d Army and the 8th Hungarian Corps. I continued this activity until the beginning of January, 1944

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Q Did you have to carry out any other functions as well? administration remained the same. The officers of the Security Police and the SD and the District Commissar's offices worked in the same manner as before. My task, the Partisan reconnaisance and seizure of reports of the enemy, completely took up my time. Sonderkommandos?

Q Where did you go then? was assigned to the Group 6 C. I remained there until the end of the war. I once made a report for American agencies about this work. I think it would lead too far to talk about this here in detail. It is at the Tribunal's or the prosecution's disposal at any time if they should be interested in it. SS and did you work there? might have prolonged the war in Austria.

A Whether the latter would have come true I cannot judge. In any case, in March of 1945 I saw to it that a Russian regiment in the Karawank mountains would gain contact with the Western Allies and in the upper Austrian territory I saw to it that a volunteer corps was prevented from being set up, which was supposed to be 15,000 men strong, after I had heard that they were going to fight against the Western powers. from your war emergency status?

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were refused, and my superior said that I was a defeatist.

Q When did you become a prisoner of war in American hands? over of the Russian staff to which I was attached, I received an order, from a supplementary office of the Waffen-SS, to report to the LHA, and an entry in my pay book was made accordingly. I reported on 10 May 1945 in Mauerkirchen in Austria to the first American camp which I came across. officially.

Q what did you do in internment? since about June, 1946 approximately, I worked as apprentice in the carpenter's workshop, and in November of this year I wanted to pass an examination as carpenter. ment in the East from December, 1941 until March, 1942 and from January until March, 1943, what did you do then? tried to be released from my war emergency status and also during that time I worked in the resettlement advisory office to which I belonged until the end of the war. Here I tried to help a -number of families and individuals who had been endangered for racial or political reasons and had saved them from persecution. I did this because at the time I had taken care of these people already before my call up and did not want to leave them to their fate. My connection with these people had the eventual result that I myself got into trouble. But, I can say today that not even one of this comparatively large group of of persons was ever sent to a concentration camp because of their race or because of their political attitude.

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My attitude can be shown from this. you tried to be released from the war emergency status?

THE PRESIDENT: It is enough if he gives us the number of times. He doesn't need to relate each particular attempt again.

A I tried this eleven times; in July, 1941; beginning of August, 1941; end of September, 1941; in December, 1941; in February, 1942; in March, 1942, in January, 1943; in February, 1943; in October, 1943; in July, 1944; and in March, 1945.

Q My final question in the direct examination to you, witness: did you do anything in order to oppose consequences as you had become aware of them beyond your personal interests. in a strong rejection by Himmler, and my memoranda to the Eastern Ministry at the time, in my economic reports to the Army Offices I tried to influence in an indirect manner the general attitude. Beyond that, since the fall of 1941 I looked for contact and found it in human beings who seemed willing to avoid a political catastrophe and to look for a connection with the Western Allies. Because of this and my work for persecutees for racial and political reasons, I personally had difficulties which increased towards the end of the war. I could not use my influence beyond a small circle, but I tried in my situation at the time to do everything I could possibly do.

DR. RATZ: Your Honor, my direct examination is now concluded.

THE PRESIDENT: Does any member of defense counsel desire to cross examine? Mr. Hochwald, you may proceed with the cross examination. Oh, just a moment, Mr. Hochwald.

KRAUSE for the defendant Haensch:

Q. Witness, you said that at the time when you came to Charkow the commander of Sonderkommando 4-A was the Obersturmbannfuehrer Dr. Weinmann?

A. Yes.

Q. Do you know when Obersturmbannfuehrer Dr. Weinmann took over the command of Sonderkommando 4-A?

A. I cannot give the exact date but it must have been the middle of March.

Q. The middle of March?

A. In any case he arrived a few days before me.

Q. And when did you arrive?

A. I arrived about the 15 or 16 of March.

Q. As you said you were on leave and then you returned?

A. Yes.

Q. Thank you.

THE PRESIDENT: Proceed Mr. Hochwald. BY MR. HOCHWALD: which was just put to you. When did you leave Berlin to go to Charkow?

A. I did not leave Berlin but Posen the beginning of March.

Q. First of March?

A. No, Mr. Prosecutor, I cannot give you an exact reply to this.

THE PRESIDENT: Let us always have the year especially when you initiate an inquiry.

Q. It was 1942, was it not?

A. Yes.

Q. I am sorry, your Honor. How long did your journey take?

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A. About six to seven days.

Q. And when you arrived in Charkow Weinmann was already for several days there, was he not?

A. Yes, he arrived just before me. 3. Where from do you know it vas a short time?

A. I heard that.

Q. Who told you that?

A. A member of the office or he himself told me.

Q. Will you turn to your SS personal file. This is Document Book III-C NO-4771 and I want to quote from page 25 of the English, your Honors. Unfortunately I have nobody here who could show the witness the German. I shall try to do that myself.

THE PRESIDENT: Yes.

A. Mr. Prosecutor, I have got it.

THE PRESIDENT: He has found it, Mr. Hochwald.

Q. Thank you very much. This is a life history of yours for the SS, written by you. May I assume that this life history is correct?

THE PRESIDENT: Yes.

Q. I am especially referring to the paragraph under the heading "page 2" and to the paragraph under the heading "page 3 of original". May I assume that what you have written here in this life history is correct?

A. Yes.

Q. Here it is stated that from 15 December 1938 -oh, no, I am sorry. That you were entrusted with the preparation for an economic reconstruction of the community and you were a member of the Main Commission of the German Embassy at the discussions concerning the Option Contract. That's the Option Contract for the resettlement of Baltic Germans, is that correct?

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It was an act that gave the Germans the right to change their homes, to be resettled, is that right? Posen in order to act as deputy of the director of the Advisory Office for Ethnic German Immigrants. That's correct, too?

A. Yes.

Q. How long did you act in this capacity?

A. Which ones are you referring to Mr. Prosecutor, the first or the second one?

Q. The second one.

A. The second one is a representation which lasted until the end of December, then it was reorganized. Here representatives no longer existed and I only worked in my own special field.

Q. Well I can assume that you have been with this resettlement activity from the very beginning, up to when? Up to May 1941, is that right?

A. Yes, except for an interruption from the beginning of February until the beginning of May 1945 when the renewed resettlement of Baltic Germans was cause for my returning home.

Q. You said 1945. I can assume May 1941?

A. 1941.

Q. So you are well acquainted with the whole matter are you not as to have been working there a long time?

A. Yes.

Q. Where were these Baltic Germans resettled? What was the place where they were to stay or where they were resettled, as a matter of fact.

A. The fact of the resettlement is indisputed. As I testified in my direct examination, regulations of the Reich Commissar for the strengthening of Germandom existed.

Q. I only wanted to know where they were to be resettled, in which place; in which province?

A. To Danzig and to Posen.

Q. Is that in the Wartegau?

A. Yes.

Q. And these places were populated - - Danzig and the Wartegau? How many Baltic Germans were sent from Latvia to the Wartegau?

A. I estimate about 40,000. There might have been more.

Q. Can you tell the Tribunal whether it was not necessary to deport first people from the Wartegau in order to settle these Baltic Germans in Posen and in Danzig.

A. Yes, that is what happened.

Q. Was that known to them when you were working in this Advisory Agency?

A. At the beginning we did not know about this. It, was said that we would be sent to quarters from where Poles had escaped. Later on I personally learned that Poles had to leave the Wartegau and to go to the Government General.

Q. But you knew as a matter of fact that that was the official policy of the agency in which you worked, did you not?

A. No, Mr. Prosecutor. It wasn't the official policy of the authority for which I worked.

Q. I possibly can refresh your memory on that a little bit. If your Honors please I am not going to introduce this document just now. It is a document which was admitted in the Race and Settlement case but I would like to read only one of the paragraphs into the record. I shall read it in German as I have no perfect English translation. I will try to read it very slowly.

"Copy -- General Instructions and Directives of the Reich Commissar for the strengthening of Germandom."

"1. The first period of our activity will cover the following matters:

"Deportation of about 55,000 Jews and of the leading anti-German Poles as well as of Polish intellectuals, starting from Danzig and Posen across the border of the German Reich into the district of the Polish Government General. In this action Jews will be sent to the territory to the east of the Vistula River, between the Vistula and the Bug River." you were working in this Advisory Agency?

A. No, Mr. Prosecutor. This document is a document of the Reich Commissar for the strengthening of Germandom and we outselves were subject to his directives insofar as we forcably had to go to Danzig, West Prussia, and Wartegau. We were not allowed to go to Berlin and Cologne and live there, as you may perhaps assume, I merely want to point out the difference.

Q Witness, I do not ask about your personal resettlement. All that I have been asking you was your activity in the resettlement agency. I know that you were resettled yourself, but you have told the Tribunal at great length that you have been actively working on this resettlement, end I am asking you whether you, having been active with these agencies, were aware at that time that more then half a million Jews were deported from the places where the Baltic Germans, for whom you arranged the immigration there - whether these Jews were deported just for the simple reason to make room for your fellow countrymen who came from Riga to this area? I do not speak about your personal resettlement.

A I did not hear that, Mr. Prosecutor; I did not hear about these restrictions.

Q. How do you explain to the Tribunal that you, having been active quite a long re, should have been completely unaware of this fact? These are not ten people; these are not fifteen people; it is more than half a million Jews and a great number of the Polish intelligentsia. You have been in Posen yourself. You were familiar, as you have told the Tribunal, with the whole affair. How do you explain, that you just did not know?

A Mr. Prosecutor, I said that I heard that our interests to advise the resettlers, the resettlers from the Baltic countries, I said already that only Baltic Germans worked for us....

THE PRESIDENT: It doesn't help you to move the chair if you still keep your head for away from the microphone. It is your head that is to move, not the chair. There, I think that will be better.

THE WITNESS: I beg your pardon.

THE PRESIDENT: Certainly. BY MR. HORLICK-HOCHWALD: had to tell them where to go and what to do., so if you told them where to go you must have known that they just went to pieces which had been made free for them by the Polish people, did you not?

A Mr. Prosecutor, there is an error. We did not tell the people where to go, but Himmler and his officers in the Reich Commissariate for the Strengthening of Germanism, who had a large agency in Posen, told them where to go. fellow countrymen, you ever found out they were settled in places where from Poles and Jews had been deported, is that what you want the Tribunal to believe? apartments from where Poles had escaped, and that I heard myself later on that people were deported, I learned that people were deported.

Q When did you learn that?

A Why did you not leave the agency when you heard about that? to help your fellow countrymen resettle in places where other people were deported from, is that what I take from your answer?

A Mr. Prosecutor, this was not up to me, where the people were sent to and how they were housed, but the advisory office merely had to see to it, and this was my field of activity, that their economic claims be founded to such an extent that a recompensation could be made by the Reich at a later time, I would like to say here expressly that at the time we told all our clients that they should not take over any property from other people, and if they could do nothing else they should act as trustees, and the result is that now, as I heard, 85 percent of the property of the resettlers actually can be claimed in a legal manner because they did not take over any property.

know that people forcibly were deported from their homes in order to make room for these settlers?

A No, I already said that they were resettled. In how far this was done forcibly or voluntarily I did not know and don't know enough about it to judge it.

Q You were of the opinion that these people were going voluntarily?

A I don't think so. If I say they were resettled or deported, I mean that something happened here which had been planned, and I myself saw of my own-self how unpleasant it is to leave one's home and, therefore, cannot imagine that they went voluntarily, but I personally don't know anything about forced measures. not so voluntarily so that you knew that they were forced, do you not? You have just explained that to the Tribunal. into the SS by order of Himmler as the entire advisory agency for Baltic Germans was taken over by the Department for the Registration of Ethnic Germans, is that correct?

Q When exactly was that?

Q You were a civilian then, were you not?

Q How was your health at that time?

Q Would you have been fit for military service?

Q When you were taken over by the SS in December, 1939. did you voice any objections against this assignment?

A No, Mr. Prosecutor, I did not do this at the time for two reasons. First of all I did not understand the whole business, and secondly I only heard about the effects in February of the following year, 1940, when I was asked to go to Berlin and got my military equipment, Secondly, an objection would have been impossible as this was not only directed against me but against my ethnic group because Himmler would have considered this to be an impudence, and it would have had bad results. But I would like to say again here, as I emphasized during my direct examination, that in February, 1940, I received information that I was a wearer of uniform and, therefore, was not under any obligation. At the time this reassured me, perhaps mistakenly, and in March, 1940, I made an application to the Wehrmacht, and this application was replied to with the statement that I was indispensable.

Q To your reason No. 1, do you want to tell the Tribunal that in December, 1939, you did not know that you became a member of the SS, is that what you want to say?

A No, Mr. Prosecutor, in that form, as I heard, it later, I did not know it at that time. national Socialist movement from, I think it was 1936, is that correct? movement from 1936 must have known in December 1939 what the SS was? Isn't it a fair assumption?

A Mr. Prosecutor, the conditions in Germany we did not know much about, and there was no connection with the SS as such, therefore one did not know much about it.

Q Did you know that the SS was a Party organization? were not drafted into the SS by the German State? a No, I was appointed to become an SS man by Himmler. that correct?

A But the command was in the hands of Himmler. At the time who was in charge of the strengthening of Germanism. advisory agency, would you have still become an SS man?

A I don't think so. could you not? a Yes, but I could not know that at the time.

Q That was not my question. You had the choice, did you? a I did not have the choice because I did not apply for this. I did not ask to be assigned; I did not ask to join; I was appointed here. I had no choice. membership in the SS was entirely voluntary. Will you tell the Tribunal whether you were drafted into the SS by the State so that you had no other choice, or whether you had a choice by leaving your position and so would have evaded to become a member of this organization? a Well, if I had known that Himmler would carry out this action, then I would have had to leave my job one day earlier, but since I did not know it I did not leave my job and therefore had no choice. ship of the SS by Himmler, is that what you want the Tribunal to believe? a Later in the summer of 1940 I wanted to volunteer for the Wehrmacht.

know, Witness, not what you did in summer 1940, about that we will speak later. for you to leave this position? SS, is that right?

A Mr. Prosecutor, I cannot say anything else than what I have said before, I did not have this choice insofar as I was appointed that is, I was not asked. If I have a choice, I have to be asked. member of the SS and a member of an organization which belonged to an "S" formation, did you try to leave the SS - did you do that, "Yes" or "No"? request?

Q So you would have had the choice, would you have not? that time I did not realize the full importance of it because it would not have had effect against me but against the resettlers.

Q Why? himself and I have always stood in awe of him. that correct, you stayed there on your own free will?

A Yes. I only made one attempt to go to the Wehrmacht.

THE PRESIDENT: Mr. Hochwald, my curiosity was peaked by his last answer that he always had a great respect for Mr. Himmler.

BY THE PRESIDENT:

Q Did you have a great admiration for Himmler - Heinrich Himmler?

Q What did you mean that you had a great respect for him? Your Honor, it was like this, Himmler as Reich Commissar for the Strengthening of Germany practically laid down our manner of life for us. He gave all the regulations and made all the laws, and in 1942 or 1943 he issued a secret order in which he said that the Baltic Germans were politically unreliable and gave certain measures, I believe I have every reason to say that I have a certain amount of respect for Himmler, but what I mean by respect is a certain precaution towards a man who had absolute power.

Q You mean by that a certain fear, don't you?

Q Well, there is a vast difference between a "respect" and a "fear", isn't that right?

A I beg your pardon. Your Honor, I may have expressed myself incorrectly.

THE PRESIDENT: Very well.

BY MR. HOCHWALD: that you were prevented from joining the Wehrmacht as you were deferred for your position in this SS agency?

A Yes. That was in March 1940. with the RSHA? is that correct?

Q In which capacity were you drafted for the RSHA? that is what I was told at the time. for this service on the basis of the decree of 15 October 1938? a Mr. Prosecutor, I don't know the details of the regulations, I will have to read again what I told you.

Q A part of the decree is in your counsel's document book. I do not know if Your Honors have the document book before you.

THE PRESIDENT: Oh, yes.

MR. HOCHWALD: It is on the pages 21 to 23. Are you familiar with this decree?

THE WITNESS: Yes. Mr. Prosecutor, may I only add here that I have read them, I have seen them sometime ago, but I am not a lawyer to be able to compare all the paragraphs.

BY MR. HOCHWALD: the last time?

Q When did you see it for the first time? beginning of the year 1940 or during my second leave. did you say? yourself, is that correct? rights you had according to this decree to object to this draft? a I inquired about it and I was told there were no regulations in writing concerning this and that there was no point to object to the war emergency status as I was drafted by the RSHA.

I only read the actual paragraphs of the war emergency status during my leave, when I gathered information about this at the labor office. you had no right to make objections to this draft?

AAt the time I was told, I don't know exactly what the exact expression was, that there was a right to object, and as I have explained during the direct examination, I went to the appropriate office, which was that of the mayor of the city of Posen, and he sent me to the employees department office of the RSHA on behalf of which the war emergency status had been decreed and there Sturmbannfuehrer Trautmann refused to release me from my war emergency status. that, and I quote "This emergency war status had the same effect as a military order, it had to be complied with, whoever refused to comply with this had to expect the same consequences as the one who would have refused to do any war service." Is that what you still maintain? will find out whether you are still of the same opinion when you are reading the decree.

MR. HOCHWALD: Your Honors, I would like to quote from the German official law gazette, volume I of 1938, page 1441 I am sorry I have again to quote in German, "Third Decree for the Securing - -"

THE PRESIDENT: Mr. Hochwald, are you now going to quote from a law - a statute?

MR. HOCHWALD: From the decree on the basis of which the defendant maintains that he had been drafted into it.

THE PRESIDENT: That is not what I am concerned about. I have the greatest admiration for the linguistic ability of our interpreter to expect her to translate extemporaneously a statute. It is really asking a great deal, don't you think so?

MR. HOCHWALD: I think so, Your Honor. Perhaps we can make it easier. I just refer that this is the same decree of 15 October 1938 which partly is in the document book of Dr. Ratz. I would like to read one article of paragraph 1 which is not in this document book.

THE PRESIDENT: Well, read it slowly then.

MR. HOCHWALD: It is Article 3 of paragraph 1 "Services due on the basis of the Reich Defense Law within the custom's border police."

THE PRESIDENT: Well, Mr. Hochwald, I think that is asking too much to expect a translation of a document which is phrased in the most technical terms. Why don't you -

MR. HOCHWALD: It is only two sentences, Your Honor, but I will have it tomorrow.

THE PRESIDENT: Yes, I think so.

DR. RATZ: Your Honor, I believe the prosecutor is arguing about the results of a refusal to obey this call-up, the draft. I believe that this argumentation here is not at the right place as part of questioning the witness. I will have to comment on this in my argumentation as to whether in the regulations which the prosecutor has talked about penalties are contained, penalties which would justify the witnesses testimony.

MR. HOCHWALD: If the Tribunal please, I have only been referring to a decree which was quoted by the witness himself on the stand. I do think I am entirely within my rights to ask him whether another part of the decree which is not in the document book of Dr. Ratz but is a part of the same decree is not in contradiction to what he said on the stand.

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He is at liberty to say that it is not in contradiction, but I do think this question is perfectly admissible.

THE PRESIDENT: Let me make it very clear on the record that there is no doubt in my mind that Miss Juelich, the interpreter, is thoroughly capable of translating this statute, but I think it is a heavy burden to put upon her at this hour after the examination which you have given us now for some time, so that the Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 17 December 1947 at 0930 hours) 0930-1630, Justice Michael A. Musmanno, presiding.

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THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. ROHR: Dr. Rohr, deputizing for Dr. Gawlik for the Defendant Naumann. Naumann be excused from attendance in court tomorrow, Thursday, all day, in order to prepare his document books.

THE PRESIDENT: The defendant will be excused from attendance in court all day tomorrow, Thursday.

DR. ROHR: Thank you.

THE PRESIDENT: You are welcome. Mr. Hochwald.

MR. HORLICK-HOCHWALD: May it please the Tribunal, I have tried to secure translations of the parts of the decree which I want to read to the witness but unfortunately I haven't got the translation yet in the courtroom, so if the Tribunal please, I shall proceed with another line of questioning, and as soon as I get the translations I shall come back to the subject.

THE PRESIDENT: Very well.

CROSS EXAMINATION (Continued) BY MR. HORLICK-HOCHWALD: 4a from the beginning of the Russian campaign until when?

is that correct?

Q What was your duty in Sonderkommando 4a during the war? a reporter. In my work as interpreter I mainly dealt with documents. Then I became liaison officer and reporter. I would like to interpolate here that, temporarily, I was liaison officer for Einsatzgruppe C. were informed by Blobel about your tasks?

Q What exactly did Blobel tell you? deal with the evaluation of documents and to make reports and also observations of all the Ukrainian questions. He also told me that I did not have those qualifications which the other officers had before joining the kommando and I would not be assigned like the other officers.

Q He did not appoint your chief interpreter, did he?

A No. He merely told me that I was to take care of the other interpreters and supervise them, but this never happened.

Q Blobel has not appointed your interpreter at all? seizing and evaluating of documents on one hand, and reports on the other hand. kommando as such, about the Fuehrer Befehl?

He just talked about the Fuehrer Befehl in general, which he announced. that all Jews and undesirables were to be killed in accordance with the Fuehrerbefehl?

Q What did you think would happen to the Jews? known, that Security Police tasks would be carried out ruthlessly against Communist functionaries, and he said on that occasion that it was expressed in this Fuehrer Order that Jews were to be considered the bearers of Bolshevism. Therefore, at the time when I heard this, I tried to distanciate myself, but I never realized the consequences of this order, in particular as it was said at the time that this was done for the sake of security of the troop. information of Blobel's, that there was a ruthless - they were to take ruthless measures against the Communists and that the Jews were to be considered the bearers of Communism. You must have understood something by that. What did you think would happen on the basis of this order? particular. At the moment I realized the ruthlessness and the unambiguousness not fully, although it struck me. I had received the information in Schmiedeberg that it would be a war assignment, that is a military assignment, and police tasks were also mentioned here.

Q I do not think that you answered my question. I asked you, what did you presume would happen now on the basis of these orders to the people named? In this order to the Jews and to the Communists; did you think that they were to be arrested or did you think that they were to be killed, or did you think that they were to be left alone, or what did you think?

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Somebody gives me such an order, which certainly is an unusual one. I must have some impression what the order means. That is my question, what did you think was to happen to these people? but I fully realized that when the expression "ruthless" was used, that they would not treat them sparingly; they would arrest them all, but not eliminate them. At the time I did not quite realize its full extent. Blobel what this order means, as you objected against the order and did not want to have anything to do with it? Before I can object to something, I must know what I am objecting to. Why didn't you ask Blobel what it is all about?

A I don't know Mr. Prosecutor, I don't want to give you a reply now which I might have constructed. All I know is that I did not want to have anything to do with police tasks, because I saw before myself an activity which merely contained the seizing of these elements and I did not like this kind of work. in which Hitler provided for the killing of all Jews, Communists, gypsies, and undesirables?

Q When did you learn first about this order? Lublin to Lutsk.

Q And when was that?

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it was never said that "all" Jews were concerned. It merely said "Jews". At the time I did not know that possibly women and children might be included.

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Q Who told, you about this order? who said that Jeckeln, who also lived in the Army billet, that he had expressed this.

Q And when you heard the expression "the Jews" you did not know that they were all Jews?

Q Isn't that clear if somebody says "the Jews", without making any differentiation, that it must mean all Jews? If somebody says, "the Jews are to be killed," what does that mean? Does it mean that only a part of the Jews are to be killed, or all Jews are to be killed?

A Mr. Prosecutor, at the time I did not think of that. It did not occur to me that all Jews would include women and children. were to be shot, is that correct? would only concern the men.

THE PRESIDENT: Mr. Hochwald, it isn't clear now whether he did or did not protest to Blobel. We were of the impression yesterday he said he did protest to Blobel. Now, I don't know.

MR. HORLICK-HOCHWALD: I just wanted to -

THE PRESIDENT: Yes. Q (By Mr. Horlick-Hochwald) What did you tell to Blobel in Sokal after he had announced this order about the ruthless measures against the Communists and Jews, what did you tell him? do with these tasks.

Q Why did you want to evade this task?

of people, no matter what people they were, because I did not want to have anything to do with the police tasks connected with it - because it said ruthless Security Police procedure would be required.

Q But you wanted to stay in the East; you did not want to be released from your assignment with the Sonderkommando?

A Mr. Prosecutor, at that moment I did not yet realize this and only did ten days later.

Q Let's go a little further. You have told us that in July, in Lutsk, you learned that all male Jews were to be killed, When did you learn that all Jews, male, female and children, were to be killed?

A I did not hear that. I realized this in practice.

Q When did you realize this?

Q At what time was that, Witness? of October, 1941. at that time approximately forty to fifty thousand people already had been killed, to find out that also women and children were killed by this unit in which you were one of the highest ranking officers, is that what you want the tribunal to believe?

A Well, I cannot say anything else, Mr. Prosecutor. It was like that. chief interpreter of Sonderkommando 4a. Do you remember having made a statement in your affidavit to the effect that you were actually chief interpreter of Sonderkommando 4a? I am referring to Document Book III-C, -Page 20.

This is NO-4438, Prosecution's Exhibit 132, That is the last sentence of the first paragraph, your Honors. "I held the position of chief interpreter with the task of screening documents which were seized during the activities in individual towns and compiling those documents in cooperation with the counter-intelligence, for evaluation in Berlin." Is that your statement, Mr. Radetzky?

A Yes. May I say something about this? my direct examination, at the suggestion of my defense counsel I talked about this question, and I said that I don't want to talk about it at all because I consider it of no importance. This is not an expression by me, but this expression originated in an interrogation which CIC carried out. They said "Who was the senior interpreter, or the interpreter who held the highest rank?" and we could not quite find a title which would be the simplest to express this, because I repeatedly had difficulties in explaining my rank, and, therefore, the expression, chief interpreter, was started then, and, therefore, it was put into this affidavit. I even believe, but I am not certain, that Mr. Wartenberg first brought up this expression again, perhaps based on a former interrogation. Wartenberg on this subject? chief interpreter?

A It is possible. I do not remember the entire interrogation. In the same sentence it is said that you worked in cooperation with the counter-intelligence. Was that correct? of your reports and of your tasks by saying, and I quote, "There were questions of economical nature, cultural matters, education, theater, religion, etc." Will you tell the Tribunal in what the counter-intelligence would have to collaborate with you on these things? on those subjects. counter-intelligence collaborated with you? with the counter-intelligence because they were looking for their military documents, and I chose those documents which interested me, and I thought of Lutsk in particular here, where we looked through the material together and the counter-intelligence took that part of the documents important for them. existed. Will you tell the Tribunal what your actual collaboration with the counter-intelligence was, was it in the way that you have been carrying out interrogations and investigations for the counter-intelligence, wasn't that your task?

A No, Mr. Prosecutor, that was not my task.

Q So you have only been looking into the theaters. Can you tell the Tribunal how many theaters there were at that time in the area where you were active?

A Mr. Prosecutor, may I come back to the document? It says here, to screen the documents and in collaboration with the counter-intelligence to make reports for Berlin. there was no collaboration. In your affidavit you state there was a collaboration. I have been trying to find out how you reconcile your statement on direct examination with your statement in the affidavit, and I have quoted your statement in direct examination where you say that you were that your tasks were only cultural matters, theaters, religion, etc., and I asked you, and I ask you again - possibly you can give an information now - how was this collaboration with the counter-intelligence carried out in these matters? kind of cooperation existed there with the counter-intelligence, and I said no to that question. Concerning the screening of documents I did cooperate with the counter-intelligence in the sense as expressed in the affidavit.

intelligence? than the evaluation of these documents existed between the Abwehr and you? the screening of documents was done by us together, that is, each one took what interested him, that was the collaboration with the counter-intelligence. was no collaboration, that everyone took his part, you did not collaborate, is that correct? one room one takes the documents, from one file cabinet, and the other takes the documents from the other file cabinet, one does not know what the other does, but they are only collaborating for the simple reason that they are in the same room, is that what you want the Tribunal to believe?

A No, just the opposite. Everybody seizes documents and everybody puts them at the disposal of the other, that is, if they had documents which might interest me, they gave them to me, and if I had documents which interested them, I gave them to the counterintelligence; the military documents went to the counter-intelligence.

Q Witness, isn't it patently clear that if these documents were of interest to the counter-intelligence, you had to evaluate them first? August you changed jobs, you ceased to be an interpreter and became a liaison officer to the army, is that right?

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interpreter--highest ranking interpreter, and carried out only the liaison job?

A No. I continued to make reports.

Q You stayed an interpreter then, did you not?

Q You were in charge of Office 3?

Q Who was leader in 3? and for the commando the responsible man was Hauptsturmfuehrer Kalson. Kalson himself hardly worked on this because he in practice did not have time.

Q How many interpreters were with Sonderkommando 4A? in time there were 10 to 12. Those were interpreters which had been gotten in the country.

Q But how many were there who were German officers? third interpreter who was not an officer but had the rank of an NCO.

Q What was the rank of Mueller?

Q And you?

Q You were the higher officer, weren't you? time when you were iwth this commando?

A I cannot answer that, Mr. Prosecutor, because I don't know all about it.

Q You should have. Witness, you have told the Tribunal yesterday that when you were liaison officer with AOK 6 from August 1941 on you reported these executions to the army authorities, therefore, you should know how many executions were carried out.

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A I don't think so. Mr. Prosecutor, that I said that.

Q I do think that you are mistaken. I do think that when the Tribunal questioned you, you admitted that you had reported killings to the army authorities. You even have said that in your economical reports you deplored these things, don't you remember?

A Yes, I do remember that, Mr. Prosecutor, but I did not mean executions. What I was trying to refer to, as I said yesterday, was the economic potential because in my opinion this was the only form at all to discuss that question. were carried out by Sonderkommando 4A when you were with this commando.

A Mr. Prosecutor, I answered to you to that question. I said I don't know because I cannot overlook this.

Q Do you have an approximate estimate?

Q You were liaison officer with the army, were you not? were carried out by Sonderkommando 4A were ordered by AOK 6 or respectively by the chief of AOK 6, Field Marshal Reichenau. Did you hand down these orders for executions to Sonderkommando 4A, Witness?

A No. I said so already during the direct examination. The department to which I was attached did not have any such orders massed through them. I also said that Blobel personally often negotiated with Reichenau and I also said that in my opinion, not the army, what I mean to say is that it was not the operational department, which looked after the carrying out of these operations, but there were the army commanders in the various territories, that is, the division commanders who induced this or caused this because the sub commander on his own could not carry out or cause an collective measure to be carried out.

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He was not able to do this. in connection with orders issued by the army, and you have never seen reports about it-is that correct, is that what you want the Tribunal to believe?

A I cannot say that, I never saw report?. I can only say that it was not my task, it was not customary to inform the army through these channels about executions which had been carried out or to receive orders for executions through these channels. reach the Einsatzgruppe directly, that the reports from the subcommandos of 4A and from 4A itself went through the liaison officer to the army headquarters and to the Einsatzgruppe C. You were the liaison officer, were you not?

A Yes. I was liaison officer. It is possible that mail from the subcommandos passed through, I recall top secret matters or secret commando matters which passed through in that manner, but these were not informations meant for me, this was information which was sent to these officers, but utilizing these channels.

Q How many reports did you receive here, Herr Radetzky?

A I cannot say. I cannot recall. can remember from these reports?

Q You refuse to answer?

A No. but I may be mistaken, and I do not want to give a false reply.

Q You have no estimate? were were so much a matter of course for you in 1941 and 1942 that you have no recollection about them?

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Is that right?

A No Mr. Prosecutor, on the contrary, they were not a matter of course at all, and I think I explained this during my direct examination, what my attitude was. If you were so much distressed about the things, you certainly must have a very good memory about these facts. commandos to the army authorities? and sometimes from the subcommandos.

Q You had nothing to do with that? I believe only in one case.

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Q.- In all the time you were with the liaison with the army, you gave only one report to the army authorities, is that what you want the Tribunal to believe?

A.- No, Mr. Prosecutor, Please differentiate here between what I said yesterday, the so-called situation report. The situation report was made in the commando and did not contain any details.

Q.- I asked the defendant Blobel several times whether the subcommandos and Sonderkommando 4A reported about executions to the army authorities, and he answered by saying, "Of course," This is on page 1692 of the record, Your Honor, Will you tell the Tribunal that you, having been the liaison officer to the same army have not seen these reports about the executions?

A.- No, Mr. Prosecutor, I did not see them because they were sent through different channels. If the subcommando was attached to some division at the front, they handed these matters immediately to the division of the army and not through me.

Q.- So the only activity you had as liaison officer was to get fuel and other supplies, of course, with the exception of ammunition, for Sonderkommando 4A, is that correct?

A.- No, That was not the only activity, but there were a number of other activities which I mentioned yesterday already, among them the handing on of reports on the military situation and also the reporting, Q.- Why were you not active as a commander of a subcommando or advance commando?

A.- Because that was not my task.

Q.- Why not?

A.- Because I did not have the required qualification.

Q.- What kind of military training did you have?

A.- Military training was done in the Latvian army where I was released as a NCO.

Q.- Did you learn there higher strategy?

A.- No.

Q.- Will you tell then the Tribunal how it was possible for you, without any military preparation, to be a liaison officer to the army -you were not fit for both services, you were not fit for the police service, you were not fit for liaison service?

A.- Mr. Prosecutor, in order to act as a liaison officer one did not need much military knowledge. I would like to say one had to find one's way about.

Q.- You have said that you had to contact the G-2 for the situation map in order to make your situation reports. You have stressed the point here again that you had to make situation reports, for this there was a certain knowledge necessary, was it not?

A.- Yes.

Q.- Coming back to the reports, did you learn how many people were killed in Kiev?

A.- Yes. I learned about this. At the time reports were issued and sent out where the figure named here was mentioned. It was doubted at the time or questioned. I heard more about this later on, why it was questioned.

Q.- Will you be a little more specific, did you see the army report on this number, or did you see the report of Einsatzgruppe C on this number on this 33,000?

A.- The report from Einsatzgruppe C, I saw here in the reports of events; the report from Einsatzgruppe C sent to Berlin, I did not see. In Kiev I saw a report dictatec by Blobel. As far as I know, it was sent to the Einsatzgruppe and also to army agencies.

Q.- And how is it that you did just see this one report and all other reports you do not remember and did not see?

A.- Mr. Prosecutor, in that time when I was in Kiev I had been taken out of my work as liaison officer in order to go to Kiev, in order to seize documents and then to go back to the army.

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I explained yesterday what I did in Kiev and how long this took me.

Q.- Were you at the 29th and 30th of September 1941 in Kiev?

A.- I cannot say that exactly.

Q.- How many executions either in Kiev or somewhere else did you witness?

A.- Mr. Prosecutor, I never witnessed any executions.

Q.- Never?

A.- No.

Q.- Mr. Radetzky, there is overwhelming evidence that 60,000 people were killed in a very short time by Sonderkommando 4A, by a commando which has all in all seven officers. The second highest ranking officer was you, and you have never witnessed one of these executions, is that what you want to tell the Tribunal?

A.- Mr. Prosecutor, may I mention here that I wasn't the second highest officer, but according to ranks there was a higher ranking officer than myself apart from the commander, and as far as police or as far as position in the police or the civil service is concerned, several officers were superior to me.

Q.- There was, with the exception of Blobel, nobody in the commando with a higher rank than you?

A.- Well, the senior officer in the commandos was a Hauptsturmfuehrer Kelson.

Q.- What was your rank?

A.- My rank was also Hauptsturmfuehrer.

Q.- Yes. So, will you go back now to my original question, how do you explain to the Tribunal that in spite of the fact that in a few months approximately 60,000 people were killed by a unit which was quite small, possibly not as small as Mr. Blobel now wants us to believe, but quite small, only seven officers. How can you explain to the Tribunal that you have never witnessed one of these executions?

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A.- Mr. Prosecutor, already yesterday I expressed that I tried again and again to be released or rather to keep away from that work and I had no reason to try and do this.

Q.- Did you never act as an interpreter when the victims were read the sentence before execution?

A.- No.

Q.- Did you ever supervise other interpreters, for instance, the Ukranian interpreters, the indigenous personnel which you hired in Russia itself?

A.- Supervised - No. Originally I had been given this mission, but Q.- No, I was now speaking now about executions you never looked into the matter how these Ukrainians acted before or during an execution in order to supervise these interpreters?

A.- No.

Q.- The defendant, Blobel has testified here at great length, and you certainly will remember that all people who were killed by Sonderkommando 4A were duly interrogated, the case was investigated, and when they were found guilty of a crime against the German forces, were legally condemned and executed, Who carried out the interrogations of these people?

A.- The interrogators who were officials from the army.

Q.- Did they speak Russian and Ukranian?

A.- No. We had interpreters at our disposal;

Q.- And you never acted in this capacity?

A.- No, Mr. Prosecutor.

Q.- There were only two German officers, interrogators in this unit. If the testimony of Blobel is to be believed, they must have carried out approximately 150,000 or 200,000 interrogations during 6 months, and you want to tell the Tribunal that you never had anything to do with this ac tivity, is that correct?

A.- Mr. Prosecutor, I described to you what kind of tasks I had and it wasn't my task to interpret during interrogations.

Q.- So you don't know anything about the activities of the interpreters with the Sonderkommando 4A, that was not your task?

A.- No. I only know that the other interpreters were always present during interrogations. They were interpreters who had been recruited during the advance.

Q.- About the Jewish question, you have testified that everything which was in connection with this question, especially also executions, was only the task of the Leader 4, is that right?

A.- No. I don't think that I said that. I said that it was the task of the Chief 4 of the Einsatzgruppe -

Q.- And whose task was that in Sonderkommando 4A?

A.- In Sonderkommando 4A it was the task of the executive officials who mostly in practice carried out these tasks.

Q.- Will you tell the Tribunal the names of those officers?

A.- Officers from the security police who were active in the commando.

Q.- Will you tell the Tribunal the names of these people, please?

A.- Yes. There was Jantzen, Hanns, whether Funck took part, I don't know, he tried to get away from the commando.

Q.- Do you remember having been interrogated by Mr. Wartenberg on this subject?

A.- Yes.

Q.- Do you remember what you told Mr. Wartenberg about that, did you tell these three names, or did you tell another name?

A.- I don't know exactly how this discussion went. I said at the time that I personally gained the impression that Blobel himself had the supervision over this sphere of work.

Q Did you not further tell Mr. Wartenberg, I mean, that Blobel was doing practically nothing else but that; that he was only concerned with executions and with nothing else? Did you tell that to Mr. Wartenberg?

A I cannot recall, Mr. Prosecutor, but I hardly think so. I would have to correct this now, if I said so at the time, since Blobel probably had to do a number of other tasks as well. I only know that the so-called secret box - that was a box which was taken along throughout the entire war with all secret orders and all dates and was always in Blobel's room, and Blobel handled those matters or directed them. charge of the executions of Einsatzkommando 4A, is that correct?

A Mr. Prosecutor, I would only like to change it insofar as I said that Blobel exclusively and alone was active on this.

Q But he was primarily active in these executions, is that correct? at the end of June, 1941?

A I think two. I am not quite sure.

Q Who was the second one? You were one. Who was the second one? preter in the kommando.

Q Will you the Tribunal the name of this man? page 84 of the German. This is Document 2938, Prosecution Exhibit 44. I am quoting from the top of page 81, under the heading "Page 13 of the original, continued." There it is said that 300 Jews and 20 looters who had been arrested were shot on the 30th of June. Who interrogated these people?

A I do not know, Mr. Prosecutor.

Q You were in Lucsk, were you not?

Q You do not know that?

A No, I don't know that? Sonderkommando 4A was which was in Lucsk by then?

Q Nevertheless you do not know anything about these things?

A Mr. Prosecutor, I already said yesterday that Jantzen, who was commissioned to deal with the executive tasks said that the town commander ordered a reprisal action, but I cannot say whether and when and in what manner this was carried out.

Q What was the rank of Jantzen?

Q You were a Hauptsturmfuehrer?

Q Who had the higher rank? is another entry in the report. That's the next paragraph and that says that 1,160 Jews were shot, but these 300 and the 20 looters had obviously nothing to do with the reprisal measure. Were they killed without investigation?

A Mr. Prosecutor, I don't know. I described yesterday what I thought I could do about the order issued by Reichenau according to which in effect an equal number of persons in the Ukrainian intelligentsia were to be killed, and I know that Jeckel and his deputy, Sturmbannfuehrer Meyer at the time insisted that this order would be carried out. intelligentsia were killed? Was that before the Germans came to Lucsk?

intelligentsia were Soviet citizens?

A I don't know what their status was, their legal status. The territory concerned was occupied by the Soviets after the Polish campaign and I cannot say whether therefore they became legal Soviet citizens or whether they were Polish citizens.

Q You should know, Witness. You have given us a very interesting lecture about the Ukraine yesterday. You should know that, but, anyhow, they were either Polish or Soviet citizens, is that correct? or Soviet citizens? out a reprisal for the killing of Poles or Soviet citizens on Polish or Soviet citizens? Will you tell that to the Tribunal? What kind of reprisal would that be? the time, the Commander in Chief of the Army gave it and carried it out. sible that the father was killed in reprisal for the killing of the son or the son in reprisal for the killing of the father? Do you understand that, Mr. Radetzky? Do you call that a reprisal?

Q All right. The victims and the people on whom the reprisal was carried out were both citizens of the same country. The reprisal was carried out for an act which happened before the German forces came in. As it was a reprisal, it was carried out without investigation. Is it not possible that the father would have been killed by the Russians and the son in reprisal of these killings, by the Germans, is that right, and you call that a reprisal, Mr. Radetsky? Do you understand what I mean?

A Mr. Prosecutor, I did not say that I called this a reprisal. I merely said that the order at the time was made known as a reprisal measure. My personal attitude I described yesterday and I have nothing to add. a reprisal? on which measures the German army command considered necessary in the Eastern campaign. I personally tried to object to this manner and I think that I expressed my view within the narrow scope which I had at my disposal. agents and spies were liquidated. Can you tell the Tribunal how it was found out that these 50 persons were agents and spies?

A Mr. Prosecutor, I cannot tell you anything about that. I had nothing to do with the execution tasks.

Q No one told you anything about it? A. No.

Q Nobody ever requested your services as an interpreter? they may have had in their possession papers which were of interest for the military authorities?

A I don't know that, Mr. Prosecutor.

Q You have never seen such documents? You have never evaluated such documents in writing your reports about the theatres in Luck?

A No, Mr. Prosecutor, I did not make any report about the theatres in Lutsk.

Q Are you sure, Mr. Radetsky that you did not say that?

A That I made reports?

Q You made reports about the theatre? yes, I said that.

Q Good. In another document, in Document Bock II-A, your Honors, it is on page 34 of the English, I do not know the German page, Document NO-2940, Prosecution Exhibit 35, it says this in the middle of the page under the heading, "Einsatzkommando 4A, Location. Luck." "Operating also always with the forward units of the advancing troops in Lutsk region. 2,000 executions as counter measures for the assassination of the Ukrainians. Material seized. In Brody between 50 and 60 safes with GPU material seized." You know about these 2,000 killed, do you? These are the same as mentioned in the other report.

A Mr. Prosecutor I knew that a large scale execution was carried out in Luck, yes.

Q Do you remember a number from your own recollection?

Q What do you know about the safes with the GPU material in Brody?

A I know nothing about that. I was never in Brody. at great length that you were in charge of a safe blasting unit? Was he mistaken in this respect?

A I was only active in Lutsk, Mr. Prosecutor, not in Brody.

Q Were you in charge of a safe blasting unit?

Q How long?

Q Will you tell the Tribunal when that was? 1941. This must have been up to the time when I was given the job as liaison officer at the front. At the time there was a standstill and no new buildings were being seized.

Q How many safe blasting units were attached to Sonderkommando 4A?

A Mr. Prosecutor, I had been given the special mission not to blast safes just for blasting's sake, but to seize documents, and I had people with a welding outfit for that purpose. In how far any more groups existed I cannot say and I do not think that any further groups existed, except in one sub-kommando which was not in Lutsk at the time. then, is that correct?

A Mr. Prosecutor, I don't know whether a kommando of 4A was ever in Brody then, is that correct?

A Mr. Prosecutor, I don't know whether a kommando of 4A was ever in Brody, because Brody was utside the territory, or, rather, outside the route which, Sonderkommando 4A took. It is further to the south and it is on the route where all the kommandos passed.

Q Let us return to the reprisal measure here. According to your own information, 1,500 people were killed; who selected these 1,500 people for the executions?

A I cannot tell you that, Mr. Prosecutor.

Q You have no idea? You were only told that 1,500 people were shot in reprisal, nothing else, no other details is known to you? I would have to give a false report if I wanted to testify to anything more explicit.

killing of 1,500 people, defenseless people, and guiltless people, and you must have know that they committed no crimes, as you yourself said it was a reprisal measure. You did not care to know why, how, by whom, for what reason, for justified or for unjustified reasons, you did not care for that?

A Mr. Prosecutor, I already told you that this order was considered a reprisal measure and had been issued as such. yourself as to who was killed, by whom, the people were killed, and how they were selected and why this reprisal was carried out. You only know there was a reprisal and the only name connected with this reprisal you can remember is the name of Jeckel, nothing in connection with Sonderkommando 4A?

A Mr. Prosecutor, I already told you that Jantzen told me at the time that the town commander - I cannot recall his name - told him that a retaliation measure had been ordered or that he had ordered one and he also said that Meyer took over the kommando at the time and that Jeckel somehow insisted on having this actually carried out.

Q Will you tell the Tribunal only one thing: Were these people killed by Sonderkommando 4A?

A Sonderkommando 4A participated in it. How far, I cannot say.

Q Which part of Sonderkommando 4A?

A I don't know, Mr. Prosecutor.

Q Isn't it true that it was the sub-kommando or the Advance Kommando in which you were the highest ranking officer at that time?

A I don't think so, because Blobel came to Luck with the rest of the kommando and only then brought the order along from Reichenau which said that the same numbers of Jews were to be shot.

Q Just a minute ago you told the Tribunal it was Meyer. Now you again say it was Blobel.

same number of Jews were to be shot as retaliation for the Ukrainians who had been shot. report itself it says expressly that it was an advance kommando?

A May I ask on which page it is? in the second to the last paragraph. "An advance squad dispatched to Lutsk on 27 June." Jantszen had stayed two days, he told me that the town command er had ordered a retaliation measure. advance kommando in which you were the highest ranking officer?

A I cannot say that, Mr. Prosecutor, in as far as the highest ranking officer is concerned, I don't think that we shall be able to clear this matter up in this procedure.

Q You don't know whether it was your advance kommando?

A No. I am not certain. you turn to Document Book II-C, Your Honors, I am quoting from page 48. This is 54 in the German. That is the last paragraph on page 48 under the heading, "Page 5 of the original," Your Honors, "Einsatzgruppe C, Lacation, Rowne". This report says that "Einsatzkommando 4A still in Rowne where executions took place of 240 Bolshevist, predominantly Jewish, officials, agents, etc." Were these people interrogated, Herr Radetzky?

A I don't know, I cannot say, Mr. Prosecutor. Rowne?

A I don't know that either. They were being recruited continuously until they had gotten as many as the kommando thought they needed. In any case, it must have been in Shitomir when the number was complete. Haw many there were in at the time, I do not know.

Q What do you know about the executions of these 240 people?

A I cannot say anything about this, Mr. Prosecutor. I said already yesterday that I was in Rowne only for a short period of time and that I had to go back to Luck and that I moved along with the advance kommando mentioned in this report. In this same report it can be seen that the advance kommando had already started moving towards Shitomir. in Rowno?

Q. You were in Shitomir for a certain time, were you?

A. Yes.

Q. The documents show three different operations against Jews, which were carried out in Shitomir. - - - If, Your Honors please, I think I am coming to a new subject, and it would be the right time to recess.

THE PRESIDENT: Very well, the Tribunal will be in recess fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session.

MR. HOCHWALD: If the Tribunal please, before I go over to the activity of the witness in Shitomir, I want to follow up the line of questioning according to the Emergency Service Decree of which I started last night, as the interpreter has in the meantime received that part of the translation of the document.
BY MR. HOCHWALD:

Q. HerrRadetzky, you have told this Tribunal that you could not join the Wehrmacht, as you were deferred for this emigration agency of Baltic Germans, but in spite of the fact, you were later called up for emergency service according to the Decree on 15 December 1930, is that correct?

A. Yes.

Q. You have told the Tribunal that you made eleven attempts to leave this service, is that right?

A. Yes.

Q. May I assume these were serious offenses?

A. Mr. Prosevuyor, I found out what I could do against this emergency status. At that time I didn't know any thing of the form, how the assignment would take place. I was told at the time....

THE PRESIDENT: Witness, he only asked you were these serious attempts?

BY MR HOCHWALD;

Q. Were these eleven attempts serious attempts, nothing else?

A. Yes, Your Honor.

Q. Did you when making these attempts look once into the Decree on the basis of which you were drafted into this emergency service?

A. No, I relied on the information which I received from the Hauptstrufuehrer who informed me about it.

Q. So you didn't know anytnign about the Decree then?

A. No, I merely knew of the fact of the emergency status.

Q. Was it not known to you that service in the Wehrmacht, or in the Waffen-SS, had preference to this Decree?

A. No, I didn't know that.

Q. Was it known to you that you had the right to object against the draft?

A. At that time, no.

Q. Was it known to you that you could have been punished with approximately a fine of 1500 marks, if you would not have obeyed this order?

A. No, I didn't know that.

Q. So you didn't know anything about the contents of the Decree?

A. About the contents of the decree, I didn't know any details when I was informed about the Emergency War Status, outside of the answer which I received, and which I have repeatedly expressed.

Q. When did you learn first about the details of this Decree?

A. I heard details about it in January 1942, shen I was in the Labor Office in Posen, whore I had asked what I could do in order to get out of this emergency status.

Q. Did you read the Decree then?

A. No,.

Q. So in spite of the fact that you claim to have made eleven Court 2, case 9 serious attempts to get released from this service, you didn't read once the Decree in order to find out what rights you eventually would have to object against the draft, as that correct?

A. Mr. Prosecutor, I relied on the information of the officials whom I thought I could rely upon.

Q. You didn't read the Decree?

A. In the Labor Office in Posen an official read to me parts of it, but today I don't remember what these were.

Q. Am I correct in assuming that you told the Tribunal that you were drafted into this emergency service as an interpreter, is that right?

A. As an interpreter and a man who knows the terrain, the country.

Q. Is it not true then that there was no possibility to use you for another purpose, as for the purpose of an interpreter, is it not true?

A. Mr. Prosecutor, I was used for other purposes.

Q. If that is true, witness, is it not further proved that at the moment in which you would not have been used as an interpreter any more, your draft would have ceased?

A. No, it didn't cease in any case. I amde enough attempts to have it revoked and it was not revoked.

Q. You never made an official objection by saying, I was drafted as an interpreter but I am used as a SD-man, I am used for writing reports, I am not used as an interpreter, and, therefore, my draft has no meaning, and it is not valid, did you?

A. In the conversation with Sturmbannfuehrer, Major Trautmann, in Office I in Berlin, I went into great details, in describing this question of my emergency war status. I told him at the time that if one drafts me as an interpreter one should not use me as a Hauptsturmfuehrer, and when I made this remark he asked me to leave the Court 2, case 9 room and to come back in three days.

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That is how the conversation proceeded.

Q. How do you explain to the Tribunal this fact, that in spite of the fact that you were drafted as an interpreter, you were never in all the time when you were with Sondercommando IV-A used as such?

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A. I explain this by the fact that right from the beginning I was used for writing out the reports and that the assignment such as seizing documents also was part of the field of activity as an interpreter. Later on my employment as liaison officer came about.

Q. That still does not seem to explain to me the fact that you were never used for the service for which you were hired.

A. Mr. Prosecutor, the expression was "interpreter and expert familiar with the country". I was put into this job conditioned by knowledge of the country and my knowledge of the language and for my part, therefore, I could not protest against it in any way.

Q. Can you tell the Tribunal how your knowledge of the country helped you as liaison officer to the Army, why it was necessary to have a knowledge of the country to be liaison officer to the Army?

A. Mr. Prosecutor, I have already said in my direct examination that I personally attached value to the job of liaison officer.

Q. You could arrange that, could you not, but you could not arrange to be released from a War emergency service which undoubtedly in your personal case was not valid? Is that what you want the Tribunal to believe?

A. Twice at the beginning of the Eastern campaign, my attention was called to the fact that I should not attempt, in any manner, to be released from this emergency status. Nevertheless I did so later on, anyway. However, I had exhausted the matter in another way and thus I did make the attempt this way.

Q. Will you then turn to Document Book II-A, Your Honors, I am quoting from page 65. This is NO-3405, Prosecution Exhibit 42, the last paragraph on this page, Your Honors, under the heading "Activity of Teilkommando SK 4A at Lubny", It says, and I quote: "On the 18 October 1941 the Teilkommando of SK 4a at Lubny took over the evaluation of the NKWD files left behind by the Vorkommando and the handling of current correspondence."

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"Together with the Ukrainian militia set up in Lubny it was possible, with the aid of the files acquired, to arrest a considerable number of NKWD agents and several leading communists. 34 agents and communists and 73 Jews were shot." the record that the aid and evaluation of the files bad something to do with the executions? That you, between the time you executed your affidavit and you testified here on the stand changed your testimony about your activities, isn't that correct? document. When you made your statement on the witness stand you knew it. Am I correct in assuming that for this simple reason you changed your testimony?

THE PRESIDENT: The affidavit, you mean. His statement in the affidavit.

MR. HOCHWALD: The statement in the affidavit to his testimony, I am sorry, Your Honor.

A. Mr. Prosecutor, this is not so. BY MR. HOCHWALD:

Q. Let's go over now to the documents which show the activity of Sonderkommando 4a in Shitomir. I am turning to Document Book II-C, page 16, page 18 in the German. There it is said that "Gruppenstab and Vorauskommando 4a in cooperation have up to date shot, all in all, approximately 400 Jews, Communists, and informants for the NKWD." What do you know about the killing of these 400 people, Herr Radetsky?

A. Mr. Prosecutro, I cannot testify anything about it.

Q. Why not?

A. Because I know nothing about the killing of these people and had nothing to do with it.

Q. You were in this Advance Kommando, were you not?

A. Yes, but I did not command the Advance Kommando.

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Q. Who was the commander of the Advance Kommando?

A. Hauptsturmfuehrer Kalsten.

Q. He had the same rank as you?

A. Yes.

Q. Who was the deputy to Kalsten?

A. I don't know that Kalsten had a deputy.

Q. Who acted for him when he was absent?

A. Kalsten was never absent.

Q. Who would have acted for him if he would have been absent?

A. As the next official for the executive measures, I would probably have had to take this over.

Q. Will you repeat that? I didn't hear it.

A. I said for the executive activity, the Senior officer after him.

Q. That would have been you?

A. No, Mr. Prosecutor, my other official I mean a member of the Security Police or the Gestapo.

Q. How many officers were in this Advance Kommando?

A. Two officers.

Q. That was Kalsten and you?

A. Yes.

Q. And you want to tell the Tribunal that in spite of the fact that there were only Kalsten and you, the only officers, that you were not his deputy and that you never learned about the killing of those 400 people? Is that what you want the Tribunal to believe?

A. Mr. Prosecutor, I don't want to tell stories at all. I merely want to explain to them how these matters were taken care of, that I had my clear assignment what to do and I completed this assignment.

Q. And you did not see left, you did not see right. The only thing you did see was documents about economics, and cultural matters.

Is that right? You were just going your way, left and right people were killed, hundred, a thousand, ten thousand, but you were only looking at the documents. Is that what you are testifying to?

A. That is only partly correct, but partly it is correct.

Q. Is it known to you whether these 400 people were interrogated by somebody?

A. No, I do not know.

Q. Is it known to you who selected these 400 people?

A. No, I do not know.

Q. Is it known to you who ordered those executions?

A. No, I assume that if the group staff participated as the superior agency the group staff probably ordered it.

Q. In the same report it is said that political commissars wearing civilian clothes were apprehended and later admitted their identity. Did you investigate this case?

A. No.

Q. Who did that?

A. I cannot tell you, Mr. Prosecutor. I had nothing to do with the executive activity of this Advance Kommando. I do not know whether this took place.

Q. And Kalsten, the only fellow officer of yours there, never told you a word about it?

A. No. Kalsten did his work and discussed his work with his officials.

Q. I would like to turn now to page 70 of the same Document Book, Your Honors, That is 77 in the German, the last paragraph of that page. This report says the same - that 400 Jews, called here "mostly saboteurs and political functionaries", were liquidated. about just now?

A. I cannot tell you, Mr. Prosecutor.

Q. And now I want you to turn in the same Document Book, Your Honors, to page 28. This is document NO-3151, Prosecution Exhibit 73, where another execution of Jews in Shitomir is reported. 266 were liquidated in this case as a further reprisal measure for the sabotage of the black out regulation. What do you know about that, Herr Radetsky?

A. About this I know that in Shitomir there were several air attacks which can be said in explanation of the sabotage of black out regulations.

Q. What do you know about the killing of these 266 people?

A. I cannot tell you anything about it to. Prosecutor,

Q. You know that these people sabotaged the black out regulation but you do not know what happened to them, is that what you want to say?

A. No. I meant to say that I know that at that time there were severe air attacks in Shitomir. That is what I know about this. How far the black out regulations were sabotaged I do not know.

Q Who interrogated these 266 Jews?

Q Who selected them for killing?

A I cannot tell you. 1 assume that it was officials and the executive people?

Q Who were the officials and who were the executive people? This is 157 of the German, Document 3140, Prosecution Exhibit 30. 126, Your Honors.

I am quoting from the last paragraph on this page. Is it known to you, witness, that the defendant Blobel was ill from the 13 August to the 13 September? that he was sick during the time in Shitomir that I know.

Q Will you look at the document. There it is stated that 10 September 1941 a conference took place with the Feldkommandatur in which it was decided to liquidate Jews of Shitomir completely and radically. Did you represent -

A You said on 10 September?

Q That is right. We found out during the examination of Blobel that the date 18 September is an error. It is in the record, It is 10 September.

Q 10 September. Can you tell the Tribunal whether you represented Blobel in this conference.

A I can say the following thing about this incident. At the time I was ordered to negotiate with the field command about the furnishing of vehicles. At the time they discussed the transportation of the Jews to the West in the area of Rowno. The field command did not approve of this at that time and Blobel later negotiated with the command himself.

I had the order at the time from a member of Einsatzgruppe C. I think it may have been an Obersturmfuehrer by the name of Krieger.

Q I do not think you have answered my question, witness. Did you represent Blobel in this meeting on 10 September 1941?

A No, Mr. Prosecutor, I told you....

Q Were you present there?

A No. I cannot remember such a conference. Rowno?

Q Who was that?

A I do not know exactly who it was. I assume it was Obersturmfuehrer Krieger.

Q What happened to these Jews in Rowno? they would be resettled there.

Q Were they to be killed there, Mr. Radetzky?

Q Is it not a little Illogical? We have just discussed a document a few minutes ago which shows that the Jews in Rowno were killed and now you tell the Tribunal that in order to get new Jews in Rowno they were to be sent from Shitomir and don't you think that this is a little bit illogical?

A Mr. Prosecutor, I on my part always hoped that this problem would be regulated differently than it was regulated in other cases.

Q When did you lose this hope?

Q Not earlier?

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on 19 September you still believed that the people would be only resettled in Rowno and not killed, is that right? another place when just a few days before that the Jews of the place had been killed?

A I don't think so. I occupied myself with this problem very much and I don'1 remember what I thought about it at the moment. I had the hope that these matters would some day find a different solution than the one which the Fuehrer Order had ordered,

Q How long were you on leave? From when to when? of March 1942.

Q Are you sure about the dates?

Q Do you remember having been interrogated by Mr. Wartenberg about these dates?

Q What did you tell Mr. Wartenberg about the dates? Did you tell him the same thing which you told me or did you change the dates?

A No. I think if he asked me about it - I don't remember that he did - I told him the same thing. I only would like to remark one thing here, I told Mr. Wartenberg that I cannot give any exact guarantee for dates and localities after six years. I cannot remember any exact date lines, I cannot say that on 27 September I was there or 14 November I was there - that would be senseless. are in no position to make any guarantee for the correctness of the dates you have given us for the same reason you have given us. Will you answer this question with yes or no.

A No, Mr. Prosecutor, I have had time to think about this matter and these investigations must serve me in correcting and clarifying those matters which I might have put incorrectly.

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Q How did you check up the date?

A By various questioning of witnesses. I tried to check my own memory and either found it confirmed or not. the very special date of the arrival of Weinmann in Charkow in the middle of March 1942. Is it true that you have checked this date according to the testimony of the defendant Haensch.

A No, Mr. Prosecutor, I did not check it in this reference and I didn't speak to him about it. The question yesterday came completely as a surprise and I tried to check it through outsiders. your memory with other witnesses here. How you say with people outside. How did you get incontact with these people and why was this date so very much of interest to you. It makes no difference in your case. It makes a lot of difference in the case of the defendant Haensch. the witnesses about activities in the East.

Q Are these affidavits in your document book, Mr. Radetzky? document book that you were on leave until 15 March. Dr. Ratz certainly has his German copy of the document book. I have only the English, Your Honors, I am sorry.

Do you find it, Mr. Radetzky?

A No, Mr. Prosecutor, not yet. it is.

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DR. RATZ: I haven't submitted the document as yet, but I am not worried about the witness using the document to support his testimony. Perhaps it is Page 43 of the document book, the testimony of Lulei.

THE WITNESS: There it says March or April.

MR. HORLICK-HOCHWALD: There is no possibility, in my opinion, to check the date according to this thing.

Q (By Mr. Horlick-Hochwald) Won't you admit that you checked the date according to the testimony of the Witness Haensch? Will you answer yes or no?

A Mr. Prosecutor no.

Q There is no further explanation necessary? the English, Page 53 of the German, I am quoting from the second part of the first paragraph on Page 34, your Honors, Document 3237. Prosecution's Exhibit 138. He said here that 236 persons could be arrested and interrogated, 193 were shot as agitators in dangerous elements. Did you carry out these interrogations?

A No, Mr. Prosecutor.

Q What can you say about the killing of these people?

A Mr. Prosecutor. I cannot tell you anything about it. When I came to Charkov, as I said yesterday, I had a number of conversations with the new commander, Dr. Weinmann. There were several heated disputes at the beginning, between us. Then I went to the Army in Poltava and to the Army group, and then I went back to Charkov.

Q So you don't know anything about this 193? Charkov there was another kommando active at the same time. I don't want to list this as an excuse for myself, because I had nothing to do with business. This was the kommando of the commander of the Security Police and SD, under Dr. Kranebitter.

had falsified passports?

Q Did you see these passports?

Q Did you have any passports?

Q You just spoke now about Weinmann. Do you remember his first name? tasks, as liaison officer, to evaluate interrogations of prisoners of war for the RSHA, is that correct?

Q Will you turn to Document Book II-A? Your Honors, I want to quote from Page 45 of the English. I think it is 43 of the German, but I am not sure. The second paragrpah under the heading "Page 5 of the original", your Honors, Document NO_3155, Prosecution's Exhibit 38. It is stated here that, "On 26 September, the Secuirty Police took up its activities in Kiev. That day 7 Interrogation Kommandos of Einsatzkommando 4a started their work in the Civilian Prisoner Camp, in the Prisoner-of-War Camp, in the Jewish Camp, and in the city itself. Thus, among other things, in the camp for civilian prisoners and prisoners of war 10 political commissars were found and interrogated in detail. Conforming to the old Communist tactics these guys denied all political activity. Only when confronted with trustworthy witnesses, five commissars yielded and confessed, that is, they admitted the position they had held, but did not make any statements beyond this. They were shot on 27 September." Were you, at that time, in Kiev? Sonderkommando 4a?

A No, Mr. Prosecutor. their testimony?

A No, Mr. Prosecutor, as far as I can see from this, they were investigated for their activity, not for their testimony about the Russian Hinterland.

Q And, therefore, you had nothing to do with that? the Army Staff, about the prisoners of war for Office 6, but not within the kommando. this evaluation? interrogations for the RSHA?

A Mr. Prosecutor, I had to evaluate the interrogation reports in the Army. There were often hundreds of records daily from which we would take the various data about the Russian Hinterland, but beyond that I did not evaluate or investigate the interrogation reports of the kommando because this kommando did not carry out the interrogation in such a way as to find out anything about the foreign activity, but only about political activities. Army, the files and interrogations on the basis of which the Army ordered executions which then were carried out by Sonderkommando 4a, did you see this file?

A No, Mr. Prosecutor, these are records of interrogations of of prisoners of war who were immediately interrogated on the front line by the counter-intelligence people in order to gather information about the enemy. These were

Q So you did not see these files either. Will you turn now to Document Book II-C? Your Honors, that is on Page 16, the second to the last paragraph, Document NO-2952, Prosecution's Exhibit 72.

It is said in this document that, "In Shitomir, a large prison camp has been set up which also contains civilian prisoners. It is highly probable that there are, particularly among these civilian prisoners, former political commissars who, apparently on instructions, left the troop in good time and somehow procured civilian clothes for themselves. Thus, three political commissars in civilian clothes were apprehended, who eventually admitted their identity. Attempts to obtain the truth on their assignments and activities failed in each case." Did you participate in the investigation of these cases?

A No, Mr. Prosecutor, this was a job of the executive people. Shitomir?

A It can be assumed. I don't know exactly. between the 10th of July and 3rd of August, between the 13th of August and the 13th of September, between the 24th of September and the 27th or 28th November, and later at the time when you were on leave. How often during the time of Blobel's absence did you act as his deputy, Herr Radetzky?

A Mr. Prosecutor, I was not his deputy during his absence. He was absent from Lutsk and Shitomir he was present.

Q Not on the 10th September. He came there the 13th according to his testimony.

A I do not know; I cannot say. I don't remember the dates. but Hauptsturmfuehrer Karlsten who was my superior, or if he was not there, it was an officer of the Security Police or of the SD. Blobel, is that correct?

Q How do you explain his statement to this effect in his affidavit?

A I cannot explain it, Mr. Prosecutor, apart from the fact that in some form he was persuaded to this testimony or brought to make it in some manner,

Q No was tricked into this answer, is that what you want to say?

A I don't remember his testimony where he said that, but I believe that Herr Blobel testified in detail about this.

Q You, yourself, have no explanation? about it, because I do not know what persuaded Blobel to say that. a Sonderkommando, a Teilkommando or of an advance kommendo, I am sorry?

A In the year 1942?

Q '41.

A Mr. Prosecutor, I was not an officer in a Teilkommando or advance kommando, I was always attached to these kommandos.

Q You never were commander of a Vorkommando or Teilkommando in 1941?

A No, Mr. Prosecutor. in 1942?

A I wasn't either.

Q Never? During the second half of the year I was liaison officer with the Army, and Army Group in the first half of the year. rank, never commander of a subkommando or an advance kommando? I was - I had to participate in the activity of the kommando as an outsider, and, therefore, these jobs were not given to me.

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It would be absurd if one were to give me police assignments which could be performed much better by someone else. That is the explanation. Teilkommando?

A No, Mr. Prosecutor, I did not command a subkommando.

Q I would like to refresh your memory on that point. I would like to introduce, your Honors, Document NO_4771_X and I think it is Prosecution's Exhibit 190. I only want to refer to one sentence. It is the third paragraph of the document. "During the advance, in the summer of 1942, SS_Hauptsturmfuehrer von Radetzky was put in command of a 'Teilkommando'", etc. What do you have to say to that?

Objection, Dr. Ratz?

THE WITNESS: May I just read through this?

DR. RATZ: Your Honor, this is evidnetly the passage that was taken from the document, NO_4771. At the time already I explained that in the photostat it is evident that one part is missing.

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MR. HORLICK-HOCHWALD: If your Honor please, I have to answer the objection, by defense counsel and have informed the Tribunal the Prosecution intends to use this very document either in cross examination or in rebuttal, as this document was unnecessary for prosecution's case in chief. The Tribunal has ruled that that would be a satisfactory answer to Dr. Ratz's objection, and I do think that what Dr. Ratz has just told the Tribunal is not a reason for an objection against the admissibility of this document.

DR. RATZ: I am not quite through wet. I would like to explain that this document is, without a doubt, a part of the Document NO-4771, because all of its pages bear that number, and therefore, it is not possible to take out one letter, because then a part of the document would be denied to the defendant. Secondly, the Prosecutor, in answer to my objection, on the 20th of October, 1947, stated that he wanted to submit the document in order to show that the Defendant Radetzky was a member of the SS and SD, If the Defendant Radetzky denied this, the Prosecutor said, "Well then, I think then this document is enough proof that he was a member of the SS and the SD," and on that basis the Tribunal decided at that time.....

MR. HORLICK-HOCHWALD: I do think that Dr. Ratz is mistaken. Ivvery well remember having told the Tribunal that Document NO-4771, which is Prosecution's Exhibit 139, was put in evidence in order to prove Radetzky's membership in the SS. What I am introducing now is a completely independent letter which has the document number, NO-771-X. This letter is not a part of a document. It is a complete letter. It is true that this letter was found in the same personnel file, in the same personnel folder that the other SS personnel documents of Radetzky were found but the fact that they were in the same folder does not take anything from the document itself, being a complete document.

THE PRESIDENT: Dr. Ratz, do you question the authenticity of this document?

DR. RATZ: No, I don't doubt it. It is a photostat, and I have no cause to doubt it.

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THE PRESIDENT: Then your objection is that it was a part of a document which was submitted in the case in chief, and, therefore, should have been included when the case in chief was presented; is that your objection?

DR. RATZ: Yes. The prosecution at that time assured us that the complete photostat of the documents will be at our disposal, and even at that time I said that this assurance was not being kept if now this one document is being torn out of this file.

THE PRESIDENT: Is there any physical evidence of mutilation? You have used the phrase "torn out". Is there something to show or suggest to you that it was violently withdrawn from another document?

DR. RATZ: The tearing out can only be determined by looking at this photostat. This page is torn out of the photostat.

MR. HORLICK-HOCHWALD: If your Honor please, if certain photostatic copies were stapled together by a staple and one letter was removed from the document, being a complete by independent document, this is not an actual mutilation of the document itself. It is just a mutilation of the photostatic copy, but the document is complete. It is a contention of the

THE PRESIDENT: Well, Dr. Ratz, you do not contest the validity of this document. Now has your case in any way been prejudiced because this document has been introduced now rather than before? If this represents an actual, official document, wherein are you prejudiced by its submission now rather than before?

DR. RATZ: I am prejudiced because I was not in a position to discuss this document with the defendant when I prepared his case and to secure further evidence.

THE PRESIDENT: Let us suppose that in the cross-examination Mr. Hochwald had put the series of questions which he did, and they were answered in the way that they were, and then to contest the veracity of the defendant's answers he brings in a witness who testifies to what is in this document. How would that be any different from what the situation at present is?

DR. RATZ: Your example, your Honor, is different, because as I must emphasize once more, according to my opinion, this document is a part of his personnel file, and his entire personnel file bears one exhibit number, and during the preparation of my defense I relied on the fact that the personnel file is complete.

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THE PRESIDENT: But, Dr. Ratz, let's got to the facts, The witness, the present witness, or the Defendant von Radetzky, was in command of a Teilkommando or he was not. That is obvious. In preparing: your case you would naturally inquire into whether he ever had or had not led a Teilkommand. That is obvious. Whether you possess this document or not couldn't alter the fact, couldn't alter history. What has happened has happened. You may have been in some way embarrassed by the production of this document now, rather than knowing it before, but from the standpoint of justice no harm has been done. You still have the opportunity to question the witness at length about this document; you still have the opportunity to bring in witnesses to show that this document is spurious or does not represent the facts; you still can produce further documents to attack this document.

DR. RATZ: Your Honor, I don't want to make any difficulties, but I just want to maintain my point of view, that I don't consider this document admissible, but I do not want to maintain my objection because I believe that one defendant will be able to discuss the document without my having discussed it with him previously.

THE PRESIDENT: Very well.

MR. HORLICK-HOCHWALD: So it will be then, Prosecution's Exhibit 191.

THE PRESIDENT: Very well.

Q. (By Dr. Horlick-Hochwald) How do you reconcile the contents of this document with your testimony?

A. Mr. Prosecutor, I don't know who signed this document. I would be grateful if I could see it.

MR. HORLICK-HOCHWALD: Could you please hand to the witness the photosat copy which is the exhibit.

A. I do not know the signature and I don't know the name of the man -

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Q. (By Mr. Horlick-Hochwald) All right.

A. Who gives this judgment about himself. About the question of the Teilkommando, however, and this is what is important, I have the following to say, that in the area of the Second Army there were a great number of Kommandos, and these kommandos were often amalgamated under one designation because they had an independent APO number. I know then that I must have been brought into connection with these kommandos in the Second Army.

Q. It is then your contention that this letter requesting your promotion is a mistake?

A. It says here as the highest decoration the handing over of an independent Teilkommando in the year 1942. I know that Weinmann in the spring of 1942, when we were not yet on the advance, had tried to get me promoted. Therefore, I think that the various statements made here were made later by offices who did not know about the matter, but, Mr, Procecutor, I shall look into this question in detail and will try to clarify it.

Q. May I show up in reference to your testimony to this letter, that this letter is a mistake?

A. No, I cannot say it is a mistake, but it is an erroenous representation of the situation as it existed then.

Q. So this letter is in this point incorrect?

A. No, it is not correct. It is not correct in the interpretation, which is important for me, that a Teilkommando is equivalent to an executive kommando.

Q. I have no further questions. BY THE PRESIDENT:

Q. Well, were you put in command of a Teilkommando ever?

A. Your Honor, no. I was given the order of the assignment of a liaison officer to the Second Army.

Q. Please answer the question, were you ever put in command of a Teilkommando?

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A. No, your Honor.

Q. Were you promoted to Sturmbannfuehrer as of 9 November, 1942?

A. Yes.

Q. Now, this letter recommends you for just that promotion, and as achieved as of that date, doesn't it?

A. Yes.

Q. How can you explain, that it could be so accurate and so prophetic to bring about your promotion as of 9 September, and the letter is dated 15 October, and yet it be incorrect insofar as the statement about your commanding a Teilkommando?

A. Your Honor, I do not say that it is a mistake; I say it is an error, and I must try to clarify this error.

Q. Now, we went into that before. The hairbreadth destination between a mistake and an error is one which requires stronger glasses than I use. How, tell me, what is the difference between a mistake and an error?

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my opinion, an involuntary incorrectness, that is, a mistaken representation.

Q You say a mistake and an error is a bigger mistake? matter of clarifying this entire matter.

Q Well, let's see how many errors and mistakes there are in this letter. The letter is dated 16 October, addressed to the Personnel Main Office of the SS. The subject is Hauptsturmfuehrer Waldemar von Radetzky. That is your name, isn't it?

A SS-NO. 351254, is that correct?

A I assume so. I do not know the number by heart. All right. Member of the General SS-Administrative District Warthe, is that correct?

Q All right. The first sentence recommends your promotion. The second sentence says that you were on duty with the Einsatzkommando of the SD since 19 May 1941. Is that correct?

A Since the 29th of May?

Q What is the date? you first called into this service? the 20th or 21st of June, 1941. which you were participating, prior to that?

Q Is that when you were first notified to report?

A No. The order to report I received it on this earlier date here.

Q On May 19th, very well. Now, the following sentence says that while you were serving with the kommando you participated in the advance toward Charkov in the summer of 1941 and that there you were distinguish yourself in action and because of that were awarded the Iren Gross, Second Class, is that correct? lity to group things quickly you have a good general education, haven't you? quickly, aren't you? Now then next, "It was therefore possible to entrust him frequently with the execution of extensive and independent tasks." Now, what is entensive and what is independent is up to the writer of this letter, and you might not agree with him as to the extensiveness and independence so we won't ask you to comment on that. Then the following sentence says, "As a liaison officer with the Army he acted skillfully and always know how to achieve his purpose." Now, you do not deny that you did your job as a liaison officer rather well, do you?

Q Well, all right. Very well. That falls into the category of the opinion of the writer. Now, Witness, so far as the physician facts referred to in this letter are concerned, they are correct, aren't they, up to the sentence which I have not yet read?

which it was stated in every application for promotion. I personally have nothing to object against these facts.

Q All right. Now then, we come to the crucial sentence. "During the advance, in the summer of 1942, SS-Hauptfuehrer von Radetzky was put in command of a 'Teilkommando'. Radetzky's general behavior is a soldierly one; he has purpose of mind and is sure of himself." Does this paragraph represent facts or not? I can only clarify this paragraph if I find someone who conforms this for me. If I now say it, that I did not command a Teilkommando, but that I was a liaison officer with the Second Army and with the Second Hungarian Army during the period covered, then it is testimony against testimony, and the document is in any case the one to be believed, Therefore, I ask for permission to be able to clarify this thoroughly. not authentic, or in any way not worthy, falsified, or in any way not worthy of belief. A piece of paper means nothing to the Tribunal just because it is a piece of paper, but if the contents of that of paper appeal to one's common sense and logic, coincide with other facts and dovetail into into a general picture of credibility and authenticity, then the documents naturally is accepted at its face value.

Now, to sum it up, what do you say this paragraph represents a mistake, an error, or deliberate falsification? error with a member of Einsatzgruppe C who knows about my activity exactly.

MR. HORLICK-HOCHWALD: I have no further questions at this time.

THE PRESIDENT: The Tribunal will now be in recess until two o'clock.

(A recess was taken until 1400hours.)

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(The hearing reconvened at 1405 hours, 17 December 1947.)

THE MARSHAL: The Tribunal is again in session.

DR. KRAUSE: Your Honor, I am speaking for the defendant, Haensch, and I ask that the defendant, Haensch, be excused tomorrow all day from attendance in court so that the final work on the document books may be concluded with him.

THE PRESIDENT: The defendant, Haensch, will be excused from attendance in court all day tomorrow so that he may work on his document book. Dr. Ratz, do you have any further questioning of your client?

DR. RATZ: Your Honor, I have no further questions, but I have a witness. This witness arrived only yesterday afternoon, and I could not inform the prosecution of it in time, but as far as I know from a discussion with Mr. Hochwald, he has no objection to this.

MR. HOCHWALD: If the Tribunal please, there is no objection to the calling of the witness. I might ask that I may be permitted to send for the document book into which the affidavit of the witness is inserted.

CROSS EXAMINATION (Continued) BY THE PRESIDENT:

Q. Witness, we have just one question which doesn't have much to do with the issue at all, but which really arises out of a curiosity. You have indicated that during your service in Russia that you had certain tasks to perform, and one of them was to investigate into, examine, and make reports on the culture, the religion, and the theaters in Russia. Were you spending time in the theaters, seeing operas, watching melodrama on the stage --- what do you mean "investigating the theater"?

A. Your Honor, the word "theather", I only used in order to explain my expression, "cultural questions". I remembered subconsciously an action by the Sixth Army, a performance which they had permitted for the troops, where soldiers should visit good theaters and where old Russian or Ukranian plays, which were not allowed to be performed during the Soviet government, were now performed again.

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Q. Well, were the theaters operating in this active zone for the civilian population?

A. Yes, of course.

Q. And did you make reports on the different performances?

A. No, Your Honor, I did not do that.

Q. You don't want to convey the impression that you were a dramatic critic during the war in Russia, do you?

A. No, I don't want to give that impression at all, Your Honor.

THE PRESIDENTS: Very well, The defendant may be returned to the defendant's box and the witness who is now in waiting will be brought in.

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated. BY DR. RATZ:

Q. Witness, you name is what?

A. Gustav Kraege.

Q. Where were you born?

A. On 17 May 1907.

Q. Where do you reside?

A. In Goslar.

Q. Have you ever been a member of the NSDAP or the SS?

A. No.

Q. Where were you in May 1941 -- where were you active?

A. In May 1941 I was with the Gestapo in Hildesheim.

Q. Were you recalled from there?

A. Yes.

Q. Where to?

A. I wasordered to go to Schmiedeberg at the time.

Q. Did you know why you were sent there?

A. No. I had no idea.

Q. What happened to you in Schmiedeberg?

A. In Schmiedeberg after some time I was assigned to a commando which was later called SK 4a, Sonderkommando 4a,

Q. Were you given a uniform to wear?

A. Yes, because of my rating, I was given an SD uniform, and I had the rank of a Scharfuehrer.

Q. Were you accepted in the SD, or did you have to -

A. No, this did not happen.

Q. You said that you were assigned to the unit later, called SK 4a?

A. Yes.

Q. What was your work in the SK 4a?

A. Throughout the entire assignment I was working in the office of the Sk 4a in the orderly room.

Q. You said, throughout your assignment, how long did this last?

A. That was from June 1941 until March 1942 except for the time from the end of September until the beginning of January. During that time I was ill and was in the hospital and wason recreational leave at home.

Q. You said you were in the orderly room of the SK 4a as a clerk. What kind of work was done in the orderly room?

A. In the orderly room they dealt with all documents which came in and handed them on, forwarded, and registered, and so forth, field post, and so forth.

Q. Apart from the general orderly room, was there any special administrative office in the SK 4a?

A. Yes, such an office was in the SK 4a.

Q. What did the general administration office deal with?

A. We got our pay from this office and as far as I know, this office looked after the clothing and the supplies for the commando.

Q. Do you know who looked after the ammunition of the commando?

A. I don't know. I assume the administrative office did this.

Q. Did you have anything to do with the top secret matters the SK 4a dealt with?

A. No, I had nothing to do with this, and I never saw them.

Q. Who dealt with this, and where were the secret matters kept?

A. Inasfar as I know, these secret matters, these top secret matters, were kept by the chief himself in his room.

THE PRESIDENT: Dr. Ratz, will you please refer us to the document book in which his affidavit appars, so we may be looking at it?

DR. RATZ: An affidavit was made by the witness, Kraege, --

MR. HOCHWALD: Your Honors, this is in Document Book IIIC, on page 30 of the English, No. 4765, Prosecution Exhibit 137.

PRESIDENT: IIIC?

MR. HOCHWALD: IIIC, that is right.

PRESIDENT: Page number?

MR. HOCHWALD: Page number 30. BY DR. RATZ:

Q. Where were the secret matters kept in the SK 4A?

A. Inasfar as I know, these top secret matters were kept by the chief himself in a special box.

Q. Was this special box open, and could you look at it, or was it locked?

A. No. This box was secured by locks and was in the room of the chief.

Q. Who was Chief of Sonderkommando 4A while you were there?

A. When I belonged to this commando, Standartenfuehrer Blobel was in charge of this commando.

Q. Do you know who was Blobel's deputy?

A. No. I know nothing about a deputy of Blobel's. I never heard of a deputy.

Q. Do you know whether Herr von Radetzky was ever Blobel's deputy?

A. As far as I know, Herr von Radetzky could never have been deputy of the chief. I know nothing about it.

Q. Why could Herr von Radetzky not have been deputy to the chief?

A. As far as I know, Herr von Radetzky -

MR. HOCHWALD: Just a minute. If the Tribunal please, this question is inadmissible. If the witness has said he has no knowledge of a deputy of Blobel, I do think he cannot testify to the fact why Radetzky could not hove been the deputy.

PRESIDENT: Isn't that correct reasoning, Dr. Ratz?

DR. RATZ: I believe that the witness as a member of the orderly room can testify why Radetzky could not have been deputy.

MR. HOCHWALD: That would have been only possible if the witness would have been called here as on expert on matters of military organization in the Einsatzgruppe, but according to his position as a minor employee in the office, this question seems to be inappropriate to be put to this witness.

PRESIDENT: Well. Dr. Ratz, if you can qualify him as on expert in the field or with definite knowledge of the table of organization, showing a familiarity with the qualifications required, and a competence needed, then the question might be in order. He certainly can testify as to what he saw von

Radetzky do, and then it will be up to the Tribunal to determine from those activities, whether he was or was not deputizing for the absent company commander.

DR. RATZ: I only put this question to the witness because the witness said he could not have been the deputy. It, therefore, seems obvious and necessary that the witness prove this by fact and say why he could not have been deputy. And he should be an expert insofar as from June 1941 until March 1942 he was in the SK 4A as a member of the orderly room, and the members of the orderly room should have known something about such questions.

PRESIDENT: Well, he has already stated in the affidavit to the contrary. Very well. We will permit the question, Dr. Ratz. I think we will lose more time deciding whether to admit it or not than if we admit it. BY DR. RATZ:

Q. Witness, when did you see von Radetzky for the first time?

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PRESIDENT: Just a minute.

DR. RATZ: I understood it to mean, your Honor, that you permit the question.

PRESIDENT: Well, who said to the contrary. Are the interpreters overruling me? Well, I would like to agree with the interpreters all the time, but this time they are overruled, all of them. You put the question, Dr. Ratz, I will take care of the interpreters. BY DR. RATZ:

Q. I now put the question, why Radetzky could not have been Blobel's deputy in your opinion.

A. As far as I know, von Radetzky was ordered to the commando as an expert on languages, and as knowing Russian conditions without any police training, from quite a different profession, in fact. I, therefore, cannot assume that in such a commando a deputy should be appointed or a commander should be appointed Who has no specialized knowledge about this field. BY THE PRESIDENT:

Q. Were you with von Radetzky all the time?

A. No. I saw Herr von Radetzky for the first time in June 1941.

Q. When did you see him again?

A. I saw Herr von Radetzky the last time -

Q. Now, the nexttime, not the last time, from June 1941?

A. Oh, I see, I then met Herr von Radetzky on the journey from Sokal to Lutzk. Herr von Radetzky had a breakdown with his car and he was stuck on the road with his car.

Q. When was that?

A. That was on the trip from Sokal to Lutzk on 27 June 1941.

Q. All right, when did you see him again after the breakdown in the car?

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A. In Luck Herr von Radetzky was in charge of the securing of documents and the opening of safes, and I was with this department.

Q. And when was that?

A. That was during the stay in Lutzk, from the end of June 1941 until the Vorkommando left for Rowno about 5, 6 or 7 June 1941.

Q. Not June -- July?

A. Yes, yes, July.

Q. All right, then when did you see him after July 6 again?

A. After the 6th of July I saw Herr von Radetzky in Rowno only temporarily.

Q. All right, now, I said when?

A. In July 1941 in Shitomir.

Q. And when did you see him after that?

A. In July or August 1941, I did not see Herr von Radetzky any more, and I saw him only once more later on in March 1942 in Charkow.

Q. And you did not see him from July 1941 until March 1942?

A. No.

Q. So you don't know what he was doing at that time?

A. No.

Q. Then how do you presume to say that he wasn't in charge of a Vorkommando?

A. As far as I know, when in July 1941 I lost sight of Herr von Radetzky, in July 1942 I heard that he had become liaison officer with the AOK, the army high command.

Q. You got this from somebody else?

A. Yes.

Q. You don't know of your own knowledge what he was doing?

A. No, I don't know that.

Q. And your only reason for concluding that he could not have been in charge of a subcommando was your assumption that he was brought in as an interpreter?

A. Yes. That was one of the reasons, and the other reason was that I heard from others that Herr von Radetzky had become liaison officer with the AOK and in that capacity he could not have done anything else.

Q. Why couldn't he have been qualified to lead a subcommando?

A. I assume that as liaison officer for the AOK he was so busy that he had no time left and besides he was not with the commando any more.

Q. We are not referring to why he couldn't have been a leader because he was a liaison officer, we are asking you what was there in his makeup which would prevent him from being the leader of a subcommando if a subcommando was turned over to him, what did he lack physically and mentally to do that work?

A. As far as I know, Herr von Radetzky had neither been trained in military or police work and had been assigned to the commando as an interpreter and as knowing the country.

bravery and intrepidity that he received a decoration?

Q Do you know that? Do you know that he was promoted from Captain to Major because of his abilities manifested in the field? the fact that he was an interpreter and you saw him when he was repairing his car. von Radetzky got into the car in which I traveled to Lutsk Herr von Radetzky worked with me in Lutsk later and later on in Shitomir. In Lutsk we worked together in seizing enemy documents, and in Shitomir I made reports for Herr von Radetzky.

Q Was he an interpreter all the time he was in Russia?

A That I can not say. I only know what he did prior to his stay in Shitomir. After that I know nothing further. Vorkommando? Herr von Radetzky had been leader of the Vorkommando. This owing to the fact that with the kommando there were three officers in all, one Hauptsturmfuehrer, that was Hauptsturmfuehrer von Radetzky and two Obersturmfuehrers, who in their civilian profession were police officers, and since I was asked during my interrogation who was deputy or kommander of the Advance Kommando and I could not reply to this. I was asked about my opinion concerning this and I said in my opinion Hauptsturmfuehrer von Radetzky could have held that position because he was the senior officer, but after thinking about it carefully afterwards, I must now say that Herr von Radetzky could not have been the commander of the Advance Kommando, because he did not have the necessary training for it concerning police work and could not have had -

Q Did you sign your affidavit voluntarily?

Q Did you swear to it? this statement: "The Vorkommando was headed by three leaders, namely, SS Hauptsturmfuehrer Waldemar von Radetzky and two others, whose names I do not remember any more."

That states it pretty emphatically, doesn't it, that he was leader?

A I beg your pardon. I did not quite get the question. that the Vorkommando was headed by von Radetzky. He was one of the three leaders. the seizing of documents....

Q Just a moment. Just a moment. I am asking you whether you made this statement. "The Vorkommando was headed by three leaders, namely, Radetzky and two others." Did you make that statement?

Q Did you make that statement? Yes or no.

Q Did you make that statement?

DR. RATZ: I beg your pardon, Your Honor. Perhaps there is a translation mistake. According to the original of my affidavit of this witness, this witness did not say that three officers were in charge of it, but the witness said that the Vorkommando had three persons who held officers' rank; Herr von Radetzky and two other Obersturmfuehrers are mentioned. It merely says there were three officers there, but it does not say that Radetzky was in charge of it and later on he says that he had the impression that Radetzky was in charge of the Vorkommando.

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He merely says he had the impression.

THE PRESIDENT: Well, now let's determine now whether this translation is correct or not. I am reading from the English. It very distinctly says that the Vorkommando was headed by three officers of whom Radetzky was one. Mr. Hochwald, can you enlighten us on that?

MR. HORLICK-HOCHWALD: If the Tribunal please, if Dr. Ratz will let me have the German -- It says here in the mimeographed copy, "3 Fuehrer-dienstgrade" which would mean in other words, "three officers."

THE PRESIDENT: Three officers?

THE WITNESS: That's right. BY THE PRESIDENT: next sentence you say, "I remember that one evening a conference was held during our stay in Lutsk in the course of which Waldemar von Radetzky as senior leader gave orders to the assembled sub-leaders." Did you say that in your affidavit?

Q Is that correct?

THE PRESIDENT: All right. Proceed, Dr. Ratz. BY DR. RATZ (Attorney for the defendant von Radetzky):

Q Witness, may I ask you chronologically. You said that as far as you remember on the 23rd of June, 1941, Herr von Radetzky came to the Special Kommando.

Q At the time the Sonderkommando was where? of Herr Radetzky?

Q You then traveled where?

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border in Sokal.

Q In Sokal was there an Advance Kommando of SK 4a set up?

Q And where was the Advance Kommando to go?

Q And in this Advance Kommando there were also officers. How many?

Q And was Radetzky also with this Vorkommando? whether Radetzky was commander of the Advance Kommando or not. In your affidavit you said that you had the impression. Please express yourself in a more satisfactory manner as to this. the time, or, rather, that I had the impression at the time that Herr von Radetzky was leader of this Kommando because he held the highest rank as a Hauptsturmfuehrer. Herr von Radetzky in Lutsk dealt with the seizing of enemy documents and I saw him working only in that capacity there and if this sentence about my opinion is in my affidavit this is owing to the fact that the interrogator asked me specifically who was in charge of the Kommando. I could not give a satisfactory answer to this and then I was asked about my opinion, and I answered that one could have had the opinion that Herr von Radetzky was in command of the Kommando just because he held the highest rank. BY THE PRESIDENT: Radetzky was the head of the Vorkommando? Advance Kommando because no leader was introduced to us -

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Q Just a moment. Just a moment. On August 21, 1947, when you were asked the question you replied at that time, that is, going back to 1941, you were of the impression that Radetzky was the head of the Vorkommando. Was that an honest statement by you to Wartenberg? Did you make an honest statement when you said that that was your impression and your opinion?

Q Please don't tell me what you were asked. I am asking you whether this was an honest expression when you said "At that time I had the impression that Radetzky was the head of the Vorkommando." Was that an honest statement made by you to Wartenberg? back to 1941, that Radetzky was the head of the Vorkommando. That's correct, isn't it? mind, if you have changed it. First let me ask you, have you now changed your mind? afterwards. I did not really know officially who was the head of the Kommando, but I was merely asked about my opinion and I stated this, my opinion honestly, on the 21st of August, but afterwards I thought about it seriously just because I knew nothing officially about this and I gained the conviction that Herr von Radetzky could not have been in charge of the entire Kommando, because he did not have the necessary training.

Q Did Radetzky give you any orders?

A In Lutsk?

Q Did he give anybody in that organization orders? How many were there? About 25 men?

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Q Did he give anybody any orders? seizing documents was concerned.....

Q Please answer the question. Did he give anybody any orders? that you were of the opinion that von Radetzky was in charge; you had some fundamental factual reason for it, didn't you? highest rank.

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orders were obeyed and for that reason you came to the conclusion that he was in charge of the Vorkommando? to the other two officers. Inasfar as I know, the two other officers gave orders or carried out orders independently in Lutsk.

DR. RATZ: Your Honor, may I interpolate here. I just wanted to ask the witness concerning the tasks of the Vorkommando and I think this will show that the Vorkommando as far as its missions were concerned was split up. Hay I put this question?

THE PRESIDENT: Please do. BY DR. RATZ (Attorney for the defendant von Radetzky):

Q Witness, what tasks did the Advance Kommando Lutsk have? had the task in Lutsk to set up quarters and to secure enemy documents.

Q Was anything done in that direction? Who took part in this?

A Concerning this the following was done: In Lutsk, quarters were prepared for the main kommando as well, and then the securing of documents in various buildings of Lutsk was carried out.

Q Did you yourself take part?

Q Were any documents found?

Q In which building did you work on these documents? building in which the billets of the Vorkommando were as well and they were processed there and the evaluation of this material took a long time. It was screened there and put in bundles and later on sent off and, as far as I know, the Wehrmacht, I believe, the CounterIntelligence Department of the Army, sent one or two persons who helped In the screening of the material.

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Q Did Herr von Radetzky before this work was started hold a meeting? held a meeting but only a few of the NCO's were present there and not the two other officers. Herr von Radetzky held this discussion with a few NCO's and with a few Ukrainian men who were given to the NCO's to assist later in sifting the documents. gave you the impression that Herr von Radetzky was the leader of the Vorkommando, is that correct?

Q You just said that the two other officers were not present. Do you know why the two other officers were not present during this discussion? profession had nothing to do with seizing documents. In any case, I never saw them do this.

Q How long did the Advance Kommando stay in Lutsk? the seizing of documents and was Herr von Radetzky also busy doing this all the time?

Q When did the main kommando arrive in Lutsk under Blobel? arrived in Lutsk? finished and we were still busy evaluating and sorting it ans we were still compiling it and putting it on lists.

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Advance Commando in Lutsk at that time also carried out executions. What do you know about these executions and to what extent did Herr von Radetzky participate? BY THE PRESIDENT:

Q What about your affidavit? It says, "I can declare with certainty that executions were carried out in Lutsk." Are you refuting that part of your affidavit also?

Q Well, did executions occur in Lutsk or not?

Q Did executions occur in Lutsk?

Q Why did you just say to Dr. Ratz they did not?

A I only said - I was asked by Herr Dr. Ratz whether the Sonderkomnando was in Lutsk while executions were carried out. I know nothing about that.

MR. HORLICK-HOCHWALD: If the Tribunal please, I would suggest that this part of the record may be read back. I understand the question put by Dr. Ratz saying, "Do you know anything about executions in Lutsk?" and the witness answered "No, I do not know a thing about executions in Lutsk." I would like that it may be clarified more.

THE PRESIDENT: Miss Arminger, can you read that back for us, please?

COURT REPORTER ARMINGER (Reading):

"Q According to the Report of Events, it is established that the Advance Kommando in Lutsk at that time also carried out executions. What do you know about these executions and to what extent did Herr von Radetzky participate?

A I know nothing about executions in Lutsk."

DIRECT EXAMINATION *- Continued BY DR. RATZ (Attorney for the defendant von Radetzky): under number 4, where he says, "During my presence in Lutsk I did not see any executions, but when some time later in Rowno, we were looking through the papers in the orderly room, I noticed a bundle of about 20 reports and records of interrogations which revealed that in Lutsk and Sokal people had been executed. I would like to ask the witness whether he wanted to say something different just now than what he said in the affidavit.

A No, I want to say nothing different. I am sorry and want to apologize to the Tribunal that I misunderstood Herr Dr. Ratz' question. I understood Dr. Ratz' question to mean that executions were carried out by the Advance Kommando in Lutsk and whether I knew anything about those. I replied to this, no, I knew nothing about then, because in my affidavit of 21 August I said that I only learned from somewritten documents which I happened to find that in Lutsk and Sokal executions had taken place and.... BY THE PRESIDENT: in those two places, is there? Lutsk and Sokal?

A That I can't say. I only came across these documents by chance and I just glanced at them and I saw that in Sokal and Lutsk a few executions had taken place.

Q Well, didn't they carry dates as to when these executions occurred? three minutes.

Q Did they carry dates as to the executions?

Q You had been in Lutsk, hadn't you? occurred in Lutsk?

Q Yes, and you weren't sufficiently interested to learn whether these executions had occurred during the time you were in Lutsk? right to read them. An officer took them away from me saying that this was no concern of mine. prisoners and witnesses?

A I beg your pardon. I did not quite get the question. of prisoners and witnesses?

Q Did von Radetzky ever question prisoners and witnesses? says that the Orderly Room joined the interrogation room and you had the possibility to observe that prisoners and witnesses were being brought in continuously.

A Yes, that was in Shitomir. In Shitomir the interrogation rooms were only separated from the orderly room by a hallway.

Q Did von Radetzky question witnesses and prisoners there?

A No, I know nothing about that. There were interrogating officers particularly for that.

Q Did von Radetzky ever question prisoners and witnesses?

Q You wrote reports for von Radetzky, didn't you?

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Q What did these reports consist of previously?

Q Was any reference made to the enemy at all? people and about the industrial and agricultural potential of that country.

Q Any reference made to the fact that Jews were being executed? Ukrainians or Russians.

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Q. So you tell us that his reports which you wrote up described agricultural conditions and the mental attitude of the people?

A. Yes.

Q. Did the reports mention too discussions of the fact that people were going to the theater, enjoying themselves in the theater?

A. I cannot give you any details about that any more.

Q. Were the theaters in operation during that time?

A. Yes.

Q. Did you have anything in the reports about the theaters?

A. Yes, I think it was mentioned some time that we took care of Ukrainian cultural matters that the theaters were open again for the indigenous population.

Q. Were you in Charkov?

A. Yes.

Q. Were you there at the time that the people were starving?

A. Yes, I know that during that time --

Q. Yes, and were the theatres operating while 300,000 people were starving?

A. Whether the theatres were open in Charkov for the indigenous people I do not know.

Q. You mean the theatres which were operated for the soldiers for the German Army only, is that what you have been talking about?

A. In Charkov now and then performances for the occupation troops were given, but they were limited most of the time I was in Charkov.

THE PRESIDENT: One moment -- red light.

A. (Continued) As far as I know during my time in Charkow the front was so near that we were always prepared for alarms and therefore very few performances were even given for the occupation forces.

Q. Well, generally, you were in a war zone, weren't you?

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A. Yes.

Q. You don't want to tell us that theatres were operating for the civilian population in this war zone?

A. This concerns only the time in Shitomir in 1941 and the theatres had already been opened for the civilian population.

THE PRESIDENT: Proceed Dr. Ratz. Well, let's have our recess now.

( A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Proceed, Dr. Ratz. BY DR. RATZ:

Q. Witness, I shall come back once more to the remark in your affidavit that in Rowno you saw a package of 20 files and records about interrogations from which you gathered that in Luck and Sokal people were executed. You said that you had just glanced at the reports. Could you, when looking at them superficially, determine whether the reports and records were made out by Radetsky?

A. No, I could not see the signatures at that moment.

Q. Could you see from the handwriting or anything else that Radetsky had participated in making out these reports?

A. No I could not. They had been typed and only because I got to see them accidentally I just glanced at them and I saw from their contents that executions had taken place.

Q. I now come back to Luck in point of time. BY THE PRESIDENT:

Q. Witness, you say that you glanced at these reports very casually and you couldn't even tell the dates of the executions. How can you tell whether Radetsky had made the reports or not?

A. I said that I could not decipher whether Radetsky had handled these matters or not.

Q. Very well, I misunderstood you. BY DR. RATZ:

Q. You said that in Luck the Main Kommando arrived and that you had continued with the job of seizing documents. How long did you take and did you proceed afterwards?

A. The work on the documents took until the Kommando was ordered to move on to Rowno.

Q. Then a new Advance Kommando was formed and sent to Rowno?

A. Yes.

Q. Was Radetsky in this new Advance Kommando?

A. I can no longer say that today but it is possible.

Q. But you yourself were with this Advance Kommando?

A. Yes.

Q. And what did this Advance Kommando do in Rowno?

A. This Advance Kommando in Rowno had the same job as the one in Luck, namely, to set up quarters and to safeguard documents.

Q. What else happened in Rowno?

A. After several days after the Main Kommando had arrived, or a short time before it arrived in Rowno, another Advance Kommando was sent to Shitomir.

Q. Was Radetsky with the Advance Kommando to Shitomir?

A. I cannot say exactly because I was not with this Kommando.

Q. Where were you?

A. I continued to stay in Rowno until the Main Kommando proceeded to Shitomir.

Q. When you arrived in Shitomir with the Main Kommando did you then see Radetsky?

A. Yes, I did.

Q. And what did Radetsky do in Shitomir?

A. In my opinion the main task of Radetsky in Shitomir was to make out reports about agriculture and to make out cultural reports.

Q. Did you yourself participate in making out these reports?

A. Yes.

Q. In what form?

A. Herr von Radetsky often in the late afternoons and in the evening dictated these reports to me and I typed them up.

Q. Do you know what Radetsky did in the mornings and in the afternoons?

A. Yes, to the occasional question where Herr Radetsky got the material for these extensive reports he answered me that he got these through discussions with indigenous authorities.

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Q. Did the writing of the reports in Shitomir take up the full time of Radetsky or didn't it?

A. In my opinion it could have taken up all of Radetsky's time because these reports were very extensive so that I suppose that the getting of the material for them took up a lot of time.

Q. How long did this activity in Shitomir last?

A. My activity for Herr von Radetsky lasted for about three weeks in Shitomir.

Q. And what happened after those three weeks?

A. After those three weeks I lost track of Herr von Radetsky.

Q. Do you know where he went?

A. As I have already mentioned I heard that Herr von Radetsky became liaison officer to the Army Headquarters.

Q. When did that happen according to your recollection?

A. That must have been at the end of July or the beginning of August 1941.

Q. Witness, according to the documents submitted by the Prosecution executions also took place in Shitomir, executions of Jews, saboteurs, and political functionaries. Do you know whether Radetsky had participated in such executions in Shitomir?

A. I know nothing about it.

Q. Since you collaborated closely together with Radetsky in Shitomir wouldn't you have had to know if Radetsky had participated in this?

A. In my opinion in these three weeks during which I wrote reports for Herr von Radetsky I would have had to notice, or perhaps, Herr von Radetsky would have said something about the fact that he had participated in such matters.

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Q. Did you see Herr von Radetsky later on?

A. After I lost track of Herr von Radetsky in Shitomir I only saw him once more, that was in March 1942 in Charkow.

Q. What did Herr von Radetsky do at that time?

A. I don't know. For some reason Herr von Radetsky came into the orderly room and said "hello" to me and asked me if I was still with the Kommando.

Q. You were then in the orderly room?

A. Yes.

Q. Would it have had to come to your knowledge and did it come to your knowledge if Herr von Radetsky had been active as the commander of Teilkommando or deputy of Blobel?

A. May I ask at what time?

Q. This is the entire period during which you were active in the orderly room of Special Kommando 4a.

A. As I have already mentioned during the entire activity with Special Kommando 4a no deputy for the commander was ever introduced, at least not in my presence. BY THE PRESIDENT:

Q. Dr. Ratz, you have asked him whether he could have known whether von Radetsky had ever deputized for the commander, the commanding officer, and he answers that he knows there was no deputy. He told us that for a period of a year or so he did not see von Radetsky. How does he know what von Radetsky was doing when he wasn't within his sight?

DR. RATZ: Your Honor, I asked this question because Radetsky was still a member of Special Kommando 4a and even if Radesky was not present at that place he still belonged to Special Kommando 4a so that the men in the orderly room would have to know where the officer von Radetsky is, or what he was doing.

BY THE PRESIDENT:

Q. What was your business in the orderly room, witness?

A. In Charkow I handled the mail.

Q. Well, you told us about Charkow. Generally what was your job in the orderly room? What did you do?

A. I took care of the letters, registered incoming mail and took care of the mail.

Q. That was the extent of your activities.

A. Yes.

Q. Who was the commanding officer?

A. The Kommando leader of the Main Kommando was Blobel.

Q. Did you have daily conferences with Blobel?

A. No.

Q. Did he tell you what he was going to do and what he had done?

A. No.

Q. Did you know of the executions which were being performed by the Kommando?

A. No, outside of those already mentioned of which I got knowledge through the records which - found in Rowno by accident.

Q. So it was only by this sheer accident that you learned about two executions?

A. Yes.

Q. You know that there were many other executions, don't you?

A. Of mass executions I heard nothing during my activity.

Q. But you can assume that this Kommando performed many other executions can't you?

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A. That there were many I cannot suppose but I assume that just as in Sokal and Luck there were executions in other parts, too.

Q. But you did not have direct knowledge of them yourself?

A. No.

Q. Well, then how do you presume to tell the Tribunal whether von Radetsky had charge of any sub-Kommando out in the field? You didn't see him? You had no control over reports which he rendered. You had no immediate familiar contact with the Kommando leader. How do you now presume to tell the Tribunal that you know that von Radetsky at no time was the leader of a sub-Kommando? How do you support that statement?

A. I have stated that Captain von Radetsky in as far as I know was never a commanding officer of a Teilkommando and I would like to support this by saying that I heard that from August 1941 on he was liaison officer to the Army Headquarters.

Q. Well, you don't know of your own knowledge whether he ever commanded a Teilkommando.

A. No, I do not know.

Q. All right, proceed, Dr. Ratz.

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BY DR. RATZ:

Q. Witness, you said in the beginning that you were a member of the Nazi Party and not a member of the SS either. Did you have the impression as far as Herr von Radetsky is concerned that he was an active or a fanatic National Socialist.

A. No, I did not have that impression. BY THE PRESIDENT:

Q. Did you think that Blobel was fanatic National Socialist?

A. I cannot say anything about it because I never talked privately with Herr Blobel.

Q. Well, you were with Blobel every day. You saw him regularly. You can't tell us about Blobel but you can tell us about von Radetsky whom you only saw a short time, is that right?

A. I saw Blobel very rarely.

Q. Well he was the commanding officer, wasn't he?

A. Yes, but Blobel was rarely in the orderly room.

Q. Where was he when he wasn't in the orderly room?

A. Possibly in his private room.

Q. Well, how far away was his private room?

A. It was in the same building but I never had anything to do with Herr Blobel.

Q. Well, you saw him going in and out, didn't you?

A. I saw him occasionally when he left by car bur why he left I don't know.

Q. And you took mail in to him, didn't you?

A. No, mostly it was an officer or another man in the orderly room that did that. The one who gave him documents to sign.

Q. You want to tell us that you didn't know your own commanding officer?

A. I could not say that I knew Herr Blobel all right but since I had no personal contact with him.

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Q. How long were you with him?

A. From June until March 1942 I was with this Kommando including the time I was sick and on recuperation leave.

Q. So you were with him 9 or 10 months?

A. About 6 or 7 months.

Q. How long were you with von Radetsky?

A. Only up to the time we were in Shitomir.

Q. How long?

A. That is about one to two months.

Q. So now you can tell us that von Radetsky was not a fanatic National Socialist but you cannot tell us whether Blobel was or not?

A. I had occasion to talk to Herr von Radetsky while he was dictating reports to me and to exchange some personal observations with him.

Q. Didn't you ever see any of the reports which Blobel made up?

A. No.

Q. Was there no discussion in the orderly room as to what Blobel was doing?

A. No. I know nothing about it.

Q. You know that your Kommando killed 39,000 in the space of a very few months.

A. I only found out after the capitulation that such mass killings took place in the East.

Q. You were right in the midst of all this carnage but you know nothing about it?

A. No. I know nothing of mass executions during all this time while working in SK 4a.

Q. Proceed Dr. Ratz. BY DR. RATZ:

Q. One concluding question. Did Herr von Radetsky ever talk to you about executions?

A. No, Herr von Radetsky never spoke to me about executions because the contents of the reports which he dictated to me were entirely different.

Q. And one final question. Do you know anything about it whether Radetsky ever participated in any form in any executions?

A. Personally I know nothing about it but only during the time which I have mentioned, namely July and August, was I with von Radetsky and I only saw him once more in March and I assume that in his capacity as liaison officer to the Army Headquarters he probably could not have had anything to do with such matters.

Q. That's all. I have no further questions.

THE PRESIDENT: Very well, Mr. Hochwald. BY MR HOCHWALD:

Q. May it please the Tribunal. Witness is it true that you signed and swore to an affidavit dated on 21 August 1947?

A. Yes.

Q. Did you say the truth in this affidavit?

A. Yes.

Q. Is it further true that you signed another affidavit, dated 10 October 1947?

A. Yes.

Q. Did you say the truth in this affidavit?

A. Yes.

Q. So you said the truth in both affidavits, is it so?

A. Yes.

Q. From your first affidavit -

DR. RATZ: Your Honor, the second affidavit is contained in my Document Book but I have not yet submitted it. I think there is no cause to question the witness about that affidavit.

DR. HOCHWALD: If the Tribunal please, the affidavit is in the possession of the Prosecution, in complete correct form. We have received the translated document book, the affidavit is before the Tribunal. I do think I should be permitted to ask him any questions resulting from this affidavit.

THE PRESIDENT: Dr. Ratz, you may not be familiar with this rule of law but in cross examination you may impeach the witness in any way, that is entirely relevant and certainly an affidavit made up by a witness is good evidence to use against him in cross examination. You may proceed, Mr. Hochwald.
BY MR. HOCHWALD:

Q. You stated in this affidavit of 21 August -- I am referring, Your Honors, to Document Book III-C, document NO-4765, page 30, No-4765, it is Prosecution Exhibit 137 -- that you worked with the Gestapo, is that correct?

A. Yes. I had been called into the Gestapo.

Q. You were in Hungary with the group Eichmann, is that correct?

A. Yes.

Q. Will you tell the Tribunal what the task of the group Eichmann was?

A. As I heard in Hungary the group Eichmann carried out negotiations with the Government authorities in Hungary and it resulted in the Jewish population there being evacuated by the Hungarian Field Police.

Q. You know that the group Eichmann was this group which was assigned the task to kill the Jews?

A. No. I didn't know at that time.

Q. You didn't know that?

A. No.

Q. You wrote articles for the defendant Radetsky, cultural reports and reports on economy, is that correct?

A. Yes.

Q. Did you ever speak to him about executions?

A. No.

Q. What did he have to do with executions?

A. I know nothing about it.

Q. Why would you then have been of the opinion that he did Know about executions if he never spoke to you, if he had never anything to do with it? Why did you, witness?

A. May I ask that the question be repeated please?

Q. Are you of the opinion that Radetsky is informed and was informed about executions in detail?

A. That he was informed about executions?

Q. In detail.

A. That is possible but I heard nothing about it.

Q. Are you and were you of the opinion that he was? That's my question.

A. As an officer the possibility existed that he heard about such matters.

Q. This is not my question. My question is very clear whether you are or were of the opinion that Radetsky was informed about executions in detail. Were you of the opinion, are you of the opinion, or are you not of the opinion?

A. I never thought about it.

Q. Were you interrogated about this question here in Nurnberg?

A. Whether Herr von Radetsky -

Q. No, about the question of executions?

A. Yes.

Q. Is it true that you said you do not know a thing about it?

A. Yes, that is correct. I merely mentioned that I knew about executions in Sokal and Luck.

Q. Is it further true that you were asked who would know about it? Were you asked that?

A. It is possible that they asked me that question.

Q. Whom did you mention who would know about these executions?

A. I mentioned that at least the commander had to know about it.

Q. Whom did you mention? You mentioned one name if you had know that a few weeks ago you must know it today, Tell us the name which you mentioned of the person who did know about executions.

A. As the only person who had to know about executions I named the Commander Blobel.

Q. Nobody else? Nobody else, witness?

A. It is possible that I mentioned the officer Karlsen.

Q. I will read to you what you have said: "Q. (I am sorry I have to read in German) How many people were exeucted.

"A. (your answer) I cannot give you the number."

"Q. Who can testify about these matters?"

"A. In my opinion the officers.

"Q. Who were the officers.

"A. Radetsky."

'Neither Blobel, neither Karlsen, but Radetsky. That is what you said, Witness,

A. It is possible that I said that at the time.

Q. All right. You have told me on very explicit questioning just three minutes ago the absolute contrary.

A. I said --

Q. I told you what you have said. Nothing else. Can you tell the Tribunal whether you are or were of the opinion that it would have been impossible that Radetsky would have carried out executions? Did I understand your testimony correctly to that effect?

A. I don't quite understand.

Q. Did you say in direct examination that according to your opinion Radetsky certainly could not have carried out executions?

A. Yes, I said that.

Q. Why?

A. Because in my opinion Herr von Radetsky was fully occupied in Luck making out his reports and later in Shitomir with writing reports.

Q. Were you interrogated about this question too, here in Nurnberg?

A. It is possible.

Q. Do you remember what your opinion then was?

A. It is possible that I then said that as an officer he could have had the opportunity to hear about such matters and I cannot remember anything further.

Q. You have not answered my question. The question was whether you were interrogated here in Nurnberg about your knowledge whether Radetsky carried out - not knew about - carried out executions? Were you interrogated about that?

A. That is possible.

Q Do you remember what reply you gave to the interrogator?

Q You did not say, "No", you only said, "I do not know, I was never outside, outside of my office." That is what you said, but you did not say with one word that it was, according to your opinion, impossible that he would have carried out executions. Let's go now to your second affidavit which allegedly is true.

THE PRESIDENT: Well, why not ask him whether that is a fact, that he did put it only in the realm of lack of knowledge and not a positive negative?

MR. HORLICK-HOCHWALD: Thank you very much, your Honor.

Q (By Mr. Horlick-Hochwald) Will you answer the question?

A I didn't quite get that question.

THE PRESIDENT: Witness, Mr. Hochwald asked you if in your interrogation you had been questioned as to whether von Radetzky had superintended or in any way taken care of any executions, and your reply in effect was here that your answer could only have been no. So far you understand what we are talking about, don't you?

THE WITNESS: Yes.

THE PRESIDENT: All right. Now, Mr. Hochwald now read to you from the interrogation which seems to say that you were put that same question and your reply was, "I don't know". "I don't know," of course, includes a positive, as well as a negative answer. Now, which is it, that you don't know whether he ever performed an execution or that he did not perform an execution?

THE WITNESS: I do not know. May I ask for a clarification?

THE PRESIDENT: All right. Now then, you say you do not know. When Mr. Hochwald asked you that very question, you said your answer could only have been no, namely that he did not perform any execution. How do you reconcile those two statements?

THE WITNESS: May I say something about this?

THE PRESIDENT: All right.

THE WITNESS: I am a baker, and have never anything to do with legal matters so that I cannot make a legal distinction between the answer, "I don't know" and "No".

MR. HORLICK-HOCHWALD: If the Tribunal takes this statement to be correct, any form of cross-examination seems to be impossible. I do think the witness himself has just admitted that he does not know the worth of an oath.

THE PRESIDENT: Well, Witness, I wouldn't understand why a baker wouldn't know the difference between "No" and "I don't know". What is there about baking bread that so confuses the brain that one can't tell between no and ignorance? The staff of life apparently does not help a baker very much.

THE WITNESS: I can only maintain my testimony, that I said at least during that interrogation I was not legally fit to handle such quibbling.

THE PRESIDENT: Such quibbling? Please read the interrogation, that question and answer.

MR. HORLICK-HOCHWALD: Yes, I shall do so.

THE PRESIDENT: For a baker you are getting into some pretty technical language here.

MR. HORLICK-HOCHWALD: I beg the Tribunal's pardon. I just can't find it at the moment, but I will have it in a minute. The question was, and I have to quote in German again, your Honor, "How many executions do you think Radetzky carried out?" The answer was, "I do not know. I never was outside." I do think there is no comment necessary, that between the explanation the witness gave today and the witness gave during the interrogation there is a colossal difference.

THE PRESIDENT: Well, give him an opportunity to explain that answer. BY THE PRESIDENT:

tion and answer. You were asked, "How many executions". It wasn't even, "Did he perform an execution," but "How many," and your answer was, "I don't know". Your answer wasn't, "I don't think he ever committed an execution", it is, "I don't know because I was never outside." You went pretty far there in implicating your comrade, didn't you? "I don't know", I didn't become aware of. I cannot really know it because I was not with Herr von Radetzky in such a manner so that after the difference between the "I don't know" and "No" have been explained, I can only say, "I don't know."

Q Well, witness, your difficulty is this. If you don't know what took place that should be your answer all the time, "I don't know", but you have voluntarily set out to tell what von Radetzky was doing when you didn't even see him. You were saying he couldn't have been in charge of a Teilkommando because in the orderly room you would have found out. Now, if you would have found out whether he was in charge of a Teilkommando or not, it is not unlikely to conclude that you could have found out whether he performed an execution. Isn't that logical?

A I said in my affidavit of October, I always said, "as far as I know" that whenever I claimed anything, that if I said Radetzky did not command a Teilkommando, at least I don't know that he did, I always added that, I think.

Q That is the whole point. If you don't know, that ends it. There is no attempt here to try to confuse you, but if you make a statement of knowledge, then you must support that statement as to how you know, and if you make the statement that von Radetzky could not have been in charge of a Teilkommando because you were in the orderly room, then you have to establish that statement, you see.

A Yes. During the time I wrote reports for Herr von Radetzky in Shitomir, Herr von Radetzky was also in Shitomir, and during this period -

THE PRESIDENT: Witness, don't let's lose a lot of time on this.

We are referring to the time that von Radetzky was not with you. Dr. Ratz asked you if when he was away from you he could have commanded a Teilkommando, and you said, no, because being in the orderly room you would have learned about this. That is what precipitated this whole discussion.

Proceed, Mr. Hochwald. Do you have something to say, Witness?

THE WITNESS: I wanted to say that I can only testify for the period that I was with the kommando, that is until March, 1942. During this time from August, or July and August, that is during the time when I lost track of Radetzky, I heard that he had become a liaison officer with Army headquarters, and as far as I always heard again later he was still that in March, 1942.

Q (By the President) Witness, let's sum it all up. From June, 1941, to March, 1942, do you know whether von Radetzky conducted any executions? was ever in charge of a Teilkommando?

A From June, 1941, until March 1942?

Q Yes. Do you know whether during that period he was ever in charge of a Teilkommando?

THE PRESIDENT: You see, if you had said that at the beginning, that would have ended all the inquiry.

CROSS EXAMINATION (Continued) BY MR. HORLICK-HOCHWALD : could not have been a leader of a Teilkommando and he could not have carried out executions, that you had the knowledge that these answers were to be - these questions were to be answered in the negative? Is it not true that you are telling the Tribunal now something completely different than that what you have said in direct examination Court No. II, Case No. IX.

twenty-five minutes ago? Your Honors, I am quoting from Radetzky Document Book No. I, Radetzky Document No. 7, which is an affidavit of the witness, from Page 29.

THE PRESIDENT: In his book?

MR. HORLICK-HOCHWALD : In the defendant's book,

THE PRESIDENT: Very well, I see.

MR. HORLICK-HOCHWALD : This document is not, an exhibit before the Tribunal.

THE PRESIDENT: I understand.

Q (By Mr. Horlick-Hochwald) I quote: "As to the question who was Fuehrer of this Vorkommando", - and that is the Vorkommando in Luck "I would like to state today after many and thorough deliberations, today, I am of the opinion that von Radetzky was not and could not have been the Fuehrer of this kommando since he was not a member of the Security Police, and, thus, was not familiar with Security Police tasks, whereas the other Fuehrers were police experts." Did you say that? "I remember that one evening a conference was held during our stay in Luck, in the course of which

Waldemar von Radetzky, a senior leader, gave orders to the assembled subleaders to seize documents and other important material from certain buildings. At that time I had the impression that Radetzky was the head of the Vorkommando, although he had never been pointed out to me as such."

A May I say something about this?

Q I want to ask you and then you can explain. Is it true that at that time, which means at a time when you were in Luck, you were of the opinion that Radetzky was the leader of the kommando? A I would like to make a statement about this.

were of the opinion that Radetzky was the leader of the Vorkommando? Answer this question, please, with yes or no. Then you can explain.

Q Will you please answer first with yes or no, and explain then?

Q Just say yes or not, whether you did. The question is, I ask you now the question for the third time, is it true that you then at that time, when you were in Luck, were of the opinion that Radetzky was the leader of the kommando?

to change this opinion between August and October 1947, six years after the happenings had taken place? that was in 1941. At the time in Schmiedeberg before the commando moved out, we had training.

Q May I interrupt you, witness. Is it not true that when you gave your affidavit in August 1947 your military knowledge was as great as on the 10th of October 1947? The question was, why did you change your testimony between August and October, Nor, what did you learn about Radetzky from 1941 to August 1947? The very clear question is, why did you change this testimony between the 10th of August and the 10th of October?

DR. RATZ: In order to make a correction, I would like to remark that the witness has not changed his testimony from August until October, for in August he said that at that time, six years ago-he had the impression.

MR. HOCHWAID: Please. That is certainly not possible that defense counsel explains what the witness is supposed to answer. This is cross examination, and it is obvious that the witness made two completely different statements. I do think that I am within my rights to question him rather rigorously on this part.

PRESIDENT: Proceed.

WITNESS: Before Dr. Ratz said anything, I wanted to say something about it. In my affidavit of August, I said that at that time I had the impression, and I didn't say that in August 1947, I had the impression that Radetzky was leader of the commando. BY MR. HOCHWAID:

Q Just a minute. That is an explanation. Were you during your examination here in Nuernberg of the opinion that Radetzky was the leader of the commando in 1947?

A No. I said in my interrogation that Herr von Radetzky.

Q I will read you question Number 16. You have said in your interrogation that he was not the commander, did you want to say that?

A In what interrogation? leader of the Einsatzkommando or of the Vorkommando or the subcommando? Radetzky was the commanding officer of-the advance commando.

Q All right. Let me ask you further what made you change your opinion between the time when you made this declaration and the time that you gave your affidavit on the 10th of August, which deliberation made you change this statement? What did you learn which informed you more about the facts between this interrogation and your affidavitwho told you to change your statement? my second interrogation here in Nuernberg --you, I can stay and hear you two days-you will answer my question. If you perjure yourself 150 times, I have no objections against that.

PRESIDENT: Now, put the question very specifically. BY MR. HOCHWAID: tween the interrogation in Nuernberg and the 10th of October when you made this affidavit-which deliberation made you change your statement?

A I did not change my testimony. I merely said in my second affidavit of October that afterwards, that is, after my affidavit of August, I seriously thought about the matter, whether Herr Von Radetzky could have been in the position, technically speaking, of being able to be commanding officer of this advance commando. asked who was the leader of this advance commando or subcommando, you did not know and it was suggested to you that it might have been

Radetzky, that is what you stated and, therefore, the name came into the affidavit. made out... specifically about the interrogation, as you have said here in direct examination that it was suggested to you in the interrogation you did not know the name and then the name was suggested to you, and so you said, "Yes". I want to find out what is the truth in this case. I speak about the interrogation. When you were interrogated, did you remember the name of the man who was in charge of the advance commando or subcommando? Nuernberg I said that Herr Von Radetzky could have been it, or that he was it--I don't remember exactly, but that in the next interrogation I corrected myself, and said that it was not Herr von Radetzky.

Q What did you say in the first interrogation?

Q Are you sure about that? I said I did not know who was the commanding officer of the advance commando. rogation of yours the fact that Radetzky was in charge in Luck or did you volunteer this statement, the statement which you consider now to be incorrect?

A Is this my affidavit of 21 August?

Q Now we are speaking all the time about your interrogation? Tribunal that the name of Radetzky having been in charge of the advance commando in Luck was suggested to you by the interrogator and that you

just could not remember, and after the suggestion, you gave way and so the name came into the affidavit. Now, I ask you, did you volunteer this statement that Radetzky was in charge in Luck when you were questioned about his activities? Radetzky was in charge in Luck, or did you when asked about his activities volunteer the statement that he was in charge in Luck? wouldn't have hit upon this Subject. put to you, how often did Radetzky command the commando? What did you say to that?

A What commando are you speaking about? did Radetzky command the commando--Einsatzkommando or Sonderkommando 4A.

A You mean the entire commando?

PRESIDENT: Mr. Hochwald, ask him if he remembers the question; if he remembers the question, then ask him if he remembers the answer, and then have him give the answer. BY MR. HOCHWALD :

Q I am asking, do you remember that these questions were put to you? similar question? that it was suggested to you by the interrogator that Radetzky was in charge in Luck if you cannot remember, as you have just told the Tribunal. You have given a very explicit statement here that you have said when asked whether Radetzky was in charge in Luck that you

answered, "I do not know", and that it was then suggested that he must have been, and that you agreed on that afterwards. Is that right that you made this statement?

PRESIDENT: You do put multiple questions, Mr. Hochwald.

MR. HOCHWALD: I am sorry.

THE WITNESS: I really don't know any more what you are speaking about. BY MR. HOCHWALD: questioned about the fact whether Radetzky was in charge of the Vorkommando in Luck, told the interrogator that you do not know, is that correct?

A This is the interrogation you mean in August?

A Yes. In the first interrogation I said, "I do not know", In the second interrogation I said, it is possible, or that he was it, and then I asked to discuss the matter again, and I wanted to correct that point. allegedly said you do not know?

Q Is it possible that it was on the 15th? time or only the first time? It was on the 15th, and I want to read to you the question which was put to you. I will again quote in German:

"Q How often did Radetzky command the commando?

A In Luck for a few days he commanded the commando." Are you still maintaining, did you say that? rected myself.

Q I can read you from another interrogation on the 18th. I have more than that:

" Q Who gave you your assignments?

AAs far as I know, Radetzky. At that time he had the command." Did you say that? blasting unit.

Q I have read your interrogations with great interest. You have testified to this to the safe-breaking or safe-blasting unit, but you have never mentioned the name of Radetzky, which appears quite

often in the other parts of your interrogation, together with the safe-blasting unit. Is it true what you said in your affidavit of 21 August that Radetzky selected among the Ukrainians interpreters who were to work with 4A? he not? Another question:

"Q Who was your commanding Officer at that time?

A I think Radetzky--I cannot say it exactly any more." Do you remember in which connection you made this statement?

A No, I can no longer say. I merely knew that Von Radetzky gave me my direct orders in Luck. answer when you were questioned, about the fact whether Radetzky was in charge in Rowno?

A Whether Radetzky commanded the commando of Rowno?

Q I want to read to you the thing again if you want me to:

"Q Did the entire commando move on to Rowno?

A No. Only the advance commando.

Q Who was your commanding officer at that time?

A I think Radetzky. I can no longer say exactly." The question was about Rowno, not about Luck, was it? Now, I want just to ask you what you did say about the fact whether Radetzky was deputy for Blobel or not. Do you remember what you said in interrogations about it? cannot testify about the deputy of the commanding officer because no deputy was ever introduced to us.

Radetzky?

MR. HOCHWALD: Your Honors, I have no further questions, but the prosecution respectfully moves that the witness may be cited by the Tribunal for contempt of court.

PRESIDENT: On what grounds?

MR. HOCHWALD: Perjury, Your Honor.

DR. RATZ: Your Honors, I have nothing to say to that. I shall leave the decision up to the Tribunal.

PRESIDENT: The prosecution has made the request that the witness be cited for contempt on the grounds of perjury, and there is no doubt that the prosecution can draw the conclusion that the witness has committed perjury, that is, the prosecution may from what has been advanced, taking its side of the case, conclude that the witness at one time made a certain statement under oath and then later made a statement contrary to that also under oath, but it may be advanced on the other side that while it is true, the witness may have made contradictory statements, yet the witness has explained that he was only giving his opinion. It does appear to the Tribunal that the witness has at least been a little careless in his answers to questions put to him on various occasions, but we are not ready to go so far as to say that with these statements which he made there went the malice which would necessarily be requisite upon which to found a charge of contempt for perjury, but aside from whether perjury has or has not been committed, the Tribunal believes that the effects might be more injurious than solubrious. The Tribunal would not want any defense counsel to feel that there is any danger or hazard to be confronted in calling any witness to testify, and even if this witness may have gone amiss, and we do not pass upon that right now, we are definitely of the belief that it would be a very bad precedent to establish, a very bad example to have, which might cause defense counsel to believe that they should proceed so cautiously as sometimes not to call a witness for fear that Court No. II, Case No. IX.

perjury procedure might follow and in that way perhaps deprive themselves of a witness who might well be helpful to their cause. We regret very much on the side of the witness that he did conduct himself in the way he did because it is quite clear that he was careless, but we will not go so far as to say that he committed perjury insofar as the Tribunal is able to determine it here. So under those circumstances, Mr. Hochwald, your recommendation will not be accepted, but we do not in any way criticize you for having presented it.

MR. HOCHWALD: Thank you very much.

PRESIDENT: Yes. Did you have any further questions, Dr. Ratz? The witness will be excused. Oh, did any other counsel desire to put any questions to the witness, because if you do, we would like to have you do it this afternoon so the witness will not have to come back tomorrow.

DR. RATZ: I only would like to clarify one point, Your Honor. On the basis of this ruling on the part of the Tribunal, I may assume that the witness can return to his homeland, to Goslar, without any hindrance, and that it would not be permitted to arrest him or to detain him or to do anything against him to prevent his return trip home?

PRESIDENT: Without any hindrance whatever, the witness may leave and go about his affairs freely as he did before he came into this courtroom, of course, referring insofar as it pertains to anything which happened here in this courtroom.

DR. RATZ: Yes, Sir. Thank you.

PRESIDENT: The Tribunal will now be in recess until tomorrow morning at 9:30 o'clock.

(The Tribunal adjourned until 0930 hours, 18 December 1947.)

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

THE PRESIDENT: The defendant, Ruehl, will be taken to the witness box.

JUDGE SPEIGHT: Witness, raise your right hand, repeat the oath after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated.

DR. LINCK: Attorney Linck for the defendant, Ruehl. May I begin my direct examination of the witness, please?

THE PRESIDENT: Please do, Dr. Linck. BY DR. LINCK: you about your person, about your vocational and political development. Please give your full name, your birth date, and where you were born.

A My name is Felix Ruehl. I was born on the 12th of August 1910 in Neheim, Westphalia.

Q Are you married?

Q Do you have any children?

Q Did you have, or do you have any brothers or sisters?

A I had one brother. He was a businessman. He was killed in the war against Russia. He was a lieutenant.

of your father?

A My father is a retired customs official. He belonged to the German People's Party.

Q Where did you grow up, Mr. Ruehl, what schools did you attend?

A I grew up in Lockenwalde. I attended the high school there.

Q Where is Lockenwalde?

Q What was your professional training? apprentice for three years in a metal factory. I remained with this firm after I completed my apprenticeship. I remained with them another half year as an assistant. Then I gave up this position in order to go to England to get some further professional training. There I was from October 1929 until May 1930, but because of financial difficulties I had to return. Because of the economic stress prevalent in Germany, at that time, it was impossible for me to find another job in my own profession in Germany, but since I did not want to burden my parents, I accepted a job as an unskilled worker in a factory. After a few months I lost this position, too, since this concern had to close up also. Despite all efforts and eagerness to accept any type of work, I remained unemployed for the time being until in the spring of 1930 -- pardon me--1931, I received an auxiliory job with the district court in Luckenwalde. There I remained until I was taken into the Prussian secret police on the first of October 1933.

Q Will you please briefly describe your political development? stress and need came to an especially strong expression -- therefore, I early reached the conclusion that the solution of the social problem was one of the most pressing problems. Therefore, during my apprenticeship.

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already, that was in the year 1926, I joined the trade union of employees and I belonged to this union until it was dissolved in 1933, and I was active in its youth group. But soon I came to the conclusion that on the small front of a profession trade union alone the important youth work could not lead to any success. Therefore, in 1927 I also joined the "greater German youth group".

Q Was this a party political organization?

A No. The"greater German youth group" rejected any political affiliation. It was active generally as a part of the organized youth, and its aim was the moral and ethical education of the youth.

Q How long did you belong to this greater German youth group?

Q Were you in it in some active position?

A Yes. In the years 1931 and 1932 I directed the local youth group.

Q That was in 1931 and 1932? Party and the SA at the end of 1930, is that correct?

Q What led you to do this? party political activity, and I didn't especially interest myself in party politics. Only after I returned from England in the spring of 1930 and when I realized the extent of the economic strain and had to experience its consequences on my own person, I think I began to become interested in political parties. As I have already said, I already had considered socialism as one of the most pressing problems. I was confirmed in this opinion in my activity as an unskilled worker in the factory, and then as an unemployed and, therefore, I came to the conclusion that only socialism would offer a solution. As to the Marxist parties, apart from the ideology, I was against the idea of the class struggle because, in spite of the position I held then, I felt that I belonged to the bourgoisie because of my background.

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But in addition to that, there was another thing. In the party system of the Weimar Republic, I saw one of the chief causes of our catastrophic economic and political conditions, which in my opinion, led to the absolutely senseless number of over 30 political parties. Thus the political will of the German people was so split up that the formation of an efficient ogvernment became impossible. Here, in my opinion, was one of the most important impediments to relieving our distress which could only be overcome by joining forces with everybody. Thus I decided to join the Nazi Party which promised to remove these conditions by legal means. I joined the SA because the membership in a Nazi affiliation was a matter of course for party members of my age group.

Q What offices did you hold in the Party? one.

the SS--what was the reason for that? organization and since their attitude seemed impossible to us and, therefore, on the first of October 1932 I joined the SS which was just being formed in my hometown, and in view of their higher prerequisites and their stricter discipline, I expected more from them.

Q Did you do any active service in the SS, if so, how long?

A Yes. In the local SS group I did service. On the basis of my professional training, the administrative work was given to me. When I was taken into the Prussian secret state police on the first of October 1933 I left the active service of the SS. SS membership. First of all, I want to ask you something else. You spoke of being taken into the Prussian secret state police. How did that come about? on a certain evening since a commission from Berlin wished to see us. This commission then reviewed us -- inspected us -- and finally told us that they were looking for people for the security police. For the time being, I no longer heard anything about this matter, until in the last days of September my commander told me that an order had been received from Berlin that on the next day I was to report there at the secret police. Therefore, I went to Berlin according to order where there was no question of reporting any longer, but where they gave me a job right off the bat. That is how I got to join the Gestapo. your career there? as an employee. These in the department for salaries I had to take care of calculating the social contributions -- the welfare contribution. On the first of March 1934, I was transferred to Cologne, and I on my own request.

I was used in the department for espionage counter-intelligence. After two years of training I passed a special examination in March 36 in Berlin, became an assistant for criminal affairs and finally in April 1937 I became chief assistant for criminal affairs. As such, I continued to work in espionage counter-intelligence until in September 1937 I was called to take an examination for the criminal service. After I successfully passed this examination on the first of October 1937, I was assigned to a training course for candidates for police inspector which ended with an examination after nine months. After completion of this course and of this examination, on the 30th of June 1938 I was appointed a police inspector provisionally and finally after another test period, effective the 30th of January 1939 I was appointed a police inspector. I continued to remain active in the espionage counter-intelligence service in this position until on the first of September 1940 I was called in for another course of study. On this occasion I was also transferred to Office I and released from the service.

Q What do you mean "called to a course of study", how did that come about?

A Well, I didn't volunteer for it, on the contrary, I objected orally to my supervisor, but when this remained without succes, I again objected to the RSHA giving my reasons. Nevertheless, on the first of September 1940 I was called to this course of study, since the chief of the security police in a speech termed such applications as without any foundation, and he emphasized that it was the duty of everyone to go wherever he was sent.

Q I do not quite understand that. We are still studying. Are you of the opinion that it was inappropriate to study -- in any case, why did you want to refuse to matriculate in the university?

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A There were two reasons for that. First of all, on my own request I was active in espionage counter-intelligence since 1934, and I was very familiar with the work in this field, therefore, it was my wish to remain in this activity since I like it. Secondly, on the first day of the war and soon afterwards again I tried to get a release for the army. Both applications were rejected, and the reason for that was that the importance of my work was decisive. Only the belief that I could do a greater service to my people in performing this work made it bearable for me to take this rejection without any trouble, therefore, I was ashamed of the fact that now I was also taken out of this work and as a young, able-bodied man to be sent to a university, while at the same time heads of families were being sent to the front.

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Q. All right. You took up your studies.

A. Yes.

Q. How long did you stay?

A. Until August 1943. Then I passed my big legal examination and that finished that.

Q. Now we are in August 1943. Then your assignement in Russia, with which we shall concern ourselves in detail, was in the midst of your legal studies?

A. Yes.

Q. Now, I would like to conclude your professional c areer. What happened after you finished your studies in August 1943?

A. Before I finished my studies, I had tried to find employment in the Criminal police, but I could not get this because of official requirements as they told me. Instead, effective the 1st of September, 1943, I was sent to the Inspector of the Security Police and SD in Koenigsberg as a Government assessor. I held this position until the 30th of August, 1944.

Q. When you worked for this Inspector of the Criminal Police and SD in Koenigsberg, did you have any executive duties or powers?

A. No, even the Inspector himself did not have such power and certainly then I couldn't have them.

Q. Can you say with one sentence what your activity was during that period?

A. In order to summarize it in one sentence To aid the Inspector in the fields of police and administrative law and to cooperate with the authorities of the Interior Administration.

Q. Now we are on the 31st of August, 1944.

A. Yes.

Q. What happened then?

A. At that point I was transferred to Augsburg. The State Police Agency there, because of lack of personnel had been dissolved in the first years of the war and had been reorganized into a branch office

Augsburg agency as far as personnel was concerned and gradually to take over its former competencies.

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When this reorganization had been completed in February or March, 1945, the appointment of a commander took place -- to whom I was subordinated -- as Chief of Department IV.

Q. And after the capitulation?

A. After the capitulation, I went back to the headquarters of my office in Augsburg and there I reported to the CIC of Third Army.

Q. Now, let's come back to the Russian assignment. This has already been mentioned on the occasion of your studies. How did this come about? Did you volunteer?

A. No, I did not. In Hay 1941 approximately all the candidates of the Leading Service who were studying in Berlin were assembled in the Leaders School of the Gestapo in Berlin and the then Chief of Office I told us that our studies would have to be interrupted immediately, since we had to be available for other more urgent tasks. He did not tell us anything about the nature of the work. A few days later, the entire group of students was sent to Pretzch, where other forces of the Security Police and SD had already been assembled and forces of the Regular Police and SS also joined us.

Q. One moment. Another question. This group of students, was that the group of which Herr Schulz spoke on the witness stand?

A. Yes.

Q. And to which Mr. Fendler belonged?

A. Yes.

Q. And how long did you stay in Pretzch?

A. As far as I recall, that could have been about three weeks.

Q. What happened during those three weeks?

A. They were essentially taken up with military training and a number of innoculations. This looked like an officer assignment, but we couldn't find out anything about the objective. It was the general opinion that the long awaited campaign against England was at hand.

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About the beginning of June we were distributed in the forces already assembled and the Einsatzgruppen and Einsatzkommandos were set up. BY THE PRESIDENT:

Q. witness, before you go into that, just a question please: What did the military training consist of at Pretzch?

A. Practically speaking, it was a brief basic military training. The important thing was to give these men a sense of belonging together to make them feel as one unit. The military training was limited to drills, marching, terrain exercises, terrain intelligence and a short course in the firing of weapons.

Q. Were you given military training in tactics, military tactics?

A. No, within the officer group terrain intelligence was discussed, and map reading -- that is really the most important thing -- and, if I may add, what we call terrain exercises, terrain games.

Q. What did you do in this type of exercise?

A. A problem was given us. Two groups were formed and one would try to reconnoiter the other and would have to find it.

Q. How long were you in Pretzsch?

A. About three weeks.

Q. Had you had any military training before?

A. Yes.

Q. Had many of your comrades had any military training before?

A. The officers, almost all of them. The members of the police, almost all. The only exceptions were those on an emergency war status. In their case it varied.

Q. was the Defendant Fendler with you?

A. Only at the beginning. We were sent there together and afterwards we were distributed among various places and even in Pretzsch we were in different groups.

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Q. But you both received about the same kind of training during the time you were there?

A. In Pretzsch itself, basically yes.

THE PRESIDENT: All right. Proceed, Dr. Linck. BY DR. LINCK (Attorney for the defendant Ruehl):

Q. Thus, when these three weeks were over, there was a distribution and I think you wanted to say something else about it. To what group or to what kommando were you sent?

A. May I add that Einsatzgruppe D was then transferred to Dueben as their garrison. Here I was assigned to Special Kommando 10-B, whose commanding officer was Major Bersterer.

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Q. Now we are in Special Kommando 10B. Will you now tell the Tribunal about your mission as exactly as possible, the position which you had in that kommando?

A. No administrative officer had been assigned to this Kommando. Since during my time with the SS I was in charge of the administrative business of my unit and since I had also been active in the State administration, all administrative jobs were given to me. I took care of these jobs until I left the Einsatzgruppe. My first-job in Dueben was therefore to look after quarters and supplies, look after equipment and taking care of the administration and organization of the forces which had come from all parts of the Reich and all branches. This work, as well as the military training already mentioned, took up my entire time until the Einsatzgruppe left at the end of June.

Q. I want to go back once more for a moment. Did you in Dueben hear about the aims and objectives of your unit?

A. In Dueben there was nothing announced about the aim or objective of the assignment, until, when war broke out with the Soviet Union, when it became clear through some lectures about Russia that we were to be sent to Russia for an assignment. About the type of our mission the Chief of the Security Police and SD in a speech in front of the entire group assembled there shortly before we left told us briefly that difficult missions were ahead of us and that he demanded absolute obedience from us and absolute fullfillment of duty.

Q. Herr Ruehl, a discussion with Gruppenfuehrer Streckenbach has been frequently mentioned here. Did you participate in this conference or did you hear anything about it?

A. I neither participated in this conference nor did I hear that such a conference had taken place.

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Q. But you must have had some thoughts about your mission or you must have tried to find out something about it.

A. I considered it as a matter of course that as far as the assignment ahead of us was concerned we would have to do a job which resulted from the usual police activity, namely, the detection and combatting of all enemy forces, especially espionage, sabotage, Communist resistance movements, and so forth. That is how I understood the remark of Heydrich that difficult tasks lay ahead of us, that the carrying out of such missions in a war area would be so much more difficult. Since the commander who came later and who was completely unknown to me did not make any announcements on his part, I, therefore, say no reason to ask him.

Q. But when did you find out details about this mission?

A. Only later on, I think, in Chernovitz.

Q. Well, then, please continue your story. You left Dueben when, and where was your kommando committed at first?

A. On the 27th or 28th of June Group D left for its assignment in the southern sector and we were then told that our area would be the Caucasus. Within the Group the kommando moved via Iglau, Englaw, Arrat, Muelbach, until Chessburg in Rumania, where it arrived on the 3d of July and remained there for two days. There the kommando received, its first assignment and the order to move on to Chernovitz as their first garrison. After on the 4th of July an advance detachment had left Chessburg, the kommando followed on the 5th until Sochawa, where the kommando was divided up, while the commando himself with the major part of the kommando moved on on one next day, that is, the 6th or 7th of July, I received the order to take up quarters in Sochawa with the supply column.

BY THE PRESIDENT:

Q. What do you mean? I am afraid I am getting lost between Rodavia and Bessarabia. I don't know just where I am now. when die you arrive in Chernovitz?

A. Your Honor, the first parts of the Kommando, or I, or the commando, which do you mean?

Q. Well, first tell me at what point did the kommando divide.

A. One advance detachment already became independent at Chessburg and proceeded to Chernovitz on its own, with a few cars.

Q. I see, and of what group were you a member?

A. I belonged to the kommando.

Q. To the advance kommando?

A. No.

Q. The kommando itself?

A. To the kommando itself, to the bulk of the kommando.

Q. I see. and where did it go?

A. On the next day, the kommando went to Sochawa.

Q. And it arrived there when?

A. In the evening.

Q. What day?

A. On the 5th.

Q. I see, and then where did it go?

A. There the kommando was divided, that is, the commander himself with the bulk of the kommando moved on the next day, that is, the 6th of July, towards Chernovitz, whereas I with the supply column, that is, kitchen, ambulances, etc., remained in Sochawa. Persterer, the commanding officer, first had to clarify the situation in Chernovitz. We had no news about the situation there and I received the order to remain until I received, the order to move on.

Q. And then when die you receive the order to move on?

A. In Sochawa I remained about three to four days, that is to say, I left on the 9th or 10th in the morning and on the same evening I arrived in Chernovitz.

Q. I see, and there you joined up with Persterer?

A. Yes.

THE PRESIDENT: Very well, I see now. Thank you.

DR. LINCK: May I proceed?

THE PRESIDENT: Yes, yes. Please. BY DR. LINCK (Attorney for the Defendant Ruehl):

Q. I just want to ask you one more thing about this, Herr Ruehl. You are giving us exact dates, even the time of the day. Do you remember that exactly or do you have any facts written down about it?

A. I remember the march and the various garrisons very well. As for the exact dates, I would nit have been able to cite them, but, fortunately, the prosecution by submitting its reports helped me out here so that I mentioned I can cite with certainty.

Q. Thus you arrived at your first headquarters in Chernovitz. You came there a few days after the bulk of the kommando arrived, there and from the 9th or 10th of July on you were in Chernovitz?

A. Yes.

Q. What did you do in detail in Chernovitz? Did you have the same mission which you have already described on did any change take place? we are now on the assignment.

Q. During the entire assignment, my mission remained the same, namely taking care of the usual economic and administrative questions; among them are the directing of all personnel matters, the calculation of their monthly pay, the negotiations with German and Rumanian Army agencies for the purpose of allocation of food and PX goods, gasoline, maps, as well as the distribution of these items within the kommando.

THE PRESIDENT: Witness, was the pay of any member in the Einsatzoommando the same as would be paid to some one of an equivalent rank in the Army?

THE WITNESS: Yes, the same thing.

THE PRESIDENT: Very well. BY DR. LINCK:

Q Any other job? You were just listing the various duties? of personnel technical equipment, as well as the arranging of quarters for the technical personnel, that is to say, for interpreters, drivers, medics, guards, and kitchen personnel. In addition, and this was the case especially in Chernovitz, there were the repairs of the hotels which had been assigned to us by the Rumanian Army, which the Russians had left in a very poor condition, as well caring for Rumanian, Hungarian and German guests. see any other places around Chernovitz? I didn't leave Chernovitz with the exception, first of all, of one drive to Piatra Neamt, which was for the purpose of taking care of some economic and administrative matters, as well as calling the group physician. Secondly, when I participated in a one day military exercise in the vicinity of Chernovitz, which was for the purpose of military training.

Q Was one of your jobs also the matter of making reports? I mean by that, receiving of reports from the subcommandos, and writing of reports about the entire activity to the group? various experts were subordinated to the commanding officer personally, and got personal instructions from him; in the same manner they also reported to him personally. The making out of the reports about the entire activity of the commando was done by the commanding officer Court No. II, Case No. IX.

himself. sit down and write the reports with a pencil, and take them personally to the group. There must have been an orderly room, where reports must have been filed. Did you have an orderly room?

A In this sense there was no orderly room. May I add that the general keeping of the files about the administration and executive was not even customary in the centralized agencies at home. In addition, the commando during my membership in it was on the march, and this march was not of the type that the commando would move as one entity from one place to another, but that it was split up in various subcommandos or detachments which would take up quarters at various places independently of each other. The same thing is true for the various experts, who are designated by the Prosecution as staff officers. Thus, the subcommandos, and these research analysts kept their own files in order to have them right with them when they needed them. were a deputy of the commanding officer, or as it was phrased at one time, that you were the second in command of the commando. Will you please comment on that? nor was I ever active as such; nor did I ever have the function of socalled second in command. My functions were quite clearly delineated, and they were limited to jobs of my administrative officer, which I have already mentioned.

Q The Prosecution also claims that you were a captain. Were you as a captain, or senior officer, the highest ranking officer after the commanding officer, so that, therefore, you had special powers. the Prosecution, I was not a captain at that time, but a 1st Lieutenant, and as such I was neither the highest ranking officer, nor the senior officer after the commanding officer, and as such I would not have had Court No. II, Case No. IX.

any special power to command towards a higher ranking officer, or towards an officer of an equivalent rank in my commando.

DR. LINCK: May I make a remark about this, Your Honor. I want to point to these personnel files which the witness refers to. They are to be found in volume III-D, English page 90. This is Document 4808, Prosecution Exhibit No. 171. BY DR. LINCK: farther details about the mission of the Kommando in Chernovitz. Now we are in Chernovitz. What did you hear about that there? taining the security of the area, and that particular order of the Fuehrer pertaining to espionage, sabotage and Communist activity, looting, and other acts of violence would have to be stopped by all means, and that those who participated in it were to be shot. Special attention was to be given to Bolshevist functionaries, and to leading Jews, since they were bearers of Bolshevism, and, thus, ware considered to be the greatest source of danger for the security of the occupied territory. as they were, or did you think about them at all. Did you perhaps express such thoughts, Will you please tell us?

THE PRESIDENT: Doctor, let's have the date, please. Just when was this speech made by the commanding officer?

THE WITNESS: May I answer that?

THE PRESIDENT: Yes.

THE WITNESS: This is not a general announcement, Your Honor, because I came only later....

THE PRESIDENT: Well, just tell me when it was that the commanding officer of the commando told you what you have just related. Just give us the date?

THE WITNESS: I can not give you the exact date. It might have Court No. II, Case No. IX.

been 10 or 11 August.

THE PRESIDENT: All right. Of August?

THE WITNESS: Yes - no, pardon me, in July.

THE PRESIDENT: Very well. You can now answer the question which your counsel had put to you, if you will. BY DR. LINCK:

Q Another question, Herr Ruehl. Did I understand you correctly to say that this announcement of Persterer was made to you, not in the form of a general announcement to the commando, which might have taken place before?

A I don't know to what extent he informed the entire commando about this order. I doubt that he did. I assume, however, that he informed all the officers about it. orientation of your own person, because you arrived late. Will you then answer my question about your reaction as to this? of this order, I was still affected by it, because on the basis of my peaceful training, and activity, I had definite ideas about the job of the police, and I had definite ideas about how a criminal case was to be prosecuted and here I was confronted with an entirely new situation. I discussed this with Persterer. He said that these measures were not to be judged by the usual European standards. That the Bolshevists would not recognize any kind of International Law, and they would force us to such measures by their manner of conducting the war. Furthermore, we would soon have plenty of opportunity to convince ourselves of this. Moreover, the Army had similar orders about the Bolshevist commissars.

Q Herr Ruehl, I want this quite clear now. According to your testimony her, if I understand you correctly, this order of Persterer's only told you that certain acts are to be investigated and to be severely punished. That nevertheless certain acts would have to have Court No. II, Case No. IX.

been committed. I would like to know whether he discussed anything about people being killed for their membership in a race, something for which they could not be held responsible. In other words, that he said a Jew should be executed merely because he was a Jew, or a Gypsy merely because he was a Gypsy? nor did he later tell me anything about it during any time.

Q But how do you explain that? sterer was expressly forbidden to carry out the Fuehrer's Order to its full extent in the Rumanian sovereign territory. Therefore, in my opinion that was no cause for him to announce such an order to us, as it was not valid for this area.

Q But you finally left Rumania, didn't you?

Q What happened then? Why didn't he then tell you about it? to withhold these measures in the interest of reconstructing of the economy. May I repeat? He evidently made use of the possibility to relegate these measures in the interest of reconstructing of economy in the administration. That this possibility existed until the visit of Reichsfuehrer SS Nikolajew in September, or the beginning of October, and that this possibility was made use of to a large extent was confirmed by Ohlendorf and Nosske, The way I can see these things today, there was in addition the fact that so far as the commanding officers are concerned, that first Mogilew was very badly destroyed, and, therefore, there was a great need for additional manpower, for building up operations, reconstructing operations; secondly, that for a time after this the commando was committed in the rural areas, in which the commando X-A had been active before. This is true of the Ananjew, as well as for Alexandrowka; thirdly, that in the area of the Nogarisch Stepp, and in Skatowsk, so far as I was informed, there ware no Jews at all. At any rate I didn't see any. membership in the commando, you got no knowledge of measures which would have caused you to conclude that an order for the execution of all Jews, Gypsies, etc., existed. My question is quite extensive. Will you please think it over?

A Yes, I could say that. I learned about various executions, but in these cases according to what I heard, these were justified individual actions, that is to say, cases where the crime had been proven.

Q I will now show you several documents. First of all Document Book II-*.

THE PRESIDENT: Doctor Linck, if you are now going to take up documents, don't you think this might be an appropriate time to have a recess?

DR. LINCK: It would be very appropriate, yes.

THE PRESIDENT: Very well, the Tribunal will be in recess fifteen minutes.

(Recess)

THE MARSHAL: The Tribunal is again in session.

DR. STUEBINGER for the defendant Braune: Your Honor, I am sorry that I am not in my robe.

THE PRESIDENT: I still recognize you as a good lawyer even without your robe.

DR. STUEBINGER: I have a very brief request. The defendant Braune has been ill since Saturday and I could not speak to him. I would like him to be excused, therefore, from the session this afternoon and ask that he be brought to room 57.

THE PRESIDENT: The defendant Braune will be excused from attendance in Court this afternoon and will be taken to room 57 where he may consult with his attorney, with or without robe.

Dr. Linck, in your opening statement you referred to the fact that the present witness, your client, had appeared at the International Military Tribunal trial. Would you be so kind as to furnish us with the reference in the transcript to his testimony so that we might glance at it. That is, if you know it.

DR. LINCK: Yes, your Honor,

THE PRESIDENT: You may continue now with the direct examination. BY DR. LINCK:

Q. I want to show you some documents, witness, Herr Ruehl, first of all in Document Book II-D, it's on English page 45, German 48. It is document NO-587 and it is Prosecution Exhibit 92. It is the report by the leader of Special Kommando 10-b Persterer to the Army Group South of 9 July 1941. At that time Special Kommando 10-b on the 7 and 8 of July carried out a large scale search for Communists and Jews and on 9 July 100 Jewish Communists were shot within the course of this operation. Does this COURT II CASE IX concur with your statement and what do you have to say?

A. This report, as well as the contents of it; I have only found out about in Nurnberg here. I have already said I arrived in Chernowitz a few days after the Kommando arrived as I was stationed three or four days in Poltawa. Therefore, at the earliest I arrived in Chernowitz on 9 or 10 July. Therefore, I cannot say anything based on my own observations concerning this. In spite of this, however, I think that this shooting which is mentioned in this report of 100 Jewish Communists is incorrect and I shall give the reasons why. I think it is inaccurate. First of all, even if such measures were not generally discussed it seems to me comparatively improbable that about such an extraordinary measure I should not have heard at least something, a measure which after all was carried out at the same locality by the Kommando just before I arrived or which is supposed to have been carried out at such time. Second, it is very significant that Perster who was with the Army Group which was far away and had no possibility to carry out such an investigation that he should have made a report to the Army Group and that on the other hand should not have told anything to his immediate superior, the Group chief. Neither in his report, as becomes evident from the report of 11 July, which is two days later, nor during the inspection by the Group chief a few days later in Chernowitz itself, because he could have established the inaccuracy of this report at the proper place and at the proper time. Therefore, I am of the same opinion as Herr Ohlendorf who thought that it was here a tactical measure in order to be able to prove some kind of activity under any circumstances.

that is inaccurate, don't you? Can you give us any factual details of your own kommando, the kommando of which you were a member, and its commander?

A I think I can. The tendency to be able to prove some kind of activity or special activity, especially to Berlin, or at least to sustain that such activity has taken place, becomes even more evident, particularly evident in the final report concerning the activity of the kommando in the territory around Chernowitz of the 1st of August, 1941.

Q Just a moment, that is Document Book Volume II-D for "Daniel" English Page 39, German page 41, Document NO-2950, Exhibit 90. why does it become particularly evident here? Persterer expressed very clearly that during the days of the 8th and 9th of July alone, by the Rumanian Wehrmacht and the police in Chernowitz more than four hundred Jews were shot or were supposed to have been shot. Contrary to this he reports on the 1st of August to the Einsatzgruppe that in Chernowitz, in collaboration with Rumanian police force altogether 658 Jews had been shot. Although it becomes evident from the report to the Army Group South of the 9th of July that the by far larger part of these executions, namely more than four hundred, had been carried out by the Rumanians by themselves: Persterer, by quite consciously unclear formulation in the report of the 1st of August to the Einsatzgruppe, wants to give the impression as if the kommando had been responsible or at least had participated in all these executions. Really, however, the part that the Rumanians took in the shootings was the much more extensive one, because I know that even after the 9th of July - that is the day the report was made to the Army Group - other executions were carried out, in which the kommando itself did not participate in any way and of which Persterer only learned afterwards.

Q Could you give us examples for this? 1947.

Q This is Document Book III-D for "Daniel", your Honor, English Page 78, German Page 123, Document NO-4149, Exhibit 169. It is the fourth paragraph of this affidavit. That is this event of where 20 or 30 people were shot. Will you comment on this? by the Rumanians. I learned of this incident when Persterer requested me one day to accompany him to the Prud River, P-r-u-d- River, outside the city, in order to find out where the river could be crossed. When we arrived at the bridge, which had been destroyed by the Rumanians we discovered at the foot of the embankment there a heap of corpses. From Persterer's behavior it became quite evident that he had no knowledge about this before. He questioned the Rumanian guard and then the Rumanian officer about this incident, and the result was that this execution had been carried out by Rumanian units. A similar incident which happened a little before the incident which I have just described now. has been mentioned by Herr Ohlendorf on the witness stand. All these figures were then compiled by Persterer and thus, this large number of executions was brought about, and he thus tried to impress Berlin with a specially high number of shootings. if you are qualified to answer this. In how far did Kommando 10b participate in this at all in your opinion? part in one execution in which, according to my memory, about 12 to 15 people were shot. you found out about it?

by comrades that Rumanian units, as well as members of our kommando, when they moved into the city after the city had been taken, had been shot at by civilians. The Rumanians had arrested a number of suspects, and the kommando had received the order to execute these people because of this incident. BY THE PRESIDENT: people?

A From the Rumanian General, I assume. The order was issued by the Rumanian Wehrmacht forces, I am informed about it.

Q Was your kommando subject to orders from the Rumanian forces? Rumanian territory. was -- a German unit of the Wehrmacht, or the armed forces generally, was subject to orders from a Rumanian officer? Rumanian Army for this particular period and this particular sector. Thus I, in my own authority, conversed with and discussed matters with Rumanian officers in order to get supplies, to be registered and all that kind of thing. supplies. That is a matter of comraderie. But actually to be ordered about by the Rumanian authorities is something which wasn't too clear up until this moment.

A I cannot give any details about this. I only deduced that from the fact that we got the quarters from the Rumanians, that Persterer reported to the Rumanian general, that he went to see him very often, reported to him, and that the Rumanian general visited us. That I saw myself.

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received an order from the Rumanian general to execute these Jews.

Q But that isn't the way you put in in your affidavit though. Why do you put it differently now from the way you put it in your affidavit? in many passages, your Honor.

Q Well, I read to you from the affidavit: "Sturmbannfuehrer Alois Persterer refused at first to carry out the executions, but in the end he gave in to the wishes of the Rumanians and 12 or 15 of these people shot by the kommando." The necessary inference there is that heard did it more or less as a favor to the Rumanians, to shoot these 12 to 15 people. opinion, according to what I heard there, and what I observed myself, that for us the relationship of subordination was absolutely clear. manner I have now read it to you?

A This way of putting it is not my own, your Honor. It does not show what I wanted to say in the interrogation because I described this incident in detail then.

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Q Didn't this discrepancy from your own thoughts about the matter catch your eye when you read the affidavit prior to signing it? as to quarrel with Mr. Wartenberg about this little incident.

THE PRESIDENT: Will you please continue, Dr. Linck? BY DR. LINCK: fully under the subordination of the Rumanians?

A I do not know anything about the subordination in detail. I only know that Persterer reported to the Rumanian general, that he went to see him on many occasions according to my knowledge, thus in order to report to him, and I also know that he went to see the Rumanian civil governor. I deduced it, as I say, from my own activity, because the Rumanians would not have supplied him anything if it hadn't been their duty to do so.

Q Yes. In order to come back to this matter which you know from hearsay, about these 12 to 15 people.

I now ask you Ruehl, do you know who arrested these people who were later on shot? We learned yesterday that between a negative answer and no knowledge there is a tremendous difference. Please consider and think it over whether you know it or were told about it or whether you know it from hearsay and tell the Tribunal so that the Tribunal must not conclude that you experienced it yourself. Do you know anything about who arrested these people?

A From my own knowledge I could not say anything. I know the incident only from hearsay, except the fact that this execution actually did take place. people in this instance...... the kommando when they moved into Chernowitz, is that correct?

MR. WALTON: The Prosecution must object to this line of questioning. There had been no feature prior to this time of anybody shooting at a kommando, and the Prosecution objects to suggesting a line of testimony to the witness. If these incidents were connected with it, I think the witness, since he is testifying from his general knowledge in the area, could give us all the facts that he heard about. I don't like the defense counsel to suggest the answer to the witness.

THE PRESIDENT: I do think, Dr. Linck, that your question was a little leading.

DR. LINCK: I only wanted to summarize the whole matter. I thought it had already been said. I will put the question in another form then.

Q (By Dr. Linck) Just describe very briefly, Witness, what you learned concerning this operation. by comrades that Rumanian troops, as well as members of our kommando, when they moved into the town after it had been turned over to us, had been fired at by civilians. Furthermore, I heard that the Rumanians thereupon arrested a number of suspects, and the kommando was given the order from the army, from the Rumanians, to shoot these people because of this action. As far as I remember, 50 to 60 people were mentioned in this connection. I also learned that the commander objected to this order, or at least tried to rescind this order, point out that this was a matter to be dealt with by the Rumanians themselves. The reason for this could have been parly that he was not convinced that all these people were actually participants in this incident. I also learned that the Rumanian generals urged the carrying out of this order, and, thereupon, Persterer asked for an investigation in order to be able to sift out the perpetrators. These investigations were carried out by Departments 4 and 5 as far as I know, and on this occasion, according to my memory, 12 to 15 of those arrested were found guilty and were shot by order of the Rumanians.

The others, as far as I know, were released. whatsoever? who carried out the investigation.

Q How did you find out about it? gations, or what? you just described to us from hearsay. found out through remarks by Hauptsturmfuehrer Finger who was the competent officer in Department 4.

Q Hauptsturmfuehrer Finder was the departmental chief in No. 4, was he? investigations, did you see any reports or files?

A No, I did not learn anything about this at all. I did not find out about details. I only heard and received knowledge of the fact that investigations had taken place. I did not see reports. this operation, does not only refer to investigations and results but also the actuall carrying out of the execution order. Did you include that in your answer?

A Yes. That was not my task.

Q You also did not take part in the carrying out of the sentence? carried out by Kommando 10b in Chernowitz?

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Q I shall now show you report of events of 1st August, 1941. It is Document Book II-D, your Honors, English Page 37, German page 40, Document 2950, Prosecution's Exhibit No. 90. There in Paragraph 2, I think it is on Page 39 of the English version if I remember correctly, there is talk about 50 Communists who have been arrested, of whom 16 have been liquidated. What do you know about that?

A I cannot comment on this at all. As far as I know Departments 4 and 5 carried out investigations and examinations and interrogations, but executions I did not hear about. Admittedly, Department 4 did it at another place geographically speaking. They were far from our own offices in another building, in another part of town, so that I did not really have the occasion to look at what they did. little hotel you spoke about when you arrive in Chernowitz?

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Chernowitz find out anything about executions which your unit carried out in other places during the time in question? paragraph 5 of my affidavit.

DR. LINCK: IIID, page 76, of the English text, Your Honor -I am sorry, it is page 78 in the English document book. BY DR. LINCK: detachment of the commando that was in a place in the locality, the name of which I do not remember. In order to clarify the murder of German airmen. After these men who had been assigned to this place returned, I heard the following. Shortly after the outbreak of the war in this locality which in those days was in Russian hands, as far as I remember, two wounded German airmen had made a forced landing and had been captured by the Russians. When those people were led into the prison the Jewish population had collected and ill-treated these prisoners during the transport to the prison, but the Russian guards had managed to take these German airman into prison. There, however, shortly after this, another turmoil had started and riots had broken out and the Jews had asked for these two German airmen or at least that is what is supposed to have happened. Finally, the Jews had managed to break into the prison, had taken these German prisoners into the streets and had beaten them to death in the most bestial manner. This state of affairs and the perpetrators had been established by extensive investigations and interrogation in collaboration with Rumanian and Hungarian army agencies, the perpetrators had been shot. As far as I remember, in this connection, a number of 20 to 30 people to be executed was named. way in the investigation or the interrogation?

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cannot answer this question at all. the case?

A No. As I say, I only know it from hearsay. The stories that people told after they returned, they were still very much excited about the fact they had established there. executions which had been carried out in other places during your stay in Chernowitz, you said "No", with the exception of this particular incident which you know from hearsay, is that correct?

Q Now, I want to put something else to you. In the report of the 14th of July, Volume IID, English page 43, it is Document 4135, Exhibit 91, it is stated, I quote, "In Hodin 10b carried out a number of tasks, Members of the Russian intelligentsia, in party and state, Jewish agents, teachers, lawyers, rabbies, were arrested in a number of raids with the help of Ukrainians and were treated accordingly". In the same document in the final report of the first of August, English page 39, document 2950, Exhibit 90, the same operation is being reported about again. I quote, "In the vicinity of Chernowitz, Hodin had been passed whereby 150 Jews and Communists have been liquidated". Will you comment on this, please? in Nuernberg -- that is, I never visited Hodin nor do I remember ever having heard that a detachment of our commando had ever been assigned to this place, therefore, I am unable to give any information as to whether this report is correct and in agreement with the facts. 14th of July where it says, I quote, "The following directives were passed on to 10b, influence the Rumanians to be more severe concerning Jewish questions.

Jewish meetings must be interrupted and polots must be found out in order to influence Rumanian procedure against Jewish intelligentsia and in order to take up our own positions against it." Can you comment on this? commander because only he could carry out such orders. I myself was never informed about this order, and I see no reason why I, as an administrative officer and obersturmfuehrer could in any way have influenced the Rumanian police or the Rumanian Wehrmacht. I never heard anything about the fact that the commando really raided Jewish meetings. I can only say from my own observation that the commander had a number of Jewish liaison men with whom he apparently cooperated extremely well.

Q How long did you remain in Chernowitz? August or thereabout. After, a few days before that, detachments of our commando had moved to Kamnitz Podolsk and Mogilew-Podolsk, the departmental expert of Department 3 and I received the order to go to Mogilew with the technical personnel of our commando. Mogilew had been named as the next garrison of our commando. There we arrived two days later. We were billeted in the unit which had already been stationed there, and there we took up our usual assignments. but a little more in detail. I want to point out again that it is Book IIID, the English page 76. According to this, you came in contact with a problem in Mogilew which in itself had nothing to do with the tasks of an administrative leader. By this I mean the retransfer of Jews who had been taken to German territory by the Rumanians and were not to be transported back to Rumanian territory. How did you learn about this fact, Witness?

the Prut and the Dniestr rivers we came upon a long line of civilian population who seemed to me to consist mainly of Jews, and which was escorted by Rumanian army units. Then, upon my arrival in Mogilew I questioned the officer who was already stationed there concerning this, he informed me that the Rumanians had transported a number of Jews across the Dniestr river and had left them there to their fate helplessly in German operational territory. He had, of course, prevented further deportation of Jews to German territory, but the Jews who had been deported before were the subject of considerable worry to him because, as they were completely helpless, they were roaming the country stealing and begging and thus were a danger to the security and orderliness of the rear army territory and, of course, there were therefore current actions between them and the Ukranian population. Furthermore, there was the danger of epidemics and diseases as there were neither hospitals nor physicians nor drugs. Therefore, he had informed the commander of the state of affairs. commando in Podolsk?

A Yes. That is what he told me. any measures to be taken?

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THE PRESIDENT: Let me get this picture straight. Now, he was on his way from Czernowitz to Mogilew-Podolsk and he enountered a transport. BY THE PRESIDENT:

Q Now, how many were in this transport?

A That is very difficult to estimate, Your Honor. They were actually walking. They had little vehicles, but it would be a very rough estimate which I could not take any guarantee on.

Q Were they mostly on foot?

A Yes. The larger part was.

Q Were they of all ages, men and women as well as children? it were. If I could give an estimate, I should say there must have been about a thousand, but that may have been over-estimated because the line did not actually march in a military formation, so that an estimate would have been easy.

Q And how many were in the accompanying Rumanian troops? column by car. I saw soldiers with their rifles who escorted this column in certain distances.

Q Were they on foot also, or were they riding?

Q I see. What is the distance between Czernowitz and this other town, Mogilew-Podolsk?

AAgain I would like to establish this on a map. I don't remember, Your Honor. It is quite a distance. you to estimate the distance?

Q Was this a matter of a day's journey or several hours? We just want an approximation.

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Q Then when this group of refugees were joined to the others, who were already in German territory, the total number was around 12 to 15 thousand people, is that the picture? figure, 12 to 15 thousand persons. and I seemed to remember that this was the approximate number of those who actually came over, who were actually in this vicinity of Mogilew as foreign Jews whose actual home was in Rumania.

THE PRESIDENT: Well, that makes it very clear to us. You may proceed. BY DR. LINCK: in Mogilew-Podolsk when the commander explained to you the situation. Will you again tell the Tribunal whether you did anything or not?

A No. There was no cause for me to interest myself in this matter. Competent in this case was until up to the arrival of the commander in this sector the leader, the officer who had been appointed, who was not subordinated to me in any way but who received his orders from the commander immediately. He had informed, as he told me, the commander so that there was neither the cause nor the possibility for me to do anything. 77, "I tried to get these people together at Mogilew-Podolsk in order to take them back in a group transport", but there is an inconsistency, or is it not an inconsistency with what you have said just now. If you tried something, then you must have been active in some way or another or is the present formulation inaccurate? point out again that this was not worded by myself but it was worded by Mr. Wartenberg, and that it is just as misleading as a number of other wordings which I shall come to later on.

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Q Herr Ruehl, we do not want to go into details about this. I would like to interpolate here and made a small remark. It is probably remembered by the Tribunal that there was a short crossexamination when Mr. Wartenberg was at the disposal of the defense, and at this occasion it was established that a second affidavit was made out after the first had been made out and that apparently in the first affidavit the wording was not so that the witness wanted to sign it, therefore, I did not pursue this matter then, after the Tribunal had stated that each defendant is permitted to correct any false or misleading passages during the presentation of his case, but I must ask you, Herr Ruehl, whether you did not draw Mr. Wartenberg's attention to the fact at the time that such wording could lead to contradictions and to misunderstandings sooner or later?

A I should like to say the following, I told Mr. Wartenberg even when I saw the first draft of the affidavit which he gave me on the 24th of June that this draft did not only contain sentences which were the cause for mistakes - for misunderstandings, but all remarks which would not at all correspond to the facts. I asked him that these passages should be changed. Mr. Wartenberg thereupon said that the sentences which I found fault with meant what I actually had meant to say. In spite of this, I requested so many corrections, and I finally dictated a whole paragraph myself as Mr. Wartenberg constantly tried to dictated something else which was different from what I had said. And so Mr. Wartenberg finally stated the whole affidavit had to be reissued. This new affidavit was shown to me two days later. Unfortunately, I had to establish that this affidavit again contained passages and wordings which gave cause to errors and misunderstandings, and again I told him that. But the reply I received was that I would have enough opportunity to clarify mistakes even during the trial in case such errors would actually crop up.

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I trusted this affirmation and as I was tired of the constant quarrels we had, I signed the affidavit especially as these misunderstandings concerned myself exclusively or at least the part that I took in these incidents.

Q What do you want to express with what you said last by "especially as it only concerned myself" and your part? interpreted from this affidavit could only concern myself, in which case I would have the opportunity to express myself accordingly and make corrections, and that is what Mr. Wartenberg affirmed me.

Q Would you like to go on? this affidavit - would be used against you as evidence without any further interrogation taking place?

A No. If I had known this, I would have made the necessary corrections and I would have insisted on them.

Q We don't have to deal with details at this point, Herr Ruehl, but I want to know the further cause of matters in Mogilew-Podolsk. What happened to these Jews?

THE PRESIDENT: Dr. Linck, you are now just about to begin an episode in some detail. Suppose that we have our recess at this time.

DR. LINCK: Yes, Your Honor.

DR. DICK: Dr. Dick for my colleague, Dr. Fritz. Your Honor, I was asked by Dr. Fritz to ask whether the defendant, Fendler, could be excused this afternoon from the proceedings. He has the opportunity to speak to his wife apparently. I would, therefore, like the defendant, Fendler, to be taken to Room 57 in the afternoon.

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THE PRESIDENT: We will gladly excuse Fendler for that purpose, and we will announce, so that the marshal will be informed, that all arrangements will be made so that there will be no difficulty about Mrs. Fendler seeing her husband this afternoon in Room 57. The Tribunal will now be in recess until 1:45.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 18 December 1947)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed.

DR. LINCK (ATTORNEY FOR THE DEFENDANT RUEHL): Thank you, Your Honor. BY DR. LINCK (ATTORNEY FOR THE DEFENDANT RUEHL: briefly about this large number of Jews who had been driven across into the German-occupied territory by the Rumanians. You have already told us about the stories which you heard when you arrived in Mogilew and you have told us that the kommando leader there had reported to your commander, Pesterer, about it. How did this matter develop further and what was your part in it? taken place there previously, had been destroyed, and the Russians had taken with them most of the supplies, especially the majority of the cattle. Thus, of course, the situation of the alien homeless Jews got so bad that Pesterer decided to go to see the group chief and to get his decision on the matter.

THE PRESIDENT: There is one word we didn't catch, it sounded, which of course, can't possibly be true, like "Aryan homeless Jews." Oh, "alien".

Q (By Dr. Linck) Please continue. because of this situation he would go to see the group chief and to see what he decided on this. He wanted to tell him that these Jews who came from the Rumanian territory should be brought back into that area.

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Since he himself, meaning Persterer, did not want to return immediately to Mogilew, because he had other business; he ordered me to accompany him in order to take care of my economic and administrative matters at the group headquarters and also to hear what the decision of the group chief was in this matter and to bring this decision back to Mogilew. When Persterer reported to the group chief, the latter decided that the Rumanian Jews should be brought back to their home area. I then brought this decision back to Mogilew on the order of Persterer and I gave this message to the officer who was in charge of bringing these Jews back. Then in his own competence this officer carried out this retransport. you mention in your affidavit. to correct something. I made a mistake about the name and I would like to correct this. The name of the man is not "Lippert," but "Lipps." As far as -

Q Litz?

A Lipps, as far as I remember, L-i-p -- possibly "p"-s.

Q And this retransport took place as ordered? because of the resistance of the Rumanians, who even threatened that on the other side of the river where they had artillery they would open fire, if despite their objection any attempt would be made to bring these Jews back. without success, the competent officer, whose order it was to take care of this matter took the Jews back again and for the time being he housed them in a barracks at the edge of the city, but this was only a very brief emergency measure, because there were no facilities there and it was hardly possible to supply thousands of people for any length of time.

Therefore it was necessary as quickly as possible to get another decision. Of course, only the group chief himself could decide what to do next. Since the commander had, however, not yet returned and 1st Lt. Lipps was tied to this place with his local assignments there, I felt obligated as the man who had passed on this order, which could not be carried out, to inform the group chief of this new situation immediately and to ask him to make a new decision. The group chief then ordered that the Jews be transported back by way of a bridge near Jampol, that is, they were to be marched there and the Kommando 12 was to take care of taking them across this bridge.

Q Did you again inform Lt. Lipps of this new decision and did you give him the order to carry out the retransport via this new bridge? chief; to use the word "order" would be misleading, because this is not an order which I gave him, but I brought him the order of the group chief and that finished the matter, as far as I was concerned.

Q Didn't you concern yourself any more about the retransport of the Jews after Lipps knew what he had to do?

A No, that was not my job. That was not necessary.

Q You did not accompany this transport?

A No, I didn't even see it, much less accompany it.

were supposed to have been shot?

Q Why? the Group Chief only said to send the Jews back into their homeland. Of executions nothing was said. estimate, of the number of Jews who were then sent back? sent back, because I said I did not see the transport. I only remember that they frequently spoke of 12,000 to a maximum of 15,000 Jews. Thus, generally, I had assumed that all these Jews were actually sent back and I mentioned these figures to Mr. Wartenberg accordingly. I told him that as far as I can judge, there were 12,000 to 15,000 human beings who were concerned in this retransport.

Q Well, now I must show you the following. In the prosecution documents there are two reports which mentioned these Jewish transports. Please look at Document Book III-D. This is page 24 of the English, page 46 in the German, and it is a report of the 26th of August,1941, NO-2840, Exhibit 154. Here something is mentioned of bringing back 6,000 Jews which was carried out despite protests of the Rumanian officer in command of the bridge. That is one thing. The other one is the report in Volume II-B, English page 11, page 8 in the German. This is the report of the 29th of August, 1941, NO-2837, Exhibit 58. Here something is mentioned about bringing back 27,500 people, with the remark that 1,200, partly younger Jews, were shot. Can you say, Witness, which of these reports, in your opinion, is concerned with this particular retransport which you have mentioned here?

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A I really can hardly clarify this. As I have already said, I did not see the convoy and I did not make out any report about this retransport nor did I see any. Therefore, I can say nothing about how many were actually brought back. I can only say with certainty that neither in Mogilew nor during the discussion with the Group Chief was anything over said about a figure of 27,500. Therefore, this figure seems to me to be incorrect under all circumstances. More probable, it seems to me, is the figure 12,000 to 15,000 which I still remember and which represents the total number of homeless Jews in Mogilew and vicinity. The report of the 26th refers to about 13,000. BY THE PRESIDENT:

Q May I ask a question here, please. Witness, since you correct this figure in Document 2837, indicating that 27,500 is a much larger number than you remember the number to have been, do you also correct the number referring to those executed? 27,500 Jews were driven back to Rumanian territory. You say this number is incorrect and that there were only about 12,000 to 15,000. Is that correct? Is that what you told us? know. May I say, there are two reports here about a retransport; one time 6,000 were supposed to have been brought back and once 27,500.

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I recall it, that you thought 27,500 was incorrect.

Q And that in your estimate it couldn't have been more than 12,000 to 15,000. made to 1,265 Jews shot. say was probably only 12,000 to 15,000. Now I ask, do you make any observation on the 1,265? Do you think that number is correct? my opinion, the retrans port which I experienced, and which took place in Mogilew and about which I had passed on the order -- that this retransport has nothing to do with this figure, 27,500. I rather believe that it refers to the report of the 26th.

Q Well, why did you comment on this document at all? trying to get it straight from you. As I recall it, you looked at this document and your attention was called to the figure of 27,500 and, still as I recollect, you said this number was incorrect; it was probably from 12,000 to 15,000. Now, the question which I put to you is this, witness: Since you looked at this document and made a correction in the number of Jews who were driven back to Rumanian territory, do you want to make any reference to the figure of 1,265 to have been shot? myself clearly. I did not want to say anything about this document and say that this figure is incorrect, because I merely remember that figure.

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I merely tried to reconcile my memory with what I found here in the documents. Jews, some of them young ones, shot? Do you know anything about that at all?

THE PRESIDENT: Well, that is all I am asking, proceed, Dr. Linck.

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Q I will show you the following, witness. You had knowledge of one Jewish re-transport only in Mogilew-Podolsk? Can you solve this riddle, and say whether you know whether there were several Jewish transports that took place during your time and according to your knowledge? Mogilew only one such transport took place. Therefore only one report can refer to that and the report of the 26th seems to me the more probable one. On the one hand for the reason I have already mentioned, because they speak here of a number of 13,000 homeless Jews who had been driven out, and also the date of this report seems to be in favor of my contention because the transport of which I knew took place, as far as I can reconstruct and sofar as Mogilew is concerned, during the days from the 18th to 20th of August, and about on the 23rd we had already left Mogilew-Podolsk.

Q I think I don't have to ask you anything further about this. But before you leave Mogilew-Podolsk I want to submit one more thing to you. In the report of the 26th of August just mentioned, that is Volume III-D, the English page 24, the German page 46, there is another sentence and I quote: "It is intended to collect the Jewish population in one area of the city". End of quote. Furthermore, I quote: "Jews fit for work were detailed to clear away the rubble in the town, as well as to bring in the harvest." Do you know anything about that? Did you execute these measures, or did you order them, or did you receive the order to carry them out? measures, or carried them out. Moreoever, I would like to point out that it says in the report: "It is intended to assemble Jews there in one quarter of the city". Sofar as I know anything about Mogilew, this never happened. In any case I can say that I neither saw a ghetto or labor camp in Mogilew, nor did I ever hear of any such camps there.

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Whether a similar order existed I can not say. That able-bodied Jews were used for labor I consider possible, since the entire population was used in clearing the rubble, and in bringing in the harvest.

Q Now, Herr Ruehl, I don't want to offend you but it is my intention to clarify everything which could have any connection with you during this time in this area, and, therefore, I want to confront you with another sentence from this report of 26 August. That is the report from which I quote: "In Czernovitz and by combing through the area east of the Dnjestr River, 31,006 Jews and 34 Communists were liquidated - correction, 3,106 Jews and 34 Communists were liquidated.

THE PRESIDENT: What page is that?

DR. LINCK: I do not have the English page, Your Honor. It is the report of 26 August.

THE PRESIDENT: There is only page here of the report in our book.

DR. LINCK: Page 24.

THE PRESIDENT: Do you find it, Mr. Walton?

MR. WALTON: No, Your Honor.

DR. LINCK: Can you help me, Herr Ruehl?

THE WITNESS: I don't have the English text, either. It would have to be the English page 24?

THE PRESIDENT: Are you referring to the report of August 29, Document 2837.

DR. LINCK: It is my mistake. Your Honor.

THE PRESIDENT: I think that was more than a mistake, that was an error.

DR. LINCK: Thank you for your patience, Your Honor.

THE PRESIDENT: You are not even in the right house. It is Book II-B.

BY DR. LINCK:

Q Can you comment on this report? questioned by several people. I can not say anything about how this report came to be made out. So far as Czernowitz is concerned, I would like to point out once more the fact that according to the order of the group chief, no such measures could be carried out in Rumanian sovereign territory. Therefore, I hardly believe that such a report was ever made out by Persterer to the group, because without a doubt this would have brought inquiries from the group chief as to what caused Persterer to act against this specific order. There, too, I would assure that Berlin laid down the final regulations about it.

THE PRESIDENT: Witness, you say that it would have been impossible to kill Jews in Rumania. Didn't you tell us this morning that you took orders from the Rumanian authorities?

THE WITNESS: Yes, Your Honor, I consider that as an exceptional case in which at the express order of the Rumanians the commando in this one case became active in their own sovereign territory, because an independent activity of the commando would not have been possible in this area according to the order of the group chiefs.

THE PRESIDENT: Proceed. BY DR. LINCK: knew anything about the 3106 Jews and 34 Communists. Did you answer all of that, or do you want to add anything to it? concerned, it does not only refer to Czernowitz but this is a report from the entire area, which at that time already extended to the Bug River, sofar as I know. I , therefore, ask also to be able to correct an error which evidently the Prosecution made, when in the order of presentation, which is contained in Volume III_D, it is said that these 3,000 and odd Jews and so many Communists were executed in Czernowitz.

To come back to Czernowitz once more, I would like to refer to the report of 7 August, which is in Volume II-D.

Q Page 35 in the English, I believe, Your Honor. That is document 10-2948 Exhibit No. 89. What is this document supposed to show? commando was in Mogilew-Podolsk. That is, it was no longer Czernowitz at that time. From my own knowledge I could add that the major part of the commando was in Camonitz-Podolsk or Mogilew-Podolsk since the beginning of August. I myself left Mogilew the 7th or 8th of August.

Q Mogilew, you mean? and I can only say that during this time I didn't hear about any other executions. May I also point out the following: Apart from the report of 7 August, namely that the garrison of the commando was already in Mogilew, there exists a situation report of 9 August, in which Einsatzgruppe C reports that in agreement with the Chief of Group-D.

Q This is Volume II-C, English page 67 on the top, Document 2947? gruppe Chief D, a small squad was transferred to Czernowitz in order to take over the assignments there.

Q I don't think that I have overlooked any document, Herr Ruehl, in which the Prosecution has implicated you in any sense so far as time and area are concerned. I merely would like to ask you a few concluding questions about the tine of your assignment, before I come to Count C, membership in criminal organizations.

You said that you left Mogilew on 23 August, is that correct?

Q Did your missions remain those of an administrative officer; did they remain as such, until you were recalled, or was there an essential change in your assignment and in your position? function of an administrative officer, and afterwards I was neither given the deputy ship of the commando nor was I given the leadership of a Teilkommando.

Q Were you a staff officer with executive powers?

Q And when did your assignment end?

A The beginning of October. I don't remember the exact date.

Q What year?

Q And what happened then? Did you get sick or what? service, were recalled to Berlin, and I took up my studies once more.

Q Then you went back to the University of Berlin?

Q And later you passed the State examination?

DR. LINCK: Your Honors, I now come to the third main subject, that is, Count-C of the Indictment, as I have already said, membership in organizations which the IMT has declared criminal.

THE PRESIDENT: A question I would like to ask just out of curiosity. Was the University of Berlin functioning in all departments in 1943?

THE WITNESS: Yes.

THE PRESIDENT: It has nothing to do with the case. I was just curious. Thank you.

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DR. LINCK: The witness is charged with membership in two such organizations, first the SS, secondly, the Office IV of the RSHA. First of all, I shall deal with membership in the SS. BY DR. LINCK: 1932 you transferred from the SA to the SS, and you said that on 1 October 1933, you left the SS in order to go into the Prussian Secret Police. Did anything change in this later on? That is, until the collapse? other unit. SS ranks? police official. The Reichsfuehrer-SS and Chief of the German Police originally had the intention to make a so-called State Protection Corps out of the SS and Police. For this purpose all police officials were supposed to be transferred to the SS, and thereupon they would be given the ranks which were equivalent to their ratings as officials. According to the so-called Decree for the assimilation of ranks, which was the Decree of 1938, and which I think has already been submitted as a document here, the corresponding ranks for the various official ratings were established, and every promotion in the SS was the automatic results of a promotion as an official. the defendant Blume?

A Yes, I think it is Blume's Document No. 10.

Q It is in Blume's Document Book, therefore, I don't want to ask you anything further about it, but I would like to know, Herr Ruehl, whether the circumstance that before you joined the police you were an active member in the SS, is not significant?

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A Well, one could hardly say that. To explain this, I would like to give the example, which shows to what strange results this assimilation of ranks led. When I came to the police in the fall of 1933, I was an SS-Scharfuehrer, that is a sergeant, but since my first position in the police only corresponded to an SS Unterscharfuehrer, I was downgraded. so to speak, to an Unterscharfuehrer, and only when I became a candidate for assistant in criminal matters, I was once more promoted to SS-Scharfuehrer, because this SS rank corresponded to that position as an official. I think this shows the relationship between the police rank end the SS rank most clearly.

Q Well, you don't have to go into such detail, because only the time after the 1st of September 1939 would play any part in this. But I would like you to describe to the Tribunal the relationship between your official ranks and the SS ranks during the later years. Please take up Document Book III-D. This is the personnel file, Your Honor, page 90 in the English text, and page 136 in the German text. This is NO-4808, Prosecution's Exhibit No. 171. Is it correct when I conclude from this that according to page 1 of the original, you received the rank of Unterscharfuehrer, 2nd It., on 2 July, 1938?

Q What did that have to do with your position as an official?

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A. As I have already mentioned when describing my professional training I took a training course as a candidate for Police Inspector from 1 October 1937 until 30 June 1938. After I completed this course of study, on 2 July, we were appointed Police Inspectors on probation. On the same date and on the same occasion, corresponding to this newly achieved rank, we were promoted to the equivalent SS rank which is Untersturmfuehrer which is 2nd Lieutenant.

Q. Does this correspond to your biography as stated in the personnel file?

A. Yes.

Q. German page 144, page 96 in the English, your Honors.

A. May I point to the end of the first paragraph where it says "and after I attended a nine months course at the Leader school of the Security Police, I passed on 2 July 1938 the Kommissar examination."

THE PRESIDENT: August. The says says August.

A. 2nd of July, your Honor, in the German text.

THE PRESIDENT: There is a question mark after August in the English, so the record will show that it should be July. It is not very important, Dr. Linck, July or August.

DR. LINCK: Yes, your Honor, and the photostat shows it correctly. I don't want to go through this dry matter any further even concerning the higher ranks, 1st lt and Captain. It will suffice if I ask you the following question. Is this description which you have given here valid for the higher ranks, that is, 1st Lieutenant and Captain, that is 1939 and 1942?

A. Yes. They were the automatic result of my promotion as and official.

Q. Well, if I want to concede to you that these SS ranks had nothing to do with an active membership in the SS then I must know one more thing. Wouldn't you have had the possibility to get out of this SS membership if it was only a formal one?

A. Theoretically this would have been imaginable but it would have presupposed my Leaving the Security Police and that such an action was not possible, at least after the beginning of the war, I may say that that is well known.

Q. The second membership to an organization declared criminal is that you were a member of Office IV of the RSH... Here also the period after the first of September 1939 is the only period we are concerned with. Is the assumption correct? *ere you a member of Office IV of the RSH.. at that time?

A. No.

Q. That is the end of my questioning, your Honor.

THE PRESIDENT: any defense counsel desire to cross-examine?

You may begin, Mr. Walton. BY MR. *---*:

Q. May at please the Tribunal I have, before I begin, one request which I should like them to grant. It appears that the regular member of our staff whose duty it is to assist the Prosecution in handing document books to the defendant is not here. However, I notice that another member of our staff assigned to me, a German-speaking stenographer, is in the audience. I'd appreciate it if the Tribunal would instruct the Marshal to let her pass to the floor of the Courtroom after the recess so that she might assist me in handling the books.

THE PRESIDENT: The Marshal will please see that that is done during the recess period. BY MR. *---*:

Q. To recapitulate and to get it clear in our minds, I should like to take you back over your testimony concerning your membership in certain organizations. You have testified that you joined the Nazi Party on 1 December 1930, have you hot?

A. Yes.

Q. And on 1 October 1932 you became member of the SS?

A. Yes.

Q. In fact, you requested your transfer to the SS, did you not?

A. Yes.

Q. And in September 1933 you became a member of the Gestapo, is that correct?

A. Yes.

Q. Now, was this a voluntary act on your part to become a member of the Gestapo?

A. without a doubt I did not need to obey the order which I received.

Q. I don't think that that answer is responsive.

THE PRESIDENT: Certainly it is. It is very responsive.

Q. At least I didn't get the connection.

THE PRESIDENT: Well, he wasn't required to respond in other words, he could have refused.

Q. If that is the answer, it is clear to me now. You state that you could have refused to join the Gestapo at the time you received that order?

A. Yes, of course.

Q. Nov; you continued to belong to the SS, the Nazi Party, and the Gestapo on 1 September 1939, did you not?

A. Yes.

Q. And you made no effort to sever your connection with any of these organizations on that day, or since, have you?

A. Yes, I said so. May I distinguish between the following. First, the SS membership, second, membership in the Gestapo. As far as SS membership is concerned I think I have already made clear that it was the automatic result of my other promotion, thus it was not an independent action which I could have given up independently. As far as membership in the Gestapo is concerned I can only say that already on the first day of the for I reported to the Army or rather asked for my release to join the Army; that in the spring of 1940 I repeated that; that in both cases it was rejected; and then there were general directives that it was not possible to get out and that releases from the Army were forbidden.

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Q. Now, according to your SS personnel file it shows that you have, or had, the rank in the Reserve Wehrmacht of Obergefreiter or private first class, is that correct?

A. Yes.

Q. And at the time that you made those requests you were in the SS a 1st Lieutenant or Obersturmfuehrer, were you not?

A. May I correct? When I made the first application on the first day of the War I was a 2nd Lieutenant but I guess that is not important.

Q. At least you were an officer in the SS. If your request had been granted what rank would you have had in the Wehrmacht if you had been given service?

A. Of course I would have gotten the rank of private first class which I had achieved thus far in the Army.

Q. So it was quite a disadvantage for you to volunteer for service in the Army, wasn't it?

A. I wouldn't have considered it as such because these are two completely different matters.

Q. A least the pay would have been much less as private first class than as 2nd Lieutenant, wouldn't it?

A. May I point our, Mr. Walton, that at that time I was not yet active in the operational area and did not yet got any pay as 1st or 2nd Lieutenant and, therefore, I wouldn't have had any disadvantage.

Q. Well, you got paid for what you did based oh your rank, didn't you?

A. According to the usual regulations this would have continued. I wouldn't have had any disadvantage.

Q. Your pay would have been the same as private first class in the Wehrmacht as it would have been as 2nd Lieutenant in the SS? Is that what you say?

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A. Yes.

Q. You were convinced, however, that you could render more valuable service to the Reich as an SS officer than as an ordinary soldier, were you not?

A. Repeat the question please.

Q. You were convinced that you could render more valuable service to the Reich as an SS officer rather than as a line soldier, were you not?

A. No, I think Mr. Walton, I have said very clearly that I personally did not think it was correct that a young able-bodied man sits at home and that old people are sent to the front. This reason alone made me decided to report to the Army. I was brought up that way. My father was an officer. My brother was an officer. And I felt ashamed to sit at home by myself.

Q. Now can you tell the approximate date in May of 1941, that you actually reported to duty with the Einsatzgruppen?

A. I don't know how I am to understand this question. I didn't report. Thus the question isn't quite correct.

Q. All right. I will rephrase the question. Will you state the approximate day in May 1941 that you arrived in Pretzsch?

A. I cannot give you the exact date but as far as I recall it was the middle of May.

Q. Did you perform any other service in Pretzsch than with the Einsatzgruppen?

A. No.

Q. Then you reported for duty with the Einsatzgruppen some time around the middle of May 1941, did you not?

A. Yes, but on the basis of the experiences I have made I must object to the word "melden" in German which has two meanings. One meaning is to report to an agency where ordered to appear. Another meaning is that I voluntarily reported there and I would like to be sure that the matter is clear.

Q. That is all right. All we want to know is the approximate date you got to Pretzsch and the approximate date you reported for duties with the Einsatzgruppen, that you entered upon your service with the Einsatzgruppen. That is all. It does not connote how you got there or how you were sent there. I merely want to know the fact of when you started your service with the Einsatzgruppen. Do we understand each other.

A. But just to be quite careful I would like to correct one more thing. because at that time Einsatzgruppe D did not yet exist. Einsatzgruppe D was not set up until we got to Dueben and that was the beginning of June. As far as I remember, until that date we were in Pretzsch without knowing at all what is the matter and without any Einsatzgruppen being formed.

THE PRESIDENT: Very well. The Tribunal will not be in recess for 15 minutes.

THE MARSHAL: The Tribunal is again in session.

DR. LINCK: Dr. Linck for the defendant Ruehl.

If Mr. Walton will permit me to disturb him for a few minutes for cross-examination in order to establish the right connection again, my attention has just been drawn to the fact that in the translation, the English translation, the answers upon the questions about the pay of a corporal in the Wehrmacht or Sturmfuehrer in the SS was not quite clearly expressed to the effect namely that it is always the same pay. That is the official pay, the pay that officials receive, the corresponding payment, that is, no matter what unit or what rank be would have had. I only wanted to establish this.

THE PRESIDENT: Very well. Your statement is sufficient, Dr. Linck. BY DR. WALTON:

Q. Mr. Ruehl, prior to the afternoon recess we had arrived in Pretsch, and Dueben, where a collection of police members and others was made, and where later on the Einsatzgruppen were formed. In your direct examination, if my memory is correct, you testified that you first assumed, or at least guessed, that you were being assembled for an action for the invasion of England. However, at a later time when you began to receive lectures on Russia, you felt that the action of this group would be directed toward Russia. Am I right so far? wasn't an actual lecture in classes, but it was just a matter of two or three lectures concerning Russia, its people, and its country.

Q. At that time you stated, I believe, that the Chief of the Security Police and the SD appeared before the group of men which later became Einsatzgruppen, and told them of the Fuehrer Order. Did I understand you to say that?

A. No.

Q. I will ask you this question, did you see Heydrich in Dueben or Pretsch while you were there?

Q Do you know for what purpose Heydrich was there?

A Heydrich? For what purpose I could not say. All I know is that he appeared in front of the men and officers who had collected there, and he took leave of these people before they were assigned. This is what happened, and it happened in the manner in which I related it.

Q I am sorry, Mr. Ruehl, I didn't quite understand two words of the translation. Heydrich appeared before a formation of all personnel who were assembled? satzgruppen personnel; what did he generally speak of? That is what I didn't get on the translation.

A I cannot express it in another way. I can only say it was a general farewell, took leave of us. During which he said that, of course, we would be confronted with heavy tasks and he appealed to our sense of duty, and he said that he requested that we would be obedient there and we would do our duty in the assignment. I cannot give you the exact wording, but that was the general tenor he was talking about.

Q Did you assume from Heydrich's remarks that the Einsatzgruppen and their subunits would have to exterminate people? now that you had not heard of the Fuehrer Order, is that correct?

Q And that the first time that you heard of it was in Chernowitz? Persterer gave me the Fuehrer Order in the wording which I have mentioned before.

out this Fuehrer Order and exterminate Jews and gypsies, and Communists, when Persterer first mentioned it to you?

A I said, Mr. Walton, that he did not mention this at all. there was a Fuehrer Order to exterminate these people, didn't you? That is, the remarks he made in Chernowitz?

Q All right, I will ask you a question. When did you first hear of the Fuehrer Order for the extermination of Jews, gypsies and other racial undesirables, when was the first time that you heard of it? when I was transferred back, and on my return at the beginning of October, I reported to Nikolaev, and there I learned that a few days ago the Reichsfuehrer had been there and had proclaimed an order to the effect that all Jews should be executed, but I really cannot remember having heard about the same, about gypsies or other groups. as an active member of Sonderkommando 10b you never heard the Fuehrer Order at all? the first units of an Einsatzgruppe committed to action, that is, first units of Einsatzgruppe D committed to action, have you not?

A For an action? I would not like to call it that, but Kommando 10b was the first one, as far as I can judge it, which was assigned to its own garrison, apart, of course, from their unit.

Q You didn't make that qualification in your interrogation of 8 May 1947. Can you remember generally what your remarks were on that day? lowing concerning this examination, that there was no opportunity to formulate it in any really understandable manner, that such possibility was altogether excluded.

was one of the first committed to security actions in Chernowitz?

A No. All I would like to say is, I would like to clarify this in order to exclude any misunderstandings as far as I know the kommando was the first one which received an order for their actual assignment, that is, they received a locality garrison which was assigned to them, but what particular activity was connected with it I cannot say. officer on the staff of Alois Persterer who was the commanding officer of Sonderkommando 10b is that correct? rations, military training, personnel matters and motor vehicle supply, is that correct?

A Yes. Again I would like to make the limitation. military training was practically only valid for the first time while we were in Dueben, that is during this military training which only took one day in the vicinity of Chernowitz, as I already mentioned.

Q But the other duties that I have outlined are generally correct?

Q what was the total strength in men of Sonderkommando 10b? billeting or food rations or personnel matters, motor vehicle supply; could you act for Alois Persterer in these matters? motor vehicles or to requisition gasoline or to requisition personnel or food?

A. No, that certainly was not the case and such situations never arose, and anyway, I do not know anything about such a situation, because our vehicles and our fuels we received on request from the unit or the agency to which we belonged, or even, sometimes, from the group itself.

Q All right. Once these were issued to you, these motor vehicles, did they come under your charge?

A You mean the vehicles?

central motor pool and dispatch them cut as needed, or did you permanently assign them to teilkommandos?

A No. From the very beginning the vehicles were distributed by the commando leader to the subcommandos or, at least, at that time there were no teilkommandos yet and it was only my task that repairs were made, when it was reported to me by a driver that the vehicles needed repair, then it was my task to see to it in case he needed spare parts that I would supply these natters. issued to Sonderkommando 10B, to see that that truck was present for duty, at all times it was in mechanical running condition--whose responsibility was it?

A The driver's.

Q Now, to whom was this driver responsible? to his platoon officer and these vehicles which were not part of a platoon, as for instance tanks and first aid vehicles, these vehicles necessary for the entire commando, the drivers of those vehicles also were responsible to the commando leader, without the slightest doubt, to see to it that their vehicles were in working order.

Q Well, as the motor officer's of the commando leader, weren't they responsible to the commando leader through you? that question. leader which was Major Persterer, You, as a motor officer of the commando leader were not these drivers responsible to him through you as the motor officer?

A I do not know, Mr. Walten. I don't know how you promoted me to a motor officer. I was no expert for vehicles or for mechanic.

I could only go into action when the vehicle needed repair and when information to this effect was received that this or the other spare part was needed which I--whereupon had myself informed whether this part was actually needed and then I asked it from the technical officer of the group. needed a vehicle. They sent into the headquarters of Sonderkommando 10B and said, "We request a vehicle for a certain purpose," and which was a normal military purpose. Who was it that had the responsibility a certain period of time. Who was it that dispatched this vehicle at 10 kilometers? by the commanding officer as we had no reserve vehicles, In order to explain this situation to you, I would like to say that we were so badly equipped when we were assigned that we had great shortages, that we lost a number of vehicles as early as Chernowitz, and that we had no reserve parts, therefore, spare parts would have to be taken from other vehicles also -

Q Evidently I do not make myself clear. The teilkommando 10 kilometers away needs a vehicle. Standing outside of your particular office is a motor truck which is not at the moment being used which belongs to another platoon of the commando. Who would have the responsibility to send this truck 10 kilometers for the use of this teilkommando that needed it? apart from the kitchen truck and the tank truck which were constantly needed for general purposes, we had no such vehicles. Otherwise, in order to deal with your example, it would have been the commanding officer whose task it would be to either permanently or temporarily allocate such vehicles.

the ranking officer in the immediate vicinity, could you have dispatched that vehicle? man who wanted the vehicle and the man to who it had been allocated and those two people would have had to discuss this matter, and I could not have decided upon it because those leaders had the same service rank as I if not a higher one.

Q Then you couldn't issue any orders concerning vehicles even if Persterer was away from his headquarters could you?

A No. About the assignment of vehicles, I could not pass any decisions. for approximately one day. Let us suppose that General Ohlendorf sent military and humane manner. Would that have been your task to have distributed that information to every one of the 85 members of Sonderkommando 10B?

A What instructions? tions must be carried out in a military and humane manner. Would it have been your task to have disseminated that order to all members of the commando to have disseminated that order to all members of the commando us the administrative officer? the Commanding officer was away one a five-day trip and this order had to be handled by someone, who was the man to handle it?

at all. I believe, however, that I have heard that the group officer gave this order from the very beginning.

beginning?

Q Where did you first hear this order?

A I don't know. I couldn't say in detail and certainly not in this concrete form. I can only know that Persterer said at the, time that the Gruppenfuehrer leader attached great importance to this and that all preparations would have to be made.

Q Was this before you reached Chernowitz?

Q Was this in Chernowitz? leader that executions should be carried out in a humane manner according to the wishes of the group chief--you know that that order was given? he did so in connection with this execution in Chernowitz but I really could not say in detail. nothing to do with execution, just routine order, and Persterer was not at his headquarters. I want to know the name of the man whose duty it was to disseminate this order to the 85 members of the Sonderkommando?

Q Well, if it had happened? given to the next senior ranking officer.

Q Would that have been you? Persterer, to whom would it have been given then?

whom it would be given. There were five untersturmfuehrer with their various tasks.

Q were you an untersturmfuehrer there Chernowitz?

A No. I was Obersturmfuehrer. in Persterer's headquarters?

Q And who was the next?

A I can't remember just now whether it was Obersturmfuehrer Barth or myself, both is possible. the headquarters?

Q. Yes, at the most, the third.

A. Of course, apart from the commanding officer.

THE PRESIDENT: When you say at the most, the third ranking officer, you mean that you could not have been second or first,

THE WITNESS: No, Your Honor, it could not have been.

THE PRESIDENT: Just a moment, I think you misunderstood the way I put it when you tell us that you were the third ranking officer at the most, you lean by it that you could not have been the second and you could not have been the first.

THE WITNESS: Yes, that is what I mean.

Q. (BY Mr. MAYER): Suppose then that an order came down which must be sent to all units of Sonderkommando 10-B and you were the only officer in the headquarters, would you have then Passed this order on?

A. I believe not, because such an order can always wait until the commanding officer is present himself.

Q. Suppose the order was addressed by General Ohlendorf to the officers and men of Sonderkommando 10-B. Wouldn't that have given you, as the only officer present, the authority to disseminate this order to Sonderkommando 10-B?

A. First of all, such an order was never given and secondly, I do not understand why I should have passed it on or make it known.

Q. All right, as the only officer present in headquarters?

A. This actually never happened.

Q. And the mail clerk opened this order, as he was supposed to do, wouldn't he refer this order to you, that came in the mail, as the only officer present?

A. I don't think, Mr. Walton that the clerk in the orderly room would have dared to open such a letter which was addressed to an officer.

Q. Well, orders are supposed to be obeyed, are they not?

A. Certainly.

Q. Yes, and when they have come to a unit, the only way they can be obeyed is for a man to know of them?

A. Yes.

Q. And if the commanding officer was away, it would be somebody's task to see that this order was given to the people who were to obey it, wouldn't he?

A. If such an order had been received, Yes, that would have been the task of the next ranking officer, that is, the Hauptsturmfuehrer.

Q. Now we are making some progress. If you were the only Obersturmfuehrer in the Headquarters and that order was called to your attention, wouldn't you have seen that it was carried out as the ranking officer there?

A. I can't --

THE PRESIDENT: Witness, Mr. Walton is putting a very simple thing and it is simply this: If an order comes through addressed to all officers and all members of the kommando and you happened to be the only officer in the headquarters, you would naturally distribute the order. There is nothing complicated or difficult about that.

THE WITNESS: If it is a vent urgent order which has to be announced immediately, and there is no other officer present, I, of course, as an officer would have announced this order,

Q. That is the answer I have been trying to get for five minutes.

A. I am sorry I misunderstood you, Mr. Prosecutor.

Q. And then we can assume that the possibility existed for You to be the deputy of the commanding officer, is that correct?

A. Hardly, Mr, Walton, because I have already said, I have already stated the subordination relationship. I have said that I was the third man, excluding the commanding officer and that only in case the others would not have been there they would have come to see me, and even then it is always the matter of content of the matter, what it is all about. If it does not concern my own authority then, of course, it would not have interested me at all, but it would have been sent to the expert dealing with such things. However, this situation never came about.

Q. The question did not go to the probability of your acting for the commanding officer. The question was: "did not the possibility exist whereby you could have in certain circumstances acted as the deputy of the commanding office, namely, the example which we have discussed?

A. I would not like to all this the deputy of the commanding officer or a representative of the commanding officer, because that would mean an internal procedure.

Q. Witness, your answer is not responsive. Answer yes, or no. Did or did not the possibility exist under certain circumstances where you could have acted as the representative of the commanding officer, answer that yes or no.

A. I would like to answer in the negative to this very general question.

Q. Then the possibility never existed where you could ever be a representative of your commanding officer?

A. Yes.

Q. What about your direct examination in your treatment of General Ohlendorf's order concerning the transport of the Jews when you stated that the Obersturmfuehrer Finger or Lipps, I don't know which one, was with the News, Persterer was away and you took it upon yourself to go back to General Ohlendorf's headquarters and consult with him a second time, concerning the transport of these Jews to Rumanian territory. Weren't you acting as a deputy of your commanding officer there?

A. No, I would not like to regard it as such for this trip, Mr. Walton, the specific order by the commander had existed, which had appointed me to accompany this man and then come back. This could not be carried out and thus an emergency situation arose which I have commented on. In compliance with this order, I went to the Group Chief in order to explain to his the emergency situation which had arisen and that the order could not be carried out.

Q. You do not think at that time that you acted as a deputy of Persterer When you treated with General Ohlendorf concerning the new development in order which he had given about these Jews.

You do not consider that. you were the Deputy then?

A. No.

Q. That is all.

A. I must add. Every officer would have done that.

Q. Well, let's turn to Document Book II D, page 45 of the English, page 48 of the German. This is Document NOKW 587, Prosecution Exhibit 92. Mr. Ruehl, how large was Chernowitz, how large a town.

A. I couldn't say, I did not really get to know Chernowitz very well.

Q. Could you estimate from what you saw there approximately how many people lived there in normal times?

A. That is difficult to estimate, because I did not really got to know the town and its extensions, but it is possible that 200,000 300,000, 400,000 people lived there, within this range I think.

Q. Well, it was a fairly large city, that is want I want. It certainly --

A. Fairly large, yes.

Q. It certainly did not come in the classification of village or small town. It was a large city.

A. Yes, certainly.

Q. Now, according to this report, to accomplish the task of searching for and I Quote, "Politically suspected elements" in this town, it took all the personnel of the Sonderkommando to make this search, didn't it?

A. You start from that point that what it says here in this report is correct. Whether it is accurate I do not know, but even if we take it for granted that it is correct, I don't see that with the men at the disposal of the kommando it would have been absolutely impossible to even approach a proper search of a town in two or three day, as it says in this document.

Q. All right, was not this the general procedure on the first arrival of a kommando in a town to search out the politically suspected elements in order to guarantee your own security.

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Wasn't this the usual procedure when a kommando first came to a town?

A. No, I wouldn't go so far as to say that in any war. I made not such observations.

Q. Well, if the security was the first requisite of any military unit in the field, as a matter of spending operating procedure was not the security the first thing taken care of on the arrival at a new territory or a new area?

A. This area had already been passed by the frontal units and as it becomes evident from the reports all these elements had already escaped and only returned after a short while in order to work there, I can't really say that I over observed that any of these villages and localities were searched. This may be due to the fact that in the period after this, we arrived at territories where kommandos had been active before us.

Q. I believe you stated that these elements had escaped and returned. Was this the only town in your experience where these politically undesirable elements came back?

A. I think either I have not expressed myself very well or we misunderstood each other because this is not what I said. What I wished to say -- I did not speak about Chernowitz but generally about things mentioned in these reports. I assumed that we were speaking about this question generally.

Q. That's right, generally. You stated that in this particular time or, at least, that's the way the translation came through, that on the approach of the Wehrmacht or certainly on the approach of the German forces these people had escaped you said and later returned. undesirable elements first left and later cane back in your experience?

A. I could not even say that of Chernowitz. From my own knowledge.

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Isn't it true that the first consideration of your commando on the arrival at any place was to make a survey to determine the situation with regard to their own security? it, because I have made no experience concerning this, but this does not mean that the general obtaining of information in this survey, as you call it, means an investigation of the whole city, because only in very rare cases we have had enough men to do so. Rumanians were there, is that not true, and by cooperation with your Rumanian Allies, could you not got plenty of men to comb the city? therefore, it was her not the task of the commando to deal with such matters, but it was the task of the Rumanians, so it becomes evident from this report there was a police commander, or police major who was a Rumanian, whose task it was, if there was nobody else to take care of it, that the security and order was maintained in this Rumanian capitol. Chernovitz then, if it was completely under Rumanian territory.

A I could not tell you. According to my observation I regarded it in this manner, that we would be there in preparedness for future actions, and this attitude of mine is being confirmed by the reports of events. states in there that the action of the Rumanians against the Jews was desultory until Sondercommando X-B arrived. However, at this particular time I want to confine our consideration to this one document.

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According to your knowledge, did any members of Sondercommando X-B assist in this search for political undesirable elements?

A I didn't hear anything about that, Communists were shot by the command? Walton, I never learned about it at all, and that I am most surprised of this, and I want to exclude, the possibility that they were shot at all, I have stated that he reported to Army group, which was far away, and that there are no deputies of his, and no inspections need be carried out, but that he does not inform his group-chief, Ohlendorf, about it, although two days later after this report to the Army group, the group was informed too, but does not say anything about this in the report. A few days afterwards the group-chief himself was in Chernovitz to carry out inspection, and even on that occasion, we have heard, he was not informed at all about this, and apart from this such a story would be in direct contradiction to the order given by the group-chief of the commando. from Sonderkommando X-B? course. that your commanding officer Persterer sent forward reports that were not true, can we assume that? until around the first of October, some five months. Did he impress you as a man who would do things like that, who would send lying reports forward?

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A I must correct this statement first. It was only just over three months, but certainly not five months. Also I was not with him all the time, so it is very hard to judge another person, especially if this problem of this kind is concerned. I only know he was very careful to be able to prove the activities of the commando, because he often complained that his commando was so much in the rear and wasn't committed to action. the commando, is that what you said? means he wanted it committed to action, did he not? to help solve the Jewish question in the East, was it not?

AAt the time I don't know anything about that.

Q I didn't ask you what you know. I said, to prove the worth of the commando, one feature of proving the worth of the commando was to commit it to assist in solving the Jewish question in the East, wasn't it? because I have already said, Mr. Walton, that this order, as it has become known to me now, was not valid for the Rumanian Sovereign Territory, and those are matters which were not known to me at that time. Therefore, it is impossible that he would have reported any activity of this kind to a group, because in that case he would have made a resistance to a superior who would give him another order. I think.

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therefore, we can not here argue about his trying to receive an assignment from the Rumanians of this kind, or carrying out such operation if he has orders to the contrary effect. if you saw it?

A I can not say. It is possible.

Q Well, you have seen his signature, have you not? seen many signatures since. Persterer didn't write much. Did your counsel ever show you the photostatic copy of this report?

MR. WALTON: Please, your Honor, could I request that this exhibit be brought into court tomorrow morning for submission to the witness to see if he can identity the signature of his then commanding officer.

THE PRESIDENT: The Secretary General will please have the document referred to by Mr. Walton in court tomorrow morning.

MR. WALTON: This is Document NOKW 587, Prosecution's Exhibit No. 92, Mr. Secretary General. BY MR. WALTON:

Q Let's go on a little farther in that. Do you know how far the City of Hodin, which is spelled "H-O-D-I-N" is from Chernovitz?

A No, I am sorry, I don't know. Chernovitz?

Q In your opinion could the name of "Hotin" and "Chotin" be the one and the same place?

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A I would think so.,I think it is marked on the maps in one way and then in the other manner. I have tried to find out which locality might have been meant and where it might be found.

Q Let me ask you this. When you arrived at Chernovitz, did you find out that the Teilkommando, or subcommando of Sondercommando X-B was in Chotin? Chernovitz when you arrived?

A I don't know. business to find out approximately where members of your command were?

A No, that is quite impossible. The people receive their orders from the commanding officer. They don't report away from me. I do not keep a list so everybody has to sign when he leaves because - generally were? In other words, when any Teilkommando were sent out. Do you know about that, as there must have been an officer there?

MR. WALTON: Your Honor, I've decided to take up another document.

THE PRESIDENT: Yes, this might be the right place for recess. The Tribunal will be in recess until tomorrow morning at 9:30 o'clock.

THE MARSHAL: The Tribunal will recess until 9:30 tomorrow morning.

(Whereupon the Tribunal adjourned until 0930 hours, 19 December 1947)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal No. II.

Military Tribunal No. II is now in session. God save the United States of America and this honorable Tribunal.

THE PRESIDENT: You may begin, Mr. Walton. BY MR. WALTON:

Q Mr. Ruehl, yesterday you stated on direct examination that you were in Chernowitz from approximately the 9th or 10th of July to about the 7th of August, 1941, did you not? any executions here, because this was Rumanian Territory, is that true?

Q Yes. What was the mission of all kommandos of Einsatzgruppe D when they went to Russia? knew at the time. I already said that Persterer made known in Chernowitz and only that is known to me. subunits was to secure the rear areas behind the Wehrmacht in order that the line of supplies should be kept open. You did not know that at the time?

A Yes, that I knew. I said so.

were a member of it.

A I do not understand what you mean. I think we do not really understand each other. I said what Persterer made known to us as the task of the Einsatzkommando and, if I am not mistaken, I began by saying that he informed us that the kommando would have to deal with the security measures in the rear Army territory. kommando at the same time he introduced you as his deputy?

A There are two errors, I am afraid, in one question, Mr. Walton. First of all, he never introduced me as his deputy because I was not his deputy and also I already said yesterday there was no general speech that he made, that I doubted whether he announced the assignment to the Kommando. It wasn't his way to do that. 10-B during the months you were with it in Chernowitz. you no information about it, because I never heard anything about that, because I was only informed about this general order which had to be regarded as a sort of general assignment during the whole time. In how far his assignment had to be carried out in Chernowitz I do not know. I said yesterday that it was my impression that the kommando in Chernowitz was alerted.

Q You were with the kommando in Chernowitz for a month. Now what did the kommando do while it was there and while you were there? up contact with the Russian and the Ukrainian Army and to become acquainted with conditions. That was that I have experienced there. I am sorry that I cannot give you any further information.

Q The translation come through "taking up contact with the Russian and Ukrainian Army." You meant the Rumanian and the Ukrainian.

Q Rumanian, yes. Did Sonderkommando 10-B spend of its time inciting Rumanians to institute Jewish pogroms?

A I don't know anything about it. out a Jewish pogrom?

A That again I certainly don't know anything about. you in Chernowitz during the month of July or August, 1941?

A How many there were during the whole period, I couldn't say if I tried, since individual officers were always on the road dealing with assignments. did Sonderkommando 10-B have in all, from Major Persterer down to the youngest Second Lieutenant, how many did it have in all?

Q How many?

A Just a moment. Seven.

Q Well, were not these seven officers in and out of Chernowitz?

A I wouldn't say that. They were not constantly on the road.

Q That's right. They came in and out of Chernowitz. Did you talk to them when they came to Chernowitz, or to some of them?

A I don't remember having discussed anything with them. I heard about this or the other story from them. In order to make this clear, I could say that, for instance, on one occasion one or two officers were sent off in order to cope with difficulties that had arisen between the Hungarians and the Rumanians; although they were both our allies, they did not like each other very much. Therefore, difficulties arose occasionally and on one occasion -- I remember this particularly -- there was a sugar plant where they were about ready to fight each other.

Q Then you did among yourselves discuss your task, is that correct?

A Noo I wouldn't say that, only special events. Such unusual events, of course, were discussed occasionally; because they were so strange, obviously, that some one heard something here and there.

Q Would you consider the execution an unusual event?

Q Would not it have been discussed among yourselves?

A Yes, I would assume that it would. That is how I gained my knowledge. was doing, if it had done something unusual, didn't you?

A I couldn't say that. to secure the rear areas behind the Wehrmacht in Chernowitz?

A No, Mr. Walton. I said that I was not under the impression that the kommando ever became active at all in Chernowitz, except in this one case which I was informed about, where, on special instruction of the Rumanian Army, the kommando became active.

Q Were you in Chernowitz on the 11th of July, 1941? the English, page 52 of the German. This is Document No_2934, and it is Prosecution's Exhibit 78, Your Honors, I specifically refer to page 49 of the Document Book. Will you indicate, Witness, when you have found the place on page 6 of the original, which is headed, "Finsatzkommando 10-B, Location, Chernowitz." evacuated by the Soviet forces, according to your memory, is that true? no Russians in the place.

Q All right, if there were Russians there, wouldn't there be plenty of work for the kommando?

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A I said, Mr. Walton, that I cannot remember having heard about Russians being in Chernowitz at the time.

Q When you got there, wasn't there plenty of work for the men in the kommando to do?

A No, I wouldn't say that.

Q Not much wor? Well, will you tell me what it means in this report when it says, and I quote, "Action against Jews, until the arrival of the Einsatzkommando desultory." That is about three lines from the bottom of the page in my document book.

Q Doesn't that mean that they stirred up these pogroms against the Jews.

A Who?

A I wouldn't conclude that from this, because here it says "action against Jews until arrival of the Einsatzkommando desultory." That means that action was taken against the Jews, but only until the arrival of the kommando.

Q Well, according to my memory, I won't argue, according to my understanding, and I won't argue with you, it seems to me there was very little action against the Jews by the Rumanians or anybody else until the Ensatzkommando got there. All right, did you ever see a Ghetto in Chernowitz? by the Red artillery. Could there have been a Ghetto in a city of 300,000 to 400,000 people?

A It is possible, but I don't know. That is a theoretical question. In a town of such extent, there might have been one. I don't know whether, there was one. However, I did not hear about in in Chernowitz. I would doubt whether there was one, merely for the reason that I myself saw these people walking about freely in the twon and, not only that, they came to our hotel and tried to do business with us.

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Q Now, as a matter of fact, wasn't it one of the principal tasks of the kommando to round up these Jews after their Ghetto was destroyed? according to this report, it took better trained and better disciplined German police forces to perform the security tasks in this city, didn't it?

A I don't know why in such a town, which is in a foreign country we should have authority to proceed against forces of this particular state.

Q Now, Mr. Ruehl, we will consider the Document Book II-D, page 37 in the English, page 40, Document No-2950, Prosecution Exhibit 90, and I am specifically interested in the report from Chernowitz that appears on pages 20 and 21 of the original -- that is found on page 39, Your Honors, of the document book. How many of these 1,200 Jews were arrested during the month of August by Sonderkommando 10-B?

A I am not in the position to tell you. I do not think that the Kommando arrested any. performed by Sonderkommando 10-B? mentioned. their interrogations were completed?

A I couldn't give you any information concerning this.

Q All right. This clearing of the area of the Jews was a joint operation by the Rumanians and the Einsatzkommando, wasn't it? document?

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killed 682, and then you arrest 50 Communists and kill 16 of them, isn't that a clearing operation?

A I said, Mr. Walton, that I doubt that the kommando even as much as participated to any large extent in this action. correct? after the Wehrmacht had driven the Russians back, is that correct?

A Do you mean the occupied territory, Transnistria, by this? It would be true of that as far as I know, at least. be no territorial changes in war time, except by conquest?

A I don't know whether I understand the gist of your question, but I should like to answer it. As far as I can see, the question it this: Chernowitz and the whole surrounding territory Bukowina up to Setzno, was Rumanian sovereign territory up to 1939 and only for one year came under Russian Sovereignty. Therefore the consequence was that as soon as this territory was reconquered, this was taken over again by the Rumanians as their own territory and was proclaimed as such. This attitude I find confirmed in a report of events, but I don't know the number, but it is one in which it says that Chernowitz and Bukowina are Rumanian sovereign territory and that it had been proclaimed Rumanian sovereign territory. What International legal conditions are concerned in this, I do not know.

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territory, were these 1200 arrested Jews Rumanian Jews or Russian Jews? been Rumanian. were they Russians or Rumanians?

AAgain I could say yes or no. I don't know. They might have been people who had been Rumanian citizen, and regained their Rumanian citizenship automatically. They may also be people who during the Russian occupation arrived from Russia as original Russian citizens, and remained Russians citizens. I could not tell you even if I tried. any civilians of conquered and occupied territories, didn't they?

A I am sorry, I don't quite understand this question. Rumanians, didn't they have the rights usually afforded civilian populations in conquered territories?

A I don't know. I don't know how far you could call Rumanian territory which again comes under the Rumanian sovereignty, occupied territory. would they not? All 682 of them, wouldn't they? were shot?

A I don't know anything about it.

Q Allright, let's turn in the same document book to page 41 of the English, Page 43 of the German, which is Document 4135, on page 42, Your Honors, and, I specifically refer, witness, to that report of Einsatzcommando 10-B, which occurs on page 3 of the original.

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Now in this report it states that there was a Vorkommando at Chotin. Have you found that place where it says that? Where it says, "Location Chernovitz, Vorcommando at Chotin."? Chotin?

A I could not tell you. In my opinion it is misleading that a Vorkommando was stationed in Chotin, for I was not informed that a subcommando was ever stationed there.

Q Do you know a man by the name of Robert Barth? I'll refresh your memory -

Q -- he was a Hauptscharfuehrer in Sonderkommando 10-B? Do you know him? Vorkommando in Chotin. Do you deny that?

A Yes, I certainly want to deny that. I never even saw Chotin, and I certainly was never there with any Vorkommando. you certain instances of your behavior while in Chotin. Do you deny that you were the highest-ranking officer with this Vorkommando also? answer, Mr. Walton. I have stated and I am stating again explicitly that I have never even seen Chotin. I certainly never was there, and certainly not with a Vorkommando. I can not tell you more. correct, according to your testimony. Now as early as the 14th or 15th of July, according to this document, Commando 10-B was being criticized because its measures had not been severe enough.

What did Commando 10-B do to increase its measures against the Jews?

A I said yesterday, Mr. Walton, and if you now refer to this paragraph, that the following directive were given to 10-B. Incidentally, a criticism that nothing much was carried out is not even mentioned. I would like to correct that. If you are referring now to this where it states: "Directives are given to 10-B" I can only repeat what I said yesterday, that this order if it arrived at the Commando, was not known to me, and that I did not observe any effect of such an order. first intellectual persons, intellectually leading persons quoted in the report? Was it always the task of the Commando to execute these people first?

A. I don't know. intelligentsia, such as a lawyer, a rabbi, or teacher, had his life spared by the Sonderkommando 10-B in spite of the fact that he belonged to the intelligentsia?

A I didn't know the prerequisite for this, namely that there was such an order to this effect, but I can not say -I really can not say I know about such an order. where one of the intelligentsia had his life spared by Sonderkommando 10-B. Now is your answer to that yes, or no? actually carried out, and that I would know something to that effect and, that, therefore, I can not tell you because, as I say, I didn't know the prerequisite and I didn't even interest myself in these matters, and, therefore, I am not able to answer this question.

THE PRESIDENT: Mr. Walton, that question is a little bit tricky. Not that you intended it to be so, of course. That question is a little bit like asking, have you stopped beating your wife, sir? If he says, yes, it means that he had been beating her, and if he said no, he is still beating her.

MR. WALTON: I withdraw the question, Your Honor. BY MR. WALTON: accused of setting fire to some houses?

A No, I have not heard anything about it. Where was this supposed to have happened? Jews in Chotin chased them over the ruins and shot at them? I have already told you, that I never even saw Chotin. I never entered the town of Hotin. Therefore, it obviates every other question. or Hotin. I am well aware that you say that you were never there, if so, all you need to do is to answer, yes or no. You already explained why you answered, yes or no. In Chotin didn't you with your own hands plus two drivers set fire to a Jewish synagogue?

Q Do you know how long this Teilkommando was at Chotin?

A No. I could not tell you. I have said that I don't even remember a subcommando having been sent there.

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Q Did you ever hear of anybody being killed in Chotin? No. 2950, on page 39 of the same document book you hold in the English, page 40 of the German, in that paragraph where it says: "In the area of Chernovitz, Chotin has been bypassed, whereby 150 Jews and Communists have been liquidated." Did you ever hear of any Jews being liquidated in Chotin or Hotin?

A No, Mr. Walton, I can only repeat what I said to Mr. Wartenberg in my first or second interrogation - I don't know when it was - that I don't even remember the name of Hotin. Hotin does not mean anything to me at all. round up Russian Nationals, such as Jews, Communists and other asocial people while you were with it? departmental chiefs made use of Russian confidential agents, in order to deal with their tasks.

Q Did you ever see a confidential agent? the commander himself received civilians as visitors, and among those there were a number of Jews as well, and he discussed matters with them. confidential agents for their services? salary, or whether they were paid a stated sum for each denunciation they made to your commander?

A They certainly didn't receive a monthly salary, because I would have known about it, it would have gone through my office, unless, of course, the commanding officer had a fund for this purpose, especially at his disposal, but I don't know anything about that.

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that are mentioned in this report on page 43 of the English and on page 3 of Document NO*4135, were these denunciations by these confidential agents sufficient to sign a man's death warrant?

A I don't know at the moment, Mr. Walton, what you are referring to.

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Q. All right, let's go almost to the end of document 4135. According to this report, and I quote: "10-B finished its tasks at Chotin. Intellectually leading persons from the Soviet Party and public life, Jewish agitators, teachers,lawyers, rabbis were apprehended with the help of Ukrainian confidential agents in the course of several raids and treated accordingly." Now I ask you , was the denounciation by these confidential agents sufficient for Sonderkommando 10-B to issue a death warrant for this man or these men?

A. Such a question you cannot expect me to answer, Mr. Walton. How could I answer such a question? I never carried out any investigation in such cases. Therefore, I could not if I tried tell you anything about the investigations.

Q. Well, you stated that there is reason you supposed that confidential agents were being sent out because you used to see them in the commander's office. Now I am trying to inquire into just how much you know about these visits to your commando. If you don't know, all you need to do is say you don't know, but let me caution you that I am asking the questions and not you. Let's turn now to Document book III-D, page 24 of the English, page 46 of the German, which is Document 2840. During the month of August where was the commando stationed?

A. As of 7 August in Mogilew-Podolsk.

Q. Were you with the Commando during this time?

A. Yes.

Q. Do you know who it was that escorted these 6,000 Jews back to Rumanian territory, and had the argument with the Rumanian bridge commander?

A. First Lt. Lipps had the order to take them back, and I am not taking for granted that these figures here are correct.

Q. Do you know whether these Jews wanted to return to MogilewPodolsk and objected to returning to their homes in Rumanian territory?

A. No, so far as I was informed, they welcomed the idea that they should be able to return to their homes, and they would have a better prospect there than in the destroyed war territory.

Q. Now according to this report the Jews were collected in three collecting camps. Who established these camps?

A. I don't know what these camps looked like. I have not seen them, and I don't know anything about it, but I would assume that they were individual groups, which were quite large. Whether the establishment of these camps had been ordered or whether the people collected there themselves in order to support each other, that I don't know.

Q. Who put these Jews to work clearing the streets?

A. I could not tell you, I think it was probably the Ukrainian self-administration, who caused the work to be carried out.

Q. Who paid them?

A. That also I don't know, but I hardly think that this kind of work was actually paid for. My impression about the work which I had done in Russia, was that it was not customary to pay, because they were emergency laborers who I think were not paid. I could not , of course, tell you any exact details about it.

Q. Could these Jews ever refuse to do this work?

A. I don't know whether they were threatened with force and if so, how.

Q. What would have happened to a Jew if he had refused to work when ordered to do so by the Germans?

A. I could only give you the same answer again, that I have no personal knowledge concerning this.

Q. All right. Let's move on then to Document Book II-B, page 7 of the English, Your Honors, page 5 of the German, Document 2837, Prosecution's Exhibit No. 58.

THE PRESIDENT: What page is that?

MR. WALTON: Seven.

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BY MR. WALTON:

Q. Witness, does the date of this document correspond with the events mentioned in paragraph three of your affidavit, which is Document Book III-D, page 76 of the English, Document NO 4149, and Prosecution's Exhibit 169. Does the date of this report, witness, correspond to the events mentioned in this paragraph three of your affidavit? I am sorry. Witness, on page 29 of the original a report is given from Einsatzgruppe-D, page 11, Your Honors, and it is about this paragraph that I asked you the question in connection with this paragraph three of your affidavit. Does the date of this report correspond to the events mentioned in this paragraph 3 of your affidavit?

A. May I ask, does the paragraph three concern the leading back of these people. I have not got it before me at the moment, I know -pardon me -- no, I don't think I have it. I only want to make certain. I'll also answer this question. I would doubt that as I have already said, the taking back of these people via taranpol in the numbers mentioned , the figure mentioned is 27,500, such figure I never heard about, neither in Mogilew, nor in discussions with the group-chief, and I would assume rather that the figure was the one I recall, namely from 12,000-15,000 people, and that the reference to this is in the report of the 26th.

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THE PRESIDENT: Witness, Mr. Walton only asked you if the dates corresponded. He wasn't referring to the figures - the dates. Put the question again, Mr. Walton, please. BY MR. WALTON: Document Book III-D, page 121 of the German. Do you have paragraph 3 of your affidavit before you now? which is on page 11 of the English text of Document Book II-B, and the events which you relate in paragraph 3 of your own affidavit correspond? dates.

Q Yesterday in answer to the President's question pointing out to you the inconsistencies in your direct testimony that "there was no cause for me to interest myself in this matter because the man competent in this case was, until the arrival of the Kommando in this sector, the Fuehrer who had been appointed who was not subordinate to me in any way" with your statement in your affidavit and I quote: "I tried to get these people together in Mogilew-Podolsk in order to take them back in a group transport", you stated that the affidavit was worded by Mr. Wartenberg and was misleading, is this true? you made the following statements about this event.

1. Persterer ordered me to accompany him to the Group Headquarters to hear what the decision of the Group Chief was in this matter and bring this decision back to Mogilew. Did you make that statement yesterday?

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Q Second: I gave this message, that is Ohlendorf's decision, to the officer in charge of bringing these Jews back. Is that correct?

Q Then you made a third statement in this connection when you said: Then in his own competence this officer carried out this re-transport. Did you make that statement? ce. With that I want to say that he was responsible for the carrying out of this order and he carried it out by himself. "I cannot say with certainty how many were actually sent back because I did not see the transport." Did you make that statement?

Q Do you remember your first interrogation by Mr. Wartenberg?

Q Was there a stenographer present?

A You mean a stenographer? Yes, a female stenographer.

Q Did she take down questions and your answers in shorthand? she tried to do so. of May 8, 1947, would you recognize them? on it in detail I would doubt because we were both rather excited and quite some time has passed since then. tion. "Q. There were about 50,000 Jews in Mogilew-Podolsk who were taken over the Rumanian border?

"A. No, it was this way. I came from Czernowitz there then to install a Kommando in Mogilew-Podolsk. On the way I overtook a train which I was able to identify as an exile train which was escorted by Rumanian soldiers." Did you make that statement?

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A Yes, but I want to correct this first sentence. I did not say that I arrived there in order to install a Kommando. I don't know how you read it but that is how it came through on the translation but I was sent there to prepare billets for the whole Kommando which was to be transferred there.

Q I skip a few sentences which are not particularly important. "I have thought a good deal about what could have been done since it was not possible to take care of them (referring to this transport of Jews again). I thereupon herded the Jewish people together in Mogilew-Podolsk with the idea of bringing them back. I tried it and went to Ohlendorf and asked him about it and explained the situation to him. I told him that the situation was impossible and I wanted to advise him that the people should be taken back. He agreed with me. I ordered them to collect and told them that I would take them back over the bridge." Did you make that statement in the interrogation?

A Yes, but, Mr. Walton, the wording which you have read does not make very much sense and I don't think I have to say much to this point. May I just take out one particular point, that I myself should have gone to see Ohlendorf, to suggest this to Ohlendorf and to cause him to tellme to lead these people back? That in itself is so peculiar and I think Ohlendorf has already given testimony concerning this point and, of course, he will confirm how it actually happened and who was to report to him about it. those statements in your interrogation to Mr. Wartenberg?

A Certainly not in this form. I have discussed this matter with Mr. Wartenberg and he said "this is what you told me", and I said, "it is quite impossible because it did not correspond to the fact. Therefore, how could I have told you such a story". I really discussed this quite some time with Wartenberg, the matter concerning these two affidavits.

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A This is not an affidavit. This is the stenographic transcript of your interrogation and I am asking you if you made these statements. Let's read further. After you relate about your negotiations with the Rumanian Colonel at the bridge and his refusal to allow this transport over the bridge you state, and I quote: "Then I went back to Ohlendorf and told him that there was still one bridge that was German across the river. The people could go back over this. He also approved this" and then you said, "I call the train together and we march back to the borders of our Kommando and there, according to orders, changed and turned the train over to our neighbor Kommando 12. This train was then also taken over." Did you make that statement? you now about statements that you made on 8 May and you are positive that you never made this statement that I have just read.

A What I say is that I did not do it in this manner. I told him that the first attempt of these transports did not take place. As I was going to report to him about it. Lipps asked me to come to see him at the Rumanian Commanding Officer's Headquarters to tell him again that it was the decision of the Group Chief, that he heard himself that this was with the agreement of the German Army. On this occasion we went to see the Rumanian commanding officer and we discussed the matter again but he refused. On the next day I went to see the Group chief because the situation was untenable, or at least I regarded it as such, and after I had passed on the order I regarded it as my duty as an officer to notify the Group Chief immediately and to tell him that his order could not be carried out, that this and that situation had arisen, and I had decided to ask him for a new decision. It is quite possible that on this occasion I mentioned that down the river there was another bridge - that is quite possible.

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Q Let's go on a little further. The question was then asked you by Mr. Wartenberg, "Who headed Kommando 12?"

And your answer: "Noske. He took the people as far as Jampol and there they went over the bridge happily". Did you make that statement?

AAgain not in this manner because I couldn't have said that, at least, as this was actually said in this particular wording doesn't mean that he himself was personally able to say this. By this it is only meant that he took charge of this in his capacity as Kommando chief, as people of his Kommando were concerned. I can only say again I did not go with this particular transport for one step. As far as I am informed, and I remember Lipps sent a few people with this column and I was of the opinion that these men escorted this column up to the border of our Kommando sector but as far as actual knowledge goes I have not been concerned with this incident.

and your statements made here disagree, which do you stand on, your statements made here or your interrogation and your affidavit?

A I may say the following here. The affidavit is the result of these alleged records.

Q Just a minute. Let me get an answer to my question. As between your statements made here and your interrogation and this affidavit, which do you stand on now, your statements made here or your affidavit and interrogation? witness stand. transport to the area of Einsatzkommando 12. Did he report to you after he accomplished his task?

A I do not know - not to me because that wasn't necessary.

Q Well, since you had taken such interest in these Jews, weren't you at least curious to find out what happened to them?

A Well, obviously when he returned he would have told me "Here I am again. The thing has been managed." But this would have been a comradely act but not a report, or whatever you want to call it.

Q All right. Did he tell you he had delivered the Jews as he had been ordered?

A I don't remember any details. He told me he only - he stated the transport had actually been carried out.

Q Did he say to whom he had delivered these Jews? these Jews and before he started back to his own unit?

A I don't understand the question.

Q All right. When he delivered these Jews to some one in the area of Einsatzkommando 12 he certainly didn't break down into a dead run and leave immediately to report back to his unit.

I am asking you now, did he ever tell you of any events in connection with this transport that happened after he turned over the Jewish transport and before he had started his journey back to his own unit?

A You presuppose, Mr. Walton, that Lipps accompanied and escorted this column to the border. I couldn't tell you that. you of any events that took place after he delivered the Jews and started back to his own unit - your answer is in the negative, is that correct?

A Yes. I never thought anything about it. transport of Jews?

A No. I regard this as quite impossible. He never told me anything about it either. I don't see any reason why he should have done that. and other places, isn't it a fact that you were convinced in your own mind that you sent these Rumanian Jews across the river you were sending then to their deaths?

A No, no, that is not so. Because that one would send a whole population to their death by shooting I never imagined that kind of thing would happen and I do not see from what you conclude this. I neither heard anything about it nor ever saw anything in the documents, and if you ask me about the picture in my mind which I have of this, I assumed that the group chief, who dealt with such important things after discussion between the Wehrmacht, also informed the Wehrmacht about it, and that there are discussions to this effect with the Rumanian Wehrmacht authorities.

Q Well, did you not know the anti-semitic attitude of the Rumanians?

anti-semitism as far as Rumanians are concerned. I would say I didn't use this expression. They were different attitudes. the Germans at this particular time? do they not?

A I would like to doubt that. I know of sufficient examples that this is not so. I mentioned the difference between the Rumanians and Germans.

Q Well, I will prove to you that your doubt is ill-founded. Both of you were fighting the Russians, were you not. Russians? of the Rumanians and Germans was the same. Now I am asking you, was not anti-semitism a basic policy of both the Rumanians and the Germans?

A You see here we do not understand each other, Mr. Walton. You were speaking of the war aims and you say that the basis of this war aim are common political opinions and convictions. In my opinion they are not necessarily a part of it. For instance, I may point out here an example you mentioned. The Allies - I do not think their political aims were the same yet they would have the same war aims.

Q Well, I will ask you this. Was it not one of their war aims to get rid of the Jews?

Q Wasn't that a common war aim between Rumanians and Germans?

Q As Allies didn't the Third Reich encourage the anti-semitic policy of the Rumanians?

A I don't know,

Q All right. Did you know when you sent these Jews to the area of Einsatzkommando 12 what Einsatzkommando 12 would do with them? chief that it was the task of the Kommando to lead these people back across the bridge and that discussion would have teen held with the Rumanians so that they would not run into the same difficulty. they got them, didn't you? back into the territory of the people that had expelled them, you knew that when you sent them hack, didn't you? was aware. I was of the opinion though, and I still am today, that it was less bad for these people not to be very well regarded in their own country or sector or position, than to be helpless in destroyed territory suffering hunger and being crowded. to the conclusion that if you sent these Jews back, some of them were very liable to be killed, weren't they?

A No. I don't see what reason I should have had to think so. I had not heard by then of any Jews being killed. Therefore, I had no conclusions.

THE PRESIDENT: The Tribunal will begin recess 15 minutes.

THE MARSHAL: The Tribunal is again in session.

DR. HOFFMANN: Hoffmann for Nosske. the Tribunal. My request is that the Defendant Nosske be excused from attendance in court this afternoon in order to prepare his document book. Your Honor, my question is the following: The Tribunal will remember the event in Jampol when the Jews were brought into the Rumanian territory. The bridge commander, whose name was Horsch, was to be interrogated, investigated. According to instructions by the Tribunal, by submitting the record, I asked Major Schaeffer in the Defense Center to bring this witness here. I assumed that the Tribunal would have a session tomorrow, Saturday, but there are rumors, I say rumors, your Honor, that there will be no session tomorrow, and in order to avoid that the witness comes here in vain, I would like to ask or inquire whether there is any truth in those rumors, whether the witness should be told not to come.

THE PRESIDENT: Is he available to you by telegram?

DR. HOFFMAN: I would have to go quickly to the information center and ask Major Schaeffer about this. I think he summoned him for tomorrow, but we can also tell him not to come.

THE PRESIDENT: Yes. Just a moment, please. Dr. Hoffmann, are you certain that by telegraph you could stop this witness from starting on his journey?

DR. HOFFMANN: I am sure of that.

THE PRESIDENT: Because we would not want him to make this trip unnecessarily. I tell you what you might do, Dr. Hoffmann, if I can burden you with it, to find out from the information center if by sending a telegram they can prevent his starting on the trip. If they cannot do that and the man is on his way or will be on his way then we should meet long enough to hear him tomorrow morning, at least for that, because it wouldn't be fair to have him make this trip and have him make it again.

DR. HOFFMANN: Your Honor, immediately, I shall -

THE PRESIDENT: Yes, I think we should have a definite statement either by a report from him or from someone who would know whether he is gone or not. why don't you do that, please, Dr. Hoffmann and then let us know and then we will make our decision.

DR. HOFFMANN: Yes, I shall be back in a few minutes, Your Honor.

THE PRESIDENT: Very well, Very well.

Q. (By Mr. Walton) Witness, before the morning recess, we were talking about the transport of thousands of Jaws which you were instrumental in delivering to Einsatzkommando 12 for further accompanyment into the Rumanian territory. Did any of this transport refuse to go with Lt. Lipps?

A. May I first correct something. In the introductory sentence I think you made a few slight errors, as to my participation in the retransport; in order to clarify this again, in order to avoid further misunderstandings, I was the one who handed on the order. I did not conduct the transport back. From my own knowledge, I cannot say whether the Kommando 12 sent any men to assist. I concluded this from the fact that they did sand people, because we also did this. Now, in order to answer this question, I would lime to say that Lipps did not tell us anything about the fact that people were shot, I think that was the question, was it not?

Q. Did some of these Jews escape and refuse to go with the transport conducted by Lt. Lipps?

A. I did not hear anything about that.

Q. Did you interview any of these Jews when you came upon them on the road to Mogilew-Podolsk.

A. On which road, please?

Q. Chernowitz to Mogilew Podolsk, where you first found them, Did you interview any of them? Did you talk to them?

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A. No.

Q. How did you know why they were in this area?

A. I don't understand quite how this is connected with what we are talking about, in order to clarify this.

Q. All right, let me rephrase the question. You have stated that you were advancing from Chernowitz to Mogilew. You came upon a transport of Jews of several thousands. Are we agreed on that?

A. Yes.

Q. Now I ask you whether when you first found this transport, when you first knew of it, did you stop and talk to any of these people?

A. No, this transport was travelling and I overtook them with my car.

Q. How did you know what it was?

A. I saw the people. I passed them and seeing that the roads were bad, one had to travel slowly.

Q. How did you know from whence they came?

A. I never said that I knew from where they came. I do not know that even now, from where they come. I assume from their territory itself.

Q. Well, why did you go to Ohlendorf with the suggestion that they be sent back across the river into Rumanian territory, if you don't know whether they came from there or not?

A. That was an entirely different group. Mr. Prosecutor, this transport I saw on my way from Chernowitz to Mogilew. I overtook them. When I came to Chernowitz I heard there from Lt. Lipps when I discussed this matter with him and after all, it was something special, something unusual, that I observed this during the journey that thousands of Jews from the Rumanian territory existed and that he had received instructions to prevent such Rumanian Jews from going back to the German operational territory.

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This transport that I saw, to where they brought these people, I don't know at all. I don't think they even crossed the bridge and those people who were on the other side already told me at that time that the Jews came from the Rumanian territory and that seemed to be something similar.

Q. Then you found out from other people then, not the Jews themselves, where they were from, is that correct?

A. Yes.

Q. All right, and you never stopped your car even to speak to these Jews to question them in any way. You just rode on by?

A. Well, I told you this transport passed through the Rumanian occupied territory and was accompanied by Rumanian military personnel and I had no reason to interfere.

Q. Did you talk to any of the Rumanian military personnel that were accompanying these Jews when you found them?

A. At that time I did not know what was going on.

Q. And the information that you got that they were from Rumanian territory you got from Lt. Lipps and others?

A. Yes.

Q. Now, let's go back to Document Book II-3, page 11 of the English text and page 29 of the original in the German text, which is Document 2837 and is Prosecution Exhibit 58. Now this report shows on its face that it was issued from Berlin, does it not?

A. Yes.

Q. And where did Berlin get these facts which they have related here?

A. From the Einsatzgruppen, of course.

Q. And where do you suppose the group Headquarters got the facts?

A. Normally from the Einsatzkommandos.

Q. Didn't they got these facts from Sonderkommando 10-B that are related in this report?

A. No, this could not be a report from Kommando 10-B, because it is a summary report, or a general report.

Q. Did they get it from Einsatzkommando 12?

A. According to the information, as far as I can see it at the moment, this is a total report of the group, but I cannot see here whether the group made any special report in that case or whether they rearranged it in Berlin or even compiled it out of various reports.

Q. Well, there is no point of Berlin charging certain activities to other groups than the one from which they received the report, is there?

A. It probably was not done on purpose. I assume that errors occurred.

Q. What proportion of the 3105 Jews and 34 Communists were executed by Sonderkommando 10-B?

A. I cannot tell you anything about this.

Q. Well, was Sonderkommando 10-B east the Dnjepr River at the date of this report, namely, the of August, 1941?

A. Yes.

Q. And since this is a summary report from all of the Einsatzkommandos and Sonderkommandos, isn't it reasonable to suppose that it included Sonderkommando 10-B?

A. That is quite possible.

Q. And if they say "all our kommandos shot 3,105 Jews and 34 Communists," it means that Sonderkommando 10-B shot part of them, doesn't it?

A. That is not bound to be like that.

Q. Now you have testified here that there is some doubt in your mind as to whether you know one Robert Barth, a former Hauptscharfuehrer in Sonderkommando 10-B. Would you recognize him if he was summoned as a witness, if you say him?

A. I think so.

Q. Do you ever remember giving a Robert Barth any orders?

A. I do not remember.

Q. Was he present when you were discussing this transport of Jews on the road from Chernowitz to Mogilew Podolsk.

A. I cannot say that either.

Q. It is possible that he was along, isn't it?

A. I cannot exclude the possibility.

Q. Do you remember whether or not he was detailed to go with Lt. Lipps to deliver the transport to the area of Einsatzkommando 12?

A. That order would have been given to him by Obersturmbannfuehrer Lupps. I do not know which people he appointed to this.

Q. Did you not route this transport through the Russian cities, Ananew, Nikilajew, Jampol, and Skajowsk? Isn't that the route that the transport took in order to get to the Rumanian bridge from where you saw them?

A. May I show you where Skadowsk is, Mr. Prosecutor?

(Witness indicating on map.)

Chernowitz is here. Here is is Mogilew Podolsk. Here is Jampol. Ananjew is here and Skadowsk is here. I hardly think that a transport went that route in order to get down here to this first point.

Q. What was the river which these Rumanians crossed? What was the name of the river that these Rumanian Jews corssed?

A. The Dnjestr River.

Q. The Dnjestr River?

A. Yes.

Q. About how many kilometres from where you found them to Rumanian territory was it?

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A. I beg your pardon, I don't know what you are referring to now. Where did I find some -

Q. You said you passed this transport on a road from Chernowitz to Mogilew Podoslk. About how many kilometres from the point where you found them to where they crossed the Dnjestr River, was it?

A. That was in Rumanian Sovereign territory. That was between Prut and Dnjestr and whether this transport ever crossed the Dnjestr River I don't know and I doubt it.

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on your second visit to him that they be conducted to another bridge. Was this other bridge on the Dnjestr River?

A I certainly did not suggest it to him. At the most, on that occasion I mentioned to him that a second bridge existed. A suggestion I could not make, because of the rank I held. I could not have done that at the time.

Q All right, where was this second bridge? On what river was this second bridge? Jampol. did they not? saw this transport of Jews, approximately how far was it?

A I don't Quite understand this connection. The two matters have nothing to do with each other. First in the first part of the sentence you seem to be talking about the retransport of the Jews who were already in Mogilew and then in the second part of the sentence you connect here, if I have not misunderstood you here, by finding me meeting this transport on the route from Chernowitz to Mogilew, that is, I was on this road where this transport was moving and I don't know why. That was still in Rumanian territory; because of that I cannot establish the distance. There is no point in giving you any distance.

Q Well, didn't you state that you took, or you were connected with plans to take these Jews in this transport which you found to the area of Einsatzkommando 12 and that Einsatzkommando 12 would then take them in Rumanian territory. Now were the two transports of Jews two separate events from the one you found and the one that you testified you spoke to Ohlendorf about and was finally taken across the river, the Dnjestr River. Were there two separate transports of Jews?

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A Definitely, there were two different matters. I am trying to clarify this all the time, but perhaps I did not express myself quite clearly. May I repeat it? When I travelled to Mogilew I came across, or, overtook, in the territory between the Prut and Dnjestr rivers, a transport escorted by Rumanian military people. Where they went to, I do not know. That they crossed the bridge I doubt very much, because Lipps had already received the order to stop such illegal deportations. That was the one transport. bring the people back from Mogilew to Jampol to their homeland. That is an entirely different matter.

Q Why didn't you put both these instances in your affidavit?

A During the interrogation I told Mr. Wartenberg how I thought of this matter. The first thing I thought of was when touching upon such a question that I saw this transport and did not know what was going on and then when arriving in Mogilew I discussed the matter with Lipps and then he told me -

Q There is no point in going through that again. I asked you the question, why you didn't put it in your affidavit. I want to follow it up. When this affidavit was submitted to you to read before you signed it, why didn't you call Mr. Wartenberg's attention to it then?

A I don't know what I could have corrected on that occasion. I don't see anything that is not clear here.

THE PRESIDENT: Mr. Walton, may I interrupt just a second, please?

MR. WALTON: Yes, sir. BY THE PRESIDENT: the road and then when you arrived at Mogilew Podolsk, you found out what this transport was all about and then you made efforts to have this transport sent back to Rumanian territory.

when I knew all that was connected to it, I didn't realize this. of refugees and then you didn't see then you didn't see them again. That ended that episode. different group of people? had been expelled by the Rumanians and had been brought across the bridge and already existed in that territory. Jews that you saw? this problem. Mr. Wartenberg told me that I should tell him about it and I told him in the same broad manner as I expressed it here and then he took a few sentences of that statement. and which consisted of roughly of about 1,000 people, came to your attention and then passed out of your view and out of your life and you don't know what eventual fate these 1,000 people met.

A No, I don't know that, Your Honor.

Q Was this in Rumanian territory that you saw these people?

A Yes, that was between, if I may explain this, Your Honor; the border ran along the the Dnjestr River and I overtook these people in the territory between Prut, that is the river Prut and the Dnjestr, which is near Mogilew. In this territory I overtook this carivan. Where they were going to I didn't know. That is why I discussed the matter with Lipps and aksed him what was going on and I then heard what the Rumanians had done previously.

Q But you don't know whatever happened to these thousand people?

Q Well, I think that's where the confusion arose. The impression was gained that you then later saw these 1,000 people elsewhere. never did get into German territory insofar as you know, in German occupied territory? agreement existed between the two armies that across the Dnjestr, which was the border of interest, any traffic was prohibited, any moving of population either way was prohibited, and, in violating this agreement, the Rumanians had used the opportunity of no German troops being there brought those people across the bridge and that was what Lipps found.

Q You say in your affidavit, Witness, we have this statement: "On my arrival at Mogilev-Podolsk, I was told that this transport consisted of Jews who originated from Bessarabia and the Bucovina and had been driven from their homes in order to be left to their fate after having passed the border." Then comes this: "I attempted to get these people together at Mogilew-Podolsk in order to take them abck in a group transport."

A That can be easily misunderstood, I agree, Your Honor. At the moment when I signed it, I did not notice that. to understand it in any other way, isn't that right?

THE PRESIDENT: Proceed. BY MR. WALTON: to get to the Dnjestr River? Did it pass through any Russian cities?

A I cannot say that, Mr. Walton, he would have taken the nearest road.

get to the area of Einsatzkommando 12? that territory. Jews that you know of?

A 10-B?

Q Isn't it a matter of fact that 10-B took 400 Jews out of a transport at Ananjew and shot them?

Q Didn't Sonderkommando 10-B have the duty to guard the approaches to an execution of the Jews, including old men, women and children, six kilometers from Chessan?

A Where?

A Chessan, do you mean? I do not remember that any of our people were in Chessan. I myself was not there and I do not know that in Charnowitz any of our unit were assigned.

Q. Your commanding officer, Alois Pesterer was an efficient officer, wasn't he?

A. Yes, but I don't know how as a subordinate that I can pass judgment on this. I think Herr Ohlendord could have given better judgment on it. He was a soldier, that was my impression.

Q. He would make inspection trips to the subcommandos of his Command some distance from his headquarters, didn't he?

A. Yes, he was on the way quite a lot.

Q. When he was away from his headquarters, whom did he leave in charge?

A. No commando existed practically, because if he visited the subcommando, the commando was divided into several commandos.

Q. Whom did he leave in charge of his office while he was away?

A. I don't know whether he asked anybody in particular, but the next senior officer was Hauptsturmfuehrer Finger.

Q. That name is F-I-N-G-E-R, is it not?

A. Yes.

Q. Whenever a commando changed its location, who was in charge of the movement?

A. The commando-chief himself.

Q. At what town did you leave the commando in October 1941?

A. In Skadowsk.

Q. Is it not a fact that Persterer introduced you to the whole commando as his deputy at Dueben, and you remained so until you got to Skadowsk?

A. No.

Q. Didn't Persterer like his alcoholic beverages?

A. I didn't notice that.

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Q. Isn't it a fact --

THE PRESIDENT: Mr. Walton, if that is a charge in the Indictment, I think we will have to exclude it.

MR. WALTON: Unfortunately Sir, this is a basis being laid to show that this man was incapable of performing his duties, and other people had to perform them, and, it is the contention of the Prosecution that this man was his deputy, and we intend to prove it, perhaps, not by this witness, I agree.

THE PRESIDENT: Very well, you may proceed, Mr. Walton. BY MR. WALTON:

Q. Isn't it a fact that Persterer was a great many times too drunk to perform his duties, was he not?

A. No. I strongly object to that in the interest of the deceased. And I can assure you that is such a thing had occurred even once, Herr Ohlendorf wouldn't have stood for this, that would have been the end of his career as a commando leader, insofar as I got to know Herr Ohlendorf.

Q. When you left the commando, wasn't your place taken by Finger?

A. As far as I know a new Obersturmfuehrer arrived who was to take over my job.

Q. Will you repeat the answer please, it didn't come through?

A. As far as I know an Obersturmfuehrer arrived, and I assume he took over my job, but I am not certain.

Q. Well, are you certain that Finger didn't take over your job?

A. I would almost like to exclude that possibility, put I am not certain.

Q. Alright. Let's turn to the fifth paragraph of your affidavit, which is in Document Book III-D, page 76 of the English, page 121 of the German, and it is Document NO-4149, Prosecution's Exhibit No. 171.

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The part we will discuss, Your Honors, is on page 78 of the English text, and page 124 of the German, paragraph 5. Isn't it a fact that this incident was left out of the first affidavit Mr. Wartenberg drew up for you to sign, and you wrote him an account of this incident, a note, and discussed it on his next interrogation?

A. May I correct this, namely, that so far as this correction is concerned I had made already before the first draft of the affidavit, and in the meantime I remembered this, and I didn't want that one could gain the impression that I tried to keep the matter out or to keep it a secret, that is why on my own I sent it to Mr. Wartenberg.

Q. Why was the number of thirty Jews decided upon for the killing of two German pilots?

A. I beg your pardon. Why?

Q. Why was the actual number of thirty Jews decided upon for the killing of two German pilots?

A. I can not tell you anything about the things that happened there, and the details. Neither can I name the figure I am not certain, I only remember vaguely that it was something like twenty or thirty people that was concerned.

Q. Who decided upon this number?

A. Who finally decided it there I can not say, whether the Obersturmfuehrer Schukert, or just the local commander there who did it. I can not say.

Q. Who gave this order or these orders to Schukert to round up these Jews?

A. If I may go back to your sentence; so far as I know, Schukert received instructions that the case of murdering the two German Army pilots was to be investigated as matter of course, this event which I have described.

Q. That is what I want to know, who gave him these instructions or orders?

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A. He could only have gotten them from Persterer.

Q. Isn't it a matter of fact that because Persterer was unable, due to absence, or because of his failing to give these orders, you as his deputy gave the necessary orders to avenge the death of these two pilots?

A. Certainly not.

Q. Did you ever issue any orders that resulted in the execution of Jews?

A. No.

Q. Of Communists?

A. No.

Q. Or of Krimchaks, or Gypsies?

A. I never saw any, and, therefore, had no oppurtunity even if I wanted to.

Q. Did you ever issue any orders of abetting the the execution of Jews, or any undesirables?

A. No, that would not have been my task any more apart from that I didn't know at that time that such general order existed.

Q. Now, I understand that you were awarded the Army War Meritorious Service Cross with swords. What year was this award made?

A. In the year of 1941.

Q. Did you receive this metal after your return from Russia?

A. Unfortunately not. I got it already before, and may I tell you which office awarded it to me. I was awarded this from the office in Brunn, for my work in counter espionage. If you knew the meaning of this merit or this distinction I think you wouldn't regard it as very important.

Q. Were you proud of this metal when you received it?

A. I said already, Mr. Walton, if I may repeat it again, this war meritorious service cross second class in Germany, is of secondary importance for almost every air warden got it who wore his helmet three times during raids at home.

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I think there is no special reason for being very proud of then, and may I tell you that afterwards I didn't even wear the ribbon because I was ashamed of it.

Q. Well, I wanted to get that answer, and it took you a little time to give me the facts.

A. I hope I have explained it.

Q. You were promoted to Hauptsturmfuehrer in January 1942, weren't you?

A. Yes.

Q. Didn't your foreign service influence your promotion?

A. I hardly think so. It was new. It was in the course of ---

Q. How often did a promotion occur in the SS, in the officers ranks?

A. There was no general regulation for this.

Q. Were you not seated in the dock when it was testified to here that four years was the normal promotional procedure from one rank to another? One of your co-defendants testified to that effect?

A. I can only tell you, Mr. Walton, that I don't know any directives saying that promotions were to be given within a certain period. I believe that was dependent on individual levels, which depended on the ranks.

Q. would you have received this promotion if you had not had foreign service?

A. No doubt I would have been entitled to this and would have been promoted,

Q. Were you familiar with the directive issued by Himmler himself that no one would be promoted in the SS until he had had foreign service, or front line Service?

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A. There was internal instructions for the different units concerned. As to the officers I don't know about that. These other directives for promotion to competent officers I can not answer that.

Q. You never saw this directive from Himmler then?

A. I can not remember.

Q. But it could have existed, so far as you know, is that true?

A. That would have been quite possible. I really can not say. It is quite possible.

Q. Now coming back to your promotion sheet in your personnel records, it seems that you were able to get promoted within three years from a 1st Lt., to a Captain. Don't you think your service in Russia had something to do with this?

A. I already said that at that time it occurs exactly on the same date when my rank was to be assimulated. In that respect, therefore, I would have been promoted automatically on that date.

Q. Well you stated in your direct examination that you were recalled from service in Russia to go to school. Now why would they promote you just to send you to school?

A. It was not done because of that. May I clarify this. Effective from 30 January 1939, I was appointed Police Inspector. My SS rank was assimulated, and I became Obersturmfuehrer; after three years service because of the assimilation regulation I automatically was made Hauptsturmfuehrer.

Q. And your service in Russia had nothing to do with it?

A. They need not have had anything to do with it.

Q. Will you explain to the Tribunal the "Action Zeppelin", what it was?

A. The operation "Zeppelin" was to try to recruit volunteers from the Russian PWs who would act in counter intelligence in the East against Russia.

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Q. How long were you engaged in this activity?

A. Two or three months.

Q. Finding these people who were willing to engage in this espionage, involved careful screening of the persons, did it not?

A. Yes, that's the reason why people were sent out did know something about counter intelligence end espionage and who had worked in the field. These Investigations could not be done very carefully, or very thoroughly, because in my mission I was limited to judge according to my impression and my experience which I would gain of the individual person I had to pass judgment whether a party would be ready to do this work, and whether he would be suitable for that kind of a task.

Q. Did you everin this screening process discover a Russian prisoner Court No. II, Case No. IX.

of war who was a Jaw, or a Communist functionary, and, what orders would you issue concerning him?

A I had no orders to that affect. My instructions from Office-VI were to find suitable people for this operation "Zeppelin", to select them and to recruit them and then to report to the office that they were ready. This task, in order to clarify this, I carried out in such a manner, that first of all I talked to the commander of the camp about the matter; then I would talk to the counter intelligence officer who existed in every camp, and who knows his people, and then he suggested a number of them to me, and I then talked to these people individually. A general screening of the entire camp could not be talked of, I, as an individual, would hardly have had the time to do this.

Q Did you ever select a Jew for this espionage activity?

A No. Mostly I selected Caucasians and Mongolians. functionary?

Q How many prisoners of war did you interview? was a Jew, or a Communist functionary?

AAt least no one told me, and I didn't notice it if any one might have been among them. you get for your "Action Zeppelin"?

A I personally? There must have been a few hundred I should think, whom I suggested. for their duties?

A No, unfortunately, I didn't know sufficient for such.

performed from July to September 1941?

Q Now you are familiar with the document books, aren't you, familiar with the documents that show that by the first of September Einsatzgruppe-D had executed 35,000 people?

A Whether this figure is right, I don't know, and I think I would like to remind you, it has been said repeatedly here, that this figure does not mean at all that all these people were executed by the group, but that these were supposed to have been executions which occurred in that territory at some time and by some one. that can be accounted for by Sonderkommando X-B were three?

THE PRESIDENT: Mr. Walton, please make it clear whether "three" refers to three people or three collective killings.

MR. WALTON: Yes.

THE PRESIDENT: Because you are using the question -

MR. WALTON: I am sorry, Your Honor.

THE PRESIDENT: -- in contradiction to the 35,000.

MR. WALTON: I'll withdraw the question and rephrase it, Your Honor. BY MR. WALTON: three persons were killed by Sonderkommando X-B from July until September?

A Did you say three persons?

Q Isn't that what you told me?

THE PRESIDENT: That is what I want to clear up. He said three executions.

MR. WALTON: All right. All right, I shall re-ask the question. BY MR. WALTON: to Sonderkommando X-B?

A I can not tell you, Mr. Walton.

THE PRESIDENT: Well, witness, how many were included in the three executions?

THE WITNESS: That I can not tell either quite exactly, because I only heard about the third execution afterwards, without hearing any figure about it on that occasion. two executions. twelve to fifteen people.

Q And in the second execution?

Q You have no idea how many there were in the third?

A I really can not say. It must have been -- it must have been a limited number of persons, I think.

THE PRESIDENT: Proceed. BY MR. WALTON: Ohlendorf?

Q How many?

Q Did Seibert ever make an inspection of Sonderkommando X-B? he came together with the group-chief.

Q Did he ever make one alone?

Q Who was the chief of Leiter-III in Sonderkommando X-B? Buckert?

been there, but I can not say really.

Q Did you have any official contact yourself with Seibert? vestigation concerning two German villages.

A -- but I didn't get any instructions from him.

Q Did you ever receive any correspondence signed by Seibert? Seibert to hold while you were a member of Sonderkommando X-B?

Q Did you consider him a deputy of General Ohlendorf? roll call, which the group-chief himself conducted there, and if I am not very much mistaken, and my recollection is not wrong, that he appointed as his deputy, if necessary to do so, Obersturmbannfuehrer Setzen.

MR. WALTON: Your Honor, I have only a few more questions but I want to go into the statements made by him yesterday concerning the signing of his affidavit,

THE PRESIDENT: Well, we can do that after lunch.

MR. WALTON: Yes.

THE PRESIDENT: Dr. Hoffmann?

DR. HOFFMANN: Your Honor, I can only get a definite reply between two and three o'clock. The Secretary General will inquire by phone whether the witness has set off or not.

THE PRESIDENT: Well, we will hold it in obeyance until you report to us, Dr. Hoffmann. The Tribunal will be in recess until 1:45.

THE MARSHAL: The Tribunal will be in recess until 1345 hours.

(Whereupon recess until 1345 hours, 19 December 1947.)

(The hearing reconvened at 1345 hours, 19 Dec 1947)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSEL FOR HOFFMANN: Your Honors, the defendant Nosske was excused yesterday to take part in a conference with his counsel this afternoon but he is still at the moment in the room here. I would like your Honor to arrange that he be excused.

THE PRESIDENT: The Marshal is directed to take the defendant Nosske to room 57 where he may confer with his counsel.

DR. KOESSEL: As the defense counsel of the defendant Schubert I would like to trouble the Tribunal with one question. According to rumors there is supposed to be no session tomorrow morning and the whole state of affairs seems to be rather difficult, especially as a witness has appeared for the defendant Haensch. There is the danger that the examination of the defendant Schubert in the witness stand will be cut into two parts and will not be finished before the Christmas holidays. I would, therefore, ask the Tribunal because of this danger not to call the defendant Schubert to the witness stand. There are a number of colleagues who want to submit documents books. I am one of them. I should like to submit my document books, also for the defendant Haensch and for Dr. Hoffmann. So I think there is quite a lot that has to be done.

THE PRESIDENT: What you are really trying to do is to have the rumor include this afternoon some time.

DR. KOESSEL: No, it wasn't that. I only wanted to be certain that I shall not have to call the defendant Schubert to the witness stand.

THE PRESIDENT: Tomorrow?

DR. KOESSL: That one would come to an agreement, to a ruling, that the examination will not be interrupted, not that part of it will take place before the Christmas holiday and the other part after the Christmas holiday.

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THE PRESIDENT: If a rumoris repeated often enough it becomes a fact and if two or three or more defense counsel tell me about this rumor there will be no way to hold court tomorrow. Suppose we see what developes during the next hour and perhaps we can have the rumor crystalize into some kind of fact.

DR. KOESSL: Very well.

MR. WALTON: Your Honors, before I conclude the cross examination of the defendant Felix Ruehl I should like at this time to answer to the ruling of the Tribunal made on 9 December that on the question of the admission of the affidavit of a deceased witness the Prosecution and the defense should file suitable briefs. At this time and in open Court I desire to tender the brief in the required number of English and German copies to the Secretary General for filing.

THE PRESIDENT: Do you know whether defense counsel have prepared a brief in reply?

MR. WALTON: It is my understanding, sir, that they are working on it. They have had English copies two days or so but I want to give them as I can the advantage of the copies prepared in German - that they have both as of today.

THE PRESIDENT: Very well. BY MR. WALTON: to the date that you received the Indictment in this case. At the interrogation in which you signed the affidavit which appears in Document Book III-D you stated in your examination that you objected to errors and inconsistencies contained in this affidavit and Mr. Wartenberg stated that you would be given an opportunity to make corrections, is this true?

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do you again state that you objected to signing an erroneous affidavit and only signed on the promise that you would be given an opportunity to make corrections?

A I have already said, Mr. Walton, that in the first affidavit which was shown to me I asked for so many corrections to be made and that I myself dictated one paragraph as Mr. Wartenberg kept on dictating something quite different from what I stated, so that a now affidavit had to be made out. The now affidavit was again not entirely according to my statement and I told Mr. Wartenberg so. Whereupon

Mr. Wartenberg told me "You still will have an opportunity to do so if this is going to be used against you." was prepared and only signed on the promise that you would be given the opportunity to make corrections? Is that a true statement of facts? the first or second draft but I want to persist to say that Mr. Wartenberg stated that if this should be the source of any errors whatsoever and if this is going to be used against you there is enough opportunity during the procedure to clear this up and I was convinced of this affirmation.

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Q Do you remember the date that you signed this affidavit?

Q Of June?

Q Was there a stenographer present when you signed this affidavit?

Q A female stenographer? Did she take notes?

A I did not observe that. As far as I know she did not write. stenographic notes from 26 June 1947 from 1500 hours to 1530 hours. "The interrogation 1243-D was conducted on 26 June 1947 from 1000 to 1030 hours. In this interrogation the affidavit was submitted. Due to the many corrections the affidavit had to be re-written and could not be signed."

And then the stenographic notes go on:

"What is your name?

"A Felix Ruehl.

"Q Are you the same Ruehl whom I have interrogated often before? I remind you that you are still under oath.

"A Yes.

"Q I have had the affidavit re-written. Please read it and sign it." these wores:

"The witness reads the affidavit and signs it."

Did those events transpire? am absolutely certain, you may believe me or not, that I discussed this affidavit with Mr. Wartenberg. addition?

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examination I assume from what you have stated that you were given a certain function in Sonderkommando 10-B and you were effectively blocked off from all other activities as if Persterer had put blinders on your eyes and you saw nothing that transpired either to the right or to the left and your whole attention and your whole eyesight was directed at your own task and that the executions of which you have any knowledge whatsoever are those which you found out only in casual, conversation with your comrades, is that the substance of your testimony? dealt with within the frame of my own competence and I told you those things that I learned about myself. I cannot tell you any more. Mr. Walton.

THE PRESIDENT: Is there any re-direct examination? Dr. Linck? BY DR. LINCK: membership in the organization of the SS. Were you a member of the General-SS? Police? Then I was taken into the Reich Security Main Office and I was then kept on the files of the SD and thus I left the General-SS. SS, the SD?

Q Did you do any service?

Q Did you pay membership fees?

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Q Was there any SS service in this special SS formation, the SD?

Q What was this formation then, your service? What was its function? was wearing the uniform. organization of unifomred men of the SD? I had nothing to do with that.

Q Thank you. Your Honor, I have no further questions. myself and in order not to appear as stupid, that I raised no objection during the whole cross examination because my client made me promise him to let him answer all the questions even thos which seemed inadmissible. It wasn't easy for me to comply with this promise, but I kept my promise.

MR. WALTON: If the counsel wants to testify let him testify and take the stand and be swonr. I don't think the matters have any bearing on the issues in this case, nor does the information add one bit to the duty or the ability of the Tribunal to decide the case. I don't think it is a proper remark for the Tribunal. I don't think counsel is acting in his place as counsel to reveal confidential communication between himself and his client.

THE PRESIDENT: I am sure that Dr. Linck did not intend to offend any one by the statement which he volunteered and which was sincerely made but I don't think it necessary to pursue the statement any further.

DR. LINCK: Thank you, your Honor. May I on this occasion ask the Tribunal whether it would be agreeable if I would answer the question which I have received about the IMT. It was a question which was asked by the Tribunal in connection with my opening statement.

THE PRESIDENT: Yes, you had stated in your opening remarks that the witness had appeared and I asked you if you could refer the Tribunal to the page in the transcript.

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DR. LINCK: There is a small error in my opening statement. I had raised the point that my client did not hide a Civilian Internee camp hut followed the call of thedefense for the organizations in IMT and he arrived in Nurnberg on his own accord. It did not come to an examination as a witness before the IMT but the following happened, which I saw myself with my own eyes as I was active myself then in the International Military Tribunal for the organization of the political leaders. The organizations defense counsels were locking in the camps for men whom they could present to the court, and on this occasion a co_defense counsel found the defendant Ruehl as a witness for the defense. He helped to compile the documents for the defense and then came to Nurnberg as a witness. As the number of those who would be heard before the Tribunal was extremely limited the defense had him merely submit an affidavit instead of examining him and after a few months he was brought back to Nurnberg. This is the only explanation that I can give.

THE PRESIDENT: Yes, well that clears it up completely. The transcript showed that you had said that the International Military Tribunal chose him to be a witness and we naturally assumed that he had appeared. But now in view of what you said naturally we don't need to have any reference to the transcript.

DR. LINCK: Yes, your Honor. the case as concluded. I have no witnesses.

THE PRESIDENT: Very well, the witness will now be returned to the defendants' box.

DR. HOCHWALD: If the Tribunal please, before the witness takes the stand I would like to ask defense counsel for the defendant Haensch, a question, the Tribunal will certainly recall that the witness Weinmann appeared in behalf of the defendant Haensch. It is the contention of the Prosecution that the witness Weinmann is the wife of the then Obersturmbannfuehrer Erwin Weinmann who replaced the defendant Blobel as commander of Sonderkommando 4-A. There is no proof in the record as yet to show this fact.

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We want to ask defense counsel for the defendant Haensch whether he contests this contention of the Prosecution or whether he will admit the witness Weinmann who appeared here in Court is the wife or was then the wife of Erwin Weinmann, Sturmbannfuehere or Obersturmbannfuehrer, who replaced the witness Blobel as a commander of Sonderkommando 4-A.

DR. KRAUSE for the defendant Haensch: I am glad to give the explanation and certify that the witness Weinmann who was examined here in the witness box was a wife of the then Obersturmbannfuehrer Erwin Weinmann with whom Haensch at the time had been assigned to the East simultaneously. That altogether was the reason why the witness Weinmann was called by us.

DR. HOCHWALD: If your Honors please there is only one thing missing, whether the defense counsel contest our statement that it was this Erwin Weinmann who replaced the defendant Blobel as commander of Sonderkommando 4A.

DR. KRUASE: May I have a short discussion with the defendant Haeusch concerning this. I am not in a position to make a statement concerning this without discussing the matter with him.

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MR. HORLICK-HOCHWALD: I beg the Tribunal's pardon, but I do think it is much easier to ascertain this fact in this way.

DR. KRAUSE: Whether Weinmann happened to be defendant Blobel's successor the defendant Haensch cannot state. He only knows of the fact that Weinmann was the assigned kommando chief of the SK 4a.

MR. HORLICK-HOCHWALD: If your Honor please, this statement seems entirely sufficient to the prosecution, and the prosecution thanks defense counsel for the defendant Haensch for his statement.

THE PRESIDENT: Do you want to say something else?

MR. HORLICK-HOCHWALD: As the witness Reich will be called to the stand, I would like to submit two affidavits which were sent down to the prosecution which were executed by the witness Reich, Document NO-5698 and Document NO-5718, which I introduce as Document 192-A and B. Your Honors, I will have these documents distributed by the clerk.

THE PRESIDENT: Will the witness now be called in?

FRIEDA REICH, a witness, took the stand and testified as follows:

JUDGE DIXON: Witness, raise your right hand and repeat the oath after me. pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE DIXON: You may be seated. BY THE PRESIDENT:

Q Witness, do you know Gertrud Schreyer?

Q Were you ever employed by her?

Q Do you remember the months?

1943, but I do not remember the month.

Q Are you sure of the year when you began employment in Schreyer's office?

A Yes. When I was interrogated at Berlin I made a mistake. I said 1939, but in the meantime I found a photograph, on the basis of which then I went to Mrs. Schreyer and I found the date, 1941.

Q Well, have you seen Mrs. Schreyer recently?

A I have not. It is about ten weeks ago that I saw her last.

Q Did you talk to her about this matter? the date as to when you first became employed in her establishment. sent to my husband at the time in the field, and on this I found the date.

Q What was your activity with Frau Schreyer? the customers, and I issued the photographs and helped her to cut, to dry the photographs, and sometimes develop, and so forth. them into the books. Then when the prints were ready, I had to dry, cut, I put the names on, and then I passed them on to the customers when they arrived.

Q Who took the photographs in Frau Schreyer's studio?

Q Do you know Walter Haensch? Frau Schreyer's studio?

A I am not certain; I couldn't say. If I saw the prints I might remember, but there were so many customers that I can't remember individual ones.

THE PRESIDENT: May we have those exhibits, Secretary-General.

(The exhibits were handed to the President.) BY THE PRESIDED: of negatives whether the pictures indicated by those negatives were taken in Frau Schreyer's studio? Tribunal is trying a certain exhibit which consists of a black bound book which I am now exhibiting to you. I would like to have you look at this book.

Are you familiar with this book?

Q Did you keep this book?

Q Do you find the name of Walter Haensch in there?

Q Yes. While you are glancing through it, Witness, let's ask you another question. Are you familiar with this other exhibit which has been referred to as an appointment pad book?

Q Did you keep this also?

A Yes, but Frau Schreyer also did so because I wasn't always present.

Q Are the entries in this appointment pad book in your handwriting?

THE PRESIDENT: Page, please show this to her.

A This, for instance, is Frau Schreyer's handwriting.

BY THE PRESIDENT?

Q Is it her handwriting all the way through?

THE PRESIDENT: Mr. Hochwald, do you remember the number of the entry in the cash book?

MR. HORLICK-HOCHWALD: To the best of my recollection, your Honor, it is 931, but if I can have the exhibit for a minute I can -

THE PRESIDENT: Well, would you please look at the black book. I don't think that is the number.

MR. HORLICK-HOCHWALD: 391. I said 931, I am sorry. BY THE PRESIDENT: in the case book and tell us if you wrote that entry.

THE PRESIDENT: Mr. Hochwald, do we have the original in German of her interrogation?

MR. HORLICK-HOCHWALD: There are two documents in evidence, your Honor. One is typewritten and one is handwritten.

THE PRESIDENT: Well, Document No. 5698.

MR. HORLICK-HOCHWALD: 5698, the original is with the SecretaryGeneral, your Honor.

THE PRESIDENT: Do you have the original there?

MR. HORLICK-HOCHWALD: Yes.

THE PRESIDENT: Please show that to the witness. answer? Read it aloud. Read it slowly, please.

A "Do you know whether a photograph was taken of this man in Frau Schreyer's studio? Answer: I do not remember. I consider it unlikely because I was supposed to transfer the names of Frau Schreyer's clients from the appointment pad into the cash book. It is, of course, possible that Herr Haensch was an acquaintance of Frau Schreir and that she photographed him privately. In this case his name would not have appeared in the appointment pad."

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Q Just what do you mean by that statement?

A I said at the time that I don't remember having seen a photograph of his, and I don't remember an entry. I said at the time that there were so many customers whom I had to enter into the book that I could not remember the details.

Q Well, just what do you mean by the statement, "I consider it unlikely" - or "impossible" as it has been translated here - "because I was supposed to transfer the names of Frau Schreyer's clients from the appointment pad into the cash book?"

A Well, I can't really say anything to this. (Your Honor, this is a mistranslation. It should be "unlikely" because the German is "unwahrscheinlich."*

Q I see. Very well. You were asked, "Do you know Walter Haensch?" And you say, "The name is familiar but I don't know in what connection I heard it, and I cannot remember a man of this name." Then you were asked, "Do you know whether a photograph was taken of this man in Frau Schreyer's studio?" and you answered, "I don't remember. I consider it unlikely." Why did you say considered it unlikely?

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ferent way perhaps when I was questioned there. Perhaps I said that it was possible that a photograph was made, but that I personally didn't remember. making the appointment, taking the picture, writing the reference in the cash book?

Q Did you take the appointment?

Q Did you write up the reference in the appointment pad?

Q You wrote up the appointment?

Q You said in that same answer, "It is, of course, possible that Herr Haensch was an acquaintance of Frau Schreyer and that she photographed him privately." Did she or did she not photograph him privately?

A I shouldn't think so because if I made this entry here, there he must have been a regular customer.

Q And did you also make the entry in the case book?

Q Do you remember the instance yourself; do you recall it? tion?

THE PRESIDENT: Let us have the document please, the book and the pad.

(The exhibits were returned to the President.) BY THE PRESIDENT:

Would you please tell us whether those were made in Frau Schreyer's shop?

THE PRESIDENT: All right, let me have them back.

(The exhibits were returned to the President.) BY THE PRESIDENT:

Q How do you identify the negatives?

A I have recognize on the top Mrs. Schreyer's handwriting, and it is, customary that we made notes in writing.

Q How do you identify negatives when you put them in your files?

A We put them into envelopes. We wrote the name on this and then, according to letters, sorted them, filed them.

Q Is the name written on the negative itself?

Q Is that done in every instance?

Q Does the number always appear too on the negative?

THE PRESIDENT: Page, please show her these negatives again. the name and number on the negatives?

A On this negative, on this photograph, there is a name. The number is almost illegible. Yes, on this one too.

THE PRESIDENT: May we look at them too?

(The exhibits were returned to the President.) BY THE PRESIDENT: you see the name and number.

A Yes, here, and here is the number. (Indicating.)

THE PRESIDENT: Do you have that famous magnifying glass of yours, Mr. Hochwald?

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MR. HORLICK-HOCHWALD: I haven't got it, your Honor, but I shall try to get one for you.

THE PRESIDENT: I thought you always traveled with a magnifying glass. BY THE PRESIDENT:

Q Just where do you see the name?

(The witness indicated the name.)

Q Oh, yes, I see it now. In whose handwriting is that?

A Mrs. Schreyer's.

THE PRESIDENT: You may take the witness stand. Page, please hand to the witness a blank sheet of paper and a pencil. BY THE PRESIDENT:

Q Will you please write your name? letters, and now I use Latin letters, that is characters.

Q Well, I know that women don't like to go back to the old days, but let's go back to those days and write the way you wrote then. Why have you changed your style of writing since nineteen-forty--- When was this, 1942? 1943? I cannot use German characters. I have to use Latin characters, and, therefore, I got used to it.

Q Were you married when you were working for Frau Schreyer?

AAt the beginning I was not married. I married only on Christmas, 1941. Frau Schreyer. 1941.

Q Well, you were married when this transaction occurred?

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"Hamburg". Now write "Dr. Haensch". Write "391".

THE PRESIDENT: Page, give her another sheet of paper now. BY THE PRESIDENT:

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Q. May I see them now, please.

A. (The sheets were handed to the President).

Q. And what is your explanation as to why you used different script while you were working with Frau Schreyer?

A. In those days I did not have any English correspondence and I was not used to Latin characters, because one did not use them in those days.

Q. And what caused you to write in this way today?

A. What exactly do you mean now, Your Honor?

Q. Why do you now use the different type of typography today?

A. You mean another kind of handwriting?

Q. Yes, that's right. Why do you write differently today from the way you wrote in 1943?

A. As I have said, because I now have a lot of English correspondence and I must write in Latin characters in order not to get back to the German kind of handwriting again.

THE PRESIDENT: Mr. Hochwald, do you want to examine? Do you want to examine the witness?

MR. HORLICK-HOCHWALD: Certainly, I do, Your Honor.

THE PRESIDENT: You may proceed. BY MR. HORLICK-HOCHWALD:

Q. Witness, do you remember having sworn to and having signed two affidavits in the time between 3 December and today?

A. Yes, I do. Two affidavits.

Q. Did you sign and swear to two affidavits in the time between December 3 and today?

A. Well, once at the interrogation and then I had to make a short statement in handwriting, and the next day somebody else came to me and gave me something which I signed again.

Q. Did you make these affidavits voluntarily and freely?

A. Yes.

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Q. Well, is it therefore true? Is what you said in your affidavit the truth?

A. Yes.

DR. KRAUSE (ATTORNEY FOR THE DEFENDANT HAENSCH): May I object to this question. I think it is impossible to question a witness whether what he has stated some time ago is true. It is possible that a witness when further considering has come to a better recollection of an event.

THE PRESIDENT: That is the only way you can find out, by asking whether it is correct and true.

MR. HORLICK-HOCHWALD: If the Tribunal please, I do not want to comment on the objection on the part of the defense.

Q. (By Mr. Horlick-Hochwald) Are these two affidavits the truth?

A. Yes, that is what I stated at the time.

Q. Were you convinced on the 3rd--I am sorry, the 4th--I am sorry, I cannot find the date -- on the 3rd of December when you signed this interrogation that you have said the truth to the interrogator?

A. Yes, at that time I was of the opinion.

Q. May I ask you, who did speak to you about this matter in the time from the 3rd of December until today?

A. You mean who was in charge of the interrogation?

Q. No, with the exception of the interrogator, with the exception of Mr. Sachs, who interrogated you in this case, with whom else did you speak about this matter?

A. No, I spoke really to nobody. I discussed it briefly with my friend with whom I share a room, I did do this because Mr. Sachs came and as he had no time then, I said she should go into another room and she asked me what was the matter, and I told her that I could not give her further information.

Q. So you spoke to nobody else?

A. No.

Q. The Presiding Judge has interrogated you about paragraph No. 7 of your interrogation. Do you have the interrogation before you?

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A. Yes.

Q. I want you now to turn to paragraph No. 12. Mr. Sachs asked you, "Do you have anything else to add?" Will you read to the Tribunal please, the answer which you gave.

A. (Reading) "I only want to point out that I consider it improbable that the name of Walter Haensch is in the cash book, because I was supposed to transfer the names from the appointment pad to the cash book and because of this I would have remembered the name."

Q. Are you still today of this opinion?

A. No.

Q. Why not?

A. Because I have first of all convinced myself of the contrary.

Q. When?

A. Just now when you showed me the pad and the cash book.

Q. But is it not true, Witness, that you changed your statement in this respect before you had seen these two books?

A. No.

Q. But that was just a routine question. Is it correct that you worked for Mrs. Schreyer, usually only in the evening?

A. With the exception of Saturdays when I was generally there in the afternoon already.

Q. Did you ever work for her in the morning?

A. I cannot remember really.

Q. Please try to remember.

A. Yes, it is possible, of course, on days when I had a day off, given me by my firm, when we had air raid precaution practice.

Q. Will you turn to paragraph 9 of your affidavit and you said, "In general, the appointment pads were only kept by Frau Schreyer. On Saturday afternoons, when I was in the place and clients were actually finished, I often made entries in the appointment pads. Aside from the two of us, no third person made entries, with the exception and so on" That is enough, and it is definitely said that you worked only in the evenings and afternoon.

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Do you change this statement?

A. Yes, then I did not think, that I did have days off owing to air raid practice.

Q. So, you think it is correct that--did you look at the pad, 391 the little pad?

A. Yes, I looked at it.

Q. 391? Did you write that?

A. Yes.

Q. Would you look at the entry 391 in the big black book?

A. Yes.

Q. Did you write all of it or only part of it?

A. May I have another look at the book. I don't remember exactly. Yes, I wrote all of it.

Q. When did you write that?

A. It is possible that I wrote it on the same day or one or two days later.

Q. Will you explain the fact that two addresses appear in this book, one address in Berlin and another one in another place, which I don't recall, but you can tell the Tribunal, as you have the book before you?

A. Yes, the first one, the address in Berlin was the living quarters of the person concerned and then it was the remark to be sent to Mrs. Dr. Haensch Renfelde via Zittau where the pictures were actually sent.

Q. Do you remember actually sending the pictures there?

A. I saw on the pad that I made a remark "sent" and then the date.

Q. May I ask you another question who used to write the names, numbers and dates on the negatives?

A. Frau Schreyer did.

Q. Always?

A. It is possible that I helped her occasionally when I was there and she had a lot of work to do.

Q. I want to tell you what Mrs. Schreyer said about this. It is very interesting. She did not find either name or number on the pictures. I asked her, "Will you just examine these two pictures?" I am quoting from Record 3356, Your Honors. "Will you just examine those two pictures. Can you tell the Tribunal whether on these two negatives" -- and she interrupted me by saying, "No, there is no number on them." I asked her for the name --"Is there a name on it?" and she said, "No, no name either, unfortunately."

The Presiding Judge asked here, "Why do you say, 'unfortunately' Why did you add that? What difference does it make whether they are there or not?"

And now says Mrs. Schreyer, "Because my employees did not do this properly when they wrote on the negatives. It really should not have occurred."

Isn't it clear from this statement that these names and numbers were usually written by you and not by Mrs. Schreyer?

A. No, it was generally the work that Frau Schreyer did, because there would have been a mix up if the photographs, and prints had been left until the evening.

Q. Mrs. Schreyer even goes farther, when the Presiding Judge asked her, "Well, therefore, you are the one who should have added the name and number-" She said: "No, I developed and printed them and the next day when the employee came she handled these writing matters." And the presiding Judge asked here again, "And she would write on the negative?" Answer: "Yes, she would have written the name and the number on it." Can you explain why Mrs. Schreyer made this statement or who of you according to your opinion is mistaken on this point?

A. I really do not know why Frau Schreyer said that.

Q. It is then true that you were supposed to do this to put these names and numbers on the negatives, is that right, and not Frau Schreyer?

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A. No, it was really the work that Frau Schreyer did herself, because, as I said, when she developed the photographs and prints and when I arrived in the evening, the prints and photographs would have been mixed up.

Q. You have no explanation as to why she gave this explanation under oath in court?

A. No.

THE PRESIDENT: Mr. Hochwald, we will have the recess. Witness, during the recess, which will last fifteen minutes, please do not speak with anybody of the prosecution or of the defense.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Witness, when were the pictures usually taken, in the daytime or in the evenings?

THE WITNESS: During the dry, but sometimes during the evenings. That is, during business hours.

Q. Until what time was the shop opened in the evenings?

A. I cannot say. It might have been six or seven o'clock.

Q. Well, you would come to work at seven o'clock, wouldn't you?

A. Yes, seven o'clock, sometimes already at six.

Q. Now, did you recognize your own entry in the appointment pad?

A. Yes.

Q. Well, if you would come to work at seven o'clock and no pictures were taken after seven o'clock, how could you have made the appointment?

A. It might have been on my day off, after my air raid service.

Q. I don't understand that.

A. I already said if I did air raid service for the firm, then I had the next day off.

Q. Which firm?

A. That was with the Aluminum Sales Company.

Q. In your affidavit, or rather in your interrogation you say, "I ordinarily worked for Frau Shreyer from six to seven o'clock in the evening until ten and later. Saturday , I worked in her business from three to six or seven o'clock." You did not indicate any exception in that answer?

A . At that time I didn't even think of that fact, that I had days off.

Q. Have you thought of anything else since you answered these questions and wrote up your affidavits, which in any way changes what you told the interrogator and wrote up?

A. I merely determined that the beginning date was not 1939 but it was 1941.

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Q. What did you tell the interrogator, what year?

A. I told him I didn't know exactly any more whether it was 1939 or 1940, but it was already during the war.

Q. Well, you tell us now that it was in 1941?

A. Yes.

Q. Just before we recessed you said that you told the interrogator 1939?

A. Yes, 1939 or 1940.

Q. Well now, which was it? What did you tell the interrogator, 1939 or 1940?

A. I think 1939.

Q. Will you please look at your affidavit, Document NO 5718?

A. I don't have it with me here.

Q. Well, will some one please show it to her . In the second paragraph, what do you say there, about working for -

A. Since November 1940.

Q. Yes, you wrote that out yourself, didn't you?

A. I wrote it by hand.

Q. Yes. Well, how was it now that you say it could have been '39 when you yourself wrote 1940?

A. Well, I must be quite honest, and I must state that I always mixed up the years.

Q. Then when you were questioned -- do you have Document 5698 there?

A. Yes.

Q. The interrogation under oath. Look at question 2-B. Read the question and read the answer?

A. "Since when? Answer: Since November 1940, shortly after -since November 1940. "

Q. Yes, that is enough. So that is twice you have indicated 1940, isn't it?

A. Yes.

Q. Then in your affidavit, Document No. 5718, -- no, you did refer to that. I am sorry. Well, you were confused about the time that you started to work for Frau Shreyer?

A. Yes.

Q. How was it you remember it so clearly now, that it was 1941?

A. I once more thought about the matter and, then it occurred to me that I still must have a picture which Frau Shreyer had before the time that I started to work for here, and on this occasion she asked me whether I can remember working for her, and, that I still must have this picture at home. I looked once more and I found the picture, and I saw that it was in November 1941.

Q. Let me have the transcript, please, of Frau Shreyer. Witness, do you know Frau Haensch?

A. No, I cannot remember.

Q. Did she come to you and ask you to locate the negatives of the pictures of her husband?

A. I cannot remember that, either.

Q. well, if that happened, it would have happened recently.

A. No, it was certainly not recently.

Q. Shortly before Frau Shreyer came to Nurnberg?

A. No, I didn't see any one there, nor talked to any one.

Q. How do you identify these negatives as being plates which come from Frau Schreyer's studio?

A. I noticed it from Frau Shreyer's handwriting on the top of the negatives.

Q. You don't remember the picture itself, do you?

A. I got a superficial recollection of it when I saw the negative.

Q. Do you remember having seen the subject in the studio, Haensch himself?

A. No, I cannot really remember that.

Q. Then you identify it from the handwriting?

A. Yes, and on the basis of the superficial recollection of having seen such a picture in the studio.

Q. You remember the picture but not the person?

A. That is right.

Q. Do you remember most of the pictures that you looked at?

A. I think if I would see them, yes.

Q. How long did you work there?

A. How long did I work there? Do you mean with -

Q. Yes, with Frau Shreyer?

A. From 1941 until the beginning of 1943.

Q. About how many pictures were taken during that time?

A. Well, I cannot say. There was a lot of work to do there.

Q. Would you say as many as a thousand?

A. Even more than that.

Q. Two thousand?

A. Well, I could not really say.

Q. Well, anyhow you had at least one-thousand, and do you think that you would remember the features of one-thousand faces?

A. Not all of them.

Q. Would you remember most of them?

A. I think so, yes.

Q. You remember the features of most of one-thousand which, of course , would be over five-hundred, but yet you could not remember when you went to work there, whether 1940 or 1941?

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Q Well, was 1940 the same as 1941?

Q Was 1939 the same as 1941?

Q Well, you had more reasons to be happy in 1939 and '40, than you did in 1941, didn't you? the furlough of my husband, and thus, the time always seemed the same to me.

Q I didn't quite catch that answer?

A I was always waiting for my husband's furlough, from one furlough to another, therefore, the time always seemed the same to me.

Q When did he go away?

Q I don't recall your having said that you were married in 1939, when we questioned you before about that? Is that when you were married, in 1939?

A No, I was married in '41, but in '39 I was already engaged.

Q Yes. Wouldn't you remember 1941 very distinctly if that was the year in which you got married? Wouldn't you?

Q Well, how could you confuse that with 1940? for Frau Schreyer.

Q In what month were you married in 1941?

Q Where is the black book? Let me have the black book, please. When did you start to keep this book (shows witness the book?)

Q What is the first month indicated here? this book before.

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Q When did you start to keep the book?

Q Was that the 13 November 1941?

Q What happened to the first seventy pages of this book?

A I don't know. ably devastated the studio? Were you working there at the time?

Q When did you leave?

Q When was the studio destroyed by bombs?

Q Is that when you ceased your services with Frau Schreyer?

Q How many days before?

Q Well, was it a matter of days or a matter of weeks? you left just before the planes arrived?

A No, I was always in Berlin, but my husband didn't want me to work in the evenings. just a day before the bombing attack?

A Why one day? studio, is that correct?

A I don't know whether it was one day before.

Q When was the studio destroyed by airraid?

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Q Well, you left the day before? Look at the book.

A (Delivers the book to the witness.)

Q Does that say, "28 February," the last entry? the day before the airraid?

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A Yes, I can now remember. On the first of March I had air raid service in the firm and when I came home on the second of March I went to Frau Schreyer to help her to clear up the place. On the same day, however, my husband came home on furlough and he didn't want me to continue to work for Frau Schreyer. didn't you?

THE PRESIDENT: Any further questions? Dr. Hochwald, you may proceed.

DR. HOCHWALD: If the Tribunal please, I have one or two questions.

THE PRESIDENT: Certainly.

DR. HOCHWALD: If I can get the book. BY DR. HOCHWALD:

Q Will you tell us, witness, what day you married?

Q Did you work that evening?

Q On the 27th of December 1941?

Q Will you look at the book. Isn't the entry of this day from you, made by your handwriting?

THE WITNESS: May I say something about that, please.

THE PRESIDENT: Yes, certainly.

THE WITNESS: We always made the entries but it sometimes happened that I would put them in afterwards. It is possible that perhaps I made the entry on 30 December but we wrote in the date when the appointment was made. BY THE PRESIDENT:

Q Were you working on your wedding day?

Q Well did you make up any appointments on that day? In that appointment pad? Where is the appointment pad?

MR. HOCHWALD: Should be on the bench, your Honor.

THE WITNESS: No, I don't have the appointment pad.

THE PRESIDENT: Very well. You may proceed counsel. BY DR. KRAUSE: entry with ink in the book?

Q Did you use a fountain pen?

A Yes. I have a fountain pen.

Q Do you still possess this fountain pen?

Q And something else. In the course of time when you were working for Frau Schreyer there were centuries of entries in this book; do you recall every single name?

A No, of course not. I could not. consider it improbable that the name Haensch appears in the cash register book, since you had transferred the names from the appointment list to the cash register book and therefore would recall that name. How did it occur to you to say this was improbable if your memory of the various names is not so good after all? quite correct. mean this? but that I can't recall it.

Q Yes. After you left Frau Schreyer, that is, after March 1943, did you ever have this book in your hands again?

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your hands again after this time?

Q Did any one on the order of Dr. Haensch get in touch with you?

A You mean now? Recently?

Q At all, I mean, ever? tions altogether and you were sworn in as to what you testified. After you answered these 12 questions or during the course of the interrogation was it said to you that the name of Dr. Haensch is contained in the book, contrary to your own assumption? reproduces your handwriting at that time? down or even letters which you wrote and which were handed back to you?

Q Thank you, I have no further questions. But I would like to make a motion. I would like those samples of writing of the witness which are available from the year 1942 and which reproduce her handwriting as it was at that time, that this material be safeguarded and secured and be submitted here in order to compare the handwriting. Furthermore, I request that the sample taken today be repeated by the witness in ink by using her own fountain pen.

Your Honor, at this occasion I would like to ask a question. After the completion of the examination of the defendant Haensch it was intended to undertake a medical examination of the defendant in order to to determine how his state of health has developed.

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Now, as I hear from the defendant, a short visit by a physician was made in his quarters and the defense is interested in whether the result of a possible examination is already available.

THE PRESIDENT: The Secretary General will be instructed to report to the Tribunal as soon as possible on the result of the examination made of the defendant Haensch and as soon as this report comes into possession of the Tribunal defense counsel will be informed.

DR. HOCHWALD: If the Tribunal please, I have no further questions to the witness.

THE PRESIDENT: Now, defense counsel has made a motion with regard to - - -

DR. HOCHWALD: I want to express the view point of the Prosecution. We do not, of course, oppose this motion but I do think that we could ask the Tribunal to instruct the witness to write down the affidavit which is in evidence before the Tribunal and is written by the witness in Latin letters, to write down the same affidavit in Gothic letters in ink so that a good basis for an examination of the handwriting may be available.

THE PRESIDENT: Witness, you are instructed to copy again the affidavit which you have already written in your own hand, but to copy it this time in Gothic in the script which you used in 1942.

DR. HOCHWALD: If the Tribunal please, I do not want her to copy. I do want her to write it from the mimeographed text which does not give an example to the witness in the way in which she wrote.

THE PRESIDENT: Well, by copying I meant copying the wordage and not the form of writing.

DR. HOCHWALD: May I move then that the witness be handed a mimeograph copy in German that from this mimeograph copy in German she should write in ink the contents of the affidavit in Gothic letters.

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THE PRESIDENT: And we ask you witness, is there any reason why you can't do that after you leave the witness stand and you don't need to bother about it any more, while you are here, you can write it and submit it to the Tribunal and you don't need to concern yourself about it later.

THE WITNESS: Of course, I can do that immediately.

THE PRESIDENT: Now just how do you intend to obtain these other papers that you referred to, counsel?

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DR. KRAUSE: Well, I have the following to say, your Honor. I believe it is not so important how the witness writes German today but how she wrote German in 1942. Therefore, taking a German sample of her writing today I do not consider so relevant but, of course, I would not object to it. On the other hand I consider it important that any kind of sample of her writing from the year 1942 be brought in for purposes of comparison, and I would ask you to instruct the witness to put such a sample at our disposal and by the motion that I made before about securing all the writing material I don't mean that everything be confiscated from her which she put down in writing. It may be left up to the witness to give us any kind of sample of her writing in 1942 and to submit it here.

DR. HOCHWALD: It goes without saying, your Honor, that of course if the witness wants to put at the disposal of an expert a letter or something in her handwriting from the year 1942 it would be of great help to this expert, but nevertheless I still move that it should be shown how she writes today, first of all, it is easily possible that the witness will be not able to put at the disposal of the Tribunal examples written by her personally in 1942 as the identification is not easy of such things. Second of all I do think it is necessary that the Tribunal knows that this example is written by the witness herself and that can only be done here and nowhere else.

THE PRESIDENT: Very well. We will sum up the entire matter. This is what will take place. In the first place the witness will in accordance with defense counsel's request, copy these words which she wrote on this sheet with her own pen on a sheet of paper. That is number one. And you may introduce that as an exhibit, counsel. Then number two. As you leave the courtroom you will step into one of the ante chambers and copy from the mimeographed sheet the affidavit which you wrote in Berlin. Number three. When you return to your home you will endeavor to locate some letters which you wrote to your husband in 1942. If he is a good husband and loved you perhaps he kept the letters, but maybe he is still a good husband and loves you but lost the letters.

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But, at any rate we would like to have not only the letters but the envelopes in which they were mailed. A representative of the Prosecution, and if the defense has a representative in Berlin, can call on you to obtain these letters. At any rate to whomever you consign these letters you will obtain a receipt that the letters were consigned to that person and then the letters will be submitted to the Tribunal.

Now will you please write those words?

WITNESS: Yes, but I just find that I have left my fountain pen in the other room.

THE PRESIDENT: Any pen will do. Where is your pen? Page, will you get the pen for her?

DR. KRAUSE: Your Honor, I ask that the witness be given the opportunity to use her own fountain pen.

THE PRESIDENT: The page has gone for her own fountain pen.

DR. KRUASE: Pardon me. Thank you.

DR. HOCHWALD: If the Tribunal please, it is respectfully moved by the Prosecution that all exhibits in the case connecting the case of Haensch with the different negatives and positives of this picture mentioned, the two negatives, the one positive, the appointment pad and the book, the different examples of handwriting of the witness may be handed to American experts who should be able to answer all questions.

THE PRESIDENT: Why do you say American experts? To experts.

DR. HOCHWALD: To experts, Your Honor.

THE PRESIDENT: They can be German as well as American.

DR. HOCHWALD: Certainly your Honor. I only said to American experts for one reason as I do not think there is an institute at the moment in Bavaria other than American who can expertise these letters. That was the only reason.

THE PRESIDENT: Well, defense counsel will have the same privilege of presenting them to whichever experts they select.

DR. HOCHWALD: Certainly, I beg Your Honor's pardon.

DR. KRAUSE: Your Honor, Dr. Riediger has already made the motion to undertake a comparison of handwriting by experts. May I repeat that motion?

DR. HOCHWALD: If the Tribunal please, I have then said that we have no objection against this motion but that we think it is premature before the Court until the witness will be heard. There is no objection by the Prosecution whatsoever that the defense hands these samples of the handwriting of the witness to any expert the defense may desire. I do think my motion was different. I said all exhibits which include also the negatives - I have mentioned the negatives - and the positives of the picture - we are interested to know when and how the picture was made. So we move that all these exhibits may be handed by the Tribunal in the form the Tribunal desires to experts who can determine all pertinent questions in this case.

THE PRESIDENT: The exhibits will be in the custody of the Secretary General and they will be available both to the Prosecution and to the defense for expert scrutiny, comparison, analysis and eventual report to the Tribunal.

DR. HOCHWALD: Thank you very much, your Honor.

THE PRESIDENT: Just one last question, witness. You have testified that both you and Frau Schreyer kept this appointment pad. In this particular one which we have here in the Tribunal do you know whether the pad was kept more by yourself or more by her?

appointment pad as between you and Frau Schreyer?

Q Very well. Was the appointment made the same day the picture was taken?

Q You don't recall whether you saw Haensch that day or not?

wouldn't you?

Q But when you saw the negative you couldn't recollect him as an individual, you only recollected the picture or rather the negative which you had seen before?

A That's right.

THE PRESIDENT: Secretary General, will you please take these exhibits now so that they won't be confused.

Yes, Mr. Hochwald.

DR. HOCHWALD: If the Tribunal please, in order to make the case completely clear I would respectfully request that the Tribunal advise the witness Schreyer to hand over the appointment pad of the second part of December 1941.

THE PRESIDENT: Well why not say the entire month so there won't be any confusion.

DR. HOCHWALD: If possible, the entire month.

THE PRESIDENT: Do you intend to have a representative call at Frau Schreyer's to pick up these pads?

DR. HOCHWALD: I intend to do so with the permission of the Tribunal.

THE PRESIDENT: The Secretary General will make the necessary entry and the transcript will show this, that Frau Schreyer is directed to turn over to a representative of the Prosecution the appointment pads kept of her work during the month of December 1941.

DR. HOCHWALD: Thank you very much your Honor.

THE PRESIDENT: And now defense counsel may introduce the exhibit made up by the witness if he so desires.

THE WITNESS: I have to wait for the fountain pen.

THE PRESIDENT: Page, where is the fountain pen? Have you located it?

DR. KRAUSE: Your Honor, the witness calls my attention to the fact that she had to have her fountain pen in order to take down the sample with ink.

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THE PRESIDENT: Well, where is the fountain pen?

DR. KRUASE: I just hear that somebody was sent out to get it.

THE PRESIDENT: Where did you leave your fountain pen?

THE PRESIDENT: Seems we have to establish a lost and found department in this particular instance. Well, under those circumstances the witness will have to return to the witness home to write up these exhibits because she doesn't have her fountain pen here.

DR. KRUASE: Well, I ask that she be permitted to do so.

THE PRESIDENT: Witness, please return to the witness house and combe back to the court house if you can still today, otherwise tomorrow morning, with the documents which you are to prepare. Is that clear to you?

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THE PRESIDENT: Defense counsel, and prosecution counsel as well, unquestionably who were cherishing the hope that the rumor might be true that the Tribunal would not sit tomorrow will have to blame Dr. Hoffmann if this hope has been punctured because we have just received a note to the effect that the witness that he had summoned will be here tomorrow morning. The Tribunal will be in session for a short period to hear this witness tomorrow at ten o'clock, and after that witness is heard, then the Tribunal will adjourn until January 5th, so that now the Tribunal will be in recess until tomorrow morning at ten o'clock.

(The Tribunal adjourned until 20 December 1947, at 1000 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. HOFFMANN (Attorney for the defendant Nosske): Your Honor, I have heard that the witness Haensch is here, I beg your pardon, the witness Harsch. May I ask the Tribunal if it is agreeable to them that the witness Harsch may be lead into the Court?

THE PRESIDENT: The witness will be brought into the courtroom and taken to the witness stand.

DR. KRAUSE (Attorney for the defendant Haensch): Your Honor, yesterday I was to be given the specimen of the handwriting of the witness Reich in order to introduce it as document. This was the specimen which she gave of her handwriting here on the witness stand. Unfortunately, I was not in a position to reach the witness in order to get this specimen of her handwriting. I do not know whether I shall reach her. In this case this is not -

THE PRESIDENT: Just a moment, there is no use of your putting a long question to me when I already know the answer.

DR. KRAUSE: Well, the important matter to me now is whether I will get this specimen of her handwriting.

THE PRESIDENT: That is what I am going to tell you. You see, I know the whole story so you don't have to tell it to me. The witness returned after the session of the court had terminated and turned over to the Tribunal the specimen of her handwriting and the copy in Gothic script of her affidavit and these have been turned over to the Secretary General to be kept in the archives until the court reconvenes in January. We don't believe that it would be wise during the holiday season to have these exhibits outside the Secretary General's office, because there is always the chance of loss, so that if you will address yourself to the Tribunal or to me personally when we reconvene on January 5th, we will accede to your wishes.

DR. KRAUSE: Thank you very much.

THE PRESIDENT: Very well.

ERWIN HARSCH, a witness, took the stand and testified as follows:

JUDGE SPEIGHT: Witness, raise your right hand, repeat after me: pure truth and will withhold and add nothing.

(The witness repeated the oath).

JUDGE SPEIGHT: You may be seated. BY THE PRESIDENT:

Q What is your name, witness?

A Dr. Harsch.

Q And what is your address?

Q Do you have a street address?

Q Very well. Witness, Dr. Hoffmann, who is the attorney for the defendant Nosske in the case which is being tried before this Tribunal, indicated to the Tribunal that you were familiar with an incident or episode in which the defendant Nosske played a part during the war. We are not going to put any specific questions to you immediately, because we do not know enough about your knowledge of the situation even to put questions. Dr. Hoffmann has suggested that you be summoned here to court and that has been done and suggested that you be allowed to tell your story and you may do so. Just tell the Tribunal what you know about this episode in which Nosske played a part, giving us the dages, the places, and all relevant data.

A I will. During the war I was a member of an engineering unit. In 1941 we had built a bridge across the Dnjestr River from Bessarabia to the Ukrainian part. After the bridge had been built, my unit went along to the Bug River, while I myself and a small kommando remained at this bridge. Approximately the middle of August, 1941, a passenger car appeared at this bridge in which there were one or more members of the SS - they might have been members of the SD, I do not remember.

Q Yes, now, Dr. Harsch, what unit were you with?

Q This, of course, was part of the Wehrmacht?

Q And what rank did you hold?

Q All right. Now you were an NCO of the Bridge Building Battalion of the Wehrmacht, you had built a bridge across the Dnjestr River, a bridge which spanned the river and which conducted traffic from Bessarabia to the Ukraine, generally speaking; and in the middle of August, a truck appeared. Proceed from that point. addressed as Sturmbannfuehrer, asked for the bridge officer. I told him that I was dealing with matters of the bridge, whereupon he said, "Surely, we know each other." He said that he had been in Halle and that I also came from Halle. After a few questions and answers we found out that the man who asked the question was a Government Counsillor, Nosske, who at the beginning of 1930 had worked in Halle as a lawyer and whom I knew from there, whom I had met during that time, in fact.

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I had then been a lawyer and notary public in Halle.

This Nosske put his request to me. He told me that a large column of Jews would be lead to this bridge and would be lead back into Bessarabia. I do not remember what number it was that he mentioned. It could have been between 10,000 and 20,000 Jews. possibly even the whole night, and he asked me whether the bridge could be released for this purpose. Of course, now, this bridge had all the traffic to the front line. As such, it could not be interrupted, so that I could not release the bridge for so long a period, unless there was some other possibility to get the traffic to the front line; there was another possibility which was that for this night another bridge had been completed for traffic by the Organization Todt a few kilometers down stream. of one half of the bridge so that the traffic could go across this bridge that night. I notified the Constabulary that at the beginning of darkness the traffic to the front line could go across the new OT bridge and now I said to Sturmbannfuehrer Nosske that at the beginning of darkness, he could use my bridge for this Jewish column. In the evening between seven and eight, he reappeared with a Kommando, I think there were several vehicles with the Kommando and preparations were made to lead these Jews across this bridge to Bessarabia. There was a difficulty, however, because the Rumanians, particularly the Rumanian bridge kommando on the Bessarabian side had received instructions not to allow these Jews to re-enter Bessarabia. As a consequence of this, this kommando, especially the Rumanian officer in charge, was told a fib. They said that the Rumanian Government had agreed to the retransport of these Jews or something to that effect. In any case, this Rumanian officer left by motorcycle in order to consult with his higher authority and the SD kommando made use of his absence and mounted a machine gun over the Rumanian guard and after dark, about eight o'clock in the evening, or possibly 2015.

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the Jewish column was lead towards the bridge without any further difficulties. They were transported to the Bessarabian bank where the Jews were left to themselves. Nosske and his other officers among whom there was the Criminal Commissary in SS or SD uniform from Halle, whose name I had heard before, that these Jews were supposed to have come from Northern Bessarabia and from Bukovina and from northern Rumania. I think Czernowitz was mentioned especially in connection with this, from which these Jews were supposed to have come.

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Q How did they get over into the Ukrainian territory? Were they led over? Were they driven over, or how? Kommando and from certain observations which I made during my march through Bessarabia and Rumania. The Rumanians, after the Russian campaign had started to drive the Jews from Bessarabia, the newly occupied territory and from the former Rumanian points from Jassy and so on across a bridge to the Russian sector and left the Jews there to their fate. It was talked about then that these 10,000 to 20,000 Jews had been led across a bridge near Mogilew. That was a Rumanian bridge which had been built from Rumanian pontoon bridges. They had been led across it over to the Russian side and immediately behind this Jewish column, this pontoon bridge had been dismantled. These Jews had tried to disperse in the Ukraine but by this Einsatzkommando they had been recollected and had then been taken in a mass in a few days up to my bridge upstream. expulsion or a voluntary pilgrimage? Rumanians. Government or its representatives with regard to this movement of Jews? been taken yet against the Jews or only gradually. Of course, they were always stopped again, but in the newly occupied territories, especially Bessarabia, the Rumanians expelled all the Jews from their settlements and they were herded into groups and as far as I could observe it, they were led across the country until large columns were finally taken across the Dnjestr River into the Ukrainian territory.

Q Did these Jews all move on foot?

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Q I presume that it was an entire population. Therefore you had men, women, and children of all ages. children, babies, etc. The whole Jewish population from the individual localities.

Q Did they carry any equipment of any kind, household equipment? with provisions of any kind. Sturmbannfuehrer Nosske informed me that he had seized peas in some place and the Jews lead to my bridge had been given these peas. He had them distributed to them. Furthermore, I saw when this long column passed my bridge, I sill saw peas lying on the ground.

Q When had they left Rumania, do you know? according to my estimate took place in the middle of August and the expulsion could not have taken place very much longer previous to that because the Dnjestr bridges were not built until July 1941. you? Bessarabia I had seen Jewish columns repeatedly which were driven by Rumanian Constabulary across the country without my being able to recognize at the time where they were to be taken to.

Q At what bridge did they cross over the first time? bridge to Bessarabia were, as far as I was informed led into the Ukraine across the bridge near Mogilew, a bridge which was 30 kilometers or even more upstream from my bridge. Thus they were led across to the Ukrainian bank.

Q And did you say that was a pontoon bridge?

A Yes, that was a pontoon bridge; that was what I was told, that was a bridge which was made from Rumanian pontoon material, a rotable bridge. This bridge was then taken apart again after this column had passed, so that the Jews could not return across this bridge to the Bessarabian which is now Rumanian bank. had reentered Bessarabia, did you ever learn what happened to them? again colleted these Jews and transported them into the interior of the Bessarabian territory where camps were now set up.

Q Were they not allowed to go back to their original homes?

A I don't think so; I didn't see anything to that effect. All I saw was in one or more places in Bessarabia, there were parts of forests surrounded by barbed wire, in which the Jews were kept.

returned into Roumania?

Q Dr. Hoffmann, would you like to address some questions to the witness?

DR. HOFFMANN: I only attach particular value to the fact that the witness confirms that I have had no contanct with him before. And that he is testifying here without my ever having talked to him before, is that correct, witness?

AA few weeks ago I received a letter by a lawyer in Hanover. I can't say what the name of this Gentleman was who mentioned that he was defense counsel of a certain man, Herr Dr. Gruenewald, who had been before the War Criminal Commissar in Halle and was of the Staff of Dr. Nosske whom I saw on the occasion of this Jewish transport, and whom I saw on the occasion. Hr asked me fora statement concerning this incident. This statement I gave to this lawyer in Hanover, the name of whom I do not recollect at the moment.

DR. HOFFMAN: But his name wasn't Hoffman was it?

THE PRESIDENT: Well, Dr. Hoffmann, even if you had spoken with him that would be entirely proper. There is no reason why an attorney may not speak with a witness and find out what he has to say. But your statement that you did not see him is adequate for the Tribunal and it isn't necessary for anybody to confirm anything what you tell the Tribunal with regard to yourself.

DR. HOFFMANN: With that I have no further questions.

THE PRESIDENT: Mr. Walton, do you have any questions? BY MR. WALTON:

Q Witness, were you a member of the Nazi Party? the war?

Q are you a member of the German Lawyers' Association?

A Yes. But there was a procedure for exclusion against me which was, however, without result.

Q Wasn't the German Lawyers' Association a branch of the Nazi Party for lawyers? defendant Nosske?

A Nobody approached me for the defendant Nosske. I merely received a telegram the day before yesterday that I should appear in Nurnberg as a defense witness without telling me what case was concerned.

Q Did you ever talk to his wife?

A No. I didn't even know whether he is married. bridge commander on this Wehrmacht bridge crossing to the Dnjestr River. How many SD officers did you see the day that Nosske came to your bridge besides Nosske?

AAt least another two. There might, however, have been more officers. I must say that the insignia and badges of SS and SD I do not know very much about.

Q Were you at that bridge all day?

Q What time did Nosske arrive? What time of day?

Q Morning, afternoon?

A That I could not tell you now. It is poissible that he arrived the day before even but any way it was in the day time and there was quite some time left for the discussion or the release of the O. T. Bridge. spoke to Nosske?

Q I am not speaking about the Jewish transport. I mean, in the normal course of business during the day did you speak about anything whatso ever with other SD officers or SS officers than Nosske?

Q Traffic was quite heavy across your bridge, wasn't it? they not? this bridge.

Q What did your traffic consist of most of the time? the Bridge. you saw during the day?

Q How many did you see? How many SD Officers did you see the day before Nosske got there? with you?

Q You could have seen them but you just don't remember, is that your answer? bridge. The next day another car arrived to bring me and my people some food supplies, but I don't know whether that was brought by an officer or a man. and not SS units, would they not?

direct, but with the money we couldn't do anything at all because the regulation slips were not valid in Bessarabia because it was Roumanian Sovereign territory, and in the Russian sector in the Ukraine, one could not buy any thing with that money.

Q Perhaps you misunderstood the question. The car that came to your bridge the following day you say came with food. Now, I ask you the question didn't you draw your food supplies or your money to buy food from the Wehrmacht and not from the SS? occasion. At that time we did not receive any food from the Wehrmacht. We only received money but we could not use this money and that is what I told Dr. Nosske in the course of our conversation and then he said, "I shall send you and your people something to eat."

DR. HOFFMANN: I would only say, your Honor, the witness must give quite lengthy answer to Mr. Walton's question. Please allow him this answer.

THE PRESIDENT: I think the question has been put and the answer has been given.

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BY MR.WALTON: arrived the next day was an emergency measure and you drew some emergency food supplies from Nosske, is that correct?

A Yes. We had difficulties with our food because we only received money for our food and and in order to help us a little Dr. Nosske sent us a little additional supply.

Q Yes, Your relation with Dr. Nosske were extremely friendly, is that correct? that night. He had worked with a lawyer in Halle and he, of course, especially as I was able to release this bridge for him thanked me in this manner.

Q Yes. One good favor deserves a favor in return, that's correct, isn't it?

A I did not regard it a favor. I regarded it as a particular way to show appreciation but also as a comradely act. As I say, it was an appreciation for my people and my men.

Q Now, let's return. How long were you bridge commander at this particular bridge? away.

Q Approximately two months time?

A No, I said until 3 September. That is about just a little more than 14 days after that episode.

Q How many Jewish transports did you see during this time? which was lead back through all this night in question and only a few individual people still arrived the next say in small groups or by themselves without any escorts. They also went across this bridge to the Roumanian Bank.

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over that brifge, wasn't it?

A I wasn't really tolf anything about it. Of course, there were the traffic regulations in effect as it was a one way traffic. That is either from the front line or to the front line but I was not aware of any directives whom we should not let pass the bridge.

Q Did you ever refuse to let any Jews cross your bridge?

A I was never put into this position to refuse; except for this one incident there was not request made to me and there was no civilian traffic across this bridge anyway. and small groups of Jews continued to cross this bridge after the main body of the transport had gone across? either Wehrmacht, or SS or SD? that they were part of this column so, of course, I let them pass my bridge to the Bessarabaian bank without further ado. next day or after the main body of the transport had crossed? Did you speak with them, talk to them? they felt safe in the persons, in their possession? bank and were glad they could go back to Roumania from which after all they had been expelled. on the Roumanian bank shouted "Hurrah for Hitler".

Q Isn't it natural that an individual Jew unescorted would come to a German held bridge. I say isn't it natural for him to ask permission to cross that bridge rather than to walk on it, without permission he had seen that the others had already crossed the bridge.

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24 hour or 48 hour period? Your bridge guards, that is.

A I did not have to tell the bridge guards. I did not say so in so many words. After 10,000 or more had crossed each individual person following would be permitted to cross the bridge. We had no control over civilian people. precedence. You could keep them off of it, couldn't you? exist. That's whay you mean to say, is it not? that after arrangements were made with Nosske for the crossing of the bridge by the Jewish transport the Roumanian Commander on the other side was notified. Who notified him that these Jews were coming across? Bessarabian bank.

Q Did you go with Nosske?

A No. He drove there in his car. motorcycle to go to see his superior?

A Nosske told me, but it is possible that I saw it myself. Anyhow this Roumanian Lieutenant at the time of the beginning of this transport, was not at his sentry post.

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Q. Now, after these Jews crossed this bridge, did they camp on the bank of the river for two days?

A. They camped partly on the banks of the Dnjestr River and partly they went further up to the rather steep bank, dispersed, and they lay down to sleep. Partly they went to the next village Kusauti (Kusiutz), until they were collected apprehended by Rumanian armed constabulary.

Q. Did you see these Jews during the whole time they remained on the opposite bank? Were they in your sight?

A. More or less, yes.

Q. But you couldn't see the portion that went farther inland to the next village, could you?

A. They didn't go that far. They had marched for too long by then. Individual persons might have proceeded to go further inland -strong people -- but remained the mass more or less together.

Q. And the last that you yourself saw of this transport of Jews was when the armed Rumanian constabulary were marching them off from the Dnjestr River, is that correct?

A. Yes, that was the last I saw.

Q. And you don't know what happened to them after they marched out of your sight, do you?

A. Later on I went to Northern Rumania on a few occasions to Jassi and Jasch, in order to take money for supplies, and on these occasions I saw on my travels through Northern Bessarabia that meanwhile one or more Jewish concentration camps had been set up.

Q. But you don't know whether any of this Jewish transport was put in those camps, do you?

A. I presume so with a 100 percent certainty.

Q. But you don't know of your own knowledge; you just presume so?

A. I think it is so absolutely certain because according to my firm conviction none of these Jews went back to his own home -- locality.

Q. Did you see them put -- commit these Jews to these barbed wire enclosures?

A. I did not see them being put in but I saw them behind the barbed wire.

Q. Did you ever talk to any of these Jews behind the barbed wire and they told you that they had crossed your bridge?

A. No.

Q. So, so far as you know that as soon as they got out of sight or nearing of the bridge that the Rumanian constabulary could have executed them? Couldn't they, so far as you know?

A. What could the Rumanian gendarmerie have done?

Q. Executed -- shot them down.

A. That, I think, did not happen.

Q. You think did not happen?

A. Because I would have been informed about it at that time if such mass executions had already taken place.

Q. Who would have informed you?

A. Well, I think one would have heard about it.

Q. But so far as you know it could have happened? You just didn't hear about It?

A. I did not hear about it, but such event at that time would have been talked about, because at that time such mass executions had not happened. That only happened later on during the course of the further Russian campaign, and then, of course, one was being told about these things.

Q. Now, you did not know that so many Jews were in the German occupied territory until Nosske came and told you, is that correct?

A. I should like this question to be repeated. did not quite get it.

Q. Yes. The first you knew of a large Jewish transport, from ten to twenty thousand was when Nosske came to you at your post as commander of the bridge and asked you to let these Jewish people pass.

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This is the first you knew of a large Jewish transport in the territory next to your bridge, is it not?

A. Yes, except for the fact that before in Bessarabian territory I had seen smaller columns of Jews which were escorted by Rumanian constabulary across the country.

Q. And, so far as you know, Nosske could have performed executions upon some of these transports of Jews before they ever got to your bridge, couldn't he?

A. But -- He could have done, but I did not hear anything about it, and I do not think that at that time executions took place.

Q. But you didn't hear whether he had or had not? He could have, but you just didn't hear it; is that correct?

A. I certainly did not hear. But when --

MR. HOFFMANN: This kind of hypothetical question, your Honor, I would like to object to. On the one hand, Mr. Walton confirms that the hypothesis which the witness states are in favor of the defendant are not valid and they must not be expressed; on the other hand, he tried to put up hypotheses which are unfavorable for the defendant to draw his conclusion. I think that a cross examination can be conducted thus to establish the credibility or incredibility, correctness or incorrectness of facts, but I don't think -it can only deal with hypotheses for half an hour.

THE PRESIDENT: Well, if hypotheses are going to be presented naturally they must be presented in a way that the answers may express an observation which will illuminate the situation as exists, whether it be favorable to the prosecution or favorable to the defendant. Put your question again. BY MR. WALTON:

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Q. I asked the witness that at some time before he knew this transport of Jews was in the area close to his bridge the defendant Nosske could have performed execution on a portion of it, so far as his knowledge was concerned. He has answered that it could have, even though he did not think that it did. Which is, to my mind -- is a responsive answer.

MR. HOFFMANN: I object also to this question, because Mr. Walton could with equal right ask whether Nosske during this time when the witness was not there whether he slept during that time.

THE PRESIDENT: Well, that is a very natural conclusion. The probative value of that is for the Tribunal. If you ask a person whether he could have flown to the North Pole and he knows absolutely nothing about it, his answer must be, "Yes, he could have, if he had the necessary equipment" and so on. Whether there is enough in the substance to prove anything is something for the Tribunal to determine: but just merely out of a void presenting a hypothetical situation when the witness himself has no way of determining whether it can or can not be true does not help the court much from a probative value point of view. BY MR. WALTON:

Q. All you know is that Nosske did not mention the fact to you that executions had or had not occurred while these Jews were under his command. That is all that you know, is it not?

A. Yes, but I am firmly convinced that Nosske or his men would have told me about these executions if such had taken place.

THE PRESIDENT: Mr. Walton, may I interrupt? One of the members of the Tribunal has suggested that the witness comment on whether he knows of executions of Jews on either side of the river.

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BY MR. WALTON:

Q. Yes, Witness, how long were you in this area all together, whether you were the bridge commander or the bridge builder, or in any capacity, how long were you in this area where this bridge existed for two weeks? bridge until this bridge was destroyed by floods. I remained in Russia afterwards until the year 1943.

Q. Well, how many months were you in this area? Or, how many weeks were you in this area? From when to when?

A. From the beginning of the Russian campaign until the October when I went to join my unit.

Q. Approximately four months?

A. Well, three.

Q. Were there any executions performed by anyone in that area while you were there?

A. No, No, nothing was told at the time about executions, either,

Q. I don't mean whether anything was told; I mean, did you see or did anyone report officially to you an execution had taken place? Is your answer the same?

A. Yes. Yes, I have not heard, or seen anything.

Q. Were you ever stationed until 1943 near SS or SD units?

A. Later on I saw in several localities that SK detachments had taken up billets, of which it was said they were the detachments that had to deal with Anti-Jewish operations.

Q. By "dealing with anti-Jewish operations" you mean executions, do you not?

A. That was made known later. I did not observe anything. When I arrived in Russia in October I learned during the following months that from the Russian villages Jews had been expelled and had been killed, in tank ditches; but this was news to me, in Bessarabia and Ukraine during my time nothing of that kind ever happened, or at least I was not informed by any parties about such events having happened.

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If such incidents had happened at that time one would have got to know about it.

Q. Do you know what German units performed these acts and executions that you heard of later?

A. No.

Q. Could you assume that they could have been either Security Police or SD or could they have been units of the Wehrmacht?

A. The Wehrmacht, as far as I could see, had nothing to do with this.

Q. So it must have been units of the police which followed behind the lines of the Wehrmacht?

A. Yes.

MR. WALTON: No further questions.

THE PRESIDENT: Dr. Hoffmann, any further questions?

In view of the fact that Dr. Hoffmann, in effect, invited you to come to Nurnberg as a Tribunal witness, we thank you for having made the trip. day morning, January 5th which will then be a new year, 1948.

(Court in recess until Monday, 5 January 1948, at 0930 hours.)

of America; against Otto Ohlendorf, et al;,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal. as follows:

JUDGE SPEIGHT: Witness, will you raise your right hand and repeat this oath after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing. (The witness repeated the oath) You may be seated.

MR. HOCHWALD: If the Tribunal please, before the Christmas Recess, during the testimony of the court witness Frieda Reich, the Tribunal ruled that certain exhibits which were put in by Dr. Riediger in the case or the defendant Haensch would be put at the disposal of both parties for investigation. As most of these documents, in fact, all of them with the exception of the affidavit which the court witness wrote in her own handwriting, and which is only for purposes of comparison, were put in by the defense, which were the guarantees for their genuineness by putting them before the Tribunal, we request at this time that we should have the possibility at this time of investigating these documents first.

THE PRESIDENT: The Tribunal ruled at that time that you would have the right to obtain the documents, so that we are only repeating when we say that you may - -

MR. HOCHWALD: Thank you very much.

THE PRESIDENT: -- get the documents and use them for the purposes indicated.

MR. HOCHWALD: May I then ask the General Secretary to be so advised about these documents.

THE PRESIDENT: The Secretary General will turn over to the Prosecution the documents under discussion.

MR. HOCHWALD: Thank you very much.

THE PRESIDENT: You are welcome.

MR. WALTON: May it please the Tribunal, there are now in the hands of the Secretary-General some voluminous defense document books of the Defendant Ohlendorf. In view of the press of other business over the holidays, and the fact that I happened to be the only Prosecution Attorney present during that time, I confess that I have not thoroughly examined the document books. However, my examination does show that at least sofar as the Prosecution is concerned, there are some documents which are objectionable. If it is convenient for the Tribunal I should appreciate in view of the number of document books for the defendant Ohlendorf that an announcement be made by counsel at least twenty-four hours before he plans on introducing the document books in order to give me a chance to list the documents which I believe are objectionable for purposes of entering formal objections as they are formally introduced

THE PRESIDENT: The request is a very normal one, and, Dr. Aschenauer, do you have any objection to the request made by Mr. Walton?

DR. ASCHENAUER: No, Your Honor, I have no ob jection.

THE PRESIDENT: Very well. Allright, you may now proceed.

DR. KOESSL: Dr. Koessl for the defendant Schubert. I would like to be permitted to examine the defendant Schubert in his own case.

THE PRESIDENT: You may proceed. BY DR. KOESSL:

Q When and where were you born?

Q What schools did you attend?

Q First I went to grammar school for 4 years; the elementary school in Eisenberg, Thueringen, for 3 years, and Grammar School in Berlin for one year. After that for six years I attended the Realgymnasium (High School) in BerlinLichterfelde, and left school after the seventh class, that is, the Obersekunda, and was given a diploma. page 147, there appears your curriculum vitae. This is Document No. 3244, which is Exhibit No. 172. Does that give your correct date of your marriage? in this document here, is given here as "1 February 1940", but it should say, 21 December 1940.

Q Did your first wife die?

A Yes. My first wife and my child were victims of one of the first bombing attacks on Berlin.

Q Did you then remarry? 1943. I now have a boy three and one-half years old. files?

A Yes. On the second page of this document at the top the date of my joining the party is mentioned here as "1 May 1944" and it should say "1 May 1934." I presume that this must have been a typographical mistake which was made when the document was copied. On the next page of the same document under the heading "Party Activities" it shows "Speaker in the Gau Indoctrination Courses" in Berlin (Gauschulungsredner). I don't know how this entry got into the original, or into this document. I have never been a speaker in my life, and sofar as the Party is concerned I did not belong to the Berlin District, and, furthermore, I was never active in the political organization of the Party. I was only a nominal member of the Party. and when was that? myself, I was transferred into the Party from the Hitler Youth of which I had been a member since 1931. Of course, I never raised an objection against it, either. I was nineteen years old at the time, and at that time it was generally considered a token of recognition for members of the Hitler Youth to be transferred into the Party if they were regarded as qualified.

Q Were you a member of any formations of the Party? Youth.

Q Since when?

Q Didn't you say 1931 before?

A If I said that I must have made a mistake. I beg your pardon. I was a member since January 1932.

Q Did you hold any full-time office in the Hitler Youth?

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A No, I held no full-time office. I did my service apart from my professional activities during my free evening hours, and during week-ends in my spare time.

Q Did you hold or achieve any rank in the Hitler Youth? of Scharfuehrer. non-commissioned officer? be no comparison with a military rank.

Q In any case it was the lowest rank, wasn't it? perform any function? least, in the organization of political leadership, the PO; I never held any office in this.

Q What professional traning did you have? administrative official in or become a candidate for the Interior Administration. At that time, that was the beginning of April 1931, all administrative agencies to which one could apply were filled up, and I could not find a job. Thereupon, on 1 April 1931, I entered a lawyer's office as an apprentice in Berlin. I was to take a training period of three years, but they exempted me from the third year so that after two years of training I became a Registrator in this same lawyer's office. This position I held until August inclusive, of 1933. At this period I had the possibility to get into administrative work, and I accepted a job as a candidate for the administrative service the Bremen Reich Deputy Office, the Representative of Bremen for the Reich.

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That was the office of the representative of the free city of Bremen in the Reich Government. There I remained for thirteen months, and had prepared myself for the examination as an administrative secretary, which, however, I was not able to take, because this particular office had been dissolved by Reich Law at the time the Reich Council was dissolved, and I, as the youngest member of the staff, and as the one who had worked there the shortest time, had to leave first. That was within the course of events.

Q When and how did you join the SD? administrative service. I didn't suceed in this, despite the strong support of my former superiors. In the search for a new appointment, I happened to meet a former comrade of mine from the Hitler's Youth who at this time had joined the SD. He told me that the SD at this time had just been transferred from Munich to Berlin, and was urgent looking for men who had been trained in administrative work, and he suggested to me, as he was aware of the fact that I had lost my job, that I apply for a job in the SD. I accepted this offer, and I applied to the then SD Main Office in Berlin. That was on 10 October 1934. On this particular day I was taken into the SD as a member of the NSDAP.

Q Did you join the General-SS on this occasion? formation of the SS, but I never became a member of the socalled General (Allgemeine)-SS. Furthermore, I never served in this General-SS for even as much as one day.

SD and what did your activity consist of? 1936, and then again from the 1st of November 1938 until the beginning of August 1939 I was an auxiliary worker in the then SD Main Office. That was in the Department I/13, that was the registration office of the SD Main Office, and I dealt with the various branches of registration machinery and I dealt with all registrar work that came up. My main activity, however, was to keep a diary of all letters. That means to register the letters coming in and going out. At the beginning of August 1939 I was transferred to the Office I of the Reich Security Main Office. I must correct myself here. I had already been a member of Office I; I was transferred to the personnel department of the SD Main Office, again only as an auxiliary employee and I handled the filing of personnel directives according to instructions of my superiors. I corrected personnel documents and I kept personnel statistics up to date. That was my general activity as an auxiliary member of the personnel department. In the summer of 1940, after I had been promoted to Untersturmfuehrer in the SD, I received a T/O job in Office I - that was the first and the lowest T/O position to be held by an SD officer. I became a so-called Departmental expert in the Personnel Department of the SD. In this function I again worked on personnel directives for the special sector of this department, again according to instructions of my superiors. From October 1941 until September 1943 inclusive I held the position of an adjutant. I shall come back to that in detail at a later point. F rom October 1943 until November 1944 inclusive I held the job of an auxiliary departmental official in Group III-B of the Reich Security Main Office. In this office I dealt with personnel matters within Group III-B, that is, the internal personnel administration and, beyond that, internal organizational matters and the general supervision of the registration and files of this Group III-B. On the first of December 1944 I was detailed to the SD Sector Augsburg and I was entrusted with the leadership of Department III-B. In this department I only had to deal with the information service in the domestic sphere, ethnic Germans and public health for the Administrative District Suabia (Schwaben). This job I held until 26 April 1945.

On this day the office of this sector was dissolved. these jobs you held? had any power of independent decision. At no time whatsoever.

Q Where were you from 1936 to 1938? You omitted that time before. Armed Forces. I was a soldier from 15 October 1936 until 29 October 1938. I did active service at the time in the 38th Armored Reconnaissince Bn in Stahnsdorf near Berlin.

Q That was a Wehrmacht Unit, wasn't it?

Q What training did you get there? as an infantry soldier and as a radio operator. After this training for a year I was trained as a company clerk, that is, as a noncommissioned officer dealing with clerical jobs. During the last seven months of my service I commanded a signal detachment in an Armored Signal Bn.

Q What was your last military rank? charged. When I was released from active service in the Wehrmacht I was made a non-commissioned officer in the Reserves. 1939?

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in the personnel department of the SD. That was Department I-A-4 of the Reich Security Main Office.

Q Were you called up for the Wehrmacht when war broke out?

A No, I was not. That wasn't even possible. I may explain that perhaps. As full-time member of the SD in July or August 1939 I received a so-called mobilization order. This mobilization order provided that the holder of this order in the case of a mobilization had to remain at the place where he worked. In addition to this, at the outbreak of the war, a special notification was put into my military papers. That was the order to the effect that I was essential for the SD, In addition to this, apart from the mobilization order which explicitly said that a voluntary enlistment for military service would be without avail in case of mobilization and, therefore, should not be done. In addition to this, from the outbreak of the war, members of the SD came under special jurisdiction of the Security Police and SD. A violation of all of these regulations and orders would have had as its consequence punishment according to this regulation of the SD and police jurisdiction. Apart from the fact that service in the SD from the beginning of the war had been declared a special war service, and therefore nobody had any reason whatsoever to leave this war service and to apply for service in the Wehrmacht. That was practically impossible and, therefore, nobody could apply for service in the Wehrmacht independently in order to be called up. never apply voluntarily for service in the Wehrmacht? just once, because I believed that I had a special reason which would guarantee success so that I could join the Wehrmacht. After I had lost my wife and child in a bomb attack in August 1941 I applied to the chief of the Security Police and SD asking that I be released to the Army and that my essential status in the SD be revoked.

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I was convinced that this application would be approved, but I was most disappointed when the application was refused on the basis of existing regulations decreed by Heydrich and Himmler.

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in the SD? Russian campaign? personnel decree was issued and this ordered the release of the candidates for the so-called leaders' service who at the time were active in the Russian campaign. Within the program of these releases I was chosen as relief in this action and I received a written order to join Einsatzgruppe D. Within two days I was to prepare myself to leave and had to start for the garrison of Einsatzgruppe D.

Q What did you at the time know concerning the Einsatzgruppen?

AActually not much more than the name. Of course, I had been told that during the Polish campaign so-called Einsatzgruppen had been set up. The same is also true, if I remember rightly, for other assignments, for instance, in Norway at the beginning these units were also called Einsatzgruppen. Of course, I also knew that at the beginning of the Russian campaign so-called Einsatzgruppen had been formed for that theater of operations also. Furthermore, from the orders of the Security Police and SD this order is the same as an administration gazette in other administrative offices, it might be called a circular. This circular contained lists of casualties from the beginning of the Russian campaign, members of the Security Police and SD who had been killed in the service of such Einsatzgruppen. That was essentially the knowledge that I had concerning the term Einsatzgruppen.

THE PRESIDENT: Dr. Koessl, I didn't quite follow that last answer. Would the witness please repeat it. I didn't quite catch the drift of just what he was aiming at in that answer.

DR. KOESSL: Please repeat very briefly what you knew about the Einsatzgruppen when you received this special order?

A I did know that Einsatzgruppen existed. I know the actual term Einsatzgruppen.

I knew that they had been active in Poland, Norway, and now also in Russia. Apart from that, however, I had concrete knowledge that they were also active in Russia - these so-called Einsatzgruppen. This knowledge I had received from the so-called gazettes from which I saw notices concerning men who had been killed in action - men who were members of the Security Police and SD and who served in these Einsatzgruppen.

THE PRESIDENT: I see. You are telling us that you saw reports indicating that men assigned to Einsatzgruppen had been killed. they were official circulars which went to all service organizations of the Security Police and SD.

DR. KOESSL: These were casualty reports, Your Honor.

THE PRESIDENT: They were the usual casualty lists which appear in the newspapers during a war announcing those in the Armed Forces who had lost their lives?

THE PRESIDENT: Well, that didn't give you much knowledge just what Einsatzgruppen meant, did it?

A No. I had no knowledge about that. BY DR. KOESSL:

Q To whom did you report in Berlin before you left? who was an officer holding the rank of Major, a Sturmbannfuehrer. missions of the Einsatzgruppen?

A No. On that occasion I was in no way informed about the task of the Einsatzgruppen, but I merely received my marching order to report to Einsatzgruppe D. I may add that at the time my superiors in this office could not even tell me where I could find Einsatzgruppe D. I first had to find out about the garrison of this unit which I was to join.

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Q What did you imagine your job would be in this Einsatzgruppe? One was a purely military assignment. The second possibility was an administrative activity in this unit. I had the professional training for both of these possibilities.

Q Where and when did you report to Einsatzgruppe D in Russia? the southern Ukraine when I reported to the staff of Einsatzgruppe D. The chief of Einsatzgruppe D at the time was SS-Oberfuehrer Ohlendorf.

Q Wasn't he a Standartenfuehrer at the time?

A I don't know whether he was still Standartenfuehrer. Any way it was about the time that he was promoted from Standartenfuehrer to Oberfuehrer.

Q Had you known Ohlendorf previously?

A I had not known Ohlendorf personally before. Of course I was aware that he was chief of Office III of the Reich Security Main Office, but I think I can say with certainty that before this date I had never seen him consciously.

Q Were you alone when you reported there?

A No, I wasn't the only one. Apart from myself there were nine other officers, who had been detailed to Einsatzgruppe D as replacements who arrived together with myself at the office of the chief of Einsatzgruppe D. Einsatzgruppe D? of the Einsatzgruppe to the effect that it was the mission of the Einsatzgruppe to secure the rear Army territory and the operational area of the 11th Army. I think, but I am not sure, that on this occasion the so-called Barbarossa order was also mentioned. Furthermore, and this seemed to me of special importance to Ohlendorf, he carefully screened each one of these ten officers He went into great detail.

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He asked about personal details. He asked for the curriculum vitae of each individual with special emphasis on the professional training, and special training in branches of Security Police and SD in order to be able to find out what special activity this particular officer would be best fitted for. It depended on this screening how each officer was to be employed.

Q Was the Fuehrer order mentioned on this occasion?

Q When and in what connection did you learn about the Fuehrer order? the first time at the end of October 1941. The circumstances were briefly the following. During the period in which Ohlendorf was on an official trip to Berlin I had started to work myself into the department to which I was assigned. I received the reports in this office which had been put at my disposal, the reports which the individual Kommandos had sent to the Einsatzgruppe and I received knowledge of the reports of the Einsatzgruppe to the Reich Security Main Office.

I can't say for certain today what was the occasion which made me think - which made me suspect - -

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THE PRESIDENT: I am a little confused here as to what reports he is speaking of. I thought that he was telling us about the reports he received. Now it would appear that he is talking about reports which were sent out.

THE WITNESS: Your Honor, I spoke about the reports deposited in this office. These were reports from the kommandos to the Einsatzgruppe D as well as reports of the Einsatzgruppe D to the Reich Security Main Office.

THE PRESIDENT: Very well, then you saw both types of reports, those which came in and those which had been sent out or were to be sent out.

THE WITNESS: Yes, Your Honor. In these reports information was contained about so-called resettlements which had taken place, and I already said that I do not remember the exact occasion which caused me to see in this term "resettlement" a camouflaged expression for executions. I intended then to find out in detail and when Herr Ohlendorf returned I asked him concerning this matter, and on this occasion , in this discussion, I was enlightened about the content of the Fuehrer Order, but Ohlendorf also told me on this occasion that I would have nothing to do with the carrying out of this order. BY DR. KOESSL:

Q Did you agree with the Fuehrer Order? now. I can only say that when I learned of the content of this Fuehrer Order I was deeply shocked, mainly about the fact that one could expect people to carry out an order of such tremendous consequences, that people could actually be expected to execute such an order. Furthermore, in my own position I was completely helpless in the fact of the facts with which I was confronted.

Q What did Ohlendorf tell you then concerning your own employment? I should be the successor of the adjutant who had been released, and he also put me in charge of the orderly room of the staff of the Einsatzgruppe D. officer in charge of the orderly room.

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A My tasks as adjutant were relatively small. The reason for this was mainly that Ohlendorf refused personally to have any office machinery for his own personal needs. As the adjutant I had to make appointments for official visits and to receive the visitors in the office. Apart from that there were occasions from case to case to carry out work within the regular field of activities of an adjutant. For instance, when Herr Ohlendorf wanted to go on an official trip it was then my task to assist him in getting the necessary maps, to note down the route, and similar matters. As the supervisor of his office I was entrusted with the supervision of the office work; that is, in this office as far as registration and files are concerned, the correspondence between the Einsatzgruppe on one hand and the kommandos or the various offices of the Wehrmacht on the other hand was filed end taken care of. The complete correspondence went through this office and was there registered according to incoming and outgoing mail. office? the officer in charge of this office, I had one clerk who at the same time, apart from this activity in the office, was the clerk of the chief and also a radio operator. Therefore, this one man did not only come under my exclusive supervision.

Q Did this T/O correspond to an office of a military unit? military unit. If I may make a comparison at all with a military unit, which never is quite fortunate, then I would compare the staff of the Einsatzgruppe D in its T/O with the staff of a regiment. In such a regimental staff, however, there was a so-called staff sergeant.

This staff sergeant did not exist in the staff of the Einsatzgruppe. Therefore, this function of a staff sergeant was also taken over by me in this case with the effect that in addition to my duties I had to deal with billeting, and I had to make out plans for sentry duties, and I had to deal with main as well.

THE PRESIDENT: Witness, if you compare the Einsatzgruppe headquarters to regimental headquarters, following out that comparison, would you say then that the kommando headquarters would be comparable to battalions and the sub-kommandos to company units, or would that rather be a forced comparison?

THE WITNESS: Your Honor, if I may say so openly, even the comparison between Einsatzgruppe Staff and regimental staff is very far-fetched, and any conclusion that could be drawn from this concerning kommandos would be equally far-fetched, I only compared it in order to give a comparison of numbers, of the numbers of the staff, and I only made this comparison in order to give a sort of comparison in the strength of personnel, but actually, or as far as service is concerned, there are no possibilities of comparison here because the Einsatzgruppen and the kommandos are, to be sure, military units, so-called mobile units. but were differently organized and sub-divided than a military unit.

THE PRESIDENT: If you were going to compare them at all, I presume the Einsatzgruppen could be compared more easily to a battalion and the kommandos to companies rather than the way you first put it.

THE WITNESS: If I am to deduce this from the number of the personnel then, of course, Your Honor is right. Of course in that case Einsatzgruppe D at best corresponds to a military battalion.

THE PRESIDENT: Proceed, Doctor. BY DR. KOESSL:

with the internal service? Einsatzgruppe? of course, I could give directives for his service in the office, I could give no directives to anyone in the Einsatzgruppe. of the office?

A Generally, yes. I can, of course, not exclude the possibility of actually not having found out about a number of proceedings, but I would like to state here that theoretically, of course, I had the possibility of examining any matter which was mentioned in the mail that came in and went out because all the documents were in the office. kommandos? Security Main Office and to the Army?

Q Did you participate in the making out of such reports? kind or parts thereof?

Q Did you ever sign a report? in that case, of course, never.

Q Will you now look at Document Book III_D, English page 34, of the German, page 60 , Document NO-2859. It is Exhibit 158. It is an affidavit of the co-defendant Seibert, in which it says under No. 2 it is on page 1 of the original - I quote, "Although Ohlendorf, as well as his adjutant, Schubert, from time to time prepared their own reports, the making out of reports was one of my main duties."

That is the end of my quotation. What can you comment on this way of putting it? A I should like to draw the attention of the Tribunal to the casein-chief of the prosecution, on page 255 of the English transcript, where it says, and I quote, under paragraph 2 of the document, that is the affidavit Seibert, it says, "It is shown that the defendant Schubert from time to time prepared certain reports of Einsatzgruppe D."

Q What do you have to comment then on these formulations?

A I beg your pardon for just one moment. I haven't quite found the place.

Q You mean in the case of the prosecution?

Q It is in the document book, page 60 at the bottom. It is the next-to-the-last line on page 60.

A. Yes, thank you, I have got it. Seibert testified here to the effect that although Ohlendorf as well as myself prepared our own reports from time to time the making out of reports was one of his main duties.

He furthermore describes the content matter of these reports but it seems tome of importance to clarify that this way of putting it, in the case-in-chief of the prosecution, concerning the omission of the defendant Seibert, that Schubert from time to time made out certain reports, and this does not say which reports, that this omission, however, should refer to the reports mentioned by Saibert in his affidavit; that would be a false assumption. From time to time in this program of reporting, I made out documents concerning personnel changes and changes of garrison within the field of activities of the Einsatzgruppe D. These documents which were made out from time to time for Berlin in order to give them an idea on the regional and personal structure and in order to keep their reports up to date, these documents, therefore, I made out; and only to that extent did I personally or my clerk take part in making out reports because these documents were made out all at a certain time for a certain report and were contained in such a report.

Q. Do you know of any data concerning executions in such reports?

A. Yes, I know about such data.

Q. Did these individual reports from the Kommandos, contain any figures concerning executions?

A. In the various reports figures concerning executions were mentioned.

Q. Did the reports of the Einsatzgruppe to the Reich Security Main Office contain any figures of executions?

A. Yes, but not all reports; some reports, especially the radio reports to Berlin, contained figures.

Q. Did you have any id*a concerning the total figure of executions?

A. At no time whatsoever. In spite of the knowledge that executions took place and in spite of figures mentioned in the reports I had no idea concerning the total number of people who were executed; never, and I could not have any such idea.

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That was practically impossible.

Q. On the 30th of September in the afternoon , page 251 in the English transcript, it is in German 256, the prosecution read a contradiction into your statements on page 7 of your affidavit of the 4th of February, 1947, Document Book I, English page 17, German page 19, No-2716, Exhibit 4. The Prosecution sees the contradiction in the fact that you first maintained that younever knew how many people were executed altogether on the one hand, and that you say yourself that the written reports which went to Berlin contained the exact number of people who were executed. Will you clarify this alleged contradiction?

A. I think that if the prosecution reads a contradiction into my Statement the reason must be in my affidavit. This phrasing , especially of no. 7 in my affidavit. is partly so unfortunate, that somebody who does not know the actual conditions can either not see anything from this or can also see that what the prosecution wants to read into it, mistakenly. In this Figure 7 of my affidavit I said, or shall we say that I signed the wording as it was put by Mr. Wartenberg, and I gave details about the two ways of reporting of Einsatzgruppe D to Berlin. On the one hand, I spoke of radio reports in which figures were also transmitted, which, however, I did not get to know, and I said why I could not have known about them. Then I explained the second way of reporting, that is those reports which went to Berlin as written reports , via army mail or via courier. As for content of these written reports, the wording for it was chosen by Mr. Wartenberg, and I quote, "These reports contained exact data and descriptions of those places in which the operations had taken place. " I may now come back to the wording in theprosecution's case-in-chief. Here it says, "I would like to draw the attention of the Tribunal to Schubert's claim which is contained in Paragraph 7 of his affidavit of the 24th of February, 1947."

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Here I may clarify this and say that it should be 4th of February. It is evidently a mistake. Furthermore, it says, two sentences later he says that he did not know the exact number of people executed, but I am now talking about the content of the reports concerning the activity of the group which went regularly to the headquarters in Berlin. He says that these reports contained exact details anddescriptions of the places in which these operations actually took place. I can, therefore, only refer these statements to the radio reports, and if the prosecution really understands it to this effect then this conclusion is wrong, because here they connect the word "operations" with the executions which had been mentioned before, but the written reports which I talked about and which I explained, contained mainly information about operations and the places in which these operations took place, but in no place whatsoever does it say that these operations or actions meant executions which had been carried out. BY THE PRESIDENT:

Q. Well, did you see the reports before they were sent out?

A. Whether I saw the reports which were sent out?

Q. Yes, did you see the reports?

A. I don't say basically before they were sent out, your Honor, but I had the chance to see them either before, that is theoretically possible, but in any case after they had been sent out when the copies were filed.

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Q Yes, well, then, I don't know that you have answered Dr. Koessl's question, namely, that you should explain the inconsistency between the statement that you did now know how many were killed and the statement that the reports contained the numbers killed. You have quoted from that paragraph, but you didn't go--you did not go to the phrase which indicates the number "number of places destroyed and persons killed". Now, when you signed this affidavit you saw that wording, didn't you?

Q Well, doesn't that very clearly state that the reports indicated the number of persons killed? because it is not clear enough, and I may remind the Tribunal of the fact that my defense counsel, when Mr. Wartenberg was called into the witness stand for cross examination, that my defense counsel asked Mr. Wartenberg about this wording and its unclarity, and I may remind Your Honor that it was you who said, "Yes, if it isn't very clear, then it is not very clear". BY DR. KOESSL: what operations are concerned on that particular point where it says in your affidavit. "the number of villages destroyed and people killed"-- what operations or actions were you speaking about in this particular point of the affidavit?

THE PRESIDENT: Judge Dixon calls to our attention that this statement appears twice in your affidavit; in paragraph 6 this sentence appears. "The reports of these leaders arriving at our headquarters were written in the manner prescribed by Chlendorf and also contained information as to the number of Russians and Jews executed". That is in paragraph 6. BY DR. KOESSL:

Q Witness, what figures were you referring to? We are now discussing reports containing figures of executions. Did these reports only contain 5 Jan 1947_M_MSD_7_2_Spears (Hildesheimer) the figure of one single execution or did these reports calculate cumulatively from the last figure in order to give a total figure of execution and people executed by this Einsatzgruppe up to that period?

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Einsatzgruppe to Berlin were not based on a previous figure that had been reported about before. Therefore, the sum total of all the executions that had taken place after that date was not reported.

Q But figures were contained? quite clear that I knew about that.

THE PRESIDENT: Well, I think that the statement which apparently I made some time ago stands, that if it isn't very clear, it isn't very clear, so let us have a recess for 15 minutes.

( A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

DR. RATZ(ATTORNEY FOR THE DEFENDANT VON RADETZKY): I would like to ask that the Defendant Von Radetzky be excused today and tomorrow afternoon from attendance in court so that he can visit his wife. This has been approved already for special reasons and I would like instructions to be given that the defendant be brought to Room 57 at 1:30.

THE PRESIDENT: When you say that Von Radetzky will be excused that he may visit his wife, you mean that his wife may visit him. Mrs. von Radetzky to visit von Radetzky this afternoon in Room 57 and the same privilege will be accorded tomorrow afternoon.

DR. RATZ: Thank you, your Honor.

THE PRESIDENT: You are welcome.

DR. KOESSL: My colleague, Dr. Ulmer, asked me to make an application that the Defendant Six be excused tomorrow, Tuesday, the 6th of January, -- that he may be excused for the afternoon only tomorrow and that he be brought to Room 57 so that the closing brief for the Defendant Six can be written.

THE PRESIDENT: The Defendant Six will be excused from attendance in court tomorrow afternoon for the purposes indicated.

DR. KOESSL: (ATTORNEY FOR THE DEFENDANT SCHUBERT) I ask permission to continue with the questioning of the Defendant Schubert in his own case.

Q (By Dr. Koessl) Witness, please clarify again which figures you knew and which figures you did not know. but I did not know any possible total figures about the total period of the work of Einsatzgruppe D. I never knew of these at any time. the various reports?

A No, I never did anything like that. I never had orders to do that. In addition those figures, for example, which were with Einsatzgruppe D documents existed for that period.

I don't think either that unless customs were changed, lists previously had been kept; I know nothing killed; which operations were you referring to here at this point of the affidavit?

as they were made known to us for the territory of Einsatzgruppe D. These against partisans.

Here, of course, localities were destroyed during combat and also people were killed.

This is what I was referring to and "Reports about the civilian sector"?nothing.

I regretted this and pointed this out to Mr. Wartenberg at the time.

If I had had the opportunity to word this myself, it probably population in the occupied territory.

That is what was meant.

Q Mr. Warenberg said in the English transcript, page 390 to 391, Figure 7 in your First affidavit.

Why, on 21 April, or on 24 April, did you not do so?

A May I correct you first? You mean 21 February and 24 February. I

A This statement by Mr. Wartenberg here on the witness stand was given Mr. Wartenberg at the time did not tell me that he would interrogate me again, or, if this should occur, when.

I did not know whether I would be interrogated again. He never let me know at any time that at a later date I would be able to give further explanations concerning this affidavit. I mentioned to him that there were some points which were not clear in this affidavit and he told me that if something had been formulated unclearly, it could only mean the same thing, as I had explained it. This was merely a compilation, a summary of this previous interrogation.

4 February?

rewritten, on 24 February it was signed again. This affidavit merely had been discussed.

Therefore, for me it was not supplementary affidavit affidavit with new subjects.

Apart from that, if I may mention it here.

on the wording of these texts in these affidavits. I could not have any influence.

The interrogation was conducted entirely by Mr. Wartenberg and I could not interfere here and say, "Stop here.

We can't do it that way," for any executions?

Q Did you yourself ever see an execution?

Q How did this come about? Was this part of your task as Adjutant?

with the executive task. Why this order was given to me, I would like Einsatzgruppe D at the time.

This was the execution which has been discussed here repeatedly.

It was the execution for which the 11th time.

This deadline, as far as I know, was Christmas or the end of the year, 1941.

Einsatzgruppe D, in as far as I understand about events carrying out the executions by that time.

The Army was informed about this personnel and technically was not able to cope with this matter.

The actual execution did not change, so it had to be carried out.

In this Einsatzgruppe, my codefendant, Mr. Ohlendorf, under those circumstances, matters carried out in a clean and thorough manner.

Herr Ohlendorf and also the local kommando leader of Simferopol, Dr. Braune, themselves

THE PRESIDANT: I didn't quite catch that distinction which you Q (By Dr. Koessl) Which differentiation did you make, whether they were carried out at all or how they were carried out?

That is what you

A Yes, I understood. What I was trying to say was: my instructions

THE PRESIDENT: Do we understand that you say that you yourself the orders issued by Ohlendorf?

THE WITNESS: Your Honor, I would not like to say here that they by Mr. Ohlendorf, because the words, "that they were carried out" carry out the executions to carry it out.

I did not get such an order.

DR. KOESSL: You only mean the manner, Witness. Thank you.

THE PRESIDENT: Let us suppose that the execution was not being by the Chief of the Einsatzgruppe?

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THE WITNESS: Your Honor, I could not have done this. I would have a different manner.

I might have tried to tell the officer who was

THE PRESIDENT: Well, if you saw a flagrant violation of the order of the execution with that violation, would you not?

THE WITNESS: Of course, Your Honor, in an emergency I would, of

THE PRESIDENT: Very well.

Q (By Dr. Koessl) What instructions did Herr Ohlendorf give you at the time for your work?

MR. WALTON: If Your Honors please, I want to object to that question as putting the answer in the witness month.

If you will note, could have received his instructions.

I should like very much for the

THE PRESIDENT: The point is well taken.

DR. KOESSL: I believe that the prossecution merely objects to the Defendant Seibert gave instructions I shall bring up later.

I shall ask that.

I don't know whether I understood the prosecution correctly.

THE PRESIDENT: Yes, well, why make it so difficult? Just ask him "Who gave you instructions?"

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DR. KOESSL: I shall do that now.

Q (BY DR. KOESSL) Witness, who gave you the instruction to be present during this execution?

Q What instructions did Herr Ohlendorf give you? phases of the entire events. That was what Herr Ohlendorf told me to do. executions?

A Yes. I knew those directives and that is written directives they had been issued to the kommandos and as part of may work in the office. I also heard about these directives. any other missions? German page 256, the affidavit by Ohlendorf of 2 April 1947 was mentioned. This affidavit is in Document Book III-D, page 1, as Document No. 2856, Exhibit 148. The prosecution says, and I quote, "In paragraph 3 of the same document, Ohlendorf says that he had sent Schubert as his deputy in order to inspect executions. These inspections of executions, the Defendant Schubert in his own affidavit of 24 February 1947 admits." What I mean is the affidavit Schubert Document Book I, English page 108, German, 141, No_3055, Exhibit 28. What can you say to this statement by the prosecution and the affidavit by Ohlendorf?

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A. This wording by the prosecution, in my opinion, is wrong, mentioned in the plural.

Concerning the affidavit by Herr Ohlendorf that is several.

He says that as far as he remembers I carried out one inspections in Simferopol.

Later in his affidavit he says, however, Defendant Seibert and Herr Gabel.

If the Prosecution wants to charge of executions.

In fact in my life I only saw one executions, the

Q. Please describe how you carried out your mission and

A. Hay I summarize first briefly and later explain it in detail?

phases of the entire events took place as I was ordered. I inspected the manner in which the execution was carried out.

In no manner did I

Q. Who had to supervise those executions?

A. The supervision was carried out by a person who hold the

Q. Were any other officers present and what rank did they have?

A. Apart from this officer who hold the rank of a major, there were two other officers who had the rank of a captain.

Apart from that

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Q. Could you supervise these officers in carrying out the missions given to these officers?

A. Of course, I could not supervise any missions of these

Q. It has just been pointed out to me that the comparison

A. The person in charge of the execution is a Sturmbannfuehrer,

Q. In the SS, therefore, the major was a Sturmbannfuehrer and

A. Hauptsturmfuehrer.

Q. Did you have any influence in choosing the location where the execution was to be carried out?

A. No, I could not influence this. The location which was nothing to do.

I merely had the instruction to look at conditions of

Q. How long did you stay at that place where the valuables were collected?

A. As far as I can remember or estimate now, I would like to say about a quarter of an hour.

I remember that during my presence at valuables.

I witnessed this. I saw how these valuables were collected.

As far as I remember, this event took about a quarter of an hour.

Q. Did you have any special mission concerning the valuables and the collection of them?

A. I did not have a special instruction for this, merely the instruction as I described before, that is, to watch this and to inspect it. whether it was carried out according to the rules laid down by Herr Ohlendorf, that is, whether the collection and the listing had been done in the proper manner.

Q. Had the execution already started when you got there?

A. Yes, it had already started.

THE PRESIDENT: Dr. Koessl, is he now describing one certain execution or is he describing generally executions which he inspected?

DR. KOESSL: Your Honor, the witness already testified that he only inspected on one occasion. That is the inspection mentioned in his affidavit and being talked of just now. BY THE PRESIDENT:

Q. Well, Witness, I understood you to say that although you only witnessed one execution, you did make some preliminary arrangements in other executions. That is to say, to see that the place was secured so that no one might look in on the executions.

A. Your Honor, I did not carry out any kind of preparations, but

Q. I did not mean that you actually made any physical preparations, but I understood you to say that in your capacity as Adjutant and acting under the instructions of Ohlendorf that from time to time you would inspect locations and sites where executions were to take place and to observe that the necessary security regulations were met and other things which you could make certain were entirely in accordance with regulations.

A. Your Honor, I would like to emphasize again, that except this one execution which I now described, I did not see any other executions and as Adjutant on no occasion did I receive the mission to

THE PRESIDENT: Proceed.

BY DR. KOESSL:

Q. The President asked you whether you made preparations, general preparations for inspections?

A. No, I did not make any preparations for any such inspections,

DR. KOESSL: Your Honor, I have just been informed that the interpreter translated "inspect" and "supervise" with the same English word.

What I mean by "inspect" this does not mean "supervise", but to inspect may receive a report about this.

That is all one has to do when inspecting, while "supervising" means a kind of work which includes

THE PRESIDENT: Dr. Koessl, it isn't necessary to amplify this any further; so long as the witness uses the words, "inspect" and "supervise". I am sure the interpreters will give us those words in

DR. KOESSL: Yes, Your Honor.

THE PRESIDENT: Because we don't have any possibility of con fusion between "inspect" and "supervise" as we had between "fehler" and "irrtum."

Who supervised this incident?

persons to be executed at the collecting place in Sinferopol?

merely had to look at this, too. I myself did not load guard, it was not up to you?

A No, I was not in charge of the supervision. I did

MR. WALTON: If it please the Tribunal, I have not

THE PRESIDENT: You want to make a differentiation

MR. WALTON: Yes.

THE PRESIDENT: You think he is dragging him.

MR WALTON: By the bridle, yes, sir.

THE PRESIDENT: Please don't drag the witness.

DR. KOESSL: It was only meant to be a summary of what BY DR. KOESSL: getting ready the execution in any way?

English page 108, German page 141, Document No. 3055, Exhibit No. 28.

Are the events as you described them during the execution, correctly related in this affidavit?

my mission is incorrect. This refers in particular to the expressions "supervise" and "Inspect," I think it is the same in English.

I think the word "supervise" means those two words in the German language; also the formulation of "I took care of it."

These wordings do not correspond with my actual signing your affidavit?

A Before signing my affidavit I talked to Mr.Wartenberg for some time about these wordings.

I told him that in place of "supervise", which is obviously deducted from the English, it would be better to use the words, " To inspect" because In English I would express it, "To look at".

THE PRESIDENT: Dr. Koessl, I, of course, don't recall now whether you questioned Mr. Wartenberg on this subject.

DR. KOESSL: Yes.

THE PRESIDENT: Did you question Mr. Wartenberg?

DR. KOESSL: I asked why the witness did not correct And now the witness is about to say why he didn't make those corrections, I myself questioned Mr. Wartenberg for a long

THE PRESIDENT: Yes. Would you please give me the look at it when we recess?

DR. KOESSL: Yes.

MR. WALTON: I shall get a copy of the transcript during

THE PRESIDENT: Very well, Mr. Walton will get me the English transcript.

That will be allright, Dr. Koessl?

DR.KOESSL: Yes, your Honor.

BY DR. KOESSL:

Q Why did you not correct this, witness?

A I was not able to make these corrections. During our conversation Mr. Wartenberg gave me repeatedly to he used and my explanations in his opinion.

He said that I had to tell Mr. Wartenberg about these beforehand, and, Mr. Wartenberg had declared repeatedly, "you can only make such corrections which I allow you to make", and thus, I was not allowed to make, but Mr. Wartenberg told me that

Q When did you sign this affidavit?

THE PRESIDENT: Dr. Koessl, opposite paragraph 3 in that affidavit there appears a note, "handwritten corrections initialed H/ScH, 24/2/47."

Witness, what correction did you make in that paragraph?

or did it refer to a correction on that page, generally?

paragraph 3, namely, the date "in December 1941." I believe "in January or February 1942."

this is - and I shall come date, why couldn't you insist upon changing the word "Supervise" if you did not like the word "Supervise."

if Mr. Wartenberg would have permitted me to do so. It is the wording, "I was assigned for this by Ohlendorf or by Seibert," right at the beginning.

At the time I pointed out to Mr. Wartenberg that this wording "or by Seibert" could the Einsatzgruppe at all, but he was on leave.

I, therefore, would have liked to cross it out, but Mr. Wartenberg told questioned me that "Herr Ohlendorf or Seibert gave me that order."

I told him thereupon that possibly I might have said that at first, but when considering this I had to correct myself. Of course, I knew exactly at that time that Herr Seibert was not present.

THE PRESIDENT: Would you think that this might be an appropriate time to recess. For Lunch-Time, Dr. Koessl?

DR. KOESSL: Yes.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

THE MARSHAL: The Tribunal will recess until 1345 hours.

(Recess until 1345 hours, 5 January 1948.)

(The session began at 1345 hours, 5 January 1948.)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: May I go on?

THE PRESIDENT: Proceed. BY DR. KOESSL: discussed before? which is contained in the Document Book was signed by me 24 February 1947 but I would like to draw the attention of the Tribunal to the fact that as early as 21 February 1947 I signed an affidavit of the same contents. In this affidavit I had 8 corrections which I made before I signed it. After it had been signed by me and I returned it to Mr. Wartenberg, in 8 copies, Mr. Wartenberg informed me that now he would have this affidavit re-written owing to the fact that so many. corrections in handwriting had been made and that he would then give it back to me for signature. 21 February 1947, ask Mr. Wartenberg whether you might be able to correct these sentences and what did he say to you when you asked him? he saw no reason for any corrections as the corrections and limitations which I had made he only regarded as a game with words and, therefore, he was not willing to have this correction made and he also added that at the proper time I could give the proper explanations and make any statements I would like to make.

Therefore, this correction never came about.

THE PRESIDENT: Let me understand this clearly. One affidavit was signed 4 February, is that correct?

THE PRESIDENT: Then which one was it in which the 8 corrections were made, the one of 4 February or the one dated 24 February? affidavit of the 21 February in which the corrections were made in handwriting and these corrections which were made in handwriting were then contained in the affidavit of 24 February except one particular part.

MR. WALTON: Owing to circumstances surrounding the affidavit which is not before the Tribunal and which has not been introduced in evidence I think such testimony is immaterial.

THE PRESIDENT: Well, which one is before the Tribunal? which number?

MR. WALTON: The one of the 4th of February and one of the 24th and now he speaks of one of the 18th which has nothing to do with the affidavit in the hands of the Tribunal as a prosecution exhibit.

THE PRESIDENT: Well, calling your attention, witness, to the affidavit which was signed on 24th day of February we see opposite paragraph 3 the words "handwritten correction - initials H.Sch. 24/2/47". Was this written by you after the affidavit had been rewritten by Wartenberg? at the moment I have not seen but I may assume that it is the original of the affidavit which I made out on 24 February in 8 copies and which I signed but I myself have not seen the affidavit since then.

I only know the cyclostyled copy in the Document Book.

THE PRESIDENT: Yes. An affidavit was submitted to you and you made numerous corrections or a number of corrections. Mr. Wartenberg then said he would have it rewritten, is that correct?

THE PRESIDENT : And he brought it back to you and you signed it?

A First I read it through. Mr. Wartenberg submitted it to me making the remark that this was the affidavit of the 21 February newly issued but unfortunately I had to establish the fact that it was not the same wording - it was not like the affidavit of the 21. Therefore, I was a bit suspicious and I looked at the affidavit and I was very much shaken because this particular point had meanwhile been changed in the text. I had trusted that this, the copy which had already been made out, would be submitted to me again without the text being changed.

THE PRESIDENT : Well, you did even on this re-written affidavit then make a correction? was referring to the change in the text of the affidavit of the 21st. In this affidavit of the 21st it had said under # 3 "In December 1941" and if I remember correctly this date December 1941 in the affidavit on 21 February was put in by me in handwriting and after it was put in its final form on the 24, now, in the new edition, the wording appeared "In January or February 1942."

THE PRESIDENT: And you made the correction?

which in this connection is most important. I was not

THE PRESIDENT: Mr. Wartenberg brought you the re-written affidavit.

He handed it to you and you read it. After reading it you made a change in the date.

That's correct, isn't it?

THE PRESIDENT: Now, why didn't you also make whatever correction?

A Your Honor, I think that Mr. Wartenberg said when

THE PRESIDENT: Now, just a moment. We are through with the date.

You have made that correction. Let's not talk about that date any more.

you have made that correction.

Now we ask you why didn't you correct the word 'supervise# if you didn't like that word?

A I didn't like it on the 24, and I uttered my

THE PRESIDENT: I don't understand you saying you were not permitted.

You had the paper in your hands. you crossed out "January - February 1942". you wrote in "December". Why didn't you then go over to the word "supervise", cross that out, and write in another word.

you had it physically in your possession - why didn't you do that?

something. Theoretically, one can see that after the event I said I wanted to change that but Mr. Wartenberg said "Any corrections you want to make you have to discuss with or not."

And this permission - - -

THE PRESIDENT: Well, did you tell him, "Mr.Wartenberg, I would like to change the word 'supervise'"?

A Yes, your Honor. The word supervise as well as

THE PRESIDENT: Did you say "Mr. Wartenberg, I want to change this word 'supervise'?" Did you call that specifically to his attention?

THE PRESIDENT: You can dwell on possibilities. We must know definitely whether it did or did not happen.

Did you specifically call to Mr. Wartenberg's attention the word "supervise"?

THE PRESIDENT: And did you call to his attention the word Seibert,the name Seibert?

A Yes, your Honor. And I would like to say here the answer that I got from Mr. Wartenberg concerning this

THE PRESIDENT: What was the answer?

A I don't know literally but I thin, I can give its drift. when I told Mr. Wartenberg that the date had been changed and the passage "or Seibert" is also contained again Mr. Wartenberg told me words to this effect - "Yes, but in January or February Seibert was there again". I told Mr. Wertenberg that that of course was correct, but...

THE PRESIDENT: Listen, witness. We are going over ground which you have tilled a number of times. Now we have cultivated that ground and we have got the harvest - mainly the correction. Don't go back to the date. Let's go back to the other things. We understand the conversation you had about the date - that is settled. you called it to his attention, you convinced him that the correction should be made, and you made the correction as evidenced by the fact that it does appear corrected and your handwritten corrections are here. Well, now why didn't you go through the same procedure on the matter of the word "supervise". That's the question.

A your Honor, I should like to be very brief on this point. I asked for this change to be made on various occasions and was not permitted to make it.

THE PRESIDENT: Not on various occasions but on this one occasion when you corrected this date, why didn't you correct "supervise"? to this word. If I have changed the wording of the dage, if I succeeded in doing so, it may be so because I was particularly obstinate on this point because I didn't want a co-defendent of mine to be indicted by a negligent remark in this document. All other wordings referred to my own person and after Mr. Wartenberg told me that at the proper time I would be able to explain everything as I meant it, I thought, in the state I was in at the time, that I could no longer resist, that I thought I would have to sign this statement being able to explain later because I did not want to appear in dubious light in case I would resist too long and trusting that I

THE PRESIDENT: Well, it you feared that you would be put in what you intended.

Wasn't that the occasion to correct the dubiosity of the situation?

Wasn't that the time to make the correc tion?

THE PRESIDENT: Well, now just a moment, did Mr. Wartenberg threaten you in any way?

THE PRESIDENT: Well, please answer that, did he threaten you?

THE PRESIDENT: Did you read this? "I had the opportunity to make changes and corrections in the above statement.

I made this statement jected to any threat or duress whatsoever". Did you read that?

A yes, but I may say the following, Your Honor. This way of putting position to make all corrections.

When it says "I read this statement and" that "I had the opportunity to make corrections" then it is in a way not false, not wrong, but it doesn't explain everything.

THE PRESIDENT: You were allowed to make 8 corrections but not 9 corrections?

Is that what you are telling the Tribunal?

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A I had to ask for the permission of Mr. Wartenberg for everyone of these 8 corrections but I did not receive permission for this owrding "supervise". I do not know at the moment whether those are the only corrections which I wished to make on that occasion .

The PRESIDENT: Suppose you do this witness. You indicate to the Tribunal the corrections which you actually made end then indicate the corrections which you want to make now and then we will have it on the record just what this statement should be. Tell us what corrections you did make and what corrections you want to make now. Dr. Koessl, will you please take him over that field? BY DR. KOESSL:

Q I will. witness, please state on what passages of your affidavit of 24 February you wanted to make any corrections on your own behalf? I do not want to make out a new affidavit now, but that I only want to carry out what Mr. Wartenberg had promised me that is to explain what I mean and what unfortunately he worded incorrectly.

Q Tell us, therefore, very briefly, what words you want to correct?

A Wherever it says "supervise" it would say "inspect" or "to look at". contained under #3 of the German, the fourth line, paragraph 3-A at the beginning of 3-B, the first expression. Furthermore again at #3 C. Then under paragraph 4, line 3, in the German and then in the next line -

THE PRESIDENT: Well, just a moment, are you making these corrections?

DR. KOESSL: The witness has already stated that all these points where it says "supervise" instead of "look at" or "inspect" - that all these points should be changed. Personally I have marked these points in my affidavit. I therefore wanted to tell you briefly. The witness is in position to do so himself - it would be the same.

THE PRESIDENT: Yes. Now, you said that 3-A was wrong but you didn't indicate how it was wrong.

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Suppose you let the witness do it Dr. Koessl. Let him point out in the affidavit where it is wrong. Now, what is wrong with 3-A?

DR. KOESSL: Tell us, witness, under #3 any passages, what passages you want to be changed? I would like to say -BY THE PRESIDENT:

Q Well, tell us why it doesn't make sense. It seems to read very clearly to us. It makes sense. "To see that the location of the shooting be remote enough so that there could be no witnesses to the shootings". I don't know how it reads in German but it is clear in English. why is it so obscure in German?

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A I don't know, your Honor, whether you are quoting now from the English, and whether it says there "to see". It says in the German "beaufsichtigen". That would be "supervise" in the English. If it says there "to see" I am in agreement, as I approve of the wording this way, although to "confirm" would be quite correct. I only had to convince myself of the actual order. sentence: that you would go to the location to make an observation and make certain that the location of the shooting was far enough away that people who might be in the vicinity would not see the shooting. That, in other words, is what we gather from this 3-A. is the thought you intended to convey? according to the wording in the affidavit it means that I had to supervise this particular place where executions took place. I cannot have a supervision of a place. therefore I object to the way of putting it here. certain that the shooting scene would be far enough away that witnesses might not see the actual shooting. in a proper state and that is what I think I have said in my statement. The wording of the affidavit means something else, in my opinion. shooting place, is that what you want to emphasize?

Q All right. This does not say that you selected it. It says that you went there to make certain that the place selected for the shooting was so located that it would fall within the regulations, namely that there would not be any unnecessary witnesses to the shooting.

THE PRISIDENT: Yes. Let's proceed to the next one. We understand that.

DIRECT EXAMINATION (Continued) BY DR. KOESSL: did not like.

A Then the next figure,Paragraph 3-B, there again it says "to supervise" so that.....

THE PRESIDENT: So that -- proceed, proceed. BY DR. KOESSL:

Q What was the wording that you approve? I convinced myself that the collection of money and valuables of people to be shot was not done by force, etc. The next passages, 3-0, here it says again "to supervise that executions were carried out as far as possible in a humane and military fashion."

Q And what should it be?

A It should say "to convinced myself" or "to look" or "see" that matters would be carried out like that.

Q Any further corrections?

A Yes, under figure 4 it says in the second sentence "I went into the Gypsy quarter of Simferopol and I supervised the loading into the trucks of people to be executed". Again it should say "I convinced myself" that this was to be done and not what it says here in the affidavit.

Q What next?

A The same sentence in the next paragraph "I took care that people were loaded as fast as possible and that no unrest and no disturbances should take place on the part of the native population. Furthermore, I took care that people who were to be executed should not be beaten while they were loaded into the vehicles.

Q What should it say?

A There again it should say "I convinced myself" of the fact of that, etc., there it could not even be formulated "I saw to it." I could only have meant "I convinced myself", because there is nothing else that could have been meant, and I could not have said anything to a different effect during my interrogation. In the last paragraph of No. 4 it says "as it was my task to supervise the whole execution I could only remain a short time at each of the different phases". There again "supervise" is wrong. Again it should say "to inspect" here or "to see", in order to get the true meaning, in order to be able to cope with my task.

THE PRESIDENT: Are those the corrections you want to make in the affidavit?

THE WITNESS: No, unfortunately, they are not all,

THE PRESIDENT: All right, let's have them all.

THE WITNESS: In No. 5 of the affidavit again there is the word, "I supervised". On page 3 of the original, the second sentence begins, "I supervised the SS and regular police that these people should not keep any of the valuables that were collected. Again there was nothing to supervise but only to convince myself, and I had to supervise how these things were carried out and whether they were in agreement with the orders which were given. Again it should not say "supervise". Under No. 5 again, the next hit one sentence, there it says. "This stage was supervised by me in detail so that all valuables should be turned over to the Einsatzgruppe for the purpose of passing them on to Berlin at a later date". This wording might permit the conclusion that it was my assignment to supervise and to take care that everything that was to be taken, actually was taken, so that everything would actually be transferred to Berlin. I think that Mr. Wartenberg thought of this way of constructing it when he formulated the sentence, but again I can only say that it was not my task to supervise these people taking the valuables, that it was not my assignment, but only, and that is what I said this morning, the stage of events, while I was there, to look at it and see to it that it was complied with, according to orders given.

I did not have to actually supervise this procedure. but I only had to see to it that it was done. BY DR. KOESSL:

Q Any further corrections?

A Under paragraph 6 it says "a short while when these executees were already in position in the ditches I supervised the shooting". This supervision again is wrong because I have already stated this morning that the task of supervision was the task of an officer who held the rank of a major. Therefore, there was nothing for me to supervise because there was already somebody who was supervising it who had a much higher rank than I had, and I did not have the executive power that these things were carried out. to Seibert. In the compiling of your corrections I think it would be a good thing if you now mentioned this particular point again.

A It is No. 3 where it is said that "in December, 1941 - I do not remember the exact date - I was detailed by Ohlendorf or Seibert to supervise the execution of seven hundred to eight hundred people". This wording "or Seibert" is completely wrong for the mere reason that Seibert at that time was not present in Simferopol at all. I think I have already clarified this point by saying that I told Mr. Wartenberg that this was wrong, but he did not permit me to make any corrections concerning Seibert because, allegedly, I had said in the interrogation "Ohlendorf or Seibert". This possibility I could not contest at the time, but I do not want to contest it today, that in the first moment when this question was put to me whether I ever or "what would you say, Herr Schubert, if we had proofs that you had actually to inspect executions?"

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that was the question that was put to me at the time.

It was put by Mr. Wartenberg. I think that it is "Ohlendorf or Seibert". I cannot and do not want to contest that, 24th of February, I drew the attention of Mr. Wartenberg to the fact in Berlin.

Therefore, it would have to be crossed out, but unfortuna

THE PRESIDENT: Does that cover all the corrections now?

DR. KOESSL: I just wanted to put that same question to the witness.

BY DR. KOESSL:

Q Have you now made all the corrections which you wanted to make?

which is inessential but which should be corrected. It is the last but one sentence of paragraph 1. "On the 9th of May, 1934, I was transferred from the Hitler Youth to the Party". It should say "on the 1st of May". I do not know whether I made this statement at the

Q And now let's just discuss again Paragraph 2. Is Paragraph 2 correct as it is put here, or do you have any other remarks to make?

A Under Figure 2 it says in this second sentence, "Otto Ohlendorf was chief of the Einsatzgruppe his deputy was Willy Seibert". I should understood and put down by Mr. Wartenberg in this very general form, the case could have happened in which Seibert would have been the deputy of Ohlendorf for the entire Einsatzgruppe D. Therefore I would like to explain this particular wording "Seibert was his deputy", and that is what I said, I think, in my interrogation very clearly, and I certainly did not put it into this very general form.

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have to make concerning this affidavit? been corrected by now. In the last but one sentence in paragraph 2 it says "I was appointed Ohlendorf's adjutant for the Einsatzgruppe and I kept this post from my joining the group until I left in 1944". I think that must have been a mistake. I think that has been corrected by the prosecutor. It should have said '42.

Page 4,613

Q I think that is only in the German copy. It should read June, 142.

Q Any more corrections? where it says in the last sentence "it is known to me that it was of special importance for Ohlendorf that people who were shot were killed in a humane and military manner as in case other methods of killing were used the psychological burden of the members of the kommando would have been too heavy." I was very sorry that this is the last sentence of this particular passage, but I could not very well tell Mr. Wartenberg what he should put in and what he should leave out, but in my interrogation I tried to explain that this psychological burden was not only the particular burden of the kommando itself but that each victim, of course, would have a much heavier burden, and that is what I would like to say here; and I think that with this all matters are now cleared up which I wanted to be cleared up. BY THE PRESIDENT:

Q Now, witness, you consider yourself an educated man, don't you?

A Your Honor, one should not say that of one's self. But I think that I have an average education.

Q Well, you had your schooling; you worked in a lawyer's office; you were a civil servant; you worked for the Reich; and you belonged to the Hitler Youth. I don't know that that would be any evidence of great education but at any rate -- how old are you?

Q Thirty-three years old? How old were you when you signed this affidavit?

Q Yes. Now you signed three times on this document, didn't you? you signed your name three times?

A I don't quite understand, Your Honor.

Q You signed your name to each sheet of the affidavit?

Q You know you actually wrote your name, you wrote "H. Schubert" at the end of the first sheet, "H. Schubert" at the end of the second sheet; and then at the end of the third sheet you let yourself out completely and signed "Heinz Hermann Schubert", didn't you?

Q You have it there before you. You are looking at the same occasions, didn't you?

the cyclostyled copy, and the initials are not contained there. I sheet of the affidavit?

different times to a paper which in itself was misleading?

matters were actually to be used. He never said that these affidavits the time given to me.

I am saying openly and honestly, I did not fully agree, but I thought -

Q This document contained the word "supervise" at least seven different times. Didn't it occur to you as an educated man that it would be highly misleading to have this word appear seven different times if it did not convey the actual picture of what occurred? I asked Mr. Wertenberg whether I would be able to change it, but I was not permitted to do so, but only the promise was made to me that "you will have the opportunity to explain this". He saw no difference in what I meant when I said "inspect" or "look at" and his own "supervision". He said that was quibbling for words and he thought it was exactly the same thing "supervise" and "look at". and the original affidavit. I would like to have you tell the Tribunal whether you yourself wrote in the word "December" in paragraph 3?

Q And did you yourself write on the left-hand side the word "handwritten" or did you write your initials to the left of that correction?

Q And did you sign each sheet of that affidavit? few minutes ago. affidavit?

"H. Schu". Your Honor thought I had signed "H. Schubert". Only on this last page it gives my full name.

Q You make a difference from "Sch" and Schubert? You make a big difference between those two?

Q you used the phrase, "this confirmed my suspicion." Whom were you suspecting:

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yourself? It is your own signature. Did you assume that someone else wrote the "Sch"?order to explain that my recollection was correct.

I only wanted in the date.

why on the very next line only two inches away you didn't correct the word "supervise"?

Q Now, you tell us just how you were not permitted. Did Mr. Wartenberg stand over you with a weapon; did he threaten you with his first; did he have you under duress; did he menace you in any way?

A Mr. President

Q You said you were not permitted. Now, explain what you mean corrections which I was permitted to make by Mr. Wartenberg there,

Q Did you say to him in this affidavit, the word "supervise" is I insist that this word be changed.

Did you tell him some think like that?

Q Yes, and yet in spit of that you signed the affidavit?

permission of Mr. Wartenberg because he had prohibited me to do so.

Q Why didn't you then refuse to sign the affidavit, drop the pen, "I will not sign this affidavit because it is misleading", why didn't you do that?

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I was in a physical and in a mental condition which did not allow me to resist Mr. Wertenberg very long and very much.

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actions, it was less of an effort not to Sign than to sign? right thing to refuse to sign it. It seems now that it would have been better to do see but I thought after I had resisted for so long and refused to be content, now with the promises of Mr. Wartenberg and apart from that-

Q Did you ever once say to him, "Mr. Wartenberg, I refuse to sign this paper", once, did you ever say that to him?

A Yes,Your Honor referring to the change of the date; when I had to confirm that the wording of the affidavit of the 24th had been changed, I told Mr. Wartenberg that I would not be willing to sign that, and this is how I explain the actual change that was then made and which I was permitted to make. have told us, which we understands, and which is a closed book--You insist on the change of date made; you initialed it, Now, I ask you, leaving aside the date, did you say to Mr. Wartenberg, "I refuse to sign this statement again; but I would like to add now, Your Honor, that immediately after the interrogation of the 18th of February I was taken into a severe custody, and on the 31st of February as well as on the 24th I did not feel myself free in my own will and physically as well as psychologically I was not in the position to resist any further, I was not in the position to go any further than I had already gone, and I thought that I had achieved all that could be done in this situation. I was put into solitary confinement. I was not allowed to go for walks I was put into an unheated cell and that in February. I could not leave the cell even to get my food, The food was brought into my cell. My cell was lit up from outside as at that time it was only usual in the case of defendants, although I at that time was not a defendants, There was, therefore, a difference between my custody as it had been until then. A difference like day and night; my state of health physically was very bad.

I was 26 percent underweight, and I was not in the position-

Q Did Mr. Wartenberg have to do anything with what you have just now related?

A Your Honor, Mr. Wartenberg was asked by my defense counsel here when he was in the witness box under cross examination concerning these matters and, if I remember correctly, he has stated that he had then been under the impression that I was thinking of committing suicide, based on the statements which I had made previously and that it was possible that owing to the statement that he had made to the prison office that therefore I was taken into more severe custody. This statement of Mr. Wartenberg's I cannot bring into agreement with the usual habits in such cases in the prison office. to what you regard as hardships in order to make you sign an affidavit which contained statements not in accordance with the facts, is that the point which you are trying to make? facts? went, and I presume it is only with regard to the affidavit that you tell us about these hardships. Now, do you want to argue or state that you were subjected to this confinement and the other hardships which you have enumerated in order to make you sign an affidavit which did not conform to facts? particular measure, but I could only regard it as pressure because this more severe custody was immediately relieved after I had signed the affidavit, therefore, this is the only conclusion that I am in a position to draw.

Q Did you say to Mr. Wartenberg, "If I sign this paper, will I be released from solitary confinement or did be indicate to you that if you signed it you would be released from confinement?

question I would never put to my victors. I think I would be too proud to do that.

Q Well, were you too proud to sign this statement, "I had the opportunity to make changes and corrections in the above statement. I Made this statement of my own free will without any promise of reward, and I was not subjected to any threat or dress what so ever." Was it because of magnanimity of soul which caused you to sign your name to a statement of that kind when, according to what you tell us now, it does not represent the fact--was that just magnanimity on your part toward your victor, as you call it? This formulation I signed because it was not exactly incorrect to a certain degree, but as I had no possibilities to make any modifying remarks or make any supplementary notes which would not have been received..... today differs from what you said in the affidavit. You said that you did not supervise, you only had to see that it was done. It is again--it is said that I had to see to it that it was done. That is again not quite correct.

Q Did you, or did you not say that? That is what I have in my notes. Did you say that this afternoon? not.

Q You were sent there by Ohlendorf, is that right? execution was not being conducted in the manner ordered by Ohlendorf; you would have spoken to the officer in charge, wouldn't you?

A Yes, Immediately. I may say that General Ohlendorf himself and Dr. Braune inspected the execution on that very day. I would have had enough opportunity to express my misgivings even if the superior officer had not been of my opinion or had not shared my misgivings.

middle of the city in a square--in the public square--you would have immediately informed the officer in charge that this was not in accordance with Ohlendorf's orders, wouldn't you? was well-known that the exeuction place should not have been inside the town but 20 kilometers outside the town.

valuables and pocketed them instead of turning them over to Einsatzgruppe D. You would have informed the officer there that this was contrary to Herr Ohlendorf's orders? notice that this officer was not using his authority to prevent such matters, then I would have had to report this incident to Herr Ohlendorf. came upon an officer who was about to use hand grandes to execute the victims. You would have immediately called it to the attention of Ohlendorf that this was contrary to orders? were carried out in accordance with the orders issued by the chief of the Einsatzgruppe D? they were actually carried out, I don't know, and I had no influence on that for this the presponsible person was an officer holding the rank of a major who was responsible for everything and who had all the authority. I was not responsible for the action, execution, I was only to find out about the manner in which it was to be carried out, but I had no influence on whether it was actually carried out, but only to see how it was carried out. that he was going astray in the event he was not following the orders of Ohlendorf? else would have done that without a corresponding order if he had found out about incidents of that kind. That, of course, was his duty without any special order.

THE PRESIDENT: The court will recess for 15 minutes.

DR. KOESSL: Your Honor, just one little question before the recess.

THE PRESIDENT: Certainly, even a big question.

BY DR. KOESSL:

Q Witness, were you ever threatened by Mr. Wartenberg?

A Yes, and I am perfectly aware of the fact that Mr. Wartenberg the question to this effect by my defense counsel which was "whether he had threatened me with a broomstick in Oberursel on one occasion", in the negative.

I can say, under oath, that I can give an affirmative BY THE PRESIDENT:

Q When was that?

Q When as that--the date?

and December '45. I don't know what month--which of the three months.

the affidavit--wasn't it?

recollection of a year and a half previously?

A Your Honor, it wasn't the broomstick, but the fact that suddenly

Q With the very same broomstick?

A No, it wasn't the broomstick, Your Honor, but the incidents or realizing again all these methods; I cannot say that it was not exactly to such extreme measures of interrogation again.

I had not by any means forgotten the incident of Oberursel, and I am prepared to give details about this event, if the president wants me to do so,then he is a stronger character than I am, at least, stronger in his resistance. I was no longer in the possession of my full strength, otherwise, I would have resisted again, and if I may emphasize this again, it was my express intention to change all those passages--wrong statements which indicted other people. As far as my own person was concerned, I trusted that I would be able to explain myself if these things would be used against me. Perhaps that was wrong of me to do so, but I cannot find any other explanation for it.

THE PRESIDENT: The Tribunal will be in recess 15 minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE KOESSL: I would like to continue?

THE PRESIDENT: All right, Dr. Koessl.

BY DR. KOESSL:

in Russia?

class; the corresponding Rumanian distinction, which is about the same as the Iron Cross, and also rememberance distinctions.

I received the German Winter Medallion for the Eastern campaign.

I received the distinction Cruisade (Kreuzzug) against Russia.

I also received the Crimea distinction.

And those other distinctions and commemorative medals which I received during my assignment in Russia.

Insofar as the enemy.

All the others are merely commemorative medals which everybody received who was in Russia during that period.

It was receive the same medals on the same occasions?

A Yes, they were medallions of the German Wehrmacht; they were not

Q When did you finish with your assignment of the East?

remember correctly, on 6th or 8th of July 1942. I flew at the time

Q What did you do during the following time in the SD?

my capacity as Office Chief III in the Reich Security Main office. This position I retained until about the beginning of October 1943.

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At

Q Why were you transferred to Office III?

A There were several reasons for this: private reasons as well as official reasons, but they occurred at the same time.

About this persons who were commanding generals and the highest officers.

I, therefore, had to get a new job because of this Fuehrer Order.

Also

Q What did you do in Group III-B?

A In the Group III-B I was an Auxiliary Referent III-BS. That is personnel matters of the group.

That was because of my knowledge which orders, transfers, or T/O Office Ratings, according to the instruc tions of my chief.

I had to supervise the filing and registration

Q How long did you stay in this office?

A I remained in this office until 30 November 1944. With affect from

Q What were your tasks in the SD Sector of Augsburg?

III-B. That is a department where the domestic sphere problems concerning Ethnic Germans and National Health were dealt with.

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This work in the SD-Sector Augsburg had to be reorganized right from the start, because the office of the SD Sector of Augsburg in August 1945 had been suspended. Therefore, at first I had to deal with organizing mostly in the internal construction. And when the machinery had finally started working I made reports to the Reich Security Main Office, and the local offices of the Gau District of Schwaben. I did this work until the collapse, exactly until 26 April 1945, when the office owing to the arrival of American troops was dissolved. ing? I receive any police training.

Q Were you ever active in the executive? I don't want you to think of the Russian assignment now? ever have to deal with Jewish questions?

Q Did you know about the event of 9 and 10 November 1938? the time, and could have had according to publications and announcements in the newspapers and the radio. At no time as a SD member did I hear anything about this officially. May I add here that at the time of these events, when they occurred, I myself was not in the service, but that afterwards I heard nothing further about this in my official capacity. I had nothing to do with such matters.

Q But you heard about the work of the Einsatzgruppen?

Q Why did you not leave the SD then?

when presented in such applications were refused; as it happened to longer be deferred, that even such an application was refused.

May I just add something about this.

I believe that I am fully convinced Criminal Police, or the SD, even.

Never did I hear of any orders the treatment of Jews.

I do not know of any such orders. I merely know that the Fuehrer Order as exclusively applied at the time.

I al territory in Russia.

Reasonably, therefore, from this work I could that reason, because the tasks had nothing to do with such matters; on the border shortly before the Police campaign?

A No, I don't know that. I merely heard about this later as part

THE PRESIDENT: Are you referring, Dr. Koessl, to the radio station incidents?

DR. KOESSL: Yes, I was thinking of the attack on the Gleiwitz a number of SD people were made responsible.

I now want to ask BY DR. KOESSL:occupied territories, or did you take part in any such work?

and kept them prisoners under inhumane conditions?

they were called?

A No. This expression "interrogations of the third degree" I only I had never heard of that before.

I did not know what it was.

the shootings of hostages?

measures of this so-called Summary Special Treatment?

A I would like to say here that I know the expression "summary special treatment" means nothing to me, and I can not imagine what it means,

THE PRESIDENT: You don't say you don't know now what it means, do you?

THE WITNESS: Your Honor, this was part of the IMT verdict against the SD, and that is where I heard this expression "Summary Special Treatment", and that is the only knowledge I have of this.

THE PRESIDENT: I understood you to say that you don't know even today what it means?

THE WITNESS: I surely don't know now what it means. I only know it was contained in the IMT verdict, but I don't know what it means

THE PRESIDENT: You don't know what is meant by the phrase "Special Treatment"?

THE WITNESS: The expression "Special Treatment"? I think that

THE PRESIDENT: You know "Special Treatment" means liquidation. You know that, don't you?

DR. KOESSL: Your Honor, I didn't ask about "Special Treatment". But about "Summary Special Procedure". Special Summary Procedure.

THE PRESIDENT: Oh, well, that is different. Then you are asking about Summary Procedure?

DR. KOESSL: Yes, procedure.

THE PRESIDENT: Very well.

BY DR. KOESSL:

Q What do you know about the so-called "Night and Fog Decree" and the "Kugel Decree"?these expressions for the first time.

I actually had never heard of it until then.

In the Camp Darmstadt it was part of the radio broadcast confiscation of property in the occupied territories?

and I did not work there, and I don't know anything about matters or orders which contained such kind of work done by the SD in occupied territories.

Q Did you know whether the SD took part in Forced Labor Programs?

Q Do you know about the so-called "Commando Order"?

Q Did you know the so-called "Lynch Order" against Allied Airmen?

A Such an order was never made known to me. I never heard about it, in fact. avoid punishment? originally I was in French captivity, and I then asked the French Captain to transfer me to the Americans if the territory occupied by the French would be handed over to the Americans. This was the territory of Oberallgau in the Alps. I also pointed out that I had heard the announcement of the American Army according to which every officer NCO and enlisted man who had served in any part of the NSDAP was to remain where he was until further decisions had been made concerning such people. I, therefore, had to expect that the Americans in Augsburg would look for me, and, I, therefore, asked to have me handed over to the American authorities, so that I could assume the responsibility for my work there. I think that I considered that I owed it to those persons in Augsburg who worked under me, and who might be interrogated by the Americans. I want to assume responsibility for my work and did not want to keep anything a secret.

DR. KOESSL: I have no further questions, thank you.

THE PRESIDENT: Any defense counsel desire to cross examine the witness? If not, Mr. Walton will proceed with the Prosecution's cross BY MR. WALTON:

Q Mr. Schubert, you have stated in one of you affidavits that correct?

Q At this time, where was the headquarters of Einsatzgruppe D? What city or what town in Russia?

Ohlendorf?

A My first discussion?

Q Yes?

A Two or three days after my arrival. Perhaps I may explain this

Q Please do so?

members of Einsatzgruppe D. During this visit of Himmler in Nikolajew we suddenly appeared unexpectedly.

At the moment they could not use You could see General Ohlendorf?

A I had a look at the city of Nikolajew. Apart from that I had no other definite work.

I had no special occupation during that time.

Q. Did you hold conversation with other members of the Einsatzgruppe?

A. No, during those days I was together with those

Q. Now when you finally had this conference with General Ohlendorf how long did it last?

A. This discussion with Herr Ohlendorf took a very sonally, very thoroughly, and I think some of them didn't like it.

This took a very long time. I think it was se

Q. Did General Ohlendorf have his conference with all time in private?

A. No, we were all 10 together in the casino of the

Q. Did General Ohlendorf explain to you at the con gruppen D was?

A. I did not quite get that. What the primary task was?

Q. Did he tell you in what work generally the Einsatz gruppen was engaged at that particular time?

A. I can only repeat here what I have already said this morning.

Herr Ohlendorf described the work of the

Q. Was anything said in that conference or by General functionaries, Krimjaks, Asiatics, or others?

A. May I repeat here what I said this morning. About

Q. Now, I believe you testifies this morning that the Headquarters of Einsatzgruppen D, is that correct?

A. No, Mr. Prosecutor, not through the files did I executions, possibly.

And, in order to be clear about such matters I asked Herr Ohlendorf about this.

On that

Q. About how soon did this discussion concerning the arrived in Nikolajew?

A. I cannot say that any more now for certain but I but I don't know for certain.

Q. At your first opportunity then you asked him about why these terms of resettlement, etc.

, were used in reports to mean liquidation of Russian nationals?

At you first op portunity you discussed this with General Ohlendorf?

A. The occasion of that discussion after his return

Q. Now when did you first learn that reports of ex were being sent to Berlin?

A. For certain after that discussion because before

Q. Did you ever discuss this topic with any other member of the Gruppenstab?

A. I cannot remember any discussion, Mr. Prosecutor, concerning this Fuehrer order.

There was no particular

Q. How soon after you reported for duty with Ein satzgruppe D did you meet Seibert?

A. I met Mr. Seibert when I came to Gruppenstab of

Q. Did you ever hold any discussions with him con cerning your duties?

A. About my duties, my official duties? As far as Ohlendorf.

I had no reason to discuss my duties with Herr Seibert.

Of course, I talked to Herr Seibert every now

Q. Now, after you reported to Einsatzgruppen D in himself, did you not?

A. Yes, from Herr Ohlendorf personally.

Q. How soon after your assignment was given and you his headquarters for an official trip to Berlin?

A. That might have been about 2 weeks but I cannot say for certain.

*---*t is possible that Herr Ohlendorf re turned already before two weeks had elapsed.

I remember

Q. I think you misunderstood the question. How soon trip to Berlin?

A. I beg you pardon. I now understand the question

Q. Now, at that time some of your tasks and duties and your surroundings were strange to you, weren't they?

You were a new man on a new job, so at least you didn't did you?

A. I believe that it would have been the same for

Q. That's right.

A. I was about to do a task which was partly new to me.

I had to get used to it. Therefore, on the first day

Q. And when prospects or problems came up which puzzled in these problems with General Ohlendorf gone?

A. May I ask which particular definite problems?

Q. Any problem which you didn't exactly understand, ficial duties to whom would you turn for advice and counsel?

A. Mr. Prosecutor, I have a disappointment for you, me.

Of course, I had some qualifications, some previous training in order to conduct filing and registration.

During confronted by any puzzles so I didn't need any counsel.

Q. I believe you testified that one of your tasks was the dispatching of outgoing mail.

Now, if mail came into Berlin or in Berlin, wasn't it a problem for you to decide to whom this mail would be referred for action?

A. Mr. Prosecutor, there was no difficulty - there was no real problem for me.

These matters went automatically of Einsatzgruppen D to deal with it.

In this case during duties, with the entire files of Einsatzgruppe D?problem?

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while you were first being acquainted with your job?

A No, there was no reason for this. I myself got used to my work and acquainted myself with my work.

I don't remember ever having asked

Q You just don't remember. It is possible that you could have, but it does not occur to your memory now.

Is that what you tell the

Q All right. You have Document Book I there on the stand, do you not?

Q Let's turn to your affidavit which occurs on Page 17 of the English, Page 19 of the German, which is Document 2716.

being Prosecution's Exhibit 4. Now, I particularly direct your attention to Paragraph 6 of that affidavit.

In this paragraph you relate some facts concerning two Einsatzkommando leaders who reported for duty.

Who were these men?

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the kommando chief 11b, the co-defendant, Dr. Braune,and the successor name was Mueller.

I believe that when making my affidavit I thought the immediately preceding paragraph of that affidavit?

Note, please, that you start Paragraph 6 with the words, "During this period".A "During this activity" it says here.

starts, "During this activity". It refers, therefore, as far as II

Q All right. Now, you say these men were Dr. Braune and Nosske?

A Not Nosske, but Dr. Braune and Mueller.

Q I beg your pardon, Dr. Nosske's sucessor?

about their duties from anyone except General Ohlendorf?

A Mr. Prosecutor, I cannot say anything about these discussions:

received instructions about their tasks. What kind of instructions these were, of course I don't know.

I could only give a general any instructions from anyone else in the staff except General Ohlendorf?

you relate in some detail the manner of reporting to Berlin. Now, did man, Fritsch?

A The copy of these radio reports?

A Yes, even these radio reports had been sent off. They were filling by the radio operator?

office they went back to the office. There, of course, I had opportunity top secret file?

such. That is, they were kept in secret files and kept secret.

courier?

the office and were part of the files. Such reports or the copies of restricted or open matters?

A One cannot make a general statement about this, Mr. Prosecutor.

Q Well, they contained details of the separate executions. What file would they go into?

may I point out here, Mr. Prosecutor, that in our file system concerning made on the outside, and I don't see much difference.

We treated it clerk?

A I did not quite get it, the right or the possibility?

these documents, did you not?

on it where it could be secured at night, could it not?

A I don't think so, Mr. Prosecutor. Conditions were so primitive matters.

We could only treat them as such in as far as we had possibility

Q Let me ask you this. Could any of the twenty-five or thirty look at one of your reports?

A Not just like that, Mr. Prosecutor.

situational report which had been dispatched out of that office?

Could General Ohlendorf act in that manner?

Q Who else besides yourself, your clerk and General Ohlendorf?

authorized for this by Mr. Ohlendorf. They needed a special order by Herr Ohlendorf for this.

If a kommando chief, for example, and come and in his work?

to present permission from General Ohlendorf, did he?

MR. WALTON: Your Honor, it is a convenient place for me to stop.

THE PRESIDENT: Yes, very well. The Tribunal will be in recess (An adjournment was taken until 6 January, 1942, at 0930 hours.)

America, against Otto Ohlendorf, et al., defendants,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States

MR. GLANCY: May it please the Tribunal-

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: The Prosecution is in receipt of the original of counsel for Dr. Strauch objected to its authenticity and requested that and defense counsel.

I expected Dr. Gick to be present in Court but I see he is not here.

I will give it to the Secretary General for the perusal of the Court and will notify Dr. Gick that it is present.

THE PRESIDENT: Have you made arrangements to photostat this document?

MR. GLANCY: The photostat is now in evidence - the photostat of

THE PRESIDENT: Well, what I had in mind was that this document being

MR. GLANCY: Yes, sir.

THE PRESIDENT: We cannot exclude the possibility that argument you now have and it wouldn't hurt any one to have this photostat

MR. GLANCY: Yes, sir. I shall make arrangements to have it photostated.

At the present time we need it for the archives but will

THE PRESIDENT: When you contact Dr. Gick inform him what transpired

MR. GLANCY: Yes, sir, very well.

BY MR. WALTON:

Q Mr. Schubert, yesterday at the close of the session we were Exhibit #4. I would appreciate it very much if you would turn to

THE PRESIDENT: He is very familiar with that Document I don't think you need to wait any time until he locates it.

I think he could locate BY MR. WALTON:

Q Yes, sir. Now you state in this document and I quote, or rather, other things and I quote:

" number of places destroyed and number of persons killed". Would these reports contain information that a Jewish synagogue was burned by units of the Einsatzgruppe?

Book - that a synagogue was burned. I never said that.

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number of persons killed. Now you said that, didn't you?

was burned by units of the Einsatzgruppe?

A NO, Mr. Prosecutor, that isn't how it is meant and apart from this wording I don't know any report where any such report might be contained.

I don't know of any such reports. Something quite different is meant here.

This wording refers to that part of the reports territory where Einsatzgruppen D was active during certain times.

I according to the reports which we received.

Part of this was, for had been completely destroyed and did not exist any longer.

But this there were those persons killed.

Them in fact it would have been right?

A I don't refer that only to the enemy who was killed but to any persons killed.

That might have been civilian people or enemy soldiers or might have been our own losses.

I only speak of casualties here and

Q I can understand what you said about casualties. It is in the very next sentence of that paragraph.

But I was speaking particularly about the phrase " total amount of persons killed". Now would that phrase include executions as well as people killed in open combat?

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A Mr. Prosecutor, this wording here does not refer to executions to mean the same as executions mentioned before.

This was never

Q All right. Let's consider the operational situation reports of which you had personal knowledge.

I believe you stated yesterday that them.

did you not?

AA total figure for a certain period of reporting. Of course, you are right.

I cannot exclude the fact that in these reports communica of the Einsatzgruppe, didn't you?

A Mutilated, I never heard that Mr. Prosecutor. I merely know the

Q Let me repeat the question. I think the translation was a little bit different from what I meant.

From reading the copies, knew that thousands of people were being executed monthly, didn't you?

A Mr. Prosecutor, that monthly thousands of people were executed I would not like to say.

Here I can only stick up for the fact that I

Q Would you say hundreds of people were executed monthly?

A I believe, Mr. Prosecutor, you asked whether I would say hundreds?

monthly according to reports which you saw?

A Mr. Prosecutor, I cannot determine this for a certain figure fro a month.

Occasionally I saw figures and heard of figures which were cannot determine this for a certain period of time.

I am unable to do by units of the Einsatzgruppe, weren't there?

filled?

A There was no special order for this Mr. Prosecutor. This was

Q Mr. Schubert, I am asking you for the name of the person in the uation report for you to file.

Who was this person?

A Mr. Prosecutor, perhaps I may briefly explain the way we worked.

Q Who was that person?

without trying to dodge the question. I merely asked who the man was who left these copies in your office.

Let's pay attention and answer promptly.

Now, in paragraph 8 of this affidavit you make a statement to headquarters you, as you state there, and I quote:

"looked after the house". Approximately how long did these inspection trips last?

A That varied very much, Mr. Prosecutor. These official trips days.

That varied.

looking after the house?

A I do not recall any such case, Mr. Prosecutor. Of course, I

THE PRESIDENT: You may proceed Mr. Walton.

BY MR. WALTON:

would you have done with this order?

A Mr. Prosecutor, in such a case, that is an emergency situation contacted him then, too?

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A If he was enroute it was very difficult, Mr. Prosecutor, because in his vehicle he did not have a radio instrument to keep up contact with the gruppenstaff but I knew in general where Herr Ohlendorf went to and could always try to reach him and that was a technical possibility. accompanied General Ohlendorf to Prague at one time. Suppose during that time the same emergency had arisen, to whom would you have referred this order for action? It took a long time to get from the Crimea to Prague, and you know they are on their way and you get an order which demands immediate action, to whom would you refer?

A Mr. Prosecutor, in every case, in each and every case, there was one definite way of receiving instructions from Berlin, from the chief of the Security Police himself if any such emergency arose. There was always their radio communication. The distance didn't make any difference. In a short period of time through the radio a decision can be reached from Berlin to the Crimea in a very short time.

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and that General Ohlendorf and Seibert were gone? Would Heydrich's decision come back to you over the radio?

A I don't think that the Chief of the Security Police would have

Q No, I don't mean that. We take our same example. Fro purposes of this example General Ohlendorf and Seibert cannot be reached.

You receive an order which demands immediate action.

You acquaint the Chief gruppe D. Now, the question I ask you is this, after the Chief of the is to whom this matter would be referred, come back to you over the radio?

A Mr. Prosecutor, it would not have come to me personally, but it

Q That is the answer that I wanted. If this matter was a matter which concerned Einsatzkommando 10a and Heydrich said, "Refer that to the area where 10a is," you would then have taken Heydrich's answer and referred it to Seetzen, the commander of 10a, would you not?

A In practice it probably would have been different, Mr. Prosecutor, fore they never had to be informed about this.

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The kommando chief of 10a was a Standartenfuehrer.

I cannot imagine that any officer in Berlin in

Q All right, we will take another example. Suppose that in the first instance orders came from Berlin, from Heydrich's office, which ward.

Now, both General Ohlendorf and Seibert are away, and they cannot be reached.

This is a matter which you open and you decide and which ions what to do with this order.

Now, I ask you, would instructions come to forward this order to the commanding officers of the various kommandos?

A Mr. Prosecutor, such instructions were never received and theoreti Einsatzgruppe at that time.

Such a situation, however, never arose.

units, would consider himself bound by orders form Heydrich at Berlin?

A That is not what I am trying to say, Mr. Prosecutor.

Q Wouldn't the commander of the 11th Army say, "This is a Security Police order; it means nothing to me.

My commanding general is the only man who can order me to do anything," and he refuses to help, and you various Einsatzkommandos, wouldn't it?

Q All right. I will go back to our same example. Heydrich has gruppe D shall be freed or cleaned of Jews.

General Ohlendorf and Seibert are both away from headquarters.

We will state even this order comes in over the radio marked "Urgent". Would you sit down and inform cannot concern himself with.

I am asking you, would you then dis mandos, the various commanders of the Einsatz and Sonderkommandos?

DR. KOESSL: Your Honor, I object against this question which in practice could not have been practiced at all.

The hypothetical questions from one day to another.

This is so entirely impossible, and entirely

THE PRESIDENT: Well, Dr. Koessl, you are indicating that it is im possible, but you weren't with the Einsatzgruppe D. You are arguing factually.

You are not arguing legally or logically now. It is up to the witness whether such a situation is impossible.

How do you know whether it is impossible or not?

DR. KOESSL: Your Honor, the order is the same as the Fuehrer Order had not been carried out completely.

I, therefore, think it is quite

THE PRESIDENT: But, Dr. Koessl, the witness stated that in any given general of the 11th Army.

Now, the witness has stated that. Mr. Walton went one step further and said, which is not impossible, "Suppose the it did not fall within the purview of his activities."

What is impossible about that?

If the commanding general says, "This is not my field; this is a Security Police measure," what is impossible about that?

DR. KOESSL: The order based on this hypothetical question is the is, they are to be executed in that territory.

It only differs from the Fuehrer Order by the word " immediately" and the word " immediately" makes the Fuehrer Order logically impossible.

In practice, therefore, the

THE PRESIDENT: Well, it is not unimaginable. You say that the only change is that the word "immediately" is added.

Well, that is a very important change.

A program may be outlined for a period of time, and then or should be achieved at once, and furthermore, Dr. Koessl, the important know what would happen in the event the commanding general said, "This is not my problem; it is the Einsatzgruppe's problem."

So, let us hear

DR. KOESSL: Yes.

THE WITNESS: May I answer to this now, your Honor?

THE PRESIDENT: Yes.

by me. I could not have decided at all.

Q (By Mr. Walton) Suppose when you handed it back to Berlin you got subunits of Einsatzgruppe D, would you have done so?

A If I had received orders from Berlin to hand on this order?

Q Yes, would you have done so?

mando chiefs and I would not have had to forward it. It would have been

Q. Now you have an order. There is no point in them sending closer to the kommandos than Berlin.

So an officer on the staff of Heydrich radios you personally, "Pass the order on to the five kommandos, of the subunits."

Would you do so?

A. Mr. Prosecutor, here again I would like to point out that it was technically impossible to do so in such a case.

In such a case one radio massage would have been sent to everybody.

That is, all the they are being addressed at the same time over the radio.

In this case

Q. You haven't answered my question yet. I am not talking about the feet that it never happened.

I ask you the simple question if an officer on Heydrich's staff, in view of the fact that General Ohlendorf and Seibert were away, radioed you to pass on Heydrich's order done so?

Now, you can answer that yes or no. You have given your

A. Mr. Prosecutor, If all other possibilities which I have

Q. Thank you very much. Now, when General Ohlendorf was every would you give it?

A. You now talk about the order, if I had received that, the order we just discussed?

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Q. Not particularly any order. Suppose that you get an order men, will be paid henceforward on the 28th of the month.

General Ohlendorf is away from his headquarters.

This is a matter which affects the whole Einsatzgruppe from the general on down.

Nobody is in To whom would you give this information?

A. Mr. Prosecutor, in that case I would have made a difference, that it had to be handed on immediately.

Then Ulrich, the administrative who required it.

I would not have been needed for this.

Q. Suppose this request came from Berlin to the effect that the ten days of the month, they have lost the report in Berlin.

To whom would you have handed this matter?

A. May I repeat the question in order to make sure that I understood it correctly?

Berlin gives me an order to inform them how of the Einsatzgruppe, is that right?

Q. That is right. Now, you are in your office and you open the mail and that request is in front of you.

I want to know to whom you would give that letter for action on that request?

A. I would not have been able to hand it on to anyone because it was addressed to the Einsatzgruppe.

Probably I would have submitted

Q. You mean to say that if that order had come down the last until he returns?

A. Of course I would have done something. If Herr Ohlendorf had

Q. That is what I want to know. Now, did General Ohlendorf ever issue any written orders to any of the kommandos?

A. I cannot remember any definite order but already yesterday about the manner of carrying out executions.

Surely there were other instructions, only I don't know whether I could call them orders.

Q. All right. Did he ever issue any written instructions or orders to a particular kommando leader?

A. I cannot say that any more now, Mr. Prosecutor. I cannot

Q. Well, it is possible, isn't it?

A. I cannot exclude that possibility.

Q. Now, you had the responsibility to see that these orders group staff headquarters?

A. For the fact that they were sent off or that they had been conscience because that was my work.

That was the task of the office

Q. Would you keep a copy in the file of this order?

A. Of course.

Q. Now, if the general was away and Seibert was in the head orders, or instructions to a kommando leader?

A. Mr. Prosecutor, If Herr Ohlendorf was absent and Herr

Q. Then he had -

A. And in that capacity he also conducted correspondence with

Q. Can you recall any subjects which he treated in his orders during the time when General Ohlendorf was absent?

A. I cannot remember any definite case, Mr. prosecutor, but I

Q. I am not talking about the reports now. I am talking about communications with the kommandos.

I am not talking about his reports either to the Army or to Berlin.

I am talking about his separate communi cations with the komnmando fuehrers.

Do you recall any subjects which he treated in his instructions or orders to the kommando leaders?

A. Here I cannot remember any definite case at the moment, Mr. Prosecutor.

I really don't know what I could tell you here.

Q. You have answered the question I asked you. Do you remember its location or its base of operations?

A. I do not remember any such order nor do I remember that

Q. Did you ever see any orders or instructions issued by this acting commander which concerned the Jewish question at all?

A. May I ask to have the question again, please? I did not

Q. Did you ever see any orders or instructions issued by Herr Seibert which concerned the Jewish question?

A. Such orders I do not know of.

Q. Did any kommando leader over call at group headquarters when the general was away and Seibert was there?

A. That certainly occurred, Mr. Prosecutor.

Q. With whom did they discuss official business?

A. The kommando chief? With whom?

Q. General Ohlendorf is away and Seibert is there. I asked

A. Mr. Prosecutor, I still don't quite know what you are aiming at.

I think you are trying to ask with whom the kommando chief discussed

Q. That is right.

A. These kommando chiefs in such case discussed the affairs

Q. When both the General and Seibert was present in staff there request to see the general?

A. The kommando chief, of course, could ask me to report him

Q. Who made the decision that the matter upon which he came was important enough to be discussed with the general?

A. Mr. Prosecutor, I don't know any case where there might not be led to him.

He certainly came to him and then discussed his

Q. If such a matter did not need the general's decision, if he didn't particularly want to see the general, he wanted to see anybody the adjutant?

A. If it was part of my task he could have talked to me. For

THE PRESIDENT: Mr. Walton, just a moment, please. We didn't quite get that word, Miss Juelich, if he wanted to have a "term". I don't understand a "term".

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DR. HOFFMANN: That means the English word -- it is the German word "termin"

INTERPRETER JUELICH: I am told it is "appointment, " not "term."

I said "term." I meant to say "appointment".

DR. HOFFMANN: It is the German "termin" "appointment".

MR. WALTON: An "appointment", Sir, an "appointment" with General

THE PRESIDENT: I see. Thank you.

(By Mr. Walton) I have been informed that one duty of an adjutant, wanted or frivolous visitors.

Now, you were such an adjutant in Berlin for second time.

Wouldn't some of your duties, at least in Berlin include chief?

A. Of course, Mr. Prosecutor. The person who asked for such an he wanted to discuss with him.

I had to tell Herr Ohlendorf this.

Q. Now, did you perform the same service for General Ohlendorf when you were sitting outside his office in the Einsatzgruppe staff?

A. You mean in my former work?

Q. I thought your previous answer referred to the time when you sat in his anti-room in Berlin.

Now my next question, did you inquire when a to see him about such and such a subject?

A. Of course, Mr. Prosecutor, I did that.

Q. Now, after you talked to this man, and you found out that even Ohlendorf was rather a busy man that this matter did not need the General's decision, to whom would this visitor be referred by you?

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A. Mr. Prosecutor, in no case could I have decided, or overlooked whether the visit was so important or so unimportant that I could have stopped the visitor from seeing H err Ohlendorf. I think I never had that right and I think I never used any such authority.

Q. Well, let's take one other example. Here is a man that arrives hot foot with what he considers a very important matter concerning the morale of the Russian population. Now you a re sitting there and he says I want to tell this to someone who can handle it. I think I can improve the morale of the opoulation. You know that, according, at least, to Seibert's testimony here, he took care of those matters as Chief of Department III. You know that General Ohlendorf is extremely busy, Wouldn't you have the right to say, "Look, maybe that's not a matter which you need to worry the General with. Seibert's taking care of this in these headquarters. Suppose I make an appointment with him for you?' Could you have told him that?

A. No, Mr. Prosecutor. I would have done something else.

DR. GAWLIK (ATTORNEY FOR THE DEFENDANTS NAUMAN AND SEIBERT): Your Honor, I object, Your Honor, I object to this question. I consider this question irrelevant, because I think the subject of this trial is not to get reports on morale. Making reports on morale among the opoulation, I cannot consider that a punishable act and therefore it does not matter what would have been done in such a case.

THE PRESIDENT: Did you hear the witness* reply? Did you hear the witness' reply?

DR. GAWLIK: Yes, I heard it.

THE PRESIDENT: Well, did it hurt your case any?

DR. GAWLIK: I only heard the first few words, Your Honor.

THE PRESIDENT: That's because you were doing a very rapid race.

DR. GAWLIK: What I wanted to say was I believe that in that manner that contact is to be made with the prosecution with the subject of Jewish executions. If the prosecutor refers the question to the subject which is the with this at all.

That is why it is irrelevant to whom the visitors would have

THE PRESIDENT: Well, haven't many of the defendants testified that they were concerned about submitting reports of the morale of the population?

Haven't several of the defendants and hasn't your own defendant testified to that -- your own client?

DR. GAWLIK: Yes.

THE PRESIDENT: All right, now, listen, Dr. Gawlik. Dr. Gawlik, if you reflect on just what happened here, won't you conclude that Mr. Walton help you generally?

Wasn't he sort of confirming what you have been insisting morale in the population?

DR. GAWLIK: Yes.

THE PRESIDENT: Well, Mr. Walton in this instance was really helping you, wasn't he?

DR. GAWLIK: Yes, that's why I consider this question irrelevant.

THE PRESIDENT: That's right. You should consider it very good.

DR. GAWLIK: That is not the point, Your Honor, in the trial it depends

THE PRESIDENT: Well, now, listen, Dr. Gawlik. Do you regard the which a certain Einsatzkommando is operating important?

Do you regard that important?

DR. GAWLIK: For the work of the Einsatzgruppe, yes, but from a legal

THE PRESIDENT: Do you want to exclude then everything that your client said about that?

DR. GAWLIK: No, not at all, Your Honor, not at all.

THE PRESIDENT: Well, then, that is one of your defenses, isn't it?

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DR. GAWLIK: Yes.

THE PRESIDENT: Yes, and Mr. Walton was talking about that very thing,

DR. GAWLIK: That is just why this is irrelevant. It has already been clarified.

I do not see the purpose of the question.

THE PRESIDENT: Do you object to its being corroborated and helping your client a little bit?

DR. GAWLIK: In this case during the questioning of this witness, it is irrelevant.

I consider this question in this particular case concerning

THE PRESIDENT: Was it irrelevant when your client spoke about it?

DR. GAWLIK: Not in this case, Your Honor.

THE PRESIDENT: Then, why is it irrelevant now? It is still the same

DR. GAWLIK: I said, Your Honor, this is accumulative proof claimed

THE PRESIDENT: Well, then do we understand you, Dr. Gawlik, that you don't want another word said in this trial which my help your client a little bit more ?

DR. GAWLIK: I do not start from the assumption that questions by the

THE PRESIDENT: No, but if accidentally he helps you, you don't have any quarrel with Mr. Walton, do you, about that?

Dr. GAWLIK: If the Tribunal holds the opinion that the answering

MR. WALTON: In order that I might have Dr. Gawlik feel a little better, I'll repeat my first general question, since we have given an Q. (By Mr. Walton) If the kommando leader or a visitor came to upon yourself to refer him to the man who could help him certainly more quickly than the General could?

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perhaps Dr. Gawlik won't object to that form of the question.

THE PRESIDENT: I think upon reconsideration now, he didn't object to the former question.

MR. WALTON: All right, Sir.

A. If a visitor had come, Mr. Walton, in every case I would have informed Herr Ohlendorf who was there what he wanted to discuss and then Herr Ohlendorf could have told me, "I have not time. Take the man to Herr Seibert, to Herr Ulrich," or to any other man. That would have depended on what the man wanted to discuss, but in every case I would have asked Herr Ohlendorf first. I would have told him about this man, even in the danger of being thrown out by Herr Ohlendorf myself. He wouldn't have done that at all, but I would not have assumed the authority and not let him see him on my own authority.

Q. Suppose General Ohlendorf arrived at his headquarters early that morning and he said, "Schubert, you are like St. Peter, standing outside the gates of heaven keeping them safe against the world. I am very busy this morning. I don't want to be disturbed. I have a lot of important things to do." Just about the time General Ohlendorf gets seated at his desk and deep in work, here comes a visitor. He wants to see General Ohlendorf. You question him about the nature of his business and you find out it is not quite as important as he thought it was and furthermore other people could handle the matter beside General Ohlendorf. Would you still go in, in spite of what General Ohelndorf said and disturb him and ask him if he wants to see this visitor or would you refer him to the one he wants to see?

A. Mr. Prosecutor, if I received these definite instructions to stop seeing visitors from seeing Herr Ohlendorf, I would have taken the man to Herr Seibert and said "This man really wants to see the boss, but the Chief has said he does not want to be disturbed and he is busy, would you please deal with the man." That would be the next best thing to do.

there was an unfortunate choice of language by Mr. Wartenberg used in your reference to Mr. Seibert and that you meant to say that Mr. staff.

Now, that is correct, is it not?

A I did not hear I am sorry. -- I think it is all right now.

INTERPRETER: Would you repeat the question, please?

Q (By Mr. Walton) Yes, in your direct testimony yesterday, I which Mr. Wartenberg put in your affidavit; that what you meant to say was that Mr. Seibert was deputy for the Group Staff and not just Deputy of General Ohlendorf.

Did you make that statement yesterday, or words to that effect?

A Yes. Mr. Prosecutors I said that Herr Seibert was the Deputy affidavits while you were at Oberoesel?

D down through the kommando level?

A I don't remember any details, just now, but I did discuss it.

I was asked about it; What were the functions of the various officers?

That is 18 months ago. Now, I don't remember the details.

it appeared on such an affidavit, wouldn't you?

A Of course, Mr. Prosecutor.

MR. WALTON: Page, will you hand this to him?

(By Mr. Walton)

A That is my signature, Mr. Prosecutor.

Q And what date is given on that document?

Q December 1945? You were at Oberoesel at that time?

Q Now, what is that document, Witness?

A May I look at it first?

Q Certainly. Certainly.

Q And that is an affidavit on that subject by yourself?

Q What title did you give the Defendant Seibert? What's on that affidavit as Seibert's title?

A It says here as title of Herr Seibert, "Permanent Deputy."

Q "Permanent Deputy"?

Q So 18 months apart you call Herr Seibert "the permanent deputy of General Ohlendorf" and yesterday you said that you didn't mean to say that, but you meant to say a deputy in the staff.

Now that is twice that you have called him "the permanent deputy."

Why did you change from your affidavit yesterday?

A Mr. Prosecutor, I did not think of this affidavit and this wording "permanent deputy" which I had used before.

I didn't think of because this wording, "permanent deputy" in my opinion can only refer to

Q The way you have got it written up there it means "permanent Deputy," for all questions. You didn't specify that he was permanent deputy for the staff. You didn't specify that he was permanent deputy for economic questions. You just said the all-inclusive term,"personal deputy". Why didn't you make that addition to that paper?

A Mr. Prosecutor, because at the time I did not know that possibly this statement might be misunderstood. If I had known that and if I had had the opportunity to explain it in more detail, I could not have explained it any differently at the time than I could have done yesterday here.

MR. WALTON: Page, will you return the copy? is being prepared for introduction into evidence. In view of the fact that there was no force here that purpose during the holidays, I am forced to be a little late. I trust that I shall offer this into evidence before the close of the cross-examination and certainly before the close of the day. I would like to reserve the right to introduce it formally into evidence at a later time.

THE PRESIDENT: Do you have a copy that you can hand to Dr. Koessl so that he can be informed of its contents?

MR. WALTON: I am sorry, Sir. That will come down with the others. I have only the copy which is my own. I have a copy, but not that I can serve on him.

THE PRESIDENT: Why not let him look at it even now.

Q (By Mr. Walton) Can you remember any orders given by Seibert that resulted in the execution of a person or persons?

A Mr. Prosecutor, I do not know of any such orders.

Q Could he have given such orders unknown to you? done without my knowledge.

Q The possibility exists, though, doesn't it?

THE PRESIDENT: I don't think that's a fair question. He says he doesn't know. He can't say what Seibert could have done. Seibert could have done anything and he could have done nothing.

MR. WALTON: I withdraw the question, Your Honor.

Q (By Mr. Walton) Was it known ahead of time in Group Headquarters that an execution was scheduled for a future time?

A I don't quite understand that question. I don't quite get the sense. May I have it again, please? later or a day later an execution was scheduled to take place at a certain time and on a certain location?

A Whether it was known in the Einsatzgruppe? May I remind you of the example I gave you yesterday? But on the whole, the Einsatzgruppe only heard about executions after they had been carried out and they heard this from the kommando; in this particular case which I mentioned yesterday there were special circumstances and therefore it had been known before.

Q Now, here's the question that I should like you to answer: Was such information of general knowledge to the staff or was this information restricted to only certain ones of the staff? one case I mentioned.

Q Either one. What I had in mind was when advance information about an execution came into Staff Headquarters, I would like to know whether such information was known to everyone in the staff or only to the particular persons in the staff.

A Mr. Prosecutor, this question I cannot answer. I never heard what might have been known. I don't know whether everyone in the staff heard about.

Q Well, I'll amend the question. Was such information known by all the officers in the staff, the SS officers, or was it known only to General Ohlendorf and yourself? except for the example in Simferopol, which I mentioned myself yesterday, I do not know any definite case where the Einsatzgruppe was informed beforehand of an execution. I really cannot say if such a case had occurred who, apart from Herr Ohlendorf, would have heard of it. Unforunately, I am not able to do this.

Q I think you have answered the question. You have in effect said that as a general thing you only know of executions after they happened. However, if anyone would have known of their scheduled time the likelihood is that if General Ohlendorf knew and certainly a very few other people, possibly Ohlendorf himself alone, is that what you mean to say?

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A Mr. Prosecutor, theoretically the possibility exists that others apart from Herr Ohlendorf heard about it. For example, it is imaginable that in this case Herr Ohlendorf informed one of the officers on the staff to inspect, but it is merely an assumption, a theoretical assumption. I don't know any definite case except the case I described yesterday.

THE PRESIDENT: Mr. Walton, do you think this might be a suitable time at which to have a recess?

MR. WALTON: Yes.

THE PRESIDENT: The Tribunal will be in recess fifteen minutes.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session.

DR. LUMMERT: Dr. Lummert for the defendant Blume. Your Honor, I ask the defendant Blume be excused from the session this afternoon and tomorrow morning so that he can prepare his documents.

THE PRESIDENT: In accordance with the request of counsel, the defendant Blume will be excused from attendance in Court this afternoon and tomorrow morning.

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BY MR. WALTON:

Q Mr. Schubert, when General Ohlendorf ordered you to make the inspection of the execution which you saw in the neighborhood of Simferopol you did not think it was an unusual occasion to receive such an order from him, did you?

A Well, I may correct this first of all. Herr Ohlendorf did not give me the order to carry out inspections of executions as it was translated but he gave me one specific order of one inspection and that I could have thought it funny I don't understand that at all.

MR. WALTON: The translation came through "funny".

THE PRESIDENT: Well, I think that is used in the sense of strange.

MR. WALTON: Well, my question to him was that when he received this order from General Ohlendorf he didn't think it was a particularly unusual occurrence and I didn't quite understand his answer. If the Tribunal is satisfied

THE PRESIDENT: No, you may put the question again. BY MR. WALTON:

Q Mr. Schubert, did you think that General Ohlendorf's order to you about this execution was an unusual one?

Q Did it occur to you why you were selected to watch this execution?

A That wasn't very difficult for me, Mr. Prosecutor. There wasn't any one else there at that time. All the other people were occupied in carrying out the execution and Herr Ohlendorf had no other choice but to give the order to me. sometimes were the personal representative of General Ohlendorf, weren't you?

A Mr. Prosecutor, I would like to draw a clear distinction here between the purely legalistic term deputy and the fact that anyone whom Herr Ohlendorf sent anywhere is sort of a delegate or representative. One can call it a deputy but it is not the same.

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Q I don't know what the German word was but certainly for this one that is true, isn't it?

A I didn't consider myself as such. I got an order from Mr. Ohlen dorf.

I carried out this order but I never was the personal representa

Q Now, witness, I don't wish to argue with you but you remarked that execution as General Ohlendorf's representative.

Now my next question

A I am sorry, but I cannot agree with you. I am of a different opinion.

I was not the representative of Ohlendorf the way you under stand it.

I was sent out to carry an order and I did so and I cannot explain it any other way.

Furthermore, and I would like to mention That's why I got it and otherwise I wouldn't have gotten this order.

Q We will return to this question in a minute. Did you ever carry out any orders given to you by Seibert?

business of the group?

A I don't know what you mean - general business of the group. I can't quite comprehend it.

Do you mean the orderly room?

Q No. Did these orders ever affect these orders of Seibert ever affect the group as a whole?

A Certainly not the entire group. They could have only affected happened every day in the staff?

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A I don't know any such orders.

Q Did any of Seibert's orders ever concern security questions?

office, or what?

Q I mean the security -- Well, either one. Answer them both. Did they ever concern security measures of the office?

A There were no such orders. I don't know of any such orders.

Einsatzgruppe D?

A I don't know of any such orders either.

Q Did they ever concern security questions of the group staff?

A I think that question was put once before. I cannot imagine anything by this and I don't know any such orders.

I don't know

Q The answer then is you don't know of any such orders. Did they ever concern executive measures to be taken?

different times?

Q All right. Now then let's turn to Document Book I, page 108 in the English text, 141 in the German text.

It is your affidavit again, Document NO-3055 and is Prosecution Exhibit 28.

Will you indicate of General Ohlendorf to be his official witness at this execution.

Is that right?

That's paragraph 4, Your Honors.

A Mr. Prosecutor, I didn't leave Simferopol for this occasion. It says here I went into the Gypsy quarter of the city - that is within the city. headquarters for there? Kommando 11-B on the way to the Gypsy quarter?

A No. I had no order to do so. from your own office, is that correct? your headquarters? thing you saw was that German personnel were engaged in loading these people on trucks, is that correct? ing at this place. That is what I had to inspect. There was a roll call and then in certain intervals they were transported away from there by trucks. I was to supervise this incident.

Q Did you get there in time?

A May I say something more. It was translated "supervise". My whole struggle is to make that clear. I apologize, but it should be: "to look at". I was to look at it. loading site what was the first thing you saw - what was the first thing that caught your eye. Now you have answered that question and I accept your amendment that the first thing you saw was the roll call being taken, that is correct, is it not?

ed there, that is the first thing I saw. Then there were some trucks there. There were guards and I also saw how people were loaded on trucks and how the trucks left.

Q Were you there when the first truck was loaded with these people?

THE PRESIDENT: Mr. Walton, did I understand you to say that he said there was a roll call.

MR. WALTON: Your Honor, I suppose we must check back with the court stenographer.

THE PRESIDENT: Well in his enumeration now of the things which he saw the roll call was not mentioned. BY MR. WALTON:

Q I will ask the question again. Was there a roll call taken of these people gathered at this loading site before they climbed on the trucks?

A I said that these people's names were read off. Well, that's a roll call. I don't know whether you call it such but it was a control which was carried out. it in the negative - were you there when the first truck was loaded? Did I understand you to say you were not?

A Mr. Prosecutor, I knew that some transports had already left this place and what I saw was not the beginning of it. I came in the middle of it.

THE PRESIDENT: Witness, do you know who made up the list which was being read?

A I cannot say, Your Honor, I don't know. BY MR. WALTON:

Q Now, Mr. Schubert, about how many German personnel were engaged in loading these people on these trucks? too high but approximately 20.

Q Was Dr. Braune there when you got there?

A No, I didn't see Dr. Braune on that day at all, When I returned from this order to the Group Staff I saw Dr. Braune again because Kommando 11-B was in the same building with us. yesterday in your direct examination who was in charge of this operation?

of Kommando 11-B. SS Hauptsturmfuehrers were present. What were their names if you know?

A Mr. Prosecutor, I am not sure whether I wouldn't give a wrong name. I thought that one of these captains was Captain Gabel, commanding officer of the Police Company, but it is possible that I am wrong and that it might have been his successor, the name of whom I don't recall. I don't remember this fact so exactly that I could take it upon my conscience to say Gabel or someone else. Perhaps both of them were there but I cannot say with certainty. Hauptsturmfuehrer? of Kommando 10-A which had been in Simferopol from the beginning and later was subordinated to Kommando 11-B but unfortunately I cannot give you the name of this man. I don't remember. present at the loading site when you got there?

A No, Mr. Prosecutor -was present during the loading phase while you were there? lieutenant of the police and there was another SS-first lieutenant and I think those were the two officers who were present at that place.

Q Now, Mr. Schubert, was there an officer in charge of these enlisted men who were loading these people on the truck? there, at that moment, in any case they were under command of the 1st lieutenant of the Police Company.

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of the Police Company?

people to the execution site?

A Mr. Prosecutor, I cannot tell you exactly. I didn't see all the trucks at Once.

But I recall the fact that the Army furnished us g hundred people in the trucks and get them away from the loading site?

Approximately hour long, how much time did it take?

A Mr. Prosecutor, I cannot tell you this from my own knowledge. I wasn't there during the entire time of the transportation.

I was left this place.

These vehicles were sent off in intervals. I can not say how long a time the entire loading process took.

I can merely truck?

A I cannot even answer that question. I merely saw trucks that left the place and I can't say whether a truck that had returned was carrying a load.

I can't really say.

the truck toke off from the time it was empty until it was filled?

A I have no possibility of estimating. You can do it quickly Or you can do it slowly.

I don't know how long it takes until you have read go.

It all depends how the these things are carried out.

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Q Were these Gypsy transported in open trucks or closed trucks?

Q How many guards were on each truck besides the driver?

there was an assistant driver. This was customary in the Army and

Q Was he armed?

Q What arms did he carry?

A Certainly that varied. He might have carried a pistol, he might

Q Did these Gypsies enter these trucks Willingly?

A I don't think that they went there gladly in any case.

Q I don't mean that - did these guards have to force them up the up the ramp and into the truck?

their own power, in that right?

THE PRESIDENT: Did the Gypsies know at that time what was going to happen?

A I don't think so, Your Honor, at that point they didn't.

THE PRESIDENT: Well, when you remarked that they didn't do it gladly

A No, Your Honor, their fate was not quite certain. It was uncertain and I meant to express this uncertainty.

They knew some change was to BY MR. WALTON: Witness, how long did you personally remain at this loading site in the Gypsy quarter?

A. In any case I was not there longer than twenty minutes.

It was sufficient for me to stay there a short time

Q. Now, Mr. Schubert, you said when you first left

A. I drove, Mr. Prosecutor, but I needed five minutes

Q. Oh, a five-minute drive in an automobile?

A. Yes, yes.

Q. Well then, you probably have answered my next question.

I presume you went in your own car from the loading site.

You had your own transportation between these two Places, did you not?

A. I had a car of the office. One was assigned to me for that occasion.

I used it.

Q. Now, did your take the same route that the trucks execution site?

A. I cannot tell you definitely because I didn't road.

There was no other possibility.

Q. Do you know whether or not these people created Execution site?

A. I know nothing about that, Mr. Prosecutor.

Q. On the arrival of the trucks at the execution site, who placed these people in the anti-tank ditch?

A. Those were members of this execution kommando who had been ordered to carry out the execution.

They were mem formation, SD, or state police men of Einsatzgruppe D.

Q. What was the rank of the man in charge of the execution kommando?

A. That was Sturmbannfuehrer Schulz.

Q. And it was at his command that these people Were placed in the anti-tank ditch, is that right?

A. Well, he certainly didn't order it again and again in every case, out he distributed the men under his command for definite jobs and these officers and men then carried out those jobs.

Q. Now, this execution squad, I believe you state in your affidavit, were armed with automatic weapons and rifles, is that right?

A. They were armed with rifles and partly With machine pistols, yes. I don't know whether I said in the affidavit - yes, yes, so it says here.

Q. Now, was each truckload of these gypsies executed on arrival?

A. Mr. Prosecutor, I myself saw only one such transport out I may assume that every preceding and further transport took place in the same way as the one that I Saw.

Q. Did you, on arrival at the execution site, get out of your car, walk over to the anti-tank ditch and look in it?

A. Later, out first of all I stopped at the road and saw something different which took place there, namely the way they were unloaded and the way the valuables were registered.

Q. We will come back to the valuables in just a moment. You stated that you saw these people unloaded. Was there any disorder among the truckload of people when they were ordered to get out of the truck at the execution site?

A. No.

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Q. Did they make any verbal protest, was there any shouting?

A. No.

Q. When they reached the ground my understanding is that then they were relieved of their money and valuables, is that correct?

A. As far as the people complied with the order to give up their valuables, yes, these things were collected, but they were not forced to give up anything.

Q. Was their outer clothing collected at this time, overcoats and shoes?

A. I know nothing about shoes, out coats were also taken away, overcoats.

Q. Was their suit or their outer clothing, besides clothing -- in other words, witness, were they stripped down to their underwear?

A. No, Mr. Prosecutor, no more than their overcoats or furs were taken away, otherwise nothing.

Q. Now long after they were relieved of their valuables and their outer clothing or their overcoats before they were ordered to the anti-tank ditch, how much time elapsed?

A. Mr. Prosecutor, this period of time was very brief, and I would say that it wasn't even five minutes.

Q. How were these gypsies placed in the tank-ditch, were they kneeling or were they standing or were they lying down?

A. Mr. Prosecutor, I have to draw your attention to an unfortunate phrase in the affidavit. There it also says, "in the anti-tank ditch", under No. 6. I must have overlooked this when I signed it. In any case, it isn't correct. The people that were to be shot were standing at the edge of this anti-tank ditch and were shot there.

Q. Did they face the execution squad or were they shot in the back?

A. Mr. Prosecutor, they were lined up with their faces turned away. During the execution which I witnessed myself it happened that some of the people to De shot on their own turned their faces towards the execution kommando and had themselves shot this way in a very courageous way.

Q. Mr. Schubert, I believe you testified that General Ohlendorf wanted these people executed in the most humane manner possible. I now ask you were mercy shots administered to those who were not killed instantly?

A. I did not witness, or I was not able to witness such a procedure. The execution which I saw, or during this execution I did not see that such mercy shots had to be fired. The persons were dead.

Q. Now, after these people were shot, did you walk over and view the anti-tank ditch, the bottom of the antitank ditch?

A. I saw this anti-tank ditch, yes.

THE PRESIDENT: Mr. Walton, your question presupposes that as they were shot they fell into the ditch.

MR. WALTON: He said so, your Honor, they were shot on the edge.

THE PRESIDENT: On the edge, out develop then that they actually fell into the ditch.

MR. WALTON: I am sorry. I reached that conclusion.

Q. (By Mr. Walton). I believe you testified a few moments ago that these people were lined up on the edge of this anti-tank ditch and they were facing away from the execution squad. Some of them turned and were shot then. Now, where did the bodies fall after they were shot?

A. Mr. Prosecutor, these bodies dripped into this ditch.

Q. Now then, the question which I asked you was, did you ever view this anti-tank ditch or did you yourself ever stand and look down into the anti-tank ditch after these executions were performed?

A. In this case, yes, I did.

Q. Did you see whether or not any of the people lying there moved or seemed to be still alive?

A. No, Mr. Prosecutor, I didn't See that.

Q. It would have been apparent to you when you stood there on the edge of that ditch if someone had moved, would it not?

A. Oh, yes, certainly.

Q. Well, your inspection confirmed the fact to you that these people were dead in that ditch; everyone was killed outright; there was no one allowed to suffer, is that correct?

A. Mr. Prosecutor, I had no cause to believe that such a thing happened.

Q. Now, Mr. Schubert, whose task was it to bury these people?

A. I did not witness that procedure out according to what I heard about it, members of the execution kommando had to fill in this anti-tank ditch with earth after the execution.

Q. Now, let's go back to the money, valuables-

THE PRESIDENT: Mr. Walton, while you are on that subject, before you proceed to the next one, would you find Out if anyone was assigned to determine that desth had been instantaneous, that the victims prior to being buried were actually dead?

MR. WALTON: Yes, sir.

Q. (By Mr. Walton). Mr. Schubert, did you know whether or not the staff phusician was present, Dr. Schnapwagner, was he present at this execution?

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A. Not at my time, no. Whether he was there otherwise I cannot say.

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officer or enlisted man had the task to determine whether those people lying on the bottom of that ditch were dead?

A Yes, Mr. Prosecutor, this was the job of the Officer in charge of the execution squad. attached to Einsatzgruppe D? because there were several execution squads who relieved each other. BY THE PRESIDENT: executees were dead, did he get down into the ditch or merely view from above? ditch, but certainly he convinced himself whether these people were actually dead according to his conviction. It was only a matter of determining whether a person actually was not killed and thus was still moving in order to giv e him a coup de grace then.

Q How big was the ditch? that a person was alive and yet seemed dead, wasn't it? of the manner in which the execution was carried out, that is, it was fired from a relatively short distance of five to six meters, and thus the result could only be fatal; it was a matter of course for the officer that if the man who had shot had really hit the person to be executed, that person was really dead.

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aimed badly and as a result the victim received only a shock, he could have been knocked unconscious with the bullet but not yet actually be dead so that to the casual observer he would seem to be dead but in fact his heart was still beating?

DIRECT EXAMINATION (Continued) BY MR. WALTON:

Q Now, Mr. Schubert, coming back to the point where the money and the valuables and the outer clothing were collected from these people, was an officer or an enlisted men in charge of this detail? officer who supervised these matters at the place.

Q Do you know his name?

Q Now, you say this was in December, 1941. The weather was quite cold, wasn't it?

A Mr. Prosecutor, in the Crimea it never really gets cold as far as our concept of cold is concerned, but I do recall that the temperature was a few degrees above zero at that time. (That is probably Centigrade.)

THE PRESIDENT: Just one more question please, on the matter of the execution. Did the executors aim at the head, was that the vital point, the back of the head, or at a point in the back that the bullet would penetrate through to the heart?

THE WITNESS: Your Honor, I merely saw that the people aimed at the head. Q (By Mr. Walton) Mr. Schubert, how soon after the Einsatzgruppe D for transshipment to Berlin?

exclusively valuables. Certainly they got there on the same reached Einsatzgruppe D headquarters?

A No, Mr. Prosecutor, I merely know that the Einsatz transshipment to Berlin?

Q His name was Ulrich?

valuables?

A No, Mr. Prosecutor. As far as I know they only were keep away unauthorized persons out at the execution site?

A I can't really estimate that, but I would say that places were people walked and drove

A This entire terrain, Mr. Prosecutor, was bordered on one side by the road from Simferopol to Karasubasar. That was really the only road. Beyond that there were same field paths which branched off and which had to be blocked off. The traffic was re-routed via another road quite a distance away from this place. did you visit these guard posts to see that these approaches were blocked off? off guards. I don't think I missed any one of them. were they not? Einsatzkommando llb?

A I cannot exclude this possibility, but I don't know with certainty. I don't remember the various individuals.

Q I don't mean that, but they were not exclusively the police company?

A Certainly not, Mr. Prosecutor. There were also members of the field police which had been furnished by the Army.

Q Now, Was Dr. Braune at the Site of this execution at any time you were there?

A No, Mr. Prosecutor. the site Of the execution? the way back to the building of the group staff I passed by a large number of guards that were blocking off the area before I actually returned to headquarters.

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see how near finished this action was? shortly to see whether things had been completed there or if they hadn't, that things were carried out according to orders there.

Q All right. Then you left the execution Site and you proceeded past this road block on your way book to view once more the number of people still to be executed, still to be loaded on to trucks, was that your action? were any persons left there to be loaded, and when I saw that there were some more I watched them for a short time in order to be certain that these matters were carried out as ordered.

Q What I want is the answer to my question. You left the actual execution site, drove in your car by the roadblock, and then went on to the loading site again. That is the action you took after you saw these fifteen or twenty people shot?

A Yes, Mr. Prosecutor.

Q Yes. Now then, Mr. Schubert, after you had determined that the loading was still going on properly, where did you go When you left the loading site for the second time? arrival?

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Q Was Seibert there?

A Herr Seibert was not there at all. He was on furlough.

Q He hadn't come in as yet? did you report to General Ohlendorf? think I can say with certainty that I saw him the day during the late afternoon and talked to him. Ohlendorf orally, or did you make a written report? talked about or discuss the facts of this execution with Seibert on his return shortly after? I discussed with Herr Ohlendorf, yes. As far as Seibert is concerned I don't think I spoke to him about them not even after he returned.

THE PRESIDENT: Mr. Walton, it is twelve-thirty. Would you want to suspend?

MR. WALTON: Yes.

DR. WISMANN: Dr. Wismann, assistant for Dr. Schwarz for the defendant Joost.

Your Honor, Mr. Barr of the interrogation branch has expressed the desire to have the defendant Joost excused this afternoon - or rather to interrogate the defendant Joost in the presence of the defense this afternoon. Therefore, I would ask the Tribunal to excuse the defendant Joost from this afternoon's session and to see to it that he be sent to Room 57 until three o'Clock.

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THE PRESIDENT: In accordance with the request made, o'clock this afternoon.

The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

( The hearing reconvened at 1345 hours, 6 January 1948. )

THE MARSHAL: The Tribunal is again in Session.

Dr. ULMER (Attorney for the Defendant SIX):

THE PRESIDENT: In room 55?

DR. ULMER: Tomorrow I would like to have the Defendant

THE PRESIDENT: I understood it was Room 57 in which

DR. ULMER: 57 is the entrance and 55 is the room

THE PRESIDENT: Very well. The Defendant Six will be BY MR. WALTON:

Q. Mr. Schubert, I was particularly interested in stated that there was no disorder.

Also in answer to the President's question, if my memory is correct, you stated was in store for them.

Am I correct so far?

A. May I have the last sentence again, please?

Q. Certainly. I believe you stated in answer to a not know at that time what their ultimate fate would be.

Am I correct in that?

A. Mr. Prosecutor, I replied to your question, whether of these people and I replied to this, "no". The president that they were going to be shot.

To this question I re plied "no" again, because at that time the people did not yet know the end.

I saw no disorder, therefore.

Q. Did these people hold any conversations with their around?

A. It certainly happened that various people talked

Q. And no one of the German personnel told them at the loading site where they were going, did they?

A. Where they were going to be sent to, they were not

Q. Now, was there any disorder that you could see when the trucks arrived at the execution site?

A. Mr. Prosecutor, in order to be quite correct here occurred, this never happened.

Of course, when the people

Q. Was there any weeping and lamentation among the women and children?

A. During my time I saw neither women nor children, really came about, no real disorder.

I would like to say, how calm it was.

It was almost too calm. It was frightening

Q. None of these men attempted to escape by leaping to the ground and running when they were unloaded, did they?

A. I did not see anything of the kind, Mr. Prosecutor.

Q. Now, was it known to you the reason why these people were being executed?

A. I did not know why the individuals were being ex ecuted.

It is possible that there were persons among them

Q. Did you ever see a written report on this total of business which came from Kommando 11 B?

A. No, Mr, Prosecutor. I would like to point out something here, if I may.

Today you only talked about gypsies, I think.

In my affidavit I said, or, rather, Mr. Wartenberg worded it, "Russians and Jews who" -- originally it said "member of other nationalities."

This wording seemed rather general to me and I asked Mr. Wartenberg to replace by "Russians and Jews" but surely there were gypsies among them as well.

perhaps even the majority of them.

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Q. Then the change should be instead of "gypsies", "Russians, Jews, and Gypsies"?

A. One could add there "gypsies". That would make it quite correct.

Q. Do you know whether or not this instance ever appeared in one of Seibert's reprts to Berlin?

A. I do not remember it and consider it quite impossible.

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Q Well, weren't executions reported to Berlin? period.

Q Yes, but you misunderstood my question. Did you ever see a written report of this total of 700 to 800 Russians, Jews, and Gypsies?

A No, Mr. Prosecutor.

Q And you don't know of your own knowledge whether this same total was included in one of Seibert's reports or not? I cannot say that any more. the total number of executions performed for the month of December, wasn't it? That is quite possible. that same day you met Dr. Braune in the building in which the Head_ quarters of Einsatzgruppe D was and also the Headquarters of Einsatzkommando 11B were.

Q Did you have any discussion with Dr. Braune about this matter?

A I do not remember any definite discussions, Mr. Prosecutor. I believe that I remember correctly that I saw Dr. Braune during a discussion with Mr. Ohlendorf.

Q Did he make any comments on your report to General Ohlendorf?

Q He listened to what you had to say, though?

A Mr. Prosecutor, however hard I try, I cannot tell you whether Dr. Braune, when I described the events I had seen to Herr Ohlendorf, whether he was present then or whether I saw him after I had reported to Herr Ohlendorf. I cannot tell you that now. he make?

much to be said about it. I think the attitude of my chief at the time me to him, inasfar as no objections could be raised.

These things

Q Did he tell you that you had done a good job?

A He did not prasie me at all. Mr. Prosecutor. He did not tell , me anything else either, that he was satisfied with me.

Mr. Prosecutor.

Q Now, Mr. Schubert, let's turn to Document Book III-D, on page 1, both in the German and the English, Exhibit 148.

Now I direct your partiu German text.

Indicate when you have found your place.

did they not?

A I believe, Mr. Prosecutor, you are referring to the explanation which starts "The former Obersturmfuhrer Heinz Schubert."

Q Now I ask you, didn't your duties include the distribution of official mail when you received it?

Q Did you open all official mail?

A I certainly cannot say, " all of it," Mr. Prosecutor, but I to see what it contained so that you would know to what person it would have to be delivered for the necessary action?

or, if he was absent, it was given to his deputy in the staff, Herr Seibert. Department III matters? because Herr Seibert was in charge of the entire reporting to the Army as well. I cannot limit this to his work as Chief III. Certainly. he also received other reports. absent, this official mail went to the desk of Mr. Seibert for action. Did this mail include orders from the RSHA in Berlin?

Q Did it also include orders from the 11th Army?

Q Now did Mr. Seibert over transmit these orders from either two sources to the kommandos?

A I know nothing about that, Mr. Prosecutor. I don't know any specific case. according to this affidavit, which is now before you of General Ohlendorf, you took care of the registery so that I assume from this affidavit and from other facts you have testified to that you registered outgoing mail as well as incoming mail, am I not correct in that assumption?

A Yes, Mr. Prosecutor. ion of at least a short or a sentence description of what the contents were and where it was going?

A Mr. Prosecutor, the outgoing mail in the office was dealt with in the some manner as the incoming mail, which was entered in the mail diary in form ofa brief summary, but now after more than six years I am

Q No, I didn't ask you for a specific case. What I want to know desk of Mr. Seibert, if Mr. Seibert took action or if it was necessary of command, wouldn't he forward those letters and wouldn't you register the outgoing mail forwarding those orders to the kommando?

DR. GAWLIK (ATTORNEY FOR THE DEFENDANTS NAUMAN AND SEIBERT): Your Honor, I,object to this question.

The witness has already answered to the question, that he does not know.

The witness has no sufficient knowledge on this.

Anything he might say now would be assumptions, or he would just gess.

If the witness does not know, he cannot answer

THE PRESIDENT: Of course, and "I don't know answer" does not exclude inquiry and probing.

That is the purpose of cross-examination.

one could close the door on cross-examination by merely saying, "I don't know."

The cross-examiner has the right to quizz to determine if ible in order to ascertain whether the defendant's answer of ignorance

DR. GAWLIK: Yes, I realize that, Your Honor. In that case the evidence, but he is only repeating his question.

It is the same question he has already put and the witness has answered, "I don't know."

THE PRESIDENT: That is what Mr. Walton is trying to do, I presume.

MR. WALTON: Your Honor, shall I refresh your memory. The answer he could remember no specific instances.

My following question was office.

I am not interested in knowing what these orders to these kommandos contained or the details of it. I merely asked this witness and I think I am entitled to an answer.

THE PRESIDENT: Well, put the specific question now and Dr. Gawlik will have the opportunity to object, Witness, please do not answer this question until you observe whether Dr. Gawlik wishes to interpose an objection.

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MR. WALTON: When this official mail from either Berlin or from the 11th Army contained a matter which should be brought to the attention of one or more sub-units, would Mr. Seibert dispatch the contents of this order, or his own directive, or some comment, to one or more of the commandos?

DR. GAWLIK: Your Honor, I object to the question because it is hypothetical. If he asked whether the witness know of some incidents of some case,dependent on the defendant Seibert, to that I have no objection, but whether he would have done it, for that the defendant Seibert can not be punished for what he thought he might have done or for what he would have done, but what he had done in fact. If the witness testified to what the defendant Seibert did do in somecases, or what he dispatched in some case, I have no objection that question.

THE PRESIDENT: The present defendant, the witness involved, occupied the same office as did the defendant Seibert, soo therefore----

THE INTERPRETER: Will you please repeat that, Your Honor.

THE PREISDENT: The witness was in the same office with Seibert, so, therefore, it is not unreasonable to ask him what Seibert did. Now whether the witness actually knows what Seibert did, or not, is only within his knowledge, and the only way he can find out as to put the question to him, and if he knows then he will tell us. If he does not know naturally he can not tell us, and the only way to find out is to ask him, which Mr. Walton has done.

DR. GAWLIK: Yes, I agree to that, but not to the question what he would have done. To the question of what Seibert did, or to the question as put by Your Honor, I agree.

THE PRESIDENT: Yes. I presume the interpretation of the question was, what was the custom, what was the practice of the office, what would he have done meaning in the usual routine and course of affairs of what Seibert had done, what did he do, that is what was meant, or by any one else in the same position. What was the routine of the office; communications coming in from the Army, how were they routed, and Mr. Walton objectionable.

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Very well, witness, if you remember now the question,

THE WITNESS: I think I understand it correctly, and I would like to answer it as,to that effect:

During the absence of Herr Ohlendorf in the group staff, Herr Seibert was the deputy for the group staff; then

MR. WALTON: Thank you, Mr. Schubert.

BY MR. WALTON:

prisoners of war, communist functionaries, etc.?

A No, Mr. Prosecutor, certainly not.

screening teams?

A No, neither that, Mr. Prosecutor.

Einsatzgruppe-D at Oberursel?

A May I have the question repeated please?

in Oberursel?

the Karaimians were Jews?

A I think if I remember correctly, Mr. Prosecutor, in the Fall of 1945 I made a statement which contained about the following:

When Ethnic groups were to be treated.

Thos were the Krimchaks and the Karai mians.

The principal question, or the basic question which had to be decided was whether these groups of persons were to be treated as Jews according to the Fuehrer Order, or not.

At the time sofar as I can recall I testified that at the time Herr Ohlendorf did not want to and could not define this order himself, and, therefore, a decision from Berlin had to be applied for by him. I think that is about the statement I made at the time.

Q I congratulate you on your most excellent memory. However, there is one point which appears in the affidavit that you omitted at this time, almost two years later, or a year and a half later. "Therefore the decision --" I shall read it to you and I am quoting now from your own affidavit: "Therefore, the decision was put up to the Reichsicherheits Hamptamt, Berlin, whereby the basic question was whether the Krimchaks or the Karaimians, or one of these two groups were to be considered Jews or not. In case - I am still quoting "In case that they would have been considered Jews, they would have come under the extermination regulations." Now this is only the point that you omitted, and I am still quoting: "Whether any decision or what decision arrived from Berlin is unknown to me. At that time I was absent from the Einsatzgruppe for some time in order to carry out these seizures of Russian POWs of Tartarian nationality at Nikolajew." Did you make that last statement?

A Mr. Prosecutor, I certainly didn't draw that conclusion, and I should like to look at my affidavit now. I am quite certain that I said I was absent because repeatedly I was on journeys in connection with recruiting Tartars as volunteers in the POW camps at Nikolajew. I don't know whether I also said in a few villages in the Crimea, and, if I may add now, I recall quite clearly the other explanations that were also made, Mr. Prosecutor, just quoted, and I do not intend to leave them out, but I merely thought I had to say this in order to clarify the matters we are talking about here, but as to the seizure of POWs of Tartarian orign, I could never had said that. This could have only been the recruiting of Tartar volunteers, and I am quite certain I said nothing else, Mr. Prosecutor.

the question and you have given an explanation. That is what I wanted. Now, did you ever make any statement concerning the commanding Officer of Sondercommando X_B, one, Alois Persterer? concerned, I made a statement.

Q Did you ever make this statement and I quote: "P" - the initial alluding to Pesterer, "Who always inclined a great deal towards great independance had always the best understanding with the local Wherm cht, which could not be said of the Einsatzgruppe as a whole.

In addition Pesterer - " except you had the initial "P", "-was a great friend of alcohol who had always worried Ohlendorf a little, obviously from fear of inconsiderations by Pesterer." Did you make that statement --- or I shall withdraw that question, and ask you this one. Is that statement true? in just those words. I said, that after Mr. Wartenberg asked me about Pesterer's personality ---

Q I withdraw that question, Mr. Schubert. I will ask you if that statement that I have just read to you is essentially ture. allowing for some differences in the translation?

A I do not want to answer this yes or no. I should like to make a brief statement. It is correct that Commando Leader presterer had much better relations with the local Wehrmacht than the Group-staff had. It is correct that Commando Leader Persterer had much better relations with the local Wehrmacht than the Group-staff had. It is correct that Herr Ohlendorf was not very enthusiastic about Herr Persterer during some meetings where the gentlemen of the Army took part in, when he took a little more alcohol than he should have done. ever was deputy to Persterer?

A No, Mr. Proseuctor, the co-defendant Ruehl did not work during

THE PRESIDENT: Mr. Walton, do you intend to introduce this document which you are reading from now into evidence?

MR. WALTON: Your Honor, please, this document is now being searched for.

I only have the English translation, This is a document which was taken from the files of the Interrogation Center in Oberursel.

I cannot c py by the defendant Schubert, or the original.

However, I believe

THE PRESIDENT: There is no question about the appropriateness and correctness and the relevency of your cross examination.

There was a but I don't know whether it ended with the meeting of the minds, or just what was said.

As I recall your quotation you used the word "seized" certain Russian prisoners of war, and the witness used the word "Recruiting," and of course, there is a vast difference between

MR. WALTON: I assume from my point of view he denied the statement

THE PRESIDENT: I see. Very well.

DR. KOESSL: Your Honor I merely would like to ask that on re is very important as part of the conten ts of the affidavit.

The witness

THE PRESIDENT: Well, Dr. Koessl, you can not be interested or concerned

DR. KOESSL: Your Honor, I am only interested in finding out whether contains exactly what the witness now said on the witness stand.

I assume

THE PRESIDENT: Well, Dr. Koessl, Mr. Walton has put certain questions and the witness has answered those questions.

Now in the absence of the probative value as the Prosecutor's questions, because Mr. Walton's questions are not evidence so Mr. Walton is really bound by the defendant's answers,

DR. KOESSL: Yes, I am only concerned with the contents of the affidavit, the translation of what Mr. Walton read is not sufficient for me to prove that it is the actual contents in the German affidavit.

Mr. Walton

THE PRESIDENT: Well, Dr. Koessl, you were asking for something that Mr. Walton has already promised, about which the Tribunal has indicated

MR. WALTON: Your Honor, if that does not come to light, his answer pointed out.

I see no reason for my surrender of my copy of a copy to Dr. Koessl at this time.

I would like a ruling on that if the Court please.

THE PRESIDENT: Dr. Koessl would you want to submit this affidavit

DR. KOESSL: No, Your Honor, I don't need it for that. I merely need concerned.

If the Prosecution accepts the reply of the witness, I agree to

THE PRESIDENT: Well, you have the right on your redirect examination

MR. WALTON: Just one final word. I accept, Your Honor, the statement he recruited Tartar prisoners.

I shall act on that in my brief and in the Maybe that will satisfy Dr. Koessl.

THE PRESIDENT: I think with that statement, Dr. Koessl, you can cons Mr. Walton as assistant defense counsel on this particular point.

Dr. KOESSL: For the time being I am satisfied.

THE PRESIDENT: Very well.

THE WITNESS: May I say something about this please?

MR. WALTON: Yes.

THE WITNESS: I am sorry that I am not quite satisfied as yet.

THE PRESIDENT: Well, it would be too much to expect that everybody

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THE WITNESS: Your Honor, Mr. Walton just said that I testified that I dealt with recruiting matters.

I am quite certain that this is not contained in my affidavit, and I would like to correct it.

I believe that there is an in Nikolajew.

I was on my way to it but never was I personally in charge

THE PRESIDENT: Very well, that statement may stand.

BY MR. WALTON:

Q. Now I believe you testified this morning that you go some office copies of the reports from Mr. Seibert to file, and that these reports contained some information concerning executions.

Nearly every report you got from Seibert had Information concerning executions, didn't it?

A. "Nearly every one" is going rather too far, Mr. Prosecutor. I would like to re-word this.

A part of these reports contained such

Q. What percent of his reports would you estimate referred in some way to executions?

A. I can not tell you a percentage and I don't think it matters.

ab out executions which had been carried out. I can further say that in other

Q. Do you want to make an estimate as to the number of radio reports that referred to executions, would you say it was fifty percent?

A. Mr. Prosecutor, it does not depend on my good will or good intentions but I simply think I am unable to make such statement.

I would be

Q. Well, you were generally acquanited with what went on in head quarters, were you not?

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A. In general, yes.

Q. Do you know what assignments were given to members of the staff other than yourself?

A. In general, the staff of officers of the staff I knew, of course.

Q. Did the Group-Physician ever have to inspect an execution by a gas-van?

A. I know nothing about gas vans.

THE INTERPRETER: There was a mistake in the translation, as was given "gas chambers" rather than "Gas-wagon" or gas-car.

THE PRESIDENT: Well, that is an important distinction between gasvan and gas chamber. So the witness may understand, you are referring to gas-wagons? BY MR. WALTON:

Q Do you understand that I meant "gas-wagon" instead of gas chambers

A. Yes, I think you are talking about gas-van, that is right. I can not say what definite orders the physician of the group received concerning this. I know nothing about that.

were you not?

A Yes, Mr. Prosecutor.

Q And it's been testified to repeatedly from that witness stand that for a time there was at least one gas van in the courtyard at Simferopol.

Q Did you ever dispatch this van anywhere? send a gas van there?

A No, I don't know of any. Headquarters dispatching the van from the courtyard to a Kommando territory?

A No, Mr. Prosecutor. cutions?

A During the executions in Simferopol, or in general?

Q In general, any executions. Do you know of anybody in the group staff who was given the special assignment to inspect executions besides yourself?

A Mr. Prosecutor, this is a question of great consequence which I have to answer here, I myself was never present when other members of the group staff were carrying out such inspections. Therefore, I cannot say who, when, and where the inspections were made.

Q You misunderstood my question. Did you ever learn - did you ever have any knowledge - did you ever hear it generally talked about did it ever come to your attention that some one besides yourself in the group staff inspected executions? cerned I know definitely that he carried out such inspections.

Q Did Seibert ever inspect an execution to you knowledge?

Q Did Siebert ever discuss the subject of executions with you? general. One could not avoid doing this, but not about any particular execution. I don't think so. Perhaps in connection with the Fuehrer order in general. in any way about executions?

A What are you referring to, Mr. Prosecutor. I said I talked to him in a general way.

Q Certainly. But, I asked you next, do you recall what was said in any of these conversations? Do you recall if Mr. Seibert expressed himself that he was for executions or against executions, if he liked them or didn't like them? Did he ever make any remark about his own feeling in the matter?

A I understand you now, Mr. Prosecutor. That is the subject of any discussion possible at all and I believe not only in as far as Seibert personally is concerned but concerning everyone. I can assure you here that there was not one man who agreed to these measures and agreed to this order. But whenever these matters were discussed everybody was seriously concerned. To be sure, we were very worried about these matters and yet we were helpless and that is perhaps, to put it quite briefly, what we talked about during such discussions. one had the intention of not carrying out the Fuehrer order, did you? one might have refused to carry out this order. I just said I understood the question to mean, whether I heard that Herr Seibert or any one else ever made statements to the effect that they would not carry out this order

Q Now in Seibert's affidavit, which is in Document Book III-D, page 34 and in your document book, Mr. Schubert, on page 60, document NO-2859, Prosecution Exhibit 158, in paragraph 2 of Mr. Seibert's affi davit he states that you prepared reports from time to time.

In your what you said.

Will you repeat for my benefit what type of reports you before you sent them off?

Mr. Seibert under figure 2 Of this affidavit, but that from time to concerned changes in personnel and location within the group.

How often I made such compilations, I cannot say.

Certainly it only occurred Mr. Seibert?

Did you ever have that task of all?

AA situation report?

Q What I mean by that, Mr. Schubert, is, did you ever have to port in view of the fact that Mr. Seibert was away on leave or some unusual reason why Mr. Seibert couldn't make this out, did you ever have to substitute for him in drawing up or compiling these reports?

AAt no time, Mr. Prosecutor.

the group chief before sending them on? Having him correct them or change them?

Did you submit it to the group chief?

A Mr. Prosecutor, May I say first these were not reports of my of a report and I really don't know in detail whether these matters I submitted to the chief or Herr Seibert before hand.

I rather think that these documents made out by me were used by the clerk exactly as they were and that the compiled report was then signed.

A Of course, Mr. Prosecutor. came of age to join did you? the time, I did not object to it. It never occurred to me. the first time. That's when you first went after you lef the lawyer's office. Did you apply for this employment or was this position offered to you?

A It was offered to me. I reported there. I was approved and I was promised the position and I did not object to it and on that occasion I joined the SD. the interview which proved mutually satisfactory you were given work in the SD, but you yourself went there, isn't that true.

A Mr. Prosecutor when joining the SD I did it on my own initiative.

THE PRESIDENT: The Tribunal will now take its afternoon recess.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

MR. WALTON: With permission of the Tribunal I will conclude this

THE PRESIDENT: Proceed.

DIRECT EXAMINATION (Continued) BY MR. WALTON:

Q. Mr. Schubert, did you over make any attempt to get released from the party?

A. No, Mr. Prosecutor.

Q. Did you ever seek to be transferred from Amt III, which is the SD, to some other amt in the RSHA?

A. I could not have made such an attempt.

Q. You could have made such an attempt prior to the outbreak of the war, couldn't you?

A. Before the war and until 1943 I was a member of Office I. I had

Q. Did you ever object to being transferred from office I to Office II*

A. I raised no objection and could not have raised such.

Q. Now, you were a member of the SS, were you not?

A. I was a member of the special SS formation SD.

Q. Now, you knew when you became a member of the SD you would also become a member of the SS, didn't you?

A. At the time when I joined I did not, Mr. Prosecutor, not yet.

Hitler Youth. The membership in the SS formation SD was not an unconditional

Q. It didn't occur to you to object when they informed you that you were a member of the SD formation of the SS, did it?

A. Mr. Prosecutor, it never occurred to me to raise an objection

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Q. Now, according to your service record -- May it please the court, I would like to give that citation again in case it is not before you. Document Book III-D, Page 99 of the English text, 146 of the

German text, Document 3244, Prosecution's Exhibit 172. I am now about to make specific reference to page 102 in the document book, which is page 149 of the German text. It is the last page in the document book. Witness, will you indicate please, to me when you have found that page 149 of the German text?

A. I have got it, Mr. Prosecutor. It is the notice about my membership in the Hitler Youth.

Q. Well, maybe it is on a different page in your book, but I am specifically interested in the last column which says SS schools. Now, according to the information that is in my book you attended SS schools from 15 October, '36, and 26 October '38. Does that appear in your copy?

A. No, Mr. Prosecutor, this must be a mistake in the copy in your document book, because these are the dates which refer to my active service in the Army. In the original document it can certainly not be contained. I cannot imagine that it could be.

Q. Then this evidently is an error in copying, but these are the service schools or Wehrmacht schools which you attended, is that correct, and the dates, are they correct ?

A. The dates are correct, but those were no schools of the Army, but that is the Army unit with whom I served actively as a soldier.

Q. Look on page 150 of your Document Book. Now, on this page there are some dates given.

Is that a Wehrmacht school or an SS school?

A. Mr. Walton, it is neither an Army school nor an SS school, but it says here under the column "Reichs Heer" -- that is the Reich Army; and there it gives the date 15 October 1936 until the 29th of October 1938;with which I served -- that is, the Armored Signal Battalion 39.

This is

Q. I wanted to get that clear there for the benefit --- My document book and your document book are not in agreement on that point.

From my were not allowed to change.

When did you inform your counsel about these allegations which you made yesterday concerning changes in your affidavit?

A. I can not remember the date, Mr. Prosecutor, but at the latest it was before Mr. Wartenberg was examined here in the witness stand.

Q. Between the time you received your copy of the indictment and the time when Mr. Wartenberg was examined.

you are sure of that?

A. Yes. Yes, it must have been between those dates.

Q. And did you tell your counsel that the corrections which were made were dependent on the permission of Mr. Wartenberg?

A. I certainly told that to my attorney.

Q. And did you also tell your counsel that you intended to make certain corrections which were not approved by Mr. Wartenberg and were therefore not made?

A. Yes, I told him that, too.

Q. Well, you were present when it was determined by the Tribunal that Mr. Wartenberg would be called as a witness, were you not?

A. Yes, I was present.

Q. Did you confer with your counsel as to what questions your count should put to this witness in your behalf?

A. Yes, I discussed this with my attorney and I merely regretted very

Q. Well, why didn't you insist that your counsel bring out matters of this correction fully for Mr. Wartenberg?

A. Mr. Prosecutor, I believe that my attorney skid Mr. Wartenberg and Mr. Wartenberg about those changes which I wanted to make.

Mr. Wartenberg

Q. One question that -

A. I don't think it was only one question. Certainly there word two

Q. Well, you were present when Mr. Wartenberg was cross examined by your counsel, Were you not?

A. Yes.

Q. Well, why didn't you insist to your counsel that he go further at great length yesterday?

A. Mr . Prosecutor, I am of the opinion that here I am represented by an official attorney whom I can not force to do this or that.

This is exclusively a matter of confidence -- a confidential matter.

I have no Way

Q. Mr. Witness, it is your case, not your attorney's case. The responsibility for your defense rests on you.

However, we will leave that.

Isn't it a fact that these topics about these corrections were dis cussed most fully with you when you were preparing your direct testimony?

THE PRESIDENT: I would like to interrupt here to say from the Bench that there is nothing in the examination conducted by Dr. Koessl which would

MR. WALTON: May I continue, your Honor?

THE PRESIDENT: Yes, you may.

BY MR. WALTON:

Q. Didn't you discuss these topics most fully with your counsel when you were preparing your direct testimony?

A. I believe I told my attorney everything that I had to say about

Q. Were you satisfied with your attorney's direct examination of Mr. Wartenberg -- cross examination of Mr. Wartenberg when he was on the stand?

THE PRESIDENT: Well, Mr. Walton, I don't think that that is a question which the witness should be called upon to reply to.

He has confidence in his attorney, and his attorney presented his case.

Now, I

MR. WALTON: Your Honor, the only thing that puzzles the Prosecution asked -- put to Mr. Wartenberg when he was on the stand and they only came out when they know that he can't be recalled, when he is beyond the jurisdiction of the court.

Those are the matters which I want to probe into.

INTERPRETER LEA: Will you please repeat that. Just the last portion.

MR. WALTON: When the matters concerning these interrogations were brought out for the first time and were not sifted from Mr. Wartenberg when should come out at this opportunity when Mr. Wartenberg is now beyond the jurisdiction of the court.

And I desire to probe into them to see whether or the opportunity of the cross examination of Mr. wartenberg has passed.

That

DR. KOESSL: Your Honor, I want to just give an explanation to this.

I asked Mr. Wartenberg about everything. I knew about these interrogations.

Rather, what I knew about the interrogation I did ask Mr. Wartenberg here, which the witness was asked.

But we would have never asked these questions in such a crude form.

I was of the opinion at that time that it was completel Mr. Wartenberg the question whether he had threatened the witness or not.

MR. Walton: The point which I am not satisfied about and which that time an interrogatee concerning the changes in his affidavit.

I read last night -- I don't have it before me now -- the questions which Dr. Koessl asked the witness Warternberg.

They were germane, they were pertinent, but I saw nothing in there, sir, concerning the refusal of the Prosecution' agent for this witness to make changes in his affidavit.

And that is what

THE PRESIDENT: Mr. Walton, I know that you are disposed to be Dr. Koessl Proceeded with the material that he had at hand, and it must be admitted that Mr. Wartenberg was brought into court without notice of a Mr. Wartenberg.

At any rate, this is something which the Prosecution may argue at the proper time.

We doubt that much can be elicited from the ship between client and counsel.

Now, he has given the explanation that the wasn't much time allowed for a conference with his attorney on all features of the questioning.

Dr. Koessl did question at some length, and the record shows that.

I don't think that much can be gained by probing into "Why wasn't this question put?"

and "Why wasn't that question put?"

MR. WALTON: Sir, the Prosecution is only interested in knowning tha

THE PRESIDENT: He gave an explanation yesterday. The probative value Wartenberg it would still remain to the defendant to explain why he didn't make those changes in the affidavit.

Well, it is suggested by Judge Spade:

Of course, you have the right to inquire into it, and you have inquired into it; in your very cross examination you go into that.

If there

MR. WALTON: I appreciate the fact, your Honor, and since it is such thin ground, I wish to be entirely ethical in the matter.

I leave affidavit of the defendant and present witness, Heinz Schubert.

I be duce this affidavit.

Diligent Inquiry has resulted in the fact that this is the only signed copy available.

A check with the document room shows that.

Therefore, the Prosecution will have to reprocess this doc ument.

However, I now move that the German copy be introduced and that serve its objection to such time.

I will serve notice on all interested

THE PRESIDENT: Yes, well then you may ask that an exhibit num number, or Mr. Hab can tell you.

SECRETARY (MR. Nab): 193.

THE PRESIDENT: Has Mr. Nab furnished the number?

SECRETARY (Mr. Nab): 193.

MR. WALTON: Your Honors, at this time I offer, subject to ob jection by the defense, Document No. 5111 as Prosecution's Exhibit 193,

THE PRESIDENT: Yes, the Exhibit number will be assigned but the

MR. WALTON: At this time, your Honor, the Prosecution has no fur

THE PRESIDENT: Very well, Dr. Koessel, do you have any redirect

WITNESS HEINZ SCHUBERT: May I say something, your Honor, before Mr. Koessel starts?

THE PRESIDENT: Yes, by all means.

WITNESS HEINZ SCHUBERT: First of all, I would like to defend my attorney as far as the point which was discussed before is concerned.

My attorney actually did ask Mr. Wartenberg in the cress examination whether in the interrogation transcript of Mr. Wartenberg there were remarks in it to the effect that a discussion took place about this.

"The tran scription shows that I wanted to make corrections.

" I would like to print out merely that Mr. Walton objected to Mr. Wartenberg should have clarity any etails which happened in the interrogation later.

But this

THE PRESIDENT: I want to say, Witness, that your apprenticeship in a lawyer's office has developed to be a great assistance to you in

DR. KOESSL: your Honor, my colleague, Dr. Aschenauer, has asked and I would like to ask these for Dr. Aschenauer with the permission of

THE PRESIDENT: You may proceed.

QUESTIONS BY DR. KOESSL

Q. Witness, concerning the question of the prosecutor whether Braune and Nosske's successor received directives outside of these given by Ohlendorf; I would like to ask you, do you know specifically that Braune and Nosske and Nosske's successor received instructions from Ohlendorf?

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A. No, I do not Know this specifically at all.

Q. Furthermore, do you know the contents of the discussion between two officers and Ohlendorf and Nosske? Do you know it specifically?

A. No.

DR. KOESSL: I personally have only a few questions.

Q. First of all, was Ohlendorf, On the day on which you were in Simferopel, or, rather, on the day when you witnessed the execution in Simferopel, was Ohlendorf himself in Simferopel on that day?

A. Yes.

Q. What did Ohlendorf do on that day?

A. I was not with Herr Ohlendorf at that time. I can not say. I merely heard that Herr Ohlendorf too inspected this execution on that day.

DR. KOESSL: Thank you, your honor, I have no further questions.

DR. GAWLIK: Gawlik for Seibert. BY DR. GAWLIK:

Q. Witness, I submit to you once more exhibit 193 , Document no. 5111.

WITNESS: Which book please, Dr. Gawlik?

Q. Please read out what it says under Roman numeral VIII, the first word.

A. "Einsatzgroup Staff."

Q. But what does it say about the co-defendant Seibert?

A. "Permanent representative."

Q. To what did that statement "permanent representative" refer?

A. To the "Einsatz Group Staff," because that is where it appears.

MR. WALTON: I want to object to that question and the answer by the defendant on the grounds that the document itself is the highest and best evidence, and that anything that he should say in answer to that question would be his opinion, when it is up to the Tribunal itself to evaluate the probative value of the document.

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We do not have a copy of that, your Honor.

That is the Document No. 5111, which I just spoke

DR. GAWLIK: Your Honor, I have this to say. In general the doc

MR. WALTON: Perhaps the translation was wrong, but that wasn't

THE PRESIDENT: Let us have the question again, Dr. Gawlik,

MR. WALTON: The Prosecution is perfectly aware that Dr. Gawlik ion, sirs, is that he can net ask him, "what does that document mean now?"

or "What does one gather from thatdocument?" or "what does it say?"

The *---* The witness can make a statement in Which he says, "I ride on a black horse."

Then he could say later on, "I really meant I ride on a write horse."

Then it is up to the listener to de termine whether it was a black or a white horse.

You get in to the realm of what is probable and what is logical.

Would a man say he rode on a black horse when he meant a white horse?

But every person is en titled to explain what he said and what he did.

The reasonableness son who has to adjuicate the declaration, so that Dr. Gawlik is al

MR. WALTON: Your Honor, as I pointed out, we have no object very well put example, but Dr. Gawlik asked him, "What did the docu ment say?"

That is what I object to --That form.

THE PRESIDENT: Well, let's have the question again.

DR. GAWLIK: I merely wanted to say the following: your Eonor It is the same question which the prosecutor has asked.

Therefore, I also ask that the question of the Prosecutor be stricken from the record, because the Prosecutor submitted the document to the witness and had him read from it, "a permanent representative." Then that is also admissible.

THE PRESIDENT: Well, whatever Mr. Walton was permitted to do, you are permitted to do, so no one is hurt. So put the question, Dr. Gawlik.

Q (By Dr. Gawlik) What did you mean to express by the statement, "Seibert, Permanent Representative." was what was the actual case. Seibert was the Permanent Representative in the Group Staff of Einsatgruppe D.

Q I how far was Seibert not the permanent representative? the Einsatzgruppe Staff.

Q Was Seibert the permanent representative within the Group?

Q Does this phrasing come from you? Did you dictate that yourself? It is a completely voluntary statement. passed on letters to the kommando leaders when Ohlendorf was absent, is that correct?

Did I understand you correctly?

A I don't know whether I said passed on " or whether I said that Herr Seibert, during Ohlendorf absence, dispatched letters to the various kommandos. they had?

A No, I don't know any more today. pecially to the execution of Jews, Gypsies, Communist functionaries?

Q You have further stated in your cross_examination that in Ohlendorf's absence the kommando leaders discussed matters with Herr Seibert. Did I understand you correctly? leaders discussed with Seibert?

A No, I wasn't present.

Q Did Seibert have any power of command towards the kommando leader? in Simferopol was the only one which had been previously known in the Group Staff. Did I understand you correctly?

A No, not quite. I cannot say, of course, anything about the time before I got there, but during my own time there I don't remember any second case.

Q Was Seibert then with the Group Staff?

Q Where was Seibert at the time?

DR. GAWLIK: Thank you. I have no further question. BY THE PRESIDENT:

Q Witness, we've allowed counsel frequently to ask an irrelevant question so the Tribunal is going to avail itself of that privilege and ask an entirely irrelevant question:

Were your forebearers related to Franz Peter Schubert?

A You mean the composer, Schubert? line, yes. in some way a connection back to that great figure in musical history. relationship to a great German, yes.

Q Was he a German or an Austrian? naturally aroused that curiosity.

deal of discussion, we wonder how the name Seibert ever got into this affidavit, unless you used it yourself in your discussion with Wartenberg, referring to Paragraph 3.

MR. WALTON: Your Honor, will you give the document number, please.

THE PRESIDENT: Yes, the document number is 3055 Q (By the president) Did you mention the name to Wartenberg?

too whether in the interiorrogation of the 18th of February, which lead to this affidavit whether I mentioned the name of Seibert. It is even possible that is used this phrasing, "Ohlendorf or Seibert" at the moment, but that I corrected myself later on after I thought about the contents of the interrogation quite thoroughly and at that time it occured to me quite suddenly again that Herr Seibert was not there at that time. duties as an Adjutant?

A Witness: With the Einsatzgruppe, Your Honor?

THE PRESIDENT: Yes, yes. very extensive. As chief of the orderly room I had much more to do and the designation of Adjutant I only listed in order not to be suspected of omitting one of my jobs; I only had to make the appointments, to receive the visitors, and occasionally to furnish maps for the Commanding General for his trips, to mark down the route, and to make out accounts of trips and I think that those were all my duties as an Adjutant. Of course, I fullfilled a few private requests of Herr Ohlendorf, but I would like to repeat once again what I said yesterday. Herr Ohlendorf did not like any kind of servants around him. Thus I was not was also given the direction of the orderly room.

Q Very well. Coming back to the affidavit, Document No. 3055, and calling attention to paragraph 4, we will ask, were the persons who were to be taken out of the gypsy quater informed that they were to be resettled? Is that what they were told? think I must answer this question in the affirmative in this case, because that was customary, generally. that the entire family in each instance would be resettled, wouldn't it?

Q Yes. Then that would mean that the women and children would go along also, wouldn't it? Place? children at the execution site, but at the place where they were gathered there were women and children.

Q And some were loaded aboard trucks? there were no women and children there actually being executed or being prepared for execution

Q Yes. Now, Witness, you have indicated, have you, all the corrections which you desire to make in this affidavit? have you?

A Yes, Your Honor. I think I have said all about them I wanted to say.

Q Now we will call your attention again to that paragraph 4. I will read, " I went to the gypsy quarter of Simferopol and Supervised"-

and we understand your correction of that word -- "the loading of the persons who were to be shot into a truck. I took care that the loading es and unrest by the native population." Now, I call your attention to the phrase, "took care." ing "I took care" it should say, "I convinced myself of the fact, because actually there was nothing for me to take care of.

Q You were present, at least, at one loading, weren't you? proper manner?

A No, Your Honor, I did not have that order. Two offices were Present for that purpose who did these things.

Q Now, the phrase in the German is, -- I know I won't pronounce it correctly, "Icj sorgte dafuer," yes, now that translated into English is, "I took care," which very clearly indicates that you were concerned about seeing that it was done properly. It was more than merely watching, but you were careful to see that it was done properly. "I took care". How can you now limit it to merely watching.

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THE WITNESS: Your Honor, Mr. Wartenberg phrased this , and it is One of the many wordings which I objected to , because Mr. Wartenberg was evidently of the intention to represent my activity in this as supervisory capacity. That is why he chose this wording "I took care", although there was nothing for me to take care of.

THE PRESIDENT: This morning, witness, when you were given the opportunity to enumerate one by one the corrections which you wished to make in the affidavit, you called our attention to "supervise" and so on, but we don't recollect that you corrected this phrase "I took case."

THE WITNESS: Your Honor, I do not know at the mount whether I said it or not, but I think that I did say it. If it was not said then it is because so much has been said about these things that I had lost track of it at the moment, but I would be grateful if my explanation would be accepted on this particular point, too.

THE PRESIDENT: Very well. Now you went to substitute for that phrase "I convinced myself", is that right?

THE WITNESS: The text would then have to be re-transposed in the German, but the sense would remain the same. "I convinced myself of the loading, etc. . ."

THE PRESIDENT: Yes.

Q Now Ohlendorf sent you on this mission, didn't he? self, could be just convinced? in which these matters were carried out.

Q Well, suppose that you were not convinced, what would have happened? in whatever manner I could have. I would then have had to point out the violations against orders to these officers.

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Q So that in effect "you took care" of it, didn't you?

A Your Honor, I don't know whether one should interpret it that way.

THE PRESIDENT: Dr. Koessl, do you have any other questions to put to the witness?

DR. KOESSL: No, Sir, I have no further questions, Your Honor.

THE PRESIDENT: Judge Dixon calls our attention to a phrase in paragraph 3-B, or perhaps it is 3-C, after discussing the collection of moneys, jewels, and so forth, then we come to a sentence or clause which reads: "To supervise" and of course we understand your explanation of "supervise", "that the execution be completed in the most humane and military manner possible". Now just what did you mean by "humane execution". THE WITNESS: Your Honor, I knew the order Ohlendorf concerning the manner of the actual shooting. There was only way one could call humane under these circumstances, that is, the form of shooting by a military execution squad under the orders of the military officer. This type of execution is what was meant.

Q And that is what you mean by "Humane manner"?

Q In paragraph 6 you said: "I know that was of the greatest importance to Ohlendorf to have the persons who were to be shot killed in the most humane and military manner possible, because otherwise in other methods of killing, the moral strain would have been too great for the execution squad". What were the other methods of killing?

A That is meant purely theoretically, Your Honor. It might mean the execution of individuals by one individual person outside of the military squad, as I have described it.

Q Then in paragraph 5 we find the sentence: "I watched that none of the deposited items were kept by the SS and the ORPO-men who were designated for the collection." Was there danger that some of the SS and ORPO-men might have purloined some of these articles, kept them for their own use?

things were always correctly conducted, but no one can look into the soul of each individual, and that is how this order came to be made to me, to see to it that great care was taken, and if something like that would happen, that this would exclude such occurrances which actually didn't happen, and I never heard anything about it. not their souls?

A Your Honor, I didn't look into the pockets of these people, but from the way in which these things were carried out, there was no doubt for me to say that these things were correctly carried out, that such things didn't happen

Q And if it was done, you didn't catch them at it?

A Your Honor, I don't know what happened when I was not present, think so, however. to participate in petty thievery of this character? matter. field, how you can distinguish between the high honor of not taking a piece of money, or ring, or watch, and the killing of a person who is utterly defenseless? of any property from these victims was prohibited. This was first of all the basic difference. from the Reich, but there is nothing wrong in seeing or in taking these personal belongings from these defenseless people?

to do with these matters, I went to explain that I am convinced without being able to say this just with certainty for everyone, that I do not believe that there was any elements among us who did not consider these things just as sacred for the carrying out of the Fuehrer's Orders, as they could be sacred to human beings.

Q Were you ordered to take the money and valuables? with then. property of those who were to be executed

A I can not say, Your Honor. I do not know whether this was one part of the Fuehrer Order, or whether these were executive regulations pertaining to the Fuehrer Order. handing them back to others legally entitled to them upon the decease of the owner?

A Your Honor, I know of the regulation of the .Reich Security Main Office which referred to these valuables, and this regulation provided that these valuables were to be sent to Berlin to be handed over to the Reich Finance Ministry. Other regulations on which this directive was based are not known to me. I could not say anything about it.

THE PRESIDENT: Very Well.

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DR. KOESSL: Your Honor, may I ask a question.

THE PRESIDENT: Certainly.

DR. KOESSL: May I consider the examination of the witness closed, and may I consider with him this evening.

THE PRESIDENT: Yes, by all means. Dr. Hoffmann, do you have something to say?

DR. HOFFMANN: Your Honor, I have a very short motion to make. The Tribunal will recollect that the defendant Nosske said in the witness stand that in the year of 1944 as the result of his resistance in Duesseldorf he was excluded from the SS. The defendant Nosske haws further informed me that this also brought in its wake his exclusion from the Nazi Party. In order to bring proof of this, I would like to get the personnel file of the defendant Nosske, which is in the Document Center in Berlin, and, I ask the Tribunal to instruct the Secretary General that he obtain this file from the Document Center in Berlin.

MR. WALTON: We have not charged him in the Indictment with membership in the Nazi Party. I don't see where that is material. We charged him with being in a Criminal organization, the Gestapo the SS, and, it may be the SD, I am not sure about that, but we have not charged him with being a member of Nazi party as a criminal act, so I think his request is immaterial.

DR. HOFFMANN: Your Honor, if I can gather from Mr. Walton's statement that he does not contest that the defendant Nosske was excluded from the SS in 1944, then, of course, I would not need this card from there, but if he does contest it then I need the card to support my contention.

THE PRESIDENT: If you are willing to admit for the record that if the card were obtained it would show what Dr. Hoffmann said, then there would be no need to get then card.

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That is the first thing you must decide. Then after you have decided that either in the affirmative or the negative, then we will go to the next thing.

MR. WALTON: That document including the SS personnel file was here at the beginning of this trial under the protecting wing of one, colonel Neil. The Tribunal at that time ruled that any comparison to be made of the document presented by the Prosecution in its case in chief would be compared at that time, and that would be the only time. They stayed here, and the opportunity originally of scrutining the personnel file when it was here, and now I think it is putting too great a burden on this court to have one of those files returned here for further scrutiny.

THE COURT: Mr. Walton, do you consider it material or immaterial, and are you basing your objection on the fact that defense counsel once had the opportunity to obtain this document, and not having availed himself of the opportunity, his time is now passed.

MR. WALTON: If Your Honor decides against my first objection, that it is immaterial, then I base it on the second prong of the objection, that it was here.

DR. HOFFMANN: Your Honor, it is correct that the personnel file of the defendant Nosske was submitted here, but the personnel file only showed that a proceeding was ins tituted against him because of military disobedience in the year of 1944, or rather that a proceeding pended against him, but * the personnel file did not show that the defendant Nosske, as he stated in the witness stand, actually was excluded. Why this was not noted down is a question of argumentation, I think, which I can bring in my final pleading, but in Order to support my argument, I would like to have documentary proof, and as a defense counsel I have no way of being admitted to the document center, therefore, I ask the Tribunal for assistance.

THE PRESIDENT: With regard to the materiality of the document asked for, we will say as we have said before, that when a defense counsel believes a certain piece of evidence is material, we are disposed to allow it, and we even went so far as to say that we will permit any evidence of any kind up to the social life of penguins in the Anarctic Zone. And if you can show that even that is relevant, we will permit you to introduce a document so show just how the Penguins live in the Anarctic Zone. So, therefore, we will rule in effect on the materiality, because you say it is material, and, in regard to the second feature, we would never penalize an attorney because he overlooked doing something which in the interest of his client he could have done. Now if you didn't get the document when it was here, that is no reason why you should not have it now, so the Tribunal will direct the Defense Information Center to obtain that document, if it is obtainable so that you may use it in the defense of your client.

Anything further?

THE PRESIDENT: The Tribunal will now be in recess until tomorrow morning at 9:30 O'clock.

THE MARHSAL: The Tribunal is now in recess until 0930 hours, 7 January 1948.

(The Tribunal adjourned until 0930 hours, 7 January 1948) A. Musmanno, Presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: The defendant Graf will be taken to the witness stand.

DR. DURCHHOLZ: Durchholz for Schulz. Schulz before the defendant Graf enters the witness stand. I need the exhibits for my trial brief which I shall submit shortly to the Tribunal.

THE PRESIDENT: Yes. Very well, you may proceed.

DR. DURCHHOLZ: So that the names and numbers in my documents appear correctly in the transcript, I would like to give the interpreters and the court reporters a written copy of my document list here. to the Tribunal when I submitted Document Books I and II on the 17th of November, 1947. This index is on Page 2448 in the English transcript and in the German transcript on Page 2500. In Document Book III too, in the English as well as in the German text, the page numbers are the same.

I now submit and offer: which refer to the activity of the defendant Schulz as a police official and police officer in Bremen during the years 1923 to 1939.

THE PRESIDENT: Would you kindly suspend just for a moment until we receive our copies of the document? We didn't know, of course, that you were going to read this.

MR. HORLICK-HOCHWALD: If the Tribunal please, I have one English copy. If the Tribunal would like to have this copy I will hand it to the Tribunal.

THE PRESIDENT: We are getting copies for the entire Tribunal. ready to present because we are now approaching the termination of the trial and we don't want any congestion in the translation and reproduction divisions. We would also suggest -- all the defense counsel are not here but you might pass the word around -- that there is no reason why they couldn't begin on the preparation of their final arguments.

DR. DURCHHOLZ: May I repeat briefly that as far as Point II of my index is concerned, I will submit documents which refer to the activity of the defendant Schulz as a police official and police officer in Bremen during the years 1923 to 1939. On page 190 as Exhibit No. 63, Document No. 65. This is the affidavit of the Police Inspector, Otto Kay. On Page 192 as Exhibit No. 64 the Document No. 66.

THE PRESIDENT: With which book are you now dealing?

DR. DURCHHOLZ: Document Book III, your Honor, Document books 1 and 2 have already been submitted by me.

THE PRESIDENT: Suppose you start at the beginning again.

DR. DURCHHOLZ: As the next document in Book III on page 190 I submit Document No. 65 as Exhibit No. 63. This is the affidavit of the Police Inspector, Otto Kay.

On Page 192 I submit Document No. 66 as Exhibit No. 64. This is the affidavit of the Secretary for Criminal Affairs, Richard Ruehe. On Page 194 I submit Document No. 67 as Exhibit No. 65. This is the affidavit of the Superior Secretary for Criminal Affairs, Wilhelm Parchmann. On Page 214 I submit Document No. 74 as Exhibit No. 66. This is the affidavit of the Higher Secretary for Criminal Affairs, Emil Kroeger. On Page 222 I submit Document No. 77 as Exhibit No. 67.

This is the affidavit of the Police Inspector, Fritz Schmidt. On page 225 I submit Document No. 78 as Exhibit No. 68. This is the affidavit of the Senior Secretary, Senior Police Secretary, Willy Aland. On Page 229 as Exhibit No. 69 I submit Document No. 79. This is the affidavit of the Police Inspector Heinrich Herrlein. All these witnesses were formerly subordinates or collaborators of the defendant

Schulz in Bremen. All of them confirm, as can be gathered from the documents I submitted earlier, that the defendant Schulz never had any political attitudes but was always impartial in fulfilling his duties as a police official, that as far as questions of protective custody were concerned which he had to deal with, he always conducted himself humanely and that he took special care of people in protective custody and their families, further, that he never was anti-Semitic, rather that he always showed a tolerant attitude. the Document No. 86 as Exhibit No. 70. This is the affidavit of the present director of the city food office in Bremen, Heinrich Sebbes. This witness, who had been in protective custody in 1993 because of communist leanings and against whom very serious charges were raised for this same reason, confirmed that he had become acquainted with the defendant Schulz as a decent and just man who respected the limits of humanity. He also confirmed that Schulz in this, his humane attitude, spared many another person a sad fate and had managed to get many people out of concentration camps. of the defendant Schulz in Graz in the year 1938, I submit and offer on Page 188 Document 64 as Exhibit No. 71. This is the affidavit of the Police Counsellor Josef Frank from Millstadt on a lake in Austria. On Page 203 Document No. 71 as Exhibit No. 72. This is the affidavit of Dr. Paul Hillinger from St. Martin in Austria. On Page 239, Document No. 82 as Exhibit No. 73. This is the affidavit of Wilhelm Weinzierl from Graz in Austria.

These three witnesses were at the time collaborators of Schulz in Graz and have an exact insight into his activity there. They have known his extraordinary friendliness and his popularity, not only with all officials, employees and workers at an agency, but also among wide circles of the population. They confirm that he released on his own initiative the greatest part of those people who had been taken into protective custody by the Austrian National Socialists. No. 83 as Exhibit No. 74. This is the affidavit of Heertha Schmid from Grazzin Austria, the wife of the university professor, Dr. Schmid, who was also in protective custody. She confirms that Schulz freed her husband from this custody. She also confirmed that as long as Schulz was in Graz she had a feeling of security against renewed attacks of the Gestapo. The affiant added a newspaper excerpt from the Graz paper, "Tagespost" of the 2nd of July, 1938, and this excerpt shows among other things that on the occasion of Schulz's farewell from Graz he made a speech in front of representatives of the state and the party in public in which he asks his collaborators to let their heart speak too in their work, whether they are friendly to the cause or not. This was not sentimentality. If one does not feel that there is heart in your work then it would be better not to do that work at all. The service had to be conducted strictly but gallantly.

As the next document I offer on page 246 the Document No. 84 as Exhibit No. 75. This is the affidavit of University Professor Dr. Heinrich Schmid from Graz, the husband of the affiant mentioned above. He states especially that Schulz saved him from a concentration camp after having released him from his protective custody, the concentration camp into which he would no doubt have been sent because of his opinion in favor of the independence of Austria. Above all he states that the conduct of Schulz and his just and humane attitude differed most pleasantly from all the other officers of the Gestapo with whom Schmid, at that time when he was arrested, had come into contact.

On Page 249 Document No. 85 as Exhibit No. 76. This is the affidavit of the pastor, Dr. Kohlbach, from Graz in Austria, who had gotten into protective custody as a well-known Austrian writer and doubtless would have been consigned for years in concentration camps just like many other editors of Catholic publications of Austria if Schulz had not released him together with other clergymen.

On Page 254, Document No. 87 as Exhibit No. 77. This is the affidavit of the then Austrian Minister for Economic Planning and Security of Property, Dr. Peter Krauland from Vienna whom Schulz had likewise liberated from protective custody in Graz. He too confirms that the conduct of Schulz was so pleasantly different from most of the other functionaries that he had written him a letter of gratitude.

itself with the activity of the Defendant Schulz in Reichenberg in the then Sudetenland in 1939, I submit and offer on Page 232 as Exhibit No. 78 Document No. 80. This is the affidavit of the engineer and former criminal counsellor, Hans Hasse, from Hamburg, This witness confirms all statements which Schulz made in the witness stand about his activity in Reichenberg, especially that in the Sudetenland there never was or there was no Jewish question, furthermore, that he appointed two police officials only for the purpose of protecting the property left behind by the fleeing Jews from unauthorized confiscation. Schulz thus had ruthlessly proceeded against the embezzlement of these valuables and he had these perpetrators arrested. Furthermore, that Schulz had understood how to influence other agencies from refraining from thoughtless actions and that he also had won his point with the Gauleiter when he considered measures that had been ordered as incorrect. Through his conduct in the Sudetangau he had no enemies and in public opinion he was respected and popular. of the Defendant Schulz as the director of Group IB in the RSHA and as the commander of the Leader School of the Security Police in BerlinCharlottenburg from 1941 to 1942, as well as the director of Group IA and of the Office I in the RSHA from 1942 to 1944, I submit and offer the following: On Page 200, Document No. 70 as Exhibit No. 79. This is the affidavit of Rudolf Hotzel who confirmed that in the Leader School of the Security Police in Berlin, whose commander Schulz was, the training in the professional subjects took precedent. He further confirms the statements of the Defendant Schulz about his talks in front of the students in the school in which he concerns himself with the concepts; domineering man and super-man. harshness and brutality, goodness and softness; leader and subordinate, He also confirms that Schulz had an unpolitical temperament and was not an eager National Socialist and did not influence the students in this respect.

and VII of the RSHA did not exist, and that an influence on the work of these offices did not exist either, nor was it possible. affidavit of Dr. Hans O'Gilvie, who was a teacher at the police officers' school. He says, among other things, that only good and well-trained teachers were allowed to teach there, that a military training was not given at the school at all, and that schulz relegated the ideological training consciously to a very small and unimportant part of the cause in favor of the professional training. Furthermore, Schulz had granted the teachers academic freedom. Furthermore, he states, as far as the activity of Schulz as chief of Office I in the RSHA is concerned, and as chief of the Personnel Department, he described Schulz as a man with great feeling for justice as opposed to the Chief of Office IV. Mueller, who had a strong dictator's will. the affidavit of the criminal councellor, Dr. Walter

Zirpins, who also describes the purely factual activity of Schulz. affidavit of Dr. Paul Dittel, who discusses the exemplary leadership of the Personnel Department in the RSHA by Schulz. defendant, Schulz, in Salzburg, I finally offer and submit on page 198, document Number 69, the Exhibit Number 83. This is the affidavit of the former Brigadier General and Chief of Staff in the Service Commando XVIII in Salzburg, Anton Glasl. He confirms, among other things, that despite existing Fuehrer Orders Schulz had prevented the defense of the city of Salzburg and the blowing up of the bridges. of the architect, Richard Rothboeck, of Salzburg. affidavit of the physician, Dr. Robert Leitinger, from Salzburg.

the affidavit of the secretary, Hildegard Seiringer, from Mondsee in Upoer Austria. has said about the activity in Salzburg, especially about the humane treatment and his care for the prisoners of war and foreign workers and his fair and humane attitude towards the enemy pilots that had been shot down. as Exhibit Number 87. This is the affidavit of Dr. Anton Neumayr from Vienna, who confirms that Schulz had liberated his father, the present mayor of Salzburg, from the Concentration Camp Dachau, and had secured him a position in the Austrian civil service. which I received voluntarily. I could submit a great many more of such affidavits, but I think that the statements already submitted will give the Tribunal a sufficient picture about the personality and the activity of the defendant, Schulz. I may only remark that I shall submit one affidavit of the Jewish Nobel Prize winner, Dr. Noewe, who now lives in New York. The defendant, Schulz, also helped this man, as he did many other people in the year 1936. I only received this affidavit a few days ago from New York, So that for the lack of translation I could not yet submit this affidavit today. This is the end.

THE PRESIDENT: When do you think you may have that ready, Dr. Durchholz?

DR. DURCHHOLZ: I shall have it written now and give it to the Translation Section, and it depends on them. As soon as I get it back, I shall submit it.

THE PRESIDENT: Very well. The defendant, Graf, Will be taken to the witness stand.

DR. BELZER: Belzer for Graf. Your Honor, I ask that before the examination of the defendant, Graf, begins that you permit me to call a witness who is present here and who has to return to Munich tomorrow. The witness' name is Schaller.

MR. HOCHWALD: The prosecution has no objection to calling the witness now.

THE PRESIDENT: The witness, Schaller, will be called in the court room and taken to the witness stand.

HEINZ SCHALLER, a witness, took the stand and testified as follows:

JUDGE DIXON: Witness, raise your right hand and repeat the oath after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

JUDGE DIXON: You may be seated.

DR. BELZER: Witness, may I first ask you to speak slowly and distinctly into the microphone, not to answer my questions immediately, but to pause a few minutes until the interpreter has translated the question. BY DR. BELZER:

Q When and where were you born?

Q Do you know the defendant, Mathias Graf, and since when?

Q Did you meet the defendant, Graf, in Russia?

Q In what capacity were you in Russia?

Q In what town did you meet the defendant, Graf?

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Q How long were you in Stalino?

Q Will you please give the exact dates? of June 1942.

Q With which unit was the defendant, Graf, at that time? merely an assumption on your part?

Q What uniform did Graf wear?

Q Any special insignia?

Q What rank did the defendant, Graf, have at that time? position and activity of the defendant, Graf?

Q How often did you visit Graf at the office?

Q Did you make an appointment with Graf before these visits? in the office of Graf to the effect that Graf was busy with police jobs?

Q Did you accompany Graf on official trips?

A No. It is possible that one trip which we made together was considered an official trip.

Q Where did this trip take you?

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factory near Stalino, on a nice spring day.

Q And you inspected this plant together with Herr Graf? Stalino Herr Graf told you anything about the fact that he had been sick previously?

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of disease? ailment and for this reason he was in a hospital back home for a longer period of time.

Q Did Graf at this time still complain about a bad state of health? Did you, during your stay in Stalino, observe anything about mass executions.of Jews especially? transporting of Russian workers to Germany?

A No. As far as I remember, even Russians would come up to you and ask you whether one could not help them to get them to Germany. They all wanted to go to Germany.

DR. BELZER: I thank you. I have no further questions to this witness.

PRESIDENT: Does any of the defense counsel desire to cross examine the witness? Mr. Hochwald, you may proceed. BY MR. HOCHWALD:

Q Herr Schaller, were you a member of the Nazi Party?

Q Never? of this party?

Q How long?

Q What wasyour position in the Hitler Jugend? the Tribunal that you never witnessed any mass execution of Jews. How many Jews were in Stalino in the time when you were there, according to your estimate?

A I don't know. I noticed no distinction between Jews and other Russians. out whether the Jews in Stalino were killed or not, is that correct -is that what I am taking from your testimony?

A Yes. I did not have this possibility. killed in Stalino or not?

MR. HOCHWALD: No further questions, Your Honor.

PRESIDENT: Very well. Have you finished with this witness, please?

DR. BELZER: I don't have any further questions of this witness either.

PRESIDENT: The witness may be excused. The defendant, Graf, Will now be taken to the witness stand. I said that the third time; I hope it takes this time. as follows:

JUDGE DIXON: Defendant, raise your right hand and repeat the oath after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The defendant repeated the oath.)

JUDGE DIXON: You may be seated.

BY DR. HELZER:

Q When were you born and where?

Q What was the profession of your father?

Q Do you have any brothers or sisters? parents' home?

A My father was a liberal during the Weimar Republic. He was a democrat.

Q What was the religious attitude in the parents' house?

Q Will you briefly comment about your childhood and adolescence?

A My mother was Italian by birth. For this reason, I learned both German and Italian when I was young.As a boy already I visited Italy, and these first impressions made me yearn for the faraway countries, which never left me again. My liking for foreign languages is to be ascribed to these circumstances.

Q What schooling did you have? school in Kempten. the beginning of the war. Kempten, my home town. During my two years' apprenticeship I learned English and Portuguese, too. I wanted to go to South America. In 1922 In Went to Brazil.

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First of all, I was English correspondent with an import and export firm. Later I was an English-German correspondent, in an export firm -- coffee export firm. By teaching in the evening at a technical high school I managed to get a good knowledge about machine construction. I learned various types of machine construction. I worked in a factory in Dolz. Here I met manufacturers and tradesmen and farmers and got to know the people and the country I made good money for my age and wanted to remain in Brazil. Unfortunately, I received bad reports from home. The firm of my parents had practically lost all its money because of the inflation. My brothers and sisters were still too yound and, therefore, I had to return to help out. In 1925 I entered my parents' plant and used all my strength in order to get the concern going again. After three or four years I succeeded in doing so. In 1932 I wanted to go back to Brazil. Unfortunately, this was not possible because of the restriction on foreign currency. the boycott against German merchandise began in South America, and this was responsible for the fact that German businessmen and technicians were rejected. I had to defer my plans. In 1934 I became independent as a business agent; by hard work and by saving, I managed to found my own business. I sold tractors and refrigadaires. My yearly income amounted to 12,000 marks. Because of my activity in the firm Humbo Dolz in Cologne, I was hoping that I could realize my old plan of emigrating. In June 1939 I was in cologne for this purpose. On the first of January 1940 I was to start a position in Valparaiso, Chile and then the war interfered.

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Q. Thank You. I think that suffices. Witness, how and when did you come to the SS?

A. I was an enthusiastic motorist when in 1993 in Kempten the SS motorized unit was formed and that is how I came to this SS unit with some friends.

Q. When did you join the party, the Nazi Party?

A. On the 1st of May 1993.

Q. Did you at any time hold a position in the Party?

A. Never in the party, as a political leader, that is.

Q. From 1993 on did you belong to the SS uninterruptedly?

A. No, in 1936 I left the SS.

Q. Why?

A. I had personal differences with my superior.

Q. Did you rejoin the SS before September 1939?

A. No.

Q. What effect did the outbreak of the war in September 1939 have on you? I mean by this, were you drafted into the army or were you able to continue with your profession?

A. On the 25th of August 1939, I was drafted for a short time to the Army Service Command as a driver. I was Assistant Driver with the motor pool. On the 8th of September 1939, I was released again without having received any military training. I continued with my profession.

Q. How did you get to the SD?

A. In the beginning of January 1940, I received the message that I was drafted into the SD by the Reichsfuehrer SS, as an auxiliary worker for the time of the war, as war emergency worker and that I was to report to the office in Augsburg. There I was told that I was on a war emergency Status and that I had been deferred for service in the SD under the Reichsfuehrer SS, and that my salary would be regulated according to the directives which existed.

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Q. Did you try to raise any objections against this drafting?

A. Yes, but it was useless. I was told that I would have to comply with a war emergency call.

Q. Why didn't you want to go to the SD?

A. I only had disadvantages to expect. I was born in the year 1903 and I had not served previously and I did not yet have to expect to be drafted in 1940. My business was intact. I had good allocation of merchandise and as an independent businessman I earned much more than what I was getting in the SD.

Q. Did you, after you were drafted into the SD, get any police or military training?

A. No, in no form. This is not necessary for SD activity.

Q. What was your position and activity in the SD?

A. I was auxiliary employee at the office in Kempten and later I was to take over the SD sector.

Q. Through your war emergency call and your transfer to the SD, were you a memeber of the SD or were you merely a temporary employee of it, for the duration of the war?

A. I was not a member of the SD, but merely a temporary employee for the duration of the war.

Q. Can you tell the Tribunal on what this opinion of yours is based?

A. After I was drafted and assigned to the SD the Labor Office in Kempten gave me a service record for my activity in the SD. In this service record from the time of my drafting on, that is the first of March, 1940, the term, "employee of an agency" was listed as my job and furthermore the MOS 25, that is, type of work, that too was listed down in Group B. I was again and again requested to join the organization and I wanted to remain as such.

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I had no to position. I was merely an auxiliary employee for the duration of the war.

Q. Did you try, after your objections against this draft were of no avail, to get out of the SD after you had gotten into it?

A. Yes, I tried to get to the General Kommando as an interpreter for English.

Q. Were you successful?

A. No. when the Inspector of the Security Police found out about it, I was transferred to Dueben a few days later.

DR. BELZER: Your Honor, in this connection I would like to submit this document. Document No. 9 in the Document Book Graf on page 23 of the Document Book. This is the correspondence which the Defendant Graf has had at that time with the army District Command. The first letter on page 23 is a letter from the Army Service Command in Kempten of the 25th of February, 1941.

MR. HORLICK-HOCHWALD: If the Tribunal please, I have just examined the exhibit. This exhibit offered by Dr. Belzer is a typewritten copy. It is the understanding of the prosecution that either the original or a photostatic copy must be submitted as an exhibit. The prosecution is in no position to find out from a typewritten copy anything about the genuiness of the document.

THE PRESIDENT: Firstly, Dr. Belzer, what do you mean to show -

DR. BELZER: May I say something to this? I was told in the Defense Center that everything that can be copied by typewriter is not photostated.

Therefore, I was not in a position to submit a photostat here, but I was told in Room 545 that I would have to copy these documents and that I would have to certify them, and then I could submit them.

THE PRESIDENT: Where is the original? Where is the original?

DR. BELZER: The original is in my possession.

THE PRESIDENT: Well, if you have the original and you will proffer that for inspection, certainly the copy will be accepted.

DR. BELZER: Yes, your Honor. Unfortunately, I do not have it with me, but I will bring it this afternoon.

THE PRESIDENT: Certainly.

DR. BELZER: I repeat then. this is, first of all, a message from the 25th of February 1941, to the Defendant Graf, according to which he is asked to present his birth and christening certificate of him and his family. On the 16th of September 1941, the Draft Board in Kempten told the Defendant Graf that he had to get his release from his office immediately and that he had to confirm his release to the Draft Board. This is a letter of the 16th of April 1941. The next letter is the application of the Defendant Graf of the 18th of April 1941, for the release from the SD. Here I only have the copy and not the original and this circumstance gives me cause to submit the document so that I can ask an additional question of the witness.

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THE PRESIDENT: Yes, by all means. BY DR. BELZER:

Q. Witness, to whom was this application of 18 April 1941 addressed?

A. To the Inspector of Security Police and SD in Munich , who was competent for me personally.

MR. HOCHAWALD: If Your Honor please, I do understand that these three documents mentioned by Mr. Belzer are not as yet evidence. There will be an offer in evidence as soon as Dr. Belzer gets the original, I presume, and the Prosecution reserves the right to object to these three documents as soon as they are formally offerred.

THE PRESIDENT: You will have all three then this afternoon, Doctor?

DR. BELZER: I hope so, but at the latest tomorrow morning.

THE PRESIDENT: Very well.

DR. BELZER: Because I don't know whether I have them at home.

THE PRESIDENT: Well, tomorrow morning will be sufficiently early.

DR. BELZER: Thank you. BY DR. BELZER:

Q. Witness, I shall then come back to your previous statement that you were transferred to Deuben, when the Inspector heard of your attempts to get to the Army. I shall ask you now, did the Inspector of the Security Police and SD in Munich get any knowledge of this application of 18th of April?

A. Yes.

Q. Did you have a written reply to this application?

A. No, I got no reply, either written nor oral.

Q. In your opinion was the transfer to Dueben the answer to your application for release?

A. Absolutely.

THE PRESIDENT: When was the transfer to Deuben?

THE WITNESS: On 18 May 1941.

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Q. Just one month after you had made the request?

A. Yes, Your Honor. BY DR. BELZER:

Q. Did you try to have the transfer order to Deuben revoked?

A. Yes.

Q. Why and with what success?

A. My wife was sick at the time in Stuttgart Hospital, and had telephoned as soon as I heard about my transfer to have this revoked, because at that point it was not clear whether my wife would survive.

Q. Where you successful?

A. No.

Q. Could you have refused to comply with this order?

A. No, that would have been a military disobedience.

Q. Did you have to expect punishment?

A. Yes, according to the regulations I was under the jurisdiction of the SS and Police as an auxilliary was worker.

Q. What were you told about the purpose of your transfer to Deuben?

A. It was a brief military training.

Q. How long were you in Deuben?

A. Until the 22 June 1941, until we left for Russia.

Q. Didn't you get to Schmiedeberg then?

A. Yes, pardon me. For our concept , Schmiedeberg, Dueden and Pretsch are in a locality close by and they were all the same for us.

Q. What did you do in Dueben or Schmiedeberg?

A. In Dueben we merely waited, and a SD officer who was unknown to me asked me a few questions, and the end of May 1941 I was transferred to Schmiedeberg.

Q. And what happened in Schmiedeberg?

A. In Schmiedeberg we were organized into Einsatzcommandos; were lined up in various formation, State Police, Criminal Police and SD, according to a definite plan the men were assigned from these units and were formed into commandos.

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I was sent to Einsatzcommando VI together with a SS sergeant, UIrich Krimminger. We were to handle Department III, Which is SD reports. Krimminger as the analyst and I as his aid.

Q. Do I understand you correctly when I assume that only you and Krimminger as SD men were assigned to this EK-VI?

A. Yes.

Q. How large was the commando, otherwise?

A. I can not tell you exactly but it might have been between onehundred sixty and one-hundred eight men.

Q. Did you receive any police or military training in Dueben or Schmiedeberg?

A. No police training but hardly any military training. In the short time of my stay there we had marching exercises, and we were trained very generally in the use of arms.

Q. Did you receive a uniform in Dueben?

A. Yes, field gray with the SD insignia.

THE PRESIDENT: witness, had you had any military training prior to this?

THE WITNESS: No, your Honor.

Q. What training did you receive in the use of arms here at this school, or rather at this assembly point?

A. First of all we got -- theoretical training. We had to take a part carbines and put them together again by ourselves, and later -we had no weapons before, they only arrived a few days before we left for Russia , we did a few exercises on the range, firing exercises, Most of the men the non-coms of the commandos had had a military training. They were men from the Waffen-SS, from the regular police, and officials of the criminal police, and the Gestapo, who were mostly soldiers who had served for twelve years. There were only a very few men there who had not served previously.

Q. Altogether how long did your military training at this point continue?

A. All told, four weeks.

THE PRESIDENT: Very well. BY DR. BELZER:

Q. What was your rank in the SS?

A. Unterscharfuehrer, which is equivalent to a sergeant in the German Army.

Q. What were you armed with when you left for Russia?

A. Pistol and a carbine

Q. What were you told about the type of your future assignment?

A. Major Hennicke, who was Chief III of Einsatzgruppe C -- B, rather, at the time it was still called "B" , told Krimminger and myself , or rather informed Krimminger and myself about the mission of the experts of Department III. Where and when the assignments were to take place we were not told.

Q. Did you receive either in Dueben or Schmiedeberg any knowledge in any form whatever about the Fuehrer Order, or about the killing of Jews, Communist functionaries, etc.?

A. No.

Q. When did you hear that you were to be assigned in Russia?

A. On the day we left, after the outbreak of the war with Russia.

THE PRESIDENT: Dr. Belzer, do you think this might be a good point at which to suspend for recess.

DR. BELZER: Yes, I consider it a suitable point.

THE PRESIDENT: Very well, the Tribunal will be in recess for fifteen minutes.

(Recess)

THE MARSHAL: The Tribunal is again in session.

DR. STUEBINGER for Braune: Your Honor, I would like the defendant Braune to be excused from the session this afternoon as I have to discuss with him various matters concerning his document book.

THE PRESIDENT: The defendant Braune will be excused from attendance in Court this afternoon.

BY DR. BELZER for the defendant Mathias Graf: examination of the witness. you were to be assigned to the Russian campaign you have not answered yet. When did you go to the East? it was the 23rd. I do not remember exactly.

Q What was the means of transport of the Kommando? the Soviet Union?

Q What was the first garrison of EK-6 in Russian territory?

Q How long did you stay in Lemberg? 6 July 1941.

Q What did you do in Lemberg? Einsatzkommando C-6 arrived in Lemberg. The NKWD building which was assigned to us for billets, a former Polish bank, was at that time inhabited by other units. I believe EK-4-B, EK-5, and EK-C, as well as the Security Police and Crakau, his name was Schoengat, were housed in the center of the town in the school. The vehicles stood on a open square and had to be guarded.

For sentry duty those were appointed who had no special assignment yet. On the first day of our stay I had sentry duty. On the second day I had 24 hour standby. I was to be relieved by SS-Unterscharfuehrer Krimminger. As he did not arrive I took his guard duty as well in order to protect him from punishment. Later on I found out that he was unconscious, apparently poisoned, and he had been delivered to the Hospital. Krimminger came from my home town and at the same time was my superior officer. I asked the Kommando chief SSStandartenfuehrer Dr. Kroeger to care for Krimminger. I got this order and I went to see Krimminger in the field hospital. I turned over to the medical officer his personal belongings, that is, Krimminger's and I tried, as the staff him whether I could take he, Krimminger, would die very soon, I asked him whether I could take his last greetings to his wife. Unfortunately he never woke up again from him unconsciousness. especially of carrying out execution of Jews? active in the actual main building but what they were doing I never learned. EM-6?

A EK-6 moved to the East. As it was raining and the roads were in very poor condition -- they had been partly destroyed -- EK-6 moved very very slowly. We spent the nights in various villages on the roadside and eventually we moved into a brick yard in time which was two kilometers from Proskurov.

Q How long did you stay in Proskurov?

Q What did you do in Proskurov?

Q What was the next garrison?

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long did you remain there? remained there until toward the end of July. period?

A No. A few days after we marched into Winiza I was detailed to the liaison officer of AOK-17. That was Untersturmfuehrer Heyer. post with Heyer? Golshevists had not destroyed and with a number of auxiliary workers, they were Russians and mechanics of the Kommando, we catalogized these films and chose the cultural films and also the propaganda films. We packed them into boxes and sent them to the Einsatzgruppe. August when I finally arrived back at my Kommando. Untersturmfuehrer Heyer? That was the Ministry of Economics Staff which had been installed. These military economic leaders had the task to issue several economic decrees. All roads met there. As this economic staff was advancing together with the 17th Army therefore a contact with the SD work was of major importance. In Winiza, however, there was no such German office. untersturmfuehrer Heyer, or did these bits of information also have bits of police matter or were they just merely general information concerning all domestic spheres?

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concerning all domestic spheres. you arrived back with your Einsatz-Kommando 6. Where did you meet your Kommando?

Q How long had the Kommando been there?

A I don't know how long it had been there when I arrived, but as far as I remember it remained there until the beginning of October 1941 in Kriwoij-Rog.

Q And you stayed all this time, did you? your activities in Kriwoij-Rog but be as brief as you can.

A May I just point out on the map just where Kriwoij-Rog is?

(The witness pointed out the place on the map)

THE PRESIDENT: How do you spell that town?

MR. HOCKWALD: May I spell it, your Honor? K-r-i-w-o-i-j-r-o-g, Kriwoij-Rog.

THE PRESIDENT: Thank you very much. important ones of eastern Europe. As far as I can remember 60-70% of the Russian-European supplies are being won there. While until then EK-6 had been mainly active in agricultural territories, with Agricultural installations, the Kommando came for t he first time into an industrial territory. It is obvious that, of course, through this the SD reports became of major importance to this. First of all we had to make an inventory as far as this was concerned -- how many ore mines were there before the war, what is the stateof affairs after the occupation, what industries are there, and how far they are intact. All documents concerning these things I obtained and I submitted them to the Kommando chief.

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Apart from this the general reporting was started and things had to be found out such as exactly what difficulties the German Military Government wasconfronted with as far as current and lack of water supplies, assignment of indigenous personnel, it had to be esta blished whether any experts or skilled workers or technicians were available. The atmosphere of Kriwoij-Rog was something newto us as well because it was first a purely industrial town with the major part of the population being workers. Therefore, the atmosphere, the mode of the working people had to be reported about, the attitude toward the German Wehrmacht, their preparedness to take up work again, the effect of the German rules and regulations on the general atmosphere, food, health, culture, and the effect on the government. Shortly, we had more and more work with each day, therefore one man was not able to cope with it. Therefore, I suggested to the Kommando chief that as a substitute for Unterscharfuehrer Krimminger, who had died, Unterscharfuehrer Dr. Haste should be appointed as my collaborator. This was agreed to by the Kommando chief. executions on the part of EK-6?

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well as the other criminal assistants and secretaries and inspectors who were all contained in the executive department, carried out arrests and interrogations. Who actually carried out executions, I do not know but I only knew that such executions were actually carried out. Jews and Gypsies without being interrogated first?

Q Did not on one occasion Himmler come to Kriwoij-Rog to Kommando 6?

A Yes, I think it was at the end of September 1941. As it was known that Himmler was very interested in German settlements, the Kommando had to prepare for his visit. That is, such settlements had to be prepared for ceremonial welcome. It was my task to deal with these preparations. which you are sitting now it was said that Himmler on the occasions of a visit to Einsatzgruppe D spoke to the officers and Men of Einsatzgruppe D and made known the Fuehrer order to them. I now ask you, did Himmler do the same with EK-6 in Kriwoij-Rog?

Q Did Himmler give a speech in front of a collection of men?

THE PRESIDENT: Did you see Himmler yourself?

THE PRESIDENT: What was the occasion? dinner, to Himmler.

THE PRESIDENT: Did you give him a good dinner?

THE PRESIDENT: If he were alive would you serve him the same dinner now?

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BY DR. BELZER:

Q Where did the Kommando go after they had been in Kriwoij-Rog?

A From Kriwoij-Rog we went to Dnepro petrowsk. May I spell it D-n-e-p-r-o-p-e-t-r-o-w-s-k. Dnepropetrowsk.

Q Did you come in one unit to Dnepropetrowsk?

Q What was the unit with which you arrived there?

Q How long did the main Kommando remain in Dnepropetrowsk? in a few short sentence your activity in Dnepropetrowsk.

THE PRESIDENT: Why don't you say in that place.

A Thank you your Honor, I shall follow this ruling. - - - were similar to those in Kriwoij-Rog. The only difference was there were a number of bigger towns with specific industrial institutions. As far as I remember before the War there were in the vicinity of this town two million people living there. Again I had to ask for expert workers, skilled workers, technicians, engineers. And, through these I had to affirm and establish whether these industrial workers were still there and still available. I had to report about the re-opening of plans and industrial enterprises and about the difficulties connected with the feeding and paying of the working population, as well as other problems, such as electric current, water supply, raw materials, question of transportation, colloboration of the over-lapping German agencies, as far instance, the labor exchange, the mining offices East, railroad administration. I had to take up contact with Economic Agencies and Economic Kommandos who had already founded their central offices for the whole Kommando in Dnepropetrowsk. Apart from that, this place was a university town and the local population tried very hard to re-open the university, especially the medical faculty.

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The professors had to be taken care of and the university teachers. Apart from that the effect of the independent administration, that is, the Ukranian mayor's office and the other Ukranian agencies had to be reported about. Furthermore the black market which was extremely active in this place had to be reported about. Then there was an order in existence to compile and collect all important material and yo sent it on to Kiew. Current reports went to the Kommando leader first who then passed them on to the competent agency of the AOK or to the Einsatzgruppe itself. Is your activity as a reporter to be understood with that effect that you were the information piece for the organization?

A No. SD information work and executive activity exclude each other. An SD official, for instance, cannot arrive at a place in the morning in order to carry out an arrest and then in the afternoon report about the same enterprise, about the mode and atmosphere in the working stage. that is quite impossible - dealing with the case in the executive is the work of the Police officials and for this a counter-intelligence service is necessary who has to report about actual cases of persons and who actually deals with these cases. The establishing that the working population takes and the attitude that they work whether willingly or unwillingly, or for this or that reason do not want to work, the executive authority cannot do very much with a report of this nature or, at least, they can't do anything at all with it because there is no basic case from which they can start. But such reports are very significant for all competent authorities in German Administration because if they are issued with expert knowledge they can, or may, be the basis for the elimination of unnecessary severity. Also they can be the basis of further directives and regulations.

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and the administrative. what do you exactly mean by executive authorities? up to the carrying out of sentences, in other words, the assignments of Departments 4 and 5 of the domestic agencies. so-called authority in the EK-6, or rather, who was in charge of it? or state police, Stapo. authorities concerning executions, arrests, or even only interrogations in Dnepropetrowsk?

A No. I had so much to do with my work with the Einsatzgruppe C for the department chief of Department 3, that he had no reason whatsoever to assign me to deal with any tasks of the executive authorities. cutions were carried out by the Einsatzgruppe or by other authorities?

A No. In several discussions with the local population I learned that in October numerous Jews had been shot. This I reported, in accordance with my duty, to my kommando chief, the SS Standartenfuehrer Dr. Kroeger, who said that this had been a special police action ordered by the Higher SS and Police Leader Jeckeln, and no official or no man of his kommando had participated in this operation. He did not approve of such measures.

Q were you enlightened about a special figure of Jews? nor by kommando leaders and officers. members of the local population about this fact. Were you then under the impression that knowledge about such facts was a general thing among the population or that it was only certain circles who knew about it?

Ukrainian authorities. One could almost say official agencies because they had been approved of by the German administration, and it is obvious that the chief of a food supply office or the population office, or even the mayor of such a large city has, of course, some extensive knowledge, more extensive knowledge at least than any, citizen. I never heard such remarks expressed by members of the population. you see any Jews there?

Q At any time? were a usual picture in the city. Of any measures of confining these Jews to ghettos in Denpropetnowsk I never heard about. any Jews?

A No. I heard merely and only afterwards of this operation which I have mentioned on the part of the Higher SS and Police Leader Jeckeln.

Q Where did the EK 6 move from Dnepropetrowsk?

A The Kommando advanced via Saporosje to Stalino. In the activity of Saporosje, the kommando, during the night of the 12th to the 13th of November, 1941, was surprised by a fall in temperature, by a catastrophic fall in temperature. Within a few hours the temperature had fallen from plus 10 degrees Centigrade to minus 20 degrees Centigrade, and this had as a consequence that most of our vehicles froze, and the kommando chief passed on the order that the individual vehicles should move on their own independently, or at least try to move, to Stalino. The EK remained in Stalino for eight months.

Q How was the kommando billeted in Stalino? This large building made it possible for us to subdivide the kommando according to departments exactly as it was in the Reich. I myself and my collaborators moved into our own office which was a special office for Department 3, as all other departments of the kommando had other offices allocated to them.

Offices and spheres of activities of the individual departments were divided and separated. General matters were discussed by the kommando chief either in the officers: mess or in the offices of the chief, always with the man competent, to deal with the individual sphere of activity.

Q Did you have access to the officers? mess in Stalino, that is, were you able to take part in the discussions between the chief and the departmental chiefs, or could you only discuss matters with the kommando chief in his office?

AAs an NCO I had no access to the officers? mess. Discussions which I had with my kommando chief took place in his office. Even during the periodical visits of the chief in the Department 3, the discussions pertaining to my sphere of activity took place in my own office.

Q Could you never enter the cassino at all? there as an NCO. of the chief of Office 3? and asked questions concerning SD reporting which I had made and which were to go to the Einsatzgruppe, which had gone in fact to the Einsatzgruppe. Furthermore, he visited other authorities and offices, together with me and my collaborators, and he visited important plants and enterprises.

Q Did you only have to deal with SD reports exclusively in Stalino?

Q Did you make any observations in Stalino concerning executions? that arrests, interrogations had been carried out, and that in individual cases shootings had been carried out.

Stalino, were you them also in Stalino all the time? occasions. On the 20th of December, 1941, I got home leave for 21 days. For the journey there and back I needed about 18 days. On the 28th of January, 1942, I arrived in Stalino. Therefore, I was not with the kommando for five and a half weeks. That is 38 days. The second interrogations happened at the end of March, 1942. I fell ill of dysentery and I was delivered into hospital. During the second half of April, 1942, I was released from field hospital, and first of all I remained in medical treatment. Around about the 9th or 10th of May I got recreation leave of 21 days from which I returned at about the middle of July, 1942, to Stalino. This absence from my kommando therefore lasted for about three months.

Q When did the kommando leave Stalino? towards the east.

Q. did you move with the kommando?

A. No, by order of Einsatgruppe C for "Charles" I remained until further order at Stalino. I saw from letters from my wife that the Inspector of the Security Police and SD in Munich wanted me to be retransferred to my home country and had taken steps to do that and that I could reckon with return very soon. No marching order arrived from Kiev for me so that for almost the whole September I had to remain at Stalino.

Q. What was your activity in Stalino after the kommando had left, Kommando EK 6?

A. That is the new commander of the Security Police and SD in Stalino, for him I had to build up the SD reporting.

Q. What was your subordination?

A. As far as personnel is concerned, according to my knowledge I was a member of the EK 6. I was merely transferred, I was detailed for work in the SD.

Q. Did you ever return at all to the EK 6?

A. No.

Q. Therefore, your activity with EK 6 was practically over at the end of July or beginning of August, 1942, when the kommando left Stalino, is that right?

A. Yes.

Q. In Document Book III-C of the prosecution, on Page 123 of the German, Page 74 of the English document book, that is Document NO-4855, Exhibit 146, that is your affidavit of the 28th July, 1947. In this affidavit it says under Paragraph 3, I quote: "In Einsatzkommando 6 I was until the 15th of October, 1942." That is the end of my quotation. How can you bring this in agreement with the statement you just made that your activity with Einsatzkommando 6 was over at the end of July or beginning of August, 1942?

A. As I have said, I did not move from Stalino with EK 6, but I was not active in the kommando since August, 1942, but as far as personnel is concerned, I was a member officially of Einsatzkommando 6. With this limitation the affidavit of the 28th of July 1947 is correct, or this statement.

Q. Were you an officer while you were a member of EK 6?

A. No.

THE PRESIDENT: Do we understand, witness, that you were physically with the kommando until the early part of September, 1942, and then were carried on the rolls of the kommando without active service until October 15, 1942?

THE WITNESS: Yes, your Honor.

THE PRESIDENT: Proceed.

A. (continuing) At the beginning of the assignment in June, 1941 I was Unterscharfuchrer, which is corporal. After approximately a year I became a Scharfuehrer, which is sergeant, and a few months later I became SS-Oberscharfuehrer, which, perhaps, is first sergeant. I was promoted to this rank. These are ranks of the NCO rank and correspond to NCO ranks in the American Army. During my assignment in the East I was at no time an officer.

Q. (By Dr. Belzer) Did you, during any period whatsoever, during your activity in EK 6 or with the kommando of this Security Police and SD, hold any executive powers there?

A. No. I was never in charge of a kommando or a subkommando. Never was I entrusted with the leadership task.

THE PRESIDENT: Did an SS N.C.O. carry the same insignia of rank as a Wehrmacht N.C.O.?

THE WITNESS: No, your Honor, the insignia were slightly different. An N.C.O., exactly as in the Army, has a silver line at his collar, and he had one star on a black ground, one pip, but an N.C.O. of the Wehrmacht and Armed Forces did not have that. He had this line without a star or pip. An N.C.O. of the SS had the same shoulder pieces, the same as in the Wehrmacht with a white silver line.

THE PRESIDENT: How about the insignia of the Officers' ranks of the SS, were they similar in appearance to the insignia of the Army officers holding the same rank?

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THE WITNESS: Similar, yes. The shoulder pieces were the same, but the insignia on the ground, on the collar, were different from the Wehrmacht ones. The different ranks of the SS could be recognized by the collar of the officer. An Untersturmfuehrer, for instance, had three stars on his black ground; an Obersturnfuehrer had three stars and a silver line, a silver bar; a Hauptsturmfuchrer had three stars and two silver bars and on the shoulder piece he had two buttons, which was exactly as in the Wehrmacht; a Sturmbannfuehrer had four stars, etc.

THE PRESIDENT: Very well, Thank you.

Q. (By Dr. Belzer) Did you ever have anything to do with a police interrogation?

A. No, I neither actually supervised an interrogation nor was I ever present in one.

Q. Did you at any period whatsoever have anything to do with executions carried out by the EK 6?

A. No. I have never been present at any execution, and I could therefore not say who ordered it or carried out such executions.

Q. Were you occupied at any time whatsoever with sifting and sorting out of prisoners in camps?

A. No, and I don't know anything of it.

Q. Did you, at any period whatsoever of your activity in the East, have anything to do with recruiting or with forced deportation of Russian workers to Germany?

A. Recruiting and deportation? No. I merely reported about transports of workers.

DR. BELZER: Your Honor, I think this would be the moment to have our recess before I begin with a new chapter.

DR. HOFFMANN: Defense Counsel Hoffmann for the Defendant Nosske. Your Honor, I should like the Defendant Nosske to be excused this afternoon and tomorrow - this afternoon and tomorrow afternoon in ordered in order for me to prepare his document book with him.

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THE PRESIDENT: The Defendant Nosske will be excused from attendance in court this afternoon and tomorrow, Thursday afternoon.

The Tribunal will be in recess until 1:45.

( A recess was taken until 1345 hours.)

(The hearing reconvened at 1400 hours, 7 January 1948.)

THE MARSHAL: The Tribunal is again in session

THE PRESIDENT: Proceed, Dr. Belzer.

DIRECT EXAMINATION (Continued) BY DR. BELZER:

Q. Witness, theprosecution , in support of their charges against you, as far as your activity in Einsatzkommando 6 is concerned, has referred to three documents, Document No. 3240 in Document Book II C, page 65 of the German text, page 60 of the English text, Exhibit 80. Secondly, it has had reference to Document No. 3405 in Book IIA, page 61 of the German, page 67 of the English, Exhibit Number 42; and finally, to Document No. 3340, in Document Book I, on page 119 of the German text and page 86 of the English text. This is Exhibit Number 22. When the prosecution submitted these documents, it had the following to say, and I quote, "All these documents refer to the executions carried out by Einsatzkommando 6 during the time that Graf was a member of it." Can you say anything about these documents?

A. I can, first of all, only repeat that I did know of the carrying out of executions, but that I had no knowledge of details about how they were carried out. Whether, when and where the executions mentioned in these and other documents were carried out, I do not know. The reports were not made out by me, and I did not see them until I got here to Nurnberg. I was in no way concerned with matters dealing with the executive measures.

Q. Witness, you have read through all the prosecution documents?

A. Yes.

Q. And in other situation reports, too, I have read of executions which were carried out by the Einsatzkommando 6. Does your statement which you just made also refer to those situation reports?

A. Yes, likewise.

Q. Will you now briefly tell the Tribunal how you were finally relieved from the Eastern assignment?

A. The office of the commander of the security police and SD in Stalino was set up in August 1942, as far as I remember. As I said before, I had been transferred to this agency in order to build up the Department III, which is the information service. In the beginning the commander had very few officers. New subcommandos had to be set up. Because of this great lack of officers, noncommissioned officers were given the leadership of the subcommandos. Around the end of September 1942 I was to take over a subcommando, too. I rejected this, saying that I had only been ordered to set up Department III, that I had been furnished by the group for this purpose and I was onlya man who dealt with SD reports. Because of refusal to obey an order, a trasncript was immediately taken down and I was arrested. After eight days I was released from this custody; in the middle of October 1942 I was ordered to repor t to Kiev where a disciplinary proceeding was to be started against me. After long delay

General Thomas decided that no disciplinary proceeding was to be started against me, and I was returned to Germany.

Q. Thus from Kiev you neither went to Stalino nor to Rostov to return to the Einsatzkommando 6 ?

A. No. After this stay in Kiev I rturned directly to Germany.

Q. While travelling from Stalino to Kiev did you stop in Rostov?

A. Yes, my orders read Stalino, Rostov, Kiev. I was to report to my unit, Einsatzkommando 6, in Rostov before leaving.

Q. Did you speak to the commando leader in Rostov?

A. No. I was told that the commanding officer was in Kiev.

Q. Who was the commanding officer of Einsatzkommando 6 at that time?

A. The co-defendant Biberstein.

Q. Were you not in Rostov on another occasion?

A. No. I was in Rostov only once.

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Q. Did you have any special mission to carry out in Rostov?

A. No. During my trip to Rostov I had already been relieved because I disobeyed the order. I undertook the trip to Rostov in the accompaniment of the two responsible Ukrainian physicians of the civilian hospital in Stalino, who, because of a threatening epidemic of diphtheria, were in need of diphtheria serum. I accompanied these two physicians to the director of the bacteriological institute in Rostov where the physicians , on the basis of a requisition slip , which I obtained for them, were able to obtain a sufficient amount of vaccine.

Q. Did you voluntarily offer your aid to these two Ukrainian physicians, or did you have an order to do so?

A. I offered this assistance voluntarily. Of course, I had to notify my commanding officer to the effect that I wanted to help them.

Q. That was then your last activity in the assignment in the East in Russia?

A. Yes.

Q. I cannot leave the unsavory field of Russia without asking you a specific question. You need not answer this question.

THE PRESIDENT: What kind of a question is it, if it isn't to be answered.

DR. BELZER: I think that after I have asked the question, the Tribunal will understand why I made this preliminary remark.

THE PRESIDENT: Very well, we are all in expectation. BY DR. BELZER:

Q. Witness, do you know anything about a nickname which you had in the Einsatzkommando?

A. Yes.

Q. What was this nickname, and how do you explain that you were given this nickname?

A. I was named "the paper soldier", perhaps because I had more to do with paper and files than with military matters.

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DR. BELZER: Thank you. BY DR. BELZER:

Q. Then we shall return back home. When did you get back home?

A. About the middle of November 1942.

Q. What was your activity back home?

A. After a short furlough I took over the leadership of the SD office in Kempten as a commissar. On the 15th of November 1944 I was given the commissar leadership of the SD office in Kaufbeuren. In Kempten, as well as in Kaufbeuren, I was occupied purely with SD intelligence service.

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Q. Did you during your activity in Kempten and in Kaufbeuren send information to the police, and especially to the Gestapo?

A. No. No such information was asked of me.

Q. This morning you explained that before your assignment in Russia you had refused repeated requests to join the SD. I now ask you, did you become a member of the SD after you returned from Russia?

A. No, I remained a temporary employee for the duration of the war. On the 20th of April, 1944, I was promoted to SS Untersturmfuehrer, 2nd Lt., but this did not change anything in my position or in my pay in the SD.

Q. In order to clarify this, your promotion to SS Untersturmfuehrer, that is, to an officer's rank, took place, according to what you say, approximately one and one-half years after you returned from Russia, is that right?

A. Yes.

Q. Witness, you told us you had left the SS in the year 1936. How is it possible that, as you have just stated now, you were promoted to an SS Untersturmfuehrer in April 1944?

A. After I was put on a war emergency status and drafted as a temporary employee for the duration of the war, I made an application in June 1940 to be taken back into the SS. The SS Personnel Office then asked me to present the papers of my family and my marriage certificate. I did so and I wrote out my biography, which is contained in Book III-D of the Prosecution, Exhibit 147, Document No-4801, page 125 of the English text.

Q. Witness, may I interrupt, please? You said, Document Book III-D?

A. Pardon me, it is Book III-C, English page 125.

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THE PRESIDENT: What page number?

THE WITNESS: Document Book III-C, English page 125.

DR. BELZER: English page 75, Exhibit 147.

THE WITNESS: The biography is on page 4 of the original. made an application for re-entry. Here I made a mistake at the time. It should say in June 1940.

Q. Does this document contain any other mistakes which you would like to correct?

THE PRESIDENT: Which page was that, please?

DR. BELZER: Page 4 of the original, page 78.

MR. HORLICK-HOCHWALD: Page 78 of the Document Book, your Honor, on the bottom of the page.

DR. BELZER: It is the last sentence.

A. In the biography itself it should read in the next to the last sentence, paragraph 2, "In 1925 I returned to Germany" and in paragraph 4 it should say, "on the 1st of May, 1933", not, "1935", when I went to the Party. That is on page 3 of the original, your Honor. That is page 3 of there original. It should say on page 3 of the original, "married since the 16th of September, 1936". On page 1 of the original it says "SS" and below it "16 September 1939". The comparison with other documents shows that this is a mistake in copying from the original. This date has nothing to do with the SS. It evidently is supposed to be the date of my marriage, which is incorrect in addition. I was married on the 16th of September 1936.

Q. What made you apply for re-entry into the SS?

A. The then personnel manager with the SD office in Augsburg, Hauptsturmfuehrer Junginger, persuaded me to make this application. After a long delay I finally agreed to do so, after this man, Junginger, had expressly assured me that I would not become a member of the SD in this way.

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Q. Why didn't you want to become a member of the SD under any circumstances?

A. Because I Wanted to take advantage of the first opportunity to get away from the SD and in order to take up once more my profession as a businessman.

Q. And I shall now come to another document which the prosecution has submitted. This is also in Document Book III-C on page 123 of the German text, page 74 of the English text. This is Document NO-4855, Exhibit 146. This is your affidavit of 28 July 1947. In this affidavit it says under paragraph

2, and I quote, "In 1933 I joined the General SS, my membership number being 47,431". Did you, before signing this affidavit, demand that it be added here that you left the SS in 1936?

A. Yes.

Q. Why was this change not made?

A. When this affidavit was made out, you, my defense Attorney, were present. The interrogator, Mr. Wartenberg, and you told me that I could make this addition in my direct examination. That is why I was satisfied with that explanation and did not made the addition in the affidavit.

Q. You have repeatedly stated today that you left the SS in 1936. In the document which was discussed previously, NO-4801, Book III-C, on page 75 of the English, page 125 of the German, the date you mentioned as to when you left the SS, is listed as March 1937. How do you explain this discrepancy between these two statements?

A. I left in the summer of 1936. I received the confirmation of my leaving the SS in March 1937.

Q. After you once again had become a member of the SS in the year 1940, I now ask you, did you perform any service with the General SS after you re-entered the SS in 1940?

A. No, in no manner.

DR.BELZER: I thank you. I have no further questions, and I have completed the direct examination of the witness.

THE PRESIDENT: What about your document book, Dr. Belzer?

DR. BELZER: After my other witness has been heard, I Shall submit them. They are all ready and I am prepared to submit the documents, perhaps after the cross-examination.

THE PRESIDENT: Do you have another witness?

DR. BELZER: Yes, I have a woman witness, Mrs. Reimers. She is present, and the Tribunal approved of a third witness, but he is not able to come and I shall do without the witness Hasslinger who had been approved by the Tribunal.

THE PRESIDENT: If you can obtain an affidavit from that missing witness, of course, it will be acceptable.

DR. BELZER: That cannot be done unfortunately, your Honor. According to the information I received, this witness is in a French prisoner-of-war camp, but I was not able to find him.

THE PRESIDENT: Very well. Does any defense counsel desire to cross-examine the witness: BY DR. FICHT (ATTORNEY FOR THE DEFENDANT BIBERSTEIN):

Q. Witness, you said that you were transferred from Einsatzkommando VI in August 1942 and you were then active in a different agency in Stalino, while Einsatzkommando VI itself proceeded on to Rostov and you merely went to Rostov to report there before leaving the unit and that you had not met the then commanding officer of the kommando, is that correct?

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A. Yes.

Q. I want to ask you this: As for the Defendant Biberstein, who was then the commanding officer of the unit, did you ever get to know him personally before you came to Nurnberg?

A. No.

Q. Who was your commanding officer when you were detailed from the unit in Stalino and when the unit left for Rostov?

A. That was Sturmbannfuehrer Mohr.

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officer of the Einsatzkommando VI and when Biberstein became the commanding officer, do you have any knowledge about that? my comrade Dr. Hasslinger, that the kommando leader, Mohr, that is my kommando leader of Einsatzkommando VI, had been very briefly with the kommando of the Security Police and SD Stalino and that he had been relieved and that he was on his way home via Kiev. I cannot give you the exact date, unfortunately, because I did not speak to Mohr himself. Biberstein started as commanding officer?

DR. FIGHT: Thank you. I have no further questions.

THE PRESIDENT: Judge Dixon has posed a question. Do you know why Mohr was relieved before Biberstein arrived?

THE WITNESS: No, Your Honor. I had no knowledge about that.

THE PRESIDENT: I see. Very well. Mr. Hochwald, are you ready to proceed? BY MR. HORLICK-HOCHWALD: rejoined the SS in 1940, it was before you were assigned to an Einsatzgruppe, is that correct? deferred to the SD?

Q Can you tell the Tribunal in what capacity?

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call, they merely told me that I was to be employed as an auxiliary war employee.

Q Did you receive a rank when you entered the SD?

A No, Mr. Prosecutor, neither a rank nor a uniform.

Q When did you receive the uniform? been between January and March 1941.

Q It was when you were still in Germany?

Q From whom did you receive the draft? Who informed you? Which was the office which informed you about your draft? labor office in Augsburg? to join the SD?

A No, Mr. Prosecutor, that is not the way it was. Somewhat later, via the labor kommando in Kempten, as far as I can recall it today, I received an official message that I was on an emergency war status and in this notification the inspector of the Security Police and the SD was mentioned as the agency which had put me on this war emergency call.

Q Did you try to evade this draft?

A Yes, Mr. Prosecutor, as I have already said this morning.

Q Did you make a written request to be released?

A No, not as far as I know. When I reported in Augsburg, I immediately made my objections orally and the personnel officer, I think it was a Major May, at the time, said that "there is no use for you to object to this. We realize that it is difficult for you, but there is nothing that can be done about it."

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had you not? collusion between the SD and the Wehrmacht? Will you explain how the thing was handled that you just wont over from the Wehrmacht to the SD?

A This morning, Mr. Prosecutor, I said that before the beginning of the war, that is, on the 25th of August, I was drafted by the Service Command of the Army as an assistant driver. After the mobilization had been completed, if one may call it that, the motor pool was handed over to the Government Councillor there. Thus a military installation became a civilian one and that was probably the reason why a few days later, probably no more than two weeks I was released from there. I had not served previously. I was Age Group 1903 and on the basis of my medical examination which took place at that time I think I heard -- of course, we were not informed about it but I think I heard -- that I was not fit for military service at that time. called up?

A Mr. Prosecutor, I was a businessman. With great pains I had built up my own business without any help from anyone else and at that time I earned an average of 1,000 Marks a month. Because of my connections with manufacturers, merchandise continued to be delivered to me, so that at that time it wasn't a matter of having to try to make a sale. One had, first of all, to get hold of the merchandise.

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question of your salary which made you reluctant to join the SD?

A Mr. Prosecutor, not quite. It was not a financial matter, but it was a matter of my existence, because I thought if I get out of my business, I will lose the contact with my customers, and furthermore it is better for a businessman if he stays away from politics.

Q Did you know what the SD was when you joined it? not say so. I merely knew it was an information service. That is all I know. the Nazi Party, did you not?

A Mr. Prosecutor, the Intelligence Department is not the right word. At this place here, right here, my codefendant Ohlendorf characterized the SD more aptly by calling it a type of Gallup Poll. I do not mean that this is the same thing new. Of course, it was an organization of the Nazi Party in addition, including everything that that term means, but it was not an Intelligence Office.

THE PRESIDENT: I did not quite catch the reference to the Gallup Poll. I know you meant it as an illustration, but I didn't get the significance of what you said.

MR. HORLICK-HOCHWALD: If I understood the witness, he wanted to say that it was something like the Gallup Institute to find out about public opinion, obviously,

THE PRESIDENT: I see, thank you. Institute, the SD?

A Well, I couldn't determine that at that time.

Q You did not know that at that time? When you come to pretseh and Schmiedeberg, you did not hear about the Hitler order, is that correct?

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A No, Mr. Prosecutor.

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Q When did you hear about this order for the first time? the IMT trial, I heard through the then counsel for the SD, Dr. Gawlik, about the Prosecution's material against the SD, and this was the first opportunity when I became acquainted with the Fuehrer Order. Gypsies and other people, insane people and other people not liked by the Nazi Regime were deliberately killed by the Einsatzgruppen?

A I didn't hear this at any time in this form in which you put it. correct? you were in Russia you never learned that there was a general policy, or a general program to exterminate those people?

A Mr. Prosecutor, I neither heard this in Russia, nor did I hear that later, from the documents which have been submitted against Einsatz Kommando-VI. This morning I said that once in Dnepropetrowsk I heard from the population that the SS and police Leader - - - rather, I heard this from my commanding officer, but I heard from the population that Jews were shot.

Q Did you hear why the Jews were shot? officer told me this was a special operation by the Police.

Q I do not think that you answered my question. I didn't ask you by whom. I am asking you whether you heard why these Jews were shot. Were they shot for the simple reason that they were Jews?

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A I don't know, Mr. Prosecutor, and did'nt know it at the time either. I merely knew that Jews were being shot. that they were shot for the reason that they were Jews?

A Not in my opinion, Mr. Prosecutor, because I was an Intelligence-man, and the only duty which I had as an SDExpert was to report any influence the German occupation Forces had on the morale of the population to my superior officer, but it was not my duty to ask my superior, "Colonel, why were these Jews shot?" did you hear about mass executions? Or about executions at all? Dnepropetrowsk.

Q And about other executions? Kriwoirog and Stalino. were a member had as its main task to kill people, is that correct?

A No. Mr. Prosecutor, in my position, in my field of work I could not establish this. I never made the observation that, for example, in a new garrison Jews were put into a Ghetto, or that any other measures were taken against the Jews. the Einsatzkommando VI was about one-hundred sixty to onehundred eighty men strong, is that right?

AAt the beginning, yes, Mr. Prosecutor.

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What did they tell you about their activities?

A Mr. Prosecutor, I didn't Speak with my fellow soldiers about this subject. I didn't go to my fellow worker in Department-IV and ask, "What are you doing?" What I heard was the conversations which took place between comrades, but gneerally my activity allowed me little contact with the other man. you were gating with them in the same mess hall, and that you word sleeping in the same quarters, that you shered your offtime with them. You must have known something about their activity?

A Right, Mr. Prosecutor, I confirmed that in my direct examination. executed by the unit of which you were a member?

A Certainly, I did ask them. In the course of the conversation this was quite natural, and down to the last day of my membership in Einsatzkommando VI I was of the opinion that every single case was investigated, and that only guilty people would be convicted and shot.

Q Why did you have this impression? Did you see or were you present at some of these investigations?

A No, Mr. Prosecutor, this opinion stems from the conversations which I had with my comrades. It was discussed that Partisans, Saboteurs, Looters, and various other clements who had violated the regulations of the Army would be investigated and convicted. were not able to state from the documents here that there was a general program to kill the Jews. Would you please turn to Document Book II- A, and the quotation is from page 57, Your Honor.

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It is Document No. 3445, Prosecution's Exhibit No. 42, the page is 67 I am quoting from, from the top of the document. Here it says very clearly that between the 24th and the 30th of November 274 people were killed, and not less than 226 of those 274 were killed, as the document says, for the simple reason that they were Jews?

A Right, Mr. Prosecutor.

Q Do you know about these executions? about these document that I knew nothing about it.

Q How do you explain that you don't know anything about it? The number in your Einsatzkommando was one-hundred sixty to one-hundred eighty men, and most of the men must have killed in those six days two people each, and you have been living among them without knowing a thing, is that what you are going to tell the Tribunal? date and the number are listed there, but not the place.

A Of course, Mr. Prosecutor, the Einsatzkommando VI, always was divided into three or four sub-commandos. I only had to concern myself with information work, and, therefore, I could not know what the commando and its sub-commandos were doing.

THE PRESIDENT: Mr. Hochwald, I don't think you got an answer on your question. I am sorry. I don't think you got an answer to the question which you put. You said that the witness had indicated that even the reports didn't show that Einsatzkommando VI had ever shot any Jews. Then you called his attention to this report. Well, that observation of yours was not commented on, and then you went to something else.

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THE WITNESS: Your Honor, may I say something about this. I think there is a mistake here. I didn't understand then Prosecutor to say that I didn't know anything about Jewish executions, but Mr. Hochwald spoke of mass executions.

THE PRESIDENT: Well, did you say, witness, that you didn't know about executions of Jews, nor do the reports show that Einsatzkommando VI executed Jews as Jews, did you make that statement here?

THE WITNESS: Pardon me, Your Honor, that is not the way I wanted to express myself.

THE PRESIDENT: Just what did you say about the reports?

THE WITNESS: The debate started with the question of the Prosecutor, as to whether my knowledge is the only one about mass executions in Dneproptrowsk.

MR. HOCHWALD: I do think you are mistaken,witness. I asked you, when did you learn for the first time that the general policy existed to kill the Jews, and, if I am not mistaken, you answered that "I didn't learn that during all the time I was in Russia, and I didn't learn it later, and even the documents, sofar as Einsatzcommando VI is concerned, do not show that such general policy existed." So I am asking now - - -

THE PRESIDENT: Well, first, let's find out if hc said that. My recollection is he said it in answer to his own counsel's question.

MR. HOCHWALD: He also said it in answer to my question, Your Honor.

THE PRESIDENT: Yes, let's find out if he confirmed that; that the reports do not show that Einsatzcommando VI killed Jews because they were Jews.

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THE WITNESS: I didn't mean to say that, Your Honor. I think the whole thing can be traced to the mistake that I assume Dr. Hochwald was speaking of mass executions.

MR. HOCHWALD: All right, do you consider the shooting of 226 Jews not a mass execution?

THE WITNESS: Right, right, Mr. Prosecutor.

THE PRESIDENT: Well, that right, right does not make it it very clear. Your question is put in the negative, and you got two affirmatives, so now we don't know just what really it is. execution?

THE PRESIDENT: All right, suppose we take up from this point, Mr. Hochwald, after recess.

MR. HOCHWALD: Yes, Your Honor.

THE PRESIDENT: The Tribunal will now be in recess for fifteen minutes.

THE MARSHAL: The Tribunal will be in recess for fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session.

Dr. VOEKEL for the defendant Six: Your Honor, I have to make the request for the defendant Six to be excused tomorrow from the session because I would like to discuss his defense with him.

THE PRESIDENT: The defendant Six will be excused from attendance in Court all day tomorrow.

DR. VOELKEL: Thank you.

PRESIDENT: You are welcome. BY DR. HOCHWALD:

Q. May it please the Tribunal, before the recess Herr Graf spoke about the document in Document Book II-A on page 67, your Honors, No-3405. It is Prosecution Exhibit 42. If you look farther into this document you will see that up to 12 November 1941 Einsatzkommando-6 shot 800 insane people. What do you know about the shooting of these 800 people?

A. I do not know anything about this shooting.

Q. Nothing at all. Herr Graf, what was your rank at that time?

A. I was an NCO.

Q. You were an NCO in this outfit. You had quite an important position. You are an intelligent person, you are not blind, you are not deaf, people are killed in your presence by the thousands. Nevertheless, you don't know a thing. Is that what you want the Tribunal to believe?

A. Mr. Prosecutor, I really do not know anything about the shooting of these persons.

Q. About how many executions did you know in all the time you were in Russia?

A. As I said this morning I learned from my comrades that people were arrested, interrogated, and shot, but I never learned any figure.

Q. You have never asked "How many did you shoot?" "How many execution do you carry out regularly, or usually?" You have never asked that?

A. That was not my task.

Q. I know that it was not your task but it doesn't stand to reason, Herr Graf.

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An execution is not an everyday thing in a soldier's life. It's only in an executioner's life an everyday thing. You were surrounded by these executions. You heard by the population, from the population, about these executions, and you are still maintaining here as a witness that you did not know the number, you did not know the reason, and you did not know anything about these executions. That is what you are going to tell the Tribunal here?

A. Mr. Prosecutor, the state of affairs was this. First, executions were not publicly carried out. Secondly, those persons who had orders to deal with these matters resented to discuss these matters.

And, I had no reason whatsoever to ask my comrades about this and I never did so, because after all, as you quite rightly put it, an execution is not a very agreeable matter.

Q. In other words, now you want to tell us that you did not ask as you did not want to know - you just did not want to know what was going on.

A. That is not what I wanted to say. But as an NCO in the position I held I merely dealt with my own SD tasks and I did not bother about the tasks of Department 4.

Q. But you yourself have volunteered this statement, that from the part of the population you had been informed about these executions which were carried out in Dnjepropetrowsk.

A. Yes.

Q. You know that by EK-6 people were executed. It's impossible, Herr Graf, that you knew that but refused to know on the other hand how many and why the people were executed. I do know that you did not know possible, the number 226 Jews which appears in the document, but you must have known by then that approximately 200 Jews were shot by your Kommando. You must have known that approximately 800 insane were shot by your Kommando. This is not 2, this is not 1, these certainly are mass executions.

with my former way of putting it I did not express myself very well. What I really wanted to say was that it does not become evident from the documents when - or at least it does become evident when, but not where these executions took place. In this document, for instance, it only says that those eight hundred people were shot in the lunatic asylum Igrin, but the remaining 274 shootings, I do not know, whether those were carried out in Dnjepropetrowsk or Vasilkowska, or were they carried out by another subkommando of EK 4?

Q This perfecty correct. I do not want to say that I do know that these people were killed in Dnjepropetrowsk, but they were killed by your unit. This unit was a small unit, 160 to 180 men, as you said yourself. You have been living with these people for one and a half years. The record is full of documents which show that executions were carried out by Einsatzkommando 6, not only once, not only twice, but many times, and I ask you now, how often did you hear about executions carried out by the unit of which you were a member?

A To give you an exact figure, Mr. Prosecutor, is impossible for me. Out of my own free will, I told you this morning that I heard about shootings through comrades, but I have not heard exact figures or exact dates.

Q Can you estimate how often you heard about executions?

AAny figure that I might give you, Mr. Prosecutor, might be wrong. I said that on various occasions I heard several times about it, but I don't know how many times.

Q All right. Possibly I can ask you something else. Did you hear once a week usually when you were in Russia, or more often then once?

A May I say something else to this, Dr. Hochwald? The Einsatzkommando itself was only in the rarest cases - I do not know of any such case -in the same buildings as the prisoners were housed.

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For instance, in Stalino the distance from the prison to the kommando office was at least two kilometers. Therefore, for somebody who actually has this office with the kommando it is not possible to find out when executions are to take place, and it was similar in Dnjepropetrowsk, the prisoners were in the building of the kommandantura, so were the interrogation rooms, so I could not find out about it. hausted and nervous?

A May I say something else to this, Mr. Prosecutor? The office routine, which employed at least thirty people of the armed SS and the Ukrainian auxiliary police, was carried on in such a way that I could not find out about such matters. They were partly in another building and I did not see them come or go. had been in Russia for three weeks, but you have been there for one and a half years. During this one and a half year Einsatzkommando 6 had as its main task the extermination of people; and you tell the Tribunal that you heard about its extermination program as late as in 1946. Do you stand to this testimony?

A Mr. Prosecutor, you say that Einsatzkommando C-6 had as its main task to exterminate people. I can assure you, Mr. Prosecutor, that during the whole time in which I was with Einsatzkommando 6 I was certainly not of the opinion and as far as I can reconstruct happenings I could not have had this opinion, that exterminatings were concerned. I knew that persons were arrested; that they were interrogated; and I knew that after a procedure they were shot, but I did not know anything of exterminations. Did you know it?

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or something like that?

A No, Mr. Prosecutor, I cannot even say anything about there kind of procedure because I don't know anything about it, but I cannot say of what opinion I was during the time I was with Einsatzkommando 6,and then I was of the opinion that they were normal martial law courts.

Q Very well. You told the Tribunal that you were informed by the population when you made your survey of the public opinion -

Q Didn't you learn then the reaction to these activities of Einsatzkommando 6? The population certainly told you a little more than the bare sentence. "By police measure the Jews were killed." Were you not interested to find out how the public opinion reacted to these killings?

A Mr. Prosecutor, it was very difficult for me personally as at that time I did not speak any Russian, and I did not understand it. I tried to learn from various inhabitants, of the town what their attitude was and with this, as I certified this morning, I also heard in Dnjepropetrowsk that the population as such knew about exterminations of Jews, but it wasn't so that everybody told me the same thing but only one or two people who held an official position. That is what I said this morning, for instance, officials of the municipalities, of the Registration Office council, the food supply offices,etc. The population as such spoke very little to me about these things.

Q Didn't those people who told you about these facts,didn't they tell you a little more than just saying Jews were killed, finished? to speak in sort of broken German with me and the drift of these conversations was, "Levy kaput; Robinson Kaput."

That is more or less how it happened. But they did not tell me that they disapproved of the shooting or that they had any emotion or any emotional attitude against the German population or the German occupation, or at least I certainly could not establish this fact at that time. I must say though, that they were somehow shocked, I must admit that. the task of the Einsatzkommando? You must have had some idea why this Einsatzkommando was formed. So you told me that you did not know that the main task of the Einsatzkommando was the extermination of people. Will you tell the Tribunal now what you did think was the main task of the Einsatzgruppe? here, the main task of Einsatzkommandos was the securing of the frontal area and the rear army territory, the security, in fact. out? occupied country, Einsatzkommandos as, for instance, in Norway, France, Czechoslovakia and Poland, and I also knew that the task of these Einsatzkommandos was the security and consisted of fighting active enemy forces by the corresponding officials and men in Department IV, or, at least, that they were arrested, and if they could be found they would be shot. That is what I knew at the time, and that is what I assumed.

Q. Did you think that this was a legitimate activity?

A. Mr. Prosecutor, I believed it at the time, for the more reason that I am neither a lawyer myself, nor that I had any knowledge of international law and jurisprudence, and I also did not know what shape the combat between Germany and Russia took.

Q. I do think it is not necessary to be a legal man to know that the population of an occupied country has the right, every citizen of the world has the right for their own lives.

Q Didn't you find out that these activities of Einsatzkommando 6 violated these rights?

A. Not at the time, Mr. Prosecutor.

Q. So, you were of the opinion that it was completely legitimate to kill these people?

A. That, of course, I can not say either, Mr. Prosecutor, but I am of the opinion that the only person who can judge whether it is legitimate or illegitimate is the kommando chief because he, after all, decides whether the man to be shot is really shot and because he is the only one who has knowledge of the activities of the kommando.

outfit, should you not have at least a general knowledge of what was going on in this outfit--did you never hear any of your comrades say that this mass shooting of Jews or for instance of insane has been ruining his nerves, ruining his health--did you never hear such a remark? especially members of the Waffen SS said that they would much rather be in the first trenches than here. I asked why, and then they said, "I will not tell you that," this was the gist. situation?

A Well, Mr. Prosecutor, I imagine that for the person who has to carry out an execution, it is very hard to carry it out.

Q I do not think that you answered my question. I asked you whether you did not guess from these remarks of your fellow soldiers why they did want to be, rather on the battle field than in this outfit.

INTERPRETER HILDESHEIMER: I would like to say something, Mr. Hochwald. You are listening to the witness without us, and the witness is listening to you without us. You must both wait for the interpretation.

THE PRESIDENT: The Tribunal confirms that.

MR. HOCHWALD: I am sorry, Your Honor. BY MR. HOCHWALD: battlefield than in Einsatzkommando 6, did you not? who has been convicted is a hard task for these people. by Einsatzkommando 6, did you not?

A I did not learn of any extensive figures, Mr. Prosecutor, as altogether I did not find any total figures.

page 86, Your Honors, No. 3340, Prosecution Exhibit 22, page 67 of the German, and I am quoting from page 87 in the middle of the page, second to the last paragraph. It is on page 118 in German--I am sorry. Here it is said that" Einsatzkommando 6 shot in the past weeks 173 political officials, 56 saboteurs and looters, and 149 Jews. And if you turn two paragraphs farther you can read that "During the period from January 10 to 6 February 1942 in Dnjepropetrowsk 17 criminals, 103 communists, 16 partisans, and about 350 Jews were shot. In addition 400 inmates of the Igrin mental hospital and 320 inmates of the Vasilkowska mental hospital were disposed of", which means, of course, that they were also killed. These are great numbers and certainly could not have completely escaped?

A May I say something to this document, Mr. Prosecutor; first of all, I do not know anything about the content matter and the origin of this document. Secondly, it becomes evident from his document, as you just said yourself, that Einsatzkommando 6 shot in the past weeks 173 political officials, 56 saboteurs and looters, and 149 Jews. The document itself was issued on the 25th of February 1942. I assume, therefore, that it is based on a report of the Einsatzkommando but it is a fact that the Einsatzkommando 6 had already been in Stalino for three months on 25 February, therefore, I do not quite understand how executions in Dnjepropetrowsk could have been carried out by Einsatzkommando 6. around?

A Quite right, Mr. Prosecutor, but Dnjepropetrowsk was after the 15th of November 1941 under German civil administration according to my knowledge, at least. Therefore, from this date on there was a civil administration in Dnjepropetrowsk, and there was a higher SS and police leader and a high commander of the security police and the SD. When these people were installed, I cannot know that, but I do know that the Einsatzkommando 6 on the 12th of November, as I said today, had evacuated Dnjepropetrowsk completely.

Q How do you reconcile then your statement with the document?

A Mr. Prosecutor, Dr. Hochwald, I only know, I can only tell you what I know. I cannot tell you anything about this do because I did not make it out, and I do not know who compiled it. earlier than in May 1942?

A That is possible. I cannot judge, but I do know that on the 12th of November the Einsatzkommando 6 had completely evacuated Dnjepropetrowsk. When the commander started his job, I do not know.

Q You made the reports for the commando leader, did you not? Gruppe? leader to the group. As a noncommissioned officer, I did not hold authority to send a NSD report to the group myself. numbers of executions were given?

A No, Mr. Prosecutor. to the Gruppe?

A No. That was the task of Department IV, Mr. Prosecutor. which turned over their report to the commander and who then passed on the individual reports to the group. commander? but what it said in these reports. I did not know.

Q But Mr. Graf, you have told the Tribunal just a while ago that you knew that people were executed on the basis of the investigations made by Department IV?

Q, Isn't it then true that you. must have also known that the Department IV, when making these reports reported about these activities, is that right?

Q So you know that Department IV was reporting the executions? just killed by Einsatzkommando 6 during the time you were there? Were you never curious to know?

A No, Mr. Prosecutor.

Q So you were not concerned with these questions, were you?

A Mr. Prosecutor, I am not - an never was a policeman, Matters connected with police actions were entirely foreign to me. Furthermore, as a noncommissioned officer, I had no authority or right to ask anybody about them.

Q All right, but you also had to evaluate documents, is that right?

A Yes, Mr. Prosecutor.

Q If you came into a NKVD building, and you found these documents, didn't you evaluate them; if you got a list of communists, did you not know that you had to hand this list to Department IV so that the people could be shot off--you must have known something about that?

A Yes, but may I tell you something? Did you ever see a list made out in Russian? whether that is a list of clothing, or whether it is names of towns, or what it is - I certainly didn't know it.

Q How could you then evaluate the document?

A I did not want to cay by that, Mr. Prosecutor, that I evaluated it, that it was my task to secure documents of any kind, and the interpreters who were also there in the commando then had to sift the documents and to pass them on to the competent departments.

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Q Was that done under your supervision?

A No, Mr. Prosecutor, that was under the order of the commander leader who knew Russian fluently and could read every document.

Q Then I am at a loss as to what you had been doing, you couldn't read it, you did not supervise it, so what actually did you do with these documents?

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A May I tell you, Mr. Prosecutor, which were the documents which were of special interest to me. They were not the K NKWD documents. That was the task of Department IV. What was of special interest to me were the documents of the special enterprises. When I arrived at an enterprise at which the offices had not been tidied yet and brought into order, there were a number of documents which c mid interest me for SD reports. With these reports I went to see the Chief and I asked him whether I could have an interpreter and then we sifted the necessary documents together.

Q All right. You came to a factory and there was a list of the higher officials. As the factories, all of them, were state owned in Soviet Russia, it can he presumed that the high officials or the higher employees in this factory were all Bolschevist. Did you hand over, when you got these lists, did you hand over these list to Department IV?

A I know what you mean to get at, Mr. Prosecutor, but I am afraid . I cannot he of any help to you here. I could give you a number of names, names of plant managers, names of former departmental chiefs during the Russian period in municipal and state enterprises who were not only not arrested, but who were re-instated in their former positions. I can say here under oath that the chief mayor of Stalino was registered member of the Communist Party, which meant quite a hit in Russia, because as you know, there were only one and a half to two millions. The task of an SD reporter was not to safeguard people. That was again the task of Department IV. My task was, on the contrary, to intervene that skilled labor and experts were employed, even if they were politically not quite sound.

Q And how was it with Jews? If your skilled specialists were Jews, what happened to them?

AAgain I cannot oblige you, Mr. Prosecutor. It is a fact that in the territory around Stalino 95% of the craftsmen, that is, also specialists, were Jews, and a mining enterprise one cannot reinstate without craftsmen. Therefore, Wehrmacht agencies, as well as industrial enterprise which interested themselves in this, had to go on employing a number of Jewish specialists.

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Q And how was it with the Jews in Gorlowka, for instance? VI, but I can't say anything about it, because I have never been a member of this subkommando in Gorlowka and because the subkommando, chief, who I think was an Obersturmfuehrer or an Untersturmfuehrer, never told me anything about shootings that had taken place there.

Q But you were in Stalino, were you not? this city? estimate and that would be arbitrary. person was Jewish or every fifteenth person was Jewish, or something like that.

A I can only tell you one thing, Mr. Prosecutor, that through the ceasing of the attack of the German troops in the Dnjepr area and through the extensive radio propoganda on the part of the Red Army which II listened to myself that there were hardly any Jews, or no big number of Jews in the Stalino area. Stalino itself was a town which had only come into existence during the last 20 years, a peasant village of about 1,500 inhabitants, and which grew within a very short time into 250,000 to 300,00 inhabitants. kommando VI?

Q How could that have escaped you?

A I said this morning, Mr. Prosecutor, it was my task to write the SD reports.

Q All right. That I know. However, you have been living in this outfit.

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If you would turn to Document Book II-C and I am quoting from page 60. This is Document 3240, Prosecution Exhibit No. 80, on page 65 of the German, under the heading, "page 5 of the original," Your Honors, there it is said in Stalino nearby 500 persons were executed, 369 of them Jews. Would you call that a mass execution, Herr Graf?

A. Yes. unit and you did not know about it?

A Dr. Hochwald, may I draw your attention to the fact that in this document it says, I quote, "As a result of the measures carried out by the Einsatzkommando 6, the localities Gorlowka and Makejewka are now free of Jewish components." These places were the garrisons of two subkommandos, Gorlowka and Makejewka.

A "A small number who remained in Stalino will be resettled as soon as weather conditions permit. Here a total of 493 persons were executed." It does not become evident from this document in what locality these people were shot. this paragraph? Isn't it absolutely clear that these 493 persons were killed in Stalino? Here a total of 493 persons were executed. means the sector of the Einsatzkommando EK 6.

A I said that I can't comment on this document as such.

Q So you say that all though you were 1 1/2 years with Einsatzkommando VI you did not know that the main task or that it was one of the tasks of this Einsatzkommando to kill people in great numbers?

A No, I did not know then, Mr. Prosecutor.

MR. HORLICK-HOCHWALD: I have no further questions. BY THE PRESIDENT:

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executions performed by Einsatzkommando VI. I don't know that I will take the trouble of reading each item, but, if you have gone through the document books, you will see Einsatzkommando VI repeated 2 - 3 - 4 - 5 6 - 7 - 8 - 9 - 10 - 11 - 12 - 13 times. Have you found those references in the document books? occurred, in view of their public nature. it would be rather difficult for you not to know about them, especially in view of the fact that you were charged with writing reports on the morale of the population. Isn't that logical? point, in my opinion, it can only be a matter of individual people and such an episode does not stay in one's memory so much as a larger matter. Of 20 or 30 persons in any case, I did not hear anything about it. of individuals taken to be killed through the streets would not make an impression upon those who saw them passing?

A Yes, Your Honor. That would have made a lasting impression on the population and would have had some response possibly, but I do not know anything about this incident and therefore I can say nothing about it.

THE PRESIDENT: Before we adjourn for the day. I would like to ask defense counsel to see to it that their document books are submitted and those who have document books ready for presentation should be in court tomorrow to present them, because after we will have completed the Graf case, we will not immediately take up the cases of Rasch and Strauch, because there is still some medical examination pending in those two cases. They will, however, come immediately after the documents have been presented.

The Tribunal will now be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 8 January 1948, at 0930 hours.)

8 January, 1948, 0930-1630. Justice Musmanno,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal. There will be order in this Court.

THE PRESIDENT: Dr. Belzer, do you have any more questions to put to the defendant?

DR. BELZER: I have just one more question int the redirect examination, Your Honor.

REDIRECT EXAMINATION (Continued) BY DR. BELZER: occasions yesterday that you as a non-commissioned officer in the Commando HK 6, that after all you held quite a high rank. Now, II would like you to tell the Tribunal on who had a lower rank then you in the HK 6. drove along during the advance in the East had a higher rank than you had?

A Yes. He was a Hauptscharfuehrer.

DR. BELZER: I have no further questions in that case. BY THE PRESIDENT: ments this Einsatzkommando 6 had participated end we had before us a list - yes, Judge Speight has handed me a list here indicating 13 different reports which tell of executions conducted by Einsatzkommando 6, and I think you have confirmed that there were 13 reports.

Q It seems rather extraordinary, don't you think, that with your being a member of this kommando that period of time that you wouldn't know of these executions or most of them.

the prosecution yesterday, when I was cross examined, I did know about executions, but what I did not know was an exact figure, and I didn't know what extensions these executions took because that was not my sphere of activity. would know the exact number of people that were executed, but you knew also, did you not, that Jews were being executed just because they were Jews?

A No, Your Honor. During the time of my assignment I did get told know that. person of your intelligence and of your more or less daily association with the men who were engaged in this week, in this activity, that some time or other you wouldn't learn that they were being called upon to shoot and liquidate people merely because they were of a certain race or nationality. make an explanation concerning this?

Q "At any time", is that the translation?

INTERPRENENT: "At everytime."

A who sometimes were 200 kilometers from thee H.Q. of the EK 6, and the existence of which I was never aware. Furthermore, EK 6 advancing passed through the most important industrial territory in Russia and worked there. We, for instance, if in one report, as week saw yesterday, there were locations mentioned, like Wokolowka and Makajewka, those were garrisons of sub-commandos of EK 6, if in fact these are mentioned, these are not small villages, but they are towns with more than 100,000 inhabitants.

I had nothing to do with these sub-commandos and , quite honestly, I did not interest myself in what these men did who mainly consisted of people from the Department IV and that, Your Honor, is the reason I do not have this knowledge which you expect me to have.

Q Just what were your duties with the commando? the reason that our commando was stationed in industrial territories only which work was confronted with more problems of every kind, more problems then there would have been in an agricultural neighbourhood, the tasks of Department III were many-fold. We had a lot of work. our work was very extensive, and I did not only have to visit the German informers during the day but also in the evenings in order to get my material.

A Now, we have one report here which says "On 13 October 1941 approximately 10,000 Jews shot in" and then we have the name which Mr. Hildesheimer and I have difficulty in pronouncing.

Q "that because of an extreme shortage of skilled laborers some Jews had to be kept alive temporarily, up to the date of the report a further 1,000 were shot. Steps are being taken for the extermination of 1,500 inmates of the provincial lunatic asylum." Now, this entire picture is one of such enormity that it seems a little difficulty to comprehend how you would not be aware of it. 10,000 Jews shot, then preparation being made for the liquidation of 1500 inmates of a lunatic asylum which in itself is a rather grotesque procedure at best. And then some were being reserved for your field reporting on industry. How could you now know about this?

as well as in the cross examination, and as far as I remember, even in my interrogation, I said that I learned of this special action, which it is in this case, it is in fact a special operation on the part of the SS - of the higher S and police leader - and that from the population.

A Your Honor, I wouldn't like to express it as precisely as that. I heard voices within the population, mainly officials of the new Ukrainian agencies, and in accordance with my duty, I reported about these to my commando chief because that was part of my tasks to reported about the atmosphere and the attitude of the population, and Dr. Kroeger, my commando chief told me then that that had been a special operation ordered by the higher SS and police leader and that no single men of his commando had participated in that, and so I had to satisfy myself. were shot, I did not know. of yours, going out of a day and finding himself engaged in shooting Jews, shooting human beings, and then coming back and not discussing it, especially when he has been engaged in the shooting of great numbers, that would be the most natural thing for this man to come back and make some remark about the terrible task to which he had been committed that day. It doesn't sound reasonable that he wouldn't talk about it. fact, especially in this case, that they were not comrades who carried out this police operation. According to my knowledge, the higher SS and police leader with his units at that time was in Dnjeprpropetrowsk and - I am sorry - in Kriwoij-Rog , that was mere than a hundred kilometers from Dnjeprpropetrowsk.

I don't know what kind of men they were. I don't know who they were. I never saw them, and, therefore, I never talked to them, and I certainly could not get any knowledge about this terrible happening. It isn't that these were men of our commando; if that had been the case, in that case I would admit that the men certainly would have been excited about it and would have reacted accordingly in some form or other.

Q Well, let's take up Operational Situation Report 94 dated 25 September '41. Were you a member of the commando in August of '41

A Yes, Your Honor. In August 1941 I was with that liaison officer AOK 17.

Q. Now, I will read under the heading, "Einsatzkommando 6". "During the period 1 to 13 September 1941 executed 60 person. Group staff was able to liquidate during the last days 4 political officials and informers of the NKWD, 6 associal elements and gypsies, and 55 Jews." Then comes this most appalling statement, "These units shot a total of 44,125 persons in August, mostly Jews." Now. does it accord with -

A. May I ask what document book that is, and what number of document that is because I do not have it in front of me

A. Yes. It is in II-C, page 62, and the number of the document is No. 3146. That is page 62 of the English, of course.

A. I have it, your Honor. In the same document it says under Roman figure I, "Locations: EK 6 is stationed in Kriwoij-Rog, where also the higher SS and police leader has moved." And then on page 15 of the original from which your Honor has been quoting, I assume -

Q. Yes, that is right.

A. When looking through this document, your Honor, I have tried very hard to understand it because, first of all, I cannot imagine that the EK 6 had a group staff, but here it says, "Functionaries of the group staff could execute 6 associal elements, 4 political officials and informers of the NKWD, during these last days and 56 Jews --." According to my personal opinion, when this document was made out in Kiev, a mistake must have been made and the man who made out this report probably mixed it all up because EK 6 did not have a group staff. I could not imagine who that could have been. "Group Staff" is only -- with the group -- and I am not aware of the fact that the group staff was KriwoijRog, I don't know.

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At any rate, I did not see it because, as I said, too, Your Honor, because I was not in Kriwoij-Rog in August; and then it says in the next sentence in German of the original, "actions of the higher SS and police leader, in August, altogether 44, 125 persons, mostly Jews, were executed." This sentence I am even more unable to understand. First of all, I do not think that at the time there were more than 30,000 people all in all, in Kriwoij-Rog. Secondly, it was shortly after advance; it was frontal territory; fighting still took place there, even in the vicinity of Kriwoij-Rog there was hardly anybody, or hardly anybody at all in September. I saw it myself, for instance, that we had moved to a village and there were about 15 or 20 people in that village. The others had escaped because they didn't want to be between the tow front lines and be exposed to bomb attacks, and it was only later that the population moved back. I can, therefore, not imagine where the higher SS and police leader should have taken these 44,000 people from. As far as I can see, this is quite impossible. Then I may draw the attention of your Honor to the fact that the sphere of activity of the Higher SS and pllice leader is mostly comprised of a whole territory or country like the Ukraine or at least a number of provinces within the Ukraine. These people could have been shot 2 or 3 or 4 hundred kilometers away from that place where I was at the time, and as far as I can see, your Honor, in the territory while in Kriwoij-Rog, which is iron ore territory, industrial territory, therefore, there were very few Jews. Therefore, I can only repeat that I cannot understand this document, and I do not know how it was compiled.

Q. In quoting from this document we did not intend to assert that it established beyond the peradventure of doubt that the Einsatzkommando 6 had killed 44,125 persons.

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A. I understood that, your Honor.

Q. But only to call to your attention that somewhere in your vicinity great numbers of Jews were being liquidated. Now, even if we say it was 200 kilometers away, that is not so distant that knowledge of so appalling an episode would not filter through, especially in a military time when there is constant movement and traffic, and soldiers talk. What we are calling to your attention is the difficulty of grasping how a person of your obvious intelligence could fail to know that there was a widespread operation which called for the extermination of a race. That is what we can't quite grasp.

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in the territory in the vicinity around Krinoij-Rog, in a radius, shall we say of 50 kilometres, there were very very few Jews. At that time I did not hoar of operations of the SS and Police Leaders neither from German soldiers nor by Ukrainian civilians, and if Your Honors would like to ask the witness, the female witness, who is to appear here, who also was in Krinoij-Rog, she will confirm this. At that time

I never heard about those terrible figures and I never heard that extensive numbers of Jews were shot in Krinoij-Rog. belonged engaged in executions of mental hospital inmates I can only say that I do not understand. The same report concerning the killing of insane people appears twice in these reports; the first time on the 12th of November, it goes to the account of Einsatzkommando 12, and a second time, I think it was in February, there were no agencies mentioned as being responsible; but in February EK 6 was not in Dnepropetrosk. It is Document 3340. I am just about to look. It is Document Book I, Exhibit 22, No-3340. Here it says on page 5 of the original, in the time between the 10th of January, until the 6th of February, 1942, in Dnepropetrosk, 17 habitual criminals, 103 Communist functionaries, 16 partisans, and approximately 350 Jews were shot after summary court. On page 6 of the original, apart from that, it says 400 inmates from mental asylums in Igrin and 320 of the mental asylum of Wasilowka were eliminated.

Q What do you intend to show by that. I did not quite understand. reported about on two different occasions. I did not hear about such shootings during my time and it is quite possible that is is the result of a mix-up of some kind, but I cannot really comment on this positively, because I have no knowledge of the incident myself. I would only like to draw the attention of the Tribunal to the fact that this report appears twice and it is questionable who is the author of this, for instance, because I cannot imagine that in a mental asylum an act of this kind is carried out twice.

I do not know about this incident. Jews were shot after court-martial, or some such phrase.

Q The document says, "by order of summary court."

INTERPRETER HILDESHEIMER: I did not have the document. It is summary court.

THE PRESIDENT: Very well.

A I did not want to comment on this document. I only wanted to draw you attention to the fact that there is something unclear about this. I did not hear anything about this operation. I was not in again and I did not know anything about it. time? mine who had been killed was buried. That was for a few hours, not more.

Q Situation Report No. 86, dated the 17 of September 1941 indicates that a caravan of Jews were shot in Novo Ukrainka and vicinity. Did that ever come to your attention?

A Is that Document No. 3151, Your Honor?

Q That is right. Did that ever come to your attention? AOK 17 with the Liaison Officer Hayer. I only stayed at Novo Ukrainka a few hours and I never heard anything about that. Jews, and perhaps even Jews in vehicles, while travelling, were suddenly fallen upon and exterminated, and, if that be true, it would certainly create an incident which would at the least cause conversation, but that never came to your attention, you say?

A No, Your Honor. I never heard about this.

Q What was your attitude generally regarding the Jews? not hostile, at no time. In my home town, there were about 12 to 13 Jewish families living. who were all respected citizens and I had a partly personal contact which I maintained with these people, and I certainly respected them. the SD, is that correct?

Q Yes, Then how did you rejoin? What were the circumstances which brought you back into the SS, briefly? There was no other possibility. I had to work in the program of the SD. Then the Personnel Department Chief told me, "Comrade Graf, you used to be a member of the General SS. Make an application, then you will receive your former number," and that is what I did.

Q Well, if you had not applied, what would have happened?

A Nothing would have changed, Your Honor. I would still have been on an emergency appointment in the SD. Nothing would have changed. voluntarily or not. I would not have rejoined the SS, never, because I was a businessman, and did not want to have anything to do with the Party and its formations.

Q I don't quite follow you. I asked you, if you had not rejoined what would have happened to you. Did you rejoin voluntarily or were you compelled to rejoin? That is what I am trying to ascertain.

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out the application. I filled in all the family papers and documents, but you could not call it "voluntarily," because it became untomatic. The Personnel Departmental Chief could see from my documents that I used to be a member of the SS, so he said, "Of course, in that case you have to rejoin the SS." Therefore I made out the application, but, if I had not been deferred to the SD, I would never have rejoined the SS. After all, I had left the SS and also I did not rejoin the General SS, but I was transferred to the special formation, the SD. After all, this was on the war emergency status. In my opinion then, it was merely a formal matter to regain my former SS number. if you had not filled out these forms, that you would have been called anyway?

A May I call the attention of Your Honors to one fact: The proof, that I did so through the interference of my Department Chief is the fact that in January I was drafted on an emergency status and only on 28 July, I believe I made out the application; only after I had spoken on various occasions to my Department Chief, he got me there so I would make out the application. If it had been done immediately, the date would not have been the 28th of July, but perhaps the 2nd or 4th or 6th of January, 1940. May I point out to your Honor this is evident in my personal file, which is in Document Book III-C, NO-4801, Ex. 147. had not made out this application, would you still have been called? called at a previous date, or, at least, before I made out this repapplication. This was only an action I took afterwards and this became necessary after the war emergency status. was a mere form?

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I think it is on page 3 of the original, it says, "Kempten Scheldow, the 26th of July, 1940." That is a few months after my war emergency status became effective. That is several months after the war emergency draft.

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Q. Where were you when the war came to an end?

A. I was in Kaufbauren, and my section chief ordered me to report to the nearest Army unit, which I did. I was detailed to an infantry division which was in Jungholz or, at least, in the vicinity of Jungholz. That was approximately the 24th of April, 1945.

Q. Witness, did you ever witness an execution?

A. No, Your Honor.

Q. Did you ever see the preparations for an execution?

A. Well, Your Honor, if you call the lining up of men a preparation, then in that case, it is so, but otherwise, I never saw any.

Q. The lining up of men, did you say?

A. Yes, yes. The lining up of men.

Q. You mean the lining up of the firing squad?

A. No, Your Honor, at the garrison of the kommando the men had to line up.

Q. You mean, merely the assembly of soldiers?

A. Yes, Your Honor.

Q. Well, that of course, would have nothing to do with the actual mission; but did you know that when they were assembled, that when they were lining up, that they were about to depart on an execution mission?

A. Well in individual cases I knew that, Your Honor.

Q. And in any of those cases, did you know that they were destined to shoot great numbers of people?

A. No, Your Honor, I did not know that in any case.

Q. You travelled a great deal and numerous executions occurred during the time that you were a member of this kommando and during the time that you were travelling as evidenced by these reports. Now, doesn't it seem a little strange that in all your travelling that you never came upon an execution, never came upon one while it was actually in COURT II CASE IX progress nor just before it took place, nor just immediately after it had occurred.

Now can you explain that phenomenon?

A. Your Honor, what my comrades told me was that an execution for reasons of security, would not be carried out on the roads or in public squares or near villages. This may be the reason that I did not happen to witness an execution either.

Q. Witness, you see squads of men lined up ready to march off to an execution. You are aware of the fact that that is their mission - and you must have been there or you couldn't have seen them - Now wouldn't natural curiosity cause you to inquire as to where they were going and what they were going to do and whom they were going to shoot and how many?

A. Your Honor, the only person who might have been able to give information about this was the commanding officer and I, as a noncommissioned officer, could not have approached him and I could have said, "Excuse me, Herr Untersturmfuehrer, where are you going to and what are you going to do?" I couldn't do that and I am quite honest when I tell you, Your Honor, I was not interested in these things.

Q. Did you see any of the aquads that went out on any of these missions which are reported here?

A. As I have already told you, Your Honor, I only know from the events mentioned in the documents, what I have said about Dnepropetrovsk and I can't say that I know that at this and this locality on this and tills, day that men were assembled and assigned for executions.

Q. Who made out the reports of executions for the kommando to the group?

A. In Einsatzkommando 6 there was a Department Chief IV, who was responsible for all executive reports. He made COURT II CASE IX out these reports and then passed them on to the kommando chief.

Q. Did Seibert make up any reports of this character?

A. Your Honor, I cannot tell you anything about this, because Seibert was in an entirely different Einsatzgruppe.

MR. HORLICK-HOCHWALD: He was Chief of Einsatzgruppe D.

Q. (By the President) Yes, Well, we know that it was a different Einsatzgruppe, but it belonged to the same department. You and Seibert belonged to the same department, Department III, and as a matter of custom and a matter of routine, did your department make up reports on executions, because that is what Seibert said?

A. May I then point out one thing? Seibert was in the staff of Einsatzgruppe D, in the group staff. I was in Einsatzkommando C-6, a Department Chief. The position of the Co-Defendant Seibert, as a Chief of Department III, is an entirely different one from my position as an NCO, a noncomissioned officer in an Einsatzkommando. My task was to collect news and reports, to write them down, and to pass them on to the kommando chief.

Q. Well would you say that your position in the kommando corresponds to the position, to the same position in the Gruppe and, if so, if Seibert would report an execution from the Gruppe, belonging to Department III, why wouldn't you in Department III of the Kommando make similar reports?

A. Your Honor, I should like to point out that Seibert, after all, was a Standartenfuehrer. Furthermore, he was Chief III of Einsatzgruppe D and, as such, he dealt exclusively with SD reports which he compiled and passed on to Berlin.

Q. Yes, but we are not asking you if you made reports to Berlin, whether you made reports to your Gruppe, your COURT II CASE IX Einsatzgruppe Headquarters.

A. Your Honors, in our kommando, the entire reports were made by the Kommando Chief. He was the only one to decide what part of my material, I had reported, was going to the Group and he had the responsibility for the entire report of the kommando, Your Honor. Furthermore, the difference between Einsatzgruppe C and D is, as far as I heard here, that Einsatzgruppe C had a Chief of Department IV, but not in D, so that these matters of reporting -- that is what I wanted to say -- went into one channel.

Q. Well then it didn't always happen that the departments in the kommandos and the gruppen were entirely isolated from each other. It did happen at times that their duties overlapped and mingled?

A. I do not know how it was in the case of other kommandos, Your Honor, but with our own kommando it was thus that the spheres of activity were separated. Department IV dealt with executive matters. III deals with Reports, I and II with personnel matters and supply.

Q. You just indicated that in Group D that Department III took over many of the duties of Department IV.

A. That is not what I wanted to say, Your Honor. What I wanted to say, Your Honor, was that there was no Department Chief of Department IV in Einsatzgruppe D, who otherwise would have passed on the reports concerning executive matters, and therefore, this all went into one channel, the whole material.

Q. We recall, Witness, that various defendants, and Schubert, particularly because he testified very recently, indicated that executions occurred near roads, near highways; in fact, it became necessary to block off these roads so that the public would be entirely excluded from the executions, COURT II CASE IX so we came back to your proposition that it was impossible for you to witness an execution because they were never near roads and they were always in very isolated sections.

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How do you reconcile your observation with the very clear statements made by the defendants as to the site of executions?

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A Your Honor* in my opinion this becomes evident from the difference in territories; I was most of the time in the industrial territory, like for instance, the rural territories in Germany, and one cannot say that here is a town boundary, and this is a town boundary of the other town, so that the roads in an industrial area are entirely different from roads in an agricultural area, that may be the reason. I don't know how it is that I was not a witness in such operations but in any case that is how it was. This is the reason I think it was. action at one tine. What was that episode? Security Police and SD at Stalino had only few leaders, and I was to become leader of a subcommando as an Unterfuehrer, that is, a non commissioned officer. I explained that I as a member of EK-VI had been detailed to Stalino, with the task to establish a Department-III, within the commando of the Security Police; if I were to be made a subcommando leader, I could not do so, that was not the purpose of my assignment, and the officer on duty thought that I was refusing to obey an order because of the fact he had given me an order that "You are taking over this and that task" and I said, "No, I had been appointed in order to build up Department III, and I will not take over a subcommando," so he said, "Therefore, you refuse to obey my order," and I said, "Yes, for this and that reason," he said, "You will have to face the consequences," and as a result of this discussion I was arrested, or at least I was locked up.

Q Who was talking to you there. Who was indicating the arrest to you?

A The then commanding officer was not present at the time. I can not say for certain what officer it was. In any case it was the representative of the commanding officer of the corps, who gave me this order.

Q And what were the consequences? a disciplinary procedure started against me with the police and SS court. the officer who subjected you to this experience. It certainly must have remained vivid in your memory? Domnick.

Q What happened to him?

Q Then when you were sent to Kiev, what occurred? already arrived, and I defended myself before the personnel Referent there, I said to him that I had not been detailed to the commando in order to take over a subcommando but in order to build up Department III. Then the natter was cleared up by the personnel referent of the department, that I was up for refusal to obey, but he admitted that I was right in saying I was assigned from Kiev in order to build up Department III, for that reason it was favorable for me, Also at that point I had already been released the commanding officer had not informed me about that. you were ordered by your commanding officer to perform a certain mission, to take over a subcommando, and you point blankly refused, and you tell us now that nothing happened to you after that very flagrant disobedience of orders? commanding officer, had given the order not to advance with Commando-VI to the East but to remain in Stalino in order to build up a Department III:

for me the order of the group was still valid, because I had not received another order to the contrary to that effect. officer, refuse to obey an order of a superior officer merely because he has an argument that an officer above that officer had told him to do something else?

Q Well, that is what you did. The officer told you to do a certain thing, and you in effect said, "Oh, no, I am not going to do that because an officer who is above you told me to do something else," that is what you are telling us? the superior agency, and I was not a member of the Security Police in Stalino, I didn't regard it as a refusal to obey. I merely explained to him that I had received this, and that order, and, therefore, I could not accept another order as long as the other one was still valid and had not been rescinded. do, and because of that you were placed under arrest? leader's order, and that is the reason that you refused to go along, and you took a chance?

A Yes, Your Honor. I knew that I was subordinated to Einsatzcommando VI, and not to this commander, and if somebody, is detailed from one former unit to another, then the old order has to be rescinded before neworder is accepted.

THE PRESIDENT: If there are no other questions by other counsel; you have a couple of questions Mr. Hochwald?

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MR. HOCHWALD: I am sorry to take the tine of the Tribunal but there are two or three questions which was brought up from examination of the witness by the Tribunal. BY MR. HOCHWALD: emergency draft, is that correct?

Q And when was that? emergency service? fullfledged member, nor through my application for rejoining. yet. Did you become a member of the SD on the basis of this emergency service, a fullfledged member of the SD?

A No, Mr. Prosecutor. of this emergency service?

A No, Mr. Prosecutor. SS on the basis of your own application? Will you answer this question with a yes or no?

A Yes, Mr. Prosecutor, based on the fact that I voluntarily applied for my rejoining, I received my formal SS number in the formal formation of the SD.

Q Is it then correct, that you rejoined the SS voluntarily?

A Mr. Prosecutor, that is not and was not my view, because if I had not come under war emergency status, one was a logical consequence of the other, in that case I would never in my life have connected with the SS again.

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the application for the entry into the SS? application, is that right? this second matter has a logical consequence of the first. If I had not been drafted on the emergency status I would never have thought of ever rejoining, or making application.

THE PRESIDENT: Mr. Hochwald, you and the witness are having a jolly good time, because both of you are exports in languages, and you both understand English and German, but the rest of the Courtroom has to get the dialogue, so please let there be a pause between you and the witness, so others not so gifted as both of you can keep up with the examination.

MR HOCHWALD: I beg your pardon.

THE WITNESS: Yes, I beg your pardon, my fault. BY MR. HOCHWALD: right?

A Of course nobody forced me Mr. Prosecutor, it was only that the personnel referent told me there that day, who used to be a member of this unit, in order to be relieved from that I would have to apply after that date and they would have to approve that; it was drawn out from January up to July. refused to take over the command of an entire commando in Einsatzcommando VI?

A No, Mr. Prosecutor, that is not how it was. I told the Tribunal that I was detailed from EK VI to Stalino; and that the officer asked me without rescinding my former order, to take over a subcommando, in the Kommando at that moment I would have been a member of the agency of the commando of the Security Police in Stalino, and I would then no longer had been a member of EK-VI.

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I told this office that this was not possible, for I am only detailed for this or that purpose and as long as the other order is still valid, and this if this order is not rescinded I will not do so, and that was regarded as a refusal to obey.

Q Who was then commander of Einsatzcommando VI? Sturmbannfuehrer Mohr, who was the commander, or Sturmbannfuehrer Bieberstein, our co-defendant.

Q Can you tell the Tribunal the exact date when that happened? in any case, it was either September or October, but I don't remember the exact date, unfortunately.

Q September or October 1942?

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take over the command of the subcomando? Departmental Chief III, that was the work which I knew; but at the moment of my taking over the job as a subcommando chief, I would have had to take over a task which was entirely foreign to me, a purely police task. I had no police training, police, and I did not have the qualifications for such activity.

Q Was that the only reason why you refused? from the very start I can not cope. carry out a military order in wartime? Didn't you have any other reason which up to now you have not told the Tribunal?

A No, Mr. Prosecutor, it was taken to be a refusal to obey, but in reality it was not such, because I had received the clear, which I had received from the group, "You are not advancing to the East, you are remaining in Stalino in order to install Department III, and, as long as I hold this order, such an order, I felt myself bound to it, because it could have been a case, Mr. Prosecutor, if I had agreed to such an appointment, I would have been punished by the Group for the reason, "You have had the unambiguous order, why did you not stick to it."

Q So you didn't refuse to carry out this order as you were reluctant to carry out executions yourself; that wasnot the reason for your refusal?

A Mr. Prosecutor, never in my life, not for one hour have I been a policeman, and for me police work was entirely strange and foreign to me. Why, therefore, should I take over a police task which I would have done if I had become a leader of a subcommando. Why should, I, therefore, do it if I had been ordered to do something else.

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Q How long before 1940 had you been a SD man?

A Not a day, Mr. Prosecutor.

MR. HOCHWALD: No further questions, Your Honor.

THE PRESIDENT: In view of the imminence of the usual recess period, the Tribunal will take this recess a little in anticipation, and during the recess the witness will be returned to the defendants' box and just before we reconvene the witness Fransiska Reimers will be taken to the witness box, and we will immediately begin with her examination when we reconvene. The Tribunal will now recess.

(recess)

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THE MARSHAL: The Tribunal is again in session.

DR. GAWLIK for Seibert: Your Honor, I ask instructions to be given that the defendant Willy Seibert be excused this afternoon so that his defense may be prepared.

THE PRESIDENT: The defendant Seibert will be excused from attendance in court this afternoon in accordance with the request by his counsel, Dr. Gawlik.

DR. GICK, deputizing for Stein for the defendant Sandberger: I ask that the defendant Sanberger be excused from attendance in court this afternoon and ask that instructions be given to take him to room 57.

THE PRESIDENT: The defendant Sandberger will be excused from attendance in court this afternoon and instructions are hereby given that he be taken to room 57 that he may confer with his counsel,

DR. KRAUSE for the defendant Haensch: Your Honor, I ask before the witness is questioned, that you permit me to give you some more information about the witnesses Schreyer and Reich.

THE PRESIDENT: Just a moment. Will the witness please be at case - sit down.

DR. KRAUSE: First of all, I have the question whether Frau Schreyer, as she had been instructed, made the letters of her husband from the year 1942, if she kept them, available to the Tribunal. Also whether the sample of handwriting which the witness Reich made here in court is available. And, also, whether Frau Schreyer sent the negatives of the Wachtmeister who was in her studio to the Tribunal.

THE PRESIDENT: Negative of whom?

DR. KRAUSE: Negatives of a Sergeant, a Wachtmeister. I don't know the name - but either after or before the entry concerning Haensch he was mentioned as ordering a picture. May I inform the Tribunal again what the situation was. In the large book of customers Haensch was listed under No. 391 on 21 February 1942 for a photograph to be made of him. Before this entry or after this entry there was an order concerning a Sergeant, a Wachtmeister in German, and it was to be determined whether the negative of the photo of this Sergeant still existed and what lettering was on them.

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THE PRESIDENT: Well, did you make inquiry about the negatives or pictures of this Sergeant before?

DR. KRAUSE: No, I did not.

THE PRESIDENT: What is your request now of the Tribunal?

DR. KRAUSE: I am only asking that the witness Schreyer be instructed that the request made by the Tribunal be fulfilled. I assume that the Tribunal had a purpose in asking this.

THE PRESIDENT: Just a moment. Has anything been said up to this time about the pictures of the Sergeant?

DR. KRAUSE: Yes.

THE PRESIDENT: What request did you make regarding those pictures?

DR. KRAUSE: Concerning those pictures I did not make any request but the Tribunal considered it important to obtain the negatives of this Sergeant as well.

THE PRESIDENT: Mr. Hochwald, can you shed any light on this situation?

MR. HOCHWALD: If the Tribunal please. As far as I can recollect I asked the witness in cross examination about her recollection of faces and in this connection the Tribunal asked the witness whether she would recollect the face of this German Warrant Officer whose name appears one or two days before the name of Haensch appears in the big book, and as far as I remember the Tribunal asked the witness whether she has the negative of this picture. The witness answered in the affirmative and the Tribunal asked the witness to hand over this picture, the negative of this picture, to the Tribunal. As far as I am informed, I don't think I am mistaken, the witness Schreyer has to do this date not complied with this request. I, however, can state that we have, with the permission of the Tribunal, sent a representative to see the witness Schreyer about the little book of December, and have received information that this little book of the end of December is not in the possession of the witness.

We have obtained a short affidavit to this effect from the witness and we have also obtained other of these little books of other months which we will submit to the Tribunal as soon as we have the expert opinion on the other exhibits ready.

THE PRESIDENT: But anything about the Sergeant?

MR. HOCHWALD: The Prosecution does not desire to put in the negative of the Sergeant in evidence and I personally do think that cannot shed very much light on the case by producing a second negative. Of course, if the Tribunal desires to have this negative I shall make arrangements that the same representative who received from Mr. Schreyer the little books will also obtain for the Tribunal the negative of the Sergeant.

THE PRESIDENT: Does defense desire the negatives of the picture of the Sergeant?

DR. KRAUSE: I would like to ask for it now, yes. Your Honor, I just heard that the witness Schreyer, with the permission of the Tribunal, was visited by one of the members of the Prosecution and again interrogated.

DR. HOCHWALD: That was not what I said, your Honor. With the permission of the Tribunal a representative of the Tribunal visited Mrs. Scheyer asking her for the handing over of the little books which contained the different orders for December.

THE PRESIDENT: Well, this is all immaterial any way, it doesn't make any difference who visits Schreyer. Anyone can talk to Schreyer. In the American forces there is liberty and anyone can talk anyone else. A representative of the Prosecution can go and talk to Schreyer, defense counsel can talk to Schreyer. She may even talk to her divorced husband. She can talk to anybody. She is free. So we are using a lot of talk here about something which is of no consequence at all. Now, to get down to the real issue of the matter, these letters which you have asked about have not come to the Tribunal, so either the Prosecution or the Defense will see that Schreyer hands over these letters if she still has them, if she preserved the letters sent by her husband, with regard to the negatives of the sergeant, if you have someone up there defense counsel who can get these negatives and can certify the negatives are properly preserved you can have that done or you can ask Mr. Hochwald to have his representative there do so, so there will be no more confusion, no more mystery and no misdirection.

DR. KRAUSE: I beg your pardon. I do not want to take up the time of the Tribunal unnecessarily about this. I only want to give one explanation. According to the information which I received, which possibly might not be correct, at Frau Schreyer's a search of her apartment is supposed to have taken place. Although Frau Schreyer is a witness of the defense I purposely kept away and since her examination here I have not approached her because it way my opinion that the points which the Tribunal considered still needed to be clarified could only be clarified by the Tribunal itself. Now if any further measures were taken concerning Frau Schreyer I only ask the Tribunal to tell me about the results of these measures.

THE PRESIDENT: Before Frau Schreyer appeared here in court I believe that the Tribunal indicated that she was not to talk to anyone about the case. But, she has now appeared in court and testified and, therefore, there is no injunction upon anyone not to talk to anyone else, I am refer ring to both witnesses, the original withess and the assistant.

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Now the Tribunal is not aware of what has happened since the assistant appeared here in court. We do know that the letters which were discussed have not been presented to the Tribunal. We would suggest that you talk to Mr. Hochwald and between both of you arrange to obtain everything that you believe you need in the further clarification of this issue regarding the picture of the defendant Haensch.

DR. KRAUSE: Yes, Sir. Thank you, Your Honor. That will be sufficient.

THE PRESIDENT: Very well. lows: BY JUDGE SPEIGHT:

Witness, raise your right hand and repeat after me: pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated. BY DR. BELZER for the Defendant Mathias Graf:

Q.- Your Honor, I have special reasons to ask the Tribunal to give instructions that no photographs be taken of the witness here. Until now with the assistance of the Prosecution and the Marshal I have been able to avoid it so far but I now ask the Tribunal to give special instructions on behalf of the witness.

THE PRESIDENT: Although this is a very unusual request that an attractive woman does not like to be photographed. Since you make that request in behalf of the witness the Tribunal will be glad to see to it that your request is carried out. So, the photographers in the courtroom will please not take a picture of the present witness.

DR. BELZER: Thank you, very much, Your Honor.

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THE PRESIDENT: That doesn't mean that the photographer may now go home and forget about his work. We will do other work. He will do other work. BY DR. BEIZER:

Q.- May I ask the witness to speak slowly into the microphone in answering the questions I put; you are not to answer Immediately but let a little time elapse for my question to be translated by the interpreters first.

A.- Frau Franziska Reimers.

Q.- When and where were you born?

A.- I was born on 3 January 1911 in Kortiska, District Saporosje, in the Southern Ukraine.

Q.- Where are you living now?

A.- In Bonn on the Rhine.

Q.- Please tell the Tribunal briefly about your career, about your life until the beginning of the German-Russian War.

A.- On 3 January 1911 in Kortiska, District Saporosje, I was born in the Southern Ukraine. My father was a carpenter, and originally belonged to the Dutchmen who at the time of Catharine the Great settled in southern Ukraine. In my native town I graduated from all German Schools the German elementary s chool, intermediate school, and high school, and after that four semesters at the Ukrainina University in Odessa, After terminating my studies I married the land-owner Cornelius Reimers. He also was a high school teacher for mathematics and physics. After marrying in the year 1930 we were both moved into the country in order to be active as teachers there. Since my husband was of bourgeois origin the Soviets never treated him very gently and he had a lot of trouble with them. These difficulties culminated in his arrest on 4 November 1937 by the Russian G.P.U. or the NKWD; they transported him to Siberia as I was told he was expelled there.

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I have never heard from him since. I myself had to stop working as a teacher. With my child, who was then 2 years of age, I was put into the street. Outside the prison of the GPU I saw so much misery that perforce I could no longer feel any sympathy for this so-called socialism although this had not been the case until then.

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Having had quite enough of Bolshevism, of course, I joined those circles who were anti-Communist. When, in the year 1941, on 22 June the war with Germany started, I was called into the NKWD building and they gave me the choice either to leave my child and also to go to Siberia or to help in the intelligence service behind the German lines. Because of fear and worry about my child I accepted this suggestion. On 15 August, 1941, in the general staff of the southern front, Major Tschaikovsky gave me my mission and I had to leave my child alone who was then five years of age while raids and fighting took place.

THE PRESIDENT: Witness, you indicated to us that you were given certain choices, to do one thing or another, or a third. You said that you were given certain alternatives: You could go to Siberia, or remain. At any rate, you were given three choices. Then you said, "I accepted the suggestion", but you didn't tell us which one of the alternatives you accepted. Please tell us which one you accepted and then relate what happened.

THE WITNESS: Since I knew the methods of the Russian GPU and the NKWD, I knew that if I did not accept the suggestion of working in the intelligence service, then I would never see my native land again.

THE PRESIDENT: Please tell us which suggestion you accepted. What did you decide to do?

THE WITNESS: I decided to accept the suggestion to join the intelligence service behind the German lines.

THE PRESIDENT: Very well. Proceed, Dr. Belzer.

Q Witness, was there a possibility for an existence in Siberia? Was there a means of making a living or would that have been your undoing? life?

A No. After having walked 500 kilometers towards Saporosje-Uman between Krawoy and Kriwoij-Roc, I was captured by the Germans.

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I was taken to a higher commander of the German Wehrmacht and a major interrogated me. The major could understand my worry about my child and my emotional distress and he promised to ask his superior to pardon me. After interrogations which lasted three days, I was brought to Kriwoij-Roc to the Security Service, EK 6.

Q Do you know the defendant Mathias Graf?

Q Where is he sitting?

THE PRESIDENT: The last one to the right as you are facing the defendants' dock, is that correct? Because the last one could be on the other side too, you know?

THE WITNESS: Yes, on the right side.

Q How did you get to know Herr Graf? Please describe the first meeting briefly. taken for a walk of one or two hours by members of the Security Police every day. Sometimes there was one. Sometimes there were two members of the SD. On the 24th of September, or, it might have been the 22nd, I don't know exactly any more now, it happened to be Herr Graf and his comrade Schulze or Schulte or something like that.

THE PRESIDENT: Dr. Belzer, let's have the date, please, the year. BY DR. BELZER:

THE PRESIDENT: Very well. BY DR. BELZER:

Q It might have been on the 22nd too, did you say that?

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THE PRESIDENT: Proceed. BY DR. BELZER: with Herr Graf? because he was particularly kind towards the Ukrainian population. I would like to give a small example here. When we passed through the streets of Kriwoij-Roc, we saw a Ukrainian woman who was crying bitterly. Herr Graf asked me to ask this woman why she was so deeply upset. I went to the woman and asked "Why are you crying?" She answered to this that her husband had been a miner in the Kriwoij-Roc Iron Ore Mines and had been denounced by the neighbors who said that shortly before the German troops came in he had dynamited the mines. As a result of this the SD had arrested him. Herr Graf talked to this woman in a very kind manner, to which I was not accustomed, by saying she should calm down, because if her husband was innocent, then after the case had been investigated, he certainly would return. These words consoled the women and I was also pleasantly surprised about that.

Q Do you know what happened to this man in the end? he an officer?

A No. At the time I did not know much about the insignia of the German Wehrmacht, but, as far as I can remember, when he was addressed by comrades, he was addressed as Unterscharfuehrer, an NCO.

Q How long did you stay in Kriwoij-Roc? my child was was no longer being shot at by Russian artillery. Then I was promised that, if possible, my child would be taken out of there and again it was Herr Graf who realized my emotional troubles and said he would speak to Standartenfuehrer Kroeger so that they would speed up this matter and I would get my child back as soon as possible.

Q Did you get back your child then? units went towards my home town on the Dnjepr River and I found my child in an air raid shelter where my brother had kept it.

Q Where did you go after Kriwoij-Roc? officials - Herr Graf was among then and I don't know the other people - brought me to Dnjepropetrowsk, again to the Security Service.

Q How long did you remain in Dnjepropetrowsk? Security Service until part of perhaps the entire EK 6 - I don't know which - was transferred to Dnjepropetrowsk and be chance Herr Graf and I met in the corridor of the Security Service building. Then he promised me again to intervene with Standartenfuehrer Kroeger as to whether my living conditions could not be changed, and that they would give me some work to do and that my child would receive medical care.

Q Did you see Herr Graf repeatedly in Dnjepropetrowsk? Russian language and Herr Schulze also and I did that in Kriwoij-Roc. At the same time Herr Graf gave me English lessons to make up for it. I Dnjepropetrowsk these language lessons were continued two or three times a week. Herr Graf?

A None, really. Of course, we only talked about private matters. to tak to the civilian population?

lived with a Ukrainian family. which were supposed to have been carried out by Einsatzkommando 6? with bundles on their back. What happened to these people I could not find out, but when I inquired about this from my superior, at the time in the Department of Agriculture and Food, I was told that the Jews were being resettled. That they were actually shot, I only heard when I came to Germany later on. Russian workers to Germany?

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Q.- How did you and Herr Graf get separated again in Russia?

A.- Herr Graf was with his commando in Dnepropetrowsk for only a short while, and I believe for three weeks, something like that, he was transferred to Stalino, over there on the front.

Q.- Did you remain in Russia throughout the entire war?

A.- Yes, until the German troops withdrew in 1943.

Q.- And then?

A.- And then I was evacuated from Russia like all Ethnic Germans.

Q.- Later on, did you meet Herr Graf again?

A.- When I was in a camp in the Sudeten Region, the SS refused to take me into Germany as a citizen, and owing to a denunciation the Gestapo arrested me in Troppo. Again I was under so-called protective custody, but after the situation was investigated I was released. Now, in the Sudeten District I was without any means at all, and being Stateless, I was not allowed to take any position, and in my distress I had my mother and my child with me, I turned in writing to Herr Graf, who at the time was in Kempten and Kaufbauern, where he was working. Herr Graf replied if I had no means of supporting myself in the Sudeten Region, would I come to him and his wife, they would look after me, and my billeting, and that he would see to it that I would got work. I packed my belongings, and travelled with my mother and my child to Kaufbauerer.

Q.- In Kaufbauerer, did you get a job through Herr Graf?

A.- Yes. First of all Herr Graf's wife had died in the meantime, and therefore, I could not remain in his home. He took care of it then to see to it that I was taken care of by farmers in the country who could help me, and at the same time he got me a job as an office worker in the DAG (Dynamit Ltd).

Q.- During the time of your presence in Kaufbauerer, did you make any observations as to Herr Graf's activities?

A.- Since Herr Graf visited the DAG repeatedly, I assumed that he had some kind of a job, and was there in an official capacity.

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He had asked me to talk to the Ukrainina population now and then because I knew the language, in order to find out under what conditions the foreign workers were living there, as a great number had escaped from work, and he suspected apparently that the management of the DAG treated the Eastern workers badly.

Q.- Did you make any observations that because of your communication Herr Graf saw to it that the conditions were changed?

A.- There I talked to the Ukrainians and the Russian workers; because those people were always very close to my heart, and I was told that the food was so bad that they could not live there any longer, that is why they escaped from the DAG. I tasted the food, and found it could not be eaten. Later it was found out that the cook smuggled the food and used it for the black market, and the Eastern workers did not have enough food to cat. Apart from that the workers from the East had the potatoes taken away from then by the Police, which they had got from the farmers. I reported this to Herr Graf, and he tried after that not without difficulties to insist that the management sofar as the foreign workers were concerned gave the same food as the german workers received. In fact, in April 1945, he achieved this.

Q.- Go ahead?

A.- Apart from that he gave instructions, or rather he succeeded in achieving that the food which the Eastern workers received from the farmers for their work was not taken away from then any longer.

Q.- What impression did you have because of your various meetings with Matthias Graf concerning his character and political attitude?

A.- In general I had the impression that Herr Graf had a very good up-bringing. He had a devout up-bringing, and to be quite honest I could not see how he came into the SS at all, he didn't fit in there.

Q.- Why not?

A.- The reason was because he was devout, which I could not coincide as in Russia it would be quite impossible that a person whoever visited a church could join the Communist Party, or would be admitted.

Q.- I have one final question?

THE PRESIDENT: I didn't quite catch the last statement. She was talking about her surprise that a man with religious tendencies should be in the SS. Then she spoke about the Communist Party. I didn't quite catch the connection. Would you please repeat that, witness?

THE WITNESS: Yes, according to my knowledge of the Soviet Union, I can not reconcile that a person who is devout and belongs to a church, simultaneously can belong to the NSDAP or the SD; that he would be accepted in such organization, because in the Communist Party this would be quite impossible.

THE PRESIDENT: I don't quite catch the comparison. What does the joining the NSDAP have to do with the Communist Party? Is that clear to you, Dr. Belzer?

DR. BELZER: Yes, the witness is trying to say that she was surprised concerning Herr Graf that he was with the SS, and yet had a religious attitude, and according to the experience she had had in Communist Russia, she simply could not imagine that a religious man, at the same time could be a Bolshevist Party member, and a member of any of its organizations, and looking at the German conditions in comparison, she could not imagine that a religious men should be in the SS. That is the comparison the witness was trying to make.

THE PRESIDENT: Very well. Thank you.

DR. BELZER: I have one final question. BY DR. BELZER:

Q.- Do you know anything about the fact that apart from the defendant here, Matthias Graf, another member of Einsatzcommando XI had the same name Graf?

A.- Yes. In Einsatzcommando in Krowoij-rog there was another Herr Graf, but I don't know his first name, or anything further about him, I only remember his appearance vaguely, which I might be able to describe. First of all, he was older than Herr Graf. He was graying, and I believe, I am not quite sure, he had the rank of an officer.

DR. BELZER: Thank you, I have no further questions to put to the witness.

THE PRESIDENT: Does any defense counsel desire to cross examine the witness. If not, Mr. Hochwald will proceed.

MR. HOCHWALD: May it please the Tribunal.

THE PRESIDENT: Mr. Hochwald. BY HR. HOCHWALD:

Q.- Witness, what is your nationality?

A.- I am stateless.

Q,- Did you have any nationality before the war?

A.- In our circles in Russia, we were mentioned as German but as Russian subjects.

Q.- So I am right in assuming that you were before you were stateless a Soviet Citizen, is that correct?

A.- Yes.

Q.- You have told the Tribunal that you were an Ethnic German, is that correct?

A.- Yes.

Q.- And that your husband was also an Ethnic German?

A.- Yes.

Q.- When was he deported to Siberia?

A.- On 4November 1937.

Q.- And from this time you changed your mind about the Soviet Union is that correct?

A.- Yes.

Q.- Am I then right in assuming that when the Germans attacked the Soviet Union, when that started your sympathies were with the German forces than with the Russian?

A.- Yes.

Q.- You have then told the Tribunal that you were called into the NKVD Building, and it was suggested to you either to go to Siberia, or to enter the Intelligence Service for this Soviet Union, is that right?

A.- Yes.

Q.- Where was that, witness?

A.- In Saporosje.

Q.- If I am not mistaken, it was in the middle of August 1941, is that right?

A.- Yes, 15th of August.

Q.- Who suggested this thing to you?

A.- First a member of the Russian NKVD. I whether would accept this order on principle.

Q.- What did you do when he asked you that?

A.- I said I was prepared to accept this order.

Q.- Immediately?

A.- No, I was allowed to think about it for twenty-four hours.

Q.- Did he tell you of what nature this kind of Intelligence Service would be?

A.- Not on that day, no.

Q.- Do you remember the name of this official?

A.- Yes.

Q.- Can you tell the Tribunal the name, please?

A.- That was Lt. Kiwenkov.

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Q.- Do you know whether also other people were offered jobs of the same kind at the same time by the same official?

A.- Whether by the same official, I don't know, but I was set on route with a few others. There were no other Ethnic Germans among them, but there were Kuranians.

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Q You were the only Ethnic German?

Q When did you learn the nature of your job?

A On 15 August, that is in the evening between 10 and 11 o'clock in the Staff of the General of the southern army.

Q Where was that?

Q Who informed you about your task?

Q What did he tell you? have to travel and the mission. I was to go the Uman where the first collision allegedly with the 9th Russian Army had occurred and was to find out under what circumstances the 9th Army had come to an end, whether owing to treason or other circumstances.

Q May I ask you a question. Did you have former training in intelligence work? position to find out all these facts and to inform the Soviet General Staff correctly about such a rather complicated matter? which directed all my deeds and actions I believe, assuming I had been on my own without children, I think I would have been able to carry out this task. out this task?

Q Without any training before hand? was to do was to find out from the population how the 9th Army had come to an end.

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an Army, is quite a large unit, the question how such an Army disappeared or was destroyed is dependent on hundreds and hundreds of small things many of which the population certainly does not know, knowledge of persons in the area from whom you can gather the information certainly is necessary. Had you been briefed on this job or just sent out be the major to go? Did he give you addresses, names, lists of confidents? Did he do that? territory I should then turn to a liaison officer of the NKWD, but he did not give me any names.

Q Did he tell you where you could find the man? could have remained there from the Russian unit.

Q To whom were you supposed to report?

A I was to return to -- Just a moment -- I can't remember the name of the place. The Staff of the General assumed that I would not be able to reach Saporosje on my way back and had named me another city, near Charkov where I was to go to, but I can't remember the name now. the treason which allegedly led to the destruction of the 9th Army?

Q How long did you confer with him?

A I believe 3/4 of an hour.

Q And you had never heard before this 3/4 of an hour anything about intelligence service of this type, is that correct? ing of 3/4 of an hour you would be able in intelligence work to discover why a complete Army of the Red Army was destroyed, is that right? it out or not.

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to do so.

Q May I ask another question?

Did this Major question your loyalty? He knew that you were Ethnic German, did he not?

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had turned over to the conservations, and I was told about all my anti-communist attitude, and I was told what would happen to me if I did not carry out this mission. Apart from that, they told me that my child would be kept back as a hostage.

Q All right. What did you do then when you had received information from the major? time to do anything. I was not allowed to leave that room. I had to learn the route by heart and during the same night, together with a few other people, I was put into a car and I had to drive about 30 kilometers away from the city. Then we were turned out of the car and we had to walk.

Q What did you do then?

A Then we walked. I was never alone. And between Kriwoij-Rog and Novo Graf in a small Russian hamlet, we became captives of the Germans.

Q It was on the 16th of August, was it?

A No. We had already walked 500 kilometers. That was three weeks later.

Q Why were you arrested--why were you arrested, witness? ourselves away that we were uncertain, but in any case, the person in charge said we were to come to an officer who was a German, and this rittmeister brought us to Kirovograd in order to be interrogated.

Q Did you confess your task in this interrogation? or was that another unit? unit was called.

Q Did you confess immediately?

A Yes. I was tired of fighting, of resisting, and I was afraid about my child. battlefield, were not immediately taken out and shot when you confessed your activities?

worry about my child that I didn't care any more, and I know that if I had carried out the mission and had returned, I would have had the same fate by the Russian NKWD, even if I had carried out the mission.

Q Did You want to carry Out this task? closer and closer, and I had a little ray of hope that my child might be saved--my child was decisive for my entire actions-- and as soon as I could assume or hope that any child was no longer in Russian hands, my intentions wavered, because I had only one aim, to get back to my child. arrested, were you not, that gave you the possibility to tell to the Germans what was going on With you and to get your child back eventually is that right? human understanding and help me to get my child back. authorities? 6 in Kriwoij-Rog.

Q What did they do with you there--were you interrogated?

Q You store in protective custody, were you not?

Q How long?

Q Who interrogated you during this time?

Q And what happened then? and I was allowed to take my child back and was allowed to bring my child back to Dnjepropetrovsk. had been a Russian spy, and after a short time of protective custody you were released and never punishment for having been a spy, is that correct? Sudeten-Gau. Sudeten-Gau?

A No real punishment. I was only taken into protective custody. for having been a Russian spy behind the German lines?

A If you don't consider what I suffered during my life as a punishment, then I was not punished. it was not meted out by any authority against you, it was just hardship which you had to endure.

Very likely many other people had to endure such hardship who had never taken a job as a spy in any place, just as an effect of the War.

Will you tell the Tribunal what reason for this unusual leniency on the part of the German forces against you was?

A Must I say this here?

Q You must not answer any question if you do not want to. If you say "I don't want to answer this questions," I cannot compel you to do so.

DR. BELZER: Your Honor, perhaps the witness should be informed that she does not have to answer any questions, the answer of which might bring about any disadvantages for her.

PRESIDENT: The Tribunal confirms what Mr. Hochwald saud, that she is not required to answer.

Of course, the immunity does not go as far as you have indicated, Dr. Belzer, and a witness may refuse to answer any question which might incriminate a Witness, but this Tribunal will go further than that and will not compel any witness to answer any question if for any reason the witness is disinclined to answer. BY MR. HOCHWALD:

Q So I take it then that you prefer not to answer this question? to be afraid of being handed over to the NKWD again, from whom I have suffered so much already, the I would answer this question freely. BY THE PRESIDENT:

Q Where do you live now, Witness?

Q Do you have your child with you?

Q Where is your husband?

A I don't know. I was told he was expelled in Siberia. I don't know whether he is still alive.

Q How long ago was that?

Q You never heard from him since? Mr. Hochwald put to you, and you are entirely free to answer or not to answer. Certainly you need have nothing to fear from the present authorities, but if you do have any fear of any character and for that reason would rather not answer the question, you follow your own inclinations in that respect.

A Shall I answer?

Q Well, we have left it to you, Witness. If you entertain any apprehensions of any character that some harm may befall you by answering the questions which was put by Mr. Hochwald, you need not, but if you think that a clarification would be in order, and that you can escape any ignominy or hardship or punishment which the court doesn't see, then, of course, you may answer the question, but it is entirely up to you.

A Very well, I shall answer. I would like to say first that not only I am concerned with this, that all the Menoits who emigrated from Holland had to suffer terribly from cruelities in Russia; in the flourishing locations at the time not one man ever came home in the villages, all the men were expelled to Siberia in 1930. I suffered terrible things. Small children, babies, were taken away from the mothers' breasts. The mother was taken to Siberia. The father was taken to Siberia, and they never Saw each other again. It is natural that for a government who sets up its power on millions of corpses. I felt an unbounded despise, and that when I accepted the mission, I had a little hope that I might be able to do a small service to my countrymen, and that is why I volunteered for the German Wehrmacht.

That if the reason why I received decent treatment by the Germans. BY MR. HOCHWALD: not arrested by the Germans, that you reported to the Germans, isn't that right?

Q You were alone when you did this? you said that together with other persons you were arrested by the German forces?

A Yes. I chose a moment when the other persons who were with me took a different route. you fetched your child, is that correct? that right? brought my child -- just a minute, not to Einsatzkommando 6, that was not in Dnepropetrovsk at that time, there was another unit of the security service there. I don't know the number there. I never knew it. leased from protective custody with units of the SD? Were you an employee of the SD?

A No. I was an employee of the general commissariat of the department of agriculture and food in Dnepropetrovsk. I was employed there through the intermediation of Herr Graf.

Q Was it a German agency?

Q Were you paid for your duties there? German Government?

Q When was that?

A In the fall of 1943. I don't know the date. left Dnepropetrovsk you left the place with them? until they were no longer able to take the civilian employees with them, and then, like all other ethnic Germans, I was taken in a transport via Litzmannstadt and was evacuated to the Sudeten district. a Russian citizen, didn't you? to Mr. Graf as Mrs. Graf had died in the meantime, he got you an employment in a factory, isn't that correct?

A Yes, in his factory?

Q In a factory?

Q was it a state-owned factory? rect -- is that correct, did I understand you? the war effort?

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this place?

A. Well, I was only there for a short period of time, for only about two weeks -- I did not look into it very deeply. I did see SS men occasionally, but what their tasks were, I don't know.

Q. You told the Tribunal further that Herr Graf wanted from you certain information about the Eastern workers in this factory, is that correct?

A. Yes.

Q. Did you ask yourself, or did you know why he wanted this information?

A. No. I considered this to be more in the nature of private work. It was not given to me as a mission, he merely requested me to talk to the foreign workers.

Q. You knew that he was in the SD, did you not?

A. Yes.

Q. Nevertheless, you were of the opinion that he asked you these questions entirely out of private curiosity?

A. Yes.

Q. Will you tell me further, you remained in contact with Herr Graf from the time you met him first in 1941 til the end of the war, is that correct?

A. We had correspondence also with Mrs. Graf. Yes.

Q. All the time?

A. Yes.

Q. I gather from your testimony that you have a great personal admiration for him, is that correct?

A. Yes.

Q. So I gather that you tried in the best possible way to help him here? Is that right?

A. First of all, I am always prepared to stand up for the truth, and it is my opinion that Herr Graf as a decent human being, deserves that I testify everything I know about him.

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MR. HOCHWALD: I have further questions, your Honor.

PRESIDENT: Dr. Belzer, do you have any further questions of this witness?

DR. BEIZER: Just one question, your Honor.

PRESIDENT: Very well. BY DR. BELZER:

Q. Witness, do you know that it was the custom in the NKWD that a great number of intelligence agents were sent behind the German lines without hardly any training?

A. Yes, hoping that perhaps one among 50 might be able to find out something.

DR. BELZER: Thank you. I have no further questions.

PRESIDENT: Do you have something further, Mr. Hochwald?

MR. HOCHWALD: I beg the Tribunal's pardon.

PRESIDENT: Certainly. BY MR HOCHWALD:

Q. You have just said that you know that the NKWD used to send great many unskilled informers out. Where from do you have this information?

A. After the German troops entered, I talked to ethnic German women who had received the same mission and were trained even less than I was, young Students, girls who had no experience at all, who could not possibly have carried out this mission, but they tried to send them.

Q. But you did not receive this information from the major who briefed you?

A. No.

PRESIDENT: You have now finished, Dr. Belzer -- have you finished with your entire case?

DR. BELIZER: I have finished except for presenting my documents.

PRESIDENT: Yes. The next defendants would be the defendants Rasch and Strauch. They are both more or less 111, so that some preparation might be required in order to take up their cases, and in fact defense counsel have asked for further medical examinations, and that is the reason we cannot proceed immediately with those two defendants. So that it is the opinion of the Tribunal that something could be gained in time if we take up the cases of these two defendants next week that is, on Monday morning. In the meantime, all counsel, of course, will be engaged in finishing their documentation, not only the document books, but we presume that they are also working on their closing statements. From all appearances, the taking of testimony should be finished next week, then there will be a recess of one week during which time all counsel will complete their closing statements and then the following week we will hear the statements. I hope that the majority of counsel already have their closing statement in good hands so they can be turned in to the defense information center -- the defense center, and they can be processed so that when they are delivered in court orally the Tribunal will have copies and, therefore, can more keenly and acutely follow the arguments being made by defense counsel. now adjourn until next Monday morning at 9:30 o'clock.

(The Tribunal adjourned until 12 January 1938, at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. DURCHHOLZ: In the absence of Dr. Stein for the Defendant Sandberger, Your Honors, I ask that the Defendant Sandberger be excused this afternoon for the session, so he can prepare his defense.

THE PRESIDENT: The Defendant Sandberger will be excused from attendance in court this afternoon.

DR. DURCHHOLZ: Thank you.

DR. KLEINERT (ATTORNEY FOR THE DEFENDANT SEIBERT): Your Honor, I would like to ask the same thing for my client.

THE PRESIDENT: The Defendant Seibert will be excused from attendance in court this afternoon.

DR. SURHOLT (ATTORNEY FOR THE DEFENDANT RASCH): The defense for the Defendant Rasch will try to examine the defendant as a witness in his own case. Before I begin with the examination, I would like to make an explanation for this procedure and read into the record: On the 5th of September, 1947, by having reference to Article IV-D of Ordinance No. 7, the defense has made a written motion to the court to have the proceedings against Dr. Rasch set aside because of the inability of the defendant to stand trial.

This motion has not yet been ruled upon. I will not go into the reasons for this. The defense just wants to make clear that this motion still stands. in his own cause, despite his physical condition be considered a demonstration of good will. The results, whatever they may be, will be an additional clarification, that is, in addition to the medical opinion now available, and will continue to clarify the facts of the case, which & are important for the Tribunal in order to rule upon the motion made by the defense.

Therefore, the defense reserves the right, after the conclusion of its examination of Dr. Rasch and in summarizing the facts which result from the proceedings today to ask the Tribunal to rule upon the motion of dismissing the proceedings and setting aside the case.

THE PRESIDENT: Dr. Surholt, your motion of September 5th was not ruled upon for the reason that a decision could not be made without a thorough mental and physical examination of the defendant. A report on that examination eventually made by a board of three physicians was submitted to the Tribunal on December 11. We now have that report before us. of the proceedings, in so far as he is concerned, the Tribunal will then be in possession of all the facts, knowledge, and information needed in order to pass upon the motion. This motion is pending and is still valid and will be ruled upon at the appropriate time.

DR. SURHOLT: Your Honor, I thank you for the explanation of the Tribunal and it agrees with the explanation the defense just made.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution will waive their right of cross-examination of the Defendant Rasch. However, we have prepared a document book containing the documents which we would have put to the defendant, if we would have cross-examined him. These documents are unfortunately not yet processed. We will submit them to the Tribunal and to the defense at the earlist possible convenience.

If Dr. Rasch wants to answer or wants to comment on these documents, I think it should be appropriate not to call him back on the witness stand, but the prosecution would have no objection if such comment would be made in the form of an affidavit.

THE PRESIDENT: We do not, however, exclude that if the defendant desired to avail himself of the right orally to explain any of these documents or make answer to them, that he could then, providing he was physically able and mentally desirous of doing so, come back to the witness stand.

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MR. HORLICK-HOCHWALD: We have made the suggestion of an affidavit only to facilitate matters for the Defendant Rasch.

THE PRESIDENT: Very well.

DR. SURHOLT: It is the opinion of the defense and this point is different from that of the prosecution, as far as the defense is informed, the prosecution and the Tribunal especially were of the opinion that the Defendant Dr. Rasch, in view of the medical opinions available, could not stand a cross-examination. Therefore, the prosecution has kindly, as it put it, waived a cross-examination. Now it has just been explained that those documents, which would have been the subject of the cross-examination are to be submitted afterwards. I consider that this is a round-about method, which does not correspond to the situation in which the defendant Rasch finds himself, as far as the trial is concerned. For the defense, especially, for the Defendant Dr. Rasch, it is of importance, and I would say in consideration of the peculiarity of such a trial, the facts of which case are of a collectivistic nature, it is perhaps decisive for such a defendant that the various defendants, and, I am speaking of Dr. Rasch, he allowed to explain and describe their personality to the Tribunal and that they have an opportunity, as far as important counts of the indictment are concerned, to be able to use their personality in explaining them in order to answer the charges. Under these circumstances, I see in the waiving of the cross-examination by the prosecution, if it is willing to submit the material later on, without the defense having the possibility of answering them personally, I see in this a very clear restriction on the defense. the participants in the trial were in agreement in principle that Dr. Rasch could not stand a cross-examination. I think that under those circumstances, the intention of taking Dr. Rasch into cross-examination would not have been necessary.

DR. HORLICH-HOCHWALD: Of course, it goes without saying that the prosecution has no objection that Dr. Rasch himself testifies on the documents, which we will present. However, if we waived the right of COURT II CASE IX rebuttal and we should be entitled to submit in rebuttal every document to rebut the statements.

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I have documents to rebut the statements which will be made in direct examination by Dr. Rasch. As to the documents, when we wanted to put in the documents earlier than in rebuttal, it was only to facilitate for defense counsel for Dr. Rasch and for the defendant himself to react to these documents, so we still take the position that the procedure suggested by the prosecution facilities and does not impede the defense of the Defendant Dr. Rasch.

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DR. SURHOLT: The defense is of the opinion that the statement of the Prosecution needs no answer. I have already given the reasons for it.

THE PRESIDENT: Then I don't see where you are in any way impeded, Dr. Surholt, by the procedure announced by Mr. Hochwald. You are in no way prejudiced in the presentation of your defense. The defendant will testify, and then later when these documents may be processed, and we are always confronted with the mechanical difficulties in this business, they will be submitted to you, you will read them over, and you will confer with your client. If your client desires to make answers to them in written form, Mr. Hochwald has indicated that he is willing, and will interpose no objection to an affidavit being submitted by your client. If your client is willing and desirous of orally explaining the documents in court, that right will be permitted him, so I don't see how in any way you will be prejudiced by the procedure outlined by Mr. Hochwald.

DR. SURHOLT: Well-- I see only that by this procedure......

THE PRESIDENT: Perhaps, Dr. Surholt, the difficulty lies in this, that perhaps you understand from what Mr. Hochwald said that Mr. Hochwald would cross examine the defendant on the documents, but I don't think that Mr. Hochwald intends that.

MR. HOCHWALD: Your Honor, please, the Prosecution has no desire to cross examine the witness, Dr. Rasch, at all.

DR. SURHOLT: Well that is just it. The charges which are to be included in the cross examination are merely being posponed, and in the personality especially of Dr. Rasch, I don't consider it an advantage, but a disadvantage to the defense, if the defendant can not stand the cross examination in these matters for physical reasons. For reasons of the defense it would have been very desirable for the defendant, Dr. Rasch, because only in this cross examination, where it always effects the personality of the man, it would important for Dr. Rasch to answer the charges personally, but perhaps we can begin the examination.

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MR. HOCHWALD: If Your Honors please, it goes without saying that the Prosecution presents its case as the Prosecution sees fit. Whether we intend to cross examine the defendant, or not, is entirely up to the Prosecution to decide. Nobody can compel the Prosecution to cross examine the witness. However, I want to repeat that we have waived the right of cross examination only in Order to facilitate the examination for Dr. Rasch.

THE PRESIDENT: Dr. Surholt.

DR. SURHOLT: Yes.

THE PRESIDENT: It is not quite clear just what you object to. You have now indicated that you deplore that there will be no cross examination, which is certainly a very novel statement coming from any defense counsel, but whatever you feel could be brought out in cross examination you certainly can bring out in direct examination

DR. SURHOLT: Yes

THE PRESIDENT: -- and if you wish to take the belligerent attitude which you assume is alwaysinherent in the cross examiner, then you can rest your fears and cross examine, if you want crossexamination.

DR. SURHOLT: No, Your Honor, I am of the opinion that the cross examination would be completely impossible for the defendant, and that for this reason it was waived, but if the charges which were to be brought up on cross examination are brought up later, without the defendant being able to answer them personally, and being questioned about them personally, then I do not consider this an advantage but a deterioration of the defense situation, but perhaps.......

THE PRESIDENT: Yes, but Dr. Surholt, you have completely overlooked what I said, that after the defendant reads the documents, we will permit him to reply by affidavit by oral statement by examination anyway that he and you agree is the best way to do it.

DR. SURHOLT: Yes.

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THE PRESIDENT: And we will say to you, Dr. Surholt, that in examining the defendant Rasch, that you need not do it in the formalistic manner; you can talk with him conversationally, and if we can arrange it so that the interpreting process will not in any way be impeded, you might even stand close to him, and we won't restrict you to the formal manner of examining, so that if by a question even a little bit leading, you can more quickly get an answer from the defendant that will be permissible.

DR. SURHOLT: Thank you, Your Honor.

THE PRESIDENT: Captain Carpenter, will you kindly step within the pit. Captain Carpenter, I should like you standing close, or Sitting close to the defendant. Will you please take a Seat at the counsel table now. (Captain Carpenter sits at the counsel table of the Prosecution within reach of the witness box). Dr. Surholt would you want to sit next to the defendant, and both of you use the same microphone, or would you prefer to stand where you are?

DR. SURHOLT: Your Honor, I shall try out whatever is best.

THE PRESIDENT: Very well.

DR. SURHOLT: I already explained to you the other day that I shall proceed in as little a formal manner as possible in order to facilitate things for the defendant, who is very much subjected to mental tensions.

THE PRESIDENT: We will first try it with you standing at the podium. If we have difficulties, then you might move to a point closer to the defendant, and attempt it that way.

DR. SURHOLT: Yes.

THE PRESIDENT: The defendant Rasch will now be brought into the courtroom. Before the defendant is brought in, Dr. Aschennauer, I presume, you will be available in the event we need you for the purpose of your presenting the document books today.

DR. ASCHENAUER: I shall need about one and a half to two hours, Your Honor.

THE PRESIDENT: Yes, I only ask that you hold yourself in availability. follows:

DR. SURHOLT: Dr. Rasch, you know which charges are contained in the Indictment against you. In the municipal hospital, when personally interrogated, you have made the statement that you considered yourself as not guilty, and as your defense counsel you have given me the reasons which were important for you in making this statement. I want you to try now in a very easy manner to express these reasons here in the courtroom. Please give the Tribunal your personal data, what is your name ----

THE PRESIDENT: Dr. Surholt, he has not yet been sworn. Lt. see that his earphones are applied.

JUDGE SPEIGHT: He need not stand. I don't know whether the witness can raise his right hand, or not. Witness, can you raise your right hand?

THE WITNESS: Yes, I can.

JUDGE SPEIGHT: Raise your right hand. I swear by God, the Almighty and Omnicient, that I will speak the pure truth and will withhold and add nothing. (The witness repeated the oath) BY DR. SURHOLT:

Q Dr. Rasch, please give your first name and your last name?

Q When were you born?

Q Where?

Q. What are your present family conditions?

A. In February, 1944, my wife died in a terror attack on Berlin. I have three children, girls, at the ages of eleven to fourteen years.

Q Well, Dr. Rasch, then you were born in East Prussia, and as I know, on an estate called "Friedrichsruhe." Will you tell us, please, briefly how the conditions......you still hear me?

Q - - - (continuing) What the conditions were in your family?

A My father was a farmer. He had a brick factory. The industrial development in East Prussia didn't begin until after the First World War. Actually, not until after 1930. Around the turn of the century, the industrial firms in East Prussia had essentially the character of agricultural enterprises, brick factories, distilleries and sawmills.

Q Dr. Rasch, perhaps you will tell us briefly about your family?

A Well, I want to say that my father was well to do. Seen from a socialogical standpoint, he belonged to the patriarchial order. It was ordered from above, and from below, it was obeyed. On the other hand, my father considered it his uppermost duty to take care of everyone of his people. This social duty came from the deeper moral awareness from religion. My parents were very devout. Everything is beginning to swim before my eyes.

Q Do you still hear me clearly when I talk to you?

DR. SURHOLT: Your Honor.......

THE PRESIDENT: Captain Carpenter, will you please examine the witness to see if he may continue. (Thereupon Captain Carpenter holds the wrist of the witness) Will one of the interpreters please go to the witness stand to interpret for the Doctor.

THE WITNESS: I merely see colors and lights, and in my ears there is a funny sound, just like in a radio.

THE PRESIDENT: Will Captain Carpenter come to the bench, please. (Whereupon Captain Carpenter appears before the Bench and discussion ensues outside the record). The Tribunal will be in recess a few minutes, and Captain Carpenter will confer with the Tribunal during that recess. Dr. Surholt will hold himself in readiness to be called into the conference, as well as Mr. Hochwald.

DR. OTTO RASCH- resumed

THE HARSHAL: The Tribunal is again in session.

THE PRESIDENT: Will you apply the ear phones, Lieutenant?

Dr. Surholt, you may proceed. BY DR. SURHOLT:

Q. Dr. Rasch, you were just about to tell us what the conditions were in your family. Please briefly describe the education by your parents and their methods, especially of your father. Do you hear me? Do you hear me, Dr. Rasch?

A. Yes, but badly. You mean educational methods?

THE PRESIDENT: It is very obvious, of course, to everybody that you are an ill man and the only reason that we are proceeding in spite of your illness is to give you an opportunity to explain the serious charges which have been filed against you. Try to be as calm as possible and take your time in answering.

A. Well, that is just the difficulty. The more I have the will to calm myself the worse do the physical disturbances get.

THE PRESIDENT: How about your comprehension of the questions which are put to you? Do you understand me clearly?

A. I understand the sense of the question but there is a strong noise and it is coming through very indistinctly.

THE PRESIDENT: Well, we will try to proceed. BY DR. SURHOLT:

Q. Dr. Rasch, back home in East Prussia didn't you get the first moral directions in your life from your father? Will you just briefly describe it?

A. At home I was educated very devoutly. That was in accord with the almost pious devoutness of my parents. My father taught Me the love of my country, love of nature, and how to hunt.

all he taught me the moral principles of hunting. He taught me that hunting was not just shooting and killing of game but it was also the care of and respect for the Creator and his creatures.

Q. How long were you at home, Dr. Rasch?

A. I lived in this atmosphere until the 10th year of my life.

THE PRESIDENT: Witness, just what did you mean by the moral principles os hunting? What morality was involved?

A. Hunting in the German sense demanded that the individual, even if he is completely unobserved in his area, realises his obligations toward the creatures, and that he is to refrain from everything which violates these, for example, shooting during the time it is prohibited that is, during the time the animals are protected, shooting of the mother as long as her young ones need her and only shooting on careful deliberation, not to satisfy one's passion for it.

Q. Thus, until the tenth year of your life you were back home, Dr. Rasch? How did you development proceed further, briefly?

A. When I was 10 years old I entered the Royal High School in Luck.

Q. Thus from the 6th to 10th year you visited grammar school in Friedrichsruhr and when 10 years old came to high school in Luck?

A. Yes, that is right. There I lived with an aunt.

Q. How far did you get in high school?

A. Until two years before graduation.

Q. You left after 10 years of school then?

A. I did not want to go to the university at that time and the grade I attained was considered as sufficient education.

Q. Do you have any special memories from this time which are important in your life?

A. I was a good student and I was on friendly terms with most of my teachers. I enjoyed a relationship of confidence with them. This lasted during my entire life.

Q. Then you volunteered for the Agriculture Department in Luck to receive training?

A. No, with the Landrat, government counsellor.

Q. And you stayed there six months?

A. Yes, approximately.

Q. And then you went to the bank of the East Prussian Agriculture?

A. Yes.

Q. You remained there about one year?

A. Yes, one year.

Q. Do you still understand me, Dr. Rasch?

A. Well it's getting worse again.

Q. Then you became the private secretary of a count zu Dona? You still hear me?

A. Yes.

Q. And then your life took a different course from then on. Can you briefly explain why?

A. The Count zu Dona took me along on some of his trips. The Court is beginning to shake. Well, he took me along on some of his trips. He took me to Paris.

THE PRESIDENT: Just a moment. You may suspend just a moment, witness.

The witness will be removed from the courtroom. The Tribunal will take its morning recess.

THE MARSHAL: The Tribunal is again in session.

DR. LUMMERT (Attorney for the defendant Blume): Your Honor, I would like to have the defendant Blume excused this afternoon in order to be able to prepare his defense With him.

THE PRESIDENT: The defendant Blume will be excused from attendance in court this afternoon.

DR. RATZ (Attorney for the defendant von Radetzky): Your Honor, I have a short but urgent request to make. On the 6th of January, I requested of the Secretary-General that I be permitted to speak to the Witness Hartl; the witness Hartl was granted to me according to a ruling of the court of the 3rd of October, 1917. The prosecution objected to my request, giving the reason that the Witness Hartl had already been examined in a direct examination and had been questioned by me.

I, however, would like to say this: that I think it is absolutely necessary to speak to the witness Hartl again concerning the document which the prosecution submitted from the personal files of the defendant von Radetzky Subsequently. This document was only submitted by the prosecution after the examination of the witness Hartl, namely on the the 17th of December and it contains completely new points about which I want to question the Witness Hartl. speak to the witness. If I am not permitted to do this, I am at a disadvantage in presenting the defense in this case, because this very point, which has been submitted by the prosecution subsequently, is a new aspect on which I have to obtain and submit new evidence.

MR. HORLICK-HOCHWALD: If the Tribunal please, it is the position of the prosecution that Dr. Ratz is mistaken by saying that by the introduction of the document to which Dr. Ratz refers a new aspect was opened in the case.

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We have asserted and also offered proof that the defendant von Radetzky was a leader of a Teilkommando. I merely remind the Tribunal of the affidavit of the witness Kroege which we have introduced in our case in chief in Document Book III-C. I haven't got the document book with me and I can't give the document numb er, but this dooument was already introduced in the case in chief. The document which we have introduced in cross-examination is nothing else than a corroborative document to this statement of Kroege. As the witness Hartl was on the stand after the case in chief of the prosecution had been presented, Dr. Ratz had full opportunity to ask the Witness Hartl questions in connection with the position of the defendant von Radetzky. Dr. Ratz has cross-examined the Witness Hartle at great length and I do think he should have exhausted all information which can be elicited from this Witness. That is the reason why the prosecution did object against further examination of the witness Hartl. I might add in passing that the Tribunal has excused the witness.

THE PRESIDENT: Mr. Hochwald, we have always adhered to the principle that a trial is not a gladiatorial combat between attorneys and no defendant or client should be made to suffer because of the lapse of his attorney, if there is a lapse. Now Dr. Ratz did have an opportunity to cross-examine this witness. He now tells us, and We certainly must accept that he tells us in good faith, that he wishes to put another question to him and we will not deny him that opportunity merely because of the procedure usually accepted that once a witness has taken the stand that finishes that Witness.

True, ordinarily that is the situation, but if Dr. Ratz, indicates that in order to properly present his case it is necessary to talk again to Hartl the Tribunal will not deny him that opportunity, because our policy has been from the very beginning to give defense counsel every opportunity to examine, cross-examine, investigate, interrogate, and to bring in anything which they believe is relevant, up to the social life of the penguins, as we explained before.

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MR. HORLICK-HOCHWAID: Very well, Your Honor.

THE PRESIDENT: So that you may interrogate the witness Hartl, Dr. Ratz.

DR. RATZ: Thank you, Your Honor.

THE PRESIDENT: You are welcome.

Did you want to say something, Dr. Aschenauer?

DR. ASCHENAUER: No .

THE PRESIDENT: The Witness Rasch will be brought into the courtroom.

)The witness was brought into the courtroom)

THE PRESIDENT: Witness, we want you to understand that this hardship to which you are being subjected is not intended as a hardship. According to the Anglo-American procedure, every defendant is presumed innocent until proved guilty beyond a reasonable doubt. You therefore stand before the court as an innocent man. You Were charged with crime, very serious crime, and the Tribunal is required to give you every opportunity to answer these charges. Thus, you are brought into court, not with the thought of subjecting you to an unpleasant and uncomfortable experience, but rather to a pleasant and comforting one in that at last you will have the opportunity to speak to the world. If you don't wish to speak, you are not required to do so and if you would indicate at any time that you do not wish to be brought into the courtroom you will not be brought into the courtroom. It was because we were assured that you had no objections to coming into court, namely in taking the stand in your behalf, that you were brought in.

We have medical attendants here. You need have no fear about your physical condition, so we again put to you that if, for any reason, you would rather not testify in court, you need merely indicate that through your counsel or directly and you will not be called upon to answer any of the questions, and we do want the record to show very clearly that you come into court voluntarily and that you are not being subjected to any hardship and are not being compelled to testify.

DR. SURHOLT: Your Honor, as the defensecounsel of the defendant, may I make just one remark? It is the express desire of the defendant obviously to express his opinion and to comment upon the counts of prosecution, by presenting himself in court, but there is no possibility for the defendant to cope with this and to testify beyond his physical ability at the moment to do so. The defense itself is of the opinion that the further examination will result in an exhaustion which will gradually increase and that such examination is not a proper examination of the Witness. The defendant therefore is here voluntarily, but his defense, however, is of the opinion that the actual examination of the witness no longer conforms with the prupose of a proper examination.

THE PRESIDENT: Dr. Surholt, the witness demonstrated an amazing clarity and lucidity of mind this morning on the two occasions that he was questioned. The Tribunal is not aware that he is having any difficulty whatsoever in understanding and comprehension. The only thing we are concerned with is whether his physical condition is such that he may not be able to continue with the examination for any extended period of time. However, all this is a medical question and not a legal one, and so we have in attendance a competent physician and defense counsel is permitted to have in the courtroom any physician that he chooses to call to assist in the determination of the final question as to whether physically this witness is able to continue With the examination which is being put to him sympathetically, because only defense counsel will question, the prosecution having waived cross-examination. with the fact that the prosecution has already submittef its case and, as is true in every instance defense counsel may be willing to accept what has been submitted against a client as true, but yet denying the legal implications sought for by the prosecution, in which event it would be a question of law as to whether the documents establish a prima facie Case.

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testify and at any time, he or you, Dr. Surholt, indicates that he would rather not testify, the proceedings, of course, will be immediately halted and he will be taken back to his cell or to the hospital, or wherever he happens to be presently lodged and, of course, your motion, Dr. Surholt, will always be before the Tribunal for determination and eventual decision as to whether he is physically and mentally capable of being heard at all.

DR. SURHOLT: Your Honor, the last decision--

Your Honor, I am not in the shoes of my client and Dr. Rasch himself must know about the borders of his physical ability. He had expressed the Wish to testify and I shall try to continue.

THE PRESIDIENT: Very Well. You may proceed.

Q. (By Dr. Surholt;) Herr Dr. Rasch, before the recess, you spoke about being in the service of the Count zu Dohna, and as Such, you went for trips into foreign countries.

A. Defense Counsel, I am desparately ill.

THE PRESIDENT: Captain Carpenter, will you please look at the defendant and report to the Tribunal?

( Captain Carpenter conferred with the court.)

THE PRESIDENT.: The proceedings will be suspended and the Tribunal will be in recessuntil One forty-five. and, if defense Counsel desires to call in a physician of his own also to examine the defendat, and then the doctors Will report to the Tribunal. At any rate at the present time, we are now to be in recess until one forty-five.

( A recess s was taken until 1345 hours, 12 January 1948.)

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THE MARSHAL: The Tribunal is again in session.

DR. DURCHHOLZ: For Dr. Riediger for the Defendant Haensch, I ask that the Defendant Haensch be excused from the remainder of today's session and for all of tomorrow's session in order to prepare his defense and to instruct that he be immediately taken to Room 57.

THE PRESIDENT: The Defendant Haensch will be immediately excused this afternoon and will be taken to Room 57 and he will also be excused from attendance in court tomorrow.

DR. DURCHHOLZ: Thank you.

THE PRESIDENT: Is there no way of adjusting the position of the defendant to that the Tribunal may actually see his face?

Witness Rasch, do you hear the Tribunal speaking? Witness Rasch, do you hear the Tribunal speaking?

THE WITNESS: Yes, I hear. I hear something, but very indistinctly.

THE PRESIDENT: We Shall make another attempt to continue with the examination, so you will please endeavor to cooperate in the best way that you can. The only reason that you find yourself exposed to this rather uncomfortable situation is that in this trial an indictment has been returned against you and co-defendants. This indictment, insofar as you are concerned, charges you -- and evidence has been submitted to support the charges -- that during the time you were in command of Einsatzgruppe C killed more than 75.000 people. There is quite a list of charges, each one of which indicates that illegally you caused the death of thousands of defenseless and helpless people. It is because of the enormity of these charges that you have been brought into the court so that you may have an opportunity to explain whatever you want to explain in answer to these grave charges.

Is that all very clear to you?

THE WITNESS: No, I heard a few words, but I did not comprehend them. I am so terribly tired.

THE PRESIDENT: Dr. Surholt, would you attempt to ask him the substance of what the Tribunal has just said?

DR. SURHOLT: Your Honor, what has just been said is, of course, the nucleus of what happened and which is the substance of the indictment. But this morning already I pointed out that the defense does not see its most important task in this fact that one, two, or three more executions are discussed here, but that it be clarified what the defendant's inner attitude was to the facts in the case and what his attitude is today and this proof can only be produced from the connections of the most important dates in his life, and, of course, above all, the most important dates of his political life.

THE PRESIDENT: Dr. Surholt, you will admit that any person charged with 75.000 murders should be given every opportunity to exculpate himself even at the expense of physical discomfort?

DR. SURHOLT: Certainly.

THE PRESIDENT: We want to make this very clear so that no one may get the impression that the defendant is being treated with but little compassion. There is the greatest of sympathy for his physical condition, but in his own behalf it must be uttered that with a crime of this appalling nature charged against him that he be given an opportunity to explain why he finds himself in this legal situation and that that of itself might even offer a comfort to him in that he had his chance in court to speak.

DR. SURHOLT: Your Honor, there is no disagreement Of opinion about that, but at the moment it was not clear to me when I was supposed to start my examination after the words of the President, at what point I was supposed to start. This morning, we briefly described the education of the defendant at home and his first schooling; that that he left school -

THE PRESIDENT: You need not repeat it, Doctor. Just begin Where you left Off. BY DR. SURHOLT:

Q Dr. Rasch, during your examination this morning, you Stopped at the point when you reported that while in then service of Count Dona you made trips abroad. Would you briefly tell us what trips you made at that time. Where did you go, and what decisions they induced in you?

A I hear your voice, but I don't know what you want. I am very tired.

Q (Dr. Surholt standing close to the witness) Herr Rasch, We want to try to continue with the examination, if at all possible. This morning you spoke of your first glimpse of the World. Do you have the physical possibility of answering?

A I don't understand you. I just don't understand you. Everything is of no consequence, and I am SO exhausted. I made all efforts, but I just can not go on.

THE PRESIDENT: Dr. Kretzer, Will you please question the Witness yourself, professionally, and then come here to the Bensch. Remove the microphone, please. (Whereupon Dr. Kretzer - later identified as Dr. Grahmann - bends over the witness and holds his wrists.) Captain Carpenter will you please also stand by. (Consultation between Dr. Grahmann and Captain Carpenter while near the witness. Captain Carpenter is before the Bench consulting with the Judges in a discussion Outside the record. The Captain returns to his chair.

THE PRESIDENT: The Marshal is directed to transport the defendant Otto Rasch from the courtroom to the dispensary, or such other place designated by the medical authorities.

(The Marshal and three assistants carry the defendant out of the courtroom on a stretcher) Captain Carpenter, will you please take the witness stand. testified as follows:

THE PRESIDENT: Please raise your right hand. Do you swear by God to tell the truth, the whole truth and nothing but the truth, so help me God?

THE WITNESS: I do.

THE PRESIDENT: Very well, you may be seated.

Q Please give us your full name?

Q What is your rank?

Q Where are you stationed?

Q Please, indicate your professional qualifications? is chief of Medical Service. I was trained at Northwestern University Medical School; graduated from that University; served an internship at Evanston Hospital, and Residential at Mayos.

Q Not so rapidly, Captain. All of this must be interpreted as you go along, please. You may now proceed.

A I was graduated from Northwestern Medical School: served internship at Evanston Hospital, and Residential at Mayo Clinic in Rochester. from this Tribunal examine the defendant Otto Rasch, with two other physicians, and submit a report on his physical and mental conditions?

brought into the courtroom? occasions that the Trib unal recessed? your findings were at that time, what they are at the present time, and what your conclusions are with regard to continuing the examination in court of Otto Rasch? examined the defendant in the hospital that he was suffering from a disease known as Parkinism; that his case is a purely advanced case of this disease. There was the further opinion into court, but that in so doing he would be subjected to emotional and mental trauma, which tends to exaggerate the signs and the symptoms of this disease.

Q A little slower,please, captain. Very well. the courtroom, it was apparent that these conclusions were borne out; under the stress of questioning, and in the emotional trauma of being in court, the manifestations of the disease -and the red means to stop.

AAll right. The manifestations of the disease were certainly exaggerated. It was apparent at that time that the defendant was becoming exhausted by the continued questioning. It was apparent that perhaps by questioning him for short periods of time, and then permitting him to rest for an interval, that we might be able to proceed.

However, the exhaustion of the patient was such that it has become evident that it is apparently impossible to proceed. It is my opinion that the defendant Rasch should not be subjected to further questioning.

Q At this time. You mean at this time? didn't mean with regard to today, but for the future. You are not indicating what the future would bring? this particular case, but it certainly is typical of this disease that the patients do not improve but continue to pursue a downhill course; so I don't anticipate that in this particular case that the condition of the defendant will improve. defendant should be brought into the courtroom to testify any time during the next two weeks? that the defendant Rasch should not be brought into the courtroom within the next two weeks.

THE PRESIDENT: Does counsel on either side desire to put any questions to Captain Carpenter? BY DR. SURHOLT: have to count on a quicker down hill course of the disease? of the symptoms and signs whenever the patient is subjected to any emotional stress or strain. The ideal treatment for such a case is to keep the patient quiet in every way possible.

Therefore, by subjecting any such patient to emotional stress of the courtroom, we probably should say that the deterioration would be more rapid,under such conditions.

Q One more question. According to the effect which the examination of today has had on the defendant, cannot it be assumed that if such a thing is repeated within the next few days that one might get a better result? point of view, is that right? stand it better, that he would use his mental capacity better than that he was able to do today? the defendant was brought in on the first occasion this morning, he was more mentally alert than he was this afternoon, for instance, or later in the morning. I anticipate that the patient, if he were permitted to rest for twenty-four hours, or thirty-six hours, again we might expect a short period during which he would be able to answer your questions, but I further anticipate that the performance we saw today will be repeated.

DR. SURHOLT: Thank you.

THE PRESIDENT: Mr. Ferencz. BY MR. FERENCZ: examination of the defendant, Otto Rasch, would you say that after a rest period, the defendant is able to understand the nature of the charges brought against him? question that was asked the Board of Officers that examined the defendant, and that question was answered in the reply of that Board of Officers, where it was stated at that time that it was the opinion of the Board that the defendant could understand the charges brought against him.

that the defendant is able to answer questions within a limited time period concerning those charges?

A I believe I answered that question a moment ago. I believe if he were brought into the courtroom again -courtroom altogether? future time, doubtlessly, for the first few minutes, perhaps, a shorter period than was that of this morning, he would be able to answer the questions, but again he would become exhausted and tired as he did today.

defense counsel a coherent statement constituting the basis of his defense, either outside of the courthouse, or in the courthouse?

A It would depend on the conditions. If the defendant and his counsel were alone or without a group of people around, I think there should be no difficulty at all in his dictating a statement to the counsel.

Mr. FERENCZ: Thank you.

THE PRESIDENT: Captain Carpenter, in describing the symptoms, you used the word "exaggeration". I presume the word "exaggeration" is used professionally, in a sense somewhat different from its popular connotation. When we speak of "exaggeration" generally we think of a purposeful enlargement of any given situation.

Q Do we understand by your use of the word "exaggeration" perhaps intensification?

THE PRESIDENT: Any other question, Dr. Surholt?

DR. SURHOLT: No, Your Honor.

THE PRESIDENT: Captain Carpenter, we are very grateful to you for being in today, and we would like to ask you to be in tomorrow again, if you will. If for any reason you find that is not possible, to notify us immediately.

THE WITNESS: Yes, sir.

THE PRESIDENT: Will you, Captain?

THE WITNESS: Yes, sir.

(Witness excused)

THE PRESIDENT: Dr. "Kretzer" will you take the stand, please.

DR. HERBERT GRAHMANN, a witness, took the stand and testified as follows:

JUDGE SPEIGHT: Raise your right hand, Doctor. Repeat after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth, and will withhold and add nothing.

(The witness repeats the oath). You may be seated.

THE PRESIDENT: Let's have your full name, please?

THE WITNESS: Dr. Herbert Grahmann.

THE PRESIDENT: You must be a different person from the one I have been talking to.

DR. SURHOLT: Your Honor, yes, it was a different name.

THE PRESIDENT: When he was in my chambers, I addressed him as "Dr. Kretzler" and you didn't correct me.

DR. SURHOLT: Your Honor, I don't believe I heard it in your chambers but at least I introduced him as Dr. Grahmann.

THE PRESIDENT: Well, we received from you a statement by Dr. Kretzler, and I made repeated reference to this statement, and I assumed all the time that naturally this was the man.

DR. SURHOLT: No, your Honor. The medical opinion of the doctor at the moment was signed by Dr. Kretzer, and the opinions were made out in the city hospital in Professor Maithaler's Department. On the order of Professor Maithaler, Dr. Kretzer and Dr. Grahmann handled the opinion, and the opinion was signed by Dr. Kretzer. It was explained to me that one name is sufficient.

THE PRESIDENT: And your name is Grahmann?

THE WITNESS: Grahmann, yes, sir.

THE PRESIDENT: I am glad to know you, Dr. Grahmann, and I hope you will excuse me for having called you "Dr. Kretzer".

" Now, Dr. Grahmann, you heard Captain Carpenter's statement from the witness stand, did you?

Q Do you concur in what he said? defendant, Otto Rasch?

patient.

Q You doctors like to talk very rapidly. Please watch these lights, and when this globe is illuminated with a yellow light, you speak slowly, and when it is illuminated with a red,stop.

A Yes, sir. It is possible that the condition of the patient might be deteriorated in such a manner during this session that it might lead to loss of consciousness, or loss of consciousness to chewing cramps.

defendant were to be called again to testify within the immediate future, that there would be the possibility that while testifying he might lose consciousness. Is that what I understood you to say?

THE PRESIDENT: Proceed. Anything else?

THE WITNESS: I would like to add that through the constant exaggeration of the mental makeup and emotional makeup, there would be a further alteration or deterioratio n of the patient, and with a onehundred percent certainty, my colleague, Dr. Carpenter, in his point on the one count of the prosecution, has not stated exhaustingly the following point: Were the defense to discuss various points with the defendant alone, considering the extent of the charges, a similar situation as we have seen here would result.

THE PRESIDENT: Do we understand from that that you take issue with Captain Carpenter's conclusion that the defendant could easily enough and without danger to his health, dictate an answer in the presence of his defense counsel to the charges brought against him?

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it doesn't matter whether the charges are answered in the presence of a large auditorium or alone with the counsel.

THE PRESIDENT: Do you wish to question him any further, Dr. Surholt?

DR. SURHOLT: No, sir.

THE PRESIDENT: Mr. Ferencz, do you have any questions to put to him? BY MR. FERENCZ:

Q Doctor, are you a specialist on Parkinson's disease? beyond that I have a large medical experience with the many diseases in the neurological field - and I think that submitting a certificate of approbation as far as this disease is concerned is not necessary. suffering from Parkinson's disease are able ot discuss matters generally with intelligence? suffering from Parkinson's disease is able to conduct an intelligent conversation on general subjects? that the defendant would be unable to discuss it? matters and especially in all questions which concern his personality so keeply would be very much disturbed. is so deeply involved in these things they h ave a deep impression on him and have a disturbing effect, is that correct?

A I cannot answer these questions; whether here is guilt or no guilt I think that an insult or a charge of this extent would suffice to produce emotional disturbance in a man which strongly effects his personality.

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Q How long have you been attending this patient? put to him?

THE PRESIDENT: Anything else, Dr. Surholt?

Dr. Grahmann, we thank you very much for giving us of your time and attention. That will be all.

Dr. Surholt, do you h ave anything else to present in the Rasch case?

DR. SURHOLT: Nothing to present, Your Honor, But I would like to take up once more my motion about severance of the case and to ask the Tribunal for a ruling.

THE PRESIDENT: Well, we believe that you have indicated your position very clearly. You have made your motion. We now have the reports of various doctors. We H ave seen the demonstration in court so that the Tribunal will be able to rule upon this motion without any further argument.

DR. SURHOLT: Yes.

THE PRESIDENT: So -

DR. SURHOLT: Your Honor, only one further remark. The facts as they have been characterized by you is clear, also my reasons given so far need no further addition, but there is something that I haven't submitted yet. That's the general difficulties for the defense. It isn't merely that the defendant could not stand the examination as a witness in his own case here in court, but the preparation of the entire defense material under the effects of this disease has suffered badly. This morning already I have explained that despite innumerable visits It's probably the same there as it is here in court, insofar as I found him in good shape and if I extended my discussion somewhat the result was so much the more negative on the following day.

Because of exhaustion and because of his entire condition which he called bad he rejected the questioning giving the reason that he could not stand it.

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I merely wanted to say by this that in the decision of the court, not only the incident here in court but the entire difficulties of the total defense should be considered.

THE PRESIDENT: That will be considered. We merely want to add one further expression on this particular episode and it is this, that the defendant Otto Rasch was brought into court because it was his right to be heard. That is a constitutional privilege which the Court gave to him and insisted upon for his own benefit.

DR. SURHOLT: The defendant Rasch told me expressly that he wanted to make an attempt considering the importance for his defense but from the beginning he was skeptical about this attempt.

THE PRESIDENT: Very well. Now, Dr. Aschenauer, I had thought perhaps we could reach you earlier in the day and then you would be able to give us your various document books.

DR. SURHOLT: One question, Your Honor. Dr. Grahmann can be eased, is that correct?

THE PRESIDENT: Oh, yes, indeed. Dr. Grahmann, that is sufficient.

(The witness was dismissed)

THE PRESIDENT: Before we consider the presentation of your document book, Dr. Aschenauer, we will make the general announcement to all counsel that the program is now pretty well established as to what will transpire in the remaining few days of this trial. When we recess this week after having heard the other defendant, rebuttal, and whatever surrebuttal there is, the Tribunal will adjourn. Does anyone have a calendar here? Is "Montag", Monday? Very well. The Tribunal will adjourn until "Januar 26, Montag". Is that right? Very well. Until - I had better be my own interpreter here - until Monday, January 26. At that time we will hear the closing arguments on the part of defense and prosecution. It is assumed that an hour's argument on the part of each defendant through his counsel will be adequate to cover the points involved, with the exception of the Ohlendorf case because Dr. Aschenauer has undertaken the burden to generally argue the international law and the common defenses and we will take that up later.

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If any of the defense counsel believes that one hour is not adequate for him in the presentation of his summation he will then please make application to the Tribunal. He does not need to make it formally, he can see anyone of the three judges, so that we can determine whether he should be allowed a little more than the hour's time. Dr. Aschenauer will be allowed such time as he considers reasonable and I would appreciate it if he would let us know just about how much time he thinks he will need. He doesn't need to tell us that now but rather soon. The summation, of course, should be prepared as quickly as possible because we have the translation difficulties always with us and you know if we get too many documents to the translation room at one time there is bound to be a congestion. We do not know whether any of defense counsel intend to submit in addition to the final closing arguments trail briefs. May the Tribunal be enlightened on that point. Do defense counsel intend to submit what we call a brief? Well, counsel, are privileged to do so if they desire. It is not asked for.

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THE PRESIDENT: Dr. Aschenauer, you indicated you would take perhaps an hour and a half approximately to present your documents and in view of the lateness of the hour, and in view of the fact that tomorrow morning we intend to take the defendant Strauch, I am afraid it would not be desirable to divide up the presentation, so if you don't mind we will have you present your documents immediately after the Strauch case is finished. Is that satisfactory to you?

DR. ASCHENAUER: Yes.

THE PRESIDENT: Thank you very much.

DR. ASCHENAUER: That is all right will me, but I would just like to announce that after my documentary presentation I would ask that the defendant Ohlendorf be excused for one and a half days from the session because I want to discuss several questions about the final arguments with him.

THE PRESIDENT: That is entirely in order, and when you have finished with your presentation of the documents your request will be fulfilled.

DR. ASCHENAUER: Thank you.

THE PRESIDENT: The Tribunal will now be in recess until tomorrow morning at nine-thirty.

(The Tribunal adjourned until 13 January 1948, at 0930 hours) Otto Ohlendorf, et al.

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, defendants, sitting at Nurnberg,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal 11 is now in session. God save the United States of America and this Honorable Tribunal.

Dr. GIGK: Defense counsel Dr. Gick, for the defendant Strauch. Your Honor, the Chief Medical Officer, Dr. Roeder von Bayer is present in this room. I received the permission yesterday for the Chief Medical Officer von Bayer to be present during the direct examination of the Defendant Strauch. I would like to be permitted, Your Honor, to have Dr. Bayer sitting at this table here in order to be able to follow the direct examination of the witness.

THE PRESIDENT: You may have Dr. Bayer sit whereever you think it will best serve your purpose.

DR. GICK: Your Honor, before I begin with the direct examination of the defendant in the witness box, I would like to make the following statement. On the 23 October 1947, I submitted a motion of severence to the Tribunal stating the frequency of the epileptic fits, and the consequence thereof. The American Board of Medical Officers examined Strauch on 11 December 1947, and the result wasthat under given conditions he would not be able to be responsible for his own acts, Strauch's condition has become considerably worse after this.

THE PRESIDENT: Dr. Gick, it is not necessary to go into a discussion of this. You have made your motion, andthe motion is now pending. The defendant is in the courtroom, and I would suggest we immediately proceed to the examination, because the longer time that we expand in discussion, the more energy is being used by the defendants, merely in waiting. So that unless you have something specific to present to the Tribunal to rule upon, it would not be necessary to review the entire history of what has happened up to now.

DR. GICK: It is not my intention, Your Honor to review the entire history. It is merely my intention to explain to the Tribunal that I am still as I always had been of the opinion, as I expressed in my written application that --

THE PRESIDENT: That is just it, you have explained it all in your written application. It isnot necessary to tell us what you told us in the application.

DR. GICK: Your Honor ---- I know ---

THE PRESIDENT: Don't you realize, Dr. Gick, that the longer you talk now, the more of a tension you are developing in the defendant. He is here. The examination has been made. It has been determined that he iscapable of testifying. Let usproceed to the testimony, unless, of course, something comes up which requires a decision. Don't you agree with me?

DR. GICK: Yes, I now agree, Your Honor, to begin with the direct examination, and if the situation should come up. I will put in my comment, which I meant to make before I was stopped.

THE PRESIDENT: Yes, we don't mean to curtail your statement, but in view of what we are confronted, let's save time. The witness does not need to stand up to take the oath. testify as follows:

JUDGE DIXON: Witness, raise your right hand and repeat the oath after me. I swear by God, the Almighty and Omniscient, that I will speak the pure truth, and will withhold and add nothing. (The witness repeats the oath while sitting.) BY DR. GICK:

Q. Herr Strauch, are you in the physical condition concerning your health to give an account for yourself today?

A. Yes, I hope that I am able to do it. I have a few difficulties, and I have difficulty in expressing myself, but I hope and any way I shal l try very hard to do so.

Q. Do you know why you are here?

A. Yes, I am here as a defendant in atrial so that -- in a political trial -- against especially which involves a number of especially large number of former people who are former political inmates.

Q. Herr Strauch, I want to start with the direct examination with you as the witness. I wouldlike you to concentrate as well as possible, and I want you to give corresponding answers to the questions so far as it is possible. Do you understand me?

A. Yes.

Q. Now, will you give us your personal particulars?

A. I was born on 17 August 1906.

Q. Where.

A. In Essen.

Q. How old are you then, today?

A. I beg your pardon.

Q. How old are you today?

A. I am today forty-one years old.

Q. What was your last civilian occupation?

A. My last civilian occupation was SS-Obersturmbannfuehrer -I mean, SS-Oberregierungsrat, that is, Senior Government Councillor.

Q. You mean, Senior Government Councillor?

A. Yes.

Q. Oberregierungsrat?

A. Yes.

Q. Please give us a short review concerning your education, and your professional training?

A. I beg your pardon.

Q. I would like you to give me a short description concerning the way you were educated at home, and what professional training and education you have had?

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A. I am the son of my father, a worker, and during the war -shortly after the First War, my father became unemployed, and my brother and myself, we did any old work that came along. For instance, myself, I gave coaching-lessons, and, thus, I earned a little money, and I was able to increase my parents! income. I thus was able to support with earnings and to increase a little the earning of my father and brothers. I worked myself, and my brother also worked. My parents worked very hard, and didn't bother about anything else. They always worked very hard, and the work was pretty hard, and they worked pretty hard so I could attend Gymnasium, which isa high school.

Q. Do you mean to say, Herr Strauch, that you always had to work very hard because your parents were not in a position to contribute anything towards your education, is that right?

A. Yes.

Q. What schools did you attend?

A. I first attended Police School -- that is, not Police School, but the elementary school -- that is, the elementary school until the year of nineteen .... I must have to think it over -- I must think it over very hard, until I was nineteen. Until 1906.

Q. 1906?

A. 1906, yes.

Q. I thought you were born in 1906?

A. No.

THE PRESIDENT: Dr. Gick, in order to save nervous energy, I don't think that I would tax the witness with questions on precise features of his early education. It isenough that he was educated. He can say in one year what hislast unit of education was, and then we must assume that he participated in all that went before that. BY DR. GICK:

Q. Herr Gick, when did you conclude your studies?

A. I can not put it in that way. May I just give a few details concerning thisfeature.

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I was born in 1906, and sofar as I remember, 1906 I went to school, and 1910 I went to high school, the gymnasium; that means that for four years of my training I had four years training of elementary studies, and 1906 until I went to high school.

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Q. You mean to say you finished your studies at high school? Did you graduate?

A. Yes, I graduated privately.

Q. You mean up to your graduation examination - you mean to say you earned your living for your studies yourself, is that right? Were you not prevented doing so through your epileptic fits which have become apparent today?

A. No, not at that time. When I studied - when I was partly going to elementary school or high school or to the university, I also worked.

Q. What I mean, did you have any epileptic fits at that time?

A. No, the first epileptic fits I had when I was a child and then in the British Camp that I was in, I think, in Dendorf.

Q. When was that?

A. That was the time --- I must work it out. I joined the forces in 1931 and I was under tremendous nervous strain as conditions were most unfavorable and I was released - and then I was completely released because it was not possible any longer.....

Q. What were you released from?

A. From the hospital.

Q. you mean the hospital of the Prisoner of War Camp?

A. Yes, I was taken to the hospital and I was then released.

Q. I asked you when was that?

A. Yes, I am just trying to recollect.

THE PRESIDENT: Dr. Gick, just a moment, please. I don't think it is necessary to go into the medical history because that history has been thoroughly examined by the medical authorities and that is a part of the record. I would suggest that you immediately proceed to ask him when he entered the SS, if he did, and get right down to the issue. Later on, if we find that it is necessary, then we can go into these other collateral matters.

DR. GICK: Your Honor, I only attach particular value to the witness testifying as to what he remembers in order to clarify the point of his COURT II CASE IX condition.

Therefore, I attach particular importance to whether the defendant remembers when these epileptic fits occurred again....

THE PRESIDENT: Dr. Gick, it isn't necessary for you to keep emphasizing the malady with which the witness is afflicted thereby only emphasizing in his mind the situation. Let us proceed immediately now to the issue.

DR. GICK: I shall be as rapid as possible.

THE PRESIDENT: It isn't a matter of being rapid. It is a matter of getting to the issue. Dr. Gick, now please do that.

DR. GICK: Herr Strauch, In order to give a short picture of your personal conditions, again please tell us what you did after you left high school.

THE PRESIDENT: Dr. Gick, now you are doing just exactly what the Tribunal to..d you not to do. Now will you please listen to what we say, Dr. Gick. We are having more difficulties with you than we have with the witness. Now please immediately get to the issue and the issue is not whether he graduated from high school. I think the Prosecution will admit that? The Prosecution very generously admits that the witness graduated from high school.

DR. GICK: Your Honor, I deem it necessary to give the Tribunal a picture of the personality and development of the defendant so that the Tribunal will be in a position to recognize what mental and professional development the defendant had which seem to me of great importance for the judgment of his deeds. Therefore, I went to deal very briefly with his professional training.

THE PRESIDENT: Well Dr. Gick, can't you get - you have got him out of high school, now, he is a grown-up man. Get into the field of activity, of his life's activity. BY DR. GICK:

Q. Yes, I can do that. Well, then I want to start with the period when the defendant became politically active for the first time, Your Honor. Herr Strauch, will you tell the Tribunal now in what way you became politically active for the first time?

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A. First I was a member of the "Jung Deutschen Orden" because I was of the opinion that Communism had to be fought. Therefore, I joined the German-Sweden. It was an organization which sometimes increased and sometimes decreased and I don't remember exactly, but I think I joined the Deutsche Orden in 1937. That was the year, I believe, which I joined.

Q. What was this organization? What were the tasks of the Jung Deutschen Orden?

A. Well, the tasks, the idea was to protect the German Nation and to get the light back into the German people. therefore, it was the belief that in this field it could become active.

A. Was not the task of the Jung Deutschen Orden to fight Communism?

Q. Certainly. There was only communism and bougeosie in Germany and then it was the right, the political right, that nothing else could be discovered and one had to fight this state of affairs. We fought Communism with the few people we had. please excuse me, it is a little difficult again. We wanted to fight Communism and as we had experienced the war a short while ago and because there was no air as a consequence of the War it was very difficult to live, and so on, and, it was no longer possible to go on.

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Q For how long were you a member of Jung Deutsche orden? Did you understand me?

A No, I don't understand you. Orden? 1925. I don't remember exactly.

Q Didn't you only join in 1926?

A yes, of course, 1926. I remember that when I joined the university then I joined the Jung Deutsche orden.

Q When did you join the SA?

A The SA I joined on 8 September, I think, 1931. Then I joined the SS......

Q Just a moment. Let us remain with SA for a little while. Why did you join the SA?

A Why? I was of the opinion that if one did have to join an organization for political reasons then one must join the NSDAF.

Q You mean SA which you joined?

A The SS and at the same time I joined the SS. Again, therefore, in 19 - - - The SA, then the SS, and finally in 1943 -- is it all clear?

Q Before you joined the SA did you leave the Jung Deutsche orden?

Q In any case you left. Why did you do that and why did you join the SA?

A Because I wanted join a political party. I wanted to join a Party which one could decently join. time -- I and my comrades -- my comrades suggested to me to join the SS-

comrades who were members of the Party and to fight for Germany. Under the conditions, therefore, seeing that Germany would be lost, therefore, one had to be a member of a Party which one could decently join.

Q Which formation did you join after you joined the SA?

Q What formation did you join after you joined the SA? and then the SS.

Q When did you join the SS?

Q What year?

A 19 - - -, I think -- I believe, in 1930. Then in 1931 I joined the Party. No, in 19 - - - I joined the Party in 1932 and 1933 I joined the SS.

Q Herr Strauch, did you not join on 10 January 1932 the SS?

Q A nd did you not join on 1 August 1932 the Party?

A No. If there is material you can produce for being given to me I can certify it and comment on it.

Q When did you join the SS and when did you join the Party?

Q Why did you leave the SA, Herr Strauch to join the SS? my liking. The general conditions were better.

Q you mean the best organization?

Q Organization for what purpose?

A Our task was mainly to protect the Fuehrer. For instance, when somebody came -- it's all right -- I have heard that -- when any fights or incidents of that kind took place they were shot at by our people and they were fought by our organization, that is the SS.

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Q Did you ever hold any office Within the Party? were carried out, such as being a Scharfuehrer -

Q You mean the SS?

Q Will you then tell us about your career in the SS? to protect the territories and I can't say what else. mainly, however, our main task was the protection of - -

Q protection of what? for being a referendar? Did you not also receive a law training. three years.

Q There years. Therefore, were you not during that time a member of the SS? A member of the SD I mean.

Q SS or SD member?

Q During 31 you were still referendar?

Q You were at the same time amember of the SS?

Q Did you have the opportunity to become active in the SS? comrade.

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Q Please go on with your career. What other jobs did you hold in the SD?

A I was gradually promoted. Well, I was a legal official first. Then I was examined by the Internal Administration, by the Internal Administration. I was taken over by the Internal Administration.

Q But that is not what we are talking about. We are speaking about your career in the SS.

A yes, I wasin the Administration. That is completely correct what I said -- in the Internal Administration, as referendar. Service.

Q How did you join the Security Service? Security Sector. I received the order to report to the Sector and I was to report there -- was to report there.

Q Who ga ve you the order?

Q What supreme commander?

A Rhineland. But my commanding officer did not went to have me transferred he wanted to keep me.

Q You mean your Commander in the SS?

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Q Was that the SS-section officer in Essen?

A Yes. What was his name?

Q What was his name? It doesn't matter. Anyway, it was the SS-section chief, Essen, who passed on the order to you. Witness, what order did he give you? Essen and then I was to take over the sector in Dortmund.

Q What job was that, the SS-section?

Q Or is it the SD-sector?

Q SD sector? expected to fulfil with the security service?

A No, not at all, I never knew what happened. I had no idea what they were doing there.

Q What was your first task in the security service? had to be organized and built up before one started with the organization. Everything that has been said here I can only confirm. your SD activity?

A You mean my SD activity? Yes, the worst for me was, or the most important thing was to organize the organization and to build up something, to build up an information and news service.

Q Where?

Q Were you not first in Essen?

that chapter was closed.

Q What did you do after that?

Q Where did you go?

A First to Essen. Then I remained in Dortmund, and remained in Dortmund. district of Arnsberg?

Q How long did you hold that position?

A You mean in Dortmund?

Q Up to what year then? concerning the tasks and the manner of working of your security service which you were in charge of. tasks, and during the - within the population to collect names and activities and to pass these on to the the superior office which again passed it on, and collect them somehow, and that was the task, to transfer them to the superior office and thus to conclude this.

Q Did you hold any other tasks besides? to the station police whom you suspected?

Q Were you active fulltime in the security service? is the state police, and I refused to work for the state police in any manner whatsoever, and it was thus that a number of comrades of mine suggested to me that I should occupy myself with other things. There was one, or at least two, which matter somewhat, but I said, "Here I have my directives, and I only have to collect information, and there is nothing else that I want to do." the SD. What, then, was your fulltime job, your professional job? secret state police, not the state police, but from the I can't remember.

Q The interior administration? and I could manage with this. which was an honorary activity, you were an official of the interior administration? sector of the district Arnsberg?

Q How long was it? Koenigsberg, I immediately took my wife with me because I reckoned with difficulties. yet.

At the moment we are still in Dortmund, managing district Arnsberg.

A What do you mean, at the beginning of the war? How long was that?

A Oh, that is what you mean. There I was from -When was it that I started? That was in -- Well, I was in Rot.... and there I remained for seven years I think.

Q Seven years? That is until the year '41, is that right? arrived there until the year 1941. I don't know when it was that I started. That must have been in 19-- probably in 19--, I really cannot remember. I should like to say the following. I believe - I want to say the following - I was taken there 1626. I was taken there and then I was separated and simultaneously I was assessor and assistant lawyer. I don't know when I arrived. I would have to look deeper into matters.

Q Let's recollect. You were the leader of your "SS" sector in Dortmund and that was in the year 1934. Do you remember that?

A '34? No. In '34 I was a section leader, an Abschnittsfuehrer.

Q Yes. Now I ask you, for how long did you remain the section chief in this district?

A Until when?

A Until the beginning of '34. long did you remain a section chief?

recollect and then in '20 yes, I think it must have been '20, I come to Koenigsberg. That is approximately how it was.

Q You mean '20 you went to Koenigsberg? Arnsberg as a section chief and you remained in that position until 1941. Do you remember whether that is correct?

A 1940 to Koenigsberg? That is quite impossible.

Q How is it according to your recollection? I don't remember.

Q You can't remember that? Do you remember that your activity as section chief in Dortmund was interrupted on repeated occasions. Do you remember that? Do you understand what I asked you? went to Russia, or the middle of '40, of '40 I went to Russia, and then I first was under Stahlecker. certain events. Do you remember that during your activity with the sector in Dortmund, you repeatedly did something else just them cope with your SD activity? it is very difficult to concentrate. I can't even keep that thing on, the earphones on.

THE PRESIDENT: Dr. Gick, we will anticipate the recess by five or ten minutes, and I would suggest that when we reconvene after the recess that you begin with the year 1939. He will have had a little rest, his energies may be refreshed, and then we can get immediately to the issue. Later on, if you believe that it is important, then you can go back in to the period prior to 1939, but now that we have him here and he is oriented, let's get to the issue. So I would suggest that after recess you do that.

( A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. BELZER: Dr. Belzer for the defendant Graf. Your Honor, I would like to ask that, for the further preparation of his defense, the defendant Graf be excused from attendance in court this afternoon.

THE PRESIDENT: The defendant Graf will be excused from attendance in court this afternoon.

Q Dr. Gick, it will be permissible within reasonable limits for you to lead the witness, so that the amount of talking that he will need to do will be reduced to a minimum. You can take him right up to a situation, and then put the question to him.

DR. GICK: Very well, Your Honor. your Honor, I had my earphones on , and thus I was not able to hear the English translation. During the recess it was pointed out to me that the testimony of the witness didn't come through in the English translation as it was said originally by the witness. What the defendant said here as a witness appeared in the German as rather confused German, in fact, completely confused. I understand the fact that it is difficult to translate the words of the witness in such a manner that the Tribunal gets the impression exactly as given by the witness. But I think it necessary, that the translation, in order to give you a correct impression, give every word the defendant says, no matter what nonsense it is.

THE PRESIDENT: Now Dr. Gick -

DR. GICK: Even that repititions are also mentioned.

THE PRESIDENT: Just a moment, please, Dr. Gick. Now, we will instruct you not to keep referring to the defendant's condition, to nonsense, and so on. You proceed with the examination. The Court will determine whether it is nonsense or not, and we are not aware there were any libertics taken with the translation, but if any mistakes occur in the translation, and they are pointed out to the Tribunal later, or even now if you know exactly which ones they were, the corrections will be made.

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Now let's proceed immediately to the issue. 1939, what happened?

DR. GICK: In order to bring this up again, may I ask the interpreter be asked that every word be translated.

THE PRESIDENT: We have the utmost faith in the interpreter, and that will be done without any additional admonition or request on the part of the Tribunal.

DR. GICK: Very well. BY DR. GICk: At that time you were still Section Chief?

A Well, when was I supposed to have arrived? At that time you were Section Chief in Dortmund?

Q What office did you take over after the year 1941?

Q That is all right. You should merely answer. as Section chief in Dortmund, where were you transferred to ?

A Yes. Yes.

Q Do you understand my question?

Q Please, answer it?

Q You don't understand the question then?

Q Then please will you reply to it? already discussed that I was to go somewhere else, and the Section Chief said - -

THE PRESIDENT: Witness. Witness, will you please direct your attention to the Tribunal. Where were you in the year 1941?

THE wITNESS: I beg your pardon?

THE PRESIDENT: Where were you in the year 1941?

THE WITNESS: Well, Your Honor, I always get the German. I always hear you speaking in German. I don't know that much German.

THE PRESIDENT: Where were you in the year of 1941?

THE WITNESS: In the year of 1941, I was in Koenigsberg.

THE PRESIDENT: All right, Proceed Dr. Gick. BY DR. GICK: Koenigsberg then?

A Yes. No answer.

Q What office did you take over there?

Q I don't understand you?

A The Government Counsellor's Office.

Q The Government Counsellor's Office, is that right? Herr Strauch, please think what you are saying. You could not have taken over the Government Counsellor's Office?

A No, I didn't take it over. I took over one department in the Government Counsellor's Office, that is what I took over. The Government Counsellor's Office in the police - - the subject of - - - in the police county counsellor, senior government, that is too main government.

Q In Koenigsberg there is a district government?

Q Were you with the district government?

A No. There are two government. There is one main government, and another government.

THE PRESIDENT: Counsel, please, please, now Dr. Gick, you know from the document, and from the personnel record, of Eduard Strauch, that since 4 November 1941 he was leader of Einsatzcommando Latvia, two. so begin with the date, November 4th, 1941. you know what he is charged with in the documents. Take up the document immediately and have him give whatever explanations. Counsel, you may begin with. when he actually arrived in Russia, or, when he was assigned to go to Russia, but this is a crux of the charges against him, what he did in the East, and, if you want to go back later, you may. You may lead two witness to that point.

DR. GICK: Your Honor, It is very difficult for me to conduct this direct examination here, because in my opinion I don't have a man in front of me with whom I can conduct this examination in a normal manner. I was just about - -

THE PRESIDENT: That is quite obvious to the Tribunal, and for this reason we said that you may lead the witness. you know your case. you know what he is charged with.

DR. GICK: yes, I am just about to clarify that point.

THE PRESIDENT: Very well.

Q Herr Strauch, when did you come to Koenigsberg? Hundred and -- Well, as far as I know -

Q How long were you in Koenigsberg then?

THE PRESIDENT: Dr. Gick, you don't need to labor over a date. If he doesn't think of it, you may supply it. We don't need to linger and work and puzzle over things which can easily be found in the record and which you undoubtedly know, so help the witness.

DR. GICK: Your Honor, may I comment on this very briefly? It is my opinion that the most important part is to hear what the defendant has to reply himself to may questions, and, if I lead him and he answered a leading which I put to him, this would not give exactly the same impression which the defendant would give otherwise.

THE PRESIDENT: We don't mean that you should lead him on a very vital point, but the matter of when he left Koenigsberg, if it is in the documents, you needn't worry him with that, and, incidentally, it is the first time, Judge Speight observes, that we have heard a lawyer objecting to leading a witness.

DR. GICK: The special situation requires it, Your Honor. May I continue, Your Honor?

THE PRESIDENT: Please do. Q (BY DR. GICK) Herr Strauch, may I remind you that in Koenigsberg you were Section Chief of the SD, which is the same as in Dortmund, until the time when you were supposed and had to take over another office.

Do you know what office you were supposed to take over? to Riga? reached me on 2 January, as far as I know.

Q Second of January, what year?

A In what year? Nineteen Hundred -- Nineteen Hundred -22 -- 20 -- 2d January 1920.

Q Herr Strauch in 1941 you were in Koenigsberg. Then the order only could have reached you in the year 1941, is that right?

Q When do you think that the order reached you? Yes, 1941 Is that right, 1941? And then 19-- I took over the kommando in Riga for a very brief period. I had to remain there and them in 1942 I was transferred form Riga to -what is that called again? I can't think of it. I will think of it in a moment. Just a moment. Rovno. the date.

THE PRESIDENT: Mr. Glancy, just a moment, Dr. Gick. Mr. Glancy, will you please furnish the Tribunal with the document numbers, document books, and the pages which contain ther specific charges against this witness?

MR. GLANCY: Sir, that might be found in the Order of Presentation contained in Document Book III-A, Responsibility. of the Defendant Strauch.

THE PRISIDENT: Page?

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MR. GLANCY: Page 2 of Document Book III-A. It begins with NO-2966 in Document Book III-A and continues on.

THE PRESIDENT: Yes.

MR. GLANCY: Do you have that, Sir?

THE PRESIDENT: Yes, I have it now, thank you. All right, proceed, Dr. Gick. Q (BY DR. GICK) Herr Strauch, please concentrate hard and try to remember when you received the order to take over the office in Riga.

A I can't say quite exactly. but I assume that -- I assume that in '44 -- that must have been in 1944. few days of November, 1941, you received a teletype message containing the order that you were to go to Riga, is that right?

Q What happened after this? No, it is not right. It isn't right.

Q What is wrong here?

A This teletype message was not this one. It was a teletype message where it was suggested to me in Riga to remain. I was told in this teletype message to remain in Riga.

Q What happened as a result of that teletype message? I was to remain in Riga forever.

Q That you were to remain in Riga forever? to remain there constantly.

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elbow and your upper arm again? I am asking you again?

A It is quite simple. I wrote to my wife and told her

Q You would have to return to Berlin?

A No, to Koenigsberg. I would have to return to Koenigsberg.

Q But you were in Koenigsberg. You were to go to Riga from Koenigsberg?

A Where was I? O, like this -- that is how it was In Derrings I was in Koenigsberg and I waited there and wanted to get away and then there came my attempt to remain in Koenigsberg and since -- and since I did not want to remain in Koenigsberg, I made an attempt -- well, through a teletype message, I was trying to get away through this teletype message, and then I was told I would not be permitted. I could not -- or, rather, I could get leave, but that I had to go back to -- to -- what do you call it? To Frankfurt on the Oder River.

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Q Frankfurt on the Oder River?

Q Weren't you to go to Riga, not to Frankfurt on the Oder River? Figuero, Fruehr.

THE PRESIDENT: Dr. Gick -

DR. GICK: Yes.

THE PRESIDENT: Witness Strauch. Witness Strauch, please look at me. You are in court and you are charged with serious crimes. we are aware of the fact that you have been ill and that on certain occasions you are afflicted with seizures, but we are not aware that between these seizures you are not fully mentally capable of understanding and participating in ordinary conversations. Now, your demonstration this morning is not very convincing of a willingness to cooperate with your attorney. We do not believe that you purposely are giving unresponsive answers, but we are of the opinion that you are being very careless. Now, if you think that by giving irresponsible answers that you are helping your case, you are making a very bad mistake, Now, we want you to take hold of yourself and answer intelligently, The medical records do not show that you are incapable of answering questions intelligently. Now, please, in a very calm and tranquil way listen and answer and answer Intellingently.

Now, Dr. Gick, we will call to your attention that in this very brief survey which I have made, after Mr. Glancy called to my attention the page on which I could find the documents, that there are two documents here to which you could well direct your attention at once, namely, the letter from the Commissioner Kube and the affidavit made by Sandberger, both of which charge this present defendant with crimes. Now, direct your attention, please, to these specific charges to begin with. Are you familiar with the document, PS-3428on page 30 of Document Book III-A? That is, it begins on 30. On page 32 you will find the reference to Strauch in which it is alleged that he participated in some way in executions which eventually mounted to 55,000.

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DR. GICK: Your Honor, I do not have the document with me. I already pointed out that I Started the direct examination of the defendant in November 1947 - I started working on it, I mean - but that about the beginning of December it was no longer possible

THE PRESIDENT: Just a moment, Dr. Gick, are you familiar with this document?

DR. GICK: Yes, I know the document.

THE PRESIDENT: Well, then, ask the witness about the statements in that document.

DR. GICK: Your Honor, may I not develop this chronologically? In Latvia the defendant was also charged with several things, for instance, the Jeckeln Action.

THE PRESIDENT: Very well. Very well. That is what I would like to have you do. Proceed to the direct charges. I only chose this one because it is the first one that came to my attention. You choose any one you desire. Now, please, have the defendant answer to the charges and don't tire him out with what can be omitted until later on, if we find then that it is relevant.

BY DR. GICK: to Riga. Do you know when you came to Riga?

A Is it so terribly important for me to know this? 14 Jantsen.

Q Herr Strauch, I Shall come back to this later. Please reply to my following question - what office did you hold in Riga?

A I did not get it. Please answer again. However, I did not carry out any office. I did not -

Q You were in Charge of an SS or SD office in Riga. That is, you were transferred there in order to take over an office.

What office was this?

A Well, I don't know. I don't know.

Q In Riga were you the commander of the Security police and SD?

Q Were you the Chief of Einsatzkommando 2?

Q I did not understand you. Please repeat.

Q Were you Commander of the SD and the Security Police? Einsatz - of the Chief -- the commander of the Einsatzkommando 2 no, it is wrong again. Well, I had nothing to do with the kommando, but immediately as commander -- as Chief of the Einsatzkommando, I went to Riga. Einsatzkommando.

Q You said you became Chief of the Einsatzkommando. That does not agree.

A Noo, I have nothing to do with it. I am not Chief of the Einsatzkommando but I was commander of the Einsatzkommando. Do you understand me now? and the SD in Latvia stationed in Riga?

A Right. That's it. Kommando Chief -- Chief of the kommando of the Einsatzkommando - Latvia.

Q Who was the commander of the Security Police and the SD in Riga?

A That was before my time, when I arrived - yes, who was it? In any case I had a predecessor - I don't know any more who it was. you came to Latvia?

established and the predecessor, I was to be trained and I was well, this work was kept away from me. I was to be trained first for three days or so. That is how it was to remain and then during the time when I was there for three days, the predecessor was retained there and that was Patz.

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Q Who was Patz?

Q What was his office as Chief? police.

Q Commander of the Security Police? And you were to become Patz' successor? of the Kommando which was advancing but we wre merely the administrative office.

Q You were merely the administrative office?

Q Were you chief of the Administrative office?

Q In Chena?

Q Riga? And the chief of which office were you? Police and SD.

Q you were then Commander of the Security Police and SD? II, number II? example, I had nothing to do with the State Police. One could say that and then, for example, I did not have to give any orders to the State Police and they had people - as Commander one did not have to give any orders and one did not have to make decisions.

Q As a commander? Riga?

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THE PRESIDENT: Dr. Gick, now the important thing is not when, where, and how he broke his arm but whether he killed and Jews. Now, ask hii that - did he kill any Jews? That's what he is charged with you know.

DR. GICK: Your Honor, here for example a date is of important, namely the 3th November 1941, That was the day when the so-called Jeckeln operation is supposed to have taken place in Latvia. I am now discussing those dates because I want to show whether Strauch was still commander on that day, chief of the Einsatzkommando or not.

THE PRESIDENT: Well, why not ask him that question? Why not ask him that question - that's the way to find out instead of going around Robin Hood's barn.

DR. GICK: In my opinion I have to create a basis for this which should help the defendant to answer this question what happened.

THE PRESIDENT: But why not have him answer first. Then, if any explanation is in order ample opportunity is permitted but you see the difficulties you are having. So, try to got to the pivotal point. Now ask him about this Jeckeln action. Was he commander at this time in Jeckeln?

DR. GICK: Your Honor, you will see we cannot. I shall now put this specific question.

THE PRESIDENT: Well, now, Dr. Gick, if you are anticipating that you can't proceed, that doesn't show that you are very anxious to cooperate either. You are already saying now we won't be able to proceed. How do you know? Has thedefendant told you he won't be able to proceed?

DR. GICK: Your Honor, I realize the witness cannot remember any dates.

THE PRESIDENT: Listen, Dr. Gick, you do not need to repeat to us what we through our own senses are able to scertain. Proceed to the question.

BY DR. GICK:

Q Herr Strauch, where were you on 30 November 1941?

A I don't get that at all.

Q I asked you were you were on 30 November 1941?

THE PRESIDENT: Now tell him what happened on that day. which took place, took place on 11 November 1941.

Q Herr Strauch, do you know anything about a Jeckeln action?

Q What happened during this Jeckeln operation?

A The following happened during this Jeckeln operation. The SS_Obergruppenfuehrer Jeckeln, who has now been condemned - what do you call it? Well, he was killed somewhere and there his wife was waiting for him and relatives and did not get any news and suddenly it was published in the paper that SS_Obergruppenfuehrer Jeckeln had died. And then he was dead, that's all.

THE PRESIDENT: Captain Carpenter and Dr. Bayer, will you please come to the bench.

(Captain Carpenter and Dr. Bayer conferred at the bench with the Tribunal)

THE PRESIDENT: Witness, up until a very short time ago you were thoroughly capable of intelligently carrying on conversations. There was no indication when you were in the courtroom the other time and since then up until a few days ago that you weren't thoroughly capable of comprehending question. Now we again ask you to pay attention to the question and use all yourmental forces to respond to the question and don't let your mind wander. We think with a little bit of will you can answer intelligently and respond factually to the questions which are put to you. Do you understand me?

THE PRESIDENT: Now, please try to answer your attorney and Dr. Gick will continue.

All right, Dr. Gick.

BY DR. GICK: called Jeckeln operation was.

A The Kuechler operation was very difficult. One day an operation was carried out, instigated by Jeckeln and he wanted all forces, he wanted to use all forces for this and we also were to participate. And at the time I think I said that Heydrich had given strict orders for a blockade, for restirictions, in Estonia, and on that evening - yes the evening when we said that it is impossible to carry out such an-to give such instructions. First of all it was against the Fuehrer and secondly other orders were received which were contrary. It is quite impossible and he did not want to reject this, to revoke it, and he did not want to give up his principles and we pointed out to him that it is impossible, quite impossible - that's nonesense - and he did not want to revoke this. He issued orders - the order is valid and will be carried out. And, now one day the famous order from Jeckeln came then and I simply got rid of the order. I ignored the order. I said simply for him to take back his order. He sent three or four officers - three officers - and I Sent the officers back and I told him that this was impossible that such an order could be carried out and I think my wife if she testified here as a witness she would know more. Well, in any case - it's funny how this looks. And then I have in this letter - I wrote a letter to him.

THE PRESIDENT: You wrote a letter to whom?

To whom did you write the letter? to Heydrich and I think it was Heydrich - to Heydrich.

THE PRESIDENT: Well why did you write a letter to Heydrich?

THE PRESIDENT: Well, what did this have to do with the Jeckeln action? Now you remember you were -

THE PRESIDENT: No the Jeckeln action.

THE PRESIDENT: Very well, proceed. You were describing the Jeckeln action. Now direct your mind to that and stay on that particular action. refused to take part in this, for example, I know very well that Stahlecker -- Sal -- Yes.

THE PRESIDENT: Stahlecker?

THE PRESIDENT: You mean one of your co*defendants?

THE PRESIDENT: Well, which one? Count him from the end, which one do you mean?

A The first, the second of the first. Not him, the third one.

THE PRESIDENT: Well, count him. You mean Sandberger? Well, count from the end, 1- 2- 3.

THE PRESIDENT: Well. that's Sandberger.

THE PRESIDENT: Yes. All right, now what about Sandberger?

THE PRESIDENT: Well what did Sandberger have to do with this Jackeln action?

A He did not want to carry it our either. He also refused to Sandberger - rather did not refuse - refused to participate.

THE PRESIDENT: Well than who did carry out the action? time. We had some sort of tour i, for example had to carry out a tour - I don't know from Strauch, from Stahlecker. Stahlecker had, I believe, wanted to - did not want to do this -

THE PRESIDENT: Well, now Strauch, you began to tell us about the Jeckeln action and you spoke very well.

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You spoke clearly and outlined the situation. New if you will just take hold of yourself

A I don't get it all

THE PRESIDENT: if you will just determine to answer, I am sure that you can. It's that you then lose control or interest but if you just will hard enough I am confident that you can answer the questions.

THE PRESIDENT: Are you willing to answer our questions?

THE PRESIDENT: And you know that you are a defendant in this trial.

THE PRESIDENT: And you know that you are charged with very serious crimes.

A Well, I don't know if this applies to my case.

THE PRESIDENT: wELL, whether it is true or not has not been decided, and the only way we can determine whether these very serious version. effort to give the right --

THE PRESIDENT: The right answers. Yes. Now you will have an opportunity to rest for an hour and a half and then you will be brought back to the courtroom and at that time we want you to answer the questions.

THE PRESIDENT: Because it is to your own benefit that you understand and answer these questions because otherwise these charges remain against you unanswered.

THE PRESIDENT: you understand that. Very well. The Tribunal will be in recess until two o'clock.

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(The hearing reconvened at 1415 hours, 13 January 1948.)

THE MARSHAL: The Tribunal is again in session.

DR. DURCHHOLZ (ATTORNLY FOR THE DEFENDANT SCHULZ): Your Honor, I would like the Defendant Schulz to be excused tomorrow the whole day, because I want to prepare the rest of his defense.

THE PRESIDENT: Thank you.

DR. KLINNERT (ATTORNEY FOR THE DEFENDANT SEIBERT): Your Honor, I have the same request concerning the Defendant Seibert.

THE PRESIDENT: The defendant Seibert will also be excused tomorrow.

MR. GLANCY: May it please the Tribunal, the prosecution would appreciate some information from the two attorneys who just requested the excuse of their clients as to when they intend to put in their document books.

THE PRESIDENT: We had assumed that practically all document books were already in and, if they are not, this comes as a disappointment to the Tribunal because certainly we have frequently informed counsel of the necessity of getting in these books at once. Now do the defense counsel who have just addressed the Tribunal have anything to offer in connection with Mr. Glancy's question?

DR. KLINNERT (ATTORNEY FOR THE DEFENDANTS NAUMAN AND SEIBERT): Your Honor, the documents for Nauman and Seibert have still to be submitted. so far, it has been impossible because the translation has not been concluded yet. I do hope, though, that we shall be in a position tomorrow to submit the documents.

THE PRESIDENT: Then they are already prepared. It is only a question of translation. Is that what I understand?

DR. KLINNERT: They are in the Translation Department.

THE PRESIDENT: Very well.

DR. DURCHHOLZ (ATTORNEY FOR THE DEFENDANT SCHULZ) Your Honor, I have submitted three volumes of document books and there are only a few documents which have been found later which are in the Translation COURT II CASE IX Department at the moment.

I may perhaps point out that the translation in the Translation Department takes a long time. That is the reason why I have not submitted them all yet, but I shall do so very soon.

THE PRESIEDNT: Mr. Glancy, there were a number of Schulz books presented.

MR.GLANCY: The reason I made that request was so that it would facilitate the prosecution in learning as to when and in what order the defense counsel had approximately agreed upon presenting their documents formally into evidence.

THE PRESIDENT: Yes.

MR. GLANCY: Would would appreciate it if perhaps we could get some word from the defense as to which order they desire to present their books.

THE PRESIDENT: Just as soon as we finish this case and we take up Dr. Aschenauer's documentation, we will go into the whole subject of document books.

MR. GLANCY: Thank you very much.

DR SCHWARZ (ATTORNEY FOR THE DEFENDANT JOST): Your Honor, in order to make it possible for the Tribunal to dispose of their time, I may point out that so far I have been unable to submit document books. I have not concluded them, in fact, because unfortunately three affidavits have been received too late. Therefore the document book is still in the Translation Division. I think it would be a good thing if I submit all my document books together. Therefore, I would like to be permitted to submit my document books on Thursday or Friday of this week.

THE PRESIDENT: Very well.

Now, Dr. Gick and Defendant Strauch, the Tribunal will call to the attention of both the defendant and counsel that an examination was made during the recess period of the defendant and it appears from the examination that the defendant is able to grasp questions and to answer. The examination was made by a psychiatrist from the Army hospital in Nurnberg. His affliction of itself does not becloud his brain or his mind or his memory. He may have some little difficulty, but nothing like COURT II CASE IX that which he manifested this morning, so far as medical reports are concerned at any rate.

So now we want to call to your attention, Strauch, that this is your one day in court. It is entirely up to you. If you don't want to answer the questions, if you want to make answers about China, that's up to you, but we would recommend to you that you confine your answers to Russia. That is where you are supposed to have committed these crimes. That is what you are charged with, and this is your day in court. Now, it is up to you. If you don't want to answer, then the Tribunal will dispose of the case without your answers. It seems rather extraordinary to the Tribunal that you would suddenly lose you memory just as you come into the court room. You were perfectly able to handle yourself up to a couple of weeks ago, so we again put it to you. It is up to you. You are on your own. The Tribunal has given you fair warning. Now, you will proceed, please. BY DR. GICK ( ATTORNEY FOR THE DEFENDANT STRAUCH):

Q. Herr Strauch, we spoke of the Jeckeln Action in Riga.

A. I am sorry, I haven't understood.

Q. I am asking you on what day and what year the Jeckeln Operation was carried out in Riga.

A. The Jeckeln situation took place -- took place -- in the year 19 -- 19 -- I think 1913 or !14 -- O, I mean !40.

Q. Where were you on that day when that operation was carried out in Riga?

A. Yes, the matter was as follows: I don't want to give a figure. I merely want to recollect the conditions. I sat - I was sitting in Riga, whereupon two noncommissioned officers arrived at my place and told me -- asked me where I was after Jeckeln -- or, at least, they asked for Jeckeln or, rather, his deputy. They were in the anti-room and they asked "what has happened? What is about to happen? Upon what order?" Actually it was all about a number of Jews who were to be killed. That was the answer. They said that Strauch is about and they COURT II CASE IX were to go to him, although I was ill and my arm was bandaged, or, at least, was in a plaster cast.

Then the medical officer arrived and I said -- and he said that -- that it was not possible to put troops at their disposal, because, first of all, it was too cold and, secondly, there were no people at their disposal for such matters. There were no troops, but we can't assume this task suddenly. There came a discussion and after I had listened to what was being said, I did not know who was speaking at the telephone. I only said that whoever was on the telephone should reassure himself and should quiet down. Anyway, there was nobody present.

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None of those who could cause anything was in the office. Then suddenly the telephone conversation went on and nothing could be done in any case. He asked --- well, then I asked him whether I could speak to him, and, he said that there was no necessity to speak to him, I had to follow the orders of the Reichfuehrer, and he was speaking, and wanted this order to be carried out. He was requesting me to do so. He just concluded the telephone conversation, and I realized that he was --- he also said that he was deputy of the Reichfuehrer.

Q. Whom did you speak to on that occasion.

A. I had spoken to "von Demback" ---no, not "von Dembach, the Highest SS and Police Leader, who was the highest SS and Police Leader at that time and that can be immediately established.

Q. Was it Jeckeln?

A. Yes, Jeckeln, that was the name.

Q. What happened to this telephone conversation?

A. After it had been concluded, I sent the teletype message to the General Jeckeln from the Highest SS and Police Leader, and then -- and, of course, to --- a number of teletype messages to Stahlecker concerning --- there was no answer.

Q. What did you say in your message?

A. I said that I was asking for new directives. First, that after now we had not received any replies from Heydrich, and, secondly, that we asked to disregard this order, and that we were refusing to execute the Jews, and that Sandberger --- Stahlecker said that they didn't want to go further, they wanted to go away; they didn't want to play. That was much later than it had been earlier when the directives --- when I had the directives as a Commando-chief to carry out these things.

THE PRESIDENT: witness --

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BY DR.GICK:

Q. Did this Jeckeln operation actually take place?

A. Yes, the operation was carried out, that, as I have already said, in February.

Q. What year was that, February of what year?

A. March.

Q. What year, that is what I am asking you?

A. In March.

Q. That was the month, but what year?

THE PRESIDENT: necessary to bother him with it. Now there is no question involved in that. Do you know what year it was? What year was that?

DR. GICK: It was in 1941.

THE PRESIDENT: ALL right. BY DR. GICK:

Q. Do you remember it now?

A. Yes, it was in 19141.

Q. It was in 1941. It was not in February anyway. It was in November. Now Herr Strauch, did you take part in this Jeckeln operation? Did you understand my question?

A. Yes, yes, yes, I did. That whole matter seems in 1941, went to Riga '41 --- I went to '41, and the whole matter, therefore, it must have been discussed in the presence of the Supreme Commander.

THE PRESIDENT: Witness, please look at me.

THE WITNESS: Yes.

Q. You were the commander of Commando-II?

A. No, I was young. I mean I was chief of the Security Police and of the SD in --

Q. Were you Chief of Einsatzcommando-II?

A. Chief of Einsatzcommando II and SD for the united Russia, that is Latvia.

Q. Were you chief of Einsatzcommando-II?

A. No, I never was the Chief of a Einsatzgruppe.

Q. An Einsatz-commander of Einsatzcommando-II? of the security Police Unit and the SD.

Q. Were you Chief of Einsatzcommando-II?

A. No. That was the dispute. That was the separation, the fact that I was not the Chief of the Security Police and SD but --

Q. What was your job in Russia?

A. I was Chief --- Chief of the Security Police, SIPO, and Chief of Einsatzgruppe. You see here there are various matters, the Reich Security Main Office was the Offices I, II, III etc.

Q. Witness --

A. Then there was --

Q. Just a moment, please. When you went to Russia, what position were you given?

A. I was immediately assigned to Einsatz---No, I became the Chief of Einsatzcommando of the SD.

Q. Yes. Was that Einsatzcommando-II? When you first went there you were Chief of the Security Police. Then later on you became Chief of a Commando, is that right, later on?

A. No.

A. No.

Q. You were never a Chief of a Commando?

A. Never, never.

Q. Yes, well, then, as Chief of Security Police, what were your functions?

A. That was assignment as it was mentioned and described by Ohlendorf, and others, that really various bits of intelligence were to be compiled and used, and were to be collected.

Q. That was the SD?

A. NO, that was Australe, that was the Red-Iv; with that I had nothing to do, This is Department - III, but I ever I was the Chief of Department III.

Q. You were then Chief of Department-III?

A. III, yes.

Q. And as Chief of Department - III did you learn of the exe cution of Jews?

A. News were part of Department- III, or part three.

Q. Did you learn of the execution of Jews?

A. no, at that time no Jews were executed.

Q. During all the time that you were in Russia, were any Jews executed to your knowledge?

A. I can pass over that. That I don't Know.

Q. Do you know whether any Jews were executed?

A. I beg your pardon?

Q. Did you participate in the execution of any Jews?

A. No.

Q. You were charged with having supervised, ordered and di rected the killing of Jews?

Q. You are supposed to have done that.

A. You mean to have carried out executions?

Q. That is right. That is right?

A. Not true. That it is documentary matter to me what is said,

Q. There are various documents here which particularly mention the Einsatzcommando-II, of which you were the Chief killed Jews?

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A But I was not the Chief. I was not the Chief. I was not made the Chief in 1902. In 1902 I was Chief of - -

THE PRESIDENT: Mr. Glancy, will you please point out to me any document or documents where he is referred to as Chief of Einsatzkommando-II.

MR. GLANCY: In Document Book III-A, your Honor, page 20, Document is No-2966. The last paragraphs on the page. The heading is: "Security Police Service Record since 4 November 1941. Leader of EinsatzkommandoLatvia," which is equivalent of Einsatzkommando-II.

THE PRESIDENT: Well, let the witness be handed that Document Book III-$ in German language. Do you have the document Dr. Gick?

DR. GICK: Yes, it is just being looked for. I think I have got it.

THE PRESIDENT: all right, show it to the witness. Show it to the witness, please. (Whereupon Dr. Glick shows the document to the witness.)

Q Will you read that?

(Conversation ensues between counsel and witness.)

Q Well, show it to him Dr. Gick, just the short statement.

DR. GICK: Yes.

THE PRESIDENT: All right, have him sit down and put on his earphones.

Q Strauch, will you read that?

Q Now that is your own personnel record? kommando in Latvia when it is right in your own personnel record? I went away, and I was supposed to go away completely.

Q Were you at any time the Chief of Einsatzkommand-Latvia?

A No. No.

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Q Why did this appear in your personnel record? give you voluminous reports which are unclear, which are inaccurate, which are not inaccurate but which are not wrong.

Q But you claim that this is a mistake?

A Yes, I maintain that this is a mistake. I can give you quite a number that are wrong.

Q Well, all right, show us some more mistakes?

A Where it says, 2 or 4/11. That we have. Then it says - -

Q Well, let's be a little more specific. Now further on in the same statement it is declared that since February 1942 you were commander of Security Police and the SD in White Ruthenia, is that correct? Is that correct. Is that correct, witness.

A (No answer.)

THE PRESIDENT: We will suspend the questioning for a moment. Dr. Gick, the Tribunal has decided to do this. To have the defendant Eduard Strauch once more examined psychiatrically, and upon the determination of the examination the Tribunal will decide what to do. We are not entirely convinced up to this moment that this defendant is not capable of understanding you a little more clearly and comprehensively than he seems to be understanding, but the only way that can be decided is psychiatrically. Now, witness, we will not question you further today, but we would advise you to make every effort to gather your mental forces and refresh your memory of the events which happened in Russia in 1941 and '42, so, when you come back into the courtroom you will be able to testify without hesitation, but we won't lose so much time as we did today. Do you understand that?

THE WITNESS: Yes.

THE PRESIDENT: Very well.

THE WITNESS: I only want to say again that my mother has lost everything in her house, her own house, everything. It is, therefore, impossible -- or it is possible that there must be something remembered of these implements that were found, that my mother or I should be reproached or charged, that we are not able to do so.

I don't think that it is possible.

THE PRESIDENT: Very well, just a moment now. Dr. Gick anything further you want to say at this moment?

DR. GICK: There is one thing, your Honor, I would like to say on this occasion; after the defendant has been examined by the psychiatrist, may I then ask the psychiatrist a few questions, and may I then again request the presence of Dr. Ritter von Bayer, and to hear his opinion as to this case.

THE PRESIDENT: Well, there is no reason why Dr. von Bayer may not be called into this conference. In fact, I think the present plans are to have him in on the conference.

DR. GICK: Thank you, your Honor.

THE PRESIDENT: Yes. Now Dr. Aschenauer, will you be ready to proceed after recess? You will be, yes. All right. The Tribunal will now be in recess for fifteen minutes.

THE MARSHAL: The Tribunal will recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: I would like to say, Dr. Aschenauer, just before you begin that such other defense counsel as have their document books ready and intend to present them should be ready tomorrow morning to proceed and we would like to say - I don't see him here - that counsel for the defendant Fendler should be in tomorrow morning because we might call Fendler to the stand for a question or two. So, will one of counsel try to notify Fendler's counsel to that effect. Very well.

DR. ASCHENAUER: Preliminary question to the interpreter. Do the interpreters have a second copy of my document presentation?

INTERPRETER: Yes, I have.

DR. ASCHENAUER: Your Honor, in that case may I tell you that I have talked with the prosecution and told them that I am presenting my documents together and that the end of the presentation of my documents the prosecution will raise their objection.

THE PRESIDENT: I don't know just what difficulties either of you anticipate. If, Mr. Walton, you should indicate at the very moment that he presents the document why you object, if you object, why is not that program followed? It may be that you have a good reason.

MR. WALTON: YOur Honor, we agreed (any agreement which we made is, of course, subject to approval by the Tribunal and the wishes of the Tribunal will of course be followed in this.) However, we thought among ourselves that it would in the end save time and in addition to that would be important for comment either in the closing statement or in the brief of responsibility or the answer brief for counsel of both sides to find the record of the objection and the ruling on the objection in one consecutive spot. Now if that is going to place an undue burden on the Tribunal, naturally, I would not insist on such a procedure.

THE PRESIDENT: Well, as it seems to us the first flush it may be after we get into it it will look different but as it seems to us prime faciedly:

we have a document before us. Dr. Aschenauer presents it and you find some reasons to object to it. You give your objection. We make our ruling and that ends it. The other way, after we listen to a discussion of some 5 documents then you come in and interpose an objection, Let us say, on thirty, well then you have to find your way through the labyrinth to connect it with the document when it is presented. It seems to us now that it might be better that is, as soon as he furnishes the document to which you desire to object you state your objection.

MR. WALTON: Very well, Your Honor, we will follow that.

THE PRESIDENT: well, we will try it.

Dr. Aschenauer do you see any serious objection to that procedure?

DR.ASCHENAUER: Yes, the objection I have for my part is that the documents form one unit and one document supplements others and that the entire document submission will be disturbed. The entire thing will be discontinued. That is the objection I have.

THE PRESIDENT: Well, isn't it going to be disturbed later when he gets up and points out his objection to various documents?

DR ASCHENAUER: I don't think so.

THE PRESIDENT: Well, if it's ruled on immediately you know whether it is in or not. Let's try it this way a few minutes. There is no harm to be committed in trying it. Well, we will see how it works out.

DR. ASCHENAUER: In my presentation of documents in the case of Ohlendorf I am starting with Document Books II, II-A and II-B which II intended to introduce in their entirety concerning problems of a war in the East. They are intended to show how it came about that communists, Jews and Gypsies in the Soviet territory were considered as elements endangering security. They are also to show in what manner Communists, Jews and Gypsies constituted and element endangering the security in Soviet territory and why the defendant might have thought so. Ohlendorf and his co-defendants picked for themselves a special situation in this war situation which cannot be without influence in judging this question.

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I, therefore, treat Document Books II, II-A, and II-B as an entirety. I submit Document 38 as Exhibit 1, Document 39 as Exhibit 2, and Document 40 as Exhibit 3.

MR. WALTON: Now, Your Honow, I would like to object to each one of these documents in Document Book II. The way they were presented was the series of four. Does the Tribunal wish me to take up each document separately or does it wish me to take up the document as a series?

THE PRESIDENT: Well, either way. Now we have these three documents and they are more or less inter-related. These three documents are inter-related and there is no reason why you can't address yourself to the three of them.

MR. WALTON: Well, prosecution objects to Document 38 as being the expert opinion on the law....

THE PRESIDENT: You are referring to Documents 38, 39 and 40.

MR. WALTON: I shall take them up as they were offered, 38 first.

THE PRESIDENT: Very well.

MR. WALTON: Prosecution objects to the introduction of Document 38 as the expert opinion on the law of the case by Dr. Reinhard Maurach. It objects for the reason that this testimony is incompetent since this witness' testimony does not relate to matters of fact but to issues of international law involved in the proceeding, that is, to those specific issues of law which the Tribunal itself must determine. Second, a conclusion and inferences drawn from assumptions of fact as to necessity and self defense would be matters for argumentations either by brief or memoranda of law before this Tribunal. Since this Tribunal like any domestic court is presumed to know and authorized to take judicial notice of law of its own sovereignty and jurisdiction, and that law which is international law, in this instance, need not be proved. The court is competent to draw its own inferences from such international law.

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THE PRESIDENT: Well, Mr. Walton, in Dr. Aschenauer's opening statement he referred to this law. Dr. Aschenauer in his opening Statement referred to the law of self defense, law of necessity, law of presumed self defense, law of presumed necessity. That is part of his opening statement. That is part of his case. Now in support of that he submits an expert opinion. No harm can be done in having that before the Court. The court will accept it or not accept it, will agree with the theory by Professor Maurach or not. I can see no harm done in having it introduced. On the contrary it will be helpful in appraising the theory of defense as presented by Dr. Aschenauer.

MR. WALTON: May I cite a precidence in the Southeast Generals case where the defense was prevented quoting an expert opinion on international law.

THE PRESIDENT: You remember, Mr. Walton, in this case Professor Maurach was here and we specifically said to him that it is not necessary to take the witness stand and give a long dissertation but we shall be very happy to have you submit a brief on that subject which he now apparently has done. lightenment and illustration and for reference no one can possibly be prejudiced.

MR. WALTON: If Your Honor Pleases, Prosecution finds the duty on itself to object for purposes of the record. The ruling on that Objection is, of course, always within the breast of the court. However, I would like to get my objections in the record regardless of what the Court's ruling is.

THE PRESIDENT: Very well. You m ay proceed.

MR. WALTON: It is of course true that in domestic courts foreign law may be proved by expert testimony. That, however, is only because it cannot be presumed that the so-called foreign law is known to the domestic court; here the law of the forum is, generally speaking, international law for this Tribunal, as Wigmore has put it and I quote:

"Must be coedited with a knowledge of its own or at least with a competent knowledge of where to search for it." Wigmore on Evidence, Section 2572, page 551. matter of argument for counsel's defense brief. The other questions of law treated are in their proper function for the Tribunal and as a defense document is objected to by the Prosecution. Document 39.

THE PRESIDENT: The objection is overruled. Proceed to the next one.

MR. WALTON: Document 39 is an excerpt from a Stalin radio speech of 3 July 1941, page 60 of defense document book. The type of resistance instituted against an aggressor cannot justify before this Tribunal the liquidation of a racial group of people of an invaded country especially since this extermination was planned before the first act of aggression was ever committed. The fact that the attacked nation fought back with every means it possessed to expell the invader still does not justify the commission of nearly one hundred thousand murders.

THE PRESIDENT: Mr. Walton, if this speech by Stalin had said that Soviet troops should kill Jews I don't think that you would object to its introduction because then it would be argument on behalf of the defense; it did not say that , we know, but it is the theory of the defense that the Russians were conducting their warfare in such a manner as gave some justification, at least psychologically, that the defense for their acts, whether that is accepted or not, is a matter for argumentation and even decision. We see no reason and no harm is done in having this in the records. The objection is overruled.

MR. WALTON: Document 40, excerpt from the Russian was publication entitled "We are Guerrillas", no date given, page 61 to 67 of the defendant's document book. This is in the n ature of hearsay evidence and in addition it gives no date when the events it relates happened. They could have happened subsequent to the date the defendant left Russia and they could also have happened in other areas besides that occupied by Einsatzgruppe D. The Tribunal in its order of 9 October 1947 has rejected this type of evidence as inadmissible.

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THE PRESIDENT: We do think that the lack of dates here make the document a little elucive.

DR. ASCHENAUER: Herr President, I am prepared to submit the original.

THE PRESIDENT: Well, does it have a date?

DR. ASCHENAUER: I have the original book in my office and can submit it to the Tribunal at any time just as it was multiplied.

THE PRESIDENT: Well, but I asked, does it have the date. A book can be printed at any time.

DR. ASCHENAUER: Well, at the moment I cannot answer this question but I can look it up any time.

THE PRESIDENT: Very well. Then we will reserve our decision on that until we see the original book.

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MR. WALTON: Document 41, the affidavit of Oskar Dankers.

DR. ASCHENAUER: I Haven't submitted that yet.

THE PRESIDENT: He hasn't submitted that, Mr. Walton.

MR. WALTON: Sorry, sir, I thought he submitted the entire document book.

THE PRESIDENT: No, he said 38, 39 and 40.

DR. ASCHENAUER: The prosecution considers in their indictment the war in the East as a normal war. Document No. 38 reveals that the German-Russian war is not a war in the sense of international law.

DR. ASCHENAUER: This document reveals that the partisan warfare which is being discussed by the prosecution, even if The Hague Convention of Warfare is applied in the case of Russia and the rules of warfare are applied according to their meaning, under no circum stances could the warfare be considered illegal; that, therefore, owing to the peculiarities in the territory where the Russian war was conducted, in view of the measures, the manner in which the war was conducted were justified which otherwise would have to be considered illegal or prohibited.

It is also shown that for the Russian warfare there were no limitations according to international law. Any means was permitted according to Soviet opinions as long as it would harm the enemy.

THE PRESIDENT: Well, Dr. Aschenauer, do you intend now to argue from this thesis?

DR. ASCHENAUER: No, Your Honor, I am just quoting from the document book.

THE PRESIDENT: Yes. Now you have indicated what it is, it is the expert opinion by this professor on international law, and then when you make your summation you will draw from this opinion such parts as you will need to support your argument. If you are going to argue it now then you are going to argue it twice. We know now what it is.

That is the purpose of talking about a document when you present it, to inform the Tribunal what it is.

DR. ASCHENAUER: Of course, Your Honor. In that case I would like to talk about the next document now.

THE PRESIDENT: Yes.

DR. ASCHENAUER: According to Document Book II - in the Document Book II-A Document No. 42 and Document No. 43 are submitted as Exhibits No. 4 and 5, and I offer those numbers. These are excerpts from the Russian Encyclopedia which indicate the official notes of warfare of the Russians. I submit this document mostly because I want to offer that all that the Russian warfare had planned and the way it was conducted was known because these documents were made out before the year 1941.

MR. WALTON: The same objection, Your Honor, to both documents being discussed by the prosecution. The prosecution objects to Documents 42 and 43 in that they are treaties on partisan warfare methods. No evidence appears as to the qualifications of the authors as experts in this type of warfare, and as such they are purely hearsay. Nothing contained therein shows any justification for multiplicitous murder committed by German Einsatzgruppen or other crimes laid down by the charges in the indictment. No policies of the Russians on partisan warfare can set at naught the laws of all nations on the crime of murder. To allow these documents will serve only to clutter up the record and thus needlessly protract the proceedings in this case.

THE PRESIDENT: Strictly speaking, Dr. Aschenauer, the relevancy of these documents is not apparent. What the Russians intended to do in their partisan warfare can scarcely have any effect on whether multiplicitous murder is justified, or killing is justified or not. However, if you insist on it, they are already mimeographed; it can't harm anyone; the work is already done; so if you insist on giving

DR. ASCHENAUER: Your Honor, I have to do that. The subject of the theory of the prosecution is opposed to the theory of the defense the prosecution contends that this fight was part of a great fight between the races, of extermination of races, while we of the defense hold the opinion that the measures were carried out for security reasons, security reasons which were required in Russian warfare. The documents of the Russian Encyclopedia, the date of the publication is known and also the author. These are official documents and they prove that the German measures had their reasons.

THE PRESIDENT: What is the Russian Encyclopedia, Dr. Aschenauer?

DR. ASCHENAUER: From the Russian Enclopedia of the year 1937. Argunew is the author.

THE PRESIDENT: Is it something comparable to the Brittanica in English, if you are familiar with that work?

A. Yes.

THE PRESIDENT: Yes, it is? Is it state sanctioned? I presume it is because everything in Russia is state sanctioned.

DR. ASCHENAUER: That is correct.

THE PRESIDENT: Yes. One reason why we would have difficulty in excluding this, especially so far as the present speaker is concerned, is that I went out pretty far in indicating what would be relevant. I said everything up to the social life of penguins, and this would certainly fall within that rather large circle, so the objection is overruled.

DR. ASCHENAUER: Document No. 41 from the Document Book II is offered as Exhibit No. 6. It is to be used as evidence in how far the assumption of the emergency state in the state appears justified Owing to the acts of the Russians in the territory conquered by them, it can be shown clearly for the defendants what would have been the fate of their homeland if these Russian troops, who have committed those crimes, had come into this country.

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MR. WALTON: Now, Your Honors, the prosecution objects to Document 41 on the basis of the decision rendered by this Tribunal on the date of October 9, 1947, and in the language of that decision when the same type of evidence was offered wherein, the alleged terror and persecution committed by Russians on Latvians in Latvia, is, as this Tribunal so succinctly stated in that order which I have referred to, and I quote, "an attempt to draw a red herring across the trail". The evidence to be considered at all must have some bearing on the issues drawn by the indictment, I have a copy of the Tribunal's order in my hand if they would like to see it.

DR. ASCHENAUER: Your Honor, may I reply briefly? This document confirms the opinion of Dr. Maurach.

THE PRESIDENT: Let's find out who Oskar Dankers is. Who is Dankers?

DR. ASCHENAUER: That is General Dankers, the plenipotentiary in Latvia, a competent witness therefore, because he took part in these things.

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THE PRESIDENT: The difficulty about this Dr. Aschenauer, is that there is nothing in this affidavit which says that the Jews were responsible for the bloody massacre described in it. It is something that happened between the Bolshevists and the Latvians.

DR. ASCHENAUER: Yes.

THE PRESIDENT: Well, how could that be used as an argument that the Einsatzgruppe operating in that area had the right to kill Jews?

DR. ASCHENAUER: Your Honor, this must be seen in the entire psychological connection which I have mentioned. What the Bolshevists did in Lithuania, in Finland, in Latvia and in Estonia, they also did in Eastern Germany after 1945, and those who fought in the East had to expect this, and therefore, the defendants doubtlessly, in view of all the measures taken, the Fuehrer Order, etc., had to consider the war-emergency status of the State which in their opinion caused these cruel measures.

THE PRESIDENT: Yes, but you are in effect telling us. A and B are having a bloody fight. C comes in and kills D. The Bolshevists and the Latvians are fighting. The Germans come in and kill the Jews. How do you connect up these two separate events?

DR. ASCHENAUER: The connection, therefore I said that these documents form an entirety, in the opinion of Dr. Maurach prove in how far the defendants could get the impression that the main bearers of these measures in the East were Jews.

THE PRESIDENT: Are Jews mentioned in this affidavit?

DR. ASCHENAUER: This affidavit mentions the active group of the NKWD, and it is a well known fact that this cannot be denied, as Dr. Maurach also says as a fact that the high leaders of this system unfortunately were Jews.

THE PRESIDENT: It would appear now that your original idea is the better one because if we let Dr. Aschenauer submit what he has to submit then Mr. Walton indicates his objections, then the court will have an opportunity to look them over and render its decision. I think we will save time and perhaps proceed a little more smoothly.

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DR. ASCHENAUER: Then no decision is made about 41 yet?

THE PRESIDENT: We won't render any decision now, Dr. Aschenauer. We will let you submit your documents and then Mr. Walton will make his objections.

DR. ASCHENAUER: I now come to the Document Book II-B. The submission of the following documents is done because the attempt of understanding the actions which have taken place in the East and for the action of the defendants is not possible without realizing how for years the problem of Bolshevism was being taught to the German people. In this connection I submit as opinion the Document No. 58 as Exhibit No. 7. I point out that this-

THE PRESIDENT: Where is that, Dr. Aschenauer?

DR. ASCHENAUER: In Document Book II-B.

THE PRESIDENT: Yes, I have that.

DR. ASCHENAUER: B for "Book".

THE PRESIDENT: Yes, but I don't see the document number.

DR. ASCHENAUER: Isn't that in the English copy? Just a moment.

THE PRESIDENT: No, we have four documents but they are not numbered.

DR. ASCHENAUER: It is the first document. I quote from it.

THE PRESIDENT: Tell us where it is. According to the index here there are excerpts from Schacht, Hitler and Byrnes.

DR. ASCHENAUER: Yes.

THE PRESIDENT: All right.

DR. ASCHENAUER: And I am quoting an excerpt. It says in this document -

THE PRESIDENT: Indicate which one it is, Dr. Aschenauer, because the documents are not numbered in this book. You give an exhibit number and then we will have it, the document number and the exhibit number.

DR. ASCHENAUER: Yes. I introduce this document as Document No. 58 and offer it as Exhibit No. 7

THE PRESIDENT: You still haven't told us what it is because there are four here.

Which document?

DR. ASCHENAUER: It is the first document in Document Book II-B.

THE PRESIDENT: All right, it is the first. Then you have told us.

DR. ASCHENAUER: I quote from this document. "As ever Germany is being considered as the focus of the Occident in view of the Bolshevist attacks. In these lines I would only like to give my conviction that this crisis cannot be avoided and will not be avoided, and that Germany has the duty to protect its own existence, in view of this catastrophe, by all means, and to secure it and to protect themselves from it, and that owing to this false situation a number of consequences result which concern the most important tasks which were ever put to our people".

THE PRESIDENT: We didn't find what you were reading. You yet haven't told us who said this.

DR. ASCHENAUER: Who said it?

THE PRESIDENT: Yes.

DR. ASCHENAUER: It says in the index: Memorandum by Adolf Hitler about the task of the Four Year Plan and that is the opinion concerning the Bolshevist problem, an opinion by Hitler which I described as Fuehrer opinion.

MR. WALTON: Your Honors, I think the compiler of the document book is the real person at fault. I seem to have in my document book a preface page and then in the very next document is an excerpt from the newspaper "Voelkischer Beobachter", and so they left the document which Dr. Aschenauer is now speaking about out of the book when they compiled it. All you have, if yours is like mine, is the preface page or the indentification page. You have got nothing that follows it, and, of course, the prosecution will have to object because it is not on notice. I don't know what the contents of it are. That is not Dr. Aschenauer's fault, but it certainly can't be answered.

DR. ASCHENAUR: I am sorry. It was a mistake by the translation department.

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THE PRESIDENT: Yes. Well, that was causing all the trouble, Dr. Aschenauer. It apparently is not in our book. Let's give it a number anyway. What exhibit number did you give that?

DR. ASCHENAUER: I gave this document the exhibit No. 58, or rather Exhibit No. 7.

THE PRESIDENT: All right, proceed.

DR. ASCHENAUER: The next document I am talking about is the second one in this document book. In the index it says "from the Proclamation of Adolf Hitler of 22 June 1941, Boelkischer Beobachter of 23 June 1941", This document, No. 59, I submit as Exhibit No. 8. I quote: "Thus I still believed to the last moment to have served the peace in this territory, even if thereby I incurred a heavy personal obligation. But in order to get a final solution of these problems and also to obtain enlightenment as to the Russian attitude towards the Reich, as well as under the pressure of the ever increasing mobilization on our eastern frontier, I invited Mr. Molotov to come to Berlin." defendants could h ave received the impression of an aggressive war, or rather whether the defendants had to get the impression that this was a war of defense; to decide, whether this last question was described correctly by the German side, I, want to submit as a supplement the Documents N os. 60 and 61 as Exhibits Nos. 9 and 10. It is a short excerpt from the book by James Byrnes, "Speaking Frankly", in English and German.

THE PRESIDENT: Judge Speight asks, is there any evidence that Ohlendorf knew of this declaration by Hitler?

DR. ASCHENAUER: These statements were made at the time on the radio and in the newspapers so that it is without doubt that Ohlendorf knew these statements by Hitler.

THE PRESIDENT: Well, would you state as a fact that Ohlendorf knew of these declarations?

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DR. ASCHENAUER: Ohlendorf knew Hitler's proclamation and from this proclamation and others he had to assume that this was a war of defense.

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DR. ASCHENAUER: I now submit Document Book No. 3. In this document book the relationship between the Wehrmacht, or the Commander in Chief of the Army with the Einsatzkommandos or the Einsatzkommandos is being clarified. In these document books the question of responsibility and the question of knowledge is being gone into for the heads of the Army concerning those actions which are under judgment here. This question of responsibility and of knowledge is of importance for the problem of the possibility of resistance against the order given.

In this connection, I offer Document No. 50, in the German text page 20 of the Document Book as Exhibit No. 11. This document is to be considered the basic document for the relation between the Army and the Einsatzgruppen. It outlines the responsibility of the Commander in Chief as the person with executive power. I quote:

"If a theatre of operations has been determined, the authority to exercise the executive power within this theatre of operations is without a further order conferred on the Commander in Chief of the Army and on the Army Commanders.

"The Commanders in Chief holding executive power can, effective for the theatre of operations enact regulations having the force of law, institute Special Courts, and give orders to the authorities and offices within whose jurisdiction the theatre of operations is, except the Supreme Reich Authorities, the Highest Prussian State Authorities and the Reichsleitung of the NSDAP. The authority to give orders has priority over the instructions issued by other superior offices."

Document No. 51, which I offer as Exhibit 12, clarifies the subordination relationship in units in the operational territory. I quote:

"The Commander in Chief of the Army or his subordinate agencies are subordinate to the Army in the operational territory of the Army and they are subordinate to the Commander in Chief in tactical questions.

"The offices and troops of other Army units are also under the command of the Commander in Chief in tactical questions.

"The Commander in Chief or the Commander in Chief of the Army, if a state of defense or of war should occur has the right to exercise executive power in the operational territory according to the R*ich Law of Defense."

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Document No. 44 I offer as Exhibit No. 13. It is a decree about the carrying out of the war jurisdiction in the area of Barbarossa and about the special measures of the troops. This decree clarifies the question whether civilian persons of enemy nationality could be subject to the competency of the war jurisdiction. It clarifies the question of the Supreme Commander as Supreme legal authority.

Document No. 45 I offer as Exhibit No. 14. In it the common basis for the treatment of political commissars is indicated. I quote from this top secret matter:

"In this war, indulgence and consideration for International Law with respect to those elements is uncalled for. They are a danger to our own security and the speedy pacification of the conquered territories.

"The political commissars are the originators of barbarous and Asiatic methods of fighting. Proceedings, therefore, must be taken against them immediately and directly, with all severity.

"These commissars are not recognized as soldiers; the protection accorded prisoners of war under International Law has no application to them. After screening has been carried out they are to the liquidated.

"Commissars who have been caught in the rear zone of an Army because of suspicious behaviour are to be handed over to the Einsatzgruppe responsible, to the Einsatzkommandos or the Security Police."

Document No. 46 is offered as Exhibit No. 15. The subject of evidence is the same. This document is submitted in order to show how the order was distributed.

Document No. 47 I submit as Exhibit No. 16. I herewith introduce a basic order by the Wehrmacht, which the Wehrmacht thought they could consider justified according to the situation. I quote:

"The troops available for the protection of the Conquered Eastern Territory are adequate in view of the extant of this area only if all resistance is not revenged by legal punishment of the guilty but if the Occupying Power spreads abroad terrir - the only thing likely to rob the population of all desire for insubordination.

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"The Commanders concerned, are, with the troops at their disposal, to be made responsible for peace in their areas. Not in the request for further security forces, but in the use of appropriate Draconic measures the commanders must find the means of keeping their security areas in order."

Document No. 48 I offer as Exhibit No. 17. I quote from this order of the Wehrmacht:

"As a matter of principle it must be said that Jews and Gypsies in general represent an element of insecurity and thus a danger to public order and safety. It is the Jewish intellect which has brought about this war and which must be annihilated. The Gypsy, because of his internal and external make-up cannot be a useful member of a people's community. It has been found that the Jewish element participates considerably in the leadership of the bands and that Gypsies in particular are responsible for special atrocities and for the communication systems."

Document No. 49 I offer as Exhibit No. 18. An order by the Wehrmacht reads: "I order the immediate arrest of all Jews and Gypsies as hostages."

Document No. 52 I offer as Exhibit No. 19. I quote from it:

"In the East, this manner of fighting a so-called partisan war, already last winter had led to a considerable decrease of our fighting power, has cost the lives of numerous German soldiers, railroaders, workers of the organization Todt, the Labor Service, and has extremely decreased the performance of transportation for the maintenance of the fighting ability of the troops; it has even disrupted the latter for days. The successful continuation of this type of warfare or even its intensification may possibly lead to a serious crisis at one or the other sector of the front. Many measures against this cruel, as well as treacherous sabotage activity, fail simply because the German Officer and his soldiers have no conception of the extent of the danger they face, and thus they individually do not act against these enemy groups as much as it is necessary to help the most forward front and thereby the entire war effort."

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I offer Document No. 53 as Exhibit No. 20. It is submitted on the subject of evidence of what a refusal meant, a refusal to obey an order, or not to obey the order according to the regulations.

That is the end of Document Book III. If we would like to take the recess now, this is suitable for me.

THE PRESIDENT: The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 14 January 1948, at 0930 hours.)

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Otto Ohlendorf, et al., defendants, sitting at Nurnberg,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Dr. Aschenauer, you don't happen to have, do you, an English copy of your presentation?

DR. ASCHENAUER: No, I am afraid I don't have another English copy.

THE PRESIDENT: Very well. Well, was there any English copy made at all?

DR. ASCHENAUER: Of course, English translations were made. The Secretary General has distributed English copies here. I received very few.

THE PRESIDENT: I do not mean the document books, I mean the presentation - what you are reading from.

DR. ASCHENAUER: I don't quite get that. Yes, I have it here. It was not translated.

THE PRESIDENT: It wasn't translated. Well, let me put the question very directly. Do you have an English translation of what you are reading to the Tribunal?

DR. ASCHENAUER: No.

THE PRESIDENT: That answers that. All right. Proceed. Thank you.

DR. ASCHENAUER: Your Honor, yesterday there was an argument with regard to my excerpts with the title "We Are Guerrillas". I have the original in front of me. It is a book with the title "We Are Guerrillas", an account of the work of the Soviet guerrillas behind the Nazi lines. "Soviet War N ews", books No. 3, published by authority of Soviet War News, issued by the Press Department of the Soviet Embassy in London. This book was published by the publishing house Hutchinson and Co., London, New York, and Melbourne. Therefore, it is an official publication which the Soviet Russian Embassy in London.

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This book was published by the publishing house Hutchinson and Co., London, New York, and Melbourne. Therefore, it is an official publication which the Soviet Russian Embassy in London published and gave to the English population. In this book several dates are mentioned so that doubtlessly one cannot say that the facts which were stated here are merely hearsay. Perhaps I on my part made a mistake by quoting from the English original which was translated into German and from German it was re-translated into English. Of course, this impression could arise. I beg your pardon for this. I hope I have made up for my mistake by making an excerpt from the English original of the sentences concerned which I shall now submit to the Tribunal in English.

May I now continue with the presentation of my documents. I shall now speak about Document Book I. I offer the Ohlendorf document #1 as Exhibit #21. It is an affidavit by Professor Andreas Preddehl, Kiel, the chief of the Institute of World Economics at the University of Kiel since the spring of 1934. Professor Preddehl confirms that Ohlendorf in the late summer of 1934 at the official request of the Ministry of Culture had to leave the Institute of World Economics, because he was a factor of unrest among the students.

I offer Document #1-A as Exhibit #22. It is an affidavit by Dr. Wilhelm Greiser. He is the administrative expert at the Institute for World Economics in Kiel. Dr. Greiser states that in the year 1934 Ohlendorf was arrested at the suggestion of the NSDAP in Kiel. For several months he was under Police observation. He was tortured with interrogations and examinations and the Reich Ministry of Education also persecuted him and finally as a result of this he was dismissed at Kiel. Dr. Greiser, who according to his statement, was neither a member of the NSDAP nor of any of its formations, also gives a character opinion of Ohlendorf in his affidavit from which I merely want to emphasize that Herr Ohlendorf is described as a loyal personality, full of high ideals, with a positive love for his native land and having true humanitarian feelings.

He had an original great love for science. He entertained elementary respect for scientific freedom, also at the time when in later life he had become a Deputy State Secretary, in the Reich Economic Ministry, where he brought science into contact with the leadership of the State by entrusting special missions to science. Dr. Greiser also explains that Ohlendorf disapproved of the measures against the Jews in the years after the power was taken over and that he rejected the radical racial opinions of the Party. He describes him as an opponent of any deviation from the legal State and of National imperialism. In this connection he also emphasizes the plans of Ohlendorf as an economic politician which show a true world economic attitude.

I offer Document #2 as Exhibit 23. It is an affidavit by Professor Karl Gebhardt who as chief physician at the hospital in Hohenlychen and advisory surgeon of the Waffen SS was in close contact with the Reichsfuehrer SS Himmler. The affidavit reveals the intense criticism of Himmler who personally strongly objected to Ohlendorf. The reasons Himmler had for this are described in detail and Gebhardt confirms that Himmler intended to release Ohlendorf between 1942 and 1943, in particular in connection with difficulties which Himmler had with the Reich Commissar Koch because of reports which Ohlendorf had made against Koch. As a discussion partner in Flensburg at the beginning of May 1945 Gebhardt repeats the request of Ohlendorf toward Himmler to dissolve the SS in order to avoid that resistance groups form and to surrender to the Allies.

I offer Document #3 as Exhibit #24. It is an affidavit by Karl Wolff who from 1936 until 1943 was chief Adjutant of Himmler and chief of the personal staff of the Reichsfuehrer SS. In the affidavit it is confirmed that the SD Inland (Sd homeland) even in 1936 was still in its early beginnings and that during that time Ohlendorf organized the economic information service. He describ es as a witness that already in 1937 the critical reports by Ohlendorf who did not compromise became a nuisance for Himmler and that Himmler reproached Ohlendorf not to be loyal enough and also for not being National Socialistic enough in his policy.

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Himmler described Ohlendorf as a pessimist, a super Nazi, a knight of the Holy Grail, and that for this reason already in 1937 Ohlendorf was put on the side track.

THE PRESIDENT: Dr. Aschenauer: I have seen this phrase "super Nazi" several times. Do you mean by that phrase just what it imports, that he was a Nazi in the superlative sense?

DR. ASCHENAUER: The translation isn't coming through on these earphones.

THE PRESIDENT: I would like some enlightenment on this word "super Nazi". Does it mean what it says - a Nazi in the superlative sense?

DR. ASCHENAUER: It means the following: That it was Ohlendorf's opinion that the practical work in the NSDAP policy had deviated from the original Party program in the course of time and for that reason Himmler described Ohlendorf as being a super Nazi because he held those opinions.

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DR. ASCHENAUER: Your Honor, perhaps it could be translated as exaggerated Nazi.

THE PRESIDENT: I see. Very well. It just seems a little extraordinary that Himmler would be complaining because someone was an exaggerated Nazi, that he was more Nazi than he was required to be, that he was more saturated, more enthusiastic about the Nazi ideology. Why would Himmler complain about that?

DR. ASCHENAUER: The situation was something like this, that Himmler was a pure tactician and left the Party program and did not want to see to this and did not want to admit this, and Ohlendorf held the opinion that owing to this deviation the excesses and the deterioration of the National Socialistic State would come about. This is a subjective attitude by Himmler and these explanations are merely to show the difference between Himmler and Ohlendorf.

THE PRESIDENT: Very well, proceed.

DR. ASCHENAUER: He confirms that in the spring 1938 Ohlendorf left the SD as a fulltime job. Wolff also confirms that in the fall of 1939 he received instructions from Himmler to inform Ohlendorf that he should leave his service.

THE PRESIDENT: Dr. Aschenauer, was the Karl Wolff statement sworn to?

DR. ASCHENAUER: Yes.

THE PRESIDENT: It does not appear in the document that you read.

DR. ASCHENAUER: Your Honor, in the copy which I have in front of me it says, "I, Karl Wolff, General of the Waffen SS", etc., "after it has been pointed out to me -- "

THE PRESIDENT: Yes. Well, we know that, that is there, but then at the end of the affidavit there is no indication that he swore to it before anyone.

DR. ASCHENAUER: The certification is in the original.

THE PRESIDENT: I see. All right, proceed.

DR. ASCHENAUER: Wolff confims that Ohlendorf only visited Himmler very few times, that he never held a confidential position with him or has influenced his decisions and resolutions.

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Wolff also confirms that from 1937 on each individual promotion of Ohlendorf encountered with difficulties and could only be effected after overcoming the determined opposition of the Reich Leader of the SS and that he, Wolff, on account of his world economic activities did overcome these difficulties. Apart from that Wolff also gives the reasons of the opposition between Himmler and Ohlendorf.

I offer the Document No. 18 as Exhibit No. 25. It is an affidavit by Luitpold Charlemayer. From 1935 until 1939 he was personal referent in the personal staff of the Reichsfuehrer SS. He confirms in his affidavit the statements by Ohlendorf about his position and work in the SD during the years 1936 to 1939, inclusive, and gives the reasons, which are not in contrast to the actual reasons, for the promotion of Ohlendorf within the SD.

I offer Document No. 5 as Exhibit No. 26. It is an affidavit by Dr. GebhardtKlopfer, the former chief of the legal state department in the party Chancellery. As a referent and later state secretary with Bormann, he makes the statement as the best expert about the relation between Bormann and the party Chancellery, his relation to the SD Inland. He shows that the SD by the party was only legitimized as enemy intelligence service, but that the SD Inland under Ohlendorf did not carry out any enemy intelligence. The special work in the domestic spheres was always denied by the Party and as I quote, "The NSDAP at no time considered it legitimate." Bormann refutes that the SD Inland has done this kind of work and threatens to report the matter to the Fuehrer and prohibits the cooperation of all functionaries of the Party in the Party just a Ley did. Simultaneously Klopfer explains that in spite of this serious rejection of the SD work by Bormann and by a great number of Gau leaders Ohlendorf continued in his work until the end of the war. There are great arguments but Ohlendorf accepts them on his own responsibility because Ohlendorf is trying to make up with the SD Inland for the public criticism and opposition which are prohibited.

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I offer Document No. 25 as Exhibit No. 27. It is an affidavit by Dr. Justus Bayer as referent in the SD before 1939 and expert in the Party Chancellery until 1945 who was in constant contact with the work of the SD Inland under Ohlendorf, and as intermediary between the Party Chancellery and Office III. He completes his testimony the statements by Ohlendorf, Dr. Klopfer, etc., about the relation of the SD Inland with the Party and the struggle between Ohlendorf for the independence of the SD Inland and the task of the intelligence service of the SD which he had developed as positive opposition against the excesses of the National Socialist regime. It is revealed particularly clearly in this testimony affidavit that in spite of the prohibition of activity in the SD Ohlendorf makes reports about the Party and he particularly makes reports about the Party itself in the SD and continuously attacks the attempts for power by the Party in the state for self-administration.

I offer Document No. 6 as Exhibit No. 28. This is an affidavit by Hans Fritsche who at the end was chief of the department Radio Transmission, in the Reich Propaganda Ministry. He is one of those receiving reports from the SD Inland, also during the time when Goebbels had prohibited the reporting to the ministries. Fritsche confirms in his statement that the SD reports were concerned with all spheres of life of the state and the people, and in particular were the echo about the statements and the actions of leading men within the people. The echo was formulated clearly and without considerations of anybody. He also saw a lot in Ohlendorf's reports and realized his aims in these reports to make up for the missing criticism. He added, I quote, "As a journalist I had the impression that Ohlendorf and his collaborators acted as mouthpiece of the opposition which otherwise could not become known." Beyond that he stressed the special position of the SD Inland with Ohlendorf within the entire SS and the Reich RSHA and indicates that contrary to the prohibition by Dr. Goebbels he received reports from Ohlendorf by indirect means.

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I offer Document No. 7 as Exhibit No. 29 . It is an affidavit by Dore Neumann who was Ohlendorf's secretary from 1937 until 1945. Apart from her character statement, the affidavit says how Gruppenfuehrer Mueller, the Chief of Office IV, tried to get rid of Ohlendorf via the question of anthroposophy. I offer the Document No. 4 as Exhibit No. 30. It is an affidavit by Karl Hedrich who from 1935 to 1944 was deputy chairman of the Party Examination Commission for the Protection of National Socialist Literature, and who in that capacity was constantly in contact with Ohlendorf. Hedrich explains in detail that in Bormann's circle Ohlendorf was considered as unreliable from an ideological point of view, in particular because he protected anthroposophy against the Party. Hedrich knows from his own knowledge that because of Ohlendorf's attitude concerning anthroposophy Bormann wanted to have Ohlendorf removed from his Berlin office and asked Heydrich to have him removed, and that this was the reason why at the beginning of the Russian campaign Heydrich ordered Ohlendorf to go to the Russian front.

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character.

I offer Document No. 8 as Exhibit No. 31. It is an affidavit by Dr. Rudolf Hauschka, one of the loading scientists from the circle of the anthroposophists, who, as part of the work against the anthroposophists, together with his collaborators was arrested in June, 1941. Dr. Hauschka had taken up personal relations with Ohlendorf, only after he has heard about the charges against him in Nurnberg, and without being asked to be sent this affidavit which I now submit to the Tribunal. I ask that the character affidavit given in the affidavit be taken note of in its entirety, and I would like to limit myself to emphasize the affidavit by Dr. Hauschka here because after being released from prison he heard, I quote, "that Ohlendorf had been removed". What he means by this is the removal of Ohlendorf from the Office III in Berlin in the year 1941 that because of his approval of and interest in anthroposophy he was sent to the Eastern front as a punishment.

I offer Document No. 9 as Exhibit No. 32. It is an affidavit by Frau Dr. Elisabeth Klein, former chief of the anthroposophic school at Gerswalde in Dresden..Frau Dr. Klein also had been arrested as part of the action against the anthroposophists in the year 1941. The affidavit contains further proof for

Ohlendorf's actively tolerant attitude towards other philosophies and his efforts against untrue attacks by the National Socialist State and the Party.

I offer Document No. 10 as Exhibit No. 33. It is an affidavit by Dr. Hans Ehlich who from 1937 until 1945 was a collaborator of Ohlendorf's in the SD Inland and at the end was group chief III-B in the Reich Security Main Office. From his experience throughout many years Ehlich explains that Ohlendorf considered all people of equal human value and therefore rejected the opinion that one people should be superior to any other peoples and should govern them as being in contradition to the laws of life. "Positively", I quote Page 34. "But the aim he tried to was an order of the people's according to which each people was to live and develop according to their own characteristics and possibilities". And according to Dr. Ehlich's testimony Ohlendorf at any time stood up for the principles which he considered right even if this should result in great difficulties with his superiors or other offices.

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His opinion of peoples became the basis of Ohlendorf's entire SD work against other National Socialist efforts. Elich gives a number of examples for this, most of all from the occupied territories and concerning the treatment of foreign workers in Germany. Elich also testified, and I quote, that, "It is known to me that in consequence of this concept Ohlendorf proposed to Heydrich about 1940 for submission to the Reichsfuehrer SS, that the Jews should be given a status of a minority, according to which they should be treated as a recognized racial minority." Elich also is witness of the measures and threats by Himmler towards Office II and Ohlendorf resulting from the report by Ohlendorf against the power politic of Koch in the Ukraine.

I offer Document No. 11 as Exhibit No. 34. It is an affidavit by Dr. Hans Roessner, referant and department chief for cultural questions in the SD Inland from 1940 until 1945. During his time of service under Ohlendorf he Roesner experienced strong criticism, from him, but Roessner wanted to give this affidavit to the Tribunal particularly in view of the charges raised against Ohlendorf. I ask the Tribunal to make special use of this affidavit in particular because it is the most extensive report about the actual activity of Ohlendorf as a political human being. Just as an indication I would like to mention that Roessner testified that in the SD, in spite of threats by Himmler, Ley and Bormann, Ohlendorf continued in positive opposition against the National Socialist leadership which expressed itself in a negative way, and I quote. "In any case Ohlendorf still was the strongest exponent and a driving mental power against any misdevelopments and excesses, as the state, the Party and the cheifs of the Wehrmacht are being reproached with now."

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I continue to quote. "Ohlendorf in countless SD-reports signed by him addressed to the authorities of the Reich, in discussions, conferences, addresses before party functionaries, SS-Fuehrer and Officers of the Wehrmacht wholeheartedly took a clear stand against appearances of despotism in cultural life, As one example of many, I cite a lecture of Ohlendorf's which I, too, heard which he gave perhaps in February 1944 at the Wartburg before all Educational Directors of the Party and its organizations." I continue to quote. "In this lecture and others, the basic thought of Ohlendorf's was, "that man could dare, wholeheartedly, to oppose the highest powerpolitic ain and signs of corruption and publicly espouse the cause of cleanliness and healthiness in the economic and cultural life." Roessner also gives many individual examples from all domestic spheres which Ohlendorf testified in his opinions, in word, writing and deed, including his fight against Fascism which caused official complaints by the Ambassador Alfieri with Himmler.

Roessner rather then draws the human conclusion, and I quote, "There are few examples, I think, that the closer collaborators, without exception, and as can be proven, now will stand by the side of their former office chief, not because they obeyed this orders or because they had sworn to a common party dogma, but because they still today recognize the pure will of Ohlendorf, and his spiritual independence even now. A deeper recognition Ohlendorf already found before 1945, in that groups of people who increased from year to year, people of all professions and social positions came to him and his collaborators in the SD Inland, in order to openly tell him about their desires, their criticisms and their worries. Party membership or political attitude was never mentioned on this occasion. These people, scientist, artists, teachers, men and women came sponstaneous and voluntarily to Ohlendorf and to the SD because there they found the only means of exercising criticism and their fuctual or position. Here Ohlendorf and the SD gained great confidence in particular from the population who were not party members.

Dr. Roessner finally describes the situation of Ohlendorf which appears tragic to him, athat in spite of this situation because of the constantly growing mistrust and the increasing objection by the highest authorities as a spiritual originator of an opposition and an alleged defeatism, he was reproached and threatened for this. According to the description of an actual loneliness of Ohlendorf, in the framework of the national socialist regime, he repeats a statement by Himmler made during the last few days in lay 1945 which reads something like this, and I quote, "If I had heard your opinion earlier and recognized it, many things would certainly have developped differently." Roessner adds, I quote, "This remark expresses more than general observations concerning the importance and tragedy of Ohlendorf."

THE PRESIDENT: Dr. Aschenauer, where did this conversation take place in the last days of May?

DR. ASCHENAUER: The discussion took place in Flensburg. Ohlendorf testified this in the witness stand as well, and this is a confirmation for Ohlendorf's testimony.

PRESIDENT: Well, when did Himmler commit suicide?

DR. ASCHENAUER: Himmler committed suicide, I believe on 22 May '45

THE PRESIDENT: In June?

DR. ASCHENAUER: June.

THE PRESIDENT: I didn't realize it was so late. I thought it was shortly after the termination of the war.

DR. ASCHENAUER: No, about two months after the end of the war.

THE PRESIDENT: All right, very well.

DR. ASCHENAUER: I offer Document Number 35. It is an affidavit by Dr. Erhard Maeding, chief of the Department constitution and administration in Office III, SD inland in the year 1944. Maeding worked on obtaining news and information concerning administrative reform questions in particular and owing to his activity in this field, he states that this is clear in particular, that the SD Inaldn did not consider it to be their task to secure a certain form of state and administration in the state, but he describes the actual task which Ohlendorf considered to be the task of the SD, and I quote: "From discussions it could be seen that Herr Ohlendorf was deeply worried about the inner misdevelopment of the German state life in the previously mentioned and in other connections. His attitude was not based on technical considerations of usefulness, and not because these organizational experiments were unsuccessful, but they were founded on clear social philosophical and ethical convictions. The state life could not be organized as a formidable legislative and compulsion apparatus, but the administrative tasks were to be shared to a last extent by many spheres of life, locality, profession, or otherwise according to who were to act independently in the administration. This social basic opinion of a community which was to be made of as many individuals and independent existences and units as possible which were to form Fin elastic society penetrated his attitude, his concept of state. The community life was to be built up on a structure of cooperative living, the central administration was to be limited very strictly.

The thought of a total administrative mechanism was rejected by Herr Ohlendorf in the same manner as any dogmatization of political, thoughts or even the monopolizing of political initiative and authorizations of professional party functionaries.

THE PRESIDENT: Dr. Aschenauer, now do you think that it is necessary to go into Such detail in each of these affidavits? We now have a pretty good picture of just what these affidavits intend to demonstrate, and don't you think that if you summarized in a sentence or two what each affidavit is attempting to establish, that your purpose would be fulfilled?

DR. ASCHENAUER: I shall try to be brief, your Honor. I offer Document Number 13 as Exhibit Number 36. It is an affidavit by Dr. Helmut Seydel, a former legal referent in Office III of the SD Inland, and describes the attitude of Ohlendorf towards the national socialist justice authorities.

I offer Document Number 17 as Exhibit Number 37. It is the affidavit by Dr. Heinrich Malz, who from 1940 until 1944 was chief of the legal department in Office III. Dr. Malz testifies to the same tasks as mentioned in Document Number 13. He describes the fight for the development, and for the maintenance of the legal state. I stress in this statement Ohlendorf' s initiative, in the legal field, according to which Ohlendorf repeatedly tried for an independent legal procedure with regard to the way in which protective custody which was to be enforced as part of the legal police.

I offer Document Number 14 as Exhibit Number 38. It is an affidavit by Dr. Sigrid Barlen, another female collaborator of Ohlendorf in the cultural department which is to be evaluated particularly as a character testimony.

I offer Document Number 15 as Exhibit Number 39. It is the affidavit by Dr. Franz Hayler, who at the end was state secretary in the Reich Economic Ministry, from 1938 until 1943, he was chief of the

Reich Group III, trade, and in both positions he was the immediate superior of the defendant Ohlendorf. In this affidavit Dr. Hayler confirm the professional activity by Ohlendorf as given before.

I offer the Document Number 16 as Exhibit Number 40. It is an affidavit by Dr. Gustav Schlotterer, who at the end was Ministerial Director in the Reich Ministry of Economics.

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Schlotterer also offered his affidavit on his own initiative, although he had personal differences with Ohlendorf in the Reich Ministry of Economics and Ohlendorf was known as his opponent. Schlotterer states that tolerance and expert knowledge were the basis of the personnel policy of Ohlendorf.

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I offer Document Number 19 as Exhibit 41. It is the affidavit by Walter Solbeens Ministerial counciller in the Reich Ministry of Economics. The statements by Solbeens complete the statements by Dr. Hayler and Schlotterer about the attitude and the work of Ohlendorf in the Reich Ministry for Economics. I quote briefly from Solbeens' statements, "It could be found that we as experts for the first time had a support with regard to attempts by the SS, the party and the DAF, the German workers' front who tried to exercise influence in the economic sphere."

I offer Document Number 20 as Exhibit Number 43. This is an affidavit by Dr. Elmer Michel, who at the end was Ministerial Director in the Ministry of Economics. This statement by an opponent of the party also completes the statements made by Dr. Hayler. He explains that Ohlendorf rejected any party political prejudices and, therefore, very soon in a number questions was in direct opposition to the party, in particular to the DAF, the German labor, front, and without fear always stuck up for his point of view even towards the highest party authorities.

I offer Document Number 21 as Exhibit Number 43. This is an affidavit by Dr. Josef Duetsch, manager of the economic group, retail trade, who was in official contact with Ohlendorf from 1937 until 1945. He also testifies, and I quote "It was particularly recognized that Ohlendorf, always stood up for his opinions which often opposed the usual tendencies of the Third Reich toward everybody." It also says, "In 1940 in a protest meeting which was called by the member of the committee of the trade organizations. Ohlendorf attacked Dr. Ley's policy in a manner which was not at all customary in the Third Reich." These are two affidavits given by two workers from his home community and which are a certificate for his character showing the opinion of people in his home town, before the taking over of the power in 1933 by Hitler and afterwards until 1945, and the giving reputation he had in his home town.

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I offer the Document Number 26 as Exhibit Number 47. this Document Book I A. I offer this Document Number 26 as Exhibit Number 47. This is an affidavit by Horst Webendorfer. He also offered to give his affidavit without being asked to do so. And he describes in particular the fight offer Lay against Ohlendorf, and that Ley asks Himmler to get rid of Ohlendorf.

I offer the Document Number 27 as Exhibit Number 48. It is an affidavit by Dr. Hans Roessner. Dr. Roessner testifies here about Ohlendorf' s political fight for freedom of the individual and he talks about an episode which is of importance for this, namely, the attempt of Ohlendorf-through many years, to try from the bottom to attain that the party bureaucra cy and the government of the party chancellery be destroyed. This was the attempt of getting the help of the leaders of the Hitler Youth in order to attain this aim.

I offer Document Number 28 as Exhibit Number 49. This is an affidavit by the Reich Minister Dr. Hans Lammers, the chief of the Reich Chancellery. The prosecution brought up the question whether the defendant, Ohlendorff, did not have the opportunity to complain to the fuehrer and supreme commander of the Wehrmacht about the general order of killing in the Eastern campaign. Lammers testifies, giving individual reasons that Ohlendorf's position was neither high enough nor it was that technically possible for him to get a personal audience with the fuehrer because of this position.

I offer Document Number 29 as Exhibit Number 50. It is an affidavit by Werner Lorenz, the former chief of the VOMI. Lorenz states that because of his activity as chief of Einsatzgruppe D in Russia in October 1941, Ohlendorf was on his suggestion spontaneously promoted to SS oberfuehrer. The reason for the promotion was the work done by Ohlendorf in the ethnic German resettlement territory in Transuistria for which the ethnic German resettlement office was competent.

I offer the Document Number 30 as Exhibit Number 51. This is an affidavit by Dr. Erich von der Heyde from the time of his activity in the economical staff of the OKW. He testifies that Ohlendorf in the fall of 1934 held a lecture to the economi staff in the OKW caused great surprise which because of the open criticism of the economic policy of the Reich of the policy of the NSDAP in general and especially of Speer, Ley, and Bormann.

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I think I made a mistake in the year, it is 1944.

I offer Document Number 31, as Exhibit Number 52. It is another statement by Dr. Erich von der Heyde from the time when he was in contact with Ohlendorf as an employee of the I.G. Farben and simultaneously as honorary collaborator in the economic intelligence service in the SD. Heyde testifies that in the years 1939 and 1940 Ohlendorf repeatedly supported applications for emigration for Jewish employees of the I.G. Farben with the Gostapo, although he neither knew the Jews concerned, nor did he have any interest in them.

I offer Document Number 32 as Exhibit Number 53. This is an affidavit by Rudolf Fumy from 1938 to 1945. His affidavit of the document submitted by the prosecution attacks the credibility. According to his affidavit, the reports of events and the details therein do not give the exact happening in the East, and can only to a very limited extent be considered as a verbal repetition of th original reports.

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DR. ASCHENAUER: I offer Document No. 33 as Exhibit No. 54. This is a personal letter of the Reichsfuehrer SS to the SS Brigadefuehrer Ohlendorf of 31 October 1943. I have submitted this letter as one of the pieces of evidence to show the relation between the Reichsfuehrer SS and Ohlendorf.

I offer Document No. 34 as Exhibit No. 55. This is a letter of thanks of the Tartar Committee of the District of Simferopol of 2 July 1942. In this letter there is expressed among other things, and I quote:

"The Tartars in the Crimea were so oppressed and enslaved during the Bolshevist regime that they had lost almost all their Tartar ethnic characteristics.

"The firm foundation of our love and confidence in the German people is the result of your thorough and unselfish work.

"The Tartar people appreciate and will never forget your services."

I offer Document No. 35 as Exhibit No. 56. It is a letter by the Defendant Ohlendorf to his then fiancee at the time of February 1934. I ask the Tribunal to take notice of this entire letter.

I offer Document No. 36 as Exhibit No. 57. It is a correspondence with Professor Dr. Otto Donner, who is now living in America. He also shows the active tolerance towards non-natuinal socialists, when they were oppressed by official offices of the Reich and were presecuted by other agencies.

I offer Document No. 37 as Exhibit No. 58. This is an excerpt from the minutes of the session of the INT, page 1869 and 1870 of the interrogation of Dicter Wisliceny of 3 January 1946. I submit this examination as evidence for the fact that the so-called final solution of the Jewish question, that is, the extermination of the Jews as Jews in Europe was expressed only in the letter by Himmler of April 1943 to the Chief of the Security Police and the SD, and the Inspectorate of the Concentration Camps The testimony is a confirmation of the further examination of the Defendant Ohlendorf who states that the Fuehrer Order for the Russian Campaign originated independently from the so-called final solution of the Jewich question.

Shall I go to Document Book No. 4 before the recess, Your Honor?

THE PRESIDENT: Just about how much more do you have, Dr. Aschenauer, So we can arrange Our program for this morning?

DR. ASCHENAUER: In all, there are the documents up to Exhibit No. 64; that is, another six documents are to be introduced and one judicial notice of a document already introduced to the Tribunal

THE PRESIDENT: Yes Who will follow Dr. Aschenauer in the presentation of documents?

You, Dr. Belzer? Yes.

Very well and then will anybody else be reedy after Dr. Belzer?

DR. STUEBINGER: Dr. Stuebinger.

THE PRESIDENT: Then you will be ready. Just a moment please. Mr. Ferencz. Yes, Mr. Ferencz.

MR. FERENCZ: Your Honor, we have a list here of all of the document books in English which have been Served on the prosecution and the list indicates that almost all of the defendants have completed document books to a certain extent. That is, some are introducing two or three books, two of which have been translated and the third of which is still being processed. in so far as they are completed. For example, if the Defendant Just has two books completed and anticipates having two more, which are now being translated, that he give us these two so that we can have a basis from to prepare our rebuttal, rather then have us wait until the last page in the last document book is done. If he can give us the book that he already has finished, I think that, will facilitate matters,

THE PRESIDENT: You have heard Mr. Ferencz' statements and the Tribunal concurs with it. We might also indicate to counsel that in the preparation of the presentation of documents that if they are going to refer to the documents that instead of reading the text a very brief condensation be already in the mind of the counsel so that he can give the idea without having to read from the document itself, because if we must sit here and listen to the reading of all these documents, naturally, it will be an interminable proceeding.

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I do not mean by this, Dr. Aschenauer, that we are in any way criticizing your presentation. On the c ntrary, we think you did a very nice job in presenting your documents.

(A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Aschenauer, before you begin, the Tribunal would like to announce that it would appreciate that all defense counsel, or as many as are available, be present when we reconvene at 1:45 (1345 hours) and all Prosecution counsel also, Mr. Ferencz, so that we can discuss just what we have before us in the way of document books and all relevant matters, so we can map out the program now for the termination of all the proceedings. Thank you. Proceed Dr. Aschenauer.

DR. Aschenauer; I now come to Document Book IV. As the first document in Document Book IV, I offer Document No. 54, as Exhibit No. 59. This is the notification in the military passport for Otto Ohlendorf of 20 November 1939. It shows that Ohlendorf at the beginning of the war was deferred from service for the Reich Group Trade, that is, that his war service was supposed to be performed in the Reich Group Trade. I quote: "The possible order on the part of the Reich Group Trade is to be complied with by you at any time in peace, as well as in war. That noncompliance with this draft is punishable. During the war reporting as a volunteer is useless, and is, therefore, to be refrained from. "Now I offer the second document of this volume, that is the No. 55, as Exhibit No. 60. It is an affidavit of Dr. Lammers, as a completion to the affidavit of 20 October 1947, which was submitted as Exhibit No. 49, and which was Document No. 28. The third document in this book with the No. 56, I offer asExhibit No. 61. First of all, I would like to correct a translation mistake. On page 11 it says under "A": "The Reichfuehrer-SS and Chief of the German Police," and not "Reich Security Main Office." This is an affidavit of Dr. Hans Ehlich, who as I have already said, who was active in a fulltime capacity from 1 February 1937 until the end of the war in the Security Service of the Reichsuehrer-SS and who since 1940 was a Department Chief in Office III, the chief of which was Ohlendorf's work. The affidavit supplements some statements of the IMT Judgment, or corrects them.

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I may quote briefly: "The new Office III, SD Tuland of the RSHA as the only central office for the SD work at home didn't have any sphere of work and had no mission as far as political opponents are concerned, and it had no political function or power. It worked completely independently from the missions of the Security Police. The restriction of the missions of Office-III of the RSHA, to purely objective task of importance about the domestic field, and the avoidance of any reference of this work to any political field was the demand of Ohlendorf when he founded Office III of the RSHA. "It is, therefore determined in this affidavit that from 1939 to 1945 no combatting of political enemies and no kind of executive power waspresent. Ehlich answered, therefore, to a number of individual questions about the activity or non-activity of Ohlendorf within Office III. The last document in this volume is Document No. 57, and I offer it as Exhibit No. 62. This is an affidavit, of Heinz Wanninger, in the end Referent for general questions of organization of the RSHA. He supplements the statements in the affidavit, that Dr. Hans Ehrlich which has just been submitted treats the organizational questions of the Office of the RSHA and the Offices of Chief of Security Police and SD at home, and in the occupied territories, as well as the special position of Einsatsgruppes and Einsatzcommando in the Russian campaign, which, as militant special units, were no agencies, or offices, or parts, or branches of the offices of the RSHA, especially not the Offices III, IV, VI and VII of the RSHA. Then I have two more individual documents which have reference to the subject as to whether the struggle of the East was regarded as a struggle between two races by the defendants, or whether it was merely a matter of measures which were taken for security reasons. These two documents refute the thesis of the Prosecution, and I may hand them both to the Tribunal. I would like to offer the German copy with the document No. 62 as Exhibit No. 63, and the English copy as Exhibit No. 62-A -- or rather, as No. 63-A. Document 63 or 63A is offered as Exhibit No. 64 or 64-A. I quote:

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"Top Secret. A few thoughts about the treatment of aliens in the East, We have to see to it ---"

THE PRESIDENT: Which document are you reading from now Dr. Aschenauer?

DR. ASCHENAUER: From 62. I just gave it to the Tribunal.

THE PRESIDENT: Well, what the number have you given that?

DR. ASCHENAUER: 62, as Exhibit 63.

THE PRESIDENT: We have a document -

JUDGE DIXON: I think I have found them now.

THE PRESIDENT: What happened, that each one of the Judges got three copies of the same document. All right, proceed.

DR. ASCHENAUER: I quote: "Concerning the treatment of aliens in the East, we have to see to it that we acknowledge and cultivated many individual Ethnic groups as possible. That is, outside of Poles, Jews, Ukranians, White Russians, the Gorals, etc. If other small and isolated national groups can be found in the other places, they should be treated the same way." document submitted in the IMT, the Document No. 710-PS. I would just like to quote into the record: "Reichmarshall of the Greater German Reich. Berlin, July 1941, and the Chief of Security Police and SD, as SSGruppenfuehrer Heydrich, As a supplement to the task assigned to you on 24 January 1939, to solve the Jewish question in the form of emigration or evacuation, and to find as favorable a solution as possible I give you the order," and so forth.

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DR. ASCHENAUER (continued): I am at the end of my documents. I have before me the documents handed over by the Prosecution in Case XII. As such these documents offer nothing new. They prove the knowledge of the Army, the participation of the Army, and the jurisdiction in the area of sovereignty. I don't have the intention to continue to submit these matters unless I decide to submit a trial brief with short quotations, at the time of my final plea.

THE PRESIDENT: Very well. Do you want any ruling on that?

DR. ASCHENAUER: Well, if the official permission would be given for this it might be good to have it in the record.

THE PRESIDENT: Mr. Fenercz, do you have something to say to this?

MR. FERENCZ: Not on this particular point, on the general matter.

THE PRESIDENT: You are permitted to do what you have asked, Dr. Aschenauer.

MR. FERENCZ: May it please your Honor, there are certain fundamental objections which are applicable to many of the documents offered by the defendant Ohlendorf. I refer particularly to Document Books, II, II-A, II-B in their entirety. Book II begins with the so-called expert legal opinion on the concept of notation or necessity as a defense. The other materials in Books II-A and B are offered in support of that legal opinion. We must examine these things as a whole to see if they can be admitted. If the Court will turn to page 2 of Ohlendorf's Document Book II they will find a table of contents of this one legal opinion. You will notice, your Honors, that parts A and B concern the law to be applied. These are the first 12 pages. With this we have no quarrel. The remaining 50 pages are quite another matter. They deal with the objective and subjective prerequisites concerning the facts about the Soviet War, whether it was an aggressive war, whether International law would be followed by Russia and Russian's conduct before and after 1941. It can be readily seen, your Honors, that these are matters of fact and not of law. The affiant purports to give an expert opinion on these questions of fact. Books II-A and B are extracts to support these facts.

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What the affiant presents as fact is nothing less than a very clear exposition of a print of view which has nearly wreched the world. We cannot allow these matters to stand on these records as great statements of fact, These matters have already been argued and decided by the International Military Tribunal. If the Tribunal here desires to open these factual questions to re-examination we will produce evidence to the contrary. To do so, however, will entail bringing into this case many questions already considered and decided by the first International Tribunal. Part C-2 of this so-called legal opinion, this is on page 2--A of the document book your Honors, concerns the official Nazi theory of Jewry and Bolshevism and the defendant's own experience and imagination on this subject. Here gain the matter has nothing to do with law and less to do with fact and are certainly beyond the scope of any export legal opinion. opinion on maters of continental law. We will not object to Ohlendorf including in his closing statement his own subjective victor of the facts but we must not forget this trial is open to the world and will be studied by future generations. We cannot permit the distortion of very important facts disguised as expert legal opinion to remains as a permanent block unchanged and unchallenged on this record. We ask the Tribunal to consider this matter and to study these documents before making a ruling. Mr. Walton will present additional specific objections.

THE PRESIDENT: You may proceed Mr. Walton.

MR. WALTON: If your Honors please, if you will permit me I should like to take up the documents in the document books in the order in which they appear rather than in the order in which they were presented. I kept score but I have no guarantee it is right as far as the exhibit number is concerned and when I wrote my notes for the objections I did not have the exhibit numbers and will refer to the document by the page it appears in the document book and the name of the affiant or document as it appears in the record.

THE PRESIDENT: Once you do that there can be no possibility of error so tire recommend you follow that announced policy.

MR. WALTON: At this time, then, I wish to file certain specific objections to Documents Book I which I will take up by documents as they appear in that volume, Document #1, in this Document Book, the affidavit of Andreas Predoehl dated 9 October 1947, pages 1 and 2. The difficulties of the defendant while a student at Kiel University are immaterial to the charges of murder or membership in criminal organizations. For that reason we object, Does the Tribunal wish to rule after each objection is uttered?

THE PRESIDENT: No, the rulings will be made after we have had an opportunity to consider the objection and studying of the documents themselves.

MR. WALTON: Very well, I will continue without further interruption.

THE PRESIDENT: Please do.

MR. WALTON: Document 1-A, being a affidavit of Dr. Wilhelm Greiser. While it contains matters which tire believe to be immaterial, Prosecution does not urge an objection since it is in part a character affidavit.

Document 2, affidavit of Dr. Karl Gebhardt, dated 15 August 1947, pages 9-21 in the English text is objected to because the personal relationships between Himmler and the defendant Ohlendorf are not material to the issues in this case. Neither is a summation of Himmler's attitude toward his subordinate leaders, his morals, or his personal idiosyncrasies helpful as background material nor do they have any bearing on the issues involved. The same can be said of the affiant Gebhardt's conception of Ohlendorf's political philosophy in comparison with that belonging to Himmler. Furthermore this is a purported affidavit but, no jurat appears on the document.

Document #3, the affidavit of Karl Wolff, dated 10 September 1947, pages 22 to 25. The same objection as to Ohlendorf document 2 applies to this document. Furthermore should the Gebhardt statement and not the affidavit be accepted in lieu or in place of a character affidavit, this document is merely cummulative testimony on the same point.

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This document has no jurat Document #4, the affidavit of Karl Hedrich, undated document, pages 26 to 35 of the Document Book.

It is cummulative evidence on the point of the defendant's political philosophy, his struggles -

THE PRESIDENT: Well, Mr. Walton, I don't think we are going to be concerned - I don't think the Tribunal will be particularly concerned whether the document is cummulative. If it is relevant and sheds light, even excessively on a point which the defense considers important there seems no reason why we don't take it, study it and evaluate it, especially in view of the fact, that it is now already processed. If required to go out and get more then we might consider that. And, furthermore the character of each defendant is certainly attacked and what ever he can present to show that his character is such that would preclude the criminals intention imputed to the defendant it is certainly relevant.

MR. WALTON: I can only get my interpretation and give them as my objections. What the Tribunal does is, of course, their function but I should like to go on record with these objections.

THE PRESIDENT: Very well we don't want you to gain the hope that you were succeeding in that particular argument.

MR. WALTON: I assure the Tribunal it is entirely impersonal. I merely put in the objections, the Tribunal acts on them. immaterial to the issues in this case and this document, being document #4, is also without a jurat. No date that the document was signed appears.

Document to. 5, the affidavit of Dr. Gerhard Klopfer, dated 3 October 1947, pages 36 to 38. This document is objected to on the grounds of immateriality and while it is admitted that in the course of time it may have some historical value it is, in my opinion of the Prosecution, of no value to the material issues of the case.

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No jurat appears on this document.

Document 6 _ this is the affidavit of Hans Fritzsche, dated 18 August 1947, pages 39 to 41. The criminality of the SD is established by Control Council Law #10 and by judgment of the International Military Tribunal. Evidence to the contrary is immaterial. As this criminality of the SD is now a raised adjudicata matter. The mere fact that the SD under Ohlendorf was engaged in some legal activities is no guarantee that the Security Police and SD were innocent of crimes in the occupied territories of Russia. This Tribunal does not concern itself primarily with actions taken by Germans against Germans. As was said in the Medical case it is only when crimes or illegal acts are committed on Nationals of other countries does it become of concern to the family of nations. This document is also objected to because it lacks a jurate.

An unworn statement of Dore Neumann, being document #7, dated 11 October 1947. This is immaterial as to the issues in the case because this affiant only testifies to the defendant's activities In Berlin and in the RSHA. She admits she knows nothing of the SD or the Einsatzgruppe activities in Russia.

Document #8. statement of Dr. Rudolf Hauschka, dated 16 August 1947, pages 46 and 47. The defendant Ohlendorf's attitude toward German practitioners of anthropography whether tolerant or intolerant is not material to the question of his attitude toward Russian Jews, Gypsies and Communist functionaries. Charitable acts toward this affiant has no bearing on his uncharitable acts toward people in occupied territories of Russia marked for slaughter.

MR, WALTON: (continued) Document 9, statement of Dr. Elizabeth Klein dated 17 September 1947, pages 49 to 52. Prosecution objects to this document because the International political struggles of Germany and the attitude of the SD therein may be of value to the history of such movements but it is immaterial as to whether the SD was a criminal organization. This has been decided by the International Military Tribunal and the issue in this case is whether or not the chief of that organization knew of criminal acts performed by the SD organization while establishing and maintaining the security of German Armed Forces in Russia.

Document 10, statement of Dr. Hans Ehlich, unsworn, dated 20 September 1947, pages 53 to 61. The attitude and the policy of the defendant Ohlendorf toward the Germanization of and assimilation of foreigners, the difficulties he had to maintain his ideals on these questions, the antipathy had had held for Koch and Thomas and the hatred he possessed for the monopolistic attitude of I.G. Farben, are material only if the issues in this case include whether or not this defendant made enemies during his career. Such statements while of interest to a treatise on the life and times of General Ohlendorf are not material. If they are offered to establish the point that the defendant did courageously maintain his ideals in spite of powerful adversaries then these documents are cummulative and are surplusage since Prosecution is prepared to admit this last named contention.

Document 11, the affidavit of Dr. Hans Roessner dated 13 September 1947 pages 62 to 79. This is a document which points out again the resistance maintained by the defendant to his political adversaries, his efforts in behalf of the cultural life of Germans, the scientific study, and achievement of German scientists, the religious policy of the state and the his relations with Nazi hierarchy. It is immaterial to SD activities in the occupied eastern territories of Russia.

Document 12, affidavit of Dr. Erhard Maeding, dated 22 September 1947, pages 80 to 90.

In the English translation the first page is missing. The Prosecution was not put on notices as to the full contents of the document but is willing to waive this technical objection if the contents are of the same general nature as the remaining 9 pages. The economic Spy system on the leading personalities in the German State was right and proper as the German people wanted it. The right of any country to make its own laws and to conduct its own international affairs is not an issue here. The same question of acts proven in Germany, whether legal or illegal, is of no concern to this Tribunal. It is when these or other acts result in the crimes against humanity or war crimes and are visited on peoples outside of the German border they do concern the rest of civilized nations of the world. Neither are the routine procedure practices in the SD, for Germany questions of material value for the Tribunal in this case nor are the relations between the SD with the Ministerial Department and gauleaders. The defendant's efforts in behalf of State reform for Germany is not material to the issue of criminal activities against the civilian population or Russian occupied territories.

Document 13, Statement of Dr. Halmut Seydel dated 3 September 1947, pages 92 to 98. Prosecution objects to the introduction of this document because the functioning of legal institutions in Germany and the proposed reforms therein are immaterial. The attempted counter action of the trend away from a constitutional state inside of the borders of Germany, the pointing out of Party corruption, etc., is of no material value to this case. The author in his closing paragraph - I cannot call him an affiant because it is unsworn - the author in his closing paragraph specifically states and I quote: "I did not know of the assignment in Russia." The Prosecution does not object to the introduction of Document 14 which is a statement of Sigrid Barlen, B-a-r-l-e-n, dated 3 October 1947, pages 100 to 102.

Document 15, this is a purported deposition of Dr. Franz Hayler, pages 103 to 121, In the English copy it is unsigned. The authority for taking the oath is not shown, no witnesses' certificates appear, the date when the deposition was taken is not shown, the authority before whom the answers were made is not shown.

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If it is a deposition, no cross interrogatories were over put to the witness. If it is purported to be an unsworn statement no signature is attached. This is cummulative evidence of the fight inside of Germany against monopoly. As to the struggles with Himmler, as to collaboration with Professor Jessen, as to the defendant's opposition to Nazi hierarchy and other Internal German State matters none of which appear to be pertinent to the issues in the case. The interrogatee disclaims in his answers to questions 6 and 7 any knowledge of the details of the defendant's work in the SD and his participation in the Russian campaign.

MR.WALTON: To ducment #16, being the affidavit of Dr. Gustav Schlotterer, dated 4 October 1947, the Prosecution offers no objection.

Document 17 the affidavit of Dr. Heinrich Malz, dated 30 September 1947, pages 124 to 126. This is cummulative to the point of the defendant's attitude and ideology on International Germanic affairs. It is Immaterial to SIPO and the SD in Russia.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

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(The hearing reconvened at 1345 hours, 14 January 1948).

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: We really feel very much complimented at seeing everyone present today.

Mr. Walton, would you mind our taking up the matter of the document books with the counsel who have all appeared?

MR. WALTON: Not at all, sir, except that I am sorry to state that I was unable to find Mr. Glancy during the lunch hour. Dr. Hochwald has gone to call his office. Mr. Ferencz, I don't know why he was not here because he was sitting here when you made your announcement, but if the Tribunal will allow the two elder members of the prosecution to stand in lieu thereof, we can proceed with the business of the court.

THE PRESIDENT: Yes.

MR. WALTON: As soon as the phone calls go through I feel certain they will be here. They are in the building.

THE PRESIDENT: Well, would you then went to proceed with your-

MR. WALTON: Not at all, unless the Tribunal feels that the full prosecution should be here.

THE PRESIDENT: Well, it isn't necessary that they should all be here, but I think they should be rather well represented because they may went to make some observations. The thing that I am concerned with is if I don't take care of these attorneys at once they are going to slip out one by one, and I want to have them here in unison. So you may proceed for ten minutes or so and if they have not come by that time then we will take up the matter of the document books.

Dr. Hochwald, do you know whether the other two intend to be here?

MR. HORLICK-HOCHWALD: If the Tribunal please, Mr. Glancy is ill today.

THE PRESIDENT: Oh, I am sorry.

MR. HORLICH-HOCHWALD: And Mr. Ferencz will be presently before the Tribunal.

THE PRESIDENT: Very well, fine.

MR. WALTON: The next document to which the prosecution wishes to enter its objection is in Document Book I, being the same document book which was being discussed prior to the noon recess. Document No. 18, which is the statement of Luitpold Charlemayer, dated 21 August, 1947, Pages 127, 129, and which is again on the point of the personal feud between Himmler and Ohlendorf, again objected to on the grounds as being immaterial to the issues involving the activities of the defendant in the East. Document No. 19-

THE PRESIDENT: Mr. Walton, I see Mr. Ferencz is here now, so let's take up the matter of the document books, if you don't mind. and we would like to suggest that even where counsel does not have all his document books but does have one or more, that he present those so that at least we can be working on them, awaiting the remaining ones which might still be in the process of being translated and mimeographed. I think it might be well to go down the list beginning with Ohlendorf, which, of course, we are now disposing of.

Heinz Jost. Now, this list indicates that we have Document Books I and II. Are there any more?

DR. SCHWARZ: Yes, your Honor, I have finished the Document Books I and II and can submit them if the Tribunal desires so. Document Book III is being translated at the moment, and a fourth document book unfortunately I was not able to complete yet, because two affidavits were only received during the last few days, but I shall hand in the document book by tomorrow for translation.

THE PRESIDENT: Very well. Erich Naumann.

DR. KLENNERT: Dr. Klennert for Naumann. Your Honor, I have four document books which I handed to the translation department. As far as I know only one of them has been returned as yet. Three further books are still to come, to be translated.

THE PRESIDENT: Are they already in the translation department, II, III, and IV?

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DR. KLENNERT: Yes, II, III and IV are in the translation department.

THE PRESIDENT: You are ready to proceed with No. I?

DR. KLENNERT: Yes, with No. I.

THE PRESIDENT: Otto Rasch. Of course, we know that you are hoping that you won't have to submit any document books.

DR. SURHOLT: Yes. I have prepared one document book, but since no ruling was made about my application as yet, I have not handed it in in order not to burden the translation department too much.

THE PRESIDENT: Nor to burden the attorney too much.

DR. SURHOLT: I have finished my work so far.

THE PRESIDENT: One of the marks of wisdom of a lawyer is never to do more work than he has to.

DR. SURHOLT: One should not contradict wisdom.

THE PRESIDENT: Very well, very well said. The attorney for Schulz.

DR. DURCHHOLZ: DR. Durchholz for defendant Schulz.

I have already submitted Document Books I, II and III. I have already submitted these three documents books, and I have another few documents which I shall probably receive back from the translation department at the end of the week. May I mention here that there is one document among them concerning the witness Karl Heinz Bent. The affidavit by this witness I have already completed a month ago, but after having summoned the witness at the time I wanted his signature. Suddenly the witness had been taken away from Nurnberg, and today I was told that tomorrow or the day after he would come back again so that I will be able to get his signature then. This was a delay which is not my fault.

THE PRESIDENT: Well, which books are you ready to present now?

DR. DURCHHOLZ: I only have a few documents which I shall submit as Document Book No. IV as soon as I have them all.

THE PRESIDENT: Very well. Attorney for the defendant Six.

DR. ULMER: Ulmer for Six.

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mimeographed and translated already, that I could submit at any time now. Document Books II and III, I handed in. II has already been mimeographed in the German and it is just being translated into English. In order to speed this up I myself have given an English translated to the translation department, and the translation department will only have to review it. My Document Book No. III I have not received back mimeographed yet in German.

THE PRESIDENT: You say that you did some of the translating youself?

DR. ULMER: I had them made.

THE PRESIDENT: Well, but you did it to assist the translation department?

DR. ULMER: Yes, your Honor.

THE PRESIDENT: Well, you seem to be contradicting the wisdom of Dr. Surholt, doing more work than an attorney is required to do.

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DR. ULMER: Your Honor, I might have a fourth document book but this will only consist of three or four documents. I am expecting these to come in within two days. That is only a small matter.

THE PRESIDENT: Very well, Thank you very much, Dr. Ulmer. Dr. Heim. Oh, he is not here. I haven't see Dr. Heim for a long time. Where is he?

DR. KUHR: DR. Heim is in the Tribunal No. VIII, where his client is just being on the witness stand at the moment. He, therefore, cannot appear. As his deputy I would like to make the following statement. Your Honor, Document Book I for Blobel has already been submitted. Document Book II we received back this morning from the translation department, and Mr. Hochwald informed me that the prosecution has the Document Book II for Blobel. We have in addiction a supplement to Document Book II of Blobel but this has not yet been received back from the translation department. It is possible that we shall hand in supplementary documents. and we shall try to have the translation speeded up. Submission of further documents is not intended.

THE PRESIDENT: Well then, you would be ready to present Document Books I and II.

DR. KUHR: Document Book I has already been submitted, your Honor.

THE PRESIDENT: Very well, you are ready to present II then.

DR. KUHR: Document Book II I could present. However, the supplement cannot be submitted as yet because it has not yet been translated.

THE PRESIDENT: Very well. Dr. Lummert for Blume.

DR. LUMMERT: Your Honor, my Document Book I has already been submitted by me at a previous date. The rest of my documents will be contained in Document Book II. I shall be able to submit the rest of the documents at the latest at the beginning of next week. They have already been translated.

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THE PRESIDENT: Are they all contained in one book, No. II?

DR. LUMMERT: Yes.

THE PRESIDENT: And you expect to have that book ready no later than Monday?

DR. LUMMERT: Monday at the latest. I can then present it.

THE PRESIDENT: Yes. Dr. Handry for Sandberger. Oh, Dr. -- I see, yes.

DR. STEIN: My name is Stein, your Honor.

THE PRESIDENT: Yes, that is right. You constantly change your name.

DR. STEIN: Your Honor, I already submitted two document book. Both are still in the translation department. I also have a supplement to Document Book No. I which is being prepared, and I shall be able to hand in this book in about two days. Apart from that I am expecting from abroad about two or three further affidavits which I was unable to get before because I did not know the addresses of these foreign witnesses. At the moment I cannot give a definite date when I shall be able to submit the document books, since I do not know when the documents will be translated. I am not able to submit Document Book I already now because the matter is overlapping. There are various affidavits in both books which I wont submit in a proper presentation. I, therefore, ask for a term, I ask to be given time until the beginning of next week provided that the books are translated by them, and apart from that I would like to reserve the right that if they should not be completed by then in the translation that I Shall be able to submit the document books at a later date, but may present them to the Tribunal earlier.

THE PRESIDENT: Very well, Dr. Stein. You understand the situation, and I am sure that you will cooperate to the utmost of your ability.

DR. STEIN: Yes, your Honor.

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THE PRESIDENT: Who is deputizing for Dr. Gawlik? Oh, you are. Very well.

DR. KLENNERT: Two document books for the defendant Seibert have been handed in. They are still in the translation department. When the translation will completed I do not know, but I assume that this will be this week. Apart from that a supplement of a few documents was prepared and was either given to the translation department today or will be given to them today.

THE PRESIDENT: Very well. Dr. Mayer for the defendant Steimle.

DR. MAYER: Dr. Mayer for the defendant Stimle. III for the defendant Steimle.

THE PRESIDENT: And will that complete your documentation?

DR. MAYER: Yes.

THE PRESIDENT: Very well. Thank you, Dr. Mayer. Dr. Fisch for Biberstein. Let's see, you have presented one document book. Do you intend to have any more?

DR. FISCH: No further documents. your Honor.

THE PRESIDENT: Very well, thank you.

THE PRESIDENT: Dr. Mayer for the defendant Braune.

DR. STEUBINGER: Steubinger for Braune.

THE PRESIDENT: Yes.

DR. STEUBINGER: I have two document book and one supplement which I have prepared. The first document book is completed and can be presented. The second document book is translation already, but it is still in the sorting out department, in the filing department, and the prosecution has not been able to have a copy as yet. The same applies to the supplement, part of which has only been translated. Document Book No. II I shall submit as soon as I am given the English translation.

THE PRESIDENT: That could be rather quickly, couldn't it, maybe tomorrow?

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DR. STEUBINGER: Yes, I hope so, your Honor. Of course, I cannot say exactly how long this will take, but Document Book I can be introduced today.

THE PRESIDENT: Yes, very well.

DR. STEUBINGER: I said this morning that I was prepared to do this.

THE PRESIDENT: Very well, we will take it just as soon as we reach it.

Dr. Riediger for the defendant Haensch.

DR, RIEDIGER: Your Honor, I handed in three document books. Document Book I has been translated and submitted. Document Book II has also been translated and should be submitted any day. Document No. III is being translated and it should take a few more days until the translation will be completed. Apart from that I am expecting two or three further affidavits from the Russian zone which should arrive sometime this week which will also be added to the document book, completed, is Document Book No. I, and can be submitted any time. Document Book No. II Should be ready for submission at the end of this week.

THE PRESIDENT: Mr. Hochwald.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution has received Document Book No. II of Dr. Riediger's.

THE PRESIDENT: Well then, you would be ready to proceed with your Document Books I and II.

DR. RIEDIGER: Yes, I then could submit I and II.

THE PRESIDENT: Very well. Dr. Hoffmann. Are you here only as a Spectator today, I see you sitting back in the gallery, or are you really working?

DR. HOFFMANN: I only took that seat because I did not want to sit in the front row.

THE PRESIDENT: That is just your natural modesty.

DR. HOFFMANN: Your Honor, for the defendant Nosske who is my Client I am submitting seven documents which will be translated by Monday.

I could not call this a book, but I shall introduce the documents individually.

THE PRESIDENT: And you think they will be ready by Monday?

DR. HOFFMANN: Yes.

THE PRESIDENT: Very well. Thank you very much, Dr. Hoffmann.

Dr. Koessl for the defendant Ott.

MR. WALTON: If your Honor please, there is one matter that concerns Dr. Hoffmann and myself, and since we are both here and since Your Honor has cited the occupational disease of lawyers to slip out. I would like to take up this one matter before we proceed further. On the 19th of December, in obedience to the direction of the court, we submitted an affidavit of the former defendant, Emil Hausmann. My understanding is that is Prosecution's Exhibit 188. I have forgotten the document number. However, there is a motion pending before the court already filed by the prosecution on the 19th of December. So far I have not received a reply or an answer to that motion. If I remember correctly the court stated in its direction that counsel for the defendant and the prosecution would file their briefs and that the court would make its decision in a written opinion.

THE PRESIDENT: Yes.

MR. WALTON: The secretary is getting a little nervous about it too. He keeps writing me notes asto just what I am going to do.

THE PRESIDENT: Yes.

MR. WALTON: But the main thing I should like, if it is at all Possible that if the motion is decided in my favor I intend to use it in my closing brief. If not, I would like to know that now so that I can Still write the brief without reference to the document.

PRESIDENT: Yes, Dr. Hoffmann, will you please tell us whether you intend to file the reply brief?

DR. HOFFMANN: Your Honor, I received the motion by the Prosecution and also prepared a reply. By the end of this week it will have been translated; however, I take the liberty of suggesting whether we and the prosecution will have to discuss the Hausmann affidavit as yet because of the fact that various Tribunals have made different rulings. This with regard to Ordinance Number 7, might complicate matters.

PRESIDENT: Well, Dr. Hoffmann, you can quote in your brief those decisions which support your view that the affidavit should be excluded, and I presume Mr. Walton will certainly quote those which support his contention that it should be admitted. Then, of course, we will decided which one we like better and dispose of it.

MR. WALTON: Fur purposes of record, Sir, that document specifically is No. 4147.

PRESIDENT: Yes, Very well. Very well. Dr. Koessl.

DR. KOESSL: Koessl for Ott and Schubert. I have ready for presentation the Document Books I and II for Ott and Document Books I and II for Schubert. For Ott only a small supplement is still to be submitted. I hope that this small supplement will be translated by the end of the week.

PRESIDENT: Well, are you ready to present Document Books I and II in behalf of Ott and I and II in behalf of Schubert?

DR. KOESSL: Yes, immediately.

PRESIDENT: Very well, thank you very much. Dr. Gick, for the defendant Strauch. Do you intend to present more than one document book?

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DR. GICK: Your Honor, I have two document books which I have completed for the defendant. The document books, the second one in particular, I had to make without the cooperation of the defendant. I had to make it based on my own information only and by studying files and documents myself because I was not able to work with the defendant for some time. These two document books were already handed in to the translation department. As soon as the translation department returns them, I shall be able to submit them.

PRESIDENT: When did you hand Number II in, because Number I is already prepared.

DR. GICK: Number I is prepared -- I didn't know that yet. The second one was only handed in yesterday.

PRESIDENT: Is it a very long one?

DR. GICK: It is not very large, No, but I assume that it contains about 20 documents.

PRESIDENT: Very well. Dr. Mayer for the defendant Klingelhoefer.

DR. MAYER: Mayer for Klingelhoefer. Your Honor, I have one document book which I am prepared to submit for the defendant Klingelhoefer.

PRESIDENT: Very well, thank you. Dr. Fritz for the defendant Fondler. You have already presented one document book. Do you intend to have anything more?

DR. FRITZ: Your Honor, today I submitted another document book, Fendler Nuaber II, but it consists only of two documents. It should be completed in a few days, and apart from that, I am expecting one further affidavit, and I would like to submit that as well, it it should be received before the end of the presentation of the evidence.

PRESIDENT: Very well, thank you. Dr. Ratz for the defendant von Radetzky.

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DR. RATZ: Dr. Ratz for the defendant, von Radetzky. Your Honor, my two document books have been translated, and mimeographed for some time already. I am prepared to submit the document books at any time, but I am about to get another three or four affidavits which I have not yet received, but I hope that I shall have them at the latest at the beginning of next week, and shall be able to submit them as well.

PRESIDENT: Very well. Dr. ruehl for the defendant Link, or I mean -

DR. LEHMANN: Dr. Link has informed me that his books are not ready yet.

PRESIDENT: Well, I think I was correct, saying "Dr. Ruehl for the defendant Link." Dr. Koessl for the defendant, Schubert -- well, he has already given us that. Dr. Belzer for the defendant, Graf.

DR. BELZER: Your Honor, I would like to make my statement from here. I have prepared one document book. I am waiting for a sign to start with the presentation.

PRESIDENT: You are waiting for what?

DR. BELZER: I am waiting for a sign to begin my presentation.

PRESIDENT: We will give you that sign this afternoon. Thank you very much. Well, I think school is out for the pupils here, with the exception of Dr. Aschenauer, Dr. Belzer, and two or three who are immediately ready. You may continue with your objection, Mr. Walton. We would suggest that those attorneys who have all their documentation ready to present might come next rather than those who are only partly ready.

DR. ASCHENAUER: Your Honor, I take the liberty of expressing a general request.

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The presentation of evidence is being delayed a little, and that is why I want to make the request that for the beginning of the final pleas a few additional days will be given us. Too many technical difficulties would arise of one considers the translation difficulties. Perhaps instead of Monday, Wednesday, or Thursday, the final pleas should be started.

PRESIDENT: It isn't quite clear just what you request, Dr. Aschenauer. We have now scheduled January 26 for the summations. Now, do you ask that that be modified?

DR. ASCHENAUER: Yes. I should like to ask to postpone this for a few days so that we have more time for preparation. It is just like this, that the presentation of documents will not be finished befor* Monday, and before the final pleas are made, all the pieces of evidence have to be considered. The final pleas can be handed in at the earliest on Friday or Saturday next week.

PRESIDENT: Dr. Aschenauer, one full week will be allowed for the preparation of the summations, regardless of when we terminate the actual taking of testimony and the receipt of document books.

DR. ASCHENAUER: For preparation, then let us assume that the presentation of documents is concluded Monday week, in that case.

PRESIDENT: You mean next Monday?

DR. ASCHENAUER: Next Monday. Let us assume that the presentation of documents is concluded by then, then we get eight days to prepare ourselves. That would mean Monday week. Then the final pleas could be translated at the earliest on Monday week. This suggestion for handing in the final pleas department on that date, but the translation department takes a few days as well.

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PRESIDENT: Yes. Well, arrangements are being made for an acceleration of the translations of the final arguments. It will not be necessary to mimeograph these arguments so long as you have the German copy ready, enough translations will be made for the delivery, that is, to say, the reporters will have a copy, the interpreters will have a copy, and then as it is delivered the summations will go into the transcript and it won't be necessary to bring it out in a separate document, so that in a matter of a couple of days we will have a summation as it appears in the transcript.

DR. ASCHENAUER: In that case, may I therefore conclude that my final plea will not be handed into the translation department before Monday week.

PRESIDENT: Yes, well, your case is just a little bit different, Dr. Aschenauer, because you more or less have taken the burden of submitting the law which applies generally to those who fall in, let us say, the category of the defense advanced by your client, Ohlendorf, so that if you should want a little more time, we are certainly disposed to let you have it, but there is no reason why the next defense counsel shouldn't be ready to begin at the time we have indicated because he won't need to have so much time to prepare his argument.

DR. ASCHENAUER: Your Honor, my colleague objected with the following argument which is of importance. They will coordinate their pleas to my final plea because I shall make general statements and they shall follow me.

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PRESIDENT: But I can't believe that every attorney is going to wait until that very last moment to prepare his argument, and there is no reason why they can't be preparing their argument right now; however, you can be assured that everyone will be allowed ample time to prepare his summation. that is what we say now, and that is what we are going to insist upon, but if because of some circumstances over which you have no control it is necessary that you have a little more time, naturally, that will be granted. As it stands now, let us say that you will be ready to submit your written argument a week from next Monday for translation, so that you will be ready to deliver it, let us say, on Wednesday of that week.

DR. ASCHANAUER: Very well.

PRESIDENT: Let us tentatively agree upon that.

DR. HOFFMANN: Hoffmann for the defendant, Nosske. Your Honor, but this does not mean to say that the presentation of documents will have to be concluded by the defense by Monday. Surely it will be possible to present some documents, if necessary, on Monday, on Tuesday, or Wednesday, next week.

PRESIDENT: Yes. Very well.

DR.BELZER: I beg your pardon, Your Honor. The suggestion I wanted to make is similar to the one my colleague, Hoffmann just made. I am in difficulties with two witnesses, Zimmermann and Wohlgemut, which have been approved by the Tribunal. I have been trying for weeks to get affidavits from these two witnesses to avoid their having to come here. Mr. Pace intervened, but still we were not able to get these affidavits in the meantime. I just heard that the one witness, Dr. Wohlgemut, will arrive here on 14 January. I shall try to get an affidavit from this witness immediately and shall include it in document Number IV, and shall try to submit this document book still this week. Concerning the other witness, Zimmermann, it might be necessary that he should be visited at his present place of residence in order to obtain an affidavit from him.

It is possible that I might only be able to get this affidavit at the betinning of next week, and I shall only be able to submit it at that date.

PRESIDENT: Well, where there is a situation as you have already described, and the Tribunal has already approved the witness, certainly we will receive the affidavit at the first moment that you are physically able to obtain and process it.

DR.PELZER: Thank you, Your Honor.

PRESIDENT: Very well.

DR. MAYER: I beg your pardon, Your Honor. Merely for the sake of clarity, I would like to ask that I might be allowed to summarize-that the final pleas, have to be handed in one week after the conclusion of the presentation of documents?

PRESIDENT: They should be ready by one week from next Monday.

DR. MAYER: I thought this was merely an example, Your Honor. It is possible that this might be delayed and that the presentation of documents might not be concluded by Monday.

PRESIDENT: Well, Yes, one week from the date we conclude the proceedings.

DR. STEIN: Your Honor.

PRESIDENT: Yes, Dr. Stein.

DR. STEIN: I have an inquiry to make. I intend to hand in a closing brief as well as my summation. I would like to ask whether this closing brief also has to be submitted within a certain period?

PRESIDENT: It would be highly desirable that that brief be in the hands of the Tribunal at least--not later than the day you make your final summation, but if for any reason you don't have it ready and would indicate to the Tribunal that you would submit it say two or three days later, we will receive it then.

DR. STEIN: Thank you.

DR. ULMER: Your Honor, I beg your pardon for intervening, but in order to be clearer about the time, it would be better to fix a definite date concerning the questions we have discussed.

I just explained for my defendant, Six, and was praised by the president for doing this, that I had my documents translated myself at least in document book II in order to avoid delays, but in fact it is like this, that as long as I have not received back the document books completely, I cannot take the responsibility of not being present at the proceedings and already starting to work on my final plea, my final summation. The translation of the document when received from the translation department has to be reviewed by the conscientious defense counsel. It is a rather vague concept if we are told that one week after the conclusion of the presentation of documents the final summations have to be handed in. This last date of presentation of documents might be Wednesday, the 21st or a day earlier or a day later. Your Honor, you originally fixed the 26th of January as the time for the submission of the summations. Looking at the calendar, may I ask for myself in a more precise manner that the submission of our summations should be fixed for the second of February at the latest, that is, one week after the originally intended 26 January. It is easier to have a definite date, Your Honor. I don't know when my colleagues will have finished with their last document. If I knew it was the second of February, I wouldn't need to know, but if you said of course, to have everything prepared by the second of February, that would help me a great deal, and I think the entire work and cooperation would be made easier.

PRESIDENT: Do you have something, Mr. Ferencz?

MR. FERENCZ: Your Honor, the prosecution is prepared to proceed with the rebuttal case immediately as soon as the defense is through with the introduction of any documents or evidence. However, we cannot proceed with our rebuttal until the defense is through. therefore, it is important for us, too, that we set a definite date when the defense will have all their documents in or it will be too late. I would like to remind the Tribunal that the prosecution's case was finished in two days. Since then the defense has had three and a half months, when they had all the evidence before them, and the prosecution and the Tribunal have instructed the defense to have their documents ready and submit them to translation.

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I suggest therefore that the Tribunal set some date close to the 26th for the date of the completion, and for the taking of any testimony for the defense.

PRESIDENT: The Tribunal will discuss this in chambers during the recess and will advise counsel precisely as to the chronology of the various things still remaining to be done until this trial is completed.

DR. ULMER: Thank you, Your Honor. May I finally make the formal application for myself to be given time until the second of February for the delivery of my summation?

PRESIDENT: Well, we can't at this moment, Dr. Ulmer, make any announcement with regard to any particular defendant, you better wait until we make the general announcement, and then if you have any specific reason for deviating from the schedule outlined, then if you will see the Tribunal, then we can see what can be done.

DR. ULMER: Yes, Your Honor. I merely wanted to specify what I wanted but not to make any new suggestions.

PRESIDENT: Yes, very well. Thank you very much. All right. Mr. Walton.

MR.WALTON: The next document in Document Book I submitted for the defendant, Ohlendorf, to which the prosecution objects is Document No. 19, which is an unsworn statement of Walter Solbeen, dated 22 August 1947, page 130 to 132. This statement gives information as to Ohlendorf's activities in the Reich Ministry of Economics after November 1943. It is immaterial to any charge brought against this defendant. Document Number 20, the unsworn statement of Dr. Elmer Michel, dated 20 September 1947, page 133 to 135. This treats of the defendant's fight against monopolistic practices, struggles with political and antagonists and it shows on its face that the author has no knowledge of the defendant's activities during 1940 to 1945, some of which time is in direct issue in this case. Document Number 21, being an unsworn statement of Dr. Josef Duetsch, dated 26 September 1947, pages 136 to 140, and it treats of the defendant's struggles prior to the outbreak of the war as an official in the Reich group for trade and commerce.

It is immaterial and irrelevant to the issues of the case.

MR. WALTON: Now objection is offered to Document No. 22, being the affidavit of Fritz Schulz, undated. Franz Maulhardt, dated 6 October, 1947, There is no objection offered to Document No. 24 being the unsworn statement of Karl Winter, dated 3 October 1947.

Prosecution does, however, wish to object to Document No. 25, which is the unsworn statement of Dr. Justus Beyer, undated, pages 149 to 153, which is again evidence submitted as to the domestic spheres of the activities of the SD. It is immaterial as to the activities of this organization in Russia.

It interposes an objection to Document No. 26, being the affidavit of Horst Webendoerfer, dated 21 October 1947.

THE PRESIDENT: Mr. Walton, perhaps if you refer to the affidavit number, the document number, and the name of the declarant or affiant, as the case may be, we might expedite things a little bit.

MR. WALTON: Yes, although all of them are hot affidavits.

THE PRESIDENT: Or whatever it is.

MR.WALTON: The affidavit of Horst Webendoerfer is a memorandum as to the defendant's activity during his service with the National Group Trade and his struggles with Ley, Himmler, and so forth, and is immaterial.

Document 27, the affidavit of Dr. Hans Roessner. There are several affidavits from this affiant. This is undated and is found on pages 6 to 15 of this particular Document Book la. This document of the witness' testimony is unsigned and refers to the cultural life of the German people, and the interest further displayed by this defendant is immaterial to the issues and to his activities as head of the

Einsatzgruppe. It is irrelevant as to whether or not he participated in war crimes and crimes against humanity as a member of the SD in the East.

Document 28, being the deposition of Dr. Hans Lammers, shows that on its face it is undated in the English text and that the certificate of the testifying witness is unsigned.

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The document is objectionable in that it is not shown that this witness is an expert on channels of communication is SS formations, nor is it shown whether this witness has knowledge of other than the official relationships between Ohlendorf and members of Hitler's personal staff. affidavit of Werner Lorenz. Erich von der Heyde. It is cumulative testimony and treats of the political ideology of the defendant. It is neither material nor relevant to the issues of the case as at this time the defendant was only nominally a member of the SD. Erich von der Heyde. This document showing the kindness and consideration shown by the defendant in the case of Jewish employees of the I.G. Farben is irrelevant to the murder of thousands of Russian Jews for security reasons. being Document 32.-from Himmler to Ohlendorf and is dated 31 October 1943. It is cumulative evidence of the uncontested fact that relations between these two parties were not cordial. Reprimands that are based on charges of alterations of SS uniforms are somewhat irrelevant to this case. pondence from the Mohammedan Committee. letter dated 6 February 1934, purportedly being from Ohlendorf. This, of course, is objected to on the grounds that it is a self-serving declaration and is immaterial to his activities in the Eastern Territories, which happened in '41, or to the illegal acts committed by the SS or SD subsequent to September 1939.

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Donner dated 8 October 1947, this document being a recital of the activities of Ohlendorf during the period 1934 to 1937, to which there is no contest and to the later period of 1944 after his return from Russia. It is not claimed by the prosecution that this defendant committed any illegal acts during these periods of time. Such testimonies as letters of recommendation, unsworn, and covering incidents outside the scope of the charges in the indictment are irrelevant. lizeny before the International Military Tribunal of the 3rd of January, 1946. ted to as the documents were offered. There is no point in going over that.

THE PRESIDENT: No, you needn't go over it.

MR. WALTON: I should like to take up now Document Book II-B, which is in the series of books.

Document No. 58 is an excerpt from Hjalmar Schacht, being Schacht Exhibit 48, and is a memorandum concerning the description of a four-year plan, dated 1936. The contents of this document have not been served on the prosecution, as was pointed out to the court yesterday and I don't believe the court has a copy of this particular document. I would like to reserve objection on that until I see what the contents of the document are.

The next document is Document No. 59, which is excerpts from Adolf Hitler's proclamation of 22 June 1941 as appear in the Voelkischer of 23 June 1941. This is hearsay evidence. It is an attempt to refute the historical fact that the invasion of Russia was an aggressive act on the part of Germany. Nothing in this document pertains to the issue involved in the case and the quotation of a newspaper account is certainly hearsay evidence too far removed from the source and for that reason the prosecution objects.

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The two extracts from the works, "Speaking Frankly," which are Documents No. 60 and 61, the work, "Speaking Frankly," being published by James F. Burns is hearsay and conclusions of the author and immaterial to the issue in the case.

The next document book is Document Book 3. The prosecution interposes no objection to Document 44 and interposes no objection to Document 45. There is no objection to Document 46, nor does the prosecution object to Document 47 in Document Book 3. der of the Commanding General Plenipotentiary in Serbia, dated 26 October 1941. Now this order is immaterial to the issue for the lack of jurisdiction over Einsatzgruppe D. At the date of the order Einsatzgruppe D was not in Serbia and was not under the jurisdiction of a general commanding in Serbia. also of the Plenipotentiary Commanding General in Serbia dated 3 November 1941 for the same reasons as were entered in the record as to Document 48. to Document 52, but the prosecution does object to Document 53, the same being extracts from an interrogation of General Westhof on the grounds that it does not show the qualifications of the witness, his positon in the German armed forces, his opportunity for knowledge and what are the reasons upon which he bases the opinion given in this interrogation, also for the reason that the highest and best evidence in the matters about which he testifies are the regulations, decrees, and orders themselves.

Prosecution interposes no objection to Document No. 54, which is contained in Ohlendorf Document Book No. 4. The same is the entry in the service record book of Otto Ohlendorf. There is no objection.

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the same being a supplementary affidavit of Dr. Hans Lammers. No. 56, that being the affidavit of Dr. Hans Ehlich, dated 25 November 1947. This is the organization and function of Amt. 3 of the RSHA as given in a deposition form by a former Chief of Section 3-B of that Amt. This document while possibly of value as background or historical material has no value to the charges of mass murder in Southwest Russia including the Crimea. Likewise it presents no defense to the charges that the SD was a criminal organization as this is a fact that has become raised adjudicata by the decision of the IMT. Doubtlessly the SD engaged in numerous legal activities during the years 1939 to 1945, but this Tribunal is engaged in the examination of the illegal and criminal activities which this organization and its titular head engaged in during the Russian Campaign. Therefore, the knowledge and or participation of this defendant in such actions are neither discussed hor denied by this witness and this document therefore becomes irrelevant to the issues of this case. same being the affidavit of Dr. Heinz Wanninger. To four-fifths of this affidavit the same objection can be raised as was offered to the affidavit by Dr. Ehlich appearing in the document book. However, since this affiant does treat the organization and inside of the Einsatzgruppe, the prosecution offers no objection to those parts which pertain to the issues of the case. missed either 63A or 64A, but certainly to the translation of Document No. 1880. There is nothing which shows the source of this document on the English copy. However, we do not object to it and I think from the language it will be of value ot the prosecution. tract from Document NO. 1881, was not served on the prosecution in English, but I waive that as I have had that translated to me, but this document refers to some plan or proposal concerning the treatment of volunteers from the East.

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It is, the best I could get from it, a cover letter or a memorandum file and such a document is immaterial until the referred-to document is introduced which apparently was part of this same extract. Maybe it can't be found, I don't know, but as the document stands on its face, it is certainly immaterial to the issues in this case.

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MR. WALTON: NOW, your Honor, a few words more and I am finished. As to the documents which were presented to the Tribunal in connection with the activities of the SD,it must be said again that all these documents are immaterial to this case. The question before the Tribunal is not whether the SD, the SS or the Gestapo were criminal organizations. The question is solely whether the Defendant Ohlendorf or any other defendant in this case having joined the SD voluntarily remained a member of this organization, or if he was drafted into this organization by the State, whether he took part in such criminal activities or not and that is the question.

The fact that the SD. the SS and the Gestapo were criminal organizations is definitely established by Control Council Law No. 10 and is not an issue before this Tribunal, the prosecution would be obliged to offer proof of the criminality of these organizations. In other words, the prosecution would be obliged to request this Tribunal to try a considerable part of the case of Goering and others, as it was before the International Military Tribunal, over again. have decided about membership in criminal organizations that the question of criminality of certain organizations to which the SD belongs was validly decided by the IMT and by Control Council Law No. 10 and was made binding for the decisions of these Tribunals. prosecution objected against the admission of a document which was presented by defense counsel for the Defendant Fendler by stating and I quote: "You can show that he, that is, Fendler, was either not a member of that organization or that being a member of the organization he was entirely ignorant of its criminal operations, but you cannot contest what is now adjudicata, that that organization has been declared a criminal organization." And later on the Tribunal stated further. and I quote again, "We will permit the document only for the purpose of enlightening the Tribunal on the knowledge of the Defendant Fendler that this organization was conducting criminal operations."

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That is from the transcript of the Record page 4020.

THE PRESIDENT: The Tribunal will be in recess 15 minutes.

(A recess was taken) THE MARSHAL:

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The Tribunal is again in session.

DR. KOESSL: Dr. Koessel for the defendant Ott.

I ask that the defendant Ott be excused from tomorrow' session, that is, in the morning to prepare his defense, and in the afternoon for a visit of the dentist.

THE PRESIDENT: The defendant Ott will be excused from attendance in court tomorrow in accordance with the request of his counsel. testify as follows:

THE PRESIDENT: Defendant Fendler, there was apparently an error in the interpretation of a question, or rather, an answer made by you to a question, which in all fairness should be corrected in the transcript. On page 4073 of the transcript you were asked: "When you arrived in Pretsch, weren't you for a few days in command of Einsatzkommando IV-B?" To which you replied , "No". The reason that question was put to you is that, when your attorney first questioned you on the matter - - - D r. Fritz, do you have that page when he was first asked about reporting? Yes, this is it, on page 3992 of the transcript, we find this: "Finally Einsatzgruppen and Einsatzkommandos were set up. personally was sent to Sonderkommando IV-B as its commanding officer. The then Government Counsellor and Sturmbannfuehrer Hermann was then designated as leader of the Kommando." We had the film checked, and it is apparent that an error was made, because of perhaps your failure to pause between one part of your declaration and the other part. The correct interpretation should be, "I myself was assigned to Sonderkommando IV-B to the leader of which the then Government Counsellor and Sturmbannfuehrer Hermann was appointed." Is that correct?

A. Yes, your Honor, that is the way it should be.

Q. So that you were at no time the commanding officer even for the shortest period of Sonderkommando IV-B?

A. No, no.

Q. Then you will recall that a question arose as to whether you were familiar with the reasons for the execution of certain individuals. we were of the impression that you had stated, you didn't know why these executees were killed, and the reason we were of that impression is that you had said, according to the transcript, page 4017: "I only know that in Kremenchug shortly before the commando left for Poltava, an execution was carried out. What kind of persons they were, and how many they were. I can not say." Do you remember having said that?

A. Yes.

Q. Well, then after you were questioned about the soldiers who were discussing the execution, you indicated that these soldiers had not told you why the execution had been carried out, and that you had not stated that you didn't know why the victims were killed. So we call your attention to that statement in the transcript where you said: "what kind of persons they were and how many they were, I can not say." Do you recall having said that?

Q Then again on page 4071 the transcript shows "As I have already said on Saturday, I heard about it in Kremenchug that one execution took place but I don't know what people were concerned there." Do you recall that?

A Well, that's the way I might have said it but I don't remember the exact wording. your testimony caused the Tribunal to believe that you did not know why these people were killed and we questioned you at great length as to why they were killed when you were telling us that the members of the squad who had done the killing were talking about it. Then you said that you thought that we were asking you if these people had told you, if these other soldiers had told you, as to why they had done this killing but the general impression was that you did not know. Then after all this questioning you said, "Well, of course, I knew because it was very obvious why they were killed. It was in retaliation to some murders done. Now we call your attention to some points in the transcript where you said definitely you did not know why they were killed. clarify this, this whole mistake does not refer to the executions in Kremenchug but to those in Tarnopol.

Q Well, where were these 20 to 30 shot?

A That was in Tarnopol. Perhaps my attorney can give you the place in the English transcript. I think he had the page before.

Q Can you give it to us, Dr. Fritz? described as follows: I said that I had heard that 20 to 30 people had been shot in Tarnopol. Thereupon, Your Honor asked me whether I was told why these people were shot. I said thereupon, "No, I did not know, or pardon me, not that I didn't know but that I was not told."

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That is what I said . Thereupon you asked me a few sentences later whether I knew why these people were shot. Then I said, "Yes, these people were shot as a reprisal measure because of the murder of German prisoners of war who were found in the Tarnopol prison". And I added that this was an assumption and a conclusion on my part, that of course this seemed to me a matter of course for me that this execution which was carried out in Tarnopol could only be connected with this incident of this murder of German prisoners of war.

Q On page 4014 you were talking about executions and you said, "I learned from hearsay that executions occurred." I remember at the moment -

In answer to a question you stated, "I learned from hearsay that executions occurred. I remember at the moment only one case that a figure was mentioned to me. It is possible that I knew at the time that I heared about it, that I had forgotten in the meantime. "Then you stated that 20 to 30 persons were mentioned. You had indicated that you did not remember and then immediately afterwards you said 20 to 30 were killed. Now, was it that you then suddenly recalled or worked out logically in your mind that 20 to 30 had been killed?

A well, I cannot explain, Your Honor, and I still haven't found the place in the transcript in order to read it in the German text in which connection I said the first - I knew from the first, and I think I said it in an interrogation already that I had heard that in Tarnopol 20 to 30 persons were shot by Special Kommando 4-B. tion?

Q Well, now I call your attention to page 4077. That's in the English. Can you find that in the German? You were asked, "How did you know 20 or 30 were killed? A. A lot was said about it in the Kommando at the time because the men were excited about the fact they had to carry out an execution."

Does it appear that way in the German?

DR. FRITZ: In the German record it is page 4152.

A Did I get you right, 4152? Yes, I found the place, Your Honor. BY THE PRESIDENT: it does in the English?

A In the German text it is not evident. In the German text there is only the objective,statement that something was said about executions in the Kommando, otherwise nothing. A statement as to whether these discussions took place before or afterwards cannot be gathered from this passage in the German text. And I would like to point out, Your Honor, that a few passages later - I hope I will be able to find it - I myself said in this connection that I learned of this execution afterwards. I would like to call the attention of my attorney to this - 4157 in the German. stand, to clear up these discrepancies and to find out if you did at one time say that you heard about the execution before and later stated you heard about it afterwards. If there is a mistake in the transcript we want to correct it. So, that's the reason we want to know what you said. On page 4077 please read it in the German. Read it slowly.

A I beg your pardon. "A lot was said at the time in the Kommando about this execution, because the men were very excited about the fact that they had to carry out an execution". It says here as far as the tense of the verb is concerned - "had had to carry out execution". This is the pluperfect - past. execution was carried out?

Q Did you hear about it before?

Q So that you only heard about it after?

Q Now I call your attention to page 4-68 in the English. Can you find that? Perhaps I had better tell you what it is first and then you can locate it.

"Q. Do you remember the execution? A I remember to have heard at the time that an execution would be carried out or was carried out."

Have you found it, Dr. Fritz? Not yet?

DR. FRITZ: Your Honor, in the German text on page 4143, the last line. BY THE PRESIDENT: Will you read that please, witness?

A One moment, please. "How many people were executed in that execution which you remember took place at that time?" Is that place, Your Honor?

Q Yes, yes. Then you have

AAnd this place refers to the execution in Kremenchug. In other words, it is a completely different incident.

Q How many were killed in the execution in Kremenchug?

A I cannot say; I don't know, Your Honor. it, but at that time I didn't hear it, in order to be precise about it. tion, as being familiar with the details, and you stated that twenty to thirty people were killed at that one execution, and isn't it? Weren't we talking about that execution? The first execution about which we spoke before was the execution of twenty to thirty people in Tarnopol. That was about the beginning of July. And now the last reference which Your Honor has made referred to an execution which took place between the 13th and 26th of September in Kremenchug, a completely different incident. Tarnopol?

the execution?

Q And they told you that they had conducted this execution?

A Yes, Your Honor;

Q This was in Tarnopol? about it in Tremblova, which was the next garrison.

Q Well, didn't you hear about it just when it happened?

Q How long after the execution did you learn about it?

THE PRESIDENT: Well, we merely called you to the witness stand to have the record very clear upon these various point. Do you have any questions, Dr. Fritz?

DR. FRITZ: Your Honor, I have no questions to ask the defendant Fendler. In reference to the execution at Tarnopol, however, would like to draw the Court' attention to page 4082 of the English transcript. On the middle of the page the defendant Fendler answered a question by saying, "I heard about this execution in Tarnopol afterward, Your Honor," That is to say the defendant Fendler gave the same description then as he did now.

THE PRESIDENT: Yes. Well, we had called his attention to that one statement where it seemed rather clear he knew about it before, but now he tells us that that was a different execution. It wasn't so clear at the time that he was talking about another execution because he had maintained throughout the testifying that he only knew of one execution in any detail. he had heard of six others, six or seven others, but there was only one that he was familiar with and knew how many had been killed and why they had been killed, and the burden of the interrogation was directed entirely, at least so we thought,too this one execution of which hear had some detailed knowledge, but apparently he was thinking about another execution and that is what brought about the misunderstanding.

BY THE PRESIDENT: Tarnopol. How is it that you tell us only twenty to thirty were killed there? Your Honor. I cannot say anything about the others. I know that in Tarnopol people mostly of the Jewish race were killed by excesses of the Ukrainian population under the German Army, but I did not hear at that time how many people were killed. I only heard now from the situation report that this was supposed to have been 600.

Q You only heard there from twenty to thirty at the time? ted 600 Jews.

A I don't think so, your Honor. Isn't that an error? If I am orientated correctly it says in that passage that the Kommando liquidated 127 persons, and in the course of the excesses 600 people had been killed.

Q I will read it to you. "Einsatzkommando 4-B has finished its activity in Tarnopol. 127 Executions. Parallel to the, liquidation of 600 Jews in the course of the persecutions of Jews as induced by the Einsatzkommando." So that the responsibility would seem to rest on the Einsatzkommando, wouldn't it? prosecutor I already made a statement about this. he asked me what I had to say about this. I was only able to tell him that I am not informed about it, that I have no knowledge that the excesses in Tarnopol which led to the killing of 600 people were instigated by Kommando 4-B, that I heard about it only here through the situation report.

Q Just one more question. Did any of these members of the Einsatzkommando who participated in that execution tell you why they had killed twenty to thirty?

I will tell you why I am asking you that question. On page 4081 in the English transcript you give three different answers to that question, so we would like to have you tell us which of the three you stand upon, provided the transcript is correct. Will you please look for that, Dr. Fritz? The first question is, "And in all this excitement, and in all this talk, no one ever said 'We killed 20 to 30 people because of the murder.' Is that what you want us to believe?"

Do you find that?

DR. FRITZ: Yes. BY THE PRESIDENT: question with "I cannot say. In general maybe somebody did." Then later on the question was, "Well, you said everybody was talking about them. You did hear someone say that men were executed because of the murders which had occurred in the prison, is that right?" His answer now is "No". Then he was asked, "In all this discussion, in all this excitement, no one ever said why these 20 to 30 had been killed, is that right?" And the answer is, "I cannot remember", so that we have the three gradations; one that no one said that, very emphatically, the other maybesomeone said it, and then the witness doesn't remember whether anyone said that or not. Now, which one do you stand on?

A May I look this passage over, Your Honor? I just found it.

the impression that these are three different answers to one question, rather I have the impression that I understood the question of your Honor to mean whether anything was ever said about it at all, why these 20 to 30 people were executed, where no reference is made as to whether this was said to me. That is my first answer. he did not need to have given this explanation to me. learned of the execution, two days after the execution, these soldiers were talking about having participated in the execution, so I asked, 'and in all this talk no one ever said, We killed 20 to 30 people, "then you answered, "I cannot say in general, maybe somebody did". Now, in that answer, you say, "Well, perhaps someone did".

Then we ask you again, "Well, then, someone did tell you then why the executions took place. you replied, "he wouldn't have had to give this explanation to me". Then we put to you, "Well, you said everybody was talking about them, you did hear someone say that the men were executed because of the murders which had occurred in the prison, is that right". You now say, "No", that is, no one talked about why they had executed these individuals, Then comes another question, "In all this discussion, in all this excitement, no one ever said why these 20 to 30 had been killed, is that, right", then you say, "I cannot remember." Now, upon our reading of that, you give us three different answers, one that perhaps someone did explain why the executions had occurred, another, "No, no one made that explanation," then a third answer you give is that, "well, I don't remember". That is the way we read it. If we don't read it correctly, that is the reason we called you to the witness stand, to explain it. that from the transcript before me, it is evident that I answered your question, namely, "during all this excitement and all this discussion no one ever said, "We executed 20 to 30 people because of this murder, Do you want us to believe that, no one ever gave this explanation" that I did not understand this question of yours to refer to my person, but that I understood it to mean the way it can only be understood in this context.

you asked me whether I was of the opinion that not any one of those who spoke about the execution didn't also mention why these people were shot. That is quite general, not referring to my person. That is how I understood your question, your Honor, and that is how I answered it in general. I asked that you regard the word "general", consider the word "general" possibly in the sense that one didn't give an explanation generally. as to whether anybody explained why he committed the murder, that naturally I would be asking you if he mentioned it so that you heard it. You couldn't be responsible for what he said to somebody else. I think the tenor of the question is very clear, that is, with regard to whether you had heard anyone say why they performed the execution. Wouldn't you say that is the normal interpretation of that, and in all this excitement, and in all this talk no one ever said, that is, no one ever said -provided you heard it, but any how, you proceed with your explanation.

A That was the first version your Honor. Then you ask me, "but now you have said that everybody spoke about it; you just heard from hearsay that people were killed because of the murders that occurred the prison, is that right?" Then I said, "No, Your Honor."

Q Well, we have it here, "You did hear someone say that men were executed because of the murders, "is that the way it appears in the German, "You did hear someone say that men were executed because of the murders which had occurred in the prison, is that right?"

Q Then you answered that "No".

A "During this entire discussion and naturally this excitement, no one ever said why these 20 to 30 people were shot, is that right", thereupon I said, "I cannot remember". Again I considered this generally.

Q Well, you had said just immediately before that, "No one had said it", then you said -

A Pardon me, for interrupting, "to me", I mean. they be saying it except to you, that is, within you earshot -- within your hearing? that I would pass two people who were conversing and during this occasion I might have accidentally heard them talk about it without their directing their words to me. I never intended that you tell me if any of the participants had said to you, "Herr Fendler, we killed these people for that reason", we were only asking you if in all the discussion which wasn't with you, but just generally, they hadn't said why they killed these people. That is the whole tenor of the questioning. And on that question as to whether you heard why they had killed anybody, as we read it, you gave three different versions, one, they did not mention it; two, they may have mentioned it; three, you don't remember whether they mentioned it or not. That is the way we read it.

A Well, your Honor, I beg your pardon. At the moment I am not in a position, or I see no way in explaining this to you in any more detail, but I beg your pardon, if I say that according to me and according to the version I have, II see no contradiction in is possible. If one discusses it, it might be quibbling, but I would like to add that II think quibbling was not my purpose at the time nor is it now. If I had correctly understood the sense of your question, I would have certainly made an effort to give you the definitive answer, the clear answer which you expected.

was to perhaps indicate that our questioning of you at the time had a certain reason, and that it wasn't done nearly to harass you on the stand. The main subject of discussion was whether you knew why these individuals were killed and we got the impression all the time that you had said you did not know, and that is the reason we began to question you asto why you couldn't have learned in all the conversation as to why they were killed and then you said, "Well, I thought you were merely asked me whether I had heard from the whether they had told me," but that you did know why they were killed because it was very obvious. Now, the reason we got the impression that you had said that you did not know why they were killed, and that is what precipated the whole question, is because on page 4013 of the transcript in the early part of your examination, this is what you said, according to the English transcript, on page 4013, Dr. Fritz, of the English, "He, the commando chief, reserved the right for Einsatzkommando 4 B for all executions which might become necessary. During the assignment I heard that Sonderkommando 4 B did carry out executions, but I did not get any information how many persons were involved or what kind of persons they were". Now, if that transcript is correct, you will see, witness, that right at the outset of your examination you laid down the promise that you did not know how many persons were involved, what kind of persons they were, which naturally indicates that you didn't know why they were killed. So that impression remained in our mind throughout your examination, and then we began to question you as to why you did not know. Is that clear? this first remark in connection with what the commando chief announced about the power of command, about carrying out executions, that this generalization, if I may put it that way, was too farreaching.

In this connection, I just wanted to explain clarly that the responsibility for the ordering and carrying out of the executions rested alone with the commando chief, that on the basis of my own position and my activity, I got not knowledge, nor could I get any knowledge, as to who was executed and how many persons were executed. decisive in any way, but from this statement of yours that you did not know how many persons were involved or what kind of persons they were, speaking of those who were executed, it would be a contradiction then to say that it was obvious to you why certain people were killed, that you did know why certain people were killed because it was obvious. That would be more or less in contrast to this statement that you did not know how many were involved or what kind of persons they were. knowledge of these incidents, that I received no official knowledge of these executions. I did not want to give the impression, Your Honor, I beg your pardon, I did not want to give the impression that I had not perhaps heard about the fact that executions had taken place. officially and merely learning of it indirectly, or unofficially?

PRESIDENT: Well, I think that is where evidently the misunderstanding occurred. Dr. Belzer, we will give you that sign that you are so eagerly awaiting tomorrow morning at 9:30.

DR. ASCHENAUR: Your Honor.

PRESIDENT: Yes, Dr. Aschenaur.

DR. ASCHENAUR: May I reply to the statements of Mr. Walton and Mr. Ferencz tomorrow?

PRESIDENT: Dr. Aschenaur, do you think that is necessary? Your have indicated why you believe that these documents are relevant, they have indicated why they are irrelevant.

Now, if you reply to them showing that they are wrong, then they have the right to reply to you that you are wrong, then you will have the right to reply to that -sur-surrebuttal, and then next Christmas some time we will see Dr. Belzer coming up with a long beard saying, "Well, when are you going to listen to me".

DR. ASCHENAUER: Your Honor, as far as the technical matters which Mr. Walton has listed are concerned, I would like to say the following. The document, the originals are all correctly made out, and have the prescribed formula, and as required, they are certified by a notary public, or by an official, or by me, or by a mayor, or by an assistant of the defense, so that each regulation which is required has been fulfilled. Mr. Walton did not look at any single original and I cannot help any differences in the translation because the translation is only an auxiliary means of helping us.

PRESIDENT: Well, Dr. Aschenauer, I don't think that the Tribunal is much disturbed about the form of those declarations, if you tell us now that the originals carry the necessary authentication, that is adequate. We take your word for it. The only question which we will need to pass upon and we will in due time, is the relevancy and materiality. The competency, I think that we can tell you right now, that is, competency in the sense of authenticity of those declarations, I think that we can admit now. Your statement is on the record, and that is adequate for us.

DR. ASCHENAUER: One further request. I ask that the defendant, Ohlendorf, be excused from the session all day tomorrow.

PRESIDENT: The defendant, Ohlendorf, will be excused from attendance in court all day tomorrow and will hear Dr. Belzer in the morning, but not for all day tomorrow.

(The court adjourned until 0930 hours, 15 January 1948.)

of America; against Otto Ohlendorf, et al;

A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. RATZ: Ratz for Radetzky.

Your Honor, I have a small request. I want to know whether I can start with the presentation of my documents after Dr. Belzer so that I can be prepared. Mr. Hochwald would be in agreement with my request.

MR. HORLICK-HOCHWALD: If the court please, inasmuch as the documents of Dr. Belzer and Dr. Ratz refer to the same subject and have also their main activity in Einsatzgruppe C, and both counsel will refer to the emergency decree of October 1938 and any decrees which led to the execution of this emergency decree, it would possibly be advisable to hear these two counsel one after the other.

THE PRESIDENT: Very well. Yes, then you will be next called.

DR. RATZ: Thank you.

DR. DURCHHOLZ: Durchholz for Schulz. excused from this afternoon's session to prepare his defense.

THE PRESIDENT: The defendant Schulz will be excused from attendance in court this afternoon.

DR. STEUBINGER: Steubinger for Braune.

Your Honor, since it may be assumed that it won't be my turn today to present my documents because only Document Book I is ready and the other is still in the filing department, I ask that my client, Dr. Braune, be excused from the session all day today.

THE PRESIDENT: Well, let's keep this in mind, that we are going to move along with these document books as rapidly as possible. We will hear what are ready. There can be no lull, no moment that will not be actually used in court in connection with the presentation of documents, because as soon as the documents are presented then we will hear the rebuttal. So I would appreciate it if you would stand by to follow Dr. Ratz with whatever you have available, and that applies to all of the counsel. Just as soon as we reach a point where there is no counsel here with any documents ready then we are going to go ahead with the rebuttal, because there will be no delay. Counsel have been informed over and over again about these document books, and we cannot tolerate any hiatus, and gap in the schedule of the presentation of the documents and the evidence which still remains to be presented in this trial.

DR. STEUBINGER: Your Honor, I completely agree to submit Document Book I, but your Honor said yourself yesterday that those colleagues should come first who have their document books complete and before me there is my colleague Mayer who wants to submit three volumes, and Dr. Belzer and Dr. Ratz.

THE PRESIDENT: Yes. Well, of course if they are here, let's see who we have here this morning. There will be Dr. Ratz to follow Dr. Belzer and then there will be Dr. Mayer, and which of your defendants are you representing this morning with document books?

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DR. MAYER: Your Honor, I can submit my document books for the defendant Steimle and immediately afterwards for Klingelhoefer.

THE PRESIDENT: Very well. Now who else in the courtroom is ready with document books?

(no response)

THE PRESIDENT: All right, now if you would want to be available sometime later on in the morning with this one document book, we will be glad to hear you. If not, we will go on without you, just as you wish in that respect.

DR. STEUBINGER: Then I shall withdraw my request for the time being.

THE PRESIDENT: Yes, and then renew it whenever the opportunity suggests itself.

DR. STEUBINGER: Yes.

THE PRESIDENT: Very well. All right, you may proceed, Dr. Belzer.

DR. BELZER: Belzer for Graf. document book for the defendant Mathias Graf. The Tribunal will recall that the defendant Graf stated on the witness stand that because of the emergency war draft to the SD he was torn out of his profession as an independent businessman, and thus suffered great disadvantages. In order to confirm this statement of the defendant Graf as a witness in his own case, I submit documents Graf No. 1, Graf No. 2, Graf No. 3 as Exhibits 1, 2 and 3. These are the affidavits by Matthias Neubaur, the partner of Mathias Graf, that is to say the business partner, and the affidavits of Theo Stellwag and Georg Beyerlein who negotiated with Herr Graf as representatives of larger firms.

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As Exhib it No. 4 I submit the affidavit of the former SS major and personnel officer in the Office I, SD, in Augsburg, with the SD sector in Augsburg. May states that he was the one who in January, 1940 -

THE PRESIDENT: What is the name, please?

DR. BELZER: The name? May, M-a-y.

THE PRESIDENT: And the document number?

DR. BELZER: Document Graf No. 4, Exhibit No. 4.

THE PRESIDENT: Yes. Please always give the document number.

DR. BELZER: May states that in January 1940 he was the man who was the cause of putting Graf on a war emergency status, I also submit Graf Document No. 5 as Exhibit No. 5. That is an affidavit of Anton Graf. This man is the brother of the defendant, Mathias Graf, who was at the time director of the SD branch office in Kempton. After this emergency war draft of the defendant, Mathias Graf, he was assigned to his brother as an auxiliary war employee. It is confirmed in this affidavit that Mathias Graf was put on an emergency war status, Furthermore, the statement of the defendant Mathias Graf is confirmed, namely, that in 1936, because of personal differences, that is lack of interest in the service, he had to leave the SS and that merely through the war emergency draft of the defendant Mathias Graf to the SD there was a new contact with the SS. Mr. Anton Graf further confirms that his brother, the defendant Mathias Graf, in the years 1940, 1941, made repeated attempts to get away from the SD and that all these efforts were unsuccessful. Mr. Anton Graf also confirms that his brother, while in the eastern assignment, was always only a noncom and never an officer. He also explains that on direct questioning his brother never told him anything about having participated in executions in the Einsatzkommando 6.

Then I submit Graf Document Number 6 as Exhibit Number 6. This is the affidavit of Annemarie Huebel. In January 1940 she was employed in the Office in the SD Sector Augsburg, and she can remember that Matthias Graf was at that time put on an emergency drafting to the SD. Miss Huebel further confirms that Mr. Graf, only some time after he returned from Russia, was promoted to SS Second Lieutenant -- that is, an officers rank.

Then I submit Graf Document Number 7 as Exhibit Number 7. This is an affidavit by Frau Friedel Schmidt. Frau Schmidt was also drafted on an emergency basis to the SD and was employed as a clerk in the SD office in Kempten. She confirms that it was not until after Mr. Graf returned from the East that he was promoted to an SS officer. Frau Schmidt recalls that after he returned from the East, Herr Graf worked on the letter of rehabilitation which concerned his attitude during assignment in the East. Frau Schmidt also explains that, as far as a cooperation of the SD Kempten and the SD Gestapo is concerned nothing is known to her. from the Work Book -

MR. HOCHWAID: If the Tribunal please, I only want to interpose shortly. Dr. Belzer has several documents which he puts in in the form of carbon copies, as he could not obtain photostats. The Prosecution has no objections against Dr. Belzer's putting exhibits in in this form as Dr. Belzer has the originals with him and will kindly give the originals to the Prosecution for probing.

THE PRESIDENT: Very well, if he will do that. The situation is tentative.

DR. BELZER: This Work Book shows that at the time the draft of the defendant Matthias Graf to the SD was connected with the contract -with a work contract, and Graf was employed from the 1st of March 1940 as a clerk there, according to an entry in the works records. Furthermore, as an MOS number, the number 25 is given, the letter small "b". These designation mean that he is a businessman.

As Exhibit Number 9, I submit Graf document Number 9. This is the correspondence which the defendant Graf carried on with the Army Service Command about being drafted into the army and his application to the SD to be released from the SD.

In the direct examination of the defendant Graf, I have discussed this correspondence with him. At the time the Prosecution objected against the submission of this document, but after looking into the originals the Prosecution kindly waives the objection it made at the time. In this correspondence we are concerned with a letter dated 25th of February 1941 from the Army Service Command in Kempten in which the defendant is asked to submit his birth certificate and that of his wife. In the next letter of the Army Draft Office in Kempten, of the 16th of April 1941, the defendant Graf is informed that he was to secure his release from his office immediatel The next letter is the copy of the reply to the application for release made by the defendant to his agency. Exhibit Number 10. This is the affidavit of Otto Heyer. Heyer was an SS Captain and when the Einsatzkommando C-6 was set up, he was assigned to that Kommando, and during the assignment in the East he was transferred to the 17th Army Headquarters.

THE PRESIDENT: You referred to this affiant as Heyer. It is Meyer according to our book.

DR. BELZER: It should be Heyer. The first letter is an "H".

THE PRESIDENT: H-E-Y-E-R.

DR. BELZER: H-E-Y-E-R, yes.

THE PRESIDENT: Very well, the correction will be made.

DR. BELZER: In this affidavit Heyer confirms that, as the defendant Graf said as a witness in his own case, that around the 20th of July 1941, Graf was transferred to him and only the end of August or September 1941 he returned to Einsatzkommando C-6. Heyer further confirms that when the Kommando was set up Graf was an SS Unterscharfuehrer, and, apart from a few men of the Waffen SS, he had the lowest rank in the Kommando. Heyer further confirms that to his knowledge the defendant Graf was occupied exclusively with SD reports and never had anything to do with matters of police executiv measures.

As a matter of precaution, I point out that in this affidavit it is mentioned that another man named Graf belonged to this Kommando who was actually an officer and who was concerned with police activities. Number 11. This is the affidavit of Karl Hennicke, formerly SS Major. When the war broke out between Germany and Russia in June 1941, Hennicke was with Einsatzgruppe C as SD export. In his affidavit he first lists the routes of Einsatzgruppe C and of the Einsatzkommando C-6. He confirms that it was he who, when the march began to Aussie, instructed the SD exports about their jobs, and expressly told them that they were to concern themselves exclusively with SD reports. He confirms that an Unterscharfuehrer Grimminger was assigned to Einzatzkommando C-6 as an expert and that the defendant Graf was assigned to this man as an assistant. Hennicke further states that, to his knowledge, as far as the kommandos in the Einsatzgruppe or Einsatzkommando C-6 is concerned, these experts never had anything to do with executions.

Then I submit Graf document Number 12 as Exhibit Number 12. This is the affidavit of Friedrich Moeller. Formerly Secretary General for Criminal Affairs, Moeller was with the Einsatzkommando C-6 in that capacity. He confirms that the defendant Graf joined the Kommando as an SS Unterscharfuehrer or was assigned to the Kommando as an SD export, and he also can confirm that another man by the name of Graf, who was an SS ofiicer, also belonged to this Kommando.

Then I submit Graf Document Number 13 as Exhibit Number 13. This is the affidavit of Hans Doering. Hans Doering was inspector of road construction road construction activity in Stalino. To his Knowledge, Graf was sent to the Kommander Einsatzkommando C-6 in order to inform himself about the conditions of Stalino. He thinks that Graf was at that time an SS non-com but certainly no officer. of Joseph Rabitsch. This man waa a War Administrative Counsellor with the Kommando in Stalino and he got to know the defendant Graf. Graf was at that time Unterscharfuehrer in the SD. Mr. Rabitsch also states what he knows about the activity of the defendant Graf in Stalino.

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He describes in detail what Graf was interested in. He mentions that Graf had no interests in any political spy activities and that he never told him about having in any way participated in any executions or the like.

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I then submit Graf Document Number 17 as Exhibit Number 15. This is the affidavit of Max Schellhorn. During the war Schellhorn was active in the Army as Captain and from December 1941 till June 1942 he was in a transit camp for prisoners of war in Stalino. He already knew Herr Graf personally from the time before the war. In the Spring of 1942 both met accidentaly in Stalino. No official contacts existed. Schellhorn states that he never heard that Graf had had anything to do in a prisoner of war camp. He confirms that Graf was not an officer at the time but was a non-com.

The Graf Document 18 I submit as Exhibit 16. This is the affidavit of Anni Mayer. From the beginning of 1942 until about September of 1942 she was a Red Cross nurse in a hospital of the German Army in Stalino. When Graf was in Stalino she saw him repeatedly. She confirms that Graf was a non-com at the time. The some thing is true for Graf Document Number 19, which I offer as Exhibit Number 17. This is an affidavit of Therese Haas, who also was a Red Cross nurse in Stalinio, at the same time as Graf was in Stalino. She also confirms the rank of the defendant as a non-commissioned officer and she can also remember that at the time she met Graf in Stalino he was convalescent -- that is, he had just been released from the hospital. davit of Frau Maria Grimminger. This is the wife of the former SS Unterscharfuehrer Ulrich Grimminger, who was assigned to Einsatzkommando C-6 as an expert and, as the defendant Graf told us, who died in Lemberg during the evacuation. She knows the defendant Graf from that time already and she confirms that Graf was an Unterscharfuehrer just like her husband and that in the Winter '41 - '42 and later in May or June 1942 he was on furlough at home.

Then I submit Graf document Number 22 as Exhibit 20. This is an affidavit by Frau Ottilie Winkler. Frau Winkler is a sister of the de fendant.

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As Defense Counsel, she gave me three APO cards, from the East of the defendants deceased wife, which I shall submit to the Tribunal in photostat. First of all, there is a card from the 27th of August 1941. Then a card from the 9th of November 1941. And one from the 25th of June 1942. All three cards were addressed to the Defendant Graf at Einsatzkommando C-6. They approximately comprise the period of time during which the defendant belonged to the Kommando. The first is addressed to SS Unterscharfuehrer, the second to SS Unterscharfuehrer, and the third to SS Scharfuehrer. This was in June '42. This shows without a doubt that Graf never belonged to the Kommando as an officer.

Then I submit Graf Document Number 23 as Exhibit Number 21. This is the affidavit of Reinhold Heinz. From February 1942 until October 1942 Heinz was with the Chief of the Security Police in Kiev as a personnel officer. In the Summer of 1942 he met the defendant Graf. He confirms that at that time the defendant Graf was assigned to the Office of the Security Police and SD in Stalino from Einsatzkommando C-6. He lists the rank of the defendant Graf as Unterscharfuehrer or Scharfuehrer but not higher. concern the activity of the defendant Graf after his return from the East-back home. As the first one, which is Graf Document 24, I offer as Exhibit 22, affidavit of Johann Zettler. Zettler was together with the defendant Graf in an SS unit in Kempten. He confirms that around the year 1936 Graf left the SS and later never did any more service with the SS. affidavit of Meinrad Prestel. Prestel states that, to his knowledge, he only has to thank the defendant Graf for not getting into a concentration camp and that he never heard that the defendant Graf ever denounced any political opponent or even persecuted them.

DR. BELZER: As Graf Document No. 24 I submit the affidavit of Josef Baur. This man, too, confirms that he only has to thank the defendant that he was spared great difficulties because of his criticism of the SS state. He confirms that Graf, even after his assignment in the East, made repeated attempts to get away from the SD. The rest of the contents of this affidavit is a description of the Defendant Graf and I shall not go into this in detail. I merely ask the Tribunal to take notice of it.

Graf Document No. 27, which I submit as Exhibit No. 25, is an affidavit by Fritz Karg, which was sent to me. This man says that the defendant saved him from being consigned to a concentration camp.

Graf Document No. 28, which I offer as Exhibit No. 26, is an affidavit of the former Government Councillor in Kempten, Sonntag. In this affidavit he describes in detail the activity and work of the defendant Graf in his capacity as provisional chief of the SD agency in Kempten.

Then I submit Document No. 29, which is Exhibit 27. This is an affidavit of the Government Councillor, Dr. Weber, in Kaufbeuren and it concerns itself with the activity of the defendant Graf as provisional Chief of the SD office in Kaufbeuren.

Finally, I submit Graf Document 30 as Exhibit 28. This is an excerpt from the SS personnel transfer record. This excerpt shows that the defendant Mathias Graf was only promoted to SS Untersturmfuehrer in the RSHA effective 20 April 1944, a year and a half after his return from his assignment in the East.

I offer Graf Exhibit 29 as Document No. 31. These are the legal regulations about the war emergency draft, first of all the war emergency regulation of the 15th of October, 1938, and as an appendix the announcement of the authorities which could ask for such emergency services after 8 July 1939.

As Graf Document No. 32, Exhibit No. 30, I submit the third executive decree of the War Emergency Decree of the 14th of October, 1939.

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Graf Document No. 33, which is Exhibit 31, is a copy of the Gazette of the Chief of the Security Police and SD and concerns the subordinated relation of members of the Security Police and the SD to police and SS jurisdiction. The excerpt, which I submit, provides who belongs to the staff of the Chief of the German Police.

Graf Document No. 34 I offer as Exhibit No. 32. It concerns itself with the question of how to proceed when members of this staff refused to comply with the order to proceed to the occupied territories. This is also in an excerpt from the Gazette of the Chief of the Security Police and SD. I quote under 5 from this excerpt: "You will, therefore, take the necessary steps against members of the staffs who do not comply with such an assignment if the pre-suppositions mentioned before are fulfilled."

THE PRESIDENT: Dr. Ratz, are you ready to proceed? Are you ready now, Dr. Ratz, to proceed?

DR. RATZ: Yes.

THE PRESIDENT: Yes, all right. Dr. Ratz, please try, in presenting the documents, to omit all unnecessary wordage. Get to the kernel of what you wish to present and move on to the next one. of, if the document books are ready and they are not here when their turn is reached, will always have an opportunity to present their document books, so long as the prosecution has copies of these document books and the prosecution offers no objection to any particular document. Those documents may be used in the final summations and in any other way that counsel so desire.

DR. RATZ (Attorney for the defendant von Radetzky): If the Tribunal please, my documents are contained in two books. I shall submit the documents in their proper order, but I can keep the order the way it is in the document books only part of the time.

From Document Book I, I offer Document No. 1 as Exhibit No. 1.

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MR. HORLICK-HOCHWALD: If Your Honors please, this document is a memorandum which was made out in May, 1946. It is neither an affidavit nor a captured document, nor a document which was made out previous to May, 1945. For this reason, I object against the document as inadmissible in its form. Moreover, its contents are immaterial.

THE PRESIDENT: Mr. Hochwald, you have observed, of course, that the policy of the Tribunal has been throughout the trial to be liberal in the allowing of the presentation of both documents and evidence. Now, this particular document is in the nature of a reference work. It seems to be a historical treatise on that particular part of the world geography. I know that you can repose faith in the Tribunal that, if it has no probative value, then it won't disturb anyone. On the contrary, it may shed some light on this period of the world's history and help to evaluate the testimony which is superimposed upon that area of the earth's surface, so we will overrule your objection.

MR. HORLICK-HOCHWALD: Of course, if the Tribunal wants to have the exhibit before it, htere are no objections from the prosecution.

THE PRESIDENT: Yes, very well.

DR. RATZ: This is a memorandum about the Baltic refugees of Werner Hasselblatt and reports about the foreceful resettlement of the Baltic Germans in 1939 from their homes in the Baltic States into the province of Posen. The memorandum further reports about the history and nature of the Baltic Germans and about their attitude towards National Socialism. Finally, he reports and describes the misery into which these people were thrown when they were forced out of their homes.

On page 14 of my Document I is my Document No. 2. I submit it as Exhibit 2. It is the order of Himmler of 11 October 1939 to the effect that the population of Riga was to resettle to Gothenhafen and Posen. Radetzky was living in Riga.

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On page 15 of the Document book is Document No. 3, the affidavit of Traugott Mense of 18 March 1944. I submit this affidavit as Exhibit No. 3. Mense reports about his activity as an expert in Office III of the Staff Office of the Reich Commissioner for the Strengthening of Germanism; that after the resettlement had been carried out and after the resettlers had been placed into camps of the Office for the Repatriation of Ethnic Germans they were taken over by the Commissioner of the Settlement for Germans and were finally settled; that the resettlers themselves had no opportunity to designate their choice of locality of where they wanted to be resettled. He also confirms that the resettlers were promised the acquisition of German citizenship without their request and that all male resettlers who had not yet been drafted were obliged to be active in the various organizations. He finally says that in general the male resettlers were drafted into the SS.

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DR. RATZ: From my Document Book II, page 50, I submit Document 14 as Exhibit 4, the affidavit of Hans Jochen Kubitz of the 28th of November 1947. Kubitz was an expert for the minority rights of the German ethnic groups in the Baltic countries and in Poland with the Office for the Repatriation of Ethnic Germans.

He states under No. 2 that the German Ethnic Group in Latvia on the basis of international treaties regarding minority rights enjoyed a cultural autonomy. For that purpose there existed an autonomous organization, "The German National Community", in which Herr von Radetzky was already active prior to 1937.

Under No. 3, he states that because of the secret supplement to the German-Soviet Pact between the German Reich and Soviet Union, it was agreed upon that the states of Latvia and Estonia, as well as a part of Lithuania, were declared as coming into the Soviet sphere of interests. He continues that Hitler had ordered the resettlement of the Ethnic Germans from Latvia and Estonia. and Reich German was forced to submit to the resettlement, because, according to the treaties concluded, the Reich refused to promote any interest of these Germans and, furthermore, the advance of the Soviet troops was threatening.

Under No. 4, Kubitz reports that an office was organized in Posen to advise these Baltic German immigrants. This was the Baltic German Immigrants' Advisory Office, and this office, on the orders of the Office for the Repatriation of Ethnic Germans, Was taken over by the latter.

THE PRESIDENT: Dr. Ratz, it isn't necessary to analyze minutely the documents. If you indicate to the Tribunal what this document refers to, what it will establish, you can make a statement without reading what is before us. Each document will be read by the Tribunal so it is unnecessary to take it up paragraph by paragraph and tell what is in each paragraph.

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DR. RATZ: I shall then very briefly give the contents of No. 5 in which Kubitz reports about the incident owing to which Radetzky received an SS rank. He says that he didn't receive the SS rank because of special merit that he acquired in the SS or in the Party and that a refusal to accept this honor on the part of Radetzky was impossible. The last sentence seems to be especially important, that the honorary leader of the SS was not considered anything but a wearer of the uniform and not as a real SS officer even up to 1945. of the 14th of November, 1947. This is Document No. 15 and I offer it as Exhibit No. 5. He reports about his activity as a personnel officer in the Office for the Repatriation of Ethnic Germans and he reports about Himmler's order that Radetzky was to be taken into the SS as an honorary officer and explains the conception of honorary officer and wearer of the uniform.

MR. HORLICK-HOCHWALD: If the Tribunal please, in the last document and in this document, having reference by the affiant as to the honorary leadership in the SS, it is the contention of the prosecution that these parts of the affidavits are immaterial. In the decision of the IMT, the honorary members of the SS are not excluded among those who are criminally liable, having been members of the criminal organization. Therefore, those affiants, or, to be correct, the affiants Kubitz and Radunski, when giving information on this point, certainly don't give material information to the Tribunal on those things. I don't object against the affidavits, Your Honor. I object only against those parts of the affidavits which deal with the question of what was the honorary member and what were his rights and duties.

THE PRESIDENT: The documents will be before the Tribunal and your objections will be recorded.

DR. RATZ: At the end of the affidavit, Radunski states that in July 1941, Radetzky made an application to be employed again by the Office for the Repatriation of Ethnic Germans.

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18 Which is the affidavit of the 4th of September, 1947, Document No. 4, and I offer it as Exhibit No. 7. This affidavit shows that after the resettlement of the Baltics from Estonia and Latvia in the years 1940 and '41, despite an order of Himmler - this affidavit shows that after the second resettlement of the Baltics from Estonia and Latvia during 1940 and '41, Radetzky, despite and order of Himmler to resettle only politically reliable people in the Reich, Radetzky effected that all people be admitted for resettlement who felt endangered because of their political or professional activity, but, even if they did not come up to the orders issued by Himmler in reference to the provisions laid down concerning national origin and racial origin and owing to this activity by Radetzky a large number of people were saved from danger of their lives and of deportation.

THE PRESIDENT: Did you purposely omit No. 6, Exhibit No. 6. I thought you called this No. 7.

DR. RITZ: I beg your pardon, I must correct myself. The document just discussed was Exhibit No. 6. As Exhibit No. 7 I offer from Document Book II, page 62, the affidavit of Doering, of 2 December 1947. This is document Radetck No. 16. Doering was a staff officer of the Office of the Delegate of Reich Commissar for strengthening the Germanism in Posen, and he says that the Immigration Advisory Office was created by the Baltic Germans themselves to represent private interests. That Radetsky didn't have any official functions, and finally, under No. III he says that on the occasion of the inspection in Posen carried out by Himmler, Radetsky had been received into the SS by the latter in an Honorary capacity, and that this being taken into the SS happened without any doings on the part of Radetsky. I want to submit further documents about the activity of the defendant in the East.

THE PRESIDENT: Yes, Dr. Ratz, we will now have a recess. Might I suggest where you have two or three documents referring to the same subject, that they can be grouped together and you can make a general omnibus remark, to the effect that this covers a certain feature, then it is not necessary to go into each document separately. The Tribunal will be in recess fifteen minutes.

THE MARSHAL: The Tribunal is in recess fifteen minutes.

(recess)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may Proceed, Dr. Ratz.

DR. RATZ: I now submit documents concerning the activity of Radetsky in the East. From Document Book I page 20, I submit Document No. 5 as Exhibit No. 8.

MR. HOCHWALD: There is no objection to this document but I have one question, Your Honor. Dr. Belzer has offered this same document as his exhibit No. 29, the translation, which the Tribunal has in Document Book for the defendant Graf is a complete one, but the translation which Dr. Ratz has obtained is only a partial one, so I would suggest that if possible Dr. Ratz could refer to the exhibit which was handed in by Dr. Belzer, as the Prosecution intends to quote certain passages of this document which are not translation in the document book of Dr. Belzer.

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DR. RATZ: Your Honor, I can not investigate in order to see whether Dr. Belzer really has everything that I have in this document. I also have a notification in this document, and also a decree -- an execution decree, therefore, this document which I have compiled for the defendant Radetsky, I would like to be permitted to offer.

MR. HOCHWALD: I am not objecting against those documents, but if DR. Ratz wants to have his version in it, it is understood, of course, that the whole documents are in evidence and not only the excerpts which he is giving that means the decree of 18 October 1936, and all other documents in full, not those parts which he has translated in his own document book.

THE PRESIDENT: Naturally, Mr. Hochwald, you would have the right to refer to the entire document -- the entire -

MR. HOCHWALD: The entire decree.

THE PRESIDENT: The entire decree.

MR. HOCHWALD: Thank you very much.

THE PRESIDENT: Yes, of course.

DR. RATZ: From my Document Book II, page 65, I would like to submit document No. 17, as Exhibit No. 9. It is the affidavit of one Heinz Wanninger, 14 November 1947. It concerns Radetsky's emergency deferement and his assignment is liaison officer, and finally Wanninger said it is known to him that Radetsky tried to get a release in order to join the Wehrmacht, that such applications, however, were basically refused. From Document Book-I, I want to submit the affidavit of Schellenberg, on page 24 of the Document Book. Schellenberg's No. 6 I want to submit as Exhibit No. 10. It is Schellenberg's affidavit of 12 October 1947. Schellenberg was Office Chief in the Reich Security Main Office, and he testifies as to War Status of Ethnic Germans from the Baltic States.

Furthermore, he said that in 1944 Radetsky was released from his activity in the East, and that in this year Radetsky applied for release in order to join the Army. From Document Book I, I furthermore submit the document on page 34, which is an affidavit of one Walter Ostermann, 26 September 1947. This Document No. 8 is submitted as Exhibit No. 11 Ostermann from the very first day of the Russian assignment, July, 1942, was in SK-IV-A, and he states that Radetsky was transferred as liaison officer with the Army, and that Radetsky was never deputy of Commando-chief in this case Blobel. On page 36 of the same Document Book, there is the affidavit of August Haeffner of 10 October 1947, Document No. 9, and I want to submit it as Exhibit No. 12. He talks about Radetsky's assignments in the SK-IV-A, and, he says that Radetsky was never the deputy of the commandochief; that Radetsky came under the war emergency status.

DR. RATZ: (continued) On page 39 of the same docubook there is an affidavit by one Karl Hennicke of 2 October 1947. It is document # 10. I want to submit it as exhibit # 13. Hennicke was from the beginning of the Russian campaign, June 1941, in the staff of Einsatzgruppe C as chief of department III and he confirms the activity of Radetzky as departmental chief for SD matters in Sk4A. He further talks about the discussions they had in Schmiedeberg furing which it was said that these department chiefs were in no case employed in other fields than their own. Furthermore, that Radetzky was permanently employed with his intelligence activity, that he was liaison officer, and was never the deputy of Blobel. book II another affidavit of 28 November 1947, document # 20 which I would like to submit as exhibit # 14. Here Hennicke talks in even more detail about the SD reporting with the Special Kommando. Furthermore, he talks about the fact that Radetzky was employed as chief of department III and that according to his knowledge, Radetzky never took part in any executions and was liaison officer with the competent Army authorities. by one Fritz Luley of 7 October 1947, document #11, which I submit as Exhibit 15. Luley was counter-intelligence officer with the 6th Army and he herewith speaks about the activities of Radetzky as liaison officer of Sk4A and the Sixth Army. He deems it impossible that Radetzky during this time was the deputy of Blobel or was used for any other assignment within the special kommando. of one Heinrich Rochel of the 14 November 1947, document #18, which I introduce as exhibit 16. He reports about the activities of Radetzky as liaison officer and gives an explicit description and the characteristics of the defendant Radetzky.

of one Konrad von Schubert, document #19. I submit it as exhibit #17. Schubert was liaison officer for the Foreign Office and he also speaks of the activity of Radetzky as a liaison officer. He furthermore confirms that Radetzky was dissatisfied with the criticism that he received in the East from superior offices. of one Theodor Cristensen of 1 October 1947. It is document #13 and is exhibit #18. He reports about the fact that Radetzky from March until September 1943 was assigned as liaison officer in Tschernigow and that during that time he did not have to deal with any activities in special assignments of the Special Kommando. ment Book II, page 79, the affidavit of one Friedrich Seekel. It is document #21. I submit it as exhibit 19. Seekel was employed with the Higher SS and Police Leader in Russia during 1943 and 1944 and he reports that Radetzky was liaison officer with the Second Army at that time. the personality of Radetzky. They are all in Document Book II. The first is on page 82, the affidavit of the Baron Seigfried von Maydell. It is document 22 and I submit it as exhibit 20. He describes the activity of Radetzky and he says that he is one of those people who come under the Nurnberg law. Then there is an affidavit of Oskar Jaksch on page 85 of the same document book. It is document 23. I introduce it as 21. Jaksch knows Radetzky and has known him since childhood and he describes his personality and his support of his compatriots which endangered him considerably.

It is document #24. I introduce it as exhibit 22. The witness, a female witness, says that he was of considerable service to her and that he endangered his own personality considerably for that.

Then on page 91 is an affidavit of Proetzel. It is document 25, exhibit 23. The witness gives an explicit description of the personality of Radetzky and mentions his automatic and his nominal transfer to the SS. Leonid Guhbin. It is document #26. I submit it as exhibit 24. He tells about Radetzky protecting the female American citizen Erika Alper and how he saved her from interrogations, persecution and internment. of one Hedwig Freudendorff, 17 October 1947. It is document 31. I submit it as exhibit 25. The witness talks about the relationship between Radetzky and the Polish people and his support of the Polish citizens who were persecuted for racial reasons. Ivar Skurewitsch of the 18 November 1947. It is document 27, is on page 98, and is exhibit 26. Here he speaks about the order by Himmler according to which a gathering of several Baltic Germans in one military unit was prohibited as these people were considered unreliable. affidavit of one Theodor von Boetticher. It is document 28. I submit it as exhibit 27. The witness here had been a friend of Radetzky's in his own country and he describes Radetzky's personality.

testimonial of a German camp leader of the internment camp Regensburg. It is document 29 and I submit it as exhibit 28. DR. HOCHWALD: If your honors please, this document is not made out in the form of an affidavit. Nevertheless we waive our objection against the admissibility of the document .

DR. RATZ: On page 104 is the testimonial of an American camp commander of the civilian internment camp Regensburg of 15 September 1946. I submit it as exhibit 29. There are another three or four affidavits which I have not yet submitted but I do hope they will be available to me, and therefore to the Tribunal, at the right time.

DR. HOCHWALD: If the Tribunal please, I would like to draw the attention of the Tribunal again to exhibit #8 which is the emergency service decree of 15 October 1938.

THE PRESIDENT: Page?

DR. HOCHWALD: I am sorry - that is Document Book Radetzky #I on page 29. I have in the meantime seen the exhibit itself. The exhibit itself contains only excerpts from this decree. In order to make it clear I would like to rule the Tribunal that I can ask the Tribunal to take judicial notice --

THE PRESIDENT: You have given us the incorrect reference.

DR. HOCHWALD: Oh, no. It is exhibit 8 on page oh, I am sorry - it says 29 but the page is 20 to 23.

THE PRESIDENT: But as we indicated before naturally the Tribunal will be concerned about the entire decree even if only excerpts from the decree are submitted in this particular document book.

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DR. HOCHWALD: But the Tribunal already ruled on that but I only want to point out that also the exhibit is incomplete, not only the excerpts before the Tribunal in the document book, but also the exhibit itself does not contain the complete decree. And, what I want the Tribunal to rule is that I should be permitted without submitting a new exhibit to quote from the same document parts which are ommitted in the exhibit.

THE PRESIDENT: Where is the complete decree?

DR. HOCHWALD: The complete decree, as far as I know, is in the Ge man Law Gazette, your Honor, it might be in Law Gazette of 1938. At the moment I am unable to tell the Tribunal the page. However, I shall be able to quote, or indicate the pages in the official Law Gazette. What I want to omit, to escape, is the fact that I would have to put in a new exhibit as such.

THE PRESIDENT: The fact that counsel for the defense has referred to this decree naturally brings the decree before the Tribunal for consideration and if he quotes from one section certainly the Prosecution has the right to quote from another section.

DR. HOCHWALD: Thank you very much your Honor.

THE PRESIDENT: You are welcome.

That completes your presentation?

DR. RATZ: I would like to reserve the right to submit either three or four more affidavits.

THE PRESIDENT: That right will be reserved to you and we will repeat that whatever documents are available after you have presented your document books in court may still be presented up to and including the time for presentation of final summations provided that copies are furnished the Prosecution so that they may in due time make any objections they deem in order.

Dr. Mayer we will now hear you.

DR. MAYER, defense counsel for the defendant Steimle: for the defendant Steimle. I am submitting three document books alto gether.

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Document Book 1 countains a number of affidavits which were made out by persons who have known the defendant Steimle for a considerable time. Document Book II contains reports of events concerning the activities of Sonderkommando 7-A and concerning other conditions in the territory of assignment SK7A, expecially during the time Steimle was Sonderkommando chief. Without the slightest doubt it will be established through the documents that SK7A in the time from the middle of September 1941 until December 1941, was mainly occupied with partisan warfare and that shootings of Jews were never reported at any period. Document Book III contains one document and is just a supplement of Document Book I.

As document Steinle #1 I submit the affidavit of one Dr. Stirner of 19 October 1947. I would like to give this document exhibit #1. Dr. Stirner has known the defendant Steimle since the year 1928. In his affidavit he gives an explicit characteristic of the defendant as far as his character is concerned and also concerning the time Steimle was with the SD in Stuttgart.

As document Steimle #2 I submit the affidavit of Rudolf Griesinger, the Senior educational officer for teachers in training, Stuttgart, of 21 September 1947 which I shall give exhibit "2. It contains an explanation of the political views of the defendant Steimle and his attitude concerning thos who had different political ideas, especially antiFascist, and he tells how Steimle later supported Griesinger when he was endangered to lose his job as director of the Seminar for Teachers in Training for referendars in Stuttgart because of antiFascist remarks he had made.

As Steimle document 3 I submit the affidavit of Dr. Dill of 30 October 1947. I would like to submit this affidavit as exhibit #3. Dr. Dill was an official in the Ministry of the Interior in Stuttgart and during the activities of Steimle in the SD sector Stuttgart he had a certain professional contact. He confirms especially the factual way of reporting of Steimle as an SD man who did not hesitate to make strong and severe criticism of measures of the Hitler regime.

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As Steimle document 4 I submit the affidavit of Dr. Gustav Scheel of 7 October 1947 which I shall give exhibit #4. Dr. Scheel was the leader of the Reich Students Association. He confirms that Steimle on his initiative joined an SD sector SW in 1936 and he also describes the kind of activities of Steimle. October 1947. Kommer from 1938 to 1940 was in the SD sector Stuttgart as typist of the defendant. She confirms especially that the defendant had protected officials and professors of the university in Tuebingen on repeated occasions when endangered by anti-fascist attitudes. She further confirms

Steimle was an enemy of radical anti-semtism and did not take part in the anti-Jewish action of 1938. This I submit as exhibit 5. Dr. Scheel of 7 October 1947 and in it is confirmed that the defendant Steimle during the time from 9 to 10 November 1938 was on a trip through Belgium with Dr. Scheel. Wilhlem Deuschle, of 8 November 1947. Deuschle confirms therein that the defendant succeed in having the son of Dueschle freed from the concentration camp Welzheim. Dr. E. Reichel of 16 October 1947. Reichel confirms that with the support of the defendant Steimle the Jewish woman Frau Geheimrat Wach, nee Mendelssohn, was released from the concentration camp at Theresienstadt and was able to immigrate to Sweden. Heinz Nosek of 14 October 1947. Nosek was the subordinate of the defendant Steimle in Office 6 of the Reich Security Main Office and here confirms that with the support of the defendant Steimle the wife of the former chief of the public relations office of the French Ministry, Mrs.

Comert was released from the concentration camp Ravensbrueck and was able to return to her home. Walter Schellenberg of 4 October 1947. Schellenberg was chief of office 6 from July 1941 until the end of the War and from July 44 until the end of the war was Chief of Amt Mil in the RSHA and in both cases superior of the defendant Steimle. First he goes into details about work of the defendant Steimle in these two positions and points out especially the always factual criticism and energetic attitude of the defendant Steimle against the catastrophic policy of the Third Reich. Mrs. Helga Stahl of 3 October 1947. In this affidavit it is confirmed that the defendant Steimle was in Stuttgart on 20 December 1941 and that during the following months until the end of July 1942 he was employed in his former office in SD sector Stuttgart. From this it becomes evident that the defendant Steimler in agreement with his testimony which he gave was no longer with SK7A during the months of January and February 1942 as actually during this time he was in Stuttgart. Therefore, in advance I would like to point out that I have submitted a correction of this document which I hope has been taken note of by the Tribunal.

DR. MAYER (continued):

As document Steimle #12, - exhibit 12 - I submit the affidavit of Walter Roller of 11 November 1947. Roller was the driver of the defendant Steimle from 1936 until December 1941. Therefore, until that point at which Steimle left Sk7A Roller describes his activities under Steimle in Sk7A. Especially, he confirms that the name of the place Sadrudubs was not known to him as a place were Sk7A was and that such a name during all his stay in Russia until the end of January 1944 he never found out about such a place. Also he confirms that during the time in which he was in Sk4 together with Steimle he had never heard anything about shootings of Jewish women and children being carried out by Sk7A. He furthermore confirms that he has never driven Steimle to any of these executions during this time. Radl of 4 November 1947. Radl was liaison officer with the Army High Command 9 and a member of Sk4 under Steimle. Radl confirms that especially in the territory of Sk7A partisan activity was especially severe and energetic combat of partisans was an important task of Sk7A. Radl as liaison officer, in agreement of the Army High Command 9. worked out marching routes of SK based on assignment orders of the Army High Command. Therefore, he had good knowledge of the territory of activity of Sk7A. He also confirms that in this territory of assignment there was no place called Sadrudubs and no place called Balochina either.

The following document #14 I will not submit. of the Indo-Germanic and Slavonic seminar of the Tuebingen University of 13 November 1947. This expert opinion confirms that the name Sadrudubs in its first part does not exist as a Russian word and that the name does not mean anything and makes no sense. Furthermore it is confirmed that the end sylable - dubs - is only used in names of larger localities which are mentioned in general geographical maps.

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COURT II CASE IX Johannes Papritz dated 12 October 1947. Dr. Papritz was recommended to me as expert and lecturer for Russian at Tuebingen University and knew Russian well. Dr. Papritz in his affidavit says: "That in all the documents which were available to him and which he mentions in these documents he could not find the place Sadrudubs. of Dr. Johannes Papritz of 11 November 1947. From this it becomes evident that approximately 5 kilometers to the south of the town Sadrudubs which was in the territory of Sk7B the locality Belowchina can be found. The Tribunal will remember that in the report of events #124 of 25 Oct. 1941 which the Prosecution submitted as document #3160 in Document Book II-B as exhibit 65, the following is mentioned. "When the village Belowchina was set up as ghetto for the Jews, some Jews resisted. Thereupon 272 Jews and Jewish women were shot." In connection with the document which I have just submitted it is obvious and evident that it can only be Jews of the town of Sarodub which I mentioned here which were to be brought into the ghettox in the village Belowchina. Sarodub and Belowchina are in the territory of activities of Sk7-A such places are not existant. reports of events which concern Steimle as chief of Sk7A and I would like to give a short explanation about these. These reports start with a report of 11 September 1941, which is #80. They are being submitted according to number and date until the report of 15 December 1941, #146. Through this the Tribunal will get a general perspective concerning all reports in this period concerning the activity of the defendant Steimle as chief of Sk7A. At the same time every doubt is to be eliminated that these reports of events were not complete when they were found and, therefore, this and other reports could not have been submitted by the Prosecution in which an incrimination of the defendant Steimle may be contained. In looking through these reports of events of events it was established that in a number of them it is only seen COURT II CASE IX that reports of Einsatzgruppe B have not been submitted.

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In these cases, therefore, in order not to put in anything that is surperfluous I only put that one sentence in my document"reports of Einsatzgruppe B have not been submitted." of reports of events of this kind into one document. Further reports of events were also sumitted by the Prosecution. As far as in these reports special reports of events are contained which have not been taken into documents of the Prosecution as excerpts. I have only taken over into my excerpts this part only as far as seems essential in order to prevent that the same excerpts would be submitted by me as well as the Prosecution. In order to gain better persepective, however, I have marked the exhibit # of the Prosecution in these cases in order to show that reports of events with other excerpts have been submitted by the Prosecution although the content is somewhat different. The report of events 124 and 125 are not contained in my document book 2". These reports of events have been submitted by the Prosecution under exhibits #65 and #63 in Document Book II-B. As these two Prosecution documents contain everything that seems to me important for this trial I will not submit them myself. As far as I submit excerpts of reports of events I only do so in agreement with the testimony of the defendant Steimle when on the witness stand in order to confirm these statements. Those things that are not in connection with this testimony I have omitted here in order to not bother the Tribunal with unnecessary material.

As document Steimle #18, exhibit 17 I submit the certified excerpt from reports of events 80-84 Nov. 11 to 15 September 1941. It is confirmed here that reports of Einsatzgruppe B have not been received. of the 16 September 1941 as excerpt. From this very short excerpt it becomes evident that on 15 September 1941 the town Shurash which is to the southwest of Welish was attacked by 200 heavily armed partisans and during this attack a number of economic enterprises were also attacked on this occasion.

operation of Special Kommando 7a.

As Document Steimle 20, Exhibit No. 19 I submit excerpts from the reports of events, No. 86 to No. 89 of the 17th, 18th, 19th, and 20th of September, 1941, from which again it becomes evident that no reports have been received from the Einsatzgruppe B.

As Document Steimle No. 21, Exhibit No. 20, I submit the confirmed excerpt from the report of events No. 90 of the 21st of September, 1941. From this it becomes evident that the Soviet Russians, before they evacuated these places, they evacuated the population and that on this occasion the Jews were specially aided and helped, and specially it is mentioned here that the Red Army, before they left plundered and destroyed everything of any economical value and it is emphasized that in Veliki Luki, which again is in the sphere of command of SK 7a, even the railroad tracks were taken away.

As Document Steimle No. 22 Exhibit No. 21, I submit here report of events No. 91 of 23rd September 1941. This report of events contains a report of Einsatzgruppe B. However, this report only deals with reports of an economical nature which enlighten the reader concerning the agricultural position, the food supply of the civilian population, and the labor situation among the population. A report concerning the executive activity of Einsatzgruppe B and therefore also Sk 7a is not contained therein. This report I would like to have regarded as an example of how normal SD reporting was carried out.

As the next document I offer Document Steimle No. 23, Exhibit No. 22. It is a report of events No. 92 of the 23rd September, 1941, which the prosecution has offered together with a number of other excerpts as Exhibit No. 64. From the excerpt of this report of events it becomes clearly evident how the public security was increasingly threatened, public security, was endangered by partisans in the occupied territory of the Einsatzgruppe B. In this it is confirmed that the parrisans have taken to calling meetings of the population, threatening individual civilians, and destroying food supply stores and therefore keep the population in a constant state of unrest.

It is also emphasized that partisan activity, especially in the extensive swamp and forest territories, is very active because in these territories they can hide very well and it is very difficult to combat them. Special Kommando 7a, that is in the territory of the town Demidov, there are large forests. Furthermore, this report confirms that the partisans were divided into units which were equipped in a military way but operated in civilian clothes and had been provided with artillery. The interrogation of a partisan who had been captured resulted in the information that partisan schools had been installed in which partisans were trained for their future activities. The problem of partisans is being dealt with in this report and it is called a very serious problem. Furtheremore, the Special Kommando 7a reports explicitly that in a number of localities extensive actions have been carried out against partisans. However, they did not succeed in arresting partisans as these had meanwhile fled. Furthermore, it is mentioned that Sk 7a carried out a cleansing action in the village Wjasjmeny during which twelve people had been arrested. Of these twelve people eight could be proved to be acting as partisans. Wehrmacht is mentioned but did not result in anything at all as the partisans succeeded in vanishing in the extensive woods.

As my next document I offer Document Steimle 24, Exhibit No. 23. It contains reports of events Nos. 93 to 96, of 24th September, 1941, up to the 27th of September, 1941. In these reports of events again no reports of the Einsatzgruppe B are contained.

As Document Steimle No. 25, Exhibit No. 24, I offer report of events No. 97 of 28 September 1941. This document contains a very enlightening report about the manner of working of the partisans.

It explains tactics with which they operated in the territory behind the German Army. It is specially emphasized that they always continuously threatened the rear lines of the German units. The document also shows through in this explicit report that the partisan activity constituted a considerable danger, and combating and fighting it was the main task of the Special Kommandos which had to be carried out immediately.

As Document Steimle No. 26, Exhibit No. 25, I submit excerpts from reports of events Nos. 98 up to 105 of the 29th of September up to 5th of October, 1941. Again no reports of Einsatzgruppe B are contained therein.

As Document Steimle No.27, Exhibit No. 26, I submit an excerpt from the report of events No.106 of the 7th of October, 1941. The excerpt contains a short statement concerning the marching route of Special Komnando 7a and it proves the fact that according to the assignment they had to advance together with the 9th Army and they were in immediate contact with the combat troops. Again the necessity is pointed out to carry out an operation together with units of the Wehrmacht against an extensive and very dangerous partisans.

As Document Steimle No. 28, Exhibit No. 27, I submit a report of events No. 107 of 8th of October, 1941. This report of events contains a report ox the Einsatzgruppe B which deals merely with general matters, for instance, matters of public administration and economy. Any executive measures are not mentioned therein. This document again proves how normal SD reporting was carried out.

As Document Steimle No. 29, Exhibit 28, I submit an excerpt from a report of events No. 108, of 9 October 1941. This report of events has been submitted by the prosecution in excerpts and it was given the Exhibit No. 60 in Document Book II-B. As the excerpts which the prosecution mentioned might give an inaccurate picture of the various points, I completed it. The document just submitted by me is situation report and shows the danger of the manner of fighting on the part of the partisans who used false passes, and they protended to be harmless agricultural workers, and fought with hidden arms, of the German Wehrmacht.

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It is specially emphasized here that former members of the Red Army are found again and again among the partisans. It is also reported that partisans and Communists, as well as Jews, constantly attempted, through the distribution of Bolshevist leaflets, to try to freighten the civilian population and to spread propaganda through this medium. Special Kommando 7a reports that in the dense forests southeast of Demidov a large number of partisans had been discovered, for the fighting of which AOK, the Army High Command 9, had put two divisions at their disposal. In the progress of this action a number of people, namely 693, were arrested and interrogated. Of this about two-thirds were immediately released again as beyond suspicion. 72 civilians could be determined to be former members of the Red Army and were immediately taken over into a prisoners of war camp. Reports about Special Kommando 7a describe the special task, which a special group of the Army High Command carried out in a number of localities in the sector Welish, a number of operations against partisan groups, during the course of which altogether 27 partisans were arrested and after a proper investigation had to be shot.

THE PRESIDENT: Did you omit purposely Exhibit No. 27, the number?

DR. MAYER: This is Exhibit No. 26, Document No. 27. Document No. 28 is Exhibit No. 27: Document No. 29 is Exhibit No. 28; Document No. 30 is Exhibit No. 29.

THE PRESIDENT: Document No. 28 seems to not be in its regular place.

DR. MAYER: I shall try and find out from the English document book, your Honor.

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THE PRESIDENT: Why not try to straighten that our during the recess?

DR. MAYER: Yes, your Honor.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

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THE MARSHAL: Take your seats, please.

DR. MAYER: Mayer for Steimle. morning. The Document Number 27, Exhibit Number 26, is the Operation Report No. 106, dated 7th of October 1941. The next Operation Report, which is No. 107, has the Document Number 28 in my German text but in the English Document Book this report too got the Number 27 by mistake. Therefore, the Operation Report No, 107 dated 8th of October 41 must have the Document No. 28, and the Exhibit No. 27 in the English. I think that clarifies it.

May I then proceed please, your Honor?

THE PRESIDENT: Please.

DR. MAYER: As the next document I offer Document Steimle No. 30 Exhibit No. 29. These are excerpts from the Operation Reports Numbers 109 and 121, dated the 10th of October and the 22nd of October 1941. They contain no reports from Einsatzgruppe B.

As Document Steimle No. 31, Exhibit No. 30, I submit excerpts from the Report No. 122, dated the 23rd of October 1941. This excerpt does contain a report from Einsatzgruppe B, which only concerns itself with church questions and economic questions which are of no interest here.

As Steimle Document No. 32, Exhibit No. 31, I submit an excerpt from the Operation Report 123 of the 24th of October 1914. Here it is established that the Partisan activities are a gain extraordinarily strong and that in the Velikie Luki along 19 reports about partisan activities have been received. The constant and serious threat of the rear lines, supply lines, of the fighting troops is always emphasized again. A study of the excerpt submitted shows very clearly the partisan danger in the area of Einsatzgruppe B and especially in the group of the Special Kommand 7A, as it is emphasized again that in the swamps and forest area south-east of Demidov, strong partisan groups are present.

Of interest is also the determination repeated here that the Jews are being evacuated to the east according to plan in an ever increasing degree by the Red Army. Therefore it is always reported again and again the places through which the evacuation took place were free of Jews because they were evacuated by the Bolshevists before the German troops marched in. Special Kommando 7A, among other things, reports the execution of 12 operations against partisans. The operations were carried out with the army participating and 41 partisans were liquidated in this. An attack by partisans on a transport of seriously wounded men in the area of the Velish-Ussviaty, in the area of Special Kommando 7A, induced a sub-kommando of Special Kommando 7A to safeguard the other transports of seriously wounded people and to comb the area for partisans. submitted by the Prosecution in its Document Book II-B, where they carry the Exhibit Nos. 65 and 63. I did not include these Operation Reports in my Document Book because I do not want to add anything to the excerpts from these reports which have already been submitted by the Prosecution.

As Document Steimle No. 33, Exhibit No. 32, I offer excerpts from the Operation Reports 126 and 132. These excerpts show merely that no reports from Einsatzgruppe B are available between the period between the 29th of October 1941 to the 12th of November 1941.

As Steimle Document No. 34, Exhibit No. 33, I submit an excerpt from the Operation Report No. 133 of the 14th of November 1941. Here again it is established that the Jewish population, together with the Communist Party members and skilled workers had fled, after they had been asked to flee by the continued Soviet propaganda. Special Kommando 7A reports that it is advancing and that the bad weather and the muddy roads render the advance and the use of the vehicles more difficult. The partisan activity, according to this report, became more and more a matter of sabotage acts. The discovery of a partisan organization of 39 members and 16 women, is especially interesting apart from the fact that usually youthful people were used for the performance of espionage services.

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As Steimle Document No. 35, Exhibit No. 34, I submit certified excerpts from the Operation Reports 134 to 142, dated the 17th of November 1941 and 5th of December 1941. In this entire period, as is evident from the excerpts, no reports were made by Einsatzgruppe B.

As Steimle Document No. 36, Exhibit No. 35, I offer an excerpt from the Operation Report No. 143, dated 8th of December 1941, which shows only an unimportant report from Einsatzgruppe B.

As Steimle Document No. 37, Exhibit No. 36, I submit an excerpt from the Operation Report No, 144, dated 10th of December 1941, which likewise indicates an unimportant report from Einsatzgruppe B.

As Steimle Document No. 38, Exhibit 37, I submit an excerpt from the Operation Report No, 145, dated 12th of December 1941. Here, too, the content of the report of Einsatzgruppe B is evident only in an excerpt, inasfar as the Prosecution, in submitting its excerpts from the same document, which is in Document Book II-B, under Exhibit No. 86, did not bring this.

As Steimle Document No. 39, Exhibit No. 38, I submit an excerpt from the Operation Report No. 146, dated the 15th of December 1941. It contains parts of a report in which it is established that the flight of Jews towards the east continues before the advancing German troops. It also is specially reported here about the destruction battalions which the Soviets set up for the rear lines of communications of the German troops and which were made up of civilians. Their mission was the carrying out of large sabotage actions. a single document which is a supplement to Document Book I.

As Steimle Document No. 40, Exhibit No. 39, I offer a further affidavit by Karl Radl, dated 25 of November 1947. Radl says here that the 9th Army had made a proclamation in Russian and German in the area of Special Kommando 7A before the time when Steimle was leader of this kommando, according to which all former members of the Soviet Army had to report to the nearest German unit for registration.

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A non-compliance with this order resulted in the fact that these former Red Army men were treated as franctikeurs and could be punished by the death. This order by the 9th Army was not directed against uniformed Russian units which operated behind the German lines. Your Honor --

THE PRESIDENT: Dr. Mayer, as a matter of curiosity --- Just as a matter of curiosity, if an un-uniformed Soviet soldier registered, reported and said, "Yes, I am a Russian Soldier, but I am wearing civilian clothes," wouldn't he be subject to the death penalty just because of that fact?

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DR. MAYER: I can't say offhand, Your Honor. It would depend on the circumstances and that it depends on what the alleged soldier would be charged with.

THE PRESIDENT: But that's a rule in war, that a member of the armed forces in operation, if caught in civilian clothing is treated as a spy and therefore subject to the death penalty forthwith. Just what do you intend to establish by this affidavit, Dr. Mayer?

DR. MAYER: This affidavit is offered to establish that Russian soldiers, who were captured as such were not shot. In one of the documents an expression is used which might give some doubt about this. That is why I submitted this document.

THE PRESIDENT: There is one sentence here which supports what you have said and which I had not seen before; "This ordinance is not directed against uniformed Russian units operating behind the German lines," but my original observation holds ture, that a Red Army soldier in civilian clothes would certainly be very foolish to present himself for registration, because it would mean inevitably his death.

DR. MAYER: Yes, Your Honor. I would also like to point out that some time ago, I sent a letter to the Secretary-General with the request of having a number of incorrect translations corrected which were found when the German transcript was compared with the English transcript. I do not know whether this request has already been given to the prosecution and what has been done about it. As a matter of precaution and as the result of the number of incorrect English translation, I would like to point out one thing that proved to be very important. This very point has given cause to the Tribunal to ask a few questions of the Defendant Steimle which probably would not have come up if the testimony of the Defendant Steimle as given in the German transcript would have been correctly interpreted into English.

MR. GLANCY: May it please the Tribunal, I personally am not aware of any application of this type. Perhaps the Doctor could inform me as to the date of this application.

THE PRESIDENT: Well the simpler way would be to find out if the Secretary General has received that request. Are you familiar with it, Mr. Knapp?

MR. KNAPP: No, I am not, Your Honor.

THE PRESIDENT: The Secretary General is directed to look for this request filed on the part of Dr. Mayer.

DR. GLANCY: I find here, Sir, that the application to the Secretary General is dated as of the 8th of January. I am sure the Doctor is aware of the attitude of the prosecution, as far as helpfulness and cooperation is concerned. If there is anything at all we can do to aid him in this respect, we will gladly do so.

THE PRESIDENT: Dr. Mayer, will you please confer with Mr. Glancy after you have finished with your presentationa and see if you can agree on the modus operandi in correcting these errors and in deciding the corrections which can be made.

DR. MAYER: Yes, Your Honor. May I point out this one matter? Steimle about the concept of so-called suspected partisans, and the point of departure is that Steimle said on the witness stand that a part of these people suspected of being partisans had been people who in some form had provided a voluntary assistance. Actually, however, Steimle -- again quoting from the German transcript pected of being partisans had to be convicted of special assistance if they were to be called to account as people suspected of being partisans. Just this misunderstanding is based on the incorrect translation.

In the German wording of the transcript on page 2,001, dated 5th of November, 1947, it says in reference to this question, and I quote, "Furthermore in some few cases so-called partisan suspects were shot. By this one meant people about whom it could at least be proved that they voluntarily assisted the partisans." The wording in the prosecution's book is incorrectly translated, namely with the words, "Among them were people," instead of "Those who are understood to be people."

MR. GLANCY: There is one question I would like to ask, Sir, the source of Dr. Mayer's information, whether or not it is from the German transcript, the English transcript, or from the automatic tape. The automatic tape is, of course, the final authority and a comparison would have to be made between the transcript and that before we could make the correction.

THE PRESIDENT: Dr. Mayer, as I indicated before, if you will confer with Mr. Glancy on these various corrections, you can either arrive at an agreement or reference can be had to the sound take and then once it is determined that corrections are required, then we can instruct that errata sheets be prepared to be added to the transcript.

DR. MAYER: Yes, Your Honor, but may I point out that my source is the comparison between the German and English transcript.

THE PRESIDENT: But you see, Dr. Mayer, there is no way for the Tribunal at this moment to make any decision because we have no independent document to turn to. We can only look at the English Transcript. We don't know what is in the German. I don't read German; so that eventually we would have to go to the sound take, so if you will confer with Mr. Glancy and first see if you can reach an agreement upon corrections, then, if you cannot, then you can go to the sound take and then report to the Tribunal and any corrections which have to be made will be made.

DR. MAYER: Yes, Your Honor.

THE PRESIDENT: Did you give a number to the last document in the Steimle documents?

DR. MAYER: Yes.

THE PRESIDENT: 29 or 30?

DR. MAYER: 39, Document No. 40, Exhibit No. 39.

THE PRESIDENT: All right, now, are you going to take up Klingelhoefer?

DR. MAYER: Yes, Your Honor.

THE PRESIDENT: Very well.

DR. MAYER: (ATTORNEY FOR THE DEFENDANT KLINGELHOEFER) Klingelhoefer. As Klingelhoefer Document No. 1, Exhibit No. 1, I offer the affidavit of Annelise Mertens, nee Buchholtz, dated 4th of November 1947. This confirms that the father of Frau Mertens, Mr. Adolf Buchholtz, was sentenced in 1937 and confined to 31/2 years imprisonment and after that to the concentration camp for religious reasons. The defendant Klingelhoefer on the request of the affiant used his influence for the liberation of Mr. Buchholtz and it is expressly confirmed that he succeeded in having Mr. Buchholtz released from the prison and thus saved him from the concentration camp.

As Klingelhoefer Document No. 2, Exhibit No. 2, I offer the affidavit of Horst Mahnke, dated 1 November 1947. Mahnke knows the defendant since July 1941, when he was on an official trip to Russia on the order of the German Institute for International Studies, in order to do research work for this institute. In this capacity, he marched together with the Advance Kommando Moscow, since his missions were in the same field as those of the Advance Kommando Moscow. Therefore, Mahnke knows the conditions in the Advance Kommando from his own knowledge. He confirms that Nebe, the Chief of Einsatzbruppe B, tried to bring the Advance Kommando Moscow under his leadership.

He confirms that the Defendant Klingelhoefer, because of his knowledge of the Russian language and his knowledge of Moscow was transferred to the Advance Kommando Moscow when this kommando was set up. He further confirms that the activity of Klingelhoefer in the Advance Kommando Moscow was that of an interpreter and that it was his job to make SD reports in the various domestic fields. Furthermore, Mahnke says in the affidavit that Klingelhoefer was appointed the liaison officer of Nebe to the Advance Kommando Moscow, but expressly only in case Nebe was away. Mahnke considered this appointment of Klingelhoefer as a mere formality. He confirms that in this brief period of time Nebe was never absent and therefore the appointment of Klingelhoefer remained, practically speaking, without any significance. Furthermore the affidavit shows that about the middle of September 1941 Klingelhoefer was transferred to the Group Staff of Einsatzgruppe B as an SD expert and that he took over a newly set up kommando at the end of October, namely, the Advance Kommando Group Staff, which went to Gshatsk.

As Klingelhoefer Document No. 3, Exhibit No. 3, I submit the affidavit of the Defendant Klingelhoefer, dated 17 September 1947. The Tribunal will recall that the Defendant Klingelhoefer already during his direct examination on the witness stand has frequently referred to this affidavit and that he emphasized that he made this affidavit and that he emphasized that he made this affidavit out before the interrogator, Wartenberg at his own request, and that this affidavit also bears the signature of Mr. Wartenberg. In the affidavit, the defendant corrects all those mistakes which were in his first affidavit, dated 1st and 2d of July, 1947, likewise given to Herr Wartenberg. He revokes in this document, which I am submitting, his affidavit of the 1st and 2d of July, 1947, Prosecution Exhibit No. 124 in Document Book III-B of the prosecution and he describes the facts the way that corresponds to his memory after he was able to calm himself. As the contents of this affidavit have already been discussed in their essential points, during the examination of the defendant on the witness stand, I need not go into it further here.

Klingelhoefer Document No. 4 shows the sketches made by the Defendant Klingelhoefer, together with 4a, 4b, and 4c, which I handed to the Tribunal at the time the Defendant Klingelhoefer was examined on the witness stand in order to illustrate his testimony. I do not want to submit those sketches as evidence.

As Klingelhoefer Document No. 5, Exhibit Mo. 4, I submit the affidavit of Ernst Schwandt dated the 1st of December, 1947. Ernst Schwandt was active in the SD Sector Kassel and he was around the Defendant Klingelhoefer during the activities of the latter. Therefore, he describes the position of Klingelhoefer in the SD sector, namely the Cultural Department and he confirms that the Defendant Klingelhoefer was ordered to the Russian assignment at the end of May, 1941, on the basis of an order issued by the RSHA. He adds a brief message to this, for the Defendant Klingelhoefer in reference to his human qualities. Klingelhoefer and I may just add that in the case of Klingelhoefer too, Court II CASE IX I shall ask for a correction of the transcript, via the Secretary General.

day tomorrow so that his defense may be prepared.

THE PRESIDENT: The defendant Steimle will be excused from attendance all day tomorrow so that his defense may be prepared.

MR. MAYER: That is the end of the presentation, of my documents.

THE PRESIDENT: Very well.

MR. FERENCZ: Your Honor, the discussion which is taking place here is just to determine in what order the defense counsel will present their document books so that we can know who is coming next.

THE PRESIDENT: Well Mr. Ferencz, we made this announcement: Whoever is ready will proceed and at the first moment that no one is ready you proceed with the rebuttal, and continue to the end of the Rebuttal. Then whatever document books have not yet been presented up to that time may be submitted to the Tribunal, copies, of course, going to the prosecution and it will not be necessary to present them in open court. Those documents will be accepted prima faciedly, unless the prosecution wants to object to any particular one, and then we will decide that question.

MR. FERENCZ: I understand that, Your Honor. It is just who is proceeding now, defense counsel for Schubert and then Ott, and that will be followed by

DR. KOESSL: I was told that Dr. Gawlik wants to be next for Neumann, one volume only, and after that I think that Dr. Stuebinger want to speak for the defendant Dr. Braune. I think that this fills up the afternoon.

MR. FERENCZ: The reason we are asking, Your Honor, is that we do have objections to some of these things and we would like to be ready to interpose our objections at the time the document is offered in this present series.

THE PRESIDENT: Yes.

MR. FERENCZ: Now, we have several of them. We have Schubert, Ott, Naumann, and Braune, to finish today's hearings and do the defense counsel know who is going to begin tomorrow and who will continue and in what order?

THE PRESIDENT: Well I am afraid we don't have that, Mr. Ferencz. It would be desirable if we did have it, but it isn't here and the only thing I can say is that you would have someone of your office here who would immediately inform the particular prosecution counsel who would be covering that defend to come immediately to the courtroom; or, if you could have someone from your office inquire of defense counsel who would be ready the first thing in the morning.

MR. FERENCZ: Yes, sir, I will.

THE PRESIDENT: All right, you may proceed.

DR. KOESSL (ATTORNEY FOR THE DEFENDANT OTT): By coincidence, Your Honor, I have a photograph of a so-called Yule Candlestick. This was so often talked about that I think the Tribunal might want to see it.

THE PRESIDENT: I am very much interested to see just what one of those thing looks like. I have heard so much about them This is the candle stick here?

Does one carry that around his neck all the time? No?

And what does one have to do in order to get that ornament?

DR. KOESSL: He had to be in the SS for a certain period of time. Then it was given to him.

THE PRESIDENT: Yes.

DR. KOESSL: I shall start with Document Book I of the Defendant Ott. This consists of only one document and this document contains several operational reports, dated 22nd of December, 1941, until April, 1942. In the Operation Report No 149, dated 22d of December, 1941, there are figures of executions of Jews. This operation report is also contained in Book III-B of the Prosecution Exhibit 114. I may point out that from the 22d of December 1941 until the 16th of February, 1942, no reports of Einsatzgruppe B are existing. In the following operation reports frequently reports from Einsatzgruppe B are entirely missing.

In some instances events are discussed which doubtlessly lead to executions, but no reports contain figures about these executions until Report No 194, dated 21st of April 1942 which is Prosecution Exhibit 66 and has been submitted in Book II-B. By submitting this Document No. 1, I want to prove that there is a great measure of probability that in the Report No 194 the figures of the preceding months are also included, even thought the report names only the period 6th to 30th of March, 1942. I may point out that on page 45 of the present document book, the report No 184, dated 23d of March, 1942 is contained. To this report there is evidently a wrong page attached. The document itself shows that there are no reports from Einsatzgruppe B. On the last page, 11, executions of Jews and Jewesses in Orel are mentioned. Orel was in the area of Einsatzgruppe B. As after page 6, only incidents in the area of Einsatzgruppe D are mentioned, page 11 must have been attached to this erroneously from another document.

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In Prosecution Exhibit No. 54 in Document Book II-A the same report No. 184 is also contained. There the wrong side of No. 11 is not attached. This, too, speaks for the fact that evidently to the documents which I have here, a wrong page has been attached. I offer this Document No. 1 as Exhibit No. 1 for the defendant Ott. 2. This is an affidavit of a certain Pierre Adam, who was an acting Mayor of this place, that is, in the same place where Ott spent some time during the war in France. This French Mayor volunteered to testify for Ott. As the affidavit here on his opinion covers a period of about three to four years. I consider the recommendation of this man as especially valuable in judging the personality of the defendant Ott. I offer this document as Exhibit No. 2.

Document No. 3 is an affidavit by Dr. Ehlich in which the frank manner of making reports by the defendant Ott is testified to, and also the fact that Ott was not at all in agreement with the policy of Gauleiter Burckel in Lorraine, and, that, therefore, Ott had serious disputes with this Gauleiter. I offer this document as Exhibit No. 3.

Document No. 4 is a Situation and Activity Report covering a period from 1 March to 31 March 1942. This Document No. 2 supports the contention of the defense, that in the Prosecution Exhibit No. 66the mentioned figures do not merely refer to the period of 6 March to 30 March 1942; the report also shows the extent of the Partisan danger. I offer this document as Exhibit No. 4.

Document No. 5 includes several reports from the occupied Eastern territories. On 24 July 1942 there is a correction, which is added, according to which the Special-Commando VII-B is commanded by a Dr. Auinger. From this period on Ott is no longer mentioned as the commanding officer of Special-Kommando VII-B at all. Furthermore, the successor of Ott, a Lt. Col. Rabe, is named already on 8 Jan. 1943 as commanding officer of the Commando VII-B , even though Ott did command the commando until the end of January.

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This document is another proof as to the reliability, especially about the statement of details. I offer this document as Exhibit No. 5.

Document No. 6 is an affidavit by mybassistant, Meyer. I used this form of evidence in order not to have 1340 pages translated. The affidavit gives the contents of the report from the occupied Eastern territories during that time in which Ott commanded the Commando 9-B, and all other details can be seen in the affidavit. I offer this affidavit as Exhibit No. 6.

As Exhibit No. 7, I offer the graphic chart about the collaboration of the Army Agencies with Special-Commando VII-B. This chart was already discussed in the direct examination of the defendant Ott.

As Exhibit No. 8 I offer Document No. 8. This is a graphic chart of the channels of command which was also discussed during the direct examination of the defendant Ott.

As Exhibit No. 9, I offer the graphic chart about the army area, and a bout the area of Special-Commando VII-B, This chart, too was subject of a discussion during Ott's direct examination. This concludes the presentation of my documents for the defendant Ott. I'll have to submit one other document, a small one, which is still being translated. As Exhibit No. 1, I offer Document No. 1, an affidavit of a man named Heinz, telling about the activity of Schubert in Department IA-4 of the RSHA. According to this affidavit Schubert was only in the auxiliary employed as an assistant, and from the summer of 1940 he was an export in the employment office of the SD. What was an e expert , can be seen from the affidavit of one Wanninger, which is in Document No. 6 in Document Book II of Schubert's. At least he had no authority of decision, and no power of signing. Heinz testified that Schubert reported to the Army after the death of his wife, even though this was prohibited. This application was refused and he was assigned to Einsatzgruppe D without having reported for this.

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I offer this as Document No. 1.

Document No. 2 is an affidavit of Kononoff. This man states that Schubert did his best in Augsburg to make it easier for the foreign workers. His willingness to help these Eastern workers, and his sense of justice are especially emphasized. I offer this document as Exhibit No. 2.

Document No. 3 has various things to say about Schubert's activity in the RSHA. This confirms what is stated, that as adjutant of Chief of Office III, Schubert was a member of Office I. I offer this document as Exhibit No. 3.

Document No. 4 is an affidavit being that of a Frauelein Lacker. This lady describes the activity of Schubert in Augsburg. Here she confirms his willingness to help and his sense of justice, which he practiced towards the Eastern workers and the sick people, and which he showed even when it was objected to by the members of the Party. I offer this document as Exhibit No. 4.

Then I come to Schubert's Document Book II. Document No. 5 is describing Schubert's activity within Office III of the RSHA. The affidavit shows clearly that Schubert was still in the stages of acquainting himself with the work of the SD. I offer this document as Exhibit No. 5.

Document No, 6 is an affidavit by Wanninger. It shows that an expert in the RSHA was a very small man, namely it was the lowest position after the clerks and the assistants. That is to say, it was a position for beginners. As an expert Schubert was under the supervision of an assistant research analyst, that is, two stages under the top research analyst. It seems to me important to emphasize this, because the word "expert " is translated with "referent" in Schubert's Document No. 1, whereas, the word "Assistant Research Analyst" is translated with "assistant referent", but the "assistant referent" was a superior to a research analyst. I think it would be best to go into the position of the expert within this graphic chart.

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The experts are those people who are listed here in the third place from the bottom with three little houses. Above these experts were these auxiliary research analysts. Then came the research analysts, then the groups, then the offices, and then the main office; under the experts we only see the clerks and the assistants. As far as the translation is concerned, the meaning of this word "expert" becomes best evident.by looking at the chart here, and shows how such a position is to be interpreted. I offer this document No. 6 as Exhibit No. 6.

Document No. 7 is an excerpt from Schubert's military pass. This shows that in the Army during Schubert's two years of military training he was employed as a clerk for one whole year; his qualification as a clerk is expressly mentioned in his discharge paper when he was released. This document also shows that between 1936 and 1938 Schubert served in the 1st company of Armored Signal Battalion No, 39, and not in the SS School, as the Prosecutor assumed during the cross examination. I offer this document as Schubert's Exhibit No. 7. This concludes the submission of those documents translated and I ask that they be admitted.

THE PRESIDENT: Will you have anything else, to submit, Dr. Koessl?

DR. KOESSL: One document for the defendant Ott that is still being translated, a very short one, otherwise, I have no more.

THE PRESIDENT: I want to thank you particularly for at last satisfying my curiosity as to the Yule Candle Stick. Do you have something, Mr. Walton?

MR. WALTON: I'll promise the Tribunal faithfully I will put in my objections within a minute and a half time.

THE PRESIDENT: Yes, very well.

MR. WALTON: The Prosecution objects to the translation of the letter of one Rosa Morale, attached to Document No. 2, of being not material, and only serves to substantiate an affiant Kononoff's statement about the incident of a beating administered to a Russian female worker in the Martin Schmittner's plant, in the occurrence of which Schubert was not involved.

of the affidavit the affiant has no knowledge of the defendant's assignment in Russia, and gives a partial account of his assignment in Germany, irrelevant and immaterial to the issued in the case.

THE PRESIDENT: You win. The Tribunal will be in recess fifteen minutes.

The MARSHAL: The Tribunal will be in recess fifteen minutes.

(Recess)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Dr. Koessl for the defendants Ott and Schubert. mention that Schubert naturally has been charged with being a member of an organization declared to be criminal. This is evidenced by the affidavit Shark and Kononoff. With this one could object to the the objection of the prosecution. The supplement of the affidavit Konoff is covered by the affidavit itself, but it is not so essential or so important that I insist on this supplement being admitted. I would waive, in fact, the submission of the supplement.

THE PRESIDENT: Very well.

DR. KOESSL: I don't know whether your Honor and the judges will accept the documents which are offered.

THE PRESIDENT: We are making it a rule now not to decide this question, but we will decide it at the end. But we had indicated a number of times that the policy of the Tribunal is to be rather liberal in the acceptance of documents, and while, of course, we will weigh the objections made by the prosecution, should there be any doubt certainly we will resolve it always in favor of receiving the documents.

DR. KOESSL: Yes. Then concerning documents which I would now like to submit to the prosecution, herewith I am doing so. Correction, to the Secretary General.

MR. WALTON: Can the prosecution take the last statement from the Tribunal that they will accept all -

THE PRESIDENT: No we have said that there is a doubt, where it could be resolved either way, we will always resolve the doubt in favor of the defendant, and that is true in accordance with AngleAmerican procedure. Where, of course, you establish beyond the pre_ adventure of a doubt that your objection is in order naturally the document will then not he received.

MR. WALTON: I understood it that the Tribunal said that where there is any doubt about the admission of a document -

THE PRESIDENT: No, we meant in weighing the arguments on either side as to whether a document should be received where the prosecution very obviously prevails the document will not be received, but if both sides are evenly balanced as to whether a document should or should not be received, then the prosecution has failed to meet the burden and in that event the document would be received?

MR. WALTON: I see. Yes.

DR. GAWLIK: Gawlik for the defendants Naumann and Seibert. documents for Naumann and Seibert. However, I have just found out that there is only one document book, which is Document Book I, for Naumann, which has been translated, and I would, therefore, like to draw the attention of the Tribunal to the fact that this document book, the documents for Naumann, I submitted to the translation section for translation at the same time as the Seibert book. I could not say exactly now, but I believe it must have been around about the 18th of December. That is almost four weeks now. I shall reserve the right to name the exact date. I do not know whether I am informed correctly that after the beginning of the rebuttal the documents may not be submitted any longer.

THE PRESIDENT: You are incorrectly informed. Documents may be submitted, may be submitted up to and including the time of the summations, but what we do say is that if they are not ready until after the rebuttal begins, then it will be not necessary to present them in open court so long as copies are submitted to the prosecution. Then if the prosecution does not object the documents will be accepted. If the prosecution does object then we will hear the objection and hear defense counsel on that particular issue and then the decision will be made so that you will in no way be prejudiced because of any delay in the translation section.

DR. GAWLIK: Well, but your Honor, I think it is necessary, however, that the documents should be submitted in open court, but that is being made impossible by the fact that the translation department isn't ready. We have no influence whatever on the translation section. If we submit them, as we did, weeks ago, and they are not translated by now, that cannot have the result that we cannot submit them in open court. After all, there are explanations to be made to each single document which we can't then make known to the Tribunal. Therefore, I would ask the Tribunal reveiw this ruling. please. For instance, the case of the defendant Seibert whom I represent is typical. I have submitted the document book in fact a month ago. The rebuttal will begin tomorrow or the day after tomorrow, and I have no possibility to submit the documents in open court. It is not my fault. It is nobody's fault in fact. I recognize the fact that the translation section has to cope with all this work and they are doing everything in their power, but those are technical difficulties.

THE PRESIDENT: Well, Dr. Gawlik, don't be concerned about it. I am sure that the question will be resolved in a way which will be satisfactory to all concerned. For the moment present what you have ready.

MR. WALTON: Your Honor, the prosecution hasn't seen any document book on Seibert and we do respectfully submit that we would like to sec them. Now he is ready with document books on Seibert, so when you spoke to him to present what he has ready -

THE PRESIDENT: I assumed that when he said he was ready that he was ready to the effect that everybody had been served.

MR.WALTON: No sir, the prosecution hasn't been served on Seibert yet.

THE PRESIDENT: What do you have ready to which the prosecution will have no objection to your submitting immediately? Do you have anything ready that you can start on now?

DR. GAWLIK: I was informed that one document book of Naumann book, has been translated.

THE PRESIDENT: Well, do you have it, do you have it?

MR. WALTON: Yes, we have the translation of it.

THE PRESIDENT: Then why do you say you were informed. Do you have it in your possession?

DR. GAWLIK: No, I was told that it has been submitted to the Tribunal one document book Naumann.

THE PRESIDENT: All right, proceed with Naumann.

DR. GAWLIK: As Document Naumann No. 1. I have already submitted Document Naumann No. 1. which is a report of events, No. 186, dated the 27 March 1942. It is Document NO_3236. So far I have only given an identification number to this document in Naumann's direct examination on the witness stand. Now I am going to give an exhibit number to this document. It is Naumann No. 1. It is contained in Document Book Naumann No. I on Pages 1 to 2. of the Einsatzgruppe B was partisan warfare and that all the forces in the Einsatzgruppe B were occupied mainly with partisan combat. In this document it says, on the 8th of March 1942 the Supreme Commander of the R*ar Army Territory held discussions during which the carrying out of an extensive operation of the Wehrmacht was discussed in order to fight partisans around Bryansk or in the vicinity of Bryansk. From the next paragraph it becomes evident that for this operation Einsatzgruppe B was assigned and was in fact assigned on directives of the Supreme Commander of the Rear Army Territory.

I now read from Paragraph 2 just one sentence. "Einsatzgruppe B on the directives of the commander of the Bear Army Territory have to create the prerequisits for the carrying out of the operations." The next sentence refers to the activity of the Einsatzkommandos 9 and 7a. From the next paragraph it becomes evident that Einsatzgruppe B acutally carried out this operation. I quote the first sentence. "The Supreme Commander of the Rear Army Territory center, General von Schenkendorff, spoke at the beginning of the discussion and thanked the Einsatzgruppe for the tasks carried out and for their success which was responsible largely for the success of the Wehrmacht."

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He pointed out that as far as -

THE PRESIDENT: Now, Dr. Gawlik, it isn't necessary to keep reading form it. Now you have given us a fairly good idea of what this report covers. If you are going to read each paragraph and then comment on it it becomes in the nature of an argumentation. You are merely presenting documents now. A document is like a witness. It is before the court. We have to read this.

DR. GAWLIK: I only wanted to read the sentences to which I want to draw the particular attention of the Tribunal.

As next document I submit Document Naumann No. 8 as Exhibit Naumann No. 2. I beg your pardon, your Honor, it is Document Naumann No. 2 as Exhibit No. 2.

THE PRESIDENT: Why not let's have the three exhibits so that we won't waste time going through the same process with each different exhibit? You have 2, 3 and 4 which are in the nature of exhibits, don't you?

DR. GAWLIK: Yes.

THE PRESIDENT: Present them all now.

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DR. GAWLIK: Simultaneously, the Document Naumann No. 3 as Exhibit No. 3. The next document, Naumann No. 4, which is listed in the Doc. Book, I shall not submit, your Honor, As to Document Naumann No. 2 , Exhibit No. 2, I want to comment the following. I have submitted this document in order to point to the difficulties between the various garrisons. This map shows all the individual garrisons of the group staffs of the kommandos and the subkomma ndos. The chart has been made according to a map of the scale 1 to 1,000,000. The garrison of the group staff is marked with a little square. The garrisons of the kommandos have been marked with a fat dot, and the garrisons of the subkommandos with a little circle. The channel of command between the group staff and the kommandos is marked with a straight line, and between the kommandos and the subkommandos with a dotted line.

The next document, Naumann No. 3, Exhibit Naumann No. 3 I have submitted in order to prove the correctness of the line of command of the group staff of the Einsatzkommandos and of the Special Kommandos. You will see, your Honors, in the upper part a double line. At the top of this line are the agencies in Berlin. Underneath this double lines there are the agencies in the territory of Russia. In the Russian territory marked in the upper part, are the agencies issuing the order, in the lower part the agencies are marked carrying out the orders. Another line has been put in which goes straight down. This line separates the agencies in the Rear Army Territory from those in the Army frontal area. Now, here we have the left side which shows the agencies in the Rear Army Territory and on the right side those in the Army frontal area. With this drawing I want to prove that first of all the Commander in chief center had all the executive power in the territory Russia and that he was also the only one who kept up the immediate connection with Hitler. From the chart, the line of command of the Einsatzgruppe B becomes farther evident. Einsatzgruppe B was first of all subordinate to the chief of the Security Police and the SD. Secondly, it was subordinate to the Army Group Center.

Third, it was subordinate to the Commander in Chief of the Rear Army territory, and then finally -

THE PRESIDENT: Well, Dr. Gawlik, you are in effect testifying here now. That was up to the defendant Naumann to explain.

DR. GAWLIK: I am only explaining the chart, your Honor.

THE PRESIDENT: Well, did the defendant explain this on the stand?

DR. GAWLIK: Yes, he testified to this.

THE PRESIDENT: Yes, well then, it is in the record and it isn't necessary to go into all that again. This is to illustrate what the defendant has already testified to, and it is here before us. Now, there is no need for you to point out what each line points to. We have this.

DR. GAWLIK: If the Tribunal is of the opinion that this is not required, I shall discontinue. I only wanted to draw the attention of the Tribunal to the line of command, as they become evident from this chart in order to clarify this chart, to the Tribunal.

THE PRESIDENT: Well, if the defendant has already indicated what the line of command was here and then we will have this before us as we review the transcript that will be enough. Your telling us won't add too much because we have it from the defendant already.

DR. GAWLIK: I was only thinking that the chart with these many lines are not very evident at eh moment when you look at it and are a bit confusing so that if you have no explanation of what the individual lines might mean, especially the channel of command and the relationship of the various special kommandos to each other, aren't very obvious.

THE PRESIDENT: While these lines are helpful, I will confess that I understand more thoroughly an oral description of the line of command more easily than the sketch, and the defendant has already explained that from the witness stand. This is only a supplementary explanation.

DR. GAWLIK: As my next document, I submit Document Naumann No. 5 as Exhibit Naumann No. 4. It is an affidavit by Erich von dem Bach-Zelewski concerning Naumann's military assignment in partisan warfare and his decoration with EK 1, with the iron cross first class.

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It is on pages 3 and 4 of the document book. This also is meant to prove that the activity of Naumann in Einsatzgruppe B was mainly that of warfare with partisans. Also the difficulties become evident from this document, the difficult situation, in fact, which was caused by the partisans in the territory of the Einsatzgruppe B. Also from Paragraph 2 the line of command becomes evident in which Naumann was. Then the document shows that Naumann actually personally took part in the warfare against partisans.

I draw the attention of the Tribunal especially to the sentence: "For this merit and for braveness General von Schenkendorff awarded him the iron cross first class." From this it becomes evident that Naumann received the iron cross first class for the reason that he earned it as a soldier in active service while participating in warfare against partisans. absolutely necessary in order to get a true judgment of Naumann's actions in Russia, to submit evidence concerning his attitude and behavior as the commander of the Security Police and SD in Holland. The next three documents refer to this. It is only a part of the evidence material which I shall submit. The further evidence material is in Document Book II which has not yet been submitted to the Tribunal in its translation. Now I submit the Document, Naumann No. 6, as Exhibit no. 5. It is in Document Book Naumann No. 1, pages 5 to 6.

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This is an affidavit by Mrs. Lily Van der Schalk. I point out to the Tribunal the fact that this is a Dutch citizen. From the document can be seen that Naumann, during the time of his assignment as Commander in Chief in Holland, actively supported and helped Jews and he actually achieved a success by having Jews released from concentration camps, for instance, Auschwitz. I draw the attention of the Tribunal to another paragraph, the next one, where the affiant makes statements concerning the attitude of Naumann, he had about the Jews. I consider this affidavit and the following affidavits of these Dutchmen as very important for the evidence and for judging the acts which he is charged with by the Prosecution during his assignment in Russia. Number 6. It is an affidavit by the same Frau Lily van der Schalk of 27th October. From this document it becomes evident that Naumann personally aided 250 Dutch hostages and brought about the release of the largest part of these hostages. vit by Mrs. Ilse Leembruggen von Lieben, of 28th of November 1947. Document Naumann Number 8, which I shall give the Exhibit Number Naumann Number 7. It is in Document Book Naumann Number I, page 8. I draw the special attention of the Tribunal concerning this affidavit, to the fact that this is an affidavit made out by a Jewess, as becomes evident from the affidavit itself; this Jewess, who had been in a concentration camp, was released as a result of the intervention on the part of Naumann. which is the only one that has been translated.

THE PRESIDENT: Very well, Dr. Gawlik. Dr. Mayer, are you ready?

I want to say, Dr. Mayer, that I am very sorry that you had to wait around all day. On two occasions we were about to call you and at that moment you just happened to step out.

DR. STUEBBINGER: Stuebbinger for Braune. I would like to draw the attention of the Tribunal to the fact -

THE PRESIDENT: Dr. Stuebbinger, of course. We had a debate here as to whether your name was Mayer or not and two of us said you were Mayer and three said no. Three won.

DR. STUEBBINGER: On behalf of my colleague, Dr. Mayer, I would like to draw the attention of the Tribunal to the fact that I shall submit a trial brief for my client Dr. Braune. Just now I found out during the recess that Document Book II has now also been submitted in English, but only to the interpreters. Mr. Walton hasn't received it yet. I myself am prepared to submit Document Book II as well, after I have concluded Document Book I. I don't know whether there is any objection on the part of the Prosecution to this.

THE PRESIDENT: Is there anyone from the Prosecution ready to reply to that?

MR. WALTON: Your Honor, we are ready to offer our objections to certain documents as contained in Document Book I, but not having received a copy of Document Book II -- If I got it tonight I would be ready in the morning, but I have never laid my eyes on it.

THE PRESIDENT: Well, what do you have ready now to present , Dr. Stuebbinger?

DR. STUEBBINGER: Document Book II -- Document Book I has been submitted in its translation some time ago. Document Book II has been handed to the interpreters.

THE PRESIDENT: Why don't you proceed with Number I now?

DR. STUEBBINGER: I only asked when I conclude Document Book I, whether I can start with Document Book II. That will probably not be possible them. Document Book Numb er I contains affidavits, Documents 1 to 6 concerning the activity of the defendant as the Reich Student Leader and as leader of the academical exchange service in the years 1943 to 1944. Documents 7 to 28 concern the activity of Dr. Braune as Commander of the Security Police and SD in Oslo in the year 1945.

Documents 29 and 30 contain character testimonies. and the German document books. The document numbers and the exhibit numbers correspond. client with intolerance and arrogance and thus with contempt of human lives and corruptness of human reasoning. As their reasons they give the activities of the defendants in the Eastern campaign. Under which conditions Braune acted on this occasion I proved when he was a witness on the witness stand.

THE PRESIDENT: May I interrupt a second, please.

Mr. Walton, the Tribunal also has Document Book II, so we would suggest that you send to your office to see if that book is there.

MR. WALTON: Very well, Your Honor.

MR. STUEBBINGER: Under what conditions Dr. Braune acted in the Eastern campaign, I proved when he was here on the witness stand . With the submission of the affidavits, I shall prove how Dr.

Braune actually acted in word and deed when he was not immediately bound to the orders of his Chief of State, but when he h ad the possibility to ask higher authorities for support. They prove that criminal and nonsensical orders, he did not carry out unconditionally. But with the whole strength of his personality he resisted such orders. In this way he succeeded, in two cases, to bring about decisions on the part of the Chief of State which can be led back to his own initiative. He thus saved the lives of numerous people and valuable property from being destroyed.

I shall now deal in Document Book I, with the factor of "students' leadership". Document 1, Exhibit 1, is an affidavit by Irmgard Grotjahn, former secretary of Braune, dated 9th of October 1947. It is on page 1 Through a law of the French Government, numerous French students during the years 1943 and 1944 had been drafted to Germany for work.

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Braune's secretary, confirmed here that he, as the man in charge of the Reich Student Leadership and as the leader of the German Exchange Academic System, he facilitated matters for these French students whenever he was able to do so. He gave them aid and support, took care that the places of work were improved; he gave them lectures and he had books and magazines given to them, and m ade it possible for them to participate in cultural performances and finally he brought about their release and made it possible for them to take up their studies again. states that Braune, during the activity as Student Leader in 1943, directed a protest letter to the National Student Leader in which he protested against the arrest of about 700 Norwegian students and therefore brought about a Fuehrer decree and the reprimand at the time of the Reich Commissioner Terboven. In this connection, I would like to point to Document Number 12, which I shall introduce at the proper time, from which it also becomes evident that Dr. Braune supported the release of a thousand Norwegian students who on the occasion of the arson of the Oslo University -- had been arrested. Grotjahn, dated 15 Octob er 1947. The Reich Propaganda Ministry had put a fund of a quarter of a million marks at the disposal of the Reich Student Leadership. He, therefore, tried to influence its office politically by asking for reports concerning the use of this money. Dr. Braune prevented this and rather went without the money put at the disposal by the Propaganda Ministry. the 17th September 1947, on page 6. From this it becomes evident that Braune in numerous discussions and speeches professed himself to the European association with mutual fate and that he objected very strongly to the German policy and used his influence concerning the recognition of sovereignty of all nations.

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Document No. 5, Exhibit 5 is an affidavit by Friedrich Sipmann, Department Chief in the Reich Students' Leadership Department, dated 10th of September, 1947. It is on page 8. Sipmann herewith confirms that at meetings of students Braune spoke harshly against the German foreign policy, criticized it , demanded a constructive plan for the reorganization of Europe and that he was an opponent to all power politics and to the suppression of national characteristics; he wanted respect between nation and nationals and the voluntary cooperation of all European nations.

Document No. 6, Exhibit 6, the affidavit of Dr. Reinhold Baessler dated the 1st of October, 1947, is on page 10. Baessler was a department chief in the Students' Leadership. From this document it becomes evident that Braune, during his activity in the German Students' organization at meetings and conferences criticized most severely the National Socialist practice. I may here quote a few short passages on page 10, paragraph 2:

"Though an old Party member, he was one of the harshest critics of practical National Socialism among whom I met him in the Party."

At the end of paragraph 3 it says, I quote:

"He quite openly said that the Party must go, if it no longer bore the will and strength for reform."

Paragraph 4:

"He was convinced that the time was ripe for a reconciliation of Europe's old national conflicts, and that only a united Europe could at length withstand the Red danger from the East."

I now come to Section Norway. This shows Braune's conduct and attitude as the Commander of the Security Police and SD in the decisive last months of the war. documents.

Document No. 7, Exhibit No. 7, is an excerpt from a Norwegian newspaper with Braune's picture and a proclamation to the public to report any cases of illtreatment, Braune might have been guilty of, in his capacity as Commanding Officer of the Security Police and SD in Oslo.

the next to the last paragraph. It should not say, "As they were carried out according to the directives", but it should say, "Insofar as they were asked for in the directives". occasions, no informations were received concerning this. and 9, which are also Exhibits 8 and 9. As these documents show, the proceedings had to be discontinued.

Then the next affidavit is an affidavit by Dr. Jungbluth, the German assistant attorney for Germans who were charged in Norway. From this it becomes evident that after the proceedings had been discontinued, Dr. Braune on the 19th of July, 1946, was taken to the German Internment Camp Kiel.

Document No. 9, Exhibit No. 9, is an affidavit by Dr. Keller, Dr. Hans Keller, Departmental Chief in the Office of the Supreme Commander of the Security Police and the SD in Norway, which also confirm the discontinuance of the proceedings.

Documents No. 10 to 12, which are submitted as Exhibits 10 to 12, show Braune as a harsh adversary and opponent of the policy on the part of Reich Commissar Terboven. From the affidavit of Georg Wolff, it becomes evident that Braune rejected the policy as unbearable as exercised by Reich Commissar Terboven and was determined to prevent it in his district by all means, even if such procedure should lead to his being transferred. Hans Keller. In which it is confirmed that Braune was against the activity of Terboven concerning police executives, and that he prevented mass arrests and also prevented the carrying out of extensive activities and that currently he himself ordered releases to be carried out and through this he came into dispute with his superior officer.

Document No. 12, Exhibit 12, is an affidavit by Herbert Not of the 12th of September 1947, it confirms, as I have said before, that Braune objected to the power politics of Terboven and that he advocated the release of the 1,000 students arrested in connection with the arson of the University of Oslo.

Documents No. 13 to 16 prove that Dr. Braune was an opponent of the taking of hostages and that in this also the advocated that the present orders be rescinded. department chief of Braune. He confirms that Dr. Braune instructed the offices subordinated to him in the Oslo district not to arrest any hostages because of escapes to Sweden.

Document No. 14, Exhibit 14, is an affidavit by Irmgard Grotjahn, which confirms that Dr. Braune issued written orders to his subordinates not to arrest any hostages in spite of existing orders to the contrary.

Document No. 15, Exhibit 15, an affidavit by Herbert Not, also shows the fact that Braune was an opponent to the taking of hostages and confirms that Braune himself advocated that the present directives be rescinded.

Document No. 16, Exhibit 16, the affidavit by Hans Keller of the 15th of September 1947, confirms the fact that Braune objected to the hostage order of the commander in chief, Fehlis, and regarded it as incompatible and brought about the rescinding of this order.

From Document No. 17, Exhibit 17, an affidavit by Georg Wolff, dated 10th of September, 1947, it becomes evident that Braune had numerous release applications forwarded to him by his departmental chiefs in Oslo and approved them. He also brought about the release of the Norwegian Prime Minister Gerhardsen. He further had a release proposition drawn up for the release of 1300-1400 prisoners, affected the approval of this plan and thus achieves in this way hundreds of releases.

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Document No. 18, Exhibit 18, an affidavit by Irmgard Grotjahn of the 29th of August, 1947. The secretary of Braune herewith confirms that Braune, during his activity as Commander of the Security Police in Oslo, had all applications for release submitted directly to him and received personally all applicants, who, even as adversaries, state their sympathy for, and confidence in, Braune. graph 2:

"I myself was repeatedly told by visitors that they had imagined a Security Police Commander to be quite different, and that they had been surprised to find a man about whom they felt that his intentions were absolutely honest, and although he was actually their opponent, he was a person to whom they had to extend their sympathy and trust."

Document No. 19 , Exhibit 19, is an affidavit of Hans Keller, dated 15th of September, 1947. From this it becomes evident that Braune even had applications which were meant for his superior office sent to his office and on his own authority decreed releases and frequently exceeded his own authority.

Document No. 20, Exhibit 20, an affidavit by Herbert Not, dated 12th of September 1947, confirms that Braune currently decreed numerous releases, proposed to his superior office more than 1,000 releases, which were approved and effected to a large extent. It also shows that Braune was opposed to large-scale operations and that he limited arrests to those persons whose guilt was proven.

THE PRESIDENT: Do you think we might suspend at this point, Dr. Stuebbinger?

DR. STUEBBINGER: Yes.

THE PRESIDENT: I might inquire if we can get any enlightenment on the order of presentation tomorrow morning. Can anyone tell us who will be ready tomorrow morning after Dr. Stuebbinger finishes?

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DR. WIESSMATH: Assistant of Dr. Schwarz for the defendant Jost, Your Honor, we intend to submit four document books for the defendant Jost. Of these four two have been translated. These two document book can be submitted tomorrow.

THE PRESIDENT: Very well. Is there anyone else who can tell us about other books to be presented?

DR. KRAUSE (Attorney for the defendant Haensch): Your Honor, I intend to introduce two document books tomorrow. A third document book is still in the Translation Section and a fourth book is just about completed.

THE PRESIDENT: Well, you will be ready to go on after Dr. Wiessmath, who will present books for Jost.

DR. KRAUSE: Yes.

THE PRESIDENT: Well, I think the answer will be "yes" anyway. The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 16 January 1948, at 0930 hours.)

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THE MARSHAL: Persons in the court room will please dinf their seats. Tribunal.

DR. LINCK: Linck for the defendant Ruehl. Your Honor, may I make the announcement now, if it is agreeable to the Tribunal, that I shall be prepared after the lunch recess to submit my documents and that my colleague, Dr. Lummert, would like to be the next one. I assume that the time before lunch has already been filled up, so that there will be no difficulty in my submitting my documents after lunch. The prosecution has been informed about it, and they agree.

PRESIDENT: If we keep going continuously until noontime, what you say can be done easily, but should there be any lull, as we indicated before, we will immediately proceed with the rebuttal, so you will just have to take that chance, Dr. Linck. If you are assured with conversation with your colleagues that there will be a continuous flow of documents until noon, then you can go about with a free and happy heart until 1:45, but if your colleagues cannot assure you of that, you had better keep one foot within the doorway.

DR. LINCK: All right, Your Honor.

PRESIDENT: Very well.

DR. STUEBINGER: May I please proceed, Your Honor? We concluded yesterday Document Number 20.

Grotjahn, of the 4th of September 1947. It is on page 34. It proves that based on the operations for the release of prisoners which Braune initiated, a number of old men and woman, diseased people, hostages, those who distributed pamphlets and leaflets, and a lot of those people who listedned to the English radio stations were released. out of a large-scale actions because, he could not reconcile it with his feeling for justice. Hans Keller, of the 15th of September 1947. Keller herewith confirms immediately took steps against the mass actions against the Norwegian resistance movement, and that he was able to prevent those. When the Reich Commissar, Terboven ordered extensive retaliation measure against Oslo and asked that about 60 Norwegians should be shot and more than 1,000 huts should be burned, Braune resisted this action. He requested a decision by the Fuehrer and, therefore, he succeeded in having Hitler forbid the operation. Therefore, it was Braune's doing that numerous Norwegians were saved and valuable property was saved from destruction. Grotjahn of the 4th of September 1947. It is on page 37. By order of Terboven in the program of a retaliation measure in the Oslo sector, a number of innocent Norwegians were to be shot and a number of huts were to be burned. From this document it becomes evident that Dr. Braune forced the Fuehrer decision and that he resisted this action. the 10th of September, 1947.

It is on page 39. This document confirmed that Braune in his discussions which he had with his departmental chiefs, protested against the carrying out of mass operations and especially against the action in Nordmarka. He refused to have this operation carried out and he succeeded in obtaining a decision by the Fuehrer which prohibited the carrying out of this action. of the 12th of September 1947. It is on page 41. In this document it is emphasized especially that Braune, by forcing this Fuehrer decision, made it possible for Terboven to be restrained from making his own decision in carrying out police security measures.

Documents No. 26 up to 28 confirm the resistance of Braune against other further retaliation measures. of the 25th of September 1947. It is on page 43. From this the following becomes evident: On the 26th of April 1945 the Norwegian resistance movement had shot three German soldiers, one had been strangled with a steel wire, and one had been strangled with a steel wire, and one had been beaten to death. Two Norwegians who had participated in this action were to be shot by demand of the Wehrmacht, after having been put before a court martial, and their farms were to be burned. Dr. Braune managed to prevent that and saved the lives of these Norwegians and their houses.

Nuber 27, Exhibit 27, is an affidavit by Kloetzer. This confirms that Braune managed to prevent the large-scale action which had been ordered by Terboven in Kongsberg-Notodden. Kloetzer of the 30th of September 1947. It shows that Braune objected to an action which had been ordered by the Wehrmacht and the Higher SS and Police leader in the sector Drammen, so that this action liekwise was not carried out.

In each of these documents there are other incidents mentioned as well. Therefore, they are not cumulative. Sipmann of the 10th of September 1947 about the testimony of the defendant. The former student-leader, Sipmann, gives a picture of the character of Braune. He emphasizes his decency and his kindness, his matters, and in matters of general political matters, his refusal to deal with political fanatism, and I may quote here a short passage lerant person. I quote, "He was an opponent of all ready-made sentences. He was a sincere person, who, without any fanatism and without any prejudices, tolerated other people's opinions. Number 30. It is an affidavit of the Protestant parson, Dr. Guenther of Oslo, who has been living abroad for 40 years.

It was his task after the capitulation to care for those prisoners who were still in custody pending investigation, and Braune was one of these prisoners at the time. Dr. Guenther, who was married to a Jewess, would have had no reason to support a person who has been guilty of participation in persecution of Jews in Norway or in the East. In spite of this statement about himself, he regarded it as his duty to show the attitude of Braune to the American Military Tribunal. Then this decision can only be explained by the wisdom of old age in order to show in what manner Dr. Guenther is intersted in the fate of my client, and how he estimates him personally. I shall read a few passages from this affidavit. On page 50, paragraph 2, the last sentence, "Very soon I came to esteem him as a very valuable person who is far above the average people. In a number of long discussions which took place, we tried to find out the ultimate reasons for the collapse, and it is amazing how we understand each other on the deep subject of ideology."

In paragraph 3, Dr. Guenther speaks about the great frankness which Braune showed towards him. In paragraph 4, "Dr. Braune is mentally and spiritually very much alive, with an ardent soul, of an idealistic character. What seems especially striking to me is his absolute truthfulness." And the last quotation which I want to read, which is on page 51 at the bottom, "I have learned to like Dr. Braune as I would a son." I have nothing to add to this quotation.

I now start D ocument Book II. Document Book II contains decrees and regulations, clippings from newspapers, and operation reports.

Document Number 31, I can omit. It is a supplement to instructicn 33 of the Chief of the High Command of the Wehrmacht concerning the maintenance of peace and order in the East. This document has already been offered as an exhibit by defense counsel for Ohlendorf.

Document Number 32, I offer as Exhibit Number 31. This is a photostat. It contains the decree of the Army High Command Chief, Keitel, dated 16 December 1942, on the anti-Partisan warfare. It becomes evident from this decree that the Wehrmacht was instructed to use the most brutal measures in combatting the bands in the East and that the unit had the authority and the duty to use any means also against women and children -- any means that achieves its aim. It says, "Consideration of any kind is a crime against our own people."

Document Number 33, I offer as Exhibit Number 32. It is Ordnance Number 1 on crimes and other punishable acts, issued by the Supreme Commander of Military Government, Germany.

Number 35 I offer as Exhibit Number 33. It is a supplement to the "Hannoverschen Neusten Nachrichten", second year, Number 62, of 16 August 1947, and it contains an article by the former American Ambassador in Moscow, William C. Bull*tt, entitled "The Strength of our New Foreign Policy". This article shows how the American Ambassador regarded the actual character of Bolshevism.

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Document Number 37 I offer as Exhibit Number 34. This is an excerpt from the "Neue Zeitung", third year, Number 81, of 10 October 1947, containing statements made by a writer who had fled from the Eastern Zone and had lived in Russia many years. His name is Theodor Plivier. He is the author of the novel, "Stalingrad", and his statements were made to the Dutch writer, Jef Last. They were published in the Dutch newspaper, "Het Vrije Volk". The submission of this document has been announced when Dr. Braune was in the witness stand. It shows that the Volga-German Republic had been liquidated during the war and that probably none of the population has survived.

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Document No. 39 I offer as Exhibit No. 35. It is an excerpt from the Wiener Kurier of the 30th of August, 1947, No. 200, 3d year, which contains an article entited, "More than 30,000 Germans are recruited for forced labor in the Soviet zone." The Wiener Kurier is published by the American Forces for Vienna population. Therefore, it can be assumed that this report is correct. With the submission of this document, which I shall come back to in my final plea, I want to prove that the description given by the defendant about the international legal situation which he found when he came to Russia is accurate, and corresponds to the present attitude and behavior of the Russians in the Eastern Zone.

Document No.40, I offer as Exhibit No. 36. It is an affidavit by Anni Kuhfahl of the 28th of July, 1947. The witness is probably known to the President from the Pohl trial. It shows that the mere application by an SS members for an assignment in the Zone of the Interior was interpreted as cowardice and was punished with commitment to a concentration camp.

Document No. 41, I offer as Exhibit 37. It is the order transferring Dr. Braune to duty with Einsatzgruppe D of the Security Police and the SD. It is dated 29 September 1941. I must draw the attention of the Tribunal to this date.

Document No. 42, I offer as Exhibit No. 38. It is a retransfer order to Dr. Braune from Einsatzgruppe D to the State Police Office in Hallo, dated the 25th of July, 1942.

Documents No. 43 and 43a. I shall omit now, because they have already been offered as exhibits in the case for Ohlendorf. The same is true for Document No. 47; also Documents 48 and 49 I skip now. They are already contained in the document books of the prosecution.

The Documents Nos. 44 up to 52, except these which I have just mentioned are operation reports to which the defendant has referred in his examination on the witness stand.

I will give now the Exhibit No. 39 to Document No. 44. Document No. 45 will get Exhibit No. 40. Document No. 46 will get the Exhibit No. 41.

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Document No. 50 will get Exhibit No. 42. Document No. 51 will receive Exhibit No. 43, and Document No. 52, will get Exhibit No. 44.

I now come to Document No. 54. This I offer as Exhibit No. 45. It is an excerpt from the Wiener Kurier, 3d year, No. 252, of 31 October 1947. In contains the verdict in the Sachsenhausen Trial. From this it becomes evident that the 16 defendants of the concentration camp Sachsenhausen were sentenced to forced labor as a result of the decree of the Supreme Soviet of USSR of 26 May 1947 regarding the abolition of capital punishment and that this decree was also enforced in the Eastern Zone. This document shows that the Soviet Union is a signatory power of Control Council Law No. 10 and that she changed the form of punishment and abolished the death penalty for her own sector.

Document No. 53 I offer asExhibit No. 46. It is a clipping from the Wiener Kurier of 6 November 1947. It contains the sentence passed by the War Crimes Tribunal Bobruisk, in White Russia of the 5th of November 1947, against 22 defendants who were charged with having murdered over 2,000,000 Soviet citizens. Therefore, this trial is similar to ours in regard to the charge. All defendants, including commanders of the highest military rank such as Generals Ochsner, Traut, Konradi, and Tarbuck, were sentenced to 25 years forced labor in a labor camp.

Document No. 55 I shell skip.

Document No. 56, which the defendant referred to in his direct examination, which I offer as Exhibit No. 46, consists of excerpts from operation reports regarding the various garrisons of the commando.

I now come to a supplement. It is the affidavit of the ethnic German Eduard Schilke of 19 December, 1947. I shall give this the Document No. 57 and Exhibit No. 47. Schilke here describes his experiences in the Soviet Union. The document shows -

THE PRESIDENT: It seems that the numbers are slightly confused. You gave Document 53 No. 46 and then you gave Document 56 also 46. It should be 47.

DR. STUEBINGER: Yes, I just notice that I made a mistake. Document No. 56 should receive Exhibit No. 47, thus making the affi davit of Schilke, which is Document 57, Exhibit 48.

This document shows that as early as 1937, ethnic Germans were deported to Siberia and had to suffer cruelties during the War. It therefore confirms the statements made by the defendant in the witness box.

The last document, Your Honor, I have here in German. It is, as far as I know, not translated yet. It is a very whort document, and, if the prosecution agrees, I shall read it into the record.

MR. WALTON: If your Honors please, before he introduces that, if he will let Dr. Hochwald read it, since it is short and we have not been served with a copy; I think we would be prepared, but I would like to see it before it is offered.

THE PRESIDENT: Very well. That is being done now. What agreement have you reached, if any.

MR. HORLICK-HOCHWALD: If the Tribunal please, the document in itself is certainly material, but I see there is only one carbon copy and from the exhibit itself it is not clear to the prosecution how the original looks and wherefrom the defense has obtained the original. I do not know whether this is purported to be an original letter obviously from the contents, but the exhibit itself is just a carbon copy, not signed, nothing. If the defense counsel for Dr. Braune will explains the form, we certainly have no objections against the contents.

DR. STUEBINGER: Your Honor, it is a letter of the Einsatzgruppe Chief Ohlendorf to the then SS Sturmbannfuehrer Braune of 2 November 1941, from which it becomes evident that Braune, effective 19 November 1941, was to take over the leadership of Einsatzkommando 11B. It becomes evident therefore from this document that between the order of the 29th of September Document No. 41, Exhibit No. 37; more than six weeks elapsed until Braune was able to take up his position in Kommando 11B. say that I have seen the original. I did not, however, submit the original, because Dr. Braune wants to keep it, but he will at any time put it at the disposal of the Tribunal, if the Tribunal attaches any value to it.

It is signed by Ohlendorf. As far as I know, he received it from his wife. She found it at home among his papers.

THE PRESIDENT: Mr. Hochwald wishes to say something.

MR. HORLICK-HOCHWALD: Your Honors, of course, we do agree with the defense counsel for the Defendant Braune, but I do think it is the right of the prosecution to see the original. In this form that is a question of principle, which I am bringing in now in this form, the exhibit is certainly not admissible, so if we allow the exhibit in in this form, we do it for the simple reason, if we see the original and can find out that it is an original.

THE PRESIDENT: There is no doubt that this is secondary evidence. As a matter of fact, all evidence should be submitted in the original to the Tribunal, but we have allowed this liberality for the purposes of convenience and facilitating the trial.

MR. HORLICK-HOCHWALD: We do agree to that, but, nevertheless, we would like to see the original. We then will have no objection that the exhibit is put in in this form.

THE PRESIDENT: Can't you show him the original?

DR. STUEBINGER: At the moment I do not have it with me, Your Honor, but I can get it. It is in our offices. I shall put it at the disposal of the prosecution.

THE PRESIDENT: Mr. Hochwald, can't we accept this provisionally?

MR. HORLICK-HOCHWALD: Certainly, Your Honor. If defense counsel for the Defendant Braune pledges himself to show us the original, we have no objections against the document.

THE PRESIDENT: Very well, proceed.

DR. STUEBINGER: That is the end of my submission of documents, your Honor. I would like my client to be excused this afternoon, if it is possible.

THE PRESIDENT: The Defendant Braune will be excused from attendance in court this afternoon, in accordance with the request of his counsel.

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DR. STUEBINGER: Thank you.

THE PRESIDENT: Very well.

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THE PRESIDENT: Yes, Mr. Walton.

MR. WALTON: Prosecution objects to the first six documents of the Braune Document Book I on the grounds that since these documents deal with his activities with the National Student Leadership and Chief of the German Academic Exchange Service, they do not apply to the issues as laid down in the indictment and are therefore immaterial. through and including Document 28, the whole series of documents. These documents pur*ort to deal with Braune's activities in Norway. Not one charge in this indictment relates to his activities in Norway, all of which occurred after his return from Russia. grounds that the source of this document is not given. The signature of Keitel is not attested to and for other formal reasons as to the form of the decree. to Braune Document 33 on the grounds that the laws issued by the Military Government of Germany are certainly immaterial to the issues in the case which are laid concerning crimes against Russian nationals. or a copy of a newspaper report clearly expressing the opinion of the author. It is neither a document nor is it an affidavit and it has therefore no probative value.

THE PRESIDENT: Mr. Walton, just a moment, please.

You may proceed, Mr. Walton.

MR. WALTON: Prosecution objects to Document 36, another newspaper account from a Swiss newspaper. I would like the record to be amended to show that Braune Document No. 36 was not offered.

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from a newspaper. It is hearsay, incompetent evidence in its present form and is irrelevant and immaterialy. excerpt from an Austrian newspaper, and further objects to Document 39, being a transcript -

THE PRESIDENT: Not submitted, Mr. Walton.

MR. WALTON: Sorry.

THE PRESIDENT: When Mr. Walton starts to object, he objects to everything, whether it is introduced or not.

MR. WALTON: Like Will Rogers, your Honor, I only know what I read in my document books. is clearly hearsay evidence, since the affiant does not testify to anything within her personal knowledge. 46, 47, 48 -

THE PRESIDENT: The defense counsel is missing a great opportunity. Mr. Walton did not object to the submission of Documents 43 and 43a and you haven't even presented them, so here is your chance to put them in.

MR. WALTON: If he does, I may do so in rebuttal, Sir. In my humble opinion they help my side of the case.

48? There is no objection to 48, 49, 50, 51, 52, but the prosecution does object to 53 for the same reason that this is a clipping from a newspaper. It is incompetent evidence and certainly irrelevant and hearsay on the part of the unknown author of the article. 55, since it wasn't offered. offer of the Supplement to Document II, the same being the Schilke affidavit wherein this affiant testifies or deposes concerning crimes against ethnic Germans by Russians.

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The Tribunal has also in its order of 9 October 1947 ruled on this type of evidence and on an undated order which was issued from the Tribunal about the same time it did the prosecution the honor of quoting a part of its brief or its objection that if the Russians committed a host of crimes over and over again, such evidence is immaterial as to the issues of the guilt or innocence of the defendants who are German nationals, having committed crimes. This is the same type of evidence and the prosecution therefore objects to it.

THE PRESIDENT: The Tribunal will take under advisement all those objections.

DR. STUEBINGER: I havennothing to say, your Honor.

DR. WIESMATH: Assistant of Dr. Schwarz for the Defendant Jost. May I now being with submitting the documents for the Defendant Jost? As an introduction, I would like to state that I intend just to indicate the content of the documents in a few words, since their probative value will be discussed and evaluated afterwards in the trial brief.

I may begin with Document Book No. I. I offer as Jost Exhibit No. 1the affidavit of Arthur Deeken. It is found on pages 1 to 3 of the Document Book Jost I. Contents: Evaluation of Jost's character and political attitude As Exhibit No. 2, Jost Document J-2 affidavit of Heinrich Eissfelder of 4 October 1947.

It includes pages 4 to 7 of Document Book I. It concerns Jost's character and personal action on behalf of political opponents and persecuted Jews.

Jost Exhibit No. 3 is Document J-3, affidavit of Edgar Thomashausen of 4 October 1947, pages 8 to and including 17. Contents Jost's character, style of loving, and support of the Thomashausen family in difficulties resulting from the fact that Frau Thomashausen is a Jewess.

As exhibit No. 4, I offer document J-4 on pages 18 through 20, an affidavit of Dr. Georg Leibrandt of 13 October 1947. Content: Conference with Rosenberg in Berlin, Jost's opposition to the shooting of Jews and attempts to cause Rosenberg to prevent the shooting of Jews.

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fact that Jost attempted to appropch Rosenberg about this after he had already been relieved from his Eastern assignment.

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passages from this affidavit. On page 18 - -

MR. GLANCY: If Your Honor please, the Prosecution has no objection whatsoever to this document; however, it feels it is more or less cumulative to take the Tribunal's time in reading this document now in its fullness, because the defense has just stated that they intend to cover all this material in their summary brief.

THE PRESIDENT: Dr. Weismath, unless you intend to read merely one sentence, or a very very short quotation, it would not be necessary to dwell on it at length, would it?

DR. WEISMATH: No, Your Honor, it was merely my intention to read from page 18 of the document book the very first sentence of the last paragraph and on page 19, the last two paragraphs.

THE PRESIDENT: You may read them if it is just a short excerpt.

DR. WEISMATH: I shall give a short synopsis of the contents. The discussion took place in Berlin at the end of November in 1942. Jost spoke very generally about the happenings during the Summer in the East, and pointed out that as for the tremendous events taking place in the East, not the individual SS-man was responsible but only the highest authorities, who had decreed these orders. Jost then pointed out that he himself objected to carrying out such orders. Finally, he attempted to cause Rosenberg either to prevent or to limit the execution measures.

THE PRESIDENT: What page does that appear on in English?

MR. GLANCY: He is giving us a synopsis, but I would like to correct the record, sofar as the English copy is concerned, it states that in November 1943 a conference took place, a year after Jost returned from the Einsatzgruppe.

THE PRESIDENT: Very well.

DR. WEISMATH: As Exhibit No. 5 I offer document J-5. This is an affidavit of Eugen Faulhaber of 13 October 1947. It includes pages 21 to 22 of the Document Book I. Contents: the number of Jews in the Wil*a Ghetto after Jost's removal as Chief of Einsatzgruppe A, and Commander of the SIPO and SD Ostland in August 1942.

As Jost Exhibit No. 6, there appears document No. J-6, affidavit of Richard Hildebrandt of 14 October 1947 pages 23-25 Contents: Jost's position in February 1944. Jost's refusal to become Commander of the SIPO and SD in the Nilolajew area, Himmler's attitude towards Jost. Jost's induction into Waffen-SS.

As Jost Exhibit No. 6 is document J-7, affidavit of Karl Hennicke of 14 October 1947, from page 26 through page 29. Contents: Jost's opinion on the problem of the executive and his reaction on receiving the order appointing him Chief of Einsatzgruppe-A and Commander of the SIPO and SD Ostland. Jost's intention to revoke this appointment, I just see I made a mistake. Jost Document No. 7 should bear exhibit No. 7.

As further document I offer Document J-8, affidavit of D. Visvalds Sanders of 15 October 1947, pages 30 and 31. Contents: Jost's attitude towards National Socialism and towards the Latvian people.

As Exhibit No. 9 1 offer Document J-9, pages 32 to 35, affidavit of Gottlieb Berger of 15 October 1947. Contents: Jost's quarrel with the Chief of Office IV, Reich Main Security Office. His attitude to Himmler. Himmler's order to draft Jest into the Waffen-SS meant as a punative measure. Kaltenbrunner' s circular letter. Position of White Ruthenia.

As Exhibit No. 9, Document J-10 pages 36-41, affidavit of Dr. Werner Best, of 16 October 1947, contents: Jost's character, his leaving of the Hesse Police Service, his entering the SD, his work in the SD, reasons why Jost left the SD. Jost's opposition to the shooting of Jews, and Kaltenbrunner's evaluation of Jost.

As Exhibit No. 11, the Document J-11, affidavit of Karl Wolff of 27 October 1947, pages 42 and 43, contents: Characterization of Jost. of 29 October 1947, pages 44 to 46. Contents: Jost suspected of having supported Goerdeler.

As Exhibit No. 13 I offer document J-13, affidavit of Gottfried Klingemaan of 30 October 1947, pages 47 and 48. Contents: Characterization of Jost as Chief of Office VI, Reich Main Security Office.

As Exhibit No. 14 I offer J-41, affidavit of Gottfried Klingemann, of 31 October 1947, pages 49 to 51, contents: Jost's refusal to liquidate the inmates of the Ljuban mental institution.

As Jost Exhibit No. 15, document J-15, affidavit of Georg Jedicke of 3 November 1947, pages 52 to 54, contents: Jost's character, refusal of Lohse's demand to clear the Ostland of Jews. of Document Book No. I, and I shall go to Document Book No. II.

I furthermore offer as Exhibit No. 16, Document J-16, affidavit of Hermina Nyhoegen, pages 1 and 2 of Document Book II, dated 23 October 1947. At this point I may point out that the statement of this affiant refers to matters which she only knows from hearsay, namely, the report by her husband who was an adjutant of the defendant Jost, but the defense considered it necessary to introduce this document as a direct proof, as it is not possible to talk to the husband and to have him testify,as he is probably a prisoner of war of the Russians at the moment, and, therefore, can not be taken to Nurnberg.

As Exhibit No. 17 I offer J-17, affidavit of Friedrich Vollheim, 4 November 1947, pages 3 to 5 of the Document Book II. Contents: Tasks of Office VI of Reich Main Security Office. No connection between Offices IV and VI. Jost's rejection of Mueller's influence on Office VI.

As Jost Exhibit No. 18. Document J-18, affidavit of Wilhelm Stuckart, dated 6 November 1947, pages 6 and 7 of Vol. II, Contents: Jost's character. His rejection of the police state tendencies of Heydrich.

As Exhibit No. 19 Document J-19, affidavit of Max Everwien, 6 November 1947, pages 8 to 11 of the document book. Contents: Jost's character, his attitude on the Jewish question, his anti-Communistic attitude, Jost's support of Everwein. His efforts to disconnect himself from Himmler.

As Exhibit No. 20 Document J-20, affidavit of Hans Hermann Rommers, pages 12 and 13 of Vol.II, dated 14 November 1947. Contents: Activity of Krasnowardeisk Kommando, no executions in the period from May until the period beginning of August, 1942. No use of gas wagon, judgment of Jost by Oplaender.

As Exhibit No. 21 Document J-21, affidavit of Wilhelm Waneck, dated 17 November 1947, pages 14-19 of Vol. II. Contents: Activity, tasks and organization of Office VI of the Reich Main Security Office. No organizational, official, or personal connection with Office IV of the Reich Main Security Office. Differences of Jost with Mueller and Heydrich. Judgment of Jost. Thomashausen case.

As Exhibit No. 22 Document J-22, affidavit of Hjalmar Mae, dated 17 November 1947 pages 20 and 21, contents: Jost's attitude on Estonia, his efforts to quit the police service.

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As Exhibit No. 21 Document J-21, affidavit of Wilhelm Waneck, dated 17 November 1947, pages 14-19 of Vol. II. Contents: Activity, tasks and organization of Office VI of the Reich Main Security Office. No organizational, official, or personal connection with Office IV of the Reich Main Security Office. Differences of Jost with Mueller and Heydrich. Judgment of Jost. Thomashausen case.

As Exhibit No. 22 Document J-22, affidavit of Hjalmar Mae, dated 17 November 1947 pages 20 and 21, contents: Jost's attitude on Estonia, his efforts to quit the police service.

As Exhibit No. 23 Document J-23, affidavit of Valentin Degen dated 18th November 1947, page 22 to 24, contents: Jost's assistance to Rev. Valentin Degen.

As Exhibit No. 24 Document J-24, an original letter from Adam Sitz to Rev. Degen, dated 6 November 1947, page 25 of Vol II, contents: Jost's assistance to Rev. Valentin Degen.

As Exhibit No. 25, Document J-25, affidavit of Dr Franz Riedweg, 25 November 1947 pages 26 and 27 of the second volume. Contents: Jost's human attitude and judgment by subordinates, his differences with Heydrich and Himmler because Jost did not obey orders blindly. which have already been received in the English translation. I would ask The Tribunal to allow me to submit the Volumes 3 and 4 at a later time, as soon as they have been translated.

Jost as I want to prepare my final plea.

THE PRESIDENT: Excuse him when?

DR WEISMATH: This afternoon, Your Honor, I would like him to come to Room 57 if that is possible.

THE PRESIDENT: The defendant Jost will be excused from attendance in court this afternoon and will be conducted to Room 57.

MR. GLANCY: If Your Honor please, this might come as a bit of a shock to the defense and it might expose me to be expelled from the league of conscientious objectors at this time, but I have no objection to the documents offered.

THE PRESIDENT: Very well, Mr. Glancy, that will be recorded.

DR. RIEDIGER: Dr. Riediger for the defendant Haensch. Your Honor, may I now begin with the submission of my documents. Sofar I can only introduce documents in Volumes I and II, because the translation department has only got that far at the moment. I may now refer to Book I, and I offer on page 1 as Exhibit No. 5 Document No. 1. It is the affidavit of Else Nevelling of 20 October 1947. The married couples of Nevelling and Haensch inhabited the same house in Berlin - Zehlendorf. Mrs. Nevelling testifies that the defendant went to the East only as late as February 1942, and she gives the reason for this.

On page a and on page 2-A is Exhibit No. 6. This is Document No. 2, affidavit of Herbert Dassler of the 23 October 1947. Dassler testifies that the defendant had tried to get acquainted with him in order to find a way out of the RSHA with his help. On 25 January 1942, the defendant had attended his birthday celebration and about a fortnight later he had been his guest again.

On page 3 and page 4 as Exhibit No. 7 is Document No. 3. It is the affidavit of Lisa Krueger-Martius of 29 September 1942. She is the wife of a former school comrade of the defendant, and she confirms the visits with Dassler at the end of January and in February 1942, and, furthermore, the attempts of the defendant to leave the RSHA.

On pages 5 and 6 is Exhibit No. 8, Document No. 4, affidavit of Elizabeth-Charlotte Ebbinghaus, dated 23 October 1947, giving the characteristics of the defendant, especially his ideals and attitude, and his experience as assessor in Doebeln; his dissatisfaction with the service in the RSHA and especially she gives the date of his leaving for the East as 26 February 1942.

On pages 7 and 7-A is Exhibit No. 9, Document No. 5. Affidavit of Maria Krueger-Martius nee Brust, dated 16 October 1947, she is the sisterin-law of the woman we mentioned before who used to live in Prague, and she states that Haensch during the time of his assignment in the East, approximately April or May 1942, had been to Prague on an official trip, and he went to see her on this occasion.

On page 8 is Exhibit No. 10, Document No. 6, a postcard of the defendant mailed by Army Postal Service dated 17 June 1942; in this postcard the defendant tells his wife that he has been ordered to return to Berlin.

On page 9 is Exhibit No. 11, Document No. 7, a telegram dated 24 June 1942 sent by Braune to the wife of the defendant, in which Mrs Haensch is being informed of the retransfer of the defendant, and she is asked to be in Berlin as from the 27 June 1942.

On pages 10 to 10-a is Exhibit No. 12, Document No. 8, letter of the Chief of NSDAP District Office Doebeln Court I, dated 1 July 1936, in which the defendant is informed that the exclusion from the NSDAP has become effective.

On page 11 is Exhibit No. 13, Document 9, affidavit of the former mayor Arno Witzsche Doebeln, dated 17 October 1947. He testifies that the defendant has been excluded from the National Socialist Party, and has been released from his job in the service of the Doebeln District, because of his behavior in front of the Kriesleiter.

On page 12, Exhibit No. 14, is Document No. 10, affidavit by Walter Schallenberg, dated 23 October 1947, dealing with the activity of the defendant in the SD Main Office and later the RSHA.

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On pages 15 and 15-A is Exhibit No. 15, Document No. 12, affidavit of Wilhelm Martenz, dated 23 October 1947. Martenz was a criminal agent in SK 4-b. His statement concerns the time during which the defendant was in charge of the Commando in SK-IV-B as well as the activity of the defendant himself.

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Pages 16 through 17, Exhibit No. 16, Document No. 13, affidavit of Gottfried Klingelmann dated the 30th of October 1947. He had been the chief of the Personnel Department of RSHA in 1939. He confirms that the members of the RSHA, after the war had broken out, had no possibility to give up their service voluntarily and that those who applied for release were threatened with disciplinary proceedings. Klingelmann furthermore states that the defendant, in spite of this, applied to Heydrich and asked to be released in order to join the Wehrmacht, without any success.

Pages 18 to 19a as Exhibit No. 17, Document No. 14, affidavit of Dr. Friedrich Stalmann dated October 27, 1947, concerning the activity of the defendant in Denmark. Stalmann confirms that the defendant extensively supported the interests of the Danish population and also the interests of the English and American civilian internees.

Pages 20 to 22 is Exhibit No. 18, Document No. 15, affidavit of Dr. Werner Best, the former Reich plenipotentiary in Denmark, of the 31st of October, 1947, likewise dealing withthe activity of the defendant in Denmark and gives a detailed description concerning the character of the defendant.

Now I shall come to Document Book No. II. From this book I offer and I submit-

THE PRESIDENT: Dr. Riediger, we will take that up immediately after the recess.

(A recess was taken.)

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(The hearing reconvened at 1130 hours.)

THE MARSHAL: The Tribunal is again in session.

DR. DURCHHOLZ: Durchholz for the defendant, Schulz. Your Honor, I would like to ask that the defendant Schulz be excused from attendance in court this afternoon in order to prepare his final plea, and I ask that instructions be given that he be brought to Room 57 immediately after lunch so that he may be at my disposal.

THE PRESIDENT: The defendant Schulz will be taken to Room 57 this afternoon, and there he will confer with his attorney for the afternoon.

DR. DURCHHOLZ: Thank you.

THE PRESIDENT: Yes.

DR. RIEDIGER: Your Honor, I ask that I may continue with my Document Book II.

PRESIDENT: Please do.

DR. RIEDIGER: On page 1, as Exhibit 19, I offer Document Number 16. This is an affidavit by Wilhelm Martens, of 20 November 1947, which supplements, or rather supports his explanation which he has already given and also is a further clarification as to the period of time during which Walter Haensch was in charge of the commando. This is an affidavit of Lisa Krueger-Martius, dated 2 November 1947. This is also a supplement to the former explanation already introduced previously, and which gives more precise statements concerning the time during which Walter Haensch was in Berlin and apart from that, also gives a description of his character. This is an affidavit by Erika Coulon, of 24 November 1947. The contents of this document show that Frau Coulon and her husband lived together with the couple Haensch in Berlin - Zehlendorf in the same house. They had personal and social contact with the defendant. Frau Coulon explains that the defendant Haensch only at the end of February 1942 was assigned COURT II CASE IX to the East--to Russia, and also that in May 1942 on the occasion of an official trip to Prague he stayed in Berlin during a visit.

Apart from that, the witness also testifies as to the character of the defendant, in particular concerning his attempts to leave the RSHA.

On page 6, as Exhibit Number 22, I offer Document Number 19. This is an affidavit by Dr. Friedrich Stalmann, dated 14 December 1947. This is also a supplement of his statement offered previously of 27 October 1947, and in particular deals with the personality of the defendant Haensch.

On page 7, as Exhibit Number 23, I offer Document Number 20. This is an affidavit by Charlotte Hermstaedt of 31 October 1947. Frau Hermstaedt was the secretary of the defendant during the time of his activity in the RSHA after his return from the Eastern assignment. This affidavit also discusses the personality of the defendant and his continuous efforts to leave the RSHA.

On page 8, as Exhibit Number 24, I offer Document Number 21. This is a postal receipt from Berlin of 28 February 1944. This shows that the defendant at the time received his salary from the finance office of the foreign office in Berlin. following persons who gave affidavits were not party members, Frau Ebbinghaus, Frau Lisa Krueger-Martius, Frau Maria Krueger-Martius, Frau Nevelling, and Frau Hermstaedt. Your Honor, I now would like to reserve the right to submit Document Book III, which is still being completed.

THE PRESIDENT: That right will be reserved to you. Who will succeed Dr. Riediger in the presentation of documents? You may proceed, Dr. Ulmer.

DR. RIEDIGER: Your Honor, may I make another request? I would like to ask that the defendant Haensch be excused from attendance in court this afternoon, and that he be brought to Room 57.

THE PRESIDENT: The defendant, Haensch, will be taken to Room 57 this afternoon to confer with his counsel.

DR. ULMER: Your Honor, I shall present my documents in the sequence in the document books. Therefore, document numbers and exhibit numbers will be the same. Since the document books were compiled while the trial was in progress, on the whole, according to the receipt of the documents, the numbering of the document books has not been done according to subject matter, but in each document book documents are contained on each subject. The subjects concerning the case of Six are (a) Vorkommando Moscow--Advance Commando Moscow, Counts 1 and 2; (b) security police, security service, Count 3; (c) activity of the defendant in the foreign office to support the refutation of count 3; (d) the scholarly activity of the defendant and general character, also to refute count 3. Therefore, every time when I make a short explanation on a document which I present, I shall add whether this document concerns (a), (b), (c), or (d). May I start?

THE PRESIDENT: Please do, Dr. Ulmer.

DR. ULMER: I submit Document Number 1, which also is Exhibit Number 1. This is the operation report Number 17 of 9 July 1941. Its contents deal with the assignment of commando Moscow, which included interpreters and people familiar with Moscow and which was commanded by SS Col. Six, to the 4th Tank Army Hq.

Document Number 2 is offered under Exhibit Number 2. This is the operation report Number 44, of 6 August 1941. It contains the material in the house of the Soviets in Smolensk safeguarded by the VKM. That is a task of safeguarding archives.

Document 3 is offered as Exhibit Number 3. This is an affidavit by Gerhard Utikal, a former Reich Office Chief and Chief of the Einsatz staff Rosenberg, which was given on 16 October 1947. It contains facts about the agreement between Rosenberg and Heydrich from the year 1940 according to which the security police received the right to evaluate documents and archive material in the occupied territories. It also talks about the dispatching of small commandos by Office 7 to Paris, The Hague, Brussels, Athens, and the setting up of such an archive commando for Moscow.

Document Number 4 I offer as Exhibit Number 4. This is an affidavit of 1 October 1947 of the former Colonel in the general staff, Erich Helmdach, who was G-2 officer in the AOK 4 from July until august 1941. He confirms that in the middle of July 1941 Six appeared in the command post of the AOK in Tolodiono , and as far as the tasks of the Vorkommando were concerned, he describes how document archives were to be secured in the Russian capital and he shows his intention of advancing on Moscow with the Division Reich, also that the advance Commando Moscow was made up of interpreters and they dealt with tasks which had nothing to do with liquidations.

Document Number 5 is offered as Exhibit Number 5. This is an affidavit of 1 October 1947 of Herr Oscar Wagner. At the time he was the assistant of the G-2 officer in the AOK 4. He confirms that Six as chief of the advance Commando Moscow in the middle of July 1941, was in Tolochino with the G-2 officer, Major Heldach, with whom he conducted discussions, and concerning the tasks of the VKM, he described the safe guarding of state archives in Moscow, Also he had received an army order for the securing of the documents.

I submit Document Number 6 as Exhibit Number 6. This is an affidavit of 3 November 1947 of the former government assessor, Karl Radl. This confirms that he and Six, became known as members of the Waffen SS in 1940 and the beginning of July in 1941 in Minsk, he happened to come Court2, Case 9 across him again and heard on that occasion that Six was in charge of a small archive commando, which was not part of Einsatzgruppe B, and that it was to safeguard archives in Moscow.

Document Number 7 is offered as Exhibit Number 7. This is an affidavit of the author, Cornelius von der Horst of 31 August 19471. It confirms that the meeting with Six in Smolensk came about owing to an illness in august 1941; the statement by a female member of the VKM that it was its task to secure archives and documents in Moscow. It confirms that the VKM was made up of a small staff of interpreters and the statement that the VKM, the Advance Commando Moscow, could not have taken part in executive measures.

Document Number 8 I submit and offer it as Exhibit Number 8. This is an affidavit of 7 October 1947 of the former colonel of the Waffen SS and artillery battalion commander of the Division Reich from the fall of 1940 to the fall of 1941. His name is Adolf Wunder, who was the immediate superior of Six in the Waffen SS. He describes in his affidavit, Six ' tasks in the Division Reich from December 1940 until June 1941 -Heydrich's repeated and vain attempts to call Six back from the Army service to Berlin. The recall of Six from the territory -- the advance territory in the East on 20 June 1941 to Berlin, Six' resistance to this order and the division commander's reference to his duty to obey. He also confirms the taking up of contact between Six and the Division Reich in the Beresina and the Jelna section and the discussions with the Division Reich in Smolensk during which Six explained the archive task of his commando in which he pointed out that he was independent from the Einsatzgruppen. He said that the strength of the advance Commando Moscow, consisted of 20 men, among them were about 5 interpreters, and he explained his intention to advance on Moscow with the Division Reich.

Document Number 9 is offered as Exhibit Number 9. This is the affidavit of the former General of the Waffen SS and chief of the SS main office, Hans Juettner, of 3 September 1947. Here it is confirmed that in the spring of 1940 Six reported to the Waffen SS.

After having received his basic and reserve officers' training, he was transferred to the Division Reich, and the chief of the security police, Heydrich, had tried in vain to call Six back from the army. Even Himmler himself, shortly before the outbreak of the Russian campaign, ordered Six to come back to Berlin. Heydrich intended to start a disciplinary action against Six because of disobedience and lack of discipline, and Juettner protected Six from Heydrich. Finally, the affidavit contains the confirmation that Juettner only released Six from the Waffen SS after this dispute was formally settled.

Document Number 10 I offer as Exhibit Number 10. This is an affidavit of 3 September 1947 of the Herr Paul Hauser, former colonel of the Waffen, commander of the Division Reich from 1939 until 1941. He assures Six' participation in the reserve officers' training course from September to December 1940, his transfer to the department of the artillery, Division Reich, and his participation in the campaign in France, the campaign against Yugoslavia, and the advance in the East in 1941, he took part in. Also the order by Himmler existed that Six should return to Berlin. This order was received a few days before war broke out for the Soviet Union. Finally, the statement that Six had to obey this order of Himmler.

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Document No. 11 offered as Exhibit No. 11, this is an affidavit dated 14th September 1947, by one of the university professors wife, Veronika Vetter, from Smolensk. She confirms her meeting Six and his Commando in Smolensk. She confirms that no executive activity by Six and his people insofar as the local inhabitants were concerned. She confirms that Six returned to Berlin on 20 August 1941.

Document No. 121 offer as Exhibit No. 12. This is the affidavit of former University Lecturer Kurt Walz, dated 20 October 1947. It confirms that on 22 June 1941 Six was given leave from the Waffen-SS to go to Gerlin in order to set up an archive commando from Moscow, She also confirms that Six on 21 August 1941 returned from Russia because the military situation had delayed the capture of Moscow, and he didn't want to take over a Commando against the partisans. D Document No. 13, I offer as Exhibit No. 13. This is an affidavit of a co-worker of Six in the SD Main Office from 1935 until 1943. The name is Karl Burmester, dated 6 October 1947. It confirms the activity of Six as Chief of the Press Department in the SD from 1935 until 1937; of the Section for Home Affairs from 1937 until 1939, and of the Office VII, Office for Ideological Research, after 1939; also it confirmsthe tension between Six and Heydrich that existed and Six' efforts to work exclusively for the University, his volunteering and his service with the Waffen-SS, and Heydrich's repeated intentions of recalling him and ordering Six to Berlin in order to set up a commando to secure documents and archives in Moscow immediately after the war against Russia had started. It also confirms the archive task of Office VII in the occupied territories and the character of an archive commando. Finally it confirms that Six returned from Russia in August 1941, his release from the Waffen-SS in 1942; his leaving asChief of Office VII of the SD Main Office in March 1943.

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Your Honor, these documents Nos. 1 to 13 inclusive which have the same exhibit numbers are those documents in this document book which deal with the subject "A", which I mentioned at the beginning. That is the subject "Advance Commando Moscow.", in order to refute Counts 1 and 2.

As Document No. 14 I offer as Exhibit No. 14, the affidavit dated 29th September 1947, of Dr. Werner Best, Office Chief I in the RSHA until 1940. This statement confirms that Six had a bad relationship with Heydrich; at the beginning of the war in 1939 he tried in vain to be released from the SD; it also confirms that Office VII merely dealt with scholarly tasks, and it confirms that since 1939 Six tried to be released from the Waffen-SS, and that Six hated Heydrich.

Document No. It isoffered as Exhibit No. 15, which is the affidavit dated 29 September 1947 of Dr. Wilhelm Albert, personnel chief of the SD Main Office from 1935 until 1939. It contains the order to Six to set up a Press Department and a Literature Department in the SD Main Office in 1935, and Dr. Six scientific aims to carry out this task; his functions as Chief of the Department "Cultural Life" towards the end of 1937, and it also confirms the tension that existed between Six and Heydrich, and the serious clashes between them in the year of 1939.

The Document No. 16 which I submit I offer as Exhibit No. 16, This is an affidavit dated 13 August 1947, by the secretary of the defendant Six, from 1938 until 1945. The name is Gerda Scholz. This affidavit contains the confirmation of the disputes that arose between Heydrich and Six after 1939 and of the lossof confidence of Heydrich to Six. It is confirmed here that Six attempted to be released from the SD in 1939; Office VII was set up and his tasks are described. It is also confirmed that he volunteered for the Waffen-SS in order to be released from the SD. The formation of the "Advance Commando Moscow" purely as an archive commando. Also this affidavit is the confirmation of the fact that Six was given leave from the SD in the year of 1942 and was transferred to the Foreign Office, and finally released from the SD in the Spring 1943, and transferred to the Cultural Political Department in the Foreign Office.

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It also confirms the keeping in office non-National Socialist officials in the Cultural Political Department, by its director Six and that he kept officials in the Foreign Office whose political opinions were not popular.

Document No. 17 isoffered as Exhibit No. 17. It is an affidavit of Hans Hendrik Neumann, adjutant of the Chief of the Security Police and SD, Heydrich, from 1936 until 1939. The date it bears is 4th September 1947. It confirms the scholarly activity of Six in the SD; the tension between Heydrich and Six. Heydrich's judgment concerning Six as an "intellectual" and eager to compromise and the clashes between Six and Heydrich in 1938; disputes between the two ever since 1939; and that his application for release was rejected in 1939.

I submit Document No. 18 and offer it as Exhibit No. 18. This is the affidavit dated 3 September 1947, by Ursula Scherrer, Secretary in the Adjutant's Office of the Chief of the Security Police and the SD, Heydrich, from 1940 until 1942. It confirms the estrangement between Heydrich and Six, after 1938; disputes between the two ever since 1939. That Six was removed from his office, and that his application for release was rejected in 1939 Heydrich's disapproval because Six was absent for a long time from the Waffen-SS, and the severe disputes between Six and Heydrich in Prague at the end of 1941.

Document No. 19 is offered asExhibit No. 19. This is the affidavit dated 22 September 1947, the former adjutant of Himmler's Werner Grothmann. It confirms that in the time from 1940 until the end of the war Six never was asked to make personnel reports to Himmler, and that he made no written reports to Himmler.

Document No. 20 I offer as Exhibit No. 20. This is an affidavit of 1 October 1947, of Willi Suchanek, former liaison officer with the Chief of the German Police Himmler.

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He confirms that Six never reported to Himmler, nor did he have written communications with him.

Document No. 21 I offer as Exhibit No. 21. This is the affidavit dated 14 October 1947, by Karl Hederich, former co-worker of the Reichsleiter Bouhler. He confirms that Six, as Chief of the Press Department of SD, automatically was taken into the Party Examining Commission without becoming a political leader this way. It confirms the basic fight carried on by Six against persons such as Goebbles, *ohrmann and Rosenberg, and against ultra-radical groups within the NSDAP. It also confirms that Six never displayed any anti-Jewish persecution tendencies. Honor, are the documents on the subject "B", that is, the subject of "SD" to refute Count III.

Document No. 23 I want to offer as Exhibit No. 23, that is the affidavit dated 16 August 1947, of Dr. Paul Roth, formerly Senior Councellor of Legation in the Cultural Political Department of the Foreign Office. It confirms the maintenance of relations with scholars abroad, which Six kept free from Party political tensions, in particular from the Ministry of Propaganda, the Party Chancelry, Rosenberg's Office of Foreign Affairs, and the organization of Germansliving abroad. It confirms the stron* fight Six carried on against people who had Party tendencies and would not give in; that he disapproved of anti-religious and anti-Christian tendencies in the Cultural Political Department, of which Six was chief. It confirms the material support of the RomanCatholic Fu-Jen-University in Peking; of Christian hospitals in China, and the opening of the Jewish Atom-Research-Scientist Niels Bohr's Institute.

Document No. 24. is submitted as Exhibit No. 24, which is the affidavit dated 6 October 1947, by Dr. Robert Feist, formerly Secretary of Legation in the Foreign Office.

This affidavit confirms that Six stood up for the old time civil servants in the Cultural Political Department of the Foreign Office ; the elimination of political thesis in the cultural work; the cooperation of Christian elements through his prhibiting that German school teachers were not to leave the church; that he wanted to have kept up religious instructions in the schools, and the overlooking of Jewish relationship in the appointment of artists and scholars in foreign countries.

Document No. 25 is offered as Exhibit No. 25. This is an affidavit dated 3 November 1947, by Rudolf Schleier, former Minister first class and Senior ministerial Director in the cultural political department of the Foreign Office. He states that Six in his department in Krummhubel concerning the organization of Jews, never on any occasion talked about the physical destruction of the Jews, also that Six never represented any anti-Jewish tendencies.

Document No. 26 is offered as No. 26. This is the affidavit dated 13th August 1947, of the former secretary of Dr. Six; her name is Gerda Scholz. She confirms that Six obtained the material for his lecture held at Krummhuebel from excerpts of a booklet, and that the manuscript was laid down in writing. She also confirms that nowhere the destruction of Jews in the East or all over the world was ever mentioned.

Document No. 27 is offered as exhibit No. 27. This is an affidavit of 10 October 1947 of Kurt Walz, In his capacity as participant in the meeting of Krummhuebel, he states that Six in his lecture on Jewish organization never mentioned anywhere that Jews should be eliminated.

Document No. 28 I offer as Exhibit No. 28. This is an affidavit of 20 October 1947, of Eberhard v. Thadden, former Counsellor of Legation first class at the Foreign Office, He confirms that in no part of his speech in Krummhuebel did Six talk about a physical elimination of Eastern Jews.

Document No. 29 is offered as Exhibit No. 29. This is the affidavit dated 31 October 1947 of Friedericke Haussmann. She also took part in this meeting of the Foreign Office in Krummheubel.

She confirms that in the Krummhuebel Herr Six never mentioned anything about the elimination of Jews in the East.

As Document No. 30 I offer as Exhibit No. 30, an affidavit of Hans Richter, dated 6 October 1947, who also took part in the meeting in Krummhuebel. He also confirms that Six did not make an instigating lecture with anti-Jewish tendencies; and that Six expressed sharp criticism on the anti-Jewish measures of the National Socialist Government.

Document No. 31 I offer as Exhibit No. 31. This is an affidavit of Professor Dr. Walther Kranz, ordinary professor at the University at Istanbul. It contains statements that Six despite objections of the Party organizations made possible his appointment and departure for Istanbul University, although his wife was of Jewish descent. 22 through to 31, concern the subject "C" which I discussed at the beginning concerning the activity of the defendant in the Foreign Office. They are to help to refute Count III.

Document No. 32 ---

THE PRESIDENT: You intend now to take up another subject in the group of affidavits?

DR. ULMER: No, Your Honor, now I come to the subject "D".

THE PRESIDENT: Yes, I thought that we might recess now for lunch and you may take them up after lunch, is that agreeable?

D DR. ULMER. Yes, Your Honor, unfortunately I didn't know at the time.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

THE MARSHAL: The Tribunal will be in recess until 1345 hours.

(Recess until 1345 hours 16 January 1948).

(Whereupon the Court met pursuant to noon recess)

1345 hours 16 January 1948)

THE MARSHAL: There will be order in the courtroom. The Tribunal is again in session.

THE PRESIDENT: You may proceed.

DR. ULMER: I proceed with document No. 32, which is offered as Exhibit No. 32. It is the affidavit dated 10 October 1947 of Dr. Albert Prinzing, former professor at the Department of International

Science of Berlin University. He confirms that the defendant Six mixed freely with Jewish professors and students during the time of his studies at the University, and on the faculty of foreign affairs which was set up according to the Anglo-Saxon pattern of which he was the director. He furthermore confirms the relationship between Six and Heydrich, and the volunteering of Dr. Six for the Waffen-SS in order to remain with this organization until the end of the war. The affidavit also confirms the re-transfer of Dr. Six to Berlin on 22 June 1941, in order to take an assignment in the Archive Unit of Moscow, and the final return to Berlin of the defendant Six on 21 August 1941, in view of the delay of the surrender of Moscow, and his refusal of taking part in the meantime in the fighting of the Partisans.

I offer my Document No. 33 as Exhibit No. 33. It is an affidavit of the 11th of October, 1947 of the former lecturer at the Department on Foreign Countries at Berlin University 1940 to 1945, by the name of Kurt Walz. He confirms that six already from the year 1930 on did not adhere to the Nazi dogma, that he was without prejudice against Jews and that he studied under Jewish professors as for instance Jellinck, Beystrasse and Eckhardt Director of the Section for Culture of the Foreign Office he always demanded freedom of science and carried it out within his own domain; that is in many cases, and he gives the cases of Pfeffer, protected political persecutees from party offices, Haushofer, Eschmann, Grewe, and that he trained his students to practice critical and independent thinking.

Document No. 34 I shall submit now under Exhibit No. 34. It is the affidavit of the 13th of October, 1947, of the former professor of Berlin University, Dr. Karl-Heinz Pfeffer. He testifies to the purely scientific purpose of the Department on Foreign Countries, the assurance of complete freedom of teaching and research in political science, the elimination of the influence of Party organizations; he further states the intervention in favor of Professor Haushefer, related to Jews by marriage, and of Professor Grewe, who had been expelled from the Party, and Six' cultural work as a scientist and Minister, destined to create mutual understanding between the nations.

Now I shall offer Document No. 35 under Exhibit No. 35. It is an affidavit of the 7th of August, 1947, of the Ordinary Professor of the University of Berlin, Dr. Dietrich Westermann. In this he confirms the complete independence of the Department on Foreign Countries from political influences, and the purely scientific aims of the Faculty.

No. 36 I shall now offer as Exhibit No. 36, it is the affidavit of 9 October 1947, of the Ordinary Professor and Dean of Political Science in Freiburg, Breisgatt, Dr. Wilhelm Grewe. In this he testifies to the effect that independent scientists were gathered in the Department on Foreign Countries, without regard to party membership.

The affidavit further bears out that he protected those persecuted for racial and political reasons. It describes the Department on Foreign Countries as the place where persons alien to National Socialism could freely perform scientific work until the end of the war. The affiant further certifies that the Defendant Six suported and aided him and that Six furthermore protected him when the latter, that is the affiant, Professor Grewe, married a half-Jewess in 1943.

I shall offer Document 37 as Exhibit No. 37. It is an affidavit of the 24th of September, 1947, of Dr. Friedrich Schoenemann, Professor of History of American Culture, Exchange Professor of Harvard University. He testifies to the effect that Six stood up for the principle of scientific freedom, and further testifies as to the tolerance displayed by him as Dean of the Department on Foreign Countries against National Socialist pressure. He also testifies to the rejection of party slogans on the part of Six and the independence when facing Nazi ideology, and the support of his professors when difficulties arose with the Gestapo.

Document No. 38 I shall offer as Exhibit No. 38. It is the affidavit of 31 July 1947 of Ilse Richter, Secretary of the Department on Foreign Countries at the Berlin University, from 1939 until 1945. It is here confirmed that the Department on Foreign Countries did not have any relations whatsoever with the Security Service, that Six within the Faculty was a tolerant dean, that, contrary to the demands of the National socialist Students' League and of the curator, he permitted those students who were related to Jews by marriage to conclude their studies. It further confirms that he successfully intervened for Professor Haushofer, related to Jews by marriage, and for professor Grewe, married to a Jewess, against the Gestapo, the Gauleitung--Berlin, the Party District Leadership of Berlin, and the Reich Ministry of Education.

Document No. 39 I offer as Exhibit No. 39. It is an affidavit of 30 August, 1947 in which Miss Countries at the Berlin University from 1940 until 1945, testifies to the scientific independence of the Department on Foreign Countries from Party offices, the trenchant COURT II CASE IX arguments with the National Socialist Dozentenbund -- Lecturers' Association -- and the Party Chancellery on the subject of those professors and lecturers who were not National Socialists, the students who were related to Jews by marriage and especially the Professors Haushofer and Grewe, related to Jews by marriage.

my Document Book No. I. As I have already said, there are another two document books, No. 2 and 3. I asked in the Defense Information Center and in the Translation Department about them and I was told that it will be ready in the translation and memographed at the very latest on Monday morning and that I shall receive it on that date. Therefore, on Tuesday I shall be in a position to submit the remaining two document books in the same shape as I submitted this one. I have made a closing brief.

THE PRESIDENT: If you have them Monday morning, why must you wait until Tuesday to present them?

DR. ULMER: Your Honor, because the prosecution will insist on the 24-hour rule and that must elapse between my receiving the document books and my actual submission in court. Otherwise I could do so earlier. If I shall have them on Monday morning and there will be no objections, I can of course introduce them on Monday morning.

MR. FERENCZ: If the Tribunal please, we will waive the right to have the document books twenty-four hours in advance, provided we can object to the document 24 hours after the document is offered.

THE PRESIDENT: I think that is fair.

DR. ULMER: Thank you very much. Then I can conclude my documents as soon as I get my document books. I have concluded my closing brief. It will be processed on Monday and stencils will be made. I shall also submit a translation of this which I shall have made on my own so that no time will be lost by the translation of the closing brief, so the closing brief can be submitted to the Tribunal for its full evaluation.

THE PRESIDENT: Do you have something, Mr. Ferencz?

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DR. FERENCZ: Your Honor, the defense counsel in this case have offered a considerable number of documents and we have permitted them to come in without much objection. You will recall that the prosecution was requested to put our interrogator, Mr. Wartenberg on the stand to explain how the affidavits were taken. I would like to submit a few questions to Dr. Ulmer as to how his affidavits were obtained. Therefore, this will just be a matter of three or four questions and I request that Dr. Ulmer take the stand.

THE PRESIDENT: That all depends upon whether he is willing to do so or not. Perhaps he can answer from where he is standing.

MR. FERENCZ: Of course, if Dr. Ulmer has some very strong objections to testifying, as to how these affidavits were obtained, we may withdraw our request.

THE PRESIDENT: Well, perhaps you can make a statement, Dr. Ulmer, as to how these affidavits were obtained.

DR. ULMER: Your Honor, of course, I shall be at the disposal of the Tribunal and will give any information as to the affidavits and especially to the inobjectionable way these affidavits were taken and made out. Therefore, I should like your Honor to ask me the questions which are necessary and I shall answer them, but I think the idea suggested by the prosecution that defense counsel should take the stand and justify himself as to whether he obtained his documents in the correct manner -- I think this is an idea which I certainly wish to object to most strongly.

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THE PRESIDENT: You don't need to object. The Tribunal has already stated that you can make your statement from where you are standing and Mr. Ferencz can ask you and it is just a conferencial matter, rather than an interrogation.

MR. FERENCE: In that case, I will limit myself to two questions. Dr. Ulmer, in the affidavits that you took, did the affiants always have the opportunity to make corrections, if they so desired?

DR. ULMER: Every single affiant was told by me in the outline what the important matter for me was, as regards my defense of my client, the Defendant Six was all about, and that I was not interested in any details concerning his clothing or such matters, but only in questions concerning the counts in the indictment. All the statements, therefore that were made and were included, in the affidavits which were taken by me or by my assistant Dr. Voelkel, of course are only statements which these people wanted to make. In no place is there any sentence in these documents which I especially asked the affiants to give, or begged them to state anything; or so to say, included something which they did not want to say.

MR. FERENCZ: Dr. Ulmer, did you ever put dates into the affidavit which the affiant was personally unable to remember?

DR. ULMER: If there are any special dates contained in the affidavits then the affiants must have declared or stated to me that they were certain that these dates are correct. If a special date was on essential matter to me in one or two cases and the affiant told me that after six or seven years, he wasnot able to say that this was the 19th or 17th of July or August, then, if this happened, I asked these gentlemen whether they knew the approsimate date, whether it was the first half of August or the second, and if these people were still in a position to remember, then in this way the date was taken into the affidavit.

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MR. FERENCZ: Thank you, Dr. Ulmer.

DR. ULMER: You are welcome.

MR. FERENCZ: Your Honor, of all of the affidavits presented on behalf of Dr. Six, I would like to cross-examine one of the affiants. I refer particularly to Exhibit No. 11 on page 19 of the Defendant's document book.

THE PRESIDENT: Well, is the affiant available? How are you going to get him?

MR. FERENCZ: The affiant, Your Honor, is either outside the door now or will be within the next minute. This is the affidavit of Veronika Vetter and Dr. Ulmer told us in introducing it that it was being offered --I am quoting Dr. Ulmer -- "She confirms his return to Berlin on 20 August, 1941." That's on page 20 line 5, of the affidavit. Dr. Ulmer also stated that this affidavit was being introduced to show that Vorkommando Moscow had nothing to do with executions. That is about the middle of the page, page 20. I now request the Tribunal's permission to call this witness for the purposes of cross-examination, on the question of how this affidavit was obtained and the accuracy of those statements.

THE PRESIDENT: If the affiant is available, you certainly have that right to cross-examine her.

DR. ULMER: The affiant can be reached through the address mentioned in the affidavit, Stuttgart Korntal, Berstrasse 3.

THE PRESIDENT: Dr. Ulmer, Mr. Ferencz states that he has already located the affiant and that she is here. That is what he has just stated.

DR. ULMER: I see. I beg your pardon.

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MR. FERENCZ: Your Honor, the witness is on her way down here and will be here in just a moment. I request that the Tribunal spend that minute in just familiarizing themselves with the affidavit so that we can save some time in questioning;the witness will be here in just a moment.

THE PRESIDENT: We will read it as he goes along. We are familiar with it. You might consume this time, Mr. Ferencz-

MR. FERENCZ: In other objections?

THE PRESIDENT: Yes, if you have any other objections.

MR. FERENCZ: Yes, Your Honor. There is a group of documents, Exhibits 14 to 21, which according to Dr. Ulmer were offered to show what the defendant's activity was in the SD. The SD was found to be a criminal organization by the International Military Tribunal and its criminality is no longer open to question in this case. I therefore object to all the defense counsel's Exhibits 14 through 21 on the grounds that they are immaterial.

DR. ULMER: May I make a statement concerning this objection, that as far as the criminality with regard to membership in a criminal organization, and I wanted to avail myself of the possibility which the main prosecutor in the IMT, Justice Jackson has given that there is no objection for each single individual to justify himself. And of this, I do not want to object, with this affidavit, against the decision of the IMT, but I only want my client to be exonerated of this particular count in the indictment; that is, membership in a criminal organization.

THE PRESIDENT: We have adopted the policy, Dr. Ulmer, of deciding whether these objections are to be upheld after we will have heard all the presentations so that the court takes it under advisement.

MR. FERENCZ: Your Honor, the witness is here and I am prepared to proceed with the questioning.

THE PRESIDENT: Yes, the oath will be administered. follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me: I swear by God, the Almighty and Omniscient, that I will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: Now, you may be seated. BY DR. FERENCZ:

Q. Witness, will you please tell the Tribunal your name and address?

A. Yes, Veronika Vetter, Korntal Stuttgart, Bergstrasse 3.

Q. Are you the same Veronika Vetter who gave an affidavit to be used in this case concerning Dr. Six?

A. I didn't understand it all.

Q. Are you the same Veronika Vetter who gave an affidavit to be used in this case concerning Dr. Six?

A. Yes.

Q. Will you tell the Tribunal, please, when did you see Professor Six for the first time?

A. On the 23rd I came to Smolensk, on the 23rd of August , that is, 1941.

Q. Was that the first time you saw Dr. Six?

A. What?

Q. Was that the first time you saw Professor Six?

A. Yes, I had never seen Professor Six before that.

Q. That was in Smolensk on the 23rd of August, 1941?

A. Yes, on the 23 August, 1941, I returned to Smolensk from the village.

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Q. How do you know that it was on the 23rd of August that you saw Professor Six?

A. That becomes evident from the documents which you have and from my diary and all the other papers.

Q. When did you see Dr. Dix for the last time in Smolensk?

A. I could not say the exact date. It was very brief, the period of my working there. Dr. Six was only in Smolensk for a very short time. I told Dr. Ulmer so.

Q. Now I am going to hand you a document to refresh your memory. Will you tell me if you recognize this document?

A. Yes.

Q. Will you explain what that document is, please?

A. It was made out on the 31 of August, 1941, and was handed over to me by Dr. Mahnke.

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Q. And that is some letter addressed to you?

A. Yes.

Q. You say that is made out on the 31st of August 1941. Was Dr. Six there at the time that letter was made out?

A. This certificate I received when he was still there.

Q. And you are sure of that?

A. Yes, I am quite certain.

W. You saw Dr. Six there at that time?

A. Yes, I got all the certificates at that time. That was done at the request of Dr. Six, that they were handed to my by Dr. Mahnke.

Q. Do you know an SS-man named Noack?

A. Yes.

Q. What was his title?

A. One called him the Commissar of Jewish Questions.

Q. During the last few months did anyone come to talk to you concerning Dr. Six?

A. Dr. Ulmer asked my by telegram.

Q. Did anyone else come to see you concerning Dr. Six?

A. Mrs. Six also came to visit me.

Q. And when Mrs. Six came to visit you what did she tell you about Dr. Six?

A. She told me that Professor Six was in Nurnberg and she told me to get in contact with the defense counsel because that was very important, because that was important for the fact for establishing what Professor Six did in Russia. Then I said that I couldn't tell what Professor Six was responsible for in Russia because the archives I never saw in Russia. I only saw them when I a

Q. Just answer the questions, please.

*. Did Mrs. Six show you a letter which she had received from Professor Six?

A. Yes, this letter said that I was to contact Dr. Ulmer and to tell him everything I knew about the activity of Dr. Six in Russia.

Q. And did this letter say that you were to be trained in your answers?

A. No, Dr. Ulmer never asked me to say anything in particular.

Q. My question was, did that letter say that you were to be trained or "Dressiert", the German word, in your answers?

A. Yes.

Q. And what is your answer; did you say yes? Would you please answer the question again?

A. Yes.

Q. And then Dr. Ulmer came to see you, is that correct?

A. No, no, I was requested by telegram from Dr. Ulmer and then I went to Stuttgart.

Q. And what happened when Dr. Ulmer came to see you or you went to see him?

A. I went to see Dr. Ulmer, and Dr. Ulmer asked me what Professor Six had done in Russia, what he had been responsible for, and I told him as to the official duties of Professor Six was very shortly in Russia, for a very short period, I could not say anything about his service and his position. Because I sat in the corridor and therefore I am not aware of what these individual gentlemen did in Russia. I was mainly in contact with Dr. Augsburg and Dr. Mahnke, and Dr. Six, I only saw when he passed me in the passage of when I saw him about matters that concerned me personally.

Q. Did you tell Dr. Ulmer that Six left Smolensk on August, 1941?

A. I could not possibly tell the date as I do not remember it. It was six years ago. I told Dr. Ulmer Six was only for a very short period in Russia, and I remember I saw him leave myself.

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I was in the hall when he left.

Q. Witness -

A. And the exact date I could not tell him. That I only established at a later date when I was requested, to do so according to certificates and papers which I still had but which I have since turned over.

Q. Then you did not tell Dr. Ulmer that Six left on the 20th of August?

A. I only said that he had been in Russia for a very short period of time. I don't know about this exact date. It is my fault; I really overlooked it.

Q. Are you sure that you told Dr. Ulmer that you did not know the exact date?

A. I am certain that I told Dr. Ulmer that Professor Six was only in Russia for a very short period of time. That I am absolutely certain of.

Q. I am asking you, are you just as certain that you did not tell Dr. Ulmer or that you did tell Dr. Ulmer that you were not aware of the exact date?

A. I had to tell that to Dr. Ulmer because I did not remember the exact date.

Q. Who dictated the affidavit that you signed, was it you or Dr. Ulmer?

A. No, Dr. Ulmer dictated it to his secretary.

Q. Did you want to make some corrections in that affidavit before you signed it?

A. Yes. Dr. Ulmer read it aloud to me. He told me that I could make any corrections I wanted to make. I only wanted to correct one particular point which was that Six and his men were very well liked in the civilian population. But I said, "Not everybody;

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not all of them," but Dr. Six and Dr. Augsburg were very well liked and held in high esteem with the Russian population because they aided them on various occasions. That is quite certain. And the others, Noack and Schroeder, for instance, were extremely moody and they were arrogant and they were not well liked at all.

Q. And when you sought to make this correction, what did Dr. Ulmer say?

A. Dr. Ulmer said that was not one of the essential things because the statement was only to give a picture of Dr. Six as a human being, but the Tribunal is not very interested in the picture of Six as a human being.

Q. So you actually did not make any corrections then?

A. No.

MR. FERENCZ: No further questions, Your Honor.

DR. ULMER: Your Honor, may I first ask to be handed the document which was just handed to the witness so I may look at it and know what it is all about?

THE PRESIDENT: Yes, please see that Dr. Ulmer has that document.

MR. FERENCZ: Your Honor, this document was put to the witness to refresh her memory on a point of cross-examination. We intend to introduce it in our rebuttal document book.

THE PRESIDENT: Well, Dr. Ulmer is certainly entitled to see it now because the witness has referred to it, unless you keep the witness here.

MR. FERENCZ: The witness is here and available for questioning.

THE PRESIDENT: No, I say unless you keep the witnessuntil such time as you offer the document.

MR. FERENCZ: No, Your Honor.

Dr. Ulmer was thereupon handed the document.)

BY DR. ULMER:

Q. My first question to the witness is the following; Has not the witness shown it to me during our discussion, that I even copied it myself and discussed it with her?

A. Yes.

Q. Witness, when we read through this document, did I not draw your attention to the fact that this has been made out on the 31st of August, 1941, and did I not remark on the fact that it was made out by Mahnke and handed out by Mahnke?

A. You did not tell me anything about this date, Dr. Ulmer. You only told me that you did not like this document. Why you did not like it, I had no idea, but we never talked about the date at all.

Q. I am now asking you whether I questioned you why this document was signed by Mahnke and not by Six?

A. No, Dr. Ulmer, you didn't ask me that.

Q. Did I not ask you that? You say that I did not let you make any correction in the draft or in the document that you were to sign?

A. Yes, you put it to me, you told me that I might make corrections before I signed. I did not intend to say that you didn't.

Q. Did I not tell you in detail that only what you know yourself you have to state?

A. Yes.

Q. Did I not believe actually that you would be able to certify more than I actually asked you to?

A. What do you mean?

Q. When I arrived I thought perhaps you might know more, tell me you did not know as much as that, because I was only in the anteroom six hours during the day?

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A. Yes.

Q. Did I not then immediately take down that you only stayed there for six hours and tell you obviously what should be evident in this document are only facts, facts which you know for certain?

A. Yes.

Q. Concerning the date of the return on the 20th of August, 1941, you say we had not talked about that. But now you say that you knew that the date of return of Six was at the end of August, but not exactly, but the arrival of Six you know to be on the 23rd of August?

A. No, not the arrival of Dr. Six, on the 23rd of August. He returned from the village to Smolensk. That is in my diary. It was the 23rd of August.

Q. But that you saw him for the first time.

A. Yes, ....

Q. You told me, "After the Germans had marched into Smolensk, I, with my twelve-months-old child went to the German office which was in the large police building."

A. Yes. The war broke out in June, and from Juno to August I remained in the village, in Korschena, which is about twenty kilometers from Smolensk. This diary I kept in Korschena, in this village. I have it to this very day. You can see it if you like. And on the 22nd of August I wrote in this diary, "Tomorrow I shall go to Smolensk in order to take my child to the physician." On the 23rd of August, in fact I went to Smolensk. I returned to town. Dr. Ulmer, that is what it says.

Q. What period elapsed between that date - from the date of my wanting to talk to you and the date when I actually talked to you in Stuttgart? What period of time elapsed between the date on which you heard for the first time that I, as a defense counsel of Dr. Six, wanted to discuss matters with you, between that time, and the actual time in which I did discuss matters with you?

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A. That I do not understand; I do not know what you mean.

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Q. Now, in autumn 1947 you learned from Mrs. Six, I believe, that her husband is a defendant in the Nurnberg trial?

A. Yes, I even read about that in the "Neue Zeitung".

Q. And then you found out that the defense counsel of professor Six wants to call you as a witness?

A. Yes.

Q. Now, what period of time elapsed between this time when you found out about this and the period of time when I actually was with you in Stuttgart?

A. Now again you ask about an exact period of time. I could not give you an exact time. It was a period of time, but whether it was a month, or half a month I could not tell you.

Q. Was it a fortnight at least?

A. I do not want to say a date any more. Otherwise I -

Q. Now, during that time did you not have several days and nights to consider this matter?

A. I did not consider anything as I did not know what questions would be asked. Of course, it worried me, and I am extremely sorry that Professor Six -

Q. When you heard surely, that somebody will arrive to examine me as a witness, you, I am sure, thought, now what can I say, what do I know about Six?

A. About these official matters I never thought about. What I can say about Professors Six was about him as a person and as a character and what he had meant to me as a support, and I really did not know what he was made responsible for. If I knew, I would like to say something about it, but I really don't know.

Q. But this is not what the question is all about at the moment. My question at the moment is why, when you learned that some information is required from you about Six, why then did you not look into your diary before?

A. Mrs. Six never told me anything about this date. She did not put the question to me which I was to consider. I did not know in what channel to direct my thought. Dr. Ulmer, I am here for the first time in a courtroom, and I don't really know what it is all about.

Q. Therefore, before I arrived you have not been influenced in any way concerning what you were supposed to testify to?

A. No. We discussed the activity, that is Frau Six and myself, and Frau Six then told me, "Did you see the archives in Russia?" And I said, "No, in Russia I did not see the archives. I saw them in Berlin for the first time, in the library, all these books which were seized by Professor Six, and there during the latter time I worked in the museum." And the pictures which were taken down at the time, they also went to Berlin, but the books I saw for the first time in Berlin.

Q. All this you discussed with Mrs. Six before I arrived to see you?

A. Yes.

Q. And when I arrived were you not surprised that I wanted entirely different information from what you thought I wanted to know?

A. No, you certainly did not force me to do anything at all, Dr. Ulmer. Of course, it is my fault that I do not remember the exact date. I don't know how this comes about, this question about the date.

Q. You don't have to apologize to me. I certainly do not blame you for anything at all. I have no bad conscience in any way.

A. Of course, it is my fault, I have signed it, and I shall never sign anything again.

Q. I don't understand why the 20th of August 1941, could be established as thedate of the return.

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A. This is a riddle to me too, Dr. Ulmer, because I am not interested in the 20th of August, I don't know how.

Q. But you certainly think that it was contained in there at the moment when you signed it, not that I put it in myself afterwards?

A. No. I have the original, or at least I have a copy. No, I certainly do not think so. I must beg your pardon.

Q. That is not necessary. Did I bring along a typewritten sheet with me, a document, when I came, or was the content of what we had discussed in peace taken down on a clean white sheet of paper?

A. Well, it was not very quiet because I cried.

Q. I mean as far as the time was concerned. I mean we had time, didn't we? I want to establish the fact, whether I just came to you in a hurry and asked you to sign this immediately or whether it took some time? What, for instance, do you think? How long did we discuss matters?

A. I don't remember.

Q. Do you remember the day of the week?

A. No.

Q. No, I don't mean the date. No, for God's sake don't let's have a date. I wonder whether it was Monday or Wednesday?

A. No, I don't remember.

Q. So you don't remember. Well, it was a Sunday.

A. Yes, it must have been a Sunday.

Q. Now, you know that, do you?

A. Well, you say it.

Q. But you do know it, do you?

A. Yes, that was a Sunday.

Q. Thank you.

A. That is all right.

Q. Now, you had a job in Stuttgart?

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A. Not any longer now.

Q. But at that time?

A. Yes.

Q. So you had to get leave, because you had to arrange your free time in order to be able to discuss things with me. Now, how long did you take -- a whole morning off?

A. Yes, a whole morning.

Q. And was this morning filled up with this visit in my office?

A. Well, I had to wait for a long time in your office, Dr. Ulmer.

Q. And you say that the 20th of August you know from your diary?

A. Yes, so it says in my diary, the 23rd of August, because I was requested to find the date. I couldn't do so from my memory so I had to look into everything that is left from that time. I really -- I took great care to find out when I returned from the village to the town.

Q. Well, how is it then -- how did you know -- where your husband was -- arrested?

A. Yes.

Q. Your husband before the Germans arrived was arrested by the Russian Police, wasn't he?

A. Yes.

Q. Where was it?

A. In Smolensk.

Q. Where were you at the time?

A. Of course, I also was in Smolensk.

Q. When your husband had been arrested?

A. I was together with my husband.

Q. But you were not arrested?

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A. But I was with my husband he was arrested.

Q. Yes. Well, then your husband was arrested. Now, what did you do?

A. I fainted first of all.

Q. I too.

MR. FERENCZ: Your Honor, I must remind the Tribunal that this witness is a defense witness. She may not be impeached, and this is simply an effort on the part of Dr. Ulmer to embarrass and ridicule the witness with irrelevant questions.

DR. ULMER: The question, your Honor, is of considerable importance and I may give the reason for that. I want to show when the witness left to go to the country, to this village from which she says she returned, on the 23rd of August. I do not want to embarrass the witness in any way. I know that the witness is very sensitive. Therefore, I spent two hours in order to be able to deal with her.

THE PRESIDENT: Dr. Ulmer, you are allowed to question the witness on any subject which has been brought into relief by this affidavit, and we don't think that you have been at all unfair in your questioning of the witness.

MR. FERENCZ: Your Honor, the witness has been asked when her husband was arrested, Her husband was killed.

THE PRESIDENT: It isn't on the right channel.

MR. FERENCZ: The witness was asked when her husband was arrested. We know that her husband was killed. She testified that she fainted at the time, whereupon Dr. Ulmer replied, "He fainted too". I hardly think it proper.

THE PRESIDENT: I wasn't aware of that comment.

MR. FERENCZ: Yes, your Honor, that is what brought about this breakdown of the witness.

THE PRESIDENT: Well, I think this would be a good moment to recess.

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The Tribunal will be in recess fifteen minutes.

( A recess was taken)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed.

DR. ULMER: Your Honor, I am terribly sorry that because of the intensity of my questions, I have to upset the witness; and my remark that I also faint only refers to the fact that in my defense I can do nothing since this situation is changed. That I am powerless, in view of the situation, but I did not want to hurt her feelings. I did refer to the fainting of the witness. That is far from me. I never intended anything of the sort and at the time in Stuttgart I tried to do everything to help the witness to talk to me in a quiet manner. BY DR. ULMER: have the impression that I tried to press you in any way or that, considering all your considerations including religious ones, that you were to testify here on oath, I explained this to you because you would have to testify here under oath. I did not want to make any difficulties for you and over that you did not have to worry as far as your conscience is concerned, there should not be any worldly consequences either?

Q I do not know why you are saying "No" now.

A No, Dr. Ulmer, you did not force me to do anything else.

Q Was I careful, considerate?

Q That is what I am trying to show. Well, unfortunately I have to continue where we stopped. When your husband had been arrested by the Russians before they left, you said, first of all you fainted.

It can't be helped. And when did you leave Smolensk then?

A The following day. My husband was arrested on 26 June and on the 27th I left the city with the child, Dr. Ulmer.

Q. Could you leave the city in an orderly manner? Could you take enough clothes and everything you needed, you had a baby, for the baby as well? Could you take all that along? along. It was fifteen or twenty kilometers from the town and I couldn't take along a good deal of things. did you also take your diary along?

A No, I did not take my diary along. I wrote it in Koschomir, in the village in a little book. Unfortunately my diary was not packed. All this was left at home, what I had written from the beginning. continue to keep this diary? you continued to write in it in Smolensk?

Q One further question. Do you remember that in Smolensk after the Germans arrived there the large cathedral was again opened?

MR. FERENCZ: Your Honor. I object to the question. It was not raised in my cross examination and the purpose of this redirect is to clarify questions raised on cross examination.

DR. ULMER: I ask you to admit this question because this question helps us to determine a date. When this cathedral was opened can be found out and that is why I would like to ask the witness about this. I am trying to help the witness and us, in order to get at this difference of these dates. That is why I asked this question.

THE PRESIDENT: If it is for the purpose of establishing the chronology of events, it will be permitted.
BY DR. ULMER:

Q Do you know when the day of the "White Mother of God", the patron of the city, is? already celebrate that occasion in the city?

A No, I didn't. At the time I didn't go to church at all. I was in such a state ......

Q I can understand that. But, do you know whether this day had already passed when you were in Smolensk?

A No, I do not know. No, Dr. Ulmer. I was not there.

Q You do not remember exactly when this day was?

A No, I know nothing about the cathedral. I know that it was opened but when this took place I cannot tell you.

Q When you came back, yes. Do you know anything about a birthday of Dr. Six? this birthday. a celebration? What I mean is, do you know that a birthday celebration took place for Professor Six?

A I can't recall that. There were many celebrations there.

chief -

A Yes. Herr Dr. Mahnke said once that it was Dr. Six's birthday.

Q Dr. Mahnke said that on a definite date, one day?

Q While you were in Smolensk with this VKM?

Q Will you please tell us how Dr. Mahnke told you about this? Dr. Mahnke told tou, "Today is Dr. Six's birthday"?

A No, he didn't say "today".

Q What did he say about the birthday of Dr. Six?

Q Do you know whether he said when?

Q I could imagine he was still tired and he said, "I am so tired, because last night we celebrated Six's birthday."

A No. Unfortunately I cannot tell you that. celebration had taken place some time age or that Mahnke simply told you "Just now it happened that we celebrated the birthday"?

A Unfortunately I cannot tell you exactly, Dr. Ulmer. Mahnke about more personal matters.

A Dr. Ulmer, from the very first day I talked with Dr. Mahnke about my personal affairs.

Q About your personal affairs? Yes, I understand that. But, right from the beginning did you understand each other so well that Herr Mahnke could discuss personal affairs which did not concern you? Do you understand, Fau Vetter? If you go to some office in Stuttgart now and ask for something, certainly you are received in a friendly and polite manner, but surely they won't tell you right away that a few days previously they have celebrated the birthday of the chief of the office.

You understand this, don't you? for some time a little closer so that he told you that "We celebrated our chief's birthday." Of, do you think that-when Herr Mahnke told you about it?

MR. FERENCZ: The witness has testified already three or four times that she does not know the date. This is not cross examination. This is a defense witness. We have permitted all kinds of leading questions to be put, without objecting. However, I would like to remind the Defense Counsel that this is a defense witness and that if she has answered three or four times that should be adequate.

THE PRESIDENT: Yes. I do not think you need to press that any more, Doctor.

DR. ULMER: Very well, I shall cease to ask about this, Your Honor. BY DR. ULMER: remembered your diary when you were asked about these matters after my interrogation? When was this? When I was asked by Nuernberg, they asked me immediately when did Professor six leave Russia and I said I do not know the exact date.

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Professor Six was in Russia only for a short time while I was there, but I cannot tell you the date because that was six years ago. asked you again about this? I just believed everything and I thought everything was all right and I trusted you fully. Dr. Ulmer, I did not think -

Q Don't you trust me any more, now?

A Yes, well, I am not talking about it. What I mean is-confidence?

Q How do you mean that? incorrect. You told me that afterwards and you did that purposely. I had already determined the definite date. They told me, "Well, do you have any papers from that time", and they took some of my papers and among them was my diary. I did not know whether anything was contained in it. I only had a little bit from that time left and they said it was so important that I determine the date when I saw Dr. Six. They said it was of importance. I didn't know why. And I tried to think as hard as I could, Dr. Ulmer.

Q Very well, I am not reproaching you. You say that they took some of your papers, that is what you said. How was this done?

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Q How did they take them? Did they tell you, "What papers do you have left from that time?"

Q What kind of papers you had left? I did not know that the date was contained in this affidavit. I really did not know.

A Yes, afterwards they told me, "How did it happen that the 20th of August is mentioned here?"

Q You do have the copies still, don't you?

Q Very well, and then you handed in all papers?

Q To the interrogator? clearly, What did he say that I said to you?

A I have said it before. "How about this date which is contained here?" They showed me the copy by you. And how it happened that this day is in there. I said, "I don't know just how it happened." So they told me, "But Dr. Ulmer knew that the date is wrong," Because I thought I don't want to harm Professor Six at all, really I don't, and so I said perhaps my diary might help. Certainly I don't want to do that. I don't want to bother my conscience about that.

Q But you are not supposed to. But, that is what I told you in Stuttgart. They explained to you that I had not been quite honest with you?

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you for the second time?

A Yes. I didn't quite remember this date so exactly, but I thought you were quite sure of it. I said to you at the time, "I only know that Professor Six was a very short time in Russia." I told you that right in the beginning. But you will understand this, Dr. Ulmer. Six years ago -one remembers when one was married and when a child was born, but apart from that I didn't even remember the date when I came to Germany. I had to look it up on papers as well.

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not Know this immediately what the exact date was, that they would have to keep you, detain you?

Q That any unpleasantness would arise for you? this affidavit with me? Because you thought perhaps you might be reproached by the Russians because of this? Do you recall that? Tribunal or any one who has to do with it will ever - just because you act as a witness for a defendant now - will ever make any difficulties for you and tell the Russians about it?

A You told me that I wouldn't be asked here as a witness at all.

Q I said I assumed that you won't be called here as a witness by me remember. Do you remember that exactly, I told you that if you give me the affidavit then I won't need to call you as witness? Please say what you would like to. I don't want to influence you at all. I don't want to look at you. I am not trying to force you to any answer.

A No, you are not forcing me. You said it certainly would not happen because everything I know was from a human point of view only. And so I asked you whether the judges would also consider the human impression -

Q And what did I tell you then? no one in this entire American Tribunal would ever make any difficulties for you with the Russian authorities about this? Didn't I tell you that?

A Well, you know, Mr. Ulmer, if I had committed an offense by signing the affidavit I have to bear the responsibility for it and I am willing to bear the responsibility.

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I assume all the responsibility.

Q Didn't you say that it night perhaps be unpleasant for you because of your child, which was everything that mattered to you, and that because of the child you did not want to have any difficulties because of being brought into this trial?

A I beg your pardon? under all circumstances to have difficulties because you had been brought into this trial. be quite irrelevant and there was never any question about it. You said, "We won't need you as a witness here on the stand and that it will be quite enough". that I did not write in that you knew nothing about it that Six killed anyone or had anyone killed -

MR. FERENCZ: The last statement was, "I wondered if something is missing from the affidavit," What the Defense Counsel wonders has nothing to do with what this witness is here to testify to.

THE PRESIDENT: You have submitteed the affidavit, Dr. Ulmer, and certainly you are assumed to knew what it contains. So any reflection on what it does not contain might not be important at this time.

DR. ULMER: Would you repeat that, please?

THE PRESIDENT: You made a remark that you were in perplexity about what was or was not in the affidavit. You are assumed to know what is in the affidavit. So your self-perplexity is of no concern.

DR. ULMER: I see. Well, Your Honor, I am of course also concerned about my personality. In order to show the Tribunal that I never tried to force the witness to give a date which perhaps she did not remember at the time, that is -

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THE PRESIDENT: You have just made a statement, "I wonder why", and then you referred to something that was or was not in the affidavit. It was not in the nature of a question to the witness.

DR. ULMER: No.

THE PRESIDENT: Do you mean that it is a discrepancy between what appears in her copy of the affidavit and what appears in your copy?

DR. ULMER: There is no difference between the witness' copy and mine. That is exactly the same. The one I have is the carbon copy of the typewritten original of this affidavit.

THE PRESIDENT: Well, you began to make a remark, when Mr. Ferencz objected, and that remark seemed to put you into a state of doubt as to why a certain statement was or was not in the affidavit. Whatever is in the affidavit is before you, so you can question on that.

DR. ULMER: That is what I got from the witness and what I discussed with the witness. And I had the impression or else I would not have entered it in the affidavit that this was exactly what the witness is trying to say and wants to say, because she still remembers it. That is all. Perhaps I thought aloud just now. I said I am surprised, I can't Imagine how the 20th of August can get in there because the date, 20 August - this witness was the first witness whom I personally interrogated who mentioned this date, 20 August. On my own, I couldn't suddenly think about this date, 20 August. I remember at the beginning when Mr. Ferencz questioned the witness it was said that before I came the witness was given a list or something like that of what they thought that she would have to testify to as witness or what she could testify to. BY DR. ULMER:

Q Isn't that what it was, Frau Vetter? Frau Six brought something that was written down to you and said they would like or they thought that you could testify as to this?

Q And did you then tell Frau Six, "No, I cannot be witness for all that?

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could not be witness for. anteroom of the office of the Advance Commander Moscow? didn't Frau Six cross out a number of things from the notes?

Q And didn't I come then and tell you Frau Six told me that you could not testify on all these points as I had imagined you could do?

Q Did I try in any way to persuade you to say a little more? remained from those notes which Frau Six brought to you originally?

THE PRESIDENT: I didn't quite catch that question and answer.

DR. ULMER: Your Honor, I said originally, for the first time, the witness was approached by the wife of the defendant -

THE PRESIDENT: It isn't necessary to repeat all that. Your last question was, did you include in the affidavit anything which was not left on the notes which had been submitted by Frau Six; and she answered, yes.

DR. ULMER: I beg your pardon, Your Honor. My question was meant to say, did I want more from you than was contained in the written notes with which previously Frau Six had approached you, and since those things which you could not remember from those notes exactly were taken out, and what remained -

THE PRESIDENT: But her answer is in the affirmative. Are you aware of that? In effect she says, "Yes, you wanted more than what appeared on those notes." Now, I want you to be aware of the reply.

DR. ULMER: She said I wanted more than what remained? BY DR. ULMER:

Q Is that right, Frau Vetter? Were you trying to say that?

A No, I didn't have the written notes with me.

Q Yes, I know, but I had them with me. I had something in my hand, some documents on which I could interrogate you. And I want to ask you, did I try to ask you about more things than you had told Frau Six about previously, more than you actually remembered?

DR. ULMER: Is this clarified how, Your Honor?

THE PRESIDENT: Yes, it is clarified. I was of the impression that her answer would be no, in view of what had preceded that question, but the answer came out yes. But it is clear now.

DR. ULMER: Perhaps it was owing to a rather complicated manner of putting questions by me. BY DR. ULMER: calendar is divided? Is there a difference between the Russian and German calendar?

A I do not know. There might be. I do not know. Christmas is different from the German one, I believe.

A That is quite possible, I really wouldn't know.

Q You don't know that either? you can recall, when you dared to go back to Smolensk?

A When I dared to go back?

Russians.

Q But surely you left it because fighting and shooting were going on?

Q That is what I mean. Yes, and then you dared to go back when everything was over? much later after Smolensk had been in German hands and the fighting was over -

Q No, you are not supposed to, Frau Vetter. I would only be interested in - did you hear that Smolensk had fallen and that you decided to return.

A Yes, of course. First I saw the German troops in the village and then I quickly returned to the city.

Q Very soon after that you returned to the city. Did you hear from your country men in Smolensk how long the Germans had been there already?

Q That didn't interest you either?

A I do not know, Dr. Ulmer, that is a long time ago.

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Q You cannot tell me therefore. Do you remember that after the defendant Sic with his advance kommando Moscow was in Smolensk there was --

A When were they there? When did they come to Smolensk? not to influence you. Let us just assume they were there, and when you came they were already there and now I ask you just one thing: Do you remember that later on a larger unit of such people came, I mean, Nebe, with this staff?

Q You remember that? Six and Nebe both there already.

A I beg your pardon? for or Police Building the first time were Six and Nebe there already or was only Six there and then you came and when you had been there some other unit came under Nebe who, according to you, were accommodated on a floor above.

A Please don't talk to me in such a manner, Dr. Ulmer. I am not a child.

Q I don't know how I could hurt you by the way I am asking then questions. I really don't know.

A I mean, I can't tell you the date when Herr Nebe moved in, but I believe I remember that -- I am always afraid to say days. It might have been weeks, but I know that some different people came who had their offices on a higher floor of the building and I was only told that Nebe -- I never talked to him. I don't know him, but they said that he had a much higher rank, but I never saw him, with Professor Six. come after you were already there?

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A No, I don't think so.

Q But when you came there, Nebe was already there? already or not? I know that later on a whole unit moved in but what kind of people they were, I only knew that they were on another floor.

Q Yes, and he lived there too, Herr Nebe?

A He also lived higher, but not where Dr. Augsburg and Professor Six were. Nebe who had a much higher rank? there whom you didn't know and who moved into the NKWD Building.

MR. FERENCZ: We must object to the defense counsel trying to put words in the witness' mouth. The witness has said she does not know and is unable to testify to it.

DR. ULMER: No, your Honor. I have tried to ask witness whether she knows that this unit came and moved in one floor higher. That is my question.

MR. FERENCZ: I must object also to any leading questions being put to the witness.

THE PRESIDENT: This is your own witness, Dr. Ulmer and you can't cross-examine her nor may you lead here, because she is, in effect, your own witness.

DR. ULMER: Your Honor, I don't know whether your Honor is of the opinion that the question has already been answered. Otherwise, I will have to put it again. It is very simple: whether Frau Vetter knows or whether she recalls that after she had arrived, another unit moved into this Police Building.

THE WITNESS: Yes, I told you, yes. They were on a higher floor. They came later. But what....

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DR. ULMER: Thank you, your Honor, in that case I don't want to impress the witness any more. I have no further questions. I am sorry that I had to confuse the witness so much.

THE WITNESS: You did not confuse me.

DR. ULMER: I mean pschologically that I had to hurt you. BY MR. FERENCZ: the NKWD Building after you had been there?

THE PRESIDENT: Do you wish to object, Dr. Ulmer?

DR. ULMER: Your Honor, when I asked this question before, the prosecutor objected to it. Your Honor sustained the objection and the witness answered it. Now I am objecting that the prosecution is putting this question to the witness again, because I want to say that obviously they are trying to make this witness uncertain of what she had already said.

THE PRESIDENT: He is cross-examining, Dr. Ulmer, he is allowed to ask questions of that character. BY MR. FERENCZ:

the NKWD Building after you had been there?

A Well, I merely was able to say that another unit moved in. When I came they weren't there, but whether Nebe was there already, that I cannot know, I merely heard about Herr Nebe that he had a higher rank and he was chief of the people on the floor above us.

Q But it might have been any police unit which moved in?

A Well, I don't know what kind of a unit it was. I cannot tell you.

Q Thank you. Frau Vetter, did Dr. Ulmer tell you at the time you signed the affidavit that the date 20 August was very important?

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A Dr. Ulmer did not tell me that the 20th of August was a very important date, in fact, we did not talk about exact dates at all. I only said that Professor Six was good in Russia.

Q Did you hear Dr. Ulmer say just a little while ago that you mentioned the 20th of August as the date? don't know. You must know yourself that if you were a sked dates six or five years ago, no one would be able to answer that, not even what happened a year ago. One can't remember exactly. That is asking too much.

MR. FERENCZ: No further questions, your Honor.

DR. ULMER: Neither have I. BY THE PRESIDENT:

Q How many times did you see Professor Six in Smolensk? my personal affairs, not about official matters. Professor Six, I am sure, will be able to say that himself that concerning official matters, concerning the tasks of Professor Six, I personally never talked with Dr. Six. I always had to deal with Dr. Augsburg, and Dr. Augsburg certainly didn't do anybody any harm. I cannot imagine that.

A May I say something more? May I say something more?

A Herr, Dr. Augsburg always said that Professor Six was a very good man and that he was very sorry for him that he had come just into this organization.

Q How many times did you talk to Professor Six?

A Well, I didn't count. How can I say how often?

Q Well, if you don't know, you don't need to say that you do.

A That's right. They did not tell me what I would have to say as a witness. number of people? Generally, how large a city was it?

A No, that I cannot say. I am afraid I can't say exactly.

Q Well, not exactly, but do you have any idea? Can you compare it with some German city, with Stuttgart, for instance?

A It's about the same as -- I am trying to think with which city I could compare it. Perhaps like Ansbach -- Well, I don't know Ansbach so well. Perhaps something the size of Ansbach, or I don't know exactly. It is a provincial town, a small provincial town.

Q Did you associate with the people in the town very much?

Q Well, you didn't live right in Smolensk, did you?

Q No, I mean after the occupation? tion?

A No, during that time I was in the village. I went to the village. I only went to the village while the town was being bombed. Smolensk, did you live in Smolensk?

A When the Germans captured the city? No, at that time I was in the village. I was in the village when the Germans moved in.

Q Then did you come back to live to Smolensk? then I wanted to go back to my apartment. Smolensk? ment?

A No, not at all. The apartment had been looted. The Russians had looted it and there was nothing left.

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and once more took up living in the town of Smolensk.

Q You got another apartment?

A Yes, I lived with a woman. I did not know. She took me up.

THE PRESIDENT: Does Counsel have any other questions? BY DR. ULMER (attorney for the defendant Six): the city was occupied -

Q Yes, bombed. Do you know how long you were in the village?

Q Two months? You are quite sure of that, or because you looked in your diary?

Q You know it? BY THE PRESIDENT: in Smolensk, is that correct?

A Yes, yes, that's right. after you had returned to Smolensk, how long you were living there when Professor Six left to go back Germany?

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A Well, in the middle of December I returned to Germany. I don't mean returned, but I just came to Germany.

Q No, you didn't understand my question, or perhaps it wasn't put very clearly. You returned to Smolensk to live again after the bombing?

Q Then subsequently Professor Six left Smolensk? Six's departure for Germany?

A I am afraid I can't say exactly. I cannot say whether that was one week or two weeks. I cannot say that.

Q. Well, was it as small a period as one week or two weeks, a week or a fortnight?

A That wasn't a very long period of time. I don't think it was a long period of time.

Q What kind of work did you do in that office?

A In this office? First of all I had to sit in the corridor and then various inhabitants of Smolensk came and I had to interpret their requests, and I had to go to the shoemaker's and to the tailor's with various officers and interpret for them, and then for some time they gave me a great number of musical records, classical music, and I had to sort out various kinds of music folk songs, and at the end, shortly before I left. I worked in the museum together with the Sturmbannfuehrer. That was for quite sometime there. That was the museum of the history of the Party.

Q And what work did Professor Six do during this period?

A Well, I have no idea there. I cannot say that. did you socialize and fraternize with the inhabitants, with the people of Smolensk; did you visit about?

A No, I made no visits. In Smolensk I only lived for one year. I did not have many acquaintances there because we lived a rather quiet life.

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Q So that you didn't thoroughly know the population of Smolensk?

A No, I already said that I can't say that.

Q In your affidavit this statement appears, "I also know that Herr Six and his men were very much like by the people of Smolensk." of Smolensk liked Professor Six? discussions which I had with members of the civilian population who were also working in that building, and I saw myself that, for example, professor Six had a lot to do with food and clothes. I saw that myself, and they were always very friendly with the Russians who worked there. of Smolensk, if you visited with them. How could you know whether they liked him or not unless you talked with them, unless you saw them, unless you socialized with them? there. in the office?

Q Were there any Jews in Smolensk?

Q Do you know whether any of this food was fed to the Jews?

A Food? I don't know that, no. that is the reason people liked Professor Six. Did the Jews receive any of this food which was distributed? you mean?

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done something, for example, tidied up the room, they treated them very well. Not all officers were so friendly and kind. office that Professor Six would give him an item of food, maybe a loaf of bread or a sandwich, or something like that? Now, is that what you mean? I saw it myself, for example. that a Russian woman was there who used to be a student. I knew her before, and she had lost everything. like all of us there, and Professor Six gave her a wool blanket and a coat and various other things.

Q Did you ever see him give anything like that to a Jew?

Q Did any Jews ever come to the office?

A To the office? I wasn't in the office. I was in the corridor, and the Jews were in the yard.

Q What was in the yard? I didn't catch that.

Q What were the Jews doing in the yard?

Q What were they working at?

Q And what happened to them eventually?

A Well, I did not see that. I only knew that they were in the ghetto. Jews who were clearing up the rubble in the yard?

A I only know one thing really, one girl. She was half-Jewish, and Professor Six knew that, and he did not report her. She was halfJew. That means - you probably know what it is. And she told me about this. Her name was Rose, and she was always very frightened. She always said "Professor Six knows this," and she still remained there.

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Q What would have happened had he reported her? reported?

A Well, I don't know. I certainly heard nothing about such matters. wasn't there: it was something that was spoken of in a shisper, as it were?

A Yes, and then they were sent to the ghetto?

Q And what happened to them after they got into the ghetto?

A I wasn't in the ghetto; never in my life have I been in the ghetto. I don't know.

Q Did you hear about Jews being executed anywhere around Smolensk?

A In the vicinity of Smolensk? No, I don't know that. I merely know that this happened later, that Herr Noack had a lot to do with the Jews, but how I never saw. The civilian population knew about that.

Q They did know about some terrible things happening to the Jews?

A Yes. I myself did not see it. ing among the population that terrible things were happening to the Jews? there they had to work. I saw that myself. That the Jews worked I saw myself. But, for example, in the yard, I watched the yard sometimes. There were my girl students there. I never saw that they were beaten in the yard; I never saw that.

Q You never saw them being beaten?

Q Did these people who worked in the yard live in the ghetto; did they go back and from the ghettos?

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Q You say you didn't see anyone being beaten. Did you hear of the Jews being beaten? beaten? You must have in your mind the thought that somebody was beaten because he was a Jew or you wouldn't tell us for no reason at all that you didn't see then being beaten. me about this, whether the Jews were beaten, and I said. "No, I don't know, "and I never saw myself that the Jews were beaten. I can only say that P.O.W.'s were shot, but that was not done by this police unit. I don't know who carried out that action. Thos were the first corpses I saw in Russia; those were the corpses of P.O.W.'s.

Q Were they Jewish P.O.W.'s?

Q What nationality were they?

A Those were Russian P.O.W.'s: yes, they were Russians.

Q And by whom were they executed? war were executed?

A Well, in every street there were corpses. Of course it was known.

Q This was while you were there?

A I beg your pardon? corpses were on the street?

Q Yes. Did you ever happen to discuss this with Professor Six, that you saw Russian corpses on the street?

A He had already left. I talked about this with Dr. Augsburg.

Professor Six was still there?

Q How long after he left did these corpses appear? for Germany. that you knew of or that you heard about? building. a Jew or of some other nationality?

AAmong those P.O.W.'s, there were some among them I should imagine, there were so many people in the Russian army. In the Russian army there were all nationalities.

Q So that some of these corpses could have been Jews?

A Why not? Of course.

Q Were they all in uniform, all the corpses?

A Well, uniforms, they were just tatters and rags. One could not call that uniform any more. The Russian soldiers were in rags. These had been uniforms I think.

Q Well, could there have been any civilians among those corpses?

A No, they were P.O.W.'s. work? there. I got that from the field kitchen.

Q You received food for your word?

Q And that was your compensation? that food?

territory got food.

Q How did you happen to meet up with Professor Six in Berlin?

A I first went to the local commander's office and inquired there about the fate of my husband.

MR. FERENCZ: I think there was an error in translation. The translator did not add "in Berlin" .

THE PRESIDENT: Oh yes, that is very important.

Q. (By the President) How did you happen to meet up with Professor Six in Berlin? the library?

Q Oh, I see, he got you the job?

Q And he was very kind to you in Berlin? he do which was kind to you in Berlin? really prohibited, but I liked to read them.

Q Anything else? prohibited, those books, and I could also read Thomas Mann and Heinrich Mann and Stefan Zweig. All the books which I liked I was allowed to read.

Q Did you receive any pay for the work you did in the library; did you receive compensation for this work that you did in the library in Berlin?

Q Yes, and you were allowed to listen to foreign broadcasts?

A Yes. Professor Six told me I should not tell anyone about it. He didn't want to know about it. the heart of the literature -and I listened to Russian music and various other statments -- I said very often that National Socialism and Communism are very similar, only in Russia it was even more terrible, the dictatorship. So he said I shouldn't talk about these political opinions or else I would be sent to a concentration camp and then no one could help me, and I should keep quiet about all my thoughts. foreign broadcasts and reading this very devastating, bad literature by Heine and Thomas and Heinrich Mann that you would be sent to a concentration camp and that he couldn't help you? self to a very serious danger, isn't that right?

Q Because you didn't need his permission to do womething which was going to get you into a concentration camp?

A Would you please repeat that?

Q You didn't need his permission to do something which would get you into a concentration camp? deeply and this meant a lot to me. I even brought a Heine book along from Russia, and Professor Six knew this, I took this along to Germany.

Q Were these books in the library where you worked? books were part of the library, all books which hadbeen prohibited, and I was allowed to take care of them. All these were prohibited books, but it was all beautiful literature.

Q Do you think it was very chivalrous of him to say, "Now, you can read these books but if you get in trouble, don't bother me about it"? Six, and I kept comparing National Socialism and Communism, and Professor Six always listened to it very patiently, and I had the impression that inwardly he thought the same thing, only he didn't dare to say it. Socialism and Communism were the same thing?

A Oh, yes, certainly. Their methods are the same, of course. Don't you know in Russia I also thought -- I didn't know about the methods. That is why I believed that the Germans came in order to exterminate Communism, and I knew quite well what Communism meant, and when I lived in Germany I could find out repeatedly that that was not the idea at all of the advance, to fight Communism. a rich country. But they only wanted the materials, goods, and this is always the pretence that this is all idealism. That happens in every war after all. improvement over Communism?

A Improvement? It was a poor imitation. expressed?

A Yes. I know this very well. I always felt that Professor Six was a different person to the others. The others whom I met later in the institute there, they were obsessed, they were fanatic about what they said, but Professor Six is not a fanatic, no. He always listens to everything very patiently, and that he agreed, I noticed, because he always laughed. Well, if one laughs then I think one believes in it.

Q Did you hear Professor Six lecture on Jewery?

Q Did you ever hear him expound on the Jewish race, talk about it?

AAbout the Jews?

A Yes, I said I often talked about Heine with Dr. Six, about his style, and so forht, and he said, "Well Frau Vetter, that is Jewish, I am not allowed to hear about this.

Q Did he ever talk about the Jewish problem?

Q Did you ever, Witness, talk about the Jewish state in the Palestine? library. I didn't read that.

Q I am not saying books written by him. I am talking about his conversations. You see, Professor Six delivered many lectures and there was one lecture which he delivered on Jews, so with that on his mind I thought he might have conversed with you about it some time.

A No, I was not the scientific assistant. That was someone else, but such questions he didn't talk about with me. I wasn't there when he worked on that lecture. Another assistant took care of that.

Q Just what did he say about that?

A Well, what do you mean? presence. You have already indicated that on one occasion he told you that he wasn't to listen to any talk about Jews. Did he ever comment on Jews, in general, just Jews?

A Well, you see, our discussions really didn't deal with such subjects, but on the whole we only talked about personal matters and when Dr. Six talked to me he was always tired of his work and I knew he just wanted to have a rest, so we talked about the family and art. About all he wanted to know about the dialecticmaterialism in Russia. No particular questions, no special questions. I myself did not like politics.

know that Professor Six displayed towards Jews was that he failed to report a half-Jewess. That is, as far as you can go about his attitude towards Jews, that was that one half-Jewess he knew and he didn't report her?

THE PRESIDENT: We want to thank you for a very enlightening discussion. Does counsel wish to question the witness any further?

DR. ULMER: I have no questions to the witness.

THE PRESIDENT: Now supposed we take stock and see what we have for Monday. Who will be ready to present documents on Monday? Dr. Heim?

MR. FERENCZ: Your Honor, may this witness he excused?

THE PRESIDENT: Yes, the witness may be excused.

(The witness was excused.)

DR. ULMER: Your Honor, I beg your pardon. Am I to consider my presentation of documents of today as concluded or are there any objections coming? May I consider the presentation of my documents as concluded?

MR. FERENCZ: Yes, Your Honor.

THE PRESIDENT: Yes, very well. The Tribunal will now be in recess until Monday morning at 9:30 o'clock.

(The Tribunal adjourned until 19 January 1948, at 1930 hours.)

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A. Musmanno, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Before we take up any other business and so that the statement which we are about to make will appearin the record immediately following the examination of Veronika Vetter and so that there can be no misunderstanding later on the Tribunal states that it is convinced that Dr. Hermann Ulmer in his examination of Veronika Vetter in Stuttgart did nothing which would in any way cast any reflection upon his professional conduct, We will say further that it is part of a lawyer's duties to investigate all evidence which he believes may be helpful in the presentation of his case. There was nothing in the examination of Veronika Vetter to suggest in the slightest way that Dr. Ulmer did not live up to the highest ethics of a lawyer. He questioned this witness, obtained information, wrote up a statement which she had the opportunity to read and to correct, and then she signed it. And, when Dr. Ulmer did that he met every requirement and not the slightest discredit may be case upon him for the work which he did in that connection.

Yes, Dr. Aschenauer.

DR. ASCHENAUER: Your Honor, I would like the defendant Ohlendorf to be excused from attendance in court this afternoon for further preparation.

THE PRESIDENT: The defendant Ohlendorf will be excused from attendance in court this afternoon.

DR. ASCHENAUER: Thank you.

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THE PRESIDENT: You are welcome.

DR. HOFFMANN (for Nosske): Your Honor, on 21 November 1947 the Tribunal allowed me to admit as a witness for the defendant Nosske a certain man called Burckhost. I have heard that this man Burckhost arrived here yesterday. I know what I want to ask him. I don't have to discuss it before hand. I would only like to ask the Tribunal to give instructions that this witness be brought into the witness stand.

THE PRESIDENT: You mean he is ready and available at this moment?

DR. HOFFMANN: I don't know for certain whether he is available at this very moment, but I think he can he by this afternoon.

THE PRESIDENT: Mr. Walton?

MR. WALTON: If your Honors please, I remember from the copy of the notice of approval to this witness. However, I respectuflly point out that the Prosecution does not know on what points this man will testify and we ask that the 24 hour rule be invoked to give us a chance to prepare the cross examination of the witness.

THE PRESIDENT: Well then at the earliest you would be ready is tomorrow morning.

MR. WALTON: At this time, yes, sir.

DR. HOFFMANN: Yes, your Honor. Of course, just in order to speed up the matter I wanted to suggest that the witness could come even today but I am prepared to examine him tomorrow morning.

THE PRESIDENT: Very well, the witness will be available tomorrow.

DR. HOCHWALD: If the Tribunal please, the Tribunal will recall that the Prosecution objected against document 58 of the defendant Braune for the reason that this document was introduced by defense counsel only inthe form of a typewritten copy. Defense counsel for the defendant Braune has in the meantime kindly handed to the Prosecution the original of the document for perusal and we want to state that we do not object against this document 58. We want to state again, -- The Prosecution had informed the Tribunal, that we do not object against this document as defense counsel was good enough to promise to show us the original.

He has done so in the meantime.

THE PRESIDENT: In view of the statement made by Dr. Hochwald, Braune document 58 will be accepted.

DR. HOCHWALD: Thank you very much, your Honor.

THE PRESIDENT: You are welcome.

Who is now ready with presentation of documents?

DR. KOHR (for Blobel): Your Honor, I would now like to introduce Document Book II of Blobel. It merely contains seven documents and the sequence of the exhibit numbers is the same as the number of the documents. As Exhibit 5 I offer document Blobel No. 5. This is an affidavit by August Haefner of 3 November 1947. The affiant was candidate for the leading service and attached to NK4A as officer and trained police official. The defendant Blobel put him in charge of Advance Kommando Kiev and apart from that for a brief period he was an official of AOK6. The affiant also was present when Blobel reported at the headquarters of the AOK6, to General Field Marshal von *eichenau. He gives a detailed description about this and about events in Sokal and Luck. He confirms in this affidavit the statement of Blobel about his stay in the hospital in Lublin. 6. This is another affidavit by August Haefner of 11 December 1947. As mentioned at the beginning Haefner was chief of Advance Kommando Kiev. In this capacity he gives detailed reports about the situation in Kiev as it was after the capture by the Germans as 19 September 1941. He confirms the statements by Blovel in the witness stand that he arrived in Kiev, contrary to the document which has been brought in by the prosecution , only on 24 September. Also this affidavit proves that in Kiev Blobel suffered a head injury.

Document Blobel 7 I offer as Exhibit No. 7. This is an affidavit by Karl Hennicke of 7 November 1947. Hennicke was expert, 3, departmental chief of Einsatzgruppe C. This affiant gives testimony of his character but also shows that Blobel repeatedly fell ill, while he was in the Eastern Campaign.

Blobel document 8 I introduce as exhibit 8. This is an affidavit by Welther Huppenkothen of 8 December 1947. Huppenkothen was departmental chief of SD Sector West in Duesseldorf in 1934 and was commander of the Security Police and SD in Lublin in 1939 and 1940. The affiant first of all gives testimony of the character but he also gives a survey of the activity of Blobel as Chief of the SD Sub-sector Duesseldorf and also proves that in July 1941 Blobel was in the isolation ward of the Lublin Military Hospital.

Dr. KOHR: (Continuing): Document Blobel 9 is introduced -

DR. HOCHWALD: May I see the original of Exhibit Blobel 9?

THE SECRETARY GENERAL: It hasn't been supplied to the SecretaryGeneral yet to my knowledge.

DR. HOCHWALD: I was just now informed by defense counsel for Blobel that the exhibit is already in the hands of the Secretary General.

THE SECRETARY GENERAL: Well, if it was presented to me last week it is already in the archives. I can get it in just a minute.

DR. HOCHWALD: May I ask then if this is a literal copy of the exhibit?

DR. KOHR: Yes. Blobel Document 9 I offer as exhibit 9. This is -

DR. HOCHWALD: If the Tribunal please, the Prosecution objects against this document for several reasons. The excerpt of the transcript -- and I haven't got the original in my hands -- but defense counsel tells me this is a literal copy of the transcript -- the excerpt of the transcript, as it is offered by defense counsel, is incomplete. The excerpt does not show whether and by whom the witness was crossexamined and what his answers to questions of the Prosecution were. It is certainly not admissible that defense produces only those parts of testimony which are favorable for agreement and leaves out those parts which may be less favorable or even unfavorable for the defendant in this case. The testimony of a witness if offered in evidence before a Tribunal, different from the court before which the witness appeared , should certainly be offered in full so that the Tribunal can obtain a clear picture of the contents of such testimony. As to the facts which are alleged to be proved by these excerpts the Prosecution wants to point that these facts are completely immaterial for the case before the Tribunal. It is clear that the alleged order of General Eisenhower, and the Tribunal will certainly recall the testimony of the defendant Blobel in this case, could not have been issued earlier than in 1945 or 1946 which dates also appear in the transcript of the testimony of the witness Wollny which is now offered by the defense for the simple reason that such order could not have influenced the acts of the defendant in 1941 or 1942.

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Moreover none of the defendants in this case has alleged that he had knowledge about this order or that he had even heard of it until after this trial began. The credibility of the defendant cannot be proved by the excerpt which is offered now by counsel for the defense. After carefully examining the transcript of the Blobel's testimony in this connection Blobel did not testify that he had knowledge of the testimony of the witness, Wollny.

THE PRESIDENT: Mr. Hochwald, this document is not admissible because the defendant himself stated that he knew nothing of such an order after having made the blanket utterance that everybody knew. Then in Court after examination by the Tribunal he indicated that nobody so far as he knew knew of this order. You can only introduce this affidavit to impeach in this statement your own witness in your own defense and if you have the desire to impeach Blobel then we will hear you but if you intend to submit this in support of anything which he said because he repudiated the statement from the witness stand and even went so far as to apologize for his utterance. The document, therefore, will not be accepted.

DR. HOCHWALD: Thank you very much, your Honor.

DR. KOHR: Your Honor, may I be permitted to give an explanation about this --why the excerpt from the transcript has become part of document No. 2 of Blobel. On the occasion of the examination of Dr. Braune in the witness stand when the quota of the ratio 1 to 200 was being discussed I tried at the time to explain how it come about that we had this excerpt from the transcript. At the time when Blobel was on the witness stand he said something to the effect that the result of the examination of the witness Wollny in case 7 had made this statement here in the courtroom. It is true that Blobel did not know this for himself. The knowledge now as excerpts from the transcript is being submitted merely for the purpose to make it clear what was the source of knowledge and where he got this knowledge from.

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THE PRESIDENT: But don't you see we get into an entirely irrelevant and collateral matter. Suppose the defendant Blobel had said that he heard that in Spain a certain situation existed. Then later on he would say: I made a mistake, this situation does not exist in Spain. Then you want to bring in a document to show why he made that statement about Spain; it becomes immaterial because the witness in the meantime stated that he repudiated the statement. The statement is not challenged by anybody. Therefore, it is entirely surplusage to have it as a document.

DR. KOHR: I do understand this but I was under the impression that it depends on where one gains an impression. Now, one could think as if Blobel was asserting an opinion which he merely assumed while we were able to find out that the fact of the examination of the witness Wollny in case 7 was the reason why this ever came up in this trial. That is what I am trying to say.

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THE PRESIDENT: You want to say something, Mr. Hochwald?

MR. HORLICK-HOCKWALD: I just wanted to make a short comment. If I understand counsel for the defense correctly he wants to introduce the document in order to show the credibility of the testimony of his client, but what Blobel stated was not that he had knowledge of the testimony of the witness Wollny either directly or indirectly. What he stated was that every German knew about the order given by General Eisenhower, that for every one American who was killed two hundred Germans were to be shot. Then he amended his statement by saying that his order was well known in Germany. He expressed his conviction that many of defense counsel present knew of this order, that the defendant Ohlendorf must have had knowledge of the order and that his own defense counsel had knowledge about it. I have the English and the German copy of the pertinent passages of Blobel's testimony before me and would like to hand it to the Tribunal for scrutiny for this purpose.

THE PRESIDENT: Mr. Hochwald, that is not necessary. We think that the incident is closed and has no probative value of any kind. The defendant made the statement and he later on explained he made a mistake, in effect repudiated the statement and made an apology to General Eisenhower. The Tribunal accepted his statement and his apology, and it is no longer before the Tribunal. There should not be any reference made to this anywhere because with that statement of the defendant, which the Tribunal in good faith accepted, it, in effect, became canceled and obliterated, unfortunately not from the record was from memory, but certainly from the legal consciousness of the Tribunal. The incident no longer happened.

MR. HORLICK-HOCHWALD: That is what I just wanted to point out, and in order to keep the record straight, it is the contention of the prosecution that by the document just offered now by the defense counsel the credibility of the defendant at this point cannot be proved.

THE PRESIDENT: We anticipate that the prosecution will not make any reference to this in summation, in their brief, or otherwise.

MR. HORLICK-HOCHWALD: If the Tribunal please, I have finished my brief on the defendant Blobel.

I think that the defendant has received an English copy. There is no reference made in this brief to this incident.

THE PRESIDENT: Very well.

DR. KOHR: Your Honor, I would like to thank the Tribunal for this explanation, and I would like to say for myself that it was merely my intention to prove that Blobel did not make this unwise statement maliciously.

THE PRESIDENT: Very well, we understand this statement and understand why you made the offer of the document.

DR. KOHR: I now come to introduce Document Blobel No. 10 which I would like to introduce as Exhibit No. 9. This is an excerpt from the Legal Gazette of Germany of 1942, Part I, No. 44, the decision by the Greater German Reichstag of 26 April, 1942. I would like to say the following here. This document shows quite clearly the position of the German head of State. This document reveals in particular and shows the position of the Chief of State with his extensive rights, which were not limited to any extent, and I consider this document relevant; because I think according to Control Council Law No. 10 this does not exclude punishment, but according to these regulations an order from higher authorities would reduce punishment, if an action is carried out because of higher orders. I would like to offer this as an exhibit because I do think it has probative value.

MR. HORLICK-HOCHWALD: If the Tribunal please, I do not want to press the point, as I know the magnanimous and liberal practice of the Tribunal to admit everything in evidence which defense counsel considers relevant for its case, but I do think that this excerpt is entirely immaterial. According to Control Council Law No. 10, crimes against humanity and war crimes can be punished whether they were committed in pursuance of an order or in pursuance of a German law, it does not make any difference.

THE PRESIDENT: But the law also states that the superior orders may be pleaded in mitigation so, therefore, this is entirely relevant.

MR. HORLICK-HOCHWALD: I only want to point out to that, your Honors, that it was never contested by the prosecution that there was an order by Hitler which provided fob the indiscriminate killing of Jews, Gypsies -

THE PRESIDENT: Well, the worst that you could say about it, Mr. Hochwald, is that it is cumulative.

MR. HORLICK-HOCHWALD: That is what I wanted to say, it is not contested by the prosecution that such an order existed.

THE PRESIDENT: I think it is well to have it in the record.

MR. HORLICK-HOCHWALD: I have just said I don't want to press the point.

THE PRESIDENT: Yes, very well.

MR. KOHR: I now would like to offer Document No. 11 which I would like to give the Exhibit No. 10. This is an excerpt from the speech of the Reichfuehrer-SS in Poznan on 4 October, 1943. The prosecution referred in their opening speech to this speech by the Reichfuehrer in Poznan, and I would like to point out that before the I.M.T. it was introduced under the Document No. 1919 ES, US 170, as evidence.

MR. HORLICK-HOCHWALD: If your Honor please, there is, of course, no objection against this document on the part of the prosecution. We only want to point out that it is understood that the whole speech is in evidence, not those excerpts which are offered.

THE PRESIDENT: The only possible objection that I personally could have to this is that I can repeat that speech to you forward, backward, any way you want it, so that it is really superfluous in order to acquanit the Tribunal with it, but it certainly is relevant.

MR. HORLICK-HOCHWALD: I only wanted to point out that we understand that the whole document is in evidence.

THE PRESIDENT: By all means; by all means.

DR. KOHR: That concludes my presentation of Document Book II, Blobel. I would like to explain that I intend to introduce as Document No. 12 an affidavit by Walter Ostermann. Unfortunately, I have not yet received this affidavit back from the translation department and, therefore, neither the Tribunal nor the prosecution have a copy of it in English of the exhibit.

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I would like to ask the Tribunal to give me opportunity to introduce this document as an exhibit here. me to make. I would like to draw the attention of the Tribunal to the fact that on 6 November 1947 Dr. Heim made an application that the sound track of the statement of the defendant Blobel on 6 June 1947 in the morning be heard in order to clear the question of credibility of the defendant Blobel. We ask that we will be able to hear this sound track here. Unfortunately, I am not able to tell the Tribunal what day Dr. Heim repeated this motion here, and I would like to make a request that this motion by Dr. Heim, which has not been decided yet, be decided by the Tribunal.

THE PRESIDENT: At the first opportunity, and that will be today, we will determine into the feasibility of the mechanical reproduction of the sound track to which you refer, and I would appreciate it, if no later than tomorrow morning, you recall this matter to our attention, but by that time we will be able to tell you just what the mechanical situation is with regard to this request.

DR. KOHR: Thank you, your Honor.

THE PRESIDENT: You are welcome. Any other defense counsel ready to proceed?

(No response).

THE PRESIDENT: Apparently not. Mr. Hochwald, is Mr. Ferencz ready to proceed with the rebuttal? Oh, pardon me.

DR. KOHR: Dr. Kohr for Dr. Link.

Your Honor, Dr. Link asked me this morning that if nothing could be discussed a suspension should arise in the Tribunal because if nobody else is able to present any documents he asked me if I inform him through his secretary to appear here immediately. Your Honor will probably remember that Dr. Link already mentioned the fact that he wanted to present his docu that he wanted to present his document on Friday.

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Dr. Link is taking part in the Krupp trial and is there at the moment and can be brought here immediately.

THE PRESIDENT: Are you sure he is in the courtoom?

DR. KOHR: He is in the courtroom of the Krupp trial.

THE PRESIDENT: Well, that is very interesting. So may someone inform him to come to this courtroom of his own free will?

DR. KOHR: His secretary will be able to do that, I think so, because he said before that he was willing to do this.

THE PRESIDENT: All right, we invite him to visit us.

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MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution would appreciate it if the defense could proceed with the presentation of document books, I have just been informed by Mr. Ferencz that our rebuttal document books are not completely ready yet. I cannot tell the Tribunal just when they will be, but I am sure it will be sometime today. I just haven't got them yet.

THE PRESIDENT: Well, has someone now actually gone to notify Dr. Link? Have you notified Dr. Link? You sent the secretary already? Oh, I see.

Well, Mr. Hochwald, after Dr. Link will have submitted his documents, will you then be ready to proceed with something in rebuttal?

MR. HORLICK-HOCHWALD: If the Tribunal please, as far as we know, Dr. von Stein is ready to present his document books on the defendant Sandberger at eleven o'clock today.

THE PRESIDENT: I see.

MR. HORLICK-HOCHWALD: So that there will be no intermission in this respect.

THE PRESIDENT: And then you will be ready this afternoon?

MR. HORLICK-HOCHWALD: I hope so, your Honor. I have just received only a short information from Mr. Ferencz who told me that the document books at this time are not ready yet but according to the best of my knowledge they will be ready this afternoon.

THE PRESIDENT: Well, if you have any witness which you intend to present -

MR. HORLICK-HOCHWALD: I do not think so, your Honor.

THE PRESIDENT: I see. Mr. Hochwald, who did you say would be ready at eleven o'clock?

MR. HORLICK-HOCHWALD: Dr. von Stein for the defendant Sandberger, That is what Mr. Glancy told me.

THE PRESIDENT: What about Dr. Lummert for the defendant Blume?

MR. HORLICK-HOCHWALD: As far as I have been told last Friday, Dr. Lummert is in a position to present his documents any time. He was supposed to follow the presentation of the defense counsel for the defendant Ruehl who is just coming in now.

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THE PRESIDENT: Yes. Is Mr. Ferencz making whatever efforts he can to get his document books herd for this afternoon?

MR. HORLICK-HOCHWALD: I just have telephoned to our office, your Honor, and I have been told that the German document books have been distributed and that we hope to have the English assembled this afternoon. That is the last information which I got just a minute ago.

THE PRESIDENT: That is, ready for submission t his afternoon?

MR. HORLICK-HOCHWALD: We haven't got them yet, but I hope so.

THE PRESIDENT: Yes.

DR. HEIM: Dr. Heim for the defendant Blobel. prosecution had not been given to us yet. I believe that for the rebuttal, in as far as the presentation of documents are concerned, the prosecution will also have to keep to the twenty-four-hour period because the defense also has to have the opportunity to get rebuttal evidence.

MR. HORLICK-HOCHWALD: If the Tribunal please, I do not think that it is in the nature of rebuttal that further documents, in order to rebut rebuttal, are supposed to be handed in by the defense. As far as I understand, the nature of rebuttal evidence is to rebut statements made of the evidence -

THE PRESIDENT: Just a moment please. What is the difficulty?

THE INTERPRETER: The switch was on neutral.

MR. HORLICK-HOCHWALD: As far as I understand the nature of rebuttal evidence: this evidence is introduced to rebut statements made or evidence offered by the defense, in order to disprove the case in chief as presented by the prosecution. However, we do not want to quibble about the question of the twenty-four-hour rule. I may possibly be allowed to make a suggestion, that we put in this evidence and that the defense may be allowed tomorrow morning, or just at the moment when the twentyfours have expired, to offer their objections against the rebuttal evidence as presented by the prosecution.

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DR. HEIM: Your Honor, I would like to point out again the procedure in Case IV against Pohl. The prosecution presented four to five documents books during the rebuttal. The prosecution kept to the twentyfour hour rule very strictly. I consider this necessary since the time during rebuttal is very shor, so that every minute is precious for us in order to get the appropriate rebuttal evidence.

DR. HORLICK-HOCHWALD: I do not think that Dr. Heim understood my suggestion. I do not want to dispute with defense the right of the twentyfour-hour rule. The only thing is I want is to put in the documents in themselves, but we want to reserve to the defense the right within the twenty-four hours to object against the documents. I think it is perfectly clear. We only want to put in the documents. I think the procedure suggested by the prosecution is by no means a circumvention of the twentyfour-hour rule.

THE PRESIDENT: Mr. Hochwald, does the rule state categorically that the opposite side must receive a document twenty-four hours before it is presented?

MR. HORLICK-HOCHWALD: I wouldn't dare to quote the rule just our of my memory, your Honor.

THE PRESIDENT: I never had occasion to pass upon it, and there is no question that that rule exists. Whether it is invoked during the rebuttal period we have not had occasion to pass upon, but we would like to say here now that if there is such a rule and the defense insist upon its being invoked, then it will be invoked. It is entirely a matter as to whether the defense wants to waive that rule. If they do not want to waive the rule then -

MR. HORLICK-HOCHWALD: If your Honors please, I do think that I called what I said as suggestion. I suggested that, and I do think it is an acceptable suggestion.

THE PRESIDENT: That is right, you just made the suggestion, and it is a question as to whether the suggestion will be accepted or not.

We would like for the Secretary General to inform Dr. Gick that he should confer with the Tribunal with regard to the testimony of the defendant Strauch.

DR. HEIM: Your Honor, personally I am not going to waive the twenty-four-hour rule. As far my colleagues, I cannot make any statement because I haven't discussed the matter with them yet.

The secretary of Dr. Link just gave me a note saying that he is in the Krupp trial and that an order by the Tribunal exists there -

THE PRESIDENT: Is he in or out?

DR. HEIM: He is in the Tribunal, your Honor, in the courtroom.

THE PRESIDENT: I just want to know. I would like to know where counsel are, because they can be anywhere.

DR. HEIM: Your Honor, Dr. Link was not arrested on Friday. The Tribunal in the Krupp trial has issued an order that all defense counsel must be present in the courtroom this morning. Dr. Link would like to inform the Tribunal that during the recess here as soon as there is a chance to leave there he will come here in order to present the documents here.

THE PRESIDENT: Very well. The Secretary General will please contact defense Information Center or wherever the lawyers may be available to ascertain who is ready to present further documents books and -

DR. HEIM: Your Honor, if the Tribunal should take a recess we would point this out to our colleagues, that as soon as the documents have been translated they should be submitted here.

THE PRESIDENT: Do I understand, Dr. Heim, that you say Dr. Link would be available at the recess time?

DR. HEIM: He informed me that during the recess he will come immediately.

THE PRESIDENT: We don't know what time they have recesses there. Approximately the same time. Yes. Well, the Tribunal will be in recess now until approximately eleven o'clock, just as soon as Dr. Link is free and the Tribunal is informed then we will reconvene, but for the purpose of the record now the Tribunal will be in recess until eleven o'clock.

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(A recess was taken.)

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(The hearing reconvened at 1125 hours.)

THE MARSHAL: The Tribunal is again in session.

PRESIDENT: Yes, Mr. Hochwald.

MR. HOCHWALD: If the Tribunal please, during the recess I have obtained the 24 hours' rule which was invoked by Dr. Heim, and I would like to quote from this rule. It is rule Number 17, "Prosecution to file copies of exhibits - time for filing. The Prosecution not less than 24 hours before it desires to offer any record, document, or other writing in evidence as part of its case in chief, shall file with the Defense Information Center not less than one copy of each record, document, or writing for each of the counsel for defendants," and so on. I do think Your Honors, it is clear from this ruling that the 24 hour rule does not apply for rebuttal evidence. "As part of its case in chief" says the rule. I did not dare to state such a thing unless I did have the wording of the rule before me and, therefore, I was reluctant when the question was raised; however, I do not think that -

PRESIDENT: Mr. Hochwald, you found yourselfin the unusual circumstance of being right, one hundred percent right, but we rule against you, and I know it won't hurt your feelings if we do the same thing again today.

MR. HOCHWALD: That will not, Your Honir, and I want to say that I do think it is an entirely theoretical question, as I know there is enough evidence to come from the part of the defense so that there will be no interruption, and as far as I have been informed, the German document books were filled this morning at 9 o'clock with the Defense Information Center, so that we, at the latest tomorrow morning when court, reconvenes, can start with out rebuttal evidence. Thank you very much.

PRESIDENT: Very well. Now, who is ready to proceed? Dr. Von Stein.

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COURT II CASE IX DR. von STEIN for Sandberger: Your Honor, I assume that there are already two of my document books available, is that correct?

THE PRESIDENT: Yes.

DR. von STEIN: My presentation will be divided into three parts. First of all, I shall submit documents which refer to the Eastern Campaign of the defendant Sandberger and then those documents --

THE PRESIDENT: Dr. von Stein, we have here a thin collection which says "Corrections and Supplement to Document Book I". Then we have Document Book I, well--that is all right. Very well, proceed with Document Book I.

DR. von STEIN: Your Honor, I would just like to say that in my document presentation the Document Books I and II belong together because they are not submitted in the order in which they are contained in the books but particularly one or two exhibit will be in Document Book II.

THE PRESIDENT: Well, we only have Document Book I so that if you need the two document books together we can't very well proceed with your Document Book I.

DR. von STEIN: Your Honor, then I can't make my presentation.

THE PRESIDENT: Dr. Lummert, are you ready to go ahead?

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: The Prosecution is not in possession of Document Book II. We just received Document Book I at 10 o'clock but I agreed with defense counsel that we would have no objection in his presenting it. However, as you say if he has to present it with Document Book II we will be unable to allow that.

THE PRESIDENT: Mr. Secretary General do you know whether Document Book II is available?

THE SECRETARY GENERAL: It is not as yet.

THE PRESIDENT: I am very sorry Dr. von Stein. Then you will have to give way to Dr. Lummert who is ready to proceed.

DR. von STEIN: Yes, But, your Honor, I think the interpreters have COURT II CASE IX Document Book II - it should be available.

THE PRESIDENT: In English?

DR. von STEIN: In English.

THE PRESIDENT: Mr. Lea do you have Document Book II.

MR. LEA: I am just looking for it, sir. I don't find it. We have it in German but not in English.

No, sir, we don't have an English copy of Document Book II.

THE PRESIDENT: They don't have it, Dr. von Stein.

DR. von STEIN: Then I beg your pardon, your Honor. This afternoon then I shall continue.

THE PRESIDENT: Very well. Dr. Lummert, will you please proceed?

DR. LUMMERT for Blume: Your Honor, may I make an introductory remark. Mr. Ferencz is not present. When last Thursday I gave him Document Book II and shortly summarized the contents for him he told me that he would have no objection against my documents. Nevertheless I would ask that you give instructions that Mr. Ferencz be called so that he may be present because he is handling this particular case.

MR. WALTON: Mr. Glancy left the courtroom for that very purpose just a moment ago, your Honor.

THE PRESIDENT: You may proceed. Prosecution is represented in the person of Mr. Walton for the moment.

DR. LUMMERT: I also would like to ask the Tribunal whether my Document Book I for the defendant Blume has been submitted to the Tribunal because I will need the map on page 28 of Document Book I.

THE PRESIDENT: We have it.

DR. LUMMERT: May I ask whether this map is on page 28 because part of the books don't have them. If not I would have other copies of the chart.

THE PRESIDENT: Yes, they are here.

DR. LUMMERT: Thank you, then I shall begin. Your Honor, the presentation of Document Book II for Blume will be very brief because the greater part of the documents, that is the documents 15 through 29, are COURT II CASE IX only or testimonies as to good character.

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I shall summarize the contents of these documents briefly. On document 11 which is the first document in Book II needs a more detailed description. I may also remark that page numbers of the English and German Document Book II correspond exactly throughout. This was already the case in my Document Book I. Karl Radl. This affiant was liaison officer between SK7A and the Ninth Army Headquarters during the time when the defendant Blume commanded Sk 7A, that is to say from the end of June until the middle of August 1941. I only saw this affiant to take an affidavit on the enening of 4 November 1947 and was only able to speak to him on that evening because already on the next day the affiant left Nurnberg again. On that 4 November the interrogation or the examination of the defendant Blume in the witness stand had just been completed including the cross examination and I already had submitted Document Book I. I would like to say at this point that it was a great pleasure to me when the story Radl confirmed to me the important facts on the evening of 4 November the way the defendant had testified to on the witness stand. This affidavit therefore confirms the absolute credibility of the defendant Blume. In order to understand this affidavit better I ask the Tribunal to look at the chart which is on page 28 of Document Book 1 of Blume. I would like to have the Tribunal recall that this map shows the route of the advance of Sk7A for the period until Blume was ordered back from the East to Berlin. Furthermore, the Tribunal will recall that the defendant Blume stated as his own witness that he considered the executions of Jews as wrong and, therefore, he wanted to evade them by always staying with the combat troops as far as possible. Furthermore, that during his time when he held command two executions took place, one in Minsk on the morning of 7 July and the second in Vitebsk around the 19 or 20 July. The first execution concerned about 50 to 60 people and the second about 80 executed people. The first one was carried out by COURT II CASE IX Hamptsrumfuehrer Foltes a member of Sk7A upon direct orders of Brigadefuhrer Nebe who was leader of Einsatzgruppe B who arrived in Minsk at that time.

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The second operation in Vitebsk, however, was ordered by a telephone message of Brigadefuhrer Nebe, rather Nebe forced Blume by a telephone message. The defendant Blume also told Hamptstrumfuehrer Foltes at that time to carry out this particular execution.

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DR. LUMMERT (continued) Now I come to document 11. On page 1 of the document the witness Radl reports about his tasks as liaison officer and he says on page 2 at the top and I quote just one brief sentence: "I was traveling nearly all the time in order to maintain the liaison between Sk7A and the G-2." difficulties which the defendant Blume had to overcome with the 9th Army Headquarters until he received the permission to move along with the combat troops. He succeeded in getting this permission. That's what Radl says after his great success in Minsk where in the house of the Soviet he found the Russian mobilization plans for the wars against Germany and Poland. important. It is probably not necessary for me to read this passage into the record but I ask the Tribunal to read these 20 lines. The passage begins on page 3, the 7th line from the bottom with the sentence: "When Dr. Blume was on his way from Minsk, etc" and the passage ends on page 4 in the middle. Radl says that he met Blume in Molodetchnow. If the Tribunal will once more look at the map on page 28 of Document Book I I may say that Molodetchnow is somewhat north west of Minsk where the road divides. Radl came from the Ninth Army Headquarters from the direction of Vilna and Blume came from Minsk and at Molodetchnow they met. If I had known the testimony of the witness Radl before then I would have put Molodetchnow on the map. I shall come back now to the affidavit of Radl and to page 4 in the middle. I ask the Tribunal to read the short Paragraph of 7 lines on page 4 in the middle. It concerns itself with executions in Vitebsk. Now I shall once more summarize. Radl reports that the Sk7A spent about 10 days on the Loswitha Lake and that he himself, namely Radl, spent about 5 to 6 days there, too. Furthermore that near Welish and near Baklanova there were serious partisan fights. Important is a conversation which Radl had with the defendant Blume in Baklanova. This passage begins on page 5, line 8, and I would like the Tribunal to read this message too, until the end of the paragraph.

The defendant Blume thus had complained at that time about the bad/conduct of the Brigadefuehrer Nebe. Finally Radl confirms in his affidavit that the defendant Blume was recalled to Berlin shortly afterwards and on page 6 he mentions that Blume was an excellent officer and an excellent commander of his unit, who was very populat with his men and that in his office he was strict and decent and had a calm and objective attitude. May I hand over document 11? witness Kruckemeier. It is very brief. I have tried to avoid cumulative evidence. Kruckemeier too was a member of Sk7A - - -

THE PRESIDENT: Dr. Lummert, are you purposely not giving exhibit numbers to these documents?

DR. LUMMERT: Your Honor, when submitting the first document book I already had adopted the system that the exhibit numbers corresponded with the document numbers and you, your Honor, approved of this system at the time. I would ask that I continue this system.

THE PRESIDENT: I think it is an excellent system on your part. It is too bad that it can't always be true. Since you have found a way to let those two systems coincide I think it is an excellent idea.

DR. LUMMERT: I offer all the documents exactly in the order in which they appear in the document book.

THE PRESIDENT: Very well.

DR. LUMMERT: I said that Kruckemeier was also a member of Sk7A. He confirms the good discipline particularly which the defendant Blume achieved especially as to the relationship toward the civilian population in the occupied territories. which the defendant Blume took measures against a member of the Sk7A, a man who had not acted according to discipline. I need not go into the details. On page 8 the witness reports about the good relationship Lake.

The inhabitants gave the defendant Blume, in a very solemn manner, the Harvest wreath after the harvest had been collected.

The himself.

It contains some snaps with accompanying texts. These testified to in the witness stand.

Since the photostatic copies are not especially clear I ask that I may submit the original pictures to the Tribunal.

his in 1941. He himself took no photographs. I may explain briefly what these pictures are.

Pictures #1 shows the large Soviet building in Minsk.

That is part of the facade. In this large building Sk7A all the mobilization plan.

Pictures 2 and 3 show the great fire in The defendant Blume has made statements about this.

Pictures #4 to Picture #5 shows the Russian prisoners of war when they were interrogat ed immediately after they were captured.

The defendant Blume testified about this on the witness stand.

Now I shall come to pictures 8 to 13.

These come from the Harvest Thanksgiving celebration, at the Los I need not give any more details about it.

The pictures show the good relationship with the civilian population. Perhaps I might mention that on Picture 10 a farmer's wife makes a speech; she has raised her hand, and on Picture 11, Defendant Blume replies. On picture 13 the Tribunal can see the affiant Radl. He is the man with the accordion. This is Document 11 which I handed over before.

THE PRESIDENT: Was an accordion part of the equipment of the Kommando?

DR. LUMMERT: On that occasion, Your Honor, indeed. I might point out Picture No. 15. It confirms the great partisan danger near Welish. Picture 16 shows the Szloboda Lake. Szloboda is on the map too which is on Page 28 of the first document book.

As the next document I offer Blume No. 14. This is an excerpt from the official diplomatic note of the Reich Government to the Government of the Soviet Union of the 22nd of June, 1941. When the defendant Blume was asked by the presiding judge about the various aggressive wars of Germany he answered that in the year 1939 and the following years he considered all these campaigns as not aggressive ones because the German government always gave the German people appropriate reasons for these campaigns which it considered as reasons for a completely defensive wars. I have chosen the statement of the German government here which was published at the beginning of the Russian campaign. It is a very long statement which appeared in all German newspapers at the time. I have only chosen the most important passages from the statement. They show clearly that every German had to believe at the time that the Soviet Union was about to attack Germany immediately and that Germany merely got ahead of them, namely as an act of necessary self-defense. I ask the Tribunal to take judicial notice of this document. They are put in such an order that they describe the defendant Blume from his childhood until the end of the last war. It will certainly not be necessary for me to read any parts of these affidavits word for word.

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If I may summarize the most important facts in these affidavits, I may say that the Tribunal will find that all these affiants always emphasized the following characteristics as the salient characteristics of the defendant Blume; namely, his open and sincere manner, his honesty and love of the truth, his pleasant and kind manner which made him popular wherever he went, then his fairness in sports and his tolerance of other people's opinions. As far as the affidavits refer to the professional activity of the defendant Blume, they confirm his absolutely correct and decent attitude and his civil courage, if I may use this concept. "Civil courage" means that a person would prove his absolutely decent and honest manner under all circumstances, especially if his superiors would object. In an official civil courage means particularly that nothing would prevent him from sticking to his honest character. I have no remarks about No. 15. It is the affidavit of the witness Meier. I don't have to say anything about 16 either, the affidavit of Koeller. About 17 I have nothing to say either. That is the affidavit of the witness Leithe. As for No. 18, the affidavit of the witness Hartleif , I would ask the Tribunal to read the last paragraph on page 31 because it concerns the political idealism of the defendant Blume, and it confirms that he was free of any hatred against anyone. Document No. 19, which is the affidavit of the witness Frommeyer, contains a special example of the political tolerance of the defendant Blume. It is a case which had happened by the end of 1944, and I would ask the Tribunal to read the passages on page 32 at the bottom until the top of page 33. Document 20, affidavit of witness Bauer, contains two examples for the fact that Blume was the opposite of a political fanatic. The first case concerns itself with the case where a doctor did not use the Hitler salute. The defendant Blume protected this physician. The second case involves a matter in which the Gestapo, upon the suggestion of the defendant Blume, did not take any steps against somebody.

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Document No. 21, the affidavit of the witness Diekmeyer confirms positively the very good character of the defendant Blume. The next, Document 22, is the affidavit of the witness Ruether, former teacher of the defendant Blume, who knew him from many years ago. He too cites a special example for the correct attitude of the defendant Blume in his position. It is a Gestapo case of the year 1934.

The next document, No. 23, is the affidavit of the witness Sommer, a former government president in Halle, the highest ranking government official of the district there. This affidavit gives an excellent recommendation of the defendant Blume. The witness Sommer was an opponent of the National Socialist regime. He had had great difficulties with the predecessor of the defendant Blume and he confirms that the defendant Blume was the opposite of his predecessor, namely a correct official who only served law and justice. Behre and Heinrichsmeier, belong together, as far as the contents are concerned. They concern the period when the defendant Blume had a position in Hannover. That is from the fall of 1937 until December 1939. There too, the defendant Blume showed his correct attitude and that which we call civil courage. As an example, the case of the 9th of November, 1938, is cited. On that day when demonstrations against the Jews took place in all of Germany, the defendant Blume was not in Hannover. when he returned he disapproved of the excesses which had taken place in Hannover very severely and had several SS men arrested who had not stayed away from looting Jewish stores. These SS men were personal friends of the SS-Obergruppenfuehrer Jeckeln, leader of the SS sector there. Jeckeln demanded of the defendant Blume that these SS men be released or be handed over to SS jurisdiction.

The defendant Blume refused to do this. Despite frequent objections by General Jeckeln he had insisted on a proper proceeding against these SS men. Thus he earned for himself the enmity of SS Obergruppenfuhrer Jeckeln. This man Jeckeln is already well known to the Tribunal, especially from the testimony of the defendant Jost. Jeckeln was the type of a ruthless fanatic who could act even in a brutal manner. These were the documents 24 and 25.

Documents 26 and 27 belong together in a similar manner. These are the affidavits of the witness Burg and the affidavit of the witness Ehlich. They confirm the official activity of the defendant Blume in Veldes which is in Upper Carolia and Lower Jtyria. The defendant Blume has already testified in his recross-examination to the facts of this case. Briefly summarized, one can say that the defendant Blume at that time saved the lives and liberty of thousands of people, in sharp contrast to the Higher SS and Police Leader Roesener. It won't be necessary to go into any details.

Finally documents No. 28 and 29 belong together. These are two affidavits of the witness Haefner. They concern the official activity of the defendant Blume in Greece. There too, Blume showed himself to be a correct official who was only guided by a positive attitude towards justice. Especially noteworthy is the conduct of the defendant Blume towards the Anglophile-Greek circles. On his instructions these were spared completely unless they made themselves guilty of active sabotage acts against the German occupying forces. If the Tribunal will look at page 58 of the document book, it is perhaps interesting that at that time there was a unity front in Greece between the Anglophile Greeks, the Greek Government, England itself, the Greek Government in exile, and the German police, against Communism on the other side. The details can be seen from the preceding pages.

Finally I come to the last document, Document No. 30. This is not of evidencial value, but this document is only to facilitate the Tribunal.

Namely, it gives various excerpts and quotations about a certain legal question. The legal question is that of so-called unexpectability. If the Tribunal would be kind enough to read the note on page 61 at the bottom of -- in my opening statement I already have announced that I would discuss this question of unexpectability in my final plea. This is one of the general subjects which defense counsel will discuss in the final pleas. In order to avoid unnecessary repetitions the defense counsel have agreed that several of them will treat certain general themes in more detail. Such general themes, for example, are the Eastern problems, to express it briefly, furthermore the state of necessity caused by the order of the superior, and finally, the so-called unexpectability, and this unexpectability is my favorite theme, and I would like to ask the Tribunal in the recess, between the last day of taking evidence and the starting of the final pleas, to be kind enough to read this Document No. 30, because this would make my final plea easier and briefer. I may remember too that this so-called unexpectability is the basic legal thought which is at the basis of all various regulations about selfdefense, state of emergency, etc.

With this I can close my documentary presentation. It is possible that I shall receive one or two more documents and that I shall submit them later.

THE PRESIDENT: Do I understand, Dr. Lummert -- do I understand that there is more or less an agreement among counsel that you will distribute the legal agruments and that each one will have one phase ofit rather than to have a repetition of the various arguments?

DR. LUMMERT: Yes, your Honor.

THE PRESIDENT: I think i t is an excellent idea, so that all of you playing together as a big orchestra will produce the symphony of the law, and that you will play on your accordion the theme of unexpectability.

DR. LUMMERT: Your Honor, of course it remains up to every defense counsel to make his particular statements himself. The distribution of the general themes was merely to avoid unnecessary repetition.

THE PRESIDENT: Well, of course you will be entirely free to present your arguments in any way that you wish, but we do think that it is an excellent idea, that where a certain feature of the law is to be developed that one or two counsel devote themselves to that feature. The others may concentrate upon other phases of the law.

DR. LUMMERT: That is just the way we intend it.

THE PRESIDENT: All right. The Tribunal will be in recess until 1:45.

(A recess was taken until the hour of 1345) (The hearing reconvened at 1345 hours)

THE MARSHAL: The Tribunal is again in session.

DR. GICK: Dr. Gick for the defendant Strauch. defendant Strauch?

THE PRESIDENT: I wish you would, Dr. Gick. BY DR. GICK: when and where you were assigned to Russia. Where were you assigned in Russia for the first time?

Q When was this? 1941, in Riga.

Q On the 10th or 12th? Which month?

A Just a moment, please. Let me think about it. I believe on the 9th -

Q I would like you to give me the answer, defendant, please. Was it in November, 1941?

Q Yes. 1941. And do you remember the day when you came to Riga? personnel office, and this main personnel office probably on the 4th sent me a teletype message to Koenigsberg which I probably got on the 5th, and I was still lying in bed any my arm was broken, and immediately I was not in the hospital anymore, but I had already left the hospital and was at home, but my arm was still in the plaster cast -- and so I called up Berlin and asked them would they leave me for sometime in Koenigsberg to recover because I was not yet fit, and I talked to Herr Blume, and he explained to me, well, he urgently needed somebody in Riga, but he said, "For a few days you can still remain in Koenigsberg", and then as far as I know on the 11th or the 12th I went to Riga.

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page 29, Prosecution Exhibit No. 106, Document No. 2966 --- there is an entry that since the 4th of November, 1941, you had been in Lativa.

MR. GLANCY: Pardon me, sir. That is page 20 of Document Book 3-A. and I already inquired why this might have been possible that this entry, was made so incorrectly, and they aid the figures did not quite concide, and therefore I objected, and I said I wastold that this happened repeatedly that in personal files mistakes occurred. BY DR. GICK: or rather transferred, and that only on the 11th or 12th you arrived in Riga?

A He told me verbally, and I stated this: I said that my wife can be heard as a witness about this because my wife took part in that discussion.

Q Herr Strauch, in what capacity were you transferred to Riga? and the SD.

Q Were you Commander of Einsatskommando II? files where it says that from 4 November 1941 you were Chief of Einsatzkommando Latvia with the command of the Security Policy in the Eastern territory, in the Eastland.

A That is just the evidence for it. If it said that I was Chief of Kommando II, then it would not have fitted in because Kommando II was in Loknia or somewhere at the Front, and if it says there "Kommando Chief with the command of the Eastland", this shows clearly that I was not Kommando Chief in Latvia but that I was Commander in the Eastland, as another expression would have been used.

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Q What expression would they have used?

Q With the command of the Security Police Eastland?

A No, that doesn't even exist. A commander for Estonia or Lithuania did not exist any longer at that time.

Q At that time who was Einsatzkommando Chief II?

A I cannot say that. I believe -- what was his name again? I can't say for certain what my comrade's name was. He was assigned immediately even before my arrival.

Q And where was Einsatzkommando II?

A That was in Loknia or somewhere there. Unfortunately I do not have a map to show that.

Q Whereabouts is this? under civilian administration? of the Security Police and SD in Latvia?

A I didn't quite get that. what tasks you had as Commander of the Security Police in Latvia. and the SD to organize a new police force because no police existed there, and Stahlecker told me, "First of all, organize a police force for me." Please consider that this is not a security police. A criminal police did not exist there, I said, and it had to be organized with Latvian forces first. Any other police did not exit either. We call it State Police -- that did not exist, and all this had to be organized, and the administration and the administration police had to be organized, and the administration and the administrational police had to be organized, and then, of course, the same as in all other areas the order had been given that the Jews living there were to be liquidated.

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Q When did you hear about this order for the first time?

Q Were you in Pretsch?

A No, I was not in Pretsch. I couldn't have been according to the first description of how I got there. I first heard about it from the Commander of the Security Police and SD in Lithuania whom I knew very well, and suddenly I saw him again and he had changed tremendously. I told him, "Tell me, for God's Sake, what do you look like?" and he said in reply that he was confused because of all the things he had to do out there. So I asked him, "What is the matter? What is it?" So he said, "Well, you know about the Fuehrer Order which exists, and we had to carry this out until now." Of course, it impresses one deeply and impressed me deeply, and I stayed with him during the night. Early in the morning I left for Riga and I hoped that my comrade, Rasch --not Rasch -- Batz, the one whose successor I was going to become. Batz is the name.

Q Was it Batz? or I wanted to go to Lange, who had been in Riga for some time. I knew them both very well, and, first of all, I wanted to get some information about what was going on. Now about noon Stahlecker arrived, so I reported there, and he said to me, " Well, what is the matter? What is to be done?" No, that is not true. That is wrong. It was like this: I met neither Batz nor Lange. Batz was somewhere far away in order to say "Goodbye" to his men, and I did not meet either of them, so I went to the main sector, and after a short time I met Stahlecker there. So I asked him what my tasks would be. He told me in reply what I have just described here, that I would have to organize a political and criminal police force, and that I had to deal with inner administration, that I had to take part in work concerning inner administration, and then he said to me, "Yes, we have to deal with the elimination of Jews as well."

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So I said quite spontaneously, "That is crazy. Only yesterday I saw "---what is his name? "He looks terrible!" So he said, "Yes, we know that one would have to do something about it. It can't be done that way. He had to be taken away." to be carried out, and first of all I was to go to my old comrades. They would tell me about their experiences, and then about evening -- in the meantime they had heard by phone that I was there, and he said in reply -they both said they had come immediately, and they both came about the same time, and I asked them both, "Tell me, what is going on here. I saw Krueger" -- no -- "Jaeger. He looks terrible. Then I went to Badecker Salzecker and had been given the same mission by him that I would have to carry out Jewish operations, and I could not imagine what terrible tasks I had to do." So I said, "This is awful." So he said to me, "Keep calm. During the last time we have not had to carry out any anti-Jewish operations recently because Heydecker during the last time had said that the anti-Jewish action should not be carried out in Riga during that time."

Q You mean Heydrich? happened, and I talked with Batz and -- what is his name -- Lange. I talked to Lange and also Brigadefuehrer -- the Brigadefuehrer here who had received an order to cease to carry this out. Nobody knew why. Weall believed that Heydrich had had some reasons because of other countries, that the other nations might not like this, and that is why he revoked the order. actually do?

police, most of all with Latvian forces who existed there who then volunteered and said, "Here we are and we are at your disposal"; and schools already existed and I extended them.

A Oh, yes. Up there it says so in red. It says -- I think this applies to all others as well.

Q You mean the organization? office 1 and 2 were combined. They dealt with the traffic administration, food, etc. Such matters were handled by 1 and 2. And then there was Office 3. That was the intelligence office which organized to a strong degree because it is obvious that in a conquered foreign territory one has to take great interest in such matters. The political organization of the country has to be considered because if one comes into a country as victor, then --what shall I says? One has to know all about everything or else onecan't govern the other country, so I worked very hard on office 3, and then there was no criminal police in existence, so we had to organize a criminal police, and we had to deal with it because the criminal police had not been well organized and was not extensive, and so every man came to us and wanted us to give him all sorts of answers to his inquiries.

He inquired about various matters and Department IV was very busy and Department Iv was changed to office--just a minute, please, I got such a fright -- office V also worked hard on the organization of the political police and they were very busy. And the political police did not exist and, therefore, still had to be organized. Those were the main points. And owing to thelack of an order by Heydrich, we avoided having to carry our anti-Jewish actions. Last time I told the President about the Jeckeln action. Weshall talk about that later. the work of the Einsatzkommando?

Q You meant Einsatzkommando?

A No, nothing at all. They passed through occasionally at the most and they just passed and were billeted, that is all.

Q Herr Strauch, please try and concentrate again. Be calm. When you need a rest, just say so, and I shall ask the Tribunal to make a short recess and your can have it at any time.

A Yes. I don't need that at this time. work in your office and the office of the SD and the Security Police, and those of the Einsatzkommando 2, for example.

A Well, I cannot say that. I am completely unable to do so. commando? territory and the Einsatzkommando in the operational territory? tasks?

A Yes. They had to do with administrative tasks to a great extent. Braune told me that one oneoccasion they had to deal with administrative tasks a great deal. He also told me, I just can't think of it, that he was busy working on administrative tasks and that he was popular just because of his work in the administrative sphere.

Q Who are you talking about now?

Q Your Honor, may I ask for a short recess. I think my client is a little tired.

THE PRESIDENT: The Tribunal will be in recess for 10 minutes.

(A recess was taken)

********** (The hearing reconvened at 1430 hours.)

THE MARSHAL: The Tribunal is again in session.

DR. GICK: May I continue, Your Honor?

THE PRESIDENT: Please.

EDUARD STRAUCH (Resumed) DIRECT EXAMINATION (Continued)

BY DR. GICK:

Q Herr Strauch, how long were you actually commander in Riga?

Q Two weeks?

Q And why did you not continue in that job? it had frozen quite hard, and I got out of my car and broke my arm again up here right into the old breakage, so I went to the military hospital and they made me stay in the hospital. And now it was strange, while I was still in the hospital, I was visited by the Brigadefuehrer Stahlecker who said, "Oh, how bad this is", "Let us try to get you cured the best we can; but apart from that, I must tell you, you have been transferred to Minsk; Your successor will be Lange". He replied to me, "But in view of your accident here, we will inquire again from Berlin whether they couldn't wait quite a while, and whether you could not remain in Riga", and we received a telegram from Berlin that this was impossible, I would have to get cured finally, I could not remain in Riga, I would have to go back to the Reich in order to get cured properly, and then I would have to take over some other office. He talked to the field general after that and asked whether he could not delay the matter, but he said, "No, I can only treat him temporarily stationary, and everything will be all right". So Stahlecker said, "Yes, it is all right, we will do that". Until the 30th of March 1933 I remained in Riga, and then I received the final information that Strauch would have to go to Minsk at last.

Q Do you mean 13 March 1942, don't you, you said '33?

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A No, no, '42; '32 I was already chief of the guerrilla unit. arm for the second time?

A Brigadefuehrer Stahlecker had the following intentions. He, himself was to become Higher SS Leader, either in France or one Nordic country - so northern country. He was prepared for this already, and he only lived for that idea to go there. And his deputy, Tschersky, himself, of course, attached importance to this. He was supported by Brigadefuehrer Stehlecker, and he wanted to have him transferred as Brigadefuehrer and as commander. the second time after that, a deputy was appointed as commander for you, Dr. Lange?

Q So obviously you weren't in charge of the commando any more?

A No. I was not in charge of the commando any more. I am just trying to tell you why not. And the - what is his name - said my arm was broken, yes, my arm was broken, and he insisted that I would not have to carry out this operation, but that I would assign men for this, but I only had 20 men in Riga under me, and I had been prohibited to do this by Heydrich. I had been prohibited to do this and if Heydrich says that this is prohibited this is so important that I cannot act to the contrary.

Q Herr Strauch, You are now talking about another situation. We will talk about that shortly. I am now asking you, what did you actually do? Stahlecker said, "Well, do me one favor, take over the - do not take over the commando post in Riga, but let Lange take it over, because you can't take it over anyhow, you will have to go to Minsk one day anyhow, since this has been rejected so strictly - so severely". So he insisted that for a few weeks I should carry out the work of his Department III.

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Q You mean his Department III in his office as commander?

A Yes, as commander. I only had to do with the position as commander, nothing else concerned me.

Q were you put in charge of this then?

A Yes, yes. I took over this department - well, "department" is saying too much, there were only three men and two girls. I held this position - well, when I handed over the office, I was at the hospital. I was treated stationary - got stationary treatment, and I just hung around quite a while, and then I took over my position in office III. Only a few weeks could have passed.

Q Did you hold that position until you went to Minsk? do with execution of Jews?

A I was supposed to deal with them. I reported about this repeatedly last time as well. I received - how was this again - well, shortly before I left -before I, or rather when I went to Minsk, when I arrived in Minsk, Kube told me - the Gauleiter, Kube, told me he was forced. Ruthenia. I am asking you whether you had anything to do with execution of Jews in Latvia? order to carry out such executions of Jews just when I had arrived, namely, I think it was in May, he already had carried out operations and had them carried out, and when I arrived he talked to me and said that this could not be carried out in his territory, in his sphere because he needed the Jewish forces and Jewish people under all circumstances.

Q I must interrupt you. Kube was not in Latvia.

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there for a very brief period of time.

THE PRESIDENT: Witness Strauch, please, what Dr. Gick asked you was whether you carried out the execution of any Jews in Latvia. You are telling us now what happened when you got to Minsk, which, of course, is important, but Dr. Gick will come to that later. He asks you now whether you carried out any executions in Latvia.

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A. I keep on saying I know about operations in Latvia on orders by General Jeckeln. Yes, on orders by Jeckeln.

Q. Please describe this.

A. I shall describe this now. On 27, I believe -- I still had my plaster cast on and I said - rather two SS officers came to me and said that all available forces of the Security Police and SD in the Eastern territory - he wanted to carry out and that I had detailed some men and put them at his disposal. I explained in reply that I still was sick, and that I was unable to work because of this and that I was not even present because my arm was still in plaster cast and he swore terribly - the two young men, or rather the two young officers - left and secondly called up and somebody swore terribly on the telephone and then in time he explained that he was Jeckeln and that he was Himmler's deputy and he demanded that I carry out his orders. So I said I was unable to do this because it was my duty first of all to hand all my orders to my superior through teletype messages and that I would, therefore, write to Heydrich, Mueller - Gruppenfuehrer Mueller and to my superior Stahlecker and I would get a definite order from him. so I waited, I think until the 27 or 28, and I thouther, "Well, if you don't like it, I still had received no information - if you still aren't ready to do this I won't do it either." So, I got in my car and drove home to my wife, and as my wife will say, will testify, in some book or other --

THE PRESIDENT: Where was your wife, witness?

Where was your wife? You say you drove home to her, where was she?

A. I think - I know there was a definite reason. By Dr. GICK:

Q. The President is asking you where your wife was.

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A. I was just saying my wife had some particular reason which she will give, but I don't know what it is. I have to look at some book or other.

Q. Please answer the question where you found your wife at the time.

A. She was in - as far as I know - Berlin. No, in Essen. In Essen with my mother.

THE PRESIDENT: Well, witness, you were telling us in a very intelligent manner just what happened when Jeckeln instructed you to carry out this execution. You said that you objected and that you would communicate with Heydrich. Did you write to Heydrich?

A. I didn't get the translation- didn't understand it, your Honor.

THE PRESIDENT: You told us that you refused to carry out Jeckeln's orders and that you would write to Heydrich, Mueller, and Stahlecker in order to be informed more precisely on your duties, Did you write to any of these men? Heydrich, Mueller, or Stahlecker.

A. Your Honor, this must have been some political affair. I just said that I did not know why this order was given but I was quite certain I fully understood that Heydrich issued such an order. He had his political reason for this. You can ask any of my comrades whether they would have acted in the same manner in a position like mine, namely that they would have obeyed Heydrich rather than that of Jackeln.

THE PRESIDENT: Well did you communicate with Heydrich to find our whether you were required to obey Jeckln's order?

A. Just a moment, I am not keeping up.

THE PRESIDENT: Did you communicate with Heydrich to find out-

A. I am not getting the German. Your Honor, I keep getting the English,

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THE PRESIDENT: Well I hope we don't have that trouble in addition to all our other troubles.

Will you check? Is he getting the German? icated with Heydrich to find out whether you were required to comply with Jeckeln's order?

A. I don't quite get that.

THE PRESIDENT: You told us - yes - you said that Jeckeln gave you an order and you believe that you were not required to comply with that order and so you communicated with Heydrich. Did Heydrich reply to your complaint?

A. Not at all, Your Honor. Neither Heydrich replied not did Brigadefuehrer Stahlecker answer, not did Gruppenfuehrer Mueller. I thought I understood it that way. In any case I left because of this. I was asked - I was allowed to do this. And then I said I will just go home then as well. If someone had to be responsible Obergruppenfuehrer Heydrich or at least Gruppenfuehrer Stahlecker will be responsible but if they just keep quiet and I have no reason to pass the responsibility.

THE PRESIDENT: Well, did you comply with Jeckel's order?

A. No, I left and I said if neither Heydrich nor Mueller nor Stahlecker want to carry out the order, obviously at least they would have replied to me. If they don't want to carry out the order and it is obviously an order to avoid the whole matter from a political point of view and I would try to get away with it. One could know, Your Honor, I would like to say that now, one did not know how Heydrich would react to this matter so they just kept quiet. one was hunting, and the other was somewhere else. I don't know where and I did not think that I alone would have to carry out this and I did not carry it out because I knew that if the matter was wrong with Heydrich that it will be bad for me.

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THE PRESIDENT: Well, all right. How you tell us that you did not obey this order or Jeckel. What did you do after that?

A. Well, until the 10th I believe -

THE PRESIDENT: 10th of what?

A. The 10th -- what was it again? The 10th of February 10th of February. That is, after my arrival I remained in Konigsberg with my wife.

THE PRESIDENT: Well, after the Jeckel action did you leave? Dr. Gick you carry on, please. Why don't you, Dr. Gick, take up each document in which he is referred to and endeavour to have him give an explanation of the particular charge in that document?

DR. GICK: Your Honor, I intent to discuss the individual documents with my client. I am just about to talk about the Jeckel document. First of all, Herr Strauch, your wife was not in Essen as you said but in Konigsberg.

A. Yes, I beg your pardon, Your Honor. I really don't know any more whether she was in Essenor Konigsberg. She wrote one day --- I beg your pardon.

THE PRESIDENT: Proceed.

A. She wrote to me the other day that at the time she was in Berlin - I don't know whether it was during that period but I really can not say when my wife, when she was where.

Q. But you traveled to Konigsberg?

A. Yes.

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BY DR. GICK:

Q was Dr. Lange, your representative and was he not present at Riga at the time?

AAt what time?

Q At the time the Jeckeln matter came up? because else they would not have turned to me. With my bad arm I was chief of office 3 - in fact I was sich with my arm my arm was in a plaster cast and then 2 SS officers -

Q Yes, we have heard that, Herr Strauch. Were you alone when the Higher SS leaders were present at the time? and I said, I an not allowed to do this, please explain the following secution, German page 61, Exhibit 42, document 3405. I new submit the following to you. I have just heard, it is on page 57 in the English. It is explained here that on the 30 November 1941, that is the day of the Jeckeln operation -- about 600 Jews were shot at Riga; that this operation was carried out under the direction of Higher SS and Police leader, that is Jeckeln, and that Einsatzkommando II took part in this with a ratio of 1 to 20 men.

A It says there "I took part in it with 20 men?" I don't know how this was ever put in. It must have been reported but because it does contain 6 to 8 figure which are contained in the Indictment, it doesn't improve matters. Something must be wrong somewhere. the Kommando, let us say? because we could not ever detail 20 men, not even for guard duties. I am of the opinion that in Latvia there was a figure for Einsatzkommando II School -- by Einsatzkommando II school where people were trained, not for me, not for the Kommando but for the Einsatzkommando and they were trained and they were in barracks.

Well, they were trained eventually and I can only imagine that People from this Einsatzkommando school were utilized for this job, but in my absence, the chief of the Eisantzkommando who had returned in the meantime on one of the visits of the SD might have given this order. My people or the chief of the Security Police and SD could hardly have participated in this and I did not either, because as I have said -- "If you don't want to do this I don't want to either." say that if 1 to 20 is mentioned from Einsatzkommando II, this could only concern the school which was the remainder of the Einsatzkommando found in the front in Riga. best people came from Riga, replacements all the time. On one or three occasions they carried out anti-partisan actions.

Q Did you have anything to do with this school?

Q Was it under your charge?

A No. Later on, it was under the charge of Einsatzkommando II Which wasin the front territory, and later on it was under the charge of Einsatzgruppe B. I believe Einsatzgruppe B or something like that and they carried on the training.

Q Let us now talk about your work in white Ruthenia. How long were you chief of Office 3 in Riga?

Q Until when?

THE PRESIDENT: The 30th of what?

THE PRESIDENT: Witness, do you hear me or rather the translation?

A I can't hear very well. Although what you know I told you only yesterday..... BY DR. GICK:

Q When did you come to Minsk?

A In 1900, no, just a moment please. 1941, 1943 on the 30th of the 30th, I came to Minsk. 30th, but the 30th of which month, please.

Q Was it January?

Q February?

Q What year please?

A 1943. Just a moment. I will think about it. Please ask the President and tell him that it is very difficult for me to think of these dates. It is always very difficult for me. May I have the question again please.

Q I am asking you when you started in your office in Minsk?

A Oh, we found that out no. That was the 30th of the 30th of 1900.

THE PRESIDENT: Witness, will you please look in my direction?

Do you understand what you are charge with in this trial?

THE PRESIDENT: Do you realize that this is the one day that you will have in your life to make an explanation as to those charges?

A I believe so. I believe you. I told the Prosecutor yesterday that I would try my best and he told me I could do it and I have the impression that I could do it. Only I have difficulties in thinking of dates.

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BY DR. GICK:

Q Was it in March, Herr Strauch? We just wanted to know the year. Now please think carefully whether you can't remember the year.

THE PRESIDENT: Just a moment, witness. Now we will help you. You went to Minsk in February 1942, to White Ruthenia, is that correct?

THE PRESIDENT: We are telling you in 1942 - is that correct?

A No, it is not correct, I am.....in 1900........

THE PRESIDENT: Well tell us then what is correct?

A Please your Honor, I haven't thought about it whether -- yes, I must have come there in 1942, because in 1943 I already went to the chief of partisan warfare.

THE PRESIDENT:Yes, well, then you were in Riga up until February 1942 and then you went to White Ruthenia. Now, is that right -if so, just say yes.

THE PRESIDENT: No, please don't. All we want to know now is whether you left Riga and went to White Ruthenia in February 1942.

THE PRESIDENT: Now we are talking about February 1942. Now listen, witness. You don't need to ramble the way you are. You understand the questions. Now why are you giving us this performance? You went to Riga first and then you went to White Ruthenia, that's correct, isn't it?

THE PRESIDENT: All right. Now what we are going to do is to give you a little rest. We will recess court now. During this recess I want you to think over these events a little and then when you are brought back into the court we would like you very much to give us your story. You are charged with very serious crimes and this your one chance.

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We can go on without your saying a word. It is up to you. We would prefer that you tell us your story but if you don't want to tell us and if you want to tell us about China and other places, then there is nothing we can do and we will just dispose of the case as if you said nothing. You understand that?

A No, I don't know the legal expression.

THE PRESIDENT: Well, you see every defendant has the right to come into court and deny the terrible things said about him, and this is the day that you have to tell your story. Is that clear?

THE PRESIDENT: All right, now we will give you a little rest, a little recess, and then we will take it up again. The Tribunal will be in recess 15 minutes.

THE MARSHAL: The Tribunal is again in session

THE PRESIDENT: Proceed, Dr. Gick.

DIRECT EXAMINATION (Continued) BY DR. GICK: once more. Please tell us when you arrived in Minisk. visited my brother who was in the hospital in Latvia as a physician. I visited him and he said, "Well, how about trying to call up father and congratulate him?" In normal times this was absolutely possible, but we didn't succeed, and on the 22nd I left and on the 23rd I arrived in Riga. a birthday on the 21st of March? him but we couldn't do it.

THE PRESIDENT: Now, just a moment. Now Dr. Gick, when he gets on the subject of his father's birthday, don't encourage him, because we are not interested in his father's birthday. He is on his way to Minsk. Now, find out what he did in Minsk and stick to it if you can.

DR. GICK: Your Honor, I only mentioned this as a means of refreshing his memory when he got to Minsk, otherwise the birthday, of course, does not interest us.

THE PRESIDENT: Very well. Then we know now his father's birthday was on March 21st.

that. Who was active in Minsk before you, as your deputy?

Q Wasn't it Hoffmann? Wasn't Hoffmann your deputy in Minsk?

A You mean in my official position?

A Well, now I don't know who it is. I was head of an agency, Commander of the Security Police and SD in Latvia, and then I broke my arm and then.

THE PRESIDENT: Now listen, you have broken that arm in so many please, I am wondering how you have any arm left. Now you went to Minsk. Strauch, did you go to Minsk?

THE WITNESS: Yes, of course.

THE PRESIDENT: Now, please tell us what you did when you arrived in Minsk.

THE WITNESS: Oh, you mean when I arrived in Minsk. Well, first of all and to a greater extent it was my job to carry out missions as they were carried out in Riga. In Russia there were no official and no finance agency and, therefore, everything had to be built up anew. The administration had a lot to do and especially in the Security Police, measures, the Security Police and the Criminal Police. The people brought us reports every morning because they didn't know to whom to turn, simply because there was no Criminal Police and we had to do everything. I had a criminal inspector and two commissars, two to three secretaries, and they arrived at our office and reported to the regular police, and they channeled them on to us. Then I had my Chief of Department V, therefore I.......

THE PRESIDENT: Now just a moment.

Dr. Gick, call his attention to the document which covers his activities in Minsk and get his comment on those documents.

DR. GICK: Your Honor, may I first ask him a few questions to prepare for that, and then I shall come to talk about the documents.

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These are the general conditions which must be discussed in my mind. BY DR. GICK:

Q Mr. Strauch, what situation did you find in White Ruthenia?

A Well, what do you mean? What do you mean what situation? There was no government. There was no Russian government. There was only the German administration. White Ruthenia? was valid in White Ruthenia, too.

Q Was it carried out during the time you were in White Ruthenia? like that, there was a large-scale Jewish action which had been carried out by my predecessor, Sturmbeumfuehrer Hoffmann. Hehad carried out a large-scale operation as I saw from the documents, I think up to 5,000 -he had carried out such an operation -- and he carried out another operation involving 2,000 people, I believe, 5,000 and 2,000.

Q Didn't you have any conferences with Heydrich about this Jewish question? me. "Well, listen, I need the Jewish forces which I have here in this country. We can't do without these people because we have a lot of Jews here who must be made use of, for instance, in the harvest, in an armament factory, etc.", and these Jews were immediately employed by the Army in such a way that one could not keep track of them, and I told him that I had the basic orders which he, too, had, and I wanted to think the matter over, and so I travelled through the countryside and looked at the various camps, looked at the factories, agriculture, etc. I inspected and I came to the conviction that for the time being Kube was right, so he said I should support them, and I said I would try it, but I couldn't give him any promises, and then by a coincidence Heydrich came to Minsk, and I told him the same thing, and he said --he laughed a little and said, "Well, that is very strange with you people.

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Nobody wants to take any responsibility. Nobody wants to do this job. Nobody wants anything to do with it." But he was in a good humor when he was talking to me, and he said to me. "Well, it is not so important;" perhaps to might reconsider his order because the Army had acted as it did, and he wanted to see how he was going to solve this problem. "Perhaps he will revoke the order." During the visit he was very pleasant and told me laughingly, "Well, just try" --well, how do you say it? "Well, you will see the consequences of the partisans, and you will cry for help, and you will tell me that I must have help; I must get away. You can't keep me here. You always think that you are smarter than we are, and you will see what is coming", and that is what he said. And then I gained a postponement for a certain time. He postponed the matter, first of all, until the completion of the harvest until November.

Q You mean a postponement in point of time? in, nothing was to be done?

Q What did you actually do in Minsk?

A In Minsk I did nothing. Nothing.

THE PRESIDENT: Take it up, Dr. Gick, after the harvest. The execution of the Order was postponed until the harvest was in. Now find out what happened immediately after the harvest was completed. BY DR. GICK:

Q Mr. Strauch, what were the conditions after the harvest? a dirty business, the whole thing. He called for any cause to find a reason to proceed with his Order. I had this Heydrich Order and I didn't have to carry it out, and in the meantime Heydrich was killed. He was not there any longer, so for the time being I was not bound by the Order.

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Q You mean even after the harvest? You mean you weren't bound even after the harvest was brought in, or how do you mean this? Himmler first concerned himself with the Ministry of the Interior, with the situation in the interior instead of with the other matters. White Ruthenia?

THE PRESIDENT: Now, Dr. Gick, he told you now that after Heydrich's death Himmler took on and that he was even more adamant in the execution of the Order Now let us find out whether they did finally execute the Order. BY DR. GICK:

A Well, first I didn't carry out the Order for the time being because Heydrich was dead and Himmler was now our chief, and he concerned himself with the Ministry of the Interior. He considered that very important and he let us take care of the Security Police ourselves. He didn't pay any attention to us. The other co-defendants can tell me about that, too. They couldn't even really get at the Chief. For the time being he worried about his activity in the interior. Furthermore, he was chief of an Army in the East. EXAMINATION BY THE PRESIDENT: until much later. We are speaking now of 1942. You postponed the execution of the Fuehrer Order until the harvest was in. Heydrich was killed in June of 1942. Now what did you do in July? Did you then take up the execution of this long-deferred Order?

A Well, first of all, as I said, there was quiet. I didn't carry out anymore orders for the reasons just mentioned. Now suddenly one one day Obergruppenfuehrer von Gottberg arrived.

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Gottberg had become persona non grata. Gottberg had become persona non grata and was transferred by Himmler to Minsk.

Q Now you worked together with him in White Ruthenia, didn't you? Kube? former activity of my predecessor, Dr. Hoffmann, and when I started working there, when Zinner, Kube and I -- or rather when I introduced myself to Kube, which I had to do because he was my superior in the administration he gave us a long speech that at the time we should not do anything, and I complied with his wish.

Q Well, but don't you know that Kube was very happy that the Fuehrer Order had been complied with and that many thousands of Jews were killed? Don't you know that? killed and when I arrived Kube asked me not to continue this system, and he told me why, and I stopped because when you arrive the first day, you can't immediately shoot Jews. One didn't have to do that.

Q Well, you say you shouldn't shoot Jews on the very first day. How about on the second day? Did you shoot any on the second day?

Q Well, did you shoot any on the third day? before, that I personally, until the arrival of Gottberg, carried out no Jewish executions.

Q Were you in Minsk in July of 1942?

June I was in Minsk.

Q Yes. Well, were you there in July? Jews were liquidated in Minsk on the 28th and 29th of July. trick on his part -- that is what the letter said -- that he couldn't understand that Kube was so soft. Himmler wrote to Kube that Kube is too soft, and he threatened to punish him. He told him he had put him into this position, but he could remove him from there just as quickly. If I may discuss this briefly, Kube before the War had been dismissed from the Party because of some kind of wrong measures and women affiars and he had been dismissed as Gauleiter, and he did the smartest thing that he could have done. He went to the Waffen-SS, and in the Waffen-SS he proved himself to be fairly capable, and then he went to Belgium, I think, with the Waffen-SS.

Q Well, now we are talking about 1942. He was in White Ruthenia in 1942. fact that he went with the Waffen-SS -- Kube -- and that he joined the campaign in Belgium, and Himmler was very proud of this that a Gauleiter had served in the Waffen-SS and he was very much impressed. May I continue?

Q Well, let us get back to Russia. You got us over into Belgium now.

A Well, we are in White Ruthenia. Himmler had Hitler appoint him to this position after a long fight, and thus actually he was there against Rosenberg's will and of .....

Q Well, witness, just a moment, please. Kube has made a report on what you did in White Ruthenia, and which he signed himself.

you worked with him and that you carried out the Fuehrer Order.

A Well, you can know how our political leaders work today. I would have never doubted it that he would have attacked me. I would have never doubted it.

Q Well, no, this isn't an attack. He praises you; he likes you. He wrote a letter on August 10th in which he speaks in very laudatory words of your achievements. he denounces me to Rosenberg, or rather attacks me, and said that "he can do nothing; I don't want him", and "Take him away". he got this letter from Heydrich and he got this letter via Lohse and in order to make himself popular publicly.

Q I have the testimony. I will read you the excerpt from the letter. This is a letter he wrote on August 10th, and he says:

"During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS_Obersturmbannfuehrer Dr. Strauch, we found that we had liquidated approximately fifty-five thousand Jews in White Ruthenia during the last ten weeks." Now he speaks of you there as the "extremely capable Chief of the SD". he says "This excellent capable Dr. Strauch, who" -- oh, yes, "This excellent man, excellent Dr. Strauch", and he also said that we had thought it over quite a bit, this Zenner and myself, and then in a brief period of time we had killed seventy-five Jews.

Q Not seventy-five, fifty-five thousand. There is a little difference in figures.

A Fifty-five thousand?

A Well, I can't say -- well, at least it was an enormous number. and had him say that first of all we weren't even together outside of the until the arrival of Gottberg we carried out no such thing. This can be traced back to the fact that Himmler had put on pressure, that he had written the figure of 1700 in this letter and that Gottberg wanted to make himself popular with the Reichsfuehrer, and he could have said, "Here, that is what we have done."

COURT II CASE IX BY THE PRESIDENT:

Q. Well, In other words, you say that he exaggerated the figures?

A. Yes, definitely, he exaggerated them. Yes. He expressed that, that probably as far as the 17,000 figures are concerned, he wanted to quiet Himmler in order not to be kicked out again.

Q. All right, now if 55,000 was an exaggeration, what figures do you think more correctly represents the facts, about how many Jews were killed during that period--you say 55,000 is too mcuh, it is exaggerated-about how many were executed during that period?

A. Well, from Minsk I only know a figure which has been named already which coveres the period of my predecessor and his predecessor and which was mentioned, and there it was supposed to have been 10,000 or something like it, but I can't swear to it, but this figure, 5,000, was always mentioned, and then the number, 10,000, was mentioned, which my predecessor, Dr. Hoffmann, was supposed to have be killed, so that the figure, 15,000--

Q. 55,000.

A. I just heard "55", well, it must have been these figures which were mentioned previously by my commander, my predecessor.

Q. Well, how many were executed after you reached Minsk?

A. Well, as I said, I had convinced myself that this wouldn't be possible for the time being and that Kube who was an opponent, or he was a very great friend of the Jews, I would say--well, I can merely say that he distributed candy among the Jewish children in the city, et cetera. In other words, he could never have written such a letter at all.

Q. Did you see him distribute this candy?

A. No. I no longer saw it, but my successor told me this officially, and that was the reason why Kube was attacked by Himmler.

Q. How long did you serve with Kube?

A. Shortly after my departure, Oh, I think until I left, we worked together.

Q. Well, that was many months, wasn't it?

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A. Yes, three-well, just a minute-well, I got to Minsk on the 23rd of July--on the 22nd or 23 I came to the chief of the anti-partisan warfare. That is how long I worked with him.

Q. Well, it was several months at least?

A. Oh, yes.

Q. Well, during this time how many Jews were executed under Kube?

A. Well, that is difficult to say. Well, first of all, we had the executive-

Q. I asked about how many Jews were killed under Kube.

A. Well, I must discuss with this with you, Your Honor. There were the large-scale anti-Jewish actions which were very large sometimes, with 30,000 to 40,000 partisans and among them in a camp there were about 300 Jewish partisans, were treated just the same. They were equipped, armed and attacked us and with SS and police units we started fighting them. In partisan fights probably 500 to 600 were killed, and under Kube himself, well let me see, these 15,000 Jews who were killed there when I wasn't there yet. That was my predecessor.

Q. No, I am not talking about your predecessor, I am speaking about the time that you served.

A. You mean my time? Oh Yes, well, if I count those Jews who were later killed by Gottberg, when I was G-2, when I count them along with the others, then I would say 17,000.

Q. Seventeen thousand Jews were killed while you served with Kube?

A. No. Then I didn't work with Kube any more, but I was G-2. I may presuppose that the Tribunal knows what the G-2 is. We were always fighting partisans and during these actions I was always used as G-2, and here, too, there was a list, and that said some operation had a code name like "Winter Zauber" or something like that and I had the the mission to carry out reconnaisance, that is, to determine where the partisans were.

Q. Just a minute, just a minute. Another section of this letter reads as follows, "In the city of Minsk about 10,000 Jews were liquidated COURT II CASE IX on 28 and 29 July, 6500 of whom were Russian Jews mainly old people, women and children.

The remainder consisted of Jews unfit for work, most of whom had been sent to Minsk from Vienna, Brunn, Bremen, and Berlin. In November of the previous year at the Fuehrer's orders." Now, You will notice in that letter, Witness Strauch, that a reference is made to the killing of Jews who were not fit for work. You had told us that the Fuehrerorder was suspended until the harvest was in because you needed the Jewish labor?

A. Yes, approximately, approximately until after the harvest and in the most important plants which were important for the army.

Q. All right, now, there is no sense in executing Jews who could work, but wasn't it the idea of the Fuehrerorder that those who were not fit to work should be executed and they were executed?

A. No. I was told by Brigadier General Stahlecker at the time that this was a general order, not about the fitness or unfitness to work, well, for ideological reasons.

Q. So, therefore, a Jew had to be killed just because he was a Jew?

A. Yes, to my knowledge.

Q. Yes. Then how many were killed by Kube when you were with him on that interpretation of the fuehrerorder that a Jew had to be killed because he was a Jew?

A. Well, Kube was glad that he didn't have to carry out any operation, that he was permitted by the Heydrich order not to do it. That was his greatest happiness, because I said, Kube....

Q. Would you please look in Document Book III A--will you help him, Dr. Gick, to find it--and look at Document 3428 PS. It is on page 32 in the English.

DR. GICK: I have got it here, Your Honor.

THE PRESIDENT: All right, let him look at it.

THE WITNESS: Well, Your Honor, I know this because I can remember it very well, because I have seen it here. BY THE PRESIDENT:

Q. Yes. Well, don't you see that from that letter Kube is quite proud of the fact that he was able to execute the fuehrerorder--don't you see that?

A. Yes. I tell you, Your Honor, that Kube wanted to protect himself. As a rest of this Himmler letter exists somewhere--he wanted to protect himself. Everyone who knows Kube knows how he does that. Under all circumstances, he wanted to get away from any mistreatment by Himmler, and that is why he made up such a letter, which is wrong, namely in the fact that he didn't even like me. He did me harm wherever he could.

Q. Well, I can understand how according to your interpretation he would exaggerate the figures, but I don't understand how he could completely invent the story that he had killed Jews if he hadn't killed any. Now, he did kill some, didn't he?

A. Well, Yes. I said in the beginning of June or January--or the January and May Jews he had to give his permission for it, as difficult as it was for him, but he had to carry it out.

Q. All right, now that-

A. Well, something he had to do, Yes.

Q. And you know that of your own knowledge because you were there, that he had executed some Jews in order to make some kind of a showing before Himmler?

A. Yes.

Q. And that was when you were there?

A. Well, almost the entire figures which altogether--figures which are shown anywhere were added by him and without my knowledge; one of my comrades in the court house told me, "Did you know this Kube letter"? I said, "No". "Well, that is very important for you". "Well, I have no reason to consider this important," I said, "but where should it come from?" "Well, that is a letter from Kube where it is described that you in a letter of Heydrich or Rosenberg you are praised very much in that." Well, I said, "That is all the same to me, it is not right, and either COURT II CASE IX it is all made up or it is forged or fabricated in order to expose the whole SS."

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That, was my opinion, and I have always expressed it. Again they couldn't understand at all that I shrugged this letter off in this manner.

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order to make some kind of a showing. He may have exaggerated the figures but he did kill some Jews. You know that as a fact, don't you? course, told me about it, and then during my first visit to Kube I told him, "Well, listen here, Kube, you are a Gauleiter. You tell me that you are so friendly to Jews and actually you yourself have had such executions carried out." But then he said, "Oh, for God's Sake, if you can help me at all to get out of this, then you will be doing me a great service." Well, I will look at the matter myself, and I traveled around the country and I looked at matters myself, and I came back in the conviction that here, for the time being, it was not being done, and there it was my good fortune that I met Heydrich.

A It was reported to me by my predecessor, Dr. Hoffmann.

A No, your Honor, that must be a mistake. I don't think so. I don't think I can say that. executed in White Ruthenia while you were there?

Q Now, you were there from February 1942 until July 1943?

Q That is a long time. That is a year and five months.

Q Well, that is the Kube letter. (A document was handed to the witness.)

Q Now, you know that it isn't reasonable to believe that in all that time that you did not participate in one of these actions, otherwise why did they keep you there a year and five months?

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A Your Honor, I didn't claim that I didn't see any executions of Jews. That is out of the question. I wouldn't refute that. I would be a liar if I did. The situation is this way. Von Gottberg wanted, rather Kube wanted to steal some praise from Gottberg. He wanted to be popular in Berlin, and he was pretty ambitious, and he wanted some sort of partisan action, and these partisan operations usually were connected with Jewish operations, and mostly I was active as a G-2 and I was out in the field, and I was looking for those partisans, and then I sent back a message telling where the partisans were, and then Gottberg came with his main forces, mostly 500 men up to a division, and he determined where the partisans were and I was sent ahead to carry out reconnaissance.

Q Just a moment, please. Now, you told us that you did see the execution of some Jews and that if you said to the contrary that you would be a liar because you did see some executions of Jews. How many executions did you see? myself.

Q Now, how many of these executions did you supervise yourself? fuehrer von Gottberg, and he ordered every single individual to the executions, every one. There were comrades who were very much affected, but the others were less affected, and now you must consider that in White Ruthenia I only had 120 men, and if I carried out operations with them, reconnaissance operations, then I needed every man for these. there was an execution in Sluzk in the middle of February 1943. Would you please tell us about that execution? Remember first the town is Sluzk, S-l-u-z-k. Do you remember that place?

A You mean the town of Sluzk?

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Q Yes. I, of course, mispronounced it. You see it there on the map? It is in White Ruthenia and South of Minsk. Do you see it on the map? Will someone please point it out to him? Perhaps it isn't shown there. Here, please show it to him here. Show to him in White Ruthenia, Sluzk. that is wrong.

Q Yes. Well, direct your attention to Sluzk. Now, you were there in February 1943?

A Yes, yes. The situation was as follows: Gottberg had started his operation and had ordered me to report to Sluzk and there was a big conference because there was at least one regiment, an Army regiment, and a regiment of police units was present there, and we worked out the operation and I was to accompany him into the field, and he announced to all participants there that here a Jewish action was to be carried out, and the reason he gave was - or rather I had mentioned the reason, that we knew that in Sluzk there were heavy arms, machine guns, etc., had been piled up, stocked in Sluzk, and this report that there were large numbers of arms, weapons there, and thereupon he ordered this action, and as G-2, I determined this beforehand, this whole story, and then immediately he started the attack. We knew approximately where the arms were stored, and hardly had we entered the ghetto when the whole thing started, the whole firing, and we were shot upon heavily and we had a pretty bad fight there.

Q Yes. Now as a result of this action in the ghetto there was an execution, that is right, isn't it?

Q Now, about how many were killed in the execution in Sluzk?

A Well, I don't know exactly because I went back into the forest, but-killed, is that about right?

A Two thousand? I don't think so, but I would assume twelve hundred.

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At least that is what I was told afterwards. I went on with a few men, and my men were distributed to the various battalions and regiments.

Q All right, how many were actually killed while you were there; how many were actually shot while you were there?

A When I was there you mean? of two hundred, weren't there? didn't you,or at least held in waiting? in abeyance and waiting their turn to be shot; about how many did you see there?

AAbout two hundred. I can't give you an exact number; I couldn't swear to it, but I would say two hundred. then you went on to some other place?

Q Where did you go to?

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A. There was a small place south of Sluzk - there was a small locality - which I was to occupy and hold until the larger forces could come after me.

Q. All right. What did you do there?

A. Well, I stayed there. I searched the place and found out what was there, from a war technical view point whether I could expect any attack, etc.

Q. Do you recall the town of - I can't pronounce it - T-s-c-h-e-r-we-n-? Is it on the map?

A. Tscherwen? I saw it somewhere - in some document Q. well, it's in White Ruthenia.

A. No, it's - well, it's in front of White Ruthenia. I would have to explain it. Tscherwen should actually belong to White Ruthenia but at that tine when I was there it belonged to the rear Army area and thus it was not under the civilian administration.

Q. Do you know anything about the executions which occurred in that town?

A. In Kursk - no. Completely unknown to me because it cannot be known to me because it does not belong to my area.

Q. I see. Did R-a-k-o-w belong to your area?

A. Rakow - Kursk.

Q. It is near Minsk.

A. That does not belong to my area either. I don't know where it belongs. I think to another Army group. But near Minsk there is another small place, K-u-r-s-k.

Q. Did any executions occur there?

A. Well, the Prosecution lists that in Kursk, the ghetto in Kursk consisted of 150 people and that they had been executed. In reality Kursk actually had only 120 inhabitants. And then in some -- what do you call it? Some document says that the entire ghetto in Kursk had been executed and my predecessor is supposed to have written this - that they had all been executed.

because the ghetto had offered resistance. All that.was from my predecessor.

Q. Can you give us an idea just what your area covered on the map? Can you show us just about which part of the map your area covered?

A. Then Korosten still belongs to us. Shitomir did not. Amanjew belonged to some swamp place. This belonged to somebody else. And then up here one part passed by Korosten. Then Minsk up there - well, it isn't listed in there - and through Baranowitsche and then the border was in the forest which the Russians had taken away. And, I think we had Luck but I can't say definite. Baranowitsche and Vilna, in any way, belonged to us. Here is the Bug river.

Q. How far east did you go? How far east did your line extend?

A. Well, that's so difficult to point out here, your Honor. In our area which also was called White Ruthonia - and that was the rear Army area - we were always in the Advance Area and the territory had a funny shape. Korosten, Bobruisk, Shitomir was outside. Oh, well, but it goes further east and then Baranowitsche.

Q. Did you go as far east as K-u-r-s-k-? Some one point that out it's down here.

A. No. No, 10 or 20 kilometers, I think from Minsk, east of Minsk, and it stops.

Q. I see. All right. You may sit down. Were you in Minsk in March of 1942?

A. No, under no circumstances. I said why I know this exactly. I have no means of refreshing my memory. I had my War Diary which the British took away from me in the camp and that's why I have nothing.

THE PRESIDENT: The Tribunal will now recess until tomorrow morning at the usual time 9:30.

Otto Ohlendorf, et al. defendants, sitting at Nurnberg,

A. Musmanno, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. ASCHEN AUER: Your Honor, I ask that the defendant Ohlendorf be excused from this afternoon's session and that you give instructions that he be brought to Room 57.

THE PRESIDENT: The defendant Ohlendorf will be excused from attendance in Court this afternoon, and it is instructed that all those who are charged with the job of seeing to it, that he is taken to Room 57 for the afternoon.

DR. ASCHENAUER: Thank you.

THE PRESIDENT: You may proceed, Dr. Gick.

DIRECT EXAMINATION (Continued) BY DR. GICK: the Kube document which is known to you. In this document it says that you took part in lengthy discussions with the SA Brigadier-General Zinner and with Kube, and that you had discussed the liquidation of Jews in these discussions. Did you have these discussions?

A Well, first of all, let me say, - this sentence I don't forget this easily - it should say, "After detailed" or "With detailed discussions". The German sentence is completely impossible. "With detailed discussions with Brigadier-General Zinner," that was the SS and Police Leader, "and the excellent, capable Dr. Edward Strauch." And I want to object to this because at this time I wasn't even a doctor of law, and that Kube knew about it. Well, that I was supposed to have had discussions with them and that after these discussions we are supposed to have had the conviction to do something about the Jewish order gently, but to carry it out eventually, gradually, and then he discussed the Jewish problem with me and told me it is absolutely necessary in White Ruthenia not to carry out the anti-Jewish actions for the moment, and he would be grateful to me if I could be of help to him to stop these operations.

Then as long as or until Gottberg arrived, we didn't carry out any single action unless the partisan operations were carried out, and that in these partisan fights Jews were also caught and executed during the fights in the woods. Well, more than that I can't tell you.

Q And when did Gottberg arrive? something like that, no November.

Q 1942?

Q Then it isn't right that you discussed the Jewish liquidation with Kube? it. That is why I say that this letter that was written around that time is a lie. would be from about the middle of May until the end of July, you had liquidated 55,000 Jews. figures. He took the earlier results, or rather he invented the earlier results. He made them up somehow. Then he sent them to Berlin and to Himmler in order to show-- Well, Heydrich put pressure upon him and somehow he had to get around it, and thus he put these figures into the report by emphasizing my own person, even though he didn't even like me at all, and at the same time he wrote to Rosenberg an uncomplimentary letter about myself, and he was glad that nothing was done by us, and he was even more happy when Heydrich came.

the figures were not invented by Kube but that these executions took place at a period which was before your time?

A Well, somehow they took place somewhere. I don't even know whether they did take place, but they always spoke of these figures, and Kube arbitrarily moved them into the latter period, yes. were liquidated around this period?

A No, I know nothing about that. When was that supposed to have been?

THE PRESIDENT: Dr. Gick, the letter states that the executions occurred on July 28th and 29th.

Q (By Dr. Gick) Yes, Herr Strauch, the specific date which is given in this letter is the 28th and 29th of July. On the 28th and 29th of July 10,000 Jews are supposed to have been liquidated in Minsk.

A No, I know nothing about that. Where? You mean in the Kube letter? like that.

AAnd where does it say, and in what passage does it say that? I read this letter thoroughly. Where does it say that?

Q I will show you the document. Right here, this passage (indicating).

A Well, that was not in Minsk. I can't say. I never knew about the Kube letter. I only saw this here in orison, and this fact certainly isn't known to me at all. executions in Libau or Slonin?

A Well, I would have to have the newspapers. Executions took place shortly before I arrived, just shortly before I arrived.

told us. These liquidations were supposed to have taken place afterwards in May, middle of May until end of July. taken place?.

A Yes, that would have to be. My deputy, of course, informed me about all the various things which happened. thing about such liquidations? such liquidations, whereas the other comrades made reports and I made none at all would have taken place? all the others did.

in White Ruthenia, do you know anything about that? they were already there when I arrived. Five or six, I said and four of those, four of there transports were destined for liquidation, and the others I - for the other I set up a large estate, farm, and the Jewish inhabitants were in there and they were housed in barns - well, they were housed in some sort of a structure, and since they were amply equipped with their own things, they were very well taken care of. They cooked their own meals, they raised their own cows, they had their food, and there was a hospital on this estate, and they were perfectly well taken care of Everyone whom I took there was surprised. say? Well, on Page 47 of this documents Kube, however, reports that you yourself were indignant that such a transport had arrived, and that during the night you had indignantly reported this to Kube, is that correct?

A Well, I don't know anything about his letter. I heard about it, and if this had roused me so much I would have reported it to the Air District Commander, but I wasn't so indignant about it if a thousand Jews came. letter says? such friendly to the Jews, that he had to try to make himself popular with Himmer and to pretend as if he was the best man, and, of couse, would do everything the way it should be done, in order to show himself up to be a good man. Brigadier-General Zinner had the same impression.

Q Herr Strauch, let's now discuss those documents which the prosecution has charged you with. First of all that would be Document 3279 in document Book I, Exhibit 21, German Page 100. It says here, on the German Page 116, "In White Ruthenia the cleaning process is proceeding.

The number of Jews in the area handed over to the civil administration amounts at the time to about 139,000. Einsatzgruppe A, after it took over the agency, White Rutenia, shot 33,210 Jews so far." Did you have anything to do with those facts here?

A How could I have had anything to do with them? During the first part I was still in Riga and was in charge Department 3, and in the middle, beginning in the middle these things were carried out, and then I left for White Ruthenia, and I spoke enough about that, namely, so that for the time beingI had nothing to do with these matters.

Q The report is dated 14 January '42. You say you weren't in White Ruthenia at that time yet, is that correct?

DR. GICK: Your Honor, I may point out that on Page 110 of this document it is expressly noted that SS Major Hoffman was deputizing for Strauch at that time.

Q (By Dr. Gick) Another document in Document Book III-A. German Page 65," Exhibit 107 of the prosecution, Document No. 4533. It says here on the German Page 69," in Minsk between the 1st and 4th of February '42 altogether 123 persons were arrested among them 80 people for refusing to work.

A When was this dated?

Q From the 1st of April '42 - oh, no. correction, from the 1st to the 4th of February '42.

A Well, I really have nothing to say about that. I wasn't even there yet.

Q Even at that time you were not in White Ruthenia yet? shouldn't people have been arrested in White Ruthenia, people who were unemployed, when now they are arrested everywhere in Germany. It was quite useful and realistic.

DR. GICK: Your Honor, may I point out the receip date of this document? On German Page 64, Herr Strauch is listed as having Hoffmann as his deputy.

Q (By Dr. Gick) In the same document, Herr Strauch, it is mentioned that on 4th February 1942 in Rakow about 100 persons were liquidated in the ghetto. What is your comment on this? office at that time. That is right, isn't it? I don't want to say anything that is wrong here. That is right. I wasn't there yet, but to be sure Dr. Hoffmann reported it to me, and he said that he had liquidated Rakow, and that was this Rakow which is on the road from - well, let me see, west, from Koenigsberg just before, before Minsk. And if he had liquidated these 120 Jews no man could be living there any more. I don't remember I saw anyone there.

Q Rakow, was that a small place? said he had liquidated the entire ghetto then, of course, he liquidated the whole place. prosecution's Exhibit 108, Document No. 3234, German Page 181 of this document. I don't know the English Page number, your Honor, but I suppose you have it. I just hear it, 66. English Page 66 - 60, Page 60, I beg your pardon. During the period from the 5th to the 28th of February, it says here, the main agency at Wilajka killed 29 Jews, 4 Communists, 5 partisans, 5 asocial people, and 4 people because of sabotage. Did you have anything to do these executions?

A Oh, well, I couldn't have been there then. That is out of the question. On the 22nd or 23rd I arrived in Minsk, and so I couldn't have been in Minsk in February. Document 3236, it says there on Page 95, on the English Page 70, other large scale Jewish executions have been carried out, for example in Tscherwen and Rakow.

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In Tscherwen 15,000 Jews were shot, and this gives the white Ruthenia population a feeling of insecurity and a certain fear. In the more educated circles it was said that they were not used to such a procedure during the Soviet regime and that it was impossible to estimate the consequences of such measures. The document is dated the 27th of March, 1942. Did you participate in this operation? did not belong to my area, and that to my knowledge - well, that I don't know anything of such a thing. Rakow, as for that place it was reported that this ghetto, which consisted of 120 people in Rakow, was completely destroyed because it had offered resistance. That is why it is no longer there. Then at another place it says, I think it has been quoted here, that 30,000 were liquidated there. Well, now, I don't know what actually is meant. Rakow does not belong to me, but they ascribe it to me.

Q Oh, you mean Tscherwen? this ghetto in Rakow was completely destroyed because it offered resistance, and at another place it says about Rakow that 12,000 or 15,000 were liquidated. Furthermore, in Russia, and I could show you this on the map, there are many town with the same figures or if you would like any confirmation of this, or there are many of Lenins, and well, I can't go into all this. I could have given you plenty of names before, and I could give you proof that there were figures of all types. That is the time when you were already in Minsk and here the following question arises, because this incident which is reported here between the 22nd - can it have taken place between the 22nd and 27th of March?

A Well, Dr. Gick, that is possible in all things, whether active in marching or whatever happened, we cannot prove. With the best will I tried to describe these things to you.

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I tried to describe it to a lot of people, but on the 31st or 35th I arrived there, so it probably happened just shortly before.

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Q You mean before your arrival?

A Yes. Well, it can also be that this man there, that he carried it out.

Q But I must correct you. Were these reports sent to Berlin and edited there and compiled there, and then they bear the name of the person who worked on it? Well, how long did this take?

A Well, that varied. One cannot give any time for its. Sometimes you can prove that the dates are much earlier than these which are listed in the reports. days?

A Oh yes, quite certainly longer than five days. I think all my comrades can confirm that this was so. German, page 130, Exhibit 53, Document Number 3261. I quote from page 135, Book IIA. English page 120, "On the 2nd and 3rd of March a partisan column of 7 Banjo sleighs was destroyed. The partisans were not only armed and had a lot of ammunition with them, but they were also amply equipped with food." That was an action of the 2nd and 3rd of March. How about this, did you participate in this?

A I could not have participated because I don't suddenly catch partisans on the way with a driver. Were you already in White Ruthenia on the 2nd and 3rd? with my brother and on the 23rd of March I arrived.

Q So on the 2nd and 3rd you were not there yet?

Q But on the next page it says that. "On the 2nd end and 3rd an anti-Jewish action was carried on in Minsk involving 3,412 Jews in Minsk and 302 in Vileika and -- 2207 in Baranowitschi" -- well altogether 5721.

A Well, yes, that is right. My predecessor did that, and I already described this yesterday, that shortly before I arrived there, 7,000 people altogether. in the German, Exhibit 110, No. 3372. English page 10. Your Honor. Here your co-defendant. Sandberger, says that you had participated in Jewish persecutions in Minsk.

A Me having participated in Jewish persecutions? Well, that is always the thing with Jeckeln in Minsk. There was only one operation, and that is the one which is well-known, and which I always called the "Jeckeln action".

Q But you say the Jeckeln action took place in Riga?

Q But we are speaking of Minsk. In Minsk you are supposed to have participated in Jewish persecutions, is that right? repudiated it. I don't know that that is right.

Q Well, what is your comment on it?

A Well, that is completely correct. I didn't take part in any Jewish action in Minsk, and I only participated in it after the arrival of Gottberg. activity in Minsk or White Ruthenia.

A No. He was never with me, and only seldom was anybody ever with me, only Heydrich was with me, otherwise, I don't even know anyone. prosecution and which I have discussed with you. Now Herr Strauch, I ask you to give the Tribunal a brief description about what activity you carried out while Gottberg was there.

A Well, I described that yesterday in detail. I was the G-2 of Gottberg and I was very seldom in Minsk, but if I was there, I took care of the office there which I have described yesterday.

And then the new order came, "go to Slusk", or some other place, God knows where, and so I had to go away again with a few people, and I had to carry out reconnaisance right there wherever the pressure of the partisans was applied.

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You can't even imagine what that was like. In a month we lost more than 30 people. That is more than what happened altogether on the front as far as losses are concerned. Well, I am just giving you these figures because I know them or maybe there are a few more. There were locomotives lost in while Ruthenia -- more than were built in the German factories, without one being able to defend oneself, etc., etc. That was the partisan situation, so we had to do everything to fight this situation and, of course, we just couldn't give them candy as German troops--these partisans, we had to fight them. There was no other way out. We had to fire all right. There was no other choice. More than that I couldn't tell you.

Q I thought you were G-" during those fights against the partisans

A Yes, I was Gottberg's G-2. Gottberg commanded the Einsatzgroup against partisans, and I was his G-2, and even though I was always reproached from Berlin, that is, that I was ambitious as a soldier, that I wanted to win decorations, ribbons, etc., but you couldn't do anything else. We had to guard the railroad tracks. We had to try to carry out reconnaisance and there was no other choice.

Q What special activity did you carry out as G-2? areas where the partisans probably were ensconced, and with my few men we went into this area and tried just like other armies do it, just as the police do it, or anybody else, we tried to determine where the enemy was sitting, and that is how I did it with my few little men, and as soon as "This is my report; that is where they are; the partisans were found there and when we arrived there I have to give him a report about what was going on, and I made that report to his officers and I reported to him and his officers, and he told me, "Go ahead, go ahead, advance; as soon as you establish contact, we will come after you and we will have a conference to discuss the situation", and then I left again. actions?

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A Yes. I have already said that once a camp of about 300 Jews was found on the way during this operation and that they were killed.

Q Did you immediately participate in Jewish executions?

A No. I was only present once in Slusk. I looked at it, and I told the Brigadier General, "Listen, General, I have got to get away again, I have to proceed", and so I said "Goodbye" to him and went on, and that was the end of that, as far as I am concerned.

Q Who was in charge of the executions? Up to a division--an army division and the police didn't have so many troops. They took part to a smaller extent. described? from White Ruthenia as far as I know. That was the last large scale operation which I experienced. This was out East, it was an action by the Wehrmacht, in Lepel where we were suddenly surrounded and suddenly there were battle lines, and from there I left.

Q What time was that? these dates, perhaps the other fellows here knew when this Lepel action took place.

Q What do you know approximately when?

Q You mean'43?

Q And what activity did you carry out then? Fouerbach.

Q Herr Strauch, when did you become a member of the SS?

A Well, I have to repeat it once more so that you don't get it wrong again. On the first of August 1931 I became a member of the SA.

Then on the 1st of August '31 I became a member of the SS. Well, in '31 I became -- No, No--after the Roehm-coup I became a member of the SD, and then on the 1st of August 1931 I became a member of the Party. on the date. Before, you told us that they were all different dates.

A No, No. First of August '31, SA.

Q And when to the SS?

A On the 1st of August '31 I got into the Party.

Q On the same day?

A well, no, not the same day, '31, '32, '33. I entered '31 into the SA, '31 in the SA, and '33--'32 into the SA, '33 into the SS. Is it clear now.

Q No, no it isn't.

A 31 into the SA, 32 into the Party, and 33 into the SS. Well, that's the way it must be.

Q I think in 1932 you got into the SS, is that right?

A Well it could have been 31. I don't know. in the SD on a full time basis.

A Yes, that's right. I have repudiated that fact that I was there on a full time basis, because I was a Senior Government Counsellor. No, no - well, what do you call that thing.? Senior assessor, the Government Counsellor, Government Assessor, Senior Government Counsellor, that's all. basis and as an honorary member of the SD?

Q Then the entry in your personnel file is wrong?

A Yes, certainly, yes. I have already said that. That is wrong because it only showed Counsellor, Government Counsellor, Senior Government Counsellor, etc. But, in reality the Party was right because actually I was an SD man. But I never was it in a full time capacity. direct examination.

THE PRESIDENT: The Tribunal will now take a recess.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Do any of the Defense Counsel desire to put any questions to the witness Strauch? Apparently not. Does the Prosecution intend to cross examine?

MR. GLANCY: If it please the Tribunal, the Prosecution has no questions. However, Sir, in lieu of cross examination we will submit documents in rebuttal.

THE PRESIDENT: Very well. Dr. Gick, if you have no further questions, we can now release the defendant.

DR. GICK: I have no further questions for the moment. I agree to having the defendant released.

THE PRESIDENT: Very well. The defendant Eduard Strauch may now be taken back to his present lodging place. I don't know where it is-whether it is in the hospital or in the prison itself.

Who is now ready with further document books?

DR. LEMMERT (for Seibert): Your Honor, I have only the first document book of Seibert and its translation, while Document Book II and the supplement have not been translated yet. But I am of course prepared to submit the documents in the first document book at the present time.

MR. WALTON: The Prosecution also announces itself ready on Document Book I.

THE PRESIDENT: You will please proceed.

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DR. LEMMERT: First of all, I want to submit a number of documents confirming the activity of Seibert in the Russian Campaign, in order to prove the fact that Seibert was merely the Departmental Chief of office 3 in the staff of Einsatzgruppe D, that he was not Ohlendorf's deputy, and that especially he carried out no executive tasks. For this purpose, I now submit Document Seibert 19, on page 27 of the document book, and I submit it as Exhibit No. 2. I would like to say here that Document No. I has already been submitted and introduced as Exhibit No. 1. This Document Seibert No. 19 is an affidavit of Dr. Ehlich. In paragraph 1 of this affidavit, the personality of Ehlich shown, especially that he had the necessary knowledge concerning Siebert's assignment in Russia. Furthermore, it becomes evident from paragraph I that Siebert did not volunteer for assignment in Einsatzgruppe D but that he was transferred to the Group Staff as a result of an order from office 3. From this paragraph I, it also becomes evident that Seibert was not assigned in this job as Ohlendorf's deputy. The statements under paragraph 1 prove that Seibert was not Ohlendorf's deputy in the group staff of Einsatzgruppe D. Chief 3, never had a deputy and that this manner of working was kept up even in Ohlendorf's absence as Chief of the Einsatzgruppe D in Russia. Furthermore, it becomes evident, from paragraph 2, that the signature "I.V." meaning "for", does not mean that Seibert was the deputy of Ohlendorf.

From the last paragraph Seibert's activity in the group staff becomes evident especially the kind of reports that Seibert issued as Department Chief 3.

The next document which I submit is Document Seibert No. 20. It is on page 29 of the document book. I offer it as Exhibit No. 3, Seibert No. 3, It is an affidavit by one Karl Hennicke. From paragraph I it becomes evident that Seibert was merely Department Chief 3 within the staff of the Einsatzgruppe.

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Paragraph 1, furthermore, contains statements concerning the tasks and activities of Departmental Chief 3. kommandos, especially it says that the activity of Seibert with kommandos had nothing to do with any executive measures. volunteer for assignment in the east but that as Departmental Chief 3 he had been detailed to the Einsatzgruppe. Document Seibert No. 21. I offer it as Exhibit No. 4. This is an affidavit by one Kellner. This affidavit refers to Document NO-3035, Exhibit 28 of the Prosecution, which is contained in Volume I, 141 German and 108 English, the affidavit of Schubert, of the 24th of February 1947. This affidavit by Kellner is submitted in order to support the statements that Schubert and Seibert made, namely for the fact that it was not Seibert who gave the order for executions in Sinferopol in December 1941. And furthermore it becomes evident from this affidavit that Seibert was at the time on leave in Berlin. We can furthermore see from this affidavit Seibert's general behavior and attitude towards the Jews. Document Seibert 22, as Exhibit No. 5. This is an affidavit by one Kaston. In this affidavit, Schubert's and Seibert's and Kellner's statements are supported by this affidavit. It also shows that Seibert, in the end of 1941, was in Berlin. activities Seibert indulged in the S.D., in Department 3-D until May 1945. During Seibert's examination in the witness stand, I have already submitted Document No. 1 as Exhibit No. 1. I now offer Document Seibert No. 2, which is on page 1 of the document book, I submit it as Exhibit No. 6. It is an affidavit by one Borst. The affiant was a director and plant leader of the Sueddeutsche Zellwolle A.G. in the Kellheim.

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He knows Seibert's activities from discussions with representatives of the economic agencies in Berlin, Borst gave expert advice and information to Seibert concerning questions of the textile industry. From the affidavit, the tasks and activities of Seibert become evident, when he was in Office No. 3, and it also shows that Office 3 was not a prime medium of the State or the Party in order to carry out any measures that might not be in agreement with the law, Seibert's task was to report about the actual economic situation and the effects of decrees and laws, objectively. For this purpose, I quote from this document the following passage, I could convince myself that Herr Seibert was not trying to propagate any Party political aims or doctrines, that he tried to describe objectively the factual position in the industry and economy, and effects of orders and regulations. In this I often had the opportunity to appreciate the critical openness of Seibert and his criticism of bad conditions and mis-developments concerning industry or the population." Document Seibert No. 3. I offer it as Exhibit No. 7. It is an affidavit of Dr. Beyer, also describing the manner of working of the economic group between 1941 and 1945 and concerning especially the tasks of Seibert within this group. Seibert No. 4, as Exhibit No. 8. It is an affidavit by one Riecke. Riecke was Under Secretary of State in the Reich Ministry of Food and Agriculture. He knows Seibert's activities in Office 3 from reports of Group 3-D which were submitted to the Reich Ministry of Food and Agriculture.

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and especially the fact that these reports did not deal with any individual activities of individual people but with general questions of economy and that the purpose of these reports was, as there was no open pulic criticism, to ascertain the opinion of the population about decrees and incidents in the agricultural sphere and about supply objectively. The reporting service of Office III-D to the Reich Ministry of Food and Agriculture had been determined by a written agreement. Document Seibert No. 5 as Exhibit No. 9, affidavit by one Bommerich giving a cross-section, a cross-view of the activities of Office III-D economics. Bommerich was a departmental expert for questions of economy in various sectors of the SD.

From Paragraph 1 the tasks and activities of Office III-D become evident especially the fact that reports that were made out by Seibert had the purpose to determine the effects of various laws and decrees on the population. The manner of reporting is shown from the examples which are cited in this affidavit. These examples show that Seibert's acitivity in Office III was not by any means criminal and was certainly not crimes against humanity. Document Seibert No. 6 as Exhibit No. 10. It is an affidavit by one Kroeger, which informs us about the work of the financial Economy Department and shows the influence that Seibert had on this particular work. Kroeger was, from 1936 to 1940, the chief of the department Financial Economy in Group III-D. Later he was the chief of the SD sector in Bremen. The address given in the affidavit: Eselheide Internment Camps, is no longer correct.

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released. The document is submitted in order to establish evidence concerning the work of Group III-D of which Seibert was in charge. It specified generally about the tasks the SD dealt with. I quote from this document the following passages: "The group III-D (Economy) received from the SD-sections and SD-main branch offices a steady flow of reports on the mood and attitude of the population, as well as on the situation in the different fields of economy Food supply, Commerce, Trade, Traffic, Banks, Stock Exchanges, Insurance Companies, Finance, Industry and Power Supply, Labor and Social Welfare." I go on quoting, "This task of finding out about the mood and the attitude of the population, as well as the position in the domestic sphere, the made reports, by questioning all parts of the population and all classes, with the intention that the chief agencies of state and party be informed impartially about the informations which had been received. All these matters had no relation to what has been called criminal actions in the Nurnberg Statutes." That is the end of my quotation. called Peterson and Schoenherr. First of all on Page 11, I offer Document Seibert No. 7, as Exhibit No. 11. This is an affidavit by one, Heinrich Peterson, giving an example of the activities of group economy end also his opinion of Seibert's personality. I wish to draw special attention to Paragraph 2 of this affidavit from which the activity of Seibert in Group III-D becomes evident. I quote: "In our work it wasn't a matter of individual cases of a personal nature, but problems of general interest in all spheres of economy." Seibert No. 3, I offer it as Exhibit No. 12, This is an affidavit by a former collaborator of Herr Seibert, Hans Schoenherr.

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He was on assistant departmental chief under Seibert. This affidavit shows the task of Group III. Furthermore, generally the question of the SD Inland. I quote from this document the following passage: "The SD Inland had taken on the task to find out objectively about the effects of regulations or decrees of the leading agencies and to represent to interests of the foreign workers creatively and critically."

My next document is on Page 15 of the document book. It is Document Seibert No. 9. I offer it as Exhibit No. 13. This is an affidavit by Mrs. Monika Stackelbeck, giving information as to Seibert's manner of working in the group economy. Stackelbeck was a secretary of Herr Seibert. Therefore, she is in the position to make statements concerning the task of Group III-D, and also Seibert's own activity.

Now I submit on Page 17 Document Seibert No. 10 as Exhibit No. 14, then document Seibert No. 11 as Exhibit No. 15. I offer Document No. 12 as Exhibit No. 16, Document Seibert No. 13 as Exhibit 17, and Document Seibert No. 14 as Exhibit No. 18, in order to prove the activities and the tasks of the SD. These documents concern agreements as to the collaboration of the Reich Traffic Ministries with the S.D., the Reich Forest Master with the S.D. and agreement about the cooperation of the Reich Ministry for Armaments and War Production with the S.D., agreements about the cooperation of the Reich Ministry for Food and Agriculture with the S.D.. From these documents I only want to read one short quotation. It is from Document Seibert No. 10. I quote. "The Security Service of the Reichsfuehrer SS (SD), as Information Service of the Party end State, has the special task of informing the leading authorities of the Reich on the public reaction to officieal meausres."

From Document Seibert No. 11 I quote: "The Security Service of the Reichsfuehrer SS (SD), as intelligence organization for Party and State, has important tasks to fulfill. The Security Service thereby is also active on behalf of the State." the membership of Seibert to the SD in wartime was not voluntary but was the result of a legal decree. For this purpose I first submit the document Seibert No. 17 on Page 24 of the document book, as Exhibit No. 19. It is an affidavit of Klingemann.

THE PRESIDENT: Dr. Lehnert, do you know whether the order referred to in that affidavit -- Do you know whether the order reputedly issued by Heydrich and mentioned in this affidavit exists?

DR. LEHNERT: It probably exists.

THE PRESIDENT: Say in the next to the last paragraph.

DR. LEHNERT: I presume it is in the Legal Gazette of the Chief of the Security Police and the SD.

THE PRESIDENT: Proceed.

DR. LEHNERT: Klingemann, as from spring 1939 up to December 1939 had been the chief of Department I of the Reich Security Main Office. He confirms that Seibert in December 1939, owing to a legal decree, was released from the Wwhrmacht and took up his service in the SD again. From the affidavit it becomes furthermore evident that the repeated attempts on the part of Seibert to get a release in order to join the Wehrmacht were in vain.

Document Seibert No. 18 as Exhibit No. 20. This is an affidavit by one Bau, who has meanwhile been released from the camp. From 1937 to 1940 Bau was Seibert's collaborator. From the affidavit it becomes evident that Seibert, at the beginning of the war, was released from the Wehrmacht and ordered to rejoin the SD. now submit two more documents which are; the first on Page 22 of the document book, Document No. 15. It is a circular decree of the RSHA, dated the 23rd of May, 1940, concerning the special jurisdiction in criminal cases against members of the SS and police units on special duties. The other document is on Page 23 of the document book, Document No. 16. I offer it as Exhibit No. 26 - I am sorry, it is No. 22. This document also is a circular decree of the Chief of the Security Police and SD, dated 16 October 1941, concerning subordination of the members of the Security Police and the SD to the jurisdiction of the SS and the Police.

The following documents testifying about Seibert's character and his personal attitude and contain especially information concerning the attitude of Seibert towards those people who had different political opinions and Jews. I first offer a document which is on Page 33 of the document book and which is Document Seibert No. 23, and I offer it as Exhibit No. 23. Mrs. Bolte, isa Jewess, she makes statements concerning Seibert's unambiguous and decent attitude even during the time when he was a member of the SD, and then in this connection I offer on Page 34 Document No. 24 as Exhibit No. 24, an affidavit by one Klingemann. This second affidavit, the affidavit of Klingemann, in fact shows that Seibert helped a Jew called Czatoto escape to Switzerland. I attempted to get a direct statement of this man Czato, but when I was told his address in Switzerland he had emigrated to Brazil, and his address in Brazil I only heard about one or two days ago. As Herr Czato is now in a foreign country I now had to be content without an affidavit because on any statement of him would not have arrived in time.

The next document is on Page 35. It is Document Seibert No. 25, I offer it as Exhibit No. 25. It is an affidavit of a certain Paul Seidel who had been in contact with seibert in Berlin as from the year 1935. Seidel states that Seibert was never fanatic in political matters and he tells about Seibert's attitude toward the anti-Jewish pogroms in the year 1938. Seibert No. 26, and I offer it as Exhibit No. 26, the affidavit by one Berners, which gives a description of Seibert's character and attitude, Mr. Berners, who was never a member of the NSDAP or one of its affiliations, has known Seibert for a number of years, and therefore knows his attitude toward church, family, etc. I am very sorry that I have not received the translation of all the other document books.

THE PRESIDENT: Very well. Who next is ready, please?

MR. WALTON: I would like for the record to record some objections, please.

THE PRESIDENT Very well, Mr. Walton. Try to group your objections as much as possible, Mr. Walton.

MR. WALTON: My first one is to the first fourteen documents, your Honor.

THE PRESIDENT: That is the idea.

MR. WALTON: For purposes of the record, since prosecution did not have the exhibit numbers, we will refer in our objections to the document numbers only. The prosecution objects to the first fourteen documents which deal with the legal activities of the SD and the activities and SD engaged in regarding German citizens and German agencies of the government. The issues in this case do not concern the legal activities of the SD or any particular department of Amt III of the RSHA. This Tribunal concerns itslef solely with the missions and duties of the SD and the Security Police in Russia.

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The I.M.T. decision of the criminality of the SD as an orgainzation rested on the evidence before it of this organization's illegal activities in Russian territory temporarily under the domination of German armed forces. It rests primarily on the activities of the SD as performed mainly by the four Einsatzgruppen. Doubtless thousands of worthwhile acts before and after this period of occupation were committed but none of these worthwile acts can atone or wipe out one brutal murder of a man because he was a Jew or because he might at some future time became a threat to security if he should live long enough. Therefore, these documents are totally irrlevant and immaterial. of the Chief of the Security Police and SD, they are incompetent as they refer to other decrees which are not included either in whole or in excerpt form. They are incompetent also in that they are indefinite. They do not show in what manner they are connected to the Einsatzgruppen or to the defendant, and, therefore, the prosecution objects. the prosecution has no objection, except to Document No. 19 in which it specifically objects to the fifthe paragraph in that thisis clearly hearsay and concerns allegations of fact not within the affiant's own knowledge. Furthermore, no sources of this hearsay evidence is shown. Hennicke shows on its face that he never was with Einsatzgruppe D or any other Ensatzgruppe. He was never in Russia and possesses no personal knowledge of what duties Seibert performed there.

THE PRESIDENT: Very Well.

DR. LEHNERT: Your Honor, I want to comment on the first statements made. Seibert is charged with membership in the SD generally and not only for his activity in the Einsatzgruppe. That is all I have to say. That is all I have to say to contradict.

THE PRESIDENT: Very well.

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DR. HOFFMANN: Dr. Hoffmann for the defendant, Nosske. If the Tribunal agrees, I would like it to rule that the witness, Paul Buckert, who is now in prison here and has been admitted by the Tribunal as a witness, that he could be called in the witness stand after the midday recess.

PRESIDENT: Can you estimate the period of time you will require for the direct examination of this witness?

DR. HOFFMANN: Half an hour, your Honor.

PRESIDENT: Mr. Walton.

MR. WALTON: I think that Dr. Hoffmann is right because the witness has been approved to testify only on one point and the prosecution will announce ready at the conclusion of the direct.

PRESIDENT: I think that is a good idea, Dr. Hoffmann. You have him here at 1:45.

DR. LEHNERT: Your Honor, I would like to comment briefly to the objections the prosecution raised, especially concerning Document Number 20 the affidavit of Hennicke. Hennicke was Chief of

Department 3 in the Staff of Einsatzgruppe C. He, therefore, has knowledge of the activities of the chief of a Department 3.

PRESIDENT: Very well. Dr. Ulmer. Dr. Ulmer I don't know whether your colleagues acquainted you with the fact that yesterday we absolved you from all sin.

DR. ULMER: Yes, I was told about that.

PRESIDENT: I wish to confirm that wholeheartedly to you personally.

DR. ULMER: I have been informed about this and I would like to thank your Honor. Gentlemen of the Tribunal, unfortunately I am not in the position to deal with Document 11 now because unfortunately in the reproduction department one page has been ruined in the actual machine and, therefore, I have received Document III before Document Book II. II has been promised to me during the course of this afternoon.

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and I do hope that I shall be able to obtain it this afternoon end then offer it here. Unfortunately this, of course, is again a technical incident which is not really my fault. I have to ask the Tribunal, as the exhibit numbers in these copies have already been inserted in the mimeographed copies of the Document Books, that a short note should be made concerning the exhibit numbers that they should be corrected to the numbers which are being given by me now, because Document Book III is being submitted before Document II and, therefore, the later documents would receive lower exhibit numbers than the earlier documents. Therefore, I should now like to submit my Document Number 52 as Exhibit Number 40, an affidavit of Dr. Horst Mahnke, representative and professor of the Berlin University. This belongs to the Series A, that is the set of documents on Advance Commando Moscow. This affidavit concerns the confirmation that Six, in the Waffen SS shortly after the outbreak of war with Russia, was ordered in Berlin, according to the example of former archives commandos of office 7, that he should set up similar organization for Moscow, that this archives commission, since the outbreak of war in 1939, was a special task of the Department Number VII, and this task was carried out in a number of capitals and in the special case of the Russian campaign, this archive commando should advance towards Moscow with the Division Reich, however, and should establish contact with the Chief of Einsatzgruppe B. This contact that was to be established between Six and the Einsatzgruppe Chief Nebe caused difficulties forcing Six to return to Berlin once more. Mahnke himself, who is the affiant in this case, joined the VKM, the Vorkommando Moscow about the middle of July. He certified that this was independent from the Einsatzgruppe, although according to an order of the departmental chief, Streckenbach it was to resort to personnel of Einsatzgruppe B. Mahnke certifies the following dates, that the VKM marched out to join the Fourth Army Headquarters at Tolotschino in the middle of July 1941. There final conferences took took place between Six and the G-2 officer, Helmdach.

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From Smolensk the connection with the Division Reich was established in order to settle the details of the advance. He verifies the fact that the advance of the staff of the Einsatzgruppe B on the 5th of August 1941 to Smolensk did not alter the tasks of the VKM, as Six aimed at a strict separation of group staff from VKM. He furthermore verifies that the suggestion of an interim task of the VKM after the direction of advance of the devision Reich had been changed would be brought about, but that was rejected by Six, and for that reason Six asked for his recall to Berlin. Smolensk on the 20th of August 1941. Mahnke confirms that Six never issued executive orders nor were such orders carried out by the commando VKM. same affiant, Mahnke, however, here it refers to the set of questions that I deal with here, (b), (c) and (d). Here it is confirmed that he was a student of Six's at the Koenigsberg University. Later on he was active as assistant and lecturer at Berlin University, and he was an honorary member of Office VII. As such, he confirms that strained relations existed between Six and Heydrich in consequence of which Six volunteered for the Waff en SS. He confirms that these bad relations grew worse after the Russian campaign. Mahnke testifies that Six concentrated from the beginning of the war on work in the Faculty of International Relations end that he used Heydrich's death to repeat his request for discharge from the SD. The opportunity was given by Six' function in the Foreign Office where Six became director of the cultural political department. Mahnke further testifies that Six' activity in the Foreign Office was opposed to the ideas of the party Chancellery and other party offices, so that in 1944 the party demanded the dissolution of his department and Six' induction into the Wehrmacht.

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Document Number 54, which is an affidavit of a former interpreter of the VKM drafted under Emergency Service Decree, Adam von Engelhardt, of the 5th of December 1947. He confirms the archive task of the Vorkommando Moscow, that the strength of the VKM was between 20 and 25 men, the garrison of the VKM was in Tolotshino, and that they advanced to Smolensk while fighting was still going on. It is further confirmed that the VKM had neither orders to carry out shootings nor did it carry out any. The discharge from VKM in July 1941 on account of illness of the affiant is being confirmed in this affidavit and simultaneously a report to Nebe, on his return from the VKM about his stay in Tolotshino. an affidavit of Gunter D'Alquen, commander of the SS war reporting unit. It is of 13 December 1947: The meeting of Six, the VKM in Smolensk in August 1941 is confirmed here. It confirms furthermore the assignment of VKM to enter Moscow with the advance units in order to safeguard archives. It is shown that no activity of the VKM in Smolensk was carried out in Six' pesence as done by the Einsatzgruppen.

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It shows the strained relationship between Nebe and Six and the impossibility for the VKM to advance towards Moscow with the Reich Division, as this division had been switched south in the direction of Tchernigov. Mueller, drafted for service with the security police in Warsaw in 1940. It is an affidavit of the 29th of December 1947. This shows the difference of opinion between Six and the chief of the Einsatzgruppen, Nebe, concerning the question of setting up an archive Komando Moscow, the visit of Dr. Six to Heydrich in order to be released from this function, Dr. Six' return to Berlin from Smolensk between the 18th and the 22nd of August 1941. Furthermore, the document confirms that the affiant on the basis of his experience as personal aide of Department Chief I of the RSHA of Streekenbach, knows that the term "special assignment" is tantamount to the term "front line duty" and was the qualifications for any promotion. The affiant confirms that the date "28 august 1941" on the promotion slip for Six contains a clerical error and should read "20 August 1941" as the end of his activity in the east and should read, as I say, "20 August 1941". The affiant finally confirms that Six was promoted to the rank of Brigadefuehrer in conformity with his rank as official as plenipotentiary and that, therefore, consequently he became honorary officer in the SS and net a police general or general of the Waffen SS.

Under Exhibit Number 45 I now offer Document Number 57. It is an affidavit of the former SS obersturmfuehrer Dr. Friedrich Hilpert of 29 December 1947. It contains the confirmation that the affiant on the 1st of September 1941 met Six in Berlin and that on this occasion he was enlightened about the fact that Six had 8 to 10 days' previously arrived in Berlin. the former SS Obergruppenfuehrer and General of the Waffen SS, Werner Lorenz, dated 9th of January 1948. It is confirmed here that the German Reich authorities had been using the term "special assignment" since 1939 to denote any matters connected with the war.

It is also confirmed that after the outbreak of war promotions in the SS were only considered if proof was furnished of distinguished service in a special assignment since 1939 concerning all matters of war. I am sorry, I made a reading mistake here. It should read, "that after the outbreak of the war promotions in the SS were only considered if proof was furnished of distinguished service in a special assignment, that is, in front line service, and that this was mentioned in the certificate of promotion." And it is finally certified that the term, "special assignment" did not refer specifically to a particular function within the Einsatzgruppe. already commented on at the beginning. Furthermore, I want to offer, owing to the cross examination of the witness, Vetter, another witness, who will testify as to the date of the return of my client on the 20th of August 1941 from Smolensk, concerning the date of his arrival between the 22nd and 25th of august in Berlin. This female witness has made out an affidavit confirming these dates. I notified here by telegram, and I asked her to come here after the last Friday, but she lives in the locality, Vig, which is on the island Foehr, therefore it is possible that considering the present weather conditions , the witness will not be able to travel because the ferries might not be going or some other flood dangers exist. I have not received any information whether she will come or net, but if she is unable to come I have in any case to submit the affidavit which she made out. I would only like to announce, Gentlemen of the Tribunal, the fact that this witness, if it is technically at all possible, will be asked to come here, and I would like you to approve my request to have her in who witness stand and to confirm, and in that case I would not submit the affidavit, which is in my Document Book II. O f course, there is the possibility, Your Honor, I aim net quite sure whether , considering the conditions and the difficulty of traveling for the witness, whether you think it advisable.

to submit the affidavit in any case and have the witness come here in any case. Generally speaking, it is a practice that witnesses appear personally or they supply affidavits. I wanted to leave this ruling to the Tribunal. I am in the position to submit the affidavit, but I do not want to spoil my chances through submitting this affidavit - my chances in fact of having the witness here in the witness stand.

THE PRESIDENT: Dr. Ulmer, in view of the importance that you place upon this date, we certainly would not deprive you of the opportunity of having this witness here personally in court, if it can be done consistent with comfort and convenience to the witness, so that we will leave it entirely open to you to have her come here; if, because of what you have outlined it is impossible or even extremely difficult for her to come, then naturally we will take the affidavit and it will be accepted provided there isn't some serious objection on the part of the prosecution to itit will be accepted at its fact value just as if she had been personally presented to the Tribunal.

DR. ULMER: Do I understand you correctly to say if through my personal appearance it would be admitted to the Tribunal or as if the witness really had been in court on the witness stand?

THE PRESIDENT: Yes. In the event it becomes impossible for the witness to come here, then you submit the affidavit and that affidavit, in the absence of a serious objection on the part of the prosecution, which , of course, it will be able to support, the affidavit will be accepted as if the witness herself had been present in court.

DR. ULMER: Thank, Your Honor, may I then ask you to permit me to have this witness here after the rebuttal because if we have rebuttal tomorrow and the day after tomorrow the witness will arrive following the telegram which was sent last Friday, then, of course, I hope I may be permitted to have the witness here on the day after tomorrow.

THE PRESIDENT: That would mean that you might get her here on Thursday?

DR. ULMER: I would like to say that if the witness is not here by the end of Thursday that would mean that she is unable to come here.

THE PRESIDENT: Very well. We should like to have everything presented by the closing of the session on Thursday.

DR. ULMER: Yes, Your Honor.

THE PRESIDENT: Very well.

DR. ULMER: Your Honor, representing my colleague, Linck, for the defendant, Ruehl, I would like to say that my colleague has one document book to submit and that we would like to ask Your Honor to give us the possibility before the rebuttal to call the defense counsel, Linck, because at the moment it is vitally important that he should be present in the Krupp case, and, therefore, he is unable at the moment to wait for the opportunity to submit his document.

THE PRESIDENT: Do you mean that it is of personal importance to him to be in the Krupp case?

DR. ULMER: His presence is wanted in the Krupp case, Your Honor. No, No. Now I understand, it isn't that, Your Honor, it is only because of the difficulties that have arisen there. It is important that he should be at the disposal of the Gentlemen of the Tribunal.

THE PRESIDENT: Very well. Immediately upon reconvening this afternoon we will take up the witness that Dr. Hoffmann will present and then if Dr. Linck may disengage himself from the other court room we will have him present his document book, and then anybody else who is ready, of course, will proceed also.

DR. ULMER: I shall let him know, Your Honor. I am sorry , Your Honor.

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: Sir, in the event that there will be no other defense counsel ready to present document books, should the prosecution be ready at that time to go ahead with his rebuttal?

THE PRESIDENT: Yes, because then whatever witness is called by the defense is ready, we can sandwich that witness in some way or other because we are now sort of cleaning up the odds and ends which still remain, and we won't be too formalistic about the presentation of any piece of evidence which comes in.

MR. GLANCY: Very good, Sir.

THE PRESIDENT: The Tribunal will now be in recess until 1:45.

(A recess was taken until 1345 hours.)

THE MARSHAL: Take your seats, please. follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat the oath after me: the pure truth and withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: Now you may be seated.

DR. HOFFMANN: Hoffmann for Nosske. BY DR. HOFFMANN:

Q When and where were you born?

Q What is your present address?

Q Why are you in Neuengamme? Duesseldorf?

Q In what capacity? for the SD Sector in Duesseldorf - to the State Police Office in Duesseldorf, and I continued my activity there, the same activity as I had performed in the SD.

Q Did you in 1944 meet the defendant Nosske?

A Yes. Nosske was director of the State Police Agency in Duesseldorf. in September '44 an order was received which said that Jews and their Aryan relatives were to be shot?

AAround the middle of September 1944 Mr. Nosske informed me of a top secret matter in which it was ordered that all Jews and their German blooded relatives were to be gathered and put in one building in order to have them shot when the code word was given without any commotion. This was to be done as soon as the Allied troops would push through from Aachen to Dueren.

Q Witness, did you see anything about this in writing?

A Yes. This order was put down in writing and I entered it into the record for top secret matters.

Q Can you remember what signature it had? and SD in Duesseldorf. order?

A I belonged to the Department II E. Department II B had diminished to three officials in 144 and one auxiliary employee. Before that the Jewish Department belonged to this department also. The Jewish Department no longer existed because in the area of the State Police Duesseldorf all Jews there lived in a approved mixed marriage and thus no longer came under the jurisdiction of the State Police measures. letter?

A Nosske was deeply moved and upset. To describe this condition today in words is impossible for me. order?

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A Yes. Nosske immediately went with me to the inspector of the Security Police in Duesseldorf.

Q What happened there? Then the inspector called me in and asked me whether these persons in the area near the front represented a danger. I denied this. He further asked me what was to be done. I answered it would be useful if one would leave them in their homes.

Q Did you get a decision from the inspector? with Nosske alone.

Q Did the order continue to be valid, to your knowledge?

A The events came too quickly. This order was directed to the State Police Offices Cologne, Aachen, Duesseldorf and Dortmund. From Cologne we heard that the State Police there had taken all Jews, Jewesses and their German spouses and the mixed offspring of the first degree, had collected them all in an old fortress, Furthermore, alarming news came to the effect that the first tanks from the Aachen area had broken through in the direction to Dueren. Thereupon Nosske decided to send a flash telegram to the RSHA, to Berlin. In this flash teletype message, rather, Nosske confirmed the receipt of this top secret matter and he expressed his misgivings about the execution. Duesseldorf, Aachen, and Cologne together, could you approximately tell the Tribunal the number of persons who would have been affected by this? or any other way. It is impossible to give exact figures there but, approximately it might have been between five to six thousand people.

THE PRESIDENT: Dr. Hoffmann, I would like to ask the witness something about this teletype message.

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BY THE PRESIDENT:

Q Did you see the teletype message yourself?

A Yes. I was present when Nosske wrote this teletype message.

Q Yes. Now please tell us as well as you can remember, just what the teletype message contained, rather than to give us an emotional as you can, of course, just what the teletype message contained.

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A. As an introduction Nosske said in this teletype that a top secret matter had been addressed to him in which it was ordered that all Jews living in the area of the State Police in Duesseldorf and all their German relatives were to be collected and put --into one building in order to have them shot without anyone noticing it when a certain code word is to be given. The code word was to be given as soon as the Allied troops would break out of the Area Aachen in the direction of Dueren. Then he mentioned misgivings about the execution.

Q. Now, it is just for that reason that I have asked you to tell us about the message. Now you say misgivings, Now, misgivings is an emotional conclusion. What did he say? Did he use the word "misgivings"?

A. I can not remember these details which Nosske stated there.

Q. Well, you remember in such precise detail what he said in reply to the order? You remember the message almost verbatim up to this point. Now, what did Nosske say about this order?

A. Nosske objected to this order for human reasons.

Q. Do you remember what, approximately -- of course, we don't expect you to remember verbatim, but approximately what language he employed?

A. Before this teletype message was written out we discussed the matter and it was emphasized especially that these were innocent people, that many brothers and fathers of the German elements had fulfilled their duties within the Party or in the Army, that the entire order, for purely humane feeling, was not possible of execution.

Q. Well, then, the objection went to the execution of these innocent relatives. Is that right?

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A. No, no, it was our effort to revoke the entire order because not only the relatives were meant among the innocent people, but also the Jews themselves.

Q. What date was this?

A. On the 15th or 16th of September.

Q. '44?

A. Yes, 44. I remember this date because on the Sunday which was the 17th of September the great parachute jump of the Allied troops in Arnheim and on the lower Rhine took place. That was in our area.

Q. Who issued the order in the first place?

A. As far as I was informed later, this order came from the Higher SS and Police Leader and came down via the inspector to the State Police Offices.

Q. All right, now, you were telling us about the message. You told us about the original teletype message and then Nosske's reply, and in his reply he repeated the message and then, as you told us, he objected to the execution of the order for humane reasons and pointed out that it would mean the execution of innocent people. All right, now proceed with what else was in the message.

A. Upon this teletyped message which Nosske addressed to the RSHA, the Office Chief IV sent a teletype reply. In this message --

Q. Well, now, you have given us the text of Nosske's message as far as you recall it; is that right?

A. Yes. But what I mentioned now, that is still Mueller's teletype message.

Q. This is the reply to Nosske now?

A. Yes, this is what I was just going to give you.

Q. Very well.

A. This teletype message from the RSHA read as follows: "It is incomprehensible to me that such measures could even be considered.

there. Should the Jews in that area represent a danger, they are to be employed as labor in Central Germany."

Q. By this time there had been instituted an order suspending the execution of Jews, hadn't there? By September 1944, Himmler himself had ordered a suspension of execution of Jews, hadn't he?

A. I do not know that.

Q. Well, do you know when it was finally decided not to execute any more Jews?

A. I have not been informed about this. THE PRESIDENT: You may proceed, Dr. Hoffmann. QUESTIONS BY DR. HOFFMAN (continued):

Q. May I immediately after this ask who was the highest bearer of command or authority at that time in this area Duesseldorf?

A. The State Police was organically under the command of the RSHA. The inspector, as such, had supervising rights, but, in my opinion, he had no objective right of issuing directives. Outside of this inspector, there was the Higher SS and Police Leader who, normally speaking, had no influence on the work of the State Police.

Q But was it different now? various commands were changed there, I do not know. by the competent Higher SS and Police Leader?

Q Then I will ask you witness, couldn't Noske refuse to carry out this order on his own part? In the area of the State Police Dusseldorf the Jews were not collected in one place. Thus Noske by this had already resufsed to carry out the order by not complying with the first directive which said that all these people were to be gathered together in one building, whereas the State Police Office in Cologne had already assembled all these people in an old fortress. is that right? right? and what do you know about it? Please tell that to the Tribunal. Noske had been relieved of his office, that his successor was already on the way, and that he himself had been recalled to Berlin and he had not even been permitted to hand over the old job to his successor as that is usually customary. BY THE PRESIDENT:

Q Witness, do you remember the message sent by Mueller? Do you recall the text of that message?

A RSHA sent the following measures, "It is incomprehensible to me that such measures could he considered there. Should the Jews in that area represent a danger they are merely (and this merely was underlined) to be sent to Central Germany for work."

Q The RSHA then supported Noske's position? an order as incomprehensible.

Q They supported Noske's position? which they approved of?

A Perhaps I may continue with the report about Noske's dismissal.

Q No, but answer that question. If the RSHA supported Noske why did they permit him to be penalized?

A I do not know the reason. I merely know that when Noske returned from Berlin he came to see me and asked me for copies of these top secret matters and he told me that because of too lax, too soft, an attitude in the treatment of the Jewish question he had been dismissed from his job and that a proceeding was to be started against him before a Higher SS and Police Court.

Q Was he tried? DR. HOFFMAN:

Q Your Honor, may I just say something?

THE PRESIDENT: Certainly.

DR. HOFFMAN: In my case in chief the Higher SS and Police Leader will appear in an affidavit and he, namely thelatter, was angry at Noske and now tried to start proceedings against Noske because of military disobedience, which we have in the do cuments, But, the witness cannot give you this information and I merely want to say this so that it would be logical.

BY THE PRESIDENT:

Q Very well. Did you hear about these proceedings against Noske, instituted by higher SS and Police Leader?

Q Well wouldn't you have been interested in what happened to Noske after this rather serious incident?

A Noske was immediately transferred into the field. He was no longer in Duesseldorf and, therefore, I did not hear anything about how the matter progressedafterwards.

Q Did you know Noske very well?

A Noske was my superiorfor about one year. Noske came from western Germany and knew the mentality of the western German population. I personally had to write reports about the religious life and this whole church program was rather a delicate problem in western German. Therefore, I had to negotiate with Noske very often.

Q Would you say that he was soft in his treatment of the Jews? with Noske.

Q Proceed, Dr. Hoffman. BY DR. HOFFMANN:

Q Why didn't you talk with Noske about Jewish problems? the time when Noske was there there was hardly any Jewish question to be handled. BY THE PRESIDENT:

Q Well, as a matter of fact now, witness, there weren't many Jews in that area, were there, in Duesseldorf there weren't many Jews? that in 1944 there were still one thousand Jews in approved mixed marriages.

Q Well, they were mostly part Jews?

spouses in an approved mixed marriage and the children of these families those were mixed off-springs of the 1st degree. with an Aryan didn't exist in any appreciable number there?

Q So that thisquestion wasn't only a Jewish question, it was also a German question to a great extent? upon which spouse was Jewish, and at least half German children, didn't it?

Q Proceed, Dr. Hoffmann.

THE PRESIDENT: You may proceed, Dr. Hoffman. BY DR. HOFFMANN: Police job in Duesseldorf, was he completely dismissed?

A Yes, that's definite. Berlin and his dismissal? to Berlin because it said that his successor was already on the way.

Q Then it was very shortly afterwards? to Berlin and he never returned to his job. BY THE PRESIDENT:

Q Who signed the telegram of dismissal?

Q Well, you were interested in the episode, wouldn't you want to know who it was that fired him?

A Noske didn't tell me.

Q How was it you saw all these telegrams and didn't see the most important of all? Here is someone you were working with, suddenly he is dismissed, is about to go away, and you don't see the telegram although you see all the other telegrams? Berlin arrived, When I came to the office Noske was already on his way to Berlin.

Q And had taken the telegram with him?

Q Wasn't a copy of the teletype there? have already said that. when Noske came from Berlin he asked me for copies of these top secret matters and on that occasion he told me that he had been dismissed because of too lax conduct as far as the Jewish question was concerned.

Q Well, did he tell you who it was that dismissed him?

A No, he didn't tell me that. that here you are interested in this episode of a grave nature. You see the telegram which arrived giving the order, you see the complaint, you see the reply to the complaint, you even tell us about words which are underlined in the telegram, then comes the explosion at the end with the dismissal of your own superior. You don't know who dismissed him, you don't know whom he saw, you never saw the message. It sounds a little incomprehensible. doesn't it? the office and Noske was no longer my superior and I had no cause to ask for any details.

Q Did he come to the office?

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BY THE PRESIDENT: (continued)

Q And you gave him all these telegrams? that had dismissed him?

Q And you weren't curious enough to say to a man who had been your boss for a year, "I am very sorry, Dr. Noske, that this happened to you. That they dismissed you, Who was it who did this dirty deed?" You didn't think of mentioning that to him? matter of course that the Chief of Office (Office I) had charge of him as far as disciplinary measures was concerned so my questions would have been superfluous. him, is that right? revoked this order upon the teletype of Noske. Yes, he had approved of Noske's conduct and for this rest, as he told me, Noske was dismissed from the Job because of too lax treatment of the Jewish question, He told me personally.

Q And he didn't mention any name who it was that told him that he had been too lax?

Q And you didn't ask him "Who was it who told you you were too lax"?

A That was a matter of course. We took it for granted that Office I handled these matters.

Q Well, Office I is an abstract designation. The whole office didn't tell him this. One individual spoke. Who was the individual who spoke.

A Noske did not tell me and I didn't ask him for it, either.

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BY DR. HOFFMANN:

ould like to ask you: the fact that Noske was no longer in his position was known to you, too? English authorities? about the Noske incident. BY THE PRESIDENT:

Q What did the successor to Noske do which Noske hadn't done? later from the RSHA to the effect that those Jews who were fit to work were to be sent to Central Germany to work in the OT; that those who were not fit to work, and the Jewesses, were to be sent to Berlin where they would be housed in Jewish families and that is how the problem found its solution. and homes that were capable of housing other people?

A I told you what the teletype message contained. What the conditions were in Berlin I do not know. BY DR. HOFFMAN:

Q But, Noske was no longer there in the State Police Office was he? because that happened soon after the teletype came. BY THE PRESIDENT:

Q Well then he did remain in the office after he was dismissed? Very well.

BY DR. HOFFMANN:

Q Witness, let's get this quite clear. Now, Noske sent a teletype to the RSHA, is that right?

Q Then the RSHA sent back a teletype?

A Yes. And that was the one from Mueller.

Q And when did the dismissal come off?

Q Were there three months, three days or what?

A I cannot give you any period of time. I don't remember any more. BY THE PRESIDENT:

Q Well now just a moment. You can't dismiss a very reasonable question like that. When Dr. Hoffmann asked three months or three days you can tell us approximately the period of time. If you can't tell us that then one might question whether you remember anything about it. Certainly you would know how quicly came the order of dismissal of the man for whom you worked for a year. You certainly didn't have much love for him if you could forget him that quickly. Now, how seen did this message from the RSHA indicating what should be done with these half Jews that the order come through dismissing Noske? the dismissal of Noske perhaps happened at the end of October, but I must say that with reservations because I do not remember the exact time Noskewas dismissed. went by? been dismissed for something else, couldn't it?

Q So that you don't know why he was dismissed?

A I merely know what Noske told me personally. I did not see the teletype message. I wasn't present when Noske talked with the officials in Berlin. Therefore I don't know what the reasons were.

Q Proceed, Dr. Hoffmann. BY DR. HOFFMAN:

THE PRESIDENT: All right, Dr. Hoffman.

Any other defense counsel desire to examine? Apparently not. BY MR. WALTON: were an SS Major? about which you testified? the State Police on temporary duty. I was paid by the SD and my personal files were with the SD. reporter on church questions, is that correct?

A Yes, that's correct. appoint you as a reporter on church questions? Were you a member of the Ministry? from SD Sector Duesseldorf No, I was not a member of the ministry. and practice in life prior to the time you were in Duesseldrof? Before I started working for the SD Sector Dusseldorf? I was active in church affairs. And, because I am an expert on Catholic and protestant matters the SD Sector employed me as a correspondent on church questions on a full time basis.

matters. Were you a member of any church prior to the time you joined the SD? sister of my Mother whose sons were Catholic clergymen I was also familiar with the doctrines and teachings of the Catholic church.

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active in Duesseldorf as an expert on church matters? these Jews or people married to Jewish spouses and their children came through some time in September of 1944, did it not? fact that all the Gestapo members knew approximately where the German troops were defending the borders of the Reich at that particular time? the push from the area of Aachen into the territory left of the Rhine was imminent.

Q And that was generally known in Duesseldorf? Office, that if this pusch came it would be very rapid, didn't you?

A I can't pass any judgment on this. within a very few days, if not hours, Allied troops would be in Duesseldorf, didn't you?

Q But it was a possibility, wasn't it?

A But we didn't believe it. Duesseldorf very rapidly there would be little if any tine to act on this code word if it came through, didn't you?

A We didn't even think about that. We only had one thought in mind and Nosske too -- to prevent the carrying out of this order. his objection, according to your own testimony, a break-through of the Allied troops occurred, didn't it?

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broke through from Aachen. I do not remember. tion, the reason that you fixed the time when Nosske filed his objection to this order was that on the Sunday following--which was the 19th of September 1944--the break-through of the Allied troops occurred. Didn't you say that on direct examination? that the Allied parachute jump, took place near Arnheim, and on the Lower Rhine. back to Berlin? sent to Berlin, the reply came from Mueller, which I have already given twice.

Q Now, isn't it a fact, Witness, that at this time it actually was more dangerous to carry out an order of this nature than to disobey it? Isn't that true?

A I didn't understand the meaning of this question. I ask you whether or not, at this particular time about which you are testifying now--the 15th, the 16th, or the 17th of September--was it not more dangerous to carry out an order of this nature than it was to disobey it. at such a time?

A I wouldn't know any reason why the carrying out of this order should have been dangerous. Dusseldorf was only occupied on the 27th of April 1945. kilometers, were the Allied troops?

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of Aachen, and then came the area on the left of the Rhine, then came the Rhine which we still considered an impregnable frontier.

Q How far was that, in kilometers, from Duesseldorf? Cologne to Aachen I think there are forty or fifty kilometers, so that altogether approximately one hundred kilometers. order at first. Did he give any reasons why he was excited? he was very excited. Jews present at this time?

A The inspector asked me this question. He asked me whether the Jews represented a danger in the area near the front and I answered this question with "no" to the inspector. And the inspector then asked me, "What should we do with these people?" and I told him we should leave them in their homes.

Q Then you don't believe that it is right to kill Jews if no military necessity exists, do you?

Q You stated that Nosske one day was no longer there. What was the name of his successor?

A Haenschke. Senior Government Councillor Haenschke was his successor. when Nosske came and asked you to get copies of them; is that correct? matter which came from the inspector, then of the teletype which Nosske himself sent to Berlin, and then of the reply message which Mueller sent. Nosske asked me for copies of these matters, pointing out that he needed these for a proceeding which the investigating officer with the SS and Police Court had started against him.

any other secret or top secret telegrams? get?

A Very few. Perhaps three or four. telegrams? the words that were underlined, in these particular telegrams that came to Nosske? against him because he was to lax in his handling of the Jewish question, I feared that I would become involved myself in this proceeding and therefore I was so interested in this matter; and why I kept the text of these teletype in mind. Furthermore, the content of this teletype was so extraordinary, something so unprecedented and so important, that no man who has read it could ever forget it. Stapo Office in Duesseldorf, of these telegrams? from the inspector as well as all these teletype messages. Yes, I registered them. your activities were confined to church matters?

AAs I have already said, I belonged to the Department 2-B. This department 2-B included, among other things, the Jewish Department. The Jewish Department, as such, however no longer existed after the middle of 1944, and the expert for this department had been given other jobs. I personally was still there with three officers and one auxiliary employee.

And, looking at it objectively thus, 2-B was competent for this question.

Q Who was the chief of Office 1 of RSHA when Nosske was recalled? Do you know his name?

A I think that was Erlinger, but I cannot be sure. I don't know whether it is true, but that is my opinion. of office in Duesseldorf? either one of you two?

Q Did Nosske ever tell you any of his experiences in the east? Duesseldorf? from one rank to another?

AAs far as I know -- well, I don't remember. I hardly think so.

Q. And during the time in Duesseldorf, during your official and personal connections with Nosske, you grew to like him very much, didn't you?

A. Yes, I liked Nosske as my superior very much.

Q. And you are still friendly toward him, are you not?

A. He never gave me cause to feel anything else. And furthermore, I am personally grateful to him that at the time he did what he could in order to prevent the carrying out of this order; because I must admit today that if Nosske hadn't developed such initiative at the time and had taken upon himself to handle this matter, then no one in the State Police Agency in Duesseldorf area would be alive any more today.

Q. You state, then, that you like Nosske very much from your personal and official contacts with him and you further state that you still are friendly toward him, do you not?

A. Yes.

THE PRESIDENT: I didn't quite understand the witness' answer to your immediately preceding question -- that if Nosske hadn't done a certain thing, that of a certain group no one would be alive today.

MR. WALTON: He stated, Your Honor, as I got it, that he was very grateful to him and one of the reasons that he was very grateful to him was that in his opinion in the way that he acted in the matter of these Jews being the correct way; otherwise there would be no one alive in that Staop Stelle today. That is the way I understood the translation.

THE PRESIDENT: Who would not be alive?

MR. WALTON: No one in that office would be alive today.

THE PRESIDENT: Of his office?

MR. WALTON: Yes, of Nosske's and his office.

THE PRESIDENT: Well, I don't understand the sequence there. They weren't half-Jews in his office?

DR. HOFFMANN: Your Honor, I agree with Mr. Walton the witness is of the opinion that he is grateful to him that he showed the correct way, because otherwise--as the witness says--no one of the State Police COURT II CASE IX Agency would be alive any more because probably today they would have been convicted in Dachau.

THE PRESIDENT: Well, then, is your gratitude only because it saved you and not the lives of these innocent people?

THE WITNESS: If he had not saved the lives of these innocent people, then our lives would have been forfeited.

THE PRESIDENT: You weren't concerned so much with saving the lives of these innocent people as with protecting yourself from some possible later conviction.

THE WITNESS: No. I now speak of today's situation, from the prospective today. At the time when this order was imminent, the prospective was quite different from the one today.

THE PRESIDENT: Proceed, Mr. Walton. BY MR. WALTON:

Q. Well, since you have a chance to reflect on it, do you not think that was the entire motive behind Nosske's attitude there in Duesseldorf in connection with these Jews--in order that he might later save his own life?

A. No, neither Nosske nor I had these thoughts. That was completely out of the question. At that time we still did not enterain such thoughts and the considerations which Nosske had were merely directed toward the innocence of these people, and they were purely human feelings which caused him to do this.

Q. How do you know what Nosske thought?

A. Nosske discussed it with me. He said it was impossible to carry out such an order.

Q. But you said on direct examination that you never discussed Jewish questions with the exception of this one.

A. Yes.

Q. Now you are testifying as to Nosske's attitude in general toward Jews.

A. You just came to talk about this special case and what caused COURT II CASE IX Nosske to conduct himself in this way at that time, and his conduct after the order is what I was talking about.

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THE PRESIDENT: Mr. Walton, we will take our recess, Recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

MR. WALTON: May it please the Tribunal, I have only one or two further questions for this witness, and I would like to call to the Tribunal's attention that the attorney for the defendant Felix Ruehl, Dr. Link, to my certain knowledge was ready to present his document books as of Monday. He properly served me with copies of all documents which had not been mimeographed, that is, translations, and he and I have both been ready since that time. Now information has come to me that Dr. Link was in the Krupp trial and is finding some difficulty in attending both courts at the same time. Both the Prosecution and the Defense would like to get this matter settled, and I think that I can speak for Dr. Link and ask for the offices of the Tribunal in giving him an opportunity to present his documents.

THE PRESIDENT: Yes. The Marshal will please go to the Krupp trial Courtroom and if Dr. Link is not actually engaged in the presentation of the case of his client, is not on the witness stand and is not in jail, he will invite him to come immediately to our court so that he may present the document books which he has now been trying to present for several days. BY MR. WALTON: recess that you considered Nosske your friend. Now as a friend you would like to help him out as best as you could, would you not? I have to leave my feeling for Nosske out of this. I have said the pure truth, and I will say the pure truth.

Q I didn't say that you said otherwise. I merely asked you the question: you are a friend of Nosske and you would like to help him all you could in your testimony, isn't that correct?

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I do not know. Nosske was my boss. A relationship of friendship in the way that you might mean did not exist between us. Of course, we were both SS officers and in a sense, of course, we were comrades, but Nosske was my superior and, of course, in this relationship there was a certain separation between us. BY THE PRESIDENT: and still not forfeit one's life for that objection? to this question. I was an SS officer and so was Nosske.

Q Well, I didn't mean soldier in the technical sense of being a member of the Wehrmacht because this would apply as well to a sailor. Let us put the question in another way. Was the SS part of the armed forces of Germany during the war? Wehrmacht.

Q Well, weren't all the SS of every character under the direction of the Commander-in-Chief?

A No. As far as it is known to me, this is not the case. We, as members of the SD and the State Police, were subordinate to the Chief of the Reich Security Main Office in all factual questions, and as SS officers -

Q Well, who was the Chief of the Reich Security Main Office?

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Q And he was the Commander-in-Chief?

Q Or in any other armed force of Germany no matter where located?

Q Did you take an oath of allegiance to Hitler?

Q Did Nosske take an oath of allegiance to Hitler?

A I should assume that this is so. But I do not know.

Q At any rate, he was in the same category as yourself?

Q Yes. Now, in that part of the armed forces of Germany which eventually led to the top who was Hitler himself, was it possible for one to object to an order and not be summarily shot for it?

A No. Whoever refused to carry out an order was disobedient and, of course, had to bear the consequences. We, as members of the SD or the Security Police, in this particular respect were subordinated to the SS jurisdiction.

Q Well, the SS was subordinate to Hitler, wasn't it? to the carrying out of an order of Hitler and still not be shot for it? exceeds my knowledge.

Q Well, Nosske objected to the order, didn't he?

A Nosske did not carry out the order which was given to him. He turned to his superior agency in order to have this order rescinded.

Q Well, he objected to the order, didn't he?

Q And he was not shot, was he?

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THE PRESIDENT: Do you have any further questions, Dr. Hoffmann?

DR. HOFFMANN: I have no further questions, Your Honor.

THE PRESIDENT: The witness will be excused.

Do we have any word from the front as to whether Dr. Link is free or not?

DR. ULMER: Dr. Ulmer for the defendant Six. weathered the storm and that she will be able to come to the witness stand on Thursday, as I said this morning. I only wanted to say so now because this morning it was not clear. She has finally arrived in Hamburg, and I think she will arrive here during the day tomorrow, and I want herewith to announce her.

THE PRESIDENT: Yes.

DR. ULMER: And I want the gentlemen of the Prosecution to take note of this.

THE PRESIDENT: Certainly. Immediately upon arrival you will hold her in readiness for summoning to the witness stand.

DR. ULMER: Yes, Your Honor.

THE PRESIDENT: Very well.

DR. STEIN: Dr. Stein for Sandberger. Book 2 which was to have been presented with Book No. 1, is translated but it has not been mimeographed yet. For this reason I have switched over my presentation and I shall now submit Book No. 1.

THE PRESIDENT: Very well. Proceed. You may begin, Dr. Stein.

DR. STEIN: I submit and I offer as Exhibit Sandberger No. 1, Document Sandberger No. 15 which is contained in Document Book Sandberger 1. It is on page 40. It is an affidavit of the architect, Lambert von Malsen-Ponickau. This gentleman was Sandberger's deputy in 1941 in the direction of the Immigration Central Office, and in this affidavit he states that Sandberger, against his wish, received the order to take up an assignment in the East with the Security Police and the SD.

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THE PRESIDENT: I see that Dr. Link, battle-scarred and quite a veteran, has returned.

DR. STEIN: He confirms the following facts which Sandberger testified to in his direct examination, first, that Sandberger in 1940 and in 1941 had the urgent wish to be released from his activity in the Reich Security Main Office and to be allowed to go to join a Wehrmacht unit as a soldier; secondly, that since 1939 Sandberger suffered from a rheumatic disease and that in February or March, 1941, he had to take health baths in order to cure this disease; thirdly, that Sandberger reported to the Chief of Office I, Streckenbach, and asked him to be released in order to join the Wehrmacht, and when this was refused, he repeated his application; fourth, that Sandberger expressed to the affiant his disappointment that this application was not approved; fifth, that Sandberger before he was assigned to the East had no knowledge concerning the tasks of an Einsatzgruppe, especially considering that he had never had anything to do with Office IV of the RSHA nor had he ever been active in any police service whatsoever. activity of Sandberger in Estonia. In these affidavits it is said that Sandberger during the second half of the month of September and in the beginning of October, 1941, was not in Estonia but in the sector in the vicinity of Leningrad, I may point out in this connection, and I may remind the Tribunal first, that the Chief of the Estonian selfgovernment, Dr. Hjalmar Mae, has given testimony concerning this question when he was on the witness stand to the effect that Sandberger was not present in Estonia at this time and that he could not be reached from Reval; secondly, that the defendant Sandberger himself stated when he was on the witness stand that the execution of Jewish men in Estonia, which is mentioned in Document 1180 and in the Prosecution Document NO-3155, Report of Events of No. 111, happened during the last days of September while he was absent from Estonia without his knowledge, by order of the Einsatzgruppe Chief Stahlecker to a deputy of Sandberger's by the name of Carstens, and owing to the passing on of Sandberger's orders to this effect by a report from Carstens to the Estonian Home Guard.

Number 13, and it is in Document Book I, page 35. It is affidavit by Alma Klenke, who states that at the and of October 1941 she received a letter from Sandberger from which it became evident that Sandberger was at the Leningrad front on the 23rd of September 1941 as well as on the 3rd of October 1941. Sandberger Document Number 12, Document Book I, page 33, affidavit of Miss Magda Kirschstein who likewise confirms that Sandberger at the end of September 1941 was at the Leningrad front, that in March 1942 Sandberger was in Berlin and after that in a field hospital in Pernau. Number 7, which is also in Document Book Number I on page 17, affidavit of farmer Otto von Haldenwang. Haldenwang was chief of the Department I of the German general commissariat for Estonia. He was, therefore, responsible to the chief of the German civilian administration in Estonia. He was together with Sandberger from the beginning of September 1941 until the autumn 1942 in Reval. He also confirms that Sandberger, during the time in question here, that is, autumn 1941, was not present in Reval and could not be reached by this affiant during the time. Furthermore, he confirms the absence of Sandberger from Reval during spring 1942 owing to illness, as well as the fact that the synagogue in Reval was not destroyed. Then he confirms that Sandberger's interest was taken up by political matters and that Sandberger, therefore, did not deal very much with police matters. Herr Haldenwang furthermore speaks about the different fields of activities with which Sandberger primarily concerned himself during his period in Estonia. Sandberger, he says, had from the very beginning advised the Estonian civil administration with word and deed, that he was sympathetic towards the Estonian people and had always supported and been kind to the Estonians at any time.

Furthermore, Sandberger had advocated a greater independence of the Estonian people and had supported this request with the German civil administration. He also saw to it that the Estonians would be walltreated and that in cultural and economic questions they should be supported as far as possible, A number of individual examples are given by the affiant confirming this. He characterizes the defendant Sandberger as a quiet, very correct person, who was able to strike a happy medium between particularly strong contrasts. Book I, page 6, which I offer as Sandberger Exhibit Number 5, affidavit by Georg Buchner, the kriminalsekretaer. In 1941 Buchner was police expert in the special commando IA, the chief of which was Sandberger. Buchner likewise confirms from his own knowledge that Sandberger during the second half of September and at the beginning of October 1941 was stationed at the Leningrad front. During the time in question, the affiant was assigned to this special. The following paragraphs of the affidavit of Buchner confirm those statements which Sandberger testified to when he was in the witness stand, when he was asked by the prosecutor concerning the competence of the subcommando Krasnoje-Selo. From the beginning of October this subcommando KrasnojeSelo was only subordinated to Sandberger as far as supply and administration were concerned, therefore, the spheres of activity of departments I and II, but the subcommando Krasnoje-Selo in all operational matters, that is, the work of the departments III, IV, and V, from October 1941 on, was exclusively under the Kommando Kranogwardeisk of the Einsatzgruppe A. That is, therefore, to the staff of the Einsatzgruppe in Kranogwardeisk. Buchner describes in detail these channels of command. This confirms everything that Sandberger said concerning this question when he was on the witness stand on page 2,399 of the English transcript. Document Number 5, page 11, affidavit of the Kriminalkommissar Johannes Court No. II, Case No. IX.

Feder. Feder was a member of the Special Commando 1A from the beginning of the Russian campaign until the 25th of September 1941. From the middle of August on, he was the chief of the branch office in Narva of SK 1-A. Narva is situated on the road Reval-Leningrad about half way. Feder confirms that Sandberger, approximately during the period from the 10th of September 1941, went to the front with a subcommando via Narva in the direction of Leningrad, that he did not return to Estonia as long as Feder was in Narva, and that in the meantime no contact existed between Sandberger and Feder. Apart from this fact, Feder confirms a number of other circumstances which agree with the statements that Sandberger made when he was on the witness stand. First, he, Feder, had not been informed as a subcommando chief about the fact that it was part of his tasks to shoot Jews, Gypsies, and Communist functionaries. On the contrary, Sandberger had expressly said that no collective measures were to be carried out. Secondly, he, Feder, during the time of his service in Sonderkommando 1A, from July 1941 up to and inclusive of 25 September 1941, had never heard either from Sanderberger or from any other place about the existence of a Fuehrer order concerning elimination of all Jews, Gypsies, and Communist functionaries.

directions from Sandberger: All measures were to be taken as were necessary to protect the rear of the fighting units. Directives concerning confinements to camps or prisons and death sentences were only to be passed after an individual guilt had been established, and only if the person charged had had the opportunity to defend himself and orally. In this executions were to be carried only in exceptional cases. The heavy guilt according to these principles was only active guilt of measures taken against the German Wehrmacht. Those were the offenses which were to be punished with death or, of course, crimes against life and property of indigenous citizens during the time of the Russian occupation which had preceded. Also, it had to be proven that the person concerned would endanger seriously the security of the area in question. Lithuania and Latvia, Sandberger had informed his Sub-Kommando Leader that the Kommando IA had no authorities as far as Lithuania and Letvia were concerned, but only for Estonia, and that for that reason, while the Kommando I A marched through Lithuania and Latvia. security measures on the part of the Security Police should only be taken if it was considered absolutely necessary to secure the Army immediately. in Narva, he had never received from anybody or from Sandbergar an order concerning anti-Jewish actions and that he himself had never taken any measures against Jews. These statements confirm the testimony of the witness Sandberger when he was on the witness stand. It is on Page 2212 of the English record:

"The territory in the Northeast of Estonia between Kapsk and Narva - - -"

THE PRESIDENT: Dr. von Stein, at the rate at which you are proceeding, which is net a very rapid one, I am afraid that we won't reach Dr. Link before adjournment time, and I am very sorry about that because we - sort of had Dr. Link going back and forth, and I am just wondering now, do you think you can complete the presentation of this book before 4:30?

DR. VON STEIN: (Inaudible) Well, I suppose so. Your Honor.

THE PRESIDENT: We didn't catch that.

DR. VON STEIN: I think that there are only another 20 minutes, as far as that is concerned.

THE PRESIDENT: Well, there are 25, to begin with, and then you are moving very slowly and giving a lot of detail which is unnecessary. The only purpose of presenting a document in this way is to generally give the picture of what it presents, but to give it in detail is unnecessary because the affidavit must be read in its entirety, and I am afraid that you don't get as much out of it as if you just told in a few brief, telling words what the affidavit says.

DR. VON STEIN: Your Honor, only a few individual documents needed an explicit explanation, All the other documents are very much shorter and only - therefore, they only give the content as you, Your Honor, wish it to be.

THE PRESIDENT: I see, very well. Yes. Well, Dr. Link, it seems quite clear that we couldn't reach you before 4:30 anyway. Now, the only thing we want to decide is whether you would want to go on immediately at 9:30 tomorrow morning or whether we should go on with rebuttal. Now just a moment now.

Dr. Link, can you give us any estimate of the length of time you would require to present your documents?

DR. LINK: It is difficult to give an estimate, your Honor, but I am almost certain that in about 40 minutes I could finish.

THE PRESIDENT: Yes. Can you be here tomorrow morning at 9:30?

DR. LINK: If it is absolutely necessary, your Honor, I shall excuse myself and I shall withdraw in the correct manner from the other trial, but, of course, it would be most welcome to me if I should be permitted to arrive at only 10 o'clock, because at 9:30 the decision is expected which the Tribunal was discussing during these last two days.

THE PRESIDENT: Yes. Yes, well, I can see the importance of that, naturally; so perhaps what we will do then is, just as soon as Dr. von Stein finishes, to go on with rebuttal, because we ought to get that in, and then when you are free, completely free, then you report to the Tribunal and we will see when you will present your documents. But you need not feel under any constraint to report here at any particular time tomorrow morning, and I am very sorry that we had you called and then you couldn't go on anyway.

DR. LINK: Thank you, Your Honor.

THE PRESIDENT: You are welcome. Proceed, Dr. von Stein, please.

DR. VON STEIN: I now continue with the affidavit - of Feder's. which is spoken about on this page of the transcript by Sandberger is the same sector which was part of the territory of Feder's Kommando. the witness stand, on page 2212 - 13, 2397, 2437, of the English transcript, to the effect that the Estonian homeguard and the Estonian police authorities were subordinated to the Kommando of the Army in Estonia at the time.

Seven, Furthermore, Feder confirms Sandberger's statements in the witness stand, page 2197 of the English transcript, to the effect that in July 1941, in Pleskau, - no agency of the Sonderkommando 1 was instituted, but that the Sub-Kommando was subordinated to the 58th Infantry Division of the Army and only marched through Pleskau - at that time.

Eight. He furthermore confirms that he received the order from Sandberger to deal with any GII auxiliary task that might come up for the Army. Number 1 on page 58, Affidavit Strauch, Exhibit Number 7. Strauch makes in this affidavit, from his own knowledge, statements which refer to end of 1941 till March 1942. In those days Strauch was in charge of all tasks of Department Chief III with the Commander of the Security Police and the SD in Riga.

Strauch confirms that a certain Dr. Lange, who was responsible for all Jewish questions in the territory of the Einsatzgruppe A at that time and the Commander of the Security Police and the SD in Riga, that in this time that was just mentioned at least two Staff members in the presence of Stahlecker it had stated that the order, the Fuehrer order concerning the elimination of Jews in the territory of Special Kommando la, therefore in the territory of which Sandberger was in charge, had not been carried out, and that this fact was the more inconceivable as the number of Jews there was a very low one and that, therefore, it had been concluded that Sandberger had not the wish to deal with these matters. Furthermore, Strauch says that Stahlecker thereupon said that he had told Sandberger on various occasions that this order must now be carried out and at his next meeting with Sandberger he would draw his attention to this again. Strauch furthermore talks about a discussion which he had in Winter 1941-1942 in the presence of Stahlecker with the SS Obergruppenfuehrer Jeckeln in Riga. During this discussion Jeckeln told Strauch, amongst other things, that he, Jeckeln, had discovered a number of Jews on an official trip in one of the localities and ordered their execution immediately personally. Strauch claims that he does not remember the name of this locality in question, especially as he had nothing to do with those matters at the time; but he remembers that it is a locality in the territory of the Sandberger assignment. "I think it is possible that it was Pleskau." In this connection, I may draw the attention of the Tribunal to the fact that in an affidavit of the, Ambassador Winnecker, which I shall submit at a later point, it becomes evident that Winnecker, not from his own knowledge admittedly, but from hearsay, had found out that Sandberger, contrary to orders which he had received, had taken Estonian Jews to Pleskau, where they were living in a camp up to that time when Obergruppenfuehrer Jeckeln got hold of them.

I offer Sandberger Prosecution Exhibit No. 8, on page 53 of Document Book 1, Sandberger Document 18, an affidavit by Dr. Gustav Adolf Scheel. Scheel has known Sandberger since 1933. He was Sandberger's chief of the SD during the years 1935 until 1939. He confirms Sandberger's er's statements on the witness stand, pages 2143, - 44,

THE PRESIDENT: Dr. von Stein, it isn't necessary to refer to the transcript. You are giving us argument when you tell us that it confirms this, it confirms that. All we need now is a general idea of what each document contains and if you only read what you have in the index under the heading "content," that would be just about what we would want. Where you have a very particularly important document and you want to be a little more specific, I think that it would be in order to dwell a little longer on it; but for you to be referring constantly to the transcript and giving us the page numbers, that is not part of the presentation of documents.

DR. VON STEIN: I only wanted to explain to the Tribunal the reason why I submitted the documents because sometimes, without any oral comment, it does not become evident what the document is meant to represent and what it signifies. For this reason I believe that a few documents have to have a comment in order that the Tribunal might see the reason why it is submitted.

THE PRESIDENT: Well, yes, but it isn't necessary to refer to the page number in the transcript.

DR. VON STEIN: I shall limit myself, Your Honor, as far as is possible. Dr. Scheel furthermore confirms, in his capacity as the former Reich Students Leader, that Sandberger from November 1936 up to the time he fell ill in 1939 interested himself in matters of the German Students Association and that in a more extensive way than in matters of the SD. Dr. Scheel says furthermore that through the beginning of the war Sanderger could not possible leave the SD service. As Dr. Scheel, from 1935 until 1941, held high position in the SD, he must be regarded as an expert in these questions and certainly somebody whose testimony carries some weight.

Dr. Scheel confirms, furthermore, that Sandberger in 1941 applied to him with the urgent request that he might ask for him in the RSHA in a capacity dealing with matters of the German Students Association.

Next I offer Sandberger Exhibit No. 9, from Sandberger Document Book I, Document No. 1,. affidavit of Dr. Reinhold Baessler. Dr. Baessler confirms the statements of Dr. Scheel and of the defendant Sandberger concerning Sandberger's activity for the Students Association, 1936 to 1939.

Next I offer as Exhibit No. 10, from Sandberger Book I, Document No. 4, affidavit of Eiseler, who from 1936 to 1939 was in the subdepartment of the SD of Stuttgart, in the security service administration district southwest. He confirms Sandberger's statements on various points, especially the impossibility of leaving the SD service after the war had broken out.

Next I offer Exhibit No. 11 from Document Book Sandberger 1, Document No. 11, page 30, affidavit of Dr. Klaus Huegel, who in 1938 was in the Foreign Department of the SD Stuttgart and in 1944 he was in Office 6 of the RSHA in Berlin. He expresses himself about the character and activities of Office 6 of the RSHA and about the nature, which has nothing to do with police matters, of Sandberger's Job.

Next, from Document Book Sandberger No. 1, I offer Document No. 14, Exhibit No. 12, affidavit by the architect Lambert von Malsen-Ponickau, concerning the nature of the immigration office. Furthermore, I submit from Document Book I, Document No. 10, on page 27, and I offer it as Sandberger Exhibit No, 13, affidavit of R*dolf Hotzel, who in 1940-1941 was in Office 1 of the RSHA and was an immediate colleague of the defendant Sandberger and in 1942 was Chief of the Training Group in Office 1 of the RSHA. He confirms that this secrecy between individual departments of the RSHA was particularly strict in those days and he confirms: "In the group in which Sandberger and I served, Group 1-B of the RSHA, we certainly never found out about any matters of other departments of the RSHA. Decrees and directives of Office 4, we were never enlightened about and we never even heard rumors about them."

der, whose affidavit is contained in Document Book I as Document No. 2 on page 3, and, which I offer as Sandberger Exhibit No. 14 concerning Sandberger's activity in Department No. 3 of the BDS, Verona.

I offer from Sandberger's Document Book I, Document No. 20, page 61, affidavit of Julius Wilbertz, which I offer as Sandberger Exhibit No. 15. Wilbertz informs us that extensive reports of Sandberger's were against matters which were of detrimental effects to the Italian population and that the SD reports pursued the aim to satisfy the needs of the Italian people under any circumstances. Wilbertz furthermore confirms that Sandberger's tasks in Verona, had nothing to do with the field of activity of the State Police. attitude of the defendant Sandberger. All five confirm that it is correct if Sandberger explains to the questions of the President and also in cross examination the other questions of the Prosecution that some measures, directives, of the Government or the Party, he did not agree with. not have the usual Party attitude toward the Jewish question, I submit and I offer as Sandberger's Exhibit No, 16 the affidavit of the lawyer, Dr. Wolfgang Heintzeler who is at the moment assistant defense counsel in Nurnberg, in Case 6. It is Document No. 9, affidavit by Dr, Wolfgang Heintzeler. The affidavit refers to the years 1931 to 1934. Dr. Heintzeler mentions two examples which confirm, as he says, the fact that Sandberger, in spite of his National Socialist attitude, had a very liberal view concerning the Jewish question and did not agree with the usual Party attitude toward the Jewish question. teacher Johanna Haist, Sandberger Document Book 1, Document No. 6, referring to the year 1933, which confirms the fact that Sandberger had no anti Jewish attitude.

I offer as Exhibit Sandberger No. 18, from Document Book 1, Document No. 8, affidavit by Karl Heinz Hederich, an engineer, referring to the year 1944 and describing successful attempts of the witness Hederich and the defendant Sandberger concerning the improvement of the situation of the Jewish personalities in Budapest and in Berlin. berger in 1938 supported agencies of the Protestant Party in Wurtenburg to improve the situation and the work of the church and to eliminate any obstacles which might be caused by other agencies. Sandberger acted in this, within the sphere of his Protestant activities, for the German Students Associations and in agreement with his chief, Dr. Gustav Adolf Scheel. The affidavit of Parson Dr. Eberhard Mueller refers to the same incident. It is Sandberger Book I, Document No. 16, which I offer as Sandberger Exhibit No. 19. The Parson, Dr. Eberhard Mueller, who was at that time General Secretary of the German Christian Students' Associations, representing the German Branch of the Christian student World Union. He is today the chief of all Protestant Christian academies in Germany.

DR. VON STEIN: (Continued) Person Dr. Mueller established among other things that the motive for Sandberger's conduct was that he agreed with the opinion of his chief, Dr. Scheel, that a prohibition of church work did not agree with the idealistic attitude of the National Socialists. Parson Dr. Mueller furthermore confirms that Sandberger through his conduct endangered himself and his position considerably because obviously in the circles of the German Christian Students Association it was again and again discussed that the Reich Students leadership had made it possible for this work to be carried on. These statements on the part of Parson Dr. Eberhard Mueller confirm the next affidavit which goes beyond these borders. I offer it as Exhibit 20. It is Sandberger Book I, Document 17, on page 47. This is the affidavit of Oberkirchenrat "Senior Church Councillor) Wilhelm Pressel in Stuttgart. He was the students' Parson of the Protestant church in Tuebingen and has known Sandberger since 1931. Since 1933 Oberkirchenrat Pressel, up to this very day, is a close collaborator of District Bishop Wurm in Stuttgart. Bishop Wurm during this time was the leader of the Protestant Church in Wuerttemberg. Since 1945 he is President of the Protestant Church in Germany. Concerning the friendly attitude that Sandberger took toward the church in 1938, as stated by Parson Dr. Mueller Oberkirchenrat Pressel says, literally, "that Dr. Sandberger conducted these discussions in so loyal and proper manner although my political - - -

THE PRESIDENT: Just a moment, Dr. von Stein, the interpreter wants to confirm a certain word. DR. VON STEIN: I shall repeat what I have just been reading. Oberkirchenrat Pressel says literally, that Dr. Sandberger conducted these discussions with the said result in such a loyal and decent manner although Sandberger knew about the fact that I was politically persecuted in this case. Oberkirchenrat Pressel was known to him and I think it is very humble of him and I shall never forget this. Sandberger's behaviour and conduct in 1938 is described by Oberkirchenrat Pressel and he says that this group in public were representatives of the idealistic and decent group of the NSDAP who attempted to suppress any forced measures within the party or make them impossible.

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Concerning Sandberger's attitude in the years 1931 and 1932 Oberkirchenrat Pressel says from his own knowledge: "I met him in those days as a man of idealistic and decent character. For idealistic reasons he joined the NSDAP and he was convinced that the leading men of the NSDAP wanted the very best for the German people, that their rules and their basic principles in the fight against dirt and misery and against public corruption and growing demoralization as well as the promises of political socialistic revolution based on law and orderliness and positive Christianity were meant seriously and honestly."

This concludes, your Honor, my presentation of documents today. I have a few further documents which have already been translated and have been here since the 15th of the month but I have not received copies. Furthermore there is a supplement to this document book I-A which I have submitted. I have not heard about this document book up to this date whether translated or not. I now ask your Honor whether he would be able to tell me whether I shall be in a position to submit, to offer these documents.

THE PRESIDENT: You will certainly be allowed to submit these documents. No one will be denied the fullest opportunity to present all relevant documents. We are only saying that the schedule for tomorrow is that we will proceed with the rebuttal testimony to be submitted by the Prosecution. Then we will take up the matter of what is still left to be heard.

DR. VON STEIN: My question, your Honor, was not to the effect whether I would be able to submit my documents but I was going to ask you whether I might personally submit them here in court after the rebuttal.

THE PRESIDENT: Well yes, that was the indention of our reply, that you will be permitted to present whatever documents you have, in court.

DR. VON STEIN: Thank you. Another request, your Honor. Your Honor, there has come to my knowledge that there are a number of translation mistakes, differences in the German and English text.

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I have already had a list made of such mistakes and I would like to know whether these mistakes should be presented in court here or whether I should go through with them with Mr. Glancy and have these mistakes corrected in the transcript officially.

THE PRESIDENT: Yes, if you and Mr. Glancy can agree upon the correction then it would be enough if you prepare an errata sheet and submit it to the person in charge of the transcript.

DR. VON STEIN: In case there should be any misunderstanding, your Honor, will I be permitted to present these matters in court here so that the Tribunal may make a ruling about these?

THE PRESIDENT: By all means, Dr. von Stein. The Tribunal will now be in recess until tomorrow morning at 9:30.

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

DR. RIEDIGER: Dr. Riediger, counsel for the defendant, Haensch. Your Honor, I have made a request some time ago to have the witness, Dr. Menle, summoned from Berlin. He was to testify that Haensch from January to February 1942 was at his place for medical treatment in Berlin. I am not in a position to call this witness here because he is now residing in Berlin and because he will not receive permission to travel unless an official invitation goes out from this Tribunal. I permit myself to make the request whether the Tribunal has already made a ruling with respect to the hearing of that witness.

THE PRESIDENT: Well, we have approved the request--Have we approved the request?

DR. RIEDIGER: Until this time I have had no news whatsoever by the Tribunal.

THE PRESIDENT: I have disposed of every request.

DR. RIEDIGER: I shall investigate this matter and perhaps I shall be able to report to the Tribunal about the matter this afternoon.

THE PRESIDENT: Well, let me say to you, Dr. Riediger, that in the event you don't find it that you will have the approval now so that you can inform them at the Defense Center that the Tribunal has approved your request for this witness.

DR. RIEDIGER: Yes.

DR. VOLKEL: Dr. Volkel, counsel for the defendant, Six. Your Honor, I am in a position now to submit Document Book II on behalf of the defendant, Six, after we yesterday dealt with Document Book III. Your Honor, would you please rule whether I may now start with my presentation of documents in order to deal with all other documents now COURT II CASE IX which are available to us in their English translation.

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PRESIDENT: We have established that today we will hear the rebuttal and I think we had better adhere to that program because otherwise there will be irregularity in the presentation of the evidence. We will hear the rebuttal today, and then we will take up the remaining documents which are to be presented.

DR. VOLKEL: If I have understood you correctly, Your Honor, we still have the possibility after the rebuttal to submit the document book?

THE PRESIDENT: That is correct.

DR. VOLKEL: Thank you very much.

DR. HEIM: Dr. Heim, counsel for the defendant, Blobel. Your Honor, Monday Mr. Hochwald has made an utterance here that a trial brief had already been prepared and been submitted to the Tribunal with respect to the defendant, Blobel. In that connection, let me state that this trial brief has not been made available to me up to date, and as Mr. Hochwald told me some time ago, this brief is still being translated. I, therefore, make the request that this closing brief be only accepted at a time when it is available to me in its German text. Furthermore, I make the motion that a period be allocated to me of 14 days within which I am in a position to reply to said closing brief.

THE PRESIDENT: Well, with regard to that, Dr. Heim, we will make the statement for all counsel. Trial briefs must be filed no later than the last day of the summation arguments. By that we mean that they must be in the hands of the Tribunal because it will not help us any if you merely submit them in their manuscript form to the Translation Department on the last day of summations, so, therefore, you will need to work out your schedule in such a way so that the briefs may be translated and mimeographed and submitted to the Tribunal by the last day of summation arguments, otherwise, it will be impossible to study them. Are you hearing me? Otherwise, it will be impossible to use them in the writing of the judgment.

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As it stands now, 14 days will elapse before that final day, but it doesn't mean though that you will have 14 days to work on the trial brief. And furthermore, we don't know why you need so much time because Blobel's case was finished a long time ago; so we will now recapitulate what the schedule will be for the remaining sessions of this Tribunal, covering the instant case. Today we hear rebuttal. Tomorrow we will finish up the presentation of document books. Next week the Tribunal will be in recess. Dr. Aschenauer, who will present arguments for the defendant Ohlendorf and who as we understand will lead off with the summation speeches, must have his summation speech ready a week from this Friday so that it can be presented to the Translation Section and it can be ready then for presentation to the Tribunal a week from next Monday. Today is Wednesday, January 21. We will hear rebuttals today. Tomorrow we will hear the remaining presentation of document books. For the week of January 26 to January 31, the Tribunal will be in recess. Dr. Aschenauer must have his summation speech ready for presentation to the Translation Section by the morning of January 30. He will present his summation speech to the Tribunal on February 2, and he will immediately be followed by the other counsel in the order of the defendants as they sit in the defendants' box. Counsel, of course, will all be working on their summation speeches during this week of January 26. Naturally, those who are among the first defendants in the first row of the defendants' box will need to have their speeches more quickly than those who are in the rear row of the defendants' box. Is that clear to the counsel?

DR. HEIM: Your Honor, I have one question in that regard. If the prosecution will only submit a closing brief to us in about 10 days in its German text, then we only have limited hours at our disposal to reply to it. Then we shall not be in a position to get the timely translation of the closing brief especially since the Translation Branch has a terrific backlog.

PRESIDENT. Mr. Hochwald, when will you have the translation of your brief ready?

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MR. HOCHWALD: If the Tribunal please, we haven't finished all of our briefs yet, and we can work on the final speech of the prosecution and on these briefs undisturbed only after the Tribunal has taken its recess, as we have to be all day in the court room, expecially now when the defense counsel for the different defendants are presenting their documents books. We won't be able to put in the briefs earlier than on the dates just given by Your Honors. We, of course, have these briefs currently translated, and it is by opinion that a brief is a summation which substitutes certain parts of the closing address. It is impossible for the prosecution to analyze the whole evidence before the Tribunal in every single case in the closing address and, therefore, we are putting in, with the permission of the Tribunal, closing briefs. If we would just put in all this summation in our closing address, defense counsel wouldn't have more than at the utmost 24 hours to answer to the summation. It is the position of the prosecution that we are giving in our trial briefs our position what we have proved.

PRESIDENT: Well, Mr. Hochwald, we understand the purpose of a trial brief and the only question was, when will you have the German translation of your trial brief in the Blobel case, that is the only question.

MR. HOCHWALD: I do hope to have it in at the latest, 3 days.

PRESIDENT: Very well, Dr. Heim has informed the Tribunal that you have already submitted the trial brief in its English version, but we have not seen it nor will we in any way regard it until the German copy is in the hands of Dr. Heim, so that was the question. Therefore, the answer is, Dr. Heim, that you will receive it within three days.

DR. HEIM: Thank you very much, Your Honor.

PRESIDENT: You are welcome.

DR. VOLKEL: Your Honor, as I have just heard, the presentation of documents will be concluded tomorrow. The Tribunal then intended to take a recess for the following week. Now we shall be confronted with the necessity, as a result of the rebuttal documents of the prosecution, to present a number of other documents on behalf of the defense before the Tribunal.

That will probably confine itself to 3, 4, 5 documents which, however, I am not able to hand in to the Translation Branch before the end of this week or beginning of next week. Since the Tribunal is going to take a recess, a fact which is heartily greeted by the counsels it will not be possible to submit these documents, therefore, I ask the Tribunal to fix a date up to which the documents on behalf of the defense can be submitted whichrefer to new evidence which will be presented by the prosecution as it arises from the rebuttal.

PRESIDENT: You, of course, know that you are not called upon to reaffirm what you have already stated in your direct case merely because the rebuttal seeks to refute what you have said in your direct case. It is only in the event the rebuttal brings up something startlingly new that you need to in any way reply to it, because your case already stands and regardless of how it is attacked on the other side it still remains as your presentation. Now, if you find that there is something which is of such a nature in the way of its newness and originality that you just must reply to it, certainly we will find a way. I won't tell you at this moment just what method will be found, but a way will be absolutely found so that you can submit this evidence which you think to be absolutely essential to your case. As we have indicated on several occasions and which we will now repeat, no defendant will be denied the fullest opportunity to submit what is really vital and relevant in his case, so that when the rebuttal will have finished perhaps tomorrow you can indicate to us if you feel that you must still get some other documents and then we will dispose of it.

DR. VOLKEL: I thank you very much, Your Honor. Tomorrow as soon as the presentation of evidence has been concluded I shall again mention the subject.

PRESIDENT: Very well.

DR. GAWLIK: Dr. Gawlik, counsel for the defendants, Naumann and Seibert. Your Honor, my colleague, Seibert, has been told that he will get his closing brief--the translation of his closing brief--in about three days.

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The same question concerns me, and other colleagues of mine, and I would be very grateful to the prosecution if they could make a statement when other defense counsel can expect the German translation of closing briefs in order that we can arrange our work accordingly.

DR. WALTON: If it please Your Honors, the closing brief against Seibert is completed and has already been in the hands of the Translation Section for a week. I think it is superfluous to remind the Tribunal that once we put it in the hands of the Translation Section, all we can do is go down and ask politely that they please get it out of there.

PRESIDENT: Yes. Let me state to defense counsel that while it is highly desirable that they have copies of the prosecution trial briefs in their hands while they are working on their own briefs, no rule of procedure requires that they have the opposite trial brief before they write up their own trial brief. Each side presents its trial brief and it isn't a debate. Defense Counsel now know what they must emphasize in their summations and in their trial briefs, and it isn't necessary to reply paragraph for paragraph to the prosecution trial brief. We will endeavor to get the trial briefs into your hands--the opposite trial briefs--but under no circumstances must you wait until you get those trial briefs before you work on your own, and the Tribunal now directs you to proceed on your own trial briefs independent of the prosecution trial briefs, assuring you that every effort will be made to get those prosecution trial briefs into defense counsel hands as quickly as possible.

MR.WALTON: Thank you, Your Honor.

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DR. GAWLIK: Mr. President, may I perhaps ask you to request the Prosecution to give us the English copy of the trial brief until such time as we receive the German copy.

THE PRESIDENT: That is an excellent idea. Where there is some delay in the translation section in the preparation of the Germany copy if defense counsel could at least have the English copy that would help them considerably.

MR. WALTON: By the same token, your Honor, we must give to the stencil section to cut the stencil, we must turn the master copy over. I will bring what pressure I can to bear on it. admit the affidavit of one Hausmann I worked night and day and got along on six hours sleep in order to serve Dr. Gawlik and Dr. Hoffmann, both of whom speak English, four days prior to the formal filing with the Secretary General on my brief of Hausmann and I have no reply brief yet.

THE PRESIDENT: Well, I think it is pretty evident to both sides that every effort will be made to expedite and accelerate the preparation of briefs, translations and so on. Let us proceed now with rebuttal.

You have something, Dr. von Stein?

DR. von STEIN: Your Honor, I have a question. Tomorrow is supposed to be the last day, for us to present any outstanding documents. I have some misgivings as to whether all documents submitted will be translated until tomorrow. What is to happen to those documents which have already been submitted but can't be presented because there is no mimeograph or translation. Shall we have the opportunity at a later date to submit and present the documents in the courtroom?

THE PRESIDENT: Dr. von Stein, if you want to sit down and work out all the things which can worry you for the rest of your life you will find plenty of things to worry about. Let us wait until tomorrow and we will see what the situation is. You are assured that no undue advantage will be taken of you and that every opportunity will be allowed to see to it that your case is presented in its completeness, fullness, and without any deprivation of your rights.

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Dr. von Stein: I thank you, very much.

PRESIDENT: You are welcome.

DR. HOCHWALD: May it please the Tribunal, before I offer the documents which the Prosecution wishes to introduce in rebuttal I would like to outline the way in which we have these rebuttal documents arranged. The Prosecution intends to offer 7 document books under the numbers 4, 5, 5A, 5B, 5C, 5D and 6.

Document Book 4 is not before the Tribunal. This document book contains several documents pertaining only to the defendant Rasch. This document book was not assembled yet as the Prosecution has been waiting for defense counsel for Rasch to present his documents first. Up to the present date no defense document book was obtained by the Prosecution and we will hand over Document Book 4 sometime today or tomorrow to the Tribunal and to counsel for the defendant Rasch at the same time. Document Book 5 contains documents pertaining to the solution of the Jewish question in the East. way as the Prosecution has arranged its case in chief. In other words, Document Book 5A pertains to those defendants who were members of Einsatzgruppe A; 5B to those who were members of Einsatzgruppe B, and so on. decrees which are contained in the official German Law Gazette. These decrees are offered in connection with the defense of some of the defendants that they were drafted into the SS and SD on the basis of certain emergency decrees. The Tribunal will recall that defense counsel for the defendants Radetzky and Graf have put in certain decrees in this connection and we have translated other parts of these decrees and these are the documents contained in Document Book 6.

I now want to offer Document Books 5, 5C and 6. Document Book 5, your Honors, on page 1, document 710-PS which I offer as Prosecution Exhibit 194. This document is a letter from Goering to Heydrich, dated 31 July 1941.

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Heydrich is charged with the preparation of the final solution of the Jewish question within the German sphere of influence in Europe. The next document 3663-PS, on page 2 of the Document Book, is offered as Prosecution Exhibit 195. This is a letter from the Reichsministry of the occupied territories to the Reich Commissioner of the East, dated 31 October 1941 and the reply to this letter, dated 15 November 1941. From this document it is apparent that the RSHA complained that certain executions of the Jews had been forbidden. The Reich Commissioner of the East requests information as to whether all Jews without regard to age, sex and economic interests were to be liquidated or whether the solution of the Jewish problem should, as the letter states, be harmonized with the necessities of war production. offered as Prosecution Exhibit 196. This is another letter from the Ministry of the occupied territories to the Reich Commissioner for the East, dated 18 December 1941. The letter advises the Reich Commissioner that no commercial consideration should interfere with the solution of the Jewish question.

DR. GAWLIK, counsel for the defendants Naumann and Seibert: Your Honor, the rebuttal evidence is to refute new facts which were being presented by the defense. Perhaps the Prosecution would be good enough to state what facts concerning the Defense are being refuted by these documents. This will enable us to check whether the documents offered are in the course of rebuttal evidence. In this I don't see what the Prosecution is trying to prove in rebuttal evidence. I don't know what assertions or defense are concerned or to be refuted. Here we are concerned with cumulative evidence, evidence cumulative to the evidence Prosecution already presented in its case in chief. But in this rebuttal evidence such evidence becomes inadmissible.

DR. HOCHWALD: If the Tribunal please, the Tribunal is certainly aware of the fact that several of the defendants have denied that the RSHA or the defendants themselves or the Security Police and SD were charged with the solution of the Jewish question in the East.

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That is the reason why we are putting in general evidence on this question.

THE PRESIDENT: Dr. Gawlik, we will follow the same procedure with the Prosecution document books that we followed with the Defense document books. At the termination of each book defense counsel may get up and make their objections and then the objections will be ruled upon at one time.

DR. GAWLIK: With respect to the last statement by the Prosecution I should like to point out the following, your Honor. In my opinion it does not suffice for Prosecution to merely prove that the RSHA was dealing with these matters. The RSHA was a large enterprise and that is something that was never contested. The Prosecution should try to bring forth evidence that one of the defendants inside the RSHA was concerned with such matters and this proof is not being brought out by these documents. That is why I consider these documents to be irrelevant, apart from being inadmissible in the course of rebuttal evidence.

DR. HOCHWALD: No further comment, your Honor.

THE PRESIDENT: Very well, we will pass upon the objection enmasse at the end.

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DR. HOCHWALD: I now offer on page 5 of the document book document 1104-PS as Prosecution Exhibit 197. In connection with this document I would like to refer to a typographical error in the descriptive index, your Honors. It should not read "request" from Carl. It should read "report" from Carl. This is in the third line in the descriptive index to the individual documents.

DR. GAWLIK: Your Honor, I also object to the presentation of that document.....

THE PRESIDENT: Dr. Gawlik, I think me mould save a great deal of time if we wait until the whole book is presented. Then you can get up and object to each document.

DR. GALIK: Very well, your Honor.

Dr. HOCHWALD: In this document Carl reports to the commissioner general in Minsk on 30 October 1941 about the execution of Jews in Schazk and other towns in this area. These executions were caried out by the German Police. Consideration for the economic necessities of the area was not taken. The Jews were indiscriminately shot in the streets in a sadistic manner and many of the victims were buried alive. The police battalion looted during the action and the Jews were deprived of their valuables in a most brutal fashion. by mistake as it was already offered in Document Book I, on page 46, as Prosecution Exhibit 27. I beg the pardon of the Tribunal for this mistake and would like to ask the Tribunal to cross this document. document NO-4882, offered as Prosecution Exhibit 198. This document is a letter from Heydrich to the Reich Ministry of the occupied territories, dated 10 January 1942. This document is offered as proof that the outlines of the solution of the Jewish question were established by the RSHA.

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introduced as Prosecution Exhibit 199. It is an inter-office memorandum of the comnissioner general in Kaunas, dated 11 November 1942, stating that the carrying out of executions particularly of liquidation of Jews, was the task of the security police and t he SD. In this connection I want to refer especially to the date which proves that as late as in November 1942 the task of the security police and SD was not changed and that units of that organization were still active in carrying out executions and liquidating the Jews.

Dr. Gawlik.

DR. GAWLIK: Firstly, I should like to object against document No-1104 which was submitted as Prosecution Exhibit 197. I object to this document firstly because it does not represent a rebuttal document because it does not refute any new assertions made by the defense. Secondly, because the document is irrelevant for what is being described in that document has not been committed by any units of the Einsatzgruppen. I draw particular attent ion of the Tribunal to the letter of 1 November 1941. Mention is made there of Police Batallion 11. This Police Batallion 11 was not subordinated neither to an Einsatzgruppe nor to an Einsatzkommando as it becomes apparent from the documents. says "from the Batallion Commander of the Security Police up to the last lieutenant". The next paragraph says: "I have talked to the responsible Briga defuehrer (Major General) Zinner of the Protective Police Center and I have discussed with him the Jewish action." The Prosecution will concede that this Major General Zinner of the Protective Police Center never belonged to an Einsatzgruppe. We see here very clearly that this Police Batallion which has committed these actions had nothing at all to do with an Einsatzgruppe or Einsatzkommando. In the same letter mention is made of Police Batallion 11 from Kauen. In the next letter, dated 30 October 1941, we see that we are only concerned with acts by Police Batallion 11. I really cannot see what the criminations against Police Batallion 11.

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Furthermore I am objecting THE PRESIDENT:

Dr. Gawlik, you remember the defendant the Police, don't you, in Latvia?

You remember his saying that he organized the Police -- or perhaps you weren't in the courtroom at the time.

Well, the defendant Strauch said when he went to Latvia that he organized the Police.

Of course, I know this has nothing to do DR. GAWLIK: Well yes, but it has not been proven that DR. HOCHWALD: If your Honors please, this is a question of argument but not a question of the admissibility of documents.

It "Einsatzgruppe" were active, in close cooperation, with the police, with the Wehrmacht, and with the Waffen-SS.

Therefore we consider such evi

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DR. GAWLICK: Your Honor, it is my opinion that this is not only not argumentation but it investigates and checks as to the relevancy and the probative value of this document concerning one of the defendants.

MR. HOCHWALD: May it please the Tribunal. The Tribunal has used a magnanimous and very liberal practice in admitting every kind of evidence from the defense which the defense considered relevant for its case. I do think that it is only fair that the defense give us the same consideration.

THE PRESIDENT: Dr. Gawlik, you can be sure that if none of the defendants had anything to do with Police Battalion No. 11, then this document can in no way be used as evidence against any particular defendant. But whatever value it may have as giving a history of just what took place during that time and in that area, we do not regard it as completely irrelevant.

MR. HOCHWALD: If the Tribunal please, from the heading of the document book and from the arrangement which we gave the rebuttal evidence, it is clear that we are not charging any one of the particular defendants for crimes which are proved by this document. This book, No. 5, was offered only in order to show again the overall picture of how the extermination of Jews in the east was handled, in order to rebut the contention of many of the defendants that they were unaware of the fact that Jews were killed in the east.

THE PRESIDENT: You remember, Dr. Gawlik, that several defendants said that although they went through the entire Russian Campaign they never saw a Jew killed, because he was a Jew. Well, here is a document from apparently a responsible official, in which he tells of the indiscriminate killing of Jews in the streets. This does not refer particularly to any individual defendant, but is part of the large picture of what happened during this most unhappy period.

DR. GAWLIK: If the Prosecution will agree with me that this document is not directed against any particular defendant, I have COURT II Case IX nothing further to add.

Furthermore I am objecting to Document 4882. This document I consider to be irrelevant. In addition, I am also of the opinion, in connection with this document, that it refers to no rebuttal evidence; no new assertion by the defense is being refuted by this document. In this connection I am drawing the attention of the Tribunal to the last sentence of this document from which it can be seen that the expert in the RSHA was the SS Sturmbannfuehrer Eichmann. From further documents which the prosecution will yet submit, we will see that Eichmann was in Office 4 of the RSHA. Furthermore I am objecting to Document 5437, Exhibit 199, also from the reason that it is irrelevant and because it represnents no rebuttal evidence; it refutes no assertion made by the defense.

MR. HOCHWALD: If the Tribunal please, I do not want to repeat the argument which I have just given to the other documents. The argument is the same. These documents are put in in order to show the overall picture, which certainly was denied by many of the defendants in the witness box.

THE PRESIDENT: We would like to point out this fact, Dr. Gawlik. When you get up and object to a document, you apparently object for the entire defense. I do not know that the entire defense will agree with you because it may be that a document submitted here may even be beneficial to some individual defendant. For instance, in this last document it says: "I hereby forbid the active participation of office personnel in any executions of any sort." Some defendants have asserted they had nothing to do with the execution of Jews because they were in the office. Now, if you argue that this document should not be presented, you in effect contradict the statement of some of these defendants.

MR. HOCHWALD: But, if Your Honor -

THE PRESIDENT: Anyhow, we will pass upon all these objections at the end and we will say that we will be no less liberal in the reception of this evidence than we have been in the reception of the COURT II Case IX other evidence.

MR. HOCHWALD: I thank your Honors very much, but -

THE PRESIDENT: Unless it can be very clearly shown that it certainly is entirely irrelevant and really getting down into the penguins of the Antarctic Zone.

MR. HOCHWALD: As the Tribunal has quoted one sentence out of this last document, I would like to quote the one why I have submitted it. The same document, NO-5437, which is Prosecution Exhibit 199, states, in the last sentence: "The carrying out of executions, particularly the liquidation of Jews, is the task of the Security Police and the SD."

If Your Honors please, I turn now to Document Book 5-C. This document book is a rebuttal document book against some of the defendants who were members of Einsatzgruppe C. I have endeavored to show, in the descriptive index, to whom of the individual defendants the documents offered especially refer. I may point out, however, that some of the documents are of probative value also against more than one of the defendants. It goes without saying that the prosecution reserves the right to use these documents also against defendants different from those who are named in the index. offered as Prosecution Exhibit 200. This is Operational Situation Report No. 3, covering a report period from 15 August to 31 August 1941. This document proves that in the area of Berditschev and Shitomir nearly all villages were combed according to plans. This report gives also details about executions in these areas. I want to point out in passing that this document does not only implicate the defendant Schulz but also the defendants Blobel and Rasch. On page 7 of the document book Your Honors find Document NO-2651, offered as Prosecution Exhibit 201. This report states that seven thousand Jews were arrested and shot, among these seventy-three officials and informers of the NKWD. In Lemberg--and the Tribunal will certainly recall that Schulz has testified about these happenings in Lemberg to a great extent. In COURT II Case IX Lemberg one thousand Jews were handed over to the prison of the Wehrmacht.

In Shitomir, one hundred seventy-eight Russians and Jews were shot, some of whom were civilian prisoners who had been handed over by the Wehrmacht. This document also proves not only the incorrectness of the testimony of the defendant Schulz as to the number of the people who were arrested in Lemberg but implicates also the defendants Blobel and Rasch. On page 14 of the document book-

DR. DURCHHOLZ (Counsel for the Defendant Schulz): Your Honor, I would like to object to Document NO-2653, Exhibit 200. I think that this document is irrelevant. In this document, Einsatzkommando 5 has not been mentioned with one word, of which the defendant Schulz was in charge. Therefore it cannot be seen how it can be directed against the defendant.

MR. HOCHWALD: If the Tribunal please: the Tribunal will certainly recall that the defendant Schulz has testified to the fact that his Einsatzkommando was located in Berdtschev. The location in itself gives the probative value of the document. If Einsatzkommando 5 was located in Berdtschev, and in Berdtschev anti-Jewish actions occurred, it is certainly of probative value to show what kind these actions were. As to the time, I want to state that the report covers a period from the 15th to the 31st of August 1941, a time in which Schulz certainly was commander of Einsatzkommando 5.

THE PRESIDENT: Dr. Durchholz, the fact that prosecution counsel says that a document is directed against a certain defendant does not of itself establish that it proves anything against the defendant. That is merely what he claims. Now, if, in the body of the document, you fail to see any connection with the defendant and it is clear it has no connection with the defendant, the Tribunal, of course, will also see that it has nothing to do with the defendant. So, don't be disturbed by his mere statement that it is directed against the defendant. Of course it is up to you to study the document and then if you see that it is an attack against your man, you reply to it.

COURT II CASE IX If it is not directed against him, in your argument you can show that the document in no way touches your particular client.

DR. DURCHHOLZ: Your Honor, then I would like to reserve the right to hear the defendant Schulz with respect to this document and call him into the witness stand for that purpose.

THE PRESIDENT: Oh no, no. We can't do that. We cannot call the defendants back to answer everything, each particular document. Do you see Schulz's name mentioned in the document.

DR. DURCHHOLZ: No.

THE PRESIDENT: Do you see his particular kommando listed?

DR. DURCHHOLZ: No.

THE PRESIDENT: Then as far us you are concerned it has nothing to do with Schulz and you make that argument in your summation.

DR. DURCHHOLZ: Yes, Your Honor.

MR. HOCHWALD: On page 14 of Document Book I, Your Honors find Document NO-4999, which is offered as Prosecution Exhibit 202. This document is an affidavit of Karl Hennicke, dated 4 September 1947. I beg Your Honors pardon, on the copy which is in Your Honors' document books, a very important line, the last line on page 14, is unreadable. I therefore will have better copies landed to the Tribunal presently. Unfortunately, just the line which is most important for the presentation of the prosecution is unreadable in the document book.

THE PRESIDENT: I don't see that this is much of an improvement.

MR. HOCHWALD: It is at least readable, Your Honor. The other one is completely illegible. I want we read one sentence into the record. The sentence starts on page 14 of the document book, but Your Honors look better to page 1 of the document I had distributed to you, and reads: "During the execution at Kiew, I noticed the following members of Einsatzgruppe C and of its subordinate kommandos respectively: Dr. Rasch, Dr. Hoffmann, Paul Blobel, and Callsen. Some more officers were present, but I cannot recall their names." In the same affidavit, Hennicke states that sonder Commando 4-B was first commanded by Sturmbannfuehrer Hermann and later by Obersturmbannfuehrer Fritz Braune, COURT II CASE IX This Fritz Braune is not identical with the defendant Braune in the dock.

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Because Fritz Braune arrived at the Einsatzgruppe only after Hermann's release, sonder Commando 4-B remained without a commander for two or three weeks. During this period, the kommando was headed by its senior officer, the defendant Blobel. The defendant Fendler, I am sorry. On page 16 of the document book -

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DR. DURCHHOLZ: I am representing Dr. Fritz, who represents the defendant Fendler, Your Honor. I was asked on behalf of Dr. Fritz to object to this document. I cannot give any reason but I just want to object in order to get it into the record. Dr. Fritz will give you sufficient reason.

THE PRESIDENT: Very well, the record will show that.

MR. HOCHWAID: On page 16 of the document book, Your Honors, it is Document NO-5174, offered as Prosecution Exhibit 203. This is Report 26, dated 23 October 1942. This document is offered as corrobotative proof that at that time the defendant Bieberstein was commander of Einsatzkommando 6 and that this kommando was located then in Rostov. Document NO-5155, Prosecution Exhibit 204. It is Report No. 12, dated 17 July 1942. The report shows that in the district around Schazk three hundred forty Jews and Communists and in Slatopol fourteen male and female Jews were shot.

DR. FICHT (Counsel for the Defendant Bieberstein): Your Honor, I should only like to express the request that the prosecution tell us where these areas are supposed to be located. I am directing my inquiry with respect to the present document and the two following documents, so that I can formulate my later objections accordingly.

MR. HOCHWALD: Your Honor, I am not in a position to state right now where these places are, but I do think it can be easily ascertained from a map, and testimony from my part on this point does not seem to be required.

DR. FICHT: Your Honor, then at least would you ask the prosecution to tell us what the connection of these documents is with the defendant Bieberstein.

MR. HOCHWALD: The Tribunal will certainly recall that the defendant Bieberstein has testified here that there were no Jews shot by his kommando, that he didn't find any Jews.

These documents are purported to show that at the time when Bieberstein was in command, or shortly before he was in command, the general extermination program of the Jews was still in force, in 1942 as it was in 1941.

THE PRESIDENT: Proceed.

MR. HOCHWALD: I then offer again from page 24 of the document book Document NO-5654, as Prosecution Exhibit 205. This document contains correspondence between the Master of the Field Police Jakob and Lieut. Gen. Guerner. This correspondence is dated 5 May and 10 June 1942. It refers to the cleaning up and killing of Jews in the area of Komenetz-Podolsk. Exhibit 206, is another letter from the same Jakob to General Guerner. This letter states that three or four actions every week were carried outk sometimes against Gypsies, sometimes against Jews and partisans, and so on. These actions took place under the cooperation of the SD Post. In one instance fifty persons were killed.

DR. FICHT (Counsel for Bieberstein): Your Honor, after all these documents have been presented against Bieberstein, may I make my objections now?

THE PRESIDENT: I think the better practice would be to wait until a whole document book is presented. Then each counsel who feels his client has been adversely affected or who feels that he has reason to object may step to the podium and announce his objection.

MR. HOCHWALD: On page 27, Your Honors, is Document NO-3251, offered as Prosecution Exhibit 207 -

DR. RIEDIGER: Your Honor, I beg your pardon if I am now already pointint out something to you with respect to that document. According to the index, Weinmann, as of the 13th of January 1942, is to have been assigned to the front as commander of Einsatzgruppe C. From the copy of the document which I received, this does not become apparent. Either there is a typographical error in translation or the document is entirely without value.

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Therefore, I should like to ask you to request counsel for the prosecution to speak on this subject.

MR. HOCHWALD: I only have before me the English copy. In the English copy there is certainly a sentence to that effect. I would like to draw the Tribunal's attention to it. It says: "Dr. Weinmann has been on the Security Police assignment since 13 January 1942." This is a letter of 21 November 1942.

I am sorry. I will have to reoffer the document. I have been just informed that just this letter was not photostated. I am very sorry. I have seen the original. I apologize to Dr. Riediger. I do think that his objection is perfectly justified. I will have to reoffer the document then, Your Honor.

THE PRESIDENT: Very well.

MR. HOCHWALD: I would, However, respectfully request that Exhibit No-207 might be reserved for Document NO-3251. 5700, Prosecution Exhibit 208. This is a police registry card of the defense witness Gertrud Schreyer and her husband Emil Schreyer. The Tribunal will recall that the witness testified that she was not living together with her husband. This registry card proves that both are registered by the German Police under the same address. this is an affidavit of the same witness, Gertrud Schreyer, in which she admits that some of her books and particularly the appointment pads No. 3 and 4, were allegedly destroyed by the Russians. In this connection, I refer to the examination of the witness by the Tribunal, where the witness stated that all the books are at the disposal of the Tribunal and did not mention one instance that one of her books is missing. This is a copy of the general directives of the Reich Commissioner for the Strengthening of German Folkdom. These directives state that five hundred and fifty thousand Jews, Poles in high position, and members of the Polish intelligentia are to be deported from Danzig and Posen.

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I want to refer to a typographical error in the descriptive index, Your Honors. On line 4, the last word of line 4 and the first word of line 5, "Jewish intelligentia", should be crossed out. It should read: "Five hundred and fifty thousand Jews, the leading Poles, and members of the Polish intelligentia." Exhibit 211. These are minutes of a conference held in Berlin on 30 January 1940. In this conference Heydrich stated that the evacuation of eighty-seven thousand Poles and Jews had already been carried out in order to provided space for the Baltic Germans who were to be resettled. Further, forty thousand Jews and Poles would have to be deported in order to make space for the Baltic Germans. Furthermore, four to five thousand Poles and Jews who had been driven from their homes had already been collected in camps in order to make space for these Baltic Germans.

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offered as Prosecution's Exhibit 212. This is an affidavit of Dr. Heinrich, President of the Nurnberg Court of Appeals. I want to point out a typographical error in the affidavit. In the English copy it appears that Dr. Heinrich was appointed President of the Court of Appeals in 1935. The correct date is 1945, Your Honors. The affidavit states that the emergency decrees of 15 October 1938 and 8 July 1939 and twenty-five decrees for the execution of these emergency decrees are no legal basis for the draft into the SD and into the SS.

THE PRESIDENT: Mr. Hochwald, shall we recess now?

MR. HORLICK-HOCHWALD: Yes, sir.

THE PRESIDENT: The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

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Dr. FICHT: Ficht for Bieberstein.

Your Honor, first of all I am talking about the Exhibit No. 203, No-5174. That is the last document book. May I point out here that this is not a rebuttal document? This fact was mentioned by us in fact, and we never contested it. Therefore, this document has nothing to do with rebuttal. I, therefore, formally object to it. I have nothing to say on the matter itself. very short excerpt from the Report No. 12, and I would like to have the entire report submitted. This is mainly because localities are mentioned here which are of importance. Mentioned are Szatsk and Slatopol. These are two localities which are more than five hundred kilometers to the west of Rostov where Einsatzkommando 6 was active during the time of Bieberstein. Also the evidence has not shown at all that EK 6 was ever in these localities. May I show to the Tribunal briefly about where these localities are? They are about here on the map (indicating) and Rostov is here. I shall mention another locality later on. Also concerning this document-

THE PRESIDENT: Well, Dr. Ficht, if you would like to have the entire document submitted, why don't you then see that it is submitted, the entire report.

MR. HORLICH-HOCHWALD: It goes without saying, your Honor, that if you are putting in one part of a report the whole report is in evidence, and the original of the report respectively the absolutely complete photostatic copy, is at the disposal of the defense counsel for defendant Bieberstein any time he chooses to look at it in Room 216.

THE PRESIDENT: Very well.

DR. FICHT: Your Honor, may I conclude my objections? The second objection is based on the date. The report is dated 17 July 1942 and it was made out in Berlin. This fact shows that the events mentioned in it must have occurred much earlier, that is during a time when Herr Bieberstein was not with Einsatzkommando 6. On these two points, localities five hundred kilometers to the west and the date which is much earlier, I, therefore, consider that this report has no probative value, and that is why I object to it.

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The next number is 205. This is a private correspondence between somebody in the field police and a general, because the two seem to have known each other privately previously. The locality here is Kamonitz-Podolsk. Kamonitz-Podolsk is approximately at the border between Poland, Rumania and Russia. This is about 1,000 kilometers to the West. Since no evidence exists that Einsatzkommando 6 was ever in that locality, and since also the dates of these letters are 5 May '42 and 21 June '42, therefore from a point of time these affidavits have no probative valye. May I emphasize that the master of police who wrote these letters in his last letter of 21 June '42 calls his own letter some elementary talk, and this should emphasize the probative value of these documents.

MR. HORLICK-HOCHWALD: If the Tribunal please, as far as I recall we have not stated in our presentation that it is the contention of the Prosecution that Einsatzkommando 6 was in the places mentioned in the different documents. However, it is of importance to show that the extermination program of the Jews in the West in the area of Einsatzgruppe C, even if it was 500 or 1,000 kilometers West of Rostov, was still going on at a time when Bieberstein was a member of this Einsatzgruppe, or shortly before he came to this Einsatzgruppe as commander of Einsatzkommando 6. That is the relevance of the document.

THE PRESIDENT: Very well. The Tribunal will pass upon all these objections at the end.

DR. FRITZ (for the defendant Fendler): Your Honor, this morning the Prosecution submitted a document in Document Book V-C, Document No-4999. This is an affidavit by Karl Hennicke. My colleague, Dr. Durchholz, when deputizing for me already objected to this document, and I would like to ask for permission to give my reasons for this objection.

THE PRESIDENT: Proceed.

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DR. FRITZ: On page 3 of the original of this affidavit Hennicke states the following, and I quote under figure 4 from the second sentence: "Commando 4-B was first led by Sturmbannfuehrer Hermann and later by Obersturmbannfuehrer Fritz Braune. Since Fritz Braune arrived with the Einsatzgruppe only after Hermann had been relieved, the Commando 4-B for about two to three weeks did not have a chief. During this interim period the Commando was led by the senior officer, Lothar Fendler." The Prosecution is claiming this, and this is a completely new assertion that Fendler, as Hermann's successor, independently commanded the unit for several weeks. The Prosecution did not claim that until now; rather, they claimed thus far that Fendler was deputy of Hermann when the latter was absent for a brief period of time from the Commando. That is why this document is not suitable to impeach the credibility of the witness and of the affiant, of whom I have brought affidavits. The defendant Fendler has had no opportunity until now to defend himself against this new contention. I therefore ask that this be not admitted, or, at least, that this point be not admitted. In case the Tribunal should admit the document, however, I would like to ask that the defendant Fendler be given sufficient opportunity to defend himself against this new contention. The defendant Fendler assured me, and I believe him, that this assertion was completely untrue. Therefore, I would have to bring new witnesses to prove that this assertion is wrong, or I would have to examine the defendant Fendler in the witness stand again.

DR. HORLICK-HOCHWALD: If the Tribunal please, if I understand the objection by defense counsel for the defendant Fendler correctly, he objects against this document by saying that the Prosecution wants to prove a new point in the case which was not raised until now. The Tribunal will certainly recall, and there is a document in Document Book 3-C, the affidavit of the defendant Fendler himself, where he stated that he was never the official deputy of the commander of the Einsatzkommando, but that he replaced him in cases of his absence. The Tribunal will further recall that the defendant Fendler has offered proof, and has himself denied on the witness stand, the fact that he substituted Hermann for more than several hours.

Therefore, an affidavit stating something different, in my opinion, is perfectly admissible and constitutes, certainly, valid rebuttal evidence.

THE PRESIDENT: Dr. Fritz, Fendler has in effect already denied this. So that now you have the statement of Fendler, all his testimony, contradicting this. It becomes a question of the probative value, the respective probative value of these two types of evidence. This affidavit denies Fendler's statement. Fendler attacks the affidavit. It is a matter of argument in the final summation to the Tribunal, and the Tribunal determines which of the two is more worthy of credence. Or, it may be possible that Fendler's testimony can be accepted in such a way as even to agree with this and yet not necessarily establish that he was guilty of crime. At any rate, you have those two stories.

DR. FRITZ: Yes, Your Honor. May I say something else. I have likewise submitted an affidavit from this witness Karl Hennicke which was admitted by the Tribunal. The contents of this affidavit contradicts the affidavit submitted now. The witness Hennicke is in the court prison in Nuernberg. I would like to ask for the right, at least, Your Honor, to be able to obtain another affidavit from the witness or to call him into the witness stand for cross examination.

THE PRESIDENT: Well, I tell you what you do, Dr. Fritz. Tomorrow afternoon, after we have moved along with the presentation of the remaining documents to be submitted by the defense, you bring this matter up again and then we will see what should be done.

DR. HORLICK-HOCHWALD: If the Tribunal please, in the descriptive index of Document Book V-C, there is a regrettable error as to the document against which Dr. Fritz just now has objected. That is Document 4999, Prosecution Exhibit 202. The affiant Hennicke was not an officer of Sonderkommando 4-A, as it is stated in the descriptive index.

He was, as the affidavit shows, an officer of Einsatzgruppe C. I respectfully request the Tribunal to make this change.

THE PRESIDENT: Very well.

DR. RATZ (for defendant Radetzky): Your Honor, I object against the submission of the Document NO-4059, Exhibit 210, page 35 of the English document book. This document concerns the clearing of formerly Polish territory from which the Polish and Jewish population was evacuated, so that the Ethnic Germans coming from the Baltic countries could be settled there. In the indictment and in the opening speech by the Prosecution nothing is said about a count of that kind against Radetzky. Apart from that it is very doubtful whether this constitutes a criminal act by the defendant Radetzky, and whether this document can prove any criminal act by Radetzky because Radetzky was not at all connected with the Reich commissioner for the strengthening of Germanism.

THE PRESIDENT: This is a matter for argument at the final summation, Dr. Ratz.

DR. RATZ: For the same reasons I have just explained I object to the next document, NO-5322, Exhibit 211, page 69 of the German and page 37 of the English document book. I only wish to add here that the defendant Radetzky did not participate in the discussion of 30 January 1940 in the RSHA, the Reich Security Main Office. The participants in this discussion are mentioned in this document.

MR. HOCHWALD: If the Tribunal please, the Tribunal will certainly recall that the Defendant Radetsky had testified at great length about his activities with this repatriation committee of Baltic Germans. For this reason in order to rebutt his testimony, these two documents are certainly relevant.

THE PRESIDENT: The Tribunal will pass on these objections at the end of the presentation.

DR. RATZ: Your Honor, finally I object against the Document NO5814, Exhibit 212, page 75 of the German Document Book. This is an affidavit by Oberlandesgerichtspraesident Dr. Heinrich. Dr. Heinrich gives his legal opinion based on studying law, but he cannot comment on how this law was applied in practice. He has no practical experience in handling this law and in applying this law, and theory and practice in wartime very often varied from those in peacetime. Dr. Heinrich is not an expert for administrative practices. In particular, he has no knowledge about the practical application of the War Emergency statutes in the Warthegau. It is not a matter of admissibility or lack of admissibility or a war emergency draft, but all that is being discussed, is whether Radetzky was actually under the War Emergency Statutes. The affidavit says nothing about that and therefore, in my opinion....

THE PRESIDENT: Dr. Ratz, this is not the time to present the argument. Now, Mr. Hochwald has submitted this affidavit; and if you think that it doesn't prove anything against your client, you can show that in your summation. We are not hearing arguments now.

DR. FICHT (Counsel for the Defendant Bieberstein): Your Honor, concerning the last matter, I apply that Oberlandesgerichtspraesident Dr. Heinrich be called here for cross examination so that it can be determined whether he has practical knowledge about the application of these regulations.

MR. HOCHWALD: If the Tribunal please, I do think that the request on the part of the defense counsel for Bieberstein in this case is not relevant.

As far as I do remember, it is not the defense of the Defendant Bieberstein in that he was drafted into the SD on the basis of this decree. Only this decree and the legal aspects of this decree are subject of this affidavit. The Prosecution fails to see what the Defendant Bieberstein has to do with this document. rebuttal evidence as good as I could, as to names. I have, if I am not mistaken, stated that the defendants Radetsky and Graf have brought forward the defense of having been drafted on the basis of emergency decrees, and both of those defendants have introduced translations of the decrees as evidence. I am not aware of the fact that this affidavit is offered in order to prove something in the case of the defendant Bieberstein.

THE PRESIDENT: Dr. Ficht, if you wish to submit any other affidavit or statement to contradict this, you may do so; but we see no necessity of calling Dr. Heinrich as a witness.

DR. FICHT: Now, I withdraw the request since the Prosecution has said that this document will not be used against Bieberstein, but according to the previous explanation of the Prosecution, I could not assume that.

THE PRESIDENT: Very well.

DR. FICHT: Your Honor, in reply to the statement made by the Prosecution concerning the documents offered as Exhibit Number 204, 205, and 206 which he has offered, I would like to add here that these documents occurred before the time when Bieberstein was in EK-6 and was about 500-1000 kilometers distant from the place where he was. May I say here that during that time civilian administration was already used there and Einsatzkommandos were no longer in charge.

THE PRESIDENT: Well, if the dates of the document show that, then, of course, there is nothing for you to worry about. It is a matter of argumen tation in any event.

MR. HOCHWALD: May I proceed with Document Book 6, Your Honor?

THE PRESIDENT: Please.

MR. HOCHWALD: Document Book 6 contains only translations of certain of the emergency decrees in connection with the execution of the Four Year Plan, and I will just offer these documents without commenting on them. These documents are offered in evidence only in order to give the Tribunal a basis to judge the affidavit of Dr. Heinrich, about which I have just offered as Prosecution Exhibit 212. on page 2 of the Document Book as Prosecution Exhibit 214; NO-5858 on page 3 of the Document Book as Prosecution Exhibit 215; and Document NO-5859 on page 5 of the Document Book as Prosecution Exhibit 216; on page 7 of the Document book, Document NO-5860 as Prosecution Exhibit 217; and Document NO-5861 which is on page 9 of the Document Book as Prosecution Exhibit 218; finally, Document NG-3678 on page 10 of the Document Book as Prosecution Exhibit 219. I only respectfully request the Tribunal to permit me to re-offer the document which was unfortunately incomplete when I offered it, after the rebuttal of the Prosecution will be over. Mr. Glancy will now proceed and offer Document Book 5-A.

MR. GLANCY: May it please the Tribunal.

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: May I proceed with the presentation of Document Book 5-A?

THE PRESIDENT: Please.

MR. GLANCY: My remarks, if any, Your Honor, shall be necessarily brief because I consider all my rebuttal evidence as self-explanatory. I offer NO-2262 as Prosecution Exhibit 220. This is a letter signed by the Defendant Strauch. His signature appears on page 15.

I offer Document NO-4317 as Prosecution Exhibit 221. This again is a letter signed by the Defendant Strauch. His signature appears on page 19.

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I offer Document NO-5498 as Prosecution Exhibit 222. I respectfully request the Tribunal to ignore and strike page 2 of this affidavit as it was previously offered as against the Defendant Blobel, but as it is outside of the period covered by the indictment, it is inapplicable and inadmissible. However, page 1 refers to the Defendant Strauch and refers to happenings and occurrences in the middle of February 1943, well within the period of the indictment. 223. This is a situation report - rather, two situation reports. It serves to corroborate some of the other documents offered by the Prosecution in re Strauch.

I offer Document NO-5167 as Prosecution Exhibit 224. This also refers to the Defendant Strauch. It refers to activities in partisan warfare, reputedly, and I call the attention of the Tribunal to the number of persons killed for having been suspected of aiding or supporting the guerrillas.

I offer Document NO-5166 as Prosecution Exhibit 225. This also refers to the Defendant Strauch and reported actions against the partisans .

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As the prosecution's last exhibit I offer Document No. 5188 as prosecution exhibit 226. On page 39, the last page of the document book, it is reported,."On 9 May 1942 in the town of Minsk 28 members of the White Ruthehian Partisan organization were publicly executed by hanging." There is a distinction made in the third line, however. It states, "On the same day 251 persons", and we will note this "predominantly Partisans and Jews were shot". 9 May 1942 is within the period in which the defendant Jost was commander-in-chief of the security police and SD for Eastland. This concludes my presentation of Document Book VA rather. Mr. Ferencz will be here momentarily to present V B.

PRESIDENT: Very well.

MR. GLANCY: Thank you.

MR. WALTON: If it please the Tribunal, in order that time will not be lost, I am ready with Document Book 7 D, if it can be presented in that order.

PRESIDENT: We would be grateful if you would proceed.

DR. WALTON: The prosecution at this time offers Document Book V D, page 1, Document NOKW 1573 as prosecution's exhibit 227. This document is offered in rebuttal as against the contentions of the defendants Ohlendorf, Seibert, Braune, and Schubert, and shows that prior to the execution held just before Christmas 1941 executions were being held continuously during the period 5 to 15 November 1941, and this slaughter was in the midst of an allegedly friendly population. ment 4147, already given the prosecution exhibit Number 188. This is the affidavit of Emil Haussmann, deceased, and relates some of his experiences in Einsatzkommando 12. Attention of the Tribunal is especially called to paragraph 5 of thus document wherein this deceased affiant relates facts concerning the report of 300 to 350 executions by the defendant Nosske's command. Since no reply brief was filed by the defense on prosecution's written motion of 19 December 1947, I assume that the defense has abandoned their objection.

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PRESIDENT: Mr. Walton, that is a rather powerful statement, you just uttered, and we wouldn't want to hold the defense to it, with Dr. Hoffmann being absent.

MR. WALTON: It is merely an assumption on my part. I didn't purport to speak for the Tribunal.

PRESIDENT: And I didn't mean that you were. I just wanted to protect, for the record, Dr. Hoffmann's position and it will be called to his attention. That is something that should appear upon the record at this moment, that anyone reading it wouldn't assume that the defense had abandoned their position without a statement from Dr. Hoffmann to that effect.

DR. WALTON: The prosecution next reoffers in Document Book V D, page 4, Document No. 5111, already offered as prosecution's Exhibit 193. This document is the affidavit of the defendant Heinz Schubert, which shows that the defendant Willy Seibert was the assistant commanding officer of Einsatzgruppe D and not deputy for purely staff matters, no more than the defendant Ohlendorf was commanding officer purely of the staff or Otto Schnopfhagen was the physician purely for the staff. ment No. 5273 already in evidence as Prosecution's Exhibit 184.

PRESIDENT: Mr. Walton, why do you reoffer a document of it is already in?

Mr. WALTON: I called that to your attention at the time that the document was offered. There was a paragraph in there which referred to the defendant Willy Seibert as the deputy of Ohlendorf. The Tribunal recognized the fact that parts of affidavits could not be offered and, therefore, specifically requested that this paragraph 4, particularly the first sentence thereof, be reoffered in rebuttal.

PRESIDENT: Very well. Have you given it a new number?

MR. WALTON: Your Honor, that is identically the same number that was given --184--at the time it was offered. Technically, this is a reoffer of two sentences of paragraph 4.

PRESIDENT: Would you then let us have that number again, please.

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MR. WALTON: Document 5273, Prosecution Exhibit 184. At the time, Your Honor, that that was offered I thought that the processing of the document, with enough copies, would have been completed before I finished with my cross examination. It was not. I had to have permission of the Tribunal to reoffer it in the rebuttal. The same document number and the same exhibit number is given as was assigned at that time, 193. Could I have some expression from the Tribunal as to Document Number 5273? Does the Tribunal want it reoffered again as to that sentence in paragraph 4?

PRESIDENT: Well, you have already reoffered it.

MR. WALTON: Oh, I mean, given another exhibit number I should have said, as to that paragraph 4.

PRESIDENT: The same number will be retained and--well, the same number will be retained and we will indicate it was reoffered.

MR. WALTON: Very good, Sir. This paragraph 4 shows in what manner this affiant regarded the defendant Willy Seibert. Erwin Lahousen, contained in Document Book V D, page 11, Document No, 2894. T his affidavit is offered as prosecution exhibit 228. It is clearly shown on pages 13 and 14 of the English document book that Russian prisoners of war and even Tartars from the Crimea were arbitrarily executed by the Einsatzgruppe there. The citation is on pages 5 and 6 of the original. code. Since this section, which is found on page 49 of the original is offered in Document Book V D, page 17, it is Document No. 5854, of Prosecution Exhibit 229, in the form of an excerpt from the cited volume. This law shows the responsibility for issuance of and obedience to an illegal order. As this Tribunal has said, murder has been considered a crime by every lawgiver since Moses, but the prosecution cites the even older precedent followed by Moses himself, namely, the defendant Gain adjudged guilty of the murder of his brother Abel and punished therefor. This is supported even by German law that illegal orders, that is, orders to murder did not have to be obeyed by these defendants.

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Document No. 5856, Prosecution Exhibit 230. This document is a certified transcript of the interrogation of Dr. Roman Loos, head of the secret field police with a German army group, who gives his opinion based on long military service and his own knowledge of such matters concerning the obligation to obey illegal orders. Particular attention is, therefore, called to pages 20, 21, and 23. This substantiates the cited section of the German military penal code. If Your Honor please, on page 29 of your Document Book V D in the certificate of Mr. Walter H. Rapp, I should like very much for you to delete the word "translation" in the last line, fourth word from the end, and write in the word "transcript" as appears on the photostatic copy of that certificate. ment No. 5821, as Prosecution's Exhibit 231. This document is the affidavit of Rudolf Diels, the former head of the Prussian Gestapo, who testifies that it is possible to disobey illegal orders without serious personal consequences He relates instances wherein he personally disobeyed such orders in his capacity as a Gestapo official.

PRESIDENT: Just a minute, Mr. Walton. Does the affidavit indicate who Rudolf Diels is?

MR. WALTON: No, Your Honor. This witness has given several affidavits here. Probably this was a series of affidavits and in one of which he indicated his official position.

PRESIDENT: Will you please repeat who he was?

MR. WALTON: Yes. Rudolf Diels was during a part of his career the first head of the *russian Gestapo which later became the Gestapo for all of Germany.

PRESIDENT: Very well.

DR. RIEDIGER: Your Honor, in my opinion one has to object to the presentation of this document. The probative value of this affidavit in my opinion, does not exist because this witness could not possibly have known anything about conditions concerning the defendants, and could not testify about it.

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That is why I went to object to the admission of this document.

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PRESIDENT: Well, Dr. Riediger, the affidavit is by no means controlive and decisive. It doesn't mean that because he thinks so that makes it so, but it does offer a piece of evidence on how it was regarded--how this military order was regarded in other instances.

DR. RIEDIGER: The probative value will be discussed again later on, I presume?

PRESIDENT: By all means.

MR. WALTON: It is only offered in substantiation of the fact that people have disobeyed superior orders and gotten away with it. It is rebuttal argument.

PRESIDENT: Yes, Yes.

DR. RIEDIGER: Your Honor, I would like to reserve an objection against this document for Dr. Gawlik, who is not present, and I think he has some objections to it which I do not know yet.

PRESIDENT: Yes. Reservations will be made in behalf of Dr. Gawlik, so that he may present whatever objections he desires to this document when he returns to the court room.

MR. WALTON: The last document in Document Book V D is found on page 32 thereof. It is Document No. 4993, and is Prosecution's Exhibit 232. This document is an affidavit of one Robert Barth, who states that he was a member of Einsatzkommando 10B, and that on occasions and at certain times the defendant Felix Ruehl was deputy to the commanding officer, one, Persterer. the prosecution desires to offer. It is a long manuscript of the speech or lecture prepared by the defendant Otto Ohlendorf, concerning the superiority of the National Socialist form of government over existing forms of governments. I am informed that the processing of this document is an extensive task and it will be completed by the end of the week. I, therefore, ask leave of the Tribunal to offer this document as soon as it is processed, or at such session as the court meets for the purpose of hearing the remaining objections to the defense documents or of handing down its ruling on matters yet pending which is scheduled for decision prior to the verdict and judgment.

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PRESIDENT: An opportunity will be afforded you to present that document, allowing the defense also opportunity to object to it, if they so desire.

DR. KOESSL: Koessl for Schubert. I would like you to instruct the prosecution to state why they introduced the Exhibit Number 27, NOKW 1573against the defendant Schubert. Schubert never deeded having known that Jews were killed. In my opinion there is no reason to submit this document against Schubert. I don't know which statements by Schubert the prosecution is trying to refute by submitting these documents.

MR. WALTON: Your Honor, that is a matter of argument. If the Tribunal desires me to reply to that, I am prepared to do so.

PRESIDENT: Well, if Schubert has not denied knowing that executions took place, and this merely indicates that he does know that executions took place, the most you can say about it is that it is cumulative.

MR. Walton : Your Honor, Schubert was a member of the staff of Einsatzgruppe D. Every document which does not specifically name a commando or a personality is certainly of some proof, regardless of however slight, as against Einsatzgruppe D as a whole, it is certainly proof against the staff who are directing the destinies of Einsatzgruppe D. Therefore, to offer a document against Einsatzgruppe D as a whole where no commando or no personality is mentioned certainly tends toward proof as against the headquarters staff and those who were the commanding officers of the headquarters staff, and those who had knowledge of these reports.

PRESIDENT: Dr. Koessl, you see that this is a theory advanced by the prosecution. It is an argument to which you have the right to reply, and the document is before us for whatever probative value it has and whatever light it might shed on this contested point.

DR. KOESSL: Yes. I merely wanted to point out that apparently the prosecution has no reason to refute any statement by Schubert it does not even try to refute any statement by him. That is why I do not see why the prosecution, when submitting this document in the rebuttal, mentioned the defendant Schubert in particular.

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MR. WALTON: I suggest that Dr. Koessl wait with what patience he has at his command. I finished the Schubert brief last night. Today it is being typed, and tomorrow I am sure that it will be in the hands of the Translation Section, and that contains my entire argument as to the guilt of the defendant Schubert.

PRESIDENT: To which you will have the right to reply, Dr. Koessl.

DR. KOESSL: Thank you.

DR. LEHNERT: Dr. Lehnert for Seibert. Your Honor, first of all, regarding the first document, NOKW 1573, Exhibit 227, I would like to raise the same objections which my colleague Koessl has raised against the first three documents contained in this document book, I would like to object, too, and I ask that these be not admitted for the following reasons: These three documents are not rebuttal documents. The meaning of a rebuttal document consists of the fact that the rebuttal statements of the defendants are to be refuted. The purpose for which these documents were submitted here is, however, nothing except to prove the statements by the defendants, but that is not the nature and the purpose of rebuttal. In detail, I would like to mention the following concerning these documents. The Document NOKW 1573, inasfar as it was submitted against Seibert, is irrelevant. It has no relationship to the defendant Seibert. Concerning Document NOKW 5111, Exhibit 193, the prosecutor argumented that Seibert was deputy commanding officer of the Einsatzgruppe. In vain have I looked for such a passage. It merely says that Seibert was the permanent deputy of the group staff. Concerning Document No. 5273, Exhibit 184, which was submitted only concerning Count 4, I object to the following: The affiant merely gave his opinion. No facts are mentioned as to how the affiant obtained that opinion. The affidavit, therefore, contains no facts. Therefore, I consider this statement as irrelevant and ask that this objection be sustained by the Tribunal.

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MR. WALTON: Nothing further to add from the prosecution.

PRESIDENT: Mr. Hochwald.

MR. HOCHWALD: If the Tribunal please, I only want to reoffer Document No. 3251 which is in Document Book V C as Prosecution Exhibit 207. I have furnished Dr. Riediger with the German copy of the letter in question and I have also received now the complete photostat, so if Dr. Riediger wants to offer his objections now, it would be possible.

DR. RIEDIGER: Concerning the submission of this document as such, I have no objection. Your Honor, since this document again concerns the question of time, of dates,-I beg your pardon if I have to do this during rebuttal - I would like to refer to the witness mentioned this morning. The Defense Center told me that it is impossible to get a witness from Berlin sooner than within 10 days since the passage through the Russian zone has to be approved by the Russians, and that takes 10 days. I have already requested an affidavit from the witness Mendler. It has not been received yet. I merely received a letter in reply to my request in which he confirms that in January and February 1942 he treated Haensch, but since the Tribunal has emphasized that they wanted to find the real truth, I would like to move that this witness, on the suggestion of the Tribunal, be interrogated in Berlin by an American officer from the Tribunal. That way it would be possible to get this testimony in the shortest time. A journey to Berlin by me is technically no longer possible because permission for this, owing to the fact that the Russians have to give the permission, will take two weeks; but time is very important to the defendant Haensch about whom the witness is to be questioned. I beg your pardon for mentioning this here, but it is so urgent, considering the time, that we should try to make it possible that this witness be heard.

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PRESIDENT: Mr. Hochwald, you have heard Dr. Riediger's request.

MR. HOCHWALD: If the Tribunal please, I would very much like to agree with Dr. Riediger on the fact that the witness may be heard by a commission, however, the Tribunal will understand it is an extremely important question and the prosecution in this special case cannot waive the right to cross-examine the witness. I certainly do not want to make any difficulties, and I would like as much as I could to aid Dr. Riediger in getting this thing straightened out, however, it is my opinion that with the proof offered by Dr. Riediger, the time can be given. Dr. Riediger had the witness Schreyer here. The witness Schreyer submitted certain evidence. He submitted certain evidence which was in the hands of the witness Schreyer as to the fact that the defendant Haensch was in February 1942 in Berlin. We have submitted, with the permission of the Tribunal and in accordance with defense counsel, all those exhibits to a German research.

PRESIDENT: Well, Mr. Hochwald, we needn't go into the history now. Would there be any possibility of having this witness here, say, in a week's time. We might be willing to sit specially, say, for a period, for a day or an hour or whatever time is required next week, if this witness could be had here in a week. Ten days would be too long, but if we could be assured, say, a week from today--Dr. Riediger, will you take up with the Defense Center the possibility of this witness being brought here, say, in a matter of 6 or 7 days?

DR. RIEDIGER: Your Honor, the Defense Center informed me that I have tried everything in order to speed this up. They said it was so difficult because the Russians have to give permission and in order to obtain that permission it takes a certain period of time.

PRESIDENT: Well, I will tell you what you do. You prepare immediately a request in writing to the Tribunal and bring it to me before we reconvene this afternoon and then I will contact the Defense Center and see if there is any possibility of expediting the departure of that witness and accelerating the arrival here in Nuernberg, just that I will have a request from you in writing.

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DR. RIEDIGER: Your Honor, the application by me for this witness has been handed in some time ago and I think it has been handed to the prosecution as well, and I think -

PRESIDENT: Well, I don't want this to be the usual formal application, but a letter written to the Tribunal indicating the great need and the fact that the trial is about to terminate, and that the request should be expedited.

DR. RIEDIGER: Your Honor, I shall hand in the application then before the Tribunal resumes its session. Thank you very much.

MR. FERENCZ: Your Honor, in order to insure that the defendant has every possibility, the prosecution is ready to offer a suggestion. If the defense counsel will telephone Berlin and speak to the witness, we will accept the stipulation on his part as to what the witness would testify to were he brought to Nuernberg.

PRESIDENT: Well, if you are willing to stipulate to that, then a statement from the witness would be sufficient.

MR. FERENCZ: Or a statement from the witness-we do not, of course, admit the truth of the statements, but we do admit the stipulation that that is what the witness would testify to if he were brought to Nuernberg.

PRESIDENT: Well, if you are willing to stipulate that, then is a more matter of going to the witness' home and getting the statement which certainly could be arranged by your representative in Berlin.

MR. FERENCZ: I don't know where the witness is, Your Honor, if the witness is in the Russian Zone, there may be difficulties for as, too, but if he can be reached, I don't want the prosecution to have the burden of going out to find a defense witness and information for them. We are ready to help them, but not to do their work for them.

DR. RIEDIGER: Your Honor, the witness is in the American Zone in Berlin. To carry out the examination there should not present any difficulties.

MR. FERENCZ: Your Honor, our staff in Berlin is very limited and overworked.

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I am sure that between now and the closing of this trial the defense counsel could go to Berlin and obtain the affidavit and return, and I am willing personally to offer him any assistance in expediting his travel orders.

DR. RIEDIGER: Your Honor, I can't go to Berlin either within the 10 days, it takes that long to get travel orders, and I have no means of doing it.

PRESIDENT: If you sent off a letter today, how soon could you, get a reply in the normal course of events?

DR. RIEDIGER: Main to Berlin takes from 5 to 14 days. Sometimes I have received letters one way in 5 days, that is, to and fro it will take between 10 and 30 days to get a letter there and back. It is completely unreliable. Already two weeks ago I have requested the affidavit, but I haven't got it yet.

PRESIDENT: Mr. Hochwald had stated that he didn't want to waive cross examination, and that is the reason we had indicated the procedure which we had, but-

MR. HOCHWALD: Mr. Ferencz has waived it.

PRESIDENT: Well, since I made my original proposition now, Mr. Ferencz has made his, and I think we can resolve it this way. Dr. Riediger, if you will make a request to the Tribunal in writing indicating just what it is you desire this witness to testify to, then we will see to it that this is transmitted to Berlin and that the witness will have any opportunity to reply to that question. Certainly in some way or other we can get that answer to your question. That doesn't seem like too much or a problem to us, so you do that. You make a request to the Tribunal in writing, specifying specifically what question you want to have answered, just as if you had the witness here. Put that question, and we will got an answer to that question for you.

DR. RIEDIGER: Thank you.

PRESIDENT: Yes.

DR. SCHWARZ: Your Honor, I would like to ask for Dr. Mayor that the defendant Braune be excused from attendance in court this afternoon, and I would like you to arrange that he be brought to Room 57.

PRESIDENT: The defendant Braune will be excused from attendance in court this afternoon and will be taken to Room 57 in accordance with the usual procedure.

DR. SCHWARZ: Dr. Schwarz for Jost. Your Honor, I ask that the defendant Jost be also excused this afternoon in order to continue preparing his defense.

PRESIDENT: The defendant Jost?

DR. SCHWARZ: Yes.

PRESIDENT: The defendant Jost will also be excused from attendance in court this afternoon and will also be taken to Room 57. Mr. Ferencz, may I ask a question, please. Will the presentation of documents in rebuttal be completed at such an hour that some appreciable time will yet be left in the afternoon session?

Mr. FERENCZ: Yes. The presentation of rebuttal should be concluded within a half hour.

PRESIDENT: Then defense counsel that have not yet presented all their document books will be reedy to proceed. Let us find out right now, if we may, who is ready to proceed this afternoon, after Mr. Ferencz concludes. Well, of course, we always have Dr. Linck ready and I want to congratulate you that apparently everything is OK with you.

DR. ULMER: Your Honor, I am able to present my Document Book II this afternoon.

PRESIDENT: Very well. Then you will be ready to follow Mr. Ferencz. Dr. Linck, will you be ready, please?

DR. LINCK: Your Honor, the battle about which you spoke yesterday, Your Honor, has been delayed until 1315 and at such time--at 1315 I have to be present once more, but about 20 or 30 minutes later I will be able to come here in order to present my documents.

PRESIDENT: Very well, and we hope that you do not come in on your shield.

DR. LINCK: I think I am convinced of that, too.

PRESIDENT: Very well, will anybody else be ready? Will you please let other defense counsel know, those of you who see them, that we will be available this afternoon for the receipt of other documents not yet presented. Dr. Gick should be informed that Document Book I for Strauch is ready, so that he could come in and present that.

The Tribunal will now be in recess until 2 o' clock.

(A recess was taken until 1400 hours.)

(The hearing began at 1415 hours, 21 January 1948.)

THE MARSHAL: The Tribunal is again in session.

DR. HOFFMANN for Noske: Your Honor, I would like to make a brief statement, for the better understanding of the affidavit of Hausmann which the Prosecution has offered as Exhibit 188 and against which I reserved all objection because the affiant is dead. Your Honor, I have been an attorney for ten years and I don't very frequently have formed so complete an understanding for the interest of my client as I have before this Court. Perhaps that has been my fault formerly or perhaps it was the fault of the period of time, but since I am convinced that this Tribunal has full understanding for it I consider it personally as not correct, for a formal reason, to demand anything which would not be serve the finding of the truth. Therefore, I withdraw my formal objection not to admit this affidavit because the affiant can no longer be taken into cross examination. Of course, I reserve the right as far as anything is to be said factually concerning this affidavit to interpret this affidavit in my final plea and to give it that interpretation which I can make of this affidavit, in contrast to that of the Prosecution.

THE PRESIDENT: Well that right, of course, is always reserved to you, Dr. Hoffmann. We don't want you to feel that you are in any way compelled to allow this affidavit to be considered. Mr. Walton has submitted his legal argument as to why he believes that, in accordance with all the authorities, it is good evidence. We were prepared to receive any argument which you cared to submit to the contrary and we don't want you to feel that you are in any way being persuaded to abandon any legal position which you may have at one time charished.

DR. HOFFMANN: Your Honor, in order to avoid this impression from the beginning I made the statement about what I personally think of this matter even though otherwise I would have kept it to myself.

THE PRESIDENT: Very well.

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DR. STUBENVOLL (For Ohlendorf): Your Honor, this morning an objection was reserved for Dr. Gawlik against a document of the prosecution. Dr. Gawlik was to raise this objection as representative for Dr. Aschenauer. As Dr. Aschenauer's assistant I myself want to raise this objection. I object to the document in Document Book 5D, document #5821 which was submitted by the Prosecution. This is an affidavit of Rudolf Diels. The defense considers this affidavit irrelevant for the present case. During the war, that is since 1941, Diels was an employee in a private industry. He has no experience concerning the conditions of command in the Einsatzgruppen and even less so about the conditions of the defendants Ohlendorf, Braune, etc. Originally Diels was chief of the Gestaop in Prussia after Hitler took over and was releived from this position by Himmler. Then he became a Government President. On the basis of his good connects to Goering he got a job in private industry after he left this Government job. His example for the application of paragraph 47 - military Penal Code he mentions of the officer who refused to obey an order happened within the Army end was given by a military superior.

THE PRESIDENT: Well, now, Doctor, you are proceeding to argue the law on the matter and that is not what we have before us. Rudolf Diels declares that he knows of an episode where a military person was ordered to execute 500 Jews in Poland and that the officer ordered to do this failed to execute the order and the most that happened to him was that he was considered a coward. Now, that's all this affiant means to us. We are not bound by what he says with regard to rule 47. He is not interpreting the law for us. He is testifying to a special objective fact of which he has knowledge according to his statement.

DR. STUBENVOLL; Yes, but the affiant makes statements which may admit judging conditions in the Einsatzgruppen.

THE PRESIDENT: Well that's what he says but whether we are going to pay any attention to that is for the Tribunal.

DR. STUBENVOLL: Yes, sir.

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THE PRESIDENT: None of these documents will be accepted just because they are presented. They all have to be weighed on balances of reasonability, law and effect, and justice.

DR. STUBENVOLL: Yes, but in case the document should be accepted I would like to ask the Tribunal to accept an affidavit or the testimony by a witness and this is the one from Karl Wolf, SS-Lieutenant General, who is still here. This is to bring proof-

THE PRESIDENT: Just a moment, Doctor. We will save a great deal of time by you merely making the request and we will rule on it and the ruling will be in the affirmative. You can obtain this affidavit and you can submit it.

DR. STUBENVOLL: Yes.

THE PRESIDENT: Very well.

DR. KOESSL for Ott and Schubert: Your Honor, I likewise raise an objection against the submission of this document but for another reason. The Count Faber-Gastell who is mentioned here was at the time of the alleged disobedience a cavalry officer. It is completely clear that a cavalry officer could refuse to carry out police measures just as well as an infantry officer could refuse to carry out an artillery mission. For this reason I don't consider this document as relevant.

THE PRESIDENT: This incident did or did not happen. If it did not happen the whole statement is a lie. If it did happen then we must determine whether it would have any effect on the interpretation of rule 47. That's all there is to it.

MR. FERENCZ: Your Honors, the documents we are about to offer in Document Book V-B concern some of the defendants who were members of Einsatzgruppe B. The first document we offer is Document No. USSR-56, found on page 1 of the document book and offered as Prosecution Exhibit 234. This document is an official report of the Extraordinary State Commission showing certain atrocities committed by the Germans in Smolensk and it is followed by a list of the immediate perpetrators whom the Commissioner regarded as responsible for the many mass tortures and murders shown in the reports. The first name listed by them as responsible for these crimes is major General Naumann.

The next document we offer is USSR Exhibit 48. This is Prosecution Exhibit 235. This is smother official German report, showing that in the vicinity of Smolensk one hundred thirty-five thousand people were killed during the German occupation. The defendant Naumann testified that he was unable to estimate the number killed during his time of command in Smolensk. This document was referred to at that time as giving the Tribunal some indication of the activities that were taking place.

The next document offered is NO-5771, as Prosecution Exhibit 236. In the opening statement for the defendant Naumann, remarks were made that while he was a police official in Holland he had treated the Dutch citizens very well and was very kind be them. What we offer here by way of rebuttal is the official report of the Chief Police Officer of the Hague concerning the defendant Erich Naumann and this report shows that he played an important part in the murder of Dutch citizens during the German occupation. This is the SS personnel record of the defendant von Six and includes in it the letter from Himmler showing the defendant's promotion to Colonel four outstanding service in the Einsatz. In includes another letter showing his assignment as commander of the Security Police and the SD in the

East and his dates of service in the Security police Einsatz in the East as 22 June 1941 to 28 August 1941.

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The Tribunal will recall that the defendant testified that he had nothing to do with the Einsatz and that he left on the 20th of August. This document was put to him to refresh his memory during cross examination and is now offered as rebuttal for the statements he made on his direct examination. This is a document which was offered and received in evidence by the International Military Tribunal. It is a captured German document and it is part of the files of the German Foreign Office. It gives a summary of a speech made by Ambassador Six. The important parts are found on page 47 of the document book. The Tribunal will notice that this summary states that the defendant Six discussed the physical elimination of eastern Jewry and urged that the Jewish question should be solved not only for Germany but also internationally. On page 47 of our document book, toward the bottom of the page, there is a further parenthetical note in this report which says that the details of the state of the execution measures in the various countries would be kept secret and would not be entered in these minutes. The Tribunal may recall that he, the defendant, stated that he opposed the anti-Jewish measures. This document is offered as a direct contradiction of the testimony he gave on the stand.

Our next document is L-185, offered as Prosecution Exhibit 239. This document was also received in evidence by the International Military Tribunal and is a table of organization of the RsHA as of 1 January 1941. The defendant testified that while he was Chief of Amt 7 of the RsHA he did not have any special section dealing with Free Masonry or Jewry. The table of organization will show that he did have such sections and the people who were in charge of those sections.

Our next document is L-219, offered as Prosecution Exhibit 240. This again is a table of organization of the RsHA as of 1 October 1943 and the Tribunal will notice that Amt 7, which was headed by the Defendant Six, still has a section concerned with Judaism, political churches, and other opposing groups.

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This is a letter which was given to us by the witness Veronika Vetter, who came here for the purpose of cross examination concerning an affidavit she had made for the defendant Six. She testified that she was certain that she saw Professor Six in Smolensk at the time she received this letter. The contents of the letter are not important. The significant parts of it however are the dates and the heading. This is found on page 137 of our document book and the Tribunal will notice that it is dated 31 August 1941 and the heading is "Vorkommando Moscow of the Einsatzgruppe B, of the Security Police and the SD." The defendant testified that he was not in Smolensk at that time, that the Vorkommando Moscow was not a part of Einsatzgruppe B, and that the Vorkommando Moscow had nothing to do with the Security Police and the SD. This letter, given to us by a defense witness, is offered as direct contradiction of those statements by the defendant. hibit 242. This is an interrogation of the defendant Klingelhoefer, in which he stated among other things that he had urged Noack to shoot only the old and sick people. That is found on the top of page 144. On cross examination, the defendant specifically denied that and requested that the interrogation be introduced. Your Honor, with the exception of a few which were mentioned previously.

DR. MAYER (for Klingelhoefer): Your Honor,in view of the submission of this document, NO-5846, I have only this objection: namely, that it is not complete. And I ask that instructions be given to the prosecution to bring in the complete interrogation of the defendant. I understood it that way too when the prosecution promised the introduction during the cross examination.

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THE PRESIDENT: What about that, Mr. Ferencz?

MR. FERENCZ: Your Honor, as far as I know, that is the complete interrogation. We certainly have no intention of introducing a partial translation. This is the only interrogation I have in my possession and when I offered it I offered it with the firm belief that it is complete. If Defense Counsel has any knowledge that it is not complete, I will be very glad to join with him in making such corrections as he may suggest.

DR. MAYER: The defendant Klingelhoefer has testified on the witness stand, that he was interrogated not only on the 1st but also on the 2nd of July, on which the affidavit was made out which is the basis for this, Thus, this is only one part of the interrogation by Mr. Wartenberg.

MR. FERENCZ: As I understand the defense Counsel's reply, Your Honor, it is that there was another interrogation, at another time. But this interrogation then is complete. I do not think we are required to put in every interrogation we have. Personally, I do not know about the other interrogation. Offhand, I can't see any objection to giving it to the defendant if he wants it, but I certainly object to the suggestion that we have only offered part of an interrogation or the insistence that we offer another interrogation that we do not wish to submit.

THE PRESIDENT: It would appear that you have introduced what you said you would introduce -- the interrogation of the defendant. So that completes that transaction. Now, if Dr. Mayer desires that some other document be presented, the existence of which he is aware of, and will locate that document, then he can present it himself.

DR. MAYER: Your Honor, it isn't possible for me to introduce it myself because the interrogation is in the hands of the prosecution. This interrogation was submitted here in connection with the affidavit of the defendant, which Mr. Wartenberg took down, and the basis for this affidavit was the entire interrogation.

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THE PRESIDENT: When you say the entire interrogation, you mean that there was more than one interrogation. Is that what you mean?

DR. MAYER: No, it is not more than one. It is one interrogation which took two days to be completed. In other words, it went on into the 2nd of July but it is one interrogation. There was one night in between, and it bears the date of the 2nd July. The interrogation which was submitted here was siggned, neither by Mr. Wartenberg, nor by the defendant Klingelhoefer. Therefore I conclude that the signatures are to be found at the conclusion of the complete interrogation.

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MR. FERENCZ: Your Honor, these are the stenographer's notes taken during the interrogation. Naturally they are not signed, inasmuch as they are prepared by the stenographer for the information of the prosecution.

THE PRESIDENT: Well, Mr. Ferencz, it is the observation of the Tribunal that you have not only been fair but you have been very generous in connection with the requests made by defense counsel. Would you please look to see that if by chance there still is another part of this one interrogation, which apparently went over two days, - it may be this represents one day alone, - and if there is another part which has not been introduced, will you kindly see that Dr. layer has the opportunity to look at it and to present it if he so desires?

MR. FERENCZ: Yes, your Honor.

DR. MAYER: Thank you, your Honor.

THE PRESIDENT: You are welcome.

DR. LEHNERT: Dr. Lehnert, attorney for Naumann. 48 and USSR-56, which have been submitted by the prosecution as Exhibits 235 and 234. The representative of the prosecution has claimed that these documents repudiate the testimony of the defendant Naumann about the figure of those executed in Smolensk. First of all nothing can be seen what connection exists between the incidents in these documents and between Naumann. First of all I want to point out that from the abovementioned documents it cannot even be seen whether these dead people who were found in the mass graves were actually executed, and it is also not proved whether they were executed by units of Einsatzgruppe B. Furthermore, I would like to point out chat in these reports the time of death is stated to be between the middle of 1941 to the fall of 1943. Naumann was chief of Einsatzgruppe B only curing part of this time. In the document USSR-48 no persons are mentioned at all. In the document USSR-56 a while number of people are mentioned without establishing any definite connection between the various people and the incidents.

With the exception of Neumann the other persons mentioned there are completely unknown. Presumably they did not even belong to units of the Einsatzgruppe. Exhibit 236, I would also like to object to it because the conduct of Naumann in Holland is not a substance of the indictment and because the various testimonies included in the police report do not show that they were sworn to.

THE PRESIDENT: Well, with regard to this last objection made by defense counsel, perhaps we should like to hear something on it. We have permitted the introduction of much testimony, affidavits on the attitude and actions of the defendants in areas other than that in which they operated, insofar as the charges in the indictment are concerned. Those are documents which tend to demonstrate the character of the defendant, and we are inclined to say at this juncture that we regard them as relevant, but whether the prosecution would be permitted to introduce a document as to an act done by a defendant elsewhere in the nature of a crime to help establish that he was of a criminal tendency we are not prepared to admit.

MR. FERENCZ: Your Honor, this document is not offered to convict the defendant Naumann of the murders he committed in Holland. However, in the opening statement for the defendant his own defense counsel pointed out that in Holland the defendant Naumann had been a very fine gentleman and had treated all the Dutch citizens with great generosity. He introduced that first. We had no intention to introduce anything concerning Holland. It is offered solely for the purpose of refuting that character information or testimony offered by the defendant himself.

THE PRESIDENT: Well, at the very most this report on activities in Holland would be regarded only as a contradiction of any testimony introduced on behalf of the defendant Naumann, that his attitude in Holland was entirely correct, in the nature of impeaching what after all is more or less collateral, but it will have no bearing on what actually happened in Russia.

We make that statement now because when we dispose of the objections en masse we might not particularly refer to this document. Very well.

DR. VOELKEL: Voelkel for the defendant Six.

As Document No. NO-4767 the prosecution has submitted a number of documents which are contained in the SS-files of the defendant Six. The representative of the prosecution has mentioned a number of documents which already have been a subject of the cross-examination. Furthermore, there is a document among them of the SS-Operational Office of the 7th of April, 1942, Page 3 of the German document book, in which it is stated that Six as Commander of the Security Police and SD in the East has been assigned in the East as such. I repeat SS-Main Operational Office, 7th of April, 1942. There it is stated that Six was employed in the East as Commander of the Security Police and SD. Now, during the presentation of the documents the prosecution did not expressly mention this document, but I see in the presentation of this document that the prosecution brings up a new fact according to which Six is alleged to have been the commander of the Security Police and SD in the East. The course of the case up to this point has shown that such an activity was not carried out by Six in the east. Therefore, I object only to this part of the document, and I would welcome it if the prosecution would make some clarifying statement whether it will draw any conclusions from this document.

MR. FERENCZ: The conclusions to be drawn from this document, your Honor, are solely the prerogative of the Tribunal. was assigned to the Security Police and the SD in the last. It is something which he specifically denied in his direct examination, and it is offered as a direct rebuttal of what he testified to.

THE PRESIDENT: Did you not get that?

DR. VOELKEL: Evidently the interpreter didn't catch it because it was too quick. Therefore, parts of his statement were not interpreted.

THE PRESIDENT: Well, please repeat it, Dr. Ferencz, because it is rather important.

MR. FERENCZ: I stated that the conclusions to be drawn from this document are a matter for the Tribunal, and that we offer the document to show that the defendant was in fact with the Security Police and the SD in the East and not merely, as he stated, a professor collecting archives.

DR. VOELKEL: My objection against this document is made from another point of view. That Six was a representative of the RSHA in the East was not contested. My objection is directed against the expression " Commander of the Security Police and the SD in the East". This designation is a special agency designation, which Six never had in the East, and, therefore, it brings up a new fact in the rebuttal, and I object against this new introduction.

THE PRESIDENT: Well, it is not a new fact when it attacks what you submitted.

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DR. VOELKL: The new fact consists in the fact that the concept of commander of the Security Police and the SD is a fixed one. It designates a definite activity as, for example, the Commander of the Security Police and SD actually carried out in Oslo or in Riga or some place else. One can interpret the document to mean that this special office was held by Six, and to this extent it would be the introduction of a new fact by the prosecution against which I object. But if one should merely conclude from this that Six was assigned in the East as a result of an order from the RSHA, then I would not object to this fact, considering the case-in-chief presented so far, and I would then merely object to the expression "Commander".

THE PRESIDENT: Well, the weight to be given all these documents is something which will be determined later, of course, in the final appraisement of all the testimony in the case. The prosecution maintains that Six was doing a certain thing in Russia; Six maintains he was doing something else. That is the issue.

DR. VOELKL: My further objection is directed against Document PS3319. It is the document in which, among other things, the Krummhuebel conference is mentioned, but which includes a large number of other documents which might perhaps show a responsibility of the defendant concerning the Jewish question in Bucharest. The prosecution mentioned those documents only insofar as they concern the Krummhuebel conference. Therefore, my objections will first of all be limited to those parts of the document. The report about Krummhuebel is on pages 15 to 25 in the German text and bears no signature. Only the letter addressed to the various subordinate agencies is signed by Schleier. In the cross-examination the defendant Six has already stated that the excerpt regarding the conference which is not signed would be considered as unauthenticated and, therefore, I repeat this objection against the minutes of the conference. clusions are to be drawn from the fact that the measures of the Foreign Office were to be kept secret as far as they concerned the Jewish question.

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As for this point I must say that Six merely was the director of the cultural political office in the Foreign Office.

THE PRESIDENT: Well, Counsellor, you are arguing the case, and this is not the time to argue it. You must show that this document is spurious; that it is irrelevant; that it is incompetent, but you may not argue the facts in the document. Now, Professor Six had an opportunity on the witness stand to answer this very document. Now, when you come to argue the case to the Tribunal you go into it further, but this is not the time to argue it.

DR. VOELKL: Your Honor, I will be brief then, and I will just say that those parts of the documen t bring up a new point which make Six responsible for the Jewish questions in the Foreign Office, and to this extent another department, i.e. the Department II of the Foreign Office was competent, and I object against this new point, or rather, I would like to reserve the right to bring a refutation of this new point in the form of another affidavit.

THE PRESIDENT: Well, that is for you to determine.

DR. VOELKL: Another objection is concerned with the Document L-185. There the table of organization of the Foreign Office is contained and the responsibility of Six is fixed insofar as on the 1st of March 1941 he was supposed to have been responsible for Department 7. Six was at the time with the troops, and in that respect the document is immaterial in reference to the defendant. I have the same objection to the Document L-219. This document contains a table of organizations of the RSHA of the 1st of October 1943, that is to say at the time when Six was already in the Foreign Office and was no longer responsible in the table of organizations as Chief of the Office 7. In this respect the document is irrelevant as far as the defendant Six is concerned. only insofar as here not the original of the statement of the 31st of August 1942 was submitted but merely a certified copy with the signature of a person by the name of Schroeder.

THE PRESIDENT: The Tribunal will pass on all these objections simultaneously. You will be ready to present your other document book?

DR. KOESSL: Yes.

THE PRESIDENT: And who will follow, anybody else ready?

(One of the defense counsel raised his hand)

THE PRESIDENT: Yes, very well.

MR. WALTON: And if Your Honor please, just for purpose of the record, the Exhibit No. 233 was skipped. There will be no Exhibit 233.

THE PRESIDENT: Very well. The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Dr. Koessl for the defendant Ott. Your Honor, for the defendant Ott I have Document No. 10, which I offer as Exhibit No. 10. This supplement brings evidence of the fact that Ott in the area of Bryansk has brought about that in his area the deportation of forced labor into the Reich was discontinued. I submit this document as evidence as to his attitude towards the civilian population. That concludes my presentation of documents.

DR. VOELKL: Dr. Voelkl for the defendant Six. Your Honor, as I have already explained this morning, I shall now present Document Book No. II. My colleague, Dr. Ulmer, has already submitted yesterday Document Book III for Six. Document Book II contains under Document No. 40 the Exhibit No. 47, which I am herewith offering. It is an affidavit from the former research assistant, Emil Augsburg. He states on 5 October 1947 that on 23 June 1941 he received the order to join Six as an interpreter for Moxcow for the prospective Archive work, and has been in the company of Six from Warsaw until Six' departure on 20 August 1941. He confirms that the assignment of the Commando was the seizure of archives in Moscow and that it was independent of the work of Einsatzgruppe B. He also confirms the journey of Six to Berlin in order to get new instructions with regard to his relations with Nebe; the formation of the Archives Detachment at Minsk on 8 July 1941 under the name of Vorkommando Moscow, after an interview with the Chief of the High Army Command of the 4th Army. The composition of the commando is also covered. According to explicit instructions in the RSHA of Office Chief I, Streckenbach, the Commando was to be formed from men with local knowledge of Moxcow and of interpreters in Einsatzgruppe B. He also talked about the start of the Advance Commando Moscow between 14 July and 16 July to the Garrison of AOK-IV in Tolotschino, and, he also mentioned the conference with the Major Helmdach on the tasks of Advance Kommando Moscow. Then in a series of statements he describes in the affidavit that contact was made with the Division Reich and that agreements were made for this division concerning the further advance with this division until the time that this division continued its advance . Archives and cultural material was seized and secured in Smolensk.

After the arrival of the staff of Einsatzgruppe B in Smolensk, on 6 August 1947 - he perhaps means 1941 - the situation and task of Advance Kommando Moscow didn't change. Then it is mentioned that the executiin of the tasks given by Six became impossible, owing to the complete change in the military situation in the central sector of the Eastern Front and that for a longer period of time, so that Nebe made an offer to Six to carry out another task in the Advance Kommando in the meantime, which consisted in anti-partisan warfare, that Six refused the offer on principle and asked for his recall from the RSHA, the Security Main Office, and that Six left on 20 August 1941. After his departure Nebe took over the Advance Kommando himself for the time being. The witness further testified in his affidavit that while Six was in charge he kept to his functions as Archive Detachment assignment and carried out neither police actions nor did he participate in any. Your Honor, this affidavit belongs to that group of documents which belong to the group "A" mentioned when the previous documents were presented, and, they therefore refer to the activity of Advance Kommando Moscow.

The next document, Six No. 41, which I would like to introduce as Exhibit No. 49, belongs also to the same series of subjects.

ment director, on 18 December 1947. Huppenkothen was together with the defendant in Lublin, and after that went to Berlin. There he reported to the Office I Strechenbach of the Reich Security Main

Office, and the latter inquired from him where Six was. He gave the proper reply to this, and as a result therefrom Heydrich recalled Six from the East. He also confirmed the return of the defendant from the east to Berlin, between the 19th and 26th of August, 1941. I also offer the document Six No. 42, as Exhibit No. 50. This is an affidavit by Ilsetraut Plautz, a former secretary of the defendant, given on 10 December 1947. Plautz states that she was the secretary of the defendant in the Reich Security Main Office, and that on 23 August 1941 she returned from her leave, and after that had written lengthy report -- which the defendant made about his activity in the advance kommando. In this report, nothing was contained about execution measures. I would like you to cross out the next mentioned of the affidavits, by Ursula Alander. I intend to bring Miss Alander here tomorrow as a witness.

I now come to the document Six No. 44, which I would like to offer as Exhibit 51. Here an affidavit is given by Dr. Dittel dated 5 December 1947 where it is confirmed that after Professor Six loft the SD and Office VII in March, 1943, Dittel he took over as acting head of Office VII. It is also asserted that Office VII carried out library, archives and press cutting work, according to the manner of academic libraries and archives. It also says that this office carried out scientific research in the manner carried out by acedemic institutes. Dittel also confirms that Office VII did not have a regional organization in Germany, nor did they have one outside of Germany, and that it consisted of 40 to 50 collaborators. This document belongs to the Series B, as far as it concerns the work of the defendant within the SD.

The same applies for the next document, document Six No. 45, which I offer as Exhibit 52. This is an affidavit of the university professor Guenther Franz, of 17 November 1947. Franz states that Office VII, according to its task and owing to its small size and since they did not have a regional organization, was a special body within the RSHA.

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Office VII was not an office like the other departments in the Reich Security Main Office, but rather a research institute which comprised, including the clerical help, about 50 people. The object of its research was not the present structure, but they had to deal with the historical roots and their idealogical conceptions, in order to gain an objective conception of history. In order to achieve this aim, commissions for research were given to scientists who did not have to belong to the SS or the Party. The results of the research were discussed in annual conferences. The results were not kept secret, but were published in books. Then Professor Franz analyzes some books as to their scientific contents, and states that the German scholars welcomed the work of Office VII, that in the scientific press and professional periodicals, their publications were approved. the year 1943, in which the activities of Office VII are described in a similar manner. Your Honor, this supplement which I have just mentioned, I offer as the next document, Six, No. 46, which I would like to offer as Exhibit No. 53. I would like to point out that there is a close relation between the two documents. In the excerpt of the research report by Franz, this historical periodical, "The World in History," is referred to and there the work of the Reich Security Main Office is also mentioned. These four books are reveiwed, and it is explained that they had the task to introduce the scientific research work on the Masonic question. The publications of Office VII constituted free scientific research, connected with degree and doctors' theses. Omitting speculations and presumptions, those works limit themselves exclusively to the historical archives. The following works are mentioned here; a book by Hans Schick. It deals with the older Rosicrucians. It describes the origin of the older Rosicrucians and for the first time by bringing in the entire literature about Rosicrucians emphasizes the three genuine Rosicrucian books, which are the basis for the entire Rosicrucian theory.

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Then a work by Adolf Rossberg, concerning "Free Masonry and Politics in the Age of the French Revolution," and the history of the Order of Illuminati, and this deals with the most peculiar picture of the Masonic organization in the 18th century. The third work is written by Heinz Guertler. It deals with German Freemasonry in the service of Napoleon's politics, and in particular with the work and the history of Free Masonry in the kingdom of Westphalia. The last work is by Hans Riegelmann, it lists the European dynasties in thier relations with the European dynasties and Freemasonry and gives all members of the former ruling houses who were Freemasons, and who influenced the policy of their countries.

I also offer Document No. 47 as Exhibit 54. This is an affidavit of the university lecturer Hans Schick of 5 December 1947. This document also belongs to the series of questions D, that is, concerning the work of the defendant in the SD. Schick confirms in his affidavit that Office VII of the Reich Security Main Office had only research tasks. This consisted of looking after archives of historical value, and also confirms the establishment of a research institute similar to the university, and the carrying out of scientific research. Schick proves these aims with actual publications, which prove the scholarly character, and which are connected with Document Six No. 46, which I have just submitted.

I now offer as Document Six No. 48 Exhibit No. 55. This is an affidavit from the university professor Eschmann of 3 November 1947. It confirms that Six as a student was not anti-Jewish. At the university in Berlin, he stood up for colleagues who had Jewish relations. It also gives the establishment of the Berlin faculty of international relations according to the traditions of the Heidelberg sociology, and Six's positive attitude concerning the question of bringing about an understanding with France. This positive attitude is proved by the fact among other things that the defendant intervened in favor of the French resistance leader Boutelleon. The document 48 which was just submitted and the following one, No. 49, belong to the series of questions D. They concern the scientific work of the defendant.

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Document No. 49, which I offer as Exhibit 56, constitutes an affidavit by Professor Jaeschke from the University in Munster. It was made out on 5 December 1947. In it he said that Professor Six, in his office as dean, felt responsible to the world of learning, that even in the questions of safeguarding and protecting endangered cultural treasures he never broke the rules of international law. He proves this with an example which refers to a library at the university, I have to say to some scientific library in Italy.

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DR. VOELKL: (Continued): I also offer document #50 as Exhibit #57. This was made by Hans Otto Meissner a former Counsel of the Foreign Office. It was made out 17 December 1947. In this affidavit Meissner states that he as a representative of the German Embassy in Milano took part in the conferences of the Foreign Office at Krummhuebel in April 1944. He also states that in the lecture of Dr. Six, statements about the extermination of Jewry or of about a solution of the Jewry question according to the Krummhuebel records were never made.

The last document which I offer is Document #51. This is Exhibit #53. This was given by Erika Boese a former photographic reporter of the Foreign Office. It was made out 10 December 1947. Erika Boese confirms, as a participant of the meeting at Krummhuebel in April 1944, that Dr. Six in his lecture at no point asked for the elimination of Eastern Jewry nor did he make any hints in that direction. This document #51 and the previous one #50 belongs to the series of questions C and therefore concern the work of the defendant in the Foreign Office. Document Book II is concerned. Your Honor, according to the announcement made yesterday it will now be possible that Fraulein Ursula Alander be heard as a witness here tomorrow morning and I ask for the permission of the Tribunal that at the beginning of tomorror morning's session I may be permitted to introduce the witness to the Tribunal.

THE PRESIDENT: That will be done.

MR. WALTON: If your Honors please, it looks like the opportunity for Dr. Linck and I think our session will not present itself this afternoon. In the event that something unforeseen would happen I will be in my office if you will have the Marshal call me.

THE PRESIDENT: Very well, Mr. Walton, that will be done.

DR. KRAUSE for Haensch: Your Honor, I would now like to introduce Document Book III. From this book I submit and offer on Court No. II, Case No. IX.

page 1 as exhibit #25 the document #22. This is the affidavit by Lotte Geissler of 14 December 1947. Frau Geissler confirms here the statements by the defendant in the witness stand that the defendant in Dresden lived in the house of a Jewish woman Frau Markus and was on friendly terms with her. Frau Geissler unfortunately did not state the period of time, however. It was from January 1934 until February 1935. I asked for an additional statement and would like to reserve the right to submit that yet.

I also offer on page 2 as exhibit #26 the document #23. This is a certificate by the dentist Dr. H. D. Maennel in Berlin-Zehlendorf of 30 December 1947, stating that the defendant was being treated by him in January and February 1942. I would like to ask to admit this certificate until Dr. Maennel will be able to come here as a witness according to my application.

I then offer on page 3 as exhibit 27 document #24. This is an affidavit by Hans Steinwede of 22 December 1947. THE PRESIDENT: Just a moment, please. Which document book are you presenting?

DR. KRAUSE: Document Book III for Haensch.

THE PRESIDENT: It doesn't seem as if we have that.

DR. KRAUSE: Your Honor, I could submit one single copy in English here which is at my disposal.

THE PRESIDENT: A mimeographed copy?

DR. KRAUSE: Yes.

THE PRESIDENT: Proceed.

DR. KRAUSE: I also submit and offer on page 3 as exhibit #27 the document #24. This is an affidavit of Hans Steinwede of 22 December 1947. Steinwede was house electrician in the Reich Security Main Office. As a member of the SD in the year 1943 he made disapproving remarks about Hitler and Goering. For that reason disciplinary action was started against him. The defendant at the time, being in charge of disciplinary matters, intervened so that Court No. II, Case No. IX.

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Steinwede was only given a small term of arrest. Steinwede himself explains and I quote briefly: "At the time, thanks to the advice of some comrades, I turned to the then Lord Justice of the RSHA, the then Sturmbannfuehrer Dr. Walter Haensch. I was told in so many words by my comrades that if anyone can help you and will help you then it is Haensch." Only one thing is incorrect in the statement, namely that Steinwede describes the defendant as Lord Justice. The defendant was only a referent which this man, being a simple man, could not realize. The clarification of this point makes me introduce the following document. I offer it on page 4 as exhibit 28. It has the document #25. It is an affidavit by the co-defendant Erwin Schulz of 12 January 1948. It shows that the disciplinary superior entitled to make decisions and the Lord Justice of the RSHA for members of the RSHA was at all times only the chief of the RSHA.

I also submit on page 5 and 6 as Exhibit #29 the document #26. This is an affidavit by Dr. Werner Best former plenipotentiary of the Reich in Denmark of 26 December 1947. It completes his affidavit which has already been introduced dated 31 October 1947. It deals mainly with the constant attempts by the defendant that the politically delicate border territory of Northern Schleswig be protected against suppression on the part of police and Wehrmacht. Dr. Best gives a case here where the dynamiting of a farm is concerned. The defendant insisted at the time that the dynamiting was not to be effected, Owing to this he got into most serious differences with the local police authorities.

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COURT II CASE IX offer as Exhibit 30-A, this is the Document No. 27 and on page 16, which I offer as Exhibit 30-B, this is Document No. 28. These two documents belong together. They are two letters by a woman from Denmark, who worked in the office of the Plenipotentiary. The first letter contains an extensive description of the work of the defendant in Denmark. The document is so important that I would like to draw the special attention of the Tribunal to it. I ask that it may be admitted it although the statements are not sworn to. The defense has tried to get a new statement in the form of an affidavit. However, we were unable to do so. The reasons can be seen in the second letter. In this second letter, the woman concerned regrets, for reasons of her personal security, to be unable to repeat her statement because recently exonerating statements in favor of a German National would result in prosecution by the Danish Government. about a document by the prosecution which was mentioned in the afternoon session of the 3rd of December, and which was introduced as Exhibit No. 187. This is a statement by Mr. Wartenburg about the interrogation of the defendant on the 8th of July 1947. I object to the utilization of this document for three reasons: first, because it was introduced at such a late date that

Mr. Wartenburg could not be cross-examined about this any more; secondly, because it is not signed by the defendant himself; and thirdly, because the defendant, as Mr. Wartenburg in his own statement, on page 410 of the transcript, said that the signature on the affidavit which was made on the basis of this transcript was refused by the defendant. With regard to the Mr. Wartenburg's statement I may point out that according to his explanation the defendant seriously reproached him about this that he, Mr. Wartenburg, had ever confused matters. introduced by the prosecution this morning, No. 3251-A, which has the COURT II CASE IX Exhibit No. 207.

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These are personnel files concerning Dr. Erwin Weinmann--or, to be quite correct, they are supposed to be such files. Obviously there is a confusion and refers to his brother Dr. Erich Weinmann.

MR. GLANCY: If it please the Tribunal, I personally am not acquainted with this because I was not in court at the time. However, I assume that the good Doctor had ample opportunity to object at the proper time--that as at the end of the prosecution's introduction of the listed documents. I would request that further argument on this be deferred until I can personally inform myself as to the matter.

DR. KRAUSE: I beg your pardon. I thought that this document was already introduced this morning, and the refore now is the right time for my objection.

MR. GLANCY: I believe the practice has been laid down by the Court, Your Honor, that at the end of the presentation of the document books the defense will avail themselves of the opportunity of objecting, at that time. I am under a slight handicap now of not being well enough versed to answer.

THE PRESIDENT: Well, suppose defense counsel finishes. We will allow defense counsel to finish his statement as to why he objects to this document and then tomorrow morning, Mr. Glancy, you can reply to it.

MR. GLANCY: Thank you, Sir.

DR. KRAUSE: This document, which I just mentioned, refers in my opinion, not to Dr. Erwin Weinmann but to his brother Dr. Erich Weinmann, who also was a member of the SS and the SD. Dr. Erwin Weinmann was never Lord Mayor of Tuebingen. He never was civil servant within the state administration. He was never under the Reich Ministry of the Interior and, at least during that time, he did not belong to the circle of persons which was under the SS Personnel Main Office.

THE PRESIDENT: Then, Mr. Glancy, you will reply to this in the morning?

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MR. GLANCY: Yes.

THE PRESIDENT: And we will continue, tomorrow morning then, with the further presentation of defense document books and the hearing of the one witness scheduled. The Tribunal will not be in recess until tomorrow morning at 0930.

(The Tribunal adjourned until 22 January 1946, at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

DR. HOCHWALD: If the Tribunal please, before Dr, Ulmer starts with his witness I would like to make a reply to the objection which was raised by Dr. Krause against document Prosecution Exhibit 187 and, I presume it is 207. Document Prosecution Exhibit 187 was admitted in evidence on 3 December of the last year. An objection raised by Dr, Krause now was certainly not raised in time. Moreover as far as I understand he objected against this document by argumenting that Mr. Wartenberg said something else on the witness stand than transpires from the document. This is an argument to be used in a closing brief or in a summation but it does not make the interrogation transcript of the defendant Haensch in itself inadmissible. The same, to a higher extent, is even true about Prosecution Exhibit 207. It is argumented by Dr. Krause that this document does not give the information the Prosecution states it does. This is entirely argumentative argument. The document is a captured document and in its form entirely admissible. It is purported to be a part of the personal file of the man Erwin Weinmann and, therefore, it is certainly admissible in evidence here. Moreover I want to point out, and that I think settles this matter, that Dr. Riediger had, when I submitted the document, declared before the Tribunal that he had no objection against the offering of the document. It is our very strong conviction that it is impossible that he make such a statement to the Tribunal in the morning and that in the afternoon his deputy goes up and objects against the very same document. That is all I have to say to this objection, your Honor.

THE PRESIDENT: We will dispose -- You want to say something?

DR. KRAUSE: Your Honor, concerning the question whether I agree with Dr. Riediger concerning this objection I would first have to discuss the matter with Dr. Riediger. I cannot imagine that we should have spoken here. To the opposite effect. I would therefore like to make the concerning statement at a later point.

DR. HOCHWALD: If the Tribunal please, I personally think that this is superfluous. The record will show whether Dr. Riediger made this statement or not. The record is official. If the record contains this announcement of Dr. Riediger in the record I think it is perfectly clear. If this announcement of Dr. Riediger is not in the record I am willing to apologize to Dr. Krause but I was standing here next to Dr. Riediger when Dr. Riediger made this statement and I hope the Tribunal can take my word for it.

DR. KRAUSE: Your Honor, I only would like to say: the fact that Dr. Erwin Weinmann, who is mentioned in document 3251 A was not Mayor of Tuebingen. He was not under the Reich Ministry of Interior, etc. This fact is not eliminated because of the statements made by the Prosecution. I would like to have this examined: even if the defense would not want to retain its objections, there is still a possibility that a confusion took place here between the two men. I would, therefore, like to ask that it be suggested to the Prosecution to consider this.

MR. HOCHWALD: If the Tribunal please, we have pointed out in answer to the objection of defense counsel that he, of course, is at liberty to attack the document in every way he see fit to bring proof that this document is an error, to bring proof that this document does not pertain to the person we say it pertains to, but that makes the document in itself not inadmissible - and that is the question before the

Tribunal; the document itself would not be inadmissible if not in the form which makes it admissible or if it is clear from the document itself that it has nothing to do with the case., None of these two things are stated by defense counsel. If he wants to argue that this document does not prove what we think that it proves this is question of argument and the Tribunal will decide this question in its judgment.

But the document itself is entirely admissible and that is the only thing here at issue.

THE PRESIDENT: Why doesn't Dr. Riediger indicate whether he objects to the document or not.

DR. KRAUSE: Your Honor, I do not want to make a statement after Dr. Riediger is supposed to have said that he did not want to raise an objection.

DR. HOCHWALD: "I have no objection".He did not save the right of objecting."I have no objection against the admission of the document."

THE PRESIDENT: Let's put it this way. There is no reason why we should have any conflict of recollection between counsel. When Dr. Riediger appears he can be asked if he does or does not object and we will dispose of it at that time.

DR. HOCHWALD: I only want to say as to the document itself - it is a captured document and in its form, and in its content, it is perfectly admissible. I do not want to add anything, any more, to that.

THE PRESIDENT: Well, I think that all counsel know that the general policy followed by the Tribunal is to admit documents which have probative value or appear to have probative value. The weight of each document will depend upon its nature and all the circumstances surrounding it. But, at any rate we will wait to hear from Dr. Riediger so we can be absolutely certain s to the position ofdefense on the document.

DR. KRAUSE: Yes.

as follows: BY JUDGE DIXON: after me. will speak the pure truth and will withhold and add nothing.

(The witness repeated the oath)

JUDGE DIXON: you may be seated. BY DR. ULMER for Six.

Your Honor, may I start to examine this witness?

THE PRESIDENT: Please, do. BY DR. ULMER:

Q. Witness, please tell the Tribunal your personal data?

A. My name is Ursula Alander, born 2 August 1918 in Munster, Westphalia, residing in Wyk-Foehr, Nord Friesland Sandwall 74.

Q. Did you have official relations with the defendant Six? a student of the foreign scientific faculty. Ever since then I have known Professor Six. Since the summer of 1940 I was a scientific assistant with the foreign scientific faculty.

Q. Witness, please talk a little slower into the microphone so that the translation can keep up. When did you start on that position?

A. On 1 June 1940.

Q. Did Dr. Six himself employ you?

A. Yes.

Q. When was this?

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A. On the previous day, 31 of May 1940, on the 1st of June Professor Six was transferred into the Army.

Q. Who was the professor of the faculty for whom you had to work immediately?

A. Professor Six himself. During hisabsence his chief assistant deputized for him.

Q. How long was Dr. Six absent from the university?

A. From 1 June 1940 until the end of August 1941.

Q. Do you know where he was?

A. Professor Six was at first near Berlin with the Army. Later on, in Holland for training, finally he was in Russia.

Q. Did he never pay any brief visits to the institute?

A. Yes he did. He had short leaves occassionally.

Q. And when did he finally return to the institute?

A. I saw him for the first time again on 21 or 22 August 1941.

Q. How do you know this so exactly?

A. Because afterwards I took my leave on Saturday 23 August 1941. I had been granted leave for the last week of August.

Q. Do you have anything to support your memory for these exact dates?

A. I have a calendar of 1941 which I borrowed. It confirms these dates. Also in the house where my mother and I spent my leave together there was a gentleman whom I asked to confirm the date by wire. My mother also recalls this particular date.

Q. How did it occur to you to remember dates that way?

A. Because I was called to the Tribunal by wire and I was asked to give the date of the return of Professor Six and prove it if possible.

Q. When did you return from your leave in august 1941?

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A. On Monday first of September 1941.

Q. Did Dr. Six remain there constantly in his offical capacity?

A. Yes.

Q. How did it come about that you came to me and told me about your dates in November 1947 when we saw each other for the first time.

A. It was an accidental visit with Professor Pfeffer. I heard about the date which was being debated about which I could give testimony. I therefore offered myself as a witness to Mr. Ulmer and on 26 November 1947 I gave him an affidavit about this.

Q. Did you hear what tasks Dr. Six had in Russia?

A. I heard that Professor Six had to look through file material and archives in Russia. This was talked about in the science department at the University.

Q. Your Honor, these are the questions which I had to ask this witness.

THE PRESIDENT: Any of defense counsel desire to examine the witness?

Mr. Hochwald do you have some questions? BY DR. HOCHWALD:

Q. If I may, your Honor. mony here, is that correct?

A. I was prepared for those questions.

Q. Who prepared you for those questions?

A. Herr Ulmer informed me what he was interested in in connection with this trial.

Q. I do not think that you answered my question. I asked you who prepared you for the answers of those questions?

A. It was not necessary that I should be instructed because I was well informed about the incident and I am able to give these replies without difficulty.

Q. My question, witness, was very specific. You told me first that you were prepared for the questions and now I asked you twice who prepared you. I take from your last answer that you revoke your first testimony and say you were not prepared. Will you then tell the Tribunal whether you were prepared -- who prepared you or whether you were not prepared?

A. By preparation I understood the discussion with Mr. Ulmer about the contents of the questions.

Q. And have you some notes before you or did you have some notes before you during the interrogation when you now testified to these questions?

A. I had a copy of my affidavit which confirms my replies.

Q. Just now, when you were testifying?

with me when I discussed the questions with Mr. Ulmer.

Q So I will come back to my first question. You have been testifying here without notes, is that correct? That was the first question I asked you.

A No, I discussed the questions with Mr. Ulmer which would probably be asked today and I had my affidavit from November with no. you. I asked you a very simple question whether you now, when testifying before the Tribunal, had some notes before you to refresh your memory, or whether you were testifying freely. Did you have some notes before you just now when you answered the questions of Dr. Ulmer this morning?

Q Would you be good enough to see these notes?

DR. ULMER: Your Honor, I object to this manner of questioning. I would like to say that the notes contain exactly what I discussed with the witness. I do not know whether the witness has any reasons to have to give them to, the prosecution. If the Tribunal rules that she should hand them ever she will do so, of course.

THE PRESIDENT: The witness is not required to surrender her notes unless she desires to do so.

MR. HOCHWALD: If your Honor please, I am not aware that I did ask for anything. I asked her whether she would like to hand me the notes.

Witness: I do not know what the prosecution wants these notes for. If I am asked to hand over the notes I shall do so, but since I do not knew the reasons, the motives, I shall not do it on my own initiative.

MR. HOCHWAID: I do not -

THE PRESIDENT: You may inquire if the notes were made by herself. If they were made by herself-

WITNESS: Please I did not understand.

Mr. HOCHWALD: May I ask the question the Tribunal kindly suggested. Did you write the notes yourself? they were copied again in Dr. Ulmer's office in an orderly manner. BY MR. HOCHWALD:

Q In what way did you make changes in these notes? Tribunal. Did you change certain parts of your testimony? in my notes. This purely factual matter of form Mr. Ulmer corrected for me and gave me the same questions more or less, only they were more precise.

Q How long did you know Professor Six? dean for the foreign science faculty at the University.

Q You were a very close collaborator of his? departure to the army. have some documents which prove this date. Did I understand your testimony correctly in this respect?

A I have no documents which prove my first meeting with Dr. Six.

Q I am sorry -- it's my mistake. I beg the Tribunal's pardon. I did not make it clear. I was just speaking about the date of Dr. Six's return to Berlin on 20 August 1942. I am sorry. I am speaking now about his return. You have told the Tribunal that you have some documents which prove this date, is that correct?

return or, that is, the ate when I started my leave which is 21 or 23 August 1941

MR. HOCHWALD: May I respectfully request the Tribunal to ask the witness if the witness will not give it to me -- to surrender these documents.

THE PRESIDENT: The notes she is using?

MR. HOCHWALD No, not the notes she is using. The documents which prove the date of Dr. Six's return to -

THE PRESIDENT: Do you have that document with you, witness? house I spent my leave confirms this leave to me. I also have a calenda of 1941 where I find my recollection confirmed that the last week of August when I took my leave had the dates of the 23rd which was a Saturday and a Monday is the 25th of August, until the 1st of September.

MR. HOCHWALD: If the Tribunal please, the witness has referred to to those documents and I do think it's perfect right of the prosecution to see these documents.

THE PRESIDENT: I think that you might let him look at those documents.

MR. HOCHWALD: May I have them. I look first at the telegram. Is it true that the telegram says only the last week in August, so that that could have been also a week which started on the 30th of August? can be seen on the calendar. Of course I started my leave already on the previous Saturday -- the previous week-end. That was 23 August. BY MR. HOCHWALD:

Q I have before me your calender. I do not see anything on the calender which would refresh my memory if I would be the owner of the calender. Not a word witness, is that correct?

A Yes, I do not own this calender. In 1945 I fled from Berlin and have no papers of my own. O borrowed this calender before I started to leave for Nuernberg. received this telegram, had no document showing that Six returned on 20 August 1942 to Berlin?

A No, I have no documents to prove this. I merely said that this date, of the return of Professor Six, coincided with the date I started my leave and that I only have been able to get some documents to prove when I started my leave. It was impossible; after an escape for weeks and after being interned in Czechoslovakia for three Months, to take any documents or papers along with me.

Q You were a member of the Party, were you not? the BDM, the German Girl's Youth Organization. When I was twenty, an age when one does not remain in this Youth Organization any longer, I was transferred into the Party proper.

Q But you were a member of the Party, were you not?

Q Until 1945?

Q You were, when Germany collapsed, in Czechoslovakia? There was no choice, then, to escape then to the Sudeten area. There the American troops advanced and the Czechoslovakian partisan troops took over the civilian administration.

THE PRESIDENT: Witness, how long did you know Professor Six? BY THE PRESIDENT: occured?

A What incidents?

Q When did he leave for Russia?

A I do not know the exact date. I only knew that on 1 June 1940 he was drafted. For a few weeks he remained near Berlin. For some time he was sent to Holland for training and was in Russia for rather a brief period.

Q Well, you met him in January 1940. Then in June 1940 he was drafted.

Q When did you next see him after June 1940? because he came to the Institute repeatedly. I can not recall any particular date. During his time of training in the Netherlands he spent short leaves in the Institute as well.

Q Then when did he leave for a protracted period?

A He never did. We never knew when we should see him again. But he kept coming back as a surprise every now and then and never very long periods elapsed in between.

Q Then when did he leave for Russia?

A I can not give an exact date; but since the Russian campaign only started at the end of June, it is obvious that at the earliest it could have been at the end of June and up to August there were only two months. began? know it, but eventually I did hear that he was sent to Russia in order to look through archives. I don't think that he advanced immediately with the armed forces.

Q When did you first learn that he was in Russia?

Q Did he communicate with you from Russia by letter?

A No, I was a student and assistant. Professor Six had no reason to write to me. that he was in Russia and when he returned from Russia. in Russia was only very brief. Institute? tely from his journey. I know he was only passing through and tried to talk to him to that occasion. Officially he could only be seen later on, but since I intended to start my leave the following week I insisted on seeing him before, in order not to have to interrupt my leave.

Q Was he still in uniform?

A Yes, while passing he was in uniform. After my leave, which was only one week later, when he took over office again, he was in civilian clothes again, but since he had just come back from his journey he was still wearing a uniform. his return from Russia? passing. He did not stay in Berlin but he was greatly interested in his department at the University and since it was close to the station, he always looked in when he passed through Berlin.

Q That isn't what I asked you, witness. I said that you saw him and then one week later you left on your vacation. Did I understand you correctly?

A I started my leave on 25 August -- that was a Monday. That is, I left, of course, already the previous Saturday, 23 August. Two days before, approximately, I talked to Professor Six when he was in transit. A week later I had finished my leave. I returned to the Institute and then, of course, I talked to him again. your leave?

A On 22 or 23 August. It was a Thursday or a Friday. On Saturday I left. him August 21 or August 22. week before I started on my leave. left the Institute?

"before I saw him. That must have been the Friday or Thursday therefore.

Q Now, did he come in just for a very short period? next he would take over his department again. He said that the following week he would go back to the Institute and would discuss our work with us. I told him then that I would like to talk to him immediately because I was going to take my leave the following week. In the afternoon he therefore returned to the Institute between two or four o'clock, I talked to him for some time then. But it was in the afternoon of the same day. during this period, you did not, of your own independent recollection, fix the date, did you? down again. But this note originates from my affidavit which I gave according to my memory.

Q We don't understand each other, witness. When you were first asked to recall, -- whether it was by Dr. Ulmer or anybody else -when you were first asked to recall the date on which you saw Professor Six in 1941, after his return from Russia, you did not, of your own free will, recollect precisely the dry, did you?

A Of course I remembered the exact date. I just made made error just now by saying I talked to him on the 22 or 23. That is a mistake, of course, because I left the house on the 23rd. Therefore it must have been the 21st and 22nd -- that Thursday and Friday. it was 21 or 22 August that you saw Six, when you ware asked to recollect that date just recently. that I left the house on the 23rd, I could immediately conclude that it must have been the 21st or 22nd.

Q You still don't grasp what I am asking you, witness. That all happened in 1941, didn't it? I don't know when you ware asked by someone to recall when it was that you saw Six in 1941 -- you were asked to recollect something which happened six years previously. That is right isn't it? for the first time or else I might have had to think about it a little longer. But when in November, when I happened to visit Professor Pfeffer and he told me, among other things, that Professor Six was not being believed concerning this date which was being debated, I remembered my leave on that occasion and I remembered immediately that it was the last week of August and that the following week started with the first of September. Therefore it was not difficult to draw the conclusion according to dates.

Q Then what did you do to confirm your recollection? on leave as what date I must have seen him, if I saw him two or three days previously; that was a very simple deduction. you had no document to support your memory, that you left on August 25 on your vacation? How could you recall, after six years lapse, that it was on that Monday? How could you confirm that it was that Monday? It could have been another Monday -- it could have been the following Monday or the preceding Monday. We'd like to know how you anchored your recollection to the precise date.

A The fact that I took leave in August is obvious. It is the month when one takes holidays. Also during that year there was still the order of the terms. The term had taken very long since it was the second one of the year. Therefore our leave started very late in August because we could not leave with the other students at the beginning of the holidays between the terns.

This was at the beginning of August. I had to remain another two weeks at least. I remember that. The summer holiday means a great deal to a student and it wasn't so easy for us that we had to wait some time yet. from the person at whose home you spent this vacation?

A Yes. Frau Alander and daughter Ursula, during the last week of August 1941, spent their holidays in my house in Berlin. Erich Schwanz.

Q Did you take your vacation right in Berlin?

A Yes, in the center of the city I had a small student's room. My mother came to Berlin and had stayed with these acquaintances for some weeks already. When I also got my leave I also moved in there.

Q Well then, you weten't very far from the Institute during the time of your vacation.

A No, of course not. But if one has such a short leave one does not want to have it interrupted and wants to dispose of one's own time.

Q Well, it wouldn't have been a very difficult thing for you to go over to the Institute even while you were on leave to speak to Professor Six, would it?

A Of course it would not have been difficult, but one can't just go over like that because the Institute was at the University and one had to go to the city and this took at least half a day, and if one only has a few days of leave one does not like to sacrifice half a day. the last week in August.

Q It doesn't specify any date, does it -- any date of the month? prosecution -from the 25th of August until the 1st of September.

house any time between the 25th and the 30th. difference to me whether I am there at the beginning of the week or already for the week-end. My mother had been there for some weeks and was waiting for me to take a few days leave as well.

Q And when did you return to the Institute?

Q How long was your vacation?

Q You were only allowed one week vacation?

AAt that time, yes. Already at Easter I had had two weeks leave and in the winter I intended to study in Copenhagen. For this reason I had to leave for some time and, of course, could not ask that in August I should also be given a long leave.

THE PRESIDENT: Very well, any other question, Mr. Hochwald. Mr. Hochwald, do you want to proceed. I think Mr. Hochwald should proceed, and Dr. Ulmer may finish up.

MR. HOCHWALD: Yes, Your Honor. BY MR. HOCHWALD:

Q You moved from Berlin to Copenhagen, did you?

A No. In November I left for Copenhagen for two semesters. I was able to study there due to the academized exchange system; all European and non-European countries could take part in this.

Q Which day was that?

Q How do you know that? know the dates precisely. Tell the Tribunal how do you so precisely recollect this date? and pleasure for Copenhagen.

Q Can you tell the Tribunal what day of the week it was?

A I can not say that; it was a week day, as to which one I don't know any more. correct?

A Yes, it was a matter of course. There was no choice for me.

Q On what day was that?

Q The date, please?

A It was in my opinion the 2nd of April. I don't think that I make a very great mistake here; there might be a slight error.

Q And do you remember the dates so very well? special meaning for me.

Q Can you tell me how long you stayed in Copenhagen?

A I returned at the beginning of August 1942 to Germany. I do not know on what date I crossed the border, but I do know the exact date since you want check up on my memory, that on 12th of August I started to work again in the Institute.

MR. HOCHWALD: I have no further questions.

THE PRESIDENT: Any other questions?

MR. HOCHWALD: If the Tribunal please, we have in the meantime obtained yesterday's transcript, and I only want to point out that I think that I was correct. The transcript shows that Dr. Riediger expressly, as already said concerning the submission -

THE PRESIDENT: Mr. Hochwald, are you through with this witness now?

MR. HOCHWALD: I am sorry.

THE PRESIDENT: You are finishing up?

MR. HOCHWALD: I had the feeling that the Tribunal had excused the witness, I beg your pardon.

THE PRESIDENT: You are now excused and you may leave, witness.

(witness excused)

MR. HOCHWALD: May I proceed, Your Honor?

THE PRESIDENT: When you get tangled up with justice, it is always hard to get away.

MR. HOCHWALD: May I proceed, Your Honor.

THE PRESIDENT: Yes.

MR. HOCHWALD: Dr. Fiediger is now here and will certainly confirm that he yesterday told the Tribunal that he had no objection against the Prosecution's Exhibit No. 207.

DR. RIEDIGER: Your Honor, it has been clarified according to the content of this document that the said Erwin Weinmann, which is the name here, is called the Mayor of the City of Tuebbingen; the Prosecution just referred to the Mayor Weinmann. Now, as it was Erwin Weinmann was not mayor but his brother was, so that, therefore, it is particularly doubtful, that this information which was given here refers to the mayor, that is, the brother - -

THE PRESIDENT: Well, counsel, do you or do you not object to this document.

DR. RIEDIGER: Until it has been found out which Weinmann is concerned here, I have to object to the probative value of this document, and say that this document can not be considered evidence until it has been clarified which one of the Weinmanns is concerned.

THE PRESIDENT: Let's hear from Mr. Hochwald.

MR. HOCHWALD: If I understand the objection of Dr. Riediger correctly, he didn't give any reason for the admissibility of the document as such. If Dr. Riediger argues that the Weinmann mentioned in this document is not the then Obersturmbannfuehrer, or whatever his rank was, who went with the defendant Haensch to the East, it is for him to prove that, but the document being a captured document, being part of the SS personnel record, of the said Erwin Weinmann, it is certainly admissible in evidence. Moreover, if I repeat, I do hope that Dr. Riediger will be in accord with me, as he said before this Tribunal that he has no objection concerning the submission of this document. I think that it is certainly clear that it is impossible the fact that the document has been accepted in evidence over the declaration of counsel, that he does not object against the document, and that he afterwards - -

THE PRESIDENT: Well, does the record show he said that?

MR. HOCHWALD: Yes, I have it before me, and I do hope that Dr. Riediger will .....

THE PRESIDENT: We will say this, Mr. Hochwald: even if Dr. Riediger said five hundred times yesterday that he had no objection to the document, but today can advance a valid argument as to why it should not be admitted, then it will not be admitted, so that we are not concerned with what he said yesterday but as to what the legal position is today. Now, Dr. Riediger, you have heard Mr. Hochwald point out that this is a captured document which comes into Court before the Tribunal with all the safeguarding and care which goes with documents.

Now the burden is upon you to show that it is not an authentic document, and until you can in some way attach the authenticity of the document, naturally, it would be accepted as a genuine document. If you want to prove that it was not the mayor, then you will have to adduce some facts to that effect.

DR. RIEDIGER: Your Honor, I would like to reserve the right here to bring other evidence in. I hope that by sending a wire to the Mayor of Tuebbingen, or other inquiry, the matter might be clarified, but in view of the fact that the date is now again emphasized, I would like to ask that the witness Maennle, who was mentioned here yesterday, who is supposed to have treated Haensch in January and February 1942, should be called here and to be examined here. It is the witness who lives in Berlin-Zehlendorf. I have not yet withdrawn h ere the application which was in the Defense Center. Everything has been done to ask him to come here, but as I have said yesterday, this should take about ten days. I believe that the oral examination in Court of the witness here, in particular when he can be cross examined here, should be far more important than the investigation by any commission in Berlin. It is not the fault of the defense if this question was only raised yesterday; an application had been made for the witness for sometime, but the defense only heard about the witness during the last few weeks, so that the defense was not able to apply for the witness to come here.

THE PRESIDENT: Well, that matter will be disposed of this morning, and if you will come to my chambers at noontime, we will let you know what steps have been taken with regard to this witness, whether he can actually be brought here, or whether it will be necessary for someone to question him in Berlin, and then we will submit the results here in open court.

DR. RIEDIGER: Thank you, Your Honor .

THE PRESIDENT: Yes.

DR. LINCK: Your Honor, I think it will be understood by the Court if I am anxious to go ahead and introduce my documents.

THE PRESIDENT: I would like to know, first, Dr. Linck, if you are permanently free, or only temporarily on parol?

DR. LINCK: No, permanently free, Your Honor.

THE PRESIDENT: I want to congratulate you in having escaped.

DR. LINCK: If it pleases the Tribunal, before I present my documents now, I would like to thank Mr. Walton for bringing me in the other day. I should also like Mr. Walton to be informed now so I will be able to be present.

THE PRESIDENT: Yes, indeed, we will take up your documents, just as soon as Mr. Walton arrives. In the meantime let's analyze our present situation so that we will know just what more there is to be presented. Dr. Aschenauer, you were not here yesterday when we discussed the schedule. We stated that you should have your summation ready for presentation to the translation section one week from today so that you would be ready to present orally your summation on Monday, February 2nd.

DR. ASCHENAUER: Of course, it will be possible.

THE PRESIDENT: Yes, the manuscript, of course, would need to be ready one week from today, which would be January 29th or at the very latest the morning of January 30th.

DR. ASCHENAUER: That also will be possible.

THE PRESIDENT: I didn't catch the answer?

THE INTERPRETER: He said he would be ready to submit it on 30 January.

THE PRESIDENT: Very well. Fine. Now who are ready today to present documents? Dr. Linck, of course. Who else?

DR. ASCHENAUER: Your Honor, I can submit two documents, but one is the result of the rebuttal. I can do that immediately. Of the questionnaire of Dr. Diels' cross examination, I shall still get in translation by today, and I shall hand this in today. May I proceed?

THE PRESIDENT: Very well.

DR. ASCHENAUER: I would like to state that I can start immediately.

THE PRESIDENT: Yes, you may after I make this announcement. Now we have to talk about Dr. Aschenauer's presentation. Of course, it follows that other counsel must have their summations ready also, and we will take up the summations in the order in which these defendants sit in the box, so that following Ohlendorf's presentation, there will be Jost, Naumann, Schulz and so on, and each attorney should have his summation ready at least three of four days prior to the day on which he is going to deliver it, so that there will be time for the translation. You may now present your own document you have ready.

MR. HOCHWALD: If the Tribunal please, as Mr. Walton is handling the case of Ohlendorf, and Mr. Walton is coming down within a minute or two, possibly the Tribunal might have its recess now.

THE PRESIDENT: Well, we will take up odds and ends until that time.

DR. ULMER: Your Honor, I was supposed to remind the Tribunal of the following: I shall present our Document Book IV for the defendant Six, which was sent to the mimeographing department today, or would have been sent there, it will take a few days before it is concluded; Your Honor was going to instruct as to the written presentation of this document book which was to be made; I ask, because of the exhibit numbers, Your Honor. Your Honor permitted us that the document may be submitted in writing, before the final summations are started; I would be very grateful if Your Honor would here give me purely technical explanation how we should handle it, concerning the exhibit numb er, whether we should submit to you the document in writing, say, we present the document No. 70, and another exhibit number such and such, and then continuously submit it in writing, as it is submitted here orally.

THE PRESIDENT: Dr. Ulmer, we can dispose of the remaining business in this way; today we will hear all the presentations which are ready; one day next week, which has not as yet been established we will sit, and this will have nothing to do with the recess, that is to say, the weeks period of recess will still run. We will sit one day to take up everything which may be remaining in the way of documents to be presented, or motions to be made, or perhaps even a straggling witness to be heard. We will decide this afternoon what day that will be. It will probably be the latter part of the week. Everything will need to be presented that day, in the way of documents and witnesses. At the termination of that days' subiness, all testimony in this case will be with the Tribunal, and nothing can be received after that in the way of testimony. With regard to trial briefs, they will be accepted up to and including the last day of the oral presentation of summations, closing statements, not after that day. Is that clear? Very well, then, this afternoon, we will make the announcement as to the date we will sit. Yes, Dr. Ulmer.

DR. ULMER: Just one most question, Your Honor, will we then get a support of the Tribunal that on that supposed term fixed for next week, the translation and mimeographing department would be told to get everything ready for this case.

THE PRESIDENT: Yes, the translation section and mimeographing section will be so informed.

DR. HOFFMANN: Your Honor, according to the experiences we have had here as a defense counsel, from previous trials, may I point out the following, which comes up as to our initiative in presenting our case. Sofar as I know the Prosecution is only just preparing its final concluding brief. If we want to reply to it now, I don't think that we shall be able to get ready our anti-closing briefs by the time the final summation is completed, and I don't think that we will get the translation ready in time. In the Doctors' trial before Tribunal No. I, the Tribunal No. I decided that our anti-closing briefs be after the final summation. May I ask the Tribunal that because of these technical difficulties, which I know from my experience as defense counsel here, that you will also consider that matter.

THE PRESIDENT: We are naturally always ready to hear anything which has to do with the disposition of the issues in this case, but necessarily we must specify a deadline, because if we say we will receive evidence or briefs even after that date, then, knowing lawyers as I do, you will bank upon that and then not attempt to get your briefs ready by that deadline. That is the reason we have indicated that all briefs should be with the Tribunal no later than the last date of the summations, because, naturally, the Tribunal will need time to study all these briefs in the preparation of the eventual judgment, but, of course, no one will be excluded, no one will be denied the privilege and opportunity and right to present anything any time up until the very last moment the decision is rendered, which is vital and important to the case, but , we must specify a certain date and hope that the mechanical difficulties will not prevent your submit ting your evidence or arguments by that date.

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MR. HOCHWALD: If the Tribunal please, I intend to join the defense on this motion. The deadline now passed by the Tribunal for the submission of briefs, is, of course, a correct one. Nevertheless, the Prosecution is extremely pressed in its time, we have to prepare altogether twenty-three briefs, it will be extremely hard for us to present these briefs before the Tribunal.

THE PRESIDENT: We can not expect to know that no attorney has done any work up until today, and then we are suddenly confronted with this mountain of work. You cannot tell us now you are immediately to start on the twenty-three briefs. I presume you have been working on these briefs before now.

MR. HOCHWALD: We certainly did, Your Honor.

THE PRESIDENT: Because if you have not been working, you certainly ought to notify those who pay you that you have not been working.

MR. HOCHWALD: We have already finished some of these briefs but the Tribunal knows that a lot of evidence was presented just during the last days; we have to amend our briefs to that effect, we have to make some stand as to the defense of the defendant, also as to their documents. It is just that we ask the Tribunals pardon and ask respectfully a little bit to enlarge the time given us for submitting the briefs.

THE PRESIDENT: Yes, we have a calendar here, and I trust everyone will take note of these dates. When the Tribunal recess this afternoon, it will recess until February 2nd, allowing for one day, which will be established this afternoon, to receive whatever remaining documents still must be presented; summations will be heard during the week of February 2nd, that is, from February 2nd up until and including Saturday, February 7th. Two weeks will be taken by the Tribunal in preparing the Judgment, which will be delivered on February 24th , the week of February 24th, because February 23rd is a holiday.

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Now, that is the schedule, so you see that the longer the briefs are delayed, the less time the Tribunal will have to weigh them thoroughly, as they should be weighed, so it is to the interest of every attorney to get his briefs in as quickly as he can.

MR. HOCHWALD: We certainly shall endeavor to put our briefs in as quickly as we can.

THE PRESIDENT: Yes. Mr. Walton, you will be ready to proceed immediately after the recess. You are not to proceed, but you will be here when Dr. Linck presents the documents.

MR. WALTON: Yes.

THE PRESIDENT: Now we can assure Dr. Linck that we will positively hear him immediately after recess. It is one week now we have had him going back and forth. The Tribunal will be in recess fifteen minutes.

(Recess) (The hearing reconvened at 1130 hours.)

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THE MARSHAL: The Tribunal is again in session.

DR. DIETMANN: Dietmann for Jost. Your Honor, may I ask that the defendant Jost be excused from the sessions this afternoon in order to prepare the final plea and to give instructions that he be sent to Room 57 at 2 o'clock.

THE PRESIDENT: The defendant Jost will be excused from attendance in Court this afternoon. At 2 o'clock he will be taken to Room 57 where he may confer with his counsel.

DR. DIETMANN: Thank you, Your Honor.

THE PRESIDENT: You are welcome.

DR. ASCHENAUER: I submit Document Number 64 as Exhibit Number 65. It is submitted as proof that Ohlendorf was not sent to Russia as a full-time member of the SD, and that through the order to report there, no change happened in his honorary membership in the SD. I quote very briefly , "During his assignment in the East Ohlendorf was subject to the regulations as everybody else in the army was subject to them or anyone else employed in the war service or in the Reich Group Trade, that is to say, he received his salary minus the certain amounts which were deducted for his family. Furthermore, he also received that from the Reich Group Trade." In their Document Book VD the prosecution submitted Document Number 5821. I have asked a few questions to the prosecution witness, Dr. Rudolph Diels, in the form of cross examination and have put them into the form of an affidavit. I shall submit the translation later on. I have agreed with Mr. Walton that any objection he might have would be raised by him after the translation has been submitted.

MR. WALTON: If Your Honors please, Dr. Aschenauer is essentially correct, but I would like the record to show that that agreement was made subject to approval by the Tribunal.

THE PRESIDENT: Approval is granted.

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DR. ASCHENAUER: I shall hand in the translation to the Tribunal, too, I may briefly quote from this affidavit. May affidavit in Volume VD is handed to me by defense counsel for Ohlendorf, Document Number 5821 which I have made out in the year 1946. I have the following to say about that, My affidavit does not refer to the problem of the resistance against the Fuehrer Order. If during my time in office as a senior government counsellor in the Prussian Gestapo Office, it had been possible to me to save Communists from execution, this was possible because at that time I always was able to have personal access to Hitler or Goering. Because of my anti-revolutionary practices I could no longer be kept by Heydrich and Himmler. I became a victim to the power-grab of Heydrich and Himmler, with the reason that I had sabotaged the German revolution. In the case of Gauleiter Lauterbacher, it isn't a matter of military orders, but these are directives by the civilian superior. As a result of the difficulties with Gauleiter Lauterbacher, I had to leave my job as a senior Government Counsellor. This corresponded to my desire because I could now be active in industry without bothering with politics. In the case of the Count Faber-Castell, whom I know from hearsay, it was not a military disobedience to the Fuehrer Order, but a refusal to carry out the directives of the immediate superior. If I am told that in Ohlendorf's transfer as an Einsatzgroup chief in the East it was practically a transfer as punishment, then I must say that a strict refusal to obey an order on the part of Ohlendorf would have had severe or even the severest consequences for Ohlendorf."

MR. WALTON: Referring to the affidavit which has just been read, if Dr. Aschenauer will state to the Court that the affidavit is in the proper form and that he has read into the record as pertinent parts or the gist of that affidavit, I can answer the affidavit now and it will not be necessary to dispose of this matter at a later time, since the Court kindly reserved time for objection to me at some future date. If he will assure us that this affidavit is in the proper form and that he has read the pertinent parts and the full gist into the record, I can answer.

DR. ASCHENAUER: The affidavit was taken by me personally and is properly made out, and what I read out are quotes from the affidavit.

THE PRESIDENT: Very well. That is adequate.

MR. WALTON: Unless then,sir, there is something new or startling in which he has not read, then I offer no objection to this document. Now, of course, if when I get it there is something which was not read, then I would ask to be heard on it.

THE PRESIDENT: Very well.

MR. WALTON: The Prosecution does, however, object to the Ohlendorf Document Number 65, which is Prosecution's Exhibit 64 on the grounds

JUDGE SPEICHT: That is the other way a round.

MR. WALTON: Ohlendorf Document 65, which is Defense Document 64 on the grounds that this document is immaterial in that what position he occupied in the SD when he was de facto an SD member with full power in the East does not - is not material to the issues in the case, and for that reason the Prosecution objects.

THE PRESIDENT: Very well. We don't need to reply to that, we are going to make our rule after all the documents are submitted. Dr. Linck, would you please now present your documents?

DR. LINCK: Linck for Ruehl. Your Honor, I have two document books to submit. Both of them have been translated and are available here. I ask the Tribunal to take up Book II first.

THE PRESIDENT: For the moment we only appear to have Book I before us. Do you have II, Judge Speight? Yes, well, you may proceed.

DR. LINCK: The defendant, Ruehl, belonged to Einsatzkommando 10-B in Einsatzgroup D, as is well-known. First of all, I would like to describe the time of his membership to this commando by two affidavits which are in Document Book II. The affiants of these affidavits studied with the defendant at the University of Berlin, were torn away from their studies with him, and were ordered to report to Pretsch and together with Ruehl they resumed their studies on the first of October '41, which had been interrupted by the military assignment.

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For this I offer and submit Ruehl Document Number 23, affidavit of August Haeffner, of the 17th of December 1947, as Exhibit Number 1. of Johannes Feder, as Exhibit Number 2. the defendant as a member of the Commando 10-B. The first is the affidavit of Erwin Hansen of the 1st of November 1947, Ruehl Document Number 1. This is in Book I. It is the first document in Book I. I offer it as Exhibit Number 3. The affiant had a central position on the Commando 10-B. He was the staff sergeant, as one says, in military language, "the top-kick." He belonged to the commando from its activation until Ruehlls time and beyond that.

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the agrrison, Czernowitz. He, Hansen, was with the last column which was commanded by Ruehl, and which arrived in Czernowitz several days after the advance command and the main echelon. Towards the end of the document the witness outlines the tasks of the defendant, Ruehl in the commando as those of an administrative officer, thus, for example, obtaining shelter and housing and supply for the unit, making up the guard roster, caring for commando members, etc. He continues, and I quote a few lines here, it is on page 3, "As far as his assignment went, he had no power of command. To my knowledge, down to the Crimea, Persterer, who was the commando leader, did not have a deputy. Ruehl did not command a subcommando either." I am skipping a sentence now, and I am quoting again, "Ruehl did not have anything to do with the writing of reports. Reports were written or made verbally by the man who was in charge of the platoon or the subcommando, reporting to the chief personally. Apart from this, the leaders of subcommandos were also under the direct command of the commanding officer. Persterer forwarded the reports directly to the higher agency or he compiled summarized report on his own and dictated it to a clerk in his room, During this, neither Ruehl nor anyone else was present. Furthermore, I know that no carbon copies were made nor were any files kept. Persterer had a strong aversion to office organization of any kind. The unit did not have any office whatsoever. The few important papers, as far as they existed at all, were kept by Persterer personally." offered as Exhibit Number 4. This is an affidavit by Karl Kaufmann, of the 1st of November 1947, who likewise belonged to Commando 10B, and who confirms the essential statements of the above-mentioned document, He states especially clearly that in Czernowitz a small advance commando arrived, first of all, and the main echelon of the commando were the commanding officer, and the platoon of the witness followed, and then more small columns followed after each other within a period of 2 to 4 days. The defendant, Ruehl, arrived with the last column, and for this the affiant has a special support for his memory.

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At the end of the affidavit the affiant talks about the job of Ruehl in the commando. May I call the attention of the Tribunal to the third last paragraph, and may I quote briefly, "The then ober jturmfuehrer and Criminal Inspector Ruehl, I well remember him. Ruehl was under the command of Persterer for the command of the administrative matters. He had no type of power of command, but he was merely used for administrative matters of all kinds, such as motor repair, billets, supply, and assignment of tasks. As long as Ruehl was with Commando 10 B, Persterer had no deputy. Ruehl did not command a subcommando. Number 5. The commando member, Max Werner, testifies in his affidavit that it was his special task to supply gasoline, spare parts, etc. He confirms that even this task which was actually a matter of administratives to t ake care of was not handled by Ruehl, but that the mission was always assigned by the commando chief personally. He remembers Ruehl who never appeared as the deputy of the commando chief and who did not lead any subcommando.

Ruehl Document Number 4 is offered as Exhibit Number 6. It is the affidavit of Wilhelm Nispel, who is a member of Commando 10 B, advanced or rather arrived in Czernowitz with the last group of this unit, that is, together with Ruehl, at least 4 to 5 days after the main echelon of the commando. About the jobs of the defendant in the commando, this affiant says that Ruehl made out the guard rosters, that he also had to see that the equipment was supplied and, for example, in Czernowitz, he had to set up a shoo repair shop. At the end of the document the witness emphasizes, "I never saw Ruehl as the deputy of the commando chief, and from my comrades I never heard at any time that Ruehl had had such a function. There were also at least one Haupsturmfuehrer and several Sturmfuehrers belonged to the commando. the service of the defendant as a police official before his activity in Commando 10 B. The Tribunal will recall from the defendants' examination on the witness stand that this activity was carried out in the counter intelligence department.

I offer Ruehl Document Number 7 as Exhibit Number 7. The document is on page 19. It is the affidavit of Josef Losse, Losse was export for personnel matters in the main office, security police. Ruehl was known to him first through his papers and later personally. He confirms that Ruehl was a specialist in counter-intelligence matters. ments which concern themselves with the missions of the counter-intelligence corps as part of the police service. Thess two documents are in my Document Book II, and they are listed as Documents 25 and 26. Those are two affidavits which were offered to the IMT and which were admitted by it. One comes from the witness, Schmitz under whom Ruehl served for several years in the counter-intelligence department. I shall come back to this personal contact on the day which will be determined next week, and I shall submit a special affidavit on that subject. I offer these two document Numbers 25 and 26 as Exhibits Number S and 9. As for as the other documents are concerned, these are character testimonials. I want to show the humane conduct of the defendant as well as the manner in which the defendant curried out his service as a police official. I want to show especially with these documents that the conduct of Ruehl towards politically and racially persecuted people was in strong contrast to that attitude which the prosecution has charged the members of an Einsatzkommando. I submit Ruehl Document Number 5 as Exhibit Number 10, on page 14. Your Honors, this is the affidavit of Hermann Bobbe of Luckenwalde. the affiant belongs to the social democratic party since 1912 and since 1929 he has been a leader of the Marxist organization of the Reichsbanner in Luckenwalde, which is the home town of the defendant. Bobbe has known the defendant since he was 20 years old. He emphasizes that despite contrary political attitude he always discussed matters with him objectively, that Ruehl was not one-sided and was not an agitator, and that publicly he had always conducted himself beyond reproach. He confirms furthermore that Ruehl, when the affiant was politically persecuted in 1933, had supported him considerably and especially saved him from being confined to the Oranienburg concentration camp.

The summary of the judgment in the last sentence of the affidavit shows that Ruehl, to be sure, was his political opponent, but that as such he had to respect him as well as he had to respect him as a man.

DR. LINCK (continued) I further offer Ruehl Document #6 as Exhibit #11. This is the affidavit of Justice Secretary Kurt Hoeche also from Luckenwalde. Under this affiant the defendant had allegedly been active as an employee in the District Court in Luckenwalde without exercising any function or pressure as member of the Nazi Party or the SA or without spying on his colleagues or denouncing them. The witness emphasizes that his wife is Jewish and that the entire family, therefore, had to suffer from chicanery of military authorities. That he did, therefore, not support any National socialists who are war criminals or guilty of any type of offense. As far as the last two documents are concerned I may point out that I consider them very strong evidence because it was possible for me to obtain them from the Russian Zone and because it is less customary for them that Anti-Fascist should exonerate a former Nazi. The other documents concern themselves merely with the time in which the defendant was temporarily director of the State police in Augsburg after he had completed his training and after he had obtained his first somewhat independent position and therefore was able to act with some independence. These affidavits were made out particularly by collaborators of the defendant, partly from affiants with whom he worked together and especially by the racially and political persecuted people whom the defendant helped.

I offer Ruehl Document #8 on page 21 of the book. This is Exhibit 12. It is the affidavit of Josef Brandl of 10 September 1947. Brandl was Police Inspector and had the closest contact with the defendant as director of the executive service. According to this, the defendant never bothered about personal opinions of others and never tried to influence him in Party political sense. Brandl testifies to the tolerant attitude of the defendant, especially in connection with an action which called for the allocation of labor of half Jews and those related to Jews which had been ordered by the entire Reich from Berlin. Contrary to directives and orders from Berlin, Ruehl on his own responsibility excused a number of people from this and thus saved them COURT II CASE IX from labor assignment and its consequence.

The example of a Dr. Fetzer is mentioned especially who had to be assigned immediately, but Ruehl always managed to postpone or suspend his assignment so that Ruehl had considerable unpleasantness since a brother of Dr. Fetzer was assigned for labor by another Gestapo agency. This agency demanded an explanation why Ruehl had not taken the same measures. Hanns Grahammer. He characterizes the defendant in a similar manner as Brandl did. The affiant was an expert for the just mentioned action. The operation, namely this labor assignment of Jews, half Jews and those related to Jews. It was Ruehl's intention to mitigate harshness of this operation and by urgent requests to Berlin he succeeded from the beginning in having all doctors subject to this decree excused from this or, at least, for the time being excused from it. In many other individual cases which Grahammer lists, Ruehl on his own responsibility always exempted those people so that those effected were always saved. These were people from all circles of the population. The regulations that only people who were unfit to work were to be exempted were not observed. The women related to Jews would have had to be used for labor at the place where they lived but this measure was not carried out. Grahammer emphasized the extraordinary risks which Ruehl took with this attitude and he only ascribes it to his clever delaying tactics that he did not suffer any serious consequences. Document 11 as Exhibit 14. It is the affidavit of the former Police President of Augsburg, Wilhelm Stark. Stark got to know Ruehl as an official on whose support one could count when it was a matter of helping endangered people. Stark mentions the example of half Jewish lawyer Kitzinger whom Ruehl had repeatedly exempted from the draft and left him on his job so that Kitzinger was spared until the end of the War. Stark also mentions the case of an officer under his supervision who because of seditious remarks was prosecuted. These utterances had COURT II CASE IX to do with the War which he considered as lost.

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Ruehl managed to suspend the proceedings so that no harm came to the person concerned even though he had to count on the fact that the matter might become known.

The next document Ruehl document 12 is offered as Exhibit 15. It was made out by the former Mayor of Augsburg who worked together with Ruehl, as the witness said, in the most loyal manner. Ruehl told that affiant that he would rather have contact with him than with the party because in all cases he wanted to form an objective judgment. This affiant, too, lists a number of individual examples showing how Ruehl conducted himself to Jews who were effected by the action named above to the Reich Security Main Office. He mentioned the Augsburg doctors who were secretly notified so that they could dispose accordingly and be left unharmed. Another example is the case of a Jewish composer professor Plechler who, if I may add this here, had just given the premiere of a new opera according to press reports recently. Piechler had fled and was hiding. On the basis of Ruehl's promises to notify the affiant immediately in case Piechler would be threatened by a new danger, the composer was able to return. This affiant, too, says that Ruehl was able to get around orders of the RSHA on his own risk.

I furthermore offer Ruehl Document 13 as Ruehl Exhibit 16. The former Gauleiter Karl Wahl summarizes the attitude of the defendant Roehl as far as the efforts are concerned which have been mentioned before, and I quote one sentence: "He went to the extreme and although I protected him in individual cases, he always exposed himself to danger of being rebuked by Himmler since Himmler was very strict in those matters as was well known." a collaborator of the above mentioned Gauleiter Karl Wahl, a man by the name of Fritz Thierbach, It concerns itself with the question of a certain Otto Zauner who had received a forcible consignment order to report at a camp. Ruehl had this order revoked and thus was consistent in his tolerant and helpful attitude as the affiant observes.

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DR. LINCK(continued) : Ruehl Document 15 is the affidavit of Kurt Muehlen and is submitted as Exhibit 18. The affiant is a confidence man of the CIC in Augsburg. In his former capacity as a plant guard he had considerable official contact with Ruehl. He summarizes his judgment saying that Ruehl did not have the inclination to participate in an extermination program. He bases his opinion, above other things, on the question, of a half Jew named Spieler, who had been drafted into a work camp of the OT. In order to escape this, he was called to Berlin by Ruehl under the pretext that missing family papers had to be obtained. As had been discussed with Ruehl previously, he did not return from there and thus he escaped further persecution.

The next document No. 16 is offered as Exhibit 19 and is the affidavit of Heinrich Riehm. It is reported how Ruehl disclosed to this affiant that the order of the RSHA also effected the leading directors of MAN (machine factory in Augsburg) - Nuernberg. Ruehl willingly listened to what the affiant had to say, reported to Berlin accordingly in order to gain time for those people effected and when Berlin was stubborn as expected, about it he postponed the draft on his own responsibility so that finally these racial victims were saved beyond the time of the collapse. from among the effected, the victims themselves and I submit Ruehl Document 17 as Ruehl Exhibit 20. Dr. Hans Fetzer as also-called non-Aryan, mixed off-spring, was on the list of those who were to be consigned to a camp. To his surprise, he did not receive the expected order and he heard that he had to thank the defendant Ruehl for that. In personal contact with the defendant Ruehl the affiant gained the impression that here the defendant acted in human sympathy and that despite the general order of the RSHA, Ruehl knew how to postpone his transport in such a way that the affiant remained free until the occupation troops arrived. ment 19 as Exhibit 21. The affiant had a Jewish employee, Bertold Auerbach, who was to be transported, too.

After all efforts of the affiant had proved in vain, he turned directly to the defendant Ruehl, found complete human understanding and succeeded in having Ruehl revoke this order.

The next document 20 is offered as Exhibit 22. In this the affiant, Harms Ritter, confirms, and he is active here as Landgerichtsdirektor, that Ruehl supported him and his Jewish wife even though the latter were expressly declared to be fit for work by the District Medical Officer and even though general orders of the Reich Security Main Office were present, Ruehl furnished a dentist's certificate and on this weak basis he managed to postpone the transport of this couple on his own responsibility. Ritter especially emphasizes that he and his wife were complete strangers to the defendant and that the help which he offered was not given from a personal view point. Kitzinger mentioned above, a half Jew of the first degree, mentioned how Ruehl tried to protect him from being sent to a work camp which was very similar to a concentration camp even though the application to Berlin was refused as could be expected. The matter was postponed in such a way that Kitzinger was spared. a Police persecutee by the name of Karl Wernthaler who already was in prison in 1933 and after that was in concentration camp Dachau and after his release from Dachau he was under police supervision until the end of the War. Today he is president of the Social Democratic Municipal Council fraction in Augsburg. He confirms that during the time Ruehl was competent for him, he suffered no persecution. and I offer document 18 as Exhibit 25. It was made out by the wife of a painter named Strupp who had been persecuted for political reasons by the Third Reich after he had spent a lengthy time in a concentration camp in 1933 already.

Strupp was again arrested in April 1944 because of suspicion of espionage and undermining remarks and had been handed over to the courts. Frau Strupp was refused any hearing from all the competent court authorities and finally turned to Ruehl with the request to do something to got her husband released. Ruehl asked for the court records and finally made it possible for the witness to apply to the Justice authorities in Munich and he also personally helped her and her husband. The proper political agencies were indignant about the fact that he disregarded his competence, and the district attorney was just as indignant. The affiant was told that the good offices of the State Police Agencies for her husband were not looked upon with any favor. Ruehl himself was reprimanded. Nevertheless he continued to help the family Strupp. Document Book and I offer it as Exhibit 26. It comes from an employee of the Augsburg office of the defendant. Her name is Marie Luise Henning and it is concerned with the human and professional conduct of the defendant Ruehl as superior. The affiant mentions particularly complaints of various private firms to the effect that Ruehl did not take sufficient action against some people who broke contracts without these complaints having any effect on the defendant at all. The affiant finally reports the judgment which the CIC officer gave here who was in charge with investigating members of the State Police in Augsburg. This said that he was amazed about the leadership of the Augsburg State Police and it was a pity that Ruehl did not have any other profession. reserve the right to submit 1, 2, or 3 further documents next week when the Tribunal reconvenes.

THE PRESIDENT: That right will be reserved.

Mr. Walton.

MR. WALTON: May it please the Tribunal, to those portions of the documents in Document Book I which are character affidavits of the defendant Ruehl, of course, the Prosecution does not object. However, as to his official duties and to his activities in Augsburg after he returned to Russia the Prosecution does enter an objection on the grounds of immateriality. In Document Book II, document 25, being the affidavit of Reinhold Aust, we believe this document to be immaterial In that it gives the activities of Department Ia in Augsburg of the Political Police, the Police Abwehr, and the Gestapo Abwehr. The document then concludes with the lament that old civil servants should not be removed just because the former government has changed which is completely irrelevant and immaterial to the issue. of Dr. Hans Schmitz, being Ruehl Document 26. It is corroborative of the Aust affidavit just mentioned and it contains justification of the Abwehr Police activities and shows cooperation between the Dutch officials and the State Police and it is certainly, we believe, immaterial and irrelevant.

THE PRESIDENT: which counsel will be ready this afternoon to present document books? Any who are here now? Apparently not.

DR. LINCK for Ruehl; As to the objections of the Prosecution, I would like to say only the following. I have submitted the affidavits of Schmitz and Aust to show not what jobs the Gestapo Counter-Expionage had, but the Counter-Expionage in the Police before 1933 and afterwards, namely, the sane tasks, and in order to show that I am not of the opinion of the Prosecution that every member of an Einsatzkommando was born to be such, as the Prosecution claims in the Indictment or makes it seem.

THE PRESIDENT: Do you refute tie thought that Kommando leaders like poets are born and not made?

DR. LINCK: They concern themselves with jobs of Police officials of CIC, the job which my client had and from which he was turned away at the time he served with the Einsatzkommando during his studios at the university.

THE PRESIDENT: Very well, be have a list here which would indicate that document books are ready in the cases of Fendler, Jost, Naumann, Radetzky, Sandberger, Schulz, Seibert and Strauch. Now the attornies in those cases ought to be here this afternoon with those books.

MR, WALTON: Your Honor, I don't know about the others but I have only gotten one document book on the defendant Seibert. I haven't been served with Document Book II yet.

THE PRESIDENT: Well, do you have any document books presented by the defense which are ready now for submission in court?

MR. WALTON: I can only answer for those in Einsatzgruppe D, that is what I am attempting to do. I have one on Seibert and I was under the impression it had already been presented by Dr. Gawlik. As to Document Book II, I have not received, Whatever your list says - I don't know.

THE PRESIDENT: This list says they are in translation but since I received the list several days ago I assumed by this time they were ready. Mr. Ferencz, do you have any outstanding defense document books that have not yet been presented in open court that you know of?

MR. FERENCZ: I believe there are sons, your Honor, which I received in German and not the English copies yet.

THE PRESIDENT: Will the Secretary General please immediately after we recess this morning inquire at the Defense Information Center as to what document books are now ready and sec to it that counsel who may present books, will report to the Tribunal when we reconvene.

Dr. Aschenauer, may I ask a question, please of you.

DR. ASCHENAUER: Pardon me - wrong earphone.

THE PRESIDENT: Yes, in order that we may develop a schedule beforehand as to the presentation of summation arguments we would like to get an idea of the length of time you believe you will require in order to present your summation. Do you think that the morning of Monday February 2 would be sufficient for you to present your entire summation?

DR. ASCHENAUER: No, I would say that my final plea will take more than 120 pages and that the whole day will be taken up with it.

THE PRESIDENT: Pretty long speech.

DR. ASCHENAUER: Yes, and considerable large problems are treated in it.

THE PRESIDENT: Yes. Are you going to be here this afternoon, Dr. Aschenauer?

DR. ASCHENAUER: I shall come back here at 1:30.

THE PRESIDENT: Well, during the recess time we will discuss this among ourselves so that we can work out a schedule, so if you will be here at 2o'clock, we can discuss this anew.

The Tribunal will new be in recess until 2 o'clock.

22 Jan 1948_A_MSD_16_1_Mills (Juelich) (The hearing reconvened at 1415 hours)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: There may be a slight modification in the schedule as announced this morning so that we will now again go over the same ground and indicate specifically what we hope to have from the defense counsel. Dr. Aschenauer will deliver his summation on Saturday, January 31. He will have the entire day for the presentation of his final speech. In view of the fact that he intends to cover, on behalf of many of the defendants, certain legal problems, it is only fair that he should be allowed ample opportunity to develop those legal propositions and thus he will have that entire day. He has promised to have his manuscript in the hands of the translator in ample time so that the Tribunal will have the English version before it on the morning of January 31. The other defense counsel will take up their summations beginning with the morning of Monday, February 2. Since we are naturally always confronted with the translation problem, it is obvious that those manuscripts must be presented for translation in ample time before February 2 so that they may be translated in time. Defense counsel, therefore, are advised that they should have their summation speeches, in German, in the hands of Major Hodges in room 106, no later than the morning of Friday, January 30. Those who can complete their speeches before that time will naturally help everybody concerned if they will deliver their manuscripts to Major Hodges bofore the 30th. But no one should submit it later than the morning of January 30 in room 106, Take it directly to Major Hodges and not to any other office, because he will see that the translation is done immediately. If there is no comment from defense counsel on that point we assume that that will be satisfactory. Dr. Aschenauer submitted a subject for discussion which we have no hesitancy in touch upon. He expressed the apprehension, which I think is shared by attornies throughout the world, that if a speech is delivered and then it is followed by a 23 Jan 1948_A_MSD_16_2_Mills (Juelich) speech from the other side, that the first speech's effect is dissipated in the oratory and eloquence of the succeeding speech.

That is a matter of psychology and a matter of opinion. If the speech delivered on one side is good, effective, and convincing, the deliverer of that speech does not need to be concerned that when his opponent gets up to talk that the effect of his arguments will be forgotten or lost. We only mention this because, as the schedule works out, the prosecution will follow the speeches of the defendants. In other cases it has happened that the prosecution made the first closing statement. He rule was laid down in this case as to who should be first and who should be last. It just developed in these closing days that in order to meet all deadlines, that it might be well if Dr. A chenauer and the other defense counsel followed, and then Mr. Ferencz and prosecution counsel will conclude the arguments. But no one need to fear that merely because the prosecution will deliver the last speech, that that in any way is going to cause the Tribunal not to give the fullest weight, thought, and solemn consideration to what proceeded the final summation speech by the prosecution. Then again, it isn't the prosecution which has the last word in this controversy between two sides, if we want to term it as such, because under the Charter and the law which controls the procedure of this Tribunal, the defendants themselves make the final statements. Is there any comment from either side on that point?

DR. GAWLIK (Counsel for Naumann and Seibert): Your Honor, I am fully convinced that the Tribunal will weigh the speeches independently of the fact who speaks first and who speaks last. But in spite of that, as a defense counsel, I have considerable misgivings if the prosecution should speak after the defense. As far as I know in most legal procedures it is such that the prosecution speaks first and then the defense. The word defense means this because I can only defend myself against something if I am attacked first, and the attack is launched by the prosecution here, and it does not depend on the psychological 22 Jan 1948_A_MSD_16_3_Mills (Juelich) effect, but I have to have an opportunity, if the prosecution should state any incorrectnesses in their final summation which I shall have to correct, and I have to discuss them and I shall not have that opportunity if I have to speak first.

and the prosecution speaks after me. While, if it is the other way around the prosecution has the advantage because the prosecution can answer to my final summation and discuss the various points and give their opinions on it. and I shall be unable to do so, to refute statements made by the prosecution. Therefore I would consider it more correct if the prosecution spoke first so that we should have an opportunity to hear what weight the prosecution factually and physically will give it.

THE PRESIDENT: I don't know what the procedure is according to German law, but in all Anglo-American courts, the prosecution speaks last and the reason for that is that the prosecution has the burden of proof. According to Anglo-American law, the defendant is presumed innocent until proven guilty. The prosecution has the burden of showing beyond a reasonable doubt, that the defendant is guilty. So that the procedure in the English speaking countries is that way that the prosecution speaks last. However that was not the reason that the prosecution was scheduled to speak last in this trial. A I indicated before it was more a matter of accident than anything else, because in the Pohl case where Judge Speight and I say, the prosecution spoke first and it has happened, it's only a matter of arrangements and convenience, as to who speaks first and who speaks last and if you allow one side to answer the other side, each time one side finished there can never be an end to a controversy. because there will always be another word to be said. Certainly every attorney, by this time, has formulated, in his mind, just what he is going to say -- what his defense is, and he doesn't need to have the prosecution tell him at this late date what he is being charged with. I don't see this great psychological advantage, Dr. Gawlik, and certainly no legal advantage, in speaking after the prosecution.

DR. GAWLIK: May I say the following to this, your Honor, According to German legal procedure the prosecution speaks first and then the defense. Buat apart from this I would like you to consider this point of view. In all trials which took place here before all Tribunals, the prosecution has spoken first and in all cases the prosecution has applied that they might be allowed to speak last. Until now this has always been refused, and we found that in the final summation the matter is described differently by the prosecution than has been shown in their cse in chief and also was given different weight, from a legal point of view. That is why we think it necessary that we be given an opportunity to comment in someway or other to the final summation by the prosecution, and I don't know, your Honor, why the prosecution whould want to speak here last -- whether there are technical reasons or -

THE PRESIDENT: Well, the only reason is, their burden, as you will admit, is a greater one than the derense's, not only legally, but factually and physically. You have twenty-two lawyers, each lawyer concerned only with one client, whereas the prosecution, made up of four lawyers, must consider twenty-two defendants. From a physical point of view they have more work to do and that is the only reason which has been advanced to the Tribunal and which the Tribunal considered in allowing the prosecution to follow. And it is impossible, in any event, for either side to construct its argument at the last moment, because we have these technical things to consider. Where you speak extemporaneously I can understand some slight psychological advantage, perhaps, in following another speaker because you may pick up some argument which he has made and immediately conjure up a reply. But here your speech has to be written out, must be typewritten, it must be translated, it must be mimeographed, all this before it's delivered. So that even if you immediately followed the prosecution you still wouldn't have an opportunity to go through all those features in the preparation of your defense.

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DR. GAWLIK: Certainly, Your Honor, we always had that opportunity until now, even if we handed in our final summation before, we always had that opportunity to add into our summation one, two or three sentences after an agreement of interpreter, in order to discuss some problem which had only been raised owing to some submission by the Prosecution.

THE PRESIDENT: Mr. Ferencz, will you please come to the podium, please. What is your situation from a factual point of view about getting a summation ready.

HR. FERENCZ: Your Honor, there are several considerations in the mind of the prosecution. First, I would like to reply to some statements made by Dr. Gawlik, which I regard as not quite accurate. In the case of the International Military Tribunal, the Prosecution did speak last, and the uniform rules, of procedure as first laid down by all of the Tribunals provided that the Prosecution would speak last. The present rule of procedure as amended, makes the matter come completely within the discretion of the Tribunal. Actually our position is well described by the Tribunal, we are all quite busy trying to get the closing briefs in, in time, so that the defense counsel may have those. He would welcome very strongly to have an additional week in which to prepare our closing statements. It is simply a matter of time so that we may do a thorough job. Of course, we are not going to introduce in our closing statements anything which is not now before all of the defense counsel. They know our position completely two days after we began the case, and closed the case, that was four months ago, and I, therefore, don't feel much impressed by their argument that they are now going to be taken by surprise by something we are going to say.

THE PRESIDENT: DR. Gawlik, you said that in previous trials the Prosecution spoke first. You were in the IMT trial, who spoke last?

DR: GAWLIK: The IMT was different because that was an International Military Trial where a different procedure was applied. The procedure which was determined for these trials, like in Tribunal No. I, the Doctors' trial, there the Prosecution spoke first.

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In the Pohl trial, the Prose cution spoke first.

In the Judges' trial I think the Prosecution also spoke first, and also in the Flick trial, sofar as I heard.

THE PRESIDENT: well, your main point seems to be, Dr. Gawlik, that even though you must prepare your speech, as of course, you must, several days before delivery, that it could happen if you followed the Prosecution, that you could extemporaneously introduce two or three sentences or statements in reply to the Prosecution, something which you could not have anticipated when you wrote out your speech beforehand.

DR. GAWLIK: Yes.

THE PRESIDENT: In accordance with the policy which we have attempted so strenuously to follow throughout this trial, of giving the defense every opportunity, suppose we make this suggestion, which will certainly be novel and unique, and sofar as I know never yet done in these trials, but does not concern us if something is new, if it is effective and if it is just. If after the Prosecution finishes -- and I know the Prosecution is not going to be very happy about this suggestion, and maybe they might be because they also have been very fair -- if after the Prosecution completes their argument, any defense counsel feels that some undue advantage has been taken of him by some novel twisting of the facts, or of the law, has been presented by the Prosecution, to which defense counsel whould reply, defense counsel may get up a make a very brief statement; he will have to extemproize of course, because We won't have the time, naturally, to wait for any written presentation. So in that way, it Can not be said, you will be taken advantage of, because your lips will be scaled, after you will have made your closing statement. Pardon me.

MR. FERENCZ: Your Honor, the rules provide that the defendants' will address the Tribunal and make a statement, that is, the last word, so the Prosecution actually does not have the final statement, and I am afraid that if we allow defense counsel to get up and make a second closing statement, we will have twenty-three closing statements half as long as the first, and be here for another week.

If the defendants feel that we have suddenly pulled something very surprising on them and put it into our closing statement, they themselves are able to answer it, and we will have the last word with the Tribunal, and we don't see any necessity for giving the defense counsel the opportunity to be heard twice on the same subject, and then the defendants on the some subject.

THE PRESIDENT: Dr. Gawlik, I am sure this will meet with your approval: After the Prosecution will have completed its summation, all of defense counsel will certainly know whether anything strikingly new has been presented to which a reply must be made, because it has not been covered by any of the twenty-two defense counsel. One of defense counsel will be permitted -- this is a suggestion we are making, or the thought we are presenting -- one of defense counsel will be allowed, let's say a matter of ten, fifteen or twenty minutes to reply on behalf of all of defense counsel to any particular thing which may be advanced in the Prosecution's speech, which has not already been covered in the twentytwo defense speeches.

DR. GAWLIK: I believe, Your Honor, if I may state my opinion, that the last suggestion is not practical in the interest of the defense, if we as defense counsel want to realize our rights, as it is our duty, only the defense counsel of each defendant concerned knows the subject and the discussion that is proper, and it is impossible for one of my colleagues to fully realize all the problems concerning all twenty-three defendants in such a manner as it should be our duty as defense counsel. On the other hand I do not see why the Prosecution objects to the first suggestion made by the Tribunal; we realize that there is a lack of time, but please consider, Your Honor, this lack of time is only a matter of one week. It is only one week, and that this not be used to the disadvantage of the defendants, so that no opportunity exists that anything be brought to the knowledge of the Tribunal which we as defense counsel consider our duty.

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I would like to add the following. Your Honor, although if we should speak for a second time to ready to a summation of the Prosecution, it will not be the same affect which would exist if we could do this as part of our final summation. If we base our final summation on conclusions by which we went to refute statements of the Prosecution, then our speech will be much more convincing, but in spite of this, because I realize the lack of time. I think I can say for myself, I don't want to say anything for my colleagues, if each one of us will be given sufficient opportunity to reply to a speech by the Prosecution, I think I can say, for my part, I agree. How my colleagues think about it, I don't know, but I think the last suggestion, that one should speak for all defendants within fifteen to twenty minutes, I think that is not practical, if I may express my opinion in this case.

DR. LUMMERT: Dr. Lummert for the defendant Blume. I would like to follow the request of my Gawlik, that the first suggestion made by Your Honor should be chosen as the final decision. I am not convinced that but a very few defense counsel will avail themselves of the opporttunity of speaking for a second time, but I think it would be better if we be given this opportunity.

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THE PRESIDENT: Dr. Gawlik, the procedure an English-speaking countries is that the prosecution has the first speech and the last speech too just because it does have the burden of proof. Now are effect we are being asked to reverse then procedure completely, that you have the first and the last speech, the defense, but we are not disinclined to grant that request. just because, as we have indicated throughout this entire trial. that the defense shall have every opportunity imaginable, to present its case because a serious issue is involved here, as you and your fellow counsel well know, Now, within the limits of reason, after the prosecution has finished, any counsel who feels that he has not had an opportunity to consider a certain proposition advanced by the prosecution in his, the defense counsel's, closing speech, will be given an opportunity to say a few words with regard to that new matter, Naturally, he may not get up and repeat what he said in his first speech just because it has been denied in the prosecution's speech, because it is quite obvious that that is merely a repetition of the same matter. But if something new, novel, unique has been presented, or if you think some unfair advantage has been taken in the matter of presentation of argument, we will allow defense counsel to reply to that. We assume that all defense counsel, if they should all avail themselves of that privilege, would not consume more than a matter of a couple hours' time.

DR. GAWLIK: Thank you, Your Honor, may I make another request? Perhaps a deadline could be fixed by what time the prosecution will have to give their closing briefs to us so that we at least will have opportunity to respond to these closing briefs.

THE PRESIDENT: Yes. Now on the matter of closing briefs, Dr. Gawlik, again we come to the matter of understanding the purpose of any particular act in legal procedure. What is the object of a trial brief? The object of a brief is to allow the attorney to analyze his Own testimony, testimony of his own client and all the evidence presented by him or against him, and indicate to the Tribunal his point of view.

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It doesn't depend upon what the other side says in their brief, because they themselves must do the same thing. The object of a trial brief is not to reply to the trial brief of the other side but to present your case in as favorable a manner as possible. that the opposing side will have an opportunity of glancing at the brief before preparing its own brief, but there can't be any guarantee that those briefs will be ready in time so that they can always be replying. Otherwise this goes on indefinitely. You realize the mechanical obstacles that are presented each time a document has to be presented, so that all we can say is that every attorney involved in this case, on the prosecution side and on the defense side, should work on his brief and get it in as quickly as possible. Since the summation will have ended by February 7 and then the Tribunal immediately goes into deliberation on the case, it is obvious that if the briefs come in very late that they cannot be given that solemn and deliberate consideration which they are entitled to receive and which they would receive if they were submitted in time. So defense counsel makes a big mistake in waiting for the prosecution trial brief in order to prepare his own trial brief. to defense counsel, but others are not.

DR. GAWLIK: But, your Honor, it isn't like this, that we are waiting in writing our final summations until we get the trial brief of the prosecution: but everyone of us has the duty only to hand in the final summation after having read the trial brief of the prosecution, and apart from that it would be unfair treatment if some defendants get the trial briefs in time and the defense counsel can consider it in their statements and other defendants do not get them. And I shall state this, according to experience I had with the previous trials, some of us got the trial briefs after we had made our final summation.

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In the Pohl trial, for example, the prosecution submitted a trial brief. The Tribunal did not accept it any more since it was handed in after the final evidence and the final summation had been presented. During that recess we received trial briefs That is why I would think it more expedient if I may make the suggestion your Honor, that the prosecution give us their trial brief by at least one or two days before we have to hand in our final summations so that all defendants are being treated in the same manner, in this respect too.

HR. FERENCZ: Your Honor, in order for us not to be confused by all this double talk, I think at is important to take a look at the total picture of what the defense have been given and what they are being given now before we can judge whether the request being made is fair or not. You will recall the prosecution completed its case in two days. For four months the defendants have been allowed to bring in here anybody they wanted as witnesses, to offer such documents and such testimony as they regarded in any way connected with this case. All of it has been admitted. They have just been given the right to speak first and last in their closing statements, not only last once, but last twice. After the defense counsel has spoken the defendant will get up and speka. Now they ask that we give them our closing briefs before they prepare their closing statements. Your Honors know that the complete defense case is not yet in and that the prosecution went ahead with their rebuttal case before the defense had completed. This is a highly unusual procedure. We would have the right in any court to say we will not submit our closing briefs until the defense has closed their case. This the defense has not yet done nor have they indicated any intention of doing it within the next week or so, In view of every action which has been taken on the part of the court, and of the prosecution, it seems an affront for the defense to come in and say, "We cannot prepare our closing statement until we see now the prosecution views the case from their side."

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Our closing statement has nothing to do with how they view the case. We are presenting our summary of the evidence which has been in few weeks and months. They are at perfect liberty to do it now. They have been at liberty to prepare it since we closed our case, and one has no connection with the other. to putting our statements in within the next five says, It would be almost impossible. But I believe that all the other reasons given make it necessary for us to view this thing as one unit and one whole in determining whether it is fair or not to require the defendants to make their statements regardless of whether we have our closing briefs in or not.

THE PRESIDENT: Well, Dr. Gawlik, I don't think you need fear that any undue advantage will be taken of your client or of any other defendant in this case because of any mechanical situation which arises and which cannot be met regardless of all the will in the world. You see that these trial briefs can't be handed to you in bulk on one day. They necessarily must be prepared and piecemeal put through the mill. They will be prepared translated, mimeographed, just as quickly as it is humanly possible to do so, and I am positive in my mind, and I am sure that I speak for my colleagues, that every defense counsel can well prepare his closing speech without waiting for that trial brief, which after all is not an anticipatory summation speech but something which is only an analysis of the testimony and an application of the law involved.

All trial briefs should be in by February 7th. If any defense counsel feels that he has not had the fullest opportunity to present whatever he intends to present and whatever is vital in the case, the doors of this Tribunal are always open. They will be open up to the very last moment, until the decision is read, and when it comes to a matter of justice, the courts are open at all times, even after the decision is delivered.

Who is ready now to present document books?

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MR. HORLICK-HOCHWALD: If the Tribunal please, the Prosecution is ready to present Document Book No. IV. As I have told the Tribunal already two days ago, this is a document book which contains evidence in connection with the case of the defendant Rasch. I only want to put the documents in without commenting on them that they may have prosecution exhibit numbers.

The first document I offer is NO-5120 as Prosecution's Exhibit 243 on page 1 of the document book. On page 3 of the document book is Document NO-1076 which is offered as Prosecution's Exhibit 244. On page 11, Document NO-1074 offered as Prosecution's Exhibit 245. On page 16 Document No-1073 offered as Prosecution's Exhibit 246. On page 20 Exhibit NO-1075offered as Prosecution's Exhibit 247.

On page 22, Document NO-1069 offered as Prosecution's Exhibit 248, and the last document on page 24, Document NO-1071 offered as Prosecution's Exhibit 249. That will be the complete document book. Document Book III of the Defendant Rasch - of the defendant Haensch - I beg the Tribunal's pardon - but I don't know whether his counsel is ready to present the document book, but I just heard now that the defense counsel for defendant Jost is ready to present his.

THE PRESIDENT: Yes. Well, then suppose we do that immediately after the recess?

Do you have something, Mr. Glancy?

MR. GLANCY: It is merely to inform the Tribunal the twenty-four hour rule was not met in the case of Book No. III. However, for expediency's sake, the Prosecution will waive and allow its presentation.

THE PRESIDENT: Yes, I am glad that you do.

DR. FICHT: Ficht for Biberstein. will rule about the objections which were raised by the prosecution and by the defense against the documents?

THE PRESIDENT: we will rule on those objections when we reconvene after the present recess, or perhaps at the end of the day when we will have heard the other objections which will probably be advanced to the documents which are to be presented during the remainder of the day.

(A recess was taken.)

(The hearing reconvened at 1530 hours.)

THE MARSHAL: The Tribunal is again in session;

DR. WIESMATH: Wiesmath, assistant for Dr. Schwarz, for the defendant, Jost. With the permission of the Tribunal, I shall submit Document Book III for the defendant, Jost. marie Jost, dated 21 October 1947, and certified on the 4th of December 1947. It comprises pages 1 to 6 of the third document book. Its contents are as follows, "Jost's critical attitude towards the party, his character, his attitude to the Jewish problem, his attitude with regard to Heydrich's execution orders, his rejection of Lohse's suggestion of making the Eastern territories free of Jews." I would like to draw the Tribunal's attention to the fact that Mrs. Annemarie Jost from May 1942 to September 1942 was herself in Riga. Her testimony about events during this time was based so to speak on her own personal knowledge and, therefore, is of special probative value. dated the 10th of December 1947, comprising pages 7 to 9 of Document Book III, "Contents: Responsibility of Jeckeln for executions. Lohse's policy in the Jewish problem. the 10th of December 1947, pages 10 to 13 of this volume, "Contents: Reports by the Einsatzgruppen, Einsatzkommandos, of the commander of the Security Police and SD." About the translation, I would like to say here "Commander of the Security Police and SD" should be translated, "Commander in Chief of the Security Police and SD". I continue in the index, "Reports of the Commanders of the Security Police and SC channel of command with regard to the Commander of the Security Police and SD", and here again I ask that it be translated "Commander in Chief of the Commanders of the Security Police and SD". The position of the Reich Commissioner for the Eastern territories and of the Generalkommissare, power to issue orders to the Commander of the Security Police and SD, or rather Commander in Chief of the Security Police and SD, and to the Commander of the Security Police and SD.

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Activity of the Commander in Chief of the Security Police and SD in the Eastern territories."

As Exhibit Number 29, I offer Document J 29. This is a diagram which is offered as a supplement to the statements of the defendant, Jost, on the witness stand and which shows the position of the Commander in Chief of the Security Police and SD in the East. In the English translation of this first diagram, I have discovered that two completely different agencies have been translated with the same term, I mean here, the Commander of the Security Police and SD Eastland, and the Commander in Chief of the Security Police and Commander of the Security Police and SD. I have already suggested that the first be translated, "by Commander in Chief of the Security Police and SD". Furthermore, this diagram has suffered in clarity by being compressed, I, therefore, intend to make up a new diagram in English, and I ask the Tribunal for their kind permission to offer a photostat of the diagram to be made up new and to offer this later.

As Exhibit Number 30 I offer Document J 30 as Diagram Number 2. This diagram pictures the position of Einsatzgruppe A. The defendant, Jost, has made lengthy statements about this during his direct examination. 29th of December 1947, pages 16 to 21 of the third volume. "Contents: Jost's activity in the capacity as Head of Worms Police Headquarters. Rejection of interferences by the party, Jost's intervention on behalf of Dr. Rahn. The objective manner in which Jost conducted his office, and his popularity with the subordinates. Release of Parson Degen from detention."

Document J 32 is an, excerpt from the newspaper "Der Tagesspiegel" which concerns the abolishment of the death penalty by Russia, one of the signatory powers of the Control Council law, I shall skip this, since a document concerning the same or including the same content has already been submitted on behalf of Dr. Braune by my colleague, Dr. Stubinger.

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As Exhibit Number 32, I submit Document J 33. This is a supplementary excerpt to the Document NO 3277 which was submitted by the prosecution in excerpt. This is in Document Book IIA, English page 133, Exhibit Number 56. This excerpt from the document, or rather this supplementary excerpt from this document is to prove that the events described in this document are supposed to have taken place in March 1942, that is, before the time that Jost started his job and before Jost's responsibility started.

This concludes the presentation of the third volume. The fourth volume is unfortunately not yet available in the English translation.

MR. GLANCY: The prosecution has no formal objections to register, Your Honor, except for the fact that it requests that the J 32 be stricken from the books as being entirely irrelevant. It is my understanding that it was not offered by Jost's representative.

PRESIDENT: The motion is granted, and that will be stricken from the record because it has absolutely no relevancy to the issued involved.

MR. GLANCY: Thank you, Your Honor.

DR. KOHR: Kohr representing Dr. Heim for the defendant, Blobel. I would like to submit the supplement to document book II for Blobel, This is only one document, but there might be one difficulty, the Tribunal may not have the English copy yet, but I am in a position to furnish the Tribunal with the copies which I have already received yesterday.

PRESIDENT: Do you have them there?

DR. KOHR: I have them here, Yes.

PRESIDENT: Let's have them.

DR. KOHR: I now offer Blobel's Document Number 12 as Exhibit Number 11. This is an affidavit of Walter Ostermann, dated 23rd of December 1947. Ostermann was a driver in the SD sector, Duesseldorf. That was at a time when Blobel was commander of the SD sector in Duesseldorf. Outside of that, he was in the Special Commando 4A from June 1941 until approx imately November 1942.

He was in charge of the motor pool of Special Commando 4A. This affidavit concerns itself primarily with a character testimony. Apart from that, it confirms that during his assignment in the East Blobel was frequently ill, and it confirms the statements about the time periods which Blobel made in the witness stand.

Your Honor, this would be the end of my presentation. I don't intend to submit any further documents on Blobel.

PRESIDENT: Very well. Any other documents ready for prsentation? Neumann?

DR.DURCHHOLZ: Durchholz for Schulz. Your Honor, I have my Document Book IV in German, the English translation has also been completed and is just being mimeographed, It is only a matter of 8 documents, and if I may nevertheless submit them, I would be grateful to the Tribunal. Dr. Hochwald has no objections.

MR. HOCHWALD: If the Tribunal please, I have seen the German text. I have no objections to Dr. Durchholz' offering the document book, but in order to be completely clear, I have objections against some of the documents.

PRESIDENT: Yes. We would be entirely willing to receive the documents now, even though we don't have the English version before us. That can be submitted later.

MR. HOCHWALD: It is perfectly all right.

DR. DURCHHOLZ: My Document Book IV, Your Honor, consists of 8 documents. I shall submit them in the order in which they appear in the document book. On page 260 we have Document Number 89, which I submit as Exhibit Number 88. This is an affidavit of the defendant, Schulz of the 10th of January 1948. In this he comments on a newspaper article in the "Moravian Journal" of the 23rd of March 1939 in Ulmitz. The complete copy of the paper is in the original document. This newspaper article, despite some contradictions on the part of German agencies, Schulz was successful in having it published. Dr. Benndar, the former Czech police president of Olmuetz, when Schulz had to take over the police office there, was not arrested by Schulz even though his arrest had been ordered.

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Schulz did not do this. It was his consideration that in the case of Dr. Benndar, there was no reason for an arrest because the latter merely carried out the orders of his superior Czech officials as was his duty, and then this newspaper article is supposed to serve to confirm the statements of the defendant in the witness stand.

MR. HOCHWALD: If the Tribunal please, there is no objection on the part of the prosecution against these documents. I would only like to reserve the right to put in one of the other documents, at the utmost, one or two, of the evidence of the defendant, Schulz in Czechoslovakia.

PRESIDENT: You mean-

MR. HOCHWALD: As a rebuttal document.

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22 Jan 1948_A_MSD_22_1_Mills (Lea)

DR. DURCHHOLZ: The next document is on page 263 -- this is document number 90 which I submit as Exhibit dumber 89. This is a mutual affidavit of Gerhilde Fleck and Dorothea Leitzinger, both from the city of Graz, of 3 December 1947. These two affiants were employees of the then office of the defendant in Graz in the year 1938, and they confirm, without being asked to do so, that Shulz was an excellent superior who only acted objectively and justly and who, in all official conferences, demanded a likewise conduct on the part of all employees. The next document is on page 265, Document Number 91, which I submit as Exhibit Number 90. This is an affidavit of Dr. Horst Hellauer, from Graz, of 30 November 1947. Dr. Hellauer Was, in the year 1938, a research collaborator of the Nobel prize winner, the Jewish counselor, Prof. Dr. Otto Loewy, who had been arrested before Schulz arrived there. He confirms that Dr. Loewy was correctly treated during his detention; that Schulz permitted this Dr. Hellauer to speak to this Dr. Loewy in prison without supervision, and that Schulz released Dr. Loewy after a few days. He continues that Dr. Loewy had told him that during his last interrogation before the Chief of the Gestapo in Graz, he had gained the impression that special importance was placed on his person and that they did not want to lose his work.

DR. HOCHWALD: If the Tribunal please, this last document presented by Dr. Durchholz I object to for only one reason. Dr. Durchholz presents as his next document an affidavit of Dr. Loewy who is the subject about whom all the time is spoken in this document, number 91. It is not understandable, and I do not think admissible, that a third affiant speaks about that what happened to the second affiant, if the name and the address of the second affiant is known to defense counsel, and if he obtained an affidavit from this man. I do think the correct way would have been that Dr. Loewy himself would have certified or would have executed an affidavit to the facts which are told to us by a third person.

THE PRESIDENT: You think that this is hearsay twice removed?

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22 Jan 1948_A_MSD_22_2_Mills (Lea)

MR. HOCHWALD: That is right.

DR. DURCHHOLZ: Your Honor, in the affidavit of Dr. Hellauer those circumstances are contained which Dr. Loewy does not state in the affidavit which I shall submit next. Therefore, these two affidavits supplement each other.

MR. HOCHWALD: If your honor please that exactly was the reason why I objected against Document 91, as in the affidavit of Dr. Loewy things which Dr. Hellauer tells that they happened to Dr. Loewy doesn't testify to himself. That is the reason why. If the two affidavits would he identical the affidavit of Dr. Hellauer would be only corroborative evidence and not directly objectionable. I am objecting that somebody is testifying out of hearsay to things to which the man who is the subject of the affidavit could have testified himself in this affidavit.

THE PRESIDENT: Why didn't, Dr. Durchholz, the first man testify to all the incidents? Why did the second man need to say what the first man could have said?

DR. DURCHHOLZ: Your Honors, I myself tried to got the affidavit of Dr. Loewy. Dr. Loewy is living in New York though and I waited all this time for this affidavit and as a precautionary measure I had one of his collaborators give me an affidavit just in case Dr. Loewy's own affidavit would not have arrived. As the next affidavit I shall submit the explanation of Dr. Loewy and then I shall ask the Tribunal to decide whether the objection of the prosecutor about the affidavit of Dr. Hellauer should be sustained or not.

THE PRESIDENT: Very Well.

DR. DURCHHOLZ: On page 267 I offer Document Number 92, as Exhibit Number 91. This is the affidavit of Dr. Otto Loewy, now professor at New York University, college of Medicine, of the 6 December 1947. I only received this statement a short time ago directly from New York, In this, the affiant, Dr. Loewy, states that on 6 May 1938 Schulz had 22 Jan 1948_A_MSD_22_3_Mills (Lea) released him from protective custody and that this release came about in the most friendly manner and in the presence of his wife whom Herr Schulz had asked to be present.

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MR. HOCHWALD: If the Tribunal please, may I now move that all other items as it is given in Schulz Document 92, Exhibit 91 -- that all items different from that which Loewy said himself may be stricken from the record.

THE PRESIDENT: Dr. Durcholz, I think you will agree to that.

DR. DURCHHOLZ: Yes. Of course, your Honor, I could not speak to the affiant, Dr. Loewy, and I did not prescribe to him what kind of an affidavit he should give me. I left it completely up to him. If I had had the opportunity to speak with him I would have taken all these facts into his affidavit.

THE PRESIDENT: Well, Dr. Loewy's statement, as much as we were able to get from you, because we don't have the text, seems to be clear enough.

DR. DURCHHOLZ: Yes, I am completely in agreement. As the next document on page 268, I offer Document Number 93 as Exhibit Number 92. This is an affidavit of the defendant Schulz of the tenth of January 1948. Schulz states here how he helped the Jews in Bemeen, those who remained in Bremen, as well as those who wanted to emigrate at their own wish. He states especially how he discussed all these problems with the representative of the Jewish community in Bremen, Dr. Rosenack, who emigrated to American in 1937, and how he discussed all these matters in the fairest manner. It is noteworthy that Dr. Rosenack and Schulz left each other with complete respect existing on both sides. I may also state in this respect that with the help of the Defense Center I was able to determine the present address of Dr. Rosenack in New York. Thereupon I wrote to Dr. Rosenack and asked him for an affidavit, but to this day I have received no answer. For this reason the defendant Schulz has described his relationship to Dr. Rosenack and the Jews in Bremen in this affidavit.

DR. HOCHWALD: If the Tribunal please, I do not want to take up the Tribunal's time with unnecessary objections, I do think that this document and the next document which is also an affidavit of the defendant are inadmissable for the simple reason that these two items to which he testifies are not new. He has taken the witness stand. He had ample opportunity to tell everything that he wanted to say. Of course the thing is the affidavits in themselves are unimportant, but I just wanted to say on principle these two affidavits in itself are not admissible as they are not refering to items which came up after the defendant Schulz was at the witness stand.

THE PRESIDENT: We'll rule on those objections at the end.

DR. DURCHHOLZ: I further submit on page 273, Document Number 94, as Exhibit Number 93. This again is an affidavit of the defendant Schulz dated 13 January 1948. Here he makes a statement giving the reasons why he left the Protestant Church and why this leaving the church does not mean that any SS member became an atheist. I offer this statement because after the examination of the defendant Schulz on the witness stand this question of leaving the church was hold up to the subsequent defendants repeatedly. As the next document I offer on page 275, Document 95, as Exhibit Number 94. This is the affidavit of Karl Heinz Bent of 19 January 1948. Bent states here that he met Schulz at the police school in 1941 in Berlin. Also that in 1943 it was said in Kiev that Schulz, because of his soft attitude, namely that he could not have carried out executions in Russia which had been ordered in 1941, or did not want to carry them out, was releived from this assignment in Russia very quickly. He confirms here with the statements of the witness Hurting, who made these statements on the witness stand, and who was also with the Einsatzgrup C in Kiev. As the last document I offer on page 277 Document Number 96, as Exhibit Number 95. This is an affidavit of Ernst Helmuth Wuppermann from Nuernberg from 12 January 1948. This affiant states that in the summer of 1941 he was on the station in Orel in Russia and that there he saw a box car full with, envelopes of which I will submit three examples as photostates.

I point to envelope number 1 in which there is a picture of a smiper in civilian clothes and which is signed in Russian "Glory to the Partisans". The witness says that a Russian employee in Orel had told him that these envelopes were distributed immediately after the outbreak of the war by the Russian government so that one mast assume that these were already made up before the beginning of the war. The original envelopes are here but I can not submit them unfortunately, because I must return them. However I have photostats and the translation is also certified to.

MR. HOCHWALD: If the Tribunal please. I object against this document just out of the simple reason that it is entirely immaterial. I also am unable to sec from the photostat whether the persons depicted on these envelopes are civilians or military personnel. That is not the nature of the objection. The nature of the objection is immateriality.

DR. DURCHHOLZ: This concludes my presentation of Doc. Book IV and on the day which will be determined by the Tribunal next week I shall submit one single document. This is an affidavit of the defendant Schulz as a reply to a rebuttal document.

THE PRESIDENT: Mr. Hochwald, do you have any further objections to the book?

MR. HOCHWALD: I have voiced my objections against the single documents. I do not think it necessary that I repeat it. Thank you very much.

THE PRESIDENT: You are welcome. Are any other document books ready for presentation this afternoon? Apparently not.

MR. HOCHWALD: I have received Document book Number 3 for the defendant Haensch. Is Dr. Riediger willing to put it in?

DR. RIEDIGER: The document book has been submitted yesterday.

MR. HOCHWALD: I beg the Tribunal pardon. I was not here yesterday afternoon and I did not know it was already submitted.

THE PRESIDENT: Very well.

MR. HOCHWALD: If the Tribunal please, I do not know whether there was an objection on the part of the prosecution against Documents 27 and 28 of the document book. I only want to inform the Tribunal that these are two letters written in October and in December 1947 addressed to Dr. Riediger. Therefore in their form they are entirely inadmissible.

DR. RIEDIGER: As far as these letters are concerned there is one message of Dr. Maennle, this witness who comes up again and again.

MR. HOCHWALD: I have seen the information of Dr. Maennle and have not objected against it as the Tribunal wants to hear the witness anyway. So I do think that his testimony will be decisive, but not the letter he wrote. But these are two letters from a certain Vibeke Jansen, and I do think that I am well entitled to object against the form. They are not sworn to and they are in no way in the form of an affidavit.

DR. RIEDIGER: In the case of this document just objected to, that is a statement of a witness who lives in Denmark and who has considerable difficulties if she choses any other form. Therefore I asked her for this. She wanted to go to an attorney in Denmark but I have received no more news. She merely informed me that she would have to count on difficulties on the part of Danish authorities. The probative value of this statement, of course, has to be left up to the Tribunal.

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MR. HOCHWALD: If the Tribunal please, I do think that an affidavit is nothing else but a substitute for direct testimony. Testimony not given under oath can not be viewed by the Tribunal in any form. Its probative value is nil Therefore I move that these two documents may not be admitted in evidence.

THE PRESIDENT: That might be true if there is no explanation forthcoming as to wiry the oath could not be administered. As defense counsel has stated, the probative value is always left to the Tribunal.

MR. HOCHWALD: If the Tribunal please, I do not want to press the subject but the witness does not even say that in lieu of an oath she is stating that or that. she just writes a letter. she did not say this is the truth.

THE PRESIDENT: Did the letter come through the mail and does the counsel recognize the handwriting?

DR. RIEDIGER: Well, first of all I would have to look at the document again. It came by mail but whether I can recognize the handwriting would depend on whether I have any other pieces of writing by her, because I personally don't know the witness. But it is possible that other examples of her handwriting are available and I would reserve the right to make another statement about it. Pardon me, your Honor, at the moment I don't have the document here, but the possibility exists that the signature is certified to. We would have to look at the document.

MR. HOCHWALD: As far as I can see one of the signatures is certified to.

THE PRESIDENT: By whom?

MR. HOCHWALD: That, your Honor, I am unable to say. Folkeregister should be some magistrate, but I unfortunately do not know. It's Danish and I can't say either the one or the other. My objection is, your Honor, mainly to the fact that the witness never says at any place that this what she is writing is the truth -- neither under oath or in lieu of oath. I am absolutely sure that Dr. Riediger obtained the letter. I have no reason to doubt that the person who is signing this letter is this Vibeke Jansen, but I do not know who she is or what she is.

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THE PRESIDENT: Dr. Riediger --

MR. HOCHWALD: It's an entirely inadmissable document.

THE PRESIDENT: You of course have observed the liberality with which we have accepted evidence, but you will also understand then there must be some safeguards in order to prevent being deceived, and there is always the possibility that someone can just write a letter and state anything. So unless we have some assurance that the statements are guarded and represent the truth, then we could all be deceived.

DR. RIEDIGER: Your Honor, after I received this statement I asked for this statement once more in the form of an affidavit. Thereupon the affiant notified me that she first wanted to go to see a lawyer, that she had misgivings that she might run into difficulties from Danish authorities and since that time I haven't heard from the witness. Of course I must admit that the Tribunal has been very liberal in accepting documents, but I believed, at least, that this letter, whose signature is certified to -

THE PRESIDENT: Mr. Hochwald, may we see the document. I don't happen to have my book here.

MR. HOCHWALD: If your Honors please I have only the mimeographed translation.

THE PRESIDENT: Do you have the letter in which said that she was unable to go to the Danish authorities?

DR. RIEDIGER: I got one more letter -- I don't know if that has been handed in.

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THE PRESIDENT: But Mr. Hochwald, what about the relevancy of the subject matter?

MR. HOCHWALD: I consider the subject matter completely irrelevant, Your Honor. However, I have to make this objection and I do think I pointed it out, out of principle. We cannot leave a letter written in November or December 1947 go in lieu of testimony of a defense witness. I beg the Tribunal to consider this point.

THE PRESIDENT: Dr. Riediger, even if this document were submitted with all the safeguards under oath, what do you content it would serve on behalf of Haensch. Here is the only statement which can be of any value to you. Let's see how far it goes: "It is also not clear to me why Dr. "H" should be convicted there since he was an official here during the war."

MR. HOCHWALD: If the Tribunal please, this statement alone proves the inadmissibility of the letters as it is admitted by the defendant that he was not only In Denmark but also in the East.

THE PRESIDENT: I don't understand that.

MR. HOCHWALD: He was not only in Denmark but also in the East.

THE PRESIDENT: I don't quite follow you?

MR. HOCHWALD: I understand in this letter he is trying to say he was all the time during the war in Denmark, as he was an official here. The Tribunal certainly will recall the defendant himself admitted having been in Russia.

DR. RIEDIGER: The contents of the document, of course, do not refer to the assignment of Haensch in Russia, but they only refer to activity in Denmark, therefore, has nothing to do with the charges against Haensch as they refer to Russia, but it serves to judge the defendant, and therefore, it can have some importance.

THE PRESIDENT: Well, I think you are arguing for the admission of something which even if admitted can not be of much enlightenment in the disposition of this case, for an unknown person in Denmark to say that he or she does not know why a defendant should be convicted because he was an official there during the war, which means absolutely nothing, all these defendants were officials in Russia, or that is to say, they were on official duty, so that does not prove anything at all, and I think that to insist on admission into evidence of a document which does not have the usual safeguard as to veracity, when the document, even if it did have that safeguard could be of very little use to you, is much ado about nothing.

DR. RIEDIGER: Well, of course, I must leave the decision up to the Tribunal, especially since the probative value itself could not be such as that of a usual affidavit.

THE PRESIDENT: Yes, the point is, Dr. Riediger, that we are willing to make an exception against a very obvious rule when it really will mean something for us to make an exception against a rule, which is only made to protect everybody from something in the last analysis, is of no use as we are asking for a pointless thing.

MR. HOCHWALD: If the Tribunal please, I only want to point out I have objected for the same reason against two documents, the document which the Tribunal has before it, and there is a document preceding this document from the same writer, and I have objected to both documents for the same reason.

DR. RIEDIGER: At the moment, I unfortunately don't have the document before me.

THE PRESIDENT: You mean this very long statement (Looking at document before the court).

MR. HOCHWALD: It is from the same writer in the form of an ordinary letter.

DR. RIEDIGER: Your Honor, may I perhaps reserve my explanation for a day when the Tribunal will reconvene, and I shall see whether I withdraw the document.

THE PRESIDENT: Very well. In the meantime if you will find that you can fortify this statement in any way with a jurat, with a statement as to who this is this Abenrade, and so on, then it might be helpful in the final disposition of the document, but for the moment both documents will be excluded.

You are very welcome to be sure.

DR. GICK: Dr. Gick for the defendant Straugh. Your Honor, before the Tribunal adjourns, I would like to repeat my motion for severance, which has been made in writing on 23 October 1947. I refer to document of 11 October 1947, also handed to the Tribunal, the opinion, of Dr. von Baier to my brief 3 January 1948, and to the second opinion of Dr. von Baier of 7 January 1943, and to my brief of 20 January 1948 which unfortunately has not yet been submitted to the Tribunal, as it is still in the translation section, and which at best can be handed to the Tribunal tomorrow. In order not to take up the time of the Tribunal, I don't want to make any more statements here. I merely want to say in one sentence to the fact that after the conclusion of the direct examination, the impression the defendant

Strauch made, was such that it can not be said that he was in a position to use his personality and the use of his intellect which is normally at his disposal, and to use them to refute charges of the Prosecution. I am of the opinion that the defense of the defendant Strauch was impeded in a considerable manner, therefore, I want to repeat this motion here in court.

MR. HOCHWALD: If the Tribunal please, the Prosecution does not desire at this time to make a formal announcement to this effect, but the Tribunal is advised that the Prosecution is opposed to the motion on the part of the defense for s everance of the case of the defendant Strauch.

THE PRESIDENT: In order that the defense counsel may know just what is still required of him in this trial, a decision would be made immediately, as to whether the motion for severance should be granted. On December 11, 1947, a Board composed of three physicians examined the defendant, Eduard Strauch, and submitting findings, paragraph five of which reads. "It is the opinion of the Board that the defendant is at most times physically and mentally able to understand questions put to him and to reply thereto with the full use of his mental faculties."

Subsequent to Strauch's first appearance in Court, another examination was conducted by two Doctors, Captain Joseph S. Jacobs, and, Lt. William L. Bedwell. They submitted a document on January 17th with an opinion which reads: "That the defendant Edward Strauch, except for brief periods preceding, during and succeeding epileptic seizure, is capable of understanding the proceedings against him, and of taking an adequate part in the direction and presentation of his own defense." in court, and gave every indication of thoroughly understanding the questions and of responding to them, with the exception of some hesitation occasionally due to perhaps physical exhaustion or otherwise of the defendant himself and during the entire time he was on the stand he was under observation by Lt. William L. Bedwell, who on January 20th, made this finding: "It is my opinion that the defendant Herr Eduard Strauch during the periods when I had observed him, including the court sessions in the afternoon of 19 January 1948, and the morning of 20 January 1948, has been mentally competent and so free from mental defect, derangement or disease, as to be able to participate adequately in his own defense." severance, but you should be informed at once and you are now informed that the motion is refused and that you should proceed with the defense, that is to say, in the submission of any document books that you have to submit, trial briefs, and eventually the closing arguments. will sit to hear whatever further documents there are to present, and, the reason we have not decided is that we do not know when the documents will physically be ready for presentation in Court, and we believe it is better to leave the date open rather than to give a date now which later on would have to be changed.

med at least twenty-four hours ahead of the day on which the Tribunal will sit, and on that day the remaining documents can be presented, and if there are any stray witnesses to be heard they will be heard. of the document books, the Tribunal rules, the motions made by defense counsel to the documents presented by the Prosecution during the rebuttal are overruled. The documents will be accepted for whatever probative value the Tribunal gives to them. This ruling in no way effects whatever ruling was made as to individual documents presented during the entire presentation. submitted by all defense counsel, the Tribunal rules that those objections are overruled; the probative value of each document being left to the Tribunal when it studies individually each document. This ruling in no way effects what was stated by the Tribunal as to any individual documents present at the time. The Tribunal will now.....yes, you have something.....

DR. LUMMERT: Dr. Lummert for the defendant Blume. Your Honor, before you adjourn, will you permit me to ask one brief question. The Tribunal will recall that the Prosecution at the beginning of this trial had issued a so-called basic information which the defense counsel also received in translation. This basic information has the heading: "Basic facts about the SS, about the SD, about the Gestapo, the RSHA and the Einsatzgruppen." My question is this, does this basic information have any probative value?

MR. HOCHWALD: If the Tribunal please, we have compiled this basic information to the best of our knowledge and belief, and we are absolutely clear in our minds that something which is not in evidence before the Tribunal has no probative value.

DR. LUMMERT: Your Honor, may I then assume that this basic information will not be considered at all.

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THE PRESIDENT: You may assume that.

DR. LUMMERT: Thank you.

THE PRESIDENT: It is understood that the Tribunal will reconvene on the morning of January 31st, to hear Dr. Aschenauer's final statement in the case. It will also reconvene for one day prior to January 31st upon call. We are unable to state the exact date today, but defense counsel will be notified through the Defense Information Center, and the Prosecution will be notified in an appropriate manner. Therefore, with that understanding the Tribunal will meet upon call. It is now in provisional recess until January 31st.

(The Tribunal adjourned subject to intervening date until 31 January 1948)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. HANS DIETRICH MAENNEL, a witness, took the stand and testified as follows:

JUDGE SPEIGHT: Witness, raise your right hand and repeat after me: pure truth and will withhold and add nothing.

(The witness repeated the oath.)

JUDGE SPEIGHT: You may be seated now.

THE PRESIDENT: Dr. Riediger.

DR. RIEDIGER (Attorney for the defendant Haensch): May I examine the witness, Your Honor?

THE PRESIDENT: Please proceed. BY DR. RIEDIGER (Attorney for the defendant Haensch):

Q Witness, please give your personal data. When and where were you born?

INTERPRETER: I cannot hear the witness speaking.

THE PRESIDENT: You don't have the witness' name on the record, Dr. Riediger. Will you put that on the record? BY DR. RIEDIGER: What is your name?

A Dr. Maennel, Hans Dietrich.

Q Do you know the defendant, Dr. Haensch?

Q When did you have anything to do with him?

Q Can you give us a more exact date?

AAccording to the personnel files, Dr. Haensch was treated by me on the 16th of November, 1941.

Q And how long did this treatment take?

Q Was he during this time with you at regular intervals? Can you get this from any kind of documents?

A The intervals were regular. There was only a longer interval in the treatment between the 10th of December and 14th of January.

Q Did you register the treatment exactly? disposal?

Q Can you hand this over?

Q Did you, yourself, make the entries in this index? can keep up. Who made these entries?

Q How long did this lady work for you?

Q Is she still with you? did you ask this lady about her entries recently? found it. possible that a mistake was made in the entry about the name of the person, or is that completely impossible?

on e patient by the name of Dr. Haensch.

Q And how long were these index cards kept by you?

A I cannot tell you exactly. I still have index cards from the beginning of my practice.

Q And when did you begin your practice? that Dr. Haensch started treatment with you in November, 1941, and remained under treatment with you until February, 1942, in regular intervals?

DR. RIEDIGER: Your Honor, I have no further questions of the witness.

THE PRESIDENT: Yes.

DR. RIEDIGER: May I offer this index card at this point as an exhibit to the Court. I have just been given it. I think the Prosecution -

DR. HORLICK-HOCHWALD: There are of course no objections on the part of the Prosecution.

THE PRESIDENT: Very well.

DR. RIEDIGER: Your Honor, the number of the exhibit will be submitted afterwards. I can not determine that at the moment. I don't know which number it will be.

MR. HOCHWALD: Number five, but I am not sure.

THE PRESIDENT: Well, the number may be supplied later. Mr. Hochwald. BY MR. HOCHWALD: recollection of your own about these treatments of Haensch by you, did you? that the patient was being treated by me.

Q Will you tell the Tribunal now how this record was found? old boxes this particular card was picked out by my secretary.

Q When?

Q Can you tell us who requested your secretary to find this record? I could not make out a medical certificate to the effect that her husband was being treated by me in the year of 1941.

Q When was that, witness, when Frau Haensch came to your place?

Q And what did you do then, afterwards? made out a medical certificate, giving the various data and statement about the treatment. find this record? my secretary.

Q Will you tell me something. You have here an entry on the 14th January, and an entry on the 7th February. Will you be good enough to 2 Feb 1948_M_MSD_3 _2_Gallagher(Lea) explain to the Tribunal what these two entries mean?

was filled. On the 7th February this filling was polished off.

Q What was polished off?

Q On 7 February?

Q Will you please look at the card, Doctor. Do you see a difference in the writing between the entry on 14 January and the entry on 7 February?

A Yes, of course. The entries were made with different ink, and with a different type of handwritings.

Q Who made these entries?

Q Why, if it was done by one person is the writing different? me whether you do not see a difference between the entry on 7th February, and all the other entries during other dates?

A yes, there are differences here. For example, between that of 23 October and the 14th of February, and between that of the 27 October and that of 23 September 1943.

Q That was not my question, witness. Please answer this one very simple question. Do you see between the entry of 7 February 1942 and the other entries in this same record a difference in the handwriting?

DR. HOCHWALD: I have no further questions, our Honor.

THE PRESIDENT: No one has as yet asked you, or told the Tribunal just what is your profession?

MR. HOCHWALD: I am sorry, Your Honor.

THE WITNESS: I am a dentist.

THE PRESIDENT: Yes. I don't know why it was kept such a secret. I would like to see the exhibit, please. (The court is given the exhibit).

Did you want to ask another question, Dr. Riediger.

DR. RIEDIGER: Yes. BY DR. RIEDIGER: the witness once more whether she made that entry, or did you refrain from asking that question, because you recognized this handwriting as that of my assistant?

A No, I didn't. I recognized it as the handwriting of my assistant, and I never paid any more attention to it. to the effect that she actually did write it? these entries, and that she listed the dates of treatments, of those dates.

Q Do you have this affidavit of the witness?

Q Will you please hand it over?

(Mr. Hochwald looks at the paper.)

DR. RIEDIGER: Your Honor, would you please permit me to read this affidavit here. I quote:

MR. HOCHWALD: If the Tribunal please, if Dr. Riediger submits this affidavit, the Prosecution must insist on cross examination of the witness.

THE PRESIDENT: That observation of the Prosecution is approved by the Tribunal.

DR. RIEDIGER: I have no further question to put to the witness, and I ask that the right be reserved to me to offer this affidavit of the witness. I merely have to have it translated.

THE PRESIDENT: In view of the statement made by the Prosecution, Dr. Riediger, that affidavit may not be accepted unless you have the affiant ready here for cross examination.

DR. RIEDIGER: Actually, the defense would saive the calling of this witness -- of this affiant, because in my opinion the testimony of this witness here is so clear that this witness does not seem to be required for the defense.

THE PRESIDENT: You mean then, that you will not present the affidavit.

DR. RIEDIGER: The affidavit is such I don't have to offer it.

THE PRESIDENT: We have told you, Dr. Riediger, that you may not offer this affidavit, that the Tribunal will not accept it unless you have the affiant here who may he cross examined.

DR. RIEDIGER: Well, then,I would have to insist upon the witness being called, and, of course, it is clear to me that this witness can hardly be called because of the time element. The affiant is also in Belin, but since the Prosecution objects to the submission of this affidavit, I have to insist on the appearance of the witness.

MR. HOCHWALD: If the Tribunal please, certainly you will remember that Dr. Riediger asked the assistance of the Tribunal in order to procure a witness who will prove beyond a reasonable doubt that the defendant Haensch was in Berlin and not in the East. If Dr. Riediger after having had three witness on the same subject brings into court with the assistance of the Tribunal on the last day, the fourth witness who is not able to testify on his own, to these facts, and then requests an affidavit of the fifth witness now --

THE PRESIDENT: Well, the affidavit is out, Mr. Hochwald, you need not argue that.

MR. HOCHWALD: --- so I think it is unnecessary to call at this late stage of the trial a fifth witness to the stand.

THE PRESIDENT: Witness, do you know the defendant Haensch?

THE WITNESS: No.

Q Do you recognize him there in the defendants' dock?

Q Do you remember his having come to see you?

Q Do you remember having treated him at all?

man --.

THE INTERPRETER: Your Honor, will you please repeat?

THE PRESIDENT: Is the defendant who is here in the courtroom the same man whose name appears on this exhibit?

THE WITNESS: First of all, I would have to see the defendant to tell that.

Q Well, do you know who Haensch is?

A Who he is?

Q Do you know him? Do you recognize him? that mean to you? Suppose I said that he was Haensch (pointing to Dr. von Stein, German Counsel) would that mean anything to you?

Q Well, then, look in the defendants' dock and see if you can recognize him?

Q Then you have no independent recollection of Haensch at all? of indicating whether Haensch came to you for treatment, or not? Walter Haensch living at Hartmannsweiler weg 19 was treated by me in 1941 and '42.

Q Let's suppose that you didn't have this memorandum, this card. Can you of your own recollection recall that a Walter Haensch had come to you for treatment? about ninety to one-hundred patients a day, and I can not remember such a small case as this one, and I could not recognize the patient, either.

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THE PRESIDENT: I must congratulate you on your big business, ninety to one-hundred patients a day is quite a thriving dental business.

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THE PRESIDENT: Where were these cards kept?

THE WITNESS: In large file boxes.

Q How far back did they go? How far back in dates do these records go? that these old file indexes were still available, because when I came home from the war, I didn't assume that all these old papers were still there, and, only now because of this particular card that I was convinced they were still there.

Q Did you go to get this card yourself?

A No. This card was on my desk, and my assistant told me that this Mrs. Haensch had been to see me, and that at her request she had looked for the card.

Q You didn't see where the cards were kept?

Q And you didn't see attic with these cards yourself before you came down to testify? boxes?

Q You don't remember seeing a box with the indication of 19411942, you don't know what boxes you do have up there, sofar as these records are concerned?

A The boxes are not numbered according to the years. They are only the files and they were just there ih order to start a fire with them.

Q How is it you never started a fire with this one. What was so precious about this one that you didn't start a fire.

Q You yourself have no recollection of this particular card?

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instead of this card? After the war I started colored file cards, but this file card is of a white color, and therefore, it is a file which was used before the war or during the war.

Q Of course, I know that you immediately see that my "chickenscratching" would be different from what appears upon this card, but let's suppose that some one got a card similar to this, and wrote various itmes on the card, and wrinkled it up, and soiled it a little bit, and put it on your desk, you would have no way of knowing yourself whether it was the original card, or not? entries are concerned, for example, the accounts, these are entries made by the medical office which made up the bills, who listed the numbers, it is impossible that any human being can falsify the making up of these numbers, or fabricate to just to envent them.

Q Was this hill paid for? ting office, or clearing office, and as the files show, the bills were then paid to this clearing office.

Q Was the treatment for the 7th of February paid for?

A I assume so. We had ended the treatment, but I can not say at the moment when the final bill was paid.

Q Why was it that the treatment for February 7th was not paid?

A That is no treatment. That is merely a polishing off of the filling, which is just additional.

Q You do that for nothing?

items as work done. Let me put it in another way. You have here various items of work done?

Q Then you draw a line and you total the amount to be paid? one day.

Q When was this bill paid for, please? I am referring now to the first group of items on the exhibits. in cash. ing line?

A This entry of a bill is made up in one day. In other words, the various individual amounts are filled in and the totaling line is made on the same day on which the bill goes out to the patient.

Q Why did the bill go out before the job was completed? file the last day of treatment was the 7th of February. below the totalling line? February comes before April. Why then wouldn't February 7th appear before April on that card? the 23rd of April, and below the bill she made the totalling line. ruary 7th wasn't written after that card was made up, if it doesn't obviously show an addition to the card. Now, just tell us frankly if that isn't the impression you gained from it?

Q You see that February 7 is in different ink?

Q You see it is a different handwriting? There is no doubt about it as far as that is concerned.

Q Now you say it is the same handwriting. It doesn't appear to be. Why are you so certain it is the same handwriting? fied them or forged them in any manner.

Q Well, that is a conclusion which I am asking you now. Leaving aside the business of fabrication, leaving aside any notions about fabrication, doesn't it appear different to you there?

A No. There is a difference to be sure, but I see this difference between the other entries too.

Q Did you see her handwriting in different forms?

A You mean the handwriting of the assistant? Oh, I think I do know it. always uniform, the same? writing. Once she writes straight, once across, once the other way. It is somewhat unbalanced. Sometimes the entries were quickly made, and those which show the bills were neatly put down, and there the handwriting is more distinct again.

Q Now, Doctor, just please consider this question. On February 7th, according to that card, you had the patient in your office and did something to his teeth, is that right?

Q 23rd. Why wouldn't the item of February 7th be above the item of the sending out of the bill since it preceded it in date?

Q Very well, let's have the exhibit. (The exhibit was handed back to the President). Over what period of time in all did you have Haensch as a dental patient?

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1943.

Q Does that sound reasonable to you?

A Yes, absolutely. I can even find an explanation for what was wrong with the tooth. did you polish the patient's teeth? or polished off.

Q You mean in two years he only had one filling?

A May I see the card once more? (The exhibit was handed back to the witness). The treatment time was from the 16th of November until the 7th of May, '43, and the same tooth was always concerned. In the time in between, on the 23rd and 27th of October, a tooth was pulled from the patient.

Q when was that? treated by you in any way, not the extracted one, the one that was filled? and treated once more.

Q Let me have the copy. (The exhibit was handed back to the President.) Was the treatment in 1943 similar to the one that took place in the early part of 1942?

Q Just tell me what you did in January '42 to this tooth, 14th of January '42?

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pains, because the tooth was opened up, and then at regular intervals it received temporary fillings. Then finally the root was treated and finally I made one filling which was to last.

Q All right, that was the 14th of January, 1942. Now, what did you do in March of 1943?

A On the 11th of March '43 the patient must have come to me with the same opened up tooth.

Q And did you treat it the same way?

Q And subsequently, that is in May, 1943; he received two fillings? 14 January, 1942?

Q Now, did you polish teeth after filling?

A I advised this to the patient. It isn't obligatory, but the patients have it done so that the filling will last longer.

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Q Why didn't you polish the fillings, the two fillings which you gave the patient in May of 1943? ment did not come. fillings; do you regard that as important?

A Well, it isn't absolutely necessary, but in order to keep the filling in place it is advisable.

Q But you didn't polish these teeth in May, did you?

Q And you didn't regard it as of too much importance, desirable, but not too important? when you had only one filling? when the patient appeared. It may be that the patient appeared on his own and at the same time the examination and the polishing off were done.

Q Is the polishing considered part of the treatment? treatment if it was part of the regular treatment?

Q Why didn't she do it that way in May?

Q Well, if you consider it part of the treatment, why didn't you see that the polishing was had? him. in February?

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one.

Q What did you treat the patient for in November, 1941?

A Pardon me, I can't tell from memory. (The Exhibit was handed back to the witness). In November, is that right?

Q You opened the tooth?

Q What do you mean by opening a tooth? some gas and after half an hour the patient becomes free of pain.

Q All right, and what did you do in the next item? That is, you say he is free of pain. Did he say that he was free of pain?

A That is a matter of course. That goes without saying. On the 19th of November he got his first filling.

Q All right, now which tooth was that, the first filling?

Q Then the next item, what does it say?

Q Same tooth?

Q I thought you had filled it before?

A Oh, no, that was too early. The patient got three antiseptic temporary fillings. That was between the time of the 19th of November and the 3rd of December. Then according to the file the tooth was all right, it was clean, and on the 14th of December he got the filling in the root of the tooth, and on the 14th of January the treatment was concluded.

Q Always the same tooth?

THE PRESIDENT: Any further questions?

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REDIRECT EXAMINATION(Continued) BY DR. RIEDIGER: could you then tell whether you made this treatment at that time on his teeth?

DR. RIEDIGER: Your Honor, I ask that it be permitted that the witness may look at the teeth of the defendant.

THE PRESIDENT: He can certainly look at the tooth of the defendant providing he can tell us by looking at the teeth when he treated the teeth. If he has the date on the tooth we will allow him to read that date and inform the Tribunal.

DR. RIEDIGER: Your Honor, but first of all it has to be clarified since the witness testified before that he cannot remember the defendant, but that the defendant was actually treated by the witness. Of course the question of time cannot be determined on examining the teeth, but considering the testimony before, that he personally does not know the defendant, it seems necessary to me.

THE PRESIDENT: Well, Dr. Riediger, he does not know the defendant, does not remember him, does not recollect him, couldn't recognize him. Now you are submitting to the Tribunal that by looking at a tooth he can tell whether it is his work or not, is that what we understand?

DR. RIEDIGER: I could imagine that every dentist has his own special technique and that he can always recognize whether he did a particular piece of work. At least then we could clarify whether the witness has treated the defendant and furthermore the witness can determine whether the treatment, the dental treatment as is shown by the file was actually carried out.

THE PRESIDENT: Dr. Riediger, we will allow the examination, and we will let it take place at fifteen minutes after eleven, quarter after eleven, and it will be in this antechamber so that the witness can be in there, and we will make arrangements with the marshal about having the defendant there.

Both counsel can be present, of course.

DR. RIEDIGER: Your Honors, with regard to the assistant of the witness-

MR. HORLICK-HOCHWALD: Before Riediger makes a motion I would like to ask the witness two questions.

THE PRESIDENT: Certainly, of course. BY MR. HORLICK-HOCHWALD:

Q Witness, were you present when your assistant spoke to Mr. Haensch? box? tant nobody else had this record in his hand or his possession before you would see it on your desk?

A No. The card was in my folder on the desk and Frau Jauer handed it to me together with other important papers which I had to take care of. handed to you?

Q Wherefrom do you know that? anyone would tamper with it.

Q You presume that?

THE PRESIDENT: When we reconvene the witness will be escorted into the antechamber and then the defendant will be taken in. During the recess there will be no communication between attorney and defendant involved and the witness. The Tribunal will now be in recess for fifteen minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: For the purposes of the dental examination, which is to be made of the defendant involved, the Tribunal will retire to the antechamber; and there will be in attendance Counsel from both sides; the reporters, German and English speaking, will be in the antechamber to take the notes; the interpreters will also be in attendance. the back row into the antechamber. interpreters. examination, and then, of course, we will take up here in the same court room again.

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COURT NO. II, CASE NO. IX.

THE PRESIDENT: The reporters are set? The witness will not be brought in. Please sit down there, Witness. Now, Witness, in view of the fact that you have stated that you can recognize your own dental work, we will submit several individuals to you and you tell us which one or ones carry dental work performed by you. Marshal, please take the first man silting there. The next defendant. What was his reply to that?

THE WITNESS: No, that is impossible. No again.

THE PRESIDENT: Just a minute. Sit down, Witness. Are you examining the defendant only to determine whether a particular tooth has been treated?

THE WITNESS: Yes.

THE PRESIDENT: Well, it is very obvious that if you are going to look only for that one tooth, which the card indicates you have treated, that this test is of no avail because all you will need to do is to find that tooth which corresponds to the tooth on the card and say that is your work.

THE WITNESS: Yes.

THE PRESIDENT: No, no, I don't think that he got the point. Which tooth are you looking for?

THE WITNESS: I am looking for the left upper 7, the lower left 5. The left upper 7 has a bridge, therefore it is not possible. On the second the lower left 5 was still there.

THE PRESIDENT: So that if the man who stands before you has no obvious repair work to the left upper 7 or the lower left 5, you immediately discard him as having been a patient of yours?

THE WITNESS: Yes.

THE PRESIDENT: Now, the test, therefore, is of no avail because you are merely looking for the left upper 7 and the lower left 5, and not for your actual work?

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THE WITNESS: Very well.

THE PRESIDENT: Well, is that so?

THE WITNESS: Yes, that is correct.

THE PRESIDENT: Well, then the left upper 7 has a bridge, therefore, it is not possible that it is your work.

(Off the record discussion.)

THE PRESIDENT: For the record. In view of the fact that the prosecution does not deny that the teeth which the witness is looking for are actually teeth which have been treated, no probative value will be served in the continuation of this test. It was assumed by the Tribunal when the test was begun that the witness would examine generally the mouths of the six defendants who are here, and that he would be able to determine or not determine merely by looking at the general dental work in the mouth of the particular person he was examining whether this work was his or not. The witness now states that he does not look generally into the subject's mouth to locate his dental work, but he looks only to see whether the left upper 7 and the lower left 5 were in any way treated. Since the prosecution does not deny that these two teeth may have been treated, the test is of no probative value whatsoever, and on the contrary might convey an impression or conclusion which does not result from the actual physical facts of the test. The defendants will not be returned to the court room. The witness will be returned to the witness box. The reporters and interpreters will return.

THE PRESIDENT: Does Prosecution counsel, or counsel for the defendant Haensch desire to address any further questions to the witness?

MR. HOCHWALD: I have no further questions, Your Honor.

THE PRESIDENT: We should now determine, Dr. Hochwald, whether the other witness referred to is to be called or not. It must be apparent that in view of this witnesses statement that he doesnot remember the defendant, does not recognize the defendant, has no independent recollection of any work done to the defendant, and his testimony is based entirely on this care; that the authenticity of this card is a matter of moment. with what serenity this witness who made up the card may be brought to Nurnberg.

DR. HOCHWALD: If the Tribunal please, I only want to repeat shortly what I have already said. Two witnesses for who defense were heard as to the date of Haensch's presence in B erlin.

THE PRESIDENT: You are opposed to bringing in the witness?

DR. HOCHWALD: I am opposed to bringing in the witness and I do not recognize the authenticity of the charge.

THE PRESIDENT: Dr. Riediger, it is only fair that you be aware of what the Tribunal just stated that this witnesses testimony being based entirely and exclusively upon this card, can only have the probative value which must be obvious to anyone, so it is for you to determine whether you want this matter to rest as it is orwhether you believe it is necessary to support the alleged authenticity of this card.

DR. RIEDIGER: May it please the Tribunal, I have request for the defense that this witness be called to Nurnberg. The Prosecution objected to the introduction of the affidavit, but the witness is very important.

DR. HOCHWALD: Does the affidavit contain the name and address of this witness?

DR. RIEDIGER: It does. Berlin-Zehlendorf/Teltowerdamm. It is Mrs. Yauer, Hertha Yauer nee Schoch.

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THE PRESIDENT: In view of the fact we have announced several times throughout the trial that every opportunity will be given the defense to obtain and submit testimony and evidence, even this ususual request will be allowed. It is to be regretted that all this wasn't done in ample time before we had reached this point in the trial, but the Tribunal is not going to complain or criticize anyone. We are interested in ascertaining the truth in every given instance. The affidavit will provisionally be held in abeyance until the efforts have been made to obtain the witness. The affidavit may or may not be introduced in evidence with the opportunity given to the Prosecution to cross-examine. The Tribunal instructs the Marshal, or rather the Secretary General, to immediately notify the Defense Center to contact this witness and have the witness brought forthwith to Nurnberg. The program of this week will continue as previously announced, and when this witness arrives opportunity will be found to hear her.

DR. HOCHWALD: If the Tribunal please, in view of the fact that the Prosecution does not submit that the chart are correct. I would ask the Tribunal to have the chat given to the disposal of the Prosecution, so that tin Prosecution can have a handwriting expert look over the chart and we respectfully request that the handwriting expert be heard at the same time as the witness.

THE PRESIDENT: That request is a reasonable one, we only request from both counsel the necessity for speed in all of this so that there will be no unnecessary delay occasioned by this very late evidence. The card will now be placed in the custody of the Secretary General, and the Prosecution will have access to it for the purpose of having an expert witness examine the exhibit, in order to testify with regard to the handwriting appearing upon the exhibit.

DR. HOCHWALD: Thank you very much.

THE PRESIDENT: The present witness is instructed that he must not correspond, communicate or converse with the witness who is to be called.

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The witness who is claimed to have entered the various items on the card in question. You understand that, witness, that you are not to talk?

THE WITNESS: Yes.

THE PRESIDENT: Very well, the witness will be excused.

Dr. Gick, you have filed a motion for an opportunity to crossexamine the witness who had submitted an affi*avit with regard to the defendant Strauch's mental condition. We had that witness in Court all morning, but were unable to locate you. We have now instructed that witness to be here at 3:30. Will you please be here at that time, so that this matter can be disposed of?

DR. GICK: Yes, Your Honor. This is an American physician, is it?

THE PRESIDENT: That is correct.

Who is now ready with the document books?

DR. GAWLIK: (for the defendant Naumann) Your Honor, I should like to present Document Book Naumann No. II and III and No. IV, and I would like to quote from these books.

THE PRESIDENT: Proceed.

DR. GAWLIK: I submit first from Document Book III Naumann Documents 13 to 17, in order to prove the extension of Partisan activity in the area where Einsatzgruppe B was active when Naumann was Chief of the Einsatzgruppe B. I want to prove that the fighting in the Partisan activity was the main activity of Einsatz Group B, especially the Group Staff, and that this took up all of Naumann's time. This confirms Naumann's statements that he did not take part in any executions, and he at no time had a hand in executions, and at the same time that Naumann's time was completely taken up in combatting Partisans. I now submit Document 13, which receives Exhibit No. 8. It is on pages 15 to 16 of Document Book III. Here is the report of the occupied Eastern territories. I draw the attention of the Tribunal to the statements made in this document that the Partisans' activity in this territory increased considerably and that large areas were infested by armed bands, and that Partisan activity became so extensive that whole villages were forced to supply the Partisans with necessary food stuffs.

that Naumann was active in combatting the Terrorists.

I now submit Document 14, which receives Exhibit No. 9. It is on page 17 to 18 of the Document Book. From this document also the extent of Partisan activity and the difficulties in combatting them. The same applies to Document 15, Page 19, Doc. Book III , which will receive Exhibit No. 10.

I now submit Document 16 as Exhibit No. 11, page 20 to 21 of the Document Book; and Document Naumann 17, Exhibit 12, page 22. armed bands becomes evident, and also the difficulty of combatting these bands. It is evident from this document that the bands were heavily armed. 20. With these documents I intend to prove the other tasks and activities of Einsatzgroup B, especially of the Group Staff, and especially of Naumann himself. These also were assignments which Naumann had to deal with personally as Chief of Einsatzgroup-B, which took up most of his time and could not be left to other members.

Next I submit Document 18 as Exhibit No. 13, which is on pages 23 to 27 of the Document Book. Here is an extensive report on the reorganization of the educational system in the territory of Einsatzgroup-B. Also from this document the difficulties become evident in carrying out these measures.

DR. GAWLIK: Now, I submit Nauman Document No. 19, Exhibit Nauman No. 14, page 28 to 31 of the Document Book. This is an extensive report concerning the introduction of the new agricultural statute, terminating the system of communal management and the re-intorudction of private owenership.

In this connection, I also submit Nauman Document No. 20, which will receive Exhibit No. 15, on page 32 to 39 of the Document Book. Here is an extensive report which goes into detail about the so-called tax detail system, the regulation of taxes and finances within the Einsatzgruppe B, the foundation of new bank institutes. From this report, it also becomes evident that the activity constituted great difficulties. From the bulk of reports received, concerning all spheres, I selected these three reports and introduce them as evidence. There is a bulk of such documents and reports which we could have submitted in order to give an extensive and exhaustive impression of Nauman's activity. These three reports, which I have submitted are typical reports of the three particular spheres of assignments. From these reports Nauman's activities become evidents in the carrying out of these measures, Nauman's work was absolutely necessary. He had to deal personally with these tasks, he personally,just as much as in anti-partisan operations, but his collaboration in the carrying out of the Hitler Order, which was issued before Naumann's time of activity was not necessary. Therefore, Nauman's statements should be credible that he did not take part in carrying out these executions, and he did not even collaborate.

The further documents which I submit concern Nauman's attitude and behavior in Holland. These documents also are to support Nauman's statements and they are to support his credibility to the effect that he did not take part in executions. They have a second purpose: If the Tribunal should hold the opinion that Nauman collaborated and participated in executions. These further documents are supposed to prove that Nauman really acted on the basis of Hitler's Order which he 2 Feb 1948_M_MSD_11_2_Arminger (Hildesheimer) had to carry out as he was a soldier himself.

But if anyone believes that he did participate, this shows that he would not have carried out these measures, if this order had not existed which he rejected instinctively. This becomes evident from Naumann's behavior in Holland, where such an order was not given. And this material has a third purpose, namely to refute the Prosecution's rebuttal Document 236. I want to draw the special attention of the Tribunal to the fact that these statements were made by official Dutch agencies, namely, the Dutch Red Cross. These are passages from Naumann Document Book II and they are contained in Document No. 9, which is Exhibit Nauman No. 16. It is page 9 to 10, and Document Nauman No. 10, which will receive Exhibit No. Nauman No. 17, it is on page 11 to 12. These two agents and representatives of the Dutch Red Cross have furthermore also made out affidavits contained in Document Book IV. It is Nauman No. 21, offered as Exhibit Nauman No. 18, pages 40 to 41 of Document Book No. IV, and Naumann No. 22, which will receive now Exhibit No, 19, pages 42 to 43.

THE PRESIDENT: Just a moment, I don't have IV, Dr. Gawlik.

(To the Secretary General) Do you have a copy of IV?

MR. NAB: No, I haven't, Your Honor.

THE PRESIDENT: Are you certain that it was translated and mimeographed?

DR. GAWLIK: I have not received the translation, Your Honor, but I assumed that the translation had been submitted by this morning to the Tribunal.

THE PRESIDENT: How many documents are there in there, Dr. Gawlik?

DR. GAWLIK: Document Book IV has five affidavits. The document book itself contains seven pages.

MR. HORLICK-HOCHWAL: If the Tribunal please, inasmuch as it is obvious that Mr. Ferencz has not received the document book, and I do not know any details about whether he wants me to make objections against some of these documents, it would possibly be better if Dr.

Gawlik could postpone his presentation of the document book until after the mid-day recess. I shall try to contact Mr. Ferencz. If Dr. Gawlik will or can furnish me with a German copy. I shall take these documents up with Mr. Ferenz and then I can tell the Tribunal whether we are objecting against these documents.

THE PRESIDENT: You mean, Document Book IV?

MR. HORLICK-HOCHWALD: This Document Book which does not exist, Document Book No. IV.

THE PRESIDENT: Would that be agreeable to you, Dr. Gawlik?

DR. GAWLIK: Yes, Your Honor. I agree to this arrangement.

THE PRESIDENT: Is some other defense counsel ready?

DR. GAWLIK: I still have to submit my document books for Seibert.

THE PRESIDENT: Yes, yes.

DR. GAWLIK (Attorney for the Defendant Seibert): May I first ask whether Document Book Seibert No. II and III have been submitted to the Tribunal in English?

MR. NAB: Yes.

THE PRESIDENT: Would you please get mine?

You may proceed, Dr. Gawlik.

DR. GAWLIK: First I submit documents which are to prove the activity of Seibert in the staff of Einsatzgruppe D. There is first of all Document Seibert No. 30. In volume II, pages 41 to 42, and will receive Exhibit No. 27. This is an affidavit of Dr. Roessner. From this document the assignments and activities of Seibert in the Group Staff become evident, especially the fact that Seibert during his assignment in Einsatzgruppe D was only the Chief of Department III and had to make out reports about the domestic spheres. Furthermore, in order to prove that Seibert was not the deputy of Ohlendorf, this has been submitted. This becomes evident from paragraph 2 of the affidavit and it cannot be deduced from the facts that Seibert 2 Feb 1948_M_MSD_11_4_Arminger (Hildesheimer) signed reports with I.V. -- that is "for". This does not prove in fact that he was the deputy of Ohlendorf for the entire group.

Roessner is acquainted with the conditions in the agencies which concerned Ohlendorf and he knows that Ohlendorf made a special arrangement, as he never appointed a deputy for all the tasks and the departmental deputies had to sign "for" on matters concerning the department they were in charge of during Ohlendorf's absence.

I furthermore now submit Seibert Document No. 28, which is in Volume II. It will receive Exhibit No. 28. It is in Document Book II, page 39. It is the affidavit of Beckhof, a personnel official in Office III during the war. He also says that Seibert worked in the Staff as the Departmental Chief of Office III and only in this capacity and that he was not the Deputy Chief of Einsatzgruppe D.

Now I submit and offer Document Seibert No. 29, which will receive Exhibit No. 29 in Volume II, page 40. Here we have an affidavit of a general, a former general, von Halder concerning the signatures of staff functionaries. This document has been submitted in order to prove the significance of a signature on a report within the armed forces. From the affidavit of this man von Halder, it becomes evident that responsibility was assumed for the report when signing it only inasfar as the compilation of reports was concerned, that it had been done in an orderly manner from the original reports, but it does not necessarily mean that the events actually occurred and that the responsibility is actually assumed for the carrying out of the operations.

I now submit as Document Seibert No. 36, Volume IV, Exhibit 30, which is on page 51. It is an affidavit -

THE PRESIDENT: Just a moment, Dr. GAWLIK. Volume IV, Mr. Nab, is it available?

MR. NAB: IV?

THE PRESIDENT: IV, Seibert No. IV.

MR. NAB: II and III are all.

DR. GAWLIK: We will come to it at a later point. to the SD organization, and I submit in this connection Seibert Documents No. 27, Volume II, which will now receive Exhibit No. 30. It is on page 38 of Volume II. Document Seibert No. 33 from Volume III, pages 45 and 46, which I shall give Exhibit No. 31 and Document Seibert No. 34 from Volume III, which will receive Exhibit No. 32, Volume III, pages 47 to 48. From these documents. Exhibits 30 and 31, the activity of Seibert becomes evident in Office III and it becomes especially evident from Document 27, exibit 30 that this activity was in no way secret or camouflaged. Document Seibert No. 34, and affidavit by Dr. Ehlich with a sketch which has been included. The correctness of this sketch has been certified to in the affidavit under oath Dr. Ehlich. This sketch gives us a picture of the difference between the SD Dews Information Service and the SS Special Formation SD, two personnel organizations Which are easily confused.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution objects against this document. The question before the Tribunal is only whether Seibert was a member of the SD or not. What the SD is and which formations of the SD belong to the criminal organization SD was decided by the International Military Tribunal. The offering of evidence as to the question of which one of the formations of the SD might have been criminal and which were not is immaterial in this trial.

THE PRESIDENT: Dr. Gawlik, you know that the only tests to be be made in connection with membership in the SD are: Was the defendant actually a member? Was he a voluntary member, and being a member, was he aware of the criminal activities of that organization? Now, if this document goes to anyone of these three criteria, then it would be relevant, but if it merely goes to argue that the SD or some part of it was not criminal, then you run counter to what is already res adjudicata.

DR. GAWLIK: Your Honor, this concerns the third count of the indictment whether he was aware of the criminal activities of the SD or whether he knew about such an activity.

THE PRESIDENT: Yes, if it has to do with whether he knew, then it would be relevant.

MR. HORLICK-HOCHWALD: If the Tribunal please, I understood the explanation which Dr. Galik gave to the document completely different. He said there are two different types of SD which are different and he wants to show that he was in the type which didn't do a thing, so the explanation of Dr. Gawlik to the document certainly is a different one from the reason why he wants to submit it, so either the document may be ruled out or the explanation may be ruled out, but both cannot stand.

DR. GAWLIK: I wanted to reply the following to this, Your Honor, if the prosecutor would have let me finish, when he would have understood that there is no difference and that my statements are not by any means illogical. What I said here was only the introduction to my statements which was merely the basis for what I was about to say.

THE PRESIDENT: Mr. Hochwald, suppose that at the end you make your objection to whatever documents you object to?

MR. HORLICK-HOCHWALD: If the Tribunal would kindly rule just now on this document, that the document is admitted in evidence only as to the criminal knowledge of criminal activities, the prosecution will certainly be satisfied with this order.

DR. GAWLIK: Unfortunately I am not getting the opportunity to finish my statements, because the document is also relevant concerning the second point which I want to prove concerning the membership of the defendant Seibert in the SS. With this I want to prove that Seibert was not a member of that part of the SS which was described as criminal by the IMT, but he was merely a member of the so-called SS formation SD and in order to clarify this particular point, this special formation, this organization, the SD, was not an organization actually and it did not fulfill all the conditions which would make it an organization in the sense of the statutes and in order to prove to the Tribunal what this special SS formation called "SD" was, that is the second point I wanted to prove with this sketch.

MR. HORLICK-HOCHWALD: If the Tribunal please, the second reason, of course, is in the same way objectionable as the first reason of Dr. Gawlik. Also this second reason that Dr. Gawlik gives attacks the decision of the International Military Tribunal. Unless I am very much mistaken, I do not think that among those members of the SS which were not members of the criminal organization, the memb ers of the SS formation SD are named in the judgment; in the judgment those formations of the SS which are not to be considered criminal are emphasized. Among those formations the Special Formation SD certainly is not mentioned. I can only repeat my suggestion. If the Tribunal would kindly rule that this document can be admitted only insofar as it is offered to disprove knowledge of criminal activities and nothing else.

DR. GAWLIK: May I say something, Your Honor? It is inaccurate the way in which the prosecutor put it, that only those formations are named in the IMT which are not considered criminal but also those formations are named in the IMT judgment which are considered criminal, because it mentions the general SS, the Waffen SS, or the SS Death Head organizations, the police organizations, as far as the members were members of the SS as well. This special SS formation SD is not mentioned and I should like to point out here the following: This was not done because the IMT did not know about this special SS formation SD. This special SS formation SD was discussed at great length and described in numerous documents, before commissions and before the Tribunal. The Witness Hoepner was heard concerning this. The records proving it can be read, and, as far as I remember, the Witness Hoepn er was examined about the 1 st of august, 1946, by the IMT on the witness stand. If the Tribunal, that is, the IMT, had wanted to declare this SS formation SD organization as criminal, they would have made special mention of the SD when listing those SS formations considered criminal.

MR. HORLICK-HOCHWALD: If the Tribunal please, this is entirely argument. If Dr. Gawlik is in a position to prove that in the decision of the International Military Tribunal, the Special Formation SD was not found criminal, he may do so. I do not think that this exhibit as such can prove anything which is found by the International Military Tribunal. The opinion of the judgment speaks for itself. No additional proof can be offered on the part of the Defense Counsel.

DR, GAWLIK: Of course, I will comment on this in detail in my final plea, but I haven't got this opportunity to make these statements in my final arguments concerning this and referring to this document, if this document was not admitted in evidence. I know, of course, these are arguments, but I have to argue now in order to get this document admitted. If the prosecutor -

THE PRESIDENT: In view of the feet that the IMT did indicate some exceptions to the SS formations, certainly counsel should be allowed to show that his client cones within some of those exceptions. At any rate, we will admit the document for the probative value which will be ascertained at a later date.

DR. GAWLIK: Concerning the case in chief, I want to point out the second point which I shall explain. The difference between the SS formation SD and SD Information Service as becomes evident from the chart here the letter was composed of personnel from the Criminal Police , the State Police and the SD, but the Tribunal can see from this chart that only a small part of the SD Information Service Office VI were members of the SS Special Formation SD. Concerning the political attitude we come to the next point, concerning the political attitude and character of Seibert, now I submit Document Seibert 31, page 43 in Document Book II, Exhibit 34, Document Seibert No. 32 in Document Book II, page 44, which will now receive Exhibit No. 35-- I am sorry, the preceding document was 33 and this one is 34, and Document Seibert No. 35, as Exhibit 35 from Volume III, pages 49 through 50.

I draw the special attention of the Tribunal to Documen t Seibert No. 35, Exhibit No. 35, from which Seibert's political attitude and especially his attitude towards the Jewish problem becomes evident. I would like to submit the remainder of the documents which I still have in the afternoon.

THE PRESIDENT: Will other counsel be ready to continue with the presentation of document books?

Mr. Hochwald?

MR. HORLICK-HOCHWALD: If the Tribunal please, I have three or four documents for my colleagues and myself to submit. It will only take five minutes.

THE PRESIDENT: Very well. The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours.)

AFTERNOON SESSION:

THE HARSHAL: The Tribunal is again in session.

DR. DURCAMOLZ: (For Dr. Mayer and for Dr. Braune.) the session so that he can discuss something in the transcript with his attorney, and I ask that he be brought to Room 57 at once.

THE PRESIDENT: The defendant Braune will be excused immediately and will be taken to Room 57, so that he may consult with his attorney

A. Thank you,

THE PRESIDENT: You are welcome.

DR. GAWLIK: Your Honor, I have been informed that Document Book IV for Naumann and Document Book III for Siebert are now available for the Tribunal. May I now continue?

THE PRESIDENT: Please do. Will you start with Naumann?

DR. GAWLIK: No, I will start with Seibert, because I only have one more document for Seibert.

THE PRESIDENT: Which book is that?

DR. GAWLIK: Document Book IV, page 51, Your Honor.

THE PRESIDENT: All right proceed, please.

DR. GAWLIK: From Document Book IV for Seibert I submit Document No. 36. This receives the Exhibit No. 36. It is in Document Book IV, Seibert, Page 51. Affidavit of Woehler, and I submit it to you as proof that Seibert was not the permanent deputy of the Einsatzgroup Chief; and secondly that the work of Seibert did not include any type of executive measures. This concludes my presentation of documents for Seibert.

I now continue the presentation of documents for Naumann. I stopped with the documents which concerned Naumann's conduct in Holland. The subject matter of these documents have already been listed by me this morning. These documents follow document No. 6. Exhibit No. 5, which is the affidavit of Lily Vander Schalk, who as it is said in her affidavit, was able to establish the conflict in the conscience of Naumann between the choice of his ideals and international decency, as she expressed it.

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For this purpose and in order to direct your attention to this point I submit from Document Book Naumann II Document No. 9 as Exhibit No. 16, and Naumann Document No. 10 as Exhibit No. 17. These are pages 9 and 10, and pages 11 to 12 from Volume II. These are statements of official Dutch agencies, namely the Dutch Red Cross; and certain documents from Volume Naumann IV also belong to this, namely document 21, pages 40 to 41, in Volume IV, and Naumann Document 22, which is on pages 42 to 43. These four documents show that first of all Naumann improved the hospital installations in a camp, that he prevented misuses, and that he was able to got the release of the Dutch people who had been held as hostages. These documents also show which is to receive special consideration here, that in these camps in as far as the hostages were concerned, Naumann was not competent for this. Naumann, therefore, did everything that was in his power and more than what he did he could not do considering his position 13.

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I submit this as Exhibit No. 20. This document shows that Naumann was able to get the release of a dutchman who had been arrested because he favored Jews. This particular document shows Naumann's attitude toward the Jewish question. 21. This is the affidavit of the dutchman, Dr. K. J. Frederiks, the former Secretary General in the Ministry of the Interior. This document shows that Naumann, first of all, saved four Dutchmen who had been sentenced to death. Secondly, that he prevented the conviction of six Dutch mayors, and thirdly, that he got several Dutch mayors released from custody. This document is the proof for Naumann's attitude towards the population in a German occupied territory.

From Document Book IV I submit Naumann documents 23 to 25. I submit Naumann Document 23, pages 44 to 45 as Exhibit No. 22. Document 25 on page 47, I submit as Exhibit No. 23. These are affidavits of Lagos and Woelk. Both confirm the statements of the Dutch Led Cross about Naumann's resistance against all measures of oppression. It is furthermore shown how Naumann, by going beyond his competence and his power, intervened against the abuses in the camps, and that furthermore as far as he saw any injustices during his inspection trips he immediately intervened against them. Exhibit 24. This is the affidavit of Rauter, which confirms the statement about Naumann's intervention against the abuse in the camps. Especially Naumann saw to it that the camp commandant was arrested, indicted and convicted. That concludes my presentation for Naumann.

THE PRESIDENT: Very well, who is next?

DR. BELZER: (For the defendant Graf) Your Honor, one of the presiding judges of these trials has said once it was the right of defense counsel to forgot something once, and I made use of this right when I inspected the transcript of 15 January this year, and I established that during my presentation I forgot to submit Document Graf No. 20.

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Therefore, the exhibit number 18 which was supposed to be given to this was left open. I would like to use this opportunity to make up for this, and herewith declare that I have now submitted Graf Document 20 as Exhibit No. 18.

THE PRESIDENT: Very well.

DR. LUMMERT (For the defendant Blume): Your Honor, I ask that I may be permitted to offer the four remaining documents for the defendant Blume. Those are Blume documents 31 to 34. The Prosecution has received these documents last Thursday in English and in German. These documents are to be attached to Volume II for Blume, and are to be attached to this volume, and I assume they are available to the Tribunal. The Index on page 3, of Document Book II. The first document is Document 31, the affidavit of the Witness Kunz. It is on page 74 of Document Book II. This affidavit contains two examples of the excellent leadership of the defendant Blume as police officer in Greece. Kunz at the time belonged to the agency of the Police Headquarters of General Shimana. Shimana was superior to the defendant Blume. On page 74 an example is listed, according to which the defendant Blume immediately took measures against a camp leader, Radonski, when the leader misbehaved himself, and that Blume appointed a certain man by the name of Fischer as successor for Radonski, who was good natured and unpretentious and the opposite of his predecessor Radonski. On page 75 at the bottom and the top of page 76, is another example. Here Blume complains General Shimana about a certain Dr. Begus, when he carried out seizures and arrests to which he was not entitled according to Blume's idea. was present when Kaltenbrunner, the Chief of the RSH A, represented General Shimana that he and Blume had practiced Greece policy, but not German policy. This, I think, is typical of the correct condition of defendant Blume in Greece.

The nex document, No. 32, is an affidavit of the witness Pinder, and this affidavit supplements the preceeding one in which the affiant Pinder know some details about the cases of Radonski and Dr. Begus; even better than the affiant Kunz.

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Therefore, I offer this document.

The next Document, No. 33 -

THE PRESIDENT: Are you giving the exhibit numbers?

DR. LUMMERT: Your Honor, the exhibit numbers are again the same as the document numbers.

THE PRESIDENT: Very well. That is a good system.

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The next document No. 33 is an affidavit of the witness Haefner. It is on Page 60 of Document Book II. When I examined the defendant Blume on the witnessstand, that was on redirect examination, the defendant Blume mentioned that he was once put in a position to be obliged to carry out the so-called Fuehrer Order, but that he had succeeded in preventing the carrying out because the circumstances at the time were particularly favorable, so that he was able to prevent the carrying out of the order. It was the question of three English sergeant who had been taken prisoner in Greece. They had conducted end been active in the partisan combat. I don't think I have to read the affidavit. The details are evident on Pages 80 and 81.

As the last document No. 34 I offer an affidavit of the defendant Blume himself. Here he makes some supplementary remarks about the kommando case about which the affiant Haefner has reported in Document 33. This concludes my presentation of Documents. for several pages in the transcript. I merely wanted to make sure that I will have time for this before the final pleas are concluded.

THE PRESIDENT: You will have that time.

DR. LUMMERT: Thank you.

DR. ULMER: Dr. Ulmer for Six. Supplements A and B. As the first document I would like to submit Document No. 68, IV A, an affidavit of Dr. Emil Augsburg, of the 25th of January, 1948. He is a former research Chief assistant.

THE PRESIDENT: Proceed please.

DR. ULMER: I would like to ask that this document be admitted with the Exhibit No. 48. Because of the submission of Document Book III before Document Book II a mistake arose in the numbering of exhibits and the exhibit number 48 regained open. I don't know whether the Secretary General has get this correct now.

cerned with the, subject matter A which concerns the advance Kommando Moscow. This affidavit by Augsburg is a clarification to the various statements of the date made by the witness Vetter who was heard recently in cross-examination about the return of Dr. Six from Smolensk.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution objects against the submission of this affidavit and of all affidavits which are intended to impeach the witness Vetter. The Tribunal certainly will recall that the witness Vetter is a witness of the defense and not of the prosecution. The prosecution has only used its right to cross-examine this witness. Whatever has transpired from this cross-examination is testimony of a witness of the defense. It, therefore, seems inadmissible that defense itself now offers proof that the testimony of its own witness was not correct.

DR. ULMER: Your Honor, I consciously did not say that I would impeach the statements of the witness Vetter, but I would like to clarify the difference here. Before the witness Vetter appeared I have at least submitted eight or nine affidavits about this date which gave 20 August as the return date. After the witness Vetter had been heard here I had the witness Alander appear here and whatever the witness Alander testified was the 20th of August must be correct, and that the witness Vetter believed something differently when she told you about what she did on the witness stand. I don't want to impeach the witness Vetter. I merely want to offer a few affidavits about this subject, the return of Six on the 20th of August.

MR HORLICK-Hochwald: May I draw the attention of the Tribunal to the different documents. The first one is Six Document No. 68, and if the Tribunal looks into the second paragraph the Tribunal will see that there is direct reference made to the witness Vetter. If the Tribunal looks now -

THE PRESIDENT: What page did you say?

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MR. HORLICK-HOCHWALD: This is Supplement B, Document No. 68, your Honor. This is the newest document, your Honor.

THE PRESIDENT: Oh, yes, I see it.

MR. HORLICK-HOCHWALD: Second paragraph of the affidavit. If the Tribunal turns now to the document book which is Document Book No. IV, the first document is a document - it is an affidavit of Mrs. Six. In the first line of this document the name of Mrs. Vetter again is mentioned.

DR. ULMER: Your Honor, may I ask that the objections against my documents will be mentioned only after I nave submitted them. At the moment I am submitting Document 68, Augsburg, and I shall offer the other documents later. Perhaps I can bring then altogether. It is correct what Mr. Hochwald says that they do concern themselves with this subject. Perhaps Mr. Hochwald can then present his objections altogether after I have submitted then.

THE PRESIDENT: The Very well, proceed.

DR. ULMER: This affiant of this affidavit Document 68, Dr. Emil Augsburg, confirms that Veronika Vetter, immediately after the artillery fire and before the arrival of the staff of Einsatzgruppe B, had already started to work for the Advance Kommando Moscow, in Smolensk, furthermore, that the witness, namely this Dr. Augsburg, conducted investigations concerning the whereabouts of the university professor Vetter for weeks, and that the witness informed Dr. Augsburg of the results only after the departure of Dr. Six. I do not want to show any more with this affidavit than merely a more exact establishment of the dates which were given generally by the witness Vetter. The witness Vetter referred to a group which moved into one wing after she had already been there,of which she believed to be able to presume that it was the Nebe group with Nebe and in order to make these references more clear, make these more precise, I have had this affidavit made out by a notary public.

As Exhibit No. 59 I offer Document No. 59, an affidavit of the wife of the defendant Six, dated 21st of January 1948. This affidavit contains the preliminary discussions of Frau Six, upon my request at that time, in Stuttgart, together with the witness Vetter, and the statement of how it came about that the witness Vetter, when making out the affidavit for me mentioned this 20th of August as the date for the return trip of Dr. Six from Smolensk.

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And the affidavit as such is a confirmation of the affiant from her own knowledge that Six was already in Berlin again on the 23rd of August 41, and sometime later was in Hannover with the affiant.

The Document No. 60 is offered as Exhibit No, 60. It was made up by the former secretary of the defendant, Miss Ilse Richter, from Berlin, The affidavit was given en the 10th of December '47. It confirms that Six went to Hannover end of August '41 in order to take his wife to the hospital.

As Document No. 61 with the Exhibit No. 61 I offer the official confirmation of the hospital of the German Red Cross, Sisterhood Clementinenhaus in Hannover, of the 25th of September '47. This contains the fact that Frau Six was admitted to the hospital on the 1st of September '41. T is admission into the hospital is the memory support of Frau Six for her own definite knowledge about the return of her husband to Germany in August 1941.

I offer Document 62 as Exhibit 62. It is in affidavit made out by the former assistant and collaborator of the defendant, Dr. Horst Mahnke, on the 19th of January '48. This affidavit confirms that the affiant has made out the original of No-58055 submitted by the prosecution in Document Book V-B, Ex. 241 for Mrs. Vetter personally. The affiant states that the heading "Vorkommando Moscow of Einsatzgruppe'B" is to be explained as follows: After Professor Six's departure from Smolensk on 20th of August 1941 the chief of the EinsatzgruppeB, Nebe, carried out his previous effort to get the Moscow Vorkommando under his command. During Six's presence the Vorkommando Moscow was independent from the Einsatzgruppe. Furthermore, in case of Six's presence at this time he would have himself signed this as the chief of Vorkommando Moscow.

Document No. 63, offered as Exhibit No. 63, is made up by the same affiant, Dr. Horst-Mahnke. It was made out on the 19th of January, 1943. Herein it is confirmed that the widow of the university professor, Veronika Vetter, already did service with the Advance Kommando Moscow in Smolensk on the 12th of August 1941, since she was able to get china and table cloths for professor Six's birthday party -- and that in thefinal days of August 1941, possibly on the 23rd of august which is mentioned in her diary, she was given a car b the VKM in order to bring her supplies from her evacuation village.

As Exhibit 64 I offer Document No, 64. This is an official confirmation of the Mayor Korntal dated 19th of January 1948. This document tells us that the child of Veronika Vetter, by the name of Ingebord Vetter, was born on the 22nd of April 1940 in Dresden, Saxony. I went to confirm the student of the witness in her affidavit by this affidavit namely that she had returned to Smolensk with her 12 months old child. In order to make this exact I am giving the birthdate of this child. These were the documents against which the prosecutor objected before. Therefore, I shall stop now in order to let Mr. Hochwald object.

MR. HORLICK-HOCHWALD: If the Tribunal please, from the presentation of defense counsel it is absolutely clear that all those documents are introduced in order to impeach the testimony of his own witness. Furthermore, I want to draw the attention of the Tribunal to Document No. 59. That is the first document in the Document Book No. IV. This is an affidavit of Mr. Six. As we are in no position to cross-examine Mrs. Six as she is a close relative of Dr. Six and cannot be compelled by us for cross-examination, this document in itself is inadmissible.

THE PRESIDENT: Mr. Hochwald, do you think that that very well known rule of law might be modified in view of the fact that she presents an affidavit?

MR. HORLICK-HOCHWALD: We have not been told by defense counsel that she is waiving this right, your honor. We didn't hear anything.

THE PRESIDENT: The wife of a defendant may not be compelled to disclose any evidence which would be inimical to the interests of her husband, but when she voluntarily presents herself to testify in his behalf, then, of course, who voluntarily submits herself to crossexamination and thereby waives that immunity which is given her by the law.

MR. HORLICK-HOCHWALD: Am I to understand then that she can be called for cross-examination any time?

THE PRESIDENT: Well, we submit that to you for your consideration and for Dr. Ulmer's consideration, It may be that he would not want to insist on the affidavit if it entails a cross-examination of the affiant.

MR. HORLICK-HOCHWALD: May I assume Your Honors, then that she would be compelled to answer to every question put to her by prosecution in the sane way as a witness not related to defendant?

THE PRESIDENT: As any other witness if she voluntarily subjects herself to the jurisdiction of the Tribunal knowing that she had the immunity against testifying, then she necessarily must submit to whatever court procedure requires, and court procedure, of course, includes cross-examination.

MR. HORLICK-HOCHWALD: If I understand the Tribunal correctly then we are at liberty to call her for cross-examination.

THE PRESIDENT: Well, it depends upon Dr. Ulmer's determination, whether he wants to present this affidavit in the light-

MR. HORLICK-HOCHWALD: Possibly Dr. Ulmer may make a statement,

THE PRESIDENT: --of what has transpired here.

DR. ULMER: I have no misgivings about calling the wife of the defendant into the witness stand as a witness in cross-examination because I am of the conviction that this will be welcome to Mrs. Six and would not impede her in any way and that she would take it upon herself without any question. Because being wife of the defendant she was taken into a camp and was interrogated there too, and she wasn't told anything about the fact that she had the immunity against testifying.

THE PRESIDENT: Well, there is a difference between being interrogated and being compelled to give testimony in court. Certainly everyone can be interrogated. The interrogation could not be introduced over her objection in court, but there is no reason why she should not be questioned if anyone desired to question her. question as to whether she should be brought in for cross-examination.

DR. ULMER: I don't want to hold up the trial and as for the date of the 20th of August I have submitted so much evidence. I shall therefore withdraw the statement of the wife of the defendant and I will not submit it in order not to delay the trial. I don't consider it necessary.

THE PRESIDENT: Very well.

MR. HORLICK-HOCHWALD: I repeat then my objection against Docu ment 68, 59, 60 - oh, 50 is out, 59 is not in evidence, sorry 60, 62, 63 and 64.

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Those documents, as the descriptive index of Dr. Ulmer and his presentation just now, prove, introduced in order to impeach testimony given by his own witness in crossexamination

DR. ULMER: Your Honor, I would like to repeat only that Document No. 60 was made out on the 10th of December, 1947, Therefore concern: a D the date of the return of Dr. Six...

MR.HORLICK-HOCHWALD: I am sorry, I do admit that, I am sorry your Honor, there is no objection against Document No. 61. I am sorry it was my mistake.

DR. ULMER: And there is no objection against 60 - 61.

THE PRESIDENT: Well, I think we can truneate this discussion with a very simple announcement. While, of course, no side is permitted unless because of extraordinary circumstances, to impeach the testimony of one's own. witness, yet there is no law which produces that side from submitting any evidence which throws additional light on the issue involved. Whether Professor Six did or did not leave any given point at a certain time has become one of the things to be considered here, and any evidence which can throw some light on that particular involvement of the main issue will be received for whatever probative value will eventually be assigned to it, so that we now understand that the Document No. 59, Ellen Six affidavit, is withdrawn, and all others will be accepted.

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MR. HOCHWALD: May I respectfully request the Tribunal to rule that all allusions to the witness, Vetter, may be ruled out from those exhibits, that all parts of the affidavit which directly apply to the witness may be ruled out?

DR. ULMER: Your Honor, just through this witness, Vetter, and through the fact that the witness, Vetter, in Stuttgart or Nuernberg made a mistake, at least, she must have made a mistake once, just because of this it is necessary to submit those clarifying documents and point out that they have been presented in order to shed some light on this mistake of the witness Vetter. That is why I always say we are pointing to Vetter, who has made two different statements about the date, not to impeach the credibility of the witness, Vetter, not at all, but where the witness, Vetter, does not say anything or raises doubts in all those who had to listen to her I would like to submit supplementary statements on the basis of which the unclear statement of the witness can be corrected.

THE PRESIDENT: But Mr. Hochwald, such parts of these documents which would run counter to may rule on evidence and which would have no probative value would have no effect on the Tribunal, but we would not like to throw out bodily any document which night give us a little more glean of data on something which is before the court for decision. Now, this Prau Vetter has testified, and Dr. Ulmer claims that she was in error, that it wasn't a purposeful distortion, but that she made a mistake and we know that making mistakes is part of life, and if she did honestly make mistake, he has the right to show that an error was actually made. He is not really impeaching her, that is, in the strict sense of the word; generally he is, because if he claims that she made a mistake, then he is impeaching her, but Dr. Ulmer did not plead surprise when she was on the witness stand, did he, and cross examine her?

MR. HOCHWALD: If the Tribunal please, the prosecution has crossexamined her, not Dr. Ulmer.

THE PRESIDENT: Well, but you know that if one side puts a witness on the stand and that witness testifies differently from what the witness told the attorney the attorney, may plead surprise and then cross examine his own witness.

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MR.HOCHWALD: He possibly did not do so in form, but he did certainly do so in fact.

THE PRESIDENT: Well, that supports his position all the more, if he cross examined his witness, if he in effect abandoned her because she told a story different from what he had first hoard from her lips, then he has the right to support what he originally claimed that the witness said to him. The evidence will be accepted, and I know Mr. Hochwald will not find it very surprising to find he is overruled by the Tribunal.

MR. HOCHWALD: Thank you very much, your Honor.

DR. ULMER: I am offering Document Number 65 as Exhibit 65, but I don't know whether by withdrawing Number 59 I have to change my exhibit numbers or whether the number "59" will remain skipped. Well, under Exhibit 65 I offer Document number 65, affidavit by Heinz Wenninger, a referent of personnel Office in Office I of the RSHA, was made out on the 11th of January 1948. It says that the Reichsfuehrer SS made a promotion dependent on an assignment with the troops or an assignment in an occupied territory. It confirms that the concept "Einsatz" does not only refer to an activity in the so-called Einsatzgroups.

Document Number 65 I offer as Exhibit 66. It was made out by the journalist, Rudolf Mueller, an affidavit dated 29th of December 1947. During the cross examination of the defendant he was reproached with having made an incriminating statement about a former police official in Warsaw, Mueller. Of course, this testimony by this police official, Mueller, was not submitted as a prosecution document as had been announced, but one had the defendant read this testimony on the witness stand, and thus the incriminating statement of this man, Mueller, did finally appear in the transcript. And to rebut this, we have offered this affidavit.

MR. HOCHWALD: If the Tribunal please, I do not want to cross the point but the affidavit is immaterial.

Page 5,566

The prosecution has offered no proof for the utterances of this Johannes Mueller. This utterance was contradicted by the defendant when he testified on his own behalf. I do not see what purpose the affidavit should serve. A naked statement by the prosecution is no proof and nothing else is in the record according to the statement of Dr. Ulmer.

THE PRESIDENT: Well, it does seen an unnecessary issue which you are raising here, Dr. Ulmer, because the prosecution has not charged anything which needs to be refuted in this connection.

DR. ULMER: The prosecution during the cross examination of the defendant, Your Honor, has put to him this incriminating statement about this Major Mueller. That is what it says in the transcript.

THE PRESIDENT: What did Muller charge with?

DR. ULMER: He said that Six was a wild man of whom one could expect that he would work with the Eisatzgrups in the Russian territory and of whom one could expect that he did whatever he was charged with here. He could be expected to do that which he was charged with here.

MR. HOCHWALD: I still do maintain it is unnecessary, for one reason, the prosecution has offered no proof that these utterances were made by the police major, therefore, there is no reason to press the point. I can cross examine or ask the witness whatever I want, "Did you kill 1500 people then and then" without the slightest proof, and I do think that the proof that he did not kill the 1500 persons, or that he did allegedly kill 1500 people is not necessary.

THE PRESIDENT: Dr. Ulmer, the question was put and the answer was in the negative, is that right?

DR. ULMER: Yes.

THE PRESIDENT: The defendant denied that there was such a story or that the story was correct.

DR. ULMER: Yes. That was the content of his statement.

THE PRESIDENT: Well, then that ends it, because the prosecution did not follow it up by showing that this condition did exist, so the defendant has already denied it, Raid there is no evidence on the point, so this affidavit is entirely immaterial.

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DR. ULMER: I shall withdraw it then. Then I have only one more to submit. Document Number 67 is offered with the Exhibit Number 67. It is Supplement A to Book 4, and it contains the affidavit of the former legation councillor. Eberhard von Thadden, dated 23 of January 1948, It confirms that it was exclusively the task of Group II Interior to maintain liaison between the Foreign Office and the RSHA. Therefore, the events presented in the rebuttal document under Document Number 3319, page 31 to 47, German text B, had neither an official connection with the Cultural Division nor a personal connection with former Ambassador Six. That concludes my a presentation. Your Honor, and I would like to point out that I made a motion about translation corrections the transcript. I think that this motion was received but I would like to have confirmed.

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THE PRESIDENT: Is Mr. Hochwald familiar with this motion?

MR. HOCHWALD: I only want to inquire, your Honors, in general how those motions will be handled. Will those corrections be checked by the court reporters or I just am at a loss to know what will happen to this motion.

THE PRESIDENT: Well, with regard to procedure, Mr. Hochwald, perhaps this might be one convenient way of attending to the problem. Let opposing counsel in each instance endeavor to reconcile their differing views, if they do view the things differently, and if they can't compose that difference and cannot reach a common understanding as to what was said and what should he recorded, then each should reduce to writing his view on what the word or phrase should be and then that itself will become part of the record.

MR. HOCHWALD: May I ask then respectfully the Tribunal to rule that those motions may be filed from the part of defense and of course on the part of the prosecution, may be filed in such a form where it may be easy to find out which changes counsel desire in the record. If only the page is given and it is said, word, so and so, should be replaced by word, so and so.

THE PRESIDENT: That is entirely unsatisfactory. If defense counsel challenges the accuracy of interpretation or of transcription that defense counsel will see the opposing counsel of the prosecution and point out to him physically on the page where this misinterpretation or mistranscription occurs and from that point they will work together until they will have to work against each other.

MR. HOCHWALD: Thank you very much, your Honor.

THE PRESIDENT: Yes. Dr. Aschenauer.

DR. ASCHENAUER: Your Honor, this matter also concerns my motion of the 6th of December 1947. This was a motion for correction about the examination of Ohlendorf. This motion contains about eight pages. I have the pages here, and I listed all the expressions which are to be corrected. For example, one problem was the investigation of the problem -- the sphere of competency.

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It was mistranslated later when the defendant Ohlendorf, was interrogated. For instance, it didn't say here that he had to decide "whethe* or not", but it said that he did not have to decide "whether or not."

THE PRESIDENT: Well, Dr. Aschenauer.

DR. ASCHENAUER: This motion was handed to the prosecution. I was handed this back from the prosecution with the note that the prosecution could not examine these corrections and this motion was supposed to be given to the interpreters of the court and then the prosecution says that they would agree to every decision which the interpreters would make in court.

THE PRESIDENT: Well, then what happened?

DR. ASCHENAUER: Well, nothing further. I just wanted to present the problem to the Tribunal and I would like to ask that the president would rule that these translations be scrutinize and that the interpreters make a decision about the corrections.

MR. HOCHEWALD: If the Tribunal please, it is entirely satisfactory for the prosecution if the court reporters can check those motions and according to their expert knowledge translate the parts of the transcript in question.

THE PRESIDENT: Well, Mr. Hochwald, it seems to us that if both counsel for instance, as far as Dr. Aschenauer is concerned, if he and Mr. Walton will get together and they do not agree then they will see the court reporters and the interpreters involved and I feel confident that in most instances the interpreters will be to satisfy all persons involved If there comes an impasse where there cannot be a universal agreement as to just what was said, then that is something which must be submitted to the Tribunal.

MR. HOCHWALD: I only want to draw your attention to one problem. If Mr. Walton and Mr. Aschenauer comes together, there is a difficulty of language. Dr. Aschenauer's knowledge of English is not good enough in order to know by himself whether the translation of a certain sentence is correct or not.

Dr. Walton has no command of the German languages at all.

THE PRESIDENT: Yes, but each side is representing a certain point of view and naturally you will have to confer with the interpreter and then you always have the sound tape.

MR. HOCHWALD: But, your Honors, I only want to suggest it would be the much easier way if Dr. Aschenauer and all other defense counsel would submit those translations, and there are always translation difficulties and nothing else, to the competent interpreters instead of to in this case to incompetent counsel for the prosecution.

THE PRESIDENT: That certainly does not apply to you, Mr. Hochwald.

MR. HOCHWALD: Your Honors I certainly would not dare, in having no experience in court interpreting, to translate certain parts of the transcript where certain difficult, technical expressions are used, which I just do not know.

THE PRESIDENT: Well, I think we are making this unnecessarily complicated. If Dr. Aschenauer, I am only using Dr. Aschenauer as an example, this applies to every other defense counsel, if he will see Mr. Walton, inform him he is going to speak with the interpreters about getting the correct translation, that is, enough just so long as Mr. Walton is notified so that the other side knows what is being done and if the interpreters then make the correction, then the correction will be made in the transcript.

MR. HOCHWALD: This is perfectly satisfactorily.

THE PRESIDENT: Who will follow immediately after the recess? Everybody.

DR. HELM: Attorney for Ruehl. I would like to submit a few supplement to Book III.

THE PRESIDENT: Yes. Well, we will do that immediately after recess, please. The Tribunal will now recess for 15 minutes.

(A recess was taken.)

THE MARSHALL: The Tribunal is again in session.

DR. HOCHWALD: If the Tribunal please, the Prosecution would like at this time to introduce three or four rebuttal documents.

THE PRESIDENT: Mr. Hochwald, would you mind deferring that until Lieut. Bedwill will take the stand and will allow Dr. Dick to examine his on the matter of the defendant Strauch?

DR. HOCHWALD: That is certainly very well.

THE PRESIDENT: Very well. Lieut. Bedwill, will you lease take the stand?

LIEUT: WILLIAM L BEDWILL, a witness, took the stand and testified as follows:

JUDGE DIXON: Raise your right hand. Do you solemnly swear that the evidence you shall give to the Court in this action now on trial shall be the truth, the whole truth and nothing but the truth, so help you God? Do you so swear?

THE WITNESS: I do. BY THE PRESIDENT:

Q. Lieut. Bedwill, on January 20th of this year you submitted the following certificate to the Tribunal: "It is my opinion that the defendant Karl Edward Strauch during the period when I have observed him, including the Court sessions on the afternoon of 19 January 1946 and the morning of 20 January 1946 has been mentally competent and so free from mental defect, derangement or disease as to be able to participate adequatel in his own defense." Are you still of that same opinion?

A. I am, sir, yes.

THE PRESIDENT: Dr. Gick, counsel for the defendant Strauch, will address some questions to you. You may proceed, Dr. Gick. BY DR. GICK:

Q. Witness, may I first ask you whether you have any expert knowledge, of psychiatry?

A. I have.

A. May I then ask you what kind this knowledge is? Professional training in this line?

A. I have a Specialist's Rating in the Army as a Neuropsychiatrist. BY THE PRESIDENT:

Q. Lieut, Bedwill, suppose that we get your qualifications in the record. Now, let us have your full name,

A. William L. Bedwill.

Q. And what rank do you hold in the United States Army?

A. First Lieutenant.

A. What is your professional training? Give us a list of the schools you attended and what was the nature of the instruction which you received?

A. Well, four years of pre-medical training, of course, at two schools; Occidental College in Los Angles and the University of South California at Los Angles. Two years at each and then four academic years of medical training at the University of Southern California also located in Los Angeles. Then, thirteen months of internship at the Los Angeles County General Hospital where my training laid an emphasis upon psychiatry and then in the army a special training course.

Q. In what?

A. Psychiatry; Neuro-psychiatry.

THE PRESIDENT: At the present time where are you stationed?

A. At the 385th Station Hospital, Nurnberg,

THE PRESIDENT: And That specialty, if any, do you have at this hospital?

A. The Neuro-psychiatric specialty.

THE PRESIDENT: A nd are you engaged daily in that particular type of work?

A. I am, yes.

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THE PRESIDENT: Do you see and examine patients regularly along psychiatric lines?

A. I do,

THE PRESIDENT: you may proceed, Dr. Gick. BY DR. GICK:

Q. witness, did you see and examine the defendant Strauch before the sessions which you attended?

A. Yes, I did.

Q. May I then ask you, at what date and for how long?

A. I examined Herr Strauch first on 13 January for about 20 minutes at the dispensary in this building, about eleven o'clock in the morning. I next examined Herr Strauch on the -- that was Friday, I believe, 17th of January, between the hours of eleven and two, for three hours at the Krankenhaus, and then I next examined him with another doctor, who made a joint statement with me to this Court, also at the Krankenhaus. For a period of about two hours between 11:30 and 13:30 on the next day, the 18th on Saturday morning. On that day we made the statement which was submitted jointly to the Court.

THE PRESIDENT: What was the name of the other officer, Lieutenant

A. Capt. Joseph S. Jacob who is stationed at the 3L 7th Station Hospital at Wiesbaden.

THE PRESIDENT: And what is his field?

A. He is also a specialist in Neuro-psychiatry.

THE PRESIDENT: Very well. BY DR. GICK:

Q. What kind of observations were made at the time?

A. I examined Herr Strauch both physically and mentally, I made neurological tests upon him and I questioned him from a psychiatric point of view.

Q. And what did you establish?

A. That to the best of my knowledge Herr Strauch was mentally competent.

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Q. Did Herr Strauch answer your questions absolutely reasonably?

A. He did, in most cases, yes.

Q. Did it not happen that he mixed up incidents?

A. His references at times were irrelevant and his speech at times was rambling.

Q. Could he remember dates and figures if you submitted them to him?

A. I don't believe I could remember dates that he refferred to. He told a rambling, but, as far as I could tell though the interpreter, a consistent story but he never gave dates to us because we did not ask for them. That was not our purpose.

Q. Witness, are you aware that Mr. Strauch suffered from epileptic fits?

A. I am.

Q. Did you make any observations to the effect that there was any connection with the epileptic fits? Were there any breaks in the continuity of his mental thinking? Was there anything that was due to these epiletic fits?

A. There were no breaks in his thinking, which were consistent with epilepsy, or epileptic equivalents.

Q. Is it basic possible that an epileptic his psychogenous, especially?

A. I do not understand,

Q. I meant to ask you wehther it is possible in the case of epileptics that their mental functions suffer because of these epileptic fits?

A. I do not hold to this view, except as it pertains to the period of the epileptic seizure.

Q. Are there no consequences and no symptoms which happen after the epileptic seizure, which mean consistency in the mental capacity of the patient?

A. My training holds that there is no mental deterioration due to epileptic fits, even in a patient who has had a great number of these seizures.

Q. Witness, the Chief of the local Psychiatric Clinic in Oberministerialrat, Dr. von Bayer, who treated Defendant Strauch and treats him now and has been treating him, for the last three months, in an expert opinion, which he made out, confirms that Strauch since the middle of December, 1947, has been, in a state of a trance. He called it the Ganser state. Are you of the same opinion?

A. That is, in the state of trance?

Q. I mean a semi-conscious state, meaning that his conceptions are not clear and that he is not capable of thinking, capable of answering clearly.

MR. HORLICK-HOCHWALD: If the Tribunal please, if the witness is supposed to give his opinion on an expert opinion, made by someone else, it seems to me correct if he gets the opinion itself, not the transcription by the defense counsel.

DR. GICK: Your Honor, may I just make a short remark. It is an expert term which could be expressed in two letters and I do not have to circumscribe this particular state. This is "Ganser", the state of semi-consciousness, "Ganser" being the name. If I make this remark to the witness, then, of course, he knows what it is all about so that the knowledge of the exact expert opinion would not be absolutely necessary.

MR. HORLICK-HOCHWALD: I only can repeat what I have said, Your Honor, without pressing the point. I do think it would only be fair, if the witness is asked about the contents of a certain opinion that he may see the opinion itself.

THE PRESIDENT: Dr. Gick, if you have the opinion to which you are referring, you might either show it to the witness or read from it to him.

DR. GICK: I have the expert opinions here, Your Honor, but I only have a German copy of it. I don't know whether the Tribunal has received the opinion in English.

THE PRESIDENT: Will you please tell me which one it is?

DR. GICK: It is one of the 7th of January, 1948.

THE PRESIDENT: I have one here dated January 14. I have one dated January 15. You say this is dated January 7?

DR. GICK: Yes, it is a letter to me in the nature of an expert opinion and it is dated the 7th of January, 1948. I think I have submitted it to the Tribunal.

THE PRESIDENT: Suppose you read it very slowly and, if you come to a technical term, please hesitate so that the interpreter can be certain as to just what is intended.

DR. GICK: "In accordance with your wish" -- as I have I said, the made and my examination of the patient, I comment again concerning the possibility of being tried of your client, Edward Strauch.

Since about the middle of December, 1947, the mental state of Strauch has deteriorated through addition of certain states of mental inconsistencies, which are similar to a so-called Ganswer mental twilight. Strauch since that time is mentally unclear, gives senseless answers to questions, and does not absorb the questions which are put to him or, at least, only to a small extent. It is very rare that one would get a sensible answer out of him. He has not had epileptic fits for the last few weeks. The Ganser mental twilight means a certain reaction due to custody which is psychologically continues, but in the opinion of most psychiatrists is not intentionally simulated in the way of a simulation where he pretends. We do not assume a simulation in the case of Strauch it has had the reaction on the basis of epilepsy or an organically affected mental capacity." the 25th of December. 1) The state of health of the defendant has deteriorated so much during the last few days that he can only at times follow the indictment.

THE PRESIDENT: Well Dr. Gick, you are supposed to put a question to the witness. What are you doing now?

DR. GICK: Well, this is the contents of the expert opinion and in brief the physician says here that the defendant is in a state of mental twilight.

Q. (By Dr. Gick) I would like you, Mr. Witness, to comment on this attitude.

A. I do not agree with this attitude. I believe that the mental twilight, as the doctor has called it, is not consistent. The psychic symptoms of this patient have been very transient. During my examinations I was able to extract a large marjority of logical answers, the answers which did suggest mental confusion are taken together with neurological, that is physical symptons, and other data such as one, one rather, desire, alleged hallucination, a combination of these symptons, in other words, in my opinion, did not conform to any neurological psychiatric or medical condition known to me and could on the other hand be sufficiently explained by the anxiety of the patient's situation.

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Q. Is it then not possible that the situation in which the defendant finds himself leads to certain changes in the mental picture of the defendant, I mean, changes in the way, that he is no longer in a position to express himself and to answer questions, as he was used to in former times?

A. I do not agree to this term, "mental". I would rather say, "emotional". There are emotional changes, I suppose.

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Q. That you mean you give an affirmative answer to the changes, if I understood you correctly, that is?

A. There are emotional changes in any patient faced with such a charge this patient, but I do not believe that that precludes the mental competency to participate adequately in his own defense.

Q. Witness, did you, owing to your observations during those last two days in the session here, gain the impression that the defendant answered all the questions that were put to him sensibly and consistently, or were their sometimes clear moments and then again unclear moments in the testimony he gave which prove a certain deterioration of his mental system?

A. There were unclear moments and mostly clear moments, I remember, for example, one of the unclear moments: The patient asked of whom he was talking and he said,"I am talking about Denmark", but these unclear moments, in my opinion, were not evidence of mental deterioration.

THE PRESIDENT: Lieutenant, do you think at any time when his answers were obviously irrelevant answers could be consonant with a conscious desire on the part of the defendant to appear to be, or make himself appear mentally incompetent?

THE WITNESS: I believe that they could be consonant with that desire.

THE PRESIDENT: Very small, Dr, Gick.

Q. (By Dr. Gick) Witness, if I may read very briefly from the record during these days, then just at that morning the defendant for instance, answered questions which were put to him on the 1st of August, 1931, he had entered the SA and at the same day, the 1st of August, 1931, he had joined the party. When thereupon he was asked, "Was that the same day," he said, "No, it was not the same day, it was on the 31st 32nd, the 33rd, on those days I joined," Later on then he said he joined the Party in 1933. Therefore, as I see matters, there was not a clear picture of the question which I put to him.

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The questions were, "When did you join the SA, the SS and the Party?"

A. These discrepancies are indeed discrepancies in logic and time, but they are not diagnostic of any known - that is known to no - mental defect, disease or derangement.

Q. May I ask you then what you deduce these inconsistencies from?

A. From my previous testimony, that I could find no syndrome which was diagnostic and that such discrepancies, as well as other symptoms, could be explained by the exigencies of the moment, I was led to the prescription that the situation in which the defendant found himself was sufficient explanation.

Q. You mean the situation in which the defendant found himself confronted, in fact with the charges of the prosecution, and this leads him to lose his memory concerning dates and figures, that he mixes them all up?

A. I say this is possible and it is a sufficient explanation.

Q. If this is thus, Witness, then in some moments he is not clear and he is not in the position to account for his actions.

A. Repeat that please?

Q. If the defendant, due to his position in which he is at the moment, gives unclear answers, then, of course, this means that he is not in the position to give clear answers all the time to what he is being asked and that he is not in a position to a full extent to make use of his right, that is, to defend himself.

A. By situation I meant to say the emotions and feelings in the patient which are concomitant with the situation, with the external physical situation of being in the courtroom. It is possible in that one situation to be both clear and unclear in expression and yet be consistent in motive.

Q. Do you not arrive at the conclusion that this defendant after all is not in the position to defend himself to that extent that he would be able to do if he were in a normal condition?

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A. I do not see how that conclusion can be arrived at from the for going.

Q. I did understand you correctly, did I not, when you said that in the testimony of the defendant there were clear and there where unclear moments. Did I understand you correctly?

A. There were clear and unclear moments to the recorders. That is what you meant, I presume.

Q. Yes, for those people who were listening.

A. Yes, I agree.

Q. Now, if the defendant also gives unclear answers, then I am of the opinion that in such moments he is not, to that extent, in the position as every other defendant who normally gives clear answers. Am right, or what is your opinion of that?

A. Repeat that again, please.

Q. I do not know whether I have expressed myself unclearly. I would like to say the following. If the defendant gives unclear answer a fact which we have now established, is the defendant during this time in which, in fact, he gives these unclear answers, in the same in the position to lead his defense as other defendants who always can give the clear answers, or is he not?

A. I do not see that there is mental defect, disease or derangement unless it can be proven by medical - by the medical examinations which the patient has been given.

Q. But this is not the question at the moment, whether there is an organic state which leads to a change of his mental state, but the question, I believe, is whetherany phychological symptons could be seen, of course from the situation he finds himself in as a defendant, which, of course, limit his possibility to defend himself?

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A. The way that the defendant answers questions alone is not a sufficient indication of his ability to conduct his own defense. The total medical picture must be examined. Where the inconsistencies of his speech can be explained on the basis of his motives and where they in themselves cannot diagnose a medical condition I am led to the conclusion that he does not have a mental incompetency.

Q. But you do admit the he gave unclear answers?

A. Unclear as I said before, with the qualification that I said before.

Q. Why then are you of the opinion that the judgement of Dr. von Bayer gave that he is in a state of mental twilight, so to speak in a state in fact which makes his thought only come up in a sort of trance, and that he can only express thoughts unclearly. Why then do you think that this ipinion is not quite accurate if you yourself say that he gives unclear answers at times?

A. In my understanding the statement of Dr. von Bayer was to the effect that the defendant since the middle of December has been in a twilight state. My objection to this statement was upon the ground that the symptoms of the patient have been transient was upon momentary and have not persisted for a long period of time in terms of hours or even minutes during the periods since the middle of December.

Q. How long do you think one of those states can last with the defendant Strauch?

A. One of what states?

Q. This state of which I say, this unclear state, this state of mental derangement, the twilight state. I do not want to use this torn so often because apparently you and I don't agree, but the state in which he gives unclear answers, how long do you think such a period lasts?

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actually mentally unclear or not. I have said that his answers are not clear in the record, but I am not convinced that the patient is mentally unlcear. do so intentionally?

A This I am unable to say. This I am unable to prove. from some symtomps is unclear, in an unclear state and gives unclear answers? far as I know, it is unknown to medical science. state exists, which influences the clear thoughts and the clear answers of the defendant, but that medical terminology concerning this particular state does not exists?

PRESIDENT: Dr. Gick, the witness, as I understood him, at no time said that he acknowledged a mental unclearness, he merely said that there were unclear answers, which could or not be symptomatic of something or other, but that his opinion was that these unclear answers did not give an indication of a pathology, which was recognized by medical science. So there is a difference between an unclear state and an unclear answer.

DR. GICK: Your Honor

PRESIDENT: I think that as Judge Speight pointed out, that the witness has indicated this unclear method of testifying at times is not any result of epilepsy, which is one disease everybody agrees that the defendant is occasionally afflicted with.

DR. GICK: That is what I understood from the witness, Your Honor, that it is in no connection whatsoever with epilepsy. However, I did understand the witness to this effect, that he objectively also states that the defendant, Strauch, does give unclear answers.

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PRESIDENT: Well, that was obvious to everybody.

DR. GICK: That is, during the first part of his testimony, when he first came into court and he talked about China, and he talked about 1975, and it was very clear that that was unclear.

DR. GICK: In the last two days doubtlessly he was not quite so unclear, Your Honor, but I showed the witness a few passages which to me meant an inconsistency and the witness has stated here that at times one has to confirm this. BY DR. GICK: you could exclude the possibility that Strauch was not fully in the position to arrange his defense in such way as he normally would be able to do?

PRESIDENT: You have no evidence for that possibility, is that what you mean, because the defense counsel put it in an alternative form Do we understand from your answer that you have no evidence of a possibility that he was--that the defendant was incapable of conducting his defense?

THE WITNESS: Yes. BY DR. GICK: fully in the position to defend himself as he would have done in a normal state. statement which I submitted to the Court.

Q And what about the unclearness in this expert opinion? How do you reconcile them? even in those moments when Herr Strauch gave answers which were irrelevant and spoke in a way which was rambling, that even at those times he was mentally competent and able to participate adequately in his own defense in my opinion.

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DR. GICK: I have no further questions to the witness, Your Honor.

PRESIDENT: Mr. Glancy, do you have any questions, please?

MR. GLANCY: If it please the Tribunal, I have one question. BY MR. GLANCY:

Q Dr. Gick, started one of his questions by saying, "Is it possible that," I would like to have the same privilege. Is it possible that when he was giving those rambling answers that it was consciously simulated and that he did comprehend everything that was said to him?

MR. GLANCY: Thank you, Sir. No other questions.

PRESIDENT: Anything further?

DR. GICK: Not to the witness, Your Honor. BY THE PRESIDENT:

Q Now, Doctor, let us predicate a hypothetical question. Let us suppose an individual of complete maturity, who is subject occasionally to epileptic seizures, but during the interval between the epileptic seizures is entirely normal in his mental and physical attributes; let us suppose that in the middle of September he had a seizure in court and is withdrawn from the court room. From that period until the latter part of December of the same year, with the exception of a periodical seizure he is entirely normal and is capable of conferring with his counsel and preparing for his defense in court of charges brought against him in an indictment. In the latter part of December he begins to give evidence of not comprehending, of giving irrelevant answers to questions put to him, of rambling utterances, of confusion of dates, that then he is brought into court two or three weeks later, and in court continues to give irrelevant answers. Then let us suppose that he is given mental and physical examinations and he is instructed in court that this is the one opportunity he will have to defend himself against the serious charges which have been brought against him, that then subsequently he is brought into court and there is a marked difference between his manner of testifying, now he answers logically, he answers relevantly, and with the exception of an occasional unclear answer, gives evidence of being completely conscious of the situation, of understanding questions and answering them.

With that kind of a hypothetical case, Doctor, we ask you whether in your opinion his previous conduct could be consistent with a conscious desire to stimulate a mental condition? of incapacity, or rather we will put it in the laternative sense. In you opinion, is it possible or is it not possible for such an entire situation to evince a desire on the part of the individual involved to simulate a mental incompetence in order not to subject himself to the procedure of court? similation?

PRESIDENT: I there are no other- questions, the witness will be excused, with the thanks of the Tribunal You want another question? By all means, Dr. Gick. Proceed. VY DR. GICK:

Q I have just one question. Witness, you say that it is possible. May I conclude from that that the other alternative is not excluded from you that he does not simulate? what I would consider to be an extremely rare condition of which I have no knowledge. exists, that is what I mean?

the possibility of which I speak, that is -- because I cannot--I have not had sufficient time to observe the patient to be absolutely certain that he is simulating. I doubt whether this is possible to do in a practical period of time. BY THE PRESIDENT: medical science up to this time has not yet discovered or recorded, so far as your recognizance of medical, science is concerned?

DR. GICK: May I just put one more question, Your Honor. BY DR. GICK: Demi condition, that is what it is called?

Q May I ask you what it means this ganzer mental twilight--?

MR. GLANCY: I believe, your Honor, he is a trifle unclear, would he like to know whether it applies to Strauch or as a hypothetical thing, this twilight?

PRESIDENT: I think he is merely asking if he knows what mental twilight is a medical term. Are you fully aware of the intention of the question?

THE WITNESS: Well, I believe he means, what is mental twilight. BY DR. GICK: after whom this particular state of disease is named.

A I am not acquainted with the works of this man, or by "mental twilight", I took to mean the semi-consciousness such as we see in such medical conditions when the patient is perhaps delirious.

obviously suffering from some condition usually toxic in nature.

PRESIDENT: Very well, let us now take stock of what we have before us yet to be disposed of before Dr. Aschenauer can proceed with his summation. Now, who else has documents ready to be presented? Everybody. Well, let's Lieutenant Bedwill, you, of course, are excused. Thank you. Let us indicate please just how many documents are to be presented so we can work out this program. Come with down the line, now, how many, do you have, please?

DR. WIESMATH: Wiesmath for the defendant, Jost. Your Honor, I still have six documents which I want to submit.

DR. DURCHHOLZ: Durchholz for Schulz. I have one document to submit.

DR. STEIN: Stein for Sandberger. I still have 36 documents to present.

DR. HELM: Helm for Ruehl - three documents.

DR. KRAUSE: Krause for Haensch - also three documents.

DR. VOGEL: Vogel for von Radetzky - still nine documents, Your Honor.

DR. FRITZ: Fritz for Fendler - four documents, your Honor.

DR. HOFFMANN: Hoffmann for the defendant, Nosske. Your Honor I could start now, I have got about 8 documents

PRESIDENT: Now, just a moment. Yes, Doctor.

DR. GICK: Well, I have about 25 documents.

PRESIDENT: You wont to keep us until twilight, do you?

MR. HOCHWALD: The Prosecution, if Your Honors please, the prosecution has approximately 4 to 5 documents.

PRESIDENT: Well, it would appear that with the exception of Dr. von Stein and I forget the one who had 25--Dr. Gick--you had 25, with the exception of those two, they are not numerous, the documents which have to be presented and I think that if we move right along we ought to be able to get them in tomorrow morning and Dr. Aschenauer ought to be ready to begin immediately after the luncheon recess.

So let us retire with that part in view, with that program in mind, that you will be ready immediately after the lunch hour to present the summation in behalf of your client, Doctor Aschenauer.

DR. GICK: May I just say something in conclusion of the matter, Strauch? May I ask the Tribunal, to invite Dr. von Bayer, the expert, to come here as a witness, He is, as is well known, the chief of the psychiatric clinic in Nuernberg, and he has observed the defendant for some tine now, in fact, from the beginning of October up to this day, and in my opinion he is able to five an exhaustive picture of the defendant, Strauch.

PRESIDENT: That will be entirely up to the prosecution, s to whether they desire to cross-examine him. Dr. von Bayer has submitted several reports and they are on file and they are available to you, Dr. Gick, in any argument which you desire to make to the Tribunal, so that it is entirely up to the prosecution if the prosecution wishes to cross examine. Of course, they are entitled to that privilege and he will be called. But if they don't, there is no need to call him.

MR. GLANCY: We do not desire, to cross examine, Sir.

PRESIDENT: Very well. The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 3 February, 1948, at 0930 hours.)

3 Feb 1948_M_MSD_1_1_Gallagher (Juelich) against Otto Ohlendorf, et al.

, defendants. sitting at

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

MR. HOCHWALD: If the Tribunal please, the Tribunal certainly recalls that the Prosecution has obtained Haensch's Exhibits Nos. 1, 2, 3 and 4 in order to get expert opinion on the handwriting, and on the pictures which were put in. We has received the expert opinion, and they are in the hands of the Tribunal, the originals, and copies were handed to Dr. Riediger, defense counsel for the defendant Haensch. I have here the exhibits, but when these tests were made additional pictures and additional charts of the handwriting were made by the Research Institute. The Prosecution does not intend to offer these items into evidence. I think it appropriate as I do expect that, Dr. Riediger wants to use them to make a short survey of these by saying what was added to each exhibit. Would that be agreeable to the Tribunal?

THE PRESIDENT: What did you specifically request?

MR. HOCHWALD: I only would make a short survey and state what was added by the Research Institute to the different exhibits so that it may be explainable for the archives why the exhibits are more and different from what was originally submitted.

THE PRESIDENT: By all means, not only I approve but it should be done.

THE PRESIDENT: By all means, not only I approve but it should be done.

MR. HOCHWALD: Haensch Exhibit Ho. 4 was one original photograph, and six more negatives were made by the Research Institute and all of them are labeled how they were obtained and from which negatives they 3 Feb 1948_M_MSD_1_2_Gallagher (Juelich) were obtained.

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There are no additions in Haensch's Exhibit No. 3. Haensch Exhibit No. 2 were two negatives and an envelope, two positives from these two negatives were made by the Research Institute and added to the exhibit. Haensch Exhibit No. 1 was one appointment pad and one photostatic copy of pad No. 391 on which the name of Haensch appears. Another pad Nos. 210 to 261, was added for comparison of the handwriting, for no other reasons, and finally, Prosecution Exhibit No. 192-B which is a handwritten affidavit of the Witness Reich, Document NO-5718, a chart with different examples of the handwriting was added by the Research Institute to this exhibit. May I inquiring on his behalf -- to introduce the codes of this expert opinion as exhibits, or would that be usable for him in the form I have just given it? As I said, the original expert opinion itself is in the hands of the Tribunal.

THE PRESIDENT: That is enough that you have presented it.

MR. HOCHWALD: I have not presented it. To be frank, Your Honor, I have not presented the expert opinion in evidence. I have only handed to the Court in partial what I have received from the Research Institue.

THE PRESIDENT: Well, if you have not presented it, and Dr. Riediger desires to present it, he may present it.

MR. HOCHWALD: All right. Allright, so Dr. Riediger can present it.

THE PRESIDENT: Very well. Who is ready to present documents? I presume you have finished, Mr. Hochwald?

MR. HOCHWALD: May I present a few documents, Your Honor, before the defense -

THE PRESIDENT: All right, you may proceed while you are there.

MR. HOCHWALD: I now offer Document NO-5877. This will be Prosecution's Exhibit No. possibly 250.

MR. KNAPP (Secretary-General): Prosecution's Exhibit No. 250.

MR. HOCHWALD: Prosecution's Exhibit No. 250. This is a letter showing the Defendant Six was the moving party in urging close cooperation between the SD and the Gestapo. Here we see the organized regular 3 Feb 1948_M_MSD_1_3_Gallagher (Juelich) conferences in order to achieve a close and confidential cooperation between the Gestapo.

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The document is offered as a rebuttal document against the defendant's contention that he was never anything else but a scholar. I have here two documents concerning the defendant Schulz. These are Document NO-5862 and Document NO-5871. The documents were already previously distributed. I want to inform the Tribunal that originally I have received Document NO-5862. As, however, the identity of the defendant was not clear but of this first exhibit. I have returned the first affidavit and sent a picture of Schulz, Which actually is attached in photostat to the first affidavit, and have obtained a second one. Those documents which I gave the numbers 251-A-B are rebuttal documents in order to refute the statement of Schulz that he never participated in the crimes of the Gestapo when in charge of the Gestapo of Czechoslovakia.

DR. DURCHOLZ: Dr. Durcholz for the defendant Schulz. Mr. President, I object to the admission of these two documents, and I shall give my reasons for these objections when I have looked at the original -

MR. HOCHWALD: I am sorry to say the original is in Czech. I don't know whether Dr. Durcholz can find something out of it but it is with the Secretary-General, and sofar as I know Dr. Durcholz has received the German Copy through the Defense Information Center.

DR. DURCHOLZ: I only got a copy of No. 5871. I know nothing about the first document.

MR. HOCHWALD: The distribution was made last Friday, Your Honor.

THE PRESIDENT: Well, has the Tribunal received a copy?

MR. HOCHWALD: The Tribunal has received copies in the frame of distribution, and I have had further copies handed to the SecretaryGeneral yesterday. and sofar as I know, the Tribunal has the document before it.

THE PRESIDENT: Very well. Who is ready to proceed now?

DR. HOFFMANN: Excuse me, but my colleague wants to speak before I do.

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THE PRESIDENT: Very well, if you are agreeable, I am agreed.

DR. KRAUSE: Dr. Krause for the defendant Haensch. Your Honor, may I ask that the opinion concerning the documents by Frau Schreyer he handed to me by the Secretary-General so that I can introduce them as documents for the defendant Haensch.

MR. HOCHWALD: It would be possibly easier if Dr. Krause would introduce copies. There will be no objection against the introduction of the copies from the Prosecution, as copies were made by the Prosecution.

DR. GAWLIK: Dr. Gawlik for Herr Ulmer, for the defendant Six. Your Honor, I object to the rebuttal document which was submitted as NO 5877, Exhibit No 250. I would like to draw the attention of the Tribunal to the date of the document of 16 June 1937. I do not know what the Prosecution is trying to prove with this document, which concerns a period of time which occurred long before 1 September 1939, and the International Military Tribunal already established that only the activity after 1 September 1939 is considered criminal in such an organization. In addition the following must be said concerning this document. It was in fact decided by the IMT that before 1938, a certain degree of cooperation between the SD and the Gestapo took place, but in the year of 1938 in particular a decree was issued separating the two, and since that time the Gestapo and the SD worked in completely different spheres, and had different tasks, and the Prosecution's Exhibit is from the year 1937, that is before the date of this socalled decree of separation; that is the question which has been discussed in detail by the IMT, and the IMT has already established the fact that only such activity as was carried on after 1 September 1939, can be considered criminal according to the statutes.

MR. HOCHWALD: If the Tribunal please, rebuttal is every evidence which can refute the contentions on the part of the defendants.

THE PRESIDENT: This document could under no circumstances be 3 Feb 1948_M_MSD_1_5_Gallagher (Juelich) controlling of any issue which is before the Tribunal.

In itself it would not establish any mooted point, but it does shed some light on the history of the entire affair, and we think that it would be well to have it in evidence for whatever probative value would be assigned to it later on.

DR. DURCHOLZ: Dr. Durcholz for the defendant Schulz. Your Honor, I have objected to the introduction of Document No. 251-A-B. I would like to five reasons for this objection. Apart from the fact that the incidents stated in this document and directed against the defendant Schulz constitutes a completely new charge against the defendant Schulz, which were not subject of the trial until now, and since at this stage of the trial the defendant has no opportunity of defending himself against this, therefore, if this document were received, this would violate the elementary principles of law: that is why I ask that this document be rejected. Only yesterday Your Honor stated here that in his trial you wanted to find the truth; but owing to such a one-sided attitude by the Prosecution this has become completely impossible. The defendant would have to state that he had nothing at all to do with the incidents mentioned in this document. That document is also called Indictmente. Therefore, another trial would have to be started against the defendant Schulz, but neither the defendant nor I have ever heard of such a thing. The defendant Schulz does not know this witness Pauker at all who makes the statements in the document. Also the document does not show that this socalled Pauker actually made these statements under oath. Finally, this statement of Pauker is completely torn out of context, because this document refers to an interrogation before the State Police Office in Reichenberg, which is an interrogation about which I don't know anything. Also it does not show whether this Pauker actually identified the defendant Schulz, and whether on the basis of a photograph of the defendant, he was able to identify him at all. May I also point out that another person called "Schulz" is repeatedly mentioned in this document, and he is called "Schulz No. 3". Also in the decisive part of the document there are a number of contradictions and inconsistencies and untruths, which the defendant Schulz and the man who is used as a witness of the opposite side could refute immediately. Also the document does not conform with the prescribed form of documents presented here. That 3 Feb 1948_M_MSD_2_2_Gallagher (Juelich) is why I ask that this document be rejected for purely formal reasons, but if the Tribunal should accept it inspite of my explanation, seeing that they are so generous, even if they only attach to it such probative value as it may be worth, I move that the Prosecution call the witness Pauker here, so that I may cross-examine him.

Only in that manner could the defendant Schulz's disadvantage be made up for. The defendant Schulz asked me to state that he never in his life had beaten a human being, and that he was not competent for the prison where this alleged socalled Pauker is supposed to have been, and that he never visited that prison.

charge of the police president in Reichenberg with which the Gestapo, and therefore, Schulz had no connection at all. Also, the Gestapo in Reichenberg did not have any air raid shelters, which are mentioned in this document; also, the defendant never gave an order such as is mentioned here. The defendant is also prepared to make an affidavit himself to refute the statements of this document, and is also prepared to give testimony concerning this in the witness stand. I also ask for permission that as a witness of the opposite side concerning this incident. I may call the witness Hasse, and that I may examine him here as a witness in this trial. He was in Reichenberg at the same time as Schulz, and who will clear up and refute the inconsistencies and untruths which are contained in this document. The defendant also tells me that the statements of the so-called Pauker in this document are nothing but a clumsy denunciation. My client and myself, therefore, ask for the protection of the Tribunal against these untruths.

DR. HOCHWALD: If Dr. Durchholz wants to testify, he may do so in the witness box, but it is impossible and there is no possibility to do that in any kind of procedure in the world in the manner he is now attempting. He is testifying not only for his client, but also for a number of other people. If Dr. Durchholz knows something of his own knowledge about the documents, about the persons, about the prison, about the happenings in 1941, he is at liberty to testify, but this is no objection against the documents, but what he is speaking about.

DR. DURCHHOLZ: Your Honor, I thought it was my duty to make these statements in order to show to the Tribunal why I had to make these motions and raise these objections against these documents. Therefore, I ask for your permission that the witness Pauker be called as a witness for cross examination.

DR. HOCKWALD: If the Tribunal please, if I understood the objection correctly, it was to the effect that the happenings which are described in the affidavit are a completely new feature of the case.

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Count III of the Indictment is to criminal membership, and the defendant Schulz is charged with having been a member of the Gestapo. The defendant has testified at great length that he, having been a Gestapo officer was blameless in the discharging of his duties. He had testified at great length what he has been doing as chief of the Gestapo, among other places in Liberets, in Reichenberg from which this affidavit was obtained. Therefore, the affidavit in itself, the affidavits are prefectly permissible rebuttal evidence.

DR. DURCHHOLZ: Your Honor, may I say here that yesterday exactly the opposite case occurred here, that a document was offered and the Prosecution asked that this document be only admitted if they have the right of cross examination of a witness, I ask you to grant me this same right. Also, the defendant Schulz wants to refute this great reproach by cross examination.

THE PRESIDENT: The defendant Schulz testified at great length on the witness stand that not only was he innocent of the crimes charged against him in the Indictment but that at no time was he guilty of any inhumanity towards those who came within his jurisdiction; and testified rather amply to what happened in Salzburg and other places. So that, in principle, this evidence would be entirely relevant to rebut the picture which you have drawn of a person who is entirely free not only of crime but even of bad conduct in his relationship with his fellow man. So that there is no question that in principle this evidence is absolutely relevant. However, we are confronted with another situation, another equally sacred principle in Anglo-American procedure, and that is that every accused person is entitled to confront his accuser; so that unless the Prosecution is willing and able to produce forthwith, or, in the next day or two, these witnesses who accuse Schulz of crime, we cannot possibly accept these statements as they stand.

DR. DURCHHOLZ: Yes, Your Honor.

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THE PRESIDENT: Because he certainly has the right to cross examine his accuser. That is fundamental. Now, this affidavit is a recent one which would suggest that the affiant is not too far away. If he can be obtained quickly, then we will entertain any motion for his reception here in Nurnberg, but it is a mater of time.

DR. HOCKWALD: If the Tribunal please, the affiant is in Czechoslovakia. The Prosecution will make every effort to get him here, but I doubt whether we can conform to the tine limit.

THE PRESIDENT: Yes. Well, the matter will stand this way that the affidavits will not be accepted at the present moment. In the event the Prosecution advises that the affiants may be brought here for cross examination, then we will again take up the situation.

DR. HOCKWALD: Thank you very much.

DR. DURCHHOLZ: Thank you, Your Honor.

DR. HOFFMANN: (Attorney for the Defendant Nosske) Your Honor, I have seven documents which I would like to offer.

Your Honor, during the direct examination of the defendant Nosske the latter said that generally a political prisoner could not be kept for more than ten days while being in protective custody. Concerning this, Your Honor asked me to bring documents to prove this. That is why I offer in Document Book Nosske the Document No. 3 as Exhibit No. 2. This is a circular decree of the Reich Minister of the Interior of the 25th of January, 1938, concerning protective custody. It is on page 2 of the English document book, and I ask you to look at page 3 , the first paragraph there which reveals that a person under protective custody had to be released after ten days' at the latest unless the secret police office has asked for him to be kept in protective custody. Also,

THE PRESIDENT: Where is that, Dr. Hoffmann?

DR. HOFFMANN: It is on page 3 of the English document book; the first sentence.

THE PRESIDENT: I don't find it.

DR.HOFFMANN: Nosske Document No. 3, page 3 of the English document book.

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JUDGE DIXON: It is page 4 of our document book.

THE PRESIDENT: I see; page 3 of the original, page 4. Yes, I find it.

DR. HOFFMANN: Excuse me, Your Honor. The next decree concerning protective custody, which also concerns the period of time of protective custody is submitted as Nosske Document No. 4; this will be Exhibit No. 3. It was issued after the second World War, that is the 4th October, 1939; and in the second paragraph under Figure 1 it says: That the previously established term of 10 days is extended to three weeks. Another question, Your Honor, which was also brought up in the direct examination of the defendant Nosske was whether on principle the secret state police office, later the Reich Security Main Office, alone was authorized to issue such decrees for protective custody. I ask that this statement be looked into on the basis of these two statements. In all these documents it says that the written order for protective custody was issued by the Secret state police office, and Later by the Reich Security Main Office, and that they were the only ones to issue such decrees. I submitted these documents first of all because Your Honor asked me to; and, secondly, in order to prove the credibility of the defendant Nosske in his testimony.

The next document which I offer is Document Nosske No. 5; this will be Exhibit No. 4. This is another decree about protective custody where a certain simplification of this procedure is ordered, but it says that the decree was issued by the Reich Security Main Office.

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As Nosske Document No. 6, Exhibit No. 5, I offer an affidavit by Dr. Hans Ehlich, a physician. Ehlich talked about the so-called commando staff in the Reich Security Main Office, and on page 13 of the document book he sais that the commando staff merely had to compile reports from the occupied eastern territories. In contrast to the previous reports from the UDSSR, they did not contain any figures about executions which were carried out due to the Fuehrer Order in the East. In order to show the credibility of the defendant Nosske, this is also important because the Tribunal will remember he stated in the witness stand that he did not see any figures about shootings carried out because of the Fuehrer Order when he compiled reports from the occupied eastern territories.

As Nosske Document No. 7, Exhibit No. 6, I offer an affidavit of Kurt Geissler. It is on page 15 of the English document book, and reveals that after Nosske returned from Russia he was not established permanently with the Reich Security Main Office nor did he want to have a permanent position there, and that the Gruppenleiter because he let the leader of the Iron Guard of Romania escape at the time.

The next document is Nosske Document No. 8, which I offer as Exhibit No. 7. And, Your Honor, I attach special value to this document No. 8 because it is an affidavit of Gunther Husmann, who was the investigation chief in the case against Nosske, because of his attitude in Dusseldorf, Nosske describes that Guttenberger made a report against Nosske and as a result a case was started against him, and as can be seen on page 21 of the document book, finally the decision was made that Nosske had to leave his position immediately and was released from the Gestapo. Husmann states that Nosske's leaving the Reich Security Main Office, and therefore leaving the Gestapo to which he belonged, was confirmed to him, to Husmann. This is on page 21 in the center, Your Honor, of the document.

witness without the Tribunal's knowledge concerning the importance or lack of importance of this witness. The witness was granted to me on the basis of this affidavit. I fully agree to this; only may I point out that this witness Husmann is in the prison here and that the Prosecution can cross examine him at any time, so that fact that this is an affidavit which is submitted does not mean that I shy away from calling a witness who is so easily available.

Your Honor, as Nosske Document No. 9, as Exhibit No. 8, I bring an ecclesiastical certificate from Walter Kawerau a retired Vicar, from Halle on the Saale River, which reveals that the defendant Nosske was married in church;also the personnel file is submitted here to show that he never left the church, but always remained a member of the Protestant Church.

As the last document, Your Honor, I submit Nosske Document No. 10; this will be Exhibit No. 9. It is in a supplementary volume, and contains an affidavit of a certain Dr. Schmitz, who was a police official in Dusseldorf, and who adds to the statement by the witness Burchardt from his own knowledge concerning his office in Dusseldorf. In the paragraph before the last he says Nosske left the Security Police and the SD; he had to hand in his SS uniform and his official pass.

THE PRESIDENT: Very well.

MR. WALTON: If it please the Tribunal, my objections to these documents are purely nominal. If Dr. Hoffmann will state in his place that the three circular decrees which he has presented as Nosske Exhibits 2, 3 and 4 are all the law on the subject of protective custody, I will not object to them. The point that I make is this: One of these documents shows that protective custody could only last ten days before trial. The next document, in the first monthsof the war, shows that this protective custody was increased to three weeks. There fore, if that is true, there may be, or, at least it is reasonable to assume that this time as the war progressed was increased.

However, if the good Doctor will state in his place, or, as a legal expert and one familiar with German law, that there was no further decree on the subject of the time when a man might be in custody without trial and without hearing, why I will not enter an objection, but asit stands, the three decrees, there is nothing in them which states that is all the law on the subject.

THE PRESIDENT: Well, we will grant, concede and state very emphatically that we have the highest respect for Dr. Hoffmann's legal acumen and knowledge but we cannot charge him with omniscience -

MR. WALTON: But, Your Honor -

THE PRESIDENT: He cannot say that he knows that there never was any other decree on that subject. You are asking him to state as to what does not exist.

MR. WALTON: I appreciate that fact, Your Honor, but he has gone into this subject. I assume that he has made a research to find three circular decrees. Now, if he will state that he found no other decrees pertaining to this during his search, it will be acceptable to the Prosecution, but the point that I am making is that this protective custody was increased, and I think I am reasonable in assuming that if it was increased once it might have been increased again. If there is any other circular decree that he knows of on this subject, I think he should put it in.

DR. HOFFMANN: Your Honor, one of the exhibitsin the International Military Tribunal in 1945 was submitted in this connection. That is all what I know, and incomprehensible ......

THE PRESIDENT: That is exactly what I said, Dr. Hoffmann, only you put it in a little better English.

MR. WALTON: My point, therefore, is won, because the Tribunal from Dr. Hoffmann's statements can draw the same conclusion that the Prosecution draws:

That it was increased. The only other objection that I have is to the affidavit of Dr. Gunther Husmann in that he speaks of matters which inject into the case an entirely new personality on the grounds of a denunciation that Nosske claimed this person made of him. Since this was not testified to by Nosske on the stand that anyone denounced him, which caused him to leave the Gestapo, I do not think that at this time the good Doctor can overcome the doctrine of Laches' that he is barred from bringing in or injecting this now feature since it was known or allegedly known to the defendant, and he testified as to nothing about thisman Guttenberger denouncing him.

THE PRESIDENT: We will follow the same rule unless you have something to say, Dr. Hoffmann. Did you want to interject something?

DR. HOFFMANN: Your Honor, the very fact that someone who is indicted does not know from the start what charges are filed against him, is sometimes the basis for the success of the Prosecution. This examiner Hussmann, therefore, did not inform the defendant Nosske, whose Prosecutor he was going to be, what the charges were against him, so that it is not strange at all that Nosske on his own initiative can only say what he knows, while Husmann as an investigator states matters as he sees them. I therefore see no reason. -

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MR. WALTON: I think Dr, Hoffmann misunderstood me. According to this affidavit in 1933 the affiant was examining judge and Nosske came before him for interrogation in conn ection with this Horia Sima's escape. At that time in 1944 the now defendant Nosske told this examining judge that the man Guttenberger was denouncing him. Therefore, if your Honors please, this fact was known to Nosske when he took the witness stand in this trial, and he was at liberty at that time to testify concerning it. Now the prosecution contends that since he did not he is now barred from injecting into the case an entirely now feature concerning this testimony about his investigation. He made no mention of anyone denouncing him when he was on the stand here.

DR. HOFFMANN: Your Honor, may I say something about this?

THE PRESIDENT: Well, I will let you, but I think that I can do it just as well. The theory of the document books is that they will contain evidence, not only rebuttal but they are still part of the case in chief -- I am speaking now of the defendants' document books - so that each affidavit could well be a speaking witness. Now Dr. Hoffmann is still presenting his case in chief and he presents this affidavit. He could have called that individual. Well, we know that in lieu of the flash and blood witnesses we are taking affidavits for the conservation of time and for many other reasons, so that he, in effect, is now presenting a witness who he might just as well have presented before. So I don't think you can charge him with laches. It is not rebuttal; it is his case in chief.

MR. WALTON: Very well, your Honor.

THE PRESIDENT: Very well.

MR. WALTON: Your Honor, I don't know quite how we are proceeding and Dr. Hochwald gets up and then Dr. Hoffmann gets up. I have one docum*--* I would like the Tribunal, in order to keep the proceedings regular, to call me at the proper time, when it is the proper time to introduce it.

THE PRESIDENT: You may present it now since you are here at the podium. I don't think Dr. Durchholz will mind.

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DR. DURCHHOLZ: Your Honor, I merely have to offer one more docu ment for the defendant Schulz but I am Willing to wait until Mr. Hochwald has returned. My colleague Link asked me to deputize for him concerning the defendant Ruehl, and he asked me to submit the Document Book No. III which consists of three documents. His wish was that I may be able to do this for my colleague Link. I think Mr. Walton is competent for this case.

THE PRESIDENT: Yes. All right, you may proceed.

DR. DURCHHOLZ: As Document Book III for the defendant Ruehl I am to submit a few supplementary documents. As Ruehl Document No. 27 I submit an affidavit by Dr. Hans Schmitz of 21 January 1948 on Page 69 of the book. This has the exhibit number 27. Dr. Schmitz talks about the professional activity of Ruehl in 1934 to 1938, when he was a speciali for counter-intelligence matters. He confirms that Ruehl was taken out of this career against his will and the Reich Security Main Office instructed him to be a candidate for the executive service. This document is a supplement for statements made in Ruel Document No. 7 which is Ruehl Exhib*---* No. 7. In Document Book No. I on Page 19, an affidavit has been introduce there by Herr Loesse, a government councillor. I also offer as Exhibit No. 28 an affidavit by Erwin Hanson of 16 January 1948. This is Ruehl Document No. 28 on Page 71. The affiant states here further details about the position of Ruehl as administrative officer in the Sonderkommando 10b and confirms that Ruehl was not one of the senior officers after the commander. Hanson also confirms that Ruehl had nothing to do with interrogations, arrests and executive tasks, and neither acted as deputy of the kommando chief nor was he chief of a subkommando nor was he active as such

MR. WALTON: Now, if your Honors, please, I don't think even th*---* Tribunal can say about this document that he just argued about that it is part of the case in chief. This document is put in specifically to refut* the one document or the affidavit of a witness Robert Barth, B-A-R-T-H. We would never get through with this case if rebuttal, sur-rebuttal, sursur-rebuttal is continually put in. Now is this witness knew these facts which was brought out certainly in cross-examination that at least the pr cution thought Ruehl was a deputy to Persterer, the kommando chief, at the time when his document books were presesented this should have been in them as part of his case in chief.

But, if your Honors please, this is an attempt to rebut the prosecution's rebuttal document, and I think the doctrine of laches certainly applies in this case.

THE PRESIDENT: Well, do you admit the principle that affidavits form part of the case in chief?

MR. WALTON: Your Honor, at the time, at the proper time they certainly do, but I ask your Honor to take this into consideration. The prosecution put in one document against Ruehl in rebuttal. Now then this comes as part of the case in chief that attacks the rebuttal or it is a sur-rebuttal of the defense, one or the other, and as a matter of point of time-

THE PRESIDENT: Does it make no reference to your case in chief Does it not reply to anything that you presented in your case in chief against Ruehl?

MR. WALTON: No, sir. My cross-examination attempted to bring from Ruehl the fact that he was a deputy to Persterer which he deinied. the prosecution in rebuttal introduced a document which the Tribunal has pointed out is equal in this case to a flesh and blood witness which refuted that. Now the prosecution comes today- I am sorry, correction the defense comes today and produces an affidavit from a witness that was known to the defense at the time he was cross-examined and attempts to rebut the prosecution's rebuttal document.

THE PRESIDENT: Until you cross-examined on this subject, how was the defendant informed that he was charged with being a deputy of Persterer? Since it was not in your case in chief how was he informed?

MR. WALTON: He was certainly questioned also, if my memory serves me right, by his own counsel as to what his position was in Sonderkommando 10b. We charged him in the indictment with being deputy commander.

THE PRESIDENT: Well that is what I asked you, if it formed part of the case in chief, and you said no.

MR. WALTON: I believe I should like to correct that. If my memory serves me, in the first pages of the indictment where each man's SS rank is given and his position in the Einsatzgruppen, it definitely states that he was charged as deputy chief of the Einsatzkommando 10b, or Sonderkommando 10b.

THE PRESIDENT: All right, if he was charged with being deputy commander in the indictment and it was part of your case in chief, then on the principle that all these documents submitted by the defense form part of the defendant's case in chief, why wouldn't he be permitted to present this affidavit to refute the charge in the indictment that he was a deputy commander?

MR. WALTON: He would, your Honor.

THE PRESIDENT: Yes.

MR. WALTON: At the proper time, but the point that I am asking is that this is a sur-rebuttal document.

THE PRESIDENT: Well, but Mr. Walton, you know of all the difficulties that there are in getting these documents presented and prepared. There are so many mechanical propositions to overcome so that the mere delay in time does not of itself suggest that defense was not diligent.

MR. WALTON: Look at the date of the instrument, your Honor, or the 28th of January 1948. It was obtained after the rebuttal document was in and it comes in as an attempt to sur-rebut the prosecution's rebuttal.

DR. DURCHHOLZ: Your Honor, may I comment on this briefly?

THE PRESIDENT: Mr. Walton, if you had brought in a witness instead of an affidavit then the defense would have had an opportunity to cross-examine that witness, but since you avail yourself of a privilege, which is accorded all counsel, to bring in affidavits in lieu of witness how is the defense going to reply or challenge in any way this affidavit less he does it in this way since you did not present the flesh and blood Witness?

MR. WALTON: Very well, your Honor, I put in the objections, the Tribunal rules on them.

THE PRESIDENT: Very well, your objection is overruled.

DR. DURCHHOLZ: Your Honor, may I just make one comment on this? The necessity of introduction of this document was not based on the rebuttal but because of the cross-examination, and the fact that the document was only introduced now is due to the fact that we had no means of obtaining this affidavit before. Apart from that this supplements previous documents on various points.

As my last document I offer as Exhibit No. 29 the Ruehl Document No. 29 on Page 76. This is an affidavit by Karl Kaufmann of 16 January, 1948. The witness confirms that Ruehl was niehter introduced as deputy of the kommando chief nor was he over active as such or as subkommando chief.

MR. WALTON: Your Honor, the prosecution makes application in open court to have those two witnesses called for cross-examination.

THE PRESIDENT: If they can be obtained.

MR. WALTON: Otherwise we object to the introduction of these last two documents.

THE PRESIDENT: If those witnesses can be obtained forthwith, the application is approved.

DR. DURCHHOLZ: I shall try, if it becomes necessary, to bring those witnesses here for cross-examination.

MR. WALTON: Do I understand the Tribunal that I have the right to cross-examine these witnesses?

THE PRESIDENT: You certainly have.

MR. WALTON: If they are not brought then the Tribunal does not accept the documents, or do they accept it for whatever probative value they choose to give it?

THE PRESIDENT: Well, what is sauce for the goose is sauce for the gender.

MR. WALTON: That is right.

THE PRESIDENT: He has the right to cross-examine your witness.

MR. WALTON: Very true, your Honor.

THE PRESIDENT: Well, can you get your witnessin here?

MR. WALTON: He lives in the French Zone of Austria. I can set the procedure in motion as soon as I leave.

THE PRESIDENT: Well, let's dispose of it this way, Mr. Walton, that if any or all of these witnesses can be obtained and presented to the Tribunal this week then we will hear them. Otherwise we will accept all the affidavits, the ones that you presented and the ones that he presented, and assign to them the probative value which the entire situation will accord to then.

DR. WISSMATH: Dr. Wissmath for the defendant Jost.

defendant Jost by presenting Document Book IV which conclude my presentation, if the prosecution does not object to this since Mr. Glancy is not present.

THE PRESIDENT: You may proceed.

DR. WISSMATH: I offer as Jost Exhibit No. 33the document J-34. This is an affidavit by Hans Daufeldt of 19 December 1947, on Pages 1 to 2. The witness was on an emergency status in the RSHA where he was assigned from 1939 until 1941 and he states that the activity in the independent Office VI dealt with making economic and political reports from foreign countries and that it did not collaborate with Office IV of the RSHA. Daufeldt describes Jost as a decent humane man who treated his subordinates in a correct and decent manner.

As Jost Exhibit No. 34 I offer the document J-35. This is the affidavit of August Finke of 12 January 1948 on Pages 3 to 6 of the document book Jost No. IV. It states that Jost was chief of Office VI in the Reich Main Security Office from September 1939 until the middle of 1941 approximately. Office VI was not a counter-intelligence organization of Office IV. It had no police tasks and had nothing to do with executive tasks. Office VI merely dealt with intelligence reports from abroad. Also Office IV of the RSHA obtained their own information apparatus which concerned enemy counter-intelligence work abroad. Attempts by Office Chief IV Mueller to influence Office VI rejected by Jost. Finke says about Jost's character. "Jost's reserved attitude was almost indifference. Things had to happen before he changed that attitude, but Jost stood up for his own opinion stubbornly, though on the whole he was very tolerant. Jost was not a political zealot nor was he doctrinaire."

As Jost Exhibit No. 35 I offer Document J-36, an excerpt from the Flick judgment. This excerpt is to be considered as part of the emergency decreestatus which concerned him.

As Exhibit No. 36 I offer the document J-37. This is an affidavit of Dr. Wolfgang Wohlgemuth of 15 January 1948, contained in Pages 14 to 19 of the fourth volume. Dr. Wohlgemuth has known Jost since the fall of 1940. At the end of 1941 or beginning of 1942, he gave him medical treatment. The diagnosis showed a disturbance of the activity of the thyroid glands caused by strong emotional excitement and a disturbance in the equilibrium of the vegetative nervous system with symptoms of deficient circulation of the blood. The illness is due to the inner tension existing in Jost which resulted because of the discrepancy between Jost's inner attitude and the work he had to do. The witness describes Jost as tolerant in his character and not at all ruthless.

THE PRESIDENT: May I call your attention to one sentence in this affidavit which to me is a little ambiguous, and I want to make certain that the translation is correct. On Page -- the top of Page 3, Page 16, the English document book, the English translation, but your Page 3, where it says, "He showed himself to be an outspoken idealist and at that time, autumn 1942 --" Have you located that?

DR, WISSMATH: No, your Honor.

THE PRESIDENT: Well, it is Page 3 of yours, of the original affidavit of Dr. Wolfgang -

DR. WISSMATH: I have the place, your Honor.

THE PRESIDENT: Now, this is the way we have it in English. "At that time, autumn 1942, he made the somewhat melancholy remark, as I still remember very well, that idealism is probably the most erroneous conception of life." I see that you understand English.

DR. WISSMATH: Yes.

THE PRESIDENT: Now, is that the correct translation?

DR. WISSMATH: Your Honor, I assume that the date given here is given in the wrong relation. I shall read the sentence again in German and the interpreter will then retranslate it.

THE PRESIDENT: Please read it slowly.

DR. WISSMATH: "He showed himself as an outspoken idealist and at the tine, namely in the fall of 1942, as I recall very well made, the rather sad remark that idealism is the most erroneous conception of life." This date, therefore, refers to the time when he made that remark and not to the time when he was an idealist, as I think the English translation night indicate.

THE PRESIDENT: Well, I don't seehow this is a favorable view of the defendant, and certainly you wouldn't be submitting something unfavorable to him. He states that idealism is an erroneous conception of life, in other words that idealism should not be embraced and followed, is that what you mean?

DR. WISSMATH: Yes, that is how I understand the testimony of the affiant.

THE PRESIDENT: Well, I can't understand the purpose in submitting something which is derogatory of the defendant in the defendant's document book. However, that is up to you. It may be that what the affiant intended to say was that idealism did not bring the defendant to any felicitous state in life and to that extent that idealism was impossible, but not that it is an erroneous conception, because if you don't have idealism in life you certainly don't have any order or system or morals. Very well.

DR. WISSMATH: Because of Jost's character the witness Wohlgemuth had confidence in him and expressed his anti-Nazi opinions to him, as can be seen from the affidavit. Wohlgemuth recalls that during a conversation Jost told him about his work in Riga, that he objected to executions of Jews.

As Exhibit No. 37 I offer the document J-38, This is an affidavit of Dr, Sohr of 17 January 1948, Pages 20 to 24. The witness says concerning Jost's character that Jost was a calm, reasonable man who was very honest.

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He was sincere and conciliatory and always willing to help.

As supplement to Document Book IV, I offer as Exhibit No.38 the document J-39. This is an affidavit by Anton Dunkan of 30 January 1948. This reveals that Heydrich disapproved of Jost and described him as an officer who was of not much use. Heydrich wanted to express by this that Jost insisted on legality and proper treatment and justice. In his opinion Jost was not energetic enough for such an assignment and too inhibited. in Document Book III, Pages 14 and 15, Exhibits Nos. 29 and 30, I want to offer the new numbers, the new charts, which I ask the Tribunal to accept now. Tribunal to the fact that the Document Book 5-A submitted by the prosecution in rebuttal in the English version merely contains a small part, namely a third approximately of the German issue. Since the defense quotes this volume in the final pleas, there is a danger that the Tribunal will not be able to find the quotations in the English text. I therefore suggest that the prosecution should complete the volume in English so that it contains the same as the German volume.

THE PRESIDENT: Suppose we have our recess now.

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DR. KRAUSE: Krause for Haensch. I beg your pardon, Your Honor -

THE PRESIDENT: If you would like to go ahead while we are absent, you may, but I think it would be more to your purpose if you waited until we have our recess.

DR. KRAUSE: Your Honor, I merely took the liberty to offer my documents because there are only three.

THE PRESIDENT: Suppose we do that now?

DR. KRAUSE: I would like to introduce Haensch Document Book Number IV. It contains three documents, but I only intend to submit the first two. On page 1 of Document Book IV, Exhibit Number 31, I offer the Document Number 29. This is a copy of a telegram addressed to the present Mayor of Oger-Tuebbingen of 22 January 1948. In this telegram I asked that the question, the first name, the date of birth, and the period of office of the former mayor, Dr. Weinmann, be given to me. The Tribunal well recall that the prosecution introduced a document which is supposed to reveal that Dr. Erwin Weinmann, who went to Russia at the same time as the defendant was already in the Einsatz since the 13th of January 1942. This document of the Prosecution describes Dr. Erwin Weinmann as Mayor of Tuebbingen. I also submit on page 2 of Document Book IV as Exhibit Number 32 the Document Number 30. That is the reply telegram sent by the Mayor of Tuebbingen in reply to my telegram dated 22 January 1948. It says that the Mayor of Tuebbingen during the time from 28 July 1939 until 18 April 1945 was a Doctor Ernst Einmann, who was born on 16 April 1907. This is merely a mistake in the surname. This obviously is the Dr. Ernst Weinmann. In any case, the document shows that Dr. Erwin Weinmann, who concerns us here, was not Mayor.

MR. HOCHWALD: I object against the two last documents as they are not submitted in the form prescribed by the Tribunal, they are neither captured documents nor affidavits nor transcripts of some criminal proceedings, they are just telegrams between two parties which have nothing to do personally with the defendant. In this form the exhibits are inadmissible; as to their contents, they are immaterial.

The question which was to be proved by the document put in by the prosecution was only whether Dr. Erwin Weinmann had been in the Einsatz from the 13th January 1942 on. Nothing to that effect is proved by these two telegrams.

DR. KRAUSE: Your Honor -

THE PRESIDENT: Well, then they don't hurt anybody.

MR. HOCHWALD: They certainly do not hurt me, Your Honor.

DR. KRAUSE: Your Honor, I still ask you to accept these documents. I shall try -

THE PRESIDENT: We haven't refused them.

DR. KRAUSE: Thank you. I now ask to be allowed to introduce another single document. It is Exhibit Number 33 , Document Number 32. This document consists of three parts. They are copies of the opinions which the prosecution put at my disposal, and I thank them for it. These expert opinions discuss export opinions about the handwriting of the witness Schreyer that is, the handwriting in the order sheet on the envelope of the negative plates.

THE PRESIDENT: Well, it isn't necessary to enumerate all those exhibits, Mr. Hochwald went into that rather completely this morning, so that we know what they are. You are now merely p utting them in evidence and they will be accepted.

DR. KRAUSE: Yes. I merely wanted to point out, Your Honor, that both expert opinions -

THE PRESIDENT: But you cannot argue it, you merely present them. The argument will come in the summation.

DR. KRAUSE: Very well.

THE PRESIDENT: The Tribunal will now be in recess 15 minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. KRAUSE(ATTORNEY FOR THE DEFENDANT HAENSCH): Your Honor, The Secretary-General drew my attention to the fact that the document numbers Haensch 1 through 4 occurred twice, that is, in connection with the submission of the documents which are with the documents of the Witness Schreyer, who was heard on the witness stand. I would like you to permit me to make a change. I would like that the documents in Document Book No. I which up to new bore the numbers 1, 2, 3, and 4, now be called 1a, 2a, 3a, and 4a. The document submitted yesterday in the form of an index card of the dentist, Dr. Maennel, will now receive Exhibit No. 34, Document No. 33.

THE PRESIDENT: Very well. The record will show that.

MR. WALTON: If your Honors please, the prosecution has one document to introduce in the case of Ohlendorf. Dr. Aschenauer has been patiently waiting all day, but I don't want to impede the defense counsel which are waiting. My understanding is that the plans of the Tribunal are to have Dr. Aschenauer begin his closing statement right after the afternoon, or the noon recess. If it is agreeable with Dr. Aschenauer and for the Tribunal and because of a matter of some importance which has come up in my office, I would like to reserve the right, before Dr. Aschenauer gets started this afternoon - it will take not more than five minutes -to offer my document and then hear from Dr. Aschenauer, so that I can leave for my office at the present time.

THE PRESIDENT: Do you want to do it now? Do you want to take five minutes?

MR. WALTON: Sir, there will be some objections, which Dr. Aschenauer desires to put and I thought when he took the podium, he could keep it.

THE PRESIDENT: Very well.

Dr. von Stein?

DR. VON STEIN (ATTORNEY FOR THE DEFENDANT SANDBERGER): I have submitted one document book for the defendant Sandberger, and I am new about to submit Document Book I-A.From Document Book I-A, I now offer as Exhibit No. 21, Sandberger Document No. 23.

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It is an affidavit of one Harry Hanke, the former Radio Chief of the Staff of Einsatzgruppe A. He says from his own knowledge that Sandberger during the second half of September and the beginning of October 1941, was not in Esthonia, but in the territory south of Leningrad and secondly that the Chief of the Einsatzgruppe, Dr. Stahlecker, at the end of September, 1941, was in Riga.

I now submit as my next document, Sandberger Exhibit No. 22, Sandberger Document No. 24. It is in Document Book I-A, the affidavit of one Margarethe Oettinger. She also testifies that Sandberger during the mentioned time was in the frontal sector near Leningrad and that during this time the rear army territory in Esthonia was not subordinated to him, but that his deputy was in charge of that area. Furthermore, she testifies in accordance with Sandberger's direct examination that Reval was under Einsatzgruppe A at that time. Furthermore, she confirms the statements that Sandberger made in the witness box, answering the question put by the President concerning his absence from Reval in March and April 1942. Finally Miss Oettinger testifies from her own knowledge as to the facts which I have already mentioned when my affidavit was submitted, the affidavit of von Rechter. It was Exhibit No. 1.

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Now I submit Sandberger Exhibit No. 23, Document No. 26, Document Book I-A, page 24, the affidavit of Criminal Commissar, Johannes Feder, who was a Sub-Kommando Chief in the Special Kommando 1-A. He confirms in this affidavit the correctness and accurateness of those statements which Sandberger made when he was on the-witness stand concerning the days of his absence from Riga from the 1st to the 4th of July, 1941.

I submit and offer from Document Book No. 1-A, page 60, Sandberger Document No. 37, which I offer as Sandberger Exhibit No. 24, the affidavit of Dr. Adolf Windecker. Windecker was a special plenipotentiary in the Foreign Office for the Baltic Countries and he has known the defendant Sandberger during the years 1941 to 1943. In this affidavit he quotes from a report which he sent voluntarily in November 1947 to the prosecution to Professor Kempner. In this affidavit he says that Sandberger supported and aided Estonian Jews, contrary to the orders received and that he had transported them to Pleskau where they were living in a camp up to the time when Obergruppenfuehrer Jackeln got hold of them. Herr Windecker also makes a positive general statement as to Sandberger's activities in Estonia.

My next document, which I offer as Sandberger Exhibit No. 25, is Sandberger Document No. 25, page 15, the affidavit of Gerhard Utikal. In May and June 1947 the affiant was in the same cell in the prison in Nurnberg with Sandberger. In order to explain this document, I may remind the Tribunal of the fact that Sandberger answered my question, with the permission of the President, when he was on the witness stand by giving a supplementary remark which was an explanation for the affidavit which he made out on the 23d of April, 1947. It was the question why in this affidavit nothing had been said about the examination and investigation of Communists. Sandberger testified in explanation of this that he wanted to say this, but that the Interrogator did not permit him to do so, and that the interrogator pointed out to him that he would be able to make such supplementary remarks in the near future,. Furthermore, Sandberger stated that he had assumed that this would be possible for him to do in the near future and he had prepared documents concerning this in his cell and he was still in the possession of these documents.

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The affidavit by Utikal refers to the fact that Sandberger told him about these matters and that he himself had made the observation that Sandberger had made preparatory notes for an interrogation which was to come and that apart from this, in order to explain this particular procedure, he prepared a chart concerning this Communist matter. I submit a photostat of this chart and explanatory remarks concerning the chart. They are all documents made by Sandberger in Spring 1947 in his cell in Nurnberg in the presence of the affiant Gerhard Utikal.

I next offer Sandberger Exhibit No. 26, Sandberger Document No. 27, the affidavit of the merchant, Herbert von Dehn, who is now living in Kassel. He confirms from his own knowledge that as far as Communist activity in Russia was concerned, individual proceedings took place and that interrogations and investigations took place. Herr von Dehn speaks at some length about Sandberger's conciliatory attitude towards the Esthonian people.

I submit from Document Book No. 1-A, Sandberger Document 36 as Exhibit 27, the affidavit of one Carl Halter . Herr Walter had a leading position as an official between 1941 and 1944 in the German Administration in Reval. From his affidavit it becomes evident that Sandberger was even just,as far as Communist activities were concerned, and that he suggested amnesties to the Governor General on various occasions and that he took measures against denouncers. He furthermore speaks about his friendly attitude towards the Esthonians and he gives various examples. He says that Sandberger attempted to get the Foreign Office to make Esthonia. A Sovereign state according to international law.

As Sandberger Exhibit No. 28, I offer and submit Document No. 34, Affidavit of Fumy. Fumy was a Criminal Commissar in Office IV of the RSHA, the Reich Security Main Office, and as such he worked on the situation reports received.

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This affidavit which I herewith submit supplements all the statements, the extensive statements, which Fumy made in the Ohlendorf Document No. 32, which has already been submitted by my colleague, Dr. Aschenauer. Fumy comments on the situation in the office for the reports which went from Reval to Berlin and refers especially to the operation events 88 and 111, which were submitted by the prosecution. He also confirms the statements which the Defendant Sandberger made when he was on the witness stand concerning operation Events 88 and 155. No. 29, the affidavit of one Dr, Hans Ehrlich, Group Chief in Office III of the Reich Security Main Office during the entire time of the war. Dr. Ehrlich confirms from his own knowledge that Sandberger's most important work was the Information and News Service in the domestic spheres. Dr. Ehrlich furthermore states that Sandberger had seen his main task in convincing the German agencies that Esthonia, within the program of a European new order, would have to receive its autonomy.

I submit and offer Sandberger Document No. 22, Exhibit No. 30, the affidavit of the Swedish Major Carl Mothander in Stockholm. Major Mothander knows Sardberger because during Sandberger's period of service in Esthonia he stayed in Esthonia on various occasions, for example, as a member of an investigating delegation of the Swedish Government, then as the Managing Director of an Esthonian Aid Committee in Stockholm, then as the representation of the Swedish Red Cross, then as the sole plenipotentiary of the Swedish Government for the transfer of Esthonian Swedes to Sweden. Owing to his familiarity with the people and the country in Esthonia and based on a number of discussions with Sandberger, Major Mothander says that Sandberger supported the Swedish Government constantly in this resettlement program of Swedes in Esthonia. In conclusion Mothander gives testimony as to the character of Sandberger. I quote:

"Political Police-Service is certainly pleasant in no country. Dr. Sandberger appeared to suffer on account of it often as a man. I got the impression that there must have been friction with higher superiors.

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A natural tendency to human kindness and justice often betrayed itself in his nature. For that reason he was always open to what is called "Argumentum ad hominem." testimony but by his own attitude and by his own impression he had discussed it with a former clergyman, a man called Roehl in Reval, who at that time also had been able to dance behind the scenes in Esthonia and he agrees with Mothander's attitude about Sandberger.

I submit from Document Book Sandberger I-A, Document No. 33, which I offer and submit as Exhibit No. 31, the affidavit of one Dr. Bruno Peter von Kleist who lives in Reinbek, who confirms that Sandberger with all the means at his disposal took part in the attempt to compel the Reich Government to carry out a certain autonomy in Esthonia. From a number of remarks in Esthonian circles, Dr. von Kleist found out that the Esthonians often sought Sandberger's protection when German agencies became rambunctious.

I offer as my next document, Sandberger Exhibit No. 32, Document No. 28, the affidavit of one Heinrich Bernhard, who from 1935 to 1938 was the Chief of the Main Department for Foreign Countries in the SD sector in Stuttgart and from 1939 to 1945 was Departmental Chief in office VI in the RSHA, the Reich Security Main Office, who confirms the statements of Dr. Scheel, Eiseler, and Sandberger concerning the involuntariness of cooperation with the SD during the war.

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office of the RSHA between 1944 and 1945. The Affidavit of Erich Olbrueck who lives in Schmilling near Arolsen. Document No. 29 I offer which is Sandberger's Exhibit No. 33. Olbrueck gives the personnel and political policies which Sandberger practiced. Furthermore, he reports that in May 1945 Sandberger reported voluntarily to the US Army. The next three affidavits concern the activity in Office VI the RSHA in 1944 and 1945. I offer from Document Book I-A Document No. 30, affidavit of one Dr. Gisel her Wirsing, which is offered as Exhibit No. 34, concerning the activity of Office VI of the Reich Security Main Office. Then there is document No. 35, affidavit of one Dr, Paeffgen , who between '43 and '45 was active as the Security Chief in Office VI for England and America. I offer it as Exhibit No. 35. This affidavit also refers to activity of Office VI of the RSHA. Next I offer Document No. 31 as the affidavit of former chief of Office VI in the RSHA, one Walter Schellenberg. I offer it as Document Exhibit No.36. Schellenberg among other things reports that in the course of his activity, especially in the activity in Estonia, Sandberger got in disgrace with a number of his superiors, and "I remember very well that Sandberger was criticized very unfavorably in Office LV, especially by its Office Chief Lueller", and they made a number of derogatory remarks about him. Schellenberg furthermore reports that suggestions were made to transfer Sandberger and to promote him and that they were refused by Heydrich and by Kaltenbrunner on two occasions. He comments on Prosecution Document 5045, which is Exhibit 182 of the Prosecution, which come up during the cross examination of Sandberger and he reports, and I quote: "He had confidential discussions with him, the affiant, which were conducted with great candor, and he made remarks saying that he was very worried about the policy of the German Government, which he considered wrong. He objects to all strict political measures, against measures which were opposed to the church end measures against the Jews. Next I submit Document No. 3 affidavit of Heinz 'Wanninger, 2 January 1948, which I offer as Exhibit No. 37.

Wanninger was in 1944 and 1945 Chief of the personnel department of the RSHA. The Prosecution Document 3045, Exhibit No. 182, bears his name. He comments on how it was possible that data concerning personnel matte rs were inaccurate in documents of the RSHA. Furthermore, he confirms statements which also are in the affidavit by Rudolf Hotzel. He says that the secrecy among the various offices was very strict, and as a member of Office I I didn't know about any activities of other offices in the RSHA, and especially no sofar as Office IV was concerned.

Now I come to Document Book No. II. In order to bring proof of the inaccuracies in Document 5045, particularly the dates, I now submit and offer as Sandberger's No. 38, a certified copy of the birth certificate of the wife of the defendant Sandberger, Mrs. Eva Sandberger nee Kirschstein, which is in Sandberger's Document Book II, Doc. No. 11, page 61. The comparison between this date and the date of Exhibit No. 182, shows that the date in Exh. 182 is wrong. As my next document I offer and I submit Exhibit No. 39, Document No. 5 on page 50. It is an excerpt from the Prosecution's Document No. 1180, Exhibit No. 34, of Prosecution Volume II-A, that pert of the document which has not been submitted by the Prosecution. This document mentioned the members of a leading central committee, especially, those leading Communist Functionaries who in the Summer of 1941 had remained in Estonia on Soviet Orders in order to direct political, underground organization, for the purpose of carrying out espionage acts, sabotage acts, and other illegal activities Sandberger referred to this list when he was on the witness stand, when he was asked by the Prosectuion who in particular were these people, these people, these leading Communist Functionaries who were named in the report 55 of Prosecution's Document NO 3272. Prosecution Document NO 3279, Prosecution Vol. 1; from the list which I submit in connection with the statement that Sandberger made, it becomes evident that these chief functionaries were not condemned to death because they were Communist Functionaries, but because they were carrying on sabotage and espionage acts and building up an organization.

As my next document I submit Sandberger's Document No. 40, it is document No. 9-C, an excerpt from an article of the Canadian Professor Watson Kirkconell, who wrote this in an English magazine, the "Baltic Review", published in Stockholm. The excerpt which I submit contains a list of groups of people who during the time of the occupation of the Baltic State in 1940 and 1941 were to be liquidated by the NKWD. This list is published by Lithuanian-American circles in New York, and that the author is in possession of a copy of this document.

MR. HOCHWALD: The prosecution objects to this document, the excerpt of a newspaper is no evidence , moreover, it is immaterial and has no value in the case.

DR. VON STEIN: The reason why I submit this document is to support the testimony of the witness Dr. Mac. This objection was also raised when that witness was on the witness stand, but the Tribunal was kind enough to admit the question, and in order to support this statement I submit this excerpt which states that the original of this list is in New York.

MR. HOCHWALD: This does not change anything in the nature of the document, Your Honor. The document is not a captured document, it is not an affidavit, end it is inadmissible in its form.

DR. V ON STEIN: I submit this document mainly in order to bring an illustration from another party. I had relied only on the testimony of the witness Dr. Mae as well as Sandberger, and in order to support this testimony I would like to submit an article which comes from abroad and which confirms the same fact.

MR. HOCHWALD: It would be perfectly correct, if Dr. von Stein would have received an affidavit from the writer of the article offered, that would be corroborative evidence for sure. It would be another question where the evidence on this would be material, but all arguments do not change one fact. An article in a newspaper which is not a captured document, which was not written before 1945, cannot serve as evidence before the Tribunal.

THE PRESIDENT: I am afraid, Dr. Stein, that would be stretching the rule of liberality a little bit too far, after all, it is merely a comment by some one not involved in the trial.

DR. VON STEIN: Your Honor, I am not in a position to support this evidence by other documents. I only have the opportunity of pointing out documents which originated abroad , and the Tribunal can of course assign any probative value it wishes , but it is not that I only have to submit official documents but I can also submit anything of any probative value, and I think that the views of the foreign press, especially something which appeared in N.Y., might have a certain probative value.

MR. HOCHWALD: If argument of defense counsel would be correct, then it would be easy to decide the case by submitting some articles which are referring to the guilt or innocence of these defendants, if the article appeared in a New York newspaper or in a Washington newspaper, during the time of the trial; the Tribunal would certainly not accept such evidence which in essence is absolutely the same thing. We have never tried, and we would not try to put in evidence --

DR. VON STEIN: May I point out again, Your Honor, from this Baltic Review, the source from which the original was obtained is listed. Probably that will suffice, as it is not just an article which I offer, but I submit the source which is contained in the document itself.

MR. HOCHWALD: If Dr. von Stein would have put in the original in its form, possibly the exhibit would have been correct, I am not sure as to its contents , but only by giving the source of the article in the newspaper, the Prosecution has no possibilityto check these sources, and would place too much of a burden on the Prosecution to prove the incorrectness of the article.

THE PRESIDENT: Dr. von Stein , don't you see that this type of evidence is like a double-edged sword. If you would be allowed to introduce a newspaper article which could be interpreted favorably to the defense, the Prosecution then could introduce many newspaper articles to the contrary.

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Then you have evidence here which is not under the control of the Tribunal. The evidence which comes into the Tribunal must have all the safeguards which go with the ascertainment of truth, examination, cross examination, ascertainment of source of material which you could not hove in the mere submission of a newspaper article which could be written by some prejudiced, or some one not in possession of all the facts. It would be a different thing if the question was, did a newspaper article appear or not and that became the issue, but that is not the issue here. Some newspaper man may express a thought, a view and certainly we can not charge the defendants with that thought or view expressed by some one who is not in the courtroom.

DR. VON STEIN: Your Honor, the document contains the source of this statement and is at the disposal of the Prosecution at any time.

MR. HOCHWALD: It is not the burden of the Prosecution but I would like to make it very clear to get the evidence which the defense wants to put in. If Dr. von Stein wants to prove something, he has to put in the exhibit, not the Prosecution can be charged in finding the book in which this evidence alledgedly is to be found.

THE PRESIDENT: We think, Dr. von Stein, in order to preserve the absolute impartiality of the deliberations, that a newspaper article may not be accepted, so the objection of the Prosecution is sustained. I would like to have you make a note, Mr. Hochwald, that one time you were sustained.

MR. HOCHWALD: Thank you very much.

DR. VON STEIN: May I proceed?

THE PRESIDENT: Please do.

DR. VON STEIN: Concerning the question of the Communists in Estonia, I submit No. 41, Sandberger's Document No. 1, in Document Book No. 11, an excerpt from operation events of the RSHA, namely such excerpts from prosecution documents whichwere not submitted by the Prosecution in their document books. Also I submit excerpts, copies from the so-called reports from the Eastern Occupied Countries, which were published by the RSHA, 1942 and '43, in connection with the operation reports which I had mentioned before.

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These are in photostatic form in the office of the Prosecution. I would like to thank the Prosecution for permitting me to look through all these reports, and to copy excerpts from the indexes and contents of these books. As Sandberger's Exhibit 42, I submit Document No. 2 in Sandberger's Document Book No. 13. This contains certified excerpts from the Eastern reports submitted by the Prosecution. As

Exhibit No. 43, Sandberger's No. 3, page 12-A, excerpt from operation report of 7 November 1941, No. 130. This excerpt describes the methods of the Bolshevist Agents in the area of the Army Group North. Especially the fact that women and juvenile children over fourteen were used by the Russians as agents. Referring to these report of events and reports from Eastern Occupied Territories I may point out the following: The excerpts from the reports of events No. 29 and No. 166, concern the measures of the Soviet in Estonia in the years of 1941 and 1942, and the measures to deport anti-Soviet elements from the Baltic to Siberia. It also concerns the fact that the Soviets in 1941 and '42, deported 60,911 people.

MR. HOCHWALD: If the Tribunal please, I do think it is clear from the presentation by Dr. von Stein, that this document has no value in the case. We object therefore, to the presentation of this document.

THE PRESIDENT: It may not be precisely relevant but we will admit it for whatever probative value it will have, shedding some light on the possible interpretation by the defendants on the historical situation, if it existed.

DR. VON STEIN: The excerpt from report of events, No. 51, concerns itself with the Soviet destruction battalions and excerpt 53 has to do with Communist Partisan activity in Estonia. The reports of events No. 163 and 171, 176, 178, 180 and 191, and the reports from the Occupied Eastern Territories, Nos. 3,30 and 50, report of this extensive activity of parachutists in Estonia. As for SK I-A, Special Commando 1-A, which Sandberger commanded in Leningrad, Sandberger said that this Commando dealt mainly with G-2 tasks. In this connection I picked out the above-mentioned excerpts from the reports of events, and also one excerpt from report of events 116. This states that the main task of the subcommando of Einsatzgruppe A before Leningrad was the military and political information service, and the intelligence service methods are explained. In accordance with this I may draw attention to pages 1 and 3 of a Situational Report, in which it is said that Pleskau in June 1941 had been the garrison of SK 1-B but not of SK 1-A. These are the excerpts submitted by me from reports of events No. 24 and No. 34. It becomes evident from this that the passage contained in the Document 3401 concerning Pleskau, that is in Document Book 2-A, on page 110 of the English Document Book, is objectively wrong. I may refer here to the statement of Sandberger when he was on the witness stand. I now submit documents concerning the general testimony which was made by Dr. Mae, former chief of the Estonian Administration in connection with the conditions which Sandberger found when he arrived in 1941 in Estonia, and also concerning the attitude of the Soviets which led to these conditions. I submit document No. 9-b, page 55, as Exhibit No. 44. That is an excerpt from a newspaper article of the American Citizen, Julius Epstein, entitled "Broken City."

MR. HOCHWALD: The objection is the same as the one on which I was sustained.

THE PRESIDENT: The ruling is the same as the one on which you were sustained.

DR. VON STEIN: I was just about to give the exact source for this document.

THE PRESIDENT: Well, it is from a newspaper article?

DR. VON STEIN: It was published in 1946 in a report, Appendix, of Washington, January 1946.

THE PRESIDENT: Dr. von Stein, it must be apparent to you that we can not accept evidence of that kind. It is no reflection on the newspaper, or the writer of the article, but it is the general principle which is involved, that if you open the door to newspapers, then you will be trying the case on hearsay evidence.

DR. VON STEIN: Your Honor, but the source is given in the newspaper article.

THE PRESIDENT: Don't you see, Dr. von Stein, the person who writes the article is not under oath, he may be mistaken in his source of information, there is no chance for cross examination. I don't think you need to argue that point. We just can not accept them.

DR. VON STEIN: I now offer Document Sandberger 9-E and 9-F in the Document Book on pages 58 and 59, as Exhibits 45 and 46. Then I submit Sandberger Document No. 9-A as Exhibit No. 47, an excerpt from an article by the Estonian Protestant Bishop -

THE PRESIDENT: What is the date of that article?

DR. VON STEIN: The date?

THE PRESIDENT: Yes.

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DR. VON STEIN: 1946.

THE PRESIDENT: You see, Dr. von Stein, if this newspaper article had been published during the time that Sandberger was there, then it could be evidence of the fact that the newspaper was published, and it stated certain things, but here is a newspaper which came out after the events, which are the subject of this trial, ended.

DR. VON STEIN: Yes, but the newspaper article concerns itself with events of 1940 and '41 in Estonia.

THE PRESIDENT: Yes, then you should have here the man who actually knows of these events.

DR. VON STEIN: As Exhibit Sandberger's No. 49 I submit and offer an excerpt from the Journal Official de la Republique 19 July 1946. This is an excerpt from a speech by -

THE PRESIDENT: It is the same thing.

DR. VON STEIN: I may point out, Your Honor, that this Exhibit No. 49 from the Journal Official de la Republique Francaise is a photo-copy of the original.

MR. HOCHWALD: It is not the original article.

THE PRESIDENT: A photostat of what?

DR. VON STEIN: Photostat of the Journal Official de la Republique Francaise, and has been certified by a notary public.

THE PRESIDENT: What is the date of the newspaper article?

MR. HOCHWALD: The date of the newspaper is 19 July 1946, Your Honor.

THE PRESIDENT: Suppose you are submitting the newspaper here, it would be subject to the same type of objection. The fact that it is photostated does not magnify the article.

DR. VON STEIN: It is not a general newspaper, but the official organ of the French Republic, one could not compare this with a newspaper.

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MR. HOCHWALD: Possibly Dr. von Stein can tell us whether it is an official decree of the French Republic, which of course would change it. If that would be a decree or a regulation or a decision before a French War Crime Court, that would, of course, change the validity of the thing, but if there is only a speech or a subjective opinion of an individual given, that would not be admissible.

DR. VON STEIN: May I take the liberty of pointing out that this is a government report of a Parliamentary session which I am submitting, this is an official document, and not just a newspaper article, as the prosecution seems to think.

MR. HOCHWALD: Will Dr. von Stein enlighten us whether this was a vote or a decision of the French Assembly, or whether it was a speech.

DR. VON STEIN: I will give a short resume of the contents.

THE PRESIDENT: Just answer his question. Answer Mr. Hochwald's question, please?

DR. VON STEIN: I, also, of course -

MR. HOCHWALD: The Prosecution is interested to know whether the item which Dr. von Stein wants to submit is a decision of the French Assembly, or whether it is a speech by somebody.

DR. VON STEIN: I must say, of course, that it is a speech, not a decision.

MR. HOCHWALD: We are not in a position to cross-examine the person who made those utterances. The document is inadmissible.

THE PRESIDENT: The objection is sustained.

DR. VON STEIN: In that case I am omitting a number of newspaper articles which I wonted to introduce from German newspapers. I now offer Sandberger's Exhibit 52, which is Document 10, excerpt from the Manual for General Staff Officers, 1 August 1939.

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It is an excerpt concerning the responsibility of an Army commander in operational areas about security tasks, and now I submit as Exhibit No. 3 an affidavit of the assistant official Mensel on this document, and he certified that he found 7/8 of all reports coming from Estonia, 10/11, that these reports are purely reports concerning the domestic sphere, therefore, they are reports which were issued by Department III. There are a few additional documents which are contained in Document Book II-A. No. 12 which I offer as Exh. 54 is an expert opinion of Dr. Maurer concerning the applicability of Estonia Law concerning a state of emergency according to Estonian Law and Estonian justice. No. 13, which I offer as Exh. 55, is an excerpt from reports of events 181, which showed that Litsche is not in Estonia, but in the territory of Einsatzgruppe A, Loknia. I point out that document No. 15 belongs to it.

THE PRESIDENT: Dr. von Stein, you refer to Document Book 2-A. Document Book 2-A contains only documents 16 and 17.

DR. VON STEIN: There is another supplement to this book, Document Book 2-A contains document 12, 13, 14, 15, 16, 14 and 15 and then there is a small supplement, which has 16. and 17.

THE PRESIDENT: Well, we will receive it in order to finish up and then get the documents, of course.

DR. VON STEIN: Document No. 15, which is offered as Exh. 56, is a photostat of Army chart from which it becomes evident where the place Oladice is situated. This is at the lower left end of the chart, and there is also the Oladice.

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No. 16 is Exhibit No. 57, an affidavit by Herbert Sandberger.

No. 17 is offered as Sandberger's Exhibit No. 58, an affidavit by one Buchner.

Buchner was a member of SK 1-A speaks especially about the events during the advance.

With to me thus far.

There is one question which I would like to ask, Mr. President.

It is highly probable that I shall be permitted to be able to submit these documents.

THE PRESIDENT: I would suggest that if you have being presented in open court.

If there is an objection then DR. VON STEIN: No, what I mean is, may I be permitted to submit this document after the final pleas?

THE PRESIDENT: Yes, you may submit it but not in open court; once the final pleas are terminated, naturally, we

DR. VON STEIN: No, what I mean is whether I can submit it to the tribunal if I just hand it directly to the court?

THE PRESIDENT: If it is a matter of a day or two, yes.

MR. HOCHWALD: Do I understand the Tribunal correctly, the form of a written motion?

THE PRESIDENT: Yes.

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MR. HOCHWALD: Thank you very much.

THE PRESIDENT: Dr. Fritz, how many documents do you have to present?

DR. FRITZ: Four.

DR. BELZER: I have nine.

THE PRESIDENT: Do you mean number nine or "nein" meaning no?

DR. DURCHHOLZ: I just have one document.

DR. SCHWARZ: Twenty-seven documents for Strauch.

MR. HOCHWALD: I have only one for the Prosecution.

DR. DURCHHOLZ: For the defendant Braune, the defense counsel will submit one document this afternoon.

THE PRESIDENT: Dr. Aschenauer, I am sorry you will be delayed a little bit in the presentation of your summation, but just as soon as we finish the acceptance of the documents, you may begin, is that satisfactory?

DR. ASCHENAUER: All right, Your Honor.

THE PRESIDENT: The Tribunal will be in recess until two o'clock.

(Whereupon noon recess until 1400 hours, 3 Febr. 1948) (The Tribunal reconvened at 1400 hours, 3 February 1943)

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THE MARSHAL: The Tribunal is again in session.

MR. WALTON: May it please the Tribunal, at this time the Prosecution offers in rebuttal Document NO-4638, which consists of two parts, the first being a cover-letter or a letter ordering distribution by General Ohlendorf of a monograph or a prepared lecture concerning some features of Nazi ideology. In view of the testimony of the defendant and in view of the testimony concerning the legality of the SD and the SS, the Prosecution desires to introduce Document NO-4638 into evidence as Prosecution's Exhibit 252.

DR. ASCHENAUER: (Attorney for the Defendant Ohlendorf) Your Honor, I object to the submission of this document.

May I point out that the reason given on the 21 January, according to the record, page 5,499 by Mr. Walton was a different one. I quote: "Mr. Walton said: 'It is a long manuscript about the lecture, which Ohlendorf prepared, about the superiority of the National Socialist form of government over the existing form of government.'" I explained to Mr. Walton that this document does not contain any contributions or any speech by Herr Ohlendorf. There is not a line in this document about subjects concerning questions of domestic sphere or concerning the independence or jurisdiction of the judges, that originated from Herr Ohlendorf. That is why, because he is informed about this, Mr. Walton wrote a lengthy argumentation about the legality of the SS and the SD. May I point out that this document, first of all, does not contain a speech by the defendant Ohlendorf; secondly, it does not contain anything on the subject of a superior state legislation, as Mr. Walton said on the 21st January; but these are legal question; thirdly, that the coordination of a speech here does not give information about opinions of the defendant Ohlendorf nor of his office or any other office with whom he had dealings.

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I refer to the following sentences on the first page of this document. It says: These contributions in no case contain a conclusive opinion by Office III or the Reich Security Main Office concerning the problems treated therein, but merely are to contribute towards the clarification of the matter among us.

In the second paragraph we find the following quotation: "The existing first contributions of 27th July 1942 is the basis of this; before the recent changes in the manner in which legal administration exists in Germany was concluded recently - "

THE PRESIDENT: Where are you reading from, Dr. Aschenauer? Where are you reading? I don't find this in the exhibit.

DR. ASCHENAUER: I am reading from the first page of the document. It starts Reich Security Main Office III, Berlin SW, 11 October 1942.

MR. WALTON: He is referring to the cover-letter.

THE PRESIDENT: Oh, I see; very well.

DR. ASCHENAUER: This cover-letter proves that this is not an authenic opinion of Office III, but Office III wrote down a lecture which somebody had held concerning the subject of law, during the time when certain SS circles wanted to get rid of the German system of justice, and they wanted this as a basis of a discussion.

THE PRESIDENT: Dr. Aschenauer, the document can have no more value than what is contained in it, and if it states, as you have pointed out to us it states, that this contribution does not contain a definite attitude of Office III, Mr. Walton nor anyone else can draw from it that it does represent the definite attitude of Office III, so I don't think that Mr. Walton would want to say that this document is something different from what it says within its own context; so, I don't understand the reason for the discussion along that line.

DR. ASCEENAUER: Your Honor, I agree, if the document is accepted for the probative value it has after I have had the possibility to explain the matter to the Tribunal. I now have a further question. Will it be sufficient if I say that this contribution does not originate from Ohlendorf at any point, or shall I in truit an affidavit which is already made out to the Tribunal by Ohlendorf on this point?

THE PRESIDENT: The document itself very clearly states that it is circulated solely to foster discussion and enlightenment. It doesn't on its face purport to represent, at least on this page, the definitive conclusion of the defendant Ohlendorf.

MR. WALTON: May I make a few remarks there, your Honor? It is in the nature of testimony but I might explain that the prosecution, particularly those of us who speak no German, have to rely on what is called a staff evidence analysis which is a digest of these documents. On the basis of this staff evidence analysis which was prepared in Berlin I made my remarks before the document was translated that Dr. Aschenauer referred to, I believe, on the 21st, the record of the 21st, but that is not controlling. The claims which I make for a document in my opinion are those remarks which are made at the time that the document is introduced. Now in this document from the cover letter this material was distributed throughout the SD organization. It is an act of the defendant Ohlendorf, not the speech itself but the distribution of it, and for that reason it is introduced here as pertinent rebuttal evidence.

THE PRESIDENT: That is entirely proper. The only observation that the Tribunal was making is that the document can rise no higher than its content.

MR. WALTON: We make no claim for that, your Honor. I merely wanted to explain the difference between my quoted remarks of the 21st and of today.

THE PRESIDENT: Yes.

MR. WALTON: I admit my staff evidence analysis was much more encouraging for the prosecution than the document itself revealed when it was translated.

Therefore I had to change my remarks when I introduced it.

THE PRESIDENT: Yes. Well, I think that clarifies it, doesn't it, Dr. Aschenauer?

DR. ASCHENAUER: Yes, thank you, that clarifies it.

THE PRESIDENT: We may now proceed with the rest of the documents.

MR. WALTON: One matter, sir.

THE PRESIDENT: Yes, all right.

DR. HELM: Dr. Helm for Ruehl.

Your Honor, this morning, as exhibits Nos. 28 and 29 two affidavit documents Nos. 28 and 29 were introduced for the defendant Ruehl. They are contained in the document book on Pages 71 and 76. They were accepted but after the prosecution raised an objection and with the reservation of the right of cross-examination of the witnesses Kaufmann and Hansen and the witness Barth by the prosecution. Dr. Durchholz could not know that those two documents were only received tentatively and according to the result of the case in chief of the defense they are not important. I therefore withdraw these two exhibit numbers. With this I relieve the Tribunal of the burden of waving to have cross-examination of witnesses at this stage of the trial. I also want to say that I waive the right to cross-examine the witness of the prosecution Bash. Mr. Walton was kind enough to say that he would make a counter statement here.

THE PRESIDENT: Well, in view of the fact if the affidavits are withdrawn then certainly there is no necessity for the presentation of witnesses.

MR. WALTON: Just to clear the record, your Honor, at this time the prosecution withdraws its request to have the two witnesses, who are affiants in the two named affidavits, Ruehl 28 and Ruehl 29, brought to Nurnberg for cross-examination. However, I think it is thoroughly understood between Dr. Helm and myself that the rebuttal document, which is the short affidavit of the affiant Robert Barth, is still in evidence.

THE PRESIDENT: Very well.

DR. VOGEL: Dr. Vogel for von Radetzky.

Your Honor. I take the liberty of introducing two small document books. Nos. III and IV for the defendant von Radetzky. First of all I want to introduce Document Book No. III. It only contains four documents which are to have the same exhibit numbers as document numbers. As Exhibit No. 30 I offer the document von Radetzky No. 32.

MR. HORLICK-HOCHWALD: If your Honors please, we object to this document. This is an affidavit of a witness who has appeared before the Tribunal. The witness Hartl was cross-examined by Dr. Ratz at great length. He testifies in this affidavit, as I can see, to a document which was handed to Radetzky on the 17th of December '47. The affidavit itself is dated 6 January 1948. On the 12 January 1948 Dr. Ratz made a request to the Tribunal in open court as to a rehearing of the witness, and I am quoting from the transcript. Page 4885, the morning session of 12 December. The Tribunal granted this request. At that late stage of the trial we are practically not in the position to cross-examine the witness. I only want to point out that the witness Hartl has been all the time in the jail here in the Palace of Justice. When Dr. Ratz made his statement and requested rehearing of the witness on the 12th of January he was informed about the fact that Hartl had signed an affidavit for his client on the 6th of January. If he would have informed the Tribunal and prosecution at that time that he intends to introduce an affidavit the prosecution would have certainly immediately moved that Hartl may come back into the courtroom and may be heard so that prosecution can cross-examine him on this particular subject. This was practically frustrated by the presentation of the affidavit at such a late date. I, thefore, respectfully move that the affidavit might be not admitted in evidence. Moreover, I want to say that Dr. Ratz has cross-examined the witness Hartl at great length when he appeared before the Tribunal.

The question was not new. It is true that the document was then not submitted in evidence. However, we have in the opening statement already and in the direct presentation of our case made it completely clear that it is the position of the prosecution that Radetzky at certain times was independent leader of Subkommando 4a. Therefore, the submission of the affidavit should be denied. The witness was excused by the Tribunal.

THE PRESIDENT: Was Hartl questioned on this matter at all when he was on the stand by either side?

MR. HORLICK-HOCHWALD: I am sure, your Honor, that I did not question him on this particular....

THE PRESIDENT: Did counsel for von Radetzky question the witness on this matter?

MR. HORLICK-HOCHWALD: I am very sorry but off-hand I am unable to make a statement to that effect. I cannot say it. I do not think so.

DR. VOGEL: Your Honor, at the time I myself went down to the prosecution and talked to Mr. Hochwald and told him that the point which was debated again on 17 December, we would have to hear the witness Hartl again. The Tribunal here admitted this expressly, and I told Mr. Hochwald that we would make another affidavit by Hartl in order to clarify this point in this simple manner. with the other documents, then during the questioning on 24th November Hartl could have been asked about this already by-

THE PRESIDENT: Let's try to save a little bit of time now. The situation remains that we have before us an affidavit which is submitted to clarify a document which was introduced after Hartl was on the stand. Strictly speaking, perhaps the affidavit should not be received. However, if defense counsel insists upon its being received then the prosecution will have the right to insist upon cross-examination of that witness. We presume that it wouldn't take too much time to crossexamine on this one point alone. It will only be a matter of a few minutes so that now we say to defense counsel that if you insist upon introducing the affidavit we will accept it and allow the prosecution to call Hartl for cross-examination.

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It is up to you to decide.

DR. VOGEL: Yes, I insist on it, and also there is always the opportunity to call up Hartl for cross-examination because he is in the prison here in Nurnberg. The defense has no objection.

THE PRESIDENT: If he is called it will he strictly limited to the point raised in the affidavit.

MR. HORLICK-HOCHWALD: Thank you very much.

THE PRESIDENT: Very well, proceed.

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MR. HOCHWALD: The Prosecution reserves the right to recall Hartl.

JUDGE MUSMANNO: That reservation will be recorded.

DR. VOGEL: Now I wish to submit the next document in Document Book No. 3; it is Radetzky No. 33. I offer it as Exhibit No. 31. It is an affidavit of Heinz Unglaube of 15 January 1948. Unglaube was supply chief with the BDS from May, 1942, until August 1943. He can assure us with certainty that Radetzky during the period mentioned was never in charge of a sub-Kommando. He also confirms the situation set forth in Document 4771X, Exhibit 191 of the Prosecution. The next Exhibit. No. 32, will be the document Radetzky No. 34. This is an affidavit by Hans Weirup of 16 January, 1948. Right from the beginning until the fall of 1943, he was in the office of the SK 4 A. He gives a detailed report about the activity of Radetzky in the SK 4 A. Special Kommando 4-A. He confirms that Radetzky was neither Blobel's deputy, nor did he carry our the function of a sub-Kommando leader. Also, that Radetzky had no power of command in the Kommando.

MR. HOCHWALD: May I request a statement from defense counsel whether the two affiants can be brought here for cross examination of the last two documents?

DR. VOGEL: I would like to say here that Heinz Unglaube is in an internment camp and could be brought here, I presume. The other witness, Hans Weirup testifies about various facts which were already mentioned in other affidavits and proved, and, therefore, I consider his affidavit as only a supplement to the other statements by other witnesses.

MR. HOCHWALD: If I understand correctly, then the affidavit of Hans Weirup should be ruled out, as defense counsel did not proclaim that he intends to bring the affiant here for cross examination.

DR. VOGEL: Well, I have not made any statement about that as yet, that I do not want to bring him here. I would still insist that Hans Weirup be examined as a witness here because he can testify and does testify about another joint, namely the charge that Radetzky allegedly was sub-Kommando chief in the summer of 1942.

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THE PRESIDENT: Well, Mr. Hochwald, the rule does not say that because a man presents an affidavit that he must have standing outside the door the affiant for cross examination. It is up to the other side to obtain that person for cross examination. The only thing that the presenter of the affidavit is required to do is to furnish whatever information he has to the other side, so that that affiant may be called for cross examination if the cross examination is desired; if he is available.

MR. HOCHWALD: The only request I made, Your Honor, if Your Honors will certainly recall that was that defense counsel may state whether he is available for cross examination and what time.

THE PRESIDENT: Yes.

MR. HOCHWALD: I am sorry. I meant to say that, Your Honor.

DR. VOGEL: Yes, Your Honor, Hans Weirup can be brought here, but it would take some time.

THE PRESIDENT: Very well. We will reserve to the Prosecution the right to bring him in if it desires to bring him in.

MR. HOCHWALD: Thank you very much.

THE PRESIDENT: Very well. Proceed.

DR. VOGEL: The next one is Exhibit No. 33. which is Radetzky Document No. 35. Thisis an affidavit by the Chief of the Ethnic German Resettlement office in Poznan, Werner Lorenz, of 12 January 1948, which reveals that Radetzky's transfer into the SS was carried out by Himmler as Reich Commissar for the strengthening of Germanism and that Radetzky could do nothing about it. Lorenz also testifies that Radetzky's application for release to join the Wehrmacht was refused.

MR. HOCHWALD: If the Tribunal please. the Prosecution does not want to drag out thistrial and, therefore, we do not want to call Lorenz for cross examination. However, we respectfully request that the Tribunal take judicial notice of the cross examination of the affiant who is one of the defendants in Case No. 8. This cross examination appears on pages 2,800 to 2,814 of the record of Case No. 8. I have been quoting, of course, the English record numbers.

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It is the position of the prosecution that in this cross examination it was proved that the affiant -

THE PRESIDENT: Now, Mr. Hochwald, you are arguing. The record will show your references to that transcript. That transcript will be available to both sides. They may quote from it and argue from it, and the transcript will be available to the Tribunal in its deliberations.

MR. HOCHWALD: Entirely satisfactory.

THE PRESIDENT: Very well.

DR. VOGEL: Your Honor, I now cone to my last document book, No. 4. This document book contains five affidavits or excerpts. The sequence of the individual exhibit numbers is to follow the sequence of the document numbers. The first document, No. 36, I offer as Exhibit No. 34. This is an affidavit by Karl Heinz Bendt of 21 January 1948, who from March, 1943, until the end of November, 1943, was Chief 3 with Einsatz Group C. Bendt describes in detail why von Radetzky could not have held a responsible position in SK 4-A, and why he was not assigned to such a post.

MR. HOCHWALD: If the Tribunal please, I am terribly sorry, but I have again to object. From the testimony of Radetzky it is clear that he left his position with Sonder-Kommando 4-A in January, 1943. This document is a information by an affiant who came to this unit in March 1943. He can not testify to facts which happened in 1942 and 1941.

THE PRESIDENT: Is that true? I am addressing myself to defense counsel. Did the affiant come in March whereas the defendant left in January?

DR. VOGEL: Your Honor, that is correct that the affiant came there in March, 1943, but it is also correct that Radetzky was still with the Einsatz group where the affiant was, and that is why this man is able to testify about the activity of Radetzky in the year 1943.

THE PRESIDENT: Well, Mr. Hochwald, if von Radetzky was still in the Einsatz Gruppe it is consistent with the possibility that the affiant would know.

MR. HOCHWALD: To the best of my knowledge, Your Honor -- my memory is not very good -- he went to Einsatz Gruppe B in January, 1943. I might be mistaken. I am sorry.

THE PRESIDENT: Well, Mr. Hochwald -

MR. HOCHWALD: It is up to defense counsel to declare.

THE PRESIDENT: Suppose we accept it for whatever probative value will be assigned to it, when, in the solitude of our chambers, we are able to compare these various dates.

MR. HOCHWALD: Oh, Your Honors, I have by chance my brief on Radetzky here. According to hisown statement he left Einsatz Gruppe C in January, 1943, and went over to Einsatz Gruppe B, and we therefore respectfully move that this document may be ruled out.

THE PRESIDENT: Which document number is this?

MR. HOCHWALD: That I am sorry I am not -- but it is in Document Book 3-C, affidavit of the defendant Radetzky. It must be the third or fourth document in the document book and it is to the best of my recollection Prosecution Exhibit 132.

THE PRESIDENT: Do you wish to withdraw the affidavit in view of what Mr. Hochwald has now said?

DR. VOGEL: Your Honors, I will not withdraw it because even if Radetzky was with Einsatz Gruppe B, the Tribunal can draw important conclusions from the statement of this witness about his previous activities with Einsatz Gruppe C. That is why I would like to ask that the document be accepted.

THE PRESIDENT: The document will be accepted for whatever probative value will be assigned to it in its due time.

DR. VOGEL: The next document from Document Book 4 will be No. 37.

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This will be Exhibit No. 35. This is an excerpt from the opening speech by the Prosecution in Case 8 against Greifelt and accomplices. There the Prosecution maintained that a considerable number of Ethnic Germans had no choice other than either to go as resettlers to the incorporated areas which Germany had taken over, or to go to Germany as forced labor. As Exhibit No. 36 I offer the document No. 38. This is an excerpt from the regulation about the set-up and administration of the immigration and resettlement office of the Security Police contained in the Order Gazette of the Chief of the Security Police and the SD, No. 42/41.

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Court No. II, Case No. IX.

This shows the competency of the resettlement agencies for evacuations. The Baltic German Immigration Advisory Office had nothing to do with the immigration agencies in Poznan. I mentioned this because the words "immigration center" has been mentioned here repeatedly.

MR. HOCHWAID: I do think your objection is clear. If the defense contends that Radetzky had nothing to do with this office, the exhibit itself is completely immaterial.

DR. VOGEL: Your Honor, this piece of evidence is only to help to clarify the matter because, as I have said, the concept emigration central office or resettlement central office was mentioned repeatedly in this case in connection with the Baltic German immigrants' advisory office in Poznan.

MR. HOCHWALD: If prosecution would claim that Radetzky had a connection with the central office, prosecution would be called upon to provide for this fact. I don't think that an exhibit can be put in evidency by saying he didn't have anything to do. The exhibit itself does not contain the name of Radetzky. It does not contain any declaration that Radetzky had nothing to do with it. I think it is completely immaterial in this case.

DR. VOGEL: Your Honor, I am glad about this statement of the prosecution, but it was just the prosecution who, I believe in the examination of Radetzky on 16 December 1947, asserted or tried to prove that von Radetzky had dealings with the deportations from the Warthegau into the Government General district.

MR. HOCHWALD: If your Honors please, I only can repeat what I have said. It is impossible by presentation of a document to prove that an individual had nothing to do by the presentation of some declaration or some decree to prove that an individual had nothing to do with it.

PRESIDENT: Well, Mr. Hochwald, if the affidavit is so devoid of merit, as you indicate, then it can't possibly harm your theory.

MR. HOCHWALD: If your Honors please, it certainly does not Court No. II, Case No. IX.

harm me. I have only pointed out the complete immateriality of the exhibit. If the Tribunal finds the slightest probative value in the document, I certainly will not object to its admission.

PRESIDENT: You may proceed and then at the end we will dispose of all the documents.

DR. VOGEL: The next exhibit Number 37 will be Document Number 39 of Radetzky. This is an excerpt from the circular decree of the Reichsfuehrer SS and the chief of the German police in the Reich Ministry of the Interior in the new edition as of 1 July '42 about replacement and reserve, order gazette by the chief of the security police and the SD, of 20 July '42, third year, Number 31. This reveals that already since the 29th of September '39 the emergency war drafting applied in order to get replacements and reserve forces in the security police and the SD. Finally, the last document, Number 40 I offer as Exhibit Number 38. It is an affidavit by the former chief of the administration department of the official in charge of personnel of matters with the police headquarters, Nuermberg-Fuerth, Dr. Alfons Holz of 25 January 1948. This expert testifies from his practical experience that the personnel for the Gestapo and for the SD was obtained according to the emergency drafting decree of 15 October 1938. And with regard to paragraph 1, Number 1, paragraph 3, of the war emergency draft, he further states that war emergency drafting could nullify the state of being draft deferred and that no one could get away if he was drafted on an emergency status. defendant, Waldemar von Radetzky.

MR. HOCHWALD: Your Honors, I do not want to press my objections for the simple reason that I do think the court will decide best which one of the exhibits is material for the case of Radetzky or not. I only want to point out that the prosecution up to date has not received the English copy of the Document Book. It, therefore, would appreciate if such copies would be handed to prosecution as soon as possible in Court No. II, Case No. IX.

order that we should be able to prepare our briefs on the individual cases of the defendants.

DR. VOGEL: Your Honor, perhaps I can clarify here, that these document books have been translated some time ago. I inquired only the day before yesterday about it, and was told that the translation had been handed on.

PRESIDENT: May we ask the Secretary General to look into this matter and see to it that the prosecution receives English copies as well as the Tribunal.

MR. HOCHWAID: If the Tribunal please, it is understood that in the cases of the defense affidavits, especially of the last one offered by the defense counsel for Radetzky, the right of cross examination is reserved to prosecution.

PRESIDENT: Yes, that is always reserved when an affidavit is accepted.

DR. STUEBINGER: Stuebinger for Dr. Braune. As my last document I offer Supplement III to Document Book II. This is the Braune Document Number 59, which I offer as Exhibit Number 50. It is an excerpt from the reports from the occupied Eastern territories Number 1 of 1 May 1942. This document reveals the situation of the ethnic groups in the Crimea and it shows that the Jews only constituted 6.3 percent of the entire population in the year 1939, while the part they took in the state administration of the Crimea, according to page 3 the original, constituted 25 to 80 percent. I still have one request, Your Honor. In the Krupp trial on 16 December 1947 the English General Morgan, a member of the Interallied Disarmament Commission and Professor of International Law is supposed to have said as an expert in the witness stand that the inner German state law precedes the international law in importance. Since more than four weeks I have been trying-

PRESIDENT: Mr. Walton.

MR. WALTON: Your Honors, if he wants the Tribunal to take judicial notice of this, I feel that the proper procedure for Dr. Stuebinger would be to give the citation and the subject matter of which it treats and let the Tribunal read it for themselves and draw whatever judicial conclusions from it they desire. This is a witness in the case which has not been settled. We have no way of knowing whether this testimony will be refuted before the end of the trial or whether it will be ruled out or what final disposition will be made of it. I think the proper thing for Dr. Stuebinger to do at this time is leave it to Your Honors and I object to comment or any quotation on it.

PRESIDENT: Yes, Dr. Stuebinger, you could not very well argue it, especially at this time. You may refer to it, give it a citation and then in your summation you may make such reference to it as you deem helpful to your theory of the defense.

DR. STUEBINGER: Yes, Your Honor. The explanations by the prosecutor and by Your Honor, I can only emphasize and it was my intention to submit that material, but it would have become obvious immediately that I was unable to do this until now but I have not been able to finish what I have been trying to say. I have been trying for more than four weeks to receive the transcript, but I cannot get it because no defense counsel in Krupp has received it as yet, although a great deal of transcript after that day has been completed. I don't know why this delay occurred. I would be very grateful to the Tribunal if they would intervene because the legal question treated by General Morgan concerns this case here as well and certainly one or the other defense counsel would want to refer to this statement in his final plea.

MR. WALTON: Well, I will do what I can to get this transcript for Dr. Stuebinger, but certainly this Tribunal has the power and the right to obtain for itself the transcript of any record in any court since these tribunals have equal power.

PRESIDENT: Dr. Stuebinger isn't concerned about our getting a copy, he wants to know hoe he can get a copy.

MR. WALTON: I can't speak for the German. I think I can get him a copy of the English.

PRESIDENT: I would be very grateful to you, Mr. Walton, if you would endeavor to assist him in getting this transcript which he believes he would like to have in connection with the summation.

MR. WALTON: I think that this is the time for the citation for all our benefits.

PRESIDENT: But he doesn't have the citation.

MR. WALTON: Does he have the date?

PRESIDENT: Do you have the date?

DR. STUEBINGER: 16 December 1947, morning session, I believe.

MR. WALTON: No objections to the document that is introduced as a supplement to Document Book III.

PRESIDENT: Do you think we ought to have our recess first--Yes. Wall, let us make an announcement now. Dr. Aschenauer, I again must express our regrets that you haven't up until this time been afforded the opportunity to begin your summation and it would seem that you can't begin this afternoon and it might be better in that event to start freshly tomorrow morning. We will announce to all counsel who still have to submit documents this afternoon that the tribunal will remain in session regardless of the length of time until every document now ready can be presented today, so that without fail tomorrow we begin the summations. The Tribunal will now be in recess 15 minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. DURCHHOLZ (ATTORNEY FOR THE DEFENDANT SCHULZ): Your Honor, I have just one more document which I would like to submit for the Defendant Schulz. I have marked it as Supplemental to Document Book No. IV. It is Document No. 97, which I herewith submit as Exhibit No. 96, the affidavit of the Defendant Schulz of the 27th of January, 1948. been submitted to the Tribunal because the Translation Department cannot cope at the moment with the work load. It has been there for a number of days. one which was Exhibit No. 201, in which the prosecution connects the Defendant Schulz with locations which had not previously been connected with him. That is the reason why this document is offered and submitted.

Then I want to make a short statement. A short while ago, I offered Document 96 as Exhibit No. 95. In this document are contained the photostats of three Russian envelopes. The prosecution, some time ago, complained that on this photostat it was not evident that on the envelope, which was entitled, "Glory to the Partisans" -- a civilian was concerned. I have here the original envelopes, but I cannot submit them because I have to return them, but I would like to show the Tribunal and the prosecution these envelopes in order to clarify this point.

(Dr. Durchholz then showed to the Tribunal and the prosecution various papers.) I have made out a supplement to my trial brief which, I am told, is already on the way to the Tribunal and I would like the Tribunal to take notice of this, at the proper time. ant Schulz.

THE PRESIDENT: Very well.

DR. FRITZ (ATTORNEY FOR THE DEFENDANT FENDLER): I have altogether four documents to submit, Your Honor. The first two are combined in Document Book II for Fendler. First, Fendler Document No. 22 and I offer it as Exhibit No. 24. It is an excerpt from a Report of Events No. 60 of 22 of August 1941. The document contains detailed statements about agriculture, or, at least, agricultural conditions at the time when Russia was occupied. Furthermore it pertains to the building up of the Agricultural Administration of the Soviet Union and it also concerns the economic position in this area. I offer this document because it covers and supports the statement of the Defendant Fendler, who, in direct examination said that the reports of Department III were very extensive ones and took up his time so much that for other tasks he had no time whatsoever.

The next,document 23, I offer as Exhibit No. 25. It is an affidavit of Dr. Wallfried Vernunft of 18 November 1947. It pertains to the activity of the Defendant Fendler which he indulged in from 1943 to the collapse of Office VI of the Reich Security Main Office. It also concerns itself with the knowledge of the Defendant Fendler about other activities of this office. This is of probative value for Count III. Finally it is a testimony concerning Defendant Fendler's character. Defendant Erwin Schulz of the 21st of January, 1948. It is Document Fendler No. 24. I offer it as Exhibit No. 26. Schulz confirms in this document the fact that he returned to Berlin before Hermann who was Kommando Chief of the Kommando IB and also before Fendler, and therefore he has exact knowledge of the fact that Fendler returned to Berlin before Hermann, from his assignment in Russia.

Last I offer another supplement to the Fendler document book. It is Document No. 25. I offer it as Exhibit No. 27. It is an affidavit by Karl Hennicke, which he made out on the 22d of January, 1948. Hennicke is in Nurnberg in prison. May I say the following concerning the document: In my Document Book I for Fendler there is an affidavit by Karl Hennicke.

Here it is Fendler Document No. 12, Exhibit No. 10, wherein Hennicke testifies among other things to and I quote:

"I am not aware of the fact that Fendler was ever the Deputy of the Kommando Chief. As such he figures neither in reports nor in discussions of the group." Witness Karl Hennicke which is in Rebuttal Document Book V-C, Document NO-4999, Prosecution Exhibit 202. In contrast to the implications of the passage just quoted Hennicke testifies in the affidavit among other things, and I quote:

"In view of the fact that Fritz Braune arrived at the headquarters of the Einsatzgruppe only after Hermann had been relieved of his duties, the Sonderkommando 4b was left without a chief for a period of two to three weeks. During this interim period the unit was commanded by the senior officer Lothar Fendler."

davit which he made out for Fendler I asked to see Hennicke again, after notifying the prosecution of this request, and he gave me this statement, the affidavit of 27 January, 1948, which I now offer here. In this affidavit he rejects what he said in Document 4999 which I have just quoted.

DR. MINTZEL(ATTORNEY FOR DEFENDANT STRAUCH): Your Honor, may I begin with the submission of evidence for the Defendant Strauch?

THE PRESIDENT: Please do.

DR. MINTZEL: I submit in Document Book I as Exhibit No. 1, Document No. 1, an affidavit of the wife of Defendant Strauch from which the date becomes evident of which Strauch began his service in Riga and when he began his service in Minsk. She says that her husband had gone to Riga on the 10th of November, 1941, and he left Riga for Minsk on the 21st of March, 1942.

Exhibit No. 2, Document No. 2, is an affidavit of Ida Strauch, that is the mother of the Defendant Strauch, in which she states that her son left Riga for Minsk on the 21st of March, 1942 and in which she also explains why she remembers this date so exactly.

Next is Exhibit No. 3, Document No. 3, the affidavit of Oskar Strauch. That is the father of the Defendant Strauch. In this statement of the 21st of March is given as the commencement of the service of Strauch in Minsk.

The next document, Exhibit No. 4, is of the same content. It is the affidavit of one Paula Gunkel.

Next is Document No. 5, Exhibit No. 5, the affidavit of Heinz Wanninger, in which he comments on the character of the agencies of the Commanders of the Security Police and SD and their inclusion in the civil administration of the occupied Eastern territories.

Next is Exhibit No. 6, Document No. 6, the affidavit of Carl Zenner. Zenner was in Minsk as the SS and Police Leader. Therefore, he was the Chief of the Defendant Strauch in White Ruthenia.

He testifies that the Defendant Strauch until the day he started his service was deputized for by an SS Sturmbannfuehrer Hofmann who acted in an entirely independent manner. He also testifies that Strauch had received the approval by Heydrich not to have to carry out the elimination order in White Ruthenia, or, at least, to postpone the carrying out of this order for the time being. He also comments on the so-called Kube letter and he also says why the Kube letter was in complete contrast to the happenings and incidents in White Ruthenia.

Document No. 7, Exhibit No. 7, is the affidavit of Walter Schimana. Schimana was also an SS and Police Leader in Minsk and as such, Strauch's superior officer at the time when Strauch was commander of the Security Police and SD in Minsk. Schimana testifies that in the time mentioned in the Kube letter no operations were carried out against the Jewish population in White Ruthenia and that at his time transports of Jews from the Russians did not arrive. He comments on the personality of the SS and Police Leader Jeckeln as to Kube's character and comments on the contradictions which become evident from the contents of the Kube letter and conditions in White Ruthenia. He then says that Rakov and Chervensk were not within the sphere of activities of the Einsatz Chief in White Ruthenia.

Next I submit Exhibit No. 8, Document 8, the affidavit of Johannes Feder.

Feder was the Field Intelligence Staff Officer in the SD in Minsk, which was the agency in which Strauch worked when he was stationed at Minsk. Feder says that in White Ruthenia no Anti-Jewish activities were carried out in his time and that the period to which Kube refers, Jewish transports did not arrive and he also testifies explicitly as to the situation in White Ruthenia, especially with regard to the activity of the partisans. He says that Strauch mainly busied himself in partisan warfare and that in these operations against partisans he took the part of a G-2.

Exhibit No. 9, Document No. 9, is another affidavit of the same Feder concerning the so-called S-carriages. These S-carriages were only used as transports for SS men and supplies, but not for what they were allegedly supposed to represent.

Document No. 10, Exhibit No. 10, again is an affidavit by Johannes Feder in which Feder states how, according to his knowledge, the incidents happened in Sluzk, about which a certain Ruebe talks in an affidavit which was submitted by the prosecution. He says that this incident was a part of a partisan war in which members of the Office of the Commander in Minsk took part as espionage units as support of the police. Police Leader von Olberg was in charge of these operations.

I submit as Exhibit No. 11, Document No. 11, which is an affidavit of Hubert Strathmann. In this affidavit Strathmann describes the very extensive partisan activity in white Ruthenia and the part the agency of Strauch played in these measures. Strathmann also says that in the time which is mentioned in the Kube letter, no anti-Jewish actions were carried out in Minsk and no Jewish transports arrived. He comments on Kube, as far as he knows Kube's personality.

Exhibit No. 12, Document No. 12, is another affidavit of Strathmann concerning the so-called S-carriages as means of transport.

Exhibit No. 13, Document No. 13, is another affidavit of Strathmann in which Strathmann, as Feder had done formerly, comments on the incidents which happened in Sluzk which are mentioned in the Ruebe affidavit and plays a certain part in this affidavit which has been submitted by the prosecution against the defendant Strauch.

He also says that the incidents in Sluzk happened within a program of a larger anti-partisan action and members of the agency of the Kommando in Minsk took part as espionage officer in the various units.

AS Exhibit No. 14 is also on affidavit of Herr von Toll, in which he comments on the time that Strauch commenced his service in Minsk, and he also says that during the time to which the Kube letter pertains no anti-Jewish operations were carried out in Minsk.

The last exhibit from the Document Book No. 1, is Document No. 15, which I submit as Exhibit No. 15; affidavit by one Lohse, who was Reich Commissar for the E stern territories. Lohse was alleged by the receiver, the so-called Kube letter. The Kube letter was at any rate addressed to him. He describes Kube's personality, his attitude toward Jews, and the contradiction with the Kube letter. I further present Document Book No. 2 -

MR. GLANCY: If the Tribunal please, the Prosecution has but one of the affidavit of Frau Strauch, because of her relationship to the defendant. However, if the Tribunal deems it correct and proper to so admit the affidavit; we at this time would like to reserve our right to cross examine her.

THE PRESIDENT: Defense counsel, of course, is familiar with the rule that the wife of a defendant can not be compelled to give any testimony against her husband.

DR. MINTZEL: Yes, Your Honor.

THE PRESIDENT: She, of course, is permitted to testify in his behalf, but once she does that then she waives her immunity from crossexamination, so that now you are confronted with this situation, either of allowing the affidavit to remain and giving the prosecution the right to cross examine her on all subjects or not to present the affidavit.

DR. MINTZEL: It is, or course, possible for the defense to prove from the documents the matters pertaining to the activity of Strauch's service in Riga and as stated by the defendant , but the defense does not object to Mrs. Strauch being examined as a witness and we would like to actually submit the affidavit ..

MR. GLANCY: Also, Your Honor, you might remind defense counsel that the immunity extends more specifically to Strauch himself, rather than his wife. He also just waive this immunity. He is the one who says whether or not his wife will testify.

THE PRESIDENT: That is also a feature of this rule of law, and do you believe that the defendant will be willing to waive that immunity, that cloak of protection placed around himself through his wife?

DR. MINTZEL: I am convinced of that, but perhaps I could ask the defendant personally and I could tell the tribunal tomorrow morning of the result.

THE PRESIDENT: Very veil, yes.

MR. GLANCY: In the meantime, sir, I would like, as a matter of record, state that we wish to reserve our right.

THE PRESIDENT: The right will be preserved to the prosecution.

DR. GLANCY: Thank you, sir.

DR. MINTZEL: I would like then to proceed with the submission ments that it contains I would like to mention that unfortunately the documents of Document Book 2, as well as No. 3, beginning from number I have been numbered from the beginning. I came to an agreement with the Secretary General to suggest to change the enumeration to the effect that in Book 2 and Book 3 the document numbers should be changed to the same number as they were to be submitted as exhibits. I now offer as Exhibit No. 16 that document which is called Document 1 in Document Book No. 2; it should be, however, document No. 16. Exhibit 16, document -it was 1, it is now 16. This document consists of excerpts from reports of events. The excerpts from No. 24 and No. 26 on page 2 show that Einsatz Commando 2 moved from Latvia to the area around Leningrad.

The excerpt No. 29 on page 3, has the name to the predecessor of Strauch -- Batz, was crossed out in Berlin and the name "Strauch" had been substituted by one of the officials in Berlin. In the location reports supplement to these reports of events, the name "Strauch" appears for the first time in the report of events of the 5th of November, 1941. This is not incontradiction of the fact that Strauch had actually only arrived in Riga on 10-11-42. The remark made in handwriting in the location report at Berlin had been made by the Departmental official in Berlin, apparently because he was informed authoritively that Strauch had been appointed on this very day, or perhaps the preceding day. Knowing this decree, he crossed ou the name "Batz" and he substituted the name "Strauch". The following excerpts show Strauch as the chief of Einsatz Kommando 2 up to the excerpt from report of events 146 on page 8. of the 15th of December 1941. If Einsatz Kommando 2 is mentioned here in the excerpts that does not necessarily mean that Strauch was really chief of Einsatz Kommando 2 which was removed from Latvia to the sector around Leningrad. It is a fact that the institution of the agencies -- the permanent agencies of the commandos in Riga for instance, was only mentioned in later reports of events, but that the Einsatz Kommando 2 as it is mentioned here, only means negligent attitude on the part of the officials who -

MR. GLANCY: It is my opinion, sir, that the documents will speak for themselves quite forcibly, and therefore this is not the time nor the place for argumentation.

THE PRESIDENT: You are presenting that document as if you were arguing the case, and of course, you know this is not the time to present the argumentation. In any way that you can enlighten the Tribunal as to the nature of the document you will be helping the Tribunal. We don't object to that, but to draw conclusions from a document and argue on it is not proper at this time.

DR. MINTZEL: On this occasion I only pointed out the difference between an Einsatzkommando of the commanding agency because here it is particularly obvious. May I now come to the Report of Events No. 149 on page 9 of the 22nd of December 1941. Here Strauch is mentioned for the first time as the commander in White Ruthenia. He appears, however, only in a few reports as such because very soon, on the 7th of January 1942, in this excerpt of the Report of Events 152 which is on Page 10, it adds: the present SS-Sturmbannfuehrer Dr. Hofmann deputizing for him, which provides an explanation that he was only for a short time shown here as the commander of the Einsatzkommando in Minsk, while after a few days it became evident that there is a deputy. But I shall come back to that in my final plea. show Strauch merely being mentioned in that capacity and during that tern of office he was there. They refer to the whole time during which Reports of Events were issued at all. This is up to No. 195 of the 24th of April 1942.

My next exhibit is No. 17. It used to be No. 2 but now it will receive No. 17. It is an excerpt from Activity and Situation Report No. 11. This excerpt gives a detailed report about the partisan organization in Minsk and it also shows the part which a number of Jews played in this partisan organization.

My next exhibit is Exhibit No. 18 which was No. 3, but it now will become Document No. 18. This is an excerpt, or at least it contains expcerpts from the reports from the occupied eastern territories. These reports begin at a certain date and they take the place of the former so-called Reports of Events.

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What is contained here as evidence material pertains to the constantly proving partisan danger in White Ruthenia, and Report No. 9 is of special importance. It is on pages 31 through 35. This report has been quoted by the prosecution in excerpt and has been introduced as exhibit No. 178, Document No. 5156. The mimeographed copy which I have received of this exhibit from the prosecution shows that those parts are missing which would threw some light on the partisan danger in White Ruthenia and which actually deal with the participation of Strauch in the concerning operations. For instance, this report of events from the occupied territories in the east contains a report of a discussion in the presence of all military personnel and Security Police personnel concerning this question, and Strauch also took part in this meeting. -- detailed description of these discussions and the confirmation of the fact that fighting squads were to be formed and that the Security Police units should carry out the espionage activous in the program of this special action, is missing in the documents as submitted by the prosecution. Therefore, I have here collected the pages which they left out.

MR. GLANCY: I wish to remind defense counsel that the rule in this Tribunal as in others is that when an extract is offered the entire document is offered. He is at liberty and there are no objections on the prosecution's part that he offer this. However, we want it understood that the entire document was open for his perusal.

THE PRESIDENT: You want to exclude the interpretation that you purposely withhold any pages which might be of benefit to the defense?

MR. GLANCY: Exactly, sir, I want that completely understood.

THE PRESIDENT: Very well, it will be understood on the record.

DR. MINTZEL: I have only pointed this out, your Honor, because naturally as a rule those who deal with such documents have used the mimeographs which are put at their disposal by the prosecution.

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I have to point out the following in the excerpt from No. 17 of the reports from the Eastern occupied countries which you find on Page 7 of the index, there is a printing mistake. After excerpt from the 7 August 1942, Excerpt from No. 15, it should say also "Excerpt from No. 47 of the 26th of March. 1943." What follows there is of the 26th of March. 1943. The excerpts here from the report numbered 43 shows that Einsatzkommando 2 and the commanding agencies are separate entities, both with regard to personnel and space.

The next exhibit from Document Book No. 2 I shall offer as Exhibit No. 19, the document which has born the No. 4 and which is now going to be made No. 19. It is an excerpt from "Soldiers Handbook on the Rules of Land warfare" by an American colonel, Judge Advocate General's Department, in which he explains the rules of land warfare of the Ameridan G.I.'s. The excerpts which I submit here talk about members of the army being not liable to punishment if they carry out orders by their commanding officers which are in contradiction to the rules of land warfare; it says that those that carry out the order are not punishable but those who give the orders are.

Exhibit No. 20 is Document No. 5 which will now become Document No. 20. In the following exhibits we have excerpts from the record, comments by the defendants and the witnesses which have been examined, as witnesses for the defendant Strauch. They are, of course, contained in the records, but they are here with shortened and put into the document book for Strauch.

The Exhibit No. 20 contains the testimony of the defendant Schulz. As a witness for the defendant Strauch, Schulz comments on the fact that in the location reports the name of a commander is being mentioned at a time when the named defendant has not started his service yet.

MR. GLANCY: It seems to be cumulative and merely a burden to the record. It is admittedly in the record already. We see no reason for its further inclusion in this form.

THE PRESIDENT: Judge Speight offers the cement that it is pretty convenient to have it there before us.

MR. GLANCY: On that basis, sir, I withdrew my objection.

DR. MINTZEL: In order to summarize the opinions of these men who testified as to Strauch's character, attitude and activities, I have here put then in a shortened and abbreviated form for the convenience of the Court. I offer former Document No. 6 now as Document No. 21 and as Exhibit No. 21 the testimony of the witness Jost as witness for the defendant Strauch. Jost says, concerning the question whether Strauch could have been chief of the Einsatzkommando 2 or whether he was just a commander of the Security Police or the SD in Latvia in Riga, what he has said during his own examination, the distinction between the Einsatzkommando and the commanding agencies testifies that according to his memory in June or July 1942 no mass executions took place in Ruthenia. He expresses his opinion of the participation of the Einsatzkommando in the partisan warfare and he says that Strauch, at the beginning of March 1942, was still stationed at Riga and not in Minsk ashe had met Strauch at that time in Riga and he had discussed current matters with him. Jost furthermore declares that Strauch had received the authority not to take any anti-Jewish measures so far, and on the occasion of this discussing Jost expresses his comment on the Kube letter.

Then there is No. 22. It is a document which is up to now No. 7 which is now going to be 22. It isthe testimony of Dr. Blume as the witness for the defendant Strauch. Dr. Blume has stated that Strauch, after he had been drafted to Riga as commander, had telephoned him and had asked for this appointment to be postponed ashe had broken his arm.

Dr. Blume furthermore states that when he was transferred from Riga to Minsk, which had been planned at an early date, Strauch broke his arm again which prevented him from leaving, and thus it was decided that Strauch, before he was to commence on his new appointment in Minsk, should be cured of his habit of breaking his arm.

As Exhibit No. 23, I submit Document No. 8, which is now going to be Document 23. The testimony of the defendant Sandberger as a witness for the defendant Strauch, and Sandberger states that although he was stationed in the adjoining territory, Estonia, where he was commander of the Security Police and the SD, he had never heard anything about the fact of Strauch was the commanding chief of Latvia, and above all other things, Dr. Sandberger comments upon his affidavit of the 19th November, 1944, in which he says that Strauch participated in Jewish persecutions, but he says here that he could not have any knowledge of incidents that happened in Minsk as he had never been there himself.

My last exhibit in Document Book II is Document No. 8 which is going to be changed to No. 24. It is an excerpt from the total report of the Einsatzgruppe A up to the 15th of October, 1941. From this it becomes evident that two-thirds of the entire Einsatzkommando II were removed to Lenigrad, and that only one-third remained in order to install an agency for the Commanders of the Security Police and the SD in Latvia.

In Document Book No. III -

THE PRESIDENT: Do we have Document Book III?

SECRETARY GENERAL: No, Your Honor.

THE PRESIDENT: If you are willing to present it without our having it before us, we are willing to hear you.

MR. GLANCY: If the Tribunal please, the Prosecution is not in possession of the document book, and I would like to reserve the right to lodge objections at a later time. Also, at this time, Sir, I would like to object to one document in Document Book II. This is Document Court No. II, Case No. IX.

No. 4, Exhibit 19, an excerpt from as Soldier's Handbook, which treats with reprisal measures, and the fact that the soldier will not be prosecuted if he follows superior orders. However, I would like to have the chance to inform myself further. I do believe that the stipulations mentioned here are qualified as to what is patently illegal shall not be obeyed. That is from my memory and not from the book itself. However, I think that is in there as qualification.

THE PRESIDENT: Well then, you are reserving the right to refer to the entire handbook or even to present further excerpts from it.

MR. GLANCY: Yes, sir.

THE PRESIDENT: That right is reserved.

MR. GLANCY: Thank you, Sir.

DR. MINTZEL: Your Honor, it would be welcome, I think, if the three documents contained in Document Book III could be presented. I shall submit these documents now, although the translations have not been available to the Prosecution or to the Tribunal. Yet if you agree, I shall do so now.

THE PRESIDENT: Yes, please present them.

DR. MINZEL: I submit as Exhibit No. 25 Document No. 1, in Document Book III, which is now to receive the Document No. 25. It is an affidavit of the defendant Strauch of the 22nd January, 1948, in which he comments upon the matters which are contained in rebuttal Document Book No. V-A, which is a bulky document pertaining also to Strauch's activities. Strauch makes the statement in detail concerning these documents, especially to Prosecution Exhibit 196 that he had nothing to do with the police battalions. In Exhibit 221 he says that Vandenbach's order that seventy Jews who were in the service of Kube were to be executed, was left to his successor in White Ruthenia who had this order carried out. He speaks about the kind of participation in the operations which were mentioned in the Ruebe affidavit. He also says concerning the Exhibits of the Prosecution, Exhibits 224 and 225 that he and the men of his agency did not take part in the operation Court No. II, Case No. IX.

"Harvesting Festival" (Erntefest) and "Jacob", and that no persons were killed who were not either partisans or who could be proved to be aids or abettors of the partisans. Commenting upon Exhibit No. 226 Strauch says that the executions mentioned therein are those of people who had been condemned to death by German courts.

My next Exhibit is No. 26; it was Document No. 2, and the document in Document Book III will now receive the Document No. 23. It is an affidavit of the defendant, Dr. Rasch, of the 26th January, 1948. Rasch says that he visited Strauch in Riga at the end of January or the beginning of February, 1942, and that at that time he, Strauch, had a permanent domicile, and that he, Rasch, had stayed with him in Riga.

The last Exhibit is No. 27, former Document No. 3 in Document Book III; it is now Document No. 27; and is an affidavit of the defendant Dr. Gick, in which he says that in the reports of the events of the 22nd December, 1941, until the 3rd of April, 1942, the commander of the Security Police and SD for Latvia, Dr. Lange had been named.

THE PRESIDENT: Any other Defense Counsel desire to present any documents? Does the Prosecution have anything to offer?

MR. GLANCY: Not at the present time, Your Honor.

THE PRESIDENT: Did Dr. Heim intend to present something for the defendant Blobel? Apparently not.

MR. GLANCY: I don't think so.

THE PRESIDENT: Dr. Aschenauer, you will be ready to proceed tomorrow morning?

DR. ASCHENAUER: Yes, Your Honor.

THE PRESIDENT: Very well. Tomorrow morning we will hear the presentation of Ohlendorf's case; then, that will be followed by the presentation of the final pleas for the other defendants. Following that, the Prosecution will make its summation plea.

judgment will be rendered. Some reference has been made to a date, but that date cannot be maintained because we have delayed in the hearing of the summation pleas, so that the date of the judgment is unknown to anyone, including the Tribunal.

MR. GLANCY: After the generous offer of the Tribunal to sit as long as was necessary to finish the Defense's case and offer of documents, I suppose we can assume that it is complete in fact.

THE PRESIDENT: Yes. It is now understood that there is no further presentation of documents in open court. Should there be a straggling document show up, than it will be presented directly to the Judges with copies going to the Prosecution.

MR. GLANCY: Thank you, Sir.

THE PRESIDENT: The Tribunal at this time will recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 0930 hours, 4 February 1948.)

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Otto Ohlendorf, et al., defendants sitting at Nurnberg

THE MARSHAL: The Honorable, the Judges of Military Tribunal II. Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: Dr. Aschenauer.

DR. ASCHENAUER: (Attorney for the Defendant Ohlendorf) Mr. President, Your Honors.

based on the substantive law of Decree No. 10 of the Control Council which was issued by the 4 signatory powers in execution of the Moscow and London Declarations, dated 30 October 1943 and 8 May 1945. Therefore it is to be examined whether and to what extent this law is consistent with the rules of international law. The Tribunal not only is entitled, but is also obligated, to make this examination. It is obvious to choose as a parallel the right of examination on the part of the American judge with respect to the constitutionality of the established law, all the more as the unwritten rules concerning the right of examination by the judge apply to all American judges, therefore also to the military Tribunal which was established by virtue of Decree No. 7. The London statute, the Decree No. 10 of the Control Council end the implementation rules based thereon are called the corner stones of the new international law and, in the opinion of the first Nurnberg verdict, the sentence has come up more than once that everything, called by the London Statute an agreement serving especially the trial of the German war criminals, is in itself nothing else than a generally recognized law, an international law. If this, however, in the case, then this law, on the part of the judge who is called upon to apply it, must likewise submit to the examination which every law is subject to with respect to its constitutionality.

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There is no reason whatsoever, if we follow the American conception of the law, to regard an agreement, based on international law, as nothing else but a national internal law. On the contrary: In general, more guarantees are given in the field of national legislation - if only on account of the homogeneousness of the legislative bodies - for the fact that the individual laws keep within the framework and spirit of the constitution more than in international law where the body of legislators is more or less mixed and - as in collective agreements like that now under discussion - is more or less determined by accident. Rules of international law, too, are subject to examination by the Court. Therefore it will be necessary that the Court will examine every sentence of the international law with respect to its consistency with the generally recognized fundamental rules of international law. These fundamental rules the existence of which is today completely undisputed, regardless of the difficulties as to their valuation and definition in the individual case, at a time of reorientationof international law in particular to principles exceeding the legal obligation out also those borne by the "Conscience publique", are here taking - mutatis mutandis the place of the national constitutional law. The basic rules of international law also include the general fundamental rules of the contract law. The rules about efficacy and lack of efficacy of agreements, however, their interpretation in the individual case may be con entious, are the more general, more comprehensive and older sentences with respect to the system of the London agreements; in the same way as an agreement, based on international law, must be regarded as void, if, for instance, it limits the sovereignty of a state in an immoral manner just because of the fact that the corresponding contract regulations are in contradiction to the superordinated, generally applied rules of sovereignty, the ad hoc concluded agreements of international law which are vitiated by a defect, recognized by the general legal principles of international law, are in the same way to be regarded as void.

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Consequently, the American Military Tribunal is not relieved from the obligation to undertake an examination of the substantive validity of the London agreement and of the rules applied to its execution, all the more as military Tribunal No. III, in my opinion, has adhered to this conception in its opinion in the trial against Altstoetter and others. The examination as to the "constitutionality" is here replaced by the obligation to examine the London agreement enacted on a fallacious basis with respect to its compatibility with the superordinate, general rules about the efficacy of agreements of international law. Moreover, article 2 of Decree No. 7, issued by the Military Government on 18 October 1946, and dealing with the constitutionality and jurisdiction of specific .Military Tribunals, is no obstacle to this examination. The aforementioned decree ordains that:

"The courts or its members or deputy members cannot be challenged counsels". Article 2e of Decree No. 7 combines twoviews which, as a rule, are dealt with separately according to German penal law namely:

the challenging of the judge and the assertion of procedural objections. The Decree No. 7 authorizes to determine such a restriction of the procedural rights of the defendants. In this case, however, no assertion of such procedural rights is in question. A challenging of certain judges or the entire Court is by no means intended here. Neither do I challenge the procedural jurisdiction of the Court. On the contrary, the objections are of quite a different nature which are not supposed to be ruled out and cannot be ruled cut by Article 2e of Decree No. 7. I raise the question whether the trial, in view of the story of the origin in international law concerning the provisions for the punishment of the war criminals, is admissible at all.

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Therefore, not the mere substantive or local jurisdiction of the Court as such is challenged (this would be immaterial according to article 2 of the aforementioned decree) but the fundamental question is raised whether the entire system of the substantive and procedural rules, issued for thejudgment of the War crimes, in view of their origin, has a claim for legal validity at all. Such a statement can obviously not be ruled out through a regulation as it is contained in Article 2e of the Decree No. 7. Bluntly expressed: A materially or formally invlaid law cannot evade the examination by ruling it out; on the contrary, the right and also the duty of a judge to examine any rule will under all circumstances prevail. In my opinion, the London Protocol, dated 8 August 1945, with all its rules issued for its supplementation and implementation represents a new institution of law from the point of view of international law, and from the political point of view , an experiment. The London agreement, including its implementation rules, must be counted to those agreements which, in view of the subtleness of the questions dealt with, can only then have a claim of legal validity and general respect in the future, if those agreements themselves have been concluded in a politicly loyal manner by politically loyal partners. If this is the case, it will be possible that the principles, laid down for the first time in this agreement and applied in practice for the first time in Nurnberg, will be recognized and will have a claim for legal Validity in the future.

If this, however, is not the case, the public conscience will some day, sooner or later, form its negative judgment about this sort of trial, regardless of the number of actually concluded trials and the number of convictions pronounced, and the time is bound to come when this kind of trials is considered an abuse and not a development of international law, and when the conduct of these trials is no longer regarded as a generally binding administration of penal justice.

The sentence: "Nobody can be a judge in his own cause" is considered a matter of course by the national penal law. The slogan of "Judex inhabilis" states: The judge is precluded from the exercise of his duty if he himself is injured by the criminal act or has retained certain close connections with the offender. Another reason for the preclusion of a judge, because this is absolutely obvious, is not even mentioned in the procedural systems. The judge can neither then perform his duty as a judge if he is suspected as an offender or participant in connection with the criminal act on trial. As opposed to the national penal law it is obvious that the principles of "Judex inhabilis" can only claim a lesser significance in international law, Only in very rare cases will it be possible in international tribunals to prevent the participation of those states which themselves have been directly or indirectly injured by the acts on trial, and the objections are based on the very "incompatibility" which have been raised again and again in all countries against the exercise of a judicature which is based on international law. It is not intended in this connection to go into further details with regard to this question. for this case, are those principles which apply to the juridical unsuitability of the person suspect of the act. The accomplice in a war crime or even more so the instigator of such a crime may not be considered suitable to participate as a judge in the trial against war crimes of that kind.

protocol to the non-aggression pact with Germany. From the viewpoint of international law the attitude of the Russian authorities, at least with respect to Poland, represents a breach of the treaty of 25 July

1932; in this treaty the Soviet Union had given guarantees not to take a part in a treaty which was directed against the other treaty partner. Now it is hardly possible to conceive of a harsher form of agreement, directed against another state, than that which prepares and makes possible the military annihilation and partition of the partner. And it is furthermore difficult to think of a cruder form of "adoption" of or "participation" in such a treaty than that chosen by the USSR; for, as seen politically, it involves a partition agreement confined solely to the USSR and the Reich which was made possible by the use of arms. The fact that both States, Germany as well as the USSR, "considered" or "would be willing to consider" the possibility of maintaining a Polish State of reduced territory, has no more weight, with respect to the clear demarcation of the spheres of interest, than the fact that the decisive military campaign was to be undertaken by the Wehrmacht while the Soviet Union .at first remained in the background. based on the "disintegration", or "discontinuation" of the Polish State, which in the eyes of the Soviet Union brought about the end of Polish sovereignty and thus also ended the Soviet non-aggression obligations under the pact of 25 July 1932, does not pertain to this case and can only be regarded as an excuse. For at this time Poland was not even considered incapable of waging war (debellatio) from the German viewpoint, and the German military as well as the Polish government offices were surprised by the premature entry of the Soviet troops into Polish territory. Even this is not relevant. For the Soviet-Polish agreement of 25 July 1932 was not broken on 14 Sept.

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1939, the day they marched in, but already on 23 August when the secret treaty was made. Poland according to international law, but a violation of world peace generally, and thereby an offense under international law against the nations of the world. The Soviet Union was also bound, aside from its regional, non-aggression and neutrality pacts, as a signatory to the p rovisions of the Kellog pact, which it attempted to endow with special importance, in its diplomatic negotiations, by describing many of the non-aggression pacts it signed with the border states after the Kellog pact went into effect, as "extending" and "furthering" the ideas of the Kellog pact; and the Soviet-Polish non-aggression pact specifically refers to the Kellog pact. The Soviet Union had a similar duty to ensure the peace in its capacity as a memb er of the League of Nations since 1932. Union does not only fulfill the prerequisites for a so-called violation again international law, which have been recognized by international law long ago. Further than that there is an offense against international law according to the London Statute of 8 Aug. 1945. can only be applied indirectly here. On the other hand it must be considered that the matter goes deeper. The same principles which are valid for the judge must also be valid for him who gives directions to the judge and establishes the norms upon which his decisions must be based. An international agreement which is designed to punish war criminals can only command respect and have value if all of the partners thereto are free from blame in regard to those crimes the judging of which they are turning over to a special court through a special law. If, however, one of the contracting powers has placed itself outside of international law through participation in crimes which form the object of the indictment, then the jurisdiction of the tribunal is vitiated by an irremediable fault, regardless of which victor nation provides the judges.

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Considered from a strictly legal point of view, such a trial procedure cannot represent a "contribution to the development of international law", for an agreement so arrived at lacks from the beginning that authorization from the "Conscience Publique" which such a new development in international law must have if it is to be effective. The participation of a disloyal partner destroys the authority of such an agreement and may also put the collaboration of the non-incriminated partners in a light which will unfavorably affect the claim for validity of the international agreement. For it is surely recognized in the civil law systems of all civilized countries that among the required prerequisites, the personal qualities and circumstances of the contract partner are usually used as a tacit, universally subordinate basis for the contract. This is especially the case - if we may first refer to civil law - in contracts which are either long term or have special confidential conditions as a basis. In these cases the personal affairs of the contract partner are especially important. Now if the partner craftily suppresses traits which would make him unfit as a contract partner if they were examined objectively, and would justify the withdrawal of the honest partner from the planned agreement, or if he uses deception concerning their existence, then it is generally accepted that the basis for such a contract has disappeared. al law (which is proved by parallel instances in international treaty law), the destructive and annulling effect of the presence of such contract partners, who themselves have no qualification to contract such agreementss. If, for instance, a continuously neutral country, like Switzerland, joined an alliance which had been formed by two other countries, then, because Switzerland could not act correspondingly, its entry into such an alliance would be illegal and could have no legal effect.

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And for this reason, when Switzerland joined the League of Nations in 1920, it made a declaration on 13 Feb. 1920 whereby it relieved itself of any military obligatio ns which were incumbent on all members of the League. Only through such a declaration could Switzerland join the League of Nations. Soviet Union to make agreements in general by saying that its agencies were guilty of certain acts according to the London Treaty. But there is an impediment ex persona in the way of participation by the Soviet Union in such international agreements which regulate the punishment of the authors of crimes against the peace. This follows from the following considerations: the moral meaning of such treaties would be reversed if states which had themselves committed the same crimes or allowed them to be committed by their agencies, could participate in forming such treaties. world opinion that it would not be able to recover. And finally, the remaining, loyal partners to such an agreement would necessarily have to lose their own position as guardians of international legality as a result of making pacts with one outside the community of nations. This so much the more since the bare fact that, in line with the London Statute and Law 10 of the Control Council, the victors are judging the vanquished, which is in itself a great moral encumberment to the agreements. they are made by parties which are not also guilty. This is not the case with Law 10 of the Control Council. Therefore, the Control Council Law 10, after thorough and objective examination - in connection with this (I refer you) to my motion of 9 December 1947, which I have also directed to the Military Tribunal Court No. II - has not gained legal validity because it stands in contradiction to international law.

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It is not without reason that Christopher Emmet says in his "Verdict on Nuernberg", on page 138 in the 22 Nov. 1946 issue of "The Commonwealth":

"If, however, all of the judging nations had come to Nuernberg with clean hands, the verdicts might have really been the milestones in history that Judge Jackson believed them to be. Unfortunately, however, against the findings in Nuernberg we must raise the constantly increasing suspicion that the leaders of one of the judging countries should have been sitting on the defendants bench with the Nazi criminals." the basis for this trial.

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Article II, 4b of the Control Council Law No. 10 orders:

"The fact that a person acted under orders of his responsibility for a crime; but it can be considered as an extenuating circumstance."

from responsibility could no longer be considered, under any circumstances. Accordingly, the defendants at these trials could not refer to the higher orders they received with the idea of complete exoneration. before the Control Council Law No. 10 was passed. Even in the Anglo-Saxon countries the prevailing school of thought generally favored the conception that the defendant in a war crimes trial had to be allowed the defense that he acted on higher orders.

I add the following quotations to this statement: in the 1914 edition, which was valid until 1944, states word for word as follows:

"Members of the combat forces who commit violations the enemy."

further determines that acting on higher orders constitutes complete justification so far as war crimes are concerned. This conception ruled British jurisprudence for decades, almost until the end of World War II.

It says further in the British manual:

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"They can punish the officials or commanders who are measures that are described in this chapter."

the head of the state, the members of the government, as well as the higher commanders of the armed forces and other commanders who are independently responsible for an original order. 1940, which is still valid today, agrees with these directives almost verbatim. It says:

"Individual members of the armed forces are not to or commanders."

Prof. Max OPPENHEIM, co-author with Col. EDMONDS of the rules of warfare of the British MANUAL OF MILITARY LAW and for many years chief advisor of the British admiralty on questions of international law, has this to say on the subject, in his work on "INTERNATIONAL LAW", volume II, 1st to 5th edition, paragraph 253:

"Violations of the rules pertaining to warfare are concerned.

If the members of the armed forces by the enemy; the latter may then use reprisals.

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be punished; for the commanders are alone responsible and the latter may therefore be punished by the enemy as war criminals when they are captured."

Prof. OPPENHEIM, who for many years was the leading authority on international law in Great Britain, held to this opinion throughout his life.

English and American law agrees on this point. George MANNER, the American expert on international law, in an article on "the legal Nature and Punishment of Criminal Acts of Violence contrary to the Laws of War" in American states the principle that members of the armed forces of a nation could not be held personally responsible for acts that violate the rules of warfare which they commit by order or with the consent of their government or their military superios, should be considered a rule of the usages of warfare that a universal tenet of International Law that reference to higher orders is excluded, existed neither during the 1st nor during the 2nd World war.

Nor has it materialised yet since 1945. In this respect however Control Council law No. 10 is in opposition to International Law. It cannot, as a one-sided act of the victorious powers, invalidate the pertinent international norms. Therefore it cannot hinder reference to a higher order either as justification of acts violating International Law, On this point, the already mentioned Prof. Lauterpacht declares:

"The cause of International Law demands not merely crime.

It demands also that such a punishment takes place in conformity with International Law."

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these statements to higher orders for the purpose of achieving exoneration in full. In the event of the Honourable court not following this argumentation by reasons of the "being bound by a statute (positives) law" then it is faced with a further weighty problem which can be summarized in the following way: limited to a punishment of their own choice of those provided for in Art. II No. 3 of Law No. 10; a limitation in accordance with the rules of International Penal Law of the power of jurisdiction of the Court result in the selection of the punishments names in Art. II No. 3. Trials already carried through. There was no occasion for opening it either in view of the wording of Art. II No. 3 of the Law in so far not to be misunderstood. In the meantime, however, legislative facts have entered which make necessary legal examination of the extent of the authority to inflict punishment by the Court. abolished capital punishment for the sphere of its jurisdictional competence. Therefore the question arises: has to decide and pass sentence in accordance with a statute based on international agreement, even then when the death penalty provided by this Statute has been abolished subsequently and on principle by one of the Treaty States of the Statute? all the immediate decision on two preliminary questions. First of all, the international range of Control Council Law No. 10 has to be checked, as to the penal sanctions of which the deeds of the defendants are subject, according to paragraph 1 of the indictment, in the first instance.

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Further, the international range of the Abolition Law of the USSR dated 20 May 1947 has to be ascertained. After these preliminary questions have been clarified the deductions for the concrete case are reached. International Range of Law No. 10. Law No. 10 was issued by the Inter-allied Control Council for Germany. By unanimous interpretation at home and abroad, however, it did not become thereby primarily a "German Law"; only in so far as in certain exceptional eases, Art. II 1c, the trial of crimes against humanity directed against Germans has been handed over to German Courts might one speak of a "transformation" of Law No. 10 into a national international German Law.

In all other cases the character of Law No. 10 remains unaltered, and indeed it is a statutory, interallied - that is "foreign law", passed by an Interallied authority (Control Council) aiming at German war criminals. Looked at materially however, a "foreign Law" as such does not exist; looked at from a legal validity point of view, Control Council Law 10 as already explained is therefore no Law but a State Treaty between the Four Allied Main Powers, looked at as a treaty from a technical point of view, an international (created by the Control Council as an international organ) Agreement implementing the Moscow Declaration dated 30 October 1943 and the London Agreement dated 8 August 1945. That the Allied Powers themselves wished to ascribe such a character to Law No. 10 is revealed beyond doubt by the following points:

(a) the circumstance that the preamble of Law No. 10 30 October 1943/8 August 45.

(b)the fact that national German Courts are expressly forbidden judicature on the basis of Law No. 10 in special orders of the Zone Commander (Art.

III No. 1 within limits.)

Law No. 10 is therefore first and foremost an International Agreement between the four signatory powers for punishing war criminals. Since, however, the Courts of the Treaty Powers have to base their decisions directly on this agreement Law No. 10 has become simultaneously an integral part of the internal law of the Treaty States. Thereby it has the same dual nature as the majority of international conventions. of the abolition of capital punishment in the USSR on this norm must be investigated firstly in its capacity as international Agreement and secondly in its capacity as national law.

THE PRESIDENT: Dr. Aschenauer, may I interrupt you for a moment please? If you regard Control Council Law 10 as in effect a treaty between the signatory powers how do you argue that any change in the internal law of the Soviet Union affects this international agreement?

DR. ASCHENAUER: Your Honor -

THE PRESIDENT: Let's suppose that the Soviet Union changed the law of succession or in some way modified the law of property, how would that effect an international treaty?

DR. ASCHENAUER: Your Honor, this question will be answered to in the following statements in my plea, if I may continue, I shall answer to your question in the rest of my final plea. The International Range of the Abolition Law of the USSR dated 20 May sovereign state can at any time undertake an alteration of her internal national law, and indeed particularly even if this internal law is based on an International Agreement. The Soviet Union is consequently justified to alter Law No. 10 in its capacity as National Soviet Law with effect for the Soviet sphere of jurisdiction, particular, to determine that the death sentence provided for by Art. II No. 3a of this Law may no longer be pronounced. Law No. 10 has become also a part of the internal law of the remaining parties of the Treaty, the USA, England, etc. that the Abolition Act pronounced by the USSR does not affect in itself the corresponding legal system of the USA, England, etc; looked at from a concrete point of view, the remaining parties to the Treaty can therefore continue to apply the death penalty in accordance with Art. II No. 3a of Law No. 10 for the sphere of their jurisdictional authority without taking into consideration whether the Soviet Union has abolished capital punishment or not. This is inherent in the already mentioned character of Law No. 10 which is not merely an international convention but also an internal law of the Treaty States. Such a way of looking at it and a result of this kind would only be impartially justified however if Law No. 10 were only a norm of the Internal Law of the Treaty States. This, however, is not the case as explained. Law No. 10 is at the same time an International Agreement. The question is therefore whether the Law of the USSR dated 20 May 1947 cannot be regarded as a tacitly undertaken notice of termination of this Agreement in so far as this provides for the death penalty in Art.

II No. 3a, at least however as a tacitly given explanation that the USSR no longer looks upon this agreement as valid as regards the means of punishment (death sentence) provided for and therefore advocates the point of view that, from a treaty point of view, the other signatory powers were no longer justified in pronouncing the death sentence. Looked at from a concrete point of view, the fact as to whether Law No. 10 is still supported by the "communis opinio" of the parties to the Treaty as regards justification for pronouncing the death sentence has to be examined.

Law No. 10 as repeatedly stressed by its originators and its immediate predecessor, the Nuernberg Statute, is issued to make victory possible for the so-called material justice. In the interests of this high aim the Nuernberg Statute and the subsequent Control Council Law No. 10 have put up even with constructions foreign to continental legal thought like for example the sacrifice of the sentence "Nulla poena sine lege poenali praevia". The circumstance that the Nuernberg Statute as well as Law No. 10 are satisfied with the element of violation of international law and the element of violation of public morals of the deed as norms of the time of the deed establishing criminal responsibility, showsclearly that in the interests of material justice express declaration of punishableness of the incriminating actions by defining special criminal facts of the case of the national legal system is to be desisted from. With that it is established that the Nurnberg Statute as well as Law No. 10 wanted to give precedence to the idea of material justice rather than the restriction rooted in continental thought "Nulla poena sine lege poenali praevia". Examination of the legal and political expediency of a step of this kind exceeds the limits ascribed to the plaideyer. From this fact however the obligation results, it is true, to advance the following sentence:

the general conviction (communis opinio) of the objection It results that the provisions of Art.

II No. 3 of Law No. 10 without detriment to their further continued validity are to be subjected to revision then if forcible proofs are given for the fact that such a communis opinio between the signatory powers no longer exists at all or at least no longer exists in the sphere of selection of means of punishment in question. however, such a fundamental significance which causes the material continued effectiveness of Art. II No. 3a of Law No. 10 to be in question. The reasons for this may be classified in two groups:

a) The penal law of the Soviet Union has always been inclined to abolitionism in principle. 1919 as in the federal principlesof the penal legislation, as also in penal codes of the states (save for individual groups of crimes), the penal law in the USSR, notwithstanding Article 14 Subsection 21 of the Federal Constitution of 5 December 1936 is essentially still states' law, i.e. regulated by the laws of the individual federal republics; in 1922 and 1926, capital punishment is designated always and only as a temporary measure caused by the then existing circumstances, bound to be abolished in principle or without exception as soon as conditions would permit. The fact that, by the penal coes in force, a relatively great number of acts was punishable by death cannot, in agreement with authoritative soviet-official conception so far, be taken as an argument against the basically provisional nature of this institution. This is given expression also by the so-called federal law of 20 May 1947, specifying that the promises for the application of the death penalty no longer exist and thereby emphasizing again the basically provisional nature of the supreme penalty.

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b) Also, the Soviet Union did not restrict itself to abolishing the death penalty ex nunc only and with effect in its own national territory only, in the sense of internal state's law. Rather does the law, in connection with implementation instructions decreed by the Soviet Military Administrations in occupied foreign territory, make it clear that the abolition shall have an absolute and comprehensive effect:

1. The abolition applies also to former enemy territory occupied by the Soviet forces within the framework of the Potsdam Agreement;

2. the abolition applies not only to ordinary civilian courts but as well to proceedings before military end special courts, and especially also to those Soviet Courts which have been established in the East-Zone and in the USSR proper to prosecute the crimes specified by Control Council Law No. 10:

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3. the abolition has effect ex tune (a consequence of the principle postulated by Article 3 of the Introductory Law to the Penal Code of the UDSSR of 1926; retroaction of the more lenient, i.e., in thiscase, of the abolitionary law, is obligatory. in the meantime been drawn by the courts of the USSR. In the trial against the members of the 9th Police Reserve Battalion, who, in particular also had to answer charges specified by Article III 1c of the Law No. 10, no death penalties were pronounced, although the court in its sentence stated that according to the previous Legal Penalty the conditions calling for capital punishment had existed; instead, they were sentenced to hard labor for different length of time, i.e. a maximum of 25 years, in accordance with the limitation by Soviet Federal Law of 20 May 1947. It must, therefore, be considered as being beyond doubt that the internal legislation of the Soviet Union has in principle changed course since the publication of Control Council Law No. 10. Concretely it looks like this: if, in the case under consideration, a military court of the Soviet Union had to decide, the inapplicability of Article II subsection 3 would be incontestable. In the relation of the Signatory Powers to each other the communisopinio, therefore, in matters concerning the quality and

quantity of punishment has disappeared which yet existed at that time, when every one of the four Signatory Powers knew the possibility of the death penalty in accordance with the law of their nations. of International Penal Lay:

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Law. For, as stated, Law No. 10 is not only an international treaty but also an internal norm of penal law of the signatory nations. In itself, the contents of this internal norm is not, as regards the remaining signatories, especially the USA, affected by the unilateral change of the law by another signatory nation (USSR). Regarded generally and basically, therefore, the military courts of the USA judicating on the strength of Law No. 10 are, without question, justified to apply Article II subsection 3 a. The question is only whether this jurisdiction power is not restricted in cases in which there exists a cogent point of contact regarding international penal law with the jurisdictional powers of the USSR. It is, therefore, to be examined in how far reasons of international penal law restrict the applicability of Law No. 10 in its character as internal norm of penal law of the signatory powers. I shall show that in this present trial, too, for reasons of fairness and the generally accepted ideas of justice, Control Council Law No. 10 is not to be implemented by the legal institution of European average penal law. This my opinion is supported by the verdict of the Jurist Trial, Case III, where it says on p. 41 of the German version: "Although this tribunal is composed of American judges, trained in the system and the rules of Common Law, it, nevertheless, is in session on the strength of international authority and can let itself be guided only by the basic principles of justice and fairness which underlie every civilized conception of law and legal procedure." International or even national military courts exercising penal jurisdiction on the strength of an international statute, are a novum in the history of International Law. This is the reason for the lack of cases of precedence which would permit an immediate solution of the quetion under discussion. Yet, International Law - in a steady evolution of now almost hundred years duration - has developed legal doctrines which are applicable to the case in hand at least by analogy. I have in mind the legal principles, created in international extradition laws, and which are, today, universally acknowledged.

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We shall discuss these principles in subsection a), in subsection b) will be shown the reasons why these principles apply to the case on trial. a) The International Principle of not Sentencing to Death a Defendant Compared with the other acknowledged principles of international extradition law (non-extradition of one's own national; reciprocity; speciality; non-extradition for political offenses; extradition only if the offense is punishable also by the laws of the state applied to; non-extradition if the offense cannot be prosecuted in concrete by the laws of the state applied to;), the principle of exclusion of the death penalty plays a corresponding part. This principle, regularly, becomes acute in the extradition relation between such states (applied to) which have no capital punishment, and those (applying) states the penal system of which provides for the death penalty. In cases of this kind, the system of inter-state extradition laws regularly and unmistakably shows the tendency of states in favor of abolition to refuse extradition or to make it dependent on the understanding that the applying state will not exact the death penalty. and agreements of European, as well as non-European states. Thus, Article 5 of the Swiss Extradition Law of 22 January 1892 determines:

"If the penal code of the applying state provides for the offense, for the commission of which extradition is requested, corporal punishment (this includes death), then extradition will be consented to only on condition that the punishment, eventually, is commuted to imprisonment or a fine." further yet, prohibiting extradition if the laws of the applying state are in concrete stricter about the offense in question than the terms of Dutch penal law.

on condition that the applying state, which, contrary to the one applied to, employs the death penalty, assumes the obligation not to pronounce it in the case in question. This, e.g., is the case in the BelgianRoumanian Extradition Treaty of 18 August 1880 (See Mertitz: International Legal Aid in Penal Cases (Internationale Rechtshilfe in Strafsachen) 897, Vol. II p. 48 Foot note No. 15); the same practice has always been applied by abolition-conscious Italy. Belgium, the classical land of extradition law, made corresponding reservations in particular in relation to its South-American treaty partners (Brazil, Peru, a.o.) In connection with this, the circumstance must be mentioned that, in analogous extension of this principle, in extradition law the tendency of any state, absolutely, prevails to refuse extradition if the extradited person faces a penalty or a kind of punishment unknown to the laws of the state applied to and obnoxious to its public opinion. Into thiscategory belongs the tendency not to extradite if the extradited faces eventually corporal punishment. In these cases, even countries not in favor of abolition tend to refuse extradition either altogether or to make it dependent on the condition that such punishment, distasteful to the ordr* publique of the state applied to, isnot inflicted. Thus, in discussing the German Extradition Law of 23 December 1929 in the Reichstag, a corresponding passus was not included in the law only for fear of invoking international entanglements by criticising foreign penal laws; yet, the Reichstag, in this respect, took the following resolutions:

"the Government of the Reich is to be requested to consider ment unusual in Germany will be inflicted."

These examples may suffice, For, they show already that there is in international extradition law a principle which has attained such little practical significance only due to the, up to now, small number of states favoring abolition, but the theoretical import of which is on equal standing with the other extradition principles: the principle of the prohitition of the death penalty in the relation of the abolitionist state to the non-abolitionist state.

b) The Application, to this Trial. of the Principle of theExclusion of the Death Penalty in International Legal Aid Relations. Here, it must be examined if and to what extent the principle established under a) also has validity for the proceedings before the American Military Tribunal, Since, here, it isnot a question of extradition proceedings the principles found in a) can be applied only in analogy; however, the analogous applicability of the afore-said principle to the subject-matter of the present case is a cogent necessity.

According to Art. I of the Law No. 10, the Moscow Declaration of 30 October 1943 "concerning responsibility of Hitler followers for atrocities committed" and the London Agreement of 8 August 1945 "concerning prosecution and punishment of war criminals" are an inseparable part of Law No. 10.

This means that the regulations set down in the last paragraphs of the Moscow Declaration about the competency to sentence war criminals also apply to proceedings to Low No. 10; thereby, the following rules are established: 1. for crimes locally not determined the competency of the international military courts is indicated; 2. for locally determined crimes, primarily, the competency of national military courts is indicated.

The indictment shows the acts of the defendants to be "locally determined" in the sense of the Moscow Declaration: the acts the defendants are charged with took place, without exception, in the national territory of the Soviet Union. a court of the Soviet Union, which, by the Moscow Declaration, would have had to decide "according to the laws of these liberated countries". But since they were placed before an American Court, this results for the latter in certain limitations of decision* for the American court derives its competency not from their own primary rights, but from their being public administrators or trustees of the primarily touched Soviet interests.

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One of these limitations is the Law of the Soviet Union of 20 May 1947, by which the defendant cannot be sentenced to death, but, at the most, to 25 years of penal detention. concrete is irrelevant for the judgment of the situation with regard to its material legality. For, in this case, too, the American court remains the trustee only of the state primarily entitled to inflict punishment. But it would be in contradiction to the promises of international law applying to such a public legal trusteeship if the American court, exercising jurisdiction in the concrete case only "by proxy", would inflict penalties the law of the primarily affected state has expressly abolished for analogous cases, to be sure, also in regard to war criminals. including the jurisdiction in the territories in Germany occupied by the Soviets.

In conclusion, therefore, it must be scertained: 1. Inasfar as the Law No. 10 represents itself as an International agreement between the signatory states, it has, to be sure, formally not been influenced by the Law of the USSR of 30 May 1947. But it must be examined if, due? to the no longer existing communis opinio of the signatory powers, the stipulation of Art. II subsection 3 a did not become materially irrelevant. This examination, being foremost a questio facti, is up to the court.

2. Independent of the decision on point 1 above, the applicability of Art II subsection 3 a of Law No. 10 in its character as internal law of the signatory states did, by acknowledged principles of international penal law, become inadmissible then, as the Soviet Union is the party primarily entitled to inflict punishment. In these cases, even a nonSoviet court may not pronounce the penalty of death provided for in Art, II subsection 3 a.

DR. ASCHENAUER: Your Honor, that is the end of the section, and it would be a suitable occasion to have the recess.

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PRESIDENT: Very well. The Tribunal will be in recess 15 minutes.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed, Dr. Aschenauer.

DR. ASCHENAUER (ATTORNEY FOR THE DEFENDANT OHLENDORF): with membership in organizations, which the IMT has declared to be criminal: namely membership in the Schutzstaffel of the NSDAP (generally known as the "SS") and in the "Security Service of the Reichsfuehrer SS" (generally known as"SD"). judgment. Because he neither was (comp. IMT Judgm.) a member of the Allgemeine SS, nor the Waffen-SS or the SS-death head - units nor an SS-member within a Police Department, but rather he was an SS-Fuehrer, at last SS-Gruppenfuehrer in the "Security Service of the Reichsfuehrer-SS" (this is what was written on his membership card), that is member of the SS-formation SD.

This kind of SS-membership, however, is according to the IMT judgment treated as membership in the Security Service of the RFSS (gnerally known as the SD) not within the scope of the SS, but in the judgment against the SS it is in respect to this membership referred to the judgment against the Gestapo and the SD. I quote page 113 of the "Judgment of Nuernberg":

"Conclusions": "..........the Tribunal includes in the SS all persons who officially were accepted as members into the SS including the members of the General SS, the members of the Waffen-SS, the members of the SS-Deathhead units and the members of the various Police departments, "Then the judgment goes on to say: "The Tribunal does not include the so-called Reiter-SS. The Security Service of the Reichsfuehrer-SS will be dealt with in the judgment of the Tribunal against the Gestapo and the SD." tion or group within the SS for the purpose of the judgment by the IMT, especially in regard to the SD, is in harmony with the real situation. For after the SS became independent in 1934 there was no "general membership in the SS." No applicant was accepted generally into the SS, but the acceptance into the SS and the membership therein became cemented into a certain organization or group of the SS. The judgment on the declaration of criminal organizations or groups corresponds to this situation, by, in leaning on the legal institute of conspiracy, predicating the charge of membership in an organization upon the supporting membership to a certain perpetrator-organization or perpetratorgroup, namely conscious cooperation in a criminal group for criminal purposes (compare IMT-Transcript, page 16,503). that OHLENDORF belonged to an organization or to a group of the SS outside of the SD, I may in my comments on Count III of the indictment limit myself to OHLENDORF's membership in the SD. IMT judgment the SS special formation SD was not convicted as a whole. And in view of the goal of the indictment in the IMT Trial there would have been no room for that, like with any conspiracy indictment to obtain punishment for assistance in the crime, and according to the opinion of the judgment that "criminal organization" means essentually "cooperation for criminal purposes" (comp. official edition, Court No. II, Case No. IX.

Vol. I, p. 258). For the SS-formation SD was a purely summary designation for SS-members of certain branches of service, who were administered by this organization merely in personnel matters. The SS-formation SD itself neither was charged with any material tasks nor did it carry out any material work of its own. Also no SS-service was done in this formation. It was not even organized in units. Its members did not meet within the aegis of its organization. Therefore the members could not obtain a common opinion on objective purposes of the organization, much less combine for common purposes. This is the reason why actually it has now become a general practice with the Spruchkammern in the American as well as the British Zone to evaluate the larger number of members of the SS-Special formation SD (for instance members of the Kripo, Stapo) as mere wearers of uniform and to exonerate them of membership with the SS in spite of their membership in the SS by way of the SS-Special formation SD. of the Security Service of the Reichsfuehrer SS (commonly called SD) as membership in a criminal organization therefore, has been limited by the IMT in its judgment to the members of the Offices III, VI, and VII of the RSHA, although also from the RSHA the SD-members of the Offices I and II belonged to it. The SS-activity stated to be criminal membership in the SD, therefore, is according to the IMT judgment to be found in the work of theSD-Offices III, VI and VII. All other members of the SD count as uniform wearers.

The defendant OHLENDORF was honorary member of Office III (SDdomestic service) of the RSHA, the so-called Spheres of Life-Intelligence Service.

According to Article 10 of the Statute "the criminal character of the troup of organization is considered as proven and cannot be contested." of which the organizations were declared to be criminal, belongs Court No. II, Case No. IX.

however "that the guilt within the meaning of Criminal Law is a personal one and that mass punishments are to be avoided", "innocent persons should not be punished." (P. 96 "The Verdict of Nuernberg").

Furthermore, the following is to be taken into consideration:

"Since .... the declaration concerning the organizations and groups will determine the criminal character of their members, this declaration should except those who had no knowledge of the criminal aims oh actions of the (that means "of these") organizations, as well as those who were drafted into the organizations by the State, unless they participated personally in the actions which were declared to be criminal by Article 6 of the Statute. The mere fact of membership is not sufficient to make one subject to such declarations". (B. 96 "The Verdict of Nuernberg"). tioned actions must be crimes of which the defendant became aware as having been committed within the framework of the organization of the SD, or in which he participated within the framework of his organization - in this case the SD - Office III - that means, not actions which are considered as criminal and which were committed outside the SD or in which the defendant participated outside of his organization - in this Case the SD Office III. cause of his membership of theSD- Office III Reich Main Security Office - is incumbent on the Prosecution. The Military Tribunal II v. OSWALD POHL and others expressly stated in the opinion concerning the defendant SCHEIDE (official text of the Verdict, p. 95 ff.) that the Prosecution has to produce evidence which may be considered as being beyond every reasonable doubt. The "high" position of the defendant SCHEIDE alone would not be sufficient to constitute a suspicion of criminal knowledge sufficient for a conviction.

"Knowledge of the crime" must be proved. It is not sufficient that one "must have known" (carelessness). As far as it is a question Court No. II, Case No. IX.

of a compulsory membership in an organization, perpetration of or a sufficient form of participation in a war crime or a crime against humanity, within the framework of the organization, must be positively proved. According to the verdict on SCHEIDE in Case IV it must be incontestably proved that an accused person during his membership in an organization had had a positive knowledge of crimes committed in the framework of this organization, or, as far as he was a compulsory member, that he participated personally in criminal actions. According to this verdict it is, therefore, not sufficient that a defendant receives, at any time or place, outside of his organization which was declared to be criminal, knowledge of crimes against the laws of war and humanity committed by other organizations, or that he was himself guilty of War crimes or crimes against humanity. generally of membership in criminal organizations, more precisely the SS and the SD. In this Count 3 it only refers to the verdict of the IMT, according to which the SS and the SD were declared to be criminal organizations, and that the IMT frequently referred to this decision to the crimes with which the Einsatzgruppen are charged. Consequently the Prosecution considers it to be already a proof of criminal activity within the framework of the SS and SD, if the defendant is convicted of crimes against humanity during his activity with the Einsatzgruppen. That means, the Prosecution considers the Einsatzgruppen as parts or agencies of the SS or the SD. this in its description of the Einsatzgruppen as military units of a special kind, it nevertheless brings the SD into a connection with the Einsatzgruppen by declaring the SD in the Offices III, IV and VII of the Reich Main Security Office to be criminal. I shall make clear at another place of my plea that the Einsatzgruppen in fact were no agencies or parts of the Offices of the Reich Main Security Office.

or a group it will be sufficient for the pending trial to point to the fact that neither in the proceedings before the IMT nor in the indictment in Case IX was it alleged, stated, or much less proved that the Einsatzgruppen had been an organization or group of the SS. On the contrary, they were military units of a special kind, which were not intended to last. They were not formed by a voluntary union of a majority of persons, likewise their tasks and their aims were not established by unanimous agreement of their members. At the time of the formation of the Einsatzgruppen the members knew neither the aims nor the tasks. They were not asked either, nor did they give their consent, as to whether they wished to participate in the tasks of the Einsatzgruppen or not. The Einsatzgruppen were rather formed by a military order and the members were individually assigned by military orders. The exceptional temporary character of the Einsatzgruppen was so strongly marked that they were not even organized into an independent actual unit. Outside of a relative majority of conscripted civilians who had been drafted for labor, the Einsatzgruppen comprised detailed members of the Gestapo (Secret State Police), of the Criminal Police, of the SD, of the Regular Police, of the Waffen-SS and of the Armed Forces. The men detailed to the Einsatzgruppen wore the uniforms of their home organization (i.e. the regular and drafted members of the Regular Police wore the uniform of the Regular Police), the groups of the

Regular Police even continued to exist within the framework of the Einsatzgruppen formally as complete units with their own equipment and administration, although their members were individually employed for all tasks of the Einsatzgruppen according to expediency and necessity. could have made them an organization or group within the meaning of the Nuernberg Statute (compare statement of the Chief Prosecutor JACKSON in the IMT Transcript p. 5187-88 and the confirmation by the English Chief Prosecutor, Transcript p. 5206.)

entail any kind of membership in the SS, nor did it constitute a new membership in a new organization or group.

the Prosecution takes as a point of departure the fact that Ohlendorf had been ordered against his will to the Einsatzgruppe D (See Pros. Doc. NO 2875 in Doc. Book of the Pros No. III.) That such an order by Himmler or Heydrich did not leave any alternative to the person concerned, and that a refusal to obey this order would have entailed severe punishment, is also acknowledged by the IMF. But, since the IMT tries to divest this irresistible coercion of its import by tracing it back to the voluntary membership as an offical in the Security Police or the SD, the representative of the Prosecution in Case IX, Mr. Walton, in cross-examining the defendant Ohlendorf also attempted to demonstrate this causal connection in the case of the defendant Ohlendorf, However, without success. the time of the Russian campaign, Ohlendorf had no employment connection with the SD. Neither was he draft-deferred for wartime employment in the SD. Rather, Ohlendorf had a mobilization order for the Reichsgruppe Trade, the organization by which he was employed (Sea doc. No. 54, Exh. No. 59 in Ohlendorf Doc. Bk. IV). This fact alone had, up to 1941, prevented his drafting into the army for which he was drafted originally. And only this retention by the Reich Group Commerce made his compulsory induction by the Reichsfuehrer-SS in 1941, possible. Mr, Walton asked: "Is it not a fact that if you had been a member of the SS and the SD before the war, you would have been inducted to some branch of the Armed Forces different from the SS and the SD"?

Answer:

"Unfortunately, I cannot decidethis theoretically, for, as I said before, I was draft-deferred for the Reich Group Commerce. However, very many persons were inducted into the Einsatz who were not members of the SS and who had nothing whatever to do with the SS, and who could be inducted just for the reason that, up to that date, they Court No. II, Case No. IX.

were in a position beyond the immediate reach of the Armed Forces, that is, for example, in protected enterprises". .....

And then, Mr. Walton, himself, asked:

"Then, it was due to your draft-deferment that you were not assigned to the Armed Forces, but to the SS and the SD units?" And Ohlendorf answered, in accord with the true state of affairs: "That is so." of the Reich Group Commerce and not as a full-time member of the SD. Like hundreds of others, he was taken away from civilian private employment. Furthermore, his honorary membership in the SD was, by his being ordered to Russia, not affected at all. Just like any other person inducted into the Einsatzgruppe from civilian life under compulsion by the state, he remained, during the time he was a member of the Einsatzgruppe in Russia, in his private employment relationship as an employee of the Reich Group Commerce and received from there his salary all the time he was with the Einsatz in Russia (See affidavit Dr. Franz Hayler in Suppl. Doc. Bk. Ohlendorf, Doc. No. 64, Exh. No. 65.). Ohlendorf's honorary position in the SD as Head of Office III, SD Interior Service of the RSHA was suspended. During this time he engaged in no activities whatever in the SD, rather, his membership was inactive (See affidavit Hoettel in IMT trial, Transcript p. 14504/5 and Ohlendorf's uncontradicted statement in the same instance, Transcript P. 1831-32.) I am citing from this statement:

"The fact that I commanded an Einsatzgruppe has no connection with my position in Office III, which was given me as a person and not as Head of Office III. I.e., as Head of an Einsatzgruppe I had an entirely new function and a position completely separated from my former position".

Ohlendorf's activity in Einsatzgruppe D must therefore be considered independent from his honorary affiliation with the SD, to say Court No. II, Case No. IX.

nothing of the circumstance that even before the war and at the time he was ordered to Einsatzgruppe D, he was no longer a voluntary member of the SD and had, already in 1938, given up his employment in the SD to remove himself from dependence on the SS and the SD. activity of Office III, SD Interior in the RSHA, and the activities of the Einsatzgruppen which can be charged as war crimes and crimes against humanity. Such a material connection has not even been alleged, much less been proved by the Prosecution. Such a connection is also in contradiction to the task of Office III SD-Interior of the RSHA, which was so aptly described in the C.I. Handbook Germany, published by Supreme Headquarters Allied Forces, Office of the Assistant Chief of Staff, G/2 Counter Intelligence Subdivision. It says therein under sub-section IV "The German Intelligence Service" as follows: "..... The SD within the Reich, RSHA Office III, with its local branch offices constitutes the Party news agency inside of Germany. It maintains for its purposes a network of news men for every sector of German life, ... drawn from all social strata and callings. The information supplied by them is worked into situation reports which the Regional District Offices then relay to the RSHA. These reports are extremely candid and give a complete picture of the state of mind and the atmosphere in Germany ..." their charge regarding Count 3, that Ohlendorf, within the SD Office III of the RSHA, had committed war crimes and crimes against humanity, or had known about such crimes in the sphere of the SD, one can ascertain that the Prosecution has made no attempt whatever to blame Ohlendorf of such facts to say nothing of proving them. the SD Main Office and of the Office III SD-Interior of the RSHA, which determined the tasks and activities of the Organization of the SD-Interior, offers no points of departure for criminal activities in Court No. II, Case No. IX.

the sense of Article 6 of the Statute. It was designed for consideration of political and criminal investigation of objective information material. Accordingly, neither Office III nor its regional substructure the SD-Sections, were connected, for example, with the opposite departments (KPD, SPD, Jews, etc.) or with police affairs (Sabotage, espionage, etc.). The organizations were, rather organized according to sectors of public life and, correspondingly were charged with the departments for Justice and Administration, Folkdom and Public Health, Culture, Science and Education and Economics. Furthermore, the Office III SD Interior of the RSHA had no executive power whatever and absolutely no aims and purposes requiring the practice or support of police executive measures, neither for their own Offices nor for any other Office. The Presiding Judge of this Tribunal, himself, ascertained this in the course of the cross-examination of the defendant Seibert in regard to his activity in Office III, in which Seibert headed one of the 4 Groups: (I am quoting from p. 2521 of the Transcript).

Pres. Judge: "Well, no, Dr. Gawlik, it is quite right that you show here that the work in this Office was entirely legal and correct . . . and further on - I quote Pres.

Judge: "That is absolutely right, Dr. Gawlik, but now that is settled. And if the Prosecution does not refute it then it is so, namely that his activity in this special Office does not include anything criminal . . ." of Office III differ in no respect in their character and their activity from Group III D in which the defendant Seibert worked. under the leadership of the defendant Ohlendorf? him, "How do the people concerned react to the measures of the National Court No. II, Case No. IX.

Socialist Reich and its leading organization, and what effect do these measures have on these people, actually or in the forseeable future, to gather suitable facts, opinions, moral and mental reaction by a network of reporters from every social sphere and all ways of life, and to transform them into reports. The resulting reports were evaluated and condensed, and published by Office III as "Reports from the Reich", appearing at first daily, later once a week, and made available to all the leading departments in the Party and State. They spheres of life. The intent and purpose of this reporting service were to replace the positive opposition, lacking in the Third Reich, and the healthy and positive public criticism necessary in a sound commonwealth. (See, among other, Affidavit Hans Fritzsche, Doc. Book I, Doc. No. 6, Exh. No. 28). For a better understanding of this activity I wish to refer to Ohlendorf's conception, which I shall present later of the National Socialist State, as Ohlendorf wanted to develop it through his work. In order to have at least a substitute for the missing public criticism about National-Socialist politics, Ohlendorf built up the SD-Interior Service in spite of the constant resistance and opposition of the influential hierarchy of the Third Reich. The numerous affidavits of his co-workers in SD-Interior and the recipients of the SD-Reports prove exactly what is said in the above mentioned C.I. Handbook: (Doc. Bk. I, Doc. No. 5, Dr. Gerhard Klopfer, 10, Dr. med.

Hans Ehlich, 11, Dr. Hans Roessner, 12, Dr. jur.

Erhard Maeding, 17, Dr. Heinrich Malz, 25, Dr. Justus Beyer, 27, Dr. Hans Roessner, Court No. II, Case No. IX.

Document Book IV Document No. 56, by Dr. med. Ehlich, " " 57, by Heinz Wanninger, as well as the testimony of the defendant Seibert about the work of the Group Economy, of Office III, Ohlendorf himself has given a detailed statement to this effect as a witness in his own defense.

of Ohlendorf was practically an illegal matter since he lacked any authorization of the competent authorities for this activity. He carried it out on his own responsibility. The SD, as the only information service of the Party, had been authorized by the Party only as its own information service. Bormann, the chief of the party chancellory, was right in actually accusing the SD-Interior that it was no longer doing any work in the fields of enemy intelligence and was dealing with questions which only concerned the individual party offices, and that it was becoming the "mouthpiece of defeatism". The SD-Interior under Ohlendorf's command, although an institution of the Party but in opposition to the chief of the Party Chancellory and even in opposition to the Reichsfuehrer SS to whom, in his capacity as the chief of Office III of the SD-Interior, Ohlendorf was subordinated in accordance with the table of organization, had developed into the vary opposite of what these offices expected, namely into the mouthpiece of the positive opposition. organizations evolved in the course of the war more and more to an actual, and partly very strong opposition, against the faulty development of National Socialism realized by Ohlendorf, and against the practice of National Socialism and its conspicuous leading personalities. It was only thanks to Ohlendorf's tactical skill and diligent conduct that he was able to remain in this state of opposition till the end of the regime, which not only was for the benefit of his own Court No. II, Case No. IX.

people but also for all the other nations and national groups within the territories occupied by Germany.

Let me quote nere only the most conspicuous proof for this contention: 1.) In Ohlendorf's efforts for anthroposophy the defense has quoted, as an example, the attempt made by Ohlendorf to sustain, in an absolutely tolerant manner, a spiritually manifold life in contrast to the onesided aspirations of Nazi ideologists; although he was opposed to the ideology of anthroposophy, the latter, having been persecuted during the time of the Nazi regime and finally outlawed, nevertheless found in Ohlendorf its best supporter and protector against all attempts by the offices of the NSDAP and the Nazi state to extermina this philosophy and all its institutions from public life. The affidavits of Dr. Elisabeth Klein and of Dr. Rudolf Hauschka give proof to this. Frau Dr. Klein confirms that Ohlendorf, with respect to the anthroposophical society and its institutions did not only show a tolerant attitude but also used his influence on behalf of the se institutions, although they were fanatically rejected by the highest Party leaders like Heydrich and Bormann. She furthermore confirms that Ohlendorf for that reason was opposed and isolated by a number of authorities. Dr. Hauschka confirms that, in anthroposophical circles, Ohlendorf had the reputation of a daring fighter against the Nazi cultural terror and that he used his influence on behalf of anthroposophy under very great risk for his own person without that in many cases the then persecuted persons had even suspected this. Frau Dr. Barlen eventually confirms, in rounding off this subject that a document from the files of the Reichsfuehrer-SS which came to her notice as late as during the days of collapse, contained an expression of strong distrust against Ohlendorf on the part of the Reichsfuehrer SS. 2.) The defendant Ohlendorf attempted twice to stop the

Jewish policy of the Third Reich and steer it into an orderly course. The first cause was the elimination of the Jews from the economy with the climax of the so-called "crystal night" (Kristallnacht") and the following defamatory discrimination of the Jews (Yellow Star, etc.)

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He put his SD-machinery to work in order to investigate these incidents and in detailed reports he expressed his opinion against these acts. In 1939/40 Ohlendorf twice suggested to Heydrich to create a Jewish minority state (Affidavit by Dr. Ehlich, Doc. No. 10, Exhibit No. 33). Ohlendorf at that time met with a sharp repudiation. Moreover, von der Heyde confirms in his affidavit that Ohlendorf repeatedly and successfully used his influence at the competent Section IV for Jewish employees of the I.G. Farben without even knowing them. As for the rest compare also the affidavit by Frau Barlen.

Ohlendorf's attitude and conduct in regard to the Jewish question can only then be understood if one is familiar with his views about people and race which became the leading motives of his thinking and acting and therefore also of his activity in the SD. To this point I quote from the affidavit by Dr. Hans Ehlich since in his group this view of Ohlendorf had to be expressed more clearly:

"Ohlendorf had quite a clear fundamental conception of the people's character. To him nation meant a community of people of the same race shaped together by a common history, language and culture. To him folkdom was the expression of a nation's character and the outward forms of its national existence. The nation as a community, based on the changing relationship of the individual, and the people as a whole were to him the expression of the natural law of mankind, a divine act of creation. Thus, Ohlendorf saw in the various nations neither superior nor inferior races but the various tones of the creative symphony "mankind". He regarded race merely as a biological conception. To him the various nations were not superior or inferior but different in character. He therefore regarded as wrong and directed against the laws of mankind the domination of one nation with its principles of life over another nation. On the contrary he aimed to achieve an order of nations in which every nation can develop in accordance with its character and its possibilities and qualifications.

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Neither did he consider a nation to be bound to a state organization. Ohlendorf frequently indicated, by giving the Polish people as an example, that a people can retain its national existence for long times without being organiz ed into a state. The Jewish people too, was mentioned by him as a proof for this fact. Therefore, for the purpose of solving the Jewish question he was of the opinion that the aim could only be achieved through creation of a closed Jewish territory in which the Jewish people were to create a state in accordance with their national character...." and conduct of those personalities of the Third Reich who were outstanding authorities in regard to this point.

If his assistant Roessner in the above, under paragraph 1) quoted affidavit describes Ohlendorf's aim as a will for the accomplishment of a way of life in accordance with the German and European character for the promotion of moral liberty and responsibility of the individual, and if he proves that this will was borne by a humanitarian thought taken from the depths of the nations, then these conceptions and motives of Ohlendorf are incompatible with the fundamental idea of race hatred and racial contempt as charged in this indictment.

Ohlendorf himself answered my question: Why did you instruct the SD to oppose, of all people, Reichsleiter Ley, Goebbels and Bormann ? I quote the answer: "Because these three men, as nobody else, challenged the moral value of the human being." The moral value of the human being and his inner freedom was the fundamental motive for his acting and thinking and to him it also meant the recognition and promotion of the human rights of every race and folkdom. 3.) Ohlendorf, as a result of his work in the SD, has also successfully employed this conception for the best possible treatment of the foreign workers.

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The best proof for this is the memorandum prepared in connection with these questions concerning the treatment of the foreign workers, which was issued on 15 April 1943 by the Reich Ministry of Propaganda and the RSHA, the Reich Security Main Office. The points contained in this memorandum orginate from the reporting system of Office III. It was only due to the urgent representations of Ohlendorf that this memorandum was issued, that the respective authorities in the Party and State used their influence that injustices, chicanneries, insults and mistreatment towards these people were prohibited, that the barbed wire fences around the camps of the Eastern workers were removed and that otherwise a housing, fit for human beings, and a supply with food, was ordered. (Affidavit by Dr. Ehlich, Doc. Book I, Doc. No. 10, Exhibit No. 33. pages 46/47). 4.) The policy of violence, applied in the Ukraine by the Gauleiter and Reich Commissioner Koch, was repeatedly and continuously attacked by Ohlendorf after his return from Russia. As a result, he came into a serious conflict with Himmler to whom Koch had made a complaint. Himmler, at that time, instructed Kaltenbrunner the SD ought to be decimated and that at last it was time for the SD to discontinue its reports, otherwise its responsible chief would be put into custody. 5.) In a manner, similar to that against Koch, Ohlendorf also turned against the policy of violence applied by Terboven in Norway. In this case he changed from the indirect fight to the open fight against Terboven and also ordered the co-defendant Braune, who at that time was in Norway and previously active in the SD, to use all means in taking steps against Terboven's negative acitvity. With regard to the result of this order by Ohlendorf I refer to the evidence and the Final Flea in the case against Braune. 6.) As a result of his work in the SD, Ohlendorf was in strong opposition to almost all known representatives of the Third Reich, because of their conduct not only towards their own people but also towards other nations.

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and requested the letter's dismissal from the SD. Goebbels prohibited the issue of the SD reports in the Ministry of Propaganda and accomplished that Himmler prohibited the "Reports from the Reich" because he regarded the strong criticism, practiced therein, as a spread of defeatism. and openly heedless drawing up of the SD reports; he was right in being under the impression that Ohlendorf and his assistants made themselves the mouthpiece of an opposition. Sauckel's policy with respect to the foreign workers was likewise strongly attacked by Ohlendorf as it is confirmed by the witness Dr. Michel. Because of the oppositional activity of the SD, Bormann at first attempted to get control over the SD. When, due to Ohlendorf's resistance, he did not succeed, he finally banned in 1944 all full time and honorary party functionaries from participation in the activities of the SD Interior Service and threatened to report to the Fuehrer.

The hostile attitude Himmler's towards Ohlendorf which is confirmed by various affidavits and also by a letter of Himmler, could be traced solely to Ohlendorf's activity in the SD Interior Service Office, III of the Reich Security Main Office (compare among others affidavit by Dr. Franz Hayler).

Moreover, Himmler's Chief Adjutant, Karl Wolff, makes a statement concerning Himmler's rejection of Ohlendorf.

Wolff testifies about the open conflict which broke out between Himmler and Ohlendorf in the fall of 1939 because of the system Ohlendorf applied in directing the Sd Interior Service. By order of Himmler, Wolff had had to request Ohlendorf to resign from his service in the SD since an agreement between him and Ohlendorf was not possible.

If I summarize the points of view concerning Ohlendorf's membership in the SD, the following picture in regard to this question will result and I am in the position to demonstrate this picture by quoting Prosecution Document NO-2875, Volume III D, page 56 and the following pages.

1934 in Kiel and 1935 in Berlin, because of his critical behavior towards National Socialist institutions, he nevertheless takes up again a suggestion by his former teacher, Professor Jens Jessen, and declares his readiness to accept a political-critical intelligence mission in the field of economy within the SD, which up till then had been unknown to him. This was Ohlendorf's only motive for entering the SD, and it cannot be disputed that it contained no criminal aims whatsoever. or the will to agree to criminal purposes. ing personalities of National Socialism, who did not want open criticism. Partly it was made impossible for him to work in the way he wanted. This caused him as early as in 1937/38 to endeavor his separation from the SD. However, he succeeded to dissolve his service relationship to the SD only as a full-time employee, on an honorary basis Heydrich, the Chief of the SD Main Office, forced him to say on, on the basis of the peculiar service relationship of fealty obligating only one side. Thus from 1938/39 Ohlendorf was only honorary director of the Main Office II, Economics of the SD Main Office. Warsaw in November 1939, was again prevented by Heydrich.

and soul. Already in 1937 Heydrich declared: "Nobody can leave the Security Police, unless we do not want him anymore. In this case however the road leads through the concentration camps." It is therefore wrong if the IMT puts the compulsion exerted merely under the pressure of the loss of an official position. Besides it is not possible at all to attribute such a motive to the defendant Ohlendorf, since, as I proved above, he had given up his position with the SD and since 1938 was forced against his will to continue as a member. III of the RSHA was put on a new basis inasmuch as the service with this office was considered war service and the members thereof placed under martial law. Every attempt, even as much as a request for leaving the SD was made punishable. The official compulsion to remain in the SD was the same as the obligation to which every soldier was subjected and which made any separation impossible without endangering body and soul. And contrary to the prerequisite assumed in the quotation of the IMT judgment that this compulsion was possible only through the martial laws and therefore losses its value because the person concerned was a voluntary member of the organization when the compulsive situation commenced, this fact is not true for the defendant Ohlendorf, since, as already pointed out, and which has been proven, he was since 1938 at the latest, only an involuntary member of the SD. feel assured by the evidence, the findings of the Court and the Prosecution that the possibility for exculpation granted in this point by the IMT-judgment and the statements of the Prosecution in the IMT-trial, is achieved for the defendant Ohlendorf, inasmuch as it is established, that according to what his superiors told him before he entered the SD 1) the purpose of the SD was the reporting on abuses and miscarriage of developments within the National Socialist Reich; that is the Court No. II, Case No. IX.

2) his motive for entering the SD and therefore the SS was a politic possible to him by Party organizations; also the opposite of 3) once this aim does not seem to him to be sufficiently guaranteed 1938 to be permitted to leave the SD.

Indeed he does leave full time employment with the SD.

A complete separation from the SD, however, is refused him.

But he is able to enter into a fulltime 4) As a compulsory member of the SD Office III he did not participate in criminal acts in the sense of Art.

6 of the statute, but on the 5) As member of Office III SD-Interior Service his retention in this criminal.

Also no concrete act in any form of complicity or Court No. II, Case No. IX.

6) On the other hand, Ohlendorf was aiming and working in the SD in 7) The defendant Ohlendorf, during the period that is of relevance outside the SD.

Theqquestion of his criminal membership with the 8) The Einsatzgruppen and Einsatzkommandos were not organizations or conditions for the criminality of organizations.

In particular the SS.

Therefore they did not establish membership in such an 9) His membership with the SD was at the start of the war and after 1938 not voluntary.

At the start of the war he had no service Reichsgruppe Trade.

So the causal connection is missing for

a) a service relationship within the SS or SD based thereon, and

b) its voluntary existence. 10) During his assignment in Russia his activity with SD Office III Court No. II, Casa No. IX.

that could be based on aiding crime in any form within his organization, the SD Office III of the RSHA that was declared to be criminal. ment is concerned, regarding the organizational connection of SD

Office III with the Einsatzgruppe, I shall explain while dealing with the organizations and the activity of the Einsatzgruppen and shall then disprove the existence of such a connection.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken until 1345 hours, 4 February 1948.)

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(The hearing reconvened at 1345 hours, 4 February 1948).

THE MARSHAL: Take your seats please.

THE PRESIDENT: Dr. Aschenauer, would you mind? Dr. Mayer wishes to make a statement.

DR. MAYER: Mayer for Braune.

Your Honor, I have a request to make to the Tribunal. It is that the defendant Braune be excused from the session tomorrow afternoon so that the defendant Braune will be able to have a discussion with a Dr. Rheinford who, as a prosecution witness, is staying in the witnesses' part of the prison here. This Dr. Rheinford was the legal advisor of the brotherin-law of the defendant, and the defendant wants to discuss difficulties concerning an inheritance matter of his which occurred because his fatherin-law died. I would be very grateful to the Tribunal if they would permit the defendant Braune to do this, thus enabling him to settle his private financial affairs.

THE PRESIDENT: The record will show the purpose for which the defendant Braune will be excused tomorrow afternoon from attendance in court. The marshal will make all necessary arrangements.

DR. MAYER: Thank you, your Honors.

THE PRESIDENT: You may continue Dr. Aschenauer. DR. ASCHENAUER: declares the SD - Department III of the RSHA - to be a criminal organisation, I consider it proper, going beyond the range of tasks of Department III under Ohlendorf's direction, to clarify several organizational mistakes which are contained in the IMT verdict and which according to general opinion are open to attack as individual findings among the reasons given in support of the verdict.

In the reasons in support of the verdict it says:

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"The Gestapo and the SD were coordinated for the first time on 26 June 1936 by having Heydrich, Chief of the SD, appointed Chief of the Security Police, which was intended to comprise both the Gestapo and the Criminal Police."

(The Nuernberg Verdict, p. 102).

"Himmler.....in his capacity as Reichsfuehrer SS and Chief of the German Police, issued......his decree of 26 June 1936, which enrolled both the Criminal Police or Kripo and the Gestapo in the Security Police and placed the Security Police as well as the SD under Heydrich's orders."

Concerning this the following must be said :

1. The SD was not placed under Heydrich for the first time by Himmler's decree of 26 June 1936, but on the contrary Heydrich had already been in charge of the SD since 1932. He held this command without interruption from 1932 until his death in 1942.

2. Heydrich did not take charge of the Gestapo for the first time on 26 June 1936, but had already become Leader of the Secret State Police Department in April 1934.

3. Heydrich's appointment as Chief of the Fain Office Security Police on 26 June 1936, therefore, was not a transfer of the business of the Security Police to the Chief of the SD, but merely a further extension of the position he had held up to then as Leader of the Secret Police Department. The Main Office Security Police was merely the new organizational form of an already existing condition. Since, of course, the State Police force of the provinces had been under the leadership of Himmler and Heydrich since 1934, the centralization and nationalization of the police forces, which had already been carried out in fact, also required a suitable outward form.

Nor were the Gestapo and the Kripo "enrolled" in the Security Police, but rather the term "Security Police" was invented as a common, inclusive term for the Gestapo and the Kripo, which besides that also retained their old names of Gestapo and Kripo, independently. In spite of the newly created Main Office Security Police, the Secret State Police Department and the Reich Criminal Police Department were also kept as central executive heads for the Gestapo and Criminal Police respectively.

purely a matter concerning the police, as a result of Himmler's appointment as Chief of the German Police in the Reich Ministry of the Interior.

The SD was not affected by this. The SD Main Office had already existed since 1933; it remained independent as before. The reorganization produced no new situation for the SD with respect to the *---* Gestapo or the Security Police, since the SD Main Office and the Secret State Police Department had already been directed simultaneously by Heydrich in person since 1934.

In particular, however, no "coordination" whatsoever of the tasks of the Security Police and the SD, was now effected, nor was any attempt made to secure this by decree. Nothing was changed in 1936 in the SD's work as the Party's information service.

4. Likewise erroneous is the view of the IMT that the consolidation of the Security Police and the SD was in every way confirmed through the foundation of the RSHA by the decree of 27 September 1939 and that both were merged together in a single administrative unit. Also erroneous is the conclusion drawn from the foundation of the RSHA that the SD was now definitely established and active as counter-intelligence organization for the Security Police. which the IMT believed it was able to declare about the development of the SD in connection with the Security Police. the creation of the Main Office Security Police under Heydrich in 1936 the SD drew constantly farther apart from the work of the Gestapo in its range of tasks. To be sure, the SD retained its independent office in the SD Main Office; as representative of its Chief, Heydrich, it also had its own Staff Director who for all practical purposes was the chief superior of the members of the SD Main Office.

(Heydrich himself personally saw only a few members of the SD Main Office on official business, since after 1934 he had his offices in the building of the State Police.) Thus, the SD was also independent in its range of tasks, which were specified by a decree of the Deputy of the Fuehrer in 1934. But for the SD the legitimization of the Party applied only to an information service employed against the Party's enemies. And since in the meantime enemies of the Party and enemies of the State had for all practical purposes been placed on the same footing by the political and constitutional development of the Third Reich and by the creation of the Gestapo, whose principle task and purpose was to combat them, the State police naturally now endeavored, after its organization was definitely established, to concentrate in its own hands the informational aspect of its work on political enemies as well. The justification for this claim is easily discernable. To every investigating service it is obvious that cases to be prosecuted or investigated and its own informational work of investigation and prosecution cannot be separated from each other and that a competing information service is only harmful to its own work. Thus, during the period from 1936 to 1939 things develop to such a point in the SD that through the initiative of the leading State Police officials, Best and Mueller, the SD's original task, which was set for it by the Party as that of collecting information against its political enemies, is first limited and then finally taken away from it. In 1938/39 every tangible enemy information service in the SD comes to an end. A Central Department II/I of the SD Main Office, which up to that time, had done the work of collecting information about the opposition, is dissolved and, insofar as this had not already been done before, its work is transferred to the Gestapo. In the meantime, however, along with the SD's Party work of collecting information about the opposition, a service for collecting information about the various occupational classes had developed in Central Department II/II. It was a miniature copy of what I have described above concerning Department III, Domestic SD, of the RSHA. Its aim, purpose and activity were concen trated exclusively on a service for obtaining factual information of a political and critical nature.

ties and business relationships -- and these things alone are under discussion in this trial -- the founding of the RSHA by the decree of 27.9.1939, contrary to the opinion of the IMT, was not the final arrangement for a coordination, but rather the final arrangement for a partition between the respective tasks and activities of the Gestapo and the SD, which were definitely separated from each other. Henceforth the Domestic SD has sole possession of political and critical business assignments and the Gestapo has sole possession of the intelligence service and executive authority for combatting tangible political and criminal enemies of the State. And neither does the henceforth definitely fixed business assignment and activity of the Domestic SD offer any reason for the assumption that it was definitely established as a counter-intelligence organization for the Security Police by the foundation of the RSHA, nor is any attempt ever made to verify this pure allegation with documentary material. However,the allegation that the Sipo and SD were merged into an organizational, administrative unit by the RSHA cannot be brought into harmony with the actual situation, either.

Himmler's plan was actually to use the RSHA as an opening wedge towards a unified State Police Corps (SS, Sipo and SD). However, in actual fact, apart from the so-called assimulation of ranks the transfer of SS ranks to police officials, this plan remained more wishful thinking on Himmler's part, and the essential reason for this lay in the fact that the Party refused to permit any consolidation of

Party and state functions, the supervision of Party tasks by state agencies or even the consolidation of State organizations and Party organizations, and did not abandon this opposition up to the time of the collapse. agency, nor even one which was known to the general public. It remained an internal, administrative structure of the Chief of the Security Police and the SD, which was recognized neither by the Party nor by the State, that is, the organizations of the Security Police and the SD were not merged into one unit; contrary to the assumption of the IMT the RSHA at no time became a department of the Reich Ministry of the Interior.

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The Main Office Security Police remained the department in the Reich Ministry of the Interior for the Gestapo and Kripo, and the Secret State Police Department and the Reich Criminal Police Department were retained as before as structures of the Gestapo and the Kripo. Both signed letters to the general public and both drew up their orders within the Reich Ministry of the Interior under these official names.

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separately dinanced by the Party, and just as before every position on the SD's TO sheet had to be approved by the Party. The pensions which were also fixed for SD members were not pensions of the RSHA but those of the Party. The founding of the RSHA brought no changes for the Party in its relations with the organizational structure of the SD. For the Party, just as before, the SD Main Office was the only Party organization of the SD. The RSHA did not exist for the Party. Neither should this fact be misconstrued, that the administrative business of the Gestapo, Kripo and SD appeared to be jointly managed in Departments I and II of the RSHA, for in reality separate groups were employed for each of the three branches in Departments I and II, which were staffed by men from these branches. Indeed, in the case of the Criminal Police, not even all personnal and administrative matters were included in the business calendar of Departments I and II of the RSHA. property and was managed separately. The RSHA was not a property holder at all. For example, the buildings and automobiles of Department III, Domestic SD, and of the SD Sections out in the country were Party property and not in any way property of the RSHA. different basic structure of the offices of the Security Police and the SD as irrelevant by referring to the Law for safeguarding the Unity of Party and State of 1. December 1933, then it must be pointed out that contrary to its programmatic title this law in reality only regulates the legal position in the State of the NSDAP, itsformations and its attached units. On the other hand, the law offers no reason for permitting separate agencies of the Party and of the State to become one unit. The presidency of a province does not become one and the same unit with the office of the Gauleiter through the fact that it is usually directed by the local Gauleiter in his capacity as Provincial President.

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Likewise, the fact that young candidates for higher administrative positions in the Ministry of Justice, the internal administration and the Party were secured jointly from the ranks of law graduates entering government service as a profession does not make those offices become one unified authority or bring about a coordination of their respective tasks any morethan the partially joint training of the candidates for higher career positions in the Security Police and the SD offers any reason for unification of the Security Police and SD. Nor is this picture changed by the organization of the Security Police and the

SD in the regional sphere and in the occupied territories. The IMT itself must admit that for Germany and the territories which were incorporated within the civilian administration of the Reich "the local Gestapo, Criminal Police and SD offices took separate forms". ("The Nuernberg Verdict", p. 103.) If it attempts to discount this actual,territorial and business separation by declaring that the separate officesswere nevertheless subject to the supervision of Security Police and SD inspectors attached to the staffs of the local Higher SS and Police Leaders, then in reply to this it must be said that, first, the inspectors did not belong to the staffs of the Higher SS and Police Leaders and, secondly had no real right whatsoever to issue orders to the offices of the Security Police and the SD. They did not even have any knowledge of the actual work of the local offices. Therefore, they were not able to coordinate the latter in their work, either, apart from the fact that they did not have any orders to do so. Police and the SD in the occupied territories too performed only a Security Service activity, receiving from Office III only such tasks as were in conformity with the area of jurisdiction of Office III. They too were not co-ordinated with the tasks of the Security Police. And if, as a measure of transition to independent offices of the State Police, Criminal Police and Security, only subordinate departments for the tasks of the Reich Main Security agencies were created, the reasons for this have been explained in the WANNINGER document, in every detail.

In no event one of these reasons may lead to considering a co-ordination of the activities of Security Police and Security Service an established fact. The question of the organization of the Einsatzgruppen in connection with the offices of the Reich Main Security Office will be dealt with later on, when the problems of the organization and the activities of the Einsatzgruppen will be broached, in as far as that question has not been dealt with already above. Here I only point out that the Einsatzgruppen must be treated as military units of a peculiar kind, apart from the other organization of the Reich Main Security Office, and are not apt to contribute to the support of the assertion that the Security Police and the security Service were co-ordinated within the offices III and IV of the Reich Main Security Office. Reich Main Security Office was working independently, autonomously, without consideration to, and co-ordination with, the Gestapo or Kripo. While Office III as a party office was busy with technical questions, with an intelligence service concerning the problems of the spheres of life, the task of the Gestapo was investigation into, and fight against, persons dangerous for the state in Germany and the occupied territories. Apart from that, the criminal police had the task of searching for the civilian offender -- as opposed to the political one -and of bringing him to punishment. after 1936, but especially by the year 1939, had the result of coordinating the tasks of the Security Police and Security Service. same chief. This fact of a personal union, however, was no peculiarity in Germany, but could be found in numerous places.

I need only point to GOERING as an example to make this plain. Now, as little as the simultaneous direction of the Reich Air Ministry, the Reich Forestry Office, the 4 Year Plan, and the Reichsjaegermeister Office by GOERING made for a co-ordination of the spheres of these offices, as little did that happen as between Security Police and Security Service by the fact of their joint direction by HEYDRICH. The "Chief of the Security Police and the SD" was only a letter heading of HEYDRICH's, but no authority or co-ordinated agency. The Reich Main Security Office, however, was no uniform authority of the Security Police and SD, which might have co-ordinated their activities, but rather a faction devoid of all reality, and devoid of all power of reformation for the independent structure and the spheres of tasks of Gestapo, Kripo and Security Service which in each case remained independent from other.

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I have attempted to give the Court a picture of Ohlendorf's work and goals in the SD, as well as his attitude to human existence. I do not believe that anyone believes this man, who in spite of brusque rejection of his proposals by Himmler and Heydrich repeatedly insisted on a just trial for every last person in protective custody and on establishing the basic rights of the Jews, was capable of any intentions of racial extermination. For exactly this reason the question becomes urgent: under what conditions was the defendant Ohlendorf connected with the events in the East?

The main Counts of the indictment are Counts I and II (indictment pg. 5 and pg. 14ff), i.e. the charges that the defendants committed war crimes and crimes against humanity. of systematic murder of peoples and races.

In the questioning of the individual defendants the "Fuehrer Order" which initiated the measures against certain parts of the Soviet population on which the charges are based was mentioned repeatedly. Reference was made to the repeated defense and acknowledgement of this order by Himmler, Streckenbach. man troops all Jews, Gypsies, Communist officials, active Communists and all other persons who could endanger the security, were to be killed.

The only motive for this order, the "danger to security", was not only expounded in detail by Streckenbach in Pretsch and Heydrich in Berlin before the Einsatzgruppen left for Russia, but was also repeated by Himmler in Nikolajew in October 1941, when he again demanded the strict execution of this order.

When the defendant was asked in the witness box "Did you know of plans or intentions that sought extermination for racial or other reasons?" he answered:

"I expressly assure you that I neither knew of such plans nor was I called on to cooperate in any such plans.

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The Obergruppen ted for the Russian campaign.

This is not only true for the were arranged; financial funds even were formed in order to help aid the poorer Jews to make this emigration possible.

Until representatives of the I. G. Farben approached me in order to overcome difficulties with the State Police.

It was then their intention to let so-called bearers of secrets emigrate.

Up to the very end I succeeded in giving such aid.

Thus at the begin the fine cooperation with the Russian population.

They were never objected to.

When Himmler was in Nikolajev, in the begin nor did he give me any other directives.

I am rather convinced it was the work of individual people."

This statement of Ohlendorf's is confirmed in many ways. The witness Wisliczeny, one of the closest collaborators of Eichmann, who was assigned to handle the Jewish questions by Heydrich, said before the I.M.T. that the order for the extermination of Jews was only issued in April 1942 (Doc. bk. Ohlendorf Ia, exhibit 58, doc. No. 37). foreign populations in the East, which were issued in 1940 and expressly approved by the Fuehrer, also speaks against the thought that an extermination of Jews or of other races was planned at that time. (Doc. Ohlendorf No. 63, 64, exh. no. 63).

The letter from Goering to Heydrich dated 31 July 1941 - Doc. PS 710) - which the Prosecution also has presented, still sees the allover solution to the Jewish question in German-dominated Europe, contrary to the conception of the I.M.T., expressly in emigration or evacuation. When in the last part of the letter the word "final solution" is used, it can be seen from the unmistakable meaning of the letter that at that time this word was not a code word for execution.

Ohlendorf's statement that he personally helped Jews to emigrate until 1941, is confirmed by document Ohlendorf No. 31, doc. ing to the Fuehrer order were not sent to Referat IV B 2 (Jews), but to the Referat department IV A 1 (Communism). The Einsatzgruppen were not connected with the Jewish Referat under Eichmann in any way (see the various statements of the defendants on the witness stand and the affidavit of Rudolf Fumy (Doc. Ohlendorf No. 32, doc. bk. Ia,) In my exposition on Ohlendorf's work with the SD I have supported the claim sufficiently that he did not personally think of or strive for an extermination of the Jewish race.

had a knowledge of plans or measures that were designed to exterminate the Jews.

in their closing statement against Otto Ohlendorf, that the executions in the Soviet Union resulting from the Fuehrer order actually were carried out for the "present and permanent security" by the Einsatzgruppen. I quote:

"These executions were carried out for the purpose of "present and permanent security" in the theater of operations of the this defendant."

Prosecution, another error which weakens their position has crept in. For it says in the record, as a quotation of Ohlendorf's statement:

". . . that these Jews are to be killed, and for the reason that German Reich."

while word for the word the quotation is used, on page 634 of the German record, goes like this:

"... that these Jews are to be killed, and for the reason that German Reich."

small extent in the Crimes, was based on the same point of view. of an extension of the Fuehrer Order to goals which were to serve a "permanent" (i.e. future) securing of the territory, has been elaborated, I do not have to go into this question any further because it does not go beyond the problems covered by the Fuehrer Order. Ohlendorf himself has made a statement on the witness stand concerning the fact that after this war other nations themselves were faced with difficult decisions which pertained to a permanent securing of a territory or to a hostile population.

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(Record pg. 544, pg. 755). In support of his statement I would like to refer the Tribunal to the speech of the U. S. Senator William Langer, held in the U. S. Senate in April 1946, and to the publication "The Land of the Dead", a study of the deportation from eastern Germany, Committee against Mass Expulsion, New York City. ethnic groups. Insofar as charges might be made in this connection from Document No. 2894 - doc. bk. V-D (Affidavit of Erwin Lahousen), I will discuss them when I come to the charge of "Segregation from Prisoner of War Camps". Fuehrer Order, the decree of the Fuehrer and Supreme Commander of the Armed Forces of 13 May 1941 (Doc. Ohlendorf No. 44), the "Decree for the Administration of Military Jurisdiction in the "Barbarossa" Territory and for Special Measures of the Troops", or according to the Special Decrees of the Commander in Chief of the Army as bearer of the Executive Power in his Army territory, are designated as "murder" by the Prosecution because the guilt was established without a formal trial. At this point I would only like to say that on account of the above quoted decree of the Fuehrer and Supreme Commander of the Wehrmacht of 13 May 1941 all the Armed Forces in the Russian campaign were directed not to have courts martial for the cases that the Prosecution has cited. Over and above the procedure ordered in the decree (bringing suspicious elements before an officer, to see whether they should be shot) the Einsatzgruppen made thorough investigations, held hearings etc.

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and only then decided on the question of guilty or not guilty. Concerning this, the defendant Ohlendorf directed, through special orders, that in determining guilt a suspicion was not sufficient, but that the suspect must be proved to have committed an act or to be a real danger to security. made in the above quoted Decree of the Fuehrer and Supreme Commander in Chief of the Armed Forces of 13 May 1941 for the Einsatzgruppen working in the theater of operations. This, therefore, was outside of the authority of Ohlendorf and his subordinates. This side of the operating methods of the Einsatzgruppen must also be considered in connection with the circumstances of international law in the territory of the Soviet Union, as I shall show later. grounds against Ohlendorf. Prosecution's cross examination of Ohlendorf. For the representative of the Prosecution argued here against Ohlendorf with the contention that the Kraimen on the Crimea were not killed although they were Jewish by religion. But their execution was stayed in agreement with the Fuehrer Order and due to the directives from Berlin which Ohlendorf received in regard to the Karaimen. nor attempts to bring proof that would show any act or intention of religious persecution by Einsatzgruppe D. not only made repeatedly in the indictment, but also played a big part in the examinations of the defendants on the witness stand. This charge and these questions can only be understood if one does not take into consideration that, in connection with Bolshevism, the political activist and the political official or the active carrier of Communist ideology are equal to extreme danger to the security of the "hostile non-Communists", class enemies or enemies of the Soviet Union who oppose them.

The Court is presented with a series of documents (Stalin Order, etc) which show how, according to the teachings and orders of the Soviet State and Army leaders a Communist official and a Communist activist are put on an equal footing with leading Partisans, saboteurs and terrorists. the witness stand have shown, simple Communist party members were not persecuted as such, and local officials also remained further in the administration, and only the active Communist was persecuted for his activity against the occupation force, then this shows, to what extent the persecution for political and ideological reasons corresponded here with the persecution that was motivated by a real danger to the security of the occupation force. According to the directions of the Einsatzgruppe D no one was to be persecuted or executed who was not guilty of a deed or action which was punishable by death under the law in force. But this method of operating is not a persecution for political or ideological reasons as usually understood, but a persecution which all occupying powers use in their own interest.

Segregation of prisoners of war. Apart from that, the defendant Ohlendorf has been charged by the Prosecution , particular in the Closing Brief, with the screening of Prisoner of War and transit camps for Communists and Party functionaries by his units. It refers to an Operational Order No. 8, issued on 17 July 1941 (Doc. Book I, Exh. No. 14) and its enclosures, in which directions were said to have been "given to the Einsatzgruppen chiefs." It then draws special attention to the Operational Order No. 14, dated 29 October 1941 which it calls a "supplementary direction" (Pros. Exh. 19). Furthermore, it is asserted that these screening kommandos could operate in the prisoner camps independently of the Army and the camp commandants.

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(page 9 Closing Brief against Otto Ohlendorf). To this point I have to make the following statements: 1) Contrary to the assertions of the Prosecution, Order No. 8 of 17 July 1941 has not been given to the Einsatzgruppen in order to be carried out, but rather, as is clearly shown by page 4 of the original, only for the purpose of information which means, in the German usage "to the attention" rather than for action. That the said order was not forwarded to the Einsatzgruppen for action should not have escaped the Prosecution also, for on p. 2/3 of the original it says:

"With regard to the screening of the transit camps in the newly occupied territories (which means Russia) a separate direction will be issued to the chiefs of the Einsatzgruppen and the Security Police." "the Reichsfuehrer SS makes available Einsatzkommandos of the Security Police and the Security Service", which are "under the direct command of the Chief of the Security Police and the Security Service." of the Einsatzgruppen A-D which are being dealt with in this trial . They were instead, as shown by order of 17 July 1941, to be organized by the offices in Cracow, Radow, Warsaw, Lublin, as well as at Koenigsberg, Tilsit, Ziechenau, Allenstein and Stettin, i.e., only by the offices in the Eastern part of the Reich, and/or in the conquered Polish towns rather than in the occupied Russian gerritories. 2.) To support its assertions, the Prosecution has further submitted the Doc. NO-2894 Exh. 228, Pros. Doc. Book V-D, p. 16, an affidavit by Erwin Lahousen. In this affidavit Lahousen states that he took part in a conference in summer 1941, soon after the start of the Russian campaign. Interrogated before the IMT he makes this additional statement: (I quote) ".... approximately in July". During that conference at the Headquarters of the OKW he says, he opposed among other things the way the

Einsatzgruppen used to sort out the Russian prisoners of war according to quite peculiar and arbitrary principles. The probative value of this deposition is, I think, best shown by the fact that the first order for the screening of the prisoner of war camps, issued to the Einsatzgruppen, was not sent to the Einsatzgruppen previous to the 29 October 1941, so that it reached the Einsatzgruppen as late as November.

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This was the Operational Order No. 14, in Document Book III D, page 93 ff., Doc. NO-3422. This order was directed only to the Einsatzgruppen and Kommandos, as the distribution list shows on pages 1 and 2. The fact that this was the first operational order directed to the Einsatzgruppen, is shown on page 1 where it says:

"The Einsatzgruppen,will immediately detail Sonderkommando in appropriate strength in relation to the size of the camps located in their operational area under the command of an SS officer." gruppen had been ordered to do the screening before. So it cannot be explained, where Herr Lahousen might have got to know as early as in summer 1941 that the Einsatzgruppen made their selection according to peculiar and arbitrary principles, if the order, as I just proved, was really issued to the Einsatzgruppen as late as November 1941. 3.) Contrary to the statement of the Prosecution in its Closing Brief against my client that the Sonderkommandos "could operate independently from the Army and camp commandants", the Operational Order No. 14 of 29 October 1941 reads:

"Close cooperation with the camp commandants and intelligence officers is obligatory", and enclosure 1 to this order says:

"It is a matter of course that the Kommandos remain in close contact with the camp commandants and intelligence officers"; and, "Outstanding conduct on duty and off duty, best cooperation with the camp commanders is, above all, obligatory for the chief of the Sonderkommandos." 4.) Apart from the fact that the order was issued to the Einsatzgruppen not in July, but rather as late as on 29 October 1941, the defendant Ohlendorf stated as early as in his direct examination with regard to that order that in his area of command there were no such camps, which had its reasons in the fact that his Kommandos had their quarters only in the immediate combat zonem and that there no camps with a view to a longer duration were established.

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Then he goes on:

"But I am positive about the fact that I had never before me a list of segregated persons, and that I never approved or rejected such lists in accordance with the direction provided for in this document. I have never seen such lists." necessarily have known of it, for he would have had to set them up according to the order, the members of these screening Kommandos would have had to send him weekly reports and he would have had to decide about the suggestions for executions, giving the screening Kommandos corresponding directions. Beginning from November, when Special Order No. 14 was issued the Einsatzgruppe of the defendant was in the Crimea. There were no prisoner of war camps here, and therefore no screening. The Prosecution has proved nothing to that effect. vit of 1 April 1947, who said:

"I had never the order to segregate Communists in Russian prisoner of war camps, but I know of the fact that members of the Security Police and the SD received the order to interrogate inmates of those camps and to carry out executive measures." interrogations, nor whether or not they became at any time practical in the area of the Einsatzgruppe D. On the other hand, Seibert elucidated the facts in an unequivocal way both in his direct and in his cross-examination. In his direct interrogation Seibert answers the question: "Do you know whether such orders were carried out?"

During his cross examination Seibert says:

Einsatzgruppe D."

"I did not got acquainted with any screening Kommandos at all within the Einsatzgruppe D." received the Operational Order No. 14 for his information when serving with the Einsatzgruppen, or whether he had heard of it subsequently in Berlin. But he had told Mr. Wartenberg that he was unable to give any details. Seibert also gave the explanations for that, he said:

"Remembering the conditions in the Crimea, e.g., I cannot help saying that there I did not see any camp. This I explain by the fact that there I did not see any camp. This I explain by the fact that we were staying with the group in the combat zone and the prisoner of war camps had been established further in the rear area." client, is no proof against him. Lindow only says that there existed ordinances and orders issued by Himmler, to the effect that captured Soviet Russian political commissars and Jewish soldiers were to be executed. He goes on saying:

"To my knowledge suggestions arrived for executions of such prisoners of war from the individual prisoner of war camps. Koenigshaus then had to prepare the execution orders and submitted them to the Office Chief IV, Mueller, for his signature." of segregations within the area of the Einsatzgruppen A-D, for there the Einsatzgruppen chief had to decide, rather than Mueller. Lindow's statements, therefore, can only refer to the activity of the Kommandos mentioned in the Operational Order No. 8 in the Eastern part of the Reich and in Poland.

the affidavit of Erwin Lahousen with the allegation that Tartars from the Crimea were segregated from prisoner of war camps and subjected to special treatment. I pointed already to the probative value of this document. Lahousen pretends to have pointed to such a case in summer 1941, whereas it has been ascertained that the Einsatzgruppen received the segregation order as late as November 1941. Beyond that, the document does not say when and where that segregation or special treatment is alleged to have taken place. It cannot possibly have occurred in the Crimea in summer 1941, for the Crimea was conquered only by the end of October 1941. Thus, no special treatment could have been employed of a kind Lahousen was able to discuss in a conference at the OKW headquarters in Berlin as early as summer 1941. This statement does not explain in what sector of a length of 2000 kilometers of the Eastern front that segregation might have occured. Thus, it cannot incriminate my client. I believe, the documents presented by the Prosecution as well as the testimonies of my client, of Seibert, Braune, and Schubert have shown sufficiently clearly the treatment the Tartars of the Crimea received by the Einsatzgruppe D. It ought to be obvious to everyone that an Einsatzgruppe and Einsatzkommando which recruited 10,000 Tartar volunteers for the fight against Bolshevism , which organize 16 voluntary Tartar Self-Defense companies, arming and training them for the fight against their own partisans, do not sort out Tartars from prisoner of war camps and shoot them. This allegation of the Prosecution is too absurd to be worth refuting.

Insane Persons. Furthermore, the Prosecution charges my client with having taken part in the euthanasia program and quotes as an evidence the operational situation report of 23 March 1942, according to which in the area to the south of Karasubasar more that 800 gypsies and insane people were shot. Apart from that it draws the attention to the execution of an insane person by the name of Romanenko by the Einsatzkommando 11 a in September 1941. stand: incriminate him, since he had gone on leave into the Reich as early as the beginning of March, together with the defendant Braune, as stated repeatedly by the Prosecution itself, so that he was not in the Crimea at all at that time. Ohlendorf stated at the witness stand:

"The report to this operational situation report refers to a period in which I myself was not in the Crimea. Nevertheless I am in a position to state firmly that no executions by shooting of insane people were carried out by my Kommandos. I had expressly forbidden this, and repeatedly issued now prohibitions for the reason that the army had on various occasions approached us with the request to shoot insane people. For this reason alone it can be ruled out that that report refers to the actions of one of my Kommandos. Incidentally, I regard this report as a false statement, as the area "to the south of Karasubasar" means woods and clay-hut where there were neither any large size villages nor asylums for insane persons".

To the Remanenko case the following nay be stated: The Prosecution Document, a letter of the Sonderkommando 11a of 10 September 1941, shows that the Commander-in-Chief of the Army had personally ordered to hand Romanenko over to Sonderkommando 11a, adding that he desired an exemplary punishment -- if possible a public execution by hanging."

executed as an insane person, who had been placed as often as three times in an asylum, for hereditary biological reasons. The letter does not show to whom it was addressed, whether or not it came to Ohlendorf's knowledge, just as the whole case. Ohlendorf said on the witness st and: directly interrogated, under oath:

"I do not know whether or not I ever saw the report. since the Commander-in-Chief had given the order direct to this commando." document in view of these circumstances. property, founding it on the confiscation of money, valuables and other property of the persons executed. done out of any private interest. On the contrary, evidence has shown that the Einsatzkommandos registered the confiscated objects in an orderly way and remitted them through the Einsatzgruppen, or directly to the Reichsbank, or the Reich Ministry of Finance, that is to the German Reich. Objects of daily use were handed over by request of the Wehrmacht to be used for war essential purposes or for the interests of the occupation, or were turned over the the representative of the National Socialist People's Welfare Organization in the Staff of the Army, in an orderly way. relating to the seizure and confiscation of the property of persons hostile to the state, which had been extended to the occupied Eastern territories. If the property of the executed persons had not been seized and confiscated, it would have become unclaimed property, or would have devolved to the Russian state, so that it would have fallen to the share of the occupation power even by virtue of the general laws of war.

It would hardly be juristically tenable to subsume such an incident under the notion of spoliation. happening in the Soviet Union, means to ignore the facts of history in view of the fact that e.g., with regard to more than 10 millions of Germans expelled from the East, the afore-mentioned "Land of the Dead", it says:

"....and yet those people expelled from Eastern Germany and the frontier". acts of violence after the truce of arms.

atrocities have not been substantiated or proved by the Prosecution. Therefore, I need not go into details as far as those charges are concerned.

DR. ASCHENAUER: Your Honor, this would be a suitable occasion to take a recess.

THE PRESIDENT: Very well. The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

in the Soviet Union, in as far as the activities of the Einsatzgruppen are included therein, would leave out important matters without taking into consideration the actual organizational connection, the incorporation of the Einsatzgruppen and Einsatzkommandos into the military machinery, the command situation connected with this, the power of command and the free latitude of command within thsi command situation. Only after these prerequisites have been taken into consideration can the acts of the defendants be avaluated. The contention in the indictment, that the Einsatzgruppen, with respect to command and organization, had already been set up in the spring of 1941, is correct. At that time the Fuehrer, considering the campaign against Russia, ordered the establishment of Einsatzgruppen to be organized by the Chief of the Security Police and SF in agreement with the Wehrmacht for use within the compas of the operating army units. Quatermaster General Wagner, who was acting for Keitel, negotiated with the Chief of the Security Police and the SD, Heydrich, about the form and nature of these now joint organizations (Transcript page 10, and page 5ff, of the indictment). A temporary result of these negotiations about the so-called "Barbarossa Decree " and a draft of the decree was submitted by the Prosecution as Document NOKW 256, Prosecution Exhibit No. 174. fundamentally new task for the operational area of the army? The Prosecution itself calls this task justified if it states in its opening statement:

"It was the task of the Einsatzgruppen to guarantee the political not directly under civil administration". (Page 11) This was not a new task.

This function (contrary to other armies) was up till that time taken care of by the German army itself. The Chief of the Security Police and SD, in order to enable the army to carry out this task, had so far provided the Wehrmacht with the necessary technical personnel, taken in particular from the criminal police.

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With the help of this technical personnel as a skeleton staff the Army formed now units in the secret field police which were to ensure the political (police) security in the army area. as it had to be expected now that the enemy, namely, Russian Communism, would find allies in the rear areas, including the German home area; in the form of the illegal Communist cadres in these territories. Thus, the security of the immediate area of operation could not be separated from that of the rear and home area. The fight against the Communist acts of sabotage and terror was therefore to be carried cut in the same manner as it would be conducted by the Communists chiefs themselves, namely in accordance with a well-connected plan and in close observation of the entire area threatened by Communism. That alone explains the organization of the Einsatzgruppen and Einsatzkommandos by the Chief of the Security Police and SD who, as previously, provides these units with their technical personnel, with the reservation, however, that he be able, contrary to the former regulation, to give them technical instructions and require from them a regular reporting which makes a concentrated fight against Communism possible from a point in Central Germany. The fact that the Chief of the Security Police and SD, as the technically competent expert, organizes the Einsatzgruppen does not alter the fact that they are organized in support of the army, that they are attached to the army groups or armies and are not units under the command of the Chief of the Security Police and SD. It is not by accident that the Einsatzgruppen and Einsatzkommandos do not carry the secondary designation "Office of the Chief of the Security Police and SD", as it is otherwise customary with the authorities of the Chief of the Security Police and SD. Although Heydrich would have liked to make these units his own, he nevertheless had to consider the fact that his own personnel in these units represented only a minority, that closed units of the regular police and the Waffen-SS were strong components of the Einsatzgruppen and that neither the Waffen-SS, nor the regular police were willing to renounce the placing of the Einsatzgruppen and Einsatzkommandos under the command of the Commander in Chief of the army groups or armies.

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and Einsatzkommandos had possibly been units of the Reich Security Main Office. Besides that, I refer in this connection to my statements concerning the situation as to the organization of the RSHA, which show that the RSHA itself was not a genuine agency or authority; consequently could net have its own branch organization. Nor has any proof been advanced that the Einsatzgruppen and Einsatzkommandos might have been the agencies, authorities or parts of offices IV or V, in other words of the Main Office Security Police or Office III, VI, or VII, which is the SD Main Office. Not even an attempt was made to prove such an allegation. Therefore the Einsatzgruppen and Einsatzkommandos have actually never been the authroties, agencies or parts of the security police or SD. already been established in several verdicts (compare, among ethers, the verdict against Pohl and others, page 21, the Einsatzgruppen, actually were military units of police character which, as it is asserted in the I.M.T. verdict (Nuernberg Verdict, page 104), were subordinated in front areas to the operational control of the permanent army commander. Since the Einsatzgruppen and Einsatzkommandos were only used in the operational areas of the army, it becomes evident that they actually were separately organized units to function within the compass of the operating army under the command and control of the supreme authority in this area namely, the commander in chief. Their sole particularly can be seen in the fact that, for the same reasons as mentioned above, they were also subordinated at the same time, as a matter of principle and in technical respect, to the power of directive of the Chief of the Security Police and the SD.

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be given special emphasis because of the fact that the designation "Security Police and SD" is only used by the Commissioners of the Chief of the Security Police and the SD as a person, who as such was assigned in an advisory capacity to the staff of the commander in chief of the army group of army. The military units of the Einsatzgruppe were at the disposal of this commissioner in order to enable him to carry out the tasks of the army units in cooperation with those military, units which were assigned to the armies, corps and divisions, in each case in accordance with the orders of the army groups of the armies. Consequently, the Commissioner of the Chief of the Security Police and the SD was at the same time chief of the Einsatzgruppe.

If it is mentioned in the excerpt from the "Manual for General Staff Officers" -submitted in Document Book III Sandberger - that the G-2 of the army gives orders to the Gestapo then this is the simplest establishment for the tasks and the position of the Einsatzgruppen and Einsatzkommandos within the compass of the army organizations. They were auxiliary organizations of the G-2 machinery in those units. The defendant Ohlendorf, testifying as a witness in his own defense, has given a detailed explanation to this effect. The difficulties he described during the period of his activity with the 11th Army showed clearly that he was regarded as a subordinated battalion commander. The Prosecution has repeatedly brought forward (among others also in its opening statement) that Hitler himself informed the commanders in chief of the army groups and armies about all measures for the Russian campaign which he deemed necessary and in which the activities of the Einsatzgruppen were also included. The documents submitted have shown, and in this connection I especially refer to my Trial-Brief in which part of the Prosecution documents from Case 12 against the generals has been utilized, that just the particular Fuehrer order, about the killing of elements endangering the security of the Army, was given as a whole.

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I repeat: which was given concerning the killing of elements endangering the a security of the Wehrmacht. the responsibility of the Army and received by the latter specific orders to this effect, but the very units of the army have carried out this order in the same way as the Einsatzgruppen.

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defendant Ohlendorf, the Prosecution attempts to make it appear as though all orders for killings, in theactual areas, even in individual cases, were given by Himmler or Heydrich exclusively, while parallel to that the commanders in chief of the army groups or armies just arranged for the tactical employment of the Einsatzgruppen and Einsatzkommandos, this will not do the trick. The evidence has produced a different impression and nothing can conceal the fact that, whereever the defendant Ohlendorf has given a description of the issuing of the command and of the personal purging in the Soviet territories for reasons of security, he meant in this connection the initial fundamental issue of orders which, as is undisputed, were given to the Einsatzgruppen by way of Himmler andHeydrich. The very fact that, as the Prosecution asserts, the orders of purging were given directly to the Einsatzkommandos, according to Ohlendorf's testimony, shows this best and at no time during the entire evidence has a situation ever been discussed in which an Einsatzkommando of the Einsatzgruppe D had received an order through Heydrich for acting on its own initiative in carrying out the order of cleaning up a specific area. On the other hand it is correct, and that is what Ohlendorf meant with regard to such a statement of facts, that the announcement of the Fuehrer order in Pretsch in June 1941 which explicitly continued the order for killings, was given directly to the chiefs of the Einsatzkommandos. In so far as in the course of the evidence concrete orders for acting on their own initiative with respect to executions have been discussed, this rather concerned only those orders which were given to the Einsatzkommandos by the army. (Compare among others the case Simferopol and Romanenko). their organizational setup by stating as follows: Security Police and SD and provided with skilled personnel. However, they were organized in order to be subordinated to the army units in Carrying out their tasks.

During the period of their activity they were actually under the command of the commander-in-chief of the army groups or the armies, and in the case of the Einsatzkommandos, under the command of the armies, corps or divisions. The basic order for killing was given by the Fuehrer to the Einsatzgruppen by way of Himmler and Heydrich, but the army had the same order with the special directive to support the Einsatzgruppen and the Einsatzkommandos in carrying out this order. And this actually happened. Beyond this, however, it was the sole responsibility the commander-in-chief of the army, if, where, and when the basic order for killing waste be carried out by the Einsatzkommandos. Moreover, the command situation resulted in the fact that the Einsatzgruppen regularly received orders from the army units and carried then out, which includes the orders for massexecutions. The position of the chief of the Einsatzgruppen was not an independent one but it was part of the machinery of the army hierarchy and its rank was below the position of the G-2 or G-2/A0 of the army of army group. defendants, especially the defendant Ohlendorf in the machinery of the Army Units, the only thing that must be grasped is the "power", the "authority to give orders" and the "freedom of personal opinion" and therefore the actual responsibility of the defendant.

The defendant Ohlendorf was subject to a dual command. First to the basic order of the German Chief of State and Supreme Commander of the German Armed Forces, the so frequently mentioned Fuehrer Order given to him via Himmler and Heydrich. Additional and individual orders were received from the Commander in Chief of the Army to whose Staff he was assigned. He was a soldier, an Officer in the service rank of a Battalion Commander at the front in the war. Prosecution accuses him of having contributed to, contained the instruct ion to kill, so as to maintain security in his sphere of operations, the Jews, Gipsies, Communistic Functionaries and active Communists, as well as all persons who represented a danger to the security for German forces.

was given once and for all to the Chiefs of Einsatzgruppen and Kommando Chiefs in Pretsch and was not cancelled during the tine of Ohlendorf's Einsatz. Without, in this connection, going into the individual problems posed by this Order, the question of legality of such an Order with the authority of a law or its relation to International Law or Morality here, the only thing to be grasped is that Ohlendorf received it as a soldier in a subordinate position and with the knowledge that his highest Disciplinary Superiors Himmler and Heydrich were inexorably behind this Order. material, including the sketch of his career submitted by the Prosecution as a Document, that he did not get into this Order situation voluntarily, guiltily, frivelously, or for his own ends, but that he was sent to the Einsatzgruppe on Himmler's Order after having twice refused. It is all the more astonishing thatthe prosecution now in its final statement makes assertions against Otto Ohlendorf of which they know, according to the contents of their own presentation of evidence, that the pre-requisites, of th*se assertions do not apply to Ohlendorf. Referring to promotion regulations of Himmler for members of the Security Police and SD it reads in the above-mentioned place, on page 15a to 16, and I quote: "All Germans in this trial insist that they are drafted for service with the Einsatzgruppen and that they had no option other than to obey. It may be remarked most respectfully that all these defendants including Ohlendorf were highly trained Police Officers, who wanted to rise in the profession of their own choice. Therefore, there aversion to serve with the Einsatzgruppen which they have sworn on oath now, cannot be recognised as true where everyone was trying so eagerly to advance in the career he had chosen for himself."

prosecution that Ohlendorf prior to or at the time of the assignment in Russia was a "highly placed Police Officer". The career submitted by the Prosecution as a Document proves the contrary. So that he cannot have wished either to rise in this "profession of his choice". His profession at this time was undisputedly Business Manager of the Reich Group Trade.

the position of "possibility for advancement" through HIMMLER. It is just as undisputed that at this time he had no material income in the SD nor did he expect it.

If therefore from these arguments is to be gathered the "implied" consent or consent of OHLENDORF, inferred at the close of the letter of the Prosecution, to the activities of the Einsatzgruppen in question in this trial, then these arguments, to begin with, must prove the contrary since the opposite of what they state is an established fact. consequences, not even tacitly, the hearing of witnesses has shown unequivocally. OHLENDORF's statement that at the issuing of orders in Pretsch he protested loudly and clearly against the Fuehrer Order was confirmed by the defendant BLUME in Cross Examination by the Prosecution. The Prosecution has not disputed the fact either that in Nikolajew in October 1941 he tried personally with HIMMLER to undermine the execution of the Order. The defendants BRAUNE, SEIBERT and SCHUBERT have repeatedly demonstrated in the Cross Examination that 0, never agreed to the Fuehrer Order. OHLENDORF himself gave neither a general nor an individual order for killing nor over killed anyone himself.

And so controversy surrounds the "duty" of the defendant, which he in his position, as I have described above, had regarding actions of which his Einsatzgruppe is accused in this trial. It is to be examined whether on account of this "duty" as he performed it, according to legal and reasonable opinion he can be accused of "guilty patronage" as the Prosecution would like to impute at the end of their final statement. We have now won the ground to enable us to see how wide the general assertions of the Prosecution are of the reality of conditions with the Einsatzgruppen.

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each of the defendants had a position of responsibility or a command post in an Extermination Unit. By virtue of this position the defendants, in this case OHLENDORF, had had at all time the competency to order executions independently. The defendants were bound by law if not by their consciences to refrain from such activities and in so far as they had had power, to prevent crimeson the part of those subordinate to them. It is a legal and moral duty to prevent the execution of innocent people, to limit it, and condemn it, a duty which all the defendants had obviously violated. The rank and position of these defendants had conferred the competency and the duty to exercise a control over their subordinates and they had violated this duty.

The "duty" of the defendant was to obey as a soldier to see to it that ordersgiven by his supreme superior and the undisputed supreme representative of his State, with their contents, were carried out, in doing which the inexorable will behind them was supposed to have been the motive of his own action.

"The"competency" of the defendant was to carry through this order with all available means. That alone was the extent of his scope in deciding and judging. Anyone who should state otherwise, struggles consciously or unconsciously against the reality of the situation. Carrying out this duty laid down and observance of this competency ordered could never be made the subject of an accusation directed against the defendant in his subordinate position.

What, then, has the defendant actually done? Has he actually reaped the consequences of his inner and outward attitude to the HITLER Order? in Document No. NO 5866 (Interrogation of Dr. Roman LOOS) submitted in their Document Book 5 D: In how far do possibilities exist for avoiding a military order in general.

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This Document refers, it is true, to the possibility of avoiding, that one of the highest Officers with rank of Field Marshal or General is supposed to have. If however in spite of that I consider briefly the result of interrogation of Dr. Roman LOOS undertaken by the Prosecution through Herr RAPP then the witness says, in substance the following:

1.) Possibility, and I quote: "If the scrutiny (of the order) revealed that it concerned an order of an illegal and immoral character then the possibility existed to achieve the revocation or alteration of the order by the higher office by stating all considerations. If his point of view was not shared by his superiors the military leader was placed in a position either of being elevated to historical greatness by his refusal to comply with the order or else of becoming the instrument of a criminal clique by complying with the given order." I quote further: "He would have had the possibility to reject the order. The consequence would have been self- annihilation and indirectly a certain historical rise. It was obvious that for refusing a fundamental order he would have been tried by a Court or as we know today would have been sent to a concentration camp. But if someone after having recognized the immorality and illegality of an order, rejects, and takes the consequences upon himself, he is to be regarded as a hero from a historical point of view".

2.) Possibility - I quote: (p. 27).

"It is reasonable to expect from an Army Commander who solved the conflict in his favour by passing on the order recognized as illegal and immoral that he will at least do everything to cut down to a minimum the stringency, of the order thus restricting its disastrous consequences to a minimum".

I quote further: (p. 28).

"1.) Corresponding formulation of the executory orders, especially accurate definitions and exact limitations with regard to subordinate units.

"2.) Corresponding verbal instructions during official meetings or tours of inspection to the junior commanders who have to execute the order. In particular to inform subordinates confidentially about one's own interpretation of the order.

3.) Corresponding directives to the G-2 to supervise the execution of the order which was passed on, especially not to insist on its strict execution and to inform the subordinate G-2 of this.

4.) Report to the High Command of the Armed Forces.

a) References to previous unfavorable experiences after execution of the order, with the aim of achieving the revocation or amendment of the order.

b) Faked reports about measures taken.

A comparison between OHLENDORF's method of acting and the Prosecution's discussion shows that O. although he did not hold the rank of a Field Marshal or General but that of a Battalion Commander subordinated to the Army, did everything, after failing to achieve the revocation of the order in spite of his protest in Pretsch and his later attempt in Nikolajew, to exhaust the second possibility completely, without support of the Army or other authoritative circles. possibility. The defendant OHLENDORF did everything in his power to limit the effects of the orders issued to his Einsatzgruppe and the Einsatzkommandos under him. It has been established by his own statement and the statement of those co-defendants who worked in his Einsatzgruppe that O. issued supplementary orders the sole purpose of which was to limit the scope for judgment in interpretation of the fundamental orders for the Kommando chiefs and to exclude their extensive effect; thus he prevented by prohibiting the pogrom ordered, the wild and uncontrollable killing and ordered strictly that the killing arranged for might only be undertaken according to military principles in an orderly and con trolled manner.

He forbade all killings in fulfilment of the Fuehrer Order on foreign sovereign territory (Roumanian Sovereign Territory), (compare statements of BRAUNE, RUEHL, OHLENDORF), he saw to it that in the case of the Jewish Group comprising several thousands of people who had been driven by the Roumanians into German sovereign territory everything was done to get these people back to Roumanian territory on their way home. From the same motives he had agreed with his subordinates not to pick out Jewish children. His only partially successful effort to save the Carmanians and Crimtschaks too, the order to sort out the non-partisans in the case of the retaliatory action of the Army in Eupatoria and protect them against the shooting, prove likewise that OHLENDORF exhausted every possibility of limiting the scope of the Fuehrer Order. By supplementary orders concerning registration and transport he tried to curtail inso far aspossible and eliminate the mental and physical agencies and sufferings of the unfortunate victims; the prohibition of the undressing of the victim served the same purpose too. O. issued instructions to prevent all possibility of enrichment from the estates of these killed, so as to afford no incentive to killing. Also the directive to individual Kommandos to keep secret the number of executions reported to avoid the inciting of false ambition in other Kommandos, not to give rise to the impression that Einsatzgruppe D placed any value on the greatness of the reported numbers, served the sane end. filled the requirements of the Prosecution doing all in his power to prevent, limit and condemn the effect of the orders issued. In many respects even he exceeded his authority, took upon himself, as shown by HIMMLER's personal intervention in October, 1941, obviously limiting and delaying contravention of the orders given. OHLENDORF's activity as guilty, that is, intentional favoring of crimes I must leave to the court to decide.

At all events in considering his method of acting the fact must not be overlooked that all this interference on the part of OHLENDORF in the course of the events was not an activity which furthered the deeds but as demonstrated a restrictive activity which limited, delayed, and, insofar as possible, prevented the ffect of the actions ordered.

This kind of aiding and abetting is however in accordance with general legal principles not genuinely in the sense of a punishable action. This kind of activity refeals rather the distinct desire and clear intention to obstruct the course of the actions ordered in so far as that is possible. In this sense Ohlendorf's approach to Himmler himself in the end must be valuated too, when the latter inspected him in October 1941 in Nikolajew. He knew Himmler, and had heard scarcely an hour before his speech to all men assembled in which Himmler renewed the Fuehrer Order and ordered its strictest execution. Ohlendorf approached Himmler inspite of that. The fact that no answer was ever vouchsafed by Himmler was an indication of the dangerous way in which he had ventured forward and exposed himself. It is obvious that Ohlendorf's so doing had already exceeded the limits of his possibilities. Amendment of the Fuehrer Order was not within his power and still much less in his sphere of command. He was given no scope for judgment either, not to carry out this order. immediately clearly recognisable if one followed his activity as Head of Office III SD after he returned from the Einsatz. Here he was not in a military machine under military command but was relatively independent in his work, that is, the tactical situation within the German heirarchy made relatively independent action through circumvention of his highest superiors possible for him. In the chapter concerning Ohlendorf's membership of the SD I have adequately proved this fact. And with this his behavior, the attested inner attitude of Ohlendor and his behavior concerning the Fuehrer Order and the compulsory events of the Einsatzgruppe must always be compared. An unbiased consideration of Ohlendorf's behavior and activity during the Russian Einsatz can only result in showing that he acted from the same sentiment which characterized him both before and after the Russian campaign. accuses the defendants, I must now ask the Tribunal to listen for a few minutes to the consideration of the probative value of the Documents submitted by the Prosecution to support its accusations.

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The evidence of the Prosecution is documentary. In the course of the examinations of the defendants on the witness stand mistakes and inconsistencies were continually mentioned in connection with the discussion of the documents submitted by the Prosecution not only in the "Operational Situation Reports from the USSR" and in the "Reports from the Occupied Eastern Territories" which replaced them after 1 May 1942, but also in the discussion of the affidavits and personnel records of the defendants submitted by the Prosecution. I shall limit myself to the "Operational Situation Reports from the USSR" and the "Reports from the Occupied Eastern Territories", since the defendants' affidavits and the personnel records have been discussed in detail during the interrogations and, on each occasion have been subject to sufficient individual elucidation to give the Tribunal a thorough insight into their probative value. Moreover, they are discussed in the individual final pleas for the defendants. Regarded as individual cases the mistakes and inconsistencies in the "Operational Situation Reports from the USSR" and the "Reports from the Occupied Eastern Territories" might often appear unimportant, as for example, confusion in places, wrong dates, cases of the same figures being counted twice, and other accounting errors concerning liquidation figures mentioned in the reports. Nevertheless, as a whole they are of considerable importance for the question of probative value. In view of the serious nature of the charges brought against the defendants in the indictment there is not only a well-founded reason but also a need and a duty to subject the probative value of the reports submitted by the Prosecution to a careful, objective examination, for in the case of such all-inclusive charges, which as a rule the Prosecution did not advance against the separate defendants in an individual and well substantiated way, shades of meaning and individual wordings in the documents can be regarded as relevant evidence for the mental attitude or individual conduct of the defendants.

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Here the examination must not only concern itself with the general probative value of the reports, but especially with the question of to what extent individual sentences or phrases can be regarded beyond any reasonable doubt as indentical with the reports originally issued by the defendants. Only by such an examination can be decided as to what extent the documents give a real impression of the actual happenings in Russia from which relevant evidence can be derived incriminating the individual defendants even in its individual findings. The greater part of the documents submitted by the Prosecution are not eye-witness reports or original operational and situation reports. Of the total number of about 200 documents which have been submitted there are only about 10 items which can be described as original reports, namely, scattered reports to or from offices of the army. Apart from these original documents, which numerically are hardly of any importance and the contents of which are dubious at least, -although even they are not free from errors of carelessness and deliberate misrepresentations -- they consist mainly of operational situation reports by the Chief of the Security Police and the SD, that is, reports which were prepared and summarized from various other reports. document books of the Prosecution only in extracts and excerpts. In preparing them those parts which were not relevant for the Prosecution were left out; it has been the general experience that such excerpts have always have a distorting effect in some way or other; they give a false impression of the nature of the document and disconnect Concrete statements contained in it -- even if they are true -from the context. operational situation report executions are shown as an insolated phenomenon, that is, taken out of the context of the actual events 4 Feb 1948_A_MSD_23_4_Hoxsie (Lea) and situations which were the reasons behind them and magnified into the sole basis of the activity of theEinsatzgruppen.

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This fails to show the background conditions, what was happening at the front, the constant danger to which the members of the Kommandos, the German army and the peaceful Russian population were exposed by partisans, terrorists and sabotuers, the observation made on repeated occasions of the dominant part played by Jews among Soviet leaders and the partisan organization, the knowledge, constantly passed on by the members of the Kommandos, of the dominant part of the Jews in the ruthless establishment of Communism in Russia and in the mass liquidations of kulaks, property owners and members of the intelligentsia. It likewise fails to show the actual picture of the over_all activity of the Einsatzkommandos which, predominantly directed toward an enlightened pacification of the Russian areas, included constructive and progressive measures for the benefit of the population. Thus, these documents, which are presented in excerpt from, therefore frequently distort the basic subject in the original report and also prevent one from recognizing mistakes in details from the total context. In an affidavit presented by the Prosecution of the former Criminal Director Kurt Lindow, for a time Special Section Chief in RSHA, IV A 1, has confirmed the fact that the USSR Operational Situation Reports, which were published by the Chief of the Security Police and the SD under the file mark IV A 1, were, as a whole, compiled from the original reports of the Einsatzgruppen "which, were received in my Special Section by radio or written message." Einsatz reports were made; on the contrary, it only confirms their authenticity, which, besides, nobody has doubted. The way in which they were prepared, however, has been established with sufficient clarity by various statements made by witnesses for the defendants, but has also been especially shown in the affidavit submitted in Ohlendorf Document Book la as Document 32, Exh. No. 53, which was given by former Police Councillor Rudolf Fumy.

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Fumy is to be adjudged the best specialist for this question, since as an official in special Section IV A 1 he collaborated personally from the very beginning in the compilation of the Einsatz reports and possesses a far more accurate knowledge than Lindow of the way and manner in which the reports were made. That the Operational Situation Reports "were compiled from the original reports of the Einsatzgruppen" must, therefore, be supplemented by the Fumy affidavit to the effect that, to be sure, the detailed original reports of the Einsatzkommandos etc. necessarily proveded the foundation, but that the Einsatz reports are not "moreover only to be regarded to a limited extent as a literal repetition of the original reports". According to Fumy's statement the Einsatz reports were free revisions of the original material received in Special Section IV A 1 of the RSHA. ly the case that the separate Einsatzkommandos and Sonderkommandos reported to the authorized Einsatzgruppen and that the latter then, in entirely different ways, summarized the reports and forwarded them to the Berlin central office. It is to be gathered from the various statements made by witnesses before this Tribunal that these original reports offered the first opportunity for errors to arise. When one of the defendants testified on the witness Stand concerning cessively high figures for the executions which had been carried out, in order to please Heydrich and "was not very exact with his zeros", this fact does not represent an isolated case, but was also applicable to Stahlegger, the chief of Einsatzgruppe A, and Thomas, the leader of Einsatzgruppe C. The defendant Ohlendorf has already called attention to this in his interrogation before the IMT.

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(During this trial the uncontested statement was also made that this incorrect reporting originated already with the Kommandos in their reports to the Einsatzgruppen. Therefore, with respect to the figures in the documents submitted the defendant Ohlendorf, judging from his own experience has doubted if even half of the figures cited there come near to the truth. stand and by comparing reports to or from various offices concerning the same period of time (for example, from an Einsatzkommando to the army) that "tactical reports" were constantly made, that is, deliberately false reports which a unit made to protect itself against some other government office. or in the Einsatzgruppen either intentionally or unintentionally for personal or tactical reasons, which are considerable and therefore can in no way be ignored or belittled, were forwarded along the regular message chanel by radio, courier, or military mail to the office in Berlin which rewrote these reports, lacking any possibility of correcting them, or desiring to do so. In the very channelling of the report further errors would occur in radio transmission, which must also be taken into account. Anybody who is familiar with radio procedure knows well enough that mutilations or distortions which are not readily apparent are constantly creeping in. In many cases,then, inquiries are made concerning the correct text. However, wherever, apart from technical deficiencies, there is no compelling need to investigate the correct text or there is not enough time to do this, the receiving office will be satisfied if it can make the text understandable to some extent.

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This latter situation actually existed in the RSHA. As must also be explained, they were always pressed for time and there was no authority for checking such things. Here, therefore, is one of the possibilities of explaining why obviously false place names and figures have been repeatedly pointed out in the Operational Situation Reports by witnesses. rewritten with a downright frivolous disregard for the facts, as has been explained and proved with sufficient clarity in the Fumy affidavit already mentioned. The RSHA received collective reports from the Einsatzgruppen, as well as from the agencies of the Wehrmacht, the Higher SS and Police Leaders, for revision. At the same time, however, it also received reports about individual occurrences. By reason of their varied natures and varied purpose these reports naturally covered periods of time, but in spite of over-lapping time periods, place and subject matter they had to be rewritten immediately as Einsatz reports in order to prevent an over-accumulation of material. The working apparatus for this purpose was improvised; an inadequate number of employees with insufficient technical training were swamped by a mass of material which had to be digested in a few hours almost every day in reports of up to 50 pages in length. Fumy employs the expression "nerve-racking" for this. The material could not be compared, there was no time for any further inquiries about it. The fact that it was not possible to do any reliable work in this way was known not only to those directly concerned in it but also to the superior offices in the department. The rewrite men became increasingly reconciled to this and let things slide. The desire for accuracy, as Fumy testifies, was still further decreased by the fact that Mueller, the Chief of Office IV, taking into account the political tensions at any given time, undertook to make changes which were not unimportant", and added or deleted things as he saw fit.

In summing up, therefore, concerning the probative value of the "Opera tional Situation Reports from the USSR" and the "Reports from the Occupied Eastern Territories," which have been submitted by the Prosecution as incriminating documents.

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I can state that their probative value with respect to individual conditions and figures listed has not been proved. Insofar as the individual defendants are said to be directly incriminated by the reports, the Prosecution must offer more than merely a reference to an individual statement or an individual quotation from the reports which have been submitted.

DR. ASCHENAUER: Your Honor, I think this would be an appropriate place to adjourn.

PRESIDENT: The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 5 February 1948 at 0930 hours.)

* * * * A. Musmanno, presiding.

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THE MARSHAL: Persons in the Courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may proceed.

DR. ASCHENAUER: The questions which are circumscribed by the term "order" belong to the most difficult problems of jurisprudence. This has also been acknowledged by the Allied side. Professor Sheldon Glueck of Harvard University, defines this complex of questions in his book "War Criminals, Their Prosecution and Punishment", as definitely controversial and nebulous. "One of the most intricate technical problems which occurs at the trial of war criminals of the Axis, is contained in the protective assertion that the defendant in committing the prohibited action did so only in carrying out orders of his military superiors." The man who makes this statement is not a run-of-the-mill author, but the foremost American authority in the field of criminal law and criminology and the book in which he makes this judgment has prepared the theoretical basis for all the war crimes trials which we witness today in Germany and in Japan. The book by Professor Glueck has its counterpart in British literature in the essay from the pen of Professor Lauterpacht of the University of Cambridge regarding "The law of Nations and the Punishment of War Crimes" in the British Year Bookof International Law, 1944, page 58 ff. Professor Lauterpacht writes there in quite a similar manner. He defines the problem as opaque, intricate and contradictory in itself and states that the question to what degree consideration should be given to the claim of having acted upon superior orders, represents practically the most significant problem of the war criminal trials.

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He writes: "The problem which has been raised by the claim of having acted upon superior orders is, as commonly admitted, a problem of great difficulties, not only in view of international but also of national law. How confused it is may be inferred from the fact that the solution accepted by British and American Military handbooks concerning war crimes are contradictory to those valid in both countries in the field of the constitutional and penal law. Beyond this, the law concerning this subject in those and in other countries in the field of national law is not free of ambiguities and apparent inconsistencies." tribunal in deciding such questions and advise urgently, to act with prudence. Therefore, the following question has to be examined in an especially calm, dispassionate and politically unbiased manner. Can the claim, of haying acted upon superior orders, in the case in question exclude the liability or only mitigate it?

Paragraph II 4 b of Control Council Law no. 10 implies that a total exclusion of responsibility cannot be considered under any circumstances. Because this regulation states: "The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime but may be considered in mitigation." This regulation must surprise everyone familiar with the pertinent American and British Military Jurisdiction. To wit, it is diametrically opposed to it. A universal exclusion of a claim of having acted upon superior orders was never considered legal in the Anglo-Saxon countries and is not considered to be legal even today with regard to its own citizens. the stipulation of such a strikingly biased point of view against the former adversaries of the Allies. I do not think that I err if I consider Professor Sheldon Glueck to be the spiritual originator.

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Referring to section 347 of the American Rules of Land Warfare, Glueck states on page 157 of his book: "The complete and absolute protection of those below the status of 'Commander' in section 347 of the American Rules was probably adopted because the farmers had primarily in mind our own soldiers and the aim was to relieve them entirely of liability in war time in order to encourage greater discipline and obedience.

However, the principle in the rules applies also to any enemy soldiers it may be desirable to prosecute; and in that respect the Anglo-American standard may prove to be troublesome. The matter thus boils down to a question of policy, whether it is more desirable, all around, to retain the principle now in the military manuals or to modify it along the lined suggested. So far as it concerns proceedings in American military commissions the President as Commander-in-Chief can clarify the matter by revision of the American Rules of Warfare through the War Department. In the convention or executive agreement for establishing an International Criminal Court to try certain serious classes of war crimes, a rule of the kind proposed, if Implemented by a sound sentencing policy ought to furnish a satisfactory solution of the superior orders problem." a far-reaching and decisive legal effect. Professor Glueck's intentions are to bring about the unilateral sentencing of merely groups of persons, former war enemies, whom he considers to be punishable, in contrast to the former administration of law of his country.

He states verbatim: "Since the application of the principle of absolute non-liability found in the English and American Rules would render impossible many convictions of Axis war criminals, and since there are differences among the various member States of the United Nations in respect to the regulations and decisions governing the subject of superior orders, a new and realistic rule is necessary both for prosecutions in domestic courts (especially English and American) and those in the proposed International Criminal Court."

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and ignore legal principles of long standing, such a manner of unabashed prejudiced jurisprudence is bound to cause particular astonishment if these are made by a scholar whose name belongs to the most renowned members of American jurisprudence.

Terms like "troublesome", "desirable", "question of policy", "realistic" are used in order to make inapplicable legal maxims, hallowed by decades of usage. All those points of view employed by Professor Glueck are such that every jurist must view them with distrust! In note 48 to chapter IX of his book, Professor Glueck refers as further justification of his opinion, to the legislative practice and jurisdiction of Nazi Germany, where such expost facto punishment was customary. It is unnecessary to touch upon this assertion any further, because if such kind of legislature and administration of justice has to be considered as reprehensible, since it is communis opinion of the entire Western civilized world then it ill suits the victors to abuse their own ideals by acting in the same spirit and to sacrifice the idea of right to the point of view of political expediency and practical considerations. as a matter of fact up to now, shall not remain unmentioned. The actions of the defendants would have to be judged pursuant to German law, according to the judicial interpretation of all European States. They were subject to German law and acted under German law; it was the law to which they had to turn for advice in cases of doubt and which decided as to the limits of their authority. Also, this principle of international law hallowed by long years of use is sacrificed by Professor Glueck to considerations of political expediency and practical considerations, by writing about it in the following way:

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"Normally in law and in justice, it would have to be that law of the accused, since he could not justly be expected to know the law of the enemy nation that prosecutes him." However, Professor Glueck continues this would give the most lawless nations the possibility to whitewash militarists for the most flagrant violations of the laws of warfare. The Nazi law is so contrary to the most elementary principles of civilized justice tha t it may legitimately be ignored as "pathological". the absolute relinquishing of century old principles of personal liability, unacceptable to every progressive legal system. The Nazi jurisprudence has been charged with having sacrificed the idea of law and justice without hesitation always at a time when it was opportune for the necessities of political considerations. If, therefore those who have made it their bussiness to combat such abuses, now themselves put aside the postulates of progressive and fair legal thinking in order to realize a certain political aim, then one feels deeply disappointed in one's belief and hope of coming of a better world - a world a a world of law and order!

It seems also that the prosecution feels that way. Therefore, it attempts to refer to Article 47 of the German Military Penal Code. Thereto the following must be stated: in the East are regulated and outlined by orders, that is by Fuehrer orders. There is no doubt about it that the orders of Hitler, in his capacity as Chief of State, were of a special nature. All his orders enjoyed a particular obligation to obey them in view of the constitutional legal status of the Third Reich, which was bound by his authority as Chief of the State. Professor Jahrreiss stated in this respect during his questioning in the trial against the jurists, the following:

"In a state in which all power of decision is concentrated in the hands of one man, the orders of this one man are absolutely binding for the members of the hierarchy of officials.

This individual is their sovereign, their legibus solutus". (Truanscript, page 4243). Reich, insofar as it related to the constitutional law of the Greater German Reich, and the defendant Ohlendorf carried on his law studies and all other defendants grew up and lived in the knowledge and application of this literature. I quote verbatim from the book "The constitutional Law of the Greater German Reich" by Ernst Rudolf Huber:

"The Fuehrer combines in himself all sovereign power of the Reich; every public power in the state as well as in the Party is derived from the power of the leadership".

"He is the holder of all political power."

"The leadership authority is extensive and total; it comprises in itself all means of political organization; it extends to all spheres of public life; it includes all compatriets who are bound to loyalty and obedience toward the Fuehrer".

"He is" - thus it goes on "holder of the legislative power" in addition, however, also "holder of judicial sovereignty and power" in a word "supreme holder of all common functions." the years to such an extent that by the resolution of the Reichstag of 26 April 1942 (Reich Law Gazette I, page 247) he was given carte blache of an extent unparalleled in constitutional history, which must be regarded as a mere certification of a situation that had already existed for years. The Fuehrer received the power to issue ordinances on every subject possible having legal force. He received the power "as chief of state and supreme holder of the executive power, as supreme judge and Party leader at any given time - "if necessary to urge, every German -- be he a simple soldier or an officer, minor or high official or judge, directing or subordinate functionary of the Party, worker or employee - to fulfil his duties, with all means he regards as appropriate and in the case of a violation of these duties after conscientious examination, without regard to so-called traditional preregatives, to inflict on him due punishment, especially to remove him from his office rank and position without instituting the "prescribed proceedings". law, beginning about the middle of the 19th century, no member of the German people was entitled to refuse obedience to these announcements of the will of the head of the state, which had legal force.

The principles which Richard Thoma, the liberal democratic teacher of constitutional law had formulated already prior to the seizure of power by National Socialism in his manual of German criminal law, 2nd volume, page 137 applied: not change entirely, "no other principle may be taught than the one that the entire legal system valid in the state by law is placed at the disposal of the state authority or authorities to which the constitution deed transfers the legislative power." "It is conceivable that a legal maxim may seem to me to be simply unjustified, be it, because I am convinced, it was issued for arbitrary reasons (e.g. party hatred), be it that I feel it to be objectionable because of its contents which seems monstrous to me. Even in the case of such a rule I must admit, as long as the state authority regards it as being valid, that in the formal sense of the term it is a legal maxim, although I in foro interno.

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.... give it the name of a rule of force or an ordinance of injustice." National Socialist but one of the very first representatives of the liberal -- democratic, political science. His opinion was not an individual opinion but the prevailing doctrine.It was thus the foundation of juridical ideology which OHLENDORF -- like many others among the defendants had been taught at German universities to be valid legal conception. By way of substantiating this, I mention one author who at present teaches at a university in the United States and various times has expressed his opinion with regard to the question of war criminals: Professor Hans KELSEN, the one-time leading authority on Austrian constitutional law. In his "Main Problems of Political Science" 2nd edition, 1923, page 56, he declares literally:

"The legal binding force of an legal maxim is not in the law."

And as late as 1927 the German Supreme Court emphasized:

"The legislator is autocratic and not bound by an in the constitution or in other ordinances."

(Decision of the Decisions of the German Supreme Court in civil law cases) I wish to emphasize once more that those doctrines and legal maxims were expressed with regard to the constitutional law of the Weimer democrary.

There can be no doubt that they had to be valid all the more in the National Socialist state which thereby neither violated the most elementary principles of civilized conception of law nor developed "pathological" law.

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by the constitution connected with the duty of absolute obedience, may often appear incomprehensible to a foreigner. Any one being familiar with history will however have to admit that this by no means without precedent. I beg to point out the following: opinion of subordination and obedience in a letter which he sent to the members of the order in 1555 as follows (this being one of the most remarkable documents of world history):

"On the whole, I must not belong to myself by to my creator and mediator; I must permit myself to be led and moved as a little piece of was permits itself to be kneaded;......like he wishes and where he can use me best;.....I must behave like a dead man who has neither will nor insight.

Thus I must always can use me for whatever it wishes mo to do."

(The Spiritual Letters and Instructions of St. Ignatius of Leyola."

Collected and translated into German by Otto KARRER, Society of Jesus, 1922 page 255.

Translation authorized by the Catholic Church). And these principles have by no means been rescinded in our modern times up to the present.

In a singular way this conception of obedience in its formal basic structure is affiliated to that of Calvinism. To the question as to what was to be done if kings and princes spurned the rights of the people, disregarded the laws of morality and acted as tyrants, the reformer gave the unmistakable answer: The sovereigns of this world may claim, the obedience of their subjects, even if they are the most villainous tyrants (nequissimus tyrannus). The sufferings afflicted to the subjects by an undutiful sovereign must be borne in humble patience and the subjectsmust be self-contemplation and a deeper consciousness of built be induced to all the more eager supplications for divine assistance.

The subjects have to do their duty and leave all the rest to God.

With regard to this Josef Behatec: Calvin and the Law (1934) page 135 ff. past two years against Luther's doctrine of the subject's obedience to the state completes the picture of the European religious views with regard to the duty of obedience without my having to go into detail in this respect. nearly half a century -- under the Stuart Kings Charles II and James II -as a dogma which was especially upheld by the Tories and Oxford University. Thomas Babington Macaulay, the great British historian, devoted an extensive elaboration to this remarkable fact in his "History of England since the ascendance of James II to the throne." especially with regard to military orders and obedience, which are under discussion in the present trial, still fully applies, is shown in the well-known speech of the British Field marshal Montgomery concerning Army and Nation of the year 1946 in which he says: "No matter how intelligent the soldier is -- the Army would leave the nation in the lurch, if it were not accustomed to obey commands immediately. It is the soldier's duty unquestioningly to obey all orders given to him by the Army -- that is, by the Nation." obeyed HITLER'S order as an order issued by the German chief of State having the unlimited authority and powers described above, they were not only backed up by all German authorities on constitutional international law in the reign of HITLER but also by themost renowned representatives of jurisprudence of the former democratic Germany and foreign countries, especially of the United States of America, as well as by the incontestable principlesof all armies of the world.

This unquestioned legal situation and the binding force of an order is in no respect changed by Art. 47 of the German Military Penal Code.

They did not act in violation of Art. 47 of the German Military penal Code simply because an order by HITLER had legal force and thus being a newer law had precedence over the earlier Military Penal Code. Above all, Art. 47, according to its context does not intend to, and connot, give the opportunity and require it as one's duty to offer resistance to the legislator himself. Its prerequisite is a military superior of the one who issues the order to whom appeals can be made made. Fuehrer order was known to OHLENDORF and his co-defendants. OHLENDORF was fully aware of it. For to the question of the Presiding Judge as to whether he had deliberated about the questions coming up in connection with the execution of the order (page 686 of the Transcript) and, in addition, as to whether he had ever felt that the Fuehrer decreeswas an unlawful order, OHLENDORF unequivocally answered: "No". As he himself several times assorted, the defendant lacked the consciousness of illegality. As has been shown, he can in this respect place himself on the same level with domestic and foreign jurisprudence. In this connection and corresponding to the Anglo-Saxon conception that the consciousness of the unlawfulness of a deed, the Tribunal tried during OHLENDORF's interrogation to find out his reaction to the Fuehrer decree in a moral respect. OHLENDORF strictly rejected a moral evaluation of the Fuehrer Order. No regarded the order as unwise from a political viewpoint and as wrong because of itspossible consequences from a standpoint of international law and general political aspects. As OHLENDORF declared, he, however, never undertook a moral appraisal since HITLER as German chief of State had issued it with legal binding force and compulsory effect for him as receiver of the order and since HITLER himself had to take the responsibility for the moral side of his order.

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The further detailed interrogation by the Tribunal has proved unequivocally that OHLENDORF during the -- execution of the order had no consciousness of moral wrong. one would uphold a legal obligation of investigating the Fuehrer order with regard to its lawfulness and its capability of being uphold from a moral viewpoint, there are further viewpoints which preclude a punishment of the defendant. He justly cites the legal institutions an emergency caused by orders and "Unexpectability" the application of which Central Council Law No. 10 obviously does not preclude.

Thus already the IMT has established (Chapter V at the end): "The actually decisive point, which is to be found in various gradations in the penal code of most nations, is not the existence of such an order, but the question as to whether a corresponding alternative (resistance) to moral law actually was possible." and the Presiding Judge of this Tribunal in the MILCH decision emphasized himself (Tribunal II, Case 2, page 96 German, in the reasons given by Judge Musamnno)" It was never our intention and never has been urged that he (MULCH) should have ever chosen any way which would have resulted in the loss of his life". With regard to the same problem the US military Tribunal states in Case 5 in discussing Art. 4, par. B of Section 11 of the Central Council Law No. 10 (Transcript of session of 22 December 1947, page 18 ff):

"In our opinion these regulations are not meant to deprive which has here been claimed for them.

This legal principle Wharton's "Criminal Law", Vol.

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I, Chapter VII, section 126, as substantiation:

"The fact of a state of emergency may be used as protective threatening legal prejudice".In a footnote to sub-section 384 in Chapter XIII of Wharton's "Criminal Law", Vol I the fundamental definition of the protective assertion of a state of emergency isdescribed as follows:

"A state of ermergency is a reason for justification, since The question of unexpectability is closely connected with this question of state of emergency.

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Even before 1933, the German Supreme Court and scholars have had to deal with the question of the unexpectability of an action and have repeatedly recognized this unexpectability as a basis for excluding guilt. Unexpectability is present "with reference to the situation as a whole" it may not be expected that "the idea of the criminal result and its injurious social effect becomes a decisive counter-motive, thus motivating the perpetrator to act in accordance with the law." (from Liszt-Schmidt,"Manual of Criminal Law" , 26th ed., p. 283). On this basis, the German Supreme Court also made its decision. Thus in the decision of the 1st chamber of the Reich Court (Justizwesen, 32, p. 2280, No. 14). In this case, a witness, committed perjury in a trial against Communists because he was afraid that if he made a true statement, he would be mistreated by the Communists. In the decision of the 1st. chamber, the Reich Supreme Court argues, among other things, that at the basis of Art. 52 and 54 is the idea that as a basis for exclusion of guilt "an abnormal encroachment upon the free will caused by special external circumstances may also be considered," which in "normal" conduct seem "not to be expected." That is, in other words, that a criminal act committed under such circumstances is still objectively illegal for lack of a basis for justification, but owing to the unusual psychical pressure burdening the perpetrator does not appear subjectively contrary to duty and therefore provides no basis for accusation of guilt. The decision of the Reich Supreme Court (3rd chamber) in the decision 66, p. 98 is similar to this. Corresponding decisions are to be found in decisions 58, p. 97 end p. 226. defendant Ohlendorf found himself from these viewpoints. Ohlendorf has described in the witness stand how he loudly and clearly protested against the order when Streckenbach announced it to the assembled officers in Pretsch. The defendant, Dr. Blume, expressly confirmed this description in his statement of 4 November 1947, p. 1915. The presentation of evidence has, furthermore, clearly brought to light the fact that the protest was immediately silenced by the implication that this was a Fuehrer order against which there could be no further objections.

Under these circumstances, could any one expect from the defendant Ohlendorf that he undertake further steps against the order? For a non-German court, this question will be very difficult to decide in any case, because it presupposes the knowledge and the ability to understand the ideas and conceptions of that time of the Germans, as well as the knowledge of the possibilities which the individual holders of various ranks of the National Socialist officers Corps had of influencing Fuehrer Orders. Ohlendorf knew that his direct superiors Heydrich and Himmler had identified themselves with the Fuehrer Order. He knew that his views would find no support of any sort from those quarters. In spite of this, however, he later made a further attempt in Nikolajew and turned to Himmler. The latter, in an insulting and emphatic manner, did not even grant him an answer. The defendant Seibert reported this scene in detail and in so far confirms Ohlendorf's statement. The Commanders-in-Chief and Generals of the German Army, to whom the Einsatzgruppen were assigned and subordinate, were above Ohlendorf, in his capacity as Chief of an Einsatzgruppe and in his rank at that time as Colonel. Apart from Himmler and the heads of the Ministries only they h ad the possibility of contradicting the Fuehrer and to attempt to have him rescind the order. That possibility obviously had been exhausted unsuccessfully, since that order was in force. In addition the situation was especially difficult for Ohlendorf, because already at that time he had incurred the gravest displeasure on the part of Heydrich and Himmler, and because his transfer to Russia must be considered a punishment (see testimony Ohlendorf and affidavit Dr. Hauschke in Document Book No. I, Doc. No. 8 , Exh. No. 31). Thus there remains merely the question, whether or not Ohlendorf had the possibility on the basis of his position to approach the Fuehrer him self and to insist on the order being changed.

Anyone who knows the conditions with National Socialist Germany will have to answer that question in the negative. In this connection I refer to the affidavit of the former Chief of the Reich Chancellery, Dr. Lammers, contained in Document Book I, Doc. No. 3, Exh. No. 24, p. 12 in the German text, to which I have nothing further to add. Because of its special importance in this decisive question I request that the Court take cognizance of it in its entirety. That there can be no expert witness against this affidavit on this question, despite the objections of the prosecution, is proven by the former position and experience of the witness.

In summarizing the following may be said: Ohlendorf had no means at all to change the course of events. He merely was enabled to carry out the execution of that order in such a way as to spare the unfortunate victims of this order and the troops commissioned with the execution as much of the mental anguish as possible and to prevent any possible outrages. I believe that I do not have to describe to what extent the defendant Ohlendorf fulfilled his duty in that respect. His own and the other defendants' testimony has proven that unequivocally without being disproven by the prosecution. Are there any other aspects or possibilities, the disregarding of which could be considered as a legally tenable charge against the defendant? Above all, could he legally be expected to resist actively the orders or to commit insubordination? It certainly requires no special explanation to show that there exists no legal duty for an open rebellion against an order by the Chief of a State. Because otherwise all the laws of obedience of the State, which govern the special life of human beings would be rendered superfluous and would be dependent only on the arbitrary interpretation of the individual. However,even plain insubordination was completely out of the question in the case of the defendant. Ohlendorf was subject to military law. The order was a military order, given in wartime. The consequences of insubordination would plainly have been a trial before the SS and Police court and a subsequent death sentence (see Blume Document No. I, pages 1-13, German, and transcript of the session of 4 November 1947, pages 1899-1902). Nowhere and at no time however has the duty to become a martyr been decreed as a legal duty quite apart from the fact that thereby the entire situation would not have been changed at all.

Someone else would have stepped into Ohlendorf's place and it would have merely raised the question whether or not the other man would have been prepared to mitigate and ease the consequences of this terrible order both for the victims as well as for the men of the Einsatzkommando in whatever way possible out of the same deep sense of responsibility. During the interrogation of the defendant, the question also arose whether or not Ohlendorf could not have evaded his assignment to the East by feigning sickness. Ohlendorf stated in this connection that he had declined to make such an attempt for reasons of his ethics and character and because it would have helped neither the unfortunate victims affected by the Fuehrer Order nor his comrades. abovementioned laws the simulation of an illness would have been considered as undermining the fighting morale and would have been punished with death. Thus there was no escape for Ohlendorf from this dilemma except for one - certain death, and it would have been too much to expect him to choose that. Neither Ohlendorf nor his fellowdefendants were placed in that position through any fault of their own. After all, they did not volunteer for the assignment to the East in full knowledge of the orders to be expected, but they obeyed governmental compulsion. They were drafted for military service and were assigned there. In the case of Ohlendorf it was done even in the way of a penal measure - though it was not discernible as such on the outside -

after he twice unsuccessfully resisted Heydrich's plans by which he was menacingly accused of being a coward.

The question of an emergency caused by orders * of unexpectability cannot be disposed of without showing to what an extent the interpreta tions of International Law had become inconsistent in the Europe of former times already during and after the first world War, as well as through the establishment of the Soviet State.

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For the uncertainty of the conceptions valid until then, was undoubtedly eO-decisive for the degree of inner or outer resistance shown or not shown by the individual offices or officials of the Third Reich depending on the position which they held in relation to the Fuehrer at any given time. The situation of International law at that time showed the following picture: During the first World War the Rules of Warfare drawn up by the Hague Conferences had become fluid (gas warfare, hunger blockade). In spite of that it had been neglected in the period following to obviate in any way the dangers to the civilian population inherent in the possibility of a total war. Above all it had been neglected to introduce any kind of limitation for aerial bombardment, even though the experts never grew weary of pointing out these dangerous points. An additional proof for the inconsistency of international law is the fact that a plan could be created during the war on the Allied side, which was - in the words of the American Senator Langer - and I quote: "a plan for the systematic annihilation of the German speaking people" , it was the so-called Morgenthay Plan. Not without reason did Langer formulate his opinion as follows: "No matter how cruel England might have been at any time during its history - and I do not exclude even the Black Hell of Calcutta - there has never been a more savage plan than the one proposed by Mr. Morgenthau". a uniform International Law. It overlooks however, intentionally or unintentionally, the fact that the world has been divided both politically and from the standpoint of law into two parts, and that not just since the beginning of the last war, but de facto already since the creation of the Soviet Union in 1917/18. According to the claims of that state which it put forth itself, the Soviet Union cannot be a loyal partner in the community of nations.

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That is made conclusively impossible by its irrevocable aim for world revolution. Beyond that it strives to use International Law and its recognized rules as a weapon against the non-Communist environments, as I shall prove yet. Professor Korovin, the well-known Soviet-Russian expert on Internatio nal Law writes in his Manual of International Law, which he has published under the title "An International Law of the Period of Transition": "The Soviet Union represents the world of tomorrow, it does not fit into a world of yesterday."

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situation, that acts are being condemned in Nuernberg as a crime, which are quite common for a power, which has signed the basis for the indictment - i.e. the Control Council Law. In this connection a collection of documents deserve a special interest, i.e. "The Land of the Dead", study of the deportations from Eastern Germany, Committee against Mass Expulsions. In that book the slave labor by Germans and their expulsion from their home-country are being publicly exposed, as follows: centage of the missing persons (expelled Eastern Germans was put to death by their tormentors, or have perished because of lack of food and housing. According to the Congressional Report of 5 February 1946, Senator Capehart estimated that no fewer than 3 Million human beings had lost their lives in the course of this "resettlement". held as slave-labor in Russia, Poland, Czechoslovakia and the Balkan countries. The January edition of the Review of World Affairs (London) reports that it is a well known fact that thousands of German women are working as slaves in the mines around Sverdlovsk. Tens of thousands of civilian slaves work in the mine of Upper Silesia; Czechoslovakia still retains about 300,000 Sudeten Germans as slave labor." Slav workers by Germany during the war, the book concludes:

"If we substitute the words 'Slav' for 'German' and 'Millions' for 'Thousands', then we have an accurate description of the occurrences in Eastern Europe under Allied blessing. It is unbelievable that the Government "of the United States should be a party to a policy for which the Nazi Leaders have been put on trial and have been hanged under American suspices."

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new International Law, the persons responsible for all the misery described above would have to be on trial now. And how many persons will have been connected with the execution of these horrible decrees, who, like these defendants, base their defense on the fact that they had to obey their national laws? Unlike these defendants they do not even receive comfort from the excuse to have obeyed a military order before the enemy. They could have, at any time as civilians given up their work for the government, which asked them to do such things. Until the present time no case has become known, in which an Allied citizen would have declined co-responsibility for the above mentioned horrible events through a pretest, which would have dissolved his relations to the state as the letter's employee. did not act, while conscious of illegality of his acts and of moral injustice. In addition he acted in a personal emergency caused by orders and he did everything in his power to show that he was not satisfied with the protest raised against the proclamation of the Fuehrer Decree and the attempt towards the Reichsfuehrer in Nikolajev, but beyond that, to do at least everything in order to minimize and to limit the effects of Hitler's order. He could not be expected to do more, as I have shown in detail. selves an exceptional and compulsory situation for Germany and insofar refer to the legal institution of national emergency aid and national emergency. It is not certain whether or not the prerequisites were present objectively.

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As I shall explain in detail, the defendants at any rate had to assume them to be present subjectively, due to the special situation according to International Law, into which they, as Germans and soldiers, had been placed. basic question whether and to what degree the legal principle of falsely assumed national emergency aid and falsely assumed national emergency may influence the question of guilt in this case. Due to the fundamental importance of that question it is necessary to discuss it thoroughly. sitated the clarification of a few preliminary questions. its conclusion is Control Council Law No. 10. It deviates from all of the known criminal laws of all legal systems insofar as it does not contain a so-called "general section" and apparently is limited solely to the establishment of criminal facts. Every criminal code of all countries however contains -- either in the form of a specific order by law or in the form of customary law systematized by the courts or by the legal profession -- a large number of detailed rules, which determine the general prerequisites of culpability, which are substantially the same for all criminal acts. They include for example -- to name only a few -- the regulations concerning the connection between cause and effect, premeditation and negligence attempts, statute of limitations, responsibility for one's actions and finally also self-defense and state of emergency, including the falsely assumed self-defense and falsely assumed state of emergency.

Thus, Control Council Law No. 10 does not deal with all of these questions of the general section of a criminal code, and is limited to the definition of a few points.

that all the other fundamental principles of the "general section" of a criminal code which are in part mentioned above, should not be applicable to Control Council Law No. 10. The observance of these general criminal regulations is so completely covered in all nations and their application is so selfevident all over the world also by law or customary law, that on the one hand without them a law could not be imagined, and that on the other hand all legal thinking would be considerably impeded. Individual Military Courts have therefore already stated that these fundamental principles would have to be taken into consideration also in the application of Control Council Law No. 10. It remains only to answer the question as to which legal sources can be considered the source of the problems not regulated by Law No. 10. Law No. 10 is not a national specical law. If that were the case the general regulations of that state which has issued that special law would have to be applied. Law No. 10 however is an inter-national agreement concluded by the four signatory powers for the detailed execution of the Moscow declaration of 30 October 1945 and the London Declaration of 8 August 1945. participated in its creation, of which each one has its own national system of criminal law. four states cannot simply be used as legal foundation and the less so since at present no international tribunal is sitting whose judges could represent the peculiarities of the systems of criminal law of their respective countries.

Dr. Reinhard Maurach, professor of criminal law and Eastern European law, has examined this question with a view to the present case (legal opinion of Dr. R. Maurach in Document Book II Ohlendorf p. 4 and following) and subjected the possibilities which might be considered to a scientific scholarly examination. This question was dealt with also in my opening statement so that I may be allowed to refer thereto, in order to save time. tribunal called up to decide in the present case can appraise the defense of the defendant exhaustively only if making a so-called continental "cross-section" of the laws on legitimate self-defense and the state of emergency the basis of its judgment. tain doubts as to the application of this continental "cross-section", the Soviet criminal law in any case must be applied as supplementing Law No. 10 in preference to the lex fori, and that on the following considerations: 1947 concerning the abolition of capital punishment in the beginning of my final plea I have expounded how the American Tribunal is acting by way of trustee of the State which has the primary right to punish, namely the Soviet Union. Consequently, an attorneyship under public law has been established for which according to the prerequisites of international law the law of the State having the primary right to punish must be considered.

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should still hesitate before applying the continental "cross section". This would be appropriate especially for this reason that according to this Russian Law legitimate self-defense and the state of emergency as legal conceptions, including the assumed self-defense and the assumed state of emergency, are the subjects of general rules so that the Tribunal could only in this way on a far-reaching scale deal justly with the defense presented by the defendant. permit the application of the aforesaid legal conceptions from the laws on legitimate self-defense. With reference to the expert opinion of Professor Maurach I intend to do this as far as the legal prerequisites are concerned in the form of references to my opening statement and to the expert opinion of Professor Maurach. In the examination whether the se prerequisites can be actually claimed to exist, the problem of the war against the Soviet Union as war not following normal military precepts must be made the first object of consideration. national emergency as legal institutions are considered it appears at once obvious that normal actions of war as such do not in themselves justify the application of these legal conceptions. If that were the case at least one of the billigerent parties could always claim to act in legitimate self-defense, and both parties could plead to be in a state of emergency. Actions of war can therefore lead to the application of these legal conceptions only when they exceed the limit of normal war operations, i.e. if the war aims and war methods to be expected with certainty from the enemy are "extraordinary" to such extent that the traditional ideas and limits of international law are inapplicable.

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In this case it would not be possible to refuse the opponent of such a state even for the duration of the war to plead legitimate self-defense and state of emergency. The establishment of this fact must be the cornerstone of the whole consideration of the question whether in view of the nature of the Soviet Russian war methods and altogether the Soviet Russian interpretation of international law and laws of war the Eastern war conducted from 1941 on was a war as defined by existing international law. Therefore the question is: Can the Soviet Union in this respect be considered in a way that will permit her opponent to plead a legitimate self-defense practiced in a time of war which can be recognized by international law? ples and doctrines represented most clearly in the following thesis proposed by Stalin: "The aim of our foreign policy will always remain the same: 'Establishment of communist dictatorship in the whole world'." No particular comments are required to prove that this guiding principle stated by Stalin himself forms a radical contrast to the idea of international law. This idea acknowledges the right to live for every state belonging to the international community of nations. Contrary thereto the Soviet Union will eliminate all non-Soviet, i.e. capitalistic nations. Therefore it cannot on principle acknowledge the law of nations and does not acknowledge it either as I shall explain later. But since the Soviet Union -- even though it be only for a certain "transition period" - has been placed within the community of non-Soviet states, the result must be the necessity of the reluctant and revocable acknowledgement for the duration of this transitory period of certain conventional rules as applicable also to the Soviet Union.

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Professor Korovin, today considered the leading specialist of international law and the spokesman of the views of the Kremlin says hereto: "Since other state organizations are still in existance in addition to the Soviet Russua the relations of Soviet Russia to these states must unevitably be based on this or that legal foundation of the 'transitory period'. Only the nature of this foundation is questionable." The nature, however, is disclosed by Soviet attitudes and publications proving that the Soviets use international law and its rules as weapons in the service of the class war against the non-communist world. In his "International Law of the Transitory Period" and in other essays some of which have appeared also later than 1945, Professor Korovin has expressed opinions, to this effect. From these publications the following overall picture can be deduced as regards the laws of war: sovereignty since it is itself -- even after 1945 -- in an isolated position and for reasons of self-preservation cannot impose any chains of convention on its own sovereignty. This reasoning is the basis of its extensive use of the veto power in the UN and also of the aspect under which the entire law of treaties is viewed. On the strength of this attitude the Soviet Union accents obligations to concluded treaties only so far as they do not "delay" the world revolution. This applies in particular to the case of war, in which the Soviet Union believes to be right in simply stripping off such obligations because it expects nothing else from the bourgeois states. On this professor Korovin says: "On one hand we know better than anybody else that the loyalty towards accepted obligations is not "being observed either generally or towards Socialistic states by virtue of the signature of a bourgeois government or by the motives deduced from normal scholasticism.

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.. however... the relative value (of such war conventions) must be acknowledged also for Soviet Russia, but with the 'unavoidable improvement with reference to the social revolution in the form of the clausula rebus sic stantibus'." In the opinion of the Soviet Union every war is fighting a defensive war because it is fought only for the sake of "class self-defense". The same basic attitude is found again in the laws on prisoners of war. It is true that official Russian authorities have not disclosed any opinion on the question as to whether the USSR is bound by the rules established by the laws on prisoners of war and Korovin, too, has left that question open. However, it is emphasized that even in the treatment of prisoners a considerable discrimination must be practiced according to "whether the prisoners are politicians or class enemies (officers and other responsible leaders); in the interest of the propaganda for the world revolution it would be attempted to influence the former "in a friendly way" whereas the latter category could hardly be "re-educated" (Korovin p. 124); but then the Soviet doctrine is prepared to accept the discriminatory treatment of the members of its own army as unavoidable retaliation.

The political events of recent years (repatriation of the Soviet prisoners of war from Finland 1940) have made it clear that the USSR considered these prisoners who had breathed the "air" of a bourgeois state to be actually lost to the political community and provided for their elimination. The same treatment is also applied to civilian prisoners. According to Soviet views the arrest and deportation from occupied territories will always be permissible if such parts of the population constitute groups which are a danger to the Red Army.

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In such cases a general display a hostile attitude towards the USSR. In all such cases it is imperative according to Soviet ideology to render them harmless. The system of hostages, it is true, is repudiated "in principle" (Korovin p. 129), but it is here stressed that the particular circumstances under which the Red Army must fight justify also the arrest of innocent persons according to the hostage principle "even though it is in pursuance not of legal ethics but of actual expediency". It is also mentioned that certain groups will be preferably considered in the selection of hostages (such as mayors, notories, public teachers, ecclesiastics) who as "spiritual supporters" of the enemy are particularly tied up with the ruling (capitalist) class of the enemy state. bound by conventions under international law as little does it regard the principles of the administration of occupied enemy territories as binding with respect to itself. The official opinion of the Soviet Union does not leave any doubt as to this official opinion. Korovin writes: ("In this connection . . . ) the question arises whether the fact can be considered unlawful that the Soviet Power does not in the least feel itself obligated to protect the inviolability of exploitation and the impertubability of the capitalistic order within the borders of the occupied territory, but, on the contrary, fighting for its socialist existence it lends any possible assistance (Finland, Poland, Esthonia, Latvia) to the efforts of the local working masses towards organizing the society on a socialist basis.

The revolutionary committees, the support of the rise of national Soviet republics, and other working principles of the so-called "Sovietizing" are the consequences thereof." recess.

THE PRESIDENT: Very well. The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. ASCHENAUER: The principles which I have here quoted must be considered the quintessence of the Soviet theory of international law. They have been published by the only spokesman of this doctrine in the USSR and, finally, were approved of by the Soviet federal censorship. It must be beyond doubt that these proclamations coincide with the official opinions of the Kremlin. The conjectures inferred from these doctrines of the Soviet Union as to the conduct to be expected in a possible war were on a considerable scale confirmed by the experiences of the Finnish winter war (Blue-White Book of the Finnish Government I). Also in taking over the Baltic States the Soviet Union displayed towards the civilian population of the occupied countries the aforesaid principles contrary to international law as it is generally known and besides was explained in detail e.g. by the witness Dr. Maw in the Sandberger case. Indeed even in 1913 the Soviet Union officially notified the German Reich Government through its diplomatic representatives at that time that the Russian Government denounced all treaties formerly concluded by the Russian State among which also the Hague Convention on the Laws and Customs of Land Warfare and the Geneva Convention. That means that already when the war with Germany started the Soviet basic thesis had received corroboration that the USSR would acknowledge the rules of international law in a certain sense only for the so-called "transitory period" during which it actually decisive clash with another power it would on principle reserve for itself the right to free action. In the eyes of the Soviet Union, however, international law is just not the modus vivendi between states for mutual restriction of their respective rights to existence but a diplomatic weapon to be used for realization of its world-revolutionary aims. Therefore the Soviet Union was also prepared to acknowledge certain theses of international law only if they did not run contrary to its revolutionary plans. The entire development of the foreign policy of the Soviet Union discloses the tactics of openly sacrificing the rules of international law if this will be in accordance with the alleged "dialectic evolution" i.e. the interests of the "coming unavoidable" world revolution.

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In all such cases international law must he superseded by the requirements of class warfare. During the time of existence of the Soviet Union - as already mentioned - this was proved unmistakably in particular by the numerous Soviet interventions. These interventions in themselves made it clear that the war going on from 1941 had to be fought by Germany not only against the Stte of the USSR but against world Bolshevism as such, in other words against the entire political Communist movement threatening the non-Soviet world. The part played by the Comintern - or Cominform as it is called at present - is so well-known throughout the world and in consideration of the political development of recent years so undisputed also by Americans that I may be allowed to abstain from dealing with this question in detail. Therefore many psychological conditions which are not relevant as far as other wars are concerned namely the imperative idea based on factual knowledge that under the circumstances collective security measures might not be avoidable even though they were reprehensible from an ethical point of view, became rightly a subject of discussion among the defendants. should like to invite the attention also to the selection of war conventions to which the Soviet Union has acceded. These are most significantly the Geneva Protocol of 17 June 1925 concerning prohibition of chemical and bacteriological warfare (with a few qualifications) and the London Protocol of 6 November 1936 concerning the rules of submarines warfare. hesitation because its incomplete preparations in the field of chemical and submarine warfare made restrictions expedient whereas the far more essential treaties, the Hague Convention, and the Geneva Convention on prisoners of war, threatened to restrict the totality of the war which by the Soviet Union would be carried on according to principles of civil war.

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of civil war.

Therefore such rules must be eliminated for a war against "capitalistic states". This applied in particular to the incitement of partisan warfare for which valuable strategical experience had already been gained through the civil war from 1917 to 1920. All this is no theoretical discussion, on the contrary this rather led perforce to the expected behavior of the Soviet Union in a war with a "capitalistic power", which then also materialized in the war with Germany. In accordance with the views it had repeatedly announced, the USSR in this war in which it did not consider itself bound by the rules of the Hague Conventions on the Laws and Customs of Landwarfare, disregarded also the unwritten basic rules of generally acknowledge customs of war although to the observation of which it would also have been bound. The leaders of the German State who, because of the National Socialist ideology and the geographic position of the Reich had concerned themselves with the Communist world of ideas more than the rest of Europe anticipated this behavior with certainty. The defendants were of the same opinion by virtue of their political and professional experience. All these circumstances must be taken into account when examining the charge of the Prosecution that the defendants are responsible of the elamination of "politically undesirable elements for ideologica reasons". I have already eleborately expounded my view that the Defendant Ohlendorf could not and was not entitled either to undertake an examination of the question whether these groups of persons were rightly designated to be included in the extermination action. These persons were by the official authorities of the German State described as an actual and potential danger to military operations and the planned permanent occupation of Soviet territory. For the danger rose from their ideology which they were bound to annihilate all opponents in order to realize the Bolshevist world revolution. From this it appears that obviously it was a question of forestalling or defeating a typically Soviet method. of carrying on war in Soviet partisan warfare. This partisan war is contrary to all principles of martial law, as already mentioned.

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A more detailed examination of its specific strategical nature in this case will confirm this allegation. Accordingly, under no circumstances can partisan warfare still be considered a permissible kind of warfare, not even by an only analogous application of the rules of war. The USSR here acted according to the principles adopted in 1918 and taken over from the atmosphere of civil war in which they had proved their effiency in an in glorious way. to know translated into practice is briefly recapitulated as follows: Military operations are subject to no obligations established by international law. Any means which injures the enemy is permissible. An object of particular importance is the disorganization of the troops by all means and through utilization of the entire population. The organization of partisan bands therefore is determined solely by the purpose to be served at any time. In the first place, bands existed carrying weapons openly and for which the most part were composed of elements wanting to evade the discipline of the regular army, e.g. released convicts and forced larorers who were frequently under the command of notorious prostitutes. In this category also the undisguised robber gangs came socalled "Machno". Large groups of the population were forcibly bound to perform scounting service for these partisan bands, to feed and to hide the partisans, and finally to serve as leaders and agents. Behind the front-lines active soldiers were parachuted from planes who were supposed to terrorize the population in the territories occupied by the Germans, to force them to intelligence and scouting service, and to instigate assaults and murers of individual German soldiers. It was their duty to force the population to carry out the Stalin order dated 3 July 1941 in which it says: "The war against Fascist Germany cannot be considered an ordinary war. It is not only a war between two armies, it is at the same time the great war of the entire Soviet people against the Fascist German troops.....

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5 Feb 1948_M_MSD_9_3_Hoxsie (Hildesheimer) In the occupied territories intolerable conditions must be created for the enemy and his accomplices, their every step must be doggedly followed, they must be destroyed and their acts must be thwarted. "And in this way the so-called "Vernichtungs-Battallione" (Destruction Batallions) came into being, of which the tribuanl has heard again and again from the testimonies of the defendants, and the activities of which made up a great part of the defensive assignments of the defendants. forcing of the entire population of the hinterland into the service of the resistance movement - as was actually experienced by the defendants and described by them on the

witness stand. Not only men, but also women and children were drawn into the net of the organization under coercion and forced to carry on acts of scouting and intelligence work. For this reason, total war was conducted by the Soviet Union from the very beginning through the compulsory, in disriminate use of other parts of the population. This corresponds to the picture shown by the excerpts from the "Russian Encyclopedia" in (Ohlendorf Document II a, No. 42.) There it speaks about the fact that "the Partisan is not only a fighter, but also a political agitator, an organizer of the masses" (Page 4 of Ohlendorf Document No. 42.) It is his taks to "create a hatred of national indignation" and not only to call on the adult mases of the population but also women, old men and boys." (Page 6.) The Partisan war must "take on savage and manifeld forms." It must "join the revolutionary struggle of the exploited classes against their exploiters as well the struggle of the people against interventionist troops". In these case "the acts of armed units from the local population took on a particularly audacious and bitter character." was possible in the history of European warfare. Not only does it transgress the modified laws of international law, consciously unrecognized by the Soviet Union, but to the same extent transgresses all the unwritten customs of the conduct of war of civilized nations. The defendants have offered numerous examples in this connection.

The organized and extensive compulsory utilization of women and children, the poisoning of wells, the spreading of typhoid fever bacillae, the destruction of the harvest and the burning of entire cities are symptoms of a type of fighting which could in no way be countered with the weapons of the former European conduct of war. In this connection we see the peculiarities of the extensive virgin land, the immensity and expanse of Russian territory. Under these conditions security measures had to be taken which are unknown in the war conditions in the West and which do not permit of generalization. In many cases the liquidation of the male population of Partisan villages was found necessary, and often it was imperative to eliminate the instigators and "wire-pullers" of a cunning and cowardly conducted "war"., qualities recognized instinctively by the German soldier. The conclusion to recognize or at least suspect as such instigators certain classes or niveaus of the population is particularly evident under the conditions of such a total war. The Soviet doctrine as well holds no divergent point of view when it experminates the bourgeoisie and those opposed to its ideology, and does this in its own country and those nations under its domination without benefit of trial. occupied himself with the foundamentals of political events, and who not only was familiar with the theoritical writings of Communism but experienced the direct perilous threat to Germany of Communism and followed its practice in Finland and the Baltic countries, never entertained doubts for one minute that the Bolschewist leadership would not observe the rules and customs of international law and laws of war in the inpending war and possible defeat of German. Therefore it was self-evident to him that Germany as well could not observe these rules towards the Soviet Union, for this would have meant an unjustifiable disadvantage against thes adversary who was intent on his destruction.

of the German text, the prosecution attempts to tie up the attitude of Ohlendorf concerning the killing of civilians in the Soviet Union without benefit of trial and the affirmation of Ohlendorf daring the crossexamination of the prosecution that the killing of civilians in the occupied territories was regarded as pure and simple murder . However, such an interpretation, following the clear statements of

Ohlendorf concerning the conduct of war according to international law of the Soviets, which he regarded as a state of emergency so far as Germany was concerned, is neither feasible, nor can such an interpretation be inferred from the connection of the passage from the cross-examination as quoted by the prosecution. For this question from Ohlendorf's point of view is not tied up with the questions concerning the killing of civilians in Russia. After all, "he did not admit anything", but rather he answered, without hesitation, with "of course", or "yes". It was clear to him that the prosecutor was questioning him for the purpose of collecting evidence against him with respect to his conduct in the Soviet Union. However, according to his own firm conviction that the German measures in Russia, including the ordered killing of civilians, should be held to be outside of every consideration of international law and beyond every recognition of the otherwise customary rules of war since the party of the second part, who would represent the prequisite for its consideration, is looking Ohlendorf cannot consider these questions of the prosecutor as being pertinent to the Soviet Union. He was able to hold this opinion for all the more reason that the two questions which proceed that quoted by the prosecution refer concretely to International Law and Conventions of War, which the Soviet Union never considered binding upon it.

The three questions and answers were as follows:

"Q: Have you ever heard of the Geneva Convention?

"A: Of course.

Q Have you ever heard of the Hague Convention? in the organization which was subject to Military Law, were you not aware that the killing of civilians in the occupied territories without benefit of trial was regarded as pure murder and nothing else according to International law as well as according to the Law and Customs of War?

A Yes. I have again brought those points before the High Tribunal in order thereby to illustrate what prerequisites bespeak the assumption of a mistaken belief of a state of emergency and self-defense on the mistaken belief of being attacked with respect to the defendant OHLENDORF and his co-defendants. This is a question of subjective prerequisites which can be induced at all only by objective conditions. The complete lack of any inhibitions with which the USSR conducted "total" war from the very beginning, and in particular the Partisan war which was fought with complete disregard of the laws of war, and their collective measures which were carried, out by the Soviet government in their intervention before 1940, also induced Germany to regard certain groups of the Russian population as a potential danger spot, and which had to be eliminated for the safety of the fighting troops. justified on the basis of the conditions described above need not be further discussed. However, one point must be examined, namely to what extent such measures were subjectively conceivable to the defendants, In this question the point must be discussed as to what the relationship of Bolschevism and Jewry was according to the ideology of National Socialism and also according to the personal conception of the defendants. I may forego a detailed description of the development of the NationalSocialist ideology in this respect. but its psychological effects upon the defendants must be considered.

defendants before the outbreak of war had conjured up a picture of the collaboration of Russian Jewry and Bolschevism, which was then confirmed in the course of their assignment in Russia. last decades by the historical-sociological research of Russia that the percentage of the Jewish population in political, cultural, and scientific key positions within the Soviet Union is unusually high. This is not based on German research but on data supplied by Russians and Jews. It is shown that the number of Jews in official positions amounts on the average to about 20%. In Party offices, this percentage was considerably larger, e.g. the Ministry for Foreign Trade with its offices abroad was a Jewish domain to a particularly great degree. The same applies for the Ministries of the Interior, for State Security, and for the great number of economic Ministries. The percentage of Jews within the army in the so-called political administration is particularly large. This percentage in higher top positions reaches 65%. These and similar facts made up a part of the daily reading matter in the German press many years before the war and thereby also formed a part of the convictions of the defendants. majority of offices, in particular the higher offices which enjoyed no great popularity among the great masses of people, such as the economic officials, and above all the Political Police (N.K.W.D.) were actually occupied to a high decree by Jews. In this connection it must be remarked that for these reasons, though it is true, conditions varied according to regions, an mistakable anti-Semitism became evidente in all parts of Russia. And finally it was learned quite soon that the Jews played a particularly important part in the resistance movement and especially in the underground organizations of the Partisan movement. This assertion is substantiated by such scenes as Jews going to their death with cries of STALIN on their lips and singing the Internationale.

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Under these conditions one must see in the Jew the leader of the resistance and sabotage. This situation gave rise to the psychological prerequisites already mentioned for the fact that the liquidation order was accepted as a necessity conditioned by the war, about which the individual could think ashe pleased, which however in the framework of general events had to be recognized and carried out.

In its opening statement (page 5) the prosecution devoted only one section to the line of thought, which, according to its interpretation, forms the ideological basis of the case in chief, namely the "Nazi doctrine of master race and inferior races." At the opening it stated that this "Nazi ideology" was devoid of any humanitarianism and represented ruthless materialism. The defendants fell complete victims to this doctrine. They despised members of other races and this extremely criminal way of thinking led them to commit their deeds. The High Tribunal will recallthat on the witness stand OHLENDORF stated quite rightly that there existed no uniform interpretation of the racial question in the Third Reich at all, that rather these problems were viewed by the most diverse leading functionaries in the most diverse way. National Socialist literature as well was full of contradictions. I remember the books of Prof. GUENTHER and Prof. KLAUS. For this very reason it is misleading to wish to explain the obediency of the defendants to the order under discussion by the falsely stated "Nazi doctrine of master race and inferior races." As far as the particular case of the defendant OHLENDORF is concerned, I believe that the High Tribunal itself has gained an entirely different personal impression of OHLENDORF than that which the Prosecution has attempted to convey, OHLENDORF's entire life and pursuits were directed to ward the correcting of the aberrations and abuses of the conceptions of individual influential National Socialists and to abolish them in their effects. I wish to refer to my statements just made with respect to membership in criminal Court,2, Case 9 organizations.

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The very humanitarian thinking of OHLENDORF in opposition to the cynical, autocratic and ruthless nature of LEY, BORMANN, GOEBBELS, KOCH, HIMMLER and HEYDRICH was the motivating factor that induced OHLENDORF to stand in constant opposition to these men. His conception of the state and his opinions concerning folk and race were diametrically opposed to these which individual authoritative leaders of the Third Reich proclaimed and in fact attempted to translate into action.

In this respect the High Tribunal stated quite clearly (see page 5038 of the German transcript):

".....whatever can be brought forth to show that his character excludes criminal intent is certainly of material importance."

Therefore, I may summarize: OHLENDORF strove for a constitutional state in which power was bound by constitution and law. OHLENDORF's conceptions concerning people and race were in sharp contrast to these which in this connection were actually translated into action. OHLENDORF sharply rejected the measures taken against the Jews during the years before the assumption of power and was not in agreement with the radical racial conceptions of the NSDAP. Remaining consistently loyal to his opinions, OHLENDORF went so far as to intervene personally through a minority statute for the Jews living in Germany. Beyond that he represented the principle of "Equality of all citizens before the law" and "Independence of the Judge." avail, to bring about an independent legal procedure in the pronouncing of protective custody within the framework of the Security Police, an attempt motivated by these his thoughts and his concern for the preservation of legal security in national life.

In the field of culture and education (OHLENDORF was constantly at odds with the authoritative offices in the Party and State, and stood up for freedom of the sciences and for a natural, healty education of German youth, just as he stood up in the field of economics for the independence of industry.

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friends and even by his ideological adversaries is actually in contradiction to that man which the prosecution wishes to make of him. To characterize this man simply as a thousandfold murderer, whom one deems it necessary to deprive of any feeling of conscience or morals appears as a crass contradiction to the description of a disinterested observer. For this reason Frau Dr. KLEIN acknowledges in her affidavit already mentioned: "Following my confinement in prison I never saw Herr OHLENDORF again and heard nothing from him for many years. Then when I saw in the press the hints concerning his activitiesin the East, I was deeply shaken. I must admit that it is difficult for me in this connection to write about Herr (HLENDORF. Nevertheless, I consider it my duty to describe truthfully his conduct and nature based on my acquaintanceship with him. It was never clear to me from the press, neither can I believe that a man who conducted himself so courageously and tolerantly could have committed such unworthy acts. Whatever may have induced him not to refuse to carry out orders of a questionable nature, whatever that might have been, his fate in my opinion is tragic." a result of the purest desires, and because of his constant struggle against power and despotism, has come to this stage of finding himself in the prisoner's dock. obtaining for himself a limited basis as manager of the Reich Group Trade for the execution of oppositional thinking against the system of a LEY, BORMANN, HIMMLER and HEYDRICH, must be done away with for that reason and falls victim to the diabolical rule of National Socialist rulers, what indeed is the reason for OHLENDORF's transfer to his assignment in the East? The somewhat more independent attitude which OHLENDORF had achieved through tenacious efforts presents an untenable situation which HEYDRICH and others cannot permit.

Therefore, OHLENDORF must leave Berlin. The reason for his assignment for the anthroposophies made it possible to punish him by transferring him and in this assignment either to crush him morally through his conduct and thus deprive him of any power to resist or in the event of open insubordination stand him before the firing-squad. result of the danger which arose in the East and the familure of all the to-level authorities and of the Whermacht to act against the National Socialist hierrachy, the only constructive opponent of the system of power which had arisen only had the opportunity during his period of assignment to restrict and limit the extent of the Fuehrer order through supplementary orders and to obviate atrocities and, insofar as it was possible, to act in a positive manner. OHLENDORF completely exhausted this possibility. East, who opposed KOCH's and THOMAS' policy of power in the Ukraine, be considered a criminal because he acted in this way during his activity as Chief of the Einsatzgruppen? your pronouncement of judgment.

THE PRESIDENT: You may proceed, Dr. Gawlik.

THE PRESIDENT: You may proceed, Dr. Gawlik.

DR. GAWLIK: Gawlik for Naumann.

Your Honors, gentlemen of the Tribunal. The defendant Naumann is charged with responsibility for the killing of persons within the sphere of Einsatzgruppe B by units of Einsatzgruppe B in the occupied Russian territories. The Prosecution deduces Neumann's responsibility for these killings from the fact that Naumann was Chief of this Einsatzgruppe. justify the charge raised against Naumann. could only be held responsible for acts falling within the period of his actual leadership of the Einsatzgruppe. Naumann was not Chief of Einsatzgruppe B at the start of the Russian campaign. Rather did he take charge of Einsatzgruppe B only several months after the start of the Russian campaign. Also for these reasons he cannot, therefore, be held responsible for all executions which, according to the indictment, are supposed to have been committed by members of the Einsatzgruppe B. B on 1 Nov. 1941 and from this deduced his responsibility for executions which from that time on were carried out by units of Einsatzgruppe B. To prove this the Prosecution has submitted the following operational situation reports:

1.) of 14 Nov. 1941

2.) of 19 Dec. 1941

3.) of 22 Dec. 1941

4.) of 21 April 1942 gruppe B. However, it is incorrect to place these executions, except for those mentioned in the last document, within the period during which Naumann was Chief of Einsatzgruppe B.

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this results quite obviously from the document itself. The exact dates of the executions are given in this report. All executions have taken place between 9 and 23 of October 1941. It therefore is impossible to connect Naumann in any way with these executions, for according to the Prosecution's own claim they have taken place at a time when Naumann did not yet lead the Einsatzgruppe. its trial brief. of 19 and 22 December 1941 within the sphere of Einsatzgruppe B do not fall within the period in which Naumann was Chief of the Einsatzgruppe. Naumann cannot be held responsible for these executions either.

The Operational Situation Report of 19 Dec. 1941 does not give any date at all for the executions mentioned there. The Operational Situation Report of 22 Dec. 1941 mentions the 18, and 21 November 1941 as only indication for the occurrences in Russia reported there. From this it follows necessarily that executions mentioned in the Operational Situation Report of 19 Dec. 1941 must have taken place prior to 18 November 1941. As these documents show, especially the report of 22 Dec. 1941, a period of more than one month on the average lies between the occurrences reported and their appearing in the Operational Situation Report, which was compiled at the Reich Security Main Office in Berlin. This becomes comprehensible by realizing the road which the reports had to travel before appearing in the Operational Situation Reports. As the evidence has shown (Record 832 and 829 of the German, pages 825 and 823 of the English) the road usually was such that at first the partial Commando concerned made up a report on the individual occurrences, which at the next best opportunity was transmitted to the competent Commando Leader, who compiled the reports of the partial Commandos for transmission to the Einsatzgruppe. On the basis of these reports the Einsatzgruppe prepared a compiled report for the whole group in order to transmit same to the Reichs Security Main Office, where the Operational Situation Reports, presented here now as documents ,were finally drafted on the basis of these compiled reports.

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Considering the vast distances in the Russian area and the poor communications there, it becomes entirely understandable that much time elapsed before the reported occurrences appeared in the Operational Situation Reports issued by the Reichs Security Main Office. No transmission by radio was possible because of the size of these reports which contained among other matters long discourses on economic, cultural and other conditions. the reports of 19 and 22 December 1941 must have taken place prior to 21 of November. One could charge Naumann with responsibility for these executions only, if the allegation of the Prosecution would be correct that Naumann took over the Command of Einsatzgruppe B already on 1 November 1941. However, this allegation of the Prosecution is incorrect. The Prosecution, to be sure, bases this allegation on a personnel questionnaire filled out by Naumann in the year 1943, submitted in evidence as Doc. No. 2970, Exh. 113, Doc. Book III B, page 4 English and German. In this questionnaire Naumann filled in the date of his commissioning and not the date when he actually took over the Einsatzgruppe B. The time of commissioning did net, however, coincide with the time Naumann actually took over the leadership of Einsatzgruppe B. In regard to Naumann's criminal responsibility, however, only the time is relevant at which he actually took command of Einsatzgruppe B. questionnaire, filled in merely the date of the commissioning order, since at the time of handing in the questionnaire in 1943 it was irrelevant when the actual transfer of command took place. The time of the commissioning order was fixed and known to the personnel department of the Reichs Security Main Office.

from the date of actually assuming of command. Often there is a longer interval between both dates. So the appointment of Naumann as Inspector of the Security Police and the SD Nuernberg is dated 19 May 1944 which becomes evident from Document No. 2970, Exh. 113 Book III 3, page 16 German, Record P. 2079 Engl.). However, Naumann did not start service before 9 June 1944 (Record p. 860 German, 850 English). In addition the Prosecution bases its claim on the Operational Situation Report of 12 Nov. 1941, Doc. Book II C, page 23 German, page 20 English, Doc. No. 2830, Exh. 72), because there Naumann is listed in the register of Military Posts and communications as Chief of Einsatzgruppe B. To this it must be said at first that this document does not contain any report by Einsatzgruppe B at all. that the persons listed therein could be responsible for whatever occurrences are mentioned in the report; for these registers were not compiled on the basis of reports received from Russia, but independently by Office I of the Reichs Security Main Office in Berlin on the basis of personnel records there on file. This becomes evident on page 815 German, 808 English record. These personnel files contained only the date of the commissioning order, but no information concerning the actual begin of service on the basis of the commission. Thus it is to be explained why Naumann in the Military Posts reports compiled by the RSHA appeared as Chief of Einsatzgruppe B beginning 1 November 1941 automatically on the basis of the commissioning order of the same date, Which Office I of the RSHA issued and therefore knew, although the time of the actual start of service was relevant, which Office I did not know. Post reports did not correspond to the actual personnel situation with the Einsatzgruppen.

So in the Military Post register of the Operational Situation Report No. 126 of 29 Oct. 1941 (Doc. Book I, page 31, Doc. No. 4134, Exh. 7) the co-defendant Rasch is referred to as leader of Einsatzgruppe B, -

THE PRESIDENT: Now, I would suggest that when you refer to a document it is enough to indicate what report it is with the number, without reading the page number, Document Book, Exhibit Number, and so on, because that appears in your written summation and it will be enough merely to refer to the report by number. Don't you think that will be all right?

DR. GAWLIK: I would like you to rule, Your Honor, that it also appears in the record, however, because if I do not read it, it does not appear in the record, because the German court reporters have no copy of my plea. I didn't understand why that is because the English have been obtained, but there have been no German copies made. The German copies only will have to be copied, and the English on es have to be translated.

THE PRESIDENT: I cannot believe that the German reporters will not be furnished with the German text of your summation. Is the Secretary General informed about this? Certainly the German reporters should have a copy of the German speech.

SECRETARY GENERAL: I have not received any German copies at all,

DR. GAWLIK: I quite agree with Your Honor, if it can be secured that German copies are being made -- I am not sure they are made at all and whether or not only English copies are being made and if the German court reporters receive the English copies so that they can get them themselves, then it is no longer necessary, only for that reason I read the numbers.

THE PRESIDENT: You may proceed as you were reading before, and at recess time the Secretary General will obtain the necess ary information and transmit it to the Tribunal.

DR. GAWLIK -- however Rasch, as the evidence has disclosed, never did lead this Einsatzgruppe, for Naumann took over command of this Einsatzgruppe directly from N ebe, who at the start of the Russian campaign had been Chief of the Einsatzgruppe.

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This can be seen still clearer from the Operational Situation Report No. 129 of 5 November 1941. Also in the Military Post register of this report Rasch still is listed as Chief of Einsatzgruppe B. If the opinion of the Prosecution were correct, then logically, it should have made Rasch also responsible for executions within the sphere of Einsatzgruppe B. But it did not do that, obviously in the conviction that the Military Post register was incorrect to that extent. To the same extent the Prosecution itself has admitted the unreliability of the Military Post registers contained in the operational situation reports.

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But the presentation of evidence has shown other errors of this kind, which do not directly affect the defendant Naumann, to be sure, but which also show that the records of the base camp can't be given any value as evidence. In this way, Strauch is mentioned as Commander of the Sipo and the SD as early as February 1942, in the report of the RSHA dated 6 September 1943, although the evidence has shown that he didn't begin to serve in that capacity until 22 March, 1942. As proof of further errors of this sort, I refer to the statements of Steimle record, Braune, Haensch, Ott, and Schulz as well as Naumann. in command of Einsatzgruppe B since as early as 1 November 1941, cannot be considered as conclusive, on account of the documents presented for that purpose. the further taking of evidence, because this has shown beyond, doubt that Naumann did not assume command of Einsatzgruppe B until the end of November, probably not until 30, November 1941. given a detailed description of his appointment to Chief of the Einsatzgruppe. In this he showed convincingly that Streckenbach informed him by telephone in Berlin on 1 November 1941 about his appointment as Commander of an Einsatzgruppe. At the same time he had been told, however, that it had not been decided yet whether he would take over the command of Einsatzgruppe B. or C. Einsatzgruppe B. he then left Berlin on the 20th or 21st of November, 1941. After his arrival in Smolensk his predecessor Nebe continued to command the Einsatzgruppe for about one week and only then turned it over to him, so that he only assumed his duties as commander of the Einsatzgruppe on about the 30th of November 1941. During his examination on the witness stand, in direct as well as in cross examination, Naumann designated 30

November 1941 as about the day he began his duties and was also able to give valid reasons to support this date.

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These are the same facts that Naumann has already declared to the Prosecution in his affidavit of 27 June 1947. These declarations are especially important because Naumann made them at a time when he could not have known the contents of the Operational Situation Reports with which he is charged, and therefore also could not know what importance would be attached to this date in this trial. evidence which was presented later. The Operational Situation Report of 5 November 1941 which has already been mentioned in a different connection, speaks for the correctness of these statements. the beginning of this document it can be seen that Rasch is mentioned as the Commander of Einsatzgruppe B, who, as has already been shown, has never been in Smolensk. From this must be concluded that it could not yet have been dtermined on 5 November 1941 that Naumann was to take over Einsatzgruppe B, for in that case Rasch would not have been mentioned as the leader of Einsatzgruppe B.

However, Naumann's statements are confirmed by Klingelhoefer. Klingelhoefer was already a member of Einsatzgruppe B when Naumann took over command. Klingelhoefer was able to say definitely on the witness stand that he saw Naumann in Smolensk for the first time between the 20th and 25th of November 1941 and that Nebe was still in Smolensk at that time. Klingelhoefer has exact information about these dates because he went on leave shortly afterwards, on 2 December 1941 to be exact; and remembers the beginning and the end of his leave very well. The end of the leave was the first Christmas holiday. Klingelhoefer can remember the beginning and end of his leave with certainty.

Steimle has also confirmed Naumann's statements; he also was a member of Einsatzgruppe B before Naumann assumed command. As Steimle said on the witness stand, he met Naumann for the first time on 25 November or 2 or 3 days earlier. In the case of Steimle's statement, however, it must be taken into consideration that he figured this date out long after the event and did not have such exact clues to go on as Klingelhoefer had, so that, as he admits himself, the meeting with Naumann referred to before could also have been a few days later.

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Steimle has stated himself that he is unable to give an exact date. Exhibit 176, in this document Naumann told the defendant Klingelhoefer, before the beginning of this trial, while in the local prison, not to let himself be bluffed during the interrogations and to be careful. Furthermore, Naumann gave in this document the content of the interrogations he had had up to that time. This document also contains the information that Naumann only took over his job at the end of November. attempted to influence Klingelhoefer to state, contrary to the truth, that he (Naumann) only assumed command of Einsatzgruppe B at the end of November 1941.

This conclusion is incorrect for the following reasons:

1) As already brought out, the document was made some time before the beginning of this trial. At this time Naumann knew nothing as yet, about the documents which the Prosecution has presented in this trial. In particular he did not yet know of the Operational Situation Reports of 19 and 22 December

1941. For this reason he could not yet know at the time that the date he assumed command could be decisive.

2. The Prosecution has not brought proof of any kind that the far reaching statements in this document are incorrect in any particular. This, however, would be the presupposition for the assumption that the information concerning when he took over his duties was incorrect. The contents of this document correspond, moreover, completely with the evidence that has been heard. This shows that Naumann could not have attempted, with this document, to induce Klingelhoefer to make a false statement.

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Under these conditions it must be regarded as proved that Naumann did not assume command of Einsatzgruppe B until the end of November 1941. Under no circumstances has it been proved that he was the responsible Commander of Einsatzgruppe B as early as the 1st of November 1941. But the evidence is particularly.not sufficient to show, beyond doubt, that Naumann had already assumed his duties in Smolensk on 1 November. According to all the recognized principles of the trial procedures of all the recognized principles of the trial procedures of all civilized nations, which are also in effect here, according to the decisions of these Military Tribunals, the declarations of Naumann concerning the date he assumed his duties in Russia cannot be considered as refuted, in view of these doubts. which were reported in the documents presented by the Prosecution as happening before the end Of November 1941.

Therefore, the executions reported in documents NO2824, exh. 62, book II B, pg. 30, and NO 2833, exh. 114, cannot be charged to Naumann. 1942, which was presented by the Proseuction in Doc. bk II, B. pg. 52 German pg. 60 English and which contains the references to the executions from 6 to 30 March, falls within the time that Naumann was Commander of the Einsatzgruppe.

To be sure, this document has been admitted as evidence. This admission as evidence, however, does not relieve the Court of the obligation of examining the value of this Operational Situation Report as evidence. It is true that according to Ordinance No. 7 the Military Tribunals are not bound to any rules governing the taking of evidence. By this, however, it was obviously not meant that the Military Tribunal can set itself above well established rules of taking evidence, well established rules which alone are a guaranty for an investigation of the truth, and with it for a just decision.

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This was also expressed by Military Tribunal IV in the recent verdict against Flick et al on page 7 of this verdict.

1. This single document, which comes into consideration as evidence against Naumann insofar as executions within the territory of Einsatzgruppe B are mentioned therein, contains the following violations of the basic rules for the taking of evidence, which must be considered as well established and therefore must be observed if the truth is to be arrived at. observations of the author of the document. The author of this document belonged neither to the staff of Einsatzgruppe B nor to a Sonderkommando or Einsatzkommando. He was not even in Russia, but compiled the document in the document in Berlin, for, as I have already mentioned the Operational Situation Reports were prepared, in the form in which they are presented here, by members of Office IV of the RSHA in Berlin. It is not

known from what records this document has been compiled. Furthermore, the identity of the author is not known, so that there is no knowledge about whether it was a reliable person who had compiled the operational Situation Reports with the requisite care. were made by persons who were reporting on things they had themselves observed. According to the evidence taken, this is even improbable. Therefore it is a matter of hearsay evidence, which is inadmissible according to the rules for taking evidence in all civilized countries, becaue hearsay evidence contains so many false sources that a just decision cannot be founded on it. Hearsay evidence itself is inadmissable according to all the recognized rules for the taking of evidence. But as we must assume, in this document it is a matter of hearsay evidence of the third, fourth or even a higher degree. Furthermore, the document is not signed.

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according to the recognized rules of court procedure, and this by a witness who will be faced by the defendant and who then also states specirically under oath, where the document was found. This condition has also not been fulfilled. It is therefore more than doubtful whether the facts reported in the Operational Situation Reports have actually occurred. and a claim to a procedure in which all rules of the law of procedure are adhered to. It is in no way intended to disclaim the assertion that executions were carried out by the Einsatz and Sonderkommandos subordinate to the Einsatzgruppe while Naumann was Chief of Einsatzgruppe B. The defendant Naumann has not discalaimed this assertion during his interrogation as a witness. But on account of the explained violations against recognized rules of procedure the offered document does not give proof of the fact that executions were carried out to the extent stated in the Operational Situation Report, especially under the circumstances stated there. It can rather he merely considered as proven that executions took place in which the number of executed persons and the detailed circumstances have not been ascertained. Especially the numbers of executions appear much too high. This is shown by the fact that during the period covered by the report in the sphere of influence of Einsatzgruppe B, the Fuehrer order had been carried out for quite some time already under Nebe, the predecessor of Naumann as testified to by the defendants Blume and Steimle. It appears therefore as absolutely believable if Ott for instance, who in March 1941 was Commander of Sonderkommando 7b with Einsatzgruppe B, declares, that at the time he took over Sonderkommando 7b there was no further action to register any Jews. Operational Situation Report dated 21 April 1943 while in the witness stand. The soundness of the reasoning given in this respect is not to be rejected offhand.

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Also Ohlendorf and Nosske have doubted the reporting. Worth mentioning in this respect is that Ohlendorf too, declared while in the witness stand, execution of Jews and Communists happened in the first part of the Campaign more often than in the year 1942. As evidence to the fact that the numbers mentioned in the Operational Situation Reports do not have an absolute value as evidence, reference may finally he made yet to the Affidavit of Fumy who is very well acquainted with the matter as he collaborated in the compilation of the Operational Situation Report, and who due to his own observations is best able to judge whether these reports are reliable. If Naumann states therefore in the witness stand, that according to its form the compilation of the Operational Situation Report dated 21 April 1942 is not at all familiar, then this appears credible? for this form originates obviously not from the report of the Einsatzgruppe B. In its rebuttal the Prosecution has offered as proff for the numbers mentioned in the Operational Situation Report dated 21 April 1942 regarding executions carried out, the documents USSR 48 and 56, Exh. No. 234 and 235.

THE PRESIDENT: Dr. Gawlik, do you think that this might be a good place in which to suspend for the luncheon recess?

DR. GAWLIK: Yes.

THE PRESIDENT: The Tribunal will be in recess until 1:45.

(A recess was taken.)

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(The hearing reconvened at 1345 hours, 5 February 1948.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Gawlik, I want to make just a short announcement. We are informed by the Translation Section that the final summation plea in behalf of the Defendant Bluem has not yet been received there. Some word should be gotten to counsel for Blume to see to it that he immediately hands in his manuscript.

DR. GAWLIK (Attorney for the Defendant Naumann): Your Honor, as a preresentative for Dr. Aschenauer, I ask that you permit the Defendant Ohlendorf to be excused from tomorrow's session, because he is to be interrogated by Mr. Wolf.

THE PRESIDENT: The Defendant Ohlendorf will be excused from attendance in court tomorrow.

DR. GAWLIK: Before the recess I was discussing the report of the 21st of April, 1942. I shall continue my final plea: numbers listed in the Operational Situation Report, dated 21 April 1942, regarding executions carried out, the documents USSR 48 and 56. the documents were offered. First of all I point to the fact that the text of both documents corresponds in part word for word. The numbers mentioned also correspond exactly. Both documents are obviously parts of the same record. The contents of the documents have no connection at all with the acts of Naumann. There reference is rather made to how many dead were found in the mass-graves. The samll percentage of cases, that death was due to the gun shot wounds. The cause of death is unknown otherwise. One should not overlook the fact, that the less immediate vicinity of Smolensk in which the graves were found, was twice within two years the theatre of stubborn fighting. If one assumes that, in so far as gunshot wounds were the cause of death, these were due to executions, which is also not an established fact, then the further question arises, by whom and on whose orders these excutions took place.

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I would also briefly like to mention in this respect that the victims of Katyn for instances were also mentioned in these reports, those, who according to German reports have always been designated as victims of executions carried out by Russian agencies. It has not been ascertained to this day who actually carried out these executions. Before the International Military Tribunal this question has also not been cleared despite the fact that three witnesses of the Russian Prosecution and three witnesses of the German defense have been interrogated in this respect. the mentioned documents are absolutely without value as proof of the act incriminating Naumann, I would like to mention addition that Naumann was active in Smolensk only during part of the period in which, according to the reports, the demise of the bodies found would fall. Besides, any connection between the crimes mentioned in the reports and Naumann's activity is missing. None of the persons mentioned in the reports with the exception of Naumann, was a member of the Einsatzgruppe Units. What Naumann is supposed to have done is also not mentioned in the reports. by the film offered by the Prosecution as evidence. That is why I objected at the time against the acceptance of the film as evidence and the Tribuanl sustained this objection too. Exhibits 234 and 235 have therefore no value at all as evidence in the proceedings against Naumann and are thus eliminated as evidence. mentioned by me, it has only insignificant value as evidence. Dure to statements made by Naumann it may only be considered as proven, that the Einsatzkommandos under his command carried out executions due to the Fuehrer order. No evidence has been offered in ragard to date, place, and detailed circumstances.

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In evaluating this case from a criminal point of view, I took as a basis the legal principles already laid down by Military Tribunal II in the case against Milch, Naumann is, according to the principles laid down by this Tribunal, only criminally liable for the executions carried out by units of his group, if the following questions can be answered positively beyond any reasonable doubt:

1. Did the defendant Naumann take part in the executions personally?

2. Have these been carried out at his direction or order?

3. Had Naumann previous knowledge of the executions before they were carried out?

4. If this proves to be correct, did he have the power and opportunity to have them stopped?

5. If this also proves to be correct, did he fail to act and did he become thereby particeps criminis and accomplice?

As for 1: nor did he personally take part in any executions. The Prosecution has neither maintained this, nor offered any proof to this effect. It has especially not offered any proof to the effect that Naumann killed the persons mentioned in Document NO 3276, Exh. 66 (Volume II B, Page 66). It is shown by the Operational Situation Report that these persons were executed by the Einsatz and Sonderkommandos. This becomes evident also from the statements made by Naumann on the witness stand (Protocol Page 820 and 834 German, Page 814 and 128 English) according to which the Einsatzgruppe itself, i.e. the Staff, did not carry out any executions. stand, at least for the time when Naumann was Chief of the Einsatzgruppe (Protocol Page 4015 German Page 3950 English).

As for 2: orders to put these executions into effect.

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In particular, Naumann did not pass on the (Fuehrer (rder) to the units under his command. As has been shown already, the executions were not carried out by the Einsatzgruppe itself, i.e. by the Group Staff, during the time when Naumann was Chief of the Einsatzgruppe. If, therefore, Naumann had given them to the Sonder-and Einsatz-Kommandos. But even to them Naumann did not give any execution orders, nor did he pass on to them the Fuehrer Order.

Of course, the Prosecution concludes from Naumann's position as Chief of the Einsatzgruppe that Naumann must have given such orders. Hosever, they were unable to prove this. Naumann, when in the witness box being directly examined and cross-examined, again and again asserted that he had given no such orders. (Transcript pages 834/35, 879, 880, 883, 887, 901 of the German verson; pages 828/29, 869, 871, 875, 889 of the English version.) The additionally adduced evidence only corroborated these statements of Naumann. of the ever having received from Naumann an order for execution or to the effect that the Fuehrer Order had been conveyed to him by Naumann. In particular was this affirmed by the co-defendants Steimel, Ott, and Klingelhoefer who held responsible positions in the Einsatz-and Sonder-Kommandos under the Command of the Einsatzgruppe B. If Naumann had given orders for execution or had passed on the Fuehrer Order these witnesses would have had to know it by all means, in particular Ott, who assumed his duties in Russia after Naumann was there. None of these witnesses, however, has confirmed this. Steimle, for instance, gave evidence that, indeed, he had discussed the Fuehrer Order with Naumann, but that Naumann had never given him any orders. In the cross-examination, too, Steimle stood by these his statements inspite of the fact that the Prosecution tried with all means at their disposal to shake the witness and extract from him a statement according to which Naumann was the one who gave or transmitted to him the Execution Order (Transcript pages 2073-2075, 2080-2085 of the German version, pages 2027-2029, 2034-2039 of the English version). Ott, too, repeatedly declared on the witness stand under direct and cross examination that he had never received from Naumann an order for execution, also he never had received from him the order that the Sender-Kommando 7 B under his command was to take stricter measures.

Ott particularly declared having heard only thrigh his predicessor Rausch about the existence of this order which Naumann had not even mentioned to him when introducing him to his duties (Transcript pages 3776-3778, 3828-3830, 3762/63, 3834/35 of the German version, pages 3715-17, 3766-3768, 3701/02,3370/71 of the English version.) These statements of Ott appear to us credible above all for the particular reason that they tally with the statements he made when he was subject to interrogation by Wartenberg. At that particular time Naumann had not yet been arrested and it was generally believed that Naumann was dead (Transcript page 3772 German, page 3711 English version.) he never had received any execution orders from Naumann (Transcript p. 3947 German, page 3884 English.) as they come from co-defendants who cannot count on being exonerated by such declarations. To doubt the credibility of those statements there is all the less cause for the simple reason that the Fuehrer Order was known to the Einsatz- and Sonder-Kommandos already a long time before Naumann took up duties in Russia. The evidence of the case in Chief shows beyond a doubt that the Fuehrer Order was issued not only to the Chiefs of the Einsatzgruppen, but also to the Leaders of the Einsatz- and Sonder-Kommandos already before the beginning of the Russian campaign and had since then existed continuously within the units of the Einsatzgruppen. (Transcript Naumann pages 819,823, 867, 883, 901, 906 German version, pages 813, 815/16,856 871, 889, 893 English version; Ohlendorf p. 524, 533; Blume p. 1811-12; Ott p.

3844 German, p. 3762 English; Jost p. 1273, 1198). Naumann was also advised of the existence of this order within the units under his command when he took up his duties in Russia. (Transcript p. 823, 864-65, German; 815/16, k54 English.) There was no occasion whatever for Naumann himself, therefore, to issue orders for execution, nor to transmit the Fuehrer Order again to the units under his command. dated 24 April 1947 (Dec. B. II B, p. 57, Doc. No. 2993, Exh. 67) that Naumann, himself, issued orders for executions. However, in this affidavit Ott only stated that Naumann gave the order to deposit the valuables, taken from the victims, with the Einsatzgruppe. Naumann *---* 24 April 1947 by declaring that this order did not originate with Naumann, but with his predecessor Nebe (Transcript p. 3802, 3803 German, p. 3740/41 English.) Moreover, it is incomprehensible how one can deduce from such an order, had it been given, that this constitutes an order to effect executions. Quite to the contrary, this statement would clearly elucidate that the issue of this order pre-supposes that the Fuehrer Order was already in existence. This statement permits therefore only the deduction that Naumann's assertions as to the existence of the Fuehrer Order before his taking over of office are correct; for, if the existence of the Fuehrer Order before his taking over of office are correct; for, if the existence of the exeuction orders had not been assumed to be known by the subordinated units, the order in the question would have been altogether senseless. manner of execution. (Transcript p. 881 German, 870 English. In particular, he did not order the carrying out of executions by means of gas vans. The evidence obtained does not indicate that gas vans were used by Einsatzgruppe B for the purpose of executions. Naumann denied it, in the witness box, as well as at the time he gave his affidavit before the beginning of the trail (Doc.

Book III B, p. 1, Doc. No. 4150, Exh. 112). To be sure, he admitted the temporary presence of such vans in the territory of his Group. His statement that he had never requisitioned these vans, but that they were, in June 1942, put at his disposal by the Reich Main Security Office without his having anything to do with it, could not be refuted in any way. No witness testified, and no document showed that these gas vans were used for the intended purpose by units of the Einsatzgruppe B. Rather were these gas vans, as shown by the evidence, surrendered to other units after relatively short time (Transcript p. 825/26, 877/78 German, 818/19, 866 English.) Reports. If the Einsatzgruppe B had used gas vans reports would exist about it which the Prosecution would have introduced. for the vans because at the time of their arrival executions were hardly possible any more (Transcript p.877 German, p. 865, English.). This being the case, one cannot hold Naumann criminally responsible for the temporary presence of the vans in the territory of the Einsatzgruppe B. confronted the Defendant Naumann during cross-examination with Document NO 5444, Exh. 175. This deals with an incident on the estate of Wessokoje. This occurrence, however, is not a Count of the charge, and Naumann, therefore, could not be convicted of it, even if it were substantiated by proof. give any order to kill the 3 persons named in this document. (Transcript p. 883/884, 886/88 German, p. 872/73; 875/76 English.) proven guilty, because this document biolates, above all, several well founded rules of evidence which, under the principles of American procedural law, prejudice the admission of this document as evidence.

For the reasons I have stated above this violation of the rules governing the taking of evidence will have to be taken into consideration when examining the value of that evidence.

1.) The document is not complete. Only part of document has been submitted. But the documents must be submitted complete. Wharton Evidence in Criminal Cases, p. 666:)

2.) The authenticity of a document must be proved by a witness who is to be confronted with the defendant, and sworn in about where the document has been found, the Prosecution has not furnished that proof (Wharton, ibid, page 391)

3.) The very best means of evidence must be presented. In consequence, hearsay evidence is precluded. The document shows that Scharfuehrer Goebel got his information from Hauptsturmfuehrer Sachnaut. Thus, his statements are based upon information received by third persons, so that this is hearsay evidence.

4.) A person accused can only be convicted on the basis of a statement made under oath. (Whalton, ibid., p. 682.) To convict Naumann on the basis of this document would, therefore, be in contradiction to this main principle of evidnce.

Therefore, Naumann's assertion that he never gave an order for the killing of those people, may not be regarded as being refuted. In any case, there are well-founded doubts about the correctness of the facts stated in the document. These doubts have to be evaluated in favor of the defendant, according to the general principles governing the law of criminal procedure. such an order, because the persons allegedly killed were members of a German organization for the so-called operation "Zeppelin". This was an operation the members of which were to be employed by Office VI of the Reich Main Security Office together with the German Wehrmacht behind the Russian front.

Thus, Naumann had no power of command, no disciplinary power over the members of that operation. This is clearly shown also by the documents submitted by the Prosecution themselves. nor forwarded such orders to the units under his command, what matters is only the answer to the following questions: Did Naumann, before the executions were carried out, have any information about these measures? Did he have the power and the opportunity to prevent or to stop them? Did he fail to take action? presupposition for the basis of a penal responsibility on the part of Naumann.

As for question 3: to the carrying out of the individual executions, (Rec. p. 826, 834, German, p. 819, page 828 English.) Generally, it is true, Naumann knew, as he admits himself, that executions had been carried out by units of his Kommandos. Yet, he acquired this knowledge in all cases only through the reports of the Einsatz- and Sonderkommandos about the executions which had already been carried out. But he had no information beforehand about the individual executions. In this connection it must be taken into consideration that the Einsatz- and Sonderkommandos were to a large extent independent. (Rec. OHLENDORF, p. 694 /95, OTT p. 3804/05, NAUMANN 824, 869, 822, German, 818, 858, 815 English.) This independence with that the Kommando chiefs had received, previous to the Russian campaign, the Fuehrer order, and, to be precise, in the same way as the Einsatzgruppen Chiefs themselves. The meaning of this issuing the order to the Leaders of the Einsatzkommandos can only have been to authorize them to take action without special orders by the Einsatzgruppen chiefs. If this had not been so, the order would not have been given to the Kommandofuehrers, but it would rather have had to be given in each case first to the Einsatzgruppen Chiefs.

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Since a special the individual execution was not necessary, no previous notification was, in consequence, necessary. Such, a procedure would, incidentally, have probably been much too cumbersome and impossible, considering the bad communications and transport conditions in the vast Russian area, the comparatively large territories of the individual Kommando areas, and the samll strength of personnel in the individual Kommandos. That the Einsatz- and Sonderkommandos were independent to a large extent, resulted, in particular from their proper task, namely, to secure the rear areas of the Army and to fight bands and partisans which might appear. (Rec. Naumann, p. 824, 835, 836 German, p. 816, 829, 830 Engl.) From this task there resulted the necessity of taking immediat action which was not allowed to suffer any delay by waiting for instructions from the Einsatzgruppen Chief.

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to be carried out by units under his command on account of the order. But this general knowledge will hardly be deemed sufficient to give an affirmative answer to question 3,) But even if an affirmative answer were to be given to this question, the prerequisites would, in any event, be lacking for number 4 and 5.

A conviction would only be justified if the questions 3.), 4.) and 5.) were to be given affirmative answers, that is, all of them.

As to question 4: the execution of the orders issued by HITLER and forwarded by HIMMLER and HENDRICH, which had been given to the Einsatz-and Sonderkommandos before NAUMANN took over his position, and thus already existed, when he took over. execution of these orders? Could he be expected to issue instructions to the units under his command not to execute the Fuehrer order? This would have been impossible. But would he thereby really have prevented the execution of the order? Supposing that the units under his command had complied with NAUMANN's instructions, which is very doubtful, since NAUMANN could not cancel an order given by the Fuehrer, what would have happened? The only consequence would have been that NAUMANN would at once have been removed from his post and proceedings started against him for disobedience. But would he thereby have prevented the executions for the future? Certainly not. He would no doubt have been replaced by a successor, who would have shown the obedience required. Thus, NAUMANN would have achieved as little as if by feigning illness or other reasons he had succeeded in being relieved from his position. The Fuehrer order would have remained in existence and would have been carried out, even if NAUMANN had no longer been Chief of the Einsatzgruppe. Naumann's conduct would not have been able to change that. It would have been impossible to NAUMANN to prevent the execution of the Fuehrer order, and this is what only matters in this connection.

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Thus NAUMANN cannot have had the power and the opportunity to prevent the execution of the Fuehrer order. executions carried out by the Einsatz and Sonderkommandos, he would surely have used then. In particular, he would never have given such orders himself, for the execution of these orders was not consistent with the spiritual attitude of NAUMANN (Rec. p. 866, German, 855/56, English.)

Besides, he never concealed this attitude of his in conversations with the Leaders of Einsatz-and Sonderkommandos. This too has been clearly shown by the evidence. The witnesses OTT and STEIMLE, for instance, have testified that in conversations he had with them, Naumann expressed a mental repudiation (Rec, Steinle, p. 2073/75 2082, German, 2028-2030, 2036, English, Ott, p. 3779, 3832, German, p. 3717, 3770, English.) Still, on these occasions Naumann always remarked that he saw no way of evading the Fuehrer order.

As to question 5: opportunity to prevent the execution of the Fuehrer order or to stop it, there is no basis for a criminal responsibility on the part of NAUMANN. But even if this question were to be answered in the affirmative, a criminal responsibility on the part of NAUMANN would be non-existent, because to have omitted to prevent such a thing does not constitute quilt. It is true, that even an omission can constitute a punishable offense. This is a general principle, both in the German as well as in the American Jurisprudence and practice of law. But, according to those principles the omission can only constitute a punishable offense, when a legal obligation existed to take action. In this connection I refer to Wharton's opinion in his book "Criminal Law" of 1932.

In vol. I, p. 222, Wharton explained that an omission must be based on a violation of duties, in order to be a punishable offense. Omissions are, in his opinion, no basis for a criminal proceeding, unless they constitute a failure in the execution of an obligation which had specially been imposed on the accused. This obligation to act must, as is also generally recognized, be founded upon the law. As to the correctness of this opinion, I refer likewise to the fundamental explanations of Wharton in the book quoted above, where on page 226 he explains that a simple negligence to give assistance is no punishable offense, unless it happened in the course of acting against an obligation specially assumed or imposed. On page 255 of the aforementioned book he amplified that idea by declaring that the failure to give assistance could constitute a punishable offense only if and when this giving of assistance was a legal obligation. Such an obligation, however, did not exist on the part of Naumann. Naumann had such an obligation neither by law nor by agreement, On the contrary, the obligation that had been imposed upon him, was not to prevent the execution of the orders issued by Hitler. In so far his conduct cannot be called guilty. general principles of humanity, Naumann would have been unable to act because he was in a state of emergency which made it impossible to carry out the obligations. Such a condition of constraint, however, rules out any guilt, This is in accordance with the generally recognized principles of jurisprudence. May I, in this connection refer again to the conclusive explanations of Wharton in the aore-mentioned book I), where the author explains that the defense may oppose the Prosecution with the contention that the crime has been committed under constraint and force, out of fear of immediate death. Wharton assumes rightly that in such cases, nobody may be found guilty of a crime unless he had the intent and will to commit it.

is presupposed in these explanations. As has been said above, he would only have been able to prevent the executions for a short time through an order which he would have had to give in opposition to the existing order of Hitler, the then chief of state. Apart from the fact that that measure, as I have stated above, would not have had the slightest effect, it would have had the consequence that Naumann would have been prosecuted for serious insubordination. (Rec. Naumann, p. 820 German, p. 813, English) There can be no doubt about the result of such criminal proceedings in view of the severe penalties the SS- and Police Courts used to inflict. Not only Naumann, but practically all the defendants have testified on the witness stand that the death penalty would have been the inexorable penalty for that insubordination. (Rec. Ohlendorf, p. 750, Braune p. 3103/04, 3098, Naumann, p. 820 German, p. 813 Engl.) to refuse the execution of the orders. (Rec. Ohlendorf, p. 563-65, Braune p. 3110, Sandberger, 2206, Nosske, p. 3480, Klingelhoefer, p. 3959, Steimle, p. 2088/2203.) able to refuse execution of the Fuehrer order, this does not refute the statements made by the afore-mentioned persons; for what matters in each case are the particular circumstances of the individual case. such a state of emergency that no possibility was left to him to act in a way different from what he actually has done. through of the Fuehrer Order and that he himself did not give orders for executions. proven, a punishment because of this would be impossible since Naumann's behaviour would be due to an order issued by Hitler.

That this order did exist and that it existed during the whole period in which Naumann was Chief of the Einsatzgruppe B, cannot be doubted according to the results of the evidence presented. As regards this I particularly refer to the testimony of Ohlendorf (Records pages 533, 524) Blume (Records p. 1811), Nosske (p. 3503-05), who gave a detailed description of the way in which the Fuehrer Order was given to the commanders of the Einsatzgruppen and Einsatzkommandos in Pretsch. degree, the plea of acting on higher orders precludes punishment, it is first of all of decisive importance according to which law this objection is to be judged. Tribunal IV declared that it wasnot a tribunal of the USA and therefore did not have to apply American principles, but that it was an international tribunal and that therefore the facts were to be judged according to International Law. (Page 3 of the decision of 22 December 1947). I must suppose that this principle applies generally to the Military Tribunals here and that therefore in this trial the plea of acting on superior orders is to be judged according to the International Law in force at the time of the action. thusfar admissible in International Law. This result cannot be altered either by the London Charter or the Control Council Law No. 10. Charter and Control Council Law No. 10 therefore can only be applied inasmuch as they coincided with the hitherto recognized rules of International Law. No new International Law could, however, be created by the Charter and the Control Council Law No. 10 since individual states cannot establish International Law, but only the community of nations can do so. This is a generally recognized principle of International Law which took root in practice as well as in theory. For the correctness of this conception I particularly mention the statements of the Professor for International Law, Norman J. Padelford, who, in an article published in April 1938, commented upon the Washington Agreement of 1922 and thereby came to the conclusion that, in spite of the consensus of opinion of the five powers present at the Conference, these were not entitled to establish new rules of International Law.

1) International Law can only be created:

1. by international agreement and 2. by a conception of law which is generally recognized by all International Law.

This conception is clearly expressed in a decision quoted by Gobbett according to which, in order to prove the existence of a rule of International Law, it must be set forth that this has either found the express sanction by international agreement or that it must have grown to be a part of international Law by the frequent practical recognition of States, in their dealings with each other.2 2) Cobbett, Leading Cases on International Law, volume I, page 5:

"It was said that in order to prove an alleged rule of international law it must be shown "either to have received the express sanction of international agreement", or "it must have grown to a part of in their dealings with each other".(i)." 1) Norman J. Padelford, Prof.

of International Law, Fletcher School of Law and Diplomacy, in the periodical "The American Journal of International Law", year 1938, page 274:

"This conclusion was new rules of International Law.

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community of nations, according to which a plea of superior orders is impossible. Such an agreement was not signed thus far. Conference to come to an international agreement to the effect that the plea of superior orders shall be impossible in International Law. However, this agreement did not come about. The Washington Agreement was not ratified. Especially France declined to ratify this Agreement just because of the provision in it that the plea of superior orders should not be admissible. With regard to this I refer to an article by the French teacher of International Law, Raoul Genet, of 1938, according to which France had objected at that time that, for example, the commanders of submarines could not be held personally responsible for orders which they had received from their hierarchic superiors.1 orders as laid down in the Washington Agreement of 6 February 1922 was rejected. This is shown by the fact that commanders of German submarines of the first World War were cordially welcomed by their English comrades,whereby they were assured that they would not be held responsible for the execution of orders received from their Admiralty.2 256. 1) Raoul Genet, Directeur de la Revue internationale francaise du droit, "The charge of piracy in the Spanish civil war", page 256:

"During the negotiation of the treaty signed at Washington France (which, however, did not ratify) had contended that the commanders of sub they had received from their hierarchic superiors."

2) American Journal of International Law, 1938, page 256: "It may be that a plan of superior orders shall not be admissible.

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ception of law by the States according to which the plea of superior orders would not be admissible. At all events, such a conception of law did not find its expression in the actions of the States. This can be seen a) from the declarations and decisions of international congresses, b) from the field manuals of the Armies and the criminal codes of the c) from the scholarly opinions of generally recognized teachers of In As for a: a) During the peace conference in 1919 a commission occupied itself with the problem whether or not a plea of superior orders frees from responsibility, and it laid down its opinion in a report.

1) This commission did not declare the plea of superior orders to be inadmissible, but left it to the judgment of the court whether or not the plea of superior orders frees the defendant from his responsibility. In this report it is expressly said that the court has to decide on the question whether a plea of superior orders is sufficient to acquit a person charged with responsibility. This regulation was the result of the following deliberations, which are shown in the forementioned book by Garner. son who acted in compliance with an order. For, if he had refused to comply with the order, the subordinate would probably have been shot. In such cases, therefore, justice requires the punishment of the person who is responsible for the order and not that of the one who executed the order. If the commission nevertheless declined to use this principle, which 1) Published in 46 Clunet (1919) pages 131 ff, excerpted from German, International Law in the World War (1920), volume II, page 490: "It will be for the court to decide whether a plea of superior orders is sufficient to acquit the person charged with responsibility."

could have arisen from this. It was feared that then every subordinate who committed a punishable action would plead to have acted on superior orders, and, since according to the general rules of the code of criminal procedure the State has to bear the onus probandi, it would then be impossible to punish subordinates for the perpetration of punishable actions. It was only for that reason that the plea of superior orders was not generally considered as admissible, but it was left to the court to decide whether the plea of superior orders is to be considered as admissible. From this results: The plea of superior orders is to be declared as admissible if the existence of such an order is incontestably to be considered as proven. ders would be admissible according to this report of the commission, since it is without doubt established that the defendants acted in compliance with an order issued by Hitler. As for b: b): The British military code, issued as early as 1715, already provided that every soldier had to obey every order given by his superiors regardless of whether the order was in accordance with the law or in violation of the law. To this effect I refer to the statements of Professor Lauterpacht in the essay in the British Year-Book for International Law issued in 1944.1) In the following period this conception became a principle in the armies of all nations. Moreover, since 1914 the field regulations of the armies of most nations have accepted this principle that the plea of acting on higher orders was admissible to be true, for the reason, that the admission of the plea of acting on higher orders had already become a common law. 2) 1) Lauterpacht, The Law of Nations in the Punishment of War Crimes-in the British Year Book of International Law, 1944, page 71: "The Military Code of 1715 provided that any officer or soldier who should refuse to obey the military orders of his superior officer" shall be liable to capital punishment. The code contains no qualifications as to the lawfulness of the command." 2) George Manner, Instructor in Political Science, University of Illinois, in the American Journal of International Law, No. 3, July 1943, page 417: "Since 1914, at least, the maxim has been incorporated in the war manuals of the powers as a rule of the customary laws of war."

the Rules of Land Warfare have explicitly declared the plea of acting on higher orders as admissible. Up till April 1944 the provision was contained in par. 443, Chapter XIV of the British Manual that soldiers cannot be considered war criminals if, by acts they were ordered to carry out by their governments or their superiors, they had violated recognized laws of war. This provision explicitly precluded a punishment by the enemy. To this effect I refer to the statements in Law Reports of Trials of War Criminals, Volume I, page 18, 1947, where, with reference to the fundamental statements made by Oppenheim in his book International Law (volume II, page 454, 5th edition), it is furthermore established that in such a case the enemy can only call to account the officials or commanders for the issue of such orders.1) Land Warfare corresponded with the provision of par. 4432) of the British manual. According to this provision, members of the American armed forces must not be punished if they had committed a punishable act on orders or even with the approval of their government or commanders. The commanders themselves rather could only be called to account. made between a lawful and an unlawful order and that the subordinate person did not even have the right and much less so the obligation to examine the lawfulness and legality of an order. L) Law Reports of Trials of War Criminals, Vol. I, 1947, S. 18: "Until April, 1944, Chapter XIV of the British Manual of Military Law contained the much discussed statement (Par. 443) that "members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their Government, or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to other means of obtaining redress.."This statement was based on the 5th edition of Oppenheim's International Law, Vol II, page 454." 2) "Individuals of the armed forces will not be punished for these offenses in case they are committed under the order or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall."

The provision contained in par. 483 of the British Manual (British Manual of Military Law) was rescinded on 15 April 1944. Since that time the plea of acting on higher orders is no longer admissible. ed on 15 November 1944 through the Change No. 1 of the Rules of Land Warfare. idently made in view of the impending end of the war and the contemplated trials of war criminals.

DR. GAWLIK: Your Honors, after I wrote these lines and after I handed in my final plea I received the book by Sheldon Glueck, "War Criminals, their Prosecution and Punishment", 1944 and I found this opinion confirmed in the book. My colleague Aschenauer has already commented in detail on this book. Therefore, I shall not go into any detail but I call the attention of the Tribunal to several sentences from this book which I shall ask the interpreter to read.

INTERPRETER: From page 141 of Sheldon Glueck's book. "The provisions in the American rules quoted above seemingly protects them against punishment not only in the case of orders of their Government (and perhaps acts of State) but also as in doing the prohibited act, they obeyed the order of a military superior, even though they knew their acts to be contrary to the laws and customs of legitimate warfare."

DR. GAWLIK: Even Glueck who, as the book shows, is not at all proGerman and who attempts to establish a procedure for the trial of war criminals, cannot get over the exclusion of the plea of superior orders. If Neumann in 1943 or 1944 would have been put before an American Military Tribunal for the charges made against him now he could not, on the basis of this regulation 347, in the rules of land warfare, have been punished according to this rule. I emphasize expressly that this regulation also applies to enemy nationals. Through the change in this regulation this plea of acting on superior orders, could only be amended to refer to those actions committed after 15 November 1944 but not to those committed before that.

significance as one of the laws promulgated by the Nazi on the occasion of the burning of the Reichstag, namely the retroactive admissibility of the death penalty for arson. At that time the world raised a hullaballoo, they spoke of a violation of the law, they spoke of the beginning of the dissolution of the legal state and one could say that those people were right. I have too great a confidence in this Tribunal and, therefore, I do not believe that they will build up their judgment on such an insecure position.

I shall continue in the final plea: tary Penal Code and author of the book Military Law and Precedents, admits the plea of acting on higher orders and expresses the opinion that an order precludes the punishment.1) As a reason for this opinion, held by him, he asserts that obedience was the fundament of every army and that the subordinated person was therefore not under the obligation to decide by himself about the question whether an order given to him was lawful or unlawful. Such a conduct by the subordinated persons would, according to Winthrop's point of view, mean insubordination and would lead to undermining of military discipline.2) In this connection, Winthrop also refers to a decision by the Supreme Court which likewise comes to the same result. It is said in this decision that it would mean the end of every discipline if, for instance, sailors aboard a warship on the high seas would. on the basis of their personal sense of justice, have the 1) Winthrop, page 296: "That the act charged as an offence was done in obedience to the order - verbal or written - of a military superior, is, in general, a good defense at military law." 2) Winthrop, page 296: "But for the inferior to assume to determine the question of the lawfulness of an order given him by a superior, would in itself, as a general rule, amount to insubordination, and such an assumption carried into practice would subvert military discipline."

possibility to shake off the power of command of their commander by reasoning that they considered the execution of the order an unlawful act.1) Law that the obligation for obedience on the part of the soldier, and such was Naumann during his time of duty in Russia, is not preceded by the obligation to examine whether the order is in violation of any law, especially the laws of war. especially the existing conditions in Germany, able to the Tribunal if defendants in this trial, interrogated as witnesses in their own defense, have again and again referred to the fact that it was their duty to carry out the order and that they had no authority to decide about the legality of the order. ed as the supreme duty of the citizen. The army and the civil servants were the pillars of the German state. It was the supreme duty of both to obey and unconditionally comply with the orders given by superior authorities. This is a fact which is based on the historical conditions of Germany, especially on the historical development of the past 150 years, a development which is completely different from that of the United States. was emphatically advocated especially in the National Socialist Fuehrer state. The individual citizen was not entitled to voice his own opinion. Neither was he permitted to express any criticism on measures taken by the state administration. 1) Supreme Court in leading case in the Navy, Dinsman von Wilkes, 7 Howard, 403, quoted by Winthrop, page 296: "There would be an and of all discipline if the seaman and marines on board a ship of war on a distant service were permitted to act upon their own opinion of their rights, and to throw off the authority of the commander whenever they supposed it to be unlawfully exercised."

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those in a free democracy. To be true, it is correct that the provisions of the British Manual and the similar provision in the Rules of Land Warfare of the United States, with respect to the plea of acting on higher orders, have undergone a change in as far as the plea of acting on higher orders was no longer admitted to the extent as this was the case in the past. However, during the period in which Naumann was chief of the Einsatzgruppe B, namely from the end of November 1941 till March 1943, the old provisions of the aforementioned field regulations were still fully valid. of acting on higher orders, is not refuted either by Par. 47 of the German Military Penal Code which in this connection has been repeatedly mentioned in this court-room.

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The provision of Par. 47 of the Military Penal Code cannot be applied if only for the reason that it is not applicable to orders given by the chief executive of the state. This interpretation results in particular from the meaning of this provision. The provision of Par. 47 of the Military Penal Code always presupposes the possibility to refuse obedience must have the possibility to complain to the superior officer of the person who had given the order so that he might find justice there. Only in this case can he make use of the provision of Par. 47 of the Military penal Code. If the soldier does not have this possibility, then his refusal to obey an order entails a severe punishment without examining the lawfulness of the order, and the unlawful act, as ordered, cannot be prevented. The provision of Par. 47 of the Military Penal Code therefore applies, for instance, to the common soldier who refuses to carry out an unlawful order given to him by his lieutenant, because he then has the possibility to complain to the superior officer of the lieutenant. Moreover, an unlawful order given by a general can be rejected since in this case the possibility is given that he who received the order can turn to the general's superior. This possibility, however, does not exist if any orders, which henceforth are found to be unlawful, have been decreed by the chief executive of the state. And this possibility by no means exists if the orders are issued by a dictator who combines in his hand all instruments of power of the state, as this was the case with Hitler, a dictator who, by use of all means at his disposal, would have actually executed the orders he decreed. What action should the defendants take against the orders given to them by Hitler? How could they have prevented the execution of these orders? Whom could they approach in order to find justice in respect to the unlawful orders given by Hitler? Under the present circumstances it is simple to assert that the defendants ought not to have carried out the order.

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No answer, however, can be given to the question what action they ought to have taken, in the situation in which they were at that time, to prevent the execution of the order. Even according to the prevailing German law itself unlawful orders are effective.1* Also according to the French penal code the soldier is obligated to obey an order of the legitimate authorities, regardless of whether the order is lawful or not. The soldier solely has a right to complain after the execution of the order. In this connection I refer to the statement by Cobbett.2* Moreover Garner, who in his statements refers, among others, to the view of Professor Nast of the Nancy University and to the example mentioned by the latter, has come to the same result.3* 1* So binding, manual of the penal code (1885), page 804, furthermore Eberh.

Schmidt, page 58. Very clearly in this meaning RMG. 1, 63:

evidently also Rittau, decree 2, (page 98 ibid.) 2* Cobbett, Volume II, page 176/77: "By the French penal code the legitimate authority (p). But it has been held that the soldier lawful or not.

He may also protest afterwards." 3* Garner, Volume II, page 486: "Article 64 of the French criminal (Delit.)

Professor NAST of the University of Nancy has expressed courts.

1" Professor Nast has added further explanations to this question.

In this he comes to the conclusion that the sedes materiae of French law is Article 64 of the Penal Code, according to which an act committed under duress does not constitute a crome. Among these acts Prof. Nast also includes cases in which a soldier has to carry out orders. In this connection Nast also mentions the Belgian and Dutch Criminal Codes, which contain the same provisions. In this connection he refers particularly to Article 43 of the Dutch Criminal Code, according to which a defendant is expressly exonerated by orders from superior authorities.1) As for Authors' Hypotheses: The hypotheses adopted in legal literature are not sources of international law. This is generally recognized in international law. I particularly call attention to the explanations of Wharton, who refers to statements by Chief Justice Cockburn. There it is said that authors in the field of international law, no matter how valuable their efforts may always be with respect to the interpretation and definition of fundamental legal provisions, cannot make any laws, because laws, in order to be binding, require the agreement of the nations, which can take place by treaty or through suitable statements by the respective governments, or even through established tradition.2) A conviction, therefore, cannot be based on the fact that individual scholars of international law adopt the viewpoint that the appeal to a superior order is inadmissible. 1) Prof. Nast, Revue Generale de Droit International Public, 26 (1919, p. 123:

"The crucial sedes materiae in French law appears to be under duress (which apparently includes the case of a soldier bound to obey orders) is neither a crime nor a misdemeanor.

Art. 327 excludes liability in case of acts "ordonnes par la loi et commandes par l'authorite."

So does Article 190, Articles 70 and 71 of the the French Penal Code.

Article 43 of the Dutch Criminal Code re cognizes generally the defense of superior orders, while Art.

40 lays down the general exception of duress". 2) Wharton, Elements of International Law:

p. 23: "Writers on international law", says Lord Chief Justice Cockburn, "however, valuable their labors cannot make the law.

To be binding, the law must have received the assent of the nations who are to be bound by it.

This assent may be or may be implied from established usage". (e). Moreover, the question of the admissibility of the appeal to the superior order is very much contested in legal literature.

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It is in no case rejected by the majority of authors. The appeal to a superior order is first declared admissible, as already mentioned, by Winthrop, who recognizes as a defense the fact that the incriminating act was committed in pursuance to an order by a superior.1) Likewise Garner, the well-known professor of international law at the University of Illinois, declares that it would be unjust to deny the right of a person under military orders to appeal to a superior order. Garner particularly emphasizes that it is not the task of a military subordinate to examine the lawfulness and legality of a military command.2) He is of the opinion that justice requires that that person be punished first of all who bears the responsibility for the order and not that person who acts under duress.3) Professor George Manner of the University of Illinois is also of the same opinion.4) Likewise Oppenheim, the 1) Winthrop, Military Law and Precedents, p. 296: "That the act fense at military law."

2) Garner, Vol. 11, p. 484: "He cannot discuss or question the commands that are given him; he is not the judge of their legality or il legality; and if he were, his ignorance of the laws of war would in many cases make him an incompetent judge."

3) Garner, Vol. 1, p. 484: "In such cases therefore justice, it is and who has a power of judgment or discretion."

4) Manner, The Legal Nature and Punishment of War Crimes, p. 433:

"Secondly, it appears to be equally admitted that the defenses in positive law.

102". - 102) Glueck, 10 ibid. p. 145.

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the well-known British professor of international law, has adopted the view of his work "International Law" that the appeal to the superior order is admissible. In this work he declares that violations of the laws of war are only crimes if they have been committed without the order of the belligerent government. He is of the opinion that members of the Armed Forces who commit violations of law at the command of their government are not war criminals and therefore cannot be punished by the enemy. In such cases he grants the enemy only the right to resort to

1) reprisals. Lauterpacht, who brought out Oppenheim's work in 1940, after the latter's death, was the first to abandon this opinion. This view of Professor Lauterpacht, however, has found no concurrence elsewhere in legal literature. It has been particularly attacked by Professor Kelson in his work "Peace through Law", page 98, and described as more than questionable. From these statements it appears that accepted international law is solely and alone decisive in deciding the question whether the appeal to a superior order is admissible in this trial and that according to international law the appeal to the superior order is a reason for justification and exoneration from guilt. In this connection the mental attitude which the subordinate had toward the order would in the first place be irrelevant. This irrelevancy follows solely from the circumstance that the subordinate receives the order without any reasons being given for it and that therefore he usually judges the order from an entirely different point

of view than this superior. His assenting mental attitude, therefore, could not signify 1) Oppenheim, International Law, Par. 253: "Violation of rules regarding warfare", writes this eminent jurist, "are crimes only when committed criminals and cannot be punished by the enemy; the latter may, how ever, resort to reprisals". any assent to the reasons for the act.

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Therefore, in judging the action the decisive point is not the mental attitude of the person who executes the order any more than the question of whether he executes the order willingly or unwillingly on the contrary, the decisive point would be whether the order of the superior has been proved to exist. Naumann inwardly disapproved of the Fuehrer Order. In accordance with this he conducted himself in a passive way with respect to the order. If he had not done this his superior Kaltenbrunner would not have brought the charge of deficient activity against him, as his fellow defendant Ott has testified on the witness stand. (Transcript p. 3849-50, 3828-3830 German, p. 3787-88, 3766 English) If any circumstance can be of importance for the question whether the appeal to the Fuehrer Order is admissible in the present case it can only be the answer to the question whether Naumann would have committed the acts charged against him if the Fuehrer Order had not existed. However, there can be no doubt that the executions in the area of Einsatzgruppe B during Naumann's time would never have been carried out if they had not been ordered by supreme headquarters. I shall argue this point in detail in another connection. However, if in opposition to the conclusion of my legal arguments the Tribunal should base its decision on the provisions of Control Council Law No. 10, then the clause in mitigation of punishment of Art. 4 b of the Control Council Law is applicable to Naumann, for the condition required by this clause that the perpetrator must have acted under orders is fulfilled. The further conditions under which the clause in mitigation of punishment is to be applicable are, to be sure, not contained in the law. Therefore, it can only depend on the more immediate circumstances, especially on the perpetrator's attitude to the act which he has been ordered to do.

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It can, therefore, only depend on whether Naumann obeyed the order only with reluctance or made the act his own through his concurrence. Naumann did not approve of the Fuehrer Order. As the testimony has shown, he definitely disapproved of the Fuehrer Order. Both in his direct examination and in his cross-examination he repeatedly declared with certainty that the execution of the order gave rise to serious conflicts between duty and conscience in his mind. (Transcript p. 881, 913 German, p. 870, 899 English). Naumann has declared again and again that he had considerable misgivings about this order and a mental aversion to it (Transcript p. 911 German, p. 897 English). He has asserted that he was gravely uneasy about the order because it seemed frightfully harsh to him, and that the order occasioned considerable worry and remorse in his mind (Transcript p. 866 , 898, 912 German, p. 855/56, 886, 898 English). He has expressly stated that he did not agree with the order because the killing of defenseless persons went against his feelings (Transcript p. 866, 911, 912 German, 855/56, 897, 899 English). These statements give an accurate reflection of Naumann's real attitude to the Fuehrer Order. There is no occasion to doubt the truth of these statements, all the more so as further testimony has shown that even during his service Naumann expressed these misgivings and this aversion to the order before the Kommando leaders under him. Concerning this I refer particularly to the statements of his fellow defendants Steimle and Ott on the witness stand, both of whom served under Naumann in Russia and reported that Naumann made no secret before them of his disapproval of the order. Steimle has repeatedly stated that Naumann expressed his misgivings to him and assured him that he had passed sleepless nights because of the order (Transcript p. 2073-74, 2082 German p. 2027-2029, 2036 English). Naumann also declared to Ott at the time that he was continuously very seriously worried about the order and mentally disapproved it (Transcript p. 3779, 3832 German, p. 3718, 3770 English). These accounts give an accurate reflection of Naumann's character and nature, that conflict between duty and conscience which is best described by the Dutch citizen, Mrs.

von der Schalk, as enemy of National Socialism, in her affidavit with the words: "I sometimes saw the conflict of conscience which he tried to master when having to choose between loyalty to his ideals and that which I would call 'international decency'." (Naumann Doc. No. 6, vol. 1, p. 5). Naumann was in no way a man who would have accepted the Fuehrer Order and brutally carried it out. Naumann was an enthusiastic soldier and is also described as such by Bach-Zelewski in the latter's affidavit. (Naumann Doc. No. 5, Exh. 4, vol. 1, p. 3). He earned his decorations in active fighting and in battles against the partisans. It was not in keeping with his views to have to tolerate the shooting of defenseless persons. The Prosecution, to be sure, has alleged the contrary and in support of this has referred to a few of Naumann's answers on the witness stand (Transcript p. 911, 913, 914 German, p. 897/896, 899, 900 English) which, taken completely out of context, must understandably give an entirely false picture of Naumann's attitude to the order. In particular, Naumann's last answer on the witness stand, which the Prosecution would like to take as its final word concerning Naumann's attitude, is based on this error. Naumann was repeatedly asked, and this was also put to him as a final question, whether he considered the order unlawful. Thus, in any case, did Naumann understand this question and had to understand it. Naumann replied to the negative and gave the same reason that almost all the other defendants have given to this question. (Ohlendorf, p. 526, 536, Blume p. 1815; Schulz p. 982/84; Steimle p. 1996; Sandberger p. 22, 2356; Seibert p. 2716; Braune p. 3094), namely that an act which is committed at the order of the Head of the State cannot be contrary to law but must be lawful and that therefore such an act cannot be an injustice (transcript p. 911-12 German, p. 897-98 English). As I have already emphasized, Naumann was a soldier and as such, as he has repeatedly asserted, considered himself obliged to obey the order because of the obedience he owed his Supreme War Lord at that time by virtue of his oath (transcript p. 866, 881, 898, 910 German, p. 856, 870, 886, 896 English). The circumstance that he attributed to the order the force of law and therefore did not regard it as an injustice cannot be taken to mean that he approved of it.

Any other interpretation of Naumann's statement than this would not only be contrary to the meaning and contents of his statements but would even be in opposition to them. The question whether the extenuating clause of Provision 4b of the Control Council Law is applicable will furthermore depend on how Naumann would have acted if this order had not existed. Here, too, it must be stated without hesitation on the basis of the previous arguments that Naumann would never have adopted on his own initiative such measures as were commanded by the order. The best proof for this is Naumann's conduct in Holland, where Naumann was sent on detached service in August 1943 as Commander of the Security Police and the SD. This comparison is of great significance for the reason that Holland, just like the area of Einsatzgruppe B in Russia, was territory occupied by Germany. There were Jews living in Holland too. What were Naumann's relations with the Jews in Holland?

and made no secret of this attitude towards NAUMANN, declared in lieu of an oath that she repeatedly intervened with NAUMANN in favor of Jews from among her acquaintances and succeeded by this in bringing in about that for instance Fral LEMBRUGGEN, Liesel HIJMANS, and Dr. FRENSDORF were discharged from the concentration camp and/or from prison. Frau van der SCHALK furthermore testified that NAUMANN was of a pronounced leniency towards Jews and that it was because of this indulgence that he was again transferred from Holland. (NAUMANN Doc. No. 6, Exh. 5, Vol. I, P. 5). Frau LEMBRUGGEN herself declared in a further affidavit that she owed her discharge from the concentration camp to NAUMANN (NAUMANN Doc. No. 8, Exh. 7, Vol. I, P. 8). affidavit by BENDELER, likewise a Dutchman, who stated that he owed to NAUMANN his discharge from the Vught Concentration Camp to which he had been committed because he had protected Jews (NAUMANN Doc. No. 11, Vol. II, P. 13). This attitude of NAUMANN clearly shows that in his heart he did not agree with the Fuehrer Order. But this attitude shows particularly that NAUMANN would never have issued orders against Jews on his own initiative, as it was made a duty by the Fuehrer Order. A contradictory statement was, it is true, made by RAUTER, the former Higher SS and Police Leader in Holland, who is still being held in custody in Holland because of war crimes committed during the time of occupation. (Doc. No. 5771, Exh. 236, Vol. V B . P. 149). This statement is, however, of no probative value. Apart from the fact that it is not regularly sworn to, it was made by a person who is himself called to account for measures against Jews and therefore endeavours to clear himself of this responsibility as far as possible.

But also in other respects NAUMANN's attitude towards the Dutch population was irreproachable. He always endeavoured, even in so far as this was not within his jurisdiction, to alleviate the fate which had befallen the Dutch population by the occupation. This is proven by Court No. II, Case No. IX.

numerous other affidavits from among the Dutch population. Particularly characteristic are the statements made by the representatives of the Dutch Red Cross in The Hague (NAUMANN Doc. No. 9 and 10, Vol. II, pages 9 and 11), who, as stated by themselves, had been opponents of National Socialism. They declared unanimously that NAUMANN had made it possible that the Dutch political prisoners in the concentration camps and in the prisons could be cared for by the Red Cross and that great quantities of foodstuffs could be supplied to them. In addition to this, NAUMANN threatened the guards with heavy punishment in the event of their appropriating such charitable gifts, as the witnesses von GENNEPP and van OVEREEM declared in agreement with the witnesses LAGES (NAUMANN Doc. No. 23, Vol. IV, P. 44) and WOELK (NAUMANN Doc. No. 24, Vol. IV, P. 46), NAUMANN effected, in order to alleviate the fate of the Dutch prisoners, although this did not come within his jurisdiction either, the improvement of the hospital facilities in the Vught concentration camp and made the erection of a new hospital in the Aamersfoort transit camp possible (NAUMANN Doc. No. 21 and 22, Volume IV, Pages 40 and 42). It is particularly to be emphasized that the discharge of 150 hostages was attained by the intervention of NAUMANN (see affidavits by van GENNEPP and van OVEREEM, NAUMANN Doc. 21 and 22, Vol. IV, Pages 40 and 42) and by van der SCHALK (NAUMANN Doc. No. 7, Exh. 6, Vol. I, P. 7). NAUMANN instigated and carried through the screening of the political prisoners in Holland so that a great number of prisoners whose guilt was not incontestably established were released from custody. (See affidavits by LAGES, NAUMANN Doc. No. 23, Vol. IV, P. 44) and by WOELK (NAUMANN Doc. 25, Vol. IV, P. 47). Frau van der SCHALK testified that the list of Dutchmen, for whom she successfully intervened with NAUMANN, was endless. She asserted that NAUMANN had done much good in Holland and even went so far that he endangered himself very much (NAUMANN Doc. No. 6, Exh. Vol. I, P. 5). Also the Dutchman Dr. FREDERIKS, the former Secretary General in the Dutch Home Ministry, testified that NAUMANN showed great obligingness, Upon his remonstrances he succeeded Court No. II, Case No. IX.

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with NAUMANN's assistance in saving four Dutchmen who had already been sentenced to death and that some of a number of arrested Mayors were released from custody, and that pending proceedings against some of them were quashed. (Doc. NAUMANN No. 12, Vol. II P. 14) Particularly worth mentioning is the fact that NAUMANN brought about the punishment of the Commandant of the Wught Concentration Camp, GRUENEWALD, after having been informed by a man of confidence that 10 persons had died as a result, of his punishment measures, even though the administration of the concentration camps did not come within his jurisdiction. (See affidavits by van OVEREEM and van GENNEPP, NAUMANN Doc. No. 9 and 10, Vol. II, Pages 9 and 11, by LAGES, NAUMANN Doc. No. 23, Vol. IV, P. 44).

The incidents mentioned in the rebuttal document No. 5771, Exh. 236, Vol. V B, P. 149 are not suitable to question the validity of these testimonies. The action "Silbertanne" (Silver-fir") which is mentioned in the document has not started by NAUMANN, as is clearly shown by the depositions of WOELK and LAGES in the document, but by RAUTER. It can well be understood that RAUTER endeavours to clear himself of the responsibility for this, since he has to answer for this measure before a Dutch court. The numerous proofs for the irreproachable attitude of NAUMANN from Dutch circles show already that RAUTER's statements concerning the action "Silbertanne" cannot be correct. It is not only improbable, but even impossible that these Dutchmen would today make statements in favor of NAUMANN, if NAUMANN had not behaved in the manner they testified. The number of statements from among the Dutchmen could have been increased at will, if their procurement from abroad had not met difficulties. shows that he is not the brutal man the Prosecution tries to describe him. It especially shows that it was solely and wholly due to the existence of the Fuehrer Order that NAUMANN had to tolerate the execution of Jews in Russia. Should the opinion of the Prosecution be correct, then there would not have been any reason for NAUMANN to behave in Court No. II, Case No. IX.

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Holland in another way than in Russia.

In Count 3) of the Indictment NAUMANN was furthermore charged with membership in criminal organizations, more precisely in the SS and the SD. must exist in order to justify a conviction because of membership in a criminal organization. I now wish to anticipate this result and to examine on the basis of this result whether a conviction of NAUMANN because of this is justified. According to the verdict of the International Military Tribunal the following would be required for this: 1) NAUMANN must have supported some criminal aims or other of the SS or the SD by co-operation with other members. 2) He must have had knowledge of criminal actions of these organizations. 3) The membership must have been on a voluntary basis. the decision of these three questions.

NAUMANN did not belong to the General SS after that date (Records p. 841 of the German, p. 834 of the English text). He was rather a member of the Waffen SS during the period from 29 April 1940 until 15 March 1941. This membership, however, was not a voluntary one, it was based on the contrary on a legal regulation, namely the Armed Forces Law (Records p. 841 of the German, p. 834 of the English text). the 1 September 1939. By such a way of acting he would have incurred most severe punishment. therefore be no justification for a conviction because of membership in a criminal organization. Reich Main Security Office after the 1 September 1939, as he conclusively Court No. II, Case No. IX.

testified during his interrogation in the stand. (Records page 842 of the German, page 835 the English text). made a withdrawal impossible. Already for this reason therefore he cannot be punished because of membership in a criminal organization. NAUMANN had any knowledge of the fact that the SD intelligence service was employed for the perpetration of any war crimes or crimes against humanity. This was also set forth by NAUMANN during his interrogation in the stand. (Records page 842 of the German, p. 835 of the English text).

(The hearing reconvened at 1540 hours.)

THE MARSHAL: The Tribunal is again in session.

PRESIDENT: You may proceed.

DR. DURCHHOLZ: Durchholz for the defendant, Schulz.

May it please the High Tribunal! opinion as the greatest murder trial of all times. The prosecution declared right at the beginning of its opening statement that it intends to describe the intentional massacre of more than one million innocent and defenseless men, women and children. correct, according to the evidence, - facts have been submitted and it also has been proved from what sources the numbers mentioned in the reports of the prosecution, characterized by it as incriminating evidence, were arrived at, and why it is impossible that those numbers can be correct, besides all this, it has to be established whether murders actually were committed. of a human being for debased reasons, originating merely from the lust and desire to kill. them really constitute killing in this sense, that is murder? Generally speaking, what did the men of the Einsatzgruppen actually do?

All those men were committed to war service. They were soldiers, soldiers like other soldiers in every other country of the world. called upon to do so. The soldier is obliged not to evade this duty and has to be obedient to his superiors. The latter implies that he has to obey all orders and instructions of his superior. If he does not do so, he will be punished. If this happens even in war time, he has to suffer the most sevre penalty it is immaterial whether it is a war of defense or a war of aggression It is absolutely feasible and possible even necessary that an attack provides the best form of defense.

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And old proverb states: "The best defense is attack." with which he is commissioned, especially as it is impossible for him as a soldier to realize what kind of a war is being conducted, especially since the modern means of propaganda of both belligerents are apt to confuse the issue. However, we do not have to examine, with regard to this one case as to whether or not the defendants here have made themselves guilty of having started or instigated a war of aggression.

As already stated, those men were engaged in war. Their activities, which constitute the subject of this trial, extended exclusi vely to war commitments against and in the Soviet Union.

It was a war which broke out ultimately in order to bring about a final settlement of the controversies of two indeologies, which were so contradictory that they never could be reconciled. It is not only the controversies between these ideologies of Germany and Russia which are concerned, because these controversies, these divergencies existed then and are still spreading today and, have now engulfed wider and wider circles, is clearly shown by the present world situation. gical controversies. It might be possible that the controversies originally were of an ideological nature. However, later on, they touched all spheres of life, both materially and ideologically. These controversies were not reconciled even after the last fatal war as may be soon by the various warlike conflicts going on in different parts of the world in spite of all efforts at peace and pacification moreover, they have now engulfed the entire world and divided it into two fronts which have become more and more clearly defined.

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And in addition each party considers its concept the only right and only true one for the future welfare of all mankind.

For this aim the battle was waged and is till going on. If in the beginning the struggle was restricted to spiritual weapons it ultimately degenerated as a result of human failures, to a struggle with material weapons and developed into a struggle for existence or elimination of one of the two opponents. will take is impossible to predict with certainty, it can only be visualized. And it is good that we are unable to foresee the future. out ideologically or materially, it is the method which counts. this method and ultimately, how these powers had been mobilized by propaganda. But here again it is of importance to consider what kind of men disseminate such propaganda and what kind of people are influenced by it. And here it is significant in what specific psychological, mental and physical condition these people were. I have here no intentions whatsoever of defending or representating a racial theory of any kind. And intensive war of propaganda is being used on both sides. Who is able to say which of the two dies succumbed or had to succumb to its own propaganda? Under those circumstances, is it permissible to make the individual responsible, considering his diversified disposition for whatever he did or still does? Which of the two parties succeeded by its propaganda in honestly convincing the people that its respectively conception of matters and events of this or of the opposing camp was ultimately correct? Which party believes in having to fight for its own convictions until the last?

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to you. you will give. opposing ideologies in order to reach a general evaluation of the attitude of these men. You yourself, without being or becoming prejudiced, may give preference to one of the two ideologies. Communism. In this struggle the German soldiers had to fulfil their duties. Communism remains the crucial problem of our time. attitude is now assumed with regard to this problem, without having to discuss the basic points of view of leading politicians renowned and well known scholars of national and international law and without having to quote the opinion of the head of the supra-national Catholic Church, the Pope, who as a Prince of Peace always carefully tried to reconstruct and preserve world peace. I repeat only a few statements which have been published by the world press. The British Prime Minister Attlee made a speech over the British radio on 3 January 1948, in the course of which he sharply criticized Communism. He said other things, that the expansionist aims of the Soviets must be stopped. Soviet Communism endangers the welfare of the European countries by a new kind of ideological, economical and strategical imperialism. The history of the USSR is a warning example of the fact that political of the USSR is a warning example of the fact that political collectivism without political freedom can rapidly deteriorate and may lead to subjugation and uinjustice. Therefore it became necessary to contemplate measures against Communism in England.

Furthermore: at present books and memoirs are often published in the Western World, propagating tendencies inimical to the Soviet-Union. They represent; according to reports of the press, the consequences of the Soviet-Russian expansionist policy and the understandable reaction of those affected by the Soviet-Russian methods. Among others it is announced that also Farenzc Navy, Premier Minister of Hungary until last year, will also publish shortly a book at a New York publishing house concerning the condition in Hungary after the war and his enforced resignation. I may quote even now what Nagy has already stated, namely "Now after it is too late, I realize that I am a living example of the thesis, that no compromise is possible with Communism". (End of quotation.) from Washington of 9 January 1948, a sub-committee of the House of Representatives for the investigation of un-American Activities, resolved. To start on 9 February 19148 with the work on a bill which aims to outlaw the Communism Party of th e United States, by declaring that membership in the Communist Party can be termed an act of high treason.

THE PRESIDENT: Dr. Durchholz, I don't want to interrupt you, and I certainly don't want to cause you to present your case in any way different from which you wish to present it, but we can't help but comment at this very juncture that what you are now telling the Tribunal is entirely irrelevant and we don't want you to assume that it is having any effect on the Tribunal whatsoever in so far as the issue is concerned. What happens in 1948 has nothing to do with 1941.

I only said that, Dr. Durchholz, so that if there is anything you wish to omit in order to present your entire argument within the hour and a half which has been allotted you, you might omit such arguments as you are now presenting, because I am afraid with the sixty pages or more that you have that you can't read it all within that time anyway.

We, of course, will read the entire summation, regardless of its relevancy or irrelevancy, but this was so far afield that we couldn't help but make some comment on it, and we don't want you to believe that anything we say is in any way prejudicial to the merit of your case.

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DR. DURCHHOLZ: There is only one more quotation, Your Honor and I would like to ask you whether I may read this quotation, and then the quotations are at an end.

THE PRESIDENT: You may.

DR. DURCHHOLZ: I may refer to the fact that according to a report from Washington, I quote:

"Italy's Communists are ready" According to this report, the American foreign policy and especially the European Relief Program was sharply criticized at a congres of the Italian Communist Party in which well-known international Communist leaders participated. Among others it had been declared that the USA together with the Holy see tries to attain world domination, that those two are the biggest war mongers. However, tens of thousands of Comminists, trained in guerilla warfare were said to be ready to resist this force of arms." (End of quotation.)

Now I come back to the methods of this struggle. Both parties have again announced that they will be locked in the most intensive struggle. at was like that also in the past-and there it came to open battle. It has been already proved by a series of defense documents and by other evidence how ruthlessly this fight was waged by the opposing camp. Men, women and even children were mobilized to participate in this fight and took part in it either openly or secretly- Is it then surprising that in such a fight for life fire was used to fight fire? Was not the old maximum valid and is it not still valid: "What's sauce for the goose is sauce for the gander"? If one party is to be condemned for that reason, then the other one must be tried with the same severity according to the commonly valid principles of justice.

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If this concerned a measure applied only against the enemy in the East but not against the enemy in the West then it had and must have had its significant reasons. Regarding the reasons of those measures which were applied against the enemy in the East I have already made detailed statements. introduce the methods which are now termed criminal and damnable? As soldiers they received orders. The question of thebasix significance of an order, of whatever kind it might be, has already been discussed. an order is viewed, whether from the point of view of natural law, national or international criminal law, or from the point of view of constitutional or international law, it is a matter for the individual, to determine his personal views regarding an order, in this case the often discussed Fuehrer Order. In this connection I may state and presuppose that the killing of human beings demanded by the Fuehrer order should not mean the exterminations of human beings for political, racial or religious reasons and with it the systematic execution of a program of genocide - at any rate the defendants were not informed of this implication. order may have been shown unequivocally by the evidence. None of the defendants were confronted by this Fuehrer order without having to overcome inner conflicts. The evidence has also proved how different the solutions of these conflicts were. individual it is import for the facts which have to be established first to determine the so-called external facts, i.e. to establish the the acts which the individual committed or did not commit and then the so-called spiritual guilt, i.e. if he did commit an act, why he did so.

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questions of this trial, which affect the interests of all defendants and therefore also those of my client. the related unfolding of problems, I now have to deal in my case, with the defendant Erwin Schulz. I wish to precede this with a few essential points. this frankly - so deeply affected by its contents that I had to deliberate profoundly whether I could reconcile with my conscience the taking over of a defense in the face of such grave charges. When going to my first confenrece, I believed I would find my future client to be at least - ruthless and relentless person. Here I had my first surprise, because I learned to know a man whom I soo liked on account of his str aight-forwardness and politeness. vity as a police official, extending over a period of almost 25 years I had my second surprise, because I hardly believed it possible that a man could be able to adhere to such an unblemished course in a difficult vocation and unless extremely difficult circumstances; a position whose heavy responsibilities were all known to me from my own experience. I must candidly confess in his presence, that I was unable to believe everything although he gave his explanations in every respect in anobjective and modest manner. I could irrefutably esyablish by virtue of the currently incoming affidavits of friend and foe, that everything without exceptions of what the defendant Schulz told me not only corresponded to the facts, but that he also explained ot ot me with an exaggerated modesty.

the former political enemies actually volunteeered to help a man to whom they owed respect and gratitude. and addressed or approached third persons, so much so, that strangely enough, I received statements from people without having to ask for them. the assertion that it actually became a necessity for them to render assistance to a man, whose hohesty, humane feelings and chivalry they had personally experienced. It was not necessary for me to go after one witness or to visit one internment camp, in order to assemble the evidence for my defense. As I have already explained when submitting my document books, I could have furnished far more documents, but I intentionally refrained from doing so, because I consider the documents submitted sifficient ecidence to prove that the defendant Schulz is nov even capable of committing a crime. it became a personal necessity for me to be of assistance to this defendant and to relieve him from the monstrous accusation of having committed crimes against humanity. In the same open and sincere manner as he described his profession life to me, he told it to all american authorities including the prosecution, who wanted to know details about it, in the course of his almost three years imprisonment He concealed nothing because he had nothing to conceal. In the same open and sincere manner as he performed his duty he conducted himself from the very first day toward the victorious enemy. It is a fact that he reported personally and voluntarily on the first day of surrender, 8 May 1945, to the American Headquaters at Zell am See; he was in full uniform, submitted all his personal papers and made himself available to account both for his person and the cause which he had to represent.

which the American Officer in Salzburg made out about this fact. It might be that this report also contains the sentence which the defendant spoke to that officer, convinced of the principle that every man should be aware of his own value, namely; "I was the same man before 1933 as after 1933 and if I remain now what I was before then even the discerning enemy will not refuse to pay me his respect." here in Nuernberg towards the prosecution. He voluntarily submitted a voluminous handwritten report of more than 50 pages, a fews days after his first interrogation by Mr. Wartenberg in the presence of

Mr. Walton, even before he was acquainted with the indictment and before he had knowledge of even one of the documents exhibited. And everything he submitted in his draft repeated almost verbatim on the witness stand. Not only that, his statements and data correspond in almost every detail to the documents although the latter have been given from memory after nearly 6 years. establish with it right at the start that the statements of the defendant Schulz have not been conceived for the specific purposes of to the truth, openly and honestly without adding any embellishments. Although his membership in the SS and Gestapo up to 1 September 1939 does not constitute a count of the indictment, I have to stress this period too, in a short and concise manner, in order to present a generally comprehensive picture. After the end of thefirst World War from which the defendant returned as a 17-year old soldier and fater passing examination (Abiturientexamen) Schulz had to face a situation which had destroyed his life ambition to become a Physician.

The sudy of law which he had taken up without any inward inclination also and to be interrupted. After a period of practical work in a bank and in a business enterprise he entered the Bremen police force on 5 November 1923. For this vocation he possessed three very essential qualifications: in the first place, his education in the home of his parents. His father was a soldier of long service and subsequently a civil servant. By him he was educated to a sense of duty, conscientiousness, and straigthforwardness of character. Secondly, his inward inclination and disposition towards helping in distress who need assistance, which had manifested itself in his wish to become a doctor and thirdly his study of law. Even though this study had not been completed it had taught him to think and reason along legal lines. These basic principles he always applied as the guide of his actions regardless of the situation in which he was placed. and activity during the first years since they are immaterial to this trial and were described in detail by the defendant on the witness stand. sents an important event which was to determine his life decisively. With reference to his activity here until 1933 Alfred Faust, at that time Social-Democratic member of the Reichstag and chief editor of the Social-Domocraticnewspaper "Bremer Volkszeitung", states in Exhibit no. 35, Scgulz Document No. 11.

I quote: "Long before HITLER'S usurpation of power under the Weimar Republic Schulz was an officer in the Bremen Political Police."

"During the period of my political activity in Bremen I knew Herr Erwin Schulz. I never knew him as a Nazi. He is the typical decent German officer". End of quotation.

On page 31 he continues: I quote:

"In my overall judgment I can only rmember Hauptmann Schulz with respect and gratitude. During his entire term of office in Bremen he always treated correctly and I have no cause whatsoever to bring accusations and charges against him." End of quotations. Reich Banner Black-Red-Gold," the militant organization of the Social-Democratic Party of Germany, and at present leader of all sports activities in Bremen, says in Schulz Exhibit No. 30, Schulz Document No. 2 Volume I, p.7: I quote:

"I know the subsequent official in charge of the State Police office Bremen, Erwin Schulz, already from the time before 1933. Herr Erwin Schulz was at that time First Lieutenant of the Police and was employed in the Polizeidirektion in the department political police. At that time I was the leader of the Reichsbanner (para-military organization of the democratic parties) Bremen and therefore I had to contact him several times when I was making preparations ofr political demonstrations and meetings. Already that time I came to know Herr Erwin Schulz as a quiet and prudent who always endeavoured to balance political emotions and to prevent clashes of a political nature". - End of quotation.

In his statement in Schulz Exhibit No. 21, Polizeisenator Theodor Laue explains as follows: I quote:

"I was known that Police Captain Schulz already before 1933 fulfilled his duties quite objectively assiting members of all political parties if he though it right and necessary out of human considerations." End of quotation.

Schulz did not change his attitude after 1933. Experiencing how for opportunistics reasons now many persons in responsible positions became obedient instruments of the Party outdoing each other in courting it and uncritically not only tolerating but even supporting what was considered right by ill-advised fanatics.

He on the contrary was opposed to all this ad because he was unable to reconcile such behavior with his inner attitude and with his relief in the purity of the National Socialist movement. Thus in indignation he approached the responsible Polizeisenator in Bremen with a public report ruthless disclosing to him the abuses going in the temporary concentration camp in Bremen established at the request of the Party of which he had been confidentially informed.

Here I again refer to the Schulz Exhibit No. 21 Schulz Document No. 60, where the witness Theoder Laue states: I quote:

"In 1933 Schulz submitted t me a report on his then chief Captain Kruse, concerning the temporarily protective custody camp in the Missler Halls in Bremen which had been established in Bremen and in which the SS-guards had resorted to exesses. His report enabled me to take immediate action and to stop the reported shortcomings. The SS-guards were immediately relieved of their duty and the Police first Lieutenant who was responsible was also, immediately transferred as a disciplinary measure. This incident proves, too, that Schulz did not approve of any incorrect actions, not even then as has been unfortunately noticed so frequently when it was a matter of "expediency considerations." -End of quotation. the consequences resulting thereform. Schulz took a heavy burden on himself, for he had to know that he made enemies with such behavior. But he accpeted this consequence without hesitation. already quoted, above says in Schulz Exhibit No. 35, as follows, and I quote:

"Thus it required a good deal of pluck to oppose the hatred of subordinate departments. "End of quotation.

When I single out Schulz' behavior immediately following the so-called seizure of power. I do so because this period in particular with its first ugly appearances of political opportunism gives the best possibility of appraising persons value. But in order to deal moredirectly with the main subject I an not able, unfortunately to discuss in detail the defendant's Bremen period in the time at my disposal especially as - as stated by the Prosecution - this period is not refer red to in the indictment. What kind of difficulties he will have to overcome at a later date, he himself possibly have to account for in Bremen. But I would like to state that when he took over his office in 1934 as the responsible official, he conducted a ruthless purge and at all times supported straightforwardness and justice, which course he also taught his subordiantes.

As for sixteen years without any interruptions, Schulz owrked in the Bremen police force, I deliberately collected a great number of affidavits dating back to that period and submitted them to the court. I did this not only because it was a matter of course that I could obtain the greatest possible number from those sources, but also because I am of the opinion that the person who conducted himself unimpeachably and in an exemplary fashion for sixteen years in one and the same town will by necessity act in the same manner in thesubsequent years, which is also incontestably proved by the documents of that particular period. person as is the case here. In another part of my plea I shall refer to the essential points in those affidavits and proceed to summarize them. Oberlandses erischtsrat Dr. Stegemann as public prosecutor with the Hansatic Court of Appeals at Hamburg, Dr. Stegemann was in charge of the Bremen high treason cases. From those activities he knew the defendant in the period from 1934 to 1939. He states in Schulz Exhibit No. 28, and I quote:

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"In the then Captain Schulz I found a man with a complete understanding of the requirements of justice who differed in a very advantageous way from many of the State Police Leaders likewise known to me though his always equitable, humane, and decent manner. Herr Schulz was free from any strict, narrow, fanatical disposition . He never took part in the war of the State Police against the department of justice which was waged by many State Police officers. At that time I learned to appreciate Herr Schulz especially for his frank, straightforward and decent character, his brave, fearless masculinely strong personality." End of quotation. friendly or intimate relations between Dr. Stegemann and the defendant Schulz, outside their official intercourse which could favorably influence the evaluation of the defendant.

During my client's stay in Bremen, he was appointed in the spring of 1938 to take up duties in Graz following the occupation in Austria. For this period, too, I have submitted a considerable number of affidavits which were mostly given by such persons as had been in protective custody, and which consitute a unanimous eulogy for the defendant, unreservedly praising his humane feelings, his chivalry, and his kindness. I deem these documents particularly important because they prove that even in the year 1938 the defendant did not change his attitude and never made nay concessions to the party for opportunistics reasons or even vain ambitions, which he could not reconcile with his conscience and his professional ideals. Apart from this humane a ttitude, the documents prove that his measures and decisions were definitely not favorably received by the Party.

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5 Feb 1943_A_MSD_24_1_Gross (Hildesheimer) account who, as an official, parson or convinced Party follower, acted in accordance with the dictates of duty and conviction, and he applied this maxim to his own action. Only an offense against the existing laws or any preceding arbitrary actions could make it necessary to call a person to account. Whoever violated that principle acted, in the defendant's

opinion, from reprehensible motives of revenge, which were to be rejected as unjust. mention in particular the testimony given by the Jewish professor, Professor Dr. Loewi, who is now working in New York as professor at the New York University College of Medicine. This is the Schulz Exh. No. 91, Professor Loewi says, and I quote:

"On 6 May 1938 Herr Schulz discharged me from protective custody. The discharge tood place in the kindest form in the presence of my wife whom Herr Schulz on his own initiative had invited to be present." dealing with Jewish persons, had no other guiding principles than that of justice. And quite determinedly he saw to it that his views prevailed although it was especially this release from detention which after a short time was responsible for its turning into a highly controversial matter. In this case, too, it required his personal intervention and all his skill to justify and motivate those measures. by Dr. Loewi's assistant, Dr. Hellauer, in Schulz Exh. No. 99. article in the "Tagespost", a Graz paper, dated 2 July 1938, which the witness Schmid had in her possession and the original of which has been submitted to the court. In this article, the defendant quite frankly announces his professional ideals by asking his officials and employees to allow humane feelings to assert themselves in thier particular 5 Feb 1948_A_MSD_24_2_Gross (Hildesheimer) work, regardless of likes or dislikes.

This does not show sentimentality. If one was not sure that humane sentiments should be permitted expression in a particular job, one had better refrain from that job. Although applying strict rules in the execution of one's duties, this would not exclude a certain amount of chivalry. but also to all those present of whom many had critized the defendant's measures which were motivated by kindness and justice. I consider this newspaper article particularly important, because it proves which ideals guide the defendant, and that he cannot be swayed from this course. Openly defending his views; for there can be no more pronounced action than announcing one's views in the press in order to stamp them as one's beliefs. However, these declarations are really a profession of belief, because word and deed coincide quite difinitely, a fact which is again evidenced by the statements of the political opponents who, according to their positions in life, which they held at that time and are holding again today, must be considered persons whose judgment is both substantial and valuable, because they are excluded from all suspicion or superficiality or an unjustified favoritism. assigned to Assig in the former Sudeten province, which took place in the fall of 1938, and to Olmuetz in the former Protectorate in the spring of 1939. These events are important because the Einsa zgruppen for these assignments had already been activated, and Schulz had been commissioned to lead an Einsatzkommando. A I have only a limited amount of time at my disposla, I can only briefly deal with those periods. the Einsatzkommandos were merely assigned to the primary task of arranging for working space with its necessary billets and providing 5 Feb 1948_A_MSD_24_3_Gross (Hildesheimer) technical means for the regular offices, which were to be set up subsequently, and securing the operations of the invading troops by establishing a communication service.

This is proved by the aforementioned article in the Graz "Tagespost" Schulz Exh. No. 74 in which reads, and I quote:

"He - the defendant - expressed his happiness that he was able to conclude his four months of building, which had created the outer form by being able to turn over this neat building to its function........ Now there follows the second part of the task, the development of the contents, which he unfortunately could not do himself." As in Graz, the same also applied in Olmuetz. And as in Graz, his arrival in Aussig and Olmuetz also meant the arrival of justice, humane feelings, and genuine friendship, which the documents of his former political opponents prove unanimously. include many tasks for the defendant, as the planned setting up of a state police branch office in Aussig had been dropped. Aussig became only a secondary branch of the Reichenberg State Police exactly according to the scheduled three stages, as provided by the Munich agreement, in which after the departure of the Czech troops and authorities, the German troops and administrative offices followed according to a mutual understanding. The whole operation rolled off smoothly under the supervision of Lord Runciman, who had been appointed for this task. That in this instance, too, the defendant Schulz proceeded according to his principles of chivalry is proved by the fact of his attitude towards the Czech Police Chief, Dr. Benda, whose planned arrest he not only prevented, but beyond this even initiated a certain release procedure for the public which had as its aim removing this sting from this action against Herr Dr. Benda. I refer to the affidavit by the defendant, 5 Feb 1948_A_MSD_24_4_Gross (Hildeshimer) Schulz Exh.

No. 88 and the newspaper attached to this affidavit. This action on the part of the defendant could not have been achieved either if he had not personally intervened, for he was obliged to give a motive whenever he deviated from the given orders. As in this case, he never chose the convenient course of blindly obeying orders, but he wanted to be just. His efforts overcame the difficulties and were also successful for the simple reason that a well-meaning man backed them up. It should be obvious, however, that his attitude towards "the smaller fry" was not less well-meaning, even though he protected them "big-shots". The above mentioned newspaper article also proves, as it shows, that the Oberlandrat was the superior authority for Schulz in the Protectorate. Yet another action on the part of the defendant signifies his chivalrous attitude. Completely ignoring the wish of his superior authorities, he did not billet the men in his office in the city hall rooms of Olmuetz, but he allowed the Czech authorities to stay there without imposing any changes, and he soon established cordial relations with them on the basis of mutual respect. He himself only claimed two modest rooms, while members of his Kommando were billetted in the vacant floor of a nearby private house. He replied to the charges of authority and representation brought against him by stating that according to his opinion, authority and representation did not depend on external matters, but were based on behavior and results. After having taken over as ordered, he returned to Bremen in the following weeks, in order to hand over his office there to his successor and to his subordinates to whom he was for many years both a respected and much-liked leader. However, the actual transfer was delayed because hes successor was taken ill, so that he did not return to Reichenberg before July of 1939, approximately. The office he found there required a thoeough reorientation if it was to be in accordance with his views. As a primary measure, therefore, he introduced his 5 Feb 1948_A_MSD_24_5_Gross (Hildesheimer) new subordinate to his professional ideals.

After that, he paid special attention to the task of definitely settling the irresponsible disorder that prevailed in the treatment of assets which were left behind by Jews, most of whom had escaped. For this purpose, he appointed two responsible officials. In this instance, too, he had to overcome the most difficult obstacles, as he had to proceed ruthlessly, in order to regain the property which had already been appropriated by others. To prove this, I refer to the statement by Kriminalrat Hasse, Schulz Exh. No. 78. However, this, his principal attitude, must also be considered as shown by this particular statement. Hasse states the following and I quote:

"He - the defendant - considered it his principal task to train his subordinate officials and clerks in such a way - and he devoted a large part of his time to this activity - that they would always act in a correct, honest, and above all decent and humane way. I shall never forget that he often said to me that true police officers should be only men of spiritual greatness, with an instinct for honesty, with heart and tactfulness. In this respect he was an example to me, and - this is no exaggeration - the one great teacher of my life. I owe him much. He frequently emphasized to me the need for waging a war on political opponents in a humane manner. In the question of protective custody, Herr Schulz was more than cautious. I also know very well that Herr Schulz frequently released prisoners after a personal warning." a policy no different from the one he had followed in all the preceding years. This is also confirmed by the statement of Polizeiobersekretaer Fritz Weise from the same office Schulz Exhibit No. 41, in which he says, among other things and I quote:

"On the contrary, he was an exemplary, modest and plain person, who looked after his officials like a father......Especially as far as morals were concerned, he demanded utmost decency, both of himself 5 Feb 1948_A_MSD_24_6_Gross (Hildesheimer) and his subordinates.

his testimony on the witness stand (Eng. transcript. p. 1113/14; German transcript p. 1131), according to which he opposed the intention of the Gauleiter to arrest the leading Czechs at the beginning of the war and succeeded in imposing his conviction. me to discover character witnesses from the former areas of the Sudetengau and the Protectorate. However, I am convinced that I would have succeeded with little effort in locating witnesses for these areas who were credible in every respect and unobjectionalbe as to character and education - and my introduction of evidence is based solely upon such witnesses. But I firmly believe that the court has been given sufficient proof by the documents which have been submitted, in order to enable them to form a judgment concerning the defendant Schulz' attitude and character. I might even say that the documents have a double value as proof, insofar as documents from subordinates of my client are concerned, because they not only present a judgment of their former superior, but beyond that illustrate the decency, and sincerity of his policy of issuing orders. In my opinion this is important because I know from my experience that many times nowadays former subordinates try to hide their own weaknesses, mistakes and undependability behind the orders of their former superiors. tion, because the entire activity of my client in Aussig and Olmuotz and the greater part of his activity in Reichenberg falls outside the time under indictment, namely before 1 September 1939. However, in the Reichenberg period, there is only the campaign against Poland, which had no effects at all upon Reichenberg, especially since Schulz had prevented the arrest of Czech inhabitants which the Gauleiter had demanded. However, after the Polish campaign had come to an end, Schulz left Reichenberg in April 1940, before the campaign in the 5 Feb 1948_A_MSD_24_7_Gross (Hildesheimer) West had begun.

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inspector. This event is of far-reaching importance because from this time on until the capitulation. my client withdrew from his former subordinate position under the office of the Gestapo in Berlin and and or the office IV of the RSHA and belonged to Amt I, in the offices of which he was directly employed in the following period. sort. In this connection, I refer to his own statements on the witness stand and the testimony of Regierungsrat Broder in Schulz Exhibit No. 42. This witness, who knows the defendant not only from his own experience but also from the judgment of the widest circles of the Security Police and the SD, above and beyond the spheres of local activity, here draws such a comprehensive picture of the defendant as a person and as a superior in his official as well as in his private life, in his conception of his profession and in his concept of life, that I would like to call it especailly to the attention of the court. This description clearly shows that the complete harmony between word and deed is scared to the defendant when he sets his fundamental principle above all else: "The living example is the best training." because now I shall start the Russian Campaign.

THE PRESIDENT: The Tribunal will recess until tomorrow morning 0930.

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may proceed.

DR. DURCHHOLZ (Attorney for the defendant Schulz): Your Honor, I should like to proceed now in delivering my final plea. We proceed on page 23, paragraph 7:

As early as March 1941, my client was recalled from Hamburg. It is unusual to advance from inspector to Gruppenleiter in the RSHA. But Schulz acceded to the request of the Chief of Personnel at that time, who told him that because of his particular inclination and capacity for leading men, he urgently needed him. He became Gruppenleiter I B (training and education) and Commander of the Leadership School. With his inherent devotion, he dedicated himself to his new work, which he approached with all the greater happiness, as he believed that where he would be able to set the lofty duties of their profession before the eyes of the people. with moving from Hamburg to Berlin, he was taken completely by surprise by his transfer to Russia as Fuehrer of Einsatzkommando 5. tions and circumstantial details. My client has described the latter in detail on the witness stand, I have listed the former in detail in my trial brief submitted to the Court. Therefore I will limit myself - presupposing the totality of events so for as they affect my client - to dividing my subsequent statements into the following topics:

"Schulz, the man. in his relation to the events in Russia and the orders issued."

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he knew nothing whatsoever about the comprehensive Fuehrer Order. He was only familiar with the statements of Heydrich in the Prinz Albrecht palace, in which not a word was mentioned concerning the shooting of the Jews and their wives and children, the Gypsies and functionaries. This is also to be regarded as proved by the fact that the co-defendant Ohlendorf likewise took part in this discussion, but together with other co-defendants clearly testifies that the Fuehrer Order was only made public by Streckenbach in Pretsch by order of Heydrich. Although Schulz was in the company of the defendant Rasch, the Chief of his Einsatzgruppe, for 2 days in Schmiedeberg and even took his meals with several officers, neither Rasch nor anyone else of those present spoke of this order made public by Streckenbach. The same statements were also made by the defendants von Radetzky, Graf and Fendler, who belonged to the same Einsatzgruppe. Further, this was nothing extraordinary, for the order was made known to only a very limited circle and the statements of several co-defendants have shown that they likewise were uninformed of this comprehensive order in their stations of Pretsch, Schmiedeberg and Dueben. Since by its very nature it was strictly confidential, it is also not surprising that news of this order did not reach Schmiedeberg, the station of the Einsatzgruppe Rasch; for even it if had been discussed in Dueben or Pretsch, it did not necessarily have to reach Schmiedeberg, which was located several kilometers from these places. Unfortunately the elimination of the defendant Rasch as a witness in the witness stand has deprived me of any possibility of clarifying these and several other points as well in favor of my client. However, from the opening statement of my colleague, Dr. Surholt, regarding his client Rasch, I must conclude that Dr. Rasch probably consciously refrained from making that particular Fuehrer Order public.

I refer to subsection 1 of this opening statement which I quote:

"The Einsatzgruppen were established in the early summer of 1941 in accordance with such principles as are generally recognized as admissible from the viewpoint of international law in the event of war..... a nature as the Prosecution is now quoting under the name of Crimes against Humanity and war Crimes was not given, neither could it be surmised. Thus the defendant Dr. Rasch had no reason to reject the command over Einsatzgruppe C with which he was charged." End of quotation. nor did it become known to him. important to me that he cannot remember ever again having seen Dr. Rasch after he had made his final report, before his departure on 24 September 1941. Without any knowledge of the indictment or the prosecution documents, he gave his testimony, which fully agrees with the statements in the above mentioned opening statement, to Herr Wartenberg orally already on 4 March 1947, and on 9 March 1947, in the presence of Dr. Walton gave Wartenberg this information in voluminous written form. However, this happened at a time in which he simply did not know where Dr. Rasch was. Since Dr. Rasch also was not transferred to the prison, but was completely isolated in the hospital, there was no possibility at all of a verbal agreement, quite apart from the fact that he would have had nothing to do with such a thing. ing route were discussed. Schulz personally took over the command of the convoy of his completely motorized Kommando. duties. But as long as everything was in flux and nothing at all was known of what would happen, these thoughts took no tangible form.

to have stood their ground and then a war of position would have to have been fought which would have made it necessary for the Kommando to have become active in the Reich area of even for the German troops to have been overwhelmed. Since my client holds the position that all tentative plans are out of place because they hinder or disturb decisions in unexpected developments, he always tried to let things develop first. He never once thought that he would have to undertake shootings, since up until that time in his entire career with the police he neither received nor issued an order to shoot a man. As he already stated on the witness stand, he pictured the course of his future activity to be similar to that which he had experienced in his previous assignments, although he probably realized that they would be of a far more serious and dangerous character. like change. In the foreground were the conditions already mentioned which suddenly and glaringly brought into focus all the difficulties of future events and the mercilessness of the coming war.

The announcement by Dr. Rasch of the first order concerning our own war measures in the East stood in direct connection with the thousands of dead, who were found, among whom were also m any German soldiers and officers. Those participants to whom this order was made public, completely overlooked the fact that that order - compiled from the so-called Commissar Order and the Barbarossa Order - had been published even before the beginning of the war with Russia, since they learned of this order only after the war had begun and had to consider it justified by the events which h ad taken place. The effect of the orders published, through the combination of circumstances, was different from what it would have been if they had learned of it before the beginning of the war. One could see from reports and stories that Lemberg was no exception.

witness stand , again agrees with the statements of my colleague Dr. Surholt, in his Opening Statement under Sub-Section 2 (Engl. transcript p. 311, German transcript p. 316), where it says, and I quote:

"Accordingly, the assignment of the Gruppen, or at any rate that of Gruppe C headed by Rasch, was motivated by military necessity. The orders he passed on to the subordin ate Kommandos were based on adequate prerequisites. Executions were only to be carried out if the actual facts of the crime were established, they had thus to be limited to cases involving persons who had participated in murders, looting, acts of sabotage, etc." End of quotation.

Rasch's order also contained the instructions that all political functionaries and agents were to be shot. Of course the partisans also fell under this heading. tion and the lack of a regular court martial, because in its consequence he saw the dangers of arbitrary action, especially since the decision according to the Keitel order was left to officers who lacked any sort of training in the field of law. However, as he testified, he was under the influence of the events of Lemberg. In spite of this his feelings struggled against it. He knew his tendency toward conciliation and his constant inclination toward the good, which have again and again been brought out in all the documents I have submitted and which have so often been falsely characterized as meekness and ascribed his conflict to his predisposition. According to the given facts, he believed that he had to force himself to a greater severity. When he conscientiously considered this with the exclusion of all emotion, he believed that he had to acknowledge the fact that right and emotion could differ, without right thereby becoming wrong. From this conflict however, he came to the conclusion that he would have to limit the not very closely limited order by requiring that the guilt of the political functionaries and agents be proved in advance.

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ordered by the Fuehrer of the Jews guilty of and participating in the Lemberg murders. which followed in the wake of the Lemberg murders, in order to be able even to comprehend such a severe order. But from a purely legal point of view he was unable to produce any sound arguments against the order, especially since in addition the attention of the world had been focused on these events and representatives of foreign powers had appeared in Lemberg in order to convince themselves of what had happened. Everything was fully discussed before this public. The Fuehrer gave the order with the explicit reference that it was a matter of reprisals (retaliation). However, such reprisals are perfectly permissible according to international law. Perhaps in such circumstances, any other belligerent power would have done the same. It could appear thoroughly comprehensible that they were also carried out for the murdered Ikrainians, since Germany had placed the Government General under its protection and by so doing had to represent the interests of the Poles. However, those persons murdered in Lemberg were for the most part former Polish citizens. In addition, the population of Lemberg itself demanded these reprisals. According to Rasch's descriptions, the measures were executed by order of the competent Wehrmacht commander in chief in cooperation with the militia under its command. Schulz even endeavored to urge Dr. Rasch to leave these reprisal measures to the Wehrmacht itself. He did this, although Einsatzkommando 6 in connection with Sonderkommando Schoengarth was already commissioned with the investigations and the execution, and therefore he personally was not at all concerned and did not have to be concerned that his Kommando would participate. In spite of this, he further endeavored to advance with his Kommando in order to remove it from this entire event and the depressing experiences in Lemberg, but he did not receive marching orders.

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Meanwhile the Jews were arrested, and hearings were constantly being conducted. In the course of time, from the approximately 2500 to 3000 persons arrested, a rather large number was singled out. Schulz saw all this, since he was satying in the same house. He had, therefore, to arrive at the convictions that a somewhat conscientious investigation was being carried out especially since men of the Lemberg authorities were included and Dr. Rasch took a personal interest in the events. that on the afternoon of the day of the shooting, his Kommando would have to carry out the executions. His efforts to have this order rescinded, since neither he nor his men were prepared for such a task, were without result. It would perhaps have been senseless to refuse, since they could not have changed anything in the execution of the order. Even Einsatzkommando 6 would prob ably not have understood if he had demanded of it what he refused himself. He therefore had to accede to the order given by Dr. Rasch. He did it, while conscientiously creating all the conditions under which the execution would be dignified and soldierly for those to be executed and for his men. He could do no more; one cannot in justice either demand or expect more from him. Here, too, I must repeat that the Einstatzkommando was acting only as a Peloton-Kommando. The guilty persons were led out and buried in that locale by Einsatzkommando 6, Sonderkommando Schoengarth and indigenous militia. He and his men performed their duty, more or less with clenched teeth, and in the clear knowledge that they were committing no injustice, since according to information which the group received, only those who were guilty and had participated in the murders were being executed. But the defendant Schulz was made all the more happy that on a day which was so bitter for him, he could free those who were still under arrest, almost 2,000 Jews, and could save the lives of several who were marked for execution. He is almost thankful for the excesses of the Wehrmacht because they m ade it possible for him to do this.

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For without this as a basis, it would have been impossible to free these 2,000 men.

The next day, Einsatzkommando 5 went on. There were days of advancing with only occasional brief interruptions. But the Lemberg scenes were repeated. This was especially the case in Dubno, which my client also mentioned. I would like to direct the attentio n of the Court in this connection to Document NO-4525 in the possession of the Prosecution, report of events No. 29 of 21 July 1941, enclosure II of the same, in which the report of these events is contained.

It is not my intention to introduce it as an exhibit. I would only like to mention it in order to emphasize the truth of my client's testimony I did not find this document until after the testimony of my client, while looking through the existing documents of the trial. where it established its quarters for several weeks. During the time subsequent to Lemberg and in the following weeks as well, there were no mass shootings, no shootings of Jews for the sole reason that they were Jews. Inflexibly Schulz clung to his position, although he was reported to be lacking in initiative. He missed no opportunity of impressing upon his officers and men the lessons of decency and humanity. Where severe action was called for, it was to proceed according to the directives he had issued, in a clean and decent soldierly manner. No one could be shot unless he and the person performing the execution knew the exact reasons for the shooting. Acts punishable by death were published on posters. Whoever consciously violated this must have considered the consequences and calculated the risk.

In particular, I must now mention two important events. 1.) The shooting of partisans on the citadel in Berditschew. This was demanded of him because the Security Police was detailed for this according to the agreement between the Wehrmacht and RSHA. The leader of the Teilkommando postponed it. Schulz tacitly bore with the delay, hoping that the Wehrmacht itself would take action or that the matter would be forgotten.

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Not until a few days later when Dr. Rasch informed him after his visit to the Army Group that there had been an objection to the fact that nothing had happened yet and ordered him to act now, was he compelled to remind the leader of the Teilkommando to expedite the necessary investigations. However, he openly told Dr. Rasch that he could not understand that the Police were made the jailer of the Wehrmacht. But he could not alter the situation. Schulz naturally had to refrain from intervening in favor of men who as civilians shot at fighting soldiers from ambush. Whoever becomes a party to this and declares himself prepared knows what he has to expect.

2.) The shooting of about 90 persons in Chmelnik. In accordance with an order from the Wehrmacht he makes available a Teilkommando to carry out an investigation. The investigation arrives at the conclusion that this is a case of open rebellion in the course of which 25 inhabitants who had worked at German Wehrmacht headquarters were murdered. In addition, a road trap for Wehrmacht vehicles was built and other incidents occurred which my client no longer remembers. This incident is also described in the documents introduced by the prosecution. These perpetrators, too, knew what would be the consequences for their act. Schulz was stationed with his Kommando in Berditschew - that is during the period from 23 July to 24 August 1941 - were carried out on orders from the Wehrmacht and under the command and supervision of the Wehrmacht. In the first case under the supervision of the Commandant of the Citadel and in the latter case under the command of the Military Governor of Chmelnik without whose approval nothing could be done.

In neither case are we confronted with "Jewish Action". If there are Jews among those to be executed, then not because they are Jews, but because they have become guilty of an act which according to the laws of war is punishable by death through shooting attention to the Jewish culprits which is unequivocally evident from the duplication of reports which offers two different versions of the same incident or if he calls the perpetrators merely Jews, my client cannot be held responsible for that as little as he could be for invented figures.

ruthless measures on the part of units of the Higher SS and Police Leader Jeckeln and soon thereafter, between the 10th and 12th August, he is ordered to come to Shitomir together with other Kommando Leaders, and there Rasch informs them of the order to take more stringent measures against the Jews, According to his statement this order was issued by Jeckeln on instructions from Himmler, and it stipulated that Jews, who were no longer able to work, were to be shot and that no quarter was to be given to their wives and children either in order to obviate acts of revenge against the German people, explanations as given by my colleague Dr. Surholt in his Opening Statement Rasch and which states on page 312 of the English transcript, I quote:

"A change only occurred when new orders were issued. These orders specified that as a matter of principle in the areas that were to be safeguarded by the Einsatzgruppe the Jews, that is, including women and children, were to be exterminated. The exact time of this order is no longer known to the defendant Dr. Rasch. It might have been in August but could also have been in September 1941. The order was transmitted to Rasch by SS-Obergruppenfuehrer Jeckeln." End of quotation, and were purposeless, the defendant Schulz decides to act on his own initiative and in by-passing all official channels, go we Berlin in order to clarify matters there since he simply cannot believe that such an order actually was given from higher up.

and the escape from this dilemma which he chose. He said himself that he was unable to tell his leaders all the things that were on his mind. He no longer saw his way clear. Was it his fault that he could no longer understand matters? It is his opinion that one can criticize the escape which he chose. Yet he chose it since he thought the "misleading" reporting for human reasons was excusable in contrast to appear important. What appear to be prosaic words in the defendant's report is in actual life a truly dramatic incident which can only be described with difficulty in detail. His conflicts do not only center on his own person, he can follow the easy way. All he has to do is to pass on the order. But he can't do that since for him, conscience ranks higher than a man-given order. And he follows the command of his conscience. Human conscience varies from man to man, and like the defendant Schulz whom I am called upon to defend here I would not like to criticize somebody else's views or compare them to others. for every resolution, if it is defended gallantly and manly, deserves to be respected.

On 24 August Schulz goes to Berlin. That trip is known. Also known is his mental agony when he decides to submit his resignation if the order would really remain in force. The road he is to go with regard to his own self is clear to him, but he feels depressed thinking of his men who have to stay on. word that pursues him. Streckenbach's benevolence made this possible; he is, according to the defendant Dr. Six, the good spirit of the RSHA. And owing to his support the course for applicants for the executive service is called off at the same time. This way Schulz at least detached those men who had been entrusted to his supervision during the time they stayed at the leaders' school. Schulz is still in Berlin. H e is also being notified.

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Einsatzkommando on the very day he left Berditschew on 24 August 1941. About 15 September 1941 he returns to Skwira without interfering anymore in executive matters. He is merely waiting for Meyer's arrival, who comes on 21 September 1941, possibly already on 20 September. When Dr. Rasch arrives to see him on 24 September on a trip to Kiev he makes his final official report and returns the following day to his office in Berlin. it says the 29th. The other date is not correct. It is the 24th of August. That becomes quite evident from the context. transfer of his Kommando to Skwira, in order to remove it from the sphere of influence of Jeckeln. occurrence end to save his men from the equally terrible consequences of this order. But the order to kill women and children and innocent Jews he never executed. This is proved alone by the fact that in the town of Berditschew with its large Jewish population no Jew was shot as long as Schulz was stationed there with the exception of those who had fought as partisans. He had them all employed as indispensable workers in order to be able to prevent the carrying out of the order.

The statements of the defendant Schulz proved:

1.) by Schulz Exhibit No. 44 in Schulz Document No. 20, Volume I, pp. 68-72 and by the statement of the witness Hartel. his term of service with the Einsatzgruppen could not be produced since they are either killed, dead, or missing, and on my inquiries to the internment camps of the Western Zones I received the answer that they were not found in the camps.

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An important witness is Regierungsrat Dr. Krieger who was surrendered to Czechoslovakia. In the first place he can prove that Schulz in Lemberg put an end to the ill-treatment of the Jews and released all Jews found in the place. He also is the person who warned Schulz that in the group staff, to which Dr. Krieger belonged, they "talked very badly about him." did not behave in a way different from what he had done in any other place.

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conclusion that the assignment in Russia in particular is the best proof that SCHULZ hasalways followed a course which he could justify before his conscience, before his country, and before the world. from two aspects. For at the time when Schulz went away the German press and radio announced that Russia was actually defeated. And when Kiev fell and at the same time the troops had occupied the Donetz territory and advanced along the Dnjestr River, it was proclaimed that Russia had been crushed. Germany had then reached the absolute peack of its victories. And just at this time when many presumptuously give themselves a free hand Schulz returned to Berlin because he had experienced the bitterest disappointment of his life. detail the various phases of my client's assignment in Russia; also because of the lack of time available to me I must necessarily be brief. the units of Jeckeln which can be considered proved, by the co-defendants as well as the documents on hand, in particularly however by the documents submitted by the Prosecution itself, i.e. Prosecution Exhibit No. 27, Volume I, p. 138 of German text (English text p. 105) Doc. No. NO 3257PS, a report to the Chief of the War Economy Office, General Thomas, dated 2 December 1941. The defendant has made detailed statements as regards this document in his direct examination-- German transcript pp. 973/74). Since the messages of the Kommando were reports of events and not reports on itsown activity -- so-called activity reports -- it can be considered a fact that everything happening in the area of the Kommando is contained in these reports, in other words also what was occasioned by other unitsof the Wehrmacht and of Jeckeln. Likewise I should like to mention once more the misleading reports which in my opinion were justified from an ethical point of view and which were forwarded on the initiative of my client, containing, however, no lies.

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If the staff leader himself exaggerates these reports urged by the craving for selfassertion of the Einsatzgruppe and even the RSHA for the same or similar reasons adds new changes, the defendant Schulz cannot be blamed for this. If in spite of this the reports contained in the documents clearly make apparent his reticence with respect to actions as well as to the reporting in itself, then this fact must also be evaluated in favor of my client. But in distinction hereto, how different is the first report of his successor: This different speaks for itself. of my trial brief as follows: (1) Whenever the Einsatzkommando of the defendant Schulz was active, in each case such action was preceded by actions of the Russian enemy in some form or other. As to the multiplicity of his hidden work of undermining, Schulz has given a detailed explanation on the witness stand (English transcript pp. 952-953, German transcript pp. 967-969).

(2) But the inner repudiation of the military measures in the East on the part of the defendant Schulz was not unknown. This is proven by the statements of the witnesses Weber, Hennicke, Sperrhake, Haefner, Bendt in their affidavits and the statement of the witness Hartl on the witness stand. The latter statement has yet a special value because it proves -- as does the statement of Bendt -- that there was talk of the alleged softness and unsuitability of Schulz at the time when he was no longer in Russia at all, for both Hartl and Bendt did not come to Russia until Schulz had left there. But the conflict between emotion and right explained by Schulz also shows that he did not act in a thoughtless way. But his clear deliberation and conduct are also evidence proving that faced with what he had done and what he had left undone he had no feeling of being wrong and did not need to have such feelings.

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which he believed he could no longer tolerate for himself and for his men washe induced to request his release. But also the fact that almost at the same time his transfer had already been requested due to his alleged "softness" confirms the truth of his statements and his attitude.

(3) With this attitude I believe to have substantiated, and also proven that Schulz did not commit any crimes against humanity since all inner and outer prerequisites are lacking which could identify the crime according to generally acknowledged international views.

(4) Since the defendant neither sawnor wanted crimes but detested and prevented them he can neither be principal nor participant nor instigator nor abettor.

(5) His general behavior incontestably proves that he never gave his approval apart from the fact that he in no case ever ordered an execution.

(6) The shooting of guilty persons can neither be viewed as a persecution for political reasons but, in consideration of the existing situation in Russia, which cannot be denied, as a measure dictated by the exigencies of war for the protection of the fighting troops.

(7) The same applies to the shooting of Jews, They were shot to death not because they were Jews but because they were Russian, Communist functionaries, agents, spies, or saboteurs and had made themselves guilty of acts which had been publicly announced as liable to be punished with death. Any persecution for racial or religious reasons is therefore completely out of the question.

(8) From what hasbeen stated above, it is also evident that it does not apply to the defendant Schulz when it is alleged that the main duty consisted in following the army and in exterminating Jews, gypsies, Soviet functionaries, and other groups of the civilian population considered racially "inferior" or "politically undesirable"; that means in no form did he take part in any extermination asalleged by the Prosecution.

ordered nor participated in and much less committed a murder, as the Prosecution terms the ruthless compliance with and execution of the Fuehrer order.

(9) No ill-treatment of prisoners of war or of the civilian population took place nor would it leave been tolerated by Schulz. Also in Russia he demanded correctness and decency from his men.

(10) As at the time of Schulz no destruction of any object took place, also the charge of wanton destruction not justified by military necessity is completely invalid.

(11) Schulz never had anything to do with insane persons.

(12) At the time of Schulz' assignment in Russia nothing at all was known of the existence of gas vans.

(13) His acts were not committed in an unlawful way. His measures were permissible according to the rules of war and and international law as well. Therefore he did not commit crimes or other punishable acts either intentionally or knowingly. through his address which he delivered on 1 November 1941 -- that means almost 6 weeks after his return from Russia -- to the participants in the leaders' course at the school. This address is evidenced by the testimony of Haefner (Schulz Exhibit No. 49 in Schulz Document No. 57, Volume II, pp. 171-172) and presents an unmistakable repudiation of the military

measures taken in the East. But it also proves that Schulz openly professes his opinion and wants to do so intentionally. When he expresses in front of the assembled leaders his intention to exclude from the course because of inferior character anybody boasting of having shot a Jew because with such an attitude he is unworthy of being an officer, then this proves that Schulz does not change his mind on his return from Russia, but still intends to prevent the pernicious effects of this incrimination.

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No human being is without faults. And not even Schulz raises such claim for himself. However, based on the experiences which I have gained as a result of my relationship with the defendant, I should like to say: "Had Schulz not been in Russia, then he would not have had the opportunity to prove so unequivocally that he allowed nothing to force him to deviate from the path of decency, justice and humanitarianism which he observed determinedly for almost 25 years in his police activity. The responsibility which he assumed was greater than his "self-concealment". The responsibility which he took upon himself in the interests of people which in every way could have resulted in serious consequences for him presupposed a stronger and bettor will than tacit and connivance. He did not leave until he realized that he was completely incapable of stopping this avalanche which had already begun its course and could no longer be halted. Under the set of circumstances prevailing his own protest was bound to be of no avail. the defendant Schulz did himself. were restricted. However, in the decree dated 13 May 1941 concerning the evvect of the court martial jurisdiction in the area "Barbarossa" and concerning special measures of the troops -- this is the so-called Keitel-Order and was submitted to the tribunal in Document Book III for the defendant Ohlendorf on page 1 as Ohlendorf Exhibit No. 13, Ohlendorf Document No. 44 -- it is ordered in I, sub-section 4, that the officer shall decide whether a shooting is to be carried out or not. Since the leaders of the Teilkommando were officers of the Teilkommando, Schulz would have had no authority at all over his Teilkommando leaders. According to this, he could not have either prevented an action or intervened if his Teilkommando leaders had violated the restriction of the Fuehrer-Order ordered by him on his own initiative.

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action who issued such orders, for they must have been aware to what they would lead. of 1 December against the defendant Schulz can deter from these facts and the resulting conclusions. For the conclusions of the Prosecution for the most part are based on a distortion of the true facts which became quite obvious in the presentation of evidence. The Prosecution brief refers only to contradictions on the part of the defendant which however on the basis of the text of transcript reveal themselves as no contradictions at all. To the contrary, the brief of the Prosecution contains itself a number of contradictions. at a final conclusions different from that of the defense. But this must not lead to an arbitrary attempt to use as the basis of argumentation -- this also in contrast to the views of the court -- only such evidence that appears incriminating only to one side, and to disregard all defense evidence that has been before the tribunal from the very beginning or was introduced by the Prosecution itself. Fair proceedings, however, require equal consideration and evaluation of either evidence as well as an examination of the subjective conduct of the accused. Yet I have explained in sufficient detail particularly the subjective attitude of the defendant Schulz toward all matters and incidents, and I am certain that the Tribunal in its way will take this into account. defendant is full of contradiction, that it is completely untrue, that it appears grotesque, that it does not merit any credibility, that its statements lack any basis whatsoever, that they do not correspond to the facts, and so on, nor is it appropriate to draw the conclusion, and I quote:

"In the light of all this evidence his entire testimony cannot be considered credible." pointed out and brought to the attention of the Tribunal which are the incorrect facts and erroneous conclusions in the prosecution brief. I, therefore, ask the court also to take cognisznce of the supplementary statements which I have made in that connection. to discuss point by point the written statements made by the prosecution. My present statements, just as those made by me before, which are neither artificial, nor merely protective, nor made because of the need for distortion of facts, permit only one conclusion. II of the indictments evidence for the guilt of the defendant Schulz, eliminating all reasonable doubts which might be held by an impartial, unbiased and carefully deliberating party. judgment, that: crimes against humanity of which he has been accused in the indictment. could be made against the defendant either concerning the time up to 1 September 1939, or that after his return from Russia, which I have described concluding with a quotation from his speech of 1 November 1941 held in the instruction course for candidates for leading positions, neither for his activities in Berlin nor for those in Salzburg, that the statement was accepted as truth that he had no knowledge of any criminal activities (English transcript p. 1015-1017 1931, German transcript 1026 1028, 1977), I think it necessary to sum up his activities up to the time of the capitulation as I wish to furnish evidence, as already announced in my statement, that my client's attitude was from the first to the last undiscriminating, uncompromising, honest and straightforward, and that he never disregarded the principlesof fairness and decency, justice, chivalry and humanity which were sacred to him.

My second reason for giving this summary is that I need not then go into details about Count III of the indictment.

duties as a commander of the officers' training school (Fuehrerschule) and as a leader of Group I B (training and education) which has been moved from RSHA headquarters to the schoolhouse in Charlottenburg. Apart from his disappointment in Russia he is depressed by the fact that he has again been accused of being "soft", an accusation against which he is forever fighting in vain. He recognizes in it the dangerous influence of "modern slogans" to which people are reacting without actually understanding them and, therefore, interpreting them and using them incorrectly. For this reason he quite deliberately changes the whole training system, giving it a new, purely technical trend herewith putting emphasis on the development of a righteous attitude. He personally takes care of the final directives to his students. He points out to them valueless slogans and makes them aware of differences in attitude and teaches them how to separate the important from the valueless. He requests the future officers to be true leaders of their men and not only superior officers who stupidly and carelessly carry out orders. They ought to live a life exemplary to their subordinates and try to show themselves worthy of their authority by their own attitude and accomplishments, and not regard it as an easily acquired possession gained together with the service rank and commission. He emphatically warns against the misuse of the idea of the "super-man" (Herrenmensch) and shows that this term might earily lead to the development of the type of the "bossy man" (herrischer Mensch) who is to be considered as a being of definitely inferior character. He compares the conceptions of "kindness " and "softness" and proves that they are basically different from each other, According to him being "good" is fulfilling one of the major aims of humanity whereas being "soft" means a definite flaw in a person's character. And just as different as the conceptions of "kindness" and "softness" are those of "harshness"and"brutality". A person of character must know how to be harsh, first of all towards himself, in the imperturbab ility of his aims and ways, but "brutality" an attitude caused by a mean character, must be rejected.

The "Fuehrertype" (leader type) would have to be kind and harsh at the same time, and harshness might strange as it might sound - mean greatest kindness. The "vorgesetztentyp" (superior officers' type) however, would be either "bossy" or brutal towards others and disgustingly soft towards himself. I can only take highlights from the long speeches of my client which may throw some light on his real aims. He tried to make his students think, his purpose being that of causing them, when they were called upon to make their own decisions in the future, to be aware of the conflicts to find the courage to take responsibility for their own actions and in such a way to be leaders of their men whose fate had been entrusted to them and to lead them according to the principle that a living example is the best education. of the defendant Schulz in the officers' training school and the I B.

1.) The affidavit of Kriminalrat Dr. Fleischmann, Schulz Exhibit No. 43 in Schulz document Book I - Doc. No. 24, p . 89 - 91;

2.) The affidavit of Kriminalrat Rudolf Hetzel, Schulz Exhibit No. 79 in Schulz Document Book III - Doc. No. 70, p. 200 - 202;

3.) the affidavit of Regierungsrat Dr. Ing. Hans O'Gilvie, Schulz Exh. No. 80, Schulz Document Book III - Doc. No. 72, p. 205 - 211;

4.) the affidavit of Regierungsrat Dr. Walter Sirpins, Schulz Exh. No. 81, Schulz Document Book III - Doc. No. 76, p. 220-221. takes over Group I A of the RSHA (personnel). I am referring to his statements on the witness stand (English transcript o. 1019/20, German transcript o. 1030/1031). I should like to emphasize the fact that Schulz declares himself willing to take over only under the condition that there would be no more shooting of Jews in the East as he does not want to be responsible for having to detail men for tasks which he is not prepared to take upon himself.

Streckenbach definitely reassures him about this and he actually had no information about such happenings at that time. This fact is also proved by some affidavits for instance those of the defendants Ohlendorf, Naumann and Ott (English transcript, o. 709, 870, 3731, German transcript p. 720, 801, 3794) who stated that no more shootings of Jews were carried out at that time. Should there actually have occurred anything contrary to this statement, my client had certainly no knowledge of it. which he is only gradually becoming acquainted is trying to makes his influence felt. He is also now, for the first time, gaining personal experience from the real tendencies which are guiding the RSHA. quarrel, Streckenbach leaves the RSHA in January 1943, in order to join the Waffen-SS, Schulz is appointed

Leader of the Amt I. It is by no means ambition which makes him accept this duty. It is again Streckenbach's request to which he gives way although these very serious misunderstandings between Streckenbach and Himmler do not make him visualize this task in a rosy light. However, as all problems concerning "Administration and Law" which had up to that time been handled by Office I and with which Schulz cannot cope because of his lack of experience and knowledge, are being separated from it and now handled by an independent Amt, Office II or III, he thinks himself capable of managing Amt I as one which concerns itself only with personnel problems. As Kaltenbrunner is being appointed the new RSHA chief at the same time he hopes to be able to assert himself. From the time of his work with Amt I and also from Streckenbach's manifold complaints which have, in the end, caused his resignation from the office, Schulz knows that there is still very much wrong. It is especially the duties of the Security Police in the East with its partisan-activities which seem to him tasks alien to ordinary police duties. which he regarded as amateurish play at soldiering and which caused him so much concern because he believed he could recognize that they were accorded primary importance by a few ambitious leaders who were striving more for decorations and medals.

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Therefore, during one of the initial department chief conferences he put forth as his first demand the creation of an office of the Inspector General, who, independent of all departments, was to check the various offices in the operational area. His demand is rejected. But in a personal discussion with Kaltenbrunner, he succeeds in having an inspector assigned, the Colonel of the Police, Dr. Canaries, who receives the order to make a tour of the Eastern territories and to submit a complete replrt sparing no details of the conditions there. The result of this report is a complete clean-up of improprieties and insufficiencies which h ad been uncovered; in addition this also resulted in the release of some personnel. In his inaugural speech before the directors of the various offices, Schulz, in agreement with Kaltenbrunner reports that the offices in the East are to refrain completely from all duties not directly connected with police activities. He is further successful in having the requirement of Himmler lifted, that in cases of promotion the individual concern ed must leave the church. He coordinates the schooling system through Group I A and gives priority to technical training. He creates directives pertinent to careers, promotions according to seniority rights, regulates efficiency and ability, eliminates arbitrary action and the patronage system and regulates an equitable development in the many Sparten. His efforts to revise the unworthy classification and uniforming along the lines of common sense cannot be fully realized. His work with Kaltenbrunner is in the beginning satisfactory. But the relationship becomes less favorable. Schulz senses the forces working against him, but is unable to get at them. He is not up to the stmosphere of the invisible battle of powers so common perhaps in the many ministerial offices, He perceives this condition quite clearly, but it does not occur to him to make his own lot an easier one through appeasement, since he is convinced that such appeasement would only be at the expense of the officials and employees.

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Kaltenbrunner does not back him up, divides his activities in this respect by making concessions in personnel matters with other section chiefs contrary to the agreements with his personnel chief, he gives way to whispering campaigns which make a uniform following of procedure impossible. Already towards the end of 1943 it comes to an open break between the defendant Schulz and Kaltenbrunner;

Schulz requests that he be released, since he feels himself incapable of continuing in office. The differences are patched up again, but the breach remains open. It would have been simple for Schulz to keep his position if he had been willing to become an obliging tool. He remains in his post because his concern for the people binds him to this. However, he goes when the attitude of Kaltenbrunner which he can no longer reconcile with honor becomes insulting, and because he recognizes quite clearly that he will never be able to adapt himself to those conditions. of the defendant in Group I A and as Personnel Chief, I cite the statements of the defendant on the witness stand and the following affidavits:

1.) Testimony of Regierungsrat Gustav Gottwald, Schulz Exhibit No. 51, Schulz Doc. Book Vol I, Doc. 16, p. 46-50.

2.) Testimony of Regierungsrat Heinz Wanninger, Schulz Exhibit No. 52, Schulz Doc. Book Vol I, Doc. 17 , p. 51-56.

3.) Testimony of Regierungsamtmann Karl Dommnick. Schulz Exhibit No. 50, Schulz Doc. Book Vol II, Doc. 48, p . 144-146.

4.) Testimony of Regierungsrat Dr. Ing. O'Gilvio, Schulz Exhibit No. 80, Schulz Doc. Book Vol III, Doc. 72, p. 209-210, under subsec. 9.

5.) Testimony of Regierungsrat Dr. Paul Dittel, Schulz Exh. No. 82, Schulz Doc. Book Vol III, p. 196-197.

In April 1944 Schulz is transferred to Salzburg as Inspector. In order not to make his transfer appear as an undeserved demotion, he receives the title "Commanding Officer of the Security Police," activity in Salzburg (English transcript p. 1021-1025, German transcript p. 1032-1037). However, his laudable efforts for the benefit not only of the population of Salzburg and the prisoners-of-war and foreign workers living in this section, but also in the last act of the tragedy in avoiding loss of human life in the face of the advancing victor, require a short summary on my part. If the day of the assasination attempt upon Hitler, 20 July 1944, passed in Salzburg without any unpleasant aftermath, then this is prim arily thanks to Schulz since he was forced to act quite independently because the Gauleiter was not present every day and the competent Higher SS and Police Leader was located in Laibach-Yugoslavia. When Himmler took over prisoner-of-war matters, Schulz, on his own initiative, volunteered for this work aware of the responsibility of his action, in order to dissipate the influence of the Higher SS and Police Leader Roesener, who was a ruthless fanatic. He not only saw to it that the Geneva Convention was strictly adhered to, but also protect ed the prisoners-of-war from the unreasonable demands of some of the State and Party offices. He patiently accepted the attacks upon his own person in the interest of the cause, but nevertheless he was not deterred. Against the desire and will of some offices and cont rary to press released which had already been published, he saw to it that in cases of airraids the prisoners-of-war were also permitted shelter in the absolutely safe placed located in the Moenchsberg and Kapuzinerberg (mountains in Salzburg).

First he did not issue the announcement of the so-called "Closeeyes Order" (Augen zu Befehl). Contrary to this order, which he was quite incapable of comprehending, he called upon his police officials to conduct themselves decently and chivalrously.

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For example, a flier who had landed in the Salzach was saved from drowning by policemen. Not until the order was announced from other quarters outside of the police and at the same time the rumor became rife that "Terror Fliers" were to be shot, did Schulz immediately call all of his police commanders to him and inform them of the contents of the order and at the same time expressly emphasized that there was not a word of truth in the alleged shooting order. With regard to the non-interference of the Police he announced in unmistakable terms that such conduct could not be reconciled with the profession of a police official, quite apart from the fact that similar conduct shown towards German aviators that had been shot down would undoubtedly cause violent protestations. For this reason Schulz forbade the forwarding of this order, and ordered that fliers who had been shot down be treated correctly and turned over immediately to the competent Wehrmacht authorities. And this happened. again consecrated his entire person to the interests of the people, after he realized that any resistance had become senseless and unjustifiable. All his successful efforts were not achieved without untiring work. Every phase could not be achieved without tenacious efforts, efforts which were based on convictions. Nothing happened which did not entail danger for the individual, since during those very days many persons were shot for alleged cowardness particularly upon the order of Himmler, who even announced his orders in the press and on the radio and himself was too much a coward to take the responsibility for the orders which he issued. he was successful in bringing about the lifting of the blockade around Salzburg, the Volkssturm was used only as constabulary, the explosive charges which had just been brought up were removed from the bridges, the so-called "Bundschuh-Befehl" which meant the committing of fighting and sabotage groups behind enemy lines, was not carried out, and lastly no Werewolf organizations were assigned.

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His suggestion, made in the Salzburg government building in the presence of the responsible officials, to surrender the city of Salz burg and the Gau, was rejected. In the so-called "Alpenfestung" (Alpine Fortress) Schulz saw to it that quiet and order were observed.

On the day of surrender the American troops marched successfully into the city without a single sign of disorganization either in the city or Gau of Salzburg. manner because Schulz had been influenced in this direction. influenced his superior and other participating offices in this direction, and had to suffer many a bitter word, also from those very persons, who, contrary to their former attitude, later revealed themselves as the liberators of Salzburg from the miseries of war, and who were then too cowardly, at least for the sake of truth, to give Schulz the credit he deserved. I must admit that I myself was indignant over such conduct. I should like to offer another example here showing the inner greatness of my client, who following my outburst of anger, answered: "Let it go, they're simply human beings. I didn't do this simply to gain recognition." in Salzburg is proved through his own testimony on the witness stand, which even the prosecutor recognized as completely credible (English transcript, p . 1934, German transcript p. 1980) and the credibility of which is again repeated on the occasion of the interrogation of the witness Dr. Wolfgang Laue (English transcript, p. 1929-1933, German transcript 1975-1980) and by the following affidavits:

1.) Testimony of the commanding general Julius Ringel, Schulz Exh. No. 55, Vol II, Doc. No. 50, p . 150-152.

2.) testimony of his Chief of Staff, Brig. Gen. Anton Glasl, Schulz Exhibit No. 83, Vol . III, Doc.

69, p. 198-199.

3.) testimony of the then Gauleiter Dr. G. Adolf Scheel, Schulz Exh. No. 54, Vol I, Doc. No. 25, p. 92-94.

4.) Testimony of Police-Lt. Col Wilhelm Kirchoff, Schulz Exh. No. 56. Vo. II, Doc. No. 51, p. 153-156.

5.) testimony of Lt. Col. Otto Barck, with the commander of the prisoners-of-war, Schulz Exh. No. 57, Vo. II, Doc. No. 52, p. 157-159. humanness, and his exemplary conduct in his profession. Also his resolution and devotion in the interests of the people must be particularly mentioned. Lt. Col. Barck speaks of the "unusual decent thinking" of my client thanks to which the Geneva Convention was able to be defended in the Military Area XVIII against the attacks of high Party offices even after the reorganization of the chain of command in October 1944. He also states that he could not remember ever having seen any conduct on the part of Herr Schulz which could not have been an example for every police officer. attributes as leader and superior officer:

1.) Testimony of Regierungs Assessor Karl Peukert , Schulz Exh. No. 59, Schulz Doc. Vol. II, Doc. No. 54, p. 162-166.

2.) Testimony of Egmont Damm, Schulz Exh. No. 53, Schulz Doc. Vol I, Doc. No. 23, p. 86-88.

3.) Testimony of Hildegard Seiringer, who was drafted by the war emergency act, Schulz Exh. No. 86, Schulz Doc. Vol. III, Doc. No, 75, p. 218-219.

4.) Testimony of Richard Rothboek, Schulz Exh. No. 84, Schulz Doc. Vol. Ill, Doc. No. 81, p. 237-238.

5.) Testimony of Dr. Robert Leitinger, Schulz Exh. No. 85, Schulz Doc. Vol. III, Doc. No. 88, p. 257-259.

following:

1.) witness, Franz Schubert, Schulz Exh. No. 58, Schulz Doc. Vol. II, Doc. No. 53, p. 160-161

2.) Witness, Katharina Froschauer, Schulz Exh. No, 60, Schulz Doc. Vol. II, Doc. No. 55, p. 167-168. most generous manner for political opponents when the duty and the laws of humanity bade him to do so, can be substantiated by the testimony of the present mayor of Salzburg, whom Schulz had liberated from the concentration camp at Dachau: Schulz Exh. No. 61, Schulz Doc. Vol. II, Doc. No. 58, p. 173-174. And in Schulz Exh. No. 87, Schulz Doc. Vol. III, Doc. No. 73, p. 212-213.

"It gives me great satisfaction to render some assistance in return, to the man to whom I possibly owe my father's life by making this truthful statement". End of quotation. However, I do not want to conclude the Salzburg episode without mentioning: If Salzburg is still standing comparatively undamaged, if its people have been spared the horrors of battle, and if Salzburg, already in 1945, was again able to open its gate to the world with its "Salzburg Festivals", this can be ascrib ed to a great extent, as has been proved by the witnesses' testimony, to the untiring efforts on the part of my client. American headquarters in Zell am See, after having made arrangements down to the last detail, to account for his person and principles, which he had upheld, and he did so without prompting, evidently causing surprise by this action. Following his request, he was given permission on 17 May 1945 to go to Salzburg in order to report there. He received a pass, and went to Salzburg without any escort. True to his promise, he immediately reported there. In the afternoon he was arrested. He had to be detained because of the "automatic arrest order", as he was politely informed.

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THE PRESIDENT: Dr. Durchholz, I notice in glancing through the rest of your summation that there are various itemizations of proof, which, of course, you can omit in the reading. You might glance through it and see if there is anything else you may omit as you finish up after the recess because you have already exhausted the time which was allotted to you. We will permit you to finish, of course, but please go through and cross out what isn't necessary to read to the Court.

DR. DURCHHOLZ: I shall read only the necessary parts and refer to the remainder.

THE PRESIDENT: Very well. The Tribunal will show be in recess for 15 minutes.

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(The hearing reconvened at 1130 hours.)

THE MARSHAL: The Tribunal is again in session.

DR. SCHWARZ: Your Honor, according to the arrangements which have been made, it was my turn after my colleague, Ulmer, which probably will be this afternoon, to present my final plea, but I heard this morning that my final plea has been translated but has not been reviewed yet. I assume that the Tribunal does not have it as yet. I now would like to ask you to find out-

PRESIDENT: We do not have it?

THE MARSHAL: No, Sir.

PRESIDENT: The answer is "No".

DR. SCHWARZ: Your Honor, in that case I would like to ask you when I should start to present my final plea so that the Tribunal can make further arrangements, and who is to continue after Dr. Ulmer.

PRESIDENT: W ell, Dr. Durchholz, we understand that Blobel's plea is ready, Sandberger, Seibert, Steimle. There are many ready, according to this list which I received. Yes, we have Steimle, we have Biberstein, Six.

DR. SCHWARZ: Then I may assume that I have to wait for the time being for presenting my final plea until the English translation is on hand.

PRESIDENT: Yes. Very well.

DR. DURCHHOLZ: Durchholz for Schulz. Your Honor, of the rest of my final plea I shall read such part as will take about 10 minutes. The fifth part I shall not read at all, but I shall continue on page 53, the sixth part. The fifth part contains only a list of exhibit numbers to which I would like to draw the Tribunal's attention. Thus I have submitted my client's professional career from 1923 - 1945 in the shortest possible manner, and I will now deal with count III of the indictment, in which my client is accused of having been a member, after 1 September 1939, of those organizations which have been declared criminal by the International Military Tribunal, and pursuant to para graph 1 (d) of article II of Control Council Law No. 10.

In count IIIA he is accused of having been a member of the SS, and in count III C of having been a member of Department IV of the Reich Security Main Office. Being equally applicable to both counts, I would like to mention in advance that my client was not in a position to resign from the SS or the Security Police on 1 September 1939, as the war laws prohibited this action. I believe I need not comment on this any further, as these points were thoroughly discussed and explained both by all the defendants on the witness stand, and also by my colleagues. In this case of my client, however, it must be added that at the time in question, he did not receive any orders with criminal contents, nor did he issue any. On the contrary, he could convince himself that in his position he was able to eliminate much hardship, and to prevent many measures, especially by party circles, tending to extremes and intolerance. He could not anticipate, though, the happenings that developed in the course of the war. Yet the Russia Einsatz proves that in this instance he cut adrift from those happenings, which he did not deem reconcilable with his opinions and his conscience. As member of Department I, however, he has been a part to any of the actions with which he is charged, nor participated in the planning or execution; he was not even informed about them. Allow me to mention just a few items of those orders concerning the sorting out of prisoners of war, the night - and fog decree, the bullet (Kugel) -decree, the mass killings of Jews in Auschwitz, Maidanek, and Treblinka; Schulz, for the first time, learns about these through the Nuernberg trials. Treblimka, Maidanek, Belsen, and many other places mentioned in this trial, were not known to him even by name until now. However, in the case of my client it should not be necessary to go into details, as his proven attitude and his official positions excluded the possibility to commit any criminal acts, or to have participated in them in any way whatsoever.

DR. DURCHHOLZ: I shall omit point 2, and will not read it. It contains general legal explanations concerning Count III. I am referring to my written statements and to the statements which my colleagues, Aschenauer and Gawlik, have made on that count before me. I continue on page 56 under figure 3. Applying those principles, I now return to the defendant SCHULZ concerning count III A regarding membership in the SS. The SS special formation Security Service (SD) is not a part of the regular SS. On 20 April 1935 the defendant SCHULZ was, without ever having filled in the prescribed application form, taken over by this formation as SS-Hauptsturmfuehrer, according to his official rank as an officer - he was a police captain at that time. He never saw active service in the regular SS. By his consecutive promotion as officer and official, he was also promoted in the SS. In order to show, too, that his advancements were by no means outstanding, I submit some of his promotion data. On 1 September 1931 SCHULZ was promoted 1st Lieutenant (SCHULZ-Exhibit No. 2). On 1 February 1934 he became a captain (SCHULZ-Exhibit No. 3). His next promotion took place on 1 March 1938. On that date, he is simultaneously transferred from the ordinary police to the Security Police. As this force did not have officer ranks at that time, he was not promoted to major, but appointed Regierungsrat. On 1 July 1940 he was promoted Oberregierungsrat. At the end of 1940, when the Security Police receives officer ranks within its own organization, SCHULZ returns to his officer's career, and on 1 December 1940, he becomes lieut,-colonel according to his official rank of Oberregierungsrat, senior government counsillor. This conversion does not constitute a promotion. At the beginning of 1941 he is promoted to colonel (SCHULZ-Exhibit No. 10). His promotion to brigadier general follows after approximately 2 years at the end of October 1942. I am unable to submit a document for this, as SCHULZ did not have it returned with his papers. As all the last original documents are missing, my client assumes that they are still in the possession of the CIC.

When he was interrogated in Oberursel by Herr 1st Lieut. GUTMANN, they were still complete. This was his last promotion. It took place - not counting his army service - after 20 years of uninterrupted service in the police force. SCHULTZ was then 43 years old. The SS promotions coincide with these other promotions. An exception is his promotion to SS-Oberfuehrer on 9 November 1941, because there was no equivalent officer rank for this position. This promotion constitutes an intermediary stage, which cannot be actually called a promotion, as it did not involve any pay raise, because SCHULZ was not paid as an SS-officer but as a police officer. These facts, too, prove that this promotion was an absolutely regular one. This promotion therefore, which had to take place between the official rank of colonel and brigadier general, is nothing exceptional. This is proved by, 1st, the defendant's regular career, 2nd his testimony on the witness stand (English transcript, p. 1111 - 1112). German transcript p. 1128 - 1129) , and in connection with this the testimony of the defendant BLUME on the witness stand (Engl. transcript p. 1925 - 1926, German transcript, p. 1972 - 1973), and 3rd my explanations on p. 667 - 69 in the trial brief. For SCHULZ and the other officers in the Security Police the simultaneous promotions in the SS were a compelling necessity, as the uniform of the Security Police was the same as that of the Waffen-SS with police drab cloth. If the promotions in the SS had not taken place, therefore, the officers would not have been able at all to wear their rank insignia. Thos points mentioned by me above are actually all that connected the defendant with the SS.

Reich Security Main Office. Here I can be quite brief. in April 1940 (SCHULZ-Exhibit No. 7), SCHULZ leaves Department IV, to which he belonged automatically till then as official in charge of the Bremen and Reichenberg State Police branches, and from then on till the surrender he is a member of Department I. As an inspector he neither has the right to give orders, nor does he have any executive powers. In this connection I refer to my client's testimony on the witness stand, as well as to the testimony by the witness BREDER concerning the work and tasks of the inspector.

On 1 March 1941 he joins Department I for good. He becomes Group Leader I B (schools and education), and commander of the training center for future National Socialist leaders (Fuehrerschule), which also belonged to Department I. At the end of June 1942 he becomes the officer in charge of Group I A (personnel) in Department I. mains there until he assumes his duties as inspector in Salzburg on 1 May 1941. What has been said about his Hamburg activities, also applies to his Salzburg work, as it is the same official position. In this case, too, he did not have any authorization to give orders nor executive powers, (in this connection I am referring to the testimony made by the witness PEUKERT in SCHULZ Exhibit No. 59), with the exception of the last 14 days, during which time he was additionally appointed SS and Police leader. influence, as he did in Salzburg, and, in the interest of the people concerned, was able to accomplish so much, this achievement should be emphasized so much more. Reich Security Main Office Department I has not been declared a criminal organization. Besides, the prosecution - as mentioned before - has Court No. II, Case No. IX.

expressly stated that they are prepared to admit that the defendant, while in the Reich Security Main Office, after his return from Russia and in his position of inspector of the Security Police and the Security Service in Salzburg, did not commit any acts, nor have any knowledge of such, which would make him guilty in the sense of count III of the indictment. Deducting the actual marching days and the journey, this covers approximately 4 weeks. Just 4 weeks out of a man's career of almost 25 years, of a man's unblemished work, a man whose personality in his life and activities lies before us like an open book not containing any secrets, who is equally respected by friend and foe. The tragedy which occurs during this short space of time is full of conflicts and tensions, from which he attempts to escape and succeeds in doing so, however, only withdrawing after severely struggling with his conscience as he has no means to check the course of events. Even if mistakes have been made, in spite of all the efforts, the overwhelming compulsion must be duly taken into account. His intention to avoid the deplorable effects of the mandatory Fuehrer order cannot be denied. Can he be blamed for not only having done the best he could in his position, but actually having accomplished it? Nobody can demand more than what the defendant has actually done. It frequently happens, however, that the point is missed, if the question of guilt is solely determined by external matters, as the decisive factors result from the person's struggle with his conscience; it is possible to speak both with words and with deeds. If in spite of all efforts, mistakes have been found, I would like to use the words which the witness BREDER used at the end of his testimony. I quote: "I cannot find any other explanation but that by thoughtfully weighing the extent of guilt and destiny in this man's case, the deliberations can only ascribe this guilt to his destiny."

which proved that my client could not be induced by anything to leave his unblemished, clear, and straight path. also applies to count III, and I request the count to decide accordingly, i.e.: reasonable doubt that he was the accomplice to crimes committed by the organizations and groups, which have been declared criminal, and of which he was a member. No judgment can be passed, however, if there is only a suspicion. Therefore, he is not guilty in the sense of count III of the indictment. fidavits that have been submitted. An official of the Bremen branch office says in SCHULZ-Exh. No. 17, I quote; "If all the superiors of the Gestapo would have been like him, the Gestapo would not have been declared a criminal organization." - End of quotation. Another official says in SCHULZ-Exh. No. 15, I quote:

"During my 21 years of service in the police force I never came to appreciate and respect a superior as much as just Herr SCHULZ." End of quotation. I have already quoted the statement made by Kriminal Rat HASSE, who was in Reichenberg, and who calls him the teach of his life. Regierungsrat GOTTWAID from Department I, says in SCHULZ-Exh. No. 51, I quote: "Both as official and officer SCHULZ had qualities which I have really rarely found to such an outstanding extent in any of my superiors, during decades in the service." - End of quotation.

INTERPRETER: There is a confusion in the figures contained in the document, Lour Honor.

PRESIDENT: Our copy seems to be in order, what is the difficulty?

INTERPRETER: Our copy doesn't contain the same as the defense counsel, and quite different figures are given.

PRESIDENT: Well, Dr. Durchholz, look at the English copy.

DR. DURCHHOLZ: I have it here.

PRESIDENT: Oh, you have it there.

DR. DURCHHOLZ: Your Honor, I find that this one quotation is not contained in the English copy. There must have been a mistake. I shall omit it and continue at the next point, so that we can get on.

PRESIDENT: If you desire, you may submit that on a separate piece of paper to the Tribunal.

DR. DURCHHOLZ: I shall hand this addition in to the Tribunal when I get it.

PRESIDENT: Very well.

A woman employee from Salzburg says in SCHULZ-Exh. No. 86, I quote: "Herr SCHULZ's attitude towards the old established Austrian population was so considerate that one could only wish to have many more such noble, valuable, and idealistic people in that country." End of quotation. Many other witnesses confirm this. His kindness and readiness to help, his humane feelings and chivalry are always the crux of all those testimonies. Wherever he was, he did his duty as a shining example, always acting in the conviction that by his influence he was able to prevent or alleviate distress and disaster. He went his own way. He recognized the falsehoods and opposed them by his actions. He was not interested to be known as or called a man of the "resistance", although this privilege has been given many Germans purely on account of their thoughts or occasional statements, without any actions. He only wants to be judged by what he really did. His actions, however, prove his convictions. And this without interruption from 1923 up to the surrender. He never had any other aims but to serve his country and all humanity. In conclusion I would like to request the Court to examine thoroughly the affidavits given by his former political opponents, all of whom are now in leading and highest positions, and to weigh, to ponder, and to consider accordingly.

I personally, however, would appreciate if by the Court's decision the defendant's attitude is eventually recognized not as "meekness", but Court No. II, Case No. IX.

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as an unswerving and determined will to achieve the good.

Mr. President, your Honors, in concluding this plea I want to mention the phrase which the American officer, who interrogated my client in Salzburg, used at the close; I quote: "If all people had acted as you did, things would be different in Germany, I daresay!" End of quotation.

PRESIDENT: Proceed, Dr. Ulmer.

DR. DURCHHOLZ: Your Honor, in the name of all the defense counsel, I would like to say something. Until now we have not yet received a copy of the final plea of the defendant Ohlendorf. The colleagues who want to submit their final pleas after me would be very grateful if the Tribunal would assist them in getting them copies of this final plea of Ohlendorf, because then they would be able to cross cut some passages from their final pleas, but they can only do that if they have in their possession their copies of Ohlendorf's plea.

PRESIDENT: Will the Secretary General interest himself in what has just been said by Dr. Durchholz, to see to it that defense counsel receive copies of the Ohlendorf summation inGerman? Very well.

DR. DURCHHOLZ: Thank you.

PRESIDENT: Dr. Ulmer.

DR. ULMER. Ulmer for Six. Your Honor, I would like to read my supplement to the final plea first, which says that I shall omit several passages from my final plea which has become necessary because two documents were withdrawn by me. "The final plea of the undersigned for the defendant Six was already submitted to Military Tribunal Number II before the conclusion of the presentation of documents on 2 February 1948. Since the Documents 59 and 66--Exhibits 59 and 66 were not submitted, it is not necessary that they be quoted in the final plea. Therefore, the following will not be stated on page 18, line 8, starting from "and from his wife"; page 12, "and 59"; lines 13, 14, and I quote, "and of Six's wife"; line 16, "the two female witnesses"; page 18 and page 19, the quotation from Document Number 59 of Court No. II, Case No. IX.

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Six's wife; page 22, paragraph 6, including quotation from Document Number 66. 1.) As Defense Counsel for the defendant SIX I may be permitted to state Consequently I do not have to analyze the defendant SIX' respon citizen's duty of obedience towards the state, which is a general Court No. II, Case No. IX.

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divine commandments. But when testifying in his own case, the suicide.

In his case it was sheer luck that he had been assigned guilty of violating the devine laws.

And this then leaves no 2.) In my opening statement I announced that I would prove on behalf NEBE and his staff; that SIX was the leader of the Moscow ad Court No. II, Case No. IX.

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of the Einsatzgruppen; that SIX was a pure scientist and had be fice VII in the SD after 1 September 1939; that SIX, by his member Tribunal; that, due to his always explicitly stated opinion on prevented by HEYDRICH's death; that, owing to these views of his, action for the combatting of partisans; that, after HEYDRICH's Court No. II, Case No. IX.

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in 1943; that SIX, in full knowledge of his responsibility for the 3.) These proofs have been established by the interrogation of the rupted chain of affidavits.

They have been critically exploited submitted by the Prosecution.

In addition to all the documents permitted to make the following three statements, namely:

a) Documents have been presented by me which are the testimonials

b) On the other hand, there are the documents on which the indict by third persons -, are not directly original.

They would Court No. II, Case No. IX.

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c) A further subject of the proceedings was the hearing of a the allegations of the Prosecution as to the defendant's command.

He never received the Fuehrer-order so important for this trial.

He did not execute it, nor order its execu purely scientific task of securing archives and files.

It had separate from and independent of Einsatzgruppe B. Because of Kommando.

He merely helped to secure files in Smolensk.

his recall from the Russian area generally. Had the defendant with the tasks of the Einsatzgruppen and Einsatzkommandos; Court No. II, Case No. IX.

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contact with such a range of tasks. of the defendant SIX is that of a man of science. His development shows a man with an academic background who, after having finished his studies, applied himself to the profession of a University lecturer and remained bound to this calling, conscious of his aims. His fields of research concerned journalism and studies on foreign countries and his academic goal was the establishment of an institute on foreign countries after the Anglo-Saxon pattern of "Political Science". As a University professor he was consistent in demanding and insisting upon freedom of teaching and research as against the doctrinaire efforts of National Socialims. was the underlying cause for the newly created SD seeking in 1935 the cooperation of this young, but already well-known, press expert for the establishment of a press department. Realizing the possibility thus offered for his scientific university work of evaluating the vast material of the whole world press available in the SD, SIX accepted this task and established a press-and literature department within the SD. Thus the University Professor SIX had become an SD member. Also in the future, the scientific goal preceded the political. He continued to be a full-time University professor; it was only in off-time hours and in an honorary capacity that he was an SD-leader. of defendant Dr. SIX's scientific standing and exclusively scientific activity, but from the symbiosis of science and SD, it wants to represent him as a typical National Socialist doctrinaire.

refutable on the strength of the facts. While no difficulties resulted for Professor SIX during his scientific activity, continued controversies developed both between him and the SD and particularly its leaders, which began already shortly after his joining. In 1938 his relationship to the chief of the Reich Main Security Office, HEYDRICH, had aggravated in such a way that the latter denounced him as being intellectual, soft and in the sense of the SD, not efficient enough, and after numerous clashes finally, in 1939, he removed him from his office as departmental chief in the Reich Main Security Service. SIX, on his side, already then repeatedly demanded his discharge from the SD, which HEYDRICH, however, constantly refused, pointing out that it was he alone who would decide when and under which circumstances an SS-Officer was allowed to leave the SD. already shows that the University Professor SIX did not sacrifice his scientific work to National Socialist tendencies and power politics of the SD. The defendant, however, did not give up his scientifically liberal and tolerant line acquired already during his University student days, or changed it for the support of National Socialist doctrines or pseudoscientific ideologies. He remained a man of science also in the SD, without indulging in adulation towards the SD leadership, which was the very reason why he got into difficulties with HEYDRICH and did not come in any way close to HIMMLER. He never made verbal reports to the latter and did not see him but four or five times at the most, as he stated himself as a witness during his cross-examination - Page 1466 of the German record - and as it was confirmed in the affidavits by GROTHMANN and SUCHANEK - documents of the defense 19 and 20, Exhibit No. 19 and 20.

1 September 1939, continued to be in the SD merely in a compulsory way, as an unimportant member, without any office and influence, removed from the function hitherto held by him, and in HEYDRICH's personal disfavor. Only as late as at the beginning of November 1939 HEYDRICH reassigned him to the SD for a special scientific job, commissioning him to set up the Office for "Ideology and Scientific Research" - Office VII -. This task the defendant SIX completed, not on a political basis, but as a professor beholden to scientific principles, calling into existence, just as he would have done in his main sphere of activity, the universities, an office organized on strictly

scientific lines and staffed with suitable experts. This was achieved by the consolidation into one whole of press, archive, library and research sections. As chief of this office VII SIX regarded historical research strictly limited to history of Arts and Sciences, to cultural history and history of foreign countries, as his main sphere of work. Publications which appeared as results of the research conducted under his supervision are evidence of the strictly scientific objectives of the Office and of the scientific elaboration of the themes, free of and remote from any politics and propaganda. Document No. L-185, presented by the prosecution in its Doc. Bock V-B, under Exh. No. 239, which contains the plan for the distribution of work in the RSHA, dated 1 March 1941, has already been commented on by the quotation. in the written pleas of the defense, of a substantial number of defense documents. That document actually refers to the defendant Dr. SIX as Chief of Office VII, although owing to his having been assigned to the Waffen SS from May 1940 to 1942 to the exclusion of any other activity, he could not actually have filled that position. The fact is, however, Court No. II, Case No. IX.

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that just the section "Free masonry and Jewry" in group VII B is vacant.

Now there can be but little doubt that a chief, efficient operation of that section.

The prosecution docu ment in Doc.

Book V B No. L 219, Exh. No. 240, contains the 1943.

It shows that SIX had been replaced by Dr. DITTEL as Office Chief VII.

Only at this juncture the section "Free masonry and Jewry" which until then, under SIX's management, is being subdivided into two separate sections, VII b I "Free masonry" and VII b II "Jewry" and placed under section chiefs.

for reasons of time. On the other hand, numerous affidavits prove that during SIX's tenure of office questions concerning RSHA that was a special assignment of Office VII.

During the Court No. II, Case No. IX.

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It has been proved in the course of these proceedings that SIX had not been consulted during the conference in Pretsch in connection with the formation of the Einsatzgruppen, and that the Fuehrer order, so indispensable for this procedure, had not been transmitted to him for guidance, either at the issuance of the order for the formation of an "Archiv-Kommando", later on named "Vorkommando Moscow" by SIX himself, or after its formation. This order, however, was a necessary instruction for the Einsatzgruppen and Einsatzkommandos, and it was actually issued to them, viz. to all their leaders. "Vorkommando Moscow", then, was just another archives commission like those which had previously been set up for Paris, Brussels, the Hague, Oslo, Athens and Belgrade. It has become clearly evident during this tril that before, during and after the time when SIX headed this "Vorkommando Moscow", there existed considerable tension and even discrepancies of a nature most dangerous to SIX in the relations between him and HEYDRICH, and furthermore that wherever, in the pursuit of his task, he came into contact with NEBE, the chief of the Einsatzgruppe operating in the same area, there existed permanent dissension, disagreement and tension between the two of them as well. While

Vorkommando Moscow was headed by SIX, there was no collaboration with the chief of Einsatzgruppa B, NEBE, but only independent operating side-by-side, a pulling in opposite directions and mutual frustration. From the very fact of the low strength of Vorkommando Moscow, numbering about 20 - 25 men, and its being staffed specially with scientists, interpreters and men familiar with the topography of Moscow, there emerges the contrast to the Einsatzkommandos which were organized quite differently in regard to personnel, strength and experience, that is, on the principles applying in the Security Police and the SD. The fact, however, Court No. II, Case No. IX.

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that Professor SIX himself, Office Chief VII of RSHA, viz., a leader ranking equally with the head of Einsatzgruppe B, the Office Chief V NEBE, was appointed as leader of so small a unit as Vorkommando Moscow goes to prove that the Vorkommando was not just operating as a sub-unit of Einsatggruppe B engaged on some special task for the latter, but that there existed an independent and important sphere of work for Professor SIX and his Vorkommando Moscow. The "Reports of Events" mentioning the Vorkommando, which the prosecution presented as the only evidence intended to prove the alleged guilt of the defendant SIX in the sense of Counts I, 7 T and U of the indictment are devoid of any conclusive probative value. Most of these "Reports of Events" just feature harmless statements regarding the locations of Vorkommando Moscow and are, therefore, quite irrelevant so far as the contention of the prosecution is concerned. They do prove, however, that the statements of the defendant in regard to the objectives of the Vorkommando, its composition and its tasks are correct. Reports of Events No's 44 and 67 commenting on the safeguarding by the Vorkommando Moscow of material found in the House of the Soviets in Smolensk and the checking of 740 persons by the Vorkommando Moscow contain nothing aggravating for the defendant either; they rather bear out that the special Kommando (Vorkommando Moskau) was employed for tasks entirely different from those of the Einsatzkommandos. They, too, prove that its assignment was technically limited to the safeguarding of archives and that it was specially staffed with scientists and interpreters. But even the fact that Report of Events No. 73 of 4 September 1941 states that the Group Staff and VKM had shot a total of 144 persons between 22 July and 20 August, and that the VKM had shot 46 persons, among them 38 Jewish intellectuals, did not enable the prosecution to prove conclusively that the Court No. II, Case No. IX.

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defendant SIX actually did commit the crimes laid to his charge in counts I and II of the indictment. The counter-evidence presented by the defense, however, is conclusive; the defendant's own statements and the submitted affidavits, furthermore the depositions of the co-defendants BLUME and KLINGELHOEFER, the analysis of these "Report of Events" and the counterproofs submitted by me in the written pleas. Once more I wish to summarize the results of the counter-evidence submitted by the defense in the solemn statement that the defendant, as leader of Vorkommando Moscow, never employed it in any activities ether than those in keeping with its assigned task, that is, the preparation and execution of pure safeguarding tacks in connection with archives, files and other documentary sources. The defense has demonstrated beyond doubt and proved by a wealth of documentary evidence that the VKM under the command of the defendant was a special Kommando independent of Einsatzgruppe B and quite different from the Einsatzkommandos in regard to nature and assignment. If the Report of Events No. 73 seems to give a different impression as far as the latter point is concerned, namely, that the combined quotation of Group Staff and VKM proves, that there existed a connection and a status of subordination, it is an assumption which also has bean refuted conclusively by the evidence of the Defense and by the analysis of the evidence submitted in the written briefs. Since, however, the incriminating Documents of the Prosecution, contained in Document Book V B, and the exonerating Documents of the Defense, contained in Document Book IV and supplements A and B have not been taken into consideration as yet in the written briefs, it is necessary to look into the matter of the incriminating Document of the Prosecution No. 5855, Exhibit No, 241, with particular reference to the counter-evidence Documents of the Defense, No. 62 and No. 68 Court No. II, Case No. IX.

in Document Book IV with supplement A and B. The Document of the Prosecution in question seems to incriminate the Defendant, and to refute his claim of defense, that the VKM was under his direction, separate from and independent of the Einsatzgruppe B. It is a receipt, given on 31 August 1941 to the witness Frau Veronika VETTER, who was interrogated in person, a receipt which shows the title of the issuing authority; "VKM of the Einsatzgruppe B - Security police and the SD" -. This heading had to be used, after the Defendant SIX had been relieved of his leading position of the VKM and had returned to Berlin. The Chief of the Einsatzgruppe B, NEBE, had placed the VKM under his command and that of his staff. The former member of the VKM Dr. Horst MAHNKE has stated the following under oath with regard to the matter at hand, confirming the statements of the Defendant, namely: In Defense-Document No. 62, Page 7/8, I quote: "The Heading "Vorkommando Moscow of the Einsatzgruppe B Security Police and the SD" can be explained as follows: After the departure of Professor SIX from Smolensk on 20 August 1941, the Chief of the Einsatzgruppe B, NEBE, carried out his previous attempts to get the VKM under his command in that manner, that he placed the Commando, which was left without a leader, under his own supervision and gave the order, that documents of the Commando were to be issued with this heading. This order was in force, until the Obersturmbannfuehrer KOERTING, who was sent by the Reich Security Main Office to Smolensk, took the Vorkommando Moscow over as an independent commando. This happened about the beginning of September 1941. Thereupon NEBE formed his own "Special Commando Moscow" of the Einsatzgruppe B, that was to carry out the special tasks of the Einsatzgruppe in Moscow."

In view of the fact, that the Defendant Dr. SIX had effected his release from the leadership of the VKM and his return to Berlin, the additional Reports of Events No. 92, 108 and 125 submitted by the Prosecution as incriminating Documents, charging the VKM with criminal activities, are no longer to be considered as incriminating Documents against the Defendant SIX, since they record alleged events, which took place at a later date. The evidence produced by the Defense, that the Defendant Dr. SIX was in fact relieved of his command of the VKM on 20 August 1941 and returned on this day to Berlin, has been proved conclusively, but it is necessary in this respect to elaborate on the statement of the witness VETTER before the court during the cross examination on 16 January 1948.

DR. ULMER: If you desire, Your Honor, this would be a suitable occasion for a recess.

THE PRESIDENTS: Very well. The Tribunal will be in recess until one forty-five.

(A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 6 February 1948).

THE MARSHAL: The Tribunal is again in session.

DR. ULMER for the defendant Six: May I now proceed.

3) Veronika Vetter, who submitted the Defense Document No. 11, Exhibit No. 11, has declared in her statement which she made under oath before the Defense Counsel, that, after the entry of the German troops in Smolensk,she had gone with her 12 month old child to the German office, which was directed by Professor Six and located in the large Police building in Smolensk, where she herself had been working six hours daily, and that she had left there on 20 August 1941 and returned to Germany. She stated further, that, knowing Professor Six and his closest co-workers Dr. Mahnke and Dr. Augsburg, she could not imagine, that they had been engaged at that time in the shooting of indigenous persons in Russia, but that she knows to the contrary that Herr Six and his associates had been very popular with the population in Smolensk. During her cross examination as witness, Frau Vetter in person has made statements, which are in contradiction to the dates, concerning the time she has spent together with Six in Smolensk, and which constitute a revocation of the sworn statement she made before the Defense, and in order to substantiate the correctness of the new dates she referred to the entries in her diary of that period, which she still had in her possession. First of all, it must be pointed out that, even though the witness has retracted her statement concerning the dates, which she had signed and which had been dictated in her presence, she has not turned from a witness for the Defense into a witness for the Prosecution. The witness tried of course to reconstruct, with the help of her diary, that she had come to Six and seen him in his office in Smolensk at the earliest and for the first time on 23 August 1941 and that his departure from Smolensk for Berlin could have taken place after 31 August only, but she did not incriminate him in any way during the cross-examination with regard to the Prosecution-counts I, 7 T and U, laid to his charge as former leader of the VKM.

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Also in the witness box, she remained a witness for the Defense with regard to those incriminating facts, cited in the indictment against the Defendant Six. She testified, that - although she was present every day in the office building and residing in Smolensk - she never has observed any criminal acts committed by Six or carried out by the VKM and that she could not imagine that Six would have participated in such acts. To substantiate this opinion, she gave an excellent description of Six's personality and that of his closest associates Dr. Mahnke and Dr. Augsburg, whereby she did not conceal the fact, that she was an opponent to National-Socialism as well as Communism, which had robbed her of her husband. tements. However, she is in no way witness for dates, also not in connection with the argumentation of the Prosecution against the Defendant. The witness has made two different statements regarding the time interval of her presence with the Defendant in Smolensk and his departure from there. In her affidavit of 14 September 1947 she affirmed that after the entry of the Germans into Smolensk, she had gone to the German office which was located in the large police building, in order co make inquiries regarding her husband who had been carried off by the Russians, and that on this occasion she met Six. She affirmed, moreover, that Six had not remained chief of this office - it was the Vorkommando Moscow (VKM) - for long, but that he left it on 20 August 1941 and returned back to Germany. In the witness-stand she stated that the appeared for the first time at the VKM on 23 August 1941, and that she had seen Six for the first time on that occasion; that the latter was present there for some time to follow - for a brief time, to be sure - but certainly yet on 31 August 1941, until he returned to Berlin.

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the statements she made on the witness-stand regarding the dates were true, because she referred to her diary entries of that time to support her memory, and to the fact, that she still claimed to know that a statement of confirmation was issued to her by the VKM under the date 31 August 1941 regarding the fate of her husband and signed by Dr. Mahnke, at a time when Six was still office chief in Smolensk, However the witness has proven on the witness-stand, that she has no memory for time and dates, whatsoever. She was not even able to say how much time had elapsed last summer in 1947, between the date on which she was approached for the first time by the wife of Defendant Six for bearing witness, and the 14 September 1947 when the Defense Counsel appeared at her place in Stuttgart to take her sworn statement. She still knew that Dr. Mahnke had told her of the celebration of defendant Six's birthday in Smolensk, but she no longer know when this birthday was to have taken place. It was on 12 August 1941. in a village in the proximity of Smolensk when the had withdrawn with the opening of the bombardment. But in that case she could have returned to Smolensk only between 10 and 15 September 1941 at the earliest, for the first German attack on Smolensk took place on 10 July 1941 and the artillery bombardment lasted from then until 4 August 1941. In this manner, however, the witness could not even have been again in Smolensk on 31 August 1941, when, she already was given the statement of confirmation, the issuing of which, however, obviously presupposes some time for the investigations which she had already previously requested. The witness, however, claims to take the data for her two months stay in the village directly from her diary. Since she wants to quote her return on 23 August 1941 likewise from the diary, she must have quit Smolensk already on the second day of battle, thus almost three weeks before the war approached Smolensk, while she claims to have not pulled out before the bombardment of Smolensk.

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But here also her statements regarding the dates made on the witness-stand are fraught with contradictions, for she said at one time, that she had left the city with her child on 27 June, following the arrest of her husband - page 5262 - and later, she declared to the President of the Court, that she had gone into the village only while the city was being bombed - page 5236 - of the German Court Record. These dates do not agree at all, but show a discrepancy of more than two weeks. of the witness, and which was deliberately included by the Defense on 14 September 1947 at the time of the recording of the sworn statement for the illustrating of the time data, did not stand up to a subsequent examination. It concerns the statement which the witness allowed to be recorded in her affidavit, namely, that she was to have returned with her 12 months old child after the entry of the German troops into Smolensk, However, this child, according to the official confirmation by the Burgomaster of Korntal, submitted as Defense document No. 67 in my Document book IV was already 12 months old on 22 April 1941. It is well known that in small children the difference between the ages of 12 and 16 months is very significant and particularly indelible for a mother. However, not even in this respect are the data of witness Vetter correct, even though she expressly points out - as indicated on page 5274 of the Court Record - that one keeps familiar dates, such as marriage and birth in memory, in contrast to unusual events, such as the ones under discussion. Therefore, with respect to witness Vetter, one can only draw the conclusion, that she made the statements on the dates concerned, which are recorded in the affidavit for the Defense without an actual recollection of precise dates on her part. However, it cannot be deduced, that her subsequent information relating to dates must how be accurate, because the fact that the latter are not correct is demonstrable from the remaining evidence on file for this trial on this point. This evidence consists of the clear information relating to dates with respect to the defendant Six's return from Russia to Germany at the date given by the Defendant himself on the witness-stand, namely, the 20 and 21 August 1941, respectively.

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To this are added the ascertainments regarding this point, as they are recorded in the sworn statements taken in part before the Defense Counsel, in part, however, also before disinterested, yet officially recognized notary public clerics, of Professor Walz, Exhibit No. 12, Burmester, Exhibit No. 13, Huppenkothen, Exhibit No. 49, Plautz, Exhibit No. 50, Mahnke, Exhibit No. 40, Mueller Exhibit No. 44, and Hilpert, Exhibit No. 45. in my written presentation of the case, as far as the confirmation of the date of the defendant Six's departure from Russia on 20 August 1941 may be gathered from them. The co-defendant Klingelhoefer, as a member of "Vorkommando Moskau" (Advance Command Moscow) of that time, has also affirmed in his statement on the witness-stand - page 3373 of the Court Record that Six left Smolensk on 20 August 1941.

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Completely clear and unobjectionable evidence of SIX' renewed presence in Berlin already on 22 August 1941, has been given by the female witness ALANDER who was heard under oath in the witness stand on 22 January 1948. Finally, after hearing the female witness VETTER in cross-examination, in contrast to the dates given by her which could not possibly be correct, statements were asked for and laid down in affdavits, from other persons who at that time had either been together with SIX or met him, namely his two former commando comrades Dr. MAHNKE and Dr. AUGSBURG, his secretary Ilse RICHTER. These affidavits have been included under document No, 63, 68, 60 and 59, in the Document Book IV, resp. Appendix IV B, which latter has been compiled and submitted to the Tribunal after the hearing of female witness VETTER. In order to prove the exclusion of every possible error in these dates given by secretary RICHTER and Frau SIX, an official certificate from the German Red Cross - Klementinenhaus Hannover - has been included as document No. 61 in Document Book IV, which by the official registration of patients of this clinic, confirms the fact referred to by both witnesses as an aid to their memory, namely that defendant had returned to Germany before Frau SIX was taken to the hospital in Hannover on 1 September 1941. Just these assurances show that Frau VETTER must have been mistaken in her statements during cross-examination and that also the reference to the note in her diary is casual (unbehelflich) and incomplete. We will therefore quote the essential part as follows: From Document No. 63 by Dr. AUGSBURG.

" I met Frau Veronika VETTER in the beginning of August 1941 in Smolensk.

Immediately after the shelling of the city had ceased, sity professor and Racial German VETTER .......By order of Prof husband, which took weeks.

......I informed Dr. MAHNKE of this outcome, as Professor SIX had already departed.

...... Of course still had been in Russia at that time."

From Document No. 63 by Dr. MAHNKE.

" With respect to the statements of Frau Veronika VETTER on for Professor SIX, Several officers from the "Reich" Division This birthday party was held on Prof.

SIX' birthday, since Prof.

SIX' regimental comrades had appeared on this very day .

property to Smolensk from her place of evacuation. In my VETTER's statement."

prove that, already during her time of service with the Moscow Vorkommando (VKM) that is after her first meeting with SIX, she has seen herself how another detachment with a higher commander arrived and took quarters on a higher floor of the lateral wing of the police building. These statements are so precise that it can be deduced that this other detachment and its commander can only have been the Group Staff and NEBE.

But according to the Report of Events No. 43 dated 5 August 1941 the staff of Einsatzgruppe B had already arrived at Smolensk at that time, a fact which has also been confirmed by co-defendant KLINGELHOFFER in the witness stand (Transcript p. 3877), by Dr. SIX himself in the witness stand (Transcript p. 1361) and in Defense Document No. 40 by Dr. AUGSBURG. shows that she must have seen and met defendant SIX in Smolensk already during the first days of August. Since she further testified that SIX remained only for a short time, it can be deduced also from her statements during cross-examination that the date for SIX' departure from Smolensk given originally in her affidavit of 14 September 1947 as 20 August 1941, must be correct and that her diary notes, to which she referred for her changed date, were not an aid to her memory but caused a confusion of her memory. Prosecution has not been submitted in evidence. Hence this part of VETTER's statement is completely deprived of any support.

4. But this departure from Russia on 20 August 1941 or Defendant SIX took place upon his own request for release. He has made this request for release because he realized that has Vorkommando Moscow, which had been formed for the task of seizing archives in Moscow, was purposeless because the fall of Moscow could not be expected for the time being. Hence it results that defendant SIX never understood and intended his assignment in Russia to be anything else but practical activity in the sense of the archives tasks and archive commandos of Office VII and that he evaded successfully and to the ultimately possible degree employment in the Einsatzgruppen and Einsatzkommandos in Russia under the SD service.

5.) It need hardly be mentioned in view of otherwise inadequate evidence produced by the Prosecution that the defendants' promotions as well as the written documents and memoranda referring to them constitute no means of evidence against him concerning his co-operation or accompliceship in the deeds perpetrated by the Einsatzgruppen and Einsatzkommandos as the Prosecution tries to prove, inasmuch as the relevant counter-argumentations have already, been exhaustively laid down in writing by the defense. I only wish to refer to document No. 4768 Prosecution Doc. Book V B, Exh. 237 which included the letter from the SSOperational Main Office - Commandant of the Waffen-SS of 3 April 1942 addressed to the SS-Personnel Main Office. This document does not permit the slightest conclusion as regards the defendants' employment in the East. This is an act of the RSHA deliberately misleading the Waffen-SS and the Wehrmacht with the object of getting defendant SIX released from military service against his will and of bringing him back under the disciplinary authority of the SD. To this end the Waffen-SS, after the Wehrmacht had already refused his release, was confronted by the RSHA with an allegedly accomplished fact by letting them know that SIX had already been assigned to the East as Commander of the Security Police and the SD, in other words, that he had already departed. This however, does net correspond to the facts. In 1942 SIX was in Berlin and he has never held the position of a Commander of the Security Police and the SD.

On the other hand, this document proves the sort of methods HEYDRICH adopted to enforce the defendant SIX' return to the SD and his release from military service against his will. At the same time the defendants' statement in the witness box is herewith confirmed once more. of defendant SIX's personal records, the Prosecution, on the other hand, would have been sure to detect some document proving the employment of the defendant in the Service of the SD-Einsatzgruppen if this had been defacto the case with the defendant.

7.) The final conclusion:must be drawn, therefore, that he charge against the defendant Dr. SIX with reference to counts I and II of the indictment has been based merely on diverse grounds of suspicion, which in themselves are incoherent and altogether rather feeble, and that the Prosecution in the course of this trial has not been able to substantiate it with evidence strong enough to disperse all doubts. On the other hand, the chain of counter-arguments offered by the defense is absolutely solid and constitutes full proof that the defendant is not in the least incriminated in the sense of counts I and II of the Indictment and that, therefore, the Tribunal must needs come to the decision to declare the defendant not guilty on counts I and II of the indictment.

1.) Concerning Count III of the indictment, the defendants' membership in the criminal organisations of the SS and the SD, I have to debate the point whether, apart from the more membership of these organisations , there existed from the part of the defendant also some sort of cooperation with them in the sense of their criminal actions or a participation in their criminal tendencies. Since the charge contained in counts I and II of the indictment, i.e. defendants' participation in war crimes and crimes against humanity committed by the Einsatzgruppen and Einsatzkommandos of the SD, is bound to break down also in connection with Count III of the indictment, there remains only to argue, whether his other connections with the SD and the SS constitute a participation in some form or another in the criminal tendencies of these organizations.

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The defendant is not guilty per se under count III of the indictment, because on the key-day, 1 September 1939. as ruled according to the verdict of the International Tribunal, the defendant was still a member of the SS and the SD in his capacity as Chief of Amt VII, which, according to the verdict was included in the criminal organizations. As Chief Prosecutor JACKSON in his opening statement before the International Trial conceded to each member, to explicate in a trial his personal relation to the organization so has this also been done in the case of defendant Dr. SIX in this trial.

2.) I stated at the beginning that SIX did not enter the SD as a politician but as a scientist and that his activity was confined to this scientific sphere. His membership in the SS was compulsorily necessitated and was dependant on his membership in the SD. Not until his entry into the SD was the defendant transferred to the SS from the SA to which he had belonged until then. His promotion in rank in the SS was effected in accordance with his duty assignment and activity in the SD. After his final inactivation in the SD the defendant did not become an active member of the SS, but an honorary member; his SS rank which ha was allowed to retain and which was finally raised to Brigadefuehrer was an honorary rank equivalent to his professional rank of ambassador 1 stclass in the Foreign Office. The fact that no SS-assignment of any other kind was the basis of his promotion in the SS is proved by the written service curriculum of the defendant, submitted by the Prosecution in Document Book V B, Document No. 4768. This reveals clearly that the type of duty of the defendant as a member of the SS was always within the sphere of SD duties. During the period of the defendant's membership in the Waffen-SS his activity consisted only of military training and training for war assignments, which does not have the nature of criminal activity within the meaning of the decision of the International Military Tribunal.

3.) The defendant never entered the Allegmeine SS as such. He never joined it as a member but due to his profession he became a member of the SS-Sonderformation SD because he thereby bad the opportunity of being active in the field of science.

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In the SD the defendant was in charge of Amt VII as from November 1939. This office was designated as criminal by the International Military Tribunal, but in the reasons for the judgment this designation was not connected with any of the features which mark the SD as criminal.

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In other words office VII was not especially blamed for criminal acts committed in the East, for the Nacht and Nebel decree or for the ballet (Kugel) decree, screening measures or other criminal acts mentioned especially in the judgment of the International Military Tribunal. Therefore it must be proved that the defendant SIX was personally involved in crimes committed by the SD. The main point, there fore, with regard to the defendant's criminal guilt, is whether he is guilty in accordance with the prosecution's point III, as a result of his membership in the and merely through having had knowledge of the activities of the Einsatzgruppen, without however having ever had any personal part in these activities; or whether it can be deduced from his general behavior during his SD membership that be put himself, his work and his designs at the disposal of the activities of the SB which have been ascertained as criminal. gruppen in Russia during his own totally different assignment as Chief of the

Archivkommando Moskau. His having had a part in the planning of the Einsatzgruppen activity, even only in an ideological way, is therefore completely out of the question. The fact that the defendant did not participate nor wish to participate in the execution, can be ascertained as a result of those proceedings. Consciously, on his own initiative and using all means at his disposal, the defendant extricated himself from his being used in the fast by the SD upon his recognizing the impossibility of fulfilling his scientific assignment and at a time when it was being considered to change his assignment into partisan combat duties within the sphere of tasks of Einsatzgruppe B. It is sufficient here to state these simple facts.

I have already mentioned this point in my statement today as well as in my trial briefs. But the defendant's entire attitude as a member of the and an SD leader was not an unrestrictedly positive attitude but a critical negative one which resulted in his leaving the SD. had to go through extremely serious, even dangerous, conflicts with HEYDRICH: he was absolutely shelved and treated with suspicion as a most unreliable member. That the defendant succeeded in getting away be entering the service of the Foreign Office, where, by virtue of an existing ministerial decree, SD-activity was even prohibited, goes to prove his own inner aloofness and unsuitability for the SD. 4. In submitting Document No. 3919-PS of their Document Book V B, the prosecution has tried to prove that, just during his service with the foreign Office, the defendant SIX behaved in a criminal way. This document contains the confidential report on the meeting in Krummhuebel on 3 and 4 April 1944 of the Information Office XIV with its experts attached to the German Missions. This document is supplemented by a conglomeration of secret correspondence between the Reich Security Main Office - Office IV, and via the foreign Office. Department for Home Affairs II, - the missions abroad on the handling of the Jewish problem by those missions. The information Office XIV of the Foreign Office was an independent office with its own chief and responsible directly to the state secretary. The tasks of this office lay purely in the field of propaganda and had no connection with the other departments of the Foreign Office within its organization. I was only the opening meeting which had to be attended, according to instructions of the state secretary, by representatives of all departments.

At that opening meeting, the defendant SIX made a short speech of a purely informational character, took his leave immediately afterwards and returned to Berlin. Therefore he does not know anything about the further course of the meeting. The affidavits of so many persons who attended that meeting prove that the words he is accused of having said were never uttered. There exist therefore well-founded doubts as to the authenticity of this document which had been submitted by Russian quarters to the IMT in 1946, all the more so as it bears no signature. With regard to the brief which have been arbitrarily submitted with this document no relation whatsoever, as far as business procedure and time are concerned, to the Department of Culture or its Chief, SIX, I refer to the affidavit by THADDEN, Document Book IV, Appendix A, Document No. 67. attempt to prove the defendant guilty in Count III, refers to the Krummhuebel meeting, which the defendant attended to be sure and at which he made a speech, the following has to be stated in this connections: Supposing the document were not of questionable origin, it were not a garbled excerpt, it were not without signature, then it would merely prove a knowledge, but not an approval, of the events. 5) Thus, the prosecution has also failed in Count

III to furnish conclusive proof that the defendant SIX, as a member of an organization which has been pronounced criminal, participated in any way actively in measures declared criminal. on the other hand, the defense has proved, in submitting the large number of documents of the Complex Groups C and D General Behavior of the Defendant Six during his Activity at the diversity and the Foreign Office - that SIX emerged always and everywhere only as a scientist of a typically candid attitude and free of dogmatic limitations.

He has never committed a criminal act nor done any harm whatsoever or supported, wanted or sanctioned the carrying out of National Socialist crimes. On the contrary, he rather opposed that ideology with determination when it did not conform to European principles and ethics. He not only tolerated opponents of the regime of whom he got to know, but frequently aided them and admitted frankly that he himself rejected the excesses of National Socialism. This entire attitude of their defendant and his behavior as a member of an organization declared criminal should absolve him from any responsibility in acts of this organization which have been found criminal. all the facts Mentioned here above pertaining to Count III, while I myself am of the opinion that also as far as this count is concerned, the defendant should be found not guilty according to the rebuttal by the defense of the charges preferred by the prosecution.

THE PRESIDENT: Who follows? Dr. Heim?

THE SECRETARY GENERAL: Dr. Heim's final plea hasn't come up.

DR. MAYER: Dr. Mayer for the defendant Steimle. with crimes against humanity and war crimes, and in addition with the membership in one of the organizations declared criminal by the I.M.T. The specific charge is the participation in an extermination program for the annihilation of certain racial and other groups; it is asserted that the Einsatzgruppen including their Einsatzkommandos and Sonderkommandos were established for, and employed in, the implementation of this program.

Steimle is stated to have participated in this by his activities as leader of the Sonderkommando 7 a of the Einsatzgruppe B and of the Sonderkommando 4 a of the Einsatzgruppe C; it is said that he thus cooperated in the implementation of the program. could really be carried out by the relatively small number of persons forming the Einsatzgruppen. It may also be left undecided whether the decree of the Fuehrer, which appears to play a very predominant part in this trial, was really meant to be the basis of such a plan. Steimle was in a position to ascertain whether this program of genocide existed or that it existed, and whether or not he took part in the murder of innocent persons by any activities implementing the Fuehrer decree. It must be admitted that it would constitute such participation in a wider sense, if during the period, in which he was in charge of SK 7 a or SK 4 a, members of his command had co-operated in this policy of extermination with the cognizance and the approval of Steimle.

The evaluation of the activities of the defendant Steimle in the light of the charges raised against him cannot be restricted to the consideration of the evidence produced by the prosecution all the more as this evidence is not comprehensive anyhow. It must consider all those circumstances which directed his action while he was committed in Russia. A tremendous amount of material of this kind is contained in the extracts from incident reports produced by the Defense. They will show that the trend and the scope of his activities in his capacity as Kommando-leader were to a large extent caused by external condition as such; this applies particularly to the areas of commitment of SK 7a. Furthermore, it will become apparent that the implementation of the decree of the Fuehrer, as charged by the prosecution, was practically impossible in these conditions, which will be described more fully later on. The same applies to Steimle's activities in the capacity of the leader of SK 4a. the personal attitude of Steimle toward the implementation of the order of Fuehrer is, therefore, of secondary importance. We may believe the defendant, if he asserts that it would have been against the grain, if not impossible, for him to carry out the Fuehrer-order, if he had been confronted with the necessity to do so. It requires an inflexibility more than human to implement such an order, and it would only be natural to shrink back. We do, however, claim that Steimle would actually have refused to obey the order, if direct pressure or force had been brought to bear on him. But he must not be prejudiced by the fact that the conditions actually prevailing saved him from this necessity. The evidence will even prove that on his own initiative he made a clover use of existing conditions with the very purpose to eliminate such necessity in his area.

guarantee of a just decision consists in the application of those legal principles which are established internationally and which reflect accordingly in the sentences pronounced by the Military Tribunals in the cases already tried. Nobody may be convicted if his personal guilt has not been proved. This requires that it must be carefully determined which of the various criminal acts charged in the indictment have been committed by the individual defendants, in this instance by Steimle. The fact that the onus of proof rests with the prosecution - which As an established principle protects the defendant from being held responsible on the basis of assertions of the prosecution, if proof is lacking. The principle that every defendant is prime facia presumed to be not guilty enhances this protection. defendant Steimle is the fact that he was assigned employment in the East. The assignment covers two periods separated by an interval of one year. The first assignment was the appointment as leader of SK 7 a of Einsatzgruppe B for the period from the middle of September 1941 to the middle of December 1941. The assertion of the prosecution that this assignment of Steimle lasted until the middle of February 1942, will be discussed later. At this juncture it is sufficient to state that this does not correspond to the facts. The second assignment of Steimle was his appointment as leader of SK 4 a in Einsatzgruppe C for the period from August 1942 to 17 January 1943. been wrapped up in his work in the SD district headquarters Stuttgart.

It seems, therefore, indicated to breach the nature of these activities and Steimle's attitude underlying them, for they will reveal the background from which he started for commitments in the East, a field which was completely new to him. It will also reveal how much his Stuttgart duties contrasted with those incumbent on him in SK 7a. The deposition of the defendant made on the stand furnishes acomplete picture of his professional background and curriculum; in this respect reference is made to the transcript dated 5 and 6 November 1947. The documents Steimle No. 1 - 5, discloses the attitude of the defendant toward the Nazi regime in the period prior to his commitment in Russia. They make it evident that he was by no means one of the blind fanatics who accepted the measures of the Third Reich without any criticism. On the contrary, he considered his activities in the SD a propitious opportunity of submitting unbiassed reports on the effects of the measures of the government as a substitute for criticism, the latter being prohibited. His purpose was to set a limit to arbitrariness. He is described as unbiassed and as a man who lent his assistance, his support and his protection where ever he feels they are needed. During his activities in the SD district headquarters, the defendant applied several times for his transfer to the army, as he wanted to do active service. Steimle document No. 4 Exhibit No. 4. As late as in January 1941 he again endeavored to be called up for active service, and he even secured an interview in Berlin for that purpose. With the obvious purpose to turn these repeated applications down, he was in August 1941 assigned to SK 7 a and appointed its leader. It must, therefore, be kept in mind that he was given this assignment at a date long after the time when the Einsatzgruppen including the Einsatzkommandos and Sonderkommandos were formed and committed for the first time.

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The defendant Steimle was neither sent to Dueben nor to Pretzsch, the only places where special indictrination courses on the purpose and tasks of the Einsatzgruppen were held. The question of the Fuehrer's decree playing a decisive part in this trial, it is not devoid of special significance that the defendant was never given detailed instructions by executive leaders on the meaning and purport of the decree. The defendant does not deny that he was made converssnt little by little with the Fuehrer's decree by way of information given to him by Einsatzgruppen-Leader Nebe, his superior official, and by the men of SK 7 a. But these informations given to him by Nebe or his own subleaders can, of course, not be considered substitute for the official indictrination given in Pretzsch and Dueben. It is obvious that an order which has not been laid down in writing can in practice never be transmitted entirely in its original form. conversant with the tasks of the Sonderkommandos and with those of SK 7 a in particular. When he reported to Einsatzgruppen-Leader Nebe on 4 September 1941, he was told only that it was the task of his Kommando - and of the other Kommandos, too, for that matter -- to secure the rear area against all communist leaders and their forces active in the area and against their supporters. On or about 7 September 1941, he was told by the deputy leader of SK 7 a, Foltis, that during its advance SK 7 a had shot a number of male Jews of military age. Only then did the defendant Steimle realize the real purport with regard to the Jews of the decree of the Fuehrer.

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No wonder the reaction of the defendant to this piecemeal information on the Fuehrer's decree, the implementation of which called for particular ruthlessness, was such he did not take pains to report an order of this kind to this sub-leaders and men. There is no doubt that during the first phase of Steimle's command, the members of Steimle's unit were more conversant with their tasks in the Sonderkommando then the defendant Stimle himself. This follows from the very fact that the Kommando had been operating since June 1941. It must be emphasized that neither at this nor at any other time the defendant Steimle gave orders of his own to his men concerning the implementation of the decree of the Fuehrer with regard to the Jews. The incident reports produced both by the prosecution and the defense show that SK 7 a is not mentioned in a single report for the shooting of Jews in implementation of the decree of the Fuehrer. In fact, during the whole period when Steimle was in charge, no Jews, Jewesses of Jewish children were shot in SK 7 a in implementation of the Fuehrer order. On the other hand, the above-mentioned incident reports are dealing throughout with the ever increasing partisan menace and with "action"i.e. combat operations, of SK 7 a against partisans, mostly carried out jointly with, and often initiated by, Wehrmacht units. Walter Roller, Steimle document No. 12, exh. No. 12. Roller was the driver of the defendant Steimle and is in a position to confirm that no executions of Jews based on the Fuehrer's decree were carried out at that period. did not implement the Fuehrer-decree while the defendant was in charge.

The defendant himself has, when on the stand, stated that this can not be explained by a claim that he had been in a position simply to refuse to carry out this order. Adhering to the truth, he admits that he would have been obliged to comply with this order in the same way as with any other order, if the necessity had arisen. In this connection, it must, however, be reiterated that the defendant did have a certain part in the actual operations of the Kommando in his charge, in so far as he cleverly exploited the conditions actually prevailing in order to be able to shelve, without incurring a personal set-back, the implementation of the decree. We must not forget that the implementation of the decree. We must not forget that the implementation of the Fuehrer's decree was not the only task of the Einsatzgruppen. According to both the deposition of the defendant made on the stand and the incident reports, it was also the task of the Sonderkommandos and Einsatzkommandos to maintain the security of the rear communication of the combat troops and to take all security measures necessary for this purpose. The latter task included the furnishing of intelligence concerning the organization of the enemy army, the communist party, and in particular the reconnoitring of the organization of partisan warfare, raised to the level of a method of warfare by the Red Army. The irrefutable fact that the strength of the Sonderkommandos was extremely weak - about 100 men for each Sonderkommando- madt it impossible to carry out the Fuehrer order and to fight the partisan menace at the same time. In fact, the combatting of partisans was the more urgent task. It had to be given priority, because the malicious combat methods of the partisans threatened the rear of the combat troops and inflicted considerable losses on the Wehrmacht.

In this connection, reference is made to the exhibit Ohlendorf No. 3, doc. Ohlendorf No. 40, page 66 of doc. book Ohlendorf II, which contains some illuminating figures for a small sector of the front. It becomes evident from the fact, specified in detail in the following, why the SK 7 a under Steimle's leadership did not carry out the Fuehrer order; 1.) That the danger from the partisans played a prominent part in the back of the combat troops in the deployment in the East, but particularly in the deployment area of the Sonderkommando 7a results from the excerpts of the reports of events submitted by the defense. This was already pointed out. Thus, the area can rather exactly be established in which a particular concentration of the partisans took place. It is further possible on the basis of these facts to establish of which circle of persons the partisans consisted and further still what kind of activity they carry out and thus what kind of danger the partisans were.

a) There is an especially great number of partisans in the extensive forests and in the impregnable marsh area, because they can find here shelter and hideout for men and weapons without any trouble. It is explicitly stated in the report of events No. 97 of 28 September 1941, which is reprinted in the Steimle document No. 25, exh. No. 24 page 37 and 40 of the English and German document book Steimle II: the main seat of the Partisans' activity in the region, comprises the area of which the city of Welish is the centre. This region is bordered in the East by the road Smolensk-Demidow, in the South by the motor highway, in the West by the road Smolensk - Witebsk, and in the North by the road Smolensk Demidow.

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It is known to the Tribunal that this city was the seat of the Sonderkommando 7a in the months September/ October 1941. The size of the afore mentioned region brought it about that the SK 7a had to be permanently occupied with combatting the partisans. They succeeded in many cases in escaping in time, thanks to the impracticable conditions of the roads.

The document Steimle No. 29, Exh. No. 28 contains on page 46 of the German and English document book Steimle No. II a detailed report on a partisan operation in the neighborhood of the township of Demidow, South East of where dense forests stand. The whole deployment area of the Sonderkommando 7a is full of forests and marshes and represents, therefore, a territory which is especially favorable for the activity of the partisans. It is complained in particular in the document Steimle No. 23 Exh. No. 22 in a report on page 18 of the original that the extensive marshes and the big forests, accessible only with much trouble, are extraordinarily helpful to the partisans. It would go to far to enumerate here all documents of the defense which express themselves in the same way with all they contain. It must be considered on the basis of the documentary evidence a fact which does not admit any doubts that there existed one of the best hideouts for partisans in the area of the Einsatzgruppe B, but especially in the deployment area of the Sonderkommando 7a when the defendant Steimle was its leader.

b) The circle of persons of which the partisans consisted can also be described in its essential points on the basis of the reports which are present as documentary evidence. The document Steimle No. 23. Exh. No. 22 gives a clear view of the organization of the future partisans' training in so-called partisan schools.

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The document Steimle No. 25 Exh. No. 24 emphasizes expressly that the so-called destruction division consisted of party members of the Communist party and active Bolshevists. For this reason alone they had not been drafted for military service. Document Steimle No. 32 Exh. No. 31 confirms that the escaped Communist functionaries and agents were active as partisans without any exception. A report in document Steimle No. 34, exh. No. 33 points to the fact that also women and predominately young ones joined the partisans to serve as scouts and to transmit intelligence. It is expressly pointed out in the document No. 40 exh. No. 3 on page 66 of the document book Ohlendorf No. II that the leadership of the partisans was assumed in most cases by the secretary of the local Bolshevist party committee or by other party functionaries. It follows from the same document that women and children were committed with especial ruthlessness for the partisan fight. Also tasks in the line of direct combat were given to them on this occasion. Neither is it excluded that partisan units were led by women. It appears from this very important document that the Bolshevist party fanaticism is not deterred from making use of children in partisan detachments. The most difficult tasks are assigned to them there, as e.g. the demolition of bridges.

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The proclamation of Stalin of 3 June, 1941, document Ohlendorf No. 39 exh. No. 2 does not permit any doubt on the fact that the Soviet state leadership planned and intended to have the total civilian population participate in the partisan war. It is also this point of view which makes it appear a necessary consequence that party functionaries of all ranks, party members and Bolshevists formed the backbone of the partisan movements. It only serves to complete the picture that the members of the Red Army were ordered to enforce in the disguise of civilians the ranks of the partisans, in case they were separated from their units. The systematic preparation of the partisan war against the Germans as occupation troops and troops of the front line comprised a considerable portion of all parts of the population and demonstrates clearly enough the ruthlessness of the treacherous manner of combat which was used by the partisans. It was the plan of the Bolshevist State leadership that the German troops should never be sure that a group of peasants which looked quite harmless or other harmless civilians could not change suddenly to armed partisans. particular the Bolshevist functionaries and NKWD agents who remained in the back of the German troops of the front line tried over and over again to form and organize partisan units out of the civilian population. This appears in several cases from the submitted documents. It cannot be contested that Jews belonged to these leading circles and also especially that there were Jews among the Communist functionaries and NKWD agents. It can be said in generally that every Communist functionary, every NKWD agent and every Bolshevist who was moving behind the German lines was obliged by the party to organize the partisan fight and to advance it.

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And it can be understood that this was especially successful in an area like the one of the Sonderkommando 7a, if one looks at the fact that it was so easy to find a hideout, as was already emphasized repeatedly. is extremely great during the time in which STEIMLE was the leader of the Kommando. Document STEIMLE No. 18, exh. No. 18 reports that an attack of 200 heavily armed partisans against the city of Surash took place and had to be repulsed on 15 September 1941. A report is contained in the document STEIMLE No. 23 exh. No. 22 on page 29 of the German and English document book STEIMLE II which mentions major operations of the Sonderkommando 7a in various locations. They were unsuccessful, it is true, because the partisans fled in time. An operation of the SK 7a is reported in the same report. Here 12 persons were apprehended. It was established after intensive interrogations that 8 of them were partisans and they were shot accordingly. The report goes for the time until 13 September 1941. The defendant STEIMLE was then leader of the Kommando for a few days only. This report is interesting because it gives a total number of 1011 persons shot to death by the Sonderkommando 7a as of 13 September 1941. The next report of the commitment of the Sonderkommando 7a is in the document STEIMLE No. 29 exh. No. 28. It is reported there that a large style operation against partisans is carried out with the assistance of two divisions of the Wehrmacht in the dense forests Sout East of Demidow. A series of persons was immediately released again after detailed interrogations by the Wehrmacht, while 72 Red Army soldiers were apprehended, but without any proof that they were connected with the partisans.

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Therefore, they were brought into a prisoner of war camp. The SK 7a established 183 individuals as partisans on this occasion. They were shot subsequently. It is further on explained in the same report that the Sk 7a carried out several operations against partisans North West of Welish, and that 27 individuals could be established as partisans on this occasion. The Sk 7a is once more mentioned in the same document, and it is stated that 8 individuals could be convicted of partisanship in the village of Michalowo. The report contains further the interesting information that 8 partisans were apprehended and that they were so called youths between 16 and 22 years of age. Thus a hint is given what age groups are put together in the reports under the word "youths". This report gives a total number of 1252 persons shot to death by the Sk 7a as of 26 September 1941. This means according to the reports an increase of 241, while there are actually only about 218 shootings according to the contents of the report. STEIMLE document No. 32, exh. No. 31 mentions that 19 reports on partisan activities came in from the area Welikije Luki alone, one of the places where the Sk 7a was stationed. It describes clearly and in detail the destructive activity of the partisans. 12 operations against partisans of the Sk 7a are reported on page 79 of the German and English document book STEIMLE II, that means in the same document STEIMLE No. 32. Among them are several in which it took part as an interrogation squad on the occasion of Wehrmacht operations. 41 partisans were shot to death after interrogation. Another operation of Sk 7a is mentioned in the prosecution document No. NO-3160 exh. No. 65. 63 Communist functionaries, NKWD agents and agitators had to be shot in the course of combatting the partisans after it had taken place.

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This report obviously comprises a series of individual reports, given in the course of the reported period. The document of the prosecution No. NO-2825 exh. No. 59 reports of Sk 7a that it executed 153 liquidations on occasion of combatting partisans in the reported period. The total number of the expressly reported numbers in the individual reports gives the figure of approximately 500, the same figure which results as a difference from comparing the total number of persons shot to death by the Sonderkommando 7a viz. 1011 as of 13 September 1941 and the total number of persons shot to death by the same Kommando viz. 1517 as of 14 November 1941. All shootings are thus actually proven by documents to be nothing but shootings of partisans. that the Sonderkommando 7a is only mentioned in connection with partisan actions, carried out either independently or together with Wehrmacht units by parts of the Sonderkommando. The Communist functionaries and NKWD agents represent in all cases the backbone and the leadership of the partisan units according to this documentary support. This was the only reason why they still were behind the German lines. No reason can be perceived why theu should not have joined the general evacuation movement, propagated and energetically carried out before the arrival of the German troops. once more still - in particular in the area of the Sonderkommando 7a, which can be unambiguously learned from the documents, compelled the defendant STEIMLE obviously and with necessity to fight the partisans with the assistance of the men of his Kommando and his subleaders from the first days of his presence in this area. It forced him to continue this fight with all means at his disposal until his departure to Germany in December 1941.

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That meant the security of the fighting units and the necessity of maintaining without disturbance army communication lines between the front and the back. It cannot be contested that the Sonderkommandos had also the task of combatting the partisans. Just as little can be contested that this was an urgent task, especially in the combat area, and that everything must automatically stand back which prevented the forces of the Sonderkommando from this task, forces which were weak anyhow. The defendant STEIMLE had, therefore, no choice in the question, whether the combatting of the partisans must fall short of carrying out the Fuehrer order. The informations, received by him piecemeal on the Fuehrer order, contained nothing on the necessity of carrying it out before all other tasks. Neither was such an order ever given and it would have been absolutely nonsensical in consideration of the grave partisan danger. that he himself was not trained from the military point of view or from that of criminal law for the task given to the Sk 7a of combatting the partisans. Therefore, he was in no position to assume the leadership of the Kommando in this respect. Moreover, there existed no necessity, as an operation of the whole Kommando was out of consideration, due to its subdivision in two or three partial units which were widely separated in space. The partial Kommando of the Sk 7a operated together with units of the Wehrmacht and functioned mainly as interrogation units on such occasions; it was here the task of the defendant STEIMLE to check the regularity of the interrogation proceedings and of the decisions, made after it.

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It was clear without further ado from the above mentioned subdivision of the Kommando that this control could only be performed at random. It was still made more difficult by the circumstance that the Kommando under the leadership of STEIMLE was advancing in his parts since the middle of October 1941, as it always had to remain in immediate neighborhood of the fighting units according to the order of AOK 9. The proper working field of the defendant, the reporting on life in the occupied territories of the Soviet Union would by itself not have been his personal task as leader of the Kommando, but he had to perform it in addition to everything else, due to the lack of a proper person in charge of it. Fuehrer order in the time when the defendant STEIMLE lead the Sonderkommando 7a. The document STEIMLE No. 13, exh. No. 13 and the document STEIMLE No. 12, exh. No. 12 express also unambiguously that the defendant STEIMLE did not carry out the Fuehrer order and that he did not go farther and did not repeat himself the Fuehrer order, when dealing with the subleaders and men subordinated to him. The defense believes to have shown that this did not happen in violation of his duty and neither, because the defendant simply refused the execution of the Fuehrer order. It happened, in the contrary, from intelligent evaluation of the existing situation and necessiated by the compulsion of leading the combat against the partisans. stands on the other hand the fact that there were exceedingly few Jews in the commitment area of the Sonderkommando 7a of which we talk here after all. As already fully explained above, the commitment area of the Sonderkommando 7a in its whole not unconsiderable extent was covered with big forests, extending far and wide, and with impassable marshes.

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The reports, submitted by the defense, demonstrate unequivocally that a planned evacuation had already taken place in the commitment area of the Sonderkommando 7a before the invasion by the German military units. And here again the evacuation of the Jewish population was performed in a preferred manner and also according to plans. There is talk in the document STEIMLE No. 21, exh. No. 20 on page 13 of the German and English document book STEIMLE II in a report on the military intelligence service in the Welikije Luki area. The Court will remember that Welikije Luki was the stations of a subdetachment of Sk 7a. The report emphasize in connection with this township the evacuation of the population according to plans already at the time of the report, which evacuation was effected to a higher degree than previously. population had a preference treatment when the evacuation went into effect already weeks before and participated in it to a greater extent than the others. It is stated again in the document STEIMLE No. 32, exh. No. 31 on page 78 of the English and German document book STEIMLE No. II that the trend of flight and the planned evacuation of the Jews towards the East took greater and greater dimensions. This obviously refers to the interval of time between the 21 September and 24 October 1941. It is reported in the document STEIMLE No. 34, exh. No. 33 on page 90 of the English and German document book STEIMLE II that the Jewish population fled without an exception at that moment, viz. the 14 November 1941 and that this evacuation movement, which was promoted from the outset by extensive propaganda of the Soviet regime, was considerably facilitated by the transport trains which were put at disposal by the Red Army.

This report obviously refers to the region of Rschew, a town which is also situated in the territory of the Sk 7a. are not limited only to the development area of the Sonderkommando 7a. But they are felt especially clearly in this part of the country which anyhow lacks in population, because it comprises a very considerable part of the population and before all practically all of the Jewish population. submitted excerpts from the reports of events had not started only when the Sonderkommando entered its development area. On the contrary it started already before the invasion by the German troops. This situation was essentially already in existence when the defendant STEIMLE arrived.

PRESIDENT: Dr. Mayer, would you want to suspend at this point? The Tribunal will be in recess 15 minutes.

( A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

DR. MAYER (ATTORNEY FOR THE DEFENDANT STEIMLE): Your Honors, before I continue, I wouldlike to make a correction which I consider necessary on page 2oof the translation, line 16 from the bottom, there is a "not" missing, the word, "not"; this does meant to say, however, as in the translation, "we do claim". It says here, I think, "We do not claim." That is the 16th line from the bottom on page 2.

THE PRESIDENT: Very well.

DR. MAYER: May I continue then?

The PRESIDENT: Please do.

DR. MAYER: It is still more evident from these circumstances that he did not start with carrying out the Fuehrer Order. There existed on the one hand the partisan danger, overshadowing everything. It was so great that the most vital interests of the military would have suffered damage, if this danger had just been ignored. On the other hand the men of the Sonderkommando 7a would have to waste their small forces in exhaustive searches for the Jewish part of the population, a task which would not have stood up in any way to what was demanded from them under the given conditions. need to carry out the Fuehrer Order. Beyond that, they have shown that it would have even been senseless to postpone the task of combatting the partisans for no other reason than to carry out the Fuehrer Order. The proceedings up to now have not established in any way that the Fuehrer Order would have had to be carried out first and under all circumstances. 7 a under the command of the defendant Steimle. The prosecution, it is true, charges him with having killed 272 Jews and Jewesses, and in evidence of this fact they have submitted the incident report No. 124 of 25 October 1941, Document No. NO-3160 , Exh. No. 65. There can be no doubt that this evidence is inconclusive.

Firstly, it must be stated from a point of view of form that the Sonderkommando 7 a is nowhere explicitly mentioned as being the unit which carried out the execution of the said number of Jews and Jewesses. It was only a deduction which led to the assumption that the SK 7a was involved and the includiveness of this deduction is adversely affected by the fact that the data concerning localities given in these incident reports cannot always be regarded as completely reliable. This is definitely established by the fact that there is neither a locality called Sadrudub, nor one called Belowschtschina within the area covered by the Sonderkommando 7 a. I refer in this connection to Doc. Steinle No. 16, Exh. No.15, Doc. Steimle No. 17 Exh. No. 16, and to Doc. Steimle No. 15, Exh. No. 14. These records show that a locality called Sadrudub does not exist at all, for, if it existed, one ought to be able to find it, in view of the ending "dub", which can only designate a town. Apart from that, the expression Sadrudub in one word is impossible in the Russian language. Furthermore, the same documents which I mentioned before show that the designation Sadrudub is abviously a mutilation of the word Starodub. Starodub is a term situated in what was then the area covered by the Sonderkommando 7b. Document Steimle No. 32, exhibit No. 31, page 80 of the English and German document book No. I. As is shown in particular by document Steimle No. 16, page 16 the village of Belowschtschine is in the immediate neighborhood of the town of Starodub, and that is the place where the Jews - obviously those from the town of Starodub in the area covered by the SK 7b - were supposed to set up a ghetto. The fact that the killing of the 272 Jews and Jewesses took place in the area covered by the SK 7b, i.e. near Starodub and Belowschtschina, is further confirmed by the incident report of 26 October 1941, prosecution exhibit 63. On page 2 of the original of this record it is reported that the Sonderkommando 7b secured 46,000 Rubol of cash which had been "the property of a number of liquidated Jews". There is no report to this effect from the SK 7a, not only during this period, but at no other time. In spite of the fact that the SK 7 a is again and again mentioned in the report of events between the 10 Sept, and 20 December 1941, and this always in connection with the combatting of partisans, there is never a report to the effect that the Sonderkommando 7a had secured Jewish money or other valuable subsequent toa possible liquidation of Jews.

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Beyond this, the sane afore-mentioned document shows that according to the reported increase in the total figure of shootings carried out by Sonderkommando 7a and Sonderkommando 7b, the shooting of the 272 Jews and Jewesses must be placed to the account of Sonderkommando 7b. The report of events No. 108 of 9 October 1941, prosecution document No. 60, gives a total figure of shootings carried by the Sonderkommando 7a amounting to 1252 and a total figure of shootings carried out by Sonderkommando 7b amounting to 1544. This refers to the position as per 28 Sept. 1941. The incident report No. 125 of 26 October 1941 prosecution exhibit No. 63, gives a total figure of 1344 in respect of Sonderkommando 7a and a figure of 1822 in respect of Sonderkommando 7b. Thus the figure of shootings carried out by Sonderkommando 7a has only increased by 92 during the period in question, in which the incident occured with which the defendant Steimle has been charged. The increase however, should have amounted to exactly 372, as in the meantime only 2 collective shootings comprising about 100 persons executed were reported, and the Jews of Sadrudub would have to be added on to this. According to the records contained in the documents the increase in the figure of shootings carried out by SK 7b amounts to 278, and it is important to note in this connection that during this same period between the last report giving the figure of 1544 and the just mentioned report giving the figure of 1822 shootings, no executions at all are reported in respect to Sonderkommando 7b. These reported figures in connection with the report concerning the Rubel amounts secured by Sonderkommando 7b, and in connection with the geographical and linguistic argument pointing to the town of Starodub, make it completely clear that the reported shooting of 272 Jews and Jewesses with which the defendant Steimle has been charged was not carried out by Sonderkommando 7a but definitely by Sonderkommando 7b. In connection with the same document, i.e. the report of events No. 124, prosecution exhibit No. 65, the defendant Steimle is further charged with the shooting of 63 communists officials NKWD-agents and agitators.

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The defendant has pointed out on the witness stand that this total figure must comprise various operations against partisans, as the result of which the fact was established that some of the partisans arrested in the course of each operation were party officials, NKWD agents and agitators. Previous evidence has been submitted for the fact t that the leaders of partisans were to be found on principle among this group of persons which constituted the backbone of the partisan movement.

The purpose and aim of their operations behind the German lines was solely to keep the idea of partisan fighting alive among the population, and to carry out the organization of the partisan movement. In view of the situation in the area covered by the Sonderkommando 7a, which has also been described in detail, it is obvious that here, too, the persons in question were such as had been arrested in the course of operations against partisans.

The document No. NO-2825, Exhibit No. 95, of 14 Nov, 1941 mentions the execution of 173 persons by the Sonderkommando 7a, without giving the reasons for which the execution was carried out. The afore-mentioned prosecution document contains a number of execution figures with respect to other Einsatzkommandos and Sonderkommandos; these figures refer almost exclusively to Jews. In view of the situation with Sonderkommando 7a which has been mentioned several times, the indisputable conclusion must be drawn that the 173 persons in question must have been partisans. There is no reason why these executed persons should not have been designated as Jews in this case as well if the SK 7a had carried out such an execution. The operations against Jews mentioned in this report can be easily placed to the account of the competent Einsatz - and Sonderkommandos on the basis of the names of localities given. The defendant Steimle expoinded this point in detail on the witness stand, on the basis of the garrison reports contained in the documents. In this connection I refer to page 2008 and 2009 of the English transcript. Therefore, these 173 executions can on no account be charged to the defendant as acts committed on the basis of the Fuehrer order.

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The prosecution also links the record NO_2324, prosecution exhibit No. 62, with defendant Steimle's responsibility. This evidence exhibit reports the shooting of a considerable number of Jews, Jewish women and children. The document is dated 19 December 1941, i.e. refers to a period when the defendant Steimle had already gone to Germany on leave. But this is not the only reason why he is not responsible for the executions of Jews reported therein, another reason is that in this report the localities of the executions and mostly also the Einsatz- or Sonderkommandos concerned, are very carefully stated. The SK 7a is nowhere mentioned, on the basis of the available incident reports every locality of execution can be easily placed as a station covered by a certain Sonder- or Einsatzkommando. In no case is a locality mentioned which by means of this procedure could be placed as a station covered by Einsatzkommando 7a. The defendant Steimle stressed this point on the witness stand, and the defendant Naumann, in reply to my detailed questioning, also stated in his testimony, that none of the localities mentioned here were situated in the area covered by SK 7a. Here again it is clearly shown that the Sonderkommando 7a, under the command of the defendant Steimle, is not mentioned in connection with shootings of Jews. This fact features in all incident reports and therefore it cannot possibly be a matter of coincidence. The repeated statements of the defendant on the witness stand, according to which he never carried out operations against Jews with the help of his commando, are thus once more confirmed and emphasized, quite apart from the other documentary evidence submitted by the defense. In this connection it must be stressed that the defendant did not only adopt this point of view when the proceedings against him were instituted he expressed it from the very start, as is shown, for instance, by his affidavit made in 1945, Doc. No. NO-3842, Prosecution Exh. No. 119.

By reason of Prosecution Exh. No. 60, Doc. No. NO-3156, that is the incident report No. 108 of 9 October 1941, the defendant is further charged with the execution of Communists youngsters who had been arrested while trying to blow up a bridge.

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Incidentally it should be mentioned that this same report, as is easily recognisable, appears twice within the same record. I have explained before that the term "Youngsters" in the incident reports comprises the age groups from 16 to 22, and it is superfluous to point out that it was the intention of these Communists to commit an act which seriously endangered the safety of the troops and which was c carried out within the framework of the partisan movement. It seems out of the question therefore, that the defendant Steimle should be incriminated on this account. ing to submit evidence for the fact that the defendant Steimle was in charge of the Kommando 7a up to 13 February 1942 must be regarded as a failure. The period in which he led the Sonderkommando 7a only lasted from the middle of September 1941 to the middle of December 1941. This fact has been proved by the defense. The prosecution does not appear to have any doubts concerning the date on which he started his activities with the Sonderkommando 7a. Only as a precautionary measure do I refer in this connection to Document Steimle No. 13, Exhibit No. 13, page 47, of the German and English Document Book Steimle No. I. The liaison officer of the Sonderkommando 7a attached to A.O.K. 9, confirms explicitly in this document that the first half of September 1941, when the latter took over the Sonderkommando. As far as the termination of Steimle's command is concerned, his statement on the witness stand is confirmed by document Steimle No. 11, Exhibit No. 11, and, in particular, by Document Steile No. 12, exhibit No. 12. The driver of the defendant Steimle, Walter Roller, served with the Sonderkommando 7a until January 1944 and explicitly states in his affidavit that the defendant Steimle arrived in Stuttgart about 20 December 1941 and did not return to the Sonderkommando 7a. In this connection, too, it must be emphasized that the defendant Steimle has stated from the very start that the date when he determinated his command with the SK 7a was the middle of December 1941.

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His two affidavits submitted by the prosecution prove these facts. Steimle of 24 July 1947, Document No. NO-4459, Prosecution Exhibit No. 120must 70 considered more closely. In this document Steimle admits that on the occasion of a conference with the Chief of Einsatzgruppe B, Nebe, about the beginning of October, he heard from the latter that the Sonderkommando 7a had, up to then, not yet shot any women and children, but that Nebe now requested that these should be shot as well. This statement of Nebe cannot be interpreted as meaning, that the Sonderkommando 7a under Stemmle's command had already shot male Jews. On the contrary, it can only be understood to mean that SK 7a had itself carried out executions of Jews, but this had occurred - as your Honors well know - under the Commander of the SK 7a who proceeded Steimle. The defendant Blume, who was this predecessor, has admitted on the witness stand that on one occasion he had had a number of Jews shot. The Chief of the Einsatzgruppe B, Nebe, must have known that Steimle had only taken charge of the command for a shot time before, and he must also known that the defendant had not carried out any executions of Jews at all up to then. Clear Evidence to this effect has been given in my previous expositions. Nor did the defendant Steimle subsequently carry out the afore-mentioned order of Nebe, or pass it on to his men. In this connection I refer to Document Steimle 12, Exhibit No. 12, and Document Steimle 13, Exhibit No. 13. In the same affidavit of the defendant which I mentioned above Steimle further admits that he, with the help of his Kommando, arrested persons suspected of partisan activities and members of the Red Army who were hiding within the area covered by the 9th Army instead of reporting, as it was their duty to do. After the facts had been established by the leaders of the sub-Kommandos, these arrested persons were shot.

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The expression "persons suspected of partisan activities" is only contained in this affidavit because the defendant, in the course of his interrogation on which this affidavit is based, admitted that the incident report No. 123, Document Steimle No. 32, Exhibit No. 31, was correct, and this expression appears on page 10 of the original. On the witness stand the defendant stated explicitly that only and exclusively such people were classed as persons suspected of partisan activity who rendered the partisans any kind of services. In this connection I again wish to point out briefly that this statement of the defendant was incorrectly translated into English, as can be proved from the German and English transcripts. For this reason the court received the impression that even persons who had nothing to do with partisans or who could not be proved to have rendered them any services were placed in this category. It is correct that the expression "persons suspected of partisan activity" is not inexact if viewed in connection with the statement made by the defendant. That is why the defendant mentioned "persons suspected of so-called partisan activity" in the course of his interrogation, in order to show that the persons in question were partisan supporters who were suspected of having actively participated in the partisan fighting. However, it is evident that their support of the partisans had to be regarded as equally dangerous from the security point of view as the partisan activities themselves, and the court has also expressed itself to that effect. defendant Steimle were former members of the Soviet Army, that is to say, former active soldiers who wandered around behind the front in civilian clothes and pursued their real purpose which was to reinforce the partisan units. Anybody who had reported to the German offices was safe from punishment. Orders to this effect had been made public everywhere by means of posters in German and Russian. These orders contained the warning that anybody who did not fulfill his obligation to report and was arrested would be treated as a guerilla and be punished by death.

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Steimle Document No. 40, Exhibit No. 39, page 2 of the German and English Document Book Steimle, Book No. III. transcript of the testimony of the defendant Steimle, when compared to the German transcript, contains some grave errors in translation, and I have made a special application to have these corrected. I beg that Your Honors, when judging the case Steimle, should take these corrections-which are still to be made - into consideration. Steimle never on his own initiative passed on the Fuehrer order to his subleaders and other ranks. He himself did not participate in any execution in which partisans were shot. The activities of his Kommando were completely taken up by the combatting of the partisans, and the danger, scope, and inescapable necessity of this combat is shown by the material submitted by the defense. In all cases when partisans were arrested they were first interrogated in detail, and only if the guilt of the individual had been established a decision was pronounced. Steimle always convinced himself by means of spot checks that the interrogations were properly carried out and that the decisions made corresponded to the result of the interrogations. In the submitted records we again and again find the statement that interrogations were carried out and that the Sub-Kommandos of the SK 7a lent their own interrogation units to the Wehrmacht, if the Wehrmacht intended to carry out operations against the partisans. The combatting of the partisans itself was partly carried out by the Sub-Kommandos of the SK 7a on their own initiative partly in cooperation with and under the command of, W ehrmacht units. The personnel which made up the Sonderkommando 7a constituted a guaranted for the irreproachable conduct of the interrogations and for the justice of the decisions based thereon. Criminal investigators with the necessary training were available and were employed as subleaders and other ranks.

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of the Fuehrer-decree can be deducted unequivocally from the aforementioned actions of the Kommando. It must be conceded to the accused that it was not consistent with his character to order the death of defenseless people only because they were members of a certain race. In view of the fact that the Fuehrer decree was a binding law, he must be given credit for having intentionally taken advantage of the situation existing in the area of SK 7a in order to evade the implementation of the Fuehrer decree. He was perfectly aware of the fact that he was responsible to his superiors in this matter. However, the serious danger, represented by the partisans, was a sufficient justification for him to shelve the Fuehrer decree -without endangering his own personand give priority rather to other operations of his Kommando which he intentionally and deliberately ordered for this purpose. The reports sent to Einsatzgruppe B by his sub-detachment left no doubt in the mind of STEIMLE's superiors about the nature of his activities. These were obviously approved of by the superior authority, as he never was called to account in a disciplinary way. This fact must not be allowed to prejudice him today. Reich Main Security Office - his second assignment in Russia as Commander of Sonderkommando 4a of Einsatzgruppe C. He held this command up to 15 January 1943, when he returned to Germany for an assignment with Office VI of the Reich Main Security Office. Reference is made to the defendant's statement made on the stand with regard to the events which took place during this second commitment in Russia and in the aforementioned period (pages 1985 to 1993 of the English transcript) . There is no need to go into this lucid presentation of the matter once more. The defendant's statements correspond with the truth and even a very sharp cross-examination could not reveal any contradictions. assignment of STEIMLE in Russia. His second mission was not a matter of his own initiative, nor was it based on the fact that he had previously been in charge of a Sonderkommando.

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The only real reason was - strange as it may sound - the personal friction existing between two Office Chiefs in the Reich Main Security Office. This state of affairs prevented STEIMLE from being assigned to Office VI of the RSHA, as had already been planned in the middle of 1942, and the outcome was that STEIMLE was detailed to Russia for a second time. Document STEIMLE No. 10. Exh. No. 10 establishes this very clearly.

The operations of STEIMLE's Sonderkommando 4a were marked by the fact that the individual sub-units had to operate far in the field and that an exceptionally large area had to be covered by the operations of the Kommando. At times, SK 42 had to detail sub-units to 3 different armies; these sub-units in turn maintained direct contact with the prospective troop units by their own liaison officers. Thus, the great distance between the various details resulted in the unorthodox situation that these details were temporarily subordinate to the corresponding Feldkommandanturen. STEIMLE found this situation was already existing when he arrived, and local conditions did not allow this state of affairs to be changed. The strength of personnel of Sonderkommando 4a amounted to about 80 man, that is to say, considerably less than the usual strength of personnel assigned to the other Einsatz- and Sonderkommandos. In addition, the defendant STEIMLE had to turn over, whilst he had charge of SK 4a, additional personnel to the Commander of Cha*kow. From these facts, it can be easily seen that the exploits of SK 4a and its sub-units cannot have been of great purport. Here again, the main object of the activities was, of course, the combatting of partisans. These, however, had but small opportunities for major operations in the wide, open, and sparsely settled region of the river Don, no suitable hiding places quickly to be reached being available. The engagements with partisans were, for this reason, only few during this period. As the Kommando was partly operating immediately behind the front line, its tasks were often of a different nature.

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The sub-units were also affected by the movements of the armies in the sector, which were necessitated in the course of strategic regroupings; this affected the details insofar as they had to take part in these movements in order to maintain contact with the forces they were assigned to. This epoch of the SK 4a under STEIMLE is thus also marked by marching movements.

The zone of operations assigned to SK 4a. especially the region around Kursk, where STEIMLE set up his command post - had been in German hands for some time, viz. for more than a year. Security tasks thus comprised only cases of active, hostile resistance such as espionage, sabotage and communistic agitation in defiance of Wehrmacht regulations. All such cases, the number of which was small anyway, were decided upon after a close interrogation for which trained personnel was available. Here again, the defendant STEIMLE checked on these proceedings and confirmed the decisions insofar as they became known to him. The details, operating very far in the field, had, of course, to be given independent authority in this matter and were subordinate to the Feldkommandaturen. not a single action against Jews implementing the Fuehrer decree was carried out. In this connection, it is interesting to note that the defendant has pointed out that he was never advised of the fact that the Fuehrer decree covered not only Jews, but also asocial elements, Gypsies and Asiatics. As already mentioned in this connection with his activity as Commander of SK 7a of Einsatzgruppe B, STEIMLE Had not been indoctrinated on the subject of the Fuehrer decree in Pretzsch or in Dueben. Thus, it is understandable that he has never heard the full wording of this decree, since he depended solely on the information derived from his superiors and from the men of his Sonderkommando. The context of these informations, however, depended on the actual requirements of the situation at any given time, I have shown that the defendant STEIMLE never heard that according to the Fuehrer decree Jews had to be shot, before members of Sonderkommando 7a told him that at one time, under his predecessor, they had been obliged to shoot Jews, and before the Einsatzgruppe leader NEBE once told him that the SK 7a had not shot any Jewish women and children yet.

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He never learned of the order to shoot the remaining groups of persons mentioned nor did any such executions take place within the area with which he was conversant. know, viz. the shooting of Jews, had not changed before he was sent to Russia for the 2nd time, to take charge of Sonderkommando 4a. No wonder then that under his command SK 4a did not shoot any Jews. In this connection, we must also keep in mind that the prosecution does not incriminate STEIMLE for this period and no evidence has, therefore, been submitted for this period. Reports were still made to the Reich Main Security Office in 1942 and 1943. These reports still mention executions of Jews; it appears, however, that the number of such executions had considerably decreased as compared with the incident reports available for 1941. The evacuation measures started in 1941 wherein the Jews were given priority, had necessarily resulted in a new situation: regions which prior to the war had been sparsely inhabited by Jews were now practically devoid of Jews. If the defendant STEIMLE asserts that there were no Jews left in his area, this is true. This cannot be challenged, as there is no proof to the contrary. The fact that in other areas a small number of Jews still existed at that time, is in no way inconsistent with STEIMLE's assertion. the prosecution-the first of which took place as early as in 1945 and on the stand, the defendant STEIMLE has stated frequently and truly that he found a gas-van when he first reached SK 4a. He then described at full length how he happened to come across this van and in which condition he found it. Utilization of the gas-van for its original purpose was no longer possible at that time. If the defendant emphasizes that he did not utilize this car, this is not only credible because no Jews were to be found in his area any more but also because any proof to the contrary is lacking and because the prosecution has not even tried to bring such evidence.

To sum up,we conclude that also during the period of STEIMLE's second mission in Russia neither he himself nor the men of Sonderkommando 4a ever committed any acts which could justify the charges. The only document submitted by the prosecution which to a certain extent admits any conclusions for this period at all is prosecution document NO-3247, Exh.121. This document, however, does not contradict the above conclusions. It rather indirectly supports the defendant's statement covering the time he spent with Sonderkommando 4a. On pages 7 and 8 of the original document, which contain a suggestion of promoting the defendant STEIMLE, it is pointed out in particular that Sonderkommando 4a was frequently involved in combat actions during the winter battle of 1942/43 and that it had proved its worth. It is quite obvious that the term "combat" covers only actual fighting engagements with the enemy in the battle field. From this sentence, we are bound to conclude that the SK 4a was engaged in the very front line combatting the Red Army jointly with Wehrmacht units. That is the only feature concerning STEIMLE's activities in the East where is mentioned in this suggestion of promoting the defendant STEIMLE, and it was obviously considered the only point worth of mention. There can be no doubt whatsoever that in such a document it would have been stressed with the utmost emphasis and even by way of overstatements, that the defendant had been particularly efficient in the implementation of the Fuehrer Decree - as it is now charged against him - if it had been at all possible to support such assertion by facts. Since no such mention has been made in the exhibit, this is striking proof for the truth of STEIMLE's statements. This proof, however, not only covers the time of his second mission in Russia but also a period when STEIMLE was commander of Sonderkommando 7a of Einsatzgruppe B.

principles which are internationally acknowledged, the infringement of national penal laws, and an utter disregard of the most primitive protection a human being is entitled to in his sphere of life in this connection. The indictment bases itself on Control Council Law No. 10 and on the offenses, the elements of which are enumerated in Article II thereof. These provisions, however, only represent an outer framework. It has been pointed out again and again by the defense in all proceedings before the Military Tribunals in Nuernberg that Control Council Law 10 cannot be applied as long as its application is inconsistent with the generally acknowledged legal maxims of "nullum crimen sine lege" and "nulla poena sine lege". I do not want to repeat all the arguments already submitted to the effect that it is impossible to punish a person for an offense which at the time of commission had not yet been declared criminal in penal law, and that nobody can be subjected to a punishment which had not been provided for at the time when the crime was committed. These legal maxims are the most fundamental axioms forming part of the criminal jurisprudence of every civilized nation. In logical consequence, we thus reach the conclusion that Control Council Law No. 10 can be taken as a legal basis for this proceeding only insofar as the elements of offenses enumerated there as criminal coincide with those for which the defendant Steimle was liable to punishment according to the law effective at the time of commission. This is, therefore, the pattern according to which the frame-work provided by Control Council Law No. 10 must be filled in. Insofar as this applies to substantive law, it is of no purport for the case of the defendant Steimle. The defense believes to have proven that the defendant Steimle neither during the time he was employed in the East, nor before or after, ever committed any punishable acts which must be atoned for according to international law or the penal law code of any nation.

laid down in Control Council Law No. 10 are a direct violation of the fundamental principles mentioned above. Special reference is made to Arti. II, sections 2c - e. These forms of participation are now rulings inconsistent with all continental penal codes. In particular, they are completely unknown in German penal law, to which the defendant Steimle was subject. I shall, therefore, discuss these provisions only as a subsidiary argument, in order to show that they do not apply to the facts of the case, as such, and that the defendant Steimle cannot be found guilty even in case these provisions were applied. while employed in the East kept within the established rules of international law and of the law of warfare then actually in force. The combatting of partisans and spies has been carrried out persistently in all wars and by all nations. Nobody can challenge the validity of the legal rules which have been developed with regard to this fight. Despite the special nature of warfare against the Red Army, waged on the part of the Soviets in defiance of the laws of warfare, the defendant Steimle never deviated from the course prescribed by the law. did not commit any crimes in the meaning of Control Council Law No. 10 nor did the members of the Kommando under him commit such crimes. He can, therefore, neither be convicted as principal nor as instigator nor as accessory. Similarly, the other forms of participation defined in Art. II section 2 c of the Control Council Law (but not contained in the continental penal codes) do not apply to him at all. On the basis of the evidence submitted by the prosecution, he cannot be charged with having taken a consenting part in any crimes whatsoever. Neither was he in any way connected with the planning and committing of such crimes. This assumption would only be justified if Steimle had been conversant with the purpose and aims of the Einsatzgruppen prior to their first commitment and if he had, in addition, taken part in the planning of their organization.

The evidence submitted by the prosecution has furnished no indications in this direction. It seems, therefore, superfluous further to discuss the elements of these forms of participation.

However, a last form of participation has been laid down by Art. II, sec. 2. According to this provision, an individual is guilty of a crime in the meaning of Art. II, Sec. 1 of Control Council Law No. 10, if he or she was a member of an organization or group connected with crimes of the character listed in sec. 1. independent "militant" units; they were by no means departments or branches of the organization of the Chief of the Security Police and of the SD. Even less were they departments or branches of one or the other of the offices of the Reich Main Security Office. This is very clearly shown by the fact that the

Einsatzgruppen and their sub-units were subordinate to the Army Groups and/or Armies. It is made still clearer by the variety - so frequently proved in this proceeding - of those groups of persons with which both the rank and file and the leader corps of the Einsatzgruppen were staffed. Beside SD members, we find in the Einsatzgruppen members of the Stapo, the criminal police, the Waffen-SS, the regular police and the Wehrmacht. The findings of the IMT particularly stress this variety. They also stress the fact that in the front areas the Einsatzgruppen were under the control of the permanent commander in chief of the army. The assignment to these independent units of the Einsatzgruppen was effected by an order of the superior command authority having jurisdiction over the individual in question, in the same way in which Wehrmacht members were assigned to special units of the combat troops. In this connection, the IMT has acknowledged the fact that SD members were, particularly during the war and in the occupied territories, not in a position to refuse - without incurring the most severe punishment - to accept an assignment given to them.

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There can be no doubt that Steimle's two periods of employment in the Sonderkommandos were brought about by official orders, and that he joined the Sonderkommandos in compliance with orders which he was in no position to refuse. The notion of membership, in the general meaning of the term, implies the voluntary decision to become a member; it cannot apply to a man who joined the Sonderkommandos in the way described above, no consideration whatsoever being given to his own intentions. When judging on this matter, it is absolutely necessary to take as a basis the conditions actually prevailing at that time and, in particular, to consider that Germany was under a dictatorship which knew only too well how to secure complete compliance with its orders. There again, the mental elements implied by the term "membership" must also be considered. The very fact that the Einsatzgruppen included members of all the various organizations of the Party and the State, militates against the conclusion that a man who volunteered for one of the SS organizations, viz. the SD, and who was later assigned to the Einsatzgruppen, became a member of the latter in the general meaning of the term. The concept of "membership" implies not only cognizance of the group or organization which an individual is joining, but it also requires that the prospective member approves of the effect, in other words, that he intends to be a member in that organization. A man who volunteered for the SD knew which organization he was joining and acquired the membership by his own free will. A man who was assigned to the Einsatzgruppen by way of an order, on the other hand, was in no way in a position to determine whether or not he wanted to be a member. Furthermore, the members of a group can only be considered members, if they have the definite intention to cooperate in the fulfillment of the purpose of the group or organization. Prior to his arrival in Russia, the defendant Steimle had no idea of the purport of his tasks.

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In practice, he adapted his activities to the conditions prevailing; by the way he performed his tasks, he clearly showed that he did not approve of the implementation of the Fuehrer-Decree. As for himself, he kept, therefore, aloof from it; thus, he clearly disrupted the unity of purpose common to the members of such an organization. He never furthered the purposes and aims with which the Einsatzgruppen are charged by the prosecution, nor did the fact that he was a member ever contribute to their implementation. The defense is , therefore, convinced that the defendant Steimle cannot be convicted even of that form of participation which I discussed just now; this applies quite apart from the fact that this conception of participation violates in my opinion the fundamental rules of criminal law which I mentioned before. According to the maxim that every defendant is presumed not guilty until the contrary is proved, the evidence produced by the prosecution is by no means sufficient in order to refute this presumption without any reasonable doubt. It must be kept in mind that the men in the dock were not the inaugurators of the events now under the judgment of this Court, but that they were, at the utmost, tools in the hands of a dictator. Not every tool is equally apt for the purpose for which it was designed. It must not be overlooked that not all leaders of the Einsatzgruppen and not by far all leaders of the Einsatz- and Sonderkommandos are in the dock. We must not succumb to the impression - an impression which could be formed easily - that the events in the East, of which the prosecution has produced evidence, had been implemented only and exclusively by those leaders who are present in this Courtroom. This notion would mean a conviction based on a superficial and misleading aspect, in other words only on the fact that the defendants served in the Einsatzgruppen. This wrong inference can easily be avoided by applying to the determination of the personal guilt of the individual defendants those standards of diligence which we can safely expect from this Court.

evidence militates for the defendant and supports his deposition on the stand so unambiguously, that it is impossible to deem the defendant guilty, particularly under counts one and two. I am convinced that the Court will roach the same conclusion.

I shall now tackle count three of the indictment, viz. the membership in criminal organizations. The SD has been declared a criminal organization by the IMT; this also includes office VI of the Reich Main Security Office. It has been established beyond any doubt that in 1936 Steimle voluntarily joined the SD, an organization of the SS, and that the later entered the Office VI of the Reich Main Security Office, again on a voluntary basis. It may be mentioned cursorily that Steimle was never a member of the general SS, but that his activities were restricted to his work in a special SS organization, viz. the SD. These facts have been stated by the defendant from the outset and they have been confirmed by the evidence. Prior to the discussion of those considerations which have caused the IMT to declare the SD a criminal organization in the above sense, I feel it is indicated to give you a character-study of the defendant Steimle, as resulting from the documents produced by the defense. Only if this entire picture is taken into consideration, a proper verdict can be rendered on this count. In this connection, I re-iterate that it is indispensable to consider the actual conditions as they then existed and to make them your starting point. It will then be revealed that the activities of the defendant Steimle in the East followed the same trends in which he had been brought up, as a human being, even before 1933, and to which he had adhered during his SD activities in Stuttgart and in the Office VI of the Reich Main Security Office.

1.) The affidavits submitted by me as Documents No. 1-8, exhibits No. 1-8, unanimously describe the defendant as an honorable man of innate decency, striving to propagate this decency in his surroundings and trying for his part to ensure that the political leadership of the State conformed with this attitude.

The motive causing him to enter the SD was that this job gave him an opportunity of counteracting abuses in the Party and unjustified measures of the authorities. May I point out that it was one of the characteristics of the Nazi regime to eliminate every trace of criticism of measures taken by the Party and the State. The SD alone offered a possibility for cautious criticism (later on even developing into unveiled frankness); at the same time, it offered a safeguard from the consequences otherwise automatically incurred by such a rash act. The fact that within the scope of his activities Steimle availed himself fully of this opportunity for criticism, is made particularly clear, i.e. by the document Steimle No. 3, Exh. No. 3, in which a former executive of the Wuerttemberg Ministry of the Interior furnishes detailed facts concerning Steimle's criticisms and their extent. intrinsic sincerity of the defendant, who intervened on behalf of all those whom he found decent and worthy themselves. If such persons, not being party members, criticized the measures of the Third Reich, he did not feel himself called upon to persecute them; on the contrary, he was instrumental in stopping or neutralizing such persecutions. When individual cases were submitted to him, in which persons had been put into concentration camps, he never grudged his assistance. This clearly shows that he endeavored to prevent sinister and unjustified measures initiated by other quarters or to have them rescinded. The fact that Steimle was far from advocating unjustified political measures, is made particularly clear by his attitude toward the Jewish problem. According to the documents submitted by me, he more than once lent his assistance to persecuted Jews, and it is an established fact that he took no part in the anti-Jewish program of November 1938. This is repeatedly proved by Exh. No. 6, Doc. Steimle No. 6. In particular, I would like to stress the document Steimle No. 5, Exh. No. 5. It contains actual facts which clearly illustrate that Steimle was by no means one of those fanatics who adhere to any policy whatsoever without any qualms and who lack any convictions of their own.

As far as possible under the conditions prevailing, he surely was an idealist devoted to, and working for, a cause which he considered right, and he was not in a position to foresee the final outcome.

We would not do justice to him if we disregarded these facts. At the time when STEIMLE joined the organization, even foreign countries did not profess a negative attitude toward the Nazi regime; the defendant STEIMLE then had no reason to disbelieve the often re-iterated public slogans calling for integrity within the state. As to the Jewish problem, he never knew of the final solution actually planned, because the plitical leadership of the state kept this plan absolutely secret. Personally, he believed in the possibility of a solution similar to the solution at present sponsored by the United Nations. In this connection, reference is made to doc. No. 5, Exh. 5. Had he been a fanatic unscrupulously backing any police whatsoever against the Jews, he would never have dreamt of making the slightest move when asked to help a Jew to be released from the concentration camp. This attitude toward the Jewish problem, proved by acts, makes it again understandable that STEIMLE did not implement this part of the Fuehrer-Decree while in charge of the Sonderkommandos. V) With regard to the specific groups of actions which caused the I.M.T.

to declare the S.D. a criminal organization, and to include the co-operated in any of these actions.

It was not the task of the tion in a concentration camp.

At the time of the persecution of charge of political security in that country; it is, therefore, a priori impossible that he took part in these activities.

Of the this was treated as a secret until the end of the war.

If it has Court No. II, Case No. IX.

in the office VI STEIMLE was ever concerned with this matter. The same applies to the finding of the I.M.T. that the SD took part in misused for the commission of crimes.

In order to reach a proper sidered.

As far as STEIMLE, while serving with the Einsatzgruppen (an organization not forming a branch of the SD as such), heard of ascribed to the SD as such.

It must also be kept in mind that the subject to criminal prosecution by the German authorities.

Today, we are relieved from the pressure of dictatorship.

Today, it is easy refused, because it purported the commission of common murder.

At office VI of the Reich Main Security Office (first in group VI B, Western Europe, and later on in the group for military affairs), they, too, could in STEIMLE's mind not result in the assumption that this organization was misused for criminal purposes.

As to Court No. II, Case No. IX.

the documents STEIMLE No. 9, No. 9, and STEIMLE No. 10, exh.

No. 10. He was then concerned with the gathering of information.

the SD by the I.M.T. On the contrary, it again reveals the which reasons and in which spirit the defendant STEIMLE was a member of the SD and of the office VI. The decision on whether or not he is guilty under count three must be left with the court. But a general remark seems indicated: The leadership of the Nazi regime deliberately deceived a large number of people in order to exploit their idealistic convictions. I leave it undecided to which extent this may constitute individual guilt. It remains a fact that the defendant STEIMLE was a member of the SD and of the Office VI of the Reich Main Security Office. But even if the attitude of the defendant which I have explained fully should not be considered a justification in the legal sense, it must at least be condired on attenuating circumstance, as far as Count three is involved. Another indication pointing in the same direction is the finding of the I.M.T. that after the outbreak of the war the members of theSD were not free any longer to choose their assignment and that they were at the same time barred from resigning the SD membership. In these circumstances, the personal guilt of the defendant under count three can only be found in the fact that he voluntarily joined the SD in 1936, in other words at a time in which he was not at all in a position to foresee which duties would be assigned to individual SD members by the leadership of Court No. II, Case No. IX.

the state. I reiterate: It must be left to the court to reach a just verdict.

Your Honors, I have reached the end of my address, but I don't want to conclude without a reiterated appeal for the application of your vast experience and your usual diligence to the decision of this case. I do know that you are facing a difficult task. But I do also know that your professional ability and your experience are devoted not to the cause of revenge, but to the ideal of justice, and that the decision is in the most capable hands. Your verdict will ensure that an individual a man who in the position assigned to him successfully tried to assert his personal decency - does not suffer for the monstrous guilt of the regime.

THE PRESIDENT: Dr. Hoffmann, if you don't mind, we will let Dr. Bergold begin the first thing Monday morning because, as you know, he has an engagement elsewhere. That will be agreeable to you?

DR. HOFFMANN: Yes.

THE PRESIDENT: And then, Dr. Lummert, you, of course, will follow, thirty o'clock.

(The Tribunal adjourned until 9 February 1948, at 0930 hours.)

COURT NO. II, CASE NO. IX.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: You may proceed, Dr. Bergold.

DR. BERGOLD (Attorney for the Defendant Biberstein):

Mr. President, Your Honors!

"In February 1934; mentally disturbed by the event of the National-Socialist revolution, I retired to a quiet mountain village high in the Bavarian Alps. The form of German democracy, existing at the time, which seemed to me until then correct and just, appeared suddenly as questionable and wrong, not because National-Socialism in my opinion could have justified and proved itself, but because of its Inherent character. It seemed, as if the right of democracy, the way in which it existed at the time, had changed and become a make-belief. It is my hobby to write poetry, because a real man should cultivate hobbies to widen his horizon. Tearing myself from deep reflection on right and wrong under German democracy of the time, I indulged in this hobby in February 1934. and wrote the verse with which I would like to preceed my statements concerning the jurisdiction of this Tribunal. The verse reads as follows:

"'Can just beginnings turn to unjust ends?' I would like to remind the Tribunal, that I have already pointed out in the case against Oswald Pohl, during the "defense of Horst Klein, that it seemed to me, as if in the cation to speak for humanity.

Page 6,000

I have said that before the London Conference.

Since this conference has failed, I formal competency.

Tribunal IV, which passed sentence in Law No. 10 it is competent, basing its competency on the authority in Germany.

The Court has not examined, on which reasons for the execution of Governmental power; force "Force, Your Honors, never means Justice.

You, countries at the time.

The Control Council can therefore man People.

This the allied powers are doing now. They "Every agreement, and unconditional surrender is conditions, which result in agreement.

Thus the unity of ally only to the so-called Western Powers.

The so-called "Western Powers have rejected such a surrender, made to them alone, by pointing out that they are Russia's allies, Allied armed forces.

Page 6,001

Therefore, the unity of the Allied surrender.

Otherwise, the then already well known plan of Germany's partition into zones would not have seemed "Even if unconditional surrender gives victorious "If international law claims to be ethical, then a justifiable manner.

This legal principle is already incorporated in civil law.

But today, where international al law must be adapted to" civil law, if the term of a new members of defeated nations.

The partition of Germany "in agreement and achieve a truly cooperative administration, able and unfair for the people concerned; moreover, it be "At the moment we have reached the point where the each pursues its own ideas and interests.

Page 6,002

I do not in is to bear the responsibility for such guilt.

Neither ment in this respect.

However, we Germans, are entitled proclaimed by the Allied and assumed by us.

Therefore Thus it becomes the task of every individual.

In this case "Therefore this deprives the Control Council of the right to decree laws.

Likewise Control Council Law No. 10 law lose their compentence to judge.

At the time, when "you, Your Honors, opened the present case for the first conceivable panta rel.

Everything changes, even the law.

sentence is passed. I think, that to-day, after the on Control Council Law No. 10, is no longer valie, unless the claim of force is put forward."

THE PRESIDENT: Dr. Bergold, I am sorry to inter your argument in any way you desire, but I can't help but be struck by the use of the words, "fiasco of the Lon don conference."

Tell me in one word why you call the London conference a "fiasco," That is a rather strong

DR. BERGOLD: I consider the London conference has administration for the entire Germany.

We Germans have

THE PRESIDENT: Oh, I thought you were referring

DR. BERGOLD: No, no. It can be seen from my final

THE PRESIDENT: Proceed.

DR. BERGOLD: Thus in my opinion a formal jurisduction has to be determined. However, a person who searches for justice is aware of the fact, that there exists an actual jurisdiction for a court, apart from a formal one.

"A court may not be competent to judge a case if the law to be applied, by its very nature, lacks the inner justification and possibility to judge a certain case. Actual jurisdiction is lacking where the case has happened in an atmosphere which has a wholly different concept of law than that upon which the law is based by which the court is to pass sentence.

"I would like to give an example, which is purposely exaggerated, in order to clarify what I mean. Assuming that an American court would undertake to sentence a national of an Oriental state for bigamy, who with several of his wives has somehow been brought before the court. If in such a case the Court would not consider the fact, that according to the law of an Oriental State, polygamy is permissible, but would only judge in conformity with American laws, one would have every reason to speak about an abuse of the law.

"I believe that our trial presents a similar case. This trial consists actually of two trials, firstly the trial concerning the so-called Fuehrer order, which supposedly demanded the extermination of a certain group of people without trial and only because they belonged to a certain race or had a certain political opinion. And secondly the trial concerning the execution of persons only on the strength of police measures, persons, who had committed unlawful acts, which were permitted under certain circumstances, such as sabotage, espionage, being in "possession of arms, and ambushing military personnel; that during the occupation of Germany.

Page 6,005

As far as dealing with Fuehrer order.

I shall leave the questions with regard to "With reference to the trial concerning executions pened solely in the war between Germany and Russia.

We "In the case at hand a just sentence can only be "Firstly it must be pointed out, that no international agreement with regard to treatment of the civilian population existed between Russia and Germany.

Page 6,006

I have submitted to the Tribunal document No. 1 Exhibit No. 1 the interrogation of the former Reich Foreign Minister Freiherr von Neurath, which shows that in 1918 respectively 1919 the the present Russian Government expressly cancelled all agreements which had bean made by the former Russian Czarist Government, which also included the Hague convention on land warfare I have already pointed out several times, particularly in the Milch Trial, the significance of such a cancellation of a codification of international law. It means, that between such states International Law does no longer exist at all. I would like to remind the Tribunal of my former arguments, which you as Judges in the Milch case will undoubtedly still remember, "Thus Germany was actually free to carry out criminal proceedings for violation of prescribed military laws and to choose any type of procedure she thought proper under the circumstances.

She was therefore fully entitled to put the prosecution of these crimes into the hands of the police, as long as the most primitive right of a defendant, namely the right to be heard and the examination of evidence was preserved.

"Even if one wishes to put forward, that without the existence of international law, Germany should have respected the national customs of the civilian population by analogous application of Article 43 of the provisions of the Hague convention on land warfare, i.e. by carrying out criminal proceedings in the same manner as was customary in Russia, then the police procedure, as adopted and prescribed by Germany, would still have been lawful, "Of importance here are legal usage and concepts which were valid in both Russia and Germany and which differ so decisively from these of Your country, that from Your concept of law an actual understanding of the legal situation seems impossible.

Page 6,007

Your country, Your Honors, stands outside of Europe. Although it is an offspring of Europe it has developed completely independently in a way of its own, The case at hand however deals with Germany and Asiatic Russia, two worlds, which attract each other and which sometimes influence one another in an inexplicable manner, even if they subscribe to utterly different ideologies. Russia has very little in common with Europe proper, far less so with America; it always leaned more towards Asia. From Russia the Asiatic mode of living flows into Europe, just as much as the European mode of living infiltrates into Asia.

"If we examine in particular the legal manner in which criminal procedure is carried out in Russia:, we must recognize that she has two methods. The one is the form which is used in lesser important criminal cases and in great public trials, which are similar to Western procedure, i.e. the public trial, with judges, prosecutors and Counsel for the Defense. The other one is the secret procedure, where the prosecution of crimes is in the hands of the police alone, where the police alone passes sentence, Without a regular Court, a procedure which admits only documentary evidence. The defendant and the witnesses are heard, evidence is submitted, but there is no specially appointed Defense Counsel, no special prosecutor and no special Judge. In short it is a procedure which arrives at its sentences by way of documents.

Page 6,008

"This procedure is evidently somehow in keeping with the Russian ideology In Russia this procedure has been developed and elaborated on in great detail and was the normal political procedure even under Czarism. Already at that time there were political cases, where the Secret Police, the Ochrana, played the part of prosecution and judge. Soviet Russia has developed and promoted the procedure of the Secret Police on a large scale. The literature of all countries contains many references to it and it also contains frequent passionate protests against such a development of legal measures. But all this does not really belong here. The sole issue here is to determine what was customary in Russia and what is also valid there to-day. In this connection I would like to refer the Tribunal to the statements by witness Mae concerning the methods of the NKWD, formerly famed as the GPU. I am much obligated to the prosecution for submitting document 5855, Document Book 5 3, Exhibit No. 241. This report dated 31 August 1931 and written by Dr. Mahnke, concerning the fate of a certain Walter Vetter, shows that the latter had been arrested and sentenced to death by the NKWD because of his German origin and his correspondence with his brothers and sisters. This document proves beyond doubt the post and present methods of the NKWD in Russia. adopted methods frequently similar to those of the GPUNKWD. When I recall that in Germany there is a rumor, that prior to 1941 Senior Gestapo Officers had absolved training courses in Russia, when I consider that a procedure like the ill-famed Nacht-und-Nebel (Night and Fob) decree has been in use in Russia for many years, a "procedure under which men were arrested and vanished into it seems almost justified to conclude that the Supreme Gestapo Command was imitating Russian methods, when introducing police proceedings.

the latter had been arrested and sentenced to death by the NKWD because of his German origin and his correspondence with his brothers and sisters. This document proves beyond doubt the post and present methods of the NKWD in Russia. adopted methods frequently similar to those of the GPUNKWD. When I recall that in Germany there is a rumor, that prior to 1941 Senior Gestapo Officers had absolved training courses in Russia, when I consider that a procedure like the ill-famed Nacht-und-Nebel (Night and Fob) decree has been in use in Russia for many years, a "procedure under which men were arrested and vanished into it seems almost justified to conclude that the Supreme Gestapo Command was imitating Russian methods, when introducing police proceedings.

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One thing is certain, that is, that the Gestapo had developed a procedure which in all formal aspects was the exact replica of the usual Russian police procedure. countries developed a police procedure, which thus became customary and the application of which does not constitute a violation of International Law, because this procedure is a valid form of law in both countries. basis of the prevalent views of Your country. Am I not justified in adapting the word of Pilatus, thus asking: "What is right?" Your Honors, in Your country a book has been published, which gives a valuable answer to this question, which has been given by one of Your highest and best known judges, and which deserves deep reflection. I am referring here to the book "A free man's life" which is the biography of Judge Brandeis, judge at the Supreme Court. This book has been reviewed in the "Amerikanische Rundschau" of October 1907, 15th volume, 3rd edition in a report by a certain Mr. Alphons Mason. This article has appeared under the heading "Holmes and Brandeis stimmen dagegen" (Holmes and Brandeis objected et it. This article quotes two statements by Judge Holmes, Judge at the Supreme Court. The first one reads as follows: I sincerely doubt that we know what constitutes good and bad laws. Thus I have only one practical criterion. What does the majority demand? Butt I take any bet, that the majority, would not demand what it does, if it nevi better; but that is irrelevant here."

The second quotation reads as follows: "The characteristic of a good government is that it expresses the will of the greatest concentration of power, whether the will of the majority be unreasonable or reasonable". Thus this high Judge of Your country, Your Honors, takes the point of view that there is no absolute law which rises above public opinion, but that law in only that which conforms to the opinion of the majority of a people.

Germany and Russia is largely to be regarded as a genuine law, the application of which renders no one punishable. Socialism certainly enjoyed the support of the majority of the German people We do not want to dispute here whether this was intelligent and sensible whether the majority knew enough to judge correctly. Holmes too declared that this is unimportant, that what matters chiefly is the fact that the majority decided in favour of a certain ideology. It is thus unimportant whether and how large a minority suffers from and opposes such an ideology At any rate, by the fact that the majority of the German people decided in favour of the totalitarian regime, its laws and methods of police procedures became legally valid. mentioned, that similar procedures were in use by the secret political police during the regime of the Czar. When the Czarist regime ceased to exist after the majority of the Russian people rejected it in 1917. the majority of the Russian people decided at first in favour of the Bolshevist regime which is likewise totalitarian This system again established a secret police which is even more powerful and far reaching than that of the Czarist regime had been, and a special police procedure was again perfected. In Russia too, the will of the majority supports this system and its inherent laws and these are undoubtedly also a justification of the Hitler regime.

THE PRESIDENT: Dr. Bergold, before we get into the discussion of evidence, may I ask you one question, please. You say here that the majority of the German people approved of the German Police measures, that is to say, the National Socialist Police Measures, because the German people approved of the Hitler Regime.

DR. BERGOLD: Yes.

THE PRESIDENT: Am I correct.

DR. BERGOLD: Yes, that is the conclusion.

THE PRESIDENT: Yes.

DR. BERGOLD: Because Hitler's Regime was approved of.

THE PRESIDENT: Yes. Would you say then that the German people approved of the war in all its phases.

DR. BERGOLD: Well, this is a two-fold question. I can decide in favor of a certain regime, a Totalitarian regime, and therefore accept the laws which are made by this regime. But this does not mean that I approve and that it is a different matter -- if such regime suddenly ask a war and thus commits crimes. What is concerned here is the form of the legal procedure, Your Honor, and it is only legal procedure that Mr. Holmes talks about. The question you raise here is a different matter, namely, certain kind of deeds done by this regime; the totalitarian form was approved of and a totalitarian government will permit such acts. But that you can see in Russia; war and carrying out of crime is not concerned here. Even a totalitarian regime can be handled in a decent manner. May I remind you that in ancient days tyrants appeared who were benefactors of their race. My legal procedure, I can approve of and use it to a good purpose or to a bad purpose. I can even abuse Democracy.

THE PRESIDENT: But Dr. Bergold, all of this results because of a war. If there had been no war there would have been no occupation of Germany, there would have been no trial such as the one in which we are participating. You have stated that the Tribunal cannot inquire into Police Procedure, because the German people approved of the Government, and, therefore, the Police Procedure, but since we would not have bean here if there had not been a war, then it is interesting to know, because of your arguments whether the German people approved of the ware If the German people approved of the war, and all the consequences which flowed from the initiation of a war, then certainly the German people cannot complain, because of the procedure which followed.

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As you have indicated, there was an unconditional surrender; and, therefore, they would have been amenable to whatever followed justly. If the German people didn't approve of the war, then it is in their interest that an impartial Tribunal inquires into the abuses which were committed by their rulers.

DR. BERGOLD: Your Honors, the manner in which you have discussed this with me now proves that you look at everything from a point of view of war, and that you would like to look at it from the point of view of the German people. Perhaps due to the translation or to the speed you didn't quite understand what I was trying to say. I say, this trial contains two trials. I won't talk about the Fuehrer Decree now. We are now concerned with procedure against saboteurs. This procedure was decided by police jurisdiction. This manner of procedure only then constituted crime, if it were crime, according to the German law, or according to the Russian law. According to the German law police procedure existed even against Germans, and according to the Russian law this police procedure could also prosecute these people, and you cannot decide this charge according to your law, but only according to the laws which existed in Germany and Russia, or, else, you would arrive at a situation which I gave in my crude example: an Oriental man who had married several wives would in your country be accused of bigamy according to your law, although the law of his country permitted him to do so In such case you have to consider the law of the Oriental State as well in passing a judgment and not your. American law, because according to his law this man conducted himself properly, and, Police Procedure according to the Hague Convention of Land Warfare are legal if they were legal when applicable in Germany and Russia.

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When speaking of Police Procedure, I am not talking about the Fuehrer Decree. Now, that is quite a different matter, and I maintain that Biberstein has nothing to do with this. Therefore, the point is not whether or not we approve of war; even if we disapprove of it -- which of course, we do -- even then, this does not constitute crime, because they conformed with the Hague Convention of Land Warfare, namely, the occupied powers have to consider the legal uses and the law of the occupied country, and I have proved to you that this procedure was customary in Russia.

THE PRESIDENT: Very well. I got your point of view. I cannot help but to reflect on what you regard as an appropriate, if a grotesque comparison between polygamy and murder. Certainly a Tribunal would accept the customs of another nation which didn't conflict with the fundamental rights to live, and if a man thinks we can live well with ten wifes, I won'd dispute with him how wrong he may be, but certainly the law with regard to the sanctity of human life is something which is universal. The other is more or less a domestic matter, Whereas the sanctity of human life is something which demands and receives universal protection, and we are more or less proceeding -- not more or less -- but actually proceeding under an International aspect which guarantees the sanctity of human life. However, Dr. Bergold, I don't wish to interrupt you any more. I am sorry that I broke in. You may continue.

DR. BERGOLD: Your Honor, I. am only glad you interrupted me, and the discussion was very instructive for me, and I am very grateful to you for it. I would like just to add one thing, namely, that of course, I hold certainly the same point as you did, that human life is sacred, but the matter under discussion here is whether the life of a human being may be taken, as a result of a trial or whether this is a criminal act. After all, this is all the same, whether I am condemned to death according to a public charge, or a secret charge, but in the results of both, the rights of the defense has been kept.

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May I continue.

THE PRESIDENT: Please do.

DR. BERGOLD: Your Honor, in this connection, may I ask you, to give your attention to BIBERSTEIN's testimony as given on the afternoon of 21 November 1947. BIBERSTEIN testified at that time that, in Russia, he never found support for the theory, that the police procedure resorted to by the Germans was considered inhuman by the Russians. He based this on the fact that the Russians frequently gave information themselves, knowing of course What kind of procedure would be applied; secondly that Russians themselves carried out individual investigations and, -- this however is the most important part of the testimony -that, from the viewpoint of his own ideology, a Russian had said at that time with regard to the activity of Einsatzkommando 6: "The Germans will lose the war because they are not severe enough." This shows that the criminal procedure resorted to by the police was not perceived by the Russian people as something inhumane, but as normal. was in Russia. You will now understand me when I tell you that your law lacks the actual jurisdiction to pass judgment here. If you were to judge here solely from the point of view of your ideology, you would judge legal events and happenings, which would in no point conform with your concept of law, and for which perhaps the people of your country would not have the slightest understanding. This would not be a defect, rather it would be a good sign. For we may only preserve the purity of our inherent character, if we lack the ability to fully understand to the uttermost, that which is absolutely alien and heterogeneous to us. If however we would pass judgment in such a case, proceeding from our concept and upholding only cur legal maxims, our verdict would constitute an abuse of justice. This, it should never be.

situation which existed in the foreign country amongst foreign peoples. Therefore, by taking into consideration such reflections, I summarize my statements to the effect that the prosecution of Russian citizens for sabotage, espionage, possession of arms and attacks on persons military etc. purely by methods of police procedures and the pronouncement of death sentences in these procedures do not constitute a war crime or crimes against humanity. acts of the defendant BIBERSTEIN and thus to himself personally, I must discuss one special pica. This concerns the fact that BIBERSTEIN may claim one special reason for exoneration which is derived from his person, namely the reason of compulsion. Military Tribunal in accordance with Control Council Law No. 10 are precedence cases for other courts. Tribunal IV, in the case against FLICK, set forth in its arguments to Count I of the indictment, that with regard to the provision of Par. 2, Article II of Control Council Law No. 10, the claim to compulsion was admissible for all persons indicted by the Military Tribunals and it based its findings by referring in detail to Whartons Criminal Law Vol. I, Article VII, par. 126 and Article XIII, Par. 384, foot note. It carefully illustrated, that every act in Germany during the war, which might be interpreted as an attempt to delay or prevent prescribed regulations, constituted sabotage and was subject to most severe and harsh punishment and was sometimes even punishable by death;furthermore that many decrees and announcements kept the population aware of these threats of punishment and that from many cases, the population know of the severe punishment being meted out for violations. The Tribunal climaxed its presentations with the statement that where irresistible physical compulsion rules, the will of the perpetrator is lacking and his guilt is therefore non-existent officials in the Reich.

This has been shown beyond doubt in his interrogation. During the war he was drafted into the Reich-Security Fain Office without having volunteered his services, he was compulsorily appointed chief of Einsatzkommando 6 even against his will, and had to fulfill his duties there in spite of the fact that he did so unwillingly and on his own initiative did everything possible to be relieved of his tasks. procedure and the execution of convicted criminals resulting therefrom was carried out under orders and that they had been established by his predecessors in accordance with orders prior to his time, i.e. prior to the beginning of October 1942 when he himself was assigned to EK 6. As a man who was ordered to assume office on the basis of a war order he could not resist these orders and instructions. He wasconstantly aware, that resistance to these orders was threatened with severe punishment. I shall remind you, that alone the fact, that because in the opinion of his superior, he had started his Kommando on the march to a prescribed operational area too late, this resulted in court martial proceedings against him. One therefore cannot compare him with a civilian official, who defends himself somewhere because of certain happenings. Likewise, one cannot compare him with a person liable to emergency service, although, remarked aside; the arguments of the prosecution in this point are incorrect. Assis proven by the court martial proceedings brought against him, he was subject to a much more stringent and severe law, i.e. Military law. As a military person, it was impossible for him to resist an order without endangering his life. 6, police proceedings were carried out, in which, aside from imprisonment for certain specific crimes which were announced to the population on public pastors and by radio as being punishable by death, there was nothing he could do to prevent this.

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He was forced to permit these proceedings if he did not want to lose his own life. He acted under compulsion.

And it was not as if this procedure was particularly cruel. The defendant BIBERSTEIN explained to you in detail how such proceedings were conducted. Punishable by death were: pillage, possession of arms, attacks on military installations and signal equipment, attacks on military persons, espionage, sabotage, terror acts etc. Such crimes are punishable throughout the world. The defendant has already described to you how horrible and cruel were the crimes upon which judgement had to be passed. I shall only remind you of the terrible incident where a live, hungry rat was tied to the body of a German soldier who had been buried, and how this rat devoured, him. Such and similar cases were reported, persons under suspicion were arrested, witnesses and evidence were examined and the culprit interrogated Then sentence was passed Thus, a verdict was pronounced only if the officials who judged the case had convinced themselves that the charges were true. Your Honors, you have heard from BIBERSTEIN that the perpetrators almost always confessed. This corresponds to the psychological makeup of the Russian. With such a state of affairs the proper verdict, i.e. a death sentence, would have immediately been clear even to a regular court. did not want to endanger his own person, need not even have worried about it whether the procedure was cruel. It was a customary one. It was ordered by the superior authorities. No guilt could be ascribed to him if he permitted it. With such a state of affairs, he may, without doubt, fully claim a state of compulsion.

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has been followed, then it and it alone must prove the contrary. I refer to the verdict of Tribunal IV in the Flick case, which, in the beginning, under Par. 4 of its general legal principles ruled that the prosecution carries the burden of proof. Thus, it is insufficient if the prosecution merely proves that executions were carried out. It must prove beyond that that these executions were carried cut arbitrarily, without examination and without a hearing of the convicted person. The prosecution has not even made an attempt to offer such proof. The defendant on the other hand testified as witness, that such examinations took place. A number of other defendants have testified the some. The witness HARTL, whom the prosecution chose as their witness against one of the defendants confirmed this too. He too know, that in all cases of executions which could not be traced to the actual so-called Fuehrer decree, a definite police procedure was followed. The prosecution had nothing, with which it could have opposed this testimony. One could now say, that the fact that defendant BIBERSTEIN tolerated executions by gas, should be ascribed to his guilt. But this type of execution too was ordered by the superior authorities and BIBERSTEIN therefore, in this point also, may claim compulsion. beyond a doubt, shows that the defendant is not guilty in this point, Document No. 2, Exhibit No. 2, Document book BIBERSTEIN shows that the large German dictionary, called Meyers Konversations Lexikon, already illustrated in 1926, that in several states of the United States of America, executions were carried out in gas chambers even at that time.

This is not an invention of National Socialist propaganda. In 1926, when this book was printed, National Socialism had little significance in Germany. Defendant BIBERSTEIN testified that he recalled from former times that the United States also used gas in executions.

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Consequently he need not have had any special scruples whether such types of executions were cruel. On the contrary however, he was of the opinion, as was stated by him in the morning session of 21 November 1947 (German minutes, 2832), that execution by gas originates from a humane desire. This consideration is quite correct. Modern methods of execution are invented nowadays only guarantee a more gentle execution of sentence and not to act more cruel then before. The defendant convinced himself of the nature of the execution and, in his opinion, assumed, that the method of execution was actually a more gentle one. The executed persons impressed him as being peaceful and calm. This at least, was the impression he had gathered. This impression alone is of decisive importance in judging him. From everyday experience be know that fatal accidents frequently occur when persons worked in a closed garage with the motor running and that such accidents happened so easily because the victim knew nothing about the impending death by gas, Taking all these things into consideration, BIBERSTEIN need not have had any particular scruples about such a method execution, The prosecution attempts to present this type of death as a special guilt. Your Honor's may I again refer to the Flick verdict, where, under Par. 5 the following is stated: "whereever authentic evidence permits two sensible final conclusions, that of guilt and that of innocence, the second possibility must be chosen. The defendant presented to you a number of sensible reasons which caused him to assume that execution by gas was more humane and more gentle than by shooting.

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Since my arguments and my train of thought are not nonsensical, you must assume that no guilt can be ascribed to him for tolerating this type of execution, of which he could have personally assumed that it was humane. Therefore, aside from the fact that even with regard to executions by gas, the defendant may claim compulsion, not guilt can be ascribed to him in this point since he never saw anything cruel in it.

I shall now turn to Biberstein's person. His case is a special case. He comes from a world entirely different from that of the usual defendant. For many years he had been a priest. He had fought hard battles with his conscience for his belief and for his concept of God. By adhering to an established tradition he did not make it easy for himself. He has struggled and fought. But he was never a fanatic. It is because of his spirit of toleration that he came into conflict with his minister at the Ministry for

Ecclesiastical Affairs and his proposals for a peaceful compromise with the church remained without effect. I need not revert in detail to his pre-war career, no charges arise from it against Biberstein. do.

Then war came and Biberstein became a soldier. His career as a soldier ended abruptly. Without having had any previous knowledge of the fact and without having in any way aspired to it, he was suddenly discharged from the army and assigned to the Reich Security Main Office by a war order. Biberstein described to you how an intrigue had been responsible for putting him into the ranks of the Gestapo. He testified that realizing his unsuitableness and acknowledging his different ideology he was unwilling to take over the Gestapo Office in Opeln. Lastly he described to you how, fearing the consequences and hoping to regain his freedom he had finally complied with the order in view of the fact that it was a war measure.

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life was only concerned with finding a true relationship to God, should have been unhappy in such an office. It is not unbelievable that it was not long before he recognized that he lacked all technical qualifications to profit by his office. I concede that one could become somewhat suspicious on hearing that during the year he worked at the Gestapo Office in Opeln he had not bothered to acquaint himself with the duties of his office. However, if one bears in mind that, from the beginning, he was determined to leave the Gestapo Office after the year was over, and if one further bears in mind that according to his whole psychological make up, such activity must have been repugnant and disagreeable to him, one can understand that as a result of this inner resistance he maintained a passive attitude and took no serious interest in his office but left everything to his trusted experienced officials. He committed no illegal acts during his term of office. Neither could the Prosecution prove that he had committed any illegal acts.

He was an outsider in the Reich Main Security Office. You have heard him say that an intrigue was responsible for his assignment to the Gestapo Office in Opeln. He testified further that an even more malicious intrigue was the cause of his transfer to EK 6 in Russia. He had tried to get his release from this Kommando. However, he was told that he must take up his position first and that he could pursue his transfer and his release from the RSHA only from Russia. It is tragic for this man that, against his will and wholly innocently he was forced into an activity for which, according to his character, he was not suited. in Russia for a transfer and release and that he told his superior that, as a former priest, he could not hold an office in which death sentences had to be pronounced and executed. As he has testified, that is why a deputy was assigned to him for tasks concerning the actual execution since his superior realized that a man had been appointed here who was absolutely unsuited for the task.

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Finally you have heard him say that he immediately pursued his transfer and release. Nothing speaks against his illustration. The short period during which he was in Russia vouchsafes for the correctness of his statements. This is the position of this man in Russia. the Fuehrer Decree neither in Germany nor in Russia and that no wholesale executions or any executions at all were ever carried out during his stay with the Kommando, that were based on the Fuehrer Decree. The president of the Court understandably remonstrated that it did not sound credible that he should not have heard of the Fuehrer Decree. Your Honors, I on the other hand am of the opinion, that nothing in the world is more credible. I shall now assume? His superior perhaps, who, because of his request for transfer and because he was a former priest recognized in him a wholly unsuited person and who even agreed to his release since Biberstein made every effort to be released from the Kommando? This superior must have considered him nothing but an outsider. However, outsiders were not taken into confidence on such terrifying orders which instilled horror even in those persons of this circle who were of a more harsh nature. Even the men of his Kommando had no reason to do so. Certainly they too must have recognized in their Chief a man, who was not suited for such terrible tasks. Moreover, it is not even certain that members of EK 6 knew of the Fuehrer Decree. The testimony of defendant Graf speaks against it. It is quite natural that Biberstein had no knowledge of the so-called Fuehrer Decree when one further considers, that according to the testimony of this same defendant Graf, executions in accordance with the Fuehrer Decree were presumably never carried out by EK 6 and that Graf furthermore had heard of only one wholesale execution which had been carried out by Jeckeln's special police formation long before Biberstein's arrival, and when finally it is considered that at the end of 1942, the period of large wholesale executions for all Kommandos had long since passed and that Jews were practically non-existent in the territory surrounding Rostow.

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The Prosecution in Document Book 5 0 bearing the title Biberstein, has presented evidence, which at first created the impression as though Jews had been found and executed in the district around Rostow at a time which would have been immediately prior to the transfer and only a few months before the arrival of Biberstein in Russia. However, the Prosecution, upon our objections, expressly limited the probative value of these documents to the extent that they only wished to show that executions of Jews were still carried out somewhere in Russia during May, June and July of 1942. Through the testimony of the witness Hartl as well as that of defendant Graf and Biberstein, the Prosecution itself knows exactly that the defendant did not come to the Einsatzkommando 6 in Rostow until the middle of September 1942. The documents concern, as has already been stated, the period from May 1942 until July 1942. At this time Biberstein had not even been transferred. The towns mentioned in the documents are located in the vicinity of the Rumanian border and are at least 500 kilometers west of Rostow. Therefore they do not prove that executions of Jews were actually still carried out in the Rostow district during the time that Biberstein was there. A Russian proverb once said: "Russia is large and the Czar is far away". This proverb wanted to express that Russia is so large and far flung that somewhere, something may always happen in this area of which the head of the state knows nothing. This applies even more so to the present war in far-flung Russia. One cannot make events seem probable in Rostow because at some far distant place occasional executions of Jews were carried out and at that by the Police or the rural police, or the offices of the civilian administration which had nothing to do with the Einsatzkommandos. One cannot refute the statements of Biberstein, Graf and Hartl with this.

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of the Fuehrer Decree and that he permitted such executions, that is executions due to racial or political membership, to be carried out. I refer once again to the findings of Tribunal IV concerning the burden of proof by the Prosecution. The Prosecution has furnished no proof. No proof can be furnished by presenting evidence in the manner in which it was attempted in Document Book No. 50. I believe that this manner of presenting evidence would be sharply criticized in their country. connection with the question concerning the number of executions, Biberstein has stated before the Court that he had made his deposition concerning the number of executions under certain moral compulsion, that in addition he had been misled by the statements of the interrogator in Eselheide, that a thousand more or less would make no material difference. A man, who would make such a statement in such a foolish manner, a statement which under certain circumstances could incriminate him, would certainly have admitted from the very beginning that he knew of and had acted in accordance with the Fuehrer Decree. In none of the interrogations and in none of the affidavits which he made is there even a hint of this. He has nothing to state or to admit in this point. One must take this into consideration and weigh this when examining the question whether or not he has told the truth. I now come to the affidavit made by him and presented against him.

Biberstein has stated that this affidavit was made under duress. That has actually been proved. Document No. 4997, Prosecution Exhibit 183, which contains the record of Biberstein's interrogation begins as follows:

Q What is your name?

Q Raise your right hand and repeat the following oath: "I swear by God the Almighty and Omniscient, that I will speak the full truth, conceal nothing and add nothing, so help me God.

Amen."

(Biberstein repeats the oath) equally severe violations of the oath as false statements under oath? the defendant of the fact that he could refuse to make a statement if it would incriminate him. The reason Wartenberg gave for his conduct was that he did not know whether Biberstein would be indicted. However, I definitely know that in Germany as well as in your country the witness has the right to refuse to make statements which would incriminate him. I know positively that the examiner must inform the witness of this right to refuse to testify. This is prescribed by law. Through the fact that Herr Wartenberg immediately placed Biberstein under oath, instructed him that he was not permitted to conceal anything and did not inform him to what extent he could refuse to answer questions, Biberstein was placed under psychic duress. I am therefore of the opinion that the affidavit which was made by him was obtained in an illegal manner and, for this reason, cannot be given any consideration. really does not know how many executions were carried out during the period of his service with the Einsatzkommando 6. He has explained to you how he came to estimate this number. You must make this the foundation for your verdict and assume that it has not been proven how many executions were carried out during the period of Biberstein's service with Einsatzkommando 6. proverbially in Germany. However, many executions may have taken place during Biberstein's time I have already explained to you that they were legal, carried out after completion of a detailed police investigation which is customary in Russia, which was prescribed and the carrying out of which can therefore not be considered as showing guilt on the part of Biberstein.

Biberstein has stated that a number of proceedings were pending at that time. He has explained to you that due to the military situation at that time the civilian population everywhere had carried out large scale attacks against the occupation forces. Biberstein has also explained that the executions which were ordered in the police proceedings were not carried out individually but in groups, that is to say after certain time intervals and for a certain number of condemned. This in itself is an understandable procedure and is in no way criminal. a war crime nor of crimes against humanity.

With regard to the last count of the Indictment, i.e. membership in an organization which has been declared criminal, I have the following to say:

Biberstein was Honorary Fuehrer of the SS. As such he never did any service in the SS. Therefore he was never used for criminal acts, nor has it been proven that he knew of the criminal acts which took place after 1 September 1939.

He was never a member of the Gestapo or the SD. He was merely on duty with the Stapo Office in Opeln because he was compelled to, that is to say due to a special war order he was there for one year on a trial basis. Through this, however, he did not become a member of the Gestapo. In this office he neither committed nor heard of crimes. The prosecution was unable to prove either of these. The Index of the Prosecution contains the assertion that Biberstein had admitted this in his affidavit. An examination of the affidavit, however, shows that this assertion on the part of the prosecution is incorrect. of an order, Fuehrer of an Einsatzkommando, this, however, only from 9 9 Feb.

the beginning and characteristically only temporarily. In this position he never committed any crimes. Nor did he discover that the Einsatzkommandos were used to commit crimes. He had heard only once of a mass execution of Jews as a singular reprisal measure for severe acts of sabotage by these Jews. He found this out however, and this is especially important, only on his return trip to Germany after he no longer belonged to the Einsatzkommando 6. Whether this report which he received at that time was correct, is immaterial. He at least knew and had heard nothing else. Therefore, at the time during which he belonged to the Einsatzkommando 6, he did not discover that the Einsatzkommandos were used to carry out criminal acts. In this connection it is also important that from the moment of his transfer, he made every effort to leave the Einsatzkommando and that he succeeded in accomplishing this. Thus I may say that no proof has been furnished that Biberstein had any knowledge of criminal acts. of the Indictment.

THE PRESIDENT: Dr. Hoffmann, you may proceed.

DR. BERGOLD: Your Honor, I beg your pardon, I have to leave almost immediately. If you remember I told you I had to go to another trial and I would therefore ask that you excuse me.

THE PRESIDENT: Very well, Dr. Bergold.

DR. HOFFMANN (for the defendant Noske):

Members of the Court! a tragedy. Russia, or to kill people only for their ideas, preferred suicide to the dock. That was the only way out that man could find. the world, or before the German people. order.

future of the German people, or that the Jewish people was bearing in itself a fundamental readiness for Bolshevism and for partisan activity.

But this is no reason. How could Jewish children endanger the future of the German people or infants became active as Bolsheviks or partisans? Fuehrer Order - Bolshevism was to be annihilated. individual guilt, an ideology is not being annihilated, but rather strengthened as history has shown beginning from the first persecution of Christians.

The order was senseless and not justifiable at the same time. It was not only a wrong against the Russian and Jewish peoples, but also against the German people, which has today to bear the consequences, while the originator of that order escaped, responsibility by committing suicide. Hitler's order.

directed mainly against the Jewish people; far from it. circle of people. to deal with the problem, how a man is to be treated, who, on his part, received that order and was to carry it out. D. During his own interrogation, he declared t hat he had never been faced with having to carry out the Fuehrer Order. He assumed me of that as early as during our first talk in the prison and has stuck to it until this day. shooting for other reasons by the Einsatzkommando 12. Yet, such executions took place by reason of the laws of war for sabotage and partisan activities. I shall deal later with the question how these executions are to be judged. the Fuehrer Order. number of persons killed by the GruppeD in consequence of the Fuehrer Order as many thousands. Einsatzkommando 12, as far as it was led by the defendant Nosske, participated in these shootings carried out on the basis of the Fuehrer Order. rogation of the defendant Nosske, the right to ask him the question how many persons he had shot on the basis of the Fuehrer Order.

by "none", in view of the strong suspicion resting upon the defendant Nosske. qyestion to the defendant Nosske in spite of the duration of my interrogation of the defendant Nosske of 11/2 days plainly hit the mark. But it was my intention to leave judgment of the question whether or not Nosske had told the truth when he stated that he had not executed the Fuehrer Order, to the cross examination.

Nosske was cross-examined for 11/2 days, and, as far as I have learned to evaluate an American cross-examination, the defendant Nosske has not been convicted to have failed to say the truth with regard to the assertion that he had not executed the Fuehrer Order. almost incredible that any man, considering the whole situation, should have been able to evade the execution of the Fuehrer Order. however, in a position to state some facts which will make that attitude no longer astonishing. god in Hitler and executed his orders as though they were tablets of the law. On the contrary, Nosske belonged, when Hitler came to power in 1933, at an age of 31 years, to a generation of men who had, in the period between the first World War and 1933 a democratic education within the Weimar Republic. 1933, when he was a referendar at the law court, no alternative was left to him by orders of his superiors than either to relinquish his career or to join the party. It may be presumed that he came to the NSDAP without a particular enthusiasm and preserved, inspite of the propaganda and his subsequent close attachment to the National Socialist State, a degree of individuality and power of discernment on account of his activities with the Secret State Police.

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in 1941, fully realized that that order was utterly unjustifiable. It will, it is true, be objected, why Nosske, realizing that, aid not oppose the order. opposition in the then prevailing situation required great personal courage, extraordinary firmness of character, and, above all, an absolute conviction of the wrongfulness of. National Socialist policy. worth of prevailing with one's own conceptions, once they were recognized as just, even in the face of a strong propaganda. defendant Nosske saw through the ummorality of that order and sensed it, he was not able to master the strength to express his right feelings, the less so as probably he would not have found understanding or even readiness to listen to him. quences. he resisted the order, have been shot summarily. But surely he would have suffered considerable personal disadvantages, which, owing to the daily increasing severity of the administration of justice, could not be anticipated beforehand as to their ultimate consequences. in his heart was resolved not to execute the order. With regard to the result of his resolution, he declares that he had succeeded in evading the Fuehrer Order until, in March 1942, he was relieved.

A "failure to execute the order" will here also be always defined as the mass shooting of people without regard to their personal guilt, only because of their membership in a race or their, activities as Commissars.

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Order for various reasons. At the start of the Russian campaign he followed up other Einsatzkommandos into areas which they had occupied previously, remaining in reserve. Later on it was partly a similar thing, partly he had to occupy preponderantly rural areas, where there were no Jews. These were mostly living in the towns. He was also helped by the extraordinarily severe winter of 1941/42, as he was unable to leave his quarters owing to snow and cold for weeks and, above all, to join the 17th Army, where his actual first assignment with a view to the execution of the Fuehrer Order would have taken place. At that assignment Nosske did become active in the area of the 17th Army either because the German advance was stopped and he was relieved in March 1942. result of lucky coincidences he was able to evade the Fuehrer Order, and in particular that he was never placed before the question of an inescapable assignment on the basis of the Fuehrer Order. if he had been restricted in his freedom of decision to the extent as to be placed before the direct alternative of shooting e.g. 500 Jews on the spot or to be shot himself in case of a refusal. To that Nosske answered that in this case he would have shot the 500 Jews.

THE PRESIDENT: Dr. Hoffmann, the illustration is not put exactly the way I put it. I did not say "confronted with the situation of shooting 500 Jews or being shot yourself, what would you do?" I merely asked him, because he had denied that he at any time ever shot a Jew and that he had ever been placed in that situation. He said that it was his good fortune that in all the time he was in Russia he did not have to confront that dilemma, that he had great regret that any of his co-defendants were placed in the position where they had to answer that problem.

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But he, fortunately, never had to answer that situation. So then I put to him, "suppose you were put in that situation that you were confronted with 500 Jews and you had this Fuehrer Order before you, what would you do?" You see there is a great difference there, Dr. Hoffmann We did not ask him to chose between an alternative. We gave him the opportunity to reply freely just what he would do in that situation. And he said, if we recall correctly, that were he in such a situation and would be subjected to the possibility of reprimand by his superior that then he would have to execute the order. However, we will, of course, examine the record very thoroughly in that connection should it become important to do so.

DR. HOFFMANN: Your Honor, if you will look at my trial brief I think my trend of thought is correct except for that point where I explain that in my opinion your question, Your Honor, also concerned the contention that in a certain case he would have been restricted to a certain extent. Actually, I merely want to explain that in my opinion you, Your Honor, put a hypothetical question - what he would have done if he had come into that situation - and that was the answer he gave you. Perhaps the translation does not indicate this quite as clearly. I want to state this again in my final plea that this was merely the answer to your hypothetical question.

THE PRESIDENT: Yes, it was a hypothetical question, At no time did we ever in the form of a question or in the shape of observation suggest that someone who is confronted with the proposition of losing his own life is compelled to take some step which would result in immediate loss of his life.

Dr. Hoffmann, since we have now stopped at this point do you think this might be a good time to have the morning recess?

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed, Doctor.

DR. HOFFMANN: Your Honor, first of all I would like to continue my presentation, and I requested that my office be giventhe German text of this cross-examination problem of your Honor so that I may refer to it briefly.

THE PRESIDENT : Very well.

DR. HOFFMANN: In my opinion this answer given by Nosske is not to be judged as the expression of callousness or inhumanity. It shows that Nosske does not pretend to be a noble and blameless man, but rather admits to be a human being with all his inherent weaknesses. Though possessing the insight to discern good and evil, his estimate of his own character is, in an assumed case, not high enough as to be able to credit himself with the firmness to prefer to be shot himself rather than to shoot others. would behave in such a situation oneself. sublime one, but an honest answer which, in its honesty speaks in my opinion in favor of Nosske. ly, indentical with those made in his affidavit in reply to the Prosecution. has submitted against Nosske in the first place. There are only 3 and I shall be able to deal with them in succession. Book II D, Page 49, of the English text. area of Babtschiczy and relates the shooting of 94 Jews. kommando 12, who had been supervising the harvesting in that area, reported those shootings to him.

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shootings had taken place because of sabotage of the harvesting, and not on the basis of the Fuehrer order.

Nosske was not present at these shootings. All he can say is what had been reported to him. of the application of the Fuehrer Order. It mentions expressly countermeasures, which presuppose that a particular cause had been present for the shootings. TheFuehrer Order, however, decreed theextermination wit out regard to a cause. pros. Exh.168. This document deals with the treatment of baled-out Russian parachutists. soldiers who would have had to be regarded as prisoners of war. The question is, whether the expression "to take care of" as used in the last paragraph of that document, means the same thing as "to kill", by which it would be proved that the members of the Einsatzkommando did in fact killprisoners of war. been killed because he offered resistance, and this procedure is called "taking care of" of the parachutist in question. In this case "to take care of" is the equivalent of to kill.

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"settle", which was also used in the last paragraph of this report, pression "erledigen" in the last paragraph means to render harmless in from his own knowledge.

He was not present during this occurrence. He did not prepare the report himself. He did not sign the report. During charge of the Kommando.

No killing could have been carried out by vir Document NOKW-3147, Exh.

96, Document Book II D, page 52 of the August to 15 September 1941.

Einsatzkommando 12 is not mentioned in this report.

The Prosecution has also submitted this report as evidence gruppe D. Even if the report contains reports on shootings which were whether by the Wehrmacht or by the police.

However, no shootings took first submitted against Nosske.

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It is Document 2837, Pros. Exh. 38, Doc. Book II B, page 7 of the English text. the Djester River near Jampol Shootings of Jews are also mentioned in that document. closely questioned about the document by Judge Musmanno. The Prosecution devoted about three-fourths its cross-examination to this document. The views of the defendant Nosske unchanged. He declared that he did not carry out any shootings and did not execute the Fuehrer Order. who by chance was once Bridge Commander at Jampol, repeated the statement of the defendant Nosske simply and clearly without previous questioning. produced unimpeachable proof that no shootings were carried out by Nosske or his men during the passage of the 10,000 Jews. The witness has expressly stated that as Bridge Commander of the Army he himself witnessed from beginning to end the manner in which Nosske effected the passage of the Jews. voluntarily, that they were happy to find themselves in their old surroundings again. question continued to camp for 2 days on the banks of the river after Nosske had driven off with his men, Not until ten were they conducted back into the interior by the Roumanian police. shows that in a case where the interpretation of the document might be just as doubtful as in the other documents the statement which Nosske gave was in accordance with the truth. Therefore, his statements concern the other documents can also be given preference before any other interpretation.

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Jampol, however, also brings up another point which is very important for Nosske. The Prosecutor asked the witness during his cross-examination what the situation of these 10000 Jews had been with regard to food and whether Nosske had done anything for these people. 10,000 persons and distributed these peas among them. He said that the ration had even been so generous that even after the departure of the Jews there were still peas left. That shows that these people received enough through this food issue to satisfy their hunger, for hungry people would not have left any peas at all. However, it also shows that Nosske did not keep to the terms of the Fuehrer Order.

If he had wanted to run up a "shooting score" it would have been easy for him to kill thousands of innocent human beings here.

Nosske was in Russia for 8 months. His activity was interrupted by a period of sickness of one month, during which Hausmann was in charge of his kommando. This is Document NO-4747, Exhibit No. 118. The Prosecution itself says that a few hours after giving the affidavit the affiant committed suicide. affidavit because I can no longer cross-examine Hausmann. the document. I believed that thereby I could better servo the discovery of the truth than if I had prevented the submission of this document merely as a matter of form. able to ascertain that it completely confirms Nosske's account of his activity. the Fuehrer Order.

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which Einsatzkommando 12 was occupying. unmolested. mann was considered false by the latter, because such executions had not taken place at all. alleged report of 300 executions is true, and if it is true what intentions Nosske had in mind with such an untrue report, are questions which can no longer be cleared up today after Hausmann's suicide.

In any case, In Hausmann's opinion the 300 executions were a lie. taken place, then he probably must have had a reason for making such a false report. Nosske to the defendant Ohlendorf. taken place. Reich Main Security Office in Berlin and in June 1942 entered Department IV. Kommando Staff.

According to Nosske's statement this was no longer an actual Kommando Staff as it is understood in the ordinary sense and as Heydrich had also once planned it, but after Heydrich's death it had become a sort of editorial staff which had only continued to retain the name of a Kommando staff. concerning persons who had been shot in Russia by virtue of the Fuehrer Order were already being sent exclusively to Eichmann, the Chief of Group B IV in Department IV of the Reich Security Main Office.

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In Nosske Document No. 6, Exhibit No. 5, Dr. Hans Ehlich, the Chief of Section III I in the Reich Main Security Office states:

"After April 1942 the Kommando Staff was the office where the respective specialists from all departments met for the purpose of making editorial summaries of the material contributed to the Reports from the East by the departments handling the respective subject matter. These summarized reports were called "Reports from the Occupied Eastern Territories". In contrast to the former "Operational Situation Reports from the USSR" they did not contain, as far as I recall, any figures or reports concerning operations carried out in the East by under the Fuehrer Order.

At any rate, Dr. Hans Ehlich's affidavit shows that the office manager occasionally appointed by Office IV of the RSHA, only had to see to it that the reports were technically correct and were distributed. the Einsatzgruppen, not even before Nosske came there, because of course, the Fuehrer Order was the basis for the work of the Einsatzgruppe. received several other tasks in the RSHA. Exhibit No. 6. tried, as early as 1942, to effect his release from the Security Police.

He says, verbatim:

"At this time Nosske, in my presence, took advantage of the opportunity to effect his release from the Security Police through the Chief of Office IV. value on his services.

Office interrupted him brusquely and told him that he would have to wait for further orders. through the Chief of Office I, once before. They had not considered his reasons valid. This was his third unsuccessful attempt in the last few years to leave the Security Police". for the final judging of Nosske. At that time Nosske was in charge of the State Police Office in Duesseldorf. In September 1944 he was ordered by the Higher SS and Police Officer Guttenberger to round up all Jews in Duesseldorf and in the entire territory of the Higher SS and Police Officer, as well as all Aryans connected with them, and to shoot them. thousand people. The propaganda was still proclaiming loudly that the Allies would be stopped at the Rhine. used.

Duesseldorf was still about 200 km from the front. It was actually still 7 months before the final victory of the Allies. the Higher SS and Police Officer. Germans, too, would be liquidated by this order, was surely the most practical point he could have made to the RSHA in order to have the order rescinded. it is basically a matter of innocent people, Jews as well as Germans, who had to be protected from an order similar to the Fuehrer Order.

the Higher SS and Police. Officer rescinded by the RSHA. Officer Guttenberger, who did not forgive him for preventing the order. military insubordination and failure to perform his duty and succeeded in having Nosske prosecuted, which was handled by the Investigation Officer Dr. Hausmann, of the SS and Police Court in Berlin. the Nosske Document No. 8, Exhibit No. 7. According to this affidavit the trial proceeding was initiated against Senior Government Councillor Gustav Adolf Nosske in the autumn of 1944 as the result of an official complaint of the Higher SS and Police Officer Guttenberger, as well as of Inspector of the Security Police, SS Colonel of the Police, Dr. Albath. brought against him. the real reason for this trial was his refusal to carry out an order of the Higher SS and Police Officer Guttenberger which demanded the execution of half Jews and their Aryan spouses. behaviour he understood and approved of. the RSHA, under any circumstances, and insisted that he must disappear.

In his affidavit Husmann says, in this respect:

"It was finally decided that Nosske would be removed from his position and dismissed from the Gestapo. He was to go to the front as a plain soldier. Charges were not to be dismissed, but only postponed until the end of the war, as was also done in other cases.

the Gestapo, to which he had belonged." witnesses from the State Police Office in Duesseldorf. day and gone the next, and did not even have a chance to turn over his tasks to his successor.

In Document Nosske How 10, Exhibit NO. 9, Dr. Hans Schmitz, who was Criminal Director of the State Police Office in Duesseldorf until the end of the war, states:

"Former Senior Government Councillor Nosske was my superior from autum 1943 until September 1944 as the Chief of the State Police Office in Duesseldorf. After the summer of 1944 I was, after Nosske, the senior official and in that capacity I state that at the end of September 1944, Nosske was dismissed from his position as Chief of the State Police Office by a decree of Kaltenbrunner.

Nosske left the Security Police and the SD. He had to turn in his official pass and his SS uniform at the office. military service. In October 1944 Nosske became a soldier." this point, I find that there is no conclusive proof that Nosske carried out the Fuehrer Order in Russia. Einsatzkommando 12 carried out under orders from Nosske, which were based on existing laws of warfare rather than the Fuehrer Order, were fundamentally illegal. It has presented only one document against Nosske which, if you accept the interpretation the Prosecution gives this document, contains a violation of the laws of warfare over and beyond the Fuehrer Order. of Russian parachutists.

tion. incident, because he had turned over Einsatzkommando 12 to another officer and himself was in the hospital. refusal in September 1944, saved, before the end of the war, thousands of innocent people from being killed. Police and SD in October 1944. declared to be criminal, according to the verdict of the IMT in Nuernberg. claims is not present. from all the circumstances I have brought up, will be decided by the Tribunal.

DR. HOFFMANN: Your Honor, may I briefly quote from the German text, that is, the transcript of the 9th of December, page 1732, and this is the question of the presiding judge. I quote:

"All right, then you would have carried out the order in case you had found any Jews?" Nosske answers, I quote:

"If I had received the order and if I had found any other way, or if I had not been able to evade the order in any other way, that is to say, if the final consequence would have been, namely, to be shot myself, then I would have carried out this order."

PRESIDENT: There is nothing in what you have read which would suggest that I had asked what he would do in the event the alternative was death, as you stated in your summation.

DR. HOFFMANN: Very well, Your Honor, but may I then have you interpret the final plea in such a manner that Nosske in such a hypothetical case gave this answer to which I refer in my final plea, even if he didn't understand your question, Your Honor?

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PRESIDENT: The only point that I made, Dr. Hoffmann, was that you said on page 6:

"Judge Musmanno asked the defendant, Nosske, what would have happened if he had been restricted in his freedom of decision to the extent as to be placed before the direct alternative of shooting, for example, 500 Jews on the spot, or to be himself in case of a refusal?" I never put such a question to him. That is the point I wanted to clear up.

DR. HOFFMANN: Your Honor, I admit that you didn't pose this question. In this respect, my interpretation is wrong.

PRESIDENT: Very well. Dr. Lummert.

DR. LUMMERT: Lummert for the defendant, Blume. With Your Honor's permission, I would like to read my final speech in the English language.

PRESIDENT: Very well, Dr. Lummert.

May it please the Tribunal:

1.) In my opening statement I announced that in my final plea I intend to deal in particular with the legal question of the so-called "unexpectability" ("Unzumutbarkeit") This is in accordance with an agreement of defense counsel in case No. 9 by virtue of which certain questions which are of importance to all defendants or to some of them are to be treated in detail by different defense counsel in order to save time and to avoid unnecessary repetitions.

Among these general themes are e.g. the special conditions in the East, the question of necessity caused by the order of a superior, the questions of general necessity and presumed or putative necessity and - as to my contribution - the question of "unexpectability". I am going to deal with this question in the first part of my final plea before discussing the conduct of the defendant Blume and the special questions of his guilt or innocence.

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What is the meaning of "unexpectability" under penal law? We are concerned here with an excuse for the individual perpetrator who failed to comply with a duty imposed upon him by order or prohibition. This duty - also existed for this particular offender, but the special circumstances however have the effect that he can not be held responsible for the fiolation of this duty. This doctrine of "unexpectability" has been developed by jurisprudence and administration of justice in German Criminal Law during the years 1920 - 1933 in particular.

The English language has no word for "Unzumutbarkeit". The meaning of this term is: that a person cannot be expected to act in a certain way i.e. according to the standards of criminal law, if the accompanying circumstances of the case are considered fairly and reasonably. As a brief translation for "Unzumutbarkeit" in this plea I suggest and use the term "unexpectability".

"Unexpectability" under German Criminal Law is no (objective) justification, but a (subjective) excuse. The distinction between the objective and subjective viewpoints of the act as know under German Penal Law, it is true, have been accepted in the Nuernberg trials during the past two years, however it is alien to the conceptions of AngloAmerican Penal Law. I therefore want to emphasize that the idea of "unexpectability" need not be limited to the subjective viewpoint of the act in the German sense, "Unexpectability" concerns much rather the borderline area of the effectiveness of the standards of criminal law, and the results under penal law are the same, no matter whether a criminal law was no longer binding for the perpetrator on account of the prevailing circumstances of the case, or whether the perpetrator acted in violation of the laws but has been excused on account of the circumstances prevailing in this case. In neither case can he be punished. Considered from this point of view "unexpectability" is the basic legal principle which is fundamental to all special statutory provisions of the individual States concerning self-defense, excessive self-defense, state of necessity, presumed or putative necessity, provocation, collision of duties, necessity arising from an order etc.

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, but which is not entirely covered by them. "Unexpectability" is a general reason outside the Statute Law, under which punishment of the perpetrator does not seem justified and is therefore excluded. and quotations from judgmentments and scholarly works in document Blume No. 30. I should like to refer to this. It is of special importance that the International Military Tribunal in its judgment recognized the basic idea of "unexpectability" in discussing the necessity arising from an order, as was done in the following classic brief form:

"The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible." The IMT also used this basic principle in judging the organizations charged with being criminal. There, it excluded from "criminal groups" those "who were drafted into membership by the State in such a way as.

to give them no choice in the matter." This same basic principle prevails in Judge Musmanno's concurring opinion on the conviction of Fieldmarshal Milch where he says:

"We never intended, nor was it suggested, that he should take any action which would result in the forfeiture of his life." The same idea can be found in the judgment of the Military Tribunal No. IV in the case against Flick and others (case No. 5); it considers the mere employment of foreign slave labour by industrialists excused by the conditions prevailing in Germany at that time, in particular by the demand of the State. The court arrived at this conclusion through an extensive interpretation of the term "necessity". May I refer here also to the excerpts from the standard Americah work, Wharton's Criminal Law, contained in Document Blume No. 30. The quotations contained in this document also refer to other foreign laws.

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Thus in Austria Article 2g of the Austrian Penal Code of 1852 makes possible a consideration of the basic idea of "unexpectability", in France it is the broad interpretation of the conception of the contrainte morale, in Italy it is the distinction between imputabilita' and responsibilita' and the interpretation of this latter concept. Under Roman Law we finally find the general legal principle of "nemo ultra posse obligatur". principle of "unexpectability", because this is a general principle "which the Judge is bound to observe", as Prof. Kraus, Membre de l'Institut du Droit International, states in his comments on Control Council Law No. 10.

2.) what are the conclusions to be drawn from the concept of "unexpectability" for this trial? The defendants are charged with murder of mass-murder. Who ever is familiar with the history of the war crimes trials - beginning with the speeches and warnings by President Roosevelt from 1941 on through the Moscow declaration to the London Four Power Agreement and Control Council Law No. 10 - knows that first of all there were two main groups of crimes which caused a humanitarian reaction on the part of the public of the World, in particular of the United States of America, namely the mass-extermination of Jews in concentration camps, which is inconceivable to every human being with any moral sense, and second, beginning already at an earlier date, the liquidations of human beings by the Einsatzgruppen in the Last from the middle of 1941 on. It was to these two groups of crimes, to which Justice Jackson's words referred in his report to President Truman dated 7 June 1945:

"We propose to punish acts which have been regarded as criminal since the time of Cain and have been so written in every civilized code." Justice Jackson might have as well quoted the fifth commandment which reads: "Thou shalt not kill."

The following question arises out of the idea of "unexpectability": Could the defendants, under the particular circumstances prevailing in 1941, be expected ("zugemutet") to act differently? the "special circumstances" under which the defendants acted in the manner of 1941 and the following months. a complete picture of the historical, political, military, and other special conditions prevailing at that time. In the following I have to limit myself to showing a few facts of particular importance. was a State that ordered these exterminations of human beings.

Who are they, strictly speaking, these so-called States? I do not intend to deliver here a legal or philosophical lecture on the "State", I only mention the fact that to this day the States are without any doubt the highest ranking forms of organized society and still are at the same time the supreme legislators. They did and still do claim so-called sovereignty for themselves. This concept of sovereignty developed after the end of the Middle Ages together with the formation of actually and legally independent States. It is the essence of this concept that the aims of the State take precedence over all other human aims, that therefore the concept of the State ranks above the concept of mankind, and that the States are the masters of International Law as well and not vice-versa, Macchiavelli, as is well known, expressed this supremacy of the State in the concept of ragione di state, the raison d'Etat. The Frenchman Bodin coined the expression of "puissance souveraine", "summa potestas" for this supreme power of command of the State. To express the same thought, Hegel, the philosopher, chose the words that the State was "the absolute power on Earth". Since the old idea of a general right of nature had been abandoned, international law could only come into existence by voluntary obligation of the States through "inter" national treaties or by customary law which was voluntarily recognized by the States.

was generally recognized throughout the world until 1914 and that it was effected only by the catastrophe of the first World war. It is not new to the Tribunal if I mention that those who promoted and represented the new concept of a worldwide law, ware and are, above all, US statesmen. At the beginning of this development to find the famous message of President Wilson to the Senate of 22 January 1917 where says:6) "Mere agreements may not make peace-secure.

It it.

If the peace presently to be made is to en ganized major force of mankind."

This organized mankind was the purpose of the 27 points laid down by President Wilson in his four speeches in 1918 which were accepted by all signatory Nations as the basis for the armistice of November 1919. The crucial point was that in the future international law should take precedence over the law of the individual States. This was most clearly expressed in the Mount-Vernon Speech of 4 July 1918 where President Wilson said: 7) "These great objects can be out into a single sentence.

That we seek is the reign of law, tained by the organized opinion of mankind."

It is well known that the idea of the precedence of international law over national law remained in force only for a few months. During the negotiations at Versailles 6) Congressional Record, 64 Congress, 2nd Session, vol.

54, No. 35 p. 1947. 7) Cf. H.W.V. Temperley, a history of the Peace Conference of Paris, vol.

I, London, 1920, p. 132.

the old concept of sovereignty and the egoism of the individual States prevailed again and were embodied anew in the Charter of the League of Nations of 1919. President Wilson's program, however, remained for the most cart unrealized. tive security was created within the framework of the League of Nations. It was to be supported by the Briand-Kellogg Agreement of August 1938, To how great an extent, however, the sovereign States actually remained the masters of international law even at that time, can be seen from the note of Secretary of State Kellogg dated 25 June 1938 to all negotiating States where if says:8 "...The right of self-defense ... is inherent in treaty.

Every nation ... alone is competent to to war in self-defense."

And not later than at the outbreak of the war between Italy and Abyssinia in 1935 did the system of collective security break down completely. 8) During the second World War the individual States were more than ever before the absolutely highest plenomena on earth. tion at this point already that unfortunately a development similar to that after 1018 can be recognized now, after the end of the second World War. For even the Charter of the United Nations leaves the sovereignty of the individual States untouched, The recognition of the right of Veto is a direct consequence thereof. the attitude of the Union of the Socialist Soviet Republics. 8) Cf. the Final Plea of Prof. Jahrreiss before the The so-called Bolshevism, it is true, certainly aims at a world state, as the dictatorship of the proletariat of the earth, organized in a Union of all States as Soviet Republics.

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But as long as every State in the world did not experience a revolution in this sense, those States in which the dictatorship of the prolotariat has been established can by no means subordinate themselves to a community under international law in which the BourgeoisStates would hold the majority. It is just in order not to endanger the world dictatorship of the proletariat that the Soviet Republics thus far established have to preserve their sovereignty strictly curing this "transition-period" as a basis for the further world revolutionary struggle. This is the urgent reason why they cannot do without the right of Veto. parallel can be found between 1919 and the period since 1945. During the Paris negotiations of 1919 it became apparent that the victorious powers, in contrast to the program of President Wilson were not ready to abandon the sovereignty and the egoism of their own nations. For Germany the terms of peace meant a violation of the principles laid down in the armistice and a dictate forced upon her, they were the expression of the unrestricted raison d'Etat of the victorious States. Like all sovereign States they came to conclude their right from their power. In a similar way there exists an undoniable contradiction at the present time: On the one hand, according to the Nuernberg Judgment and Control Council Law Mo. 10, the principles of the Hague Convention on Land-Warfare and the Geneva Prisoner of War Convention are alleged to be generally valid international law, for the violation of which even German individual persons are indicted and convicted, and on the other hand the four occupation powers do not observe the limitations imposed by these legal regulations of the Hague Convention on Land-Warfare and the Geneva Convention in their attitude towards occupied Germany.

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The two most important examples in this respect are the forcible eviction of about 15 million Germans from Eastern Germany and German Bohemia which had been their German homeland for about a thousand years, and the retention of German Prisoners of War which is contrary to international law. for the victory of "inter"-national law or much better "super" national law over the concept of the raison d'Etat has not yet come. in that statement of the Nuernberg Judgment which is the most important one and at the same time the most difficult one to carry out, said:9) "On the other hand the very essence of the Charter dience imposed by the individual State."

It is obvious that this sentence in reality anticipates the facts and the basic law of a future World State. It is true that Justice Jackson said in his speech before the University of Buffalo in October 1946:10) "At all events, whether they be regarded as a codi teen others.

They are now embodied in the tri bunal's judgment.

That these rules of law apply without dissent at Nuernberg."

9) Official Edition, vol. I, p. 223. 10) Quoted from "New Yord Herald Tribune" of October 6, 1946.

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But opposed to that, the Charter of the United Nations only provides for col ective responsibility of the States as such for violations of the Charter; that is to say, the State responsible for the violation is called to account, not the individual concerned. And the General Assembly of the United Nations in its resolution of 11 December 1946 only took note of these new principles, affirmed them and turned them over to a committee for further action.11) The Charter of the United Nations was, however, not amended accordingly. In reality, therefore, there is no State on earth which at this time recognizes the precedence of international law over national law, for all of them are soveriegn. Nor is there any organized supernational power able to protect the individual who finds himself in a position where his national duties of obedience clash with his international duties. 11) This resolution runs as follows: paragraph 1, subparagraph a, of the Charter, to initiate studies and make recommendations for the purposes of encouraging the progressive development of international law and its codification; and of an International Military Tribunal for the prosecution and punishment of the major war criminals of the European Axis signed in London on August 8, 1945, and of the Charter annexed thereto, and of the fact that similar principles had been adopted in the Charter of the International Military Tribunal for the trial of the major war criminals in the Far East, proclaimed at Tokyo on January 19, 1946. nized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal; national law established by the resolution of the General Assembly of December, 1946, to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal in the judgment of the Tribunal (Journal of the General Assembly, No. 75, p. 945). (Quoted from "The International Law Quaterly", Vol I, p. 170.)

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DR. LUMMERT: I beg your pardon, Your Honor, it has been forgotten to underline these two sentences. I think them to be important - the view point of wanting protection can be decisive. give preference to the international duties would be ruthlessly punished e.g. for military disobedience or hightreason or treason. Mankind is not organized at all; as before it is still divided in the populations of the different States, the so-called Nations, and the individual citizen of such a State - almost like a piece of cattle is treated like part and parcel of his State and has to take a collectivistic part in the fate of his State. d'Etat is of such fundamental importance because they constitute the principle by reason of which actions, which when normally committed by private individuals would constitute murder, arson, robbery, extortion or property damage, are not considered as such if a State committed them. The moral standard, to be applied to the State differs from that of the individual. This concept has thus far been, accepted throughout the world. In every war, no matter how far back we go, innumerable human beings had to lose their lives on either side of the belligerents. But killing within the framework of military measures is not considered murder. It is generally agreed that the leaders of States and Supreme Military Commanders have to observe the rules of international law and the laws of warfare as recognized by all civilized nations. They may be held personally responsible for violations according to the new principles asset forth in the London Agreement dated 8 August 1945 and the Charter of the IMT which were to be included as valid international law in the Charter of the United Nations, but which unfortunately have not been incklouded to this day.

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But which penal provisions are applicable to the individual soldiers and officers in the case that the supreme national and military leadership issues orders in violation of international law and law of warfare? This question constitutes one of the main problems in this trial.

Considered from the viewpoint of "unexpectability" the question is as follows. Could the defendant be "expected" independently to examine the order they received from the sovereign Chief of State as to whether it was in compliance with or in violation of international law and if the latter should be case to refuse to carry out the order and to take all consequences upon themselves; up to the forfeiture of their own lives, even though there was no international authority to protect them? and even more so, if the further special circumstances are taken into consideration which I am going to discuss in a minute. lowing: pangs of the new World State. Hitler issued that cruel Fuehrer-order in the middle of 1941 to assure Germany's victory over Bolshevism, i.e. he issued it under the concept of the raison d'Etat, a concept which caused Friedrich Nietzsche, the philosopher, to coin the phrase that the State is the "coldest of all cold monsters." We have to bow in deep sympathy to the unfortunate victims of this order in the East from middle of 1941 onwards which was a result of the concept of the raison d'Etat.

But these defendants here, too, are victims of that concept, Because it is their personal tragedy that fate caused them to become members of these Einsatzgruppen.

b) Secondly I should like to direct the Tribunal's attention to a viewpoint which is rather remote to AngloAmerican thinking but which is worth mentioning for an understanding of the defendant's general attitude. It is the concept of legitimacy and state discipline which was developed above all in Germany. It is easy to explain this viewpoint to a Frenchman, for example, because the same attitude is observed in France though not to the same extent as in Germany. But it is really difficult to explain this mentality to an Anglo-American because as a rule he is not able to understand it and considers it to be absurb. Mr. Winston Churchill dealt with this continental line of thought in his wellknown second secret speech before the House of Commons on 10 December 1942, a few weeks after the Allied landing in North Africa, in answer to the protests raised against the Allied cooperation with Admiral Darlan. I should like to quote from this speech of Mr. Churchill's as follows:12) "I now turn to examine a peculiar form of French men which has overtaken their country.

I am not at all tality.

But it would be very foolish not to try to understand what is passing in other people's minds they respond.

The Almighty in His infinite wisdom Englishmen.

In a state like France which has ex12) Quoted from "Life", Overseas Edition, Vol. 20, No.

5, p. 34.

"of many French officers and officials in times of revolution and change.

It is a highly legalistic sheer anarchy.

For instance, any officer who obeys tions.

From this point of view many Frenchmen who of Verdun and the sole hope of France.

Now all this may seem very absurd to our minds.

But there is one aspect about it which is important to us.

..." It is interesting to hear what a Frenchman has to say about the Germans. Professor Donnedieu de Vabres who was the French judge on the IMT said in a speech delivered in March 1947 before the Association des Etudes Internationales and the Association des Etudes Criminalogiques on the first Nuernberg Trial13) "Defense counsel understood that well.

They have been berty for propaganda purposes.

On the contrary I am of gree, conducted themselves as correct aids to justice," Here a Frenchman who, according to Mr. Churchill, in this connection is almost suspected of being absurd confirms the fact that this discipline has been developed to a particularly high degree in Germany.

No matter whether this fact merits irony or admiration or criticism to the effect that it is absurd, this high degree of discipline must not be disregarded in passing a just judgment on the happenings in Germany under the so-called Third Reich. Moreover, this discipline has historical reasons. In contrast to England which is protected by nature through the sea or to the USA which never in their history have been the objective of a foreign invasion Germany's borders are unprotected all around and she has experienced numerous invasions from the West, North, South-East and East. Since, according to Macchiavelli's wisdom whose opinion was recognized during the past centuries, the neighboring State was the natural enemy and only the neighbor's neighbor a friend, it was a consequence of natural conditions that Germany in the interest of self-preservation had to organize herself in a disciplined way, and Prussia took the leading part in this organization during the past 250 years. The limited economic possibilities of Germany furthered 13) -"Le proces do Nuremberg". - Original text of the quotation.

"Les avocats de la defense l'ontbien compris. Certains lour ont re proche d'avoir abuse do leur liberte pour faire do la propagande.

J'estime, au contraire, et c'est aussi, je crois, la pensee du Tri auxiliaires corrects do la justice."

the tense organizing additionally. All this influenced the German mentality. The Christian Churches supported the State in this development, above all by the quotation from the Bible that Each man should render obedience to his master who has power over him. Expressed briefly, the German people is obedient to the State and to orders.

If any mere proof is needed to corroborate the German people's particular public discipline this proof can be found in the incredibly small percentage of acts directed against the occupation powers. The German people subordinates itself in a matter of fact way to the military dictatorship which succeeded the brown dictatorship. sharp distinction between public law and private law as we find it in Germany and as it is not known in Anglo-American legal doctrine. Furthermore, it must be mentioned here that in German Law acts of State officials are not to be evaluated as acts done by these individuals but as acts of the State only. lation as provided by the Weimar Constitution of 1919 was no longer able after 1930, to meet the difficult economic and political situation in Germany. Several years before the so-called seizure of power of 30 January 1933 the Government in Germany used a dictatorship, based upon Article 48 of the Weimar Constitution. Hitler's Government was nothing but a continuation, though a stricter one, of the method of governing already previously adopted. cipline which was brought about by the increased penalties for violations of the duty of obedience during the war. In this connection I should like to refer to documents Blume Nos. 1 - 3.14) 14) - Cf. Transcript pp. 1766 and 1853 - 1857.

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cipline of the State is not relevant in this connection because this abuse was not clearly recognizable within Germany and partly because no criticism of any kind was tolerated. I shall come back to this problem in the next paragraph. it can be said that only within the framework of this special discipline of the German people and State could such actions as are at issue here be ordered and executed by the State-Government.

c) In the third place, the point of view of the so-called mass-psychology must be mentioned. Here again this brief plea cannot possibly deal with this point of view exhaustively. I only went to stress one fact: it is a fact in mass-psychology that every people wants to have its heroes. These heroes are glorified, sometimes even idolized by propaganda, no matter whether or not they actually merit adoration to such extent or any adoration at all.

Such a hero e.g. for the majority of the Germans was formerly Fieldmarshal v. Hindenburg and for the majority of the French Marshal Petain. A popular hero of that type is e.g. General Eisenhower; no loyal American would permit anybody to talk disrespectfully about him. such a hero for the overwhelming majority of the German people. In this connection it is of no importance, that Hitler, as it appears today, had a Janus-head, i.e. on the one hand he showed the ideal characteristics of a hero and almost infallible leader of the German people as contended by the German propaganda and on the other hand, at any rate during the last years, the characteristics of a criminal or maniac carefully concealed by the propaganda. The mysteries about Hitler's personality have not been solved up to this day. The only relevant fact in this connection is that the bulk of the German people in the years following 1933, more and more considered Hitler as stateman whose qualities of leadership and conduct were almost those of a superman and of whom only the very best could be expected.

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He solved the big problem of unemployment (whether this was done through the rearmament which in the beginning was strictly secret has been contested and was not known to the bulk of the people or at least they were not conscious of it). And there was no event in the later years which consolidated Hitler's position with the bulk of the German people as much as the Anscluss of Austria in the Spring of 1936. It must be borne in mind that the reunion of the Germans living in Austria and German-Bohemia with the rest of Germany had been a unanimous demand of all Germans, German Austrians and German-Bohemians in 1919, that, however, the peace treaties of Versailles and St. German had forbidden such a reunion, in flagrant violation of the right of self-determination of peoples which constituted one of the most important points of President Wilson's program. The tremendous support for the Anschluss of Austria within the German people is shown by document Blume No. 9: One must imagine what it meant if at that time a.o. the Austrian cardinals and bishops welcomed the Anschluss of Austria to Germany with the words "Heil Hitler".

It was this ideal side of Hitler's Janus-Head in which the bulk of the German people had unlimited confidence and to which it was definitely obedient.

Three circumstances played a particular part in this connection?

1) The recognition granted to the Third Reich and Hitler personally by foreign countries. I should like to refer e.g. to the glorification of Hitler in Eiscount Rothermere's book "Warnings and Prophecies" published in 1939.

2) The extraordinary effectiveness of the propaganda within Germany.

15) The judgment of the IMT states: 15) - Official Edition, vol. I, p. 182.

"Through the effective control of the radio and the press, ance of the regime.

Hostile criticism, indeed criticism imposed on those who indulged in it.

Independent judgment,

3) Hitler's contention which he already presented in his book "Mein Kampf" was: "Terror can only be broken by terror".16)This sentence meant that the red and communist terror could only be broken by strict force on the part of the State. Many people in Germany acquiesced in various terror-measures under the Nazi-regime of which they heard because they considered such dictatorial measures indispensable as defense against and for avoidance of the red terror, even though on principle they did not approve of them. The following words of the Austrian bishops were to be similarly understood:17) "We are also convinced that the danger of the all-destroying the National-Socialist movement."

men and foreigners who maintain that in case the moderate parties in France should not be able to remain in power a dictatorship by de Gaulle would still be preferable to a communist dictatorship. A similar attitude can be found in many instances with regard to the dictators Franco and Salazar.

For many Germans, however, Hitler's abuse of the command-power of the State became obvious at the outbreak of World War No. II. But at this moment it was too late. For actually at that time nobody in Germany could offer resistance to the development which led to the catastrophe. Moreover every campaign was explained and presented to the German people by its Government as a purely defensive war, and this was also true of the Russian campaign, I refer to Blume document No. 14 end the borderlines between an 16) - Cf. e.g. pp. 44-46 in "Mein Kampf", 489-493, Ed., 1939. 17) - Blume document No. 9, p. 4 (Doc. Book I, p. 98) aggressive and a defensive war are not fixed.

President Roosevelt in his radio speech on 11 September, 1941, in giving the reasons for his order to shoot at German and Italian submarines, said very strikingly:18) "If one sees a rattlesnake rising one does not wait for it to jerk but smashes it before."

Summarizing I might say: At least until about the middle of 1943 the bulk of the German people believed in Adolf Hitler as an eminent statesman and General and German hero in a manner which in the last analysis can only be explained by making use of the experiences in mass-psychology and psychology of nations.

THE PRESIDENT: Dr. Lummert, do you agree this might be a good point at which to suspend for lunch?

DR. LUMMERT: Yes, certainly.

THE PRESIDENT: Then we will be in recess until :45. summations after we reconvene.

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(The Tribunal reconvened at 1345 hours, 9 February 1948)

THE MARSHAL: The Tribunal is again in session.

DR. KOESSL: Dr. Koessl for the defendant Braune. The defense counsel discussed.

In view of the fact that his final plea is to be ready

THE PRESIDENT: Do you want him taken into Room 57?

DR. KOESSL: Yes, please.

THE PRESIDENT: Dr. Braune will be excused and taken to Room 57 so he may confer with his counsel.

Proceed Dr. Lummert.

DR. LUMMERT: It is on page 20, Your Honor.

In the fourth place, as regards the "unexpectability" as set forth the East.

In order to avoid repetitions I should like to refer to the detailed expert opinion of Professor Dr. Maurach (Document Ohlendorf No. 38) and I should like briefly to call attention to the Soviet fact which was set forth by Prof.

Maurach in detail that at that e.g. in Poland and in Russia.

Everybody in Russia and Poland knew and still knows what the word "horpom" or "pogrom" means.

In Germany pronounce or spell it with an "r" in the wrong place, namely "program" (as if the word contains the Latin prefix "pro"). Without the compel Last but not least, in connection with the "unexpectability", the Fuehrer Order to the Einsatzgruppen in the East and the direct orders of the superiors, e.g. of Brigadefuehrer Nebe to the defendant Blume, and the urgent character of these orders must be taken into consideration.

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Here "unexpectability" and the legal aspects of necessity, in particular necessity caused by orders issued, overlap. Since these questions are dealt with in some detail by my colleagues Dr. Aschenauer and Dr. Gawlik I take the liberty of referring to their statements.

Summarizing I may say: If the Tribunal is to pass a fair judgment in this phenomenal trial, all the special conditions with regard to the legal problem of "unexpectability" with which the defendants were faced in 1941 have to be considered, from the point of view of the defendants at that time. In effect Justice - without any feelings of hatred or revenge and without any prejudice - can only be administered in that way.

I now turn to the case of the defendant Dr. Blume who is represented by me before this Tribunal. ed i.e. the actions of the defendant Blume in his position as temporary commander of Sonderkommando 7 a in the East in the summer of 1941, from the beginning of July until 15 August, 1941, the Prosecution and I as defense counsel are fundamentally in agreement as far as I can see. This is the reason why neither the Prosecution, as I was told by Mr. Ferencz, nor I myself drafted a closing brief for the defendant Blume. 7a can clearly be seen 20)

a) from his own examination and the two supplementary affidavits he gave (Blume documents nos. 4 and 13). 20) Cf. Transcript pp. 1764-1846, 1858 - 1863, 1867 - 1875, 1881

b) from the reports of events for the time in question (see Blume Document nos. 5 and 6).21)

c) from his affidavit NO-4145, Prosecution's Exhibit No. 10, in connection with the letter written by the defendant Blume to Mr. Wartenberg on 29 June 1947, to complete this affidavit (Blume Document No. 8);

d) from the affidavit of the witness Radl (Blume Document No. 11);

e) from the affidavit of the witness Krueckemeier (Blume Document No. 12);

f) and finally from the excerpts from the newspaper (Voelkischer Beobachter) offered as a supplement (Blume Document No. 7) and some additional evidence, i.e. the two affidavits of the defendant Steimle (Prosecution's Exhibits nos. 119 and 61) and the examinations of the witnesses Naumann, Schulz, Six and Steimle by me as counsel for the defendant Blume. roughly credible way. They are borne out by the entire evidence. I believe I can say that the Tribunal in examining the defendant Blume gained the impression of a frank, upright and truthful character. (Blume documents no.s 15 - 29 and 31 - 35). Sonderkommando 7 a during the period of time up to 20 August, 1941, in the report of events no. 73 (Blume document No. 6, 0. 25) there is such a bulk of material in evidence before the Tribunal concerning the exaggerated figures of liquidations usually reported by Brigadefuehrer Nebe, who was Chief of Einsatzgruppe B, that this alone is sufficient to consider this figure as refuted.22) 21) Cf. transcript pp. 1805 - 1822. 22) Cf. examination of witness Blume, transcript pp. 18-3, 1807-1808, and 1818; affidavit Radl (Blume doc.

No. 11), p. 5; furthermore the Ott in this respect (transcript pp.

535, 825, 2234, 3768) as well as the affidavit of the witness.

Fumy (Ohlendorf document no, 32) approve of the Fuehrer -Order concerning the liquidations and-that as far as at all possible he evaded its execution.

but when executing it he acted because of extreme emergency 23) and finally, as early as in the middle of August 1941, he was relieved as being too "soft and burocratic" and was ordered back to Berlin.

Concerning this latter Six, and Steimle and Steimle's two affidavits.

24) charge of it, are the following:

1.) On 7 July, 1941, in the morning the shooting of 50-60 persons from Minsk.

This liquidation had been categorically ordered the the reluctance of the defendant Blume.

Nebe had directly ordered defendant Blume because of his obvious aversion to it.

For this liquidation.

In view of the order issued by Nebe to Foltis, Blume

2.) On 19 or 20 July, 1941, the liquidation of about 80 persons in Witebsk.

The defendant Blume himself ordered Hauptsturmfuehrer Foltis left Witebsk.

The defendant Blume on the witness stand, testified as the liquidation; I should like to refer to this testimony.

25)This is 23) Cf. trans.

pp. 1768-1770, 1777-1779-1790, and 1837-1840; affidavit Radl (Blume document No. 11), pp.

3-5 24) See trans.

pp. 847, 1025, 1378, and 2024 as well as Pros. Exh.

nos. 119 and 61 (cf. trans. p. 1823) 25) Cf. transcript pp.

1787-1790; furthermore aff. Radl. p. 5) On the other hand the defendant Blume had nothing to do with the shooting of 27 Jews in Witebsk who refused to come to work and which took place a short time before, because Foltis carried out this execution under the Fuehrer Order on his own initiative without the defendant Blume having issued such an order or having any knowledge of it.

July and beginning of August 1941 - Hauptsturmfuehrer Foltis was ordered to Welish to fight partisans. There Foltis independently and on his own initiative carried out the liquidation of 50 - 60 people. The defendant Blume did not issue an order in this case either, on the contrary, this liquidation was in contradiction to the firm resolution Blume had made in Witebsk after the liquidation there to avoid any similar situation by all means. The defendant Blume only learned about it when Foltis returned from Welish. He therefore had no chance to prevent the execution. Foltis acted within the framework of the Fuehrer Order. armed partisans or saboteurs in very rare cases only, altogether about 10 - 15 persons within 6 weeks. On the witness stand the defendant Blume testified that in such cases careful interrogations used to take place, and that executions which were ordered according to the Fuehrer Order concerning such cases were carried out only if the guilt of the partisans or saboteurs had been clearly proved. I believe I need not go into further details in this connection.

The above mentioned enumeration is complete (paragraphs 1-4). This has been confirmed by the defendant Blume on the witness stand under 26) oath.

only remains the shooting of about 80 Jews in Witebsk on 19 or 20 July 26) Cf. transcript p. 1805 (on this page the translation unfortunate ly is incorrect and incomplete.)

1941, carried out by the defendant Blume by strict order of his superior Nebe. I want to call Your Honor's attention to the fact that the defendant Blume, from the beginning, admitted this case voluntarily and on his own. There is no report of events and no other evidence concerning this case. The defendant Blume in this connection is incriminated only by his own testimony which he gave voluntarily.

I should like to request the Court, in deciding the defendant Blume's guilt or innnocence in this case - Witebsk - to take into consideration all statements which I made in the first part of my plea concerning "unexpectability", and which the defendant Blume made on the witness stand about the details of the state of emergency in which he found himself at that time. The conclusion can only be as follows:

The defendant Blume could not be "expected" to act differently in the Witebsk case.

He had no other choice at that time. If he had refused to obey Nebe's order, a court martial proceeding would certainly have been started against him which would have resulted in a death sentence. This alternative, however, left no moral choice for him. as his good character is concerned - was and is the very contrary of what the Prosecution has contended at the beginning of this trial. The Prosecution stated in its opening statement:

"Each of the defendants in the dock held a position of responsibility or command in an extermination unit. Each assumed the right to decide the fate of men, and death was the intended result of his power and contempt."

None of this has been proved against the defendant Blume. On the contrary, it is proved that the defendant Blume never wanted the killing of Jews, that he ordered it in a single case - Witebsk - only under extreme compulsion limiting it to able-bodied men and sparing women and children, that from Witebsk he sent a courageous report to his superior Nebe with the aim of preventing the liquidation of the Jews and of having the Fuehrer Order revoked ,27) that in his conversation with the local commander at Wilna he did not intend the killing of Jews, but recommended very limited measures under the necessity of the Fuehrer Order.

28) of the defendant Blume give the picture of a splendid and good character (Blume documents nos. 15-29 and 31-34, also 11 and 12).29) I need not go into details. If I may summarize the most important facts in these affidavits, I may say that all these affiants always emphasized the following characteristics as the salient characteristics of the love of truth, his pleasant and kind manner which made him popular wherever he went, and his fairness in sports and his tolerance of other people's opinions. As far as the affidavits refer to the professional activity of the defendant Blume, they confirm his absolutely correct and decent attitude and - briefly put - the fact that in his whole professional

career he only served law and justice. Count I and II of the Indictment. after 1 September 1939, in various organizations which have been declared criminal by the International Military Tribunal. I can be brief in discussing this Count.

a.) Count III, B of the Indictment charges the defendant Blume with having been a "member of Offices III, VI and VII of the Reich Security Main Office which constituted part of the SD. This, however, is a mistake. The defendant Blume was never a member of these offices of the RSHA.30) 27) Transcript pp. 1786-1787 and 1820. 28) Transcript pp. 1884 - 1888 29) Cf. transcript pp. 5234-5237 and transcript of 2 February, 1948, afternoon session, and transcript pp.

5232-5233 30) Cf. transcript pp. 1851 and 1877 - 1879.

b.) Count III, C of the Indictment charges the defendant Blume with having been a "member of Office IV of the Reich Security Main Office", which constituted part of the so-called Gestapo. This again is a mistake. The defendant Blume was never a member of Office OV of the RSHA.31)

c.) Count III, A of the Indictment charges the defendant Blume with membership in the Schutzstaffeln of the NSDAP, i.e. the so-called SS. In the final analysis this is not correct either; the defendant Blume can not be punished for this, either. only a certain group composed of those persons who officially became members of the SS, etc.32) The essence of this offense according to the clear wording of the IMT judgment is cooperation for criminal purposes in the above mentioned group of the organization.33) Before the IMT Justice Jackson spoke accordingly:34) "The purpose of declaring criminality of organizations.

... is punishment for aiding crimes...."

The defendant Blume was only a police official. He never did any service in the SS and therefore never rendered any "cooperation for criminal purposes" within the SS.35) He never held any position in the SS, but only a so-called assimilated rank. In this connection I refer to the official decree concerning this assimilation of ranks dated 23 June, 1938 (Blume document No. 10) and to Blume's testimony concerning this question.36) a formal member, but no "real" or "active" member of the SS. 31) Cf. transcript pp. 1852 - 1853, and 1879 - 1881 32) Cf. Offocial Edition, vol. I, p. 273. 33) Cf. Offocial Edition, vol. I, p. 256 34) Cf. Official Edition, vol. VIII, p. 369 35) Cf. transcript p. 1848 36) Cf. transcript pp. 1848 - 1850.

days before the German capitulation, received a military draft call for the Waffen-SS with the military rank of a private first class. like any other soldier, the defendant Blume had no possibility but to obey this draft order.37) the "great problem" of the Nurenberg Trials. These are the questions concerning jurisdiction and justification of these tribunals and the doubts arising from Control Council Law No. 10. this plea. However, I intentionally mention them at the end. For I believe that the statements made in the previous paragraphs I - III in themselves are sufficient a foundation for my request to acquit the defendant Blume. Moreover, in this case No. 9, we are faced with the fact that many thousand innocently exterminated human beings demand that justice be done. Therefore it might be said that it is of no relevancy whether e.g. this tribunal must be considered an American or an International one and whether Control Council Law No. 10 contains international law, be it as codification or innovation, or whether the four occupying powers in the Control Council Laws are competent merely to pass occupation laws (under Article 43 of the Hague Convention on Land Warfare), or whether they executedGerman legislative power since according to the Berlin Declaration of 5 June 1945, they assumed sovereign legislative power over the former German territory and its population, the very legislative power which Hitler held as dictator during the preceding years. of the l aw the formal aspect is very essential; and sometimes the ultimate problems of justice are hidden behind these formal questions. Therefore I should like to say a few words concerning the "great _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ 37) Cf. transcript p. 1850.

problem" of the Nurenberg Trials.

THE PRESIDENT: Just a moment, please.

DR. LUMMERT: It is in the middle of page 30.

THE INTERPRETER: I am sorry, Your Honor, there is one page missing in the translation. Possibly it could be read slowly for translation.

DR. LUMMERT: You have read this already?

THE PRESIDENT : You have it now?

DR. LUMMERT: I thought the interpreter could read the missing paragraphs. At first I can read it to you.

THE INTERPRETER: Yes, that is possible.

DR. LUMMERT: The Prosecution in its Opening Statement called the Indictment a "plea of Humanity to Law."

What does Humanity means? Nobody has found more striking words for the explanation of this term than the German philosopher Johann Gottfried Herder. He was born in East Prussia and lived in Weimar after 1776 and during the years from 1793-1797 he published several collections of "Letters to promote Humanity" in connection with his "Ideas on the philosophy of the history of mankind." In the 27th letter he wrote the classic words:

"The divine in us therefore is education for humanity; all great and good people helped in it, legislators, inventors, philosophers, poets, artists, every noble man in his position, in the education of his children, in observing his duties, by example, work, institution, and philosophy. Humanity is the treasure and the result of all human strivings, it is the art of mankind. The education for it is a work which has to be continued ceaselessly; or also we, higher and lower classes, shall lapse back into crude animality, into brutality." Law? But which is this Law? Under section I, 2a of this plea we saw that thus far the sovereignty and egoism of the individual States are the highest law on earth and that the alleged international law of Control Council Law No. 10 has thus far actually not been recognized by the individual sovereign States as supernational law nor has it been embodied in the Charter of the United Nations.

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For the time being then, only the sovereign power of the victor States is using those new principles of law against citizens of defeated Germany unilaterally. From this one-sidedness results the doubt in the "justice", and also the "great problem" of the Nurenberg Trials. This problem will remain unsolved as long as the "reign of Law" in an "organized mankind" in the sense of the great ideas of President Wilson has not actually been established. This problem, on the contrary, would be decided in the negative if the organization of mankind does not take place. For in this case "les lois de l'humanite etdles exigences de la conscience publique" (the Laws of humanity and dictates of the public conscience) which have already been mentioned in the introduction to the Hague Convention on Land Warfare as the basis for this Convention, could not be realized. Present world developments, just as in the years after 1918, are obviously getting away from this goal. gradually to overcome force among men in favor of a general peace and a supernational law of mankind, can only fear that the work done in the Nurenberg "Palace of Justice" during the past 2 1/2 years might have been one-sided and therefore in the final analysis vain and unjust. to the solution of the legal problems of mankind.

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THE PRESIDENT: Dr. Lummert, I wish to congratulate you on the excellent manner in which you have presented your plea in English, although that is not your native language.

DR. LUMMART: Thank you so much, Your Honors.

THE PRESIDENT: Who is ready now? Do we have the final summation of Dr. von Stein's? I don't have it.

Your Honor, Members of the Court: I have submitted. Where I have summarized the essential results of the evidence. Principally I wish to repeat here once more what I have particularly emphasized at the close of this trial-brief: That it is necessary to oppose in the strongest possible way the contention expressed by the Prosecution that they need carry only a minor part of the burden of proof in regard to the culpable participation of the defendants in the criminal acts alleged in large outline by the Prosecution. The more grievous the misdeeds are with which a defendant is charged the more conscientiously and indubitably must it be proven that he really committed these acts. May I refer here to the statements of the Military Tribunal No. IV in the judgment of Case V. (Quoted in the JOST-Doc. Book IV, Page 7, JOST Doc. No. 36). At the close of the trial-brief it is explained what remains of proven criminal acts on the part of the defendant Dr. SANDBERGER after the results of the evidence have been appraised. Therefrom it follows that essentially 2 questions are relevant for the decision of this Case:

1.) How are SANDBERGER's measures against Communist activists and

2.) how are SANDBERGER's measures against the Esthonia Jews to be judged?

SANDBERGER's measures against Communist

1.) The reasons for the Fuehrer - Order.

based on the Fuehrer-order. Inasfar as the order deals with Communist activists it is essentially based on the following considerations. System of Government and the political movement of Communism was a fact. For him the Bolshevic State apparatus was the most important representative of the Communist movement and carrier of an active Imperialism, which was a mixture of Panslavism and the aim of Communistic world revolution. social leadership was rooted out. All experiences since 1917 showed this clearly, at least in the Baltic countries, which in 1940 were incorporated into the Bolshevist Federation of States. The witness MAE has also confirmed this specifically for Estonia. A clear example, true for all Baltic States, is given in the liquidation-list of the NKWD, published by the Canadian University Professor MIRCHCONELL and which I inserted in the Doc. Book SANDBERGER II. the nature of which is depicted by the Bolshevists themselves in the brochure of the Press-Dep. of the Soviet Embassy in London "We are Guerillas" contained in OHLENDORF Document Book II, from this very description the illegality and criminality of this form of struggle in view of international law becomes evident. (Comp, also the opinion of University professor MAURACH submitted for OHLENDORF). This form of struggle consisted in preparation and execution of an illegal levee en masse on territory effectively occupied by enemy troops.

THE PRESIDENT: Dr. von Stein, you don't contend that partisan warfare was originated by the Bolshevists do you? You know that in the Napoleonic invasion of Russia partisan warfare was quite common. You know that historically, don't you?

DR. VON STEIN: Yes, Your Honor, I only want to contend that this partisan war developed in a particularly cress manned in the Eastern campaign.

THE PRESIDENT: But you say here, "Bolshevism also developed new types of warfare, the partisan war." Well, it certainly was not new,

DR. VON STEIN: No, Your Honor, I am not trying to spy it was new. I am merely trying to spy that the manner of fighting which had been developed by the Bolschevists was new, that is to say, fighting became more cruel all the time. It cannot be compared with the beginnings of the partisan war which you have just described.

THE PRESIDENT: Very well. Proceed.

DR. VON STEIN: It was a war to the knife; which was conducted by the partisans in the bitterest and cruelest manner. It threatened the reinforcements, replacements-and supply-communications in the rear of the troops. Particularly dangerous was this warfare in such vest en ere? as Russia. In regard to the Estonian area there was a very special danger in the fact that most important communication lines of the German Army Group North ran through Estonia, namely from the navel port of Reval over Narve and Pleskau to the front end from the Reichs-border over Dorpat in direction Leningrad. To nip such movements in the bud, or to keep them to as small a size as possible, severe measures were necessary for the sake of preservation of the whole fighting front. To this came the particular type of enemy. The Eastern man is capable of a fanatical toughness, almost unlimited endurance and simply limitless faith. For him the fight against the "fascist German troops" was a crusade. The idea of the Bolshevist State of the future was an idol for him, which he worshipped as he did the Icons in former times. by the war he regarded as essential. That such a war would to a greater part unset the existing principles of international law was clear to him, freed with an enemy like Bolshevism.

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For he know its attitude toward international Law, which meant nothing else but to keep its hands essentially free in case of a collision with a "capitalist state". (Compare also the opinion of University professor MAURACH, Document BOOK OHLENDORF II and SANDBERGER II-A). by the wry, expressed a similar opinion for the case of total war (British Yearbook of International Law 1944, P. 72):

"But original proceeding before the municipal courts itatively the existing Law on subjects of controversy".Total war has altered the complexion of many rules.

At a time when the "scorched earth" policy with regard to the belligerents own territory has become part of a widespread practice, general destruction of property ordered as an incident of broad military strategy will not property form the subject matter of a criminal indictment." war strong shock effects may be obtained by certain draconic measures, which as a final result may cause the weakening or disintegration of the enemy's will to resistance. Measures of such effect were regarded as admissible in the war against Japan.

Henry L. STIMSON, 1940 - 1945 secretary of War reports in his article: The decision to use the atomic bomb (Excerptly):

"to extract a genuine surrender from the emperor of Japan and Empire.

Such an effective shock would save more lives, both American and Japanese, than it would cost."

the conviction by such measures to nip the partisan war in the bud or to suppress it effectively.

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The welfare of the whole front was menaced by the unrestricted partisan war. HITLER may have expected a shock effect from the measure he ordered, which in the end would save the lives of an infinitely greater number of German soldiers. I have proven that just in the Estonian Territory the Soviet leadership put great importance to partisan movements in the widest sense of the word. It even left the most important officials back in Estonia in order to organize as extensive and effective an underground movement against the Germans as possible. 2.) Was the Fuehrer-order to that extent admissible according to international law. the territory occupied effectively by the German Wehrmacht. Inasmuch as Communist functionaries actually distrubed or threatened the security, as active directors of sabotage or espionage organizations, or by sabotage, incitements and other hostile acts, murder, espionage, possession and use of weapons, they could be shot according to the law of war (war rebels). Here the same principles would apply as have been developed for the illegal levee on masse in the occupied rear of the troops.

So says i.e. OPPENHEIM Vol. II, Par, 116, Page 278/279:

"What kinds of violent means may be applied for these purposes, and imprisonment are lawful means for those purposes."

surrection and resistance or other serious crimes and inasmuch as such acts were proven to them, they could be shot in accordance with international law. Greek northern border.

The Basic Field Manual, Rules of Land Warfare states in No. 12:

"Uprising in occupied territory - If the people of a country, or their protection."

It states further in No. 349.

"War rebels - War rebels are persons within territory under hos forces or against the authorities established by the sane.

If upon to do so by their own expelled government and in ("the event kind by overt act of hostility".) And in No. 350:

War treason: Examples of acts which, when committed by inhabitants follows:

Espionage, supplying information to the enemy: damage to aiding prisoners of war to escape; conspiracy against the occupying forces or members thereof;.... and circulating propaganda in the in terests of the enemy."

3. What has Sandberger done?

The defendant Sandberger was active only to this extent. In so far as Communist functionaries were shot in his area and under his command or on his responsibility, this did not take place in the form of mass execu he was not able to establish such.

Nor was it necessary. According to No. 356 of the Rules of Land Warfare, too, regular proceedings are adequate to establish the lapse and guilt of "war rebels. The more detailed arrangements for these proceedings must naturally be made in accordance with circumstances and possibilities Pt the time. ings were carried through. Over and beyond that, however, it has been proved by numerous depositions that Sandberger always behaved correctly, decently and fairly. the behavior as a whole of Dr. Sandberger in Esthonia, I quote as especially typical, one part from the deposition of the Swedish Major Mothander who was in Esthonia for 2 long time as? representative of the Swedish government. The latter says among other things about Sandberger: "He was generally regarded as a decent fellow. A natural tendency to human kindness and justice was often evident in his nature. Therefore he was always open to what is called Argumentum ad hominem! He showed himself to be a gentleman through and through both as official and as man". 4.) Sandberger acted in full consciousness of the legality. this. For every state it is an elementary precept of self-preservation to suppress resistance in the actually occupied area in all circumstances. The Supreme Commander decides what measures are to be taken in the individual case. He alone can decide what military necessities command him to do. This is the conception too of the expert on International Law, Hyde, (international Law chiefly as interpreted and applied by the United States 1945 Vol. II, section 655, War Dept. Rules of Land Warfare 1940).

"If the term military necessity implies great latitude and is invoked the law of options itself permits in case of great emergency and allows a belligerant commander to be the judge of the existence and sufficiency of the need".The measures against Communist activists were severe.

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But in view of the general war situation and the special position in Esthonia, they were, the defendant was convinced, justified. The resistance which naturally became manifest on receiving the Hitler Order as connected in the first place with the extensive measures timed simply at the Jews, that is, regardless of whether they had become active as partisans, war rebels, or war traitors or belonged merely to the civilian population, it was connected also however with all collective measures against other people who had no individual guilt as far as acts endangering security were concerned. Now when he came to Esthonia and had convinced himself on the spot of the horrows which the Communist activists had perpetrated there, he was also convinced that such measures were in the end unavoidable against war rebels and war traitors of the kind. This was an elementary precept of self-preservation, the self-preservation, which in particular is fully recognized in Anglo-Saxon international law. For the conviction of having acted in defense against a state of emergency which actually existed - a conviction to be claimed for Dr. Sandberger as for all defendants - reference is made to the detailed statements of Prof. Dr. Maurach in his Counsel's Opinion in the Ohlendorf Document Book II and in the Sandberger Document Book IIA. The Prosecution has not proved that Sandberger, in the measures against Communist activists, behaved contrary to the principles of International Law. Instead, it has the onus probandi the more so because I have proved that Sandberger was judged to be correct, fair and upright in general and even in Esthonia. 1.) Was the Internment an international offence? issued on the basis of this order, to proceed against the Jews in the occupied territory, were the basis of his order.

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The inner opposition which had arisen naturally in the defendant Sandberger when the Fuehrer Order was made known was connected above all with this part of the order. Sandberger was, as I have proved by countless affidavits, a morally pure personality who, from the beginning, had adopted a humane attitude in the Jewish question, which deviated from the official Nazi doctrine. He condemned, too, the measures hostile to the Church and protected a number of prohibited student institutions in the religious sphere. In view of these facts, what Sandberger stated about his inner attitude to the Fuehrer Order is credible without more ado. He said: The contents of this Order were so completely foreign to anything I could previously have imagined that I simply could not conceive its realisation. In particular I could not imagine that I myself could be capable of doing it and, on the other hand, I did not believe that I could demand something of my man that I could not do myself.......I considered the Order inhuman concerned, in so far as ever was possible without however offering open resistance which would certainly have been senseless.

This also explains all the subsequent action of Sandberger's. He disapproved, too, the collective internment of the Jews and did not order the internment as a preliminary measure either for the killing measure which he disapproved of all the more but as a substitute measure enforced by his order in place of the far worse measure. He ordered the less farreaching even if equally disapproving of measure of deprivation of freedom which was nevertheless bearable rather than the destruction of human life. This internment cannot be disapproved of from the point of view of international law as the result of the enforced weighing up and down. When, for example, in the Boer War, a general laying waste of the country was started, innumerable women and children of the Boers were brought into the concentration camps which were newly created at that time, to avoid something worse.

I quote from Oppenheim, Page 324' "It is also lawful when, after the defeat of his main forces and than let them perish on the spot.

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The practice resorted to during the South African War of housing the victims of devastation in concentration camps must be approved." ternational law, was sanctioned here because it was not to prevent worse things, or because worse things were to be prevented.

The very same applies also to the case of Sandberger. The measure of internment was to prevent worse things, namely death. Therefore, no objection against this measure can be raised from the point of international law. Besides that, it represented an emergency measure to prevent the Jews from being killed and, Sandberger, in order to ward off the violation of the right to live, was compelled to violate the right to liberty even if this was done only under compulsion. 2). Why has Sandberger confined his measures to the internment? he could prevent the execution of the Jews. He was convinced of the fact that the lawless order for execution of the Jews would lead to enormous difficulties or even complications in the occupied territory. At a time when the United States of Worth America had not yet entered the war, he was right in assuming that the lawless execution of the Fuehrer order would lead to an aggravation of the international situation and that HITLER, in spite of all, might yet decide to mitigate or limit the order.

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This hope was by no means unjustified. For in the following period it also occurred repeatedly that Fuehrer orders were limited. In the course of 1942, for example, the treatment of the Soviet prisoners of war was considerably cased. Moreover, inmates of concentration camps were, contrary to the original tendency, assigned to an increasing extent to economically essential work. The prisoners taken in the fights against partisans were used later on predominantly as workers. executive authorities to achieve a change or cancellation of the execution order, is also shown in the statement by Erwin LAHOUSEN which the Prosecution itself presented in the rebuttal document-book 5 D under Doc. No, 2894, Exhibit 228. SANDBERGER's intention to intern the Jews is also substantiated in the situation report No. 111 submitted by SANDBERGER's deputy in the latter's absence. According to that report all Estonian Jews were to be housed in camps. At the same time arrangements were made for the permanent financing and feeding of the camp inmates. If Sandberger, however, intended to arrange for a long term financing and supply with food, he certainly did not order the internment as a preparatory measure for an execution following shortly thereafter. If an early execution would have been contemplated it would have been quite unnecessary for him to make any efforts for furnishing and enlargement of an internment camp.......when in San forger's absence, without his knowledge and consent, Stahlecker ordered the execution of a part of the Esthonian Jews, the former, after his return, had the rest of the Jews transferred to the Pleskau camp. If he had approved in his innermost of Stahlecker's aim to make Esthonia free of Jews, he then would have carried out the execution immediately and would not have arranged for the transfer of the Jews to the Pleskau camp which was located beyond the borders of Esthonia.

This in addition to the fact that, according to human foresight, the life for the interned Jews in Pleskau was by far safer than in Reval. The Headquarters of the Army Group North was in Pleskau. No reasonable person could expect that such an execution would be ordered in the immediate neighborhood of the headquarters as this was then ordered by JECKELIN, again without SANDBERGER's knowledge and consent, for the Jews interned in Pleskau. 3. In carrying out the executions SANBERGER's subordinates acted under In both cases the execution was ordered by SANDBERGER's superiors and carried out by subordinates of SANDBERGER.

In one case the chain of command led from Stahlecker to Carstens, in the other case from Jeckeln to Bleymehl. This order was absolutely binding for both. Active or passive resistance, or any kind of disobedience would have entailed capital punishment for desertion, insubordination or underlining the permit of the armed forces. The sane principles were enforced in the SS. In consequence of a special decree, issued on 9 April 1940, the entire security police including the SD were alerted for special operations. If the penalties, pronounced by the Wehrmacht court martials, were harsh, those of the SS-courts were draconic. The simple death penalty was comparatively mild. Intensified kinds of death led certain death by way of the concentration camp or special probationary units. Compare Doc. Book I for the defendant Blume. Tribunal II had to deal with in the case of Milch. There the Tribunal stated:

"It has never been our intention nor did we ever suggest resulted in the loss of his life."

But then, is a punishment admissible for acts which were ordered or committed under the compulsion of a dictated order?

Is a punishment admissible if a violation of such an order was threatened by such draconic penalties that "no other choice was left"?

The Military Tribunal No. IV has stated in Case No. V that the Reich was "ubiquitous", "ready for action and in a position to inflict cruel punishment immediately on everyone who did something which could have been interpreted as sabotage or opposition against the execution of decrees or regulations issued by the government." (German record, page 10736) acting under compulsion. large extent. How should Sandberger then be hold responsible for ations in which he did not participate, of which he was not informed, which he did not want, and the perpetrators of which are besides exculpated to a large extent by the state of emergency in which they were?

4) Sandberger had no criminal intent either. the reason that the Fuehrer Order was not yet carried through within Sandberger's sphere of command, although the number of Jews was only small. This is explicable. For it was declared to the defendant Sandberger, especially by his superior Stahlecker, that he was not severe enough for the things in the East and that he showed no understanding for the requirements of the time and space (Transcript of the sessions, page 2223 of the German text).

Sandberger did not order the internment as a preparatory measure for the killing of the Jews, but, on the contrary, in order not or not yet to have to order their being killed.

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It cannot be said: Jews were killed within Sandberger's sphere of command, therefore he is responsible. This more responsibility for the result of a crime is not recognized in criminal law, it is on the contrary rejected. A crime exists only whore a serious guilt exists. If the mere responsibility for the result of a crime is not even recognized in criminal law the less so in International Law. The International Law hitherto existing declined the criminal liability of individual persons. It was introduced on this scale and to this extent by the Nuernberg Verdicts only. It will also in future remain an exception and will, probably be applied partially only, that means not against members of the victorious powers. Thus it is an exception. Now, according to an old legal principle, valid for millenniums, exceptions are to be interpreted restrictively. If thus the responsibility for the result of a crime is not recognized by criminal law, the less so by International Law, if it is indeed intended to punish individual persons for delicts within the meaning of International Law. Also for that reason a liability of Sandberger within the meaning of criminal law must be declined.

5) Sandberger was not connected either with the killing. the internment. Thus, Sandberger had "been connected" with their being killed. If this tern of the Control Council Law-claims to have a reasonable meaning, a merely external connection with a committed crime is not sufficient, Whoever supplies the weapons with which prisoners are shot, contrary to International Law, is not connected with the crime of killing. He knows indeed that the weapons are suitable and destined for the killing of men. He creates a not at all unessential prerequisite to the killing. This condition is, however, not taken into consideration in connection with the crime, since the supplier could not prevent the misuse and, considering it reasonably, the person alone is responsible who commits the criminal action.

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the crime, and co-operates in connection with the crime by any legally essential actions or omissions, His responsibility is either constituted by the fact that he

a) actively participates in the crime

b) or inactively tolerates the crime, although it would be the meaning of the Control Council Law refer to active actions. The "being connected" with a crime refers, however, to those forms of co-operation in which an active participation does not exist, but still an objectionable passive participation, Such a participation is to be presumed, in those cases in which a commander does not supervise his subordinates sufficiently or does not prevent excesses, although ho can foresee them. This is probably also meant by the Prosecution in stating (German Transcript of the sessions, page 64):

"The rank and the position held by these defendant comprises the authority to supervise their subordinates.

This authority command renders them unequivocally penally responsible."

and acts pertaining to the execution. Penally relevant are all acts pertaining to the execution, and that from the first commencement until the completion of the crime. Preparatory activity is, however, not punishable, unless it constitutes a punishable act in 9 Feb 1948_A_MSD_19_1_Hoxsie (Juelich) itself.

The thief who brings a ladder to a certain place in order to commit a burglary prepares by this the burglary. In so far he cannot yet be punished. He only renders himself punishable in the very moment in which he begins to execute the burglary, that means to climb the ladder, in order to execute the burglary then in immediate connection with this. The act pertaining to the execution thus is an unbroken chain of events with regard to time.

THE PRESIDENT: Dr. Von Stein, in order that we may not misunderstand you argument in this respect, do you contend that if Mr. X is aware that a burglary is to take place and then does nothing further that he is not liable criminally for having taken the ladder to the place of the crime? Is that your illustration?

DR. VON STEIN: What I meant was - if I want to stick to this example - if the person concerned knows what action others intend and he assists them in some manner, however, and assists them to such an extent that it makes it easier for the perpetrator to commit a crime, then he is punishable.

THE PRESIDENT: Then your illustration is not correctly put in your summation "because you say here he only renders himself punishable at the very moment in which he begins to execute the burglary, that means to climb the ladder, be he doesn't have to climb the ladder if he has taken the ladder there so that it may be used in a burglarious enterprise.

DR. VON STEIN: Your Honor, the example may not quite apply here. With a ladder it would be like this; if the person concerned only places a ladder there but knows nothing about the plan and does not commit any other action then he is not liable to punishment

THE PRESIDENT: If he -

DR. VON STEIN: --but the example was as follows:

THE PRESIDENT: Just a moment, Dr. Von Stein. If you contend that he know nothing about the burglary and took the ladder with the understanding that it was to be used for painting a house, certainly there is no crime committed, but we didn't understand your illustration to be that.

If you say now that he knew nothing about a burglary then the illustration is of no consequence whatsoever.

DR. VON STEIN: Your Honor, I merely wanted to determine a preparatory work from the point of view of time. Preparatory work can have been done so much earlier that it can no longer be considered a punishable act from a legal point of view. What I wanted to say is when preparatory work is liable to punishment. I said principally that preparatory work is irrelevant from a legal point of view unless this preparatory work as such constitutes a criminal act. That was my principle statement.

THE PRESIDENT: It does not constitute a criminal act unless the preparatory work is done knowingly, that it is part of a criminal act.

DR. VON STEIN: Your Honor, there are certain crimes according to the German law which refer to preparatory work, and they are only liable to punishment because the legislature determines them as a punishable act expressly. Apart from that preparatory work is not liable to punishment from a legal point of view. The example I have chosen with the ladder, it is like this, that because of the preliminary work an action rises which can be described at the beginning of the commission of the crime, that is the getting up on the ladder. That is what I was trying to explain.

THE PRESIDENT: Well, we understand that you understand that if an individual obtains and carries a ladder to a certain place knowing that a burglary is to be committed with the use of that ladder and the burglary then does actually take place that he is particeps criminis. That is correct statement, is it not, from your point of view?

DR. VON STEIN: Well, your Honor, may I repeat? I will stick to the example of the ladder. If somebody merely brings a ladder and that is all he does, and he knows nothing about a crime apart from that, that the ladder is to be used for a burglary, then he is not liable to punishment.

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THE PRESIDENT: Very well.

DR. VON STEIN: Although the ladder was perhaps necessary in order to enable the criminal to commit a crime this preparatory work is of no importance from a legal point of view. But if the person concerned himself climbs the ladder hut the burglary is not committed then this preparatory task is an attempt to commit burglary. That is why it is of importance from a legal point of view "because something is added.

THE PRESIDENT: Yes, but carrying your illustration further, if the man did not know that the ladder was to be used for burglary and he climbed the larger not knowing that he was going to commit a burglary then, of course, he is not guilty. could have climbed the ladder to elope with his sweetheart, and that is not considered a crime in any country.

DR. VON STEIN: Your Honor, I want to say something to this example.

THE PRESIDENT: Let's take it up after recess. The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

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(The hearing reconvened at 1530 hours.)

THE MARSHAL: The Tribunal is again in session.

MR. HOCHWALD: If the Tribunal please, the Tribunal will certainly recall that the prosecution objected against an affidavit by the affiant, Jauer, and asked to cross examine this witness. As far as I am informed by the marshal, the witness will arrive tomorrow afternoon. Up to date the prosecution has not received a copy of the affidavit in question. I have asked Dr. Riediger, who promised it to me, and I have asked his assistant this morning. In order to be able to prepare the cross examination, I respectfully request that the marshal may inform Dr. Riediger to furnish prosecution with a copy of the affidavit on which I am supposed to cross examine the witness.

THE PRESIDENT: Well, Mr. Hochwald, the situation is simply this, that the witness will be in court and since the affidavit has not been introduced in evidence, you may have that affidavit unless Dr. Riediger wishes to give it to you. If he wants to submit it in evidence, then naturally he must present it to you, but if he does not then -

MR. HOCHWALD: If Your Honors please. I understood that the affidavit will be admitted under the circumstances that the prosecution will be permitted to cross examine the witness. If the witness comes here, I am supposed to cross examine the witness on the affidavit. I do think I should have a copy of the document.

THE PRESIDENT: Well, Yes, if Dr. Riediger still ;intends to submit it, then by all means you should have a copy of the affidavit.

MR. HOCHWALD: The original request of Dr. Riediger's was not for the calling of the witness, the original request was for the introduction of the document. I have requested to cross examine the witness on the contents of the affidavit, nothing else is subject of the -

THE PRESIDENT: Yes. The Secretary General is instructed to contact Dr. Riediger, counsel for the defendant, Haensch, and instruct him to turn over to the Secretary General the affidavit which is the subject of this discussion so that Mr. Hochwald may have a copy of it for the purpose of cross examining the witness.

when the witness takes the witness stand.

MR. HOCHWALD: If I may add, Your Honors, a German copy will be entirely satisfactory to me. Thank you very much.

DR. GICK: Gick for Strauch. Your Honor, I have submitted the affidavit of the wife of my client, as an exhibit and after conferring with my client, I have to say that my client agrees to it. if the prosecution wishes to cross examine this affiant.

THE PRESIDENT: Mr. Glancy, I don't know whether you heard the statement of Dr. Gick. It is to this effect, that the defendant, Strauch, has no objection to the calling of Mrs. Strauch as a witness for cross examination in view of the fact that he has submitting in his own behalf the affidavit made by his wife, Mrs. Strauch. The prosecution is so informed,

MR. GLANCY: Thank you, Sir.

THE PRESIDENT: Yes, indeed.

MR. GLANCY: We will take it under consideration later and see whether or not we wish to call the witness.

THE PRESIDENT: Very well, Dr. Gick. Proceed, Dr. Von Stein. And I don't think that you need to elaborate any further on what you have already told us with regard to the ladder episode. We all admit, I think, it is understood that if one is entirely unaware of the purpose to which a ladder is to be put -- unaware of any criminal use, that naturally he can't be charged with any crime. You seem to be still in a state of quandary about it. You don't think that anyone would accuse Romeo of having committed a crime because he went with a ladder to take Juliet away, do you?

DR. GICK: No Your Honor, I agree with you. I just would like to point out that the example chosen by me was a different one.

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I merely concerned myself with one person and not with a number of persons who were supposed to be involved in a burglary therefore, the misunderstanding.

THE PRESIDENT: Very well.

Dr. GICK: The execution of the crime of killing did not yet begin with the internment of the jews, but in the very moment in which the order to kill was pronounced by the commander who had the authority to do this. Responsible for the killing is that commander who was connected with the order to kill and its execution. He is likewise responsible for such killings which were committed without his express order, which he could, however, have prevented.

In the case under consideration Sandberger gave.. the order to intern the Jews, This can possibly be considered in itself as a delict within the meaning of International Law. On the other hand, the internment is no act pertaining to the execution of the killing which took place at a later date. If Sandberger had approved of the later killing, a (punishable) preparatory activity could perhaps be seen in the internment, Since he disapproved, however, of cases Sandberger did not participate in the execution of the crime of killing. On the one hand not by active commitment. For in both cases he neither participated in the issue, nor in the forwarding nor in the execution of the order. But he did not either by default as passive participation. For, in both cases he was not in a position to prevent the killing because of his being absent. More., over, he had expressly declared to Carstens that he did not approve of the Fuehrer Order and that he wanted to do whatever possible in order to keep himself and his Kommando out of this. In the case of Bleymehl, Sandberger did not know at all that Bleymehl was informed of the Fuehrer Order, and besides, in view of Bleymehl's chapters he thought he could be sure that the latter would by no means act independently.

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THE PRESIDENT: Dr. Von Stein, as we see it now, the issue before the Tribunal is whether Sandberger knew that once he placed the Jews in the internment camp they would probably be executed, and the determination of that issue can only come from all the facts in the case. If it is not reasonable to suppose that he could have anticipated their execution, then there was no crime. If reasonably, as a normal thinking persons he could have anticipated that the act of internment was but one stop removed from the act of execution, then there would be criminal knowledge. Does that conform to your view of the law?

DR. VON STEIN; Yes, but I wish you would consider, Your Honor, that furthermore one must consider the compulsory situation in which Sandberger found himself. Sandberger had received the order, first of all, to carry out the killing. Sandberger did not carry out this order. Afterwards Jeckeln again threatened him that he would have to carry out these matters, and Sandberger always postponed it. In other words, Sandberger was faced by the question of what he would now have to do. He could not always keep on postponing the matter, but once he had to act in same form and then Sandberger weighed the problem what to do. On the one hand, he has to violate the right of liberty, namely, the internment; on the other hand, he would have had to order the execution as per order. While weighing these two problems, Sandberger chose the violation of the law of less legal value. There was no third possibility for him. It was excluded. When Sandberger was faced by this choice he believed that perhaps after all there might be a possibility that beyond that a further execution might perhaps be prevented, be it either that the order might be revoked or that other incidents would happen and this thought of Sandberger had been taken from his finger-tips. He thought that perhaps orders might be changed later on or that they might be revoked.

THE PRESIDENT: Very well. We understand your position thoroughly.

Of course, we have also the other feature as to whether merely interning the Jews was not of itself a crime, depriving these individuals of their human liberty. When we come to that, then we must consider the question of superior orders. The more fact that he locked up these Jews even without any thought of their execution would not of itself he an innocent act unless he was acting under what you might regard as compulsion and then we come into the field of the determination of the defense of superior orders.

DR. VON STEIN: Yes, Your Honor, Already before I have stated in my plea that perhaps the interment could he an international delict, but I have also pointed out how one could hardly consider internment under international law, I have also cited from the scholars who have commented on this question of the internment and who consider internment as permissible according to international law. But in principle I agree with Your Honor, and I also say that even if one says that Sandberger had made himself liable to punishment because of the internments one would still have to consider the compulsory situation in which he found himself, especially the superior order under which he acted.

THE PRESIDENT: That is the point we wanted to make. The deprivation of the liberty of any person without justification is a crime. We start out with that premise, the defense is that the human liberty was deprived only because of a compulsion, influence, a superior order, and of course that takes us into another field of discussion which, of course, will be resolved.

DR. VON STEIN: Yes. May I continue?

THE PRESIDENT: Please do. been in a position to prevent his subordinates from killing. For the order to kill was given by a higher superior directly and was executed by a subordinate of Sandberger.

Dr. Sandberger's membership in an organization declared criminal by the I M T.

Dr. Sandberger is charged with having belonged to organizations declared ciminal by the IMT.

1) as a member of the (SS) of the NSDAP

2) as a member of Office III, IV and VI of the Reich Main Security Office. Dr. Sandberger too, had been conscious of the criminal character of the organization which he joined.

1. Dr. Sandberger became a member of the SS only as a member of the SD. He was never a member "of the SS" in itself - irrespective of his membership of the SD. He was neither assigned to a unit (A "Sturm", a Standarte, or perhaps a staff of a higher command) of the "General SS", the political force of the SS, not to a unit of the Waffen SS, the Military branch of the SS. He came to the SS only via the SD and his "membership" in the SS is not thinkable and cannot be judged separated from his membership in the SD, above all it cannot be proved with regard to criminal activity and taking an active part therein, or taking a "consenting" part in crimes of others by approval or even by a mere membership, in consciousness of a criminal nature of an organization. He can only therefore as a member of the SD have belonged to an organization declared criminal.

2. Dr. Sandberger joined the SD in 1936. At the beginning he occupied himself there with the reporting on the so-called "spheres of life". It was sufficiently discussed during these proceedings of what nature this activity was.

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I may be allowed to refer to all argumentations advanced by other defense counsel with regard to this especially to the exhibits and statements advanced by the defense counsel for the defendant Ohlendorf. Even the presiding judge himself stated in the course of the discussions on the SD reporting activity of a defendant during his activity as Chief of Office III in a Einsatzkommando that the lawfulness (consequently by no means criminal nature) of this activity is acknowledged. It is also shown that the SD most strictly opposed all features of public life which were contrary to an idealistic conception of National Socialist aims, including all kinds of excesses against Jews or other encroachments by the Party, by a disapproving manner of reporting. Neither at the date he joined the SD, nor during his membership could the defendant Sandberger therefore have been conscious of a furtherance of, much less of a participation in crimes. Add to this that from 1937 until February 1940, i.e. just the time during which the Nazis gradually proceeded to a policy of force, Dr. Sandberger really was only a formal member of the SD. He worked during that period in the internal administration of the Land Wuerttemberg and in the Reich Student Leadership, and from October 1939 onwards in the Immigration Center. For the rest, the SD never identified itself with this policy of the NSDAP which resulted in an increasing distrust towards its members, finally - as was shown by the direct examination of the defendant Ohlendorf - even in an actual prescription by these forces which more and more governed the Party machinery (as f.i. Goebbels, Ley and Bormann, finally the formal head of the SD himself, Reichsfuehrer SS Himmler, and the Chief of the Security Police and the SD). Of all things, the later "abandoning" of the SD and its members by the special top command, which the SD had jointly with the G on oral as, the Waffen SS, the State Police, the Criminal Police, etc.

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, shows the singularity of the incorporation of this intelligence organization into a formation which had its control agency in the Reich Security Main Office. At all events, the theory of a criminal activity, participation in or furtherance of crimes by Office III (SD Inland) and its subordinate agencies cannot be maintained after the evidence produced in this trial, since these indeed directly opposed and unlawful development of the Party activity. other agencies and their subordinated agencies committed or supported any criminal activity or whether their members even without any personal participation had to be or could be aware of any such activity by branches of their agencies. In any case, Dr. Sandberger had not, could not and was not obliged to have become aware of any such activity by other offices even after he had been appointed Referent of Office I in the Reich Main Security Office, Due to lack of any criminal intent and actions of the Security Service, Dr. Sandberger had also no cause to leave same up to the beginning of the second World War, but he endeavored to bring about his release after the war had started in order to serve in the army and to do so he removed first of all the impediment which consisted in his rheumatic ailment. But these endeavors of his were blocked already by the then valid strict order against any withdrawal from service, Membership in the SD was not voluntary any longer; release was now only and alone at the discretion of the common high command, shared also with other semi-military and military organizations, which extended their compulsory orders intended for organizations of this kind, also to the SD, entirely unsuited to this by its nature.

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The facts about the impossibility of a withdrawal from this time on, were proven by me in a number of testimonies; I refer in this instance to these exhibits contained in the Document Books. The Einsatzgruppen- and Kommandos were then formed for the campaign against Russia and Dr. Sandberger was ordered to Einsatzgruppe A as Commander of SK la. As a member of the SD it was to him in no way discernible or to be expected beforehand, that for a member of the SD every anything else but purely informational, especially police executive functions could come under consideration, for the one reason, that the SD had a common High Command with other organizations. Sandberger had no knowledge at all about the tasks of Einsatzgruppen before he was detailed for duty. Valid for his detail were regulations regarding police units on special duty. Insubordination was threatened with severest penalties by SS and Police Courts. Due to his enforced activity with a Sonderkommando Dr. Sandberger became aware of measures forming the basis of these proceedings. He himself however has refrained from any criminal activity, Actual participation in a crime is therefore not the case. His membership, while aware of criminal plans and acts of others, was nevertheless compulsory, it could not constitute any participation or activity. Despite of this Dr. Sandberger proved his intention to quit his activity. From the end of 1941 Dr. Sandberger tried 7 times to get released for service in the Armed Forces, always without success. In this respect I refer to the testimony of the witness Spengler and to the testimonials in this respect submitted by me as evidence.

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Verona, Italy, he was finally able to return to mere SD reporting activity in the scope of which Sandberger acted now as before neither criminally, nor was he able to gain any knowledge about such an activity of others there, the SD had remained true to his rejection of such active or passive participation. He was now in his capacity as an SD member also under the authority of SS and Police jurisdiction, to which also SD agencies were subject.

Dr. Sandberger was finally yet head of a group in Office VI of the Reich Main Security Office, in this position he took care of technical administration tasks, he came into contact with the relevant tasks of the office in connection with the "Egmont Report". But just this contact shows again no characteristics of criminal implication, sanctioning of such an activity or the awareness of participation only by membership. On the contrary it was the aim of this report to make highest quarters well inclined to an immediate cessation of hostilities at the price of capitulation, by giving a clear picture of the Reich's hopeless state. connection with the foreign news service operated by it, should ever have been in contact with criminal intentions or a criminal activity, then this was surely not the case from the year 1944 on, the year in which Dr. Sandberger took over his post there. participation in such an activity, favoring, or conscious support due to mere membership while aware of such acts as a member of the SD or the Office VI of the Reich Main Security Office; do therefore not apply to Dr. Sandberger. But mere membership without these characteristics can not be liable to punishment.

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His membership after the 1 September 1939 was besides not voluntary, nor his membership of a Sonderkommando either. Valid is in this respect what caused the IMT to exempt certain groups of persons from membership in criminal organizations.

Exempts must be those persons who "are drafted by the State for membership in such a manner that they had no choice left. not made himself liable to punishment in the sense of Count I, II, and III of the indictment. I beg the honorable Court to pay due consideration to this result of the trial by a just sentence.

THE PRESIDENT: Very well, Dr. Koessl.

DR. KOESSL: Attorney for the defendant Ott.

May it please the Court! this trial is concerned with the crime of genocide, which in the theory of the Prosecution was incited by the fundamental teachings of the Nazi doctrine. The Prosecution logically requests that the Tribunal, by imposing a punishment in accordance with international law, will confirm the fact that human beings have the right to live in peace and dignity, whatever their race or their religious faith may be. The prosecution, therefore, does not raise the charge of murder within the meaning of the facts constituting this crime in national legislative codes. None of the defendants is charged in the Indictment with the murder or mistreatment of any one specific person. If this were the case the Indictment would doubtless name the presumed victim.

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criminal act covered by national penal code, but it does not base the Indictment either on par. 211 of the Reich Penal Code or on the corresponding paragraphs of the Soviet Penal Code as the law governing the place of the crime, but apparently only wishes to cite thereby a fundamental criminal act, just as reference was also made in the course of the trial to God's 10 Commandments as the root of the moral conceptions of the civilized world. These legal and moral Prohibitions against killings are the foundation, not the subject matter, of this trial. for persecutions which "attain the proportions of national campaigns" and which "are intended to exterminate large groups of human beings." whether there was any participation in an extermination program and if so of what kind it was. For the accused members of the Einsatzgruppen these questions are identical with the questions: 1) Was the Fuehrer Order forwarded to the Einsatzgruppen in Pretsch - Dueben - Schmiedeberg an order for extermination? 2) To what extent and in what way did the individual defendants participate in the execution of this order? The first question will be discussed by my colleague, Dr. Aschenauer, both for the defense as a whole, and also the significance in criminal law of the order in general and the Fuehrer Order in particular, insofar as it becomes of acute importance for the defendants.

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the defendant Ott which appears to justify the conclusion that Sonderkommando 7b executed 27 Jews on the basis of the Fuehrer Order while under Ott's command. This document is to be found in Document Book II B, English p. 60, German p. 52, bears the number NO 3276, and is submitted as Exhibit 66. This Operational Situation Report No. 194 of 21.4.1942 contains a list showing the number of executions which the individual Kommandos of Einsatzgruppe B presumably carried out between 6 and 30 March 1942, in which the number of persons killed by each Kommando is divided up according to groups of persons, from the description of which the reason for the execution, can be understood. evidence showing that these Operational Situation Reports were exposed to many sources of error and therefore possess only qualified value as evidence. The Operational Situation Reports represented summarized reports of the RSHA, which for their part were again based on summaries Which were prepared on the staff of the Einsatzgruppen. Each revision changes the picture of the original report, especially if it is combined with abbreviations and ideas directed at some specific purpose. that Operational Situation Report No. 194 does not constitute any proof that Sonderkommando 7b executed 27 Jews between 6 and 30 March 1942.

1. In the first place, the given period of time from the 6th to the 30th is not named as a reporting period in any other month, and as a matter of fact the regular reports were prepared on each occasion. in the middle and at the end of a month for the preceding 14 days, but never for 3 weeks or for 24 days.

2. This unusual report period is given here for all Kommandos of Einsatzgruppe B, so that it is apparently an arbitrary summarization by the staff of Einsatzgruppe B or the RSHA.

3. Through the submission of Doc. Book 1 for the defendant Ott it was proved that there were many gaps in the reports of Einsatzgruppe B between December 1941 and April 1942 and that no figures at all on executions were reported in this entire period up to Report No. 194 of 21 April 1942, although in some reports occurrences were reported which doubtlessly led to executions.

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This very much speaks in favor of the supposition that the figures given in Operational Situation Report No. 194 also include executions which dated back before the time given; presumably these figures include executions which took place after the last numerical report in December 1941.

4. Activity and Situation Report No. 11 covering the period of 1- 31 March 1942, which has been submitted in Ott Doc. Book II as Ott Document and Exh. 4, does not mention, any executions within the area of Sonderkommando 7b.

5. The strongest proof for the assertion that it was impossible for Sonderkommando 7b to have executed 27 Jews on the basis of the Fuehrer Order during the period from 6- 30 March 1942 is furnished by the defendant Ott's own statement on the witness stand (transcript English p. 3744, German p. 3805 et seq.). Ott proved that he has a good memory and recalled many details. It is clear that just the events during the first month of his activity in Russia remained particularly vivid in his memory and that therefore he would have to remember such a large number of executions as is mentioned in the Operational Situation Report No. 194. (See also Engl. transcript P. 3793, German P. 3856). cross-examination by the Prosecution again confirmed possibly that not before 16 March 1942 did he take over responsible Command of the Sonderkommando 7 b and that up until then his predecessor Rausch made all decisions, held conferences with Wehrmacht agencies and signed reports (Engl. Transcript P. 3781, German P. 3843). Even supposing the Operational Situation Report No. 194 was correct, the possibility would still remain upon that the executions mentioned there, were ordered by his predecessor Rausch, or under Rausch's responsibility during the first half of torch, without the defendant Ott knowing about it, since he was then only getting acquainted with his work and did not overlook the Commando yet and therefore also had not yet taken responsibility.

outline of his activity in Russia, and disproved all misleading interpretations of his affidavit of 24 April 1947 NO 2993 - (Pros.Exh. 67 in the Doc. Book II B, Engl. P. 64, German P. 57.) He has stated that his Commando 7b has during the whole time he was in command of it, which after deduction of 2 longer interruptions amounted to approximately 6 months, executed not more than 80 - 100 persons after careful investigations. (Transcript Engl. P. 3733 - 3735, 3741, German P. 3795 - 3798, 3803). testimony with Mr. Wartenberg and during cross-examination, forbidden his Sub-Commando leaders, to act independently, and ordered them to submit to the Commando all protocols and interrogation records for reexamination. Minor offences were punished with imprisonment differentiated in time, so that the degree of guilt could find proper consideration, (Fig. 7 of the affidavit Ott, Pros.Exh.67).

The Execution of only 80 - 100 persons during all of Ott's activity in a distinctly partisan area, the concientious reexamination of each individual case and the imposing of differentiated detention penalties in minor cases, show that Ott did not consider his unit as an extermination instrument for Asiatic peoples and that he did not use it as such. initiative of his own. He did not carry out any action to find Jews and execute them after seizure for the reasons mentioned in the Fuehrer Order. (Transcript English P. 3718, German P. 3799). To be sure, the Army-territory was in general considered as already free of Jews, when Ott came to the Sonder Commando 7 b, but yet it was known that here and there Jews kept themselves hidden. If Ott had been a man of this kind as the opening speech of the Prosecution characterized the defendants, then instead of the numerous, dangerous reconnaissance actions against the skillfully fighting partisans he would at least have carried out a few safe searching raids for Jews, Ott did not search for Jews and also he did not have defenseless old men and children executed.

The few women executed were active partisan fighters, (Transcript Engl. P. 3760, German P. 3822). that Jews were seized only in connection with sabotage -, partisan - or. communistic units and that about 20 Jews were executed on the basis of the Fuehrer Order. (Transcript Engl. P. 3753, 3754, German P. 3816/17). it did not become clear, whether these Jews were shot only bee use of their race or because of partisan activity, At any rate after the crossand re-direct examination the President asked some more questions, obviously to clear up this matter. (Transcript Engl. P. 3791 ff. part. P. 3793 - 3795, German P. 3853 ff, especially p. 3856 - 3858). Operational Situation Report No. 194 were not executed under his respossible Commando leadership and that the total number of 20 executed Jews admitted by him extend to his whole activity in Russia, there with present the total number. He repeated his previous statements that all Jews were seized in Band - territory and that there the Jews were doubtlessly very capable of defense. To the question: "But some were entirely defenseless?" Ott answered: "Yes, some were among them". (England Transcript P. 3795,... German P. 3857/58).

This is the central question in the case Ott: Do these facts meet the specifications of a crime against humanity according to Count I of the Indictment and of War Crimes according to Count II of the Indictment? of Communist agitation and sabotage troops or some other Partisan groups. Since Ott could not advance into the heart of the Partisan area with his small forces, it was without doubt one of those active harrassing units which the Partisans had operating on the main railway stretches behind the lines.

There were neither children nor old or feeble persons among those captured, only people of both sexes who were capable of carrying arms. carry their arms openly, and also did not abide by the rules of warfare, they could, according to existing rules of warfare, be shot after their capture. Since the Presiding Judge asked the defendant Ott on the witness stand if there were also defenseless persons among the Jewish Partisans, I would like to refer here to the changeable Partisan tactics, which depended completely on surprise and the most elaborate use of deceit. Harmless appearing women suddenly drew hidden weepons and shot down unsuspecting soldiers. Unarmed Partisans in civilian clothes did intelligence work, signalled to the riflemen who were hidden in perfectly camouflaged ambush positions by means of unobtrusive signs and, after completing their job, themselves joined the armed conflict. These scouts and messengers can't be called "defenseless" even when, for the moment, they are unarmed. The really defenseless people stayed in the heart of the Partisan territory, where such small reconnaissance units such as Ott led, could not go. Stronger forces usually found empty nests after marching for days, as in operation "Polar Bear",Ott Exhibit 5. through the statements of individual members of same or through our own observation must, under such conditions, be sufficient proof in regard to those members, too, who refuse to make a statement. I, as defense counsel for the defendant Ott, was astounded when he, on the witness stand, unexpectedly admitted applying the Fuehrer Order in 20 instances. own earlier motives, for Ott has emphasized, now as then, that these 20 Jews were also captured as Partisans. The meaning of his statement is merely that he could not show Jewish Partisans any mercy, because the Fuehrer Order had authoritatively established the fact that the entire Eastern Jewry was involved with the Bolshevist system in such a way as to endanger the security and that Jews were even to be shot if no connection with the Partisans could be proved in the individual case.

cutions were dictated by military necessity alone. show how great the Partisan danger was, by describing the strength, armament, organization and fighting methods of the Partisan bands, (for example Prosecution Exh. 66, 85, 87, 93 etc, and Ott Exh. 1,4 and 5). so weird that it can only be comprehended if you consider how immense the space, how impenetrable the forests and swamps and how difficult to comprehead the ideas and mental processes of the Asiatic peoples and the peculiarities of the Bolshevist ideology and methods were for the European, and add to this the picture of a relentless ideological bottle which used every means of warfare, from the methods and tricks of primitive tribes to the most modern weapons of technological war. These are the conditions under which one must consider the Russian campaign, and especially the Partisan war, if one is to establish the boundaries of "military necessity." at the battle front in Russia was more than "enemy" and "enemy territory." All conceptions of the Occident concerning man and state, space and time, technology and war and might and right were exploded in this unfathomable land of released demons. In such a situation the Fuehrer Order also had a different aspect than it now has in retrospective contemplation from the view point of a world that is at least formally at peace. In this case, every retrospective verdict can use knowledge which is denied to the man acting in the present. And so the defendant Ott also did not have an extermination program in mind when he came to Russia, but rather, he saw, first of all, the destruction of two German engineer companies in a treacherous Partisan attack using unlawful measures of war.

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When he was told of his duties, on the spot, his predecessor told him, in Briansk, of the Fuehrer Order, which had been issued "for security", as he was told. Ott did not understand that defenseless women and children and the aged were to be shot "for security", but his Chief also acknowledged to him that the Supreme War Commander had ordered this. With the sound instinct of a plain man, Ott led his Kommando like a military police unit to secure the rear and the lines of communication of the most advanced troops. Because Ott saw the duties of his Kommando exclusively from the view point of military necessity, he was brought back to Russia by General Schmidt as Commander-in-Chief of the 2nd Panzer Army, after he had already been transferred back to his job at home. (Record English page 3714, German 3775). Sonderkommando 7 b only killed proved Partisans under his leadership. And approximately 20 Jews were also members of Partisan groups. Their execution was permitted by the rules of warfare and did not have to be based on the Fuehrer order. The boundaries of the security of his own combat troops Naturally, he could not deny the fact towards the leaders of this subkommando that the Fuehrer order remained formally in effect (Reocrd English page 3752/53, German page 3816), but in practice the Fuehrer order no longer had any meaning in his territory while Ott was in command of the Kommando. (Record English page 3782, German page 3844) The territory of the Army could be considered as free of Jews since long before (Steimle Exhibit 20, 33 and 38), and the security tasks had to be carried out where the danger threatened, that is, in the territory of the Partisans and against them. The Security Police functions of Ott and his Kommando were exhausted in the defense against the Partisans and their sabotage activities. Ott also took measures to maintain strict discipline in his subkommandos, he examined all interrogation records in order to prevent frivolous decisions (Record

English page 3782, German page 3844). In minor cases, despite the proximity of the front and the attendant increased need for security, he permitted clemency and gave only short prison sentences.

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(Prosecution Exhibit 67, subsection 7) These limiting measures indicate the responsible way Ott carried out his police duties. Since they are a result of his own initiative they show his tendency to use milder means which, on the front lines, is equal to saving lives. In Russia, too, Ott helped the civilian population that did not participate in the fighting. Through complaints to the German Labor Office in Brjansk he was able to stop the conscription of laborers. (Ott Document 10, Document Book III). This behavior corresponds to his readiness to help the French population, which the Mayor, elected in 1947, of the village in Lorraine where Ott lived before and after his assignment in Russia, confirmed voluntarily. (Ott Exhibit 2, Record English page 3697, German page 3758). After what has been said, the way Ott commanded Sonderkommando 7 b cannot be considered as a criminal activity, His Security Police activities and his military assignment served exclusively to secure the occupation troops and the rear of the fighting front. Even if the executions of a total of 20 Jews are supposed to have been backed by the Fuehrer Order, yet it remains proven that these 20 Jews were, as well, members of the partisan units, so that they could have been shot according to the general rules of the laws of war too, In these circumstances, no participation in crimes of the murder of peoples can be seen in these 20 cases. Actions which are unobjectionable from the point of view of international law can prove no connection with carrying out of a crime in the sense of Article II, No. 2 of Control Council Law No. 10. The position as Commander of a Sonderkommando Within an Einsatzgruppe can, in itself, entail no criminal responsibility. As Ott did not use his Kommando for actions the purpose of which was the registration of Jews and their execution because of their race, he withdrew his Kommando from a purpose of the kind.

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I do not need to verify whether other Kommandos of the Einsatzgruppe B carried out such actions in Ott's time, for, even if they did it, Ott did not take part in these actions and was not a member of a participating unit. The Einsatzgruppe as such was no tactical unit, which carried out restricted and uniformly conducted actions, rather the individual Kommandos operated independently, Ott had no connection with the other Kommandos of Einsatzgruppe B and of other Einsatzgruppen. (Transcript English, page 3760, German page 3823). Nor had he a clear picture of the activity of other Kommandos (Transcript English, page 3785, German page 3847). Thus the applicability of Article III, No. 2 e of Law No. 10 drops out too. Since Ott committed no war crimes and crimes against humanity, took part in no such thing in any form and was otherwise in no way connected with the committing of such, there remains only examination of the question whether Ott, through his knowledge of crimes is to be ranked in the category of persons of an organization declared criminal. First of ally there is no doubt that Ott was familiar with the Fuehrer order and that he knew too that it was carried out in Russia by the Kommandos of the 4 Einsatzgruppen, the leadership of which was principally in the hands of members of the Security police and the SD. This knowledge, in my opinion, does not suffice, because Ott could not see in such a use of individual members of the SD a criminal characteristic of the Organization SD, any more than he could regard as activity of the SD the activity of many SD members on account of their employment within the Wehrmacht. The Einsatzgruppen and Einsatzkommandos were mobile units of a peculiar kind with military tasks of a securitypolice nature. When he came to such a unit he had no knowledge of the Fuehrer order so the conspiratorial idea of promoting, by membership in this unit, the realization of the Fuehrer order was missing.

Ott, however, at the time when he discovered that putting into effect of the Fuehrer Order was one of the tasks of an Einsatzkommando, could no longer leave the unit, because he was ordered to it by virtue of war laws and was subject to the laws of war of the soldier, which had been tightened up and which excluded the free expression of volition in the manner of a member of a private union of persons, and, consequently, made withdrawal from the unit impossible. He did not employ the Kommando entrusted to him in a criminal sense and for criminal purposes, from which it is sufficiently clear that such aims were not his. Outside Russia, too, Ott developed no kind of criminal activity whatever during the war and know nothing either of a criminal quality of the SD and could have known nothing The Prosecution is indeed obliged to prove, if it asserts criminal knowledge. Without such proof, however, on the part of the Prosecution I have shown actual proofs in the direct examination (English Transcript page 3695 3703, German page 3756 - 3763) that permit the conclusion to be drawn that Ott had no knowledge in the sense of approval of a criminal activity of the SD. The already mentioned affidavit of the French Mayor Adam seems to me to be a specially valuable piece of evidence in this respect (Ott - Exhibit 2), because this confirmation takes in almost the entire duration of the war with the exception of the Einsatz in Russia and shows the very informative behavior in the occupied territory. Ott Exhibit 3 proves, too, that in Lorraine Ott, through his reports, rebelled against the despotic regime of the Gauleiter Buerckel, in order to help the indigenous population. Nowhere is there a tendency to criminal activity and, for that reason, it is of significance, that at the end of the war Ott presented himself voluntarily to the occupying powers (Transcript English, page 3763, German page 3826), that in 1946 he reported voluntarily to Nuernberg as a witness when the IMT was deliberating on the SD and that finally he gave evidence concerning his activity in Russia that always tallied whether it was before the Interrogator Mr. Wartenberg or the Tribunal, and that always with the same frankness.

Had he had something to hide then he would not have extended the responsibility for Sonderkommando 7 b to a longer period than was necessary according to the documents submitted. From Ott Exhibit 5 it is evident that Ott, as early as 24 July 1942, was no longer designated as Commander of Sonderkommando 7 b, and yet he has assumed responsibility for the later period of its commando. The Prosecution wishes presumably to make good the lacking evidence of culpable behavior on Ott's part by reference to his long membership in the Party. Proofs must be more effective which in Ott's case are produced by the actual behavior of the defendant in the most difficult situations than such a piece of evidence as is based on the idea of collective responsibility. We must not forget that the proceedings before the Nuernberg Tribunals represent a first attempt to interpret power struggles of secular significance in terms of a legal trial by using figures which were utterly unknown in the theater where those power struggles were enacted. If one has already dared the novel innovation of making individuals answerable, from the point of view of International Law, for political and historical events, then, in no event, should this penal responsibility be extended to persons who themselves were never the determining factors but always merely victims of those power-political disputes. Control Council Law No. 10, looked at from a legal point of view, is a much too controversial creation to be regarded as a recognized development of International Law. There is as yet still no court of judicature in the world which could create International Law by means of legislation. If however Control Council Law No. 10 merely intends to fix what is valid International Law, in so doing, it would only take upon itself the task reserved at all times for the Courts.

Besides, this law furnishes characteristics of a particular offense and forms of participation which were entirely foreign to the continental legal system up to now, and, accordingly, can constitute no basis for judging, from the point of view of penal and international law, events which took place in the past before the law was issued, in the time of the war on the Continent. How entirely different is the attitude of the Signatory Powers of the London Agreement and Control Council Law No. 10 in legal thought is revealed by the different interpretations of the meaning of the State form "democracy". However, welcome the effort is to check the methods of political power struggles by international standards yet contemporary events show that experiments with development of international law in the sense of the Nuernberg principles are not yet established on a common practice and legal conviction of all civilized people in the world, This common conviction and practice is however the only real indication of genuine development of International Law. In particular, however, expiation of violations of International Law, on the part of the conquered only, must be avoided, for uniformity of law and similarity of law do not affect merely the extent to which the law can be enforced but are a property of law itself, especially of international law which is built up on reciprocity. If, however, Control Council Law No. 10 is to be looked at in individual part as national law and as legislative work of the Control Council as representative of the Reich Government, then it can not be applied to events prior to the issuing of this law. All these ideas prompt me to ask the honourable Tribunal to acquit the defendant Ott of guilt and punishment.

THE PRESIDENT: I presume you will be ready tomorrow morning to present the summation in behalf of the defendant Schubert.

DR. KOESSL: Your Honor, tomorrow morning a number of colleagues want to present their pleas and I think they would be so jealous that they would not let me do so first and I would rather complete the plea for Schubert in the turn in which it comas regularly. I shall agree with my colleagues about who is to present his plea.

THE PRESIDENT: Very well.

DR. KOESSL: I think my colleague Kink and several other people want to come before me.

THE PRESIDENTS: The Tribunal will be in recess now until tomorrow at 9:30.

(The Tribunal adjourned until 10 February 1938, at 0930 hours) of America, against Otto Ohlendorf, et al.

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is not in session. God save the United States of America and this Honorable Tribunal.

Dr. HEIM: Dr. Heim for the defendant Blobel. Your Honor, before beginning with my final plea, I would like to make a brief statement about the final brief of the Prosecution. Some weeks ago, already, I submitted my closing brief for Flobel to the Tribunal, which concerned itself with the facts and legal consideration of the evidence submitted by the Prosecution against the defendant Blobel. The viewpoint expressed there is maintained even in view of the closing brief submitted against the defendant Blobel by the Prosecution. I ask the Tribunal to take into consideration the statements in my closing brief when arriving at the judgment. In order to avoid unnecessary repetitions, I shall, therefore, not discuss the documents in detail. but I must point out a few significant mistakes in the mentioned documents of the Prosecution, First of all, as for dates in Document No-3140, Exhibit No. 30 which mentioned the conference in Schitomir, and about the execution to be carried out in order to shoot Jews who were living there, this is mentioned on page 6 of the closing brief of the Prosecution, and is listed as having taken place on 10 September 1941. In the session of 29 October 1947 ----

Mr. Glancy: If it please the Tribunal, the Prosecution is of the opinion it is hardly the time or the place, or is it hardly appro priate for a discussion, or the debating of the broad merits of a docment as presented. This is time for a final plea. This can very well be taken care of. and I an sure it has been in the closing brief which the Doctor said has been submitted to the Tribunal.

THE PRESIDENT: Dr. Heim, you are now about to argue your case, and you have your summation prepared.

DR. HEIM: Your Honor, I have seen the closing brief against the defendant Blobel made by the Prosecution, and I have only received it after my final plea had already been completed and submitted,

THE PRESIDENT: Well, do you intend to file a closing brief yourself, or you already have filed one?

DR. HEIM: Yes, I have already submitted one, Your Honor. Your Honor, in only one and a half pages I merely want to comment briefly on the closing brief of the Prosecution. because I could not consider the statements of the prosecution in my final plea.

THE PRESIDENT: Mr. Glancy.

MR. GLANCY: I think it should be well and definitely understood, Your Honor, that the functions of a closing brief, that is, of the Prosecution and the Defense. although related, are independent of one another. Totally independent of one another, As the Prosecution gives their interpreation of the evidence as a function for their closing brief, likewise. the same is performed for a closing brief of the defense. It is merely our interpretation or their interpreta tion. They are independent of one another.

THE PRESIDENT: That is correct, Dr. Heim, each side gives its own version of the interpretation of the evidence in the case in the briefs, and, we can not go on replying to each brief back and forth, ad infinitum.

DR. HEIM: Your Honor, I shall then start with the presentation of my plea.

THE PRESIDENT: If in your closing remarks you want to make some reference to a document which has been touched upon by the Prosecution in its closing brief, you certainly may do soo but it is not the place here to argue the brief itself.

DR. HEIM: May it please the Tribunal. the countries of Europe and have in addition to destruction misery, want and hunger left behind millions of dead. These men in the dock have been charged with having caused the death of one million people, whereby this million of people is alleged to have been murdered upon the instigation of the defendants. The defendant Blobel alone is held responsible for 60,000 murders. may it please the Tribunal that I give in short outline a picture of the defendant Blobel since I regard it as being of a very great importance for judging his person and for understanding this case. son of a master carpenter. At the ago of 5 he came to Remscheid, attended school there, learned the carpenter's trade, passed the journeyman's test, worked then as mason and by studying without a teacher acquired the necessary knowledge so that he could attend the building trade school. This training was interrupted by World War I during which he spent four years at the front as soldier. After his return Blobel resumed his interrupted studies and by industry and energy he as a practical and ingenious man attained the respectable profession as a freelance architect which he practiced from 1924 on. Coming from a modest environment he had led an irreproachable, honest and true life. By untiring efforts Blobel became a successful architect. He was then able to realise his dream of owning his own home. He was able to make use of his abilities his entire knowledge as an architect in designing his own house and its furnishings. He could surely look back with pride upon the past years of hard work which finally had not been without success. His diligent activity, however, could not for ever postpone the impending fate. The years of economic "false prosperity" were followed in Germany all the sooner by a decline, which dragged many absolutely secure existences into its destructive whirlpool.

Thus also the economic rise of the defendant Blobel achieved with great effort was suddenly interrupted by the economic crisis of the years 1928/29. he solid existence for which he had fought and worked untiringly was smached by the general economic collapse. New orders could not be obtained, outstanding fees could not be realized. The years of distress that followed consumed his last savings. The mortgage interest could no longer be paid. Due to the general economic crisis Blobel "was doen to his last shirt". This is only one fate which so many people of that type experienced. Nothing indicates that Blobel was particularly interested in politics or sympathized with any of the parties existing at that time. If there existed an association of ideas at all then Blobel only occupied himself with the socialist parties Since he himself came from the workers' class. But the substance of Blobel's life was the establishment of security in his job, his family and profession. of the quarrel between the large political parties which was becoming ever more violent; they all promised the German people a removal of the distress which was taking on the proportions of an avalanche and a restoration of sound and just social conditions. This situation alone makes the subsequent behavior of the defendant Blobel comprehensible It can only be interpreted correctly on the basis of the extraordinary situation at that time. What may appear reprehensible objectionable today was at that time regarded as a panacea which could lead out of the diastrous years. persons. For 4 1/2 years he had nothing but the most modest state support to depend upon. Thus the immense economic depression, as it is again being experienced by the world a second time - at present after this World War II- caused him simultaneously to become a member in the SPD as well as the SA reserve. By joining these two organizations he did not so much pursue political goals; economic interests were much more decisive.

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He hoped his membership in the parties would make it easier for him to overcome the economic crisis and he expected finally to use it for building up his destroyed existence again. In 1932 Blobel became a member of the SS. Not fanatic eagerness to fight for the ideology of National Socialism, not the irresponsible acceptance of the platform of the NSDAP were decisive for his membership in the SS but solely the conviction that this was a way which might lead out of the economic chaos. Finally. after the seizure of power by National Socialism he was for one year employed by the municipal administration in Solingen receiving a more than modest monthly salary. His position was by no means commensurate with his training and knowledge. And when then in 1935 he received the order as an architect to furnish the office of the SD in Duesseldorf he in no way declined this offer in view of his economic situation but accepted it without long deliberation since he could again work in his line. Since his economic situation had not yet by any means essentially improved and the building business still was stagnant he readily accepted the offer to stay there as coworker in the office he had just designed; in the time thereafter he was placed in charge of the intelligence work for the SD covering all spheres of public life in the Duesselderf territory. at the same time resulted in his leaving the Allgemeine SS; he had entered into relations which he in the time to come he was unable to sever in spite of all efforts. duties and the nature of the SD. The SD, and NSDAP agency, had been established for the sole purpose of communicating to the leadership of the Party and in view of the unity of Party and State - also to the leadership of the state a true picture of all spheres of public life within the Reich. Its task exclusively consisted in collecting news from all spheres of life, in ascertaining public opinion in pointing out abuses, in short, to give the Party and State leadership a picture of how the man in the street reacted to the measures and decrees of Party and State.

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The SD never had executive power, since being an organization of the NSDAP it could never authorized for that. Then SD may properly be compared with the I attitude for the Study of the Public Opinion, especially since the SD had many coworkers who did not at all belong to the NSDAP. In this respect it was an entirely objective source for intelligence. the reason why he was declared to be indispensable by a general order of the Reichsfuehrer-SS according to an agreement with the OKW, i.e. that for the duration of his indispensable status, he was at the disposal not of the Wehrmacht but exclusively of the Reichsfuehrer SS. This activity as full-time SD leader was also the cause for Blobel's being ordered to Berlin in June 1941, According to the agreements reached between Wehrmacht and the Reichsfuehrer-SS this was placed on the same level with a draft into the army, i.e. it corresponded to an induction notice such as millions of German men fit for service received during the war. Non-compliance with the draft order was equal to a refusal of military service which was subject to severest punishment. This was, however, not a typically German institution. None of the belligerent countries contented itself with an appeal to voluntary enlistments, not one country could in this world - wide struggle renounce the conscription of its men fit for service. World War II toward a withdrawal from his service of fulltime SD in order to be able to devote himself to his former profession as an architect had been in vain, it had now become completely impossible due to the order of the Reichsfuehrer-SS. Once ought in this vicious circle there was no retreat. From the time of his transfer in June 1941 Blobel was considered soldier and was subject to the regulations of maritial law; in case of a refusal he would undoubtedly have been placed before an SS and Police tribunal.

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The statements made by Streckenbach and Heydrich at Pretsch were also to the same effect. Thus the defendant Blobel had slipped into this assignment without intending it and without in the least having made any efforts in this respect, nay even without having known in advance what his assignment actually meant. SD, The refusal of his spureior office did not per it him to materialize this plan. his remaining with the SD at all have been regarded as criminal ommission taking into consideration his knowledge at that tiie of the activity of the SD? By no means. activity with the SD and to turn his back upon this organization for his duty merely was to collect information without making comments and to pass it on to the competent offices. That this never can be a criminal activity and never has been so was an established fact for the defendant Blobel at that time and still is so at present, Quito on the contrary. he had to regard this activity of his as a proper and admissible instrument for informing the government about the actual state of mind of the people and the suitability of the adopted measures, a means which - if duly applied and evaluated would necessarily be of benefit to all nationals of the Reich and in thepositive sense of an inestimable value. charged with having occasioned the murder of 60,000 persons as leader of Sonderkommando 40. what now did Blobel actually do as long as he was leader of Sonderkommando 4a? Has he made himself liable to punishment on the grounds of war crimes and crimes against humanity in the East according to the presentation of evidence by the prosecution?

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long as it was commanded by Blobel, beginning from the first day on always was in every respect exclusively subordinated to the Army in the combat area under the command of Field Marshal von Reichrenau, and that this subordination resulted in a situation for Sonderkommando 4a which was entirely different from that of other Kommandos, and which is of fundamental importance for the judgment under criminal law of the defendant Blobel. The very name "Sonder"-Kommando (special Kommando) refers to the direct subordination of the unit under unit of the army. Neither is this refuted by the draft of an order for the commitment of the Einsatzgruppen of the Secutiry Police and the SD (Doc.

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NOKW-256, Exh. 174). The document involved is merely a draft and the Prosecution has not been in a position to prove that it was carried out as such. The fact of subordination under an army unit also accounts for the essentially smaller number of personnel which amounted to about one quarter of that of the remaining Kommandos of Einsatzgruppe C (BLOBEL statement, German Transcript, page 1531). In this connection the following circumstances must be pointed out; The frontline in the East extended from North to South over a distance of much more than 1000 kilometers. In this vast area 4 Einsatzgruppen with an average of 4 Kommandos each were in charge of Security police tasks which had to be carried out in cooperation with Wehrmacht and Constabulary. The purely military operations were incumbent on 3 Army Groups: Army group North Field Marshal Ritter von LEEB --, Army Group Center Field Marshal von BOCK and Army Group south-Field Marshal von RUNDSTENDT-Several armies and special military formations were subordinated to every Army Group. As has been shown at all times during military actions the person of the army commander is the decisive essential, It is his initiative which lends the special character to the orders coming to him for execution from the supreme authority. This is ultimately the reason why the situation was entirely different for the individual Einsatzgruppen and oven more so for the individual Kommandos. Sonderkommando 4a was appointed for commitment in the area of Army (AOK) 6. The chief commander of AOK 6 was Field Marshal von REICHENAU. As will be shown later, von REICHENAU as military commander exercised a decisive influence on the activity of Sonderkommando 4a; in doing so he wasperhaps in opposition to other generals who -- perhaps intentionally -- hold themselves aloof from the units of the Security Police and the SD and from their sphere of duties. Von REICHENAU was an army commander of an entirely different past. His eminent person asserted itself also insofar as he exercised an influence on everything that in the least degree would touch upon the military interests of his zone of operations. In order to elucidate what has been said up to now, the following must be noted:

The German generals did not form a homogeneous unit. They were different in their conceptions and view. At the time when National Socialism seized power in 1933 there were on the whole only a few generals who could be regarded as absolute followers of HITLER. However, one of these few was von REICHENAU. His words: "The Wehrmacht will be National Socialist or it will not exist", are typical of his attitude at that time and also later. His absolute subordination toward Hitler made him contrary to many another army commander -- an obedient and passionate executor of his directive. In this connection I wish to refer especially to the statements made by the USSR member of the International Military Tribunal Brigadier General (?) of Justice L.T. Nikitschenko concerning the "inaccurate decision with regard to the General Staff and the OK Which in their latter part in detail deal with von REICHNAU's person. the commander -in-Chief of AOK 6. On this occasion he was informed of the order from OKH which had been directed to AOK 6 directly. According to this order, Kommandos of the Security Police were subordinated to the military commanders in their area whereby it was the task of the Kommandos to handle the-circles of political opponents according to security police principles and to bring about the absolute elimination of all elements insofar as these would in any form impinge the security of the military units and the military operations. In addition to this order of the OKH it was left to the discretion of the commanders of the forces to issue the corresponding implementation provisions. (BLOBEL statement. German Transcript pages 1532/33). Accordingly, Field Marshal von REICHENAU ordered that Sonderkommando 4a be attached to AOK 6 with regard to movement and supply. As regards its activity it was subordinated directly to department C of AOK 6, its duties being the handling of security police matters. (BLOBEL statement, German Transcript, page 1533). This order by REICHANAU was, while still in the discussion stage, laid down in writing and passed on to the units involved (division commander and commander of the army rear area). In accordance with the chain of command von REICHENAU immediately ordered the splitting up of the Kommando into 3 sections and the subordination of those sub-kommandos (Partial Kommandos) under the division commanders (BLOBEL statement, German Transcript, page 1532, BLOBEL Doc.

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No. 5 Exh. 5, HAEFNER Affidavit, para 4). In the period from 28 June 1941 to the end of August 1941 the situation of Sonderkommando 4a was as follows: In its entirety it was completely subordinate to the Commander-in-Chief of the AOK 6 Field marshal von REICHANAU. The leadership of Sonderkommando 4a. received its orders directly from Department C of AOK 6, which corresponds to the G-2 in the American Army. In order to prevent every overlapping and contradictory orders, the directives of Einsatzgruppe C for Sonderkommando 4a were routed through Department C of AOK 6, Moreover, directives from Einsatzgruppe C could only be of minor importance, since Sonderkommando 4a was assigned to the combat zone and here exclusively AOK 6 was competent, whereby it must be taken into consideration that Sonderkammando 4a was attached to AOK 6 as military Security Police unit. men including drivers, mess personnel and office, was divided into three subkommandos and into one tank obstacle clearing kommandos. These subkommandos were in charge of the handling Security Police matters, that is, the search for, seizure of, and collection of enemy records, the interrogation of persons, the compilation of files on incidents and also the carrying out of executions that had been ordered. The subkommandos were for reasons of expediency subordinated to the divisions of the AOK 6 and accordingly received their orders from these directly, that is, from their Departments C, whereby these orders because of their urgency only in exceptional cases were routed through the office of Sonderkommando 4a, and in such cases merely forwarded.

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(SS BLOBEL statement, German Transcript, page 1534 to 1540; Doc. Book I BLOBEL Document No. 1 Exhibit 1) BLOBEL himself stayed with the rest of Sonderkommando 4a consisting of orderly room, messing personnel, as well as of an interpreter. Handicapped by the bad read conditions, the structure of the vast combat area and the state of the operations, during the advance a connection between the subkommandos and the rest of Sonderkommando 4a was absolutely out of the question; however, even apart from that it was hardly possible, since Sonderkommando 4a and the subkommandos possessed no radio communication and merely depended on courier service by messenger. As chief leader of Sonderkommando 4a BLOBEL was not competent to make independent decisions, he was solely subordinate military agency which carried out the orders received from AOK 6. In a Edition, the subkommandos were more or less separated from the chain of command, from Sonderkommando 4a; they were only subordinated to this in personnel matters. To whom could thus BLOBEL have given orders in view of this situation. STRECHENBACH had announced in Pretsch, i.e. whether the extermination of all communist groups and Jews had been ordered or merely the elimination of these elements who imperiled the security of troops and thus the military operations. Even as blanket orders it was of no importance whatever for BLOBEL since Sonderkommando 4a only was the executive agency of AOK 6. It was only of importance for those officers whose unit was not directly subordinate to a military unit. For BLOBEL exclusively and solely the order received from von REICHENAU and issued by the OKW was decisive, whereby its execution in every single case was ordered by AOK 6. According to the statements of BLOBEL which have not been refuted this order merely contained the directive that those elements should be exterminated who attempted to prejudice the course of the military operations in a way contrary to international Law. Thus the "Fuehrer decree" is of no importance whatever for judging the activity of the defendant BLOBEL so tint there is no need for further details concerning this question.

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underwent no change even in August 1941 when 28 to 30 men of the police as well as two platoons of the Waffen-SS were ordered to Sonderkommando 4a and thus caused a certain re-organization of Sonderkommando 4a. These attached units were with regard to orders subordinate to the competent Wehrmacht units -- as was Sonderkommando 4a itself. BLOBEL had no competence whatsoever to give them orders or directives since they were completely outside of his jurisdiction. of the Waffen-SS to the subkommando South, since pursuant to a directive by the AOK 6 to begin with only 2 subkommandos had been found BLOBEL statement, German Transcript, page 1552/53), of which later -- as had already been provided for the Advancekommando Kiev -- was found with the strength of 2 leaders and 8 men. army units and within their assigned area received their orders directly from the Wehrmacht Kommandant. They were in addition, also subordinate to the Chief of Einsatzgruppe C who, however, chiefly received his orders from Department G-2 of AOK 6 as well as from the Higher SS and Police Leader JECKELN. We particularly refer to the statements in the closing Brief (page 31) concerning the person of JECKELN. In agreement with this commitment and the subordination of these Subkommandos to the Wehrmacht Kommandants there existed, no connection whatever with regard to orders between the rest of Sonderkommando 4a and the Subkommandos. The office and the supply column of Sonderkommando 4a comprised merely 3 leaders, 6 non-cons and men, as well as one or two interpreters. The subkommandos were also assigned to fight against the guerillas.

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together with units of the Wehrmacht, the local Kommendantures, the Ukrainian militia with the army units and formations, which were exclusively subordinate to the Higher SS and Police Leader JECKELN. (BLOBEL statement, German Transcript, pages 1555/56, Doc. Book BLOBEL I Doc. BLOBEL No. 2, Exh. 2.). Corresponding to the commitment of Sonderkommando 4a in the combat area ordered by the Wehrmacht, BLOBEL could exercise no influence whatsoever on the activity of the subkommandose, neither on executions possibly carried out by them. It is incontestable that the subkommandos were integral parts of Sonderkommando 4a and that its officers were subordinated to BLOBEL in disciplinary ratters, this does, however, not imply any authority whatever to issue orders concerning their activity in carrying out security police measures. Those measures were exclusively meant to guarantee the security of the Wehrmacht and a smooth course of the military operations as possible, and to avert impingement of any kind.

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Since Sonderkommando 4a only was employed in the direct combat zone, the exclusive responsibility rested with the Wehrmacht Commander who was in charge of the control and performance of the military operations. This very fact proves that the defendant BLOBEL even at that time never had any authority to give orders to the subkommandos with regard to security police matters. The rest of Sonderkommando 4a was far away from them, its functions more of a purely administrative character and with a view to its small number of personnel it was not taken into consideration for any security police measures. BLOBELS activity merely consisted in the handling of purely administrative duties, however, in the widest sense.

In discussing Doc. NO-3140 presented by the Prosecution as Exhibit No. 30 the Kiev operation and BLOBEL's participation in it were dealt with in detail in the closing Brief for the defendant BLOBEL (page 23), Reference can be made to it in this respect. If it is mentioned again, then it is done only because the Prosecution offered in rebuttal an affidavit by Karl HENNICKE as evidence with which it wishes to prove BLOBEL's participation in the execution in Kiev, (see Doc. IX-4999, Exh. No. 202). Incidentally we wish to note that HENNICKE was not an officer of Sonderkommando 4a, asis erronesouly assorted on page lit in the Closing Brief of the Prosecution, According to his own statement HENNICKE was the official in charge (Sachbearbeiter) of Ant III with the staff of Einsatzgruppe C (see Doc. NO-4999, Exhibit No. 202, Subparagraph 3). First of all, we establish that the executions in Kiev were by no means carried out by BLOBEL's order, but Kiev were not carried out on Blobel's order at all but on the basis of a joint large-scale action of the town commander and the Higher SS and Police Leader Jaeckel by the forces of the Constabulary and the Security Police (Blobel testimony, German transcript, page 1606), Since a town commander, of the Wehrmacht had been appointed who was in charge of the entire area of the town, only he -- in agreement with the Higher SS and Police Leader -- could be competent for executions of that kind, BLOBEL himself had suffered a head wound during the dynamiting of buildings at the time of the entry into Kiew and as a consequence was not fit for duty (Blobel testimony German transcript, page 1603) Document Book Blobel II, Affidavit Hennicke, Doc.

No. 7, Exhibit 7; Affidavit Ostermann, Doc. No. 12, Exh. 11; Affidavit Haefner, Doc. No. 6, Exh. 6, Section 4). This testimony of BLOBEL, which is substantiated by several affidavits cannot be refuted by the prosecution not upon by the affidavit of Hennicke of 4 September 1947 (Doc. NO-4999) Exh. 202, which they submitted. does not follow at all that BLOBEL was personally present during those executions, it leaves completely obscure the question as to whore and in what capacity Hennicke supposedly saw the defendant BLOBEL, In addition, his statement is obviously incorrect, since he claims to have seen Calsen also. Calsen was one of the candidates for a supervisory position, who had already left Kiew before 29 September owing to their having been ordered to return to Berlin, The affidavit is in no way suited to prove beyond a reasonable doubt the participation of BLOBEL in the executions in Kiew because of its inaccurate formulation and because of the incorrect statements proved in the above mentioned paragraph, as a witness on his own behalf, BLOBEL has not denied (testimony Blobel, German transcript, pages 1598 ff) that men of SK 4a had been assigned to that large -- scale action; that fact however does not establish a criminal responsibility, since the Higher SS and Police Leader and the town commander were in charge of all of the detachments which had been assigned to the executions; SK 4a thus merely had been ordered to supply the required number of enlisted men.

In connection with that it must be considered that BLOBEL -- as already mentioned -- was not at all fit for duty due to his head injury and thus could not have had a hand in those transfers. preparatory action or the actual execution, that fact alone cannot be considered a criminal act by the defendant BLOBEL in accordance with the provisions of Control Council Law No. 10. An analysis of the text of the Affidavit by Hennicke (Doc. NO-4999, Exh. 202) -- its doubtful value as evidence has already been pointed out -- leads, to no other conclusion than that BLOBEL actually had been only a spectoator, and that he himself had no authority to order or to carry out the executions in Kiew. November 1941 was stationed in the same place -- Kiew -- as Einsatzgruppe C, necessitated a change in the chain of command, even though it was only of a minor nature. The Remaining sonderkommando - 4a - was directly subordinate to Einsatzgruppe C. Even though it had been intended for commitment in the combat zone, it had remained at the headquarters of Einsatzgruppe C due to personnel changes, and was utilized there for patrol and security duty. (See Affidavit Ostermann, Doc. BLOBEL No. 12, Exh. 11). Both of the Subkommandos were located in the frontline-zone; there they were subordinated to the 0-2 sections of the individual divisions and received their orders directly by way of AOK 6 - Division. Einsatzgruppe C was completely excluded in regard to the Subkommandos. The channel of commands between AOK 6 and Einsatzgruppe C continued to exist. (Testimony Blobel, German transcript, pages 1632/33; Document Book Blobel I, Doc. Blobel No. 3, Exh. 3) During this period also, BLOBEL, who was with the Remainingkommando of SK 4a had no authority to issue orders to the SK-4a Subkommandos, which were committed in the combat zone.

the Remaingkommando of SK 4a arrived there after a trip which had been made difficult by the unusually severe winter, on or about 10 December. Almost at the same time the two Subkommandos arrived. SK 4a thus for the first time in many months was almost full strength i.e., 4 Officers and 42-45 non-commissioned officers and men, except for a decrease in personnel due to sickness. Kharkow was in the combat zone and. was the focus of the Russian winter offensive for the reconquest of that strategically important town. The situation was extremely precarious and necessitated the commitment of all available forces for the defense of Kharkow. The severe Russian winter, to which the German soldiers were not accustomed and which in addition reached temperatures lower than any recorded for a long time, had in conjunction with all other difficulties -- undoubtedly impaired their fighting power. The over-all situation had as a consequence that from December 1941 SK 4a was released from its security police tasks and was committed next to combat units in the defense belt around Kharkowin a purely military function. Thus in its entity it was subordinate exclusively to the competent Wehrmacht commander of that sector (Blobel testimony, German transcript, pages 1634 - 1637; Doc. Book Blobel I, Doc. Blobel No. 4, Exh. 4). defendant BLOBEL (Doc. NO-3824, Exh. 31) in connection with his testimony as a witness on his own behalf regarding his criminal responsi bility (German transcript, pages 1646 - 1654): they had been ordered by the Commander-in-Chief of AOK6. These included persons who had been arrested by the Wehrmacht and the SK 4a because of guerrilla activities, attacks on German troops, disrupting of supply lines and acts of sabotage.

Those cases were examined by Field Marshall von Reichenau himself together with his Judge Advocate on the basis of the documents, after the accused had been thoroughly interrogated and given fair hearing. Thereupon, BLOBEL was ordered by the Commander-inChief, Field Marshall von Reichenau, to have those executions carried out under his personal supervision. (Blobel testimony, German transcript, pare 1649). In addition, it is a fact that the maximum number of persons who were executed in actions in which the SK 4a participated in any way, be it only by furnishing a few non, amounted to approximately 10-15,000 including the Kiew action (Blobel testimony, German transcript, page 1649). Apart from a few reprisal measures and actions which had been ordered because of special incidents, by C in C, AOK 6, and/or the Higher SS and Police Leader, executions have been carried out by the SK 4a only on the basis of unobjectionable ordinary procedure and the decision of the C in C of the AOK 6 or the officers, assigned for this purpose. At no time did BLOBEL hold independent authority to execute an operation (statement Blobel, German transcript page 1648-49). Not one single document of the prosecution proves that any executions had been carried out by order or by instigation of Blobel. Not one single document states that BLOBEL had knowledge of executions carried out by the Subkommandos. All assertions of the prosecution to the contrary are merely conclusions without being substantially proofs. BLOBEL, i.e. whether he actually became liable to punishment for murder by his action in the sense of International Law, according to the charge preferred against him by the indictment.

Before appraising BLOBEL's activity in the light of criminal law may I define the criminal act of murder more in detail. Control Council Law No. 10 in connection with the London agreement, which has established the rulings on which this trial is based, mentions among other things, murder, without, however, specifying the elements which make it a criminal act and the criterion for killings which are permissible in war.

One solution of this extraordinarily grave problem is possible only by explaining it rather from the actual meaning than from the mere wording of rules of International Law. According to this, where now is the difference is between the permissible and non-permissible, between "military necessities" and offense, between sanctioned killing and murder? century-whether as customary law or legal maxims - ware exhaustively codified by the first and second Hague Peace Conferences of 1899 and 1907. Even if it is true that the community of nations adhering to International Law, has alienated itself from the spirit of the Hague Rules of Landwarfare in the time following these conferences, and above all by the ordeal by fire of two world wars, the existence of a general International Law corresponding to the Hague Convention cannot be denied. acknowledged the Hague Rules de jure, or have ratified them. This is especially true with regard to the Soviet Republic. I will enter later on into the discussion of the question as to whether as a consequence of the lack of a formal ratification by the Soviet Union legal inferences may be drawn, Moreover, in this respect, I would like to refer to the previous exhaustive discussions, because this concerns a general question, which affects. the case in chief of all defendants. War and its unavoidable consequence of the killing of human beings, constitutes from time immemorial an institution of International Law, Most of all, under the effects of doctrine of natural law, it was bound to become one of the most important tasks to find a suitable limit which divides the two basically recognized spheres of law, that of the state and that of the individual. The Hague Rules of Land Warfare is one of those laws, which aspires to fulfill this task by ore erecting barriers for the protection of the enemy soldiers and the civilian population against a belligerent or victorious sovereign power, occupying; a particular area, according to Paragraph IV of the introduction to the basic agreement it tries "to draw a certain line" in order to restrict that is, to "limit" the hardships of war.

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It merely confirms something, which had already existed before, similar to the proclamation of the King of Russia of 11 August 1870: "I wage war against the French soldiers, not against the citizens of France. Therefore, they will continue to enjoy complete security with regard to their persons and their property and as long as they do not deprive themselves of this privilege by undertaking hostile actions against German troops, I will accord them my protection." in cases where human beings are killed in violation of the rules of International Law. It is true that paragraph VI of the introduction to the basic agreement emphasizes that the "necessites militaires" the the "military necessities" have precedence over alleviating the hardships war. "military necessity" can be defined as those acts.

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which are indispensible for the carrying out of combat missions, or for the protection of one's own soldiers, for instance against attacks or sabotage on the part of the civilian population. Therefore, it should not be forgotten that human rights become secondary in relation to "military necessities"; in other words, infringement of the internationally recognized human rights are permitted only insofar as they serve the purposes of military necessities, that is, the protection of military personnel or of war operations. In practice, every independent state decides autocratically as to the limits of the military necessity of its measures on the one hard and the human rights on the other, provided however, that the sovereign state can neither arbitrarily alter the Hague Rules of Land Warfare, nor the laws and usages of war. International Law recognizes two kinds of intentional killing of human beings: the permissible one, i. e. killing in the course of hostile actions during the war and the non-permissible one. The latter constitutes murder, not only according to International Law but also according to the national laws of civilized states. The two executions which were carried out under the supervision of the defendant BLOBEL do not violate, the rules of International Law. Civilians perpetrated hostile acts against the German troops and because of the fact that the prerequisite of article 1 of the supplement to the Hague Rules of Land Warfare did not apply., they forfeited the rights of protection granted by this treaty. Whether, according to the standards of International Law and in consideration of the fact that the Soviet Union did not sign the Hague Convention and often violated the laws and usages of war during the belligerencies, it can be assumed that there is a justified claim to arbitration and thus to legal hearings, must be left open. However, the evidence in that respect had proved that in all such cases interrogation officials of the SK 4a and of the Wehrmacht made thorough investigations, interrogated the accused and finally submitted each case to the C in C AOK 6 for decision. Von Reichenau examined the documents together with his court officer and passed sentence.

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This procedure was completely sufficient and without doubt corresponded to the conception of human rights and humaneness as conceived in the Hague Rules of Land Warfare, If the SK 4a carried out executions of which BLOBEL was previously informed, that is those for which he forwarded the orders of the competent Wehrmacht units to his Subkommandos, this does not constitute murder. Every single case had been thouroughly investigated by interrogation officials, the defendant had been granted a hearing, documents were made up for each case and each case was submitted to the AOk 6 for decision. Even if the AOK 6 should have made decisions concerning executions without a thorough examination of the documents at least, the subjective prerequisite of murder with regard to the defendant BLOBEL is lacking; he could assume that on account of the regular orderly examination of the documents by the AOK 6, such an examination was actually made; moreover, the defendant BLOBEL had no authority and also no possibility of establishing the fact that the procedure of the examination had been omitted. Finally, it must be taken into consideration that the defendant did not possess the necessary training in order to be aware of a possible irregularity or illegality. The authorized military commander has to be held responsible for a possible objective violation of International Law in cases of ordered executions or procedural infringements. As an executive official BLOBEL was obliged to obey the military order, believing that it was a correct one.

(The legality of reprisals.) by the competent Wehrmacht Commanders, or by the Higher SS and Police leaders in each case, it must be said, that they too cannot be considered as criminal according to the indictment, as far as they were executed by the SK 4a. Here too, the Hague Rules of Land Warfare try to define the two opposites in the so-called reprisal law in order to reconcile the individual in need of protection and claiming his human rights, with the independent state, insisting upon its judicial omnipotence.

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Therefore on the one hand, the individual, who will always consider it a hardship and injustice to be punished wrongly for the mere assumption of a crime, and in addition for the reasons of state of an enemy state. On the other hand, there is the military power of the belligerent state, the military necessities of which demand complete subjugation and supremacy. usages of war alleviation should be achieved by drawing a boundary line between state and individual. The point of view of the state is taken into account by recognizing in principle the right of collective punishment; that of the individual by limiting this right. These limitations are drawn up along three lines: according to purpose, the punishment and the persons to be punished. introduction to the basic agreement. Pursuant to this Paragraph collective punishment is permissible for assassination, attacks and acts of sabotage against the fighting or occupation forces, in order to deter others from similar actions. Concerning the penalities, Article 50 states that they should consist of "fines or other types of penalties". If according to this regulation a fine is to be imposed death penalty is permissible, whereby the International Law does not provide for any proportional relations. Apart of this, Article 50 also limits the category of persons, whose punishment is permitted. Such persons have to be found "jointly responsible for individual actions". It is not stated when human beings are jointly responsible as one body for an individual act. At any rate, it cannot mean that the state occupying a country, may determine that according to its own discretion, since the moral responsibility constitutes the prerequisite of a criminal act according to the established standards of the Hague Rules of Land Warfare, that is, the occupying state may decree a collective punishment for a definable individual act only for those persons guilty of voluntarily perpetrating such an act.

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Evidence or incriminating circumstantial evidence must be furnished against the individuals concerned. number of documents which prove beyond any reasonable doubt that the conduct of the Russian enemy was contrary to International Law, and which prove above all that the guerilla warfare had been planned a long time before the outbreak of the war and that the population had been systematically trained for it. Faced with this situation, the German Wehrmacht and the Police units subordinate to the Higher SS and Police leaders could not guarantee the security of the occupation forces without carrying out severe collective punishments. The Soviet Union conducted the war against German troops with methods which not only were in direct contradiction to international law, but also would never have been used by any civilized nation of this world. Men, women, children, old men, in short everyone capable of using a weapon was forced to participate in the system of guerilla warfare prohibited under International Law. A long time before the occupation, an extensive and very detailed organization had been created for the purpose of functioning behind the front lines following the occupation by enemy troops, that is, exclusively for the purpose of causing damage to the personnel and equipment of the occupation forces by malicious and surprise attacks as well as by acts of sabotage wherever and whenever possible. The man left behind, even women and children were used as snipers who attacked individual soldiers and convoys and who did not even hesitate to desecrate the dead in a bestial manner. Women and children acted as spies and informers their primary duty was the safeguarding of supplies for the partisans. There can be no doubt about it, that guerilla warfare conducted in such a way is not permissible under International Law simply because this wan has been declared a war of defense against an agressor. It can never be decisive which one of the warring states is to be considered as the agressor with regard to the illegality under International Law.

lines was well known to the German authorities. Thus, in each raid and act of sabotage, the entire population of this Particular area was always guilty of giving willing assistance, and they were backed up by this superbly operating organization. The fact that in carrying out reprisals innocent people can also be affected and unfortunately are affected, is unavoidable, from the outset, it is the purpose of the reprisals to be mainly directed against innocent persons. Only such reprisals which are carried out according to plan against any kind of a majority of persons regardless of the guilt of the individual are illegal under International Law. to the defendant BLOBEL, that the SK 4a participated in the executed reprisals with the full knowledge of BLOBEL, without first examining as to whether it was a planned crime on the Part of the population.

Your Honors! I believe that whosoever witnessed in Russia these cruelties and inhuman acts perptrated on German soldiers, whosoever saw or even suffered on his own body the horrors and bestialities of Russian warfare, will understand the reprisals carried out by the German troops and will not doubt that they represent genuine "military necessities". danger, because the sovereign state decidesas judge on its own behalf, that is, it transfers the decision to its officials. Its doubtless subjective opinion is the guide for the subsumption of its executed measures according to the standards of International Law. was at all bound to follow the regulations of the Hague Rules of Lana Warfare, in view of the totally different conditions of warfare prevailing in the East - at least according to the propagated opinion of the supreme authorities at that time:

It is true that in international law the non-observance on the part of one party does not relieve the second party from his obligation of observance, but this principle is in no way an exception and especially could not be applied in the war in the East. It is true that the individual who suffers in the conflict between governments and states i s the real object of protection, that is the population and the individual soldiers end prisoners-of-war. Further, it is true that all these individuals, be they military personnel, be they civilians, require this protection all the more in the occupied territory if their army collapses; international law is primarily created to assure the safety of these individuals in such a situation. However, as was the case in the campaign against Russia, when a large number of the inhabitants of this land, whether young, old, man, woman, or child, contrary to all acts of humanity and against every provision of international law, cowardly carries on a war from abmush against the occupying army, then certainly one cannot expect that the provisions of international law would be observed to the letter by this army. That would mean sacrificing oneself and surrendering without benefit of protection to the innumerable influences acting in direct contradiction to international law. The strict implementation of the principle: "Vivat justitia pereat mundus", would mean an irresponsible sacrifice of one's own soldiers, namely if the opponent does not intend in principle to observe on his part" the existing customs of civilized nations, the laws of humanity and the demands of public conscience". In this connection the fundamental question must be asked whether today general international law applies at all. The legal interpretation of this question seems to me to be of great significance with respect to the acts which re under indictment in this trial. For be it from me to lose myself in a maze of juridical observations, I wish only to offer incontestable facts. The allied Powers have imposed a series of provisions of the Hague Convention of Land warfare which are quite obviously not valid law -- and denied Germany the right to impose a corresponding customary law.

In this connection are included the provisions of Articles 46, 47, 50,53, 55 and, 56. These facts, it is true, should not be submitted to critical examination, however, they must be ascertained, since it is unequivocally and incontestably clear from them that the Allies as the occupying ofrces, as well, have declared on their own initiative that provisions of international law are not applicable. According to the principle of equality in international law, Germany should also be accorded this same Light in its conduct of war. May I just add a few comments to the fundamental statements on the subject "Order", which was already presented from the opposing side: As leader of an executive organ Blobel had no other alternative than to carry outthe orders given him by his superiors. The possibility of open insubordination and resistance to superiors existed in Hitler-Germany only under the simultaneous risk of an SS and police proceeding, which could mean the most serious personal disadvantages - loss of freedom and possibly of life, but conceivably did not necessarily have to result in this way. In the final analysis this was contingent upon matters which were beyond the influence of individuals. However, there is a sufficient number of examples on hand to prove that neither one's position of rank or undeniable merits could keep one from the fate of death or the concentration camp. That does not mean that everyone had to pay the high price of loss of life or freedom for such acts. However, could the taking of such a great risk be expected? What should Blobel have done in his condition of constraint into which he had been forced by conditions of war in June of 1941? In all events, would he have been able to achieve anything through insubordination, which would undoubtedly have placed him jeopardy? Another would have taken his place with the same order. The charge of unconditional obedience against the government of Hitler is fundamentally unsubstantiated, since then the whole world would collapse in anarchy if in every state every citizen were permitted to subject the legality of every order of a formal competent organ to scrutiny, every citizen of every state would be logically entitled to the rewards and culpability of everything good and bad achieved by any of the agencies of his state, provided he obeyed the supreme legislator.

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In every army loyalty and obedience still apply as the highest military virtues without which it cannot carry out the duties assigned to it. but having obeyed blindly is too lightly raised. Unfortunately, the true picture of the authoritarian state is too lightly misunderstood by all those who have been spared by fate from a life under such a system of government. If it were so simple to disrupt themotivating power of such a government machine, organized down to the n'th degree, then the history of not only of Europe but of the entire world would Present an entirely different picture. The technical means of suppression have in the course of history been perfected to an immense extent. At the time of the storming of the Bastille a comparatively small number of people were able to carry out successfully a unique uprising against weapons which were primitive when compared with those of today, Today they would have been dispelled with a few machine-guns and in all probability it would have required several million martyrs to overthrow the ancient regime. Our era is well aware of the techniques used in controlling the masses and evidences this knowledge through the appreciati n they accorded, among other things, to the atom bomb. As concerns the indictment for membership in the SD declared by the IMT as a criminal organization, neither can Blobel be condemned for this fact. According to the wording of the judgment of the IMT, the prerequisite for the judgment is that the member of the organization did not declare his intention to resign after 1 September 1939 in site of his knowledge of the criminal character of the organization. It can be seen from previous statements that in the action of Blobel there was a lack of subjective facts, that is, that hemust have considered the executions carried out in harmony with international law and so considered them, with the result that the found himself in a credible error of judgment.

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It would have been incumbent upon the prosecution to present evidence for this fact, yet it did not produce evidence that Blobel was aware of the criminal character of the organization. In addition, service in the SD was not voluntary, seen from the viewpoint of the conditions of war. This point has been treated in detail in another passage. a man who had been successful in a recognized profession through his assiduity and honest endeavors, who never strayed from the straight path of personal decency, obedience end loyalty, and who, through conditions of war, was placed before a task that today is under severe indictment. Do not consider his case only from the legislative point of view, but also call upon your humanitarian feelings and understanding for the position from which he like many of his comrades found no escape. And now, your Honors, render a judgment that is conceived before God and your conscience, affix your names to a judgment that is an expression of wisdom and justice. Remember the words of your President Woodrow Wilson: "America has raised the torch that will shine for all generations and will light the way of humanity to the goal of justice, freedom and peace."

THE PRESIDENT: Do you want to say anything further now on the matter of documents presented in the closing brief by the prosecution, or do you think you have sufficiently covered it?

DR. HEIM: Your Honor, may I ask one question please? The Tribunal has ruled that after the final pleas of theprosecution, the final statement of the prosecution, the defense may immediately reply to it. I will take the liberty, if the Tribunal agrees, during this reply to make these statements briefly.

THE PRESIDENT: Yes, very well. We would like to repeat, however, that this additional reply which will be permitted defense counsel must be directed to something entirely novel, unique and new presented by the prosecution which the defense did not have a chance to reply to or meet in its argument.

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present in court this morning. There should always be two or three lawyers here to proceed with the further business of the court. Now it so happens that we are just about at the recess period so that no time will be lost, but if Dr. Heim had finished sometime prior to the recess period we would have lost considerable valuable time which is inexcusable. with regard to further counsel ready to present their summations? that you, Dr. Heim, will inform other counsel that they must not take too lightly this business of presentation of their final pleas.

(A recess was taken.)

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(The hearing reconvened at 1125 hours.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Dr. Durchholz.

DR. DURCHHOLZ: Durchholz for the defendant, Schulz. Your Honor, I would like the defendant , Schulz, to be excused tomorrow morning from participation in this session because I would like to have a talk with him.

THE PRESIDENT: The defendant, Schulz, will be excused from attendance in court tomorrow morning. Dr. Gawlik, are you ready to proceed?

DR. GAWLIK: Gawlik for the defendant, Seibert.

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DR. GAWLIK (Attorney for the defendant Seibert): D from the middle of July 1941 until June 1942. He did not volunteer for the assignment to the group staff in the capacity as Leader III, but was ordered to the group staff of Einsatzgruppe because of his former activity in Office III of the RSHA. Neither did Seibert work voluntarily in Office III during the war. with the Wehrmacht and was recalled from there without his knowledge and without his volition. I refer to the affidavit of Arthur Bau which has been submitted by me. This affidavit proves that, at the beginning of the war, the defendant Seibert was serving with a Wehrmacht unit where he held the rank of officer. Against his wish, he was recalled from his unit to Berlin, to the RSHA, Office III. This is likewise confirmed by the then leader of the department "Personnel" in Office I of the RSHA, Gottfried Klingemann. His affidavit proves that the department for mobilization orders in Office I, on 1 September 1939, the date of the outbreak of the war, sent orders for their immediate return to the RSHA to all members of the RSHA who were serving with Wehrmacht units at that time, and that Seibert numbered among the re-called, and that Klingemann himself had seen and welcomed him in the RSHA, on which occasion, in early September 1939, he was still wearing the army uniform of a lieutenant. fore, was not a voluntary one, but was based on the Reich Defense Law. The affidavits of Dr. Ehlich and Hennicke which were submitted by me, prove that the defendant Seibert did not volunteer afterwards for Einsatzgruppe D, but was officially assigned there in the capacity of Leader III. The statements of the said persons tally with the findings of the IMT, namely that members of the SD had no possibility of choosing freely their fields of activity, during the war, and that refusals of accepting definite positions, in particular in the occupied territories, could have entailed severe punishment.

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For this reason it is not a matter of voluntary transfer to Einsatzgruppe D as the Prosecution asserts in its Closing Brief on page 2. Seibert worked as Leader III, and his work consisted in making reports, in particular about the various fields of daily life, such as about economy, administration, folkdom and culture and about the mood and situation in general. It was therefore not merely a matter of making economic reports as the Prosecution will have it on pages 2 and 3 of the Closing Brief, where, by the way, some mistakes are made as regards the denominations and the activities of Seibert in Office III and as Leader III in field service. The intelligence work of Department III was one of the tasks of the Einsatzgruppen and Einsatzkommandos which fact has been proved by the hearing of the evidence. addition, been commissioned with the task of "liaison with the 11th Army", i.e. with the Wehrmacht, by the Chief of the Einsatzgruppe D, owing to his being an officer in the Army. While the defendant Seibert was a member of Einsatzgruppe D he never exercized any functions in either an Einsatz- or a Sonderkommando which alone, as has been clearly proven by the evidence submitted.,- had the task of carrying out executions. Seibert for part of the executions carried out by Einsatz- and Sonderkommandos of the Einsatzgruppe D. A decision on the Question as to whether the defendant is guilty within the sense of the indictment, depends upon an answer to the following 5 questions, namely which I have already mentioned in my plea for Naumann. These are:

1. Did the defendant personally participate in executions?

2. Were these executions. carried out by his directives or orders?

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3. Before the executions were carried out, was he aware of this fact?

4. In case the answer is in the affirmative, did he either have the power or the opportunity to prevent or stop them?

5. Should this also be answered in the affirmative, did he neglect to act and thus became particeps criminis and co-principle?

Concerning question 1: Neither did the Prosecution contend that he did, in fact, do so. However, he neither participated at executions. persons having committed acts of plunder and sabotage. His presence was, however, merely due to chance and was in no way postulated by his tasks with the Staff of Einsatzgruppe D. These tasks merely demanded the carrying out of trip of inspections pertaining to his sphere of work as Leader III, but did not include superintending of executions. On the occasion of these journeys of inspection, it was the task of Seibert to talk to the expert III of the Kommando he was visiting, to give him directions and to visit, jointly with him, the offices of the Army Command or Division of the letter. On most of those trips Seibert was accompanied by the Chief of the Einsatzgruppe. When accompanied by the Chief of the Einsatzgruppe, Seibert's activities or tasks did not differ from the ones he usually undertook when he was alone. That is to say, when he was accompanied by the Chief of the Einsatzgruppe, he merely executed tasks pertaining to his sphere of work, namely that of reporting events. Twice, on trips undertaken jointly with the Chief of Einsatzgruppe, Seibert happened to arrive in time to witness executions, carried out by Kommandos. anything beforehand of these executions. Their presence at these executions was therefore not the purpose of their trip, Whilst en route, Seibert and Ohlendorf merely happened to come upon these execu tions.

Only after the lender of the Kommandos had talked to the Chief of the Einsatzgruppe, did Seibert learn of the details. In this connection the defendant Seibert learned in both cases that the persons about to be executed had committed acts of plunder and sabotage. These, therefore, were not executions based on the Fuehrer Order, The defendant Seibert never admitted, as is contended by the Prosecution in their Closing Brief, page 9, that possibly the victims had only been executed because they were Jews. On the contrary, Seibert has stated (records page 2526 Engl.) that he learned that these persons had committed acts of plunder and sabotage. Neither did the defendant Seibert in his cross-examination by the Court state, as is contended by the Prosecution, referring to the record, page 9 of their Closing Brief, that he knew what the purpose was. Seibert's testimony pertaining to this point, according to page 2523 Engl., is as follows: "Beforehand, I know nothing at all of the execution." Seibert as a subordinate officer could not very well stay in the car, but had to accompany him. Under those circumstances, the presence of the defendant Seibert at the executions does not render him a party to the crime. This is the generally accepted principle of the penal code of laws of all civilized states. I refer in this connection to the arguments of Wharton in his book on "Criminal Evidence" 1935, Vol. II, page 1237, where he says:

"Mere presence at the time a crime is committed without interfering, does not make one a party to a crime, unless his interference was a duty by reason of some position held by him, or unless non-interference operated ans was designed to operate as encouragement or protection." This corresponds also to the judgments regularly passed by the American Courts. For this, I refer to the decisions of the tribunals in the individual states of the USA, listed under note 16 on page 1237 of the quoted work, I further refer to the decision of the British Military Court for the Trial of War Criminals, held at the Court House, Almelo, Holland, on 24-26 November 1945, printed in Low Reports of Trials of War Criminals, Vol.

I, pa, 35. From this decision of the British Military Court the fact emerges that the mere presence does not suffice, but that, according to the Established Rules of Criminal Law of civilized Countries, only those are responsible as aiders, abetters, accessories, etc., who in some way supported the action. Hence there must be added a support of the crime by some kind of action in order to create a responsibility as aiders, abettors, accessories, etc. with the judgments regularly passed by German Courts according to which complete inactivity never suffices to make somebody responsible as an accomplice in a crime of commission, not even if the inactive person knew about and approved of the punishable action of the other. Especially his mere presence at the place of crime is not sufficient. realization of the crime (I here refer to Eber-Mayer-Lobe-Rosenberg, Reich Penal Code 1929, Article 47, Note 2b and decisions listed there of the Reich Supreme Court in penal cases). Also the rendering of assistance as an accomplice is a crime of commission in German Penal Law and therefore cannot be found in a purely passive attitude (Sec Olshausen, Commentary on Penal Code, 1927, article 49 Note 10). happened to witness as a spectator, were not measures on the basis of the Fuehrer Order, but measures which probably had been taken in accordance with the law after carrying out proceedings against plunderers and saboteurs. During his presence, Seibert neither had the right nor the obligation to interfere with the carrying out of the executions, because he only accompanied Ohlendorf on his two journeys, owing to the great distances between the locations of the Kommandos in order to take advantage of the Einsatzgruppen-Chief's car, and because his presence at executions did not belong to the service tasks which were incumbent on him in the Staff.

Moreover, it would not have been possible for him to prevent the executions in the presence of his superior Ohlendorf. His non-interference therefore does in no way mean a support of the Kommandos who carried out the executions.

Covering paragraph 2: of Einsatzgruppe D never gave directives or orders for the carrying out of executions. reason that the Fuehrer's Order had been transmitted by Gruppenfuehrer Streckenbach in Pretsch to the Sonder- and Einsatzkommandos already before the beginning of the Russian campaign. Neither would Ohlendorf's temporary absence have given any cause, owing to the order which in Pretsch had been clearly transmitted to all Kommandofuehrers for giving any execution orders or making decisions in this field. In this connection I quote the statement of Einsatzgruppen Chief Ohlendorf (page 533 of the German, 523 of the English transcript) "The orders for the executions in the East given in Pretsch, went to all Einsatzgruppen commanders or Einsatzkommando leaders who went along during the beginning of the Russian campaign.

They were never revoked. Thus they were valid for the entire Russian campaign as long as there were Einsatzgruppen. Thus it was, therefore, unnecessary at any time to give another order of initiative. Therefore, I did not give any general order of initiative and did not give any individual order to kill people." ing to Ohlendorf's own statement, had been transmitted in writing by himself to the Kommandos. I also refer to the statement of defendant Schubert on this point, who testified that there existed written directives by the Einsatzgruppen Chief to the Kommandos.

authority in the Kommandos under his charge to decide whether a person was a Jew, a Gypsy or a Communist and to order his execution, Ohlendorf declared: "That was a matter of the Kommandos". Also codefendant Braune has testified during the cross-examination by the Prosecution that the final establishment of the fact whether a person was a Communist or a Soviet functionary rested with the Teilkommandos. not the responsible deputy in charge of the Einsatzgruppe during the absence of Ohlendorf. February 1947, 24th February 1947 and 7th of December: 1945 to which the Prosecution has referred as evidence, that the defendant Seibert had been the deputy general of Ohlendorf. In the statement dated 24th February 1947 Schubert testified:

"In October 1941 I was assigned to the Einsatzgruppe D. Otto Ohlendorf was the chief of the Einsatzgruppe and Willy Seibert was his deputy, I was assigned as adjutant to Ohlendorf, and stayed in this position from the time of my arrival until the end of June 1942". conclusion by the Prosecution that Seibert had been the responsible deputy of Ohlendorf within the entire Einsatzgruppe. Schubert stated merely, as is evident from the context of his testimony, that Seibert represented the Chief of the Einsatzgruppe Ohlendorf within the Group Staff. During his hearing on the witness stand Schubert has made it absolutely clear, that he wanted to state only this, when making his statement, and that his explanations could only be understood in this sense. Schubert testified to this as follows:

"What can be meant here is only that Herr Seibert in the Staff of Einsatzgruppe D and only for the staff of the Einsatzgruppe D was the deputy of Ohlendorf, only in this one function, but never, and that is what I said, the ease could have happened in which Seibert would have been the deputy of Ohlendorf for the entire Einsatzgruppe D. Therefore I would lie to explain this particular wording Seibert was his deputy,' and that is what I said, I think, in my interrogation very clearly, and I certainly did not put it into this very general form."

proof as compared with the affidavits. For this reason the oral statements are to be given preference. When analyzing the affidavits of Schubert, it should be taken into consideration also, that the statements dated 4th and 14th February 1947 were not composed by Schubert. Rather, they were drawn up by the interrogator Wartenberg on the basis of Schubert's statements and were merely given to Schubert for his signature, as has been confirmed by Wartenberg in the witness box. In the index dated 7th December 1945, Seibert is listed under the heading "staff". Schubert stated with regard to this in the witness box:

"I mean to express by this phrasing, what I actually expressed was what was the actual case. Seibert was the Permanent Representative in the Group Staff of Einsatzgruppe D." justify the assumption that Seibert was the deputy general for the Einsatzgruppe D. The statements of Jonas are much too general. The statements of Jonas are hearsay, which, according to the general rules of evidence, are not admissible. Jonas has only voiced his opinion, that Seibert had been the representative of Ohlendorf in the Einsatzgruppe D, without giving the least indication, how he came to have this "opinion". Jonas was at that time officer in the Company of the Police and - as he himself stated in his affidavit - was assigned to the Sonderkommando 11 B, which up to November 1941 was never stationed at the location of the Group.

He was with the Kommando 11 B in Simferopol, the location of the Group, only at the time, when the defendant Seibert was on leave in Berlin (November/December 1941), and he himself left the Sonderkommando 11 B and with it the Einsatzgruppe in the middle of December 1941, according to his own statements. These statements have been confirmed also by the testimony of the former Kommando Leader 11 B, B raune, during cross-examination. during cross-examination and to the affidavit of Bekhof. the statements of Ohlendorf in his affidavit dated 2 April 1947, in order to substantiate its claim, that Seibert was the responsible plenipotentiary for the entire area of the Einsatzgruppe. Ohlendorf did not have a Deputy General, but the four Group-Leaders of his office represented him each in his sphere of activity. This is evident from the affidavit of Dr. Ehrlich, who knew from the way in which Ohlendorf used to conduct his work and command in RSHA, that Ohlendorf during the 6 yea rs of his activity as Amtschef had never had a deputy. Dr. Ehrlich mentions in particular with regard to this question:

"In his absence, even if lasting for a longer period of time, he was represented by the competent Group-Leader in matters pertaining to his specific sphere of activity. This ruling applied also for the long period of absence of Ohlendorf as Chief of the Einsatzgruppe D in Russia. In the absence of Ohlendorf, the Group-Leader signed with "I.V." (by order, in Vertretung), if it was a matter of letters from the Amtschef, without, however, thus being or becoming the Deputy general for the entire Amt III. This applied also for the time, when Ohlendorf was present as Amtschef III and the Group-Leader signed a letter concerning his Group-area."

Spengler find the affidavit of Dr. Roessner. appointed as deputy of Ohlendorf by the ESHA. Ohlendorf himself has never appointed him as his deputy for the entire area of the Einsatzgruppe D nor has in fact permitted him to be active as such. He could not even have done it without the ESHA. I refer in this matter to the statements of Ohlendorf in the witness stand. he was the senior officer after him, had been entrusted with the duties of a deputy during his (Ohlendorf) absence. These statements however refer only to the position of Seibert within the Staff, but not to his position within the entire area of the Einsatzgruppe. This has been indicated very clearly by Ohlendorf in his hearing as witness. In this connection, Ohlendorf testified as follows:

"Seibert was the senior officer after me, in my staff out, not in the Einsatzgruppe, but in the Einsatzgruppe there were at least two people who were senior to him in rank, and at least two others who had the same rank as he held; therefore, it means that he was my deputy on the staff of the Einsatzgruppe, but not deputy for the entire sphere of the Einsatzgruppe." prosecution. To be sure, on page 5 of the Closing Brief, the prosecution, referring to page 727 of the record, makes such assertions. But this is not true. Ohlendorf merely said as follows:

"The co-defendant Seibert was my deputy in the staff of my group". (Record p. 737 German). Brief: "He supervised the smooth running of the affairs" (Record page 728 Engl.) On page 5 of the Closing Brief, the decisive phrase "in the staff" is missing.

on the witness stand, are a better proof, too, then the written statement of Ohlendorf.

According to Ohlendorf's additional credible statements Seibert could never have deputized for Ohlendorf in the entire spheres of the Einsatzgruppe because he had no authority over commanders whose rank was superior to his, as for instance, Seetzen, who commanded 10 A, or Standartenfuehrer Mueller of Kommando 12, This very fact proves that Seibert was not Ohlendorf's deputy in all the spheres of the Einsatzgruppe, and not a deputy with authority over the Einsatzkommandos and Sonderkommandos. This would also have created conditions which were entirely impossible from military aspects, as it would hardly be possible to make a Major the superior of a Colonel or Lieutenant Colonel - if we want to make comparisons with military life.

This proof is in no way invalidated by Seibert's own statements. Seibert has never admitted that , in absence of Ohlendorf, he could have forwarded orders to the Kommandos with the notation "for your compliance". This fact does not become evident from the page of the Record as quoted by the Prosecution on page 8 of its Closing Brief (page 2616 German). Seibert has only stated that he forwarded such a communication "with the request to take official notice", which does not mean "for your compliance". There is a considerable difference between forwarding orders "to take notice" and "for your compliance". The phrase "for your complance" at the same time, has a commanding meaning, which the phrase "to take notice" has not. This invalidat es also the conclusions which the prosecution wants to draw from this unproven assertion of Seibert's having been an important link in the chain of command. the situation with the leader of the Kommando in an urgent case and that he took steps at once, it is unmistakably proven by the Record that this statement of the defendant Seibert had nothing to do with immediate steps in connection with executions, as the Prosecution would like to have it, but referred to circumstances like the example of the surprise attack of partisans, as mentioned by the Presiding Judge.

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The statements of the defendant Seibert about the interrogation of PW's have likewise not the meaning which the Prosecution, on p. 8/8a of the Closing Brief, wants to attribute to them. The defendant unmistakably said that it would have been impossible for him to conduct police interrogations for the gathering of information from a PW, in the framework of an investigation, but that he, just as any other soldier, could have asked only general questions of a prisoner who had been taken to his presence, in order to learn which agency would have jurisdiction for the questioning of the PW. relevance as to Seibert's guilt. Only what Seibert did can have decisive value, and not what he would have done. in rank within the staff of the Einsatzgruppe and that he therefore took over all the tasks "within the group", whenever Ohlendorf was absent from the group, In this respect, the fact must be stressed that Seibert did not formulate the affidavit himself. As Seibert testified on the witness stand, he did not alter this formulation beca use, in the usual phraseology, the group staff too was meant when the term "group" was used. This interpretation of the term "group" clearly emerges from the affidavit, because Seibert, in the same affidavit, but shortly before, stated that he was never declared as the deputy of Ohlendorf as regards the Einsatzgruppe D. This sentence would make sense only if the staff of the group is meant too by the germ "group". That the term "group" was frequently used when the staff of the Einsatzgruppe was meant, has been repeatedly proven in the hearing of the evidence.

Thus the defendant Graf said for instance, on page 4769:

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"Current reports went to the Kommando Leader first who then passed them on to the competent agency or to the Einsatzgruppe itself," "Around the end of September 1942, I was to take over a sub-commando too.

I rejected this, saying that I had only been ordered to set up Department III, that I had been furnished by the group for this purpose and I was only man who dealt with SD reports," On p. 4895; to the question:

"Did you know that the commando leader made reports to the group", the defendant Graf, cross-examined by the Prosecution, replied as follows:

"Yes, I knew that because my reports wont through my commando leader to the group". put the following question to Graf:

"Would you say that your position in the commando corresponds to the same position in the group?" in his cross-examination, according to page 36-6:

"Who wrote these reports to the group?"

And his answer contains the following sentence:

"But it is also possible that, at that time, reports were submitted to the group directly from there, from the sub-commando, because it was nearer."

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The Defendant Noske once used the word "group" and another time the word "staff" though in both instances he meant the staff of the group (Gruppenstab). According to page 3607 of the German text of the record, the Defendant Noske in cross-examination, was asked the following question by the Prosecution:

"......, thus you would have omitted to mention this in your report to the Einsatzgruppe D?" mitted to him shortly afterwards, in the following manner:

"The report was sent by my Kommando, and I know, that the report was approximately 3 to 4 times as voluminous.

That is has now been cut, I perceive.

As to who has done the cutting, whether cannot say."

the questions, used the word "Einsatzgruppe" in the sense of staff. During the cross examination of the Defendant Schulz two pages of the records mention "Einsatzgruppe" seven times, though they can but refer to the staff itself; this applies both to the questions of the Prosecution and the replies by Schulz. It is to be noted in this connection, that in the German Military parlance it is common usage to talk of the "Regiment", though only the Regimental Staff is meant. I do not believe that the arguments of the Prosecution concerning the interpretation of the word "group" as used in the affidavit of Seibert could be refuted more precisely. Finally, the documents submitted by the Prosecution do not in any way prove that Siebert was Ohlendorf's deputy-in-toto. If Seibert signed these reports with the letter i.V. on behalv of Ohlendorf, he did this merely in matters pertaining to his sphere of work: namely that of making reports for the Army. As regards his sphere of work Seibert also acted as deputy for the Chief of the Einsatzgruppe when the latter was on duty. In this connection, I refer to the statement made by Ohlendorf, that the letters "i.V.", on behalf of, do not mean that Seibert had, in effect, been his deputy.

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Ohlendorf testified as follows:

"But it was the general, habit that chiefs of certain branches signed "By order of". That was the usage in the RSHA and par ticularly in my office III.

Therefore he signed "by order of" my deputy in his branch."

This very lucid statement of Ohlendorf's proves that the conclusions drawn by the Prosecution from his affidavit in its closing brief pages 4 and 6, are erroneous. I furthermore refer to the testimony of the witness Dr. Spengier. These statements are confirmed by affidavits given by the following persons: Dr. Ehlich and Dr. Roessner. In addition, the then Chief of Staff of the 11th Army, General Koehler, to which the Einsatzgruppe D was assigned, stated in his affidavit that he was not aware of the fact that Seibert had been a deputy of the Chief of the Einsatzgruppe or had been designated as such. Koehler was the 11th Army officer who had received the reports in question signed by Seibert. He therefore would have known if Seibert was Ohlendorf's deputy in the latter's capacity as Chief of the Einsatzgruppe. been the deputy-in-toto of Ohlendorf, we must not forget to consider the fact that Seibert accompanied the Chief of the Einsatzgruppe on most of his duty trips. The questions directed to defendants Ohlendorf, Schubert and Seibert by the Prosecution were based on this fact. Among others, the defendant Seibert thus visited Prague to attend, jointly with Ohlendorf, a congress there at the end of April/beginning of May 1942, as is evident from the statement of Seibert and also from the affidavit by Dr. Ehlich. This fact in particular refutes the assumption that Seibert was the deputy in-toto of Ohlendorf. If Seibert had in fact been Ohlendorf's deputy-intoto for the entire Einsatzgruppe, then his presence with the Einsatzgruppe during the absence on duty of the Chief would have been absolutely and particularly necessary.

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the statement made by Ohlendorf and the information that Schubert has given us each Kommandofuehrer had to make his own decisions necessary for his sphere of work during Ohlendorf's absence. He became thus a do facto deputy of Ohlendorf in matters pertaining to his own section. If a decision concerning the entire sphere of action of the Einsatzgruppe would have become necessary, then the ranking Kommandofuehrer would have had to make it. This ruling corresponded to the actual situation, as anyhow, the Kommandofuehrer had to act independently owing to the enormous size of the area occupied and the great distances between their location and the group. entire sphere of action of the Einsatzgruppe cannot be concluded, as it is done by the Prosecution, by the fact that he had access to the secret files of the Einsatzgruppe. All files and orders, inclusive of secret reports and secret orders were, as has been evidenced by Ohlendorf, Schubert and Seibert filed in the office. Neither had the defendant Seibert been commissioned with the task of keeping special secret files of of safeguarding them. If the reports filed in the office were accessible to Seibert in his capacity of Leader

III and for his duties connected with the making of reports, it remains incomprehensible how anyone could deduce from these facts that Seibert had held a special position with the sphere of action of the Einsatzgruppe as a whole. while being cross-examined by the Prosecution, immediately confirmed that naturally he had access to the secret files. Without considering this unequivocal statement of Seibert concerning this matter and by incorrectly reproducing Seibert's statement, page 5, closing brief of the Prosecution the latter tries to prove that Seibert has denied this fact.

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In reality, however, the defendant Seibert even on page 2590 English, 2639 German, of the record quoted by the Prosecution itself, states that he naturally had access to the secret documents. The remark of the Prosecution that in this connection Seibert had given a very sly reply indeed, is completely out of place. assertion that the cooperation between Seibert and the Chief of the Einsatzgruppe Ohlendorf was of necessity close and complete and that the defendant even knew about top secret matters with which the Einsatzgruppe was engaged. During the cross-examination of the Prosecution, Ohlendorf replied to the question whether Seibert was one of his few close friends in the Einsatzgruppe D:

I quote:

"I do not consider military connections as friendly connections." During the cross examination of the Prosecution Ohlendorf was likewise unable to corroborate the statement that he trusted Seibert to be the man who would see to it that all orders and instructions from Berlin as well as from the Army would be carried out as conscientiously as he himself would have done it, had he been present. Seibert discussed the execution of Jews, gypsies, Communists, with Ohlendorf etc., is incorrect in this form. According to the page of the Record quoted above, Ohlendorf said that he did not recall any concrete discussions. on page 5 - page 730 of the English Records, that Seibert would have had the power and authority to remedy abuses in the Kommandos or Tartarean companies, I refer to Ohlendorf's statement who literally said the following:

"I have just said that I do not remember that he was sent by me to inspect any executions.

If I sent him on any inspection trips, had special authority to remedy bad conditions there.

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That was the purpose of the trip."

more contained on page 3 and 10 of the Closing Brief of the Prosecution:

Defendant Seibert never stated that he was Ohlendorf's representative in questions concerning economy (Department D III). On page 2474 of the English Record which was quoted by the Prosecution itself, Seibert merely said, that he was not deputy chief of the Einsatzgruppe. At another passage Seibert declared that he represented Ohlendorf in the staff, in his sphere of work III, that is in all matters relating to SD-reports (which does not refer exclusively to economy) and in matters concerning communication with the Army. This points to the incorrectness of the statement on page 10 of the Closing Brief of the Prosecution, according to which Seibert is said to have defended himself by stating that he was in charge only of the administration and business routine.

Not even the enumeration of Seibert's duties, which, as I have pointed out, are represented incorrectly and one-sidedly, entitles the Prosecution to draw the conclusion that these duties are "the normal and official duties" of a deputy chief of the Einsatzgruppe. Because then even a staff officer, as for instance the administrative officer, or the transportation officer, who makes inspections, could be called a deputy chief.

This might be sufficient proof that Seibert never was Ohlendorf's deputy for the entire area of Einsatzgruppe D, and consequently had no authority to issue any commands whatsoever for any execution measures.

1.) the affidavits of

a) Ohlendorf, who, to use the very words of the Prosecution should be able to judge Seibert's duties better than anyone else.

b) Schubert

c) Seibert

d) Braune

e) Nosske

f) Ruehl

g) Spengler well as Schubert do not revoke in any point their affidavits which have been submitted by the Prosecution against Seibert, but only elucidated them when standing in the witness box,

2.) In order to prove the correctness of the statements made by defendant Seibert himself, I submitted the following affidavits:

a) Dr. Ehlich

b) Beckhof

c) Dr. Roessner

d) Woehler by Ohlendorf are completely in accord with these made by the defendants Braune, Noske, Schubert and Seibert and that there were no contradictions during the cross-examinations by the Prosecution either. lendorf's chief of staff for security problems. Concerning this Ohlendorf declared that this was a mere imaginative denomination. staff for security problems. The staff of Einsatzgruppe B itself never dealt with executive tasks. This was clearly shown by the statements made by Ohlendorf, Seibert and Schubert, True, a specialist for executive questions had been attached to the staff at the time of the activation of the Einsatzgruppe; however, Ohlendorf requested the Reich Main Security Office to remove him already at the beginning of the operations because the staff of Einsatzgruppe D itself had no executive tasks, a specialist for this subject thus being unnecessary. So this specialist was subsequently relieved. If the defendant Seibert accepted also reports from the Kommandos dealing with executive matters, he had, however, - in contrast to his reporting on the Dept.

III - domain proper - neither the right nor the possibility of checking such matters or even of giving orders and directives in connection therewith. The two activity reports mentioned on page 9 of the Prosecution's final plea, which partly fall into the time of Ohlendorf's absence, therefore cannot be regarded as incriminating Seibert, particularly because due to the absence of the chief of the Einsatzgruppe only the Kommando leaders as the letter's appointed substitutes might be mentioned in connection with the events described in the activity reports. ordered the co-defendant Schubert to inspect the executions in Simberepol in December 1941. In this connection the Prosecution referred to Schubert's affidavit dated 24 February 1947. In this affidavit Schubert declared that he had received an order from Ohlendorf or Seibert for the inspection of the executions in Simferopol in December 1941. Even the contents of this declaration make it doubtful as to who gave this order. To this must be added that Schubert when questioned in the witness box declared unequivocally that this order could have come, not from Seibert, but only from Ohlendorf. During his interrogation in the witness box Ohlendorf testified that it was he himself, not Seibert, who gave the order for the inspection of the executions in question. Moreover, the order cannot have come from Seibert for the mere reason that he had not been in Russia at all during the time in question. Seibert, in the period from mid-November till about end December 1941 was on recreation leave, which he spent in Berlin. This follows from Schubert's testimony in the witness box. Schubert's testimony further shows how the wording came about, according to which Ohlendorf or Seibert had destined Schubert to supervise the shooting of 700 to 800 human beings.

Schubert stated;

"Where it is said that "in December, 1941 - I do not remember people."

This wording "or Seibert" is completely wrong for feropol at all.

I think I have already clarified this point by saying that I told Mr. Wartenberg that this was wrong, but he because, allegedly, I had said in the interrogation "Ohlendorf or Seibert". November and December 1941 Seibert had been on leave in Berlin for about 4-5 weeks.

I make further reference to the statement made by the codefendant Braune to this point. In addition there are two more affidavits which confirm that the defendant Seibert was on leave in Berlin at the time in question. order to supervise the executions from the defendant Seibert. the Prosecution quoted also Ohlendorf's affidavit dated 2 April 1947 in which Ohlendorf declared that the only people whom he committed in genera to inspection duties had been, besides Schubert, Willy Seibert and Hans Gabel. There is no mentioning of any executions. The Prosecution has arbitrarily added this to its quotation on page 5 of the final plea. to Seibert in connection with executions. dated 2 April 1947, as follows:

"This formula was no doubt the result of long discussion with "that I did not know anything whether, or to which executions I sent the two persons named last.

The inspection task I refer also carried out regularly; he inquired about order in the thing he had to deal with, or of any event occurred."

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Upon my question put after this to Ohlendorf:

"Is it therefore correct that in this sentence you wanted to express that Seibert did not inspect any executions?"

I received the following answer from Ohlendorf;

"I expressed that I do not remember any such executions, there fore, I do not remember that Seibert inspected any."

satzbruppe D answered in the negative to the question I put to them as to whether the defendant Seibert had inspected an execution carried out by their units. did not supervise any executions. or Sonder Komnandos or for their further commitment. In the reports presented by the Prosecution as evidence, Seibert only passed suggestions and plans of the Kommandos on to the 11th Army without having himself any power of decision. It should be noted in this connection that the suggestions made in these reports were not originated by Seibert, but by the Einsatz and Sonder Kommandos. The only reason why Seibert passed on these reports was that he had been entrusted with the task of collaboration of the staff of the group with the 11th Army. nection as the Prosecution tries to imply on page 7 of its final statement. If Seibert stated on page 2587 English: "Decision rested solely with the Army", he was referring to the assignment of the Kommandos. On pages 2588 and 2589 of the English Record, however, no more mention is made of these assignments. The point at issue was the power of decision in case of necessary local transfers of Kommandos.

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interview on 11 October 1941, he did so within his sphere of work and not by any means as Ohlendorf's Deputy-General. In this capacity, he accordingly signed the report "I.V." on behalf of, that is acting as deputy in his sphere of work, The respective comments on page 7 of the closing brief of the Prosecution to the effect that he had admitted having signed as deputy of the group chief, is incorrect for it says on page 2578 of the Record, quoted by the Prosecution itself, that Seibert was with regard to the staff (Stab), the permanent deputy of the Group Chief in his sphere of work, and, as such, signed these reports, This is also proven by the affidavit of General Woehler.

Woehler was Chief of Staff of the 11th Army and it was with him that Seibert had the interview, referred to in the document. That an interview with General Woehler did take place is proven by the photostat copy of Document NOKW-629Exhibit 159, Volume III D, which shows Woehler's initials and the handwritten annotation: "Took place on 11 October in Novnikolajewka. W". Woehler stated in his affidavit that Seibert whose sphere of work comprised economy, administration, public health, ethnic and cultural questions, never reported to him about executive measures or executions, nor about executions of Jews. It had not come to his knowledge, he states, that the defendant Seibert acted or had been appointed as deputy of the Chief of the Einsatzgruppe D. of the Kommandos of Einsatzgruppe D, between 1 February and 16 April 1942 deals with executions of Communists and the burning down of the village of Laki, that does not prove at all that the defendant Seibert had any influence whatsoever on these actions. The measures described in the report could not, by any means, be based on an order or on instructions by the defendant Seibert, because Seibert was never informed about the activities of the

Kommandos until afterwards. In this connection I would refer in particular, to the deposition of the chief of the Einsatzgruppen, Oh lendorf, These reports in no way supported or promoted the carrying-out of executions as per Hitler's orders.

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In particular, no connection can be proved between these report and the carrying-out of the Hitler-orders. This was not possible, alone for the reason that these reports were made only after the aforementioned events had taken place. The reports, therefore, cannot have any bearing on the carrying-cut of the aforementioned measures. the defendant is blamed by the Prosecution is just a summary of Kommando reports. In regard to the executive powers of the Kommandos, Seibert neither had the right, nor was it his task, to make any further enquiries, to check on matters or to pass decisions. It is therefore incomprehensible how the Prosecution proposes to deduce from the contents of the two documents Seibert's responsibility for the events mentioned in the reports. davit by Generaloberst Halder, formerly Chief of Staff of the Army, submitted by me. In this affidavit, Halder pointed out that in putting his name to a report, the undersigning staff officer does not assume responsibility, for the acts referred to therein, but only for the correct rendering of the report.

In view of the fact that Seibert was a "Referent III", viz. an intelligence officer and reporter - I wish to mention this fact because it was under discussions during his interrogation - it is not possible to connect him with the collection and realization of the objects taken from persons selected for execution, The Prosecution has not been able to present any incriminating evidence against the defendant in connection thereto. The Prosecution probably was laboring under a misapprehension because it cannot possibly have been one of Seibert's function to have dealt with confiscated objects. had been formed at the order of the 11th Army cannot, in any way, be con nected with the executions carried out by the Einsatz and Sender Kommandos, These companies had nothing whatever to do with executions carried out on the basis of the Fuehrer-order.

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These companies had been quartered in ondangered villages, as a protection against raids by partisans; that was their only function, as shown by the documents presented by the Prosecution itself,

THE PRESIDENT: Dr. Gawlik, shall we suspend now, and, Dr. Link, you will be ready to follow Dr. Gawlik?

DR. LINK: Yes, Your Honor.

THE PRESIDENT: Very well, the Tribunal will be in recess until 1:45.

THE MARSHAL: The Tribunal will be in recess until 1345 hours.

(Noon recess taken, to 1345 hours 10 February 1948.)

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(The hearing reconvened at 1345 hours, 10 Feb 1948)

THE MARSHAL; The Tribunal is again in session.

DR. GAWLIK: I shall continue on page 32; supervised the military training of the Group been proved. With regard to this question the Defendant Seibert stated that he had carried out one or two driving manoevures with the drivers in Dueben, shortly before the departure of the Einsatzgruppe and that he had nothing to do with this any more after the arrival at the point of departure of the Einsatzgruppe in the East. Moreover, it is to be pointed out, that there is no proof whatever that the Defendant Seibert had participated in the screening of Communists or other persons in Russian Prisoner of War Camps. This is proved not only by his own affidavit, but also the statements made in direct and cross-examination through the Prosecution leave no doubt, that Seibert has never been implicated nor that he had any knowledge of those cases of screening during his stay with the Einsatzgruppe D. During cross-Examination Seibert testified convincingly to his affidavit.

"I told Mr. Wartenberg at the time clearly that I cannot give any detail, and I do not know at the moment whether this general knowledge was based on an order which I read or whether I heard it through conversation. I do not know exactly." order from the Army to the Einsatzgruppe for the execution of hostages. He merely informed the Einsatzgruppe of a remark made by the General von Schobert, who was dissatisfied with the situation in the army area and had therefore made the remark, that he had ordered or was going to order the taking of hostages and that he would have them shot, if anything happened. But it was not the case of transmitting an order, ashas been stated convincingly by the Defendant Seibert in cross-examination by the Prosecution.

in addition, even the absence of Ohlendorf and on his own initiative, issued the necessary orders for the murder and mistreatment of Russian citizens, the Prosecution has not even attempted to submit any evidence. had never been carried out by instruction or order of the Defendant Seibert, The activity of the Defendant Seibert in the staff of Einsatzgruppe D, which I have analyzed in detail, did in not way support the carrying out of executions either.

As for question 3: ordered the execution of Jews, Gypsies and Communist functionaries, Seibert was not present at the meeting in Pretsch, where Gruppenfuehrer Streckenbach informed the Chiefs of the Einsatzgruppen and the Chiefs of the Einsatz- and Sonder-Kommandos, who were present, of the Fuehrer order, because his sphere of activity in the Staff of the Einsatzgruppe D had nothing to do with the ordered executions, For this reason and I want to stress it particularly, he was not even invited to take part, when the order was issued. He only heard of this order, as he explained convincingly on the witness stand, on the journey to the Einsatz area. as a criminal participation in carrying out the order. First of all, it would have to be proved, that Seibert knew of the respective executions, before these measures had been carried out. carried out, because the executions, as I have explained in detail, did not belong to his sphere of activity. He can only have hoard afterwards of the respective executions through the incoming reports of the Einsatz- and special Kommandos.

Besides, even knowledge before the carrying out of the respective executions would not be sufficient to warrant a conviction of Seibert. This opinion is generally acknowledged by the literature of criminal law and jurisdiction. I refer in this matter to the expositions of Wharton in his publication, which I have mentioned already, Criminal Law, Volume II, Page 1236, Par. 734. It is stated there:

"The knowledge that a crime is being or is about to be committed cannot be said to constitute one accomplice." power and the opportunity to prohibit the carrying out of the order or to halt it, and that he criminally neglected to do so. This proof had not been brought by the Prosecution. Quite to the contrary, there can be no doubt in view of the submitted evidence, that Seibert Could not prevent the carrying out of this order in the course of his reporting duties, and that neither his position within the Einsatzgruppe nor his rank gave him the necessary power or authority to do so. one of Hitler's orders, the execution of which was supervised by the men, Himmler and Heydrich, who were among the most powerful people in Germany? question. But if that question remains unanswered, then it cannot be stated either that Seibert had the power and the chance to prevent the execution of the order issued by Hitler. In conclusion the above may be summed up as follows:

1. It has not been proved that Seibert knew in advance of measures to be carried out.

2. Seibert had neither the authority nor the chance to prevent these executions from being carried out or to halt them. Nor can, for the same reasons, a responsibility of Seibert be deduced from the fact that he failed to prevent the carrying out of the executions.

recognized as proved that Seibert took part in any of the crimes of which he is accused by the prosecution, it would be unjustified to find him guilty: for Seibert acted on orders. Here, I am refering to my general arguments in so far as they deal with the fact that, according to general principles of international law, a person having acted on higher orders cannot be found guilty. In any case, however a considerable mitigation of punishment would he justified.

Within Einsatzgruppe D. Seibert did not hold a position of command. He was a subordinate of the Chief of the Einsatzgruppe who alone was responsible for the actions of the whole Group. including the actions of the Staff of the Einsatzgruppe, and whose orders Seibert was bound. to obey. Seibert could not fell any independent decisions. In particular, he had no authority to make decisions with regard to executive measures. Seibert, while on the witness stand, declared credibly and convincingly that, according to his inner conviction, he thought the Fuehrer's order to be wrong. (Records: page 2551 English, page 2602 German). In the course of the subsequent interrogation, Seibert reaffirmed his attitude towards the Fuehrer's order and declared that be would not have carried out an order, if conveyed to his through military channels, to shoot two persons only because they were Jews (Records: page 2725 German). furthermore, he has stated that, as an officer, he would not have been bound by duty to obey such an order. Under Count 3) of the indictment the prosecution has asked to find Seibert guilty of membership in the A. the SD and B. the SS, organizations which were found criminal by the verdict of the International Military Tribunal.

First of all I shall deal with Membership in the SD. The defendant Seibert was a full-time employee of Office III (SD) of the Reich Main Security Office. But that fact alone does not justify a verdict of guilty because of membership in an organization which has been found criminal by the verdict of the IMT. The IMT has expressly stated:

"The mere membership is not sufficient for a person to be affected the these findings." (Records: Page 16503 German). that the fact that a group of persons has been declared a criminal organization must not result in wholesale convictions of its members. (Records: page 16503 German transcript) But if the mere membership were found sufficient for a verdict of guilty, then the result would be mass convictions.

DR. GAWLIK: I shall interpolate something here. I unfortunately find that outside in the denazification boards in the British as well as in the American Zones, mass convictions do happen of members contrary to these expressed statements by the IMT - mass punishment merely on the basis of the membership in a circle of people generally declared to be criminal.

organizations may be summed up as follows: Individual members may only be found guilty of membership in criminal organizations when the following conditions have been fulfilled:

1. The member must have supported the criminal aims of the organization in co-operation with the other members, because, according to the IMT verdict, a criminal organization is similar to a group of criminal conspirators (Records: page 16503, German transcript):

"In both cases, the co-operation for criminal purposes is the essential factor."

2. The member must have been cognizant of the criminal aims or actions of the organization. That also can be unequivocally concluded from the IMT verdict. According to the IMT verdict, those members who had no knowledge of the criminal aims or actions of the organization do not belong to the condemned group of persons. This limitation rests on the principle, expressly recognized by the IMT, that the criminal guilt be a personal one. The IMT has recognized this principle of personal guilt as one of the most important principles of criminal law. (Records: page 16503, German).

3. The membership must be voluntary, for, according to the IMT verdict, all those members are expressly excluded from the group of persons declared criminal I refer in particular to the statements of the Chief Prosecutor of the USA, Justice Jackson, and to the statements of the British Prosecutor, Sir David MaxwellFyfe, in the session of 28 February 1946.

Among other things Jackson has stated:

"Organizations with criminal aims are regarded everywhere as criminal conspiracies in keeping with their character, and their criminal character is viewed according to the principles of their conspiracy."1
1) Page 400 of the official text "The Trial against the Chief War Criminals before the IMT", Volume 8
Thus the following result may be obtained:

The fact of more membership does not suffice for conviction. The member must in addition have fulfilled the prerequisites of the conspiracy, and indeed a conspiracy to commit the crimes designated by the IMT in the sense of Section 6 of the Statute. facts of the conspiracy. the following must be differentiated:

1.) his activity in Group D of Office (Amt) III, 2.) his activity as Chief III in the Einsatzgruppe, With respect to 1): (The activity of this Group D of Office III)

a) The activity of Seibert as Group Leader III in the sphere-oflife work was concentrated on the Sector Economy. and of the Party in Economy and to work the result of these findings into reports. State and of the Party in question, to show up possible deficiencies. In the opinion of the IMT it was established that the SD (Office III) pursued tasks and aims, which are war crimes or crimes against humanity according to Section 6 of the Statute. a judging of this sort with respect to Amt III (SD) will not have a support in history. SD in the reasons for the verdice were not carried out by the SD. I have demonstrated this in detail in my final plea before the IMT. As a matter of fact the very evidence in the proceedings has shown that the organization Office was merely an intelligence service. the purpose of which was to investigate the frame of mind (Morals) of the people toward measures of the State and of the Party, and to forward the results of this work to the authoritative offices.

for example, as is set down in the judgment of the IMT, to shoot hostages, to arrest relatives within the blood kinship, to carry our the "Nacht und Nebelerlass" (Night and Fog Decree), "Kugelerlass" (The Bullet Decree), and the Kommando orders, to commit any given atrocities and murders in concentration camps and to put through the slave-labor program of the German Reich, In fact this very Court will know, for example, from the proceedings against Pohl and others, that other main offices bore the responsibility for the conditions in the concentration camps, and that one cannot ascribe responsibility to Office III for the latter. The findings may be presupposed before this Tribunal to be a fact known to the court. ever be regarded as a support of any criminal tasks in the sense of Article 6 of the Statute. The presiding judge of this Tribunal has declared this activity as legal in the course of this Trial (Record p. 2521 German). commission of war crimes or of crimes against humanity by being employed in Office III (SD), For that reason already the first premise is lacking, for the punishment of Seibert for belonging to a criminal organization because of this activity. justify a conviction of this kind, are also lacking.

b) Since the SD (Amt III) Was not party to a conspiracy for the commission of war crimes and crimes against humanity, article 6 of the statutes, the knowledge that Amt III was pursuing such aims does not obtain. ion of Seibert because of membership in the SD as a criminal organization is lacking.

with the Einsatzgruppe had knowledge of the execution of the Hitler Order.

The Einsatzgruppen were not an integral part of the SD. They were units of a specific kind. That they did not belong to Office III is demonstrable in particular from the following facts:

1. The formation of the Einsatzgruppen was not ordered by Office III.

2. They weren't under the command of Office III.

3. Not all members of the Einsatzgruppen were members of the SD.

Only a small percentage (approximately 3%) of the members of the Einsatzgruppen belonged to the SD.

The Police, the II A, page 1, submitted by the Prosecution. in the Document Books submitted, this classification regarding the composition of the Einsatzgruppen is not contained. entrusted to the Group Staff but to the parts of the Kommando charged with the executions. The carrying out of the Hitler order thus was not a task of Amt III (SD). Hence, the knowledge of the execution of the Hitler Order Decree was no know of the tasks and the activities of office III. For this reason having knowledge of the execution of the Hitler order cannot be looked upon as having knowledge of a criminal activity on the part of office III (SD).

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c) The defendant Seibert was not a voluntary member of the SD during the war. In Seibert's case it is proved particularly clearly that this membership after 1 September 1939 could never have been a voluntary one. At that period, the defendant Seibert served with his army unit and was ordered back to the SD office III on 1 September 1939 without his knowledge and against his will subject to the National Defense Act. He therefore did not volunteer for service with the SD. His repented applications for a retransfer to the army were rejected as proved by the evidence mentioned heretofore. Seibert had already previously been a volunteer member of the SD. This opinion of the prosecution is not correct, however, The IMT verdict expressly rules that an activity before 1 September 1939 could on no account justify a conviction for membership in a criminal organization. The time before 1 September 1939 must therefore be eliminated when judging this case. The crucial point is, whether the membership after 1 September 1939 has been a voluntary one or whether it was subject to a lawful command.

Seibert's membership in the SD after 1 September 1939 was not voluntary. which would justify a conviction for membership in a criminal organization based on the fact that Seibert had been active in Office III.

Seibert's activity as Chief III in the Einsatzgruppe staff does not justify any such conviction either, because the Einsatzgruppen did not form parts of Office III (SD), as explained already.

Moreover, Seibert's activity as chief III in the staff of Einsatzgruppe D was not voluntary, but was subject to a lawful command, i.e. the German National Defense Act. Seibert had no means of evading this lawful command. He was drafted into this activity for the Einsatzgruppen staff.

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verdict, whereby the members of the Security Police and the SD had no free choice with regard to their activities, and that a refusal to accept any particular post, especially for service in the occupied territories, could have meant severe punishment. (Page 16544 in the German transcript) member of the criminal circle of persons in the SS. have been expressly enumerated in the IMT verdict; they are the members of the General SS, of the Waffen SS, of the SS-Death-Head-Units and of the various Police Departments who had been members of the SS,(Page 16527 of the German transcript) as he has stated during his examination on the witness stand.

Document NO-2969, Exhibit. 162, Vol. III D, page 192,-proves that after 1 September 1939 and this is the date of importance, Seibert had only been a member of the SD.

As such he was a member of the SS-Special Formation SD. The SSSpecial Formation SD is not mentioned in the IMT verdict as being one of the parts of the SS which were declared criminal. from the SS which was declared criminal, because it was not an SS-unit, no part of an organization either, especially not a part of the SS or the SD. The Special Formation SD was in fact a mere enrollment of members of the State-Police, the Criminal Police, the SD and also that group of the Criminal Police Office V which was not declared criminal.

no special activity either, the members never met for a joint service, not had them any other joint meetings, There was no feeling of community in this circle of men. This group of men was not organized at all; e.g. it had no leaders. organization declared criminal by the judgment of the IMT, it would not be justified to pronounce Seibert guilty because of being a member of this group of persons. nor perform any common tasks, its aim cannot have been the commission of war crimes of crimes against humanity within the meaning of *rt. 6 of the statute, or, in other words, this group of persons could not participate in any conspiracy. consequence of his political attitude at that time. He never was a fanatic as the Prosecution istrying to make him out. It was not political fanaticism which prompted him to join the SD. after he had finished his studies, Seibert saw no chance of making a living as political economist. After his attempt to get a position as official in the armed forces had failed, he took advantage of the opportunity to work as a political economist for the SD then in the stage of organization, This was the reason why he joined the SD, during the whole time of his membership in the SD this attitude of Seiberts' did not change. He approached and handled all his assignments from a merely economic point of view. I refer to the numerous affidavits as proof for these facts. 1) Affidavit Borst, Doc. Seibert No. 2, Exhibit 6, Vol. I, P.1 German " Beyer, " " No. 3, " 7, " I, P.3 " " Beecke," " No. 4, " 8, " I, P.5 " " Bommerich " " No. 5, " 9, " I, P.8 " " Kroeger, " " No. 6, " 10, " I, P.10 " " Petersen," " No. 7, " 11, " I, P.12 " " Stackelbeck " No. 9, " 13, " I, P.15 " " Schieber " " No. 33, " *), " III, P.45 " *) Not yet submitted at the time this Final Plea was drafted.

life, has never shown a fanatical attitude, not even towards people who had convictions different from his.1) In this connection it made no difference to him if the person concerned was Jewish.2) Thisis proved especially by the affidavit of Frau Bolte, a Jewess.3) Moreover, Seibert was a soldier. He was an officer of the German army. It would have been quite inconsistent with his soldierly mentality to concern himself with war crimes. 1) Affidavit Paul Seidel, Doc. Seibert No. 25, Exhibit 25, Vol. I, P.

" Berners, Doc. Seibert No. 26, Exhibit 26, Vol. I. P.

" Seegers, Doc. Seibert No. 26, Exhibit *), Vol II, P.

" August SeidelDoc. Seibert No. 32, Exhibit *), Vol II, P.

" Driesch, Doc. Seibert No. 35, Exhibit *), Vol. III, P. 49 German 2) " Kellner, Doc.

Seibert No. 21, Exhibit 4, Vol. I, P.

" Klingemann, Doc. Seibert No. 24, Exhibit 24, Vol I, P. 3) " Bolte, Doc. Seibert No. 23, Exhibit 34, Vol. I, P. 4) " Hemmiche, Doc, Seibert No. 20, Exhibit 3, Vol I, P. *) Not yet submitted at the time this Final Plea was drafted.

THE PRESIDENT: Before you begin. Dr. Link, we would like to take inventory of the summations yet to be delivered. I am sorry that Dr. Gick and Dr. Koessl are not present here because they follow next in the order of the defendants. Nearly every defense counsel who has addressed the Tribunal has taken more time than that allotted, so because of that fact we have fallen behind somewhat iin the schedule perhaps we ought to have an evening session this evening in order to catch up.

Now, Dr. Belzer, will you be ready to follow Dr. Link?

DR. BELZER: Your Honor, certainly at the request of the Tribunal I will be ready at any time to present my final plea. For tactical reasons I would prefer personally if I could follow Dr. Ratz because in both pleas the same basic question of the emergency war status is treated, and the client of my colleague Ratz is first of all charged by the prosecution on the basis of this emergency war status, but, of course, I am ready to waive these personal reasons if the Tribunal wishes.

THE PRESIDENT: Very well.

DR. MINZEL: Your Honor, I am in a position to present the final plea for Strauch after Dr. Link if the Tribunal so desires.

THE PRESIDENT: Very well. All right then, which two counsel will be ready to present their pleas this evening? You would be willing to do so, Dr. Fritz for the defendant Fendler, and who else would be ready? If we can have two this evening that will sort of even up the schedule. Anybody else ready?

(No response.)

TEE PRESIDENT: Well then, you will need to find Dr. Koessl.

DR. MAYER: Your Honor, I am prepared to present the final plea for the defendant Klingelhoefer.

THE PRESIDENT: Well then, I think that would take care of it. We will have Dr. Link now followed by counsel for Strauch, and then this evening Dr. Mayer for Klingelhoefer and Dr. Fritz for Fendler.

Is that agreed?

DR. MAYER: Yes.

THE PRESIDENT: Very well. In the event that Dr. Mayer and Dr. Fritz should leave before we adjourn this afternoon, let it be understood that we will reconvene at seven-thirty this evening to hear those two pleas.

DR. MAYER: Yes.

THE PRESIDENT: Very well, Doctor.

DR. LINK: May it please the Tribunal, two brief preliminary remarks. After the technical prerequisites now exist, I am now able to present the final plea for the defendant Ruehl. I am aware of the fact that it is not yet my turn actually. Secondly, I have to ask for the patience of the Tribunal. If my time is not quite sufficient I hope for the indulgence of the Tribunal because in the case of the defendant Ruehl the Tribunal does not need to work through a closing brief for the defendant Ruehl. I did not think it necessary to submit one. Finally I would like to say that up to this point I did not receive from the prosecution any closing statements against Ruehl either in German or in English, but I am certain that this Tribunal will give me the possibility of replying to it in the proper form as far as is necessary.

THE PRESIDENT: Proceed. DR. LINK: In my Opening Statement of 4 October 1947, I expressed my surprise at the fact that my client Felix RUEHL has been indicted in this case. In this respect I was able to refer to a large extent to the presentations made by the Prosecution, and to maintain that all the actual incidents on which the Prosecution seems to depend as a possible basis, do not permit holding the defendant Felix RUEHL responsible and sentencing him as requested by the Prosecution. I stressed the fact that, up to the serving of the indictment, Felix RUEHL never had the position which could and should have provided the Prosecution with a possible basis for its assertions.

Finally I expressed, my hope and confidence that it would he possible to prove these facts, if that would still be necessary at all, to the Court in the course of these proceedings in an absolutely clear and unmistakable manner. of which my client had only a very insignificant role for factual reasons, I am able to state complacently that all my expectations have come true. guilty of the crimes with which he is being charged, To be sure, such convictions will not always hold good as regards the judgment of the judge. It happens often enough, unfortunately, that the concientious counsel is subject to inner conflicts and backs the man whose interests he has to look after, only as a jurist.

That is not the case here. As a defendant in these proceedings, Felix RUEHL has not only been a client whom I had to defend to the best of my abilities, but he came closer also to me as a man because of his clean personal attitude. very outset and with all sincerity.

The defendant RUEHL was born in an industrial city in 1910. His father was a civil servant and wanted to impart to his son a good education and professional training. First Felix RUEHL attended and completed high school and then became a merchant and was thus removed from the middle-class surroundings of his parents home. His childhood and early adolescence fell into the troubled times which followed the First World War. The economic decline influenced the professional development of Felix RUEHL, After a three year's commercial apprenticeship and after a short stay in England which had to be discontinued for financial difficulties, he could not find employment in his profession, worked for some time as an unskilled industrial worker, became unemployed again, until, in the spring of 1931, he succeeded in getting a modest position with some public agency.

Like many other people in his age group whose lives were also early affected by economic need, he gave thought to the possibilities of contributing his share for the relief of the critical economic and social conditions which were especially blatant in his home town. At first he was an active member of the youth group of the trade union of the employees and remained a member from 1926 until it was dissolved in 1933. Besides, he advocated the goals of the Youth Association of Greater Germany which, without following the policies of any particular party, aimed at the moral and national education of the youth. The deliberations which were responsible for his getting into contact with the NSDAP have been explained by him to the Court on the witness stand. He became a member of the NSDAP not because he strove for radicalism in connection with the prevailing political situation, but because of the conviction that only a socialist Party would be able to basically improve conditions. The idea of class-conflict, as maintained by the Social Democratic Party, was alien to his middle-class education, and the anarchist slogans of the Communist Party were even more repellent. Neither then nor later, RUEHL took an active part in the development of the NSDAP, but, as young Party members used to do in the years prior to 1933, he joined the SA, and, at the end of 1932, was transferred to the SS. Since he was a member of an SS-company, he was chosen to become a police recruit by a committee which was in search of such recruits, but he himself had done nothing to that end. 1933, his future professional career was already cleanly outlined, RUHL, upon his own request, was assigned to the counter-intelligencedepartment and worked in this special field for a number of years until the fall of 1940. The affidavits submitted by me as RUEHL Exh. No. 8. 9, 7 and 27, disclose the nature of his tasks, his professional qualifications, and his personal attitude during these years. They prove the statements which RUEHL has made on the witness stand, namely that this activity did not emanate from National Socialism, but was an activity which is one of the main duties of the police of any civilized state.

The affidavit SCHMITZ of 21 January 1948 (Exh. No. 27) equally proves that the police officers who worked in the field of counterintelligence were a class by themselves, and that it would have been contrary to all custom to remove the individual officials from this special field of tasks. This was the situation in which RUEHL found himself in 1940. His career as a police official in the counter-intelligence service seemed to lie cleanly before him, That things nevertheless took another turn did not depend on him; this was due to decisions which were ordered with regard to him and to which he had to yield. the Berlin University as a candidate for the executive service. Harmless though these studies may appear to the outsider and harmless though they were themselves, RUEHL nevertheless was immediately aware that he was being removed from his previous professional career and that he had to expect employment in another branch of the police service later on. He therefore did all in his power to have this summons cancelled and began with his studies only when all his remonstrances had proved without success. It goes without saying that he could not foresee at that time that these studies would be interrupted and that he would be detailed to one of those units which played so crucial a role in this trial. On the contrary, the further events developed quite suddenly. In May 1941 all the candidates for the executive service studying in Berlin were told by the then chief of Amt I that, on the order of the chief of the security police, their studies had to be discontinued immediately. A few days later, the whole study group was collectively moved to Pretzsch and the people assembled there were finally distributed. Einsatzgruppen and Einsatzkommandos were being activated and the defendant was assigned to one of the latter. The history of the origin of the Einsatzgruppen and Einsatzkommandos, which is pictured here only in a concise form, has been described in this trial repeatedly and in a manner not contested by the Prosecution, so that I can dispense with going more thoroughly into this matter.

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That must be borne in mind is the fact that RUEHL, up to that date and even beyond it, was not prepared for the imminent commitment either indirectly or directly. The notions with which he approached the new task, which was unknown to him, were those of a police official trained on a peace-time basis who up to that time had performed his duties in the special police branch mentioned, in an objective and personally irreproachable manner and who lately had been working as a student for his further training. Prosecution seems to be of the opinion that, by reason of their previous political and professional development, all these defendants were predestined to play an essential part in the units which it termed extermination units. right from the beginning - as I think I have made clear. reluctantly - would have reconciled himself to his new task and there would have either himself committed any acts considered by you, Your Honors, as crimes, or if he would at least have held a position that had aided in, or permitted in any form, the committing of such acts, so that one night speak of a responsibility for acts committed by other persons. It will therefore be essential to make sure to what extent Felix RUEHL himself took part in the events which are the subject of this indictment, or what the position was which he held in his unit. attempt to incriminate my client. In my opening statement I claimed the prognosis of the Prosecution (Opening Statement page 59 English, page 35 German), according to which some of the defendants' direct participation in criminal acts might not he provable, for Felix RUEHL.

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There has not appeared a thing in this trial which would decide against this supposition of the Prosecution, b within Einsatzgruppe D.

He was in the field with this unit up to the end of Sept. 1941, that is to say, for approximately 3 months. On 1 October 1941 he was recalled to the University of Berlin, just as were the other members of that group who, on higher orders, had had to interrupt their studies. This limitation in time has been unequivocally established in the course of this trial, among other things by the testimony on the witness stand of the co-defendant SCHULZ (p. 1056 English, p. 1069 German, dated 20 October 1947). In this I refer, above all, also to my RUEHL documents No. 23 and 24 (RUEHL Exh. No. 1 and 2). change during those 3 months but remained always the same - the Prosecution itself apparently is not sure. Already in my opening statement I pointed out that the indictment has mentioned RUEHL merely as an officer of that Special Kommando and also on its charts and maps has designated him as a mere member of that unit; but that, on the other hand, the Prosecution in its opening statement (page 24) appointed RUEHL deputy of the Kommando Chief who has died.

Concerning this the evidence has shown the following:

Already in his SS-home-unit, in 1932/33, RUEHL had been in charge of the administrative matters. Also later on, during his job as a police official in the counter-intelligence service, he was not concerned with tasks of the executive proper. The fact that he was selected to study jurisprudence offers a clue that in the opinion of his superiors he disposed of the mental equipment necessary for scholarly studies and that he was not chosen to be an executive official. It is therefore only a logical consequence that the co-defendant OHLENDORF as chief of Einsatzgruppe D made RUEHL economic and administrative officer within Kommando 10 b (Testimony OHLENDORF dated 14 October 1947, p.

606 English, p. 614 German). The field of activity connected with this position was the sane as in any peace-time or wartime unit of any country having military organizations.

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It was clearly defined and extended to the administration of the agency both in personnel and economic respects, to housing. supplying and equipping its members. to do with the operations as such. Considering the absolute clarity of this range of tasks it is hardly necessary to go into fuller particulars in this connection. OHLENDORF as chief of the group, by the affidavits of a series of members of SK 10 b (Exh. No. 3, 4, 5, The above mentioned affidavits were made by witnesses who during those months in question had been continuously in official contact with RUEHL and never knew him in any capacity other than that of an administration officer.

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It is also apparent from them that RUEHL was never introduced as Deputy of the Kommando-Leader or has put in an appearance as such nor that he has ever led a Teil-Kommando of that units Persterer did not have any deputy at all, - at least at the time when RUEHL was attached to the Kommando. Even in the case of a short absence of the chief, RUEHL's rank or seniority would not have entitled him to represent him, quite apart from the fact that no administrative officer, on principle, is ever appointed anywhere as deputy of the respective commander. Moreover,RUEHL was at that time Obersturmfuehrer (1st Lieutenant) and shared this rank with four other leaders in the unit, of whom at least two had the same, if not a higher seniority and would have been considered in the first place as entitled to present Persterer, in view of their status as sub-Kommando officers and Chiefs of an Executive-Department. Finally it must in particular be pointed out that the Kommando 10 b also had a Hauptsturmfuehrer (Captain) by the name of Finger, which fact would have solved the question of the deputy without difficulty, if it had become acute. (Compare in this connection the statements of RUEHL himself, transcript of the session on 18th December 1947, furthermore the Statement of Ohlendorf transcript of session on 14th and 16 October 1947.

It must be taken into consideration therefore: RUEHL was according to rank and seniority at the most-in the sense of the Prosecution-the 4th man. As far as his official position was concerned, he was out of the question as far as an independent responsible leadership of the Kommando or a part of same was concerned, even if only temporarily.

In his capacity as specialist I and II (Administration and Economics) he could not issue any directives to other Departments in particularly to the Department IV. As is disclosed by his statement in the witness stand he actually had never carried out or ordered interrogations, arrests or other executive measures.

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has only the sworn statement of a certain Robert Borth (Doc. Book of the Prosecution No. 5 C, page 32 English, page 42 German, Prosecution Ex. Do. 232) The following can be Said with regard to this Document; an Austrian, in what capacity he had actually been attached to the Einsatzkommando 10b. He merely mentions that been "had been with the Einsatzkommando 10 b" during an undefined period of time.

Kommando, belonged most, likely to the enlisted ranks, is for this reason too uncertain and too doubtful, as to enable him to draw reliable conclusions. All the moreas, as he himself speaks only of an absence of Persterer of 2 to 3 days at a time. affidavit and its author, which deprive the Document completely of its already small probative value. at the time when Ruehl took the stand. Ruehl was charged, with the statement of Barth made for the prosecution that Ruehl had been the chief of Advance which had been sent from Czernowitz to Chotin and allegedly carried out liquidations on a considerable scale (transcript of session on 19th December 1947, page 4455 English, page 4541 German) that Ruehl and his people had chased the Jews, whom they had driven together in Chotin, through the ruins and had shot at them (page 4457 English, page 4542 German). Furthermore Ruehl allegedly gave Robert Barth - also according to the cross examination carried out by the Prosecution-orders concerning the retransfer of the Jews in Mogilow-Podolsk, which will be discussed in detail later on (transcript of session on 19th December 1947, page 4478 English, page 4563 German). Ruehl in the witness stand had insisted that he has never been in Chotin, nor that he had ever led a Vorkommando to this place. He just as clearly contradicted the alleged statements of Barth with, regard to his.

part in the case of that re-transfer.

In spite of this, the Prosecution refrained from refreshing Ruehl's memory by introducing the sworn affidavit of Barth or putting him ion the stand. It confined itself merely to submitting that Exhibit No. 232 in the rebuttal (Doc. Book 5 D. page 32 English, page 43 German) which does not contain any of the points brought out during the cross-examination. I have no reason to doubt that the Prosecution is fully aware of the contradictions between the statements of Ruehl and the allegations of Barth. If, in spite of this, the prosecution has made no use of its incriminating material, I can only draw the conclusion that Barth has revoked these allegations, so important for the Prosecution, or that they did not seem to be of any use for other reasons. But then, apart, from any other things Barth cannot lay claim to any credibility with Exh. No. 232. of the Kommando, as well as the repeated and express testimony of the chief of Einsatzgruppe D - Ohlendorf - contradict his statement. established evidence the position and activity of Ruehl In SK 10b. itself has set up for the question of responsibility of the sphere of persons against which it prefers charges. Ruehl held neither "a responsible position nor a post of command", nor did he possess "by virtue of his position the powers to order executions", nor were his rank and his position of such a nature that they included the power and duty to exercise control over the subordinates, (Page 58 English, page 36 German Opening Statement) be explained by his position - Ruehl could have been connected with any of the events With which the Prosecution charges the unit as such.

Above all one might think that in view of the relatively small numerical strength of the unit, Kommando members, who according to their position and sphere of duty had nothing to do with executive tasks, also gained knowledge of this sort of events and became somehow tied up with them.

These theoretical reflections are confronted by the following facts; departments were under the personal command of the Kommando Chief. The latter issued the orders in person, and reports were made to him personally. There was neither a common file keeping between administration and the executive branch nor did the Kommando maintain a business office. In particular, Department IV, which was engaged in executive measures, worked wholly independently and even in rooms separated from the rest of the Kommando, so that only those who were working there in the immediate place had an insight into these tasks. Moreover, it must be added, that the Kommando was on the advance as long as Ruehl was a member, and that thus it was split up into individual groups, which established different local headquarters independently. Thereby it became more than ever impossible for a Kommando member to get a survey of events with which he was not occupied in line of duty.

THE PRESIDENT: It isn't necessary that you read those, Dr. Link.

DR. LINK: Yes, Your Honor.

(Cf. Statement Ruehl as witness Record page 4463 German.)

the Kommando membersof officers rank, did not know that their unit had been designated by the Fuehrer Decree or by other orders from the highest quarters to practice a so-called extermination policy. Felix Ruehl. and suddenly to the SK 10b, and with what conceptions he approached the tasks which awaited him there. At first it was not even clear whether the marshalling of the most different kind of units, which pointed to use in battle, would turn to the West or to the East. When after the outbreak of the War with the Soviet Union there was no longer any doubt on this point, the whole group was sent off to the (Einsatz) the assignment with an address by the chief of the Sipo and of the SD in the customary military manner, without any special instructions.

Ruehl has neither taken part in the conversation with Gruppenfuehrer Streckenbach, which has several times been mentioned in this trial, nor did he learn about it. Nor did his unit commander instruct him in the sense of the presentation of charges. He explained the tasks merely to the effect, that certain actions of the enemy were to be prosecuted and punished with the application of the severest standards. Neither on this occasion nor subsequently was there any talk of liquidating individually guiltless persons without trial because of their race, their political convictions or similar reasons. (Compare Record of Session page 4373/77 English, page 4456/59 German and page 4382/85 English, page 4464/66 German.) drawn appropriate conclusions as to a general execution decree, at least through the knowledge of such events, even if gained only from hearsay, and whether he could not have helped but do so. which the Prosecution considers itself justified to reproach all those in whose case the evidence is negative in its opinion. What he heard in a roundabout way and by chance from his comrades he stated frankly.

This concerns three executions. In one case it was a measure against civilians who had perpetrated a treacherous firing-attack on Roumanian troops and members of the Kommando in Czernovitz. This measure was carried through upon orders by the Roumanian General in authority on Roumanian sovereign territory as far as Ruehl can remember, some 12 - 15 persons were said to have been shot on the basis of drumhead court-martial. This took place after many more suspects had been investigated and the guilty ones identified in due course. In another instance German fliers having made forced landings and got into Russian captivity, when forcibly dragged out of the prison by the population, abused and finally beaten to death in a bestial manner.

Also here, detailed investigations were made and the persons found guilty were shot in the end. about a third execution, by which at still another location agents and saboteurs were said to have been punished.

(See testimony Ruehl, Transcript page 4471/79 English page 4579 German.)

individual criminal acts, which everywhere are characterized as such. It is clear that from a knowledge of these actions, gained from hearsay, no conclusion of a general order for the execution of Jews, gypsies and communists could be drawn. part which Ruehl played, or could have played, during the three months of his membership in Sonderkommando 10b, and also his position and his activities, his considerations and possibilities without finding, a responsibility of his in the sense of the indictment. Prosecution has tried to connect with Ruehl, are commented upon below, this must not be misconstrued. It is done upon the risk of exposing Ruehl to the reproach by the Tribunal, why he should deal with matters which are no concern of his, as has already happened once during his hearing if on the stand. Since he has been accused and had to see this trial through, he also wants as I already emphasized in my opening statement, to contribute his part which necessarily is very modest - to the solution of the various contradictions and to the establishment of the plain truth by the Tribunal. He therefore insists on maintaining this line, already followed during the examination on the witness stand, also in these concluding statements.

DR. LINK: This would be a good time to recess.

DR. FRITZ: Pardon me, your Honor

THE PRESIDENT: Dr. Fritz?

DR. FRITZ: Dr. Fritz as a representative for Dr. Lummert for the defendant, Blume. Your Honor, Dr. Lummert has asked for the defendant, Blume, in order to speak to him this evening, and I, therefore, ask that the defendant, Blume, may he excused from the session this evening after 4:30.

THE PRESIDENT: The defendant, Blume, will be excused from attendance in court this evening.

DR. MAYER: Dr. Mayer, representing Dr. Schwarz for the defendant, Jost. My colleague, Dr. Schwarz, requests the Tribunal to excuse the defendant, Jost, from the tomorrow morning session in order to go over the final plea.

THE PRESIDENT: The defendant, Jost, will be excused from a attendance in court tomorrow morning. The Tribunal will be in recess 15 minutes.

(A recess was taken.)

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THE TRIBUNAL: The Tribunal is again in session.

DR. FICHT: Representing Defense Counsel Ulmer. Your Honors, I would like the Defendant Six to be excused tomorrow afternoon so that he cah confer with his counsel for a reply to a closing brief, and I have a similar request to make, representing Defense Counsel Dr. Hoffman, to the effect that the Defendant Nosske should be excused this evening, because he had arranged for a conference with him this evening.

THE PRESIDENT: The Defendant Nosske will be excused from attendance in Court this evening and the Defendant Six will be excused from attendance in court tomorrow afternoon.

DR. LINK (ATTORNEY FOR THE DEFENDANT RUEHL): In detail I would like to make the following statement:

PERSTERER's report to Army Group South, (Document Book II-D English, page 45, German page 48, Prosecution Exhibit 92) in the first place admits of certain doubts in the truth of the facts reported in it. was bound to report immediately to the latter. It is therefore surprising that Sturmbannfuehrer PERSTERER, without any official reason, should make such a report to the distant Army Group South, yet neglect this very same duty towards his superior. (Compare letters of 11 July 1941 and 14 July 1941, with the statements from the witness box of the Defendant Ohlendorf on 9 October 1947.) of the Einsatzgruppe, in contrast to the far distant Army Group, would have found out the untruth of this report, in other words, PERSTERER wanted to feign a particular activity of his unit. in Czernowitz at all, because he only arrived there in the evening of the 9 or 10 July.

RUEHL-Exh. # 3, 4 and 6 and then the statement of Ruhl. PERSTERER's report was incorrect.

RUEHL for reasons of time. had been sent to Chotin. On 11 July this report was supplemented to the effect that the Teilkommando had been forced to withdraw again by the Russian occupation. The alleged measures of that Teilkommando, reported on 14 July, cannot be connected with RUEHL according to the time of their taking place, because he only arrived in Czernovitz after the dispatch of that Group and did not leave this town during the period in question. That is shown in Ruehl Exh. 3, 4, and 6. RUEHL himself testified under oath that he never was in Chotin and never gained knowledge of alleged actions on the part of a Teilkommando sent there. Einsatzgruppe gave instructions to the Kommando 10 b to influence Roumanian authorities to take action in regard to the Jewish problem. OHLENDORF himself, who gave this order, expressed himself in detail on this subject in the witness stand. This concerns an order, which the Sturmbannfuehrer PERSTERER received personally and orally on the occasion of an inspection. It is obvious that in the case of RUEHL all assumptions are lacking for his participating in the execution of this order. During his interrogation he even denied expressly the more knowledge of it. No. 90 states in regard to the activity of the Kommando 10 b in the area of Czernowitz that up to then 16 persons out of 1200 arrested Jews arrested Communist functionaries had been shot. In this connection, one is struck by the following facts: ings by the Kommando in Czernovitz. On the other hand, the report Of 14 July states expressly that Kommando 10b was scheduled to complete its assignments in Czernovitz in 3 - 5 days. Afterwards, the Kommando was to stay there, ready to join the advancing Army Corps. These assignments, however, as is evident from the reports of 11 and 14. July, did not consist in the liquidation of Jaws in Czernovitz. The contrary is the case. As shown by the statement of the Defendant OHLENDORF in the witness box, the commander of Kommando 10b was explicitly prohibited to carry out such a measure in territory under Rumanian sovereignty. That Czernovitz was regarded as territory under Rumania sovereignty is demonstrated conclusively by the report of 11 July which states that:

"The Rumanians have taken over the civil administra tion in Czernovitz", as well as from the report of 14 July stating:

"the Rumanians declare Northern Bukovina as territ ory under Rumanian sovereignty."

Consequently, the commander of Kommando 10b would have been acting in contravention to the explicit instructions of his direct superior, the chief of the Einsatzgruppe D, if he had taken part with his Kommando in the liquidation of the Jews in Czernovitz. As the Defendant OHLENDORF stated in the witness box during a tour of inspection in Czernovitz he found the commander of Kommando 10b in a state of great excitement, because the Rumanians had carried out liquidations in an unimaginable and unspeakable manner. PERSTERER had launched a most vigorous protest against these liquidations and, by this very protest, again rejected the invitation of the Rumanians to participate in liquidations. As a matter of fact, neither the Defendant RUEHL nor the signers of the affidavits HANSEN, KAUFMANN, NISPEL and WERNER had any knowledge of liquidations of Jews in Czernovitz. Consequently, the passage in the report of 1 August 1941 "in Czernovitz, 658 out of an approximate total with the Rumanian Police" was probably a deliberate misstatement inasmuch as the shootings were carried out by the Rumanians alone.

These comments, too, are made only for clarification, having regard to the documents presented in the course of this trial. The fact that RUEHL himself had been informed Court No. II, Case No. IX.

of only 3 executions which, however, were carried out, not for political or racial reasons, but as punishment for criminal acts and after due investigations had been made in each case, has bean mentioned by me in another context before. inasmuch as they concern that retransfer of Jews. I am going to demonstrate that there, too, RUEHL held not commanding function, as the Prosecution assumed, but was involved in that matter only in part and incidentally owing to purely external circumstances unrelated to the events themselves. several documents presented by the Prosecution itself; furthermore from statements of the Defendant OHLENDORF in the witness box, from the interrogation of the witness HARSCH and, finally from the exhaustive account which RUEHL gave as witness and which served as supplement and commentary to his affidavit presented in court by the Prosecution.

According to all that, what actually took place was this;

tion. There he was to commandeer billets for the other administrative tasks.

Already several in advance to Mogilev-Podolsk.

That the Kom Court No. II, Case No. IX.

the Kommando. Consequently RUEHL could not possibly took a marching column, consisting, as it appeared, for the most part of Jews and escorted by Rumanian soldiers. There were men, woman and children in it, obviously a whole population on the trek; it was a proper procession of misery. On arrival in Mogilev-Podolsk, RUEHL talked with the leader of the local unit about his observations and learned that this procession consisted of Jews who had been compelled by the Rumanians to leave their homes in territory under Rumanian sovereignty to be shifted to German-held territory. RUEHL learned furthermore that a large number of these Jews, expelled by the Rumanians and utterly destitute were already in the German-held Mogilev area. According to what the local leader told, these Jews were without shelter, food and medical attention and, therefore, in a desperate plight. Their presence there also constituted a danger for the command of the German Wehrmacht, as they resorted to theft and looting and, moreover, were a potential source of epidemics. Finally, RUEHL also learned that the local leader had already notified the commander and endeavoured to prevent a further influx of Jews from the Rumanian sphere of sovereignty and interests. in Mogilev-Podolsk are borne out by Prosecution Exhibit No. 39 which mentions the prevention of an influx of Jews into the German sphere of interests. cumstances was there an occasion or even only a possibility for RUEHL to take any action. find out how the misleading statement of RUEHL in the affidavit taken Court No. II, Case No. IX.

down by Mr. WARTENBERG came to be made (Prosecution Exhibit No. 169) subsection 3. RUEHL himself never attempted to concentrate the Jews near Mogilev-Podolsk in order to return them as a body. came ever more untenable, Sturmbannfuehrer PERSTERER, in his capacity as Kommando leader, took occasion to report to Group Leader OHLENDORF and to ask for his orders. PERSTERER ordered RUEHL to accompany him on this trip and to bring the Group Leader's decision back to Mogilev, as PERSTERER himself would not return there immediately. OHLENDORF decided that the Rumanian Jews were to be sent back to their homes across the Dnjestr, RUEHL transmitted the Group Leader's order to the local leader and that was the end of his part as courier which he had had in this matter.

(Compare also deposition OHLENDORF Session Record.) thwarted by the stubborn resistance of the Rumanians. It turned out to be necessary to inform the Group Leader of the New development, and to ask for his further orders. It was only natural that RUEHL who already had accompanied PERSTERER on his trip to OHLENDORF once before should be charged with the job, the more so as PERSTERER had not returned yet and the leader of the sub-unit stationed in Mogilev was bound in his station. which was still in German hands. As this bridge was in the area of the neighboring Kommando 12 under NOSSKE, NOSSKE was instructed directly by OHLENDORF to take charge of that transport. OHLENDORF, when on the witness stand, remembered all these events in detail and confirmed that RUEHL acted as a mere messenger transmitting that order. given to anybody and that from the interpolation of RUEHL neither an authority of command with respect to the leader of the Teilkommando nor the capacity of deputy with respect to the leader of the Commando could be inferred. The locally competent leader had to see to it that also Court No. II, Case No. IX.

this second order was carried out. That is why RUEHL paid no attention to the moving of the Jews and did not accompany, indeed not even see, the column when it left. territory was effected smoothly and that nothing happened to them, has been unequivocally confirmed apart from NOSSKE's testimony by the witness HARSCH who was in charge of that bridge at that time. hibits No. 3 to 6 got to know of the shootings. Indeed, the Jews themselves did not consider their removal as a coercive measure; they expressed their joy and gratitude on being allowed to return home by enthusiastically cheering Adolf HITLER. had passed on their way back, Jews kept passing the bridge individually or in small groups, on their own volition and without escort. Upon explicit questions posed during the cross-examination, the witness stated that those Jews were not in flight and that at that time he had not heard of any executions or coercive measures, but, had there been any, he should have got to know of them. phase of that action, it is evident that he cannot give any detailed data on the number of Jews that were affected by it. He can only recall that altogether 12 - 15,000 of homeless Jews were mentioned. Mogilev, as ordered by OHLENDORF, with two Reports of Events of 26 and 29 august 1941, introduced as Exhibits No. 154 and 158, The first report mentions 4,000 Jews as part of the population of Mogilev, and another 7,000 who had been shipped to that region by the time the Roumanians took over the administration from the Germans. Finally, it mentions a transport of about 6,000 Jews who, in spite of considerable protest by the Roumanian in charge of the bridge, were transferred to the other side of the river Dniestr. Accordingly, the total number of Court No. II, Case No. IX.

Jaws who were not natives of the region around Mogilev amounted to 13,000. Thus it is possible that that report refers to the events in which RUEHL took part as transmitter of orders. Of the other measures described in Document Exhibit No. 154 (concentration of the Jews in a ghetto and three camps respectively, their assignment for work clearing the town of the rubble and collecting the harvest) RUEHL could have no knowledge, as he arrived there only at a later date. Anyway, the prosecution has never claimed that such measures would have been war crimes or crimes against humanity. mentioned transport of Jews from the region of Mogilev, at the time the Sonderkommando 10 b was stationed there, and the contents of the report of 29 August 1941 (prosecution Exhibit No. 58). In the first place, so much time elapsed between this report and this actual transport of Jews which took place, according to the statements of all witnesses already about the middle of the month, that the report cannot possibly refer to it. remotely with the figures which RUEHL learned in Mogilev. If 1265 Jaws in excess thereof had been shot in the area of SK 10 b, the members of the commando most certainly would have received information about such a drastic measure at least afterwards. I have already stressed the fact that this was not the case, and, in this respect, I have referred to the RUEHL Exh. No. 3, 4, 5, 6 and to the testimony of OHLENDORF. The credibility of the statements as made by RUEHL is fully confirmed, particularly by the testimony of the witness HARSCH who was interrogated while completely unprepared. of Svanzia played a part in the district of the Sonderkommando 10 b. that the report which is the basis of Pros. Exh. No. 58, was erroneously attributed in Berlin to Einsatzgruppe D, because it came from an area Court No. II, Case No. IX.

where the group had been stationed before. In effect, the Einsatzgruppe D had long left the district of Mogilev on 29 august 1941, and at that date was already stationed in Ananjev. In the beginning, the prosecution seems to have been of this opinion also, since, at first, this exhibit No. 58 had not been submitted as an incriminating document. But all these meditations are irrelevant as far as the defendant RUEHL is concerned. His share in that evacuation action consisted in the transmission of two orders by the group chief to the competent local leader of the Teilkommando. This did not have anything to do with his general official tasks, nor can any conclusion be drawn from it, in the specific case, as to even a single instance of his deputizing for the Kommando leader or as to any authority of command over the leader of the Teilkommando. the result could not be a different one. This would at least have to be conceded from RUEHL's point of view, who did not perceive the events, which were hardly objectionable in themselves, in their further course. The idea of the indictment surmising that those Jews had been, evidently driven to death as a result of the evacuation, is without any real foundation and, according to the evidence, contradicts the very opinion of the persons who were directly affected by that action. endeavored to treat and elucidate the case of my client RUEHL from all conceivable angles. because of his being a member of an Einsatzkommando, was connected with plans and enterprises for the commission of crimes and/or took a consenting part therein.

This kind of argumentation has already been rejected by the Military Tribunal II in the Pohl-verdict in the case of defendants to whom it believed to be justified in imputing the cognizance and knowledge of crimes committed by others. This Tribunal has emphasized that the expression "to be connected with a crime" signifies more than a mere knowledge or working together in the same building and at the same time with the principle and accessory in the same group or organization. For the assumption of an "assenting participation" the element of positive action is required, exceeding a mere "not objecting". of such considerations were missing already at that time for a variety of reasons, i.e. as regards knowledge of plans and actions to be considered criminal. not made himself liable to punishment neither as principal nor as accessory nor in any other form of participation within the provision of law on which this Trial is based. dictment. member, after 1 September 1939, of organizations which have been declared criminal by the International Military Tribunal, i.e.;

1.) of the Schutzstaffel of the National-Socialis tic Workers' Party (SS of the NSDAP)

2.) Of the Office IV of the RSHA. SS, the following particulars must be of importance: SA to the SS quite spontaneously. On being taken over into the police service on 1 October 1935 he ceased to be an active member of the general SS and from that date on he has done no duty in any SS unit either in Luckenwalde, Berlin or any other place.

Purely formally he continued to be a member of the SS till 1935 or 1936, but that, too, came to an end, when Ruehl was transferred to the RSHA and enrolled in the SS-Special Formation SD. The particular role of this special formation has been explained several times during the presentation of the evidence and especially in the course of the concluding statements. In this connection I refer in particular to the fundamental statements in the Ohlendorf plea. Ruehl himself spoke at great length on this matter when he was in the witness box. In this connection it has been explained, on the basis of his personal documents presented by the prosecution, how and why the SS grades conferred on him were nothing but the logical outcome of the perodical automatic promotions in the service. The fact that Ruehl was a member of the general SS before the beginning of his official career did not have any influence on this. This could be explained by the fact that Ruehl, when he joined the police service, was even demoted because the rank he had then reached in the general SS was higher than the comparative rank (Angleichung Dienstgrad) prescribed for his initial position as an official. my client's membership in the SS, an organization declared criminal by the International Military Tribunal, is "no" at any rate for the period after 1 September 1939. opposite view, then it would have to be checked -- according to the meaning of the IMT verdict and the subsequent decisions of the Military Tribunals, particularly the Pohl verdict, - whether the defendant Ruehl, knowing the criminal aims, consciously collaborated.

This proof, which would have to be brought by the prosecution, could not consist of a mere reference to the fact that Ruehl was a member of an Einsatzkommando. The Einsatzgruppen and Kommandos, as proven by their history of origin, their organizational form, and their assignments, had nothing to do with the SS. They were assigned to the units of the Wehrmacht as mobile military units for police tasks. place the knowledge of the actions which the IMT took as a basis when it declared the SS as criminal. The defendant Ruehl, moreover, worked in Office I of the RSHA from 1 September 1940 until August 1943, in an office which does not fall within the group which has been declared criminal, and during the time of his assignment in Russia, when he was a leader in administrative and economic fields, he fulfilled only the tasks which corresponded to his formal membership in Office I of the RSHA. the meaning of the judgment of the IMT, we must finally investigate whether Ruehl, on 1 September 1939, still was a voluntary member of this organization. We would have to find that the contrary was the case for the following reasons: later, Ruehl took steps for his release for service in the army; supreme authorities finally rejected this petition in both cases. Exhausting all the means at his disposal, Ruehl, moreover, had opposed his assignment to service in the higher ranks and to the compulsory studies which were combined with this assignment, because, if he was not permitted to serve as a soldier, than at least he did not want to be separated from his professional activities in counter-intelligenge.

But this was futile also. His special formation had no fields of work of its own, and if he had renounced the rank which forced him to don the uniform of the SS, this would have meant that he would have been compelled to leave the Security Police And I think that it has been proven to the full satisfaction of the Court in the course of these proceedings that this was not definitely possible, at least while the war lasted.

Ruehl's conviction for membership in the SS would therefore be impossible because of the fact that this membership was not a voluntary one since 1 September 1939. member in an organization which has been declared criminal because he allegedly was a member of Office IV of the RSHA. When questioned under oath, Ruehl has denied that this assertion of the Prosecution corresponds to the facts. cution has submitted not one document nor disclosed anything that would point at such a membership of Ruehl in the Office IV of the RSHA. During the cross-examination of Ruehl which went into details very much in other respects, the Prosecution did not probe any deeper into this question. This assertion has remained unproven therefore, nay, on the contrary, in consideration of Ruehl's statement under oath, it must be considered as refuted. not been guilty in the meaning of the indictment.

concerning Ruehl's personality. that nothing more but also no less would be proved in this case as regards my client, than that his attitude was the clean attitude of a man who did his duties there where he was asked to do them, duties moreover, which were neither dishonorable nor criminal. I believe that I have not been mistaken in this. during his interrogation in his defense, in particular during his cross-examination, will have imparted the conviction not only to myself that his statements are credible to their full extent. political career of my client, I have therefore taken particular pains to disclose his personal opinion as regards the problems which are the nucleus of these proceedings. tified to in a manner commanding respect by his political opponents already prior to 1933. he was a humane and tolerant official later on, an official of a class of police officers against whom no objections can be raised. Finally, the Ruehl Exhibits No. 12, 13 and 26 prove that he was also averse to terror and a policy of constraint when he was a superior, and that he was highly esteemed because of his personally and professionally correct attitude. voices of those to thom Ruehl gave advice and help when they were persecuted in the Third Reich for racial and political reasons.

In an absolutely fundamental manner, they disclose an attitude which is diametrically opposed to the principles and measures which are being judged here. They also prove that the forcible interruption of the studies of Law was not able to shake the basic attitude of Ruehl, neither as regards his ethics nor as concerns his character. proceedings, then it will be the question of why my client has been accused here. He has been the only administrative leader in an Einsatzkommando who has been brought into the limelight in this case. For all those months I could not get rid of the idea that this has been done because there prevailed the assumption - an erroneous assumption, by the way - that it would be impossible to find any other representative of Sonderkommando 10 b. Ruehl not guilty.

DR. GICK: Dr. Gick for the defendant Strauch.

THE PRESIDENT: Proceed.

DR. GICK: May it please Your Honors: have to make on behalf of my client - that I do not consider discussing once more those questions which will have to be decided upon before this Tribunal will be able to pass to individual cases, i.e. fundamental questions with which these trials are dealing. Even that part of each individual case which, according to the view of the defense, applies to all defendants alike, I shall mention only insofar as its importance with reference to my client can be clearly seen. I am convinced that this tribunal will give careful consideration to all those matters which have already been discussed in full by some of my fellow defense counsels, to whose statement I am herewith expecially referring myself, and which I am making my own, on behalf of my client, and also examine their part they have played in the case of my client and will pass judgment with all due consideration of these fundamental objections and protective assertions.

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I must also declare: It is still my point of view that the defense of the defendant Strauch has been hampered by his state of health to such a degree that it must be called insufficient. However, one may judge his state of health the following facts will still remain to be considered;

1.) The defendant Dr. Strauch is suffering from epilectic attacks. Such an attack was also the cause of an injury to his health which prevented the defendant from being present in court.

2.) In connection with the state of health following such attacks, a condition of semi-consciousness often ensued which made it impossible for weeks on end to discuss with the defendant the problems with which this tribunal concerns itself, namely the court-proceedings and the line of defense. A great deal of that which I am able to state in favor of the defendant Strauch before this tribunal is solely due to my studies of files and documents. This cannot, however, take the place of personal knowledge of circumstances which the defendant must undoubtedly have but which he could only very incompletely convey to me.

3.) In spite of his illness the defendant always wanted to put in a personal appearance in Court as a witness on his own behalf. He had already started to inform me, according to regulations, of the facts which he would be able to state as a witness, when, about a month and a half before he was supposed to appear on the witness stand, all further information became impossible.

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The way in which the witness had then to be questioned on the witness-stand cannot be called a regular examination. The hearing had to be improvised and some of the most important points, for instance that of a basic description of the personality of the defendant and his attitude to the Fuehrer-order which is all important for the subjective side of his actions, could not be gone into because of considerations due to the state of health of the defendant. However, in this trial in which it is made so difficult for the defendants to find witnesses and documents, apart from those which the Prosecution has collected, it is of the greatest importance to have a regular examination of the defendant on the witness-stand. According to my opinion those facts present such flaws in the proceeding that the discontinuation of the proceedings against the defendant Dr. Strauch would be justified until the condition of his health has improved enough to enable him to take part in the trials personally, to give full informations to his defense counsel and to make correct statements in his own cause. I am, therefore, herewith repeating my plea for discontinuation of the proceedings, and refer in addition to my new statement of 5 February 1948 and the attached affidavit of Herr Dr. Spengler, the defendant Strauch's roommate at the city hospital here. now state such evidence which can be found in favor of the defense under the afore-mentioned restricted possibilities of information, i.e. from the documentary material, the statement of evidence and the examination of the defendant which is hampered by the difficulties already described.

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of the indictment.

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With reference to Count I of the indictment, the defendant Dr. Strauch has been accused of crimes against humanity, with reference to Count II of the indictment he has been accused of war-crimes, and according to the prosecution it is obvious that the actions with shich my client has been charged are supposed to be offenses against both counts of the indictment at one and the same time. He specialization has either been actually made or attempted. documents presented by the prosecution against the defendant Dr. Strauch. the prosecution makes it clear that it is of great importance to find out at what time incidents have occurred which are mentioned in these reports and if, at that particular time, the defendant could have taken a responsible part in these incidents, taking into consideration his official position and place of residence at that particular time. criminal actions committed in two localities: of acts committed in Riga (Latvia) and Minsk (White Ruthenia). If it can be established without doubt for how long Dr. Strauch was stationed first in Riga and then in Minsk we shall be able to take this as basis for our judgment of possibilities referring to time of his participation in the acts committed in near the other of these areas. responsible information, stated that he arrived in Riga on 10 or 11 November 1941, that he was transferred to Minsk shortly after his arrival in Riga, but stayed on in Riga until his fractured arm has healed, that he had left only on 20 March 1942 and arrived in Minisk on 22 March 1942. In July 1943, he was then transferred as I c to the Commissioner for the Combatting of Bands.

dates made this possible for him, he made similar statements also when he was interrogated. He stated that:

German transcr. p. 5333 He arrived in Riga either on 10 or 12 German transcr.

p. 5342 Stayed on in Riga until March and was German transcr.

p. 5352 That he arrived in Minsk in March 1942 German transcr.

p. 5355 That the left on 22 March and arrived in Riga (Strauch meant to say Minsk) in Rositten on 21 March 1942, his father's German transcr.

p. 5377 That at the beginning of March 1942 he German transcr.

p. 5381 That he arrived in Minsk on 22 March, 1942, German transcr.

p. 5383 Concerning a report of events of 1 to 4 German transcr.

p. 5384 Concerning a report of events from 5 till German transcr.

p. 5385 Concerning a document dated 27 March 1942 German transcr.

p. 5387 That on 2 and 3 March 1942 he was not following exhibits submitted by me:

1. In her statement dated 4 November 1947 (Strauch document Book I English and German p. 1, Exhibit No. 1) Frau Luise Strauch confirms that he husband received his order of transfer on 5 November 1947 in Koenigsberg, but he did not leave for Riga until on 10 November 1941 because he had obtained a delay of his reporting for duty in Riga because of a fractured arm. Further she confirms that in Riga he broke his arm for the second time and came from Riga several times to visit her in the

Reich, and told her that he had again been transferred to Minsk hat need not go there before his arm had been completely healed.

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From 10 till 16 March 1942 she was once more together with her husband in Berlin on which occasion he told her that he would combine the moving to Minsk with a visit to his brother in Rositten on 21 March.

2. The Defendant Dr. Blume stated as witness for the Defendant Strauch (Strauch Document Bock II English and German 0,48, Exhibit No. 22) that he remembers after Strauch had been ordered to Riga, that he received a telephone call from his. Because of the fracture of his arm Strauch had asked for a delay in his departure for Riga, and he (Dr. Blume) had agreed to a delay not to exceed 8 days. Hardly was Strauch in Riga before he was again transferred to Minsk whereas Dr. Lange was to take over his position in Riga. But then he suffered a new arm fracture which delayed his so that it was decided his arm should be entirely healed before he went to Minsk.

3. Strauch's mother, Frau Ida Strauch, in her statement dated 4 November 1947 (Strauch Document Book I English and German p. 4, Exhibit No. 2).

4. Strauch's father, Oskar Strauch, in his statement dated 5 November 1947 (Strauch Document Book I English and German p. 5 Exhibit No. 3).

5. and Strauch's aunt, Frau Paula Gunkel, in her statement dated 5 November 1947 (Strauch Document Book I English and German p. 6. Exhibit No. 4) confirm concerdantly that on the journey to Minsk in order to report for duty Strauch traveled via Resitten, met his brother, Dr. Osker Strauch, who was stationed there as captain (Med), on 21 March 1942 and that both of them tried to call up their father in order to congratulate him on his birthday.

6. The Defendant Dr. Rasch in his statement dated 26 January 1948 (Strauch Document Book III English and German p. 8, Exhibit No. 21) testifies that he visited Strauch at the end of January or during the first half of February 1942 in Riga and was billeted in his house.

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contained in Strauch's personal files (Prosecution Document Book IIIa English, p. 20, German P. 29 Exhibit No. 106):

"From 4 November 1941 commander of the Einsatzkommando Latvia with the Chief of the Security Police "Ostland" "February 1942 Commander of the Security Police in White Ruthenia".From Strauch Document Book I, Exhibit No. 1 and from Strauch Document Book II, Exhibit No. 22, it appears that Strauch was ordered to Riga some days prior to his reporting for duty, the delay being due to the fracture of his arm.

The date given in the files of the RSHA; 4 November 1941, is then the day on which the order was issued in Berlin which sent Strauch to Riga and not the day on which Strauch actually reported for duty in Riga. With respect to the personal date, naturally the date of the order of transfer was decisive for the RSHA but this date is irrelevant for the responsibility with which Strauch is charged in this trial. Here everything depends on the actual taking over of the management of official business. proved indirectly by the contents of report of events No. 29 dated 5 November 1941 (Strauch Document Book II English and German p. 3, Exhibit No, 16). Here the preducesser of Strauch in Riga, Batz, is actually mentioned, but his name has been crossed out and substituted with "Strauch" in hand-writing. That means: some employee in Berlin substituted the name of Strauch for that of Batz in the copy of the report of events, apparently because in Berlin it was officially known to him that an order had been issued transferring Strauch to Riga, whereas in fact Strauch had not yet received this order at all, or at least had not yet arrived in Riga.

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The wording of the garrison report is accordingly a result of the corrections made in Berlin and based on the orders issued from Berlin which however, had at that time actually not yet brought about the change of commands out there in the East which had been prescribed by the issuance of the orders. East at any time not directed by orders from Berlin were mostly not known in Berlin until some time later, so that commanders appeared in the Berlin reports who out there actually had no longer held the position referred to for some time.

In Riga Strauch served not as commander of Einsatzkommando No. 2 But as Commander of the Security Police and the SD, to which point I shall return later, but only for about 10 days when he broke his arm again, and was replaced by Dr. Lange in the position of Commander of Security Police. Even at this time he was formally transferred Minsk, but until the healing of the second fracutre of his arm he stayed in Riga where he was used for pure reporting activity by the Chief of the Security Police Stahlecker (consultant for the reporting on the "vital territories). This confusion of re-assignments, sickness, and legal emergency, solutions, which is evidenced also by the testimony of the Defendant Dr. Blume (Strauch Document Book English and German p. 48, Exhibit No. 22), is again reflected in the garrison reports:

Report of events No. 146 dated 15 December 1941 (Strauch Document Book II English and German p. 8, Exhibit No. 16) mentions Strauch still as the commander of Einsatzkommando No. 2, but the entry has been crossed out in hand-writing and substituted by: Commander of the Security Police Latvia, Dr. Lange. Not until this time apparently, was it known in Berlin that since 20 November 1941 at the latest Strauch was not at all functioning in Riga as Commander of the Security Police but had laready been replaced By Dr. Lange, The date of the report on this event in the Berlin report - approximately 3 weeks after the event had taken place in the East - is in aggrement with the general fact, proved in this trial, that it took between 2 and 3 weeks to forward the reports.

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(of Sandberger Document Book Ia, Statement of Fumy dated 12 January 1948, English and German p.50) when in report of events No. 148 dated 19 December 1941 (Strauch Document Book II, English and German P. 9, Exhibit No. 16), two reports later, Strauch is nevertheless again mentioned as commander of Einsatzkommando No. 2. On the other hand, already in reports of events No. 149 dated 23 December 1941 to No. 151 dated 5 January 1942 (Strauch Document Book II English and German 9/10, Exhibit No. 16) Strauch is mentioned as Commander of the Security Police in White Ruthenia because the order of transfer to White Ruthenia had already been issued at this time.

Report of events No. 152 dated 7 January 1942 (Strauch Document Book II English and German p. 10, Exhibit No. 16) is the first report which by the handwritten entry. "At present deputized by SS Sturmbannfuehrer Regierungsrat Hofmann" shows that in fact Strauch had not at all entered upon duty. This naturally, had again not become known in Berlin until some time following the transfer of Struach to Minisk. (Forwarding time of the reports: 2-3 weeks). 1942; here to compare the statements of Frau Strauch (Strauch Document Book I English and German p.3, Exhibit No. 1) that during the time from 10 to 16 March 1942 Strauch told her in Berlin that now he finally had to go to Minsk, and the testimony of the Defendant Schulz as witness for the Defendant Strauch Document Book II English and German p. 42, Exhibit No. 20) that in the personnel office of the RSHA in Berlin the draft of the order of transfer was persumably written out with "February" only, leaving the date open for the office chief who was to sign the order later.

In report of events No. 179, dated 11 March 1942, the first report containing a garrison report since 23 February 1942 (Strauch Document Book II English and and German p. 20, Exhibit No. 16). the addition "deputized by SS Sturmbannfuehrer Regierungsrat Hofmann" has been crossed out in hand-writing. But of course Strauch had not entered upon duty in Minsk at the time of issuance of the final order in Berlin, not until he had received this order and had made preparations for his journey. documents, was no longer Commander of the Security Police in Riga but had not yet entered upon duty in Minsk, the local office of the Commander of the Security Police, in charge of Sturmbannfuehrer Hofmann, Dr. Lange, is proved to have been Commander of the Security Police in Riga (statement of Dr. Click dated 26 January 1948 - Strauch Document Book III English and German p. 9. Exhibit No. 27). When these testimonies and documents are compared, it appears that the statements which Strauch formerly made to me and also tried to explain to the Tribunal to the best of his ability in his direct examination, are perfectly true:

1. By order of the RSHA Strauch was about 4 November 1941 appointed Commander of the Security Police and the SD in Riga.

2. Strauch was Commander of the Security Police in Riga approximately from 10 November till 18 November 1941.

3. At this time he broke his arm for the second time and was first through Stahlecker replaced by Dr. Lange who was also from Berlin appointed Commander of the Security Police in Riga as successor to Strauch.

4. After the second fracture of his arm - which was at first supposed to be completely healed - Strauch was used by Stahlecker for office work as leader III in the office of the Chief of the Security Police in Riga until 20 March 1942, since Strauch was able to attend to this work (reading and dictation of reports on the vital territories) in spite of his incapacitation.

5. By order of the RSHA Strauch was finally transferred to Minsk in March 1942.

6. But in fact he did not enter upon duty in Minsk until 22 March 1942. Defendant Strauch cannot be charged with any responsibility whatsoever for all occurrences which took place in Riga and Latvia prior and subsequent to the period from 10 November till 18, or at the latest 20 November 1941, when he was actually in office as Commander of the Security Police, and in Minsk, prior to 22 March 1942 when he entered upon duty. Prosecution documents:

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Prosecution Document Book II, English page 57, German page 61, Exhibit No. 42. Report of events No. 156 dated 16 January 1942: Killing of 10,600 Jews in Riga on 30 November 1941 in an operation led by Higher SS and Police Chief Jeckeln. Although Strauch, at this time was no longer Commander of the Security Police and was not other wise concerned with the operation either, I shall again return to this incident later.

Neither can Strauch be charged with the "first aggregate result" amounting to 33,970 shootings in the area of Einsatzkommando No. 2 as sated in this report, for he ordered no executions from 10 till 20 November 1941, consequently has no share in this aggregate result. That means that the counts of the indictment marked E and F must also be dropped with respect to Strauch (English translation page German page 6). Exhibit No. 21. Report of events No. 155 dated 14 January 1942: Shooting of a total of 33,210 Jews by Einsatzgruppe A since the taking over of affairs in White Ruthenia. been there before. The report shows that he had been formally appointed for White Ruthenia but that Sturmbannfuehrer Hofmann was actually there in charge of the official duties of a Commander of the Security Police English translation page German page 5382-5383. Exhibit No. 107. Report of events No. 168 dated 13 February 1942. Shooting of 5 persons refusing to work by summary courtmartial procedure, in Minsk (1/4 February 1942.) Liquidating of the Ghetto in Rakov comprising about 100 persons (4 February 1942). At this time Strauch was not yet in White Ruthenai and had never before been there. The report shows that he had been formally appointed for White Ruthenia but that actually Sturmbannfuehrer Hoffman was there in charge of the official duties of a Commander of the Security Police (English transcript page German page 5383).

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Prosecution Document Book IIIA English page 59, German page 80, Exhibit No. 108. Report of events No. 183 dated 20 March 1942: Shooting of 29 Jews and 4 Communists in Vilajka (5 - 28 February 1942). At this time Strauch was not yet in White Ruthenia and had never before been there. (English transcript page German page 5384). Exhibit No. 109. Report of events No. 186 dated 27 March 1942: Largescale actions against Jews in Rakov and Cherven (In Cherven 15,000 Jews were killed). the east are incidents which took place at least 2 weeks prior to the appearance of the Berlin report. At this time Strauch was not yet in White Ruthenia and had never before been there (English transcript page German page 5384 - 5386).

THE PRESIDENT: Just a moment, they are locating the translation. Proceed. German transcript page 130, Exhibit 53. Activity Report 178 of 9 March 1942: Execution of Jews at Minsk (3412 Jews) at Viljeka (302 Jews) and at Berenewitsche (2007 Jews); total of Jews shot: 5,721. been there before. The report shows that although it is true that he nominally had been appointed for White Ruthenia, the official duties of the Kommandos there were actually carried out by Sturmbannfuehrer Hoffman (For the situation report, reference is made to the situation report in activity report 172) English transcript page German transcript, page 5386. to Strauch either (English transcript page German transcript page 7).

Prosecution Document Book VA (rebuttal documents) English transcript page German transcript page 25/37, Exhibit 223.

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Activity and situation report No. 9 (Not No. 2 as mentioned erroenously in the document book) 1 January - 31 January 1942: In White Ruthenia 33, 210 Jews have been shot so far. This refers to a repetition of the report, culled from activity report 155. Strauch was not in White Ruthenia at this time and had never been there before.

Prosecution Document VA, (rebuttal documents) English page German page 54/70, Exhibit 223. Operation and situation report No. 11, 1 March to 31 March 1943: Execution of Jews at Minsk, Vilejka and Beranewitsche. report 178. Strauch was not in White Ruthenia at this time and had never been there before. reported for Tscherwen in activity report 186 on the occasion of actions in Rakov and Tscherwen (Tscherwen 15,000) is mentioned now for Rokov (inconnection with a place named Artenowsk), that is, it concerns an event distinctly separated from "the remaining areas of the eastern front, therefore, it did not take place in White Rutnenia. of his second arm fracture already handed over the official duties of a KAS (Commander of the Security Police) in Riga to his successor Dr. Lange, but in the following period remained in Riga in his capacity as Chief of department III of the BdS (Commanding officer of Security Police), I tried to get a statement from him in direct examination concerning the Jeckeln operation of 30 November 1941 in Riga. prehensible form during his examination of 13 January 1948, (English transcript page German transcript 5025-5085) and again still quite obscure, during the examination of 19 January 1948 (English transcript page German transcript page 5345-5351). longer the commander at Riga at the time of the Jeckeln operation, I am obliged to stress again these events in order to prevent the drawing of incorrect conclusions from the confused statements of Strauch.

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The facts which could only be vaguely deduced from Strauch's statements are as follows: superior in his capacity as Chief of Department III with the BdS and the new Commander of the Security Police, Dr. Lange, the success of Strauch, were away on official business just at the time when Jeckelm tried to forward to them theorder for participation of units of the BdS and KdS in the operation at Riga planned by him. Consequently, Jecklen's messengers came upon Strauch, who was still nursing his broken arm, in his office as Chief of the department III of the BdS and tried to induce him in the absence of Stahlecker and Lange to issue on order for the participation of units of the BdS and KdS in the operation. Strauch had been informed, at the time when he himself took over the official duties of the KdS, that Heydrich had ordered that no actions against Jews should be carried out in Riga. (English transcript page German transcript page 5338); therefore, he refused, referring to that order of Heydrich, to do anything in that matter. (English transcript page German transcript page 5345/46). Thereupon Jeckeln called him personally on the telephone and after reprimanding him insisted on his order. (English transcript page German transcript page 5345). Strauch, who in the absence of both competent leaders and in view of Heydrich's order was loath to make a decision, sent a teletype message to Heydrich and Stahlecker, asking for instructions. However he received information neither from the one nor from the other (English transcript page German transcript page 5347) and neither the BdS nor the KdS returned to Riga. Under such circumstances, Strauch avoided any further discussions with Jeckeln. Because of the fact that he no longer had any authoritive functions in Riga, he made use of the permission granted him "to nurse first of all his arm in Germany", made up his mind and went to Koenigsberg to his wife. He arrived there either on 27 or 28 November 1941.

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(Affidavit of Frau Strauch of 4 November 1947, Strauch document I German and English version page 2, exhibit 1). Therefore, Strauch was not in Riga on the day of the Jeckeln action. By abstaining from issuing orders in the absence of Stahlecker and Dr. Lange, he avoided participating in the operation especially as he did not receive any answers from his superiors to his teletype message, Strauch is unable to state from his own knowledge whether Jeckeln carried out the operation only with his own forces or whether he actually succeeded in inducing 1 officer and 20 men of "the EK 2" to participate in it. However, he concluded from the above mentioned fact that nobody from the office of the KdS and BdS took part in the operation, but probably a small detachment of the Riga training school of the EK 2. The EK 2 itself was on duty at the front near Laknje. However, this detachment was subordinated to that Einsatzkommo and not to the KdS Riga, (English transcript page German transcript page 5351). previously and it was his intention to describe the history of this event also in his direct examination in court. However his description was rather vague. separate unit of the KdS Riga, I want to point out furthermore that the prosecution tries to connect Strauch with this EA 2 as well. It charges him quite generally of having been the leader of Einsatzkommando 2 and states for example in its opening statement (English transcript page German transcript page 49:)

"The defendant Strauch was the commander of EK 2, Six months after the beginning of the operations he reported a total of 33,970 executions." Strauch was the leader of the Einsatzkommando 2 from its inception and was in some way connected with the results of its execution activities during these six months. Strauch was at no time leader of the Einsatzkommando 2. After the conquest of Latvia this Kommando had been to a large extent moved up to the front by Stahlecker (see the corresponding reports which were submitted as evidence with document book Strauch II):Activity report No. 24 of 16 July 1941 (English and German version, page 2 exhibit 16 of that document book) and activity report No. 26 of 18 July 1941 (English and German version, page 2 exhibit 16 of that document book). advanced into the area around Leningrad.

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THE PRESIDENT: Pardon me, perhaps that might be a good point at which to suspend. Can you come back at seven-thirty?

DR. MINZEL: Yes, your Honor.

THE PRESIDENT: You will complete the reading then at seven-thirty.

(A recess was taken until 1930 hours.)

(The hearing reconvened at 1930 hours, 10 February 1948)

THE MARSHAL: The Tribunal is again in session.

DR. MINZEL (ATTORNEY FOR THE DEFENDANT STRAUCH):

I stopped at page 9: (English and German version, page 56, exhibit 24 of that document book). which shows that 2/3 of the strength of Einsatzfommando 2 had been moved to the front and only 1/3 remained in Riga for the set-up of the new commando post. time at Loknja (see the testinomy of the defendant JOSTas witness for the defendant STAUCH document book STRAUCH II, English and German version, page 44 exhibit 21). space and personnel from the office of the Kds in Riga, which had been set up after the establishment of the Civil Administration in Latvia. did not form a part of the Army organization but constituted a part of this Civil Administration. It was not a mobile militant unit but a p permanent local authority. The defendant JOST who during his activity as BdS Ostland at Riga was also a Chief of an office of the Civil Administration, described the set up of the BdS and MdS office in this Administration in a survey chart, which is contained in document book JOSTIII, English and German version, page 14, JOST decument 29. units completely different with regard to local and personnel is also shown by the garrison report, included in document book STRAUCH II English exhibit 18, which also mentions the command post at Riga and the Einsatzkommando 2 at Loknja as two different units, each with a special leader of its own.

the establishment of the command post in Riga, this office was listed as "Einsatzkommando 2" can merely be explained by the negligence with which the reports were compiled in Berlin; in this connection wee the affidavit of FUMY of ...(document book OHLENDORF Ia, English version page 11, German version page 25, document OHLENDORF No. 32) and the affidavit of FUMY of 12 January 1948 (document book SANDBERGER Ia, page 50, exhibit .......). This negligence was the reason that, only beginning with activity report No. 146, of 15 December 1941 (document book STRAUCH Ia, page 8, exhibit 16) after the establishment of the civil administration, that is after the actual organizational set up of the Security Police and the SD in the Reich Commisseriat Ostland, the offices were named accordingly and correctly in the reports. kommando 2 and the general chargesof the prosecution are not founded on facts. of department III of the BdS in Riga, that is, he was in charge of compiling SD reports. These duties were carried out by the independent offices of the SD in the Reich completely seqarate from all other tasks, including executive tasks entrusted to joint offices together with such belonging to the executive duties of the Security Police. However, this did not alter the special problems of their duties or their execution. The departments III had nothing whatsoever to do with the other departments, which were in charge of executive duties; its activities were concerned just as the activities of the SD in the Reich, with the compiling and forwarding of news and reports from all spheres of life, in order to keep the leading officials informed about the actual situation. I refer in this connection to the testimonies of the defendant OHLEHDORF concerning the real nature of the information and report activities.

These testimonies have been confirmed in the course of the proceedings by innumerable additional affidavits of the defendants concerning their activities in the SD and as Chiefs of the department III of Einsatzgruppen, and Kommandos as well as command posts. This activity did not involve the defendant STRAUCH in any kind of participation in crimes. Therefore, also as Chief of department III, he did not perpetrate acts punishable according to the indictment.

Therewith all charges are refuted which refer to STRAUCH's activity in Riga. he had to face the following situation: for more Jews lived in White Ruthenia than in any other territory of the Reich Commissariat Ostland. Almost all skilled workers of technical or trade professions were Jews, whereas the indigeneous White Ruthenian population was working predominately in agriculture. (document book STRAUCH II page....exhibit 16: activity report No. 32 of 24 July 1941.) vancing with the troops, were active in the execution of the Fuehrer Order. Repeatedly it had been pointed out in reports of the SD from White Ruthenia that drastic measures against the Jews there would only lead to a crippling of the entire economic life. This opinion was shared by the Commissar General for White Ruthenia KUBE, and when STRAUCH took over his position in Minsk, he demanded from him that in consideration of the situation he should abstain from measures against the Jews. STRAUCH knew from his first visit to STAHLECKER in Riga that the Fuehrer Order for extermination of Jews and Communists had been stipulated as a task of the commanders too.

However, his inner revulsion against this order induced him now, when it was set up to him for the first time to take issue with this order, to make use of every opportunity which would relieve him from its execution. Therefore, STRAUCH agreed at once to undertake nothing until he became more informed about the economic conditions of White Ruthenia. A short time afterwards, the Chief of the Sipo and the SD Heydrich, STRAUCH's highest ranking superior after HIMMLER, arrived by chance in Minsk; STRAUCH informed him of the situation and HEYDRICH granted a postponement of the execution of the measures against the Jews in White Ruthenia, first of all until the gathering of the harvest, that is until the late fall of 1942. Document book STRAUCHI, English and German version page 9, exhibit 6): affidavit, Karl ZENNER of 3 November 1947.) However, KUBE himself went too far. By virtue of all testimonies and documents regarding his person, it has been established that he followed a policy of open favoritism of Jews, contary to the condemnation of Jewry by the Nazi Leadership which was, of course, not fundamentally altered by the suspension of the extermination measures;

THE PRESIDENT: You don't need to read all those.

DR. MINZEL: stronger opposition to this policy. He had already been removed from his post once before as Gauleiter of the Mark Brandenburg, at that time because of shady dealings. How in White Ruthenia, as his friendliness toward the Jews became more and more apparent, this same fate threatened to overtake him. He had already been repeatedly and explicitly warned by Himmler and Heydrich that he would have to count on stricter measures. It was obviously this compulsory state of affairs which brought him to resort on 31 July 1942 to sending a letter to the Reich Commissar for the Eastland, Lohse, in Riga, the so-called Kube letter; (Prosecution Document Book III A, German page 44, 111) in which he reports alleged measures against the Jews, which in the 10 weeks previous to that time, he is supposed to have taken, together with the SS and Police Leader and with his subordinate, Commander of the Security Police Strauch.

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55,000 Jews are said to have been exterminated according to this report, and of this number, 10,000 in Minsk on 28 and 29 July alone. The defendant Strauch vehemently denies that such events actually did take place; I have submitted a whole series of statements which confirm that: (Strauch Doc. Book I e, German page 10a, 12, 19, 25a, 34a, Exhibit 6, 7, 8, 11, 15); from them may be seen the cross contradiction between the tenor and contents of the Kube letter and the actual conduct of Kube.

"As though to refute its own incriminating document, the Prosecution has introduced a report about Kube in which his personality, his attitude towards the Fuehrer order, the Security Police and their leaders is so evident that his letter of 31 July 1942 may be interpreted only as an attempt to mislead, which can be explained by his vulnerable position. In this report about Kube, such misleading letters are explicitly mentioned, and on this subject the following is said (page 10 of the original): "In what he says and writes in which he takes a position on the Jewish question, I see only a means of protecting himself for the future." In the face of these statements, the value of the Kube letter vanishes as evidence; this document which the prosecution so especially singled out in its presentation of documents by reading it in its entirety is completely nullified? It is however, rendered completely valueless by the statement, which I have also proved with documents, the Kube's operations against the Jews in the 10 weeks before 31 July 1942 are only a figment of his imagination. In Strauch Document Book No. II pages 28037, Exhibit 18 from the "Reports from the Occupied Eastern territories" No. 1 of 1 May 1942 to No. 15 of 7 August 1942, I have quoted all the passages in excerpts which are concerned with the events and the situation in White Ruthenia.

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There is not one word in these reports, which extend over the period decisive for the Kube letter, of even a single operation, as mentioned by Kube in his report.

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This is the case, then, as the defendant Strauch testified in direct examination from his knowledge of Kube's personality and the conditions in White Ruthenia: Kube arbitrarily patched together events and figures from a time prior to that in a description of his own invention and applied it to the period before 31 July 1942, in order toprove his positive attitude in the Jewish question during this period, a "political" maneuver, which he undertook following the reprimands such as the one directed at him by Heydrich in his letter of 21 March 1942 (Prosecution Document Book VA - Rebuttaal documents - Engl. page ..... German page 9/10, Exhibit 220). contents, and one made by Kube himself. The operations reported in it simply did not take place, at least not in the period claimed. This is proved by the far more reliable reports of Commander Strauch himself, which are contained in the reports from the occupied Eastern territories. Therefore, no criminal responsibility can be inferred for Strauch from the dates of the Kube letter. ting the report concerning Kube, the Prosecution has furnished the Defense with proof that Strauch did not take up his duties in Minsk until the end of March 1942. The report was made by Strauch in July of 1943 when he was already G-2 (Intelligence officer) with the Task Officer for the Bandit Combat Operations. In the report, Strauch quoted file memoranda and measures of Commanders of the Security Police and the SD in Minsk. He himself had also become Commander of the Security Police in Minsk by that time. Thus, he submitted a memorandum concerning events on 1 and "In a memorandum of the Commander of the Security Police of that time." It is apparent that he is not referring to himself here, thus on 2 March 1942 he had not yet taken over the office of the Commander of the Security Police in Minsk.

On the contrary, Strauch then says in connection with a. memorandum of the Commander of the Security Police dated 18 April 1942:

"I have sent excerpts of the following letter under the dateline 25 April 1942 to the Gauleiter.", and further: "In a letter of 28 April 1942, the Gauleiter significantly did not even touch upon my reproaches." thus speak of himself in this report when he mentions the Commanders of the Security Police of Minsk. no reports concerning operations against the Jews in the period relevant to the Kube letter. On the contrary, what is apparent from the reports is the fact that in White Ruthenia another question was far more vital for the Security Police than measures against the Jews, the The reports (Strauch Document Rook II, eng.

and german pages 25-37, Exhibit 17-18) show that the uprising of partisan bands had attained such proportions that all civilian activities in the General Commissariat White Ruthenia threatened to collapse. In Minsk there were reports of a partisan organization (Strauch Document Rook II, Eng. and German pp. 25/26, Exhibit 17) in which 9 Partisan groups worked together under one staff, among which were groups with a strength of 200-400 men. The organization was supervised by a Communist underground machine, the organizer of which was the Georgian Jew, Delikurdgly, who was financed by Jews from the Ghetto and provided with weapons and reinforcements. From the Ghetto, Jewish troops were also sent to the Partisans. There was a secret press which was directed by a Jew, and a Partisan military council was set up, which maintained connections with Moscow via a parachute group. detail in the Report from the Occupied Eastern territories No. 9. 178, Doc. No. 5156, the German mimeographed copies of which create the impression that the pages of the original have been reproduced in their true continuity.

In reality, the very pages are missing which throw a special light upon the seriousness of the situation and which are concerned with a conference of all the Wehrmacht commanders, the Security Police Commanders and all representatives of the civil administration, in which the Defendant Strauch is also quoted as having participated, and from the course of which may be seen how Strauch was and should have been primarily busy with his Commander of the Security Police Office as G-2 in obtaining advance information for assignments against the Partisans. I have taken the liberty of introducing these very pages as evidence which were left out by the Prosecution.

From this time on, Strauch's entire activity was conducted within the framework of anti-Partisan and guerilla operations. The SS and Police Leader Minsk set up an Einsatz staff for obtaining information about partisans and the Commander of the Security Police Strauch was the leader of this Einsatz staff.

All reports from the period of Strauch's further stay in Minsk are full of the clash of weapons in the Partisan warfare, and it is understandable that in Berlin Strauch was accused of "playing soldier" and of neglecting his Security Police duties, (Strauch Document Book II, Engl. and German page 43, Exhibit 20). mander of the Security Police Minsk in this fight against the Partisans is shown also by the following statements;

Strauch Doc. Book I, Engl, and German p. - Exhi. 11, detail here because my client, in consideration of the unusual circumstances of his examination, had no opportunity to comment thoroughly and clearly enough on the subject. Without sufficient knowledge of the conditions, however the measures of the German Security end constabulary Forces, which had to call upon Wehrmacht units for the most part in their operations, may not be properly evaluated.

In no other area of the Eastland was there such deadly danger for the security of the rear-area communications and for the maintenance of public peace and order as in White Ruthenia, therefore, drastic measures had to be taken in order to counter the criminal activities of the Partisans. light; here it is not a question of imagining a Partisan danger and unscrupulously declaring innocent people to be Partisans or Partisan helpers, but a question of bloody reality. so above all did the defendant Strauch. And Strauch also experienced the reality of the especially active participation of the Jews in the Communist fight in White Ruthenia, claimed by the German authorities. (cf. the report cited above concerning the discovery of the Partisan organization in Minsk). Only when seen from this point of view do the documents which alone of all the Prosecution documents still remain, appear in their true light Prosecution Document Book VA(Rebuttal Documents) Eng. p... German p. 118, Exhibit 226: Report from the occupied Eastern territories No. 5 of 29 May 1942. measures pertaining to Partisan warfare and measures taken exclusively in this connection against captured partisans and Partisan helpers are reproduced. The defendant Strauch also gave this information in his affidavit of 22 January 1948. sans or Partisan helpers who had been sentenced to death by the German court in Minsk. In the reports preceding this report there is ah account of the particular role played by the Minsk Jews in the Partisan and Communist organization which had been uncovered.

court, but in each case of severe but nevertheless justified penal measures against criminals, and not a question of criminal measures against innocent persons.

Prosecution Document Book VA - Rebuttal Documents. German page 105, Exhibit 224: Report from the Occupied Eastern territories No. 41 of 12 February 1943. This report gives a detailed account of the conclusion of extensive operations against the Partisans. In these undertakings, 1165 Partisans were subjected to "special treatment" for having given aid to the Partisans. In this case too the affidavit of the defendant Strauch of 22 January 1948 is referred to. It is a question of an undertaking which in part did not take place in White Ruthenian territory (Sec the mention of the localities Tscherwen and Ossipowitschi in the rear army area) and in which numerous other units participated in addition to those of the Commander of the Security Police Minsk. The leader of the expedition was SS-Obergruppenfuehrer Jeckeln. As in all such expeditions, Strauch was assigned with men of his office for purposes of reconnaissance. cution of pehal measures against the captured bandits and their supporters. Apart from the fact that these penal measures were justified, Strauch's responsibility cannot be deduced from the report, nor from the actual conditions. Prosecution Document Book VA (Rebuttal Documents) German p. 105 Exhibit 225: Report No. 43.

THE PRESIDENT: If you will refer to the exhibit number, then we can go right along.

DR. MINZEL: This report deals with further large-scale combat operations against the bandits. The Commander of the Security Police supplied only a small part of the forces committed in operation "Jakob"; therefore, this report shows that this operation could not possibly have been commanded by Strauch, but that it was the commander of the constabulary, regular police (Ordnungspolizei) in Minsk, at that time, who was in charge of operations.

144 "bandit suspects" were given "special treatment". If the expression "bandit suspects is being used, this does not coincide with the actual facts, as those persons were encountered in the partisan formations, and as they, contrary to the armed partisans, did not carry any weapons openly. The very same report mentions the operation "Harvest Celebration (Erntefest)" in which even stronger forces had been committed. Here again, members of the office of the Commander of the Security Police were only a small part of the total forces, among others 11 police and constabulary battalions participated. 1175 "bandit suspects" received "special treatment". Strauch who had been assigned to reconnaissance duties did not order any executions during this particular operation, nor did he participate. (Strauch Doc. B. III e/german p. 1 Strauch affidavit of 22 January 1948). Reports No. 41 and No. 43 cannot therefore contain any factual information concerning Strauch's participation in crimes against humanity, which could be considered as proof for Strauch's personal responsibility. described just now in the Prosecution rebuttal document, Engl. Page ..., German page 105. Exhibit 224. According to the text of this document the very same 1, 165 partisans were not executed because they were bandit suspects, but because they were bandit supporters, which is a proof for the fact that the word "bandit suspect" has been used quite arbitrarily, and precludes the conclusion that these persons were not found guilty of having committed crimes. Prosecution Document Book VA - Rebuttal Document Book Engl. p. German p. 23 Exhibit 222: Affidavit Ruebe dated 23 October 1947. the Commander of the Security Police Minsk, Strauch, has allegedly participated, having supposedly killed 2000 Jews during this operation.

operation was part of the combatting of bends. In his affidavit of 22 January 1948 (Strauch Document Book III, Engl. and German p. 1, Exh. 25) he also states that he himself had been in charge of the search party in the Sluzk ghetto, and that a large store of weapons had been found there. SS and Police Leader von Gottberg had then ordered a clearing up operation for the ghetto, and heavy weapons had to be used in order to take it. He continues by stating that all surviving Jews were finally shot by order of von Gottberg. Strauch himself did not give this order, nor did he participate in the executions. However, he witnessed those executions following a situation conference which had been ordered by von Gottberg, but he soon departed to the Pinsk swamp country south of Sluzk, in order to continue this reconnaissance operations against the bandits.

That Strauch's statement is correct can be seen from the affidavit by Joahannes Feder of 10 November 1947 and the affidavit by Hubert Strathmann of 10 November 1947. were given special treatment. This memo comes from Strauch. In this connection I refer to his explanations in the repeatedly mentioned affidavit of 22 January 1948. Officer to the Chief of Staff bandit combat formations for a considerable time, i.e. that he was no longer Commander of the Security Police in White Ruthenia at that time. He states that he and his Commending Officer, Obergruppenfuehrer von dem Bach, at that time left his new office in East Prussia and flew to Minsk. Von dem Bach expressly ordered him to arrest the Jews who were employed by the Generalkommissar Kube (approximately 70 persons), and to have them shot with the assistance of the Commander of the Security Police and the SD in White Ruthenia. Strauch transmitted this order to the Commander of Minsk, his successor, who had them executed by Obersturmfuehrer Hauser, as an attempt to contract Obergruppenfuehrer von dem Bach, who had alreadyleft, in order to have this order revoked, had not been successful.

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Following this, Strauch dictated the memo at the office of the Minsk Commander of the Security Police, his successor, in Order to, prove to von dem Bach that he had executed his order. This was the explanation, he stated, why the memo was written on stationery of the Commander of the Security Police and SD for White Ruthenia in Minsk. However, he did not leave the document in Minsk, but took it with him to the office of the chief of staff bandit combat formations, where he had it filed. Therefore, Strauch was compelled by an order he received personally to take this measure, and he could not possibly refuse to obey or have it executed. Solely Obergruppenfuehrer von dem Bach is responsible for the arrest and execution of those Jews. Strauch's participation cannot be compared to the independent actions of a commander, or of an Einsatzkommando leader based on the Fuehrer order, which was only a general directive for any such actions. The execution of a specified individual order from an immediate superior cannot be compared to those ordered executions which, although it was compulsory to comply with this general directive, were ordered by the individual leaders in each particular case, either quite independently or implementing their respective superiors instructions. Here special attention must be paid to the fact that this immediate superior was able to check on the implementation of his order at any time. Strauch, being the G-2 (intelligence officer) to the Chief of staff of bandit combat formations was constantly in direct touch with this Chief, von dem Bach, who gave him the execution order. How painstakingly accurate Strauch's account of executing this order has been is proved by the fact that the memorandum, which had been written to cover him, was a completely new and unusual business procedure. I shall now conclude my examination of the actual incriminating points concerning the defendant Strauch as listed in the Prosecution documents. The Prosecution generally accused Strauch of having participated in Jew baitings at Minsk, and to prove their point referred to statements made by the defendant Dr. Sandberger on 19 November 1945.

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(Document Book III, A, English page, German page 17, Exh. 110: This contains a long list of names of those men who were allegedly responsible for the persecution of Jews all over Russia. It is evident that such an accusation is absurd if leveled by a man who was located in Reval, the Northwestern corner of the Baltic countries, and who could not possibly have any knowledge of the events which were taking place in the whole of far-flung Russia. As witness for the defendant Strauch, Dr. Sandberger has stated

(Strauch Document Book II, English and German page 49/54, Exhibit 23) that apart from knowing of Strauch's presence in Minsk, he did not have any knowledge of the actual events which took place in Minsk. He himself has never been to Minsk nor was Strauch in Reval at any time. During the whole of this period, they never attended discussions at the office of the Riga Commander of the Security Police; this refers to the time Strauch stayed in Minsk. Defendant Strauch with its gigantic liquidation numbers but the portrayal of a man who for six years as chief of SD sectors was only engaged in compiling SD reports, who, a long time after the Russian Campaign had started and the Einsatzgruppen and Einsatzkommandos had been assigned to the East, who in Riga, for another four months, as Chief III with the Riga Commander of the Security Police continued to write SD reports, and who finally at Minsk was thrust into the dangerous atmosphere of a constantly lurking fight against the bandits, which required effective soldierly devotion and the implementation of the most stringent measures. Apart from a few others, Strauch is one of the real soldiers amongst the defendants, even though this seems to be a paradox considering his present condition. During the Polish campaign he became an officer and received his decorations as such, and during the fighting against the bandits he further distinguished himself by his personal devotion in fulfilling his reconnaissance tasks.

Ha was a man who made it his business to comply with the orders he received as a soldier, He was compelled to take these orders seriously, for his security police activities in Minsk were actually an effective assistance for the Wehrmacht, in order to secure the supplies and communications coming up from the rear. For many months of fighting against the bandits, Strauch was not even in Minsk. (Strauch Document Book I. English and German page 18. Exhibit 8: statement Feder of 30 Oct. 1947 much as he possibly could (Transcript English page German page 5336-37). Apart from arresting, 70 Jews in Minsk, he did not contribute to implementing this order, which had been given by his immediate superior. Obergruppenfuehrer von dem Bach, whose order he was obliged to obey. Strauch himself did not give the order to have them executed, but left this task, that is the arrest and actual execution, to his official successor, the Commander of White Ruthenia. Strauch himself had given orders that a camp was to be set up on a large estate for the Minsk Jews, whose immates were doing quite well considering these circumstances. (Transcript English page. German page 5381). The remainder of the executions, which took place in the course of those operations in which Strauch participated, amongst others, cannot be laid to him. The special situation in White Ruthania was the cause that these operations assumed such proportions that all of them were directed by senior officers, while Strauch only had to carry out limited reconnaissance tasks (Strauch Document Book I, English and German page 17, Exhibit 8: Statement Feder of 30 October 1947). The reports quoted at the beginning which deal with these operations, although mentioning that the Minsk Commander of the Security Police participated in them, do not bring any proof that Strauch, who was not in charge of those operations had ordered the punitive measures which followed them. These reports describe the activities of all the participating formations, and they do not allow any conclusion regarding a personal responsibility. Even the statement Ruebe (Prosecution Document Book V A, Rebuttal Documents, English page, German page 23, Exhibit 222). although mentioning that Strauch participated in the operations against the Ghetto at Sluzk, stresses, however, the presence of the SS and Police Leader von Gottberg.

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This particular operation took place as part of a large scale combat operation against bandits, in which Strauch was merely commissioned with reconnaissance tasks. (Strauch Document Book I, English and German page 21, Exhibit 13: Statement Strathmann of 10 November 1947). While fighting the bandits. Strauch was one of those defendants who knew better than anybody else that they acted during an emergency for the Reich, in order to establish security measures and ward off a deadly danger. In his case the defense asserts that a mitigating circumstance resulting from the existing emergency should be fully considered; also insofar as Strauch was fully aware that he had to obey the orders he received, and that he could not possibly oppose them without endangering his own life. Now I shall deal with the remaining points, that is, Count III of the Indictment, in which he is charged with membership in a criminal organization. Since 10 January 1932, Strauch had been a member of the SS, and since July 1934, a member of the SD. From the end of 1934 till November 1941, he at first was in charge of a SD sector in Westphalia and at the end in Koenigsberg. In November 1941, he was appointed Commander of the Riga Security Police, but actually worked in this capacity only for about ten days, in order to resume writing SD reports, for another four months. It was not before March 1942 that Strauch really assumed the position of Commander at Minsk, and in this capacity he stayed on till spring 1943, when he was assigned to purely military duties as Intelligence Officer to the Task Officer in Charge of Combat Operations against Bandits. The International Military Tribunal has ruled that those SS members are guilty of criminal membership, who voluntarily joined after 1 September 1939, or remained in that organization, and who either had knowledge of the criminal acts committed by the SS, or themselves were involved in committing such crimes.

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In this trial it has been established and proved that members of the SD could not resign from the SD after 1 September 1939, nor could they resign from the SS, with the exception of those whom the Chief of the Security Police wanted removed from this organization. Therefore, since 1 September 1939, Strauch has not been a voluntary member in the SD, which also applies to his SS membership. At the beginning of the war he joined the Polish Campaign as a soldier, and after the conclusion of this campaign he was reassigned to the SD from the Wehrmacht, where he intended to stay, and again contrary to his intentions, was then declared unfit for military service in the Wehrmacht. In the course of his SD reporting duties, which he resumed after returning from the Wehrmacht for the initial period thereafter. Strauch neither committed criminal acts himself nor did he participate in those criminal activities as perpetrated by others, and he also had no knowledge or was aware of the criminal actions committed by the SS. Doinghis duty he rather considered his activities perfectly legal, which consisted of submitting frank and correct reports to the leading authorities of both State and Party. Furthermore, he was assigned to the position of Commander of the Security Police, first in Riga and then in Minsk, without being able to refuse this particular assignment. During the time he was in charge of that office he did not approve of any criminal actions nor did he participate in them. As for the combat against Partisans, he was only a part of the committed large formations, he did not order any actions which would be subject to punishment, nor did he participate in them, if these actions were part of the operations referred to. Having knowledge of the emergency which existed in fighting the partisans and underground organizations, this fact simultaneously excluded an approving knowledge of criminal actions. Strauch considered the very stringent measures, which he did not order himself, but of which he had knowledge, a fully justifiable defense measure.

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When by order of Obergruppenfuehrer von dem Bach in Minsk, he transmitted the order for the arrest of 70 Jews and their extermination, he only obeyed an immediate order given by his superior. He was not in a position to refuse. This situation excluded an independent criminal action. Therefore, merely based on this incident, Strauch could not possibly know or assume that he was a member of an organization which pursued criminal objectives. Incidentally then as before, he did not have an opportunity to resign. Mr. President, Your Honors ! At the outset of the trial it appeared as if it had been just my client who really committed crimes against humanity. Now we are able to discern the facts more clearly, and the ground has been prepared for a fair and just decision. However, the picture is not as clear as it should be, considering the severity of the indictment. The guilt of both this defendant, as that of all the other defendants, must be established beyond all reasonable doubts, if he is to be sentenced. The shortcomings of the Defense in this particular case which are a result of the defendant's ill health, leave certain doubts which can only be removed by eliminating those shortcomings. I repeat my request to take these special conditions into account by making arrangements for a future complete trial. Whatever the outcome will be, however. I trust that the Court will pass a just verdict. DR. MAYER FOR KLINGELHOFER:

May it please the Tribunal: humanity, are also charged with war crimes which they are supposed to have committed within the scope of the Einsatzgruppen, the Einsatz and Sonderkommandos, one is easily tempted in evaluating the offered documentary material, to view the Einsatzgruppen outside of the frame-work into which they had actually been placed. If this were to happen, then an entirely false impression would be created.

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in the Eastern territories occupied by German troops, is part and only part of the events of war which occurred like destiny - and one can say due to the force of circumstances between the German Nation and Bolshevist Russia. These intentions of the USSR, voiced right from the beginning of the Soviet regime to bring about world revolution in all countries of the world and the threat contained therein not only to Germany but to the whole Western part of Europe, was a fact always demonstrated to the whole Western part of Europe, was a fact always demonstrated to the German people by its government at the time, as of considerable danger. The Public, as well as the Party end its formations, saw the meaning of this war not in the intention to conquer new territory, but in the aim to prevent by active defense the expected onslaught from the East. The German Nation as the only important neighbour of the Soviet Union was supposed to intervene in this case. It can not be denied that this conflict was publicised as a decisive contest between Eastern and Western culture and that a considerable number, of not exactly the worst Germans, considered this a hard and bitter necessity according to their true conviction. It was furthermore obvious and confirmed by former experiences, that war with Russia would be carried on by this State with a ruthlessness, which would not feel itself in any way restricted by limits of international agreements and international law. It followed from this, that it would be of decisive importance to care by all means for the security of the troops as quickly as possible.

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just as soon as they were on Russian territory. This included the breaking up of any resistance wherever it appeared in occupied territory. The malicious fighting of the partisans, saboteurs and spies who camouflaged as harmless civilians would cause insecurity from ambush, was to be expected. But this fight could only meet with success if, by earliest possible, rapid evaluation of the documents captured at NKWD (Secret State Police), military and state officers, the most comprehensive and exact insight possible, which corresponded to the existing facts, could be gained of the entire organization of the Soviet Party machinery, the military structure and the partisan formations intended for unuisance activity. Einsatzgruppen and their sub-formations were first of all intended for this task. They were actually detailed for this. The true picture would be distorted if one would make the mistake of proceeding from the supposition that it was the sole task of the Einsatzgruppen to kill Jews, Gypsies, anti-social elements and communist functionaries. The entire evidence has shown time and again clearly and unequivocally that the previously mentioned basic security task was in the accomplished sense the predominant aim of the Einsatzgruppen. That in fact no sight was lost of this aim, is demonstrated especially well by a number of Operational Situation Reports. ments was therefore a task of special significance which last but not least gave significant information to the command of the army. But it was also a task which due to its importance could only be entrusted to those who had the necessary knowledge and ability. Prerequisite for work in this branch was, aside from acquaintance with Russian conditions, also the perfect knowledge of the Russian language, as only then quick and accurate work could be guaranteed. It is unfortunate that it was impossible for the defense to offer at least some of these sometimes quite voluminous and detailed documents to the Tribunal to show thereby what an amount of work was often contained in them after months of research. From those it would have become obvious that the ones compiling these reports had been engaged in this kind of work to the limit of their time and that they had no possibility to bother with other matters.

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mind when judging the case of Klingelhoefer. Evaluation of the captured documents has been accomplished. There is no doubt about that. Such a job demanded men suitable for this kind of work, men who had to, devote themselves and all their time to this matter, and that this work did not constitute any unnecessary waste of time, is also obvious. It is therefore no wonder if the defendant Klingelhoefer's activity during the two years of his assignment in Russia concerned itself exclusively with this task, aside from few exceptions. The importance of this work which presupposes in itself only knowledge of the Russian language was such, that it justified without any doubt the appointment of an SS-Major. It is for this reason alone already a misconception, if the Prosecution tries to infer from the rank of the defendant that he must have been assigned as Commander of Einsatzgruppe Units, and that he as such was active in a sphere different from the one he was actually working in. in which he gives a short outline of his life history up to the time of his assignment in Russia, shows clearly that it would have been an absurdity without comparison if one would have entrusted him with different tasks than the revising and evaluation of the captured documentary material.

Klingelhoefer was born in Moscow. He learned the Russian language together with his mother tongue. Due to long years of residence in Russia he was acquainted with Russian conditions and, what was even more important, with the character of the Slav people. Due to his acquaintance with Bolshevism he joined the NSDAP after his resettlement in Germany because this party promised him a fight against this conception of life which he could not tolerate. In considering this fact, one should not disregard the political situation then existing in Germany, It would go too far if I would give a resume of this situation here again even in rough outline.

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I trust that the Tribunal is aware of it and that it will evaluate it accordingly. The fact, that the defendant has a perfect knowledge of the Russian language, and that he could be considered as one acquainted with Russia, made the Security Service, then in the process of being set up, aware of him. The defendant Klingelhoefer who had to take care of his family without any special vocational training, became a salaried member of the SD in Kassel, because in this he saw a possibility to participate actively in the enlightenment about the real character of the Bolshevist system. But he was at first in no way employed with regard to the previously mentioned knowledge. Instead he was placed in charge of the cultural branch and had to take over the Cultural department with all its branches later on. Here he acquired an extensive training in the drawing up of reports in which he pictured the essential and interesting parts from all sectors of cultural life within the area of the SD Administrative Sub-district, Kassel. Later on he received also the order for continuous reporting in which he had to report about the morale of the population results of propaganda in press reports and films and about the populations reactions to war conditions and government measures. In this connection I refer to Doc. Klingelhoefer No. 5, Exh. No. 4. This affidavit of one of the defendants coworkers of that time, confirms the defendant Klingelhoefer's testimony while on the witness stand. It is also certified in the same document, that the defendant always endeavored to adopt a just and objective attitude in his reports and that he pointed out deficiencies and grievances without regard to the person concerned. It is furthermore certified that he was also decent in a human respect and that he never lent his hand to the persecution of persons for racial or other unjustified reasons. This latter fact is clearly stressed by Klingelhoefer Document No. 1, Exh. No. 1. Moreover, the defendant Klingehoefer is a man of extraordinarily kind and gentle character who always endeavours to be righteous and true in his actions and utterances. I may be allowed to point in this connectio to the proved fact that right from the beginning - that means a long time before the beginning of his trial - the defendant always endeavoured in all his interrogations to speak the truth.

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He did not wait until Operational Situation Reports were presented to him. He considered it to be his duty as an honourable man to say what actually happened and I can emphasize that this endeavour was also the basis of his testimony on the stand. Administrative Sub-District in Kassel to the Russian assignment virtue of an order given by the Reich Main Security Office to his superior agency in Kassel the defendant Klingelhoefer had to report to the Pretzsch Police School. It that date he was still completely in the dark about the purpose of this assignment. After the setting-up of the organization and formation of the Einsatzgruppen with their Einsatz- and Sonderkommandos he was assigned to Sonderkommando 7b. He belonged to it from 2 June 1941 until 10 or 11 July 1941. After having been taken over thereafter into the Advance Kommando Moscow, in which he was employed until middle of September 1941, he was transferred to the Group Staff of Einsatzgruppe B. He belonged to it for about a month from middle of September 1941 until the end of October 1941. At the last mentioned date he was appointed to his sole independent command in Which he had to command the Advance Kommando Group Staff. He held this command from the end of October 1941 until he went on leave to Germany on 2 December 1941. After his return from leave on 25 December 1941 he was retransferred to the Staff of Einsatzgruppe B where he remained until 20 December 1943. The Advance Kommando Group Staff had been dissolved in the course of December 1941. Already now I should like to stress particularly that Klingelhoefer, apart from commanding the Advance Kommando Group Staff, never directed a unit of Einsatzgruppe B independently and as solely responsible officer. This assertion finds its confirmation in the submitted Operational Situation Reports, especially since the name of the defendant is nowhere mentioned in them, although they frequently contain exact enumerations of names and ranks of the commanders of the units.

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This fact should not be overlooked. It is established and is contradictory to the allegations of the Prosecution. mony of nearly all of the defendants, the organization and formation of the Einsatzgruppen and their sub-formations, i.e. the Einsatzkommandos and Sonderkommandos, took place in Pretzsch and Dueben. night, a roll call was held during which the officers and men were assigned to the positions they were intended for in the Einsatzgruppen and Kommandos, On this occasion the defendant was assigned to Sonderkommando ub as an interpreter. In a speech Streckenbach only emphasized particularly the general duties of a soldier in the field with respect to fulfilment of duty and discipline. Any explanation about the aim and purpose of the commitment was not given. In Dueben, to which place the Sonderkommando 7b had been transferred, the organization of this Kommando was set up in detail by its commander, Major Rausch. The Sonderkommando 7b was divided into an SD squad and two executive squads. The defendant Klingelhoefer was assigned to the SD squad with the special order to organize it. This sub-division of Sonderkommando 7b was continued until the withdrawal of the defendant Klingelhoefer from this unit. The later commitment made it necessary to make a new arrangement, namely in that manner that the SD squad disappeared and in its place SD experts were assigned to each of the executive squads. In that regard I refer to the testimony of the defendant in the English transcript, pages 3896 to 3898. The employment of the defendant in the SD squad was done with regard to his activity with the SD in Kassel. The defendant received the knowledge of the aim of the commitment and the purpose of the Sonderkommandos shortly before the departure to the Russian territory, at a roll call hold by the commander of the Kommando for this purpose. Major Rausch particularly stressed that it was the task of the Kommando to cover the rear area of the combat troops and to compile all important material in intelligence reports which was to be done besides the usual SD reports.

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In this connection he pointed to the ruthlessness of the fight against the Red Army which was to be foreseen, and, moreover, he disclosed the order of the Fuehrer. According to this, the Jews in Russia were to be considered as the strongest support of Bolshevism and to be shot. He stressed that this must result in a heavy charge for the members of the Kommando. It had also bee tried to have this order cancelled, however in vain. The order would also affect Communist functionaries and Gypsies. In this connection he expressed his opinion that his Kommando would have nothing to do with this order, since it had first of all the task of following the combat troops immediately, while special

Einsatzkommandos in the rear area as stationary units would take charge of the carrying through of this order. interpreter and SD-Specialist and must therefore have been convinced that he would never be compelled to participate in the execution of this order. It was a matter of course that this order deeply impressed the defendant and his aversion against it, which he expressly emphasizes in his testimony, can well be understood. His activity during the whole subsequent period kept him away from these things. It is clear and is not denied by the defendant that he frequently heard of the executions in compliance with the Fuehrer Order but the drawing up of his special reports, which was of quite a different nature as compared with the usual SD reporting, prevented any personal participation of the defendant in these incidents, and this is estensibly expressed by the fact that the command of a Sonderkommando or an Einsatzkommando was never conferred upon him.

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The fact that he was appointed commander of the Vorkommando Group Staff is not contradictory to this either; for a task was envisaged for this Kommando which was entirely within the framework of the former work of the defendant. For that reason the Vorkommando Group Staff is never mentioned in the documents in connection with the executions. which are to show his participation in the executions which were performed by Sonderkommando 7b, by the Vorkommando Moscow and by the Staff of Einsatzgruppe B.

By Prosecution's Exh. No. 61, Document No. NO-2844, it is to be proved that Klingelhoefer participated in the shooting of 886 persons which is attributed to Sonderkommando 7b in this Operational Situation Report dated 4 September 1941. 1941 until 10 or 11 July 1941, as is proved by his testimony on the stand and by Klingelhoefer Document No. 2. During this period, however, the Sonderkommando 7b was on the advance. During the approximately 3 weeks Klingelhoefer belonged to this Kommando, it travelled via Brest-Litovsk and Slonim to Minsk, a distance which is not at all insignificant. Of course, the advance of such a unit cannot be carried through without difficulties and therefore the statements of the defendant are absolutely worthy of belief, if he reports that during this period the Kommando did not perform executions just because of this advance movement. The Exh, No. 61 of the Prosecution, mentioned at the beginning, shows the state of 20 August 1941 as reporting date. Since the defendant no longer belonged to the Kommando after 10 July 1941 and since the Kommando was engaged in a greater advance movement before this date, the document proves by no means with regard to the defendant that even part of these reported executions took place before the date on which he left Sonderkommando 7b. Therefore, it proves by no means either that he participated in those executions in any form.

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The fact that the executions took place is by no means sufficient for the presumption of the defendant's participation in then. The Prosecution ought to have shown from what it concludes a co-operation of the defendant Klingelhoefer. Furthermore, it ought to have advanced the facts and evidence for these facts which would have justified such a conclusion. Prosecution draws from this same Operational Situation Report No. 73, Prosecution's Exh. No. 61, namely Klingelhoefer's participation in the execution of 46 persons by the Vorkommando Moscow. Klingelhoefer document No. 2, Exh. No. 2, proves in an absolutely clear manner that within the Vorkommando Moscow the defendant dealt exclusively with extensive intelligence tasks which were connected with the securing of valuable documents. The same affidavit, more precisely Klingelhoefer Exh. No. 2, Stresses moreover that additional work was assigned to the defendant in Smolensk within the framework of the Vorkommando Moscow, which was in the line of his intelligence activity and entailed important and extensive work for him. Among other things the evaluation of the discovered archives of the Communist Party pertained to this. The further statement contained in this Exhibit No. 2 submitted by Counsel for the Defense, according to which Klingelhoefer neither performed nor participated in an executive activity within the Vorkommando Moscow, is extraordinarily vital in this connection.

The Document No. NO-3143, Prosecution's Exh. No. 64, which was furthermore presented by the Prosecution against Klingelhoefer, cannot be as evidence for a contrary assumption. The sphere of tasks of the defendant always remained the same during the whole period he belonged to the Vorkommando Moscow. The reason for his being transferred to this unit was, of all things, the established fact that he had a good knowledge of the country and its population and that he was at the same time perfectly Conversant with the Russian language. These conditions rendered the defendant particularly qualified for the forementioned work within the Vorkommando Moscow. A simple, reasonable deliberation alone results in the opinion that it would have been a waste of valuable abilities to entrust the defendant with tasks which would have left his knowledge unused.

of two more documents, namely Prosecution's Exh. No. 60 and Prosecution's Exh. No. 63. The first of these documents is an Operational Situation Report dated 9 October 1941 in which the execution of 114 Jews by the VKM is reported. The second document is an Operational Situation Report dated 26 October 1941 in which a total number of 2457 persons executed by the Group Staff and the VKM is stated.

Despite these documents the facts remain the same: The defendant was in no manner involved in the reported executions. I already set forth in detail his actual occupation. As regards Prosecution's Exh. No. 60 I should also like to point to the fact that Klingelhoefer no longer belonged to the Vorkommando Moscow since middle of September 1941, but had been transferred to the Staff of Einsatzgruppe B. Of course, this transfer did not change anything in his occupation. accomplished by the documents it submitted. The contents of the documents are by no means sufficient for an establishment of the personal guilt of the defendant. On the other hand Klingelhoefer's actual occupation is unquestionably ascertained. The affidavit submitted by Counsel for the Defense as Klingelhoefer Document No. 2, confirms that the defendant's testimony on the stand corresponds to the truth. Therefore, it cannot be a question of a guilt of the defendant as set forth by the Prosecution. According to the Prosecution the defendant Klingelhoefer also was in command of the Vorkommando Moscow. This contention does not correspond to the facts in any way. In his affidavit of 2 July 1947, Prosecution Exh. No. 124, the defendant says very plainly on page one that he had deputy-command of the unit. It has been determined beyond a doubt that this deputy command could only have occurred from the end of August, i.e. after the recall of Prof. Dr. Six, the first commander of VKM, until about the middle of September 1941.

As I have already shown, the defendant was transferred to the staff of Einsatzgruppe B in the middle of September 1941. Here I am again referring to the Klingelhoefer Doc. No. 2, Exh. No. 2, pages 7 and 8 of the English and German document books. The defendant explains this deputyship in his affidavit of 17 September 1947, Klingelhoefer Doc. No. 3, in detail. Accordingly, it is shown that while he was appointed deputy commander in the VKM by Nebe who had just taken over the VKM, that this deputy command should only go into effect when Nebe was absent from his permanent office in Smolensk. However, in the approximately three weeks under consideration here, this never happened. In the Klingelhoefer Document No. 2, Exhibit No. 2, it is shown, in this connection, that the defendant was only appointed liaison officer for the VKM and that only in the Case Nebe was absent from Smolensk. It is shown beyond doubt that Nebe had taken the administration of the Vorkommando Moscow in to his own hands and that all clerks and specialists of the VKM were forced to turn directly to Nebe. Klingelhoefer's appointment as liaison officer was pure formality. Therefore the defendant never commanded the Vorkommando Moscow in any way, and he cannot be hold responsible for executions which occurred during the time he was assigned to the Vorkommando Moscow. The advance command, Group Staff, which the defendant actually commanded, had nothing more to do with the Vorkommando Moscow, as it developed under Major Koerting, the successor to Nebe. It was his job to prepare the initial security measures for the imminent march into Moscow. Here I am again referring to the Klingelhoefer Document No. 2. Besides this pure planning and office activity, the Vorkommando Gruppenstab under the command of Klingelhoefer did nothing. Furthermore, the Kommando was dissolved in December 1941 when it was seen that an entry into Moscow could no longer be counted on. The defendant was on furlough in Germany, from 2 December 1941 until 25 December 1941 when the dissolution occurred. Therefore it would he entirely incorrect if, by mistaking the Vorkommando (Group Staff) which was in Gshatsk, for the Vorkommando Moscow, one were to charge the defendant Klingelhoefer with the executions carried out by the latter Vorkommando.

I am convinced that a thorough examination of the evidence will not lead to that mistaken conclusion. Now, during his assignment in Russia, the defendant Klingelhoefer was given some tasks wherein his qualifications as an interpreter must be looked upon as the reason for his assignment. In all of those cases it was necessary to have someone who knew the Russian language, who could clear up the situation on the spot through the necessary inquiries and dealings with the civilian population. However, in all those cases the defendant never executed the Fuehrer order in the course of carrying out his task. This can already be seen from the fact that only the commander of an Einsatzkommando or a Sonderkommando would have teen authorized to carry out the Fuehrer Order. Now I shall examine these assignments in greater detail, insofar as it seems necessary, in view of the arguments of the Prosecution. was ordered by Einsatzgruppen Chief Naumann to carry out a reconnaissance of the Partisans near Krassnji, village about 40 km west of Smolensk. The position, movements and activity of a Partisan group in the forest near Krassnji were to be recomnoitered, to provide the necessary information for the Wehrmacht to fight this group. The reconnaissance was carried out in close collaboration with the local Wehrmacht headquarters in Krassnji. This fact shows clearly that in this case Klingelhoefer's main task was as an interpreter who, by questioning and examining the local civilian population, was to provide the necessary basis for the real purpose of the operation. It doesn't have to be pointed out that reconnaissance is a strictly military function and that Klingelhoefer was only of use here as an interpreter. Here I refer to the statement of the defendant on the witness stand on page 3827 of the English transcript. The result of the reconnaissance near Krassnji was negative, because the Partisans had evidently been warned and had therefore disappeared.

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Klingelhoefer was given Another task by Naumann, the Chief of Einsatzgruppe B, in about the middle of December, 1942. According to this he was to conduct an investigation on the state farm Wissokoje which was near Smolensk Just in passing I want to mention that the task described under 1) above had occurred over 1/2 year before and that in the meanwhile the defendant Klingelhoefer had been busy working on and evaluating the files, as I have already described in detail earlier. Russians who had been trained in Germany as intelligence and sabotage troops and who were to be dropped by plane behind the Russian lines, were quartered on this state farm in Wissokoje. There had been a delay of about three weeks due to bad weather, which prevented the execution of this operation. During this period a kind of mutiny had broken out among the Russians, who were about 15 or 16 in number. Klingelhoefer's investigation showed that 2 or 3 of these Russians had threatened to report their comrades, who had different ideas than they who were ready to carry out their assignment, to the nearest NKWD station after they landed behind the Russian front. Klingelhoefer made a thorough report of this investigation and sent it to Einsatzgruppe B. He does not know what, if any, measures were taken against the 2 or 3 Russians as a result of his investigation, because he went to Germany on leave after making his final report. staff of Einsatzgruppe B in this case was because he spoke Russian fluently. It was only through him that a reliable investigation could be made, which as desired under all circumstances. Finally, one cannot overlook the fact that he was assigned to service in Russia as an interpreterrin the first place.

The incidents mentioned under subsections 1) and 2) are not contained in any of the documents the Prosecution has presented. The defendant has mentioned them in pursuing his intention always to tell the whole truth. The credibility of his statements is therefore not to be doubted. The defendant Klingelhoefer was given two more assignments like the ones just mentioned, one of which is mentioned in the Operational Situation Reports, while the other is only found in Klingelhoefer's own affidavit.

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This last circumstance again affirms that the defendant expresses his love for the truth in every situation.

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Einsatzgruppe Nebe, according to which, Klingelhoefer had to procure winter clothing for the Einsatzgruppe, that is, fur coats and fur linings. The Prosecution submits as evidence in this exhibit No. 124, that is, the affidavit of Klingelhoefer dated 2 July 1947 which was drawn up by the Prosecution's interrogator Wartenberg. This whole affidavit was expressly refuted by the defendant through a second affidavit that was made out before the sane official and countersigned by him. The Defense has submitted this 2nd affidavit dated 17 September 1947 as Klingelhoefer Document No. 3, Exh. No. 3. The reasons for the withdrawal can be seen from this document. As the defendant declared in explanation of this in the witness box, the above-mentioned interrogator of the Prosecution expressly afforded him the right to correct possible inaccuracies in his affidavit dated 2 July 1947 later, in a special new affidavit. That was the reason, too, why Klingelhoefer's affidavit dated 17 September 1947 was countersigned and accepted by the Interrogator Wartenberg. I refer here to page 3855 of the English record. An answer to the question as to why the defendant when he was first interrogated by Wartenberg was in a confused state of nerves can easily be found. If one considers how it must affect a person who throughout his life has done no wrong and is now startlingly confronted with the accusation of having cooperated in a criminal manner in the killing of a number of innocent people, it is clear that such a shock causes a profound reaction. This state of nerves of the defendant led, among other things, which the defendant has mentioned also on the witness stand and which are partly of a purely personal nature, to his attempted suicide, too. it is absolutely understandable if, in spite of the desire to speak the whole truth, he was not in a position to pay attention to the accuracy of the wording of a declaration submitted to him with the considered care that would otherwise characterize a healthy man in a normal condition.

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The fault in this rests neither with the defendant nor the interrogator. If the interrogation had come after an improvement in the nervous condition of the defendant, then declarations would have been made by the latter readily which he would have had no occasion to withdraw and which he would today have had to leave unaltered for and against himself. His declaration in the first affidavit dated 2 July 1947 according to which he commanded the Vorkommando Group Staff until 2 Sept. 1942 may be cited merely to illustrate how little Klingelhoefer, in the case of the interrogation in question here, could actually survey the position during his stay in Russia. This quite obvious inaccuracy in a very essential point has been remedied at the instigation of the Prosecution. Exactly in the same way as this discrepancy arose, a series of further false assertions are contained in this declaration the objective inaccuracy of which was not noticed by the defendant when signing just because of his condition which gave rise to indifferences Because of the correction suggested by the Prosecution, the defendant Klingelhoefer has now, however, undertaken, on his own, a complete correction in the form of a new affidavit, while expressly withdrawing the original affidavit, which merely for technical reasons was only put down in writing and signed by him in the presence of Herr Wartenberg 14 days later, namely on 17 Sept. 1947. ally from the fact that Prosecution Exhibit No. 124, that is, the affidavit of Klingelhoefer dated 2 July 1947, must be eliminated in the evaluation of evidence by the honorable Tribunal. witness stand and in his 2nd only valid affidavit of happenings in Mstislawl and Tatarsk were to be discussed in detail once more. I should like to draw particular attention to one point only, however.

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The shooting of the Jews in Mstislawl and Tatarsk took place on the sole responsibility of Hauptsturmfuehrer Noack. Noack received an express order to do it directly from the Chief of Einsatzgruppe B at that time, Nebe. Noack was the only commander to be considered for this since his special section was responsible for dealing with Jewish matters. The witness Vetter declared expressly in cross examination by the Prosecution that this very Noack was known even among the cirilian population as Commissioner for Jews. Page 5256 of the German, page 5165 of the English Record.

This unequivocal statement affords sufficient actual proof for the fact that Hauptsturmfuehrer Noack must have been encrusted with the carrying out of the executions of the Jews, otherwise, he would not have received such a title among the people. In the same way, the accuracy of the defendant Klingelhoefer's statements with reference to the description of events in Mstislawl and Tatarsk can be concluded from this: logically, this is also a confirmation of the fact that his statements relative to this on the witness stand correspond to the truth like his statements in the Document Klingelhoefer No. 3, Exh. No. 3. Consequently, it is also in conformity with the facts that the sole task of the defendant in Mstislawl and Tatarsk was to look after the supply of furs as a result of appropriate negotiations with the Russian mayors of these places. This task is merely in keeping, too, with his capacity as interpreter which made him appear suitable for this. cludes Klingelhoefer's order to investigate a report concerning the escape and mutiny of the Jews in the Ghetto in Tatarsk. For this the Prosecution has offered Document No. NO-3160 Exh. No. 65 as evidence. It is the Operational Situation Report No. 124 dated 25 Oct. 1941 in which it is reported that in Tatarsk, because of noncompliance with orders of the German Security Police, all male Jews as well as three women were shot.

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makes it possible to conclude that the defendant Klingelhoefer was mixed up in this. Right from the start he freely admitted this. Furthermore it is to be stated that in the Operational Situation Reports submitted to the Honorable Tribunal as evidence in the case of actual executions of Jews in the sense of the Fuehrer Order, explanations are never given as to why these Jews were shot. The reason for this was the existing Fuehrer order and no further commentary was required. In this report, Prosecution Exh. No. 65, contrary to this other method, a detailed reason is given for the shooting of the Jews in which the fact is specially stressed that the non-compliance with the orders of the German Security Police resulted in the shooting. From this very circumstance which without doubt is striking it can be assumed that in these incidents it cannot be a question of execution of the Hitler Order in the sense of the Indictment. Now, the defendant Klingelhoefer gave a detailed description of the events on the witness stand which he confirmed as accurate on account of an investigation thoroughly carried out in Tatarsk. According to this, the cause of his being sent there was not to be looked for in the fact that an action against Jews was supposed to have been started by the Chief of Einsatzgruppe B, the cause of his commission was simply a report of the mayor in Tatarsk which the latter had sent to Einsatzgruppe B by a special messenger. This report contained the confirmation of the mayor that all Jews and Jewesses of the Ghetto in Tatarsk head left it and had threatened to kill the mayor of Tatarsk along with his police. Therefore, the mayor implored help and support in the quickest way, since he was no longer master of the situation. in connection with his order to procure furs. Therefore he knew the place and its surroundings. He knew the mayor, too, and, apart from that, because of his knowledge of the Russian language, was in a position to ascertain most accurately by direct contact, with those concerned in how far the report sent by the Russian mayor of Tatarsk corresponded to the true state of affairs.

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It was therefore quite the obvious thing to dispatch the defendant to Tatarsk with the order to confirm it accordingly. Had an action against Jews been planned, then the defendant would have been out of place here, because no confirmation of any guilt and therefore no kind of investigations would have been required. Nobody would have been required who had command of the Russian language. Therefore it was merely a question of ascertaining by thorough investigations whether the Jews had, in fact, left the Ghetto and threatened the mayor, that is, whether they had violated the prohibition which was expressly imposed when the Ghetto was established, to leave the Ghetto without special permission, although death was threatened in the event of this violation. The interrogations actually carried out not merely confirmed this state of affairs but reveal ever and beyond that that the Jews had sought contact with the partisans and established it. Support and strengthening of the partisans was likewise threatened with death by an Armed Forces Decree. Then he arrived in Tatarsk the defendant Klingelhoefer was only able to seize 30 more male Jews, while a considerably larger number of women and children could still be arrested. According to the interrogations these 30 Jews represented only a relatively small proportion of male Jews previously to be found in the Ghetto, By far the greater proportion of male Jews had fled and, according to the statements of the mayor, of the remaining Jews, and of the Jewish women who were interrogated, had joined the partisans, who, as we know from experience, were hiding in the pathless woods which expended close, up to Tatarsk. It was extablished, in particular, that before the Jews escaped from the Ghetto, three Jewish women had already contacted the partisans, that these three women had returned to the Ghetto again and had goaded on the male Jews to escape from the Ghetto and to join the partisans. Therefore, it had been planned in advance that a small proportion of the male Jews was to remain in Tatarsk together with the women and children to support the partisans as spies and informers by means of informations about the German Forces.

This plan, as a result of the remaining behind of the previously mentioned 30 Jews, had thus been practically carried out. with the partisans had been established. The Jews who had joined the partisans had undoubtedly told them that a part of their men had volunteered for espionage services and, the willingness to support the partisans which had actually taken place, constituted a menace to security, to be regarded as absolutely serious, and therewith, a violation of the afore-mentioned Wehrmacht decree. In connection with the escape from the Ghetto and in view of the threat to the mayor, the defendant Klingelhoefer had to consider it justified to carry out the capital punishment as threatened in the provisions of the security police. The allegation of the Prosecution that the Jews were concentrated in the Ghetto only for the reason that in this manner it was easier to shoot them, is not true. Against this, one must point to the fact that the Fuehrer Order, the wording of which had already been changed at that time, had already beer, carried out by Noack in Tatarsk, since at that time he had executed the old Jews and those unfit for work in accordance with the direct order by Nebe, mentioned before under paragraph 1). The defendant Klingelhoefer had no order to carry out the Fuehrer Order, neither did he have an order to shoot the Tatarsk Jews under all circumstances. It was his task to order an execution as punishment only then if it was to be established that the Jews had actually acted in violation of the security police regulations. Consequently, the defendant ordered those Jews to be executed whom, on the basis of his thorough interrogation, he had to regard as offenders of the security police regulations.

He arranged that the rest of them, and those were the women and children, be returned to the Ghetto as not guilty. Three Jewesses, however, had also to be found guilty as the instigators of these offenses. One cannot accuse the defendant of the fact that he has failed to mention the shooting of these three Jewesses in his affidavit. When questioned as a witness in his own defense he himself declares to this effect that he forgot them. One ought to believe him without hesitation in regard to this facto There would be no reason for the defendant to admit frankly the execution of 30 Jews and consciously conceal the shooting of three women. In both eases the defendant had to regard the executions as necessary and also justified on the basis of the existing regulations. He therefore had no reason for withholding the facts about the last mentioned execution. Neither could one imagine the reason that precisely three women only were subjected to execution, while a considerable number of Jewish women and children were returned unharmed to the Ghetto, if there had not been special charges against these three Jewesses which justified their shooting. As I have already mentioned before, the wording of the pertinent Operational Situation Report is not in contradiction to this either. On the contrary, it corroborates in a brief form the most important statements made by Kingelhaefer For the charges of violating the regulations of the security police or, as it is expressed in the report, "not complying with the orders of the German Security Police", could be interpreted in no other way but non-compliance with the order to leave the Ghetto only with permission and, to refrain from any contact with the partisans. If the rest of the details were omitted in the report it is not the defendants fault. It has not been ascertained as to how the Operational Situation Report No. 124, Prosecution Exhibit No. 165 came about in regard to the. point here in question. It may have been made on the basis of a report by Nebe and abbreviated accordingly, the reason for the shooting of the Jews nevertheless having still been preserved.

It may be left in the balance to determine what actually happened. Only of importance is the fact that the contents of the report are in no way contradictory to the defendant's statement made as a witness in his own defense. A contrary conception would only constitute a literal and forced interpretation of the report and would by no means do justice to the real circumstances about which only the defendant has given, and was able to give, the true explanations. the defendant Klingelhoefer has never been ordered to execute the Fuehrer Order, neither previously nor later on, according to which he rather was constantly occupied with the preparation and utilization of documents, by making use of his knowledge of languages, and in view of his clearly proven zeal for the truth, Prosecution Document NO-3160, Exh.

65 can by no means be used as evidence against him or against his statements. in this case too, the defendant has not contributed to the execution of the Fuehrer order but has acted by applying the regulations which were in force at that time. That he also was personally convinced of the lawfulness of his actions must be believed without hesitation. Control Council law No. 10. In my closing speech on behalf of the defendant Steimle I have already explained the nature and extent of the legal objections which may be raised against the application of this law. In this connection I have es pecially emphasized those parts of Control Council Law No. 10 which establish a now law that, in view of the generally recognized principles of law, cannot be applied in this ease either. I have especially pointed to a number of forms of participation which do not exist in the continental criminal law and especially not in the German criminal law. It is irrefutable that the defendant Klingelhoefer, during the period decisive in this connection, was only subject to German criminal law. The judgment of his conduct can and must only be passed on the basis of the circumstances prevailing at that time. This applies to the actual

circumstances as much as to the legal system he was subject to. article II, paragraph 2c to 2e of the Control Council Law No. 10, could be applied in this case, the result would likewise be that, on the basis of' these provisions, the defendant had not become guilty either. No evidence could be produced against him that, by giving his consent, he had participated in the commission of any sort of crimes or that he was involved in any way in the preparation and execution of such crimes. His position within the Einsatzgruppe B and its affiliated organizations was always asubordinate one.

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His position was not even outwardly connected with the crimes which the men in the dock have been charged with by the Prosecution In the same way he cannot be regarded, in the sense of Article II, paragraph 2e, as a member of a group or organization which were involved in the commission of the aforementioned crimes, With reference to this point I particularly like to refer to the statements which I made in this connection in my final plea on behalf of the defendant Steimle. The legal and factual conditions, cited there, which could made the defendant a member in this sense are in no way present in the case of Klingelhoefer. On the basis of an order from his superior office he had to perform his assigned duty as an interpreter and specialist on reporting, the nature of which has been described in detail, and it did not matter in this respect whether he was willing to do this or not. The defense has produced evidence for the fact that even the missions ho was to carry out and which in a few cases took him outside of his office, were absolutely within the scope of his assigned duty as an interpreter. During the period of his service in Russia it could hive never occurred to the defendant through his activity that his work constituted a necessary chain in the realization of crimes or the promotion of such crimes. In consideration of his general attitude he would have never included this result into his intentions if at all he had thought of such a result. unless evidence has been produced to the contrary. This proof must preclude any reasonable doubt. The evidence produced by the Prosecution does not meet this demand. The personality of the defendant Klingelhoefer and the facts which can be gathered from his development are clear proof of his decent and honest character. On this basis he hrs performed his assigned duty and, owing to his personality, he was not put into the position by his superior to argue about orders the execution of which he would have regarded as incompatible with his conscience. I am convinced that the Tribunal, in judging the case of Klingelhoefer, will arrive at the conclusion that the defendant is not to be found in any way of crimes against humanity end war crimes.

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either as a perpetrator or participant.

According to Count 3 of the Indictment. the defendant Klingelhoefer is furthermore accused of his activity in the SD and in Section VI of the Reich Main Security Office. It is beyond doubt that he was a member of the general SS, a member of the SS-Special formations and the SD since 1934 and furthermore belonged to Section VI of the Reich Main Security Office. In respect to this point I again. refer to my explanation in the final plea on behalf of the defendant Steimle. During his activity in the aforementioned formations and in Section VI the defendand had never even the slightest possibility to presume that these organizations were used for criminal purposes. The Einsatzgruppen and their branch organizations could not convey to him such an opinion either because in front areas they were under the control of the army commanders. which was also expressly acknowledged by the International

Military Tribunal, and, because as units of a special character, they could not make him think that their activity would some time in the future be imputed solely to the SD. Having once been a monitor of the SD. the defendant was no longer in a position, especially in times of war, to decide by himself about his future assignment, since he was subject to the orders of his superiors. It must be left to the judgment of the Tribunal to what extent a personal guilt can be ascribed to the defendant Klingelhoefer with reference to Count 3 of the Indictment. By judging the fateful events of that time this guilt cannot be a grave one by any means.

Mr. President. to remind the Tribunal once more of the words I have spoken at the beginning, and to express the request not to forget the broad scope within which the events took place which were here presented to the Tribunal by the Prosecution.

Only a fraction of the great number of officers who served in the Einsatzgruppen is present here in the dock. They must not necessarily be those who are the ones really responsible for these things. others whose orders they had to comply with as soldiers. I an convinced that the Tribunal, in consideration of all these circumstances, will come to a just decision.

DR. FRITZ (For Defendant Fendler): Your Honor, Honorable Judges! Einsatzgruppen and Einsatzkommandos, besides their other tasks, to commit acts which doubtlessly violated the recognized laws and customs of war as well as humanity. The obligation towards the great number of innocent persons who fell victims to this order may be the cause for some persons to believe a collective responsibility and a vicarious liability to be justified. But nothing must be allowed to prevent us lawyers from examining in a dispassionate and objective manner the question of criminal responsibility of each of these defendants. to lead to the result that he did not participate in any way either in the planning or in the execution of this order and that no punishable membership in any criminal organization can be laid to his charge. legal view of mine. committed, between May 1941 and July 1943, as an officer and deputy chief of Einsatzkommando 4b, crimes against humanity as defined in Article II, par. 1c of Control Council Law No. 10. He is charged furthermore, in Count II of the indictment, with having committed simultaneously, by these same acts, between 22 June 1941 and July 1943, war crimes as defined in Article II, par.

lb of the sane law. He is finally charged, in Count III of the Indictment with having been a member of the SS and the SD after 1 September 1939, - Organizations which have been declared criminal by the International Military Tribunal (IMT). to these proceedings, I positively object to the juridical view of the Prosecution that it could not be expected to assume the full burden of proof for its charges - also in the case of Fendler.1) If, after mature deliberation I decided to put my client on the witness stand, I did not 1) See transcript of 29 September 1947, English version page 57, German version page 63. do it in order to assume in thisway the burden of proof, but in order to offer the Tribunal the possibility of convincing itself that Fondler's work and appearance in the East does not have to shun the light. The burden of proof for his alleged criminal culpability rested solely with the Prosecution. To be sure, the latter used a total of seven documents1) for the support of the charges contained in the Indictment, but it did not produce, as it should have done, the proof in any of these counts. 1) Doc. No. 4144 - Exhibit 142, Doc. Book III C, Doc.

No. 2938 - Exhibit 44, Doc. Book II A, Doc.

No. 2934 - Exhibit 78, Doc. Book II C, Doc.

No. 2830 - Exhibit 72, Doc. Book II C, Doc.

No. 3155 - Exhibit 38, Doc. Book II A, Doc.

No. 4958 - Exhibit 143, Doc. Book III C, Doc.

No. 4999 - Exhibit 202, Doc. Book 5 - C. to the contents of the Indictment, no longer maintained that Fendler had been deputy chief of Einsatzkommando 4b. It rather commented in the source of the trial, that he, and I quote:

".....often carried out the functions of a deputy of the leader of the unit". 2) client's own affidavit.

3) But this interpretation is false, For Fondler, under No. 3 of his affidavit only stated, and I quote:

"within the Special Commando, (Sonderkommando 4b) I was, Hermann, the senior officer.

I have never been officially designated as a deputy of Hermann:

I have, however, taken charge of official matters during his absence". in no way be construed to the effect that Fondler ever was "deputy chief of Sonderkommando 4b". The Einsatzkommando 4b did not have any deputy commando leader, as, by the way, was the case with various Einsatzkommandos and at times even with Einsatzgruppe D.1) Fendler was neither designated as deputy nor did he ever have this function.

This is shown by the affidavits ofHeyer2) raid Martens3) and, above all by the one of Koenig4) who was with the Einsatzkommando 4b during the whole of the assignment of the defendant Fondler, who worked together with Fondler and therefore knows the conditions precisely.

Among other things Koenig stated and I quote:

"Hermann had no deputy. Once, when he was absent from his 2) Session of 30 September 1947, English transcript page 212, 3) Affidavit Fondler of 27 June 1947 - Doc. No. 4144 - Exhibit 142, Doc.

Book III C, English transcript 55. German transcript page 89, 1) See statement Ohlendorf in the session of 9 October 1947, English transcript page 572, German transcript page 576/7. 2) Fendler Doc.

Book I, Doc. No. 11 - Exhibit 8. 3) Fendler Doc. Book I, Doc. No. 10 - Exhibit 11. 4) Fendler Doc. Book I, Doc. NO. 9 - Exhibit 9.

the special orders issued by Hermann. In such cases, routine which at times was Fondler.

This officer never had complete directives to the individual specialists.

I can say with certainty that Fondler actually never gave any such directives". that during his assignment he had never been a fully authorized deputy of the Kommando leader and that in fact he never exercised the functions of the Kommando leader.

Besides, there never had been an appointed deputy for the kommando leader at all In case of the Kommando leader's absence, the chiefs of the several sections had made their own necessary decisions.1) 1) Session of 13 December 1947. English Transcript page 4010, German Transcript page 4080/81.

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In the further course of my elaborations I intend to treat in more detail the professional trading of my client. Neither was he trained in executive work now was he ever entrusted with executive tasks. He therefore was not competent to give instructions to the chief of Section IV, who was an export in executive tasks. As can be gathered unequivocally from the affidavits of Schoenborn, Hanke, Pfoser and Koenig, Fondler, owing to his correct and reserved nature, was in no way inclined to meddle on his own initiative in affairs for which he was not authorized. These facts too lend credibility to his statements. It would not be sound to point out his rank of service alone in this connection. For in case of an objective non-competency, the missing authorization cannot be automatically compensated for by a higher rank in the service. It rather would have been the task of the Prosecution to furnish the proof that Fondler had the full power of command even in one single case during the Kommando leader's absence, and thus had the possibility of giving appropriate instructions to the executive. But on this point the Prosecution did not challenge the statement of my client in cross-examination but rather evidently accepted the correctness of his description. Only in the rebuttal the Prosecution produced the affidavit of Karl Hennicke, dated 4 September 1947. Among other things, Hennicke declares in this affidavit that the Einsatzkommando 4 b had first been commanded Braune. But, as Fritz Braune did not arrive until after Hermann had been relieved, the Einsatzkommando 4 b had been without a chief for a period of 2 - 3 weeks. During this interval, he says, the Kommando had been under Fondler's charge. In gross contradiction to this statement, Hennicke has declared in another affidavit, and I quotes:

"It is not known to me that Fendler was the deputy of the Kommando leader; he did not appear as such in reports or in group conferences."

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End of quotation. Finally, Hennicke expressly revoked, in a third affidavit, the statements he made on this point in his affidavit of 4 September 1947. The complete falseness of his statement in the affidavit of 4 September 1947 results alone from the fact that Fendler left the Einsatzkommando 4 b for good already before Kommando leader Hermann. On the other hand, the correctness of Fendler's statements in underlined by the fact that -- at least during the entire period of Fendler's assignment -- there was no need for a deputy because Kommando leader Hermann, during the time from the beginning of July until early October 1941, was neither ill nor absent for any other reason from Einsatzkommando 4 b for any length of time, In this connection I refer to the affidavits of Koenig and Martens as well as to the statement of my client in direct examination. After all this, there is no need for any further evidence that Hennicke's affidavit of 4 September 1947 is in no way apt to prove the assertion by the Prosecution that Fendler in several cases had assumed the functions of a deputy leader of the Einsatzkommando 4 b, or to disprove the contrary statement of my client which is identical with the statements of several witnesses. When the Prosecution presented the case of the defendant Fendler in the session of 30 September 1947, it referred to four Reports of Events in all. As far as concerns Document NO-2830, the Prosecution pointed out that the Einsatzkommando 4 b had killed 186 persons in Poltava, and that Fendler had also been in Poltava. On the other hand, the main trial has clearly proved that Fendler at that time was not at all with the Einsatzkommando 4 b, but was already back in Berlin at that time. This fact emerges unequivocally from the affidavits of Heyer, Koenig, Feder, Haefner, Hennicke, Schulz and Brass as well as from the statement of the defendant Fendler as a witness in his own case.

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Therefore, these documents must be left out of consideration when judging Fendler's case. The other three Reports of Events -- Doc. NO-2938, NO-2934, and NO-3155 disclose among other things that Einsatzkommando 4 b has carried out executions in Tarnopol as well as in Krementschug. As the defendant Fendler stated in his own affidavit, that he had been in these places with the Einsatzkormmando 4 b, the Prosecution obviously thinks it has sufficiently proved his participation in these executions. I could not agree with this view of the Prosecution even if it were certain that the only task of the Einsatzkommandos consisted in the destruction of certain groups of persons. Even though I am forced to admit to my greatest regret that it has become evident in the course of this trial that, in compliance with an inhuman order by the Fuehrer, this was one of the tasks of the Einsatzkommandos, on the other hand the evidence has proved just as clearly that the Einsatzkommando also had other tasks to fulfill, Let me remind you of the fight against the partisans and the tasks which were purely within the domain of the Security Police. This results alone from the fact that the Einsatzkommando did not only consist of officers and enlisted men who had been trained in executive tasks, but for example also had experts of the Intelligence Service. Thus there were also specialists (Referenten) assigned to the Einsatzgruppen who merely dealt with intelligence tasks. I have proved by affidavits and by my client's statement as a witness in his own case, that he too, owing to his exclusive training, was only assigned and active as an intelligence expert. When Fendler was a young student and looking for employment in order to earn some money so as to be able to continue his studies he came to the SD by chance without even having had any knowledge of its existence at that time.

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Owing to new economic difficulties he was unable later on to continue his studies and therefore remained with the SD. At first, i. e. from 1936 onward, he was employed with the then main sector (SD Oberabschnitt) Southeast in Breslau. from April 1937, he was consultant (Referent) for industrial counter-intelligence in the then SD regional sector (Unterabschnitt) Breslau. From March 1939 until the end of 1940 he was head of the SD Office in Olomouc. Towards the end of 1940 he became a candidate for the executive service and hence left the professional work of the SD, was transferred to office I of the Reich Main Security Office and began to study jurisprudence. The candidates for the executive service were ordered to the war theatre in the Fast an bloc at the end of May 1941. In Pretzsch Fendler was assigned to Einsatzkommando 4 b which had been formed there; therefore, he did not volunteer for this assignment by any means. According to his training Fendler was appointed III-specialist already in Pretzsch by the Kommando leader. That is quite natural because he was the only intelligence expert in the Komando. From the affidavits of Hennicke, Heyer, Martens and Koenig it can be seen that the Einsatzkommando 4 b did have a section III. In these affidavits it is explained in every detail which tasks belonged to the individual detailed duties of the defendant Fendler in his capacity as chief of this section.

Fendler has also commented on it in his direct examination. He described that it was his duty to gather and evaluate in the individual villages touched by the Einsatzkommando 4 b the information needed for his reports on political, national and economic conditions of Russia gained from the population and from files found by him. In reading the Reports on Events one can see in what detail these reports have been made. I particularly refer to the example in Fendler Doc. No. 22. If we consider that for these tasks he only had one associate and one interpreter at his disposal, his statement that his working capacity was completely taken up by these tasks seems utterly credible.

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Fendler therefore was departmental chief III and never and in no way was active in the executive of the Kommando, i. e. Section IV, which was a completely independent department. Neither did he cooperate with this section by his reporting which did not deal at all with executive matters. For its own purposes, the executive maintained a separate Police Intelligence Service. If I said above that Fendler's working capacity was completely taken up by his activity as III-specialist, this naturally does not exclude his having been entrusted now and then in individual cases with one or the other military task, owing to the fact that Einsatzkommando 4 b was operating in the front-line area. But neither did these tasks, which I now intend to treat in detail, have anything to do with the executive. Thus he was also liaison officer with the 49th Mountain Army Corps. Only once did he become active in this capacity, namely in Trembovla, as he stated in his direct examination. At that time, upon instructions by the Kommando leader, he had established contact with the G-1 of this Army Corps and had obtained approval for the further advance of the Einsatzkommando 4 b. Finally, Fendler has twice been in charge of a small Vorkommando. According to orders, both times the main task of these Vorkommandos was to find quarters for the immediately following Kommando and to get the supplies ready. In the course of the main trial upon a corresponding question by the presiding judge, Fendler had the opportunity of giving detailed information on this matter. In these cases he was billeting officer and by no means the leader of a Teilkommando. I particularly emphasize this, especially during the period of Fendler's assignment, the Einsatzkommando 4 b, in contrast to other Einsatzkommandos, always operated as a compact unit under the leadership of the Kommando chief and hence was not divided into independent Teilkommandos.

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This, by the way, was also one reason why sections III and IV in Einsatzkommando 4 b were able to operate independently from one another. Fendler's own statement on this matter, given in direct examination is confirmed by the declarations in the affidavits of Koenig and Heyer. Thus I have proved that, during the entire period of his assignment in the East, my client did not make himself liable to punishment -as a principal in the sense of Article II, paragraph 2 a of Control Council Law No. 10. He never had the full power of command, which was always in the hands of Kommando leader Hermann, he never worked in the executive, he did not participate in any execution and he did not commit any other action which would fulfill the provisions of this law. Neither has he been an accessory in the perpetration of such acts, nor did he order or incite them (Article II, paragraph 2 b of the Control Council Law). For I have proved that Fendler did not collaborate in executions or other inhuman actions either as III-specialist or as liaison officer or as chief of the Vorkommando. Moreover, my client did not give his "consent" to these acts in the sense of Article II, paragraph 2 c of the Control Council Law.

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mando 4 b, which was involuntary, must be considered as consent. In the POHL verdict the Military Tribunal No. II has commented on this matter as follows and I quote:

"There is an element of positive conduct implicit in the word consent.

Certainly, as used in the ordinance it means something more than not dissenting."

End of quota But FENDLER never showed such a positive attitude.

He neither was chief of the Kommando nor deputy chief nor leader of the executive section, As III-specialist he was not in a position to give any instructions to Section IV, nor did he ever do this, He therefore neither had the power nor the authority to order executions or to prevent their being carried out. According to the decision of Military Tribunal No. II in the POHL Trial, FENDLER therefore was not a person whose "knowledge of the fact coupled with silence could be interpreted as consent." some other way. On the contrary, FENDLER has told us, in the course of his direct examination, that he had objected to inhuman actions. From what has been said so far it is clear that he was not "connected" with the carrying out of the acts in the sense of Article II, par. 2 d of the Control Council Law.

In the POHL verdict it is said and I quote:

"It (i.e. being connected with a crime) means something organization with the principals or accessories."

End ledge of the executions, which, by the way, he denied for the time of his membership in Einsatzkommando 4 b, this would not be sufficient to punish him in application of this provision of the law. For, as correctly stated in the same passage of the POHL verdict, "being connected" with a crime means more than mere knowledge.

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executions. Considering the fret that before the start of the Russian campaign he was not employed at all in the SD but was a student of law; that is so obvious that I probably can spare myself going into any details. Only several years later (1943), after the conclusion of his studies, did he resume his intelligence activity in a relatively subordinate position in the Reich Main Security Office. His direct examination proved that he, not being Kommando leader and not holding any high rank, was not present when STRECKENBACH announced the Fuehrer order in Pretzsch. Hence he did not even know at the beginning of his assignment that the Einsatzkommandos would be ordered to exterminate certain groups of persons in the East. In this connection permit me to refer to the other results of the hearing of evidence. experiences as an SD-specialist during assignments in the Sudetenland and in Czechoslovakia.

I summarize my above elaborations as follows: ishment, during the three months he belonged to the Einsatzkommando 4 b as an intelligence officer and was assigned in the East. An assumption, based solely on his membership in Einsatzkommando 4 b, that he participated in the incriminating acts is not supported by the unequivocal result of the hearing of evidence. of false deductions and assumptions on the basis of a generalization. But such a procedure would have nothing to do with a judicial evaluation of the result of the hearing of evidence. For, in the course of the main trial, it has again and again been shown how varied and different were the conditions in the Einsatzkommandos and hence those applying to the defendants.

the evidence submitted by me, will also arrive at the conclusion that FENDLER is not guilty on Counts I and II. the SS on Documents NO-4144 and NO-4958. The latter document is FENDLER's personnel SS-form. It is true that this document gives the 15 April 1933 as the date of his joining the SS. But the defendant FENDLER has supplemented his affidavit - Document NO-4144 - the the direct examination as follows: that in 1933 he became only a candidate for the General-SS. As he had not done any service in the SS during the following years, he had been struck again from the list of candidates.

Hence, he never has been a member of the General-SS. Only by his joining the SD in the spring of 1936 he became a member of the SS, namely of the Special Formation (Sonderformation) SD. phasize that at that time he was 23 years old and had no political experience whatever. But his joining took place at a time and under conditions which exclude any knowledge of the criminal tasks and activities of the SD. He neither participated in the crime of the SD established by the IMT, nor did he hold any positions which would nave been bound to give him any knowledge of these events. trary. fice I of the Reich Security Main Office. But, as I already said, he did not perform any professional work for the SD in these years because, during this period, he was studying law and subsequently got his further legal training with the agencies of interior administration. the proof that FENDLER, during his membership in Office VI, had committed any criminal acts or had obtained any knowledge of such. The defendants STEIMLE and SANDBERGER as well as FENDLER himself have described in detail what tasks were incumbent on Office VI.

Moreover, I have produced the evidence by affidavits that my client was entrusted in the Office VI, in his limited position as Section Chief, exclusively with the gathering and evaluation of information, but did not have to make or did make any political decisions. Even as it is still done today, each state at that time employed certain civil servants who had to carry out such an activity. The same evidence shows that FENDLER did not gain any knowledge of the fact that criminal acts were committed in other sections of this office. Russia and later on in Berlin he gained knowledge of the acts of the Einsatzkommandos which are indicted here. But this knowledge does not constitute any punishable membership in a criminal organization. The Einsatzkommandos in the East did not belong to the organization of the Reich Main Security Office. They were not parts of it, particularly not of the Intelligence Organization SD (Offices III and VI). They rather were para-military mobile units of a special kind, subordinate to the Wehrmacht Commanders of the respective areas of assignment. of members of the Intelligence Organization SD. In the same manner as FENDLER, they were entrusted with intelligence tasks which are not the subject of the indictment. In consideration of these facts and of his own experiences FENDLER could not, from his knowledge of the activity of the Einsatzkommandos, draw any conclusion as to a criminal purpose or crimes committed by his organization-namely the Intelligence Service SD. mit crimes does in no way suffice per so to prove a criminal membership in this organization. And this even less so because these acts were committed quite independently of the organization (Intelligence Service SD) and in the course of the execution of tasks not belonging to this organization and under orders not coming from this organization(namely in the Einsatzkommandos). would remain incomprehensible inasmuch as it expressly ascertains the participation of the criminal police and the regular police in the Einsatzgruppen, nevertheless does not declare either of them to be a criminal organization.

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i.e.during and after the period of his assignment in the East - was a member of Office I of the Reich Main Security Office, which definitely was not declared to be criminal by the IMT. for FENDLER to leave the SD during the war. In the course of the trial it has repeatedly been mentioned that the members of the SD, including FENDLER, had already been declared indispensable to the SD before the war. Hence, this happened already at a time which, according to the IMT verdict, is not relevant to the criminal character of the SD. In the IMT verdict as well as in the POHL verdict it has been unequivocally established that those members of an organization who were called or compelled to membership by the State must not be punished. pelled by the State to remain in such an organization. But this was the case with my client, as has already been said. Martial Law, he had to follow the order attaching him to Office VI of the Reich Main Security Office after the termination of his legal studies in September 1943. Hence, his membership in this office was likewise not a voluntary one. member of the SS only by his joining the SD. Hence, there was no independent membership in the SS. It merely was the purely formal consequence of his membership in the SD and therefore cannot at all be considered as a separate fact.

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is also not guilty according to Count III.

As regards the defendant FENDLER's personality, the following is to be said: that all the participants in the trial must have gained the conviction that, in the course of his examination-be it by the Presiding Judge, by Mr. HOCHWALD or by me - he told the truth and endeavored to give us an exhaustive description of his entire activity in the SD, including the work in Einsatzkommando 4 b. It must be added that his description tallies with the contents of the numerous documents submitted by me. It is not surprising therefore, that the Prosecution has not succeeded in casting any doubt on his credibility. I refer only to the affidavits of BRASS, SUESSMUTH and BARTL which described FENDLER as a straighforward and clean character. Also for this reason it can and must be assumed that he told the truth here when he was under oath. tolerant man, who never was a political fanatic but rather distinguished himself by a particular readiness to help even those who were persecuted for political or racial reasons. Not one of these witnesses who have known FENDLER rather well for years - be it in the service or outside of it - believe him to be capable of participating in the acts which led to this trial. Through my dealing with this case, which now already has lasted for a half a year, and has frequently brought me in touch with FENDLER, I have come to the same conviction and I hope that also the Tribunal has gained this impression of my client. ing at 9:30.

(The Tribunal adjourned until 11 February 1948, at 0930 hours.)

Michael A. Musmanno, presiding.

THE MARSHAL: Persons in the courtroom will please find their seats.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. ASCHENAUER: I would like to ask that the defendant Ohlendorf be excused from attendance in court this afternoon and he be brought to Room 57. There are a few matters, final words and remaining matters, to discuss with him.

THE PRESIDENT: The defendant Ohlendorf will be excused from attendance in court this afternoon and will be taken to Room 57 so that he may there confer with his counsel.

DR. ASCHENAUER: Thank you, sir.

THE PRESIDENT: You are welcome.

DR. MAYER: Dr. Erich M. Mayer for Braune. mention that in order to save time I shall omit the introductory remarks which are contained in my written plea. I ask the Tribunal to take notice of them from the written copy. I shall start directly in medias Res.

1.) War crimes and crimes against humanity according to Control Council Law No. 10 of 20 December 1945 and committed during the time between May 1941 and Jane 1943.

2) Membership after 1 September 1939 in organizations declared criminal by IMT judgment: that is

a) SS,

b) Offices III, VI or VII of RuSHA,

c) Office IV of RuSHA. The details of this accusation are contained in the indictment, the Opening Statement of the Prosecution and Prosecution Documents with which I have dealt in detail and in a factual way in my Trial Brief. I refer in this respect to my statements there. not even that one single man was tortured by my client or by members of his Kommando or that the slightest destruction had been committed by him or his Kommando. He and his troops neither classified helpless civilians as Partisans or Partisan-supporters only to execute then, nor did they annihilate the sick or the insane from hospitals and asylums. I refer in this respect to the statements of Dr. ASCHENAUER in his final plea. One cannot charge my client with the report of 23 March 1943 since already at the beginning of March he went on a furlough to the Reich with Herr OHLENDORF, and thus was not even in the Crimea at that time. Furthermore the document does not prove that executions took place south of the Karasubasar. The whole report, as shown by the document covers the area of the entire Eilnsatzgruppe.

"South of Karasubasar" refers only to reconnaissance for the purpose of preparing larger Wehrmacht operations, but doesnot refer to the clearly separated next paragraph which, without mentioning a definite locality, speaks of the shooting of 500 Gypsies and insane persons. and executed the selected men.

Here, too, I refer to the final plea of Dr. ASCHENAUER Even if there had been prisoner of war camps in the Crimea and if a selection had taken place it would not concern my client. Einsatz Order No. 14 of 29 October 1941 and its enclosure are the only things the defendant knew about this matter. It says in this document on page 94:

"According to the size of the camps located in their zone of an SS officer."

page 101:"The leaders of the Sonderkommandos will submit a short report to the chief of their Einsatzgruppe every week."

page 102:"The chief of their Einsatzgruppen decide on the suggestions Sonderkommandos the corresponding orders."

In other words, the defendant had nothing to do with the selection and the execution. is meant by this term. The persons who were arrested by the Kommando of the defendant were arrested under the suspicion of punishable acts during the investigation were either convicted of a criminal act and consequently punished Dr freed. The following paragraph I would also like to omit and ask that you would kindly look at it in the written copy, in particular ason Page 15 I am discussing this question again. them out, nor did they set up ghettos. Villages were not burned down by him nor hostages shot. Pertaining to the plundering with which he has been charged, I refer to the final plea of Dr. ASCHENAUER. Gypsies, communist functionaries, saboteurs and partisans. under oath that his Kommando, after incontestable conviction or in combat, shot Jews, Gypsies and communist functionaries according to a decree by the supreme war lord and lawmaker Adolf HITLER, as well as plunderers, saboteurs and Partisans according to the regulations of theCommander-in-Chief of the Army as the exponent of the executive power. cution for racial, political or religious reasons and that they intended even less the annihilation of whole sections of the population, as the Prosecution claims.

saboteurs and Partisans. They were shot according to the regulations issued by the Commander-in-chief of the Army in his capacity as the exponent of the executive power. plunderers, saboteurs and Partisans with the death sentence. All belligerent groups and nations have at all tines threatened and executed the sane death sentence for such criminal acts within the areas of operation. point to "Ordinance No. 1 of the American Military Government, Germany Supreme Commanders' Area of Control", which threatens the death penalty for twenty different actions.

Among the regulated crimes worthy of death I mention: "Wilful interference with, destruction or concealment of records or archives of any nature, public or private" or "Wilfully interfering with or misleading any member of a person acting under the authority of the Allied Forces in the performance of his duties" (No. 17 of the ordinance). Under No. 20 of this very ordinance considers sufficient for the pronouncement of the death sentence:

"Any other violation of the laws of war or act in aid of the enemy or endangering the security of the Allied Forces." the American Military Government represents the result of existing customs of war. shot were without exception guilty of acts which had been threatened with the death penalty by decree of the Wehrmacht. The defendant, and before him his superior OHLENDORF, testified to this credibly. The prosecution has not been able to prove the opposite.

evaluation the "Closing Brief" of the Prosecution unfortunately forces me to a statement. It contains so many objective falsehoods, distortions, imputations without foundation and false quotations that I cannot let it go unanswered.

cution in its opening statement against the defendant

1.) placed his subkommandos to Kertsch and Feodosie (transcript page 243);

2.) charged executions that were carried out by the entire Einsatzgruppe to Kommando 11 b;

3.) male 7-8000 people shot out of 7-800;

4.) charged the defendant with (having given his execution kommandos the order to shoot, which he never gave;

5.) made the defendant a member of the general SS; the defendant while in the witness stand declared those incorrectnesses to be errors

6.) When he was on the witness stand the prosecution charged him with having shot 15-20,000 persons, while the document mentions 15002000 persons; the prosecution then refrained from presenting this document. nesses:

7.) The prosecution calls Dr. BRAUNE "Commander-in-Chief".

8.) It claims that at Odessa Dr. BRAUNE denied that his kommando carried out executions, although Dr. BRAUNE was never charged with those neither through documents nor during the examination, and although he proved, on the contrary, that he prevented the shooting of tens of thousands of Jews in Odessa.

9.) The prosecution charges him with having carefully avoided comment on the shooting of 800 gypsies and insane people, although the prosecution did not charge the defendant with this document; neither in the indictment, nor in the opening speech of the prosecution, nor in the witness stand, the reason being, as one can see from the evidence; that Dr. BRAUNE together with OHLENDORF went on a vacation at the beginning of March while those shootings were reported as having taken place on March 23rd.

On 29 September Mr. FERENCZ answered a question of Dr. GAWLIKS:

"At that time we will refer back to the documents already received and point out exactly how each defendant is connected with that document." presented against BRAUNE nor wasit mentioned in the beginning of volume III D under "responsibility of the defendant BRAUNE". There was therefore no reason for me to refer to it daring my examination. Wehrmacht carried out those executions although I did not ask Dr. BRAUNE a single question concerning this complex, because it has nothing to do with Dr. BRAUNE. The following Point 11 I shall omit because the translation department has assured me that there had been a mistake in the translation by the translation departments and the prosecution took up this mistake. I think that the matter is cleared up. that it wasnot a matter of underclothing but a matter of outer clothing. While in the witness stand the defendant could prove that no incrimination can be derived from document NOKW 1863 (document book III D of the prosecution) which is an operational order of 12 January 43 based on an Army order and issued by the defendant for the combing of the city of Simferopol in search of untrustworthy elements; and that document NOKW 584, concerning the attitude of Major "RIESEN to the retaliation action in Eupatoria of 7 January 1942 Which had been ordered by the Commander-in-Chief of the Army could not be charged against the defendant, since in this case guerillas and snipers were shot which action constituted a retaliation permissible under the articles of war, and which had been ordered by the holder of the executive power, Field Marshal won MANSTEIN.

following incriminating facts against the defendant: It simply mixed the two documents NOKW 1863, and, in a completely non-sensical manner it declares that the responsibility for the execution at Eupatoria, on 7 January 1942 of 1184 suspects of partisan activity becomes apparent through the operational order for the combing of Simferopol of 12 January 1942. This seems unreasonable because the execution of the 1184 snipers took place on 7 January 1942, whereas the order for the combing of Simferopol, which is 100 km away from Eupatoria was given on 12 January 1942, i.e. 5 days after the happenings in Eupatoria. In this manner the prosecution succeeds in making it appear as if the execution of 11814 persons was the result of the combing of Simferopol, whereas in reality not one execution, indeed, not even any arrest can be seen from the combing order.

But this is not all:

Document NOKW 1863 states quite clearly: under Figure 4:

The city will be divided up in 6 tactical divisions......division leaders are: 1st division: 1st lieutenant IIIrd " captain IVth " " Vth " " VIth " " In accordance with this the defendant explained in the direct examination.

"On page 2 it can be seen that the city was divided into 6 districts and all these six districts during that action were under the charge of an Army officer. That is What actually happened in these districts during that action was done under the command of an Army officer".

And during the cross examination the defendant quite logically said:

"It wasnot that one of my men had the leadership in these districts but asyou will see from page 2 of the document".........

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did not conclude his sentence. The document, the statements in the direct and the cross examination are absolutely in agreement. In spite of this the prosecution states in its closing brief, and I quote:

"but, after close questioning, he does admit that in each of suspects."

again parts of the happenings in Eupatoria of 7 January 1942 and arrives at the astonishing conclusion:

"Document NOKW - 584, shows in an official report of the clearly shown that Dr. BRAUNE gave orders on the place of execution for the carrying out of the shootings". Thus the operational order of 12 January 1942 was used in order to prove BRAUNE's authority to issue orders; and the happenings at Eupatoria of 12 January 1942 when 1184 partisans were shot, actually, upon the order of Major RIESEN, were used in order to make it appear as if BRAUNE had given the order for the 1184 shootings as a result of the combing of Simferopol, while in reality, as we have already mentioned, not a single arrest and not a single execution can be derived from the operational order of 12 January 1942.

This is the reason why the prosecution, in its opening speech of 30 September in the afternoon (page 245 in German, page 239 of the English transcript), states;

"This order admittedly does not show its own execution. However, Dr. BRAUNE will soon have ample opportunity to relate the final results of the raid". Since Dr. BRAUNE's report in the witness stand did obviously not yield the results desired by the prosecution, it is now trying to obtain some "results" in the above-mentioned way.

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14.) On page 3192 of the English transcript, the prosecution quotes that he, Braune, "eight to ten hours after his arrival in this area for 'the whole lot Of them had engaged in illegal activities'". Actually the defendant said;"Well, according to the information I had at the tine, I Army was carrying out Fuehrer orders".The words:

"for purposes of commanding this action" are thus an invention on the part of the prosecution.

The defendant in that very document:

"The retaliation against partisans at Jewpatoria on Commander-in-Chief". obviously wrong statement on page 10 of itsclosing brief when it says:

"It is, however, incumbent upon the prosecution to recollection, Einstatzkommando 11b used one.

A gas van."

The fact is:

that Dr. BRAUNE stated on the forenoon of the is of January "The van must have been used by my kommando in Simferopol at least once" i.e. in contradiction to the claim of the prosecution in its closing brief he did not deny that his kommando used the car.

It is furthermore true, that OHLENDORF did not say:

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"that to the best of his recollection Einsatzkommando 11 b used the van" but, upon the question:

"And 11 b, did it ever use one?" he answered;

" "11 b will have used it" and a few lines further down he declared:

"11 b nay have used the van twice or three tines perhaps, I don't know it". This means, that OHLENDORF did not say:

"that to his best of recollection "Einsatzkommando 11 b used the van".

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This too, is a wrong quotation from the transcripts. In spite of the documentary evidence proving that in Eupatoria the execution of the Jews was performed through the Kommando 11 a and not through the Kommando of the defendant and which the defendant has also described in detail in direct examination, the prosecution, in its closing brief, claims again "Braune admits that executions were performed by elements ox his commando Eupatoria". Nowhere in the transcript isthere such a statement by Braune.

Finally, the prosecution, on page 11 of its closing brief, makes 47-50 members of Kommando 11 b out of the 45-50 murdered end badly wounded German soldiers who had their throats cut by guerillas in Eupatoria in January 1942 which event gave rise to the above mentioned retaliations.

"Braune further admits that he and some 47 - 50 members of his 1184 mail inhabitants of Eupatoria". Here too, Dr. Braune is put in charge of that action". The fact is that Dr. Braune went to Eupatoria alone with Major Riesen, that a company of the airforce carried cut the execution and that Major Riesen was in command.

Dr. Braune declared in the session of the afternoon of 26 November:

"During this selection Major Riesen, who says himself on page one (of his statement) that he had to carry out the order of the to carry out these shootings on order of the Army."

This is what Dr. Braune admitted and not "that he and some 47-50 of his Kommando personnel were in charge of and directed a reprisal action."

May it please the tribunal! I have proved that in 19 cases the prosecution quoted incorrectly documents and statements taken from the examination of the defendant, and thus completely misrepresent the actual facts.

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closely to this closing brief. However, I believe that I have amply explained to the High Tribunal the methods which the prosecution used in itsclosing brief in order to incriminate my client and to impeach his credibility, and that I proved how this closing brief should be evaluated. of Jews and gypsies. circumstances of the war against the USSR which led to those shootings. I herewith refer to the statements I made there. The shootings were made - and this was not denied by the prosecution either:

a) upon order of Hitler, the Supreme War Lord, b) subject to the executive power, the knowledge and cooperation, indeed, subject to the order of the army, with whom rested the decision upon life and death of the persons in that theater of operations. They were carried out against an enemy who himself was ignoring all limitations of international laws and of the laws of humanity, who was carrying on a total war in the most merciless manner and is carrying it on to this very day, without respecting any principles of international law, whether they were established before or after 1945. Security, quiet and order in the rear of the fighting troops were the reasons for the Fuehrer order given to the defendant, not extermination for political, racial or religious reasons as claimed by the prosecution. The defendant was never given any different or additional orders, especially has he never during his service received any direct additional orders in this direction from Himmler or from Heydrich. He never received an order to have Jews and gypsies shot only because they belonged to a certain race or religion; the order was given to him with the sole motivation that Jews and gypsies are an element most dangerous to security, and that in addition to this the Jews next to the Communist functionaries were the most important representatives of the of the Bolshevist system and its fighting methods in the rear of the Army.

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This feet was confirmed by experiences made by colleagues of the defendant during the months before the defendant was assigned end which the defendant found confirmed to the full extent during his service in the Crimea. The activity and situation report No. 4 of 22. May 1942 shows that only 5-6% of the total population of the Crimea were Jews, but they usually held 50% of the leading positions in the Bolshevist Party and State.

The following excerpts I shall emit in order to save time. Particularly inthe econd paragraph there are mentioned that the Volk Commissar had 40%, The Commissar for Education had 80%, for health and education 80%, for economics 80%, for commerce 60%, and for NKWD had 45% of Jews. was of equal importance as can be seen from the action, reports, the activities and situation reports. that the Fuehrer order had been issued for reasons of security, especially since he had not the slightest knowledge of the so-called "final solution of the Jewish question". living in their apartments, in as far as they had not emigrated with the aid of State authorities. cussed in the highest government it authorities and the statement by Wisliceny before the IMT shows that not until April or May 1942 was the order for the final solution of the Jewish question given to Eichmann. The letter from Goering to Heydrich presented by the prosecution, also shows that it was meant to be a supplement of the assignment already given, namely to bring about a solution of the Jewish question which should be as favorable as possible in view of the conditions of the time by letting them emigrate or by evacuating them.

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This is also not contradicted by Heydrich's express letter of 21 September 1939, presented by the prosecution:

"to the Chiefs of all Einsatzgruppen of the Security police." According to the opening statement of the prosecution concerning the organization of the Einsatzgruppen it is a fact that the "Einsatzgruppen" in the Polish are in no way identical with the Einsatzgruppen of this trial, which at that time did not even exist, but which were not organized until Hay and June of 1941. The defendant never saw or heard of that express letter of Heydrich of 21 September 1939. Besides, this order does not provide in any lace for extermination or annihilation, but only mentions the concentration of Jews in Ghettos, which were to be set up in the cities. If, during the course of the trial various interpretations of the Fuehrer order by other persons involved are mentioned, this does not prove anything against the defendant, who was not present when this order was published in Dueben and Pretsch through the office Chiefs Streckenbach and Mueller and never heard of any other interpretation of the order, than the one given him by his superior Ohlendorf. During the rebuttal the prosecution presented document NOKW 1573, and stated that, contrary to the statements of Ohlendorf, Seibert, Schubert and Braune the document shows that alreadyduring the period or 5 to 15 November there were, constantly, executions in Simferopol although at that time the civilian population was allegedly friendly. Here too, the prosecution has left out the second half of the sentence-I assume it was through an oversight -- which says: "that there seem to be many Communists left in the city". My client has nothing to do with this document. He did not state that there were no shootings in Simferopol between 5 and 15 November. He could not state this, since during that time the defendant was still in Odessa with Kommando 11 b. He did not take over this Kommando until the 10th of November and did not arrive in Simferopol until the 28th of November.

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The result of the evidence as stated by me in my trial brief, has thus not been affected by the only document presented in the rebuttal against my client. in my trial brief in all their details? Legislator. Adolf Hitler was for him the Head of State, elected by the German people, recognized by the whole world, and with whom all nations maintained diplomatic relations until the outbreak of the war, with whom America kept up diplomatic relations until the and of 1941, and to whom the neutral states sent their diplomatic representatives until the end of the war. The Fuehrer had been given legisl tive powers by constitutional procedures -- indeed, under full observance of the Weimar constitution, a model piece of democratic ideals which is often quoted. His power was unlimited and thus Reich Defense Law issued in 1930, e.g. defines the Fuehrer and Reich Chancellor as "holder of the supreme state authority". The holder of the supreme state authority and supreme war lord and Communist functionaries. I am aware that the Control Council Law No. 10 of 20 December 1945 in article II, figure 4b, does not free a person from responsibility for action pursuant to the order of his government or of a superior, but may be considered in mitigation. Nevertheless I must raise the problem of the ideas and convictions caused by Hitler's order, in the mind of my client with regard to their legal aspect, because I believe that in the very last analysis this problem contains the inherent problems of this trial which a court, independent of all propaganda, of public opinion and of all attempts aimed at falsifications endeavors to pass just judgment on those men in the dock, cannot overlook.

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I am not trying to work any extenuating circumstances out of this question and -- I want to make this quite clear -- but I want more. I want to explain why my client, at the beginning of the trial could answer the question about "guilty" or "not guilty" only with a clear "not guilty". Is the defendant Dr. Braune guilty? This is the question, to the solution of which I want to contribute. I am going to start but from the following deliberations: Though Control Council Law No. 10 may exclude any reference of a person to the order of the government or a superior with retroactive effect there is one thing which it could not have intended and did not intend: To punish men, who took up service because they believed that the order upon which they acted was legal; who, without any fault of their own, had no feeling that they did wrong and could not have had such feelings. The retroactive force of the Control Council Law may be enforced objectively; it will, however, find its limitations in the subjective part of the events, in that part which took place in the mind of the defendant. Even retro-actively effective laws cannot change anything in the fact that those persons had the right to believe their actions legal and therefore had no feeling of doing anything wrong, and this alone counts. Could the defendant, at that time, have this feeling of legality, or rather, did he have to have it?

the legal position at the time: basis of the order that had been issued, he must not be punished, even if the Control Council Law does not purport to bring about convictions without guilt. awareness of having acted unlawfully is an integral part of guilt, which according to criminal law is always a personal guilt. only be understood to mean that the recipient of an order must have been conscious of the fact that his conduct was contrary to the law and wrong. There is no guilt without the awareness of having acted unlawfully.

Also the IMT clearly acknowledged this principle. Which conceptions, then, were decisive for the defendant's awareness of acting lawfully? the basis of his constitutional powers as well as on the basis of his military authority in his capacity as supreme commander of the armed forces.

"The Fuehrer's orders were law already a considerable time before this second World War.

"His orders were something quite different from the orders of any official of the hierarchy under him."

It cut short any discussion. It was legally binding for the persons concerned, even when the directives went counter to international law or to other recognized obligations."

This stated Prof. Jahrreis as expert before the IMT.

The Fuehrer Order partook of the character of a law. A law, however, was binding for a judge as well as for every official and every subject of the state, not only in the authoritarian Fuehrer state after 1933, but already under the auspices of the democratic republic based on the Weimar constitution.

Gerhard Anschuetz, says in his commentary about this:

"If it cannot even be conceded that the judge is entitled to examine the law as for its being constitutional or not, so it can be conceded even less that he may refuse obedience to a law which was passed constitutionally because, according to his opinion concerning certain standards which, again according to his opinion, are above the legislator, that is to say, morality, ethics, natural law, they contradict these points or because they cannot stand up to certain evaluations," Fuehrer state but the spiritual father of the Weimar democracy. Already during the Weimar period, during which the defendant received legal training at German universities, it was beyond the reach of not only an official but also a judge and even beyond the Reich Supreme Court to re-examine any law for its moral basis or its background of international law.

"The background of international law could not even be examined by the Staatsgerichtshof, the State Court. The State Court was only allowed to examine whether it was constitutional, but it was not allowed to examine it from the point of view of international law."

According to Prof. Jahrreis and his opinion in the Justices' Trial. the following on page 153 of his book:

"Judges and subjects are under the obligation to apply the law of the state, even if contrary to international law, and to follow it. It is not up to them but up to the government to take into consideration the differences with international law which may arise out of this."

Also the well-knwon German jurist, Prof. Jahrreis, only repeats the general concept and legal opinion, when he gives the following expert opinion of the Justices' Trial:

"Every state must demand as a matter of principle, that its laws be followed, even if the individual concerned holds a different opinion owing to moral, or religious, or other grounds."

At another occasion he says:

"Already before 1933, and even more after 1933, it has always been undisputed that the judges were obligated to obey the law of the German state, even if by doing so they were violating the principles of international law." officials and subjects, whose position did not nearly afford them the same measure of independence as that enjoyed by a judge.

But even if no legally binding force is granted to Hitler's Order, but it is evaluated as what it undeniably was, namely an order of the head of the state and supreme commander of the armed forces during war time and under military law, the result remains. If already in peace time officials and judges are bound by constitutionally enacted laws and are not even permitted, leave alone abliged, to examine their admissibility or their basis in international law, it is obvious how much more the soldier during a war and who is subject to military law is bound by the orders of his highest authority in the state. They too did not permit any re-examination.

"Should or can the state authority grant the members of its hierarchy its officials and officers, the right or even Impose on them the duty, to examine at any time any order which demands obedience from them, to determine whether it is lawful and to decide accordingly whether to obey or refuse? No domination which has appeared in history to date has given an affirmative answer to this question...... in as far as such a right of examination is not granted to members of the hierarchy, the order has legal force for them."

highest orders which must be binding on the hierarchy, if the authority of the State is to exist at all, being on occasion in conflict with rules not imposed by the state - to divine law, to natural law and to the laws of reason...."

"If Hitler issued an order which was faulty from a legal point of view, that did not give the German official agencies any reason to refuse obedience, for in every state there has to be an authority beyond which there is no appeal."

Thus did Prof. Jahrreis outline the problem in his expert opinion before the IMT and also during the Justices' Trial.

during the war, refuse to comply with orders, contradicting international law. violations of international law at all in regard to Russia, who had placed herself outside all international law from the first day of its existence. But also the farmer question has to be answered in the negative, as it had always been beyond a question for any official in Germany that, in case of a contradiction between the Reich law and international law, he had to apply Reich law. in a far higher degree in war time for the soldier at the front: sovereign state is able to face as yet. The question remains inasfar as Article 47 of the German Military Penal Code made it incumbent upon the defendant to refuse compliance with Hitler's Order. argumentsof my colleagues, Dr. Gawlik and Dr. Aschenauer. The provisions of Article 47 (MSTGBI) can only mean that a soldier is permitted to refuse compliance with an order if there exists a higher authority able to decide if his refusal to comply with the order was justified.

Hitler's orders, however, were no ordinary military orders, but were suprema lex, beyond which one could not go any further. There was no possibility of an appeal against them. Article 47 could not be applied at all to orders emanating from Hitler, the Supreme Commander of the Armed Forces. Also in the question of the possibility of resisting to a military order, it is a prerequisite that the person to whom the order applies, should have the possibility to appeal against it. The long tradition of that Article 47 in the jurisdiction of the German Armed Forces is witness to this. In this justified conviction, however, there could not arise in the defendant an awareness of the action being unlawful, especially as he was neither permitted nor obligated to re-examine the order from the point of view of its lawfulness or its contradiction with international law. Neither did he have the scope for an examination.

Was, then, at the time of the defendants appointment in the East, i.e. 1941, this legal position of the German Reich and its subjects in conflict with the legal concept and legal position of other civilized nations in a matter at all discernible to the defendant? Also to this point I am able to refer to the remarks of my colleague Dr. Gawlik, who was shown that up to 1945, almost all the other nations of Western outlook too subscribed to these principles. Thus, during the discussions on the Briand-Kellog Pact repeatedly quoted by the Prosecution, to which Russia, however, was not signatory power, the American representative Kellogg said in 1927:

"Every state is the only judge of its conduct in the question of its existence." in his "International Law" that the law could not demand that an individual be punished for an act which he had been forced to commit by law.

1940 by the United States War Department, after enumerating possible war crimes, contains the following statement:

"Individual members of the armed forces are not liable to punishment for these crimes, if the latter were committed under orders or with the approval of their governments or commandants." agencies in the British "Manual of Military Law" which after listing the possible war crimes states the following in Article 443:

"It is, however, important to note that members of the armed forces, ccommitting such violations of the recognized rules of warfare, which had been ordered by their governments or their commandants, are no war criminals and can therefore not be punished by the enemy". national law, George Manner, too, writes the following in an article headed "The legal nature and punishment of criminal acts of violence contrary to the laws of war":

"The principle that the members of the armed forces of a country are not personally responsible and can therefore not be punished for acts violating the rules of warfare committed under orders or with the approval of their governmental or military superiors, does not form part of the military law. Nevertheless it appears to be a recognized principle of that law. At least since 1914 this principle has been embodied in the war manuals of the powers as a rule of the common military law." America is shown by the fact that in 1840, the American Secretary of State, Webster, in a controversy with the British Government concerning the punishment of a British subject stated the following:

"That an individual member of an official armed force acting on the authority of its government cannot be held responsible for the tres passing of laws, is a principle of public law which has been sanctioned by the usage of all civilized nations and which the government of the United States is not inclined to contest."

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upon to prove the contrary, for that provision, which was never carried out, was not a law agreed upon, but the result of a onesided dictate. It is of interest to note that it was the American expert on international law, Professor Fenwick who stated in his book "International Law" that one of the reasons why this provision was not carried out, was "the difficulties arising in public law from the fact that many of the accused individuals had acted on superior orders." life up to this day is shown by the well-known speech held by Marshal Montgomery on 26 July 1946 at Portsmouth. Aschenauer has already quoted it. even during the Second World War, the Control Council Law now sets up the statute for members of the German people, that the acting on superior orders does not do away with responsibility. The Control council certainly possesses the legislative powers to issue such rules. But it does not alter the subjective aspect of the defendant's conduct during the Russian campaign. Owing to the legal position in Germany - as shown above - but also outside the borders of the Reich, he could not even have had an awareness of guilt, it was neither his right nor his duty to examine whether the orders he received were unlawful or violated international law.

The following page I shall omit except for the last paragraph:

Apart from this question of the lawfulness of the defendant's actions performed on the order of the head of his state and his supreme commander of the armed forces, and the question of his lack of awareness of doing wrong, which is closely linked to the former, in my opinion the court must not overlook the problem inasfar as the conduct of the German Reich in the war against Russia, especially the Fuehrer Order violate the obligations of Germany towards the USSR according to international law.

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precisely with Germany's obligations toward the Western Powers according to international law, treaties or customary procedures in the sense of the obligations which were binding at the commencement of World War II. Germany violated by the Fuehrer Order her obligations towards Russia which were imposed by international law, since the Fuehrer Order referred to Russian nationals in Russian territory. My client's acts were carried out exclusively against Russian nationals in Russian territory. between Germany and Russia developed after 1917, and how Russia behaved since 1917 towards other countries. I have furthermore explained in how far Russia ignored existing international law true to her ideology and aims. I refer now to these explanations and restrict myself to drawing the legal conclusions from this situation. between Germany and Russia. Nor did any international common law or custom develop between 1917 and 1941 between Germany and Russia.

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Nor would the development of such procedure have been possible in view of the attitude of the USSR to international law.

Owing to her knowledge of this behavior and of Russia's fundamental attitude to modern war - I remind you, for example, of the guerilla warfare - Germany had reason to be convinced that this war would be conducted from the very first day without the slightest respect for international law on the part of the enemy. I am convinced that in these circumstances Germany was not bound by the principles of international law which applied to her relations to the Western Powers. The Tribunal must consider the question to what extent HITLER's order and its execution constitutes a violation of international obligations towards Russia - and that is all that interests us here. Russia as being a criminal war of aggression. Soviet government which was published in the entire German press and broadcast throughout the world (document Book II pp. 17 ff.) this war as a justified preventive war? Looking back on events, can one today bring such a reproach, in view of the statements made by the leading American diplomats BYRNES and BULLET and quoted in my Trial Brief? further question and dealt with the matter to what extent, in the light of recent knowledge and developments in the sphere of world politics, the affirmation of the IMT can be maintained that the war against Russia was "a criminal war of aggression", "an obvious attack", without a shadow of justification! facts became known which necessitate the re-examination of that decision by this Tribunal.

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but a justified preventive war, then, on the basis of my explanations in the Trial Brief on the subject of the ideology, aims and practice in the USSR, to which I refer, the question arises, in how far the German Reich found itself, in this war against Russia, in a genuine state of national emergency, and whether this justified the orders given by HITLER. ASCHENAUER in the body of his closing Brief and make them the subject of my defense plea. Similarly, with regard to the question of an assumed state of emergency (Putativnotstand) I refer to Dr. ASCHENAUER's statement on this question. justified or expedient in view of the assumed state of emergency was outside the experience and judgment of the Defendant. guilt of the higher order, and the belief in legality and the absence of consciousness of violating the law resulting therefrom, next to the question of national emergency or assumed national emergency, we have to consider the actual state of emergency in which the defendant found himself, which places his conduct outside the limits of criminal responsibility. stand that he was convinced that the Fuehrer Order was justified, i.e. that it was created constitutionally within the rights vested in Adolf HITLER as Head of the State, supreme lawmaker and warlord (Transcript p.3094) and was therefore binding also for the recipient of the order.

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presiding Judge, that he had not been able to form a critical opinion concerning the necessity of this order, its ethics and its morals, in view of the special conditions on the Eastern front and in view of the behavior of this enemy who right from the start dropped all restrictions of a normal conduct of war, and also in view of the scope which this Second World War had assumed on both sides - beginning with the events in the East through the bomb terror to which hundreds of thousands of innocent German women and children, sick end aged people succumbed, to the use of the atom bomb which took each time within a few minutes the life of many tens of thousands - and again without any discrimination of ago and sex. criminal since they originated from serious and severe considerations of the political end military leaders on both sides who obviously considered these measures necessary in order to decide the war in their favor transcript page 3091/92). In one respect, however, the Defendant did not leave the least doubt during the proceeding, not even for one moment, namely that he resented the Fuehrer Order for humanitarian reasons, that he considered it wrong inspite of its legal character and inspite of its constitutional origin, that he never executed it on his own free will, that he never would have acted as he did upon his own initiative and that in the last respect he carried out the orders because there was no other possibility for him (Transcript page 3039/3110/3116).

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approved of the Order even for one moment or that he was in accord with its contents, I explained in detail in my Trial Brief the conditions under which the actions of the Defendant occurred. I should like to refer to this. any action on his part, without his knowledge and by orders of the RSHA. this Order, but he also had no reason whatsoever to object against it since, at the time he received the Einsatz orders, he had no knowledge of its activities nor, indeed, even knowledge of the position which he was to take. or his position in the Einsatz.

By submitting the BRAUNE Document No. 58 Exhibit 49 (document Book II Supplement III) 1 have proved that he was not placed in command of Kommando 11b which was stationed in Odessa until 2 November 1941 in Nicolajew, with effect from 10 November 1941. after BRAUNE's arrival, demanded from BRAUNE and his Kommando the shooting of many tens of thousands of Jews. Dr. BRAUNE has proved clearly what was his personal attitude to the measures ordered against the Jews. Commandant of Ohlendorf (who was the exponent of the executive power in this territory) nothing would have happened to him in view of the Fuehrer Decree, even inspite of OHLENDORF's ban in conducting general executions outside of the area under German Army jurisdiction.

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even then, when the Rumanians, preferring to the Fuehrer Decree, threatened to take diplomatic steps in Berlin (Transcript page 3126). justify his refusal with the fact that the Rumanians had the executive power in this area and to refer thereto.

If the Defendant DR. BRAUNE had been filled with that contempt for humanity, the boundless hate which the prosecution falsely attributes to him, he would have had the opportunity here to discharge this hatred (of which he is unjustly accused) on tens of thousands of Jews. Dr. BRAUNE did the contrary however. He opposed all demands of the Rumanians. Nothing proves better his inner humane attitude to the Fuehrer Order than this fact. Not with words, but by action, did he prove how he acted in a situation which enabled him to make a free decision of his own. Not one Jew was killed at Odessa while he was in command. About one month later, at the beginning of December, the Commander-in-Chief of the 11th Army, in whom the executive power over Einsatzgruppe D was vested, gave the order that the Jews there were to be shot before Christmas (Transcript, page 3140, SCHUBERT Transcript p. 4671, OHLENDORF, p. 607). This order was issued in accordance with a Fuehrer Order. Dr. BRAUNE's office was in the same building as that of the Chief of the Einsatzgruppen. The leader of his Subkommando, Sturmbannfuehrer SCHULTZ, whose duty it was to carry out the executions, was opposed to doing so when the Chief of the Einsatzgruppen received the order from the Army. Dr. BRAUNE told his Chief that his Subkommando could not carry out the order with the few men and vehicles at his disposal.

The army provided vehicles and personnel, the Einsatzgruppe assigned members of Kommandos 10b and 11a as reinforcements and the newly arrived police detachments as support. Now what could the defendant do in such a situation? Defendant to prevent these murders. Defendant should have or could have done. It has not given an answer to this question because it cannot find an answer to it. prevent the execution to the order? Or to wash his hands of the affair or even to limit its execution an any way? Should he have refused be accept the order? the Fuehrer Order is quite well known, declared as follows under oath:

"The men of my groups who are under indictment here were under my military command.

if they had not executed called to account for it by me.

If they had refused to account for it by me.

There could be no doubt about it.

Whoever refused anything in the front lines would have met immediate death.

If the refusal would have brought about the same consequences.

The jurisdiction SS were gruesome."

Under such circumstances, the Defendant could not quietly refrain from carrying out the order, nor could he openly refuse to do so.

would not have changed the course of events at all. In this entire matter, one must not forget that in November 1941, when the defendant assumed command, the Fuehrer Order had been carried out by the Kommando for months, and that the commanders and subordinate commanders were acquainted with the order. the execution of the order by refraining from issuing any directives to that effect to his subordinates. For he no longer needed to issue such directives, nor did he do so. of the mission and was being carried out, and therefore did not require any directives from Dr. BRAUNE. Apart from the executions in Simferopol, which Dr. BRAUNE, in view of the circumstances, was completely unable to prevent, the latter, therefore, would have been unable to prevent the activity of his sub-commandos only by issuing an express order not to carry out the Fuehrer Order. a wasted self-sacrifice, for a trial before SS and Police Courts for disobedience and refusal to comply with a Fuehrer Order on the front, could only have resulted in a death sentence. Thus the Defendant could not avoid or prevent the carrying out of the Fuehrer Order, by open refusal, tacit non-Compliance, or opposing orders, apart from the fact that every one of those measures would have meant his death. Thus, they did not present the defendant with a choice in keeping with ethical law. Merely in order to give a complete picture, 1 must mention the fact that he was not able to join the advancing troops with his Kommando, and thus evade the order.

in this sector of the Eastern Front and the geographical position of the Crimea as a peninsula. tribunal, and the Prosecution have expressed doubt that such a punishment would have been the invitable result. In defense of my client, therefore, 1 should like to add the following statements: The Defense counsel has proved that under German laws of war, disobedience, refusal to obey an order, undermining the armed forces etc. called for the death penalty."

11 Feb 1948_M_MSD_6_1_Spears (Juelich) Oberfuehrer Ohlendorf, as the Defendant's superior, stated under oath that certain death would have been the result of refusal to obey an order. In his Posen speech, Himmler the highest SS-Fuehrer and supreme judicial authority in the entire field of SS jurisprudence, expressed clearly what he thought of disloyalty, even if it were only thoughts of disloyalty. And as far as a man like Himmler was concerned, there was no difference between disloyalty and disobedience. waived the death sentence: Himmler would have seen to it that an end was put to the man, either in a concentration camp or in "a compulsory suicide squad" of a disciplinary unit of the Waffen-SS.

There should however, be no doubt as to Hitler's ideas about disobedience of his orders in war-time. Those are the facts which confronted the Defendant. In view of all this, what is proved by the four cases listed by Herr Diels, in which "refusal to obey an order" did not result in death? (Prosecution Document Volume 5-D, Pages 40/41) In none of these cases had the order been given by Hitler.

Two cases occurred in 1933/34, and in the third case, concerning Herr Diels, a Gauleiter was allegedly the person who had issued the order. Even the example of Rittmeister (Captain, Cavalry) FaberCastell is not really a convincing argument for the application of Article 47 of the Military Penal Code (MSTGB) to the Fuehrer Order. He opposed an illegal "direct" order, that is an order of a direct superior. This is, however, exactly the sort of case covered by Article 47 of the German Military Penal Code (MSTGB). It says nothing about the impossibility of applying Article 47 to the Military Penal Code (MSTGB) to an order by the Supreme Commander-inChief. Diels in the meantime, and submitted by Dr. Aschenauer in behalf of Herr Ohlendorf.

11 Feb 1948_M_MSD_6_2_Spears (Juelich) the fact that the Prosecution, in spite of 2 1/2 years of investigation, and even though it has access to the entire collection of German documentary material - material which both incriminates and exonerates the defendants, - has nevertheless not been able to produce even one single case in which so much as one German Feldmarschall or General opposed a Fuehrer Order. Should then a man with the rank of major have been expected to oppose in such a manner not only Hitler's Order but also at the same time the order of one of these Feldmarschalls? That would be going far beyond the bounds of what could be reasonably expected of a man. I refer to the judgment of Dr. Loew the record of whose interrogation was submitted as a Prosecution Document. following even with regard to an order by Keitel:

"The result would have been self-annihilations and indirectly, a certain historical improvement."

I believe that there is no debut that this "self annihilation with an indirect historical improvement" did not constitute a choice in keeping with ethical law. but even if he had, this would not have altered events anyhow. Oberfuehrer Ohlendorf himslef stated, during his examination (Court Transcript, Pages 743/44) that such an attempt on Braune's part would have been a wasted effort. truthfully stated (Pages 3110-13, Court Transcript) that he had not made such an attempt. Similarly the Defendant could not have evaded the incident by reporting ill, apart from the fact that even if he had, it would not have delayed the execution of the Fuehrer Order by so much as one day. transferred back to the homeland under the pretext of illness. But 11 Feb 1948_M_MSD_6_3_Spears (Juelich) But at this point as well I dare to rasie the question of whether malingering is a "choice in keeping with ethical law", for a soldier at the front, in his people's struggle for existence against Bolshevism, exposed and courtmartialled.

In this case as well, the Defendant would have incurred the danger of the depth sentence, in view of the following:

"The following shall "be guilty of undermining German defensive strength and shall be 'punished by death. whoever under takes to cause himelf or another to avoid the fulfilment of military service entirely, to a limit extent, or temporatily by means of self-mutiliation, or by means designed to deceive or "by any other methods. question of possible desertion and stated as follows:

"I would not have deserted, when my people was in a struggle for its very existence. But I would not desert under any circumstances to an enemy like Bolshevism," (Transcript, page 3104) All that I can add to that is that the Defendant could not have been expected to give himself up to the Bolshevists. why the Defendant did not attempt, together with Herr Ohlendorf, his superior, with whom he was on very friendly terms, to refuse to carry out the order or to sabotage it quietly. I joint refusal would have constituted mutiny. For this the laws of war of all nations know only one penalty. At the front at any rate: shooting by courtmartial. But a silent failure to carry out the order was also out of the question, under the given circumstances. The Army and superior authorities would have found out about it very soon and would have punished it as disobedience and refusal to obey an order. of the Military Penal Code (MSTGB) was impossible.

11 Feb 1948_M_MSD_6_4_Spears (Juelich) possibilities considered, the following is still apparent: the Defendant was absolutely unable to avoid or prevent his Commando from carrying out the order. No matter what he would have done, it would not have altered matters any as far as execution of the order was concerned. ing his own life. There is no legal concept in the world that demands of a man that he consciously sacrifice his own life, especially if the self-sacrifice seems wasted. And in this case, it would have been wasted, for it could in no way have altered the entire course of events. Finally with regard to the problems of the state of emergency brought about by the order and the problem of what could be expected of a man, I take the liberty of referring to the statements by Dr. Lummert and Dr. Gawlik. till now, I have reached the following conclusion: 1945, and, as for as the Defendant knew, in European and AngloAmerican countries. as well, the Defendant cannot be considered guilty of having committed war crimes or crimes against humanity. Supreme Military Commander, he dealt with a matter which justifies the conduct of the Defendant, in the light of national and international legal concepts existent till 1945. Article 47 cannot be applied to the Fuehrer Order.

Dr. Braune's acts were justified by his awareness that according to the legal principles existent up till 1945, national law was superior to international law, and that also, in case of conflict, every subject must obey the law of his State.

The Defendant acted in the awareness that Hitler's order was legal, that is, issued within the scope of Hitler's constitutional rights as Supreme Head of the State and Supreme Military Authority, 11 Feb 1948_M_MSD_6_5_Spears (Juelich) Furthermore, I wish to point out that in Germany's struggle with the USSR, there were no international obligations towards the USSR, and that therefore violations of international law against the USSR could not be committed.

The Defendant acted during a time that Germany was in a state of national emergency, and he should at least be given the benefit of pleading a presumed state of national emergency on the basis of the evidence which has been submitted concerning the picture which Reich Leaders gave to the German People concerning the reasons for, and the nature of, the war against the USSR. which could provide the gasis for the Defendant to be punished in view of the circumstances and conditions that have been described here.

The Prosecution confronts him with Control Council Law No. 10 dated 20 December 1945 and bases its request for his punishment on this law. The time at my disposal is not sufficient for me to deal with the problematic nature of this law as I should.

I therefore refer to it only briefly: of the legal systems of all civilized nations:

The Principle: nulla poena sine lege. previously existent in the entire world, is that the Control Council Law aims at the creation of a new international law, the expressions of laws of humanity to be binding upon the entire world. It is based on the reason that it is the expression of international law existent at the time that the law was created, that the law of war is not derived from treaties alone, but also from the international usages and customs, which have gradually found general recognition. This law is not rigid, but, by constant adaptation, it follows the requirements of a changing world; it is the essential nucleus of a new law, that individual persons have international obligations over and above national 11

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order to justify the Statute - and thus also the Control Council Law derived from it. disregard the following points:

1) Do these reasons justify the creation and application of a new international law with retroactive force or rather, should not such revolutionary laws which invalidate the law existent in the entire world up till now, be considered as valid only from that they come into force? However, if it is to be applied retrospectively to the leading men of a state because they knew of this new development of the law not yet codified, does this thesis then also justify its application to the subject of the State, who was forced by martial law to carry out laws and orders of the head of state and of its leading men?

2). If the Control Concil Law were the expression of the valid International Law at that time the former was created, was this International Law then also valid in respect to the USSR, that is a state which since its establishment did not know anything binding it to International Law, and towards which Germany did not possess any duties as far as International Law is concerned, neither those arising from contracts, nor from common law, nor those created by custom? International Law was valid in 1941/42 already, and if so, whether or not it was possible for the defendants to know it at all.

The problem arises: "Where did this new International Law appear for the first time perceivable for the German state's subject, so that he was able to know it? To which of these defendants could it be imputed that he had learned 11 Feb 1948_M_MSD_6_7_Spears (Juelich) of such decisions during the war, quite apart from the problem, whether or not decisions made by American State Courts may constitute an International Law binding for all the world.

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defendants here, for, as has been set forth by the Prosecution on page 56 of the Court transcript, the military tribunals in session here are international tribunals according to their character and indeed, a concept which the American Military Tribunal adopted in the verdict against the jurists, though the indictment was raised by the "United States of America". which gradually had found general recognition. Did the USSR also recognize them, so that they would have become binding for Germany? Was it effected by agreements? If not, was it effected by concluding actions? contrary.

Finally the following problem remains: the new law, that individuals had international duties, which transcend national duties, which are laid upon them by their obedience to the individual state.

Must then not the problem be raised: would protect the state's subject, who, in favor of the international duty violates the national law? Where was the international power in 1941, which would have protected the defendant against a sentence by German Court Martials on account of disobedience and refusal to carry out orders? today they have not been answered yet.

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11 Feb 1948_M_MSD_6_8_Spears (Juelich) which would protect any state's subject if he violates the laws of his own state by fulfilling his international duties. this problem when finding its verdict. But

even if the High Tribunal would pass by all these problems, then it would not be able to disregard the following in its decision.

THE PRESIDENT: Dr. Mayer, do you think this would be a good point at which to have the morning recess?

DR. MAYER: Yes.

THE PRESIDENT: The Tribunal will be in recess 15 minutes.

(A recess was taken.)

COURT NO. II, CASE NO. IX.

THE MARSHAL: The Tribunal is again in session.

DR. MAYER (Attorney for the Defendant Braune): Your Honors, I now proceed with my final plea on page 51. It is also page 51 of the English text. Council Law No. 10, too, will not see two justifications invalidated:

1.) The lacking consciousness of illegality 2. ) The emergency.

in the verdict of the IMT, out it is impossible to perceive that a new International and World Law, as the base of which Control Council Law No. 10 was designated, would disregard the most primitive hypothesis of any guilt, namely, the consciousness of unlawfulness. has been clearly expressed by the IMT on page 64 of the published text, where it says that not the existence of an order is the decisive moment, but "whether or not it was actually possible to effect a choice according to the moral code."

This principle was recognized in the verdict against Erhard Milch as well as in that against Flick. Law No. 10 of 1945 will be applied retrospectively to my client's behavior in 1941/42 a sentence does not seem justified, as this is opposed by the facts of a

a) lacking consciousness of illegality

b) justified reference to a genuine emergency. Finally I beg the high tribunal while finding its verdict to examine how far it was possible to assert this new International Law in reality and whether it thus found its justification, or whether it has remained a law for the defeated ones only, which is not only disregarded by the USSR and all states in its sphere of power, but also whether the Western victorious powers have not violated it, without any Court in the world applying this new law to these violations, and thus this new law has lost its ethical-moral foundations.

a future development of the law, if in future two measures will still be applied in the world George Martin of the Nuernberg trials published in the Munich newspaper, Muenchener Zeitung, a few weeks ago: then I believe that no tribunal which is conscious of its responsibility to justice and history can pass by the above raised problems. Finally Dr. Braune is charged with membership:

a) in the SS, or general SS

b) in Amt III, VI, or VII of the RSHA

c) in Amt IV of the RSHA Dr. Braune belonged to the SS only in the framework of the SS-special formation SD, which comprised all members of the intelligence service on special subjects I want to supplement the SS, (Sachnachrichtendienst) SD (Amt III, VI and VII of the RSHA) and of the Security Police (Amt IV and V), as well as of the administrative Amt I and II of the RSHA.

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criminal by the IMT, but only the "SD" was declared criminal, as far as it conprises Amt III, VI and VII as offices for special subjects (Sachaemter), and of the Security Police only the Secret State Police (Amt IV), and not also the Criminal Police (Amt V). by the IMT outside the SS as two independent groups, as "Gestapo and SD" (see IMT verdict). facts, in sofar as it mistakenly identifies Amt III, VI and VII with the "Reich Security Service of the Reich Fuehrer-SS" (Page 18 of the indictment) There never existed a "Reich Security Service" of the Reich Fuehrer-SS". There was a Reich Security Service, which had nothing to do with the RSHA and the SD, but was a special protective unit for leading persons of the Reich, and which was subordinate to its own unit leader, SSFuehrer Rattenhuber.

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On the other hand, the "Security Service" of the Reich Fuehrer-SS is an SS-formation without any task and activity, without any sub-division, which, as shown above, did not only comprise the SS-members of the sentenced Amt III, IV, VI and VII, but also comprised Amt I, II and V of the RsHA and other police units.

The defendant only belonged to the groups "Gestapo and SD", which are declared to be criminal, but he never belonged to any of the SS-groups which are declared criminal.

I refer to the IMT verdict; it declares on page 113 of the published text in its conclusion:

"The Security Service of the Reich Fuehrer-SS, (generally known as the SD), will be dealt with in the tribunal's verdict on the Gestapo and the SD."

longed to the general SS, which Dr. Braune never did, and on account of which he, therefore, cannot be sentenced. Concerning SD. The IMT isolates the Security Service of the Reich Fuehrer-SS" from the Group "SS", and, as is shown at another point, by which the IMT understands Amt III, VI and VII of the RsHA; the defendant only belonged to the Security Service of the Reich Fuehrer-SS until April 1939, when he was released from his activity with the SD and was ordered to the Secret State Police. The defendant cannot be sentenced for this time which lies before 1 September 1939. After this date, the defendant did not belong either in an official or honorary capacity to Amt III, VI or VII of the RsHA or to my of their sub-divisions, neither did he have any functions in them, nor was he active in them. As from April 1939 onward he only were the SS-uniform with the SD-insignia, concerning the SS he neither had any function nor did he carry out any activity, he did not have to perform any SS-service, neither did he have any knowledge of the activity of the SS-groups, declared criminal here, nor of that of Amt III, VI and VII of the RsHA.

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war, this was only effected in sub-divisions of Amt IV of the RsHA, the. Secret State Police. takes there, which the Tribunal shall omit, then.

Should the Tribunal be of a different opinion, then Dr. Braune cannot be sentenced on account of an other reason. The IMT declared:

"During the war members of the Security Police and of the SD have lead to severe sentences."

Nevertheless the IMT arrived at a sentence on the following basis:

"However, the fact remains, that all members of the Security as civil servants."

With this the IMT did not at all want to exclude the admissibility of a counter proof concerning the voluntariness, cooperation or knowledge of the individual members of the groups concerned. The IMT itself has referred to the "recognized principles of law" and has especially expressed, that "a criminal guilt is an individual guilt, and mass punishments are to be avoided."

The Chief Prosecutor of the IMT, Jackson, declared (Official transcript page 5176) concerning the individual member of the organizations:

"Nothing hinders him from denying, that he joined voluntarily, or from proving that he acted under compulsion.

He can prove that by deceit and by wile he was made to join."

"The membership which the statute and the law of the Control Council Law declare to be criminal, means, of course, a real membership according to a decision of the member's own free will. It is necessary that the member joined the organization fully cognizant and voluntary.

which a person has become victim, were never considered as a crime of the victim; neither is it intended to achieve such an unfair result now." all further proceedings:

"In this trial the individual defendant can state everything in which he was."

(Declaration of Chief Prosecutor Jackson, dated 14 December 1945.)

Braune received the completely concrete assurance, that he did not need to undertake any function or activity in the State police, he became a merely formal, that is, not a genuine member of the State Police, He remained exclusively active in the SD, in the legal and administrative department. Security Police and Braune was ordered to the State Police in Muenster. That this was effected against his will and under compulsion is proved by the fact, that with all means at his disposal Braune defended himself against this transfer and when he was not able to prevent it, he practically did not do any service in Muenster. no activity of Dr. Braune's in the State Police exists. He intended thus to force his dismissal. He did not succeed in doing so, for, in contradiction to the supposition of the IMT that he was not exposed to any other pressure before 1939 than to the danger of losing his position as a civil servant, kt has been proved, that Heydrich already openly declared in 1937:

"Nobody will be released from the Sipo, with the exception if we do not like him any more; in this case, however, the way goes via the concentration camp."

Therefore, in Koblenz the defendant did not chose any more the way to force his release from the Stapo, as it had proven to be foolish - but he tried it in that way, that with his farmer superior, Ohlendorf, he tried to arrange for a re-transfer to the SD.

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And this way seemed to work. that he could count on his re-transfer to the SD in Berlin.

He had even already been asked to start on his removal. Heydrich had agreed. The defendant cannot be reproached, that in view of this fact he was awaiting further developments and did not undertake any further steps.

Contrary to all expectations, Dr. Best, Heydrich's deputy, succeeded in frustrating Braune's call to Berlin and in forcing Braune to remain in the Stapo. situation as quoted in the IMT-verdict had arisen. joining an organization which had been declared criminal, or of a voluntary staying in same. formally. His superiors used this formal membership to order him to work. He did not remain with the Stapo in order to keep his position as a civil servant, but he wanted to be dismissed from this very position as a civil servant, and he did everything in order to lose this position as a civil servant, Shortly before the outbreak of war he was fully entitled to suppose, that he had succeeded in doing so. not any guilt of his. Already by reason of this fact Dr. Braune cannot be sentenced on account of his membership in the Secret State Police. motive for sentencing him is lacking.

Apparently the Prosecution proceeded from the fact, that Braune's activity in the East was a criminal one in the program of Amt IV of the RsHA.

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In his plea Dr. Aschenauer has exhaustively proved that this was not the case. I may refer to this. arising from orders (Befehlsnotstand) and of the special circumstances which lead to his behavior, the defendant's activity in the East was not a criminal one. can be drawn from the assignment in the East, apart from the fact that he never belonged to Amt IV. concerning the criminal activity of the defendant in the program of Amt IV or only for the knowledge concerning such a criminal activity. have to be valid, that "he, (the defendant), according to the Anglo-Saxon and the British secret law is entitled to be considered non-guilty as long as his guilt had not been conclusively proven in a way excluding any well founded doubts."

Military Tribunal No. II recognized this principle also in the proceedings against Oswald Pohl et all when acquitting SS-Standartenfuehrer Scheide, who belonged to the SS from 1930 to 1945.

There it says:

"The defendant admits membership in the SS, an organization deon these points. To save time of the Tribunal, I am not emitting pages 61 to 64. It is just a short sketch of the testimony of the defendant based on the testimony of his character by certain witnesses, Dr. Baessler, the witness Friedrich Sipmann and Dr. Guenther, a Protestant Minister, who has been living in Norway for forty years, and I shall proceed on page 64.

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THE PRESIDENT: They will all be read, of course, these pages which you omit.

DR, MAYER: In 1930/1931, Dr, Braune becomes a National-Socialist. Openly in the witness-box he gave the reasons for this stop: Spiritual distress and concern for the helplessness and factionism among his people, for class-war and class-hatred, for the ethical and moral disintegrationin Germany was one of the reasons, another was his desire openly to advocate unity and the bond among all Germans and finally his last reason was his recognition of the threatening danger from Bolshevism (Court Transcript page 3055 to 3056).

Are these motives to be condemned?

2) In 1934 Braune becomes SD man. tion of any criticism, with the ever-increasing tendency to create yes-men and to silence the free and open expression of a man's opinion is the first reason for this step, and the other reason is the possibility of bringing to the attention of the leadership shortcomings, dangers, unfavorable developments and mismanagement. ciation for criminal purposes?

I think Ohlendorf's examination and final plea clearly prove that these men of the SD intended and did at that time. Was it a crime that Dr. Braune by dedicating himself to these aims of the SD exposed himself so much that he had to make way before stronger forces and that his superiors transfered him to police work, a job he did not turn down but which did not suit his make-up and interests. Braune did everything within his power to be sent back to his former SD work which he recognized as a suitable and necessary one. I have explained that it was not his fault if his efforts in this direction remained fruitless.

Deceit and pressure brought him to police work. Can this be called voluntary association which even IMT considers a pre-requisite for punish able membership in a criminal organization?

3) From the last mentioned step, his way led him to assignment in the East. I need not repeat the events which led to it and which special circumstances determined his actions. for mankind, and a corrupted mind, as the Prosecution would have us believe. that "Death was their tool and life their toy"? seriousness and dignity of this proceedings and that it helps us to come closer to the actual events as a primary condition for a just verdict. in Odessa is a proof of neither hatred nor of contempt of mankind similarly not of the intention to exterminate ethnical groups. This conduct proves, better than all fine speeches, his personal attitude to these events in the East. opportunity to devote himself to task of cultural and academic policy of German students. His peen and courageous statements in numerous speeches and on the occasion of conferences, his intercession on behalf of French and Norwegian students, his extensive assistance and support of the thousands of foreign students prove that he himself tried to combine theory and practice, preachings and conduct. They contradict the Prosecution's unproved assertions of contempt and hatred of mankind, self-professed superior, beings and similar charges.

4). The development of war caused Braune's transfer to Norway. What during the last phase of war under the most difficult conditions appeared as Braune's attitude, is the best proof for the motive or his conduct. Hatred and contempt for other peoples do not prompt a person to realease hundreds of prisoners to oppose a despot of the caliber of Reich Commissioner Terboven, to use pressure to obtain numerous Fuehrer decisions against him and thus to save human lives and valuable property.

different idea of What a Commander of the Security police would be like and that they had been surprised to find a human being who gave them the feeling that he meant well and whom they had to like and to trust although he was their enemy.

But more significant than anything else for Braune's conduct in Norway is the Norwegian judicial authorities quashing of the proceedings against him.

Thus we see that the picture which I have drawn of Dr. Braune's character on the basis of the numerous personal testimonials agrees with his conduct in all situations in which Dr. Braune could act on his own initiative and realize his personal opinions. Are we not to judge the motives for his conduct in the East in accordance with this general picture? victions when passionately rejecting every allegation of low and criminal instincts as driving power of his conduct, and why I still consider my client innocent in spite of all actual events which he never attempted to conceal, to deny or to distort. Even in the witness-stand Dr. Braune has remained true to himself. Straight forward honest end upright, he has given an account of himself, always endeavoring to give the Tribunal as complete and truthful a picture as possible with regard to his ideas and conduct, that the Defendant was acting under the pressure of his hateful, inexorable position and yet of the deduction that his guilt derives from the fact that he entered the party and the SD. Objective weighing of his motives which determined his course does not allow of the following charge. the SD no assignment to the East.

Wherever Dr. Braune worked whatever he did never did he reveal a motive of which he ought to be ashamed, which he could not confess openly and freely and which must cause him any feeling of criminal guilt. I am convinced that the Tribunal will not fail to consider this when pronouncing judgment upon my client. I described the events which have brought my client into the dock. tances which led to these events. acted and finally I have tried to give the Tribunal a picture of the Defendant's character and of the motives for his conduct. All this will make it clear that, fully conscious of my obligation to serve justice and to make truth prevail, there is but one thing for me to do and that is to plead that Dr. Braune he declared innocent of the charges under count I and II of the indictment as well as of the charge of membership in an organization which has been declared criminal.

THE PRESIDENT: You may proceed Dr. Belzer.

DR. BELZER: Dr, Belzer for the defendant Matthias Graf.

Your Honors and Gentlemen of the Tribunal ! arraigned before this Tribunal my client, the defendant Matthais Graf, charging him with having committed crimes against humanity and war crimes, as well as with having been a member of criminal organizations. To prove the commission of the crimes charged, the Prosecution, in a series of documentary books, has presented more than 200 individual documents. Matthias Graf, it is first contended in the indictment that Fraf had been an officer of Einsatzkommando 6 of Einsatzgruppe C. In producing the particular evidence, the Prosecution restricted itself to establish that the defendant Matthias Graf at the times specified in some of the documents, when Einsatzkommando 6 was carrying out executions, was a member of that Kommando.

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Alone from this membership does the Prosecution infer that the defendant Graf shared responsibility for the executions carried out by Einsatzkommando C 6. Such an argumentation can scarcely satisfy any law of procedure of any modern constitutional State all over the world. ly referred to it - every defendant has to be considered innocent as long as his guilt has not been proven beyond any reasonable doubt.

To furnish this proof, is the task of the Prosecution. The obligation to furnish proof covers all the essential components of the crime charged, including criminal intent. It is never the business of the defendant to prove his innocence. In this connection I explicitly refer to the corresponding expositions in Wharton's "Evidence in Criminal Cases", Volume 1. The fact of the defendant Matthias Graf havinb been a member of Einsatzkommando C 6 alone cannot be valued as "prima facie evidence". But even assuming a case of "prima facie", any obligation on the part of the defendant Graf to furnish proof could not go further than to provoke a reasonable doubt as to his guilt. This being premised, it is now my task to comment on the result of the evidence in the case Graf. I. Counts I and II of the Indictment. thing about the form in which the defendant Graf is said to have become guilty of committing the crimes as stated. The name of Graf has not appeared in even nine of the reports of events which have been presented as evidence. Nowhere has it become discernible that the defendant Graf was connected with the executions which were carried out by Einsatzkommando C 6, Thus there is no legal basis for a conviction of the defendant Graf under counts I and II of the indictment, but, on the other hand, the defense has nevertheless proved' beyond any doubt that there was actually no connection between the defendant Fraf and the crimes which are the subject of this trial, In detail I have to say the following:

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1.) Then the Einsatzkommando C 6, in strength of between 160 and 180 men, was formed in Schmiedeberg, the SS-Unterscharfuehrer Grimminger was assigned to this commando as export III, which means as the SD Intelligence officer, and the Defendant Graf was assigned to this Grimminger as a co-worker, Grimminger and Graf were instructed on their future tasks in the Einsatzkommando by the SD specialist in the staff of the Einsatzgruppe G, SS-Obersturmbannfuehrer Karl Hennicke. Hennicke expressly instructed the experts Grimminger and Graf, that they would have to deal only with the tasks of intelligence work and that any other activity was out of the question. Grimminger already died in early July 1941 in Lemberg, the first garrison of EK 6 on the russian territory. Graf was then the only SD - reporter of EK 6 at first. Upon his request, Graf was given an assistant later on because he could not cope alone with all the work which cropped up in his department. of SD export until, late July/early August 1942, except for some interruptions to which we shall have to come back later. From that date until ho was finally recalled in October 1942, Graf was only statistically a member of EK 6. In effect, he had been assigned during this time to the Commander of the Sipo and the SD in Stalino and had to assist there in the organization of a department III. then Leader III of Einsatzgruppe C, Graf, during the entire period of his membership in EK 6, exclusively worked as the SD-expert III, which means in making SD-reports. discussed so often that I need not discuss it any furhter. With regard to the details of Graf's activity it is sufficient to refer to his statements which he made as witness on his own behalf in direct examination.

ly by the evidence - is, that the Defendant Graf during his attachment to the Einsatzkommando 6, or even during his assignment with other offices was never engaged in executive matters. The Defendant Graf did not, have anything to do with political investigations of any kind, nor was he ever present at trials of arrested persons or at executions. Considering the conditions prevailing at the Einsatzkommando 6, SD specialist Graf could without any trouble stand completely aloof from executive affairs and confine himself to his own sphere of activity. transport to Germany was never one of the duties of the Einsatzgruppen, and the Defendant Graf had even less to do with it. The defendant Graf had just as little to do with the segregation of Russian Prisoners of war in the Camps. Kommando. The attempt to entrust him at the time of his assignment as commander of the Security Police and the SD in Stalino with the leadership of a Kommando came to nothing because of the firm refusal of the Defendant. Unterscharfuehrer. Apart from a few men of the Waffen-SS, assigned to the EK 6, Graf had the lowest rank in the entire kommando. After perhaps one year he was promoted to Scharfuehrer and after a few months shortly before his recall from the East the defendant Graf became Oberscharfuehrer. These ranks hold by him very exclusively noncommissioned officers' rank. At no time during his assignment was Graf an officer.

ted which could entitle the Prosecution to include the defendant Graf in such assertions as:

"All defendants, as officers or members of the staff of one or several Einsatzgruppen, or their subordinate units, committed murder, atrocities and other inhumane actions" or:

"The defendants were commanders and officers of special SS-Groups, etc.", or:

"Each man in the prisoner's dock occupied a responsible position or a command in a liquidation unit. Each of them presumed the right to decide about the fate of human beings and death was the intended consequence of his power and of the contempt with which he was filled this trial - as far as the person of the defendant Graf is concerned then it is the following premise contained in the Opening Statement: "We shall demonstrate in this trial that the rank and position of these defendants carried in themselves the authority and the duty to exercise control over their subordinates." is this : Neither by virtue of his rank nor by his position had the defendant Graf power over life and death of people; he could neither order nor carry out nor prevent shootings. nor instigator, nor abettor; he neither gave his approval for the commission of the crime in question, nor was he connected with any persons or agencies a iming to carry out those crimes. ed in the charge were committed. The Fuehrer decree which formed the basis for the shootings by the Einsatzgruppen of Jews, Commissars and Gypsies was not conveyed to the defendant Graf during his service with t he Einsatzkommando 6. Fuehrer Decree was only issued to the Group and Kommando Leaders, not to the sub-leaders and men.

Nor was the order passed on to the men and sub-leaders of Einsatzkommando 6 during the assignment. Not even during his visit to Einsatzkommando 6 in Kriwoj-Rog did Himmler speak of it to the men as he did when visiting Einsatzgruppe D. satzkommando 6 carried out arrests, interrogations and shootings. The defendant Graf credibly asserted that he never learned of the fact that shootings were carried out without previous. legal proceedings or that persons such as Jews, Commissars, etc, were shot only because they were Jews or Commissars, The fact that the defendant Graf actually thought that no conviction or execution took place in Einsatzkommando 6 without legal proceedings and without proof of guilt according to the generally valid laws of war can not become more evident than it does by the testimony of the female witness Reimers on 8 January 1948. Frau Reimers described how Graf once conceled a crying Ukrainian woman, whose husband had been reported and arrested on suspicion of sabotage, in the most kindly manner and assured the woman that her husband would surely return after the investigation if he were innocent.

May it please the Tribunal; defendant Graf's human behavior in this situation is not the behavior of a man who knew of the Fuehrer Decree or who even suspected that people were shot without trial and without proof of guilt. Nor does a man act that way who, to use the words of the Prosecution, presumed the right to decide the fate of people and who considers death to be the intended result of the power and contempt he was filled with. No man acts that way who does not have the deepest respect for life and liberty of another man and who does not have the most profound human compassions for the plight of his fellowmen.

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Truth is not clad in golden resplendent raiment. It frequently bears the likeness of unlikelihood, It is more difficult to defend than a lie. It is not surprising therefore that the statements of the defendant Graf meet with scepticism and disbelief when they concern purely internal processes and when no testimonies or documents support the defendant. defendant that it is hard to believe that despite his comparatively long service with EK 6 and the daily contact with other members of the Kommando he had not observed anything of the mass shootings carried out by EK 6. A scrupulous and unbiased inquiry into the entire situation, however, cannot but lead to the conclusion that a doubt in the correctness of the defendant's statements does not appear justified from whatever angle one may look at it. almost 11/2 years. against this statement it must be pointed out that Graf served in EK 6 in Russia from the end of July 1941 till the end of July 1942, that is approximately 13 months. In the period between the end of July 1942 and the middle of October 1942, Graf was with the commander of the Security Police and the SD in Stalino. From the 13 months of Graf's service in EK 6 we must deduct, furthermore, his assignment to liaison leader Heyer, approximately from 20 July 1941, that is altogether about 5 weeks. Furthermore, we must deduct Graf's furlough from 20 December 1941 till 28 January 1942, which makes another 5 weeks, and finally, Graf's illness and subsequent sick-leave from end of Larch 1942 till about middle of June 1942, that is approximately 3 months. Thus, Graf's effective total service with Einsatzkommando 6, after a deduction of at least 5 months off the total of 13 months, shrinks to about 8 months. And during these 8 months his time was so taken up with the tasks in his sphere of work as not to leave him any time to bother about the affairs of other sections. As regards the assumption that the defendant Graf talked with other members of the Kommando about the occurrences in EK 6, it must be pointed out, in the first place, that apart from the assignment in Stalino, EK 6 was almost all the time on the move in an easterly direction, with only short stops at any one placed.

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ful that its sections could be put up in different billets according to their sphere of work. It must not be overlooked that Kommando 6 was never billeted in any one place as a closed body, but always split up into 3 to 4 sub-kommandos. The sub-kommandos were in different places, often 200 and even more kilometers apart. All these facts go to prove that Graf could contact only a small proportion of the Kommando members, Those among them whom Graf met and who had anything to do with the executions were not too communicative and even less so in front of the defendant Graf.

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The reason for this fact is to be found in the nature of things. From all the defendants and witnesses who somehow knew of the events, we have learned here in the witness stand, that the execution of the Fuehrer Decree caused a tremendous emotional strain to all the participants. It may be presumed as certain that those people felt the need to unburden their mind occasionally, in order to ease their spiritual trouble through a conversation with comrades who were in the same position. out it is equally certain, that all these people were very secretive toward outsiders, who had nothing to do with the executive, and who were not at all to be considered as full members, but, like the reporter Graf, so-called "paper soldiers." All this, one must consider in order to understand that Graf's claim, that he did not hear anything about mass executions of Jews, etc. by the Kommando during the period of his membership in EK 6, is entirely credible. the Prosecution, insofar they contain references by the activity of EK 6. The defendant Graf, who had nothing to do either with the shootings or with the reports relating to them, is not able to give any relevant information about the statements made in the documents about the activities of EK 6. We have repeatedly heard from other defendants, who had a certain amount of insight, that extreme caution was to be observed in regard to these reports. In this connection I want to point out myself the following facts which particularly struck me when perusing the documents. In the Report of Events of 6 March 1942 - it is Prosecution Doc, NO-3240, Exh. 80, in Doc. Book II C it is reported that the village of Gorlovka had been cleared of Jews by the EK 6. In two Reports of Events dated 10 April 1942, Doc. Book III A, Prosecution Doc. NO-3256, and 20 March 1942, Doc. Book III A, Prosecution Doc. NO-3234, Gorlovka is quoted as garrison of the SK 4b for the same period during which the EK 6. is said to have become operative there. Something must be wrong here. In the Report of Events of 25 February 1942, Prosecution Doc.

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NO-3340, Exh. No. 22, Doc. Book I, after naming the EK 6, there is a report on actions in Dnjeprpetrovsk, which are said to have been carried out in January and February. But the EK 6 was no longer in that town and in that area since 12 November 1941. In this connection I refer to the Report of Events of 14 January 1942, in Doc. Book I, Prosecution Doc. NO-3279, Prosecution Exh. No. 21, and to the Report of Events of 16 January 1942, Prosecution Doc. NO-3405, Exh. No. 42, Doc. Book II A. In both documents, Stalino, more than 300 kilometers east of Dnjeprepetrovsk, is quoted as garrison of the EK 6 for the period in question, a fact which confirms the statement of defendant Graf. Hence, there is not much to be derived from the Reports of Events. These documents cannot be construed as evidence against the credibility of defendant Graf, all the lees so, because, according to the statement of witness Hart -the Kommando Chief of EK 6, Sturmbannfuehrer Mohr, ordered executions to be carried out only after detailed examinations of the facts. In this connection I also want to refer to the affidavit of Friedrich Moeller, submitted by me. prising that defendant Graf should not have even once have come to see a mass execution in the course of one of his journeys. In reply to this, the fact must be emphasized that in general these executions were carried out in remote places and, as far as possible, to the exclusion of the public. Therefore it would have been quite a coincidence if defendant Graf on his way had just chanced to meet an execution. If an event, which in itself is possible, could only have happened by chance, one may not assume that its actual happening was probable. The defendant Graf denies that he ever has been even witness of an execution. There is no shadow of a counter-evidence to this fact.

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are not apt to create any justified doubt in the credibility of defendant Graf. It is the result of evidence that Graf neither can be considered as principal nor as accessory in the imputed crimes nor had any knowledge of the fact that these crimes were being committed. must essentially result from the evidence. 1 September 1939, of organizations which have been declared to be criminal by the International Military Tribunal and by paragraph 1 (d) of Article II of Control Council Law No. 10, namely the SD and the SS. securing of required manpower for tasks of special state and political importance (Emergency Service Regulation) of 15 October 1938, the defendant Graf was drafted for emergency service by the Landrat in Kempten who had jurisdiction over the defendant's place of residence, and was assigned to the SD-Aussenstelle in Kempten on a war supplementary status. The defendant Graf objected unsuccessfully to this drafting for emergency service at the SD section in Augsburg. later on he tried again and again to get away from the SD. When he was bold enough eventually to apply to the Wehrmacht direct to get enlisted, the only result was his transfer to Dueben and from there his assignment for Einsatzkommando 6 in Russia. Upon his return from the East the defendant was appointed in the late fall of 1942 as Deputy Chief of the SD branch in Kempten. In 1944 Graf took over the SD branch Kaufbeuren as Deputy Chief, Even after his return from his assignment in Russia he never gave up his endeavors to get released from the SD, but they proved until the end of the war just as unsuccessful, as they had been at the time he went to Dueben. Graf refused all invitations from his chiefs to join the SD organization.

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Under his liability for emergency service Graf had been attached to the SD as a temporary employee during the war, and there was no change in his relations to the SD until the end of the war. It follows from these facts that Graf has never become a member of the SD. The defendant Graf was nothing else but an ordinary civil servant in the SD, and not a voluntary one at that, but compelled by an act of government authority. For this reason alone the defendant Graf cannot be classed as belonging to the SD organization which was declared criminal by the International Military Tribunal. I quote from the IMT judgment:

"The Security Police and the SD was a voluntary organization."

"The fact remains, however, that all members of the Security Police and SD joined the organization voluntarily under no other sanction than the desire to retain their positions as officials." never apply to the case of defendant Graf.

In Doc. Book V C the Prosecution has presented a legal expert's opinion as Doc. No. 5814, Exh. No. 212, declaring that the Emergency Service Decree of 15 October 1940 with its subsidiary regulations would not offer a legal basis for call-ups to the SS or the SD.

This expert's opinion expounds the private views of a judge pertaining to questions which do not come up for decision at all in this Tribunal, while disregarding altogether all questions under discussion in this trial. the basis of the Emergency Regulations concerning liability of service, anyone had ever been called up for the SD, and in particular whether the Defendant Graf was detached to the SD in this manners. This question has been clearly answered. And even if the opinion, cited, had been correct, this could in no way have sweetened the pill of bitterness that the Defendant Graf had to swallow, namely that of the actual notification for liability of emergency service and his later transfer to EK 6. That notifications concerning liability for emergency service for the SD were sent out, generally, by the competent authorities, according to the official notice of 8 July 1939, and that there hardly existed a possibility to wangle one's way out, e.g. to neglect to comply with the order, is clearly demonstrated by the affidavit of the former Government Councillor Dr. Holz submitted by Counsel for the Defense on behalf of the Defendant Radetzky.

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That the defendant Graf had done everything in his power under the existing circumstances, to evade the order for liability to serve in the SD, has been clearly shown by the evidence. ly active in the SD, and neither that he did in fact possess any knowledge of the SD being used as an instrument for the achievement of criminal aims.

2.) Membership in the SS. became a member only in 1933. After having been ordered to join the SD on the basis of his liability for Emergency service he made application, in June 1940, for a renewal of membership in the SS having been urged to do so by his superior officers. Graf then became member of the Special Formation SD of the SS. To the general SS Graf had had no connections since 1936. Graf's re-entry into the Special SS-Formation SD was an inevitable consequence of his conscription for service with the SD. That is, he did not join it of his own free will. In any case, it has been established that Graf did no duty with the SS after 1 September 1939 and did not come at all into contact with the SS as such. On the other hand, his activity with the SD was entirely independent from his membership in the SS. Therefore it cannot be said that the SS had any authority of command over defendant Graf's actions. The Military Tribunal II acquitted in Case 4 versus Oswald Pohl and others, the defendant Volk of the charge of having been a member of the SS because it had not been established clearly enough if the SS had had exclusive authority of command over Volk's actions.

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he is not guilty of crimes against humanity and war crimes. There is no basis to the supposition that he knew of the above-mentioned crimes committed by the SS. The correct personal behavior of the defendant speaks against this supposition. defendant Graf is neither guilty on Count III. Matthias Graf and for his release from custody.

THE PRESIDENT: when the Tribunal reconvenes at 1:45 we will hear the two witnesses which are still outstanding and then -

DR. BELZER: I can't understand.

THE PRESIDENT: It doesn't affect you anyway, Dr. Belzer; you are through. And then we understand that Dr. Koessl will be ready to deliver his final plea in the Schubert case.

The Tribunal will now be in recess until 1:45.

(A recess was taken until 1345 hours.)

(The hearing reconvened at 1345 hours, 11 February 1948.)

THE MARSHAL: The Tribunal is again in session.

DR. HOCHWALD: If the Tribunal please, before the witness is called I respectfully move that the defendant Haensch may be placed in another seat in the defendants' box.

THE PRESIDENT: The defendant Ruehl will please take the third seat from the end - just exchange seats with Haensch. follows:

JUDGE SPREIGHT: Witness, raise your right hand and repeat after me: I swear by God, the Almighty and Omniscient. that I will speak the pure truth, and will withhold and add nothing."

(The witness repeated the oath.)

JUDGE SPREIGHT: You may be seated.

DR. KRAUSE for the defendant Haensch:

Your Honor, the witness Jauer has been named by the Defense. I would like, therefore, to stare with the direct examination of the witness.

THE PRESIDENT: We understood that you had submitted an affidavit.

DR. KRAUSE: Your Honor, the affidavit I shall not introudce after the witness has appeared here on the witness stand. I refer only to her statement she is making on the witness stand.

THE PRESIDENT: Will both counsel please come to the bench.

(Both counsel went to the bench and conferred with the Tribunal.) BY DR. KRAUSE:

A My name is Herta Jauer, Berlin-Zehlendorf. Teltower Damm 7.

Q When and where were you born?

11 Feb 1948_A_MSD_14&15_2_Gross (Hildesheimer)

Q What is your profession?

Q Do you have any special training for this profession?

Q What is your place of work at the moment?

A I am a dental assistant at the moment of Dr. Maennel.

Q When did you first start working with Dr. Maennel?

Q And what is the work at the moment, in detail?

Q Do you receive the patients?

Q Do you comply with telephone calls?

Q Are you a practical assistant to Dr. Maennel as far as the treatment is concerned?

Q And what at the correspondence and office work?

Q What does the correspondence comprise? has anything to do with correspondence or office work. been concluded?

Q Do you also deal with any letters, mail, and correspondence? practice? treatment about what has been done.

Q Do you also write down the date?

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11 Feb 1948_A_MSD_14&15_3_Gross (Hildesheimer) afterwards? is being tr ated.

Q In what way do you make out the bills? invoices are made according to the time. or is it also taking place during the time the patient is there, or what time or you do that?

THE PRESIDENT: Just a moment, please. Now the witness did answer your question. Than you put a very leading question to her which is not permitted. BY DR. KRAUSE: over and the bill is paid? into another closet.

Q How long do you keep the index cards?

A Well, they are never thrown away. They are kept until they are full - they are kept as long as that. back?

Q How far back are the oldest index cards in your collection?

A Before the War. The index cards have been put in a certain place from as far back as 1933. card which has been introduced here as evidence so I can discuss it with the witness. (The card was handed to the witness.) Witness, I have here an index card in front of me which I am now going to 11 Feb 1948_A_MSD_14&15_4_Gross (Hildesheimer) show to you.

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It boars the name of Dr. Haensch, Zehlendorf. Hartmannsweilerweg 16. Will you please look at this index card. Do you know this card?

Q Who made this particular entry on this index card?

Q Are all the entries your own? 1942.

Q Did you also make that entry?

Q Are you sure that it is your handwriting?

Q It strikes me. witness, that the handwriting on this index card isnot always the same. Can you give us an explanation concerning that?

A Well; it was written in a hurry at the time, sometimes one writes standing up or takes another fountain pen or any other pen, and the handwriting is not always the same.

Q How many patients did you deal with in one day?

AAbout 80 to 100 in those years. We had a tremendous lot to do in thos days.

Q Under the entry of 14 January 1942 you see a line. What does that line mean?

A You mean in the invoice or when the amount is mentioned?

Q Yes. Why did you make this line?

Q You say, that is addition then?

Q What has been added then?

Q Does that have anything to do with the making out of the invoice?

Q You say it is addition of the treatments. What actually did you add? You cannot very well..... the individual treatments, 1,2,3....

DR. HOCHWALD: If the Tribunal please, this is a leading question. The addition from the part of the defense counsel is unnecessary. He asked what did you add together - which is a complete question. He goes on to explain what she could not have done. is leading.

THE PRESIDENT: Please try to refrain from leading questions, counsel.

BY DR. KRAUSE: concluded on the 14th January 142. What does the further entry mean on the 7th of February, that is?

MR. HOCHWALD: If the Tribunal please, the prosecution does not recollect that the witness has made such a statement.

THE PRESIDENT: Now, the witness did not say that. Now, please don't lead the witness. You ask questions which will allow her to use her own discretion and her own judgment, her own recollection. BY DR. KRAUSE: why is the entry of 7 February not included in this edition? and therefore the addition line has been made where the treatment, or at least not the treatment was fin is lied, but that part of the treatment which is being paid for. then guarantee for the correctness and the accurateness of those entries whatever is entered on this card corresponds to the fact, that it is correct?

DR. KRAUSE: Thank you. BY MR. HOCHWALD: have executed an affidavit on the 27th of January 1948? me to hand you a copy?

Q Nevertheless, I would like to hand you a copy. You say in this affidavit that Dr. Haensch is known to you. How long do you know him?

A I have known Dr. Haensch only during the time of this treatment.

Q Where from do you recall his first name?

A That I do not know. If it is not entered in this card index, I am sure I have never asked for his first name.

Q But in your affidavit, you say, "Dr. Walter Haensch is known to me". Till you look now at the chart, does on the chart the first name appear. then his first name was "Walter"?

A Then it was put in at the attorney's, Dr. Kirsch, I have not paid attention to it, the lawyer Dr. Krisch, in Berlin-Zehlendorf, who actually made out the affidavit, then must have added the first name. not known to you?

Q It was not known to you?

Q Did you see Haensch after his treatment by Dr. Maennel had been finished in 1943?

Q Has somebody shown you a picture of his in thelast time?

Q Would you recall the defendant?

A That is very difficult to say. I am not sure. I don't know whether I would recognize the face after that many years.

Q Will you try? Look at the defendants.

cognize the face. I could not say.

Q So you do not recall him?

MR. HOCHWALD: If the Tribunal please, I wish that the defendant, Haensch, would show himself to the witness.

THE PRESIDENT: Well, if she doesn't recognize him, there is no point in showing him, then.

MR. HOCHWALD: I only want to know if she Will recognize him if he is shown to her. BY MR. HOCHWALD: your hand was found and who found it? because now we use new cards. The cards are now on the attick, aid there is only a small remainder of cards because one part of the cards was soiled and the remainder I put into the attick. remained?

A That is difficult to say. There are hundreds of them. There are certainly a few hundreds. one which is before you, if you know that?

A Well, there are private cards; they were on the writing desk and therefore they probably remained because those which I put down stairs in the card index box had all been thrown down and were soiled by the Russians. They have been destroyed. before you found among these hundreds of cards which have remained? put into large boxes in alphabetical order and therefore I could find it.

Q So you have told us now that you found the card. Who asked you to look for the card, please?

A Mrs. Haensch arrived and asked whether Dr. Maennel would perhaps make out a certificate to the effect that Haensch in 1942 had been treated by Dr. Maennel, and I said, "He will do so if this card index card can be found." Thereupon I looked for the card.

Q When was that, please?

A I cannot give a date. That must have been beginning of January?

Q How long did it take you to find the card?

AAbout three-quarters of an hour. I am sure it took as long as that.

Q That did you do then when you had found the card?

A I put it into a folder and told Dr. Maennel that I put the card there, he could now make out the testimonial. found the card and you have put the card to Dr. Maennel?

Q I am sorry, would you re cat your answer. I did not follow. and nobody over got it except Dr. Maennel. the stand that all the entries which were made on this card were made by you and were made on the dates indicated on the card, is that correct? word "telephone" and then look please to the entry of 7 February 1942. Is it not apparent from the card that these two entries were made by a person different from the person who made the other entries? for me. It may be her entry.

Q Witness, please, you did not answer my question. I asked you whether it is not apparent that the third line, the address or the word which is written opposite the printed ward "telephone" and the entry of 7 February 1942 are written by a person different from those or those who have made other entries on the card?

Q And who made then the other entries?

AAll the entries are mine. I only said on the 26th November that is probably the handwriting of my sister who might have taken my place for once.

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Q 26th November of what year? all entries were made by you is not correct? 26/11 -- November -- that probably was made by my sister.

Q Did you see the card when you made this affidavit? entries yourself if you knew that one of the entries at least was made by somebody else than by you?

A I did not see that. It did not strike me at all. Did you know when you made the affidavit for what purpose this affidavit was made? card, is that correct? line or opposite the printed word "telephone" and the entry of 7 February 1942?

Q Did you make these entries?

Q When did you make this entry?

A "Svenhedin Blatz". I wrote myself after Mrs. Haensch had come to see me and given me the new address, that was in January this year.

Q And did you write the entry of 7 February?

AAfter the patient had been there. When the patient was actually treated.

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after the visit of Mrs. Haensch? wrote the word "SvenhedinBlatz" with the same ink and at the same time also made the entry which allegedly was made on the 7th of February 1942?

A No, after Mrs. Haensch came to see me I wrote "SvenhedinBlatz". in January 1948?

A I don't understand. January 1948?

MR. HOCHWALD: I have no further questions, your Honor.

THE PRESIDENT: May I see that card, please? BY THE PRESIDENT: word "telephone"?

A No. The address after the word "telephone" I wrote myself.

Q And when did you write that?

AAfter Mrs. Haensch had come.

Q Why did Mrs. Haensch tell you to add that -- what explanation did she give to you which caused you to write this in -- What did she say to you -- why was it necessary to add that address? Maennel was to be sent there by post and therefore she told us they were living somewhere else now, therefore, I put it in pencil on an envelope and when I found the card I added that.

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Q Well, did Mrs. Haensch tell you to add this to the card?

Q Well, we still don't understand why it was necessary tto add that address to the card. to Mrs. Haensch. I had written the address on an envelope and generally one throws these envelopes away, and therefore I put it on the card.

Q Well, why didn't you give the card to her when she was there?

A I hand't found it then. It was only the next day that I went upstairs and looked for the card.

Q Well, then did you mail it to her?

A No. Mrs. came here to fetch the letter. she was going to call for it personally?

A I didn't know that she would come. She actually did come on the next but one day and the letter had not been made yet. were to mail the card to her?

A No, not the card, only the letter by Dr. Maennel -- the --the medical certificate which she had asked for, that is what she wanted.

Q The affidavit you mean?

A No, only the letter to the effect that Dr. Haensch had been treated in 1942. card which had nothing to do with the mailing of the certificate? the-way on this envelope, I also put it on this card. There is nothing unusual about it, I just put it there. manent record? address and they tell us about these addresses, we put them on the index card.

add this item of February 7?

Q Which entry was made by your sister?

THE PRESIDENT: Let her point it out and then show me. BY THE PRESIDENT:

Q How many other entries were made by anybody else?. thing also on the card was written by you?

Q Is that correct?

Q Now, you remembered Dr. Haensch coming there for treatment, do you? Do you remember that Walter Haensch came there for treatment in 1941, 1942, and 1943?

AAfter Frau Haensch had said whether Dr. Maennel would make out a medical certificate, I assumed that the patients had been there and therefore I looked for the card index card.

Q Well, then after you had spoken with Mrs. Haensch, did you recall Haensch having been there for treatment? activity "Dr. Walter Haensch" then with the address "is known to me"-why did you say that if he wasn't known to you? out the affidavit and therefore I knew, as I had written it myself, that Dr. Haensch had been treated, only from this card.

Q Did you remember his first name?

A No. The first name, if it was not contained on the index card, I did not know it.

Q Well, this affidavit says that Haensch was known to you. Do you mean that?

A I only know Dr. Haensch from the treatment he received.

Q Well, then you do know that Haensch came there for treatment? had been there.

Q Then you know that Haensch had come there for treatment? A Yes. three years, about 12 times, is that right? for one treatment?

Q Well, I said "the average", would you say that this was more than the average or less than the average, you were treating from 80 to 100 patients per day, weren't you? repeat? days until the treatment had been completed. times one patient would be treated before his treatment was complete?

A Roughly throe to four times. That depends on what is wrong. per day, do you realize how many visits there would be in a year's time? Say, on the average of 90 per day, let us say 300 days per year. Do you realize into what figure that goes?

A I. Yes.

Q And over a period of 3 years that would 81,000 visits wouldn't it?

A Well, now, of course, patients kept returning. They are not always now patients. one patient would have before his treatment would be completed and you told me on the average of 3 or 4 treatments. treated, then he has to return 4 to 5 times; if, of course, he has pain again after about 8 weeks -- well, of course, that is very difficult to say.

Q Very well, now you have a recollection of Haensch, haven't you, of Haensch coming there during 1941, 1942, and 1943 -- you remember his coming there, don't you?

A I don't remember it now, but he must have been there because I made the entries on the index card, other wise, the index card would not even exist.

as an ink entry -- as an individual -- do you remember hin as a person, Haensch, coming there for treatment?

A That is difficult to say. I could perhaps say that he was a tall man, but it is too long ago and I can't say for certain, The name, when Mrs. Haensch came for this, I did know that Haensch had come once for treatment. The name was known to me.

Q Then you do remember him? according to these figures, at least 20,000 people, you remember that Haensch is a tall man. Is that what you are telling us?

A I cannot say with certainty. I do not know. not recall Haensch as a man, not as an entry.

Q You don't have any mental image of him? him in the defendants' box. One often sees faces and one believes to have seen then before because very often I do recognize the patients in the office, and especially when I hear their names later on and. when I see the patients. I can remember when former patients of the year 1939 and 1940 returned again. In our business one does remember them.

Q Look at the defendants' box. Is it the first man in the first row? Is that Haensch over there, the rather handsome man, smiling?

A It is possible, but I do not know. I really do not know.

Q Is it the first man in the second row?

A No, that is quite impossible. It couldn't be he.

Q Is it the second man?

Q Is it the thrid man?

A I really couldn't tell you. No, it is not Haensch. It isn't he either.

Q Well, is it the fourth man?

Q Look very closely in the defendants' box now and see if you can recognize him.

Q The third in the first row?

A No, against the wall. It is the second row, Your Honor.

Q The third from where?

Q There are two rows. The first or the second row? image of this person? when they return after years, hut I just saw him for the first time now without the glasses and I assume that is Dr. Haensch. you remember this man as being Haensch?

A I assume that it is he, but I couldn't say with certainty. man?

A No. not by any means. there, the man you have identified?

A No, that I couldn't do. person whom you are trying to recall?

11 Feb 1948_A_MSD_18_3_Arminger (Hildesheimer) am not sure.

Q Which one is that?

Q The fourth from the end?

Q Now, what makes you think that he is Haensch?

A I couldn't tell you. mind, because you couldn't make these comparisons unless you had a prototype to draw from. Now tell us from your memory just what Haensch looked like.

A From the treatment that I can't actually say today. I only said that it is possible to recognize a face.

Q All right, now, you have given us two possible people. Look a little bit further. See if there is anyone else there that looks like the image you have in mind. before.

Q Which one?

Q And how about the fourth?

A I seem to recognize that face too, but I couldn't say.

Q Now, why can't you identify Haensch in that defendants' dock, when you saw his picture just a few days ago?

Q You looked at his picture before you came here to Nurnberg. Mrs Haensch showed it to you.

Q You haven't seen a picture of the man that you think is Haensch at all in your life?

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11 Feb 1948_A_MSD_18_4_Arminger (Hildesheimer) saw over a period of three years, that you can recall one individual person? again after years; people who have been patients in 1939, if one sees the fact again, one can remember when one sees that face again, and, if the patients also say that they have been treated before, then one might be able to remember the face. to the name of Haensch wear glasses?

A I could not say that. That much I do not know. That, of course, one cannot remember.

Q Well, why didn't you remember the glasses. That's part of the picture of a person's face, if he wears glasses? him with or without glasses.

Q But you would remember whether he were glasses or not, wouldn't you, if you saw him twelve times?

A That I couldn't say.

Q (To the page) Please hand this to the witness. We had bettor use a pen. Please write on there the figures, "7, 2," and then the letters "p o l".

A (The witness did as requested.)

Q "P o l" Is that third letter an "1"?

Q Please write on here, the word, "Zehlendorf."

A (The witness did as requested.) I want to ask you to look once again in the defendants' box and tell me whether you are willing to state on your oath that there is anyone in that box that could be Haensch, the man who came to your boss's office for treatment, if there is anyone there, and can you state that on your oath?

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11 Feb 1948_A_MSD_18_5_Arminger (Hildesheimer)

A No, under oath, I can't state that that is Dr. Haensch. totaling line on April 23 and then later wrote the figures "7, 2." Why does "7, 2" follow 23-4?

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A. That was a treatment which was not charged for, and therefore it wasn't added in.

Q. Why wouldn't this item, "7,2" be above the totaling line, since it precedes it in date?

A. That is a treatment which is not charged for and therefore it is not entered.

Q. Why don't you charge for polishing?

A. That is part of the treatment and it isn't charged for as a rule.

Q. What kind of a treatment was given prior to polishing? Some fillings, a filling ?

A. Yes, yes, a filling was made.

Q. Yes, and after every filling, there is a polishing, isn't there?

A/ Yes, every patient is asked to come for a polishing,

Q. Now, please tell the Tribunal why there isn't a polishing entry after the fillings which were introduced on the last item of that card?

A. The patient probably did not appear again, otherwise it. would have been entered.

Q. And why didn't he appear?

A. That I. do not know.

Q. Well, he apprared for the first tine. Why didn't he appear the second time?

A. Every patient is asked after a filling has been made, to come again within the next eight days, to come again for polishing,

Q. You say, after eight days?

A. Yes.

Q. Is that right?

A. Well, that again depends -

Q. Tell me how many days intervened?

A. A few days. In any case the patient is asked to come back.

Q. Tell me how many days intervened between January 14 and February, Is that eight days?

A. No.

Q. It is three weeks, isn't it?

A. Yes.

Q. Now-

A. It doesn't really matter, the date when the patient returns. I said every patient is asked to come back, but when he does come back it does not matter to us.

Q. Is polishing part of the job, part of the repair work?

A. Yes, it is important.

Q. It is important?

A. Yes, it is of considerable importance.

Q. Now, no patient goes to a dental parlor just for fun, does he? No one goes for entertainment purposes.

A. No.

Q. On the contrary, it is proverbial that one tried to avoid going to a dentist until the situation is such that he just must go. That's understood, isn't it?

A. Yes.

Q. But when a patient is confronted with the necessity of having his teeth attended to, then he goes, doesn't he?

A. Yes.

Q. Now, this patient was so much concerned about his teeth in February 1942 that he came back for that polishing process, didn't he?

A. I don't know whether he worried, but in any case he was there.

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Q. He came. The record shows he came.

A. He must have been there. Otherwise the entry would not have been made.

Q. Now, can you explain to us what process of reasoning caused this patient not to come for those other fillings in 1943?

A. I do not know.

Q. The same doctor, the same patient, the same clerk, the same kind of work. Yet he reacted differently, when it came to the two fillings which were introduced. You have no explanation for that?

A. We cannot go and fetch the patients by force, if they don't come back for polishing, It happens quite often.

Q. Did you send the police after him to come back on February

Q. Did you send the fire department for him to have his teeth polished on February 7?

A. No.

Q. No came voluntarily, didn't he?

A. Obviously.

Q. Do you know why he didn't cone voluntarily a few months later

A. No, that I do not know.

Q. Is ther any other item on here that doesn't call for payment?

A. Ho. I would have to look at the card again. I would have to see it again.

Q. All right. Please look at the card and tell me if there are any otheritems there which do not call for payment.

A. Yes, there is a trepanation, so-called, which I never charge for, in the first treatment, that is, there follows either an extraction of -

Q. Let us see the card.

A. Where there is an extraction.

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Q. What did you call that treatment?

A. A drilling. It is a drilling of the teeth, an opening of the tooth.

Q. And you don't charge for that?

A. No, if the patient returns, it is charged only very rarely and that again depends, as I say, either the tooth can to treated again, or it is extracted.

Q. Now, witness, I would like you to have explain to us why it is that the address watch you wrote in January, 1938, was written with exactly the same ink that was used in the writing of the entry of 7th February. Now look at it very carefully and tell us why the same type of ink was used.

A. I cannot see that.

Q. Well, you see it is the same ink, Tell us why it happened to be the same ink.

A. I cannot see that.

Q. You say it isn't the same ink? Do you say it is not the same ink?

A. We had fountain pens, ink, and fountain pen ink.

Q. Well, please tell us Whether it is or is not the same ink.

A. I could not say that.

Q. You mean you can't tell us?

A. No.

Q. Or that it is not the same ink.

A. I could not tell you.

Q. You say you don't know whether it is the same ink or not?

A. I could not say whether that is the same ink.

Q. Well, then, it could be the sane ink?

A. Moll, that is impossible, becasue -

Q. witness, just a moment. Just a moment. I asked you first if you know whether it is the same ink or not. How answer that ques tion.

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A. It cannot be the same ink, because I only wrote the address now, in January 1948.

Q. That is the only reason you give?

A. Yes.

Q. All right. Let's see that, please. Now, when you made these entries on the card, did you usually dip from the same ink well?

A. No, We had fountain pens and I had a pen and ink and very often we used different fountain pens.

Q. How many fountain pens did you have?

A. No, fountain pens and one ordinary pen and ink.

Q. So that you had three different types of pens?

A. Yes.

Q. All right, now, please tell us why from 16 November 1941 to the lit of January 1942 you used always the some pen and ink and then suddenly on February 7, decided to use another pen and other ink? Tell us why you made that change?

A. Often another pen was used. First there is a pencil mark. It has been written in pencil first, as a matter of fact, and then it has been added in ink. Dr. Maennel had another fountain pen, perhaps, that was just lying about. I couldn't say.

Q. You used the boss's fountain pen also?

A. Yes, also on occasion, when it was there, it was also used.

Q. Yes, and how many times did you use the boss's fountain pen?

A. I only say, when it was lying about, when he forget to put it in his pocket, of course, it was used.

Q. And was it with the boss's pen that you wrote this entry of February 7?

A. I made the entry.

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Q. Was it with his pen?

A. That I couldn't say today, what land of fountain pen that was.

THE PRESIDENT: The witness will not be allowed to speak to anyone during the recess which will take place for fifteen minutes.

( A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

Q. (By the President) Witness, the month of April follows the month of February, doesn't it?

A. I beg your pardon?

Q. The month of April is later in the year than February -February, March, April?

A. Yes.

Q. So that if you would make an entry in February anywhere on a sheet of paper, an entry made two months later would be lower down on the sheet ordinarily, wouldn't it? That's right, isn't it, ordinarily speaking?

A. Yes, yes.

Q. All right. Now you recall on this card that you sent out the bill on April 23, but yet the item of Feb, 7 does not appear before April 23. That is correct, isn't it?

A. I would have to look at it first.

Q. Look at it. The item of February 7, does not precede the item of April 23 in point of deapth on the sheet.

A. Well, it is on the same line.

Q. On the same line? Very well. Let me have that. You didn't give that an item a line by itself, did you, a line by itself?

A. No, this is a treatment which is not charged for.

Q. And therefore you did not give it a full line?

A. No.

Q. That is the reason you did not give it a full line, because you didn't charge for it?

A. Yes.

Q. Now, please, explain to us why you gave a full line to the first item for which you didn't charge anything either? You have a full line there, haven't you, for that first item?

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A. Yes, this was done in October, 1942 already.

Q. But you gave it a full line?

A. Well, another treatment was necessary for that tooth.

Q. But you gave it a full line and placed a diagonal in the space which you usually reserved for the price, correct?

A. I don't quite understand what you mean here.

Q. I will call your attention to the first item for which you say there was no charge. Although there is no charge you did make a mark. You placed a symbol of some land within the column intended ordinarily for the price, is that correct?

A. Yes, for this treatment in October, the extraction was char. for.

Q. Well, you do not charge for the first item, do you? You told us that before recess.

A. Yes.

Q. All right, but at the end of the line you placed a mark. like that, a diagonal, which indicates no price, is that correct? Please look at that first line, the first item. Do you see that?

A. Are you talking about the treatment in October?

Q. The first item.

A. During the first treatment, yes, I see it now.

Q. All right. In the column which ordinarily carries the cost of the treatment, you only have a diagonal, like this?

A. Yes.

Q. That means there is no charge, for that, is that right?

A. Yes.

Q. Now, please tell us why you didn't make the same kind of a symbol on February 7, for another item which did not call for payment?

A. Well, in the case of the first drilling, the first treatmen, the treatment was continued, the tooth was treated after that.

Q. But when you administered the polishing treatment of Febuary 7, you have not yet decided to charge the man, because the bill didn't go out until April 23, so why didn't you carry the item across the shoot and make the same kind of a mark, as you did above?

A. Well, the treatment had been concluded then. I did not have to do that. Here in this case, the treatment had been concluded and therefore I made the account for the treatment and this entry of the 7th of February then came on the sane line at the totaling.

Q. But the totaling did not come, the totaling did not come immediately. It was two months later, two and a half months later.

A. Yes.

Q. So, therefore, you had plenty of space to put this same kind of a mark, didn't you?

A. Yes.

Q. You didn't know that the patient night not return again in February or March or the first part of April. You had no way of knowing whether he would come back or not?

A. Yes.

Q. So that you wouldn't total the figures until you were ready to send out the bill, would you?

A. No.

Q. Then it is incomprehensible to me why you would have this totaling line which refers to April 23 above the item of February 7.

A. Well, I just said, because it was not charged for, I did not include it.

Q. Very well. Now, you treated from 80 to 100 -- Well, first let me ask you about this last treatment again. Please look at that.

A. What is that' last treatment?

Q. The last one on the card.

A. Those are fillings, two fillings.

Q. Two fillings?

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A. Yes.

Q. Now, how much time would the dentist spend with a patient to take care of two fillings?

A. That all depends.

Q. Well, generally.

A. It depends on what kind of a tooth it is, what is the matter with it, how bad it is.

Q. What would be the minimum of time to do one filling?

A. Well, one cannot really say. It depends entirely on the tooth. This was a treatment of the root. There are teeth which take months to treat.

Q. Well, I am only speaking of one visit. Would it last about a half an hour?

A. Well that depends on how long the patient has to wait. We work according to a time schedule, but one can't always keep to that.

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Q. Now, please look at that card and indicate generally, since I preseme you are failiar with the various treatments, how much time the patient was in the chair each time he came there.

A. Two fillings?

Q. Two fillings, how long for two fillings?

A. Twenty minutes. Well, that depends again on how much has to be drilled.

Q. All right, and how long for a polishing process?

A. That is very quick, the polishing doesn't take long at all.

Q. Fifteen minutes?

A. No.

Q. Ten minutes?

A. No.

Q. What hind of polishing did you give?

A. Ton minutes or eight minutes, not longer than that.

Q. All right. How much time for the trapaning process which you mentioned, that first item?

A. A trepanation, yes.

Q. A trepanation, yes.

A. That all depends how bad the pain is, what kind of pain the patient has.

Q. You have to drill through a crown, don't you?

A. Yes, the filling has to be taken out first or the crown has to be drilled open, and then it depends.

Q. That would take about a half hour, wouldn't it, for a process of that kind?

A. Well, it is hard to say. Sometimes it is very quick. If the channel is quite free and one can got at the root very easily then it is very quick, but sometimes it takes at least half an hour. quarter of an hour or twenty minutes.

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Q. All right, let's say twenty minutes on the average, although that sounds pretty rapid. Take the next item on that card, what is it?

A. That is a temporary filling.

Q. How long would that take, about fifteen or twenty minutes ?

A. Well, for the first temporary filling it takes about ten minutes, but then the channel has to be cleaned up again.

Q. Well, you would say that on the average at least fifteen minutes was given to a visit, wouldn't you? You have one a half hour, another twenty minutes, another ten minutes. A pretty fair agerage would be -

A. No, it is not always like that. Yes, but there are eases when it only takes two minutes or where the temporary filling can be changed very quickly.

Q. It takes two minutes?

A. Every treatment varies.

Q. It takes two minutes just to get in and out of the chair. Tell me what treatment you can dispose of in -

A. Well, I am only talking about the temporary fillings as such done by the doctor.

Q. You tell me what treatment it is that can be done in two minutes. I would, like to know who this dentist is because that is pretty rapid treatment. Tell me what treatment you can do in two minutes?

A. Well, it is very quick. For example, when one changes a temporary filling that is very quick.

Q. You can do that in two minutes?

A. Two to three minutes.

Q. You can do that in three -

A. From the time when the doctor starts.

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Q. Hell, altogether from the time that the patient arrives in the office and leaves the office, how much time would expire on the average?

A. Ten minutes.

Q. Ten minutes?

A. Well, from the moment - when the patient sits down in the chair until the moment when he leaves the chair.

Q. That is ten minutes?

A. Ten minutes, on the average.

Q. That is on the average, yes. How many hours a day did you work; how many hours a day did you have your office open?

A. We worked all day. We hardly had. any break for lunch,

Q. Well, all right, how many hours would that be?

A. We started about a quarter to nine and mostly worked through the lunch hour until eight, eight-thirty every evening, every day.

Q. You didn't stop for lunch?

A. We just ate very quickly but then the patients already arrived again.

Q. And the dentist did not stop for lunch?

A. No, I just said hardly. There-were days when we were at rest for an hour but on the whole it was constant.

Q. Well, he would stop for lunch, wouldn't he?

A. Yes, we would eat, of course,

Q. And on the average how much time did you have for lunch perday?

A. Well, sometimes we didn't even have time to sit down because the bell was ringing again, There was nobody else there.

Q. Now, witness, you know that it is absolutely impossible to treat one hundred patients perday every day, day in and day out, allowing for only ten minutes, which is a very small average per patient.

You Know that is impossible, don't you?

A. Well, but there were so many patients.

Q. You treated eighty to one hundred patients every day?

A. Yes.

Q. Do you realize that on the basis of only ten minutes per patient you would have to work sixteen hours continuously per day?

A. Well, I said sometimes it is very quick with some patients. It doesn't even take ten minutes. It is hard to see that, but there were so many Patients.

Q. Well, there were some that would take a half hour?

A. Yes, because of extractions or injections and people who had to wait.

Q. Well, that would lengthen the average, wouldn't it?

A. No, it is vary quick, because the patients which get out again, they just get the injection and in the meantime we can go on treating someone else.

Q. Hay I have the card back? (The exhibit was handed back to the President.) How long did you speak with Mrs. Haensch before you came dorm here to testify?

A. How long?

Q. Yes.

A. Well, it was very quick. She just asked me whether the doctor could write out the certificate.

Q. Everything is done very quickly in your office, conversations, extractions, trepanations, polishings?

A. Certainly.

Q. Yes, and this addition was made very quickly too, wasn't it? this February 7th?

A. No, the additions are made in the evenings and sometimes I even made them on Sundays, I made the bills.

Q. This entry of February 7th was made when?

A. That was made when the patient was there 7 February.

Q. Did you always make the entry the same day that the treatment occurred?

A. Yes.

Q. Without fail?

A. Yes.

Q. Would you please indicate to me what you mean by this angular line which precedes every item? (Indicating)

A. Well, that is the statement concerning the tooth, whether it is on the right or the left or the upper of the lower, and the figure is contained in it.

Q. Well, what does that mean when it is like this (indicting)?

A. That is the left top.

Q. That means the left top. All right.

A. Yes, the left top.

Q. Yes. Now, please tell us which tooth it was which was polished?

A. Well, it was that tooth that had been filled.

Q. Well, left or right, left top, right top?

A. The one that had been treated before.

Q. well, how do you know that?

A. Well, if the tooth is to be polished then only that one is polished which Dr. Maennel has filled.

Q. Do you use this with each item (indicting)?

A. No.

Q. When did you use it and when did you omit it?

A. When that tooth is treated.

Q. When do you use it and when do you omit it? How do you decide when to use this angle and when not to use it?

A. When a tooth is treated the angle is entered and then when it is polished it is not necessary to do so because we know which tooth is to be polished, which one we have filled.

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Q. Suppose that you do a trepanation job and then the patient comes back for treatment of that same tooth, do you use the angle?

A. For a trepanation, yes.

Q. When he comes back a second time, do you use that angle?

A. Yes.

Q. Well, you know it is the same tooth, why must you use the mark?

A. Well, for temporary fillings, etc., it is necessary. One just does it.

Q. Well, you use this mark in order to identify a tooth, don't you?

A. Yes.

Q. And you would use that each time the patient arrived, wouldn't you?

A. Yes.

Q. To identify the tooth?

A. Yes.

Q. Well, please tell me why you don't have it as against the February 7th item?

A. Well, this is a polishing operation and we know that Dr. Maennel had treated that tooth.

Q. Well, you knew what he had done in those other instances. It was always the same tooth. Why did you need to identify it each time when it was always the same tooth but yet omit it on the February 7th item?

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A. Well, it was never entered for polishing the tooth; the tooth is never marked.

Q. Well, you are merely saying that doesn't explain it. A person comes in end he must have, let us say, the upper seventh -- just to give some number. He gets & treatment, then he comes back again. It is still the upper seventh and you use that line in every instance, don't you?

A. Yes.

Q. How would you compare it against the February 7th item?

A. Well, when it is polished it is not a marked specifically.

Q. He still has to know which tooth to polish, doesn't he?

A. Well, we know. It is written above that.

Q. Well, in those other instances, it is Written above else. Let's have the card. Now take this item of 1 November 1941. Then it is followed by the item of 13th of November. Tell me whether it is the same tooth. Does the second item refer to the same tooth as the first item?

A. Yes.

Q. Why do you use the angle then? You know it is the same tooth.

A. Well, these matters -- those are temporary fillings, etc. and that is usual. That is what one does for fillings and temporary fillings. It is usual that the tooth is marked.

Q. Well when a patient comes in to have a cert in tooth polished because some work had been done to that tooth, the dentist has to know which tooth, doesn't he? He just doesn't polish any tooth at random.

A. No. When a patient comes and asks us that this tooth is to be polished because it is sharp, then the doctor does it but after a continuous treatment, it is not necessary because it is not charged for and it is not usual that the tooth is marked. One simply writes "polishing".

Q. Then your explanation is, the reason you do not use this angle mark is because there Was no charge for it, is that right?

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A. Yes, and because it is not the usual practice to mark that tooth when it is only polished.

Q. All right, if you don't make that angle only because there is no charge, why did You make the angle against the first item for which there was also no charge?

A. Well, in the case of the trepanation, the doctor has to know after the second treatment which tooth he has worked a trepanation on.

Q. Well, he has to know also which tooth to polish, doesn't he?

A. Well, we know which tooth we have treated.

Q. Well, wouldn't you know which tooth you had done the trepanation on?

A. Of course, the doctor can see that, but that saves him looking at the tooth again by merely looking at the card. Then he knows what he has treated.

Q. Why does he have to go on a searching expedition to find a tooth which must be polished. why couldn't you put that same item against the polishing operation?

A. Well we know, because on the top seventh on the left he has had a filling, and we know which tooth is to be polished.

Q. Well, why wouldn't you know after a trepanation job which tooth it was that had to be done?

Let us take the third item. On the first time you have done the trepanation job. Then he comes again on the 13th of November, still the same tooth, and you do something else. The he comes on the 26th of November and you treat him again, the same tooth. Then he comes on the 3rd of December and you treat him again. By this time you ought to know which tooth it is, wouldn't you? One, two, three, four, five-you have treated him five times. You know by this time which tooth it is, don't you?

A. Yes.

Q. Then why must you make thisangle each time?

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A. Well, because that is the usual practice. One just does it.

Q. Well, why isn't it usual practice when he comes for his other treatment which is the polishing?

A. No. I can only repeat that is a matter -- in most cases, the patients don't come back but many of them do come back and it is simply noted down briefly when the patient has come. It is just noted down that the tooth has been polished.

Q. When he does come back for the polishing, it is important that you polish the right tooth, isn't it?

A. Yes.

Q. Well, if you use the angle line for identification on the other treatments, then why wouldn't it be necessary for the identification of thepolishing job?

A. Well.

Q. When you don't charge, do you use a whole line or not on this card?

A. Well, I have to enter it.

Q. When you mentioned the polishing job, you did not use a whole line because there was no charge, that is right, isn't it?

A. No.

Q. Well, maybe you don't understand the question. When he came on February 7th and had that tooth polished, and you made the entry on the card, you did not give it a whole line on the card because there was no charge, is that correct?

A. Yes, yes.

Q. That is your explanation, isn't it?

A. Yes.

Q. All right, now please tell us why you give a whole line to the treatment of 23 October for which there was also no charge?

A. Well, treatment was continued then. We did not yet know what was to become of the tooth, whether we would have to continue treating the tooth.

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Where was I to write about the extraction? I had to start a new line.

Q. You still made no charge for the item? You made no charge for that item?

A. No, the trepanation was not paid for.

Q. So therefore your explanation that the reason you gave only half line to the polishing job of February 7th because there was no payment expected is not the explanation for giving only half a line, is it?

A. This treatment had been concluded at the time, in fact, and therefore I did not hove to leave that line empty and therefore I made the totaling line one line higher up.

Q. But you did not know when you entered the item of February 7 that he was not going to comeback for some other treatment, did you? You couldn't tell whether he was coming back or not?

A. No, after one polishing, one treatment has been concluded.

Q. He could have come back on March 1st for some other kind of treatment, couldn't he?

A. Then he would have had to have pains again.

Q. He could have come back on March 1st for another tooth.

A. Yes, but now the tooth had been looked at and it could not be expected that something would occur, would go wrong.

Q. I said some-other tooth. He could break another tooth.

A. You mean the polishing?

Q. Witness, we have an item here February 7 polishing. Is that correct?

A. Yes.

Q. You did not send out a bill until April 23?

A. Yes.

Q. So it was perfectly possible for him to come back in March for some other kind of treatment?

A. Well, if he had come, then of course we would have continued to treat him.

Q. So that you did not total these items until April 23?

A. No, they Were totaled when the bill was sent out.

Q. So you still do not give us an explanation why your totaling line, which was dated April 23, would precede the item of polishing which was February 7?

A. Well -

Q. Anything else you want to add? That is the explanation you had given.

A. No.

THE PRESIDENT: All right, Mr. Hochwald.

MR. HOCHWALD: If the Tribunal please, I have no further questions but it would be possibly adviseable that the witness should stay ready until after the testimony of the expert Witness on handwriting so that further questions which may arise from this testimony could be put to the witness later.

THE PRESIDENT: Yes, Just one other question which Judge Dixon suggests. BY THE PRESIDENT:

Q. Is the name Haensch a very unusual name in German?

A. I really don't know.

Q. Well, do you know of any other Haensches? Have you ever heard the name in any other connection?

A. No.

Q. But it is possible that there could be someone else called Haensch?

A. Well, I never heard that name and I do not recall any other patients who had that name, Haensch.

Q. But you do not know the defendant Haensch personally, do you?

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A. No.

Q. How do you know that the treatments recorded on this card were administered to Walter Haensch, one of the defendants inthis case? You don't know, do you?

A. I beg your pardon.

Q. I will put the question a little more simply. You do not know Walter Haensch, one of the defendants in this case, personally?

A. No.

Q. So that when you talk about Haensch, you talk about the individual who came into your office?

A. Yes.

Q. You do not know whether the individual who came into your office is the same man who s the defendant in this case of your own personal knowledge?

A. No.

Q. We would like to have you remain if you will, available, because you might be called later after we hear another witness.

THE PRESIDENT: Marshal, would you take care of the witness so that she will be comfortable?

Does the defense counsel desire to put any further questions? Very well. DR. HOCHWALD: If the Tribunal please, the prosecution would like to call at this time the witness Commander Francois Bayle.

THE PRESIDENT: Let the witness be called.

DR. HOCHWALD: If the Tribunal please, the witness who is a French citizen will testify in English. he will have an interpreter stand by if he should feel limited in his expressions and therefore need an interpreter.

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11 Feb 1948_A_MSD_24_1_Spears (Juelich)

JUDGE DIXON: Will you raise your right hand, please? Do you solemnly swear that the evidence you shall give to the court in this action now on trial shall he the truth, the whole and nothing bu the truth, so help you, God, and do you so swear?

THE WITNESS FRANCOIS BAYLE: I shall swear.

JUDGE DIXON: You may be seated, BY MR. HOCHWALD:

Q. Commander, will you please give the Tribunal your name, your rank, and your official position?

A. My name is Francois Bayle. and my rank is Commander in the Medical Corps of the French Navy.

THE PRESIDENT: Commander, please spell your second name.

THE WITNESS: My first name is Francois __F_R_A_N_C_O_I_S. My last name is Bayle __ B_A_Y_L_E.

THE PRESIDENT: Thank you.

THE WITNESS: I am Commander in the Medical Corps of the French Navy, and a specialist of Neuro-psychiatry. BY MR. HOCHWALD:

Q. Go on.

A My education and training are the following. After two first years of medical studies begun in Paris, I entered the main Naval Medical School in Bordeaux, received my doctor of medicine degree and state examination in 1928, interne in 1929, became assistant doctor in the neurological and psychiatric clinic in Toulon, and received the degree of specialist for hospitals in this field in 1936. I was for four years the director of the applied psychology center of the naval laboratory in Toulon, and later on directed an institute for applied psychology in Claimant University. In the same time I took my degrees in philosophy. I always have been interested in handwriting, which from the very beginning appeared to me as the recording of the numerous and delicate gestures through which everyone 11 Feb 1948_A_MSD_24_2_Spears (Juelich) expresses his main characteristics.

The value of these analyses of handwriting is proved by the more fact that no handwriting looks like another.

Q. May I interrupt you for a moment, Commander? Can you tell the Tribunal whether, if any experience you have as a court expert as to handwriting?

A. I had approximately 12 years experience in the experimental study of handwriting. My expert training in these fields started in 1935, and consisted in the study and application of the works of the two main specialist, French specialists --I mean in this field. Crepieux_Jamain and Carton. Crepieux_Jaimain's works on the question are known the world over, and he is considered as the creator of modern scientific handwriting study. Has man works which are wellknown to me are the following: Practical Treating of Graphology, Handwriting and Characters, Fundamental Basis of Graphology. Age and Sex in Handwriting, Elements of Scoundrel Handwriting. ABC of Graphology. and so forth. I have been also a direct and personal pupil of his coworker, Dr. Carton, who died three months ago and who wrote in particular, Mentally Diagnosing by Handwriting, Diagnosis and Conduct of Temperaments, Medical Arts. Keys of Individual Diagnosis, and thirty important works books. Since 1935 I have used my knowledge of handwriting in performing such work. Moreover, I was utilized last year during the medical case as an expert the study of one handwriting during the medical case. out of some files under the heading, "Dr. Haensch, Hartmannsweller Weg 16?" I will hand you the card. all the entries with the exception of one, the date of which I do not know, but if you would hand me the card, I can tell it to you-with the exception of an entry which appears on the date of 26 November 1941, 11 Feb 1948_A_MSD_24_3_Spears (Juelich) that she has written all the entries herself.

She has further testified that the entry on the third line of the card, which appears opposite of the printed word "telephone" was written "by her in January 1948. I ask you, according to your expert opinion, is it correct that all entries, with the exception of the entry of 26 November were written by the same person, and is it further correct that the entry of the 26th November was written by someone else? I must say first that it is admitted in handwriting specialists' circles that the establishment of 10 species permits the identity and figuration of a given handwriting among hundreds of thousands of others. Without the slightest difficulty, I was able to gather 11 species for the violet handwriting and 15 different species for the black-blue one. hose species being, of course, different, and notwithstanding the possible species, they might have in common, each specie belongs to one of the seven following genus; speed, pressure, form, dimension, direction, contintuity, and arragnement. If we consider first the violet handwriting, which concerns the third line in front of the German, word "telephone" and the entry which appears in front of the date then of February 1942, I any say that this handwriting belongs in all probability to the same and only person and presents the 11 following species: the speed is fast; the pressure is sharpened, explosive, and this; the form is round, the dimension is irregular, and even-elevated; the direction is straight and centrifugal; the continutiy is very poorly organized; and the arrangement is loose. If we consider now the blue and black handwriting, I may point out 15 different species, and these species being absolutely different of the 11 ones which have just been described. That is to say, for the speed; the speed is reserved, inhibited, restrained, well something like inhibited, a variety of inhibited. The pressure is regularly conducted, thick, heavy_set. The form is large and arched. Dimension is low, inflated, and equal. The direction is rigid, slightly bent.

11 Feb 1948_A_MSD_24_4_Spears (Juelich) The continuity is slightly organized and the Arrangement is ordered. The conclusion of the pointing out of the 11 species for the violet ink and the 15 different species for the two others -- the conclusion is that with a scientific certainty two persons, at least have written these handwritings. can you tell with certainty to the Tribunal that the entry which appears opposite the printed word "Telephone" and the entry which allegedly was made on 7 February 1942 were made by the same person?

A Yes. It is absolutely my opinion and when I have described the 11 species made with the violet ink, I did not discriminate, and in my opinion the same and only person wrote the word "Sven Hedin Platz 8" and "7 Feburary - POL", which I suppose to be "polishing" and I have to precise one thing, that this violet handwriting includes a pretty rare variety of the spasmodic specie. This variety is the explosive specie which can be seen on both entries, first in front of the word "Telephone' and secondly in front of the entry of the 7th of February. This explosive specie Consists of a vigorous and short pressure described for the first time in the "Diagnosis and Conduct of Temperaments" by Dr. Paul Carton, whose first edition was published in Paris in 1926. This very peculiar variety concerns and extremely sensitive subject who reacts by violent, certain and short projection of strength, with violent, spasmodic reactions, but these reactions being checked at once, and restrained by the self-control, and this very rare specie appears, as I have said, in the entries of the violet ink and, on the other hand, it does not appear on any of the other entries. And the blue and black handwriting. in all probability, with perhaps one or two exeptions which can be precised, belongs to the one and same person. possibility that the two entries with violet ink were made by the same person who wrote the other entries?

not the same as the one who made the other entries. certain dates which indicate when these entries were made. Can you tell the Tribunal whether it is your opinion that these entries were made at those dates which are indicated on the chart? written at the top of the chart in front of the printed word "telephone" are written with the violet ink. They seem to have been written much more recently than the two first lines in blue ink and the three first entries of 1341, that is to say. at a later date than they are supposed to. They are supposed not to have been written more than three months later. Furthermore, the three entries with the black ink appearing just before the entry of the 7th of February '42 seem much more recent than, the corresponding dates, December '41 and January '42.

filled fountain pen, and the third line, "Sven Hedin Plantz 8" a Swedish explorer, seems to have been written with a common pen holder which had not much ink for the last letters. Moreover, the entries of the 23rd of October 42 and 27th of October 42 seem to be somewhat pale for having been made ten months after the two entries of December 1941. However I must say that I limit myself to a statement of probability in accordance with the actual date of these entries. This kind of an expert opinion chiefly concerns a chemical expert. The nature and quality of ink may have been altered during the war. Substitutes may have been used, and I do not consider myself as an expert, I mean a chemical expert, in this fields and in this case there is only a presumption of probability for the actual date of the entries. the entry opposite the printed word "Telephone", "Sven Hedin Platz" and the number -- I do not recall the number -

Q -- was made by her in January 1948. Would you say from the nature of the handwriting and from the quality of the ink that the entry of 7 February was made approximately at the same time?

A In all probability these two entires, "Sven Hedin Plat_ 8" and "7 February Pol" have been made by one and the same person at the same time.

MR. HORLICK-HOCHWALD: Thank you very much, Commander, Your Honors, I have no further questions. BY THE COURT: probably made more recently that the on of January 42, you don't mean merely the sequence of a month,

Q Because naturally it would be more recent in chronology? month's space of time.

A Yes. Yes, your Honor, but it is indeed very hard to fix even an approximate date, an approximate length of time.

Q Well, we wanted to make clear that you didn't merely mean that it was subsequent,-itself it would have to be one month later.

A I don't think it is possible to see a difference of one or two or three months in an ink, in the color of an ink which has been used six years ago. I do not think that it could be possible to point out a difference of such a short distance of one or two or even three months between two handwritings written six years ago. I don't think so. That is all I meant. I meant a much, much longer time.

THE PRESIDENT: Yes. Does defense counsel desire to cross-examine? BY DR. KRAUSE. Writings is based on medical interest mainly. You said here you were particularly interested for diagnostic reasons. As an expert are you in a position to determine a handwriting from a technical point of view concerning the letters and the manner of writing on the basis of your experience?

A You mean the identification of a given handwriting? mainly on the basis of their exterior impression and on the basis of the technical event which took place when the writing was actually done?

able, like many handwriting experts, to determine the actual number of different species of a given handwriting. I think it is out of the question to say that it is a more question of impression, and the eleven species I have indicated for the violet ink and the fifteen other species I have indicated for the blue-black ink, indicate clearly that it is not a mere impression but these reserves are based on an objective and, let's say, scientific study.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution is not advised that defense counsel for the defendant Haensch has offered in evidence any expert opinion on the exhibit. If he did or if he wanted to be may do so, but he cannot question the witness on expert opinions which are not in evidence before this Tribunal.

DR. KRAUSE: Your Honor, it is my opinion that I should be permitted to put questions which concern the ability of the witness to give an expert opinion.

MR. HORLICH-HOCHWALD: Defense counsel for the defendant Haensch cannot cite and not quote evidence which is not before the Tribunal.

THE PRESIDENT: Well, he has the right to test the capacity and competence of the expert witness.

MR. HORLICK-HOCHWALD: Your Honor, he certainly has, and there is no objection to that, but I do not think that it is possible that he may question the witness on documents which are non-existent in this courtroom.

DR. KRAUSE: Your Honor, I am not operating with any documents or any other papers which have not been submitted to the Tribunal. I merely put questions with no regard to such basic material in order to find out how the expert was interested in handwritings and to what extent and how his opinion should be considered here.

THE PRESIDENT: You may proceed. The objection is overruled.

Q (By Dr. Krause) Commandant, in your opinion you are speaking about special characteristics, about the speed and the pressure, the form, the size, the direction, etc., and you draw certain conclusions from this, in particular also pertaining to the temperament and the psychological state of the person who wrote. Is this not rather a graphological way of judging a handwriting? But I understand scientific graphology to be, the opinion on a handwriting to the effect that from the handwriting and from the entire impression one gains from the handwriting one can draw conclusions asto the personality of the writer, in particular to his psychological state of mind, his inclinations, etc., but has this anything to do with a comparison of handwriting? word "graphology" it wasonly as far as I have quoted the works of the two French masters who wrote specialized books about handwriting, but I have entirely and definitely limited myself to the word "handwriting" and I did not use in any way the word "graphology". Handwriting and graphology are two different things. I think handwriting is recognized the world over as an objective applied science. and whatever could be my opinion on the possibility of investigating character and temperament through handwriting, -- I do not mean to bring in this court anything else but my experience and knowledge of the objective and scientific study of handwriting. I did not say, for instance, that the person who wrote with the violet ink had such character or such temperament. I did not say that the person who wrote with the blue and black ink had such and such character.

THE PRESIDENT: We understand What you have in mind. You are merely indicating objectively what your study of the handwriting shows only for the purpose of comparison as to the possible author of the handwriting, -

THE WITNESS: Yes.

THE PRESIDENT: Not the characteristics which went into that person who Wrote.

THE WITNESS: Yes, I limit myself to an identification.

THE PRESIDENT: Yes.

THE WITNESS: And this identification has been a part, an official part of my training as an expert on neuropsychiatry.

Q (By Dr. Krause) I can leave this point, Commandant, but my misgivings originated when you described your career and your training for this job. You quoted a number of works which in my opinion are purely scientific graphological works and do not concern the usual comparison of handwritings which we know normally.

MR. HORLICK-HOCHWALD: If your Honor please, this is entirely a matter of argument and not the subject of cross-examination.

DR. KRAUSE: Your Honor, I am not arguing at the moment but I merely took the liberty of explaining my questions.

Q (By Dr. Krause) Commandant, the female witness who has been questioned here, said among other things that the entries on the card were often made in a hurry. Is that your opinion and did you consider that in your opinion? when she made the entries. Did you consider that too, because she didn't have time to sit down? far as I can be sure -- I am sure that several words which would appear to a, let's say, amateur handwriting expert as written by two different persons have in all probability been written by the same person standing up, for instance, or being obliged to write without a support or in a bad physical condition, but I think it is quite easy to consider and to see on this chart -- Yes, but that does not keep me from believing that main question resides in the fact that at least two different persons have written entries on these charts so far.

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addition was made this was done in the evening and sometimes even on Sundays. I believe that she had more time to work then than in the hurry during the day. Do you still stick to your statement that the differences, which you also find concerning speed, oblige you to draw the conclusion that two different persons have made entries on this card?

A Well, I do not understand very Well the question. I do not want you to repeat it counsel. I just want to say that, do you mean the entries which have been written with the exception of the violet 1 ink, that is to say the blue and black ink, or do you mean that there is a possibility of identity between the violet ink and the blue and black ink?

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blue-black ink, as far as I know, which refer to the prices and the addition of the prices, in my opinion were written by the same person. Therefore no two persons took part in writing those figures.

A In all probability. I agree.

DR. KRAUSE: Yes, thank you.

MR. HORLICK-HOCHWALD: I have only two questions, Your Honor.

THE PRESIDENT: Yes. BY MR. HORLICK-HOCHWALD. on the handwriting of the so-called Ding Diary an exhibit before Tribunal No. I, in Case No. I? accepted by the Tribunal and whether in the judgment this Tribunal has accepted your view on the genuineness of this document?

MR. HORLICK-HOCHWALD: Thank you very much.

THE PRESIDENT: Mr. Hochwald, do you know whether you will need the other witness again?

MR. HORLICK-HOCHWALD: If Your Honors please, in view of the testimony of the witness, who has herself testified that she has added something on the exhibit at a later date, and with the view that she herself has admitted that somebody else than herself has made entries on the chart, in view of the expert opinion given by Commander Bayle now, I respectfully move that the exhibit may be rule out and not accepted in evidence. Furthermore, I respectfully move that the witness may be warned by the Tribunal as, according to her own admission, she has made statements in this affidavit under oath, which could not be upheld by her on the witness stand.

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THE PRESIDENT: We have just been informed that the sound tape is about to run out this evening, so that the ruling will be made tomorrow morning.

The Tribunal will be in recess until tomorrow morning at 9:30.

(The Tribunal adjourned until 12 February 1948 at 0930 hours.)

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Michael A. Musmanno, presiding.

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

DR. ASCHENAUER: Your Honor, I would like to ask that for today, too, the defendant Ohlendorf should be excused for this afternoon and, if there should be a session, also this evening, and be brought to room 57 in order to continue our discussion.

THE PRESIDENT: That, of course, will be entirely agreeable, Dr. Aschenauer but we wanted to make an announcement so that all defense counsel will be informed, and the defendants, Prosecution, of course. Tomorrow the defendants will have the opportunity to make their final statements which procedure is provided in the ordinance under which the court operates. So, that the program for the remaining period will be as follows:

Today we will hear the four remaining closing speeches. Then tomorrow morning we will convene in Courtroom #, the large courtroom. The Prosecution will make its final statement. Defense counsel will be permitted extemporaneously to reply to any completely new matter which could by any chance appear in the Prosecution's final statement. And, then following that the defendants will individually make their statements. In order that the defendants will know the approximate length of their remarks we would suggest that 10 minutes would be ample for each defendant, a maximum of 10 minutes. He, of course, does not need to use all that time if he doesn't desire. The defendant Ohlendorf, of course, will be allowed more time - whatever time is required, whatever time he feels is in order burden of outlining the general defense, the law, and so on. Amd, so with that in mind he would not be limited within reasonable bounds, of course.

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If any defendant should feel he would require more than ten minutes then the Tribunal should be informed today of that fact so the necessary arrangements can be made. Then, we will add, the defendant Ohlendorf will be excused from attendance in court - you want him all day today?

DR. ASCHENAUER: Only this afternoon and evening, if there is a session.

THE PRESIDENT: The defendant Ohlendorf will be excused from attendance in court this afternoon and, also, this evening if there should be an evening session.

DR. ASCHNAUER: That means tonight he needn't come either?

THE PRESIDENT: That's right, should there be an evening session.

Not all the lawyers are here this morning. Will those who are present please take it upon themselves to acquaint their colleagues with what the Tribunal has stated? Thank you. BY DR. HOCHWALD:

Q. May it please the Tribunal, I have only a very few questions to the witness. Witness, yesterday after you had testified the Tribunal heard the testimony of an expert witness on the file card which you ---

THE PRESIDENT: Just a moment. BY DR. HOCHWALD:

Q. Witness, yesterday after you had testified the Tribunal heard testimony from an expert witness on the file card which you have allegedly filled out. This expert witness has declared that the two entries, the one opposite the word telephone "Seven Hedinplatz 8" and the entry of 7 February 1942, both written in violet ink, can not possibly be written by the same person who made the other entries. When I asked this witness whether it is his opinion that if one of these two entries was made as late as January 1948, that also the other was made at the same time, the expert witness said that it is his expert opinion that both entries were made at the same time. Will you tell the Tribunal now, and that's the last time I am asking you this question, who made these two entries?

A. I made those entries.

Q. When did you make these two entries?

A. The address I added now in January. The other one at the time when the patient came to us.

Q. Will you tell the Tribunal the date when allegedly the other entry was made?

A. Well, I cannot tell you the date but it was in January, after Frau Haensch had visited us.

Q. Both entries were made at that time after Mrs. Haensch had been present?

A. No, I only entered the address on the card in January.

Q. Witness, will you look at the card once more? Is it not patently clear that the handwriting of these two entries is completely different from all otherhandwriting and is written in different ink, but the ink of these two entries is identical. Are you still remaining with your ....

A. Yes, I only made that one entry up here.

Q. When did you make the entry which allegedly was made on 7 February 1942?

A. That was written at the time when the patient came for treatment.

Q. Will you tell the Tribunal the date please?

A. On 7 February 1942 when the patient came to us as it has been entered here.

Q. I have no further questions, Your Honor. BY THE PRESIDENT:

Q. Witness, how long did Mrs. Haensch have this card in her possession?

A. Frau Haensch never had the card.

Q. She never saw the card?

A. No, she just glanced at it when the note was written by the doctor. It was attached to the card but she didn't look at it very closely.

Q. Which note was written by the doctor?

A. The certificate which was attached to the card. Frau Haensch asked for a certificate for a trial, she said, and this certificate was attached to the card by the doctor and when Frau Haensch called for it I took the certificate of the doctor off the card.

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Q. When did Mrs. Haensch call to see you the first time?

A. I cannot tell you the exact date.

Q. How long ago?

A. It must have been the beginning of January.

Q. And what did she say to you?

A. Whether it would be possible that Dr. Maennel could write a doctor's certificate to testify that Dr. Haensch was treated by him in 1942. She said she required this for her husband for a trial which was supposed to be very important.

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BY THE PRESIDENT: (Continued)

Q. Then what did you do after she said this?

A. I said, "Yes the doctor will do that if the file card still exists."

Q. And what did you tell her to do, to come back? Did you tell her to come back?

A. Well, I said "We will either send on the certificate or you can call for it." And then she said they had changed their address and lived in another place now.

Q. Well you weren't certain that you would find the card then, were you?

A. No, I did not know that the card still existed.

Q. And then you went to look for the card?

A. Only the following day, I went to look for it.

Q. And how long did you have to look before you found it?

A. Half an hour, or 40 minutes, or 3/4 hour, approximately.

Q. Do you keep the cards according to year?

A. No.

Q. How do you catalog the cards, alphabetically?

A. Yes, alphabetically.

Q. Why should it take you forty minutes to find a card if you have them arranged alphabetically?

A. Well, they were no longer in alphabetical order quite correctly, only approximately. Not all the cards were in it any more because they were needed for the new file index.

Q. About how many cards did you find in this depository?

A. There are several hundred.

Q. Well why would it take 40 minutes to go through several hundred cards?

A. Well, I said the cards were not in proper order because several had been taken out; they were not packed away in boxes properly.

Q. Did you use these cards for kindling fires?

A. No. Yes. After the Russians had been there, some cards were burned that had become soiled but those up in the attic were not used.

Q. Did you ever use these cards to start a fire with?

A. No.

Q. Well, do you know your boss so testified?

A. I don't know that.

Q. Well, you would know if they were used to start a fire with, wouldn't you?

A. Well, I did not use any.

Q. Which entry was made by your sister on this cart?

A. That was the third line from the top I believe.

Q. Well, I don't know your sister, you will have to tell me.

DR. HOCHWALD: If the Tribunal, please, I do think it is the entry of 26 November 1941. BY THE PRESIDENT: Yes, that is thethird one. Will someone please come here. Hand the witness a sheet of paper. Now, please write on that paper before you "Zehlendorf, Hartmannsweiler Weg 16".

A. I wrote that in German though on the card.

Q. Well, you can write it in German now.

Now underneath that write "Sven Hedinplatz 8". Let us have that. That's all. Does defense counsel desire to put any further questions to the witness? BY DR. KRAUSE:

Q. Witness, do you have the card in front of you still?

A. No.

Q. May I ask you to have a look at the card again, closely. You will find entries on it which were first written with pencil, is that correct?

A. Yes.

Q. And these pencil entries were then written over with ink?

A. Yes.

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Q. Who wrote them with ink?

A. I did that, that is my handwriting.

Q. When was it written in ink? Was that done the same day the entries were made with pencil?

A. No, that was made in the evening when there was spare time, we wrote over it with ink.

Q. How often was this done, perhaps you can tell us by looking at the card?

A. You mean here on the card?

Q. Yes.

A. Three times.

Q. Was the original writing in pencil and writing over with ink done with the entry of 7 February 1942?

A. No.

Q. Can you see this only from the card or do you consider that impossible altotether?

A. I beg your pardon.

Q. As you tell me now, on 7 February 1942, that is, the entry of 7 February 1942, was not first made with pencil and then written over with ink.

A. No.

Q. Do you draw this conclusion merely from what you see on the card now or are you saying this because you recollect that this did not take place in this case?

A. No, I only see this from the card.

Q. You only see that from the card, do you? Witness, you have heard that an expert yesterday made two important statements here. The first one was, if I may repeat this here, that the entries in violet ink behind the word telephone and the entry which refers to 7 February 1942 were allegedly made by another person than the other entries on the card. And, secondly, that the entries in violet ink "Sven Hedinplatz 8" and "7 February 1942 for polishing" were probably made at the same time. I would like to ask you to tell me now who asked you about this matter, who approached you to find the card and make statements concerning it.

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A. Frau Haensch came and asked.

Q. Was it only Frau Haensch?

A. Yes, only Frau Haensch.

Q. What did Dr. Kirsch, the attorney, tell you when you made your affidavit there?

A. Attorney Kirsch merely wrote it down.

Q. Have you an explanation for the fact how the attorney Kirsch happened to think of the first name Walter Haensch?

A. Well, Dr. Maennel had made an affidavit previously and I know that Dr. Maennel received a letter and probably Dr. Haensch's first name was mentioned on its top. I am not certain but I assume so.

Q. You said yesterday as far as you recollect you imagined the Dr. Haensch who is entered on your file record to be a tall man. Who told you that Dr. Haensch is a tall man?

A. Well, one vaguely recollects a person when one looks at the file card. Sometimes when patients are treated for a long time one recollects something immediately and one still remembers the person himself vaguely.

Q. I asked you purposely this way - who told you? You said you merely have some recollection. Will you tell the Tribunal that nobody told you?

A. Nobody told me.

Q. You then say again that you vaguely recollect that?

A. Yes.

Q. Witness, according to the result of the testimony of the expert I have to say now a certain suspicion arises concerning the defendant.

MR. HOCHWALD: If the Tribunal please, this is direct examination or redirect examination. Explanations to the witness are entirely leading and I do think not admissible.

THE PRESIDENT: You can ask direct questions, but you may not draw conclusions and argue them out with the witness.

DR. KRAUSE: Your Honor, at that moment I was merely aiming at making a statement in order to put a very important question to the witness.

MR. HOCHWALD: If this question is so important it is necessary that the witness answers unbiased by an explanation to the witness, the witness might be influenced by the explanation.

THE PRESIDENT: And we assume further more that every question put in a trial is important. It isn't always true. BY DR. KRAUSE:

Q. Witness, I would like to ask you now and for the last time even for my part to tell me the full truth to the following question. Did anyone approach you as far as the entry of 7 February 1942 is concerned, that the card should be falsified and that you only made that entry now in January concerning the 7th of February 1942?

A. No. The entry was made on 7 February 1942.

Q. Therefore, if I understand you correctly, you still say that this was done on the 7th of February 1942?

A. Yes.

Q. Do you realize that you would be doing a poor service to the defendant?

MR. HOCHWALD: That is the same explanation to which I have objected, and the objection was upheld by the Tribunal, plwase not to admit the question.

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THE PRESIDENT: Don't you see that is argumentation? A witness comes in supposedly entirely impartially, and unbiased to testify. It isn't a question whether a witness does a good or bad service to any individual in the trial. A witness only is to answer the questions. Just put the questions. Don't argue with her.

DR. KRAUSE: Your Honor, in that case I have no further questions, but merely want to make the following statement to the Tribunal. I would like to ask that the card and the tests of the handwriting done by the witness should he given to me so that I can get another expert opinion on handwritings about the samples and the card. I consider this necessary because in my opinion the opinion of the expert who testified here yesterday is not absolutely appropriate as a basis for evidence. May I explain that with a few words? The expert who was examined here yesterday is a physician. He judges handwritings, first of all, according to medical points of view for diagnostical purposes. His training, which he described to us here -

THE PRESIDENT: Just a minute, please. Of course, you will be given the opportunity to have the handwriting examined, just as the prosecution had, although you had the same opportunity the prosecution had before. You are waiting now until five minutes to 12 to ask for what amounts to the presentation of further evidence, but as we have indicated before, we won't deny anyone an opportunity to present any evidence which is relevant, regardless of the hour. You will have this opportunity, but we will say to you that the results will be submitted in writing. There will be no further session of court after tomorrow, and whatever argument you desire to present upon the matter will be submitted in writing and it should be in the hands of the Tribunal no later than let us say next Wednesday.

DR. KRAUSE: Yes.

MR. HOCHWALD: May I then respectfully submit that the prosecution should be permitted to get a copy of this expert opinion and be permitted to answer in writing to this export opinion. I only want to point out two things: The card itself was in the hands of Mrs. Haensch in the beginning of January.

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This is more than a month. The affidavit was made by the witness on the 27th of January. It is, therefore, by no means a fault from the part of the prosecution that this possibility has been delayed in such a way.

THE PRESIDENT: Oh, well, that is very obvious that there is no fault attaching to the prosecution in this respect.

MR. HOCHWALD: I further want to point out that immediately when Dr. Riediger intended to put in the affidavit I have asked the Tribunal's permission to ask an expert witness in handwriting so defense counsel can not be in doubt that we did not recognize the possibility of this charge.

THE PRESIDENT: Dr. Hochwald did you say that the card was in the hands of Mrs. Haensch?

MR. HOCHWALD: I am sorry, the witness said that it was not actually in the hands of Mrs. Haensch, but Mrs. Haensch knows from the beginning of January on that this card is in existence. I am sorry that it was not clear.

THE PRESIDENT: Yes.

DR. KRAUSE: Your Honor; hero, too, I did not say anything on purpose. I did not ask for the card to compare handwritings or even wanted to use it for that purpose because I wanted to wait until the witness had been examined and until Dr. Maennel had been examined, too. I considered it unsuitable to take part in examining the card before the witness had testified here. According to the results of this testimony, I could come to a resolution whether such an examination would become necessary or not. May I emphasize here that neither Dr. Riediger nor myself ever had any contact with Mrs. Jauer or Dr. Maennel verbally and with the latter only in writing; we only saw the card here when Dr. Maennel handed it over to the Tribunal here. It was never in our hands. I saw it for the first time yesterday. I intentionally did not do anything.

THE PRESIDENT: Well, you have stated that and don't keep repeating yourself. You had access to the card and you didn't take it because you wanted to hear the witness first. You have heard the witness, now you will have an opportunity to test the handwriting and, as we indicated before you will need to get your results in immediately.

DR. KRAUSER: Until Wednesday, inclusively.

THE PRESIDENT: Yes. Very well.

MR. HOCHWALD: I have only one question, sorry, your Honor. BY MR. HOCHWALD:

Q. Will you look at the card again, witness? You have testified that the entries on the card were mostly made first By pencil and afterwards by ink. Will you tell the Tribunal how many times of all entries on the card this was made by pencil before it was made by ink?

A. Three times -- it was made three times.

Q. Will you tell the Tribunal further how many entries are on the card?

A. There are 13 entries.

MR. HOCHWALD: I have no further questions, Your Honors, but I have a motion to make.

THE PRESIDENT: Let's have the card, please. BY THE PRESIDENT:

Q. We understood you to say, Mrs. Jauer, that the entry of February 7 was made with a pen owned by Dr. Maennel, is that correct?

A. Yes, I assume so.

Q. Well, you so stated yesterday that it was made with his fountain pen?

Q. But on other occasions you used another pen?

A. Well, he took his fountain pen away again, of course.

Q. He usually carried his pen in his pocket--his fountain pen?

A. Yes.

Q. How do you explain that six years later you happened again to use this very same pen -- Dr. Maennel's pen to write the address on the card?

A. I did not have Dr. Maennel's pen recently when entering the address.

Q. Well, what pen did you use to enter the address on the card in January 1948?

A. Well, either I had another fountain pen which was broken or just an ordinary pen--I don't know.

Q. Well, that was comparatively recently and we have discussed it a great deal, so, therefore, you must have the incident very vividly in your memory now. Which pen did you use when you wrote in the address opposete the word "telephone"?

A. Well, I cannot say that. There were two pens there. I don't know which one I used that day.

Q. Well, it was only Dr. Maennel's pen that has the violet ink, is that right, his fountain pen?

A. We still have the ink. I have never bought any new ink. That must be a coincidence or something. I don't know that the same ink was used again now.

Q. Well, the ink which you use ordinarily is black and blue? That is right, isn't it?

A. Yes.

Q. Dr. Maennel's pen had violet ink?

A. Yes, but now I use the ink from that bottle to write with. This is fountain pen ink and was kept for fountain pens because it is very hard to get ink in Berlin now and therefore we are now using this ink as well every day.

Q. This violet ink?

A. Yes.

Q. And is this the same bottle you used back in 1942?

A. Yes, it must be that bottle then which was already used at that time and which was used to fill the fountain pen at that time. It could not be different.

Q. So then the ink which you used in 1942 still exists, that is, that ink bottle?

A. Yes, we still use it to write with.

Q. And do you use it now generally in all your writings, this violet ink?

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A. Yes.

Q. Are you making your entries now in violet ink?

A. Yes.

Q. And are you using Dr. Maennel's pen or your own pen?

A. No, the pens which are lying on the desk in the doctor's office.

Q. How many pens do you have lying around in the doctor's office?

A. Two.

Q. Well, how is it that all these entries are written with a pen that has a broad point, but only this one of February 7 is written with a fine point? Now, you have given your explanation that this is due to the fact that on February 7, 1942 you used Dr. Maennel's pen?

A. Yes.

Q. Now how does it happen that in January 1948, six years later, you happened to pick up the same pen which was used on 7 February 1942, and that is the only time, as far as this card is concerned, that you used this thin, this fine pointed pen; is that just a coincidence?

A. Well, surely I wrote that with the thin pen now. Now, that is the ordinary pen, I used that to enter that address with.

Q. But it happens to be exactly the same kind of a pen point that you used six years before?

A. That is not the same pen.

Q. Well, it is the same result, isn't it-- it gives the same result?

A. I don't know.

Q. Well, just look at it and tell us if in your opinion the handwriting which appears in the address and the handwriting which appears in the February 7 entry don't agree, so far as fineness of writing is concerned?

A. The other one was written with pencil first. Most of then have first been written with pencil and therefore the writing looks broader.

Q. You didn't answer my question. I am asking you whether the hand writing in the telephone address and the handwriting in the February 7 entry are not similar so far as fineness of writing is concerned?

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A. Yes, there is a similarity.

Q. Yes. Now, you say it is merely a coincidence that six years later you happened to use the same kind of a pen point?

A. That must be a coincidence then.

Q. Because you tell us that you did not use Dr. Maennel's pen when you wrote the address?

A. I said I have a fountain pen now and one ordinary pen which is very thin -- very fine, and I used that now because the fountain pen is not working properly. I mostly use this thin pen to write with, now.

Q. So it is merely a coincidence that the handwriting in the address bear a similarity to the handwriting in the February 7 entry so far as fineness of writing is concerned in spite of the fact that every other entry on the card is written with a heavy pen?

A. Yes, that is a mere coincidence.

Q. Very well, all right. You usually gave one line to an item -usually, that is correct, isn't it?

A. Yes.

Q. But occasionally you would put two items on a line, wouldn't you?

A. Yes, but no treatment; that is, no work that Dr. Maennel did.

Q. You would never put on the same line two treatments?

A. No. That hardly happened.

Q. Tell us what those last two items are on the last line-- those two entries, each one preceded with an angle, what are those?

A. Those were two fillings.

Q. So they were two jobs, weren't they?

A. Yes, but the same filling. There were two teeth, but the same filling was put into the two teeth.

Q. Oh, but they were two different teeth?

A. Yes.

Q. Why didn't you enter the polishing item of February 7 on the line above, since it did not require any charge?

A. That was done on another day. That was done at a different day and the dates are always written below each other.

Q. Well, the day isn't so important, especially since you didn't care whether they came back for the polishing or not and you didn't charge for it. If you were so concerned about conserving space on that card, why didn't you enter that polishing item against the item of the actual work of filling the tooth?

A. One does not do that. It never happened.

Q. Well, then tell us if you were not concerned about saving time, why you didn't draw the totalling line underneath the February 7 item instead of above it, especially in view of the fact that April 22 naturally follows February 7?

A. One doesn't think anything of it, one just does it. That is the usual practice, and one does not do it in a commercial manner like a proper bookkeeper. Actually, the treatment had been concluded.

Q. But it was still an item of the treatment and then when you came to total up, why didn't that line come under February 7 rather than above?

A. Well, I did not notice this particularly. It usually is added up that way, or I did it that way.

Q. Would you say that it would be more reasonable to draw the line under the February 7 entry?

A. Yes. In my opinion it does not make any difference where this addition line is made.

THE PRESIDENT: Very well. Any other questions.

DR. KRAUSE: I have no questions, only a request. Your Honor, I would like to ask the witness to give me a short specimen of her handwriting. May I ask that she be given some paper?

THE PRESIDENT: Well, she has already written two items here. If you desire that she write something, do it on that card.

DR. KRAUSE: Please write, "Sven Hedinplatz 8".

THE WITNESS: I have no pencil.

DR. KRAUSE: Oh, you have no pencil. Do you have your fountain pen with you? "Sven Hedinplats 8" and below it "7 February 1942 - polished." Your Honor, may I now ask for the card and the specimen of handwriting in order to be able to get an expert opinion on that.

THE PRESIDENT: Yes. Well, there is just one more question. BY THE PRESIDENT:

Q. Witness, in every item on that card the tooth which is to be treated is indicated except the item which refers to the polishing. Do you want to tell us why you didn't indicate which tooth was involved in the polishing process?

A. Yes. I already said yesterday that we know which tooth is to be polished. The doctor will only polish that tooth which he filled himself if the patient does not ask to have another tooth polished because it has a sharp edge. Doctor Maennel will only polish that tooth that has been treated, otherwise.

Q. Well, do you make this entry before or after the work is done?

A. Sometimes while the patient is being treated or else immediately afterwards.

Q. Well, it is never made before the work is done?

A. No, it is never made before.

Q. So, therefore, the entry is not put on the card to acquaint the doctor with the particular work that is to be done because he knows?

A. Yes.

Q These entries are put on the card for two reasons: One, to indicate the price and, the other, so that you will have a record of the precise work done.

Q So that glancing at that card now you couldn't tell whether the polishing was done to the tooth which had been treated several days before or to some other tooth which happened to have A sharp edge, could you? filled by Dr. Maennel, be treated, then, of course, I write down that tooth. I mark it on the card and, then, if A sharp edge is polished off and the patient has nothing else to be done to him, then we charge him. and deduction. It would have been much simpler to have indicated on the card as you did on every other item just which tooth had been polished, wouldn't it?

A Yes, here it would be the left upper, No. 7, which Dr. Maennel had filled.

Q Well, you just have to assume that. It isn't on the card. had been treated, it would be entered and the polishing is entered so that we know the treatment has been concluded.

Q Well, that's only A matter of conclusion. That doesn't appear on the card. on your part. It does not appear on the card. it was that tooth that was polished. I said that Dr. Maennel polished teeth which he filled.

Q Is that the way you always abbreviate "polishing" in German, "p-o-l"?

THE PRESIDENT: Very well. All right.

DR. KRAUSE: Thank you.

MR. HORLICK-HOCHWALD: If the Tribunal please, the prosecution respectfully moves that the witness may be cited for contempt of court for perjury. I do not base this motion on the entirely incredible stories which the witness has told about the pen holders and the sixyear old ink pot. However, I base this motion on the contents of the affidavit and of her own testimony. she knew that at the time when she signed the affidavit it would be used here before this Tribunal -- that she knew Dr. Walter Haensch. The Tribunal certainly will recall that her testimony has clearly shown that she did not know him; that she did not know his Christian name which appears in the affidavit. the chart were made by her. She has testified to this effect before the Tribunal yesterday. She has admitted in cross-examination that at least one of the entries was not made by her own hand and that another one was admittedly made in January 1948. entries in violet ink, which are a falsification of the document, were made by the witness. On the contrary, I do think it is perfectly clear to the Tribunal from the testimony of the expert witness that these two entries were made by somebody else than the witness. However, the witness has testified here in direct examination, and I quote:

"Question of Counsel for Defense: If I understand you correctly then, you testified on oath that whatever it says on this card corresponds to the fact that it is correct.

"The witness: Yes."

guilty of contempt of court and the prosecution respectfully moves that the Tribunal may decide so.

DR. KRAUSE: Your Honors, I object to the motion by the prosecution. In my opinion, the perjury with which the witness is charged has not yet been proved at all.

THE PRESIDENT: Counselor, I don't think it is necessary to make any argumentation in this matter.

DR. Koessl, are you ready to proceed?

DR. KOESSL (ATTORNEY FOR THE DEFENDANT SCHUBERT): Yes, Your Honor.

THE PRESIDENT: The motion made by the prosecution is refused. The witness will be excused and we will proceed with the presentation of summation arguments.

(The witness was excused.)

DR. KOESSL: May it please the Court. The opening speech of the Prosecution contains the following sentences to show the obviousness of and give juridical proof for a guilt of the defendants:

"Everyone of the defendants was in a responsible position or assigned as a commander of an extermination unit. By virtue of his position he had the authority to give orders for executions."

"As military commanders these men were bound to laws which are certainly familiar to all who have worn the military uniform. Laws which impose the duty to the commander, as far as it is in his power, to prevent the commission of crimes on the part of those persons who are subordinated to his command."

"They ware lawfully, if not by their conscience, under the obligation to refrain from such activities."

"It is a legal and moral duty to prevent, restrict and condemn the slaughter of innocent persons, a duty which was evidently violated by all defendants." the Einsatzgruppe D. He himself, as well as Ohlendorf, testifying as Court No. II, Case No. IX.

witnesses in their own defense, have described in detail the former's power of authority and there were no contradictions. I refer to the passages on page 583 in the German records, (unfortunately, I never found out the English page) page 4657 ff. German, page 4572 ff., English, pages 4819/20 German and 4729 of the English records. Schubert had come to Russia without that his function had been previously determined. This was customary for the ranks of commanders only and Ohlendorf used him as an Adjutant and office chief at the staff of the Einsatzgruppe. Ohlendorf's statement and Schubert's own testimony give a picture which makes Schubert, as an Adjutant, appear not even responsible to that extent which is customary for an Adjutant all over the world. Ohlendorf has stated literally that he himself did not use an Adjutant, page 583 German records, and that Schubert's assignment as Chief of the office was the most important thing for him. If we hear from Herr Ohlendorf that Schubert could neither exercise a power of command nor was he permitted to give orders, that he had no authority to make decisions in personnel - or technical matters and had no supervisory obligations and not even a general authority to sign, this is fully coinciding with Schubert's description in his testimony (page 4657 ff. of the German records, page 4572 of the English records) and also corresponds with the conditions which evidently existed in the immediate surroundings of such a strong personality as Ohlendorf. Thus, Schubert did not hold a position which would have given him any power of authority let alone a power to decide over life and death. Neither was his position of such a nature to prevent any crimes. This leads me to the incident which the Prosecution has stressed as the strongest proof for its theory of Schubert's penal responsibility, namely: sion of the execution in Sinferopol in December 1941. It has been ascertained that this execution was planned and fixed as to the details of its implementation without that the defendant Schubert was in any way involved in it (page 585 of the German record) (German record, page Court No. II, Case No. IX.

3154, English record, page 3103, German, page 3181, English, page 3130). Once again I shall give a description of the actual role Schubert played in the course of the execution: On a December day in 1941 these shootings were carried out near Sinferopol. The executions have been going on since the forenoon of that day. Ohlendorf himself has seen to it that they are carried out in accordance with his special directives while repeatedly inspecting the course of the action. (page 742 of the German records, German 4706, English 4620 and German 3180, English 3129).

THE PRESIDENT: Dr. Koessl, it isn't necessary to read those. Those appear in the transcript.

DR. KOESSL: The passages should be entered in the record without my having to read them.

THE PRESIDENT: They will appear in the record. The reporters are so instructed to leave everything as it appears in the written manuscript which is before the Tribunal.

DR. KOESSL: Thank you. latter could then report to him whether his directives would be complied with (page 585 German records). Now what kind of a mission did Schubert have? The Prosecution asserts that Schubert had acted as a deputy of Ohlendorf.

In order to examine the legal aspects of Schubert's acting for Ohlendorf it is necessary to determine the purpose Ohlendorf pursued with his own personal and repeated inspections. Ohlendorf had given special directives for the implementation of executions which were announced in writing (page 4674 of the German record, page 4588 of the English). On the day when the executions took place it was his intention to see to it, by personal inspection, that the executions were carried out in accordance with these directives in order to remedy or correct, through immediate intervention at the place and time in question, any deficiencies or deviations that might occur. Schubert had Court No. II, Case No. IX.

no such authority neither was it conferred upon him. Schubert was in no position to remedy any arising deficiencies. orders to any officer carrying out the execution. Schubert "could not interfere" (page 586 German record,) "he had no authority to give orders" (same record). He would have had to report to Ohlendorf in case he had noticed deficiencies (page 586 German record).

This express limitation of Schubert's mission is a decisive indication for the legal judgment of whether his inspection was performed as Ohlendorf's deputy or not. For Ohlendorf decided about the kind and extent of Schubert's task when the latter was assigned. he was entrusted with: From the point of penal law it would be of importance if Schubert would have subjectively comprehended and carried out his mission to a greater extent than it was given to him by Ohlendorf. However, this is not the case either. In his testimony, Schubert has clearly described the particulars of his own interpretation in regard to his mission. (Page 4672 of the German record, page 4587 of the English record). he was "some kind of a deputy." The passage quoted by the Prosecution on page 5 of its closing brief from the English record page 4671 says exactly the opposite of what the Prosecution asserts.

In noticing deviations from Ohlendorf's directives Schubert would not have been able to interfere and give instructions; the utmost possible for him to do, according to his own view, was that, in an emergency case, he could have called the attention of the competent officer to a violation of Ohlendorf's directives (page 586 of the German record) (page 4823 of the German, page 4732 of the English, page 4673 of the German, page 4587 of the English records). However, there cannot be any doubt that this authority, provided for an emergency case, was not specifically based on the mission he received, on the contrary, Court No. II, Case No. IX.

everyone in general has a right to this authority who realizes that existing regulations are violated, and considers it necessary to call attention to this fact because of the existence of an emergency case. The authority was no longer within the scope of the mission given to Schubert, it rather belongs to the general rights of every soldier and officer. closing brief asserts incorrectly on pages 7 and 10, but only contains the possibility to draw the attention of the competent officer to violations of Ohlendorf's directives. did not refer at all to such an emergency case, since his interference would not have been necessary in this case at all. (page 4707 of the German record, page 4622 of the English record). Fundamentally his mission, according to his own view, was confined to an inspection the result of which he had to report to his chief. tion for which Ohlendorf himself was competent, constitutes from the legal point of view the decisive limitation of the mission given to Schubert.

Here I must once more thoroughly discuss SCHUBERT's phraseology concerning his assignment in his affidavit of 24.2.47, Prosecution Exh. 28, Doc. Book 1 Eng. p. 108, German p. 141), which has already been mentioned several times during his interrogation in direct and in cross examination.

There SCHUBERT says literally under fig. a) that he had to see to it that the shooting area was located well outside of town, so that there would be no witnesses of the shooting living in the vicinity. According to the actual conditions this phraseology must appear sheer nonsense. Let our memories take us back to the time: the place of execution has been fixed for days, the necessary preparations have been made, executions are taking place regularly, and Herr OHLENDORF Court No. II, Case No. IX.

has already visited the location that same morning. Probably neither Herr OHLENDORF nor SCHUBERT can have seriously thought that SCHUBERT was in any way supposed to exercise any supervision so that in the meantime while OHLENDORF was absent the place of execution would not somehow be changed and the shootings perhaps be carried out in an entirely different place, possibly in a place which was not far from town and therefore could be seen by unwelcome witnesses.

This assumption, by which alone fig. a) with the expression "see to it" ("Beaufsichtigen) might have some meaning, is nevertheless probably so impossible that it must be completely rejected in the case of a proceeding so complicated with respect to organization as the above-mentioned executions. However, the wording of fig. a) must thereby also be denied any meaning. To be sure, this fig. a) acquires a meaning if we take into consideration what SCHUBERT himself reports about how this phraseology came to be used. I refer to the transcript, German p. 4681, Eng. p. 4594. SCHUBERT says there that he discussed the matter for a fairly long time with Mr. WARTENBERG, with whom this phraseology originated, and pointed out to him that he possibly used this word "supervise" ("beaufsichtigen") incorrectly by deriving it from an English word, and that it rightly ought to be "observe" ("besichtigen").

If we only consider fig. a) in this version with the word "observe" it takes on a thoroughly sensible meaning. Without entering into a lengthy analysis now of the phraseology, corrections and uncorrected mistakes in various places in the affidavit I should at least like to point out here that SCHUBERT's statement not only appears credible in itself but also logical and natural. I am convinced that SCHUBERT, who after all is an educated and intelligent man, would never of his own accord have used such phraseology as in fig. a). And in the last analysis our search for evidence has brought us one more proof for precisely this point, which is better and clearer than any other proof one could think of. We recall that this German word "beaufsichtigen", Court No. II, Case No. IX.

which Mr. WARTENBERG wanted to use and actually did use, was already translated by the English translator of the affidavit as "to see", although literally it ought to have been translated as "supervise". An impartial philologist of the original text would have been obvious nonsense and has translated it with the correct meaning. Concerning this I refer to the transcript, German p. 4692, Eng. p. 4606-07.

Figs. b) and c) contain the same word "beaufsichtigen" as fig. a). In connection with the tasks described there this mode of expression makes some sense in itself; however, we must consider its meaning once more later on. tion with the legal structure and effect of the order given by OHLENDORF: 1.) SCHUBERT received and carried out the order with the limitation which OHLENDORF attached to the order. 2.) Accordingly, the crux of the order was merely to inform OHLENDORF whether or not the execution was also carried out according to his instructions during his absence. 3.) Basically SCHUBERT had no occasion at all to interfere. He had no executive power whatsoever.

Therefore, OHLENDORF's order to SCHUBERT to observe the executions in Sinferopol in December 194 cannot be legally regarded as tantamount to acting as OHLENDORF's deputy.

Now what did SCHUBERT actually do? And what is the criminal nature of his act from the legal point of view that is said to connect with the execution of human beings? where it maintains that there were no other officers present when the transportation took place. As a matter of fact, two officers were present, who had Schubert's rank. sees them being loaded aboard and shipped off. Then he drives to the place of execution, sees the rerouting of traffic, the roads blocked Court No. II, Case No. IX.

off, persons being unloaded, valuables handed over, and the shooting. Finally, he drives back once more along the way to the gypsy quarter and there again sees them being loaded aboard and carried off, and then returns to his office. That is what he did. SCHUBERT did not in any way affect persons who participated in the progress of the execution, whether ordinary soldiers or officers. There is no connection whatsoever of cause and effect between SCHUBERT'S inspection and the execution. The statements of OHLENDORF, BRAUNE and SCHUBERT himself are in complete agreement on this point.

SCHUBERT's statements in his affidavit of 24.2.47, Prosecution Exh. 28, Doc. Book 1, Eng. p. 108, German p. 141, and his statements on this point as a witness in his own defense. The statements concerning this take up the largest amount of space in the evidence submitted during the entire trial, and besides myself, both the prosecuting attorneys and the presiding judge themselves have repeatedly helped through appropriate questions to clear up conditions which at first glance appear highly confused. If we sift out the results of this thorough examination of all the inconsistencies between the affidavit and the actual situation, (transcript, German p. 4705 et seq., Eng. 4620 et seq.) we find that SCHUBERT's actions kept within the bounds of what was proper for his limited assignment. He briefly observed the various phases of the execution at the various places, directed his attention to the points concerning which OHLENDORF had given him special instructions, and drove back to headquarters without having anywhere or at any time ordered anything to be done during the course of the action, or having observed anything unusual. Even his report to OHLENDORF on the inspection was so unimportant that OHLENDORF and SCHUBERT do not even remember it any longer. glance creates the impression that SCHUBERT had interfered during the course of the execution -- I am thinking of fig. 4, which in several places contains the phrase "I saw to it that" -- is to a considerable Court No. II, Case No. IX.

extent to be attributed to the fact that the phrase did not originate with SCHUBERT himself. Likewise, the expression "supervise" ("ueberwachen") is used in such a way that it can be clearly seen that the interrogator was trying to represent SCHUBERT'S assignment in an individual case in such a light as would appear to justify the conclusion that SCHUBERT'S position was connected with executive powers and supervisory duties, so that finally an indictment could be brought against the man who was already bound hard and fast by an affidavit. Even the laws of logic are forgotten in this fanatical zeal. When, for example, it says in fig. 5): "This phase was carefully supervised (uebarwacht) by me so that all the valuables would be turned over to Einsatzgruppe D ....... "then one only has to ask one's self the question: How could SCHUBERT supervise the collection carefully and how could he observe the collection of all the valuables if he himself was only a few minutes at the place where the collection went on throughout the entire day? represent the preparation of the outgoing mail as a supervisory activity.

Neither during his interrogation by Mr. WARTENBERG nor in the courtroom did SCHUBERT report any occurrence which permits the conclusion that he displayed any activity during the execution at Sinferopol which could be described with the words: "Superintendence" (beaufsichtigen), "supervision" (ueberwachen) or "seeing to it" (dafuer sorgen). Mr. WARTENBERG has attempted to make up for this lack of activity by the frequent, even strikingly frequent, use of the verbs "superintend", "supervise", and "see to it" in the affidavit. exert a certain amount of pressure in order to obtain truthful statements. For this purpose the technique of interrogating even permits the use of stratagems and tricks.

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of the time cost Schubert much trouble and a hard fight. It is clear that Mr. Wartenberg remained adamant when it came to the point of changing that formulation which was his sole reason for preparing the affidavit, especially as the words "supervise" etc. do not so much express a concrete activity as suggest that one's presence has a definite implication. It was, however, impossible to imply this meaning from Schubert's presence because in no mobile unit of Germany was it permitted that a 1st Lieutenant "supervise" a major and several other senior officers. Furthermore, on the same day, Ohlendorf as Troop Chief, and Braune as Kommando Leader were, themselves, witnesses to this execution, consequently, all attempts to brand Schubert as Ohlendorf's substitute, or to charge that he had commanding authority or supervisory duties are frustrated by this fact alone.

THE PRESIDENT: I think that will be a good point in which to have the morning recess, Dr. Koessl.

DR. KOESSL: Yes, your Honor.

THE PRESIDENT: The Tribunal will be in recess fifteen minutes.

(Recess)

THE MARSHAL: The Tribunal is again in session.

DR. HOFFMAN: Dr. Hoffman for the defendant Nosske. ing session today?

THE PRESIDENT: That will all depend on whether we can get in the remaining closing statements before 4:30 this afternoon. We have three more statements here after Dr. Kossel finishes.

DR. HOFFMAN: Your Honor, then I would ask that the following defendants be excused for this afternoon, and if there is an evening session, also for this evening: The defendants Seibert, Jost, Fendler, Sandberger, Steimle, Nosske, Schulz, Blume and Ott, in order to prepare their final statements.

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DR. DURCHALZ: Dr. Durchalz for the defendant Schulz.

May I make a suggestion, your Honor. In case there should be an evening session today, it would perhaps be useful that between 5:30 and 8:30 there would be no session, because there is only a possibility for the defense between 6:00 and 8:00 o'clock to speak to the defendants. Since the final statements have to be in writing, it would perhaps be useful if we could take care of it during that period, and have the remainder of the session this evening to be held from 8:30 on. I am speaking for the entire defense.

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THE PRESIDENT: That will be agreeable to the Tribunal. If we have an evening session it would be from eight-thirty on until we finish the closing summations. And with regard to the motion made by Dr. Hoffmann, the following defendants will be excused from attendance in Court this afternoon, and if there is an evening session, from this evening's session, the defendants Seibert, Jost, Fendler, Sandberger, Steimle, Nosske, Schultz, Blume, Ott.

DR. DURCHHOLZ: Your Honor, after the defendants that you have just mentioned have now been excused this afternoon, and since there is no possibility now to speak to these defendants may I ask that the Secretary General be instructed that he should tell Mr. Joseph in Room 55 that these defendants may be brought over there in order to speak to their counsel?

THE PRESIDENT: Mr. Joseph? Mr. who?

DR. DURCHHOLZ: Yes, Mr. Joseph.

THE PRESIDENT: In which room?

DR. DURCHHOLZ: 57.

THE PRESIDENT: Will the Secretary General so inform Mr. Joseph in Room 57. Very well.

DR. DURCHHOLZ: Thank you, sir.

THE PRESIDENT: Yes. Now, such defendants as have their statements ready by four-thirty or five o'clock should turn them in to somebody so that translations can be made tonight. Let's see first to whom to turn them in. Whichever statements are ready this afternoon should be taken to Room 106 and given to Mr. Hodges, not to be delivered anywhere else, because those statements will be given special attention because of the time element, so that as a statement is ready counsel for that particular defendant will take the statement to Room 106. Very well, proceed.

DR. KOESSL: I do not believe that there exists an army in the whole world in which principles of troop leadership different in that respect prevail.

The pressure that Mr. Wartenberg exerted during the interrogations may not even have exceeded the usual limits. But when we hear of threats with a broom or of the stipulation that every correction must be approved by Mr. Wartenberg, or of solitary confinement in an unheated cell, then I, at least, am of the opinion that even in a subsequent purely theoretical consideration of all the circumstances one must at least take into account that the defendant was not free in his decisions, nor at his best to defend his interests in a haggling about words, as Mr. Wartenberg termed the discussion about the expressions "supervise" etc., and to hold his ground.

Schubert's statements in connection with this not only comprise a clarification of prima facie seemingly contradictory actions and statements, but they grant also an insight into Schubert's personality and illuminate the credibility of his own statements. When Schubert here testifies that he was once threatened with a broom by Mr. Wartenberg and thereby puts himself into contradiction with Mr. Wartenberg's statement, then I can only express my conviction that Schubert told the truth. influence whatever that the execution was held, his duty was only to see for himself if it was done in the manner Ohlendorf had ordered, and to report to the latter what he had seen. charge by the Prosecution that Ohlendorf had sent Schubert to substitute for him in inspecting executions, is not in accordance with the powers granted to Schubert, nor with the factual happenings, and furthermore, that the confusing formulations in his affidavit were not corrected by him for the sole reason that he was simply unable to obtain Mr. Wartenberg's approval for it at that time.

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English Transcript p. 4589, also in Ohlendorf transcript, where Ohlendorf explains the meaning of the formulations contained in his affidavit, Prosecution Exhibit 148, with regard to the inspections mentioned there. These show clearly that Schubert, with the exception of the Simferopol case, was only sued for general inspections and not for executions as the prosecution asserts on page 10 of the Closing Brief. tional incriminating activity outside the bounds of a general adjutant's functions that Schubert, at intervals, had composed certain reports of the Einsatzgruppe. This is again on Page 15. They supported this claim by a statement of the co-defendant Seibert in his affidavit Document Book III-D, Exhibit 158. On the stand as witnesses, the co-defendants Seibert and Ohlendorf offered an explanation in regard to this assertion of the Prosecution which relieves this point of its incriminating quality. not an essential, but only a formal part of the report namely the reports about changes of personnel and locations, as they appeared regularly on the first page of every Operational Situation Report. In these points the two statements are in full accord, and I believe, since Schubert, too, when examined in his own behalf, said the same thing, neither the Court nor the Prosecution had any doubts as to the correctness of his exposition. increased by the finding that they not only do not contradict the Seibert affidavit, but rather are its explanation. Material contributions to these reports were never part of Schubert's work. One may add that Schubert's function, as elucidated in this point, was in full accord with the scope of tasks he could perform considering his training. ordinate activity consisting only of superficial acts of a technical or organizational nature, which had no material connection whatsoever with the subject matter of the tasks or the acts in themselves.

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cleared and I see no possibility to consider Schubert as in any way whatsoever incriminated in regard to it. namely the charge of knowledge of the Fuehrer Order. The way in which he reacted to this knowledge is of import in considerations of judicial nature.

In this respect, Schubert's own testimony alone can elucidate this point, for in a military unit with its discipline demanding unconditional obedience, no superior will be able to testify as to a contrary reaction to an order, as it would surely mean certain destruction for any soldier if he showed even the least counter-reaction. the question of the consent with or the rejection of the Fuehrer Order, we are left to depend entirely on Schubert's testimony and encounter in proving the hereby expressed sentiments to be genuine, one of the main difficulties of this trial, namely, the question of the credibility of the statements of Schubert about himself. For this reason, I am forced to treat the credibility of my client in detail. the foundation for an answer to this question and I believe to be of one mind with the Tribunal if I make here and now the anticipatory assertion that the over-all impression gained from Schubert and his testimony is that he honestly endeavored to present all points, which he was confronted with and had to answer, truthfully.

Sometimes we did notice a slight hesitation on Schubert's part.

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A mental inhibition of Schubert's, which characterizes his whole personality and which we encounter in a conspicuous manner again in his correction of his affidavit of 24 February 1947. There too, he placed, in the argument arising from the wording and the permission for correction, at first the greatest weight on having a wording altered that was apt to incriminate another man. Only in the second place he took care of the matters that concerned himself, even making with concessions, so that no other man might be incriminated by an incorrect statement. concerned, Schubert gave the answers without hesitation and without any omission, only there striving for details, where he was certain that truth had not been reached to the full extent. And let us not deceive ourselves by asking why Schubert has struggled so tenaciously for the wording in the Wartenberg case, of all things. This he certainly did not do for reasons of his own safety, but rather out of a fanatical zeal for the truth. explain the seeming contradiction between his affidavit of 24 February 1947, where in sub-section 7 the wording is to be found that the reports contained the number of the villages destroyed and the persons killed, and his deposition that he was in ignorance of the number of the persons executed. In this point too we have seen how carefully Schubert stuck to the truth, explaining that in sub-section 7 of his affidavit it was not a question of execution within the meaning of the Fuehrer Order, but of statements as to the casualties incurred on the occasion of military operations. seeming contradiction between his statement that Seibert had not been Ohlendorf's deputy for the entire sphere of duties of the Einsatzgruppe, on the one hand, and some wordings in his affidavit which curtly called Seibert Ohlendorf's deputy, on the other hand.

For this elucidation too Schubert fought with genuine zeal for the truth even with a sort of petty effort for veracity. The more it had been tried to discover a vagueness or a false judgment in the wording of his affidavits, the more punctiliously did he keep fighting for an elucidation. Yet, this doubt about the question of the capacity of Seibert as a deputy, between the verbal and written statements of Schubert has finally been decided by the Prosecution in favor of the facts stated by Schubert verbally by submitting the doc. No. NO-5111, Doc. Book V D p. 5. I am thinking of the document that shows an organization scheme of Einsatzgruppe D, worked out by Schubert himself, and where Seibert appears as permanent deputy under the section "Staff of the Einsatzgruppe". I think in the English translation the date, December 1945, is missing. This was it what Schubert meant then and in all his later statements, always protesting whenever different statements of facts were to be read into wordings which were not even made by himself. Here the trustworthiness of Schubert could, at the end of long arguments in the course of direct and cross-examinations, finally be proved even through a Prosecution document. Schubert was able to rely on his good memory, apart from his zeal for the truth, in all the statements he made.

There is no need, I believe, to prove Schubert's trsutworthiness, From this starting point, I should suggest that his own statements referring to his knowledge of the Fuehrer Order and the executions be judged, so that later a total evaluation of his conduct may be gathered from his later working methods.

He learned about the Fuehrer Order from Ohlendorf. From his statement also a mental reaction emerges. We saw him arriving, as a final result of his mental struggle, at the conclusion that he was facing the situation completely helplessly. Was that helplessness, that incapability to find a way out, really the utmost left to do for a person who had done something to prevent these crimes, as the Prosecution demands?

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Should he to have withdrawn from these things? Russia, to take any action against the goings-on which are under discussion today? Nobody will consider this seriously, in view of the picture we have received of his subordinate activities, of the way he was tied by orders and his complete lack of independence. It must be added that Ohlendorf himself had told him, that he had nothing to do with these things. By that Schubert had been shown his proper place by his chief, and this in a manner so as not to leave him any possibility of supporting an application for transfer or a refusal to carry out orders by pointing to the executions, for with those he had nothing to do and he would only incur the risk of having "his nose rubbed in" even more, as Heydrich had once threatened the defendant Blobel. Moreover, it is remarkable that Schubert, in whose soul the internal struggle about those things had not come to an end by that, learned on the occasion of the Simferopol executions in December 1941 that not the Einsatzgruppe alone was in possession of this Fuehrer Order, but that even the supreme command authority, the 11th Army itself, was giving orders for execution contrary to Ohlendorf's protests, supplying the personal and material assistance required for carrying out the executions. This state of affairs could not but convey to this little lieutenant the conviction that no way out was left to him even through the Wehrmacht.

Coming back to the words used by the Prosecution that "it" was a legal and moral obligation to prevent the slaughter of innocents, to limit, to repudiate it, an obligation which all the defendants have obviously neglected, we arrive first of all at the conclusion that Schubert has not neglected his obligation to repudiate those acts. In the German transcript p. 4656 /57 Schubert has shown us his feelings and he broached this subject again in the course of the cross examination.

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Everybody will have to recognize, in just evaluation of these statements that Schubert has not neglected this obligation which the Prosecution stressed as a generally legal and moral one, but rather has fulfilled it. of ordering executions, so he was not in a position to prevent executions. Nor could Schubert be expected to refuse to obey the order to go on an inspection trip, since his refusal would have neither prevented nor limited the execution, the more so since his inspection was in no way causally converted with the chain of events. Thus, Schubert was unable to realize any noticeable personal implication in the crime. Ohlendorf himself has explained to the Tribunal what consequences would have been drawn by him from a refusal to obey orders. office because in the reports which he had to register and to file in the books, statements were contained with regard to executions? this question, because that knowledge of the events was one gained in the routine work in an office, and the events had in each case already been concluded, and, besides, Schubert, was, as an officer in the orderly room placed outside of any power of authority and command with regard to those events and the reports made thereof. The notion of being in connection with crimes within the meaning of the Control Council Law may surely not be extended as far as that. And listening to the words of the Prosecution that "the rank and the position of the defendants comprised the authority and obligation on the part of the defendants to exercise control over their subordinates and that that authority in conjunction with their knowledge renders them unequivocally responsible from the penal point of view", we conclusively exclude those from criminal responsibility who did not possess such an authority and obligation.

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Nobody will attribute such an authority over subordinates to Schubert in view of the results of the investigations of this trial. No penal responsibility can, thus, be invoked against Schubert in this respect.

The Prosecution sees a signifiance in Schubert's position within the staff of Einsatzgruppe D. It would be a completely wrong opinion to consider the staff of the Einsatzgruppe as a leadership agency in which every officer would be partly originator, or even only participant in, or accessory to, the acts which were being done in the Einsatzgruppe. If we admitted this as right, we should have left the ground of individual guilt, the basic principle of any criminal responsibility.

Schubert's position regarded in itself is illuminated enough, it was not tied in with any authority. With any other activity of the Einsatzgruppe it had closer relationship than just with the executions, which in no way were promoted by the adjutants. It was a position that always goes with any military unit, but in itself it was neither typical for the tasks of Einsatzgruppe D, nor was the holder of the position charged with any special tasks of the Einsatzgruppe. Schubert as the first lieutenant at the side of a Chief, who is Colonel, 5 officers of the rank of Colonel and Lt. Colonel, who were CommandoLeaders and about 5 other officers of the Staff, superior to him in rank, could not possibly have attained any significant leadershipor Commando position.

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DR. KOESSL: Schubert did not even pass on orders. The Prosecution's questions to this effect rare merely hypothetical ones. Not a single case was proved why page 8 of the closing brief is unjustified in referring to page 4657 of the English transcript. On the same page of the closing brief the Prosecution goes too far in explaining the passage in the English record page 4710 by deducing from Schubert's quoted statement that he knew all the missions of the kommando chiefs, although only the general tasks of the members of the staff were mentioned at that point. Schubert was not informed about all missions with which Ohlendorf entrusted the kommando chiefs.

Apart from that the question comesup: Does SCHUBERT's knowledge of the executions have the effect of knowing criminal aims of the SS, here specifically of the SD, and was it SCHUBERT's obligation to withdraw from the SD? To answer this last important question it must be examined of what kind his professional development and activity was before and after the Russian assignment.

He has given us his professional curriculum. The submitted documents SCHUBERT- Exh. 1 and SCHUBERT - Exh. 3show that until his Einsatz in 1941 he had been employed all the time and exclusively as an administrative employee. Of what minor category this position was is disclosed by SCHUBERT -- Exh. 6. A look at the graphic description of the organizational build-up of Office I of the RSHA attached to this document, shows that at first until 1940 SCHUBERT as an assistant clerk belonged with the clerks to the lowest rank among the employees and beginning 1940 as a specialist to the lowest rank within the leadership organizational chart. At first an aide to the Registrar and the

Postoffice. SCHUBERT in the course of his career finally becomes a specialist in personnel matters. How his position was during the Russian-Assignment, I have already explained and I only wish to add here that it was a direct continuation of the pure administrative activity, as exercised in Berlin.

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Also after his return from the Russian assignment, SCHUBERT at first becomes Adjutant to the Chief of Office III, not an SDspecialist in Office III, but he remains an employee of Office I. This also corresponds to his tasks as Adjutant, which OHLENDORF declared were the same as in Russia. Chief of the waiting-room he calls it. Here too purely clerical work without any participation in the material decisions of Office III. by abolition of the adjutant position, SCHUBERT becomes Assistant Specialist in the Personnel Dep. of Office III and is reinstated as an administrative employee. Schubert-Exh. 3.

The witness EHLICH in the SCHUBERT-Exh. 5 explained in detail that also in Gruppe B of Office III SCHUBERT attended at first only to administrative technical and organizational tasks and throughout the time up to 1 Dec. 1944 he was involved in material tasks only as far as information is concerned, but by no means as an SD-Specialist. official whose road was prescribed by his education. I also refer to the fact that during his 2 years of military service he was also used as a clerk for one year. (SCHUBERT-Exh.7). We get the picture of an official whose assignments up to 1 Dec. 1944 never went beyond the limits of pure administration and in addition kept themselves within a rank, which beginning at the lowest went up only 3 grades to the position of Assistant Specialist and never permitted any independent work or much less material decisions of his own. An average official as it is called in the German language. Augsburg and there he takes charge of the SD-Dep. health) (SCHUBERTExh. 5). For the first time in his life. SCHUBERT enters the service of the SD in its specialized field as an independent worker beginning at the lowest rank. It will be important now, for the judgment of the case as a whole, how SCHUBERT is going to conduct himself in an independent position.

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The 2 documents SCHUBBRT-Exh. 2 and 4 cast a significant light upon this. The affidavit KONONOFF, a now stateless Russian, who since the First World War lived in Germany and was during the Second World War degraded by the Nazis to an East-worker, is more than a testimony to his decent character. KONONOFF, who lived in daily terror of the Nazi authorities, put confidencesin SCHUBERT and to the SD-men of Schubert and what he has to report on SCHUBERT's, intervention in the cases referred to, are moving testimonials of SCHUBERT's, the SDmember's, aid to the suppressed and mistreated workers of foreign nationality, above all how he helped Russian male and female workers and prisoners of war to obtain humane treatment, the punishment of their oppressors and deceivers, in short to be given their rights and how he thereby disregarded the danger to his official position. The testimonials speak for themselves and what SCHUBERT's secretary, the then student of medicine LACKER, a military service draftee, reports about this time in the SCHUBERT-Document 4 is one more proof for the absolute truthfulness and love for justice that was glowing so much within SCHUBERT, that I cannot but refer to it as the most eminent quality of his whole personality. much as a possibility for a decision of his own, was commandeered into the Einsatzgruppe D, after he had on his own initiative expressed a desire to be released for service with the Army, following the death of his first wife and child during the terror of the bombings.He had just as little chance to determine the end of this assignment and the way he was employed. He wasunder military law and had no choice as to his activity or much less any possibility of leaving the SD. In addition SCHUBERT could not see the acts committed by Einsatzgruppe D in connection with criminal activities of the whole SD or the SS, revealed to us today by the IMT.

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The Einsatzgruppen are neither SS- nor SDunits, but mobile organizations of a special type and the execution of the Fuehrer-Order was assigned to them as a Security Police security missions. The English translation contains the expression Security Police task instead of Security Police Security missions. The knowledge of this activity of the Einsatzgruppe cannot therefore establish membership in the criminal circle of persons of the SD or the SS. SCHUBERT during his following activity in Berlin and Augsburg considered himself entirely free and without further connection with any injustice perhaps committed by Einsatzgruppe D in Russia. His interrogation also reveals that he did not know of other crimes committed by the SD and SS, which has give to the organization as a whole the criminal character as pronounced in the IMT - judgment. criminal penal law SCHUBERT is to be held accountable, it must not be overlooked that Control Council Law No. 10 represents on extremely disputed legal basis, since international law cannot be ordered to the vanquished by any authority whatever and national criminal laws, could not be applied retroactively. However since the given situation cannot be altered at present, I ask the High Tribunal to interpret the forms of participation of the Control Council Law No. 10 restrictively. Only such persons should be held accountable as "perpetrator" and "participant" in war crimes and crimes against humanity, to whom own initiative and a causal activity can be proven. Whoever was as an insignificant figure, pressed into a mechanism of tools by, governmental coercion, should at any case be freed of responsibility to international law. If today in practise toward the vanquished the old principle has been abandoned that individuals are not responsible according to international law then the criminal responsibility for governmental measures must by no means be extended to include the broad mass of those, who neither could overlook the cause nor the purpose, neither the tenability in international law, nor the actual necessity of those measures by the state leadership and who by no means could dodge them.

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His position as adjutant and director of the office with the staff of Einsatsgruppe D did not connect SCHUBERT with the planning or carrying out of executions; the acknowledgment of reports on executions carried out, does not include consenting participation in the meaning Art. II. fig. 2c of Law No. 10, since this consent always must be given prior to the completion of the act and must be causally connected with it. Also his presence at the execution in Siferopol did not bring SCHUBERT in such a causal relationship to the main act since any promoting action remained absent. His presence to which he was ordered cannot even be regarded as a consent, just as little as his presence in the theater of operation implied consent to the war. The mere presence does not prove any affirmative mental or intellectual attitude toward the events taking place. If one would now want to close the gap in the chain of evidence by referring to the membership in the SD, declared as criminal, then a circulus vitiosus would be formed that way, from which no innocent man could find escape. Such reasoning would adopt the same kind of logic to which HITLER obviously fell fictim, when he issued the unfortunate order under discussion here. Whoever under martial law is commanded to join a mobile unit, to whom the highest state leadership has assigned criminal tasks, does not by virtue of this governmental act enter into a criminal connection with the commission of war crimes and crimes against humanity, since he was coerced into an emergency that was inescapable. To him also the comprehensive specifications of 2d and 2c of Art. II of the Law No. 10 cannot be applied without violating the fundamental principlesof all national codes and even moreof international law.

Art. 347 of the American Rules of Land Warfare of 1940 declares individual members of Armed Forces to be exempt from punishment, if they have committed crimes upon order of their government.

The same stand was taken by the British "Manual of Military Law" of 1944. This principle dominated the common law of warfare throughout both World Wars and could not be made ineffective out of force by legislation of any group of powers. of the soldier by at the same time accusing him of crimes against humanity. So far no satisfying definition of the notion" crimes against humanity" has become known, At any rate the war crime seems to be distinguished from the crime against humanity only by being in causal or only timely connection with the war. Accordingly facts which under the aspect of common law of warfare remain impunitive cannot become punishable as crimes against humanity. in dealing with the question of membership of SD-persons in criminal organizations. An SD-member in a wider sense also belonged to the SS, since the SD was part of the SS. SCHUBERT came to the SD directly from the HITLER YOUTH so that he belonged only indirectly to SS via the SD. He never belonged to any SS-unit. Therefore the High Tribunal will bear with me, if I do not put forth any further arguments in the support of my request that this indirect SS-membership of SCHUBERT may be disregarded. his private and official life such a clean and truthful character, who has chosen the principle of truthfulness, one might say, as his life maxime, that a man of this kind would have become such an honest and valiant fighter for the rights of the oppressed nations, as we have seen him from the affidavit, if he had not been of a clear conscience. It is just this clear conscience which makes SCHUBERT states all his actions and thoughts so precisely and without circumlocation, as we have seen here at the trial. Pure conscience speaks from all of SCHUBERT's words.

And this is proof for me that there is no consciousness of criminal action here. And when the High Tribunal after Counts 1 and 2 will also have to decide on Count 3, then I know that the Tribunal in its endeavour to find the truth and serve justice will not pass over the fact that it came from the innermost, honest conviction, when SCHUBERT, upon questioning at the start of the Trial replied that he considers himself not guilty. my client. During the interrogation through some kind of unclear translation the impression was given that he wanted to express some suspicion that something was being put into his mouth unjustly. This was during the discussion whether he had signed several pages of his affidavit, pages 4614-4616 of the English transcript. My client only wants me to make the statement that he did not have any suspicion of any kind. He did not mean to express any suspicion in this respect so that it is only an assumption which is not based on any kind of premeditation.

THE PRESIDENT: Very well. The record will show that explanation, Dr. Koessl.

Dr. Schwarz for the defendant Jost: Before I begin with my presentation I would like to point out, especially to the interpreters, that I shall not mention the quotations, especially those that are in parenthesis.

THE PRESIDENT: The Court Reporter will be directed to include these quotations in the transcript even though not read by counsel.

DR. SCHWARZ: Thank you, Your Honor. little shorter I shall skip the introduction, that is on pages 1 to 7. In view of the time allotted me I must also disregard the general legal questions, or leave them out. They are pages 8 to 21, that is II. Thus I shall begin with III which concerns the personality of the defendant. That is on page 22. I consider this an appropriate moment for a description of the defendant's personality. In doing so, I refer to my statements in the trial-brief for the defendant Jost, pages 50 - 66. from a respectable, honest and upright bourgeois-family, may be made from the depositions of a variety of personalities, former SS leaders or subordinates, National Socialists and non-National Socialists, political persecutees and others, the truest picture being evolved from this very multiplicity and diversity. thanks to a subsidy granted by Jost, considers the latter as a reliable and upright man , resembling the type of a respectable official who endeavored to hide his natural sensitiveness and soft-heartedness behind external self control and reserve. His bearing was clearly indicative of the discord which, in the case of National Socialists, so often resulted from disagreement of ideals with party-reality or disparity between imposed duties and personal feelings. Thomashausen was impressed by Jost's modest standard of living and the simplicity of his bearing, very much in opposition to the habits of others during that time (Affidavit Thomashausen Doc.

Book Jost I, Doc. No. 3, exh. pages 8-9*.

Dr. Best, the former Ministerialdirektor and Chief of Office I of the RSHA (Reich Security Main Office), who has known the defendant since 1930, brings into prominence Jost's almost exaggerated modesty, his calm, reasonable views and his strict sense of justice. With Heydrich and Heydrich's right hand man Mueller, Jost passed for "a lawyer burdened with inhibitions and not prepared to comply with everyone of Heydrich's wishes." first adjutant and Chief of Himmler's personal staff who knew Jost officially, the latter was described, by various high-ranking SSleaders as an upright, calm and conscientious character. The general's personal, official and special contacts with Jost confirmed this impression. Jost was known to defend his personal convictions in a calm, and decisive manner even before his superiors. Wolff had never been able to discover in Jost a leaning towards unbridled excesses or cruelty. On the contrary, Jost was recognized as a man whose actions were ruled by a sense of fairness. General Wolff did not have the impression that Jost was a careerist.

The Latvian Prior Sanders testifies to Jost's readiness to help and his kindliness when he addressed himself to Jost for aid to prisoners. ary for the Eastern Territories at Riga, had the humanly best impression of Jost. He has never heard anything to his disadvantage. On account of his calmness and serenity, Jest enjoyed the best possible reputation and great popularity both with his subordinates and with the population (Affidavit Jedicke Doc. Book Jost I, Doc. No. 15, exh. 15, pages 52-54).

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industrious man of open, calm and honest character. Jost had no leaning to excesses (Affidavit Deeken Doc. Book I, Jost Doc. No. 1, Exh. 1 pages 1 - 3). Worms Police Station, Jost was trusted implicitly by the non-National Socialist circles among the people and also by the Jews, while on the other hand, the Party was not satisfied with his activity at the Worms Police Station, because he rejected the Party's attempts to interfere, and saw to it that the Jews were treated justly. All those who applied to Jost officially, were treated equally and received advice and assistance irrespective of their political views. Jost was popular with the Police officials on account of his just behavior. He took under his protection even those who were not Nazis in the event of their being attacked by the Party, and in many instances preserved their posts for them. Seitz confirms Jost's intervention on behalf of Pastor Dogen. Jost freed Rahn, the former Oberguergermeister of Worms from a mass demonstration in which he was in danger of losing his life. straight forward human personality who treated his subordinates in a correct and decent manner. a reserved, quiet and gentle p erson whose reserve bordered on indifference. Jost could only be induced to drop his reserve for the strongest reasons; then, however, he stubbornly defended the point of view which he held to be right.

Dr. Wohlgemuth, surgeon and medical practitioner in Berlin, regarded Jost as being tolerant, and in no way harsh or ruthless. He was modest in his way of living and in the conduct of his household affairs. Wohlgemuth was repeatedly surprised by Jost's humane and just attitude which he combined with objective criticism.

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Jost also proved his readiness to help this witness inasmuch as he put him in a position which enabled him to reject the Gestapo's demand that he (Dr. Wohlgemuth) should spy on Prof. Sauerbruch. korn which I shall skip. I shall continue on page 28. the main point. The salient qualities of his character which are repeatedly confirmed are his strong sense of right, his justice, decency humaneness , goodness and integrity, his modesty and tolerance and the lack of every ambition. by nature, and not a militarist. He did not receive the Prussian military type of officers training. He always endeavored to find employment in civil administration, and in any case, his peacetime occupation in the SD was also of a more administrative character.

It should now be easy to illustrate the defendant's political attitude, based on this clear and fine foundation of his character, in order to gain greater understanding of his personality. with regard to the contents of the documents submitted by the Defense and I request the High Court to take into consideration these documents which only give the right picture if read in this connection. fanatic nor a bigot, that he not only rejected excesses, but wherever he had the chance to do so he opposed them sharply, that he had helped people in their political emergency without thought of his own advantages or disadvantages and that for this very reason he also experienced serious difficulties in his official life. Thus as a political entity he also tred the way of decency, tolerance and helpfulness.

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Jost's attitude in the Jewish question can be gathered from the affidavits: Deeken, Eisfeller, Thomashausen, Sanders, Klingemann, Everwien, Waneck, Pfarrer Degen, Annemarie Jost, Seitz, Dr.

Wohlgemuth, Dr. Spohr. the Jewish question which ran counter to that which was demanded of him. The affidavit by Thomashausen also gives exhaustive information in this instance, as to how the defendant exposed himself without regard to his person and position, and indeed risked his position and got into difficulties with his superior. I would like to refer to the evidence given by the defendant Jost, page 1158, English page 1141 in the transcript, in which he described how Heydrich reproached him for his conduct which was not, sufficiently National Socialist in character, and that in this instance he saw himself obliged to give up his office. The affidavits of Thomashausen and Waneck confirm these statements. Further information concerning the irreproachable conduct of the defendant with regard to the Jewish question is given in the affidavits by Eisfeller, Everwien, Seitz, Spohr and A. Jost. treated the Jews in a just manner, that the Jews regarded him as a man who acted justly, and his indignant repudiation of the measures taken on 8/9 November 1938, are mentioned several times. picture of the character of the defendant and have shown how, in politics, he conducted himself decently, how his relationship stood with regard to opponents of the Nazi system, how he assisted them out of his sense of right and justice, and also how his attitude towards the Jewish question was dictated by motives of absolute justice and finally how he was not afraid to face official and personal disadvantages.

directly or indirectly connected with the defendant, this comprehensive illustration of his personality must also be taken into account.

COURT NO. II, CASE NO. IX.

THE MARSHAL: The Tribunal is again in session.

DR. SCHWARZ: I now come to point IV, the position and responsibility of the defendant. Counts I and II of the indictment. dictment the defendant is reproached with his activity as Chief of Einsatzgruppe A. At the same time reproaches are levelled against him, which do not concern the affairs of Einsatzgruppe A, but incidents in the field of the civil administration, in fact the office of the Reich Commissioner for the Ostland. a single concrete reproach can be made. There is no assertion, still less any evidence of any case of murder occurring either in the SK Ia or in the Commandos Krasnowardeisk or Leknia - the only two commandos of which Einsatzgruppe A was composed. capacity of Chief of Einsatzgruppe A, the indictment gives an entirely wrong idea. Of Jews, Communists and Partisans of whom considerably more than 100,000 were, according to the Prosecution, allegedly assassinated in the area under the control of Einsatzgruppe A, not a single person was murdered during the period in which the defendant Jost was in charge; more details will follow later. Even according to the statements of the Prosecution, out of considerably more than 100,000 assassinated persons only about 1,300 persons were killed while the defendant was in charge, i.e. an infinitesimal fraction of the number which the Prosecution asserts were killed in the area of Einsatzgruppe A. This must be emphasized since the Prosecution has assigned to the defendant a position not due to him.

The defendant cannot be held responsible for the actions of his predecessors. hald responsible in his capacity as Chief of Einsatzgruppe A, since the incidents described under Nos. 6 S and T of the indictment took place in the area of the office of the Reich Commissioner for the Ostland which was under civil administration; it must now, for safety's sake, be investigated whether the defendant can be held responsible for these incidents in his capacity as Commander of the SIPO and of the SD (security service) for the Ostland, although as regards the time when they occurred the defendant cannot be charged with these incidents. question in my trial brief on pages 36 - 43 to which I refer here. Reich Commissioner Ostland was composed of the territories of Esthonia, Latvia, Lithuania and White Ruthenia. The Reich Commissioner was in charge; he had powers that cannot be compared to those of the Chief of any other agency since he was subordinated directly to the Fuehrer. He was the immediate superior of the Higher SS and Police leader who, on his part, was the superior of the Commander of the SIPO and of the SD, consequently of the defendant Jost. was invested with actual powers. He was the superior of the local SS and Police leader to whom the Commander of the SIPO and the SD were in turn subordinate.

of the SIPO and SD. However, this title does not represent the actual state of things. Ohlendorf and the witness Erlich, the Commander of the SIPO and the SD Ostland had, in practice, the position of an Inspector (a post which was usual in the Reich territory) and not the position of a real Commander (transcripts of 14 October 1947, German page 592, English page 586, cross examination Ohlendorf - trial-brief for Heinz Jost page 41 - affidavit Erlich, Dec. Book Jost III, German and English page 13.) plans which have been submitted (Doc. Book Jost III, page 14/15) illustrate that the power of command of the Commander of the SIPO in the Ostland was restricted. in question, the extent of the area - about 400,000 qkm and in a country without roads and railways it is natural that responsibility can in practice only rest with the local agencies which must, therefore, have the necessary powers; in this case it was first of all the Commissioner General and, under him the SS and Police leader who exercised these powers. This fact is apparent from the letter which the Commissioner General in White Ruthenia sent to the Reich Commissioner, and in which the Commissioner General complains about a campaign against Jews. of the SIPO and the SD, but, as I said, to the competent SS and Police leader locally. The statements of Sandberger and of witness Hartel give particulars about the responsibility of the SS and Police leader; they confirm the above assertions.

the organization of the Civil Administration, the defendant Jost was also limited in his work by Heydrich as soon as he took up his duties. Actually the restriction ordered by Heydrich only confirmed the existing state of things. defendant is not responsible for individual executive measures carried out locally. raised by the Prosecution will show the same result.

can be made concerning the various points under counts I and II of the Indictment:

1. Report of Events USSR No. 166. This report, dated 27 March 1942, was put together, on this date , from earlier reports received from the competent headquarters. On 27 March the defendant had not yet taken over his duties as Chief of the Einsatzgruppe and Commander of the Security Police. He took up office only on 29 March 1942. In view of the facts which have come to light during the trial, it is, I

think, quite clear that the events set forth in the report took place a long time before 27 March. Again and again it has become clear that a few weeks passed between the occurrance of the various incidents reported from Russia and the drawing up of the reports in Berlin. The defendant can, therefore, in no way be held responsible for the events referred to in this report; neither did he nor could he know anything about them; much less could he have taken part in them. on 27 March 1942 when that Einsatzgruppe reported that 15,000 Jews had been shot at Tscherwen it has not produced any evidence to bear this out. But even if Jost had actually commanded Einsatzgruppe A as early as 27 March 1942, he could not be held responsible for this incident, since, in any case, the incident itself took place and must have taken place some time prior to 27 March 1942. this report, dated 17 April 1942, was carried out because of Communist activities and the maintenance of connections to partisan groups. Stick hand grenades and explosives had been found with some of the Communists. The execution took place - as in all cases of this type after individual investigation and proof of guilt.

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in whose case the investigation showed that they had indulged in Communist propaganda up to the last moment. cannot be denied. As regards the justification of this conduct I would expressly refer to the quotations mentioned in my trial brief, p. 45; particularly to ordinance No. 1 of the Military Government, which show that then the death penalty is provided for offenses considerably less grave than those under discussion here. It must be remembered in this connection that Communist propaganda in occupied Russian territory did not mean the study of Karl Marx's or Lenin's doctrines, that Communist propaganda there meant, on the contrary, inducement to such participation in sabotage, terrorism, partisan warfare and incitement to violence, as well as instigation to murder, arson and manslaughter. Such actions are incompatible with the laws of war and have quite definitely entailed in any war the death penalty for the perpetrator according to general laws of war. in any way in these actions. He has neither issued orders nor given his consent nor did he know anything about these measures before they were carried out. For this reason, too, criminal responsibility of the defendant is out of question. 14 Jews who - among others - were shot at Kauen - were shot not because they were Jews, but because they, too, had made propaganda for Communism. This became quite clear during the direct examination of the defendant. perpetrators who were Jews had to be described only as "Jews" and not as "saboteurs, marauders, etc." in the various accounts and incident reports. Sandberger stated in his testimony among other matters: "According to the order.... Jews had to be entered in the column headed 'Jews' even when they were treated as Communists."

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tions on this document, to which I may make some reference.

He made it absolutely clear that the "report period" in the excerpt submitted by the Prosecution refers to, and must of necessity refer to the month of March 1942, or to be more exact the period up to, and including 27 March 1942. This is a monthly situation report by the Commander for Latvia for March 1942, which was only processed in Berlin on 24 April 1942. made from the complete report. In the original report a number of events, all of which occurred in the time of 1 to 27 March 1942, are listed in chronological order. Not one single date later than 27 March is to be found. According to this there can be no doubt that the execution of 1272 persons, which the Prosecution claims to be the responsibility of the defendant, must have occurred prior to 27 March 1942, which precludes any responsibility on the part of the defendant for this event. said to have been shot in Riga on 14 April 1942. The testimony of the physician Drikifis was neither taken down properly, nor sworn to in anyway. It cannot even be seen when, and to whom the statements were made. This in itself is already a reason why the document cannot be given any weight as evidence. Furthermore, the alleged statements of this doctor are in such general and uncertain terms that nothing can be taken from it which could incriminate the defendant Jost. Among other things, he is alleged to have said, "on 14 April, the SS men came to the hospital and took away more than 200 patients." And further, "In October 1942, the Germans took away approximately another 100 insane." Apart from that Drikifis is said to have put the remark "evacuated by the SS Police" on a report which has not been submitted either.

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building of the department of the commander of the Security Police and SD, no indiccation whatsoever may be found that the defendant Jost was in any way connected with the 243 insane allegedly killed on 14 April 1942. No unit number can be ascertained, to say nothing of the name of a person responsible; it must even be seriously doubted whether this killing took place at all, as on the report submitted in photostat there is a signature, not handwritten, but merely typed, altogether an unusual procedure. The two other relevant documents were not even submitted by the Prosecution. Security Police and SD Latvia addressed to the Registrar's Office of the City of Riga, dated 19 May 1942, as well as the two other documents of the same kind which were allegedly found were said to have been discovered in the building of the sender and not that of the addressee. It is in practice unimaginable that the mailing of these three documents, the dates of which are several months apart, should have been omitted. 1942, should only have been reported on 19 March 1942, an incident on 14 April, should have been reported only on 28 May, and an incident on 22 October 1942, should have been reported only on 15 March 1943. Even if they were genuine it would be quite impossible to deduce a responsibility on the part of the defendant from them, especially in view of the fact that the killings, if they happened at all, could have been carried out by SS units which were not under the command of the defendant, or by any other police units, or even by the Wehrmacht. tains any reference whatsoever to the alleged happenings. Since, in other cases of liquidation of insane persons which were brought up during the trial, they are referred to in the reports of events there appears to be no reason why these happenings should not have been reported.

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These circumstances almost force one to draw the conclusion that the alleged killings did not take place at all. order for the killings or that he was involved in any way in the happenings of 14 April 1942, which are the only ones occurring during the period of his responsibility. the International Military Tribunal and therefore has special value as evidence, then it may be pointed out that the happenings at Katyn could not be cleared up by the International Military Tribunal either. Considering everything it is absolutely plausible that the defendant neither knew before the 14 April 1942, of planned measure against the insane, nor after the 14 April 1942 heard of the alleged execution of such a measure.

Amongst other things it is stated in this report, "On 9 May 1942, 28 members of the Partisan organization White Ruthenia were publicly executed by hanging in the city area of Minsk .

Furthermore, 251 persons, mainly Partisans and Jews were shot on the same day." believes itself able to draw the conclusion that of the 251 persons, at least part of them were Jews who were executed because they were Jews. were Partisans who were sentenced on the basis of a previous court trial and that this was a deterring measure brought about by the fact that the Partisan situation in the city area of Minsk had become so tense and serious at that time, that the Wehrmacht considered such measures necessary, and even Commissar General Kobe who, according to the Prosecution's own statements, was pro-Jewish and by no means particularly aggresssive, could not say anything against them.

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Prosecution Document, Document Vol. 5-A, Document No. 2262. one may conclude, without laying oneself open to a charge of indulging in wishful interpretation here, that the 251 persons not executed publicly were all Partisans or at least such persons who were guilty of some infringement of the laws of warfare which carried the death penalty. This is supported by the fact that the 251 persons were not all Jews, in other words, it was not a proper action against Jews. The same applies here as in the abovementioned case of Olita of 7 April 1942 (C. 2), or Kauen. The fact that the number of Jews among those executed was shown separately from the others does not by any means prove that they were executed merely because they were Jews. As was the case on other occasions, this was probably done only to determine how many Jews were taking part in Partisan, or other activities. (Statements Sandberger, transcript of 17 November 1947, German page 2461, English page 2410). all customary to carry out actual executions of Jews as understood by the Prosecution, together with the execution of Partisans, etc, On the other hand, Jews, as far as they themselves were Partisans, were, of course, shot together with other Partisans, as undoubtedly was the case here. In addition to this it must in particular be considered that, according to orders given, the executions of Jews were to be carried out as inconspicuously as possible. This fact, too, speaks against the assumption that the Jews in question were supposed to have been executed merely because they were Jews. At the time under discussion many thousands of Jews were still living in Minsk, so that, if one had wanted to carry out an action against Jews, one would not have confined oneself to a small number, and moreover carried out the executions together with those of the Partisans. Hence, the argument of the Prosecution concerning the interpretation of Document NO-5188, Exh.

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326, is wrong. following sentence in the document, "In Minsk, an action was carried out against a railroad terrorist group; 126 persons were arrested. The number of those arrested shows thedangerous strength of this terrorist - and Partisan group" .

Document No. 3876, Exh. 223 in Document Book 5-A gives exhaustive information of the participation of Jews in the Partisan, movement and illegal activities. of the document book, page 54/55 of the original report, which, as I have just found out, are not included in the English text, details are given on pages 87/88 of the document book, pages 57/59 of the original about the considerable strength of the Partisan groups - up to the strength of a battalion - in white Ruthenia and Minsk.

Page 57 of the original states:

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"In Minsk the chief of a partisan recruitment agency, a Jew, was arrested. In a fresh campaign against the partisan movement in White Ruthenia it has been possible so far to arrest 163 people. Numberous pistols, hand grenades, machine guns, carbines and ammunition were seized. Investigations so far have disclosed the following: staff, composed of 10 departments, whose heads were all Bolshevist officers or army administrative officials. ROKOV, the Chief of the Soviet Partisan Movement of Ninsk, and numberous other leaders were arrested. The staff had set itself the task of poisoning the Commissar General, contaminating wells and water installations in Minsk and reconnoitring military objects. Several bacterial cultures were seized. The reconnoitring of military objects was already for advanced." partisan groups, which consists of 200 to 400 men. Furthermore it is stated:

"Side by side with the Partisan Department there is the Party in Minsk, which exercises a certain control. It was possible to arrest the organizer of the Party machine, the Grusinian Jew Mustafa (page 59 of original) LELIKURDGLY. The management of the Party was in the hands of a committee consisting of seven persons. An illegal group of 60 Ghetto Jews financed Party activities, procured weapons, and continued to reinforce the Partisan group. 60 to 80 Jews were sent from the ghetto to join the Partisans. Several receiving sets as well as bandaging materials and drugs were seized in the home of the Jew DELIKURDGLY. Furthermore a perfectly functioning printing shop was dismantled and 8 typewriters confiscated." ment Book 5-A than in the English Document Book 5-A and bears the report dated March 1942, reveals that both recruitment for the Partisan movement and the organization of the Party, which is hardly separate from the Partisan movement, were essentially in the hands of Jews, that strong group of Jews - 60 men - effected the financing and procured weapons, and that strong groups of 60 to 80 Jews were sent to the Partisans.

partisan-shootings on 9 May 1942. It proves that the actions of 9 May were necessary, justified, and therefore legal according to martial law. It may be assumed that the shootings of 9 May 1942 were the outcome of the events of March 1942, in that the partisans, including the Jews, who had been arrested in March 1942 and who had participated, received their punishment on 9 May 1942 after having been tried previously. part of the defendant JOST,insofar as any responsibility whatever for the shootings Of 9 may 1942 could possibly be ascribed to him. This holds good, if for no other reason, then because of the fact that the defendant gave no order, nor did he participate in any way in this case. The relevant orders, as the document shows, were on the contrary given direct by the Commissar General in charge of that domain, or by the Wehrmacht. This fact then clarifies the fundamental question of responsibility for incidents in areas under civilian administration. that HEYDRICH had given the respective commander a respite for the enactment of the action against the Jews in White Ruthenia until after the harvest had been brought in. (transer 22 Oct. 1947, German page 1158 English page 1151, direct examination JOST- transcript 20 January 1948, direct examination STREUCH - affidavit ZENNER, Document Book I STRAUCH. Minsk at the time, as he had indicated to the defendant on the occasion of the discussion in Riga on 31 march 1 April 1942. In view of the respite greats by HEYDRICH to STRAUCH, but postponing the Jewish executions until after the harvest had been brought in, there was no reason whatever for such executions in May 1942, insofar as they were not, as explained above, executions connected with partisan or other punishable activities.

This fact too, shows that the events of 9 May 1942 were not an actual anti-Jewish campaign. for events in White Ruthenia during the time from March until September 1942, as, according to HEYDRICH's declarations, events in White Ruthenia were no particular concern of his, and he was above all things not responsible for executive measures, as is proved by the above described incident.

1. The Prosecution is unable to bring a charge of, and much less to prove, one single execution in the entire domain of Einsatzgruppe A, namely Krasnowardeisk and Loknia, during the time from 29 March 1942 to roughly 2 September 1942, which was the defendant's term of office as chief of Einsatzgruppen A; nor has any other punishable action or deed been brought forward.

2. Concerning the events outside the domain of Einsatzgruppe A. i.e., in the Reich Commissariat Ostland, and the Main districts (Generalbezirke) it may be regarded as proved that the events dealt with in action reports 186, doc. NO-3236, exh. 109 and action report 195, exh. 56, doc. No. 3277, date from the time before the defendant took office.

The contents of Doc. USSR-41, exh. 101, are not proved, Punishable conduct of the defendant JOST in particular cannot be regarded as having been proved.

This leaves the events of action report No. 193, NO-3261, exh. 55, with 22 shootings on 7 April 1942 in Olita for active Communist Activity and contact with Partisan groups, and the shooting of 22 persons in Kauen, for proved Communist propaganda activities, and finally the shooting of 253 partisans in Minsk on 9 May 1942. of the size of Greater Germany.

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white Ruthenia for.the following previously discussed, reasons:

the defendant's position as Commander of the Sipo and the specific restriction of his executive powers, through HEYDRICH, due to the vastness and complexity of the area and the consequences arising therefrom, but especially in view of the defendant's attitude regarding the enactment of the Fuehrer-order, which I shall discuss in detail. connection to the statements and argumentation of the co-defendant STRAUCH, as well as to those of the other co-defendants, inasfar as they relevent. that the charge against JOST cannot be upheld, then it will be shown even more clearly through the clarification of the subjective part of the facts and the description of the situation that would have arisen if the defendant had really acted as the Prosecution asserts, namely if he had enacted the issued orders in a formal and strict manner, that the defendant cannot be charged with any punishable offense.

The defendant's attitude toward the execution problem and HENNICKE whom he had in known previously, in Smolensk. The subject of the execution problem was brought up during the conversation, and the defendant stated unequivocally that he would never let himself be drawn into such things. The defendant's statements gave HENNICKE the impression that if need be, JOST would certainly act accordingly. message for the defendant was received, conferring on him the position of chief of Einsatzgruppe A, and BdS for the Ostland. The radio message greatly perturbed and depressed the defendant, who told HENNICKE that he would, not comply with this command without protest, but would contact HEYDRICH immediately to have it revoked.

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HENNICKE had the impression that these remarks were in keeping with JOST's inner most attitude toward these matters, and that he wished to have no further dealings whatever with the Sipo and the SD. (Affidavit HENNICKE, JOST's examination). attitude toward the assignment, and his intentions to escape such an appointment. They are in conformity with his psychological make-up and character as described earlier.

The defendant's words were soon followed by action. but failed at first. However, he soon had an opportunity of speaking to Heydrich, as the latter arrived in Riga himself at the end of March 1942. The contents of his talk which the defendant had with him and especially his attempt to have his assignment and the Fuehrer-Order revoked, are explained in greater detail in Jost's statements in the witness box. ( Transcript of 21 October 1947, German page 1162/64, English page 1146/49). revocation of the assignment, he nevertheless achieved the restriction of his assignment, and tasks at least so far as duties and duration were concerned. On this occasion the defendant adopted the attitude which he had already previously explained to Hennicke, and he declares in particular that he was unable to carry out measures such as were here demanded of him. of a possible transfer, and that, at least for the moment he would receive no specific instructions for a continued execution of the Fuehrer-Order. In support of the above I refer to: ventures to speak to his local superior, the Higher SS and Police Leader Jeckeln, about the Fuehrer Order.

In view of Jeckeln's personality, as revealed in various reports of events which were introduced in the proceedings, this was rather a critical undertaking. He had the advantage of being able to refer to his previous conference with Heydrich and to modify his attitude on the basis of that discussion. Yet his statements are not accepted favorably. But the defendant at least achieved the following: he did not receive any special instructions for executions. could in all fairness be expected to do. To do more than that, the defendant would have had to sacrifice his own life considering Jost's personality, the defendant must be given particularly high credit for his attitude. acquanit the commanders in Lithuania, Latvia and Esthonia of his personal attitude and of the result of his conference with Heydrich in order to achieve that for the time being executions of Jews would no longer be carried out. (Transcript dated 22 October 1947, German page 1181, English page 1165 direct examination Jost.)

In that respect the defendant's testimony is also correborated by defendant Sandberger's statements. (Transcript dated 14 November 1947).

The result of the defendant's action is evident from the fact that during the following period no further executions were reported from the area in question, at least not during the time of the defendant's activity. This alone proved the credibility of the defendant's statement in the most unmistakeable manner. by an order of Heydrich to surrender Jews under 16 and over 32 years of age for special treatment, while the other age groups were to be made available for labor allocation. The defendant credibly described and proved why he could not - and consequently did not - transmit this order. (Transcript dated 22 October 1947, German age 1182, 1183, English page 1165/67. Direct examination Jost).

surprise by an order of Heydrich to surrender Jews under 16 and over 32 years of ago for special treatment, while the other age groups were to be made available for labor allocation. The defendant credibly described and proved why he could not - and consequently did not - transmit this order, ( Transcript dated 22 October 1947, German page 1162, 1183, English page 1165/ 67. Direct examination Jost). (Affidavits, Best Nyhoegen, and Jost.

Dr. Leibbrandt, the former department chief of the Ministry of the Interior who was present at Jost's conference with Rosenberg at a later date, is also in a position to report that the latter had told him at that time that he had expressed his disapproval of the execution of such impossible orders to Heydrich (Doc. Book Jost I, page 19).

In spite of the clear order and Heydrich's and Jeckeln's attitude which is known to him from the previous conference, Jost decides to visit Heydrich In Berlin. This proves the defendant's strong instinctive disapproval of these execution orders. It was a risk for him to report to his superior once more in connection with this question, even if he were to employ the most diplomatic means to achieve his aims. During the conference Jost was then also informed of his assignment for active duty in no uncertain terms etc.

( Affidavits Dest, and Jost.) The defendant was unable to achieve the cancellation of the order, where as he was assured of his recall, which he urgently desired.

However, owing to Heydrich's death shortly afterwards the recall was never effected. his conviction, for instance in Krasnowardeisk he prevented the liquidation of insane persons requested by some Army Headquarters. (Transcript dated 22 October 1947, German p. 1189, English p. 1172.

Direct examination Jost). This is corroborated by the statement of the former Major General of the Waffen-SS Klingemann (Doc. volume Jost I, page 49/51). when, at the end of July 1942, Reichskommissar Lohse revealed to him his desire to report to the Fuehrer that the Eastern territory had been freed of Jews. Also in this case the defendant refuses to cooperate in the execution of measures of this kind. (Transcript dated 22 October 1941.) with Lohse, came home, Major General Jedicke, commander of the regular police, was waiting for him there. He informed the latter of his conversation with the Reichskommissar. Jedicke commented: "Well, that takes courage: Congratulations. Did you also consider that this might cost your life?" (Affidavits Jost and Jedicke). to a viewpoint which he had once considered right, regardless of danger to his own person. the lives of thousands.

After Heydrich's death the defendant was unabating in his endeavors to get away from the activity he disliked. He repeatedly tried to contact Himmler and he finally succeeded during the last third of August 1942. By this alone he incurred a great risk since he had not been ordered to present himself to Himmler.

THE PRESIDENT: Dr. Schwarz, in the statement at the bottom of page 53, "later on the defendant was rewarded for his conduct which saved the lives of thousands. " To what do you refer? What happened later on?

DR. SCHWARZ: He was drafted to the Waffen-SS later on.

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THE PRESIDENT: You say he was "rewarded."

DR. SCHWARZ: I am not getting the translation, Your Honor.

THE PRESIDENT: The statement says that "later on the defendant was rewarded for his conduct." Do you moon the word "rewarded" to suggest that his action was approved.

DR. SCHWARZ: Your Honor, I believe this is a mistranslation in the German text. It does not mean "reward," but it means "receipt," "receipt of the reward," "a receipt for receiving something. "

THE PRESIDENT: Mr. Glancy -

MR. GLANCY: I think possibly it is used in an ironic sense, Your Honor.

THE PRESIDENT: Yes, if it is used in an ironic sense then it makes sense. What is actually the German word, the literal translation of the German word?

INTERPRETER JUELICH: "Reward" is the correct translation of the original, but it may mean something different.

THE PRESIDENT: Do you mean that in a cynical or saracastic sense, that he was paid for the rebellion by being demoted, is that what you mean?

DR. SCHWARZ: Certainly, Your Honor, it is sarcastic -- it means that in fact he was punished.

THE PRESIDENT: Very well.

DR. SCHWARZ: In connection with this personal visit, I refer to the defendant's description in the witness-box and to the relevant affidavits.

(Affidavits Best, Nyhoegen, Annemarie Jost.)

The defendant had to listen to harsh words, such as "I have to decide how I can make up for that (strict adherence to orders) and how I can teach you " or "Order are not to be discussed or talked about, orders are to be carried out ". That this conversation did not have any serious consequences for the defendant, at least for the moment, was probably due to the fact that Himmler took Jost's poor state of health into consideration.

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Jost was at least able to obtain the approval for his recall from Riga and his transfer from the SD (Security Service ) to the ministry for the East. (Affidavit Best as above) (Affidavit Wohlgemuth, Doc. Book Jost I V).

The discussion with Rosenberg, "which took place in November 1942, ran along the same lines. At the time Jost was no longer concerned with affairs regarding Jews. He had no reason whatsoever to commit himself again in the same matter. He nevertheless took the opportunity at his first meeting with his superior, to state his personal views once again without thought of personal gains. On this occasion the defendant again opposed the execution of the pertinent orders. He tried to induce Rosenberg to prevent further executions of Jews. (Affidavit Dr. Leibbrandt, Doc. Book Jost I, page 19).

This also proves again that the Prosecution's opinion of the defendant is erroneous and untenable.

A few days after the call on Himmler the defendant's recall was actually effected. Thus his activity in the East came to an end.

The consequences and the result of the defendant's activity. different than the way the Prosecution tried to present it, For 5 months Jost was chief of an Einsatzgruppe and commander of the Sipo (Security Police) and of the SD in the East. During this time not a single person was reported dead from the entire territory of the Einsatzgruppe. Reports from the territory of the Reich Commissariate show that 2 partisans and Communist activists were shot. Within the entire territory neither a Kommissar nor a Gipsy was shot and not a single Jew was shot only because he was a Jew.

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his predecessor Stahlecker. A comparison of the two results alone makes the indictment against Jost appear untenable. took up has duties, more than 40,000 Jews were living in the countries of Lithuania, Latvia, and Esthonia; the same number of Jews were living when the defendant left his office as the report of events, submitted by the Prosecution, prove. Thus about 2600 Jews were at that time still living in Riga, 900 in Duenaburg, 300 in Libau, 4500 in Schaulen, 15 000 in Kaunas and 20 - 25 000 in Vilna. Had the defendant executed the Fuehrer and Heydrich orders, then no Jews would probably have been left at the time when he was recalled from his office.

The defendant's statement is also supported by the following fact: regarding the individual persons responsible for the persecutions of Jews in the Baltics and in White Ruthenia. (Doc. Book of the Prosecution III - A, doc. No. 3872, exh. 110, German page 17 - 20, English page 1012). that he had been given a few days in which to compile this list of names and that for this purpose various persons had been interrogated. The defendant Jost's name - who was the chief of the co-defendant Sandberger 5 months - does not appear in this document. That can only be ascribed to the fact that Sandberger could not link the name of the defendant Jost with persecutions of Jews in the Baltics and in White Ruthenia and was therefore unable to list it. There is no logical reason why Sandberger, who listed the names of a greater number of co-defendants like Ohlendorf, Strauch, Nosske, Rasch, should not have mentioned the defendant Jost, if according to his opinion and his knowledge, the latter had been responsible for the persecution of Jews in the territory in question.

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the executions of the persecutions of Jews have been submitted while Jost held office. Furthermore Faulhaber's affidavit proved (Doc. Book Jost I, page 21/22) that at the time when Jost was in Riga - that is at the end of August 1942 - there were still about 25 000 Jews in Vilna alone. Various reports of events or situation reports also show, that the number of Jews in the area in question did not vary during the period from March to September 1942. Jost's responsibility for his area, therefore, is this, that he has not destroyed life but has saved the lives of many thousands on account of his attitude dictated by a strict sense of justice, his decent moral principles and his conscience. On no account can the defendant, therefore, be charged with being guilty either in the eyes of the law or even morally. In view of all those circumstances it would mean basing one's judgment on formal reasoning if one intended to charge the defendant with a crime against humanity or with a war crime. The defendant was not, as the Prosecution declared in its opening statement, "presumptious enough to decide the fate of human beings, their death being the intended manifestation of his power and of his contempt for them with which he was filled". The defendant did not exercise his power for carrying out evil, but good intentions. He did not allow himself to be guided by feelings of contempt, as is corroborated by the statements of all witnesses who made affidavits. Even if one assumed that one or the other incident had happened, which might justify the raising of the question of guilt, one really could not - if one were guided by reasonable considerations - make him responsible for them. One could have to take into account his proved fundamental attitude and the extent of the area subordinated to him, the bad transport and communication conditions in this area, the unclear situation with regard, to orders which was apt to load to action being taken by all kinds of departments, and all the other circumstances, which had already been mentioned previously.

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Incidentally it may also be mentioned - in order to round off picture of the defendant's personality - that he had explained his views on the Jewish question to members of his headquarters on the occasion of a rollcall and had pointed out that even the person, the life and the property of a Jew enjoyed the protection of the law. Furthermore, one of the first steps he took was to express his objection to Heydrich with regard to a decree concerning the treatment by the Police of Latvians, Estonians and Lithuanians who were employed in the Reich, and to effect the cancellation of this decree despite the fact that this decree did not even concern the sphere of his authority. in Riga as on 1 May 1942 and recommended the same measure to be taken in Estonia as well. These incidents further emphasize the general attitude of the defendant towards members of other races and nations and even towards political opponents. to produce the witnesses Nyhoogen and Landgraf, who had the most extensive insight into these events. Nyhoogen is a prisoner-of-war in Russia, whilst Landgraf is missing.

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VII. The consequences of the defendant's course of action affecting him personally. talks with HEYDRICH and HIMMLER did not, of course, remain without repercussions so far as he himself was concerned. The defendant now encountered many difficulties in his path. He had given up his past, without being immediately entrusted with other tasks. He stayed with his new office in the Ministry for the East without occupation for 13 months. He was in fact being passed over. His temporary assignment as chief of liaison with an army group, that is to quite an inferior post, accentuates the impossible situation into which the defendant had got himself. (Affidavits HILDEBRANDT, and REST) prevented JOST's employment even outside the SS and the Police. Although BERGER, Chief of the SS Main Office, tried to provide a post for the defendant in the public or civil sector, he was unsuccessful, as HIMMLER did not agree to this. (Affidavits BERGER and HILDEBRANDT) HIMMLER was not satisfied with having JOST "shelved"; on the contrary he ordered him to be drafted into the Waffen SS as a corporal - a truly degrading procedure. Accordingly JOST was then to be assigned immediately,to a front unit, without previous training and medical examination and inspite of his impaired state of health of which HIMMLER know. Even the General of the Waffen SS, BERGER, wasunable to do anything about by pointing out to HIMMLER that under these circumstances JOST's conscription would be equal to a "Himmelfahrtskommando" (suicide commando). As has been stated by BERGER, HIMMLER used to take such measures whenever any of his subordinates acted in any way contrary to his orders. (Affidavit BERGER). The final cause for HIMMLER's action end the renewed order given to BERGER to have JOST drafted immediately, may have been the defendant's refusal - of which HIMMLER had gained knowledge through HILDESBRANDT to be re-assigned to the Security Police. At that time HIMMLER had used the grossest invectives against JOST, when talking to HILDEBRANDT, and had declared "that now he would certainly bring him (JOST) to his senses". (Affidavit HILDEBRANDT). JOST's conscription was ordered to list until the end of the war.

It was made known as a warning to higher SS and police Headquarters by means of a circular - a heavy blow to the defendant who was now finally "done for", a victim of his uprightness. He had been deprived of his reputation and his honor. These facts have been corroborated by the witnesses THOMASHAUSEN, NYHOFGEN and EVERWIEN. (Affidavits THOMASHAUSEN, NYHOFGEN and EVERWIEN). with not being promoted and not receiving any decorations during the whole the war and not even during his assignment to the Eastern front. Eventually one went so far as to link up the defendant with the happenings on 20 July 1944. Probably at the instigation of the Chief of the Office IV of the Reich Security Main Office, MUELLER, with whom the defendant had been at variance right from the beginning, he was searched for and suspected of having concealed the Oberourgermeister Dr. GOERDELER in his apartment. (Affidavit HEINRICH) (Transcript dated 14 October 1947, cross examination OHLENDORF). the defendant suffered through his upright and honest conduct. The defendant could have saved himself all that, of he had complied with orders. He chose to take the difficult path, which his attitude and his conscience dictated to him. VIII. Count III of the Indictment. belonged to a criminal organization, i.e. Office VI of the Reich Security Main Office and the SS. In the IMT-Verdict the SD and consequently Office VI was declared a criminal organization, because it was maintained that Office VI was a counter-intelligence organization of the Gestapo.

Actually the Prosection does not contend that the defendant had himself committed a criminal act during the period from September 1939 to August 1941, when he belonged to the Office VI; the prosecutor too pointed out during the defendant's examination, that membership of Office VI was by no means an important point. The prosecutor declared. when questioned by the Presiding Judge as to whether he accused the defendant of a crime in connection with his activity at the Reich Security Main Office: "No, Your Honor, that is only an irrelevant point".

In this connection it must be pointed out that:

1) the Office VI was no counter intelligence organization of the Gestapo, but an intelligence service for the procurement of political and economic news from abroad,

2) the Office VI accordingly had no professional connection whatsoever with the Gestapo and had nothing to do with the facts with which the Gestapo was charged; and,

3) the defendant had not gained any knowledge of these facts during his term of office from 1939 until 1941. ments of the defendant in the witness box. tasks of the Office VI and the fact that this Office VI was no counter intelligence organization of the Gestapo, are confirmed by the following affidavits: VOLLHEIM, BEST, WANECK, FINKE, DAUFEIDT and OHLENDORF. libitum, show clearly the

tasks of Office VI and the non-existence of any connection with Office IV. Proof has therefore been furnished that the tasks of this office were legally founded. Furthermore the prosecution and annihilation of the Jews, atrocities and murder in concentration camps, excesses in the administration of the occupied territories, the carrying into effect of the slave labor program, and the illtreatment and murder of prisoner-of-war, with which the IMT Verdict charged the Gestapo, happened at a time, which precluded the possibility of JOST's having gained any knowledge thereof while ha held a position with the Office VI.

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who had either participated in the perpetration of a crime or had not severed his connection with the organization after having gained knowledge thereof. But at the same time the verdict says (page 104) that the members of the Security Police and the SD had no opportunity during the war, to exert any influence whatever on the type of their activity, In spite of this being established in the verdict, it remains for the Tribunal to examine what the defendant undertook to quit the service of the SD and what was the result of his endeavors. The defendant, in his evidence, has given a detailed description of his relationship with the Chief of the Security Police, HEYDRICH, and the Chief of Office IV, MUELLER; of how he had at first tried to protect Office VI from MUELLER's lust for power and to keep it away from tasks, which had nothing in common with its purpose and structure, and which he furthermore considered dangerous; and last but not least he has described how he endeavored to leave the SD when he considered it impossible for material, personal and political reasons to continue to cooperate with HEYDRICH and MUELLER respectively. These declarations by the defendant are absolutely confirmed by the following affidavits: The following list I shall not read into the record but would like to ask you to take note of it. relations of the defendant to his then chiefs HEYDRICH and MUELLER, of his conception of the tasks assigned to him, and above all of his attempts to leave the SD and of the fact that he actually left the SD on account of his attitude and his endeavors approximately in August 1941. Though it is true that no formal discharge took place, it is decisive that, through his subsequent transfer to the Ministry for the East in the Reich Security Main Office, he no longer performed any functions.

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There, namely in the Ministry for the Fast, no use was made of JOST's services, and without any steps on his part and against his express wish, he was employed in Riga. employment for 7 months was by no means pleased with this new task, as might have been expect d after his long period of inactivity. Nor did he reach to HEYDRICH's obvious attempt at reconciliation but immediately asked HEYDRICH's again to reverse this assignment, and in any case to give it a time-limit. Thereby he stressed anew that under no circumstances was he willing to return to the sphere of activity of the Security Police and the SD. When HEYDRICH did not keep his promise of an early recall, he Went to see him again in Berlin on 22 May 1942, in order to effect his recall. HEYDRICH gave his promise, together with the unambiguous threat that he would have him drafted into the Waffen-SS after his recall.

Even after HEYDRICH's death, JOST's endeavors were continuously directed towards bringing about his recall, and after having tried many times in vain, he succeeded in seeing HIMMLER during the last part of August. The defendant related this discussion with HIMMLER in detail.

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result of this discussion. In this case he had again succeeded in leaving this kind of work, even though it was not possible for him to leave the organization altogether during the war. Only after 13 months of inactivity was the defendant given an unimportant position as liaison officer of the ministry of the East with the army group at Nikolayev. When the position of commander of the Security Police was offered to him again in February 1944, he resolutely refused it, since he did not want to be subordinated again to HIMMLER's authority. JOST's refusal, which was made without considering his own person, was made known to HIMMLER and led to JOST's final drafting into the Waffen-SS. in 1941 as chief of office VI and in 1942 as chief of Einsatzgruppe A and Commander Ostland as also in 1944, in order to be able to leave the Security Police and SD, namely HIMMLER's field of activity. he maintained this attitude without regard for his own advantages. In practice it was impossible for him to achieve any more. He has proved that he tried everything that could be asked of him, and thereby succeeded in not performing any functions, at least after fall 1942, within the scope of the Security Police, SD, or SS, with the exception of his being drafted into the Waffen-SS. Taking this into consideration, he cannot be convicted for membership in a criminal organization. In this connection I wish to refer to the statement made by the British Chief Prosecutor in the verdict of the International Military Tribunal, namely that there was one way of leaving, namely via the forces. By his attitude towards HEYDRICH and HIMMLER' JOST provoked this course of events and accepted it.

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Through his assignment to the Einsatzgruppe, JOST's membership to Office VI Reich Security I Main Office would have stopped even if he had not, de facto, left before. As Chief of the Office VI Reich Security Main Office, JOST committed no crimes. Since his activity at that time was lawful, he could not of his own accord have gained any knowledge of the criminal nature of Office VI, as was ascertained by the International Military Tribunal. Einsatzgruppen and Einsatzkommandos were no authorities, agencies or parts of the organization of the Chief of the Security Police and the SD even less so of the Offices III, VI and VII of the SD, which were declared criminal. Einsatzgruppen and Einsatzkommandos were on the contrary militant and mobile units set up ad hoc and attached to army groups or armies for police purposes. This is not changed even by the fact that the Chief of the Security Police and the SD could give pertinent directives to the Einsatzgruppen and Einsatzkommandos. The Einsatzgruppen and-kommandos did not thereby become agencies of the Chief of the Security Police and the SD. In this case he acted as the professional agent who was at the disposal of the commander in chief of the army group and the armed forces respectively. Therefore the knowledge of the events in the East which JOST acquired in 1942, i.e. many months after his withdrawal from Office VI of Reich Security Main Office, cannot be cited as proof of his knowledge of the criminal nature of Office VI at the time when he was still office chief. This knowledge would need to be immediately connected with his activity in Office VI. However in this case the link between time and subject matter is missing. It is therefore a fact that at the time of his activity in Office VI Reich Security Rain Office, JOST was not conscious at all of any wrongdoing. direct examination. By his activity in Office VI of the Reich Security Main Office, he automatically became a member of the SS-formation Security Service.

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The peculiarity of this formation was that it did not possess an organization of its own. There were neither Stuerme nor Standarten within this special SS formation Security Service. Therefore no SS service wasperformed in it either. Since this special formation existed only theoretically and actually made no appearance, it lacked the prerequisites for criminal activity right from the beginning, and no member of this formation could have been conscious of belonging to a criminal organization. of my colleague, Dr. Gawlik, for the defendants Seibert and Naumann, according to which one can judge Jost's membership in the SS; Jost's is not charged with involuntary membership in the Waffen-SS by the Prosecution. I am now coming to Point IX. commander of the Security Police and the Security Service Ostland, JOSTfor the first time received full knowledge of the Fuehrer order. It became clear to him that he was faced with a binding order given by his highest superior, the Fuehrer, and he also became aware what actions were demanded of him on the basis of this Fuehrer order. disposition, his attitude was one of opposition to this order right from the beginning. Reich, especially with regard to the Russian peril, Judaism as the pillars of Bolshevism etc. did not leave his attitude uninfluenced. not the training and exercise with regard to the duty, character and morale of an officer of the regular army, he wasyet well acquainted with such conceptions as duty, obedience, loyalty and treason.

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and necessities surrounding him; and with his personal attitude. Undoubtedly he was confronted with a conflict of duties. The defendant tried to free himself from this conflict of duties by immediately and repeatedly attempting to sever all personal connection with the execution of the Fuehrer order either by having his superiors cancel the further execution of the Fuehrer-Order on the basis of his remonstrances or by being released from this order entirely. He continued to make every effort in order to achieve this -- as has been proved and explained already in detail -- without having regard for his person or for the fact that he was thereby risking his life. action, he again, at the risk of his life, undertook to delay the further execution of the Fuehrer-Order and later the HEYDRICH-Order. However, the defendant could not make up his mind flatly to oppose the order. However, the considerations which were especially impressed upon him -- as a soldier -- namely that in his position as a superior he was not to give a bad example, that disobedience on his part would undermine the discipline of the forces, that by this he would become guilty of aiding the enemy and in fact would become a traitor to his people kept him from taking such an action. At the same time the defendant was of course aware of the fact that he would speedily lose his life if he went beyond that which he had already done. training as jurist and his three years' practice as an attorney, the defendant -- in the position in which he found himself -- took the course which, to a certain extent, made him appear dishonrable in the eyes of his superiors and also his comrades, as is proved by his degrading enlistment into the Waffen SS with the rank of a sergeant.

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On the basis of his character the defendant valued decision according to his conscience, more than the execution of a binding order which, it is true, he considered legal yet which he himself felt unable to carry out.

THE PRESIDENT: The Tribunal will be in recess.

(Recess.)

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THE MARSHAL: The Tribunal is again in session.

DR. SCHWARZ: It must be admitted that the defendant for his part did everything that could reasonably have been exported of him. It is impossible to maintain that the defendant should have gone further and should have flatly refused an order or become what would have to be considered a traitor to his people. Yet the defendant would in fact have betrayed his people -- a crime punished by the death sentence in all civilized states -- if by flatly disobeying orders he had undermined the discipline of the forces and thus aided the enemy. author of the orders in question which were given by the Fuehrer and by HEYDRICH; that he never issued orders of his own on the basis of these orders; that these fundamental orders had existed and had already been carried out for a long time past and that under these circumstances the defendant had no possibility of making a decision of his own free will. duties and the unexpectability ......., the defendant must also be acquitted of guilt and punishment with regard to the subjective side of the case. or participation in acts -- which according to the explanations given under paragraph IV to VI is out of the question -- the defendant should also be acquitted of guilt and punishment on the basis of assumed selfdefense, of an assumed state of emergency, a state of emergency arising from an order received and the conception of a general state of necessity, as was applied particularly in the Flick sentence. be acquitted of guilt and punishment.

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THE PRESIDENT: Dr. Ratz.

DR. RATZ: Dr. Ratz for the defendant Von Radetzky. make a brief remark. On 7 February I handed in a trial brief which has already been translated and which will be submitted to the Tribunal within the next few days. This trial brief is an important completion of my final plea. Your Honors -

THE PRESIDENT: Dr. Ratz, will you please follow up that trial brief and see that it does get to us quickly. Don't just assume that mechanically it will finally reach us. Keep an active interest in it yourself.

DR. RITZ: Yes, your Honor.

Your Honors: shootings which they offer in the indictment is still not sufficient wholly and completely to life the veil and clear away the fog surrounding the question of the criminal guilt of each of the defendants sitting here, in spite of all the operation reports with dates, figures and names. In its opening speech of 29 September 1947 the prosecution described the *** doctrine of the Master Race and inferior races", apparently with the intention of demonstrating how such a thing could be possible, why such acts are to be attributed to the defendants, and where the roots of their guilt are to be found. But it would mean going only half way if, in this trial of all trials, one did not investigate the character of each individual defendant and if one did not utilize every means of cognition to gain a true picture of the nature and the character of each one of them. This applies particularly if the name of a defendant, like that of the defendant v. RADETZKY, is nowhere to be found in any report of events concerning shootings. There is only a hint there for the correct judgment of what he did and and what he did not do and of what he submitted to the court; his personality.

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The defendant v. RADETZKY is a Baltic German. He comes from an ethnic group which until 1939 had nothing at all be do with the Third Reich, either spiritually or culturally, and which for centuries has been a closed community in customs, morals and manner of thinking, the individual members of which have been and still are today tru representatives of their Baltic homeland with regard to what they think, feel and want. ments of the defendant v. RADETZKY in the witness stand, concerning his origin and the influences in his old homeland which had a decisive part in building his character; it is therefore, probably superfluous for me to go once more into the conditions in the Baltic countries which prevailed there until the resettlement of the defendant. I would only like to summarize once more the reasons why particularly in the case of the defendant v. RADETZKY one cannot simply assume that on the basis of his development he unconditionally endorsed the National Socialist theory and/or its result. On the contrary, a transition into the ideas of National Socialism was impossible for the following reasons:

1.) From time immemorial, the Baltic Germans nave been very part of the Protestant civilization in the North;

2.) The Prussian principles of subordination, of the obedience to civilian life in its entirety, was foreign to the Balts;

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3.) The entire history of the Balts is a history of their autonomy in school, church, justice and culture; the policy of regulating all walks of life from "above" was

4.) The Balt's country of origin is a homeland for diversified principle by which peoples my live together in peace; The defendant v. RADETZKY was forced to go to Germany with his ethnic group at that time.

It would be incorrect and unjust to brand this defendant with a stamp bearing the National Socialist view of life and to try to maintain that he endorsed the Nazi ideology of the master race. For this reason he is supposed to have been an arbitrary instrument of a systematic program of genicide.

In his own homeland, v. RADETZKY had experienced the cost of belonging to a national minority. In personal danger, in personal suffering and personal injury, Besides the Germans there were other minorities in Latvia who had the same needs and troubles the Germans had. These minorities were of mutual assistance to each other, and on the witness stand v. RADETZKY has told us that he owed the upward trend of his firm in those years of special affliction from 1936 on, to close business cooperation with Jewish firms.

From 1936 on! Can one seriously claim or even believe that from 1939 on, or at least from 1941 on, v. RADETZKY in gratitude for his compulsory resettlement to Germany or in gratitude for his enforced drafting into the Sonderkommando subscribed to the doctrine of the existence of one higher and many inferior races, and that the most inferior races are the Jews and the gypsies?

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Or should we rather not believe in the steadfastness of his conviction that only mutual tolerance and regard of peoples in ethnic groups can be the prerequisite of the common good, thus the national tolerance which is as deep rooted in him as a Balt as the sense of freedom is in the Swiss.

Your Honors! A straight path leads from the general character via the subjective conviction to guilt or innocence. Therefore, let us consider the character of the young RADETZKY even more closely and ask: In the period before the resettlement of the Baltic Germans to Germany, when his will was still free and he could still move unhampered, were there not perhaps traces of such traits or tendencies in his nature which pointed like the needle of a magnet to events which later occurred in the Sk4a? Did he have political interests, or what sort of interests or motives did he have? Did he have a bent for public activity, and along what lines?

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Young RADETZKY's inclination were in for different fields from those of politics: he had to rebuild an economic existence for himself and his old mother and wanted to regain his lost property as a businessman. To be sure, he also had a deeprooted social sense and took over the direction of an office for vocational guildance and assitance with the German People's Community, the organization of the German minority of the country, recognized by state and international law; he founded homes for the families of white-collar workers and officials and a company-aid fund, and no one can claim that as a German he would not have stayed within the limits of legal and normal activity of his patriotism. autumn of 1939 came the resettlement of the Baltic Germans from their old homeland by the Baltic Sea to the region of Posnan. It was not the sort of emigration which takes place when the homeland has become top small for its population and now on its own initiative it seeks a new homeland in the hope of bettering its personal condition: it was an emigration determined upon by the government over the heads of those concerned. In reality it was a mass flight before the advancing Bolshevist armies which were on the verge of occupying the Baltic countries. In all reason one cannot speak of a voluntary impulse. It was nothing short of a tragedy involving 60,000 people who had to leave their homeland, their dwellings and houses, and at best could wretchedly take some furniture and a few cattle with them. to hold v. RADETZKY responsible for what happened to the former inhabitants in the new area of settlement. The Resettlement Center was solely responsible for the emigration of the settlers.

v. RADETZKY, a businessman and economic expert, took part in this portenteous transferring of his compatriots from their homeland as an economic counsel both in the appraisal of the property left behind in the homeland and in their economic care at their destination in Poznan.

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The Balts set up their own Immigration Advisory Office which was staffed exclusively by Balts and served the sole interest of the resettled Balts, and there can hardly be any doubt about its character as a social, unpolitical enterprise. Once again we can observe the conduct of the defendant v. RADETZKY in a relatively free situation: he did not fawn upon the National Socialist Offices and also did not prove to be one of those National Socialist preachers who had been frustrated up to that point, but he helped and only helped, insofar as he could help at all, with his energies in the general confusion, and he was just as astonished as his Baltic compatriots when the Gauleiter of the NSDAP received the Baltic Germans with the friendly threat that he would soon exercise their domineering attitude and teach them National Socialism. In this external and internal distress into which v. RADETZKY and his compatriots had fallen as a result of National Socialism, he truly did not have the heart to acknowledge a particular belief in National Socialism or even to enter the SS.

I would like to repeat what I said in the beginning: The Balts came as refugees, who were looking for work and shelter; they had to adapt themselves and enter the Party and its affiliations if they wanted to profit by a moderate influence upon their fate: they could hardly criticize the recruiting of the Party, since they came from a foreign country. It would hardly be possible, therefore, to hold it against v. RADETZKY, if, in his hopeless situation and in the face of his existence which had again been shattered, he had joined the SS, hoping for a modest improvement in his situation. In spite of this, von RADETZKY came to the SS, however, under conditions which were for him just as unexpected and involuntary. He did not simply join through the system of pressure from above, he was forced into the SS.

It happened in this way: in the fall of 1939 the Baltic German Emigration Advisory Office in Poznan was taken over by the Repatriation Office for Ethnic Germans upon the order of HIMMLER as Reich Commissar; it would have been an exception and almost a miracle if this office had remained free from the general tendency of centralization. Had the Balts not offered any resistance, their organization would have been dissolved without opposition, and an increase of suffering, worry, and distress on the part of the resettlers would have been the certain result. Even though events might have taken the same course as previously, there was still from all outward appearances the "Repatriation Office for Ethnic Germans Emigration Advisory Office -- Poznan," and even though the Baltic German employees, among them von RADETZKY, had remained the same as far as their personality and identity were concerned and their work remained unaltered in every way, they were still assigned to the SS. During his stay in Poznan HIMMLER personally took them into the SS on 12 and 13 December 1939 and appointed them at the same time SS-offieers. simultaneously when von RADETZKY was taken into the SS he was appointed SS-Untersturmfuehrer. had come to Germany as a Baltic German and foreigner, was taken into the SS as an Officer without any further investigation of his person and without his application. The witness KUBITZ, former Director with the Repatriation Office for Ethnic Germans, has explained in detail to us this event, which is certainly a singular one, (affidavit, dated 28 November 1947, Document Book RADETZKY II, page 54 ff., Document No. 14, Exhibit 4). He remarks as follows:

"I am able to testify as follows in this respect on the basis of my practical knowledge; von the SS; made no SS oath, paid no dues, was not SS duties.

The honorary officer was carried as a belong to an SS unit.

He exercised no power of literature.

To be sure, the Honorary SS--officer Main Office and not by an SS unit.

I also remember not as a regular SS-officer."

Resettlement of the Baltic Germans, with Headquarters in Riga, and subsequently Personnel Chief of the Repatriation Office for Ethnic Germans, in other words certainly also a competent witness, supplements this statement in his affidavit of 14 November 1947 (Doc. Bk. RADETZKY II, p. 57, Doc. No. 15, Exh. 5) when he states:

"After the first resettlement, there existed a Poznan in which v. RADETZKY worked; when this Honorary officers by the SS; among them was v.RADETZKY.

From my activity as Personnel Chief of SS; it was a written order which stated that SS Main Office.

Thus v. RADETZKY was in no in connection with this transfer."

the former SS-Obergruppenfuehrer LORENZ states:

"HIMMLER, during a visit to Poznan about the middle of December 1939, had shown extreme indignation at the existence of an independent representation of the Baltic Germans in the form of the Immigration Advisory Office. By HIMMLER's order it was made an annex of the Repatriation Office for Ethnic Germans. At this occasion the greater part of the personnel was taken over and put into uniform............

In this manner also v. RADETZKY was taken over by the Repatriation Office for Ethnic Germans and it was contemplated to give him as well as several other Baltic German employees, insignia of a senior rank. In February 1940 v. RADETZKY was ordered to report to Berlin and for the first time was issued the uniform of a second lieutenant. I wish to emphasize that this transfer came about without any request or action on the part of v. RADETZKY and that he was in no position to promote or counteract it." (Doc. Bk. RADETZKY III, p. 8 f. Doc. No. 35).

May it please the Tribunal. Behind the verdict of the IMT, which declares as criminal certain organizations and groups and thus finds their members guilty of criminal acts, stands the incontestable principle of the criminal code of all civilized nations which demands that only a person, who voluntary, knowingly and willingly commits an act, shall be treated as a criminal; therefore, the IMT excerpts those members of the SS from being declared criminal who were drafted into its ranks by the State in suchaa matter as to leave then no other choice, and those who did not commit such crimes.

The admission of the defendant v. RADETZKY was a purely passive act as far as he is concerned. I further quote from LORENZ' above-mentioned affidavit?

"HIMMLER issued his orders during his inspection and not as Reichsfuehrer-SS.

With regard to governmental authority.

In this capacity Immigration Advisory Office".v. RADETZKY, who was accepted not on political grounds but for reasons connected with the resettlement action, and particularly in order that he could be in uniform while officially dealing with the Russians, had as little choice as any other person who was drafted into the Waffen-SS for purely military purposes.

In due deliberation with reason and justice conscription for state duties cannot be charged one way on another today as a crime to those concerned. No further discussion is needed of the fact that the execution of the state treaties with the Baltic states and/or Russia concerning the resettlement of Baltic Germans represented a state matter. the part of the defendants not only on the claim that they participated in shootings; in some cases, and this includes the case of my client, the accountability is based on the assertion that the defendant in question had held a responsible position and therefore had authority to order executions, but also to prevent then.

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Since the defendant in question had violated his legal and moral duty of preventing the execution of innocent people, he was, for his reason alone, responsible for what happened. The prosecution's argumentation in the case of the defendant v. RADETZKY is quite simple: v. RADETZKY at the time held the rank of SS-Captain and thus was next to the highest leader of the Kommando BLOBEL, therefore on account of his position alone he should be held fully responsible. This argumentation, however, is incorrect since the SS-rank in itself did not bestow on a person any authority within an Einsatzkomamando. The position within an Einsatzkommando, and thus the authority and responsibility, was not determined by the SS-rank but, as was and still is customary in civil service setup, of every state, by the orders from superior headquarters in the same Sector, in this case by orders from the Einsatzgruppe.

If the defendant v. RADETZKY would not have been admitted to the SS in December 1939 by order of Himmler in his capacity as Reich Commissar, he would have been drafted for the Einsatzgruppe no differently, in no other manner and in no other way but under the Emergency Service Decree. The fact that v. RADETZKY was transferred to or drafted into the Einsatzgruppe and/or the SK 4a not by the Personnel Main Office of the SS or by any other SS office, but that he was drafted under the Emergency Service Decree by the Oberbuergermeister of Poznan as the local Police Authority seems to me to be the decisive factor in the solution of this problem.

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with very little talent for administration and organization and a very poorly developed scent if one were to assert that the responsible leaders of a Sonderkommando, which is scheduled to carry out assignments of the gravest nature in the East, were picked in such a manner. In order to illustrate how incorrect it is to confound SS-rank and power of command in the Einsatzkommando, I quote from the affidavit of the Amtschef (Chief of Office) of the RSHA Walter Schellenberg, of 4 Oct. 47 (Doc. Bk. Radetzky I, p. 24, Doc. No. 10, Exh. 10):

"In May 1941 many ethnic Germans from the Baltic Area were drafted for the SD (RSHA) under the Emergency Service Decree. These persons were assigned to Einsatzgruppen as interpreters and experts on the country in view of their knowledge of the Russian language. These persons so drafted under the Emergency Service Decree were so-called "persons wearing uniform", in other words, regardless of their previous membership in organizations they donned the SS-uniform. There were no specific rules concerning rank insignia, they Were issued quite indiscriminately in consideration of age and previous positions and ranks." to render service on the basis of their draft by the civil authority under the Emergency Service Decree, this situation in itself explains why there can be no talk of "authority" or "power of command" as far as these persons are concerned. The need to put them in uniform resulted from the nature of their assignment; they were employed by a mobile outfit in enemy territory.

identity between von Radetzky's rank in the SS and his position in SK 4a is also substantiated by the available personnel records of the defendant von Radetzky (NO-4711). In vain we look for an order by the SS Personnel Main Office or the Repatriation Office for Ethnic Germans decreeing von Radetzky's transfer to the RSHA or to the Einsatzgruppe C or to SK 4a, in vain we look for any other indication that usually can be found in a Personal File in connection with the transfer of an SS-Leader for duty in another office. Yet on the first page of his file card we find the following data: "Trained vocation: business man; at present Deputy Chief of Ethnic Immigrants; furthermore Employer: Immigration advisory Office for Ethnic Germans at Poznan; drafted on 19 May 1941 into a Sonderkommando of the Security Police."

In this connection I would like to explicitly establish the following: Emergency Servide Decree: a less involuntarily way of committing a person to render service cannot be conceived!

Yet another fact should receive attention: from a viewpoint of seniority von Radetzky never was the senior Leader next to the Commander; both at Blobel's time and otherwise von Radetzky was subordinate not only to the Commander but also to other SS-officers. This fact has been clearly substantiated by the defendant's statements on the witness stand as well as by the affidavits of members of the Einsatzgruppe and the Kommandos which were introduced. have nurtured a false ambition to ever have held the position which the Prosecution has ascribed to him. And even by way of the relatively neutral activity of objective reporting von Radetzky was not Chief of this Section but only Special Advisor as, here again, he also was subordinate to another SS-officer in addition to the Commander. It thus is impossible to uphold the assertion that von Radetzky was second-incommand of the Kommando next to Blobel, regardless from which viewpoint one may consider his position.

that he was a member of the SD Organization which was declared criminal. The question as to whether the defendant von Radetzky became a member of the SD be being drafted under the Emergency Service Decree to a Sonderkommando, must be answered in the negative already because the IMT judgment in discussing the membership in the SD expressly emphasizes that the Security Police and the SD were voluntary organizations. I wish in this connection to quote verbatim the respective passage of the judgment (page 104 of the Nymphenburger Edition 1946):

"The Security Police and the SD were voluntary organizations. It is true that many state and administration officials were transferred into the Security Police. The assertion that this transfer was a compulsory one results in nothing but that they had to accept the transfer or to withdraw, thereby possibly exposing themselves to official disgrace. During the war the members of the Security Police and the SD had no free choice with regard to their activity within this organization and the refusal to fill a certain position, especially in the service within the occupied territories, could have inflicted heavy punishments. There remains, however, the fact that all members of the Security Police and the SD voluntarily joined this organization under no duress other than the wish to retain their position as civil servants." drafted and made liable to do emergency service may, therefore, today not be regarded as a member of the SD or the RSHA according to the sense of this judgment. tion: It may be true that the defendant was made liable to emergency service, yet this cannot mean an exoneration for him, because (1) the Emergency Service Decree of 15 October 1938 does not form a sufficient legal foundation for the drafting into the Security Police and the SD (Cf. Affidavit of Dr. Hans Heinrich of 7 January 1948, Doc.

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No. 5814, Doc. Book V C) and (2) the compulsion of a draft on the basis of the Emergency Service Decree nevertheless, was not so far reaching that upon certain efforts one could not have evaded it.

In this connection the following should be stated: Reich is not under discussion in this connection. It would be of no use to attempt to prove, for instance, to a former prisoner that his commitment to a concentration camp had no legal foundation. Incidentally, the argument of the non-existing legal foundation is also substantially incorrect. In his order Gazette of 20 July 1942 (Doc. Book IV Radetzky, Doc. No. 39) the Chief of the Security Police and the SD, on his own authority, confirmed and ordered the draft into the ranks of the Security Police and the SD on the basis of this Emergency Service Decree of 15 October 1938. The Chief of the administrative department and simultaneously the personnel officer of the NuernbergFuerth Police Headquarters in the years 1933 to 1945, Regierungsdirektor Dr. Alfons Holz, further confirmed on the basis of his practical experience of many years (Doc. Book Radetzky IV, Doc. No. 40) that it was the regular practice of the Nuernberg-Fuerth Police Headquarters to draft persons into the Gestapo and the SD as well as into the SS on the basis of the Emergency Service Decree. In addition, on the basis of his practical handling of the Emergency Service Decree for years, Dr. Holz declared as follows:

"I am acquainted with Article 1 of the Emergency Service Regulation of 15 October 1938, in which is stated in paragraph III that service on the basis of the Defense Law, in the Reich Labor Service , in the Border Customs Defense (Zollgrenzschutz), on the Police etc. always has priority over Emergency Service. This regulation is to be understood to the effect that service on the basis of the Defense Law, in the Reich Labor Service, in the Border Customs Defense, in the Police, etc. cannot be altered by an Emergency Service draft, and that persons who are clearly serving on the basis of the Defense Law, in the Reich Labor Service , in the Border Customs Defense, in the Police, etc.

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can not be drafted to service on the basis of the Emergency Service regulation".

And he continues:

"It may not be concluded from that this an "indispensable" status based on the Defense Law could not have been altered by an Emergency Service draft. Rather, the procedure was such that an Emergency Service draft could overrule an "indispensable" status for a civil service, i.e. outside of the Defense Law, without any trouble. In practice this was handled in such a way that the man drafting for emergency service had to negotiate with the civilian office for which the "indispensable" status applied, for instance with the town administration."

Finally, Dr. Holz also made statements which are based on his practical experience of many years with regard to the question as to whether one could evade the Emergency Service Decree. He states that he does not know of one single case where somebody would have dared to make an attempt of evading the draft for emergency service. Everybody knew that such a behavior would have been interpreted as political unreliability or as sabotage and that his behavior would have caused state police interference with the customary consequences, such as commitment to a concentration camp. Finally, Dr. Holz declared that he did not experience a single case in his practice where a person liable to emergency service would have succeeded in evading the draft.

Thus it is evident: It is not very commendable to trap a defendant today by applying judicial theories based on the decrees and laws of the Third Reich. sequence of his career as civil servant or by being drafted into emergency service, had come into the mysterious sphere of the RSHA, Heydrich's threat applied to all of them, namely that the very attempt voluntarily to resign would mean concentration camp and physical extermination of the renegade.

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a dozen times, ventured to get out of the liability for emergency service. First of all he asked his employer, the Repatriation Office for Ethnic Germans, to requisition him; Radunski in his affidavit of 14 November 1947 (Doc. Book Radetzky II, page 60, Doc. No. 15, Exh. 5) stated that von Radetzky's application for re-employment with with the Repatriation Office for Ethnic Germans was not processed by chief of staff Behrends because the latter shunned quarrels with the SD in personnel matters. At every change of commanders with Sonderkommando Ha, von Radetzky repeated his risky attempt, he troubled his Baltic friend von Freytag-Loeringhoven, who for a certain time was Ic of Army Group Center, to assist him in this dangerous game. He repeatedly informed first one person then the other, in Einsatzgruppe I, of his wishes, always hoping perhaps some time to contact the right man and to discover the right way. A gracious fate protected the defendant von Radetzky so that this, not only dangerous, but I may say, also naive playing with fire did not one day become a flame, consuming him. As regards his naivety, I must in this connection refresh your memory that von Radetzky told us how he sent two memoranda from Shitomir to the Reich Minister for the Occupied Eastern Territories , one concerning the treatment of the Jewish question, hoping thus to effect a change of the German policy in the East. One must have been a Baltic German of the mould of a Radetzky with so much ignorance about the actual conditions on the one hand and with so much faith in the good of human nature on the other, in order at all to get the idea of writing such a memorandum. Maybe this imperturbably decent and good character of the defendant von Radetzky is the reason why his desires were not taken amiss and why he was not treated in agreement with Heydrich's threat. With this confiding naivery he seriously and obstinately purused his goal and first of all succeeded in being granted leave from the middle of December 1941 until the middle of March 1942; and then h e was very fortunate in finally finding a man right in the center of the RSHA with whom he not only could speak openly but who even promised him his full support; this was defendant Schulz, at that time Personnel Officer in the RSHA, with whose assistance von Radetzky , after long, vain efforts, finally succeeded in being released from Eastern assignment (Einsatz). declares verbatim as follows (page 108 of the quoted edition):"The

Tribunal declares the group of such members of the Gestapo and the SD to be criminal according to the sense of the statutes as held the positions enumerated in the previous section, as were members of the organizations or remained so, although they knew that these were being used for the performance of deeds which according to Article 6 of the statute have been declared to be criminal and such as being members of the organization personally participated in the perpetrated in the perpetration of such crimes."

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amy be said in summarizing: (1) the defendant was not a member of the SD in the sense of this sentence, since he joined the service of the Einsatzgruppe and the RSHA on the basis of a civilian draft, the so-called Emergency Service obligation, and never in any way voluntarily; (2) he cannot be reproached for having stayed in the service since he made every effort that reasonably may be expected from him, considering the situation at that time, in order to escape this service, rendered involuntarily and reluctantly, and he did so immediately employing every opportunity offering itself regardless of possible consequences as we could see from his discussion with the Chief of the Einsatzgruppe Thomas. A third point speaks in favor of the defendant von Radetzky: Not only was he not a member of the SD, he also never participated in the perpetration of the crimes mentioned in the sentence of the IMT.

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the individual responsibility of the defendant v. RADETZKY; (1) by ascribing to him a special position and authority in Sonderkommando 4a on the basis of his rank in the General SS, saying: this very authority makes the defendant appear guilty; (2) by presenting his mere belonging to Sonderkommando 4a as evidence for his criminal participation in executions; one could assume that it was impossible to have belonged to Sonderkommando 4a as an officer without being entangled with these things. the General SS are evidence for the authority and the sphere of responsibility of the defendant within Sonderkommando 4a; in addition, that his duties to begin with were adjusted to the purpose of his emergency service obligation. It is still necessary to discuss the further development of the activity of the defendant v. RADETZKY with Sonderkommando 4a in order to remove every doubt about the miscarriage of the argumentation of the Prosecution concerning the individual guilt of this defendant. cution expresses at the conclusion of its opening statement of 29 September 1947, saying that the defendants were under the obligation, if not by their conscience then by law, to refrain from such an activity. The story of the activity of the defendant v. RADETZKY is nothing but a successful attempt, attended by equal shares of good luck and ability, to stay out. Since he also regarded his activity as interpreter as dangerous-under no circumstances would he have to deal with interrogations - he merely restricted himself to reporting and thus gradually severed his connections with Sonderkommando 4a altogether, he became liaison officer to the army and in this practical manner achieved what was not possible for him in any other way. of Einsatzgruppe C, Karl HENNICKE, of 28 November 1947(Doc. Book I RADETZKY II, page 76, Doc.No. 20, Exh. 14) I quote his statement with regard to v. RADETZKY's activity as follows:

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"In each of the Sonderkommandos, or Kommandos, the Secu which kept the person concerned fully occupied.

The official reports in some way or other.

For this purpose he had to sources of information of all kinds.

The reports were drafted (according to the department to which they went), mental head III.

The drafting of reports which prepared charge of department IV of the Kommando concerned.

As far matters were prepared by their own officials."

clusively with execution; but the duties of the Special Adviser IV and/or the Chief IV in the Staff of Einsatzgruppe C comprised all police and similar measures. There was a separate to Special Adviser in the Staff of Einsatzgruppe C for executive matters.

In Sokal where v. RADETZKY for the first time learned of the Fuehrer order, he made sure once more in a discussion with his Commander, BLOBEL, about his special task which concerned reporting for the SD and registration of documents, and he received the assurance that he would be given no such assignment as the other officer of the Kommando since he did not have the necessary qualifications, that is police training, v. RADETZKY also were rank insignia different from those of the other leaders of equal rank, who were exercising police functions; this, possibly, was only a formality, yet in the Wehrmacht this was definite proof as to the kind and scope of the authority and duties of the wearer of the uniform; also the amount and manner of payment assured v. RADETZKY that he was not regular T/O officer in the Sk4a but only a civilian drafted under the Emergency Service Law, even though he held the rank of (Captain) in the General SS. While v. RADETZKY had to be satisfied with a daily allowance of RM 1.20,a Captain of the SD of the Secret State Police, who to all outward appearance was of equal rank, received exactly ten times the amount.

In connection with his job of reporting, the defendant v. RADETZKY came into increasingly close contact with the headquarters of the 6th Army, be it on the distributing or the receiving end, for their duty, too consisted of reporting and thus their interests ran parallel to those of v. RADETZKY.

Here he saw for himself an opportunity to escape the narrowmindedness of the Kommando after his initial attempt to resign had failed. He worked his way intentionally toward the position of a Liaison officer since only in this way could he escape the constant danger of being drafted for executive work. Thus he succeeded in becoming detached from the Kommando as early as one month after the invasion of Russia.

He was sent on temporary duty with the G-II of the A03 (Army High Command Section 3) of the 6th Army, a Major LULEY, whose affidavit of 7 October 1947 can be found on p. 42 of my Doc. Bk. 1 (Exh. 15, Doc. No. 11); LULEY reports that from - August 1941 until the middle of December 1941 v. RADETZKY maintained constant local contact with him and that after he took leave of absence at that time for several months he resumed his functions on his return from furlough. Through his well-informed reports on the situation in agriculture, commerce, and industry von RADETZKY had attracted above all the attention of the economic secitons of the Army and now as Liaison officer with the Army had a special opportunity of reporting from a central point, and it was here that he found one of the few places where, in an indirect manner and a form unique under the prevailing circumstances, he was able to point out the effects of the Fuehrer order. In his closer entourage at that time was also the Liaison Official of the Reich Ministry for Foreign Affairs, Councillor of Legation von SCHUBERT, whose affidavit of 1 November 1947 can be found on page 72 of my Doc.Bk.II (Exh. 17, Doc. No. R 19). Von SCHUBERT, also had to file reports, in his case with the Reich Ministry for foreign Affairs, and they dealt with the morale of the Soviet Army on the basis of the material arriving at G-II from prisoner of war statements, furthermore with the morale of the population in the occupied territory, the supply situation of the population, cultural affairs, such as re-ortanization of the school system, and with the re-organization of the self-administration of the population. Von SCHUBERT received many an idea for his reports from Von RADETZKY, who also gave him hints with regard to offices and persons who would give him further enlightenment.

Von RADETZKY, in this connection, proved to be an outstanding expert while revealing at the same time that he was a most severe critic and opponent of the official German policy toward the East. gical report of the further official assignments and the career of the defendant, Von RADETZKY. With the help of affidavits from many witnesses I have been able to demonstrate without any gap whatsoever von RADETZKY's activity during the period from June 1941 until the beginning of 1944 and beyond, and in such a manner that for any given part of this period there are always several statements available. I therefore, need not carry on this presentation since the Tribunal can easily gain from the perusal of my document books a precise picture without any further argumentation on my part; this picture clearly and distinctly shows the following:

Von RADETZKY, who in June 1941 was drafted as a "person rendering emergency service without an employment contract" in an assignment as interpreter and expert on the country with Sk4a and who at once was used, in addition, as Special Advisor III for reports to the SD, soon, that is as of August 1941, was given the assignment as Liaison Officer with the Army and he exercised these functions at various Army headquarters until he resigned from Sk4a, and even thereafter. He could not be drafted for executive tasks in the Sk4a since he formally held only a rank in the SS; since he had had no training in police work, in other words since helacked technical qualifications, he could not at all be utilized in this field and he actually was not utilized in the security police work of which the so-called executive matters formed a part. For this reason, i.e. the fact that he was not a full-time and technically trained police officer, Von RADETZKY wielded no power of command in the Sk4a, and, therefore, never could become a Chief of the Kommando or of a Vorkommando or Sup-Kommando nor could he ever become deputy to such a Leader, and he never did.

with the army and in maintaining himself in this office "since he was able to move about in military circles and possessed the necessary poise" to quote the fitting remarks which the witness BENDT made in his affidavit of 21 January 1948, Doc. Bk. RADETZKY IV, Doc. No. 36, but also certainly because, from a technical point of view he was a stranger within the Sk4a and could not be given an other assignment. Logical thinking will lead yet to the following conclusion:

1) If v. RADETZKY constantly was Liaison Officer with the Army, then he must have been geographically separated from his Kommando; one would have to expect the existence of special circumstances if one were to assume that he participated all the same in executions; there was for him all the less reason for this since his capacity and time were efficiently made use of at another place, i.e. within his assignment as Liaison Officer, not to speak of his additional time-consuming task of reporter within the scope of duties of Department III. Furthermore; As Liaison Officer with the Army he was under constant observation and could be watched better than if he would have trudged along within the unit of the Sk4a; all the more elucidating and valuable are the unanimous statements by the witnesses to the effect that Von RADETZKY never had anything to do with executions and even less ever was Deputy of the Chief of the Kommando. And thirdly; if Von RADETZKY exercised either as Chief of a Sub-kommando or as Acting Commander of the Sonderkommando or in any other way security police functions within the scope of activities of the Sonderkommando - a situation that, as we know, never materialized - then why was he kept on as Liaison Officer to the Army? One certainly could have assigned him a position of greater responsibility and with better prospects in the Security Police Service, as the witness BENDT, who certainly is an expert in such questions, correctly pointed out. There is yet another question to which one cannot find a sensible answer; why should it have been just Von RADETZKY who was used in executive matters as long as there was a sufficient number of technically trained officers available? Neither in his personality, nor in his training nor in reports of events or similar documents, nor in testimonies do we find an answer to these questions.

One thing, though, is clear and obvious; the defendant Von RADETZKY was only belatedly included among the defendants of this trial on the basis of the affidavit of 6 June 1947 of his former Commander BLOBEL (Doc. NO. 3824, Doc. Bk. I of the Prosecution, Exh. 31) who states therein that among other things W. v. RADETZKY took charge of Sonderkommando 4 a during his absence and that under his direction, too, a number of mass executions took place. witness-stand, to their full extent if concerns Von RADETZKY (Transcript of 29 Oct. 47, p. 1660 ff. German,1622 English.

DR. RATZ: I shall interpolate here that I am skipping the remaining part of this paragraph and I shall continue with the next paragraph. KRAEGE who states in his affidavit he had been (Doc.Bk. III C, No-4765 Exh. 137, p. 30 Engl. p. 47 German) under the impression that v. RADETZKY was Chief of the Verkommando LUCK. Yet with this witness the prosecution experienced no less a mishap than with the witness BLOBEL; before this high Tribunal he termed his "Impression" of the past incorrect and made most valuable and positive statements in defense of Von RADETZKY, which can be summarized that Von RADETZKY at the time in question was engaged in the registration of enemy documents and in reporting, not however in executions. (Examination KRAEGE of 17 Dec. 1947, p. 4319/20, 4322/23 Engl. p. 4403, 4408/9 Germ). established three new theses: 1) the alleged responsibility of Von RADETZKY for the compulsory evacuation of the Poles, an accusation lying absolutely outside the framework of the indictment and which was already repudiated by my previous statements; the alleged illegal drafting of Von RADETZKY into the Sonderkommando on the basis of the Emergency Service Decree.

I have also repudiated this argument previously; 3) the recommendation for promotion by the Reich Security Main Office of 15 October 1942, NO-4771 X, concerning v. RADETZKY in which the following sentence appears: "During the advance in the Summer of 1942 SS-Hauptsturmfuehrer v. RADETZKY was entrusted with the direction of a Telilkommando". I would like to make a brief statement as far as this recommendation of promotion is concerned. First of all I would like to use this document in favor of the defendant. The Reich Security Main Office requests the SS-Personnel Main Office to promote SS-Hauptsturmfuehrer v. RADETZKY. If v. RADETZKY was not under the jurisdiction of the Reich Security main Office, as is unequivocally shown by this request for promotion, then v. RADETZKY was not an officer either in the Security Police or the SD; even in October 1942 he was "a person rendering emergency service without an employment contract", who had received a rank in the Allgemeine SS, as was stated previously, and not by virtue of some position within the sphere of activities of the RSHA. In further consideration of the alleged incrimination of v. RADETZKY by this document I would like to quote the prosecution witness. Albert HARTL, who in his affidavit of 6 January 1948 (Doc. Bk. RADETZKY III, Doc. No. 32) states In this connection:

"I made the acquaintance of v. RADETZKY in Kharkow in the Spring of 1942.

Neither at the time I met him nor later during the Summer RADETZKY was a Teilkommando Leader.

At the time I met him he was also later.

If a Teilkommando v. RADTZKY had existed, I would existence of such a Teilkommando v. RADTZKY during my work with the BDS.

At the time I learned about all the Teilkommandos. If there had been a Teilkommando v. RADETZKY I would remember it with near-certainty."

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The prosecution witness Albert HARTL concludes his affidavit with the following words:

"I do not know why the paragraph: "v. RADETZKY was Teilkommando fuehrer in the summer of 1942", was written into the suggestion for Prosecution submits as evidence.

I only know that at times some motion.

Thus I remember for instance the suggestion to give SS (Generalfeldmarschall von BOCK, later Generalfeldmarschall von WEICHS), the War Merit Cross 1st class.

In this suggestion it was consisted solely of his activity as liaison officer". The statement of this witness agrees with the affidavit of Heinz UNGLAUBE, who was in Kiev as supply officer with the Commander of the Security Police and the SD for the Ukraine, with the rank of a Hauptsturmfuehrer from May 1942 to August 1943.

(Document Book RADETZKY III, Doc. No. 33). He states:

"and I can state with absolute certainty that there never existed in the Ukraine a Kommando or Teilkommando by the name of "RADETZKY" during the above period.

Furthermore, I can state for certain at least by name if not personally". UNGLAUBE further says:

"When I am told that a suggestion for promotion of RADETZKY also for promotion.

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Such things happened at times." Your Honors! I would like to say in summary: v. RADETZKY was drafted and liable for emergency service, i.e. on the basis of his knowledge of languages he was forcefully removed from his former activity and assigned to a Kommando. He had hardly been instated as an interpreter, when he accepted an activity probably practiced by every army and its retinue, by the neutral duty of registration of documents, and beyond that he devoted himself to the reports made to him about the country and its people. He was immediately forced into a clear and decisive opposition by the Fuehrer Order, of which he heard nothing until he came to Russia, and his further progress in the Kommando was nothing else but a carrying out of this order, which his conscience induced him to oppose. On the witness stand, v. RADETZKY gave a candid and detailed report of his course. What he said nothing about was the spiritual suffering he experienced. On the other hand, he opposed it with whatever means were at his command in his situation. He soon succeeded in having himself removed from the Kommando and in changing over to the position of a liaison officer, a position which, as is well known, is endowed with no authority over anyone. However, he was not satisfied with this, and directly and indirectly attempted to intervene wherever this seemed possible and sensible, as for instance in Luck or in the case of his intercession when the Waffen-SS Company, which was originally assigned to the Kommando, was relieved. v. RADETZKY was a lone wolf in the Kommando and was not at ease there, as the witnesses freely stated in the affidavits submitted, members of the Vehrmacht have further testified that they knew that v. RADETZKY wanted to leave the Kommando and tried to achieve this by connections with the Vehrmacht v. RADETZKY's attitude was also known by the outside and he had already placed himself in a very risky situation. If he did not take the final step, i,e. open opposition with all its attendant consequences, and by that I mean imprisonment in a concentration camp with no prospect of ever regaining his freedom, this happened because he had nothing directly to do with carrying out given orders:

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in retrospect, one cannot in all fairness demand this of him today. In the course of the presentation of evidence, I have demonstrated that v. RADETZKY was only a nominal SS-Fuehrer and that he was not amember of the RSHA or one of the offices under it, and that he was never fully recognized. This was his position within the Kommando, in which he had no support and no influence of any sort. If v. RADETZKY had held the position ascribed to him by the Prosecution, this would have to have been expressed in one way or another in the documents. He would not have been secretly given the fictitious activity of a Teilkommandofuehrer in his last mention for promotion, if he had actually held the position of a deputy or a department chief. He certainly would have shown a different official development than was actually the case. We know that until the end he was employed only in subordinate or secondary positions. I have already explained why the defendant has even been put in the dock, why he of all persons was chosen from among the hundreds of SS-Fuehrers and thousands of members of the Einsatzgruppe. On the basis of the BLOBEL affidavit, the Prosecution could not assume anything else but that v. RADETZKY was actually active in this sense; thereupon they held v. RADETZKY responsible for a series of actions in which they supposed he had participated. Their surmise was completely refuted by BLOBEL's authentic disavowal on the witness stand and by the entire presentation of evidence. To be sure, BLOBEL neglected to say who actually represented him; but even that, I believe, has now been cleared up beyond a shadow of a doubt. v. RADETZKY's defense was made especially difficult from the beginning by the fact that he had no friends and no correspondents available from the period of his assignment to the East. Luck was kind to us, however, and helped us find an unexpected number of witnesses who were willing and in a position to confirm under oath everything v. RADETZKY himself had said concerning his activity and his conduct in the Last in all points and for all periods of time which came into consideration for us.

However, on the other hand, it is a lamentable fact that no other human community can mourn so many losses as the Baltic German ethnic group which was resettled at the beginning of the war, so that in spite of everything, many important witnesses were still not available. In addition to this, the six members of the defendant's family managed to save only their lives and nothing else when they fled from the East, so that important documents of the defendant could no longer be obtained. However, as I said, I have succeeded in suite of this in presenting complete proof for the activity of the defendant in the East, which is contained in 35 statements under oath and which refutes in detail the charges of the Prosecution, while confirming the statements of the defendant. Today there can not be the slightest doubt concerning that which I was able to say even in my Opening Statement to the court, that v. RADETZKY was not involved in any criminal act. Still another glance at the character of the defendant: He gave freely of his assistance to poor, afflicted people whenever they asked for his aid, without considering him elf; above all, until the end of the war, he rendered such extensive help to political and racial persecutees in the Baltic German Immigrant Advisory Office that he exposed himself to serious personal danger. After the surrender, he turned his energies to a broad program of re-education in the internment camp, and here again he proved that he not only wanted to wait until justice showed him his furure position; he helped people discover a place in the newly developing order, so that they could again become useful members of society.

THE PRESIDENT: Dr. Ratz, I have had a chance to glance at this and I notice that in the last paragraph of this summation there appears a sentence which I cannot believe you sincerely mean. I want you to look at this before you read it and see if there is a sentence in that last paragraph that you would want to omit.

DR. RATZ: You mean, Your Honor, the sentence immediately before the end?

THE PRESIDENT: Yes.

DR. RATZ: Then I can only imagine, Your Honor, that you mean the two sentences before the last.

THE PRESIDENT: Well, that's up to you. You have the paragraph before you and this should strike you in the eye as being a very improper statement. If it doesn't strike you, then we will have to call it to your attention, but it should certainly he very obvious to you that that is no remark to make in court, so I will leave it up to you whether you want to read it or not.

DR. RATZ: Your Honor, I can only understand through interpretation that it does not correspond to the German, that the translation does not correspond to the German phrasing, because in the German form it is completely all right, but I shall omit these two sentences. I believe that as such there should be no misgivings according to the German version.

THE PRESIDENT: You know that this Tribunal is here to do justice and justice alone.

DR. RATZ: Yes.

THE PRESIDENT: The Tribunal is interested only in ascertaining the truth, and certainly the statement as it appears in English cannot be accepted.

DR. RATZ: I can only say, Your Honors, that I never had any other opinion and that not even remotely did I want to say anything else. It thus can only be a translation which does not give the sense of the original, but I shall omit these two sentences, and I would ask you to believe that not even remotely did I have in mind to say anything which would not find the approval of the Tribunal.

THE PRESIDENT: You may proceed.

DR. RATZ: In conclusion I would like to state:

cerning the question of v. RADETZKY's criminal participation in the crimes which took place; he did not voluntarily enter upon this course and did not for one moment voluntarily pursue it; did nothing, abetted nothing and agreed to nothing of anything which is under indictrment here. What the defendant v. RADETZKY did and what he proclaimed to be his thoughts and feelings was nothing but opposition and refusal, and clearly recognizable evasion to the very Unit of what could be expected with regard to what his conscience had forbidden him to do. I shall withdraw the next two sentences. Therefore, I can ask with complete confidence for the acquittal of the defendant v. RADETZKY?

THE PRESIDENT: The Tribunal will now recess until 8:30 this evening when it will hear the final plea in behalf of the Defendant Haensch. We presume that counsel will be here at that time and we repeat what we said today: that such statements as are ready, that is, the defendants' final statements, will be taken to Room 106 as soon as possible. defendant or a counsel may be excused from this evening's session, if the proper motion is made to the Tribunal.

DR. RATZ (ATTORNEY FOR THE DEFENDANT VON RADETZKY): Your Honors. I ask that the Defendant von Radetzky be excused from this evening's session in order to prepare his final statement.

THE PRESIDENT: Yes, the Defendant von Radetzky will be excused from attendance in court this evening.

MR. GLANCY: Your Honors, I see one of the other defendants is interested in being excused. Perhaps his request can be made by one of the defense counsel now present, if the men in the dock would so indicate.

THE PRESIDENT: That is the Defendant Ruehl. Would you like to be excused this evening?

THE DEFENDANT RUEHL: Yes, if Your Honors please.

THE PRESIDENT: The Defendant Ruehl will be excused from attendance in court this evening so that he may work on his final statement.

this time prepared their final statements or will have then ready, at the very latest at nine o'clock tomorrow morning so that the necessary translations may be made.

The Tribunal will now be in recess until this evening at 8:30.

(A recess was taken until 2030 hours.)

12 Feb 1948_E_MSD_25_1_Gallagher (Juelich) (Court met pursuant to recess 1830 hours, 12 February 1948)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: You may proceed.

DR. KRAUSE: Dr. Drause for the defendant Haensch. Your Honor, the defendant Haensch, together with all other defendants in the case, has been accused of having committed three different offenses: Crimes against humanity, war-crimes and membership in organizations declared criminal by the International Military Tribunal. The first two counts are closely linked to each other as they both refer to the same fact i.e. the activity of the defendant as a leader of the Sonderkommando IV b, I shall, therefore, deal with this matter in the first part of this plea and in the second part with those accusations which refer to the defendant's membership in the SD and the SS. Document In the garrison strength roster of the report Book IIA of the of events No. 156 of 16 January 1942, the defendant Prosecution, is mentioned for the first time as the leader of P. 61 Doc. No. the Sonderkommanso IV b. The prosecution No-3405 Exh. No. 42 concludes from this that he was in charge of this Kommando at least from this day onward.

However, Doc. Book The defendant himself has always given the IIIC of Prosecution, p. 54 middle of March 1943 as the date of his taking-over Doc. No. No-4567 Exh. No. 140 of command, even in his affidavit of 21 July 1942 transcript According to this, although he was already appointed p. 3273 ff.

i.e. end of February 1942, because his predecessor, 12 Feb 1948_E_MSD_25_2_Gallagher (Juelich) Kommando.

Sturmbannfuehrer Braune is not identical with the defendant.

The Defendant, together with Obersturm bannfuehrer Dr. Erwin Weinmann, leader of SK IV a man for the front until the end of February 1942.

However, the Einsatzgruppe C, Dr. Thomas.

He arrived at the Kommando on 15 March 1942, at the earliest.

This facts:

Haensch Doc. According to Herbert Dassler's affidavit of 23 Book I, p. 11 October 1947 the defendant was present at Dassler's Doc. No.2 Exh. No.6 birthday-party in the latter's apartment in Berlin later, i.e. already in February 1942.

Haensch Frau Krueger-Martius is also aware of the fact Doc.Book I,p.3 and that the defendant did not start upon his journey Book II p. 2. to the east until the end of February 1942. Doc. No.3 and 17 Exh. No.7 and 20 Haensch Frau Else Neveling and Frau Erika Cohlon, two follow Doc Bk 1 and tenants of the house at Berlin-Zehlendorf, Hartmannweilerweg Doc. Bk II p.4. 16, in which the defendant had his apartment, made stateDoc. 1 & 18 Exh. No. 5 ments to the same effect. I refer to their affidavits of and 21 12 Feb 1948_E_MSD_25_3_Gallagher (Juelich) before he left, which was not before her husband's birthday, (Haensch which is in the middle of February.

Up to and including 7 Doc. BK IV p3, February 1942 the dentist Dr. H.D. Maennel in Berlin-Zehlendorf, DOC.31 Exh.33 treated the defendand, as the former stated in his affidavit index-card, and of those of his assistant Frau Jauer.

Frau sister.

She has assured us that all entries made by her are true in every respect.

She persisted in this testimony opinion had been submitted to her.

During all her statements value, I am unable to share.

The expert has declared derive from the one and the same person.

However, that this entries.

On this point, however, I believe, I can already state that in this the expert is undoubtedly mistaken.

The the entry of 26 November 1941, even to a layman's eye such 12 Feb 1948_E_MSD_25_4_Gallagher (Juelich) one person can be considered the writer.

This, however, the studio of Frau Schreyer in Berlin-Zehlendorf.

This can (Haensch be proved by Frau Schreyer's order-pad, and her customers' Doc. Exh.No. record both of which show under the consecutive number 391, 1-4.

which was taken at that time. All these objects have been (transcr. p.3374 ff given by Frau Schreyer, and her former employee, Frau Frieda Reich, the occasion of the latter's detailed examination (transcr.

in court. It is mainly due to Frau Reich on the name of p. 4590 trial.

May I also mention here that from the time of Frau Schreyers's examination those negatives were constantly in Prosecu- I further refer to the first questioning of Frau Reich by tion Doc.

No. the interrogator, Mr. Sachs on 3 December 1947 and to her NO-5698, 5699 and affidavit of 4 December 1947. The defense wishes to 5718 ment and was questioned by him.

If Frau Reich, during the interrogation on 3 December 1947, termed it "improbable" 12 Feb 1948_E_MSD_25_5_Gallagher (Juelich) -the English version even says wrongly "impossible" - that the defendant should have been entered into Frau Schreyer's due to an error.

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This mistake is all the more understandable had been kept in Frau Schreyer's studio at that time, as well therein may serve as proof that the defendant's picture must have been taken at the stated time.

Finally I refer to mentioned Obersturmbannfuehrer Dr. Erwin Weinmann, was also Transcr.

She had accompanied her husband to the station and could p. 3106ff left at the same time.

Frau Weinmann, too, is unable to give the exact date of departure, but remembers the following:

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12 Feb 1948_E_MSD_25_6_Gallagher (Juelich) the front "hardly three weeks" after the birth of the Hanesch bers this fact, especially in connection with the time Doc.

Book I,p. 5 of the birth of her child. If it had happened hardly Doc. No. 4 Exh. No. 8 three weeks after the birth of the child, the departure February 1942.

This is the date given in an affidavit picture had been taken in Frau Schreyer's studio.

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12 Feb 1948_E_26_1_ MSD_ Arminger (Juelich) his first letter from Russia, about their trip. There he mentioned that they, i.e. he and the defendant, stopped for some days both in Lemberg and in Kiew, and that following the journey by train they had covered another long distance by car. Considering that they were traveling during that winter. which was extraordinarily cold even by Russian standards, which already at that time almost brought German military operations in the East to a standstill, and that the transportation difficulties, which already in Remberg caused an interruption of the journey lasting several days, which grew in proportion as they approached the front-lines, then it becomes clear that the whole journey must actually have taken not only days but weeks. Unfortunately no witnesses are now available who could testify directly as to the time when the defendant finally joined the Kommando. But on the witness stand the co-defendant V. Radetzky stated the time when Obersturmbannfuehrer, Dr. Erwin Weinmann, joined the Sonderkommando IVa in Kharkov. This happened in the middle of March. The defendant must have also reached his destination about the same time. (German transcript p. 4321 and following) that Dr. Erwin Weinmann had been on active duty already since 13 January 1942, (Prosecution document No. NO-3251) These efforts were, however, unsuccessful.

The letter submitted by the Prosecution from the SS Main Personnel Office to the Reich Ministry of the Interior, dated 21 November 1942, concerning the release of the Oberburgermaster of Tuebinger has no probative value since it is based on mistaken identity. According to the inquiry which I made by wire to the municipal administration of Tuebingen on 22 January 1948, and according to the information given to me in the telegraphic answer dated 23 January 1948, not Dr. Erwin Weinmann but a Dr. Ernst Weinmann (the family name "Einmann" contained in the second wire is a typing error) holds the office of Oberbuergermeister. This is confirmed 12 Feb 1948_E_MSD_26_2_Arminger (Juelich) also by the affidavit of Professor Wilhelm Gieseler, dated 28 January 1943, interpol to which I shall still hand in, who at that time was Ratsherr of Tuebingen.

The Oberbuergermeister, Dr. Ernst Weinmann, is a brother of Dr. Erwin Weinmann, the person referred to. (Haensch Doc. Book IV pp. 1 and 2 Doc. No. 29 and 30 Exh. No. 31 and 32) I admit that it is probable that Dr. Erwin Weinmann already received his order of transfer in January 1942 like the defendant.

But he did not actually take over the Kommando until the middle of March 1942. transfer a more or less prolonged period elapsed before the person concerned actually entered upon duty. Thus, e.g. the co-defendant Biberstein on the witness stand stated that he did not join his Kommando until 18 September 1942 although the appointment as leader of the Kommando dates back to 14 July 1942. Another similar case is that of the Defendant Braune. Martenz, dated 23 October and wO November 1947 are of importance. Martenz was attached to the Sonderkommando IVb as investigator during the term of service of the defendant, but also already under his predecessor Braune. (Haensch Doc. Book I, p. 15 and II, p. 1 Doc. No. 12 and 16 Exhibits No. 15 and 19) As he explains in the period from February till May 1942 he was detailed for a skiing course. When he left the Kommando at the beginning of February 1942, Braune was still leader of the Kommando but was at that time away on leave returning from this leave to join the Kommando in the middle of February. Interpolate: Martenz met him in Kiev on that occasion. also thereby been confirmed. Not until his return from the skiing course at the beginning of May did Martenz find that in the meantime the defendant had become leader of the Kommando.

12 Feb 1948_E_MSD_26_3_Arminger (Juelich) the command of the Sonderkommando VI b until 15 March 1942. The erroneous statement in the garrison strength roster of report of events No. 156, dated 16 January 1942, which losts both the defendant and Dr. Weinmann as Kommando leaders already at that time, can be explained simply by the fact that the report office of the RSHA which made up the reports of events used the dates of the orders of transfer as a basis. again terminated. (Haensch Doc. Book I, p.8, Doc. No. 6 Exhibit No. 10) This appears from the submitted army postcard which the defendant sent to his wife on 17 June 1942. Therein he says that he had just been ordered by radiogram back to Berlin but that for offiical reasons he could not leave until 24 June 1942. Further a telegram from Sturmbannfuehrer Braune, dated 24 June 1942, has been submitted to the Tribunal as evidence, in which Braune once more informs the defendant's wife that her husband had been ordered to return, asking her to be in Berlin again 27 June 1942 on. This also proves the accuracy of the statements of the defendant concerning the date of his return from the Kommando. (Haensch Doc. Book I, p. 9, Doc. No. 7 Exhibit No. 11.) 1942, however, the defendant was not constantly with the Kommando either at first. In April 1942, he was in Kiew on official business for several days. Then at the end of April 1942 he was ordered to a meeting in Prague, from which he did not return until the last third of May. In Prague the defendant and the co-defendant Schulz met each other, as was definitely as confirmed by the latter. The defendant combined this official trip with a visit to his wife in Berlin which lasted several days. In

Prague he visited Frau Marie Krueger-Martius, the sister-in-law of Lisa Kruegger-Martius, already mentioned. In this connection I once more refer to the affidavits of Lisa Krueger-Martinus and Frau Erika Coulon, dated 2 November and 24 November 1947, as well as to the affidavit of Frau Marie Krueger 12 Feb 1948_E_MSD_26_4_Arminger (Juelich) Martius and Frau Erika Coulon, dated 2 November and 24 November 1947, as well as to the affidavit of Frau Marie Krueger-Martius, dated 16 October 1947.

(Haensch Doc. Book II, p.2 Doc. No. 17 Exhibit No. 20 Haensch Doc. Book II, p.4, Doc. No. 18 Exhibit No. 21 Haensch Doc. Book I, p. 7 Doc. No. 5 Exhibit No. 9) B. Locale of activity as specified.

the command of the defendant, the garrison strength roster in the reports of events, on which again the Prosecution founds its charges, to a certain extent also represents a false picture. Up to and including report No. 190, dated 8 April 1942, the garrison locations of Sonderkommando IV b are given as follows: (Prosecution Doc. Book II D, p. 1. Doc. No. NO-3359, Exhibit No. 84) Kramatorskaja with detachments in Shitomir, Rovno, Winnica. Then in subsequent reports, starting with No. 191, dated 10 April 1942, only Gorlowka is listed as a garrison. (Prosecution Doc. Book III A, p. 74, Doc. No. NO-3256Exh. No.) Kommandoo the Kommando with its staff was actually in Gorlowka. For this report of events No. 183, dated 20 March 1942, contains irrefutable proof. The garrison strength roster of this report states, it is true, that the garrisons hitherto reported were not changed. (Prosecution Doc. Book III A, p. 80 Doc. No. NO-3234 Exhibit No. 108) This should then mean with respect to Sonderkommando IV b that the Hauptkommando was still located in Krammtorskaja. However, the text of the report reads: "As reported by Sonderkommando IV b, Gorlowka, ...". It is indicative of the unreliability of the garrison strength roster in the beginning of the reports of events that the persons preparing the reports do not notice this error in the garrison strength roster, of report of events No. 183, dated 20 March 1942, but allowed it to be repeated 6 times until finally correcting in report of events. No 191, dated 10 April 1942, which, as already mentioned, for the first 12 Feb 1948_E_MSD_26_5_Arminger (Juelich) time lists Gerlowka as a garrison.

If based hereon it can be maintained that the lists given in the garrison strength roster of the reports of events are not correct for the Hauptkommando, this applies still more to the Teilkommandos. In no period of the term of command of the defendant were any detachments of Sonderkommando IV b stationed in Shitomir, Rowno and Winnica. But such Teilkommandos were located in Artemovsk, Kramatorskaja, and finally also in Barvenskova. All these places, including Gorlowka, are located in the area between Slaviansk and Stalino directly on the Eastern border of the Ukraine in the Donez district, whereas Shitomir, Rowne, and Winnica are on the western border of the Ukraine, Rowne even in former Polish territory. to no less than between 700 and 900 kilometers in a straight line, shows that Sonderkommando IV b at that time could not possibly have had anything to do with Shitomir, Rowno, and Winnica. As Sonderkommando advancing together with the combat troops, the Kommando had exclusively security tasks in the front lines and was therefore never used in any other place than in the operational area of the army. This appears from the defendant's own statements as well as from all reports in which the Sonderkommando IV b is in any way referred to. I refer once more to report of events No. 183, dated 20 March 1942, in which the proximity of the front is expressly mentioned. (Prosecution Doc. Book III A, p. 80. Doc. No. NO-3288 Exhibit No. 108) before the Tribunal. (Transcript p. 2914 ff.) In the spring of 1942, Hartl was deputy consultant of personnel matters with Einsatzgruppe C in Kiew, and therefore familiar with the assignments of the various groups. Even though he cannot recall now the exact limitations of the area under the command of Sonderkommando IV b, he still remembers with certainty that the Kommando was operating in the industrial area of Southern Russia, i.e. in the Donez River Valley. But this is something quite different from the territory of Western Ukraine around 12 Feb 1948_E_MSD_26_6_Arminger (Juelich) Shitomir, Rowne, and Winnica.

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never at all garrisones in these towns. (Transcript p. 4096 ff.) According to the statement of the co-defendant Fendler, who belonged to the Kommando from the beginning of the Eastern compaign until 2 October 1941, the Sonderkommando IV b never was in the towns of Shitomir and Rowno, but once stopped in Winnica for 8 or 10 days, leaving the place again in closed formation. At no stage of the advance were detachmentments of the Kommando left behind in any place, nor were they later sent back anywhere. Neither did the Kommando have any other connections with the rear area. This is proved also by the route of the Sonderkommando IV b according to the reports of events preceding report No. 154, dated 12 January 1942, which has for the first time the incorrect location of the alleged Teilkommando. Shitomir, Rowne, and Wihnica, was already under civil administration when the defendant arrived in Russia. (Prosecution Doc. Book III A p. 63, Doc. No. NO-4533 Exhibit No. 107) E.g. report of events No. 168, dated 13 February 1942, already lists separate commanders of the Security Police and the SD for Rowne and Shitomir respectively. I interpoltate: namely Dr. Putz and Dr. Ratze Berger. As soon as a certain district of the occupied territory was turned over to civil administration, all activities of the Einsatz-and Sonderkommandos were suspended, as explained by the co-defendant Ohlendorf, since the security duties were then taken over by the local police offices. Shitomir, Rowne and Winnica, which however, was never actually the case, their activity had to be concluded in February 1942 at the latest. (Transcript page 594 ff.) explained if one studies the report of events No. 129 of 5 November 12 Feb 1948_E_MSE_26_7_Arminger (Juelich) 1941 and those of subsequent dates.

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In these reports the Teilkommandos in Shitomir, Rowno and Winnica are surprisingly enough referred to as such of EK V and even under exactly the same designation. This makes it clear that they belonged to the forces of EK V and not to those of the SK IV b. This statement is further substantiated by the fact that the garrison of EK V has located at Kiew. The Teilkommandos in Shitomir. Rowno and Winnica were therefore situated in its area of authority. Therefore, this is an obvious mistake. (Porseuction document book II D, page 8 No. NO-3159 Exhibit No. 85) Starting with report of events No. 154, of 12 January 1942, EKV is no longer mentioned in the garrison strength Roster.

It had been abolished in the course of the establishment of the Civil Administration. It is therefore not likely that the Teilkommandos stationed even to the West of Kiew should have remained activated after this date. They must have been affected too by the deactivation and were mentioned for a time as still being with the SK IV b only on account of an error of the reporting office, until also this mistake in the garrison strength rosters had finally been corrected in the report of events No. 191 of 10 April 1942. (Prosecution document book II A page 113 No. NO-3278 Exhibit No. 51) jurisdictional areas, therefore amounts to the following, that is, that SK IV b was only operating in the east Ukrainian sector at the time the defendant was there, which sector is marked by the towns of Gorlowka, Artemowsk, and Krmatorskoja and Barwenkowa.

C. The Activity Itself. questions concerning the Kommando period and the Kommando spheres, I turn now to the individual events with which the defendant, in his capacity as leader of SK IV b, has been charged.

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12 Feb 1948_E_MSD_26_8_Arminger (Juelich)

1.) The prosecution submitted as evidence for the alleged criminal activity of the defendant in Russia, first of all the report of events No. 173, of 25 February 1942. This report states:

"Through the Sonderkommando IV b, 861 summary shootings were carried out during the time of 14 January to 12 February 1942. Among the victims were 649 political functionaries, 52 saboteurs and partisans and 139 Jews." (Prosecution Document Book I, pg. 118 Document No. NO 3340 exhibit No. 22) because he was at this time, as had been proved, still in Berlin.

2.) Next, the defendant is charged with an action about which the report of events No. 177, of 6 March 1942, mentions the following: (Prosecution document book, p. 65 II C, document No. NO-3240 exhibit No. 80) "Owing to the extremely low temparatures and the snow drifts.

The Police actions were reduced following the lull at the front, which because of the protracted stay of the Kommandos brought about a considerable number of incidents.

Through the Sonderkommando IV b a total of 1317 persons (among them 63 political activities, 30 saboteurs and Partisans and 1224 Jews) were executed. As a result of these measures the community of Artomowsk became free of Jews also." No. 11, made up about 8 weeks later and submitted as a supplement by the prosecution, which stated; the following about this incident:

"In the remaining areas of the Eastern front the task of the Security Police and the SD apart from the actions against individual Jews who were politically or criminally active, consisted in the general parting of larger communitions. Thus in Rakow alone 1500 Jews and in Artemowsk, 1224 Jews were shot, so that these communities are not free of Jews." (Prosecution document book I page 51 document No. NO-2662 exhibit No. 13) 12 Feb 1948_E_MSD_26_9_Arminger (Juelich) above mentioned community Rakow belonged at no time to the area under the command, of SK IV b and that this is also not maintained by the Prosecution, Rakow is situated about 30 kilometers west of Minsk and belonged at that time to the area of the Einsatzgruppe A. Therefore, I must concern myself only with the shootings carried out in Artomowsk.

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neither of the two reports quoted. One thing is certain; they must have been carried out before 6 March 1942, the date of report of events No. 177, because otherwise it would have been impossible to mention them in the report. Moreover, the shootings must have been executed before 4 March 1942, because the report winds up with this date. This alone in itself should be sufficient proof that the defendant had no connection with these measures, because he was not yet assigned to this command.

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However, the shootings at Artemowsk cannot be determined as having taken place at a certain period. I stress this question because it is significant also for another reason which I shall discuss later on. Obviously the prosecution agrees with me that the events took place prior to 4 March or at least prior to 6 March 1942. On the other hand, the prosecution maintains that the activity and situation report No. 11 mentions the report-period from 1 March until 31 March 1942 and hence infers that the shootings at Artemowsk must have taken place in March 1942. This, however, is a false conclusion. ports represent monthly reports. In order to make a comparison, I request that reference be made to report No. 9 covering the period from 1 February to 28 February 1942. They were intended for the Foreign Office according to the accompanying letters attached to them, and represent a concise summary of the reports of events of the corresponding month. Therefore, the mentioned report period does not prove by any means that the reported events actually took place during this time, but that the reports of events based on the events were drawn up at this period. Both, i.e. the operational - as well as the activity and situation reports, were compiled at the Reich Main Security Office. the actual events and their recording in the report of events, often a period of 6 to 8 weeks elapsed. If, therefore, the report of events No. 177 of 6 March 1942, mention is made of shootings at Artemowsk then this alone, in all probability, infers, that these shootings were carried out not just a few days before but considerably earlier. This becomes a definite fact if one considers the further contents of the report of events No. 177. same report by one concerning the EK V in which it states:

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"As a result of the activity of the Einsatzkommando V b, a total of 1880 have been shot; among them political activists, 114 sabo teurs and looters as well as 1580 Jews.

This Kommando also car ried out an operation against members of the Bandera group."

and not even in February 1942. I refer in this connection again to report of events No. 154 of 12 January 1942 and others in which the EK V is no longer mentioned in the garrison strength rosters. Report of events No. 177, of 6 March 1942, concern therefore events which must have taken place prior to the destination of EK V, that is during January 1942 at the latest. port of events No. 189, of 3 April 1942, in the form of a photostat and an excerpt. The text of the excerpt contains only two paragraphs. They read:

"In Shitomir the soldier's cemetary at Cayssin had been desecra ted by persons unknown.

In the course of the subsequent inves Among them were:

1 mentally deranged person." ity of Shitomir, I proved that the SK IV b was never active in this area. The report itself does not mention anything as to who had carried out this measure. I could have been done only by the local Police offices, which had already been established there in February 1942 and which were subordinated to a special command of the Security Police and the SD. I may point out that

this commander had also been definitely mentioned in the report of events No. 188, of 1 April 1942, which the prosecution submitted together with report of events No. 189, of 3 April 1942, already dealt with in this connection.

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No other security units existed at this time. cribe the further mentioned execution of 434 persons, among them 352 Jews, to the SK IV-b. The submitted excerpt from report of events No. 189, of 3 April 1942, is misleading in that respect. Because it contains only the two paragraphs quoted it is apt to cause the impression that the shooting of 434 persons, including the 352 Jews, also took place in Shitomir. However, the photostat of the entire report gives quite another picture. According to it, the excerpt has been taken from an extensive report of Einsatzkommando C, altogether comprising seven paragraphs. Paragraphs one and two of this summary report concerns Kiew, the third concerns Schepetowka, the fourth concerns Nikelajew, the fifth Illowainschka, and the sixth Shitomir. The seventh and last paragraph then states in conclusion, how many persons had been subjected to special treatment during the time from 28 March to 31 March inclusive, in total i.e. in the entire area of Einsatzgruppe C. however, SK IV b did not participate in all these events, since all the localities quoted were outside of its sphere of activity at that time.

Finally, the report from the occupied Eastern territories, No. 6, dated 6 June 1942, was shown to the defendant. This report contains the following:

"Toward the end of April beginning of May 1942, several exten munists in the Commander's jurisdictional area Gorlowka.

Of the 1,038 persons arrested 727 were given 'special treatment', tivists and NKWD agents."

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were carried out in the area of SK IV b but executed by the Wehrmacht and not by SK IV b. The Wehrmacht had reserved for itself the combatting of partisans and similar elements in those areas where extensive measures were necessary, and had organized special units for this purpose. A small Sonderkommando such as SK IV b, with a strength of only seventy men, and which, in addition, was split up into several Teilkommandos in various locations, would never have been able to carry out such operations, since it was not up to a completely organized and armed band simply for the reason that they were outnumbered. Consequently, when the report speaks of several large-scale operations then it can already be established from the very beginning that these operations were conducted by the Wehrmacht. They were mentioned in the reports of the Einsatzgruppen only because the reports of events and the reports from the occupied Eastern territories were supposed to provide as complete a picture as possible of the security measures which had been taken. tions mentioned here only in so far as a few experienced criminal police officials of the Kommando had been requested by the Wehrmacht for their assistance and assigned there in one or two cases. These officials for the length of their assignment were subject to the sole order of the leader of the particular Wehrmacht unit who thereby assumed sole responsibility for their actions. They were never used for executions. because the incidents happened at a time when he was absent from the Kommando temporarily for the second time, namely, on the occasion of his trip to Berlin and Prague. Also, he had nothing to do with the transfer of the officials; rather, this was initiated through his deputy at that time. These events became know to him only from the report which he had received from his deputy following his return from the above-mentioned trip. Also, this report contained information to the effect that a few such Wehrmacht operations had taken place, and this has been substantiated by the defendant on the witness stand.

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which could be regarded as a crime. The containing of partisans, members of the Destruction Battalions, saboteurs, and looters is an action permissible according to International Law. I believe I do not have to touch upon this matter further. The report also shows that those persons apprehended were not killed indiscriminately but that only some 75 percent were actually affected by the so-called "special treatment". In other words, the cases were all investigated.

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executed there were also a few Communist activists and NKWD agents, then this does by no means mean that these persons had been executed only because of their membership in the Communist Party or belonged to the NKWD without otherwise being particularly incriminated by other facts.

The focal point here rests on the fact, that, as can be clearly seen from the report, these were Communist activists and NKWD agents. These were no innocuous civilians but men who worked for the cause of the Soviets behind the German lines. The offices to which the report was transmitted did not have to be informed in detail as to how and in what nature this activity took place, since the operations of Communist elements, which had taken on active proportions, had long been known. These very persons created the chief danger to the security of the fighting troops since they were the ones who incited the resistance of the civilian population secretly but all the more effectively, and who created and maintained secret communication with the Soviet armed forces and the Soviet leadership.

II. The Activity According to the Statements of the Defendant it charges the defendant with war crimes and crimes against humanity, is completely exhausted. However, this will still require a certain elaboration as to what the defendant himself has stated regarding his activity with the SK IVb. him by Streckenbach, Director of AMT I in the RSHA, as well as by Heydrich, to the effect that he was to be responsible within his area of command for the security of the combat zone according to the directives as issued by the Wehrmacht. The instructions which he received from Thomas, Chief of the Einsatzgruppe C, were identical. An order, the execution of which would have been a crime according to the principles of humanity and according to the recognized rules of war, was never transmitted to him from any quarters.

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In addition, up to the time who had been designated as inferior.

I shall return to this point termed as allegedly inferior.

However, at the time the defendant Haensch This was confirmed as well by the witness Martenz, in his affiDoc.Book I, p.15, davit, dated 23 October 1947. With the exception of a few Jewish Doc. No. 12 Exh. Panje drivers, who were there were never any Jews, gypsies, or No. 15 dant until during this trial.

In Gorlowka, the garrison of the Pros. following the measures carried out by Einsatzkommando VI. This Doc.Bk. IIC,p. is shown by the report of events No. 177, dated 6 March 1942. 65,Doc. No. NO- As has already been established, that was the same case following 3240,Exh No.80 the operation in Artemewski, which was previously mentioned. This area.

In this connection refer to the statements by the Co Spring 1942.

My colleague Durchholz has expressed the same in his final plea for the Co-Defendant Schulz.

Consequently, the de in toto were carried out, that is, two by the main Kommando in Gorlowka, one by the Teilkommando in Artemowsk, and one by the Teilkommando in Berwenkowa.

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In each case, these had to do with small groups, in all some 60 parsons. These were exclusively saboteurs, spies, looters, and similar elements who as has been established, had acted unmistakably against the decrees which had been issued and made public for the security of the fighting troops. tions which were carried out by specialists thoroughly trained in criminology -- I interpolate -- and every accused person was given a hearing. The results of the investigations were then written down, the officials in charge of the investigations were then heard again verbally, and thereafter the decision was reached. May I again call particular attention to the fact, in this connection, that the defendant, as a professional lawyer, who had passed his State examination, was capable, according to German law, of holding the office of a judge. This was also true of the Director of the Executive Department. It can make no difference in the evaluation of the trial whether in this connection the defendant functioned formally as a judge or not; in practice, however, he reached his decisions in the only way that this could be expected of a judge. The executive procedure in the SK IVb was, therefore, at the time of the defendant, at least just as legally tenable as a procedure in a court martial, at which persons experienced in criminal law and judges, for the most part, are not to be found. Apart from that, a proceedings had been regulated by the OKW and the OKH, that is, the highest authority, and the defendant had been told not to change this. It was not up to him to change the procedure and to investigate it. that this was initiated, and decided upon by the Wehrmacht. The Wehrmacht had only commissioned the Teilkommando located there with the execution of punishment.

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of execution. I interpolate: he found full understanding for this D. Closing Comment to Part I to the activities of the defendant in Russia.

If I may just briefly the slightest involved.

The evidence which has been submitted for this fact by the prosecution has been incontestably refuted.

On the under his command , was confirmed.

The charges raised against him fendant.

From this he has been suffering, and shall continue to suffer The defendant'smembership in the SD and the SS.

I shall now deal with the part which covers the defendant's contained in the transcript of my Opening Statement.

It is stated therein, that the defendant was a member of the General-SS.

However, this is not correct.

As I shall prove with the following, the de A. Data Concerning the SD Membership

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1.) Date of Joining the SD of the SS.

This was in connection with his work as Rats assessor in Daeboln (Saxony). These activities were the reason for interfering in the city administration.

This, in turn, Haensche been a member since 1931, and that he also lost his job with Doc. Bk. I, Pg.10 the city of Daeblen. The above-mentioned facts can be suband 11, Doc. No. stantiated by the findings of the Daebeln Circuit Court of 1 8 and 9, Exh. No. July 1935, and by the affidavit of the former Daebeln Mayor, 12and13.

Arne Nietzsche, of 17 October, 1947, by which the defendant's statements are corroborated.

When the defendant made out the leadership.

At that time he did not know that the SS had and considering such reports, that is, the SD.

He only learned Prosec. Doc. Bk. fendant of his curriculum vitae dated 22 August 1937, which had III C.Pg. 86,Doc.No. been drafted for the personnel files , and in which it is stated 3261, Exh. No. that he had submitted the reports in his capacity as SD Confi141 dential Agent.

From this, the Prosecution thought it could prior to this incident.

However, by this statement, as re in the report he had become a confidential agent for the SD, but he certainly did not intend to show that he had acted in accordance with an already existing SD instruction.

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There were no such confidential connections in this sense. Only in this particular case was the defendant working as SD Confidential Agent, but he did not act in that capacity either before or after this incident. by his stand for an orderlycity administration, which was to be protected against arbitrary Party interference, they approached him to take over the office for legal consultation and judicial, matters with the newly activated SD administrative District Chemnitz. The defendant agreed to this, as being an expelled Party member, he had no chances for the time being to receive another appointment. He considered the Chemnitz job only an emergency and transitary solution, as he had decided to follow a civil service career. He joined the Chemnitz SD on 1 august 1935 on the basis of a purelyprivate contract. However, the defendant intended to return to civil service afterhis expulsion from the Party had been rescinded, which he tried to expedite. unexpectedly. The defendant, without submitting a corresponding application, was formally transferred as an Unterscharfuehrer to the SS Special

Formation, the SD in 1 May 1936. This did not affect his activities at all. He had still the choice of resigning, as soon as he could return to civil service.

II. His Continued SD Membership. were concluded. The final decision decreed that the defendant's expulsion from the Party was rescinded, and that the defendant was to be punished only by being reprimanded and warned. The Gauleiter of Saxony decreed, in addition to this, that the defendant was not to be appointed to any party office for the duration of three years. Because of this, he was unable to reenter civil service for the same period, as no government authority would have dated to employ a reprimanded Party Member, particularly inconsideration of the unity of Party and State firmly enacted by law, and in contradiction to the intentions as expressed by the Party Leadership.

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In spite of that, the defendant had repeatedly tried to reenter government service. However, his efforts were of no avail.

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to remain with the SD for an indefinite period, and to wait for the expiration of the ban. On 1 November 1936, he was transferred from Chemnitz to the SD Main Office in Berlin, the predecessor of the future Reich Security Main Office, where he was assigned to take over Personnel Main Department I as special advisor on disciplinary matters. When the Reich Security Main Office was established, his department was incorporated in Department I of the Reich Security Main Office. In order to prove this I refer to the affidavit by Walter Schellenberg of 23 October 1947. Also the testimony of defendants Ott and Sandberger.

Haensch Document Book I, Page 12; Document No. 10, Exhibit No. 14.

war had meanwhile broken out. The defendant was not in a position any longer to resign from his SD job. Even though, this would not have been possible before, especially since he had been permanently employed, without special arrangements being made. The Chief of the Security Police and the SD had prevailed with the Wehrmacht that in case of war the Reich Security Main Office members were to be exclusively under his assignment command. The induction centers made a corresponding special entry in the military passports of Reich Security Main Office members. By virtue of this special power of command, the Chief of the Security Police and the SD demanded that each member of the Reich Security Main Office should remain in his position. He even resorted to the extreme measure by instigating disciplinary action in reply to all release applications for joing the Army. This is shown by the affidavit of Gettfried Klingemann of 30 October 1947, who was the Chief of the Personnel Department for the Reich Security Main Office in 1939. From then on the defendant was really tied down. He was subject to martial law and had to continue his work with the Reich Security Main Office whether he liked it or not. Just as before, it was his task to deal with disciplinary matters within Department I.

Haensch Document Book I, Page 16, Document No. 13, Exhibit No. 16.

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assigned to the Eastern Einsatz for a period of approximately three months. Actually he was still a member of Department I, with the sole exception that his particular official duties rested during that period, and after concluding his assignment to the Eastern Einsatz he had no difficulties in returning to his old position. Only this and nothing else was the reason for his missions towards the interrogator Mr. Wartenberg, when he - the defendant - stated that he had been assigned to Russia as special adviser for disciplinary matters. In the statement drafted by Mr. Wartenberg on 8 July 1947, which the defendant did not see until it was submitted during the cross-examination, these, his statements, were found to erreneously formulated, and this is the reason whyc the defendant refused to sign the affidavit which was written down by Mr. Wartenberg based on his erroneous initial draft.

Prosecution Document No. NO-5572, Exhibit No. 187. Reich Security Main Office Departments. If the indictment states to Count III under B,: that he had been also a member of Departments III, VI, and VII, this statement is false. The defendant himself never made any such statement, nor did the Prosecution submit any relevant evidence. This evidence can never be submitted, because it is an irrefutable fact that the defendant was never a member of Departments III, VI, and VII. Here, I want to make a special point that the Prosecution has made a very fundamental mistake. tion before, to resign from the Reich Security Main Office during the war, the defendant tried everything to attain this long-wished for aim, as he felt in his position, which he had been forced to accept in order to tide him over his period of unemployment at that time, and in which he was being retained against his will because of the exegencies of war. This has been substantiated by the affidavits of Herbert Dossier of 23 October 1947, of Lisa Krueger-Mettus of 29 September 1947 and 2 November 1947, of Elisabeth-Charlette Ebeinghaus of 23 October 1947, of Gottfried Klingemann of 30 October 1947, of Erika Coulon of 24 November 1947, and of Frau Charlette Hermstaedt of 31 October 1947.

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Frau Hermstaedt was the defendant's secretary in the RSHA and consequently, was particularly well informed of his endeavors in this respect.

Haensch Doc. Bk, I, Pg. 2 Doc. No. 2, Exh. No. 6, Bk. I, Pg. 3, Doc.

No. 3, Exh. No. 7, Bk I, Pg. 5, Doc.

No. 5. Exh. No. 8. Bk. I, Pg 16, Doc. No. 13, Exh.

No. 16. Bk. 2, Pg. 4, Doc. No. 18, Exh. No. 21, Bk No. 2, Pg. 7, Doc.

No. 20, Exh. No. 23. quested via the Foreign Office for service in the Office of the Reich Plenipotentiary in Denmark. The Chief of the Security Police and the SD granted this request. In July 1943, the defendant ceased to work for the Reich Security Main Office. After a short informatery orientation the defendant, on 1 September 1943, reported the Office Of the Reich Plenipotentiary in Denmark, where he continued up to the end of the war as Referent in the Main Department Administration and legal matters. This is proved by the Affidavits of Friedrich Stahlmann of 27 October 1947 and 4 December 1947, as well as of Werner Best of 31 October and 26 December 1947. Stalhmann was a senior administration official in the Office of the Reich Plenipotentiary. The Court knows the person of Herr Best.

Haensch Doc. Bk. No. I, Pg. 18, Doc. No. 14, Exh.

No. 17, Bk II, Pg 6 Doc. No. 19, Exh.

No. 22. Bk. I, Pg. 20, Doc. No. 15, Exh. No. 23.

Bk. III, Pg. 5, Doc. No. 26, Exh. No. 29.

The defendant's new position was not a transfer by the Reich Security Main Office, but a was an entirely independent assignment. The defendant also ceased to receive his salary from the Reich Security Main Office; he was now paid by the Legation Pay Office of the Foreign Office in Berlin, as is proved by the money order stub of March 1944. Consequently, this transfer from the Reich Security Main Office did not only concern his removal from the personnel roster but also his being cancelled in the pay office recrods.

Otherwise, he had no further contacts with the SD after that time.

Haensch Doc. Bk. II, Pg. 8, Doc. No. 21, Exhibit No. 24.

It most now to be examined as to how the defendant's SD membership should be evaluated in the light of a criminal responsibility. The IMT verdict states that only those SD members belonged to a criminal group, to whom the following three requirements applied:

1.) They were to have occupied a specially defined position

2.) They were to have been SD members before 1 September 1939 This verdict does not show quite clearly which positions the IMT had in mind as regards the first requirement. Of the Reich Security Main Office Department, only Departments III, VI, and VII have been mentioned. Department I, which was the defendant's department, has, therefore, been excluded.

istrative District in Chmenitz cannot be included, because both factually and in organizational matters, this office was headed by Central Department I of the former SD Main Office, the predecessor of Department I in the Reich Security Main Office. to do with the SD. This was a military assignment. The Einsatzkommando and Sonderkommando were military units, which had not been activated solely from SD and Gestapo members, but also by drafting members of the criminal police, the constabulary, the Waffen-SS, and other groups or formations, which have not been declared criminal. This is not the point in question, as all other prerequisites do not apply to the defendant. his own free volition, but was forced to remain in this organization in accordance with the war laws and the regulations which the Chief of the Security Police and the SD had decreed concerning the commitment of members of the Reich Security Main Office in the Wehrmacht. Above all, his assignment to the Kommandos in Russia was not a voluntary act. It was based on the Einsatz order of the Chief of the Security Police and the SD, which if not carried out would have been tantamount to mutiny and would have incurred most severe punishment for the defendants. The defendant could not have been expected to assume this responsibility. As to the question whether this could be expected of the defendant, I refer to the arguments of my colleague Lummert, with whom I fully agree. of the Einsatz and Sonderkommandos, he had absolutely no reason for not taking over the command of SK IV b. He only knew that these Kommandos were assigned in order to obtain the necessary security and order for carrying out the military operations in the occupied area and specifically at the rear of the front lines. Of what was otherwise done by the Einsatz and Sonderkommandos, the defendant had no knowledge and he was other organizations served over and above what they were actually supposed to do.

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him no opportunity for finding out about these particular things. The accounts and reports from the Eastern front, from which he could have gained the knowledge, were not accessible to him. As the distribution key in the various reports of events shows, they were sent only to specific groups within specific departments, besides being sent to the department Chiefs. In addition Department I is not even listed. For example, I cite report of events No. 47 of 9 August 1941. even mentioned in the official conferences within department I. In accordance with the express order of Hitler the most rigorous secrecy was maintained before those persons who were not directly concerned with it in their official capacity. From the evidence, the court knows that for the handling of matters pertaining to the Jews, there was even a secret department which was kept completely apart and secluded from the other offices in a separate place to which no one had entrance except those persons employed there. other groups regarded as inferior, were kept from the special advisers for disciplinary matters, apparently with special care. investigation. The disciplinary officials would have lost every standard for judging official lapses on the part of those members of the Security Police and the SD employed in Germany, and would have experienced the most grave internal conflicts if they had learned what was going on in the occupied Eastern territories as performed according to order by the members of these organizations assigned to these territories. The prosecution is obviously of the opinion that the defendant must have connection with his own activity in Russia.

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In this connection I must say the following: initiate him into these matters, because, as I have described, he came to an area in which there were no more Jews. Of course, his superiors in the RSHA, Heydrich and Streckenbach and also Thomas, the Chief of Einsatzgruppe C, had exact information about these natters. Therefore, they consciously avoided brining up the subject before him. It can even be assumed that the defendant was ordered to this part of the Eastern front because here he could gain the front-line experience which Himmler required of every member of the RSHA, without coming into contact with things of which he was supposed to know nothing, considering his future activity as special adviser in disciplinary matters. of Jews which had taken place earlier. The last execution of this sort, i.e. the one in Artemowsk, had occurred, not as the prosecution says, a few days before the defendant took over the leadership of the Kommando, but a number of weeks prior to this. In this connection may I refer to the statements I made in the first part of my final plea. Minutes or other written documents were no longer available, therefore, since it was forbidden to keep them. Moreover, may I once again remind you that the staff of SK IV b was not located in Artemowsk, but only a Teilkommando was stationed there. The defendant only visited the latter, lasting perhaps one and a half hours at a time, for purposes of inspection. On these occasions only current matters were discussed. At any rate, neither the predecessor of the defendant, Braune nor the non of the Kommando over uttered a word about the fact that there had been shootings of Jews by SK IV b. resumed his activities as RSHA special adviser for disciplinary matters, the situation was the same as before. The reports of events or, as they were not sent to department I, and their contents were otherwise kept strictly secret.

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The practical effects of the handling of the racial problem was a matter concerning which the little man on the street knew much more than the officials in the RSHA who were not directly connected defendant knew nothing of the persecution of Jews also explain why he did not know anything about the Fuehrer order, which was supposed to have been the basis for these measures. He did not need to be familiar with this order in order to perform his tasks as Fuehrer of SK IV b, since at his time it no longer had any significance in the Kommando areas.

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Knowledge of such an order, however, would have had nothing less than a tragic effect for the activities of the defendant as RSHA special adviser for disciplinary matters.

III. The question of the defendant's participation in criminal also had he personal connection of any sort with crimes against humanity and war crimes, neither as a perpetrator nor as a participant. the defendant constantly conducted himself as can only be expected of a humane and just man. As Kommandofuehrer in the East, he saw to it that no one was persecuted without cause and that the civilian population of the occupied territory was spared unnecessary oppression. The affidavit of Hans Steinwede, of 22 December 1947, to cite only this one example, proves how he was regarded as a special advisor for disciplinary matters. Steinwede's error with regard to the defendant's authority in department I of the RSHA has been corrected by the affidavit submitted by the codefendant, Erwin Schulz, of 12 January 1948. an assistant judge, an assessor, of the Gestapo in Berlin, and he had him punished because he had maltreated a Jew. Reich Plenipotentiary in Denmark is of particular significance in this connection. Of course, these activities have nothing further to do with his membership in the SD, but they demonstrate the over-all personal conduct of the defendant with penetrating distinctness. There the defendant intervened in every possible way for a compromise between the interests of the German Wehrmacht and the concerns of the Danish civilian population, including the American and English citizens interned in Denmark, and in numerous cases where there were indications of undue severity, he interceded in a helpful manner, in direct and shart contrast to the German police.

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I will not go into the multitude of details here, but will refer to the affidavits of Friedrich Stalmann, of 4 November and 4 December 1947, and of Werner Best, of 31 October and 26 December 1947. praisal of the character of the defendant. The same applies to the affidavits of Elizabeth Charlotte Ebbinghaus, of 23 October 1947, Frau Lisa Krueger-Martius, of 29 September and 2 November 1947, of Frau MariaKrueger-Martius, of 16 October 1947, of Frau Erika Coulon, of 24 November 1947, and of Frau Charlotte Harmstaedt, of 21 October 1947. I would also like to call the attention of the court to these.

C. Closing comment to Part II. not guilty on count III of the indictment.

THE PRESIDENT: The Tribunal will now be in recess until tomorrow morning at 9:30 o'clock, and tomorrow's session will take place in Courtroom No. 1.

(The Tribunal adjourned until 13 February 1948, at 0930 hours.)

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THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

PRESIDENT: Some time ago'several weeks ago the Tribunal discussed with counsel of both sides the order of presentation of the final pleas or summations. Several of defense counsel were of the impression that they were entitled to the final word. We indicated at the time, and we repeat today that the order of the presentation is not of paramount importance. After all, it is the substance of the speech and not the order in which it is heard which determines just how much it helps to elucidate the issued involved. In Anglo-American procedure the prosecution invariably terminates the argument because the prosecution has the burden of proof. We decided that the prosecution would make the final speech in this case, not so much because of the burden it must sustain, but because of the physical and mechanical difficulties with which it was confronted and which were more numerous than those which confronted defense counsel. Nonetheless, although the prosecution will have the final speech in this case, defense counsel will still be allowed an opportunity to make further remarks. In keeping with the policy which has been demonstrated rather repetitiously throughout this trial and which perhaps sometimes it has been demonstrated we fear to the annoyance of the prosecution, we allow the defense every possible latitude in the presentation of arguments or of evidence which they believe are of importance in the defense. Thus, after the prosecution will have completed its final speech this morning, such of defense counsel who believe that they should reply to what is new in the prosecution's final utterance will be permitted to make those extemporaneous remarks. We will insist that these extemporaneous remarks be addressed only to what is new in the argument presented by prosecution counsel and not merely be a duplicate of some argument which has already been made by defense counsel in final statement or summation already delivered.

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We will now hear from the prosecution.

GENERAL TAYLOR: May it please the Tribunal. dence in support of the indictment which has been brought against these defendants. On 30 September, 136 days ago, the prosecution rested its ease. In view of the nature of the crimes charged here, and the conclusive documentary proof in support thereof, the desperate nonsense which has been chattered during the twenty-one intervening weeks may jar the ear but it can hardly surprise the mind. week for each defendant the prosecution sees not the slightest necessity for or benefit from a tedious rehearsal of the details of the record. We are filing briefs summarizing the evidence against each individual defendant. In this oral statement, we will confine ourselves to the very few general matters raised by the defense which warrant a few words. briefly what the prosecution's evidence showed with respect to the organized program of murder of which these men are the chief surviving executors. It is only too well known that anti-semitism was a cardinal point of Nazi ideology. Throughout the early years of the Third Reich, the Jews of Germany were subjected to ever more severe restrictions, persecutions, and barbarities, and by 1939 life in Germany was all but intolerable for them. The war presented Himmler and Heydrich with what, to them, was a golden opportunity to carry these doctrines to their logical and terrible conclusion--the extermination of all Jews in Germany and in the countries overrun by the Wehrmacht. But practical problems soon cropped up. No one, at least for centuries, had ever tried to eradicate an entire antional and racial group, and it rapidly became apparent that such a project was.....

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PRESIDENT: General Taylor, I suggest that you speak a little more slowly for the benefit of the interpreter.

GENERAL TAYLOR: ...an ambitious undertaking which required time and money and manpower and planning! With the invasion of the Soviet Union, the project was put on a really systematic footing. the most part, the approximately 3,000 members of the four so-called "Einsatzgruppen" of the SS, whose leading members are indicted here. The members of these units were carefully instructed as to their mission by Heydrich himself. Their general task was to insure the "political security" of the conquered territories in Russia, and as part of this function they were directed to exterminate all Jews, Gypsies, government officials, Communist party leaders, and other so-called "undesirable elements" in their assigned territories. With the support of the Army leaders, this program was faithfully carried out, and resulted in the murder of at least a million Jews and other human beings during the first two years of the Russian campaign. The defendants have not seriously endeavored to controvert these facts, which conclusively prove the crimes of genocide and the other war crimes and crimes against humanity charged in the indictment. Nor, with a few exceptions as to precise dates -- for the most part insignificant -- have the defendants attempted to contradict the clear proof that they commanded or were otherwise connected the Einsatzgruppen as charged in the indictment. All of the foregoing is clearly established by the documents introduced by the prosecution, consisting chiefly of the defendants' own reports of their activities. escape the damning effect of the conclusive proof afforded by their own records? Only a few of them have been so utterly foolish as to deny that they knew that the Einsatzgruppen had been directed to kill Jews and government officials as described above, or that such executions indeed took place, and in the face of the proof, such a defense is, preposterous.

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These defendants who were in charge of these units at the outset of the Russian campaign received instructions which were terribly clear. Those who came in later learned about it from their superiors and predecessors. Mass executions of Jews by the Einsatzgruppen took place in all sectors of the Russian front. We may well believe that the members of the Einsatzgruppen were brutalized by what they did and what they saw being done around them, but they did not become so blase as to carry out these mass executions without even talking about it among themselves. The subject matter of this proceeding is horrible, but it is hardly boring. And furthermore, quite apart from the inherent incredibility of this defense, it is easy to see why very few of the defendants have ventured to put it forth. Most of the defendants have relied upon the so-called defense of "superior orders", and if no order was given to kill Jews and others, or if such an order was not perfectly well-known to all the members of the Einsatzgruppen, then of course the defense that these executions were committed under the compulsion of such an order can not be made. In any event, the very idea that the defendants did not know of both the order and of the executions is so ridiculous that we have already dignified it overmuch.

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various times during the trial which deserve some comment. Some of the defendants have sought refuge in the contention that they as individuals did not take an active or direct part in the actual executions, but were primarily concerned with administrative matters or other phases of the operations of the Einsatzgruppen. Other defendants claim that the units under their command did not carry out the order for the killing of Jews and Gypsies and Government Officials, and other undesirables. With respect to reports showing that their units did in fact execute large numbers of people, the excuse is given that the victims were either proven criminals or were all executed by way of reprisal in the course of the anti-partisan warfare being waged behind the front in Russia. And the third point - made by numerous defendants - is that they acted under the compulsion of "superior orders". we will, shortly, make a few observations on what effect, if any, a few of the defendants - most notably the defendant Ohlendorf - have advanced as a defense the very motives which led them to commit these murders; they have bluntly taken the position that under the circumstances which confronted them, the killing of all Jews - even Jewish children - was a necessary and proper part of warfare. This sinister doctrine we will deal with in conclusion. available, conclusive, and susceptible of very brief statement. We do not propose now to examine the evidence, or the application of these arguments, with respect to each of the individual defendants; that has been done in the written briefs which we have filed or are filing with the Tribunal, we have no desire to protract the trial on this, its last day, by laboring the obvious or burdening the transcript with a detailed refutation of flimsy and desperate contentions.

What we may call the defense of "lack of direct participation" has been made by two distinct groups of defendants.

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Some of them - for example, Jost and Naumann, and Blobel - were the commanders or deputy commanders of the Einsatzgruppen or their subordinate units the Einsatzkommandos and Sonderkommandos, with slightly greater plausibility. Thus the argument has also been put forth by the lower ranking defendants - such as Ruehl, Schubert and Graf - who were officers and staff members, but not in command of these units. participate directly , the elementary principle must be borne in mind that, neither under Control Council Law no. 10 nor under any known system of criminal law, is guilt for murder confined to the man who pulls the trigger or buries the corpse. In line with recognized principles common to all civilized legal systems, paragraph 2 of article II of Control Council Law No. 10 specifies a number of types of connection with crime which are sufficient to establish guilt. Thus, not only are principals guilty but also accessories, those who take a consenting part in the commission of crime or are connected with plans or enterprises involved in its commission, those who order or abet crime, and those who belong to an organization or group engaged in the commission of crime. These provisions embody no harsh or novel principles of criminal responsibility, and a moment's reflection on their meaning will indicate how inadequate is the defense which we are now considering. matters which they affirm establish that their responsibility is, in fact, deeper than that of some of the other defendants. It is, of course, highly probable that these defendants did not, at least very often, participate personally in executions. And it would indeed be strange had they done so. Not even a regimental or battalion commander in battle spends much of his time personally shooting a gun -- it is his task to organize and direct the shooting by the men who serve under him.

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And when these defendants tell us that they were chiefly engaged in "administrative work" this means only that they were engaged in the general management and direction of the work of the Einsatz units which they commanded. The "administrative work" which these top leaders and their immediate staffs performed at times - as in the case of Jost -- included such interesting tasks as the ordering of additional gas vans to be utilized for mass exterminations. But such items like that one are colorful rather than necessary to establish guilt. We are not aware that General Yamashita, with his own hand, took the life of anyone in the Phillipines, and surely General Anton Dostler did not serve as a member of the firing squad which shot down the fifteen American commandos who had been taken prisoner in Italy. waking hours to the extermination of Jews. The Einsatzgruppen had a general mission of which these executions were a very important part, but they did have some other things to do. We are quite prepared to believe that the defendants spent some of their time writing general reports to the RSHA and to the military intelligence officers, and that they at times scrutinized captured documents, in pursuit of what the defendant Six was plased to call "cultural objectives". Often, as the defendant Klingelhoefer conceded, the purpose of the documentary research was to identify intended victims of Einsatz executions. But, in any event, these circumstances are no more important than the conceded fact that the defendants had to take time out to eat and sleep in order to carry on. So far from being a defense or even a circumstance in mitigation, the fact that defendants like Naumann did not personally shoot a great many people, but rather devoted themselves to directing the overall operations of the Einsatzgruppen, only serves to establish their deeper responsibility for the crimes of the men under their command. such as Radetzky and Ruehl, and Schubert and Graf. It is a little different, but not much.

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Even though these men were not in command, they can not escape the fact that they were members of Einsatz units whose express mission, well known to all the members, was to carry out a large scale program of murder. Any member who assisted in enabling these units to function, knowing what was afoot, is guilty of the crimes committed by the unit. The cook in the galley of a pirate ship does not escape the yardarm merely because he himself does not brandish a cutlass. The man who stands at the door of a bank and scans the environs may appear to be the most peaceable of citizens, but if his purpose is to warn his robber confederates inside the bank of the approach of the police, his guilt is clear enough. And if we assume, for the purposes of argument, that the defendants such as Schubert and Graf have succeeded in establishing that their role was an auxiliary one, they are still in no better position than the cook or the robbers watchman. group of defendants - including Schulz, Blobel, Sandberger, Steimle, Haensch and Nosske -- have claimed that they did not carry out the order. And they say that executions reported by units under their command are justified on the basis that the victims were in all cases partisans, or that they were executed in reprisal for attacks by partisans, or were proven criminals. their contention is palpably false even at first glance. Blobel, for example, was in command of Sonderkommando 4 a of Einsatzgruppe C when his unit entered the Russian city of

Kiev. This ancient city had not seen such carnage since its destruction by the Monguls centuries before. As the records show, Blobel's unit killed 35,000 people in Kiev in two days, and 60,000 over the course of six months. Schulz's Einsatzkommando 5 killed 12,000 people during the six weeks of his command . Sandberger's Einsatzkommando I A of Einsatzgruppe A killed 14,500 people, including according to one report, 1,158 "Jews and Communists" at one fell swoop.

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And even as to the other defendants whose recorded murders do not run to five figures, nevertheless the number of executions reported is still more than ample - particularly in view of the established pattern and purpose of Einsatzgruppen activities -- to compel the inference that these executions were certainly not all undertaken solely against partisans or by way of reprisal. the situation of the defendants is not much the better for our charity. In thus exculpating themselves under Count One of the Indictment, they have simultaneously inculpated themselves under Count Two, which charges atrocities and offenses against the laws of war, including the murder and ill-treatment of the civilian population of occupied countries. As a most eminent authority on international law has pointed out, "a war crime does not cease to be such for the reason that it is committed under the guise of reprisals". extreme as reprisals, which can be taken only when an unlawful act of warfare has first been committed by the other side. Counter-action can only be taken as a last resort, and the sole purpose of reprisals is to discourage the continuance of unlawful acts of warfare by the enemy. Reprisals may never exceed the degree of violence of the acts which they seek to stop, or the degree reasonably necessary to accomplish this purpose. by the Einsatz units never conformed with the requirements laid down by the laws of war. So far from being measures of retaliation for unlawful acts of warfare by the Russians, they were carefully planned in advance long before Germany launched the attach which began the war. Furthermore, nothing is more clearly established by the laws of war than that no surrendered combatant - whether he is a partisan, spy, or guerrilla - and no civilian may be executed without the benefit of a court-martial or military court trial to determine his guilt.

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This was well known to each defendant and is written in the pay book of every German soldier. The defendants have not even pretended that this requirement was fulfilled. If we had applied to these defendants the kind of law which they administered prior to the executions they carried out, this trial would have ended the day before it began.

In arguing that the victims of the Einsatz executions were "partisans" the defendants become enmeshed in a hopeless mase of contradictions and confusions. If their own records show that the victims were Jews, they reply that all Jews were partisans. If the records show the executions of partisans, the they are asked how they knew that the victims were partisans, they reply that they must have been partisans because they had been ascertained to be Jews. This, of course, is flatly contradictory to the argument advanced by Jodl, the defendant before the IMT, who assured us that "there were enxt to no Jews among the partisans. In the main, these partisans were fanatic, steelhard Russian fighters, mostly white Russians."1 "cultural research", but the Judicial process, however summary, was not part of the activity of the Einsatzgruppen. As the defendant Klingelhoefer finally admitted on cross-examination, "whether or not the Jews had violated any order, whether they left or stayed in the ghetto, and whether or not they contacted the partisans, they were all killed".2 And the defendant Blume admitted that interrogations were not held in order to determine guilt or innocence, but to obtain information, and that the interrogation was always followed by the death of the subject.3 Having noted these admissions which, revealing as they are, serve merely to confirm what is abundantly clear from the documentary proof, we may turn to 1. IMT mimeographed transcript, p. 11075. See also the admission to the JODL's counsel, Vol.

IV, Trial of the Major War Criminals, p. 487. 2. Tr. p. 3939 3. Record p. 3756 the third general proposition which a number of the defendants have urged on the Tribunal.

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That is the defense of command did carry out mass executions of Jews, gypsies, and political officials, but seek to escape the burden of guilt by pleading that they carried out these executions under the compulsion of superior orders. To this group belong Ohlendorf, Naumann, Blume, Braune, and Ott. It should be noted at the very outset that the putting forward of this plea of superior orders cuts the ground from under the defenses which we have just been considering, If, as Ohlendorf and these other defendants tell us, Hitler did order the Einsatz units to execute all Jews and political officials, and if, in obedience to Hitler's order, such executions were carried out, then there is less than nothing left of defenses such as lack of knowledge, or that the victims of the executions were all partisans. And in fact, the documents make it clear beyond the slightest doubt where the truth lies -- the order for the mass executions of Jews and political officials was given, and it was carried out and there remains for consideration only the question whether the fact that these defendants acted pursuant to an order shall be held to better their position before this Tribunal in any way. to the effect of superior orders on criminal responsibility are by now well established Normally, a subordinate is entitled to assume that orders issued to him by his superiors are lawful and do not require him to commit crimes in execution thereof; and we cannot hold the subordinates responsible to make careful inquiry or elaborate research into the background of the order to make sure that it is in fact lawful. But this general presumption for the benefit of subordinates has no application where, on its face, the order is palpably criminal. These principles have been concisely set forth in the decision of the German Supreme Court at Leipzig in the so-called Llandovery Castle Case (1921): I will quote from that opinion:

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"...It is certainly to be urged in favour of the military count upon its legality.

But no such confidence can be doubt whatever against the law.

This happens only in rare and exceptional cases.

But this case was precise ly one of them.

For in the present instance, it was per breach of law.

As naval officers by profession, they were people.

They well know that this was the case here." The language of this decision is precisely applicable to the present case; here also we are dealing with even more obviously criminal orders to kill "defenseless people" on the sole ground that they were Jews, gypsies, or government or party officials. And, in any event, the scope and affect to be allowed the plea of "superior orders" are expressly set forth in Control Council Law No. 10, which is governing on this Tribunal and which states: 1 "The fact that any person acted pursuant to the order ed in mitigation."

So we are left, with this question of mitigation. In dealing with this matter, the prosecution believes that there are at least three matters which deserve primary consideration. The first is--what was the attitude of the defendants towards the criminal order and the criminal acts which it required? Obviously, if the defendants were in sympathy with or merely indifferent to the criminal character of the order, its existence can be allowed, no mitigating effect. If, and only if, the Tribunal is satisfied as to any defendant that he was opposed to and revolted by the character of the criminal order, then two other matters warrant consideration. First -- how well equipped, by rank and education, was the accused to resist the compulsory impact of the order? And secondly, how 1. Control Council Law No. 10, Article II, paragrapy 4 (b). This pro deep was the criminalnature of the order?

For by this we can, to some extent, measure the gravity of the obligation to resist it. defendants made any showing whatever which would establish a claim to mitigation. These defendants are not German peasants or artisans drafted into the Wehrmacht. They are not uneducated juveniles. They are lawyers, teachers, artists, and a former clergyman. They are, in short, men of education, who were in full possession of their faculties and who fully understood the grave and sinister significance of the program they embarked upon. They were part of the hard core of the SS. They did not give mere lip service to Himmler's atrocious racial doctrines; they were chosen for this terrible assignment because they were thought to be men of sufficient ruthlessness to carry them out. They are handpicked fanatics; Every one of them was an officer of the SS, and among those indicted here are six SS Generals, five Colonels, six Lieutenant Colonels, four Majors, and only three junior officers. They are not unhappy victims, unwillingly pushed into crime by the tyranny of the Third Reich; these men, above all others, themselves, spread the Nazi doctrine with fire and sword. of the crime which is charged here. We are not concerned with the conduct of soldiers in the heat and excitement of battle. These crimes were not committed as a result of snap judgments in serious emergencies. These crimes were committed in execution of deliberate plans laid months earlier. And the crime itself is of staggering enormity -- the annihilation of entire racial and national groups -- such as Jews and gypsies -and all leading government and party officials. Questions of guilt or innocence of the victims played absolutely no part; this was massacre for its own sake and the intended victims numbered in the millions. This case therefore, falls well within the conclusion reached by the IMT in passing judgment on Keitel and Jodl. Keitel and Jodl too, had advanced the same argument; in disposing of it, the IMT said, in the case of Keitel:

"There is nothing in mitigation. Superior orders, even justification."

and, in the case of Jodl2, the IMT said:

"His defense, in brief, is the doctrine of "superior or ders", prohibited by Article 8 of the Charter as a de fense.

There is nothing in mitigation. Participation his excuse for commission of these crimes."

the sake of formal completeness, that this defense has no application under Count Three of the indictment, which charges all the defendants with membership in organizations (the SS, the SD, and the Gestapo) declared criminal by the IMT. Under well established principles, the defendants must be convicted under Count Three on the basis of a showing that they were in fact members of any of these organizations after September 1939, and that they knew that the organizations were being utilized for the commission of acts declared criminal by the London Agreement and Charter. The defendants were all officers in the SS -- most of them high ranking -- and all of them joined the SS years before the time, during the latter part of the war, when compulsory recruiting for the Waffen SS began. The close association of all of the defendants with one of the most horrible crimes of the SS upon which great stress was laid by the IMT in rendering the declaration of criminality, needs no further emphasis here. few of the defendants, and most notably by the defendant Ohlendorf, that the massacres of the Einsatzgruppen were, under the circumstances, defensible and necessary. I have used, the expression "point of view" advisedly, 1. Vol I, Trial of the Major War Criminals, p. 391 2. Vol. I, Trial of the Major War Criminals. p. 325 for this argument is not, properly speaking, a defense against the charges stated in the indictment; rather it is an attack upon the binding character of the laws of war and international law.

Its logical conclusion is that the laws of war are not laws at all, and are not judicially enforcible. The argument runs about as follows:

(a) It was not unlawful for the Third Reich to attack Russia Government;(b) The Germans expected that, in repelling the attack, the Russians would not comply with the laws of war;(c) Therefore, it was lawful for the Germans to plan to vio ever extent might be necessary in order to achieve victory;(d) Among the Russians, those groups who could be expected sies, and political and party officials;(e) Therefore, it was lawful for the Germans to plan to ex their own military and political security;(f) Furthermore, in modern total warfare the laws of war are not and can not be observed;(g) The heavy bombing raids carried out by the allies during (h) Finally, therefore, the defendants can not be held criminThis, I believe, is an accurate statement of the arguments which the defendant Ohlendorf put forth during his testimony.

And, after all the incredible gabbling we have heard about cultural pursuits and scientific research, it is a relief to be given a direct and stark rejoinder of this kind.

This is exactly what a fanatical pseudo-intellectual SS man might well believe. Thus, when Ohlendorf was asked on the witness stand to explain why the civilized world regarded the Einsatzgruppen massacres with abhorence, he replied:1 I quote from the test:

must shoot individual persons. I believe that the time will Ohlendorf's theses is, of course, equally relevant to the other cases which are being or have been tried at Nurnberg and, indeed to all war crimes trials everywhere.

And Ohlendorf is not the sole exponent of the thesis that Allied bombing constitutes a complete and satisfactory defense to all the crimes charged in these indictments. Thus, counsel for the defendant Burkart in the Flick case, by way of defending his client against the charge of participation in the slave labor program, asked2 in his closing argument:

their wives and children, through air attacks? 1. Tr. p. 520 2. Final plea for Burkart, p. 176, in United States v. Flick, Case No. 5 And counsel for the defendant List in Case No. 7, dealing with the charge that his client had executed thousands of hostages in violation of the laws of war, observed:

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1 And General Rendulic, testifying in his own behalf in that same case, drew exactly the same parallel between the killing of hostages and "air attacks" and the atomic bomb2 on the other. It is the doctrine that total war means total lawlessness. The doctrine is logically indefensible and is based upon wanton indifference to facts and the order in which certain events took place. ways tends to produce bigger guns and faster airplanes and more lethal explosives. Ultimately, the responsibility for these developments lies not with those who finish a war but with those who start it. But the question is, in any event, quite irrelevant in terms of the traditional laws of war, the laws of war have never attempted to prohibit such developments. Neither in the Hague Conventions nor in the general principles and usages of warfare have any limits ever been laid down in terms of size, speed, or destructive capacity. ordinary bombs; under the laws of war, the question is not as to the character or explosive capacity of the bomb, but how it is used. It is sad but true that the destruction of an enemy's power of resistance by air attacks against urban industrial centers has become an accepted part of modern warfare. We are constrained again to note that the responsibility for this development does not lie with any of the powers under whose authority this proceeding is conducted. The first cities to L. Final plea for List, p. 204, in United States v. List, Case No. 7 2. Case No. 7, mimeographed transcript p. 5291-92 undergo the terror of modern air raids suffered under German bombs, and Warsaw, Rotterdam, and London were badly mauled while there was still hardly a scratch on any city in Germany.

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Nor can there be any suggestion that the major criminal ventures of the Third Reich -- the slave labor program, the extermination of the Jews, or any other crime of similar magnitude--were planned or committed in retaliation for Allied bombing. All of these programs were well under way and on the high road to consummation long before Allied bombing had had any appreciable effect on life in Germany.

But there are still more fundamental considerations. We may overlook for purposes of argument the question of who started all this bombing, because it is clear that in this field there is by now no question of unilateral repudiation of the laws of war. But, just as the laws of war develop by common observance, so they are not changed merely because one country breaches them, no matter how savagely and consistently. No parallel exists in modern warfare to the Einsatzgruppen and their activities. The defendant Ohlendorf justifies them on the ground that it could be expected that the Jews and party and government officials would oppose the German attack with special vigor. Even the dullest mind can imagine what would have happened in Germany had similar principles been applied during the Allied advance and occupation. that Jews were especially hostile to the Wehrmacht involves a perversion of fact and a reversal of logic so extraordinary that it would be amusing were it not so seriously advanced. After the Nazis had reviled and degraded and threatened the Jews for twenty years, it certainly might have been expected that the Russian Jews would have feared the coming of the Germans. And so now this very circumstance is put forth as a justification for slaughtering them to the last man, woman and child. We could ask for no more exact a parallel to the burglar who shoots the houseowner in self defense.

On this whole question we wish to make one final observation. The Einsatz massacres of Jews have been defended here as if it were sincerely believed that the killing of Jews was a military necessity in order to achieve military victory over the Russian Army.

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But in point of fact this argument is not sincerely made. Whatever anyone may think about atom bombs or ordinary bombs, they have not been dropping here in Germany since the capitulation. But will any defendant dare to suggest to us that the execution of the Jews in Russia would have stopped if Russian military resistance had collapsed? On the contrary, the evidence is compelling that a German victory would have enormously widened the scope of operations of the Einsatzgruppen and the holocaust would have been even more staggering. Ohlendorf's own testimony makes this clear beyond a doubt. When questioned as to the necessity for the killing of Jewish children by the Einsatzgruppen he replied:1 "I believe that it is very simple to explain if one danger no smaller than that of the parents."

In short, the crimes of the Einsatzgruppen were not, fundamentally, military crimes at all. They were not committed in order to make military victory possible. On the contrary, military victory was sought in order to put the victors in a position where these crimes could be committed. These crimes were a war objective, not a military means. only because they deal with questions which are fundamental to the integrity of this proceeding, but also because they are fundamental to the very existence of the laws of war and international penal law. Not only is this 1. Mimeographed transcript p. 662 Tribunal dedicated to the enforcement of international law; it owes its very existence to international law and agreements.

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Though constituted by the United States, its jurisdiction is established and defined by international agreements and declarations. One of the things for which we fought was to put an end to international anarchy, and the need for establishing international law on a practical and enforcible footing has never been clearer than it is today. ing with us on questions of international law, and what they did was not only a crime against humanity under international penal law; it was a heinous crime under all civilized legal systems. It is for this Tribunal, not for the prosecution, to determine what punishment the deep guilt of these defendants merits. But it is within the legitimate prerogatives of the prosecution to state the nature of the crime. The crime involved in this case is murder -- deliberate, premeditated murder; murder on a gigantic scale; murder committed for the worst of all possible motives. Some of these defendants still believe that what they did was not murder because the victims were Jews. No system of domestic or international penal law could possibly survive under which the determination of guilt for murder is governed by the political or religious creed or racial origin of the victim. It is vitally important to the peace of the world that no such doctrine gain currency among nations. We earnestly suggest to the court that true judicial, wisdom in this case counsels firmness rather than leniency to those adjudged guilty of this terrible crime against humanity.

THE PRESIDENT: Dr. Hoffmann:

DR. HOFFMANN(Attorney for the Defendant Nosske): I have a request, Your Honor, that the defense will be permitted a brief recess in order to determine how and who will reply to the prosecution's statement.

THE PRESIDENT: Just a moment please. We could combine the time required for defense counsel deliberations with the regular morning recess.

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In that way both ends will be served. The Tribunal will therefore be in recess until eleven o'clock this morning.

(A recess was taken.)

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THE MARSHAL: The Tribunal is again in session.

DR. ASCHENAUER: Your Honor, the defense, apart from my colleagues Dr. Hoffmann and Dr. Gawlik, are of the opinion that General Taylor's speech did not bring anything new. With the exception of Dr. Gawlik and Dr. Hoffmann, the defense waives the right of an oral reply but reserves the right to reply to the Prosecution's closing briefs.

THE PRESIDENT: Well, Dr. Aschenauer, I thought that defense counsel had already submitted closing trial briefs. You don't mean that you are going to submit still another trial brief, do you?

DR. ASCHENAUER: Your Honor, a number of colleagues have not yet received the closing brief of the prosecution. General Taylor has emphasized the fact that there are a number which are yet to be submitted to the defense. Therefore, I think it would be a good thing if the Prosecution was told, how much time they will be given to submit these closing briefs, and that the colleagues concerned who have not yet received these closing briefs should also have a deadline up to when they can reply to these closing briefs.

THE PRESIDENT: Ordinarily the function of today should terminate definitively all proceedings in this case, but we will allow still a short further time in connection with these trial briefs, but we will now specify that one week from today will be the absolute deadline on the receipt of any type of document or evidence from either side. What ever arrangements must be made with regard to the mechanics of producing these trial briefs will need to be taken care of immediately, and we urgently request counsel on both sides to cooperate so that the Tribunal will have whatever is outstanding no later than within the week from today. briefs, the Prosecution trial briefs will have to be submitted first and we assume that prosecution will have those briefs ready, if, in fact, they are not all ready now.

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DR. ASCHENAUER: Thank you.

THE PRESIDENT: Yes, Now we understand that Dr. Gawlik and Dr. Hoffmann would like to make some comment on the presentation of the prosecution this morning.

DR. HOFFMANN: ATTORNEY Hoffmann for the defendant Nosske. fendants who have declared from the very beginning that they objected to the Fuehrer Order and did not carry it out.

General Taylor in his speech put all these defendants in one group, and he stated that, if these defendants were punished under Count I, for carrying out the Fuehrer Order, then they had to be punished under Count II of the indictment because of their activity in the Security Police in Russia, and their shooting of partisans and hostages. conducted this trial as one in which the Fuehrer Order was the main count. Concerning the question whether the shooting hostages and partisans or was not a legal act was not mentioned by the prosecution in this trial. I remind Your Honors that this particular point, the question of the shooting of hostages and partisans was one of the cardinal points in the generals' trial, which has been concluded just now, and where this question was discussed for six or seven months. If the prosecution puts these points into the foreground now concerning a few defendants, then in my opinion a number of details are not mentioned, and especailly those points which are regarded as illegal by the prosecution. These cases were not examined and especially, and that is the main thing, they did not point out to the defense that these facts had become the main points against some of the defendants. not been examined sufficiently by the prosecution and not enought documents have been submitted concerning this subject as to now accuse them because of their police activities.

THE PRESIDENT: Well, Dr. Hoffmann, war crimes are part of the case. You admit that, don't you?

DR. HOFFMANN: Yes.

THE PRESIDENT: Now the prosecution presented many documents and in those documents references are made to various types of executions. Many of the defendants explain that executions in which they participated were in accordance with the laws of war, and where that has been established and proved, then natureally the charge of the prosecution of the particular instance cannot be sustained. If an execution is proved to have taken place in accordance with the laws of war, then there is no crime. So we fail to see, where the prosecution summation advanced anything, which you did not have the opportunity to reply to in the presentation of the defense, and if it is your conclusion that the prosecution has not proved these particular crimes, well then, naturally you haven't in any way been offended.

DR. HOFFMANN: Your Honor, then in agreement with this point of view of Your Honor, I would like you to rule that in all the individual cases where it was not explicitly clear whether there was a violation of the laws of war or not, the defense as far as I myself am concerned, is of the opinion that the Prosecution did not prove that, apart from the Fuehrer Order, any laws of war have been violated.

THE PRESIDENT: Well, the Tribunal certainly is not going to make any ruling of that character. The indictment has been filed, the prosecution has presented its case and the defense has presented its case completely. The issues are now before the Tribunal for eventual and definitive decision. Closing arguments are helpful and interesting but are not evidence.

DR. GAWLIK: Dr. Gawlik for the defendants Naumann and Seibert. however, did not add that two judges of the Supreme Court, the Judges Murphy and Ruthledge, objected to this decision. They objected to this decision with very strong words, I am not in the position to quote verbatim at the moment, but there is one sentence which goes as follows:

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"Wherever the American flag is waving the principles of American law must be adhered to" and these principles of Americal law in this particular case, the Yamashita case, it was said, had not been adhered to, and these two judges advised number of reasons, I think, as far as I remember there were five or six reasons, why these two judges of the Supreme Court, Murphy and Ruthledge, objected. fendants. He gave as an example the cook in the kitchen of a boat. Far be it from me to compare these defendants to cooks, but I want to take up his paralled, in order to deal with the basis of the legal thoughts concerned her. The chief prosecutor did not add that according to a decision of the Supreme Count this cook cannot be punished if he acted in execution of the orders of the chief. In this decision it is mentioned explicitly that on a boat it is only the captain who has the power of command and that his crew has to comply even with illegal orders. When taking up this particular example of the boat, then in this case, in my client's ease, it is Hitler who is the captain. Deputy captain is Himmler and the vice-deputy captain is Heydrich, and those people were the only ones responsible, and not the defendants who are my clients. courts. I am very much surprised that the prosecution, in order to prove that higher order does not exclude punishment, of all things cited the opinion of a German law court. I conclude from this and any decisions made by an American or British law courts before the Second World War are not mentioned and can not be mentioned. The prosecution always held the opinion that in this procedure the German legal principles are to be disregarded because, according to these laws the defendants could not be punished, because one of the German laws which was valid at that times was the Fuehrer Order which, and I am now referring to the statements of Professor Jareis, is a law which was then in force.

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Either you apply German law or international law, but you cannot apply international law once and then again German law just as the case may be. IV the defendant cannot refer to an order by his government or his superiors. I draw the attention of the High Tribunal to the face that the chief of state is not mentioned here. In this decree it is only government or superior Government and chief of state are entirely different matters and different terms according to international law. Therefore, if we invert this decision then it follows that a subordinate can refer to an order of the chief of state.

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which mitigating circumstances would be justified. I am not in agreement with these three prerequisites but I want to draw your attention to one of them. The chief prosecutor spoke about the circumstances or positions, which might have put the defendants in the position to resists, but the chief prosecutor could not give an answer and could not made any statements as to whether the defendants I am representing here actually were able to resist and what they could have done in their positions. Tribunal was to put an end to international anarchy. I agree with this statement of the chief prosecutor as far as anarchy should be done away with, but anarchy cannot be eliminated by building up a huge building, but if you want to do away with anarchy you have to start with the root, and the root for this procedure is the superior order which excludes the punishability.

THE PRESIDENT: Dr. Gawlik, what you have presented is entirely in the nature of argument. You have already spoken to the issues, and the prosecution has presented its summation. Now you have replied to the prosecution's summation with argument and not with anything dis None the less, we can't help but call attention to your statement about the Yamashita case.

Has it ever come to your attention that in a European court that there has been less than unanimity in a court deciding upon a certain issue? Has a German court or a French court or a British court or any other court in Europe ever endered a decision in which all the judges did not agree? Is it possible to have a decision without unanimity, is that Possible?

DR. GAWLIK: No, not at all, Your Honor.

THE PRESIDENT: Well, perhaps the question wasn't put very clearly. The majority of a court rules, that is true, is it not?

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DR. GAWLIK: Yes

THE PRESIDENT: That is true in Europe?

DR. GAWLIK: Yes.

THE PRESIDENT: It is true all over the world?

DR. GAWLIK: Yes.

THE PRESIDENT: Why should it be any less true in the Yamashita case? You were quoting from the minority, not the majority opinion.

DR. GAWLIK: Yes.

THE PRESIDENT: And you seem to take great objection and you felt it rather sensitively that perhaps the defendants were referred to as cooks. I think you will agree with me that a cook is a very important individual?

DR. GAWLIK: I agree.

THE PRESIDENT: The human race could not exist without cooks, could we?

DR. GAWLIK: I quite agree, Your Honor.

THE PRESIDENT: Yes, Now you say that only the captain of a ship is responsible; Hitler was the captain of the ship?

DR. GAWLIK: Yes.

THE PRESIDENT: Well, if Hitler was the captain, what were Himmler and Heydrich, cooks?

DR. GAWLIK: Not at all, Your Honor.

THE PRESIDENT: What were they?

DR. GAWLIK: I stated, this clearly, they were the deputy captains, if you want to choose this comparison.

THE PRESIDENT: Would you say going right down the line that the defendants were deputy captains? Were are you going to stop with the deputy captains? Where are you going to stop with the deputy captains? How about Goering? Was he a deputy captain?

DR. GAWLIK: One could call him that, yes.

THE PRESIDENT: Ribbentrop, was he a deputy captain?

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DR. GAWLIK: Well, Ribbentrop has nothing to do with this particular case, Your Honor.

THE PRESIDENT: Neither has Himmler nor Heydrich. Do Himmler and Heydrich have anything to do with this case?

DR. GAWLIK: Certainly, yes, very much.

THE PRESIDENT: Does Yamashita have anything to do with this case?

DR. GAWLIK: No, it has nothing to do with this case.

THE PRESIDENT: You brought it in though, didn't you?

DR. GAWLIK: I only cited this case to the Tribunal in order to point out that there a disagreeing opinion. I consider it my duty as a defense counsel to point out that the principles of international law which are laid down in the decision of the Yamashita case are dubious, especially as two judges, two well known judges, the Judges Murphy and Ruthledge, were of another opinion.

THE PRESIDENT: Very well, Dr. Gawlik, we understand your point of view.

DR. GAWLIK: I regarded this as my duty, Your Honor, to remind the Tribunal of the different opinion of two judges in the Yamashita case.

THE PRESIDENT: Very well, your remarks will be a part of the record.

Does any other defense counsel intend to comment at this time?

(No response).

THE PRESIDENT: The procedure calls for final statements from the individual defendants. We are informed by the translation section that all the statements which were presented have not yet been translated, but we have every reason to believe that they will be translated before the court reconvenes this afternoon so that, therefore, in order to avoid any pause in the proceedings once we get started with the defendants final statements, the Tribunal will now recess until 1:45.

( A recess was taken until 1345 hours.)

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(The hearing reconvened at 1345 hours, 13 February 1948)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The Tribunal will now hear the final statements of the individual defendants. The page will operate the movable microphone so that each defendant will have an opportunity to speak his statement to the Tribunal. We will begin with the defendant Ohlendorf.

THE DEFENDANT OHLENDORF: May it please the Tribunal, all serious literature published in the last two years on the problems of National Socialism, and particularly, religious literature, is agreed that National Socialism is not the cause, but the effect of a spiritual crisis. That crisis which unfolded itself in the last centuries, and particularly, in the last decardes, is twinfold: it is a religious and a spiritual one, and it is a political and social one. Catholic and Protestant literature, both maintain that at least since the application of Gallican freedoms, Christian religion as the final aim of humanity was increasingly eliminated from the spheres of the state which form the core of historical development. The end of the Christian idea as a binding goal for humanity in its social systems and of the individual turning to the beyond, to life in God, had a double effect.

1. Man lacked absolute and uniform values in his life. In his mind and impulses he no longer found a uniform and firm guiding point which could have supplied him with the motives for his actions. Religious values and laws took an ever smaller space in his emotions, thinking, and acting. The Christian values, if they remained at all important, actually could not prevent man from being split into a "Sunday" and "week-day" individual. Week-day supplied him with different motives to an even temporary meditation on God's will. Life this side of the grave had not only acquired a significance of its own, but indeed ruled him independently with its concepts of autonomy, wealth, social position, and so forth.

2. Society, organized into separate states, found in this development no uniform values either which might have been the constant objective of society or the state. As individuals and majority groups were in a position to make their separate aims the objects of society and politics, the inviolate metaphysical relatedness of politics was lost, and in consequence such social and political order as existed at a given time had to be disputed by the differing concepts of other individuals and other groups. The endeavors to preserve the status quo within the state and the nations was replaced by the will to eliminate the status quo by means of war or revolution. found this spiritual, religious, political, and social decay having a deep effect. There were no values for them which were not immediately attacked and opposed by different groups. Thirty or more parties fought for power in the state. They represented a number of opposing interests. This generation was not given the opportunity of living as humans and nothing else, nor was that idea taught to them as an uncontested concept. Socially their future was without hope. It is understandable that under those conditions this generation did not regard wealth as their aim, for material wealth had become a questionable asset after inflation, financial crisis, and years of economic stress, during which century-old properties, dissolved into nothing. They were longing for spiritual support, for a goal behind the social order into which they were born, a goal which promised them true human dignity, firm human objectives, and a spiritual and religious center for their developing into human beings. This generation had become too realistic in their suffering to believe that by fixing their

eyes at the beyond they would find the moral and social basis for their existence as human beings at this period in history, They found denifite daily conditions socially and they were far too clear-cut for anyone to underrate their significance for human existence. Indeed the split into a "Sunday" and "week-day" man appeared as one of the deeper causes for spiritual and material suffering.

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Thus, it becomes understandable that this generation searched for new religious values. the constitution and condition of the society, national, and state in which he lived for this generation not to look for ways and means to replace the changing rule of group interests by an order which was based on the conception of totality in relation to every single individual irrespective of his social statutes. We regarded National Socialism in that light and expected it to furnish the basis of a new order. It was not in the spirit of frivolity that we spoke of "The Thousand Years Reich" because we knew that the great development of humanity takes centuries, nay, thousands of years, until it matures and gives rise to yet newer developments. Our minds were not impatient, but we looked at the history of mankind, including their religious history, and that of the ups and downs of states and nations in order to find the guiding ideas in the growing and declining of the peoples in order to find the indications which would make it possible for us to fulfill justly the requirements of our time for the experiences and sufferings of history. From our search in history, we acquired the certainty that always it is the great religious aims, the great moral and ethical issues which flank the actual historical events. repeatedly pointed to the great religious and moral law contained in the Ten Commandments of Moses. Nobody will deny their binding character and no one can escape the sacred earnest of the Commandments, but it would amount to misjudging reality if one would, in the Books of Moses, ignore the descriptions of real history which in all its frightfulness is said to have been ordered by the same God who transmitted the Ten Commandments through Moses. It is not an empty religious phrase to say that to God a thousand years are but a moment. Anyone familiar with history will note that it is the outward customs and means that change in the course of the centuries, but that in 1948 no ideas are conceived or discussed which were not the living contents of Indian religious and philosophical systems, the Persian and Egyptian mysteries, Greek philosophy, the political systems and battles of the Greek city-states, of neo-platonic philosophy, of the large emotions of early Christians, the Roman concepts of law, and the state, of the great impulses of the Catholic Church and of Protestantism.

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Middle Ages in the belief that in its wars the so-called modern age had become more humane that the Middle Ages, or the distant times, of what is known as barbarism. create martyrs for its ideals, but, independent of these aims and forces, every age has its human history, where individuals and nations engaged in contest for their existence, for great or small aims, for individual or collective objectives, the outward shape of which in its degree of frightfulness essentially depended on inner and outer suffering, and the degree of sincerity in these contests. As subject and object of history man stands in the middle of the development formed by sincere or insincere impulses. Man will take one or the other side or will be driven on by one or the other motive. In meditating on the character of man, he comes perhaps closest to the concept of man who is animated by religious ethic, and moral impulses which he tries to understand in himself in order then to apply them to living history. But as this aim and its practical fulfillment will never coincide, there always will be a tragic tension in the individual life between the religious and moral impulses and their application to real life, not only because individual man is limited in his power, but also because he lives in a worls of powerful groups and social conditions which can wholly ignore his intentions and dispose over him.

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That tension, extends and becomes cruder in the history of the nations, both in the living body of the nations themselves, as well as in the relations between the nations. And yet all religions, especially the Christian religion teach that God becomes manifest in history. Experiences in the last years have often shaken that conception, and yet no one with a spark of religion in himself can escape that knowledge.

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in God and historic reality as the outward manifestation of human ability and inability, human wisdom and human error, has grown into a general crisis in the human existence as such, since the elements of creations have shown themselves to man, and since human beings were not bound together by common ideals, Bolschevism appeared as the idol, equipped not only with power and force, but even with martyrs. Socialism, the spiritual, religious, political, and social crisis still persists. A link between East and West has been eliminated and this perhaps has made the crisis yet more apparent. In analysing our present time we will always find that ultimate values are still lacking from the feeling, thinking, and acting of human beings and nations. The meta-physical standards are lacking. We must never forget that the basic laws of Christianity in its relatedness to God and individualism with man as its center and its outward expression in the constitutions of states, are diametrically and irreconsilably opposed to one another. To Christianity this will always be true of any social order or political constitution which has made man the sole measure for its moties, the objects of its policies. If the ideas and concepts of democracy, the ideas of human dignity and liberty are to be made the sole yard-stick for the measuring of the recent period in history, it must not be forgotten that the idea of democracy is no substitute for the metaphysical obligation of the Christian or any other religious idea. The democratic idea is a formal one. It lacks all certitude which would comprehend the totality of human life; it assigns duties and privileges to people and social organizations; it grants individual liberties, but it does not give the reason why. Nor is this intended because this would contradict the objectives of democracy. To equip that idea with judicial authority by bestowing on its representatives a legitimacy from a binding religious and moral principle amounts to an entirely unjustified assumption that an idea or a law, which does not exist, is generally binding. As all metaphysical motivation is lacking, this usurpation will always be regarded as an effort by one group to maintain the status quo which will not serve to lessen the tension between the nations.

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Nothing can grow from this which would substitute force by an idea binding for all and from which there could come comprehensive motives for a human conception of law and for the shaping of a common history of the nations. period simply because a fight has taken place for moral and ethical principles and, through certain historic conditions, for the survival of nations, even if appearances seem different at a superficial glance. I regard myself as one of those who have become aware of the contrast of those two forces in history. I have myself sensed that tension and endeavored to find a solution. I have said time and again that I was tortured by the fear of the punishment which those in Germany who were responsible for the historic development seemed to invite by their words and deeds. Their frank ignoring of human lives, and of the basic ideas of their own religious and moral conceptions of the people made this fear grow in me, but today my fear of future punishment invited by presentday events is greater still.

I have been now in the Palace of Justice in Nurnberg for 2 1/2 years. What I have seen here of life as a spiritual force in these 2 1/2 years in Nurnberg has increased my fear. Human beings who under normal conditions were decent citizens of their country were deprived of their basis and conception of law, custom, and morals by the power of the victors. The fact that they were deprived of their conceptions which in the place of the lost religious values had given to the majority of human beings moral and ethical support, and the fact that the life which they led justified by those conceptions was now called criminal, made them give up their human dignity, which they should never have done. While they waited for the verdict which was really announced beforehand, when the victorious powers had condemned their basic conception of life, the march of history did not stop, which in its concequences for the peoples concerned put the powers on the judges bench in the wrong before their own verdicts.

over-simplified and over-generalized formulas of the post-war period and contemplate the events of this period from the point of view of the two basic forces which have always decided the flow of events. Not one nation alone is guilty, but ideas and the weight of concrete conditions among the nations fighting for their survival and future find human representatives who are capable of unloosening the pent up tension. The concrete situation facing the nations after this war shows that the tension which still persists and grows daily goes deep back into the past and far beyond the German people and its intentions. take into consideration that these defendants here were thrown into a historic development which they did not cause and which went on independant of their will. None of them has himself selected his place in that development as a result of which he now sits in this dock. They were the target of impulses which made them act as they did independently of their own aim in life. They entered on their task convinced that they were backed by a genuine and justified moral force. They felt that their work was necessary even if it opposed their own inner tendencies and interest, because the existence of their people was in deadly peril. They were the same good average citizens as you find them by the million in all countries. They never thought of criminal activities or criminal aims. They felt that they had been put into an inevitable, awful, and gigantic war which was to decide not only on the survival of their nation, their families and themselves, but where they were also the shield against a unique enemy also for other nations. They were in no position to judge the necessity and methods of this war. They were not responsible for this. They could not be responsible for this. Any other attitude would have been in contradiction to the customs of the states in force for centuries, and the existing responsibility of the highest leaders of the nations. They had to accept the methods and the orders in this war as did all soldiers in all countries, and those who looked at history and who from the things history taught them concluded that the future would be the result of inexorable moral laws ever faced by the tension between the two basic forces in history; in their longing for the realization of ethic and moral ideas and the power of actual history with its overwhelming strength.

They also felt the natural human urge for peace and a normal life with their fellow beings. But the passion of their moral existence included the metaphysical stipulation that the existence of their people must be preserved.

I never lost faith that God is manifest in history; even though we may not understand his ways, no situation will deprive me of my faith that life and death in this world has a reason and must be regarded affirmatively. Never in one moment of my life have I failed to offset the overwhelming forces of practical history with religious, moral, and ethical impulses, whenever life demanded something of me. I always regarded history as the realization of ideas for which human beings were both subject and object and which yet seemed to point to something beyond them. I am of the opinion that this Tribunal will use the historic facts which have become known in the last two years on the background of the past period, facts which not only threaten the existence of the German people, but are a menace to the whole world, in order to truly understand the realities of history in their broad ideological and material implications. The fact that the victorious powers declared the German people guilty and the statement that its legal moral and ethical basis of the past had been unlawful, immoral, and unethical have confused and uprooted the German people as well as the individuals who were heard here in Nurnberg as the representatives of that people. Thus, this legal, moral, and ethical suffering of the German people became greater than the material one which threatens its physical existence. May the verdict of this court take into account the reality of historic conditions and developments and give the Germans, individually and collectively the opportunity of true selfrealization. lest they be kept in the grip of despair because their existence is held to take place outside historic reality and their future fate is based, not on the firmness of law, but on power and force.

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without expressing my gratitude for the very generous way in which you have dealt with the problems which we have regarded as important to these proceedings.

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THE PRESIDENT: The defendant Jost will now make his statement.

DEFENDANT HEINZ JOST: Your Honor, having grown up in the years of need of the German people, I decided in 1928 to enter the NSDAP, because I believed that I found in this Party the movement which alone was suited to be able to prohibit the fall of Germany, and was in the position to be able to offer resistance to the ever increasing 1/2ressire pf Bolshevism within Germany, and also abroad. I believed that I would best be able to fulfill my duty toward my people and my Fatherland by taking this path. This point of view also caused me to enter the SD in 1934, an organization which I considered a just and necessary arrangement, an instrument capable of representing particularly in an authoritarian state a constructive rehabilization agency connected with necessary criticism. considerations which I have submitted at length. satzgruppe A, and Chief of the Security Police and SD Eastland in late March of 1942. with this assignment, and in connection with known orders then at hand, and other orders which were given to me later by my superior, I was charged with a singular responsibility, a responsibility which fortunately only few men have had to bear in the long course of history. The execution of the orders given me meant the death of 10,000 people. The knowledge and acqaintance with the fate of these victims, and, in addition, about the inevitable fateful result of this order for the

German people brought me to a state of conflict regarding my duties which can not be described today with mere words. I decided in the course of this conflict to undertake everything in my power to render a further execution of these orders impossible, and to commit myself to the revocation of the orders. I myself gave no order, and I did not pass on the order which I received from Heydrich, and I did not carry out the instruction from the Reichs kommissar to render Eastland free of Jews.

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I took this position because I had to take it. I did not act in this way in order to derive thanks from some person; neither did any opportunistic considerations influence me. And, moreover, I certainly did not act in this way in order to have an alibi for a prosecutor one day, because in the Summer of 1942 such thoughts would have been absurd. It was possible for me to prevent a further execution of this order for five months so that all Jews who lived in this area at the beginning of my activity there were still living at the end of my activity there. Three-hundred deaths in an area larger than Germany, and in a span of five months are proved by the Prosecution, and these are exclusively concerned with partisans, or such people who had forfeited their lives because of offenses against the laws of war. If I expressed in an appeal that Jews, too, stood under the protection of the laws with their life and property, that was the expression of my conviction that even the Jewish people have their right as a portion of the Godly creation in exactly the way that the German people, too, have this right to live. of a certain Roman Loos, and this statement is supposed to be a standard for the activity of a commander when confronted with orders like the Fuehrer Order. I can only say that in my position I fulfilled all these conditions. I expressed to all my superiors my opinion and my point of view. I did not leave my subordinated in any doubt about my ideas. If the Prosecution introduced documents of this nature, then they would have to be permitted to work favorably for the defendants who acted in accordance with the conditions therein contained. I personally was completely aware of the results which could follow from my actions. It was in the hands of my superiors to act in accordance with them, and finally they did so. Mr. Wartenberg stated in the course of an excited interrogation in May 1947, "We know that you acted very decently in Riga.

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We know, too, that you have done everything humanly possible in opposition". This statement admits the compelling conclusion that they were aware of this material which mitigating for me. But they did not submit it. believe as a German and as a man that I acted justly. I can *---* my actions to myself and to any Tribunal in the world with a pure conscience.

THE PRESIDENT: The defendant Naumann will now make his statement.

DEFENDANT ERICH NAUMANN: Ill conditions within the German people, patriotism and conscientiousness were the reasons which, in 1939, caused me to join the NSDAP. Inspired by the very same patriotism, and the same conscientiousness, I chose the opportunity from 1928 to take part in the brief courses which were held in those days by the then Reichswehr, the predecessor of the later German Army, and, part from exercising my profession, to train myself as a soldier in order to be able to defend my country, should the necessity arise. Thus I received my basic training and visited the NCO officers' courses. to let me join the Army until I achieved my aim, and was able to join the Army in April of 1940. However, this condition did not last for long. As early as December of the same year, I was to return to my former office. Owing to my personal acquaintance with General Juettner of the Waffen-SS, who held then the corresponding rank of Chief of General Staff in the Waffen-SS, I managed to remain with the Army. But through a decree of Himmler I was recalled to my office in March 1941. At the end of November 1941 I took over Einsatzgruppe B by personal order of Heydrich, and thus became acqainted with the Fuehrer Order, which is being dealt with in this trial. Apart from this instinctive attitude against this order, there was the fact that this order had been given by the Supreme Commander, and the Chief of State during the war.

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Apart from the wish not to have to comply with this order, there were the considerations that the oath rendered to the Chief of State left no possibility to evade it, and the realization that it was a legal order, as it was given by the Chief of State. In this inner conflict of emotions, in this enormous collision between duty and conscience, I conducted myself as has been described by my counsel in his plea. his assistants for his labors he underwent in my behalf. Psychologically, I rejected this order. On the witness stand I have attempted to give as true a picture as possible of this inner conflict. The testimony of my comrades Steimle and Ott equally show how strong and how serious our objections were against this order. Steimle's and Ott's testimony supported my inner attitude, but we clearly recognized that we had neither the possibility nor the power to take any steps against the order. The Fuehrer Order was also subject of discussions with my military superiors in Russia, the Commanderin-Chief of Army Group Center, Field Marshal von Kluge, and the Commander of the Rear Army Territory, General von Schenkendorf. Also Field Marshal von Kluge, who exercized the entire executive power in Central Russia, and who was the only man in this area who had immediate access to the Fuehrer, stated, that there was no possibility to evade the Fuehrer Order. On many occasions I discussed this with General von Schenkendorf and the result was the same. I would like to say here that friendly relationship developed between von Schenkendorf and myself in spite of the high position and high rank, and his ago; von Schenkendorf was then 68 years old.

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he became my fatherly friend. According to information that I had access to I believed that Germany had anticipated the immediate impending attack on the part of the Soviet Union. I was furthermore convinced that Bolshevism was a tremendous danger for Germany and Europe, and that all forces must be mobilized to avert this danger. How right this attitude was has been proved not only by the subsequent period. The causes which led to the cooling off of the Allied relationship between U.S.A. and U.S.S.R. prove, I believe, the accuracy of my original point of view.

There I was, a soldier and officer in the East. It was in accordance with my inclination as a soldier, that I regarded my assignment as a purely military one and that I complied with it accordingly. The situation in the Army sector, and the very imminent partisan danger provided the opportunity for this. Therefore, I mobilized the Forces of Einsatzgruppe-B to a large degree for Partisans' reconnaissance and combat, which was made a reason by my superiors later on to reprimand me. bined a battalion of Russians who voluntarily fought on the German side, and had put themselves at our disposal with the Police Company of the Einsatzgruppe-B, a unit of many of the Waffen-SS who were part of Einsatzgruppe-B, and a number of voluntary Ukrainians into one combat unit, and reported voluntarily for combat against partisans as commander of this newly formed unit. This was approved by my superiors. In the course of this combat, I was decorated with the Iron Cross Third Class for bravery before the enemy. I merely mention this fact because the Prosecution in their trial brief, have mentioned this decoration as a reproach. I would like to tell the Prosecution here that I am still proud of this decoration which I have earned for bravery before the enemy.

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a unit commander during the whole period of war, because, first, the battalion of Russians, and, later, the mixed battalion were withdrawn from the territory of the Army Unit, and thus I had to dedicate myself entirely to the leadership of Einsatzgruppe-B. I was a German soldier and officer in the truest sense of the word. Whenever I had to order, or to act anywhere, and anyhow on my own initiative, I have always acted in a humane manner. If I was confronted with an order by the Supreme Commander, or the Chief of State, I saw just because I was an obedient soldier no possibility to disobey this order, even though my inner attitude resisted it. When I was in Russia, it so happened that I took over Einsatzgruppe-B only five months after the beginning of the war, and, therefore, I did not have to comply with the Fuehrer Order, because the Fuehrer Order had been given to the Chiefs of the Einsatzgruppen and the Commando Leaders at the very beginning. To reject the order I had neither the power nor the possibility. The fact that obedience is the supreme duty of a soldier is shown in the well known speech of the British Field Marshall Montgomery of 1946, in which he says:

"No matter how intelligent the soldier is, the Army would leave the nation in a lurch if she (that is the Army) was not used to obey orders immediately.

It is ing which the Army, i.e., the nation, gives him."

soldier receives and executes severe and severest orders. How could it be possible otherwise that my home town of Dresden, which housed no factories nor any installations of war importance within her boundaries, should be destroyed within 36 hours, and, thus more than two-hundredthousand defenseless human beings, mostly old people, women and children were killed, buried, or cruelty wounded. How would it otherwise have been possible that the old city of my last garrison, old Nuernberg, had been turned into a rubble heap.

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How would it have been possible that the first atom-bombs were thrown on Japan, and thousands and thousands of defenseless people had been killed, that through the very consequences of the atom-bomb even the unborn generation will have to suffer? superiors, even if it was not in accordance with their conscience, when they had received the orders, with the reason that they were necessary in order to reach the war aim. my inner attitude have given me the confidence so that I was able to answer the question of the President of this Tribunal which he put to me on 15 September 1947, with a clear conscience and deep conviction by "NOT GUILTY".

THE PRESIDENT: Defendant Naumann, you made reference to a military decoration. The Tribunal will indicate to you that you do not need to make any apologies for a decoration received as a soldier in honorable combat. Any such decoration is respected by all mankind. The Defendant Schulz will now make his statement.

DEFENDANT ERWIN SCHULZ: May it please the Tribunal. To the charges made against me in this trial I have expressed myself on the witness stand. That which had to be said by way of summary was put forth by my defense attorney Dr. Durchholz in his final plea. I have nothing to add to these statements because they corresponded with the truth. Thus, and in no other way, the events unfolded before me. charges of the Prosecution; my statements are impeached. On the day of capitulation I made myself available without qualification for myself, and for the thing which I have to represent not in order to lie but to serve the truth.

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test the truthfulness of my statements because of my readiness in all ways which certainly has not occurred frequently in connection with investigating authorities. If the many men were interrogated, whose names Mr. Wartenberg read to me from a long list, then the result of the questioning can have been nothing other than that which I said myself, excluding the events, naturally, which took place within me. according to which 12,000 people have been shot under my responsible leadership of Einsatzkommando V. Each member of Einsatzkommando V who was there during my time can truthfully say nothing other than that such a charge is devoid of any basis. men have always been holy for me. Just as I am concerned to maintain the purity of my own honor, I consider also the honor of my fellowman, no matter who it was. And it was also not otherwise in Russia. At no time did I deviate capriciously or without feeling on the subject of the fate of human beings. witness - that never in my life at any place or at any time have I maltreated or tortured a human being. Neither have I ever participated in an order to this end, nor have I tolerated such an act silently. Had I discovered such an inhumane act within my area, I should have committed myself against it with all means at my disposal. That this is the case is proved also by the affidavits which have been submitted, which for the most part were made available most voluntarily by former political opponents. a conclusion which is not in harmony with my conception, I wish to try to attain understanding here, too. But that should not after the fact that I can answer to my conscience for that which I have done and permitted. This accounting to my conscience is, however, all that I should like to do myself.

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wards humanity, because I carried within me personally the conviction that the respect of my Fatherland is dependent upon that respect which it deserved from its environment. I acted in my position on this promise. fidently await the decision of the Tribunal.

THE PRESIDENT: The defendant Six will now make his statement.

DEFENDANT FRANZ SIX: Your Honor, I was always a scholar but never a policeman. My life was honorable, whether at the desk of the university, or at the desk of an office, which I served understandingly, and not militarily. The four weeks of my assignment in the East did not constitute an exception to this. And I do not have to reproach myself in anything as a man and as a soldier than as today. Thus my first word in this trial can remain my last word, NOT GUILTY.

THE PRESIDENT: The defendant Blobel will now make his statement.

DEFENDANT PAUL BLOBEL: May it please the Tribunal, Contrary to the assertion of the Prosecution that I did not serve at the front and that my activity did not take place in the confusion of the front line, I would like to say once more in conclusion: My assignment was exclusively in the combat area and not in the rear area. In addition this assignment was the result of an order by the RsHA, which legally is to be considered equivalent to a war draft. Like every soldier I was subject to the harsh war laws. I too became enmeshed, by the assignment in the East, in conflict between law and morality, obedience and refusal to obey orders, harsh necessity of war, and personal feelings, a conflict which can hardly be retold today, and which can hardly be explained to the outsider. mass executions of Jews, Communists, and other enemies, since I personally lacked every prerequisite to bear the responsibility for such a decision.

bach as a final order. I expected certain executive orders. There were issued to me when I was subordinated to Sixth Army Headquarters.

Executions were not ordered by me personally. The executions which were carried out, at which I was present, were decided upon and ordered by the Commanding General of the Sixth Army, Fieldmarshall von Reichenau according to documentary statements. to my knowledge all events with which any man of Sonderkommando IV-A had to furnish a small group of men, as per order, is responsible for by far the greater part of this number. Whether any of these men took part in this execution is something of which I am not personally aware, since I did not actively participate in this operation. due to infectious diseases. Only relatively late did this condition lead to my being relieved, after the superior authorities finally had knowledge of the medical opinion about my reduced military fitness. operations connected with it, as can be seen from the hospital papers which have been submitted. orders given to me by von Reichenau, I did not commit war crimes and crimes against humanity, as the Prosecution states. I can face my wife and my children with a clear conscience, and I can look into their eyes. I am NOT GUILTY before God and my conscience.

THE PRESIDENT: The defendant Blume will make his statement.

THE DEFENDANT BLUME: May it please the Tribunal, my defense counsel in his final plea and myself when in the witness stand commented already on the actual questions of this trial and its legal problems. Therefore I only want to add a few words with regard to my personality. university acquainted me with the values of western culture. At the same time Germany was a sacred concept for me. After the conclusion of my studies and at the beginning of my professional career in 1933 it was the aim of my life to become an official in the internal state administration. But fate sent me to the branch of the political police. In all those years from 1933 until 1945 I saw nothing else in all the developments in Germany than the great effort to eliminate the moral threat through Bolshevism against our Western cultural values. According to my conviction of that time, this purpose was served by Adolf Hitler's policies, even when he in the middle of 1941 led Germany into the war against the Soviet Union. the inner values of man, and on the belief in ideals. I always tried to realize these ideals in my personal conduct of life as well as in my profession. This required in particular a correct and clean attitude as an official and the endeavor to serve justice and law in my professional activity. In those cases where my character could not agree with certain orders received in my activity, I tried up to the last limit to dominate with my own humane attitude. I therefore believe that during my entire professional activity, I helped incomparably more people without their knowing it, than I interfered in human destinies and made them suffer in the execution of the authority of the state.

All in all I feel myself free from any legal guilt. I therefore expect your judgment, Your Honors, with perfect calm and confidence.

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THE PRESIDENT: The defendant Sandberger will make his statement.

THE DEFENDANT SANDBERGER: I do not want to make any statement.

THE PRESIDENT: The defendant Seibert will make his statement.

THE DEFENDANT SEIBERT: May it please the Tribunal, I do not wish to add to the statements of my defense counsel about the actions indicted here in this trial in Russia, because I am of the opinion that that which had to be said about it has already been said. I had requested my defense counsel not to make any lengthy statements about my character and my life otherwise. Above all the reason was that the Tribunal already knew my life even in brief outline because of my testimony on the witness stand, and that my activity in the SD, especially outside of Russia, always took place in the economic department. The documents of the prosecution prove this. SD I feel myself free, so free of every guilt according to the best of my knowledge, that I dare to claim that it is no coincidence that the prosecution did not succeed during the time of my detention, which is more than two and three -quarters years, to mention even one human being who has been harmed through my activity. that not only here but already in '45 and '46 I was interrogated about my activity longer than seven months in the headquarters of the British Secret Service in Nenndorf. After the completion of these interrogations in February 1946 I was charged with nothing but I was committed then to an internment camp for automatic arrest. I feel free of every guilt.

THE PRESIDENT: The defendant Steimle wall make this statement.

THE DEFENDANT STEIMLE: May it please the Tribunal, may I precide my final words with the story of an event which I experienced at the end of September or beginning of October '41 in Welich, the headquarters of my kommando, and which I related to Mr. Wartenberg during the interrogation?

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by a partisan attack. The competent military field commander handed over to me a number of farmers from collective farms from a village which was located near the site of the attack. He asked me to have these Russians shot as hostages by my kommando. For this purpose I ordered an interrogation of the prisoners concerned. The invesgitation showed that these men could not be connected with the partisan attack. I therefore ordered their immediate release. received the indictment for participation in systematid genicide. As far as my situation is concerned, it seems to me to be especially symptomatic in this trial too, insofar as the interrogator at the time greeted my truthful story with sarcastic laughter and did not believe me. Whatever the Prosecution may bring up, the inner certainty of having the truth on my side induces me once more to present the following concerning the charges made against me:

1. At no time during my command, either in Kommando 7 a or in Kommando 4 a, did I give orders to carry out the Fuehrer Order, just as little as this Fuehrer Order was carried out in my two kommandos, to the best of my knowledge.

2. Numerous crimes against the security of the German troops which were punishable according to announcements, especially the appearance of partisans, gave my kommandos cause, by order of the competent army, to take action against the bearers of this resistance movement and also to carry out death sentences in the process.

3. These convictions resulted on the basis of detailed interrogations which proved the individual guilt of the individual defendants.

4. At no time did my kommandos carry out any collective measures during my command.

5. The Communist functionaries who are reported as having been shot were convicted as active leaders of the resistance movement.

The documents submitted by the Prosecution cannot brand me a criminal nor a war criminal. No witness who experienced my activity has supported this claim of the prosecution, even though the prosecution interrogated officers and men of my kommando in detail. into contact with the National Socialist movement once upon a time. I wanted to serve Germany, to help German people. The end of the war finds my generation facing an immense abyss. Where we dreamed of future well-being and peace, we found ruins and distress in their stead. No history-conscious man will claim that such an event is thinkable without human weakness and guilt. Likewise, every historically-minded man knows that it is impossible, after such an event, to distribute the guilt individually or even to charge all to one people alone. As a former SS officer and National Socialist I am prepared to take my guilt upon myself. It does not lie in a punishable act which I might have perhaps committed in Russia. If I am to express this sense of guilt only in an approximate manner I will say this: Hundreds of thousands have, together with me, placed their faith and idealism into the hands of a few people with too great a confidence and have thereby laid the foundation of one of the causes of our unfortunate time. Thus alone did I and many others become unmeshed in the guilt of our time. Surely their guilt is not a criminal one, but a political one. As an upright man I will answer for it.

THE PRESIDENT: The Tribunal will take its afternoon recess and reconvene in fifteen minutes.

(A recess was taken.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: In view of the fact that the microphone is not protable to the back row of the defendants' dock, each defendant, as his name is called, will please come to the center of the defendants' box and speak into the microphone standing there at that point.

ERNST BIBERSTEIN: Your Honors, I have nothing to add to the deliberation of my defense counsel. As to all charges of the Prosecution I do not feel guilty before God and my conscience.

THE PRESIDENT: The defendant Braune will come to the microphone.

WERNER BRAUNE: Mr. President, Your Honors: I have nothing to add to the final plea of my defense counsel.

THE PRESIDENT: Very well. The defendant Walter Haensch.

WALTER HAENSCH: Your Honors, when this trial started I pleaded not guilty. With this idea I begin my final words. At no time did I have any connections with war crimes or crimes against humanity, and equally am I unable to see anything criminal in my membership in the SD and, therefore, also in the SS. that I am here today. Documents have been found, which appear to speak against me. However, a benevolent fate made it possible to prove to Your Honors that I actually had nothing to do with the events reported in the documents. I underline here to its full extent what my defense counsel has said about this. I returned from there. I myself never did commit anything criminal, nor did I see others do so, nor did I ever hear of it. Also, nobody ever suspected me of committing a criminal act. What actually happened during this war in this respect - especially the treatment of the Jews on account of their race - I have learned, and of this I assure you again, only after the collapse of Germany, and the full details I heard only in this trial.

I did not know the so-called Fuehrer Order. One could, therefore, not ask me now to feel guilty about this which is something which does not correspond to the fact. I, therefore, do not want to deal with it at this point, but only want to say one thing - had such an order been given I myself would have left nothing unturned in order to fight against it, just in the same way as otherwise I always interfered against injustice and corruption without consideration of my person. met during this trial, to check on my assertions and ask whomever they wanted to about my person and activities because I did and have nothing to hide and, therefore, have nothing to fear. It was clear to me that only truth could wash the suspicion off me, which the false statements in the documents had cast on me. Therefore, I avoided everything which could have shaken the proof put forward in my defense in the remotest way, and I know that all those who have helped me in providing for my evidence or who testified for me, did the same. For this reason I even restricted to a minimum my personal correspondence with my family. This was in no way easy for me, worried as I was about my wife and my aged mother, both of them being almost without means of subsistance at the present time. point out that I only joined this organization in the belief to serve my people best in this way. This was my conviction when I swore fidelity to the Head of the State. This oath was no obligation to blind obedience as far as I was concerned, but left sufficient amplitude to my own responsibility. I related which events induced me to join the National Socialist Movement. It was the situation created in Germany by Bolshevism at that time. Everything I saw with my own eyes showed the development which could only end in chaotic destruction. To stem this danger I considered my duty, not only as a German, but also as a member of the entire civilized world.

I do not think that I made a mistake in the recognition of this danger. It is still my conviction to this very day. made me join the SD and the SS. I have nothing to add to this point. intention. My intention, however, was and is clean. Nobody can disturb the peace of my conscience. However, there is another thing, which ought to be defended. This is honor. It is exposed to outside attacks. Please do understand that I suffered a great deal and still suffer under the accusations of the Prosecution, because they charged me with a guilt, of which I feel myself free. As a man who at one time was privileged to serve justice I trust that you, Your Honors, will dispense justice to me, and will find me not guilty as my defense counsel has applied.

THE PRESIDENT: Dr. Nosske.

GUSTAV NOSSKE: Your Honors, I have declared since the very beginning that I was determined not to obey the Fuehrer Order. And indeed I did not carry it out. as during war time it is imperative in enemy country. On the other hand, the knowledge of this order prompted me to try with all means to sever my connection with the Gestapo. I have made many attempts in this direction, however, I failed. Only as late as 1944 I succeeded to leave the Gestapo. I refused to obey an order, which I could not evade, but should have carried out. The consequence of my leaving the Gestapo was that I was sent to the front as a soldier, and this could be considered as extreme leniency towards me. Just as well I could have been court-martialled and executed for disobedience. I did not have an easy time as a soldier but was assigned to those placed where fighting was hottest, which is proved by my combat wound. I ask you, Your Honors, to consider all these circumstances, and put my life in your hands.

THE PRESIDENT: The defendant Adolf Ott.

ADOLF OTT: Mr. President, Your Honors: Since 1945 singular and most secret conferences and decrees have come to our knowledge which we hever had access to before. I must confess that under the influence of these documents numerous conclusions seem at hand which, however, were never drawn by me as I have never had knowledge of the internal connections. Thus, the Fuehrer Order looks quite different if we look at it today as it did then in Russia where I did not have any idea of the happenings in the concentration camps and similar matters. In Russia I, as a soldier, was confronted with the task to do my utmost towards securing the army territory for the fighting units. I carried out this task as well and as conscientiously as I was able to do. I saw no unjust war, I had no ideas of liquidations, but the decisive matter for me was my duty as a German and a soldier within the struggle for life of my own people. I only came in contact with the Jewish population of the sector of our assignment so far as individual Jews were members of the partisan groups which we fought against. I never searched for Jews in order to have them shot. In accordance with this I used Sonderkommando 7 b only as a unit for fighting partisans and for the prevention of acts of sabotage but never for liquidation operations. Even partisan counter-intelligence tasks I have tried to comply with using aslenient means as possible. Therefore, from my own initiative and under great difficulties I set up an internment camp in the vicinity of Orel to which I had people brought whose offenses would have sufficed to have them shot according to the general laws of warfare then in force. But I thought I would be able to secure their lives and merely punished them with 6, 9 or 12 months confinement. By doing this I saved the lives of about 200 people.

I have never hunted for external honors. All my actions have been guided by reason and humane compassion. My assignment in Russia did not result in promotion; I received no decorations, no priority in subsequent employment.

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I did not apply for my assignment in Russia appointed to the same post I had held before. assignment, especially my activity in Lorraine was not regarded as one enforcing and supporting a terror rule by the population. It is most clearly shown in the letter of the French mayor, who, on his own initiative, says that I would be welcomed by the population of this particular French area at any time.

My conduct in Russia was not different. Whenever and wherever I saw injustice done or unnecessary severity exercised I openly applied to the responsible agencies as Gauleitung, Regierungspraesidium, and Labor Exchange, or State Police in order not only to bring about exceptional treatment by deviating the normal channels but also to cause the suspension of any and all unjust measures; concerning this, evidence has been brought.

Apart from this, any agency of my former domiciles can be asked concerning my behavior and conduct, be it my hometown Lindau, be it Norway, Saarbruecken or Lorraine. Therefore I faced interrogacontained in the common indictment. Yesterday the Chief Prosecutor, Mr. Ferencz, has stated that he will not submit a Closing Brief against me. I have only one special request to make to the honorable judges that they may arrive at their decisions only according to the defendant's own personal conduct and their motives, and not according to points of collective guilt. It is just because I was an old member of the Party that I know that we never as much as thought of elimination as a solution of the racial question. This kind of solution was invented in the heads of a few leaders under the impression of war. And it was only carried out by few of them, based on order which have nothing to do with the Fuehrer Order which is the subject of this trial.

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Even at the time when I was inspired by the idea of a new European Order under German leadership I never for a moment thought of violent methods, which would be considered a terror regime against other nations.

The war has caused many hardships. It also treated me with severity by taking my wife from me. She was shot down in the street of a locality which was not defended when the enemy marched in by an antitank gun through a well aimed shot, as she was just coming out of a shelter. In spite of this sorrow no bitter feeling has remained with me but only the wish that peoples may, in future, be saved from the horrors of war.

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THE PRESIDENT: The defendant Ott has made a statement with regard to trial brief. Does the prosecution intend to file a trial brief in his case?

MR. HOCHWALD: If the Tribunal please, the Tribunal is aware of the fact that Einsatzgruppe B was handled entirely by Mr. Ferenoz, however, I do think this is a mistake from the part of the defendant.

As far as I know, trial briefs in all cases of all individual defendants are being filed and will be filed by the prosecution.

THE PRESIDENT: We wouldn't want any defendant or defense counsel to be of the impression that a trial brief is not being filed if one is to be filed. We will repeat what we said before. The trial briefs will be accepted up to and including next Friday, February 20, but will not be accepted after that, and we recommend that both defense counsel and prosecution counsel get together, where briefs have not yet been filed, to see to it that with all expeditiousness possible that they now be submitted to the Tribunal.

MR. HOCHWALD: Very well, your Honor.

THE PRESIDENT: In their order, the next defendant would be Eduard Strauch. He is not here, we presume, for physical reasons. We would like to inform his counsel, Dr. Gick, that Eduard Strauch has the right to make his final statement in court and we do not know whether you purposely, Dr. Gick, did not have him brought in or whether it was just assumed that he would not be brought in, and perhaps he is actually in good physical condition to make his statement or it may be that Strauch doesn't care to make a final statement. We would appreciate it, Dr. Gick, if you would inform him that he is entitled to make this final statement unless he has already indicated to you that he waives that right. If he wishes to make the statement in open court and you inform the Tribunal, the Tribunal will sit to hear his statement. It may be that he will be satisfied to make merely a written statement in the nature of a final statement and that will be 13 Feb 1948_A_MSD_22_2_Spears (Hildesheimer) accepted by the Tribunal.

We will leave it entirely in your hands, Dr. Gick.

DR. GICK: Your Honor, I saw the defendant Strauch yesterday in the hospital and I found him in a state of health which was wprse than ever before. He gave completely confused answers and he spoke nonsense. I was not in a position to make it clear to him that he, if necessary, could say a few final words, but I was not in a position to make it clear to him what that meant. I believe that Strauch in his present state is not responsible for his actions. If the Tribunal will permit me to do so, I shall sumbit another medical certificate concerning the present condition of the defendant Strauch at a date to be fixed by the Tribunal.

MR. GLANCY: If it please the Tribunal, it is the prosecution's opinion that the defense counsel for the defendant Strauch is precluded from testifying as an expert in mental diseases. The Tribunal is well aware of his present condition and has been so advised by experts.

THE PRESIDENT: Defense counsel has on previous occasions made comments similar to those which he has just now made and the facts established the contrary. The defendant was brought into court and did testify in a normal manner after two or three attempts and after examination had been made by competent physicians. So that the present statement of the defense counsel may not be accepted as evidence of the defendant's condition.

DR. GICK: May I say a few brief words, Your Honor? It is not my intention to give an expert opinion here. I am not in a position to do so, but it was merely my intention to tell the Tribunal how I found the defendant, and what impression I gained.

THE PRESIDENT: Yes. Well, the Tribunal will ask you, Dr. Gick, to inform the defendant Strauch that he is entitled to make a final statement just like every other defendant is making. He may make 13 Feb 1948_A_MSD_22_3_Spears(Hildesheimer) it in writing.

Very well. The defendant Klingelhoefer will please advance to the microphone.

Mr. President, Your Honors. early youth through the fact that I was born outside of Germany. Besides my love for the German people and the inner obligation to dedicate my energy and my efforts to the good of the people, there always was the respect and the understanding for other peoples and nations. East made me join the NSDAP at a time when the political, social and economic conditions in Germany threatened to develop towards a chaos, which was bound to open the doors of Germany to Bolshevism. I also realized the fact that for Bolshevism Germany represented the key for the polticial conquest of Europe. From this point of view I considered the war in the East and therefore hoped for Germany's victory, being convinced that this victory in the East would also mean the final exclusion of the Bolshevist danger in the East. Einsatz as an interpreter, because of my knowledge of languages. This assignment was based on a military order, which could not be objected to. My task in this assignment was restricted to intelligence duties and those duties resulting from my knowledge of the language and the country. In consideration of my subordinate position within the SD in Germany I never could be given the independent job of being the leader of a commando. My activity was therefore limited to the execution of orders and directives given to me, without ever being able to issue orders on my own initiative. declared that I personally objected to this radical order and tried to evade it. I also succeeded in doing so. I again declare expressly that at no time whatsoever, was I in a position to have to carry out or pass on the Fuehrer order in its radical and absolute form. I 13 Feb 1948_A_MSD_22_4_Spears (Hildesheimer) therefore never sent any persons to death on the basis of this Fuehrer order.

of particular circumstances and under particular pressure I had to carry out on direct orders, and where my knowledge of the language played a decisive part, I never had anything to do with the executive tasks. This was entirely beyond the scope of my duties. the cases, where I had seen shootings or participated in them. At no time did I ever have the intention to deviate from the truth or to withhold something; in the witnesstand as well as in all the interrogations and affidavits I always tried to speak the truth. I did not do anything which for any reasons -- be it for fear of punishment or because of the knowledge of having done wrong -- I had to withhold. Everything I did and however reacted to the tasks assigned to me and orders I received, was directed by the awareness of my duty as a soldier as well as a soldier as well as by the intention to do only those things which according to my own and full conviction had to be done to maintain and guarantee the order and security in the rear of the fighting army. of the Tribunal at the beginning of the trial, I pleaded "not guilty", and with a clear conscience I can repeat this declaration at the end of the trial.

THE PRESIDENT: The defendant, Fendler, will please come to the microphone.

On his final plea, my defense counsel Dr. Fritz stated our opinion on all points which might be of importance for the Tribunal in judging my case; he has arrived at the conclusion that the case-inchief has undoubtedly turned out favorably for me. Therefore, I shall 13 Feb 1948_A_MSD_22_5_Spears (Juelich) tell your Honors about my personal opinion concerning the indictment filed against me.

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chief of Einsatzkommando 4B is just as incorrect as all conclusions drawn from that assertion. It is also unjustified for other reasons to make me responsible for the happenings in Einsatzkommando 4B which were discussed in the course of this trial. The truth is, and I solemnly confirm this, that my entire activity in the SD, both before, during and after my assignment in the East, consisted exculsively of intelligence work. At all times, including my assignment in the East, I only did what any state demands of its officials and officers entrusted with such jobs. I never had cause to fear that I was doing anything not permissable or even morally doubtful. Therefore I cannot hold a different opinion of my work during those years. sibility for actions which I neither ordered nor carried out, in which I did not participate in any way whatsoever, and which I was even unable to prevent.

I can only repeat what I said at the beginning of this trial: I am not builty!

THE PRESIDENT: The defendant, Von Radetzky.

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THE PRESIDENT: The Defendant von Radetzky.

THE DEFENDANT VON RADETZKY: Mr. President, Your Honors, when I was given the indictment on the 13th of July 1947, to answer for myself before this Tribunal, I accepted it, being confident that the truth would be established in the course of the trial and that I would have an opportunity to justify myself for a period of my life which without my assistance took a course during which I was not able to decide freely for even one hour. I have now answered for myself before this Tribunal. I did not commit any crime. I need not ask for pardon for my actions. I only ask for unprejudiced understanding and I am confident that the Tribunal will arrive at a just verdict.

THE PRESIDENT: The Defendant Ruehl.

THE DEFENDANT RUEHL: Your Honors, my career, my position, and tasks, my activity, and my attitude from 1933 to 1945 have been discussed at such length during the case-in-chief that it does not seem necessary to me to go into details about this again at this point. I would only like to say the following: SA and two years later I joined the SS with youthful faith in the truth and purity of the ideals and aims which were made known at the time. In this good faith I finally complied with the draft to the then completely unknown State Police in 1933 and worked there until 1940 on counter-espionage, having nothing to do with everyday political differences. began to undermine this faith, apart from the outer duress, I felt myself obligated to stay at that post to which I had been ordered in the decisive battles of my people of my native country.

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answer for before my conscience is proved most clearly by my behavior in Augsburg. In opposition to binding orders from the highest authorities, I stood up for those people whom the prosecutions believes it was my aim to persecute. prosecution wants to ascribe motives to me in my action concerning the retransfer of those Jews in Mogilew-Podolsk, which did not even occur to me, in view of my basic attitude, which has now been proven. The important part which I played there as an intermediary of an order, was only based on the idea to avoid terrible misery and to enable those people to return to their native land. to give orders in this case, to which I was not entitled, I do not consider incriminating. On the contrary I hold the opinion that I would justly be in the defendant's dock now, if I had refused to assist at the time and had let those people perish in misery by referring to my incompetency. opinion that my conscience has not deceived me.

THE PRESIDENT: The Defendant Schubert.

THE DEFENDANT SCHUBERT: Your Honors, being one of those tens of thousands of officers holding the same rank as I and holding the same position as adjutant, fate has placed me among those 220 German men who have to answer for themselves to the highest American Military Tribunals as the ones whol held the most responsibility. As long as I live I shall never understand that decision. Yet I shall never complain about my fate. I need have no fear for myself as to the verdict of this Tribunal.

manner, I feel eager to state my opinion at this point concerning the charge of the prosecution that every defendant was filled with boundless contempt for human life, because of National Socialist ideology in which he believed. age, a member of a generation born during the First World War and the majority of them probably witnessed the second one in the front lines. Everywhere we were in the center of events without having ourselves held any responsibility worth mentioning. event in the judgment of persons who were responsible for past happenings. I became a National Socialist and even more so an S.D. member, not because of contempt for human life, but because I always strongly approved of life in a community of human beings. The severe stroke of fate in my young life did not change this either, when, before my Eastern assignment I lost my wife and child as a result of Allied operations during the war. The love for my people always made my duty towards my Fatherland a perfectly natural sentiment. While searching for a real life in a genuine community of people, we found our way to National Socialism. From 1934 to 1945, in the SD, I considered it my noblest duty to serve my people. crossroads of events of decisive importance to the world, not only as far as time is concerned, but also because of the place, in a territory between two worlds. We did not set out to kill, but we set out to defend Western civilization. sphere of the events contained in the indictment, but I was all the closer to the men in those units, who the prosecution asserts were filled with boundless contempt for human life.

assignment. I know the mentality of these men, their surroundings, their troubles, and worries. I saw them when carrying out the hard task they had been given and I saw their struggle between duty and conscience when they were concerned with having to carry out the Fuehrer Order discussed here. I know that there was no one in those units that could have carried out the tasks assigned to him only because he did not respect the sacredness of human life. I know that these men decided to do their duty to a great extent because they realized that the defense against Bolshevism was a question of "to be or not to be" for their people, their wives, and their children. I do not believe that anyone has the right to charge these men with contempt for human life without having been in the same position himself at some time, since these men, as soldiers could only choose between obedience and the dishonorable death of a mutineer. tasks which were given to us in the Einsatz, but I wish that the ones who accuse us today would have once had the opportunity to witness the joy of liberation of the ethnic groups oppressed until that time by Bolshevism and to see the Einsatzgruppen looking after the cultural interests of such ethnic groups and other peaceful tasks. incriminating material my own statements in the preliminary proceedings in the form of affidavits. I did not at any time keep anything secret about my activity from the first day of my captivity, since I was and still am of the opinion that I can be justly judged only if I give a clear picture of myself to the persons who are to pass judgment on me.

I did not give any cause to the prosecution to make any further charges against me beyond my truthful and exhaustive statements. happenings of that time from the perspective of the present time, with the knowledge of connections gained in the meantime, but to imagine themselves in the area and in the situation into which we were placed at that time. Then it will become clear to the Tribunal that we did our duty not in contempt of human life, but in constant struggle between duty and personal feelings. Then I have the hope that the Tribunal will arrive at a just verdict.

THE PRESIDENT: The Defendant Graf.

THE DEFENDANT GRAF: Mr. President, Your Honors, it was not my wish that led me to the SD in 1940. It was fate that I was ordered to the East. In exactly the same way it was fate that I am the only one of approximately 5,000 noncommissioned officers and men in the Einsatzgruppen who came to this defendant's dock. not involve me in the things which have been the object of the indictment here. I have confidence that a similarly benevolent destiny will restore my honor and my freedom to me, thanks to the objective and righteous judges.

THE PRESIDENT: With the termination of the trial proceedings, the Tribunal wishes to express its appreciation to both counsel for the prosecution and for the defense for their courteous cooperation with the Tribunal at all times. We wish particularly to congratulate counsel for the defense for their indefatigable efforts in behalf of their clients.

Entrused with a difficult task, they measured up to the finest traditions of the bar, and they have earned the commendation of the Tribunal. judgment is to be rendered, date of which has not yet been set. However, all counsel will be notified in due time as to the date of the judgment, when it is decided upon by the Tribunal. upon order of the Tribunal.

(The Tribunal adjourned without day.)

THE MARSHAL: The Honorables, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: The Tribunal hands to the Secretary General the Opinion and Judgment in Case No. 9. This document shall be the official opinion and judgment in the case. Any questions regarding translation and transcripts shall be resolved by consultation with this document. saving or for any other reason will not affect the authenticity and authority of the official copy of the opinion and judgment filed with the Secretary General.

Mr. Secretary General.

(The President handed to the Secretary General the Official Opinion and Judgment.)

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THE UNITED STATES OF AMERICA OTTO OHLENDORF, HEINZ JOST, ERICH NAUMAN,: OTTO RASCH, Cancelled, ERWIN SCHULZ, FRANZ SIX, PAUL: BLOBEL, WALTER BLUME, MARTIN SANDBERG,: OPINION AND JUDGMENT WILLY SEIBERT, EUGEN STEIMLE, ERNST BIBER-: STEIN, WERNER BRAUNE, WALTER HAENSCH, : GUSTAV NOSSKE, ADOLF OTT, EDUARD STRAUCH,: WOLDEMAR KLINGELHOEFER, LOTHAR FENDLER, : Case No. 9 WALDEMAR VON RADETZKY, FELIX RUEHL, HEINZ: SCHUBERT, and MATHIAS GRAF, Defendants : charged the twenty-four defendants enumerated therein with crimes against humanity, war crimes and membership in criminal organizations. The twenty-four defendants were made up of six SS-Generals, five SS-Colonels, six SS-Lieutenant Colonels, four SS-Majors and three SS-junior officers. Since the filing of the indictment the number of the defendants has been reduced to twenty-two. Defendant SS-Major Emil Haussman committed suicide on July 31, 1947, and defendant SS-Brigadier General Otto Rasch was severed from the case on February 5, 1948 because of his inability to testify. Although it is assumed that Rasch's disease (paralysis agitans or Parkinsonism) will become progressively worse, his severance from these proceedings is not to be regarded as any adjudication on the question of guilt or innocence. Indictment are identical in character, but the indictment draws the distinction between acts constituting offenses against civilian populations including German nationals and nationals of other countries, and the same acts committed as violations of the laws and customs of war involving murder and ill-treatment of prisoners of war and civilian populations of countries under the occupation of Germany. Count III charges the defendants with membership in the SS, SD and Gestapo, organizations declared criminal by the International Military Tribunal and Paragraph I(d) of Article II of Control Council Law No. 10.

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commission of atrocities, persecutions, exterminations, imprisonment and other inhumane acts, the principal charge in this case is murder. However, as unequivocal as this charge is, questions have, arisen which must be definitely resolved so that this decision may add its voice in the present solemn re-affirmation and sound development of international precepts binding upon nations and individuals alike, to the end that never again will humanity witness the sad and miserable spectacle it has beheld and suffered during these last years. with which the Tribunal must deal in this Opinion are so beyond the experience of normal man and the range of man-made phenomena that only the most complete judicial inquiry, and the most exhaustive trial, could verify and confirm them. Although the principle accusation is murder and, unhappily, man has been killing man ever since the days of Cain, the charge of purposeful homicide in this case reaches such fantastic proportions and surpasses such credible limits that believability must be bolstered with assurance a hundred times repeated. slaughtered his brother. He has always had an excuse, criminal and ungodly though it may have been. He has killed to take his brother's property, his wife, his throne, his position; he has slain out of jealousy, revenge, passion, lust, cannibalism. He has murdered as a monarch, a slaveowner, a madman, a robber. But it was left to the twentieth century, to proclaim and to produce so extraordinary a killing that even a new word had to be created to define it.

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biggest murder trial in history. Certainly never before have twenty-three men been brought into court to answer to the charge of destroying over one million of their fellow-human beings. There have been other trials imputing to administrators and officials responsibility for mass murder, but in this case the defendants are not simply accused of planning or or directing wholsesale killings through channels. They are not charged with sitting in an office hundreds and thousands of miles away from the slaughter. It is asserted with particularity that these men were in the field actively superintending, controlling, directing, and taking an active part in the bloody harvest. here participation in a crime of such unprecedented brutality and of such inconceivable savagery that the mind rebels against its own thought image and the imagination staggers in the contemplation of a human degradation beyond the power of language to adequately portray. The crime did not exclude the immolation of women and children, heretofor regarded the special object of solicitude even on the part of an implacable and primitive foe. of October 1, 1946 declared that the Einsatzgruppen and the Security Police, to which the defendants belonged, were responsible for the murder of two million defenseless human beings, and the evidence presented in this case has in no way shaken this finding. No human mind can grasp the enormity of two million deaths because life, the supreme essence of consciousness and being, does not lend itself to material or even spiritual appraisement.

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It is so beyond finite comprehension that only its destruction offers an infinitesimal suggestion of its worth. The loss of any one person can only begin to be measured in the realization of his survivors that he is gone forever. The extermination, therefore, of two million human beings cannot be felt. Two million is but a figure. The number of deaths resulting from the activities with which these defendants have been connected and which the Prosecution has set at one million, is but an abstract number. One cannot grasp the full cumulative terror of murder one million times repeated. into units capable of mental assimilation that one can understand the monstrousness of the things we are in this trial contemplating. One must visualize not one million people but only ten persons -- men, women, and children, perhaps all of one family -- falling before the executioner's guns. If one million is divided by ten, this scene must happen one hundred thousand times, and as one visualizes the repetitious horror, one begins to understand the meaning of the Prosecution's words: "It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women and children." realization that such things could happen in an age supposedly civilized and mankind may also well cherish the hope that civilization will actually redeem itself, so that, by reflection, cleansing and a real sanctification of the holiness of life, that nothing even faintly resembling such a thing may happen again.

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information and guidance of the legal profession, but the Nuremberg judgments are of interest to a much larger segment of the earth's population. It would not be too much to say that the entire world itself is concerned with the adjudications being handed down in Nuremberg. Thus it is not enough in these pronouncements to cite specific laws, sections and paragraphs. The decisions must be understood in the light of the circumstances which brought them about. What is the exact nature of the facts on which the judgments are based? A Tribunal may not avert its head from the ghastly deeds whose legal import it is called upon to adjudicate. What type of reasoning or lack of reasoning was it that brought about the events which are to be here related? What type of morality or lack of it was it that for years bathed the world in blood and tears? Why is is that Germany, whose rulers thought to make it the wealthiest and the most powerful nation of all time, an empire which would overshadow the Rome of Caesar -why is it that this Germany is now a shattered shell? Why is it that Europe, the cradle of modern civilization, is devastated and the whole world is out of joint? Einsatzgruppen trial in particular makes no little contribution to that enlightenment. crossed the Polish frontier and smashed into Russia, there moved with and behind them a unique organization known as the Einsatzgruppen. As an instrument of terror in the museum of horror, it would be difficult to find an entry to surpass the Einsatzgruppen in its blood-freezing potentialities. No writer of murder fiction, no dramatist steeped in macabre lore, can ever expect to conjure up from his imagination a plot which will shock sensibilities as much as will the stark drama of these sinister bands.

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RSHA (Reich Security Main Office), the OKW (Armed Forces High Command), and the OKH (Army High Command). The agreement specified that a representative of the Chief of the Security Police and Security Service would be assigned to the respective army groups or armies, and that this official would have at his disposal mobile units in the form of an Einsatzgruppe, sub-divided into Einsatzkommandos and Sonderkommandos. The Kommandos in turn were divided into smaller groups known als Teilkommandos. Only for the purpose of comparison as to size and organization, an Einsatzgruppe could roughly be compared to an Infantry Battalion, an Einsatz- or Sonderkommando to an Infantry Company and a Teilkommando to a Platoon. (lettered A to D) were formed, equipped and fully ready to march before the attack on Russia began. Einsatzgruppe A was led by Stahlecker and later the defendant Jost, operated from central Latvia, Luthuania and Esthonia towards the East. Einsatzgruppe B, whose chief was Nebe, succeeded by the defendant Naumann, operated in the direction of Moskow in the area adjoining Einsatzgruppe A to the South. Einsatzgruppe C, led by Rasch and later Thomas, operated in the Ukraine, except for the part occupied by Einsatzgruppe D, which last organization, first under the defendant Ohlendorf and then Bierkamp, controlled the Ukraine south of a certain line, which area also included the Crimean peninsula. Later, Einsatzgruppe D took over the Caucasus area.

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800 to 1,200 men, were formed under the leadership of Reinhardt Heydrich, Chief of the Security Police and SD. The officers were generally drawn from the Gestapo, SD, SS, and the Criminal Police. The men were recruited from the WaffenSS, the Gestapo, the Order Police and locally recruited police. In the field, the Einsatzgruppen were authorized to ask for personnel assistance from the Wehrmacht which, upon request, invariably supplied the needed men. Saxony, in May 1941, the Einsatzgruppen and Einsatzkommando leaders were instructed by Heydrich, Chief of Security Police and SD, and Streckenbach, Chief of Personnel of RSHA, as to their mission, and they were introduced to the notorious Fuehrer-Order around which this extraordinary case has risen. Under the guise of insuring the political security of the conquered territories, both in the occupational and rear areas of the Wehrmacht, the Einsatzgruppen were to liquidate ruthlessly all opposition to National Socialism -- not only the opposition of the present, but that of the past and future as well. Whole categories of people were to be killed without truce, without investigation, without pity, tears or remorse. Women were to be slain with the men, and the children also were to be executed because, otherwise, they would grow up to oppose National Socialism and might even nurture a desire to avenge themselves on the slayers of their parents. Later, in Berlin, Heydrich re-emphasized this point to some of the Einsatz leaders.

One of the principal categories was "Jews". No precise definition was furnished the Einsatz leaders as to those who fell within this fatal designation.

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Thus, when one of the Einsatzgruppen reached the Crimea, its leaders did not know what standards to apply in determining whether the Krimtschaks they found there should be killed or not. Very little was known of these people, except that they mad migrated into the Crimea from a southern Mediterranean country, and it was noted they spoke the Turkish language. It was rumored,however, that somewhere along the arterial line which ran back into the dim past some Jewish blood had entered the strain of these strange Krimtschaks. If this were so, should they be regarded as Jews and should they be shot? An inquiry went off to Berlin. In due time the reply came back that the Krimtschaks were Jews and should be shot. They were shot. shoot Gypsies. No explanation was offered as to why these unoffending people, who through the centuries have contributed their share of music and song, were to be hunted down like wild game. Colorful in garb and habit, they have amused, diverted and baffled society with their wanderings, and occasionally annoyed with their indolence, but no one has condemned them as a mortal menace to organized society. That is, no one but National Socialism which, through Hitler, Himmler, and Heydrich ordered their liquidation. Accordingly, these simple, innocuous people were taken in trucks, perhaps in their own wagons, to the anti-tank ditches and there slaughtered with the Jews and the Krimtschaks.

The insane also were to be killed. Not because they were a threat to the Reich, nor because someone may have believed they were formidable rivals of the Nazi chieftains. No more excuse was offered for sentencing the insane than was advanced for condemning the Gypsies and the Krimtschaks.

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However, there was an historical basis for the decrees against the insane. That is, a history going back two years. On September 1, 1939, Hitler had issued his Euthanasia decree which ordered the killing of all insane and incurably ill people. It was demonstrated in other trials that this decree was made a convenient excuse for killing off those who were racially undesirable to the Nazis, and who were unable to work. These victims were grouped together under the title of "useless eaters". Since all invaded territories were expected to become Reich territory, the same policies which controlled in Germany itself were apparently introduced and put into effect in the occupied lands. But a very extensive interpretation was given to even this heartless decree. Insane asylums were often emptied and the inmates liquidated because the invaders desired to use the asylum buildings.

"Asiatic inferiors" was another category destined for liquidation. This kind of designation allowed a wide discretion in homicide. Einsatzgruppen and Einsatzkommando leaders were authorized to take executive measures on their own responsibility. There was no one to dispute with them as to the people they branded "Asiatic inferiors". And even less was there a curb on homicidal operations when they were authorized to shoot "Asocial people, politically tainted persons, and racially and mentally inferior elements." Again it was never made quite clear how broad was this classification. Thus, in recapitulation, the Fuehrer-Order, and throughout this Opinion it will be so referred to, called for the summary killing of Jews, Gypsies, insane people, Asiatic inferiors, communist functionaries, and asocials.

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is not something pieced together years after their crimson deeds were accomplished. The story was written as the events it narrates occurred, and it was authored by the doers of the deeds. It was written in the terse, exact language which military discipline requires, and which precision of reporting dictates. the planning of future operations demands cold factuality in reports, which requirement was rudimentary knowledge to all members of the German Armed Forces. Thus, every subkommando leader was instructed to inform his kommando leader of developments and activities in his field of operations, every kommando leader in turn accounted to the Einsatzgruppe leader, and the Einsatzgruppe leader by wireless and by mail reported to the RSHA in Berlin. These accounts were veiled in secrecy but they were not so covert that they did not come to the attention of the top ranking military and political officials of the regime. In fact, at the capital, they were compiled, classified, mimeographed and distributed to a selected list. These are the reports which have been submitted in evidence. these official accounts prepared by the Einsatzgruppen and Einsatzkommando leaders. The Tribunal will quote rather copiously from these reports because only by the very language of the actual performers can a shocked world believe that these things could come to pass in the twentieth century. A few brief excerpts at the outset will reveal graphically the business of the Einsatzgruppen. A report on Einsatzgruppe B, dated December 19, 1941, speaks of an action in Mogilew and points out:

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"During the controls of the roads radiating from apprehended.

.... 127 persons were shot."

The report also declares:

"In agreement with the commander, the transient officials.

126 persons were found and shot."

"A special action was executed, during which 1,013 Jews and Jewesses were shot."

In Rudnja:

"835 Jews of both sexes were shot." reported that on October 23, 1941, 116 Jews were shot; on the following day 144 were shot. Poltawa, reported as of 23 November 1941:

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"Altogether 1,538 Jews were shot." (NO-3405) Einsatzgruppe D operating near Simferopol communicated:

"During the period covered by the re port 2,010 people were shot."

(NO-3235) that in Rakow:

"1,500 Jews were shot." (3876-PS) A report on activities in Minsk in March 1942 reads:

"In the course of the greater action against Jews, 3,412 Jews were shot."

(NO-2662) that on October 13, 1941:

"Of the remaining 30,000 approximately 10,000 were shot."

(NO-2832) Einsatzkommando 2, stated that in Riga on 30 November 1941:

"10,000 Jews were shot." (NO-3405) shot so, within the narrow compass of expression allowed in a military report, some variety was added. A report originating in Latvia read:

"The Higher SS and Police leader in Riga, embarked on a shooting action (Erschiessungsaktion) transport from the Reich were disposed of."

(NO-3257) "Disposed of", the word "killed" was added in parentheses.

A report originating from the Crimea stated laconically:

"In the Crimea 1,000 Jews and Gypsies were executed."

(NO-2662) in Lithuania were placed in concentration camps for special treatment, and then the report explains:

"This work was now begun and thus about liquidated daily."

(NO-2937) A kommando, operating in Lachoisk, reported:

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"A large-scale anti-Jewish action was carried out in the village of Lachoisk.

In the course support of a kommando of the SS Division 'Reich'.The village may now be described as 'free of Jews'. (No-3143) on one of its operations in October:

"In Mogilew the Jews tried also to sabotage in masses.

The Einsatzkommando No. 8, with 113 Jews."

(NO-3160) This same organization also reported:

"Two large-scale actions were carried out by the platoon in Krupka and Sholopanitsche;822 in the latter place."

(NO-3160) of October 4, 1941, reported:

"Altogether, 537 Jews (men, women, and adolescents) were apprehended and liquidated."

(NO-3404) monotonous, so the report-writers broke another bond of literary restraint and began describing the murder of Jews with varying verbiage. One particularly favored phrase announced that so many Jews were "rendered harmless". Still another declared that so many Jews had been "got rid of." One more pronounced that a given number of Jews had been "done away with". However, it really mattered little what phraseology was employed. Once the word "Jew" appeared in a report, it was known that this invariably meant that he had been killed. Thus, when one particularly original reportwriter wrote, "At present, the Jewish problem is being solved at Nikolajew and Cherson. About 5,000 Jews were processed at either place." it required no lucubration on the part of the RSHA officials in Berlin to comprehend that 5,000 Jews had been killed at Nikolajew and 5,000 had been killed at Cherson. (NO-3148)

THE PRESIDENT: Judge Speight will continue with the reading of the Judgment.

JUDGE SPEIGHT: Death was simple routine with these earthy organizations. In the Reich Security Main Office, Einsatzgruppen could well be synonymous with homicide. One report, after stating that certain towns were freed of Jews, ends up with the abundantly clear remark that "the remaining officials were appropriately treated." (NO-3137) groups had been "taken care of". (NO-3151) When an Einsatzkommando "took care" of anybody only one person could be of service to the person taken care of, and that was the grave digger. "Special treatment" was still one more contemptuous characterization of the solemn act of death when, of course, it applied to others.

Then some report-writers airily recorded that certain areas "had been purged of Jews." definitive. It in no way called up the grim things connected with shooting defenseless human beings in the back of the neck, and then burying them, sometimes partially alive, into shallow graves. This piece of rhetoric proclaimed that in certain areas "the Jewish question was solved." And when that wording was used one knew finally and completely that the Jews in that particular territory had been removed from the land of the living.

Einsatzgruppe C, reporting on more than 51,000 executions, declared:

"These were the motives for the executions carried out by the kommandos:

juveniles, - " and then came the all-inclusive phrase:

"Jews in general." (NO-3155) The summary cutting down of such groups as "drifting juveniles" and such vague generalizations as "undesirable elements" shows that there was no limit whatsoever to the sweep of the executioner's scythe.

And the reference to individual categories of Jews is only macabre window dressing because under the phrase "Jews in general", all Jews were killed regardless of antecedents. conscientious than the others. They refused to kill a Jew simply because he was a Jew. They demanded a reason before ordering out the firing squad. Thus, in White Ruthenia, a kommando leader reported: "There has been frequent evidence of Jewish women displaying a particularly disobedient attitude." The kommando leader's conscience now having been satisfied, he went on in his report:

"For this reason, 28 Jewesses had to be shot at Krugloje and 337 in Mogilew."

(NO-2656) and returned to their homes. The scrupulous kommando leader here reported the serious offense committed by the Jews in taking up living in their own domiciles. He accordingly executed all the male Jews in the town as well as three Jewesses. (NO-2656) Further:

"At Mogilew, too, the Jews tried to pre were liquidated."

(NO-2656) Operation Report No. 88, dated September 19, 1941, states that, on September 1 and 2, leaflets and pamphlets were distributed by Jews, but that "the perpetrators could not be found."

With this declaration that the guilty ones could not be located, the leader of the execution unit involved tranquilized his moral scruples and, accordingly, as his report facturally declares, he executed 1,303 Jews, among them 875 Jewesses over 12 years of age. (NO-3149) in Monastyrschtschina and Choslawitschi displayed an "impudent and provocative attitude". The kommando accordingly shot the existing Jewish Council and 20 other Jews.

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(NO-3143) No. 124, dated October 25, 1941, had repeatedly shown hostile conduct and disobedience to "the German authorities". Thus, the current kommando went into Ostrowo and shot 169 Jews. (NO.3160) Report No. 124, dated October 25, 1941, "very reluctantly". Thus, 996 Jews end Jewesses were given "special treatment." (NO-3160) Report No. 108, dated October 9, 1941, advises that for the death of 21 German soldiers near Topola, 2,100 Jews and Gypsies were to be executed, thus a ratio of 100 to one.

There is no pretense in the report that any of the 2,100 slain were in the slightest way connected with the shooting of Germans. (NO-3156) An item in Operation Report No. 108, October 9, 1941, points out that "19 Jews who were under suspicion of having either been communists or of having committed arson" were executed.

(NO-3156) In Mogilew, the Jewish women were "extremely resistive" and not wearing the prescribed badge, so 28 of them were liquidated.

(NO-3156) Report No. 73, dated September 4, 1941, acquaints the world with the fact that 733 civilians were exterminated in Minsk, the reason being that they "were absolutely inferior elements with a predominant mixture of Asiatic blood."

The method of determining the inferiority of character and the predominance of Asiatic blood is not indicated. (NO-2844) Jews. Sometimes apparently the liquidation took place for the benefit of the Jews themselves. Thus, Einsatzgruppe B reported in December 1941:

"In Gorodok, the Ghetto had to be evacu 394 Jews were shot."

(NO-2833) declared:

"A supply of food for the Jews as well creasing danger of epidemics."

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(NO-3149) The situation was met bravely and chivalrously:

"To putaan end to these conditions Ukrainian militia.

Thereby, the Son of 11,328 Jews till 6 September 1941."

(NO-3149) Operational Report No. 92, dated September 23, 1941, related how scabies had broken out in the ghetto of Newel.

"In order to prevent further contagion, 640 Jews were liquidated and the houses burnt down." This treatment undoubtedly overcame the scabies. (NO-3143) a contagious disease, accompanied by fever, broke out. It was feared that the disease might spread to the city and the rural population. To prevent this from happening, 1,025 Jews were shot. The report closes proudly with the statement: "This operation was carried out solely by a commander end 12 men." (NO-3143) capabilities of their rifles, they turned to the field of preventive medicine. In October of 1941, the kommando leader in Witebsk came to the conclusion that there was an "imminent danger of epidemics" in the town, and to forestall that this should come to pass, he shot 3,000 Jews. (NO-3160) Mention had been made of the execution of the insane.

The reports are dotted with references to the liquidation of inmates of mental institutions. It seems that the kommandos, in addition to the executions carried out under their own orders, were ready to perform other killings on request. Einsatzgruppe C reports that a teilkommando of Sonderkommando, 4a, passing through Tschernigow, was asked by the director of the mental asylum to liquidate 270 incurable.

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The teilkommando obliged. (NO-2832) located there maintained a farm for the inmates. Since there was not enough full cream milk in the town to supply the three large German military hospitals there, the milk shortage was met by executing a part of the insane. The report on the subject explains:

"A way out of this difficulty was found removed to a better asylum in Charkow."

(NO-2832) It was also stated:

"The underwear, clothing and other mainly to the hospitals."

(NO-2827) comes to light in an item taken from a report made by the Russian Government (USSR-41) which reads:

"On 22 August 1941, mental patients small town of Aglon.

Among them were of the hospital from a Children's home."

(USSR-41) Report No. 47, dated August 9, 1941, after generally discussing conditions in the Ukraine, stated of the operations of Einsatzgruppe C: "Last but not least, systematic reprisals against marauders and Jews were carried out."

Under their meticulous taskmasters, the Jews were bound to be wrong no matter what they did. If they were their badges they could expect maltreatment, since they were recognized as Jews; if they left them off, they were punished for not wearing them. If they remained in the wretched and overcrowded ghettos they suffered from hunger, if they left in order to obtain food they were "marauding".

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Operation Report No. 132, describing the activities of Einsatzkommando 5, declared that, between October 13 and October 19, 1941, it had among others executed 21 people guilty of sabotage and looting, and 1,847 Jews. It also reported the shooting of 300 insane Jews, which achievement, according to the report, "represented a particularly heavy burden for the members of Einsatzkommando 5 who were in charge of this operation". (NO-2830) Operation Report No. 194, detailing the activities of Einsatzkommando 8, states that, from March 6 to March 30, 1942, this kommando executed:

"20 Russians for subversive Communist 1,551 Jews."

November 8, 1941 killed, as Report No. 143 succinctly states:

"15 political officials, 10,650 Jews."

Report No. 150, dated January 2, 1942, speaking of actions in the Western Crimea, stated:

"From 16 November thru 15 December 1941, 17,645 Jews, 2,504; Krimtschaks, 824 have been shot."

The report also states, as if talking of Cleaning out swamps:

"Simferopol, Jewpatoria, Aluschta, Kar been cleaned of Jews."

the executions and, consequently, many Jews escaped. This irritated the report-writer considerably. He stated:

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"Naturally,the systematic action of Jews in Uman.

In particular, a large and escaped from the city.

Besides were found and liquidated.

The re after its arrival."

(No-3404) It rill be noted that the word "excesses" is here used in its opposite sense, that is deficiency.

Not as many persons were killed as should have been.

It also objected that people talked about these executions:

"Rumors about executions in other areas ficult.

Reports about actions against unguarded talks of German soldiers."

(NO-2834) unsuccessful because this particular report sums up with: "Altogether, 75,881 persons have been executed."

A report from the northern Crimea reads:

"Between i and 15 February, 1,451 persons looters, saboteurs, associals.

Total up to now is 86,632."

(NO-3339) October 1 to October 15, 1941, stated in Report No. 117:

"The districts occupied by the kom bringing the total up to 40,699."

(NO-3406) Coming back to Simferopol, in Report No. 153, dated January 9, 1942, we find:

"The operational areas of the teilkommandos, were shot.

Sun total: 79,276. In Simfero and Gypsy question was solved". (NO-3258).An entry from Operational Situation Report Nr. 3, on the period August 15 to August 3, 1941, states.

"During a scruting of the civilian prison elements". (NO-2653). the above will suffice to indicate their tenor and scope and the attitude of those who participated in the events described therein.

How did the action groups operate? As kommando leaders entered a town they immediately assembled what they called a Jewish Council of Elders made up of from 10 to 25 Jews, according to the size of the town. These Jews, usually the more prominent ones, and always including a Rabbi, were instructed to register the Jewish population of the community for the purpose of resettlement. The registration completed, the Jews were ordered to appear at a given place, or vehicles went to their homes to collect them. Then they were transported into the woods and shot. The last step of the kommando in closing the books in the whole transaction was to call on the Council of Elders, express appreciation for their cooperation, invite then to mount the truck standing outside, drive them out to the same spot in the woods, and shoot them, too. One report illustrates the procedure described:

"The Jew a of the city were ordered to present in a camp.

About 54,000 reported, including women and children.

After they had been made were killed; this took several days". (NOKW-2129) for his resourcefulness and skill in rounding up the intelligentsia of Winnica:

Caurt 2 case 9 "He called for the most prominent certain registration work.

When appear with these the following day."

(NO-2947) And then the report ends triumphantly on the note:

"This method was repeated for a third and liquidated."

In Kiev a clever stratagem was employed to ensnare the Jews. The word "clever" is taken from the report covering the action:

"The difficulties resulting from such a large move.

Although only a participation of expected at first, more than.

30,000 Jews arrived an extremely clever organization."

edged with a black border of misery and desolation. In every paragraph one feels the steel and flinty pen with which the report-writer cuts through the orange described therein. Report No. 94 tells of Jews who, driven from their homes, were compelled to seek primitive existence in caves and abandoned huts. The rigors of the elements, lack of food and adequate clothing inevitably produced serious illnesses. The report-writer chronicles:

"The danger of epidemics has thus increased became necessary."

and then, he adds:

"The insolence of the Jews has not yet diminished even now."

evictors still complained: The Jews were not even courteous to their executioners! tory. In this connection the prosecution introduced an interesting letter from one Jacob, Laster of Field Police to his Commanding General. The letter, dated June 21, 1942, is very chatty and companiable, the writer sends birthday greetings to the addresses, talks about his horses, his girl-friend, and then casually about Jews:

"I don't know if you, General, have also seen in Poland such horrible figures of Jews.

I thank the left.

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The little Jews (Juedlein) living in the districts (Rayons) also belong to our customers.

and then.... the waves close and the world is at peace."

for the sake of his country.

"I thank you for your reprimand. You are right.

selves. Even if it means a longer separation from our family.

Now is the time to clean up with the we don't sleep here.

Every week 3-4 actions, one other rabble.

It is very nice that we hove now a SD unit (SD Aussenkommando) with which I can work excellently."

sorry for himself that he is far away from home and thinks of his children: "One could weep sometimes. It is not good to be such a friend of children as I was." However, this does not prevent him from taking up lodging in a former Children's Asylum.

"I have a cozy apartment in a farmer children's asylum.

One bedroom and a livingroom with all the accessories."

fantastical for normal mental comprehension. As suggested before, the mention of one million deaths produces no shock at all commensurate with its enormity because to the average brain one million is more a symbol than a quantitative measure. However, if one reads through the reports of the Einsatzgruppen and observes the small numbers getting larger, climbing into ten thousand, tens of thousands, a hundred thousand and beyond, then one can at last believe that this actually happened - the cold-blooded, premeditated killing of one million human beings.

kommando, states that up to September 6, 1941, this Kommando 4a "has taken care of a total of 11,328 Jews". very casually declares: "In Latvia, up to now, 30,000 Jews were executed in all". that the operational area has been "cleared of Jews. From 19 August to 25 September 1941, 8,890 Jews and Communists were executed. Total number 13,315". 5, 1941, that total executions had reached the figure of 31,767.

Reporting on one month's activities (October 1941), Einsatzgruppe B advised that "during the period of the report, the liquidations of 37,180 people took place". 12, 1941, declared that Sonderkommando 4a had now reached the total number of more than 51,000 executions. approbation on August 10, 1942:

"During detailed consultations with the SS-Brigadefuehrer Obersturmbannfuehrer Dr. jur.

Strauch, we found that we Ruthenia during the last 10 weeks".Speaking of another place, the Commissioner General proclaimed:

"In the Minsk-Land area the Jewry was completely exterminated." Then he complained that the Army had been encroaching on the Einsatz prerogatives:

"The preparations for the liquidation of the Jews already been reported to your office.

In the Rear us anyway". and went on with his narrative:

"In the city of Minsk, about 10,000 Jews were liquidated in November of the previous year, at the Fuehrer's orders.

The Sluzk area was also ridded of several thousand Jews.

The same applies to Nowogrodek and Wilejka". not been going as well as he desired:

"Radical measures still remain to be taken." He explained: "In Baranowitschi, about 10,000 Jews are still living in the town alone." However, he would attend to that situation at once. He promised that 9,000 of them would be "liquidated next month." of Jews executed in Lithuania was 71,105. ory of the people killed as a business house might submit a list of stock on hand:

"Total: Jews Communists Total White Ruthenia 7.620 - - 7,620 to be added to these figures:

"In Lithuania and Latvia Jews annihilated by pogroms 5,500 (correct total 130,065) 122,455 135,567"

THE PRESIDENT: Judge Dixon will continue with reading of the opinion and the judgment.

JUDGE DIXON: It would not take, and it did not take many reapings of this character to reach the figure of one million.

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Operational Report No. 190, speaking of the activities of Einsatzgruppe D, announces quite matter-of-fact that , in the second half of March 1942, a total of 1,501 people were executed, and then adds, perhaps boredly: "Total number shot up to date, 91,678". Operation Report No. 150 declares: "There is no longer any Jewish civil population".

Activity and Situation Report No. 9, covering the period of January 1942, apprised Berlin:

"In White Ruthenia the purge of Jews is in full swing.

of the Security Police and the SD." Eastern Territories, left nothing to conjecture as to the purpose of their organization.

"The systematic mopping up of the Eastern Territories complete removal, if possible, of Jewry.

This goal has present time, of 229,052 Jews."

observation that many of the Jews used force against the officials and Lithuanian auxiliaries who performed these excutions and that, before they were shot, they even abused Germany! that it did not take over this area until a heavy frost had set in. The report points out this "made mass executions much more difficult". And then another difficulty, the report-writer emphasizes, is that the Jews "live widely scattered over the whole country. In view of the enormous distances, the bad condition of the roads, the shortage of vehicles and petrol, and the small forces of Security Police and SD, it needs the utmost effort in order to be able to carry out shootings."

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unreasonable in not coming themselves over these long distances to present themselves for shooting. In spite of all the difficulties, however, the report ends up with: "Nevertheless, 41,000 Jews have been shot up to now." in one report, where the question of setting up a ghetto was concerned the report-writer communicated that in getting things started there would be "executions of a minor nature of 50 to 100 persons only".

"On 2 January, at the order of Einsatzgruppe A of all foodstuffs, etc.

, and all the villagers shot.

neighboring town, Rossitten".

The report ends on the very casual note:

"All these actions were carried out without incident." massacred. In another village 301 people were herded into the public square and shot down mercilessly. But for the report-writer this mass violence did not even constitute an incident!

On two days alone (September 29 and September 30, 1941) Sonderkommando 4a, with the help of the Gruppenstaff and two Police Units, slaughtered in Kiew 33,771 Jews. The money, valuables, underwear and clothing of the murdered victims were turned over to the racial Germans and to the Nazi administration of the city. The massacre ends up with the phrase:

"The transaction was carried out without friction - " and then adds, as he was about to put away the typewriter:

"No incidents occurred." kommandos sought to avoid executions, not out of charity or sympathy, but because it meant just that much more work. The defendant Nosske testified to a caravan of from 6,000 to 7,000 Jews who had been driven across the Dnjester River by the Rumanians into territory occupied by the German forces, and whom he guided back across the river.

When asked why these Jews had been expelled from Rumania, Nosske replied:

"I have no idea. I assume that the Rumanians wanted to the trouble of shooting them.

We didn't want to do that.

We didn't want to do the work for the Rumanians, and we happened.

We refused it and, therefore, we sent them back." resulting from acts of the organizations to which the defendants belonged did not reach the total of one million. As a matter of fact, it went far beyond one million. As already indicated, the International Military Tribunal, after a trial lasting ten months, studying and analyzing figures and reports, declared:

"The RSHA played a leading part in the 'final solution' established to supervise this program.

Under its direc of the Security Police."

declared that, according to the reports, his Einsatzgruppe killed 90,000 people. He also told of the methods he employed to prevent the exaggeration of figures. He did say that other Einsatzgruppen were not as careful as he was in presenting totals, but he presented no evidence to attack numbers presented by other Einsatzgruppen. Reference must also be made to the statement of the defendant Heinz Schubert who not only served as adjutant to Ohlendorf in the field from October 1941 to June 1942, but who continued in the same capacity of adjutant in the RSHA, Office Amt III B, for both Ohlendorf and Dr. Hans Emlich, until the end of 1944. If there was any question about the correctness of the figures, this is where the question would have been raised, but Schubert expressed no doubt nor did he say that these individuals who were momently informed in the statistics entertained the slightest doubt about them in any way.

prepare the reports and to avoid errors:

"The Einsatzgruppe reported in two ways to the Reich Security Head Office.

Once through radio, then in writing.

The radio reports were kept strictly secret enter the radio station.

This is the reason why only the of these radio reports.

The reports were dictated directly to Fritsche by Ohlendorf or Seibert.

After the report had been sent off by Fritsche I received it for filing.

In persons killed.

The written reports were sent to Berlin by courier.

These reports contained exact details and des etc."

thought of ever filing a false report because he regarded that as unworthy of himself.

THE PRESIDENT: The Tribunal will now be in recess fifteen minutes.

THE MARSHAL: The Tribunal will be in recess until 11:15 o'clock.

(recess)

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Dixon continues with the reading of the opinion and judgment.

JUDGE DIXON: Then, the actual figures mentioned in the reports, staggering though they are, do by no means tell the entire story. Since the objective of the Einsatzgruppen was to exterminate all people falling in the categories announced in the Fuehrer-Order, the completion of the job in any given geographical area was often simply announced with the phrase: "There is no longer any Jewish population." Cities, towns and villages were combed by the kommandos and when all Jews in that particular community were killed, the report-writer laconically telegraphed or wrote to Berlin that the section in question was "freed of Jews". Sometimes the extermination area covered a whole country like Esthonia or a large territory like the Crimea. In determining the numbers killed in a designation of this character one needs merely to study the atlas and the census of the period in question. Sometimes the area set aside for an execution operation was arbitrarily set according to kommandos. Thus one finds in the reports such entries as: "The fields of activity of the kommandos is freed of all Jews." meditated by the Einsatz units without their having to do the killing. When Jews were herded into a few miserable houses which were fenced off and called a "ghetto", this was incarceration -- but incarceration without a prison warden to bring them food. The reports make it abundantly clear that in these ghettos death was rampant, even before the Einsatz units began the killing off of the survivors. When, in a given instance, all male Jews and Jewesses over the age of 12 were executed, there remained, of course, all the children under 12. They were doomed to perish. Then there were those who were worked to death. All these fatalities are unmistakably chronicled in the Einsatz Reports, but do not show up in their statistics.

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victims of the Einsatzgruppen who did not fall under the executing rifles. In many cities, towns end provinces hundreds and thousands of fellow-citizens of those slain fled in order to avoid a similar fate. Through malnutrition, exposure, lack of medical attention and particularly, if one thinks of the aged and the very young, of exhaustion, most if not all of those refugees perished. These figures, of course, do not appear in the Einsatzgruppen Reports, but the criminal responsibility for their deaths falls upon the Fuehrer-Order program as much as the actual shooting deaths. temporarily spared, not for humanitarian reasons, but for economic purposes. Thus, a report from Esthonia specifies:

"The arrest of all male Jews of over 16 years of age has been nearly finished.

With the exception of the cial Detachment 1 a. Jewesses in Pernau and Reval of were arrested and put to peat-cutting or other labor."

(L-180) a great shortage of doctors for the non-Jewish population:

"More than 60% of the dentists were Jews; more than 50% of the other doctors as well.

The disappearance from the Reich."

(L-180) Jews be killed by working and not by shooting:

"There is only one possibility which the German ad ted for a long time:

Solution of the Jewish prob economic conditions of the country."

(NO-3151) paid manpower, but there was always the danger that, despite these economic advantages to the Germans, the security police would shoot the working Jews.

(NO-3146) Einsatzgruppe C reports in September 1941:

"Difficulties have arisen, in so far as Jews are often the only skilled workers in certain trades.

Thus, the only are Jews.

At other places also only Jews can be employed "In order not to endanger reconstruction and the repair older Jewish skilled workers from the executions."

(NO-3146) and Dnepropetrovsk, collective farms, known as Colchoses,were found to be operated by Jews. They were described in the report as being of low intelligence but since they were good workers the einsatz commander did not liquidate them. However, the report goes on to say that the einsatz commander was satisfied with merely shooting the Jewish managers. (NO-3153) July 1942, expressed quite frankly his desire to strike down all Jews in one murderous stroke. However, he was willing to stay his arm temporarily until the requirements of the Wehrmacht should be satisfied:

"I myself and the SD would certainly of the Wehrmacht have fallen off.

For still being considered."

(3428-PS) Operation Report No. 11, dated July 3, 1941, also explains that in the Baltic region the Wehrmacht is not "for the time being" in a position to dispense with the manpower of the Jews still available and fit for work.

(NO-4537) the Jews were free from molestation. Einsatzgruppe B, reporting on affairs in Witebsk, declared:

"By appointed Jewish Council, so far about 3,000 Jews registered.

Badges for Jews introduced.

At present they ble.

For deterrent, 27 Jews, who had in the streets."

(NO-2954) that as the Germans advanced, the Esthonians arrested Jews but did not kill them. He shows the superior methods of the Einsatzgruppe:

"Only by the Security Police and the work."

(2273-PS) He then adds as an obvious deduction:

"Today there are no longer any Jews in Esthonia."

til he has drained from its body the last ounce of utility, so did the action unit in Minsk dispose of the Jews:

"In Minsk itself--exclusive of Reich used as labor."

(2273-PS) of Heydrich to suspend the killing of Jews until after they had brought in the harvest. point of view, was perhaps even worse than their own directly committed murders, that is, their inciting of the population to abuse, maltreat and slay their fellow citizens. To invade a foreign country, seize innocent inhabitants and shoot them is a crime, the mere statement of which is its own condemnation. But to stir up passion, hate, violence and destruction among the people themselves, aims at breaking the moral backbone, even of those the invader chooses to spare. It sows seeds of crime which the invader intends to bear continuous fruit, even after he is driven out.

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of those responsible for these shameless crimes endeavored to keep them secret. SS-Brigadier General Stahlecker, head of Einsatzgruppe A, reporting on activities of Einsatzgruppe A, stated in October 1941 that it was the duty of his Security Police to set in motion the passion of the population against the Jews. "It was not less important", the report continued, "In view of the future to establish the ities could not be found out."

(L-180) In Riga this same Stahlecker reported:

"Similarly, native anti-Semitic forces be very difficult.

Following out ord possible means and most decisively.

But were apt to stir even German circles.

It period."

(L-180) was not so easy to start pogroms against the Jews. However, after certain prodding and assistance, results were attained. He reports:

"Klimatis, the leader of the partisan unit, from the outside.

During the first pogrom sisting of about 60 houses.

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During the made harmless in a similar way.

In other been left behind."

(L-180) groms in Lithuania and Latvia, Stahlecker made it a point to select men who for personal reasons had a grudge against the Russians. Somehow these squads were then made to believe that by killing Jews they were avenging themselves on the Russians for their own griefs.

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Activity and Situation Report No. 6, prepared in October 1941, complained that Einsatz units operating in Estonia could not provoke "spontaneous, anti-Jewish demonstration with ensuing pogroms" because "adequate enlightment was lacking". However, as stated before, not everything was lost because under the direction of the Einsatzgruppe of the Security Police and Security Service, all male Jews over the age of 16, with the exception of doctors and Jewish Elders, were arrested and killed. The report then states: "At the conclusion of the operation there will be only 500 Jewesses and children left in the Ostland". building firm in Sdolbunow, Ukraine, has described in graphic language just how a pogrom operates. When he heard that a pogrom was being incubated he called on the commanding officer of the town, SS-Sturmbannfuehrer Putz, to ascertain if the story had any basis in fact since he, Graebe, employed some Jewish workers whom he wished to protect. Sturmbannfuehrer Putz denied the rumors. Later, however, Graebe learned from the Area Commissioner's deputy, Stabsleiter Beck, that a pogrom was actually in the making but he exacted from Graebe the promise not to disclose the secret. He even gave Graebe a certificate to protect his workers from the pogrom. This amazing document reads:

"Messrs. JUNG affected by the pogrom.

You must transfer them From the Area Commissioner Beck".That evening the pogrom broke.

At ten o'clock SS-men and Ukrainian militia surged into the Ghetto, forcing doors with beams and crossbars. Let Graebe tell the story in his own words:

"The people living there were driven on to the street dressed or in bed.

Since the Jews in most cases militia applied force.

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They finally succeeded, with in clearing the houses.

The people were driven out of had been left behind in several instances.

In the street parents.

That did not prevent the SS from driving the "Car after car was filled, and the screaming of women and resounded unceasingly.

Since several families or groups these houses were now blown open with handgrenades.

Since a small river to get away from the Ghetto area.

As this "All through the night these beaten, hounded and wounded people moved along the lighted streets.

Women carried road toward the train.

Again and again the cries 'Open the door! Open the door!' echoed through the Ghetto."

Beck, seven of them were seized and taken to the collecting point. Graebe's narrative continues:

"I went to the collecting point to save these seven men.

the streets I had to walk along. The doors of the houses stood open, windows were smashed.

Pieces of clothing, shoes, stockings, jackets, caps, hats, coats, etc.

were lying in the street.

At the corner of the house lay a baby, less than a year old with his skull crushed.

Blood the area immediately around the child.

The child was the ground.

He had a heavy dog whip in his hand. I those who were crouching on the ground.

Dr. Puetz was very furious about Beck's concession and nothing could persuade him to release the seven men.

He made a motion with his once here would not get away.

Although he was very angry strasse out of Rowno by 8 o'clock at the latest.

"When I left Dr. Puetz, I noticed a Ukrainian farm cart, with two horses.

Dead people with stiff limbs were lying The cart was making for the freight train.

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I took house to Sdolbunow."

27 Jews on the streets of Witebsk, announced in its report:

"The Ruthenian part of the population has approved of this.

Large-scale execution of Jews will follow immediately."

of pogroms is evidenced by one report where the Sipo and SD want some of the credit for the murders committed:

"As a result of the pogroms carried out by the Lithua smaller town were eliminated."

In some areas special groups were set up:

"In addition to this auxiliary police force, 2 more of carrying out pogroms.

All synagogues have been destroyed; 400 Jews have already been liquidated."

THE PRESIDENT: The presiding judge continues with the reading: Heading, the Jews to extermination, the public record shows that they counted on substantial material advantage. The levying of enormous indemnities against persons considered by the Nazis as Jews or halfJews and the expropriation of their property in Germany as well as in the countries occupied by it, brought huge returns to the coffers of the Reich. And even in the dread and grim business of mass slaughter, a definite profit was rung up on the Nazi cash register. For example, Situation Report No. 73, dated 4 September 1941 reporting on the executions carried out by a single unit, Einsatzkommando 8, makes the cold commercial announcement:

"On the occasion of a purge at Tscherwen 125,880 rubels kommando 8 to 1,510,399 rubels up to the present day."

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Situation Report No. 133, dated 14 November 1941, shows the progress made by this unit in a little over two months:

"During the period covered by this report, Einsatzkommando rubels.

They were entered into the ledgers and passed to the Administration of Einsatzkommando 8. The total amount to 2,511,226 rubels."

On 26 October 1941, Situation Report No. 125 gave Einsatzkommando 7b credit for 46,700 rubels taken from liquidated Jews, Einsatzkommando 9 credit for 43,825 rubels and "various valuables in gold and silver", and recorded that Einsatzkommando 8 had increased the amount of its loot to the sum of 2,019,521 rubels.

Operation and Situation Report No. 31, dated July 1941, rendering an account of operations in Lithuania, recorded the taking of "460,000 rubels in cash as well as a large number of valuables" from liquidated Jews. The report stated further:

"The former Trade Union Building in Wilna was secured for the German Labor Front (DAF) at their request, likewise 1.5 million rubels."

on the highest ethnic and cultural level, executants of the program were not above the most petty and loathsome thievery. In the liquidation of Jews in Zhitomir and Kiew the reporting Einsatzkommando collected 137 trucks full of clothing. The report does not say whether the clothing was torn from the victims while they were still alive or after they had been killed. This stolen raiment was turned over to the National Socialist People's Welfare Organization. ordered to obtain furcoats for his men, and that since the Jews had so much winter clothing, it would not matter much to them if they gave up a few fur coats. In describing an execution which he attended, the defendant was asked whether the victims were undressed before the execution. He replied: "No, the clothing wasn't taken - this was a fur coat procurement operation."

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A document issuing from Einsatzgruppe D headquarters (February 1942) speaks of the confiscation of watches in the course of anti-Jewish activities. The term "confiscate" does not change the legal or moral character of the operation. It was plain banditry and highway robbery. The gold and silver watches were sent to Berlin, others were handed over to the Wehrmacht (rank and file) and to members of the Einsatzgruppe itself "for a nominal price" or even gratuitously if the circumstances warranted that kind of liberality with these blood-stained articles. This report also states that money seized was transmitted to the Reich Bank, except "for a small amount required for routine purposes (wages etc.)". In other words the executioners paid themselves with money taken from their victims. some Ethnic German families were living in Southern Russia, showed that it helped by placing Jewish homes, furniture, children's beds, and other equipment at the disposition of the Ethnic Germans. These houses and equipment were taken from liquidated Jews. (September 1941), stated that it organized a regular police force to clear the country of Jews as well as for other purposes. The men enlisted for this purpose, the report goes on to say, received "their pay from the municipality from funds seized from Jews".

Whole villages were condemned, the cattle and supplies seized, (that is stolen), the population shot and then the villages themselves destroyed. shallow pretense, that some of the inhabitants had been aiding or lodging partisans. cooking-utensils, etc., taken from the murdered Jews.

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over to the mayor who, according to the report covering this action, "gave special priority to the Ethnic Germans when distributing it". to give up their money and valuables and sometimes their clothes before breathing in the carbon monoxide. Reich Ministry of Finance. When a Jewish Council of Elders was appointed to register the Jews for the ostensible purpose of resettlement, the Council was also requested to submit the financial situation of the Jews. This facilitated the despoiliation of their possessions which went hand in hand with their execution.

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also extended to prisoners of war. Even in the first weeks of Germany's war against Russia, large numbers of civilians from the invaded areas were indiscriminately thrown into prisoner of war camps, run by the P.O.W. department of the High Command of the Wehrmacht. On 17 July 1941, Heydrich issued Operational Order No. 8, which contained "directives" for the Einsatz units "detailed to permanent P.W. camps (Stalags) and Transit camps (Dulags)". These directives not only grossly violated the provisions of the Hague Regulations on prisoners of war and civilians in belligerently occupied territories and of century-old rules and customs of warfare, but outraged every principle of humanity. They provided for nothing less than the cold-blooded mass-murder of prisoners of war, and of civilians held in P.W. camps. The directives state as their "purpose":

"The Wehrmacht must immediately free it Bolshevist influence.

The special situa fore, demands special measures (Italics original) which have to be carried out in ness to assume responsibility."

gories of persons to seek out "above all". This list mentions in detail all categories and types of Russian Government officials, all influential communist party officials, "the leading personalities of the economy", "the Soviet Russian intellectuals", and as a separate category -- the category which was again to yield the largest number of victims of this "action" -

"All Jews" "taking any decisions, the racial origin has to be taken into consideration."

Concerning executions, the directives specified:

"The executions must not be carried out neighborhood.

They are not public and as possible."

Further:

" "In order to facilitate the execution of Commander-in-Chief of the P.W. camps in of the P.W. camps in the General Gouvern ment in Kieloe."

doomed either because they were "Russian intellectuals" or because they were Jews. However, by 29 October 1941, Heydrich found it necessary to rule:

"Because of the existing shortage of segregation and to be left in the P.W.founded cases."

strates to what extent the Reich went officially in flouting the most basic rules of international law and the principles of humanity:

"The chiefs of the Einsatzgruppen decide kommandos the corresponding orders."

aware of its illegality:

"This order must not be passed on in an excerpt.

District commanders for ally."

objected to this shameful and degrading repudiation of the rules of war. In one report we find:

"As a particularly clear example the two other officers."

Army, however, was not so chivalrous as the officer indicated. The report states further:

"Generalfeldmarshal von Reichenau has, by the Wehrmacht."

reached by these murder groups when one of the kommandos brutally killed helpless, wounded prisoners of war. Einsatzgruppe C, reporting (November 1941) on an execution performed by Sonderkommando 4a, stated:

"....the larger part were again Jews, been handed over by the Wehrmacht.

At handed over by the camp physician."

PRESIDENT: The next heading, How were the executions conducted?

What was the modus operandi? On this subject history need not remain in the dark. Several of the executioners have themselves cleared away all mystery as to just how they accomplished their extraordinary deeds. Defendant Paul Blobel, who stated that his sonderkommando killed between 10,000 and 15,000 people, described in some detail one performance he personally directed. Specifying that from 700 to 1,000 persons were Court No. II, Case No. IX.

involved in this execution, he related how he divided his unit into shooting squads of 30 men each. Then, the mass graves were prepared -

"Out of the total number of the persons faces turned toward the grave.

At that collected.

Later on this was changed.....

"When the men were ready for the execution shoot.

Since they were kneeling on the "I have always used rather large execution (Genickschusspezialisten). Each squad placed.

The persons which still had to not take part in the executions."

graves, and the executioners were then compelled to exert themselves to complete the job of internment. A method, however, was found to avoid this additional exertion by simply having the victims enter the ditch or grave while still alive. An SS eye-witness explained this procedure:

"The people were executed by a shot in the neck.

The corpses were buried in a large tank ditch.

The candidates for execution ditch.

One group had scarcely been shot on the corpses there."

ment:

"The shootings took place in a sand pit, buried."

to 100 executions, told of one winter execution where the corpses were temporarily buried in the snow.

business-like procedure, illustrated by Report No. 24, dated 16 July 1941, which succinctly stated:

"The arrested Jewish men are shot without at Duenaburg up to now."

ceremonious. These executioners called off the names of the victims before they were loaded on to the truck which was to take them to their death. This was their whole judicial trial -- the indictment, the evidence, and the sentence -- a roll call of death.

There were different techniques in execution. There were Einsatz commanders who lined up their victims kneeling or standing on the edge of the grave, facing the grave, others who had the executees stand with their backs to the grave, and still others, as indicated, who had their victims stand in the grave itself. One defendant described how the victims lined up at the edge of the ditch and, as they fell, another row stepped into position so that, file after file, the bodies dropped into the pit on to the bleeding corpses beneath.

Hardly ever was a doctor present at the executions. The responsibility of the squad leader to make certain the victims were dead before burying them was simply discharged by a glance to determine whether the bullet-ridden bodies moved or not. Since in most cases the huddled and contorted bodies were strewn and piled in a trench at least six feet deep, only one more horror is added in contemplating the inadequacy of an inspection made from the rim of a ditch as to whether life in the dark ground below was extinct or not. that an executee could only seem to be dead because of shock or temporary unconsciousness. In such case it was inevitable he would be buried alive.

aimed at the heads of the victims. If, he explains, the victim was not hit, then one member of the firing squad approached with his rifle to a distance of three paces and shot again. The scene of the victim watching the head-hunter approaching with his rifle and shooting at him at three paces represents a horror for which there is no language. lie down on the ground, and they were shot in the back of the neck. But, whatever the method, it was always considered honorable, it was always done in a humane and military manner. Defendant after defendant emphasized before the Tribunal that the requirements of militariness and humaneness were meticulously met in all executions. Of course, occasionally, as one defendant described it, "the manner in which the executions were carried out caused excitement and disobedience among the victims, so that the kommandos were forced to restore order by means of violence", that is to say, the victims were beaten. Undoubtedly always, of course, in a humane and military manner. Commenting on this phase of the executions, one defendant related how some victims, destined to be shot in the back, turned around and bravely faced their executioners but said nothing. Almost invariably they went to their end silently, and some of the defendants commented on this. The silence of the doomed was mysterious, it was frightening. What did the executioners expect the victims to say? Who could find the words to speak to this unspeakable assault on humanity, this monstrous violence upon the dignity of life and being? They were silent. There was nothing to say. not be performed publicly, but should always take place far removed from the centers of population. A wooded area was usually selected Court No. II, Case No. IX.

for this grim business. Sometimes these rules were not observed. Document NOKW-641 relates an execution which took place near houses whose occupants became unwilling witnesses to the macabre scene. The narrative states:

"A heavy supply traffic for the soldiers window of the battalion's office, the be heard, too.

The following morning, quisitive civilians and soldiers.

An immediately."

has left a moving account of a mass execution witnessed by him in October 1942 near Dubno, an account which because of its authoritative description deserves recording in its entirety in this Opinion:

"Moennikes and I went direct to the pits.

Nobody bothered us. Now I heard rifle one of the earth mounds.

The people who "They had to put down their clothes in top clothing and underclothing.

I saw clothing.

Without screaming or weeping "During the 15 minutes that I stood near the pit I heard no complaint or plea for mercy.

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I watched a and two grown up daughters of about 20 to 24.

An tickling it.

The child was cooing with delight.

years old and speaking to him softly; the boy was fighting his tears.

The father pointed toward the thing to him.

At that moment the SS-man at the pit shouted something to his comrade.

The latter counted the earth mound.

Among them was the family which I "I well remember a girl, slim and with black hair, who, '23'. I walked around the mound and found myself con fronted by a tremendous grave.

People were closely only their heads were visible.

Nearly all had blood running over their shoulders from their heads.

Some of the people shot were still moving.

Some were lifting were still alive.

The pit was already 2/3 full. I I looked for the man who did the shooting.

He was an SS feet dangling into the pit.

He had a tommy gun on his knees and was amoking a cigarette.

The people, completely them.

They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice.

Then I heard a series of "I looked into the pit and saw that the bodies were of the bodies that lay before them.

Blood was running down their necks.

I was surprised that I was not postmen in uniform nearby.

The next batch was approach ing already.

They went down into the pit, lined them truckload of people which had just arrived.

This time it included sick and infirm persons.

An old, very thin The woman appeared to be paralyzed.

The naked people carried the woman around the mound.

I left with Moennikes "On the morning of the next day, when I again visited the about 30 to 50 meters away from it.

Some of them were still alive; they looked straight in front of them with around.

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A girl of about 20 spoke to me and asked me to give her clothes and help her escape.

At that that it was an SS detail.

I moved away to my site.

of the pit. The Jews still alive had been ordered to throw the corpses into the pit; = then they had them selves to lie down in this to be shot in the neck."

The tragecy of this scene is lost entirely on the executioner. He does his job as a job. So many persons are to be killed, just as a carpenter contemplates the construction of a shed. He must consider the material he has on hand, the possibilities of rain, etc. Only by psychologically adjusting oneself to such a state of affairs can one avoid a shock when one comes to a statement in a report very casually written, namely: "Until now, it was very difficult to carry out executions because of weather conditions." the winter of 1941-42, remarks:

"The Commander in White Russia is instructed to liquida the difficult situation.

However, a period of about 2 months is still required - according to the weather."

another report-writer to chronicle simply: "Hostages are taken in each new place, and they are executed on the slightest reason." executed at Grodno and Lida during the first days. He manifests his displeasure and declares: "I gave orders that considerable intensification was to take place there."

JUDGE SPEIGHT: Adolf Ruebe, a former SS-Hauptscharfuerher, declared in an affidavit that now and then there were executioners who devised original methods for killing their victims:

"On the occasion of an exhumation in Minsk, in Novem kommando of Latvians.

They brought eight Jews, men and women, with them.

The Latvians guarded the Jews, their own hands.

The Jews were bound, put on the pile alive, drenched with gasoline and burnt."

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children were to be executed with the men so that Jews, Gypsies and so-called asocials would be exterminated for all time. In this respect, the Einsatzgruppen leaders encountered a difficulty they had not anticipated. Many of the enlisted men were husbands and fathers, and they winced as they pulled their triggers on these helpless creatures who reminded them of their own wives and off-spring at home. In this emotional disturbance they often aimed badly and it was necessary for the kommando leaders to go about with a revolver or carbine, firing into the moaning and writhing forms. This was hard on the executioners, personnel experts reported to the RSHA in Berlin, and to relieve their emotional sensitivity, gas vans were sent to the rescue. otherwise externally resembled family trailers. Women and children were lured into them with the announcement that they were to be resettled and that they would meet their husbands and fathers in the new place. Once inside the truck, the doors automatically and hermetically closed, the driver stepped on the accelerator, and monoxide gas from the engine streamed in. By the time the van reached its destination, which was an anti-tank ditch outside the town, the occupants were dead. And here they joined their husbands and fathers who had been killed by rifles and carbines in the hands of the Einsatzkommandos. image of these murder wagons, they were simply articles of equipment so far as the Einsatzgruppen were concerned. Communications went back and forth, correspondence was written about these vans with the casualness which might accompany a discussion on coal trucks. For instance, on May 16, 1942, SS-Untersturmfuehrer Dr. Becker, wrote SSObersturmbannfuehrer Rauff, pointing out that vans could not be driven in rainy weather because of the danger of skidding.

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He, therefore, posed the question as to whether executions could not be accomplished with the vans in a stationary position. However, this suggestion offered a problem all its own. If the van was not actually set for mobility the victims would realize what was about to happen to them, and this, Becker said, must be avoided so far as possible. He thus recommended: "There is only one way left. To load them at the collecting point and to drive them to the spot". Becker then complained that members of the kommando should not be required to unload the corpses:

"I brought to the attention of the commanders of those S.K. concerned, the immense psychological injuries and after each unloading."

Becker says:

"The application of gas usually is not undertaken correct ly.

In order to come to an end as fast as possible, the driver presses the accelerator to the fullest extent.

By asleep peacefully."

Service Ostland wrote the RSHA in Berlin as follows:

"Subject: S-Vans "The three S-vans which are there are not sufficient for that purpose.

I request assignment of another S-van (5 tons). At the same time I request the shipment of 20 gas hoses for the three S-vans on hand (2 Diamond, 1 Saurer), since the ones on hand are leady already". that the Einsatz authorities now even set up a school in this new development of the fine art of genocide.

The defendant Biberstein, describing one of these ultra-modern executions, spoke of the driver Sackenreuter of Nuremberg "who had been most carefully instructed about the handling of the gas truck, having been through special training courses". Biberstein was satisfied that this method of killing was very efficient because the faces of the dead people were "in no way distorted"; death having come "without any outward signs of spasms". He added that no physician was present to certify that the people were dead because "this type of gas execution guaranteed certain death". Who it was that guaranteed this was not vouchsafed to history.

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power, driven to the field of action. The reports tell of two vans which travelled from Berlin to the Crimea. It would be interesting to know the thoughts of the drivers of these murder-cars as they rolled over half of Europe, through city and country, climbing mountains and penetrating plains, travelling 2,000 kilometers with their gaseous guillotines to kill helpless women and children. One of the drivers was none other than the chauffeur of the arch-murderer Reinhardt Heydrich. a few excerpts and yet there remains the instinct to disbelieve, to question, to doubt. There is less of a mental barrier in accepting the weirdest stories of supernatural phenomena, as, for instance, water running up hill and trees with roots reaching toward the sky, than in taking at face value these narratives which go beyond the frontiers of human cruelty and savagery. Only the fact that the reports from which we have quoted came from the pens of men within the accused organizations can the human mind be assured that all this actually happened. The reports and the statements of the defendants themselves verify what otherwise would be dismissed as the product of a disordered imagination. The record reveals that investigators and evidence analysts have checked and rechecked. Being human they sometimes doubted the correctness of the startling figures appearing in the reports.

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Thus, when one of them came across the statement of Stahlecker that Einsatzgruppe A, of which he was chief, had killed 135,000 human beings in four months, the investigator questioned Otto Ohlendorf if this were possible. Ohlendorf read the statement in question and announced:

"I have seen the report of Stahlecker (Document L-180) the first four months of the program.

I know Stahl document is authentic."

How can all this be explained? Even when Germany was retreating on all fronts, many troops sorely needed on the battlefield were diverted on this insane mission of extermination. In defiance of military and economic logic incalculable manpower was killed off, property of every description was destroyed - all remained unconsidered as against this insanity to genocide.

Here and there a protest was raised. The SS-Commissioner General for White Ruthenia objected to the executions in his district - not on the grounds of humanity, but because he believed the unbridled murder program was lowering the prestige of Germany.

"Above all, any act lowering the prestige of the Ruthenia with methods of that sort.

To bury reported to the Fuehrer and Reich Marshal.

The Fuehrer.

These efforts cannot be brought in harmony with the methods described herein."

action. It told of the arrival of a Police Battalion with instructions to liquidate all Jews in the town of Sluzk within two days. The Commissioner for the Territory of Sluzk protested that the liquidation of all Jews, which naturally included the tradesmen, would shut down the economic life of that area.

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He asked, at least, for postponement of the executions. The Lieutenant in charge of the battalion refused to wait. The report continues:

"For the rest, as regards the executions of the action, bordered already on sadism.

The town itself offered a picture of horror during the action.

With indescribable out of their dwellings and herded together.

Everywhere the corpses of shot Jews accumulated.

... In conclusion same in those of the White Ruthenians.

Anything of use has been taken away.

On the basis of statements of the "A major of the Finance Department reported that a Jewish rubels to have her father released.

This girl is said to have actually gone everywhere to obtain the money."

tion reach the soldiers holding the fighting frontiers. Yet, many vehicles loaded with ammunition for the armed forces were left standing in the streets of Sluzk because the Jewish drivers, already illegally forced into this service, had been liquidated by the Execution Battalion. Although the very life of the nation depended on the continued operation of every type of food-producing establishment, 15 of the 26 specialists at a cannery were shot. The Commissioner General inquired of the Reich Minister of Occupied Eastern Territories if the liquidation of Jews in the East was to take place without regard to the economic interests of the Wehrmacht and specialists in the armament industry. The Reich Minister replied:

"Clarification of the Jewish question has most likely unconsidered in the settlement of the problem."

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investigation into the Jewish Liquidation Program, reported to General of the Infantry, Thomas, Chief of the Industrial Armament Department, that the project was a big mistake from the German point of view. In the Ukraine he found that the Jews represented almost the entire trade and even a substantial part of the manpower.

"The elimination, therefore, necessarily had far D U S T R Y (Production for sypplying the troops)."The report goes on:

"The attitude of the Jewish population was anxious obliging from the beginning.

They tried to avoid tion.

That they hated the German administration and surprising.

However, there is no proof that Jewry acts of sabotage.

Surely, there were some terrorists a danger to the German armed forces.

The output produced German administration."

the executions invariably took place not during the stress and turmoil of fighting or defense action, but after the fighting had ceased:

"The Jewish population remained temporarily unmolested shortly after the fighting.

Only weeks sometimes months executed a planned shooting of Jews.

... The way these children of all ages were carried out was horrible.

The Union.

So far about 150,000 to 200,000 Jews may have to the Reichskommissariat (RK); no consideration was given to the interests of economy."

In a final appeal to reason this German inspector cries out:

"If we shoot the Jews, let the prisoners of war perish, remains unanswered:

WHO IN ALL THE WORLD ECONOMIC VALUES HERE?" No one answered the question of the inspector; Nor did any one answer the question of Humanity as to why those oceans of blood and this burning of a continent.

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Reason, with its partner Conscience, had been lost long ago in the jungle of Nazi greed and arrogance, and so Madness ruled, Hate marched, the sky reddened with the flames of destruction and the World wept - and still weeps. treaty for the Renunciation of War, more generally known as the Kellogg-Eriand Pact, wherein sixty-eight nations agreed:

"Article I. The High Contracting Parties solemnly "Article II.

The High Contracting Parties agree that pacific means."

fifth decade of the twentieth century witnessed a conflict at arms of global proportions which wrought such devastation on land and sea and so convulsed organized society that, for many decades yet to come, men, women and children in every land will feel and suffer its consequences. and the United States met in London and entered into an agreement for the trial of war criminals ascertained to be such. Nineteen other nations expressed their adherence to this agreement. by the London Agreement, after a trial which lasted ten months, rendered a decision which proclaimed that Germany had precipitated World War II and, by violating international commitments and obliga tions, had waged aggressive war.

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The International Military Tribunal, in addition to rendering judgment against specific individuals, declared certain organizations, which were outstanding instruments of Nazism, to be criminal. representatives of the same four above-mentioned nations and constituting the highest legislative authority for Germany, enacted Law No. 10, concerning "Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Crimes Against Humanity". This Tribunal came into being under the provisions of that Law, but while the Tribunal derives its existence from the authority indicated, its jurisdiction over the subject matter results from International Law valid long prior to World War II. to this case. In view of their representations and the gravity of the case itself, the various phases of the law will be discussed with more detail than perhaps ordinarily the situation might require. and impartial trial, which the Tribunal has endeavored throughout the long proceedings to guarantee to than in every way. The precept that every man is presumed innocent until proved guilty has held and holds true as to each and every defendant. The other equally sanctified rule that the Prosecution has the burden of proof and must prove the guilt of the accused beyond a reasonable doubt has been, and is, assured. began on September 29. The Prosecution required but two days to present its case in chief because its evidence was entirely documentary. It introduced in all 253 documents. 136 days transpired in the presentation of evidence in behalf of the defendants, and they introduced, in addition to oral testimony, 731 documents. The trial itself was conducted in both English and German and was recorded steno graphically and in both languages.

The transcript of the oral testimony consists of more than 6,500 pages. An electric recording of all proceedings was also made. Copies of documents introduced by the Prosecution in evidence were served on the defendants in the German language. tely in the latter part of the Opinion, but since many items of defense, especially in argumentation, are common to more than one of the defendants they will be discussed collectively to avoid repitition during the individual treatments. It is to be emphasized that the general discussion and collective description of acts or defenses of defendants need not apply to each and every defendant in the box. Any general reference will necessarily apply to a majority of them but that majority need not always consist of the same persons. As already stated, the individual treatments will appear at the end.

THE PRESIDENT: The Tribunal will now be in recess until 1:45.

(A recess was taken until 1345 hours.)

(The Tribunal reconvened at 1345 hours.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Dixon will continue with the reading of the Judgment.

JUDGE DIXON: different headings and will be discussed in that order by the Tribunal: Jurisdiction, Self Defense and Necessity, Superior Orders and Non-Involvement.

The substantive provisions of Control Council Law No. 10 which are pertinent in this case, read as follows:

Art. II, 1. (b) War Crimes. Atrocities or of (c) Crimes against Humanity.

(d) Membership in categories of a 2. Any person without regard to nation of this Article, ifhe was (a) a principle or (b) was an accessory same or (c) took a consenting part therein or (d) was connected with commission or (e) was a member of crime or (f) with reference to paragraph 1 (a), if he held a high political, civil or military (in cluding General Staff) position in such country."

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Control Council Law No. 10 was attacked by Defense Counsel at the beginning of the trial, at the end of the trial, and even after all evidence and documentation had been received and arguments closed. In a motion filed February 20, 1948, counsel renewed their representations that this law was inapplicable to the instant case because of the fact that Russia, on August 23, 1939. signed a secret treaty with Germany agreeing to a division of Poland. In the argument supporting their motion, Counsel do not dwell on the fact that in signing the agreement with in Russia, Germany naturally became a party to the very transaction involved. However, in spite of this very definite concurrence by Germany in Russia's acts, insofar as they arose out of the so called secret agreement, Defense Counsel submitted that Russia disqualified herself from membership in the Allied Control Council and that, therefore, any agreement reached with her as one of the signatory powers must necessarily be void. The argument is wholly lacking in merit. was fully considered and decided by the International Military Tribunal in its decision of September 30,1946:

" The Tribunal is fully satisfied by the humanity."

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precipiatated, as the International Military Tribunal pointed out, a global war whose effects are visible today throughout the world. The legal consequences drawn from the International Military Tribunal *** *** *** *** may not be altered by the assertion that someone else may also have been at fault.

At the final argument* in the case various Defense counsel spoke of international events which followed the ending of the war. It is intended as no offense to Defense Counsel to say that is would seem they are seeking to fish in troubled waters, or what they assume to be an agitated sea. Nonetheless, the Tribunal must refuse representations and arguments upon that subject. The defendants in this case stand accused of crimes which occured during the war. History's footsteps since the termination of World War II can not obliterate the blood marks of that collossal and tragic conflict. Counsel's representations, as in justice it should not, it does not follow that everything was relevant to the issue in the case. It is only by hearing an argument that one can conclusively determine its materiality or lack of materiality. However, the Tribunal now decides, after hearing and analyzing all the evidence, that discussions in this case on the ante-war relationship between Germany and Russia are Immaterial. It further decide* that representations on the post-war relationship Russia and the rest of the world are equally irrelevant. treaty with Germany prior to the Polish war, the Defense said or presented nothing in the way of evidence to overcome the well considered conclusion of the International Military Tribunal that Germany started an aggressive war against Russia.

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On the basis of this finding alone, Russia's participation in the Allied Council which formulated Law No. 10 was legal and correct and in entire accordance with International Law.

Furthermore, Defense Counsel's representations in this respect have no bearing on the charges in this Indictment. They are not defending Germany as a nation in this trial. They are representing individuals accused of specific crimes under Law No. 10, which, like the Charter of the International Military Tribunal, was not an arbitrary exercise of power of the victorious nations but the expression of Internation Law existing at the time of its creation. Control Council Law No. 10 is but the codification and systemization of already existing legal principles, rules and customs. Under the title of Crimes against Humanity, these rules and customs are the common heritage of civilized peoples, and, in so far as War Crimes are concerned, they have been recognized in various International Conventions, to which Germany was a party, and they have been International Law for decades if not centuries. As far back as 1631, Grotius, in his De Jure Belle ac Pacis, wrote:

"But.....far must we be from admitting the all Right ceases in war; nor when under Bounds of Justice and Fidelity."

The German author Schaetzel, in his book "Bestrafungen nach Kriegsgebrauch, published in 1920, stated:

".....The Laws and Customs of Warfare are International Law.

The Imperial Decree (of 1899) speaks ofpunishment 'in accord authorities' (Art.

2). This shows clearly a source of law.

They are binding on in "The customs of war are substantive penal law as good as the State's penal legislation."

Law No. 10 with Latin maxim Nullem crimen sine lege, nulla peona sine lege. It is indeed fundamental in every system of civilized jurisprudence that no one may be punished for an act which was not prohibited at the time of its commission. But it must be understood that the "lex" referred to is not restricted to statutory law. Law does, in fact, come into being as the result of formal written enactment and thus we have codes, treaties, conventions, and the like, but it may also develop effectively through custom and usageand through the application of Common Law. The latter methods are no less binding than the former. The International Military Tribunal, in its decision of September 30, 1946, declared:

"International Law is not the product of a changing world."

a substantial degree and one such subject is the law of Land Warfare which includes the Law of Belligerent Occupation because belligerent occupation is incidental to warfare. The Hague Regulations, for instance, represent such a codification. Article 46 of those Regulations provides with regard to invading and occupying armies that:

"Family honor and rights, the lives of must be respected."

This provision imposed obligations on Germany not only because Germany signed signed the Hague Convention on Land Warfare, but because it had become International Law binding on all nations.

before it does not depend alone on this specific pronouncement of International Law. As already indicated, all nations have held themselves bound to the rules or laws of war which came into being through common recognition and acknowledgement.

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Without exception these rules universally condemn the wanton killing of non-combatants. In the main, the defendants in this case are charged with murder. Certainly no one can claim with the slightest pretense at reasoning that there is any taint of ex post factoism in the law of murder. a question which will be determined later, but it cannot be said that prior to Control Council Law No. 10 there existed no law against murder. The killing of a human being has always been a potential crime which called for explanation. The person standing with drawn dagger over afresh corpse must, by the very nature of justice, exonerate himself. This he may well do, advancing self defense or legal authorization for the deed, or he may establish that the perpetrator of the homicide was one other than himself. killings to be called upon for an explanation -- and to whom are they to render explanation so that their innocence or guilt may be determined? Is the matter of some one million non-military deaths to be denied judicial inquiry because a Tribunal was not standing by, waiting for the apprehension of the suspects? governed the Nuremberg trials, have only provided a machinery for the actual application of international law theretofore existing. In the comparatively recent Saboteurs Case (Ex parte Quirin 317 U.S., 1, 1942) the Supreme Court of the United States affirmed that individual offenders against the rules and customs of war are amenable to punishment under the common law of nations without any prior designation of tribunal or procedure. In this connection reference may also be made to trials for piracy where, going back centuries, the offenders, regardless of nationality, were always tried in the arresting state without any previous designation of tribunal.

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of the rules of land warfare outlined in the Hague Convention, even though the Convention is silent on the subject of courts. The International Military Tribunal speaking to this subject said:

"The law of war is to be found not ticed by military courts."

All civilized nations have at times used military courts. Who questions that Prussia during the Franco-Prussian war and Germany during World War I and World War II utilized military courts to try subjects of other nations charged with violating the rules and laws of war? diction over individuals in its actual custody charged with violation of international law. And if a single nation may legally take jurisdiction in such instances, with what more reason may a number of nations agree, in the interest of justice, to try alleged violations of the international code of war? one would be so bold as to suggest that what occurred between Germany and Russia from June 1941 to May 1945 was anything but war, and, being war, that Russia would not have the right to try the alleged violators of the rules of war on her territory and against her people. And if Russia may do this alone, certainly she may concur with other nations who affirm that right.

Thus, Russia'a participation in the formulation of Control Council Law No. 10 is in accordance with every recognized principle of international law, and any attack on that participation is without legal support. The Tribunal also inds and concludes that Control Council Law No. 10 is not only in conformity with International Law but is in itself a highly significant contribution to written International Law.

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from International Law do not apply to individuals. It is a fallacy of no small proportion that international obligations can apply only to the abstract legal entities called States. Nations can act only through human beings, and when Germany signed, ratified and promulgated the Hague and Geneva Conventions, she bound each one of her subjects to their observance. Many German publications made frequent reference to these international pledges. The 1942 edition of the military manual edited by a military judge of the Luftwaffe, Dr. Waltzog, carried the following preface:

"Officers and noncoms have, before taking Law.

Every troop leader has been con questions such as the following:

Am I entitled to take hostages; How do I have to behave if bearing a flag of truce;with a franctireur; What may I do as a permitted ruse of war; What may I requisition; What is, in turn, already looting and, therefore, forbidden;lays down his arms; How should enemy and after they have landed?"

An authoritative collection of German Military Law ("Das gesamte Deutsche Wehrrecht"), published since 1936 by two high government officials, with an introduction by Fieldmarshal von Blomberg, then Reich War Minister and Supreme Commander of the Armed Forces, carried in a 1940 supplement this important statement:

"The present war has shown, even more tries to cause confusion; this is are binding on the German conduct of war."

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imposed by International Law in his very paybook which carried on the first page what was known as "The Ten Commandments for Warfare of the German Soldier". Article 7 of these rules provided specifically:

"The civilian populations should not be "The soldier is not allowed to loot or to destroy."

for their clients, several defense counsel have submitted that this trial in effect represents a trial of the victors over the vanquished. This objection dissolves so quickly under a serious glance that one wonders if it was presented reflectively. In the first place, the defendants are not being tried in any sense as "vanquished individuals" any more than it is to be assumed that a person taken into custory by police authorities is to be regarded as a "vanquished person". Wars are fought between nations as such and not between individuals as such. In war there is no legal entity such as a "defeated individual" just as there is no judicial concept of a "victorious individual". The defendants are in court not as members of a defeated nation but because they are charged with crime. They are being tried because they are accused of having offended against society itself, and society, as represented by international law, has summoned them for explanation. The doctrine that no member of a wronged community may try an accused would for all practical spell the end of justice in every country. It is the essence of criminal justice that the offended community inquires into the offense involved. the Tribunal in this particular phase of the case, as in all phases, reference is made to the speech by Mr. Justice Jackson in the International Military Tribunal trial in which he said:

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"We must summon such detachment and to posterity as fulfilling humanity's aspirations to do justice."

Tribunal says at the termination of the current trial.

Dr. Aschenauer, speaking for the defendant Ohlendorf and such others whose cases fall within the general pattern of the Ohlendorf defense, declared that the majority of the defendants committed the acts with which they are charged -

"(a) In presumed self defense on behalf of a third party.

(Putativnothilfe is the language).(b) Under conditions of presumed necessity danger, (so-called 'Putativnotstand')." committing the acts charged to them, acted in self defense for the benefit of a third party, the third party being Germany.

In developing this theme of defense for Germany, Dr. Aschenauer insisted that this Tribunal apply his interpretation of Soviet Law. One can not avoid noting the paradox of the defendant's invoking the law of a country whose jurisprudence, ideologies, government and social system were all declared antagonistic to Germany, and which very laws, ideologies, government and social system the defendants, with the rest of the German armed forces, had set out to destroy. However, it is the prerogative of Defense Counsel to advance any argument whichhe deems appropriate in behalf of his client and the fact that Dr. Aschenauer considers Soviet Law more modern than German Law cannot fail to be interesting.

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"It has thus achieved the aim which the at for a long time.

Acts of necessity are not he averted by any other means."

be allowed unilaterally to abrogate the laws and customs of war. And it takes no great amount of foresight to see that with such facile disregarding of restrictions, the rules of war would quickly disappear. Every belligerent could find a reason to assume that it had higher interests to protect. As untenable as is such a proposition, Dr. Aschenauer goes even further:

"If the existence of the State or of may act for their protection."

Norway and there kill a Norwegian on the basis that he, the Abyssinian, was motivated only by the desire to protect his country from an assumed aggression by the Norwegian.

And that is not all:

"An error concerning the prerequisites very least -- a mitigating circumstance."

of assumed necessity to protect his nation's interest, but it developed later that he killed the wrong person, he would be absolved because he had simply made a mistake. The fact that this astounding proposition is advanced in all seriousness demonstrates how desperate is the need for a further revaluation of the sacredness of life and for emphasizing the difference between patriotism and murder.

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Dr. Aschenauer does not claim that the actual circumstances supported Staatsnothilfe (defense of endangered State), but he submits that this state of affairs does not render the deeds of the defendants any less legal provided the defendants assumed that conditions existed for the application of the above-mentioned legal concepts. In support of this argument he points out what he regards the objective conditions and the subjective conditions of the German-Russian war:

"The cast European Jewish problem as part of the problem of Bolshevism;origin and import of the defendants' lem 'Bolshevism versus Europe' could only be brought about by a 'solution' execution of the Fuehrer-Order."

this theory.

Dr. Aschenauer's legal position on assumed self defense has been discussed not because it corresponds with any accepted tenets of international law but only for the purpose of demonstrating that under any law the acts of his client and others falling in that category cannot by the widest stretch of the imagination be justified as an act of self defense in behalf of German. cordance with well-established rules. And there is nothing in the most elementary rules of warfare to permit the killing of enemy civilians simply because they are deemed "dangerous". But in killing, e.g., Jews, the defendants did not succor Germany from any real danger, or assumed danger. Although they declared that the Jews were bearers of Bolshevism, it was not explained how they carried that flag. Nor did any one attempt to show how, assuming the Jews to be disposed towards Bolshevism, this per so translated itself into an attack on Germany. The mere adherence to the political doctrine of Bolshevism did not of itself constitute an aggression or potential aggression against Germany.

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circumstances of the German-Russian War, but in point of fact Jews were oppressed in Germany and German-occupied territory long prior to that war. The treatment of Jews by Germany and those representing the Third Reich did not depend on the German-Russian at all. The circumstance that Jews were living in Russia when the German forces invaded Russia was simply a coincidence which did not call for their annihilation. If merely being an inhabitant of Russia made that inhabitant a threat to Germany then the Einsatzgruppen would have had to kill every Russian, regardless of race.

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considered as mortal enemies and subject to exeuction only those Russians who were members of the Communist party, then even according to this theory those Jews who were not members of the Communist Party should have been spared, as were those Russians who were not members of the Communist Party. The record shows, however, that when it came to a Jew, it did not matter whether he was a member of the Communist Party or not. He was killed simply because he was a Jew.

THE PRESIDENT: The presiding Judge continues with the reading of the judgment.

THE PRESIDENT: Mass killings for Ideological Reasons Dr. Reinhard Maurach, Professor Criminal Law and Eastern European Law was called by the defendant Ohlendorf to expound the international law underlying the position of the various defendants maintaining Ohlendorf's view.

Some sections o his treatise, submitted as Ohlendorf Document No. 38, supported the prosecution rather than the defense. On three occasions he condemned mass killings for ideological reasons:

"This is the place to say with special by any 'collective suspicion', of any "It has already been emphasized that "General extermination measures cannot be matter how exceptional."

First he stated that a state of war as such does not vindicae extraordinary actions, but then in a superb demonstration of legal acrobatics he declared that if the war aims of one of the opponents are total, then the opponent is vindicated in claiming self defense and state of necessity, and therefore may introduce the mass killings he had previously condemned.

fact that Germany waged an undeclared war against Russia, that Germany adduced to support the theme that, after being invaded, Russia's actions were such as to call for the executions of which the Prosecution complains. introduced. Among them were documents on the Soviet Foreign Policy, statements emanating from the Kremlin, articles from the Russian Encyclopedia, and speeches made by Stalin. All these exhibits are strictly irrelevant and might well be regarded as a red herring drawn across the trail. But the Tribunal's policy throughout the trial has been to admit everything which might conceivably elucidate the reasoning of the defense. Thus, the excerpt from Stalin's speech of July 3, 1941, quoted in Ohlendorf's document book, will be cited here:

"In the areas occupied by the enemy, trains.

Unbearable conditions must be Germany as an ordinary war.

It is not only a war between two armies.

It is at Troops."

the execution of German prisoners of war or the shooting of wounded persons, or the mass killing of Germans in German territory occupied by Russia, or anything which would justify the allegedly retaliatory killing of non-combatant Jews.

startling features is the manner in which the aggressive war conducted by Germany against Russia has been treated by the Defense as if it were the other way around. Thus, one of the Counsel in his summation speech said:

"However, as was the case in the campaign observed to the letter by this army."

izes the defense of one's country as "cowardly", and the other equally astounding remark that the invader has the right to ignore internaional law. from the charge of killing civilian populations since every Allied nation brought about the death of non-combatants through the instrumentality of bombing. Any person, who, without cause, strikes another may not later complain if the other in repelling the attack uses sufficient force to overcome the original adversary. That is fundamental law between nations as well. Germany under its Nazi rulers started an aggressive war. The bombing of Berlin, Dresden, Hamburg, Cologne and other German cities followed the bombing of London, Coventry, Rotterdam, Warsaw and other Allied cities; the bombing of German cities succeeded, in point of time, the acts discussed here.

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But even if it were German cities without Germans having bombed Allied cities, there still is no parallelism between an act of legitimate warfare, namely the bombing of a city, with a concomitant loss of civilian life, and the premeditated killing of all members of certain categories of the civilian population in occupied territory.

A city is bombed for tactical purposes: communications are to be destroyed, railroads wrecked, ammunition plants demolished, factories razed, all for the purpose of impeding the military. In these operations it inevitably happens that non-military persons are killed. This is an incident, a grave incident to be sure, but an unavoidable corollary of battle action. The civilians are not individualized. The bomb falls, it is aimed at the railroad yards, houses along the tracks are hit and many of their occupants killed. But that is entirely different, both in fact and in law, from an armed force marching up to these same railroad tracks, entering those houses abutting thereon, dragging out the men, women and children and shooting them. distinction between shooting civilians with rifles and killing them by means of atomic bombs. There is no doubt that the invention of the atomic bomb, when used, was not aimed at non-combatants. Like any other aerial bomb employed during the war, it was dropped to overcome military resistance. with the usual bombs or by atomic bomb, the one and only purpose of the bombing is to effect the surrender of the bombed nation. The people of that nation, through their representatives, may surrender and, with the surrender, the surrender, the bombing ceases, the killing is ended. Furthermore, a city is assured of not being bombed by the lawabiding belligerent if it is declared an open city. With the Jews it was entirely different. Even if the nation surrendered they still were killed as individuals.

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of the Jews as Jews in any way subdued or abated the military force of the enemy, it was not demonstrated how mass killings and indiscriminate slaughter helped or was designed to help in shortening or winning the war for Germany. The annihilation of defenseless persons considered as "inferior" in Russia would have had no effect on the military issue of the war. In fact, so mad were those who inaugurated this policy that they could not see that the massacre of the Jews in many instances actually hindered their own efforts. We have seen in the record that occasionally German officials tried to save Jews from extinction so that they could be forced to work for the German war effort. This would have been another war crime but at least it would not have been so immediately disastrous for the victims.

The Einsatzgruppen were out to kill "inferiors" and, first of all, the Jews. But in the documentation of the war crimes trials since the end of the war, no explanation appears as to why, from the viewpoint of the Nazis, the Jew ad to die. In fact, most of the defendants in all these proceedings have expressed a great regard for the Jew. They assert they have admired him, befriended him, and to have deplored the atrocities committed against him. It would seem they were ready to help him in every way except to save him from being killed.

The Einsatzgruppen were told at P*etzsch that "the Jews" supported Bolshevism, but there is no evidence that every Jew had espoused Bolshevism, although, even if this were true, killing him for his political belief would still be murder. As the Einsatzkommandos entered new cities and towns and villages they did not even know where to look for the Jews. They could not even be sure who were Jews. Each Einsatzkommando was equipped with several interpreters, but it became evident throughout the trial that these invading forces did not carry sufficient linguistic talent to cope with the different languages of the States, provinces and localities through which they moved. There can be no doubt that because of the celerity with which the order was executed countless non-Jews were killed on the supposition that they were Jews.

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Frequently the only test applied to determine Judaism Was that of physiognomy. One supports the killing of the Jews or denounces it. If the massacres are admitted to be unsupportable and if the defendants assert that their participation was the result of physical and moral duress, the issue is clear and it becomes only a question of determining how effective and oppressive was the force exerted to compel the reluctant killer. If, however, the defendants claim that the killing of the Jews was justified, but this claim does not commend itself to human reason and does not meet the requirements of law, then it is inevitable that the defendants committed a crime. defenses, and it is the duty of the court to consider them all. But it is evident that the insistence on the part of the defendants that the massacres were justified because the Jews constituted an immediate danger to Germany inevitably weakens the argument that they acted only under duress exerted on them personally; and in turn, the "personal duress" argument enfeebles the "danger to Germany" argument. In two or three instances an attempt was made to show that the Jews in Russia held a high percentage of official positions, a percentage disproportionate to the size of the Jewish population. This was the most common theory utilized in Germany for the oppression and persecution of the Jews. By adducing the same excuse here the defendants involved acknowledged they were putting into physical effect in Russia an antipathy and prejudice already entertained in Germany against the Jewish race. There was no duty and certainly no right on the part of the defendants to go into Russia to equalize the official positions according to the proportion between Jews and non-Jews.

Defense Counsel Dr. Mayer admitted that the Fuehrer-Order violated the recognized laws and customs of war, but urged that Russia was not entitled to protection under international law.

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Apart from the fact that Russia was a party to the Hague Convention of Land Warfare -- in fact, the Hague conference of 1899 was initiated by Russia -- the International Military Tribunal pointed out that the rules of the Hague Regulations have become delcaratory of the Common Law of War. It further disposed of the objection by quoting approvingly from the memorandum issued by the German Admiral Canaris on September 15, 1941, in which he declared that it is contrary to military tradition, regardless of treaty or lack of treaty -

"To kill or injure helpless people."

Dr. Mayer also said, taking the same line as Dr. Maurach:

"If this war was not an unjustified orders given by Hitler."

If Dr. Mayer means this, he collides head-on with a res judicata. The International Military Tribunal, after studying countless documents and hearing numerous direct witnesses of and participants in the event itself, declared:

"The plans for the economic exploita shadow of legal excuse.

It was plain aggression."

of Germany, the genocide program was in no way connected with the protection of the Vaterland, it was entirely foreign to the military issue. Thus, taking into consideration all that has been said in this particular phase of the defense, the Tribunal concludes that the argument that the Jews in themselves constituted an aggressive menace to Germany, a menace which called for their liquidation in self defense, is untenable as being opposed to all facts, all logic and all law.

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THE PRESIDENT: New headings. killings which are the subject of this trial, plead that they were under military orders and, therefore, had no will of their own. As intent is a basic prerequisite to responsibility for crime, they argue that they are innocent of criminality since they performed the admitted executions under duress, that is to say, Superior Orders. The defendants formed part of a military organization and were, therefore, subject to the rules which govern soldiers. It is axiomatic that a military man's first duty is to obey. If the defendants were soldiers and as soldiers responded to the command of their superiors to kill certain people, how can they be held guilty of crime? This is the question posed by the defendants. The answer is not a difficult one. A soldier is a reasoning agent. He does not respond, and is not expected to respond, like a piece of machinery. It is a fallacy of wide-spread consumption that a soldier is required to do everything his superior officer orders him to do. A very simple illustration will show to what absurd extreme such a theory could be carried. If every military person were required, regardless of the nature of the command, to obey unconditionally, a sergeant could order the corporal to shoot the lieutenant, the lieutenant could order the sergeant to shoot the captain, the captian could order the lieutenant to shoot the colonel, and in each instance the executioner would be absolved of blame. The mere statement of such a proposition is its own commentary. The fact that a soldier may not, without incurring unfavorable consequences, refuse to drill, salute, exercise, reconnoiter, and even go into battle, does not mean that he must fulfill every demand put to him. In the first place, an order to require obedience must relate to military duty. An officer may not demand of a soldier, for instance, that he steal for him.

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And what subordinate is not required to do.

Even if the order refers to a offense.

If the nature of the ordered act is manifestly beyond the scope of the superior's authority, the subordinate may not plead ignorance to the criminality of the order.

If one claims duress in the harm which would result from not obeying the illegal order.

It would himself would risk a few days of cinfonement.

Nor if one acts under declared that:

"The true test, which is found in vary possible."

if he executed an order knowing that it "related to an act which obviously aimed at a crime". kingdom of Saxonia in 1867, and of Baden in 1870. Continuing and even extending the doctrine of conditional obedience, the Bavarian Military Penal Code of 1869 went so far as to establish the responsibility of the subordinate as the rule, and his irresponsibility as the exception.

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provided:

"Art. 158: A subordinate who does not carry dination if:

(a) the Order is obviously con Prince of the Land;(b) if the order pertains to an fense is to be recognized."

by legislation, but the Reichstag rejected his proposal and instead adopted the following as Article 47 of the German military Penal Code:

"Art, 47: If through the execution of an responsible.

However, the obeying accomplice:

1) if he went beyond the order

2) if he knew that the order of tary crime or offense."

changing the word "civil" to "general", and as late as 1940 one of the leading commentators of the Nazi period, Professor Schwinge wrote:

"Hence, in military life, just as in i.e., blind obedience, does not exist."

is that a German soldier must obey orders though the heavens fall. The statement has become legendary. The facts prove that it is a myth.

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When defendant Seibert was on the stand, his attorney asked him:

"Witness, do you remember a proverb said out of orders by soldiers?"

And the defendant replied:

"I do not know whether it was William I Emperor used the expression, 'If the to shoot his own parents'." such an order, he would execute it.

To the surprise of everybody he replied that he did not know. He declined to answer until he should have time to consider the problem. The Tribunal allowed him until the next morning to deliberate, and then the following ensued:

"Q. Now, if in accordance with this declara would you do so?

A. I would not do so.

Q. Then there are some orders which are isued by the Chief of State which may be disobeyed?

A. I did not regard this as an order by the a son to shoot his own parents.

I imagine it only as follows, Your Honor:

if I am an this village.

This is the only way in which Q. ..So. therefore, if you received such an order to obey it?

You would not obey it?

A. I would not have obeyed such an order.

Q. Suppose the order came down for you to us say, a Jew and his wife.

And in your ents.

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Now, it is established beyond any absolutely guiltless, belmishless.

The they are Jews.

And you have this order Would you shoot the parents?

A. I would not shoot these parents."

Then, in summing up, the witness was asked:

"And, therefore, as a German officer, obey that order?"

And the answer was:

"I answered your example affirmatively, I said 'Yes, I could not have obeyed'."Although Defense Counsel's query intended to establish the utter helplessness of a German soldier in the face of a superior command, the inquiry finally resulted in the defendant's declaring that he would not only ignore the order of the supreme war lord to shoot his own parents, but also to shoot anybody else's parents.

He thus demonstrated that under his own interpretation of German Mlitary Law, he did have some choice in the matter of obeying Superior Orders. Why then did he participate in the execution of the parents of other people? Why did other defendants do the same if they had a choice, as the defendant Seibert indicated?

THE PRESIDENT: Judge Speight will continue with reading of the judgment.

JUDGE SPEIGHT: Subject: rance of their illegality. The sailor who voluntarily ships on a pirate craft nay not be heard to answer that he was ignorant of the probability he would be called upon to help in the robbing and sinking of other vessels.

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He who willingly joins as illegal enterprise is charged with the natural development of that unlawful undertaking What SS man could say that he was unaware of the attitude of Hitler toward Jewry? in its 25 point program, which was never changed, its opposition to Jews and declared that a JEw could never be an equal citizen. Mein Kampf was dedicated to what may be called the "Master Race" theory, the doctrine of Aryan superiority over all other races. When the Nazis seized power in 1933, persecution of the Jews became an official state policy. Then in September 1935 came the well-known Nuremberg Laws which among other thin s deprived the Jews of German citizenship.

Mein Kampf was not a private publication. Its brazen voice rang throught Germany. One passage Was proclaimed over and over:

"The soil on which we now live was not fathers.

They had to conquer it by risking their lives.

So also in the of a triumphant sword."

the Jews. "Der Stuermer" and other publications spread the verbal poison of race hatred. Nazi leaders everywhere vilified the Jews, holding them up to public ridicule and contempt. In November 1938 an SS inspired and organized hoodlumism fell upon the Jews of Germany: synagogues were destroyed, prominent Jews were arrested and imprisoned, a collective fine of one billion marks was imposed, ghettos Were established, and now the Jews were compelled on orders of the Security Police to wear a yellow star on their breast and back.

Did the defendants not know of these things? Could they express surprise when, after this unbroken and mounting program of violence, plans were formulated for the "final solution of the Jewish problem"? extermination program or, if they did, they were not in accord with the sentiments therein expressed.

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But again, a man who sails under the flag of skull and cross-bones cannot say that he never expected to fire a cannon against a merchantman.

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When Bach Zelewski, SS General and many years member of the Party, was asked to explain the phenomenon of the Einsatzgruppen killings, he replied:

"I am of the opinion that when, for years, decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable." was not criminal. Although this proposition is at first blush opposed to all common sense, contrary to natural human reactions and out of harmony with the rudimentary law of cause and effect, yet it has been presented seriously by the defendants and in fact constitutes the major item of defense. Therefore, it cannot simply be dismissed as intolerable; reasons must be advanced as to why it is intolerable. of all grey-eyed people, regardless of age, sex or position. So long as the iris of the eyes responded to those light rays in the spectrum which make up grey, the possessor of such eyes was estined for evil days. Character, occupation and health could not influence nor could religion, politics and nationality alter the predetermined doom. The farmer at his plow, the teacher at her desk, the doctor at the bedside, the preacher in his pulpit, the old woman at her knitting, the children playing in the yard, the cooing infant at the mother's breat -- would all be condemned to death, if they saw the wondering world through the tell-tale grey eyes. a family, whose members, because of that unfathomable selection of life's chemicals and inscrutable mixing in the mystic alembic of time, all have grey eyes. Suddenly comes a thunderous knocking and the door bursts open. Steel-helemeted troopers storm in and with automatic guns and drawn pistol order the dismayed occupants into the street.

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faces of mother and sister, the biting of lips of the helpless father and brother, the wild tramping of the invaders' boots through the house, the overturning of furniture, the smashing into cupboards, attics, wardrobes seeking out the hidden, horrified Grey-Eyed. The tearful farewell to home, the piling into the waiting truck of the pitiful family possessions, the bewildered mounting of the doomed Grey-Eyes. The truck rumbles forward, stops to pick up other Grey-Eyes and still more GreyEyes in the market square, at the corner store, in the parish church. are waiting chalk-faced, mute, staring at each other. The unloading of the truck, the guttural command to line up with the others. Then the red-mouthed machine rifles speaking their leaden sentences from left to right and from right to left. The villagers falling, some cut in two, others with blood flowing from their mouths and eyes, those grey eyes, pleading for understanding, for an explanation as to why? why? Others only wounded but piled into a ditch already dug behind them. The shooting party rides away, piteous hands uplift from the uncovered grave, we hear a moaning which, at times, decreases to a murmur, then mounts to a wail, then ceases altogether. and incredible than what has happened innumerable times in this very case. If one substitutes the word Jew for Grey-Eyed, the analogy is unassailable. ordered to kill the grey-eyed population, they would have balked and found no difficulty in branding such an act as a legal and moral crime. If, however, fifteen years before, the Nazi Party program had denounced all grey-eyed people and since then the defendants had listened to Hitler vituperating against the Grey-Eyes, if they had seen shops smashed and houses destroyed because Grey-Eyes had worked and lived there; if they had learned of Himmler's ordering all Grey-Eyes into concentration camps, and then had heard speeches in Pretzsch wherein the mighty chieftains of the SS had declared that all Grey-Eyes were a menace to Germany -- if this had happened, can we be so certain that the defendants would not have carried out a Fuehrer-Order against grey-eyed people?

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And in that event, would there not have been the same defense of Superior Orders? did not come to pass, the defendants can denounce, as we assume they would, this hypothetical massacre, how can they less denounce a slaughter which did occur and under circumstances no less harrowing than the one pictured only for the purpose of illustration? it was entirely different with the Jews. They were bearers of Bolshevism. If that was their guilt, then the fact that they were Jews was only incidental. They were being exterminated not because of Judaism but because of Bolshevism. If by that argument they mean that a Jew was to be executed only because he was a Bolshevik, why was it to be assumed that a Russian Jew was any more bolshevistic than a Russian Russian? Why should Alfred Rosenberg, chief Nazi philosopher, be less inclined biologically to Communism than his obscure Jewish namesake and neighbor? What saved Benjamin Disraeli, leader of the Conservative Party and several times prime minister of Great Britain, from being a Bolshevist? And had he lived in 1941, would Hitler have declared him a carrier of Bolshevism? simply destined to be Bolshevistic, but it is a demonstrable truism that, if the einsatzkommandos themselves had adopted Jewish babies, those babies would have grown up to be staunch SS men. In point of fact, during the war, thousands of Czech, polish, Russian, and Yugoslav children were taken into Germany to be reared as Germans. No one knows how many Jewish offspring were included in these carloads of kidnapped children because it was seriously assumed that so long as they were blonds they could not belong to the hated race.

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written by one of the defendants in which he quoted from Heydrich:

"Many of the Jews listed in your register are already known for continually trying to deny that they belong to the Jewish race by all possible and impossible reasons. It is, on the whole, in the nature of the matter that half-breeds of the first degree in particular try at every opportunity to deny that they are Jews.

"You will agree that in the third year of the war, there are matters of more importance for the war effort, and for the Security Police and the Security Service as well, than worrying about the wailing of Jews, making tedious investigations and preventing so many of my co-workers from other and much more important tasks. If I started scrutinizing your list at all, I only did so in order to refute such attacks by documents once and for all.

" I feel sorry to have to write such a justification six-and-ahalf years after the Nuremberg Laws were issued. The defendant noted in his letter his enthusiastic accord with the sentiments expressed by Heydrich and added on his own that consideration for the Jews was "softness and Humanitarian day-dreaming". He also declared that it was unthinkable that a German should listen to Mendelssohn's music, and, to hearken to Offenbach's "Tales of Hoffman", simply revealed ignorance of National Socialistic ideals. Yet, he saw nothing unidealistic about invading the office of his superior, the General Commissioner of White Ruthenia, trained in the same school of Nazi idealism, entered a complaint against the defendant's action, not because seventy innocent human beings had been killed but because a subordinate had dared to come into his office and shoot his Jews without telling him about it. the propriety and correctness of removing gold fillings from the teeth of the Jews designated for killing.

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obvious, but perhaps it is not so obvious. Otherwise the arguments by and on behalf of the defendants might not have been presented with such insistence. Furthermore, this is the time and place to settle definitively, insofar as it is part of the issue in this trial, the business of the so-called Jewish problem. to be considered on either side. But what in Nazi Germany was so delicately called the "Jewish problem", was a program, that is, an antiJewish program of opporession leading finally to extermination. The socalled Jewish problem was not a problem but a fixation based upon the doctrine that a self-styled "master-race" may exterminate a race which it considers inferior. Characterizing the same proposition as the "Jewish meance " is equally devoid of sense. In fact, if it were not so tragic, the National Socialistic attitude toward the Jews could only be considered nonsensical. the Crimea. In the same area they came across a sect known as Karaimians. The Karaiminas resembled the Krimtschaks in that they shared the same Jewish religion. However, the ethnic experts in Berlin after some kind of study, concluded that the Karaiminas had no Jewish blood in their veins and were, therefore, exempt from the extermination order. Thus, although the Karaimians had Jewish religion in their souls, they did not have that kind of corpuscles in which the seeds of Bolshevism ride. Hence they had the right to live. If one can picture an einsatz unit rounding up the worshippers in a synagogue and distinguishing the Karaiminas from the Krimtschaks, releasing the former and killing the latter, one is privileged to decide whether the Nazi attitude toward Jewry was not something which could well fall into the category of nonsense, that is, tragic nonsense. with Hebrew arteries. Although any other person could change his religion, politics, allegiance, nationality, yet, according to the National Socialist ideology, there was nothing the Jew could do.

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It was a matter of blood, but no one has testified as to the omniscient wisdom which counted and evaluated the offending corpuscles.

PRESIDING JUDGE: We will now take a recess of 15 minutes.

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THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: Judge Speight continues with the reading of the Judgment.

JUDGE SPEIGHT: One thing can be said about the Fuehrer Order. It was specific, it was unambiguous. All Jews were to be shot. And yet, despite the unambiguity of this order, in wpite of the unappealable and infallible pronunciamento that Jews were absolutely outside the pale, defendant after defendant related his great consideration for the Jew. Scores of affidavits were submitted, in behalf of nearly all the accused, demonstrating their generous conduct towards some individual Jews in Germany. One of the defendants related, in a pre-trial interrogation, how he had even lived with a Jewish woman. He wished to prove by this that he was entirely devoid of prejudice. equals in Germany, why did they consider them sub-human in Russia? If they did not recognize them as a potential danger in Germany, why should they regard them as a threat in the Crimea 2,000 miles away? It is not too much to say that most of the Jews did not know of Hitler and his doctrines until the Einsatzgruppen arrived to kill them. systematic attempts to destroy the graves of the slain as described in official German documents are interesting in that they shed some light on the mental attitude of the executioners. Did they regard the executions as culpable acts, ocular evidence of which should be destroyed? The defendant Blobel in his affidavit, signed June 18, 1947, stated that in June 1942 he was entrusted by Gruppenfuehrer Mueller with the task of removing the traces of the executions carried out by Einsatzgruppen in the East. He leaves nothing to the imagination:

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"I muself witnessed the burning of corpses in a mass grave near Kiew, during my visit in August.

This grave was about 55 m long, 3 m wide, and 2 1/2 deep.

When the cover set on fire.

It took about two days for the grave to burn down.

I myself saw that the grave became red-hot right down to the ground.

After the grave was filled "Owing to the approach of the front, it was not possible gruppen."

out the incriminating evidence of the killings, that he even tried to destroy the corpses by means of dynamite. Rudolf Hoess, Commandant of the Auschwitz concentration camp, who supervised these experimentations, stated that the dynamiting method was not successful:

"Blobel constructed several experimental ovens and used wood and gasoline as fuel.

He tried to destroy the corpses by means of dynamiting them, too; this method was rather unsuccessful."

Hence other means were used:

"The ashes, ground to dust in a bone mill, were thrown in the vast forests around.

Staf. Blobel had the order and to eliminate them.

... The work itself was carried out ular task, were shot.

Concentration camp Auschwitz had to furnish continuously Jews for this kommando."

realizes that the act he is called upon to perform is a crime, he may not refuse its execution without incurring serious consequences, and that this, therefore, constitutes duress. Let it be said at once that there is no law which requires that an innocent man must forfeit his life or suffer serious harm in order to avoid committing a crime which he condemns. The threat, however, must be imminent, real and inevitable. No court will punish a man who, with a loaded pistol at his head, is compelled to pull a lethal lever. Nor need the peril be that imminent in order to escape punishment. But were any of the defendants coerced into killing Jews under the threat of being killed themselves if they failed in their homicidal mission?

The test to be applied is whether the subordinate acted under coercion or whether he himself approved of the principle involved in the order. If the second proposition be true, the plea of Superior Orders fails. The doer may not plead innocence to a criminal act ordered by his superior if he is in accord with the principle and intent of the superior. the execution of the illegal act, the doer may not plead duress under Superior Orders. are pooled in the planning and execution of an illegal act, the subordinate may not subsequently protest that he was forced into the performance of an illegal undertaking. act. It does not mean superiority only in rank. It could easily happen in an illegal enterprise that the captain guides the major, in which case the captain could not be heard to plead Superior Orders in defense of his crime. of the illegal order, that the order is obviously but one further logical step in the development of a program which he knew to be illegal in its very inception, he may not excuse himself from responsibility for an illegal act which could have been foreseen by the application of the simple law of cause and effect. From 1920, when the Nazi Party Program with its anti-Semitic policy was published, until 1941 when the liquidation order went into effect, the evermounting severity of Jewish persecution was evident to all within the Party and especially to those charged with its execution. One who participated in that program which began with Jewish disenfranchisement and depatriation and lead, step by step, to deprivation of property and liberty, followed with beatings, whippings, and measures aimed at starvation, may not plead surprise when he learns that what has been done sporadically, namely, murder, now is officially declared policy.

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On January 30, 1939, Hitler publicly declared in a speech to the Reichstag that if war should come it would mean "the obliteration of the Jewish race in Europe". expected to anticipate what the enterprise will logically lead to. opposition of the doer must be constant. It is not enough that he mentally rebel at the time the order is received. If at any time after receiving the order he acquiesces in its illegal character, the defense of Superior Orders is closed to him. order when they first heard it. This assertion is, of course, contradicted by the other assertion made with equal insistence, and already disposed of, that the Fuehrer Order was legal because the ordered executions were needed for the defense of the Fatherland. But if they were shocked by the order, what did they do to oppose it? Many said categorically that there was nothing to do. It would be enough, in order to escape legal and moral stigmatization to show the order was parried every time there was a chance to do so. The evidence indicates that there was no will or desire to depreciate its fullest intent. When the defendant Braune testified that he inwardly opposed the Fuehrer Order, he was asked as to whether, only as a matter of salving his conscience in the multiplicitous executions he conducted, he ever released one victim. The interrogation follows:

"Q. But you did not in compliance with that order attempt woman or child?

A. I have already said that I did not search for children.

I can only say the truth. There were no exceptions, and I did not see any possibility."

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if one will. But it may not be lightly charged with inefficiency. If any of these kommando leaders had stated that they were constitutionally unable to perform this cold-blooded slaughter of human beings, it is not unreasonable to assume that they would have been assigned to other duties, not out of sympathy or for humanitarian reasons, but for efficiency's sake alone. In fact Ohlendorf declared on this very subject:

"In two and a half years I had sufficient occasion order in their inner opinion.

Thus, I forbade the some of these men, and I sent some back to Germany."

by refusing cooperation with the Army. He testified that the Chief of Staff in the field said to him that if he, Ohlendorf, did not cooperate, he would ask for his dismissal in Berlin. declared that all those who could not reconcile their conscience to the Fuehrer Order, that is, people who were too soft, as he said, would be sent back to Germany or assigned to other tasks, and that, in fact, he did send a number of people including commanders back to the Reich. pointed out, but it is not enough for a defendant to say, as did Braune and Klingelhoefer, that it was pointless to ask to be released, and, therefore, did not even try. Exculpation is not so easy as that. No one can shrug off so appalling a moral responsibility with the statement that there was no point in trying. The failure to attempt disengagement from so catastrophic an assignment might well spell the conclusion that the defendant involved had no deep-seated desire to be released. He may have thought that the work was unpleasant but did it nonetheless. Even a professional murderer may not relish killing his victim, but he does it with no misgivings. A defendant's willigness may have been predicated on the premise that he personally opposed Jews or that he wished to stand well in the eyes of his comrades, or by doing the job well he might earn rapid promotion.

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The motive is unimportant if he killed willingly. driving through the country, Blobel pointed out to him a long grave and said: "Here my Jews are buried." One can only conclude that Blobel was proud of what he had done. "Here my Jews are buried". Just as one might speak of the game he had bagged in a jungle. they were straight-jacketed in their obedience to Superior Orders, the majority of them have, with testimony and affidavits, demonstrated how on numerous occasions they opposed decrees and orders handed down by their superiors. In an effort to show that they were not really Nazis at heart, defendant after defendant related his dramatic clashes with his superiors. If one concentrated only on this latter phase of the defense one would conclude that these defendants were all ardent rebels against National Socialism and valiantly fought against the inhuman proposals put to them. Thus, one affiant says of the defendant Willy Seibert that he "was strongly opposed to the measures taken by the Party and the government".

Of Steimle an affiant said: "Many a time he opposed the Party agencies and so-called superior leaders." Another affidavit not only states that Steimle opposed violence but that in his zeal for justice he shrewdly joined the SD in order to be able "to criticize the shortcomings in the Party". Again it was stated that "repeatedly his sense of justice led him to oppose excesses, corruptions and symptoms of depravity by party-officers."

Of Braune an affiant states, "over and over again Dr. Braune criticized severely our policy in the occupied territories (especially in the East, Ukraine and Baltic States)". opposition to tyranny and injustice in his own camp. He bitterly opposed the Reich Kommissar Terboven, cancelled his orders, condemned large-scale operations, released hostages and freed the Norwegian State Minister Gerhardsen.

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One affidavit said that in these actions "Braune nearly always went beyond his authority". And yet in spite of this open rebellion Braune was not shot or even disciplined. Why is it that in Norway he acted so differently from the manner in which he performed in Russia? Was he more the humanitarian in Norway? The answer is not difficult to find. One of the affiants very specifically states:

"Right from the beginning of our conferences, Braune Fehlis continually carried out.

He did not expect danger of increasing their spirit of resistance."

agree with them. But when they ideologically espoused an order such as the Fuehrer Order they had no interest in opposing it.

THE PRESIDENT: Judge Dixon will continue with the reading of the Judgment. German court. In 1921 two officers of the German U-boat 68 were charged with violation of the laws of war in that they fired at and killed unarmed enemy citizens seeking to escape from the sinking Hospital Ship H.M.S. Llandovery Castle. The defendants pleaded lack of guilt in that they had merely carried into effect the order given them by their commander, First Lieutenant Patzig. The German Supreme Court did find as a fact that Patzig ordered his subordinates Diethmar and Boldt to fire at the life boats, but it adjudicated them guilty nonetheless, stating:

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"It is certainly to be ordered in favor of any doubt whatever against the law.

This less people.

They quickly found out the boats when these were stopped.

They could obey.

As they did not so they must be punished."

for the defense asked in behalf of their clients: What could they have done? After all, the defendants were soldiers and were required to obey orders. Ordinarily, in war, the proposition of unquestioning obedience involves a set of circumstances which subjects the subordinate to the possibility of death, wounding or capture. And it is tradional in such a situation that, in consonance with the honor of his calling, the soldier does not question or delay but sets out stoically to face the peril and even self-immolation. Lord Tennyson immortalized this type of glorious self-sacrifice when he commemorated the Cavalry Charge at Balaklava in the Crimea:

"Theirs not to make reply, Theirs but to do and die."

fate, were operating in the same Crimea and surrounding territory about one hundred years later, were not, however, facing the same situation which confronted Tennyson's Light Brigade. The einsatz battalions were not being called upon to face shot and shell.

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They were not ordered to charge into the mouths of cannon. They were called upon to shoot unarmed civilians standing over their graves. one-sided a battle. No soldier could be accused of cowardice in seeking relief from a duty which was, after all, not a soldier's duty. No soldier or officer attempting escape from such a task would be pleading avoidance of a military obligation. He would simply be requesting not to be made an assassin. And if the leaders of the Einsatzgruppen had all indicated their unwillingness to play the assassin's part, this black page in German history would not have been written. relieved? They could have been less zealous in the execution of the inhuman order. Whole populations of cities, districts and wide lands were within their power. No Roman emperor had greater absolutism of decision over life and death than they possessed in their areas of operation. They were not ordered within any given town to shoot a precise number of people and a fixed number of women and children. But men like Braune could see no reason for making exceptions. to avoid the order by subterfuge, because had they done so, their successors would accomplish the task and thus nothing would be gained anyway. The defendants are accused here for their own individual guilt. No defendants knows what his successor would have done. He could possibly have also indicated his reluctance and with a succession of refusals properly submitted, the order itself might have lost its efficacy. But in any event no execution would have taken place that day. One defendant stated that to have disobeyed orders would have meant a betrayal of his people. Does he really mean that the German people, had they known, would have approved of this mass butchery? a little garden in which to grow a plant or two than the promise of vast lands beyond the horizon, will here learn how they were betrayed by their supposed champions.

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Here they will also learn of the inhumanity and the oppression and the shedding of innocent blood committed by the regime founded on the Fuehrer prinzip.

In his attack on Control Counsil Law No. 10, Dr. Mayer declared that it invalidates two fundamental principles of the legal systems of all civilized nations:

"(1) The principle: nulla poena sine lege.

(2) Validity of the excuse of having acted under order."

The Tribunal has already disposed of objection number 1. Objection number 2 is no more convincing than was objection number 1. Law No. 10 does not invalidate the excuse of Superior Orders. It states:

"(b) The fact that any person acted pursuant in mitigation."

Dr. Mayer, like others, misreads this provision and substitutes for the word " crime" some other word, possibly "act". This makes the provision to read that anyone acting pursuant to the orders of his Government or superior does not free himself from responsibility for any act". But the provision specifically states "crime". Unless it is established that the deed in question is a crime then naturally there needs to be no explanation for its commission. If, however, the act is a crime then there can be no excuse for its commission. No superior can authorize a crime. No one can legalize what is demonstrated categorically and definitely to be a crime. prove that the acts of the Einsatzgruppen were not crimes, that they were acts of self defense committed in accordance with the rules of war. If, however, it is proved that they were crimes, then, naturally, the approval of another criminal would not make the acts any the less crimes.

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Once it is juridically established that a certain act is a crime, then all those who participated in it, both superior and subordinates are accomplices. offense it was? Hitler was not above International Law. Let us suppose that in 1935 Hitler ordered one of his men to go to Siam and there assassinate its King. Would it be argued that the assassin in that situation would be inmmune because acting under Superior Orders? Any judicial inquiry would establish that the Siam assassin had committed a crime and the fact that he had acted in pursuance to the order of his Government or a superior could not possibly free him from responsibility for the crime. This is exactly what Control Council Law No. 10 says, and this is what the law has always said, or ever since there was International Law. goes much farther than Control Council Law No. 10. Under the German Code the subordinate may be convicted even if no crime was actually committed. It is sufficient if the order aims at the commission of a crime or offense. The German Code makes the obeying subordinate responsible even for any "civil" or "general offenses", i.e. for comparatively insignificant breaches of law which are not contemplated in the Allied law. Nor does the German Code, as contrasted to the Allied law, mention the defense of Superior Orders as a possible mitigating circumstance. of Land Warfare in support of their position on Superior Orders. The section in question, after listing various offenses against the rules of warfare, declares:

"..... Individuals of the armed forces will whose hands they may fall."

"individuals" is intended to apply to individuals who make up a military unit, that is, ordinarily, soldiers of lower rank. It applies naturally also to officers, but only provided they are serving under another officer of a higher rank. Unless one accepts this meaning the word "commanders" appearing in his second sentence would be entirely elusive as to its significance. But it is to be noted that in square juxtaposition to the men (and perhaps officers) who make up the military unit, the Article puts the "commanders" of such units; and by "commanders" is obviously meant the officers pr acting officers, in charge of any armed unit. ion, and the captain of a company, the sergeant or 2nd lieutenant may be in charge of a platoon. If the unit commander were not responsible, and the responsibility climbed upward from grade to grade, the result would be that the only one who could ever be accountable for an illegal order would be the chief executive of the nation, that is, the President, King or Prime Minister, depending on the country involved. That such singular responsibility was not intended is evidenced in the use of the plural "commanders" instead of the singular "commander". Making this meaning absolutely clear, the provision specifically mentions two types of "commanders" who are to be held responsible:

(a) commanders who order their units to commit war crimes; and (b) commanders if the troops under their authority be responsible -- whether he gives the order to commit war crimes, or whether the troops under his authority commit them at the behest of somebody else, since he has the control over the troops and is responsible for their acts.

of einsatz units, they clearly would fall within the provisions of Article 347, American Rules of Land Warfare. This Article 347 was repealed in 1944, but it has here been discussed at length because Defense Counsel made much of it, and because it was still law at the time the Einsatzgruppen were operating. Article 347, reference is made to Article 64 of the American Articles of War which announces punishment for the disobedience of any lawful command of a superior officer. Obviously if the order is unlawful he may not be punished for refusing to obey it. ted as it had been made by some legal commentators. In considering the law in this matter we must keep in mind that fundamentally there are some legal principles that stand out like oak trees. Much underbrush has grown up in the vicinity and they seem to confuse the view. But even the most casual observation will catch on the legal landscape these sturdy oaks which announce that:

1. Every man is presumed to intend the consequences of 2. Every man is responsible for those acts unless it be 3. Deciding the question of free will, all the circum impossible to read what is in a man's heart.

Dr. Aschenauer correctly referred to one of these trees in Lord Manfield's charge to the jury in Stratton's case, (1780) Howell, State Trials, Vol. 21, p. 1062-1224:

"A state of emergency is a reason for tended it.

If there is irresistible, has no volition with regard to the deed."

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Was there irresistible, physical duress? Was there volition with regard to the deed? The answering of these two questions will serve as safe guides in applying the criteria herein announced in the discussion on the subject of Superior Orders. they were in no way involved in the homocidal operations of the einsatz units. These denials of participation took various forms. It was stated that the defendant, although traveling with the kommando, never learned of executions and certainly did not participate in them, it was asserted that, although the defendant participated in executions, the executees were partisans, saboteurs, looters, end the like; and it was also claimed on behalf of some of the defendants that, although they actually ordered and supervised executions, these executions always followed an investigation in the case involved. No one was shot unless he was proved guilty of a crime.

How thorough were these investigations if and when they took place? An order issuing from the Fuehrer's headquarters on June 6, 1941 -that is, 15 days before the beginning of the Russian war -- spoke of the conduct of the German forces entering Russia, One paragraph discussed the disposition of political commissars who "for the time being" were not to be executed unless they committed or were suspected of hostile acts. Then came this very significant instruction:

"As a matter of principle in deciding the be improvable."

execute a man more on his looks than on evidence. One of the defendants corroborated this practice. He was asked what he would do if he came upon a person speaking to four or five people in a room, advocating Communism but in no way opposing the Germans. The defendant replied:

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"I would have got a look at the man, and if I I would have had him shot.

The actual speech cally."

He was asked further:

"So that you would listed to the speech and have him shot.

That is what we understood by your answer?"

And the reply was a categorical "Yes". quiries for the purpose of obtaining from the victim information which would enable the executioners to locate and seize other victims. For instance, the defendant Ott testified from the witness stand, as will be noted later, how arrested persons were arrested, "investigated", and shot. soldiers and that their only job was combat. But if the job with the

Einsatzgruppen was strictly military, why did the High Command not send military men to do it? Why did they choose Ohlendorf who had had no military training of any kind to head a military organization? Very few of the kommando leaders had been soldiers, and the brief three or four weeks' training at Pretzsch, prior to marching into Russia, consisted only of drilling and target practice on the rifle range. It is obvious that they were being sent into Russia not as combat soldiers, but as ideological exponents. In the field they were a travelling RSHA, they were a Gestapo on wheels.

Report No. 128 describes the executions by Einsatzgruppe C of 80,000 persons and explains that 8,000 of them were "convicted of anti-German or Bolshevistic activities".

The report goes on further to say:

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"Even though approximately 75,000 Jews the Jewish problem."

had achieved a complete liquidation of the "Jewish problem, and that, in the larger cities, after executions, all Jews had disappeared". It is evident from this statement that the main objective of the kommandos was to kill Jews, not partisans. United States Basic Field Manual, Rules of Land Warfare:

"If the people of a country, or any portion tection."

Dr. von Stein, however, failed to show that the people in the respective German-occupied areas took part in any uprising. On the contrary, it was the einsatz leaders who attempted to stir up popular tumult by instigating pogroms. served in Russia, he never saw a Jew, and that he never heard of the Fuehrer-Order. Although his kommando, prior to his arrival in Russia, had admittedly slaughtered thousands of Jews, no one ever told him of this nor did he ever hear of it. This is simply incredible. And, in support of this admittedly incredulous utterance, an even more extraordinary assertion was made by his attorney, namely, that Heydrich was anxious for Haensch not to know about these things since they had nothing to do with his work in Berlin. his kommando had killed 10,000 to 15,000 people, his attorney declared in a final summation that Blobel's duties were purely administrative-adding, to be sure that these administrative duties were to be interpreted in their "widest sense".

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One of Blobel's administrative duties was to conduct executions. History will be his debtor for the authoritative account he rendered on mass-executions from the standpoint of the spirit and philosophy of slayer and slain. He was asked at the trial whether the doomed, as they were being led to their waiting graves, ever attempted to break away before the shots were fired. He replied that there was no resistance and this surprised him greatly. The following interrogation then occurred:

"Q. You mean that they resigned themselves easily to what was awaiting them?

A. Yes, that was the case. That was the case with these people.

Human life was not as valuable as it was with us.

They did not care so much.

They did not know Q. In other words, they went to their death quite happily?

A. I would not say that they were happy.

them. Of course, they were told what Q. And did that make the job easier for you, the fact that they did not resist?

A. In any case the guards never met any re Everything went very quietly.

It took Q. In other words, your pity was more for victims?

A. Our men had to be cared for.

Q. And you felt very sorry for them?

A. Yes, these people experiences a lot, psychologically."

Thus, to murder was added criminal impertinence. The victim is shown to be inhuman while the executioner is to be pitied. The condemned is put in the wrong and the slayer in the right. A person is robbed of his all -- his very life -- but it is the assassin who is the sufferer.

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To these people "human life was not as valuable as it was to us". Thus we behold the moral supremacy of the murderer over the depravity of the massacred. "Our men who took part in the executions suffered more from nervous exhaustion that those who had to be shot." "administrative duties" of one of the leaders of the Einsatzgruppen in land not his own.

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Court No. II, Case No. IX executions, explained that they had not killed any innocent persons but had merely shot partisans, to be sure, not in combat, but punitively.

This bald statement in itself does not suffice to exonerate one from a charge of unlawful killings. Article I of the Hague Regulations provides:

"The laws, rights, and duties of war ing the following conditions:

1. To be commanded by a person responsible for his 2. To have a fixed distinctive emblem recognizable 3. To carry arms openly; and 4. To conduct their operations in accordance with the laws and customs of war."

an armed civilian found in a tree top sniping at uniformed soldiers, is not such a lawful combatant, and can be punished even with the death penalty, if he is proved guilty of the offense. fighters in the war against an invading army, if they fully comply with the conditions just mentioned, can be put outside the law by the adversary. As the Hague Regulations state expressly, if they fulfill the four conditions, "the laws, rights and duties of war" apply to them in the same manner as they apply to regular armies. characterizing a person a partisan he may be shot out of hand. But it is not so simple as that. If the partisans are organized and are engaged in what International Law regards as legitimate warfare for the defense of their own country, they are entitled to be protected as combatants.

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Court No. II, Case No. IX Einsatzgruppen operated, the so-called partisans had wrested considerable territory from the German occupant, and that military combat action of some dimensions was required to re-occupy those areas.

In belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control. This can be seen from Article 42 of the Hague Regulations which grants certain well limited rights to a military occupant only in enemy territory which is "actually placed" under his control. to the enemy, he is not carrying out a police performance but a regular act of war. The enemy combatants in this case are, of course, also carrying out a war performance. They must, on their part, obey the laws and customs of warfare, and if they do, and then are captured, they are entitled to the status and rights of prisoners of war. in evidence in this case, show, however, that combatants were indiscriminately punished only for having fought against the enemy. This is contrary to the law of war.

THE PRESIDENT: The Presiding Judge continues with the reading.

From time to time the word "reprisals" has appeared in the Einsatzgruppen reports. Reprisals in war are the commission of acts which, although illegal in themselves, may, under the specific circumstances of the given case, become justified because the guilty adversary has himself behaved illegally, and the action is taken in the last resort, in order to prevent the adversary from behaving illegally in the future. Thus, the first prerequisite to the introduction of this most extraordinary remedy is proof that the enemy has behaved illegally. While generally the persons who become victims of Court No. II, Case No. IX the reprisal are admittedly innocent of the acts against which the reprisal is to retaliate, there must at least be such close connection between these persons and these acts as to constitute a joint responsibility.

Article 50 of the Hague Regulations states unequivocally:

"No general penalty, pecuniary or otherwise, and severally responsible."

in alleged reprisal for the killing of 21 German soldiers near Topola, were taken from concentration camps in Yugoslavia, hundreds of miles away, it is obvious that a flagrant violation of International Law occurred and outright murder resulted. That 2,100 people were killed in retaliation for 21 deaths only further magnifies the criminality of this savage and inhuman so-called reprisal.

Hyde, International Law, Vol. III, page 35, has this to say on reprisals:

"A belligerent which is contemptuous of like, lacks the requisite excuse."

or members of the population did commit acts which were in themselves unlawful under the rules of war, it would still have to be shown that these acts were not in legitimate defense against wrongs perpetrated upon them by the invader. Under International Law, as in Domestic Law, there can be no reprisal against reprisal. The assassin who is being repulsed by his intended victim may not slay him and then, in turn, plead self-defense. wrong for which they are to retaliate. The British Manual of Warfare, after insisting that reprisals must be taken only in last resorts, states:

Court No. II, Case No. IX "459.

....Acts done by way of reprisals mitted by the enemy."

Similarly, Article 358 of the American Manual states:

"(b) When and how employed:

(c) Form of reprisals:

reprisals.....should not be ex violations committed by the enemy."

quotes General Halleck on this subject:

"Retaliation is limited in extent by barous cruelty."

(Stowell American Journal of International Law, Vol.

36, p. 671) to the extent to which they respected the limitations laid down by International Law on reprisals in warfare.

follows:

"At the trial of any individual member bunal may declare (in connection with convicted) that the group or organiza member was a criminal organization."

organizations declared criminal by the International Military Tribunal was to be considered proved and not to be questioned in any succeeding proceedings. Control Council Law No. 10 defined membership in any Court No. II, Case No. IX organization declared criminal by the International Military Tribunal as a crime.

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a great deal of space to the discussion of Count III in the Indictment. To the extent that the discussion has to do with the facts, it is welcome and helpful. So far as the law on the subject is concerned, it has been stated completely and definitively by the Judgment of the International Military Tribunal and therefore needs no amplification here. The International Military Tribunal declared the SS, SD and the Gestapo to be criminal organizations within the purview of the London Charter. The pertinent provisions of that Judgment declaring these organizations criminal and defining the categories of membership therein, follow:

(At this point the following was not read but at the direction of the President is included in the transcript:)

"The SS was utilized for purposes which ers of war.

....In dealing with the SS the "The Tribunal declares to be criminal Court No. II, Case No. IX ted no such crimes.

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The basis of this against Humanity connected with the war;1 September 1939."

"The Gestapo and SD were used for purposes ars of war.

....In dealing with the Gestapo specified above.

....In dealing with the SD "The Tribunal declares to be criminal with crimes.

The basis for this finding is connected with the war; this group de Court No. II, Case No. IX.

"In dealing with the Gestapo the Tribunal have been specified above."

(At this point the President continues reading:) judgments the Tribunal here declares that where it finds a defendant guilty under Count III it will be because it has found beyond a reasonable doubt from the entire record that he became or remained a member of the criminal organization involved subsequent to September 1, 1939 under the conditions declared criminal in the Judgment of the International Military Tribunal. against humanity. The concept of war crimes is not a new one. From time immemorial there have existed rules, laws and agreements which kept opposing forces within bounds in the matter of the conduct of warfare, the treatment of prisoners, wounded persons, civilian noncombatants, and the like. Those who violated these rules were subject to trial and prosecution by both the country whose subjects they were and by the country whose subjects they maltreated. heretofore existed only in the heart of mankind, has now been written into the books of men as the law of Humanity. This law is not restricted to events of war. It envisages the protection of humanity at all times. The crimes against which this law is directed are not unique. They have unfortunately been occurring since the world began, but not until now were they listed as international offenses. The first count of the Indictment in this case charges the defendants with Court No. II, Case No. IX.

crimes against humanity. Not crimes against any specified country, but against humanity. Tribunal is convoked to determine why. This is not a new concept in the realm of morals, but it is an innovation in the empire of the law. Thus a lamp has been lighted in t he dark and tenebrous atmosphere of the fields of the innocent dead. tofore were enjoined only by the respective nations now fall within the prescription of the family of nations. Thus murder becomes no less murder because directed against a whole race instead of a single person. A Fuehrer-Order, announcing the death of classifications of human beings can have no more weight in the scales of international justice than the order of a highwayman or pirate.

and barbarities, a bright light shines through it all if one recalls the efforts made in the past in behalf of distressed humanity. President Theodore Roosevelt in addressing the American Congress, said in 1903:

"There are occasional crimes committed on so those who have suffered by it."

that roops be sent to Cuba "in the cause of humanity-

or mitigate." of all mankind for amedium by which crimes against humanity could be stopped and the instigators puniched. One recommended diplomatic protest, the other armed intervention. Both methods have been used but they do not express the ideal. The former is often ineffectual and the latter achieves its benevolent objective only at further expenditure of blood. No recourse was had to law because there was no jurisprudence on the subject, nor was there any legal procedure to punish the offenders. Humanity could only plead at the doors of the mighty for a crumb of sympathy and a drop of compassion. a tribunal in which to proclaim its rights. Humanity need not plead for justice with sobs, tears, and piteous weeping. It has been de monstrated here that the inalienable and fundamental rights of common man need not lack for a court to proclaim them and for a marshal to execute the court's judgments. Humanity can assert itself by law.

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It has taken on the robe of authority. Allied powers, 19 other nations expressed their adherence to that Agreement. In giving effect to the London Agreement and the Charter pursuant thereto, as well as the Moscow Declaration of October 30, 1943, the Allied Control Council formulated its Law No. 10 which treated, among other things, of crimes against humanity. Those who are indicted under this provision, however, are not responding alone to the nations which have approved the principles expressed in the London and Moscow Agreements, they are answering to humanity itself, humanity which has no political boundaries end no geographical limitations. Humanity is man itself. Humanity is the race which will go on in spite of all the fuehrers and dictators that little brains and smaller souls can elevate to platforms of tinsel poised on bastions of straw. sale and systematic violation of life and liberty. It is to be observed that insofar as international jurisdiction is concerned the concept of crimes against humanity does not apply to offenses for which the criminal code of any well-ordered State makes adequate provision. They can only come within the purview of this basic code of humanity because the State involved, owing to indifference, impotency or complicity, has been unable or has refused to halt the crimes and punish the criminals. on July 11, 1947 the Counselor of the Vatican defined crimes against humanity in the following language:

"The essential and inalienable rights of man cannot vary in time and space.

They cannot be interpreted and limited for they are essentially immutable and eternal.

Any injury...

enslavement, against the life, freedom of opinion.....the moral or physical integrity of the family.

....or the dignity family or profession, is a crime against humanity."

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Charter, declared that the Charter's provisions limited the Tribunal to consider only those crimes against humanity which were committed in the execution of or in connection with crimes against peace and war crimes. The Allied Control Council, in its Law No. 10, removed this limitation so that the present Tribunal has jurisdiction to try all crimes against humanity as long known and understood under the general principles of criminal law. is also not restricted as to nationality of the accused or of the victim, or to the place where committed, while the overwhelming majority of those killed in the present case were Soviet citizens, some were German nationals. A special report prepared by Einsatzgruppe A, and previously quoted in another connection, declared:

"Since December 1940 transports containing Jews had arrived at short intervals from the Reich.

Of these *---*.....all evacuated Jews who survive the winter can be put into this camp (apart of the Riga ghetto) in the Spring.

Only a small section of the Jews from the Reich is capable of working.

About 70 to 80% are women and children or old people unfit for work.

The death rate is rising continually also as a result of the extraordinary hard winter."

3,500 Jews "most of whom had been sent to Minsk from Vienna,..... Bremen and Berlin." ment which covers, inter alia, crimes against German nationals. international tribunals have adjudicated crimes against humanity as an international offense, this does not, as already indicated, mean that a new offense has been added to the list of transgressions of man. Nurnberg has only demonstrated how humanity can be defended in court, and it is inconceivable that with this precedent extant, the law of humanity should ever lack for a tribunal.

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Where law exists a court will rise. Thus, the court of humanity, if it may he so termed, will never adjourn. The scrapping of treaties, the inditement to rebellion, the fomenting of international discord, the systematic stirring up of hatred and violence between so-called ideologies, no matter to what excesses they nay lead, will never close the court doors to the demands of euity and justice. It would be an admission of incapacity, in contradiction of every self-evident reality, that mankind, with intelligence and will, should be unable to maintain a tribunal holding inviolable the Law of Humanity, and, by doing so, preserve the human race itself. standing between himself and his neighbor. Each group of people through the ages has carried a stone for the building of a tower of justice, a tower to which the persecuted and the downtrodden of all lands, all races and all creeds may repair. In the Law of Humanity we behold the tower.

THE PRESIDENT: Judge Speight will continue.

JUDGE SPEIGHT: Subject, Simferopol. is without bitterness. It can only be deplored that all this could happen. The defendants are not untutored aborigines incapable of appreciation of the finer values of life and living. Each man at the bar has had the benefit of considerable schooling. Eight are lawyers, one a university professor, another a dental physician, still another an export on art. One, as an opera singer, gave concerts throughout Germany before he began his tour of Russia with the Einsatzkommandos. This group of educated and well-bred non does not even lack a former minister, self-unfrocked though he was. Another of the defendants, bearing a name illustrious in the world of music, testified that a branch of his family reached back to the creator of the "Unfinished Symphony", but one must remark with sorrow that it is a far cry from the Unfinished Symphony of Vienna to the finished Christmas massacre of Simferopol, in which the hapless defendant took an important part.

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that the discussion of enormous atrocities was constantly interspersed with the academic titles of the persons mentioned as their perpetrators. If these men have failed in life, it cannot be said that it was lack of education which led them astray, that is, lack of formal education. there is no reason to disbelieve, came of devout parents. Some have told how they were born in the country and that, close to Nature and at their mothers' kneww, learned the virtues of goodness, charity and mercy. It could be said that the one redeeming feature about this entire sordid affair is that those virtues are still recognized. One inexperienced in the phenomena of which the human soul is capable, reading the reports of the Einsatzgruppen, could well despair of the human race. Here are crimes that defy language in the depths and vastness of their brutality. Here pitilessness reaches its nadir and nothing in Dante's imagined Inferno can equal the horror of what we have discovered happened in 1941, 1942, and 1943 in White Ruthenic, the Ukraine, Lithuania, Esthonia, Latvia and the Crimea. which defied every concept of morality and conscience. One looked in on scenes of murder on so unparalleled a scale that one recoiled from the sight as if from a blast of scalding steam. of redemption. Some of the defendants called witnesses to testify to their good deeds, and practically all of them submitted numerous affidavits extolling their virtues. The pages of these testimonials fairly glitter with such phrases as "honest and truth-loving", "straight thinking and friendly manner", "industrious, assiduous and good-natured", "of a sensitive nature", "absolutely honest". fumes of the gas vans, through the unuttered last words of the one million slaughtered, the defendants have recalled the precepts gained at their mothers' knee.

Though they seemed not to see the frightful contrast between their events of the day and those precepts of the past, yet they do recognize that the latter are still desirable. Thus, the virtues have not vanished. So long as they are appreciated as the better rules of life, one can be confident of the future.

Nor are the affidavits merely subjective in praise. They point out objectively what the defendants did in attacking injustice and intolerance. In various parts of Europe (always with the exception of Russia) the Tribunal is told they occasionally interceded in behalf of oppressed populations and broke lances with the local Nazi despots. The affidavits state, for example, that Ott who enforced the FuehrerOrder from beginning to end in Russia, was all kindness and gentleness to the villagers in Gross-Bierderstroff in the Lorraine, and that Haensch, whose conduct in the East leaves much to be desired, was the epitome of charity in Denmark where the population in paeans of thanksgiving showered him "with adulatory messages and boquets of flowers. During the period that Naumann was stationed in Holland, one affiant states, Neumann befriended the Jews, got them out of concentration camps and released hostages. In face, according to one affidavit, Naumann was known as a man "with softness towards Jews." virtues which others saw in these defendants and their deeds as described by themselves? Was it the intimate companionship with evil? The poet Pope sought to describe this phenomenon in his quatrain:

"Vice is a monster of so frightful a mien, As to be hated needs but to be seen;We first endure, then pity, then embrace."

local bar apparently would seen, unwittingly, to have given an explanation. From the constant association with the case, he found himself arguing in his summation speech: "What did Schubert actually do which was criminal?" And then he outlined Schubert's actions:

"Schubert first goes to the gypsy quarter of Simferopol and sees them being loaded aboard and shipped off.

Then valuables handed over, and the shooting.

Finally he drives then returns to his office.

That is what he did." beings who happen to be Gypsies, there is no assertion anywhere that these Gypsies were guilty of anything but being Gypsies. He sees that the roads are blocked off, that the victims are loaded on trucks and taken to the scene of execution, that that their valuables are taken from them and then he watches the shooting. This is what Schubert did, and the question is asked: What is wrong about that?

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There is no indication of any realization here that Schubert was taking an active part in mass murder. Counsel even goes further and says that when Schubert reported to Ohlendorf on what had happened, he stated that he saw "nothing unusual". intended as any criticism of professional conduct. It is the function of a lawyer to represent to the best of his ability his client's cause and it must now be apparent what difficulties confronted the attorneys in this case. None theless, with industry and skill, with patience and perseverance they made their presentations so that the Tribunal was not denied any fact or argument which could be submitted in behalf of the accused. Regardless of the results of the Judgment it cannot be said that the accused did not have the utmost and fullest defense. defendants spoke of religion. One related how Seibert often accompanied his mother to church. While he was in the Crimea, did he recall these visits to the house of God with his mother, and if he did, could he reconcile his activities there with the teachings of religion and of his mother? of religion on the part of any defendant is not an issue in this trial. The fact, however, that Seibert advanced his early Christian training as an item of defense is indication that he at least recognizes there is a dissimilarity between what he learned and what he later did. This affidavit is additionally interesting because it impliedly repudiates the condemnations of religion by men like Goebbels, Rosenberg, Himmler, and above all, Hitler himself, who designated the church as the only remaining unconquered ideological opponent of National Socialism, continually insulting it in speeches and pronunciamentos.

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Bormann said:

"National Socialist and Christian the NSDAP must be eliminated.

More and more the people must be' separated from the churches and their organs, the pastors."

Socialism, it is interesting to note that at least ten of the defendants, according to their own statements, formally left the church of their childhood. in the year of 1941. In the early part of December the commander of the 11th Army, which was located in that area, notified the chief of Einsatzkommando 11b that the Army expected them to kill some several thousand Jews and Gypsies before Christmas. holiest days of the year, did not consternate the kommando leader, as one might expect, On the mystic chords of memory no echo sounded of the Christmas carols he had heard in childhood, nor did he recall the message of Peace on Earth and Good will Toward Men. The only impediment this kommando leader saw in the execution of the order was that he lacked enough men and equipment for so accelerated an assignment, but he would do his best. He called on the Army Quartermaster and obtained sufficient personnel, trucks, guns and ammunition to do the bloody deed, and it was done.

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The Jews and Gypsies Christmas. Tribunal was told, not because of the slaughter, but because they now feared for their own lives. Death, which had been so commonplace a day or two before, presently revealed itself as vivid and frightening: It might overtake the executioners themselves. Life became sweet and precious. The kommando leader testified that the danger existed they might fall into the hands of the Russians. found themselves in the mood to celebrate their own Christmas party. Their chief, Otto Ohlendorf, made a speech on that occasion. The defendant Braun was questioned on this speech:

"Q. And did he talk on religious matters?

A. I cannot give any details of the words anymore.

I don't know whether he mentioned Christ, but I know Herr Ohlendorf's Q. What was his attitude as he delivered it in his speech?

What did he say that was of religious significance?

A. I really cannot give any details any more.

Q. Did anybody offer any prayers on Christmas Day of 1941?

A. Your Honor, I do not know......

Q. Were any prayers offered for the thousands of Jews that you had killed.

....?

A. Your Honor, I don't know whether anyone prayed for those thousands of Jews."

of Germany and her people? Did it harmonize with the theory of moral revulsion to the Fuehrer-Order, as proclaimed by the defendants?

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How far did the defendants get away from religion? It is to be repeated here that it is entirely irrelevant to the issue before the Tribunal as to whether the defendants are religious or not. They can be atheists of the first degree and yet be as innocent as the driven snow of any crime. Religion is mentioned because several of the defendants introduced the subject and their references to religion are pertinent in the evaluation of the credibility of certain testimony. the Gospel, left the church in 1938. At that time he repudiated organized religion and claims to have founded a religion of his own. This religion, he stated, was based on the love of his fellow-men. Despite his definite abandonment of the church, he states he was regarded as a clergyman by his fellow-officers and emphasized this point as a reason why he could not have committed the murders with which he is charged. He did admit to attending various executions, since according to his testimony, he still worshipped at the invisible altar of his own religion, he was asked whether he attempted to offer comfort and solace to those who were about to die. His answer was that since the Bolshevist ideology advocated the movement of atheism, "one should not throw pearls before swine". Then came the following;

"Q. Did you think that because they were Bol that they did not have souls?

A. No.

Q. You did believe they had souls then, didn't you?

A. Of course.

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worthwhile to try to save these souls?

A. I had to assume that those were atheists.

Q. Well, suppose he did become ironic that that harm anyone?

A. These things are too sacred to me that I would risk them in such situations."

He was further asked:

"Do you think that you demonstrated that 'Love of fellow-men' by letting these considering that you were a Pastor?

Did you demonstrate there a 'Love of fellow-men?

'." And his answer was:

"I didn't sin against the Commandments of Love."

core of his religion was "Love of his fellow-men" and then ordered the shooting of innocent people whom he regarded as swine? Was he trustworthy when he declared that he never heard of the Fuehrer-Order until he arrived in Nuremberg? Was he credible when he announced that during all the time he was in Russia he never learned that Jews were shot because they were Jews? the weak, aided the poor and comforted the lonely and oppressed, is man's own determination, but that a minister of the Gospel, via the road of Nazism, participated in mass executions is an observation that cannot go unnoticed, When the Swatiska replaced the cross and Mein Kampf dislodged the Bible, it was inevitable that the German people were headed for disaster.

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When the Fuehrerprinzip took the place of the Golden Rule, Truth was crushed and the Lie ruled with an absolutism no monarch has ever known. Under the despotic regime of the Lie, prejudice supplanted justice, arrogance cancelled understanding, hatred superseded benevolence -and the columns of the Einsatzgruppen marched. And in one of the front ranks strode the ex-minister Ernst Biberstein.

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defendants' dock. At each session in this Palace of Justice, he has entered the door and quietly moved to his place among the other defendants. For over two years he has been making his entrances and exists. He never takes the witness stand, he never speaks, but he dominates every piece of evidence, his shadow falls over every document. responsibility or their every reverse and misfortune. But were he to cast off the cloak of invisibility and appear as he was, the amimadversions of the other occupants of the defendants' box might not be so audible, because he knows them well, He was no sudden interloper in Germany's destiny. He did not appear in a flash and order his present companions into action. Had it happened that way, the story of physical and moral duress they recounted from the witness stand would not be so incongruous. But, of their own free will, they threw in their lot with that of the specter's, and in their own respective functions enthusiastically carried out the shadow's orders, who was then not a shadow but a fire-breathing reality. they explain they had no reason to doubt him. He had been so successful. But the very successes they cheered most were usually this man's greatest crimes. Each defendant has claimed that the propaganda of the day assured them that Germany was always fighting a defensive war, but these men were not outsiders, nor were they children. They were part of the government, they belonged to the regime. It is incredible that they should believe that Germany was being attacked by Denmark, Yugoslavia, Czechoslovakia, Greece, Belgium and even little Luxembourg. Indubitably they revelled in these successes. One of Defense Counsel declared that the defendants could well believe of Hitler that "here was a man whom no power could resist".

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was a living man so ignominiously and stupidly obeyed by other men. Never did living beings, made in the image of man, so pusillanimously grovel at the feet of clay. But it is not true that no one could resist him. There were people who could resist him, or at least refused to be a party to his monstrous criminality. Some voluntarily left Germany rather than acknowledge him as their spiritual leader. Others opposed him and ended up in concentration camps. It is a mistake to say or assume that all the German people approved of Nazism and the crimes it fostered and committed. Had that been true, there would have been no need of Stormtroopers in the early days of the Party, and there would have been no need for concentration camps or the Gestapo, both of which institutions were inaugurated as soon as the Nazis gained control of the German state. violences of Nazism, there were those who could not resist the glory, pomp and circumstance of war, nor the greed of unbridled domination. They accepted Hitler with fervor and passion because they believed Hitler could lead them to a gratification of their bloated vanity and lust for power, position and luxurious living.

Nor have all forsaken their "successful" leader. Several of the defendants in this case have expressed their countinuing belief in the Fuehrer. One could not bring himself to blame Hitler for any of the illegal deaths under discussion. Another regarded him as a great leader, if not a great statesman. Still another, when asked if he would have been satisfied if Hitler had succeeded in his aims, replied with a categorical affirmative. The defendant Klingelhoefer stated that he would have been happy if Hitler had won the war, even at the expense of Germany in ruins, with two million Germans killed and the entirety of Europe devastated. One other defendant told of his adoration for Hitler which apparently had not changed since 1945. The expression of such adoration offers convincing testimony on the mental attitude of the defendant at the time he received and executed the Fuehrer-Order.

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doubted, but his capabilities for harm would have been nil had he not had willing, enthusiastic collaborators like the defendants who accepted his mad out-pourings and hysterical maledictions against defenseless minorities, as if his pronouncements were the apostrophies of a semi-divinity. megalomaniac to achieve his ambition of putting the world beneath his heel or to bring it crashing in ruins about his head. Some of these defendants, in following Hitler, may have believed that, in executing his will, they were serving their country. Their sense of justice staggering from the intoxication of command, their normal reactions drugged by the opiate of their blind fealty, their human impulses twisted by the passion of their ambitions, they made themselves believe that they were advancing the cause of Germany, But Germany would have fared better without such patriotism, When Samuel Johnson uttered his cynical line that patriotism is the last refuge of a scoundrel, he could well have had in mind a Hitlerian patriotism. death had it not been for his fellow arsonists, big and little, who continued to supply the fuel until they, themselves, were scorched by the flame they had been so enthusiastically tending. If history has taught anything it has demonstrated with devastating finality that most of the evils of the world have been due to craven subservience by sub-chiefs upon a man who through boundless ambition unrestrained by conscience has formulated plans which, proposed by anyone else, would be rejected as mad. whatever benefits derive from centralized control are lost in the infinite damage which inevitably follows lack of responsibility. That unlimited authority and power are poisons which destroy judgment and reason is a demonstrable fact as conclusively established as any chemical formula tried and tested in a laboratory.

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The genius of true democratic government is that no one person is allowed to take the nation with its millions of people into the valley of decisive action without the advice, counsel and approval of those who are to be subjected to the hazards, hardships and potentially fatal consequences of that decision. cross-roads where and when there was still the opportunity to turn in the direction of the ideals which they had once known, but the wilful determination to follow the trail of blood prints of their voluntarily accepted leader could only take them to the goal they had never intended. It is possible that currently the defendants realize the mistake which h they made. Though most of them have sought to rationalize their deeds, though they attempted to explain that every executioner's rifle was aimed at a national peril, it is possible they now grasp the disservice they have done not only to humanity but to their own fatherland. It may even be that through this trial with its sobering revelations they will have demonstrated what are the inevitable consequences of any plan which stems from hatred and intolerance; and her they may have proved what has never been disproved: There is only one Fuehrer, and that is Truth. wrote on "The Myth of Blood":

"A new faith is arising today: They myth of the blood, of man.

The faith, embodied in clearest knowledge that placed and ever come the old sacraments."

What does this mean? No one has yet deciphered its cadenced incoherence, but as Rosenberg himself claimed in it conclusive proof of the master race, others were willing to assume in this torturing abstruseness the authority of a revealed writing.

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Beneath the meaningless phrases Trent the subtle theme of a race of men so different from, and superior to, other men that it required an occult language, whose alphabet was understood only by the elect, to carry the wisdom of this ineffable superiority. From it could be proved everything and nothing. From it the Nazi hierarchists drew their meretricious inspiration which led to their licentious and profligate deeds. also have confirmed the rulers of nations, states and tribes in their superiority over other nations, states and tribes, but the results have invariably been the same. The theme of might against right has, through the centuries, led to consequences which were catastrophic to the assumed stronger. Through the pauseless sweep of the centuries, despots and tyrants have ever and again appealed to the weakness of their followers, the weakness of supposed strength, and have utilized their primitive vanity and arrogance of the little man in the accomplishment of their monumental horrors. Over and over, this monotonous and savage drama has appeared on the stage of history, but never was it played with such totality, fury and brutality as it was with the Nazia in the title role. tieth century, which could well have been the fruition of all the aspirations and hopes of the centuries which went before, makes the spectacle almost unsupportable in its unutterable tragedy and sadness. Amid the wreckage on the six continents, amid the shattered hearts of the world, amid the sufferings of those who have borne the cross of disillusionment and despair, mankind pleads for an understanding which will prevent anything like this happening again. That understanding goes back to the words spoken 1900 years ago, words which had they been honored in the observance rather than in the breach would have made the events narrated in this trial impossible -"Therefore, all things whatsoever ye would that men should do to you, do ye so to then."

PRESIDENT: The Tribunal will be in recess until tomorrow morning at 9:30 o'clock.

(The Tribunal adjourned until 9 April 1948, at 0930 hours.)

THE MARSHAL: The Honorables, the Judges of Military Tribunal II.

Military Tribunal is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT (reading): attempt will be made to cite from all the testimony and documents introduced on both sides. Such a treatment would give to the overall Judgment a length out of all proportion to the nature of a final adjudication. Nor is it necessary. Although the Indictment has charged the several defendants with multiplicitous murders, the verdict of Guilty, where arrived at, does not need to be predicated on the total number contended for by the Prosecution. been on the subject of murder, the defendants are charged also in / Counts I and II with Crimes against Humanity and violations of Laws or Customs of War which include but are not limited to atrocities, enslavement, deportation, imprisonment, torture and other inhumane acts committed against civilian populations. Thus, if and where a conclusion of guilt is reached, such conclusion is not based alone on the charge of murder but on all committed acts coming within the purview of Crimes against Humanity and War Crimes. In each adjudication, without its being stated, the verdict is based upon the entire record. dorfs. There is the Ohlendorf represented as the student, lecturer, administrator, sociologist, scientific analyst, and humanitarian.

This Ohlendorf was born on a farm, studied law and political science at the universities of Leipzig and Goettingen, practiced as a barrister at the courts of Alfeld-Leine and Hildesheim, became deputy section chief in the Institute for World Economics in Kiel, then section chief at the Institute for Applied Economic Science in Berlin, and in 1936 became Economic Consultant in the SD. On behalf of this Ohlendorf, defense counsel has submitted several hundred pages of affidavits which speak of Ohlendorf's efforts to make the SD purely a fact-gathering organization, of his opposition to totalitarian and dictatorial tendencies in the cultural life of Germany, of his defense of the middle classes, and of his many clashes with Himmler, the SS Chief, and Mueller, the Chief of the Gestapo. One of these affidavits declares:

"Ohlendorf did not see superior and in ferior races in various peoples.

... He superior or inferior, but different.

The the laws of life.

For him, the goal to abilities.

Folk, in his view, also was not dependent on a state organization."

dorf who led Einsatzgruppe D into the Crimea on a race-extermination expedition. That Otto Ohlendorf is described by that same Ohlendorf. If the humanitarian and the Einsatz leader are merged into one person it could be assumed that we are here dealing with a character such as that described by Robert Louis Stevenson in his "Dr. Jekyll and Mr. Hyde". As interesting as it would be to dwell on this possible dual nature, the Tribunal can only make its adjudication on the Ohlendorf who, by his own word, headed an organization which, according to its own reports, killed 90,000 people.

and testimony in this case that Einsatzgruppe D did kill 90,000 persons in violation of the laws and customs of war, of general international law, and of Control Council Law No. 10. need to plead guilty to evasiveness on the witness stand, which indeed cannot be said of all the defendants. With a forthrightness which one could well wish were in another file of activity, Otto Ohlendorf related how he received the Fuehrer Order and how he executed it. He never denied the facts of the killings and only seeks exculpation on the basis of the legal argument that he was acting under Superior Orders. Further, that, as he saw the situation, Germany was compelled to attack Russia as a defensive measure and that the security of the Army, to which his group was attached, called for the operations which he unhesitatingly admits. All these defenses have been treated in the General Opinion and need not be repeated here.

In addition to Ohlendorf's direct testimony in this present trial, he voluntarily appeared as a witness in the International Military Tribunal trial and there described under oath the entire einsatz program of extermination. With but a minor exception he confirmed in this trial the testimony presented before the IMT. Thus, that testimony, by reference, is incorporated into the record of the instant trial and forms further evidence in support of the findings reached in this Judgment. Even outside the Courtroom Ohlendorf admitted untrammeledly the activities of the Einsatzgruppe under his charge. In at least four affidavits he related how his command functioned. He told of the area covered by his Einsatzgruppe, the division of his group into smaller units, the manner and methods of execution, the collection of the valuables of the victims, and the writing and submitting of reports to Berlin.

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RSHA and the Chief of the Einsatzgruppe D, is complete. country and showed great promise in the field of learning, purposeful living and sociological advancement, will need to be made elsewhere. Unfortunately it cannot form part of this Judgment which can only dispose of the charges of criminality presented in the Indictment. Those charges against Otto Ohlendorf have been proved before this Tribunal beyond a reasonable doubt. The Tribunal accordingly finds Otto Ohlendorf guilty under Counts I and II of the Indictment.

It has been argued by Dr. Aschenauer that Ohlendorf was not a member of a criminal organization as determined by the International Military Tribunal decision and Control Council Law No. 10. In support of this argument it is asserted that Ohlendorf was ordered to Russia as an employee of the Reich Group Commerce. It is impossible that Ohlendorf, as the leader of Einsatzgruppe D, should have been functioning as a member of the Reich Group Commerce. He headed Office III of RSHA before he went to Russia, and he headed it when he returned. organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

JUDGE SPEIGHT (reading): specialized in law and economics when he studied at the universities of Giessen and Munich. He later worked in the District Court at Darmstadt. He joined the Nazi Party in February 1928 and subsequently became a member of the SA, the SS, and SD. He served as an SS officer in the Polish campaign. He headed Einsatzgruppe A in the Russian campaign. His attorney devoted many pages in his final plea to arguments on self defense, necessity and national emergency, confirming and emphasizing what was said at great length by Dr. Aschenauer on these subjects.

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In the latter part of the plea, Defense Counsel insisted that his client in no way participated in the execution of the Fuehrer Order. If, as a matter of fact, the defendant committed or approved of no act which could be interpreted either as a War Crime or Crime against Humanity, the argument of self defense and necessity is entirely superfluous. gruppe A the defendant was aware of the criminal purpose to which that organization was put, and, as its commander, cannot escape responsibility for its acts. Jost outlined his activities outside of Germany in the following language:

"During my activity as Chief of the Einsatz Security Police and SD in Eastland (BdS Ostland).SD Eastland was located in Riga.

On the whole, of the Security Police and SD (KdS) the same as kommando, respectively."

to Army control, Jost as Chief of Einsatzgruppe A cooperated with the Army command. When the territory came under civilian administration, he, as Commander-in-Chief of Security Police and SD received his orders from the Higher SS and Police Leader or SS and Police Leader. Under this double designation he was responsible for all operations conducted in his territory.

Report No. 195, dated April 24, 1942, reporting on activities within the area under the command of Einsatzgruppe A, states:

"Within the period of the report a total of and crimes."

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murders. The item itself does not carry the exact date of its happening, but the latest date revealed in the entire document is March 26. Thus the execution of the 1,272 persons mentioned the rein could not have occurred on a date subsequent to March 26. The defendant testified that he was in Smolensk when, on March 24 or 25, he received his orders to take over the command of Einsatzgruppe A and that he did not arrive in Riga, headquarters of the Einsatzgruppe, until March 28 and 29. thousand murders prior to March 29 and, as late as March 26, as indicated by the report above-mentioned, was still killing Jews, It would be extraordinary that it should suddenly cease this slaughter for no given reason and with the Fuehrer Order still in effect, three days before Jost arrived.

The Prosecution argues that it would not take an officer of Jost's rank (Major General of Police) four days to travel the 100 miles between Smolensk and Riga. But whether Jost arrived the day before or the day after is not controlling in the matter of responsibility for the program involved. The Fuehrer Order was in effect prior to Jost's arrival at Riga and he did not revoke it when he took over the Einsatzgruppe. The defendant does state that when in May 1942 he received an order from Heydrich to surrender Jews under 16 and over 32 for liquidation he placed the order in his safe and declined to transmit it.

Report No. 193, dated April 17, 1942, reports an execution in Kauen, as of April 7, 1942, of 22 persons "among them 14 Jews who had spread communist propaganda". The defendant was asked on the witness stand:

"Do you regard it proper, militarily proper, to propaganda?"

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and he replied:

"According to my orders these measures had to be carried out.

In that far it was correct and justified."

victims had indulged in Communist propaganda "up to the last moment". But there is nothing in International Law which justifies or legalizes the sentence of death for political opinion or propaganda. reports about "mass executions" during his time. If there had been no such executions during his incumbency it is reasonable to suppose that Jost would have emphatically so declared. It cannot be assumed that so grave and solemn an event as a mass execution could fall into the realm of the forgettable. Thus the only possible conclusion is that here the defendant was equivocating. the area, one of his subordinates, SS Hauptsturmfuehrer Truebe, wrote to the RSHA, requesting shipment of a gas van and gas hoses for three gas vans on hand. Jost denied any knowledge of this letter but admitted that the subordinate in question had the authority to order equipment. It is not reasonable to suppose that the ordering of such extraordinary equipment would not come to the attention of the leader of the organization and the fact that the ordered gas van was to go to White Ruthenia (where he was also in command) does not absolve the defendant from responsibility. alone with the crime of murder. The Indictment lists various offenses, including enslavement, imprisonment, and other inhumane acts against civilian populations. Thus the defendant cannot escape responsibility for a consenting part at least in the slave labor program instituted by Sauckel in his territory. Report No. 193, dated April 17, 1942, carried this item:

"On orders by the new Plenipotentiary for the Commissariate General 'White Ruthenia' has to muster about 100,000 workers.

But will be adopted."

order of May 19, 1942. He testified that he visited Heydrich and Himmler and urged his recall and even spoke to Rosenberg against the extermination program in principle. He asserted that later he was recalled and subjected to disciplinary action, Although he retained his general officer rank in the police he was sent to the front, as a sergeant in the Waffen SS. The credibility of this story depends entirely on Jost, since all the other alleged conferees are dead, and there were apparently no surviving witnesses that he could call to confirm his conversations. to do with the reversal in his military fortunes, it can be believed that illness alone could not have brought about such a drastic change in his situation. Nonetheless the evidence is irrefutable that he was a principal in and an accessory to the extermination program in his territory. He may have, after participation in this enterprise, at last relented, and this is to his credit, but this cannot wipe out the criminality which preceded his withdrawal from the field. defendant is guilty under Counts I and II of the Indictment. criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

JUDGE DIXON (reading):

and obtained employment in a commercial firm in his home town of Meissen, Saxony. In 1933 he joined the SA in a full-time capacity and then became official and officer of police. He joined the SD in 1935. He was Chief of Einsatzgruppe B from November 1941 until February or March 1943. The Prosecution contends that he took over the command of this organization on November 1, 1941 and points to various pieces of evidence to confirm that contention:

(1) Neumann's personnel SS record, (2) Reports listing Naumann as being in Smolensk (Headquarters of Einsatzgruppe

B) on November 12, 1941, (3) Testimony of Steimle that he met Nau (4) Naumnann's note to the co-defendant fluence Klingelhoefer's testimony that Neumann's duties began on November Neumann's purpose in establishing the latter date of induction into the chiefship of Einsatzgruppe B is to refute the Prosecution's claim that he is responsible for executions committed by Einsatzgruppe B in the month of November.

One report, dated December 19, 1941, described v arious actions which resulted in the liquidation of several thousands of people. Another report carrying the date of December 22, 1941 told of the execution of 324 Jewish prisoners of war and 680 civilian Jews. executions, since the reports were published four to five weeks following the events described therein. This would date the indicated events as having occurred about the middle of November and consequently prior to the date he claims he took over the Einsatzgruppe command. It has not established as a fact that the Operational and Situation Reports always appeared four to five weeks subsequent to the chronicled events.

It was testified during the trial that this period of delay fluctuated and that sometimes the reports were published within two weeks after the happening of the events.

However, this discussion is more interesting than practical. Even if Naumann were to prove irrefutably and conclusively that the reports were delayed and that he did not arrive in Smolensk until November 30, this would still not exonerate him from the charges under Counts I and II, for there is existent the Operational Report of April 21, 1942, covering operations from March 6 to March 30, a period during which indubitably Naumann commanded the area under consideration. This report shows, inter alia, that the Einsatzkommando 9 killed 273 persons made up of 85 Russians "belonging to partisan groups", 18 "because of Communistic, seditious acts and criminal offenses" and 170 Jews. Sonderkommando 7a executed 1,657 persons, 27 of whom were partisans and former Communists,45 were Gypsies, and 1,585 were Jews, The same report shows that unit Einsatzkommando 8 killed 1,609 persons made up of 20 Russian Communist, 5 criminals, 33 Gypsies and 1,551 Jews. was not "derived from the actual observation of the author of the document". This indeed is equivocation. The Operational Report was made up from accounts sent in by Einsatzgruppe B, accounts controlled by Naumann himself. In his affidavit of June 27, 1947 Naumann declared:

"The Einsatzgruppe B reported regularly on the Office.

Written reports were sent to Berlin every by radio.

The reports were prepared by my staff and submitted to me as a matter of routine," states:

"It is in no way intended to disclaim the assertion while Naumann was Chief of Einsatzgruppe B." executions appeared "much too high". In other words Dr. Gawlik claims that the numbers are incredible.

To say that these figures are incredible is an entirely credible and sane observation. This whole case is incredible, This is a case where the incredible has become the norm. It is not necessary to look at the reports to be shocked with incredulity. Many of the defendants themselves made statements on the incredulous things which they did. that it was in effect when he arrived. From this he seems to argue an absence of guilt. But Naumann had the power of command:

"The law of war imposes on a military officer in violations of the Law of war."

(Judgment, Milita ry Tribunal I, Case No. I, the United States of America against Karl Brandt et al, page 70.)

Naumann met from time to time with his kommando leaders. He knew that they were giving full effect to the Fuehrer Order. He knew that executions were taking place and even stated that if any of his subordinates had refused to carry out the order he would have taken disciplinary action against them.

Then it is to be noted from Naumann's own testimony that he knew of the liquidation order even before he took command of the Einsatz gruppe. He testified:

"... I was ordered to Heydrich and I received clear orders from him for Russia.

Now, first officials.

...." that Naumann was aware of the Fuehrer Order and that he carried it into effect. The only defense left him is that of the so-called Superior Orders. Did he agree with the order or not? If he did not and thus was compelled by chain of command and fear of drastic consequences to kill innocent human beings, the avenue of mitigation is open for consideration.

If, however, he agreed with the order, he may not, as already demonstrated, in the General Opinion, plead Superior Orders, The answer to this question can be found in his own testimony. anything morally wrong about the Fuehrer Order, and he replied in the negative. He was asked again the same question, and he replied specifically:

"I considered the decree to be right because it was necessary."

inquired if Naumann intended by his answer to say that he "saw nothing wrong with the order, even though it did involve the killing of defenseless human beings", and he replied "yes". dant is guilty under Counts I and II of the Indictment. nal organizations SS and SD under the conditions defined by the judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: The defendant, Erwin Schulz.

SS-Brigadier General Erwin Schulz entered the Army in 1918. After the first World War he successively studied law at the University of Berlin, was employed on the staff of the Dresden Bank and joined the Security Police. In 1940 he became Commissioner Inspector of the Security Police and SD. He was serving as Commandant of the Fuehrerschule of the Security Police in Berlin-Charlottenburg when he was assigned to the command of Einsatzkommando 5 which formed part of Einsatzgruppe C. He left Pretzsch with his kommando on June 23, 1941 and arrived in Lemberg in the early part of July. Here he was told that, prior to the evacuation of Lemberg by the Russians, 5,000 of the inhabitants had been murdered, and reprisals were in order. 2,500 to 3,000 people were arrested and within several days executions began. Schulz's kommando was ordered to participate in the executions and, under his direction, shot from 90 to 100 people.

kommando had been thoroughly investigated and found guilty of participation in the massacre which preceded his arrival. He stated further that after the execution he observed that Wehrmacht members were abusing the other 2,000 detainees being hold in a stadium, and that he opened the gate and allowed these detainees to escape.

These Lemberg shootings, despite the defendant's explanation, still remain unexplained. Schulz states that 5,000 Ukrainians and Poles had been massacred by the Russians and that then the invading forces, which had already executed hundreds of thousands of Poles, took reprisals against the Jews for the murder of Poles. If the operation was a "reprisal" one, as the report states, the Einsatz leaders would not have conducted investigations. If these executed were actually guilty of murder then the measure was not a reprisal but an orderly juridical procedure. Defense Counsel argues that Einsatzkommando 5 really had nothing to do with this affair:

"....it was only to fire the shot, without having of the incidents which preceded the shootings."

proceeded with the execution. Schulz testified that German soldiers had also been murdered in the Lemberg affair, but he could not state how many. Hitler had ordered a reprisal measure and that seemed to suffice. The defendant admitted that he conducted the execution of those allotted to him without any report of their guilt. He was not even furnished with a list of the executees. and was successively at Zhitomir and Berditschew. On August 10, while at Zhitomir, Schulz was instructed by the Einsatzgruppen leader that Jewish women and children, as well as men, were to be executed. Schulz states that, in moral rebellion against the order, he left for Berlin on August 24, arriving there on August 27. He spoke with Streckenbach and asked to be relieved from his post, and he was assured that this would be done, He returned to the kommando on September 15, and turned over the unit to his successor on September 25.

against the execution order cannot be conclusively known, since the other participants in that discussion, assuming that it took place, are not available. It is true that he did give up his kommando in the latter part of September 1941. Whether this excluded him from responsibility for executions, however, remains to be seen.

Report No. 88 states that "between August 24 and August 30, Einsatzkommando 5 carried through 157 executions by shooting comprising Jews, officials and saboteurs." Schulz used his trip to Berlin which embraces the six days indicated in the report, as an alibi for this shooting. But if the operation was planned before he left, his absence would not exonerate him. The man who places a bomb, lights the fuse, and rapidly takes himself to other regions is certainly absent when the explosion occurs, but his responsibility is no less because of that prudent non-presence. kommando 5 even thought he knew he intended to be absent while on the trip to Berlin is established by the fact that on the actual date of his departure, August 24, he ordered the kommando to move on from Berditschew to Skwira, 100 kilometers east of Berditschew, which removal actually took place on August 26. Schulz's explanation for this removal is a laudable one, if true. He says that he wanted to avoid that his kommando should come in contact with Higher SS and Police Leader Jeckeln who was set on execution of all Jews, including women and children. In any event, the fact remains that Schulz retained control of the kommando until the actual arrival of his successor in the latter part of September.

that before leaving for Russia he heard Heydrich's speech in which Heydrich said:

"That every one should be sure to understand that, in this fight; Jews would definitely take their the one to be overcome.

For that reason, all mea cular.

The experience in Poland had shown this."

The expression "all measures" certainly put Schulz on notice as to what was expected of the Einsatz units. for the executions described in Reports Nos. 132 and 135. The former is dated November 12 and the latter November 19, so that if one allowed even the maximum of five weeks' delay in publication of the reports, these executions would still fall subsequent to the date Schulz admittedly left Russia.

However, Report No. 47, dated August 9, 1941 which describes the shooting of 400 Jews (mostly saboteurs and political functionaries) would be within the time Schulz was on duty in Russia. This report makes the further statement: "Einsatzkommando 5 shot an additional 74 Jews up to this date."

Report No. 94 definitely chronicling a period when Schulz was in command, even though absent on the Berlin trip, says: "Einsatzkommando 5 for the period between August 31 and September 6, 1941, reports the liquidation of 90 political officials, 72 saboteurs and looters and 161 Jews." cuted by his kommando were only those who had committed offenses entitling them to be shot and in this connection Dr. Durchholz said that the "perpetrators who were Jews, were designated only as 'Jews' in the reports of the Einsatzgruppe, upon orders from superior offices, that they were not to be listed as 'saboteurs, plunderers, etc.'".

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whose handling of the truth was as careless as his review of the evidence in capital cases in Esthonia. The Tribunal now declares that the record is absolutely bare of credible evidence that those listed in the column headed "Jews" fell into any category other than those who were shot merely because they were Jews. The whole documentation in the case is directly to the contrary.

Dr. Durchholz claims of his client a liberal attitude towards the Jews, but he adds:

"It goes without saying that he wanted to reduce again to normal proportions," It was just this spirit of reduction to what the Nazis called "normal proportions" which brought about the excesses in Germany leading to disfranchisement, appropriation of property, concentration camp confinement and worse.

In his final plea, Dr. Durchholz devoted some 20 pages to Schulz's activities prior to his Russian venture. He says here that Schulz was a competent police officer, that he was considerate and polite and was regarded as an "exemplary, modest, plain person who looked after his officials like a father". That the defendant is a person of innate courtesy has been evidenced in the court room, but the issue in this case is whether he lived up to International Law. did not respond to the obligations imposed upon him not only by the International law but the concept of law itself, of which, as a long police official, he could not be ignorant. In spite of this, however, it can be said in his behalf that, confronted with an intolerable situation he did attempt to do something about it.

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is guilty under Counts I and II of the Indictment. minal organizations SS and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

JUDGE SPEIGHT: The defendant Franz Six. high school at Mannheim in 1930 and then matriculated at the University of Heidelberg where he specialized in sociology and political science, receiving the degree of doctor of philosophy in 1934. He then taught at the University at Koernigsberg (where he also took up the position of press Director of the German Student's Association). In 1936 he received the high academic degree of Dr. phil. habil. from the University of Heidelberg, and became Dozent in the faculty of law and political science at Koenigsberg; later, he passed examinations for the Venia Legendi at the University of Leipzig. By 1938, he was Professor at the University of Koenigsberg, and by 1939, he had obtained the chair for Foreign Political Science at the University of Berlin and was its first Dean of the faculty for foreign countries. achievements, duly enumerated by the defendant himself, the youth who came to him for guidance and instruction could expect in him a comparable degree of achievement in moral honesty. Unfortunately, this may not have been true, and therein is a tragedy of its own. A school teacher is bound in conscience to hold himself impeccable in deportment because of the example he constantly presents the future citizens of the State. The example afforded by Six left something to be desired. Reference will be made to the defendants own words on the witness stand in support of this observation.

to the Tribunal the tale of his student days at the University of Heidelberg. He said:

"I carried on my studies at Heidelberg for four years on an average of twenty marks a month.

I needed nine marks to live on.

Nine marks, that meant thir complacency with so much distress."

Then on his own words he solved the enigma: "The answer which I gave myself was joining the Nazi Party." showed, he had become a Nazi in 1930, that is, even before he matriculated at the University of Heidelberg, so that whatever advantages, benefits and comforts derived from National Socialism were already due to him at Heidelberg. Thus, by failing to tap the munificent resources which Nazism offered, while already a full-fledged Nazi, Six suffered needlessly during those four sad years at Heidelberg.

There is another illustration. Six declared he had no animosity toward Jews and advanced his respect for two certain Jewish university professors as proof of this assertion, He was then asked whether it disturbed him that these two Jews, because of their race, were persecuted. He replied that he regarded it as "highly unpleasant" that these people should have been "affected by the new laws and regulations". Whereupon the inquiry was made as to whether he was offended by the persecution of thousands and millions of the brothers and sisters of these two professors. He answered: "What do you mean by persecution? When did the persecution begin?" When this was explained to him he conceded that the burning down of the Jewish synagogues on November 9, 1938, was a "shame and a scandal". Counsel for the Prosecution now inquired if he regarded the Fuehrer-Order, which called for the physical extermination of all Jews, as a "shame and a scandal". Here he saw a difference.

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The synagogues had been burned down without an order and therefore the destruction was a "Shame and a scandal". The Fuehrer-Order, however, to destroy human beings, issued from the Chief of State and consequently could not be a shame and a scandal. He later conceded that the execution of women and children was deplorable, but the killing of male Jews was proper because they were potential bearers of arms. versity of Berlin at which Six was professor and Dean, had, as far back as 1809, defined "the limits beyond which the activities of the State must not go." Obviously Six did not agree with the doctrine that there could be a limit to the activities of the State, The name of Adolf Hitler apparently throw a shade over the light of his learning, and thus, for him there was nothing wrong, even mass killings, so long as the order therefor originated with the Fuehrer. In this last named organization he attained the grade of Brigadier General. On June 20, 1941 he was appointed Chief of the Vorkommando Moscow. According to the defendant the task of this kommando was to secure the archives and files of Russian documents in Moscow when the German troops should arrive there. The defendant arrived in Smolensk on July 25, 1941 and remained there until the latter part of August when he returned to Berlin. were not as innocuous as made out by him. The prosecution submits that the Vorkommando Moscow was ussed in liquidating operations while under the command of Six. Further, that the seizing of documents in Russia was done not for economic and cultural purposes, but with the object of obtaining lists of Communist functionaries who had themselves become candidates for liquidation.

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In support of its position, the Prosecution introduced Report No. 73 dated September 4, 1941, which carries on its final page the heading "Statistics of the liquidations", and then enumerates various units of Einsatzgruppe B with the executions performed by each.

"The total figures of persons liquidated by the Einsatz gruppe as per 20 August 1941 were:

1.) Stab and Vorkommando 'Moskau' 144

2.) Vorkommando 7a 996

3.) Vorkommando 7b 886

4.) Einsatzkommando 8 6,842

5.) Einsatzkommando 9 8,096 Total .....16,964" The same report carries the item:

"The Vorkommando 'Moskau' was forced to execute another tablished Ghetto of Smolensk."

kommando Moscow could not have performed the executions mentioned therein. His argument is as follows: Assuming that the executions occurred August 20th, two days must have elapsed before the report left Smolensk. Allowing then two or three days more for evaluation of the events, the report, according to Dr. Ulmer, could only have left Smolensk on August 25th or 26th. A few days were needed for the transmission to Berlin and there, on September 4, 1941, it appeared as Operation Report No. 73, Dr. Ulmer then says:

"The report can therefore -- and that is essential -

earliest, i.e. on the sixth day after the defendant had left Smolensk."

No one questioned the correctness of the date of September 4th when the report was published in Berlin.

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Therefore, the longer the time required for the submission of the report to Berlin, the further back must be the happening of the events narrated therein, and thus the further back into the period when Six was incontrovertibly in Smolensk. The usual argument presented in matters of this kind has been that the delay between the event and the eventual publishing of the report was a longer one rather than a shorter one. In this case the date in the document itself indicates a delay of only 14 days. If Dr. Ulmer argues that the lapse of time was longer than 14 days, then the events in question occurred prior to August 20th when no one questions that Dr. Six was present in Smolensk. specifically states that he never made any reports to Einsatzgruppe B. Report No. 34 declares, under the heading of Einsatzgruppe B:

"Smolensk, according to the report by Standartenfuehrer Dr. Six, is a thoroughly destroyed as Minsk.

... It was follow to Smolensk."

Report No. 11, dated July 23, 1941 listed Vorkommando Moscow as one of the units of Einsatzgruppe B. Furthermore, Six admitted having supplied Einsatzgruppe B with some of his interpreters.

The defendant has described himself as a "pure" scientist. His duties were so scientific that in April 1944 he made a speech in Krumhubel at a session of consultants on the Jewish question in which he was reported as follows:

"Ambassador Six speaks then about the political structures of world jewry.

The physical elimination of Eastern Jew ry would deprive Jewry of its biological reserves.

... The so internationally."

At this same session:

"Embassy counsellor v. Thadden speaks about the Jewish the Anti-Jewish executive measures.

.. (As the details protocol.)

" Six admitted having been present and having addressed the meeting but denied making the remarks attributed to him.

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had no special section devoted to the Jewish situation, but it developed that the organizational chart of the RSHA very clearly described Section VII-B-1 as dealing with Free Masonry and Jewry. so that the population could worship, and then Inter stated that he protected these churches mainly for the reason that "there were archives there and valuable treasures." of exceptional service with the Einsatzgruppe, he denied that his promotion had anything to do with special merit, but the letter from Himmler specifically stated:

"I hereby promote you, effective 9 November 1941 to Signed:

H. HIMMLER." was "quite unimaginagle" that "special merits in the past should be mentioned" in the "promotion". Whereupon the Prosecution introduced the following document:

"Memorandum: The Reich Main Security Office requests the promotion of SS-Oberfuehrer Dr. Six to Brigade fuehrer, effective 31 January 1945.

..SIPO Einsatz;

22 June 1941 -- 28 August 1941, East Einsatz... On Police Einsatz in the East."

SS prior to 1939, but it is incongruous to say the least that one who joins the Nazi Party voluntarily because he believes it to be the salvation of Germany, joins the SA voluntarily, becomes a brigadier general in the SS, and joins the SD voluntarily, should seek to leave it when Germany was riding the crest of the high wave running toward ever continuing and ever more glorious victories and triumphs.

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gruppe B and despite the finding that Six was aware of the criminal purposes of Einsatzgruppe B, the Tribunal cannot conclude with scientific certitude that Six took an active part in the murder program of that organization. It is evident, however, that Six formed part of an organization engaged in atrocities, offenses and inhumane acts against civilian populations. The tribunal finds the defendant guilty under Counts I and II of the Indictment. minal organizations SS and SD under the conditions defined in the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

JUDGE DIXON: The defendant Paul Blobel. commanded Sonderkommando 4a from June 1941 to January 1942, and in that capacity is responsible for the killing of 60,000 people. Defense Counsel in his final plea, argued that the maximum number of persons executed by Sonderkommando 4a cannot have exceeded 10,000 to 15,000 which in itself, it must be admitted, would anywhere be regarder as a massacre of some proportions, except in the annals of the Einsatzgruppen. 60,000 killings are subject to error. He points out first that the reports are not under oath. This overlooks the fundamental fact that the reports are strictly military documents and that every soldier who collects, transmits and receives reports is under oath. He then states that the reports were compiled and issued by an office unfamiliar with the subject covered in the reports.

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But this is to say that a military headquarters is stranger to its own organization. But the crowning objection to the reliability of the reports is the conjecture that possibly headquarters did not have a map with which to check the locations!" defendant was under the jurisdiction of the Army, coming directly under the orders of Field Marshal von Reichenau of AOK 6. The Tribunal has already spoken on the defense of Superior Orders. But Blobel asserts that the persons executed by his kommando were investigated and tried, and that Field Marshal von Reichenau had reviewed every case. There is nothing in Blobel's record which would suggest that his bare statement would be sufficient to authenticate a proposition which, on its face, is unbelievable. It is enough to refer to the massacre at Kiev where 33,771 Jews were executed in two days immediately after an alleged incendiary fire, to disprove Blobel's utterance in this regard. Incidentally Blobel, whose kommando took an active part in this mass killing, said that the number reported was too high. "In my opinion", he states, "not more than half of the mentioned figure were shot". accordance with International Law.

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He testified:

"Executions of agents, partisans, saboteurs, suspicious Hague Convention."

It is to be need that Blobel's ideas of International Law are merely because he thinks they are suspicious.

Sixteen separate reports directly implicate Blobel's kommando in mass murder, many of them referring to him by name. Report No.,143 delcares that as of November 9, 1941, Sonderkommando 4a had executed 37,243 persons. Report No. 132, dated November 12, 1941, tells of the execution of Jews and prisoners of war by Blobel's sonderkommando. That report closes on the note: "The number of executions carried out by Sonderkommando 4a meanwhile increased to 55,432." Report No. 156 declares that as of November 30, 1941, Sonderkommando 4a had shot 59,018 persons. explanation why Blobel became involved in the business just related. He said that in 1924 Blobel began the practice of his profession, that of a free-lance architect. By untiring efforts he became successful, and at last he realized his dream of owing his own home. Then came the economic crisis of 1928-29. "The solid existence for which he had fought and worked untiringly was smashed by the general economic collapse." He could get me now orders, his savings disappeared, he could not pay the mortgage on his house, which he had previously stated he owned. Paul Blobel was, as his counsel tells us, "down to his last shirt". The defendant was seized by the force of the quarrels between major political parties, and his counsel sums it up:

"This situation alone makes the subsequent behavior of the defendant Blobel comprehensible."

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depression which affected the whole world justified the defendant's going into Russia to slay tens of thousands of human beings and then blowing up their bodies with dynamite. he believed in the ideology of National Socialism, but to improve his economic condition. In 1935 he received an order as architect to furnish the office of the SS in Duesseldorf. Despite the miraculous prosperity promised by National Socialism, the defendant in 1935 still found himself in distress and so he thus decided to take up Nazi work seriously and become clothed again. He would give his entire time to National Socialism. life in ascertaining public opinion. Defense Counsel states that Blobel tried to withdraw from the SD prior to the outbreak of World War II, but later contradicts, this with the statement that "up to 1939 there was no reason for him to withdraw from his activities with the SD and to turn his back upon this organization." charge of Sonderkommando 4a and marched into Russia. In one operation his kommando killed so many people that it could collect 137 trucks full of clothes, Blobel's attitude on murder in general was well exemplified by his reaction to the question as to whether he believed that the killing of 1,160 Jews in the retaliation for the killing of 10 German soldiers was justified. His words follow:

"116 Jews for one German? I don't know.

I am not a militarist, you see. One can sentiment and from one's own human ideas.

fied ratio of retaliation." every opportunity to defend himself against the serious charges advanced by the Prosecution.

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defendant is guilty under Counts I and II of the Indictment. criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: WALTER BLUME.

SS-Colonel Blume obtained his Doctor's Degree in Law at the University of Erlangen. He later served with the Prussian Secret State Police. In May 1941 he was called to Dueben where he was given command of Sonderkommando 7a and instructions on the task of exterminating Jews. This unit formed part of Einsatzgruppe B which in the execution of the FuehrerOrder killed Jews, Communists and alleged asocials in no inconsiderable numbers. Blume states that he left his kommando on August 15 or 17, 1941. The defendant Steimle stated that Blume remained with the kommando until September 1941.

Report No. 73, dated September 4, 1941, credited Vorkommando 7a with 996 killings as of August 20. Even if Blume's assertion as to the date of his leaving the assignment were correct, that would only mean that he cannot be charged with that proportion of the 996 murders which occurred during the last 3 or 5 daysof this period; and even this only under the additional assumption that prior to his departure he had not given orders which were executed within those 3 or 5 days.

Report No. 11, dated July 3, 1941 states that Blume's kommando liquidated "officials of the Konsomol (Communistic Organization) and Jewish officials of the Communist Party."

Report No. 34, dated July 26, 1941 speaks of the incident already described in the General Opinion -- the killing of the 27 Jews who, not having reported for work, were shot down in the streets. This happened in the territory under Blume's jurisdiction.

Blume admits having witnessed and conducted executions. He states that he was opposed to the Fuehrer-Order and that he made every effort to avoid putting it into effect, But the facts do not support this assertion, From time to time during this trial various defendants have stated that certain reports were incorrect, that the figures were exaggerated, even falsified.

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Yet, when Blume was asked why, since he was so morally opposed to the Fuehrer-Order, he did not avoid compliance with the order by reporting that he had killed Jews, even though he had not, he replied that he did not consider it worthy of himself to lie. his revulsion about cold bloodedly shooting down innocent people. In spite of this reasoning on the witness stand he submitted an affidavit in which it appears he did not have scruples against lying when stationed in Athens, Greece. In this affidavit he states that the KriminalKommissar ordered him to shoot English commando troops engaged in Greek partisan activity. Since Blume was inwardly opposed to the kommissar decree as he pointed out, he suggested to his superior that the order to kill these Englishmen could be circumvented by omitting from the report the fact that the Englishmen were carrying civilian clothes with them. him with revulsion, yet he announced to the firing squad after each shooting of ten victims:

"As such, it is no job for German men undertake these executions.

This we out this order."

had committed any crime or had shot at anybody, but that the Fuehrer had said that he, the Fuehrer, was convinced that these people "would shoot" at them, their women and children, 2,000 miles away. In other words, the victims were to be killed because of the possibility that they might at some time be of some danger to the Fuehrer and the executioners.

Blume says that he made this speech to case the feelings of the men, but in effect he was convincing them that it was entirely proper to kill innocent and defenseless human beings. If he was not in accord with the order, he at least could have refrained from propagandizing his men on its justness and reasonableness, and exhortation which could well have persuaded them into a zestful performance of other executions which might otherwise have been avoided or less completely fulfilled.

Blume's claims about revulsion to the Fuehrer-Order are not borne out by his statement:

"I was also fully convinced and am so tic dictatorship, and still is."

instructed the local commander to arrest all Jews and confine them to a ghetto. Since the local commander of Wilna was not Blume's subordinate, Blume was not called upon to issue the order for the incarceration of the Jews which only brought them one step closer to execution under the Fuehrer-Order. Blume's explanation that he hoped the Fuehrer-Order might be recalled is scarcely adequate. He could have done nothing. Duty did not require him to incarcerate these Jews. men charged with having asked the farmers not to bring in the harvest he was asked whether such an execution was not contrary to the rules of war:

"Q. Are you familiar with the rules of war?

"A. In this case I acted by carrying out "Q. Did you regard a person who told a farmer sentence which you invoked?

"A. Yes.

"Q. Are you familiar with the rules of war?

"A. I already stated that for me the directive was the Fuehrer-Order.

That was my war law."

that he was shooting innocent people and admitted the shooting of 200 people by his kommando.

Blume is a man of education. He is a graduate lawyer. He joined the NSDAP voluntarily, swore allegiance to Hitler voluntarily and became director of a section of the Gestapo voluntarily. He states that he admired, adored and worshipped Hitler because Hitler was successful not only in the domestic rehabilitation of Germany, as Blume interpreted it, but successful in defeating Poland, France, Belgium, Holland, Norway, Yugoslavia, Greece, Luxembourg and other countries. To Blume these successes were evidence of great virtue in Hitler. Blume is of the notion that Adolf Hitler "had a great mission for the German people." he would not go so far as to say that this order which brought about the indiscriminate killing of men, women and children, constituted murder and the reason for the explanation was that Hitler had issued the order and Hitler, of course, could not commit a crime. In fact Blume's great sense of guilt today is not that he brought about the death of innocent people but that he could not execute the Fuehrer-Order to its limit:

"Q. We understood you to say that you had a bad order.

Does that mean that you regretted Order?

"A. Yes. This feeling of guilt was within me.

ed it impossible, to follow a Fuehrer-Order."

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Dr. Lummert, Blume's lawyer, made a very able study of the law involved in this case. His arguments on Necessity and Superior Orders have been treated in the General Opinion. Dr. Lummert, in addition, has collected a formidable list of affidavits on Blume's character. They tell of Blume's honesty, good nature, kindness, tolerance and sense of justness, and the Tribunal does not doubt that he possessed all these excellent attributes at one time. One could regret that a person of such excellent moral qualities should have fallen under the influence of Adolf Hitler. But on the other hand one can regret even more that Hitler found such a resolute person to put into execution his murderous program. For let it be said once for all that Hitler with all his cunning and unmittigated evil would have remained as innocuous as rambling crank if he did not have the Blumes, the Blobels, the Braunes and the Bibersteins to do his bidding, -- to mention only the B's. the Indictment. criminal organizations SS, SD and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment. Universities of Munich, Freiburg, Cologne and Tuebingen. He worked as an assistant judge in the Inner Administration of Wuerttemberg and became a Government Councillor in 1937. In October 1939 he was chief of the Immigration Center and in June 1941 was appointed chief of Sonderkommando ia of Einsatzgruppe A. He left for Estonia on the 23rd day of that month. On December 3, 1941 he became Commander of the Security Police and SD for Estonia. He returned to Germany in September 1943. During this long period of 26 months he had ample opportunity to be involved in the execution of the Fuehrer-Order which he originally heard in Pretzsch end which was fully discussed again in Berlin before he left for the East.

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Despite the defendant's protestations from the witness stand, it is evident from the documentary evidence and his own testimony, that he went along willingly with the execution of the Fuehrer-Order. Hardly had his kommando reached its first stopping place before it began its criminla work. Operational Report No. 15 reads:

"Group leader entered Riga with Ein satzkommando 1a and 2." of 400 Jews and the setting up of groups for the purpose of fomenting progroms.

Sandberger seeks to deny responsibility for the executions, although it has been demonstrated that not only he was in Riga at the time they occured, but he actually had a conversation about them with the Einsatzgruppe Chief Stahlecker before he left Riga.

This same report shows that a teilkommando of Sandberger's unit, Einsatzkommando 1a, was assigned to an operation in Dorpat; and it is interesting to note that a subsequent report (No 88, dated September 19, 1941) tells of an execution in Dorpat of 405 persons of whom 50 were Jews. This report closes with the significant statement:

"There are no more Jews in prison." included one item under Esthonia of 474 Jews and 684 Communists. The defendant also denies responsibility for these killings, placing the credit or blame for them on the German Field Police and Esthonian Home Guard. It is a fact, however, that the Esthonia Home Guard was under Sandberger's juridiction and control for specific operations, as evidenced by the same report:

"The arrest of all male Jews of over 16 "At present a camp is being constructed be free of Jews in a short while".(Emphasis supplied) Report No. 17, dated July 9, 1941 carried the item:

"With the exception of one, all leading to about 14,500.

Of these about 1,000 tration camps.

3,785 less guilty sup porters were released."

cipated but argued, reponsibility for only a fraction of the mental figure". He placed this "fraction" at 300 to 350 persons. In further attempted exculpation from responsibility for the numerous killings which admittedly occured in the territory under his jurisdiction, Sandberger announced in court a system of investigation, appeal, review and re-view which involved eleven different people, one of whom was himself. The real difficulty about Sandberger's explanation is that it lacks not only support, documentary or otherwise, but it lacks credibility in itself. Sandberger's story would argue that these involved and elaborate pains were taken under the Nazi aegis to protect the lives of the very people, the supreme order under which they were operating had doomed to summary extermination. for at least 350 deaths in this instance:

"Q. The sum total of Communists seized runs to about 14,500; do you see that?

A. Yes, 14,500, yes.

Q. That means 1,000 were shot?

A. Yes, I get that from the document.

Q. You know it. Did you know of it?

Do you remember it?

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A. The report must have bun submitted to me.

Q. Then at one time, at least, you knew of it?

A. Yes.

Q. Were you in Esthonia then?

sponsibility. I am only responsible for Q. You are responsible for 350?

A. That is my estimate." the internment of Jews which resulted in the internment of 450 Jews in a concentration camp at Pleskau. He states he did this to protect the Jews, hoping that during the internment the Fuehrer-Order might be revoked or its rigorous provisions modified. The Jews were later executed. Sandberger claims that the execution took place without his knowledge and during his absence, but his own testimony convicts him:

"Q. You collected these men in the camps?

A. Yes, I gave the order.

Q. You knew that at some future time they could expect nothing but death?

A. I was hoping that Hitler would withdraw the Q. You knew that the probality, bordering on being collected?

Q. In fact, almost a certainty, isn't that right?

A. It was probable." which, of course, constituted murder, was even more definitely admitted.

"Q. You collected these Jews, according to the basic order, didn't you, the Hitler Order?

A. Yes.

Q. And then they were shot; they were shot;

isn't that right?

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A. Yes.

Q. By members of your command?

A. From Esthonian men who were subordinated to my Sonderkommando leaders; that is also Q. Then, in fact, they were shot by members under your command?

Q. Then, as a result of the Fuehrer-Order, these Jews were shot?

A. Yes."

(Emphasis supplied)

Sandberger's temporary absence, on the date of the execution of course, in no way affects his criminal responsibility for the deed. witness stand to denial, the one admission he did make was that executive measures in Esthonia were taken under his supervision. He stated that he objected to the Fuehrer-Order:

"I objected to the decree sp strongly thinkable.

... I could not imagine that I could not do myself."

was the highest legislative authority, and, although the Fuehrer-Order offended his moral sense, it had to be obeyed. His moral sense apparently did not always prevail for the defendant btrayed himself into a note of justification of the Fuehrer-Order when he testified:

"....when we saw in this Baltic area this."

the Fuehrer-Order and other Nazi dictates is evidenced by the eulogistic remarks which appeared in the recommendation for his promotion:

".....He is distinguished by his great in his work.

From the professional point of view, S. has proved himself in the East.

S. is a versatile SS-Fuehrer, suit "S. belongs to the Officers of the Leadership minimum age set by the RF-SS (36 years).tanfuehrer."

(Emphasis supplied) ant guilty under Counts I and II of the Indictment. criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: The Tribunal will be in recess for fifteen minutes.

(A recess was taken.)

(The hearing reconvened at 1120 hours.)

THE MARSHAL: The Tribunal is again in session.

JUDGE DIXON: The defendant WILLY SEIBERT. University of Goettingen in 1932 as a graduate economist. He served in the Army from 1932 until 1935 when he entered the SD as an expert in economics. In 1939 he became Chief of Group III D, Economics, in the RSHA and, as such, Deputy to defendant Ohlendorf. He continued in this capacity until transferred to service with Einsatzgruppe D in May 1941. April 2, 1947, declared:

"The former Standartenfuehrer Willi Seibert was my Chief III.

Since he during my absence.

One of his tasks Berlin, and to the 11th Army.

In of the contents as a routine (customary) matter.

Seibert had full access to all the secret files; including those by Seibert as by me.

Reports which are Einsatzgruppe.

Seibert was acquainted the framework of Einsatzgruppe D. Only which took place, namely, Seibert and myself."

already been cited and quoted from, the defendant Seibert stated that the radio reports on the activities of Einsatzgruppe D were known only to Ohlendorf, Seibert and the telegraphist. Further, that Seibert accompanied Ohlendorf on journeys of inspection.

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their original statements as to Seibert's activities with the Einsatzgruppe and endeavored to delimit his functions to those of Chief of Office III. This modification could well have stemmed from a desire to help a co-defendant, rather than because of a mistaken statement in the first instance. One could err in the general summing up of another's activities, but it is difficult to comprehend how one in the normal possession of faculties of memory and reflection could ascribe the accomplishment of a very specific act to another if, in fact, it had not occurred. Thus, in his affidavit of April 2, 1947, Ohlendorf stated: "The only people whom I generally assigned to inspections were, except for Schubert, Willi Seibert and Hans Gabel." Here we have a very definite type of work. specifically declared that Willy Seibert was Ohlendorf's deputy, and that Ohlendorf or Seibert had assigned him to supervise and inspect an execution which involved some 700 people. Schubert could scarcely have credited Seibert with this type of executive authority, unless he was aware ho possessed it. One Karl Jonas declared by affidavit that Seibert was deputy to Ohlendorf. he was not Ohlendorf's deputy generally for Einsatzgruppe D, he did represent his chief "in all matters which a Chief III has to work out". And then he explained that "as senior officer on the staff of the Einsatzgruppe" he "took over all tasks within the Group whenever Ohlendorf was absent from the Group".

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his activities to those falling within the normal scope of Office III, he did state that he made inspections of Tartar companies, that he engaged in combat actions against partisans and that he did make reports on executions. These assignments obviously do not fall within the duties of a Chief of Office III, as Office III was described by Seibert. been originally appointed by Heydrich as chief of the Department IV in his Einsatzgruppe. Under the plan of organization, Setzen would thus become Ohlendorf's deputy in executive functions of the Einsatzgruppe. However, Ohlendorf did not use Setzen for this purpose. He assigned him to the leadership of a subkommando, and the evidence is entirely convincing that he used Seibert for functions which would otherwise have been performed by Setzen. Seibert had been Ohlendorf's deputy in Office III of the RSHA since 1939. It would be quite natural for Ohlendorf to want Seibert, who had been his deputy in Berlin, to continue in a similar capacity in the field. And it is significant that they both returned at about the same time to the RSHA in Berlin and Seibert once more took up his duties as deputy to Ohlendorf in Office III. of reports signed by Seibert as acting commander for Ohlendorf during the latter's absence. These reports show conclusively that Seibert was reporting upon the general activities of the Einsatzgruppen, which included executions, planning for operations, and negotiations with Army officials, and in one of the documents Seibert is revealed requesting a conference with the chief of Staff of the Army. A report (Register No. 1118/42) dated April 16, 1942, carried the phrase "The Crimea is freed of Jews". Seibert knew the full significance of that phrase.

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He was questioned about it on the witness stand:

"Q. When you signed the report which contained of Jews?

A. That did not have to be the case, Your Honor, or at least during the first time; they were Q. Eventually they were executed?

A. Yes, that is probably the case.....

Q. And when you signed the report which contained the phrase, 'The Crimea is freed of Jews', you knew what had happened to the Jews?

A. Yes, I knew that." stated that he did not exclude the possibility that Jews were among the executees. He also knew that Jews and Communist functionaries were shot without investigation:

Q. So you know that of your own knowledge without any investigation or trial?

A. Yes, I had to assume that from the Fuehrer-Order."

Einsatzgruppe D any orders from Army Headquarters which should arrive during Ohlendorf's absence. name, Ohlendorf's deputy in the Einsatzgruppe D. It finds further that he was thoroughly aware of the activities of Einsatzgruppe D and participated as a principal as well as an accessory in its operations which violated International Law, and fall within the provisions of Control Council Law No. 10.

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that the defendant is guilty under Counts I and II in the Indictment. of the criminal organization SS and SD under the conditions defined by the Judgment of the International Military Tribunal and, therefore, is guilty under count III of the Indictment.

PRESIDENT: The defendant, Eugen Steimle. and French at the Universities of Tuebingen and Berlin. In May 1935 he qualified as instructor of secondary schools, and in March 1936 he passed the examination as Studienassessor. In April 1936 he entered the security service and on 1 September 1936 was appointed leader of the SD Regional Headquarters in Stuttgart. chief of Sonderkommando 7a of Einsatzgruppe B. During this time his unit executed 500 people:

Report No. 92;

Report No.108;

Report No.125;

Report No.133, chief of Sonderkommando 4a of Einsatzgruppe C, which unit also participated in liquidating operations. executions ordered by him were in the nature of punitive actions falling under established offenses against the laws of war, such as sabotage, looting, and partisan activity. It is evident that this defendant, like the defendant Blobel, has a distorted view of what constitutes established offenses when he states, as he does in his pre-trial affidavit, that under his leadership his kommando executed even "persons suspected of being partisans".

did not submit any evidence to contest the defendant's assertion that every exeuction of partisans was preceded by a thorough examination on the basis of a regular procedure. The defendant himself gave one highly illuminative demonstration on his idea of regular procedure. He was asked what he would do to a man he came upon lecutring on Communism, and he replied that, after taking a look at him:

"If I was under the impression that he shot."

narrative of an episode involving the shooting of three girls who, according to the defendant, were about to form a partisan group. He explained that the case of these throe girls was investigated for eight days. Whether such an investigation actually took place or not can only depend on the credibility of the defendant himself. In this respect it must be remarked that, if his concern for the girls' civil rigts rose no higher than his regard for their spiritual comfort, the victims could not have had much of a chance to defend themselves. Steimle himself commanded the firing squad, and he was asked if the girls were afforded any religious assistance before the shots were fired. He replied that, since they were Communists, they could not have had a religious conviction. Then the question was put to him as to what he would have done in the event they were religious. His reply was:

"If the wish had been uttered I can I, myself, wouldn't have bothered."

executions performed by his two units by stating that the alleged investigations were conducted by his subordinates. His admission, however, that he reviewed investigations and ordered death sentences makes him co-responsible with the persons in charge of the examinations. A superior may not delegate authority to a subordinate and then plead non-involvement for what the subordinate does.

Especially, when the superior reserves the right of supervision, as Steimle testified he did. defendant understood his responsibility in this regard but failed to meet it. does not support any conclusion that all Jews admittedly executed under Steimle's orders were accorded a trial and judicial process guaranteed by the rules of war and International Law. sub-kommandos while he was chief. In his pretrial affidavit he stated:

"From talk by members of the Kommando, I know that SS-Stnadartenfuehrer Dr. Blume, besides fighting against partisans."

And "I know that my predecessors, SS-Standart through the Ukraine."

were engaged in the execution of Jews prior to Steimle's arrival, they should suddenly cease performing their principal function while the Fuehrer-Order was still in force. Jews in his territory is discredited by Report No. 108:

"The Sonderkommando 7a executed a local, Gorodnie.

In Klinzy 83 Jewish terror were likewise liquidated.

At a further Politruk (political commissar at the front) and 82 Jewish terrorists were dealt with, according to orders."

(Emphasis supplied) Order.

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He added that he was opposed to it and thus, by failing to shoot Jews, he exculpated himself from any responsibility under that order. But, neither the Fuehrer-Order nor the Indictment in this case is limited to the extermination of Jews. The ruthless killing of members of the civiliam population other than Jews is also murder. Nonetheless the Tribunal is convinced that the Einsatz units under Steimle's leadership and authority killed Jews on racial grounds and also killed Jews on supposed offenses without affording them the trial called for under the Rules of War and International Law. It is also clear that Steimle did not attempt to prevent Foltis, his subordinate, from killing Jews under the Fuehrer-Order. The Tribunal finds from all the evidence in the case that Steimle authorized and approved of killings in violation of law and is guilty of murder. defendant guilty under Counts I and II of the Indictment. criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and, therefore, is guilty under Count III of the Indictment. JUDGE SPEIGHT: The Defendant Ernst Biberstein.

Ernst Emil Biberstein was originally named Szymanowsky. This striking change in name was no more extraordinary than the change in his profession. From clergyman in the Lutheran Protestant church in Kating, Schleswig-Holstein, he went to a chiefship in the Gestapo in Oppeln, Germany, in the meantime having renounced the church and his ecclesiastical garb. In August 1935 he entered the Reich Ministry for Church Affairs and in May 1936 was promoted to Oberregierungsrat in the State service. He served in the Wehrmacht from March 10, 1940, until October 20, 1940, when he became Chief of Gestapo at Oppeln. In the meantime, he had become SS-Sturmbannfuehrer and as such went to Russia as Chief of Sonderkommando 6 under Einsatzgruppe C. He served in this capacity from September 1942 until June 1943.

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a sworn statement that his kommando during the time he was its chief killed from 2000 to 3000 people. In Nuremberg he twice repeated these figures under oath. At the trial he sought to repudiate the total, saying that the interrogator, on the three different occasions, had insisted that he name a figure and that a discrepancy of one thousand more or ess did not matter. It was then put to him that allowing for a margin of one thousand he had still admitted to from one to two thousand killings. He refused, however, at the trial, to name any figure. that he had witnessed two executions, the precise details of which he had described in his three pre-trial declarations. In his affidavit of July 2, 1947, he related:

"I personally superintended an execution of a gas truck.

The persons destined valuables (sometimes the clothes also) and 60 people.

The truck was then driven to any outward signs of spasms.

There was no that the people were really dead."

"I have also witnessed an execution carried out with firearms.

The persons to be exe automatic pistol.

The persons thus killed mostly dropped straight into the pit.

I the neck.

No physician was present either at this form of execution."

only because the Chief of the Einsatzgruppe wished him to experience the sensation of watching an execution so that he might know how he would feel about a spectacle of that kind.

"Q. You didn't know that before you witnessed You didn't feel that before you actually witnessed the execution?

A. Of course not, Your Honor, for, before,

Q. So you had to see an execution in order sentiments?

A. Yes, I had to see what kind of an effect this would have on me."

stantiation of this assertion he advanced various explanations:

(1) that Thomas, the Einsatzgruppe chief, was aware of his religious background and therefore wished to spare him his feelings;

(2) that there were no Jews in his territory anyway; (3) that he did not know of the Fuehrer-Order. point where he declared that althought he had led an einsatzkommando in Russia for 9 months, he did not learn of the FuehrerOrder until he reached Nuremberg. In fact he states that the very first time the Order ever came to his attention was when it was talked about in the court room and its contents shocked him considerably. nounced the word "investigation" with a certain self-assurance which proclaimed that so long as they "investigated" a man before shooting him they had fulfilled every requirement of the law and could face the world with an untroubled conscience. But an investigation can, of course, be useless unless proof of innocence of crime releases the detainee. Investigating a man and concluding he is a Jew or Communist functionary or suspected franctireur gives no warrant in law or in morals to shoot him. Biberstein claims that all executees of his kommando were given a proper investigation and killed only in accordance with law. Can this statement be believed? In testing Biberstein's credibility he was questioned regarding his work as a Gestapo Chief.

His answers to the questions put to him shed some light on the extent to which Biberstein can be believed in his wholesale denials:

"Q. Suppose that you learned that in the town was waging, what would you do?

A. I would have asked the man to come to me just would have warned him."

"Q. You are on your way home one evening from what would you do?

A. Nobody would have done this, I don't think.

Q. Well, let us suppose someone did. Peculiar A. I would have told him, 'Don't talk about it.

Keep it to yourself, keep it quiet'."

"Q. Well, let's go a little further. This 'By the way, I just found out that there is a plot on here to kill Hitler.

I heard the men talking about this; I know the house in which they gather; I saw Biberstein.

' What would you do?

A. I would have told him, 'Go to Official So-andSo and report it to him'.Q. And you would have done nothing?

A. Why what could I have done? I didn't.

know what to do. I had no police directives." that a pastor has the task "to help souls but never to judge". Biberstein was no longer a pastor, professionally, spiritually or intellectually. He had already denounced his church and his religion and when asked why he did not offer religious comfort to those who were about to be killed under his orders and in his presence, he said that he could not cast "pearls before swine". incriminating answer, truth in an unguarded moment emerged and Biberstein confessed to murder from the witness stand.

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He steadfastly had maintained that every exeuction had been preceded by an investigation. As chief of the kommando which conducted the executions, his was the responsibility to be certain that these investigations revealed guilt. However if conceivably he could -- although in law and in fact he could not but even if arguendo he could be excused from responsibility for the death of those who were executed outside his presence, he could not escape responsibility for the death of those killed before his eyes.

With regard to the two executions which he witnessed (one by gas van and the other by shooting), he testified that the first involved some 50 people and the second about 15. He was questioned as to whether investigations had been made to determine guilt or innocence of these 65 executees. He replied:

"I did not see the files of these 65 cases.

I only know that men of the to investigate the cases."

The interrogation continued:

"Q. You do not know of your own knowledge that those cases were investigated?

These 65 deaths?

A. I did not see it.

Q. No. So, therefore, you permitted 65 or not?

A. I said that I only made spot checks.

Q. Did you make any spot checks in these 65?

A. Not among these 65.

Q. Then we come back to the conclusion that death without even a spot check?

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A. Without living made a spot check, yes." is guilty of murder in ordering the death of 65 persons and supervising their very executions without evidence of guilt. Sonderkommando 6, during the time that Biberstein was its chief accomplished mass murder. It finds further that as its chief, Biberstein was responsible for these murders. is guilty under Counts I and II of the Indictment. SS, SD, and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and, therefore, is guilty under Count III of the Indictment.

Judge Dixon; The Defendant Werner Braune University of Jena in July 1932 and in 1933 was awarded the degree of Doctor of Juridical Science. He joined the SS in November 1934. In 1940 he became chief of the Gestapo in Wesermuende. In October 1941 he was assigned to Einsatzkomando 11b. As chief of this unit Braune knew of the Fuehrer-Order and exected it to the hilt. Hi defense is the general one of Superior Orders which avails Braune no more than it does anyone also who executes a criminal order with the zeal that Braune brought to the Fuehrer-Order. Various reports implicate Braune and his kommando in the sordid business of illegal killings. Simferopol. Braune was the kommando leader in charge of this operation. He has admitted responsibility for this murder in unequivocal language:

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"It took place under my responsibility.

with Mr.Ohlendorf and there we con the assignment.

I personally was there company and, I think, another Captain."

Like a guillotine blade in its descent it did not stop to inquire into cause and premise. Nonetheless, the question was put to Braune as to why the Army, which apparently had immediately ordered this execution, was so anxious that the slaughter be accomplished before Christmas. Braune enlightened the Tribunal and simultaneously horrified humanity for all time as follows:

"The Fuehrer-Order was there, and now the Army said 'We want it finished be fore Christmas'. I wasn't able at the time to find out all the reasons.

May Army to issue that order.

Maybe they were territorial Questions.

Maybe they were questions of food.

The Army, at cause of the food situation.

..."

There were also executions after Christmas. Einsatz-Order, dated January 12, 1942, speaks of an operation destined -

"....to apprehend unreliable elements (partisans, saboteurs, possibly enemy Jews, leading Communists, etc.)

." Braune admitted that he took an active part in this operation. He was asked what happened to the Jews who fell into the dragnet which he had spread, and Braune replied:

"If there were any Jews, Mr. Prosecutor, they were shot, just as the other Jews."

the defendant replied:

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"Mr. Proseuctor, I believe that it has Jews."

that document carried this significant item:

"SS-Sturmbannfuehrer Dr. Braune gave the carrying out of the shooting."

he does admit that he marched with the condemned men to the place of execution.

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was convinced that "the whole lot of them had engaged in illegal activities", but he admitted that there was the possibility, theoretically, as he described, that among these 1,184 executees "There were some people who had not participated participated in sniping activities."

defendant is guilty under Counts I and II of the Indictment. criminal organizations SS, SD and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: The Defendant University, trained as Referendar in various cities and passed his final State Law Examination in December 1934. He took a position with the town administration of Doebeln in February 1935 and in the Fall of that year entered the SD. In the early part of 1942 Haensch was assigned to Sonderkommando 4b as its leader. It is the contention of the Prosecution that his authority over this unit began on January 16, 1942. The defendant asserts on the contrary that although it is true he was ordered to this post in January, he did not arrive at the site of the kommando until March 15, 1942. service, the defendant presented evidence to show that he was in Berlin on February 7, 1942, for some dental work, that, on February 20, 1942, he opened up a bank account, on February 21, 1942, he posed for some pictures and on another date attended a birthday party, all in Berlin.

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entation of evidence both for and against the alibi contended for by the defendant. The question of alibi, however, remains moot, in view of the fact that even if the Tribunal assumed that the defendant did not arrive in Russia until March 15, 1942, the date asserted by him as the beginning of his active service with the Sonderkommando, this assumption would not exculpate him. The record proves beyond a reasonable doubt that Sonderkommando 4b, under the leadership of the defendant Haensch, was active in War Crimes and Crimes against Humanity, even subsequent to March 15, 1942. and killed one-half of them. The identification of Haensch's unit in this mass execution is established by the following:

(1) Report No. 188, dated April 1, 1942 shows that Sonderkommando 4b had an active unit operating in Zhitomir.

(2) Report No. 189, dated April 3, 1942 states:

"Locations and communications as re 1 April 1942, remain unchanged."

so that it was bound to be the unit responsible for the incident described in the report as follows:

"Zhitomir -- 50 hostages from Gayssen were shot."

(3) Report No. 190, dated April 8, 1942 confirms the responsibility of Sonderkommando 4b for the events of April 3 by declaring that units of Sonderkommando 4b were still stationed at Zhitomir.

Report No. 189 above indicated, carries also another item under "Einsatzgruppe C":

"From 28 March up to and inclusive 31 March a total of 434 persons were subjected to 'special measures' (executed). The figures breaks down as follows:

253 Jews and 1 insane." 4b was responsible for the 434 executions, but for the purpose of demonstrating that Einsatzgruppe C (and, therefore, its integral units, including Sonderkommand 4b) was at the time actively engaged in the carrying out of the extermination program. 15. Report No. 6, dated Juno 5, 1942 shows that Sonderkommando 4b, under the leadership of Maonsch, was located at Gorlovka. The same report carries this item:

"Several large-scale actions against partisansa and Communists were carried out in the district of the Gorlovka in late April -- early May 1942. 727 out of1,038 persons arrested were given special treatment Among them there were 461 partisans, mentors of destruction battalions, saboteurs, looters and some Communist activists and NKVD agents."

The conclusion is inescapable that Hanesch's organization is responsible for the various executions mentioned herein. himself from Gorlovka at the time of the executions, but his evidence in this respect was vacillating and entirely inconclusive. He admitted that officials under his command participated in the action. Whether he personally was present in the actual physical arresting and shooting of the victims is of no consequence legally. A high ranking officer who plans an operation or participates in the planning and has control over officers taking part in the movement certainly cannot escape responsibility for the action by absenting himself the day of execution of the plan. Haensch was not only responsible for the sonderkommando during the operation, but he admits having been informed on the results thereof.

It is urged by Defense Counsel in behalf of Haensch that:

"In addition, nothing happened during the course of these operations which could be regarded as a crime. The containing of partisans, members of the ing to International Law.

I believe I further.

The report also shows that by the so-called 'special treatment'.vestigated."

partisans and Communists. Membership in any political party is not a capital offense according to the Rules of War and International Law. And executions for membership in a general political party can only be murder. It is asserted that all the cases were investigated. The report says nothing about investigations and, in any event, there is no evidence in the record that the investigations, if held, conformed to the accepted trial requirements, recognized by the Rules of War and International Law insofar as they appertain to civilians. Whatever defense exists to the charges contained in this item depends on the defendant's word. Can he be believed? never heard of the execution of Jews as Jews. Only three or four weeks prior to his alleged assumption of command over Sonderkommando 4b, the kommando killed, 1,224 Jews. He professed to know nothing about this massacre. He was asked:

"You have now stated that you have no reports.

Therefore, if 1,224 Jews were Jews?"

His only reply was that no one talked about these killings or any killings at all, and that he did not learn that Jews were executed for racial reasons until he arrived in Nuremberg five years later!

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4b he was told by Mueller, Chief of the Gestapo and Thomas, Chief of Einsatzgruppe C, that the executive activities of Sonderkommando 4b were to remain unchanged. He was asked whether he carried out these directives of Mueller and Thomas and he replied in the affirmative.

Report No. 24, dated July 16, 1941, discloses the killing of 180 Jews and the burning of Jewish homes by Sonderkommando 4b. Report No. 88, dated September 19, 1941, spoke of the execution of 435 Jews as well as 28 saboteurs and 55 officials and agents of the NKWD. Report No. 94, d dated September 25, 1941, contained an item on the execution of 290 Jews. Report No. 111, dated October 12, 1941, declared that 125 Jews had been liquidated. Report No. 132, dated November 12, 1941, reported 161 Jews killed. Report No. 135, dated November 19, 1941, repotted 562 Jews liquidated. Report No. 143, dated December 8, 1941, described the killing of not only 137 Jews, but also 592 "mentally deficients". Report No. 173, dated February 25, 1942, revealed the killing of 649 political officials and 139 Jews. Report No. 177, dated March 6, 1942, chronicled the execution of 1,224 Jews. policy of Sonderkommando 4b as it existed prior to his arrival in Russia, and the above enumeration indicates quite clearly what that policy was, this can only mean that he continued with the execution of the FuehrerOrder. The Tribunal rejects completely the defendant's statement that he did not know of the execution of Jews. In the face of what appears in the record the Tribunal also refuses to accept as fact the statement of the defendant that he was only personally aware of four executions involving in all sixty deaths. einsatz service. Over eight pages (which is over one-third of the entire statement) were devoted to a discussion on executions and his, the defendant's manner of conducting then. On page 22 he said:

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"I was requested to make statements con To this I must state the following:

In to give such information.

An estimated number would lack any basis of fact.

For I cannot give such an estimate."

of executions performed by the kommando during the time he was its chief is practically conclusive, if words have any meaning, that the number was a very large one. There is additional reason for this conclusion, in suite of his mentioning specifically three or four executions. His long eight-page description of executions is written in a manner and style which reveals irrefutably that mass killings former a regular routine to him and were not unusual events. A few sentences taken from this volunteered statement are quite illuminating on this point:

"The executions were effected by shooting than 8-10 paces.

The seeumption that the shootings were effected 'by revolver' does not correspond with the facts.

I have already the 14/7/47.

"I must once again energetically repudiate the out in a mean manner, e.g., in the form in the neck or in an otherwise lowdown manner."

"After quiet reflection I am bound to state "Moral sufferings for the victims as well as be avoided as far as possible.

Thus great care execution took place."

"I myself watched a few executions. Where sudden appearance.

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During this I saw derations enumerated were "being dis regarded."

"Occasionally officers or authorized appropriate offices."

"I still remember that the absolutely for instantaneous death."

"I recall that the executions were prepared on the other side."

"As far as I remember in the executions intervals and shot together."

"In those executions which I attended, death was instantaneous.

Immediately they were really dead.

I do not recall either ever having heard a cry of pain."

"As to the composition of the execution circumstances so-called 'shooting kom mandos' were formed, that is to say, the day before the execution."

expert with long experience, belies the defendant's assertion on the witness stand teat his kommando conducted only four executions with aamaximum of sixty deaths. given the benefit of a hearing, but no evidence was adduced to indicate the character of the charges brought against the arrestees except the general statement that they were partisans, saboteurs, looters or Communist activists.

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Nor was there any evidence that these persons recieved a trial. Furthermore, the large number of victims and the haste with which they were executed would demonstrate, considering the time element, the impossibility of trials for all of them. As a matter of fact the defendant testified that Streckenbach pointed out to him that in the East there would be no "formal court proceedings such as we were accustomed to carrying out in the Homeland, in the Police Courts, or another court." And on the contrary, he was instructed that the procedure was to follow the decree of the highest political authorities and it is a matter of record that all einsatz units had received the Fuehrer decree. The Fuehrer-Order, of course, provided for no trial whatsoever. The Tribunal is convinced that the civilians shot by Sonderkommando 4b under Haensch's leadership did not receive the trial intended by the Rules of War and International Law. The credible evidence shows, further that if there were any proceedings they were entirely of an ephemeral nature. the cases of the sixty persons executed by his kommando:

"Yes, I knew exactly about the individual district.

I also knew about the other security of the people."

decisions, but when he was asked:

"Would you have been able to reverse vidual was not justified?"

he replied:

"Yes, without any trouble. If I had been able to do that."

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were killed under his orders:

"Q. There were sixty people killed under your orders?

A. Yes." he pronounced the death sentence.

"Q. Now, how many of these sixty cases did the evidence on?

A. The evidence? I only looked through Q. All right.

A. (Continuing) came thereafter.

Q. That is thirty-two that you investigated yourself?

A. Yes.

Q. So that means that twenty-eight went to your having reviewed the evidence?

A. No.

Q. Sixty were killed under your orders?

A. Yes.

Q. Thirty-two you investigated?

A. Yes." went on to say that no investigated the sixty cases. The defendant's manner of testifying, his shifting and evasive attitude while discussing this subject, convince the Tribunal that he did not tell the entire truth about the sixty alleged investigations. The defendant stated that some of the killings had been ordered by the Army, but that he reviewed those cases also. It developed, however, that no written report was made so that it is not clear, if he had no personal knowledge of the facts and received no written report, how he could review the cases. His explanation, which is obviously no explanation, follows:

"....these cases of executions which I was to me for information.

Today, I cannot state exactly, committed by the defendants.

I Considered kommandos."

Much of the defendant's testimony, even if believable, does not exculpate him. Much is simply not worthy of belief. For instance, when he says that Streckenbach, who was the man responsible for the announcement of the Fuehrer-Order in Pretzsch, said nothing to him about this momentous program as he was about to depart for the East, Haensch utters an obvious falsehood. when he says that in his conversation with Heydrich, Heydrich was silent about the Fuehrer-Order, he declares what is incredible. And even, more incredible is his statement that the very Chief of the Einsatzgruppe, under whom he was to operate, remained mute on the subject of the Order of the head of the State, the very Order which brought the Einsatzgruppen into being. And then one can only dismiss as fantastic the declaration of the defendant that his predecessor who had admittedly executed thousands of Jews under the Fuehrer-Order, and whose program Haensch was to continue, said nothing to Haensch about that program. And when Haensch boldly uttered that the first time he ever had any inkling of the Fuehrer-Order was when he arrived in Nuremberg six years later, he entered into a category of incredulousness which defies characterization. Crimes against Humanity has been clearly and conclusively established. From all the evidence in the case the Tribunal finds the defendant guilty under Counts I and II of the Indictment. criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

JUDGE SPAIGHT: (reading) passed his examinations as assessor in 1934 and entered the Administration of Justice at Halle. In June 1935 he became employed in the National Ministry of the Interior at Aachen and then transferred to the Gestapo. From June 19, 1941, until March 1942, he served as commander of Einsatzkommando 12. put it into effect because it was his good fortune never to have been in a position where he had to execute the order. When he was asked if he had been called upon to shoot 500 Jews under the Fuehrer-Order whether he would have done as, he replied:

"If I had been in a situation where the then probably I would have done it."

he would take the matter up with his conscience:

"Q. .....you are before 500 innocent people, men, be your conclusion?

A. I would have taken it upon my conscience.

Q. And you would have killed them?

A. I would have probably done it."

Report No. 61, referring to Einsatzkommando 12, says:

"......Only in Babtschinzy resistance a few months ago.

By spying on the to Siberia.

As a counter-measure, 94 Jews were executed."

was carried out by one of his detachments, but declared that the execution was legal because the executees had sabotaged farm machinery and crops. The defendant's explanation is in flat contradiction to the report which specifically states that the 94 Jews were killed as a counter-measure. The phrase "counter-measure" carries no implication of guilt on the part of the victims and killing such victims can only be a crime. it had taken place, but admits that it was done by members of his kommando. He admitted further the possibility that the Fuehrer-Order figured in the decision of the sub-kommando leader to perform the execution. He asserts that his sub-komnando leader conducted investigations before shooting the Jews, but he made no independent inquiries to determine whether the executions were warranted. Taking him at his word, his acceptance without inquiry of the killing of 94 persons was a demonstration of criminal and wanton indifference which might well have induced his men to further illegal and unjustified executions. but admitted that there were shootings under his authority even though he did not know the number.

"Then comes the period of time from the on my responsibility during that time."

severe weather prevented any activities on the part of his kommando. It is a fact that Report No. 178 said:

"Kommando 12 had to limit its activities unpassable streets."

But it also said:

"From the 16 to 28 February 1942, 1,515 Jews.

271 Communists, 74 partisans, 421 Gypsies, as asocials and saboteurs."

While all these killings are not to be charged to Sonderkommando 12, it does refute the statement that Sonderkommando 12 was entirely immobilized during the period in question. Nor was it immobilized, according to Report No. 165, which, covering events in January 1942, said:

"Besides, 2 further Teilkommandos were of combing out the northern Crimea."

Then there was the episode of the Roumanian Jews. The prosecution contended that the defendant was involved in a forced migration of Jews from German-controlled territory into Roumania, and that in the operation some of the Jews were shot. The defendant admitted that he had led some 6,000 to 7,000 Jews across the Dnjestr River, but denied that in this movement any of the Jews were shot. In fact he endeavored to convey the impression that in this particular affair a great favor had been done the Jews in repatriating them. A witness, Harsch, called to testify on the subject stated that he witnessed the arrival of the Jews on the Roumanian side of the river, and that once they had gained that point they evinced their gratitude to the German escort by crying "Heil Hitler". Although this contingent of Jews escaped the German firing squad by leaving German territory, it is not so certain what fate awaited them in Roumania. The defendant Nosske, in this regard, testified, as stated before in the General Opinion:

"I assume that the Roumanians wanted to trouble of shooting them.

We didn't want to do the work for the Roumanians."

The witness Harsch said that later he saw these same Jews within barbed wire enclosures on Roumanian territory.

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shootings by his kommando:

"From 21 June until 15 September certainly, 23 (Of August), the shooting in Babtschinzy took place."

"This territory where the Kommando XII territory; certain shootings occurred but we didn't quite know.

Our own and other people's reports mentioned this.

it. Of course, shootings were carried which had been in other territories."

"In this connection many reports were as foreign executions."

total killings of the parent organizations, Einsatzgruppe D, but refused to name any figure or even an estimate of the number of persons his kommando had executed. He said that in his entire period of service in Russia he had only seen two people killed and then, after vividly narrating the details of an incident which resulted in numerous executions, he could not or would not state the number of people who had been killed. It is extraordinary that he should recall the alleged investigation of this incident but not recall what happened as a result of the investigation. executed by his kommando, he did finally say that he knew it had killed at least 244. Taking his testimony as a whole, the Tribunal is convinced that the kommando executed a number considerably larger than 244. Nor is it convinced that the Rules of War and International Law were observed in all these cases.

Report No. 95, dated September 15, 1941, speaks of various executions conducted by Einsatzgruppe D of which Sonderkommando 12 formed a part. In his summation, defense counsel says:

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"Even if the report contains reports on of the Fuehrer-Order."

But the report itself says:

"From 19 August until 15 September, Total number:

13,315. The Jewish in Nikolajew and Cherson.

About 5.000 Jews were rounded up in each town."

killings enumerated here, it is obvious that the shooting of the Jews, since no qualifying phrase limits the reference to the Jews, was done on the basis of the Fuehrer-Order. the Roumanians shows a familiarity with the Fuehrer-Order which belies his general assertion that he was opposed to it. In that statement he practically asserted that he was against killing Jews for the Roumanians, but that there was no objection to the same kind of a performance if it took place in the territory of his own organization. to Germany, the Higher SS and Police Leader in the Duesseldorf area instructed him to round up all Jews and half-Jews in that area and shoot them. The defendant stated that he protested this order and that, eventually, it was revoked or at any rate not enforced. Nosske's protest against this order was undoubtedly due mostly to the fact that many of the intended victims, because of the conjugal relationship of the halfJews, were considered Germans. Nonetheless, his action in refusing categorically to obey the order, demonstrated, contrary to the argument advanced throughout the trial in behalf of the various defendants, that a member of the German Armed Forces could protest a superior order and not be shot in consequence. Though it is true the defendant suffered some inconveniences because of his unwillingness to shoot the people of Duesseldorf, he was not shot or even degraded.

defendant is guilty under Counts I and II of the Indictment. organizations SS, SD and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: The Tribunal will be in recess until one forty-five o'clock.

(The Tribunal recessed until 1345 hours.)

(The hearing reconvened at 1345 hours, 9 April 1948)

THE MARSHAL: All persons in the Courtroom will please take their seats. The Tribunal is again in session.

JUDGE DIXON: The defendant Adolf Ott. administrative office of the German workers Front in Lindau. He joined the NSDAP in 1922 and became a member of the SS in 1931. In 1935 he entered the Security Service. except perhaps the meaning he intended to give to the word "execution". In his pre-trial affidavit he said that his kommando carried out 80 to 100 executions. At the trial he stated that, by the word execution, he meant the death of but one person. The context of the affidavit would logically convey a contrary view because, immediately after speaking of the "80 to 100 executions", he says: "I remember one execution which took place in the vicinity of Bryansk", and he then proceeds to describe this execution which involved "corpses". The affidavit also says that the valuables collected from "theseepeople" were sent to Einsatzgruppe B. to the effect that the word "execution" is used in the sense of a multiple killing. However, for the purposes of the ascertainment of guilt or innocence it matters little whether, by "80 to 100 executions", Ott meant the killing of only 80 to 100 people or a multiple of 80 to 100, which multiple, in view of the evidence in this case, would increase the number of the slain to many hundreds at the very least.

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Sonderkommando 7b on February 15, 194-2, and, according to his testimony in court, he arrived at the headquarters of the kommando in Bryansk on February 19. He asserted, however, at the trial, that he did not actually take over the leadership of the unit until about the middle of March. It is the contention of the prosecution that Ott testifyingly delayed his chief ship of the kommando until March 15, in order to avoid responsibility for the executions enumerated in Report No. 194:

"In the area of the Einsatzgruppe, during the following were specially treated:

through SK 7b: 82 persons, 19 among then for 27 Jews."

February 19 for the specific purpose of taking over control of Sonderkommando 7b it is not clear why he should have waited until March 15 to assume leadership of the unit. But even if this unexplained delay in the technical assumption of command were a fact, this would not of itself exculpate Ott from responsibility for the operation involved. Under Control council Law No. 10 one may be convicted for taking a "consenting part in the perpetration of crimes" and it would be difficult to maintain that Ott, while actually with the kommando, did not (even though technically not its commanding officer) consent to these executions, declared that the 82 persons enumerated therein were killed between March 6 and March 30.

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Thus, if arguendo Ott's authority over the kommando was delayed until March 15, there is still the responsibility on his part for the executions which occured between March 15 and March 30. as to the number killed before March 15 and the number executed after March 15 is academic, because the evidence is conclusive that, during the at least ten-month period that Ott commanded sonderkommando 7b, great numbers of people were killed in violation of international Law. in the individual judgments, to enumerate and discuss all the executions charged against the defendants by the Prosecution if it is once established that the defendant is guilty under Counts I and II of the Indictment. In this respect, Ott himself removed every possible scintilla of doubt when he said:

"I told my sub-kommando-leaders that basis of the Fuehrer-Order."

After this statement in court, he was asked:

"Did I understand you, witness, to say accordance with the Fuehrer-Order?

Is that what you said?

And his answer was:

"Yes, that is correct." shot, even if he did not belong to a partisan or sabotage organization. And he replied:

"Yes. He would have been shot, even one of these organizations."

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incontrovertible guilt, more questions were out to him on this subject, so that there could be no possible misunderstanding The further interrogation follows:

"Q. If he had not belonged to an organization he would have been shot anyway?

A. He would have been shot if he had not been Q. .....so that whether he belonged to an or saboteurs; or not, he was bound to be shot because, if he wasn't shot as a be shot under the Fuehrer-order?

That's correct, isn't it?

A. He was shot in accordance with the Fuehrer Order -- yes.

I would like to add..... that, in this particular case to see 'is he a member of an organization or is he not'.Q. And in each case you found out he was a organization?

A. One of these three groups.

Q. Yes, now if you had found out that he was under the Fuehrer-Order, that's right, isn't it?

A. Yes, that is correct.

Q. What was the necessity of the investigation shot?

What; was the reason for wasting all anyway?

A. Interrogations were carried out to find out and their activities.

That was the purpose of the interrogation."

refused to speak:

"Q. Some of them refused to talk?

A. That is so.

Q. They were shot just the same?

A. They had to be shot if they were Jews." of equivocation and error, the defendant was questioned further, and he answered as follows:

"Q. Well, then you did shoot some Jews because they were Jews?

A. I have already said, ..... every Jew Q. How many Jews did you shoot just because they were Jews?

A. I estimate there must have been about 20, at least."

that he shot 20 Jews just because they were Jews conclusively establishes his guilt, and it is unnecessary to consider the other items of accusation advanced by the prosecution. this subject, and that is the undeviating fidelity of the defendant to the virtue of Consistency. consistency, which has always been regarded as a jewel, did not lose any of its sparkle or glean in the hands of Adolf Ott. When asked why he did not release some of the Jews when he had the opportunity to do so, he replied:

"I believe in such matters there is capture or I have to release them all."

One more item in Ott's case is worthy of comment. In his pre-trial affidavit he said:

"In June 1942, without having received ment camp in Orel.

In my opinion people comparatively snail misdeeds.

For this were made by my kommando.

It happened too that people were released.

The in this camp was 120 persons."

in the declaration that it was his opinion that people ought not to be shot right away for comparatively small misdeeds", but his assertion that it "happened too" that is, it even happened, that people were released. the defendant guilty under counts I and II of the Indictment. member of the criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under count III of the Indictment.

JUDGE SPEIGHT: The defendant Woldemar Klingelhoefer. Kassel, served in the Army from June to December 1918 and after the war studied music and voice. He gave concerts throughout Germany and later received a State's Certificate as voice-teacher. In 1935 he became an opera singer. In 1937 he took over Department culture, SD III/c in Kassel. In 1941 he was assigned to Einsatzgruppe B as an interpreter, This Einsatzgruppe, already by November 1941, according to Report No. 133, had killed 45,467 persons. This score was considerably increased later.

evidence at all indicate that Klingelhoefer could be charged with all these executions simply because he belonged to Einsatzgruppe B, which, of course, consisted of several kommandos. The reference to the larger unit is made only because the defendant has told of various transfers within the Einsatzgruppe. He said that he was in Sonderkommando 7b from June 22, 1941 to July 10, 1941, and then entered Vorkommando Moscow. In October he took over an independent command of this unit and held it until he went on leave. On his return to Russia on December 20, 1941 he entered the Group Staff of Einsatzgruppe B where he remained until December 1943. There are scores of reports covering the activity of these various units and it is unnecessary to trace Klingelhoefer in and out of these individual units specifying the exact number of persons killed by the units during the time he was with that particular organization.

Report No. 92 shows that Vorkommando Moscow killed over 100 persons as of September 13, 1941 and Klingelhoefer admits he was in charge of that unit during August and September 1941.

Report No. 108 declares that by September 28, 1941 the Vorkommando Moscow and the Group Staff of Einsatzgruppe B had killed 2,029 persons. Between August 20 and September 28, 1941 the Vorkommando and the Group Staff executed 1,885 people. Klingelhoefer admitted that he was in charge of Vorkommando Moscow during that time. had executed 2,457 persons and, whereas Klingelhoefer can not be charged with the entire number of 572 persons killed between September 28 and October 26, 1941, he can not escape responsibility for some of these killings since in this period he commanded part of Vorkommando Moscow.

he witnessed showing thereby the greatest familiarity with the macabre techniques involved but in his pre-trial affidavit he related how he shot 30 Jews because they had left the Ghetto without permission. He did this, he said, under orders from the chief of the Einsatzgruppe, Nebe, who ordered him "to establish on example". At the trial he gave a different explanation of this episode which, however, establishes even a clearer case of guilt. He said that three women had contacted some partisans and, returning to the town, had talked to the thirty Jews in their homes. This, according to the defendant, made them guilty of partisan action and he had then shot. He, of course, also shot the three women. He, did, however, accord them a special consideration. He had them blindfolded for the execution and then ordered that they be given a separate grave. Einsatzgruppe operation was only that of interpreter. Even if this were true it would not exonerate him from guilt because in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found. In this function, therefore, he served as an accessory to the crime.

"Q. I asked you, witness, didn't you know that going to exterminate all these he could?

You either knew it or you didn't know it.

A. Of course, I did."

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mere interpreter in the grim business of the Einsatzgruppe. He was an active leader and commander. He knew what the einsatz units were doing to the Jews, "Q. You told us you knew that if he then set free?

A. If he left the ghetto, he violated the Q. So that he was killed anyway?

A. Then he had to be executed, yes."

In his own affidavit the defendant stated:

"While I was assigned by Nebe to the part of the Jews there.

The Jews had Hauptsturnfuehrer Egon Noack.

The interrogation on the witness stand that he was morally opposed to the Fuehrer-Order, it is evident from all the testimony in the case that he went along quite willingly with it. would have been happy for Hitler to win the war even at the expense of its present condition with two million Germans killed, the nation in utter ruins and all of Europe devastated This statement has no bearing, of course, on the question of his guilt under counts I and II, but it is helpful in determining the state of mind as to whether he obeyed the so-called Superior Orders with a full heart or not. defendant accepted the Fuehrer-Order without reservation and that he executed it without truce.

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The Tribunal finds the defendant guilty under Counts I and II of the Indictment. of the criminal organizations SS and SD under conditions defined by the Judgment of the International Military Tribunal and is therefore guilty under count III of the Indictment.

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JUDGE DIXON: the Wehrmacht from 1934 to 1936. He then joined the SD. to October 2, 1941. During this time, the Sonderkommando was engaged, as all other kommandos of the Einsatzgruppe, in the execution of the Fuehrer Order. The reports show that, during the time that Fendler was with the unit in question, many executions occurred:

Report No. 24 - IIA/31, NO-2938 Report No. 19 - IIC/49, NO-2934 Report No. 111- IIA/44, NO-3155and asserts complete ignorance of them.

In fact, according to his story, he did not learn of the Fuehrer execution order until after he had severed all connections with the Sonderkommando. Department III and that he was concerned only with the gathering of information. Defendant after defendant has asserted that, in doing Department III work, he was utterly ignorant of the functions performed by the other departments, but one cannot help but observe that Department III did not operate within the confines of a high stone wall separating it from the rest of the kommando. An Einsatzkommando in the field usually consisted of from 80 to 100 men and 7 to 10 officers.

Sonderkommando 4b had a staff of 7 officers. Fendler lived, ate and associated with these officers. He was Department III, some other officer was Department IV, and still another officer was Department V or VI, and so on. It is absurd to assume that Fendler could not know what these other officers were doing, especially in view of the fact that Fendler was the second senior officer in the kommando. Fendler, himself, ever conducted an execution, but it is maintained that he was part of an organization committed to an extermination program.

Fendler asserts that Department IV alone conducted the executions and, therefore, within the water-tight compartment of his own Department III, he did not know what was happening in Department IV. between the SD (which is Department III) and the Gestapo (which is Department IV), said:

"One of the principal functions of the local Agency for the local Gestapo units.

In the Police and SD was slightly closer."

executions and that, generally, he did not know what was taking place. Fendler's assertion runs counter to normal every day experience because it is simply incredible that a high-ranking officer in a unit would not know of the principal occupation of that unit. after he had left the kommando and was at Kiev on his way home. He was asked:

"So that you had to travel five hundred kilometers and two days' distance from the is that right?"

And his answer was "yes". the kommando was making out morale reports on the population. He was asked whether, when he learned of the pogrom which had occurred in Tarnopol, where about 600 people were murdered, he included this fact in his report. He replied in the negative. He was asked why he would not include so momentous an event as the murdering of 600 people in the streets in a report which he was compiling on the morale of the population, and he replied he did not have a chance:

"Q. Well, how much time would it take in an SD 600 Jews were murdered, - or you didn't want to report?

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How much time would it take to say that?

A. Two seconds.

Q. Well, then, why didn't you have the two seconds to write that?

A. Because I made no report.

Q. Why didn't you make a report?

A. Because I was given the order by the kommando leader to evaluate this material."

leader and stated that, when he acted as an advance kommando leader, he occupied himself only with the obtaining of intelligence files left behind by the Bolshevists. But, in evaluating these reports, it is inevitable that he would need to tell someone what he found. In fact, he did admit that this information usually was "utilized for individual reports". The Army was also informed "in a written form or orally". and thus would not know what the others were doing, the defendant stated that his unit never divided its forces. Thus, one officer would not need to do the job of others. However, since this would establish that, by sheer proximity, the officers could not help but know each other's business, the defendant later stated that the unit was not always together because of the distance it had to travel.

The defendant knew that executions were taking place. He admitted that the procedure which determined the so-called guilt of a person which resulted in his being condemned to death was "too summary". But there is no evidence that he ever did anything about it. As the second highest ranking officer in the kommando, his views could have been heard in complaint or protest against what he now says was a too summary procedure, but he chose to let the injustice go uncorrected.

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He was asked:

"Do I understand you correctly that you were of sufficiently safeguarded?

Is that what you want to say, that that was your opinion; was that your opinion?"

And he replied:

"That was my theoretical opinion, Mr. Prosecutor." the Tribunal is not prepared to say that the evidence in this case rises to that degree of certainty which could conclusively establish that the defendant was guilty of planning the killing of people or ordering their death. It does, however, show that the defendant took a consenting part in the criminal activities in the sense intended in Control Council Law No. 10, although there are some mitigating circumstances. From the evidence in the case the Tribunal finds the defendant guilty under Counts I and II of the Indictment. The Tribunal finds the defendant was a member of the criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: the Latvian Army in 1932. After discharge in 1933 he worked with an import firm until November 1939 and then moved to German-occupied Posen, being employed from November 1939 until January 1940 at the Advisory Office for Immigrants and from January 1940 until May 1941 at the Office of Repatriation of Ethnic Germans. In May 1941 he was assigned for emergency service with the RSHA and then transferred to Pretzsch as an interpreter to the newly formed Sonderkommando 4a. He traveled with the Sonderkommando to Hrubgoschow and from there to Ludzk where he was assigned to a Teilkommando of the same organization.

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In December 1941, he took leave and reported back to Sonderkommando 4a in Charkow in March 1942. He remained with this unit until December 1942 and, at the same time, acted as liaison officer between the Einsatzkommando and German and Hungarian army units. In January 1943, the area under the jurisdiction of the 2nd Army was subordinated to the area of the Einsatzgruppe and the defendant's reports and activities were controlled by Einsatzgruppe B. In the winter of 1943, he returned to Berlin. time he served with Sonderkommando 4a, he was officially informed that the kommando participated in a number of executions in the areas assigned. that such executions did occur. A the trial the defendant claimed that executions were entirely beyond his sphere of activities, and his job was simply to make reports. One could well believe, if one were to accept as fact the statements of the various defendants who functioned in the so-called Department III that these kommandos were engaged in a scientific expedition studying the flora and fauna of the land through which they traveled, obtaining data on agriculture and economy, but in some way or other avoiding all contact with the grim enterprise to which the units were committed. It is not known what blinders these defendants wore that they could be in the very midst of the carnage caused by their own associates and yet remain entirely unaffected thereby. Again we come to the question of credibility. The witness was asked whether, in making a report on the economy of the country he would indicate that the labor supply had been affected because of the execution of Jews. He replied in the negative and the following ensued:

"Q. Making a report on the economy you would include that in your reports, would you not?

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A. The situation which we found was that the entire Q. The economy wasn't helped by shooting off further labor supply, was it?

A. No.

Q. Did you report this in your reports?

A. I may say the following.

Q. Did you make this statement in your reports, that the economy was made worse?

Did you report that?

A. As far as I remember I reported about the fact Q. And did you report that Jews were being decimated?

A. No.

Q. You didn't put in any report that Jews were being killed and this affected the economy of the Ukraine?

A. No, in this shape I did not report about it. I only Q. ..... You say that you did include in your report economic potential.

Did you then add that this because of the executions?

A. No, I did not report that.

Q. And yet you want to tell the Tribunal seriously that you made a report on the economy of the Ukraine?

A. Yes." employed as an interpreter. He amplified later that he was drafted into the Einsatz-organization because of his ability in languages. His witness Kraege confirmed this. Yet, at the trial, von Radetzky denied acting in the job for which apparently he was best adapted.

It can only be assumed that he made this denial because, by admitting the translating functions, he would be admitting that he knew of executions which followed certain investigations. Asked how it was that he was able to side-step his job of interpreter he replied that his work day was filled up with his job of expert in the SD Department.

"Q. Well, how did you become and expert in De partment III?

You had not had SD training?

A. No, I did not have that, I said-

Q. Well, then, how did you become an expert so quickly?

A. I was appointed for this because of my Q. Well now, we come back to languages again.

wouldn't he naturally turn to you who was interpreter?

A. There were other interpreters in the kom Q. Then you were not used as an interpreter?

A. I was never used as an interpreter by the Commander.

I was never used in interro gations as interpreter, either."

an interpreter. Report No. 156, commenting on the activities of a teilkommando of Sonderkommando 4a at Lubny, stated that -

"On the 18 October 1941 the Teilkommando of the NKWD Files."

and thus, "......it was possible, with the aid of leading Communists.

34 agents and Communists and 73 Jews were shot."

Report No. 37 states:

"In Zhitomir itself, Gruppenstab and the NKWD."

the NKWD could only be established through the medium of the interpreter the documents would point to you Radetzky as that interpreter since he admitted being with this advance commando. Hence the possible motive for denying the interpreter's position.

Other reports also show the need for an interpreter:

Report No. 24 - IIA/81, NO-2938 Report No.187 - IIIC/34, NO-3237 Report No.111 - IIA/45, NO-3155 Report No. 111 would indicate still another reason why von Radetzky would deny his interpreter's role:

"On 26 September, the Security Police took up its activities in Kiev.

That day, Camp, and in the city itself.

Thus, interrogated in detail.

Conforming denied all political activity.

Only confessed, i.e. they admitted the position statements beyond this.

They were shot on 27 September."

(Emphasis supplied). he obtained supplies for the komnando. When asked what supplies were involved he replied: "Food and fuel". He was then asked about ammunition. He replied that he did not remember. It was then put to him:

"Witness, you either remember or you don't remember.

If you remember food ordered ammunition or not.

Did you order ammunition?"

and he now replied with a definite "No". He was then asked why it was that he at first said he could not remember if he had ever obtained ammunition for his kommando:

"Q. Do you remember now very definitely that you did not order ammunition?

A. Yes.

Q. Do you say now definitely that you did not order ammunition?

A. I an certain that I would remember if kommando."

pre-trial affidavit, that, during his absence, von Radetzky took over. Blobel repudiated this statement on the witness stand, but he also denied that von Radetzky could ever have been even a teilkommando or vorkommando leader. But the documentary evidence clearly establishes that von Radetzky was active as a sub-kommando leader. rank in his kommando could qualify as leaders and, to that extent, he also was "a leader of the kommando." Sonderkommando 4a and rear army HQ "to liquidate the Jews of Zhitomir completely and radically." not present at it but that he had been ordered to negotiate with the field command about the furnishing of vehicles. He stated that he was of the impression that the Jews were to be resettled in Rowno. It is difficult to believe that the defendant did not know what "resettlement" meant in Einsatzgruppen circles. Sonderkommando 4a during Blobel's absence. Although there is evidence that Blobel was often absent because of illness, the Tribunal cannot find beyond a reasonable doubt that, during those absences, von Radetzky took over the kommando.

Report No. 14 tells of a reprisal operation carried out at Ludzk by a sub-unit of Sonderkommando 4a. Gustav Kraege stated in an affidavit that von Radetzky was one of the officers of this sub-unit. Von Radetzky stated he was present in Ludzk during the time of this execution but denied having been commander of this unit, although he stated he was the highest ranking officer in the sub-kommando.

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When Kraege appeared in court as a witness he sought to repudiate his statement about ascribing the chiefship of the sub-kommando to von Radetzky but he did admit that, at the time he was actually in Ludzk, he believed that von Radetzky was commanding, since Radetzky gave him his direct orders. knowledge of the extermination of Jews he finally admitted this knowledge. doubt that the defendant knew that Jews were executed by Sonderkommando 4a because they were Jews, and it finds further that von Radetzky took a consenting part in these executions.

The Tribunal further finds, in contradistinction to the defendant's statement, that he did at times command a sub-kommando. luntarily and remained in it against his will, submitting that on eleven different occasions he endeavored to be relieved from this service. It must be remarked, however, that whether he became a member of the einsatz forces voluntarily or involuntarily, he did his work zestfully. It can be said in mitigation that, according to his testimony, he did on occasion endeavor to assist potential victims of the Fuehrer-Order and in one particular instance issued passes which allowed some persons to escape from the camp in which they were being held. Nonetheless, the Tribunal is convinced that the evidence establishes beyond a resonable doubt that von Radetzky took a consenting part in War Crimes and Crimes against Humanity and, therefore, finds him guilty under Counts I and II of the Indictment. on behalf of the defendant to show that he did not enter the SS or SD organizations voluntarily, but was drafted. It is not sufficient however, in order to absolve oneself from the charge of membership in a criminal organization to show that one entered its ranks involuntarily.

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Attention is directed to that part of the International Military Tribunal Decision which says that it charges with criminal membership in the SS those persons who became or remained members of the organization with knowledge that it was being used for criminal purposes, "or who were personally implicated as members of the organization in the commission of such crimes." The decision excludes those who were drafted into membership by the State in such a way as to give them no choice in the matter but adds that this exception does not apply to those who committed the acts declared criminal by Article 6 of the Charter. Thus, the question whether von Radetzky entered the SS voluntarily or involuntarily becomes moot in view of the finding of the Tribunal that he is guilty under Counts I find II of the Indictment, thereby proving conclusively his personal implication in the acts established as criminal by the Charter. The same finding holds true with regard to the defendant's membership in the SD. defendant was a member of the criminal organizations SS and SD under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: The Tribunal will be in recess fifteen minutes.

(A recess was taken.)

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(The hearing reconvened at 1505 hours.)

THE MARSHAL: The Tribunal is again in session.

THE PRESIDENT: The defendant, Eduard Strauch.

SS-Lieutenant Colonel Eduard Strauch is a graduate lawyer. He joined the Allgemeine SS on December 1, 1931. In 1934 he joined the SD. Einsatzkommando 2 on November 4, 1941. This is denied by the defendant who, in effect, claims he was never in charge of this kommando. The defendant explains that when an area passed into the hands of the Civilian Administration from the military the einsatz units ceased to exist and were replaced by:

(1) the chief commanders (Befehlshaber) of the (2) the commandants (kommandeure) of the Security military at all, yet in seeking to make this point he gave the illustration of the Chief of Offices (Befehlshaber) of the SIPO and SD, Ostland with headquarters at Riga, the area of the Civilian Administration, maintaining his headquarters as Chief of Einsatzgruppe A in Krasnowlisk, within the Army area.

By this very illustration, which was supposed to show the contrary, it is very clear how one could act in a civilian administrative capacity and be head of an einsatz unit at the same time. command of Einsatzkommando 2, Latvia, on November 4, 1941, and that in February 1942 he became commander of the Security Police and SD in White Ruthenia, situated at Minsk. From some time in July 1943 until he left Russia, he served as Intelligence Officer in an anti-Guerrilla warfare unit.

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Strauch's guilt has been established by numerous documents. Strauch seeks to deny that he cooperated with Jeckeln, Higher SS and Police Leader in the Jewish operation of November 30, 1941, because he only had 20 men under him. But it is an extraordinary conincidence indeed that one officer and exactly 20 men of Einsatzkommando 2 participated in that operation which resulted in the death of 10,600 Jews in Riga.

Report No. 186, dated March 27, 1946 shows Strauch was commander of the Security Police and the SS for White Ruthenia during this period. The report chronicled the death of 15,000 Jews in Tscherwen.

Report No. 183, dated March 20, 1942, states:

"In the period from 5 to the 28 February Another 16 persons were arrested."

This operation was conducted by Hoffmann who was Strauch's deputy, and who kept Strauch informed of his operations, as Strauch admitted on the witness stand. 31, 1942 to the Reich Commissar in Riga as follows:

"During detailed consultations with SS-Obersturmbannfuehrer Dr. jur.

weeks. In the Minsk-Land area, the of labor in any way."

then abandoned that position, claiming that Kube exaggerated the figures. The Tribunal is convinced that the letter is authentic, and that the statements contained therein represent the truth even if not accepting the absolute accuracy of the figures down to the last digit.

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of the Jews, and displayed considerable indignation when anyone sought to defend them. In a letter dated 25 July 1943, he related a plan whereby 5,000 Jews of the Minsk Ghetto were to be "resettled". The Jews, jowever, learned that the resettlement meant execution and Strauch bitterly attacked those responsible for this "treachery". He said:

"We had no choice but to herd the Jews together by force."

70 Jews to special treatment and expressing his resentment because complaint had arisen from the fact that he had had the gold fillings removed from the mouths of these Jews before they were killed. on Strauch which further emphasizes Strauch's guilt which is complete:

"About the middle of February 1943 the sturmbannfuehrer, Eduard Strauch.

At about 6 o'clock in the morning the kommando was called together.

A Haupt every member of the kommando.

A cer to carry out the shootings.

Another who were supposed to be shot.

The older Ghetto.

A man in the uniform of that they would be resettled.

The OT (Organization Todt), Reichsbahn, etc.

of Sluzk. There the mass graves had already been prepared.

In the same summer 1942.

The Jews were taken into separate shots from behind.

At approxi mately 3 o'clock in the afternoon the Gottberg were present at the executions."

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White Ruthenia, Strauch replied that the Fuehrer-Order was valid in White Ruthenia, as everywhere else. He testified that he had a conference with Kube and that Kube told him Jews were needed and he could not do without those Jews, since they should be used in bring in the harvest, working in an armament factory and doing other jobs. The defendant thereupon talked to Heydrich and was directed to postpone the execution of the Fuehrer-Order until the harvest was brought in. had been killed. When Strauch arrived, Kube asked him not to continue this system, and the defendant said that he could not begin to shoot Jews on the first day of his arrival. the defendant's time of service he replied:

"You mean my time? Oh yes, well, if others, then I would say 17,000."

because he was a Jew. Regarding the affair of Sluzk, he testified that the number executed there was about 1,200 and not 2,000 as mentioned in the Kube letter. He stated that he was present during part of the execution and witnessed about 200 being killed. He also saw about 200 women and children lining up to be shot. guilty under Counts I and II of the Indictment. criminal organizations SS and SD under conditions defined by the Judgment of the Internation Military Tribunal and is, therefore, guilty under Count III of the Indictment.

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JUDGE SPEIGHT: Felix Ruehl from 1926 until 1929. He then went to England for one year. In February 1931 until September 1933 he worked in the Luckenwalde court and in September 1933 joined the Gestapo. In May 1941 while attending the Leadership School in Berlin he was summoned to Pretzsch, assigned to Sonderkommando 10b of Einsatzgruppe D, left for the field on June 27 or 28 and arrived in Roumanian territory about July 30. On October 1, 1941, having been called back to Berlin to continue his studies, he left the kommando. Robert Barth, supposedly a former onlisted man in the kommando in which he stated that during the "temporary duty trips" of the kommando leader which usually took two or three days, the unit was commanded by Ruehl. If it were established that Ruehl really served as commander of the unit even for brief periods during such times as the kommando was engaged in liquidating operations, guilt under Counts I and II would be conclusive. The Prosecution maintains that it has proved that verything. But if this proposition is to be upheld it must rest on the one pedestal of Barth's affidavit. Ruehl could not come into the leadership automatically as the result of rank or seniority because they were such as to place him only in the fourth position. Thus the proof of leadership must rest on the Barth column which probatively speaking, is a rather shaky one. While the rules of procedure permit the introduction of affidavits and indeed this innovation in trial routine has accomplished much good in the saving of time, an affidavit can never take the place of a flesh and blood witness in court when the affiant is available and the issue raised by the affidavit is a vital one. Had Barth appeared in court, not only would Defense Counsel have had the opportunity to cross-examine him, but the Tribunal itself could have appraised with more discernment than it can now his otherwise unsupported statement of Ruehl's supposed leadership. The pedestal of Barth's assertion with regard to upholding the hypothesis of Ruehl's leadership must withstand the successive hammer blows of, first, the unexplained absence of the affiant, secondly, Ruehl's low rank in the hierarchy of the unit and, thirdly, the fact that normally an administrative officer would not have executive functions.

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Under a multiple attack of that character the Tribunal cannot ascribe to this lone piece of evidence the strength needed to sustain so momentous a weight as the leadership of a kommando with its concomitant responsibility for executions. witness stand, that Ruehl never functioned as a deputy commander of Sonderkommando 10b. Ruehl denies that the action reported therein took place and then adds that he arrived after the date of the alleged executions. The communication in question, however, states:

"Kommando 10b reached Czernowitz on Sunday, 6 July 1941, at 18.

15 hours fore and had provided quarters."

(Emphasis supplied) of quarters it is not to be excluded that he led the "advance division" which established communications with the Roumanians and provided quarters. This, however, in itself would not make him a participant in the executive actions which followed nor would his contact with the Roumanians in itself establish that he was aware that executions were impending. A presumption in an issue as serious as the one involved in this particular transaction.

The Prosecution has also introduced Report No. 19, dated July 11, 1941 which plainly involves the kommando, but again there is no indication that Ruehl was in charge of the kommando or had any authority over it.

Report No. 50, dated August 1, 1941, speaks of an operation in Chotin or Hotin. Ruehl denies all knowledge of the executions mentioned therein. That Ruehl may not have taken any part in these executions is admissible, but that he was ignorant of their happening is contrary to human observation. That he may not have done anything to prevent them is within the realm of believability but to assert that as a member of a unit made up of only seven officers and 85 men he could not know that killings were taking place is to enter into a fairyland which was quite the antithesis of the demons' land in which they were operating. deduction to produce the conclusion of cognizance. It is readymade in Ruehl's own pre-trial sworn statement in which he tells of having received official notice of the killings by the kommando of 12 to 15 people declared to have participated in a surprise attack against Roumanian troops. He also tells of the sonderkommando which killed 30 Jews declared to have participated in the murder of two German air pilots. At the trial he denied having actual knowledge of these events and stated that what he acquired in the way of information came to him only through hearsay. illegal operations of Sonderkommando 10b, it has not been established beyond a reasonable doubt that he was in a position to control, prevent or modify the severity of its program. the matter of the migration of a large group of Jews from the German controlled territory into Roumania. Although this episode was dwelt on at length during the trial, no evidence was adduced to show that Ruehl acted in any capacity other than courier between the Chief of the Einsatzgruppe and the escorting Roumanian officers of the so-called transport. There is no evidence that Ruehl in any way maltreated these Jews, and certainly he did not participate in the execution of any of them. months and during the entire period took part in no executive operation nor did his low rank place him automatically into a position where his lack of objection in any way contributed to the success of any executive operation.

under Count I of the Indictment and not guilty under Count II of the Indictment. criminal organizations SS and Gestapo under the conditions defined by the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

Judge Dixon: Heinz Hermann Schubert: 1934, having previously served in the Hitler Youth Organization. In October 1934 he joined the SS. From October 1941 to June 1942 he served as adjutant to Ohlendorf, Chief of Einsatzgruppe D. At the trial he testified that his duties consisted mostly of attending to the personal affairs of his chief, the receiving and filing of correspondence, the making of appointments, receiving visitors and so on. It would appear, however, that he was more than an office boy with shoulder straps.

Schubert's own affidavit answers the question as to whether he is guilty under Counts I and II of the Indictment. The pertinent parts of this affidavit read as follows:

"In December 1941 -- I do not remember mations of the Einsatzgruppe D. My consisted of three parts:

a) to see that the location of the shooting:

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b) to supervise that the collection use of force; and that the persons

c) to supervise that the execution be according to Ohlendorf's orders.

"After the execution I had to report "As commissioner of Ohlendorf I followed his orders.

I went to the Gypsy quarter unrest by the native population.

Fur ing was going on.

Since it was my task "The place which was designated for road in an anti-tank ditch.

Among detoured on side roads.

When the this.

I watched that none of the de the collection.

The depositing of "For a short time, when the people strictest conformity with Ohlendorf's manner, as far as possible.

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The people rifles.

I know that it was of the strain (se*lische Belastung) would have "I have read this statement, consisting of three p*---*s in the German language "Nuernberg, Germany, the 24 February 1947 (Signature) Heinz Hermann Schubert" is established conclusively not only by reports but by the testimony of other witnesses as well.

In fact, Schubert himself said:

"This was the execution which has been discussed here repeatedly.

It certain time.

This deadline, as end of the year 1941."

affidavit by saying that the word "supervise", which is frequently used in his narrative, does not correctly report the functions he performed at the execution; he did not supervise but merely inspected. The affidavit consisted of three pages, he made a correction on page 1 and initialed the correction, placed his abbreviated name at the bottom of the first two pages and signed his full name at the bottom of the last page.

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recount on the witness stand of the part he played in the execution of defenselless and innocent people would clearly take him within the purview of Control Council Law No. 10.

When asked why these 700 to 800 people were shot he replied:

"I did not know why the individuals were being executed.

It is possible tion were being executed.

As for me, based on the Fuehrer-Order."

he emphasized that he did not select the place for the execution. It was then pointed out to him that his affidavit did not so indicate:

"This does not say that you selected it.

It says that you went there to ing."

He affirmed this version. With regard to the taking of the valuables he also confirmed in court:

"I convinced myself that the collection shot was not done by force, etc."

on, more or less, as a spectator, but he admitted that he would have interfered if the execution had been laid in the wrong place, if weapons not prescribed by the chief of the Einsatzgruppe were used, and in general he would have intervened if things were not going "well".

Schubert's criminal involvement in the Christmas massacre of Simferopol is complete and presents no mitigating circumstances. was its adjutant is not to be doubted. The defendant Ohlendorf declared in an affidavit:

"The only people whom I generally Gabel."

denied that he had been "generally assigned to inspections". He did, however, state that he knew "definitely" that Gabel "carried out such inspections". It would be strange, indeed, that Ohlendorf should mention three names, and it developed that the only one who performed the duties he assigned to them should be that one person who did not appear in this trial as a defendant. instructions generally given by the Chief of the Einsatzgruppe with regard to the "manner of carrying out executions". It is furthermore evident that, as adjutant, Schubert was current on the assignments given to various members of the staff and, therefore, had full knowledge of the main purpose of the Einsatzgruppe. guilty under Counts I and II of the Indictment. criminal organizations S and SD under the conditions defined in the Judgment of the International Military Tribunal and is, therefore, guilty under Count III of the Indictment.

THE PRESIDENT: Matthias Graf. the whole time he served in Russia was he an officer. When first attached to Einsatzkommando 6 he held the rank of Unterscharfuehrer (corporal). After one year he was promoted to Scharfuehrer (sergeant) and when he left Russia in October 1942 he held the rank of Oberscharfuehrer (master sergeant), that is to say he remained in a non-commissioned officers' status throughout the entire period of his service with the kommando. served as SD expert. Upon Grimminger's death in July 1941 Graf took over his position.

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Although Graf was statistically with Einsatzkommando 6 for thirteen months he served also for a short period with the Commander of the Security Police and the SD in Stalino. For five weeks he was detailed to the Liaison Office of AOK 17; he was on furlough for five weeks and was ill and on sick leave for about three months. Thus about five months of thirteen months' incumbency with the einsatzkommando were spent away from the unit. During the eight months he actually served with the organization, Graf never once acted as commander of it or any of its subdivisions. but he refused to accept the assignment. Because of this refusal he was arrested and placed in custody for disciplinary action. Eventually the disciplinary proceedings were dropped and he was sent back to Germany. be innocent until proved guilty. The Prosecution has introduced reports showing that Einsatzkommando 6 engaged in various executive operations. It is not questioned that the kommando did participate in liquidating operations and, despite the defendant's denial, it is not to be doubted that he know of at least some of these executions. However, more than more knowledge of illegality or crime is required in order to establish guilt under Counts I and II of the Indictment. Furthermore, in view of his various absences from the kommando it can not be assumed that his membership in the organization of itself proves his presence at and knowledge of any particular executive operation, without there being proof of that fact.

In view of Graf's non-commissioned officer's status in an organization where rank was of vital importance, it is not to be assumed that the commander of the organization would take Graf into his confidence in planning an operation. As a non-commissioned officer he would not participate in officers' conferences. Since there is no evidence in the record that Graf was at any time in a position to protest against the illegal actions of others, he cannot be found guilty as an accessory under Counts I and II of the Indictment.

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Since there is no proof that he personally participated in any of the executions or their planning, he may not be held as a principal. the Tribunal concludes that the evidence does not rise to that degree of proof required by the principles of justice and the concomitant guarantees of correct procedure to warrant a finding of guilt beyond a reasonable doubt, and thus finds him not guilty. of lack of attendance and general indifference to the organization. It would appear that at no time was Graf a fanatical adherent of National Socialism. In 1932 he intended to go to South America but was prevented from doing so because of restriction on foreign currency. He tried to migrate in 1940 but could not do so because of the war. His primary interest was not politics but business. His Work Book, a document required under the Law of February 26, 1935 (published in Reich Law Gazette 311) lists him as an Independent Business man from the period of October 1, 1935 to February 1, 1940 and as a civil servant from March 1, 1940. for service with the Landrat in Kempten and then entered the SD-Aussenstelle in Kempten on a war supplementary basis. that he might join the army. He took an interpreter's examination in order to qualify for linguistic services in the army but he did not succeed in his attempt. On April 18, 1941 he wrote a letter, seeking to be released from the SD so that he might be enrolled in the army. A copy of this letter was introduced as a document. as defined by the International Military Tribunal Decision, September 1, 1939 is accepted as a crucial date. On that date Graf was not a member of any criminal organization. When, in 1940, he was drafted by the Emergency Service Regulations he applied to rejoin the SS.

He explained that this application was purely a perfunctory function because he would automatically have fallen into this organization on account of his then being a member of the SD:

"The Personnel Departmental Chief could a member of the SS, so he said, 'Of the SS'. Therefore, I made out the ap special formation, the SD.

After all, number."

the insistency of his departmental chief the defendant pointed out, that although drafted into war service on January 1, 1940 he did not make his application for the SS until July 28. Had he had a sincere desire to rejoin the SS, he would not have waited 7 months to make the application. He, therefore, submits that the filing of the application was a were form.

The Tribunal finds that the defendant's leaving the SS in 1936 showed a clear intention to disassociate himself from that organization and accepts the defendant's explanation that he would not have rejoined the SS in July 1940 had he not been drafted by the Emergency Service Regulations and deferred to the SD. The Tribunal therefore finds him not guilty of membership in the SS under the conditions declared criminal by the International Military Tribunal. decision which declares that the Security Police and SD was a voluntary organization and that membership therein was voluntary. The Tribunal therefore finds the defendant guilty of membership in the SD. It further finds as a mitigating circumstance, however, that is membership in the SD was not without compulsion and constraint. It therefore adjudges that the period of the defendant's imprisonment from the date of his arrest, following the termination of the war, to the present date, shall constitute the sentence of the Tribunal based upon such conviction.

In view of the fact that the defendant has thus already served his term of imprisonment under the sentence just imposed, it is now ordered, that he be permanently discharged from custody under the Indictment upon adjournment of the Tribunal this day.

THE PRESIDENT: The Tribunal will now be in recess until tomorrow morning at ten o'clock.

(The Tribunal adjourned until 10 April 1948 at 1000 hours.)

of America, against Otto Ohlendorf, et al.,

THE MARSHAL: The Honorable, the Judges of Military Tribunal II.

Military Tribunal II is now in session. God save the United States of America and this Honorable Tribunal.

THE PRESIDENT: The Tribunal has the following order to promulgate with regard to sentences where the term of an imprisonment is indicated. The defendant involved will receive credit for the time already served by him in confinement from the first date of arrest following the termination of the war.

The Marshal will produce the defendant Otto Ohlendorf. indictment on which you have been convicted the Tribunal sentences you to death by hanging. on which you have been convicted the Tribunal sentences you to imprisonment for life.

JUDGE SPEIGHT: Defendant ERICH NAUMANN, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshall will produce the defendant Erwin Schulz.

JUDGE SPEIGHT: Defendant ERWIN SCHULZ, on the counts of the indictment on which you have been convicted the Tribunal sentences you to twenty years imprisonment.

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THE PRESIDENT: The Marshall will produce the defendant Franz six.

JUDGE DIXON: Defendant FRANZ SIX, on the counts of the indictment on which you have been convicted the Tribunal sentences you to twenty years imprisonment.

THE PRESIDENT: The Marshall will produce the defendant Paul Blobel.

JUDGE DIXON: Defendant PAUL BLOBEL, on the counts of the indictment on which you have been convicted the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshall will produce the defendant Walter Blume. on which you have been convicted the Tribunal sentences you to death by hanging.

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indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

JUDGE SPEIGHT: Defendant WILLI SEIBERT, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshal will produce the defendant Eugen Steimle.

JUDGE SPEIGHT: Defendant EUGEN STEIMLE, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshall will produce the defendant Ernest Biberstein.

JUDGE DIXON: Defendant ERNEST BIBERSTEIN, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshal will produce the defendant Werner Braune.

JUDGE DIXON: Defendant WERNER BRAUNE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshal will produce the defendant Walter Haensch. on which you have been convicted, the Tribunal sentences you to death by hanging.

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on which you have been convicted, the Tribunal sentences you to imprisonment for life.

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JUDGE SPEIGHT: Defendant ADOLF OTT, on the counts of the indictment upon which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshal will produce the defendant Walter Klingelhoefer.

JUDGE DIXON: Defendant WALDEMAR KLINGELHOEFER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshal will produce the defendant Lothar Fendler.

JUDGE DIXON: Defendant LOTHAR FENDLER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to ten years imprisonment.

THE PRESIDENT: The Marshal will produce the defendant Waldemar von Radetzky. indictment on which you have been convicted, the Tribunal sentences you to twenty years imprisonment. on which you have been convicted, the Tribunal sentences you to ten years imprisonment.

JUDGE SPEIGHT: Defendant HEINZ SCHUBERT, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Marshal will produce the defendant Eduard Strauch.

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JUDGE SPEIGHT: Defendant EDUARD STRAUCH, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

THE PRESIDENT: The Tribunal is now adjourned.